

MR.. CORRIGAN: If it measures up to the quality of proper evidence.

MR. BAILEY: No question, but you cannot argue that because we put on no evidence it is an indication that Sam is guilty.

THE COURT: John, the objection is overruled.

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

THE COURT: The Court's ruling is that the objection is overruled.

Do you want the question restated by the court reporter, or do you want to restate the question, Counselor?

MR. BAILEY: I will rephrase the question.

Q Do you remember the question that was before you, Mr. Ainsley?

A The question was whether I would --

Q Just do you remember? If you don't --

A Yes, I do.

Q If you don't, I will be glad to put it again.

A Yes, I do.

Q Now, can you answer it? If you would like me to have it put again, just say so. There has been an interval here.

A I would say no.

Q Would you say then you would be unable to disregard the silence on the part of the defense --

A Yes.

Q --and not count it as having some bearing on the guilt or innocence of the defendant?

A Yes.

MR. BAILEY: Challenge for cause,
your Honor.

THE COURT: Proceed further,
Counselor, predicated on the instructions of
the Court.

MR. BAILEY: Very well, your
Honor.

Q Mr. Ainsley, supposing the defendant did give testimony which he has the right to do upon his own election, if the Court instructed you that all witnesses, no matter what their station in life, or their position in this case, are regarded as equal when they come to this witness chair, and that you are not to disbelieve the defendant solely because he is the defendant in this case, could you accept that instruction, and listen to his testimony with as open a mind as you could to the testimony of somebody who was obviously totally disinterested in the outcome of the case?

A Yes, I could.

Q Now, when you said that you could lay your opinion aside, for the purposes of sitting as a juror in this case, notwithstanding the fact that you have held it for twelve years, do you mean by that that the opinion you have can be changed if some evidence is presented?

MR. SPELLACY: Objection.

THE COURT: Objection overruled.

A Yes.

Q And do I take it from that that if no evidence is presented, that your opinion would remain the same, that is, if nothing happens to change it in the course of this trial? Do you understand the question, Mr. Ainsley?

A I would say yes.

Q Now, you have learned -- you know what the verdict of the original jury was?

A Yes.

Q You, I take it, at some time heard a couple of years ago, in the summertime, that Doctor Sheppard was released by a legal procedure, you heard about that, did you?

A Yes, sir.

Q Do you recall reading anything about the proceedings that had caused the release or the opinions that the Courts were handing down?

A No, I don't.

Q Now, do you recall learning at some time earlier this

year that the Supreme Court of the United States had made a ruling relative to the Sheppard case?

A Yes.

Q And that the original trial judgment had been set aside by that court?

A Yes.

Q Now, if Judge Talty instructs you that all of the prior proceedings from the date that the first trial opened, and a jury was begun to be impaneled, until the Supreme Court set that trial aside as defective last June, were for all purposes in this case a nullity, meaningless, no indication of the guilt or innocence of the defendant, but strictly a defective and abortive procedure, and that you were to consider this case as if there had never been a trial, do you think you could accept that instruction and completely disregard the steps that you know have taken place earlier in the case of the State of Ohio versus Sam Sheppard?

A I feel that I could.

Q Do you accept as fact the proposition that the earlier trial is meaningless at this juncture?

A Yes.

Q Now, when you learned that the judgment had been set aside, did you feel conscious of any opinion as to that development, whether it was right or wrong, deserved or ill-deserved?

A No, I can't recall.

Q You experienced no emotion as to whether that should have happened?

A No.

Q You have indicated on examination by Mr. Spellacy that you are willing to accept all of the law in this case from the Court?

A Yes, sir.

Q Do you have any idea in accepting not only the rulings that Judge Talty will make, and has made so far in this case, but also any of the other rulings that you are aware of that have been by courts inside or outside the State of Ohio in the past?

Do you have any difficulty accepting those as proper and fair?

A No.

Q Do you have a family physician, sir?

A Yes, sir.

Q Is your physician a medical doctor?

A Yes, sir.

Q Do you know what an osteopathic physician is?

A In a very sketchy sort of way.

Q Well, do you know whether or not an osteopathic physician is a physician like a medical doctor, or some other kind?

A My impression has been that an osteopath is not fully

accepted by the American Medical Association. I may be wrong on that.

Q If a medical doctor gave an opinion in this case, gave his opinion as evidence, on the one hand, and an osteopathic physician contradicted that opinion by giving his own opinion, can you say whether or not you would be inclined to give more weight to the medical doctor simply because he held that title?

A No.

Q If the Court instructs you that under the law of the State of Ohio, an osteopathic physician or doctor of osteopathy, and a medical doctor are precise equals, both recognized as having the same qualifications and taking the same exams to get the same license, and that in fact the doctor of osteopathy may use the term medical doctor after his name if he chooses under the law, could you accept that instruction and regard them as co-equals in the field of medical experts, for the purpose of medical testimony in this case?

A Yes, I could.

Q And set aside any notions that you held until today, that you held that an osteopathic physician was in some way inferior, and set that aside?

A I don't believe I have those notions.

Q Whatever notions you may have had, I understand you

could lay aside in the face of instructions by Judge Talty?

A Yes, yes.

Q Do you know what kind of doctor the defendant is?

A Doctor Sheppard is an osteopath.

Q Do you know what his specialty is within the field of osteopathy?

A No, I do not.

Q Do you have any of your family in law-enforcement?

A No, I do not.

Q Do you know Coroner Gerber?

A No.

Q Have you heard of him?

A I have.

Q Now, Coroner Gerber might give some testimony in this case.

If the Court instructs you that the fact that he is the Coroner and elected official of the County of Cuyahoga, is to have no bearing on your evaluation of his testimony, but that you are to regard him and study him and evaluate him on the same basis as every other medical witness, or witness, who may appear in the case, will you be able to do that and not attach any special credence to him because of his office?

A Yes.

MR. BAILEY:

I think that is all

of the questions by the defense, your Honor.

Excuse me a moment.

We will challenge for cause.

THE COURT: Overruled. Mr. Ainsley, would you be kind enough to take the last chair in the second row, please.

MR. BAILEY: May we approach the bench?

THE COURT: You may.

(Thereupon Counsel and the Court conferred at the Court's bench out of the hearing of the jury panel, as follows:)

MR. BAILEY: I just want to clear the time, on the matter of peremptory challenges, so we don't go by.

THE COURT: What I would prefer, gentlemen, is that unless you have some reason to the contrary, I would prefer you using your peremptories after the challenge for cause as to each prospective alternate has been ruled upon, that is, after each alternate has been seated.

MR. BAILEY: Do you want to seat three and then start challenging?

THE COURT: No. I want to

challenge individually.

MR. BAILEY: Challenge him now?

THE COURT: Yes.

MR. BAILEY: Well, when the time for challenges is appropriate, could you say, "You have the option for so and so."

MR. SPELLACY: I think we start anew.

MR. CORRIGAN: I think it is two challenges as to each alternate. The only way it could be effectively worked out is if you want one at a time.

MR. BAILEY: Well, I want to challenge.

THE COURT: I understand. You couldn't do it now because the peremptory is with the State now, and then the option would be yours.

MR. CORRIGAN: The challenge is with the State.

THE COURT: The challenge is with the State, the option is with the State, and then the option would be yours.

MR. BAILEY: Yes.

(Thereupon proceedings were resumed within the

hearing of the jury panel, as follows:)

THE COURT: Gentlemen, I believe that the option is with the State of Ohio.

MR. CORRIGAN: May it please the Court, the State is satisfied with Mr. Ainsley as an alternate juror.

THE COURT: Counselor Bailey?

MR. BAILEY: If it please the Court, the defendant will challenge Mr. Ainsley peremptorily.

THE COURT: Gentlemen, will you excuse me just a moment, please.

Mr. Ainsley, before excusing you, the Court wishes to express to you the gratitude of each of us participating in this proceeding, for your willingness to come forward and be a member of this panel, if so selected.

The Court, however, before excusing you is obliged to instruct you that you shall not discuss this case with anyone, including members of your own family.

You shall not permit anyone else to discuss it with you. You shall not make any statements to anyone with respect to any opinion that you may ^{have} had or have today, with respect

to the merits of this case, sir, until such time as you learn for a certainty that a jury has returned its verdict here in open court.

Do you understand these instructions, Mr. Ainsley?

MR. AINSLEY: Yes, I do, sir.

THE COURT: And would you follow them, sir?

MR. AINSLEY: Yes, sir.

THE COURT: You are hereby excused from further service in connection with this case, and Mr. Patrick or Mr. Reed will escort you from the room.

MR. BAILEY: Excuse me, your Honor. Before we commence with the next juror, may I suggest we have our morning recess, unless your Honor had intended not to take it?

THE COURT: Do you have a purpose for the recess?

MR. BAILEY: Yes, I do, your Honor.

THE COURT: Ladies and gentlemen of the jury, we will have our morning recess at this time, and while you are away on your morning recess you will bear in mind the instructions given you on each occasion when you leave this

room.

You shall not discuss this case or what little you know of it, even amongst yourselves.

You shall not permit anyone else to discuss it with you, nor shall you permit yourselves to overhear anything that relates to this case by any means or communication.

We will have our morning recess.

(Thereupon a recess was had.)

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