

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. PETERSILGE: Your Honor, ladies and gentlemen of the jury, counsel for the State: We have just heard something over two hours of argument by counsel for the State, in the course of which he has stated the State's case. I tried to listen to it carefully to see what the State's theory was, and as nearly as I can tell, all that the State has had to offer is a series of suppositions, guesses, hypotheses about what occurred, a long series of questions to you members of the jury, "What's the significance of this? What does that mean?"

And in a word, it's been two hours of suspicion, suspicion of Sam Sheppard plus a recital of his affair with Susan Hayes, plus the fact that he was in the house when the crime occurred.

Now, I want to come back to these points as we go through the evidence, and I want to go over the evidence with you and show you what our impression of the facts that have been proved in this case amount to.

But before I do that, I do want to point out that in this case the Defendant, Sam Sheppard,

who is charged with first-degree murder, is presumed to be innocent. That the burden is on the State to prove that he is guilty. That when he is charged with first-degree murder, the State has to prove each and every element of that crime, and that includes the intent to kill. It means that they must prove that Sam Sheppard had the intent to kill his wife.

It must prove that he did it with deliberation and premeditation, that he turned it over in his mind, had time to think about it and decided he wanted to kill her.

It must prove beyond a reasonable doubt that he did these things, and that he did it with malice, malice aforethought.

Now, unless the State can prove each and everyone of those elements beyond a reasonable doubt, the State has failed. And the thing I want to impress upon your minds as we start this analysis of the evidence is: It is not our job as Defense counsel to show how Marilyn was killed. It is not our job to show that Sam did not kill her. It's the State's job to show that he did. And so far they have utterly failed to make a case.

It is now about five and a half months

since the crime occurred. It's about four and a half months since Sam was arrested. It's over four months since he was indicted, and yet, after some nine weeks of trial, after the summation that has been made on behalf of the State, it is still apparent that the State, although it charges Sam Sheppard with having killed his wife, that the State still does not know how she was killed, the State still does not know with what weapon she was killed, the State still doesn't know why she was killed. And yet, on the basis of that rather flimsy evidence, the State of Ohio is asking you to send Sam Sheppard to the electric chair.

And how any jury, on the basis of the facts that have been presented here, could find that Sam Sheppard beyond any reasonable doubt had the intent to kill his wife, and that he did kill her, that he killed her maliciously and with deliberation and premeditation, is, frankly, beyond my powers of imagination.

Now, let's go back and take a look at the evidence in this case. There have been, if I counted right, some 70 witnesses who have come before this Court and this jury since the trial started. I don't intend to go over what each one has talked

about, but I do want to review some of the more salient facts and for a moment look at the background of the people who are involved here.

Sam and Marilyn Sheppard were married in California, as Mr. Parrino said, in 1945, and in 1951 they came back to this community. Sam started in his practice in Bay Village, and in the course of that practice had a great deal of emergency work at Bay View Hospital. Through that he came to handle a great many of the accident cases that arose on U.S. 20, U.S. 6 and U.S. 2, which are heavily travelled arteries, and through that became police surgeon of Westlake and unofficial police surgeon of Bay Village.

The evidence is that Sam took care of emergencies day and night, he was on call 24 hours a day, and he did it as a public service.

The evidence also is that Sam was active in Civil Defense matters, that Sam was a good citizen, that he took his part in the community and that his neighbors thought well of him.

You saw Sam's neighbors on the stand here. Some of them we called; some of them were people the State called. And it didn't seem to make much difference whether the State called them or whether

we called them, I think that I can say, without exception, that of all the people who took the stand who knew Sam Sheppard, that they were all character witnesses for Sam Sheppard except one man, and that was Tom Weigle, and the only thing that Tom Weigle could say against him was that on one occasion Sam had spanked his boy too hard.

To my mind, it isn't so much what the witnesses have said, although it was all good, but it's the fact that the State couldn't find anybody who would say anything against Sam, except Tom Weigle. That's a pretty good record for a man, I think. The only thing that Tom Weigle had was that Sam had spanked his boy too hard. Well, certainly that's nothing to send a man to the electric chair on. Certainly the result of it wasn't that Chip loved him any the less.

The testimony here is legend from friends and neighbors of Sam that Chip and Sam and Marilyn were a happy family. That Chip looked up to his father. In fact, the night of July 3rd, when his airplane was broken, he ran in to his Dad and asked him to fix it, and Sam fixed it. Earlier that night he had taken Chip and the neighbor boy down in the basement and taught them how to punch the punching

bag.

The evidence is that Sam and Marilyn had practically had open house while they were living in Bay Village. Their friends, whether they were children or adults, came over there freely, were in and out of the house. Sam set up a basketball hoop for these youngsters, and the boys used to come over and play, and when Sam had time, he would play with them.

Sam taught a number of the children in the neighborhood to water ski. He loved children, he loved people, and it's inconceivable to me that a man of that type could go up in the dead of night and beat his wife to death.

Now, the State has gone back to some difficulties which are alleged to have existed in 1950, and I'll come back to that in a minute.

I want to say this to you at this time: That the testimony of the people who knew Sam Sheppard and Marilyn Sheppard is, I think without exception, that during the last few months of their lives, since they had come back from California, that they were among the happiest months of their lives. The people who saw them in that period said that they seemed like a devoted normal couple, that Marilyn

was very happy about the coming of the child, that Sam was happy about it, too.

Some of her classmates who had known Marilyn when she was in high school had met her only a few days before, and two of them, Seymour Rosen and one other took the stand and testified, Kenneth Benjamin, took the stand and testified that they had seen Marilyn and she was the happiest he could remember. Certainly that is not the sort of thing you would find if a husband and wife were having real trouble.

When Dr. Hoversten got to the home on the evening of July 1st, he got to the yard and he testified what? That Sam and Marilyn were out there raking leaves together -- maybe it was weeds, Sam says weeds -- but, in any event, they were out there together. Well, you can't imagine a husband and wife who were contemplating divorce, or a husband and wife who weren't happy in the teamwork that comes through marriage, who would be working around the home like that.

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And certainly there was nothing in the events of the weeks preceding the murder night, which events were testified here to by the brothers and sister-in-law of the defendant, that would indicate that there was anything wrong in the lives of these people. They attended numerous parties together. They announced the coming of the child. They were happy about it. They were making plans for the future, and even for the very next day, July 4th, they had planned a large party for the interns who were completing their year at the hospital, and who were leaving with their wives and going to other points. Marilyn had laid in a supply of food for that party. Sam had talked about it to some of his fellow workers, and had invited them. And when the Aherns left that night, they understood that there was to be a party the next day.

Both Don and Nancy Ahern told you how they went over to the Sheppards that night, how the Sheppards first came to their home, had a couple of cocktails, Sam was called away to the hospital on an emergency, came back; Marilyn went over to start the dinner, and the Aherns followed with Sam.

They got over there, and Don Ahern said he

remembered going down to the lake with Sam. Sam wanted to see whether it was going to be rough for skiing, for water skiing the next day, and they came back. They showed the children how to punch the bag. Sam went down and got a basket, or something that the boys could stand on, and showed the boys how to do that, and then they had a leisurely dinner on the porch while the children had dinner in the kitchen.

Again, you look at the Aherns' testimony. What is it? Just a friendly visit of neighbors. They sat around and talked, watched television, and in the course of it, Dr. Sam, who had had a hard day, fell asleep. They said it wasn't unusual for Sam to fall asleep while they were there or while he was at their house. That he was a fellow who could relax and go to sleep, and that he was a sound sleeper, and Dr. Don told about what a hard sleeper he was. Dr. Don told how, in the course of emergencies, if it wasn't sufficient of an accident to require Sam to come back to the hospital, that sometimes they just took X-rays and took them up to the house and had Sam look at them there, and you will remember how over a half-dozen occasions during the course of time that ~~Dr. Don was on the emergency detail, that he had driven~~

down to Sam and Marilyn's home during the nighttime, at a time when the house was dark, and they were in bed, and how he had gone up to the door and opened the door and walked right in. It was never locked. And how he had called up, and the one who always awoke the first was Marilyn, and Marilyn would answer, and then she'd have to rouse Sam, and after a while Sam would come down looking kind of sleepy, and they would look at the X-rays.

Now, the Aherns, along about midnight, or a little later, went home, and at that time Sam was asleep on the couch. According to the testimony, he had stretched out there to look at the television, which was on the north side of the room; his head was toward that direction; his feet to the south; and he had fallen asleep. He was asleep when the Aherns left.

From that time on, there was nobody who knows what happened in that house except Sam. You have heard his story.

Now, Mr. Parrino has attacked that story in many respects, said a lot of things didn't seem sensible or reasonable to him. Why wouldn't Sam have done this? Why didn't he do something else?

Well, let's look at the story for a moment. You

have heard it many times from different witnesses, and there is one thing that I would like to call to your attention.

One witness has said this and another witness has said that. There have been minor variations, and it is natural that after some months, that a witness who talked to Sam and has no notes of the thing, has no record of the conversation, that his recollection of what Sam said may be a little different from somebody else's, but essentially, essentially the story which Sam told from the stand is exactly the same as the story that he told from the very beginning, and you will recall that Carl Rossbach, the Deputy Sheriff, when he was on the stand said that he had interviewed Sam -- well, the first time was on a Monday, for a brief interview. He was there on Thursday when he and Yettra and Schottke talked to Sam for three hours. He was out to the house the next day, and Sam went through the house with Mr. Rossbach, down to the lake, went all over the premises, and explained what had happened the night of the July the 3rd and the morning of July the 4th, as he remembered it.

And then on the following day, Sam and I came down

here to the jail, and they questioned Sam all day long, and he gave a written statement starting about 11 o'clock in the morning and going through until late in the afternoon, and Mr. Rossbach was also present during the inquest. The inquest was held out at Bay Village on the 22nd, 23rd and 26th, and at that time Dr. Sam was on the stand for five and a half hours, and Mr. Rossbach said that the story which Sam had told in the beginning, the story that he gave at the time in the County Jail when he gave the written statement, the story that he told at the inquest, were substantially the same.

Now, that story was of a man who had fallen asleep, as I say, and he has a vague recollection of being partially wakened by his wife when she was going upstairs. After that he apparently fell back to sleep and sometime later, he was awakened by his wife calling his name, crying out. As he came to consciousness, he thought that perhaps she was having convulsions again, such as she had early in the pregnancy, and he started upstairs, got up, and as he was going into the room, or just as he got into the room he saw this form.

Now, Mr. Parrino has said, in the course of his argument, "Why didn't the doctor put on the light?

The house was dark. The natural thing would have been

to put on the light."

Well, I think that probably, members of the jury, you have had the experience of waking up in your own homes at night, and if so you know that there is enough light comes in, if you are familiar with your house, so that you can see to walk around quite well. I think the natural thing was that he would not have put on the light, but in any event he didn't, and he went upstairs.

Now, during the examination of Dr. Sam, the State attempted to take him over each and every step of this night and tell just exactly where he was at any moment. I think some of the questions that were asked, some of the things he was asked to recall, would have been difficult for a man who had not been in a fight and had not been knocked out, but to expect the man who had been through what Dr. Sam was through to tell exactly and in detail just what he did at every moment or just where he was struck, is more than anybody can reasonably expect.

Now, Dr. Sam testified that as he entered his wife's room -- and that this was all a matter of just one, two, three, and you have been up the stairway, you know from that that the top of the stairway to the door of Marilyn's room was just a very narrow hall, one step

would take you over and in, and as he got in there, he saw this form with a light top, and almost immediately was struck, he ^{saw} saw from behind, and was rendered unconscious.

Now, nobody knows how long Sam was out. Sam doesn't know. When he came to, he found that he was in the room beside the bed on the floor with his feet toward the door, and he came to a sitting position and saw something reflected in the light that came through from the hall, from the lamp that was in the dressing room. Apparently that was the police surgeon's shield that was on his wallet, and he remembers dimly picking that up and putting it in his pocket.

He then got up, gradually, began to become aware in his dazed condition that there had been a struggle ^{had} and he/heard his wife cry out, and he looked at her and examined her and concluded that she was gone.

And that his next thought was Chip. He went next door and felt of Chip or checked him in some way, satisfied himself that Chip was all right, and about that time heard the noise downstairs and went down.

Now, again Mr. Parrino said, "Why didn't he call the police?"

Well, perhaps one person would have called the

the police. With somebody else it was instinctive to go after him. Sam went after him, certainly not an unnatural reaction for a man who had been an athlete all his life and played football and was of an aggressive nature.

But, in any event, when Sam got down in the living room, and as he rounded the L, he could see this form going out across the porch toward the yard, and he pursued it.

Now, again I say to you that in judging whether Sam acted wisely, or whether he should have stopped to call the police or put on the lights, or to get a gun, or pick up a stick, or do something else, you can't judge a man who has been knocked out with as serious a blow as Sam had quite the way you would a person who has had plenty of time to think it over. When you are in a situation like that, you do what your instincts tell you to do, and Sam pursued this fellow. His thought then was to get him, and he lost him on the stairway, but when he got to the platform there around the beach house, he again made out this form going out to the beach, and when he got down he could see by what light there was, he could see a silhouette.

Again, that is perfectly natural. I mean going down the stairway, it would be dark there, you couldn't

see anything, but when you once get down to the water at night, it is a little lighter than the land, and you could see a silhouette. Sam saw a silhouette of a dark form. It looked to him like a tall man with dark clothes from the rear, a man who had a rather large head and bushy hair, and Sam tackled that form, grappled with him, and he felt as though he grabbed something very solid, and he had a choking sensation, and he lost consciousness again, and when he came to, he said that he was -- he could feel his body being wallowed back and forth gently by the waves; his feet were in the water and his head was up on the beach, but he recalls that the waves were washing up and splashing over him.

He got to his feet, finally, and still somewhat dazed, went up the stairway and into his home, remembered that there had been a struggle upstairs and went up and found his wife dead; checked her again. And then it seemed to him that it was just a horrible dream. It seemed to him that maybe he'd wake up any minute and come out of this, and I think that anybody who has ever had a nightmare will understand how Sam felt.

Here was a man who went to bed happy in the thought that he and his wife were going to have an

addition to their family, a man who just a couple of weeks before had a meeting of doctors at his home, had told Dr. Selnick -- you remember Dr. Selnick telling from the stand that while they were frying steaks, Dr. Sam had said to him that he had everything, everything anybody could desire; he had a fine family; he had a wonderful wife; he had a nice home; he was well set up professionally; what more could he want?

That was the man who had gone to bed on the night of July 3rd, and in a few short hours, his wife was killed, his unborn baby was dead, Sam himself was badly beaten. No wonder he felt that this was a horrible dream, that he just couldn't believe it was true.

Now, when you are judging the actions that Sam performed at that time, I ask you to think how clearly a man might think after he had been through what Sam was through, and I think that the things which he did are entirely consistent with a man who had twice been knocked out and who had received a very severe blow to the vital centers of the base of the brain back here.

While we are on that, let me say that there can't be any doubt, after the evidence that has been introduced here that Sam had a very severe injury.

Mr. Parrino has talked a lot about the X-rays. Well, as a matter of fact, X-rays are not very conclusive at any time, but in this particular case the X-rays are not especially important. The kind of injury that Sam had was an injury to the nervous system. You heard Dr. Elkins tell yesterday that as far as he was concerned -- he is an expert, I don't think anybody can doubt it, can doubt the expertness of Dr. Elkins on neurosurgery -- and Dr. Elkins said that he didn't need X-rays in order to make a diagnosis of what was wrong with a patient who had a disorder of the nervous system. The nervous system can be checked in other ways, much more effectively than you can with an X-ray. The only importance of the X-ray would be that if there was a chip fracture, such as the first X-ray showed, that would be some evidence that there had been a very severe blow to that area, because you could hardly knock off a chip of the spinous process unless you had had a hard blow, but that is just one way of checking whether there was a blow.

The injury to Sam wasn't the chip that was off there, if it was off. The injury was the contusion to the spinal cord.

Now, there has been a lot of testimony on the injury. As a matter of fact, even Dr. Bexter agreed

basically that some of these reflexes were missing. The only thing was that Dr. Hexter was the general practitioner who hadn't had experience in neurology. He said he hadn't studied it since 1934, and he admitted he wasn't a neurosurgeon, he was a general practitioner, and he wasn't able from his experience to evaluate what the absence of those reflexes meant, but Dr. Elkins has spent the better part of his life in that work. He has had all kinds of experience in it, and he is one of the top men in the country, and he told you yesterday, first, that in checking Sam he found that the triceps reflex was missing, that is the reflex back here. You strike it, and it has to do with your arm coming up and down. That the left triceps was missing, the right was present, and he said that the absence of a dependent reflex of that kind, a stretched tendon, is something that cannot be simulated. In other words, you can't fake it. That is a condition that absolutely existed.

He also tested Sam on other reflexes, and he found that the abdominal reflexes on the left side were missing, the ones on the right were present, and that is significant.

Again he said that that was the kind of a reflex

that cannot be faked. It is either there or it isn't there. The patient has no control over it, and he found that the cremasteric reflex was absent. That is another one that you can't fake. It is either there or it isn't. He found it was absent. He also found -- and this is a very significant thing -- he also found when he palpated the back of Sam's neck that there was a deep muscle spasm.

Now, you remember he said that tenderness back there is something that is subjective, he can't tell whether it is tender or not, he has to rely on what the patient tells him, but the deep muscle spasm, that is what you feel when you press hard, palpate hard, and you remember Dr. Elkins saying that the deep muscles -- you could feel the muscles go like that (indicating). That is something you can't fake. It is there, and he testified that he found it, and as a result of his examination he testified that, in his opinion, Sam had suffered a contusion of the spinal cord.

He also testified that a blow back in that area, which affects the vital centers, can have a very serious effect, and if serious enough could produce death, because there are many functions of the body that are controlled automatically by the vital centers that are

in the medulla oblongata, and if those are deranged, your respiration, your heart beat, elimination, all the body functions are thrown off, and if they are thrown off badly enough you die.

Now, that is where Sam got the blow, and I think that after the evidence that has been presented here in this court there can't be any doubt but what Sam had that injury.

What would a man with that kind of injury do? Would he think clearly? I think not. I think that the story that Sam told is entirely consistent with that, with that condition that he was under, and certainly, if Sam had been intending to present any fake clues such as has been suggested here, if Sam had not had such an injury, if Sam had been clear-headed and thinking clearly and had deliberately killed his wife, as the State is charging, and if Sam had then tried to cover up, he could have done a lot better than he did.

Sam is a smart man. You have seen him on the stand. It certainly would have been a very easy thing to put on another T-shirt, for example. Sam just had no recollection about his T-shirt. After what he had been through he didn't know whether he had a T-shirt on or not until somebody called it to his attention.

Take the money. Mr. Parrino said there was money in so many places in that house he couldn't even remember them all. If there had been a burglary, that the burglar would certainly have been more thorough than he was.

Well, of course, we don't claim there was a burglary. I mean I don't know why the intruder was there. We claim there was a man there, but whether he was there for a burglary or not, I don't know. We never claimed that he was. But I will say this:

That if it had been Sam who was doing all this, if Sam had been the person who committed the crime and who was trying to cover up and make it look like a burglary, one of the easiest things would have been to get rid of the money. He certainly wouldn't leave a lot of money around that house.

Now, when Sam finally came to and decided that he had to do something, that it was real, he tried to think of what to do, and Mayor Houk's number popped into his mind and he called it.

Well, again he is criticized for not calling his brothers. Mayor Houk lived just a few doors away, and Mayor Houk, it seems to me, was a proper person to call. As a matter of fact, as the Mayor of Bay Village, he was the head of the police and fire

departments, he was the chief law-enforcement officer, and he was a close friend and neighbor of Sam's. No wonder his number popped into his head. Sam had called him many times, but he called Mayor Houk. Mayor Houk and his wife responded, and shortly after got there.

Well, he called the police of Bay Village, he notified Dr. Richard Sheppard, who, in turn, notified Dr. Stephen Sheppard, and when the police came Mayor Houk had a conference with Mr. Drenkhan, and as result of that they called the Coroner's office and they called the Cleveland Homicide for additional help.

Bay Village had a small force and wasn't used to handling this sort of problem.

Now, at that point I would like to call your attention to the testimony of Dr. Stephen Sheppard, who said that while he was down there at the den, he heard Fred Drenkhan calling the Cleveland Police Department, saying, "Yes, it looks like a burglary and homicide, and you better send some help."

Well, I think that is significant, because at that time that is what anybody would have thought.

All this talk about the brothers removing Sam from the house in a hurry and without the permission of the police is perfectly silly. Why wouldn't they

take him? He was an injured man. They didn't need any permission, but if they did certainly nobody would have kicked about it. The police were right there, Mayor Houk was right there. They must have seen him going out of the house. Nobody raised any dispute about it, and it was the logical thing. Here was a man who was hurt, and there was no doubt that he was seriously hurt.

In this type of injury, I think the testimony is that the full extent doesn't show up until a day or two later. It is progressive. But, nevertheless, there was a badly hurt man.

As a result of those calls, the Cleveland police responded, and the Coroner's office responded, and I want to take a little time to go over with you what they did, because I feel strongly that if it had not been for the stupid bungling, for the incompetence with which the Coroner's office and the police handled this thing, that you might be trying the real murderer today instead of Sam Sheppard, and I am not using those words loosely. I think that it was an eye opener to most of us who heard the testimony, to see both what was done and what was not done by the so-called experts when they got out there to make an examination.

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Now, the first thing after Dr. Gerber had made a preliminary examination was that the body was removed to the Morgue, and Dr. Adelson took over for his post-mortem.

When Dr. Adelson was on the stand, he admitted that when they made their examination, they had washed the blood off Marilyn and just let it go, it went down the drain. They didn't save it, they didn't take any tests of it, they didn't do anything to determine the things that might have been determined from the blood that was on Marilyn and, as you know from looking at the pictures, there was a lot of blood. They might have found evidences of something that would have helped in the solution of this case, but they didn't do it. They washed it down the drain.

The next thing he admitted was that they made no microscopic examination of the wounds. After they had washed the blood off, these various wounds on the head were apparent. Dr. Adelson admitted that had they made a microscopic examination -- and they had microscopes out there that enlarged up to a thousand times -- that had they done so, it might have revealed traces of rust

or paint or grease or something that would have shown the nature of the weapon that was used, and that by close examination, it would have indicated the sequence of the wounds. But no such examination was ever made. And, of course, the chance is gone. And that is true of a lot of these things.

The police took that house over on July 4th. They have had custody of it ever since. In fact, they still have it. They kept Sam Sheppard and his family out of it, except occasionally to allow somebody to go in, under a police guard, and allow somebody to take out some food and clothes. What has happened to the clues out there, nobody knows, nobody ever will know.

Certainly this Defendant couldn't do anything about it, and the police have failed to take the steps that should have been taken to get the right party down in this Court.

Dr. Adelson further admitted that they had not made any adequate test for criminal assault on Marilyn. They made a partial test, they made a test with a swab to determine the presence of sperm, but they didn't make any chemical test which would have determined the presence of seminal

fluid without sperm. And the result is that although they announced that Marilyn had not been criminally assaulted, nobody knows; nobody ever will know.

Dr. Adelson also admitted that the wound on Marilyn's mouth was on the inside of the mouth. There was no evidence of any wound on the outside. Further, that Marilyn had two of her teeth broken, and they were broken on the biting surfaces, which means that she must have clamped down on something and that's what broke the teeth.

You heard Dr. Novatney when he was in here telling how this biting on a crust of hard bread had broken one of her teeth and that her teeth weren't in too good shape.

Now, from the fact that the wounds were on the interior, the damage was to the interior of the mouth, and the fact that there was no blow on the outside -- no evidence of a blow on the outside, it would indicate almost conclusively that that had happened by something when her mouth was opened or when she was biting down on something, probably when biting down on the finger of her assailant. And there is one thing that I do want to call your attention to, and that is that Dr. Sam was examined from head to toe, and there wasn't any mark of

Dr. Sam being bitten on the finger or anyplace else.

And then we come to the position of the wounds on the head. I think, perhaps, you will remember in Mr. Corrigan's examination of Dr. Adelson, how he brought out that the wounds on the forehead started on the left side, and it was a half inch to the first wound, and then that the others were evenly spaced an inch apart, six of them, right across. That the wounds on the top of the head -- there were four of them that were evenly spaced a half inch apart. I call your attention to that because the theory of the State has been -- and Mr. Parrino repeated it in his argument to you here today -- that whoever killed Marilyn had some instrument and struck her 35 blows. He said, "Go back to the jury room and try striking 35 blows and see how long it will take."

And their theory is that Dr. Sam -- that Dr. Sam's story of having woke up and gone upstairs and run into an intruder just won't hold water because had he jumped up and run upstairs, as he says, he would have gotten there before the intruder had time to strike the 35 blows. Well, of course, that involves some assumptions.

In the first place, you have to assume

that Sam woke up as soon as his wife cried out, and nobody knows that. The probability is that he didn't, because Sam was a deep sleeper, and when you are asleep, you might not hear the first call. It might have been the sixth or eighth or ninth call for help that Sam heard, we don't know.

But, in any event, it certainly doesn't follow that Sam got up with the first blow and that he spent all the time going up while the man, whoever it was up there, was striking any 35 blows. I think that almost anybody who has ever tried to swing an axe or a hammer will know that it's almost physically impossible to strike a series of blows such that they would be exactly an inch apart, or a half inch apart. It would be hard enough to do it in daylight. It would be practically impossible to do it in the night time, in the dark, and with some woman struggling for her life, and for somebody to stand there and strike blows that would be spaced like that.

The only possible explanation that we can see is that those blows must have come from some multi-pronged instrument, and that they came with perhaps one, two or three swipes, and I think the nature of the blows speak for themselves.

The only way that you could possibly space

something like that would be with a tool that was already spaced, so that when you hit, the prongs all hit at once, and if that's so, there weren't any 35 blows. There were probably three, four, six, I don't know. But certainly there wasn't the time lapse that the State talks about.

However, that fact was not called to anybody's attention by the Coroner's office. The police weren't looking for that kind of a tool. In fact, Chief Eaton told how he was looking for some kind of a file. Nor was the fact of the injury to the inside of Marilyn's mouth and the significance of that, the possibility of somebody having a bitten finger, that wasn't called to the attention of the police.

The testimony was that when they had their meeting on July 16th, when they got all the law enforcement agencies together and tried to pool their information, that there was no discussion of that fact, although it was perfectly evident and obvious from the fact that it was in the Coroner's report.

I don't mean to say that the wound -- the wound was there, the breaking of the teeth was there, but not the significance about apparently having

come from somebody's finger being inside the mouth.

Now, I want to turn to what the police did and did not do in this investigation. The Bay Village Police had called for help from the Cleveland Police. The Cleveland Police sent out a Bertillon team, and the ones who testified here were Detectives Grabowski, Dombrowski and Poelking.

Detective Grabowski was the so-called expert on fingerprints and photographs, Detective Poelking was the expert on latent fingerprints and Detective Dombrowski was the investigator who investigated the so-called trail of blood.

Mr. Grabowski testified that he went out to the Sheppard residence in response to instructions from his Chief on the morning of July 4th. He didn't testify to it, but one of the witnesses testified that when Mr. Drenkhan first called the Cleveland Police, which was around 6:30, he was told that the shift was changing and he better call back later on. So he called later on and he got the next shift, and it was something after 7:30 before Detective Grabowski started out there.

He made only one trip to the house, and he got there either at 8:15 or 8:30, and he was through at 10:30. So that the entire examination

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that he made of the Sheppard house and grounds and the photographs that he took all occurred within that two or two and a quarter hour period.

He testified that he first went through the house, kind of a hurried-up trip to kind of get himself oriented, and that then he came back and took some pictures downstairs and then checked for fingerprints, and it's the fingerprints that I especially want to call your attention to because there has been a lot of talk about lack of fingerprints in the house.

Detective Grabowski said that his examination was as follows: He said he went into the living room and he dusted the desk for fingerprints. Now, you will recall that that was a writing desk with a slant top that came down as a shelf, and he dusted the inside of the shelf and the outside of the shelf, and he dusted the fronts of the drawers and he dusted the sides of the desk, putting his fingerprint powder on, blowing it off and looking at it. And that examination revealed only one print, which was a partial palm print, which was later determined to be Chip's.

He also found some parallel lines, he said, which looked as though they might have been made by

a cloth or fine sandpaper, but that was all he found.

He also said that there were various papers that were in the chair next to the desk and that were on the floor. Those he examined by the visual method, which meant that he took his flashlight and held it at a 45-degree angle and looked across it, like this, and if he could see a fingerprint, or something that looked as though it might be a fingerprint, he then put some fingerprint dusting powder on, but if he didn't see something like that, he just passed the paper up.

Well, he also admitted that there are latent prints that aren't visible to the naked eye which can be brought out by the iodine fuming process or which can be brought out by the silver chloride process, and that he had in the car that he drove out, that he had an iodine fuming kit, but he didn't use it on any of those papers.

For all we know, it may have been full of somebody's fingerprints, but Detective Grabowski made no effort to find out, and he took nothing back with him to the laboratory. He left it all right there.

After he had looked at those papers, he went to the door to the porch. He examined the

door and door frame, and again, using his flashlight with a visual examination, he testified that there were some undecipherable smudges, blurs, but no clear fingerprints, although on the knob of the door he could see a succession of prints one on top of the other, and he didn't think that he could get a clear print so he didn't take a picture of it and didn't do anything about it. He just passed that up.

Now, you ladies and gentlemen were out there in the house. You know that that's a large living room. Over on the east side there's the living room furniture -- the dining room furniture, and on the south wall there's a china cabinet, the two sectional chairs with a lamp table between them, just before you get to the L. Around the corner there is a couch, there's fireplace tools, there's several other chairs in the room. And on the north side there is the television and there is a telephone over near the corner, a couple of lamps. There are a lot of things in that room.

To me, just as a layman, I would have thought that a fingerprint expert would look over some of those things. It seems to me that anybody who made a proper examination would have

looked at them. But Detective Grabowski did not. He testified very frankly in response to a direct question by Mr. Corrigan that that is all he did in the living room, and then he went into the den.

Now, when he went into the den, he dusted the top of the desk, he dusted the fronts of the drawers, and I believe the sides and bottoms of the drawers, and I believe the sides and bottoms of the drawers, although it may have been visual there.

He made a visual examination of the side of the desk. He dusted the two broken statuettes that are in here in evidence. He dusted two metal boxes that were on the floor and examined the papers in them. He dusted several cardboard boxes, and that, he testified was all that he did in the den.

Now, again, I say to you, ladies and gentlemen, that there were lots of things in that den that Detective Grabowski never looked at. And the next thing he did was to go upstairs -- no, I'll take that back -- the next thing he did was to look at the medical bag in the hall.

Do you remember that just outside the den the medical bag, this smooth bag which has the scuff marks, had been up-ended and was sitting on

its end with the contents spilled out on the floor.

Now, Detective Grabowski said that he examined the various vials, and so forth, that were in here for fingerprints, but as far as the bag itself is concerned, he said all he did was to try to put his own fingerprint on it and that he concluded he couldn't get a satisfactory print so he made no further examination.

Well, now, this is the bag that -- and he apparently was mixed up on the bags, because he testified it was a pebbly bag. Of course, the evidence is that the pebbly bag is the one that was out in the jeep. But in any event, he testified he couldn't get a fingerprint on this bag. Well, now, you ladies and gentlemen will remember that during the course of this trial Mr. Corrigan placed his hand on this bag and -- yes, I think it is still here, although somewhat mutilated -- they put some Scotch snuff on that and blew it off, and you could see that fingerprint. Certainly, it seems to us, that the examination that Detective Grabowski made was something less than complete, something less than you could have expected from a Bertillon expert.

Now, that finished his examination of the

downstairs and so he went up. And he testified that he went into Marilyn's bedroom and that he checked only the northwest window for fingerprints. The northwest window was the window on the north side, which was toward the west side of the room, and that was the only window that was open. The other windows were locked when he got there. And he checked that window, and the window frame, the northwest window, he checked the inside and out.

Now, Mr. Corrigan asked him whether he checked the dresser, whether he checked the beds, either bed, Marilyn's or the other one, whether he checked the night stand between the beds for fingerprints, whether he checked the telephone that was on that stand, whether he checked the alarm clock that was on that stand, and to each and every one of those questions he answered no.

He explained that he didn't check Marilyn's bed and he didn't check the doors, the closet door and the door to the room which had been swung in, because there were a lot of blood spots on it and he felt that if the pictures that he had taken of the blood spots were not clear enough, it might be necessary to take them over and the fingerprint powder might spoil that. But, of course, it

doesn't take very long to develop the prints, and they didn't develop the prints and come right back. It wasn't until July 23rd that anybody came out there looking for any more fingerprints.

He also testified they might want to make some chemical tests, but again that didn't take until July 23rd. But apparently, in the meantime, between July 4th and July 23rd, apparently everybody slept on the case, no further examination was made.

Detective Grabowski took a look at the window, and then he said that he did not look at the closet door or the frame of the closet door nor the other windows, and that he did not examine the door jamb into the bedroom, nor did he examine the stair rail or the stairway going down.

Well, now, certainly if you are going to make a thorough examination of a home, here's a case where a murder occurred on the second floor, presumably the intruder went up the stairs and down the stairs, you would think that a normal natural place to look for fingerprints would be on that stairway, the stair rail or walls or someplace there. But he didn't look for it,

nobody looked for it until many, many days afterwards, at a time when there had been dozens of people through that house and fingerprints all over the place.

But there was the opportunity and there was the place where an expert should, in my opinion, have made a thorough examination. It's a chance that comes only once. After you let people go through and put fingerprints all over, you can't go back and do anything about it.

And then he testified that that completed his examination of fingerprints in the house. He took some pictures and he left and he never came back.

Well, that's probably all he could have done in two hours. But I say to you, ladies and gentlemen, that what the police should have done was to make a thorough examination of that house, and they didn't do anything more about it until July 23rd, and on July 23rd Detective Poelking was sent out. He is the latent fingerprint expert.

On that day he went up into Marilyn's bedroom and he examined her bed. He also examined her closet door. He examined the door that leads into her room and the framework around that door.

He examined the closet door, but not the jamb inside the closet door. He also testified that he examined the door in the west bedroom and the door frame in the west bedroom, but not the closet door in that room. He examined no other closet doors and nothing else in the house for fingerprints.

Well, of course, you could probably understand why Detective Poelking didn't make a more thorough examination of the house, because by that time the police had decided -- in fact, long before they decided that Dr. Sam did it and it wasn't necessary to look any further.

You heard Dr. Don say yesterday how during the morning, about ten o'clock in the morning, he had heard Dr. Gerber saying to the officers out at the house, "Well, it's pretty evident that the doctor did it. Let's go down to the hospital and get his confession."

And it wasn't long after that, on that afternoon, to be exact, that Officer Schottke did say to him, "The physical evidence all points toward you, and I don't know what my partner thinks and I don't know what Chief Eaton thinks, but I think that you killed your wife."

The Defense thinks that the evidence shows

pretty clearly that from that time on the police concentrated their efforts on trying to pin the thing on Sam instead of looking around and evaluating the clues and making the most of them. Their efforts were directed toward one end, which was to pin it on Sam and get a confession from him.

And so Detective Poelking didn't go all through the house, but he did go around the bedroom and look around, and what did he come up with? The net result of his search was that he found one left thumb print of Dr. Sam on the head of his wife's bed. If it weren't so serious, it would be kind of funny, because after all, what's wrong about a husband's thumb print being on the head of his wife's bed? It seems to me that it's no evidence whatsoever to connect Sam with this crime.

The evidence is that Sam was in that house on the 9th, that he was in the house on the 12th, that he was in that room. He might have put it on there then, I don't know, but whether he did before or after, certainly there is nothing wrong about Sam's thumb print being on the head of his wife's bed.

And, of course, with these thumb prints, or any of these fingerprints, it's the same thing

as with these drops of blood that I'm going to come to in a minute, they can't tell how long those have been on. They can't tell whether it was something that was put on on July 4th or some other day.

Now, Detective Poelking did say that when he examined the portions of the bedroom that I have referred to, he found fingerprints and palm prints of the various detectives who had been working over the house, and I assume that if he looked other places, he would have found more of them because there had been a number of police and people working over that house.

But one thing that stands out in his testimony, and also in the testimony of Detective Grabowski, is that they did find smudges or smears which would be made by a hand being placed or fingers being placed on the framework or woodwork, or wherever it was, glass or wherever it was. It wasn't the absence of this -- there has been a lot of misinformation about this thing, about whether there were fingerprints present or not. These smudges are fingerprints, but they are not identifiable prints. Of course, with people in the house you are bound to have fingerprints in the house, you can't help it. But the only fingerprints that

they have come up with that they thought were significant were Sam's. To me, it seems to me the most logical thing that you'd have in your house your own fingerprints, and I don't see that it proved anything.

I do say this, though: That the testimony which the State offered proves that there might have been a lot of fingerprints in there that they never even looked for. When they say that there was nobody in the house but Sam, they didn't know, they didn't even look.

Mr. Parrino said at one time they didn't want to magnify some of the testimony. Well, I'll say to you that if the Coroner's office and if the police had used some of the microscopes and other equipment that they had there to magnify what was there, it might be a different story here today.

Now, another chapter of the story, of the bungling and incompetence that was shown in this case is the so-called trail of blood, and I want to spend a little time on that because while Mr. Parrino didn't go into that, the State spent a lot of time in its case on it, and I think it is something that we ought to consider.

Of course, it may be that the State

intends to refer to it in the closing argument. After we get through, the State still has time in which to close. But I will call your attention to it, that after the State gets through, we have no chance to come back and say anything more about it. Anything that we are going to say, we have to say now, and for that reason I am going to anticipate that maybe something will be said about it.

Now, the so-called trail of blood: There was testimony that there were some 50 or 60 spots of blood throughout the house, upstairs, downstairs, in the basement, on the stairways, even in the garage. There was some indication that a charge was going to be made that Dr. Sheppard in his wanderings after he had come back from the lake and had seen his wife dead, or at some time during the time, had walked back and forth aimlessly and dripped blood wherever he went.

Well, there were two people who testified about that. That was Detective Dombrowski and Miss Mary Cowan from the Coroner's office.

The sum and substance of it is that of all the drops that they found, there were only six that Mary Cowan and Detective Dombrowski between

them could identify as being human blood. The rest of the drops were tested by the Luminal and benzidine tests by Detective Dombrowski. They were tested by the leuchomalachite green and the phenophthalin test by Miss Cowan, and both Miss Cowan and Detective Dombrowski said that so far as those tests are concerned, the only thing that they would show is that they got the positive reaction, which might mean blood, either human or animal, or it might mean something else.

There are various other substances which do respond to these tests, some of them types of vegetables, some of them chemicals that give the same reaction as blood. Whether it was vegetable, chemical or some kind of blood, those tests don't show whether it is human blood or whether it is animal blood.

And, of course, by this time we all know the story about KoKo and the fact that when KoKo was in heat and was running through the house that, as Mrs. Brown said, the dog had the entire run of the house and she just dripped blood everywhere. Mrs. Brown said that she wiped up the kitchen floor, but she didn't go around the house looking for places to wipe up, and that so far as the

carpet was concerned, it was kind of a reddish color anyway, and that she just never -- the blood kind of blended in and she never washed it up.

Miss Cowan also testified that when blood has fallen on a surface, even though it dries, that it retains the characteristics of blood and will respond to a test for blood months and even years after it has fallen on this surface.

So that any blood spots that were found there in August, it might have been blood that came there July 4th, it might have been blood that came there in April or it might have been blood from a year or two before, nobody can tell.

And both Detective Dombrowski and Miss Cowan were very frank in saying that they could not tell how long the blood spots had been on these surfaces, even the spots which they said were human blood.

Now, Detective Dombrowski said that on the third step from the bottom on the basement stairs he had scraped up a little chip of wood that had a spot of blood on it, which was suspected blood, and that he had tested that with the precipitant test, and that in his opinion it was human blood.

Mary Cowan took some spots from the basement stairs, too, I think, if I remember rightly, from

the risers between the kitchen and the stair landing and two from the steps or risers going from the landing upstairs. Some of those drops she removed physically by scraping the little chip of paint off, some she took by putting a drop of distilled water on and sucking up the solution, but in any event, from those six drops she got sufficient so that she could make a test. And she said that those gave a result which indicated to her that they were human blood.

Now, that leaves us with six drops -- giving the most favorable interpretation to the State's testimony -- six drops that were human blood. Now, of course, they don't know when that blood was put on. They don't know who put it on. It wasn't even possible to type it for blood. And in order for those drops to mean anything in this case -- of course, they haven't been hooked up with Sam Sheppard in any way whatsoever. It might be that it was from Chip's cut foot, it might have been from some of the other instances that occurred, when the niece cut her head and ran through the house, it might have been from any number of things, even a crushed mosquito, a fly or beetle would leave a drop of blood on the step.

But even assuming that that was human blood, in order to do anything about it, they would have to prove that it was put there July 4th, that it was Marilyn's blood, that Dr. Sam was responsible. None of that has been proved.

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Again I say that so far as the State is concerned, there is a complete failure of proof on that matter. The Court will instruct you when you come to the instructions of the law that you can't pile an inference on an inference.

Well, as far as the blood is concerned, you would have to pile an inference on an inference on an inference, because you would have to assume first that it was Marilyn's blood; secondly, that it was put there on July 4th, the morning of July 4th, and that thirdly, that Dr. Sam was responsible, and that is something that the Court will tell you you can't do.

Now, there is another thing about the blood trail that I want to call to your attention.

In the first place, we have evidence in the record that blood coagulates so promptly, that even if you were to have your hands dipped in a bucket of blood, even if you have a weapon that had blood dripping from it and started to walk, it wouldn't be very long before the blood coagulated and stopped dripping.

The idea that the slayer could have walked throughout the house, over into the garage, upstairs, back to the upstairs of the garage, and down to the basement, dripping blood all the time, is perfectly

fantastic. The only way that that could have been done would have been to have a sponge available with blood in it and to squeeze it from time to time as you went around and renewed the supply, because blood just doesn't act that way.

But there is another thing about that blood. Just suppose for the moment that the slayer had left Marilyn with a weapon that was dripping blood, and he steps out of the room. Now, where would the drips occur? Certainly the biggest drops would be just when he started, wouldn't it? They would be right there in the room, or as you go out into the hall, or as you go on down the stairway.

Now, when you go to the jury room you will have these photographs, you will have the evidence as to where these drops were found. I think we have -- well, we have in evidence all the photographs of the drops of blood which were produced by the State, and they took their own photographs. They also testified as to where they found drops, and you will find that there are no drops whatsoever in the upstairs hall, there are no drops at all between Marilyn's bedroom and the stairway, and you have to go partway down the stairs before you start to get any drops of blood at all.

And it just isn't reasonable. It doesn't hang together. If the slayer had done what has been indicated, you certainly would have had blood in that upper hall.

Another thing, as the slayer progressed through the house it would be only reasonable that as he got toward the end of the trail the drops would be smaller. Well, if you recall, when these witnesses were on the stand, Mr. Corrigan asked them to describe in detail the size of these drops, and they ran from an eighth of an inch in diameter or a narrow streak, maybe $3/16$ or a quarter of an inch long to drops as long as a quarter of an inch in size -- in diameter. Well, it wasn't a case of the larger drops being up in the bedroom and diminishing as you went away, with those drops irregularly spaced and irregularly sized. Wherever you went, they were about the same size, whether you were in the garage or basement or living room, or wherever you were. The whole thing sums up to this:

That the police found some 60 drops here and there, which responded to certain tests, that showed they might be blood or they might not be blood, human blood; that they might be animal blood or human blood, except for six drops, and those six drops, there is

no evidence whatsoever to tie them up with Sam.

Now, I want for a moment to call your attention to some points in the evidence which are consistent with and which support the story of Dr. Sam Sheppard, the story that Dr. Sam Sheppard told, and I am not going to ask you a lot of questions about the thing. I am going to point out the things that are in this record and stand uncontested.

The first thing is that -- and I think this is one of the strongest -- and that is that Sam Sheppard's trousers had only one spot of blood on it, and that was a rather large spot down here just above the knee. Those trousers are in evidence, and you will have them when you go to the jury room, and you will notice that spot I am referring to here right on the left knee.

You will also notice that these trousers were thoroughly soaked. According to Sam's story, he had been out for an unknown time in the lake, knocked out, lying on the edge of the shore there, and the witnesses said that when they got there Sam was soaked, he was soaking wet, trousers, shoes, socks, shorts, and there was some water still in his hair, although his shoulders and such had dried off, but in spite of that, the blood had remained.

Now, there also is in evidence picture of the room, and you will have these with you in the jury room. I will call your attention to Defendant's Exhibit III, a scene across the bed and showing the closet door and the door to the room, which is swung back, and you will notice all the spots of blood that were on the door. There is a close-up in here, it is Defendant's Exhibit QQQ, and State's Exhibit 77, showing the same spots. This was taken after the fingerprint powder had been put on, it is not quite as clear, but it is more of a close-up, and you will notice the multiplicity of the spots and the same thing on the wall behind Marilyn's bed, which is shown in Defendant's Exhibit KKK.

When you were in the room you may have noticed those things, although nobody was there to point out anything special to you, you may not remember them, but as you look at those photographs, I think you will remember that the blood in that room was sprayed around in droplets, just as though you had a hose with a fine spray and just sprayed it around. It wasn't just great spheres of blood. It was little drops of blood, but a great many of them, and it was on the wall behind the bed, it was on the door -- the two doors and part of the wall on the east side, and

there were even drops on the north wall and on the curtains on the windows on the north side.

Now, I say to you that whoever killed Marilyn, standing beside that bed striking her, inevitably was sprayed with blood. You just couldn't get away from it, and that blood wouldn't come in great big gobs. It would come just as it came on the other surfaces around there, a myriad of small spots.

Mary Cowan was on the stand. She made an examination of these trousers. She was asked whether she found any blood spot except this one. She did not. She had at her disposal all the chemical tests which would have revealed blood, had there been any anywhere, even though it might have been washed out to the naked eye, the chemical tests would still show it, but there was nothing. In fact, Mary Cowan testified that you can't wash blood out successfully, that even if you boil the clothes you can't get rid of the blood, and the only thing that is on Sam Sheppard's pants is this one spot, which might very well have come after he tested Marilyn's pulse and reached for her throat, an instinctive reaction would be to wipe your hand across your pants like that. (Indicating).

To me, the fact that there is no blood on these trousers, no spots of blood, I mean, where there would have been 50 or 60 on the murderer, that there is no blood on that belt, that there is no blood on the shoes and the socks, is mute evidence, but very powerful evidence, that Sam Sheppard did not kill his wife, because the person who killed Marilyn certainly had the blood on him.

Now, the counsel for the State may say to you, well, he had blood on his T-shirt, whoever killed Marilyn. That is why Sam got rid of that T-shirt. But I will call your attention to the fact that if there was blood on the T-shirt, there also would have been blood on the other clothes. We don't know about the T-shirt. I don't know where it is. Sam has no idea. It might be -- it might be that it was a T-shirt that was found on the Schuele's pier and which is in evidence here. There was a northeast drift that night. Sam's place is in the lee of the Huntington Beach pier, the wind was from the northeast, and the Schuele's is the next place west. It might have gone over there, I don't know. It is equally consistent that whoever killed Marilyn and had blood on his T-shirt or shirt, whatever he wore, might have taken Sam's shirt -- he was about the same size -- he might have taken Sam's

shirt and pulled it over his own in order to cover up, because if you were wearing dark pants and had some spots, it wouldn't show, but if you had a white T-shirt and you went any place with drops of blood all over, it would show.

But again I say that isn't our function to determine what happened to the T-shirt. The absence of the T-shirt doesn't mean a thing. Here is a man who -- he falls asleep, and according to testimony, he had a T-shirt on at that time. When he is found after the experience that he relates he has no T-shirt. Certainly that is entirely consistent with Sam's innocence. It is certainly no proof of his guilt.

And the same thing with the corduroy jacket.

Now, there is something I want to mention for a moment. They made a lot about the corduroy jacket and how it was neatly folded. Dr. Steve testified that when he got there, which was shortly after six, that he went into the den and looked at his brother, saw he was alive, and immediately went on up to Marilyn; that he went through the living room where his wife was, and around the corner of the L, and that as he passed through, this was next to the couch, and he stepped over it. He remembered stepping over it going up, and he remembered when he came down it was

still there, and that he stepped over it. Later in the morning it was on the couch.

You have also heard testimony from various State's witnesses that when they came there they saw the jacket on the couch. The time element is not too clear as to just when that jacket was first seen on the couch, although Patrolman Drenkhan did say that when he got there -- and he was one of the first to arrive -- that as he went through the kitchen and up the stairway, that he could see this jacket on the couch. I am inclined to think he was mistaken. Detective Schottke said that when he got there he went up, and that, if you remember, he said, as you go up the stairway, if you lean over the rail, you can see the couch, and I think if you look at the photographs that are in evidence you will see that is the case, that where this jacket was on the couch, you couldn't have seen it just by going through the kitchen. You would have to lean over the rail, and certainly somebody who was in a hurry that morning to get up to where Marilyn was killed, would hardly have stopped to lean over the rail and make a notation that there was a jacket on the couch.

I think it is something that came later, in all probability; that the neat folding to me suggests that

some woman probably did it. It is quite likely that Mrs. Houk, Mrs. Sheppard, one of the women who were there that morning, might have picked up that jacket and folded it neatly and laid it on the couch. I don't know, but it doesn't seem like the sort of thing a man would do.

However, let's assume for the moment that the State's contention that Dr. Sheppard was wearing this, and that he took it off, is correct.

Now, you have got to have it one of two ways: Either he had it on, or he had it off. If he had it off, he certainly -- I mean if he had it on -- take if he had it on, first, -- if he had it on when he killed his wife, the jacket would certainly have been full of blood. There isn't a speck of blood on it. Nobody even claims there is any on it. You can't -- you can see that from looking at it.

So it must be, then, that he took it off before he killed his wife.

Well, now, if he took it off what did he do, take it off and neatly fold it, and lay it down there, and then go upstairs and beat his wife to death? It just doesn't seem sensible. I can't for the life of me see what the corduroy coat proves. It is just another one of those things that winds up with a question.

Well, Mr. Parrino says, "Well, what do you make of the coat?"

Well, I say to you, ladies and gentlemen, that whatever you make of it, I don't think that it proves that Sam Sheppard killed his wife, but I think that any theory that Dr. Sheppard took that coat off and neatly folded it before he killed his wife would be silly, and if he didn't take it off and he had it on when he killed his wife, then certainly, if that is the case, it would be full of blood, so it just doesn't match up.

The first point, then, that I mentioned that supported Sam's story was the lack of blood on his clothes, and I think that is very strong.

But there are some other things that support that, too. One is the sand that was found in his clothes. Miss Cowan testified that when she went through the clothes she took out of the pocket some sand, lost some of it, but had some of it in a vial that she brought in, said she didn't know what kind of sand it was, but it looked like it might be lake sand.

Well, when Dr. Sam was on the stand, while being handed all the clothes he had, he was handed the trousers and socks and shoes by Mr. Corrigan, and he looked at it,

and at that time he was still able to shake out a visible amount of sand from the socks, and there are still grains of sand in the lining of the pockets.

Now, when you get to the jury room, if you take the shoes that Sam wore that night, and take the inner sole and roll it back and look underneath you will find where sand is packed in there.

Now, that is not the sort of thing that could get into a man's clothes if all he did was to go down, as has been suggested, and wash off in the lake. That came from being there a long time, from the action of the water washing back and forth, and I think it is some evidence that the story that Dr. Sam told about being down and knocked out and lying in the water at the edge of the beach for a period of time is true.

The next thing is the trail of water that led from the beach up to the house. Mrs. Houk testified that when she was there, she remembered seeing a spot of water on the porch, and she had called Dr. Steve's attention to the trail of water. Dr. Steve followed it, and saw that there was spots of water coming up from the beach on the steps that went upstairs. In fact, he knelt down beside Marilyn's bed and found a wet spot in the carpet, which he determined to be

water. All of it is entirely consistent with the story that Sam told.

Then there is the evidence of injury to Dr. Sam's teeth. He said he had been in some kind of a struggle. He had these marks on his face, a blow on the side of the mouth. The inside of his mouth was cut and bleeding when they found him, and his dentist testified that he had two chips off his teeth. They were not the two chips that were found under Marilyn's body. Those chips were determined by Dr. Gerber to be chips of Marilyn's teeth, but these chips that came off Sam's teeth.

I have already spoken about the injury to Sam's neck and spinal cord. I won't go over that again.

There is one thing that I think I have touched on, but I want to emphasize a little, and that is the fact that the custom of Dr. Sam and his wife was not to lock their doors when Sam was in town. A lot of people may think that was foolish. I customarily lock my doors, but a lot of people don't, and apparently there were a good many people in Bay Village who didn't, before this. You may remember that the morning that Mayor Houk was called, he drove over with his wife, and after he saw what had happened,

he said to her, "I think I better go back and make sure that our place is locked up," and that is the first thing he did, he went back home and got Larry out of bed and told him about it, and told him to lock the door.

Mrs. Paine from across the street was asked, when she was on the stand, whether she customarily locked her doors, and she said, "We do now," or "At least, we try to."

But Dr. Sam and his wife didn't. Dr. Hoversten testified that when he was with them -- and do you remember he stated he stayed with them for about six weeks when he first came to Cleveland before he went over to the hospital as an intern, and that he was with them again when he came back on July 1st -- and he testified that on the night of July 1st he came home about 11:30, and Sam was still up, and he went right in, the door wasn't locked, but Sam was up. He testified that the next night, when he came home, the family was in bed, the house was dark, he had no key, but he went to the Lake Road door and turned the knob and walked in, and he said it wasn't locked, as usual, and he didn't lock the door because he knew the custom was not to lock the door, but as he went upstairs Marilyn called out to him and said, "Is that

you, Les?"

And he said, "Yes."

And she said, "Did you lock the door?"

And he said, "No."

And she said, "Good, because the maid is coming in the morning."

And, o f course, Mrs. Helms testified that on occasion when she went there the door was unlocked.

Dr. Don told about the times that he went to the house during the nighttime, and that when he went there he never found the door locked, so that we have a situation here where anybody could have walked into that house.

There was a lot of talk from the witnesses for the State about how they made the examination of the house. They checked all the windows, they checked all the doors, and they found no evidence of forcible entry.

Well, of course, if the doors are unlocked you don't need to have any evidence of forcible entry. All you have to do is turn the knob and walk in, and although Mrs. Ahern said that she had locked the door on the porch when they came in, because it was a windy night, so that she locked that door, she said also she didn't know anything about the condition of

the door in the west end of the living room or the door off the den or the door that they left by. The last thing she remembered was Marilyn going to the door with them and saying goodnight.

Now, another thing which Mr. Parrino touched on very lightly, but which I think deserves more comment, is the undisputed evidence of two people who have no connection with Dr. Sheppard, that there was a bushy-haired man in the vicinity of the Sheppard home on the morning of July 4th. The first one was Mr. Leo Stawicki, and you remember that he had started out for Edgewater Park with his brother, but went out to Johnson's Island in Sandusky Bay to go fishing; that when coming back at 2:30 in the morning towing a boat, his headlights picked up this rather large, bushy-haired man. He stated that he had seen several hitchhikers before he got to Sandusky, that is, from Bay Village over, but that from Sandusky in he saw nobody else on the road except this one man, and it stuck in his mind, because here was a fellow that was supposed -- that he supposed was a hitchhiker, and yet here he was standing back off the road in the shade of this tree and rather protected by the tree from anybody coming the other way, and Mr. Stawicki testified that he was driving down the center of the

road and had had his bright lights on, and picked this fellow up, and he remembered that he had some kind of a light shirt on -- he didn't know whether it was a T-shirt or a sweat shirt, or just what, whether it was light gray or white, but it was light colored, and it was not a regular shirt with buttons, such as I am wearing. And this fellow was large, he thought about six feet, and he had a generally bushy appearance to his hair.

He testified that that week was his vacation, and he went out fishing, spent most of the time that way; he doesn't read the paper every day but along about the end of the week he looked in the paper, and when he saw they were saying the doctor did it, and that this murder had occurred, that he felt it was his duty to go to the police with the information, and he went out there.

Of course, the prosecution is claiming that Mr. Stawicki went there because of the \$10,000 reward, and the same suggestion was made as to Mr. Knitter. Mr. Stawicki denied it, but, look, if he had been after the \$10,000, all that Mr. Stawicki would have to do would have been to go to the police and say, "I saw that man, and the man under the tree is Sam Sheppard." In fact, the police subsequently put Dr.

Sam in a line-up down here at the County Jail and called Mr. Stawicki down and asked him if anybody in the line-up was the man he saw, and Mr. Stawicki said no.

Now, I say there was an honest man. He didn't know Sam. He didn't know anything about the Sheppard family, but he thought it was his duty as a citizen to go over and report to the police officers. You saw him on the stand, you heard what he said, and I think you will be convinced that what Mr. Stawicki said had the ring of truth, and it is exactly what he saw on that day, and so with Mr. Knitter.

Mr. Knitter was going home a little bit later in the morning, and he saw this bushy-haired man on the road a little bit west of the Sheppard place, by the cemetery, I believe.

Now, I can't prove that the person who was seen on the road was the man who killed Marilyn Sheppard. I don't know. But there is the evidence of two unprejudiced people, didn't know the Sheppards, don't know anything about them. They came in and said that that is what they saw that morning, and it ties in with Sam's story of the kind of person he knew, and he told that story long before these people showed up.

Sam didn't tell that to fit in with what these people said. Sam told his story, and it was the same from the beginning, and this evidence showed up, which is some corroboration of what Sam went through that day.

I also want to call your attention to some of the spontaneous remarks that same said while he was under the influence of this beating, and while he was incoherent, and in a state of what some of the witnesses have described as shock.

Of course, Mr. Parrino spoke about the shock as though it was something that existed ever since the time the doctor started up the stairs when he was first hit. I don't know how long it occurred, but I think the evidence is perfectly clear that when Mayor Houk arrived that morning that Dr. Sam was somewhat incoherent and in pain, and as the other witnesses came in, they all testified that Dr. Sam was suffering, that he was incoherent.

His sister-in-law testified that when they put him into the station wagon to take him to the hospital, he was cold and shaking and quivering and quaking, as she put it; that when he got to the hospital, the nurse who undressed him -- you remember Mrs. Franz -- if you ever saw an honest person, a person who told

exactly what she saw, just as she did it, that was Mrs. Franz, and she said that when they undressed Dr. Sam that he was shaking so that some of the doctors had to hold the top of him while she and the helper pulled off the wet clothes which clung to him; that he was icy cold; that she put a thermometer in his mouth, and it didn't even register. She said that from her experience, he was in shock, so she ordered hot water bottles and put blankets on him, and we have the testimony of the X-ray technician that when she was taking the X-rays, that Dr. Sam seemed to be talking to himself, but what he said -- and here is what he said when he was on the floor of the den.

Mrs. Houk said she remembered him saying, "And I kidded Steve about keeping his doors locked."

And on the way down to the hospital he kept muttering, "How could this happen? Why couldn't it have happened to me instead of Marilyn?"

And in the hospital, the X-ray technician told how he said over and over again, "I tried to get to Marilyn. Oh, God, I tried, but I couldn't get to her."

And Mr. Munn said that when he and Marilyn's father went to see Sam that day, that Sam said to him that he regretted he hadn't kept his doors locked.

And again Dr. Don said that when he was in Sam's room,

Sam kept saying, "Why did they do it? Why didn't they do it to me?"

Now, I say to you ladies and gentlemen of the jury, that those things are entirely consistent with and support the story that Dr. Sam has told, but there are other things which are in the evidence which are entirely inconsistent with Sam's guilt, as charged by the prosecution, and I want to go over those with you just briefly.

I know it is getting late in the day, and you have had a hard day, and you have been very patient about listening to all this, and I think I can wind it up rather quickly.

There are certain things in this evidence that haven't been explained, that can't be explained, and yet they are entirely inconsistent with the idea that Sam could have killed his wife.

The first thing is that Sam did not have any bitten finger or any evidence that Marilyn had -- that he was the one that she had struggled with.

The next is that there were no blood spots on his trousers except ~~that~~ one spot at the knee, that I talked about.

The next is that there was no blood trail from the bedroom to the landing or in the hallway.

The next is that there are a number of unexplained items in this record that deserve your consideration.

Now, the first of those is the piece of leatherette that was found in the bedroom. You recall that, when the detectives went back and made a thorough search they found a piece of leatherette or leather. It has never been determined which it is, but it is in evidence here. It is a little flake of leather, and they checked all of Sam's leather goods, and they couldn't match it up with anything that he had. Presumably, that is something that was torn off the intruder in the struggle, and if so, the intruder wasn't Sam. They made every effort to match it up.

The next thing is the flake of fingernail polish that was found on the floor.

Now, Marilyn, you will recall, did not have fingernail polish on. She did have toenail polish on. This flake -- well, there is very little material, it is now in fragments -- but that flake, the testimony was from the Coroner's office, was ^{not} from her toenail. In other words, it wasn't from the toenail, and it wasn't from the fingernail because she didn't have it on, so it came from somebody else. Who, we don't know,

but there is some evidence that somebody else was in that room that night, and it certainly wasn't Sam Sheppard.

Also you will recall that when Dr. Adelson examined her body he found certain things under the fingernails, and those scrapings were turned over to Miss Cowan to examine, and Miss Cowan found that under one fingernail there were some particles that looked like the same kind of material as this flake of red fingernail polish that was found on the floor. It might have come off when she scratched off that flake of polish.

Then there were the strands of red and blue material that were found under her fingernail. One was a strand of a bluish wool. Another one a mercerized cotton. Those strands are all in evidence. What they come from, nobody knows.

There is the chipped tooth that was found under the bed. You will recall that when the detectives went back there and rechecked the thing, one of them got under the bed and looked around and found this chipped tooth, which has never been identified, but it is in evidence here. Again some evidence of a struggle.

Now, Mr. Parrino said that there was no evidence

of a struggle in that room except on the bed.

Well, of course, some of the questions that were asked of witnesses when they came in were, "Did you see any evidence of struggle in the room?" "No."

Well, the evidence of struggle on the bed was enough in itself, I would say. You didn't need much else. After all, what was there to show evidence of struggle?

When you go into a room where you find a woman with her head beaten in, blood all over the mattress, blood spots on the walls, not only on the wall behind the bed, but on the side and even across the room, you find the bedclothes bunched down at the foot of the bed and in disarray, with the woman partway down the bed and her legs sticking under the bottom board, and her pajama top practically torn off, the one pajama leg off, and the pajamas pulled down and bunched at the other leg, that certainly is some evidence of struggle, and supplemented with these other things that were found on the floor, I would say there was plenty of evidence of struggle there.

Then there was the cigarette butt in the upstairs toilet. Well, that has been mentioned by several witnesses, and you heard Sergeant Hubach just this

morning admit that he had seen a cigarette butt in the upstairs toilet, but nobody did anything about it. There was testimony that Sam didn't smoke cigarettes, he smoked a pipe, and that Marilyn never smoked upstairs, so how that cigarette butt got in the toilet or what the significance might have been is something that has never been explained.

Then there was the footprint that was found under the window. You will recall that when Mr. Grabowski was looking around outside he found a footprint under the window and called Dr. Gerber, and Dr. Gerber required those present to lift up the soles of their feet and took a look at the shoes to see whether it matched the mark, but that is all that ever came of it.

The pants pocket has a tear in it that was not there when Sam went to sleep. ~~That~~ is this tear down there, which might very well have come from somebody jerking the keys and the key ring out of there.

There is a break on the band of Sam's watch, which was called to your attention, but which is unexplained. And then there is the second key to the house. The testimony has been that there was one key and this second key turns up, and when the key turns up, what do the police do? Do they check the key to see whether there are any fingerprints? No. They just pick it up and add it to the key ring, and that's the end of it.

And then down on the beach, there was a woman's footprint and there are photographs in evidence of that footprint, the bare footprint of a woman. The evidence is silent as to whose that is. Mr. Schuele was asked if it could have been his daughter's, and he said he guessed it could have been, but there's no proof that it was.

And further down the beach, about 100 to 150 yards east of the Sheppard premises, 15 or 20 yards up the bank, and a week or so later, some of the boys who were searching found a pair of sunglasses and a handkerchief, which has been put in evidence, but just what the significance is of that --

MR. CORRIGAN:

That was the same day.

MR. PETERSILGE: Pardon?

MR. CORRIGAN: That was the same day.

MR. PETERSILGE: The same day, but I think I am correct about 100 or 150 feet down the beach.

Then there is one other thing which I think is important, and that is that the State hasn't shown any motive for this crime. And after all, people don't go out and kill one another without some reason. And the State doesn't know why Marilyn Sheppard was killed.

Now, in the beginning, when the opening statements were made, the Prosecutor told you that the State would prove -- I think I am quoting him correctly -- that the State would prove that the reason Marilyn was killed was because of Sam's infatuation with other women, and particularly reference was made to Miss Susan Hayes. And in his summation this afternoon Mr. Parrino referred to that same theory.

I think we ought to examine that calmly for a moment and just see what it amounts to. There has been a lot of talk about divorce off and on in some of this testimony, and I want to say a couple of things to you ladies and gentlemen about

divorce.

Now, in the first place, I think the evidence shows that Sam didn't intend to get a divorce, but let's assume that the evidence that has been put in is to the contrary, suppose he wanted a divorce. That's the most you could claim for what the State has put in through Dr. Hoversten, about 1950 and again in '53, and the mention that Sue Hayes made about there being a discussion of divorce.

But just suppose that the result is that Sam wanted a divorce. Well, now, if he wanted a divorce, that doesn't mean he wanted to kill his wife. The easiest thing in the world is to get a divorce. There are thousands of them go through every year down here and all over the country, and people aren't killed because of that. So that if divorce was discussed, it seems to me that it was not a motive to kill. After all, he is on trial here for killing his wife.

But, as I say, I don't think that Sam ever seriously intended divorce. He says he never discussed it with his wife.

But, again, take the State's testimony and give it the most favorable interpretation that you can, and let's see where we wind up. Now, the

testimony on divorce, as I recall it, came in first through Mrs. Ahern, and Mrs. Ahern said that in April of this year, after Sam and Marilyn had gotten back from California there came a day when she went over to Marilyn's and they were talking, and Marilyn told her about Sam having bought the watch for a girl in California, and Mrs. Ahern asked her whether she was upset about it. She said, "Do you think there is anything to it?"

And Marilyn said, "No, I don't think so."

She also told Mrs. Ahern at that time that when Dr. Sheppard left Los Angeles and drove up to Monterey with Dr. Chapman, that Dr. Chapman had convinced Dr. Sam that he ought to drop the idea of a divorce.

Now, she admitted on cross-examination that several months before at the inquest, when it was fresher in her mind, she had related this same conversation but had said at that time that Dr. Chapman and Dr. Sam discussed it, and that Dr. Sam decided that Marilyn was the one for him, and was the only one, and that Dr. Sam decided to forget about a divorce.

But whether Dr. Sam decided to forget it or whether Dr. Chapman convinced him, either way

you look at it, at that time Dr. Sam decided to forget about a divorce. So as far as the divorce part, no matter what it was worth, it was over by the time they started back from California.

Of course, when you get to Susan Hayes and talk about a divorce, she said there had been some talk about a divorce, but she didn't say what it was. Dr. Sam said that the substance of it was that she said, "Well, other people get a divorce, why can't you?"

But there is no evidence at all that there was any intention to get a divorce, as far as Susan Hayes is concerned, and, in fact, no reason why he would need to.

Now, aside from the question of divorce, how much is this testimony of Susan Hayes' worth? Of course, the State said they were going to show about affairs with other women. The only one they got in here was Susan Hayes. As far as the other poor women whose names were mentioned here, there was nothing of any substance, and certainly they shouldn't have been mentioned. At the worst, it was just a silly flirtation.

But with Susan Hayes, the testimony was, as you know, that she and Dr. Sam had had an affair

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for some time. I don't want to go into the details of it with you, but I think that there are some things that you ought to remember. The first talk of divorce that Susan Hayes said anything about was sometime in the latter part of 1953, when she testified that her intimate relations with Dr. Sam started in 1952 before she had left the hospital. So that whatever there was with Sue wasn't the result of any talk about divorce, it had started a long time before.

The second thing about Sue Hayes is that -- and she has testified to this herself -- that while this was going on Sam told her he loved his wife. Sue was never misled, she knew what she was doing, and she testified that at all times she knew that Sam was a married man.

To my way of thinking, Sue Hayes as a reason for Sam killing his wife is just no good, it isn't adequate. Why would he have killed Marilyn for Sue Hayes?

The evidence is that when Sue and he first became acquainted, she was a technician at the hospital, and after a time she decided that she wanted to get a job downtown and she left. Sam didn't try to stop her. He continued to see her

while she was in town, but when she came back to the hospital, it wasn't Sam's urging. It was Dr. Hartman that brought her back, and he did it because he needed a technician. And when she came back, she said that she was doing it only on a temporary basis, and there was an understanding that she would notify them when she was going to California, and she went to California and Sam didn't try to stop her.

She went out to California, and when Sam was out there he saw her again. But after he left and came back here, there was no evidence of a continuing liason with Sue Hayes. The only thing that happened was that they wrote a few letters back and forth, and Sue said that there was no protestation of love in the letter, in the body of the letter. She said he signed it with "Love, Sam," but that's a lot different than writing a love letter. Well, you can't believe that there was any grand passion between those people, some impulse that would have driven him to kill his wife in order to get Sue Hayes. Sam Sheppard had been able to have relations with Sue Hayes anytime he wanted to for the past two years, and when he went to California, according to the evidence in

this case, it was just another incident. But the idea that he would come back to Cleveland and four months later, after having written a couple of letters in the meantime, that he would on the night of July 3rd while entertaining some neighbors fall asleep watching television, and sometime during the night get up, rush upstairs and kill his wife because of Sue Hayes, ladies and gentlemen of the jury, I can't believe you will ever reach that conclusion.

Now, I think that that just about sums up what I had in mind, and I will say this to you again: The burden is on the State in this case to prove that Sam had the intent to kill his wife, that he had the malice, the wickedness of heart that goes with that, to prove that Sam deliberated and premeditated and deliberately went in there and killed his wife. And that is a burden that the State has to carry by substantial evidence and prove it to you beyond a reasonable doubt. Unless they do that, they have failed.

And it is the belief of the Defense in this case that the State has failed, for the reasons that I have stated.

Again I want to thank you for your attention.

THE COURT:

Thank you, ladies

and gentlemen, for your patience, and I hope that you will be patient at least tomorrow for the simple reason that we are now in the closing stages, and it is important that these presentations be given to you in one connected fashion.

It was important to Mr. Petersilge that he be permitted this afternoon, of course, to complete what he had to say. I am sure you will understand that and be sympathetic with that kind of procedure. This presentation will undoubtedly take all of tomorrow, but we will be through with these presentations tomorrow, without regard to time.

Is it necessary that we start a little early in the morning? Would it inconvenience any of you ladies and gentlemen if we thought, without binding anybody to any minute, of starting at nine o'clock tomorrow morning? Would it inconvenience any of you?

All right. We will not be adjourned until nine o'clock tomorrow morning, and if there is anyone missing at nine o'clock, he or she will not be in contempt of this Court.

We will convene and proceed as soon as

we are all here ready to do so. In the meantime, we are coming now to the closing stages, and will you please be very careful not to discuss this case at all with anyone. Nine o'clock tomorrow morning.

(Thereupon, at 4:50 o'clock, p.m., an adjournment was taken to 9:00 o'clock, a.m., Thursday, December 16, 1954, at which time the following proceedings were had:)

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