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Thursday Afternoon Session, December 16, 1954.

(1:15 o'clock p.m.)

CLOSING ARGUMENT ON BEHALF THE STATE OF OHIO

MR. DANACEAU: I believe I expressed the sentiments of everyone present on both sides of the table at this stage when our tempers have somewhat cooled, when I say that you have served on this bench very many years with marked ability, and in this particular case, with particular patience throughout these very many weeks. We thank you for your patience and for your ability, which we have long recognized.

THE COURT: To quiet the lawyers down, is that it?

MR. DANACEAU: Well, that is an important task in a lawsuit, particularly such as this.

As to you, ladies and gentlemen of the jury, may I also, on behalf of the three lawyers here sitting on this side of the table representing the people of the State of Ohio, thank you for being with us these many weeks, listening so attentively, observing these proceedings, trying to do your job as we are trying to do ours.

We, too, each of us, took an oath to God that we do defend the Constitution of our nation and State.

To carry out that oath, we are here to do our job, to do it vigorously and to do it fairly, to do it right.

You listened this morning to a brilliant address. Mr. Corrigan, when he started, said very modestly, "I am no orator," and then we listened to superb elocution. Mr. Corrigan is a great lawyer, a great criminal lawyer. He speaks very well, does a great job for his client, as he should. I only wish I had the capacity to speak so brilliantly with such eloquence, for if I had possessed those qualities, I sure would use them. Unfortunately, I do not possess those abilities, as you will soon discover. I am more of a type of lawyer who was arguing a case, such as this, but without a jury, to a Judge, and when he got through arguing all morning they had a lunch recess, and when they came back and the Judge ascended the bench, this lawyer got up and he said, "Your Honor, might I with pleasure resume my argument?"

And the Judge very quietly said, "You might continue, but the pleasure is all gone hours ago."

You listened to arguments here yesterday, all day, this morning, and now it is my turn. Mr. Corrigan dwelled very much upon the Constitution, the American

lawyer.

Well, after I was discharged from the Navy in 1919, I took the Bar examination in 1920, and have been a lawyer in this community ever since, and I hope an American lawyer, and I hope that I have cherished the principles which form the basis of our nation and our State, and which make possible a trial such as this when a person is accused of crime.

It is true, as Mr. Corrigan has said, that many nations, particularly those behind the Iron Curtain, no longer have their freedoms, no longer have their liberties. Trials such as this are not possible in those countries. That is true.

The Constitution on paper doesn't mean anything. The Soviet Union, I am told, has a wonderful reading Constitution, but no one pays any attention to it there. Certainly the group in power pay no attention to it, it means nothing, but rooted in our people from the moment the Declaration of Independence was written to the enactment of our Federal Constitution, and then subsequently, as each State adopted a Constitution, these underlying principles were written into these Constitutions, and they are not merely on paper.

We are living democracies in our nation and State, and every public officer takes an oath to God, and he makes no reservations of any kind, that he will uphold that Constitution and John Mahon, and Tom Parrino and I have always endeavored, and have endeavored in this case, and endeavor at this very moment to uphold that Constitution from beginning to end, every part of it, not merely the one that gives every accused person a right to a trial by a jury.

There are other provisions in that Constitution, basic provisions in that Constitution, which Mr. Corrigan has seen fit to discuss, and there is another basic provision which is far more than the denial of some person of a trial by jury.

There are many democracies where there is no jury trial. France has a different procedure entirely than we have.

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But what is it that destroyed the democracies of Europe? The basic thing that destroyed those democracies was the absence of a free press, the absence of the right to speak and write freely, to criticize public officials when they are not doing their job. You know that that's the basis reason there is no freedom in those countries behind the Iron Curtain.

Now, I have been working with Mr. Cullitan for many years, I've got an office under him. We have been criticized from time to time, and we don't like it when it happens. It annoys us and irritates us. Sometimes we feel that the criticism is totally unjustified and we have said so. But we'd be in a horrible fix if just because newspapers make mistakes-- and they do, and they do it frequently, and we are annoyed and you are annoyed and others are annoyed at the things they sometimes say and do; they have the basic right to criticize, right or wrong.

Now, let's see what we have in this particular case. We know that Sam Sheppard is entitled to a fair trial, and I do hope he gets it here. That is what we are all here for, the prosecutors, these lawyers in the community,

an impartial and able judge, a fair and impartial jury -- isn't that a fair trial?

You recall that when you were being examined to be on the jury, both sides made it clear to you that a Grand Jury hears only one side. That's why there is a presumption of innocence. It even goes in the indictment. Wasn't it made clear by our side and the defense that the Grand Jury only hears one side, and yet this very day we are criticized because certain defense witnesses weren't brought before the Grand Jury.

If the Grand Jury heard both sides and then came to a decision, it would mean something as to his guilt or innocence. But under our law they only hear one side. So we are damned because we didn't bring defense witnesses before the Grand Jury. How preposterous.

Let's take this case. It happened on July 4th, Independence Day. It happened out in Bay Village. And as I go along, perhaps I will digress a little bit.

Do you remember on the eve of July 3rd they were watching a picture, "Strange Holliday." On July 4th, Independence Day, that, too, for many people was a very strange holiday. It was

a strange holiday for Dr. Sam Sheppard, of course, and for Chip.

It was a strange holiday for Dr. Richard Sheppard, Sr., and his wife, the mother of Dr. Sam, and for Dr. Steve Sheppard and his wife, Dorothy, and for Richard Sheppard and his wife, Betty. Events made that a horrible strange holiday.

Our hearts on this side of the table go out to Chip, as they must to you and to everybody else, to Dr. Sheppard, Sr., and his wife, the mother, and to his brothers, Steve and Richard, and their wives. And what they have done is quite understandable. After all, Chip is the son of Marilyn and Sam. Richard, Sr., and his wife, his father and mother, they are his brothers, it's understandable at least what they did, what has been done.

Now, when this thing happened out in Bay Village, the Mayor and his wife are the first to come. His brothers come, first Richard and his wife, then Steve.

Now, the accident of Dr. Sam calling Mayor Houk and Mayor Houk showing up with Mrs. Houk might well have prevented some greater heartache to Mayor Houk than has already occurred, because he would

have then been there by himself in that terrible situation before any police or anybody else arrived. And who knows what might have happened, what stories might have come out then? But fortunately for him, Mrs. Houk accompanied him.

Now, for about two hours or more -- we don't know exactly -- after Marilyn was killed the only one in that house, that we know of, was Dr. Sam Sheppard. What was done in that house during that period of time, exactly when and what, only Dr. Sam Sheppard can relate.

We know that certain things were wiped off with either sandpaper or a cloth. Did you hear any of the attorneys mention that during the entire argument?

There was opportunity at that time to go around from room to room to simulate, or fake -- that's the language we understand and use -- a burglary. There was an opportunity at that time to do it. There was an opportunity at that time to get rid of whatever instruments were used. And Dr. Gerber said a surgical instrument or another instrument similar to it. There was opportunity for hours to do things in that house, but only Dr. Sam Sheppard was there and could tell.

And after he called Mayor Houk, for another two or two and a half hours before the Cleveland Police representatives had been there, before Gerber had been there, who had the run of the house? Dr. Richard Sheppard, if my memory of the evidence is correct, was there three times in Marilyn's bedroom before Gerber got there. Dr. Steve Sheppard was there twice before Gerber or the Cleveland Police got there.

They took away Chip, they took away Dr. Sam. Tom Parrino described that to you. Who were the others there? Well, Bay Village has a Police Department and a Mayor. The Mayor is a close personal friend of the defendant. They own a boat together. How closer could you get? The defendant is the unofficial police surgeon. How closer could he get to the six or seven or eight police officers of that village?

Long before Dr. Gerber or the Cleveland Police Department get there, for hours after Sam had already called Mayor Houk, his relatives, his friends have complete run of the house, have opportunities to do what they please and to get rid of whatever they wanted to get rid of.

Mark you, that's even before Dr. Gerber

got out there or knew anything about it, before Schottke got out there or knew anything about it, several hours before Mayor Houk was called, several hours after that. Talk about an investigation. Those were the four crucial hours. If experienced homicide men were out there during that four-hour period, something could be done. And yet, the Cleveland Police Department are blamed for what happened there. And those are the four crucial hours or the four and a half crucial hours.

Those facts became known, that's true, the newspaper printed them. And when people were sitting on their seats dragging their feet as though they were lead -- we had an expression in the Navy that was altogether different, but I can't repeat it to you -- the community was aroused: "What's going on here? This is murder. This is murder."

Was that confined to the editors of newspapers? They expressed the community feeling. This man, though he may be the close friend of the Mayor, though he may be the close friend of the police, this is murder and he should be treated not worse than anybody else but the same as anybody else.

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Now, if we treat him the same as anybody else, are we depriving him of any constitutional liberties, any constitutional rights? And that is all we are doing, treating him the same as anybody else.

They go out there -- Schottke and Gareau go out there by invitation. This is not a Cleveland police job. They are invited out, and they go out there to assist. They have no authority to proceed.

Now, you would suppose from listening to this argument that from the very inception of this thing the Cleveland Police Department was right in there running the show. They certainly weren't running the show the first four and a half hours after Marilyn was killed, and Schottke and Gareau didn't have much to say, and they were merely assisting the Bay Village police, and it wasn't until several weeks later at the time of the inquest that the City of the Village of Bay formally invited the Cleveland Police Department to get in the case. Several weeks later, around the 21st or 22nd.

Was the Cleveland Police Department responsible for what happened out there, what the Bay Village police did or did not do, and which they may not have done because of the close relationship to this defendant? Are they to be whipped on account of that, and called

every name under the sun, and pictured as though they were Gestapo men in Soviet Russia or Czechoslovakia? Is that fair?

You want fairness for your client, treat him fairly. How about treating these fellows fairly? Aren't they entitled to some fair consideration and treatment? Are we, on the side of the State, to be the only people who are fair and considerate? Aren't we entitled to some fairness from the other side of the table? Are they to be permitted to make the wildest charges without any foundation, with impunity? Is that a fair trial? And that is what has happened from time to time in this case.

Now, I will take second place to nobody in defending the Constitution of my State and nation, and so will John Mahon, and so will Tom Parrino, and so will Inspector McArthur, and Sergeant Lockwood, and so will everybody on our side of this case. We will defend it, but murder is murder, and it is our job to proceed to prosecute where prosecution is warranted.

This man has been indicted by the Grand Jury of this County, he is here on trial. Give him a fair trial, by all means.

If you think that John and I and Tom, and these men, have manufactured this case, have manufactured this evidence all because we want publicity, because we want glory, for heaven's sake, acquit this defendant immediately. I won't have anything like that on my conscience, neither will John or Tom or these other men.

If, on the other hand, upon a fair consideration of the evidence, not the distortions that have been presented here from time to time -- if, upon your search for the truth, you find that he is guilty, have the courage to return such a verdict. It is not easy. It is not easy for me to stand here and prosecute a person, a citizen charged with first degree murder. It is not easy for you to sit here in judgment.

There is, of course, a final judgment. Sam will be judged, as I will be judged, as you will be judged some day by our Father in Heaven, but we took an oath here that we would try this man accused, and we would decide this case on the basis of the evidence in this courtroom, and we are not trying anybody else. We are not trying any newspaper or newspapers; we are not trying Dr. Gerber; we are not

trying Mr. Adelson. We are trying Sam Sheppard. If any charges are to be brought against any individual, bring them. Let them have the same kind of a fair trial you want for your client, and not have them try to be without a lawyer, without an opportunity to present their side, as you have done.

Now, in this case we have been obliged to bring in testimony against some women. Dr. Gerber is not tried here because he had relationship with other women. That is not the charge, and that evidence wasn't brought in here for that purpose at all.

We recognize human frailty --

MR. PETERSILGE: Dr. Sheppard, you mean.

MR. DANACEAU: What did I say?

Dr. Gerber? I beg your pardon. I meant Dr. Sheppard.

He is not being tried because of these indiscretions. We recognize human frailty. He is not being tried for these indiscretions at all, and I didn't think it would even be necessary to argue the point or explain it.

From the very beginning, in keeping with his general portrayal of a happy home life, of a man who could not possibly have done this thing, he presented a picture of lovely home life throughout

the year. This evidence has been brought in, ladies and gentlemen, to show that that was not so, that it wasn't so.

As Tom has told you, he brazenly lived with Sue at the time of -- at the home of their mutual friends, that is, Marilyn and his mutual friends in California, and must have known that word would get back to Marilyn. She loved Dr. Sam, there is no question about it. She may not have wanted a divorce. She may have struggled against it. She may have thought that her pregnancy might have helped prevent their marriage from going on the rocks. Marilyn loved him, but she must have known of these indiscretions, not just this recent one, but the others, and that is why it was brought in.

Now, a loving wife doesn't enjoy knowing about those sort of things concerning her husband. Those sort of things create bitterness, create recriminations, produce possibly terrible things. We don't know what happened that night. Mr. Corrigan says, "Do you expect us to believe that the State intends that this man woke out of a deep sleep, heard someone or his wife call his name, and that he rushed up and he killed her?"

Why, we made no such absurd claim at all. It is his story that he was in a sound sleep and heard her name and rushed up. They may have been up. He may have walked up. He may have gone into that room to see his wife, to be with his wife. These happenings might have been brought up, some recrimination, some argument, some fight, and when men are angry, they sometimes do things that they wouldn't otherwise do, and her death may have been the result of some sort of recrimination. There was plenty of background for it. We don't know. Only Dr. Sam can tell exactly what happened there that night.

Do you remember the testimony of the lady who said she saw lights on at 2:30 as she was going by? This story of his being in a stupor and hearing her name, that is only from Dr. Sam and no one else. He said he lied at the Coroner's inquest to protect the reputation of Susan Hayes. He had given out a picture of lovely home life throughout the years, and he wanted to maintain that to divert suspicion.

You recall the other day that he was questioned about other women, and to those affairs, I think Mr. Petersilge said they were just flirtations.

Well, this chivalrous man, who wanted to protect

the name of Susan Hayes, needlessly testified that, I think it was Mrs. Lossman, kissed him, she was the aggressor. How chivalrous that was. How he enjoyed protecting her.

I cite that to show the absurdity of his claim that he refused to admit his relations with Sue because he wanted to protect her name. Oh, no. He wants to continue the picture of lovely home life throughout the years, and it was only when Sue talked and he knew that she talked, that he began to talk, because it would have been silly for him to continue to deny it.

They say "Protective Wall" we talk about. Of course, we talk about a protective wall. Here is murder. Here is a fake burglary. Mr. Petersilgle, in his address to you, said, "We don't claim there was a burglary there that night."

Of course, he doesn't claim that. He mustn't say it for anybody. It is obviously a fake job, but who could have faked the job? A burglary job is faked by an insider to make it appear as though an outsider did it.

Well, who are the insiders? Dr. Sam and Chip. Take away Chip. Dr. Sam. Two minus one is one. He

is the only one who could have -- he is the only one who did fake that burglary. That is plain arithmetic, plain logic, plain reason.

That sort of conduct is consistent only with guilt. An innocent man would not fake such a burglary. It is irreconcilable with any claim of innocence. Who else could have possibly faked the burglary -- and they practically can say that there was a fake burglary -- but Dr. Sam, and why would he fake it if he didn't kill his wife, and after killing her, to proceed to do all the things that he possibly could to conceal it, conceal the weapon, conceal his T-shirt, to conceal everything else, to wipe off any prints or marks? That is what Dr. Sam did, and no one else, and that is why they removed him quickly, didn't ask even the friendly police officers whether they could remove him, didn't use the ambulance that was available. Got him out quick. He is taken to the hospital, his brothers are helping him, that is understandable. It is understandable, no question about that, and they keep him at the hospital. They can't prevent him from being interviewed by anybody.

He is talking about a police officer. He was on the stand. He wasn't there to prevent Sam from

going in and out. It was to keep newspaper men away, to keep others in the family away. Why, he was their guard for them. That is why he was there, and they make it appear as though he were in custody of some sort. There isn't any evidence of that sort at all.

And they throw this cordon around him in the hospital, protected by his family as much as they could. And soon his lawyer comes in, Mr. Petersilge, the family lawyer, and later, shortly, Mr. Corrigan comes in.

Now, everybody has got a right to hire a lawyer. We know that. We are not arguing that he didn't have that right. Of course, he had that right. Of course, he had that right, but let me read what Mr. Corrigan said in his argument. I took it down. "When a man is innocent, they don't need me around here."

Those are his very words this morning. "When a man is innocent, they don't need me around here."

Now, people have a right to do certain things, legal right to do certain things. No question about that. But in judging their conduct, whether they are guilty or not, we have a right to examine what they did, and find out whether this was the conduct of an

innocent man. Would an innocent man act that way, or is it the conduct of a guilty man?

Now, I am using Mr. Corrigan's own words. Why was the foremost criminal lawyer of our community summoned out there so hurriedly if this man was innocent? Why did he refuse to take the lie detector test?

Now, you heard Mr. Garmone this morning -- from his words you would get the idea that he agreed to it and took it. Well, that is not so at all. If you will examine Schettke's statement, he at first agreed, and then Schette explained how it was done, and he said, no, and then what does Mr. Rossbach say about that?

Do you remember Freddy Garmone? "Why, he agreed to take the lie detector test." Did he? I know of no lie detector test that was taken ever, to this very minute.

Now, Mr. Rossbach is the elderly, kindly gentleman that they have expressed a great admiration for, and he is a swell guy, a fine man. He was in the tavern business for six or seven years, and when Joe Sweeney needed a deputy he came back, although he had never been in the homicide work. He was a policeman. He came back, and he is a deputy to Joe Sweeney upstairs, a kindly fellow.

Now, let me read from the record, to refresh your memory as to what Mr. Rossbach said on the stand on that very subject, and now get the date. This is from page 2247 of the record. Mr. Rossbach is on the stand -- in order to get the date, I will go back a few questions.

"And when is the next time that you saw him again?

"On July 12th.

"And where did you see him?

"At his home.

"Q. Did you speak with him?

"A. I did.

"Q. Who was present?

"A. Mr. Corrigan, Mr. Petersilge, his brother, Dr. Richard and Dr. Stephen.

"Q. What was said?

"A. I again asked him if he had thought over the suggestion that I made about him trying to eliminate himself as a suspect. He stated that he wanted to help us in every way possible to serve this crime -- to solve this crime."

And then Mr. Rossbach continued, "Why don't you meet me some morning at some designated place at a designated time unbeknownst to anyone but yourself and

myself and we will take this lie detector test, and at least you will eliminate yourself in one way?"

He is quoting the question that had been asked.

Now, "Q. Did you state to him as to where this test would be made?"

"A. I said anywhere, regardless of where it might be, I would take him wherever he wanted to go.

"Q. And what did he say to that?"

And then there was an objection by Mr. Petersilge, which was overruled, exception noted, and then the question was repeated.

"What did he say?"

"A. He says, 'No,' he says, 'I'll be guided by the advice of my family and my attorneys.'"

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Now, lest there be no misunderstanding here, sure he agreed to take the test, but ran out and never did take it. Is that the conduct of an innocent man? I don't know whether it is, but it seems to me if a man's wife is killed, and even if he is hurt, and if he was innocent, and he was asked to say or do anything, he would have all but broken his neck to say anything that would help and to do anything that would help.

He might have even broken his neck, if that was necessary. That's how an innocent man would act. That's my reaction. You can judge for yourselves what your reaction would be.

Schottke, a Cleveland Police officer, out there by invitation, not officially on the job at all, was the first one to point the finger at Dr. Sam. And from then on he is a villain. ~~Why~~ that fellow isn't going to examine him anymore. He can only be examined with lawyers around, by friendly police officers.

Well, that would be a nice way to conduct examinations of murders, of suspects -- the suspect tell the officer and the public authorities who should examine him and under

what conditions.

Desperately, the Cleveland Police tried to interview him upstairs. Mr. Mahon will probably touch on that more thoroughly than I can. Sure, they talked to him repeatedly and repeatedly, and sure, he gave the same vague statements that he gave you here and continued to give that. Is that any information?

When you tell how you evaluate a thing, how you imagine a thing, how you suspect a thing, how you thought it might be but you are not sure, is that giving you any information at all? And that's a hundred per cent of what he told. He told nothing that was precise, nothing that you could put your finger on, all in this fantastic vague way that nobody knew what he was talking about or what he meant. It could mean anything and everything.

Is that giving you information? And if he sticks to that vagueness and uncertainty and fantasm, and all that sort of thing, continuously, is that giving the same information all the time to the police? It's nothing of the sort. It's giving them nothing to begin with and it's giving them nothing on the second day, the third day,

it's giving them nothing four months, five months later. They got nothing from him to the very end. It's nothing as far as information is concerned. That's been his conduct right straight through.

The physician, Dr. Foster, being up there -- do you remember him? He is a fellow who was almost as vague as Dr. Sam has been about who left and when. He didn't even see Chip being taken out, although the testimony is uncontradicted that at the time Steve left with Sam, Dorothy left with Chip. He doesn't know anything about that.

And he had been told that Marilyn had been killed, and this young intern, even though he knew that, says -- you remember -- he went upstairs, lifted up the sheet to take a good look. Do you remember that?

And I asked him, "Didn't you believe Dr. Richard when he told you that Marilyn was dead?"

And he said, "Well, relatives get confused."

Is there any doubt in your mind that he knew that Marilyn was dead?

And there is another doctor who testified that he heard about it, and said he went out to

the hospital and asked for Steve, and then he went out there. Now, what he says Dr. Gerber said, you can rely only upon his statement and nobody else's.

Now, if he went out there after consulting Dr. Steve at the hospital, although he denies it, isn't it plain that Dr. Steve sent him out there and said, "Go out there and see what you can see" and that they have consulted since?

Is there any doubt in your minds that in all these weeks and months Dr. Sam, Dr. Steve, Dr. Richard, Mr. Petersilge, Mr. Corrigan have been consulting one another?

Mr. Corrigan says, "Why, I didn't tell him what to say."

Well, let's not be naive about this thing. Of course, he didn't tell him what to say, but he is a good criminal lawyer and he was called into the case for a purpose, and he has been with it ever since. And good lawyers consult their clients, consult their witnesses from time to time. So let's not be naive about this thing.

He mentioned something about he hasn't been paid yet. Well, we are not interested in his fee. If and when this case is over, he can

get whatever fee he pleases. We are not concerned with that in this case anymore than we are concerned with the trial of newspapers, with the trial of Dr. Gerber or Dr. Adelson or Dr. Hexter who, by the way, whose testimony was fully, was fully supported by the testimony of Dr. Elkins, who also said that certain reflexes in and of themselves don't mean anything. And even Mr. Corrigan had to repeat that statement today, although he tried to use a mop on the doctor when he was here testifying some weeks ago.

Mr. Corrigan has said many things, Mr. Garmone and Mr. Petersilge. I won't even try to start to answer that. Mr. Mahon, who will follow me, will close.

We know that people are frail, sin. No one is perfect. We, least of all, claim perfection. We make mistakes. But I know this -- of course, I am along in years, I have five grandchildren, and perhaps it wasn't like this with Mr. Parrino, Tom is a younger man, but as I remember my days in years gone by, if my wife had ever found out what Dr. Steve was doing, that is, if she ever found out that I did while I was married what Dr. Steve was doing --

MR. MAHON:

Dr. Sam.

MR. DANACEAU:

Dr. Sam. Excuse

me. If she ever found out that I acted to her as Dr. Sam acted to Marilyn, she would have broken my neck. We are talking not about whether a person is being tried for those indiscretions, we are talking about the background, the relationship of husband and wife as a basis for what happened, and that is all, not anything else.

No one is being tried for their indiscretions here, no one is being tried for that. We know we are human, we make mistakes, but we don't ordinarily commit murder.

Now, before I close I want to again say that this is a trial under our Constitution, a trial before a fair-minded jury and an impartial judge, and it is nothing else. It is not a contest between lawyers, who is the better orator. It is not an exhibition, it is not a show for the newspaper men. It is a trial, it is a trial of Sam Sheppard. Let's keep it that.

They make a big noise about newspapers, and yet, what do we have here? Not a trial of Dr. Sam Sheppard, but a trial of newspapers, a trial of Dr. Gerber and somebody else. I had

hoped that we'd keep all those extraneous things out of this case and have a trial in the good old American fashion, a trial of that sort. Let's keep it that.

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