

21.

Wednesday Afternoon Session, 1:30 p.m., October 26, 1966

(Thereupon an additional panel of twenty-four prospective jurors was brought into the courtroom, whereupon the following proceedings were had:)

THE COURT: Good afternoon, ladies and gentlemen. Let the record show that the Court is now instructing in the presence of Counsel and the parties in open court prospective jurors who have not been previously instructed in this case, and that those prospective jurors who have been previously instructed in this case are not now present in the courtroom.

Ladies and gentlemen of the prospective panel, the Court wishes to welcome each of you on behalf of the citizens of our community for your willingness to participate in this most important and enobling work.

We realize each of you comes here at a sacrifice to yourselves, your families and your businesses. But without this willingness on your part to participate in our American form of justice and jurisprudence, our American way of life would not be possible.

Each of us who participates in these proceedings regularly begins to take on a new and solemn understanding of what this means.

We want you to know that we know that our way of life cannot function without your willingness to participate in this important work.

Ladies and gentlemen, we are about to embark upon that part of a trial or a proceeding which is known in the law as the voir dire.

The voir dire, a translation of which means to speak the truth. The lawyers and the Court have the responsibility of putting questions to you to determine your ability to sit in this case as a fair and impartial juror, a fair and impartial juror both to the State of Ohio and the defendant.

Now, in order to draw the matter with which we are concerned here this afternoon to your direct attention, the Court is going to read to you the indictment. But before reading this indictment to you the Court instructs you and admonishes you that the fact that this indictment is now going to be read to you or may be read to you at other times, throughout the course

of this proceeding, if you were to be seated as a juror, this fact shall not be construed or interpreted by you as in any manner constituting guilt of this defendant.

The indictment is read to you simply for the purpose of advising you now of the charge with which we are here concerned this afternoon.

An indictment under our way of jurisprudence never achieves or reaches the stature of evidence, and it will never in this proceeding achieve that stature, and it will not be in any manner construed by you in any fashion as evidence of the guilt of the defendant, or as evidence of any type in this hearing.

Now, what we seek here this afternoon, ladies and gentlemen, what each side in this proceeding seeks, what the Court seeks and what you want and what our way of life requires and wants, are twelve fair and impartial jurors, twelve people who can sit as jurors and fairly and impartially determine the truth, because this afternoon we embark upon a search for the truth, and that is what this lawsuit is all about, a search for the truth as nearly as

truth in human affairs can be ascertained.

Neither side as they sit at the counsel table seeks the edge in the vernacular of the street, or the advantage. Each side seeks twelve fair and impartial jurors.

Please bear in mind as these questions are put to you individually by Counsel, or by the Court, that these questions or similar questions have been put to hundreds of thousands of prospective jurors who have come through these courtrooms and this courthouse over the years, hundreds of thousands of your fellow citizens who have likewise served or offered to serve as jurors in these courtrooms.

These questions are not meant in any fashion or in any manner to look into your private or your personal or your family affairs. The lawyers are not asking these questions of you, nor is the Court, because we are interested solely out of curiosity.

These questions are put to you because the law deems them necessary to be put to you, and the lawyers have the duty to put these questions to you, and please accept these questions as they are put to you in that light and with

that understanding.

Some of these questions will relate to your personal backgrounds, and your ability to serve fairly and impartially in this case.

It may be that in many other cases you could sit fairly and impartially, but in this particular case because of some experience in your lives, that you may be rendered to such a position that you could not sit fairly and impartially, and this is what the lawyers are attempting to establish as they put these questions to you.

Now, when the lawyers put these questions to you, ladies and gentlemen, please answer them forthrightly and accurately, and answer them clearly so that the court reporter, Mr. Romito, can report them when they are put to you, and so that each person in the courtroom can hear your response as the questions are put to you.

Ladies and gentlemen, if each member of this prospective panel will stand and raise their right arms I will administer to you the oath. Will each of you rise.

(Thereupon the panel was duly sworn by the Court.)

THE COURT:

Please be seated.

Now, ladies and gentlemen of the prospective

panel, a lawsuit is broken down into two important parts.

You as a jury serve completely one of those important parts. You have two functions principally, ladies and gentlemen, and these two functions you should keep in mind.

One, you are the sole determiners of the facts in this case, and along that line the lawyers cannot tell you what the facts are. The Judge can not tell you what the facts are.

You and you alone have the responsibility to determine the facts in this case, and obviously the facts in this case are in dispute or we would not be here this afternoon.

So, number one, you members of the jury determine the disputed questions of fact, and you and you alone do this and no one else in this courtroom can invade or impinge upon that province.

Number two, you decide the believability or the credibility of the witnesses who will take this witness chair. You and you alone will make that determination. No one else can tell you how you shall accept that believability.

You will take instructions from the Court alone this line, and the Court will now

instruct you that as a witness takes this chair you can believe all of what the witness says, part of what the witness says, or none of what the witness says.

So then you have these two important functions, one, you determine the questions of fact, and, two, you assign believability or credibility to the witnesses as they take the witness stand in this case, and that is the only place that you will take your evidence from upon which you will ultimately render a verdict in this case.

You will take evidence only as it comes from that witness chair, from the mouths of witnesses or through exhibits which are offered and received into evidence by the Court, and from any stipulations made by and between Counsel in open court in your presence which you will hear. Those are the sources of evidence.

That is the place from which the evidence will come and that is the only place that you will take facts upon which you will ultimately make your deliberation and render your verdict in this case.

Do each of you understand that?

Now, ladies and gentlemen, the Judge

presides at the lawsuit, and he has the responsibility imposed upon him by law to see that the orderly procedures prescribed by our Ohio Statutes are adopted and are followed throughout the course of this proceeding. He will rule on questions of law which the lawyers from time to time throughout the course of the trial may address to him.

It may be that the lawyers will request a conference at the side of the bench. In these conferences the lawyers discuss questions of law. They are not attempting to hide, nor is the Court attempting to hide anything from you which you should have.

Bear in mind that you determine the facts. The Court has the responsibility of deciding and determining the law questions.

So the Court will not invade or impose upon your province. You will not impose or attempt to invade the province of the Court.

From time to time the Court will sustain or he will overrule an objection which may be made by Counsel in this case. If that happens, you are to attach no significance to the fact whatsoever that the Court may sustain or may overrule an objection interposed by Counsel.

The lawyers have the duty and the responsibility to enter objections when they feel the interest of their clients demands such, and you will attach no significance to the way or the manner in which the Court may sustain or overrule an objection.

At the appropriate time in this proceeding, ladies and gentlemen, the Court will charge you as to what the law is in this case, and you are hereby instructed and you will then be instructed that you must accept the law as the Court gives you the law, and this is true whether you agree or disagree with the law, or whether the Court agrees or disagrees with the law, or whether the lawyers agree or disagree with the law.

The Court must give you the law and must charge you what the law is, and you must accept the law, and you must apply this law as you and you alone find the facts to be.

Apply the law as the Court gives it to you, to the facts, as you and you alone find the facts to be.

You find the facts and you apply the law as the Court gives you the law to be. This is your responsibility in arriving at your fair and

impartial verdict in this case.

You will apply this law without bias or prejudice or sympathy of any type for any person, either the State of Ohio, the defendant, the alleged victim, or any other person.

You will apply the law dispassionately, fairly, and objectively without bias, passion, or sympathy for anyone.

Now, ladies and gentlemen, under our system of jurisprudence the defendant does not have to prove his innocence.

The defendant in this room this afternoon, as every other defendant in a trial, under our American system of jurisprudence sits presumed to be innocent, and you must accord him as we enter upon this trial that presumption of innocence. You must presume him to be innocent.

Later on at the appropriate time the Court will charge you more with respect to the presumption of innocence.

But suffice to say for the moment the defendant sits before you this afternoon presumed to be innocent, and you are hereby instructed as a matter of law that you must give to him this presumption of innocence as we embark upon this

proceeding.

Under our system of jurisprudence the State of Ohio has the burden of proving the defendant guilty beyond a reasonable doubt.

The defendant does not have to prove his innocence. The State has the burden of proving his guilt beyond a reasonable doubt.

So that you need not speculate about what the term reasonable doubt is, at the proper time in this proceeding, the Court will define for you what the term reasonable doubt means, and you will accept the Court's definition as to what reasonable doubt means, because this term has been defined for us by our State Legislature, and the State Legislature has imposed upon the trial court the duty and responsibility of reading to the jury at the appropriate time the definition of reasonable doubt to you verbatim.

So you will not have to speculate about the definition of this term. The Court at the appropriate time will charge you that it is the duty and the responsibility of the State of Ohio to prove the defendant's guilt beyond a reasonable doubt, by proving each and every essential element and averment of the indictment.

Each of these elements will be explained to you in detail, so you will not have to speculate as to what the law means by an element or what these elements or ingredients of this crime are.

Mr. Reporter, have I read the indictment?

THE REPORTER: No, sir.

THE COURT: The indictment in this case, ladies and gentlemen, with which we are concerned this afternoon, reads as follows:

"The State of Ohio, Cuyahoga County.
Of the term of April in the year of our Lord one thousand nine hundred and fifty-four, the jurors of the Grand Jury of the State of Ohio, within and for the body of the county aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that Sam H. Sheppard on or about the fourth day of July, 1954, at the County aforesaid, unlawfully, purposely, and maliciously killed Marilyn Sheppard, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Ohio."

This is signed Frank T. Cullitan,
Prosecuting Attorney.

Now, ladies and gentlemen, some of you will remember, but for those of you who do not, in 1954, in April of 1954, the Prosecuting Attorney of this county was Frank T. Cullitan.

The Prosecuting Attorney of this county today is John T. Corrigan, and he is in the courtroom and he will be introduced to you at a later time.

But the indictment is signed by Frank T. Cullitan, Prosecuting Attorney.

Now, ladies and gentlemen, sitting at my right at the counsel table, and representing the State of Ohio in these proceedings, in the second chair on my right is the Prosecuting Attorney John T. Corrigan.

MR. CORRIGAN: Good afternoon.

THE COURT: Sitting in the first chair and immediately in front of Prosecuting Attorney John T. Corrigan is Assistant Prosecuting Attorney Leo M. Spellacy.

MR. SPELLACY: Good afternoon.

THE COURT: Sitting directly behind John T. Corrigan, Prosecuting Attorney, is a member of our Cleveland Police Department, Sergeant Harold Lockwood.

On my left at the trial counsel table is Defense Counselor, one of Defense Counselors in this case, F. Lee Bailey, of the Massachusetts Bar, who is defending in this case for and on behalf of the defendant, along with Russell M. Sherman, a member of the Ohio Bar, who is sitting in the second chair.

And sitting behind Mr. Sherman is the defendant in this case, Doctor Sam H. Sheppard.

Ladies and gentlemen, from time to time throughout this proceeding lawyers for one side or the other may challenge prospective jurors for cause.

If the Court should sustain or grant such a challenge, you then will be excused.

If, however, such challenge is overruled then you may be seated and you may then hear and decide this case as a juror.

If you should be challenged you should not regard this as a personal affront, and you should not feel that your wisdom, your honesty, or your integrity is being questioned by the lawyer or the side that challenges you.

In some instances it may be that you would be challenged by both sides. If after a

challenge for cause you are seated as a juror, it would be improper and unfair for you to harbor any resentment or ill will against the side which challenged you, and I instruct you as a matter of law that you must not do so.

You will not permit the fact that an effort was made to excuse you to influence you in any degree whatsoever in your determination of the merits of this case.

Finally, ladies and gentlemen, you are hereby further instructed that jurors and persons summoned but excused from serving as jurors, and some of you perhaps will be excused, some of you will be excused from serving as jurors in this case, and you are hereby instructed that you are forbidden to participate in interviews or from making any statement for publicity of any type, until such time as a verdict in this case has been returned by a jury in open court.

Do each of you understand that? That is true whether you sit as a juror or whether you are excused as a juror, and now since you have been brought into this room and been instructed you are considered by the Court as a prospective juror in this case, and whether

you are called back into this room again or not,
you shall follow this instruction very carefully.

Do each of you understand that?

May I see Counselors, please?

Ladies and gentlemen of the jury, you
are further instructed that on each occasion that
you leave this room, including the occasion now
when you will leave this room, you are hereby
instructed that you shall not discuss this case
or what little you know of it amongst yourselves.

You shall not permit anyone else to
discuss it with you. You shall not permit your-
selves to read anything that relates to this
case in any type of publication, newspaper or
any other type of publication.

You shall not permit yourselves to
overhear anything that relates to this case by
any means or media of communication. By way of
example, the person most likely to inquire of
you about this case is someone at home who is
interested in you, one of your loved ones to
whom you will return home the end of the day.
They will want to know where you have been,
what you have heard, what you are doing.

You will follow the instruction very

carefully, and you will tell them that you are following the Court's instruction that you can not discuss this case even with someone as close as that.

You shall not permit yourselves to overhear anything that relates to this case by any means or media of communication.

If you are listening to a radio, and the radio commentator should begin to comment on this case, you will either turn off the radio or walk away from it, so that you cannot hear the comment.

If you are viewing a television set, the same rule and admonition and same instruction applies.

Now, ladies and gentlemen, you will bear these instructions in mind carefully on each occasion that you leave this room, and you will bear these instructions in mind until such time as a jury in this case has returned its verdict in open court.

Now, Mr. Patrick, will you escort the panel from the room.

(Thereupon the panel of prospective jurors was escorted from the courtroom.)

THE COURT: Ladies and gentlemen, while we await the other panel, you may visit amongst yourselves, as you choose.

(Thereupon the members of the prospective jury who were previously seated, were brought into the courtroom, whereupon the following proceedings were had:)

THE COURT: Good afternoon, ladies and gentlemen.

Gentlemen, I believe the option is with the State of Ohio.

MR. CORRIGAN: May it please the Court, the State will excuse juror number six, Mrs. Reese.

THE COURT: Mrs. Reese, the Court before excusing you, wishes to express to you our appreciation and gratitude for all the time you have spent with us in this case.

You will bear in mind specifically, however, Mrs. Reese, the instruction given you earlier, and which is now again reaffirmed and given to you.

You shall not discuss this case with anybody, including any member of your family. You shall not permit anyone else to discuss it

with you.

You shall not make any statement or participate in any interview for publicity, until such time, Mrs. Reese, as a jury in this case has returned its verdict in open court.

Do you understand that?

MRS. REESE: Yes.

THE COURT: Thank you,
Mrs. Reese, and Mr. Patrick will escort you
from the room.

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