

1 (AFTER RECESS:)

(Thereupon the following proceedings were had between Court and counsel in the absence of the jury:)

THE COURT: All right, gentlemen.

MR. MAHON: If your Honor please, at this time the State would like to make an application to the Court that Juror No. 6, Mr. Manning, be discharged from this jury.

THE COURT: Be what?

MR. MAHON: Be discharged from this jury, be disqualified as a juror.

We are making that application on the grounds that when he was interrogated on the witness stand as to his qualifications as a juror in this case, that he did not tell the whole truth. When inquiry was made whether or not he had ever been a juror or a witness in a case, he said that he had not been, when, as a matter of fact, he had been a witness in a case which involved himself as a defendant, and that was in November of 1943. He was arrested on November 5th, 1943, in Cleveland. He was charged with violating General Code Section 13031-13.

THE COURT: Will you give me that number again, please?

MR. MAHON:

General Code Section

13031-13, in that he unlawfully occupied an automobile for the purposes of lewdness. He was convicted of that charge and was sentenced to six months in the workhouse, and the sentence was suspended and he was placed on two years' probation.

The facts in that case, if your Honor please -- and if your Honor wants some proof on this, we have it available -- that when this case was called in to Court on the 5th of November -- I am not sure if it was the 5th. What is the date of the trial?

MR. DANACEAU:

The 18th.

MR. MAHON:

(Continuing) The 18th

of November, before Judge Kovachy, that is, Judge Julius Kovachy, who is now on the Court of Appeals, in the Municipal Court, that the witnesses were sworn, that he, the defendant, also had taken the oath at that time.

There was then a suggestion, because of the nature of the case, that the hearing be had in the Judge's chambers, and evidence was had in the Judge's chambers, and the Judge found Manning guilty of the charge then pending against him.

Now, this juror, when he was upon this witness stand, was asked specifically whether or not he had

ever been a juror in another case, also whether or not he had ever been a witness in another case, and to both questions he said no. He was also asked whether or not there was anything that might in any way influence his judgment in this particular case, and he said no.

Before this jury was finally accepted, and when all 12 of the jurors were seated in their places in this jury box, I asked the jury then whether or not -- that they had sat here, some of them, for nearly two weeks and heard these questions repeated and repeated over and over again -- whether there was anything that came to the mind of any one of them, regardless of how slight it might be, that might in any way influence their judgment in this case, and every one of the jurors was asked, one by one, whether or not there was anything, and they all said there was not.

Following that, Mr. Garmone asked them nearly the same question, practically the same question, and called them all by names as they sat in the jury box.

THE COURT: I suppose that could still be his position, though, that it wouldn't affect him.

MR. MAHON: That might be, your Honor. I am just reciting that fact. It might well be that it might have no influence on him as a juror, but certainly there was no reason for not telling the truth on that witness stand when he was interrogated, when he was asked whether or not he had ever been a witness in a case. Now, that's something that he certainly could not have forgotten about, if your Honor please, that experience in his life.

And on that, if your Honor please, we base our application that this juror be disqualified because the crime that he was charged with, if your Honor please, involved moral turpitude, a sex crime. The charge which he was charged on does not reveal the type of crime it was. He could have been charged with a felony under the facts in that case, he could have been charged as a felon.

And so it certainly involved moral turpitude. And on that ground, if your Honor please, we ask for his disqualification as a juror in this case.

MR. CORRIGAN: If the Court please --

THE COURT: Mr. Corrigan, first of all, do you challenge any of the statements as to the facts? If so, I think --

MR. CORRIGAN: I challenge it all.

THE COURT: Not at all?

MR. CORRIGAN: I challenge it all,
every bit of it.

THE COURT: Well, all right. Do I
understand that you are not admitting that those facts
are true?

MR. CORRIGAN: I am not admitting those
facts are true.

THE COURT: All right. Then we
better proceed to evidence on those facts. The
Court wants the record to show what the facts were.
It may be entirely removed from anything that is
claimed by the Prosecutor because someone might come
along here and say those are not the exact facts.

MR. GARMONE: Is there a journal in
the case?

MR. MAHON: Pardon?

MR. GARMONE: Is there a journal to
show the activity of what transpired at the hearing
that you have related to the Court? Is there a record?

MR. MAHON: You mean the details of
the thing?

MR. GARMONE: No. When a matter is
disposed of in any court, it is always journalized, is

that right, the same as a matter in this court is journalized?

THE COURT: There would undoubtedly be a journal as to the final outcome, of course.

MR. MAHON: There is a journal over in Police Court, yes. We can get it over here.

MR. GARMONE: We talk about the journal to determine whether or not this man was ever sworn as a witness.

THE COURT: That is what the Prosecutor says, that he has proof of it, if it is required. That is what the Court would want, if there is any question about it.

MR. CORRIGAN: We challenge everything the Prosecutor says.

THE COURT: Sir?

MR. CORRIGAN: We challenge everything that the Prosecutor says.

THE COURT: All right. Now, Mr. Prosecutor.

MR. MAHON: If your Honor wants that proof, we will have to get it from the Police Court.

THE COURT: All right. Are we willing to stay here long enough this evening to dispose of this matter? The Court is, if everyone else is, but

will not impose his wishes on anybody.

MR. CORRIGAN: I am not.

THE COURT: You are not willing?

MR. CORRIGAN: No.

MR. GARMONE: You can't get it all today.

THE COURT: Counsel for the defense indicate that they do not want to go beyond the regular court hour, and I don't want to start this matter without going through with it and disposing of it.

MR. MAHON: It will probably take more time than that, Judge.

THE COURT: All right. Then we will now adjourn until 9:15 -- will you make it 9:30 on Wednesday morning, at which time we will go into the matter promptly and dispose of it one way or another.

Without any formality at all -- wait a minute. Let's have the jury down.

(Thereupon the following proceedings were had within the hearing of the jury:)

THE COURT: The Court is aware of the fact that not any of you, I take it, have ever served on a jury before, so you may think that this kind of performance is rather queer, but we are seeking, of course, in all of these cases to follow the require-

ments of the law strictly. We cannot proceed any further with this case today, and tomorrow is election day and it is a half holiday under the law of the State. It is hardly worthwhile our coming in the morning because we will not get enough accomplished to justify breaking up the day. So we will, without any formality at all, be adjourned now until 9:30 on Wednesday morning. And will you, ladies and gentlemen, be kind enough again to observe the caution which the Court has heretofore expressed to you? And I will repeat it again for the benefit of the two new jurors who have come, alternate jurors who have come into the picture.

You are not to talk about this case to anyone. You are not to permit anyone to talk about it to you. You are not to remain anywhere where other people are talking about it among themselves. You are not to talk about it among yourselves, in your jury room or elsewhere.

It is your duty as an individual juror and responsible citizens to keep your own counsel, to listen to the evidence that comes from this witness stand and the instructions of the Court as to the law and wait until all those are complete before you form any opinion or judgment whatever as to the outcome

of this case, which opinions and judgments are to be expressed only in your jury room after the case has been finally submitted to you for deliberation and decision.

I would suggest to you, too, and this is particularly directed to those who have come in today, that you do not during the pendency of the trial listen to comments about it over the radio or otherwise and do not read newspapers. Have somebody preserve those for you, and you can read them -- that is, as far as this case is concerned -- have the reports of this case taken out and have them preserved for you, and you may read them to your heart's content after this case is disposed of. I say that because I think you will feel better and you will be better.

MR. CORRIGAN: May I have the Court state to the jury that they will know more about this case than what will appear in the newspapers?

THE COURT: Yes, indeed. You understand, ladies and gentlemen, the entire community has had through news media of this kind, that kind and the other, and discussion by people who really know nothing whatever about the case, probably, and there have been all kinds of things floating around,

there is no dispute about that anywhere, but you will get here the only facts that you are to consider in the determination of this case. They will be presented by the State, and then the defense will have its opportunity to present its views, if there are views to be then presented, and let us be sure that we are relying on what we hear here from official authoritative sources and rely on those entirely in our consideration and decision of this case. Let's forget all about what has been floating in the community. We are now to the serious business of ourselves determining what the facts really are, and we will get that from this witness stand and on the basis of the rules of law that the Court will give you.

Without any formality -- does that cover what you wanted?

MR. GARMONE: Yes.

THE COURT: Does that cover what you wanted? -

MR. CORRIGAN: Yes, that's what I wanted covered, your Honor. Thank you.

THE COURT: Without any formality at all, we will now be adjourned until 9:30 Wednesday morning.

(Thereupon at 4:00 o'clock p.m. an adjournment was taken to 9:30 o'clock a.m., Wednesday, November 3, 1954, at which time the following proceedings were had:)

187 tke 42

WEDNESDAY MORNING, NOVEMBER 3, 1954, 9:30 A.M.

MR. DANACEAU: The juror asked me how he could address the Court.

THE COURT: Pardon?

MR. DANACEAU: The juror asked me how he could address the Court.

THE COURT: All right. We have a very democratic court here, sir.

Is it Mr. Manning?

JUROR MANNING: That's right.

THE COURT: Would you just come up here, Mr. Manning, please?

(Thereupon Juror James R. Manning resumed the stand and testified further, as follows):

THE COURT: Let the record show that this is Juror No. 6. Mr. Manning has made a request to address the Court. All right.

JUROR MANNING: Your Honor, it has come to my attention that some unfortunate event in my past has come to light, and it is causing disturbances in the neighborhood, my family and my friends.

This is such -- well, this has unnerved me so much that I feel that I am physically and mentally unfit to serve as a juror in this case. When I was

questioned on the stand, I thought I answered truthfully every question that was asked me, and what was in my past I thought had been investigated, that it was a matter of public record, that it had been so far removed from the present that it was, well, considered to have no bearing on the case, and that is my honest belief.

THE COURT: Let me ask you this question, if I may: Have you discussed or talked, directly or indirectly, with the Court or with any member of counsel on either side of this case since this happened?

JUROR MANNING: No, sir, I haven't.

THE COURT: Anyone?

JUROR MANNING: No. My wife told me about it Friday night. I have talked to my Pastor, but not about the case at all.

THE COURT: All right. I want you to know, and I want the record to show, that the paper, one or two papers, perhaps more, last Friday carried a story that the Court had discussed this matter with your Pastor and that your Pastor had made certain requests of the Court. Those reports were absolutely untrue, they did not happen at all. The Court had no discussion with your Pastor about the

matter at that time.

Your Pastor came in, and the Court immediately informed him that he could not discuss this matter at all for the simple reason that there was nothing at that time before the Court, and your Pastor very graciously, I know, understood the situation and immediately bid the Court goodday, and that was the end of that. There was no discussion. All right.

Now, I would like to ask you one or two questions, Mr. Manning.

JUROR MANNING: Yes, sir.

THE COURT: First, did you testify in the 1943 incident?

MR. CORRIGAN: Object.

THE COURT: You may answer. Overruled. Exception.

JUROR MANNING: I believe I did, sir.
I don't know. Yes, I did.

THE COURT: I see. So that actually, when you answered the question "No" to the Court and to counsel, that answer was not actually true?

JUROR MANNING: As a layman, I didn't know what it meant. I see now, but it was not --

THE COURT: It was not true?

JUROR MANNING: It was not true.

THE COURT: Now, Mr. Mahon, Mr. Danaceau, have you any questions?

MR. MAHON: We have none.

THE COURT: Mr. Corrigan?

EXAMINATION OF JUROR JAMES R. MANNING

BY MR. CORRIGAN:

Q Mr. Manning, you were chosen as a juror in this case and you swore that you would well and truly try the case of the State of Ohio versus Samuel H. Sheppard, didn't you?

A That is right, sir.

Q When you took your place in this jury box, you had stated that you had no bias or prejudice of any kind and that you would base your decision entirely upon what you heard in court and the charge that the Court gave you?

A That is correct.

Q Now, if you remain as a juror in this case, is there any reason why you should change and not decide it according to the evidence in this case?

A The only answer I could make to that, Mr. Corrigan, is that in my present emotional and mental frame of mind I don't believe I could sit unbiasedly in that witness box.

Q How did you get into the present emotional frame of mind, what caused that?

A Through the bringing up of the past which I thought had been

checked and cleared.

Q Well, how was it brought to your attention?

A My wife told me that what had happened in 1943 was on the radio. I never heard it on the radio myself or read it in the paper.

Q But it was being broadcast?

A That's right.

Q And your wife told you about it?

A She did.

Q Was there any comment about it among the other members of the jury?

A No, sir, there was not at any time.

Q At any time?

A No, sir.

Q Now, whatever happened happened 11 years ago, didn't it?

A That is right, sir.

Q When you were 27 years old?

A That's right, sir.

Q You are now 36?

A 38.

Q And since that time you have fathered two boys?

A That is right.

Q You have a family of three boys?

A That is right.

Q And this thing was dragged out of the past?

A That is right.

Q Have you lived an honorable life for the last 11 years?

A I have.

MR. CORRIGAN: I object to the juror
being excused.

THE COURT: Now, gentlemen, the
matter is definitely before us now and probably should
be disposed of at this time.

MR. CORRIGAN: There is just one other
question I want to ask.

THE COURT: Yes.

BY MR. CORRIGAN:

Q Now, let me go back to see if you were -- do you know whether
you were sworn or not when you had the hearing -- was it in
Police Court, in Municipal Court?

A That's right.

Q Do you know whether you were sworn?

A As far as I can understand, I was sworn in by the bailiff, I
believe it was.

Q Well, now, let me see if I can refresh your recollection. Do
you recall that you all went into the Judge's office?

A That's right, sir.

Q What?

A That is right, sir.

Q And you sat around and had a rather informal discussion of the

matter?

A That is right, sir.

Q And that the Judge inquired about the whole thing privately?

A That is right, sir.

Q And that during the course of this inquiry your attorney suggested that you **had** made a mistake and that you had a wife and a two year old baby, and that probably if you got some advice, that the thing would work out all right, and he plead you guilty to assault and battery; do you remember that?

A No, sir, I don't.

Q But there was no formal hearing in Court on this matter?

A It started in Court and was adjourned to the Judge's chambers.

Q What?

A It started in court, in the courtroom and was adjourned to the Judge's chambers.

Q I see.

MR. CORRIGAN: Now, I think that the only thing that we can depend upon here, your Honor, is the Journal Entry in this case, and the Court speaks through its Journal Entry. The recollection of people after 11 years is the same as mine or yours or anybody else's. Apparently, from what he says, all there was was an informal hearing in the Judge's chambers, which happens frequently. I wasn't

there, I just surmise what happened, and it is verified by what he says. There was an informal hearing and a decision was made by the Judge in this matter.

I think it is outrageous, personally, that this man has been subjected to this situation.

JUROR MANNING: May I say anything else, sir?

THE COURT: What did you say?

JUROR MANNING: I was just going to say, may I say something else?

THE COURT: Surely.

JUROR MANNING: Right now, I mean from what is going on, when I came down here for jury duty I thought I was doing what a public spirited citizen of this country would do. That's the only idea I had when I came down. It interfered with my work, my earning a living. I didn't give a second thought to that. I came down here, and if I was chosen, I would serve and serve in the way I spoke, absolutely unbiasedly. And I was -- I tried to run myself from the heart and mind together and be absolutely unbiased and unprejudiced in thinking and talking with other people, even speaking outside this jury. But after what has happened, I would not

be able to sit in that box with the other jurors, be able to listen to the case and be unbiased, unprejudiced or -- unemotional is what I am trying to drive at mostly; that if this keeps up, if I am kept on the jury, I think I will be a sub-headline as long as the trial goes on. I will definitely have a nervous breakdown in a very short time and, in fact, I feel I am just about ready for one right now.

THE COURT: Well, now, gentlemen, the Constitution, of course, provides that a person charged with crime shall not be twice put in jeopardy for the same offense, but the law, after all, is practical and it is for the states to determine the method, machinery for the people charged with crime, in the trial of civil cases as well, the State courts.

Now, the legislature of our state has taken a good deal of pains and gone into a great deal of detail in an effort to make sure that persons shall have a fair and impartial trial before a jury that is qualified and capable of granting that kind of trial. The statute provides it specifically, not only for the impanelling of a jury, but for the impanelling of additional alternate jurors, and has spelled out in

minute detail the function of that juror, if he is ever used; that is, to step in at the outset, to listen as all other jurors do, and to replace any juror who is removed by death or who may be removed by disability or who may have become disqualified.

Now, at the very outset this gentleman made a very horrible mistake, and it is unfortunate for him and unfortunate for everyone else concerned, but the Court, after his statement this morning, has no hesitation whatever in saying that he not only is disabled but that he is also disqualified as a juror. And, for that reason the Court will excuse Mr. Manning and order Mr. Hanson to take Chair No. 6.

MR. CORRIGAN: I want to object on behalf of Sam Sheppard. The --

THE COURT: Just one moment, if you will, Mr. Corrigan. Let me excuse Mr. Manning. Then you can --

MR. CORRIGAN: Well, I would like the juror to remain while I raise my objection.

THE COURT: All right. You go ahead with your statement. If you want him to remain, it is perfectly all right.

MR. CORRIGAN: On Friday morning this matter was called to the attention of the Court, last

Friday morning, and the defense counsel, in your chambers --

(Thereupon a discussion was had between Court and counsel out of the hearing of the jury, after which the following proceedings were had within the hearing of the jury:)

THE COURT: Mr. Corrigan would like to say what he has to say in the absence of the jury.

MR. CORRIGAN: I don't care if this juror remains. You can excuse the rest of the jury.

90 THE COURT: Ladies and gentlemen, you will be excused for a few minutes. And will you please observe the caution which the Court has expressed to you, do not discuss this case?

And Mr. Hanson, when we come back, will you be kind enough to take Seat No. 6? And Mrs. Mancini, is it?

PROSP. JUROR MANCINI: Yes.

THE COURT: Will you be kind enough to take the seat that Mr. Hanson now occupies?

MR. MAHON: Do you want Mr. Manning to remain?

MR. CORRIGAN: No, he can go out, but I want him to return.

THE COURT: You want him to return?

MR. CORRIGAN: I want him to return,
yes.

(Thereupon the jury retired from the courtroom,
at which time the following proceedings were had in
the absence of the jury:)

MR. CORRIGAN: I said on Friday
morning this matter was called to the attention of
the Court -- I will withdraw that.

On Thursday the jury was sworn, and on Friday
morning this matter was called to the attention of
the Court, so that the Court had knowledge of the
fact that Mr. Manning had been arrested in 1941.

MR. GARMONE: '43.

MR. CORRIGAN: '43, and had plead guilty
to assault and battery and had been sentenced to six
months in the workhouse. The fair time --

MR. MAHON: Let me correct that.
We never said that this man plead guilty to assault
and battery. We said he was convicted, not of assault
and battery, either.

MR. CORRIGAN: Well, he was convicted.
The card was there that had been furnished by the
Police Department, and the matter was held in abeyance
by the Court and by counsel for the State while they

impanelled alternate jurors. Was the purpose of that method that was carried on to trick Sam Sheppard into having a jury that he had not chosen?

Now, then, the panel was not exhausted -- before I come to that, then from Friday night on the newspapers of the community have been writing about this matter. When we left the Judge's office on Friday, we said we would have a consultation with the counsel for the State. During Friday, Saturday and Sunday all the radio stations were giving this news to the general public. There is represented in this courtroom all the radio stations of the city of Cleveland, and the television stations, they are back here. If you doubt what I say or question what I say, then I demand you put them on the stand.

There are some 30 or 40 newspapermen here representing the Cleveland papers and out of town papers which are sold in the city of Cleveland. They all wrote about this man. They are sitting back here. If there is any question about that, the Court can inquire of them.

Now, then, I discovered that it was the intention of the prosecution to use a devious method to get this juror off the panel, and I so stated to them in their office, that, "What you are going to do is to

impanel extra jurors, additional jurors, and then make your motion." And that is just what they did.

Now, by this method we are deprived of the jury that we might have. The juror No. 72 of the first panel, Joseph A. Kaczmarek, qualified for this jury. He passed all the challenges for cause, and if the Court had acted and if counsel had acted on Friday, Joseph A. Kaczmarek would be sitting on that jury, not Mr. Hanson that you are placing there. And if he was not sitting on that jury, then juror No. 73, Mr. John C. Smith, qualified and he would have been on the jury. We had only one challenge left. Whether we would have exercised it on Kaczmarek or Smith, we don't know. Whether the State would have exercised it on Kaczmarek or Smith, we don't know. So now with the situation that is presented in this matter this morning, whereby you remove Mr. Manning off this jury and substitute another man, is wrong. We can only prosecute our error on that.

There is only one method in Ohio by which the Court may remove a juror and put another in his place. If before final submission of the case to the jury a juror becomes incapacitated or disqualified, he may be discharged by the Judge, in which case --

or if a juror dies. That is Section 2313-37.

Now, a man is not disqualified, nor can he disqualify himself, by saying that he has been affected by the fact that publicity has been spread about him. But even if he is disqualified -- and the Court already has found that, so there isn't much use in me arguing about it -- then that jury panel is broken, and it was broken deliberately by the Prosecutor, with malice aforethought in this thing. You are not being tried, Judge Blythin, or you are not being tried, Judge Mahon. Sam Sheppard is here on trial for his life and he is entitled to a fair and impartial jury in this case, of his choosing, not of your choosing, Judge Blythin.

Now, if the Court removes that juror, then I say we have to go back to the panel and call these men in that were further qualified. It just astonishes me, your Honor, that this devious method has been adopted in this important case.

THE COURT: What is devious about it,
Mr. Corrigan?

MR. CORRIGAN: The devious method I complain of is that they knew that they were going to challenge Manning.

THE COURT: What if they did?

MR. CORRIGAN: Then they sat there,
and for the purpose --

THE COURT: I know, but the statute
does prescribe the method --

MR. CORRIGAN: No, that isn't prescribed.
That's trickery; that's trickery, your Honor, because
I said in their office in the morning that that was
just what they were going to do, that they were going
to challenge Manning after they had alternate jurors,
and that's just what they have done here.

MR. MAHON: I would like to be
heard on this after Mr. Corrigan gets finished.

THE COURT: I know, but the statute
specifically says that at any time, even during the
trial it could have been done, if it can be done at
all.

MR. CORRIGAN: Yes, during the trial,
but you did not know it before that; you knew it before,
you knew it on Friday morning.

THE COURT: Sure.

MR. CORRIGAN: You knew it on Friday
morning.

THE COURT: Sure, and I would have
been --

MR. CORRIGAN: There were no alternate

jurors here on Friday morning.

THE COURT: And the Court would have disposed of it Friday.

MR. CORRIGAN: Why wasn't it disposed of Friday morning? Why were we suckered into a position --

MR. PARRINO: I object to the remarks of counsel, if the Court please. Nobody is sucking anybody into anything, Mr. Corrigan.

THE COURT: The Court has excused the juror, and it is really perhaps rather cruel to discuss the matter after that is done. It is inconceivable, after what has broken over this man's head in the last few days, that he could function as a juror such as is contemplated by the law of this state. He also has made a false statement under oath in this court, and the Court doesn't want to be brutal in repeating that. That completely disqualifies him. And if the statute under which he is now being replaced doesn't take care of this situation, it is not only worthless but it is wholly meaningless, and it is in perfectly plain English language in the Code of Ohio.

MR. CORRIGAN: Supposing --

MR. MAHON: Judge, can I say a word here?

THE COURT: Yes.

MR. MAHON: I want to get the record straight here, much as I hate to dispute what Mr. Corrigan has said here. This jury was sworn in last Thursday. We started --

THE COURT: Let the Court say one word. That Mr. Corrigan talks about some conference. This is the first that this Court heard of any such conference.

MR. CORRIGAN: You know that we were going to have a conference. We left your office.

THE COURT: Oh, no.

MR. MAHON: Let me set the record straight, if your Honor please. After that jury was sworn, then we started immediately to impanel alternate jurors. And we had exercised a challenge on one of the alternate jurors, and the defense had exercised a challenge on one of the alternate jurors, and we ran out of jurors and you had to call a supplemental venire, and they were here Friday.

MR. CORRIGAN: Yes, but you knew --

MR. MAHON: Just a minute, please.

MR. CORRIGAN: You knew you were going to --

MR. MAHON: Just a minute, please.

On Friday morning we informed the Court of this situation that we discovered. Mr. Garmone, Mr. Corrigan and the other counsel were in your chambers when we discussed the matter there.

THE COURT: That's right.

MR. MAHON: At that time it was agreed that this matter be put over until 1:30, and then at 1:30 we met again and then counsel suggested that the matter was very important and it should go over until Monday morning.

MR. DANACEAU: The defense counsel.

MR. MAHON: Defense counsel suggested that.

MR. PARRINO: Mr. Garmone.

MR. MAHON: Let it go over until Monday morning, and Mr. Corrigan stated voluntarily then that he would come to the Prosecutor's office on Saturday morning, he would think the matter over and come into the Prosecutor's office and discuss the matter with us on Saturday morning. We never heard one word from defense counsel until Monday morning when Mr. Corrigan came into my office.

Mr. Parrino was there, was called there, and Mr. Danaceau was called there. Mr. Corrigan did not tell us we were going to do something devious in this

matter.

What Mr. Corrigan said at that time was this: "We will agree to have that juror, Manning, removed, but we want the rest of the jurors discharged and a mistrial had."

And I said, "We will not do that."

That was all that was said there, and Mr. Corrigan left, and we came up here and started to impanel the alternate jurors. Now, those are the facts. Nothing devious about this at all.

Under the law there are certain provisions for a juror being removed and alternates to take his place. We availed ourselves to the statutes of this state in order to bring this matter before the Court, and now before we can put on our proof to substantiate what our claim is here, that this juror had not told the truth when he was being interrogated, the juror voluntarily this morning makes a statement to the Court and says that because of his mental condition -- and I can well understand it, and the Court can and everyone else in this courtroom can understand it -- that he would not be able to give this case the attention that it should have.

The man is sick, he is sick of mind, and everyone can well understand that, that this matter of 11 years

ago has brought up. No one relished bringing that matter up. I feel as bad about it as anyone else that it had to be, but I am responsible here in representing the State of Ohio in this matter.

This defendant is not the only party of interest in this case. The State of Ohio is an interested party in this case, and as representative of the State, it was my duty and my associates' duty to bring this matter to the attention of the Court under the statutes that provide for such procedure, and that is exactly what we did, and that is the record, if your Honor please.

MR. CORRIGAN: Now --

THE COURT: Let's not prolong it.

MR. CORRIGAN: I just want to prolong this: Do you see that headline, Judge?

THE COURT: Oh, I saw that.

MR. CORRIGAN: Well, how is it that the Cleveland Press has your decision on Monday, "Judge to Oust Sheppard Juror"?

THE COURT: Mr. Corrigan, you have to ask the Cleveland Press. If I live to be 100 years old, I shall never run for editor, and I am not running any newspaper and I am going to let newspapers run their own, and I will do my part as the law requires in

operating this court.

How any such story as that could get headlines or get into the paper at all is beyond this Court, but there it is, and the Court isn't going to pay any attention whatever to it. He saw the headlines, he has not read the article.

Now, let's have Mr. Manning in here, please.

MR. GARMONE: If the Court please, may I say something at this time before you bring the juror in?

THE COURT: Let it be very brief, though, because I do want to dispose of this. We can't help it, in any event.

MR. GARMONE: I am not going to make any argument on the meritorious side of the situation one way or another.

The Court has placed in the record a withdrawal of Juror No. 6, Mr. Manning, and has instructed Juror No. 13, Mr. Hansen, to replace him. I move now, in view of that order that the Court has made, that the remaining 11 jurors be withdrawn and that there be declared a mistrial, and ask for the Court's ruling on that motion.

THE COURT: That request will be overruled. Exception noted.

MR. GARMONE:

Exception.

MR. CORRIGAN:

Well, in support of that motion we want to introduce exhibits -- will you mark these, please?

(Defendant's Exhibits 50 to 62, inclusive, with relation to Defendant's motion, were marked for identification.)

MR. CORRIGAN:

We want to introduce Exhibits 50 to 62.

THE COURT:

They will be received.

(Defendant's Exhibits 50 to 62, inclusive, were received.)

(Thereupon Mr. Manning returned to the courtroom.)

THE COURT:

Mr. Manning, the Court would like to just make clear to you, as a parting word, what the situation is here, and I think I can assure you on behalf of everybody on this side of the table and, undoubtedly, everybody on this side of the table, and certainly for the Court, that we are all horrified by what has happened here and it is terribly unfortunate that actually you made it possible, either by inadvertence or misunderstanding or whatever we may term it, but that is water over the dam now.

The law of this state does provide that if a person does become unable by reason of any illness, disturbance or whatever it may be, unable to function as a juror, or if he becomes disqualified, that the Court may substitute for him an alternate juror and discharge him. I am assuming that you have been a decent citizen and a good husband and father since 1943. I have no option but to assume that, and you look like a person who is a decent member of society.

While we regret these things, they are, after all, matters that we have to deal with with brutal frankness in a court in a case of this kind, and it is only my hope that as you leave here your family, your neighbors, friends and the community as a whole will be as charitable to you as I am sure we -- feel as charitable towards you as we do right here, and I hope that whatever injury has been done to your family or to yourself, that it will pass on, as all things pass on in life, and that the scars will soon be removed and completely forgotten.

I am grateful to you for your statement this morning. I can understand it thoroughly, and I believe you are absolutely honest in stating it, and as a result you are relieved from further service in this case.

MR. CORRIGAN: We except, your Honor,
to relieving this man.

(Thereupon Prospective Juror James R. Manning
was excused.)

MR. CORRIGAN: Now, at this time I
renew my motion for a continuance and renew my
motion for a change of venue.

THE COURT: They will both be
overruled. Exceptions noted.

Are you ready to make opening statements,
gentlemen?

MR. MAHON: Judge, we want to make
a motion, but I think it should be in the presence
of the jury.

THE COURT: Sir?

MR. MAHON: We want to make a motion
at this time, but I think it should be in the
presence of the jury.

THE COURT: All right.

(Thereupon the following proceedings were had
within the presence of the jury:)

MR. CORRIGAN: Now, if the Court please,
due to the situation that has arisen, I want to
exercise the challenge I have left. I, therefore,
without any offense to you, Mr. Manning -- I am