

GEORGE MASON AMERICAN INN OF COURT



OPENING STATEMENTS AND CLOSING ARGUMENTS: HOW TO REACH A JURY AND CLOSE THE CASE

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Agenda

- Opening remarks 7:30pm – 7:40pm
- Openings 7:40pm – 8:00pm
- Closings 8:00pm – 8:20pm
- Concluding Observations 8:20pm – 8:30pm

Well, when I was an attorney, a long time ago, young man, I realized, after much trial and error, that in the courtroom, whoever tells the best story wins.

- “John Quincy Adams”, *Amistad*

OPENING STATEMENTS: HOW TO REACH A JURY

- I. Opening statement is defined as an introductory statement made by the attorneys for each side at the start of a trial.
 - A. The Supreme Court has characterized the opening statement as “ordinarily intended to do no more than to inform the jury in a general way of the nature of the action and defense so that they may be better prepared to understand the evidence.” *Best v. District of Columbia*, 291 U.S. 411 (1934).
 - B. The Virginia Supreme Court has said the following about opening statements, “[i]t should be a clear, concise, and brief statement of what the parties expect to prove. It should not be an argument. Generally, a chronological order of events will be the most readily understood and borne in mind by the jury, but the facts of some cases are too complex to render this order practicable. In any event, that statement should ‘be clear and clean-cut.’” *Baker Matthews Lumber Co. v. Lincoln Furniture Mfg.*, 148 Va. 413, 420 (1927) (*quoting* Burks’ Pleading and Practice (2d ed.)) (emphasis added).

C. Theme and Theory

II. Law

A. Va. Code § 19.2-265: On a trial of any case of felony or misdemeanor and before any evidence is submitted on either side, the attorney for the Commonwealth and counsel for the accused, respectively, shall have the right to make an opening statement of their case.

1. Each side (h)as the right to make an opening statement, but it is not mandatory. *Johnson v. Commonwealth*, 111 Va. 877 (1911).

2. The court may exercise broad discretion in the supervision of opening statements. *Spencer v. Commonwealth*, 238 Va. 295 (1989).

B. Opening statements cannot contain inadmissible evidence in any form. *Burnette v. Commonwealth*, 203 Va. 455 (1962).

1. A prosecutor acts unprofessionally when he or she alludes to evidence in the opening statement unless he or she has a good faith, reasonable belief for believing the evidence will be offered and admitted. *Arrington v. Commonwealth*, 10 Va. App. 446 (1990).

C. You cannot argue questions of law. *Lam v. Lam*, 212 Va. 758 (1972).

D. Prosecutors are not permitted to comment on whether the defendant will testify or make statements that impugn the presumption of innocence.

Ford v. Commonwealth, 48 Va. App. 262 (2000); *Hazel v. Commonwealth*, 31 Va. App. 403 (2000).

- E. Counsel is not permitted to put his or her client's character into evidence during the opening statement. *Fields v. Commonwealth*, 2 Va. App. 300 (1986).
- F. Visual aids can be used, even if not introduced into evidence. *Curtis v. Commonwealth*, 3 Va. App. 636 (1987).
- G. Do not make personal comments about opposing counsel. *Warmouth v. Commonwealth*, 29 Va. App. 476 (1999).
- H. Do not give the jury your personal opinion. *Jones v. Commonwealth*, 218 Va. 732 (1978).
- I. Va. Code § 8.01-379.1 permits the attorney for either party in a civil action to inform the jury of the amount of damages sought by the plaintiff during opening.
- J. No inflaming the passions or prejudice of the jury.

III. Tips and Practice Pointers

- A. Start off with a strong hook—in the first few sentences, the jury should know why they are there. Start Strong, keep it short- BANG.
 - 1. Pick a theme and stick to it.
 - 2. Set the scene.

3. Factual Summary: Chronological order is easy but sometimes not best.

B. Show and tell your story.

1. Use visual aids, but don't rely on them too heavily.
2. Make sure the aids are admissible before trial.

C. Write it out, but don't read.

D. Make eye contact.

E. The pause can be persuasive.

F. Argue (gasp!) and show commitment, but don't over promise.

G. Recognize weaknesses, but don't concede too much.

H. Be flexible, but don't change your story because of what your opponent said.

I. Be the truth giver: Civil evidence in particular can be boring. As you say things that have evidentiary support it will build trust with the jury. They will see you prove what you promised.

J. Use bad facts to win.

K. Don't be afraid to use the burden of proof.

L. Tell a story- use empathy and other story-telling techniques:

1. Make the character skilled at what they do.

2. Make the character a victim of undeserved tragedy.
3. Give the character a sense of humor.
4. Make the character a good person.
5. Put the character in jeopardy.
6. Have a Hero: the best hero is an empowered jury! Use juror information to your advantage (e.g. teacher, lawyer, nurse, etc.).
7. Have a Villain.
8. Assign blame.
9. Tell the jury what you want them to do.

M. Keep it short and concise—don't be afraid to sit down.

N. If you are going to object, make sure you are right.

O. Recognize that opening is different than closing.

P. PRACTICE

IV. Examples

A. Jim Willette's opening statement from sniper trial (first 12 paragraphs), see Attachment.

B. Bee Movie https://www.youtube.com/watch?v=sQks_Mvb4NA

C. Philadelphia <https://www.youtube.com/watch?v=131fQF4CLg4>

D. The Devil's Advocate <https://www.youtube.com/watch?v=DEX-5gM0P8I>

CLOSING ARGUMENTS: HOW TO CLOSE THE CASE

- I. Authority: Va. Code §8.01-379 grants right to counsel to make a closing argument in jury trials. *Fish v. Commonwealth*, 208 Va. 761 (1968) grants the right to counsel to make a closing argument in non-jury trials.

- II. Manner/Length: Court's discretion. Must be reasonable.
 - A. What is reasonable depends on the facts of the particular case as all cases are different. *Brown v. Peters*, 202 Va. 382 (1961).

 - B. Factors considered by the Court in determining length:
 - 1. Amount of Evidence.

 - 2. Whether Evidence is Conflicting.

 - 3. Number of parties.

 - 4. Number of witnesses.

 - 5. Complexity of jury instructions.

 - 6. Number of lawyers involved in the case.

- III. Counsel Responsibilities: Counsel waives objections to unreasonable limitations unless they use all of their time and then request additional time from the Court on the record. *Cohen v. Power*, 183 Va. 258 (1944).

- IV. Keep Your Promise: Opening Statement you make a promise, Closing Argument you argue you kept your promise:

- A. Focus on Themes from Trial and tell the story.
- B. Loop back to your themes in *voir dire* and Opening.
- C. Put your themes in order.
- D. Keep your promise - Met the Burden of Proof, Proved Damages.
- E. Explain weaknesses in your case.
- F. Explain weaknesses in their case.
- G. Show your case is more credible.
- H. Chronology - if it works with your case facts, use it.
- I. Analogies work well. Apply facts to law.
- J. You may not argue your personal opinion.
- K. You may not argue the Golden Rule.
- L. Use Exhibits if they are helpful.
- M. Use visual aids even if not introduced into evidence.
- N. Don't be afraid to use the verdict form.
- O. Educate your jurors: tell them what you WANT them to do and HOW to do it.

- P. Be polite and professional—do not disparage opposing counsel.
- V. Matters not Permitted in Closing Argument. *See Friend*.
 - A. The personal opinion of counsel regarding the credibility of witnesses or the weight of the evidence.
 - B. Statements of fact not introduced into evidence.
 - C. Statements that attempt to inflame the passions and prejudices of the jury.
 - D. Statements that tempt the jury to disregard its duty or take that duty lightly (e.g. “If you make a mistake, the court can correct it”).
 - E. The Commonwealth cannot comment on the defendant’s failure to testify. However, if the testimony of the Commonwealth’s witnesses is uncontradicted, it may note that fact, provided that the language used is not manifestly intended or of such character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify. It may also be permitted if invited by defense counsel comment that the defendant denies doing it.
 - F. The Commonwealth cannot comment on the demeanor of the defendant if he or she does not take the stand.
- VI. Damages in Civil Cases
 - A. Amount Sought: You may inform the jury of the amount of damages sought by plaintiff. *Fields v. Commonwealth*, 2 Va. App. 300 (1986); see also Va. Code § 8.01-379.1: (“[A]ny party in any civil action may inform

the jury of the amount of damages sought by the plaintiff in the opening statement or closing argument, or both.”).

- B. Personal Injury Trials: It is permissible to request separate amounts for each different element of damages as long as it does not exceed the *ad damnum*. *Wakole v. Barber*, 283 Va. 488 (2012) (“Wakole Exhibit”). However, *per diem* arguments are improper. *Certified T.V. & Appliance Co. v. Harrington*, 201 Va. 109, 115 (1959).

VII. Burden of Proof: Know whether it is preponderance, clear and convincing, or beyond a reasonable doubt and use to your client’s advantage.

VIII. Objections During Closing Argument

- A. Required to preserve appellate review (*Friend* 1-1 § 1-4).

- B. May be inappropriate for the trial court to intervene *sua sponte* without an objection. *Clark v. Commonwealth*, 14 Va. App. 1068 (1992).

- C. Two wrongs do not make a right: *United States v. Young*, 470 U.S. 1 (1985).

- 1. “Invited Response” Rule: “[T]he Court must consider the probable effect that the prosecutor’s response would have on the jury’s ability to judge the evidence fairly. In this context, defense counsel’s conduct, as well as the nature of the prosecutor’s response, is relevant.” *Id.* at 11-12.

- 2. Trial court has a duty to limit such improper tit-for-tat arguments. *Id.* at 10-11.

IX. Limiting Instructions

- A. Limiting instruction is curative in most situations. *Schmitt v. Commonwealth*, 262 Va. 127, 147-48 (2001). “We will presume that a jury has followed the trial court’s prompt and explicit curative instructions, unless the record clearly shows that the jury disregarded the instructions.” *Beavers v. Commonwealth*, 245 Va. 268, 280 (1993).
1. What would such evidence actually look like?
 2. Trial court must at least attempt to correct the error with a prompt curative instruction: “The trial court’s failure to properly direct the jury is relevant to determining prejudice because the jury may infer from such inaction that the trial court approved the impropriety.” *Smith v. Commonwealth*, 40 Va. App. 595, 602 (2003).
- B. Instructions are insufficient when there is a “manifest probability that the evidence or statement has been prejudicial to the adverse party.” *Kitze v. Commonwealth*, 246 Va. 283, 288 (1993) (quoting *Saunders v. Commonwealth*, 218 Va. 294, 303 (1977)).
- C. Adverse party *must* move for a mistrial if an argument about the ineffectiveness of the curative instruction is to be preserved. See e.g. *Brown v. Commonwealth*, 208 Va. 512 (1968).

X. Jury Instructions

- A. State Court: Jury Instructions are given before Closing-Argument Instructions in Closing remarks. These instructions inform jurors of the more important instructions.
- B. Federal Court: Jury Instructions are given after closing.

XI. Tips

- A. Trial Notebook: Keep notes from Opening, Defendants' arguments, and evidence to assist you in preparing your closing. Your time will be limited!
- B. Keep your themes separated with transcripts and Exhibits flagged for use.

XII. Examples

- A. The Verdict <https://youtu.be/qjYP7J3oP9Q>
- B. To Kill a Mockingbird, <https://youtu.be/HOocTXKPVVU>

A VIEW FROM THE BENCH

Opening Statements

1. Know your judge.
2. Goals of counsel.
3. Goals of the judge.
4. What likely will be allowed.
5. What likely will be stricken.

Closing Arguments

1. Know your judge and the evidence.
2. Goals of counsel.
3. Goals of the judge.
4. Greater latitude than in opening statements, but not unlimited.
5. What likely will be allowed.
6. What likely will be stricken.

Remedies

1. If uncertain, ask in advance.
2. Whether and how to object.
3. Motions for mistrial.
4. Harmless error doctrine.

The Honorable Robert W. Wooldridge, Jr. (Ret.)

Judge Wooldridge retired in 2008 as a Judge of Virginia's 19th Circuit Court, Fairfax County after serving on the bench for sixteen years. He is currently a neutral for the McCammon Group in the areas of personal injury, medical malpractice, commercial issues, products liability, professional liability, family law, contracts, real estate, construction, condemnation, employment, and trusts & estates. He is a Certified Mediator for the Supreme Court of Virginia. Prior to becoming a Circuit Court Judge, he was a partner at McGuire Woods, where he practiced civil litigation, with an emphasis on commercial, real estate, construction, products liability, and trusts and estates litigation. Judge Wooldridge is also a former Senior Counsel at Rees Broome, P.C., a former Professor at George Mason University School of Law, and a former Commissioner-in-Chancery at the Circuit Court of Fairfax County.

Judge Wooldridge is also a former President of the Fairfax Bar Association, former Member of the Virginia State Bar Council, former Faculty Member of the Virginia State Bar Professionalism Course, former Member, Board of Directors for the Legal Services Corporation of Northern Virginia, and former Member, Board of Directors for the Medical Care for Children Project. Judge Wooldridge serves currently as a Member, Board of Directors for the Flicker of Hope Foundation, and a Counselor at the Mid-Atlantic Burn Camp. He has been listed as "Legal Elite" in the field of Alternative Dispute Resolution, *Virginia Business*, 2017. Judge Wooldridge earned his J.D. and B.A. at the College of William & Mary, and earned an M.A. at the University of Virginia.

Jonathan P. Lienhard, Walker Jones, PC

Jonathan has practiced law for over 20 years in the areas of commercial litigation, civil litigation, and criminal defense. He began his career as a Navy JAG prosecutor at Naval Station Norfolk and served as a Special Assistant U.A. Attorney in the Eastern District of Virginia. Jonathan has tried cases before juries in federal court, state court, and military courts martial. He has also argued cases before the Virginia Supreme Court. Jonathan holds an AV rating from Martindale-Hubbell and is admitted to practice in Virginia, Maryland, and the District of Columbia. After being raised in northern Virginia, he

attended the University of Notre Dame, where he earned his B.A. and his J.D. A former President of the Fauquier County Bar Association, Jonathan currently serves on the board of the American Legion, Post 72, and is member of the Better Annual Meeting Committee of the Virginia State Bar. He resides in Warrenton, Virginia, with his wife and three children.

Susan F. Pierce, Walker Jones, PC

Susan Pierce is a principal at Walker Jones PC. where she focuses her practice on personal injury, wrongful death, and general civil litigation. She has 30 years of legal experience in personal injury law and holds a special interest in brain injury cases.

Susan began her career in Arlington County where she served as a judicial law clerk for the 17th Circuit. She holds an AV rating from Martindale-Hubbell, has been elected as a Virginia “Super Lawyer”, a top personal injury lawyer, and recipient of top verdict and settlement by Virginia Lawyers Weekly. She is admitted to practice in Virginia and the District of Columbia. Born in Warrenton, Virginia, Susan earned her B.A. at Mary Washington College and her J.D. at George Mason University. A former President of the Fauquier County Bar Association, she is currently a Member of the Virginia State Bar Council, representing the 20th Circuit.

Sean P. Roche, Cameron/ McEvoy, PLLC

Sean Patrick Roche is a business litigation attorney and a partner at Cameron/McEvoy. His practice is devoted to complex civil litigation with expertise in matters generally revolving around a variety of forms of contract disputes, often including high stakes “bet-the-company” litigation. For example, Mr. Roche regularly handles contract litigation involving construction, real estate, trust and estates, labor and employment, commercial landlord-tenant, telecommunication, intellectual property, and various other forms of complex business disputes. Ultimately, Mr. Roche is a trial attorney though his expertise is in conflict resolution, whether by prevailing in court or negotiating the best possible resolution out of court. Mr. Roche is licensed to practice law in Virginia, Washington, D.C., and Maryland. He regularly handles litigation in the state and federal courts

throughout all three jurisdictions and he is often specially admitted to appear on behalf of clients in various courts and arbitration proceedings throughout the United States and Canada for specific matters as necessary.

Mr. Roche was born and raised in the Washington, D.C. area, where he continues to reside with his wife and two sons. He obtained two Bachelor of Arts degrees from Georgetown University, a Juris Doctorate from the University of Richmond School of Law (where he served on the *Law Review* as Allen Chair Editor), and a Master of Laws (“LL.M.”) in Litigation and Dispute Resolution from The George Washington University Law School. Mr. Roche is also a graduate of the College of Trial Advocacy.

Mr. Roche has been named among *Virginia Business* magazine’s “Legal Elite”, the Washington Post Magazine’s “Outstanding Young Lawyers,” and he has been elected as a “Super Lawyer” in Virginia, Maryland, and D.C. In his first year of eligibility, he achieved an AV-rating by Martindale-Hubbell, the highest available rating from the premier attorney rating database. Inclusion on these various lists means Mr. Roche is among those lawyers recognized by his peers as one of the best in the D.C. metropolitan region.

Lacey Conn, Thomas, Thomas & Hafer, LLP

Lacey is a partner in the Washington D.C. office. Prior to joining Thomas, Thomas & Hafer, LLP, Lacey worked for a large national insurer, during which time she tried over 50 jury trials and obtained her Chartered Property Casualty Underwriter (CPCU) designation.

Lacey devotes most of her practice to representing insurers and their insureds in litigation in cases involving motor vehicle accidents and premises liability. Lacey also has defended railroads against claims brought by employees and third parties under the FELA.

Lacey earned her B.S. at The Ohio State University and her J.D. at the University of Toledo College of Law. During law school, Lacey interned for Judge Jensen in the

Lucas County Court of Common Pleas in Toledo, Ohio, and was a member of the University of Toledo College of Law's Trial Advocacy Team. She is admitted to practice in Virginia, Ohio, Maryland, and the District of Columbia. Lacey serves on the Board of the Fairfax Bar Association.

Brian Goodman, Fairfax County Public Defender's Office

Brian Goodman is an Assistant Public Defender for the Fairfax County Public Defender's Office. He joined the office in May 2011 after graduating from The George Washington University Law School in May of 2010. While studying, he worked at his current office, the Public Defender Service for the District of Columbia, a criminal defense firm in Fairfax, and the criminal section of the DC Law Students in Court Clinic. Upon graduation, he practiced court-appointed criminal law until a position opened at the Fairfax County Public Defender's Office. In his time at the Public Defender's Office, he has represented thousands of clients, charged with everything from trespassing to murder.

Transcript: Opening Statements of Attorney James A. Willett

Tuesday, October 21, 2003; 12:00 AM

The following is the transcript of the opening statement by Assistant Commonwealth's Attorney James A. Willett. This is from a preliminary transcript of court proceedings compiled by court reporters Ronald Graham and Associates.

MR. WILLETT: Ladies and gentlemen, I would ask you to come back in time with me to a day almost a year ago. It is October 24, 2002. It is a day that would prove to see the arrest of the snipers, a day that would be their last day at large, a day that we'd finally see an end to their killing and their terrorism.

From this day forward, the shroud of fear that enveloped so many of us would begin to lift. From this day forward, schools would reopen, football games would be played. From this day forward, ordinary people going about ordinary tasks like pumping gas or walking across the street to a grocery store would be able to do so without being in fear for their very lives.

Come with me to the arrest scene. It's shortly after 3:30 in the morning on the 24th of October at a rest stop off an interstate in rural Maryland. It's like any of a hundred rest stops you've been in before. There's a ramp that leads from the interstate to the rest stop; and at the other end of rest stop, there is a ramp that leads from the rest stop to the interstate. At this time of the morning it's dark. There's a mist in the air. The lights overhead are halogen lights, and you can see the cones of light that throw down upon an almost completely empty parking lot.

Besides the parking lot, there's a small circular building which houses restrooms and maintenance closets and things like that and behind the rest area itself the building is a line of woods vegetation that you can't see through.

Looking around the parking lot in the distance the far end of it are some tractor trailers parked. Their running lights are on. Their engines run all night. The drivers are probably asleep in the cabs. You can smell the exhaust from the diesel engine. That's about the only sound that you can hear except for the occasional whine of tires from a lone automobile traveling up the interstate.

Looking around the parking lot facing the restrooms backed into a parking space right near there is an old boxy Chevrolet Caprice. Dirty paint job, banged up a little bit. You can see the grill work. You can see the headlamps, which are not on.

You're looking through the windshield, but you can't see inside the car because it's too dark. If you were to walk around to the side of the vehicle and attempt to look in the side windows, you would fail because they have been tinted.

It is the snipers' vehicle. It looks like an old cop car because that's exactly what it is. It is the place from which they took their killing shots, the thing that concealed them, and the

thing that allowed them to escape. We can see the car, but we can't see the snipers. Where are they? Are they in the car asleep? Are they in the car awake looking at us? Or are they out of the car? Are they in the woodline across the parking lot somewhere where we can't see with a high-powered rifle ready to take the next kill shot? As we stand there, we have no way of knowing.

But the snipers are not the only people there that we can't see. If we were to look past the car, past the restrooms to the woodline, we would see no movement; but movement is there. There are men there dressed in dark clothing highly armed, highly trained. They are the members of the FBI elite hostage rescue team. They have the mission to take the snipers. They have been alerted by a citizen who recognized the car after a police bulletin went out to everybody in the public with their names and their license plate and the car description. He happened to see the car parked there in this lonely space at the rest stop, and he called the police, and the police brought in the FBI.

But their problem is the same problem we have. They don't know where the snipers are. They know an awful lot about the snipers. They know they're clever and that they plan things well. They know that they'll kill without provocation, but they don't know where they are.

Unlike someone standing in a parking lot looking at this scene, the members of the hostage rescue team have a responsibility and a mission; and so rather than wait for the car to drive off or wait for some citizen to wonder by even at that time in the morning, they decide to take action. They rush the vehicle, two to the rear of the vehicle, two to the side of the vehicle, two to the other side of the vehicle. They smash out the windows.

In the front seat is an asleep Lee Boyd Malvo. He's taken out of the car and put on the ground. In the rear seat is an awake but dazed John Muhammad staring, sitting up. He's taken out of the vehicle, put on the ground, secured. It's over just that fast. In the understated language of the FBI report of the incident, the team leader said: two subjects arrested and secured without incident.

Ladies and gentlemen, as Judge Millette has told you, my name is Jim Willett. I'm an assistant commonwealth's attorney in Prince William County.

I'm here with Mr. [Richard A.] Conway, assistant commonwealth's attorney, and the commonwealth's attorney of Prince William County, Mr. [Paul B.] Ebert. We are here because we had a killing in our community like many communities did in our area, and Judge [LeRoy F.] Millette in his wisdom thought that it would be fair for the defendant if we came to an area where people weren't as directly affected by his crimes as the people where we're from, and that's why you were asked so many questions about did this personally affect you? Do you have friends or relatives in the Washington metropolitan area? And many of you said, "Well, I was concerned about it; but it was far away." Many of you said, "Well, I had relatives in the area; but I personally wasn't concerned;" so it was a good decision to bring the case to the people of Virginia Beach.

When I was growing up, we had one rule in our house that was more important than any other rule because this was the one rule that the boys better not break. That was if we were guests in somebody else's home, there better not be a report of bad behavior or inappropriate conduct coming back as a result of that.

Ladies and gentlemen, we will be and are guests in your home; and we'll be on our best behavior. That is not to say that there won't be moments in this trial that are emotional. That isn't to say that there won't be moments in this trial where there is a hardfought battle because this will be a hardfought battle.

On that point I want to address something that just happened today. As Judge Millette has told you, Mr. Muhammad has decided to represent himself.

It is an unusual but not unheard of thing for someone in his position to do. The Constitution states clearly that he has the right to do that if he meets certain qualifications in terms of his abilities to do that, and we had a very long meeting with him this morning at the bench for the court to make that determination, and the court felt that he did have the basic ability to at least begin to represent himself with the assistance of standby counsel, and it's a decision that the judge can change if he finds that Mr. Muhammad is not adequately representing himself, but for now that's his status, that's his right. Please understand that he has no knowledge of the rules of evidence or procedure of which we are aware, and he was advised of this gap in his ability his courtroom knowledge by the court and by his lawyers and has chosen voluntarily to ignore it.

We will make him play by the rules. We represent hundreds of thousands of people. We are not going to lay down simply because he's made this decision; so if he asks a question that's objectionable, we are going to object. If he tries to introduce a piece of evidence that's inadmissible, we are going to prevent him from doing that. We have a duty to do, and I hope and I ask that none of you hold his decision to represent himself against us in any way.

I want to talk to you a little bit if I can, folks, about something that I call just my word sniper craft. Because in order to be a sniper, you have to have a certain set of skills. You have to have certain abilities, and you have to have certain equipment, and together it really does form a craft or a trade or a profession however you want to think about it. The leading principle of sniper craft -- the guiding commandment if you will -- is that snipers never act alone if they can help it.

They always want to deploy in teams of two or more.

If you stop and think about what a sniper does, this becomes apparent. A sniper has two goals. First, he has to go into enemy territory, take out a target, and leave without being detected.

Second, he has to terrorize and demoralize the other side. In this case the other side were the people of the Washington metropolitan area.

Two men. One is the shooter. His responsibility is to take a weapon like this with a sight or a scope, select a target area, and focus all of his attention on that area. His concentration is fully there to the exclusion of everything around him, and that's where the second man comes into play.

He has more duties even than the shooter. He is the spotter. He has to provide a 360-degree security for the man who is focused on the one thing that is his objective his target. So for example, if a sniper sets up in an urban environment near a Home Depot or a WalMart or a Sunoco or a Ponderosa where there's people all over the place coming in and out of restaurants, getting in and out of cars, the spotter has to make sure that no one is around to see when the shot is taken or they're caught.

Likewise, ladies and gentlemen, in addition to providing security for the shooter, the spotter has to know a way out and pick the time to escape; and, most importantly, in sniper terminology the spotter has to trigger the target for the shooter; and by that I mean he has to tell the shooter when the target is coming, where the target is, and when the target is in position to be shot. That's how they operate to achieve the twofold goals. Kill without being detected, terrorize and demoralize the enemy.

Obviously, they have to have some pretty significant equipment to do that; and in this case one of the pieces of equipment they had is a Bushmaster 223 high-powered rifle. A sniper wants to select a weapon with which he is familiar with.

Folks, this is the civilian equivalent of the military's M16 -- a weapon that that man fully qualified for during his days in the Army, a weapon that he is quite familiar with. The difference is that this is not fully automatic. It will only fire one round at a time with every pull of the trigger.

One round was all he needed. It has a muzzle velocity of 3,000 feet per second. That means that when the projectile leaves the end of the muzzle, it is traveling 10 football fields like that. It's a small projectile. A .223 is not a big bullet. It doesn't have to be. With that kind of energy when it is delivered to a target, it destroys that target if the target is a human being. It liquefies that part of the body that it strikes, and it is almost always fatal.

It is a weapon that is best fired from the prone position, that is laying down, because the ground can support the weight of the weapon; so if you're on the ground or if you're on a surface, like in the trunk of a car, and you couple that stability with this bypod up front here, this weapon becomes extremely stable and extremely accurate; and the shooter can remain in that concealed position for a very long time because it is comfortable to be prone. He is not standing holding the weapon up for his arms to get tired. He is on the surface with it, and he can stay there indefinitely.

The Caprice. I've told you the role that it played. It was their hide, their concealment place.

The Caprice was common and ordinary in an urban environment. You wouldn't think twice about it if you saw it backed into a parking space of a WalMart or a Mobil. It hid them. It allowed them to wait, pick their time, and provided them a means of escape.

So wait a second. Wait a second. If this thing was so essential to the sniper operations, are you telling me that somebody can just take any old car and become a sniper? No. I'm not saying that, and you are right. Certain modifications had to be made to this vehicle.

Let me show you a picture of it, if I can.

This was taken after the arrest. You can see the broken glass, things that were removed from the vehicle. You can also see that it's a very large trunk. Notice if you would, please, that the upper lid of the trunk is white except on that edge, that last foot where it's been spray painted blue. That's one of the modifications that the snipers made to the car because the trunk lid has to come up a little bit in order for them to take the kill shot, and they didn't want to a change or flash of white color, so they changed that.

Another thing they did was they took the supports of the back seat and removed them so that the back seat could raise up in two portions. One portion was a place to conceal the weapon. What you are looking at here is the back seat of the Caprice with one part of the back seat removed. The weapon was hidden there. If you were to take this piece and raise it up on a hinge, you would see that the back supporting struts have been cut away by the defendant so that he can crawl into the trunk from the rear seat and stretch out in a prone position to fire.

He also . . . went around to the back of the car and cut a hole in the rear deck, as you see here, to allow the barrel, the muzzle of the gun to protrude while he took the shot; and it's very interesting the way this cut was made, ladies and gentlemen, because when you see different pictures of it, from the top you will see that the cut is not made straight across like this. He beveled it. That gives him a much wider field of vision and a much narrower exposure. A very, very clever premeditated device.

The Caprice allowed them with impunity to travel where they wanted, park where they wanted, and kill who they wanted; and the more they killed the more their territory in which they killed became enemy territory. Because after these killings started to rage, everybody in our area was looking for the sniper. People were pumping gas looking for the sniper, buying groceries looking for the sniper.

So at each increasing shot, his risk of capture elevated; and yet this car and his planning escape routes and so forth allowed him to continue to kill with impunity.

The sniper has other tools. In this particular situation, you would need ear protection firing from a trunk and we found ear plugs in the car. You would need a means for the spotter and the shooter to communicate. We found functioning walkie talkies. We found a computer with maps of the areas where the kill shots were made and escape routes

plotted on them, and we found a global positioning unit and a digital voice recorder that was used by them to rehearse their extortion demands.

Folks, I want to talk to you a little bit about how the evidence of the shootings themselves is going to come in; but before I do that, I would like very much to introduce you to a man by the name of Dean Harold Meyers. On October 9, 2002, Mr. Meyers works for a company in Manassas. He lives in Maryland. He is in his early fifties. He is by all accounts a good and gentle soul upon this earth. He is a hard worker. He is a man of generosity. He is a friend to many. He is a man of modesty. He is at work at his place of business, an engineering concern, in the city of Manassas; and as is his habit, he's working late. He comes in early. He leaves late.

As the evening began to wear on, however, he decided it was time to go home. He stands up, he says goodbye to his coworkers. He says something to the effect, "Well, I think I've had all the fun I can take for one day," or words to that effect. He gets his coat, walks out the door, walks down the steps.

He walks to his car. You can see him opening the door, stepping inside the driver's side and turning on the ignition. Dean wants to go home. He wants to have a meal. He wants to relax. He fully intends to do that except that Dean needs to put gas in his car.

He drives up the road. You'll see a picture of it. It's a congested area just like all the other shootings. By now the sniper fear has been raging.

There have been any number of killings, but that's not a concern to him. This man survived a bullet in Vietnam. He wasn't about to let some sniper hiding somewhere alter his behavior. He drives to the Sunoco. He pulls to the pump. You can see him getting out of the car. He takes the gas cap off the tank and sets it up on the gas pump, goes to remove his wallet to use his credit card to pay for the gas when the sniper's rifle crack is heard and he falls to the pavement to death.

The shot came from across the street Bob Evans parking lot here. Dean was gunned down here -- a distance of about 80 yards. You can see how important a spotter would be in this situation. This parking lot is always crowded as you see it pictured here today. There are always people coming in and out of the restaurant, and that's where they were.

How do we know that? Did anybody see them?

No. There will be no eyewitness testimony to any of these shootings, ladies and gentlemen. That's how clever he is. But we know that that's where the shot is fired from because of the trajectory of the bullet and because we found right there, right in that parking area, an ADC map booklet that was stolen from a library in Baltimore, and we seized that and we examined it for fingerprints, and lo and behold it had both Mr. Muhammad's and Mr. [Lee Boyd] Malvo's fingerprints on it. And we took the bullet fragments from Dean Meyers' body and compared them forensically with known bullets shot from the gun that was found in their car the night of their arrest, and it matched.

No question whatsoever. It matched to the exclusion of any other weapon in existence.

That's basically how the evidence is going to come before you, and I give you that as an example because in this situation we have selected 16 of the sniper shootings to present to you, 10 of which were fatal. What I'd like to do now is go back to the beginning on Sept. 5 to the first shooting and take you through it case by case because, folks, let me tell you right now. This evidence is not difficult to understand. It is straight forward and clear. The problem is that there is so much of it.

Most juries are asked to decide one or two crimes, one or two shootings. You . . . are being asked to decide 16 shootings. The only way I can get a handle on it is to take it one case at a time and then move on to the next one, and that's what we're going to do in the presentation of evidence in this case. We have a chart that I think might help.

The evidence is also going to come in a pattern that I hope will be recognizable and help you predict what's going to happen. Now, each of these shootings was different; so the pattern doesn't hold true and exact for each shooting; but generally speaking, I would anticipate that for each shooting where there is a fatality, you will hear from a family member who will identify a picture of the victim in life. You will hear from crime scene folks who surveyed and photographed the area over all, from above, and that sort of thing to give you a general layout of what the area looked like where the shooting took place. You will hear from people who were there at the time. Although none of them actually saw a shot fired, they will tell you different ones will tell you they heard a shot or they saw somebody fall, their reactions was that they called 911, what they did in that regard. You will hear from the first official people who got on the scene, whether it's a rescue person or a police officer and what took place from that point on; and then you will hear from the crime scene analysts.

Perhaps some of you have seen the TV program CSI and you see the magic that they work. Let me tell you, our guys are better; and they will present to you the forensic evidence that was meticulously gathered at each one of these scenes. DNA evidence, fingerprint evidence, and ballistic evidence that links the rifle that was found in the car to all but two of the shootings and all of the murders.

It began on Sept. 5th. It ended, as I have told you on, Oct. 24th. Back in a previous December, December of 2001, an incident of little importance occurred. And I am going to tell you about it, and I'm going to ask you to take it and set it aside knowing that it's on the shelf over here. Remember that we're going to take it off the shelf when it becomes important later. The defendant and Mr. Malvo are in Bellingham in the state of Washington. Mr. Malvo's mother, Ruda James, is there too. She and Mr. Malvo are in the country illegally, and there is an argument and a domestic dispute, and the police are called to the dispute and discover two things. First, Mr. Malvo is in the presence of Mr. Muhammad. Second, Mr. Malvo is illegally in this country; and so he is arrested; and he is fingerprinted in the presence of the defendant on December 19, 2001. Put it up on the shelf for now.

September 5th. September 5th saw the beginning of the financing -- the raising of funds by the defendant -- to finance his campaign of terror.

Paul LaRuffa, a survivor, he's 55 years of age. He runs a restaurant in Prince George's County called Margellina's. It's a nice little place, homestyle kind of food, little bar. He does a nice little business for himself. It's closing time. He and two of his friends lock up the business. He has two bank bags with about \$3,500 in them. He says goodbye to his buddies, who go to different locations in the parking lot where their vehicles are located; and he goes to his car, opens it, shuts the door preparing to leave. When all of a sudden, one person appears at his window.

He can't tell you who it was. He didn't see the face because that person . . . Lee Boyd Malvo . . . began shooting. He was in possession of a .22 caliber revolver. Five shot capacity. All five shots emptied into Mr. LaRuffa.

The shooter reaches in through the shattered glass. Mr. Lauffa is bleeding profusely at this point. You will hear a doctor describe his bleeding as arterial spurt, and you will see pictures of it along the side of his car. It looks as if someone . . . took a great big water gun and filled it with blood colored liquid and squirted it up and down the side of the car. The shooter reaches into the car, takes the bank bags with the money and the name that says Margellina's on it and takes a computer belonging to Mr. Lauffa. This computer is the very same computer that would be found in the car at the time of the arrest with all the snipers' plans and maps on it. Mr. LaRuffa's friends see what happened. They call 911; and in one of the calls, you can actually hear Mr. LaRuffa say, I don't want to die in this parking lot. He would not die. He would survive, and he will be here to tell you about that horrific experience.

Some days later at a law office some distance away from Margellina's restaurant, the bank bags are found empty and a shirt is found.

Ironically, the shirt says something along the lines of on the front, I only have the ability to be nice to one person today; and on the back it says, today's not your day. That shirt was collected. It was microscopically examined, and there were hairs found in that shirt that DNA analysis proved belong to Mr. Malvo.

As we go through these different scenes, ask yourself, Who's out front? Who's taking the risks?

Whose DNA? Whose fingerprints? Who's being exposed to being caught? I think you'll find the answer to that question is that it was the 16-year-old Lee Boyd Malvo while this man stayed safely in a place of concealment.

Let me give you another example of just that. On the 15th of September Muhammad Rashid was at his business, a business called Three Road Liquor also in Prince George's County not too far from Mr. LaRuffa's pizza restaurant. Same method of operation folks.

You've heard the term MO, modus operandi. Same thing. Mr. Rashid is in the process of locking up his business. If I didn't tell you excuse me I should have. The snipers realized \$3,500 in profits from their attack on Mr. LaRuffa; and that is important because when they come to attack Mr. Rashid, they have an acquired something new. They have acquired the Caprice. They went up to New Jersey to a place called Bordentown and purchased it there from a used car dealer who will tell you that when he sold the car to him, the trunk wasn't spray painted, there wasn't a hole cut in the back, and the back seat support struts were all in shape, which means that he made all those modifications.

Mr. Rashid comes out of his business early that evening, and he sees a car that looks like that Caprice parked out back; and, you know, he doesn't really think a whole lot of it because it's a car.

You know, there's cars everywhere; but he's never seen it before; and he makes some notation of it. At the end of the evening, he comes outside. He's in the process of locking the door to the front of his business when he feels something go by him, and he hears a crack, and he doesn't know what it is, and something goes by him again a second crack.

What's happening is he's being fired at by a high powered rifle. The rounds miss him. They lodge inside the store itself. They go through the door and lodge inside a shelf. They were so destroyed that no ballistic match could be made; but, nevertheless, we could tell that it was a high -powered rifle as opposed to a handgun; and, again, as soon as those shots were fired and missed; a young man was up on Mr. Rashid and with this gun fired one time in the abdomen; and Mr. Rashid fell to the pavement and was robbed.

Mr. Rashid played dead. It was a difficult thing for him to do being shot in the abdomen. He wanted to cough. He suppressed his cough as he laid there, and his plan worked. He wasn't shot again and again and again like Mr. LaRuffa was. He was only shot one time. The robber flees. Mr. Rashid calls 911 himself, and you will hear that tape, and he survives.

The financing of this operation then went to Montgomery, Ala., where an important lesson was learned by the snipers. Same MO. Two women at a liquor store closing up for the night. Key in the door, engaging the lock, Ms. Kellie Adams shot in the face by a high -powered rifle. She goes down. Her friend Claudine Parker is horrified. She begins to back up away from this horrible thing. At one moment it was her friend. At the next moment, she's down; and Ms. Parker takes the second shot to the back.

This shot kills her. As soon as the shots from the high-powered rifle were fired, Mr. Malvo is right up on the scene again and starts rifling through their property in an attempt to rob them; but this is where they learned a lesson because not only was Mr. Malvo right up on the victims, but the police were right up on them too because they were in the area and heard the shots.

Where is the spotter? And Mr. Malvo has to run for it, and run he does. On the way he drops an Armor Light catalog. It's a weapons catalog. You know whose fingerprints are

on it. Mr. Malvo's. On the way he stashes the .22 caliber rifle, which is found by a citizen in her backyard a couple weeks later. When that gun is recovered, it is matched to the bullets that are taken from Mr. Rashid and matched to the bullets that were taken from Mr. LaRuffa to prove that this was the gun to the exclusion of all others that shot those two men.

The police went to the scene. They found a paper bag, a liquor store bag, with a receipt attached to it. Mr. Malvo's fingerprints are on that as well. But the lesson was learned. You better have somebody giving you that 360-degree security.

The next killing was also in the deep south in Baton Rouge, La. . This time the business was not a liquor store but a beauty shop called Beauty Depot. Ms. Ballenger closing the store will be the next victim of the sniper. She was shot. She was killed almost instantly; and, again, as soon as the shot was fired, Mr. Malvo was right up on the scene right there. Shots fired, he appears to take her purse. He is seen by a witness or at least a young man is seen by a witness grabbing the purse and running to the Caprice. He gets in, the Caprice drives off. Ms. Ballenger was not shot with the handgun because the handgun is now in police custody. She is shot with a high-powered Bushmaster .223 rifle, the very rifle that was found in the back seat of the Caprice on October 24th when they were arrested. Perfect match.

There were also two receipts found in the Caprice at the time of the arrest which were significant because both of those receipts were from businesses in the vicinity of Ms. Ballenger's shop.

One was from a business called the Piggly Wiggly, which is a grocery store down there; and it was dated Sept. 23rd, the very date of the killing. The other was from a Savalot store dated four days later on Sept. 27th proving that they were in the Baton Rouge area when the killing took place.

At this point we see a change in the strategy and tactics on the part of the snipers.

Robbery is no longer their sole goal. They now wish to terrorize, and so they go from a single isolated shooting on a single isolated day to a series of killings all on one day to create a zone of terror in and around Montgomery County.

The first victim was a gentleman by the name of Premkumar Walekar. He was a cab driver. He pulls into a Mobil station a little after eight o'clock in the morning in Montgomery County, [Maryland]. He goes to the back of his car, and it's one of those older style gas tanks that's behind the license plate where you pull the plate down. There was a woman, a physician in fact, who was at the pump next door along with her children inside her van who had never seen that type of gas tank located there. I guess she is much younger than me, and so she's watching in fascination as he goes around to the back of the car and pulls this thing down and inserts the pump, and her attention is focused on him because of that. It is at that precise moment that he is gunned down from across the street. He gets hit. He staggers. To her horror, he staggers towards her van where she and

her child are, and he falls up against the van and slides down to the pavement leaving a smear of blood all the way down the side. She's scared to death, but she's a doctor. She gets out of her car leaving her child there, not even thinking about her child at that point.

At the same time, a police officer is arriving. They try to give Mr. Walekar CPR, mouth to mouth resuscitation. It's a wasted effort. He would die sometime later from a shot from the .223 Bushmaster. He was a random victim who came into a preselected killing zone and died for no better reason.

Twenty-five minutes later Sarah Ramos, 34 years of age, is reading a book seated on a bench outside a restaurant near a home for the elderly called Leisure World. She's sitting in a normal position with her head like this slightly down reading the book. The defendants are parked at the other end of the parking lot, again about 70 or 80 yards away, pulled into a parking space so that the deadly end of the Caprice is facing Sarah. An elderly gentleman from Leisure World is walking by her, notices her, walks past her, hears the crack of the rifle, turns around and sees that she is splayed out on the bench and there's blood everywhere. He thinks it's a suicide.

He calls 911, tells them, we've got a suicide.

You'll hear his testimony, and you'll hear his tape.

But when the police get there right away, one police officer is pretty on the ball; and she says, It can't be a suicide. There's no gun. She couldn't have shot herself.

As the police continue with their investigation, they find a witness who sometime just a few minutes before the shooting saw the Caprice parked in the space where the shot was taken from; and again, Sarah Ramos was murdered by the Bushmaster .223 that was found in his car when he was arrested.

An hour and a half later still in Montgomery County, LoriAnn Lewis Rivera is at a Shell station not far-- these places are all close to each other, folks. She's a young mother. Fortunately, she does not have her children with her; but she does have her children's car seats, and she wants to vacuum out her van, so she pulls up to the vacuum at the Shell station and removes the children's car seats when it's her turn to be executed. Children without a mom as a result. The car was seen by a police officer in the vicinity just before the shooting took place, and Ms. Lewis Rivera was killed by the very same gun.

The last killing on Oct. 3rd took place technically in the city of Washington, but it is just over the border of Montgomery County so that you can throw a stone from where this gentleman was executed, and it would land in Montgomery County. It is right there. Paschal Charlot, an elderly gentleman, 72 years of age, is walking in his neighborhood where he grew up and lived his entire life. He is stopped at a street corner waiting for a traffic light. The defendants are in their Caprice parked across the intersection, again, with the killing end of that vehicle facing Mr. Charlot. He raises his hand as the shot is fired. It tears his hand apart, lands in his chest, and kills him.

Two witnesses who run a restaurant there called the Tropicana happened to be out back near where the vehicle was parked when the shot is fired, and their attention turns towards it, and they see the Caprice pull slowly up the street and away at night with no headlights. At Mr. Charlott's autopsy, fragments were removed from his body and found to be an exact match. Four people from eight o'clock in the morning to 20 minutes after nine o'clock.

The tactics of the terrorists have changed, and they will change yet again. Now we are going to see a geographic expansion of the killings into Virginia.

Caroline Seawell was 43 years of age. She is a survivor, ladies and gentlemen; and you will get to meet her. She is a wonderful person. It will come through to you immediately on the witness stand. You will be so glad that she was one of the lucky ones because of the type of person she is.

She is at the Michael's craft store in Spotsylvania County where you buy art supplies and cardboard paper and crayons and crafts and things like that. She's there for the purpose of buying those types of things. She comes out to her van.

Loading things into her van, she is shot in the side of the back. Fortunately for her the bullet passes through her and lodges in her vehicle. She's rushed to the hospital. She's saved. Again, people see the Caprice in the area just before he shooting; and, again, when the bullet fragments are removed not this time from her body but from the side of her car where they struck they matched his gun.

Three days later the authorities in Prince William, excuse me Montgomery County, Md., have a press conference at 6:30 in the morning. It is a press conference that will prove to be tragically ironic. The press conference was to announce that the authorities have stationed state police throughout the schools of Montgomery County, Md., to effectuate the safety of the students.

An hour and a half later, a fine young man, a neat kid, 13 years of age named Iran Brown is being driven by his Aunt Tonya to Tasker Middle School. She is a registered nurse. He gets out of the car with his book bag and begins to walk toward the entrance of the school, which is covered with a canopy. His aunt begins to pull away when she hears the crack of the snipers' rifle. She stops and she turns and she sees her nephew; and he says, "I've been shot," and he falls. She brings the car right back to that place, takes matters into her own hands. As I say, she's a nurse. She puts Iran in the car with her, and off they go to the nearest medical facility. She's calling 911, and you will hear her anguish on that tape as she tries to let the police know the desperate circumstances of her plight and at the same time keep her nephew from going into shock, keep him from getting scared, keep him calm to save his life; and save his life she does.

She gets him to the Prince George's County medical facility, and they drop him in a helicopter, and they medevac him to DC like that--where expert physicians and surgeons

who're trained for just this type of thing take over and save Iran's life; and I am happy to report to you that except for a spleen, which he no longer has, Iran is okay. He doesn't like the notoriety that this case has brought him.

It is unwelcomed. He is the object of attention. He just wants to be a normal kid. Now in his freshman year in high school, he will tell you how he feels about that.

The vehicle, the defendants' Caprice, was seen in an area the night before Iran was shot and in that same neighborhood the morning of. In fact, one witness will tell you that he was stopped at a traffic light right outside Tasker Middle School an hour before Iran was gunned down and made eye contact with him in the Caprice. As far from him as I am from you right now, they locked eyes. He was smiling. He also saw Mr. Malvo in the front seat and saw Mr. Malvo climb over the front seat into the back seat before he drove off.

When the bullet fragments were removed from Iran's body, they were an exact match to his .223.

The police realized, folks, that this shot was probably not taken from the Caprice but taken from a woodline to one side of the school; and so they organized a step-by-step search -- people in a line walking in a grid search fashion -- and they found some interesting things. They found a cartridge casing from a .223 round that ballistics analysis showed was fired from the .223, so we have a double ballistics match here the round from Iran's surgery and the shell casing at the scene both from his gun. They find a pen barrel -- an empty pen barrel, you know, like a Bic nothing inside -- with a DNA sample consistent with the defendant's DNA. The odds of it being somebody else's DNA are approximately 510 to 1. If you take that statistic and you combine it with the undisputed match of the rifle casing, we know who was holding that pen out there. And they found a tarot card. Not surprisingly, the snipers chose the tarot card of death; and this was the first time that they had communicated with anybody.

"Call me God," they write on one side. "For you, Mr. Police, call me God. Do not release to the press."

It's all said in some enigmatic code. What does it mean? Mr. Malvo's DNA was found on that card, so we have ballistic match, DNA from both defendants.

After they tried to kill Iran Brown, the snipers went to the city of Baltimore and had an encounter with the police. That's how we know that they were up there, which really isn't significant in and of itself until we get to the day of the arrest on the 24th of October when inside the Caprice they find a piece of paper with a list of schools in the Baltimore area where they were the very next day from the school shooting.

The snipers wanted to add still more jurisdictions to their list, and it was at this time that we had the shooting in Prince William County, and I've talked to you about that. You

know how it was executed. One interesting point about it is an hour before the shooting, the defendant and the Caprice were sighted by a woman who works in a bank.

They were in the parking lot, and they encountered one another, and she will tell you that they had a brief conversation. She was a little bit startled but was immediately reassured by his calmness and his polite demeanor an hour before he gunned down Dean Meyers.

After the shooting he is in the Caprice up in the Bob Evans parking lot; and as luck or ill-luck would have it, there happened to be a Prince William County police officer, Officer Bailey, in his patrol car right in that area; and as soon as the shot was fired, Officer Bailey was instructed to block off the Bob Evans parking lot and take the names of everybody that was there. There was only one entrance to the Bob Evans parking lot, and he pulled his cruiser right across it blocking him in.

Mr. Muhammad is one of the first cars in line. They've just killed Dean Meyers. He rolls down the window.

"Sir, can you tell me your name?"

"I am John Muhammad."

"What are you doing here?"

"I was directed off the Interstate here."

Officer Bailey will tell you the same thing that the lady from the bank will tell you, calm, polite, talking to him like he had an ordinary conversation just after an execution.

The snipers decide to go back to Spotsylvania after this. They go to an Exxon station. Ken Bridges is 53 years old when he is shot in the back and dies. The Exxon station is just like all the other scenes, folks. It's a classic sniper-picked scene, picked because it's crowded, picked because the Caprice can blend in, and picked because it's near an Interstate for easy escape. The fragment is removed from the body of Mr. Bridges and again matched to the .223.

He wants to add more jurisdictions at this point, expand the terror, expand the jurisdictions that might contribute to the pool of ransom money that he's about to ask for; so he goes to Fairfax County; and he goes to a business there called the Home Depot where Ted and Linda Franklin are there with their vehicle loading their purchases into the car when Mrs. Franklin is taken by a head shot that blows her brains apart. I mean that in a very literal sense of the term. They aren't there anymore. Right in front of her husband, Ted. He stands there and sees his wife's head explode.

Explode. He calls 911. He is hysterical. He is so shocked and damaged by what happened that his voice is involuntarily raised to the point where you will think when you hear this tape what the dispatcher thought when she took the call that she was talking to a woman

until it becomes clear that he is describing the execution of his wife. Ladies and gentlemen, we are going to play that tape. We are not going to play it in the presence of Mr. Franklin. That would be an unnecessarily cruel thing to do. We will play the tape and then bring Mr. Franklin in to tell you what happened. The crime scene specialists, analysts from Fairfax County find the rounds at the scene in the vehicle; and it was the defendant's sniper rifle which took Linda in her 47 year.

The snipers then decided they want further expansion. They go down to Hanover County; and it's a scene just like any others, folks. It's right off the Interstate. You take the Ashland exit on your way to Richmond; and you come to an area that's got all kinds of restaurants like Ponderosa and, you know, Applebee's and places like that.

Jeff Hopper and his wife don't even live in Virginia. They are from Florida. They are on a trip along 95 and have the bad luck to pull off at this particular Ponderosa to get something to eat, and they park in the back. There is a woodline in the back, and they finish dinner. They're coming out to the parking lot walking to their car. They're joking with one another. They're playing, you know, around with one another. They're having a good time. They just had a nice meal when Jeff is shot. He survives, and the bullets are matched to the rifle, but some very interesting things happen just before Jeff Hopper was gunned down.

The snipers began to expand their efforts to communicate. They called a hotline in Rockville, Md., they called a police line in the Montgomery Police Department, and they called a priest, a Catholic priest in Ashland, in the very town, they called the priest the day before they tried to kill Jeff Hopper, and the priest will not be able to tell you that he recognized their voices or that they identified who they are, but remember the things that I told you about that were found in the Caprice -- there was a global positioning system, a computer, and a personal data device. In some of those items are notations of exactly who they called and when, including the priest; and they tell the priest, "We know who's doing the sniper killings; and if you want to find out, there was a robbery and a murder in Montgomery, Ala. , at a liquor store that is unsolved."

At this point nobody knows what this means, but the priest calls the information in, and the authorities look into it, and sure enough there's a woman gunned down with a high - powered rifle and another one shot with a high -powered rifle that is the same caliber of the rifle being used in the sniper shootings, and so Jeff Hopper is one of the lucky ones. He survives.

The police go into the woodline again doing that gridline search like they did at the Tasker Middle School and they find some very interesting things. They find a casing, another shell casing, that matches the sniper rifle, so there's another double match from Jeff's body and from the scene.

They find a Cinarasin bag, this thing just crumbled up and thrown on the ground by the trees, with Mr. Malvo's DNA on it, and they find a Halloween bag. It's a plastic bag. Kids might use them at Halloween. It's got pumpkins and witches and stuff. Otherwise, it's a

regular Ziploc plastic bag; and inside that plastic bag is a note which reads in part, "For you, Mr. Police, call me God. Do not release to the press. We have tried to contact you to start negotiation, but the incompetence of your forces in Montgomery County, in Rockville, and a priest in Ashland these people took calls for a hoax or a joke, so your failure to respond has cost you five lives. If stopping the killing is more important than catching us now, then you will accept our demand which are nonnegotiable. You will place \$10 million in a Bank of America account." It gives the account number in the name of Jill Lynn Farrell Ms. Farrell will be here. She will tell you that she was a bus driver out west where the defendants were one time and that her credit card with this number was stolen from her.

"We will have unlimited withdrawal at any ATM in the world. You will activate the bank account, credit card, and PIN number. We will contact you at the Ponderosa telephone at this number Sunday morning. You have until 9 a.m. Monday morning to complete the transaction. Try to catch us withdrawing, at least you will have less body bags; but if trying to catch us is now more important, then prepare your body bags. If we give you our word, that is what takes place. Word is bond. PS, your children are not safe anywhere at any time."

So they've opened up the communication process. After the killing they call the FBI hotline and try to do some further negotiations to no avail.

The police don't know what to do at this point.

The final killing before their arrest was on Oct. 22nd back in Montgomery County. The defendant was seen the night before in an Outback restaurant. In fact, we have a videotape of him in the restaurant. You will see that. You will see that he is in possession of Mr. LaRuffa's computer, and the next morning, early morning, Conrad Johnson, a longtime employee of the Montgomery County Transportation System, he is a bus driver. He's standing in the steps of his bus with the door open waiting for the day to begin, waiting for his passengers to arrive. From his vantage point, he looks out across a small play area with basketball courts and some grassy areas to a woodline.

Concealed in that woodline is one or both of the snipers. We don't know. Nobody saw them. But as Mr. Johnson stood there minding his own business waiting to begin his day, the shot was taken. He's thrown back into the bus. He is conscious. The bullet hits him center mass, and help is brought right away, and he is taken to a hospital, but the internal damage is worse than they first thought, and he bleeds to death on the operating table.

The bullet that killed Mr. Johnson was likewise inclusively matched to the defendant's gun, and the police began once again to do their gridline search in that wood area. They find a duffel bag that you will hear some evidence about that contained many, many things unusual items that were also in the Caprice. Things like black pepper. Things like onion skins. Different debris, different trace evidence with the exact same types of things found in the Caprice. They found a glove to one hand. Its mate was in the Caprice, and they found yet another note. The pattern to us by now should be familiar.

"For you, Mr. Police, call me God. Do not release to the press. PS, your children are not safe. Can you hear us now? Do not play these childish games with us. You know our demands. Next person your choice. You did not respond to the message and departed from what we told you to say, and you departed from the time. Your incompetence has cost you another life. You have until 9 a.m. to deliver the money and 8 a.m. to deliver this response, 'We have caught the sniper like a duck in a noose,' to let us know that you have our demands."

You will hear evidence, ladies and gentlemen, that terrorists groups often communicate with the entities that they're terrorizing with codes like this. The purpose is so that the people that are being terrorized know that the actions were taken by the genuine folks. The IRA puts it out all the time a list of code words.

You will say this. We have caught the sniper like a duck in a noose. So that when we hear that go out over the news, we know that you got our note; and you know that we're the real article.

Sixteen shootings, 10 homicides, all of which came from a Bushmaster .223.

Ladies and gentlemen, we have a long and difficult journey ahead of us. Long because there were just so many crimes, there is so much blood on his hands, and we have to examine each one of those one at a time. Difficult not because the evidence is difficult to understand but because of the type of evidence it is that you all have to listen to, the way these people died and the impact that it's had on their loved ones. You will hear from family members who will tell you about that as further victims in this case, but let me assure you they are not the only victims. There are countless others. Other family members, friends of the murdered and hundreds and hundreds upon thousands of people who were stung by his terrorism all looking to us. They will be nameless and faceless in this trial, but they are there nonetheless. He committed capital murder after capital murder.

At the close of the evidence, we'll ask you to convict him of that very crime. Thank you very much for your time and attention.