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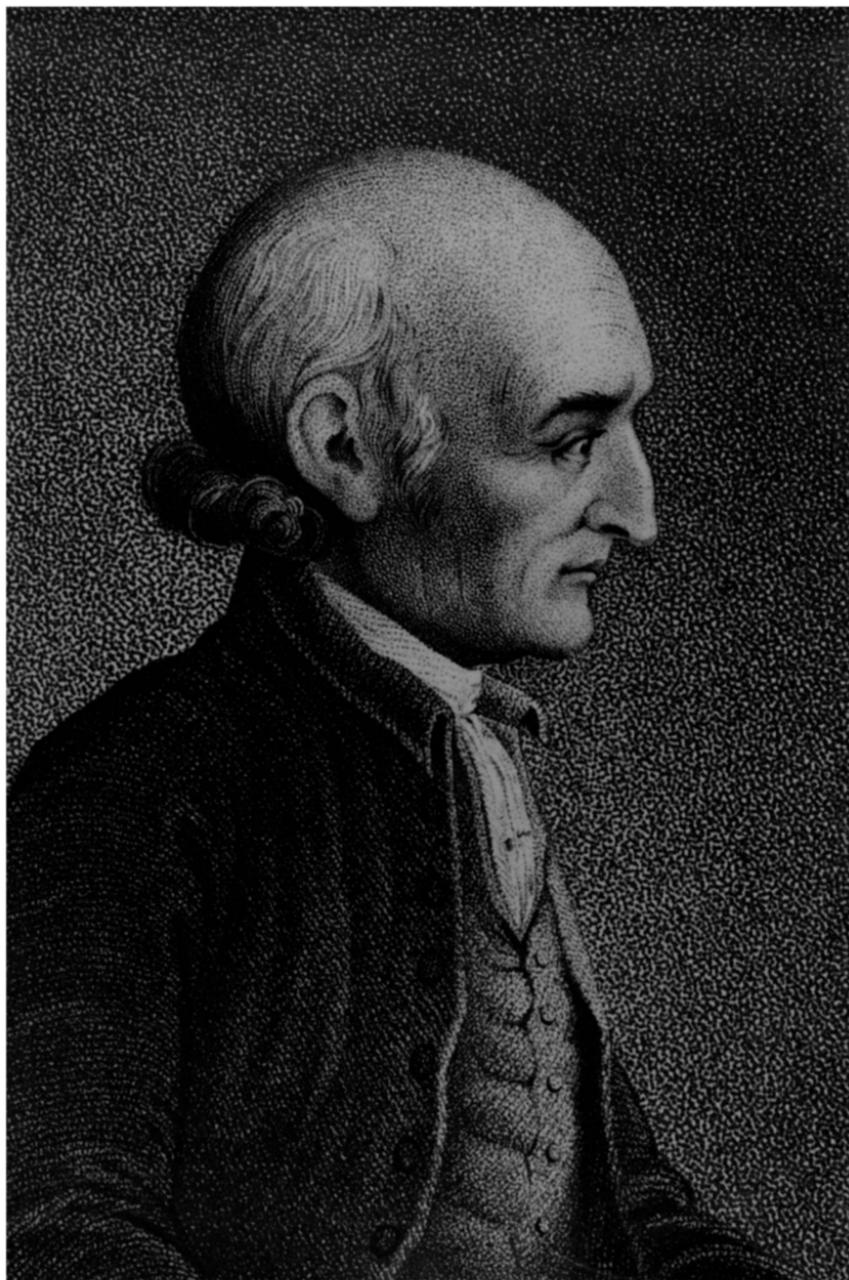
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GEORGE WYTHE

Drawn and Engraved by J. B. Longacre,  
From a portrait in the *American Gleaner, & Virginia Magazine*  
(Courtesy of the Virginia State Library)

# The Murder of George Wythe

Julian P. Boyd\*

THE murder of George Wythe was, in the deeply-felt words of his greatest student and admirer, Thomas Jefferson, "such an instance of depravity [as] has been hitherto known to us only in the fables of the poets." Few if any crimes have so greatly aroused the inhabitants of Virginia. Popular indignation rose to fever pitch, for the circumstances of the crime left no room for divided feelings. The murderer was the grandnephew and residuary legatee of the Chancellor, a favored beneficiary of Wythe's many acts of kindness and generosity. He was young, apparently reckless, no doubt a gambler and spendthrift, and certainly a callous ingrate. Wythe was eighty years old, universally beloved, and too generously trusting to be suspicious of those closest to him. The story is worth telling, though it is unrelieved in its grimness, because history, no less than judicial process, took a strange course in its attitude toward this brutal crime and its perpetrator.

George Wythe, one of the greatest teachers and jurists that America has produced, was born in 1726 on his father's plantation in Elizabeth City County. He was taught Latin and Greek by his mother, a granddaughter of George Keith, the distinguished Quaker of "unbearable contention and carriage." George Wythe may have inherited some of his great-grandfather's abilities, but it is certain that he did not exhibit any of his capacity for controversy. He was for a time a student at the College of William and Mary, and, whether it was there or at his mother's knee that he learned the classics, he became so proficient in these studies that Jefferson referred to him, without qualification, as "the best Latin and Greek scholar in the State." Wythe also acquired, by his own reading, a good knowledge of mathematics and "Natural and Moral Philosophy." He was admitted to the bar of the General Court at the age of twenty. There, in competition

\* Mr. Boyd is a member of the Department of History, Princeton University, and editor of *The Papers of Thomas Jefferson*. His essay, based primarily on William DuVal's letters to Jefferson, was originally read as a paper before the Philobiblon Club of Philadelphia; in somewhat expanded form it was issued by the Club in 1949 in a privately-printed edition. It is here reprinted by permission of the Philobiblon Club and, except for the addition of notes prepared by Mr. Boyd on examining Mr. Hemphill's documentary essay (see page 543), has not been altered.

with the first lawyers of Virginia, he became, according to Jefferson, "eminent among them, and, in process of time, the first at the bar, taking into consideration his superior learning, correct elocution, and logical style of reasoning, for in pleading he never indulged himself with an useless or declamatory thought or word; and became as distinguished by correctness and purity of conduct in his profession, as he was by industry and fidelity to those who employed him."

He was elected a member of the House of Burgesses at various times before the Revolution. At the opening of that conflict, he early assumed the advanced position that was held by only a few in America at that time, among them Franklin, Adams, Sherman, and Jefferson. "On the first dawn of that [Revolution]," wrote Jefferson, "instead of higgling on half-way principles, as others did who feared to follow their reason, he took his stand on the solid ground that the only link of political union between us and Great Britain, was the identity of our executive; that that nation and its Parliament had no more authority over us, than we had over them, and that we were coordinate nations with Great Britain and Hanover." Wythe was elected a member of the Continental Congress in 1775 and in 1776 signed the Declaration of Independence as the head of the Virginia Delegation. He was a member of the committee to prepare a seal for Virginia in 1776 and probably designed it. In 1777, in conjunction with Jefferson and Edmund Pendleton, he assisted in the tremendous task of revising the laws of Virginia, covering as his own portion of the work the period from the English Revolution of 1688 to the American Revolution of 1776. This committee in 1779 produced one of the most important reports in the history of American Legislation, for it included among many others the act directing the course of descents which abolished primogeniture; the act for regulating conveyances by which all estates in tail were transformed to estates in fee simple; the act for the establishment of religious freedom; the act organizing the state militia system; and the act regulating procedure in chancery and common law courts. All of these acts—and the first three, the most revolutionary of all, were monuments to Jefferson's liberalism—were enacted into law. Others equally daring that Jefferson, Wythe, and Pendleton proposed—a bill for general education, for a public library, for the better support of the College of William and Mary, and for enlightened penal policies—were not adopted by the legislature.

In 1778 Wythe became one of the three judges of the new Virginia

High Court of Chancery and the next year he assumed those duties as a teacher which probably gave him the opportunity to make his greatest contribution. On December 4, 1779, the Board of Visitors of the College of William and Mary established the "Professorship of Law and Police," the first of its kind in North America, and invited Wythe to this chair. This was only twenty-one years after the establishment of the Vinerian professorship of English law at Oxford. Following Blackstone in procedure if not in his concept of law, Wythe introduced highly successful moot courts and parliaments in his course.

From Paris in 1788 Thomas Jefferson gave Ralph Izard a good estimate of what Wythe as a teacher meant to the reputation of his college. "I cannot but approve your idea of sending your eldest son, destined for the law, to Williamsburg," Jefferson wrote. "The professor of Mathematics and Natural Philosophy there (Mr. Madison, cousin of him whom you know), is a man of great abilities, and their apparatus is a very fine one. Mr. Bellini, professor of Modern Language, is also an excellent one. But the pride of the Institution is Mr. Wythe, one of the Chancellors of the State, and professor of law in the College. He is one of the greatest men of the age, having held without competition the first place at the bar of our general court for twenty-five years, and always distinguished by the most spotless virtue. He gives lectures regularly, and holds moot courts and parliaments wherein he presides, and the young men debate regularly in law and legislations, learn the rules of parliamentary proceeding, and acquire the habit of public speaking. . . . I know no place *in the world*, while the *present professors remain*, where I would so soon place a son."

As one of the three judges of the High Court of Chancery from 1778 to 1789 and later as sole Chancellor, Wythe distinguished himself for his integrity, courage, and sense of justice. Against popular opinion, he was the first judge to decide that the debts owed by Virginians to British merchants should be recovered. In 1782 he made one of the first enunciations of the doctrine of judicial review. He did not need to do so, for the decision in *Commonwealth v. Caton* could have been reached without such a declaration. But Wythe could not refrain from delivering this solemn warning to the legislature: "If the whole legislature, an event to be deprecated, should attempt to overleap the bounds, prescribed to them by the people, I in administering the public justice of the country, will meet the united powers at my seat in this tribunal; and pointing to the Constitution, will say to them, 'here is the limit of your authority; and hither

shall you go but not further.'” The office of Chancellor—which one of Wythe’s students said was “that most troublesome and laborious office of all in the gift of the Commonwealth of Virginia, and perhaps of the United States”—was not a lucrative one, being at first only £300 and later “with a salary somewhat larger but still very inadequate.” But Wythe continued to serve in this highly useful but unrewarded post despite the opportunity for more remunerative public employment. “With that scanty supply from his country,” declared Wythe’s funeral orator, “he lived in this expensive city, secluded from all other business but that of the public, to which he devoted all his time . . . and in that office he continued ’till the day of his death, because he believed himself better qualified to serve his country in that station than in any other.” Chancellor Wythe, it is worth noting, was not a man of wealth.

Like Aristides, with whom he was constantly compared, Wythe was a model of probity in public life. As an attorney, he refused to defend unjust causes and abandoned those in which he had been misled. As a jurist, his probity, disinterestedness, and effort to achieve absolute justice were widely known and respected. Both Jefferson and Henry Clay, his most distinguished students, left remarkable appraisals of their teacher, though that of Jefferson is better known: “No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of man, he might truly be called the Cato of his country, without the avarice of the Roman; for a more disinterested person never lived. Temperance and regularity in all his habits, gave him general good health, and his unaffected modesty and suavity of manners endeared him to everyone. He was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate; not quick of apprehension, but, with a little time, profound in penetration, and sound in conclusion. In his philosophy he was firm, and neither troubling, nor perhaps trusting, any one with his religious creed, he left the world to the conclusion, that that religion must be good which could produce a life of such exemplary virtue. His stature was of the middle size, well formed and proportioned, and the features of his face were manly, comely, and engaging. Such was George Wythe, the honor of his own, and the model of future times.” Henry Clay’s estimate, and that of almost every Virginian who knew Wythe, agreed with Jefferson’s ap-

praisal. It is interesting to note that Jefferson's observation of the urbanity and suavity of Wythe's manners is also typical; Henry Clay thought that Wythe "made the most graceful bow that I have ever witnessed." Benjamin Rush spoke of Wythe's "dovelike simplicity and gentleness of manner" and even Andrew Burnaby, who entertained no flattering view of Virginians in general, thought Wythe possessed "such philanthropy for mankind, such simplicity of manners, and such inflexible rectitude and integrity of principle, as would have dignified a Roman senator, even in the most virtuous times of the republic."

So universal is the agreement of contemporaries regarding the exemplary nature of Wythe's life that the generally unknown account of a contrary tenor, written by B. B. Minor in the middle of the nineteenth century, comes as something of a shock: "His mother died before he attained his majority. Her death and that of his brother put him in possession of the means of self-indulgence, and he now gave himself up to a long career of pleasure and dissipation. . . . Having the means to *'live like a gentleman,'* he felt no incentive to exertion. But at the age of thirty, by his own strength of will and better purpose, he broke the chains which evil habits might have bound indissolubly around him, and entirely reformed his whole life. The particular causes of this change are not stated: whether love, the foreseen exhaustion of his resources, his own penitent reflections, or the influence of interested friends; or several of them combined. . . . But he never ceased to deplore the follies and imprudences of which he had been so long guilty; to regard the time allotted to them as irretrievably lost, and to warn the many young men who came under his influence to profit by his example." Minor must have obtained this from men who had known Wythe as friends or who had studied under him as protégés. No doubt the Chancellor did seek to influence these young men—Henry Clay, for one, seemed to have a natural talent for the card table and the pleasures of society—but it is very likely that in doing so Wythe greatly exaggerated his own "misspent" youth. His modesty and humility would have made this quite characteristic. Moreover, such a reformation as Minor describes would have made of Wythe a notable example to which the local clergy and others could have pointed in their efforts to reform youth and this could easily have led to further exaggeration. But three seemingly well established facts present an even stronger argument against a literal acceptance of Minor's account: Wythe did not inherit any conspicuous means "to live like a gentleman"; he was married in

December, 1747, at the age of twenty-one; and he was admitted to the bar the previous year—not in 1756, at the age of thirty, as Minor asserts elsewhere. Yet this tale of dissipated youth has some value, if only to emphasize the likelihood that Wythe would be patient, generous, and kind toward so dissolute a youngster as George Wythe Sweeney.

In 1789 Wythe left his home in Williamsburg and moved to Richmond; this was not altogether due to the reorganization in the judicial system which made Wythe the sole Chancellor, but partly to an increasing irritation with some of the policies and personalities at William and Mary. At Richmond he lived in a yellow wooden house with a hip-roof, located on the Southeast corner of Fifth and Grace Streets on Shockoe Hill; its gardens extended all the way back to Franklin Street and embraced half of the square. Here the aged Chancellor "might have been seen," according to Hugh Blair Grigsby, "not infrequently of a bright frosty morning, in loose array, taking an air bath in the porch of his humble residence." It was in this house on the eminence overlooking the James that a favored kinsman struck down the man whom Jefferson and others declared to be without an enemy in the world.

Sometime in April, 1806, George Wythe Sweeney,<sup>1</sup> grandson of Wythe's sister Anne, forged his granduncle's name on six checks drawn on the Bank of Virginia, probably to cover gambling or other debts.<sup>2</sup> During the

<sup>1</sup> For a note on the variant spellings of Sweeney's name, see Mr. Hemphill's article in this issue, page 551, *n* 26. In contemporary letters, newspapers, and court proceedings, both the form "Sweeney" and "Swinney" were used. DuVal employed the former.

<sup>2</sup> The extraordinarily interesting court proceedings discovered by Mr. Hemphill in the course of his exhaustive research reveal that Sweeney forged one check (or at least presented it for payment) after those in the Wythe household had been poisoned. The testimony also shows that Sweeney was promptly arrested on a charge of forgery; that bail was fixed at an impossibly high figure (\$1,000); that Wythe explicitly refused to become surety for the accused; that Dandridge, the banker who had cashed the check, suspected it of being a forgery only on examining it *some time after*; that, on confronting the youth with the check, Dandridge did not accuse him of forgery but merely said he "believed there was a mistake." These facts suggest several more or less plausible inferences: (1) that Dandridge's suspicions of the check were first aroused when he learned of Wythe's agonized illness or heard the rumors of poisoning that were being noised about; (2) that, alternatively, he may have suspected the youth for some time—the five other checks thought to be forged were all cashed before Wythe's illness—but hesitated to advance such a serious charge against a close kinsman of Richmond's most venerated citizen; (3) that, even on May 27, the banker evidently was satisfied on receiving from Sweeney the reimbursement that at once removed the bank's liability and pointed to the youth's guilt;

preceding year Sweeney had taken some books from Wythe's library and endeavored to sell them at public auction. He was also suspected of having disposed of a terrestrial globe that Wythe had intended to bequeath to Jefferson. These facts make it seem clear that Sweeney, a young man who was living with the widowed and childless Chancellor, did not possess a character anything like that of his uncle. Sometime late in May, 1806, it doubtless became apparent to Sweeney that his criminal act of forgery would soon be revealed, and it is possible that the avenue of escape which suggested itself to him was that of covering up a smaller crime by a greater. He procured what must have been a considerable quantity of yellow arsenic, much of which was later found in his room. Such a purchase presented no more difficulty in the agricultural Virginia of 1806 than it would present today.

On Sunday morning, May 25, the Wythe household awoke, as usual, with the sunrise. The account that has come down to us of Wythe's physical appearance and customary routine for the early morning hours may be undependable in some minor details, since it was written by the son of William Munford many years after Wythe's death, but William Munford had also lived with Wythe and had delivered the Chancellor's funeral oration; he may therefore be presumed to have handed on to his son many exact details about the character, personality, and career of the great teacher and judge. "His stature," wrote Munford, taking his first sentence directly from Jefferson, "was of the middle size. He was well formed and proportioned, and the features of his face manly, comely, and engaging. In his walk he carried his hands behind him, holding the one in the other, which added to his thoughtful appearance. In his latter days he was very bald. The hair that remained was uncut, and worn behind, curled up in a continuous roll. His head was very round, with a high forehead; well arched eyebrows; prominent blue eyes, showing softness and intelligence combined; a large aquiline nose; rather small but well defined mouth; and thin whiskers, not lower than his ears. There were sharp indentations from the side of the nose down on his cheek, terminating

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and (4), most important of all, that the immediate arrest and incarceration of Sweeney on a charge of forgery may have been prompted by a desire for his secure commitment pending the recovery or death of those suspected of being poisoned. Since Sweeney was not arraigned for murder until June 18, this last inference gains added plausibility from Ritchie's comment in the *Enquirer* of June 10, 1806 that the "rights of the accused" should be respected, for the context of that remark was the cause of Wythe's death, not forgery.

about an inch from the corner of the mouth; and his chin was well rounded and distinct. His face was kept smoothly shaven; his cheeks, considerably furrowed from the loss of teeth; and the crow's-feet very perceptible in the corner of the eyes. His countenance was exceedingly benevolent and cheerful. His dress was a single-breasted black broadcloth coat, with a stiff collar turned over slightly at the top, cut in front Quaker fashion; a long vest, with large pocket flaps and straight collar, buttoned high on the breast, showing the ends of the white cravat that filled up the bosom. He wore shorts; silver knee and shoe buckles; was particularly neat in his appearance, and had a ruddy healthy hue. He had a regular habit of bathing, winter and summer, at sunrise. He would put on his morning wrapper, go down with his bucket to the well in the yard, which was sixty feet deep and the water very cold, and draw for himself what was necessary. He would then indulge in a potent shower-bath, which he considered the most inspiring luxury. With nerves all braced, he would pick up the morning *Enquirer* [the Republican, pro-Jefferson newspaper which exerted a powerful influence in Virginia] . . . and seating himself in his arm-chair, would ring a little silver bell for his frugal breakfast. This was brought in immediately by his servant woman, Lydia Broadnax, who understood his wants and ways. She was a servant of the olden time, respected and trusted by her master, and devotedly attached to him and his—one of those whom he had liberated, but who lived with him from affection.”

We cannot be certain what the Chancellor's breakfast consisted of on Sunday morning, May 25, 1806, though we may trust Munford's description of it as frugal. Wythe, in his later years, avoided animal foods and was what Parson Weems called *granivorous*. His breakfast, therefore, was probably very different from the typical Virginia breakfast of that day, which customarily included vast quantities of ham, sausage, bacon, spare-ribs, and many other products of the ever-present pig, to say nothing of hot breads, cereals, eggs, gravies, and molasses. We know that the great and good man was moderate and temperate in all things, especially in food and drink, and his breakfast probably consisted merely of eggs and toast. Certainly, and fatally, it included coffee.<sup>3</sup>

<sup>3</sup> As the documents discovered by Mr. Hemphill indicate, the coffee may not have been poisoned at all. The testimony of witnesses before the court of examination suggests that Sweeney may have poisoned the strawberries that Wythe ate for supper on May 24. It is possible, as Mr. Hemphill points out, that Sweeney may have poisoned either the strawberries or the coffee or both.

May 25 was Whitsunday. On this pentecostal day, Wythe had not followed his usual custom of reading the *Enquirer's* four pages of advertisements, European dispatches, and meager items of information drawn from New York, Philadelphia and Charleston newspapers whose adherence to the policies of the Chief Executive could make them worthy of trust. The Court of Chancery, of which Wythe was the presiding judge, was in session and, either before or after breakfast, he gave some attention to the judicial paper-work that was never far from the center of his attention. Sunrise came at Richmond on that Whitsunday morning a few moments before five. If we assume that the Chancellor took about an hour to shave, dress, and enjoy the inspiring luxury of his cold shower, he must have sat down to ring for Lydia Broadnax to bring his simple breakfast shortly after six o'clock. His temperate approach to food and drink, as the sequel proved, may indicate that he confined himself to a single cup of coffee. Perhaps, we may imagine, as the aged man sipped his cup slowly and judiciously, he detected its sweetly astringent taste, called for Lydia to ask about it, and no doubt received in reply the statement that the coffee had been boiled as it had been for many years, and that an egg had been used to settle the grounds. Whether he drank more than one cup or whether he inquired of Lydia concerning the taste, the unquestioned fact is that he drank some of the coffee and that a considerable amount of yellow arsenic had been placed in it. Three hours later, as the town of Richmond slumbered in the soft indolence of the bright May morning, the poison struck.

The one person best qualified to tell what happened in the Wythe household on this Sunday morning, next to the Chancellor himself, was Lydia Broadnax. There can be no doubt of her devotion to Wythe. Nor is there reason for doubting that her strong sense of loyalty compelled her to speak—perhaps volubly and warmly, for she must have disliked the dissipated Sweeney as much as she revered her master. Unhappily, we cannot be sure of the exact nature of her testimony.<sup>4</sup> For what remains of it has come down to us from a single source, published three-quarters of

<sup>4</sup> A part of what Lydia might have testified, had she been legally competent as a witness, together with what other Negroes might similarly have sworn to, is to be found in the evidence given by witnesses before the court of examination on June 23. The preliminary examination held on June 18 when Sweeney was first arraigned on a charge of murder lasted for five hours and some of the witnesses who appeared before it may have reported additional information gained from Lydia and other Negroes.

a century after the murder, and that source has authentic fact so intermingled with legend, folklore, and reminiscence as to defy accurate weighing of its varied ingredients. This is George Wythe Munford's posthumously published *The Two Parsons*, a work of curious interest whose vague subtitle suggests the miscellany that it is: *Cupid's Sports; the Dream; and The Jewels of Virginia*. Published in 1884 and written by a man of some erudition and literary talent who had spent most of his life holding office in Virginia, *The Two Parsons* is a volume of essays, anecdotes, character sketches, incidents, documents, and reminiscences that deserves some respect as a historical source—but a respect that should be tempered with caution. It is obvious that George Wythe Munford possessed a good memory and that he had learned much from his father and others of Wythe's generation who knew the Chancellor intimately. It is equally obvious that many of the episodes recounted in *The Two Parsons* are based, in part at least, on researches in the Munford family papers. George Wythe Munford, a good antiquary who appears to have been misled into becoming a poor novelist, may have made it difficult for us to separate fact from faulty recollection but unquestionably he had access to sources of information now lost to us. "Chancellor Wythe," Munford remembered his father as saying (or was it a letter that he quoted?), "is the best friend I ever had, and one of the most remarkable men I ever knew, and he certainly has been as kind to me as a father." Munford's father had lived with Wythe for three years and had studied law under him. He had also been one of those who anxiously visited the house on Shockoe Hill during the tragic days of early June, 1806. Obviously, the one source from which we may obtain Lydia Broadnax' story is a source that deserves attention, for the story must have become a family legend in the Munford household. At any rate, here, as George Wythe Munford remembered it or perhaps quoted from his father's reminiscences, is Lydia's own story:

"Mass George Sweeney," Lydia is supposed to have said on Sunday, May 25, to Dr. William Foushee, "came here yesterday, as he sometimes does when old master is at court, and went into his room, and finding his keys in the door of his private desk, he opened it, and when she went in, she found him reading a paper that her old master had told her was his will. It was tied with a blue ribbon. Mass George said his uncle had sent him to read that paper, and tell him what he thought of it. Then he went away, and, after the Chancellor had gone to bed, came back again late at night, and went to the room he always stays in when he sleeps here.

In the morning, when breakfast was nearly ready, he came into the kitchen, and said, 'Aunt Lydy, I want you to give me a cup of coffee and some bread, because I haven't time to stay for breakfast.' She said, 'Mars George, breakfast is nearly ready; I have only got to poach a few eggs, and make some toast for old master; so you had better stay and eat with him.' 'No,' he said, 'I'll just take a cup of hot coffee now, and you can toast me a slice of bread.'

"He went to the fire, and took the coffee-pot to the table, while I was toasting the bread. He poured out a cupful for himself and then set the pot down. I saw him throw a little white paper in the fire. He then drank the coffee he had poured out for himself, and ate the toast with some fresh butter. He told me good-bye and went about his business. I didn't think there was anything wrong then.

"In a little while I heard old master's bell. He always rings it when he is ready for his breakfast; so I carried it up to him. He poured out a cup of coffee for himself, took his toast and eggs, and ate and drank while he was reading the newspaper.

"'Lyddy,' he said, 'did I leave my keys in my desk yesterday, for I found them there last night?'

"I suppose so, master, for I saw Mars George at the desk reading that paper you gave me to put there, and which you said was your will. He said you had sent him to read it, and to tell you what he thought of it.

"Master said, 'I fear I am getting old, Lyddy, for I am becoming more and more forgetful every day. Take these things away, and give Michael his breakfast, and get your own, Lyddy.'

"I gave Michael [Brown, a mulatto freed boy], as much coffee as he wanted, and then I drank a cup myself. After that, with the hot water in the kettle I washed the plates, emptied the coffee-grounds out and scrubbed the coffee-pot bright, and by that time I became so sick I could hardly see, and had a violent cramp. Michael was sick, too; and old master was as sick as he could be. He told me to send for the doctor. All these things made me think Mars George must have put something in the coffee-pot. I didn't see him, but it looks monstrous strange."

Much of Lydia's story as given in *The Two Parsons* is demonstrably legendary, but the final sentence, revealing the cautious equivocation that somehow manages through prudence to avoid accusing and yet through outraged justice to point out guilt—a trait developed through generations by those of Lydia's race and station when confronted with such situations

—has the ring of authentic testimony. Also, taken as a whole the story is so detailed as to suggest direct testimony, perhaps testimony given in answer to searching questions. The abrupt transition from first to third person indicates this as well. George Wythe Munford's father was a clerk of court at the time of Wythe's death and he may possibly have taken down Lydia's testimony, either in a private or public capacity, at the subsequent examinations. If he left such a record, his son may have rewritten it with the kind of literary license in presentation that he employed with other known documents in *The Two Parsons*. Whether this conjecture is sound or not, Lydia's testimony in general agrees with known facts. Yet it is equally demonstrable that she could not have given this particular version to Doctor Foushee on Sunday morning, May 25, nor on that date could she have pointed the accusing finger toward Sweeney.

For the fact is that Lydia was not taken ill on Sunday, Doctor Foushee apparently was not among the physicians called at the beginning, and Sweeney was not suspected until the 27th. This much—perhaps more—of her testimony is obviously the embellishment of legend, the rounding out of evidence to fit the pattern of afterthought. The part that is essential—the part that only Lydia presumably could have contributed—is much simpler and less ominous. She asserted Sweeney's presence in the house. She saw him drink a cup of coffee. She saw him throw a little white paper in the fire. Nothing could be more harmless than these innocent facts. Yet, if any reliance whatever is to be put in her testimony as given in *The Two Parsons*, these are the facts that are important. For, innocent as they seem, they take on ominous significance when related to the known fact that Sweeney was the only person in the household who escaped poisoning. It is conceivable that the good Chancellor, trusting Lydia implicitly, may have told her that a certain document was his will, fearing that death might take him unawares and that the testament might not be found. This is conceivable, though masters do not customarily confide such important matters to servants. But how could Lydia refer to the "paper that you gave me to put there" without indicating that she, too, was custodian of the keys to the desk? If she had access to the desk, why should Wythe have replied merely that he was becoming forgetful or why, indeed, should he have inquired about the keys at all? Lydia's statement about Sweeney's examination of the paper with the blue ribbon was presumably intended to convey the impression that his coming to the house while Wythe was at court was a surreptitious business. If so,

the Chancellor's reply gives no hint of surprise or annoyance. Obviously, this part of her testimony relating to the will was an afterthought, probably not Lydia's at all but the result of conjecture, rumor, and supposition after the contents of the will became known. Stripped of its encrustations of folklore and also of the colorful idiom in which she must have expressed it, Lydia's testimony seems to amount only to this: "I didn't see him, but it looks monstrous strange"—this and the innocent fact that Sweeney was in the house and that he drank a cup of coffee.

The account in *The Two Parsons* asserts that Doctor Foushee, after hearing Lydia's statement, was satisfied that poison had been put in the coffee by George Wythe Sweeney. The doctor also reported, according to the same source, that "the Chancellor had told him he ate nothing but two eggs and some toast, and drank a cup of coffee"; that in a "very short time" Wythe had been taken with severe pains, followed by nausea and "great thirst"; that Lydia was seriously ill; and that Michael was suffering worse than either, being "cold in his extremities and having convulsions." The doctor's assertions, like those of Lydia, are alleged to have been made on Sunday morning, May 25. It was also presumably the same day, according to *The Two Parsons*, that Doctor Foushee came to Wythe's bedroom door and remarked: "'Lyddy . . . feels more comfortable. But Michael is dead. The effect of the poison has been rapid indeed.' 'I shall not be far behind,' the Chancellor said." This conversation, of course, could not have taken place before June 1 when the boy Michael Brown died.

Such, in part, is the one published account of the murder that approaches authenticity. Tinctured as it is with legend and rumor, it nevertheless has a validity and an intimacy that causes one to wonder at its neglect by Wythe's few biographers. Sanderson and Minor, of course, never had access to it, but Tyler and the author of the sketch in the *Dictionary of American Biography* would have profited by a discreet use of its narrative.

The statements of Lydia Broadnax and of Doctor Foushee are best evaluated when compared with a series of letters written by William Duval,<sup>5</sup> executor of Chancellor Wythe's will and a visitor at the house during these tragic days of May and June. These letters, constituting an unimpeachable contemporary source, have never been published. They

<sup>5</sup> Thus in the sketch in the *Dictionary of American Biography*, but I think Mr. Hemphill's use of the form DuVal is correct and is in accord with DuVal's signature.

were addressed to Wythe's famous student and ardent admirer, Thomas Jefferson, then President of the United States. The first, dated at Richmond on June 4, 1806, was written in a state of understandable agitation. Its first object apparently was to inform the President of the condition of the venerable man whom Jefferson referred to as "my most affectionate friend" but its opening sentence, though it may have seemed incongruous, was blunt: "Worthy Sir," the letter began, "Geo W. Sweeny who lived with Mr. Wythe was Committed to Gaol on the 27th of May last for forging Six checks on the Bank of Virginia." Then followed a brief, dramatic chronicle of the events of May 25 and the succeeding days. On the evening of that day, Duval had called at the Chancellor's house and Wythe told him "he never suffered more in his Life—that in the morning he attended to his Official Duties, the Chancery Court being in Session, that he ate his Breakfast as usual, that about Nine O'Clock in the Morning he was attacked in the most violent manner." Duval called in Doctors James McClurg (Jefferson's old college mate at William and Mary), James Currie, and James Drew McCaw to attend him. "They pronounce his Death to be certain in a day or two," Duval added. "They say that his Constitution was remarkably strong for a person of his age." This news was distressing enough, but the crime that Duval set forth next must have been shocking in the extreme to Jefferson. The rest of the family—Lydia Broadnax and Michael Brown—had been seized with the same "Cholera Morbus" on the 26th and 27th. So late as Tuesday the 27th, Duval continued, "We had no idea that Sweeny had poisoned the whole Family." But the matter of the forged checks, the damaging fact that "Yellow Arsenic was found in Sweeny's Room & many other strong Circumstances concurred to induce a believe [*sic*] he had poisoned the whole Family." Thus, concluded Duval, "by the hand of a Youth to whom he was kinder than a Father is about to be taken from us the most virtuous and illustrious of our citizens—one among the best of men—whom even Death can't terrify or alarm." The fact that Duval, writing to the President of the United States, called Wythe "the most virtuous and illustrious of our citizens" is an indication of the unrivaled position held by the Chancellor in the esteem of Virginians.

In this same letter Duval reported that "On Sunday Morning June the first last Michael the Mulatto Boy Died. . . . As a Magistrate I requested four eminent Physicians to open the body of the Boy. They did so; from the Inflammation in the Stomach & Bowels, they said that it was the kind of Inflammation induced by Poison."

For two weeks Wythe lingered in great agony. On Sunday, June 1, he was informed that Michael, the mulatto boy, had died that morning. "He drew a long breath," Duval reported, "and pathetically said 'Poor Boy.'" "The Boy was humble and good," added Duval. "He had caught the Suavity of his Master's Manners." Wythe immediately called for his will that he might add a codicil to it. He knew then, apparently, that he was the victim of a murderer and on Thursday, June 5, he roused himself to exclaim to those around the bedside, "I am murdered!" But he mentioned no name. He did not need to do so; the significant codicil to his will pointed a finger straight at George Wythe Sweeney. On Friday he uttered the words that some historians have called his last—"Let me Die righteous." Sunday morning, precisely two weeks after he had been poisoned, he passed away. "Our venerable, great, and pious Friend," wrote Duval to Jefferson on that day, "departed this Life about half an Hour after Nine of the Clock this morning. Doctors Foushee, Currie, Greenhow, McClurg, and McCaw opened his chest and bowels. There was considerable inflammation in his Stomach. It is strongly suspected that he & Michael Brown were poisoned with Yellow Arsenic by George W. Sweeney."

All of the clinical aspects of the case of Wythe and the Negro boy seem to agree with the symptoms of arsenic poisoning. The fact that Michael Brown and Lydia Broadnax felt no ill-effect until the 26th and 27th does not indicate that they were poisoned at a different time. The symptoms of arsenic poisoning appear only after several hours and sometimes on the next day; illnesses occurring promptly after eating poisoned food are probably not due to arsenic. Once begun, the course of arsenic poisoning may be very rapid, leading to convulsions, paralysis, and death before enteritis has time to develop. The typical course, however, extends through eighteen hours to three days and sometimes for as long as fourteen days, as was the case with Chancellor Wythe. The symptoms start with vomiting and profuse and painful diarrhea—Duval said that Wythe "had rose from the bed forty times" on the first day of his illness. Such effects alone are not likely to arouse suspicion, since both the acute and subacute symptoms resemble those of a severe gastro-intestinal upset. The corrosive effects of arsenic, leading to inflammation, are not, however, conclusive proof of such poisoning. The only positive proof is that furnished by chemical analysis, which of course was not employed by the Richmond physicians.

The whole of Richmond had been in suspense during the days when

the aged jurist's life hung by a thread. Now that the end had come, the full shock of the dreadful tragedy was felt. As the bells of Richmond began to toll, the Governor and Council went into session and immediately arranged to have Wythe's body rest in state in the capitol. They also arranged the order of the funeral procession and had it printed as a broadside. William Munford, a member of the Council of State who had been one of those young men fortunate enough to be taken into the Wythe household to study law, was selected to deliver the funeral oration in the Hall of the House of Delegates at four o'clock on Monday afternoon. In the meantime, those who were close to Wythe waited with keen anticipation for the proving of the will and its codicils.

The great Virginian in the White House learned of these tragic developments in Richmond through various letters written to him by Major Duval. On June 14 he acknowledged these letters, "the last announcing the death of the venerable Mr. Wythe, than whom a purer character has never lived. His advanced years had left us little hope of retaining him much longer, and had his end been brought on by ordinary decays of time and nature, altho' always a subject of regret, it would not have been aggravated by the horror of his falling by the hand of a parricide. . . . I thank you for the attention you have been so kind as to show in communicating to me the incidents of a case so interesting to my affections. He was my antient master, my earliest & best friend; and to him I am indebted for first impressions which have had the most salutary influence on the course of my life. I had reserved with fondness, for the day of my retirement, the hope of inducing him to pass much of his time with me. It would have been a great pleasure to recollect with him first opinions on the new state of things which arose so soon after my acquaintance with him; to pass in review the long period which has elapsed since that time, and to see how far those opinions had been affected by experience & reflection, or confirmed and acted on with self-approbation." If Jefferson had been permitted to enjoy these anticipated conversations with the Chancellor on the broad terraces of Monticello, there is no doubt that the two aged patriots would have found themselves in fundamental agreement on the world-shaking events their lives had spanned. No man in Virginia was more staunch in his republicanism than Wythe; twice—once in 1800 and once in 1804—he had presided over the Virginia College of Electors, lending to its deliberations, in support of his former student's candidacy for the highest of offices, the weight of his character and the charm of his manner.

On Wednesday, June 18, Sweeney, charged with the murder of Chancellor Wythe and Michael Brown, was brought for examination before Colonel Edward Carrington, Mayor of Richmond, and two magistrates. Witnesses were questioned for nearly five hours and the examiners unanimously came to the conclusion that Sweeney was guilty as charged. He was thereupon remanded to the Richmond jail to await a special Court of Examination to be held on June 23. "You may suppose," Duval wrote to Jefferson, "that the Conduct of Sweeney has excited the most lively sympathy for the deceased and detestation against the supposed Culprit." The Court of Examination met on June 23 and that court also was unanimous in the belief that Sweeney was guilty of the murders. The accused was again remanded to jail to await trial at the District Court in September. "In my next letter," Duval wrote to Jefferson on June 29, "I shall state all the Circumstances as proved against George Wythe Sweeney." Unfortunately for history, Duval apparently forgot his promise and his correspondence over the next few months concerned only the character of Wythe and the bequests that he had made to President Jefferson. No record of the questions asked in the two courts or of the answers to them has been preserved.<sup>6</sup> If Duval had kept his promise, he would have given us probably the only summary of legal evidence of Sweeney's guilt. We do know, however, that in addition to Sweeney's appearance before the Mayor and magistrates and before the Court of Examination, his case was presented to the grand jury sometime during the summer. True bills were found on six charges: one for the murder of George Wythe, one for the murder of Michael Brown, and four for the forgery of Wythe's name on checks drawn on the Bank of Virginia. The trial of Sweeney on these charges was scheduled for the District Court at Richmond in September.

On Tuesday, June 10, Wythe's favorite paper the *Enquirer* appeared on the streets of Richmond with all four pages dressed in heavy mourning borders. The editor announced the death of the venerable Chancellor, printed the order of the funeral procession, and departed from custom by publishing an obituary editorial paying tribute to Wythe's virtues. "Over the suspected cause of his death," wrote Editor Ritchie, "let us for the moment draw the veil. Every situation in life has its rights and its duties. Let us therefore respect the rights of the accused. But of the deep, the solemn, the almost unparallel impression produced by his [Wythe's] death; we may be permitted to speak. Let the anxious solicitude mani-

<sup>6</sup> Mr. Hemphill, happily, has rendered this sentence obsolete.

fested for his recovery; let that sorrow which buried beneath it all political distinction; let the solemn and lengthened procession which attended him to his grave; declare the loss which we have sustained. Kings may require mausoleums to consecrate their memory; saints may claim the privileges of canonization; but the venerable GEORGE WYTHE needs no other monument than the services rendered to his country, and the universal sorrow which that country sheds over his grave." During the following week the *Enquirer* also published in full William Munford's extemporaneous but profound and moving tribute to the learned and just man.

On Wednesday, June 11, the will of George Wythe was proved before a general court in Richmond. A complete and authentic transcription of this will is found in the Jefferson papers and another was published in the 1852 edition of *Wythe's Decisions of Cases in Virginia by the High Court of Chancery*, edited by B. B. Minor. Both of these transcripts preserve Wythe's peculiarities of orthography—the use of a lower-case "i" for the personal pronoun, the spelling of all words ending in "cy" and "ly" as "cie" or "lie," and so on, peculiarities which at once raise the question whether Jefferson's similar departure from standard practices was adopted from his old preceptor. The will, consisting of twenty lines only, named Major Duval as executor. The rents from Wythe's Richmond home and the interest from his bank stock were to be used for the support of "my freed woman Lydia Broadnax, and my freed man Benjamin and freed boy Michael Brown" during the lives of the first two and after their deaths in trust to Michael. The remainder of his estate was bequeathed to George Wythe Sweeney. Three years later (the Negro Ben had died in the meantime), Wythe added the first codicil, dated January 19, 1806. The most important change—an ominous one that proved Wythe was well aware of Sweeney's debts and dissipations—was that specifying that the residuary estate left to Sweeney should be "charged with debts and demands." But the most interesting part of the codicil concerned Thomas Jefferson and Michael Brown: "I give my books and small philosophical apparatus to Thomas Jefferson, President of the United States of America: a legacie, considered abstractlie, perhaps not deserving a place in his museum, but, estimated by my good will to him, the most valuable to him of anything which I have power to bestow. . . . to the said Thomas Jefferson's patronage i recommend the freed boy Michael Brown in my testament named, for whose maintenance or other benefit, i will the . . . bank stock or the

value thereof. . . ." A month later a second codicil directed that "Michael Brown have no more than half my Bank Stock, and George Wythe Sweeney, have the other immediatelie." Then, after another bequest to Jefferson of his silver cups and gold-headed cane, came the provision which some Virginia historians have assumed was the cause of the murder: "If Michael die before his full age, i give what is devised to him to George Wythe Sweeney."

Of this will Jefferson wrote, a week after Wythe's death, "I hope he [Wythe] had time to alter its disposition as to him who has brought it prematurely into force." This wish had been gratified. The third codicil, dated June 1, 1806, revoked "the said will and codicils in all the devises and legacies in them or either of them, contained, relating to, or in any manner concerning George Wythe Sweeney, the grandson of my sister: but I confirm the said will and codicils in all other parts except as to the devise and bequest to Michael Brown, . . . who, I am told, died this morning." Following this revocation, the codicil provided that the estate be divided equally among the brothers and sisters of Sweeney.

This will and its first two codicils were not witnessed. The third bore the names of four witnesses: Edmund Randolph, William Price, Samuel Greenhow, and Samuel McCraw. Despite the fact that Wythe was one of the greatest of law teachers, his will and the codicils that he himself wrote were strongly marked with eccentricity. The language was scarcely that of orthodox legal phraseology and was interspersed with Greek and Latin phrases and pious verse. But the third codicil was couched in conventional terms and was probably drawn, as George Wythe Munford asserts in *The Two Parsons*, by Edmund Randolph.<sup>7</sup> When this codicil had been drawn and signed, according to the account in *The Two Parsons*, Wythe turned to Randolph and William Munford and said: "It is not my desire that this unfortunate nephew of mine shall be prosecuted or punished, further than this codicil will punish him, for the offences with which he stands charged. I dread such a stigma being cast upon my name or my sister's." Also, according to this account, Wythe went on to say that he did not think Sweeney could be convicted. "For myself," he added, "I shall die leaving him my forgiveness." This conversation, George Wythe Munford thought, would explain why Edmund Randolph appeared as counsel for the defense when Sweeney was tried. All of this supposed conversation is clearly suspect. First of all, William Munford

<sup>7</sup> See Randolph's testimony on the drawing of the will, page 559.

was apparently not present at the drawing up of the codicil; at least he did not sign it as a witness and it is almost certain that he would have done so if he had been present. Second, Wythe could not have referred to "the offences with which he stands charged" (meaning, in George Wythe Munford's account, the charge of murder), for on June 1 no such charge had been preferred. Third, Wythe was too just a man to obstruct legal processes even though the course of law might bring stigma to his name and he was too good a lawyer not to be perfectly well aware that a charge of murder was something beyond his power to stay. For the good Chancellor, even on his death-bed, must have remembered the oath that he had taken as a jurist—one of the most exacting oaths ever administered to public officers in America, which read in part: ". . . You shall not maintain by yourself, or by any other, privily or openly, any plea or quarrel depending in the Courts of this Commonwealth. You shall not delay any person of right, for the request or letters of any person, nor for any other cause; and if any letter or request come to you contrary to law, you shall proceed to do the law, any such letter or request notwithstanding. And finally, in all things belonging to your said office, during your continuance therein, you shall faithfully, justly, and truly, according to the best of your skill and judgment, do equal and impartial justice, without fraud, favor or affection, or partiality." This oath reveals the spirit, so Minor asserts, "in which Wythe is universally admitted to have executed his office." We know that matters in Chancery proceedings occupied Wythe's mind even in his last illness, and there is no reason to suppose that the approach of death would cause him to deny the opinion he had expressed previously on the bench: "Compassion ought not to influence a judge, in whom, acting officially, apathy is less a vice than sympathy." Fourth, Wythe himself apparently did not express the opinion that he was the victim of a murderer until June 5, four days after the codicil was drawn up, and even then, according to the reliable testimony of Duval, he named no person as the guilty one. Finally, though George Wythe Munford was the only nineteenth-century chronicler to give the real reason for Sweeney's acquittal, he clearly erred in putting into Wythe's mouth the assertion that Sweeney could not be convicted: for, again, Wythe was too fair a judge to render an opinion until the testimony was all in—and Sweeney was not even arraigned for his first examination until after Wythe's death.

But surely George Wythe Munford must have based this very cir-

cumstantial conversation on some authentic account? He was a young man of twenty-two when his father died in 1825 and he must have discussed the famous murder with him. His assertion that his father was present when the conversation took place indicates that William Munford must have related this or some similar anecdote to him. If so, how could so clearly a fictitious incident have been perpetuated? The most plausible explanation is to assume that William Munford was at Wythe's home on May 27 when Sweeney was committed to jail for forgery. On that occasion Wythe may indeed have remarked that he hoped Sweeney would not be prosecuted. It would have been quite proper and quite characteristic for him to have done so: for there was no statute covering the forgery of bank checks and Wythe was the one who had suffered injury. If this assumption is correct, it is probable that, in the course of time, Wythe's forgiveness of a forgery that had been committed became confused with forgiveness of a murder that had not then been charged.<sup>8</sup>

There is one further point about the will and its codicils, as set forth in *The Two Parsons* and in some historical accounts, that should be clarified. "Subsequent to the writing of the last codicil, dated 24th of February, 1806," wrote Munford in *The Two Parsons*, "the Chancellor had ascertained from various sources that his nephew had become exceedingly dissipated—was habitually keeping company with disreputable associates and frequenting gambling houses. From time to time . . . he [Wythe] had . . . warned him that such conduct could not be tolerated. He went so far as to say that he had made provision for him in his will, but unless there was some change in his conduct, he should certainly revoke his bequest. His mind was finally made up to this by learning from one of the bank officers that Sweeney was suspected of having forged the Chancellor's name to two checks drawn on the Bank of Virginia, one for fifty and one for one hundred dollars. There was a probability that he [Sweeney] would be indicted before the grand jury for the forgeries, and the old gentleman came to the conclusion that he must do this thing which hung so heavily over him. He put it off, however, from day to day."

What this and other historical accounts have overlooked is that the will and the first two codicils were progressively more liberal toward Sweeney. The first codicil of January 19 recognized Sweeney's spendthrift

<sup>8</sup> Wythe's refusal to go bail for Sweeney, as evidenced in the testimony now published, is an indication that he did not forgive the lesser crime, much less that of murder.

ways by charging the residuary estate with debts and demands. But by February 24, the Chancellor, generous and trusting as always, apparently had concluded that Sweeney's needs would be great, and he *reduced* Michael Brown's trust fund of the bank stock by one-half, the remaining half to be given to Sweeney immediately after the will became operative. Surely if the Chancellor took these steps because of Sweeney's dissipations before February 24, it is not likely that he would have reversed his characteristically generous course so soon after that date. He *could* have "done this thing which hung so heavily over him" on May 27 when Sweeney went to jail for forgery if that had been his intent. Instead he waited until June 1, when Michael died.

"I sincerely regret the loss [of the freed boy Michael Brown]," wrote Thomas Jefferson on June 22, "not only for the affliction it must have cost Mr. Wythe in his last moments, but also as it has deprived me of an object for attentions which would have gratified me unceasingly with the constant recollection & execution of the wishes of my friend." If the President of the United States was denied the privilege of looking after the education of the fifteen-year old Negro ward, he nevertheless had some dealings with Lydia Broadnax, the faithful cook. Wythe, in common with Jefferson and other enlightened Virginians of the eighteenth century, believed in manumission and had put his beliefs into practice. Ben, Lydia, and Michael were all freed by him. "Never had a man a more faithful servant [than Lydia]," Duval wrote to Jefferson. "Her attention to Mr. Wythe was incessant & [she] always studied to please him." Wythe had given her a small miniature of himself in profile. When Jefferson learned of this, he wrote: "I ask only . . . to borrow it that I may get it copied by Mr. Peale and the original shall be safely returned." Lydia, on her part, was also gracious: "If you preferred the original," Duval wrote the President, "Lydia would be contented with a profile copy. I know from what Mr. Wythe often said that you were dearer to him than any relation he had—that his attachment arose from that impulse that unites great minds, the sincere love of Virtue." Jefferson must have been pleased with the gracious gesture, but he kept the copy and sent the original back to Lydia, with his thanks for the opportunity of copying it.

In the sketch of Wythe in the *Dictionary of American Biography* there appears the following statement: "This will led to Wythe's death. His grandnephew, George Wythe Sweeney, was named principal beneficiary, while a legacy to a servant was to come to him if the servant died. To se-

cure this legacy, or perhaps the inheritance, Sweeney, who was apparently in financial difficulties, poisoned some coffee with arsenic. The servant drank some; Wythe also drank some, perhaps fortuitously." This passage clearly implies, though it is qualified twice by "perhaps," that Sweeney's real object was to do away with Michael in order to receive his part of the legacy, and that Wythe's death was fortuitous or accidental. The authority for this assumption seems to go back to the following statement in Lyon G. Tyler's sketch of Wythe in William Draper Lewis's *Great American Lawyers*, published in 1907: "This clause is believed to have been the innocent cause of Judge Wythe's decease. Avarice overpowered the favorite nephew, and to get immediate possession of the devise, he put arsenic in a pot of coffee which he supposed the Negro boy would be the only one to use. But it happened that Judge Wythe also drank of the coffee, and both were fatally affected." There is no "perhaps" in Tyler's comment; what he implies is that the indictment against Sweeney for Michael's death should have been a charge of murder; that respecting Wythe, a charge of homicide. But what was Tyler's authority? Apparently it was a footnote by B. B. Minor, written in 1852: "At the time of the poisoning, the Chancellor had been confined at home by indisposition. Swinney [*sic*], indignant at the kindness and munificence of his uncle to the colored boy, intended to poison the boy, and put the poison in the coffee for breakfast, not expecting that the Chancellor would think of coming from his chamber, or would be in any danger of partaking of it. But during his absence, the Chancellor did make his appearance and drank of the coffee. The woman also died. These facts were obtained from Dr. John Dove, who then resided in that neighborhood, and was present when Mr. Wythe breathed his last."

This account is all the more remarkable in view of its conflict with the remembered testimony of the aged Henry Clay. This testimony was given in a long, moving tribute that Clay paid to Wythe in the form of a letter addressed to Minor under date of May 3, 1851, and printed by Minor in the pages following his own version. Clay's reminiscences about Wythe were detailed and exact and in that part devoted to the Chancellor's murder his version agreed more nearly with the contemporary evidence than with the account that Minor juxtaposed to it: "It is painful and melancholy to reflect that a man so pure, so upright, so virtuous, so learned, so distinguished and beloved, should have met with an unnatural death. The event did not occur until several years after I emigrated from Richmond to the State of Kentucky, and, of course, I am not able from

personal knowledge to relate any of the circumstances which attended it. Of these, however, I obtained such authentic information as to leave no doubt in my mind as to the manner of its occurrence. He had a grand nephew, a youth scarcely I believe of mature age, to whom, by his last will and testament, written by me, upon his dictation, before my departure from Richmond, after emancipating his slaves, he devised the greater part of his estate. That youth poisoned him, and others,—black members of his household, by putting arsenic into a pot in which coffee was preparing for breakfast. The paper which contained the arsenic was found on the floor of the kitchen. The coffee having been drunk by the Chancellor and his servants, the poison developed its usual effects. The Chancellor lived long enough to send for his neighbor, Major William Duval, and got him to write another will for him, disinheriting the ungrateful and guilty grand nephew, and making other dispositions of his estate. An old negro woman, his cook, also died under the operation of the poison, but I believe his other servants recovered. After the Chancellor's death it was discovered that the atrocious author of it had also forged bank checks in the name of his great [*sic*] uncle, and he was subsequently, I understood, prosecuted for the forgery, convicted and sentenced to the penitentiary; but whether that was the fact or not, can be ascertained by a resort to the records of the proper criminal courts of Richmond."

Obviously Clay's testimony must be used cautiously because it comes to us subject to two qualifications, one indicated by Clay himself (his absence in Kentucky at the time) and the other suggested by the fact that he was writing from memory nearly half a century afterward. Yet there is scarcely room for doubt that in 1806 Clay had received "authentic information" of such a nature as to convince him that the Chancellor had been purposefully killed. The will that Clay described was clearly not that of 1803, for that will was in the Chancellor's own handwriting—we have Jefferson's word for this—and Clay had left Richmond in 1797. Also, the will of 1803 did not free the slaves: that had already been done. Perhaps, during the time that Clay was Wythe's amanuensis, Wythe had caused a will to be drawn up leaving the Negroes their freedom as a legacy and then, prior to 1803, decided to manumit them instead. The only matter of consequence in Clay's evidence that departs from contemporary evidence is his assertion that "An old negro woman . . . also died." The significance of his testimony lies in its source and in the fact that he made no such distinction as Minor made—or derived from Doctor Dove—in the volume in which he printed Clay's letter.

In Doctor Dove we find what seems to be the fountainhead of the legend, though he was probably far from being alone in originating or disseminating it. First of all, let us dispose of the obvious or probable errors in Doctor Dove's report as related by Minor: First, the Chancellor was not ill on May 25, but "took his breakfast as usual." Second, the woman—Lydia Broadnax—was not among those who died. Finally, among the names of doctors mentioned as being called in for consultation, that of Doctor Dove is not included. Yet Minor quotes him as saying flatly that Sweeney "intended to poison the boy" and he implies that Wythe's sip of coffee was accidental. Sanderson, writing in 1822 and obtaining much of his information from Jefferson, is noncommittal and apparently inclined, as most Virginians seemed to be in their public statements in the early part of the century, to draw a veil over the murder. But, on the eve of the Civil War, an interpretation of the event arose which continues in one form or another.

It seems clear from the correspondence between Duval and Jefferson that those who were closest to the tragedy made no such distinction as was developed by later historians. Indeed the evidence seems to point to a general conclusion that the crime was intentionally perpetrated on both Wythe and his servants. This evidence may be summarized as follows: (1) we do not even know, or at least there is no clear evidence for supposing, that Sweeney knew anything about the provisions in the will respecting Michael Brown or even himself; (2) his impending arrest for forging checks in Wythe's name may in itself have provided sufficient motive to do away with his uncle; (3) granted that Sweeney was conversant with the terms of the will in all of its detail, one would still have to explain how the murder of Michael could benefit him or enable him to come into Michael's portion of the estate when no part of the testament became operative until Wythe's decease; (4) we know that Wythe was the first to take the poison or at least the first to feel its effects; (5) Wythe himself was convinced that he was the object of a murderous attack, a fact proved both by his words and by the deathbed codicil to his will disinheriting Sweeney; (6) and finally, the two courts of examination and the grand jury were convinced that both victims had been put to death with premeditation, hence the charge of murder in both indictments. No evidence, save the hearsay of Doctor Dove, has ever been adduced to establish an intended murder in the case of the boy and an accidental death in the case of Wythe.

Why then did the distinction arise? Was it due solely to the kind of

warping and metamorphosis that word-of-mouth information undergoes in passing from one generation to another? Was it an afterthought of popular gossip when the terms of the will became public property? May we attribute it to the poor memory of Doctor Dove? Was it because Virginia historians on the eve of the Civil War felt that his detested crime would be less abhorrent if there were a proved animus against a manumitted slave and none established as against the great and good Chancellor? Or was there something else?

One possible clue seems at first to be indicated in a letter written by Major Duval to President Jefferson on June 19, in which he said: "G. W. Sweeney's case in some respects resembles that of Captain John Donellan for the willful murder of Sir Theodosius Edward Allesley Boughton . . . who was convicted and executed for poisoning the brother of Mrs. Donellan." Captain Donellan, who had been cashiered from the British Army, lived with his wife at the country seat of Sir Theodosius and on August 31, 1780, administered to Sir Theodosius a generous draft of distilled laurel-water which speedily put an end to the baronet's life. Presumably the similarity in the cases that Major Duval referred to lay in the fact that Sir Theodosius was a minor, aged 20, that he expected to inherit an income of £2,000 when he reached his majority; and that, in the event of his death before reaching the age of twenty-one, the estate would devolve upon Sir Theodosius' sister, the wife of Captain Donellan. But there all similarity ends. Sir Theodosius, an irresponsible, headstrong, scrofulous youngster, had nothing in common with the venerable Chancellor of Virginia except in the fact that he was poisoned. Captain Donellan's chief resemblance to George Wythe Sweeney lay in the fact that both were murderers; but the fate which so speedily overtook Captain Donellan under English law, in a verdict returned by the jury within nine minutes, had nothing in common with the fate which Virginia justice administered to Sweeney. There is a superficial similarity in the two cases in that both involved a legacy and both involved murder by poison. But the case of Captain Donellan as reported in the *Universal Magazine* in 1781 seems to offer no clue to the treatment of the Sweeney case by Virginia historians.

On Monday, September 1, the District Court convened in Richmond, with Judges Prentis and Tyler presiding. On Tuesday, so the *Enquirer* reports, "came on the celebrated trial of George W. Sweeney, on the charge of administering arsenic to his great Uncle the venerable George

Wythe." The attorney general, Phillip N. Nicholas, handled the case for the state, and Sweeney was defended by two of the ablest lawyers in Virginia, William Wirt and Edmund Randolph. The brief account in the *Enquirer* continues: "After an able and eloquent discussion, the jury retired, and in a few minutes, brought in a verdict of *not guilty*. A similar indictment against him [Sweeney] for the poisoning of Michael, a mulatto boy (who lived with Mr. Wythe) was quashed without a trial. On a subsequent day, he was brought up and convicted on two of the indictments, which were found against him for counterfeiting of his uncle's name to checks drawn upon the Virginia Bank." The *Enquirer* did not report, however, that, upon the conviction for forgery, Sweeney was sentenced to six months' imprisonment in jail and to one hour's exposure on the pillory at the market house in Richmond. But this sentence was never executed. "The General Court had arrested one judgment," writes Minor "but the appeal to them on another indictment was ineffectual; yet the Court below granted him a new trial, and the prosecuting attorney entered a *nolle prosequi*. The unfortunate man then sought refuge in the West; where his career was brought to a premature and miserable close."

The *Enquirer*, however, strongly hinting that it had other views than those which the jury entertained, made this editorial comment: "The pen yet lingers to add, that some of the strongest testimony exhibited before the called court and before the grand jury was kept back from the petit jury. The reason is, that it was gleaned from the evidence of negroes, which is not permitted by our laws to go against a white man." Lydia Broadnax, the cook, who was the chief witness, was not a slave but a freed woman. Yet, because of the texture of her skin, Virginia justice was unable to punish the murderer for a crime which the President of the United States, the attending doctors, the examining courts, and the victim himself believed to have been committed. Surely there is irony in the fact that the death of the great and benevolent Chancellor, who believed that kindness and freedom for Negroes were for the best interests of his beloved Commonwealth, went unavenged by his native state in part because of this legal repression of Negro evidence.

Is it not significant also that this ironic fact was omitted from the writings of those historians who developed the legend of accidental death? The date of the origin of this legend, sometime on the eve of the Civil War, seems to offer the best explanation. Leading Virginians in the 1850's were no longer able to advocate manumission and emancipation with the

same freedom that Jefferson, Wythe, and others of their generation had promoted such a cause. With the South battling as a conscious political minority to retain its control of the Federal government and with the institution of slavery under attack from the North, it may have seemed best to those who wrote about this case to make its motive depend solely upon the racial animus developed through granting too much freedom to Negroes. Whether this is the correct assumption or not, it has at least three more or less plausible explanations: first, it underscored for Northerners as well as Southerners on the eve of the Civil War the supposed dangers of manumission; second, it made unnecessary any reference to legal suppression of Negro evidence; and third, it made the death of a greatly venerated Virginian an accident and not willful murder, thereby apparently rendering the horrible crime slightly less odious.

But the legend of Wythe's accidental and unintended death leaves one difficult question unanswered and apparently unconsidered by those who set forth the traditional belief: if this was the cause of Sweeney's acquittal of the charge of murder in respect to Wythe—that is, failure of proof of intent—how could acquittal of a similar charge in respect to Michael be explained when the tradition rests on the assumption that the attempt on Michael's life was purposeful and premeditated? The dilemma that this presents to those who accept the tradition involves equally grave questions of ethics and justice. Nevertheless, none of those who upheld the accidental theory of Wythe's death apparently felt it necessary to explain Sweeney's acquittal of the charge of murdering Michael, and none followed the *Enquirer* in commenting upon the inadmissibility of Negro testimony. It is significant, however, that George Wythe Munford dwelt at some length on this question of Negro evidence—and Munford left no doubt as to his belief that both Wythe and Michael were poisoned with malice prepense. The account in *The Two Parsons* obviously errs in representing Wythe as saying that he thought Sweeney could not be convicted because Negro testimony was inadmissible in Virginia courts. It is implausible and uncharacteristic, as already noted, that Wythe should have made such an observation under the circumstances. But the point is that *The Two Parsons*, published long after the emancipation of the Negroes and after the repeal of statutes forbidding courts to accept testimony offered by Negroes against whites, is the only published account in the nineteenth century, aside from the contemporary comment of the *Enquirer*, which discusses this legal technicality of Negro evidence and

the only one (save that of Clay) which rejects the theory of Wythe's accidental death. Strangely, Tyler and the author of Wythe's sketch in the *Dictionary of American Biography* follow the earlier versions rather than Munford's and the latter, though it includes the best bibliography of writings by and about Wythe, does not mention *The Two Parsons*.<sup>9</sup>

Thus one of the purest of American judges, whose whole life was devoted to the idea of equality before the law, came to a death unavenged by the justice that he had served so well and misrepresented by those historians who sought most to honor him. Virginia law, three months after Sweeney's acquittal, made provision for punishment of the crime of forging checks drawn on the Bank of Virginia. But the laws limiting the right of Negroes to give evidence in court because of their color were not repealed until 1867. The final irony is that the great legal reforms reported by Jefferson, Wythe, and Pendleton in 1779, though accomplishing a virtual revolution in the legal and social structure of Virginia, perpetuated the provision of colonial law which made it impossible for Negroes to testify against whites. It was Wythe himself who had the primary responsibility for revising that portion of colonial law between 1688 and 1776 containing the particular statutes which, reenacted in what was then called the Chancellor's Revisal, permitted his own murderer to escape the gallows.<sup>10</sup>

#### BIBLIOGRAPHICAL NOTE

The correspondence between William Duval and Thomas Jefferson is in the Jefferson Papers in the Library of Congress. Duval wrote seven letters to Jefferson during 1806, dated June 4, 8, 19, and 29; July 12; November 21, and December 10; Jefferson replied on June 14, 18, and 22; July 17, and December 4. The principal printed sources are cited in Theodore S.

<sup>9</sup> This should not be taken to imply that the sketch in the *Dictionary of American Biography* intentionally refrained from discussing the effect of Negroes' inadmissibility as witnesses in cases involving whites; I had only meant to suggest that it followed the traditional view in regarding Wythe's death as possibly accidental, and, as indicated above, the author of the sketch—who naturally could not devote space to a discussion of the cause of Wythe's death—qualified his statement with "perhaps" in two instances.

<sup>10</sup> It is now established that, when Wythe and Jefferson came to make the final allocation of bills remaining to be drafted for the revisal, it was the latter who prepared the text of the bill for the government of slaves, incorporating in it the familiar and, in a slave economy, necessary limitation of the competence of Negroes as witnesses. Julian Boyd, ed., *The Papers of Thomas Jefferson* (Princeton, 1950—in progress), II, 470-73, 665.

Cox's biography of Wythe in Allen Johnson and Dumas Malone, eds., *Dictionary of American Biography* (New York, 1928-44). They include, among others: Lyon G. Tyler's sketch in William Draper Lewis, ed., *Great American Lawyers . . .*, 8 vols. (Philadelphia, 1907-09), I; John Sanderson's *Biography of the Signers to the Declaration of Independence*, 9 vols. (Philadelphia, 1820-1827), II; and B. B. Minor, ed., *Wythe's Decisions of Cases in Virginia by the High Court of Chancery . . .* (Richmond, 1852). The last is prefaced by a biographical sketch of Wythe and includes the interesting letter written in 1851 by Henry Clay. Two comments on Wythe in the text are drawn from George W. Corner, ed., *The Autobiography of Benjamin Rush . . .* (Princeton, 1948) and Andrew Burnaby, *Travels through the Middle Settlements in North America . . .* (3d ed. revised and enlarged, n.p., 1798).