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Cuyahoga County Court of Common Pleas

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(After recess at 11:10 o'clock a.m.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness HORACE M. DON, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name?

A Dr. Horace M. Don.

Q You can sit up straight, be comfortable in your chair.

Where do you live, Dr. Don?

A At the present time I live in Tipton, Iowa.

Q Are you in the practice of medicine in Tipton, Iowa?

A Yes, sir.

Q When did you start in practice in Tipton?

A I started in practice there August 22nd of this year.

Q And prior to that time where did you practice?

A I practiced in Cleveland.

Q When did you come to Cleveland?

A I came to Cleveland in July of 1952.

Q And when you came here did you become associated with any institution?

A Yes, sir. I came here to -- I started an internship at Bay View Hospital.

Q And during what period did you serve an internship at Bay View Hospital?

A I served from July, '52, to July, '53.

Q And during that time I presume that you became acquainted with Dr. Sam Sheppard?

A Yes, sir.

Q Now, during the period of your internship did you have anything to do with the accident cases that were brought to that hospital?

A Yes, sir.

Q And in relation to those accident cases, did you have any contact with Dr. Sheppard?

A Yes, sir. Dr. Sam was in charge of the accident ward.

Q And during what period of the day or night would most of the accidents occur?

A Well, most of the accidents would occur -- oh, the major ones probably between 10 o'clock in the evening until about 6, 7 o'clock the following morning.

Q Now, during that year, did you have occasion to make an observation of the sleeping habits of Dr. Sam Sheppard?

A Yes, sir.

Q And from your observation can you state whether or not he was a very deep sleeper?

A Yes, sir, he was.

Q Can you state whether or not he was difficult to awake?

A

Yes, sir. Sometimes we had quite a hard time to get him to wake up.

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Q Now, after midnight during that year, did you have occasion from time to time to consult with Dr. Sheppard in regard to accidents that were brought into Bay View Hospital?

A Yes, sir.

Q And how was that consultation conducted after twelve o'clock at night?

A Well, if it was a big case and there were quite a few involved, why, Dr. Sam would be called and he would come to the hospital. However, if it was a minor problem and the police were waiting for your disposition of the case, why, sometimes we would go to his place and take him a film for him to take a look at, see if there was a fracture, or so forth, and just minor things like that.

Q Did you have occasions during that year to leave the hospital after twelve o'clock at night and --

A Yes, sir.

Q Wait a minute, now, until I get through with the question.

(Continuing) -- and drive to Dr. Sam Sheppard's home?

A Yes, sir.

Q And on those occasions, did you bring anything with you?

A Yes, sir.

Q What did you bring with you?

A X-ray films.

Q X-ray films. Will you tell the jury if there were occasions when you arrived at that home after midnight?

A Yes, sir.

Q When the house was dark?

A Yes, sir.

Q And how did you gain entrance or attract the attention of Dr. Sam Sheppard?

A Walked in the Lake Road entrance of the home.

Q Yes. Was the door open?

A Well, the door wouldn't be open, but it wouldn't be locked, either.

Q It would not be locked?

A No, sir.

Q And on those occasions when you walked in, where would you go?

A Well, if it was after midnight and Sam and Marilyn were asleep, why, you would walk into the hall and to your left, the first door to your left would go into the kitchen, and you would go across the kitchen to the door which would lead either to part of the living room or leading upstairs.

Q Now, did you go to -- did you walk into that house after midnight when Sam and Marilyn were asleep?

A Yes, sir.

Q And on those occasions, when you went in, what would you do in regard to attracting their attention and letting them know that you were in the house?

- A Go in, go through the kitchen, as I said previously, and stick your head around the corner and holler upstairs.
- Q And who would you call to?
- A Oh, just holler for Sam or Marilyn. Marilyn usually woke up.
- Q Marilyn would wake up?
- A Yes, sir.
- Q And then after Marilyn woke up, what, as far as you know, did she do?
- A Well, as far as I know, why, she would shake Sam and try to get him awake for him to come down.
- Q And then would Sam come down?
- A Yes, sir.
- Q And where were the X-rays then examined by Sam?
- A Well, right across from the kitchen was Dr. Sam's den, in which he had a view box that he could look at films there.
- Q And that occurred on a number of occasions?
- A Yes, sir, several occasions.
- Q Now, then, did you know Sam Sheppard and his wife during that year and the succeeding year?
- You finished in June of '53?
- A Yes, sir. Well, it would be the first of July of '53.
- Q The first of July, 1953. And then you started in practice for yourself?
- A Yes, sir.

Q And where did you establish your office?

A 332 Bassett Road in Bay Village.

Q And how long did you remain at that office?

A I remained there until July 1 of '54.

Q And on July 1, '54, did you change your office to some other point?

A Yes, sir. To Parma.

Q Now, then, during the year 1953 to '54, when you started into your private practice, did you have contact with Dr. Sam Sheppard?

A Yes, sir.

Q And what kind of a contact was it?

A When I began practice -- of course, everybody needs help to get started -- I worked with Dr. Sam in the emergency room, and Dr. Sam was having to go out of town frequently to do surgery at other hospitals. At that time he was the official police physician for Westlake and was working with the Bay Police Department unofficially. And when I went out to practice, Dr. Sam suggested to the Chief of Police of Westlake that I be appointed with him as the official police physician so that somebody would be there to cover at all times, even though he would be out of town, and also at Bay Village Police, why, he recommended that if he was out of town, that they could call me.

Q And did you work for the Bay Village Police and the Westlake

Police?

A I was appointed the official police physician at Westlake and I worked with the Bay Village Police unofficially.

Q Now, then, during that particular year, did you visit the Sheppard home?

A Yes, sir.

Q And how frequently?

A Oh, I'd say a couple, three times a week, running in and out.

Q And did you make an observation of the conduct of Sam Sheppard towards his wife and his wife towards him?

A Yes, sir.

Q What was your observation?

A My observation, it seemed that they were very happily married.

Q Now, then, you are married, are you, Dr. Don?

A Yes, sir.

Q Did you make an observation of the general conditions that existed around that home in regard to whether or not it was used by other people?

A Yes, sir.

Q Tell the jury.

A Very frequently there were a lot of the high school set that was over at Dr. Sam's house to play basketball and go water skiing, and so forth. In fact, Dr. Sam received a

fractured rib playing basketball with some of the kids one day. But there were always the high school set around. Also the adults, there were always people coming into the Sheppard home water skiing, just talking sports cars, and so forth.

Q They held a sort of an open house there?

A Yes, sir.

Q Now, then, did you accompany Sam Sheppard to Put-in-Bay sometime in June?

A Yes, sir.

Q And as the story has been told here to the jury, Sam flew back. Do you recall that?

A Yes, sir.

Q Did you accompany Marilyn back from Put-in-Bay?

A Yes, sir.

Q And what time did you leave Put-in-Bay, do you recall?

A I don't know the exact time. However we caught the --

Q What day, I mean?

A It was on a Sunday.

Q On a Sunday?

A I believe.

Q It isn't a very great drive, as I remember it.

A No, sir. The big wait was getting on the ferry from Put-in-Bay over to the mainland.

Q About 70 miles or something like that?

A Approximately.

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Now, then, did you see Sam Sheppard during the week preceding the murder of his wife?

A Yes, sir.

Q Do you recall what day it was?

A I believe, oh, the Thursday before, if my memory doesn't desert me, at Mr. and Mrs. Howell's residence.

Q How did you happen to get up to Mr. and Mrs. Howell's residence, you and Sam?

A Well, Sam and I were out -- I had just purchased an MG and I was out riding around waiting for my wife to go off duty at the hospital, and met Dr. Sam, and we were talking about the races at Put-in-Bay prior to that, and the films that -- or the pictures that they had taken, and Sam was interested and so was I to see their films, so we stopped over at the Howells and they showed us their pictures that they had taken of the races.

Q Then did you drive Sam home?

A I don't recall just --

Q You recall being with him, though?

A Yes.

Q Being up to the Howells?

A Yes, sir.

Q Now, then, on the 4th of July do you recall -- withdraw that.

Were you with Sam between the 4th of July, between the Thursday and the 4th of July, the time you were at the

Howells, and the --

A Well, we were together almost every day as far as at the hospital, and so forth.

Q And you worked with him during those days?

A Yes, sir.

Q Now, coming to the 4th of July, the morning of the 4th of July, did you hear of the murder of Marilyn Sheppard?

A You mean on the morning of the 4th?

Q Yes.

A Yes, sir.

Q Where were you when you heard it?

A I was at home.

Q And what were you doing?

A My wife and I were getting ready to go to church.

Q And how did you get the information?

A We received a call from Dr. and Mrs. Selnick.

Q Now, then, when you received the call you abandoned the idea of going to church?

A Yes, sir.

Q Or did you go to church?

A Well, my wife went to church. I got dressed and went to the hospital.

Q What church were you going to go to?

A That was the Baptist Church in Rocky River.

Q When you got the information that this tragedy had

occurred, where did you go?

A I first of all went to the hospital.

Q And did you go into the hospital?

A Yes, sir.

Q Did you go into the room where Dr. Samuel Sheppard was?

A Yes, sir.

Q Did you see him?

A Yes, sir.

Q Did you go in as a physician?

A No, sir.

Q Will you describe to the jury what you saw in that room?

A I went into the room to see Dr. Steve Sheppard, and while I was in the room I naturally noticed Dr. Sam laying there. He had bruises on his face, about the mouth, and swelling of the cheek and of the eye.

Also while I was in there, it was evident that he was under sedation, but he kept moaning over and over, "Why did they do it? Why didn't they do it to me?"

And he seemed to be just like a record just playing over and over, but he didn't recognize anybody that was there, or so forth.

Q Did he recognize you?

A No, sir.

Q Did you have any conversation with him?

A No, sir.

Q All you heard was this "Why did they do it? Why didn't they do it to me?"

A That's right.

Q Now, then, after you had gone to the hospital, did you go to the Sheppard home?

A Yes, sir.

Q And what time did you arrive at the Sheppard home?

A Well, I'd say approximately 10 o'clock, or around that time.

Q And when you arrived there, who did you see that you remember now?

A Well, just as I arrived, Mrs. Dorothy Sheppard, and Mrs. Betty Sheppard were coming out of the house. They had gathered some clothing, I believe it was for Chip. Also around were Sergeant Hubach of the Bay Village police, Dr. Gerber, several men from his department, Patrolman Drenkhan of the Bay Village police. There were several other men. I mean the place was literally crawling with policemen about that time.

Q Well, after you had made the observation, did you do anything?

A Yes, sir. Of course, I asked Jay Hubach what seemed to happen and what --

Q Well, you had a conversation with him?

A What occurred up to the present time when I got there.

and then afterwards, I believe the fingerprint men were in the house at the time because everybody seemed to be standing out, and it was after that that they discussed about going into the house.

Q Did you see a small boy there that morning?

A Yes, sir.

Q And where did you see the small boy?

A We were out in the front of the house -- that is the Lake Road side -- and Dr. Gerber and a couple of his men were talking about going into the house and searching for any evidence, and there was a boy there, oh, I'd say about 10 or 12 years old, and he asked whether or not he could go into the house also, and Dr. Gerber gave him permission.

Q And then did you go in the house?

A Yes, sir.

Q Did you see the boy?

A Yes, sir. He went in before I did.

Q Where did you see him?

A In the living room-dining room or the cove there.

Q What was he doing?

A Looking around, touching things.

Q Touching things?

A Yes, sir.

Q And going around the downstairs?

A Yes, sir.

Q Did you know who he was?

A No, sir, I didn't. I took it that it possibly was Dr. Gerber's son, or something like that.

Q I think you discovered later that Dr. Gerber didn't have a son?

A I discovered later that Dr. Gerber didn't have a son.

Q Did you go through the house?

A Yes, sir.

Q Were there other people going through the house also?

A Yes, sir. There was Chief Eaton from the Bay Village police, young Patrolman Drenkhan, and his father is also on police the part-time/duty there, and he was there; Dr. Gerber, a couple of his assistants.

Offhand, that's what I remember. And I think there were more there -- of course, the boy -- but I didn't know them.

Q Had Marilyn's body been removed at that time?

A Yes, sir.

Q After you had gone through their house what did you do then?

A Well, while we were going through the house or after?

Q After the search. I suppose you were searching around for anything you could find?

A Yes. We were literally tearing the place apart trying to find some clues or murder weapon, or so forth, and then

afterwards, why, after we had gone through the house thoroughly, they were standing around talking, they hadn't found anything, and Dr. Gerber was talking to his men, and he made the remark, "Well, it is evident that the doctor did this, so let's go get the confession out of him."

Q Well, where did you go then?

A After I left the house I went down to the beach where, by that time, some of the boys in the neighborhood were searching in the lake for any possible weapon, and so forth.

Q How many of them were there, do you remember?

A Oh, I'd say around 10 or 12.

Q Now, then, did you leave the premises and go somewhere?

A After that I went back to the hospital.

Q Now, then, had you been invited to a party that was going to take place at the Sheppard home that day?

A Well, the party had been two-fold --

MR. PARRINO: I object to this,

your Honor. Had he been invited, is the question.

Q Just let's get an answer, Doctor. Were you going to a party at the Sheppards?

A Yes.

Q That is enough. Now, then, did you later return to the Sheppard house that day?

A Yes, sir.

Q And what time did you return?

A Oh, I'd say it was about 3 o'clock in the afternoon, about that time.

Q Was there anybody with you?

A Yes, sir.

Q Who was with you?

A I don't remember his last name. It was Chet. Dr. Selnick's brother-in-law. Brennan. Chet Brennan.

Q What was the name?

A Brennan.

Q And when you returned the second time what time was it?

A I'd say it was about 3 o'clock in the afternoon, or so.

Q Where did you go?

A Well, we went over to the Sheppard house.

Q And did you go in?

A Yes, sir.

Q Both you and Mr. Brennan?

A Yes.

Q Did anybody stop you?

A No, sir.

Q How long did you remain in the house then?

A Well, we walked clear through the house, both upstairs, downstairs. I'd say going through the house would take approximately 15 minutes.

Q Now, then, you were connected at that time in a sort of

unofficial way, or was it an official way, with the Bay Village police?

A It was an unofficial way.

Q Did you later go to the Bay Village police station during the course of the next few days?

A Yes, sir.

Q Did you have a conversation with the Bay Village police?

A Yes, sir.

Q And the conversation was about what?

A Well, it was about the murder and about Dr. Sam. Two of the patrolmen were trying to find any information that they could pertaining to what might have happened.

Q And did you attempt to obtain information yourself?

A Yes, sir.

Q And did you give that information to the Bay Village police?

A Yes, sir.

Q And when you gave the information to the Bay Village police, what were you told?

A Well, when I was asked to go see different ones, they said that they had -- that they'd like for me to ask these questions because they were told by the Cleveland police that they would like to have them stay out of the picture.

Q Have them stay out of the picture?

A Yes.

Q The Cleveland police?

A Yes.

MR. CORRIGAN: Cross examine.

CROSS EXAMINATION OF HORACE M. DON

By Mr. Danaceau:

Q You say that you were an intern at Bay View Hospital for one year?

A Yes, sir.

Q And beginning in July of 1952 and ending in July of 1953?

A Yes, sir.

Q While you were an intern there, where did you stay?

A Well, when I first went there as an intern, I stayed at the hospital. After that my wife came to Cleveland. We -- of course, interns only make \$75 a month, so we got an apartment out at the housing project out by the airport.

Q To whom did you make your application for internship?

A To the Bay Village Hospital.

Q Anybody in particular that you knew or applied to?

A No, sir. I had known of a doctor who had interned there previously, and he told me that it was very good internship, so I wrote.

Q You didn't know Dr. Richard Sheppard, Sr.?

A No, sir.

Q Did Dr. Sam Sheppard stay at the hospital during that period of a year while you were interning? Did he stay at the

hospital overnight, is what I'm getting at? Did he reside there?

A No, sir.

Q During that entire period of time, he resided at his home on Lake Road, is that correct?

A Yes, sir, except during the time of the fire.

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Q When was the fire?

A I don't remember the date of the fire.

Q Well, during that period after the fire, didn't he reside at the Bay View Hospital at any time?

A No, sir.

Q He did not. Now, you said that on a number of occasions you went there to his home to let him see some X-ray plates, is that correct?

A Yes, sir.

Q How many times did you do that?

A Oh, I'd say about half a dozen times.

Q And on each time it was just to see X-ray plates?

A Yes, sir.

Q Nothing else?

A Oh, we'd discuss the case. He'd ask me what happened and what the symptoms were of the patient, and so forth.

Q And who went with you?

A Usually myself.

Q Did you drive there?

A Yes, sir.

Q In your car?

A Yes, sir.

Q And these occasions were all after midnight?

A Well, I didn't write down every occasion. I didn't have any reason to do so, but I remember a couple of instances

where it was after midnight, yes. They were at night.

Q They were at night?

A Yes, sir.

Q A couple of instances after midnight?

A Well, the reason for that --

Q Now, just a minute.

A Yes, sir.

Q A couple of instances after midnight?

A Several instances.

Q And all the others before midnight?

A Well, they were around midnight or after, all of them.

Q You now say that all of them were at midnight or after midnight?

A Well, 11:30 or so. I mean --

Q It might have been 11 o'clock?

A It might have been.

Q It might have been 10 o'clock?

A I doubt that.

Q Well, 11 o'clock would not be midnight or after midnight, would it?

A Well, it's getting pretty close.

Q I see. And you would get there and you would find them both asleep at the time upstairs?

A Well, I didn't know if they were asleep. They were upstairs.

Q You didn't know they were asleep? Then how do you know

that he was a deep sleeper and had to be awakened so that he could come down and view the plates, if you didn't know he was asleep?

A I would presume he was asleep at the time I got there.

Q And is everything that you testified here this morning merely a presumption, sir?

A No, sir.

Q Did you ever go into the bedroom?

A No, sir.

Q Did you ever go upstairs?

A No, sir.

Q Well, then, how do you know that he was a sound sleeper?

A Because of the time that it would take from the time that Marilyn would answer until Dr. Sam would come down, and the way he looked when he came down.

Q It would take some time to get dressed, wouldn't it?

A He didn't dress.

Q All right. How was he dressed when he came downstairs on these occasions?

A In his shorts and shirt, T-shirt.

Q Shorts and a T-shirt. You mean he got out of bed with a T-shirt on?

A He'd wear his T-shirt.

Q Did he ever come down without a T-shirt on?

A Yes, sir.

Q What would he have on if he would not have a T-shirt on?

A Shorts.

Q Just shorts?

A Yes, sir.

Q And no T-shirt at all?

A No.

Q No covering at all other than the shorts?

A (Witness shakes his head negatively.)

Q How many occasions did he do that?

A Oh, I'd say once or twice.

Q Once or twice he came down just with a pair of shorts and nothing else?

A Yes, sir.

Q And the other times it would be with a pair of shorts and a T-shirt?

A Yes, sir.

Q What kind of a T-shirt?

A Just straight T-shirt.

Q What color?

A White.

Q And would he wear the T-shirt inside the shorts, or would it be outside the shorts? Do you understand what I mean?

A I didn't make the observation. I wasn't interested.

Q You have worn a T-shirt, haven't you?

A Yes, sir.

Q And on occasion you wear it outside of your trousers so that it extends down to your hips, isn't that correct?

A That's right.

Q And on other occasions you insert it inside the trousers?

A That's right.

Q Now, which did he do on these occasions when he had the shorts on, was the T-shirt on the outside or on the inside of the shorts?

A I never paid that much attention.

Q You didn't pay that much attention?

A No, sir.

Q Did you ever go out with Dr. Sam to assist him or be with him when he would perform surgery elsewhere outside of the hospital?

A No, sir.

Q Did you ever drive with him in his Jaguar?

A You mean Jaguar?

Q Yes.

A Yes, sir.

Q Did you ever see a surgical kit in that Jaguar?

A Well, he carried his bag with him.

Q Did you ever see a surgical kit in that Jaguar?

A What do you call a surgical kit?

Q Well, perhaps you better tell me. I'm not a doctor.

A Well, do you mean just a medical bag where we keep things in

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and carry with us, or do you mean something strictly for surgery?

Q I mean a bag in which surgical instruments are carried when a doctor goes from place to place for the purpose of performing surgery.

A I've seen surgical instruments in the car, yes, sir.

Q You have seen surgical instruments in the Jaguar?

A Yes, sir.

Q In what were they contained?

A Oh, the hospital would wrap them up for him when he was going to some other places to do surgery. They were usually wrapped by the hospital.

Q And what would those surgical instruments consist of?

A His tools that he used in his neuro-surgery.

Q And will you describe those tools?

A Sir, there's quite a few tools.

Q How many are there?

A I'd have to guess. Probably --

Q About how many?

A Oh, when he'd take them with him, probably there'd be about 20 or so things that he would take with him.

Q And in a general way, what did those surgical tools or instruments consist of?

A Oh, there would be his instruments probably for trephining, a drill, probably a hammer, chisels, Gigli saw, the spatulas

that he used when he was touching the brain, and so forth.

Q Now, some of those instruments were small, were they not?

A Yes, sir.

Q And some were larger and heavier?

A Yes, sir.

Q Now, take the larger instruments, will you tell us what some of the larger instruments are?

A Well, probably the largest would be the drills that he possibly used. That would probably be about the largest.

Q And what is the next largest?

A Probably something for the bone cutting, rongeurs.

Q What is that?

A Some of the rongeurs.

Q You said bone cutting?

A Yes, sir.

Q And how do you spell that last word, rongeurs?

A I don't know. I'm not up to my spelling lately.

Q Well, I certainly don't know how. Would you give us an approximation of what it is, the spelling?

A Oh, it's r-o-n-j-o-u-r, something of that nature.

Q And how much does that instrument weigh?

A Oh, less than a pound. I mean, they are not very heavy.

Q Well, is it close to a pound?

A I really couldn't say because I've never weighed them or paid that much attention.

Q And of what is it made? Is it metal?

A Yes, sir. Stainless steel.

Q Stainless steel. Now, the largest instrument, the drill that you spoke of, how much does that weigh?

A Oh, possibly a pound and a half.

Q And of what is that made?

A Stainless steel.

Q Now, what other of the larger instruments are there that you haven't thus far described?

A Well, actually, those would probably be about the largest.

Q Well, is there what they call a bone setting instrument that is included?

A A bone setting?

Q I may not have the phraseology correct.

A I don't know what you would have reference to.

Q Bone holding instrument?

A That is not used in neuro-surgery.

Q Sir?

A That isn't used in neuro-surgery.

Q Now, you have mentioned the drill and --

A Rongeurs.

Q Rongeurs. What other instruments are there that weigh more than a half a pound and are made of stainless steel?

A Oh, that would be about the extent of it.

Q Now, you also know that Dr. Sam Sheppard had a medical bag?

A Yes, sir.

Q In which there would be bandages and tweezers and medicines, is that correct?

A Yes, sir.

Q Now, would these instruments that you have been describing be included in the medical bag or are they other instruments than those that were included in the medical bag or were in the medical bag?

A Well, in the medical bag he didn't carry any instruments particularly.

Q He did not carry any instruments particularly in the medical bag?

A I mean the instruments for neuro-surgery.

Q He did not carry them. What did he carry in the medical bag?

A I never went through his bag to find out.

Q But, at any rate, these instruments that you are describing are not those that he ordinarily carried in his medical bag?

A No. Those would be taken primarily if he had some work to do someplace else.

Q Did he have a bag in that Jaguar in which he carried instruments of that kind?

A Not all the time. Just when he went on trips to other hospitals.

Q I didn't quite understand you. You said just when he went

on trips to other hospitals?

A To other hospitals.

Q Well, did you see that bag that he used when he took those trips to other hospitals?

A No, sir.

Q But you knew he had a bag, didn't you?

A I knew he carried them with something. I don't know what he carried them with.

Q Do I understand you correctly that the number of surgical instruments are approximately over 20, but that just a few of them were of the heavier type?

A Yes. Most of them were small.

Q You say he would get these surgical instruments at the hospital?

A Well, they were kept at the hospital, yes, sir.

Q Well, were they his instruments?

A I presume so.

Q Where at the hospital did he keep the instruments?

A In surgery.

Q In the surgery room?

A In the cabinets where we kept the instruments that weren't sterile, and so forth, or if he had a case, naturally they would be sterilized.

Q Other than Dr. Sam Sheppard's surgical instruments, were other surgical instruments kept at the hospital?

A Yes, sir.

Q And whose were they?

A Oh, they belonged to any of the surgeons at the hospital.

Q They belonged to any of the surgeons?

A Yes, sir.

Q Would they interchange instruments?

A They might.

Q If Dr. Sam needed a surgical instrument that belonged to one of the other doctors, it would be available to him, would it not?

A I imagine.

Q And if any of his instruments were needed by any of the other doctors, his instruments would be available to them, is that correct?

A (Witness nods head affirmatively.)

Q So am I correct in saying that Dr. Sam Sheppard and any of the other doctors who performed surgery had available any and all of the surgical instruments at the hospital?

A There at the hospital, yes.

Q You have a set of surgical instruments, do you?

A No, sir. I'm not a surgeon.

Q Oh, you are not a surgeon. I beg your pardon.

Now, you say that you learned of this tragedy on the early morning of July 4th. What time was it that you learned of it?

A Oh, approximately nine, nine-thirty.

Q And where were you when you learned it?

A Home.

Q And where did you live at that time?

A On Woodstock.

Q Whereabouts is Woodstock?

A That's in Fairview Park, sir.

Q I see. And if I understand your testimony correctly, you then drove to Bay View Hospital?

A Yes, sir.

Q Did you at that time know that Dr. Sam was at Bay View Hospital?

A No, sir.

Q Why did you drive to Bay View Hospital rather than to the home of Dr. Sam Sheppard, if you did not know that he was at the hospital?

A I wanted to find out what had happened.

Q Wouldn't the best place to find out what had happened be right at the home itself?

A Possibly.

Q Well, why did you go to the hospital if you didn't know that Dr. Sam Sheppard was at the hospital?

A Just went to the hospital.

Q Well, why, instead of going to the home if the home was the place where you certainly could find out what happened

there?

A Well, most of the time you want to stay out of the way, and you get to someplace where possibly somebody might know what's going on.

Q At any rate, you want this jury to believe that you had learned that some tragedy had occurred at the home, so instead of going to the home, you went to the hospital without knowing that Dr. Sam Sheppard was there?

A Yes, sir.

Q All right. Now, what time did you get to the hospital?

A Oh, I'd say about five or ten minutes after I received the call.

Q Well, about what time did you arrive at the hospital?

A I don't know exactly what time I left the house. I stated I got the call around 9:00, 9:30, and it was about five or ten minutes after that time.

Q And then you walked into a room to see Dr. Steve Sheppard, is that correct?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And you went in to see Dr. Steve Sheppard, and there you saw Dr. Sam Sheppard in his room, is that correct?

A Yes, sir.

Q Why did you go to Dr. Steve Sheppard's room?

A Well, I found out Dr. Steve was there, and I wanted to ask him a question.

Q What room was it that Dr. Steve occupied?

A I don't know the exact number of the room. It was by the nurse's -- well, it was down towards the end of the hall in the new wing. I don't know exactly what the room number is.

Q Is that the room that Dr. Steve Sheppard is always in when he is there? Is it his office or something?

A No, sir.

Q Why did you say it was Dr. Steve Sheppard's room?

A I didn't say it was Dr. Steve Sheppard's room. I went into the room to see Dr. Steve.

Q Well, why did you expect him to be in that room?

A When I went in, I asked a few questions and found out that he was in the room.

Q I see.

A I found out that Dr. Sam was there.

Q What questions did you want to ask Dr. Steve Sheppard?

A The normal curiosity questions that -- all I had been told was that Marilyn was dead, and I wanted to find out some of the particulars. Being a friend, why, naturally, you would want to know those things.

Q Well, you were a very close friend of Dr. Sam Sheppard, were you not?

A Yes, sir.

Q Well, why didn't you go to the house to ask him those questions?

A Well, being around police work a little bit, you might figure that maybe some other people around there are asking a few questions, too.

Q I'm sorry. I didn't understand you.

A Well, you would want to try to stay out of the way of the normal procedures of the police department. I don't know why, but --

Q What normal procedures of the police department were you afraid of?

A I'm not afraid of anything.

Q I don't quite understand you. What were you trying to stay out of?

A The way.

Q The way of whom?

A Whoever might be there.

Q Just what were you afraid that you would do that would be in the way of anything?

MR. CORRIGAN: He didn't say he was afraid. I object to that. The man is not afraid of anything.

THE COURT: Let him explain.

Q Go ahead.

- A What I was afraid of? I wasn't afraid of anything.
- Q Well, just what were you trying to avoid?
- A Well, if you see a fire, do you rush in to get in the way of the firemen, and so forth?
- Q No. But I don't rush somewhere else to inquire about it. In fact, I go right there to take a look at it.
- A You might ask questions around, how it started, and so forth.
- Q All right. At any rate, how long were you at the hospital?
- A Oh, I'd say about 10, 15 minutes.
- Q Did you have any difficulty going into the room?
- A No, sir.
- Q Was there a police officer stationed there at the door at that time?
- A I don't recall if there was or wasn't.
- Q No one stopped you from going in?
- A No, sir.
- Q Did you talk to Dr. Steve Sheppard?
- A Yes, sir.
- Q Did you talk to Dr. Sam Sheppard?
- A No, sir.
- Q Did Steve tell you not to talk to him?
- A No, sir.
- Q Well, why didn't you talk to Dr. Steve -- Sam Sheppard?
- A Being a physician and seeing that Dr. Sam was evidently

hurt, you don't go into a case and start asking a person a lot of questions. It might upset their progress.

Q Did Dr. Steve Sheppard brief you on the situation?

A No, sir.

Q Did he tell you not to ask any questions?

A No, sir.

Q What did he tell you?

A He gave me an answer to the question I asked him.

Q What question did you ask and what answer did he give?

A I don't remember. I think it was something about the telephone operator had asked me if they could take a picture of Dr. Sam, or if they could talk to Dr. Sam, or something like that.

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Did you ask Dr. Steve Sheppard what had happened?

A

No, sir.

Q

You didn't ask Dr. Sam Sheppard what had happened?

A

No, sir.

Q

Did you ask anybody what had happened?

A

I asked some of the doctors that weren't in Dr. Sam's room if they knew what happened.

Q

Did they tell you?

A

They said someone killed Marilyn.

Q

And that is all?

A

Yes, sir.

Q

What time did you leave the Bay View Hospital?

A

As I say, it was about 10, 15 minutes after I arrived.

Q

About what time would that be?

A

I don't know exactly when I got there, sir.

Q

Where did you go?

A

Over to the home of Dr. Sam.

Q

Why did you go to the home of Dr. Sam at that time?

A

I heard that the police were over there, that they were going through, and I thought that maybe I could get some more information as to what had happened.

Q

Did Steve tell you that?

A

No, sir.

Q

Who did?

A

Oh, everybody knew around the hospital that the police were

over there.

Q What time did you get at the home?

A Oh, it takes about five minutes to drive from the hospital to Dr. Sam's home.

Q Now, did I understand your testimony correctly that when you went into the house there, Marilyn's body had already been removed?

A Yes, sir.

Q Did you see the body being removed?

A No, sir.

Q It was removed before you got there?

A Yes, sir.

Q What time did you say you got there?

A I imagine' around 10.

Q Around 10 o'clock?

A 10:30.

Q The body had already been removed?

A Yes, sir.

Q And all that you told about this little boy occurred after the body had been removed?

A Yes, sir.

Q How long after you got there was it that this little boy went in the house?

A Oh, I talked around probably about 15 minutes, or so, before we went in the house.

Q So it was about 15 minutes after you got there that this little boy went in. Did you see this doctor give this little boy a turtle?

A No, sir.

Q Do you know who this little boy was?

A No, sir.

Q Did you ever meet the little boy that belonged to the Aherns?

A No, sir.

Q You didn't see a little pet being turned over to this little boy?

A No, sir.

Q But, at any rate, when this little boy was in the house, Marilyn's body had already been removed?

A Yes, sir.

MR. DANACEAU: I believe that
is about all, sir.

MR. CORRIGAN: Thank you, Dr. Don.
(Witness excused.)

THE COURT: Ladies and gentlemen
of the jury, we will now adjourn for the noon hour,
and return as soon as possible to 1:15 this afternoon.

In the meantime, please do not discuss this case.

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(Thereupon at 12:05 o'clock p.m. an adjournment was taken to 1:15 o'clock p.m., Tuesday, December 14, 1954, at which time the following proceedings were had):

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Tuesday Afternoon Session, December 14, 1954, 1:20 o'clock p.m.

MR. CORRIGAN: Dr. Novatney, will
you please take the stand?

Thereupon, further to maintain the issues
on his part to be maintained, the Defendant called
as a witness DR. JOHN FRANK NOVATNEY, who, being
first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION OF DR. JOHN FRANK NOVATNEY

By Mr. Corrigan:

- Q Will you state your name for the Court and jury?
- A John Frank Novatney.
- Q And you are a doctor of dentistry?
- A Yes, sir.
- Q Where is your office, Doctor?
- A At 1015 The National City Bank Building.
- Q And where do you live?
- A 371 Northcliff Drive, Rocky River, Ohio.
- Q How long have you resided in this community?
- A Ever since I was born.
- Q Whereabouts were you born?
- A Broadway and 55th.
- Q Good old spot. Now, then, where did you go to school?

- A I went to Barkwill School, elementary school, but I went to West Commerce High School on the west side at 41st and Randall, and then to Ohio State University for my dental training.
- Q And when did you graduate from Ohio State University?
- A In 1924.
- Q And after that you were regularly admitted to the practice of dentistry in Ohio?
- A Yes, sir.
- Q And have you practiced your profession ever since?
- A I have practiced my profession ever since then.
- Q Did you know Marilyn Sheppard?
- A Yes, sir.
- Q How long did you know Marilyn Sheppard?
- A I would safely say about 10 years.
- Q Were you her dentist?
- A Yes, sir.
- Q Do you recall when the last time was that you attended her professionally?
- A In May of 1954.
- Q During the period that you have known her and have been her professional advisor you, of course, are acquainted with the teeth that Marilyn Sheppard had?
- A Yes.
- Q In May, 1954, will you describe to the jury what kind of

teeth Marilyn Sheppard had?

A Well, the last session, the last dental session in which I took care of Marilyn's teeth, she had fractured an upper right lateral. Now, that is the second tooth from the median line and on the right side of her face. She told me at the time that this tooth was fractured while she was eating a crust of bread. The tooth in question was broken at the gum line, the complete crown was removed and only the root remained.

We then technically replaced the tooth on a bridge.

Q Now, can you tell the jury the general condition of the front teeth of Marilyn Sheppard?

A Well, frankly, the front teeth of Marilyn Sheppard -- now,

I am speaking of her upper front teeth -- were in extensive repair. They had been filled a good many times in the past, and our next procedure in the completion of her dental work was to have jacketed the upper remaining four teeth, exclusive of the bridge section or segment, which we placed in May of 1954.

Q Can you state, Doctor, whether those front teeth of Marilyn Sheppard were more fracturable than the ordinary set of teeth?

A In my opinion, her teeth were very fracturable because of this said extensive dentistry which was done in the past, and it didn't take much to break the upper right lateral.

in my estimation.

Q In your opinion, could the front teeth of Marilyn Sheppard be fractured by biting on the finger or the hand of an individual?

MR. PARRINO: I object to that,
if the Court please.

THE COURT: Yes. I think that
is objectionable, Mr. Corrigan.

MR. CORRIGAN: We except.

Q But you did find that they were -- the tooth had fractured in the front, the one that had fractured in the front when she bit on a hard crust of bread?

A Yes, sir.

MR. CORRIGAN: Cross-examine.

CROSS-EXAMINATION OF DR. JOHN FRANK NOVATNEY

By Mr. Parrino:

Q What tooth was that, Doctor, that had been fractured? Will you show me, please? I am not quite sure.

A Yes. It was the second tooth from the front on the upper arch and on the right side of the face, and the tooth I am pointing to at present. (Indicating).

Q Is that what you would call the incisor?

A I would call it -- it is the upper right lateral incisor.

Q I see. And when had she done that, do you know?

- A She had fractured it just a day or two before we commenced the technical work, and that, I would say, was perhaps the latter part of April of 1954. The bridge construction was finished in about 10 days.
- Q And of what did that bridge construction consist and for what teeth?
- A The bridge construction, technically, involved the upper right cuspid, and that is the third tooth from the median line, and to which the false tooth was anchored replacing the one which Marilyn had fractured. We call that a swing-on cantilever bridge.
- Q And had your work been completed in May of 1954, sir?
- A No. We still had one session to go, and that was in the jacketing of her upper front teeth. We were going to replace all of the natural enamel with artificial media.
- Q I see. And how much time would that take you to do that job, sir?
- A That would have taken us a period of about 10 days from the time that we would have prepared the teeth for these jackets to the time when the technician has completed his technical work and the jackets placed upon the stubs which were remaining.
- Q In other words, that jacket would be a covering for certain teeth in the front, is that correct?
- A Yes. People used to call it a crown. Jacket is a synonymous

term.

Q How was Marilyn getting along without that jacket before that work was done?

A She was comfortable. Her teeth were serviceable, except that with the extensive fillings which she had had to her front teeth, the esthetics was the objectionable feature, and she felt as though she wanted a nicer appearing mouth, and as a result we had that in mind and we were going to eject them.

Q And had she had any fillings in the front teeth, Doctor, the incisor?

A Yes, sir. They were all filled with so-called synthetic porcelain.

Q And what kind of a substance is that?

A Synthetic porcelain is a silicate material mixed with an acid called salycic acid, and it makes a paste or a cement.

Q Is that quite hard?

A It gets quite hard, but it doesn't make for a nice looking filling when it gets large due to the fact that in --

Q Yes, but is it quite hard?

A It gets quite hard.

Q And durable, is it, rather durable, would you say?

A Generally durable.

MR. PARRINO: That is all, Doctor.

MR. CORRIGAN: Thank you, Doctor.

THE COURT: Thank you.

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Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness CHARLES ELKINS, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Would you kindly state your name for the Court and jury?

A Dr. Charles Elkins.

Q And you are Dr. Charles Elkins?

A Yes, sir.

Q Doctor, you are suffering from some bronchial trouble at the present time?

A Unfortunately, I have a laryngitis.

Q Where do you live, Doctor?

A At the present time I live in Tuscon, Arizona.

THE COURT: You shouldn't have asked that question.

MR. CORRIGAN: What is it?

THE COURT: You should not have asked that question. With the doctor's voice condition, you should not have asked anything about Arizona.

MR. GARMONE: It doesn't speak well

for the Chamber of Commerce.

MR. CORRIGAN: I see. All right.

Q Doctor, you have come to this courtroom from Tuscon, Arizona, to testify in the case of Dr. Samuel Sheppard, correct?

A Yes, sir.

Q You have come without subpoena?

A Yes, sir.

Q You have come without any indication as to any fees or anything else, haven't you?

MR. PARRINO: I object to these leading questions, your Honor.

THE COURT: Yes. We are not interested in that, Mr. Corrigan.

Q Now, when did you move to Tuscon, Arizona?

A Approximately on September 1st of this year.

Q And are you in the practice of medicine in Tuscon, Arizona, and that district?

A Yes, sir.

Q Doctor, I want to qualify you before this jury so that they will know who you are and your professional capacity.

Where were you born?

A I was born in Delaware, Ohio.

Q Where?

A Delaware, Ohio.

Q And what school did you attend as an undergraduate?

A Ohio Wesleyan University.

Q And after you graduated from Ohio Wesleyan University, what medical school did you attend?

A Western Reserve University School of Medicine.

Q Do you remember the year that you graduated from that school?

A I graduated from medicine in 1937.

Q And after graduating did you enter immediately into practice, or did you take further training?

A I took further training, sir.

Q And where was it?

A I served a year's internship at the Cleveland City Hospital.

Q And after that year's internship did you take further training?

A Yes, sir.

Q And where was the next place that you took further training?

A My next year I spent as a house officer in neurology and neurosurgery, neurological surgery, at the Boston City Hospital, Boston, Mass.

Q And how long did you remain in the neurological field or the neurosurgery department in the Boston City Hospital?

A I was there for one year, and then I served as a Fellow in neurological surgery at the Leahy Clinic in Boston, Massachusetts.

Q And that was advancing along in your education, training

and skill?

A Yes, sir.

Q After you finished that particular phase of your life and training, what was the next thing that you did?

A Well, I then returned to Boston City Hospital for another year, and served as the resident neurosurgeon at Boston City Hospital.

Q And after you had completed your year as the resident neurosurgeon at Boston City Hospital, did you leave Boston and go somewhere?

A Yes, sir. I returned to Cleveland. That was in 1941, approximately July 1st of 1941.

Q After you came here in 1941, did you enter into the general practice of neurosurgery in this city?

A I entered into the practice of neurosurgery, yes, sir.

Q Now, so that the jury understands what that term means and what that type of practice is, neurosurgery, would you tell them, Doctor, as briefly and as plainly as you can just what neurosurgery is?

A Neurosurgery or neurological surgery or surgery of the nervous system is ~~that~~ phase of medicine and surgery which deals with diseases, particularly surgical diseases of the brain, spinal cord or peripheral nerves of the body.

Q Now, then, how long did you remain in practice in 1941, when you returned here?

A Until December 7, 1941.

Q And what happened on December the 7th?

A There was a war, sir.

Q And did you participate in that war?

A Yes, sir.

Q And when did you participate and begin?

A Shortly after December 7th, the Fourth General Hospital, or more commonly known as the Lakeside Unit was activated, and I was a member of that organization, and we went to Australia where I spent some two years as a neurosurgeon for the Lakeside Unit, or the Army term, Fourth General Hospital.

Q The Lakeside Unit, that originally was organized by Dr. Crile in the First World War, was it not?

A I believe that to be true, yes.

Q And then when the Second World War came on, it was reactivated?

A Yes, sir.

Q And organized out of leading doctors in this community?

A A group of doctors in the community, yes.

Q Was Dr. Crile connected with that at that time, do you remember?

A I think Dr. Crile was dead before --

Q Was he?

A I think so, yes.

- Q I didn't know.
- A Dr. Crile, Sr., yes. I think he was dead before the war.
- Q Now, then, you went to Melbourne, Australia, as part of that unit in what year?
- A It was in 1942.
- Q 1942?
- A The first month in 1942.
- Q And you were there for a period of two years?
- A About two years.
- Q How large a hospital was it, can you tell the jury?
- A Yes. It varied, actually. According to, as I recall, the Army classifications, we were set up as a thousand-bed hospital. It was what we called or was termed a base hospital.
- Q And in your assignment to that hospital, what were you assigned to be?
- A I was the neurosurgeon for the hospital.
- Q The neurosurgeon. And those were the wounded ~~soldiers~~ ^{soldiers} that were being brought in from the Eastern War Theater?
- A Well, let me put it this way: Many of our casualties came from Guadalcanal, and later on from the New Guinea Campaign.
- Q Now, then, were there many cases that were brought into that hospital that required your services, your particular special service?
- A Yes, sir.

Q Did you hold a particular rank, an official rank, besides the fact that you were a surgeon, were you also ranked in the Army?

A Yes. I was commissioned as a Captain. As I recall, I was promoted to Major before I returned to the United States.

Q Now, then, after you had spent two years in that hospital, were you transferred to any other hospital?

A I was returned to the United States and assigned for a short period of time as Chief of Neurosurgery at Fitzsimmons General Hospital in Denver, Colorado.

Q And how long did you stay in the Fitzsimmons Hospital in Denver?

A I think, sir, it was only about six weeks.

Q And after that service, did you perform any other service as a neurosurgeon for the soldiers wounded in the war?

A Yes, sir. I was transferred from Fitzsimmons to Newton D. Baker General Hospital in Martinsburg, West Virginia, where I completed my service in the Army, and I think it was about a year and a half at that hospital.

Q And where was that hospital located?

A That is Martinsburg, West Virginia.

Q And is that a large hospital?

A Yes, sir. That, too, was known as a base hospital and was set up as somewhere around a thousand-bed hospital.

Q And all this work that you did during that particular period of time was within the field of neurosurgery?

A Yes, sir.

Q When were you discharged from the service?

A As I recall, it was in April of 1945, that I returned.

Q At the time of your discharge, did you receive any special recognition?

A Prior to my discharge, I was notified that I had been awarded the Legion of Merit.

Q Now, following your discharge from the Army, did you return to Cleveland?

A Yes, sir.

Q And when you returned to Cleveland what activity did you enter into professionally?

A I opened an office for the practice of neurosurgery in the Hanna Building, and was appointed, as I recall, as instructor in neurosurgery at Western Reserve University School of Medicine, and assigned as the assistant neurosurgeon at Cleveland City Hospital.

Q Now, then, you continued in the practice of your profession in your specialty in this community until when?

A Until September of this year.

Q During that particular period of time, did your position as instructor of neurosurgery at Western Reserve Medical School change?

- A Yes, sir. As I recall, about a year ago, or a year before I left, I was appointed assistant clinical professor of neurosurgery at Western Reserve School of Medicine.
- Q Would you explain to the jury what that would mean, to be appointed assistant clinical professor at Western Reserve University Medical School?
- A Well, it just simply means that it was a promotion, a little higher grade of the academic rank.
- Q Well, in the process of operating as an assistant clinical professor, did the students view your operations at any time?
- A Yes, sir.
- Q And that was part of their training to come into the hospital where you were performing an operation?
- A Yes, sir.
- Q And is it a fact that after you performed the operation, or during it, or after it, you would then go into the detail of what the operation was and what was done?
- A Yes, sir.

JUROR NO. 5: He wants some fresh water.

MR. CORRIGAN: Oh, he wants fresh water. He has got a bad cold.

THE WITNESS: Thank you.

MR. GARMONE: Here you are. So you don't have to leave. I will get it, Judge.

MR. CORRIGAN:

And it is awfully

hard for him to talk.

Q Now, were you connected, in addition to having this connection with Western Reserve University Medical School, were you connected with any other medical institutions in this community?

A Yes, sir.

Q And will you tell me what they were?

A I practiced neurosurgery at the University Hospitals, I was on the active staff at Lutheran Hospital and Lakewood Hospital. I believe I was on the associate staff of Fairview Park. I first was attending neurosurgeon at the Veteran's, and then later on was made a consultant neurosurgeon at Crile Veterans' Hospital. That was about a year and a half ago.

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Q Now, at the time that you were -- do you remember Dr. Claude Beck?

A Yes, sir.

Q And who was Dr. Claude Beck?

A Dr. Claude Beck was one of my early teachers. I went with Dr. Beck many years ago as a student and our paths crossed many times. He became my area consultant in the Army when I was at Newton D. Baker, and when I returned to Cleveland, I worked under Dr. Beck.

He was the senior neuro-surgeon at Cleveland City Hospital, and I was the junior neuro-surgeon. About two or three years ago Dr. Beck resigned as professor of neuro-surgery at the medical school to devote his -- limit his time to surgery.

About that time, they made me the chief at City and the consultant at Crile, and I think about that time is when I received that promotion on the faculty.

Q And you became the chief then?

A At City and at the Veteran's, yes, sir.

Q And did you occupy that position at the time you left Cleveland?

A Yes, sir.

Q What was your position, I mean in grade, at Lakeside Hospital?

A Well, actually, that's a little difficult to explain.

There are no particular appointments at Lakeside Hospital. The appointment comes from the medical school or the university. Let us say that most of the men who work at University Hospitals are members of the faculty of the medical school. But there is no direct relationship, so far as I was concerned.

Q Of course, we old-timers call it Lakeside. Now it's University.

A I still call it Lakeside.

Q Now, are you a member of any medical associations?

A Yes, sir.

Q And will you tell me what medical associations you belong to?

A I belong to -- at the present time I still belong to the Cuyahoga County Medical Society, Cleveland Academy of Medicine, the American Medical Association.

I am a fellow in the American College of Surgeons and a diplomate of the American Board of Neurological Surgery. I just happen to be the immediate past president of the Ohio Society of Neurological Surgeons.

Q Now, in order to be a member of the American College of Surgeons, is it just something that you can go and join, that a doctor can join, like you join the Elks or the Eagles, or some other organization?

A Well, sir, there are certain requirements for

membership in the American College of Surgeons. I believe that in the first place one has to have been out of medical school for a certain number of years. I think it's seven, but I can't be positive of that; that one has had to engage in further training in the specialty in which he is involved, in my case, in neurological surgery, in other cases, in surgery of the eye or general surgery.

Q Now, in order to save your voice, can I put it shortly this way, Doctor: That in order to be a member of that association or a member of the American Board of Neurological Surgeons that you -- that a doctor must have acquired a certain perfection in his profession?

A Let me put it this way: I, or anybody that belongs to these organizations, have qualified in somebody else's opinion to belong to the organizations.

Q Now, then, Doctor, do you know Samuel Sheppard?

A Yes, sir.

Q Dr. Samuel Sheppard. Did you receive a call to go to see him on the 4th of July of this year?

A Yes, sir.

Q And do you know what time you received that call?

A I can't accurately tell the time, except this way: That I had played golf in the afternoon and had returned home and then I saw Sam, oh, somewhere around between six and seven o'clock that evening of the 4th of July.

Q And where did you see him?

A At the Bay View Hospital.

Q When you went to see him at the Bay View Hospital, did you make an examination of him?

A Yes, sir.

Q And will you tell the jury what kind of an examination you made, how you made it and the purpose in making that examination on that day?

A Certain information had been given to me that Sam Sheppard had been hurt. It was my purpose to determine the severity of injuries to his nervous system, that being my specialty. I was most interested, and occupied myself with, in the first place, determining whether he was going to live or die, whether immediate surgery would be necessary. In other words, what the outlook was for the patient immediately.

Q And did you on that day, after you made the examination, enter upon the chart of the hospital notes?

A I believe I wrote a consultation note.

MR. CORRIGAN: (To Mr. Garmone.)

Will you let me have it?

Q This has been identified in Court, Doctor, as the Defendant's Exhibit YYY, and I want to call your attention to Page 12 of that Exhibit and ask you to look at it and state whether or not those are the notes that you made on the

4th of July?

A This is my handwriting, sir. I don't see any date, but these are the notes I made on the 4th of July.

Q The date isn't on, but you remember it as the notes you made on that day?

A Yes, sir.

Q Now, when you examined him and made your notes on the 4th of July, will you tell the jury what you determined?

A Am I permitted to read this?

Q Yes.

A "Dr. Sam is alert and answers questions lucidly."

Now, if you don't mind, I'm going to stop as I read and explain what this thing means.

Q That's what I want you to do. I want you to explain that to the jury.

A I had been told -- as a matter of fact, Sam told me that he had been hit by an intruder in his home. That's all the farther he went. I wasn't interested in anything else except the history that he was hit.

So when I say that he is alert and answers questions, that meant to me right away that he was not in a serious situation. I mean, does the Doctor who is the specialist have to do something? In other words, you can sit tight because he was alert and his mind wasn't affected.

Q Indicating to you he wasn't going to die?

A

He wasn't going to die, unless I was wrong.

I went on and said that -- well, answers questions lucidly means the same thing, that means clearly. When I asked him, "How do you feel?" he answered and there wasn't -- I mean the answer was lucid.

I said, "There" -- I'm right up to here now.

MR. PARRINO:

Thank you very

much.

A

(Continuing) I said, "There was swelling of the right peri-orbital tissue."

That means around the eye. Now, that didn't -- I mean I wasn't -- I made a note that he had this swelling around his eye. It didn't mean anything to me particularly, except just a part of the examination. In other words, it didn't have any effect on the nervous system, which I was particularly interested in, that's the reason I was there.

However, I go on to say, "The pupils are equal and react."

Now, admittedly this isn't a long and a meticulous examination, but when a patient has been hurt the pupils are equal, that's a sign that certain things are not going wrong. In other words, if the pupils had been unequal, I would have made a note of it and I would have been a little more worried about what was going on inside his

head. When I say "react," I mean they react to light.

A normal pupil, for instance, if you take an individual with a normal pupil and you flash a light in the eye, the pupil will constrict. If you ask an individual to focus his attention on a near object, the pupils will assume a certain size, and if you ask him to look at an object further away, they change size. That's called accommodation.

A more complete statement would have been, "The pupils are equal and react to light and accommodation." This is just a short form of saying they react.

MR. CORRIGAN: (To the jury.)

Can you hear him?

JUROR NO. 12: Yes.

A (Continuing) I further state that, "He moves all of his extremities well."

Now, here again in evaluation of a patient with suspected injury of the nervous system, whether it is brain or spinal cord, it is most important to the examiner to determine whether he can move his arms or legs. If he can move them, chances are that he is not in any serious difficulty right at that time; things can happen later, but not right at that time.

Q And when you say -- when you come to the conclusion he could move his arms and legs well, that is from your

point of view as a neuro-surgeon, that he could move his arms and legs?

A Yes. I ask him, "Move your arm, move your leg. Let's see how strong it is." Is he weak in one member or the other?

Q And he responded?

A Yes. I point out -- the next statement is, "No Babinski."

Now, this requires a little bit of explanation, also. The Babinski sign is elicited by lightly stroking the sole of the patient's foot. In a normal response, the toes will curl downward and inward, assume this position, if you can transfer my hand to the foot. (Indicating).

In an abnormal response, the toes to light stroking of the sole of the foot, the toes will spread and the big toe comes up, and that is what is known as a positive Babinski. And if it is present, it is indicative of disease of the nervous system anywhere from the brain down to the end of the spinal cord.

I don't want to use professional terms, but actually the great motor tracts which originate in the cortex of the brain go down through the spinal cord, and these are known as the pyramidal tracts, p-y-r, pyramidal. And disease of this great motor tract anyplace from its origin to the point where the nerves leave the spinal cord may -- and I would like to emphasize "may" -- result in a positive Babinski.

In Sam's case, his Babinskis were negative. So in this instance there was no evidence that he -- by this one test there was no evidence that he had disease of his nervous system.

Q That is one test?

A That is one test. And this is what I noted. I go on and make which to me is a fairly important statement at this time, that "He has voided," which means that he has passed his urine voluntarily.

In this evaluation or total evaluation, if he had not voided, that would be evidence that something had gone wrong with the nervous system which would cause him not to be able to urinate. But I thought enough of it at the time to ask him, "Have you voided?" And he said, "Yes."

So I put it down, "He has voided."

Now, I continue with the statement: "Complains of occipital headache. Cervical collar in place. Neck not examined."

I finish up with an abbreviation, "I-m-p," which means impression.

Q Now, did the complaint of the occipital headache -- and that means a headache that is inclined to be around the occipital bone, the bone in the back of the head?

A That's right.

Q Did it indicate anything to you as a neuro-surgeon?

A Well --

Q Now, all you knew about that was what he told you?

A That's right. You can't feel a patient's pain, that's for sure. In the total evaluation, I mean I had been told -- as a matter of fact, he told me that he had been struck, he had been struck somewhere in the region of the neck, that he had been unconscious.

Sure, when he tells me he's got an occipital headache, I put it down, and if the facts be true, he's got a right to have an occipital headache, but I make a note of it.

Q Now, what happens to a person, how the injury is acquired, that is elicited by you questioning him, is what you doctors call part of the history?

A Will you please repeat that, sir?

Q What a person tells you about how the accident occurred, how they got into the position that they are in where you see them sick is what you call history?

A That's correct.

A Something that we are going to watch. I mean, there are many complications that can occur to these people with injuries that you watch for. They write text books on the complications, but right now I'm not too worried about the outcome so far as Sam's life or death is concerned. He received a concussion, and now he is awake and conscious.

Q Now, did you return there on the 5th of July?

A I believe I did, yes, sir.

Q Is there anything that you have that indicates that you returned on the 5th of July? There is nothing in the --

A Is there nothing in the chart? I don't believe I made a note on the 5th of July.

Q I see. But you did see him on the 5th of July?

A I believe I did, yes.

Q Now, then, did you go in on the 6th of July?

A Yes, sir, I believe I did.

Q Now, will you turn the page and see if there is a record in that hospital chart made by you on the 6th of July?

A Yes, sir. I dated this one as July 6, 1954.

Q Now, on the 6th of July -- and you may refer to those notes which you made, that appear on the chart -- what examination did you make of him on the 6th of July?

A Well, as you will see when we evolve this thing, this is a much more complete evaluation of Sam's status as of the 6th

of July.

Q And what did you find on the 6th of July?

A Well, in the first place, we start out here again with a little bit of history of his status at that time, and I say, "The patient complains of urgency of urination, and this morning when attempting to pass gas, he soiled his sheet with fecal material."

Q Does that indicate anything to you?

A Yes. It made me a little suspicious that something was going on, that these complications I talk about might be setting in. I mean this is history, now, if these facts be true, that something is going on in this nervous system, something has occurred, because it is not normal for an individual to have urgency of urination. Certainly --

Q How about the soiling of the --

A It is not normal for an individual to have -- to soil the bed.

Q For a full-grown person?

A For a full-grown person, but these things can occur in injuries of the nervous system.

Q Is that one of the indications of an injury to the nervous system, the loss of control of the bowels?

A That is one of the indications that an injury to the nervous system might be present.

Q Now, what was the next thing that you noticed, or the next thing that you did?

A I again -- I now make a note that, "He complains of numbness over the ulnar distribution, left."

Now, -- go ahead.

Q Now, I want to ask you a question to make it clear, Doctor, to the jury:

We have used the term, and the term was used "Subjective and objective signs of injury," and that is a term that is used pretty generally medically, isn't it, subjective and objective signs of injury?

A Yes, sir.

Q Would you explain to the jury what those terms mean?

A I will attempt to. The term subjective is usually used in describing a patient's symptoms. In other words, if a patient tells you, "I have a pain in the foot," that is a symptom, and it is subjective because you can't feel the pain in his foot.

If Sam tells me he has got a pain in the back of his head, I accept that he has got a pain in the back of his head, but I can't feel it. That is a subjective complaint.

Now, moving on to objective evidence of disease, there are certain signs in any examination, which, if these signs are present, an individual can't simulate. There is something the examiner can see. That is objective evidence of disease.

Q That is, that the examiner determines from his own examination

whether or not there is a difficulty or a pain present?

A That's correct, sir.

Q Now, in the practice of neurosurgery, and in the examination of a person to determine if there is an injury to the nervous system, or the central nervous system, or the brain, are there certain things that you as a neurosurgeon do to determine that?

A Yes, sir.

Q Irrespective of what the person tells you?

A Yes, sir.

Q And what is the process by which you arrive at a conclusion as to whether there is a derangement of the nervous system, the spinal cord or the brain, without information being supplied by the patient?

A Well, I believe that -- well, that requires a considerable amount of qualification. For instance, as I pointed out, I think the history of the situation is very important. In other words, if a patient gave you the information that he was hit on the big toe, you wouldn't suspect that he'd have an injury of the brain, so I mean the history is important.

Now, the examination is of equal importance. The state of the patient's consciousness is important, whether he can answer questions, whether he can move his extremities. There are certain reflexes that one tests to determine

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Q And is it not an important thing or a very important item in diagnosing an injury to know the facts surrounding the inquiring of the injury?

A I think it is most important to take a history.

Q Now, then, at the conclusion of that examination, you marked down "Impression" -- "Imp.," which stands for impression, and the word behind it is "Brain concussion."

A I put down cerebral concussion.

Q Cerebral concussion. Now, will you explain to the jury what that means when you, as a neurosurgeon, put down the word "Impression"?

A Yes, sir. Impression or imp, as I abbreviated it, to physicians, can really be defined as an unverified opinion. Whenever I look at a patient -- not particularly Sam, -- when I look at a patient I make up my mind, is he sick? Is he not sick? What is going to happen to him? I've got lots of things that can be done, lots of laboratory work to verify an opinion, which had not been done and is not done here, so I make an impression of cerebral or brain concussion on the basis that the man tells me that he has been hit and that he was unconscious. That is all that is necessary to make a diagnosis or an impression of concussion.

Q And it means that that is something that "I will investigate further"?

whether they are present or absent, or if they are present or absent, whether it is normal or abnormal.

This is a very complicated thing and, of course, the nervous system is pretty complicated.

Q Now, did you proceed to determine whether there was -- in your examination, to determine to your own mind, outside of the history, and what you were told about it, from what you could see, did you proceed to determine whether Sam Sheppard was suffering from an injury?

A Yes, sir.

Q Now, what did you do?

A Well, I further went on -- I finished this ulnar distribution business, and if you want me to explain that, that again is a subjective complaint. The ulnar nerves happen to supply the little and the ring finger and half of the middle finger. He complained of numbness in what we call the ulnar distribution. It is one of the two or the three main nerves controlling the hand.

All right. Then I put down "Examination today."

Now, this is as of July the 6th.

"The ecchymosis" -- or the periorbital swelling is another word -- "of the right eye improved. Pupils equally react." I have gone through that.

I go further and say "EOM," which is again an abbreviation, which means extra ocular movements. In other

words, the movements of the muscles controlling the eye. His eye movements were normal. He could look up, he could look down, he could look either side. There was no paralysis of any of his eye muscles, and I pointed out that there was no facial weakness. In other words, the muscles of his face were not weak or not paralyzed.

And I say "There is numbness of the ulnar sensory distribution, left, and weakness of the interossei, left."

I have gone through this ulnar thing.

Now, interossei are a group of muscles controlling the movements, the fine muscles controlling the muscles of the hand.

Now, I tested Sam at this time, as I recall, with a pin, and with pinching, and he said, "It is numb."

I tested his muscle strength by asking him to close his fingers, first left and right on my finger, and he was weaker on the left side than he was on the right side, so I put it down.

Q Is it possible in determining that particular reaction, whether that could be simulated or faked?

A Yes, sir, I think that could be simulated. I think -- again, I mean here is a sensory examination. You hit somebody with a pin and you can't feel it, and they tell you that that is number there than it is there, that can be simulated, and so can a weakness.

Q You have to depend upon the --

A You have to depend upon the honesty of the individual that you examine.

Q The honesty of the individual in that particular test.

Now, did you test any other reflexes?

A Yes, sir. My next statement is, "The left triceps reflex not obtained."

Q And where is that?

A The triceps reflex is elicited by the tapping behind the elbow, behind and above the elbow on the tendon of the triceps muscle. This is the big muscle which causes you to forcefully put your arm down.

Q And what did you find there?

A This left triceps reflex was not obtained, was missing.

Q Now, did that indicate anything to you as a neurosurgeon?

A Yes, sir. It focused my attention that there was a derangement someplace going on in the nervous system.

Q Is it possible for a person to simulate the absence of that reflex?

A No, sir. By definition, an absent reflex cannot be simulated.

Q It cannot. So that your reaction that you obtained there was without the assistance of anything given to you by Dr. Sheppard?

A That's correct, sir.

Q That was from your own knowledge, that situation?

A Yes.

Q Now, then, did you examine any other reflexes, and what do your notes show as to the next reflex that you examined?

A Well, the next statement is bearing out at this time that I was beginning to focus my attention here on something going on, because I made the statement that, "Both biceps reflexes are present."

Now, the biceps is the reflex which is obtained by tapping the tendon of the biceps muscle, and this muscle is the one that brings the arm up. Both of these are present, right and left, and the right triceps was present, the left triceps was absent, which can't be simulated.

The right triceps present, so something is wrong with the mechanism controlling that reflex on the right side -- on the left side, excuse me.

Q Will you tell what you did further as shown by your records?

A My next statement is, "The right abdominal reflexes, active."

Now, there are two abdominal reflexes, an upper and lower. That's beside the point.

I go on to say, "The left abdominal reflexes are absent."

Now, here is a patient with a present right abdominal reflex and absent left abdominal reflex.

Q Could that be simulated?

A No, sir.

Q It cannot. It indicated something wrong in Sam there?

A Something is going on.

Q Now, then, you proceeded to an examination of a further reflex?

A I made the statement that, "Neither cremasteric reflexes" -- "Neither cremasteric reflex" -- this is turned under. I think the word is "obtained."

Now, the cremasteric reflex is a reflex which is -- well, in a male obtained by gently stroking the inner surface of the thigh and the scrotum will jump. Neither of these reflexes were obtained, and I recall at the time of asking Sam whether he ever had them or not, and he said that he supposed so. He recalled that sometime when he was in school that they had tested, as most of us do, tested these reflexes and he had had them at one time, but the absence of a cremasteric reflex, if it has normally been present, the absence of a cremasteric reflex certainly can't be simulated.

Q It cannot be simulated?

A It cannot be simulated.

Q Now, is it a fact, Doctor, that that reflex is more active in youth than in old age?

A I think generally speaking, yes, it is more active in young people -- young male adults or young males.

5 Q As the male grows older, that, like many other things connected with our ability to move and think and talk, decreases?

A I think that if you examine a lot of older individuals, that there would be a greater percentage of absent cremasteric reflexes than if you examined the same number of young people.

Q I will come back to that. You found them both absent, which indicated to you that something is going on in Sam Sheppard's body?

A Yes.

Q Did you examine his neck?

A Yes. Down lower I have got another statement that says, "Local examination of neck," which simply means examination of the site.

"The neck discloses tenderness over the spinous process of C-2" -- that is the second cervical vertebra -- "with spasmodic contraction of cervical muscles to pressure."

Q Now, would you explain, Doctor, to the jury, how you made that examination?

A Well, in the first place --

Q I am talking now of the --

A Of the neck.

Q -- the section of the second cervical vertebra.

A Well, I think, as I recall -- I mean, obviously I had to --

we took the collar off, and I palpated the neck, and as you will get along here a little bit later, I had been informed that there was a possibility that he had a fracture of one of the cervical vertebra, and so I palpated this area.

Q What did you find when you palpated it?

A Well, as I say, "Disclosed tenderness over the spinous process of C-2," and that is one point in the neck he complained of tenderness. Now, let's be fair. Again, this is subjective. He can tell me has got a pain, but I can't feel it myself, so, as I say, I mean this can be simulated, except this:

That when you pressed in this area, his neck muscles went into spasms, and believe me, this can't be simulated. In other words, this is another reflex to the production of pain by pressure. The muscles go into spasm.

Q And that occurred here?

A This occurred here.

Q And you know that that was an objective sign of injury?

A This is an objective sign, yes.

Q Now, after you had completed these examinations, did you come to a conclusion about Sam Sheppard as to whether or not he was suffering from an injury?

A My conclusion here was, again, "Impression: Cervical spinal cord contusion," which means a bruise of the spinal cord

in the neck region.

Q Now, can you state, Doctor, whether a blow in that region that would produce a spinal cord contusion could or would cause unconsciousness?

A Would you repeat that, please, sir?

Q Can you state whether a blow in the back of the head in that particular section where you found this objective sign of injury could produce unconsciousness?

A Yes, sir, a blow could do that.

Q In your experience, can a blow that produces a spinal cord contusion cause unconsciousness, even though there is no fracture present?

A I don't believe that the presence or absence of a fracture is necessarily important in the production of unconsciousness.

Q Will you explain that?

A Well, a person can be rather severely injured, have rather severe injury to the spinal cord without any fracture of the bones surrounding it. The same thing can occur with injury to the brain. It doesn't necessarily mean that -- or a fracture of the skull doesn't have to be present. As a matter of fact, many skull fractures are not particularly significant. It is what goes on underneath in the nervous system that is the significant factor in the whole affair.

Q Has it been your experience, Doctor, over the course of years, and in your study of this matter, that even in fatal

injuries to the brain and to the spinal cord, that no fractures have been present?

A I have seen a great many fatal injuries to the brain and spinal cord where fractures -- particularly the brain, let's put it that way, let's limit it to the brain, if you want to -- where no fractures are demonstrated.

Q I see. Now, then, after your examination of Sam on that day -- and you may refer to your notes -- did you see Sam Sheppard at a future time?

A I believe that I --

Q Well, I am calling attention to the 6th day of August in the County Jail.

A Oh, yes, sir, I examined Sam on August 6th at the County Jail.

Q And you examined him where?

A In the dispensary of the County Jail.

Q Did they have all the equipment there necessary for your examination?

A Whatever they didn't have, I brought along, but it was adequate equipment, yes.

Q So that you had adequate facilities for making that examination in the jail?

A Yes, sir.

Q And I believe that is on the 11th floor?

A I don't recall.

Q Well, it is upstairs. And do you recall that there was a doctor present named Dr. Mankovich?

A Yes. Dr. Mankovich was present.

Q He is the physician for the Jail?

A I believe so, yes.

Q Now, in the examination in the jail of August the 6th, what did you find, or did you find anything different than your examination of July the 6th?

A Yes, sir.

Q Now, tell the jury what you found.

A May I refer to my notes of August the 6th, sir?

Q Yes, you may. Those are your personal notes --

MR. PARRINO: Here you are.

THE WITNESS: I don't mean in there. I mean my personal notes.

A I have this dated as of August 6, 1954, over my signature. Do you want to read this with me?

MR. PARRINO: No.

A "Asked to examine Dr. Sam Sheppard by his brother Steve. Performed exam at County Jail. Sam looked well, and when asked about specific complaints, replied that he still had some neck pain, throbbing occipital headache and occasional right-sided headache. When specifically asked about bladder difficulty, stated that he didn't void until his bladder was quite full.

"Examination: Pupils are equal and react to light and accommodation." You recall I have explained that.

"EOM," which again, as I explained, means extra ocular movements. "The muscles of the eye" -- but I had a couple of more on here -- "fields and fundi."

The fields may be defined as the patient's ability to see out to one side or the other; in certain diseases and abnormalities, the field of vision is cut down.

Now, the fundi consists of the retina and the optic nerve, the vessels which may be seen in the interior of the eye by the use of the ophthalmoscope. I make a statement that, "Extra ocular movements, fields and fundi are normal," and again I say "there is no facial weakness."

Now, I point out that, "There is moderate weakness of the left triceps and left interossei."

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Q Those were the same reflexes that you found absent or weak on the 6th of August -- on the 6th of July?

A Here I'm referring to these little muscles in the hand here. As I recall, I'm now referring to actual weakness of the muscle, the triceps muscle in the back of the arm rather than the reflex. I will come to that later, I believe.

So I am pointing out that there is weakness of the muscle of the triceps and also the small muscles of the hand.

I go on and say that, "There is hyposthesia," which means decreased sensation, "to pin prick over this ulnar distribution on the left," which I have described as the middle or ring finger, and I make a statement here which says, "The left triceps reflex is now present but diminished over the right."

Q It's what?

A This left triceps reflex is now present, it's returned, but it's still diminished.

Q The one you found absent?

A The one I found absent is now present one month or so later.

Q Meaning the fellow was improving?

A That meant to me, if it were Sam or anybody else, that if the individual had injury to the nervous system and was

getting better, I would have been very happy about it.

"Abdominal reflexes present but left tires quicker than the right."

Now, that means to me that, again, the left abdominal reflexes had been absent and one month later they were present, but that I could tire them out and here, again, we've got to go into reflexes. In any normal individual, take a knee jerk, for instance -- we haven't even talked about those -- when you hit the patellar tendon, the leg will fly out, kick out, and if you hit it often or fast enough, that reflex will tire out. In other words, the impulse gets going so fast it catches up with itself.

So that while a reflex may be present, if it tires easily, it may be an indication that there was something wrong with that reflex before. It was absent once, it came back, but it still wasn't normal, in other words.

Q On August 6th?

A On August 6th.

Q All right.

A Now, I state that, "The cremasteric reflexes are present but weak."

These were absent before. They have now come back but they are still weak.

Now, I may interject something here that -- I wanted to be awful certain about this abdominal reflex, and I

really gave Sam a working out and I apologized to him for scratching him --

MR. PARRINO:

I object to this,

if the Court please. Just tell what he did.

A (Continuing) I really gave Sam a working out and apologized to him for scratching his abdomen so many times. I wanted to be sure about this abdominal reflex.

Is that all right, sir?

Q Now, you gave him a working out on the abdominal reflex, and that was for the purpose of determining whether the reflex that had been absent, whether it was present then?

A Yes, sir.

Q And how it compared with the other reflex that was present there?

A Yes, sir.

Q And what did you determine after you gave that working out to that abdominal reflex?

A That the reflex which had been absent had returned but it still was not a normal reflex.

Q I see. And that was true, also, of the cremasteric reflexes?

A Yes, sir.

Q They were absent and they were coming back?

A Yes, sir.

Q It meant to you, as a neuro-surgeon, that this man was getting better?

A Yes, sir.

Q But he wasn't better yet?

A No, he wasn't completely normal.

Q All right.

A At least his reflexes weren't.

Q Yes. Is there anything else?

A Yes. I again point out that, "There is tenderness to pressure over C-2."

That's the second cervical vertebra. And in parenthesis I have, "No spasm now."

Q That is, the spasm had disappeared?

A Yes, sir, on pressure.

Q Yes. But on July 6th it was very definitely there, wasn't it?

A Yes, sir.

Q Anything further?

A I continue further and say that, "Forward and backward neck movements good but lateral motions limited."

Q What does that mean, now?

A Well, he could go like this pretty well, but moving it from side to side, he said, was painful to him. I mean he didn't do it as well, observing him, as he did forward and backward.

Q Any reason to doubt him?

A I have no reason to doubt him, no, sir.

Q Is there anything further, Doctor?

A Yes, sir. I continued and I say, "Other DTR's" -- which is another abbreviation, meaning deep tendon reflexes -- "active and equal."

In other words, they were normal. All the other reflexes that one could test were active and equal.

"There is no ataxia or incoordination."

Now, ataxia and incoordination practically mean the same thing. Normally I can reach out and pick up this glass of water and drink it with one movement without a -- abnormally I might reach for the thing and miss it. That's called ataxia. This is generally tested by asking a patient, with his eyes open or closed or both, to reach up and touch the tip of his nose, and a normal individual can do that without missing the tip of his nose, he can do it a hundred times. In this instance, again, I say that there is no ataxia or incoordination. This part of the examination was normal.

And again I point out that the Babinskis are normal. I explained the Babinski signs.

"Hearing good, sensorium clear. Answers questions readily without hesitation."

Q Now, did your examination of August 6th in the jail confirm your impression of July 6th at the hospital?

A Yes, sir.

Q And tell the jury what conclusion you came to after August 6th?

A My impression was that Sam Sheppard had received a contusion of his spinal cord; that he exhibited certain positive signs of this injury back in July, and that one month later, approximately one month later, that his disease was improving and had improved.

MR. CORRIGAN: I think that that is all.

Do you want a little recess, Doctor?

THE WITNESS: I would appreciate about five minutes.

MR. PARRINO: Yes, that will be fine.

THE COURT: Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. Please do not discuss this case.

(Thereupon a recess was taken at 2:40 o'clock, p.m., after which at 2:55 o'clock, p.m., the following proceedings were had:)

CROSS-EXAMINATION OF DR. CHARLES ELKINS

By Mr. Parrino:

Q Now, Dr. Elkins, if at any time during my questioning you want to stop for a moment, you feel free to do so. And if

I am going too fast at any time, please tell me and we can take it slowly.

A Thank you, sir.

Q Now, how long have you known Sam Sheppard?

A I can't state exactly.

Q Well, how long did you know him before the 4th, approximately?

A Well, I will say two years. I can't be exact on it.

Q And you would associate with him from time to time at various places, is that correct?

A Would you repeat that?

Q I say, you would associate with him from time to time in various places, isn't that a fact?

A No, I wasn't associated with Sam Sheppard.

Q I don't mean professionally, I mean socially.

A No, I wasn't particularly socially acquainted with Sam Sheppard.

Q I see. Well, did you have any contact at all with him?

A Yes, sir.

Q And what was that, please?

A Upon occasion Sam would ask my advice.

Q I see. Now, on the 4th, what time was it that you came to the Bay View Hospital, approximately?

A Approximately six o'clock in the evening.

Q And on whose request was it that you came to Bay View Hospital?

A Steve Sheppard.

Q Now, you state that your first examination was not a meticulous one, isn't that a fact?

A That's what I stated, yes.

Q Yes. It was a cursory examination of the patient, is that correct?

A Well, I wouldn't say it was cursory. That would require a definition.

Q I see. Well, it was not meticulous, in any event?

A Let us say that the examination was sufficient for me to determine what I wanted to determine at that specific time.

Q Well, here just a few moments ago, Doctor, on your direct examination by Mr. Corrigan, you stated, did you not, that it was not a meticulous examination that you made on July 4th of 1954, isn't that correct?

A If I stated that, it's in the record, Mr. Parrino.

MR. CORRIGAN: I don't recall
him saying that.

MR. PARRINO: I'd be glad to
check the record, if you want, Mr. Corrigan.

MR. CORRIGAN: Oh, I won't check
the record. Let it go.

MR. PARRINO: You say you don't
recall it. I'd be glad to have the record
checked, if you want to.

MR. CORRIGAN: Don't waste the
time checking the record.

MR. FARRINO: All right.

Q Now, Dr. Elkins, as I understand the medical definition of shock, it is said to be an acute circulatory failure of the -- or, an acute peripheral failure of the circulatory system, is that correct?

A That requires a qualification. There are several types of shock.

Q Well, let us speak for a moment of traumatic shock and of exposure shock. What is that exactly?

A Well, now, you ask a question, and let's divide it again.

Q All right. Take the one first.

A Traumatic shock?

Q Yes. All right.

A There is a difference between traumatic and exposure shock.

Q All right. We'll take them one at a time, please.

A Without going into a long lecture on traumatic shock and the various substances which are liberated into the blood stream after injury, traumatic shock is simply this: That secondary to injury, which usually must be severe injury, the patient becomes pale, there may be profuse perspiration, the blood pressure usually falls from its normal -- or the patient's normal, let's put it that way, range; the pulse speeds up; the respirations become shallow

and may even be embarrassed labored respirations.

Q Why does blood pressure fall, Doctor?

A Well, again, without going into a long dissertation on the theories of shock, let me point out this: That no one knows absolutely what shock is. I mean almost every half a dozen years there is a theory of shock. Now, one of the prevalent theories is that secondary to an injury there is a substance liberated into the blood stream, a chemical, which by its action alone causes the falling of the blood pressure.

Q I see.

A That, Mr. Parrino, is a theory, sir.

Q Yes. Now, are there other reasons that you know of, medically, as to why blood pressure falls?

A Yes, sir.

Q Would you state them in a general way, please?

A In a general way, if an individual would receive a severe -- a blow of sufficient intensity to damage certain centers at the base of the brain, the blood pressure would certainly fall because here is a center -- there is a center for blood pressure at the base of the brain, there is a center for pulse, there is a center for respiration. These are known as vital areas, and they are located, generally speaking, at the base of the brain in the medulla oblongata.

Q Now, you say that the pulse increases?

A Its rate increases.

Q And what is the reason for that?

A There are certain compensatory mechanisms, Mr. Parrino. If the blood pressure falls, in order to compensate for the falling blood pressure, nature has provided the human being with a compensatory mechanism which increases the pulse rate. In other words, the same amount of blood is to be delivered and it has to be delivered some way, so if the blood pressure falls, the pulse rate increases and there is an effort for nature to deliver the same amount of blood or the blood that is sufficient to supply the organs of the body.

Q Now, what is the normal blood pressure for a person 30 years of age, about six foot tall and about 180 pounds, would you say, approximately?

A I think the insurance statistics point out that that blood pressure is measured somewhere around 120 millimeters of mercury as the systolic pressure, and the diastolic pressure would be 80 millimeters of mercury. We ordinarily say 120 over 80.

Q And what would be the pulse for a person in that same range, average pulse?

A The average pulse, with all other things being equal, should be between 72 and 80 beats per minute.

Q And what of respiration?

A I believe that the normal respiration is somewhere around

16 per minute.

Q Now, Doctor, I am going to state to you that there has been evidence in this case that Sam's, Dr. Sam Sheppard's respiration, normal respiration, as a matter of fact, is approximately 16 per minute. And will you keep that in mind, please? And that Sam's pulse is normally about 80 per minute, and that his blood pressure is approximately, his normal blood pressure, before the 4th was approximately 115 over 74.

Do you have those figures in mind, sir?

A Respiration, 16 per minute; pulse, 80 per minute?

Q Yes, sir.

A Blood pressure 115 over what?

Q 74.

A 74. All right.

Q Now, Doctor, will you look at this Defense Exhibit YYY, referring to Page 6 of this report, you have here blood pressure and pulse taken at various times on that morning, is that correct, at 7 o'clock, 8 o'clock, 9 o'clock, 10 o'clock, 11 o'clock and 12 o'clock, do you not?

A This is not my writing, Mr. Parrino.

Q No, no. I understand that, of course. I don't mean to infer that. I am just showing you a hospital record. That's not your writing, but certain information appears in this hospital record that is not yours, of course.

A All right. It's there. It isn't mine. It's there.

Q Yes. I don't mean to infer, sir, that you compiled this report. As a matter of fact, here I think we have Dr. Carver, and Dr. Carver's name here at the bottom of this page, Dr. R. Carver, D.O. You had nothing to do with that.

A Yes.

Q Your report is way over on Page 12, right?

A Yes, sir.

Q And 13. And those are the only two reports that we have in here that belong to you, right?

A Yes, sir.

Q Now we are referring to another report here prepared by another physician in the hospital. Do I make myself clear?

A Yes, sir.

Q All right. Now, 115 over 74; pulse, 80; respiration, 16, normal.

Now, would you look at the readings of pulse and blood pressure there between the hours of 7, 8, 9, 10, 11 and 12.

Now, do you have an opinion, Doctor, as to whether or not during that time, indicated on that chart between 7 in the morning and 12 at noon, that individual was suffering from traumatic shock?

A Mr. Parrino, I am going to reserve a prerogative which I think I have, that I am not, in the first place, responsible for anybody else's observations or anybody's signature on a

chart but my own.

Q Of course.

A But I understand that you are presenting to me a series of figures. I don't know whether they belong to Sam Sheppard or anybody else. I don't know whether they belong to you. I understand that these are --

Q Well, they don't belong to me, Doctor. I want you to know that.

A Well, I'm just pointing out that; they certainly don't belong to me, either.

Q Yes. All right.

A But I m pointing out that these are not my observations, and I don't think that in all fairness I ought to be forced to express an opinion on somebody else's observations.

Q Doctor, I am not forcing you to do anything. I am merely --

A All right. Then I have no opinion.

Q You have no opinion?

A No.

Q Now, Doctor, are there any reflexes that can be controlled?

A Would you repeat that again?

Q Are there any reflexes that can be controlled? Can an individual control certain reflexes?

A By definition, a reflex cannot be controlled. This is an automatic response to a stimulus.

Q Well, are there reflexes that can be faked?

MR. CORRIGAN: Can be what?

MR. PARRINO: Faked, the term you
used, Mr. Corrigan, fake, f-a-k-e.

MR. CORRIGAN: All right.

A Yes, sir.

Q And how many reflexes that you know of are there that can
be faked?

A I don't know the number, sir.

Q But there are several?

A Several.

Q All right. Now, you have described the cremasteric reflex,
have you not, sir? In a general way?

A Yes, sir.

Q Isn't it true, Doctor, that there are some male -- there are
some males in which the cremasteric reflex is normally
absent?

A Yes, sir.

Q And in what percentage of the male population is the --
in your experience -- is the cremasteric reflex normally
absent?

A I can't answer that question, Mr. Parrino. I don't have
the percentages.

Q You haven't made a special study?

A No special study.

Q But you do know from experience, probably in the Army to

some extent, that in some males the cremasteric reflex is normally absent?

A Yes, sir.

Q And where it is normally absent, there need not be necessarily any evidence of brain injury or -- brain injury, right?

A That's correct, sir.

Q And there need be no evidence of nervous system disease?

A That's correct, sir.

Q Or of spinal cord injury?

A That is correct, sir.

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- Q Now, in other words, Doctor, the absence of the cremasteric reflex in and of itself, to you as a doctor, doesn't mean very much? Is that a fair statement, sir?
- A Would you again --
- Q It was badly put. The question was badly put.
- A Yes, it was sort of jumbled up.
- Q Now, the absence of the cremasteric reflex, in and of itself, doesn't have any great importance, is that right?
- A I will answer it this way, and I think this is what you mean: If the cremasteric reflex were the only thing absent, in all probability it would not be significant.
- Q Are there other reflexes, Doctor, that are normally absent in certain individuals?
- A In certain individuals, reflexes may be normally absent.
- Q Thank you, Doctor. Now, where you have a case of injury to the brain, in your experience, have you not found that the use of morphine is contra-indicated, Doctor?
- A Mr. Parrino, I will have to again qualify that. That statement is written in all the text books, and everybody --
- Q Before we get to that. What does that mean, that the use of morphine is contra-indicated in cases of brain injury?
- A Oh, excuse me. I was just going to go into that.
- Q All right. Thank you very much.
- A It has been written that the use of morphine is contra-indicated in brain injury for two main reasons:

One, that it fixes the size of the pupils, and remember we went into the size of the pupils before, so that later on in the patient's course, if complications set in which would result in a change in the size of the pupils, the use of morphine fixes the pupils so it won't change to this light and accommodation business we talked about.

Furthermore, it is written that the use of morphine is contra-indicated in head injuries because it lowers the level of consciousness of the patient and the level of consciousness of a patient is a most important thing in the evaluation of whether this patient needs surgery, whether he is going to live, whether he is going to die, in other words, what is happening to the patient, so that the use of morphine is written that it is contra-indicated.

This statement is written, and must require qualification, because I have found that upon the occasion that the judicious use of morphine in head injuries is very valuable, provided the surgeon knows what he is doing and knows what to look for.

Q I see. In other words, where you have brain injury or where you have a concussion, a person has been rendered unconscious in some instances, isn't that correct, Doctor?

A Again repeat it. I'm sorry.

Q Where you have a concussion, or that results in some brain

injury, you often learn that a person has been knocked out or rendered unconscious, right?

A Yes, sir.

Q Now, as he is revived, where you have a bona fide case of brain injury, there is always a possibility that that person may revert back into unconsciousness? That is always a possibility, isn't that right?

A That is a possibility, yes.

Q And since that is a possibility in cases of concussion or brain damage, the use of morphine is, generally speaking, not indicated, because the morphine may tend to render that person unconscious or put him asleep, so that if he were in that sleep it would be difficult for a physician to determine whether that sleep is due to the morphine, or whether it is due to the injury to the brain?

Now, I don't know that I have put it very well, but do you understand what I mean?

A Well, you put it exactly like I put it a few minutes ago.

Q And that is the way a layman would put it, I take it?

A Well, it was pretty accurate, really.

Q In other words, where you have brain injury, where you have concussion, if you give a person morphine and he is out, appears to be asleep, you don't know as a physician whether he is unconscious because of the morphine or because of the brain injury, that is generally the situation, right?

A I mean, are you asking me whether I don't know the difference between morphine or not?

Q No, no. I say, that is the reason why the use of morphine is contra-indicated where you have brain injury or concussion, isn't that correct?

A I would say that your statement is generally correct, but again I have qualified the thing in saying that I don't always agree with that statement.

In my hands, morphine may be used judiciously.

Q Now, did you prescribe -- withdraw that.

After you were there on the 4th, what time did you leave there that day, Doctor, the hospital, that is?

A I can't tell you --

Q Approximately.

A -- the exact hour. I imagine I was there about an hour.

Q About 7 o'clock, maybe a little later?

A About 7 o'clock, maybe a little later.

Q And did you prescribe morphine for Dr. Sam on that night?

A I don't believe I wrote any orders. I may be wrong. I can look at the chart. I can verify it.

On my consultation, I advised, "Urge fluids and sedation."

I can look at the order sheet. I don't recall writing any orders. Did I?

Q I don't know, Doctor. Take as much time as you wish.

There may be some.

A Mr. Parrino, here is the order sheet, as I see it, for the 4th of July --

Q Is this your order sheet, Doctor?

A No, sir. I haven't got my name on this, so I will answer your question. I didn't prescribe for him.

Q One-quarter grain of morphine -- withdraw that.

What is morphine, by the way?

A Morphine is an opiate, a derivative of the poppy, which has peculiar properties in deadening pain.

Q And what does it do to an individual?

A If an individual is in pain, morphine, as an analgesic will decrease the pain.

Q Now, one-quarter grain of morphine, is that a substantial dose for the average person, in your opinion, Doctor?

A I should think that a quarter- grain of morphine in an adult is the average dose.

Q And what would you say as to one-half grain of morphine?

A It depends upon the situation as to even a half-grain of morphine, depending upon the situation, that might be a small dose.

Q Well, did you prescribe the use of one-half grain of morphine for Dr. Sam on the night of July the 4th?

A I don't believe I wrote any orders.

Q All right. So that you did not?

A Insofar as I know, I didn't.

Q Now, in evaluating injuries, you have stated that you consider two things: The subjective complaints of the patient, on one hand, and what you are able to find yourself objectively on the other hand, is that correct?

A That's correct.

Q And the subjective complaints are those things which the patient orally states to you, isn't that correct?

A That's correct.

Q Now, as you saw Sam for the first time on the 4th, you have stated that your first job was to determine the extent of the injuries?

A I believe I stated that my job was to evaluate the patient.

Q Now, you said something about checking to see if he was going to live or die, is that correct?

A That's right.

Q Had anybody given you the impression that Sam was about to die?

A I don't believe so.

Q From whom did you receive the call, again, please, to come to visit -- to see Sam?

A Steve Sheppard.

Q What time was it that he called you?

A Well, if I got there at six o'clock, it was about 15 minutes before, depending on what time I got there. I left

home immediately and went out there.

Q Do you live around there?

A I lived on Beachcliff, yes.

Q And what did Dr. Steve state to you when he spoke to you?

A As near as I can recall, Steve told me that Sam had been badly hurt, and that he wanted me to see him.

Q Is that all he said?

A That is all I can recall.

Q Now, when you got to the hospital -- of course, you didn't take your medical bag with you to the hospital, did you?

A No, sir.

Q That is not generally done by doctors who are experienced that go into a hospital, is it, Doctor?

A Well, I don't carry a medical bag.

Q Now, where did you first go when you went into the hospital? Directly into Sam's room?

A I believe directly to the room.

Q And you examined Sam, did you?

A Yes, sir.

Q And who was present at that examination?

A I believe Steve was there, and if I recall correctly, at one time or another his brother Richard came into the room.

Q Was Sam coherent at the time you saw him there for the first time?

A As I stated in my first line, "Sam is alert and answers

questions lucidly," sir.

Q He did not seem to be confused, did he, Doctor?

A Sam was not confused.

Q And when you say that he is alert -- "Sam is alert and answers questions lucidly," we can take those terms to mean what they mean generally to the layman, isn't that correct?

A Yes, sir.

Q And he didn't appear to be in any particular pain at that first interview, did he, Doctor?

A Well, I have got it stated down there, "He complains of occipital headache," Mr. Parrino.

Q Oh, yes. Other than the headache?

A That's correct.

Q Other than the headache?

A Yes.

Q And you say on this first report of the 4th, on page 12, "There is a swelling of the right periorbital tissue. Pupils are equal and react," is that right?

A Yes.

Q "Moves all extremities well."

A Yes, sir.

Q He didn't complain of any pain anywhere in his arms or legs, did he?

A I don't believe so.

Q "No Babinski's," right?

A Yes.

Q And, "He has voided."

A Yes, sir.

Q Now, you say if he had not voided that would mean something to you as a doctor, is that correct?

A That's correct.

Q And what would that mean to you if he had not voided during the day?

A Well, it would, of course, depend upon the time element. I mean, if he hadn't voided four hours before, it wouldn't mean anything. If he hadn't voided in 24 hours, or 12 hours, or whatever the time is, I would begin to wonder what was going on, and I would have examined his bladder to see if it was full.

Q So that the statement to you that he had voided indicated that there was no immediate injury to the brain?

A No, sir, it didn't mean that at all. My statement means that I asked Sam had he voided, and he said yes.

Q And you say, "He complains of occipital headache, cervical collar in place, neck not examined."

A Yes, sir.

Q And as a result of that, you have "Impression: Cerebral concussion"?

A Yes, sir.

Q Now, is it true, Doctor, that the only evidence of cerebral

concussion that you have as a result of that examination, that first examination, is what Sam, the patient, told you?

A That is correct, sir.

Q There is nothing in this first -- withdraw that.

There was no objective test or finding by you on that first examination that would indicate that he had a cerebral concussion, is that correct?

A There is no object sign that I elicited on the first examination which would make it positive that Sam had a cerebral concussion, except for the fact that he told me that he was unconscious, and I had no reason to doubt it.

Q Yes, of course. Now, did Sam tell you how long he was unconscious, Doctor?

A No, sir.

Q Did he tell you where he was unconscious?

A I don't believe so.

Q Did he tell you anything about the events that had occurred to him that night or the night before?

A As I recall --

Q At that time.

A At this time, as I recall, in taking a history, I said, "Sam, what happened?"

And as I recall, he said that he was struck in the region of the neck by an intruder in his home, and that he was unconscious, and that is all, the further I went into

history.

Q You didn't ask him how he was struck or by what he was struck?

A No, sir.

Q Or describe the person or any of the details? You were not interested?

A No, sir. I was his doctor. I was not his lawyer.

Q Now, this examination that we have here on page 12 of your report of the 4th, was a complete explanation as to everything that you had done with Sam on that day, isn't that correct?

A Mr. Parrino, this was a preliminary evaluation of a patient.

Q Now, you did not examine his abdominal reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his cremasteric reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his biceps reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his triceps reflexes on that occasion, did you, Doctor?

A No, sir.

Q Now, Doctor, if Dr. Stephen Sheppard stated that on that

first occasion of the 4th, in his presence, that you examined the abdominal reflexes of Sam Sheppard, that would not be true, would it?

MR. CORRIGAN: Wait a minute.

Object to the question.

THE COURT: Yes. I think that is objectionable, Mr. Parrino.

Q And if Sam Sheppard testified that you examined the cremasteric reflexes, the abdominal reflexes, the triceps reflexes, and the biceps reflexes, on the 4th, the first time that you were there, that would not be true, would it?

MR. CORRIGAN: Object.

THE COURT: Objection sustained.

Q The fact of the matter is, Doctor, as you have fairly stated, you were making a preliminary examination there on the 4th, isn't that correct?

A Yes, sir.

Q And that in no way could be fairly determined by you to be a complete, thorough and painstaking examination of the patient, could it?

A Mr. Parrino, I was called in as a specialist. I did an examination that I thought was indicated to satisfy myself of this individual's condition.

Q Yes, but if Dr. Stephen Sheppard testified here under oath that you, on that first occasion, made a painstaking,

thorough and complete examination of the patient, that would not be correct, would it, Doctor?

MR. CORRIGAN: Object. It is the same question over again.

THE COURT: I think he may answer that.

A The only way I can answer that is that I again am not responsible for anybody's statements.

Q We understand that, Doctor, of course. But when statements are made in this courtroom as to things that you are alleged to have done, and did not do, and quite fairly, then we feel that we have the right to discuss these questions.

MR. CORRIGAN: Object.

A You have the right to ask, and all I can say again is that I am not responsible for anybody else's statements. My examination is my own, and I was as thorough as I thought indicated at the time.

Q What you are saying, Doctor, is that you are not responsible for the statements made by Sam Sheppard -- by Stephen Sheppard in this courtroom under oath, isn't that correct?

A That is quite correct.

Q Now, did you see Sam Sheppard again on the 5th?

A I believe I did.

Q Well, do you remember as a fact that you did, or, I mean, do you just feel that you did?

A Yes, sir. I saw him on the 5th.

Q Do you recall what time that was?

A I think it was around -- oh, it was before noon.

Q And you didn't make any report on that, of course?

A I did not make any notes on that occasion.

Q And who was present -- withdraw that.

Were you called on that occasion to come to the Bay View Hospital?

A I had been invited to take care of Sam as his doctor insofar as his nervous system is concerned, and it was my usual custom to call on my patients as often as I think indicated.

Q Now, before we get to the 5th, Doctor, as the result of your examination of Sam Sheppard on the 4th, did you feel, as his consulting physician, that he could not be subjected to questioning?

MR. CORRIGAN: Object to that.

THE COURT: He may state whether
he --

MR. CORRIGAN: Whether he felt --

THE COURT: -- whether it was
his opinion that his condition was such that he
couldn't be subjected to questioning. I think
that is all right.

A Will you state it again, Mr. Parrino?

Q I will repeat it. As a result of this examination of the

4th, was it your opinion, Doctor, that Sam Sheppard should not be subjected to extensive questioning?

A No, sir.

THE COURT: He may answer that.

Pardon me, I thought you objected. There is a little echo, and I wasn't sure whether you objected.

THE WITNESS: I said no, sir.

Q Was his physical condition such, in your opinion, that he could be subjected to questioning?

MR. CORRIGAN: I object to that.

Now we are getting into the realm of speculation.

MR. DANACEAU: It is not speculation.
He is your expert doctor.

MR. MAHON: It is his opinion.

THE COURT: That is a rather sharp issue here. I think he may answer that as to what his opinion is. He is an expert.
He examined him.

MR. DANACEAU: That's right.

MR. PARRINO: Would you read the question?

(Question read by the reporter.)

A Well, I will answer this by saying that I questioned him, talked to him.

Q So that you feel that he was in good enough shape on the 4th when you saw him so that he could answer questions?

A He could answer questions.

MR. CORRIGAN: When did he refuse?

Q Did you ever advise Stephen Sheppard, Richard Sheppard, Sr., Richard Sheppard, Jr., that as a result of your first examination, Sam could not physically stand up to any extensive questioning?

A Mr. Parrino, I have never -- I had never to anyone made the statement that Sam Sheppard could not be questioned at any time from the first time I saw him until the last.

Q Now, on the 5th, you were there at or about 12 o'clock?

A Before noon.

Q And was Steve Sheppard there that day?

A I don't recall, sir.

Q Did you examine any of Sam Sheppard's reflexes on that day?

A I don't recall, sir. I made no note.

Q Did you talk with Sam that day?

A Yes, sir.

Q And I take it you didn't make any note of any conversation between you?

A No, sir.

Q You made no entry into the chart as to anything you did there on the 5th, right?

A Unless it is there. I mean I haven't seen this, you see.

for a long time.

Q Well, you can look at it, if you wish.

A Well, if it is there, you will show it to me. No use me looking for it.

Q Then you returned on the 6th?

A Yes, sir.

Q Did you see Sam on the 7th?

A Yes, sir. Let me qualify this. The 7th was Wednesday, am I correct?

Q I think so, yes.

A Yes.

Q At the hospital?

A Yes.

Q And you made no entry of that on the chart?

A No, sir.

Q Did you see him on the 8th? I think that's the date he was discharged, Doctor.

A I don't know. If you will refresh my memory of the date of the funeral --

Q I think the funeral was on Wednesday, the 7th, and he was discharged from the hospital on Thursday, the 8th.

A I don't believe that I saw him after that -- after the 7th.

Q You were not consulted, then, prior to him being discharged from the hospital, were you?

A No, sir.

Q When was the next time after the 8th that you saw Sam?

A I believe you mean after the 7th, don't you? "

Q After he was discharged -- I'm sorry. Excuse me. The last time you saw him was the 7th. When was the next time you saw him after the 7th?

A On August 6th.

Q You were not called upon to examine him at any time between July the 7th and August 6th? Right?

A No, sir.

Q Now, here on July 6th in your report on page 13, it is stated that the plain --

A That is "Pt." That is "Patient."

Q We lawyers refer to it -- I thought it was "Plaintiff" for a moment.

"The patient complains of urgency of urination and this morning, when attempting to pass gas, soiled his sheet with fecal material." Right?

A Yes.

Q You didn't see that, did you, Doctor?

A I saw the fecal material.

Q Was he still in bed at that time, or how --

A He moved around.

Q What?

A He showed it to me.

Q " And he also complained of numbness over the ulnar

distribution," is that correct?

A Yes, sir.

Q Now, that is a subjective complaint, is that correct?

A Yes, sir.

Q Now, when he complained of that to you, as I understand it, the ulnar distribution is this -- is all of this small finger and one-half of the fourth finger, is that correct?

A That's correct.

Q Is that where the -- is that the area where it occurred?

A Right there (indicating).

Q And where you have the numbness over the ulnar distribution, left, we are talking about this area here, right?

A Correct, and up further.

Q Up a little farther?

A Up a little (indicating).

Q Now, did you check that in some way objectively, Doctor?

A I examined it at that time, as I have stated, with a pin, and tested pain sensation.

Q Did I understand you to say that it is something that can be faked?

A This is something that can be simulated, the loss of sensation.

Q How can that be done, Doctor?

A Well, it is simply that you test a patient for pain, you ask him, "Does this hurt you, and do you feel this as a

pin prick?"

And normally the patient will respond -- if the patient is normal, he will respond, "Yes, I feel it is a pin prick."

And you compare one side with the other.

If the patient says, "No, I can't feel it," again, as I have stated before, the examiner can't feel the patient's pain, so the patient can lie and can simulate the loss of sensation, although sometimes it is pretty tough.

Q Now, then, Doctor, you say here that "Cervical X-rays show chip fracture, spinous process, C-2," is that correct?

A That is what I have written.

Q Now, did you see the X-rays of that fracture?

A I was --

Q Let me put the question this way: Did you see any X-rays that morning of the 6th of Sam's cervical vertebra?

A Yes, I believe I did.

Q And did you evaluate what you saw?

A Yes, sir.

Q And what is your opinion, Doctor, as to whether or not you saw a fracture of the spinous process of the second cervical vertebra?

A I did.

Q Was there a fracture there, Doctor?

A I can't say whether there was a fracture there. I saw a set of X-rays which showed a defect in the spinous process of the second cervical vertebra, and at the time, I made the statement that this looked like a fracture, I couldn't tell whether it was recent or old, but that it had looked like a fracture, and I advised -- and I believe this to be correct, although I can't be sure -- these X-rays were taken with Sam's collar in place, and I advised repeating the X-rays without the collar. In other words, I was not certain of this thing.

Q Now, these pictures ~~are~~ X-rays that you looked at, were those the X-rays that had been taken on the 4th?

A I believe they were the first set of X-rays. I can't recall whether the date was on the X-rays or not.

Q I see. Well, let's go back to the 4th, Doctor. At six o'clock on July the 4th did you examine any X-rays of Sam's neck on the 4th?

A I believe that those were the X-rays which I have just described, showing this defect in the spinous process.

Q Well, on the 4th, did you examine any X-rays of Sam's neck?

A I believe I did. These are the ones I just described.

Q And that is what you are talking about on your report of the 6th, is that correct?

A I believe that is correct.

Q So that on the 4th -- withdraw that.

The entry that you have here as to July the 6th was actually a finding that you made on July the 4th, is that correct?

A I suppose it is, yes.

Q Now, those X-rays of July the 4th, do I understand you to say there appears to be some defect in that X-ray picture, is that correct?

A State that again, Mr. Parrino.

MR. PARRINO: Read the question.

(Question read by the reporter.)

A Yes.

Q And what was the defect in that X-ray picture that you saw that was taken on July 4th?

A The particular defect to which I am referring is a particle -- a small particle of bone which was separated or seemed to be, let's put it that way, seemed to be separated from the main body of the spinous process of the second cervical vertebra.

Q And you say that you thought that to be a defect in the picture?

A No, I didn't say that. I said that this piece of bone seemed to be separated from the main body of the spinous

process of the vertebra, and I again repeat that I concluded that this looked like a chip fracture -- that is a common term for a little hunk o f bone -- it looked like a chip fracture, but that I couldn't tell whether it was recent or old from looking at the picture, and advised, since I was uncertain of the thing, that the X-rays be repeated without the collar.

Q And did you advise that on the 4th?

A As near as I can recall, I think that was -- I looked at these X-rays on the 4th, as near as I recall, and I said, "Well, you have got to repeat them because they were uncertain."

Q So that, in other words, putting it briefly, there was something about those X-rays of the 4th that caused you to state that those pictures should be repeated, isn't that correct?

A Correct.

Q There was some degree of uncertainty there of what you saw, in your mind, isn't that correct?

A I was uncertain -- I'll put it that way. It looked like a fracture to me, but I was uncertain whether it was recent or old.

Q Now, did you at any time see another set of X-rays of the same area after that, Doctor?

A Yes, sir.

Q And when did you examine those X-rays?

A The only time that I can specifically recall examining was on the 7th, when Dr. Gerber and I looked at them together. We took the whole bunch together.

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- Q And looking at those X-rays on the 7th of the neck, did you find any fracture in the same area?
- A In the second set of X-rays this defect was not present.
- Q I see. Now, you say you advised that another set of X-rays be taken on the 4th, is that correct? Who did you advise? Was it Dr. Steve?
- A As near as I can remember, we were in the X-ray department with their X-ray man, and I can't be specific, but I should guess that Steve was present.
- Q I see. Now, in this report here of the 6th, Doctor, you say, "Lumbar puncture done this morning. Demonstrates clear fluid with normal pressure, 150 --"
- A Millimeters.
- Q -- "of spinal fluid and normal dynamics."
- A Correct.
- Q What does normal dynamics mean?
- A In certain diseases of the spinal cord, such as tumors and in certain injuries, the spinal cord swells to the extent that it blocks the fluid pathway. Now, the fluid pathway actually can be described as the spinal fluid which is formed in the lateral ventricles or normal openings of the brain through the choroid plexuses and is distributed through the third ventricle and the aqueduct of Sylvius and the fourth ventricle out through the foramina of Lushka and Megendie over the surface of the brain down in

the subarachnoid space of the spinal cord, and is absorbed mainly through the veins all over the surface of the brain. This circulation may be interfered with in a situation of neoplasms or tumors of the spinal cord or hemorrhage, in so far as that by pressing upon the jugular veins with a needle in place in the low back, the normal response is that the pressure is transmitted upwards through the jugular veins, is transmitted to the spinal fluid and is recorded in a spinal fluid monometer, and the pressure is ordinarily measured in millimeters of spinal fluid or water. It sometimes may be measured in millimeters of mercury. In this instance, I was trying to determine whether or not a block due to injury was present in between my needle, which had been inserted in the low lumbar region, and the jugular vein, because that is the direction of the transmission of pressure.

Q Was there any block there, Doctor?

A There was no block, as I quote.

Q In other words, that is what you mean --

A By normal dynamics.

Q All right. Now, you say that the spinal fluid pressure is normal, is that correct?

A Yes, sir, that's correct.

Q Now, was there any blood found in his spinal fluid, Doctor?

A I received a report from the laboratory, and I think the

report is on the chart, and I can read it.

"There is one crenated red cell," which probably is a normal finding.

Q I see. In other words, the finding of one crenated blood cell in Sam's spinal fluid is a normal finding, isn't that correct?

A It can be normal, yes. Let's put it: It's not abnormal.

Q All right. Now, as a result of all of your examination there of the 6th, you have here "Impression"?

A Yes, sir.

Q "Cervical spinal cord contusion"?

A Yes, sir.

Q Now, what is a contusion, Doctor?

A A contusion may ordinarily be described as a bruise.

Q In other words, you felt that there was a bruise of the spinal cord, is that correct?

A Yes, sir.

Q Now, was that your total diagnosis as to injury that had been done to Sam, in so far as his spinal cord and brain was concerned?

A Again, will you please repeat that? Was my total what?

Q Was that your total findings as to injuries to the spinal cord and to the brain?

A No. I have many other findings listed there.

Q Well, what is an edema of the brain, Doctor?

A Edema is swelling.

Q And in this report here, do you have any notation of edema of the brain?

A I don't believe so.

Q In your examination of Sam, was there any edema of the brain?

A I couldn't determine that from my examination.

Q You found none, so far -- withdraw that.

You say from the examination that you made and were able to make, you found no edema of the brain? Is that a fair statement, sir?

A No, that is not a fair statement, because you got to see edema, and the only way to see it is open the head.

Q I see. Now, nobody opened Sam's head here, did they?

A No, sir.

Q Will you excuse me for a moment, please?

A Surely.

MR. PARRINO: May I have a moment, please, Judge? Just a moment, please.

THE COURT: Yes.

Q Now, as a result of seeing Sam as you did, Doctor, did you prescribe anything for his injuries, what could be done to help him?

A I believe the only -- can I have that chart again, Mr. Parrino?

Q Yes.

A On my first report on the 4th, I prescribed or advised bed rest and sedation, and I made no other recommendations, at least I made no recommendations in writing.

Q I see. In other words, on the 4th you stated --

A Fluids and sedation.

Q What you advised for Sam on the 4th was fluids and sedation?

A Sedation.

Q And apparently rest, which is not on here?

A That's right.

Q And on the 6th, after that examination, you made no recommendation?

A I wrote no recommendations down.

Q By the way, Doctor, do you have that list of findings that you performed on the 6th, on August 6th?

(Witness hands paper writing to Mr. Parrino.)

Q Thank you very much.

MR. PARRINO: You can go back to Arizona now. That's all.

MR. CORRIGAN: Doctor, there's just a couple of questions that I want to ask you.

REDIRECT EXAMINATION OF DR. CHARLES ELKINS

By Mr. Corrigan:

Q Your diagnosis that you made was independent of the X-rays,

was it not?

A Yes, sir.

Q And a trained neuro-surgeon like you, who has had all your experience, can make diagnoses of brain injury and spinal cord contusion and nervous derangement without X-rays, can't you?

A Yes, sir.

Q Mr. Parrino asked you about shock, and he gave you dropping of the blood pressure, raising of the pulse, clammy body, and so forth. Those things are not shock, are they, Doctor? Aren't they just the results of shock?

A I would say that's a fair statement.

Q Yes. And the question of what shock itself is, as a medical term, has never been clearly defined by the medical profession?

A I tried to indicate that by pointing out that there are many theories.

Q Doctor, you are familiar with the writings of Dr. Crile, are you not?

A Yes, sir.

Q And you know that he worked all his life trying to define shock?

A Yes, sir.

Q And that he come up with an answer towards the end of his life that shock had something to do with the diminution of

the nervous energy that is in a person, that the cells are like a storage battery storing up energy and something happened to separate that energy from the cell; do you remember that?

A This is familiar to me. I can't be specific on it, sir.

Q What?

A This is familiar to me, but I cannot be specific in answering.

Q What I state sounds familiar?

A It sounds familiar, yes, sir.

Q All right. Now, then, Mr. Parrino says the mere absence or the absence of a cremasteric reflex in itself indicates nothing. Do you remember that, it may indicate nothing?

A Yes, sir.

Q That is, Doctor, if I would walk into your office in the normal condition I am today and I say, "Examine my cremasteric reflex," and you didn't find it and that is all you knew about me, or that's all you inquired about me, that wouldn't indicate very much, would it?

A No, sir.

Q It wouldn't indicate anything?

A No, sir.

Q But if you have an injured man and a man who obviously is injured, and the cremasteric reflex is absent, and then you examine him again, say, a month later and find that the

cremasteric reflex is present, does it indicate anything?

A That, to me, was significant.

Q And that's just what you found here, wasn't it?

A Yes, sir.

Q Now, on the 7th, you say you were there and you met Dr. Gerber?

A Yes, sir.

Q Did you tell Dr. Gerber on the 7th, the Coroner of this county, just what you found wrong with Sam Sheppard?

A I believe I did, sir.

Q Were you subpoenaed to the Grand Jury?

A I was not, sir.

Q Were you subpoenaed to the inquest?

A I was not, sir.

MR. CORRIGAN: That is all.

MR. PARRINO: That is all,

Doctor. Thank you very much.

(Witness excused.)

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Thereupon, further to maintain the issues on his part to be maintained, the Defendant called as a witness PAUL L. TEARE, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF PAUL L. TEARE

By Mr. Garmone:

Q Will you state your name, please?

A My name is Paul L. Teare.

Q Where do you live?

A Maple Heights, Ohio.

Q Who do you live there with?

A My wife.

Q Children?

A One child.

Q Are you employed, Mr. Teare?

A Yes, sir, I am.

Q And where are you employed?

A With the Ohio Bell Telephone Company.

Q How long have you been in the employ of the Ohio Bell Telephone Company?

A Three and a half years.

Q You were subpoenaed, Mr. Teare, to bring with you some records?

A That's right, sir.

Q Do you have those records with you?

A I have them with me.

Q May I see them, please?

A Yes, sir.

MR. GARMONE: Will you mark
these Defendant's Exhibits 22 and 23?

(Defendant's Exhibits 22
and 23 were marked for
identification.)

Q I will hand you what has been marked for identification as
Defendant's Exhibit 22. Does that carry a telephone number
on it, Mr. Teare?

A Yes, sir, it does.

Q And what is that telephone number?

A Trinity 1-0628.

Q And listed to whom?

A J. S. Houk.

Q What address?

A 29014 West Lake Road.

Q And when was that telephone number ended, as far as your
records are concerned or show? Does this show it?

A Yes, sir.

Q I will hand you what has been marked for identification
as Defendant's Exhibit 23. Does that card carry a telephone
number?

A Yes, sir, it does.

- Q And what is the telephone number carried on that card?
- A This is a card containing the order changing the Trinity 1-0628 to Trinity 1-3686.
- Q When did that change take place?
- A That took place on the morning of August 5th.
- Q 1954?
- A That's right.
- Q What was the telephone number of J. S. Houk at 29014 West Lake Road on the morning of July 4, 1954?
- A According to our records, that would be Trinity 1-0628.
- Q And what is the telephone number of J. S. Houk at the same address as of today?
- A Trinity 1-3686.
- Q And that telephone number didn't go into effect until the 9th day of August, 1954, is that correct?
- A That's not quite correct, sir.
- Q What date did it go into effect?
- A August 5th.
- Q August 5th of 1954?
- A Yes, sir.

MR. GARMONE:

That is all.

We would like to offer Exhibits 22 and 23.

MR. DANACEAU:

No objection.

MR. MAHON:

No questions.

THE COURT:

They will be received.

(Defendant's Exhibits 22 and 23 were received in evidence.)

MR. GARMONE:

That is all,

Mr. Teare. Thank you.

(Witness excused.)

(Thereupon a discussion was had out of the hearing of the jury between Court and counsel, after which the following proceedings were resumed within the hearing of the jury:)

THE COURT:

Ladies and gentlemen of the jury, we will now adjourn for the day and reconvene at 9:15 sharp tomorrow morning. Will you be kind enough in the meantime to be careful not to discuss this case, not even among yourselves, anywhere.

(Thereupon, at 4:15 o'clock, p.m., an adjournment was taken until 9:15 o'clock, a.m. Wednesday, December 15, 1954, at which time the following proceedings were had:)

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Wednesday Morning Session, December 15, 1954.

(9:15 o'clock a.m.)

Thereupon the defendant, further to
maintain the issues on his part to be maintained,
called as a witness MARY BROWN, who, being first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you please state your name?

A Mary Brown.

Q Is it Mrs. Mary Brown?

A That's right.

Q Is your husband living, Mrs. Brown?

A Yes, sir.

Q And what is his name?

A Gilford R. Brown.

Q Where is your husband employed?

A In Halle Brothers.

Q And how long has he been with Halle Brothers Company?

A About 25 years.

Q Where do you live?

A 1861 Idlewood Avenue, East Cleveland.

Q How long have you lived at that address?

A Almost all my life.

Q Were you born in Cleveland?

A Yes, sir.

Q Were you related to Marilyn Sheppard?

A Yes, sir. I was her aunt.

Q Are you related on her mother's side?

A That's right.

Q Are there any other sisters or brothers?

A No, sir.

MR. CORRIGAN: There is so much
noise out there.

THE COURT: I don't know where
it comes from.

MR. PARRINO: It is in the hall,
Judge. I will see if I can quiet them down.

MR. CORRIGAN: Tell them to be
quiet.

Q Now, Marilyn's mother died when she was how old?

A Six years old.

Q And after her death did you have much to do with Marilyn?
Did you see her very much?

A Yes, very often.

Q Do you recall when she was young and kept company with Sam
in their high school days?

A Yes, sir.

Q Did they come to your house?

A Yes, sir.

Q That is, both of them. How would they come there?

A Quite often on their bicycles after they had been out riding.

Q Did your association with those two young people continue?

A Yes.

Q And for what length of time?

A At least 15 years, probably more than that.

Q Did your father and mother live with you?

A Yes, sir.

Q And what was your father's name?

A Harry P. Blake.

Q And that was Marilyn's grandfather?

A Yes, sir.

Q When did your mother die?

A In 1948.

Q And when did Marilyn's grandfather die?

A On October 26th of 1954.

Q During this trial?

A Yes, sir.

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Q Now, did Sam and Marilyn spend -- after their married life and after they came to Cleveland in 1951, did they spend any time at your house?

A Very often for dinner, evening. Probably once a week.

Q Once a week?

A Yes, sir.

Q And did you spend any time at their house?

A Yes, sir.

Q Out on Lake Shore Boulevard?

A A great deal of time.

Q That is, you were very close friends?

A Yes, sir.

Q Now, do you recall that at various times you stayed at their house?

A Yes, sir.

Q And that started when, Mrs. Brown?

A In 1951.

Q Do you recall the occasion of 1951, when you stayed at their home?

A Yes. In November of that year when they went to Colorado Springs.

Q And how long were they gone, do you remember?

A It was a long weekend, from Thursday until Monday evening.

Q And the occasion of your staying there was what, for what purpose?

A To take care of Chip.

Q Now, then, do you recall the next time that you spent any considerable time at their home?

A Well, there were many weekends. One was the following New Year's eve of '51 and '52, and in September of 1952 when they went on a fishing trip to Canada.

Q And you stayed there then?

A For a week, yes, sir.

Q And when was the next time that you recall?

A In October of 1953, when they went to Los Angeles for three weeks.

Q And that would be October of 1953, that was last October?

A That's right.

Q And when was the last time that you stayed any considerable length of time?

A In March of 1954, for about three and a half weeks.

Q And did you see them after March, 1954?

A Yes.

Q And how frequently did you see them after March, 1954, until the day of Marilyn's murder?

A Probably once a week at our house.

Q Now, of course, you had the occasion to observe these people constantly over those years, didn't you?

A Yes, sir.

Q And did you form opinions about Sam and Marilyn?

A Yes, sir.

Q Did you form opinions about their regard for one another?

A Yes.

Q And will you tell the jury what your opinion is, based upon the observation that you made of these two people over those years?

A I thought they were very, very much in love, very happy together.

Q Now, in July -- or in June, did you go away?

A Yes, sir.

Q When did you leave the city?

A I believe it was the 21st of June.

Q And while you were away, did you receive a letter?

A Yes, sir.

Q Who was the letter from?

A From Marilyn.

Q From Marilyn?

A That's right.

Q And do you know when that letter was written?

A It was written on the 30th of June.

Q On the 30th of June?

A That's right.

Q Do you have the letter?

A No, I don't.

Q Where is the letter?

A Mr. McArthur has it.

MR. CORRIGAN: May I have it,
Mr. McArthur?

MR. PARRINO: It's downstairs.
We'll get it.

Q And how did that letter get out of your possession?

A Well, I gave it to Mr. Severino with the idea that he would not publish it or do anything about it unless he had Dr. Sam's consent and yours.

MR. PARRINO: I object. Just
a moment, please.

THE COURT: No, no. You
have answered the question.

Q Now, then, did the police interview you?

A Yes, sir.

Q And where did that interview take place?

A In a police car up in Rockefeller Park.

Q And did they also interview your husband?

A Yes, sir.

Q And you told them substantially what you have told here today?

A That's right.

Q Now, you lived about 23 miles away from where Dr. Sam and Marilyn lived, didn't you?

A Yes, sir.

Q And did you make that trip quite frequently back and forth?

A Yes.

Q And they came to your house?

A Yes, sir.

Q And did you go to their house without invitation?

A Yes, many times.

Q And did they come to your house unannounced?

A Yes.

Q And that was the association you had, and there was no feeling that you had to call up to make an arrangement before you went to the house?

A No.

Q And that is the way it was with you.

Were you present when there was some talk between Sam and Marilyn about smoking?

A Yes, sir.

tl 3
m 6 Q And will you tell the jury what you remember about that?

A Well, Sam said that he would give her a fur coat if she would refrain from smoking.

Q Do you know where that conversation took place?

A Out at the house, their house.

Q Out at their house?

A Yes, sir.

Q And do you know when it was, about?

A I believe, as far as I can recollect, the early part of last year.

Q Did you have occasion to make an observation about the fact that Marilyn and Chip and Sam would go away to various things together and enjoy one another's company?

A Yes, sir.

Q What do you know about that?

A Basket ball games, football games, out in the boat.

MR. CORRIGAN: I think that is all,
if I have that letter. I will wait.

THE COURT: Are you gentlemen
going to wait for the cross-examination until
you get the letter?

MR. DANACEAU: Well, yes.

MR. MAHON: Yes.

MR. DANACEAU: It has been brought up.

We certainly want to see it.

Q

Handing you this letter --

MR. CORRIGAN:

Will you mark this?

(Defendant's Exhibit 24-A,
being an envelope, and
Defendant's Exhibit 24-B,
being a letter, were marked
for identification.)

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- Q Will you look at it and see if you recognize the handwriting on that letter?
- A Yes, sir.
- Q What is your answer?
- A Yes, sir.
- Q And whose handwriting is it?
- A Marilyn's.
- Q And when was that letter received by you?
- A On July 3rd.
- Q You were at that time where?
- A In Gattenburg, Tennessee.
- Q I have never seen it so I want to look at it.
- That was 1954?
- A Yes, sir.
- Q And this letter was -- McArthur, Detective McArthur, did he go over this letter with you?
- A No, sir, he did not.
- Q He did not?
- A No, sir.
- Q The last time you saw it was when Severino got it from you, is that so?
- A Yes, sir.
- Q Was it published in the newspaper?
- A Yes, sir.

MR. CORRIGAN:

I introduce it in

evidence.

MR. DANACEAU: No objection.

THE COURT: It will be received.

(Defendant's Exhibit 24-A
and 24-B received in
evidence.)

MR. CORRIGAN: Cross-examine.

I think now, as long as I introduced
it in evidence, I shall read it to the jury.

"Wednesday. Dear Mary and Bud."

Q Bud is who?

A My husband.

Q She called him Bud?

A That's right.

MR. CORRIGAN: (Continuing)

"Sorry I had to" -- you'll have to be alongside
me -- "Sorry I had to" --

MR. DANACEAU: No, that isn't
correct, Mr. Corrigan. I think you are in
error there. I suggest you let her read it.

"Sorry I didn't."

A "Sorry I didn't get to say goodbye to you."

Q "Sorry I didn't get to say goodbye to you. Can't remember
where we were" --

MR. DANACEAU: When we were.

Q "When we were."

A "Where we were."

Q "Guess where we were? I'm at 1861 'Grandpa sitting.'
Carol has gone to lunch."

Who is Carol?

A A lady that lives with us, Carol Kirkwood.

Q -- "with one of our friends."

A "Went to the Alcazar."

Q "Went to the Alcazar I guess."

Maybe you better read it.

A "Chip and I got here about noon and Carol said she'd be
back about three o'clock."

Q Don't read it too fast now so the jury can hear it and
understand it.

A "I fixed lunch and H.P. had a four minute egg, toast and
honey, and? -- I think I'll have to put my glasses on
myself. -- "and apricot and milk. Ate every bit of it."

Q Wait, Mrs. Brown. When you read down that way your voice
is lost. Would you come down here and read it?

A Yes.

Q Stand in front of the jury.

(Thereupon witness leaves witness stand and stands
in front of jury.)

THE WITNESS: Right here?

MR. CORRIGAN: Yes, right in

front of them. Face the jury.

THE WITNESS:

(Continuing)

"Chip and I had cold cuts, sandwiches, milk, crackers and hard boiled egg with banana and some prunes. H.P. said he would nap. It's about 2:10 now, but he is talking now so this is rather incoherent because I'm chatting too. Sounds like you are baking. I read your three letters. And where is mine? I wish we could have come down but Sam has really been busy lately. We have had wonderful weather, quite cool, a little cool for swimming and we don't like that. Looked like rain when we drove over but now the sun is out.

"Chip is playing with the kids next door in their back yard. Paul has shorts on and I think his legs are fatter than mine.

"Funny Mrs. Nussel never called up -- showed up. Are you sure she understood the date? I guess they are getting along all right though. H.P. looks quite good I think and his voice seems quite strong."

Q Who is H.P.?

A My father, Harry Parsons.

Q Harry Parsons?

A Yes.

(Continuing) "We are going to the stock car races with Otto and Bev tonight. After their program we'll meet them. We are taking Chip and they are taking Dewey. Otto is a bug on racing.

"The Bay folks you know are all fine. Roger is a daily visitor and has been cutting our lawn. He spent a week at Camp Perry. The high school sent him to Boy's State. I forget what office he held.

"We have been playing golf twice a week at North Olmsted. I really love it but Sam thinks I'm insane and should be home working.

"Hold your hats, some news. If all goes well you should be an aunt and uncle again in December. I'm sure maybe you guessed as I have put on weight but I wanted to wait to tell people as long as I could as it makes the time seem shorter. Still sounds long though. Did you guess? Some of the family, in fact most, don't know yet. Guess I should tell H.P. today. Maybe it will perk him up. Maybe. I don't want Chip to know yet as I can just hear the questions so we'll wait a while for that. After seven and a half years

I'll really have to begin all over again. I need so much stuff, but can borrow a lot. You'll have to bone-up with my baby book as we'll really need a baby sitter. How's that for a bombshell exploding in the middle of your vacation? I'm surprised too to tell the truth. I just told H.P. and all he said was 'No!! Ha.

"The house is very neat and clean and H.P. says Carol is very good to him. Runs errands, and so forth. Said they had lamb chops for dinner and they were good. She really is very nice.

"I'm in the midst of arranging a luncheon at Stouffer's Westgate next Tuesday for the Auxiliary to get the new officers installed. I'll go out as president and Dorothy takes over. It's all hers. I'm glad to be through.

"Grandpa just got his own milk and crackers. I was on the phone. I'll try to go over next week again. Write to us. How are you doing on my things? Hope you can get them. The darn popsicle man just came and I have a half a popsicle as Jimmy and Paul split one so Chip had to. Tastes cool though.

"Have a wonderful time. You deserve it.
All is well here. Wish we could be with you.
Some day we will.

"Love, Marilyn.

"Hope you can read this. Pepper and Coke
say 'Hi.'"

MR. CORRIGAN: You may cross-examine.

CROSS-EXAMINATION OF MARY BROWN

By Mr. Danaceau:

Q Mr. Severino is a newspaper man, is he?

A Yes.

Q Cleveland Press?

A Cleveland News.

Q Cleveland News. I beg your pardon. And you gave him
this letter, did you not?

A Yes, sir.

Q You knew he was a newspaper man?

A I did.

MR. DANACEAU: That is all.

MR. CORRIGAN: Did he get it
from you to print in the newspaper?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

MR. CORRIGAN: That is all.

Thank you, Mrs. Brown. (Witness excused.)

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MR. GARMONE: If the Court please,
at this time the defendant, Sam H. Sheppard,
rests his case.

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THEREUPON THE DEFENDANT RESTED.

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THE COURT: Let's have it under-
stood that the resting is still subject to a check
on all their exhibits when we are through with all
the testimony.

MR. GARMONE: That is correct.

THE COURT: Has the State any
rebuttal?

MR. DANACEAU: Yes. He is bringing
up a witness.

(Thereupon the following proceedings were
had out of the hearing of the jury):

MR. GARMONE: Let the record show
that we are renewing all of the motions made at
the end of the State's case, as follows: - -

MR. PETERSILGE: The motions are three
in number:

First: To dismiss the indictment, or, in the

alternative, to direct the jury to bring in a verdict of not guilty.

The second motion relates to the count of first degree murder only, and is to enter judgment for the defendant on that count, or, in the alternative, to instruct the jury to bring in a verdict of not guilty on that count.

The third motion relates to all of the included counts, namely, second degree murder, first and second degree manslaughter, assault and battery, and simple assault, and as to each of those counts and as to all of them, the defendant requests the Court to enter judgment for the defendant, or, in the alternative, to instruct the jury to bring in a verdict of not guilty.

THE COURT: Overruled and exceptions to the defendant.

MR. PETERSILGE: Exceptions.

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R E B U T T A L

Thereupon the State of Ohio, further to maintain the issues on its part to be maintained, and to rebut the evidence offered on behalf of the defendant, called as a witness JAY H. HUBACH, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Danaceau:

Q Will you give us your name?

A Jay H. Hubach.

Q And how do you spell your last name?

A H-u-b-a-c-h.

Q And you live where?

A Bay Village.

Q And you are on the Bay Village police force?

A That's correct.

Q How long have you been on the Bay Village police force?

A Nearly seven years.

Q I didn't get that.

A Nearly seven years.

Q And what position do you occupy?

A Sergeant.

Q And how long have you been Sergeant?

A About five and a half years.

Q And do you know Dr. Sam Sheppard?

A Yes, sir.

Q How long have you known him?

A About two years.

Q Have you ever been at his home before this tragedy?

A Yes, sir.

Q How often?

A Not too many occasions, that is, in personal visits.

Q And how many personal visits?

A I have been water skiing with him several times.

Q You have been water skiing with him several times?

A Yes, sir.

MR. CORRIGAN: I object. That
is not rebuttal.

MR. MAHON: It is all preliminary.

MR. DANACEAU: It is all preliminary.
I don't know what the objection is. Mr. Corrigan
has objected.

THE COURT: Yes. I think it is
not rebuttal of anything that has been testified
here.

MR. MAHON: Well, it is preliminary.

MR. DANACEAU: It is nothing in
issue thus far. It is all preliminary.

THE COURT: Let's go ahead.

Q Did you know Marilyn Sheppard?

A Yes, sir.

Q How long have you known her?

A Approximately the same length of time, maybe just a little
bit less.

Q Of course, you knew that Dr. Sam Sheppard was the unofficial
police ~~surgeon~~ connected with Bay Village Police Department?

A Unofficial, yes.

Q You were friendly with him, were you not?

A Yes, sir.

MR. CORRIGAN: Object. It isn't
rebuttal.

THE COURT: All right. Go ahead.

Q It has been testified here, I believe, that you were present,
Sergeant Hubach, in a visit to the Sheppard home, was it
November 11th --

MR. GARMONE: On or about November
11th.

Q -- on or about November 11th of this year. Do you recall
that?

A Correct.

Q Were you present?

A Yes, sir.

Q Who was there?

A Mrs. Dorothy Sheppard, Dr. Richard Sheppard, Dr. Stephen Sheppard, and Mr. David Phillips.

Q Who is Mr. David Phillips?

A He is a friend of the Sheppard family.

Q And you were there?

A Yes, sir.

Q It has been testified here that Dorothy Sheppard saw or found a key underneath a wastebasket. Do you recall that incident?

A I recall of the key, sir, but I don't recall it ever being under the wastebasket.

Q Where is this wastebasket?

A In location, it was between the sink and the cupboards. Now, the cupboards are on the east side of the room and the sink is facing the south.

Q And in what room is this?

A That is the kitchen.

Q In the kitchen. And were you in the kitchen when this occurred?

A I was in the doorway, sir.

Q And did Dorothy point something out to you?

A I don't recall as she pointed out or I saw it, or it was simultaneously, but we did see the key.

Q And where was the key that you saw?

A When I saw the key it was in the open. It was more or less --

THE COURT: In the what?

MR. DANACEAU: In the open.

THE WITNESS: In the open.

THE COURT: Oh, yes.

Q Was it underneath this basket?

A I didn't see it under the basket.

Q Who picked it up?

A I'm not positive of that, whether Mrs. Sheppard picked it up and handed it to me, or whether I picked it up. I'm not positive.

Q Now, then, Sergeant, you have been in that home many times?

A Yes, sir.

Q After July 4th and prior to November 11th of this year, is that correct?

A That's correct.

Q Were you in that home when a search was made in this very room in the kitchen?

A Yes, sir.

Q Before that, before November 11th?

A Yes, sir.

Q And when was that?

A It was the latter part of July, possibly around the 22nd

or the 23rd.

Q And by whom was the search being made?

A By the boys from the Cleveland laboratory.

Q And were you in the kitchen at the time the search was being made?

A Yes, sir.

Q State to the jury what the fact is as to whether or not that basket was moved or a search made under it or around it?

A That basket was moved at that time by Detective Elmer -- is all I can think of is his first name, I can't think of his last name -- he moved that out to the center of the kitchen floor at which time he dumped a lot of his refuse into that can.

Q And was there a key there at that time?

A No, sir.

Q It has been testified here, Sergeant, that you accompanied -- withdraw that.

It has been testified here, sir, that you suggested to Dr. Sam Sheppard that he carry a pistol or a gun. Did you ever make any such suggestion to Dr. Sam Sheppard?

A I don't recall of making any suggestion to that effect.

Q Did you have a conversation with him about carrying a gun?

A Yes, sir.

Q Will you relate to the jury precisely what that conversation was, what he said to you and what you said to him?

A I don't know as I can recall the exact words.

Q Well, give us the substance.

A The substance or gist of it was to the effect of the ability to carry a gun, and I explained to the best of my knowledge the concealed weapons law, and what it pertained to, and whether it would apply to him, I didn't know.

I also stated that I didn't know whether his police surgeon's commission in a neighboring town would enable him to carry that gun freely, but that the best thing to do was seek counsel from his attorney.

Q Was that the substance of the conversation?

A That is the general gist of it, yes, sir.

Q Did you later see Dr. Sam Sheppard with a pistol or a gun on him?

A Sometime later I saw him have one on him. It was in his father's home.

Q Do you remember when it was or about what time that was?

A I would say possibly the week after the funeral.

Q And where on his body did he carry this gun?

A It was in the open, that is, it was in a holster on his belt.

Q Did you then have a conversation with him about carrying the gun?

A As I was leaving I recall saying to him that, "Doctor, you had better get advice from your attorney as to carrying that

weapon."

Q What did he say?

A Words to the effect that he wasn't interested or didn't care, he was going to carry it anyways.

Q Sergeant Hubach, have you been subpoenaed by the defense within the last few days?

A Yes, sir.

Q Did they call you to the stand?

A No, sir.

MR. DANACEAU: You may inquire.

CROSS EXAMINATION OF JAY H. HUBACH

By Mr. Garmone:

Q Sergeant Hubach, you have been with the Bay Village police force for how long a period?

A A member of the force?

Q Yes.

A Six years and seven months, to be exact.

Q And about five and a half of those years you have had the rank of Sergeant?

A Yes, sir.

Q Now, how many times would you say, between the 4th of July and November 11th, that you had the opportunity of going through the Sheppard home at 28924 West Lake Road?

A It would be hard to say exactly how many days I was in

there.

Q Well, the approximate number of times.

A Possibly ten or twelve.

Q And during any of those ten or twelve times you never once touched the wastebasket, did you?

A I, myself, never touched the wastebasket.

Q Now, coming down to the 11th of November, when you first saw the key, where was it in reference to where the wastebasket was located?

A I would say, as I recall, about a foot and a half to two foot.

Q And was there anything in the wastebasket?

A Yes.

Q Litter?

A Yes.

Q Empty milk containers?

A That milk container was put in there by Dr. Richard Sheppard that morning.

Q Well, what was some of the litter -- some of the other litter in the wastebasket?

A That I can't explain.

Q But the wastebasket did have litter in it, didn't it?

A Yes, sir.

Q And wasn't Mrs. Dorothy Sheppard in the process of emptying that wastebasket at the time?

A At the time, as I recall --

Q Was she or was she not?

A I can't say that she was in the process of emptying it.

Q Well, was there something said there by Mrs. Dorothy Sheppard that she thinks she'll empty the wastebasket?

A Yes, because there was an odor in the home.

Q Odor in the home, and it was coming from the wastebasket, wasn't it?

A At that time we didn't know.

Q Didn't know. Now, who picked the key up? Did I understand you to say you don't recall?

A That's correct, I don't recall.

Q You participated in the investigation of this matter, didn't you, Sergeant?

A Yes, sir.

Q After the key was picked up what, if anything, did you do with it?

A I took it back to the station and turned it over to the Chief.

Q What was done with it, to your knowledge, after that, do you know?

A To my knowledge, it was put on the key ring with the other two keys.

Q Did you at any time, Officer Hubach, submit that key to any ballistic expert to determine whether or not there was

fingerprints that could be obtained from it?

A No, sir.

Q Did you think that was important?

A At the time of the discovery of the key?

Q Yes.

A I didn't.

Q You didn't. Now, was the key ever taken anywhere other than the Bay Village Police Department?

A To my knowledge, no.

Q Now, when you were asked the question by Mr. Danaceau as to whether or not Sam had obtained permission from you as to whether or not he could carry a pistol, your answer was you don't recall?

MR. DANACEAU: I object to that.

He never said anything about permission. It was a question of whether he suggested that he carry it.

THE COURT: Objection will be sustained. That was not the question.

Q Then I will rephrase my question. When it was suggested to you by Sam Sheppard whether or not he be permitted to carry a pistol, your answer in response to that question was that, "I don't recall," wasn't it?

A I said I don't recall ever mentioning that. I explained to him --

Q

No. Was your answer, in response to the question, when the suggestion by Sam Sheppard was made to you whether he be permitted to carry a pistol or not, "I don't recall"?

MR. DANACEAU: I object again,
because that is not the question.

THE COURT: No, that is not the
question, Mr. Garmone.

MR. GARMONE: Well, then, you put
the question to him.

THE COURT: Let's have the question
from the record, if you can find it, Mr. Reporter.

MR. MAHON: Let the reporter
read the question.

MR. DANACEAU: I suggest the
reporter read the question.

(Question and answer read by the reporter
as follows: "It has been testified here, sir,
that you suggested to Dr. Sam Sheppard that he
carry a pistol or a gun. Did you ever make any
such suggestion to Dr. Sam Sheppard?

"A. I don't recall of making any suggestion
to that effect.")

Q

Was that your answer to the question that was put to you
by Mr. Danaceau?

A

It must be.

Q As read by the reporter.

Now, you were in the house on the morning of the 4th of July, weren't you, Sergeant Hubach?

A Yes, sir.

Q And about what time was it when you first arrived there?

A Roughly about 6:20.

Q Did you go to the bathroom of that home during the course of your observations in and about the Sheppard home that morning?

A Yes, sir.

Q And didn't you, as a matter of fact, see a cigarette butt in the toilet bowl that morning?

A Yes, sir, I did.

Q Did you do anything about it?

A No, sir.

Q Do you think that was good police investigation, Sergeant?

MR. PARRINO: I object to this.

MR. DANACEAU: This isn't --

THE COURT: Objection sustained.

Q Did you call to the attention of -- I will withdraw that.

Who was present, by the way, of officers when you made the observation of the cigarette butt in the toilet bowl about 6:20 a.m. on the morning of July the 4th?

MR. PARRINO: I object to this,

if the Court please, as not being part of rebuttal.

THE COURT: Objection sustained.

Q Were you alone at the time that observation was made?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Did you call the observation to the attention of any of your fellow-officers?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Did you call the observation that you made to the attention of any officers of the Cleveland Police Department?

MR. DANACEAU: We object.

MR. MAHON: Now, if your Honor please, this witness --

THE COURT: Objection sustained.

This witness isn't here as a general witness. He is here only on rebuttal.

MR. GARMONE: I think they opened the door for general examination.

Q Now, Officer, on the 11th, coming back to the incident where the key was observed, did you make a report of that finding?

A There is a report to that effect, yes, sir.

Q Was that report ever submitted to any member of the Cleveland Police Department?

A I believe so. I'm not positive, however.

Q You are not positive?

A No, sir.

Q Was there any member of the Cleveland Police Department that came out to discuss the finding of that key with you?

A Not with me, no, sir.

Q To your knowledge, was there any member of the Cleveland Police Department that came out to discuss the finding of that key with any of your fellow officers?

A I don't know that, sir.

Q Now, you have been asked by Mr. Danaceau in preliminary examination about how long you have known Sam and Marilyn, is that right?

A That's correct.

Q And you testified about two years?

A Correct.

Q And Marilyn maybe a little shorter time?

A Possibly.

Q You, during that period of time, have had an occasion to observe Sam, have you not?

A Yes, sir.

Q And Sam is a good man, isn't he, Sergeant Hubach?

MR. MAHON: I object to the form
of the question.

THE COURT: Yes. Objection will
be sustained.

MR. GARMONE: That is all.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. MAHON: The State rests,
your Honor.

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THEREUPON THE STATE OF OHIO RESTED.

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THE COURT: Ladies and gentlemen
of the jury, --

MR. DANACEAU: Just a moment. The
defense should also rest, if they rest at this
time.

MR. GARMONE: Yes. Let the record
show that we again rest.

THE COURT: The resting by the
State is also subject to the checking of the
exhibits, of course.

MR. GARMONE: That is correct.

MR. DANACEAU: Both sides have
rested.

MR. GARMONE: That is all.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. MAHON: The State rests,
your Honor.

- - -

THEREUPON THE STATE OF OHIO RESTED.

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THE COURT: Ladies and gentlemen
of the jury, --

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show that we again rest.

THE COURT: The resting by the
State is also subject to the checking of the
exhibits, of course.

MR. GARMONE: That is correct.

MR. DANACEAU: Both sides have
rested.

MR. GARMONE: That's right.

THE COURT: Before we finally submit them to the jury in their jury room, they will be checked by both sides, and if we have overlooked anything we will correct it.

MR. GARMONE: All right, sir.

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THEREUPON THE STATE OF OHIO RESTED.

THEREUPON THE DEFENDANT RESTED.

TESTIMONY CLOSED.

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THE COURT: Now, shall we let the jury be excused for a few minutes, and we will decide how we will proceed?

MR. GARMONE: I think so.

MR. DANACEAU: Yes.

THE COURT: Ladies and gentlemen of the jury, this concludes the testimony in this case.

Now, we would like to discuss among ourselves just how we shall proceed to close this chapter. You are not interested in those details at the moment. You will be excused. Return to your

jury room and remain there until we call you.

In the meantime, please do not discuss this case.

MR. DANACEAU: Shall we check the exhibits?

THE COURT: May we agree that the exhibits be checked as a finality when we are all through?

MR. GARMONE: We are agreeable to that.

MR. PARRINO: Yes.

MR. DANACEAU: Only those that have been received may be used. If they are not received, they shouldn't be used.

(Thereupon the following proceedings were had in the absence of the jury):

MR. PETERSILGE: At this time, your Honor, the defense wants to renew its motions, and those motions are three in number.

The first motion is to dismiss the indictment or, in the alternative, to direct the jury to bring in a verdict of not guilty, and that relates to the entire indictment.

The second motion relates only to the count of first degree murder. As to that, the defense

moves that the Court enter judgment for the defendant on that count or, in the alternative, to instruct the jury to bring in a verdict of not guilty.

The third motion relates to the included counts, namely, second degree murder, first and second degree manslaughter, assault and battery, and simple assault.

As to those counts, and each of them, the defense moves that the Court enter a judgment of not guilty for the defendant or, in the alternative, that the Court instruct the jury to bring in a verdict of not guilty.

We also renew the motions previously made from time to time for continuance of the case; for a change of venue; and for withdrawal of a juror.

THE COURT: Overruled.

Exceptions may be noted.

MR. PETERSILGE: Exception.

THE COURT: Now, the matter of time. The Court will state his view now at the moment without it being final on any one. The Court has a feeling he would like to charge this

jury first thing in the morning.

MR. CORRIGAN: Tomorrow morning?

THE COURT: No, not necessarily.

Could we now agree on a schedule that would give you the time you need to present your views to the jury, and still leave the Court ready to charge at 9:15 on Friday morning?

MR. CORRIGAN: I think that that probably could be arranged. That gives us all day and all -- what is the day?

THE COURT: Then we will divide the time equally that you are to take, and we will finish tomorrow at 4:30.

MR. CORRIGAN: It gives us all day today and all day tomorrow for argument, and I think that is sufficient.

THE COURT: Yes, all right.

Would both sides like to have, say, from now until noon to get your thoughts together, and then we will start at 1:15 sharp, and then we will have a whole day and a half for argument?

MR. CORRIGAN: We are ready to proceed.

THE COURT: I know, but the State has to proceed first.

If the State is ready to proceed, the Court is perfectly willing.

MR. DANACEAU: Is it agreeable, then, -- let's figure out what the time is, and then each side should understand how many hours they have so that there will be no dispute about it.

THE COURT: Now, the immediate question is: Is the State prepared and ready to start on its argument now? If you would want an hour, we will grant it, but if the State is ready, the Court is perfectly willing.

MR. DANACEAU: Let's figure this out. There is this afternoon from 1:15 to --

THE COURT: This afternoon would be from 1:15 to 4:30, that would be exactly three hours and 15 minutes, and we will take 15 minutes for recess. That would be three hours that we would use today. Tomorrow morning we would have 9:15 to 12:15, less 15 minutes, that would be another two hours and a half.

MR. DANACEAU: Two and a half in the morning.

THE COURT: And then three in the afternoon. That would be eight and a half hours.

That would be four hours and 15 minutes per side.

MR. CORRIGAN: We would like five hours, your Honor.

MR. DANACEAU: Well, that would be impossible.

MR. CORRIGAN: It isn't impossible if you start now.

THE COURT: No, it wouldn't. We can go to 5:30 tomorrow night.

MR. CORRIGAN: I say it wouldn't be impossible if we start now. It is 25 minutes past 10.

THE COURT: We haven't got the answer to that question.

Is the State ready to proceed?

MR. MAHON: Well, we are just trying to figure the time here.

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MR. PETERSILGE: Maybe we could start at nine o'clock tomorrow morning instead of 9:15 and get a little earlier start.

THE COURT: That is all right with me. That would only give us 15 minutes.

MR. PETERSILGE: Or 8:30, as far as I am concerned. I think the morning is a little better. People are a little fresher than in the afternoon.

THE COURT: Time is a terrific thing, it doesn't stop for anybody. Time goes on.

May I make one suggestion? If you gentlemen would like to have half an hour, that would bring us to eleven o'clock and you would have an hour before noon. Would that help any?

MR. CORRIGAN: Well, they ought to be prepared on their argument to go ahead now.

THE COURT: I'm not sure, Mr. Corrigan.

MR. CORRIGAN: I have to be.

THE COURT: Oh, but you have got time. You will be waiting there.

MR. CORRIGAN: They have had time since the 4th of July to prepare their argument.

MR. MAHON: We can start right now, your Honor.

THE COURT: All right.

MR. MAHON: If we can have just a five-minute recess.

THE COURT: That will give us an hour and a half this morning. Won't that give you exactly five hours apiece?

MR. MAHON: I don't know. I didn't figure it out, Judge.

MR. PETERSILGE: He said he would start after a five-minute recess.

THE COURT: All right.

(Recess taken.)

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(Thereupon the following proceedings were had within the hearing of the jury:)

THE COURT: Ladies and gentlemen of the jury, it is now the privilege of counsel for the State and counsel for the Defense to present to you what are usually referred to as closing statements or closing arguments. What counsel will now say to you is not evidence, and it is not to be considered by you as evidence at all at any time or for any purpose.

The purpose of these presentations is to permit counsel to present to you their views of what they conceive the testimony to have been from this witness stand and, of course, to urge upon you the fair inferences which they believe may be drawn from part of the testimony or all of the testimony put together.

The State, as you have already been informed, has the burden of proof in a case of this kind, and for that reason the State may present a word of opening statement and then require the Defense to present its total statement, following which the State may have a closing word with you.

More than one counsel on each side may participate in these presentations, and they

will divide their own time on each side as they see fit.

I state these things to you now so that you will understand the procedure when it comes into action.

Now, who will open for the State?

MR. DANACEAU: Mr. Parrino.

THE COURT: . Mr. Parrino.

MR. PETERSILGE: Before the State starts, your Honor, we have certain requests for written charges before argument. We have served a copy on the State.

(Thereupon the following proceedings were had outside the hearing of the jury:)

(Thereupon the Defendant, at the close of all of the testimony, before the beginning of the arguments, requested the Court, in writing, to give to the jury the following Special Instructions:)

"I. The Court instructs you that neither the Indictment itself, nor the fact of it having been found and presented by the Grand Jury, constitutes any evidence, or warrants or justifies any presumption or inference as to the guilt of the defendant to the offense charged.

"II. Defendant has entered a plea of 'not guilty' in this case, by which plea he denies each and every

material allegation set forth in the Indictment, and thereby places upon the State of Ohio the burden of proof.

"III. I instruct you that from the beginning of the trial until the end, the State of Ohio has the burden of establishing beyond a reasonable doubt every fact essential to the conviction of the defendant; the defendant has no burden to sustain; it is enough to warrant your verdict of 'not guilty' that is evidence, taken together with that of the State of Ohio, raises a reasonable doubt as to his guilt of the offense charged.

"IV. I instruct you that under the law the defendant is presumed to be innocent of the offense charged in the Indictment; that this presumption continues throughout the trial and the deliberations of the jury, and remains with the defendant in the examination of every fact and proposition necessary to be established on the part of the State of Ohio.

"V. I instruct you that if you can fairly reconcile all the material facts and circumstances proved in this case upon the theory of innocence, it is your duty to find the defendant 'not guilty'.

"VI. A 'reasonable doubt' may exist in this case, when, after a full consideration and comparison of

all the evidence, you are unable to say that you have an abiding conviction to a moral certainty of the guilt of the defendant to the offense charged.

"VII. I instruct you that evidence is 'direct' when the facts in dispute are related or communicated by witnesses who have actual knowledge of them.

"VIII. I instruct you that evidence is 'circumstantial' where a fact which is not directly or positively known is presumed or inferred from one or more facts or circumstances which are established.

"IX. I instruct you that any inference to be drawn from circumstantial evidence cannot be based upon conjecture, surmise or speculation.

"X. I instruct you that an inference of fact cannot be predicated upon another inference, but must be predicated upon a fact established by the evidence.

"XI. I instruct you that to warrant a conviction on circumstantial evidence alone, the facts and circumstances should not only be consistent with the defendant's guilt, but they must be inconsistent with any other rational conclusion or reasonable hypothesis, and such as to leave no reasonable

doubt in the mind of each juror as to the defendant's guilt."

MR. MAHON: They will all be in the general charge, won't they?

THE COURT: Yes. Show the special instructions proffered and not given. They will be included in the charge. Exception.

(Thereupon the following proceedings were had within the hearing of the jury:)

THE COURT: Gentlemen, I will say to you now that the Court will not time you as to the individual presentation, only as to the total time on each side and you can take care of your own.

(Thereupon the following proceedings were had within the hearing of the jury:)

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OPENING ARGUMENT ON BEHALF OF THE STATE

MR. PARRINO: If it please the Court, counsel for the Defense, counsel for the State and ladies and gentlemen of the jury: Judge Blythin has explained to you that at this time it is the privilege of counsel on both sides of this case to direct to your attention remarks which we, in law, call the summation. He has stated to you that what we say here in this summation, of course, is not evidence, but we are giving this opportunity of addressing a jury in this case, as in all cases, in order to give to the jury some of the impressions, possibly, that we think to be of importance, that is to say counsel think to be of importance, so that we may, perhaps, in some little way assist the jury in collecting their thoughts in so far as the evidence is concerned.

Now, before I begin, with your permission, please, there are some preliminary remarks that I should like to address to your attention.

Now, this trial, as I recall, began on or about October 18th and has proceeded up to this time and will very shortly come to its close. You folks, as jurors, have come into this court

room from your various ways of life, from your homes, from your work, and you have given a tremendous sacrifice in time and energy and patience, and perhaps, in some cases, even monetary, to serve as jurors in this important case. And that does not mean to say, of course, that all cases in which persons are called upon to serve as jurors are not important. We appreciate, all of us, that this jury system that we in this country so lovingly cherish and enjoy is one of the bulwarks and foundation of our democracy, and certainly it is one of the things in this country that makes us great.

In my opinion, ladies and gentlemen of the jury, there are numerous tasks which jurors or which citizens are called upon to perform in this democracy of ours from time to time during their lives, and in my opinion, this service that you perform as jurors is second only to that service that is performed by individuals who serve their country in times of war. In my opinion, this comes second to that.

And so it is that I wish to offer each of you individually, Mr. Barrish, Mrs. Borke, and Mr. Verlinger, Mr. Lamb and Mrs. Fauchter,

Mr. Hansen, Mrs. Foote, Mrs. Orenstein, Mr. Bird, Mr. Moravec, Mr. Kollarits, Mrs. Williams, Mrs. Mancini, each of you individually for the careful interest and attention that you have given to this Court and to all of these proceedings throughout these many weeks of trial, I am sure that no one in this court room can adequately express the thanks that we have and appreciation that we have for your great service in this case.

And I wish to thank you, sir, Judge Blythin, for the extremely fair and patient manner that you have conducted these proceedings, fair not only to the State but to the Defense, and may I thank you.

Now, as we are about to begin this statement to you, I want to make certain -- I want to have an understanding with this jury so that as we proceed we will know exactly where we stand. As you know, the evidence in this case has been voluminous indeed. We have, some of us, taken many notes and memoranda as to what has occurred during the course of this trial, but as you recall, when you were sworn as jurors, or prior to being sworn as jurors, it was stated to you that you folks, and only you, are the judges of the facts.

I cannot tell you what the facts are; Mr. Mahon nor Mr. Corrigan nor any of the other gentlemen here in this court room can state to this jury what the facts are in this case. You heard the facts from the witness stand. You have exhibits here in this court room that you may in your deliberations examine and inspect as long as you wish to determine exactly what the facts are. And, as has been stated to you, being the judges of the facts, you can believe any witness that you choose to believe; you can believe all of what they have said or a part of what they have said; you can disbelieve all they have said or disbelieve a part of what they have said.

It is for your, then, taking into account your own experiences in life and the instructions of the Court, to determine what degree of weight and truthfulness you shall give to the testimony of the respective witnesses, and in coming to your conclusions in this regard, as you size up the testimony of all witnesses, whoever they may be, including the State's witnesses -- and I want to be fair about this thing -- you can consider as to what they have said, as to the manner in which they have said it, and consider and weigh carefully

as to whether or not you feel as a reasonable person that what they have said appears to you to be reasonable or not reasonable, probable or not probable, whether it appears to be fantastic or logical. Those are things that you will be called upon to do in your jury room.

And in analyzing the evidence in this case, I say to you, ladies and gentlemen of the jury, you need not use any extraordinary standards or guides. We do not have to be great scholars. I say to you, ladies and gentlemen of the jury, in judging the evidence in this case, take into account your own experiences in life, take into account that which is reasonable and probable, take into account all of your daily experiences, the logic and reason and understanding that you use at your work, wherever that may be, or in your home or with your children, just the simple ordinary reason and understanding and logic that you use every single day of your lives. And if you do that, ladies and gentlemen of the jury, there is no question in my mind that in appraising the evidence in this case you will arrive at a fair verdict.

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And now, I want to come to one further thought with you, if I may, please, and that is this:

As I say, and as you appreciate, the evidence in this case has been great in quantity, and as I attempt here to give you my impressions as to what the evidence has been, it is possible that during the trial I may have been writing something or speaking to Mr. Mahon or Mr. Danaceau, and it is possible that I may misquote some evidence on some particular point, and if I do this, I want you to believe that it is not purposely done, and I want to go one step further:

That if at any time I should fall into that, I ask you in fairness to the defendant to disregard completely everything that I have stated in that regard. Don't take what I tell you is the evidence to be the evidence. Take and accept that what you heard, that which you know to be the evidence. Compare your thoughts with one another. Take what your impressions are as to what is the evidence, and not necessarily what I say or what Mr. Mahon says or Mr. Corrigan, or any of the counsel that may make statements to you.

Now, is that a fair statement?

So, then, let us attempt in some way to review

the facts and evidence in this case. What exactly do we have here?

Now, we have a situation where Marilyn Sheppard and the defendant, Samuel Sheppard, were married sometime in and about 1945, I believe, in California, after they had known one another, quite apparently, and had gone with one another in their high school days, and upon being married, of course, they continued to live together there in California until the time came that they -- that Dr. Sheppard completed his training in California, and they came to Cleveland and resided there in Bay Village, Ohio.

And the evidence shows that this relationship continued between them, and that Marilyn took care of the home and took care of Chip, generally, and that the defendant engaged in his medical practice, which has been described to you, until we come to the night of July the 3, 1954.

It was on that fateful night that the Aherns were at the home of the Sheppards, the Aherns, who apparently have been acquainted with and quite friendly with the defendant and Marilyn for some period of time. That they had some dinner together during the course of that night, and the evidence shows that they -- at least, Mr. Ahern was listening

to a ball game, and that at one point in the evening, at least, the defendant and some of the children, I believe, went downstairs to a punching bag and entertained themselves in that way, and that as the time grew on, the defendant came upstairs, lay on his couch there in the living room, the couch that is adjacent to the stairway, and his head was facing to the north and his feet to the south, and that apparently the defendant fell asleep.

Marilyn, apparently, also was quite drowsy.

It was at this point that as the ball game was terminated, or about to terminate, I believe, I think it was about to terminate, that the Aherns got up and left the home.

It was at one point while Mrs. Ahern was still there, however, that she went to the door there on the north side of the home and closed it and locked it. That they left the home and went to their own home, and there left Marilyn and Sam and Chip in that home alone.

Now, the evidence discloses that sometime later that night, apparently Mayor Houk received a telephone call from Dr. Sheppard, and I think that the substance of that call was, "Come over quick. I think they have killed Marilyn," something

to that effect. Those may not be the exact words.

"I think they've killed Marilyn"

So, of course, Mayor Houk immediately responded to the call of his friend.

Now, at that point, ladies and gentlemen of the jury, let us start being logical. Let us start with things that appear to me to be reasonable and decide for yourselves whether these things are reasonable in your mind or not, because you are the jury. What I think is not important. What you think is most important.

Here we have a man who claims -- who, it is claimed, is confused, is hurt very badly, who his brother, Dr. Stephen Sheppard, the next day claims to have a broken neck. Here we have a man who is supposed to be in a state of shock, traumatic shock and exposure shock. Here is a man who was supposed to have a cold, clammy sweat. Here is a man who is in such a state of shock who we are led to believe is out -- is thought to be out of touch with his surroundings about him.

I say to you ladies and gentlemen of the jury, taking into account again your own experiences in life, have you ever seen a person in a state of shock, traumatic shock as a result of some injury?

I ask you, have you? How do they react?

In the first instance, do you feel that a person in the state of shock has the capacity and the ability to go to a telephone and to coherently dial a number which he has in his mind of a friend to come to his home for help? I don't know. In my -- I feel that he does not, but you are the jurors in this case.

He has the capacity to think and to perform that act of dialing a number on a telephone. Now, is he in a state of shock? That is food for thought, now, is it not?

Now, we are to understand, and we know, of course, that Richard, the brother of the defendant, lives but a short way down the street on Westlake Avenue. By automobile, maybe three minutes away, maybe less, I don't know. I never tried it, but just moments away, but he does not call his brother whose number he knows better than Houk's, most certainly. He does not call his brother, Steve, who lives a somewhat greater distance away, but merely a matter of minutes. Does not call him. Does not call any member of his family to that scene first. Does ~~that~~ seem logical to you? Does that seem reasonable to you that he should first call

Houk?

And I ask you, ladies and gentlemen of the jury, why does he do that? In any event, Houk is called. Houk comes to the home, sees the defendant there in that home. Apparently other calls are made to members of the defendant's family.

Now, Mrs. Houk comes to the scene there, sees the defendant, and apparently solaces him in some way. Now, she goes to him and states to him at one point -- tries to give him a shot of whiskey, which is not unusual, is it, when a person is hurt, to the layman? We are not doctors, are we?

How often is it in our experience that you try to give a person some whiskey, some spirited beverage we think to stimulate? It is the common reaction for the layman, but what does the defendant do when that is offered to him? Is he in a state of shock? Does he know what he is doing? He refuses that shot of whiskey? I wonder why. I wonder why. Does the defendant at that time feel that perhaps he should not drink that whiskey, because when the police come -- and their arrival is inevitable -- when the police come smelling whiskey on his breath, they may think that at the time of this crime he was under the influence of whiskey

and it might hurt his case, but he has the mental capacity to refuse that whiskey and say something to the effect that, "I want to clear up my head," or something to that effect, and some other persons come to that home.

As Houk goes up to the room, he sees there the body of Marilyn brutally beaten and disfigured about the head and face, lying in that bed, and so Mrs. Houk goes to that room and apparently sees the same thing.

A short time thereafter it was that Dr. Stephen Sheppard and Dr. Richard Sheppard come to the scene, Dr. Richard Sheppard coming to the scene, I believe, after the arrival of the police. Dr. Richard Sheppard, as he comes into the home, goes up into the room with a knife in his hand, or, rather, asking the police to get a knife for him. They go up into the room and see that there is no hope for Marilyn.

Now, I think the testimony of Dr. Richard surely is important in this case. Statements that he made to the police, statements that he made to his brother on the morning of his arrival there.

You will recall, ladies and gentlemen of the jury,

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that Dr. Richard, in coming into that home, goes over to the defendant, his brother, and states to him, "Sam, did you do this, or did you have anything to do with it?"

To which Sam replied, "Hell, no."

The brother of the defendant asking him, "Did you do this or did you have anything to do with it?"

Now, what was his state of mind at that time as to the relationship between Marilyn and Sam? What would prompt a brother to make a statement such as that, a statement which, in its import, is so severe that words alone cannot describe. What was the true relationship between the defendant and his wife? Why would a brother immediately ask the defendant that ominous question unless there was something in their background that would immediately make him question that perhaps his brother had committed this most foul, vicious and brutal act? It practically amounted to a direct accusation, did it not?

And we learned later, did we not, ladies and gentlemen of the jury, that it was this same Dr. Richard who had testified at the inquest, and who

had spoken to the police and testifies in this courtroom, that upon seeing the body of Marilyn, that, in his opinion, as a doctor and physician, with long experience and training, that in his opinion Marilyn had been dead for approximately between 18 minutes and two hours at the time he saw her, two hours being the limit that he puts upon that death.

Well, assuming that the two hours was the time that she was dead, and there is evidence in this case to support that, is there not? We do not have the bare statement of Dr. Richard that she was dead for approximately two hours before six o'clock, now, do we? As we go back and look at the evidence in the case, you recall when Dr. Sam's watch was found, the watch which we have here as Exhibit 26-A in the evidence, and you recall that at the time it was found, this watch was stopped and read 4:15. Would that not in some way give you some indication as to the time or the approximate time that Marilyn Sheppard must have died or been killed? Certainly she was killed before the time someone threw this watch into the brush on the north side of the home.

Now, there is no question about that, is there?

The watch stopped at 4:15. Dr. Richard says she might have been dead from 18 minutes to two hours. Now, that pretty well coincides, does it not? That certainly gives some accuracy to his estimate, and the question that I have to ask at this time and put to the reasonable minds of this jury is this:

Where was this defendant, and what was he doing for a period of two long hours? What was happening during that fateful period?

Those are questions, ladies and gentlemen of the jury, that you must answer. Certainly the defendant was not rendered unconscious for that period of time.

And so it was that Richard comes upon the scene. Thereafter, brother Steve comes upon the scene, and again I say to you ladies and gentlemen of the jury, you heard the testimony of Stephen Sheppard. I have not certainly been in these courtrooms for anywhere near the length of time that Mr. Corrigan, or Mr. Mahon, or Mr. Danaceau or Mr. Garmone have appeared and had the privilege to appear in a courtroom such as this and before a jury such as you, but, ladies and gentlemen of the jury, as you appraise the testimony of Dr. Stephen

Sheppard, I ask you to consider:

Have you ever heard such a story in all your life? Have you?

You could not tell what that man was going to say from one moment to the next and from one day to the next, now, could you?

And there is plenty adequate proof in these records, and in these court reporters' notes to support that. How much belief and credibility are you going to give, can you possibly give to the testimony of Dr. Stephen Sheppard?

Now, ladies and gentlemen of the jury, in saying these things to you we are dealing with a serious and grim business. It is not easy for me as a prosecuting attorney to come before this group and say many of the things that we have to say. It is not a simple task. This is a difficult job, and I am sure that you appreciate it, but we are here dealing with murder, we are dealing with foul, brutal and vicious murder, and we must call a spade a spade. You cannot perfume it. It is there. These are the facts, and if at any time I use any expressions you may think to be out of the ordinary, please excuse what I say, but it is my way of expressing what I sincerely believe to be the evidence and the important evidence in this case.

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So Dr. Stephen Sheppard comes there to the scene. He doesn't bring his medical bag with him, but he packs his gun on his person, coming to the home -- and this is the evidence in the case -- he comes into the home, sees Sam there in or about the den, sees him for no more than 60 seconds, one minute. He testified on the stand that he did not recall having any conversation with the Defendant. That is his testimony.

At the inquest he recalls -- there was his testimony that Sam stated to him that, "They killed Marilyn," that's all, "They killed Marilyn." Nothing further was said.

Stephen Sheppard tells us that he did not speak to the Houks when he first came in. Stephen Sheppard tells us he did not speak to the police when he came in, he had no conversation with anyone and no one spoke to him. So after seeing Sam for one minute, what does he do? He immediately rushes through the living room. And where does he go? Directly to the room of Marilyn Sheppard, directly to the room of Marilyn Sheppard.

Now, you see Sam, he is wet. Is it logical that if Sam is wet, if anyone killed Marilyn, that she might be down in the lake? Is that logical?

He has been given no indication as to where Marilyn is located at that moment, and he runs directly and immediately, without hesitation, up to her room.

And here again, ladies and gentlemen of the jury, we come back to the old question as to when exactly was Marilyn Sheppard killed. Was it at or about four o'clock? And what were the events between four o'clock and six o'clock in the morning?

Where Stephen Sheppard can directly go up into that room, and he states to this jury that he is up in that room for no longer than one minute, that he observes the things in detail that he tells us that he observed in great particularity -- do you recall that? -- and then after it is said and done, he is asked, "How long were you there?" And he states, "One minute."

And then he comes downstairs, sees Brother Sam again, and within a few minutes thereafter he takes Sam from that home with the help of other people.

Now, why was it so important to get Sam out of that home within a matter of minutes after the arrival of these people? Of course, the police were there, but no police officer gives to Sam or to Steve or to anyone the permission to take this

Defendant from that house at that time. Why is it so very important to get this man out of that house so very quickly indeed? What does this all mean? Why? Why? Why?

And how do they take him from the house? The desire is so urgent to remove him from that house. You have an ambulance there, you have a stretcher in the house, I believe the police testified, you have a man who is supposed to be in a state of shock, you have an injury that Dr. Stephen diagnoses as a concussion. Of course, I do not believe that at that time he was told by anyone that the Defendant was knocked out, but he diagnoses the injury as a concussion. He takes him out of the house, as he himself described it, by dragging him most of the way or at least a part of the way to the automobile with an ambulance right there in the driveway, and he drives to the hospital at 60 or 70 miles per hour.

Where you have a person with a severe brain injury or a suspected brain injury and a suspected injury perhaps to other parts of his body that may be serious indeed, is it your idea of good medical attention to stuff and throw that person into an automobile, as was done that night, in the way that it was done, when you have all the facilities

there available for doing it in a more reasonable manner? What was the reason, ladies and gentlemen of the jury, that they had to get Sam Sheppard out of that home so quickly that morning?

And I add, going back to this scene for a moment, the police from Bay Village arrived there that morning, Officer Drenkhan. And as Officer Drenkhan arrived there, he saw this medical bag in the hallway with the contents strewn on the floor, as you have seen them in the photograph, not strewn all over that floor as you might suspect a burglar might do, but with the appearance as though somebody had just lifted it over. And there in the living room some papers strewn on the floor with the desk drawers of that leaf desk pulled out, with nothing apparently in great disarray or greatly disturbed. And there in the den the drawers removed and placed one on top of one another.

I say to you, ladies and gentlemen of the jury, if this indeed was a burglary, this certainly was the most -- the neatest burglar in history.

There was no burglary there on that morning, ladies and gentlemen of the jury, someone

obviously had the desire to make it look like a burglary. And so Officer Drenkhan tells us that when he got there that morning -- and keep in mind, if you will, please, who is this Officer Drenkhan? He is a member of the Bay Village Police Department. The Bay Village Police Department, you must take into account, is a group of some seven or eight officers, and the Defendant knew them and they knew him and knew Marilyn, and they were not intimate friends, but certainly they were friendly toward one another. Can there be any doubt about that? Can there be any doubt about that whatsoever?

This same Bay View Police Department and Officer Drenkhan, who had some brief words with the Defendant there on the morning of the 4th, but who did not bother to question him again later on the 4th of July, he was not questioned by the Bay Village Police on the 5th of July or on the 6th of July or on the 7th of July, but on the 8th of July was questioned, not upon any request by Officer Drenkhan to participate in the questioning, but by a request and command performance, as it were, by the Sheppards to have this friend or this friendly person participate in that questioning,

which he did on the 8th, which I believe was a Thursday.

Now, we have this same police officer coming into that home, going through the kitchen and going upstairs. It's daylight now. Light shines through the windows in that home. And there is a couch that appears in the L of that room on the east side immediately west of the steps. And there as he is going up those steps he -- and being one of the very first persons on that scene -- he sees the jacket in the position that it is here in this photograph, State's Exhibit No. 8. No, he did not stop and hesitate on that stairway. He was going up the stairway, and this Mr. Drenkhan, the friend of the Defendant, says under oath in this court room that he did see that jacket and that substantially he saw that jacket as he was going upstairs, and that a short time later that morning he saw this jacket in the same position that we have it here in this photograph.

About 6:25 that same morning Chief Eaton came into the premises, and that he was walking through the living room, and that he saw this jacket in exactly the position that we have it here in this photograph.

Now, what does that mean? Is that important in this case? Is that important in this case? It is for you to decide.

Let's reconstruct that for a moment. Here we have the Aherns telling us that when they left the Defendant was lying on this couch wearing a T-shirt and wearing this jacket, State's Exhibit No. 7. Drenkhan sees the jacket that morning when he comes into that home, Chief Eaton sees the jacket there that morning when he comes into that home, neatly folded on this couch, as we have it described in the picture.

Now, if during the course of the night we are given to believe he became warm and removed this jacket, does it seem logical and likely to you that he would take the jacket, in his sleep, and fold it on the couch and then lie on top of the jacket? And if he did, wouldn't the jacket be not neatly folded, as we have it in the photograph? If during the night he took the jacket off because he was warm and threw it to the floor, isn't it likely that the jacket would just fall to the floor, in the position that perhaps you now see it?

Just exactly, ladies and gentlemen of the

jury, when was that jacket taken from the Defendant and so neatly folded, as we have it in the picture? Did a burglar do that or did the Defendant do that, and when did he do that? And if he got up from that couch and neatly folded that jacket, what were the events after that?

If he did that, ladies and gentlemen of the jury, certainly perhaps he must have been going up to bed, if he neatly folded that jacket. Or maybe, it is possible, is it not, that the jacket -- he states, I believe, that he recalls Marilyn attempting to arouse him during the course of the night. Folding a jacket as neatly as we have it here in this photograph, is that something that a woman would logically do with the clothing of her husband?

But the jacket, being neatly folded on the couch, certainly indicates that when that was done, the Defendant was in a clear mind. And after he claims that he heard Marilyn scream, do you think it is logical that he took the time to remove the jacket and neatly place it on the couch?

You remember Dr. Steve's testimony in that respect, don't you? Dr. Steve was the person

that is going to cure all of these things. He tells us that being in the home for a minute and running upstairs or half running-half walking -- I don't recall what his description was -- he saw this jacket lying on the floor, and he took this box here and we had him illustrate the manner in which the jacket was lying on the floor. And you recall the manner in which he placed the jacket, do you not? He placed the jacket neatly upon the floor in substantially the manner that I have it here, with the top of it up against the couch.

Now, it is for you to decide. Does that sound reasonable to you, if Sam threw it off during the course of the night, that the jacket was going to be as neatly folded as that? Did Stephen see that jacket neatly folded on the floor? Or in this instance, is Dr. Stephen attempting to help his brother in a way that he has in so many instances in this case, from his own testimony, as he did by ushering him and taking him from the home so quickly as he did that morning? Is this jacket just another example of an attempt to assist his brother?

Ladies and gentlemen of the jury, it is

for you to determine and to give such weight as you think you shall give to the evidence as to the position of this jacket on that couch on the morning of the 4th.

And so the Defendant is taken to the Bay View Hospital, and he is supposed to be under the care and treatment of Dr. Stephen Sheppard.

But before getting to the hospital, what does the Defendant tell us, he, himself, on the witness stand, as to what the events were of that night before he went to the hospital? He tells us that at some time in the morning, he does not recall when, he heard his wife scream; and hearing her scream, he rises from this couch. And, of course, he's got a light switch there that leads to the second floor, which he does not use.

He rushes to the second floor. Apparently the downstairs is completely dark. And I don't know if that sounds logical to me. Is it reasonable that a wife, who has gone to bed in the upper part of a home, will leave the downstairs of a home in total darkness for her husband, who she knows is downstairs, who will later come up that evening? I don't know. Does that seem logical

to you ladies?

But he says hearing this scream, he rushes upstairs. There at the base of the landing, or at the landing leading to the second floor there is this light switch. Does the Defendant take the trouble to merely to flick on that light switch, where the entire upstairs would be illuminated so that he could see exactly what he was doing?

Going upstairs, he tells us in various stories at various times that at one time he tells certain persons that he was clobbered immediately upon getting to the top of the stairs; on another time that he rushed into the room and there he struggled with an unknown form; that he did not put the light on in the room as he went into that room; that he could not describe this form in any great detail, and that before he knew it, he was knocked out, rendered unconscious.

Now, who is this Defendant? We have here a man 30 years of age, six foot tall, 180 pounds, apparently in the prime of life, active athletically throughout most of his life, football, basketball, skiing, water skiing, punching bag; this man who is rendered senseless, apparently, with one single

blow. There is a mark on his face but no marks on his hands or his knuckles to show that he might have engaged in combat with this person then and there.

And I ask you men on this jury: If you run into a room where you felt that some violence was being committed against your wife or your loved one, how much strength and force could you muster up under that situation, where it is a matter of life and death, to possibly kill or be killed? How much strength can a normal man work up in a situation such as that? And exactly what force did the Defendant work up on this night in that room?

Was there a struggle in that room? He tells us that he struggled with an unknown assailant in that room. Other than the condition of Marilyn's bed, was there a struggle? We are told that the area between the bed and the east wall is about three feet. Was there a struggle? There is no signs of it on the floor, of course.

There is a chair there in the corner that does not seem to be disturbed. The Defendant tells us that later that morning when he was awakened, he was in that room, some distance into it.

Now, ladies and gentlemen of the jury, it is reasonable to assume, is it not, that if there was a struggle, that the quarters there were rather narrow indeed, that this unknown phantom who was supposed to have killed Marilyn Sheppard thought in the struggle with the Defendant of life and death that he certainly must have struck some of the blows against her before the arrival of Sam and possibly had completed his job? In the first place, I want to know: Where was Sam while approximately 35 blows were being struck against that woman? What was he doing? Where was he? How long does it take an assailant to strike 35 blows as fast as you can? Try it in your jury room, try it. Thirty-five. Certainly a matter of ^{at} least 30 seconds, maybe more, maybe less.

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How long does it take you to get up -- I don't know -- I don't recall how many stairs there were there, eight, ten, twelve, I don't know. How long does it take you to do that? Two seconds, three seconds? Where was this man while his wife was being brutally murdered, if such she was, as he explains in the fantastic story that he tries to tell to reasonable men and women?

And coming into the room, is there any kind of a struggle there? If there was a struggle, you will recall that a great part of that east wall where those doors are located in that room immediately to the right as you go in, you remember, you saw it, and it has been described to you, and there are pictures of it -- if there was a life and death struggle in that room, isn't it logical, indeed, that either Sam or his assailant and/or both would have brushed up against that wall and you would see smear marks of blood all over that wall?

Now, if that sounds logical to you, take it and accept it. If it does not sound logical to you, say to yourselves, Mr. Parrino, you are wrong. We cannot take what you say to be logical, so we don't

believe that.

Now, isn't that fair? Can I say more to you?

Sam tells us further that upon knocked out there -- I don't know how long he is supposed to be knocked out. I see fights on the television, persons that are battered and beaten for 15 rounds, and they stand up under the most severe and brutal and shocking beating in the prize ring that you could possibly see, perhaps, but here is a man apparently with one blow, out. And how long is he out? An hour?

But when he does awaken to reality again, he is sitting there in that room, he sits up, and there he has the memory to recall -- this man who was in a state of shock -- he has the memory to recall that there is his wallet, that there is a badge apparently shining from that wallet. He picks it up and puts it in his pocket. He gets up and he looks at Marilyn. Perhaps he touches her. I think that was his testimony. But as he is running up those stairs prior to that moment he does not recall whether he had his jacket on or his T-shirt on.

Now, what would be there in his mind? What would there be in his mind to not permit him to remember if he had his jacket and his T-shirt on when

he ran upstairs? He wasn't hit yet, was he? Why can't he remember that? This convenient memory of this defendant.

So after he awakens, he doesn't recall if he had his T-shirt on at that point either after being knocked unconscious.

Now, ladies and gentlemen, we are talking logic. So he awakens, he sees his wife there on the bed, he touches her in some way, and then he tells us that to evaluate the situation he goes from that room into Chip's room, or at least partially in there and feels that there is nothing wrong with Chip, or that he has not been molested, leaves that room, or is about to leave that room, and then he hears a noise downstairs. He is still upstairs. What does he do?

Now, get this picture, ladies and gentlemen of the jury. Please get this picture. You have here a fellow who is in his home upstairs. There are two people in this world that are to him most dear, his wife and his child. He says he felt that his wife was already gone, his child was all right, and there he was, and he hears something downstairs. What did he do? There you have a telephone in Marilyn's room between the two beds. Does he go to that telephone

and make some call to the police?

Here you have a fellow that has just apparently brutally murdered Marilyn. You have a fellow who apparently with one blow has knocked you out, a fellow who could make short work of you if he wanted to. What does he do? He doesn't call the police, with a telephone that is just a few feet away. He could have safety to himself, safety to his child, and perhaps attempt to help his wife further by merely staying upstairs, but he wants us to believe that he is the hero, so that he runs downstairs.

Does he turn the light on as he goes downstairs? What is the logical thing you would do? You turn -- there is another switch upstairs where you could turn the light on and see exactly what you were doing downstairs.

So he runs downstairs without the aid of any instrument or weapon or toy or anything that he could get his hands on before he goes down to kill this man that just killed Marilyn. You are not going to destroy this man with your bare hands, are you? You are not going to destroy this man that felled you with one blow with your bare hands, are you?

Everything you love is upstairs, and he is downstairs. What could you possibly do unless you

have a gun or an instrument to use in destroying that evil person?

At the bottom of the stairs there to the left at the fireplace you have all these tongs and fireplace instruments. Does he pick up something so that he can kill or strike this man? None of those things does he do. He just wants to engage apparently in hand-to-hand combat.

Now, ladies and gentlemen of the jury, before we continue with that point, let me direct to your attention something that I think to be of tremendous importance in this case, of tremendous importance, and if you do not think it to be of importance, please ignore what I say. Will you do that, please? What I am about to say, if you don't think it is important, forget it and ignore it, all of you.

Is there any doubt in anybody's mind that this assailant of Marilyn used some vicious instrument to perform that violent act, some vicious instrument?

This assailant of Marilyn's struck Marilyn these so many blows about the head that took her from the face of this earth in the brutal way that cannot certainly be described by my inadequate vocabulary.

So you have Sam here that is in the same room with this

unknown phantom. There is a light coming from the dressing room that shines through the corridor there and partially into Marilyn's room. If there was a burglar there, if there was a burglar there, and this burglar took the time and the trouble to strike all those vicious blows on Marilyn's head, I ask you, I ask you and you and you and you, each of you on this jury, why, why did not that assailant use that same instrument, not to strike 35 blows against Sam, why did he not use the same instrument to strike one single solitary blow against Sam with that instrument?

Does that sound logical to you? Why didn't he just strike Sam on the head just once with that, a burglar coming into the room and killing one person as viciously as he did, realizing that here is a man that comes into the room, there is some light here, there is a possibility that he can identify me, he saw me, I am in the room, I am killing this woman, this fellow who is probably the husband sees me here, maybe he can identify me and see me for who I am and what I am. If I am going to kill one, why do I stop on one? If you are going to commit murder and kill one, why can't you stop on two or three? You don't stop there. A burglar certainly does not leave a

living witness at the scene of the burglary, does he?
Somebody that could possibly identify him?

That is the question that I have to ask. Why
did not that vicious murderer strike Sam just one
single blow with that lethal weapon on and about the
head as he did Marilyn? Was he being charitable to
Sam?

Now, that is the question that I have to ask.
Can you answer that question in your minds? Does
what I have said sound logical to you?

And I repeat, if it does not sound logical,
of
all/you please ignore what I have said.

I see that the noon hour draws near, your
Honor. I think that it would be a reasonable time
to adjourn.

THE COURT: All right. I think that
time is a little fast. It is nine minutes to 12.
All right.

Ladies and gentlemen of the jury, we will
adjourn for the noon hour, and please be very careful
in these last stages of this hearing not to discuss
this case or mention it in any way, shape or manner
to anyone, or even to each other.

1:15 this afternoon, please.

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(Thereupon at 11:55 o'clock a.m. an adjournment was taken to 1:15 o'clock p.m., Wednesday, December 15, 1954, at which time the following proceedings were had):

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Afternoon Session, Wednesday, December 15, 1954, 1:15 o'clock

OPENING ARGUMENT ON BEHALF OF THE STATE (CONTINUED)

MR. PARRINO: If it please the Court, counsel for the Defense, Mr. Mahon, Mr. Danaceau, ladies and gentlemen of the jury: As we adjourned for the noon hour we were discussing that point where Marilyn was struck and beaten by this assailant and where Sam was not struck by and with the same instrument, where Sam thereafter claims that he ran downstairs or, rather, went downstairs, saw a figure or a form, as he calls it, on the north side there of that home; that he went through the living room and pursued that form down to the beach.

Was there a burglar in this home that night? Does it seem logical to you that if there were a burglar, that as a means of escape he would run toward the beach where there would be a lake beyond that?

And as he went down to the beach, it is claimed here that he saw this unknown assailant, who was out of his sight for a few moments, and then he saw him again. And that as they got down to the beach, the Defendant tells us that either he caught this man or this form or assailant from behind or

this form stopped and, in any event, he does state apparently that there was some kind of a struggle there on the beach; and yet, a short time later when the police arrived, they looked at the beach there and in the vicinity where you would expect to find scuff marks as a result of any scuffle or struggle, the police and the persons that went down there for the first time -- I think it was Officer Callahan and Sommers, if I am not mistaken, I think it was the firemen that were down there first-- they saw no marks or signs of any struggle on the beach.

And if you say to yourself, "Well, maybe the water was coming up against the bank in such a way that it completely covered all that beach so that there wasn't any beach," but the Defendant tells us that he was knocked out there on that beach again, apparently by another blow. And if he was knocked out, as he claims that he was knocked out, lying there on the beach, as he claims he was, on his face and the water was coming up to that beach, then isn't it reasonable to say to yourself, "Then why doesn't this man drown if he is supposed to be unconscious? Why doesn't some of that water get into his mouth and into his nose, go down into his

lungs and drown him?

You can't have both. If there was no water there, then there would have to be some signs on the beach. If there was water there, he is knocked out, then how could a person survive under those circumstances, if he is there face down on that beach? How does that appear to you?

And then we have this same assailant. Is this the same assailant that struck him up in the room? He did not use this weapon that he used against Marilyn there in the room and then here on the beach again. Isn't it logical to think that an assailant that remains there on the premises would maintain control of any lethal weapon that he might have had and use it there again against the Defendant, Dr. Sam, on the beach, and strike him with that weapon there? Why is that? What do you have here?

You have here this supposed phantom, this unknown assailant, who will take the time and the trouble to go into Marilyn's room there as she lies on her bed in her pajamas defenseless, with no protection whatsoever -- you have here a defenseless woman -- why would an assailant take the time and the trouble to strike a defenseless woman all these blows, who he could, if he wanted to, subdue with

his hands probably, strike all these blows against her and then not strike a single blow against Sam there in the room? Six foot tall, 180 pounds, athletic, 30 years of age, in the prime of life, he does not strike one blow against him there in the room. Then again on the beach not one single blow with that instrument. Why? Was there an assailant in that home? That's for you to decide.

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Then later that morning the police are looking around there, searching the area. The Boy Scouts were looking around there at the request of the police, apparently. Maybe that is not the best way to do it, but here we have Bay Village, a department of some eight police officers. I wonder how many murders they have had in that community for the last ten years, probably none other than this.

So these Boy Scouts are there looking for something that might be of help. They look through the brush, and what do they find? I think it was Larry Houk. He finds this green bag, State's Exhibit 26, that contained Dr. Sam's watch, his ring and his key chain.

Now, what importance, if any, do these things bear in this issue, in this case? Do they have any bearing? How do you feel about that? You have thought about this thing, I know, for all these weeks. I know that you have been diligent in your duties in that you have not discussed this case with anyone, because I have every confidence in this jury, but I have every confidence, also, that this thing certainly has been going through your mind, as it has been going through my mind for all these weeks and all these days, and I can, in my honest beliefs, come to

certain conclusions, but you folks were admonished, and I am sure that you did not come to any specific conclusions as to all this evidence that is in until the Court states to you what is the law to be applied, but, anyhow, does this stuff that sits here before me become important in this case? What was the appearance of these items that were found in that bag?

Well, let's look at the watch, Sam's watch found in the bag with water under the crystal. You must say to yourselves, "How did the water get under the crystal of that watch?"

Oh, there has been many things here stated as to how that possibly could have been done, how Sam was pushing out a rowboat and how he went to the stock car races and it was raining one day, and apparently they want you to believe that as a result of that rain the water got in his watch, or when he was pushing that boat.

Well, you can believe that if you want to, but how did the water get under the crystal of that watch? Was it in the way it was described, or did the water get under the crystal of that watch on that night when Sam went down to that lake and was in the water there? And for what purpose was he in the water? I cannot say. It is for you to decide.

We are told here that this watch was -- that there was blood on this watch, that the blood was on the crystal of the watch, some of it, and that some of it was on the band. You have pictures of it here that you can look at, if you want to. You remember the color photographs, which you will recall, I am sure.

Now, how and when did that blood get on the watch? We are told by Dr. Sam that after he was knocked out he saw, or, rather, he touched Marilyn, he touched her afterwards. After he was knocked out the first time, did he get the blood on his watch then?

Well, as we are to understand, he wears his watch, as I am wearing it now, with the face at the back of his wrist. If he touches her, how is he going to touch her? Is he going to touch her in that manner (indicating), or is he going to touch her with his fingers, and if he touches her with his fingers how does he get blood on the watch, band of the watch? Those are important things in this case. How does he get blood on the crystal of the watch? And recall that this watch was supposed to have been put into this bag by an alleged burglar.

Then there is an examination made of this bag, of the outer portion of it and of the inner portion

of it, but still there is no blood on the bag. When was the watch put into the bag? The only logical conclusion you can draw is that the watch was put into the bag after the blood was dry, and does that seem logical? Don't you think that is true?

Somebody put the watch into the bag as an afterthought, somebody put the ring into the bag as an afterthought, somebody put the key chain into the bag as an afterthought. There was no blood on the bag, on the interior or the exterior.

Now, you say to yourselves, well, on what other occasion could the blood have gotten ~~on~~ the crystal of this watch? So far as we know, Sam only touched her twice, after he was knocked out the first time or after he was knocked out the second time on the beach and came back upstairs. If he was knocked out the second time and came back upstairs and touched her then, he couldn't have the watch on his hand any more, so the blood had to get on the watch after he was knocked out the first time.

Now, ladies and gentlemen of the jury, after he was rendered unconscious, are we to believe that this so-called burglar took from him there in the room the watch and the ring and the key chain? If he did,

then why didn't he take Marilyn's rings that were on her finger? You figure it out.

Where was Sam's T-shirt? What would any burglar want with a T-shirt? Ask yourselves. What would any burglar want with a T-shirt? He was looking for something of value.

As you recall the testimony in this case, there is money all over the house, in drawers, and in cups, twenty-dollar bills here -- I can't even remember in how many different places there was money. Burglar?

So that this burglar, we are to believe, put these items into the bag. He has to find this bag. He has to find this bag to put these articles in it. Why? Cannot he get these articles -- if he wants them so badly, does he have to have a bag? Can't he just put them in his pocket? If he doesn't have a coat pocket, can't he just put them into one of his trouser pockets? Why does he have to have a bag? Why does the man have to make this thing so complicated?

Then is it logical to believe that a burglar is going to go to the time and trouble of putting all these items in a bag, and after putting them in a bag, then throw them away? Why? Are you going to

steal them, and then you are going to throw them away?

There is supposed to be some narcotics missing. If there was, why doesn't he put them in the bag, too? Is he going to collect all his loot, put something in the bag and not put something else in the bag? Why? Why take the bag, put these things in, go outside and then throw it away?

Blood on the watch. How did it get there? When did it get there? You figure it out. You have logical minds. Individually and collectively, I'm sure that you folks will come to the right answer.

And so it was then that Sam was taken from his home by Steve and others, taken to the hospital in a supposed state of shock. We have here the medical chart, Defendant's Exhibit YYY of the Bay View Hospital.

Well, we know something as to what Sam's normal blood pressure is. I think 115 over 74, I think it was stated, and his pulse, and we look at this chart and we see that his blood pressure was at 7 o'clock, 8 o'clock, 9 o'clock, is 140 over 90.

We are told that blood pressure generally, if a person is in a state of traumatic shock, goes down. Here we have it going up. Was he in a state of shock?

The chart was given to Dr. Elkins to have him look at it on the basis of a hypothetical question here yesterday in this courtroom. I asked him to look at this chart, to take all of this information here as to blood pressure and pulse, and at 7 o'clock in the morning on July the 4th, and to ask him if he has got an opinion on the basis of what is in this chart and what Sam's normal responses are insofar as blood pressure and pulse are concerned, and to give us an opinion as to whether or not this defendant was in a state of shock on the morning that he was taken to the hospital.

He said quite freely and frankly, with no hesitation or reservation, didn't he, that he is not responsible for anything that may be in this chart other than what he put in it, and that he would not express an opinion on that subject? I don't know why. But here is the chart. You may examine it and inspect it for yourselves.

We are given to understand that a person in a state of shock is -- I think we have been told here by medical experts that generally the pulse falls, that the breathing becomes rapid and thready. Here we have at 7 o'clock in the morning a notation by Dr. Carver, "Heart sounds at 7 o'clock in the morning,

heart sounds, pulse strong. Slightly irregular."

Was this man in a state of shock?

And so it was that morning, then, that Officers and Schottke and Gareau at sometime questioned him, and so it was that Dr. Gerber arrived there on that morning, and that the Bay Village police were attempting in their own way to cope with this situation; that they thereupon called the police for assistance in the city of Cleveland, who have some more experience in these matters, and I believe that the Cleveland Police Department sent two officers of the Homicide Squad, department, who are members, as I say, of the Homicide Squad, who are familiar with these matters of murder, who know what to do and know from experience how to investigate these things.

So coming to the scene there, they look around and they see that there are no signs of any forcible entry in that room. They go to the police department -- they go to the hospital, rather, in Bay Village, and speak with the defendant. The defendant is able to speak perfectly clearly to them, clearly and coherently. They ask him what happened, and he gives them the story as to how this thing happened, how he was sleeping, he heard some cries, he rushed upstairs, and there he was knocked out. That the officers asked him whether

or not he kept any narcotics in his medical bag or in the house, and I believe that he told Schottke -- or that Schottke testified that the defendant stated that he did not. There was other testimony of things that were said between them. The conversation lasted maybe a half-hour, maybe a little more or less, I don't recall.

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The evidence showed that thereafter these men went back to the police station -- or, rather, to the home and conducted a further investigation there; that later that day the watch was found and the ring was found and the green bag was found, as a result of which they went back and questioned this fellow a second time on the afternoon of July 4th.

And there it was that these officers, viewing the situation as they did, seeing what they saw, examining the premises, finding the watch as they found it, seeing Marilyn as they saw her, they come to certain conclusions and they questioned Sam or Dr. Sam about what they saw, questioned him about one thing and another until, if my judgment serves me correctly, it was first Sam that suggested to these police officers, "Do you suspect me in this case?" Or something to that effect.

I think that's the testimony in this case. As a result of which Schottke stated to the Defendant he did not know what Chief Eaton thought, that he did not know what Gareau thought, but he felt that the Defendant had committed that crime.

And what did the Defendant say in response to this? Did he appear emotional? Did he exclaim

and break down and say, "That's a lie, I could not do that"?

The Defendant states to Detective Schottke, "Don't be ridiculous." Does that seem to be the normal reaction to you for someone that has just accused another one of killing his wife? It certainly doesn't appear that way to me.

And so it was that these police officers left that scene there, and it was shortly thereafter that Mr. Corrigan comes into the picture with Mr. Petersilge; that there was attempts to question the Defendant on the 5th and on the 6th and on the 7th, and that he was questioned on the 8th.

Now, ladies and gentlemen of the jury, I want this to be clear in this trial: We of the State do not wish to say to you that the Defendant was not in any way injured on this night because, of course, it is perfectly evident that he was injured, but we take exception, certainly, to the manner in which it has been stated by the Defense that these injuries occurred. We take exception to that. And we also take exception to the degree of the injuries and whether or not they were by various peoples at various times magnified and placed out of proportion than they ~~were~~ in true life.

Now, let us look at those injuries for just a moment. Here we have Dr. Steve who, upon having the Defendant admitted into the hospital, orders that certain X-rays be taken, and X-rays were taken. We are given to understand that after these X-rays were taken, they were sought to be examined by Dr. Steve later that morning but he could not examine them because the X-ray plates or photographs, or whatever they are called, were wet. And you recall that Dr. Foster says that about 2:30 or 2:50, I think it was, in the afternoon -- he was the consulting physician out there at Bay View -- he said that he wanted to look at those pictures too, and that he looked at the picture of the jaw, you remember -- he was the expert as to the -- eye, ear and nose specialist -- and that he wanted to look at those pictures at 2:30 or after 2:00 in the afternoon, and that he could not look at them because the X-rays were -- the plates were wet. Do you remember that?

But still, on the other hand, we have the evidence in this case that Dr. Flick examined those X-rays and stated that it was between 10:00 and 12:00 that someone had placed those X-rays on his desk in his office, and that they were dry; that he looked at them for some period of time and made an examination,

and about 12:15, I think he stated -- in fact, it appears in the chart in this case that at 12:15 he made his first entry concerning that there was no fracture of the skull, I believe.

But those plates were dry. If they were dry then, how did it happen that they were wet in the afternoon? Can anybody explain that to me?

And if you have here a person that is injured as severely as the Defendant was thought to be injured, then exactly what would Dr. Steve and Dr. Richard, Sr., do? They would be waiting by that machine to get those X-ray photographs from that machine as soon as they possibly could, and dry them as soon as they possibly could and examine them as soon as they possibly could, in detail, and have an expert examine them in detail as soon as they possibly could.

Dr. Steve tells us that he did not examine those X-rays carefully himself until the next day. Now, the next day -- was that the extent of his interest, that he should examine those X-rays for the first time in detail the next day, on July 5th? He is the consulting physician in this case. He would tell us, of course, that he is relying on the

testimony or the opinion of Dr. Flick. Dr. Flick's report, as I recall, was not written until some time later.

So Dr. Flick testifies as a witness in this case. The young lady who took those first X-rays testifies as a witness in this case. She is not the same person that took the X-rays on the second occasion, on the 6th. Doesn't it seem apparent and logical to you that they should have the same person taking the second set of X-rays that they had take the first set of X-rays so that it could be done in the same way?

You remember what the description of an artifact was. There was something in that film that will cause it not to give an accurate representation of what it is supposed to depict, an artifact.

Dr. Flick tells us that as he first examined that X-ray, that his first impressions, as you recall, his first impressions were that he felt that there might be some artifact in that film. That was his first impression. We are talking about the first X-rays of the 4th. There might be some artifact. In other words, there might be something wrong with these X-rays whereby we cannot get a true reading.

But then he says that as he examined it

more closely, he come to the conclusion that there was possibly a fracture or a chip fracture of the spinous process in the second cervical vertebra, and that is the conclusion that he came to at that time.

Well, I say to you, ladies and gentlemen of the jury, do you think it reasonable that he would have conveyed that information to the consulting physician? And if there was any question whatsoever, if there was any question at all that these pictures did not accurately and fairly represent the true appearance and condition of that spine, would it not appear reasonable that they should have that X-ray taken again immediately, then and there, a short time thereafter?

So that nothing is done on the 5th as to taking any additional X-rays, but on the 6th I believe that there were certain additional X-rays taken. Even Dr. Elkins, who testified here yesterday, was not quite sure as to what that first X-ray represented, as to whether it was a new injury or an old injury or there was possibly some artifact in that film. He says that he saw that on the 4th, and he advised that new X-rays be taken.

Why did they not take them there on the 4th,

or on the 5th, than wait until the 6th? But certainly on the 5th Dr. Steve did not hesitate to announce to one and all that Dr. Sam was suffering from a broken neck, he says, from a broken neck, from a broken neck on the 4th. There on the 5th he makes that announcement.

There on the 8th we have the Defendant discharged from the hospital in a wheelchair. Was that really necessary?

On the 9th we have the Defendant walking around, out of the wheelchair and walking around. Did he have a broken neck? Do you think that he had a broken neck and was able to do those things in that short a time? On the 5th a broken neck, and on the 9th walking around. What were the true extent of the man's injuries? We know that he had some injury to his face.

Dr. Steve, who tells us as a witness in this case, that there was certain reflexes absent, Dr. Elkins telling us the same thing, of course; Dr. Elkins coming there on the 4th and making his examination of the Defendant in the presence of Dr. Steve; Dr. Steve coming in this court room and under oath telling us, under oath telling us, that Dr. Elkins made a complete, thorough and a painstaking

examination of the Defendant when he, himself, submits that he did not; Dr. Steve telling us that Dr. Elkins, in examining Sam there on the 4th, examined his abdominal reflexes, the cremasteric reflexes, the reflexes of the biceps muscles, the triceps reflexes, he examined all those things in his presence, and then Dr. Elkins coming in here yesterday and saying, "No, I did none of those things on the 4th." Why do we wish to magnify so many of these things, ladies and gentlemen of the jury? Why?

As I say, certainly it would appear that Dr. Sam was not injured as greatly as we are led to believe that he was injured, and the question, as I say, further is for you to determine the exact manner, if you can, from the evidence in this case, as to the means by which these injuries were obtained.

There are some things that just strike me as being rather curious in this case. You have here a burglar that is supposed to come into the house. You can reasonably ask yourselves, "Why was it during the course of this night, during which this supposed assailant was supposed to be in these premises, that this dog that they had in the home

didn't bark and awaken the household?"

You might say to yourselves, "Well, we have testimony in the case that she's not a watch dog." Well, watch dog or not a watch dog, from your own experience with dogs, if you may have had one in life, here we have someone in the dead of night coming into a home and striking someone down, do you think that any kind of a dog, regardless of what it was, male or female, would not make some kind of an outcry to preserve the life and health and safety of persons in that home? Why didn't that dog bark?

Were there any screams? Was there an assailant in that home? Why didn't Chip wake up during the course of those screams and struggle?

And as Dr. Sam was running from the house, not turning the lights on in the home, not grabbing any object or weapon with which to protect himself and strike down his assailant as he was running out of doors, why didn't he yell, a bloody cry for help, "Murder"?

The neighbors only live 20 or 30 feet away next door. He might have been able to arouse them. We have no evidence of any outcries of that kind in this case.

Those are all questions that you must ask yourselves.

We have here the picture painted that, of course, Marilyn and Dr. Sam lived a perfectly compatible life while they were together. Now, that becomes important in this case.

Was that life so happy? Were their relations so compatible at all times? Was there any thought of divorce between these persons? How did Sam Sheppard treat his wife? Did he love her? Did he not love her?

You cannot decide these things, ladies and gentlemen of the jury, on any basis of speculation, but I think you can come to certain fixed and positive conclusions based upon evidence, competent evidence, in this case. And I think that, if you will permit me to do so and listen carefully to what I have to say, I think I can show to this jury that Sam Sheppard had no particular love and affection or respect for his wife or his family.

Was there any talk of divorce between these persons at any time? The Defendant tells us that so far as he knows, there was no serious talk of divorce, yet we have the testimony of his own brother,

Dr. Steve, who tells us that in 1950 -- Book 21, Page 3981

of the record:

"Q Was there ever any marital difficulties between them during which breakup or divorce was contemplated?"

I am reading from the record now, not from my imagination, Dr. Steve's testimony.

Again: "Was there any marital difficulties between them during which breakup or divorce was contemplated?"

"A There was discussion of such a possibility between Marilyn and me in 1950, sir.

"In what part of 1950 was that that there was a discussion of possible breakup or divorce between Sam and Marilyn?"

"August 10th of 1950."

Now, were things -- is that so completely a rosy picture as there has been attempted to be painted here? Was there some divorce contemplated as far back as 1950? And how long did that continue? Was that the last time that those thoughts and statements apparently were made? Did those questions of divorce again come up during the course of that marriage? What was Sam's attitude toward Marilyn?

You recall the testimony of Dr. Hoversten, that he tells us -- I think he said it was in 1950,

also, that he had some conversation with Sam while they were there in California, and that Sam had written or was about to write and did write some letter to Marilyn; and that he, Hoversten, advised Sam not to write that letter or not to send that letter because, in his opinion, apparently Marilyn was a good woman, that she was a good wife, told him not to send it.

Now, did that occur in 1950? Was that the figment of Hoversten's imagination? Here from the very lips of Stephen Sheppard, in 1950, we have the same subject of divorce. So there is something that most certainly supports the testimony of Dr. Hoversten on that subject.

And then a few days later we understand from Dr. Hoversten that there was a call from Dr. Richard, Sr., and that as a result of that call there was some additional conversation between Sam and Dr. Hoversten about Dr. Richard being upset because of this situation. Now, was that the last of it? Was that the last of this divorce talk in this happy marriage?

We come down to the spring of 1953, when Hoversten was visiting Sam again, and there was some conversation concerning divorce at that time when Hoversten told Sam, "You better just stay as you are. Marilyn is a good woman."

And no one doubts that she was exactly that. Marilyn Sheppard, I knew her not, but from the evidence in this case, certainly, every indication is that she was a fine and beautiful woman, and deserved not the fate that she received at the hands of Sam Sheppard on the morning of July the 4th.

And so again, there in the spring of 1950, we had more talk of divorce --

MR. CORRIGAN: Object to that.

MR. PARRINO: 1953, rather.

Now, you see, ladies and gentlemen of the jury, if, as I go along, I -- I just had some error there as to date -- now if I should make any error as to date, you heard Mr. Corrigan correct me, which is his right. I ask you to correct me in your own minds if I should make an error. That was inadvertent, I think you believe that.

In the spring of 1953, then, we had that talk of divorce, and was that the end of it? Did it stop there?

And then, ladies and gentlemen of the jury, we have Susan Hayes, who comes into this picture with the defendant there, working at the Bay View Hospital. What was the relationship of Sam Sheppard toward Susan Hayes? Is that important in this case, or should you just discount that? What effect does that have on the issue in this case?

I think, ladies and gentlemen of the jury, it is of the greatest significance, certainly, because here you have divorce talk that is repeated, because, as you understand -- I think Susan Hayes stated that she worked at the Bay View Hospital until December, 1952, and then until August of 1953 she no longer worked there, but from that time to time she -- withdraw that -- that she got a job in an office downtown, which I believe was in the Rose Building, I think I am right there, and that on Friday or Saturday nights, whatever it was, some night of the week, as she would quit her work, the defendant, Sam Sheppard, would meet her and drive her home, and that during some of these occasions there would be sexual relations that took place in the car.

Now, I want to apologize to the ladies on this jury and to the men, as well, for some of the things that have, of necessity, been brought up in this trial.

As I say, facts are facts, and nobody can change them. We are all grown up and mature people, and we can talk about these things, and we can face these issues for what they are, but we can't change them.

And so they were having these relations in the car. How much respect did Sam Sheppard have for his wife while he was doing that? While it was secret -- well, perhaps that goes on, perhaps there are men and women who do that, and when they have these extra-marital affairs with women, and they do it in a way that they cannot be seen, well, I think, you can say that the possibilities are that that man might still love his wife. He doesn't want anyone to see him, so they do it in the secrecy of an automobile, but is that where it ends as their relationship continues, as the relationship between them develops further?

When she becomes employed again at the Bay View Hospital in August of 1953, she says that in November of 1953, there was some talk of divorce again, there was some talk of divorce again, and that there was divorce talk on other occasions, also. Did he have respect for his wife then? Did he love her then?

These relations occurred from time to time in

her apartment where people could certainly see him going in and coming out. Do you think he had respect for his wife then? Does a man that operates in that way have respect for his wife? Does he love her?

And then at the Fairview Park Clinic from time to time there. Does he have respect for his wife?

Well, maybe he still does. We will give him the benefit of the doubt and say that maybe he still loved his wife and had respect for her. Possibly. But does the situation end there? It does not, because in February or March of 1954, they go to California on this trip to advance the further studies of Dr. Sam Sheppard, apparently, so within a day or two after they are in California Marilyn is packed off to Monterey with Mrs. Chapman.

Sue Hayes is in California, also. Sam Sheppard knows that, and one of the first acts that he does while there in California is to contact Sue Hayes, as he did. Then what happens?

And here, ladies and gentlemen of the jury, we are about to, in my opinion -- and if you don't agree with me, ignore what I say -- but here is the crux of this case insofar as the alleged love that Sam Sheppard bore his wife. Here is this defendant, who goes to

Susan Hayes, brings her to the home of Dr. Miller.

Now, let us see for a moment if we can adequately describe that picture. This is not an obscure automobile in some distant park. This is not an apartment in Fairview Park above a clinic. This is not the apartment of Sue Hayes where these things can be done in privacy.

We will all admit, perhaps, that this has occurred throughout the line a thousand times a day, perhaps. It is not a good thought, but it is a fact.

But what do we have here now? We have here a defendant or an individual who brings or takes this girl to the home of a friend, Dr. Miller, a school mate, and they all know each other. They went to college together. They occupy -- there is a dinner at that time, there is a card game at that time. We have Dr. Chapman coming to the home.

Now, keep in mind that this is the same Dr. Chapman at whose home Marilyn is staying 300 miles away, the same family.

We have Dr. Marsh, Dr. Miller, Mrs. Miller, their child, everybody knows everybody, apparently, or at least everybody knows Sam and Sam knows them; Dr. Buono, and there may have been others, and so Sam stays in that home with Susan Hayes in the same bed the first night

of their stay. The second day they go to Marilyn's apartment there --

MR. MAHON: Susan's apartment.

MR. PARRINO: I'm sorry.

To Susan's apartment or home, get her clothes, bring the clothes back to the Miller home, and for approximately one week, or some period of time, days, however number they were, they stay together in that home in the same bedroom. This is not an automobile. If Sam had any respect for his wife there in California, if he had any respect for his wife, for a few paltry dollars, he could have gone to a motel and enjoyed himself to his heart's desire in some obscure motel on the highways of California where no one would know, but, no, he goes to the home of a friend in the presence of all these people, lives as he did.

Is that important? There is only one single conclusion to which you can come. In Cleveland he may have been hiding it. In California, in the presence of these people, he was performing these acts or living in this home, at least, openly. What is the only conclusion any man in this courtroom can possibly come to? Did he still respect her? Can any man in his right mind think that maybe, since I'm doing these things in the

Miller home, word will not get back to Marilyn as to how I am living here? She has got to hear of this situation as to how I am staying here with Sue, with friends.

You can't keep these things a secret. People are bound to talk, and word is certainly bound to get back to the wife. Can anyone here doubt that, that word is bound -- where you live so brazenly and openly -- word is bound to get back to the wife?

And what is the answer to that? What is the answer to that? There is only one answer, one single answer. There is no other explanation. Sam Sheppard did not care whether word got back to her or not. He just didn't care. If she finds out, let her.

If he wanted to keep it a secret, he certainly could have. He just didn't care any more. This divorce talk that had been building up since 1950, here in March of 1954, he just didn't care. If he cared, don't you think that he possibly could have been just a little bit more discreet about the whole situation? What do you think?

And as I stand here before this jury, I just wonder, wherever that beautiful girl may be now, did she find out? Did Sam Sheppard love her in acting the way that he did? Is that incident important in this case?

Did he respect his wife?

You can take away all of the smoke screen and frills and perfume, ladies and gentlemen of the jury, and that is a situation that you just cannot hide or disguise in any way at all. You just can't.

So they take this trip together. He buys her this watch. Before he left Cleveland he saw her. He bought her the ring that has been introduced here into the evidence, and then they return from California, where letters are exchanged between them.

While they are in California -- so that it does not slip my mind -- apparently Sam is driving along the street there, and in a lot somewhere he sees an automobile.

Now, it would seem to me that a husband that had love and respect for his wife, before purchasing an automobile, might want to consult with her, talk it over with her. Is that so unusual in marriage? Was anything like that done?

With Sue Hayes there, he goes out and gets this car and switches cars there in California. Marilyn is 300 miles away.

But we do have a very important thing that occurred after their return from California. It seems important to me. It may not be, but it seems important to me.

You recall that there was a very charming, sweet lady that took the stand in this case, Mrs. Elnora Helms, a lady that works for a living, who would come to the home there at the Sheppard home from time to time to help Marilyn around the house with her chores, and do you recall her testimony. She was certainly an honest -- one of the most honest witnesses I have ever seen. She said that before she went to -- withdraw that. Before Sam and Marilyn went to California, you will recall, that they used to sleep there in the double bed in Hoversten's room, which is, of course, the common thing with husband and wife. About two weeks later, after their return from California, do you recall what happened? They moved from this room with the double bed to the room with the twin beds, apparently the room in which Marilyn was killed. Mrs. Helms was told by -- from her testimony -- "Oh, somebody had a cold."

Well, what would you expect her to say? What would you expect her to say? But we know that on July the 4th they were occupying these twin beds at that time.

What does that mean in this case, you married people? Does that mean something, maybe?

The information that we have here that -- oh, all these people that come into the courtroom, and honest people, good people, I don't mean to impute anything to their integrity, that tell us that when they saw Sam and Marilyn, they seemed to get along fine.

Reverend Kreke, a more honorable person you couldn't find anywhere, says that, yes, -- he was honest -- when he saw them under the conditions that he saw them, they got along fine.

Well, do married people, if they have arguments and difficulties, wash the dirty linen out in public?

Here is a man who is a physician, maintains a certain degree of respect. He is not going to go around pushing this girl around and still maintain his demeanor of a physician and the reputation of his family there, so insofar as the eyes of the world were concerned, they got along very well.

In a marriage, certainly two persons that would know most completely, of course, if there is happiness or discord, the only true test is from the two people themselves, from Sam, who is here, and from Marilyn, who is dead.

So we must look to other things to see exactly what the real facts are, to other things that are

small, but may be of great importance.

I cannot possibly attempt to review all of the evidence in this case because, ladies and gentlemen of the jury, as I complete my summation then counsel for the defendant will have something to say to you, then, of course, the State again will address the jury, after which time the Judge will give you the law that is to apply in this case, and I am sure that you will give to all of this your careful and your undivided attention.

Oh, yes. There was some testimony in this case by Mr. Stawicki and Mr. Knitter -- you remember those two gentlemen -- about seeing the man on the road. Have you ever heard anything like that? Here you have Stawicki and Knitter sometime after the reward is offered, where they come upon the scene and have certain information, certain information. Do you remember what Stawicki's testimony was? The probabilities are, going at the rate of speed that he was going, he could only see this fellow, this mystery man that was supposed to be in the area there, for maybe two or three or four seconds at the most, but he described him. He didn't know where the house was. He can only say that as he was driving along, there in front

of a maple tree -- and I never saw so many maple trees in all my life that you see in Bay Village -- but there he noted a specific maple tree, and said in front of a maple tree three feet thick, or three feet in diameter, he saw a man standing, several days before at such and such an hour in the morning -- at night; didn't see any house in the background, but there was this fellow standing in front of this maple tree, and there were three or four other maple trees there. He can describe this man to a T. He states that the man didn't have any moustache, he saw that; the man was cleanly shaven; he saw that; and that on top of all that, on top of everything, he tells us that this man appeared to be suntanned.

Now, how much credibility can you give the testimony of that man?

Now, ladies and gentlemen of the jury, it was after the arrest of the defendant -- after attempts were made to question him that he was arrested on or about July the 30th of this year. Was this defendant in such bad shape that he could not be questioned by anyone? To hear Steve describe it, he was in a position to be questioned by no one, but what does Dr. Elkins tell us concerning his condition? From the very first day that he saw him,

July the 4th, he said that he was lucid and alert, and that in his opinion, there was no reason in the world why that man could not be questioned from the first moment that he saw him.

MR. CORRIGAN: Object to the statement.

MR. DANACEAU: That is exactly what he said.

THE COURT: I am not sure that he said "there was no reason in the world." He said, "There was no reason," I take it.

MR. PARRINO: Leave out "the world." That there was no reason why the defendant could not be questioned.

So ask yourselves, then, why wasn't he permitted to be questioned?

And so it was sometime later that, on July the 22nd, an inquest was held by the Coroner of this County, and you remember the testimony of the Coroner in this case, and I will only go into it briefly.

Dr. Adelson's testimony as to the many and severe injuries that Marilyn had. I don't know what the purpose of that entire interrogation was. Questions were asked pertaining to -- something to the effect that, "Did you make an examination for poison?" and

for this and for that?

Why? Ye Gods, does anybody in this room doubt for one moment that Marilyn came to her death as the result of being beaten on the head, and not by poison and not by being strangled, and not by being shot? By being hit on the head many times. Can anybody doubt that?

And, so, finally, the Coroner subpoenas the defendant into a public inquest. The defendant testifies as a witness in that case, and now we come to another point that is possibly very important.

The defendant is asked certain questions concerning Susan Hayes as to intimacies with Susan Hayes. The defendant admits on the witness stand here in the last day or two that he lied under oath, that he knew he was under oath and he lied.

Now, what is an oath? When you take a witness chair and you raise your hand to your God, you are going to tell the truth before God. It is just as binding wherever that oath may be.

He states that he lied concerning his relationship toward Susan Hayes because he wanted -- I think this is the substance of what he said, I don't remember his exact words -- because he wanted to protect the name of that

lady. We are not dealing here with something minor and insignificant. We are dealing with murder. We are dealing with the brutal murder of Marilyn Sheppard, and he, of course, was in a position to realize that he was one of the primary suspects in that inquest. He knew all of those things. Any man would. So he lied under oath.

Now, if -- if this defendant is such a person who would lie under oath to protect the name of a lady, which he has admitted, how many lies would he utter to protect his own skin? The issue is as simple as that. The issue is clear. If he would lie to protect the name of a lady, how many lies will he utter under oath to protect Sam Sheppard? Does the oath mean anything at all to him? At the inquest he was sworn to tell the truth before God. Here he was sworn to tell the truth before God. You heard his story. You can believe it or you can disbelieve it.

In reviewing the events of the 4th as he told it to you from the witness stand, you will recall, of course, how clear and how glib and how fluent he was when he told us about his medical practice and his automobiles and all of these other things that are not important, but when we come down to the direct

issues in the case, to what happened on the night in question, things that you should remember and should not forget, how convenient his memory was; how he could not give direct answers to things even when they were not especially important; how he had to add and to add and to explain answers all over the place.

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Does the oath mean anything to this man?

That is for you to decide. The issue here is clear and it is important. We look to this jury for justice, because here we have certainly one of the most brutal and vicious murders in the history of crime. We have here a murder that was committed, have no doubt, by this Defendant. There were three persons in that home on the morning of the 4th: Marilyn, Chip and the Defendant.

There was an attempt here to simulate a burglary, which there was not. You have the survivor -- one of the survivors is awake, the other is asleep. You find a woman there beaten to a pulp on her bed.

And so, ladies and gentlemen of the jury, it is for you to dissect all of the mass of evidence and testimony in this case. I, for one, do not envy your position in this case, any of you. Our task is not simple, Judge Blythin's task is not simple, but your task in your conscientious heart and mind is serious, is important, and I am sure that you take it to be such.

And we are fortunate, indeed, that we live in a country protected by Constitutional guarantees which give to this Defendant and to all defendants

that come into this court room every day of the week a fair and an impartial trial, the right to have persons selected from a community such as this, decent and honest, law-abiding citizens coming from all fields of life to hear evidence, to listen to issues and decide things, and that is your job in this case.

And you have been patient and wonderful, indeed, and I am sure -- and I ask you to do this: To give to this Defendant a completely fair and impartial hearing of this cause, which you have done and will continue to do. You see, as we are here in this court room, you see here before you the Defendant, but you do not see here before you Marilyn Sheppard, who is dead.

We gentlemen on behalf of the State of Ohio, Mr. Danaceau and Mr. Mahon and myself, we are here representing the people of the State of Ohio in an effort to present the facts as clearly as we can.

And so, ladies and gentlemen of the jury, give a fair and impartial hearing to the Defendant, but give a fair and impartial hearing to the people of the State of Ohio so that we may say to the Defendant, and to other persons who take life, as

he has done in this case, that, "We hold life to be dear and that where individuals such as you commit a crime such as you have in this case, that we as a jury of reasonable and decent people will not hesitate to return a verdict which responds to the law and which responds to the facts, and return a verdict of guilty in this charge."

And I want to thank you very much for listening so carefully to what I have had to say. I am sure that you will listen just as carefully to other counsel, and my parting word to you is this:

Whatever you do, ladies and gentlemen, let justice be done. No one can ask for more.

Thank you very much.

MR. DANACEAU: May we have a second, please?

THE COURT: Do you wish the Defense to proceed now?

MR. DANACEAU: We are just discussing that amongst ourselves.

We prefer to have the defense proceed at this time.

THE COURT: All right. Would you like to proceed briefly now, or would you rather

have a recess now?

MR. PETERSILGE: I think I would rather have a recess now so that we will be able to go ahead uninterrupted.

THE COURT: Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. Please do not discuss this case.

(Recess taken at 2:30 o'clock, p.m.)

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(Thereupon, on behalf of the Defendant, closing argument was made to the Court and jury by Mr. Petersilge.)

(Thereupon, at 4:50 o'clock, p.m. an adjournment was taken to 9:00 o'clock, a.m., Thursday, December 16, 1954, at which time closing argument was made to the Court and jury by Mr. Garmone and Mr. Corrigan on behalf of the Defendant, after which an adjournment was taken to 1:15 p.m., Thursday, December 16, 1954, at which time counsel for the State presented their final closing arguments as follows:)

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CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. PETERSILGE: Your Honor, ladies and gentlemen of the jury, counsel for the State: We have just heard something over two hours of argument by counsel for the State, in the course of which he has stated the State's case. I tried to listen to it carefully to see what the State's theory was, and as nearly as I can tell, all that the State has had to offer is a series of suppositions, guesses, hypotheses about what occurred, a long series of questions to you members of the jury, "What's the significance of this? What does that mean?"

And in a word, it's been two hours of suspicion, suspicion of Sam Sheppard plus a recital of his affair with Susan Hayes, plus the fact that he was in the house when the crime occurred.

Now, I want to come back to these points as we go through the evidence, and I want to go over the evidence with you and show you what our impression of the facts that have been proved in this case amount to.

But before I do that, I do want to point out that in this case the Defendant, Sam Sheppard,

who is charged with first-degree murder, is presumed to be innocent. That the burden is on the State to prove that he is guilty. That when he is charged with first-degree murder, the State has to prove each and every element of that crime, and that includes the intent to kill. It means that they must prove that Sam Sheppard had the intent to kill his wife.

It must prove that he did it with deliberation and premeditation, that he turned it over in his mind, had time to think about it and decided he wanted to kill her.

It must prove beyond a reasonable doubt that he did these things, and that he did it with malice, malice aforethought.

Now, unless the State can prove each and everyone of those elements beyond a reasonable doubt, the State has failed. And the thing I want to impress upon your minds as we start this analysis of the evidence is: It is not our job as Defense counsel to show how Marilyn was killed. It is not our job to show that Sam did not kill her. It's the State's job to show that he did. And so far they have utterly failed to make a case.

It is now about five and a half months

since the crime occurred. It's about four and a half months since Sam was arrested. It's over four months since he was indicted, and yet, after some nine weeks of trial, after the summation that has been made on behalf of the State, it is still apparent that the State, although it charges Sam Sheppard with having killed his wife, that the State still does not know how she was killed, the State still does not know with what weapon she was killed, the State still doesn't know why she was killed. And yet, on the basis of that rather flimsy evidence, the State of Ohio is asking you to send Sam Sheppard to the electric chair.

And how any jury, on the basis of the facts that have been presented here, could find that Sam Sheppard beyond any reasonable doubt had the intent to kill his wife, and that he did kill her, that he killed her maliciously and with deliberation and premeditation, is, frankly, beyond my powers of imagination.

Now, let's go back and take a look at the evidence in this case. There have been, if I counted right, some 70 witnesses who have come before this Court and this jury since the trial started. I don't intend to go over what each one has talked

about, but I do want to review some of the more salient facts and for a moment look at the background of the people who are involved here.

Sam and Marilyn Sheppard were married in California, as Mr. Parrino said, in 1945, and in 1951 they came back to this community. Sam started in his practice in Bay Village, and in the course of that practice had a great deal of emergency work at Bay View Hospital. Through that he came to handle a great many of the accident cases that arose on U.S. 20, U.S. 6 and U.S. 2, which are heavily travelled arteries, and through that became police surgeon of Westlake and unofficial police surgeon of Bay Village.

The evidence is that Sam took care of emergencies day and night, he was on call 24 hours a day, and he did it as a public service.

The evidence also is that Sam was active in Civil Defense matters, that Sam was a good citizen, that he took his part in the community and that his neighbors thought well of him.

You saw Sam's neighbors on the stand here. Some of them we called; some of them were people the State called. And it didn't seem to make much difference whether the State called them or whether

we called them, I think that I can say, without exception, that of all the people who took the stand who knew Sam Sheppard, that they were all character witnesses for Sam Sheppard except one man, and that was Tom Weigle, and the only thing that Tom Weigle could say against him was that on one occasion Sam had spanked his boy too hard.

To my mind, it isn't so much what the witnesses have said, although it was all good, but it's the fact that the State couldn't find anybody who would say anything against Sam, except Tom Weigle. That's a pretty good record for a man, I think. The only thing that Tom Weigle had was that Sam had spanked his boy too hard. Well, certainly that's nothing to send a man to the electric chair on. Certainly the result of it wasn't that Chip loved him any the less.

The testimony here is legend from friends and neighbors of Sam that Chip and Sam and Marilyn were a happy family. That Chip looked up to his father. In fact, the night of July 3rd, when his airplane was broken, he ran in to his Dad and asked him to fix it, and Sam fixed it. Earlier that night he had taken Chip and the neighbor boy down in the basement and taught them how to punch the punching

bag.

The evidence is that Sam and Marilyn had practically had open house while they were living in Bay Village. Their friends, whether they were children or adults, came over there freely, were in and out of the house. Sam set up a basketball hoop for these youngsters, and the boys used to come over and play, and when Sam had time, he would play with them.

Sam taught a number of the children in the neighborhood to water ski. He loved children, he loved people, and it's inconceivable to me that a man of that type could go up in the dead of night and beat his wife to death.

Now, the State has gone back to some difficulties which are alleged to have existed in 1950, and I'll come back to that in a minute.

I want to say this to you at this time: That the testimony of the people who knew Sam Sheppard and Marilyn Sheppard is, I think without exception, that during the last few months of their lives, since they had come back from California, that they were among the happiest months of their lives. The people who saw them in that period said that they seemed like a devoted normal couple, that Marilyn

was very happy about the coming of the child, that Sam was happy about it, too.

Some of her classmates who had known Marilyn when she was in high school had met her only a few days before, and two of them, Seymour Rosen and one other took the stand and testified, Kenneth Benjamin, took the stand and testified that they had seen Marilyn and she was the happiest he could remember. Certainly that is not the sort of thing you would find if a husband and wife were having real trouble.

When Dr. Hoversten got to the home on the evening of July 1st, he got to the yard and he testified what? That Sam and Marilyn were out there raking leaves together -- maybe it was weeds, Sam says weeds -- but, in any event, they were out there together. Well, you can't imagine a husband and wife who were contemplating divorce, or a husband and wife who weren't happy in the teamwork that comes through marriage, who would be working around the home like that.

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And certainly there was nothing in the events of the weeks preceding the murder night, which events were testified here to by the brothers and sister-in-law of the defendant, that would indicate that there was anything wrong in the lives of these people. They attended numerous parties together. They announced the coming of the child. They were happy about it. They were making plans for the future, and even for the very next day, July 4th, they had planned a large party for the interns who were completing their year at the hospital, and who were leaving with their wives and going to other points. Marilyn had laid in a supply of food for that party. Sam had talked about it to some of his fellow workers, and had invited them. And when the Aherns left that night, they understood that there was to be a party the next day.

Both Don and Nancy Ahern told you how they went over to the Sheppards that night, how the Sheppards first came to their home, had a couple of cocktails, Sam was called away to the hospital on an emergency, came back; Marilyn went over to start the dinner, and the Aherns followed with Sam.

They got over there, and Don Ahern said he

remembered going down to the lake with Sam. Sam wanted to see whether it was going to be rough for skiing, for water skiing the next day, and they came back. They showed the children how to punch the bag. Sam went down and got a basket, or something that the boys could stand on, and showed the boys how to do that, and then they had a leisurely dinner on the porch while the children had dinner in the kitchen.

Again, you look at the Aherns' testimony. What is it? Just a friendly visit of neighbors. They sat around and talked, watched television, and in the course of it, Dr. Sam, who had had a hard day, fell asleep. They said it wasn't unusual for Sam to fall asleep while they were there or while he was at their house. That he was a fellow who could relax and go to sleep, and that he was a sound sleeper, and Dr. Don told about what a hard sleeper he was. Dr. Don told how, in the course of emergencies, if it wasn't sufficient of an accident to require Sam to come back to the hospital, that sometimes they just took X-rays and took them up to the house and had Sam look at them there, and you will remember how over a half-dozen occasions during the course of time that ~~Dr. Don was on the emergency detail, that he had driven~~

down to Sam and Marilyn's home during the nighttime, at a time when the house was dark, and they were in bed, and how he had gone up to the door and opened the door and walked right in. It was never locked. And how he had called up, and the one who always awoke the first was Marilyn, and Marilyn would answer, and then she'd have to rouse Sam, and after a while Sam would come down looking kind of sleepy, and they would look at the X-rays.

Now, the Aherns, along about midnight, or a little later, went home, and at that time Sam was asleep on the couch. According to the testimony, he had stretched out there to look at the television, which was on the north side of the room; his head was toward that direction; his feet to the south; and he had fallen asleep. He was asleep when the Aherns left.

From that time on, there was nobody who knows what happened in that house except Sam. You have heard his story.

Now, Mr. Parrino has attacked that story in many respects, said a lot of things didn't seem sensible or reasonable to him. Why wouldn't Sam have done this? Why didn't he do something else?

Well, let's look at the story for a moment. You

have heard it many times from different witnesses, and there is one thing that I would like to call to your attention.

One witness has said this and another witness has said that. There have been minor variations, and it is natural that after some months, that a witness who talked to Sam and has no notes of the thing, has no record of the conversation, that his recollection of what Sam said may be a little different from somebody else's, but essentially, essentially the story which Sam told from the stand is exactly the same as the story that he told from the very beginning, and you will recall that Carl Rossbach, the Deputy Sheriff, when he was on the stand said that he had interviewed Sam -- well, the first time was on a Monday, for a brief interview. He was there on Thursday when he and Yettra and Schottke talked to Sam for three hours. He was out to the house the next day, and Sam went through the house with Mr. Rossbach, down to the lake, went all over the premises, and explained what had happened the night of the July the 3rd and the morning of July the 4th, as he remembered it.

And then on the following day, Sam and I came down

here to the jail, and they questioned Sam all day long, and he gave a written statement starting about 11 o'clock in the morning and going through until late in the afternoon, and Mr. Rossbach was also present during the inquest. The inquest was held out at Bay Village on the 22nd, 23rd and 26th, and at that time Dr. Sam was on the stand for five and a half hours, and Mr. Rossbach said that the story which Sam had told in the beginning, the story that he gave at the time in the County Jail when he gave the written statement, the story that he told at the inquest, were substantially the same.

Now, that story was of a man who had fallen asleep, as I say, and he has a vague recollection of being partially wakened by his wife when she was going upstairs. After that he apparently fell back to sleep and sometime later, he was awakened by his wife calling his name, crying out. As he came to consciousness, he thought that perhaps she was having convulsions again, such as she had early in the pregnancy, and he started upstairs, got up, and as he was going into the room, or just as he got into the room he saw this form.

Now, Mr. Parrino has said, in the course of his argument, "Why didn't the doctor put on the light?

The house was dark. The natural thing would have been

to put on the light."

Well, I think that probably, members of the jury, you have had the experience of waking up in your own homes at night, and if so you know that there is enough light comes in, if you are familiar with your house, so that you can see to walk around quite well. I think the natural thing was that he would not have put on the light, but in any event he didn't, and he went upstairs.

Now, during the examination of Dr. Sam, the State attempted to take him over each and every step of this night and tell just exactly where he was at any moment. I think some of the questions that were asked, some of the things he was asked to recall, would have been difficult for a man who had not been in a fight and had not been knocked out, but to expect the man who had been through what Dr. Sam was through to tell exactly and in detail just what he did at every moment or just where he was struck, is more than anybody can reasonably expect.

Now, Dr. Sam testified that as he entered his wife's room -- and that this was all a matter of just one, two, three, and you have been up the stairway, you know from that that the top of the stairway to the door of Marilyn's room was just a very narrow hall, one step

would take you over and in, and as he got in there, he saw this form with a light top, and almost immediately was struck, he ^{saw} saw from behind, and was rendered unconscious.

Now, nobody knows how long Sam was out. Sam doesn't know. When he came to, he found that he was in the room beside the bed on the floor with his feet toward the door, and he came to a sitting position and saw something reflected in the light that came through from the hall, from the lamp that was in the dressing room. Apparently that was the police surgeon's shield that was on his wallet, and he remembers dimly picking that up and putting it in his pocket.

He then got up, gradually, began to become aware in his dazed condition that there had been a struggle ^{had} and he/heard his wife cry out, and he looked at her and examined her and concluded that she was gone.

And that his next thought was Chip. He went next door and felt of Chip or checked him in some way, satisfied himself that Chip was all right, and about that time heard the noise downstairs and went down.

Now, again Mr. Parrino said, "Why didn't he call the police?"

Well, perhaps one person would have called the

the police. With somebody else it was instinctive to go after him. Sam went after him, certainly not an unnatural reaction for a man who had been an athlete all his life and played football and was of an aggressive nature.

But, in any event, when Sam got down in the living room, and as he rounded the L, he could see this form going out across the porch toward the yard, and he pursued it.

Now, again I say to you that in judging whether Sam acted wisely, or whether he should have stopped to call the police or put on the lights, or to get a gun, or pick up a stick, or do something else, you can't judge a man who has been knocked out with as serious a blow as Sam had quite the way you would a person who has had plenty of time to think it over. When you are in a situation like that, you do what your instincts tell you to do, and Sam pursued this fellow. His thought then was to get him, and he lost him on the stairway, but when he got to the platform there around the beach house, he again made out this form going out to the beach, and when he got down he could see by what light there was, he could see a silhouette.

Again, that is perfectly natural. I mean going down the stairway, it would be dark there, you couldn't

see anything, but when you once get down to the water at night, it is a little lighter than the land, and you could see a silhouette. Sam saw a silhouette of a dark form. It looked to him like a tall man with dark clothes from the rear, a man who had a rather large head and bushy hair, and Sam tackled that form, grappled with him, and he felt as though he grabbed something very solid, and he had a choking sensation, and he lost consciousness again, and when he came to, he said that he was -- he could feel his body being wallowed back and forth gently by the waves; his feet were in the water and his head was up on the beach, but he recalls that the waves were washing up and splashing over him.

He got to his feet, finally, and still somewhat dazed, went up the stairway and into his home, remembered that there had been a struggle upstairs and went up and found his wife dead; checked her again. And then it seemed to him that it was just a horrible dream. It seemed to him that maybe he'd wake up any minute and come out of this, and I think that anybody who has ever had a nightmare will understand how Sam felt.

Here was a man who went to bed happy in the thought that he and his wife were going to have an

addition to their family, a man who just a couple of weeks before had a meeting of doctors at his home, had told Dr. Selnick -- you remember Dr. Selnick telling from the stand that while they were frying steaks, Dr. Sam had said to him that he had everything, everything anybody could desire; he had a fine family; he had a wonderful wife; he had a nice home; he was well set up professionally; what more could he want?

That was the man who had gone to bed on the night of July 3rd, and in a few short hours, his wife was killed, his unborn baby was dead, Sam himself was badly beaten. No wonder he felt that this was a horrible dream, that he just couldn't believe it was true.

Now, when you are judging the actions that Sam performed at that time, I ask you to think how clearly a man might think after he had been through what Sam was through, and I think that the things which he did are entirely consistent with a man who had twice been knocked out and who had received a very severe blow to the vital centers of the base of the brain back here.

While we are on that, let me say that there can't be any doubt, after the evidence that has been introduced here that Sam had a very severe injury.

Mr. Parrino has talked a lot about the X-rays. Well, as a matter of fact, X-rays are not very conclusive at any time, but in this particular case the X-rays are not especially important. The kind of injury that Sam had was an injury to the nervous system. You heard Dr. Elkins tell yesterday that as far as he was concerned -- he is an expert, I don't think anybody can doubt it, can doubt the expertness of Dr. Elkins on neurosurgery -- and Dr. Elkins said that he didn't need X-rays in order to make a diagnosis of what was wrong with a patient who had a disorder of the nervous system. The nervous system can be checked in other ways, much more effectively than you can with an X-ray. The only importance of the X-ray would be that if there was a chip fracture, such as the first X-ray showed, that would be some evidence that there had been a very severe blow to that area, because you could hardly knock off a chip of the spinous process unless you had had a hard blow, but that is just one way of checking whether there was a blow.

The injury to Sam wasn't the chip that was off there, if it was off. The injury was the contusion to the spinal cord.

Now, there has been a lot of testimony on the injury. As a matter of fact, even Dr. Bexter agreed

basically that some of these reflexes were missing. The only thing was that Dr. Hexter was the general practitioner who hadn't had experience in neurology. He said he hadn't studied it since 1934, and he admitted he wasn't a neurosurgeon, he was a general practitioner, and he wasn't able from his experience to evaluate what the absence of those reflexes meant, but Dr. Elkins has spent the better part of his life in that work. He has had all kinds of experience in it, and he is one of the top men in the country, and he told you yesterday, first, that in checking Sam he found that the triceps reflex was missing, that is the reflex back here. You strike it, and it has to do with your arm coming up and down. That the left triceps was missing, the right was present, and he said that the absence of a dependent reflex of that kind, a stretched tendon, is something that cannot be simulated. In other words, you can't fake it. That is a condition that absolutely existed.

He also tested Sam on other reflexes, and he found that the abdominal reflexes on the left side were missing, the ones on the right were present, and that is significant.

Again he said that that was the kind of a reflex

that cannot be faked. It is either there or it isn't there. The patient has no control over it, and he found that the cremasteric reflex was absent. That is another one that you can't fake. It is either there or it isn't. He found it was absent. He also found -- and this is a very significant thing -- he also found when he palpated the back of Sam's neck that there was a deep muscle spasm.

Now, you remember he said that tenderness back there is something that is subjective, he can't tell whether it is tender or not, he has to rely on what the patient tells him, but the deep muscle spasm, that is what you feel when you press hard, palpate hard, and you remember Dr. Elkins saying that the deep muscles -- you could feel the muscles go like that (indicating). That is something you can't fake. It is there, and he testified that he found it, and as a result of his examination he testified that, in his opinion, Sam had suffered a contusion of the spinal cord.

He also testified that a blow back in that area, which affects the vital centers, can have a very serious effect, and if serious enough could produce death, because there are many functions of the body that are controlled automatically by the vital centers that are

in the medulla oblongata, and if those are deranged, your respiration, your heart beat, elimination, all the body functions are thrown off, and if they are thrown off badly enough you die.

Now, that is where Sam got the blow, and I think that after the evidence that has been presented here in this court there can't be any doubt but what Sam had that injury.

What would a man with that kind of injury do? Would he think clearly? I think not. I think that the story that Sam told is entirely consistent with that, with that condition that he was under, and certainly, if Sam had been intending to present any fake clues such as has been suggested here, if Sam had not had such an injury, if Sam had been clear-headed and thinking clearly and had deliberately killed his wife, as the State is charging, and if Sam had then tried to cover up, he could have done a lot better than he did.

Sam is a smart man. You have seen him on the stand. It certainly would have been a very easy thing to put on another T-shirt, for example. Sam just had no recollection about his T-shirt. After what he had been through he didn't know whether he had a T-shirt on or not until somebody called it to his attention.

Take the money. Mr. Parrino said there was money in so many places in that house he couldn't even remember them all. If there had been a burglary, that the burglar would certainly have been more thorough than he was.

Well, of course, we don't claim there was a burglary. I mean I don't know why the intruder was there. We claim there was a man there, but whether he was there for a burglary or not, I don't know. We never claimed that he was. But I will say this:

That if it had been Sam who was doing all this, if Sam had been the person who committed the crime and who was trying to cover up and make it look like a burglary, one of the easiest things would have been to get rid of the money. He certainly wouldn't leave a lot of money around that house.

Now, when Sam finally came to and decided that he had to do something, that it was real, he tried to think of what to do, and Mayor Houk's number popped into his mind and he called it.

Well, again he is criticized for not calling his brothers. Mayor Houk lived just a few doors away, and Mayor Houk, it seems to me, was a proper person to call. As a matter of fact, as the Mayor of Bay Village, he was the head of the police and fire

departments, he was the chief law-enforcement officer, and he was a close friend and neighbor of Sam's. No wonder his number popped into his head. Sam had called him many times, but he called Mayor Houk. Mayor Houk and his wife responded, and shortly after got there.

Well, he called the police of Bay Village, he notified Dr. Richard Sheppard, who, in turn, notified Dr. Stephen Sheppard, and when the police came Mayor Houk had a conference with Mr. Drenkhan, and as result of that they called the Coroner's office and they called the Cleveland Homicide for additional help.

Bay Village had a small force and wasn't used to handling this sort of problem.

Now, at that point I would like to call your attention to the testimony of Dr. Stephen Sheppard, who said that while he was down there at the den, he heard Fred Drenkhan calling the Cleveland Police Department, saying, "Yes, it looks like a burglary and homicide, and you better send some help."

Well, I think that is significant, because at that time that is what anybody would have thought.

All this talk about the brothers removing Sam from the house in a hurry and without the permission of the police is perfectly silly. Why wouldn't they

take him? He was an injured man. They didn't need any permission, but if they did certainly nobody would have kicked about it. The police were right there, Mayor Houk was right there. They must have seen him going out of the house. Nobody raised any dispute about it, and it was the logical thing. Here was a man who was hurt, and there was no doubt that he was seriously hurt.

In this type of injury, I think the testimony is that the full extent doesn't show up until a day or two later. It is progressive. But, nevertheless, there was a badly hurt man.

As a result of those calls, the Cleveland police responded, and the Coroner's office responded, and I want to take a little time to go over with you what they did, because I feel strongly that if it had not been for the stupid bungling, for the incompetence with which the Coroner's office and the police handled this thing, that you might be trying the real murderer today instead of Sam Sheppard, and I am not using those words loosely. I think that it was an eye opener to most of us who heard the testimony, to see both what was done and what was not done by the so-called experts when they got out there to make an examination.

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Now, the first thing after Dr. Gerber had made a preliminary examination was that the body was removed to the Morgue, and Dr. Adelson took over for his post-mortem.

When Dr. Adelson was on the stand, he admitted that when they made their examination, they had washed the blood off Marilyn and just let it go, it went down the drain. They didn't save it, they didn't take any tests of it, they didn't do anything to determine the things that might have been determined from the blood that was on Marilyn and, as you know from looking at the pictures, there was a lot of blood. They might have found evidences of something that would have helped in the solution of this case, but they didn't do it. They washed it down the drain.

The next thing he admitted was that they made no microscopic examination of the wounds. After they had washed the blood off, these various wounds on the head were apparent. Dr. Adelson admitted that had they made a microscopic examination -- and they had microscopes out there that enlarged up to a thousand times -- that had they done so, it might have revealed traces of rust

or paint or grease or something that would have shown the nature of the weapon that was used, and that by close examination, it would have indicated the sequence of the wounds. But no such examination was ever made. And, of course, the chance is gone. And that is true of a lot of these things.

The police took that house over on July 4th. They have had custody of it ever since. In fact, they still have it. They kept Sam Sheppard and his family out of it, except occasionally to allow somebody to go in, under a police guard, and allow somebody to take out some food and clothes. What has happened to the clues out there, nobody knows, nobody ever will know.

Certainly this Defendant couldn't do anything about it, and the police have failed to take the steps that should have been taken to get the right party down in this Court.

Dr. Adelson further admitted that they had not made any adequate test for criminal assault on Marilyn. They made a partial test, they made a test with a swab to determine the presence of sperm, but they didn't make any chemical test which would have determined the presence of seminal

fluid without sperm. And the result is that although they announced that Marilyn had not been criminally assaulted, nobody knows; nobody ever will know.

Dr. Adelson also admitted that the wound on Marilyn's mouth was on the inside of the mouth. There was no evidence of any wound on the outside. Further, that Marilyn had two of her teeth broken, and they were broken on the biting surfaces, which means that she must have clamped down on something and that's what broke the teeth.

You heard Dr. Novatney when he was in here telling how this biting on a crust of hard bread had broken one of her teeth and that her teeth weren't in too good shape.

Now, from the fact that the wounds were on the interior, the damage was to the interior of the mouth, and the fact that there was no blow on the outside -- no evidence of a blow on the outside, it would indicate almost conclusively that that had happened by something when her mouth was opened or when she was biting down on something, probably when biting down on the finger of her assailant. And there is one thing that I do want to call your attention to, and that is that Dr. Sam was examined from head to toe, and there wasn't any mark of

Dr. Sam being bitten on the finger or anyplace else.

And then we come to the position of the wounds on the head. I think, perhaps, you will remember in Mr. Corrigan's examination of Dr. Adelson, how he brought out that the wounds on the forehead started on the left side, and it was a half inch to the first wound, and then that the others were evenly spaced an inch apart, six of them, right across. That the wounds on the top of the head -- there were four of them that were evenly spaced a half inch apart. I call your attention to that because the theory of the State has been -- and Mr. Parrino repeated it in his argument to you here today -- that whoever killed Marilyn had some instrument and struck her 35 blows. He said, "Go back to the jury room and try striking 35 blows and see how long it will take."

And their theory is that Dr. Sam -- that Dr. Sam's story of having woke up and gone upstairs and run into an intruder just won't hold water because had he jumped up and run upstairs, as he says, he would have gotten there before the intruder had time to strike the 35 blows. Well, of course, that involves some assumptions.

In the first place, you have to assume

that Sam woke up as soon as his wife cried out, and nobody knows that. The probability is that he didn't, because Sam was a deep sleeper, and when you are asleep, you might not hear the first call. It might have been the sixth or eighth or ninth call for help that Sam heard, we don't know.

But, in any event, it certainly doesn't follow that Sam got up with the first blow and that he spent all the time going up while the man, whoever it was up there, was striking any 35 blows. I think that almost anybody who has ever tried to swing an axe or a hammer will know that it's almost physically impossible to strike a series of blows such that they would be exactly an inch apart, or a half inch apart. It would be hard enough to do it in daylight. It would be practically impossible to do it in the night time, in the dark, and with some woman struggling for her life, and for somebody to stand there and strike blows that would be spaced like that.

The only possible explanation that we can see is that those blows must have come from some multi-pronged instrument, and that they came with perhaps one, two or three swipes, and I think the nature of the blows speak for themselves.

The only way that you could possibly space

something like that would be with a tool that was already spaced, so that when you hit, the prongs all hit at once, and if that's so, there weren't any 35 blows. There were probably three, four, six, I don't know. But certainly there wasn't the time lapse that the State talks about.

However, that fact was not called to anybody's attention by the Coroner's office. The police weren't looking for that kind of a tool. In fact, Chief Eaton told how he was looking for some kind of a file. Nor was the fact of the injury to the inside of Marilyn's mouth and the significance of that, the possibility of somebody having a bitten finger, that wasn't called to the attention of the police.

The testimony was that when they had their meeting on July 16th, when they got all the law enforcement agencies together and tried to pool their information, that there was no discussion of that fact, although it was perfectly evident and obvious from the fact that it was in the Coroner's report.

I don't mean to say that the wound -- the wound was there, the breaking of the teeth was there, but not the significance about apparently having

come from somebody's finger being inside the mouth.

Now, I want to turn to what the police did and did not do in this investigation. The Bay Village Police had called for help from the Cleveland Police. The Cleveland Police sent out a Bertillon team, and the ones who testified here were Detectives Grabowski, Dombrowski and Poelking.

Detective Grabowski was the so-called expert on fingerprints and photographs, Detective Poelking was the expert on latent fingerprints and Detective Dombrowski was the investigator who investigated the so-called trail of blood.

Mr. Grabowski testified that he went out to the Sheppard residence in response to instructions from his Chief on the morning of July 4th. He didn't testify to it, but one of the witnesses testified that when Mr. Drenkhan first called the Cleveland Police, which was around 6:30, he was told that the shift was changing and he better call back later on. So he called later on and he got the next shift, and it was something after 7:30 before Detective Grabowski started out there.

He made only one trip to the house, and he got there either at 8:15 or 8:30, and he was through at 10:30. So that the entire examination

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that he made of the Sheppard house and grounds and the photographs that he took all occurred within that two or two and a quarter hour period.

He testified that he first went through the house, kind of a hurried-up trip to kind of get himself oriented, and that then he came back and took some pictures downstairs and then checked for fingerprints, and it's the fingerprints that I especially want to call your attention to because there has been a lot of talk about lack of fingerprints in the house.

Detective Grabowski said that his examination was as follows: He said he went into the living room and he dusted the desk for fingerprints. Now, you will recall that that was a writing desk with a slant top that came down as a shelf, and he dusted the inside of the shelf and the outside of the shelf, and he dusted the fronts of the drawers and he dusted the sides of the desk, putting his fingerprint powder on, blowing it off and looking at it. And that examination revealed only one print, which was a partial palm print, which was later determined to be Chip's.

He also found some parallel lines, he said, which looked as though they might have been made by

a cloth or fine sandpaper, but that was all he found.

He also said that there were various papers that were in the chair next to the desk and that were on the floor. Those he examined by the visual method, which meant that he took his flashlight and held it at a 45-degree angle and looked across it, like this, and if he could see a fingerprint, or something that looked as though it might be a fingerprint, he then put some fingerprint dusting powder on, but if he didn't see something like that, he just passed the paper up.

Well, he also admitted that there are latent prints that aren't visible to the naked eye which can be brought out by the iodine fuming process or which can be brought out by the silver chloride process, and that he had in the car that he drove out, that he had an iodine fuming kit, but he didn't use it on any of those papers.

For all we know, it may have been full of somebody's fingerprints, but Detective Grabowski made no effort to find out, and he took nothing back with him to the laboratory. He left it all right there.

After he had looked at those papers, he went to the door to the porch. He examined the

door and door frame, and again, using his flashlight with a visual examination, he testified that there were some undecipherable smudges, blurs, but no clear fingerprints, although on the knob of the door he could see a succession of prints one on top of the other, and he didn't think that he could get a clear print so he didn't take a picture of it and didn't do anything about it. He just passed that up.

Now, you ladies and gentlemen were out there in the house. You know that that's a large living room. Over on the east side there's the living room furniture -- the dining room furniture, and on the south wall there's a china cabinet, the two sectional chairs with a lamp table between them, just before you get to the L. Around the corner there is a couch, there's fireplace tools, there's several other chairs in the room. And on the north side there is the television and there is a telephone over near the corner, a couple of lamps. There are a lot of things in that room.

To me, just as a layman, I would have thought that a fingerprint expert would look over some of those things. It seems to me that anybody who made a proper examination would have

looked at them. But Detective Grabowski did not. He testified very frankly in response to a direct question by Mr. Corrigan that that is all he did in the living room, and then he went into the den.

Now, when he went into the den, he dusted the top of the desk, he dusted the fronts of the drawers, and I believe the sides and bottoms of the drawers, and I believe the sides and bottoms of the drawers, although it may have been visual there.

He made a visual examination of the side of the desk. He dusted the two broken statuettes that are in here in evidence. He dusted two metal boxes that were on the floor and examined the papers in them. He dusted several cardboard boxes, and that, he testified was all that he did in the den.

Now, again, I say to you, ladies and gentlemen, that there were lots of things in that den that Detective Grabowski never looked at. And the next thing he did was to go upstairs -- no, I'll take that back -- the next thing he did was to look at the medical bag in the hall.

Do you remember that just outside the den the medical bag, this smooth bag which has the scuff marks, had been up-ended and was sitting on

its end with the contents spilled out on the floor.

Now, Detective Grabowski said that he examined the various vials, and so forth, that were in here for fingerprints, but as far as the bag itself is concerned, he said all he did was to try to put his own fingerprint on it and that he concluded he couldn't get a satisfactory print so he made no further examination.

Well, now, this is the bag that -- and he apparently was mixed up on the bags, because he testified it was a pebbly bag. Of course, the evidence is that the pebbly bag is the one that was out in the jeep. But in any event, he testified he couldn't get a fingerprint on this bag. Well, now, you ladies and gentlemen will remember that during the course of this trial Mr. Corrigan placed his hand on this bag and -- yes, I think it is still here, although somewhat mutilated -- they put some Scotch snuff on that and blew it off, and you could see that fingerprint. Certainly, it seems to us, that the examination that Detective Grabowski made was something less than complete, something less than you could have expected from a Bertillon expert.

Now, that finished his examination of the

downstairs and so he went up. And he testified that he went into Marilyn's bedroom and that he checked only the northwest window for fingerprints. The northwest window was the window on the north side, which was toward the west side of the room, and that was the only window that was open. The other windows were locked when he got there. And he checked that window, and the window frame, the northwest window, he checked the inside and out.

Now, Mr. Corrigan asked him whether he checked the dresser, whether he checked the beds, either bed, Marilyn's or the other one, whether he checked the night stand between the beds for fingerprints, whether he checked the telephone that was on that stand, whether he checked the alarm clock that was on that stand, and to each and every one of those questions he answered no.

He explained that he didn't check Marilyn's bed and he didn't check the doors, the closet door and the door to the room which had been swung in, because there were a lot of blood spots on it and he felt that if the pictures that he had taken of the blood spots were not clear enough, it might be necessary to take them over and the fingerprint powder might spoil that. But, of course, it

doesn't take very long to develop the prints, and they didn't develop the prints and come right back. It wasn't until July 23rd that anybody came out there looking for any more fingerprints.

He also testified they might want to make some chemical tests, but again that didn't take until July 23rd. But apparently, in the meantime, between July 4th and July 23rd, apparently everybody slept on the case, no further examination was made.

Detective Grabowski took a look at the window, and then he said that he did not look at the closet door or the frame of the closet door nor the other windows, and that he did not examine the door jamb into the bedroom, nor did he examine the stair rail or the stairway going down.

Well, now, certainly if you are going to make a thorough examination of a home, here's a case where a murder occurred on the second floor, presumably the intruder went up the stairs and down the stairs, you would think that a normal natural place to look for fingerprints would be on that stairway, the stair rail or walls or someplace there. But he didn't look for it,

nobody looked for it until many, many days afterwards, at a time when there had been dozens of people through that house and fingerprints all over the place.

But there was the opportunity and there was the place where an expert should, in my opinion, have made a thorough examination. It's a chance that comes only once. After you let people go through and put fingerprints all over, you can't go back and do anything about it.

And then he testified that that completed his examination of fingerprints in the house. He took some pictures and he left and he never came back.

Well, that's probably all he could have done in two hours. But I say to you, ladies and gentlemen, that what the police should have done was to make a thorough examination of that house, and they didn't do anything more about it until July 23rd, and on July 23rd Detective Poelking was sent out. He is the latent fingerprint expert.

On that day he went up into Marilyn's bedroom and he examined her bed. He also examined her closet door. He examined the door that leads into her room and the framework around that door.

He examined the closet door, but not the jamb inside the closet door. He also testified that he examined the door in the west bedroom and the door frame in the west bedroom, but not the closet door in that room. He examined no other closet doors and nothing else in the house for fingerprints.

Well, of course, you could probably understand why Detective Poelking didn't make a more thorough examination of the house, because by that time the police had decided -- in fact, long before they decided that Dr. Sam did it and it wasn't necessary to look any further.

You heard Dr. Don say yesterday how during the morning, about ten o'clock in the morning, he had heard Dr. Gerber saying to the officers out at the house, "Well, it's pretty evident that the doctor did it. Let's go down to the hospital and get his confession."

And it wasn't long after that, on that afternoon, to be exact, that Officer Schottke did say to him, "The physical evidence all points toward you, and I don't know what my partner thinks and I don't know what Chief Eaton thinks, but I think that you killed your wife."

The Defense thinks that the evidence shows

pretty clearly that from that time on the police concentrated their efforts on trying to pin the thing on Sam instead of looking around and evaluating the clues and making the most of them. Their efforts were directed toward one end, which was to pin it on Sam and get a confession from him.

And so Detective Poelking didn't go all through the house, but he did go around the bedroom and look around, and what did he come up with? The net result of his search was that he found one left thumb print of Dr. Sam on the head of his wife's bed. If it weren't so serious, it would be kind of funny, because after all, what's wrong about a husband's thumb print being on the head of his wife's bed? It seems to me that it's no evidence whatsoever to connect Sam with this crime.

The evidence is that Sam was in that house on the 9th, that he was in the house on the 12th, that he was in that room. He might have put it on there then, I don't know, but whether he did before or after, certainly there is nothing wrong about Sam's thumb print being on the head of his wife's bed.

And, of course, with these thumb prints, or any of these fingerprints, it's the same thing

as with these drops of blood that I'm going to come to in a minute, they can't tell how long those have been on. They can't tell whether it was something that was put on on July 4th or some other day.

Now, Detective Poelking did say that when he examined the portions of the bedroom that I have referred to, he found fingerprints and palm prints of the various detectives who had been working over the house, and I assume that if he looked other places, he would have found more of them because there had been a number of police and people working over that house.

But one thing that stands out in his testimony, and also in the testimony of Detective Grabowski, is that they did find smudges or smears which would be made by a hand being placed or fingers being placed on the framework or woodwork, or wherever it was, glass or wherever it was. It wasn't the absence of this -- there has been a lot of misinformation about this thing, about whether there were fingerprints present or not. These smudges are fingerprints, but they are not identifiable prints. Of course, with people in the house you are bound to have fingerprints in the house, you can't help it. But the only fingerprints that

they have come up with that they thought were significant were Sam's. To me, it seems to me the most logical thing that you'd have in your house your own fingerprints, and I don't see that it proved anything.

I do say this, though: That the testimony which the State offered proves that there might have been a lot of fingerprints in there that they never even looked for. When they say that there was nobody in the house but Sam, they didn't know, they didn't even look.

Mr. Parrino said at one time they didn't want to magnify some of the testimony. Well, I'll say to you that if the Coroner's office and if the police had used some of the microscopes and other equipment that they had there to magnify what was there, it might be a different story here today.

Now, another chapter of the story, of the bungling and incompetence that was shown in this case is the so-called trail of blood, and I want to spend a little time on that because while Mr. Parrino didn't go into that, the State spent a lot of time in its case on it, and I think it is something that we ought to consider.

Of course, it may be that the State

intends to refer to it in the closing argument. After we get through, the State still has time in which to close. But I will call your attention to it, that after the State gets through, we have no chance to come back and say anything more about it. Anything that we are going to say, we have to say now, and for that reason I am going to anticipate that maybe something will be said about it.

Now, the so-called trail of blood: There was testimony that there were some 50 or 60 spots of blood throughout the house, upstairs, downstairs, in the basement, on the stairways, even in the garage. There was some indication that a charge was going to be made that Dr. Sheppard in his wanderings after he had come back from the lake and had seen his wife dead, or at some time during the time, had walked back and forth aimlessly and dripped blood wherever he went.

Well, there were two people who testified about that. That was Detective Dombrowski and Miss Mary Cowan from the Coroner's office.

The sum and substance of it is that of all the drops that they found, there were only six that Mary Cowan and Detective Dombrowski between

them could identify as being human blood. The rest of the drops were tested by the Luminal and benzidine tests by Detective Dombrowski. They were tested by the leuchomalachite green and the phenophthalin test by Miss Cowan, and both Miss Cowan and Detective Dombrowski said that so far as those tests are concerned, the only thing that they would show is that they got the positive reaction, which might mean blood, either human or animal, or it might mean something else.

There are various other substances which do respond to these tests, some of them types of vegetables, some of them chemicals that give the same reaction as blood. Whether it was vegetable, chemical or some kind of blood, those tests don't show whether it is human blood or whether it is animal blood.

And, of course, by this time we all know the story about KoKo and the fact that when KoKo was in heat and was running through the house that, as Mrs. Brown said, the dog had the entire run of the house and she just dripped blood everywhere. Mrs. Brown said that she wiped up the kitchen floor, but she didn't go around the house looking for places to wipe up, and that so far as the

carpet was concerned, it was kind of a reddish color anyway, and that she just never -- the blood kind of blended in and she never washed it up.

Miss Cowan also testified that when blood has fallen on a surface, even though it dries, that it retains the characteristics of blood and will respond to a test for blood months and even years after it has fallen on this surface.

So that any blood spots that were found there in August, it might have been blood that came there July 4th, it might have been blood that came there in April or it might have been blood from a year or two before, nobody can tell.

And both Detective Dombrowski and Miss Cowan were very frank in saying that they could not tell how long the blood spots had been on these surfaces, even the spots which they said were human blood.

Now, Detective Dombrowski said that on the third step from the bottom on the basement stairs he had scraped up a little chip of wood that had a spot of blood on it, which was suspected blood, and that he had tested that with the precipitant test, and that in his opinion it was human blood.

Mary Cowan took some spots from the basement stairs, too, I think, if I remember rightly, from

the risers between the kitchen and the stair landing and two from the steps or risers going from the landing upstairs. Some of those drops she removed physically by scraping the little chip of paint off, some she took by putting a drop of distilled water on and sucking up the solution, but in any event, from those six drops she got sufficient so that she could make a test. And she said that those gave a result which indicated to her that they were human blood.

Now, that leaves us with six drops -- giving the most favorable interpretation to the State's testimony -- six drops that were human blood. Now, of course, they don't know when that blood was put on. They don't know who put it on. It wasn't even possible to type it for blood. And in order for those drops to mean anything in this case -- of course, they haven't been hooked up with Sam Sheppard in any way whatsoever. It might be that it was from Chip's cut foot, it might have been from some of the other instances that occurred, when the niece cut her head and ran through the house, it might have been from any number of things, even a crushed mosquito, a fly or beetle would leave a drop of blood on the step.

But even assuming that that was human blood, in order to do anything about it, they would have to prove that it was put there July 4th, that it was Marilyn's blood, that Dr. Sam was responsible. None of that has been proved.

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Again I say that so far as the State is concerned, there is a complete failure of proof on that matter. The Court will instruct you when you come to the instructions of the law that you can't pile an inference on an inference.

Well, as far as the blood is concerned, you would have to pile an inference on an inference on an inference, because you would have to assume first that it was Marilyn's blood; secondly, that it was put there on July 4th, the morning of July 4th, and that thirdly, that Dr. Sam was responsible, and that is something that the Court will tell you you can't do.

Now, there is another thing about the blood trail that I want to call to your attention.

In the first place, we have evidence in the record that blood coagulates so promptly, that even if you were to have your hands dipped in a bucket of blood, even if you have a weapon that had blood dripping from it and started to walk, it wouldn't be very long before the blood coagulated and stopped dripping.

The idea that the slayer could have walked throughout the house, over into the garage, upstairs, back to the upstairs of the garage, and down to the basement, dripping blood all the time, is perfectly

fantastic. The only way that that could have been done would have been to have a sponge available with blood in it and to squeeze it from time to time as you went around and renewed the supply, because blood just doesn't act that way.

But there is another thing about that blood. Just suppose for the moment that the slayer had left Marilyn with a weapon that was dripping blood, and he steps out of the room. Now, where would the drips occur? Certainly the biggest drops would be just when he started, wouldn't it? They would be right there in the room, or as you go out into the hall, or as you go on down the stairway.

Now, when you go to the jury room you will have these photographs, you will have the evidence as to where these drops were found. I think we have -- well, we have in evidence all the photographs of the drops of blood which were produced by the State, and they took their own photographs. They also testified as to where they found drops, and you will find that there are no drops whatsoever in the upstairs hall, there are no drops at all between Marilyn's bedroom and the stairway, and you have to go partway down the stairs before you start to get any drops of blood at all.

And it just isn't reasonable. It doesn't hang together. If the slayer had done what has been indicated, you certainly would have had blood in that upper hall.

Another thing, as the slayer progressed through the house it would be only reasonable that as he got toward the end of the trail the drops would be smaller. Well, if you recall, when these witnesses were on the stand, Mr. Corrigan asked them to describe in detail the size of these drops, and they ran from an eighth of an inch in diameter or a narrow streak, maybe $3/16$ or a quarter of an inch long to drops as long as a quarter of an inch in size -- in diameter. Well, it wasn't a case of the larger drops being up in the bedroom and diminishing as you went away, with those drops irregularly spaced and irregularly sized. Wherever you went, they were about the same size, whether you were in the garage or basement or living room, or wherever you were. The whole thing sums up to this:

That the police found some 60 drops here and there, which responded to certain tests, that showed they might be blood or they might not be blood, human blood; that they might be animal blood or human blood, except for six drops, and those six drops, there is

no evidence whatsoever to tie them up with Sam.

Now, I want for a moment to call your attention to some points in the evidence which are consistent with and which support the story of Dr. Sam Sheppard, the story that Dr. Sam Sheppard told, and I am not going to ask you a lot of questions about the thing. I am going to point out the things that are in this record and stand uncontested.

The first thing is that -- and I think this is one of the strongest -- and that is that Sam Sheppard's trousers had only one spot of blood on it, and that was a rather large spot down here just above the knee. Those trousers are in evidence, and you will have them when you go to the jury room, and you will notice that spot I am referring to here right on the left knee.

You will also notice that these trousers were thoroughly soaked. According to Sam's story, he had been out for an unknown time in the lake, knocked out, lying on the edge of the shore there, and the witnesses said that when they got there Sam was soaked, he was soaking wet, trousers, shoes, socks, shorts, and there was some water still in his hair, although his shoulders and such had dried off, but in spite of that, the blood had remained.

Now, there also is in evidence picture of the room, and you will have these with you in the jury room. I will call your attention to Defendant's Exhibit III, a scene across the bed and showing the closet door and the door to the room, which is swung back, and you will notice all the spots of blood that were on the door. There is a close-up in here, it is Defendant's Exhibit QQQ, and State's Exhibit 77, showing the same spots. This was taken after the fingerprint powder had been put on, it is not quite as clear, but it is more of a close-up, and you will notice the multiplicity of the spots and the same thing on the wall behind Marilyn's bed, which is shown in Defendant's Exhibit KKK.

When you were in the room you may have noticed those things, although nobody was there to point out anything special to you, you may not remember them, but as you look at those photographs, I think you will remember that the blood in that room was sprayed around in droplets, just as though you had a hose with a fine spray and just sprayed it around. It wasn't just great spheres of blood. It was little drops of blood, but a great many of them, and it was on the wall behind the bed, it was on the door -- the two doors and part of the wall on the east side, and

there were even drops on the north wall and on the curtains on the windows on the north side.

Now, I say to you that whoever killed Marilyn, standing beside that bed striking her, inevitably was sprayed with blood. You just couldn't get away from it, and that blood wouldn't come in great big gobs. It would come just as it came on the other surfaces around there, a myriad of small spots.

Mary Cowan was on the stand. She made an examination of these trousers. She was asked whether she found any blood spot except this one. She did not. She had at her disposal all the chemical tests which would have revealed blood, had there been any anywhere, even though it might have been washed out to the naked eye, the chemical tests would still show it, but there was nothing. In fact, Mary Cowan testified that you can't wash blood out successfully, that even if you boil the clothes you can't get rid of the blood, and the only thing that is on Sam Sheppard's pants is this one spot, which might very well have come after he tested Marilyn's pulse and reached for her throat, an instinctive reaction would be to wipe your hand across your pants like that. (Indicating).

To me, the fact that there is no blood on these trousers, no spots of blood, I mean, where there would have been 50 or 60 on the murderer, that there is no blood on that belt, that there is no blood on the shoes and the socks, is mute evidence, but very powerful evidence, that Sam Sheppard did not kill his wife, because the person who killed Marilyn certainly had the blood on him.

Now, the counsel for the State may say to you, well, he had blood on his T-shirt, whoever killed Marilyn. That is why Sam got rid of that T-shirt. But I will call your attention to the fact that if there was blood on the T-shirt, there also would have been blood on the other clothes. We don't know about the T-shirt. I don't know where it is. Sam has no idea. It might be -- it might be that it was a T-shirt that was found on the Schuele's pier and which is in evidence here. There was a northeast drift that night. Sam's place is in the lee of the Huntington Beach pier, the wind was from the northeast, and the Schuele's is the next place west. It might have gone over there, I don't know. It is equally consistent that whoever killed Marilyn and had blood on his T-shirt or shirt, whatever he wore, might have taken Sam's shirt -- he was about the same size -- he might have taken Sam's

shirt and pulled it over his own in order to cover up, because if you were wearing dark pants and had some spots, it wouldn't show, but if you had a white T-shirt and you went any place with drops of blood all over, it would show.

But again I say that isn't our function to determine what happened to the T-shirt. The absence of the T-shirt doesn't mean a thing. Here is a man who -- he falls asleep, and according to testimony, he had a T-shirt on at that time. When he is found after the experience that he relates he has no T-shirt. Certainly that is entirely consistent with Sam's innocence. It is certainly no proof of his guilt.

And the same thing with the corduroy jacket.

Now, there is something I want to mention for a moment. They made a lot about the corduroy jacket and how it was neatly folded. Dr. Steve testified that when he got there, which was shortly after six, that he went into the den and looked at his brother, saw he was alive, and immediately went on up to Marilyn; that he went through the living room where his wife was, and around the corner of the L, and that as he passed through, this was next to the couch, and he stepped over it. He remembered stepping over it going up, and he remembered when he came down it was

still there, and that he stepped over it. Later in the morning it was on the couch.

You have also heard testimony from various State's witnesses that when they came there they saw the jacket on the couch. The time element is not too clear as to just when that jacket was first seen on the couch, although Patrolman Drenkhan did say that when he got there -- and he was one of the first to arrive -- that as he went through the kitchen and up the stairway, that he could see this jacket on the couch. I am inclined to think he was mistaken. Detective Schottke said that when he got there he went up, and that, if you remember, he said, as you go up the stairway, if you lean over the rail, you can see the couch, and I think if you look at the photographs that are in evidence you will see that is the case, that where this jacket was on the couch, you couldn't have seen it just by going through the kitchen. You would have to lean over the rail, and certainly somebody who was in a hurry that morning to get up to where Marilyn was killed, would hardly have stopped to lean over the rail and make a notation that there was a jacket on the couch.

I think it is something that came later, in all probability; that the neat folding to me suggests that

some woman probably did it. It is quite likely that Mrs. Houk, Mrs. Sheppard, one of the women who were there that morning, might have picked up that jacket and folded it neatly and laid it on the couch. I don't know, but it doesn't seem like the sort of thing a man would do.

However, let's assume for the moment that the State's contention that Dr. Sheppard was wearing this, and that he took it off, is correct.

Now, you have got to have it one of two ways: Either he had it on, or he had it off. If he had it off, he certainly -- I mean if he had it on -- take if he had it on, first, -- if he had it on when he killed his wife, the jacket would certainly have been full of blood. There isn't a speck of blood on it. Nobody even claims there is any on it. You can't -- you can see that from looking at it.

So it must be, then, that he took it off before he killed his wife.

Well, now, if he took it off what did he do, take it off and neatly fold it, and lay it down there, and then go upstairs and beat his wife to death? It just doesn't seem sensible. I can't for the life of me see what the corduroy coat proves. It is just another one of those things that winds up with a question.

Well, Mr. Parrino says, "Well, what do you make of the coat?"

Well, I say to you, ladies and gentlemen, that whatever you make of it, I don't think that it proves that Sam Sheppard killed his wife, but I think that any theory that Dr. Sheppard took that coat off and neatly folded it before he killed his wife would be silly, and if he didn't take it off and he had it on when he killed his wife, then certainly, if that is the case, it would be full of blood, so it just doesn't match up.

The first point, then, that I mentioned that supported Sam's story was the lack of blood on his clothes, and I think that is very strong.

But there are some other things that support that, too. One is the sand that was found in his clothes. Miss Cowan testified that when she went through the clothes she took out of the pocket some sand, lost some of it, but had some of it in a vial that she brought in, said she didn't know what kind of sand it was, but it looked like it might be lake sand.

Well, when Dr. Sam was on the stand, while being handed all the clothes he had, he was handed the trousers and socks and shoes by Mr. Corrigan, and he looked at it,

and at that time he was still able to shake out a visible amount of sand from the socks, and there are still grains of sand in the lining of the pockets.

Now, when you get to the jury room, if you take the shoes that Sam wore that night, and take the inner sole and roll it back and look underneath you will find where sand is packed in there.

Now, that is not the sort of thing that could get into a man's clothes if all he did was to go down, as has been suggested, and wash off in the lake. That came from being there a long time, from the action of the water washing back and forth, and I think it is some evidence that the story that Dr. Sam told about being down and knocked out and lying in the water at the edge of the beach for a period of time is true.

The next thing is the trail of water that led from the beach up to the house. Mrs. Houk testified that when she was there, she remembered seeing a spot of water on the porch, and she had called Dr. Steve's attention to the trail of water. Dr. Steve followed it, and saw that there was spots of water coming up from the beach on the steps that went upstairs. In fact, he knelt down beside Marilyn's bed and found a wet spot in the carpet, which he determined to be

water. All of it is entirely consistent with the story that Sam told.

Then there is the evidence of injury to Dr. Sam's teeth. He said he had been in some kind of a struggle. He had these marks on his face, a blow on the side of the mouth. The inside of his mouth was cut and bleeding when they found him, and his dentist testified that he had two chips off his teeth. They were not the two chips that were found under Marilyn's body. Those chips were determined by Dr. Gerber to be chips of Marilyn's teeth, but these chips that came off Sam's teeth.

I have already spoken about the injury to Sam's neck and spinal cord. I won't go over that again.

There is one thing that I think I have touched on, but I want to emphasize a little, and that is the fact that the custom of Dr. Sam and his wife was not to lock their doors when Sam was in town. A lot of people may think that was foolish. I customarily lock my doors, but a lot of people don't, and apparently there were a good many people in Bay Village who didn't, before this. You may remember that the morning that Mayor Houk was called, he drove over with his wife, and after he saw what had happened,

he said to her, "I think I better go back and make sure that our place is locked up," and that is the first thing he did, he went back home and got Larry out of bed and told him about it, and told him to lock the door.

Mrs. Paine from across the street was asked, when she was on the stand, whether she customarily locked her doors, and she said, "We do now," or "At least, we try to."

But Dr. Sam and his wife didn't. Dr. Hoversten testified that when he was with them -- and do you remember he stated he stayed with them for about six weeks when he first came to Cleveland before he went over to the hospital as an intern, and that he was with them again when he came back on July 1st -- and he testified that on the night of July 1st he came home about 11:30, and Sam was still up, and he went right in, the door wasn't locked, but Sam was up. He testified that the next night, when he came home, the family was in bed, the house was dark, he had no key, but he went to the Lake Road door and turned the knob and walked in, and he said it wasn't locked, as usual, and he didn't lock the door because he knew the custom was not to lock the door, but as he went upstairs Marilyn called out to him and said, "Is that

you, Les?"

And he said, "Yes."

And she said, "Did you lock the door?"

And he said, "No."

And she said, "Good, because the maid is coming in the morning."

And, o f course, Mrs. Helms testified that on occasion when she went there the door was unlocked.

Dr. Don told about the times that he went to the house during the nighttime, and that when he went there he never found the door locked, so that we have a situation here where anybody could have walked into that house.

There was a lot of talk from the witnesses for the State about how they made the examination of the house. They checked all the windows, they checked all the doors, and they found no evidence of forcible entry.

Well, of course, if the doors are unlocked you don't need to have any evidence of forcible entry. All you have to do is turn the knob and walk in, and although Mrs. Ahern said that she had locked the door on the porch when they came in, because it was a windy night, so that she locked that door, she said also she didn't know anything about the condition of

the door in the west end of the living room or the door off the den or the door that they left by. The last thing she remembered was Marilyn going to the door with them and saying goodnight.

Now, another thing which Mr. Parrino touched on very lightly, but which I think deserves more comment, is the undisputed evidence of two people who have no connection with Dr. Sheppard, that there was a bushy-haired man in the vicinity of the Sheppard home on the morning of July 4th. The first one was Mr. Leo Stawicki, and you remember that he had started out for Edgewater Park with his brother, but went out to Johnson's Island in Sandusky Bay to go fishing; that when coming back at 2:30 in the morning towing a boat, his headlights picked up this rather large, bushy-haired man. He stated that he had seen several hitchhikers before he got to Sandusky, that is, from Bay Village over, but that from Sandusky in he saw nobody else on the road except this one man, and it stuck in his mind, because here was a fellow that was supposed -- that he supposed was a hitchhiker, and yet here he was standing back off the road in the shade of this tree and rather protected by the tree from anybody coming the other way, and Mr. Stawicki testified that he was driving down the center of the

road and had had his bright lights on, and picked this fellow up, and he remembered that he had some kind of a light shirt on -- he didn't know whether it was a T-shirt or a sweat shirt, or just what, whether it was light gray or white, but it was light colored, and it was not a regular shirt with buttons, such as I am wearing. And this fellow was large, he thought about six feet, and he had a generally bushy appearance to his hair.

He testified that that week was his vacation, and he went out fishing, spent most of the time that way; he doesn't read the paper every day but along about the end of the week he looked in the paper, and when he saw they were saying the doctor did it, and that this murder had occurred, that he felt it was his duty to go to the police with the information, and he went out there.

Of course, the prosecution is claiming that Mr. Stawicki went there because of the \$10,000 reward, and the same suggestion was made as to Mr. Knitter. Mr. Stawicki denied it, but, look, if he had been after the \$10,000, all that Mr. Stawicki would have to do would have been to go to the police and say, "I saw that man, and the man under the tree is Sam Sheppard." In fact, the police subsequently put Dr.

Sam in a line-up down here at the County Jail and called Mr. Stawicki down and asked him if anybody in the line-up was the man he saw, and Mr. Stawicki said no.

Now, I say there was an honest man. He didn't know Sam. He didn't know anything about the Sheppard family, but he thought it was his duty as a citizen to go over and report to the police officers. You saw him on the stand, you heard what he said, and I think you will be convinced that what Mr. Stawicki said had the ring of truth, and it is exactly what he saw on that day, and so with Mr. Knitter.

Mr. Knitter was going home a little bit later in the morning, and he saw this bushy-haired man on the road a little bit west of the Sheppard place, by the cemetery, I believe.

Now, I can't prove that the person who was seen on the road was the man who killed Marilyn Sheppard. I don't know. But there is the evidence of two unprejudiced people, didn't know the Sheppards, don't know anything about them. They came in and said that that is what they saw that morning, and it ties in with Sam's story of the kind of person he knew, and he told that story long before these people showed up.

Sam didn't tell that to fit in with what these people said. Sam told his story, and it was the same from the beginning, and this evidence showed up, which is some corroboration of what Sam went through that day.

I also want to call your attention to some of the spontaneous remarks that same said while he was under the influence of this beating, and while he was incoherent, and in a state of what some of the witnesses have described as shock.

Of course, Mr. Parrino spoke about the shock as though it was something that existed ever since the time the doctor started up the stairs when he was first hit. I don't know how long it occurred, but I think the evidence is perfectly clear that when Mayor Houk arrived that morning that Dr. Sam was somewhat incoherent and in pain, and as the other witnesses came in, they all testified that Dr. Sam was suffering, that he was incoherent.

His sister-in-law testified that when they put him into the station wagon to take him to the hospital, he was cold and shaking and quivering and quaking, as she put it; that when he got to the hospital, the nurse who undressed him -- you remember Mrs. Franz -- if you ever saw an honest person, a person who told

exactly what she saw, just as she did it, that was Mrs. Franz, and she said that when they undressed Dr. Sam that he was shaking so that some of the doctors had to hold the top of him while she and the helper pulled off the wet clothes which clung to him; that he was icy cold; that she put a thermometer in his mouth, and it didn't even register. She said that from her experience, he was in shock, so she ordered hot water bottles and put blankets on him, and we have the testimony of the X-ray technician that when she was taking the X-rays, that Dr. Sam seemed to be talking to himself, but what he said -- and here is what he said when he was on the floor of the den.

Mrs. Houk said she remembered him saying, "And I kidded Steve about keeping his doors locked."

And on the way down to the hospital he kept muttering, "How could this happen? Why couldn't it have happened to me instead of Marilyn?"

And in the hospital, the X-ray technician told how he said over and over again, "I tried to get to Marilyn. Oh, God, I tried, but I couldn't get to her."

And Mr. Munn said that when he and Marilyn's father went to see Sam that day, that Sam said to him that he regretted he hadn't kept his doors locked.

And again Dr. Don said that when he was in Sam's room,

Sam kept saying, "Why did they do it? Why didn't they do it to me?"

Now, I say to you ladies and gentlemen of the jury, that those things are entirely consistent with and support the story that Dr. Sam has told, but there are other things which are in the evidence which are entirely inconsistent with Sam's guilt, as charged by the prosecution, and I want to go over those with you just briefly.

I know it is getting late in the day, and you have had a hard day, and you have been very patient about listening to all this, and I think I can wind it up rather quickly.

There are certain things in this evidence that haven't been explained, that can't be explained, and yet they are entirely inconsistent with the idea that Sam could have killed his wife.

The first thing is that Sam did not have any bitten finger or any evidence that Marilyn had -- that he was the one that she had struggled with.

The next is that there were no blood spots on his trousers except ~~that~~ one spot at the knee, that I talked about.

The next is that there was no blood trail from the bedroom to the landing or in the hallway.

The next is that there are a number of unexplained items in this record that deserve your consideration.

Now, the first of those is the piece of leatherette that was found in the bedroom. You recall that, when the detectives went back and made a thorough search they found a piece of leatherette or leather. It has never been determined which it is, but it is in evidence here. It is a little flake of leather, and they checked all of Sam's leather goods, and they couldn't match it up with anything that he had. Presumably, that is something that was torn off the intruder in the struggle, and if so, the intruder wasn't Sam. They made every effort to match it up.

The next thing is the flake of fingernail polish that was found on the floor.

Now, Marilyn, you will recall, did not have fingernail polish on. She did have toenail polish on. This flake -- well, there is very little material, it is now in fragments -- but that flake, the testimony was from the Coroner's office, was ^{not} from her toenail. In other words, it wasn't from the toenail, and it wasn't from the fingernail because she didn't have it on, so it came from somebody else. Who, we don't know,

but there is some evidence that somebody else was in that room that night, and it certainly wasn't Sam Sheppard.

Also you will recall that when Dr. Adelson examined her body he found certain things under the fingernails, and those scrapings were turned over to Miss Cowan to examine, and Miss Cowan found that under one fingernail there were some particles that looked like the same kind of material as this flake of red fingernail polish that was found on the floor. It might have come off when she scratched off that flake of polish.

Then there were the strands of red and blue material that were found under her fingernail. One was a strand of a bluish wool. Another one a mercerized cotton. Those strands are all in evidence. What they come from, nobody knows.

There is the chipped tooth that was found under the bed. You will recall that when the detectives went back there and rechecked the thing, one of them got under the bed and looked around and found this chipped tooth, which has never been identified, but it is in evidence here. Again some evidence of a struggle.

Now, Mr. Parrino said that there was no evidence

of a struggle in that room except on the bed.

Well, of course, some of the questions that were asked of witnesses when they came in were, "Did you see any evidence of struggle in the room?" "No."

Well, the evidence of struggle on the bed was enough in itself, I would say. You didn't need much else. After all, what was there to show evidence of struggle?

When you go into a room where you find a woman with her head beaten in, blood all over the mattress, blood spots on the walls, not only on the wall behind the bed, but on the side and even across the room, you find the bedclothes bunched down at the foot of the bed and in disarray, with the woman partway down the bed and her legs sticking under the bottom board, and her pajama top practically torn off, the one pajama leg off, and the pajamas pulled down and bunched at the other leg, that certainly is some evidence of struggle, and supplemented with these other things that were found on the floor, I would say there was plenty of evidence of struggle there.

Then there was the cigarette butt in the upstairs toilet. Well, that has been mentioned by several witnesses, and you heard Sergeant Hubach just this

morning admit that he had seen a cigarette butt in the upstairs toilet, but nobody did anything about it. There was testimony that Sam didn't smoke cigarettes, he smoked a pipe, and that Marilyn never smoked upstairs, so how that cigarette butt got in the toilet or what the significance might have been is something that has never been explained.

Then there was the footprint that was found under the window. You will recall that when Mr. Grabowski was looking around outside he found a footprint under the window and called Dr. Gerber, and Dr. Gerber required those present to lift up the soles of their feet and took a look at the shoes to see whether it matched the mark, but that is all that ever came of it.

The pants pocket has a tear in it that was not there when Sam went to sleep. ~~That~~ is this tear down there, which might very well have come from somebody jerking the keys and the key ring out of there.

There is a break on the band of Sam's watch, which was called to your attention, but which is unexplained. And then there is the second key to the house. The testimony has been that there was one key and this second key turns up, and when the key turns up, what do the police do? Do they check the key to see whether there are any fingerprints? No. They just pick it up and add it to the key ring, and that's the end of it.

And then down on the beach, there was a woman's footprint and there are photographs in evidence of that footprint, the bare footprint of a woman. The evidence is silent as to whose that is. Mr. Schuele was asked if it could have been his daughter's, and he said he guessed it could have been, but there's no proof that it was.

And further down the beach, about 100 to 150 yards east of the Sheppard premises, 15 or 20 yards up the bank, and a week or so later, some of the boys who were searching found a pair of sunglasses and a handkerchief, which has been put in evidence, but just what the significance is of that --

MR. CORRIGAN:

That was the same day.

MR. PETERSILGE: Pardon?

MR. CORRIGAN: That was the same day.

MR. PETERSILGE: The same day, but I think I am correct about 100 or 150 feet down the beach.

Then there is one other thing which I think is important, and that is that the State hasn't shown any motive for this crime. And after all, people don't go out and kill one another without some reason. And the State doesn't know why Marilyn Sheppard was killed.

Now, in the beginning, when the opening statements were made, the Prosecutor told you that the State would prove -- I think I am quoting him correctly -- that the State would prove that the reason Marilyn was killed was because of Sam's infatuation with other women, and particularly reference was made to Miss Susan Hayes. And in his summation this afternoon Mr. Parrino referred to that same theory.

I think we ought to examine that calmly for a moment and just see what it amounts to. There has been a lot of talk about divorce off and on in some of this testimony, and I want to say a couple of things to you ladies and gentlemen about

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divorce.

Now, in the first place, I think the evidence shows that Sam didn't intend to get a divorce, but let's assume that the evidence that has been put in is to the contrary, suppose he wanted a divorce. That's the most you could claim for what the State has put in through Dr. Hoversten, about 1950 and again in '53, and the mention that Sue Hayes made about there being a discussion of divorce.

But just suppose that the result is that Sam wanted a divorce. Well, now, if he wanted a divorce, that doesn't mean he wanted to kill his wife. The easiest thing in the world is to get a divorce. There are thousands of them go through every year down here and all over the country, and people aren't killed because of that. So that if divorce was discussed, it seems to me that it was not a motive to kill. After all, he is on trial here for killing his wife.

But, as I say, I don't think that Sam ever seriously intended divorce. He says he never discussed it with his wife.

But, again, take the State's testimony and give it the most favorable interpretation that you can, and let's see where we wind up. Now, the

testimony on divorce, as I recall it, came in first through Mrs. Ahern, and Mrs. Ahern said that in April of this year, after Sam and Marilyn had gotten back from California there came a day when she went over to Marilyn's and they were talking, and Marilyn told her about Sam having bought the watch for a girl in California, and Mrs. Ahern asked her whether she was upset about it. She said, "Do you think there is anything to it?"

And Marilyn said, "No, I don't think so."

She also told Mrs. Ahern at that time that when Dr. Sheppard left Los Angeles and drove up to Monterey with Dr. Chapman, that Dr. Chapman had convinced Dr. Sam that he ought to drop the idea of a divorce.

Now, she admitted on cross-examination that several months before at the inquest, when it was fresher in her mind, she had related this same conversation but had said at that time that Dr. Chapman and Dr. Sam discussed it, and that Dr. Sam decided that Marilyn was the one for him, and was the only one, and that Dr. Sam decided to forget about a divorce.

But whether Dr. Sam decided to forget it or whether Dr. Chapman convinced him, either way

you look at it, at that time Dr. Sam decided to forget about a divorce. So as far as the divorce part, no matter what it was worth, it was over by the time they started back from California.

Of course, when you get to Susan Hayes and talk about a divorce, she said there had been some talk about a divorce, but she didn't say what it was. Dr. Sam said that the substance of it was that she said, "Well, other people get a divorce, why can't you?"

But there is no evidence at all that there was any intention to get a divorce, as far as Susan Hayes is concerned, and, in fact, no reason why he would need to.

Now, aside from the question of divorce, how much is this testimony of Susan Hayes' worth? Of course, the State said they were going to show about affairs with other women. The only one they got in here was Susan Hayes. As far as the other poor women whose names were mentioned here, there was nothing of any substance, and certainly they shouldn't have been mentioned. At the worst, it was just a silly flirtation.

But with Susan Hayes, the testimony was, as you know, that she and Dr. Sam had had an affair

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for some time. I don't want to go into the details of it with you, but I think that there are some things that you ought to remember. The first talk of divorce that Susan Hayes said anything about was sometime in the latter part of 1953, when she testified that her intimate relations with Dr. Sam started in 1952 before she had left the hospital. So that whatever there was with Sue wasn't the result of any talk about divorce, it had started a long time before.

The second thing about Sue Hayes is that -- and she has testified to this herself -- that while this was going on Sam told her he loved his wife. Sue was never misled, she knew what she was doing, and she testified that at all times she knew that Sam was a married man.

To my way of thinking, Sue Hayes as a reason for Sam killing his wife is just no good, it isn't adequate. Why would he have killed Marilyn for Sue Hayes?

The evidence is that when Sue and he first became acquainted, she was a technician at the hospital, and after a time she decided that she wanted to get a job downtown and she left. Sam didn't try to stop her. He continued to see her

while she was in town, but when she came back to the hospital, it wasn't Sam's urging. It was Dr. Hartman that brought her back, and he did it because he needed a technician. And when she came back, she said that she was doing it only on a temporary basis, and there was an understanding that she would notify them when she was going to California, and she went to California and Sam didn't try to stop her.

She went out to California, and when Sam was out there he saw her again. But after he left and came back here, there was no evidence of a continuing liason with Sue Hayes. The only thing that happened was that they wrote a few letters back and forth, and Sue said that there was no protestation of love in the letter, in the body of the letter. She said he signed it with "Love, Sam," but that's a lot different than writing a love letter. Well, you can't believe that there was any grand passion between those people, some impulse that would have driven him to kill his wife in order to get Sue Hayes. Sam Sheppard had been able to have relations with Sue Hayes anytime he wanted to for the past two years, and when he went to California, according to the evidence in

this case, it was just another incident. But the idea that he would come back to Cleveland and four months later, after having written a couple of letters in the meantime, that he would on the night of July 3rd while entertaining some neighbors fall asleep watching television, and sometime during the night get up, rush upstairs and kill his wife because of Sue Hayes, ladies and gentlemen of the jury, I can't believe you will ever reach that conclusion.

Now, I think that that just about sums up what I had in mind, and I will say this to you again: The burden is on the State in this case to prove that Sam had the intent to kill his wife, that he had the malice, the wickedness of heart that goes with that, to prove that Sam deliberated and premeditated and deliberately went in there and killed his wife. And that is a burden that the State has to carry by substantial evidence and prove it to you beyond a reasonable doubt. Unless they do that, they have failed.

And it is the belief of the Defense in this case that the State has failed, for the reasons that I have stated.

Again I want to thank you for your attention.

THE COURT:

Thank you, ladies

and gentlemen, for your patience, and I hope that you will be patient at least tomorrow for the simple reason that we are now in the closing stages, and it is important that these presentations be given to you in one connected fashion.

It was important to Mr. Petersilge that he be permitted this afternoon, of course, to complete what he had to say. I am sure you will understand that and be sympathetic with that kind of procedure. This presentation will undoubtedly take all of tomorrow, but we will be through with these presentations tomorrow, without regard to time.

Is it necessary that we start a little early in the morning? Would it inconvenience any of you ladies and gentlemen if we thought, without binding anybody to any minute, of starting at nine o'clock tomorrow morning? Would it inconvenience any of you?

All right. We will not be adjourned until nine o'clock tomorrow morning, and if there is anyone missing at nine o'clock, he or she will not be in contempt of this Court.

We will convene and proceed as soon as

we are all here ready to do so. In the meantime, we are coming now to the closing stages, and will you please be very careful not to discuss this case at all with anyone. Nine o'clock tomorrow morning.

(Thereupon, at 4:50 o'clock, p.m., an adjournment was taken to 9:00 o'clock, a.m., Thursday, December 16, 1954, at which time the following proceedings were had:)

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Thursday Morning Session, December 16, 1954.

(9:00 o'clock a.m.)

FURTHER ARGUMENT ON BEHALF OF DEFENDANT

MR. GARMONE: May it please the Court, Mr. Mahon, Mr. Parrino and Mr. Danaceau, ladies and gentlemen of the jury:

May I take this opportunity -- as I started to say, may I take this opportunity to congratulate you on the splendid attention, the tireless effort you have displayed during these nine weeks. You have been deprived, probably, of many comforts that you ordinarily enjoyed in and around your home with your family because of the admonitions that you have received throughout the trial by his Honor, Judge Blythin.

The purpose, ladies and gentlemen, of those admonitions was that we could come to this point in the lawsuit where your minds would be free, your minds would be open, and that you could take into consideration all the facts and all the testimony that has been submitted to you without any outside influence, and I am sure, and I say this to you sincerely because I have had the opportunity of observation during this entire period, that you

have done just that.

I shall try in my summation to be rather brief. Yesterday you were privileged in hearing arguments that were presented by Mr. Parrino as to what he thought you should gather from all this unraveled and unfolding story. You heard the summations that were made by Mr. Petersilge, and he expressed what he felt your interpretation should be of the facts that you have in your possession now as to the guilt or innocence of Sam Sheppard.

With an effort not to be repetitious, may I convey to you some of the thoughts that I have in my mind?

And I start with the first witness that was offered for your consideration, Mr. Drenkhan, after we had heard the testimony of Dr. Adelson, whose testimony I will try not to touch in the course of my summation.

If you recall, ladies and gentlemen, his testimony was that when he arrived at the scene, he made an investigation of the bedroom in which the body of Marilyn Sheppard was found, and when he was asked the question -- and this is a matter of record -- whether or not, after the body had been removed by the funeral home, there was taken the sheets

and other bedclothing along, his answer was, "Not at that time, but sometime later the funeral home took the sheets and bedclothing with them."

And then he was asked on cross-examination whether Officer Schottke and whether Officer Gareau was present when that was made, and his answer was that they were.

We talk about this vast investigation that was made by members of the Cleveland Police Department. Why, from the very first instance tangible items that were necessary in determining whether or not Sam Sheppard was the man who had committed this most revolting crime was permitted to be removed from that room, without any preservation, without any effort by Schottke, Gareau, Drenkhan or Gerber, though his testimony be to the contrary on the sheets and the bed clothing, to preserve any evidence that may have been of value on those items, evidence that could have been revealed and brought before you as members of this jury by proper examination in one of the finest Coroner's offices in the United States of America.

Why do I attach any significance to that particular portion of the examination at the very first instance? It's significant because, as you have been told by witnesses that were presented through the State of Ohio, that there had been found underneath the fingernails of Marilyn Sheppard some foreign substances, that there had been found in and about the room some nail polish, that there had been found a chip from a person's tooth. Had there been an examination conducted? Had there

been an effort to preserve in a proper manner all the items in that room, including the bed sheets, so that a microscopic examination could have been performed thereon?

How do we know, and how can you say, that these items taken altogether could not have revealed the true murderer of Marilyn Sheppard? Is it on that type of investigation, is it on that type of operation, that you are to be led through a cloud of darkness in asking that you come back with a verdict of guilty as to this Defendant?

If there was not available to the Police Department, if there was not available to the Coroner's office, the necessary mechanics to conduct an examination, then I would say to you to give it whatever weight you feel necessary under the circumstances. But that was not the case.

And while I'm on the subject of Schottke and Gareau, I want you to keep in mind their arrival there at the first instance that they came to the home of the Sheppard family, because you can see that the pattern was now beginning to form.

They went up to this bedroom. There's a man who admits that he was with the Homicide Squad

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for a period of 10 years, and by his own acknowledgement, he said that he spent no more than a minute in the bedroom where the body of a lady who had been murdered laid. Is the pattern beginning to form?

Search your minds and take it step by step until we get to that visit that was made to the room of Sam Sheppard on the second occasion, where Schottke, after having had some conversation with Sam Sheppard earlier in the morning, had come back and he says, "Sam, we found your teeth under your wife's body." That was Sam's testimony.

Schottke didn't say that he made that statement, but he didn't, on the other hand, deny that he had had some conversation there with Sam about teeth.

And you have as much right to believe that the statement was made as testified to by Sam Sheppard, because if it wasn't made, why didn't they bring Officer Gareau in here to rebut the testimony of Sam Sheppard after he had testified on that point?

And then during the course of that conversation he says, "Are you willing to take a lie detector test?"

And what was the answer that this man

gave? He says, "I am."

And after he had been surprised with the answer, if you recall the testimony of Sam Sheppard on that subject matter, he says, "I don't think that will be necessary because I'm satisfied that you are the guilty person."

Now, the pattern has already taken shape, the thoughts that had been running through the mind of Schottke are being expressed, and mind you, ladies and gentlemen of the jury, that that statement was made, not after he conducted an examination or investigation that had run for a period of days, but it had been made after he had spent a matter of two or three minutes in the bedroom of Marilyn Sheppard, after he had spent a matter of about 45 minutes in and around the home of Sam Sheppard, the pattern of bringing about a conviction in this matter by whip rather than by wit.

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There has been much said about the circumstances, about the circumstantial evidence that points in the direction of Sam Sheppard. I say to you, ladies and gentlemen of this jury, that if you place in both of your hands all the circumstances that have been submitted for your consideration and you deal with them fairly and impartially, and favor Sam with the same circumstances as you favor the State, I have no doubt in my mind, from the sincerity that you have displayed during these nine weeks, that that scale will balance in favor of Sam Sheppard, and satisfy your conscience and conviction as to his innocence, and that his guilt has not been proven to you beyond a reasonable doubt.

We have heard the testimony of many witnesses, Mr. and Mrs. Houk, and Mr. and Mrs. Ahern, and many doctors and many nurses who were associated and employed at the Bay View Hospital.

Have you heard one person come into this courtroom, whether it was witnesses that were submitted for your consideration by the State of Ohio -- have you heard one word in this courtroom through the witnesses that were offered by the defense that Sam Sheppard has the capabilities, that Sam Sheppard has

the temperament, or that Sam Sheppard was the type man that was capable of committing so revolting a crime? Why, to the contrary.

Mr. Munn, Marilyn's uncle, who testified for the State, said that Sam was even-tempered. Mr. Munn stated that he on no occasion -- and he had testified that he had been in their company on many times -- stated that he had never seen Sam mistreat Marilyn, that he had never seen Sam mistreat Chip.

The Houks, who were friends and neighbors, the Aherns, who were friends and neighbors, and the Schueles and the Paines, each and every one of them gave you a picture of this young man that defeats entirely the capabilities that would possess him to commit so revolting a crime.

And as I listened in this courtroom for a period of nine weeks, as I heard this testimony unravel, as I heard the State unfold their case, I asked myself this question, and maybe you did, too:

Where have they shown a motive? Where have they shown to you a motive that Sam Sheppard had any desire, that Sam Sheppard ever premeditated or deliberated, where have they showed you a motive that Sam Sheppard had formulated in his mind any

malice toward Marilyn, or anyone else, to bring him to the point where he could kill Marilyn?

Can you, ladies and gentlemen of the jury, on that type of evidence take away all the hope from this young man? Can you, on that type of evidence, take away his life? Can you, on that type of evidence, take away his freedom and existence and a right to continue in this community, to do the many good deeds that people have testified that he has done in his young 31 years?

Why is the testimony of the Coroner's office so significant relating to the nail polish? Why is the testimony of the Coroner's office so significant relating to the substances that Mr. Petersilge described to you were found under the fingernails of Marilyn Sheppard? Why is the testimony of the chipped tooth -- and on that particular subject, if the State of Ohio, and if the Coroner's office, had a scintilla of thought that that chipped tooth came from the mouth of Sam Sheppard, that testimony would have been given to you for your consideration.

But let me not forget what I had started out to say regarding the substances under the nail, the nail polish and the chipped tooth, why a great

significance should be attached to it.

Do you remember Mr. Stawicki, do you remember Mr. Knitter, both gentlemen foreign to one another, Mr. Stawicki having no knowledge of what Mr. Knitter saw, Mr. Knitter having no knowledge of what Mr. Stawicki saw, and they both came in here and told a straightforward story, and the people that they both identified met, in substance, the same requirements as to facial features, as to dress, and as to physical appearance, and that description, ladies and gentlemen, without having knowledge of what Sam Sheppard had told Mr. Houk, without having had the knowledge of what Sam Sheppard had told Schottke and Gareau, and without having knowledge what Sam Sheppard incorporated in the 12-page statement that he signed, corresponded with the description that Sam, to the best of his ability, was able to give the authorities.

Now, correlate two strangers in the vicinity of the Sheppard home, correlate that set of fact, that descriptive picture with the substances under the fingernail of Marilyn Sheppard, with the nail polish, with the chipped tooth, not any of the items having been identified with the defendant -- and you

know as well as I do that if the Cleveland Police Department could have found any clothing in that room, that if the Cleveland Police Department could have found any nail polish in that home, and that if the Cleveland Police Department could have associated the chip of that tooth to the mouth of Sam Sheppard, that that testimony would be here before you.

Think of that picture. Those are two disinterested people, and that silent testimony, through those exhibits that I have described to you, corroborates the story of Sam Sheppard that there was somebody in the room of Marilyn when he got up into that room, beckoned as a result of his wife's call.

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Those are not circumstances that leave you hanging in the air. Those, ladies and gentlemen of the jury, are not circumstances that have not been connected or associated with a continuous chain, but that is direct evidence to substantiate the story that was related to you by Sam Sheppard.

Oh, I know that they said to Stawicki, "What were you interested in, the \$10,000 reward?"

And what was his answer? He said he wasn't.

You saw Mr. Stawicki. He was the man who worked in the steel mills for 26 years. The material things in life that he has gained, the material in life that he enjoys today came by good, honest-to-goodness hard labor. And when we, in our everyday walks of life, through the efforts of hard labor, gain the material things that we need in and around our home and for our family, there is something else that is bred into us through those hard efforts: Spiritual honesty. And that was displayed by Mr. Stawicki.

And when he was told by Chief Eaton, "Maybe you made a mistake, I'll drive you up the road about a mile and bring you back in the opposite direction,"

he came back to the same point and picked out the same place.

Was he ever -- and I say to you again, is his testimony significant? -- was he ever, as the State of Ohio will make you believe that the Police Department investigated out all these rumors and tips, was Mr. Stawicki ever taken to the police station to view any photos? Was Mr. Stawicki ever taken to a line-up in the police station of some of these people who were suspected of the crime for which Sam Sheppard stood charged with? The only line-up he viewed was the line-up that Sam Sheppard was in. And when he was asked the question, "The man that you saw, was he Sam Sheppard?" his answer was no.

And then we have the Knitter boy. Would he have any reason to come before you and state an untruth? What does he have to gain in offering you the testimony that he did? But he came in and told you a straight-forward story. And when he was asked the question regarding the \$10,000 reward, he said he had never read about it.

Ladies and gentlemen of the jury, you can't -- you can't discard from your consideration in the determination of this young man's guilt or

innocence that testimony, because there had never been made an investigation or an examination of the nail polish. Marilyn had no polish on her fingernails, but Marilyn did have polish on her toenails. And was there submitted for your consideration any evidence that the polish that was found on the floor of that bedroom that placed another person in that room that was not Sam Sheppard, was there submitted for your consideration whether that polish corresponded with the polish that was on the toenails of Marilyn Sheppard? They said they didn't make an examination of it.

Well, can you, on that type of evidence that is left hanging in the air, that has been left in this cloud of darkness permit yourselves to be casted out into a stormy sea without a compass, in the darkness of the night, to the point where you may shipwreck the happiness of your home and the peace and forever destroy your conscience?

We are dealing, ladies and gentlemen of the jury, with the life of a human being. And whether a man sits at that table as a first, second, third, or fourth class citizen, he is entitled to a more thorough, he is worthy of a more beneficial

investigation of all the facts than he received under the circumstances.

He didn't receive the consideration that he was entitled to comparable to the seriousness of the charge that he stands on trial for here, because that wouldn't have been consistent with the pattern that began to shape up when the sheets were permitted to be removed before any investigation or examination of them was made.

He didn't receive the benefit of an open mind from the Police Department, he didn't receive the benefit of an open mind from the Coroner's office, because it wouldn't have been consistent with the pattern that formulated in the mind of Officer Schottke. And if he had been honorable and if he had gone into this matter with an open mind, such as you have, would he have interrogated this young man and made no notes of it?

There was this pattern, it came into being, and it was continued throughout:

"We'll get Sam Sheppard. We don't have to worry about getting him through our wits. We'll get him through the old means that we use. We'll interrogate him now and we'll interrogate him again. Schottke and Gareau will go in, Becker

and Lonchar, Boyett, O'Hara, and somewhere along the line we will get a confession out of this man."

But, ladies and gentlemen of the jury, a man who was subjected to the interrogation that Sam Sheppard was put to, if there had been any evidence of guilt, if there had been any knowledge within him, it would have come out. But they didn't realize, they didn't appreciate, that they were dealing with an innocent man, a man who, through all this volume of testimony, a man who has unravelled here a story and through all this volume of testimony there has been unfolded the type man that Sam Sheppard is, the type man who, under no circumstances and, certainly, not under the type of evidence that you have received, could ever possess, could ever possess within the soul in that body the capabilities of committing this most revolting crime.

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My time is drawing to a close. There are one or two items I would like to leave with you.

There was much time spent here yesterday describing Dr. Stephen Sheppard's activities, as to why Dr. Steve Sheppard, when he arrived at the home, went to the bedroom of Marilyn Sheppard without having been told.

Ladies and gentlemen of the jury, as that man testified from that witness stand, he knew that every word he would utter would be weighed by you carefully. He knew that every word he would utter would have a direct bearing on the salvation of Sam Sheppard's life, on the salvation of Sam Sheppard's existence and freedom, and he told you without hesitation that he assumed, because it was that hour in the morning, that Marilyn was in her bedroom.

And let me just leave this thought with you on that subject:

Who would have a better right to assume where the body of Marilyn Sheppard was, Dr. Steve Sheppard or Mrs. Houk, who, from her own testimony, if you recall, stated that she hadn't been in the upstairs portion of that home for a period of a year or a year and a half, or better, and when she arrived there the

only person in the house was Sam Sheppard, and where did she go? She went to the bedroom of Marilyn Sheppard, to an upstairs portion of that home that she had had no acquaintance with for a period of a year or a year and a half, or better.

Now, if there is so much fuss to be attached to the assumption that Dr. Steve Sheppard used as to where Marilyn's body was, think, think how it fits into the statement made by Mrs. Houk, who didn't stop to talk to Sam, only looked into the den, and went directly to the bedroom where the body lay.

Oh, they have said things about Steve, about his activity. I won't spend too much time on that.

I will leave this thought with you:

In the bedroom of my son there is a picture, a picture of a boy about eleven years old, and across his shoulder is a little boy about five years old, and this boy is shuffling through the snow, and as nighttime is beginning to fall, in the far beyond is the silhouette of a schoolhouse, and as he is walking along he said, "He ain't heavy, Father, he is my brother."

I think that that is sufficient answer for the fine bringing-up that Mrs. Sheppard has displayed for you in Richard, Steve and Sam.

Ladies and gentlemen of the jury, there has been much time spent on Miss Hayes. I cross-examined her. I will not go into that. There has much time been spent on Mrs. Lossman, and will you ask yourselves why a mother, Mrs. Lossman -- ask yourselves why her name was dragged into this picture. What significance did it have on the guilt or innocence of Dr. Sam Sheppard?

As to Susan Hayes, it reminds me of the time when Mary Magdalen was brought out by the Elders and thrown at the feet of the Lord, and they wanted to stone her, and the Lord stooped in the sand, and then He straightened again and He said, "Let him who is without sin cast the first stone."

Yes, Sam Sheppard has sinned, he has admitted it, but did the sins he committed, did the sins he committed, as serious as they were, with what you know about this man's background, with what you know about his love for Marilyn Sheppard, testified to by Miss Hayes, create in him, again, the capabilities to commit so revolting a crime?

I ask the State of Ohio in their final summation not to fight for any personal glory, not to fight for the protection of the bungling that was done in this entire investigation, but to state to

you the facts and give them the interpretation in a fair manner, and I am sure they will do that, because the stakes, the stakes that we have contested for in these past nine weeks are very high.

Mr. Barrish, Mrs. Borke, Mr. Verlinger, Mr. Lamb, Mrs. Feuchter, Mr. Hansen, Mrs. Foote, Mrs. Orenstein, Mr. Bird, Mr. Moravec, Mr. Kollarits, Mrs. Williams, Mrs. Mancini, I bring you Sam Sheppard, I give him to you. A more serious deposit I probably will never make again; a more serious deposit in your lifetime you probably will never receive again. I give you the body of a man 31 years young, more than that, his immortal soul, the purchase for which God poured out His own blood.

I ask that you deal with it accordingly, and that you search your conscience thoroughly, and if you do that, I know that your verdict under this descriptive, factual picture that you have received here, will be one of not guilty.

In the language of the Lord, "May God to him, Sam Sheppard, a good deliverance make; the Lord guide you and bless you."

Thank you.

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FURTHER ARGUMENT ON BEHALF OF DEFENDANT

MR. CORRIGAN: If the Court please,
and counsel and members of the jury:

I have the obligation of saying the last word in this case for the defendant, Samuel Sheppard, and when I have finished talking his defense is closed, and no matter what the gentlemen on the other side of the table may say, I have no opportunity to answer it.

I expect to review some of the evidence in this case. I know that you will not receive this case until tomorrow, and that many of the things that I say may be forgotten by you, but perhaps you will remember some of them.

Now, I am not a great believer in the maintenance of a position by oral argument at the end of a case. I believe in trying a case that I have, to present to the jury, as I go along, evidence that convinces them, and that is what I have tried to do. As I have examined, and as my colleagues have examined these witnesses, the information that we have been eliciting is for your minds, and all I do now is try to refresh your recollection on some of the things that occurred in the trial of this case. I am no

orator, as you will see as I go along. I haven't the wit nor the power of words to stir men's souls.

When Freddy told that story about the picture in his son's room, it brought tears to my eyes, but I don't have the ability to bring tears to any eyes, and I don't think it makes any difference in this case, and I am not going to try to bring tears to your eyes, but I am going to tell you what I think I have proven in this case.

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Sometimes I think that it's a sort of a dream that I have been in, that these things that I have been listening to and observing in my native city of Cleveland, Ohio, have been a dream. Could it happen here, these things that we have listened to and that have happened to this young man?

And I often think that sometimes maybe there's undertones here that we don't appreciate. Osteopathic physicians, osteopathic hospitals, the Sheppard family as doctors, are there some undertones that started this thing against this family and against this hospital that raised this hysteria in this community?

Here he sits among strangers. You are strangers to me, you are strangers to him, and all around the room for weeks have been strangers around Dr. Sam Sheppard.

And I know this, ladies and gentlemen, and you know it, too, with the exception of Mrs. Borke, who said she didn't read the newspapers and came into this court room not knowing a little bit about it, and except Frank Moravec, who said he confined most of his reading to the sports pages, to baseball, but all the rest of you, when you were on that stand, said that you knew about

the Sheppard case and that you heard about the Sheppard case and you heard people talk about the Sheppard case, and that you had heard it discussed.

And how could you not, in this community since last July 4th, honestly put yourself on the witness stand and say that you had not heard about the Sheppard case and the stories that went around this town and the tales that were told? And some of them vile and dirty, by people who didn't know a thing about the Sheppard case except what they read in the Cleveland Press, the Cleveland Plain Dealer and the Cleveland News.

And then when you came to this court room and you entered that door downstairs, you know what kind of people you were and what effect this had on you. But you swore, you swore to Sam Sheppard, you swore on your honors, that you would answer on your voir dire the questions honestly, and you told him and you told yourself, "My mind is such that I can sit on this jury and decide this case on what I hear in court in sworn evidence and nothing else. That I'll give him a fair trial and I'll decide this case upon what is sworn to before me and I will not be affected by anything

that I hear outside of this court room."

And you know that since you have sat in this court room, that you have been presented lurid headlines and misleading headlines about what you heard, and you couldn't escape them if you looked at a paper, and your papers were delivered into your home.

And you have been on the television, and it's been on the radio, and that's the thing that this jury has been subjected to since the beginning of the case.

But you said -- and I hold you to your oath as you would want me held to my oath if your son was sitting here in this room and I was the jury -- that you will render your verdict, you swore that you would render your verdict based on the evidence that you concluded on and you would not try to please anybody with the verdict.

The Grand Jury indicted this man. It raised no presumption of guilt. The Grand Jury had witnesses that these gentlemen selected. Everybody else that they didn't want was left out. They picked and choosed, and then the Grand Jury indicted, in the hysteria that was going on in this community, in August of this year.

And Mr. Mahon, who is now a Judge and who has been elected a Judge and who was a candidate for Judge all through this thing, he was in this case on July 7th, on Wednesday, and he was out in Sam Sheppard's home.

And Parrino and Mr. Danaceau were investigating this case and calling in witnesses and getting statements, Dr. Sheppard and Richard Sheppard and Stephen Sheppard, and going out and examining the home. They are not a police force, they are not hired for that at all.

But there was publicity. And then when we came into this court room, after all their investigation, Mr. Mahon got up and spoke to you, and it was the result of his statements, the statements he had obtained and everything else, and he said to you on the opening day of this trial, on Page 26 of the record, that after Sam Sheppard had come from California and after this affair with Susan Hayes had taken place in California, and after he had succumbed to that lure of sex that is the strongest lure in the human body, as you know and I know, that he and Susan Hayes corresponded.

Mr. Mahon is saying this. I am reading his words to you. That they talked together about

divorce and marriage. Did they ever talk together about divorce and marriage?

Susan Hayes said they were together and when the discussion took place, Sam said to her, "I love my wife, I love my son."

That's what he was saying to his paramour. Was there any talk about divorce and marriage when a man is lying with his paramour and telling her at the same time that he loves his wife and he loves his child? Was Susan Hayes deceived?

And then he says they corresponded in language of endearing terms. And Susan Hayes said that there was no expression or no love in the letters, except the letters were signed, "Love, Sam."

Well, you sign letters yourself that way. It's a common way of signing letters, "Love, Bill; Love, Marilyn; Love, John." It's a common way.

But Susan Hayes said there was no expressions of love or endearment between those two.

And we expect, Mr. Mahon says, the evidence in this case to disclose, if you please, ladies and gentlemen of the jury, that this Defendant and Marilyn were quarrelling about the activity of Sam Sheppard with other women and that is the reason she was killed. That's what this chief

prosecutor told you after his months of investigation.

Now, then, what did he bring forward to prove those assertions that he made, that these gentlemen made to you? Mr. Parrino classifies this crime among the great crimes in America, that it's a horrible crime. Who talks about its horror?

But these crimes of this kind happen again and again. Even this week down in Arkansas, the very same thing happened, where a man was asleep and his wife was killed upstairs. Well, perhaps they have a police force down in Arkansas, in Brinkley, that will use some sense in investigating why that man was asleep and why his wife was killed upstairs with children asleep.

And Mr. Parrino says he's protected by the Constitution. Protected by the Constitution? Well, God help Sam Sheppard or God help anybody or any citizen in this community if we would depend upon you gentlemen for Constitutional protection or if we would depend upon the authorities in this community for Constitutional protection.

Yes, he's protected by the Constitution, but God help him if he didn't have a lawyer that would assert his rights under the Constitution. The Constitution provides for representation by

counsel, in the Bill of Rights. It provides for cross-examination, meeting witnesses face to face, those things that were etched out by the founders of our country, by the Revolutionary Fathers, those things that were etched into our Constitution as a result of bloodshed and sacrifice and which have been maintained in our Constitution as the result of vigilance and sacrifice and death of many men.

And those safeguards, ladies and gentlemen, can be lost. They were lost in other countries. Men over in Germany back in 1911 and 1912 were living as free men, and suddenly they found their Constitutional rights lost. People in Czechoslovakia who were living under a Constitution, people in Poland, Lithuania.

I remember that the President of Lithuania died in a rooming house out here on 30th Street a few years ago, living in this country. I can go through the European countries, many of them where years ago they lived under Constitutional privileges that were lost, lost by vicious men who took over government and destroyed government, and they can be lost in the United States just as they can in any other country.

And you've got to maintain -- my job is

to maintain in this court room the Constitution,
as far as I can do so.

Just imagine what happened in Cleveland,
Ohio. Trial by newspapers.

"Arrest Sam Sheppard. Throw him in jail.
Third-degree."

That's what you read and what you saw and
what this case is about.

And challenged by Gerber to make a confession
of his sins in public, to confess sins that we
only confess to a priest or a minister or we con-
fess to God himself in the privacy of our own room.

But Sam Sheppard, dragged out before 500
people and asked to make this confession, and he
didn't make that particular confession. But
Parrino says he got up and he lied under oath,
he lied under oath. Well, I'd lie under oath
and so would you and you and you, if somebody
brought us out in public and asked us to confess
to some private sin that we had discussed -- or
that we had committed.

And it was discussed everywhere, as you
know. And that's why I say that you people now
are different people than what you were when you
came in here on the 18th of October, and you'll

never be the same again because you have heard what can happen to a fellow citizen.

And then they holler about the protective shield that was placed about Sam Sheppard by his brothers and his attorneys. And since when does a man not have the right to counsel if he is accused of murder? That's his Constitutional privilege. But these gentlemen will tell you and the police and the newspapers and the community will tell you, there's something wrong about an attorney representing a client when he is charged with murder.

And believe me, it hasn't been pleasant to represent Sam Sheppard. It hasn't been pleasant from the telephone calls that I get and these other gentlemen get all hours of the night, waked up out of bed to be insulted by citizens because we dare come in and represent Sam Sheppard. And the fantastic stories that have been spread around the community about us, that we are working for money. Well, we are not working for money. And about our fees -- we are not working for fees. We have received no fees and haven't even talked about fees.

This man is a poor man. What is he? A

young doctor with some old furniture, a house with a heavy debt, a few dollars in the bank, a Jaguar car and a second-hand Lincoln and ability to live and make money. That's what he is. He is no rich man. And those people there have cost us in the neighborhood of \$3,000 for the record in this case. That's what he is put up against.

Don't you believe, and don't let those things enter into your mind, protection, protective shield. When did that man refuse to talk to anybody? Is there a scintilla of evidence in this case that he ever refused to talk to anyone?

The protection that his brothers may have given him or tried to give him. I gave him no protection. I was convinced on Wednesday of that 4th of July week that this man did not commit any crime, and I walked away from it on Friday because I thought that reason would prevail, that the man didn't need an attorney. Why should an innocent man need an attorney? Why should he need me? I thought reason would prevail, and I walked away, and I didn't see him but once until the 30th of July when he was arrested, and then he needed an attorney, and I became his attorney.

But take the first day -- "Protective shield" -- who was there? Schottke, Gareau, Eaton, Hubach, Drenkhan, Houk, Hoversten, they were all talking to him, and the story was told to them, and then a police guard around his door, protective custody.

Why, it is obvious that these gentlemen, the whole police force of the city of Cleveland -- where is McArthur this morning. He has been here since the beginning? Where has he gone? The whole police force, the Coroner's office, the Sheriff's office, the Prosecutor's office, they are not big enough to admit that they made a mistake. They are not big enough to admit that they made a mistake. They jumped at a

conclusion, the obvious thing.

You know, ladies and gentlemen, that that is one human failing to jump at the obvious, so they came into the house that morning, Dr. Gerber, without any investigation, finds a woman in bed slain, her husband a doctor, an osteopathic doctor connected with Bay View Osteopathic Hospital, and Dr. Don told you that on that morning Gerber says, "Well, he did it. Let's go down and get a confession."

And let me follow that through for just a minute. The body was taken over to the morgue, wounds on the head, obvious. She was killed by being bludgeoned in the head, so they washed the blood away. They gave her a sloppy autopsy, one they should be ashamed of. A morgue with everything in it, finely equipped by the tax payers of this community, built out at Western Reserve so they could have the advantage of Western Reserve University, the Medical School and all the authorities out there so that they would give correct and proper results, but they didn't do that with Marilyn Sheppard. And then the word came through, and when the autopsy was performed, she was pregnant, carrying out the theory that they had evolved that he killed his wife because she was pregnant. Adelson said he heard that

theory, and carrying out that theory -- and why should they take that little baby that was unborn, that little baby and put it in a bottle in the morgue without consulting the father of that child? And they kept it out there, and they have kept it since in a bottle in the morgue for the curiosity of students and others that might come along to view it.

Why, they are to be condemned, they are to be condemned, Adelson and Gerber are to be condemned for that kind of tactics as public officials of this community, and the only reason they did it is because they were going to work on the theory that they had evolved that very morning that he had killed his wife because she was pregnant.

And there is something so very crude about this whole thing to me. "A fetus," Gerber said; "a fetus," he keeps on repeating. And Mr. Parrino, when he gets to talking about that -- a mother with five children becomes a woman with five kids, and it is so crude to me.

Now, William is my oldest son, he is my first born, he sits here with me. He was never a fetus. He was a soul from the time we discovered he was conceived, and I remember my wife and myself going down

on our knees and thanking God that he had blessed our union with a soul. We didn't know it was William, but we knew it was someone whom God had infused -- into which God had infused a human soul.

And these gentlemen come in and they talk about Marilyn's unborn child as though it was some kind of a thing, and kept it in the morgue in a bottle.

And accused of murdering his wife, accused of murdering his wife, but he should have no attorney representing him, he should have no attorney representing him.

You have seen the scene around this courtroom and around this Courthouse since we started this case. You have seen all these people come here from out of town, these reporters, and writing about this thing.

Well, you better write this, gentlemen, that when these things happen, there is the creaking of the ropes behind the stage that signifies that maybe the curtain is going to fall. You might think of one of your confreres, William Oatis, over in Czechoslovakia. You might think of what becomes of a bar of lawyers when taken over by a totalitarian country. You might think of the lawyers that were

in Czechoslovakia and what became of them, and when Oatis, who was one of their confreres, an Associated Press correspondent, when he was forced to confess, and then thrown into a Communist jail, and they sent him a lawyer, and the lawyer went down to him and said, "I can't defend you. Nothing I can do to defend you. All I can do is see if I can mitigate the sentence."

And then the story of the young fellow in New Jersey, a Czeck boy who escaped in New Jersey, and who finally was captured by the Communists, and he had a lawyer, and the lawyer said, "Oh, we can't appeal the case because if we appeal it then the court up above can make it a heavier sentence."

Think of those things, ladies and gentlemen, as we go through this case, and go through the case of Sam Sheppard.

I am not at all satisfied that this matter is going to be settled forever in this courtroom, and what has just been done in this community by the newspapers of this country, and by the radios and television of this country -- I am not satisfied, nor will I rest until there is some justice in this community for a man who is charged with a crime.

And then on Monday Schottke, Gareau, Yettra,

Rossbach; on Tuesday -- I have forgotten what happened on Tuesday. On Wednesday, to his wife's funeral, a policeman, Hubach, along with him, and talking there and back. And Friday -- and Thursday, when they again came accompanied by their retinue of reporters and photographers. He sat with them from one o'clock in the afternoon till late in the afternoon answering everything that they said -- asked him, and I asked Mr. Rossbach, "Did he answer all of your questions?"

He said, "Yes." And he said, "During several times, he broke down and wept during the investigation that we made that day."

And one thing that he said that was very significant, that Mr. Rossbach told you -- you may have forgotten it, but it touched me as significant of what the feeling of that man was. Rossbach said to you, "he said, 'I came up from the lake and I looked at my wife's body and her body wasn't covered,' so he said, 'I pulled the sheet over the lower part of the body because Marilyn was a modest woman.'"

And then the next day, Friday, again out to the house doing everything that these police officers wanted him to do and he wanted to do it, because he said to them, "I am more interested in the apprehension

of my wife's murderer than anybody on earth."

And he was glad and happy to accompany them and give them every help that he could, and at the same time, instead of accepting his help, instead of taking the position that he was trying to help them, all they were doing from the beginning to the end was to try and get evidence to justify the position that had been taken on the 4th day of July and the morning in the house by Gerber, "He did it, let's get the confession."

Do you want to adjourn now for recess, your Honor? I think we have been going since nine o'clock.

THE COURT: Ladies and gentlemen, we will have a few minutes' recess at this time.

Please do not discuss the case.

(Thereupon at 10:35 o'clock a.m. a recess was taken.)

(After recess, 10:45 o'clock, a.m.)

And on Friday you remember that he went with the police through the whole affair, as far as he could give information to the police. And they requested, Mr. Rossbach requested that he come downtown on Saturday. And he came downtown on Saturday, and there he was questioned by Mr. Parrino, Schottke, Gareau, Rossbach and Yettra; all by himself surrounded by all those men -- and he told them all that he knew about what happened on the 4th of July. And without any reluctance, he signed a statement and gave it to them.

I wasn't there, I had departed. I did not stay because I felt that when a man is innocent, when a man is innocent he doesn't need me around him.

But they were investigating the case, and I was not going to interfere in any way in the investigation of that case.

And then on it went through July. Many, many times the police came to him and talked to him about the case.

And then we saw on the 17th day of July a meeting at the Coroner's office of all the authorities mixed up in this case: The Prosecutor's

office, the Sheriff's office, Bay Village police, the Cleveland Police Department, the Coroner's office. They all assembled together. For what purpose?

Petersilge, the representative of that family and of that hospital, he wasn't invited. The Sheppards weren't invited. No, no one was invited except those that they chose.

And what was the meeting about? Oh, the reporters and the photographers, the television and the radio, they were invited, but nobody connected with Sam Sheppard was invited. And what was the meeting about?

Now, on Page 1530 of the record and Page 1761 of the record -- there's pretty near 6,000 pages of record in this case; I can't go over them all, I can only touch a few -- on Page 1761 of the record -- I want to take this pillow right at this point. And Dr. Gerber came in and said to you on the 4th of July he noted an impression on the pillow which indicated, on direct examination, that it was the imprint of a surgical instrument. Do you remember that?

And he wanted to give you the impression, this man who is a public official and who is

supposed to represent everybody and to call the thing as he sees it and let the chips fall where they will, who is not supposed to be a police department or a prosecutor, he left you the impression, did he not -- did he not leave you the impression on that testimony that that was the imprint of a surgical instrument because Sam was a surgeon?

And I thank the Court for this, I thank him most deeply on behalf of Sam Sheppard for this, when he said to him:

"Doctor, on yesterday when you were testifying as to this pillow and the stains on it, and so forth, you testified you found an impression on the pillow, and I understand you to say that it was the impression of a surgical instrument. Is that what you said?

"The Witness, Gerber: Yes, sir.

"The Court: All right. Do I understand you to say, then, that it could not have been made by anything other than a surgical instrument?

"The Witness, Gerber: No, sir.

"The Court: You didn't mean that?

"The Witness: No, sir, I did not mean that.

"The Court: It could have been made by any other instrument?

"The Witness: Similar to this type of a surgical instrument.

"The Court: So that you didn't mean to confine your testimony to a surgical instrument?

"No, sir."

Now, talk about the protection of people's rights and Constitutional rights. If it was left that way and that's all you heard, what Gerber testified before you, you would come to the conclusion that that was the impression of a surgical instrument. He said he saw it on July 4th. That was a foul blow, and I'll show you that it was a foul blow that that man brought into this court.

And I turn now to the meeting of -- he said he saw that on the 4th of July -- I'll turn now to the meeting of July 17th, when all these people were together and all discussing this matter. If it was the impression of a surgical instrument on July 4th, don't you think he would have said something about it on July 17th? Certainly.

Now, what happened on July 17th:

"Q And a number of different weapons or objects that created these wounds were the subject of discussion among the group?"

That was my question, because I assumed in asking that question that when police officers got together and when they gathered together to discuss this thing, surely they would discuss what kind of a weapon caused this wound. And I asked that question, and the answer was:

"No."

And I said, "What?"

And the answer was, "There was nothing discussed that said that a certain particular type of weapon or instrument was used or weapon that caused this wound. There was just a general all-around discussion.

"Question: But no specific weapon was picked out as being the weapon?"

"Answer: No specific weapon was picked out as being the weapon."

And I find then, in my further cross-examination of Dr. Gerber:

"What was this meeting about?"

And he gives me the answer, Page 1763:

"I think the meeting was a get-together

and to release" -- now, listen to this -- "to have publicity released at one meeting and not going to half a dozen meetings."

Now, that's the way they were investigating this murder case about Marilyn Sheppard on the 17th of July in the Coroner's office with all these men present, to arrange about the publicity. That's what Gerber said, not what I say, that's what he says.

And then after the meeting, after the meeting about the surgical instrument and after the meeting -- Page 1763:

"All right. Now, then, after that did you know that Chief Eaton, that the weapon he was looking for was a square-edged file?"

Did Gerber say, "Don't look for anything like that. Look for a surgical instrument"?

"No. Everybody was looking for everything.

"I see. And after the meeting there was a great search for a golf club, do you remember that?

"There was a search for a golf club, yes, sir."

Now, does that dispose of this statement by this man about the pillow, that it was a surgical instrument?

And when he was on the -- in Sam Sheppard's house on the 12th day -- on that Friday afternoon, he made the search, Sam Sheppard's case was turned over to him, and a group of surgical instruments that were in the house that were not in the case that he looked for were handed to him by Mr. Rossbach, and they were carried out of the house.

And then was there any search made of the Bay View Hospital on surgical instruments, as to whether they were missing? Was there anything told you out of any catalogue -- or shown to you out of any catalogue in the United States that there was a surgical instrument that fitted this pattern?

That pattern, ladies and gentlemen, is nothing but the Rorschach pattern. That's an ink blot, where you put ink on a paper and fold the paper over and you get a pattern.

So you have blood on a pillow, and you fold it over and you get a pattern. That's all it is. If it was an instrument that hit that pillow, it would come through on the other side.

Now, is that enough about the pillow?

Or do I have to go further? Does it raise in

your mind a reasonable doubt about whether that is a fact or not?

Now, then, we pass on to the fact that on July 21st the publicity wasn't arranged, it wasn't settled as decided on the 17th, because John Mahon was calling Betty Sheppard and Dorothy Sheppard into his office for statements, and at the same time the Cleveland Press was printing an editorial to Gerber, "Call an inquest." The story is dying down and papers weren't selling so well.

So immediately that night their wires get crossed. Instead of Betty Sheppard coming to the Prosecutor's office on the next day and Dorothy Sheppard, they were subpoenaed that night to go over to Normandy School to the "carnival."

And then Dr. Gerber sat there with Mr. Danaceau and put everybody on the grill for the benefit of the publicity. The room was full of reporters, like it is today, and 500 people in a gymnasium, although he had a Morgue out here that we built, we taxpayers built at the cost of \$700,000, in which to hold inquests. He held the inquest out in Bay Village. And what an inquest it was.

And this man, who could have claimed his Constitutional rights, who could have refused to answer any questions -- he knew just as well as I know that that was nothing but a hostile crowd and a hostile investigation, and he was not permitted to have counsel, and Dr. Gerber held that thing there. And when it got out of hand and when the mob began to move against the Sheppards that were testifying -- and I protested -- I was thrown out of the meeting.

MR. DANACEAU: We object to that.

MR. CORRIGAN: I was thrown out.

MR. DANACEAU: Just a minute.

There is no evidence of any mob moving. The evidence is that you were thrown out because you created a disturbance.

MR. CORRIGAN: Well, I was thrown out, Mr. Danaceau.

MR. DANACEAU: Just a minute.

That is the evidence and there is no evidence to the contrary. I was there. There was no mob. You created the disturbance --

MR. CORRIGAN: I was thrown out.

MR. DANACEAU: -- and that's why

you were thrown out. There is no evidence to the

contrary. That's exactly what happened.

MR. CORRIGAN: You tell the jury
what you want to about it.

THE COURT: Let's confine ourselves to the evidence in this court room.

MR. DANACEAU: But you stick to
the proof and to the evidence.

MR. CORRIGAN: I was thrown out.

MR. DANACEAU: Yes, because you
created the disturbance. No mob moved. You were
the mob.

MR. CORRIGAN: All right. But I
can't be thrown out of this court room.

MR. DANACEAU: You might, if you
did the same thing, sir.

MR. CORRIGAN: I can't be thrown
out of this court room. I might overstep the
bounds of propriety, and the Court might put me
in jail for contempt, but I can't be thrown out
of this court room or prevented from representing
Sam Sheppard. I could come down from jail and
still represent him. That's the difference.

And on the 30th of July he was arrested.
He was back and forth about his business, but in
the night time three men came to his house and

manacled him. It almost reminds you of the old Gestapo days that we remember about. In the night this man manacled, a mob in front of his house. There's evidence to that, sir.

Shouts in front of his house. There's evidence to that, sir. People screaming through his windows and looking through his windows, and he's manacled to that Bay Village policeman and a mob is there surrounding that place, and reporters and photographers and everything else are notified, but not his counsel, his counsel can't be there.

He's not given any opportunity to have his counsel. And then he is arraigned before a councilman and a big parade of cars follow up to the village hall, and then he is manacled and thrown in jail at eleven o'clock at night and put on the fourth floor where he is incommunicado until the next Friday from anybody else but his lawyers. There's a visiting day on the fourth floor on Friday.

And then the third degree starts. And if you read about this thing in a story about the People's Court in China or behind some Iron Curtain, it would raise the hair on your head. But you

are hearing about something that happened in your city, by the officials of this city, and it's astounding to me, and that's why I say that sometimes as I went through this case I felt: Is this a dream?

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And then on Saturday, the next day, you saw and you heard that which he was subjected to. On Saturday morning, Braden and Green, doctors, and Story and Kerr, the head of the Homicide Department, who makes statements to the newspapers but doesn't appear on that stand, and then from one o'clock until twelve o'clock at night this young man is subjected to the most grueling examination by people who know how to do it, not amateurs, detectives.

When one group was through then the next group came along. When one group was through, the next group came along, and that continued for a number of days, that type of examination.

Now, ladies and gentlemen, if Sam Sheppard was guilty of the murder of his wife, do you think he could withstand that type of grilling and not make the confession that they were looking for to cover up their own incompetence in this case, to make a victim for their own incompetence in this case? No, no, no more than you or I would do it. The commission of a crime, of a brutal crime like this, is just as foreign to the nature of Sam Sheppard as anything could possibly be. The commission of this brutal crime would weigh upon his soul, and the

soul would endeavor to give that off, and there would be a compulsion within his soul to give that off and tell about that, just as much as if he had taken some poison into his stomach, the stomach would revolt and attempt to throw it out, and the comparison of a soul of a man, the spiritual part of a man and the physical part of a man are the same, and the reason that these gentlemen solve crimes is because of that very fact, that you can't, if you committed a crime and you are subjected to questioning, you can't conceal it. Oh, hardened criminals, maybe, but you and I and Sam Sheppard couldn't conceal it.

And he was subjected to that questioning, and what was it for? Confession. They used the different means. Each team had a different way of attacking him, one with the pictures would shove it in front of his face, the murdered body of his wife, insulting his mother, insulting his father, calling him vile and unspeakable names, and using vile, unspeakable terms, and then another group telling him, "Well, manslaughter. We will make a deal for you."

"I'm going to the ball game," said Doren, "wouldn't you like to be going out with me to the ball game? I'm going down to see the ball game? Wouldn't you like to get out of the jail and plead

guilty to manslaughter? A couple of years. Nine months, maybe."

Those are the kind of methods that they were adopting in order to get a confession out of this man, and during that period of time, during all this period of time, remember Sam Sheppard told -- related what happened on the 4th of July, on the morning of the 4th of July -- take all the questioning down through, don't you think that if it was not the truth, that all of this questioning would have developed fatal errors in his story, and that you would have heard those fatal errors that would have developed from his story on that witness stand when he sat there for three days?

But, no, from the beginning to the end, it has been the same, and not all the ability of all these people on their questioning can change the truth and the facts.

And McArthur sat here for nine weeks. I don't know what he sat here for. The Chief of Detectives of the City of Cleveland, did he give you any information? Did he produce any information to you that would help you in this matter?

MR. DANACEAU: We object to this, if the Court please. He was here to consult counsel, not to

give the jury information.

MR. CORRIGAN: He is the Chief of
Detectives.

MR. DANACEAU: Yes, but he could not
take the witness stand, having sat with us here
throughout the trial, under the rules of this court.

THE COURT: I think it is pretty
well known to the jury that he was here to furnish
the prosecutor information.

MR. DANACEAU: That's right, and was
not permitted to take the witness stand, having sat
here.

MR. CORRIGAN: Argue to the jury.

MR. DANACEAU: I am making my objection
to the Court to your statement that he was here
and didn't tell the jury anything. How could he?

MR. CORRIGAN: All right.

THE COURT: He was properly here
and he did not have to take the witness stand.

MR. CORRIGAN: He was here. I will
agree with that. His detectives did the job.

MR. DANACEAU: Please argue to the jury.

MR. CORRIGAN: His detectives did the
job. Did any of his detectives take that witness stand

and deny anything that was said by Sam Sheppard?
It stands unrefuted, ladies and gentlemen of the jury.

You had a picture drawn for you of happiness;
you had a picture drawn for you of a home that was
a noble house, that all the children of the neighbor-
hood played around, that the neighbors went to; that
they were a happy family.

I don't care about whether this difficulty
arose about Sue Hayes, and that he wandered from the
path of rectitude. Is sex the only thing in the love
of a man and a woman? Is that the only thing that
holds me and my wife together that sometime I can
go to bed with her? Is that the only thing that
is in marriage? Is that the only thing that makes
you love a woman?

Mr. Parrino says that they slept in twin beds
so there must be something.

Well, how many people sleep in twin beds?
He knows little about marriage. He has very little
understanding about marriage.

And the fact that Sam strayed from the path
of rectitude is no proof that he didn't love his wife,
Marilyn, and love his home and love his child. In
fact, March was quite a distance from July the 4th,
and Susan Hayes was 2,000 miles away, and as far as

you know, there was happiness in that home, and there was happiness on that Saturday night.

And Mary Lavelle Miller that testified that she saw her on Wednesday and Marilyn was radiant -- is the expression she used. You heard Meyer Rosen -- I think his name is --

MR. PETERSILGE: Seymour Rosen.

MR. CORRIGAN: Seymour Rosen, and the other young fellow who told about meeting them, meeting Marilyn shortly before her death. Mr. and Mrs. Paine, Mr. and Mrs. Howell, Mr. Schuele, the next door neighbor, everybody that came into this case, with the exception of that one young fellow for one incident many years ago, said that their life was a life of happiness, that they loved one another, and that they demonstrated they loved one another.

And Mary Brown, the woman who was closest to them of anybody in the world, closest to Marilyn than anybody in the world, who was the last witness, told you of how these people loved one another, and her last letter that she wrote to Mary Brown, the last letter of Marilyn that she wrote to Mary Brown, exudes from it happiness and contentment, and that is the picture that you have up to Saturday night,

when he put in this hard and difficult day working in the hospital on Saturday afternoon, and then the rather pleasant evening that they had together with the Aherns, and the pleasant dinner, and then after that he sat on the seat with his wife, Marilyn, the same seat, and Mrs. Ahern said in her testimony that, "You are not the only ones that can be loving or show love," addressing Sam and Marilyn, and she then went over and sat upon her husband's lap.

And after a while, weary with the labors of the day, and although wishing to keep company with his guests, he went over on the couch and fell asleep, and then his eyes were weighed down, and then he fell asleep. Sleep that weighs the heavy eyelids down and steepens the senses in forgetfulness; sleep that knits up the raveled sleeve of care and refreshes us and restores us and takes up the shock that we have been experiencing all day long.

And then these gentlemen would have you believe that that man jumped up out of that sleep, and ran upstairs and battered his wife to death, for what? For why? And with what?

That he committed the act of a depraved person; that he committed the act of a malicious heart. Sam

Sheppard. Sam Sheppard, with that scene, and with these hands killed his wife, with these hands that worked over a beautiful little boy whose head was crushed that afternoon, and who tried to bring him back to life; with these hands that have tended the sick and the wounded; with these hands that have been trained to cure and not to kill. Do you believe it? Do you accept it?

Now, there was something said about why I spent so much time with Mr. Adelson. I spent time with Mr. Adelson, or Dr. Adelson, because I wanted to develop to you that the autopsy was sloppy and incompetent, and that if it had been properly performed that there would have been some knowledge gained at that autopsy of the kind of a weapon that was used, which blow was struck was first, and information could have been obtained that would have had some effect in solving this murder.

And I went into -- Parrino says 35 blows. There weren't 35 blows. There are seven blows on the top of the head, and as Mr. Petersilge illustrated to you, they are an inch apart, and when the detective was up quizzing Sam and was saying, "Down, down, down, down," imitating the blows that he had charged that he had rained on his wife, it isn't the fact at all.

Each one of those wounds on the top of the head, on the front of the head, are jagged and ragged. They are not cuts. They are not the result of a knife. They are not the result of a sharp instrument. They are the result of a pronged instrument of some kind that hit that woman six times, made six wounds at one time. You can't figure it any other way, because nobody could go into a dark bedroom and mathematically put six wounds apart. And then there are four wounds over here. These wounds are not through the bone. There is a small wound in the back, a quarter by an eighth of an inch. There is another small wound here, and if there had been a proper autopsy and a proper analyzation of this case we would know something about it, but the reason it wasn't done is because the word had gone to Adelson, "This man killed his wife," so he didn't pay any attention to it, and he washed away the blood.

And then his autopsy -- he says he cut the head open and 20 cc's of blood flowed out of each space, and when I examined him on 20 cc's of blood flowing out of each space, I found that it was wrong; that he estimated 20 cc's of blood. That isn't in the autopsy, that he estimated. And those were the wounds on the top of the head.

The other wounds show this very definitely:

That there was a struggle in that room. 17, 18 and 19 apply to the right eyelid. There was no blow on the right eyelid. 24, 25 and 26, apply to the teeth and the mouth, and there was no blow on the mouth, and these smart detectives, with the least bit of analysis, would have shown that there was something peculiar that the woman's teeth were broken, and the wound was inside the mouth, and there was no wound on the outside of the mouth.

And 23 is a small wound on the edge of the nose, a scratch on the edge of the nose, but her nose is broken, but I don't know where or why, but I can visualize a man putting his hand over a woman's mouth, I can visualize a man grabbing a woman's nose and breaking her nose.

And the other wounds show an abrasion, skin scraped off on the hands in three or four different places. They are not blows. They are the result of a struggle.

I was surprised at Mr. Adelson, or Dr. Adelson, he didn't know the difference between a coronal suture and a frontal suture, and he called them both the same, and in one place in his autopsy he talks about the separation of the frontal suture, another

place about the separation of the coronal suture.

Well, he says, "I am not an anatomist."

Well, ladies and gentlemen, neither am I.

All I know about anatomy is what I read in books, but I know this: That anatomy is as essential -- the knowledge of anatomy is as essential to a pathologist or a doctor as your tools are to you, as the knowledge of your tools are to you, and if Mr. -- Dr. Adelson is not an anatomist, then I think Cuyahoga County ought to make an investigation and get an anatomist to perform these autopsies in the County Jail.

Now, in the evidence here, where did it come from? We had to pull it out. We had to bring in the trace evidence. Everything was accumulated and put out in the morgue, the icebox, Dr. Gerber calls it, and the teeth, and the trace evidence, and I want to show you something very interesting, ladies and gentlemen about this investigation that you have seen, that there is evidence under the fingernails of Marilyn Sheppard that was never investigated except to this extent: To find out if they could tie that evidence to Sam, and when they couldn't tie it to Sam, then they filed it away in the morgue to be forgotten until we brought it into

court.

Not so long ago in Springfield, Massachusetts, there was a man traced and found guilty of a murder, who was a pallbearer of the woman he had murdered, by a thread found under his fingernail or under the girl's fingernail.

But let me show you now my exhibit, and show you how these people have not given the information that we are entitled to. When we asked for a report of the microscopic examination, we got this, and it says, "Scrapings removed at autopsy from underneath fingernails of Marilyn Sheppard. No significant fibers or hairs noted."

Now, that is the report of your Cuyahoga County Morgue. That is the report, and if we hadn't investigated any farther and had accepted that, the official report, we would not have the evidence in this courtroom to show you.

And I expect that anybody that is a public official, when he comes in this courtroom, should be fair, and Dr. Gerber was not fair. He had made a mistake. He had made a mistake, and he has made a mistake in this case, and they have all made a mistake in this case, and they are still trying to maintain

the position of their mistake, and when he got on that stand, on page 1499 of the record, he said to you that Sam Sheppard told him, "He couldn't tell what the form was, couldn't tell whether it was a human being, couldn't tell whether it was a man or a woman, could not ascertain whether or not he could see any hair, could not ascertain whether this person was wearing a hat or any clothes whatsoever."

Now, supposing that Sam Sheppard didn't have a lawyer, and supposing I didn't go to the inquest and listen to what was going on and get a record of what happened at the inquest, and supposing no lawyer was there, as is liable to happen with many a person that doesn't get a lawyer, or that can't get a lawyer, can't afford to get a lawyer until he comes into court under indictment and a lawyer is assigned by the Court, and can't protect his interests, and suppose I wasn't there and didn't take the record -- because what he told you was absolutely false on that witness stand.

Sam Sheppard told him, "I saw a form," and this was in the cross-examination -- "as I think of it now-- I thought -- I can't quite decide in my mind what brings me to this feeling, of a big man. Whether it was because he struck me down so easily, but it seems

to me it was a form that was relatively large, large head, good size head.

"Well, again as I told you, I thought it was a he. I say he because I gather it to be a he.

"He went down the steps from the landing to the beach house on the beach. As we got down -- as I approached the beach, I thought this form was -- again and again I wish to say it may be because I was so easily knocked down by him, but I felt he was a fairly large man and had on a dark clothing from the back.

"Was he a white or a colored person?

"I can't say for sure. I somehow after encountering him have a feeling it was not a colored person. I felt he had a large head, and it seems to me like there was, as I have mentioned earlier, a lot of bushy hair."

Now, if I wasn't there, and if nobody was there, Mr. Gerber would be believed, and I say that he has been entirely unfair. He took 159 pages of transcript of Sam Sheppard at that hearing, and 76 pages were devoted to July the 4th, and the rest were inquiring about the birth of his first child, his diseases, and so forth.

And then he said to you that the blood was dry on the bed, and that the bedclothing was taken out and there was no blood on them, that there was blood on them as they appear today.

Look at the picture, look at the picture, ladies and gentlemen, of the bedclothes as they lay that day, and you find only one little bit of a spot on the top of the bedclothing. That is Exhibit, State's Exhibit 21. The bedclothing were rolled up and the blood got all over them, and they were carried out, and that is probably how some of the blood got on the stairs going down the stairs, and then he said the blood was dry.

Now, let me show you something. I will show you two pictures to show you that that isn't the truth, that the blood wasn't dry. You remember that I questioned him, and he moved the body up in the bed because the feet were hanging over the end of the bed. You remember that. He got on one side and the undertaker got on the other.

Now, before that happened, here was Marilyn's body, and there is the position of the blood on the bed.

Now, look at that. That is State's Exhibit No.10.

Then here is the picture taken after her body is removed. Do you see where the blood has come to? When her body was pulled up the blood followed it. That is Exhibit 10 and Defendant's Exhibit JJJ.

And Drenkhan, as Mr. Garmone told you, said that the bedclothes were bundled up and taken out by the undertaker, and then I come to another point, the injuries of Dr. Sam Sheppard.

And they spread around the town, and they tried to infer in this case that the injuries were self-inflicted and that he wasn't badly injured.

Well, there is a picture taken on the morning of the 4th of July. Do you need anything else to tell you that Sam Sheppard was injured? That is Defendant's Exhibit No. 5.

And then you had the testimony of Mildred Harridge, who looked in the door and saw him when he didn't see her, and she saw him painfully getting out of the bed.

You had the testimony of Anna Franz, a registered nurse who took his clothes off with Dr. Brill in the morning, his body was cold, he was shivering and shaking, he was incoherent and mumbling, and when she took his shoes off his feet were shriveled as though they had been in the water a long time, and when she

tried to take his temperature she could not -- she could get no temperature registered. Shock.

Well, you recover from shock, but there is every evidence in the world that that man was in shock.

And then you have the testimony of Dr. Foster and Mrs. Vetter, Mr. Paine, Dr. Brill, Dr. Don, all of whom testified to the condition of the man on that morning.

And another thing, was the body moved? I will leave Steve Sheppard and Richard Sheppard out, but Dr. Dozier, when he went up in the room, when he made the inquiry, you remember what happened when somebody told him, "Marilyn is dead, Marilyn has been murdered," and then when Richard and Steve departed, he went up into the room and he found her arm hanging over the bed at right angles, and he took the pulse, but later when the picture was taken that is here in evidence, the body had been changed and the arm is under the sheet.

Now, the fact that he was injured cannot be gainsaid. You heard Dr. Hexter, produced by the State, who said that he made an examination and he found some missing reflexes, and that "reflexes didn't mean

anything to us doctors," and that he did not examine the back of the neck. And if Dr. Gerber wanted a fair and impartial and a competent witness before this inquest, or these gentlemen wanted a fair and competent witness before their Grand Jury, they wouldn't take Dr. Hexter, because Dr. Elkins told Gerber on Wednesday, and he said everything I have told you here today, what he testified, so that Gerber had a competent witness and a competent man, but he chose Hexter, who is not a competent man in this field and doesn't pretend to be, and who didn't examine the neck.

And Dr. Elkins, who is an M.D., who is not an osteopath and who feels the difference between the osteopaths and M.D.'s, as M.D.'s do, came all the way from Tucson, Arizona, without pay and without subpoena, because he is a man and he is a doctor, and he wants to see justice done.

And he told you that he was suffering -- his impression was at the conclusion of his examination on Wednesday that Sam had suffered from a spinal concussion which would produce unconsciousness, and in some occasions would produce death.

And then he came here on August 6th -- and Hexter, who doesn't know anything about a cremasteric reflex, said the absence of the cremasteric didn't mean anything -- and Elkins told you that it meant a lot -- and that the cremasteric reflex, when it is absent, of itself means nothing.

Like I illustrated, if I went in to you without any injuries and you found the absence of a cremasteric reflex and there was nothing else wrong with me, it wouldn't mean very much to you. But if a man has a cremasteric reflex and it disappears and then comes back again, then you know, as he says, there is something going on inside.

And he came down on the 6th of August and he examined Sam again and found out that he was recovering. And his examination of the neck was of such a nature that Sam could not fake it, and he was recovering.

And I want to go just a moment now to our Police Department and what they did in examining this man, I think it was the 3rd day of August.

Elkins says, when he examined him up in the jail, there was plenty of facilities there. He found all the facilities he needed to make the examination, but the Police Department and the authorities, oh, they've got a jail here but they wouldn't use those facilities.

They pulled Sam Sheppard out at night, at seven o'clock at night, and they took him in a devious route, police officers, to the City Hospital, and there was Braden and there was Green, doctors, and two other doctors and four detectives, and they took him into a room and they stripped his body bare, and they subjected him to an examination, and they stuck pins in him, they took X-rays of him. Why, you would think that that couldn't happen around here, wouldn't you?

Is it any wonder that I think every once

in a while I'm in a dream when I find that they do that kind of thing to a prisoner, when they knew that he had a counsel and without asking his counsel whether it could be done? That's the kind of stuff this young man was subjected to; trying to make up for the error they had made, trying to draw a cord around him.

But where is Braden, where is Green, where is the other doctors? Why didn't they come here? What did they do to the man if they were not to be used as witnesses?

And then they took him out of the jail and took him over to the Central Police Station, and they hung a number around his neck. And he became a felon before he was indicted and his picture was published in the paper.

There's that man that you see here today that has suffered more than any individual that I have known, who has lost his wife, who has lost his home. Just imagine what these authorities have done. They have taken his home and his child's home away from him, and they hold it today. Did you ever hear of such a thing, holding his home and his child's home and his property without any warrant of law? And you saw what

happened when I tried to get the keys in this court room.

And Sam, who bought that home and put it in his wife's name, who bought the insurance for his wife and protected his wife by insurance, who gave her his paychecks and she handled the bank account -- he is the man that killed her? For what? For why? With what?

And what Sam said on this witness stand is as he remembered it. And if he remembered more, if he knew all about the light, if he knew every detail, if he moved this, if he could answer all the questions that Mr. Mahon had worked out as an astute cross-examiner -- "Did you do this? Did you do that? Did you do this? Did you do that? Did you go there?" -- and if he could answer them all perfectly, then I would say that he would be inconsistent in his story, he would be inconsistent.

Ladies and gentlemen, I have a fertile imagination. You know I've been charged with having talked to this man and told him what to say. I didn't talk to him on the 4th of July. But if I wanted to make up a story for anybody, for you, I have the ability to make it up. But I would never make up a story for a client, nor

no lawyer ever makes up a story for a client unless he is a fool.

Lawyers take the stories of their client and present them to the jury. He would be a fool, a lawyer would be a fool to make up a story and put it in the mouth of their client, because if you do that, a lawyer puts himself under the control of the client, who can come into court and say, "Corrigan told me to say that," or, "Some other lawyer told me to say that," and I would be disbarred.

We are not fools, we who practice law, in handling business, in handling peoples' cases. But the inconsistency, the inconsistencies and the failures to recreate the facts of the story -- the man who was cross-examining him was calling for the reactions of a normal man, of a man who had sat down and figured things out and knew just what he was going to do from spot to spot. He was giving you the reactions of a man that had been blacked out twice. He was giving you the reactions of a man that saw this horrible thing in his room and that had been visited by this murderer.

And even Dr. Gerber said, in my

cross-examination, that it looked to him, and that he made the statement, that it was the act of a schizophrenic and a madman. And Sam Sheppard is neither.

And he further said to you that the story that Sam Sheppard told about being knocked out twice was physically and mentally a possibility.

Now, I have come, ladies and gentlemen, almost to the end of what I have to say to you, and as I said before, you'll probably not remember many of the things that I say by the time we get around to tomorrow afternoon or tomorrow morning when you start your deliberations, but I hope you remember some of them.

But there is one thing that I do want you to remember, and I want you to -- where is my transcript? Pardon me while I find it. Did somebody pick it up? Will you go in there and see if somebody took that from my desk?

Well, I can't find it, but I remember it.

You remember that very fine young lady that came into this court room from her position in Bay View Hospital, dressed in white, and who told you how she was called on the morning of

July 4th, and that Sam Sheppard was brought into the room to have X-rays taken, and that when he come in he was mumbling, he was incoherent, he was shaking, he was cold, and she thought that he was unconscious until he moved his eyes.

And that she started to take X-rays of him, and in the course of the X-rays, it was necessary for him to open his mouth, and he couldn't open his mouth except about 25 per cent, and then she saw that his mouth was full of blood and all she could see was the two front teeth.

And then in the course of the examination it was necessary to move him, and he had -- she had learned that he was struck in the back of the neck. And she immediately looked at that and she saw the mark of something that had struck him in the back of the neck, and that she was in the room alone with him.

That she didn't know his wife's name. And he wasn't looking at her or he wasn't looking at anybody, and he wasn't talking to her, he was talking to the room.

And that morning Sam Sheppard was saying, out of his subconscious mind, "I tried to get to Marilyn. I heard Marilyn scream. I tried to get

to Marilyn but couldn't."

That's what she heard and what she told you, and you know it's the truth, and you know that it's the thing that should acquit Sam Sheppard, and you know that under those conditions that he, out of his subconscious mind, was re-enacting the thing that morning.

And I want you to remember that, if you remember nothing else, tomorrow when you go to your jury room. I want you to remember Eileen Hugu when you go to your jury room tomorrow morning, if you remember no other word that I have said in this case.

MR. GARMONE: Here's the transcript.

MR. CORRIGAN: I don't want it now. I am through with it.

And then these gentlemen cross-examined Eileen Hugu. Do you remember their cross-examination of that young woman? I want to refresh your recollection, and I want you to remember that, that their cross-examination consisted: "Did somebody else take another X-ray at some other time?"

Now, ladies and gentlemen, I am completely

free of any desire for revenge. I find that I have no anger in my heart. As Clarence Darrow has written:

"No one who has seen himself the prey and sport and plaything of the infinite forces that move men can tell what justice is for someone else or for himself. I am not the judge of others' motives or actions, and I do not intend to function in such capacity at any time. I have had experiences which have taught me a new way of life and given me a new sense of value. There is only one judge that any of us should truly fair, and I face him without hesitation or apprehension."

What am I reading? I am reading Sam Sheppard's letter to me.

And when Sergeant Lockwood said to him, "How can you stand all this?" Sam replied, "I trust in God, and Marilyn is at my side."

And I said to him when he was on the stand, "Is she at your side now?"

And he said, "Yes."

And is he at your side now, Sam Sheppard, and he'd say "Yes," that Marilyn is with him.

You have heard a case unprecedented in

the history of this county, ladies and gentlemen. You sit as jurors in the case of an innocent man. You have the opportunity to turn back this tide and to tell the people of this community, aye, the people of the nation because it's been spread all over the country; aye, the people of the world because it's been spread all over the world, that in Cuyahoga County the Constitution still lives.

Thank you, ladies and gentlemen, for your kind attention and your patience in this case. I hope that I have said something to you that will help you. I hope that during the trial of the case that some of my volatile mannerisms and methods have not offended you.

I wish I had the calmness of Judge Blythin, Mr. Petersilge and Sam Sheppard, but I haven't. So that sometimes I did talk during the trial of the case a little louder than I should, but don't hold that against Sam Sheppard. He is to be tried on this indictment, and as you promised me under oath at the beginning of this case when you sat there and answered on your voir dire examination that you would compel the State to prove his guilt beyond a reasonable doubt, that you would compel them to prove each and every

material allegation in the indictment; that one wouldn't do, two wouldn't do, three wouldn't do, but they all must be proven, that is what you promised, isn't it? -- I hold you to your promise.

And there is just one word I say before I go. This man is 30 years old, he will be 31 in December. My boy, sitting alongside of him, is 31 years old. They were born the same year within a month of one another. Your children some day, you who have children, some day will be 31 years of age. They are growing up around you now just as Sam grew up around his father and mother, with no more thought in your minds, ladies and gentlemen, that your child ever would have to sit in the seat of Sam Sheppard just like Dr. Sheppard, Sr., never thought that his little boy would have to sit in a criminal court.

And remember that what you are doing in this court room and in this case is not for Sam Sheppard alone, but to preserve for your children and other people's children the rights that have been dearly bought and dearly paid for.

And his father can't be here, and his mother is stricken down, and his little boy I wouldn't bring into this court room because I

have no idea of trying to arouse sympathy in your hearts, and that is the only reason that little Chip would be brought in here. But he exists, you know that. I look for justice and I look for the maintenance of freedom in this community.

We approach the season of Christmas, and God came down to a virgin to set men free and to establish the world freedom. That follows the question of religion and the question of principles. And if you are not a Christian, if you are Jewish, you approach the season of the Lights. And the old priest, Maccabeus, from the hills of Judea, when the Syrians came down with their cohorts of silver and gold, he called his people to the hills to strike and fight for freedom; and his son, his noble son, Judas, carried it to a successful conclusion and established peace in Jerusalem 165 years before the birth of Christ and lit the light in the temple. And you approach that season.

And I approach this case imbued with the idea that unless we do our part, we American lawyers do our part, and we American juries do our part in maintaining in this court room today, now, in the case of Sam Sheppard, that freedom, we have failed in our duty.

Thank you, ladies and gentlemen, for
your kind attention.

THE COURT: Ladies and
gentlemen of the jury, we will now be adjourned
for the noon hour, and we will return as near
as possible to 1:15 this afternoon. In the mean-
time, please do not discuss any phase of this
case at all.

(Thereupon, at 12:05 o'clock, p.m., an
adjournment was taken to 1:15 o'clock, p.m., at
which time the following proceedings were had:)

*Allowed and made part of the
Bill of Exceptions this day
allowed.*
*James H. [unclear]
Chief Judge
2-14-66*

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Thursday Afternoon Session, December 16, 1954.

(1:15 o'clock p.m.)

CLOSING ARGUMENT ON BEHALF THE STATE OF OHIO

MR. DANACEAU: I believe I expressed the sentiments of everyone present on both sides of the table at this stage when our tempers have somewhat cooled, when I say that you have served on this bench very many years with marked ability, and in this particular case, with particular patience throughout these very many weeks. We thank you for your patience and for your ability, which we have long recognized.

THE COURT: To quiet the lawyers down, is that it?

MR. DANACEAU: Well, that is an important task in a lawsuit, particularly such as this.

As to you, ladies and gentlemen of the jury, may I also, on behalf of the three lawyers here sitting on this side of the table representing the people of the State of Ohio, thank you for being with us these many weeks, listening so attentively, observing these proceedings, trying to do your job as we are trying to do ours.

We, too, each of us, took an oath to God that we do defend the Constitution of our nation and State.

To carry out that oath, we are here to do our job, to do it vigorously and to do it fairly, to do it right.

You listened this morning to a brilliant address. Mr. Corrigan, when he started, said very modestly, "I am no orator," and then we listened to superb elocution. Mr. Corrigan is a great lawyer, a great criminal lawyer. He speaks very well, does a great job for his client, as he should. I only wish I had the capacity to speak so brilliantly with such eloquence, for if I had possessed those qualities, I sure would use them. Unfortunately, I do not possess those abilities, as you will soon discover. I am more of a type of lawyer who was arguing a case, such as this, but without a jury, to a Judge, and when he got through arguing all morning they had a lunch recess, and when they came back and the Judge ascended the bench, this lawyer got up and he said, "Your Honor, might I with pleasure resume my argument?"

And the Judge very quietly said, "You might continue, but the pleasure is all gone hours ago."

You listened to arguments here yesterday, all day, this morning, and now it is my turn. Mr. Corrigan dwelled very much upon the Constitution, the American

lawyer.

Well, after I was discharged from the Navy in 1919, I took the Bar examination in 1920, and have been a lawyer in this community ever since, and I hope an American lawyer, and I hope that I have cherished the principles which form the basis of our nation and our State, and which make possible a trial such as this when a person is accused of crime.

It is true, as Mr. Corrigan has said, that many nations, particularly those behind the Iron Curtain, no longer have their freedoms, no longer have their liberties. Trials such as this are not possible in those countries. That is true.

The Constitution on paper doesn't mean anything. The Soviet Union, I am told, has a wonderful reading Constitution, but no one pays any attention to it there. Certainly the group in power pay no attention to it, it means nothing, but rooted in our people from the moment the Declaration of Independence was written to the enactment of our Federal Constitution, and then subsequently, as each State adopted a Constitution, these underlying principles were written into these Constitutions, and they are not merely on paper.

We are living democracies in our nation and State, and every public officer takes an oath to God, and he makes no reservations of any kind, that he will uphold that Constitution and John Mahon, and Tom Parrino and I have always endeavored, and have endeavored in this case, and endeavor at this very moment to uphold that Constitution from beginning to end, every part of it, not merely the one that gives every accused person a right to a trial by a jury.

There are other provisions in that Constitution, basic provisions in that Constitution, which Mr. Corrigan has seen fit to discuss, and there is another basic provision which is far more than the denial of some person of a trial by jury.

There are many democracies where there is no jury trial. France has a different procedure entirely than we have.

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But what is it that destroyed the democracies of Europe? The basic thing that destroyed those democracies was the absence of a free press, the absence of the right to speak and write freely, to criticize public officials when they are not doing their job. You know that that's the basis reason there is no freedom in those countries behind the Iron Curtain.

Now, I have been working with Mr. Cullitan for many years, I've got an office under him. We have been criticized from time to time, and we don't like it when it happens. It annoys us and irritates us. Sometimes we feel that the criticism is totally unjustified and we have said so. But we'd be in a horrible fix if just because newspapers make mistakes-- and they do, and they do it frequently, and we are annoyed and you are annoyed and others are annoyed at the things they sometimes say and do; they have the basic right to criticize, right or wrong.

Now, let's see what we have in this particular case. We know that Sam Sheppard is entitled to a fair trial, and I do hope he gets it here. That is what we are all here for, the prosecutors, these lawyers in the community,

an impartial and able judge, a fair and impartial jury -- isn't that a fair trial?

You recall that when you were being examined to be on the jury, both sides made it clear to you that a Grand Jury hears only one side. That's why there is a presumption of innocence. It even goes in the indictment. Wasn't it made clear by our side and the defense that the Grand Jury only hears one side, and yet this very day we are criticized because certain defense witnesses weren't brought before the Grand Jury.

If the Grand Jury heard both sides and then came to a decision, it would mean something as to his guilt or innocence. But under our law they only hear one side. So we are damned because we didn't bring defense witnesses before the Grand Jury. How preposterous.

Let's take this case. It happened on July 4th, Independence Day. It happened out in Bay Village. And as I go along, perhaps I will digress a little bit.

Do you remember on the eve of July 3rd they were watching a picture, "Strange Holliday." On July 4th, Independence Day, that, too, for many people was a very strange holiday. It was

a strange holiday for Dr. Sam Sheppard, of course, and for Chip.

It was a strange holiday for Dr. Richard Sheppard, Sr., and his wife, the mother of Dr. Sam, and for Dr. Steve Sheppard and his wife, Dorothy, and for Richard Sheppard and his wife, Betty. Events made that a horrible strange holiday.

Our hearts on this side of the table go out to Chip, as they must to you and to everybody else, to Dr. Sheppard, Sr., and his wife, the mother, and to his brothers, Steve and Richard, and their wives. And what they have done is quite understandable. After all, Chip is the son of Marilyn and Sam. Richard, Sr., and his wife, his father and mother, they are his brothers, it's understandable at least what they did, what has been done.

Now, when this thing happened out in Bay Village, the Mayor and his wife are the first to come. His brothers come, first Richard and his wife, then Steve.

Now, the accident of Dr. Sam calling Mayor Houk and Mayor Houk showing up with Mrs. Houk might well have prevented some greater heartache to Mayor Houk than has already occurred, because he would

have then been there by himself in that terrible situation before any police or anybody else arrived. And who knows what might have happened, what stories might have come out then? But fortunately for him, Mrs. Houk accompanied him.

Now, for about two hours or more -- we don't know exactly -- after Marilyn was killed the only one in that house, that we know of, was Dr. Sam Sheppard. What was done in that house during that period of time, exactly when and what, only Dr. Sam Sheppard can relate.

We know that certain things were wiped off with either sandpaper or a cloth. Did you hear any of the attorneys mention that during the entire argument?

There was opportunity at that time to go around from room to room to simulate, or fake -- that's the language we understand and use -- a burglary. There was an opportunity at that time to do it. There was an opportunity at that time to get rid of whatever instruments were used. And Dr. Gerber said a surgical instrument or another instrument similar to it. There was opportunity for hours to do things in that house, but only Dr. Sam Sheppard was there and could tell.

And after he called Mayor Houk, for another two or two and a half hours before the Cleveland Police representatives had been there, before Gerber had been there, who had the run of the house? Dr. Richard Sheppard, if my memory of the evidence is correct, was there three times in Marilyn's bedroom before Gerber got there. Dr. Steve Sheppard was there twice before Gerber or the Cleveland Police got there.

They took away Chip, they took away Dr. Sam. Tom Parrino described that to you. Who were the others there? Well, Bay Village has a Police Department and a Mayor. The Mayor is a close personal friend of the defendant. They own a boat together. How closer could you get? The defendant is the unofficial police surgeon. How closer could he get to the six or seven or eight police officers of that village?

Long before Dr. Gerber or the Cleveland Police Department get there, for hours after Sam had already called Mayor Houk, his relatives, his friends have complete run of the house, have opportunities to do what they please and to get rid of whatever they wanted to get rid of.

Mark you, that's even before Dr. Gerber

got out there or knew anything about it, before Schottke got out there or knew anything about it, several hours before Mayor Houk was called, several hours after that. Talk about an investigation. Those were the four crucial hours. If experienced homicide men were out there during that four-hour period, something could be done. And yet, the Cleveland Police Department are blamed for what happened there. And those are the four crucial hours or the four and a half crucial hours.

Those facts became known, that's true, the newspaper printed them. And when people were sitting on their seats dragging their feet as though they were lead -- we had an expression in the Navy that was altogether different, but I can't repeat it to you -- the community was aroused: "What's going on here? This is murder. This is murder."

Was that confined to the editors of newspapers? They expressed the community feeling. This man, though he may be the close friend of the Mayor, though he may be the close friend of the police, this is murder and he should be treated not worse than anybody else but the same as anybody else.

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Now, if we treat him the same as anybody else, are we depriving him of any constitutional liberties, any constitutional rights? And that is all we are doing, treating him the same as anybody else.

They go out there -- Schottke and Gareau go out there by invitation. This is not a Cleveland police job. They are invited out, and they go out there to assist. They have no authority to proceed.

Now, you would suppose from listening to this argument that from the very inception of this thing the Cleveland Police Department was right in there running the show. They certainly weren't running the show the first four and a half hours after Marilyn was killed, and Schottke and Gareau didn't have much to say, and they were merely assisting the Bay Village police, and it wasn't until several weeks later at the time of the inquest that the City of the Village of Bay formally invited the Cleveland Police Department to get in the case. Several weeks later, around the 21st or 22nd.

Was the Cleveland Police Department responsible for what happened out there, what the Bay Village police did or did not do, and which they may not have done because of the close relationship to this defendant? Are they to be whipped on account of that, and called

every name under the sun, and pictured as though they were Gestapo men in Soviet Russia or Czechoslovakia? Is that fair?

You want fairness for your client, treat him fairly. How about treating these fellows fairly? Aren't they entitled to some fair consideration and treatment? Are we, on the side of the State, to be the only people who are fair and considerate? Aren't we entitled to some fairness from the other side of the table? Are they to be permitted to make the wildest charges without any foundation, with impunity? Is that a fair trial? And that is what has happened from time to time in this case.

Now, I will take second place to nobody in defending the Constitution of my State and nation, and so will John Mahon, and so will Tom Parrino, and so will Inspector McArthur, and Sergeant Lockwood, and so will everybody on our side of this case. We will defend it, but murder is murder, and it is our job to proceed to prosecute where prosecution is warranted.

This man has been indicted by the Grand Jury of this County, he is here on trial. Give him a fair trial, by all means.

If you think that John and I and Tom, and these men, have manufactured this case, have manufactured this evidence all because we want publicity, because we want glory, for heaven's sake, acquit this defendant immediately. I won't have anything like that on my conscience, neither will John or Tom or these other men.

If, on the other hand, upon a fair consideration of the evidence, not the distortions that have been presented here from time to time -- if, upon your search for the truth, you find that he is guilty, have the courage to return such a verdict. It is not easy. It is not easy for me to stand here and prosecute a person, a citizen charged with first degree murder. It is not easy for you to sit here in judgment.

There is, of course, a final judgment. Sam will be judged, as I will be judged, as you will be judged some day by our Father in Heaven, but we took an oath here that we would try this man accused, and we would decide this case on the basis of the evidence in this courtroom, and we are not trying anybody else. We are not trying any newspaper or newspapers; we are not trying Dr. Gerber; we are not

trying Mr. Adelson. We are trying Sam Sheppard. If any charges are to be brought against any individual, bring them. Let them have the same kind of a fair trial you want for your client, and not have them try to be without a lawyer, without an opportunity to present their side, as you have done.

Now, in this case we have been obliged to bring in testimony against some women. Dr. Gerber is not tried here because he had relationship with other women. That is not the charge, and that evidence wasn't brought in here for that purpose at all.

We recognize human frailty --

MR. PETERSILGE: Dr. Sheppard, you mean.

MR. DANACEAU: What did I say?

Dr. Gerber? I beg your pardon. I meant Dr. Sheppard.

He is not being tried because of these indiscretions. We recognize human frailty. He is not being tried for those indiscretions at all, and I didn't think it would even be necessary to argue the point or explain it.

From the very beginning, in keeping with his general portrayal of a happy home life, of a man who could not possibly have done this thing, he presented a picture of lovely home life throughout

the year. This evidence has been brought in, ladies and gentlemen, to show that that was not so, that it wasn't so.

As Tom has told you, he brazenly lived with Sue at the time of -- at the home of their mutual friends, that is, Marilyn and his mutual friends in California, and must have known that word would get back to Marilyn. She loved Dr. Sam, there is no question about it. She may not have wanted a divorce. She may have struggled against it. She may have thought that her pregnancy might have helped prevent their marriage from going on the rocks. Marilyn loved him, but she must have known of these indiscretions, not just this recent one, but the others, and that is why it was brought in.

Now, a loving wife doesn't enjoy knowing about those sort of things concerning her husband. Those sort of things create bitterness, create recriminations, produce possibly terrible things. We don't know what happened that night. Mr. Corrigan says, "Do you expect us to believe that the State intends that this man woke out of a deep sleep, heard someone or his wife call his name, and that he rushed up and he killed her?"

Why, we made no such absurd claim at all. It is his story that he was in a sound sleep and heard her name and rushed up. They may have been up. He may have walked up. He may have gone into that room to see his wife, to be with his wife. These happenings might have been brought up, some recrimination, some argument, some fight, and when men are angry, they sometimes do things that they wouldn't otherwise do, and her death may have been the result of some sort of recrimination. There was plenty of background for it. We don't know. Only Dr. Sam can tell exactly what happened there that night.

Do you remember the testimony of the lady who said she saw lights on at 2:30 as she was going by? This story of his being in a stupor and hearing her name, that is only from Dr. Sam and no one else. He said he lied at the Coroner's inquest to protect the reputation of Susan Hayes. He had given out a picture of lovely home life throughout the years, and he wanted to maintain that to divert suspicion.

You recall the other day that he was questioned about other women, and to those affairs, I think Mr. Petersilge said they were just flirtations.

Well, this chivalrous man, who wanted to protect

the name of Susan Hayes, needlessly testified that, I think it was Mrs. Lossman, kissed him, she was the aggressor. How chivalrous that was. How he enjoyed protecting her.

I cite that to show the absurdity of his claim that he refused to admit his relations with Sue because he wanted to protect her name. Oh, no. He wants to continue the picture of lovely home life throughout the years, and it was only when Sue talked and he knew that she talked, that he began to talk, because it would have been silly for him to continue to deny it.

They say "Protective Wall" we talk about. Of course, we talk about a protective wall. Here is murder. Here is a fake burglary. Mr. Petersilgle, in his address to you, said, "We don't claim there was a burglary there that night."

Of course, he doesn't claim that. He mustn't say it for anybody. It is obviously a fake job, but who could have faked the job? A burglary job is faked by an insider to make it appear as though an outsider did it.

Well, who are the insiders? Dr. Sam and Chip. Take away Chip. Dr. Sam. Two minus one is one. He

is the only one who could have -- he is the only one who did fake that burglary. That is plain arithmetic, plain logic, plain reason.

That sort of conduct is consistent only with guilt. An innocent man would not fake such a burglary. It is irreconcilable with any claim of innocence. Who else could have possibly faked the burglary -- and they practically can say that there was a fake burglary -- but Dr. Sam, and why would he fake it if he didn't kill his wife, and after killing her, to proceed to do all the things that he possibly could to conceal it, conceal the weapon, conceal his T-shirt, to conceal everything else, to wipe off any prints or marks? That is what Dr. Sam did, and no one else, and that is why they removed him quickly, didn't ask even the friendly police officers whether they could remove him, didn't use the ambulance that was available. Got him out quick. He is taken to the hospital, his brothers are helping him, that is understandable. It is understandable, no question about that, and they keep him at the hospital. They can't prevent him from being interviewed by anybody.

He is talking about a police officer. He was on the stand. He wasn't there to prevent Sam from

going in and out. It was to keep newspaper men away, to keep others in the family away. Why, he was their guard for them. That is why he was there, and they make it appear as though he were in custody of some sort. There isn't any evidence of that sort at all.

And they throw this cordon around him in the hospital, protected by his family as much as they could. And soon his lawyer comes in, Mr. Petersilge, the family lawyer, and later, shortly, Mr. Corrigan comes in.

Now, everybody has got a right to hire a lawyer. We know that. We are not arguing that he didn't have that right. Of course, he had that right. Of course, he had that right, but let me read what Mr. Corrigan said in his argument. I took it down. "When a man is innocent, they don't need me around here."

Those are his very words this morning. "When a man is innocent, they don't need me around here."

Now, people have a right to do certain things, legal right to do certain things. No question about that. But in judging their conduct, whether they are guilty or not, we have a right to examine what they did, and find out whether this was the conduct of an

innocent man. Would an innocent man act that way, or is it the conduct of a guilty man?

Now, I am using Mr. Corrigan's own words. Why was the foremost criminal lawyer of our community summoned out there so hurriedly if this man was innocent? Why did he refuse to take the lie detector test?

Now, you heard Mr. Garmone this morning -- from his words you would get the idea that he agreed to it and took it. Well, that is not so at all. If you will examine Schettke's statement, he at first agreed, and then Schette explained how it was done, and he said, no, and then what does Mr. Rossbach say about that?

Do you remember Freddy Garmone? "Why, he agreed to take the lie detector test." Did he? I know of no lie detector test that was taken ever, to this very minute.

Now, Mr. Rossbach is the elderly, kindly gentleman that they have expressed a great admiration for, and he is a swell guy, a fine man. He was in the tavern business for six or seven years, and when Joe Sweeney needed a deputy he came back, although he had never been in the homicide work. He was a policeman. He came back, and he is a deputy to Joe Sweeney upstairs, a kindly fellow.

Now, let me read from the record, to refresh your memory as to what Mr. Rossbach said on the stand on that very subject, and now get the date. This is from page 2247 of the record. Mr. Rossbach is on the stand -- in order to get the date, I will go back a few questions.

"And when is the next time that you saw him again?

"On July 12th.

"And where did you see him?

"At his home.

"Q. Did you speak with him?

"A. I did.

"Q. Who was present?

"A. Mr. Corrigan, Mr. Petersilge, his brother, Dr. Richard and Dr. Stephen.

"Q. What was said?

"A. I again asked him if he had thought over the suggestion that I made about him trying to eliminate himself as a suspect. He stated that he wanted to help us in every way possible to serve this crime -- to solve this crime."

And then Mr. Rossbach continued, "Why don't you meet me some morning at some designated place at a designated time unbeknownst to anyone but yourself and

myself and we will take this lie detector test, and at least you will eliminate yourself in one way?"

He is quoting the question that had been asked.

Now, "Q. Did you state to him as to where this test would be made?

"A. I said anywhere, regardless of where it might be, I would take him wherever he wanted to go.

"Q. And what did he say to that?"

And then there was an objection by Mr. Petersilge, which was overruled, exception noted, and then the question was repeated.

"What did he say?

"A. He says, 'No,' he says, 'I'll be guided by the advice of my family and my attorneys.'"

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Now, lest there be no misunderstanding here, sure he agreed to take the test, but ran out and never did take it. Is that the conduct of an innocent man? I don't know whether it is, but it seems to me if a man's wife is killed, and even if he is hurt, and if he was innocent, and he was asked to say or do anything, he would have all but broken his neck to say anything that would help and to do anything that would help.

He might have even broken his neck, if that was necessary. That's how an innocent man would act. That's my reaction. You can judge for yourselves what your reaction would be.

Schottke, a Cleveland Police officer, out there by invitation, not officially on the job at all, was the first one to point the finger at Dr. Sam. And from then on he is a villain. ~~Why~~ that fellow isn't going to examine him anymore. He can only be examined with lawyers around, by friendly police officers.

Well, that would be a nice way to conduct examinations of murders, of suspects -- the suspect tell the officer and the public authorities who should examine him and under

what conditions.

Desperately, the Cleveland Police tried to interview him upstairs. Mr. Mahon will probably touch on that more thoroughly than I can. Sure, they talked to him repeatedly and repeatedly, and sure, he gave the same vague statements that he gave you here and continued to give that. Is that any information?

When you tell how you evaluate a thing, how you imagine a thing, how you suspect a thing, how you thought it might be but you are not sure, is that giving you any information at all? And that's a hundred per cent of what he told. He told nothing that was precise, nothing that you could put your finger on, all in this fantastic vague way that nobody knew what he was talking about or what he meant. It could mean anything and everything.

Is that giving you information? And if he sticks to that vagueness and uncertainty and fantasm, and all that sort of thing, continuously, is that giving the same information all the time to the police? It's nothing of the sort. It's giving them nothing to begin with and it's giving them nothing on the second day, the third day,

it's giving them nothing four months, five months later. They got nothing from him to the very end. It's nothing as far as information is concerned. That's been his conduct right straight through.

The physician, Dr. Foster, being up there -- do you remember him? He is a fellow who was almost as vague as Dr. Sam has been about who left and when. He didn't even see Chip being taken out, although the testimony is uncontradicted that at the time Steve left with Sam, Dorothy left with Chip. He doesn't know anything about that.

And he had been told that Marilyn had been killed, and this young intern, even though he knew that, says -- you remember -- he went upstairs, lifted up the sheet to take a good look. Do you remember that?

And I asked him, "Didn't you believe Dr. Richard when he told you that Marilyn was dead?"

And he said, "Well, relatives get confused."

Is there any doubt in your mind that he knew that Marilyn was dead?

And there is another doctor who testified that he heard about it, and said he went out to

the hospital and asked for Steve, and then he went out there. Now, what he says Dr. Gerber said, you can rely only upon his statement and nobody else's.

Now, if he went out there after consulting Dr. Steve at the hospital, although he denies it, isn't it plain that Dr. Steve sent him out there and said, "Go out there and see what you can see"? and that they have consulted since?

Is there any doubt in your minds that in all these weeks and months Dr. Sam, Dr. Steve, Dr. Richard, Mr. Petersilge, Mr. Corrigan have been consulting one another?

Mr. Corrigan says, "Why, I didn't tell him what to say."

Well, let's not be naive about this thing. Of course, he didn't tell him what to say, but he is a good criminal lawyer and he was called into the case for a purpose, and he has been with it ever since. And good lawyers consult their clients, consult their witnesses from time to time. So let's not be naive about this thing.

He mentioned something about he hasn't been paid yet. Well, we are not interested in his fee. If and when this case is over, he can

get whatever fee he pleases. We are not concerned with that in this case anymore than we are concerned with the trial of newspapers, with the trial of Dr. Gerber or Dr. Adelson or Dr. Hexter who, by the way, whose testimony was fully, was fully supported by the testimony of Dr. Elkins, who also said that certain reflexes in and of themselves don't mean anything. And even Mr. Corrigan had to repeat that statement today, although he tried to use a mop on the doctor when he was here testifying some weeks ago.

Mr. Corrigan has said many things, Mr. Garmone and Mr. Petersilge. I won't even try to start to answer that. Mr. Mahon, who will follow me, will close.

We know that people are frail, sin. No one is perfect. We, least of all, claim perfection. We make mistakes. But I know this -- of course, I am along in years, I have five grandchildren, and perhaps it wasn't like this with Mr. Parrino, Tom is a younger man, but as I remember my days in years gone by, if my wife had ever found out what Dr. Steve was doing, that is, if she ever found out that I did while I was married what Dr. Steve was doing --

MR. MAHON:

Dr. Sam.

MR. DANACEAU:

Dr. Sam. Excuse

me. If she ever found out that I acted to her as Dr. Sam acted to Marilyn, she would have broken my neck. We are talking not about whether a person is being tried for those indiscretions, we are talking about the background, the relationship of husband and wife as a basis for what happened, and that is all, not anything else.

No one is being tried for their indiscretions here, no one is being tried for that. We know we are human, we make mistakes, but we don't ordinarily commit murder.

Now, before I close I want to again say that this is a trial under our Constitution, a trial before a fair-minded jury and an impartial judge, and it is nothing else. It is not a contest between lawyers, who is the better orator. It is not an exhibition, it is not a show for the newspaper men. It is a trial, it is a trial of Sam Sheppard. Let's keep it that.

They make a big noise about newspapers, and yet, what do we have here? Not a trial of Dr. Sam Sheppard, but a trial of newspapers, a trial of Dr. Gerber and somebody else. I had

hoped that we'd keep all those extraneous things
out of this case and have a trial in the good old
American fashion, a trial of that sort. Let's keep
it that.

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CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. MAHON: If the Court please, gentlemen of the defense, I would at this time, if your Honor please, like to join with other counsel in expressing my appreciation and thanks to your Honor for the fair and impartial manner in which you have conducted this trial. It's been heated at times, but your Honor has always kept his patience, and I deeply appreciate the courtesies and the fairness in which you have conducted this trial.

And to you, ladies and gentlemen of the jury, may I also join other counsel in expressing to you my appreciation for your courtesies and services in this case. I realize the difficulty it is for citizens to be taken from their daily walks of life and set into a court room to sit as a juror, all of the things you have to give up in order to perform that civic duty. And so I want to thank you for having served and been willing to serve in this trial of this case.

As we approach the end of this case, ladies and gentlemen, I know you have been burdened with words from not only witnesses but

from the lawyers who have been engaged in the trial of this case, the defense lawyers, and two lawyers, two prosecutors here that have already preceded me, and I know it becomes weary on a jury, and I wonder sometimes whether or not we accomplish the things which we try to accomplish in these arguments.

We attempt in our way to answer some of the things that probably are in the minds of the jurors. We have no way of knowing what is in their mind or what the thinking is of a juror, and we have to in these arguments make some attempt to, oh, guess, you might say, what might be in the minds of the jury, what explanation we can make of certain evidence, whether or not it is logical and probable that certain things happened as the evidence disclosed that they did happen.

And I think that no better example could I point out here than the other day when Mrs. Borke, something was bothering her mind about something when the defendant was on the witness stand, and she wanted to ask a question. Well, rightly or wrongly, there is no provision in the law for that to be done. Sometimes you wonder whether it wouldn't be better if it was permissible, but it's not. But that's the point I am trying

to make. You can't ask me questions and I cannot ask you questions, ladies and gentlemen, nor are you permitted to ask witnesses questions.

I wonder if sometimes we don't expect and ask too much of juries. You folks sit here and you folks are going to determine from the evidence, from the testimony of the witnesses who have testified in this case, whether or not this defendant is guilty or not guilty of this most serious charge, and you are supposed to remember everything that has been testified to by all of those witnesses, ladies and gentlemen, and it's absurd.

The lawyers sit here, why, they use up tablets in a case the length of time that this has taken. I have used two of them here myself making notes, not of all of the testimony, but notes on certain pertinent things that have been testified to, and even you'll hear the lawyers from both sides of the table at times quibble and disagree on what some witnesses have said.

And here is a trial, at the end of the ninth week, I think about seven weeks or nearly seven weeks of testimony. It took a couple of weeks to complete the jury, but about seven weeks, in round figures, of testimony in this case, and

the law expects you folks to retain in your mind, without any notes at all, all of the evidence.

Now, that is our law, and so that is what we have to work with.

But I wouldn't replace the jury system with anything else. It is fundamental in the laws of our land which guarantees to every individual who is charged with the commission of a crime, it is guaranteed to him that he has a right to a trial in an open court, public trial, before a jury of his peers. That is fundamental in our American law. God forbid that it shall ever be changed.

But I realize, and you must realize, the handicaps that even jurors have where a trial stretches out over a matter of weeks, in keeping track of all of the evidence, all of the evidence that has been introduced.

And so what are the purposes of being permitted to talk to you, ladies and gentlemen, at the conclusion of all of the evidence? It is for them to be able to go over and analyze, summarize the evidence that has been introduced, to refresh your memories as to what has been testified to in the hope, of course, that we

might be of some little assistance to you in arriving at a fair, just and impartial verdict.

And so anything that I say to you now during the course of this argument, or anything that any of these other gentlemen have said to you already, should not be considered by you in any respect as evidence in this case. You are to be guided solely and only from the evidence that came from that witness stand.

Now, you might well ask yourselves: What did we come here in the first place for? Why have we been here these many weeks listening to all of these witnesses? Well, in our complex society, ladies and gentlemen, it has become necessary for our lawmakers to enact certain laws making it a crime for those who violate the rights of other people, violate their persons, violate their properties. And we are here because this defendant is charged with the violation of one of those criminal laws, the highest one in the category of crime.

That law which our lawmakers made said that no one should unlawfully take that which only God can give, human life. That is what this defendant is charged with having done, ladies and

gentlemen, and that is what this trial is all about.

And you have heard many times throughout this trial about the presumption of innocence and reasonable doubt, and his Honor in his charge to you on the law will instruct you what those terms mean, that as a defendant is placed on trial, that he is surrounded with a presumption of innocence, which presumption is to remain with him throughout the trial until such time, if such a time ever comes in the trial of the case, that the State of Ohio has produced sufficient evidence to convince the minds of each and every one of you ladies and gentlemen of his guilt beyond a reasonable doubt.

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And so at the very outset of this trial, ladies and gentlemen, the burden of proof rested upon the shoulders of the State of Ohio.

Now, what has the State of Ohio produced in this case that might convince the minds of reasonable-minded men and women of the guilt of this defendant. Let us go over some of the evidence in this case, ladies and gentlemen.

Mr. Corrigan made an eloquent plea to you, told you about the grand Constitution that we have in this country, and the lack of Constitutions or Constitutions that were lost in some of the foreign lands. He castigated Dr. Gerber and Dr. Adelson. He said I went out to the scene out there on the 7th day of July for publicity, being a candidate for Judge.

Ladies and gentlemen, I was a candidate for Judge long before Marilyn Sheppard met her end. I had been nominated for that office on the 4th of May of this year. It was not because Marilyn Sheppard died that I was a candidate for Judge, but that is one of the things that Mr. Corrigan talked about.

The officers, the police officers that conducted the investigation, why, he said, "Where

is McArthur this morning? Where is McArthur this morning? He has been in this courtroom all these weeks, but where is he this morning?"

I suppose he wanted to point his finger at McArthur as an arch enemy of the defendant.

Well, I will tell you where McArthur was. He was down to the Police Academy this morning at

8:30 a.m. lecturing to a number of police lieutenants of the Cleveland Police Department, and completed that task at 11:20 this morning. That is where he was, Mr. Corrigan, and he is back here this afternoon.

And he said, "Why didn't he testify?"

Well, if Inspector would have testified, it would have been all hearsay. The Inspector didn't go out and conduct these investigations. He directed his men to go out, and they reported back to him. He was the directing head. All he knows about it is what these men told him about it, so how could he give you firsthand information on anything? He could tell you generally how the investigation was conducted, that's all he could have testified to.

Why, I suppose Mr. Corrigan was trying to impress you that McArthur was running out on this thing. No

such thing, ladies and gentlemen. No one is running out on this.

And the thing that I waited for Mr. Corrigan to tell you something about, and he never said one word about it, is what happened out there in that house on Lake Road on the morning of July 4th. Did you hear him say one word about what went on out there? Did you hear him say one word about that fake burglary setup that was out in that house on the morning of July 4th?

Why, his colleague, Mr. Petersilge, got up here in front of you yesterday and honestly told you, honestly told you, "We don't claim there was a burglary out there."

More power to him for being honest about it. Anyone who looked at that setup out there, anyone who looked at it would know that there wasn't any attempt of burglary in that house. Mr. Corrigan knows that, but he didn't say one word to you about it, did he?

Well, if there was no burglary in there, why was it necessary to fake a burglary? What was the necessity of it? Certainly if an intruder was upstairs, as is claimed by this defendant, you don't think that that man, if there was a man, taking his

story, who had just pounded the life out of a woman on her bed, is going to wait around there and go down and pull out some drawers and lay them on the floor. You don't think he is going to do that, do you?

If there wasn't a burglar, ladies and gentlemen, -- and Mr. Petersilge conceded that there wasn't -- if there wasn't a burglar, who put that wrist watch, that ring, and that key chain in that little green bag? Who put it in there? Is there any doubt but what this defendant done that? Can there be any doubt about that, ladies and gentlemen? Who else was there to do it, if there was no burglar there that morning? Those are things we cannot overlook in this case, ladies and gentlemen.

We know this -- we know this: We know that the Aherns were over at that house on the night of the 3rd and left there shortly after midnight, shortly after 12 o'clock midnight, they left the Sheppard home to go to their own. We know that definitely and positively, and we know that when they left that the door to the north, the front door was locked and the chain was on. We know that because Mrs. Ahern told us that she did that, and we know that when she left, that this defendant was lying on the couch with a jacket on,

with a T-shirt on, and with a watch on his wrist.
We know that definitely, ladies and gentlemen.

We know that as the Aherns left, Marilyn Sheppard walked to the door with them, the door on the south, the back door, as we have been calling it, and bade them goodnight as they left. We know that. We know that was shortly after 12 o'clock midnight, the early morning of July 4th.

The next thing we know of anything concerning that Sheppard home is about 6 o'clock in the morning, or shortly before six, that same morning, when Mr. and Mrs. Houk went over there in response to a telephone call, and we know that when they arrived, that there was two people living there and one dead person. I might say that when the Aherns left, that Chip was there, also. He was also there in the morning, alive, this defendant was alive, but Marilyn Sheppard was dead, brutally beaten. That is where the police start from in this case, ladies and gentlemen.

Then they get the story of this defendant that he was awakened from a sleep, his name is called by his wife, and he goes upstairs and there he sees a thing, a thing with a white top, no head, he can't see any, a white top, and he is knocked out; doesn't light a light on his way up; doesn't light a light

upstairs; and when he comes to he knows something has happened to Marilyn, and he touches her and he feels she is gone, and he still doesn't light a light, and then he said he went to his son's room and satisfied himself that he was all right, and then heard a noise downstairs and he went downstairs, didn't make any effort to summon help, which he could readily have done from the upstairs, the telephone up there. Didn't cry out. Made no effort to do anything, and went downstairs when he heard the noise, and then he saw a shape, he saw a shape then, a form, out on the -- beyond the living room door toward the lake. No light on downstairs, and he didn't put any on. He goes in pursuit of this form and follows it down to the beach.

Why, here, if you want to believe his story ladies and gentlemen, you certainly must assume that he knew or felt that that form that he was following or chasing was the form of the person who had just bludgeoned his wife to death, but he obtained no weapons of any kind. Why, he passed that fireplace that had a half a dozen irons in there, any one of which he could have picked up as he passed it, and he had to pass it in coming down the stairs. No, he just rushes after this form, lost sight of it going

down the stairs to the beach, and there down on the beach he grasped the form and was again knocked out, and then later on found himself lying on the beach wallowing with the waves, and he dragged himself up to the house.

That is his story, ladies and gentlemen. That is his story.

And then after the police get there, his brothers come, they get him down to the hospital. The police in Bay Village seek the help from the Cleveland police, and they send a couple of men out there, Schottke and Gareau, and it didn't take those gentlemen, who are experienced, it didn't take them very long to know just by viewing that scene that there was something wrong with it, something wrong with it. They knew that a burglar wasn't in there.

Why, good God, ladies and gentlemen, a burglar just doesn't do those things. If a burglar goes into someone's home, and someone discovers him there, he might strike the person to knock them out so he can make his getaway, but he certainly wouldn't stay there and pound and pound on that person with a deadly weapon. A burglar just doesn't do that. These police officers knew that a burglar just doesn't operate that way. They knew there was something phony

about it, and they are condemned here, "Oh, without any investigation they accused this defendant of having murdered his wife."

Well, they went over to see him in the morning and heard his story. They listened him out, and they went back and made further checks, and then after -- it was after they left him that first time that this bag was found down over the hill there in front of his house with the watch, and the ring, and the key chain in it, and they went back with that to the hospital for him to identify, to identify those articles, and he did identify them.

And they knew there had been no burglary, and it was on that occasion that Schottke said, "I don't care what anybody else thinks. I think you killed your wife."

And everything pointed to it, everything pointed to it. There wasn't any substantial evidence that these officers had outside of his hazy story, of this hazy form which he told them about. There wasn't anybody else in that house to do that foul act, no one. Certainly they told him -- or Schottke told him just how he felt about it, and because he did that he is condemned here, he is condemned.

Oh, understand, ladies and gentlemen, that was

not a case that was within the jurisdiction of the Cleveland Police Department. That wasn't within their jurisdiction. They had just as a courtesy been called out there to lend whatever help they could, by the officials of Bay Village. Of course, those officers, in those villages don't have the equipment or the experience to handle major matters of this kind, and this is a major matter, taking someone's life. There can be nothing more serious, and they just don't have the manpower or the knowledge or technique for handling such situations of that kind.

Cleveland had no authority. The Cleveland police had no authority to step in on their own and do anything about it, and so it dragged along, dragging along, and that is the reason that I went out there on the 7th of July. That is the reason I went out there to find out why there wasn't some action. Someone's life had been taken. We wanted some answers, some answers to some questions, because anybody who takes a human life should be punished for it as provided for by law.

Why, Mr. Rossbach, the Deputy Sheriff, fine officer, served honorably in the Cleveland Police Department for over 25 years in the detective division,

and then retired, went into business, and then was called back by the Sheriff as a deputy in the Sheriff's office -- he wasn't notified or called there by anyone for any assistance, but he read it in the newspaper on Monday morning, July 5th -- that was his information on it -- and he went over there. He went over there to be of whatever assistance he could be, and where did he go after looking over the scene? Where did he head for? He went down to that hospital to talk to Sam Sheppard, that is where he went, and he got in the room there and was talking to him, and then what did he get up against? Why, Mr. Corrigan, Mr. Petersilge and Steve came in there and told him he couldn't talk to him, couldn't talk to him, said he wasn't in any condition to be talked to.

MR. CORRIGAN: I except to that.

MR. MAHON: Well, that is the evidence in this case.

MR. CORRIGAN: Schottke gave the description --

MR. MAHON: I am talking about Rossbach.

MR. CORRIGAN: I am talking about Rossbach, too. Schottke was there. I except to the statement.

MR. MAHON: You heard the testimony, ladies and gentlemen. You heard it. It just bears out what I told you a little while ago, that even lawyers disagree on what has been testified to.

Rossbach could not talk to him.

MR. CORRIGAN: I except.

MR. MAHON: He started to talk to him, and while he was talking to him that is when these other people came in, Corrigan and Petersilge, and I think Steve was there before that.

So Rossbach had to leave without getting any information, and he went back there on the next day, the 6th of July, and he wasn't permitted to talk to him. He went back there on the 7th of July, the day that this defendant went to the funeral, and he wasn't permitted to talk to him that day, either, and he went there on the 8th, and you have heard the witnesses testify as to what occurred out there on the 8th, on the 8th of July, when Dr. Gerber was there, and Rossbach and Schottke and Gareau, Petersilge and Corrigan and Steve; that Dr. Gerber had to threaten to serve a subpoena on this defendant to get to be able to talk to him, and then a compromise was made, a compromise, a compromise which shut out Schottke and Gareau, experienced homicide investigating officers

were shut out of that hearing, and he wanted a friendly officer in the room, a friendly officer, and they wanted Drenkhan, that young officer who testified here, an officer on the force in Bay Village, and he was called in; he was called in to sit in on the conversation then at the hospital. You heard that testimony here, ladies and gentlemen.

Does your Honor want a recess for the jury?

THE COURT: Ladies and gentlemen of the jury, we will now have a few minutes' recess at this point.

Please do not discuss this case.

(Thereupon at 2:50 o'clock p.m. a recess was taken.)

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(After recess, 3:05 o'clock, p.m.)

MR. MAHON:

Ladies and gentlemen

of the jury, let us for the moment take up the story that this defendant tells to you in this court room, how he was awakened, he lie there on the cot on the first floor hearing his wife call, "Sam, Sam," and going upstairs, encountering this thing in the room which he grappled with, and being struck and knocked out.

Now, I suppose it is fair to assume, ladies and gentlemen, that if his story is true, that the person who knocked him out is the same person who had just killed his wife, and that she was killed with some kind of an instrument. There cannot be any question about that, I don't believe. Certainly those wounds that were on that woman were not inflicted by a bare hand. Those lacerations which covered her head and forehead and on the backs of her hands were not inflicted by bare hands. They were inflicted by some kind of an instrument.

Is it fair to assume that a person who had just committed that foul act, that brutal act of beating that woman the way she was beaten, and then someone coming to her rescue, that they would

let that person with a blow of their hand? The only possible living witness, the only possible living witness to the foul act that had just been committed, the assailant lets off with just a blow of the hand, satisfied just to knock him out, let him lie there, probably step over his body and go on his way downstairs where he created so much racket. This person who had just taken the life of a human being then creates so much noise downstairs as to attract the attention of the man who, in his own words, was in such a haze he didn't hardly know what was going on, but caused him to go down after him, a man who had just killed somebody just hanging around there to be caught, I guess, if you want to believe that story.

And then he goes down to the lake, down in the direction where there is the least, the least chance of escaping from. There isn't any place to go down there but out on the water. That's the story you are asked to believe, ladies and gentlemen, by this defendant. That's his story, that's his account of this.

Why, if he would have walked up, if there was really an intruder there on that night and he

would have walked up into that bedroom after this intruder had killed his wife, he would have suffered the same fate.

No, he gets knocked out, gets hit on the neck, on the neck. Oh, there isn't any question but what he was injured, ladies and gentlemen, but he wasn't injured in that way, not the way he tells it. There's no question about him being injured.

There isn't any question, either, about what caused the death of Marilyn Sheppard. Why, you can show those photographs to a six-year old child and they can tell you what caused her death. This lady that was living, a living, breathing human being shortly after midnight, and at six o'clock in the morning she is found in that condition. Why, you don't have to be a doctor to know what caused her death.

And they bring up such technical terms as, "Oh, didn't she drown herself? Wasn't she drowned from the blood that ran down into her windpipe?"

Well, what difference does it make, ladies and gentlemen, what caused the blood to run down in her windpipe but the severe injuries that she

received with that weapon that was wielded there by that assailant?

Why, Adelson, Dr. Adelson was on that witness stand for two or three days. For what purpose? What was the reason? Just to confuse all of the issues in this case. Why was it necessary that he be on that stand that long and all of those questions asked?

As I say, a six-year old child could have told you what caused Marilyn Sheppard's death. An act of violence, wounds caused by a dangerous instrument of some type or kind.

And still, if you want to believe this defendant's story, you must say that the person, the person who swung that instrument into the flesh and crushed the bones of Marilyn Sheppard never used it on this defendant as he went upstairs there to protect her. Is that reasonable, ladies and gentlemen?

No, no one saw all of this happen. When you were impanelled as jurors in this case, ladies and gentlemen, you were told that there would be circumstantial evidence in this case, and you said you had no prejudices against that type of evidence but that you would give reasonable, probable

interpretations of proven facts, of proven facts in this case, ladies and gentlemen.

Do you think there was an intruder in that bedroom? Or was it this defendant in that bedroom? Oh, they say there's no motive, no motive for doing this at all, there isn't any motive; the State hasn't proven any motive.

His Honor, Judge Blythin, will instruct you as a matter of law, ladies and gentlemen, that it is not necessary that the State prove any motive at all. We don't have to prove any motive. Motive is helpful to have sometimes in a case, it is helpful in determining issues but it is not a necessary element in this case, or any other criminal case. It is not a necessary element.

But is there motive in this case? Well, let's see the background. We have had people come in here and who tell, "Oh, yes, they seemed to get along fine and loved each other, never saw this defendant lose his temper."

We have had those people testify. I think they probably testified honestly as they saw the conditions in the open, I think they testified honestly.

But was there some trouble between this defendant and his wife? I don't think that Marilyn Sheppard was one who wanted the world to know her troubles. She kept them to herself, probably, but once in a while something would overwhelm her and she would let little things out here and there, little things like the disagreement -- not out in the open it wasn't -- but between her and her husband, the disagreement over her getting a dishwasher. Oh, yes, and when something overcame her and she told Sally Ahern -- this was in April of 1954, April of 1954, after the return from California when they talked to Sally Ahern -- Marilyn talked to Sally Ahern and told her of some disagreements with Sam and some talk of divorce. Here and there you get something about it.

When I questioned this defendant on the witness stand -- oh, and they say we dragged in the name of Mrs. Lossman here. Well, it's necessary, ladies and gentlemen, that you get the entire background. This man is built up to you with these witnesses, who don't know -- and I say they speak honestly, I think -- who don't know what's going on. I'm sure that none of those folks knew what was going on with this defendant and some of these

women. But his wife knew about it, his wife knew about it.

His wife was present on that boat ride to Put-in-Bay when he and Mrs. Lossman went away, were gone for a couple of hours, and Mrs. Lossman's husband slapped his wife's face when she returned. Marilyn was there, she knew that.

Following that there was talk between Marilyn and Sam that they should give up their associations with the Lossmans. And don't you think, ladies and gentlemen, that it wasn't Marilyn who insisted upon that. She knew the danger that was there. She didn't go out and spread it to the public, but read in between the lines here, ladies and gentlemen.

And they talked that matter over. This defendant, after some reluctance, admitted that it wasn't all patient and doctor with Mrs. Lossman, meeting up in parking lot and dragging her down into the Metropolitan valley. She kissed him -- read in between the lines on all of that. And Marilyn knew about that association, too, ladies and gentlemen, because as I said before, there had been talk, there had been talk between her and Sam about that situation and an agreement to give up

the Lossmans as friends and not go out on social affairs with them.

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And then we have this Susan Hayes. Oh, Mr. Corrigan said this morning, he didn't want to tell in front of 500 people out there of his relationship with Sue Hayes, he is too much of a gentleman to do that. Why, of course, he said, he lied.

Ladies and gentlemen, when you raise your hand to your God and swear that you will tell the truth, to me, at least, that means something. It means to tell the truth regardless of who it might hurt.

"He didn't want to do that in front of 500 people out there at the inquest, and so he lied about it."

Well, when he was talking to a couple of officers on the 10th day of July before any inquest was had, he told them also -- there wasn't 500 people, but only a couple of officers present -- he told them also that he had no affair with Susan Hayes.

And this is an exhibit in this case, and this is a written statement that he made, ladies and gentlemen, to the officers up in the Sheriff's office here on July 10th, 1954, and on page 6 of this statement, the question:

"Did you ever have an affair with Sue Hayes?"

"I wouldn't call it an affair, but we have been good friends for sometime, which was known to my wife."

That is his answer there, and so he lied about that other places when he wasn't under oath, too, and it wasn't until Sue Hayes, until Sue Hayes told about it that he admitted it, that is when he first admitted it, ladies and gentlemen.

If he would lie about that to save his reputation, ladies and gentlemen, if an oath didn't mean any more to him than that, do you think he might lie in this courtroom from that witness stand in testifying here when his life is at stake? Would an oath be anything to him with those kind of stakes, ladies and gentlemen? And that is the position he is in in this trial.

You have a right, and his Honor will tell you, ladies and gentlemen, that you have a right in considering the credibility that you will give to the testimony of any witness who has testified here, you have a right to consider all of their background and apply any test that you apply in your private lives when you are trying to determine whether someone is telling you the truth or not. You have a right to determine and to take into consideration whether or not the things that they are telling you is reasonable and probable, whether things happened the way they say this

happened. You have that right, ladies and gentlemen, because, after all, it is part of your job to determine who is telling the truth in this case. When you determine who is telling the truth, ladies and gentlemen, then you will know what the facts are in this case, then you will be able to say whether or not this defendant is guilty or not guilty of this horrible murder.

Now, let's take this defendant's story a little further. He said he ran -- or after he heard this noise downstairs he went down after it -- he didn't say he ran -- he went downstairs after it, and saw this form, and he progressed down the stairs after this form and tackled it on the beach.

And you will recall that I asked him, when he was on that witness stand, "Didn't you jump off of that platform down on the beach?"

That is the platform which stands about eight or nine feet above the beach where the bath house is, stands some eight or nine feet above the beach.

"Didn't you jump from there?"

And he said, no, he did not, and the reason I asked him that, ladies and gentlemen, is because Detective Schottke testified here that in his first conversation with him on the morning of July the 4th,

down in the hospital, about 11 o'clock in the morning, after Schottke had been at the house, made some preliminary investigation, and then went to the hospital to get some information to help him in conducting the investigation, and he talked to this defendant there, and what did the defendant tell him there?

He said, "I ran down the steps, and I don't know whether I jumped over the rail or ran down the steps."

That is what Schottke testified to, and that is what prompted me to ask this defendant on the witness stand, and he said no. Now, that was something he said on the 4th of July.

Oh, you remember when Schottke was on the witness stand, and they said, "Did you make a report of all this?"

And he said, "Yes, over in the police station."

"Get it over here."

You remember that hassle that was had around here, and then the next morning Schottke brought it over, and it was put in the evidence, and it is an exhibit in this case.

MR. CORRIGAN:

Only part of it, sir.

The rest of the report was never brought in here.

MR. MAHON: State's Exhibit No. 49.
Here it is, right here.

MR. CORRIGAN: Part of Schottke's
report.

MR. MAHON: This is what is in the
evidence here.

MR. CORRIGAN: True.

MR. MAHON: And ~~this~~ includes the
conversation that he had with him on the morning of
July 4th.

MR. CORRIGAN: Where is the rest of
Schottke's report?

MR. DANACEAU: We object to this
interruption, if the Court please.

THE COURT: Please, let Mr. Mahon
go ahead.

MR. MAHON: And this starts out,
ladies and gentlemen -- the officer is not altogether
dependent upon his memory at this late date, but this
report he made out on July 7th, three days after this
conversation, and he starts out by saying:

"The following is the list of questions asked
Dr. Sam Sheppard on the first time we questioned him on
July 4, 1954, and he tells of chasing the man. When he

regained consciousness he heard some noise downstairs, and ran downstairs and seen a form going out the door leading to the porch. He ran after this form, and chased him down the stairs, and when he got to the boat house landing, he doesn't remember if he jumped over the railing or if he ran down the steps to the beach."

That is what he told Schottke on the morning of July 4th, and I say to you, ladies and gentlemen, in my humble opinion, that is where he got the injuries that he sustained, by jumping off of that platform, jumping over on that beach, not in the pursuit of a shadow, or a phantom or a form, but pursued by his own conscience as he ran away from the foul act that he had just committed, ran down there maybe with the thought in mind of ending it for himself in the waters of Lake Erie, and the cold water changed his mind.

And then he came back upstairs, and then he saw what he was in, realized the seriousness of what confronted him, and that is when this fake burglary was set up right then, ladies and gentlemen, to deceive anybody who might investigate. That is when it was set up, and that is when whatever instrument that had been used was taken from that house, and that T-shirt that had been worn was taken and disposed of. Where,

we don't know, nor what kind of an instrument, we don't know, but, ladies and gentlemen, you will have with you in your jury room as a part of the evidence in this case this pillow, this pillow. Examine it.

If that marking didn't come from some kind of an instrument lying on that pillow, then I am greatly mistaken. Look at it when you get it in your jury room. Just examine that, ladies and gentlemen.

Oh, Mr. Corrigan says, "Well, that is from the pillow folding."

Well, you can take a couple of pieces of paper and fold them up together but you can't take a pillow and fold it up that way. You can't fold that together in the same manner you could two pieces of paper, ladies and gentlemen. You might put a blot on there -- you can fold them up together right tight. Can you fold that pillow that way so they are up against there tight? Give that some consideration, and if you do, ladies and gentlemen, what conclusion do you have to draw? What conclusion do you have to draw? If that was an instrument or a weapon of some kind that was lying on that pillow, then it must have been lying there long enough for the blood to dry while it was lying there, or it wouldn't leave that marking, and isn't it reasonable to assume that when this defendant

came up from the beach, he had been in the water, sure, his trousers were wet, that that is when that instrument was removed, the blood had dried and left that telltale mark.

Now, ladies and gentlemen, that is the blood of Marilyn Sheppard that is on that pillow, and you will have this exhibit with you, State's Exhibit No. 10. You will have this exhibit with you in your jury room to look at Marilyn Sheppard lying there in her blood, in the blood around her. You will notice that that pillow -- there is no connection, there is no connection from the blood from her body down to that pillow. Just look at that photograph. No connection. So whatever blood that is on that pillow was carried from her head to the pillow, and undoubtedly on the instrument that was used to bludgeon her to death.

Examine those, ladies and gentlemen, when you retire to your jury room, to consider this evidence.

And that is not all, that is not all, ladies and gentlemen. Marilyn Sheppard's watch, her wrist watch was found down in the den on the floor down there, down at a location where this green bag came from, down there where these pins and tools that had been taken out of that bag. Her watch was there. There was blood on the band of that watch. There was blood on

it, and you will have it with you, ladies and gentlemen, in your jury room as an exhibit in this case, State's Exhibit No. 45, which is a photograph of the hand and wrist of Marilyn Sheppard, and you will observe the blood splotches on that wrist, and you will recall the testimony concerning that, that that dried blood on that wrist bore the impression of the band on the wrist watch of Marilyn Sheppard, the same impressions were left on her wrist in that dried blood, and there was blood stains on the watch itself, that is, on the band of the watch.

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Now, what does that mean, ladies and gentlemen? What does that mean? It means that after Marilyn Sheppard was killed, that that watch remained on her, on her wrist. It remained there until the blood dried before it was taken off, because if it wasn't, it wouldn't have left that pattern of that bracelet or band of that wristwatch.

And isn't that exactly the same thing that happened to whatever was placed on that pillow? It was there long enough for the blood to dry before it was lifted. And weren't those things -- oh, in order to carry out this burglary, this fake burglary set-up, well, they thought it would be a good thing to take that watch off of Marilyn, so the burglar was going to take that away as part of his loot, and that he then left it downstairs on the floor.

She had rings on, too, gold rings, a diamond in one of them. They were still on her.

Why, this house was full of phantoms that night, I think, ladies and gentlemen, the phantom burglar, the phantom killer, and then they charge this defendant with the murder. The phantoms did all that, ladies and gentlemen.

Oh, and they make much about the fact here, ladies and gentlemen, "No, she didn't, Marilyn didn't receive 35 blows. No, she didn't receive that many."

I think something was mentioned, "Oh, she didn't get more than six or seven."

My God, one was too many, one was too many. They are willing to settle for six or seven. We say 35. There are 35 wounds.

Oh, they say, "Well, there's not that many blows, though, not that many blows, because this probably was a multi-bladed instrument of some kind that inflicted two or three wounds at one time, and so it wasn't 35, it was only six or seven blows that she received."

Only? Only six or seven?

Oh, well, the doctor says she had a broken nose. Why, there is no evidence of a mark there even. She had a little scratch on the nose, Mr. Corrigan says, but he says: Isn't it reasonable to think that somebody put their hand over her mouth and broke her nose with their fingers? That's the way they are explaining a broken nose.

Well, isn't it more reasonable, ladies and gentlemen, after looking at these pictures of

the back of the hands of Marilyn, the back of the hands of Marilyn, isn't it more reasonable, ladies and gentlemen, to believe that as her life was being beaten out of her and the blows were raining down on her, that she put her hands up to protect her from those blows, and that one of those that hit her hand was the force that her nose was broken right through the fingers, without leaving its mark on the nose but leaving the mark on the back of her hands.

Look at them. Look at the blows that were rained upon the hands. How do you think they got on there? Isn't it an instinct, where you are being struck in the face, to throw your hands up for protection? It's a natural instinct which will happen every time.

And isn't it reasonable to believe that that is what happened to Marilyn when she got her nose broke, and isn't it reasonable to believe that that's where her hands were when those teeth were broken, also?

Oh, they say that she probably bit the finger, bit the finger of this intruder that came in there, and in biting that finger, that's the

way that these teeth were chipped. That's the story they want you to believe, ladies and gentlemen.

Oh, and then the conclusion: "And Sam hasn't got a bitten finger and, therefore, he is not the man."

That's the final answer they want you to draw, the final conclusion they want you to draw from that, ladies and gentlemen.

I don't think, ladies and gentlemen, that you are going to be deceived by that. I think you are going to analyze all of this evidence, approach it all with an open mind and determine this case on the facts.

Now, something was said to you here --

(Discussion between Mr. Parrino and Mr. Mahon.)

MR. MAHON: Yes. I was just reminded, and before I forget it, ladies and gentlemen, I intended to say something about it, about a T-shirt.

There was a T-shirt found tied up with a wire or caught in a wire or something on a pier that was on the Schuele property there. It's in the evidence here, you will have it, and

you will observe the size of it as 42-44. And you remember the evidence, that the shirts of this defendant were 38-40.

They don't claim, they don't claim outright that that T-shirt, that 40-42 size was this defendant's.

MR. PARRINO: 42-44.

MR. MAHON: 42-44. Pardon me. They don't claim that.

But the defendant, oh, it could have been. It could have been his T-shirt, it could have been, trying to muddle the waters on that score, ladies and gentlemen, grasping to confuse you on that issue. Don't be fooled by that, ladies and gentlemen.

Now, there was something said about there being no premeditation here. Well, I am sure that his Honor will instruct you on the law that should guide you in arriving at your decision in this case.

This defendant is charged with the crime of murder in the first degree, and he is charged specifically in this indictment in that he unlawfully, purposely and of deliberate and premeditated malice killed Marilyn Sheppard.

Now, it is necessary for the State to prove in this case, ladies and gentlemen, in order to prove a first-degree murder case, to prove that there was an unlawful crime, a purposeful killing and a deliberate and premeditated malicious killing in order to prove first-degree murder.

We must prove that, all of those elements, beyond a reasonable doubt. And the Court will instruct you, I am sure, in this case that if we fail to prove all of those elements, if we fail to prove all of those elements, that then you should consider the evidence to determine whether or not we have proven any, and if so, how many?

And if we have proven beyond a reasonable doubt that there was an unlawful and purposeful killing, without any premeditation and malice, then it would be second-degree murder. In other words, to be second degree, you have to drop off the premeditation and malice.

And then I am sure the Court will charge you further that if we do not prove first-degree murder and second-degree murder, then you should consider whether or not we have proven beyond a

reasonable doubt manslaughter, and the element of manslaughter would be the unlawful killing of one, of a person, the unlawful killing.

Now, let's analyze that the other way and let's see whether or not we have offered proof here convincing beyond a reasonable doubt to prove these elements,

Well, on the first, the only element that must be proven for manslaughter, an unlawful killing; unlawful killing, that's all we have to prove.

What is an unlawful killing? The Court will tell you what it is, he will tell you what an unlawful killing is. Why, you take someone's life, maybe in the heat of passion, not intending to kill him, not with premeditation, but you might be in a fight with him and in the heat of passion kill someone. That's an unlawful killing, that's manslaughter.

Now, to build that up to second degree, you must have the same element you had in manslaughter, you must prove that, an unlawful killing, and you add another element: Purposeful. That is, you intend to kill. Purpose and intent are synonymous. There must be a purposeful killing. Unlawful,

purposeful, that's second degree.

Well, now, let's analyze this in this case. Was there an unlawful killing of Marilyn? Was there an unlawful killing of her? Certainly, she wasn't the aggressor in any way. She's there in her bed clothes and she is bludgeoned to death. It certainly is unlawful, whoever killed her. Whoever killed her committed an unlawful act. That was an unlawful killing.

And the next step: Was the killing purposefully, intentionally? Well, what evidence have we on that? The Court will tell you that purpose and intent, that's a frame of mind, ladies and gentlemen, that's something that is locked up in a mind. You can't see it and the only way you can determine what intent is is by the acts of a person, by their acts, by what they do and what they say, what kind of instrument they use. Is it an instrument that might cause death?

Now, let's fit it into the facts in this case. Was Marilyn Sheppard's death a purposeful act? Well, we know that a deadly instrument was used. We haven't got it, but we know that. The effects of it are left, were left in her head. We know that a deadly instrument was used. And

we know that it wasn't an accidental thing, that someone hit her by accident, we know that. We know by the number of blows that were rained on her.

Oh, they say five or six, not 35, but five or six even, blows of a deadly weapon, the kind to inflict those kind of injuries, can anyone say that there wasn't purpose and intent to take her life? Can anyone say that that element hasn't been proven, whoever did it?

And then let's step it up to the next step: First-degree murder. And to prove that, ladies and gentlemen, we must prove the element that's in manslaughter, an unlawful killing; we must prove the elements that are in second-degree murder, that would be the unlawful and purposeful killing. To make first degree, you must go up one step further and in addition to those two, in addition to the unlawful and the purposeful killing, you must prove "and of deliberate and premeditated malice."

Now, we must prove that in addition to the other two to make it first-degree murder.

Now, what have we here on that score, ladies and gentlemen, what have we on that score

to prove deliberate and premeditated malice in this case? Well, we do know, we do know that an instrument was used to take the life of Marilyn Sheppard. We do know that, whoever did it. Whoever did it used an instrument, and if they used an instrument, ladies and gentlemen, a deadly instrument of that kind, they must have carried it into the room there, they must have necessarily carried it into the room there because nothing was missing from the room and the weapon has never been found, and there was nothing missing from the room.

Now, you can ask yourselves, then, ladies and gentlemen, well, why did someone carry that kind of a weapon into that room? What for? Only to do the thing that was done, to take the life of Marilyn Sheppard. That is why it was carried in, and if it was carried in, then there was premeditation, and it was a deliberate, malicious act, ladies and gentlemen. There isn't any question about that. I don't think there is any question about the degree of crime that has been committed here, ladies and gentlemen.

It seems to me that the serious thing that you have to determine in this case is whether or not this defendant is the man that killed Marilyn Sheppard. That is the serious thing that you have to determine in this case.

Consider his story, the truthfulness of this story, the probability of things happening the way that he said they happened, the reasonableness or the unreasonableness of the story that he asks for you to believe, ladies and gentlemen, and then think also, ladies and gentlemen, of some of these cold facts, cold facts that cannot be disputed by words, cannot be disputed.

If someone had committed the act, as he said they committed it, who went back in that room and took that weapon off of that pillow? Who did that? Who took that wrist watch off of Marilyn Sheppard's wrist after the blood dried? Who did that?

Do you think that a killer came back in, after this defendant chased him down to the beach, came back up and took the instrument out and took the wrist watch off? Do you think this intruder did that, ladies and gentlemen? That is just not reasonable. How can you reason that as being the fact in this case, ladies and gentlemen? Just no rhyme or reason to it.

And if it was an intruder, ladies and gentlemen, who had killed Marilyn Sheppard, if it was an intruder, why in God's name did they set up this fake burglary? Why? Why do they want to waste all the time and the likelihood of being caught there? Do you think that is reasonable that a person would do that, would stay around there and pull out drawers and spill a couple of papers on the floor?

MR. CORRIGAN: I except to the statement of the fake burglary. There is no evidence on that point at all produced by the State.

THE COURT: This is merely argument.

MR. CORRIGAN: Note my exceptions to the

statement of the prosecutor.

MR. MAHON: Do you think, ladies and gentlemen, that an intruder would come back in and do that? I don't, ladies and gentlemen.

When you analyze all of this evidence down, and I want you to be fair in this case, ladies and gentlemen, I want you to give this defendant the benefit of every doubt to which he is entitled, and I will ask you, on the other hand, to be just as fair to the decent, law-abiding citizens of this community as I want you to be to this defendant. That is all I ask you to do.

Analyze all of this evidence with an impartial, mind, ladies and gentlemen, without any prejudice, without any bias; yes, ladies and gentlemen, and without any sympathy for anyone in this case.

My job is about done here, ladies and gentlemen. The serious part of your job is just about to commence, and you do have a serious job, ladies and gentlemen, I realize that. We all realize that. The most serious job in this entire trial rests upon your shoulders, ladies and gentlemen.

You sit here in judgment of a fellow-man, and particularly in a case of this kind, ladies and gentlemen,

your job is doubly serious, because, ladies and gentlemen, at your hands might rest the life -- does rest the life of this defendant, ladies and gentlemen, and so you do have a serious job.

I want you to be open-minded, give credit to the testimony of those witnesses whom you think are entitled to credit, and disregard that testimony of witnesses who you feel are not telling you the truth about the facts in this case. Analyze thoroughly all of the evidence, ladies and gentlemen, so that when your verdict is finally agreed upon, it will be a verdict that responds to the evidence and to the law, so that full and complete justice shall be done, justice for this defendant, and equal justice for the people of this community.

May I thank you.

THE COURT: Ladies and gentlemen of the jury, we will now be adjourned until, shall we say, nine o'clock tomorrow morning. I would like to get a fairly early start, but if we are not all here at nine o'clock we will not, of course, until we all are here, but as soon as possible after nine o'clock, I would like to have the court convene.

In the meantime, will you be very careful --

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now we are in the closing stages -- not to discuss this case or reach any point whatever where you are seeking or securing any information or notions or statements from anybody about it. The law of this State provides that when a jury is charged with the final word in the case, and a jury proceeds in the secrecy of its jury room to deliberate and to determine the issues that are to be determined, that from that point on, and continuing until such time as they and the Court together, if that should have to come to pass, are not able to agree -- or, rather, they and the Court are agreed that the jury cannot agree upon a verdict, or a verdict is rendered, the jurors must be kept together. This case is important. It may take you a short time, nobody knows. It may take you some time, nobody knows. But, in any event, I am sure you appreciate the fact that it is a case that does need deliberation and care in its decision, whatever that decision may be, and for that reason, it may go over tomorrow. If it does, it will be necessary for you to remain in the comfort -- some people think it is discomfort -- of a downtown hotel. The Court will take care of all of those details, if they are to be taken care, so I am saying that to you

now so that you may come tomorrow morning prepared, if necessary, to remain in a downtown hotel tomorrow night under the care and as guests of the Court and its officers.

MR. CORRIGAN: I except to the instructions of the Court.

THE COURT: Sir?

MR. CORRIGAN: I except to your instructions.

THE COURT: What is erroneous about it?

MR. CORRIGAN: I say I except to your instructions.

THE COURT: Oh, yes. All right.

Without any formality at all, we will be adjourned until 9 o'clock tomorrow morning.

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(Thereupon at 4:15 o'clock p.m. an adjournment was taken to 9 o'clock a.m., Friday, December 17, 1954, at which time the following proceedings were had):

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Friday Morning, December 17, 1954.

9:05 o'clock a.m.

(Thereupon, in the absence of the jury, the following proceedings were had between Court and counsel, in the Court's chambers):

MR. CORRIGAN: The defendant requested a written charge, and such written charge has been written and a copy thereof has been given to defendant's counsel; and now, in presence of the Court and in presence of counsel for the State, the defendant takes the following exceptions to the written charge:

No. 1. On page 10 is the following charge in regard to character and reputation evidence:

"Some evidence has been given in this case concerning the claimed general conduct and reputation of the defendant and it is proper to present such evidence for your consideration. It is not admitted because it furnishes proof of guilt or innocence but because it is a matter of common knowledge that people of good character and reputation do not generally commit serious or major crimes. Such evidence, if believed, may be of some help to you in your consideration of the total evidence and the situation as a whole. The Court wishes to caution

you, however, that good character and a good reputation will not avail any person charged with a crime against proof of guilt beyond a reasonable doubt."

The defendant takes exception to that part of the charge, and requests the Court to charge that:

"If evidence of reputation and character shall be considered by the jury in connection with all the other evidence in the case, and if the evidence of good reputation and character, taken in consideration with the other evidence, raises a reasonable doubt of guilt, the defendant may not be found guilty."

The Court overrules that.

The second exception to the written charge is as follows; beginning at the bottom of page 9 and continuing over to page 10, the Court has charged as follows:

"It is necessary that you keep in mind, and you are so instructed, that where circumstantial evidence is adduced it, together with all other evidence, must convince you on the issue involved beyond a reasonable doubt and that where circumstantial evidence alone is relied upon in the proof

of any element essential to a finding of guilt such evidence, together with any and all other evidence in the case, and with all the facts and circumstances of the case as found by you must be such as to convince you beyond a reasonable doubt and be consistent only with the theory of guilt and inconsistent with any theory of innocence. If evidence is equally consistent with the theory of innocence as it is with the theory of guilt it is to be resolved in favor of the theory of innocence."

The defendant takes exceptions to that particular part of the charge and asks the Court to instruct the jury as follows:

"Where reliance for conviction is placed on circumstantial evidence, the jury is instructed that the facts and circumstances upon which the theory of guilt is based should be shown beyond a reasonable doubt, and when taken together must be so convincing as to be irreconcilable with innocence and admit of no other hypothesis than guilt."

THE COURT: Exceptions overruled, and exceptions noted to the defendant.

MR. CORRIGAN: And I will repeat those after.

THE COURT: Yes. Then you repeat
the same thing after the charge is given, so that
it will be at both places.

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(Thereupon the Court charged the jury
as follows):

CHARGE OF THE COURT:

 BLYTHIN, J.: Ladies and gentlemen of the Jury, some of the statements which will now be made to you may be repetitious of what has already been said to you, either upon your impaneling as a jury or thereafter at some points during the course of this trial. Those statements are not repeated here because the court entertains any thought that you have forgotten them or would disregard them, but because the law places upon the trial judge the obligation of outlining to you at this point in this proceeding the issues that are to be here determined and to state to you the principles of law which are to govern you in the determination of those issues. When we refer to determining issues we are merely referring to determining what the facts are. It has undoubtedly occurred to you that deciding what the facts are in a case of this kind is a very important function. It is, in fact, an all-important function and is exclusively your function. With it I have nothing whatever to do, and if by anything that has been said or done during the progress of this trial, or by something that is now said, or by some emphasis which you may think I place on something I now say, there is expressed -- there is created in your minds some impression that I have formed

some opinion as to what the facts are in this case, you are now instructed to disregard and dismiss such impression entirely and to proceed to arrive at your own conclusions on the basis of instructions now being given to you. You are the sole judges of the facts in this case.

Coming, however, to state the principles of law which are to govern you in your determination of the issues in this case, it is my function, and mine alone, to state those and it is your duty as jurors to follow those principles without question or challenge; and that is true even though you may believe that the court is not stating those principles correctly or that the law ought to be different to that which is stated to you. Jurors are not judges of the law but are the judges of the facts on the basis of the law as stated by the trial judge.

A case of this kind comes into this court by the filing of an indictment by the grand jury of this county. An indictment is merely a piece of white paper, on which is printed, typewritten, written; or possibly some of each; a statement that someone has done something, which, if it is true, would constitute a violation of a criminal law of this State. In this case such an indictment was filed charging defendant Sam H. Sheppard with

Murder in the First Degree; it being claimed that on or about the 4th day of July 1954 Sam H. Sheppard killed Marilyn Sheppard. The fact that an indictment has been filed raises no presumption whatever of guilt of any crime. A person named in an indictment and therein charged with a crime is presumed to be innocent and that presumption remains with him until he is shown to be guilty under the conditions and by the degree of proof which I shall now outline to you.

When the indictment in this case was filed in this court it became the duty of Sam H. Sheppard to appear and to enter his plea to the charge made in the indictment. He appeared and pleaded Not Guilty. When he did that he placed in issue, meaning in dispute, each and every element of the crime charged against him and placed upon the State the burden, if he is to be found guilty, of proving him guilty beyond a reasonable doubt; such proof including proof of each and every element of the crime charged.

A defendant in a criminal case is presumed to be innocent until he is proved guilty of the crime charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he shall be acquitted. This presumption of innocence places upon the State the burden of proving him guilty beyond reasonable doubt.

By presumption of innocence is meant that cloak which the law throws over every citizen in our society, giving him, in a sense, a favorable position in society as distinguished from an unfavorable one; the place of an honest man as distinguished from a dishonest man, and an innocent man as distinguished from a law violator, and keeps that cloak over him unless and until proof is furnished that such citizen is not entitled to the protection of that cloak and, in a case of a charge of crime, to be guilty of it by evidence showing it beyond a reasonable doubt, as that term is understood under our law.

What is a reasonable doubt is something about which reasonable minds could have different views and for that reason the legislature of Ohio has enacted into law the State's own definition of reasonable doubt and has made it the duty of the trial judge in every criminal case to read that definition to the jury for its guidance. It is as follows:

"A reasonable doubt is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison

and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

Section 2901.01 of the Revised Code of Ohio, in its pertinent part, provides that:

"No person shall purposely, and either of deliberate and premeditated malice, kill another."

The indictment in this case, eliminating its caption and certain formalities, charges:

"that Sam H. Sheppard on or about the 4th day of July 1954, at the county aforesaid, unlawfully, purposely and of deliberate and premeditated malice killed Marilyn Sheppard contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio."

The mention of "county aforesaid" in that indictment has reference to Cuyahoga County.

You will note that the charge in the indictment is based directly on the section of the Revised Code just quoted. You will recall that in order to arrive at a

verdict of guilt it is essential that each and every element of the crime charged be proven beyond a reasonable doubt. It therefore becomes important to determine what those elements are. They must be found in the law itself without diminution or enlargement by any thoughts or notions entertained by us.

The elements, in their chronological order, are these:

(1) "No person."

That expression embraces the entire population. It singles out no particular person and, for that reason, there must, before guilt can be established, be an identity of person. Only one person is accused in the indictment in this case. That person is Sam H. Sheppard, and unless you are able, under the evidence in this case, to eliminate all other persons and, further, to establish that Sam H. Sheppard is the person who committed the act charged you need go no further and would be obligated to render your verdict in his favor.

(2) "Shall purposely."

This relates to killing. To do an act purposely is to do it intentionally and not by mischance or accident. Intent is a state of mind and we have not yet found the means of peering into the mind and viewing within it an intent there formed. We therefore must

resort to an appraisal of those things which generally become the form of expression of an intent. We look to what is said, if anything; what is done, if anything; movements made which indicate a relationship to each other; the natural result to be expected from such movements; the weapon or instrument used, if any, in the commission of an act and especially such that may readily cause injury or death to another, having in mind that every person capable of reasoning is presumed to intend the probable and natural consequences of his voluntary acts. If a deadly instrument or weapon is used wilfully and in a manner calculated to destroy life a jury may infer the intent or purpose to kill by such instrument or weapon. Intent is an element which must be found to be present simultaneous with the act of killing.

(3) "Either of deliberate and premeditated malice."

When we speak of malice in common parlance and in everyday affairs we usually refer to ill-will, bitterness, hatred, spite or jealousy. In a legal sense malice does not mean those things but may include one or more of them. To do an act maliciously in a legal sense is to do an act without just cause or excuse for doing it, and with a design and intent to injure another. It is an act expressive of a disregard of social duty and of a

heart bent on mischief.

Such malice as an element of murder in the first degree must have been deliberate and premeditated. The words "deliberate and premeditated" mean that the purpose to kill was considered and that it was turned over in the mind, or thought about, before it was put into execution. The law does not fix a time for which such deliberation and premeditation must have existed. It may be for months, weeks, days, hours or a very short period of time. If the malicious purpose be formed a sufficient length of time to enable the killer to consider and contemplate his unlawful act before its commission it satisfies the legal requirement of deliberate and premeditated malice.

(4) "Kill another."

There must be a killing. The mere fact that a death occurred does not, of course, mean that a murder has been committed. It must be shown that the death of the person claimed to have been killed was caused by the acts charged.

The jurisdiction of this court in criminal matters does not extend beyond the boundaries of Cuyahoga County so that before any verdict of guilt of any crime is rendered here the offense involved must be found to have been committed in this county.

If, therefore, you find that Sam H. Sheppard purposely and either of deliberate and premeditated malice killed Marilyn Sheppard in Cuyahoga County it will be your duty to find him guilty of murder in the first degree.

While the indictment in this case charges only murder in the first degree it embraces within its terms certain crimes of an inferior degree, namely; "Murder in the Second Degree" and "Manslaughter, First Degree." It is therefore possible for you to find that the defendant in this case is not guilty of murder in the first degree but that, nevertheless, the elements of murder in the second degree or of manslaughter, first degree, are present and that he is guilty of one of those specified crimes.

Section 2901.05 of the Revised Code of Ohio provides that:

"No person shall purposely and maliciously kill another."

Such an act is designated as murder in the second degree.

If you find that Sam H. Sheppard is not guilty of murder in the first degree on the basis of the evidence and the rules which I state to you it will be your duty to move a step further and to determine whether the elements of murder in the second degree are present. The

elements of murder in the second degree are precisely the same as those of murder in the first degree with the one exception that the act of malicious killing need not be the result of deliberation and premeditation. I will not undertake to repeat the definition of the elements because their character is the same with the one exception mentioned. It follows that if you find that Sam H. Sheppard is not guilty of murder in the first degree as charged but do find that he purposely and maliciously killed Marilyn Sheppard in Cuyahoga County it will be your duty to find him guilty of murder in the second degree.

Section 2901.06 of the Revised Code of Ohio provides that:

"No person shall unlawfully kill another."

Such an act is designated as manslaughter, first degree.

The words "first degree" in the section and in this connection are of no vital importance in this particular case. The legislature of our State undertook to divide the crime of manslaughter into two classes -- one being manslaughter, first degree, and being one in which no motor vehicle is involved; and manslaughter, second degree, being one in which the operation of a motor vehicle is involved. It is therefore possible for you to find that the defendant Sam H. Sheppard is not

guilty of either murder in the first degree or murder in the second degree but that nevertheless the elements of manslaughter, first degree, are present. We look to the law itself for those elements. Again we have:

(1) "No person."

I shall not repeat what I have said about the necessity of finding that Sam H. Sheppard is the person. What was said in that connection within the requirements in the case of murder in the first degree has equal application here.

(2) "Shall unlawfully kill another."

A killing is unlawful when without cause. It is an intentional or unintentional killing but without being prompted or motivated by malice of the character I have described to you. It is that killing which is done in the heat of passion due to some provocation, and takes place before enough time has elapsed to permit such passion to cool down and thereby avoid the unfortunate killing.

If you find Sam H. Sheppard not guilty of either murder in the first degree or murder in the second degree, but do find that he did unlawfully kill Marilyn Sheppard in Cuyahoga County under the conditions last recited to you it will be your duty to find him guilty of manslaughter, first degree.

You are in no event to find Sam H. Sheppard guilty of any offense outlined to you unless each and every element of that particular offense is found by you to have been proven beyond a reasonable doubt. On the other hand it is not to be your privilege to be generous by rendering your verdict finding him guilty of a lesser offense when and if in the judgment of the twelve of you the evidence discloses beyond a reasonable doubt his guilt of a higher offense.

If you find that the evidence in this case does not, under the rules outlined to you, disclose Sam H. Sheppard guilty beyond a reasonable doubt of any one of the three offenses mentioned it will be your duty to find him Not Guilty.

/ There are two classes or types of evidence and both are involved in most cases of the kind and character of this case. They are designated as Direct Evidence and Circumstantial Evidence. Both are proper and one is as effective as the other if equally convincing under the rules of law for its application. Direct Evidence is that given by a witness on the basis of the dictates of his own senses -- what he himself heard; what he saw; what he did; what he said -- matters which he himself knows. Circumstantial Evidence is that which is furnished as to a fact which may not be the fact or

situation sought to be proven but is a fact from which a fair inference can be drawn tending to prove the fact or situation sought to be shown or proven. I believe that a very simple and homely example or illustration of each of the two types of evidence mentioned may be helpful.

Illustrating now what would be direct evidence, let us assume that I had on a certain day a very fine cherry tree in my yard. The family happens to be away on that day and when I return about 5 o'clock in the evening I find my cherry tree chopped down. I proceed to investigate and first make inquiry of my next door neighbor Mr. Smith. I ask him if he saw any stranger doing anything in my yard on that day. He replies: "Yes, I saw George Washington chop it down with an ax." That would constitute direct evidence because Mr. Smith is relying on his own sense of sight and states what he himself saw with his own eyes. For that reason he is able to give direct evidence that George Washington chopped down that cherry tree.

Let us now consider a case of Circumstantial Evidence in the same connection. Assume that on inquiry of Mr. Smith, my neighbor, he, in answer to my question, says that he did not see anyone chopping down my tree. I then ask him: "Did you see anyone about my place today?"

He replies: "Yes, I saw George Washington walk along your driveway from the yard to the street with an ax on his shoulder." Here is evidence of a fact which does not directly prove who chopped down my cherry tree but which permits a natural and fair inference that George Washington was in my yard with an ax combined with the fact that my tree was chopped down would constitute very definitely a piece of circumstantial evidence to be weighed in the consideration of a charge against George involving the act of chopping down that tree. It is for you to determine how much of circumstantial evidence adduced in this case is credible and what fair inferences are to be drawn from it. You are instructed that any inference drawn must in every instance be drawn from a proven or established fact. In other words, you are not to draw a second or further inference upon an inference but that is not to say that you are confined to drawing only one inference from one fact. There is no limit to the number of independent inferences that may be drawn from a fact. The rule is simply that every inference must be drawn from, and based on, a fact and that once having drawn an inference one may not draw a second inference from the first.

It is necessary that you keep in mind, and you are so instructed, that where circumstantial evidence is

adduced it, together with all other evidence, must convince you on the issue involved beyond a reasonable doubt and that where circumstantial evidence alone is relied upon in the proof of any element essential to a finding of guilt such evidence, together with any and all other evidence in the case, and with all the facts and circumstances of the case as found by you must be such as to convince you beyond a reasonable doubt and be consistent only with the theory of guilt and inconsistent with any theory of innocence. If evidence is equally consistent with the theory of innocence as it is with the theory of guilt it is to be resolved in favor of the theory of innocence. /

The law does not require the State to prove motive in this case. The presence or absence of motive shown by the evidence may be considered by you in determining intent, or its presence or absence in the mind of the defendant Sam H. Sheppard, so that if you find beyond a reasonable doubt that the defendant is guilty of any offense under these instructions, then you should find him guilty whether or not a motive has been established.

Some evidence has been given in this case concerning the claimed general conduct and reputation of the defendant and it is proper to present such evidence for your consideration. It is not admitted because it

furnishes proof of guilt or innocence but because it is a matter of common knowledge that people of good character and reputation do not generally commit serious or major crimes. Such evidence, if believed, may be of some help to you in your consideration of the total evidence and the situation as a whole. The court wishes to caution you, however, that good character and a good reputation will not avail any person charged with a crime against proof of guilt beyond a reasonable doubt.

You are, as already stated, the sole judges of the facts in this case as well as the credibility of the witnesses who have testified in this trial. In determining what you are going to believe it is your privilege to resort to those means and processes that you resort to in everyday life in resolving conflicting statements and facts in dispute and in honestly and rationally arriving at what, in your judgment, the truth actually is. Without meaning to mention all of those means and processes the court mentions a few for illustration and your guidance. You may take into consideration the demeanor of a witness on the witness stand; his willingness or unwillingness to answer questions put to him; the reasonableness, or otherwise, of the answers given by him; the opportunity which he had, if any, to observe and know the things that he testifies to. In addition, you

may take into consideration the interest, if any, which a witness has in the outcome of this trial. You are not to arrive at your conclusion on the basis of consideration of part of the evidence. Your final conclusion is to be based on full, fair and honest consideration of all the evidence but that is not to say or mean that you must believe all of the evidence. You are privileged to believe all that an individual witness testifies to, or disbelieve all of it. You may believe part and disbelieve part of it but you are not to do so on the basis of any prejudice, sympathy, motive or aim other than to arrive at what the actual truth is. In and of itself, the source of evidence is not the test of its value. It may come from a professional person, a public official or the most humble of laymen. The real and final test is whether or not you find the truth within it. You are not to decide this case on the basis of the number of witnesses nor on the length of their testimony. Testimony is to be judged on the basis of its quality rather than its quantity.

With the penalty, if any, which will be imposed in case of a finding of guilt you have nothing to do excepting in one instance. In the event that you find the defendant guilty of murder in the first degree you will have the duty of determining whether or not you will

recommend mercy.

You are not obligated to recommend mercy and your discretion in that matter is not subject to the dictation or control of any others or in any sense. You are not to recommend mercy out of considerations of prejudice, sympathy, or favor, or for the purpose of avoiding what you may consider an unpleasant task or duty. If you come to consider a recommendation of mercy you will scan the evidence and determine whether there exist within the evidence some facts and circumstances which lead you to believe that in the exercise of your sound discretion and judgment you should recommend mercy in spit of your finding of guilt of murder in the first degree.

If you find the defendant guilty of murder in the first degree and do not recommend mercy it will be the obligation of the court to sentence the defendant to death. If you find the defendant guilty of murder in the first degree and do recommend mercy the penalty imposed will be imprisonment in the penitentiary for life.

When you retire to your jury room it will be your duty to elect from your number a person to act as your foreman. That person may be a man or woman but, just for convenience, I will refer to that person as if he were a man. He will have neither authority nor duties beyond those of any other juror excepting those that I will now

specifically mention. He will be the chairman of your deliberations. That is a very important item. You have been cautioned during the progress of this trial not to discuss this case with anyone and to so refrain from discussion of it among yourselves, either in your jury room or elsewhere.

You are now to fully discuss and consider among yourselves in your jury room all the evidence in this case and it will be the duty of your foreman to see to it that every member of this jury has full and a fair opportunity to express his or her views upon any part or all of the evidence in this case and to urge upon his and her fellow-jurors the fair inferences which he or she believes can be fairly drawn from any portion or all of the evidence in the case. This is important because you will not be able to return a verdict in this case unless all twelve of you are in agreement upon that verdict. Your verdict will therefore represent the composite judgment of twelve people together. In arriving at final judgment it is the duty of every juror to fairly and patiently, listen to the views of his or her fellow-jurors on the evidence and to join in a reasonable manner in a common effort to correctly evaluate it and, upon it, to arrive at a just verdict. That is not to say that any juror must surrender his or her judgment to that of any other person when that

judgment is honest and real after fair discussion, and collaboration. The foreman will also have the duty of affixing his signature to the form of verdict upon which all jurors have agreed. It is not necessary that any juror other than the foreman sign the verdict.

You will have with you in your jury room the indictment filed in this case but you are instructed that it is not evidence and that the fact that it is here raises no presumption of guilt. It goes with you to your jury room for the sole purpose of having you know exactly what the charge against Sam H. Sheppard actually is.

You will also have with you the exhibits which have been admitted in evidence in this case. Those exhibits are evidence and are to be considered by you as such to the same extent that you consider the spoken word.

You will, too, have with you five forms of verdict. Only one of these forms is possible or permissible in this case. Each form is completely filled out with the exception of the signature of your foreman. They are:

1. Guilty of Murder in the First Degree as charged in the indictment.
2. Guilty of Murder in the First Degree as charged in the indictment, but we do recommend mercy.
3. Not Guilty of Murder in the First

Degree but Guilty of Murder in the
Second Degree.

4. Not Guilty of Murder either in the
First or Second Degree but Guilty of
Manslaughter, First Degree.

5. Not Guilty.

You will have with you in your jury room a copy
of the instructions which I have just read to you and you
may refer to it for guidance if you should find it
necessary to do so.

If and when you have agreed upon a verdict your
foreman will sign the form which is expressive of your
finding.

ns-mg

(Thereupon the jury retired to consider its verdict, and the following proceedings were had in the absence of the jury):

MR. CORRIGAN: The defendant requested a written charge, and such written charge has been written and a copy thereof has been given to defendant's counsel; and now, in presence of the Court and in presence of counsel for the State, the defendant takes the following exceptions to the written charge:

No. 1. On page 10 is the following charge in regard to character and reputation evidence:

"Some evidence has been given in this case concerning the claimed general conduct and reputation of the defendant and it is proper to present such evidence for your consideration. It is not admitted because it furnishes proof of guilt or innocence but because it is a matter of common knowledge that people of good character and reputation do not generally commit serious or major crimes. Such evidence, if believed, may be of some help to you in your consideration of the total evidence and the situation as a whole. The Court wishes to caution you, however, that good character and a good reputation will not avail any person charged with

a crime against proof of guilt beyond a reasonable doubt."

The defendant takes exception to that part of the charge, and requests the Court to charge that"

"If evidence of reputation and character shall be considered by the jury in connection with all the other evidence in the case, and if the evidence of good reputation and character, taken in consideration with the other evidence, raises a reasonable doubt of guilt, the defendant may not be found guilty."

The Court overrules that.

The second exception to the written charge is as follows, beginning at the bottom of page 9 and continuing over to page 10, the Court has charged as follows:

"It is necessary that you keep in mind, and you are so instructed, that where circumstantial evidence is adduced it, together with all other evidence, must convince you on the issue involved beyond a reasonable doubt and that where circumstantial evidence alone is relied upon in the proof of any element essential to a finding of guilt such evidence, together with any and all other

evidence in the case, and with all the facts and circumstances of the case as found by you must be such as to convince you beyond a reasonable doubt and be consistent only with the theory of guilt and inconsistent with any theory of innocence. If evidence is equally consistent with the theory of innocence as it is with the theory of guilt it is to be resolved in favor of the theory of innocence."

The defendant takes exceptions to that particular part of the charge and asks the Court to instruct the jury as follows:

"Where reliance for conviction is placed on circumstantial evidence, the jury is instructed that the facts and circumstances upon which the theory of guilt is based should be shown beyond a reasonable doubt, and when taken together must be so convincing as to be irreconcilable with innocence and admit of no other hypothesis than guilt."

THE COURT: Exceptions overruled,
and exceptions noted to the defendant.

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FRIDAY, DECEMBER 17, 1954, 12:20 P.M.

(Thereupon, the following proceedings, as dictated into the record by the Court, occurred as follows:)

The Court, in the presence of all parties and the jury, called Simon Steenstra, the Criminal Court Bailiff of the Criminal Division of the Court, and Edgar L. Francis, his own Courtroom Bailiff, and designated them as the two Court Officers to be in complete charge of the jury during their sequestrations, and in open court instructed them as to their obligations, the Clerk of the Court being present, and on order of the Court administered the oath to said two Bailiffs in accordance with the requirements of law.

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FRIDAY, DECEMBER 17, 1954, 5:45 P.M.

THE COURT: Ladies and gentlemen of the jury, I am assuming that you have not arrived at a verdict, and for that reason, you will now be conveyed to a proper place and entertained there at dinner by the two nice gentlemen who took you to lunch today. After your dinner hour is over, you

will please return here, and you will be returned to your jury room, and you will please bear in mind that the same instructions, exactly as the Court gave you at noon when you went to lunch, apply again in the dinner hour. You are not to permit anyone to speak to you about this case in any way, shape or manner. You are to have no communication with anyone else, and you will be under the care at all times of the two Bailiffs who will be with you.

We will not decide anything about any proceedings -- I mean any breach in the proceedings at this point -- I am referring to the proceedings after your return to your deliberation room. All right.

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FRIDAY, DECEMBER 17, 1954, 10:30 P.M.

THE COURT: We are assuming, ladies and gentlemen of the jury, that you have not arrived at a verdict, and inasmuch as the hour is getting late, we think it wise that you should retire to a hotel for the night and reconvene here at 9:15 tomorrow morning, return to your jury room and resume your deliberations.

Will you please be very careful to observe the

caution which the Court has expressed to you, not alone during this entire trial, but since the Court delivered his charge to you this morning, it is very important that you do not have communication with anyone and that you do not permit others to have communication with you. You will tonight be under the guard again of the two Bailiffs who have been sworn to take care of you during this period.

I think that is all I need say to you now. We hope we are well at 9:15 tomorrow and back here on the job.

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SATURDAY, DECEMBER 18, 1954, 12:05 P.M.

THE COURT: We have arrived at the noon hour, ladies and gentlemen, and we are assuming, of course, that you have not yet arrived at any verdict. You will, therefore, be conducted out to someplace or other -- I'm not sure just where -- for lunch, in care of the two Bailiffs who have been with you since yesterday morning.

Please observe the caution which the Court has heretofore expressed to you: Do not discuss the case at all or any feature of it, even among yourselves, or with anyone else, until you have returned to your

jury room this afternoon and you are together behind closed doors under the chairmanship of your foreman, whoever he may be. The two Bailiffs will not conduct you, as soon as you get your wraps, for lunch.

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SATURDAY, DECEMBER 18, 1954, 5:35 P.M.

THE COURT: Ladies and gentlemen of the jury, again we must assume that you have not yet arrived at a verdict, and being that we have arrived at what is a normal dinner hour, the Bailiffs will now conduct you to, I think, the Carter Hotel -- I'm not sure about it -- where you will have dinner together, and please observe the caution which the Court has heretofore expressed to you: Have no communication with anyone, have no communication with the Bailiffs other than on matters entirely beyond and outside of this case. Then you will please return to your jury room within a reasonable period of time and resume your deliberations.

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SATURDAY, DECEMBER 18, 1954, 10:00 P.M.

THE COURT: Ladies and gentlemen of the jury, again we are assuming that you have not arrived at a verdict, and I am wondering, without any of you expressing yourselves on anything other than what I mention to you, if there is some likelihood that if you do continue your deliberations for a short period of time tonight, that you might arrive at a verdict, and that you, yourselves, would want to continue later in that effort, or if you would want to discontinue now and return, say, at 10:00 o'clock tomorrow morning.

Now, I'd like to know by a show of hands how many of you feel that you might be able to arrive at a verdict tonight and would want to stay somewhat later tonight.

MR. GARMONE: I think, your Honor --

THE COURT: Do I take it that --

MR. GARMONE: Pardon me, I'm sorry.

THE COURT: Do I take it, then, that you would prefer to come back at, say, 10 o'clock tomorrow morning, is that right? Everyone raises their hands. Very good. Then we will discontinue at this point and the Court will be adjourned, and

you will be conducted to your hotel for the night, and you will have breakfast and return here on or about 10 o'clock tomorrow morning and resume your deliberations.

Please, in the meantime be careful to observe the caution which the Court has heretofore expressed to you: Do not discuss this case anywhere with anyone excepting in your jury room when all 12 jurors are present under the leadership of your foreman. Thank you, ladies and gentlemen. Ten o'clock tomorrow morning.

(Thereupon the jury retired from the courtroom.)

(Thereupon the following proceedings were had in the absence of the jury:)

MR. CORRIGAN: I want to put in the record that I except to the jury deliberating on Sunday. Do you overrule it?

THE COURT: Yes, sir. And exception noted.

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SUNDAY, DECEMBER 19, 1954, 1:20 P.M.

THE COURT: Ladies and gentlemen of the jury, we are assuming again, of course, that you have not arrived at a verdict, and the lunch hour has

arrived. You will now be conducted by the Bailiffs to some proper place where you will be entertained at lunch. Will you please observe the caution which the Court has heretofore expressed to you: Do not discuss this case or any feature of it with anyone, and have no communication except for the Bailiffs, and that about other matters. You will return to your deliberation room after the lunch hour at a time that you will find convenient.

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SUNDAY, DECEMBER 19, 1954, 6:00 P.M.

THE COURT: Ladies and gentlemen, we have reached the hour of six o'clock. It is a Sunday evening. The weather is not particularly good, and you must undoubtedly feel somewhat tired and perhaps would appreciate a little rest. I think that now you ought to retire and have dinner together with the Bailiffs and then take the rest of the evening off, but you are not to separate, and please have no communication with anyone. Observe the cautions which the Court has heretofore expressed to you. We would like to have you return here at 9:15 tomorrow morning.

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MONDAY, DECEMBER 20, 1954, 12:00 NOON

THE COURT: Ladies and gentlemen of the jury, we have again arrived at the noon hour, in spite of the fact that the clock has stopped. You will now repair with the Bailiffs, as you have from day to day, to the hotel for lunch, and return as near as possible to 1:15 this afternoon and resume your deliberations. In the meantime, please observe the caution which the Court has heretofore expressed to you: Have no communication with anyone excepting with the Bailiffs, and with them on matters entirely outside of this case.

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MONDAY, DECEMBER 20, 1954, 5:30 P.M.

THE COURT: Ladies and gentlemen of the jury, we have again arrived at a dinner hour, and you will now be conducted to the hotel with the Bailiffs for dinner, and please return at your convenience after the dinner hour. Be careful not to discuss this case in any manner.

(Thereupon, on this same evening, the following was dictated into the record by the Court:)

The Court not having received any communication

of any kind from the jury, nor having any evidence that their deliberations were not progressing satisfactorily, he, nevertheless, at the suggestion of counsel for the defense, called all counsel together in the early evening, and after discussion of the situation, indicated that he would, unless some report came by 10:00 or 10:30 p.m., have the Bailiff carry to the jury an inquiry from the Court. At about 10:00 p.m. this was done. The inquiry that would be made had been made known to all counsel. The inquiry to the jurors was verbal and was as follows:

"Have you arrived at a verdict? If not, is there a probability that you can arrive at one if you deliberate awhile longer either this evening or tomorrow? If so, which would you prefer?"

The Bailiff knocked at the door and propounded the questions to the juror who responded. The juror closed the door and in a few moments returned and stated that the jury had not arrived at a verdict, but that the jury was very close to agreement and would prefer to retire for the night and return the next morning for deliberation. This was communicated to all counsel in chambers and preparations made to have the jury retire for the night.

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MONDAY, DECEMBER 20, 1954, 10:15 P.M.

THE COURT: We are assuming, ladies and gentlemen of the jury, that you have not arrived at a verdict, and you will repair to the hotel for the night, with the Bailiffs, and reconvene here at 9:15 tomorrow morning. Then you will return to your jury room and resume your deliberations.

Will you please^{be}/very careful to observe the caution which the Court has expressed to you: Do not discuss this case with anyone in any manner.

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TUESDAY, DECEMBER 21, 1954, 12:10 P.M.

THE COURT: We are right at the noon hour, again, ladies and gentlemen. Will you please now repair to the hotel for lunch with the Bailiffs, and be kind enough to return as near as 1:15 this afternoon as you can -- 1:30, shall we say, this afternoon. Please be careful not to discuss this case.

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TUESDAY, DECEMBER 21, 1954, 4:33 P.M.

THE COURT: I want all those who are present in this courtroom at this moment to thoroughly understand that regardless of what happens here, there is to be no demonstration of any kind, and there is no one to leave this courtroom until the entire matter before us now has been disposed of and the jury has been dismissed and left the courtroom and the court session is adjourned for the day.

Ladies and gentlemen of the jury, have you arrived at a verdict?

THE FOREMAN: We have, your Honor.

THE COURT: Will you be kind enough to hand it to the Bailiff?

"We the jury in this case, being duly impanelled and sworn, do find the defendant Sam H. Sheppard not guilty of murder in the first degree but guilty of murder in the second degree, James C. Bird, Foreman."

Is this your verdict, ladies and gentlemen?
So say all of you?

Anything further, gentlemen?

MR. CORRIGAN: I will ask that the jury be polled, your Honor.

THE COURT: Ladies and gentlemen of the jury, a request has been made that you be polled. As you are not experienced in this kind of matter, the Court will state to you that it is a matter of finding definitely that the verdict is the verdict of each and every one of the jurors on the panel. In order not to repeat the same question 12 times, the Court will put the question to all of you individually and collectively now, but do not answer it.

The question is: Is this your verdict? Your names will now be called, and you will, as your names are called, be kind enough to answer that question yes or no.

THE BAILIFF: Howard L. Barrish.

JUROR BARRISH: Yes.

THE BAILIFF: Elizabeth A. Borke.

JUROR BORKE: Yes.

THE BAILIFF: Edmond L. Verlinger.

JUROR VERLINGER: Yes.

THE BAILIFF: William C. Lamb.

JUROR LAMB: Yes.

THE BAILIFF: Louise Feuchter.

JUROR FEUCHTER: Yes.

THE BAILIFF: Jack Hanson.

JUROR HANSON: Yes.

THE BAILIFF: Ann W. Foote.

JUROR FOOTE: Yes.

THE BAILIFF: Beatrice P. Orenstein.

JUROR ORENSTEIN: Yes.

THE BAILIFF: James C. Bird.

JUROR BIRD: Yes, sir.

THE BAILIFF: Frank Moravec.

JUROR MORAVEC: Yes.

THE BAILIFF: Frank J. Kollarits.

JUROR KOLLARITS: Yes, sir.

THE BAILIFF: Lucille Williams.

JUROR WILLIAMS: Yes, sir.

MR. CORRIGAN: If the Court please, we would like to file a motion for a new trial, and we would like to fix a time when that motion will be heard. Next week sometime, I think, after Christmas.

THE COURT: The Court will hear your motion for a new trial next week on Monday, Wednesday or Thursday morning, whichever may be your choice, Mr. Corrigan.

MR. CORRIGAN: I think Thursday would probably be most agreeable to us.

THE COURT: Thursday of next week at 9:30.

MR. CORRIGAN: At 9:30.

THE COURT: All right. Thursday of next week at 9:30. In the meantime, you will file a formal motion?

MR. CORRIGAN: In the meantime, I will file a formal motion, yes, your Honor.

THE COURT: All right. Sam Sheppard, will you come up here, please?

Sam Sheppard, this jury has found you guilty of murder in the second degree. Have you anything to now say why the Court should not pronounce sentence upon you?

THE DEFENDANT: I'd like to say, sir, I am not guilty, and I feel that there has been proof presented before this Court that has definitely proven that I couldn't have performed this crime.

THE COURT: All right. But the jury has found otherwise, and under the rules of our law and our Government, the Court is bound by the finding of the jury. It is now the judgment of the Court that you be imprisoned in a penitentiary in the State of Ohio for life.

MR. CORRIGAN: Aren't you going to wait until I file my motion for a new trial before you sentence the man?

THE COURT: No. The Court is going to dispose of this matter. We will be glad to hear your motion for a new trial in exactly the same way as we hear all other motions.

Quiet, please. Mr. Corrigan; please.

MR. CORRIGAN: I have a right to talk to the jury now.

THE COURT: The Court is in session.

Ladies and gentlemen of the jury -- Mr. Corrigan, I wish you would not have any communication with the jurors, please, while the Court is in session.

MR. CORRIGAN: All right, but I object to the manner in which the Court has conducted this case and sentenced --

THE COURT: Let the record show that Mr. Corrigan, while the Court is in session, proceeds to speak to one or more of the jurors, and the Court's admonition was based upon that conduct, and you may take exception to it.

MR. CORRIGAN: Probably I was wrong there, your Honor, and I apologize.

THE COURT: Your apology is accepted, sir. We have known each other too many years to have any matter break our friendship, I hope.

Ladies and gentlemen of the jury, I may not be

the best person in the world to find apt words to express a situation, but I think, if I was the most eloquent person in this community, I would now be wholly at a loss to express to you the appreciation of this Court, and I know all persons of responsibility about here, and the community as a whole, for the patience, the diligence and the genuine sincerity which you have clearly expressed during the progress of this trial and in your deliberations up to the finding of the final verdict.

The Court appreciates, and I think that by this time the community appreciates, what a problem was yours. You have been here and you have heard a large number of witnesses covering a period of seven weeks of time in taking testimony alone, and with all those exhibits that were before you, your task was not a simple one. The task, in cases of this kind, becomes very complicated, and they pull at our heartstrings and our feelings and our sympathies, and sometimes -- I'm sure not in your case -- at our prejudices.

I think as a group -- and I have already stated so publicly during your, shall I call it incarceration -- I have stated it publicly that you are a splendid group of people, and that is exactly what you are.

We are grateful deeply for your service in this particular case, and I think you have expressed as eloquently as it can possibly be expressed the value of the jury system, and you added to the enrichment of our life under our Constitution.

Thank you very much again, and you are now dismissed. Just one moment. I would like to urge upon you -- you have seen and heard a good deal about all of these newspaper people, and they can become annoying. They think we get made at them, but we do not, but we do become irked, and I am sure that you can, too. I wish to say to you that if any of you do not want to be pestered, you decide that question now, and all you can say is that you do not want to be interviewed, but if you want to be interviewed after you leave this Courthouse, there is no prohibition whatever.

I think that these matters do have an element of sacredness about them. You had a confidential relationship, one with the other. You performed a great service to the community jointly. Thank you very much again.

The Court is adjourned without any formality.

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Thereafter, at the September, A.D. 1954, term of court, to-wit, on the 21st day of December, A.D. 1954, the jury returned its verdict against the defendant, and in favor of the State of Ohio, as appears of record herein; to which verdict of the jury the defendant, by his counsel, then and there duly excepted.

And thereafter, at the same term of court, to-wit, on the ____ day of _____, A.D. 1954, the Court entered judgment upon the verdict against the defendant, as appears of Journal Entry filed herein, and as of record herein; to all of which the defendant, by his counsel, then and there duly excepted.

And thereafter, to-wit, on the 23rd day of December, A.D. 1954, the same being within _____ days after said entry of judgment on the verdict, and within the time fixed and allowed by law, the defendant, through his counsel, filed his motion for a new trial of this case, for the reasons and upon the grounds in said motion stated and set forth, and which motion is a part of the record herein.

And thereafter, to-wit, on the 30th day of December, A.D. 1954, in connection with said motion for a new trial, the following proceedings were had:

MR. CORRIGAN: May it please the Court, we have filed in this case a motion for a new trial, and we have attached thereto an affidavit and two exhibits. I don't care to argue the facts set forth therein because they are plain enough.

We have some testimony that we would like to present to the Court in the way of oral testimony in regard to this motion for a new trial, and we would ask a separation of witnesses. If there are any witnesses in the room that we have subpoenaed, we ask them to leave until they are called. That will include Mrs. Williams and Mrs. Feuchter.

THE COURT: If there are any persons in the courtroom who have been subpoenaed to testify, or who believe that they will be called to testify, they will please retire to the witness room or the hall, and await call, any who have been subpoenaed or who expect to testify in this case.

MR. CORRIGAN: This testimony, your Honor, that we desire to present orally is testimony that has come to our attention since the close of the trial, and I wish to call Mr. Gus Dallas.

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Thereupon GUS DALLAS, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION OF GUS DALLAS:

BY MR. CORRIGAN:

Q Will you kindly state your name?

A Gus Dallas.

Q Where do you live, Mr. Dallas?

A 4532 Laurel Road, South Euclid.

Q And what is your business or profession?

A I am a reporter with the Plain Dealer.

Q And were you a reporter working on the Plain Dealer on the
4th day of July, 1954?

A Yes.

Q Did you go to the residence of Dr. Sheppard?

A Yes, I did.

Q And what time did you arrive there?

A Oh, between 8:30 and 9:00 in the morning.

Q Did you see the body of Marilyn Sheppard removed from the
house?

A Well, I saw, I presume it was a blanket wrapped object. I
did not actually see the body itself.

Q And will you describe to me where you were when you saw this
body removed?

A I was standing out on the lawn in front of the home. I don't

know -- I was speaking to some spectator or other, I don't recall, and someone else pointed out they were removing the body.

Q Will you tell me what kind of a -- will you describe what kind of a stretcher, or whatever it was, that the body was removed in?

A Well, I can't be too sure. I think it was one of the type with the wheels at one end with the body tied onto it, strapped on, or some such.

Q The body was strapped on a carriage?

A Yes.

Q A wheeled carriage?

A (Witness nods affirmatively.)
was

Q And how/the body encased?

A It was in a blanket.

Q In a blanket?

A Yes.

Q Now then, did you go in the house?

A Yes.

Q What time was it that you went in the house?

A Oh, I don't recall the exact time. It was several minutes after the removal of the body when the coroner came out.

Q The coroner came out?

A Yes.

Q And then did he invite you in the house? Or just tell me how

you went into that house?

A Well, I was speaking to the Mayor at the time when the coroner came out, and I believe it was one of the other reporters that mentioned the matter first, and the coroner -- I didn't hear what he said, but the coroner turned around and walked into the house, and then we went in behind him.

Q Who else went in behind him?

A It was the Assistant City Editor from the Press, a Mr. DeCrane, and he had a photographer with him.

THE COURT: You will have to speak louder.

Q The Assistant City Editor of the Press, what is his name?

A Roy DeCrane.

Q And who else?

A There was a Press photographer. I don't recall who that was.

Q And you wrote an account of this that appeared in the Plain Dealer last Sunday, did you not, Mr. Dallas?

A Yes.

Q And in that account you stated that you were escorted through the house by --

A The coroner and the Police Chief of Bay Village was behind us most of the time.

Q Did you go through the house?

A We went in directly through the living room and up the stairs and into the bedroom where it occurred.

Q And how many men went up into the bedroom on that occasion?

A Five -- only two went into the bedroom itself, the coroner and the photographer from the newspaper, as I recall it.

Q Did you go into other rooms in the house?

A Not up on the second floor.

Q In the first floor?

A Well, we were through the kitchen and through the study.

Q Did you touch some things as you went through the house?

A The only thing that I touched was the telephone.

Q Well, you report in your story that you didn't touch the golf --

A That's right, I didn't. They were up against the wall. It wasn't necessary to touch them.

Q You didn't touch them. How long did you stay there?

A We were in there for about 15 minutes, and then we were put out, and about two hours we were let back in again.

Q Who let you back in the second time?

A The second time it was the coroner again.

Q And were there more men that came in, more reporters and photographers that came in the second time?

A There was one other reporter and one other photographer.

Q Do you know who they were?

A Mr. Blair from our paper and one of our photographers. I don't recall right now which one it was.

MR. CORRIGAN:

That is all.

MR. DANACEAU:

That is all, sir.

(Witness excused.)

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Thereupon LUCILLE WILLIAMS, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF LUCILLE WILLIAMS:

BY MR. GARMONE:

Q Will you state your name, please?

A Lucille Williams.

Q And where do you live?

A 2209 East 71st Street.

Q And you were a juror in the case of the State of Ohio versus Sam Sheppard?

A Yes, sir.

Q Did you during the course of the trial get a letter?

A I think I did, but I brought it down.

Q Who did you turn the letter over to?

A The bailiff.

Q And approximately when, in reference to the final adjudication of this case, did the letter come into your possession?

A Oh, it was during the trial.

Q Was it a matter of a week or 10 days?

- A I don't recall. It could have been two weeks or better.
- Q How many letters did you receive during that period?
- A Just the one.
- Q Do you have the letter now?
- A I turned the letter in to the bailiff.
- Q Mr. Francis?
- A Yes, sir.

MR. GARMONE: Do you have the letter,
Mr. Francis?

BAILIFF FRANCIS: No, I have not, Mr.
Garmone. I have turned everything over to the Judge.
They were handed to me, I took them right in chambers.

THE COURT: Well, I am not sure
that I remember any such thing at all, but surely
if there was, it is here and it will be produced.
I wouldn't know just where to find it now.

MR. GARMONE: Well, I will continue
my examination and give the Court an opportunity to
produce the letter.

THE COURT: Yes. Then we will just
check and see.

Q Now, Mrs. Williams --

THE COURT: The Court will be perfectly
willing to have Mrs. Williams state what the contents
were, if she remembers.

MR. GARMONE:

No. We'd like to see

the letter before we go into it.

Q Mrs. Williams, during your examination as a prospective juror, you testified that sometime during your period of employment you did some housework, is that right?

A I don't think so. I only recall telling that I worked at the one place, and that was Thompson Products.

Q Did you ever do any housework?

A Years ago I worked about two or three weeks.

Q Well, do you know a family whose name is Honeycutt or some such name?

A I don't recall.

Q You don't recall?

A I don't recall no such name.

Q Well, did you ever prior to the trial do some housework for a family by the name of Honeycutt?

A I don't recall ever working for anyone -- in fact, I haven't worked a day excepting in election booth or something like that since 19 and 45 when I quit working at Thompson Products, and I worked there almost three years. Prior to that I worked for the W.P.A.

Q Who?

A W.P.A.

THE COURT:

W.P.A.

Q W.P.A.

A Yes, sir.

Q Now, you were asked during the course of your examination as a prospective juror whether or not you had ever expressed an opinion in this matter, and I believe your answer was that you hadn't?

A That's right.

Q Did you express an opinion to another lady that should you be accepted as a juror in the case of the State of Ohio against Sam Sheppard, that you would fry him?

A No, sir.

Q Are you certain of that?

A I am certain.

Q You appreciate the fact that you are under oath now, Mrs. Williams?

A I certainly do.

Q And you say that you did not make that expression?

A I did not. I did not.

Q Now, coming back to the letter that you have informed me about that you have received during the course of this trial, were there any other such letters received by other members of the jury?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Were there any other letters similar to the letter that you received that were shown you by other members of the jury?

A I saw no one's letter except my own.

Q Except your own?

A That's right.

Q Now, after you had turned the letter over to Mr. Francis, were you ever asked into the Court's chambers regarding the contents of that letter?

A In here? Do you mean in here?

Q Were you ever taken into Judge Blythin's office?

A No, sir.

Q Did he at any time interrogate you as to what, if any effect, the contents of that letter would have on your judgment in this case?

A I never had a talk with Judge Blythin.

Q Never had a talk with him?

A No, sir.

Q After you had received this letter, were you ever in open court questioned about the contents of it by Judge Blythin in the presence of Sam Sheppard or any of his lawyers?

A No, sir.

MR. GARMONE: Before I go any further with the examination, why, I'd like your Honor sometime during the day to make a search of his records and see if he can produce the letter or not.

THE COURT: Sure. Mrs. Williams, I have a question. Was that a letter signed by a

particular person, or was it just a mere drivel as we had so much of?

THE WITNESS: I don't recall anything that was on the inside. I think on the outside of the envelope it had like a return address.

THE COURT: Did it have any effect at all upon your judgment?

THE WITNESS: It did not have any effect upon me at all.

THE COURT: All right. Now, will you keep yourself available, please, because counsel may want to question you further.

THE WITNESS: Yes.

BY MR. GARMONE:

Q You say that the letter did have a return address on it?

A I think it did.

Q Did the letter have the name of the person who had sent --

A I think it did. I am not for sure.

Q And can you search your memory at this time and try to recall who the writer of the letter was?

A I wouldn't be able to recall.

Q Would the name of Montbille strike any significance in your mind regarding this letter? M-o-n-t-b-i-l-l-e.

A I wouldn't remember.

MR. GARMONE: Well, until such time as your Honor can make an effort to give us the letter, we withdraw this witness with the right to recall her -- reserving the right to recall her.

THE COURT: Have you any questions?

MR. DANACEAU: No.

(Witness excused.)

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Thereupon LOUISE K. FEUCHTER, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF LOUISE K. FEUCHTER:

BY MR. CORRIGAN:

Q You are Mrs. Louise K. Feuchter?

A Yes, sir.

Q And you live at 3541 Warren Road?

A I do, sir.

Q You were a member of the jury in the case of the State versus Sam Sheppard. During the time that you served as a juror, did you receive a communication from anybody?

A Well, no. Do you have anything specific to refer to? I don't know. I can't say I did.

Q Did you receive a letter?

A During the trial?

Q Yes.

A No, sir.

Q You did not?

A No, sir.

Q Did you receive any communication from anybody about Sam Sheppard during the trial?

A No, sir.

Q You did not?

A If I did, you will have to show it to me. I am saying no, truthfully.

Q I'd have to show it to you?

A Well, I don't know. I haven't received anything.

Q Do you know whether you received a communication during the trial of this case from anyone?

A No, I haven't -- I did not receive any communication.

Q I see. All right. Do you know a lady on Warren Road who is a widow?

A Beg pardon?

Q Do you know a lady on Fisher Road?

A Fisher Road?

Q Yes.

A I know no one at that address. There's nobody I know that lives on Fisher Road.

Q Do you know a lady that is a widow that has one son?

A I know of lots of widows. I couldn't state one.

Q Did you have a telephone call from a lady asking for your sister's address?

A And I can't think who that woman was.

Q What?

A I can't think who that woman was. I received a letter after this trial.

Q Did you receive a telephone call from a lady asking for your sister's address?

A It seems to me I had, yes.

Q You did. And you had some conversation with her?

A Well, evidently I must have if she asked for my sister's address.

Q And your husband talked on the phone at the same time to that --

A No, I don't say that he did.

MR. DANACEAU: Just a moment, please.

May we have the date of this, otherwise we will object to any further questions.

THE COURT: Yes.

Q Yes. The day before you were summoned as a juror.

A I couldn't testify to that. I don't know.

MR. DANACEAU: Just a minute. The day before she was summoned as a juror?

MR. CORRIGAN: Yes.

MR. DANACEAU: Well, we object to that.

MR. GARMONE: To qualify as a juror.

THE COURT: All right. Let's have
the question.

Q Now --

A You will have to turn your face to me because I can't hear
you with your back to me.

THE COURT: Wait a minute, please.

There is no question.

Q Just a moment. Did you say to a lady, "Have you read the
evening paper?"

And didn't you say to her that you had been called on
this jury?

A Mr. Corrigan --

THE COURT: No, wait a minute.

Listen to the question. Wait. There is no question
yet.

Q Did you make those statements to that lady who called about
your sister's address? Did you ask her, "Have you read the
evening paper?" And did you say that you had been called on
this jury?

A I didn't make a statement like that. If I did --

Q How did you state it?

A If -- I don't know who this woman was that asked for my
sister's address, but I'll think of it if it takes me a long

time. It will come to me.

Q Well, what did you state to that lady?

A All that I can recall is that I asked her, "Why are you calling me?"

And she went through some big rigamarole, I don't know what it was now, and the only thing I said was perhaps she had called me because she saw my name in the paper that I was called as a juror in the Sheppard case. And I'm trying very hard, and I have been since I received a certain letter a couple of days ago, to think who this woman is, because I think she is the woman who wrote me this letter.

MR. DANACEAU: If the Court please, we demand that counsel give us the name of this party. Obviously he couldn't have known of this --

THE COURT: Yes. Let's be specific.

MR. DANACEAU: I demand that the name be furnished at this time before any further questions are asked.

MR. CORRIGAN: The lady knows the name.

THE COURT: Oh, no.

MR. DANACEAU: I demand that counsel furnish the name immediately.

THE COURT: Let's find out, Mr. Corrigan. Let's be specific about these things.

MR. CORRIGAN: I am specific. My

questions are specific.

MR. DANACEAU: I have made a request of the Court that we have this name given us at this time immediately by Mr. Corrigan.

MR. CORRIGAN: I won't give the name at this time. I don't have to give the name at this time.

MR. DANACEAU: Well, I object to any further questioning along those lines, then.

THE COURT: All right. Let's have the questions.

Q Did you state -- or did the woman state to you, "Don't you have an opinion on the case?"?

MR. DANACEAU: Objection.

A That I don't --

MR. DANACEAU: Just a second.

THE COURT: Objection sustained.

MR. CORRIGAN: Except.

Q And did you not state, "I have an opinion on the case; if Sam didn't do it, Steve did it"?

A No, Mr. Corrigan.

MR. DANACEAU: Objection. Just a minute.

THE COURT: Wait, Mrs. Feuchter, please.

THE WITNESS: Well, isn't that silly?

THE COURT: Objection sustained.

MR. CORRIGAN: Mr. Bird.

Are there any further questions? Have you any questions?

MR. DANACEAU: Yes. I want to ask a question.

CROSS EXAMINATION OF LOUISE K. FEUCHTER:

BY MR. DANACEAU:

Q Mrs. Feuchter, what was the question that Mr. Corrigan asked you in the jury box here the other day after the jury returned the verdict, or what statement did he make to you?

MR. CORRIGAN: The same question.

MR. DANACEAU: Well now, just a moment here. Is Mr. Corrigan the witness in this case?

THE COURT: Let Mr. Danaceau question the witness, please.

Q What did Mr. Corrigan say to you after the jury returned the verdict, pointing the finger at you?

A Well, Mr. Corrigan ought to know what he said.

Q Do you recall what he said?

A Yes.

THE COURT: No. Mr. Danaceau is asking you what Mr. Corrigan said to you.

THE WITNESS: He said to me -- I was very

stunned, as everyone could see --

THE COURT: Never mind. The only question is: What did he say to you?

THE WITNESS: Well, I have to come up to a certain point.

THE COURT: No. What did he say to you?

THE WITNESS: The end of the question was that I said -- or some woman said to me -- either I said to some woman or some woman said to me that -- the remark was made that if Sam didn't do this, his brother Steve did.

I didn't say it, and I don't know that anyone said it to me, and I said no, I didn't.

MR. DANACEAU: That is all.

MR. CORRIGAN: That is all.

THE COURT: Thank you, Mrs. Feuchter.

THE WITNESS: Well, I don't like being made a monkey out of.

(Witness excused.)

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MR. CORRIGAN: Mark these Defendant's exhibits 1 and 2 on the motion for a new trial.

(Defendant's Exhibits 1 and 2, on motion for a new trial, being newspaper volumes, marked for identification)

54
Thereupon JAMES C. BIRD, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JAMES C. BIRD:

BY MR. CORRIGAN:

Q Will you please state your name?

A James C. Bird.

Q And where do you live, Mr. Bird?

A 1956 Green Road, Cleveland 21, Ohio.

Q You were a member of the jury that passed upon the case of Sam H. Sheppard?

A I was.

Q And after the matter was submitted to you, you deliberated it in this courthouse?

A Yes, sir.

Q And then from time to time you left the courthouse and went to your meals?

A Yes, sir.

Q And during -- I want to get these dates properly -- during the 17th, 18th, 19th and 20th, the nights of the 17th, 18th, 19th and 20th, you were quartered in the Carter Hotel?

A That's right, sir.

Q Now, during the time that -- after the case was submitted to you, the jury on two occasions were separated, were they not?

MR. DANACEAU:

We object to that. That

is a conclusion. Let's have the facts.

THE COURT: Yes.

Q Was the jury separated on any occasion?

MR. DANACEAU: Object to that.

THE COURT: Well, he may ask if the jury was separated. I think that is correct.

A May I ask --

MR. DANACEAU: That is a conclusion.

A May I ask how you mean "separated", Mr. Corrigan?

Q Apart.

A At times seven people would go up the elevator with one bailiff and the other seven would remain taking the next elevator, if that is a separation.

Q No, I am not referring to that. I am referring to the day of Monday, December the 20th. I will ask you to look at this photograph that appears in my Exhibit 1 on a motion for a new trial, and ask you if you recognize the photograph that appears there in the copy of the Cleveland News on December 20th, 1954?

A I recognize the people in the picture, yes, sir.

Q You recognize your own picture?

A Yes, sir, I do.

Q And will you tell me in this picture if it shows that the women are in one group?

A Yes, sir, it does.

Q And the men are in another group?

A That's correct.

Q How did that come about that the two groups got separated so that their pictures could be taken?

A I have no knowledge of that, sir.

Q Well, you were there.

A I was there.

Q Tell me, then, what happened.

A If any separation was made of the jury, it was made through the bailiff.

Q No. But who communicated with you people to arrange this separation of the jury into two groups? You were the foreman, were you not?

A I was the foreman, yes, sir.

MR. DANACEAU: Just a minute. I object to that question. It supposes that that has been done.

A Well, Mr. Corrigan --

MR. DANACEAU: I have no objection to the facts being stated, but I object to any conclusion.

Q Tell me the facts.

A Any communication with the jury was made through the bailiffs assigned by the Court, and on that particular case, Mr. Corrigan, I don't know how the communication was given to us, except I will say this: That it was made through the bailiff, and that's all I have to say.

Q Where was this picture taken?

A That I can't tell you, Mr. Corrigan.

Q What?

A I don't know.

Q Well, you were there?

A I was there, apparently, but my picture -- as I am in one of the pictures. From the background in the picture --

MR. DANACEAU: Just a minute. Do you know where it was?

THE WITNESS: No, I don't know definitely.

Q You don't know where it was taken, but you do know that you were separated -- you men were separated into one group and the women were separated into another? You remember that, don't you?

A Yes, sir. I remember that by the picture.

Q Was this picture taken in this building, in the Criminal Courts Building?

A Mr. Corrigan, I don't know.

Q Well, certainly, Mr. Bird, you know something about it.

MR. DANACEAU: Just a minute. I object to the arguing --

A Mr. Corrigan --

MR. DANACEAU: Just a minute, Mr. Bird. There has been objection here.

Q All I want is a frank statement from you.

THE COURT: If he knows.

MR. DANACEAU: He said he doesn't know.

THE COURT: He said he doesn't know

where it was taken.

Q As a matter of fact, wasn't that taken in the Carter Hotel?

A Before I answer, let me read what it says.

Q Yes, I wish you would.

MR. DANACEAU: Just a minute. If he is going to answer by reading what has been presented him, that is not a proper answer. We object to that.

THE COURT: I think the Court can bring enough facts to Mr. Bird to refresh his recollection on that. The Court knows where it was taken and under what circumstances.

Isn't it a fact, Mr. Bird, that that was taken in a dining room of the Carter Hotel?

THE WITNESS: I think it was, your Honor.

MR. CORRIGAN: Well, do you know?

THE COURT: And isn't it also a fact that the thing was merely a momentary thing, and just the one group moved over from the other and the pictures taken?

MR. GARMONE: Just a minute. Object to

the question put to the witness by the Court.

THE COURT: All right. The Court will withdraw his question and put the bailiff on the stand later. Go ahead. We will clear that up in a hurry.

MR. GARMONE: Let's clear it up through this witness.

THE COURT: He says he doesn't know.

MR. GARMONE: Well, then, how can he answer the Court, that it was taken in the dining room of the Carter Hotel? For all he knows, it may have been taken on the floors of their respective rooms.

THE COURT: Let the witness testify.

MR. GARMONE: Let him testify then.

THE COURT: The Court wants you to have your testimony.

Q Referring, Mr. Bird, to this picture that is now before you, that shows the women of this jury in one group --

MR. DANACEAU: Just a minute. I object to counsel reading -- stating to the witness what a picture in a newspaper shows.

THE COURT: That's right.

MR. DANACEAU: I object to all of this and ask that no further questions along that line be asked.

MR. CORRIGAN: What are we getting in now? I am referring to a very important and material matter in this motion.

MR. DANACEAU: I object to counsel showing this newspaper article to the witness and then reading parts of it or describing parts of it. It has nothing to do --

THE COURT: He himself has said that he recognizes the picture, and for the purpose of the picture, they were separated, so I think inquiry can be made along that line within Mr. Bird's knowledge.

Don't testify about anything you are not sure about, reasonably sure.

Q You know that the picture was -- that the group was separated for the purpose of taking that picture, don't you?

MR. DANACEAU: Objection. The question has been asked and answered.

THE COURT: Well, let him answer, if he knows.

A From the picture, it was, yes.

Q Where was the picture taken?

A Mr. Corrigan, I don't know exactly where it was taken. It could have been taken at the Carter; it could have been taken outside on the street in front of the hotel. There were -- I think -- I'm not sure -- if you want my impression as to the

picture, Mr. Corrigan --

Q No. I want your intelligent answer as an intelligent man.

A It would be an intelligent answer, Mr. Corrigan.

Q You were a school teacher.

A I was, yes, sir.

Q Now then, I want ^{you} to tell me frankly about your knowledge about that picture.

MR. DANACEAU: We object to this, if the Court please. The witness is obviously reading a newspaper article and has to testify what he reads there.

THE COURT: If he has any knowledge of it, let him say so.

A I don't recall how the picture was taken or where.

Q That is your answer?

A That is my answer, Mr. Corrigan.

Q Now, I refer to another -- was there any other time that the jury was separated in two groups and pictures taken after deliberation?

A After deliberation, Mr. Corrigan?

Q After you started your deliberation.

A After we started deliberation?

Q Yes.

A From what I see before me --

MR. DANACEAU: Well now, that is --

THE COURT: No, no. Do you recall any?

THE WITNESS: Yes, sir, I do, sir.

THE COURT: All right.

THE WITNESS: After breakfast on a particular morning -- I think it was -- we were asked before we put on our overcoats to return to the Courthouse or come to the Courthouse, to stand for photographs.

Q When was that?

A I don't recall the date, Mr. Corrigan.

Q And who asked you to come to the Courthouse?

A Who asked us to come to the Courthouse?

Q Yes. To stand for photographs.

A I didn't say that, Mr. Corrigan. I said before we came to the Courthouse.

Q Oh, this was at the hotel?

A Yes, sir.

Q And who came to you at the hotel?

A Nobody came to us at the hotel, Mr. Corrigan. We were asked by one of the bailiffs if we would mind standing for a picture without wraps?

Q And where was this picture taken without wraps?

A I don't recall the name of the room at the Carter. It was a private room, with no one else present except the jury,

the bailiffs, and a photographer.

Q And a reporter?

A No, sir.

Q Who was the photographer?

A I don't know, sir.

Q What?

A I do not know.

Q And then you all went into this room and had your picture taken?

A No, sir. We were in the room eating.

Q You were in the room eating?

A Yes, sir.

Q Referring to this part of Exhibit No. 1, which shows the Cleveland Press --

A Cleveland News, Mr. Corrigan.

Q The Cleveland News. It shows this picture. Was that the picture that was taken?

A It could have been. I never saw the picture, sir.

Q Didn't you see it in the paper?

A No, sir.

Q In these communications with the jury about these photographs, were you the person that was contacted?

A I was not.

Q You were the foreman of the jury?

A I was the foreman of the jury.

MR. CORRIGAN: That is all, Mr. Bird.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. CORRIGAN: May we have the letter, your Honor, that this witness --

THE COURT: I don't know just where it would be, whatever it was, at the moment.

MR. GARMONE: Would you want time?

MR. CORRIGAN: I'd like to put the letter in evidence, and then beyond that, your Honor, I don't have anything else that I want to present on the motion for a new trial, and if I get that, then I will be through with my evidence on this motion.

THE COURT: Then you want to present it orally, do you?

MR. CORRIGAN: No, I don't think I care to present it orally.

MR. GARMONE: No oral argument.

THE COURT: This is all that you have?

MR. GARMONE: That's right.

THE COURT: We will have a recess for a few minutes, and we will see if we have that --

MR. CORRIGAN: That is all, Mr. Bird.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. CORRIGAN: May we have the letter, your Honor, that this witness --

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MR. GARMONE: That's right.

THE COURT: We will have a recess for a few minutes, and we will see if we have that --

MR. CORRIGAN: We have a motion, your Honor, as part of our motion for a new trial, we have filed as one of the elements of error -- one of the elements for the granting of a motion for a new trial a ground saying newly discovered evidence. The newly discovered evidence must be supported either by oral testimony or by affidavit. We have a certain number of days in which to present that. In fact, newly discovered evidence can be presented at any time.

MR. GARMONE: Within 120 days.

MR. CORRIGAN: We have that motion in there, but we don't intend at this time, your Honor, to bring forward any new evidence on the ground of newly discovered evidence. We may in the future, but not right today.

THE COURT: Do you have the thought in mind that you want to defer decision on the motion for new trial until you determine something as to that?

MR. CORRIGAN: I'd like to have a little consultation on that.

THE COURT: Well, we will have a few minutes recess and the Court will see what he can find about the letter.

MR. CORRIGAN: I have talked to my associate counsel, your Honor, on this matter, and they

would like the matter continued to a week from Saturday, if that is agreeable to your Honor.

THE COURT: Sure.

MR. CORRIGAN: And at that time, if there is anything additional that we consider that is worthy of the Court's notice, we will produce it at that time.

THE COURT: I know, but Mr. Corrigan, we are going to end this chapter. Now, we have had 10 days since the close of the trial, and here we are going over it again. A week from Saturday, that will be another 10 days, and the next thing you know, we will be prolonging this case as long on this matter as we --

MR. GARMONE: That will be the final -- that is the final date we are asking for. That is not too much, when it comes to the question of newly discovered evidence. We are not saying that we are going to come in on that day and ask for more time. That will be it.

THE COURT: All right. 9:15 on Saturday morning, January the --

MR. GARMONE: That will be the 8th, your Honor.

MR. DANACEAU: Has that letter been found?

THE COURT: Oh, yes. Mr. Corrigan has it.

MR. DANACEAU: Well, we haven't seen anything of it. We certainly would like to see it before we adjourn this morning.

THE COURT: Sure, but we will have the witness come in, please.

MR. DANACEAU: May I see it?

MR. GARMONE: Yes, you can see it. I was just going to have it marked for identification, that's all.

MR. DANACEAU: If you want it that way.

MR. GARMONE: You go ahead. I don't care to spar with you. Are you through with it?

Mark this 3-A and 3-B.

(Defendant's Exhibits 3-A and 3-B on motion for new trial, being a letter, was marked for identification.)

- - -

Thereupon LUCILLE WILLIAMS resumed the stand,
and was examined and testified further as follows:

REDIRECT EXAMINATION OF LUCILLE WILLIAMS:

BY MR. GARMONE:

Q Mrs. Williams, I will hand you what has been marked for
identification Defendant's Exhibit 3-A and 3-B, and I will
ask you to look at the letter and just read the contents to
yourself and see if that is the letter that you received.

A There is no use for me to read the letter because I don't
even know what was in it, but that is the letter.

Q That is the letter?

A Yes.

MR. GARMONE: We will offer it at this
time.

THE COURT: It will be received.

(Defendant's Exhibits 3-A
and 3-B on motion for new
trial were offered and
received in evidence.)

MR. GARMONE: May I ask just one more
question of Mrs. Williams?

Q To the best of your recollection, is this the only letter
that you received during the period that the testimony was
being submitted for your consideration in the case of the
State of Ohio versus Sam Sheppard?

A Well, now --

MR. PARRINO: Would you read the question? I didn't hear the question.

THE COURT: Is this the only letter she received? And the Court is adding: After the jury was impanelled.

A That is the only one.

Q That is the only one?

A Yes.

Q And that is the only letter that you turned over to the bailiff?

A Yes.

Q Because it was the only letter you had received?

A Yes.

MR. GARMONE: That is all. Thank you.

THE COURT: Mrs. Williams, do you know that this letter is from that same person who had written the driveling letters prior to your impanelling and which you were questioned about during the impanelling?

THE WITNESS: I wouldn't know because I didn't pay any attention to the inside. The first one I got before I was impanelled was postmarked from Orlando, Florida.

THE COURT: That's right.

THE WITNESS: And then this one, and I don't know if it was the same person or not.

MR. DANACEAU: The witness has testified, your Honor, that she did not read the letter, this letter.

THE COURT: That is what I am getting to now. You didn't pay any attention at all, you mean to say, to this --

THE WITNESS: I looked at it. I was on this case. I was taking it very seriously, and when I got the letter, quite naturally I looked at it. I didn't think there was anything that the letter could tell me. I was to listen what I heard here.

THE COURT: Did you read the letter at all?

THE WITNESS: I didn't read it.

THE COURT: That is all.

Are you through now?

MR. CORRIGAN: Yes.

THE COURT: Mr. Francis, please.

MR. DANACEAU: Do I understand that the Court proposes to continue this matter -- there is sort of a two-pronged motion here, one for a motion for a new trial; second, an additional motion for a trial on newly

discovered evidence. Are both of those matters continued to a week from Saturday?

THE COURT: Well, I would think that we ought to close this chapter now.

MR. DANACEAU: Well, that is what I am trying to decide. Except for the newly discovered evidence --

THE COURT: The second supplemental motion for newly discovered evidence goes over.

MR. DANACEAU: Then we have some evidence we'd like to present.

THE COURT: All right. We will dispose of that matter.

- - -

Thereupon EDGAR L. FRANCIS was called by the Court as a witness, and, being first duly sworn, was examined and testified as follows:

THE COURT: Now, Mr. Corrigan, will you be kind enough to disclose those pictures that you have?

Mr. Francis, you are the bailiff of this Court and one of those who were in charge of this jury during their deliberations?

THE WITNESS: Yes, sir.

MR. GARMONE: Do you want them up here? (Referring to pictures.)

THE COURT: You might just show them to him so he can see what they are.

Will you look at that picture in the Cleveland News -- of what date?

MR. GARMONE: December 20th, Judge.

THE COURT: December the 20th.

THE WITNESS: This picture --

THE COURT: Wait a minute. Do you know when or about when and where that picture was taken -- those pictures were taken?

THE WITNESS: Well, it was taken in the coffee room of the Carter Hotel. I think the five

ladies' picture was taken first, and then the gentlemen of the jury. The ladies stepped aside and the gentlemen of the jury -- their picture was taken.

THE COURT: To what extent was the jury separated at that time?

THE WITNESS: Well, about 10 feet.

THE COURT: Sir?

THE WITNESS: Ten feet. About 10 feet apart. The same room.

THE COURT: You mean the men from the women?

THE WITNESS: That's right. After the first picture was taken, they stepped aside, and then the others went over and got in line and had their pictures taken.

THE COURT: Was there any conversation by anyone, other than the two bailiffs, with the jury?

THE WITNESS: No, sir. X

THE COURT: How long did that separation take place?

THE WITNESS: Oh, a few minutes. A few minutes.

THE COURT: Have you any questions?

MR. GARMONE: Do you want to go into the other picture?

THE COURT: Yes. Showing you --
what paper?

MR. GARMONE: Cleveland Press of
December the 21st, Judge.

THE COURT: Do you recognize those
pictures?

THE WITNESS: As near as I can re-
collect, that was taken in the hotel, too, all in the
same room at the same time. I'm not sure what room
that was taken. It was taken in the Carter Hotel.

THE COURT: Do you recall spe-
ficially the taking of this picture?

THE WITNESS: No, I don't recall this
specifically. There were so many pictures taken --

X THE COURT: Let me ask you, then:
Were the jury at any time separated beyond the few
minutes or moments that it would take to take those
pictures in that fashion?

THE WITNESS: No, sir, no time.

THE COURT: And was any communication
had with them at any time at any place by anyone other
than the bailiffs?

THE WITNESS: No. No one ever talked to
this jury, outside of one fellow that was inebriated,
he stepped up one night, but the bailiff pushed him

aside before he could say a word to them. That was when they were registering. X

THE COURT: Have you any questions?

MR. DANACEAU: No.

THE COURT: Have you any questions?

CROSS EXAMINATION OF EDGAR L. FRANCIS:

BY MR. GARMONE:

Q You don't know where this picture was taken?

A I'm not sure, Fred.

Q You started to say that there was so many pictures taken that you don't remember where this one was taken.

A I mean they were snapping pictures right and left.

Q At the Carter Hotel?

A No, not at the Carter. All over.

Q Where were some of the other places?

A Well, they were moving when these were taken. They were walking.

Q The jurors were walking?

A Yes.

Q On the street?

A Yes.

Q And photographers were taking their pictures?

A That's right.

Q Well, in what part of the city were they walking?

A Toward the restaurant, Shanghai Restaurant.

Q Any place else?

A No. That's about all.

Q Walking in the vicinity of the Carter Hotel?

A They got a few pictures in the lobby when they were coming in at night, late at night.

Q Now, you had instructions from his Honor, Judge Blythin, about your obligation to this jury, is that right?

A That's right.

Q That there was to be no contact?

A That's right.

Q No communication?

A That's right.

Q Under any circumstances?

A That's right.

Q There was to be no contact, no communication, except -- I will withdraw that. That there was to be no contact and no communications without first consulting with his Honor, Judge Blythin?

A That's right.

Q You didn't do that in this instance, did you?

A No, I didn't.

Q You didn't do it in the instance where the jurors' pictures were taken where the five ladies were shown?

A No, that's right, Mr. Garmone.

Q And you didn't do it in the instance where the picture was taken where the seven gentlemen were shown?

A That's right.

Q Is that correct?

A Correct, sir.

Q Now, where is this dining hall located in reference to the lobby of the Carter Hotel?

A As you go in, it is to the left.

Q Off of the lobby floor or off the second floor?

A No. The lobby floor. The coffee shop.

Q And that room was a room that was set aside from the balance of the dining room so you could enjoy some privacy, wasn't it?

A That's right. It was open -- partly open.

Q Well, were there arrangements made by you and Mr. Steenstra about dividing that room so there would be privacy between the rest of the people eating in that place and where the jury was to be seated?

A I had nothing to do with those arrangements, Mr. Garmone.

Q Do you know whether such arrangements were made by Mr. Steenstra?

A No, I don't.

Q But these photographers came in -- these photographers came in on these respective occasions to that portion of the dining room where the jury was eating and took these pictures?

A That's right.

Q Who did they contact before the pictures were taken?

MR. PARRINO: Object to that. He didn't say they contacted anyone.

Q Well, I will withdraw it. The photographers talked to you before the pictures were taken?

MR. PARRINO: Objection. He has gone into that.

THE COURT: Well, he may answer that.

A On one occasion.

Q On which occasion did they talk to you? Was it the occasion where the five ladies were taken in separation as against the pictures taken by the seven men?

A That's right.

Q And where did that conversation take place?

A Just at the door.

Q At the door leading into the Carter Hotel?

A No. The sliding door between the coffee shop and the other part of the hotel.

Q The sliding door between the coffee shop and the lobby portion of the hotel?

A No, not the lobby. It was the other part of the dining room.

Q Was there a sliding door that separated the dining room that you ate in as against the dining where the public was eating in?

A That's right.

Q Well, those sliding doors were closed, weren't they?

A Well, they were open about that much, about three feet, maybe.

Q They could have been closed, couldn't they?

A Yes, they could have been.

Q Did you ever see that they were closed?

A No.

Q Did Mr. Steenstra ever make it his business to see that they were closed?

A I couldn't say.

MR. DANACEAU: Objection.

Q Now, when the photographer came to the portion of the dining room that was cut off by these sliding doors that separated the jurors from the balance of the public that was enjoying the facilities of the restaurant, who did he talk to? Did he talk to you?

A That one time he talked to me, yes, when the five and seven were taken.

Q Did you contact Judge Blythin after your conversation?

MR. DANACEAU: Objection. He went into that.

A No, I didn't.

MR. PARRINO: Just a minute, Mr. Bailiff.
Would you wait?

MR. DANACEAU: Would you wait when there is an objection for a ruling by the Court, please?

Q Did you talk with any members of the jury?

A No, I didn't talk to them.

Q You took it upon yourself to have --

A Yes. I did talk to them.

Q Who did you talk to?

A Well, the group. I just said, "Would you mind having your picture taken?"

Q Did you direct your remarks to anyone at all?

A No one in particular.

Q Well, this first picture was taken after there had been elected a foreman of this jury, is that right?

A That's right.

Q And that foreman was Bird?

A Bird, yes.

Q You had knowledge that he was the foreman, didn't you?

A Sure.

Q Prior to the time that the picture was taken?

A That's right.

Q Did you inquire from him whether or not the picture should be taken?

MR. PARRINO: Objection.

THE COURT: Objection sustained.

Q Did you go specifically to Mr. Bird, the foreman of that jury, and ask his permission that the picture be taken?

MR. PARRINO: Objection.

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Mr. Francis, when you were sworn in to be the guardian or the protective custodian of the jury in their travels from the courtroom to the hotel, and during their stay at the hotel, weren't you instructed that any communication between yourself and the jury would have to be to the foreman, Mr. Bird?

A Yes.

MR. PARRINO: Objection.

THE COURT: Objection sustained.

Q You didn't follow those instructions in this particular instance, did you?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

MR. GARMONE: Exception.

Q Now, when the second picture was taken, that was taken after the jury had started their deliberations, is that right?

A I don't remember, Mr. Garmone.

Q Well, if the date says December the 21st --

MR. DANACEAU: We object to that. The witness has testified he doesn't know anything about that subject, and if you are going to just read him

a newspaper --

THE COURT:

What was the question?

MR. GARMONE:

The question was that when the second picture was taken, that was taken after the jury had begun their deliberations.

MR. DANACEAU:

And the witness says he doesn't know anything about the second picture.

THE COURT:

That is what the witness said.

MR. GARMONE:

He said he didn't know anything about the second picture?

MR. DANACEAU:

Well, read his answer, if you want it.

Q Well, I will ask you, Mr. Bailiff: Was this picture taken out of your presence?

A I don't remember this picture at all, Mr. Garmone.

Q Well, weren't you with the jury at all times, Mr. Francis?

A I certainly was.

MR. PARRINO:

Objection. Just a moment.

THE COURT:

Well, he said he was.

Q Well, now; tell us, Mr. Francis, whether that picture that has been introduced here, taken on the 21st day of December, 1954, was taken in or out of your presence?

A It was taken in my presence, but I don't remember just where

it was taken, Mr. Garmone.

Q Did you communicate, after a request was made of you to take the picture, with the foreman, Mr. Bird?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

Q Did you call his Honor, Judge Blythin, regarding this picture?

THE COURT: No, he did not, Mr. Garmone. We had no communication.

MR. GARMONE: May I have an answer from the witness?

MR. DANACEAU: Well, he has answered that several times before.

MR. GARMONE: Not on this picture.

MR. DANACEAU: He has.

THE COURT: He has already said that Court he did not, and the Court will say to you that the/had no communication of any such character with either one of the two bailiffs. That can be blanketed into the record.

Q Mr. Bailiff, the jury in this case -- what floors of the Carter Hotel did they occupy?

A Seventh floor.

Q All 12?

A Yes, sir.

Q What floor of the hotel did Mr. Steenstra occupy?

A Seventh.

Q And you likewise the seventh?

A That's right.

Q Do you know, of your own knowledge, whether there was any telephone communications made out of any of the respective rooms that were occupied by any members of the jury?

A Their phones were cut out, Mr. Garmone.

Q By whose request?

A Mr. Steenstra arranged that.

Q And were there any telephone calls made from the room that you occupied?

A Yes, sir.

Q Did you make the calls, or did the jury make the calls?

A No. The jury made the calls, and I sat in the chair right alongside the telephone.

Q You did not take the numbers and make the call yourself?

A No, I did not.

Q And you did not make the inquiry for them that they made as a result of their own telephone calls?

A I don't quite understand it.

MR. DANACEAU: We object to it. The question has been answered already in another form.

MR. GARMONE: What question has been answered?

MR. DANACEAU: Your last question.

MR. GARMONE: Will you then agree or
admit for the purpose of the record --

MR. DANACEAU: The answer will stand
for itself.

MR. GARMONE: What was the answer?
I didn't think I had an answer to it.

MR. DANACEAU: The previous question
you had an answer along the same line. You asked the
same question in two different forms.

MR. GARMONE: Maybe I want an answer
in two different forms. I mean, if Mr. Danaceau --

THE COURT: What is the question
before the house, gentlemen? I lost the question.

Q Did you make a record of the -- keep a record of the tele-
phone calls that were made in your presence?

A No, I didn't.

Q Were you present when any telephone calls were made from
Mr. Steenstra's room?

A Once or twice.

Q And those calls were made by the jurors themselves?

A That's right, sir.

Q Did you keep a record of those calls?

A No, I didn't.

MR. GARMONE: That is all.

MR. PARRINO:

Just a minute, please, Ed.

CROSS EXAMINATION OF EDGAR L. FRANCIS:

BY MR. PARRINO:

Q Mr. Bailiff, what was the purpose of the calls that the jurors made in your presence?

MR. GARMONE:

Objection.

THE COURT:

Well, he may answer who

the calls were made to, if you know.

A Well, they were made to their husbands and wives, and those that had children, they talked to the children.

Q Was there any conversation whatsoever about this case or their deliberations?

A Not one word, Mr. Parrino. X

MR. PARRINO:

That is all.

RECROSS EXAMINATION OF EDGAR L. FRANCIS:

BY MR. GARMONE:

Q The conversations that you heard were from the side that you were on, is that right?

A That's right.

Q By the person making the calls?

A That's right.

Q Is that correct?

A That's right.

Q What it was said back to that juror, you have no knowledge of?

A No.

Q And you can't say now at this time that there wasn't anything said about the case of Sam Sheppard from the other side of the telephone, can you, Mr. Francis?

MR. DANACEAU: Objection.

THE COURT: Objection sustained.

MR. GARMONE: Exception. That is all.
(Witness excused.)

- - -

Thereupon the State, further to maintain the issues on its part, called as a witness JULIAN WILSON, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JULIAN WILSON:

BY MR. DANACEAU:

Q What is your name?

A Julian Wilson.

Q Where do you live?

A I live in Chesterland, Ohio.

Q And for whom do you work?

A The Associated Press.

Q What is the nature of your work?

A I am a photographer.

Q And have you been in and about this courthouse and courtroom during the trial of Sam Sheppard?

A I have.

Q And your work was to take pictures, I take it?

A That's right, sir.

Q Now, did you take any pictures in this courtroom while the court was in session?

A No, sir, I did not.

Q Now, while the court was not in session, during recess or after adjournment, did you take pictures in this courtroom and

around this building?

A Many times.

Q Did you take pictures of Mr. Corrigan?

A Yes, sir.

Q About how many times?

A Roughly -- it would run considerably over a hundred negatives.

Q About a hundred negatives. And of Dr. Sam Sheppard?

A I made many pictures of him.

Q And Mr. Garmone?

A He, too, I have made many pictures of.

Q Now, did Mr. Corrigan ever object to your taking of any of these pictures?

A A few times he has objected.

Q When was that?

A About the middle of the trial or towards the end of it, Mr. Corrigan -- we were instructed that Mr. Corrigan didn't want any pictures made of himself, the defense, or the defendant.

Q How many pictures had you taken without his objection before you received those instructions?

A Oh, many.

Q More than 50?

A I'd think so.

Q And after you received the instructions, did you stop taking pictures?

A Yes, sir.

Q And how long did that continue?

A About a week and a half, two weeks.

Q Then what occurred?

A We asked Mr. Corrigan's permission.

Q And did you get it?

A Yes, sir.

Q And then resumed taking pictures?

A Yes.

Q How many pictures did you resume taking -- did you take after you resumed taking those pictures?

A I'd say not as many as before because we didn't need as many pictures.

Q More than 20 or 25?

A About that.

Q Now, with respect to the defendant, Dr. Sam Sheppard, is the number of pictures that you took before the objection by Mr. Corrigan about the same as what you took of Mr. Corrigan?

A About, yes.

Q You took about 50 before. Then there was this period when you didn't take any pictures because of the objection, is that correct?

A That's true, sir.

Q And then did you later resume?

A Yes, sir.

Q With whose permission?

A Well, when we got Mr. Corrigan's permission, we resumed taking pictures.

Q And about how many did you take after you got permission?

A Somewhere around 15, 20, 25.

Q Were you in this courtroom, sir, during the deliberations of the jury?

A Yes, sir.

Q Did you see card playing in the courtroom?

A Yes, sir.

Q Did you see Dr. Stephen Sheppard participate in playing cards?

A Why -- in this courtroom?

Q In this courtroom, in this court building.

A I can't say that I did. I may have. I couldn't swear that I did.

Q Did you see any of counsel participate in playing cards?

A I couldn't actually say.

Q Did you ever take a picture of either Dr. Sam Sheppard or any of his counsel over their objection?

A No, sir.

MR. DANACEAU:

That is all.

THE COURT:

May I have just one

question? Were you present at the conference which the Court had with photographers prior to the opening of the case?

THE WITNESS: Yes, sir, I was.

THE COURT: And at which the Court stated what the rule would be as to taking pictures during the trial?

THE WITNESS: I was.

THE COURT: Do you recall what that was as to taking pictures within the courtroom and of the defendant and his counsel?

THE WITNESS: Yes, I do recall.

THE COURT: All right. State it.

THE WITNESS: Your ruling, sir, was that no pictures would be made at any time when the Court was in session, and you also requested that we make no pictures of the defendant or the defense or anyone without their permission. I believe that is the gist of the thing.

THE COURT: That's correct. /

Anything further, gentlemen?

MR. CORRIGAN: Yes.

CROSS EXAMINATION OF JULIAN WILSON:

BY MR. CORRIGAN:

Q What is your name?

A Julian Wilson.

Q Where do you live, Mr. Wilson?

A In Chesterland, Ohio.

Q And you are with the Associated Press?

A That is true, sir.

Q Were there any other photographers here beside yourself during the trial?

A Yes, sir. Many of them.

Q What are their names?

A There is Clayton Knipper, Jerry Horton.

Q Will you give me what they are connected with as you go along?

A Yes, sir, I will. Clayton Knipper, Cleveland Press. Glenn Zahn, the Cleveland Press. Jerry Horton, Cleveland News. Perry Craig, Cleveland News. Frank Kuchirchuk, International News. Frank Wasny of International News. Joe Dunn of United Press. Frank Reed of United Press. Dudley Brumbaugh of the Plain Dealer. Carl Raskab of the Plain Dealer. Ray Matjasic of the Plain Dealer. Marvin Greene of the Plain Dealer.

This is at one time or the other. This is not all at one time, but at one time or another.

Q Were there some television cameras here, also?

A Yes, sir, there was.

Q And who were they?

A If I can remember the names, Ted Coleman, who shoots for NBC-TV. The Koza brothers, who shoot for television.

There was a number of others, but I didn't happen to remember their name.

Q Now, there was somebody here from Life, also. Do you remember that?

A Yes, sir. There was a photographer here one day for **L**ife.

Q Did you remain here all during the trial?

A The entire time.

Q During the trial the photographers accumulated in the hall outside the courtroom, did they not?

A That's right, sir.

Q And they also were on the steps of the Courthouse in the morning?

A Yes, sir.

Q Took photographs of the jury as they left and came individually and collectively?

A That is true.

Q During the entire time of the trial?

A Well, no, not during the entire time. I mean whenever there was anything, new development, or something, or that the story wanted --

Q There was also erected out in the corridor here television lights?

A That's right, sir.

Q You saw those, didn't you?

A They were portable hand lights that one of the newsreel

cameramen used. Most of them did not use lights at all.

Q What's that?

A Most of the television -- the newsreel cameramen did not use lights.

Q Yes, but there were at times these glaring lights erected in the corridors of the courtroom just outside the courtroom door?

A That's right, sir.

Q And as these witnesses appeared, they were photographed. You remember that, don't you?

A Yes, sir.

Q And during the voir dire examination, every prospective juror was photographed?

A That's true.

Q And their pictures were spread through the Associated Press, throughout the United States, as well as the Cleveland papers. You know that, don't you?

A Absolutely, and the world.

Q Gus Liederbach was a prospective juror; his picture was spread all over the world?

A Yes, sir.

THE COURT: The Court saw your picture, Mr. Corrigan, in a magazine from Berlin, sir.

MR. CORRIGAN: I got a picture from Chili the other day.

THE WITNESS:

I undoubtedly made it,

your Honor.

Q Now, there was live television on the sidewalk, wasn't there?

A Yes, sir. There was one program.

Q And when the jury would -- when we would have a recess -- withdraw that.

In the morning before Court started, Sam Sheppard was photographed many times, wasn't he?

A Yes, sir, he was.

Q The photographers that you named and others would come into this courtroom and take his picture?

A That is true.

Q You didn't ask his consent, did you?

A I didn't ask Dr. Sam, no.

Q Now then, during recess, you would come in here and take pictures?

A Yes.

Q And after court, you would come in here and take pictures?

A Yes, sir.

Q And you would take pictures on the outside of the courtroom many times?

A Yes, sir.

Q Now, you say that you have a hundred negatives?

A That is a generalization.

Q Of me?

A Probably.

Q That I consented that you should take those 100 pictures of me?

A Yes, sir.

Q Will you bring them to Court? Develop them and bring them to Court, sir?

MR. DANACEAU: We object to that.

A No, sir.

Q Oh, you won't. Well, I demand that they be brought in to me, since you made the statement. You took pictures of me putting on my rubbers; you took pictures of me drinking water; you took pictures of me walking down the hall, didn't you?

A Yes, sir.

Q You mean to say that I was giving my consent to those pictures?

A You did give your consent many times.

Q You know that I protested to those, don't you?

MR. DANACEAU: We object to this argument.

MR. CORRIGAN: I want the pictures taken brought to Court.

THE COURT: The witness says you gave consent.

MR. CORRIGAN: I say I want the

pictures brought to Court so we can determine what kind of pictures they are.

MR. DANACEAU: Well, we object to that.

MR. CORRIGAN: If a person poses for a picture, he poses for a picture.

THE COURT: He says the pictures were taken, Mr. Corrigan. Doesn't that satisfy your record?

MR. CORRIGAN: That wouldn't satisfy me, your Honor. I ask the pictures be brought to Court.

MR. DANACEAU: We object to it.

THE COURT: Objection sustained.

MR. CORRIGAN: We except.

That is all -- wait a minute.

BY MR. CORRIGAN:

Q Did you take a picture of me this morning?

A Yes, sir, I did.

Q Where did you take it?

A In the hall outside.

Q How did you happen to get it?

A You were there talking to Mayor Houk.

Q And was it televised, also?

A I couldn't say to that, sir.

Q Was there bright lights going on when I was talking to

Mayor Houk?

A I don't remember at that moment whether there was or not.

Q Did you ask me anything about taking the picture?

A No, sir, I did not.

Q Did you hear me tell those people to turn those lights off from us?

A I didn't hear that, no.

Q You didn't hear it, all right.

MR. CORRIGAN: That is all, sir.

MR. DANACEAU: That is all.

(Witness excused.)

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THE COURT: The Court wants to look over this matter now as to the motion for a new trial and will rule upon it at the earliest possible moment.

The other matter will be heard on Saturday morning, January the 8th, if that is the date, at 9:15 in the morning. Without formality, we will be adjourned.

MR. CORRIGAN: If the Court please, may I say this to the Court: If the Court rules adversely to our motion, may we be informed so that we can ask for a stay of execution until the matter is filed in the Court of Appeals? We will file it immediately.

THE COURT: All your rights in that regard will be protected, Mr. Corrigan.

MR. CORRIGAN: All right. Thank you, your Honor.

THE COURT: There will be no disposition on the part of the Court to just permit any snap movement of any kind.

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And thereafter, to-wit, on the 3rd day of January, A.D. 1955, said motion for a new trial was overruled by the Court; to which ruling of the Court counsel for the defendant then and there duly excepted.

And thereafter, to-wit, on the _____ day of _____, A.D. 1955, the same being within 20 days of the overruling of defendant's motion for a new trial, and within the time fixed and allowed by law, the said defendant filed written notice of his intention to appeal. Praecipe for transcript of Docket and Journal Entries filed by the defendant.

And thereafter, upon the 31st day of Jan., A.D. 1955, the same being within 30 days after the overruling of defendant's motion for a new trial, and within the time fixed and allowed by law, the defendant filed with the Clerk of this court this, his bill of exceptions, and prayed that the same might be allowed and signed by the Trial Judge, and filed as, and made a part of, the record in this cause, but not spread at large upon the Journal.

Receipt of said bill of exceptions is hereby acknowledged, this 31st day of Jan.,

A.D. 1955.

LEONARD F. FUERST

Clerk,


By David Kikstadt
Deputy Clerk.

And thereafter, to-wit, on the _____ day
of _____, A.D. 1955, notice of the filing
of this bill of exceptions was duly served upon
Frank T. Cullitan, County Prosecutor, and John J.
Mahon, Saul Danaceau, and Thomas J. Parrino,
Assistant County Prosecutors, attorneys for the
State of Ohio, plaintiff, by the Clerk of this
court.

And thereafter, to-wit, on the _____ day
of _____, A.D. 1955, being not less than
10 days after such notice of the filing of said
bill of exceptions and within five days after the
expiration of such 10 days, to-wit, _____ days
after the service of such notice, this bill of
exceptions was duly transmitted to the Trial Judge
by the Clerk of this court, together with all
objections and amendments filed thereto.

Receipt of said bill of exceptions and all
objections and amendments filed thereto, is hereby

acknowledged, this 11th day of February,
A.D. 1955.


Trial Judge.

And now, upon the 14 day of
February, A.D. 1955, being within five
days after the receipt of said bill of exceptions
and all objections and amendments filed thereto,
and supplement ordered by the court clerk
from said Clerk, and upon due consideration of the
same, the said bill of exceptions is hereby allowed
and signed by the Court, and it is ordered that
the same be transmitted to the office of the Clerk
of this Court, forthwith, and that the same be
filed as, and made a part of, the record in this
case, but not spread at large upon the Journal.


Trial Judge.

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