

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. BAILEY: If it please the Court, gentlemen for the State, and ladies and gentlemen: It may seem somewhat anomalous to you that you were forced to sit for days on end to listen firsthand to the evidence, and then suffer through the procedure whereby the lawyers get up and tell you what you have heard.

I am sure your collective minds have retained more of this evidence than I can recount, and I will not attempt to.

This is not, although it is often wrongfully characterized as such, an argument, because you can't argue death.

Jurors by definition are silent and they speak but once, but very important words. And if in days past lawyers made big names by lofty oration and adventure into some wild rhetoric, I am not of that caliber, I am afraid, and I have no lofty oration for you.

You were given a nasty job to do, and you have some nasty evidence to look at. It is laid out on this table and I shall allude to it in the course of my argument; and my purpose is only to

appeal to your logic, your analysis, and your ability to put together from the evidence produced by the State and by the defendant all of the truth that has reached your minds and is accepted by you as true, and come up with an answer if you can; and if you cannot, you at least tried, if you cannot resolve your doubts as the law says you must.

I have no notes, no outline, I have no planned presentation to give you. If I seem over-enthusiastic at times, please bear in mind that today is November 15, 1966; five years, 1,826 days we have waited for this hour.

First, I think we should settle just exactly what we are not trying to do. A lawsuit is a contest. Attorneys by definition and by obligation are required to take a side, and to point with tenacity toward everything that benefits their side of the controversy, and to point with doubt at everything that does not.

This does not mean that we are trying to buffalo a jury. I think that lawyers who try to fool juries have very little success.

There is too much combined intelligence in twelve citizens to buffalo. It is not a contest between the good guys and the bad guys, or the white

hats and the black hats, and I have no hesitation in saying that in many jurisdictions where I have appeared and tried cases, I have never met lawyers of any greater caliber than you have seen representing the State of Ohio in this case.

When Mr. Spellacy concluded his closing argument, it took me a while to realize that this was not a strong case, but it was a very good lawyer describing it.

And it is well, I think, because this is an important case to the defendant as well as to the State of Ohio, that good representation has been had. So that you may be satisfied that you need not go out and look for some theories never advanced.

If there is a good case for the State, it has come from Mr. Spellacy or it will come from Mr. Corrigan, or it doesn't exist. Speculation by the jurors is not necessary.

We have also been benefited -- and I throw no kudos at the bench because it can do the defendant no good at this point, his fate is in your hands -- by a very able trial judge who has conducted the trial in the kind of decorum that the people who wrote the Constitution of the United States intended.

It is a serious business, and you have been sharply limited, you have been sacrificed to protect yourselves from the dissemination of information not guarded, not refereed, by the one man who can allow you to hear a fact, or who can rule that you must not hear that fact because it is no good in this case, and that is Judge Talty. So the sacrifice you have made, although difficult, is certainly worthwhile.

Now, we attempted to narrow down at the very outset of this case what we would and would not litigate. Ninety percent we said of the prosecutor's opening was admitted, and we now say and we may make comment, that ninety percent of it as to the guilt or innocence of Sam Sheppard is equivocal or meaningless.

There is only one statement that I recall from that opening statement, which was a promise to you, the jury, a promissory note which is payable now when the case is dumped into your hands, that has been demonstrated to any degree. The prosecutor said, "We will prove that only one man was in that house that night."

There are two kinds of evidence in this case, but only one upon which the State relies.

There is direct evidence, by an eye witness, who has given a story which has been placed before you, and he reports that they, two people, were in his house that night and killed his wife.

But the State, because they cannot accept that story and still allege guilt, tells you no, disregard this witness, depend on the circumstances.. Fine, fine. We like circumstantial evidence, too.. It can be very reliable.

I am sure you people had a bellyfull of voir dire examination of jurors, those of you who were chosen earlier and had to sit through the questioning of the rest, you are all satisfied that there is a way to determine that rain has fallen without seeing it fall.

On the other hand, lest one too quickly concludes that circumstances point where they do not, rigid tests are applied, they will be given to you by the Court and they must be conscientiously applied by you, or this system of justice that we value so highly can easily misfire.

There is nothing much more horrible to contemplate in a free society than a man sitting in a cage for something he didn't do.

You must understand in fairness to all

of us, that by the nature of the procedure we adopt, we do not get to sit down with you at the end of the day and say what did you think about this, what do you think about that, and more or less keep you up to date.

I am sure you have some thoughts about this case even though you have had no discussion, and we may touch upon things you already agree with.

You think to yourself, why is this lawyer trying to ram something down my throat that I have already accepted? Well, be patient, if you will. It has been a long trial. There has been a lot of evidence, a lot of testimony, and just bear in mind I have no way of knowing what you already know, or whether or not something needs to be brought to your attention, and if there is a doubt I am required by my oath as an attorney to do the job all the way, and not just partly.

I don't think any man likes to heap criticism upon his fellows, especially when they are or have been probably diligent and sincere in their purpose.

But this is serious business. This is a grave challenge, and it is far better to call a spade a spade than to lightly pass by things

that should be brought to your attention, things that were done that shouldn't have been done, and much more important, many of the things that were never done that should have been done.

There is an old story which fits this case like a glove. A man walked down the street and saw a lady looking around under a street lamp. And he said, "Madam, can I help you?"

She said, "Yes, I dropped a dollar and I am looking for it."

He said, "Where did you drop it?" And she said, "Oh, about fifty feet down the road."

He said, "Why are you looking here?" And she said, "Because the light is better in this area."

The reason that Sam Sheppard was accused was because he was the handiest guy, and that's all.

And while this was going on, while attention that should have been open and flowing out in every direction for two people at least, was focused upon the handiest object, two murderers were walking around the streets of Ohio. And I suggest to you unless they have died they still are.

Marilyn Sheppard was murdered. This was homicide. It was committed by a human being,

there is no question about that, there is no point in arguing it.

You didn't see Doctor Lester Adelson cross examined at any length. There is no question but what he found a dead body, and h's opinion that an instrument caused it, there is no question about that either.

Now, the people have a right to redress upon a human being. A citizen is wiped out, in this brutal fashion. And one of the people that has that right, the right to pin the blame on the guilty party, is the widower who is left behind.

This case is the People of the State of Ohio against Sam Sheppard; and too easily the notion creeps in that the jurors are the people.

You have for purposes of this trial been lifted out of the people. You are the judges that pass between the people as represented by counsel, and the defendant as represented by my brother Sherman and myself. These are not your attorneys for this purpose.

The only way that a fair trial can be had between a power as mighty, as large, and with as many resources as the Juggernaut that is the State of Ohio, and one single citizen who is the

defendant, is if the barrier of a jury is thrown in between.

Despite your silence and the fact that you are herded from place to place at times all strictly controlled by the Court, despite the fact that all the action is generated by the attorneys and through the witnesses that they produced and examined and cross-examined, and to some extent by the Court as rulings are made as to whether you should or should not be given certain facts; when all is said and one, and the smoke is cleared away, the power is all yours.

And this is our last opportunity before we hand you the responsibility, all that this defendant has to his name, to take with you and judge.

Citizens in this country really can do two things that I consider most important; they can vote in elections and make their collective weights felt, and they can sit on juries.

The defendant has the power to say, "I don't want a jury; I will take a judge, or more than one." But there is no man in this country too small to demand a jury, to demand a judge, and to demand counsel, and there is no man in this country so large that he can't be brought before a jury, and be judged.

This is the great equalizer. This is probably why we like to say this is the best country in the world. This is probably why people go to Viet Nam, or wherever they have to go and shed blood and fight. It is this courtroom right here. This is our unique institution. This is the greatest system of fair play, with its many many drawbacks, that we have ever been able to devise, and this is what we really are defending when we battle.

Other countries have other systems. We don't use them. We use this system. It is clumsy. This country does not trust human power.

We split our government into three groups, each one checking on the other. Those who make the laws cannot sustain the laws.

Those who have the power to strike down the laws cannot make them.

And so it is with the trial of a legal lawsuit. We don't put too much power in any one area and that is why we cannot call one citizen to be a jury, the dangers are too great.

But the collective power of twelve people, with the checks and balances inherent in different backgrounds and different reasonings, are the safety that we rely upon.

Oddly enough we extract you from society, and you must have no detailed experience or you probably wouldn't be allowed to sit. Professional jurors don't exist.

A long time ago jurors used to be made up of people who knew something about the case, back when the system was first devised.

Now we insist on people who don't know something about the case, so that they will decide solely on what they are told lawfully in the courtroom.

And once you have acted, once this collective power is exercised, and it is the greatest power in the world, the only power in the United States that can under appropriate circumstances lawfully wipe out a human life, then we disband the power. You jurors can never be reassembled, and always always bear in mind as you will be told, you are the final judges of the facts.

We may appeal what the judge does, but not what the jury does; and you can never be reassembled to reconsider what you have done.

If you fail to recognize a reasonable doubt, you make a mistake, you can't correct it.

Now, with that in mind, let's proceed

to the case of the State of Ohio against Sam Sheppard and see what it consists of.

I have referred to the more than able argument of Mr. Spellacy, and I anticipate a corker from Mr. Corrigan, and the State is entitled to their say, certainly.

But precious little reference was made this morning to the exhibits themselves. If there is a story to be told, it is not the attorneys conjuring up that story, but it is the evidence that must tell it, because as the Judge says, what we say is not evidence, nor should it be.

We didn't see the crime committed. We weren't even around. We had nothing to do with it. But these things may tell a story.

There were photographs produced by the State, some by the defendant. These have preserved the scene of the crime for your study, and these photographs tell a story.

Your diverse backgrounds I hope will enable you to collectively understand the evidence in this case and to piece it together and to see a great deal more truth than has ever been extracted from it before.

According to your background in one area,

science, you will be able to help the others as to the technical testimony that came in.

Those of you with just common ordinary good sense and a lifetime of human experience, will be able to make a judgment on the probabilities as to whether or not a certain thing happened.

But there are two things that you are required to do by law, and these are no more than a discipline. It is like getting up when you are in the Army and marching at six o'clock in the morning for no reason other than you have to march. It isn't logical but you have to do it.

There are reasons in the wisdom of the law for these two propositions, and whether or not you understand them you will recall that counsel were very careful in selecting you, to ascertain that no man or woman sitting on this jury would put himself or herself above the law and say, "I don't like that rule and I won't follow it."

In the civil law, probabilities are important. In a civil case, a suit for money or property, whoever has the greater weight of the evidence, the probability of truth in his favor, is entitled to a verdict.

In the criminal law, because of the

horrendous potential results, a safeguard is injected so that no mistake can be made if it is humanly possible to avoid it, and that safeguard is all summed up in the term reasonable doubt.

The Legislature of Ohio has defined a reasonable doubt. In other jurisdictions courts have defined it. There are many definitions.

The irony of the matter is that a reasonable doubt is no more, no less than what you say it is, because you will never be called back into this courtroom to define what you thought it to be in this particular case. You took an oath to speak guilty or not guilty and no more.

But it is important to understand the concept because there is an area between probability, if you should reach that level, and I suggest that you ought not to, but between that level and the point of reasonable doubt, that is to say, a doubt with a reason behind it, a doubt that would prevent you from feeling sure, somewhere in that gray area the temptation to find the fact of guilty despite a reasonable doubt, is strong.

It may seem unfair that the State has to go so far, but this is the safeguard; and it is only good if you exercise it.

We have no check on it but the integrity that we thought you had when we said, "Take the juror, pass the juror," both sides.

I think you can easily recall, although it is a week or so ago, the questions that were asked and understand the reasons why.

Neither side sought any advantage in picking a jury of predisposition. You came in here with clean slates, blackboards, in your minds without a character or symbol written there. That is all we ask because then the case is on the evidence.

And you were asked at that time, and I reiterate it now, because you have heard much evidence which may have sparked old memories, whether or not you could put aside anything you might remember, triggered by something said in the course of the trial that you knew came from outside this courtroom and not appeared in evidence, and all of you said on your oaths that you could, and if that has happened, we must assume that you will do so, and that those rules will bind.

The other rule which is thought to be perhaps illogical, that you agreed to accept, and you will be given by the Judge, is the appearance of the defendant. As you were told, the defendant

didn't have to present any evidence. The defendant did not take the stand. He has a Federal Constitutional right not to do so. These are the rules of the game.

You have no way of knowing what the defense might have done if the rule were otherwise, because this is the rule that we operate under, and that we depend upon, and in making the decisions necessary to determine how this trial will be run we have to assume that this rule will be followed conscientiously, whether you admire it or don't like it. It is the law of your country.

The failure of the defendant to take this stand and go through his story now after twelve years, and subject himself to whatever questions the State might now have to put to him, is no basis for any inference that he is hiding something.

An indictment is the legal means by which we bring a man into court to answer to a charge, but to an innocent man it is an insult. And unless and until the prosecution in any criminal case proves or produces some good evidence of guilt, there is no call upon a citizen to personally answer that insult.

The evidence makes this case crystal clear.

Circumstantial cases are built out of pieces of evidence that eventually put together a structure of some kind, call it a building for analogy. If the evidence is there, the building will be complete, and the truth will stare you in the face. And if it falls short, there is a failure of proof, and the defendant is by law to be discharged.

And so we start with the proposition that we have a decedent. There is murder. The sole question is, does the evidence single out the defendant? Is he the man, must he necessarily be the man on all that is proven, all that you believe?

My brother Sherman has attempted to demonstrate to you or to suggest to you in appropriate fashion that even the evidence of the State if you had been left with that, falls far short of singling out Sam Sheppard as the culprit beyond a reasonable doubt.

There are chancy little bits and pieces which don't really point in any direction, consistent with innocence and consistent with guilt.

There are some pieces of evidence in the State's case that are wholly inconsistent with guilt, and I shall mention them.

The fact that Sam Sheppard could have killed his wife, if you believe that he could -- and not a shadow of a reason has been given to you why he might want to after that pleasant evening on the 3rd of July -- the fact that a man could do something is not proof of anything. It would not be enough to get a verdict in a civil case. You must find in your hearts and your minds that you are sure that he did, or your job is acquittal.

Now, in building the structure which is the murder of Marilyn Sheppard, you take the evidence that you find to be reliable and put it in place.

Sam Sheppard had a story to tell. It has been reproduced for you through several witnesses, and it is all he could give at that time, and it was vague.

How suspicious might you be if every time somebody said, "What happened?" a button were pushed and word for word the story came out? Contrivance? Sure.

And if that had happened very able counsel for the State would be here arguing that it is a pat story.

But here is a man who slept, and from the evidence slept deeply; and from your own experience

you know, those of you who also sleep deeply, that one wakes up groggy, disoriented, the eyes slowly unsnapping and beginning to see what goes on.

And then he was struck in the back of the head. Is there any doubt of that? Has there been any shred of evidence produced by the State to the effect that this man was not injured?

Was one doctor called to that stand to say that he wasn't hurt? Were the doctors called by the defendant with good sound objective proof of serious injury, were they destroyed, torn apart, or shown to be liars or incompetent?

Now, if he was knocked out and if he was later knocked unconscious -- and at this point I don't know what the State's position is -- witnesses said they didn't check the sand on the beach. There is no question but what he was down there. Your job, what was he doing?

He said he went down there and he fought, he got sand in his pockets, he had been in the water, his body was clammy when he was taken to the hospital. All of that was corroborated.

He said he was struck in the back of the neck. That was corroborated.

Every single substantial piece of his

story is borne out by the evidence. And I suggest to you that you ought to find, if you are ever called upon to do so -- and you are not -- that this man's innocence is demonstrable beyond any doubt.

But if you reject his story, you cannot by rejecting it say that there is proof of guilt simply because you don't believe what he says.

Then you start from scratch. Then you either put this case together out of the circumstantial evidence offered to you, and believe by you, or you don't have a case; and I ask you what can you build with this?

The evidence presented by the State of Ohio, with all due respect to the skillful manner in which it was presented, amounts to no more than ten pounds of hogwash in a five pound bag. It does not solve the problem presented to you, did Sam Sheppard kill his wife, in any affirmative way.

Would Sam Sheppard have done the following things? Assume, if you will, that for reasons that you are going to have to dream up, because none are offered to you through any evidence, he decides he is going to get rid of poor Marilyn.

Now, this crime charged is second degree

murder, that is to say, murder not thought upon for very long, but rather sudden, without pre-meditation.

A seven-year old boy asleep at the time was never awakened. You have a right to draw an inference from that.

Did this thing happen out of the blue, if Sam did it, or was there a quarrel going on, something that got very hot, and what was it about?

Do you want to indulge in guesswork, because nobody has told you or given you any help in making that decision.

Could this thing possible have happened with Sam as the killer, without some God-awful battle? Did he have the kind of injuries you would expect if he had gotten in a battle with a woman?

Or did he without ever getting a scratch on himself just strike her down 25 or 35 times? Is that what you would expect of a neurosurgeon? Do you have any explanation, any reason, anything to satisfy you, because behind every deed there is a why somewhere.

No, the State doesn't have to prove a motive, but you have every right to consider it in determining whether or not they have proven guilt.

And the motive in this case is not shown, does not exist, and the law does not permit you to indulge in guesswork.

You know, it is very easy to say something with words, just as Roger Marsters said, "That watch is covered with speckled blood." The photograph doesn't show that, but it is up to you, you are entitled to make a judgment with your own eyes.

But until the photograph is flashed on the screen you would perhaps assume it was covered with blood; just like the nearly folded brown jacket, as Fred Drenkhan says, "Yes, it was."

Well, we don't have to take Drenkhan's word. Somebody took a picture of it. If you think this is neatly folded you are entitled to think so, but I suggest it is not. It is meaningless.

But the State begins with a jacket. This is an item of importance they say. They say it tends to point somewhere.

Now, either Sam got up and took the jacket off as he explained to one of his interrogators, because it was getting warm, or he didn't, he took it off at some other time and concealed that fact.

You have a Defense Exhibit, ZZ, which will

go to the jury room with you, and we are fortunate that part of the money we pay for sometimes onerous taxes is given to the Weather Bureau to keep records, and that exhibit will show you, if you will read it, that on the 3rd day of July beginning at about 11:00 p.m., the temperature at the Cleveland Airport -- and you may use your own judgment in determining whether or not the same temperature is likely to exist elsewhere in the area -- was 69 degrees; that at midnight it went up to 70 degrees; at 12:30 it was 69; at 1:00 it was 68; in determining whether or not that house was chilly that night, it was chilly out on the porch with the wind blowing, and whether or not the defendant might naturally have gotten up and gotten out of a jacket that was warm.

And in determining whether or not that was likely you will also determine with respect to the matter of temperature certain other evidence relating to chills which I will point to later on.

The defendant says, "I charged upstairs; I saw a form." Well, in the light described, you saw the house, how much more do you think a man freshly awakened is likely to remember?

Is there any contradiction to that story whatsoever? Is it even unlikely on the face of the

evidence you have seen? Of course not.

Now, remember the first words he spoke to anyone, in trying to take this case apart and seeing whether or not Sam Sheppard contrived to kill his wife, and then cover it up with a crazy story, he said, "They." "They." "They have killed Marilyn," and he never said anything else but "They."

There is no way in the world, no way that you can conceive that Sam Sheppard approaching an intruder or killer standing by that bed, in the place we know that killer stood from the scientific evidence from both the State and the defense, no way that that person could reach out and rap him on the neck with the force that you have seen must have been applied.

This takes two people, and he was struck down, he was unconscious. Perhaps he saw who hit him.

As Doctor Elkins told you, he could not well remember those things that happened in the last instant, the last flash or second before he was rendered unconscious by a trauma to the back of the neck or brain concussion or whatever you find happened.

It is unlikely that any honest man

recovering from these circumstances would have anything but a confused state of mind or a dim recollection of some events. Important matters, yes.

Now, he says when he woke up the glint of the badge in his wallet caught his eye. There was a badge in the wallet, no question about that. He said it was lying on the floor. Is that likely? Does it make sense? Of course.

And he checked his wife, he checked his son, and suddenly the next important thing that happened he heard a noise downstairs.

Now, he says that he tore down the stairs or ran down or went down and he saw somebody going out the lake door, the front door, as it were.

It is important because you have a right to try to put this case together, involving others than the defendant as the guilty party, and somebody not familiar with the house I think would not go out the lake door because they wouldn't know where it led to, or whether that was a good means of escape, and absent some evidence that there was a person right out front who could see them, the Lake Road door who could see them, and that is not the case.

Assumptively somebody else would be out

there at that time and you would have another witness and you wouldn't have to be content only with the story of Sam Sheppard.

My brother suggests that the burglary was faked. I think the question is not clearly resolved, but it seems likely, it seems likely.

It was not the kind of burglary that Doctor Sheppard could be expected to fake if he were trying to cover up a murder he just committed, and there are many reasons why he could not have done so.

But I think we can trace the path of the responsible party fairly closely.

Now, a murder was done in the room; somebody, somebody had an awful hate for Marilyn Sheppard. I am sure that none of you had ever experienced this, but try to conceive of the kind of hate that would not cool down before you had butchered a woman's head with 25 smashes in the face.

Somebody had a hate that this defendant could never have known, and they sprayed that hate all around that bedroom with her own blood. And suddenly Sam intervenes.

Now, did he see and recognize anybody?

There was no time to ask him. He was knocked out. But unless this is an intruder, if this is somebody who feels that he or she may turn up as a suspect, just through routine investigation, we better do something to throw people off the track, because you must understand that at that point no killers had any idea that over-anxious authorities would shirk their responsibility and go after the only guy they happened to be able to put a finger on, without even bothering to check and see whether or not he was so badly injured that he could not have committed this murder.

Sam's watch you may infer was on his wrist. Being righthanded as all the evidence shows he was, he would wear it this way.

Some of you must wear watches with expansion bands like this one, and you take them off probably every night when you take a shower; and when you do so, habitually, the thumb goes under and you pull it off.

Being a doctor, more important, a surgeon, it is likely that just as a matter of instinct a man would not consciously want to damage his own timepiece.

This watch wasn't taken off Sam's wrist that way although it was certainly taken off. It was

yanked like this.

This is the only way in which this band which you know was broken when the watch was first discovered, could have been broken at that spot, the only consistent way, and that I suggest to you is what happened.

Off came Sam's ring. He said he fought with somebody, or got hit, without remembering the details.

Nobody seemed to notice that an onyx stone was smashed, except a couple of scientific people in the laboratory.

But prior to questioning him and throwing out the filthy accusation while he is lying in bed hurt, just become a widower, nobody bothered to look at this.

And so these things are taken, the key chain, carried in the pocket, removed, hurriedly; as the watch was broken in the haste, so the pants are ripped. You have the exhibit. Is it likely that a man removing his own key chain would rip his pants down like that? It never happened.

Now, Marilyn's watch, Exhibit 22, it is no longer bloody but it was then. The photographs are clear. How did it get that way? Well, there

certainly was blood all over her wrist. But more important, the evidence was left on the wrist, not as the Coroner would like to have you believe, and thank goodness you are entitled to draw your own conclusions from facts proven to you.

Blood dries rather quickly. I think that has been established. This watch was stripped off a hand that was soaked with fresh blood.

If you will examine Exhibit 29, when you get to your jury room, you will be forced to that conclusion, because where the watch is normally worn there is a band, the blood that was left there when it was pulled away.

More important, as it was stripped off the wrist just like a bulldozer pushing snow, it carried with it a quantity of fresh blood which then streamed and ran down the hand.

Even tacky blood couldn't possibly do that. And so this happened rapidly.

Now, it is unlikely, I agree, that any burglar who came in for the purpose of stealing would kill Marilyn Sheppard, or if he did, kill her that way and with that kind of vengeance, or be interested in jewelry of this sort. Who would steal these if he really wanted value?

What good is that, with a symbol, to any burglar?

Down the stairs goes someone with these items in hand, bloody.

Now, anybody in that room when the striking was going on is going to have some blood. Blood was flying, there is no way in the world you can doubt that.

The photographs for the State as well as the defendant show that the room was covered, and the only reasonable inference is that that blood was spurting around that room like a water fountain.

And it is logical that the killer in taking this watch off Marilyn's hand would have to get bloody, after if not before, he or she, and so the watches may be expected to be bloody, and they were.

Down the stairs they go to the den where the toolbox is open, and this bag is found.

Because blood dries so rapidly, once it becomes tacky it is unlikely to adhere to a surface like this green bag and in fact it did not.

And there is no question, I think, from the physical evidence that someone tried to stuff all these objects in the bag and Marilyn's watch fell out and it was left in the den, but that's where

these items were put in the bag.

And then cursory efforts were made to pull out drawers, rip things up. Why? What was taken? Nothing. To make it look like a burglary, to divert suspicion from someone, someone who felt that investigation would point the finger in his or her or their direction, and so that is why this was done.

This is not consistent with any planned or unplanned murder on the part of Sam Sheppard. There is no sense behind any of it. It is some after-thought to cover up.

But in this context it does make sense, and I suggest to you that with all due respect to your powers to decide the facts of this case, that this is precisely what happened.

Would Sam Sheppard, having cooled down to the point where he could think, and begin to make some plan to hide what he had done, having cooled down that far, would he take and break trophies that had been awarded to him for some achievement of one kind or another?

Now, the photos show and the evidence shows that these were broken, but would someone else who had a hate for Marilyn Sheppard as demonstrated by the way she was left, and perhaps for Sam, too,

we don't know, just out of spite smash them up.

Well, that's the way they were found.

Sam says, "I pursued someone out the lake door." We know, according to Mrs. Ahern, no reason to doubt her, that door was locked. So someone had unlocked it, and across the front lawn they went and down the set of stairs that you had to negotiate, in the dark of night, in the dark of night. Could you do it?

Could you, being a total stranger, run down those stairs without falling and breaking your head? No. But if you knew them well, you might stumble along in the dark just as Sam did, he didn't break his head going down.

But when running, this green bag -- and Lord knows where it might have ended up -- is suddenly an encumbrance, and so it is cast aside, exactly where it was found, within easy throw of the stairs going down.

And getting there first, and being faced with a man who awakened from a deep sleep, Sam is badly struck down and injured.

It is doubtful that the person who struck Sam was a woman, but for reasons I will suggest to you, I will suggest that you consider with care, you

may well infer that the person who killed was a woman.

There was a fight on the beach, and a weakened man, not too difficult at this point to subdue, is knocked unconscious again.

It is unfortunate we have no way of knowing when the action began. We have no way of knowing how long the periods of unconsciousness persisted. We have only a vague estimate as to the time of death. We have nothing in the way of reports and examination of these watches to tell us whether or not the times at which they were stopped when they were found was significant.

There is a disparity of about an hour, but we know that this one would run when you picked it up and shook it.

How much time it was caused to run from the time it may have originally stopped when it was cast through the air or handled we don't know.

We do know that there was time between Sam's being knocked out, and Sam's going downstairs to start the chase, for somebody to do the things that were done and were found by the first arrivals.

We do know that Sam stayed in the water long enough to give the appearance of being soaked,

to have leather shoes soaked through, to have a wallet soaked through; and you may examine it. Every card in there is run with dye that came from that wallet, and the dye has run into the trouser pockets, as everyone agrees; lying half in and half out of the water, unconscious, until just about the break of dawn.

How long was he there? We only know that when he arrived at the hospital his body was clammy; or would you disbelieve the ladies who appeared and testified, nurses around the clock who accounted for every shift, would you disbelieve them and say they contrived their testimony to help this man? Or do you think they told the truth?

In putting this case together it takes more than the unbridled enthusiasm and unfortunately ignorant lunging of irresponsible people who jump too quick.

Sam Sheppard was the police surgeon. One would expect since he knew how to call the police, that when this thing happened he would call the police who had guns.

The last Sam knew he was in a fight, perhaps a serious one, perhaps his own life was at some point at stake and the killer left before killing

him, and they might still be around.

He stumbled back into the house, and here his story continues, the eyewitness whose testimony the State offers to you and then tells you to disbelieve.

I think you have no doubt from what Miss Cowan said and what Doctor Kirk said, that the killer was spattered with blood and had to be.

Sam's T-shirt, of course, was gone; probably the first thing that would go in any fight. After all, this is no skinny kid, and probably whoever knocked him out the second time had to fight, or the first, we don't know, we don't know.

But we do know that if he was trying to contrive a killing and get rid of a bloody T-shirt, there were a bunch down in the laundry that he could have put on before calling the police.

Miss Cowan said that these trousers had only one provable spot of blood, and that is the state of the evidence, there is no basis on which you can find as a matter of fact that there was blood elsewhere.

But certainly there was not the kind of blood that you would expect a man from the waist down to the level of that bed, where the blood spatter was

blocked, to have.

And more important, although you can tell we sharply disagreed with her opinion, Miss Cowan said this blood spot may well have been there before he went into the water. Well, that's fine. If that is so, and it didn't wash off, then where is the rest? The rest the guilty Sam would have to have carried with him.

This is an unpleasant exhibit to foist off on twelve citizens. But your duty is not a pleasant one to begin with.

Exhibit 28 shows -- and nobody from the State of Ohio ever thought enough of this to try to match it up with the knee stain -- that somebody with a wet knee put that knee against the blood spot and as Doctor Kirk told you, the blood flowed away from it, as it is natural.

So Sam Sheppard's story once again is corroborated.

Now, says the State of Ohio, Sam said he had his watch on when he checked the pulse the first time. He didn't say that at all.

Here is a guy lying in the hospital, being bombarded with questions, trying to help, contusion or concussion of the spinal cord as it

developed, and he is shown a bloody watch and asked, "How did that get there?"

Well, he doesn't know. That is one possible explanation, but I think you ought not find that that is what happened. The evidence doesn't bear it out.

All of these things in the green bag were part of the effort of someone to cover up. But this watch, says the State, in its original condition before someone wiped it off, which is unfortunate because you are prevented from making a personal and direct examination, this watch is important, this shows that Sam Sheppard was the killer.

Well, not having surmounted the problem of explaining how a righthanded Sam was suddenly switched to the lefthand and used almost sidearm blows to smash his wife to pieces, and not really having resolved the problem as far as the position they will take, and we will learn when Mr. Corrigan has his final say whether Sam did it with his right or left hand, nevertheless the watch is suggestive.

Now, there were spots on the watch, there is no question about that. It is a little difficult to determine what the State's evidence is, because Miss Cowan says some of it was smeared. Doctor Marsters said no, even though he is looking right at it.

But this is why we have a jury. You will get Exhibit 42, you can look at it, decide for yourselves.

If this watch were worn on the hand, and it would have to be the left one that caused the death that swung the instrument, whatever it was, that splattered the blood, the spray if any there came would all have to be from one direction. Most of it would probably skip. Some might catch the edge; although as you try to reconstruct this in your deliberations you may find it unlikely that any would hit.

But in any event, the watch that is presented to you, not here, but through Exhibit 42, cannot have been on that wrist at that time.

If I may have the lights, Mr. Ferguson, just for a moment, I think this fact so clearly demonstrable that we need waste no further time with State's Exhibit 24.

(Thereupon the projection screen was set up in the courtroom.)

Ladies and gentlemen, this is the only evidence we have of what Sam's watch looked like when it was picked up, even though we know it was handled by one or more youngsters before the police

ever got a hold of it, and failed to run it right down for fingerprints in order to find out who killed Marilyn Sheppard as they should have, and you will find on close examination that there are smears all over the place, there are as Miss Cowan said smears on the crystal. There are some drops. That room was full of flying blood and whoever stripped this watch off Sam probably caught some of it.

But there is one blood spot that is able to reach out from 1954 and tell you this was not on the wrist of the man that swung the instrument.

As Exhibit 42 will show, this watch was positioned in such a way so that this half of the band below the 6 was hanging down, and the top half of the band was folded back, and you can see it here, when the picture was taken, and staring you in the face is a spot of blood.

That spot of blood, ladies and gentlemen, as the photograph shows, is right here on the inside, on the inside -- may I have the lights now?

This link right here, and you can see the spot of blood when you examine the exhibit in your deliberation room, that spot could not have gotten there on the inside if the spatter took place while the watch was worn on the left wrist. Again, Sam's

story checks out.

Now, why is the killer of Marilyn Sheppard walking the streets of Ohio? Well, first of all, as has been made perfectly clear, this was no investigation at least at the outset; it was a circus. Everybody piled in to have a look. The neighborhood kiddies were in.

The Coroner gave one special permission, unless you think Doctor Don is a liar, and there is no basis in his testimony for saying so. The kiddies even conducted a search.

No responsible police officer knowing that important evidence might be found, and that its momentary handling could destroy the signature of the person who was a brutal killer, would send teenagers out to find the evidence.

Well, they did. And they got just what they deserved. They found the green bag, pulled it out, Jim Redinger said, "Thumb and forefinger."

No competent expert using the proper method, powder, checked that watch then or at any later time, because they should have found Jim Redinger's prints; but, no, none were found.

And yet somewhere on this band, if careful handling had been the key, rather than tossing it

back and forth for detectives to go down and throw at Sam Sheppard, if careful handling had been the key there might have been the answer and saved an awful lot of nonsense and an awful lot of years.

Who was in charge of this holocaust of an investigation? We have evidence that the Cleveland police were called. Why? "This is too big for us."

Well, that makes sense. There is no crime laboratory out in Bay Village, no experienced homicide investigators. Call in the best; and you should be entitled to the best.

After all, Sam Sheppard has some rights, don't you know, this was his wife that was killed, and he had a right to have it investigated correctly. This was a sorry job.

The fingerprints from the watch, nobody ever thought of. Fingerprints in the house, meaningless, except, except the one thing that Grabowski in his short trip that day, a couple of hours, which satisfied him as to the necessary investigation, one thing he found had Sam Sheppard right out of this case.

The only person whose fingerprints in that house would not incriminate him is Sam Sheppard.

The State of Ohio would prove nothing by showing that his prints were all over the place, and indeed they should have been, just as yours were in your house on the day you left it some weeks ago.

But if there were other prints there, if somebody else was there, then it became a matter of importance.

Now, from the time we are twelve or thirteen on, from watching Captain Midnight or wherever we derive our information from in this area, everybody knows that fingerprints point to criminals, and that everything is fingerprinted when a crime is committed, and it wouldn't take a person with very special experience to realize that a wipe with a cloth would be necessary to remove that evidence before somebody with a powder kit arrived. And it was done.

Grabowski found not the fingerprints, they were gone; he found the wipings caused by a person who couldn't have their prints in that house.

In my brother Spellacy's most able argument I found there to be lacking any mention whatsoever of the uncontradicted evidence that Doctor Sam Sheppard was injured.

Now, you were presented with the following

testimony. Jurors ought not to just cast aside evidence on a whim. Unless you have a reason to disbelieve a distinguished scientist or doctor, you should accept what he says, or at least part of it, or the substance.

We read to you the testimony of the deceased radiologist and he said he found a fracture, a small one, but certainly nothing the defendant could ever have caused to himself.

Pictures taken later on at a different distance and contrary to his instructions, did not disclose the same fracture. But that doesn't mean it wasn't there in the first instance.

A Doctor Foster, whose testimony was read to you -- and I apologize for the boredom that must have accompanied that experience, but it was important and we felt that we should give it to you -- he examined, and, yes, he found injury, he described it in his testimony.

But Sam was the only neurologist in that hospital, and not in any condition to treat himself. So what would you expect his brothers, all doctors, to do?

They are not neurologists and they don't pretend to be, and they called in the best man they

could find; and it would be hard to imagine a more qualified man than Doctor Charles Elkins. He was the best there was. He wasn't any ringer for the Sheppards. He was no part of the plan to cover up this deed by phonying up a hospital record.

He just happened to be a good doctor, and they thought Sam needed attention and they called him and he found, not on the first day, of course not, because he said Sam was too sick, they didn't want to move him.

But when he did examine, something that to a doctor is important -- we use experts, ladies and gentlemen, in the trial of lawsuits because there are some things that are beyond your experience. You can't look at a spot and tell whether it is blood. People who can are allowed, if they are qualified, to give you opinions.

But where your own common experience will enable you to grasp a situation, experts are not used. As to reflexes that are part of the neurological pattern emanating from the spinal cord, it takes an expert.

And so Doctor Elkins either lied to you under oath on this stand, for reasons you will have to dream up, or that man was badly hurt on that day

and he is not guilty of any murder.

Take Doctor Koch; is he a liar? Well, we don't much care whether he is a liar, because he brought objective evidence. He brought the X-rays.

What happened to that piece of tooth? He said it was broken off. He filed it on the 15th day of July.

The evidence of blood in the mouth is abundant. Even the State's witnesses who didn't see very much saw that, and they so testified.

So do you say that Sam Sheppard took his fist and smashed his own face and broke a tooth off? Well, Doctor Koch told you that that couldn't be done, and I suggest to you that it not only couldn't be done but nobody in his right mind would do it to cover up a murder or any other purpose.

Now we come to the final and most important part of this case. Something that was never done, with all of the excitement that ran rampant, with all of the many officials who got their finger in the pie and showed up a couple of weeks late, of course, but showed up, nonetheless, late in July, to make a scientific investigation, nobody got very scientific.

This is not intended as a personal attack

on any of the people involved, but it nonetheless is perfectly clear that stories which that murder room had to tell anyone diligently seeking the truth, went unheard because nobody listened to them.

Now, although it is not necessary to the defense of Sam Sheppard and was not because the other evidence is overwhelming in favor of his innocence, the testimony all by itself, without anything else in this case, of Doctor Paul Leland Kirk, is the touchstone to the truth, and you should consider it. It was not seriously contradicted by anybody who had any comparable experience.

I suggest to you that someone who saw fit to undertake his training, his first experience in grouping dried blood, in a case as immense as this cannot carry very much weight, especially when he is forgetful of his own articles on the subject.

Doctor Paul Leland Kirk was one of the scientists, as he told you, that worked on the Manhattan Project of the United States of America.

His qualifications take so long to recite that they tend to put a jury asleep and yet it is important that you hear them, because on the testimony of this man depends the solution which you can find

if you wish to pursue these facts forward to a conclusion, something you need not do once you resolve Sam's guilt, but because the State of Ohio has raised the challenge for us to prove any theory of the proven facts inconsistent with guilt, we have done so.

And so after the first trial is all over, in comes Doctor Kirk, and he studies and observes and he sees. He sees the things that should have been seen long before and never were.

He sees the things that were perfectly available to the scientists and experts of the State of Ohio when they took the photographs that have been shown to you and which you will study again, showing that same closet door.

And here it is. These are the spots that are different. These are the spots that tell something. These are the spots that demonstrate beyond any question that the back swing of a weapon dripping with blood terminated somewhere near that door, and the reversal of the direction shook off drops that were far too large to have come from spatter, or to have come from the swing of the weapon when the small drops would go off at high velocity.

But more important, do you have any

evidence that anyone in the whole State of Ohio in the investigation of this case ever noticed that large spot? You know perfectly well that if they did it never occurred to anybody to type it.

Doctor Marsters says to you that the typing done by Doctor Kirk was not in his opinion reliable because it was difficult to do, that is the essence of it.

Curiously, of course, he never tried to duplicate the experiment or he might well have found that a man of Doctor Kirk's reputation and background does not lightly make a judgment of this immensity.

That is the area describing the arc of the swing of the weapon, and not a backhanded swing; nobody would swing backhanded 25 times; it is too awkward. The force is there but it is not anywhere near as strong; and so progressively we blow it up.

Doctor Marsters says, desperate for some means to cast out this evidence, this so damaging evidence that the State of Ohio can't live with, he says there may be contamination, from his experience, bodily contamination, it gets on closet doors twelve to eighteen inches off the floor, even though the panels are inset.

Well, you are entitled to rely on your

experience. That is not a matter within the aegis of any expert.

But these two spots, these are important, they are the whole case. We know they were both "O" so that lets Sam out.

There has never been any serious contest, although curiously no one ever bothered to check Sam's blood type until Doctor Kirk did it.

This large spot the doctor says attracts his attention because it is too big to have been flung off any weapon carrying dripping blood.

Obviously there has to be some limit to the size that any weapon will carry, no matter what its shape, unless it is a spoon.

All the other spots are within the perimeter of the maximum size except this one, so he notices it but doesn't disturb it.

He goes back to California, makes his experiments and then sends for the blood. And he says beyond question that is "O" blood that did not come from Marilyn Sheppard.

And so suddenly the State of Ohio has before it if it wants to use it and certainly would have if it occurred to the State to hire Doctor Kirk before the defense did, evidence that somebody else

was in that room, but it is too late, too late, the show is over.

And so rather than go out and get some other competent expert in dried blood to come in and contradict Doctor Kirk, because no such expert would do so, they bring in Doctor Marsters, and you may have his testimony for what you think it is worth.

Now, where did this spot come from? We are obliged to put this case together, and here is the probable answer.

This tooth is broken and it is broken at an angle. It was found outside the mouth. There is no evidence that it ever was inside the mouth.

How did it get there? Several possible ways, one of which is that Marilyn Sheppard fighting for her life, as the evidence clearly shows with her hands up, being punched one or two times, perhaps, blows not inflicted with this weapon, whatever it was, bites a finger and it is yanked from the mouth, and it breaks a tooth out, out, as you may find when you examine this, because that is where the tooth was found, out.

On that finger is a big drop of blood which unlike the weapon accumulates until it is cast off.

So we have the signature of somebody not Sam Sheppard who didn't mean to leave it, but bled in the murder room.

The pillow, does it help you? Well, does it really mean anything? Sure, there are spots on both sides. You may decide from your own experience that if wet blood were here, and the pillow were creased, Doctor Gerber said he saw a crease, that that would blot in this fashion, that the blood would run and leave an outline.

You may not. You may see an instrument there. You may see an object.

Well, is it fair of Sam Gerber to say that in his opinion that represented a surgical instrument, to foist off on you, as a doctor of his experience, if he couldn't produce the instrument? Oh no, we have the confession of Sam Gerber.

I said, "Where is the instrument, doctor?" He said, "I looked all over the United States for twelve years and I just couldn't come up with one."

But, then, desperate, he tries. He drew you a picture, he said it was a cast spreader. You will decide if that fits the pattern or indeed if it could afflict any of the blows that you will see in Marilyn's head, and you will have to remember, of

course, that Doctor Adelson said a blunt instrument.

So in cross examining Steve Sheppard, to give the other side of the coin, the State offers a cast cutter, not used any more. It doesn't fit the imprint much better than the other, but you can look at it if you like.

You will recall and you will notice that although it was marked initially as a State exhibit, we put it in evidence and that is why you will take it to the jury room.

Now, the State of Ohio, although its counsel have every obligation to present to you the best they can of this case in the best way that they can present it, and to persuade you if they can, is just faced with too much physical evidence.

If Mr. Corrigan has a case, and I exhort him to tell you if he does, he can make it out of this evidence and not out of any other.

This is Exhibit 72, and you may read it, and you will decide, because it has been in the hands of the State for twelve years, whether or not this was concocted with the connivance of about fifteen people to protect Sam Sheppard and to show phony injuries that never existed.

Because if it wasn't, just as Mr. Spellacy

has demonstrated to you by failing to touch on the point at all, by failing to acknowledge that he couldn't bring you one piece of medical evidence to show a lack of injury, not one doctor did he produce on the stand for the State, the injuries the State of Ohio can't get around.

The charge here does not suggest that Sam Sheppard was one of a squadron of killers who might have fought later among themselves. It says that Sam and only Sam committed this crime.

Now, I will wrap up pretty quickly.
You have been pretty patient.

Why did Sam Sheppard make the phone call he made instead of the one he should have made to the police? Did he have something in his subconscious memory that caused the name to come out illogically?

But more important, as Mr. Sherman said very briefly, is there a man on the jury among you who on being called and being told by a neighbor, "Joe, they, they have just killed Marilyn," would fail to call the police on the spot, or would fail to pick up a weapon and go charging over to help, or would at least go over by himself.

How could anyone know that the danger was gone? Did Sam say so? Oh, no. He said, "They killed

Marilyn." They might be inside the house, outside the house, they might have him by the throat. No more detail was asked for. And you will have to determine why.

Behind every killing, ladies and gentlemen, there must be a reason. This is very difficult to suggest to you and I am going to skirt it as delicately as possible, but the evidence is before you. I don't have to slap it down on the rail.

Someone was angry, angry enough to kill, someone who didn't have the strength in her arm that Sam Sheppard had, for indeed he would have crushed that skull like an egg shell, with the frenzy that was taking place, just as any of you would. Twenty-five blows and you would have found nothing left but bits.

Why was that person so angry? What had happened? What had Marilyn done to anger that person? We will never really know.

Putting together the evidence as best you can, you should decide and decide quickly, because this case does not take profound deliberation, although you certainly have an obligation to consider it until you are satisfied one way or the other.

Unless some satisfactory explanation can

be worked out of the evidence that is sitting in your lap, unless you can be shown how Sam Sheppard created these injuries out of whole cloth, unless you can be satisfied that Doctor Kirk is an incompetent or a liar who doesn't know his business, on any one of those points, Sam Sheppard is excluded; and if you should get by all of those things, and you sit down to do the thing that the law says you must do, and that is put together from the facts and circumstances a picture of what happened, where no other picture, no other theory can stand, then you can quickly say that this man is and always was not guilty.

And I ask you to find him not guilty without hesitation, and, ladies and gentlemen, I ask you to do it with dispatch.

Thank you very much.

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