

CLOSING ARGUMENT ON BEHALF OF THE STATE

MR. MAHON: If the Court please, gentlemen of the defense, I would at this time, if your Honor please, like to join with other counsel in expressing my appreciation and thanks to your Honor for the fair and impartial manner in which you have conducted this trial. It's been heated at times, but your Honor has always kept his patience, and I deeply appreciate the courtesies and the fairness in which you have conducted this trial.

And to you, ladies and gentlemen of the jury, may I also join other counsel in expressing to you my appreciation for your courtesies and services in this case. I realize the difficulty it is for citizens to be taken from their daily walks of life and set into a court room to sit as a juror, all of the things you have to give up in order to perform that civic duty. And so I want to thank you for having served and been willing to serve in this trial of this case.

As we approach the end of this case, ladies and gentlemen, I know you have been burdened with words from not only witnesses but

from the lawyers who have been engaged in the trial of this case, the defense lawyers, and two lawyers, two prosecutors here that have already preceded me, and I know it becomes weary on a jury, and I wonder sometimes whether or not we accomplish the things which we try to accomplish in these arguments.

We attempt in our way to answer some of the things that probably are in the minds of the jurors. We have no way of knowing what is in their mind or what the thinking is of a juror, and we have to in these arguments make some attempt to, oh, guess, you might say, what might be in the minds of the jury, what explanation we can make of certain evidence, whether or not it is logical and probable that certain things happened as the evidence disclosed that they did happen.

And I think that no better example could I point out here than the other day when Mrs. Borke, something was bothering her mind about something when the defendant was on the witness stand, and she wanted to ask a question. Well, rightly or wrongly, there is no provision in the law for that to be done. Sometimes you wonder whether it wouldn't be better if it was permissible, but it's not. But that's the point I am trying

to make. You can't ask me questions and I cannot ask you questions, ladies and gentlemen, nor are you permitted to ask witnesses questions.

I wonder if sometimes we don't expect and ask too much of juries. You folks sit here and you folks are going to determine from the evidence, from the testimony of the witnesses who have testified in this case, whether or not this defendant is guilty or not guilty of this most serious charge, and you are supposed to remember everything that has been testified to by all of those witnesses, ladies and gentlemen, and it's absurd.

The lawyers sit here, why, they use up tablets in a case the length of time that this has taken. I have used two of them here myself making notes, not of all of the testimony, but notes on certain pertinent things that have been testified to, and even you'll hear the lawyers from both sides of the table at times quibble and disagree on what some witnesses have said.

And here is a trial, at the end of the ninth week, I think about seven weeks or nearly seven weeks of testimony. It took a couple of weeks to complete the jury, but about seven weeks, in round figures, of testimony in this case, and

the law expects you folks to retain in your mind, without any notes at all, all of the evidence.

Now, that is our law, and so that is what we have to work with.

But I wouldn't replace the jury system with anything else. It is fundamental in the laws of our land which guarantees to every individual who is charged with the commission of a crime, it is guaranteed to him that he has a right to a trial in an open court, public trial, before a jury of his peers. That is fundamental in our American law. God forbid that it shall ever be changed.

But I realize, and you must realize, the handicaps that even jurors have where a trial stretches out over a matter of weeks, in keeping track of all of the evidence, all of the evidence that has been introduced.

And so what are the purposes of being permitted to talk to you, ladies and gentlemen, at the conclusion of all of the evidence? It is for them to be able to go over and analyze, summarize the evidence that has been introduced, to refresh your memories as to what has been testified to in the hope, of course, that we

might be of some little assistance to you in arriving at a fair, just and impartial verdict.

And so anything that I say to you now during the course of this argument, or anything that any of these other gentlemen have said to you already, should not be considered by you in any respect as evidence in this case. You are to be guided solely and only from the evidence that came from that witness stand.

Now, you might well ask yourselves: What did we come here in the first place for? Why have we been here these many weeks listening to all of these witnesses? Well, in our complex society, ladies and gentlemen, it has become necessary for our lawmakers to enact certain laws making it a crime for those who violate the rights of other people, violate their persons, violate their properties. And we are here because this defendant is charged with the violation of one of those criminal laws, the highest one in the category of crime.

That law which our lawmakers made said that no one should unlawfully take that which only God can give, human life. That is what this defendant is charged with having done, ladies and

gentlemen, and that is what this trial is all about.

And you have heard many times throughout this trial about the presumption of innocence and reasonable doubt, and his Honor in his charge to you on the law will instruct you what those terms mean, that as a defendant is placed on trial, that he is surrounded with a presumption of innocence, which presumption is to remain with him throughout the trial until such time, if such a time ever comes in the trial of the case, that the State of Ohio has produced sufficient evidence to convince the minds of each and every one of you ladies and gentlemen of his guilt beyond a reasonable doubt.

15
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And so at the very outset of this trial, ladies and gentlemen, the burden of proof rested upon the shoulders of the State of Ohio.

Now, what has the State of Ohio produced in this case that might convince the minds of reasonable-minded men and women of the guilt of this defendant. Let us go over some of the evidence in this case, ladies and gentlemen.

Mr. Corrigan made an eloquent plea to you, told you about the grand Constitution that we have in this country, and the lack of Constitutions or Constitutions that were lost in some of the foreign lands. He castigated Dr. Gerber and Dr. Adelson. He said I went out to the scene out there on the 7th day of July for publicity, being a candidate for Judge.

Ladies and gentlemen, I was a candidate for Judge long before Marilyn Sheppard met her end. I had been nominated for that office on the 4th of May of this year. It was not because Marilyn Sheppard died that I was a candidate for Judge, but that is one of the things that Mr. Corrigan talked about.

The officers, the police officers that conducted the investigation, why, he said, "Where

is McArthur this morning? Where is McArthur this morning? He has been in this courtroom all these weeks, but where is he this morning?"

I suppose he wanted to point his finger at McArthur as an arch enemy of the defendant.

Well, I will tell you where McArthur was. He was down to the Police Academy this morning at

8:30 a.m. lecturing to a number of police lieutenants of the Cleveland Police Department, and completed that task at 11:20 this morning. That is where he was, Mr. Corrigan, and he is back here this afternoon.

And he said, "Why didn't he testify?"

Well, if Inspector would have testified, it would have been all hearsay. The Inspector didn't go out and conduct these investigations. He directed his men to go out, and they reported back to him. He was the directing head. All he knows about it is what these men told him about it, so how could he give you firsthand information on anything? He could tell you generally how the investigation was conducted, that's all he could have testified to.

Why, I suppose Mr. Corrigan was trying to impress you that McArthur was running out on this thing. No

such thing, ladies and gentlemen. No one is running out on this.

And the thing that I waited for Mr. Corrigan to tell you something about, and he never said one word about it, is what happened out there in that house on Lake Road on the morning of July 4th. Did you hear him say one word about what went on out there? Did you hear him say one word about that fake burglary setup that was out in that house on the morning of July 4th?

Why, his colleague, Mr. Petersilge, got up here in front of you yesterday and honestly told you, honestly told you, "We don't claim there was a burglary out there."

More power to him for being honest about it. Anyone who looked at that setup out there, anyone who looked at it would know that there wasn't any attempt of burglary in that house. Mr. Corrigan knows that, but he didn't say one word to you about it, did he?

Well, if there was no burglary in there, why was it necessary to fake a burglary? What was the necessity of it? Certainly if an intruder was upstairs, as is claimed by this defendant, you don't think that that man, if there was a man, taking his

story, who had just pounded the life out of a woman on her bed, is going to wait around there and go down and pull out some drawers and lay them on the floor. You don't think he is going to do that, do you?

If there wasn't a burglar, ladies and gentlemen, -- and Mr. Petersilge conceded that there wasn't -- if there wasn't a burglar, who put that wrist watch, that ring, and that key chain in that little green bag? Who put it in there? Is there any doubt but what this defendant done that? Can there be any doubt about that, ladies and gentlemen? Who else was there to do it, if there was no burglar there that morning? Those are things we cannot overlook in this case, ladies and gentlemen.

We know this -- we know this: We know that the Aherns were over at that house on the night of the 3rd and left there shortly after midnight, shortly after 12 o'clock midnight, they left the Sheppard home to go to their own. We know that definitely and positively, and we know that when they left that the door to the north, the front door was locked and the chain was on. We know that because Mrs. Ahern told us that she did that, and we know that when she left, that this defendant was lying on the couch with a jacket on,

with a T-shirt on, and with a watch on his wrist.
We know that definitely, ladies and gentlemen.

We know that as the Aherns left, Marilyn Sheppard walked to the door with them, the door on the south, the back door, as we have been calling it, and bade them goodnight as they left. We know that. We know that was shortly after 12 o'clock midnight, the early morning of July 4th.

The next thing we know of anything concerning that Sheppard home is about 6 o'clock in the morning, or shortly before six, that same morning, when Mr. and Mrs. Houk went over there in response to a telephone call, and we know that when they arrived, that there was two people living there and one dead person. I might say that when the Aherns left, that Chip was there, also. He was also there in the morning, alive, this defendant was alive, but Marilyn Sheppard was dead, brutally beaten. That is where the police start from in this case, ladies and gentlemen.

Then they get the story of this defendant that he was awakened from a sleep, his name is called by his wife, and he goes upstairs and there he sees a thing, a thing with a white top, no head, he can't see any, a white top, and he is knocked out; doesn't light a light on his way up; doesn't light a light

upstairs; and when he comes to he knows something has happened to Marilyn, and he touches her and he feels she is gone, and he still doesn't light a light, and then he said he went to his son's room and satisfied himself that he was all right, and then heard a noise downstairs and he went downstairs, didn't make any effort to summon help, which he could readily have done from the upstairs, the telephone up there. Didn't cry out. Made no effort to do anything, and went downstairs when he heard the noise, and then he saw a shape, he saw a shape then, a form, out on the -- beyond the living room door toward the lake. No light on downstairs, and he didn't put any on. He goes in pursuit of this form and follows it down to the beach.

Why, here, if you want to believe his story ladies and gentlemen, you certainly must assume that he knew or felt that that form that he was following or chasing was the form of the person who had just bludgeoned his wife to death, but he obtained no weapons of any kind. Why, he passed that fireplace that had a half a dozen irons in there, any one of which he could have picked up as he passed it, and he had to pass it in coming down the stairs. No, he just rushes after this form, lost sight of it going

down the stairs to the beach, and there down on the beach he grasped the form and was again knocked out, and then later on found himself lying on the beach wallowing with the waves, and he dragged himself up to the house.

That is his story, ladies and gentlemen. That is his story.

And then after the police get there, his brothers come, they get him down to the hospital. The police in Bay Village seek the help from the Cleveland police, and they send a couple of men out there, Schottke and Gareau, and it didn't take those gentlemen, who are experienced, it didn't take them very long to know just by viewing that scene that there was something wrong with it, something wrong with it. They knew that a burglar wasn't in there.

Why, good God, ladies and gentlemen, a burglar just doesn't do those things. If a burglar goes into someone's home, and someone discovers him there, he might strike the person to knock them out so he can make his getaway, but he certainly wouldn't stay there and pound and pound on that person with a deadly weapon. A burglar just doesn't do that. These police officers knew that a burglar just doesn't operate that way. They knew there was something phony

about it, and they are condemned here, "Oh, without any investigation they accused this defendant of having murdered his wife."

Well, they went over to see him in the morning and heard his story. They listened him out, and they went back and made further checks, and then after -- it was after they left him that first time that this bag was found down over the hill there in front of his house with the watch, and the ring, and the key chain in it, and they went back with that to the hospital for him to identify, to identify those articles, and he did identify them.

And they knew there had been no burglary, and it was on that occasion that Schottke said, "I don't care what anybody else thinks. I think you killed your wife."

And everything pointed to it, everything pointed to it. There wasn't any substantial evidence that these officers had outside of his hazy story, of this hazy form which he told them about. There wasn't anybody else in that house to do that foul act, no one. Certainly they told him -- or Schottke told him just how he felt about it, and because he did that he is condemned here, he is condemned.

Oh, understand, ladies and gentlemen, that was

not a case that was within the jurisdiction of the Cleveland Police Department. That wasn't within their jurisdiction. They had just as a courtesy been called out there to lend whatever help they could, by the officials of Bay Village. Of course, those officers, in those villages don't have the equipment or the experience to handle major matters of this kind, and this is a major matter, taking someone's life. There can be nothing more serious, and they just don't have the manpower or the knowledge or technique for handling such situations of that kind.

Cleveland had no authority. The Cleveland police had no authority to step in on their own and do anything about it, and so it dragged along, dragging along, and that is the reason that I went out there on the 7th of July. That is the reason I went out there to find out why there wasn't some action. Someone's life had been taken. We wanted some answers, some answers to some questions, because anybody who takes a human life should be punished for it as provided for by law.

Why, Mr. Rossbach, the Deputy Sheriff, fine officer, served honorably in the Cleveland Police Department for over 25 years in the detective division,

and then retired, went into business, and then was called back by the Sheriff as a deputy in the Sheriff's office -- he wasn't notified or called there by anyone for any assistance, but he read it in the newspaper on Monday morning, July 5th -- that was his information on it -- and he went over there. He went over there to be of whatever assistance he could be, and where did he go after looking over the scene? Where did he head for? He went down to that hospital to talk to Sam Sheppard, that is where he went, and he got in the room there and was talking to him, and then what did he get up against? Why, Mr. Corrigan, Mr. Petersilge and Steve came in there and told him he couldn't talk to him, couldn't talk to him, said he wasn't in any condition to be talked to.

MR. CORRIGAN: I except to that.

MR. MAHON: Well, that is the evidence in this case.

MR. CORRIGAN: Schottke gave the description --

MR. MAHON: I am talking about Rossbach.

MR. CORRIGAN: I am talking about Rossbach, too. Schottke was there. I except to the statement.

MR. MAHON: You heard the testimony, ladies and gentlemen. You heard it. It just bears out what I told you a little while ago, that even lawyers disagree on what has been testified to.

Rossbach could not talk to him.

MR. CORRIGAN: I except.

MR. MAHON: He started to talk to him, and while he was talking to him that is when these other people came in, Corrigan and Petersilge, and I think Steve was there before that.

So Rossbach had to leave without getting any information, and he went back there on the next day, the 6th of July, and he wasn't permitted to talk to him. He went back there on the 7th of July, the day that this defendant went to the funeral, and he wasn't permitted to talk to him that day, either, and he went there on the 8th, and you have heard the witnesses testify as to what occurred out there on the 8th, on the 8th of July, when Dr. Gerber was there, and Rossbach and Schottke and Gareau, Petersilge and Corrigan and Steve; that Dr. Gerber had to threaten to serve a subpoena on this defendant to get to be able to talk to him, and then a compromise was made, a compromise, a compromise which shut out Schottke and Gareau, experienced homicide investigating officers

were shut out of that hearing, and he wanted a friendly officer in the room, a friendly officer, and they wanted Drenkhan, that young officer who testified here, an officer on the force in Bay Village, and he was called in; he was called in to sit in on the conversation then at the hospital. You heard that testimony here, ladies and gentlemen.

Does your Honor want a recess for the jury?

THE COURT: Ladies and gentlemen of the jury, we will now have a few minutes' recess at this point.

Please do not discuss this case.

(Thereupon at 2:50 o'clock p.m. a recess was taken.)

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(After recess, 3:05 o'clock, p.m.)

MR. MAHON:

Ladies and gentlemen

of the jury, let us for the moment take up the story that this defendant tells to you in this court room, how he was awakened, he lie there on the cot on the first floor hearing his wife call, "Sam, Sam," and going upstairs, encountering this thing in the room which he grappled with, and being struck and knocked out.

Now, I suppose it is fair to assume, ladies and gentlemen, that if his story is true, that the person who knocked him out is the same person who had just killed his wife, and that she was killed with some kind of an instrument. There cannot be any question about that, I don't believe. Certainly those wounds that were on that woman were not inflicted by a bare hand. Those lacerations which covered her head and forehead and on the backs of her hands were not inflicted by bare hands. They were inflicted by some kind of an instrument.

Is it fair to assume that a person who had just committed that foul act, that brutal act of beating that woman the way she was beaten, and then someone coming to her rescue, that they would

let that person with a blow of their hand? The only possible living witness, the only possible living witness to the foul act that had just been committed, the assailant lets off with just a blow of the hand, satisfied just to knock him out, let him lie there, probably step over his body and go on his way downstairs where he created so much racket. This person who had just taken the life of a human being then creates so much noise downstairs as to attract the attention of the man who, in his own words, was in such a haze he didn't hardly know what was going on, but caused him to go down after him, a man who had just killed somebody just hanging around there to be caught, I guess, if you want to believe that story.

And then he goes down to the lake, down in the direction where there is the least, the least chance of escaping from. There isn't any place to go down there but out on the water. That's the story you are asked to believe, ladies and gentlemen, by this defendant. That's his story, that's his account of this.

Why, if he would have walked up, if there was really an intruder there on that night and he

would have walked up into that bedroom after this intruder had killed his wife, he would have suffered the same fate.

No, he gets knocked out, gets hit on the neck, on the neck. Oh, there isn't any question but what he was injured, ladies and gentlemen, but he wasn't injured in that way, not the way he tells it. There's no question about him being injured.

There isn't any question, either, about what caused the death of Marilyn Sheppard. Why, you can show those photographs to a six-year old child and they can tell you what caused her death. This lady that was living, a living, breathing human being shortly after midnight, and at six o'clock in the morning she is found in that condition. Why, you don't have to be a doctor to know what caused her death.

And they bring up such technical terms as, "Oh, didn't she drown herself? Wasn't she drowned from the blood that ran down into her windpipe?"

Well, what difference does it make, ladies and gentlemen, what caused the blood to run down in her windpipe but the severe injuries that she

received with that weapon that was wielded there by that assailant?

Why, Adelson, Dr. Adelson was on that witness stand for two or three days. For what purpose? What was the reason? Just to confuse all of the issues in this case. Why was it necessary that he be on that stand that long and all of those questions asked?

As I say, a six-year old child could have told you what caused Marilyn Sheppard's death. An act of violence, wounds caused by a dangerous instrument of some type or kind.

And still, if you want to believe this defendant's story, you must say that the person, the person who swung that instrument into the flesh and crushed the bones of Marilyn Sheppard never used it on this defendant as he went upstairs there to protect her. Is that reasonable, ladies and gentlemen?

No, no one saw all of this happen. When you were impanelled as jurors in this case, ladies and gentlemen, you were told that there would be circumstantial evidence in this case, and you said you had no prejudices against that type of evidence but that you would give reasonable, probable

interpretations of proven facts, of proven facts in this case, ladies and gentlemen.

Do you think there was an intruder in that bedroom? Or was it this defendant in that bedroom? Oh, they say there's no motive, no motive for doing this at all, there isn't any motive; the State hasn't proven any motive.

His Honor, Judge Blythin, will instruct you as a matter of law, ladies and gentlemen, that it is not necessary that the State prove any motive at all. We don't have to prove any motive. Motive is helpful to have sometimes in a case, it is helpful in determining issues but it is not a necessary element in this case, or any other criminal case. It is not a necessary element.

But is there motive in this case? Well, let's see the background. We have had people come in here and who tell, "Oh, yes, they seemed to get along fine and loved each other, never saw this defendant lose his temper."

We have had those people testify. I think they probably testified honestly as they saw the conditions in the open, I think they testified honestly.

But was there some trouble between this defendant and his wife? I don't think that Marilyn Sheppard was one who wanted the world to know her troubles. She kept them to herself, probably, but once in a while something would overwhelm her and she would let little things out here and there, little things like the disagreement -- not out in the open it wasn't -- but between her and her husband, the disagreement over her getting a dishwasher. Oh, yes, and when something overcame her and she told Sally Ahern -- this was in April of 1954, April of 1954, after the return from California when they talked to Sally Ahern -- Marilyn talked to Sally Ahern and told her of some disagreements with Sam and some talk of divorce. Here and there you get something about it.

When I questioned this defendant on the witness stand -- oh, and they say we dragged in the name of Mrs. Lossman here. Well, it's necessary, ladies and gentlemen, that you get the entire background. This man is built up to you with these witnesses, who don't know -- and I say they speak honestly, I think -- who don't know what's going on. I'm sure that none of those folks knew what was going on with this defendant and some of these

women. But his wife knew about it, his wife knew about it.

His wife was present on that boat ride to Put-in-Bay when he and Mrs. Lossman went away, were gone for a couple of hours, and Mrs. Lossman's husband slapped his wife's face when she returned. Marilyn was there, she knew that.

Following that there was talk between Marilyn and Sam that they should give up their associations with the Lossmans. And don't you think, ladies and gentlemen, that it wasn't Marilyn who insisted upon that. She knew the danger that was there. She didn't go out and spread it to the public, but read in between the lines here, ladies and gentlemen.

And they talked that matter over. This defendant, after some reluctance, admitted that it wasn't all patient and doctor with Mrs. Lossman, meeting up in parking lot and dragging her down into the Metropolitan valley. She kissed him -- read in between the lines on all of that. And Marilyn knew about that association, too, ladies and gentlemen, because as I said before, there had been talk, there had been talk between her and Sam about that situation and an agreement to give up

the Lossmans as friends and not go out on social affairs with them.

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And then we have this Susan Hayes. Oh, Mr. Corrigan said this morning, he didn't want to tell in front of 500 people out there of his relationship with Sue Hayes, he is too much of a gentleman to do that. Why, of course, he said, he lied.

Ladies and gentlemen, when you raise your hand to your God and swear that you will tell the truth, to me, at least, that means something. It means to tell the truth regardless of who it might hurt.

"He didn't want to do that in front of 500 people out there at the inquest, and so he lied about it."

Well, when he was talking to a couple of officers on the 10th day of July before any inquest was had, he told them also -- there wasn't 500 people, but only a couple of officers present -- he told them also that he had no affair with Susan Hayes.

And this is an exhibit in this case, and this is a written statement that he made, ladies and gentlemen, to the officers up in the Sheriff's office here on July 10th, 1954, and on page 6 of this statement, the question:

"Did you ever have an affair with Sue Hayes?"

"I wouldn't call it an affair, but we have been good friends for sometime, which was known to my wife."

That is his answer there, and so he lied about that other places when he wasn't under oath, too, and it wasn't until Sue Hayes, until Sue Hayes told about it that he admitted it, that is when he first admitted it, ladies and gentlemen.

If he would lie about that to save his reputation, ladies and gentlemen, if an oath didn't mean any more to him than that, do you think he might lie in this courtroom from that witness stand in testifying here when his life is at stake? Would an oath be anything to him with those kind of stakes, ladies and gentlemen? And that is the position he is in in this trial.

You have a right, and his Honor will tell you, ladies and gentlemen, that you have a right in considering the credibility that you will give to the testimony of any witness who has testified here, you have a right to consider all of their background and apply any test that you apply in your private lives when you are trying to determine whether someone is telling you the truth or not. You have a right to determine and to take into consideration whether or not the things that they are telling you is reasonable and probable, whether things happened the way they say this

happened. You have that right, ladies and gentlemen, because, after all, it is part of your job to determine who is telling the truth in this case. When you determine who is telling the truth, ladies and gentlemen, then you will know what the facts are in this case, then you will be able to say whether or not this defendant is guilty or not guilty of this horrible murder.

Now, let's take this defendant's story a little further. He said he ran -- or after he heard this noise downstairs he went down after it -- he didn't say he ran -- he went downstairs after it, and saw this form, and he progressed down the stairs after this form and tackled it on the beach.

And you will recall that I asked him, when he was on that witness stand, "Didn't you jump off of that platform down on the beach?"

That is the platform which stands about eight or nine feet above the beach where the bath house is, stands some eight or nine feet above the beach.

"Didn't you jump from there?"

And he said, no, he did not, and the reason I asked him that, ladies and gentlemen, is because Detective Schottke testified here that in his first conversation with him on the morning of July the 4th,

down in the hospital, about 11 o'clock in the morning, after Schottke had been at the house, made some preliminary investigation, and then went to the hospital to get some information to help him in conducting the investigation, and he talked to this defendant there, and what did the defendant tell him there?

He said, "I ran down the steps, and I don't know whether I jumped over the rail or ran down the steps."

That is what Schottke testified to, and that is what prompted me to ask this defendant on the witness stand, and he said no. Now, that was something he said on the 4th of July.

Oh, you remember when Schottke was on the witness stand, and they said, "Did you make a report of all this?"

And he said, "Yes, over in the police station."

"Get it over here."

You remember that hassle that was had around here, and then the next morning Schottke brought it over, and it was put in the evidence, and it is an exhibit in this case.

MR. CORRIGAN:

Only part of it, sir.

The rest of the report was never brought in here.

MR. MAHON: State's Exhibit No. 49.
Here it is, right here.

MR. CORRIGAN: Part of Schottke's
report.

MR. MAHON: This is what is in the
evidence here.

MR. CORRIGAN: True.

MR. MAHON: And ~~this~~ includes the
conversation that he had with him on the morning of
July 4th.

MR. CORRIGAN: Where is the rest of
Schottke's report?

MR. DANACEAU: We object to this
interruption, if the Court please.

THE COURT: Please, let Mr. Mahon
go ahead.

MR. MAHON: And this starts out,
ladies and gentlemen -- the officer is not altogether
dependent upon his memory at this late date, but this
report he made out on July 7th, three days after this
conversation, and he starts out by saying:

"The following is the list of questions asked
Dr. Sam Sheppard on the first time we questioned him on
July 4, 1954, and he tells of chasing the man. When he

regained consciousness he heard some noise downstairs, and ran downstairs and seen a form going out the door leading to the porch. He ran after this form, and chased him down the stairs, and when he got to the boat house landing, he doesn't remember if he jumped over the railing or if he ran down the steps to the beach."

That is what he told Schottke on the morning of July 4th, and I say to you, ladies and gentlemen, in my humble opinion, that is where he got the injuries that he sustained, by jumping off of that platform, jumping over on that beach, not in the pursuit of a shadow, or a phantom or a form, but pursued by his own conscience as he ran away from the foul act that he had just committed, ran down there maybe with the thought in mind of ending it for himself in the waters of Lake Erie, and the cold water changed his mind.

And then he came back upstairs, and then he saw what he was in, realized the seriousness of what confronted him, and that is when this fake burglary was set up right then, ladies and gentlemen, to deceive anybody who might investigate. That is when it was set up, and that is when whatever instrument that had been used was taken from that house, and that T-shirt that had been worn was taken and disposed of. Where,

we don't know, nor what kind of an instrument, we don't know, but, ladies and gentlemen, you will have with you in your jury room as a part of the evidence in this case this pillow, this pillow. Examine it.

If that marking didn't come from some kind of an instrument lying on that pillow, then I am greatly mistaken. Look at it when you get it in your jury room. Just examine that, ladies and gentlemen.

Oh, Mr. Corrigan says, "Well, that is from the pillow folding."

Well, you can take a couple of pieces of paper and fold them up together but you can't take a pillow and fold it up that way. You can't fold that together in the same manner you could two pieces of paper, ladies and gentlemen. You might put a blot on there -- you can fold them up together right tight. Can you fold that pillow that way so they are up against there tight? Give that some consideration, and if you do, ladies and gentlemen, what conclusion do you have to draw? What conclusion do you have to draw? If that was an instrument or a weapon of some kind that was lying on that pillow, then it must have been lying there long enough for the blood to dry while it was lying there, or it wouldn't leave that marking, and isn't it reasonable to assume that when this defendant

came up from the beach, he had been in the water, sure, his trousers were wet, that that is when that instrument was removed, the blood had dried and left that telltale mark.

Now, ladies and gentlemen, that is the blood of Marilyn Sheppard that is on that pillow, and you will have this exhibit with you, State's Exhibit No. 10. You will have this exhibit with you in your jury room to look at Marilyn Sheppard lying there in her blood, in the blood around her. You will notice that that pillow -- there is no connection, there is no connection from the blood from her body down to that pillow. Just look at that photograph. No connection. So whatever blood that is on that pillow was carried from her head to the pillow, and undoubtedly on the instrument that was used to bludgeon her to death.

Examine those, ladies and gentlemen, when you retire to your jury room, to consider this evidence.

And that is not all, that is not all, ladies and gentlemen. Marilyn Sheppard's watch, her wrist watch was found down in the den on the floor down there, down at a location where this green bag came from, down there where these pins and tools that had been taken out of that bag. Her watch was there. There was blood on the band of that watch. There was blood on

it, and you will have it with you, ladies and gentlemen, in your jury room as an exhibit in this case, State's Exhibit No. 45, which is a photograph of the hand and wrist of Marilyn Sheppard, and you will observe the blood splotches on that wrist, and you will recall the testimony concerning that, that that dried blood on that wrist bore the impression of the band on the wrist watch of Marilyn Sheppard, the same impressions were left on her wrist in that dried blood, and there was blood stains on the watch itself, that is, on the band of the watch.

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Now, what does that mean, ladies and gentlemen? What does that mean? It means that after Marilyn Sheppard was killed, that that watch remained on her, on her wrist. It remained there until the blood dried before it was taken off, because if it wasn't, it wouldn't have left that pattern of that bracelet or band of that wristwatch.

And isn't that exactly the same thing that happened to whatever was placed on that pillow? It was there long enough for the blood to dry before it was lifted. And weren't those things -- oh, in order to carry out this burglary, this fake burglary set-up, well, they thought it would be a good thing to take that watch off of Marilyn, so the burglar was going to take that away as part of his loot, and that he then left it downstairs on the floor.

She had rings on, too, gold rings, a diamond in one of them. They were still on her.

Why, this house was full of phantoms that night, I think, ladies and gentlemen, the phantom burglar, the phantom killer, and then they charge this defendant with the murder. The phantoms did all that, ladies and gentlemen.

Oh, and they make much about the fact here, ladies and gentlemen, "No, she didn't, Marilyn didn't receive 35 blows. No, she didn't receive that many."

I think something was mentioned, "Oh, she didn't get more than six or seven."

My God, one was too many, one was too many. They are willing to settle for six or seven. We say 35. There are 35 wounds.

Oh, they say, "Well, there's not that many blows, though, not that many blows, because this probably was a multi-bladed instrument of some kind that inflicted two or three wounds at one time, and so it wasn't 35, it was only six or seven blows that she received."

Only? Only six or seven?

Oh, well, the doctor says she had a broken nose. Why, there is no evidence of a mark there even. She had a little scratch on the nose, Mr. Corrigan says, but he says: Isn't it reasonable to think that somebody put their hand over her mouth and broke her nose with their fingers? That's the way they are explaining a broken nose.

Well, isn't it more reasonable, ladies and gentlemen, after looking at these pictures of

the back of the hands of Marilyn, the back of the hands of Marilyn, isn't it more reasonable, ladies and gentlemen, to believe that as her life was being beaten out of her and the blows were raining down on her, that she put her hands up to protect her from those blows, and that one of those that hit her hand was the force that her nose was broken right through the fingers, without leaving its mark on the nose but leaving the mark on the back of her hands.

Look at them. Look at the blows that were rained upon the hands. How do you think they got on there? Isn't it an instinct, where you are being struck in the face, to throw your hands up for protection? It's a natural instinct which will happen every time.

And isn't it reasonable to believe that that is what happened to Marilyn when she got her nose broke, and isn't it reasonable to believe that that's where her hands were when those teeth were broken, also?

Oh, they say that she probably bit the finger, bit the finger of this intruder that came in there, and in biting that finger, that's the

way that these teeth were chipped. That's the story they want you to believe, ladies and gentlemen.

Oh, and then the conclusion: "And Sam hasn't got a bitten finger and, therefore, he is not the man."

That's the final answer they want you to draw, the final conclusion they want you to draw from that, ladies and gentlemen.

I don't think, ladies and gentlemen, that you are going to be deceived by that. I think you are going to analyze all of this evidence, approach it all with an open mind and determine this case on the facts.

Now, something was said to you here --

(Discussion between Mr. Parrino and Mr. Mahon.)

MR. MAHON: Yes. I was just reminded, and before I forget it, ladies and gentlemen, I intended to say something about it, about a T-shirt.

There was a T-shirt found tied up with a wire or caught in a wire or something on a pier that was on the Schuele property there. It's in the evidence here, you will have it, and

you will observe the size of it as 42-44. And you remember the evidence, that the shirts of this defendant were 38-40.

They don't claim, they don't claim outright that that T-shirt, that 40-42 size was this defendant's.

MR. PARRINO: 42-44.

MR. MAHON: 42-44. Pardon me. They don't claim that.

But the defendant, oh, it could have been. It could have been his T-shirt, it could have been, trying to muddle the waters on that score, ladies and gentlemen, grasping to confuse you on that issue. Don't be fooled by that, ladies and gentlemen.

Now, there was something said about there being no premeditation here. Well, I am sure that his Honor will instruct you on the law that should guide you in arriving at your decision in this case.

This defendant is charged with the crime of murder in the first degree, and he is charged specifically in this indictment in that he unlawfully, purposely and of deliberate and premeditated malice killed Marilyn Sheppard.

Now, it is necessary for the State to prove in this case, ladies and gentlemen, in order to prove a first-degree murder case, to prove that there was an unlawful crime, a purposeful killing and a deliberate and premeditated malicious killing in order to prove first-degree murder.

We must prove that, all of those elements, beyond a reasonable doubt. And the Court will instruct you, I am sure, in this case that if we fail to prove all of those elements, if we fail to prove all of those elements, that then you should consider the evidence to determine whether or not we have proven any, and if so, how many?

And if we have proven beyond a reasonable doubt that there was an unlawful and purposeful killing, without any premeditation and malice, then it would be second-degree murder. In other words, to be second degree, you have to drop off the premeditation and malice.

And then I am sure the Court will charge you further that if we do not prove first-degree murder and second-degree murder, then you should consider whether or not we have proven beyond a

reasonable doubt manslaughter, and the element of manslaughter would be the unlawful killing of one, of a person, the unlawful killing.

Now, let's analyze that the other way and let's see whether or not we have offered proof here convincing beyond a reasonable doubt to prove these elements,

Well, on the first, the only element that must be proven for manslaughter, an unlawful killing; unlawful killing, that's all we have to prove.

What is an unlawful killing? The Court will tell you what it is, he will tell you what an unlawful killing is. Why, you take someone's life, maybe in the heat of passion, not intending to kill him, not with premeditation, but you might be in a fight with him and in the heat of passion kill someone. That's an unlawful killing, that's manslaughter.

Now, to build that up to second degree, you must have the same element you had in manslaughter, you must prove that, an unlawful killing, and you add another element: Purposeful. That is, you intend to kill. Purpose and intent are synonymous. There must be a purposeful killing. Unlawful,

purposeful, that's second degree.

Well, now, let's analyze this in this case. Was there an unlawful killing of Marilyn? Was there an unlawful killing of her? Certainly, she wasn't the aggressor in any way. She's there in her bed clothes and she is bludgeoned to death. It certainly is unlawful, whoever killed her. Whoever killed her committed an unlawful act. That was an unlawful killing.

And the next step: Was the killing purposefully, intentionally? Well, what evidence have we on that? The Court will tell you that purpose and intent, that's a frame of mind, ladies and gentlemen, that's something that is locked up in a mind. You can't see it and the only way you can determine what intent is is by the acts of a person, by their acts, by what they do and what they say, what kind of instrument they use. Is it an instrument that might cause death?

Now, let's fit it into the facts in this case. Was Marilyn Sheppard's death a purposeful act? Well, we know that a deadly instrument was used. We haven't got it, but we know that. The effects of it are left, were left in her head. We know that a deadly instrument was used. And

we know that it wasn't an accidental thing, that someone hit her by accident, we know that. We know by the number of blows that were rained on her.

Oh, they say five or six, not 35, but five or six even, blows of a deadly weapon, the kind to inflict those kind of injuries, can anyone say that there wasn't purpose and intent to take her life? Can anyone say that that element hasn't been proven, whoever did it?

And then let's step it up to the next step: First-degree murder. And to prove that, ladies and gentlemen, we must prove the element that's in manslaughter, an unlawful killing; we must prove the elements that are in second-degree murder, that would be the unlawful and purposeful killing. To make first degree, you must go up one step further and in addition to those two, in addition to the unlawful and the purposeful killing, you must prove "and of deliberate and premeditated malice."

Now, we must prove that in addition to the other two to make it first-degree murder.

Now, what have we here on that score, ladies and gentlemen, what have we on that score

to prove deliberate and premeditated malice in this case? Well, we do know, we do know that an instrument was used to take the life of Marilyn Sheppard. We do know that, whoever did it. Whoever did it used an instrument, and if they used an instrument, ladies and gentlemen, a deadly instrument of that kind, they must have carried it into the room there, they must have necessarily carried it into the room there because nothing was missing from the room and the weapon has never been found, and there was nothing missing from the room.

Now, you can ask yourselves, then, ladies and gentlemen, well, why did someone carry that kind of a weapon into that room? What for? Only to do the thing that was done, to take the life of Marilyn Sheppard. That is why it was carried in, and if it was carried in, then there was premeditation, and it was a deliberate, malicious act, ladies and gentlemen. There isn't any question about that. I don't think there is any question about the degree of crime that has been committed here, ladies and gentlemen.

It seems to me that the serious thing that you have to determine in this case is whether or not this defendant is the man that killed Marilyn Sheppard. That is the serious thing that you have to determine in this case.

Consider his story, the truthfulness of this story, the probability of things happening the way that he said they happened, the reasonableness or the unreasonableness of the story that he asks for you to believe, ladies and gentlemen, and then think also, ladies and gentlemen, of some of these cold facts, cold facts that cannot be disputed by words, cannot be disputed.

If someone had committed the act, as he said they committed it, who went back in that room and took that weapon off of that pillow? Who did that? Who took that wrist watch off of Marilyn Sheppard's wrist after the blood dried? Who did that?

Do you think that a killer came back in, after this defendant chased him down to the beach, came back up and took the instrument out and took the wrist watch off? Do you think this intruder did that, ladies and gentlemen? That is just not reasonable. How can you reason that as being the fact in this case, ladies and gentlemen? Just no rhyme or reason to it.

And if it was an intruder, ladies and gentlemen, who had killed Marilyn Sheppard, if it was an intruder, why in God's name did they set up this fake burglary? Why? Why do they want to waste all the time and the likelihood of being caught there? Do you think that is reasonable that a person would do that, would stay around there and pull out drawers and spill a couple of papers on the floor?

MR. CORRIGAN: I except to the statement of the fake burglary. There is no evidence on that point at all produced by the State.

THE COURT: This is merely argument.

MR. CORRIGAN: Note my exceptions to the

statement of the prosecutor.

MR. MAHON: Do you think, ladies and gentlemen, that an intruder would come back in and do that? I don't, ladies and gentlemen.

When you analyze all of this evidence down, and I want you to be fair in this case, ladies and gentlemen, I want you to give this defendant the benefit of every doubt to which he is entitled, and I will ask you, on the other hand, to be just as fair to the decent, law-abiding citizens of this community as I want you to be to this defendant. That is all I ask you to do.

Analyze all of this evidence with an impartial, mind, ladies and gentlemen, without any prejudice, without any bias; yes, ladies and gentlemen, and without any sympathy for anyone in this case.

My job is about done here, ladies and gentlemen. The serious part of your job is just about to commence, and you do have a serious job, ladies and gentlemen, I realize that. We all realize that. The most serious job in this entire trial rests upon your shoulders, ladies and gentlemen.

You sit here in judgment of a fellow-man, and particularly in a case of this kind, ladies and gentlemen,

your job is doubly serious, because, ladies and gentlemen, at your hands might rest the life -- does rest the life of this defendant, ladies and gentlemen, and so you do have a serious job.

I want you to be open-minded, give credit to the testimony of those witnesses whom you think are entitled to credit, and disregard that testimony of witnesses who you feel are not telling you the truth about the facts in this case. Analyze thoroughly all of the evidence, ladies and gentlemen, so that when your verdict is finally agreed upon, it will be a verdict that responds to the evidence and to the law, so that full and complete justice shall be done, justice for this defendant, and equal justice for the people of this community.

May I thank you.

THE COURT: Ladies and gentlemen of the jury, we will now be adjourned until, shall we say, nine o'clock tomorrow morning. I would like to get a fairly early start, but if we are not all here at nine o'clock we will not, of course, until we all are here, but as soon as possible after nine o'clock, I would like to have the court convene.

In the meantime, will you be very careful --