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## Defendant's Motion for Preliminary Instruction to the Jury

William D. Mason  
*Cuyahoga County Prosecutor*

Marilyn B. Cassidy  
*Cuyahoga County Assistant Prosecutor*

A. Steven Dever  
*Cuyahoga County Assistant Prosecutor*

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CLERK OF SUPERIOR COURT  
CLACK COUNTY

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY OHIO

ALAN DAVIS, Special Administrator  
of the Estate of Samuel H. Sheppard,

Plaintiff,

VS.

STATE OF OHIO,

Defendant.

CASE NO. 312322

JUDGE RONALD SUSTER

DEFENDANTS' MOTION FOR  
PRELIMINARY INSTRUCTION  
TO THE JURY

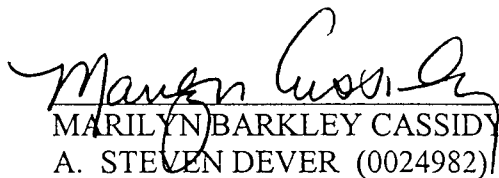
Now comes Defendant State of Ohio who, pursuant to Civ.R. 51 (B), moves this Court to provide a preliminary instruction to the jury prior to the opening statements of counsel. Civ. R. 51 (B) authorizes the court as follows: “At the commencement ... of the trial, the court may give the jury... instructions of law ... and may acquaint the jury generally with the nature of the case.

A preliminary instruction will define the issue for the jury, thereby assisting the jury in assessing the testimony. A preliminary instruction will provide the Court the opportunity to provide the jury with any necessary information regarding prior judicial proceedings. In light of the high level of publicity already attendant to this case, the preliminary instruction to the jury will help insure a fair trial.

The State of Ohio's proposed text for a preliminary instruction is attached.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney  
Of Cuyahoga County, Ohio

A handwritten signature in black ink, appearing to read "Marilyn Barkley Cassidy", is written over a horizontal line.

MARILYN BARKLEY CASSIDY (0014647)

A. STEVEN DEVER (0024982)

Assistant Prosecuting Attorneys

The Justice Center, Courts Tower

1200 Ontario Street

Cleveland, Ohio 44113

(216) 443-7785

ATTORNEYS FOR DEFENDANT

## PROPOSED TEXT OF PRELIMINARY INSTRUCTION TO JURY

Ladies and Gentlemen of the Jury, the plaintiff, the Estate of Samuel H. Sheppard, has brought this action pursuant to Ohio's wrongful imprisonment statutes. In order to succeed in this case, plaintiff must establish by the greater weight of the evidence that Samuel Sheppard is innocent of the July 1954 murder of his wife Marilyn Sheppard. This is not a criminal case. This is a civil case and the plaintiff, not the State of Ohio, has the burden of proof.

The wrongful imprisonment statutes are meant to compensate the innocent for wrongful imprisonment. They are not meant to compensate a person who is not innocent but has simply avoided criminal liability.

Many of you may be aware that several decades ago there were prior criminal proceedings regarding the murder of Marilyn Sheppard. In fact, because of the death of many persons who testified at those earlier trials, some of the testimony you will receive in this case will be the reading of transcripts of the testimony those deceased witnesses gave in the past. Other than that, what occurred in those other trials and their outcomes is not relevant to your job in this trial. In this trial, your job will be to examine with fresh eyes and ears the evidence that will be admitted in this trial and to discount anything you may have earlier read or heard about this matter.

I will now provide you some very basic information about those prior criminal proceedings as a matter of background. However, what occurred in those other criminal proceedings is not relevant to your job. You are now the jurors and it is your verdict that matters.

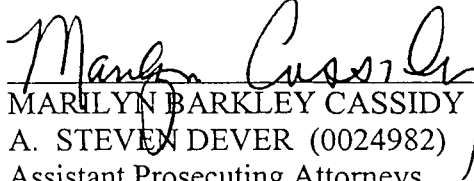
By way of background, I inform you that in late 1954, Dr. Sam Sheppard was tried and found guilty of the July 1954 murder of his wife, Marilyn Sheppard. He appealed the conviction to the Cuyahoga County Court of Appeals and then to the Ohio Supreme Court. In both instances, the Courts upheld the convictions. Sheppard then requested the United States Supreme Court to review the case. It declined, leaving the conviction in place. Sheppard then filed a writ of habeas corpus seeking to be released from prison. The U.S. District Court granted the writ. The U.S. Court of Appeals overruled that decision and denied the writ. Eventually, the United States Supreme Court agreed to review the matter. The United States Supreme Court examined the publicity and atmosphere surrounding the criminal trial. The United States Supreme Court did not rule that the evidence of guilt was insufficient. Instead, it ruled that the massive, pervasive and prejudicial publicity which surrounded the trial, meant that Sheppard was entitled to a new trial.

In 1966, there was a new criminal trial. A different judge presided over the trial and there were different lawyers on both sides. The jury in the 1966 trial entered a verdict of not guilty. It should be noted that the state is unable to appeal a final verdict in a criminal prosecution.

A verdict of not guilty in a criminal trial means that the prosecution did not convince that jury beyond a reasonable doubt that the defendant was guilty. It is not a finding that the defendant is actually innocent.

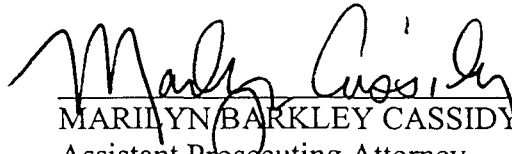
Whether or not Samuel Sheppard is innocent of the murder of Marilyn Sheppard is the ultimate issue you will decide in this case, keeping in mind that it is plaintiff's burden to prove Sam Sheppard's innocence by the greater weight of the evidence. No prior court or jury has answered that question.

Respectfully submitted,  
WILLIAM D. MASON, Prosecuting Attorney  
Of Cuyahoga County, Ohio

  
MARILYN BARKLEY CASSIDY (0014647)  
A. STEVEN DEVER (0024982)  
Assistant Prosecuting Attorneys  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7785  
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendants' Preliminary Instruction to the Jury has been sent, by ordinary United States mail, postage prepaid, and facsimile transmission, (216) 621-0427 this 31 day of January, 2000, to: Terry H. Gilbert, 1700 Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113.

  
MARILYN BARKLEY CASSIDY  
Assistant Prosecuting Attorney