

THE BAILIFF: Mr. Nicholson,  
please be seated in the witness box.

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THEREUPON, WILLIAM D. NICHOLSON, a  
member of the prospective jury panel, having  
been previously sworn, was examined and testi-  
fied on voir dire, as follows:

THE COURT: Good afternoon,  
Mr. Nicholson.

MR. NICHOLSON: Good afternoon.

THE COURT: Mr. Nicholson,  
is this your first opportunity to serve as a  
prospective juror?

MR. NICHOLSON: Yes.

THE COURT: The lawyers here,  
Mr. Nicholson, will be asking you some questions.  
If you will just sit back in your chair and relax  
and listen to the questions, and answer them  
accurately and forthrightly, that is all that  
is expected of you. Understand, sir?

MR. NICHOLSON: Yes.

THE COURT: Now, in responding  
to these questions, Mr. Nicholson, you will  
remember that you are under oath.

MR. NICHOLSON: Yes, sir.

THE COURT: And you will keep your voice up, sir, so that Mr. Romito, here who has the responsibility of reporting what your answers are, will be able to hear you, and so that everyone else in the courtroom will be able to hear you.

Understand that, sir?

MR. NICHOLSON: Yes, sir.

THE COURT: You will do that? You will have to bring it up just a little bit.

MR. NICHOLSON: Yes, sir.

THE COURT: Thank you.

Counselor Spellacy or Corrigan?

VOIR DIRE EXAMINATION OF WILLIAM D. NICHOLSON

By Mr. Corrigan:

Q Will you state your name, please?

A William Nicholson.

Q Will you spell your last name?

A N-i-c-h-o-l-s-o-n.

Q Where do you live, Mr. Nicholson?

A West 114th Street.

Q And your address?

A 1327.

Q How long have you lived at that address?

A About six years.

Q With whom do you live at that address?

A With my wife and children.

Q What are their ages and the names of your children?

A Leslie, my daughter, she is eighteen. Mary, my daughter, is five.

Q Is your oldest daughter in school or is she employed?

A She is employed at Ohio Bell.

Q What does she do at Ohio Bell?

A She is an operator.

Q How long has she been so employed?

A Since July.

Q Is Mrs. Nicholson employed outside the household?

A No.

Q Prior to living on 114th Street, where did you live?

A On Pearl Road, for five years.

Q What was the address on Pearl Road?

A 4722.

Q Before living on Pearl Road, where did you live?

A In Pennsylvania.

Q What community in Pennsylvania?

A Newcastle.

Q That is just over the line from Ohio, is that correct?

A Yes.

Q Are you native to Newcastle?

A Yes.

Q When did you come to Cleveland, what year?

A 1956.

Q Is your wife native to Newcastle, also?

A Yes.

Q What type of employment are you engaged in?

A Purchase Advertising, Cardboard Display Advertising.

Q Keep your voice up.

A Cardboard Display Advertising.

Q And the name of the firm?

A The Dymment Company.

Q How long have you been associated with that firm?

A Ten years.

Q Before working with them, where did you work and what type of work did you do?

A I was an art teacher in Newcastle, High School.

Q Now, the case that is at issue here is the State of Ohio versus Sam H. Sheppard; do you understand that?

A Yes, sir.

Q Did you have any occasion to read or hear anything about this case in 1954?

A No, I don't remember it, I mean, I don't remember having read about it then.

Q May I ask how old you are, Mr. Nicholson?

A Forty-three.

Q Since 1954, have you had any occasion to read in the newspapers or see on television or hear on radio anything about this case?

A Yes, of course.

Q That which you have seen or heard or read, have you followed it closely?

A No.

Q Have you had occasion to discuss this case with anyone?

A If it comes up, of course.

Q In the course of those discussions, you have heard people express their opinions?

A Yes, sir.

Q Have you in turn expressed an opinion?

A No.

Q Approximately how many times have you engaged in conversation with people about this case?

A I don't know. Ten, twenty times.

Q The opinions that you heard expressed, were they persuasive one way or another, answer yes or no?

A THE COURT: Does he understand the question, Counselor?

A Yes, yes.

Q They were persuasive one way or another?

A They would try to be.

Q In the course of these opinions, were you given



allegedly some facts about this case?

A No.

Q Predicated on the information that you obtained from the discussions that you had, and from what you have read and from what you have seen, do you feel that you could put those facts out of your mind, and if you are selected as a juror, rely solely on the evidence that would be presented and received in this courtroom?

A I think I could.

Q I think we are entitled to a stronger answer than that, either yes you could, or no you could not?

A Yes.

Q Do you feel you could divorce from your mind any outside influences and predicate your judgment on that which you heard in this courtroom, is that correct?

A Yes, sir.

Q If Judge Talty instructs you that every defendant in a criminal prosecution is presumed to be innocent unless and until proven guilty beyond a reasonable doubt, would you accept that instruction?

A I must. I would accept it.

Q And would you require the State of Ohio to prove each and every element beyond a reasonable doubt?

A Yes.

Q If Judge Talty were to tell you that there are two

types of evidence, direct evidence, that which we perceive by our senses, we see, we touch, we feel, we hear, and indirect evidence or circumstantial evidence, conclusions that we arrive at from a set of facts, if Judge Talty were to tell you that circumstantial evidence properly proven is just as good as direct evidence, would you accept that instruction?

A Would you review that again?

Q Yes. Suppose -- and I anticipate that Judge Talty will instruct you -- that there are two types of evidence. One is direct evidence, that is evidence that comes to you through a witness by virtue of the witness having perceived something, he saw it, he touched it, he smelled it, he heard it, he felt it, and so on.

On the other hand, you will receive circumstantial evidence, a set of facts are presented to you, and from those facts you draw inferences that flow normally and reasonably from those facts.

Now, this is an inference that you arrive at from facts; and if Judge Talty says that that inference is circumstantial evidence, then you may accept it, if it is properly proven, would you follow that instruction?

A Yes, remembering the qualification if properly proven.

Q In other words, to give you a set of facts, let us assume that when you came in here this morning, the streets

and the buildings and the trees and the lawn, the grass, was dry, and the sun was shining, and you had no opportunity to go out between nine o'clock in the morning and noon, no opportunity to see out; but at noontime when you went out the streets were wet and the buildings were wet and the grass was wet, and the general area was wet.

From those facts, you could reasonably -- using your common ordinary experience -- arrive at the conclusion that it had rained sometime between nine o'clock in the morning and noon, is that not correct?

A That is correct.

Q You didn't see it rain, but you arrive at that conclusion from these other set of facts.

Now, let us assume the same set of facts, that the sun was out in the morning when you came in, and the street and the building and the trees and everything was dry, but at noontime when you went out only the street was wet.

Now, it might have rained, but it may also be that a truck had gone down and washed the streets down or somebody had hosed them down with a hose.

So there are several inferences that you could arrive at from the fact that the street was wet; is that not correct?

A Yes.

Q Now, under those circumstances where you can arrive at several inferences, and not only one, the Court will tell



you that that kind of circumstantial evidence you would have to reject, and you could not use that kind of circumstantial evidence that lends itself to many inferences, and you can accept only that circumstantial evidence that lends itself to the one inference and that is to the guilt of the defendant.

If it lends itself to the innocence, or if it points in the direction other than the defendant, the Court will tell you that you have to disregard that circumstantial evidence.

Would you follow that instruction?

A Yes.

Q So that, again, properly proven, you could accept circumstantial evidence, if the Court instructed you that it was to be accepted, if properly proven?

A Yes.

Q Now, is there any member of your family, sir, associated with or employed by any law enforcement agency?

A No.

Q Do you have among your acquaintances or friends any member of any law enforcement agencies, police departments, sheriff's departments, and the like?

A No.

Q Do you know anybody in the Prosecuting Attorney's Office?

A No.

Q Do you know the defendant Sam Sheppard?

A No.

Q Or his counsel, Mr. Bailey or Mr. Sherman?

A No.

Q If you are selected as a juror, sir, and the time arrives where the jury would be deliberating this matter, do you feel that you could join with your fellow jurors in a full and complete discussion of all the testimony and evidence, with the view in mind of arriving at a fair and just verdict, fair to both the State of Ohio and the defendant?

A Yes, sir.

Q Looking at the panel of people in the jury box now, do you know any of those people?

A No.

Q Other than newspaper articles or magazines that you may have seen, did you ever read any books in connection with this case?

A No, I haven't.

Q It may well be that police officers or governmental officials such as the County Coroner or some of his aides may testify in this case, and if such a person were to testify, would you solely because he was a police officer, or a governmental official, give more believability or

credibility to what he would say than somebody else who is not in a governmental capacity?

Do you understand the question, sir?

A Yes, I am thinking about it.

THE COURT: All right, you reflect on it as long as you like.

A I don't think I would.

Q Now, a police officer or governmental official, just because he is a police officer or governmental official, he is not infallible, is he?

A That's correct. He is human.

Q And being that police officers and lay people are human, they are subject to the same believability or lack of believability just on the basis that they are people, are they not?

A Right.

Q And their official status doesn't attribute or shouldn't attribute more or less weight to what they have to say, as far as credibility is concerned?

A Not when they are in the witness stand.

Q Beg pardon?

A Not when in the witness stand.

Q So that you would measure all the witnesses regardless of what their official capacity may be, by employing your common every-day sense in determining whether a witness

should be believed in total, or in part, or disbelieved entirely, would you not?

A Yes.

Q Now, in weighing a witness, and in employing the common ordinary every-day sense that you employ in evaluating the credibility of someone that you might meet, would you take into consideration his interest or lack of interest in the case?

A Yes, it would be a part of it, wouldn't it? You would have to weigh that.

Q No, don't ask me the question. But answer, would you or would you not?

A Yes.

Q You would take into consideration his interest or lack of interest, in weighing his credibility, is that not correct?

A Right.

MR. CORRIGAN: Pass for cause,  
your Honor.

THE COURT: Counselor Bailey  
or Sherman?

## VOIR DIRE EXAMINATION OF WILLIAM D. NICHOLSON

By Mr. Bailey:

Q Mr. Nicholson, if the defendant Sam Sheppard were to testify in this case, would you give him less credence than any other witness solely because he is the defendant?

A Yes.

Q If the Court instructs you that that is improper, that he is entitled to be judged on the same plane with any other witness, and that although you might logically infer that he has a strong interest in the case, nonetheless he starts even like everybody else, could you accept that instruction and apply that rule in evaluating his credibility?

A I don't know myself, well, enough really to be able to answer that.

Q I realize that. Mr. Nicholson, assume that you sit as a juror and you are told that your function as a juror is that of a final judge of the facts, the jury box is the only place that facts are ever decided in our law, and that the rules that you apply to those facts must come from the Court, whether you agree with them or disagree with them they are the rules for this ball game.

Now, to be sure this is a discipline, but could you accept these principles and take your rules from Judge



Talty, whether you happen to think they are good ones or not?

A Yes, sir.

Q Now, you have indicated some difficulty in viewing the defendant who has a mild interest in this case as a witness on an equal plane with everyone else.

But the law is that he is just another witness entitled to your inspection and eventual believability, if you find him believable, and he is not to be penalized because he happens to be the defendant.

If you are given an instruction that you want to approach an evaluation of his credibility on that basis, can you follow it?

MR. SPELLACY: I object to the form of the question, your Honor.

THE COURT: Overruled. Do you understand the question, sir?

A Yes, I could follow such an instruction.

THE COURT: Do you want the question read back to you?

A Yes, please.

THE COURT: Do you want to restate the question, Counselor, or do you want the reporter to read it?

MR. BAILEY: I will be glad to restate the question.

Q Notwithstanding that it is perfectly obvious that Doctor Sheppard has an interest in the outcome of the case, and that you might logically consider that in evaluating his testimony, if you are told that the rule is and the law is that when he takes the witness stand, he is entitled to your consideration as a believable witness, just as much as any other witness, with a slight interest or with no interest, could you approach the matter of evaluating his credibility as impartially as that instruction requires, could you do that, psychologically?

A Yes, sir.

Q What were your sources of information about the case in 1954, do you know, do you know what publications?

A I don't remember having had any at that time.

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Q You were living where in 1954?

A Newcastle, Pennsylvania.

Q I see.

A It must have been in the papers, but I don't remember it.

Q It wasn't a subject that ever commanded your deep interest at that time?

A No, sir.

Q When was the first time you began to hear about the Sheppard case that you took notice of it?

A When I came back to Cleveland, came up to lunch one

day.

Q I see, it was being discussed by friends or associates?

A Yes.

Q And was there a discussion of the facts of the case or what these people thought were the facts?

A No.

Q But there were some opinions projected or proffered for your consideration?

A No, not really.

Q You mean the case was discussed without reference to facts or opinions?

A Right.

Q When was this, Mr. Nicholson?

A Well, I can't remember exactly.

Q Approximately?

A Probably in early 1957.

Q Was the conversation in reference to some development in the case, the appeals, the petition, or some legal maneuver, if you recall?

A I recall it very well. How explicit should I be?

Q Well, do you recall the conversation very well?

A Yes.

Q Don't give us the conversation. When you left that conversation, Mr. Nicholson, did you have an impression either way of the guilt or innocence of the defendant?

A No.

Q Were you aware of any dominant impression among the members of the group with whom you are associating during the conversation?

A No.

Q Would you say the discussion was controversial?

A No.

Q It didn't involve people arguing back and forth?

A No.

Q I see. Did it involve anything about the defendant's private life beyond the fact that he was a doctor?

A No.

Q Did it involve anything about his conduct in the pre-trial stages of the case?

A No.

Q What other occasions have you become engaged in conversation with others about the Sheppard case?

A They are hardly worth calling conversations. The subject has come up several times, of course, since I was summoned for jury duty, but only in passing.

Q This is recently?

A Yes.

Q When was the last time you conferred with anyone about this case or mentioned it in passing?

A The last time I discussed it with my wife, when the

articles appeared in Time Magazine about the decision of the Supreme Court.

Q I see. But have you had any discussion since you knew you were going to be a juror and could be called in this case?

A No.

Q Did your wife offer an opinion for your consideration one way or the other on the merits of Doctor Sheppard's guilt or innocence?

A No.

Q Do you feel you are, as of this moment, completely free from any opinion as to the guilt or innocence?

A Yes.

Q It is still an open question in your mind, would take evidence to decide, is that correct?

A That's correct.

Q Now, again, the rule will be, as has been said to you briefly, that a failure of evidence militates in the benefit of the defendant, and unless the State produces evidence which rises to a certain acceptable level of certainty, that the defendant is to be acquitted, no matter what you might suspect because it has not been proven; since that is the rule and will be given to you in a fashion similar to the terms I have described by the Court, do you think you will have any difficulty in following it?



A I am sure I should have difficulty.

Q You feel you would have difficulty?

A Yes.

Q If the Court tells you that the level of proof, minimum level of proof which is acceptable in a criminal prosecution is that level which removes all reasonable doubt, that is, proof beyond a reasonable doubt in the mind of the individual juror making the judgment, and that a belief in the probability of guilt is not sufficient, and that no amount of suspicion is sufficient, but despite the belief and the probability of guilt you must rise to the level where reasonable doubt is eliminated, could you follow that rule and acquit the defendant, unless all reasonable doubt were removed from your mind?

A Yes, sir.

Q You wouldn't have any difficulty following that rather strict rule?

MR. SPELLACY: Objection.

THE COURT: Objection as to the comment will be stricken.

Please put a question, Counselor.

MR. BAILEY: It was a question.

THE COURT: The question is ordered stricken. Please put another question.

Q Would you have any difficulty following that rule?

A Would you restate the question, please?

Q We will pass it for the moment.

If you were given such an instruction by the Court, with reference to the level of proof, and the level of certainty which would have to exist in your mind, before the law would countenance a judgment of conviction from you as an individual juror, before you could properly make that judgment, even though you might think it was harsh, or you might disagree with it personally, could you nonetheless follow it as given by the Court, and apply that rule to whatever level of satisfaction you might then have or not have with reference to the guilt of this man?

MR. CORRIGAN: Objection.

A Yes.

THE COURT: His answer may stand. Objection is overruled.

Q The burden of proof you will learn is always upon the State, and the defendant you will be told has no burden to come forward and bring evidence, even though it might be available to him, and the instruction will further say that his failure or the refusal of the defendant to produce evidence, even though it may obviously be available to him, cannot be used in assessing his guilt as something from which an inference of guilt can be drawn, in other words, it can't be held against him one iota.

Now, if that rule is given to you in those terms or similar terms, and the evidence should be, and you should find that Marilyn Sheppard was murdered in her home in July of 1954, and that Doctor Sam Sheppard was in the home at or about the time this happened, could you evaluate the evidence which you were presented by the State, without reference to the silence of the defense, without reference to the failure of the defense to come forward and prove or explain anything?

A Yes, remembering your introduction, the burden of proof lies with the State.

Q Then you have no conscientious difficulty with abiding by the rule that a failure of proof must benefit only the defendant and never the State, a failure of proof, a failure to satisfy you as a juror of his guilt?

A No.

Q All right. Now, just as the defendant has a right to testify, he is given a lawful right not to testify, he is given that right without any penalty attaching to it.

If the defendant is shown by other evidence to have been in a position where he would or should have made observations relevant to this case, but nevertheless does not testify, does not come forward, does not explain for your benefit as a juror anything that he may know, or you may believe that he ought to know, and you are told by the Court that he has the right to do that, the legal right,

and that you may not use his silence as the basis for some inference that he is hiding something, or guilty of something, can you follow that rule and put away from your mind the fact that he was silent, in judging his guilt or innocence based on what evidence there is?

A Yes.

Q Then you say you would be able to follow that instruction, as I have described it, and not be influenced by his silence to any extent?

A Yes.

Q Do you have a family physician, Mr. Nicholson?

A Yes, sir.

Q Is he a medical doctor?

A Yes, sir.

Q Do you know what a doctor of osteopathy is?

A I have a vague idea.

Q Do you make any distinction between the two as far as being doctors is concerned?

A No.

Q If the Court tells you that a doctor of osteopathy and a medical doctor are in the view of the law, co-equals in professional standing, by definition, would you accept that instruction and regard them as such?

A Yes.

Q So that if you heard an opinion on the one hand from

a medical doctor, contradicted by an opinion on the other hand from a doctor of osteopathy, I take it you would not be inclined to give less weight to the doctor of osteopathy, just because he followed that profession instead of being a medical doctor?

A No.

Q Before, when you were asked by Mr. Corrigan whether or not you would be inclined to give greater weight to the testimony of a police officer, than any other citizen, I believe you hesitated slightly to think about the matter.

A Yes, sir.

Q If the Court instructs you that every witness who takes the witness stand, no matter what his uniform, his station in life, education or position, must start even, as far as you, the judge of his credibility, is considered, can you follow that instruction?

A Yes.

Q Mr. Nicholson, if there should in the course of this trial occur some testimony or event which would recall to your mind information about the defendant which never appears in the evidence, but which you remembered having gotten from some other source, could you if so instructed by the Court, as you will be, put that information totally out of your mind in considering his guilt or innocence, and restrict your consideration to only the evidence that is



admitted before this jury by Judge Talty in this trial?

A Yes.

Q Now, I take it that you learned somewhere along the line that there had been an original trial resulting in a jury verdict of guilty?

A Right.

Q And there has been numerous subsequent appeals?

A Yes.

Q And eventually the order of a higher court set aside the finding and judgment of guilty as defective?

A Yes.

Q You will be instructed that if you have knowledge of these events, the entire proceeding from the time the first trial started until the time this trial started, is meaningless, legally meaningless on the issue of guilt or innocence, and that Doctor Sheppard is in the same position today that he was in 1954 when the original trial started, and you are to draw absolutely no inference from what some other jury may have done in the defective proceeding, if you are given that instruction, will you be able to put totally from your mind the significance if indeed any there is, of the fact of an earlier trial with conviction and subsequent voiding of that conviction?

A Yes.

Q So that as you regard Doctor Sheppard sitting here

today in this witness stand, I am sorry, in this defendant's chair, you are able to afford him the same presumption of innocence that you would give him if there never had been a first trial, is that correct?

A Yes.

MR. PAILEY: Pass the juror for cause.

THE COURT: Mr. Nicholson, would you be good enough, sir, to take the first chair next to Mr. Lindblom, the man sitting on your right there, Mr. Lindblom.

I think we are beyond ordinary recess time, gentlemen.

Will you bring in the rest of the panel, please?

Ladies and gentlemen, in the back of the room, you may leave if you wish now while awaiting the arrival of the prospective panel.

You may be at ease, ladies and gentlemen, and visit among yourselves while awaiting the arrival of the other prospective members of the jury.

(Thereupon the balance of the prospective members of the jury panel was brought into the courtroom.)

THE COURT: Thank you, gentlemen.

Ladies and gentlemen of the prospective panel, we have reached the point where we should have our afternoon recess.

While you are away on your afternoon recess, you shall bear in mind the instructions given you on each occasion when you have gone from this courtroom.

You shall not discuss this case or what little you have heard of it amongst yourselves.

You shall not permit anyone else to discuss it with you, nor shall you permit yourselves to overhear anything that relates to this case by any means or media of communication.

We will stand in recess.

(Thereupon a recess was had.)