

Thereupon ELIZABETH A. BORKE, being first
duly sworn, was examined and testified as follows:

EXAMINATION OF PROS. JUROR ELIZABETH A. BORKE

By the Court:

Q What is your name, please?

A Elizabeth Borke. ✓

Q Where do you live?

A 7010 Pearl Road.

Q How long have you lived there?

A Four and a half years.

Q Where did you live before that?

A 2929 East Boulevard.

Q Are you married?

A Yes, sir.

Q What is your husband's name, please?

A John Borke.

Q What is his profession or occupation?

A He is a methods engineer for Republic Steel.

Q And how long has he been so employed, roughly?

A 16 years.

Q Have you a family?

A Yes, sir.

Q How many?

A Two, boy and a girl.

Q And how old are they?

A I have a boy 14 and a girl 16.

Q And are you employed at all other than as a housewife?

A No, sir.

Q Do you know the County prosecuting attorney, Mr. Cullitan, or any member of his staff?

A No, sir.

Q Are there any members of your immediate family who are members of a police force or any law-enforcing agency anywhere?

A No, sir.

Q Have you ever served on a jury before?

A No, sir.

Q Nor on a Grand Jury?

A No, sir.

Q Have you heard of this case before, or read of it, this case of the State of Ohio against Sam H. Sheppard?

A No.

Q Have you read any newspaper articles or any other material about the case?

A No, sir.

Q Have you discussed the case with anyone?

A No, sir.

Q But you do know -- you were here yesterday, were you not?

A Yes, sir.

Q When the Court stated to the panel what the case was all about?

A Yes, sir.

Q Do you know any of the Sheppard family?

A No, sir.

Q Do you know any of the people who were mentioned here by name yesterday and who were introduced here?

A No, sir.

Q Have you or any members of your family been the subjects of violence at the hands of another at any time?

A No, sir.

Q And do you have any religious or conscientious objection to capital punishment? ✓

MR. CORRIGAN: Object to that.

THE COURT: Objection overruled.

A No.

Q Do you know of any reason at all why you could not sit here as a juror and listen to the evidence and the instructions of the Court and be guided entirely by those, and be absolutely fair and impartial?

A I don't know of no reason, no.

THE COURT: Mr. Mahon.

EXAMINATION OF PROS. JUROR ELIZABETH A. BORKE

By Mr. Mahon:

Q Mrs. Borke, how long has your husband been employed by the

Republic Steel?

A 16 years.

Q And what kind of work does he do?

A He is a methods engineer.

Q And how long has he been on that particular job?

A Definitely, I can't say.

Q How long have you resided in this County?

A About 10 years.

THE COURT: Are you asking about
her or her husband?

MR. MAHON: Her.

PROS. JUROR BORKE: About 10 years.

Q And where did you live before that?

A Youngstown, Ohio.

Q Are you a native of Youngstown?

A No, sir.

Q Where were you born?

A Wappingers Falls, New York. It's there. It's there. It's
on the map.

MR. CORRIGAN: It is on the map?

PROS. JUROR BORKE: Yes. It is listed.

Q You say that you have not read anything about this matter?

A No.

Q Have you ever heard about it?

A Yes. I have heard of it on the radio, yes, but I usually

shut it off.

Q This crime that we are now trying this defendant here is alleged to have occurred on July 4th of this year in the City of Bay Village. Can you tell us when you first heard anything about it?

A Well, I believe it was Sunday night. I was working out in the garden all day, and when I came in, my youngster asked me if I heard it, and I said no.

Q Sunday night?

A Yes.

Q What Sunday was that?

A Well, it was the 4th of July. Was it on a Sunday or Monday? I don't know which it was. It was on a Sunday, that's all I know.

Q 4th of July was on a Sunday.

A Was it on a Sunday? Then it was Sunday night, then.

Q That is the Sunday you are referring to?

A That's it.

Q And you say your son said something to you about it?

A My youngster asked me if I heard it, and I said, no, I didn't.

Q Well, following that did you read anything in the newspapers about it?

A No, I did not.

Q I believe you did say that you heard something on the radio.

A Yes, but when it was on, I switched it off.

Q Was there any particular reason for that?

A I just wasn't interested.

Q Did you ever discuss the matter with anyone?

A No.

Q Were you ever present at any time when there was some discussion about it --

A No --

Q -- between other people?

A No.

Q Do you get the newspapers at your home?

A Yes, sir.

Q You say you did not read anything about it?

A No. I read the Press. That's all we get. ✓

Q How?

A We get the Press, that's all, and I didn't read it.

Q Is there any particular reason why you did not read it?

A No, there isn't. I'm just not interested in something like that.

Q Well, have you any opinion at this time as to the guilt or innocence of this defendant?

A I have none.

Q You feel that you could enter into this case as a juror with a free, open mind, and be guided entirely in any decision you arrive at from the evidence you received here in this courtroom?

A Yes.

Q Now, you have stated that you were not opposed to capital punishment.

A That's right.

Q You understand, do you not, that the laws of Ohio provide that one who is found guilty of the charge of murder in the first degree, that unless the jury recommends mercy, that the penalty is death in the electric chair? You understand that?

A Yes, sir.

Q If you were selected as a juror in this case, and you and the other members of the jury were convinced of the guilt of this defendant beyond a reasonable doubt, could you join in a verdict in which the penalty would be death?

MR. CORRIGAN: Object.

THE COURT: She may answer.

A I don't see why not.

Q And I am sure that you realize the seriousness and the importance of a matter of this kind?

A Yes, sir.

Q And you realize that as a juror you might be called upon to render a verdict which will take a human life?

A Yes, sir.

Q And as a juror, are you willing to assume that responsibility?

A Yes, sir.

Q I believe you have stated that you have never been a juror

in any other case?

A That's right, sir.

Q Have you ever been a witness in any case?

A No, sir.

Q In a case of this kind, you might say it might be divided into two parts: That part dealing with the facts in the case, and that part which deals with the law that governs a case of this kind.

Now, as to the side dealing with the facts, in that respect the jury is supreme in determining what the facts are, and the jury determines what the facts are from the evidence that they get from the witnesses who take that witness stand and testify.

Now, no one can interfere with the jury in determining the facts. You understand that?

A Yes, sir.

Q The other part of this case dealing with the law, in that respect the Judge presiding at the trial, in this instance his Honor Judge Blythin will instruct the jury on the rules of law that govern a case of this kind, and it is the duty of the jury to follow the Judge's instructions right to the letter.

Do you feel that you can do that?

A Yes, sir.

Q Do I make myself clear? I don't want to confuse you. The

jury determines what the facts are, the jury is the sole judge of that, but as to the law, principles of law that are involved in a case of this kind, the Judge is supreme in determining what that law is, and it is the duty of the jury to follow his instructions. You understand that?

A Yes, sir.

Q And you would be willing as a juror to follow the Judge's instructions?

A Yes, sir.

Q And there are times when jurors have their own ideas or thoughts as to what the law is or what the law ought to be. Sometimes they are right and sometimes they are not right about it.

Now, if that might by chance happen in your case and you felt that the Judge was wrong about the law, and you had your own ideas as to what the law was, could you set your own opinions aside and follow the Judge's instructions as to the law?

A Yes.

Q You could do that?

A Yes.

Q In evidence there is what is known as direct evidence and circumstantial evidence. Have you any prejudice concerning circumstantial evidence?

A No.

Q If the Court were to tell you that circumstantial evidence is proper evidence and you have a right to consider it, would you follow his instructions in that respect?

A That's right.

Q And you would give whatever --

THE COURT: Let's make sure, Mr. Mahon, that she understands what is meant by circumstantial evidence to some degree.

Do you know what circumstantial evidence means?

PROS. JUROR BORKE: Yes.

THE COURT: All right. Good.

Q You don't know what direct evidence means?

A Well, that's --

Q Someone tells you that they heard certain things or they saw certain things, that is direct evidence. Circumstantial evidence is where certain matters are described to you and from that you can draw reasonable inferences. You understand that?

A Yes, sir.

Q You would be willing to follow and would follow the Judge's instructions as to evidence, both circumstantial and direct, would you not?

A Yes.

Q And apply whatever principles of law his Honor, Judge Blythin,

will instruct you on in that respect?

A That's right.

Q It is the principle of law in this State that one who has been charged with the commission of crime, when that individual enters a plea of not guilty, as has happened in this case, that the law presumes that that person is innocent until there has been sufficient evidence produced by the State to convince the minds of the jury of his guilt by a degree of proof known as beyond a reasonable doubt. And so, at the very outset of the trial, this particular trial, the law presumes that the defendant is innocent, and his Honor, Judge Blythin, I am sure will instruct you that that is the law of Ohio.

Will you follow the Judge's instructions in that respect and afford to this defendant at this time the presumption of innocence?

A Yes.

Q You understand me?

A Yes, I do.

Q You feel that you can do that?

A Yes.

Q And you will not join in a verdict of guilty unless and until you are satisfied that the State has produced evidence which convinces your mind beyond a reasonable doubt of his guilt?

A That's right.

Q Is that correct?

A That's right.

Q You understand that in asking these questions that our only purpose is to get a jury that can be fair and just and impartial. We have no desire to pry into your private affairs, but it is necessary that some questions be asked at least so that we might determine whether or not a juror can be fair and impartial in the trial of a case. You understand that?

A Yes, sir.

Q I might ask you many questions, and still I might not touch upon something that is on your mind, that might in some way influence your judgment in this case, so I want to ask you this broad question, and I want you to think about it for a moment and then give us a frank answer:

I ask you to search your own mind and see if you can think of any reason at all why you could not sit here as a juror and be absolutely fair and just and impartial both to the defendant, on the one hand, and to the State of Ohio on the other.

Can you think of any reason, however slight it might be? Will you please tell us at this time?

A No, I can't think of any right now.

MR. MAHON: Thank you.

Pass for cause, your Honor.

THE COURT: Mrs. Borke, have you received any communication by telephone or by mail from anybody?

PROS. JUROR BORKE: Yes. I received one of those letters last week in the mail. ✓

THE COURT: And when, if you know, did you receive that?

PROS. JUROR BORKE: Beg pardon?

THE COURT: When did you receive it, about, if you know?

PROS. JUROR BORKE: I don't remember if it was last Wednesday or Thursday.

THE COURT: And have you got it with you?

PROS. JUROR BORKE: No, sir.

THE COURT: I hand you here two sheets and I will ask you if that is the same as that which you received?

PROS. JUROR BORKE: Yes, sir, that's it. That is a copy of it.

MR. GARMONE: May we see it?

MR. CORRIGAN: May we have it marked, your Honor?

THE COURT: I am going to have it marked.

I will ask you if that has or would have any bearing whatever on your judgment in this case?

PROS. JUROR BORKE: No.

THE COURT: And are you quite sure you would not be influenced either in favor of the defendant or against him or in any other manner by reason of having received this particular document?

PROS. JUROR BORKE: No.

THE COURT: The document will be marked Court's Exhibit A-1 and A-2, and will be received for the purpose of this inquiry only. It will not be a part of the exhibits in the case.

(Court's Exhibits A-1 and A-2, letter and envelope, were marked for identification, and received in evidence.)

THE COURT: All right, Mr. Corrigan.

EXAMINATION OF PROS. JUROR ELIZABETH A. BORKE

By Mr. Garmone:

Q Mrs. Borke, how long have you resided in Middleburg Heights?

A Four and a half years.

Q Where did you live prior to that?

A 2929 East Boulevard.

Q And did you have any other residence in or about this County of Cuyahoga before you moved to 2929 East Boulevard?

A No.

Q And how long had you lived at 2929 East Boulevard?

A About eight or nine years.

Q Now, approximately what year did you come from the town that you mentioned in New York to the city of Cleveland?

A Well, I didn't move right from Wappingers Falls. I moved from Amsterdam, New York, to Youngstown.

Q Were you married at the time you moved from Amsterdam to Youngstown?

A That's right.

Q And what year was that?

A About 1938.

Q And how long did you live in or about Youngstown, Ohio?

A Four years.

Q Would you, if you can, give me the address in Youngstown, please?

A 1217 Republic Avenue.

Q And you lived there approximately four years, is that correct?

A About that.

Q During that period that you resided in Youngstown, was Mr. Borke employed by any company there?

A Republic Steel.

Q And in what capacity?

A Engineer at Truscon.

Q Engineer --

A At Truscon.

Q I didn't get the latter part.

A Truscon.

Q And then you moved to the city of Cleveland?

A Yes, sir.

Q 2929 --

A East Boulevard.

Q When you resided at 2929 East Boulevard, am I correct in saying that Mr. Borke was employed by the Republic Steel at that time?

A That's right.

Q As a methods engineer, is that right?

A That's right.

Q Now, some of these questions may seem like I am making an effort to pry into your personal life, but I am not. It is just that the responsibility in this matter is so great that I must make sure that I can get all the information that I think is necessary in determining whether or not a person can be fair and impartial in this case. You appreciate that, do you not?

A Yes, sir.

Q Now, where did you attend school? In Watertown, New York?

A Where?

Q Where did you first attend school?

A Amsterdam, New York.

Q Where?

A St. Mary's.

Q Did you go on to high school?

A I went to first year high, that's all.

Q Did you attend any schools at all in or around Cuyahoga County?

A No, sir.

Q Were you ever employed while you resided in and around the city of Cleveland?

A Yes, I was.

Q Where were you employed at?

A Chevrolet, Parma.

Q Is that the plant that is on the West Side?

A Yes.

Q Off of Brookpark Road, I believe?

A Yes.

Q And how long were you employed at that plant?

A About 18 months.

Q And can you give me the approximate period of time?

A March, 1951, until August 17, 1952.

Q And in what capacity, may I ask?

A Punch press operator.

Q Have you had any other employment other than that?

A No, sir.

Q During the time that you have resided in Cleveland?

A No.

Q Do you have any ill-feelings or prejudice against any lawyer that may represent a defendant in a case such as this?

23 A No.

Q You feel that any person who is charged with a violation of the law is entitled to counsel, do you?

A Repeat that, please. Would you mind repeating that?

Q I say: Is it your feeling that any person who is charged with a violation of some of our laws is entitled to be represented by a lawyer?

A That's right.

Q You believe in that theory, is that right?

A Yes.

Q Now, your first attention was called to this matter by your son?

A Well, I don't remember if it is my son or my daughter. It was either one of the other.

Q And you were out in the --

A Garden.

Q Out in the garden. And this was sometime during the day of the 4th of July of this year?

A Yes, that's right.

Q Was there anything said by either your son or your daughter about it?

A No. They just said that, "Did you hear the news over the radio?" And I said, no, so --

Q Well, did they in that statement to you make reference to Sheppard at all, the name of Sheppard?

A No. We don't know Sheppards.

Q Well, I mean when either your son or your daughter came out in the yard and asked you whether you had heard the news over the radio, did they explain what news they were referring to?

A No. They just said that there was a murder committed, that's all.

Q Did you then continue on with your chores in the garden?

A Yes, sir.

Q Or did you go back in the house?

A No. I went back out in the garden.

Q You went back out in the garden?

A Out in the garden.

Q Well, had you gone into the house then after this information had been given to you that caused you to leave to go back out in the garden?

A Oh, no.

Q Did you listen to some of the broadcasts?

A (Pros. Juror Borke shakes head negatively.).

Q Pardon?

A No, sir.

Q You did not?

A No, sir.

Q Have you listened to any of the broadcasts that were given

out over the medium of radio or television regarding this case?

A No, sir.

Q You read no newspapers about it?

A Not as far as--not the Sheppard case, no.

Q No articles whatsoever?

A No, absolutely.

Q May I ask what papers you have delivered to your home?

A We have the Press.

Q Not the News of Plain Dealer?

A No, sir.

Q And there was a good deal of newspaper space afforded this matter, and this matter was headlined for a period of about 40 days in the Cleveland Press. Did you just pass those articles over without giving any consideration or thought to them?

A Just turned the page.

Q Just turned the page?

A Yes, sir.

Q Was there ever any discussion at your home at any time about this case between maybe yourself, Mr. Borke, or one of your two children, or both?

A No. My husband and I haven't discussed this case at all.

Q At no time was there any discussion?

A No.

Q Now, the time that either your daughter or son came out and informed you whether you had heard the news or not while you were working in the garden, after you went back in the house was there any discussion as to what the radio broadcast had to deal with?

A I don't remember right now, no.

Q Well, can you search your memory and see whether or not maybe there was some discussion? Was Mr. Borke home at the time?

A Yes. We were out in the garden, both of us.

Q Oh, both out in the garden?

A Both out in the garden.

Q And after you had come back did you inquire as to what one of your children had made reference to?

A No.

Q Relative to this radio broadcast?

A (Pros. Juror Borke shakes head negatively.)

Q No discussion whatsoever?

A No.

Q When did you first learn that or come in contact with the nature of the Sheppard matter?

A I didn't until I was summoned.

Q That was the first contact of any sort that you had with it?

A That's right.

Q Never talked about it?

A No.

Q Well, the Court handed you a letter that he had marked as a Court's Exhibit A-1 and A-2. Had you received this letter before or after you were summoned?

A After.

Q And about how long after you had received the summons?

A I don't know. I received the summons on the 19th, and I got that letter last week.

Q Was there any discussion regarding the letter in connection with the summons that you had received to report here as a prospective juror?

A Was there any --

Q Between yourself and Mr. Borke or any of your children?

A No.

Q Was there any discussion between yourself or any of your neighbors?

A No.

Q Now, you read your name in the paper that you were going to be called, had you not, as a juror in this matter before you received your summons?

A Yes. After four youngsters come in and told me. ✓

Q Four youngsters?

A That's right.

Q And who were they?

A The neighbor's.

24 Q And about how old were they?

A Well, I'd say one is about 14, the other two are about 16.

Q Were the other two youngsters yours?

A Why, no. My neighbor called up my son, and then he said, "Do you know that your mother has been picked for a jury?"

And my son says, "I don't know what you are talking about."

Because I was already out in the garden again, and he said, "Your mother is picked for jury."

So my son said, "What do you mean?"

"Well, she is picked for jury duty."

So then he hung up and he ran over, he came over to our house and, of course, I was coming up for supper -- my daughter was getting up supper, -- my daughter was getting up supper, and I was coming in there, then the telephone started to ring.

Q Now, then, this neighbor that you speak of, is that your immediate next door neighbor?

A No.

Q About how many houses away would that be?

A Well, it is only one house, but it is three lots.

Q So that would be the house next to yours with three lots separating your home from that home?

A No. There is a house next door, and then two lots, and there is --

Q That would be the second house from yours?

A That would be the second house.

Q And did they come over and visit with you?

A Oh, no.

Q Did they call you?

A No, sir.

Q Now, then, you said you got a good deal of telephone calls after that?

A Well, of course, it wasn't grown-ups. It was children that was doing the calling because they were more interested than I was. They were getting excited.

Q Who were some of the children that were calling?

A Well, the Leese boy called.

Q Where does he live?

A He lives, as I said, -- he is one of the boys that lives two doors from us. Well, it was one house, two lots over and, then, of course, he came over, and then the Shuler boy asked my son about it.

Q Shuler?

A Yes.

Q What is his dad's name? Is it William Shuler?

A You got me. I don't know.

Q Is his father a member of the Cleveland Police Department?

A I don't know.

Q And then who else in the neighborhood may have called you, Mrs. Borke?

A Called me, you mean?

Q I mean -- well, called your home. Let's put it that way.

A Well, I believe the Hadden girl called my youngster and asked her -- she said, "Is that your mother that's been picked?"

My girl said, "Yes."

Q Were there any express opinions made by any of those callers to either one of your two children?

A No, there wasn't.

Q As a result of any of these calls that you had, did either one of your children express any opinion one way or another to you?

A No, they have no opinion. They just wanted to have their picture taken.

Q They have no opinion, they just wanted --

A Their picture taken.

Q Their picture taken?

A That's all.

Q You say that no one whatsoever has discussed this matter with you?

A No, sir.

Q In connection with any of these calls that you received?

A No.

Q Did you have any calls last evening after you had spent the first day here in the Criminal Courts Building?

A Well, I don't know. I didn't get home until after 6 o'clock, and then after I got home I ate and went to the stable, so if there was any calls, I don't know.

Q To the stable?

A Yes, to the stable, so I don't know. There weren't any when I came home, but before, I don't know.

Q Well, did you have any calls at all?

A Not that I know of.

Q Was there any discussion between yourself and Mr. Borke about --

A No. I absolutely told him, no, I didn't want to talk about it.

Q By coincidence this young man here works at Republic Steel. Do you know one another?

A No. I have never seen him before -- till yesterday.

Q And I suppose you discussed between one another the fact that Mr. Borke works at the Republic Steel and he works at the same place?

A What do you mean, we have discussed it?

Q Did you discuss anything about meeting someone who works at the same company?

A No, because I didn't know that he worked at Republic Steel until I got home. It was in the newspapers.

Q You read it in the newspapers? ✓

A No, but my husband said -- my husband read the newspaper,

and he said to me, "Did you know that boy that is at Republic Steel?"

And I said, "No."

He said, "Did you meet him?"

And I said, "Yes, I seen him, but that's all."

Q You didn't read last night's --

A I didn't read it, but he read it. He asked me.

Q Your husband told you that --

A He works at Republic Steel.

Q That Mr. Barrish works at the Republic Steel?

A Yes.

Q Did you see your picture in the newspaper?

A After my son showed it to me, yes.

Q But you didn't read any of the articles?

A But I didn't read underneath it, no.

Q You just passed it off?

A Just let it go by.

Q You used the same system with that paper that you did throughout all the publicity and notoriety that was given this matter prior to the time that you were informed that you had been a prospective juror?

A That's right.

Q Now, was there any particular reason why, Mrs. Borke, you never read any of the articles or listened to any of the broadcasts by either radio or television?

A No. There is actually no reason. I just don't go for anything like that, so when there's murders, I just skip it.

25 Q When you say you don't go for anything like that, do you mean that you have some preconceived idea or some thought on the subject?

A Well, no. I just absolutely am not interested, so I just skip it.

Q Well, do you come to any immediate conclusion as a result of just seeing a headline that pertains to a murder and decide in your mind what ought to be done or what should be done with a situation such as that, and for that reason you don't read it?

A No.

Q You had no discussion at all with the Mister last night?

A No.

Q His curiosity wasn't aroused any about you being down here and all the photographs that were taken?

A No. He just asked me what took me so long.

Q That's all?

A Yes, that's it.

Q Evidently he wanted his supper a little sooner than he got it, is that it?

A That's right.

Q Now, John Mahon went into a subject matter about whether you knew any of the parties in the lawsuit here. Of course, you

know Mr. Mahon. He is the man that just finished examining you. You have never had any professional or social contact with him, have you?

A No.

Q This is Mr. Danaceau, another member of Mr. Cullitan's office. Do you know him?

A No.

Q Mr. Parrino is the young man that sits behind him.

A No, I don't know him.

Q I am told that there are about 20 assistants in the County Prosecutor's office. Do you know any of them at all that are associated with that office?

A No.

Q Do you know Frank T. Cullitan, the County Prosecutor?

A No.

Q Ever have any contact with him?

A No.

Q Now, this Mr. Shuler that you speak of, does he live south or north of your home, or would it be east or west?

A I don't know. I guess it would be north, wouldn't it, going towards Strongsville.

Q Are you right on Pearl Road?

A Yes.

Q That would be Route 42?

A That's right.

Q So going towards Strongsville would be in a northerly direction.

A I think it would be north. I'm not too sure.

Q About how many homes away from you does he live?

A Oh, I don't know. He must live -- I can't say exactly. I don't know how many homes. It is quite a few, I know.

Q And you don't know for certain whether he is a member of the Cleveland Police Department or not?

A I wouldn't know the man if he stood in front of me. I don't know the gentleman at all. I know his youngster, but I do not know the mother or father.

Q Have you ever seen the man?

A I seen him once two years ago when he came in the drive, and he was sitting in the car. Outside of that, if I have seen him, I don't know it was him.

Q Well, have you ever heard any of his children while they were visiting back and forth with your youngsters discuss, like a lot of children do -- they say, well, my Daddy works here or my Mommie does this? Did they ever discuss what their father did, or how he was occupied or employed or occupied his time?

A No. Freddy has never said what his father has done, and I have never asked him.

Q Now, seated at this table, also, is Inspector James McArthur. That is this gentleman here. Do you know him?

A No, sir.

Q There has been attributed to Mr. McArthur a lot of quotations in the Cleveland Press, or the paper that you have delivered to your home. Did you by chance ever, in scanning the headlines, read any of his quotations relative to the matter of the State of Ohio versus Sam Sheppard?

A No.

Q Did any members of your family read them and relate them to you?

A No.

Q You don't know this man at all?

A No, I don't.

Q And seated right next to Mr. McArthur is Sergeant Lockwood. Do you know him?

A No.

Q Do you know anybody that is associated or connected directly or indirectly with the police department of the City of Cleveland?

A No. You mean that is associated with him?

Q Yes. Connected.

A Well, I have a neighbor that is a cop, but I don't have anything to do with him.

Q Well, who is he? Shuler?

A No, no.

Q What is his name?

A Let's see. I believe it is, as I remember, Cyrus Emmett.

Q Cyrus Emmett?

A I think that's it.

Q Now, this Cyrus Emmett --

A Well, he is on the police force, but I believe he is taking care of stables. I'm not too sure now.

Q Which stables?

A The horse stables, I believe. Now, I'm not too sure.

Q Are those the stables that you made reference to a short while ago?

A Oh, no, no.

Q That you went down to?

A No.

Q Well, are you interested in horses, Mrs. Borke?

A Yes, I am.

Q And has your interest in horses ever caused you to come into contact and have a conversation with this police officer that takes care of the stables for the Cleveland Police Department?

A No, sir.

Q There has never been a conversation in relation to a subject matter that he probably is interested in and you are interested in regarding horses?

A I have lived there four and a half years, and I have never had a conversation with the man yet.

Q Well, now, is his home to the south of you, or farther north?

A Right next door.

Q That would be to the south?

THE COURT: Towards Strongsville
is south.

Q Towards Strongsville would be south, away from Strongsville
would be north. Now, is his home before you get to your home?

A Yes.

Q So that would be north of your home, is that right?

THE COURT: Towards Cleveland?

PROS. JUROR BORKE: Yes, towards Cleveland.

Q Now, has he lived there for the four and a half years that
you have occupied 7010 Pearl Road?

A He moved in a week before I did.

Q A week before you did. Then he has been there approximately
the same time?

26 A The same length of time.

Q And do you know Mrs. Emmett?

A I know her to see, that's all.

Q Never had any conversations with her?

A Absolutely not.

Q Now, what is the difference or the distance between the lot
that your home occupies and the space of the farthest
northerly end of your home to the beginning of the home that
is occupied by the Emmetts?

A You mean what the --

Q The space.

A The space?

Q Yes.

A We have eight feet on our side. I don't know how many feet they got.

Q Well, at that point, would there only be eight feet between your--

A No, there would be more than that, because you are required at least so many feet. I'm not too sure what they have, but we have eight.

Q Well, then, if they have eight, that would be 16?

A That would be 16.

Q Is your drive on that side?

A Yes, sir.

Q And you say that you never engaged or talked with these particular neighbors?

A That's right.

Q Did they call you after it had been publicized that you would be called as a prospective juror in this matter?

A No.

Q Did their children come over -- or do they have children?

A They don't have any.

Q Then you haven't discussed this matter with anyone, is that right?

A That's right.

Q Now, Mrs. Borke, Dr. Sheppard is charged here with murder in the first degree. That is a very serious charge, and if you are chosen, your responsibility will be a very great one. Up until this time, and with the questions that have been put to you by myself, Mr. Mahon and his Honor, Judge Blythin, do you feel that you can give the young man seated on the other side of the table there a fair and impartial trial?

A Yes.

Q Any question in your mind about it?

A No.

Q None whatsoever?

A (Pros. Juror Borke shakes head negatively.)

Q Now, the Court will advise you as a matter of law that though there has been an indictment returned, and that is an instrument in this form, that under no circumstances whatsoever are you to consider this as evidence in this case, will you follow those instructions if his Honor, Judge Blythin, gives them to you?

A Repeat that, please.

Q In order to apprise the defendant with what he is charged with, there was presented to the Grand Jury a statement of facts, and as a result of those facts they returned what is known as an indictment. That is in this form here. The Court will instruct, as a matter of law, that although you will be permitted if you are chosen as one of the jurors in

this case to have in your jury room a copy of that indictment, but under no circumstances are you to consider it as evidence and it is not part of the case, and it is not to be considered as evidence in the case, will you follow that rule of law?

A Yes.

Q No question in your mind about it?

A No.

Q Now, the indictment reads that "On the 4th day of July, 1954, at the County aforesaid, that the defendant unlawfully and purposely and of deliberate and premeditated malice killed Marilyn Sheppard."

On that subject matter, Mrs. Borke, you will be instructed by the Court that everyone of the elements that I have just read to you that constitute first degree murder must be proven beyond a reasonable doubt before you can arrive at a verdict of guilty.

Now, should the State fail -- and the Court will so instruct you that it is the law in our State--that the prosecution has failed to convince you beyond a reasonable doubt of the elements that constitute first degree murder, and that under those circumstances you would be duty-bound as a juror to return a verdict of not guilty, would there be any hesitation on your part to do so?

A No.

Q The Court will further instruct you, Mrs. Borke, that it is incumbent upon the State of Ohio -- and when I make reference to the State of Ohio, I make reference to the gentlemen, Mr. Mahon, Mr. Danaceau, Mr. Parrino -- through whatever witnesses they may submit for your consideration, that those witnesses must satisfy you as an individual member of that jury, that it is not only necessary to prove all the necessary elements that I have read to you, but should the State fail to not prove one or two of them, that under that situation it would be your duty as a juror to return a verdict of not guilty, would you then have any hesitancy in that regard?

MR. MAHON: Object to that.

THE COURT: Well, she may answer.

MR. MAHON: Well, he says --

MR. GARMONE: The Court says --

Do you understand my question?

PROS. JUROR BORKE: Repeat it.

Q At the outset, I read you the elements of first degree murder, and I stated that it was incumbent upon the State of Ohio by proof beyond a reasonable doubt. Now, the burden in that regard never changes. The Court will so instruct you that the burden of proof to satisfy or convince your mind beyond a reasonable doubt of this defendant's guilt is always with the State of Ohio, it never switches. It is

not incumbent upon Sam Sheppard to prove his innocence.

That is the law. But it is incumbent upon the State of Ohio to satisfy you beyond a reasonable doubt as to his guilt.

You understand that?

27 A Yes.

Q Now, then, there are elements of first degree murder that will be outlined to you by his Honor, Judge Blythin. He will then instruct you that it is necessary for the State to prove each and every element that constitutes murder in the first degree as it is set out in this indictment. It is necessary on behalf of the State of Ohio to prove to you beyond a reasonable doubt those elements. Should they fail, that it would be incumbent upon you as a juror to return a verdict of not guilty; would you hesitate to do that if that were the case?

A No, I wouldn't hesitate.

Q You see, Mrs. Borke, when we speak of an indictment, this instrument was returned by the Grand Jury of this County, and we don't only refer to indictments that are returned by the Grand Jury in this particular case, but in most all cases the State of Ohio presents their witnesses and only their witnesses, and in this case they presented whatever witnesses they thought were necessary to gain their end result in the return of this indictment.

MR. DANACEAU: Object to that statement,

if the Court please.

THE COURT: Yes. Necessary to the return of the indictment.

MR. GARMONE: Well, we will change it.

Q Necessary to the return of the indictment, and that became sort of an ex-parte hearing. When we say ex-parte, we mean one side. Sam Sheppard was afforded no opportunity to present his side of the issue to the Grand Jury at any time, and it is under that rule that the Court will instruct you that you are at no time to consider this as evidence, and your answer to me was that you would not, is that correct?

A That's right.

Q Now, have you any immediate members of your family that may be associated with the medical profession?

A No.

Q Do you have any feelings toward people who are osteopathic doctors?

A No.

Q As against persons who may practice -- are doctors of medicine?

A No.

Q Now, I talked to you about the fact as to whether or not you knew anybody that was connected with the police department and you told me about Mr. Emmett, who you --

A Well, that is a neighbor.

Q Who you have had no contact with?

A That's right.

Q For four and a half years?

A That's right.

Q Now, do you know Sheriff Sweeney, Joseph Sweeney?

A No.

Q Do you know anybody that is connected with his office?

A No, sir.

Q Anybody of the deputies?

A No.

Q Do you know Dr. Gerber, the Coroner of Cuyahoga County?

A No.

Q Or anybody that is connected or associated with his office?

A No.

Q In his office there is a Dr. Adelson. Have you ever heard or do you know of him?

A No.

Q Directly or indirectly?

A No.

Q Also in his office is a Dr. Sunshine. Do you know him?

A No.

Q Do you know a Mary Cowan?

A No.

Q She is a technician associated with the office of Dr. Gerber.

THE COURT:

There is a Dr. Chamberlain

now, too. W. B. Chamberlain, Jr.

Q Do you know Dr. Chamberlain?

A No.

Q We anticipate that there may be submitted for your consideration testimony by a Dr. Spender Braden. Do you know of him?

A No.

Q Do you know Dr. Green that is the recognized doctor for the Cleveland Police Department?

A No.

Q Do you know anybody that is in the medical profession?

A Well, I know my own doctor, yes.

Q What is his name?

A Dr. Levendula.

Q Where is he located?

A Medical Art.

Q On --

A 105th, East.

Q And Carnegie?

A That's right.

Q In any of your visits there, has there ever been a discussion as would distinguish a doctor of medicine from a doctor of osteopathy?

A No.

MR. CORRIGAN: Osteopathy.

Q Should there be given for your consideration in this case testimony by a doctor of medicine as against testimony by a doctor of osteopathy, would you be more apt to give the testimony of a doctor of medicine more consideration than you would an osteopathic doctor?

MR. MAHON: Object to that.

THE COURT: Objection sustained.

MR. CORRIGAN: May I have the reason for the objection and the sustaining of it?

MR. MAHON: She may give great consideration to anyone.

MR. GARMONE: I think I haven't completed my trend of thought. I was going to put the question in the reverse, which would probably satisfy Mr. Mahon.

THE COURT: All right.

MR. GARMONE: May we have the answer stand until I complete my question?

THE COURT: Yes.

Q By the same token would you be more apt to give an osteopathic doctor more consideration than you would a doctor of medicine?

A No.

Q You would treat them both alike?

A That's right.

Q Now, Mrs. Borke, there will be witnesses here that are

members of police departments, some from the department representing the City of Cleveland that is manned over by Chief Story.

By the way, do you know Chief Frank Story?

A No.

Q And I probably am right in saying that you have never had any contact with him?

A No.

Q Would you be more likely to give the testimony of a police officer more consideration and greater weight than you would the testimony of a layman because of the fact that he is a police officer?

28 A No.

Q If the Court would instruct you that you have a right to weigh the testimony of all persons regardless of their station in life and whatever positions they hold with the same yardstick and the same rule, you would follow those instructions?

A That's right.

Q Under our system or jurisprudence, if you are seated as a juror, you and your fellow-jurors will become the sole judges of the facts.

Now, when we speak of facts, we mean testimony that will be submitted in this courtroom under oath by witnesses that may be presented by either the State of Ohio or the

defense, and that there is no one, his Honor, with all of his authority, and with all the sanctity that the Court may have, has no right to trespass on your authority -- you are the sole judges of the facts, and the Court will so instruct you, and will you follow that rule of law that nobody can tell you how those facts should be interpreted, only you are the judge as to how they shall be interpreted or what inferences shall be gathered from that, and if the Court tells you that is your right and solely your right, will you abide by it?

A That's right.

Q Now, the Court, of course, is the sole Judge of the law. There will come a time in this case, after you have heard all the facts, when the Court will give you instructions on the law that he thinks should be correlated to the facts that you have heard. As human beings, we sometimes we have our own idea of what the law should be or what the law ought to be, and we get in controversies with Judge Blythin. He sometimes tells me I am right and tells Mr. Mahon he is wrong, and sometimes he tells Mr. Mahon he is right and tells me I am wrong. I have to abide by his ruling.

Now, should you have any notions of your own on what the law should be or what the law ought to be, can you set those aside and just follow Judge Blythin's instructions on the law?

A That's right.

Q You see, that is very important. I needn't tell you about it, because you, being a mother, you know sometimes that your children try to overrule you and you know that you are right, and you want them to abide by your ruling, regardless of how they feel on the subject matter that is being discussed.

Well, would you carry that same theory in this case?

A Yes.

Q Now, when we talk about facts, Mrs. Borke, you know in your daily travel to and from the court, to and from this room in whatever room you may be located in this building prior to your being brought into court, that it is only natural that there is a good deal of general conversation going on by people who are not in the courtroom or out in the hallway; there may be some remark that is dropped one way or another, I don't know. It may be beneficial to me, or, on the other hand, it may be beneficial to the State. Can you disregard anything that you may hear in your daily travels and judge this case only on the facts that you will hear in this courtroom and no other facts whatsoever?

A Yes.

Q And that is very important, because there will be a good many articles printed in the daily papers about this case, there will be a good many radio broadcasts, there will be a good many television broadcasts, and you know and I know that

these radio and television broadcasts are given the interpretation of the subject matter in the way that the commentator wants to give to it, and you won't permit those to creep into your mind and circulate with the things that you will hear in this courtroom, will you?

A No.

MR. GARMONE: Can I recess here?

It is quarter of 11.

THE COURT: Can't you get through with her?

MR. GARMONE: No.

THE COURT: We will take a few minutes' recess.

(Thereupon a recess was taken.)

s;os

(AFTER RECESS:)

BY MR. GARMONE:

Q Mrs. Borke, if you will just bear with me a short while longer, we can probably bring this interrogation to an end.

I would like to show you this letter that was handed to you by Judge Blythin. I had never seen nor had the privilege of reading it until just this morning, and that is a facsimile or a copy of the letter that you received also, is that right?

A Yes.

Q Would you want to look it over and determine whether it is the same copy as yours?

(Document handed to PROSP. JUROR BORKE by Mr. Garmone.)

A I would say yes.

Q Now, after you had received this letter and had read it, did you show it to Mr. Borke?

A No, I did not.

Q Did you form any opinion in your own mind as a result of the contents that you absorbed from reading the letter?

A No.

Q About when did you get the letter in reference to when you were notified officially that you were going to be called as a juror in this case?

A Well, as I said, I believe it was last Wednesday or Thursday I got that in the mail.

Q Now, when you received the letter and read its contents, did you form any opinion as to whether or not this letter may have been sent out, or do you feel it was sent out by any members of the Sheppard family to you?

A No.

Q Did you give that idea any thought whatsoever?

A No. I just opened it up and put it on the refrigerator and left it there.

Q After you had read it?

A Yes. \

Q And you showed it to none of your neighbors?

A No, sir.

Q Made no inquiry about it?

A No, sir.

Q When did you first inform Judge Blythin that you had received the letter?

A I didn't until just right now.

Q Just this time now?

A That's right.

Q At any time after having received the letter and read it, did the thought come to your mind that anybody connected with Sam Sheppard or members of the Sheppard family or with members of the counsel that are representing Sam Sheppard were

responsible for the issuance of this letter?

A No.

Q You never gave that a thought?

A No.

Q And you don't feel at this time that they had anything to do with it?

A I do not.

Q And this letter --

THE COURT: Let's tell the lady.

To be quite frank and clear it up, I think we ought to, in fairness to her, tell her that not any of us believe that the Sheppard family or anybody connected with them had anything whatever to do with it.

MR. GARMONE: Thank you, your Honor.

Q So then I can believe that you formed no preconceived notions about this case as a result of the letter, and it created no prejudice or ill-will in your mind as a result of the letter, is that right?

A That's right.

Q Now, Mrs. Borke, do you know or have you ever heard of a young lady whose name is Susan Hayes?

A No, I don't.

Q Do you know or have you ever had any contact or knowledge, directly or indirectly, with any members of Susan Hayes' family?

A No.

Q It may develop during the course of this trial that testimony in this case may dkvulee that Sam Sheppard may have had affairs with some women other than his wife. Would that cause you to become prejudiced or create any ill-will or biases in your mind toward this matter? ✓

MR. DANACEAU: Objection.

THE COURT: Objection sustained. ✓

MR. GARMONE: Now, may I be heard, if the Court please, in the absence of this jury, if the Court so desires, on why I feel that the question is a proper one?

THE COURT: Well, wouldn't that be true -- if it is true of that connection, wouldn't it be true of every detail that can possibly be produced in this case?

MR. GARMONE: If we are going to discuss the worth of the question, whether it should be admitted or not admitted, I think that if the Court cares to exclude this juror, why, I would like to be heard. If not, I will state my reason in the presence of this juror, or prospective juror.

THE COURT: The objection will be sustained. You may take your exception. ✓

MR. GARMONE: Now, your Honor, Judge

Blythin, we are faced here with a very serious matter, and we have a right to anticipate from knowledge, both direct and indirect, that we have in this case -- that there will be testimony submitted dealing on that subject matter, and we feel, and your Honor knows from his experience not only in this Court but in all the branches of this Court that you have sat in judgment on matters of this nature or any other nature, that when elements of testimony that deal with that particular subject matter can and will create a feeling of prejudice, a feeling of bias or may cause a person to disregard any other circumstances surrounding this entire factual picture and take into consideration only that fact, that if Sam Sheppard -- if the testimony does reveal it -- did have some affair or affairs with women other than his wife, may regard that and that alone, without any correlation of any of the other testimony that may be given them for their consideration, cause them to come to a conclusion in this case that wouldn't be fair under our system of fair trial by jury.

The Constitution provides --

MR. PARRINO: If the Court please, I want to object to the comments of counsel at this time. They are not pertinent to the voir dire examination,

and I want to object further at this time, if the Court please. The Court has already ruled on the question involved.

THE COURT: Yes. The Court will not -- Mr. Garmone, we have no evidence here, and when we do have evidence, we shall hear it and decide on its competency as it comes along. And the Court will instruct the jury finally not on the basis of what we now think but upon the basis of what case is made or not made on the evidence which is actually produced.

MR. GARMONE: How can the Court clear by its instructions a subject matter that we can't go into now and determine by examination whether Mrs. Borke, whether Mr. Barrish, will carry into this jury box after they are sworn -- it is too late at that time to determine whether they went in there with a feeling of prejudice and bias and ill-will toward this man as a result of that particular piece of testimony. I think for that reason that we are within our rights in pursuing this examination.

THE COURT: No. The Court does not believe so, Mr. Garmone.

MR. GARMONE: Exception.

Q If there is submitted for your consideration during the course of the trial testimony by women regarding a subject that has

no bearing on the necessary elements of first degree murder, and you are instructed by the Court that those facts should not be considered, will you follow the Court's instructions in that regard?

A Will you repeat that, please?

Q Should there be offered by the State of Ohio testimony by various women that has no bearing on the allegation that is set out in the indictment dealing with first degree murder, and you are instructed by the Court that that testimony shall not be considered in and of itself as to the guilt or innocence of Sam Sheppard, would you follow those instructions?

A Yes.

Q Mrs. Borke, I dealt at length on the subject of "beyond a reasonable doubt" and the burden of proof incumbent upon the State of Ohio convincing you beyond a reasonable doubt, and that that burden of proof never shifts, and I have talked to you about facts and what facts you are to consider in your final determination as to the innocence of guilt of the defendant, Sam Sheppard.

Now, one further subject matter regarding the law that rules the operation of this case. As this young man sits here, he is clothed with the presumption of innocence, and that presumption follows throughout the entire trial and it never leaves him. Now, as you see Sam Sheppard at this moment, he as a defendant and you as a prospective juror, do you

believe in the law that he is presumed to be innocent now?

A Yes.

Q Do you feel in your mind at this point or at any time, should the State fail to convince you beyond a reasonable doubt, that it would be necessary for him to offer you any testimony to prove his innocence, if the State does not convince you of that degree of proof beyond a reasonable doubt that the law requires?

A Repeat that, please.

MR. GARMONE: Will you repeat the question?

THE COURT: Perhaps I can shorten it.

MR. GARMONE: All right. Maybe the Court can clear it up.

THE COURT: If the State fails to prove him guilty beyond a reasonable doubt, would you still require any evidence from him to show his innocence?

PROSP. JUROR BORKE: No.

Q Mrs. Borke, as Mr. Mahon stated to you, we could spend a good deal more time in our examination, asking you many questions, but sometimes in our anxiety to determine a person's qualifications some of the thoughts that we had when we get up to conduct this examination kind of leave our mind and don't come back to us.

Is there anything that you may have in your mind that hasn't been developed by examination that you feel would disqualify you as sitting as a juror in this case?

A No.

Q One of the greatest responsibilities that can come to any citizen of our community -- and I think that I can be safe in saying the greatest responsibility that ^{can} come to a citizen of our community -- is to be chosen as a juror and to sit in judgment on the guilt or innocence of a fellow citizen. And in this case, more exacting than that, if chosen to sit in judgment, as to whether or not you shall take, through your vote, a human life.

Do you now feel -- and I ask you to search your conscience and search it very carefully -- that you can, if you are chosen, be fair and impartial to the young man that is seated over there on the other side of the table and take your place in this jury box without any preconceived ideas, without any prejudices, biases, or ill feelings toward anyone that may be associated in his defense; do you feel you can do that?

A Yes.

MR. GARMONE: Thank you very much.

Pass for cause.

THE COURT: Will you take the seat next to Mr. Barrish over there?