

and without conceding that they would cure any defect which has arisen, a more specific question such as, "Has anything that you have heard during the examination of other jurors, that influenced you in any way with respect to the impartial stand you said you had when you were originally seated?"

I also would like to suggest a question asking the jurors as a group whether they are able to disregard completely the fact that one or more of the jurors they have listened to have been disqualified because of a fixed opinion, on extrinsic information.

THE COURT: Anything further,
Counselor?

MR. BAILEY: That's all.

THE COURT: Thank you. The
Court will proceed.

MR. BAILEY: Your Honor, after
you question them, and before they are sworn, may
I make motions? It seems to me I probably ought
to do that before you administer the oath, or at
least, if I make motions may they be retrospective,
in other words, I don't want -- I don't want to
assent --

THE COURT: Yes, any motions

that you make -- well, let us go on the record now with respect to the motions you may make.

MR. BAILEY: Well, first of all, we renew our motion for change of venue, based on the statistical and factual breakdown of the voir dire as a whole.

The reason we do that, despite the fact that we have passed for cause as we have been required to do when jurors have said they have no prejudice, is because the position of the defense is that the voir dire has smoked out only those jurors who are conscious of their opinion, and although these people may have answered in good faith that they do not have an opinion, we feel the likelihood is great that there is a subconscious opinion.

Second, we feel the jury is defective because no matter what may be said in the way of general questions, the jurors should not have been allowed to hear the examination of other jurors, or learn of the high percentage of the second group that have come in here with fixed opinions.

Next, we feel that the jury is defective because of the excusing of the woman who knew Betty Sheppard, and we have saved our rights with

reference to that.

We have also saved our rights as to denial of challenge for cause of Mrs. Uhrin, which has cost us a peremptory challenge.

On these bases we move for a withdrawal of this jury, and in addition we move that a change of venue be granted.

Those are my motions.

THE COURT: The motions up to that point excluding renewal of your motion for change of venue, are all overruled. The Court will still reserve its ruling on the defendant's motion for change of venue at this time.

MR. BAILEY: May I ask for the record, your Honor, because of the order which you have issued, I am assuming that anything that is said here at the bench deliberately out of the presence of the jury, is also deliberately out of the presence of the newsmen and not to be recited for their benefit.

THE COURT: That is true.

MR. BAILEY: All right.

THE COURT: I am more concerned with protecting the record as we ordinarily do here, from in any way impinging upon or influencing in

any way the judgment of the jurors.

The side bar conferences are only secondarily related to the matter of keeping it from the news media.

But nevertheless all Counsel will bear in mind specifically those items in the order, in the orders prepared by this Court, on October 10th and 19th with respect to their obligations to this Court, in public statements, and also Canon 20 which has been referred to in the order.

MR. BAILEY: Well, yes. The reason I asked the question is because ordinarily anything that is part of the public record would not come within the purview of the order. The public would be entitled to it whether they got it from counsel or from the court stenographer.

This is a curious situation, where this is a public record, and if they wanted to pay for a transcript they would be entitled to it.

THE COURT: Let the record be clear now that no one will get a copy of this record, except the Court or Counselors, until such time if we reach the point, until after such time as a verdict has been rendered by the jury in this room. No one other than Counselors or

the Court will have a copy of this record until after that point is reached, if we reach it.

MR. BAILEY: All right. The last thing, your Honor, after you swear the jury, if that is the appropriate time, may I make motions as to sequestration and state my reasons and grounds therefor? Would you like that now?

THE COURT: I would like that to be reserved, Counselor, until such time as we impanel alternates who may become members of this jury.

MR. BAILEY: Well, yes, except that won't happen until Monday. This is Friday. This leaves the jurors at home over the weekend, which I realize is for their convenience. But in the event some publication should occur over the weekend which we later will contend may have reached them and prejudiced them, I just want the record to show that we made a motion at the start for sequestration, and that we continue the position of desiring sequestration at all times.

THE COURT: The Court believes that the proper time to rule on the motion for sequestration will occur after the original twelve have been sworn, and the alternates, the number of

which is yet to be agreed upon between Court and Counsel, after the alternates have been sworn, because it is possible that one or more of the alternates may become a member of this deliberating body. The Court is saying now that it will rule upon a motion for sequestration after we have had all of the jurors who will hear the testimony, and not at this particular time.

MR. BAILEY: May I point out, your Honor, in connection with your reasoning, on that judgment, that if impermissible publicity occurs in the next 48 hours, before we get back to this courtroom, as to any prospective alternate, Counsel will have the opportunity to discover whether there has been any exposure as to a given prospective alternate; an opportunity to discover anything this jury may read without individual interrogation, which we hope to avoid, although I am sure you have the power, is gone, we are through examining, and we don't have the protection as against these people as we have against the alternates.

THE COURT: Counselor Corrigan, do you wish to speak to the record?

MR. CORRIGAN: No, your Honor.

THE COURT: The Court, then, will proceed now to swear these twelve as the petit jury and will proceed as he indicated he will in the record.

MR. BAILEY: All right; my rights are saved.

THE COURT: Yes.
(Thereupon proceedings were resumed within the hearing of the jury panel, as follows:)

THE COURT: Ladies and gentlemen of the prospective panel, this question of the Court is directed to the attention of each of you, and I know you will listen very attentively, as you have throughout the past several days.

Ladies and gentlemen, after listening to all of the questions that have been put by the lawyers and the Court, all the time that you have been in this room, does any reason now occur to any of you why you could not sit as a fair and impartial juror, and render a fair and impartial verdict in this case, both to the State of Ohio and the defendant, if you are sworn as a juror in this case?

If any reason does occur to you, even realizing that service in this case may come at