

THE BAILIFF: Mrs. Denk, will
you please take the witness chair?

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THEREUPON, LILLIAN E. DENK, a member
of the prospective jury panel, having been
previously sworn, was examined and testified
on voir dire, as follows:

THE COURT: Good afternoon,
Mrs. Denk.

MRS. DENK: Good afternoon.

THE COURT: Is that the correct
pronunciation of your name, D-e-n-k?

MRS. DENK: That's right.

THE COURT: Mrs. Denk, the
lawyers are duty bound to put questions to you,
and will you please answer these questions
accurately and forthrightly, and hold your
voice up so that each person in this room
may hear your response.

Mr. Romito, who sits in front of you
must report and record your responses.

So you must not respond by a nod of
your head. You must do so audibly.

Do you understand?

MRS. DENK: Yes.

THE COURT: And remember in making these responses to these questions, Mrs. Denk, that you are under oath?

MRS. DENK: Yes.

THE COURT: Thank you. Counselor Spellacy or Corrigan?

VOIR DIRE EXAMINATION OF LILLIAN E. DENK

By Mr. Spellacy:

Q For the record, will you please tell us your full name, now?

A Yes. Lillian Elaine Denk.

Q Where do you live?

A I live in Seven Hills.

Q Your address, please?

A 221 Rockside Road.

Q How long have you lived there?

A Maybe five years, May 31st of next year. So it is really four and a half years.

Q Prior to living at that address, where did you live?

A I lived in Parma. The address there was 741 -- it was Valley Village Drive. I don't remember the exact address.

Q How long did you live in Parma?

A About twenty years.

Q Twenty years, all right. Did you go to school in the

Parma School System?

A Yes, the entire time.

Q Pardon me?

A Yes, the entire time.

Q Did you go to Parma High School?

A Yes.

Q What year did you graduate from Parma High School?

A '59.

Q 1959?

A Yes.

Q Are your mother and father still living?

A Yes.

Q Where do they reside?

A At the same address, 221 Rockside.

Q What type of work is your father engaged in?

A He is a carpenter.

Q Carpenter?

A Yes.

Q Is he self-employed or does he work for anyone?

A He is working for Haber Acker Construction Company.

Q Haber Acker?

A Haber Acker Construction Company.

Q Is your mother employed outside the home?

A She is just a housewife.

Q You are employed where?

A At the Ohio Bell Telephone Company.

Q How long have you been so employed?

A Seven years.

Q What type of work do you do there?

A I am a supervisor, currently doing instruction work.

Q How long have you been in the instruction line of the work?

A Since January.

Q Prior to that, what did you do at Ohio Bell?

A I was a service observer. This is analyzing the work that our service representatives do in the Commercial Department.

Q Where do you work, do you work downtown for Ohio Bell?

A Yes, that's right. In the Bulkley Building.

Q In the Bulkley Building on St. Clair Avenue, is that correct?

A That's correct.

Q You understand that this is the case involving the State of Ohio versus Sam Sheppard, do you understand that?

A That's right.

Q Have you read anything about this case?

A No.

Q Pardon me?

A You mean recently? No.

Q Yes, recently.

A No.

Q Well, at any time have you read anything about this case?

A Well, during the original trial, on occasion I might have read anything, but I don't recall.

Q That would have been in 1954, is that correct?

A That is a long time ago.

Q Do you recall what grade you were in, in school, in 1954?

A It must have been about the eighth or ninth grade.

Q Is there anything about the trial which you read about at that time that caused you to have an opinion or did you express an opinion about this case to anyone?

A Not really.--

Q Just yes or no.

A No.

Q Do you have an opinion in regard to this case today, yes or no?

A No.

Q Has anybody ever expressed an opinion to you regarding this case?

A Yes.

Q Was that recently?

A No, not recently. Recently, you mean like, say, within the last year?

Q Yes.

A No.

Q When was it that they expressed, that someone expressed an opinion?

A Well, during the original trial, my parents, you know, after the original trial, my parents discussed it. And then on occasion, at work.

THE COURT: At where? I am sorry.

A Also on occasion at work.

THE COURT: Thank you. Keep your voice up, please.

A I am sorry.

THE COURT: That is all right, Miss Denk.

Q Was this approximately, how many times did someone else express an opinion to you relative to this matter?

A Probably not more than five times.

Q Now, as a result of someone expressing an opinion to you, did this cause you to have an opinion?

A No, not really.

Q If called upon to sit as a juror in this case, could you set outside your mind anything that you might have heard about this case before, any opinion or any expression of an opinion, and decide the case solely on the facts here in

this courtroom?

A Yes, I could.

THE COURT: Keep your voice up,
please, Miss Denk.

MISS DENK: Oh, yes.

THE COURT: Keep your voice up,
please.

Q You understand that as a juror that you would be the
trier of the facts in the case, you understand what I mean?

A Yes.

Q It would be your job and your job alone to determine
the weight that you want to give the evidence presented by
the witnesses, understand?

A Yes.

Q That you are to analyze witnesses as they testify, and
you can accept all of what they say, part of what they say,
or none of what they say?

A Yes.

Q That is your job as a juror. Equally important, you
must take the law that Judge Talty gives to you and apply
that law to the facts, you have to set outside your mind any
ideas you might have as to what the law is or what it might
be or what it should be, and take the law that Judge Talty
gives to you; can you do that?

A Yes.

Q You see, in this day and age of radio and television, and so forth, we all have heard about principles of law; do you think you could set outside your mind any ideas you might have heard and take the law that Judge Talty gives to you?

A Yes.

Q Under our system of justice, a defendant is presumed to be innocent until proven guilty. The law places upon the State of Ohio the burden to prove him guilty beyond a reasonable doubt.

Now, would you listen to the instructions that Judge Talty gives to you as to that principle of law, can you do that?

A Yes.

Q Also, Judge Talty will instruct you that there are various types of evidence, what we refer to as direct, what we refer to as circumstantial evidence, and if Judge Talty were to tell you that circumstantial evidence properly proven is just as good and just as binding as direct evidence, will you follow that instruction?

A Yes.

Q You see, direct evidence is evidence a witness who testifies as to what he or she heard or saw, what they felt, and circumstantial evidence are facts which you may infer from proven facts which follow according to the common and

usual experience of mankind.

Now, assuming when we came in the building here this morning that the streets were dry, the grass was dry, the trees were dry, the buildings were dry, we didn't have occasion to look out until we went out on our noon recess, and when we went out we saw the streets were wet, puddles on the sidewalk, the grass was wet, the trees were wet, the buildings were wet, we could reasonably infer from that set of facts that sometime between the hours of nine o'clock and twelve o'clock it had rained.

This is what we mean by circumstantial evidence.

Could you follow that instruction of his Honor Judge Talty?

A Yes.

Q Now, also, I believe Judge Talty will instruct you as to the matter of intent, that one is presumed to intend the natural and probable consequences of his voluntary acts.

If I had a sponge here in my hand, if I threw the sponge against the window, I wouldn't expect the window to break.

But if I had a rock in my hand and if I threw the rock against the window, the natural and probable consequence of my throwing the rock would be that the window would break, that I would be responsible for breaking the window.

That is what we mean -- and you would follow the

principle of law -- that one is presumed to intend natural and probable consequences of his voluntary acts; you follow that?

A Yes.

Q Now, do you have any relatives or close friends who are members of the Police Department, law enforcement officials?

A No.

Q Do you know anybody connected with the County Coroner's Office?

A No.

Q Now, it is anticipated that police officers will testify here, representatives of the County Coroner's Office, or public officials will testify here.

His Honor Judge Talty will tell you that in weighing the testimony of witnesses, you are not to give any greater or less weight to the testimony of witnesses solely because they are either police officers or public officials, understand?

A Yes.

Q And that you are only to use the same guide lines as you would evaluate any other witness, would you be able to follow that instruction?

A Yes.

Q I also anticipate that Judge Talty will tell you that

sympathy or bias or prejudice has no particular place in the lawsuit; would you follow that instruction?

A Yes.

Q And that as a juror, you are to concern yourself only with the facts as they are presented here in this courtroom, that as a matter of law, you are not to concern yourself with punishment or with penalty, if there is to be punishment or penalty, that that is a matter solely within the discretion of his Honor Judge Talty?

MR. BAILEY: I object to that question. Inaccurate statement.

THE COURT: Do you wish to restate the question, Counselor, or do you wish the Court to rule on it? I did not follow the question that closely.

MR. SPELLACY: Excuse me a moment.

THE COURT: The objection is sustained. Counselor will restate the question, if you so choose.

Q That the matter of penalty or punishment is a concern of the Court only, you would follow that, would you not?

A Yes.

Q Is there anything that you can think of that would prevent you from being a fair and impartial juror in this case, both to this defendant as well as to the people of Ohio?

A I don't believe so.

Q Can you decide this case free of any bias or prejudice --

MR. BAILEY: Excuse me. I don't think the witness had finished her answer.

MR. SPEILACY: I am sorry.

A Well, there is only one thing --

THE COURT: Gentlemen, there will be no colloquy. You will make objections and the Court will entertain your objections. Is there an objections?

MR. BAILEY: I object to the witness's answer being terminated prematurely by the putting of another question.

THE COURT: Do you have something that you wished to respond to the question previously put, Miss Denk?

A Let's see, the question previously put was to the effect that -- I really -- I know how I answered it, but could you restate the question?

Q I will restate the question. If you can answer it yes or no, please try to.

Is there anything, any reason that you can think of why you could not sit as a fair and impartial juror both to this defendant as well as to the people of Ohio?

A No, but could I make a comment on this? Could I make

one further comment? Well, all right, no.

Q There is no reason. You could be fair to both sides?

A Yes. There is one person that I knew in the case, involved in the case, and I was wondering if this would be something.

THE COURT: Please put the

question, Counselor, as I know you wish. I am sure Counselor for defense wishes the question put as to who she may know in the case.

Q Was there somebody that you knew in the case?

A I knew the daughter of someone in the case.

Q And who would that be?

A That would be Mr. Houk.

Q You knew the daughter of Mr. Houk?

A Yes, which I understand was part of the case.

Q Would the fact that you knew the daughter of Mr. Houk, would that tend to influence you in any way in this case?

A I don't believe so, no.

Q It is anticipated that Mr. Houk will be a witness in this particular case, would that fact that you knew his daughter -- and I might add he would probably be a witness for the State -- would that fact preclude you from evaluating him just as you would any other witness?

A No.

Q It is also anticipated that Mrs. Houk will be a witness

for the State, and I will ask you the same question, would the fact that Mrs. Houk appears here as a witness, and that you knew her daughter, would that tend to prevent you from evaluating her just as you would any other witness?

A No.

Q How long have you known the daughter of Mrs. Houk?

A I have known, I only knew her a brief period of time. She worked in the same office I did.

Q And where was that?

A Ohio Bell.

Q Do you see her recently, have you seen her recently?

A Oh, no, I haven't seen her for about three years.

Q For how long a period would it have been that you knew her?

A I only knew her about three months, and then a prior period of time I knew her briefly, again, I would say about two months.

Q Did you ever have occasion to discuss this case with her?

A Yes.

Q And as a result of having discussed this case with her, did you arrive at any opinion, or did she express an opinion to you?

A She expressed an opinion. However, at that particular time --

Q I don't want to know what the opinion was.

A Okay.

Q Did she express an opinion to you relative to this case?

A Yes.

THE COURT: Will you establish the point of time, Counselor?

MR. SPELLACY: Yes, your Honor.

Q When would that have been?

A About three and a half years ago.

Q Would the fact that she expressed this opinion to you prevent you from serving as a fair and impartial juror here?

A No.

Q You could set aside that opinion and decide it solely on the evidence presented here in this courtroom?

A Yes.

Q I will go back now, could you be fair to both sides in this particular case?

A Yes.

Q To this defendant as well as to the people of Ohio?

A Yes.

MR. SPELLACY: Pass for cause.

THE COURT: Counselor Bailey?

VOIR DIRE EXAMINATION OF LILLIAN E. DENK

By Mr. Bailey:

Q Have you ever met Spencer Houk, Miss Denk?

A No.

Q Did you ever meet Esther Houk?

A No.

Q In your conversation with their daughter, did she convey to you any opinions they may have expressed?

A No.

Q In the course of expressing the opinion you told us that she mentioned, did she give you any facts to support the opinion?

A No.

Q Did she tell you any of the circumstances of the case as she knew them to be?

A No.

Q Of course, you have some memory, I suppose, of the original incident, wherein Marilyn Sheppard was murdered by someone?

A Yes.

Q You heard about that, you heard about the investigation?

A Yes.

Q You heard that Doctor Sheppard was arrested and charged with the crime?

A Yes.

Q You heard that he was tried and the jury found him guilty?

A Yes.

Q And you heard that the higher courts have since set that conviction aside?

A Yes.

Q Now, if the Court instructs you that all of these prior proceedings are in the eyes of the law, and indeed in your eyes as a trier of the facts, a nullity, that is, that you attach no inference whatsoever that Doctor Sheppard committed any crime based on the earlier trial, the appeal, or anything else, do you think you could accept that and completely clear your mind of any notion that he is guilty because of something that happened before?

A Yes.

Q A couple of times when you were asked whether or not you had an opinion, you said, well, not really; do you have some little opinion?

A No.

Q Some leaning or inclination of which you are conscious?

A No.

Q Do you have a family physician, Miss Denk?

A Yes.

Q Is he a medical doctor?

A He is an osteopath.

Q An osteopath. You will be told that the defense has no burden of any kind in this case, no obligation to prove anything, he doesn't need to put on one bit of evidence.

If you were to hear evidence on behalf of the State of Ohio that Marilyn Sheppard was murdered by someone, and that Doctor Sheppard was at home in his house, and no evidence at all by the defense, and yet you were told that that silence on the part of the defense was no basis whatsoever to infer guilt, could you follow that instruction?

A Yes.

Q Further than that, Miss Denk, you might also be told if it is appropriate, that the defendant himself, even though some other evidence may be presented, he has a constitutional right not to give testimony, and not to be penalized for his silence by an inference of guilt.

If Doctor Sheppard does not testify, does not answer, does not explain or tell you what he knows what happened that night, but remains silent, and you are told by the Court to draw absolutely no inference against him on account of that silence, no matter what you may personally think about it because that is the law, do you think that you can abide by that instruction and ignore his silence and decide the case solely on the evidence you have heard?

A Yes, sir.

Q Were you very friendly with the daughter of the Houks?

A No.

Q Did you ever see her socially outside your place of work?

A No.

Q There may well be presented for your consideration circumstantial evidence, as Mr. Spellacy has said, wherein certain facts will be established, and you will be urged on behalf of one party or the other, to draw a conclusion or some inferences from those facts, as opposed to as was stated direct evidence, somebody who saw or heard; and you have told Mr. Spellacy that if the Court instructs you that that was good evidence, properly proven, that you would follow that instruction.

Now, if circumstantial evidence is used, there will be a further instruction, and that is that before you can convict a fellow citizen, as this defendant is, on circumstantial evidence, that all of the facts and circumstances must point only to guilt, not to a possibility of guilt or possibility of innocence, not in several directions, but only in one direction, and that if there is some reasonable explanation to these facts not consistent with guilt, that you must acquit him.

This is a special instruction --

MR. CORRIGAN:

Objection.

THE COURT: Overruled.

Q --if that instruction is given to you to apply to these circumstantial evidence produced, do you feel that you can follow it conscientiously?

A Yes.

Q Miss Denk, you also learned that the defendant, who has a right to remain silent, has a right to testify if he chooses, and if Doctor Sheppard were to testify, would you be inclined to attach less weight to his testimony solely because he was a defendant, even though the Court instructed you not to do so?

A No.

Q You would be able then to regard him as just another witness?

A Yes.

Q You also learned that a defendant in a criminal case has a right to defend himself by trying to prove that someone else committed the crime?

A (No response)

MR. SPELLACY: I object to that.

THE COURT: The statement is stricken. Put a question.

Q Just as the State may present circumstantial evidence, the defense may present circumstantial evidence, and ask you to draw different inferences than those suggested by the

State, pointing to people other than the defendant.

If that should occur, if that is the state of the evidence, would you be able to search the evidence with an open mind, just as willing to accept the evidence pointing to someone other than the defendant?

A Yes.

Q And would you be inhibited in doing that, or unable to do it?

A No.

Q To any extent if the person to whom the circumstantial evidence pointed was someone that you knew?

A No.

MR. BAILEY: Pass the juror for cause.

THE COURT: Do you pass for cause, Counselor?

MR. BAILEY: Yes.

THE COURT: Miss Denk, would you be kind enough, please, to take the first chair next to Mrs. Uhrin, in the first aisle here.

Gentlemen, it is five minutes to four. Rather than commence with another prospective juror, we will adjourn for the day, and we have no further prospective member of this

panel to call.

Do you gentlemen at the back of the room, all of you, if you wish to leave now while we are waiting the other members of the panel, you may do so if you like, and that includes the ladies, of course.

Ladies and gentlemen of the prospective panel, you are instructed again as you have been on each occasion when you have gone from this room, that you shall not discuss this case or what little you have heard of it, even amongst yourselves.

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

You shall not permit anyone else to discuss this case with you.

Do each of you understand that? And you will stand recessed so far as you are concerned until 9:15 ^{Thursday} Monday morning.

Mr. Patrick, will you escort this panel, and bring in the second panel, please.

(Thereupon the balance of the prospective jurors was brought into the courtroom.)

THE COURT:

Ladies and gentlemen,

you may leave in the back of the room if you wish.

Ladies and gentlemen, we are going to adjourn for the afternoon, and while you are away on your adjournment over the evening from this building, you shall bear in mind the instructions given to you on previous occasions when you have gone from this room, and that is that 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. You shall not permit yourselves to overhear anything that relates to this cause by any means or media of communication.

By way of example, again, to point up what I am talking about, those people that you will visit at your homes tonight, those persons who are closest to you will inquire of you what you are doing, what you have heard.

You are admonished and instructed that you shall tell them that you have been instructed that it is your duty not to discuss this with them or anyone else.

If you are listening to a radio, viewing

a television set, and the commentator should comment, you will turn off the set or you will walk away from it, so that you cannot hear the comment that the commentator may have to make.

If you are reading a newspaper or any other printed material, and you see some reference made to this case, you shall not read it and you are forbidden to read that part of the written material.

We are adjourned, ladies and gentlemen, until 9:15 tomorrow morning.

(Thereupon adjournment was taken to 9:15 a.m., Thursday, October 27, 1966, at which time the following proceedings were had:)