

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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