

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

THE COURT: Good morning, ladies and gentlemen. You have been summoned here as prospective alternate jurors in the case of the State of Ohio versus Sam H. Sheppard.

We have sworn a jury of twelve and one alternate. There are other alternates to be selected, and accordingly we have summoned you here as prospective alternate jurors.

Now, an alternate juror, if selected, ladies and gentlemen, in any case must be as attentive to the testimony and to the Court's rulings, and to what transpires in the courtroom as a member of the original twelve, because, if for any reason one of the original twelve which have already been sworn is excused, it will then become necessary for one of the alternates and possible all of the alternates to become members of the deliberating panel, and finally take this case and deliberate upon a verdict in the case.

So it is imperative, and you are hereby instructed, that if selected as an alternate juror in this case that you would be just as

attentive as though you were a member of the original twelve sworn.

Now, ladies and gentlemen, in an effort to draw your attention directly to the matter with which we are concerned, the Court is going to read to you the indictment, but before reading to you the indictment, the Court instructs you further as a matter of law, that an indictment is not and never throughout the course of any proceeding of this character reaches the level or the stature or the character of evidence.

An indictment is not evidence and will not be so treated by this jury at any time throughout the course of the proceedings.

The indictment in this case, ladies and gentlemen, provides as follows:

"Indictment for murder, second degree. 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."

Signed Frank T. Cullitan, Prosecuting Attorney.

Now, ladies and gentlemen, in 1954 when this indictment was issued, the name of the Prosecuting Attorney then, and the man who was the Prosecuting Attorney, was Frank T. Cullitan.

Mr. Cullitan was succeeded in office by John T. Corrigan, our present Prosecuting Attorney, who is in the courtroom this morning and who will be introduced to you at a later time.

But the indictment is signed, and it was necessary that it be signed by the Prosecuting Attorney then, Frank T. Cullitan.

Now, ladies and gentlemen, as has already been indicated to you, the fact that the Court reads the indictment, or the fact

that you may hear it read again throughout the course of this proceeding, if you were selected as a juror in this case, does not in any way signify or does not bear upon the question of the guilt or the innocence of the defendant in this case.

The indictment is not evidence and will never reach the stature of evidence in this case, and will not be regarded by you as evidence in this case.

What each side seeks here, ladies and gentlemen, is twelve impartial, fair, and dispassionate persons who will fairly and impartially try this lawsuit, hear the facts, hear the Court's charge on the law, and then apply the law to the facts and then render a verdict accordingly.

A lawsuit under our system of jurisprudence, ladies and gentlemen, is a search for the truth.

It is a search for the truth as nearly as truth in human affairs can be ascertained.

Neither side as they sit at the counsel table this morning seeks an advantage, or to use the vernacular of the street, the

edge.

Each side has the responsibility of bringing forward the facts as they believe the facts to be, and the responsibility of the jury is to search out and find wherein lies the truth.

The lawyers have the responsibility imposed upon them by law, and it is their duty to put to the prospective members of a jury questions touching upon your qualifications to serve as a fair and impartial juror in this case.

So when the lawyers put these questions to you, ladies and gentlemen, bear in mind that they are not on fishing expeditions, they are not curiosity seekers.

They have a duty imposed upon them by law to put these questions to you, to determine whether or not you could sit fairly and impartially as a juror in this cause if selected.

Please bear in mind, also, that these same or similar questions have been put to hundreds of thousands of prospective jurors who have come through this building and through these courtrooms over the years.

These questions again are in an effort

to determine your ability to serve fairly and impartially as a juror in this case if selected.

When questions are put to you ladies and gentlemen, please answer them accurately and forthrightly. If the lawyer feels that another question is necessary, he will put it to you.

Do not volunteer any information except that called for by way of answer and response to the question put to you.

Ladies and gentlemen, at this time I'm going to ask each of you to rise and raise your right arm, and I will administer to you the oath.

"You and each of you do solemnly swear that you will well and truly answer all questions put to you by Court or Counsel, touching upon your qualifications to serve as a juror in the case of the State of Ohio versus Sam H. Sheppard, as you shall answer to God."

You will answer, "I do."

THE JURY PANEL: I do.

THE COURT: Please be seated.

Now, ladies and gentlemen of the prospective panel, a jury has two important functions to fulfill in a lawsuit under our

system of jurisprudence, and the first of these functions, ladies and gentlemen, is to determine the disputed questions of fact.

Obviously there is a dispute here as to what the facts are, ladies and gentlemen, or we would not be here.

So the jury then is the sole determiner of the facts.

The jury must accept this responsibility and perform this responsibility. You and you alone as jurors will determine the facts.

You will then also, as your second function in this lawsuit, determine the credibility of the witnesses, the witnesses who will take this witness chair and be sworn as witnesses.

You will determine what credibility if any is to be assigned to each witness as he or she takes the witness chair, and is sworn to give evidence and present testimony.

Now, these are your two important functions; the first being that you will decide the disputed questions of fact; secondly, you will determine the believability or the credibility to be given to the witnesses as they

take the witness stand and are sworn.

You will learn and you are hereby instructed that so far as credibility is concerned, irrespective of who the witness is, what his profession is, what his participation in the case may be, that you may believe all of what the witness says, you may believe part of it, or you may believe none of it. That is your sole responsibility.

The Court cannot invade upon this sole and exclusive province.

The lawyers cannot invade upon this sole and exclusive province which the jury has, nor can anyone else. You and you alone determine what the facts in this case are.

You and you alone assign the credibility or the believability to the witnesses as they make their appearance in this case.

Then the Court charges you with respect to what the law is. The Judge has the duty and the responsibility to see that this proceeding is conducted in an orderly fashion according to the statutes and the law of Ohio.

He is the sole determiner of the

law in this case, just as you are the sole determiner of the facts, and you will not invade upon his responsibility to tell you what the law is anymore than he will impinge or invade upon your responsibilities and province to determine what the facts are in this case.

At the appropriate time in this proceeding the Court will charge you what the law is, and you must follow this law and apply this law to the facts as you find the facts to be without sympathy or prejudice or bias, for or against either the State of Ohio, or the defendant, or the alleged victim in this case.

You must accept the law just as the Court must give you the law, and you must accept it whether you agree with it or not, or whether the Court agrees with it or not.

The Court must give you the law as the law is.

From time to time, ladies and gentlemen, throughout the course of this proceeding lawyers on either side may interpose objections. The Court will either grant the objection or

overrule the objection.

The lawyers again are duty bound to interpose these objections to questions that may be put or the responses which may be made by witnesses, and this is their duty and their responsibility to protect their side of the lawsuit, and you will attach no significance whatsoever to whether or not the Court grants the objection or overrules the objection.

This is a matter of law which you will not speculate about. You will take only the facts and determine the facts, and the Court will rule on the objection and the legal matters, and you will not speculate or attach any significance to what is meant by the overruling or the granting of an objection.

Further, ladies and gentlemen, the lawyers from time to time throughout the course of this lawsuit may request, as lawyers do in every lawsuit, conferences at the side of the bench.

These conferences are held to discuss with the Court legal issues which the lawyers and which the Court discuss out of presence

of the jury, since we are talking about legal matters and legal issues.

This is not an attempt or an effort on the part of either side or both sides or the Court to hide something from you which you are entitled to know.

These are legal matters which the lawyers have the duty and the right to request to be heard outside of the hearing of the jury, and you are to attach no significance to the fact that lawyers from both or either side request side bar or side bench conferences.

Ladies and gentlemen, under our system of jurisprudence, a defendant is presumed to be innocent, and this morning as the defendant sits in this courtroom you must grant and give to him the presumption of innocence, and the defendant under our system of jurisprudence need not prove his innocence.

It is incumbent and the duty rests upon the State of Ohio to prove each and every essential averment and element of the indictment, and you need not at this time, ladies and gentlemen, speculate about what the elements of this indictment are, because at the appropriate

time in this lawsuit the Court will define these elements to you.

Now, the State of Ohio must prove the guilt of this and every defendant beyond a reasonable doubt.

The Court will also define for you what is meant by the term reasonable doubt, and the legislature of Ohio has defined the term reasonable doubt, and at the appropriate time in this proceeding the Court will read to you as it has the duty, read to you verbatim the definition of reasonable doubt, so you will not have to speculate upon what is meant by the term reasonable doubt.

The Court will instruct you and inform you at the appropriate time as to what is meant by the term reasonable doubt.

Further, ladies and gentlemen, from time to time throughout this procedure, the lawyers for one side or the other may challenge a prospective juror for cause.

If the Court grants such challenge you will be excused from service as a prospective juror in this case.

If such challenge, however, is overruled,

you may be seated and become a member of this deliberating panel, and ultimately decide the case.

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

If after a challenge for cause you are seated as a juror in this case, it would be improper and unfair for you to harbor any resentment or any ill-will against the side which challenged you, and I instruct you that you shall 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.

Ladies and gentlemen, since you have been summoned as a prospective juror in this case, in the event you are excused from being a juror in this case, you are forbidden to discuss this case or any opinion which you may have relative to this case, or any opinion which you may have had, you are forbidden to

discuss it even with a member of your family, your husbands, your wives, your children, or anyone else, and you are forbidden to permit anyone else to discuss it with you, until such time, ladies and gentlemen, as you learn for a certainty that a jury has returned its verdict in open court in this courtroom.

May I see Counselors, please?

(Thereupon Court and Counsel conferred at the Court's bench out of the hearing of the jury panel.)

THE COURT: Ladies and gentlemen of the jury, it has been called to my attention by Counselors that I overlooked instructing you that since you have been summoned as a prospective juror in this case, that you will not discuss what little you know of this case, even amongst yourselves.

You shall not permit anyone else to discuss this case with you. You shall not permit yourselves to read any printed material that relates to this case, by way of newspapers or any other publication.

If you are reading a newspaper or other printed material, and you should come upon some

article that refers to this matter, you shall not read this portion of the printed material.

If you are listening to a radio or viewing a television set, you will either turn off the radio or the television set, if the commentator should make reference or allude to this case, or you will walk away so that you cannot hear the comments that the commentator may have with respect to this case.

Now, ladies and gentlemen -- as you will bear these instructions in mind on each occasion, ladies and gentlemen, that you leave this room.

Now, you will have your luncheon and you will report back here at one o'clock for prospective service in this case.

Mr. Patrick, will you escort the panel, and bring, return the panel of thirteen.
(Thereupon the panel of prospective jurors was excused from the courtroom.)

THE COURT: Ladies and gentlemen at the rear of the room, if you desire to leave now, you may do so.

Ladies and gentlemen, it is time for lunch. Ladies and gentlemen, while you are

away on your luncheon recess you will bear in mind the instructions given you on each occasion when you leave the room.

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

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 media of communication.

We will stand recessed for lunch, ladies and gentlemen, until 1:30.

(Thereupon an adjournment was taken to 1:30 p.m., Monday, October 31, 1966, at which time the following proceedings were had:)