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Thereupon JAMES C. BIRD, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JAMES C. BIRD:

BY MR. CORRIGAN:

Q Will you please state your name?

A James C. Bird.

Q And where do you live, Mr. Bird?

A 1956 Green Road, Cleveland 21, Ohio.

Q You were a member of the jury that passed upon the case of Sam H. Sheppard?

A I was.

Q And after the matter was submitted to you, you deliberated it in this courthouse?

A Yes, sir.

Q And then from time to time you left the courthouse and went to your meals?

A Yes, sir.

Q And during -- I want to get these dates properly -- during the 17th, 18th, 19th and 20th, the nights of the 17th, 18th, 19th and 20th, you were quartered in the Carter Hotel?

A That's right, sir.

Q Now, during the time that -- after the case was submitted to you, the jury on two occasions were separated, were they not?

MR. DANACEAU:

We object to that. That

is a conclusion. Let's have the facts.

THE COURT: Yes.

Q Was the jury separated on any occasion?

MR. DANACEAU: Object to that.

THE COURT: Well, he may ask if the jury was separated. I think that is correct.

A May I ask --

MR. DANACEAU: That is a conclusion.

A May I ask how you mean "separated", Mr. Corrigan?

Q Apart.

A At times seven people would go up the elevator with one bailiff and the other seven would remain taking the next elevator, if that is a separation.

Q No, I am not referring to that. I am referring to the day of Monday, December the 20th. I will ask you to look at this photograph that appears in my Exhibit 1 on a motion for a new trial, and ask you if you recognize the photograph that appears there in the copy of the Cleveland News on December 20th, 1954?

A I recognize the people in the picture, yes, sir.

Q You recognize your own picture?

A Yes, sir, I do.

Q And will you tell me in this picture if it shows that the women are in one group?

A Yes, sir, it does.

Q And the men are in another group?

A That's correct.

Q How did that come about that the two groups got separated so that their pictures could be taken?

A I have no knowledge of that, sir.

Q Well, you were there.

A I was there.

Q Tell me, then, what happened.

A If any separation was made of the jury, it was made through the bailiff.

Q No. But who communicated with you people to arrange this separation of the jury into two groups? You were the foreman, were you not?

A I was the foreman, yes, sir.

MR. DANACEAU: Just a minute. I object to that question. It supposes that that has been done.

A Well, Mr. Corrigan --

MR. DANACEAU: I have no objection to the facts being stated, but I object to any conclusion.

Q Tell me the facts.

A Any communication with the jury was made through the bailiffs assigned by the Court, and on that particular case, Mr. Corrigan, I don't know how the communication was given to us, except I will say this: That it was made through the bailiff, and that's all I have to say.

Q Where was this picture taken?

A That I can't tell you, Mr. Corrigan.

Q What?

A I don't know.

Q Well, you were there?

A I was there, apparently, but my picture -- as I am in one of the pictures. From the background in the picture --

MR. DANACEAU: Just a minute. Do you know where it was?

THE WITNESS: No, I don't know definitely.

Q You don't know where it was taken, but you do know that you were separated -- you men were separated into one group and the women were separated into another? You remember that, don't you?

A Yes, sir. I remember that by the picture.

Q Was this picture taken in this building, in the Criminal Courts Building?

A Mr. Corrigan, I don't know.

Q Well, certainly, Mr. Bird, you know something about it.

MR. DANACEAU: Just a minute. I object to the arguing --

A Mr. Corrigan --

MR. DANACEAU: Just a minute, Mr. Bird. There has been objection here.

Q All I want is a frank statement from you.

THE COURT: If he knows.

MR. DANACEAU: He said he doesn't know.

THE COURT: He said he doesn't know
where it was taken.

Q As a matter of fact, wasn't that taken in the Carter Hotel?

A Before I answer, let me read what it says.

Q Yes, I wish you would.

MR. DANACEAU: Just a minute. If he is
going to answer by reading what has been presented him,
that is not a proper answer. We object to that.

THE COURT: I think the Court can
bring enough facts to Mr. Bird to refresh his recollec-
tion on that. The Court knows where it was taken and
under what circumstances.

Isn't it a fact, Mr. Bird, that that was taken in
a dining room of the Carter Hotel?

THE WITNESS: I think it was, your
Honor.

MR. CORRIGAN: Well, do you know?

THE COURT: And isn't it also a fact
that the thing was merely a momentary thing, and just
the one group moved over from the other and the pictures
taken?

MR. GARMONE: Just a minute. Object to

the question put to the witness by the Court.

THE COURT: All right. The Court will withdraw his question and put the bailiff on the stand later. Go ahead. We will clear that up in a hurry.

MR. GARMONE: Let's clear it up through this witness.

THE COURT: He says he doesn't know.

MR. GARMONE: Well, then, how can he answer the Court, that it was taken in the dining room of the Carter Hotel? For all he knows, it may have been taken on the floors of their respective rooms.

THE COURT: Let the witness testify.

MR. GARMONE: Let him testify then.

THE COURT: The Court wants you to have your testimony.

Q Referring, Mr. Bird, to this picture that is now before you, that shows the women of this jury in one group --

MR. DANACEAU: Just a minute. I object to counsel reading -- stating to the witness what a picture in a newspaper shows.

THE COURT: That's right.

MR. DANACEAU: I object to all of this and ask that no further questions along that line be asked.

MR. CORRIGAN: What are we getting in now? I am referring to a very important and material matter in this motion.

MR. DANACEAU: I object to counsel showing this newspaper article to the witness and then reading parts of it or describing parts of it. It has nothing to do --

THE COURT: He himself has said that he recognizes the picture, and for the purpose of the picture, they were separated, so I think inquiry can be made along that line within Mr. Bird's knowledge.

Don't testify about anything you are not sure about, reasonably sure.

Q You know that the picture was -- that the group was separated for the purpose of taking that picture, don't you?

MR. DANACEAU: Objection. The question has been asked and answered.

THE COURT: Well, let him answer, if he knows.

A From the picture, it was, yes.

Q Where was the picture taken?

A Mr. Corrigan, I don't know exactly where it was taken. It could have been taken at the Carter; it could have been taken outside on the street in front of the hotel. There were -- I think -- I'm not sure -- if you want my impression as to the

picture, Mr. Corrigan --

Q No. I want your intelligent answer as an intelligent man.

A It would be an intelligent answer, Mr. Corrigan.

Q You were a school teacher.

A I was, yes, sir.

Q Now then, I want ^{you} to tell me frankly about your knowledge about that picture.

MR. DANACEAU: We object to this, if the Court please. The witness is obviously reading a newspaper article and has to testify what he reads there.

THE COURT: If he has any knowledge of it, let him say so.

A I don't recall how the picture was taken or where.

Q That is your answer?

A That is my answer, Mr. Corrigan.

Q Now, I refer to another -- was there any other time that the jury was separated in two groups and pictures taken after deliberation?

A After deliberation, Mr. Corrigan?

Q After you started your deliberation.

A After we started deliberation?

Q Yes.

A From what I see before me --

MR. DANACEAU: Well now, that is --

THE COURT: No, no. Do you recall any?

THE WITNESS: Yes, sir, I do, sir.

THE COURT: All right.

THE WITNESS: After breakfast on a particular morning -- I think it was -- we were asked before we put on our overcoats to return to the Courthouse or come to the Courthouse, to stand for photographs.

Q When was that?

A I don't recall the date, Mr. Corrigan.

Q And who asked you to come to the Courthouse?

A Who asked us to come to the Courthouse?

Q Yes. To stand for photographs.

A I didn't say that, Mr. Corrigan. I said before we came to the Courthouse.

Q Oh, this was at the hotel?

A Yes, sir.

Q And who came to you at the hotel?

A Nobody came to us at the hotel, Mr. Corrigan. We were asked by one of the bailiffs if we would mind standing for a picture without wraps?

Q And where was this picture taken without wraps?

A I don't recall the name of the room at the Carter. It was a private room, with no one else present except the jury,

the bailiffs, and a photographer.

Q And a reporter?

A No, sir.

Q Who was the photographer?

A I don't know, sir.

Q What?

A I do not know.

Q And then you all went into this room and had your picture taken?

A No, sir. We were in the room eating.

Q You were in the room eating?

A Yes, sir.

Q Referring to this part of Exhibit No. 1, which shows the Cleveland Press --

A Cleveland News, Mr. Corrigan.

Q The Cleveland News. It shows this picture. Was that the picture that was taken?

A It could have been. I never saw the picture, sir.

Q Didn't you see it in the paper?

A No, sir.

Q In these communications with the jury about these photographs, were you the person that was contacted?

A I was not.

Q You were the foreman of the jury?

A I was the foreman of the jury.

MR. CORRIGAN: That is all, Mr. Bird.

MR. DANACEAU: That is all.

(Witness excused.)

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MR. CORRIGAN: May we have the letter, your Honor, that this witness --

THE COURT: I don't know just where it would be, whatever it was, at the moment.

MR. GARMONE: Would you want time?

MR. CORRIGAN: I'd like to put the letter in evidence, and then beyond that, your Honor, I don't have anything else that I want to present on the motion for a new trial, and if I get that, then I will be through with my evidence on this motion.

THE COURT: Then you want to present it orally, do you?

MR. CORRIGAN: No, I don't think I care to present it orally.

MR. GARMONE: No oral argument.

THE COURT: This is all that you have?

MR. GARMONE: That's right.

THE COURT: We will have a recess for a few minutes, and we will see if we have that --