

THEREUPON, HYMAN EISENBERG, a member of the prospective jury panel, having been previously sworn, was examined and testified on voir dire, as follows:

THE COURT: Good morning, Mr. Eisenberg. Is that the correct pronunciation of your name, sir?

MR. EISENBERG: Yes, sir.

THE COURT: Mr. Eisenberg, will you please keep your voice up, sir, so that each of us in this room can hear you, and you know that you are under oath.

You can't just respond by nodding your head, because Mr. Romito must record your responses. You must audibly respond to the questions that the lawyers will put to you, do you understand, sir?

MR. EISENBERG: Yes, sir.

THE COURT: Thank you. That is better.

Now, Mr. Eisenberg, it is my understanding from Professor Sheard -- you know who Professor Kevin Sheard is?

MR. EISENBERG: Yes, sir.

THE COURT: Have you seen

Professor Kevin Sheard in this courtroom?

MR. EISENBERG: Yes, sir, I have.

THE COURT: Are you a full-time or part-time law student at Cleveland Marshall Law School?

MR. EISENBERG: Yes, sir, I am.

THE COURT: Which is it, full-time or part-time?

MR. EISENBERG: Well, I am a full-time student at the night school, which would be a part-time student.

THE COURT: I see. Have you had Professor Sheard in class?

MR. EISENBERG: Yes, I have.

THE COURT: Professor Sheard is not in the courtroom at the moment, but have you observed him as being here in the courtroom?

MR. EISENBERG: Yes, I have.

THE COURT: As an observer?

MR. EISENBERG: Yes.

THE COURT: Would the fact that he has been in the courtroom, or the fact that you are student there, and that he is a professor, would that in any fashion or in any manner render you to such a position so that

you could not be a fair and impartial juror if called upon in this case?

MR. EISENBERG: No, sir.

THE COURT: Thank you. Counselor Corrigan?

MR. CORRIGAN: May it please the Court.

VOIR DIRE EXAMINATION OF HYMAN EISENBERG

By Mr. Corrigan:

Q Will you state your full name, please?

A Hyman Eisenberg.

Q Will you spell your last name?

A E-i-s-e-n-b-e-r-g.

Q Where do you live, sir?

A At 488 Harris Road, in Richmond Heights.

Q And how long have you lived at that address?

A Approximately nine years.

Q Where did you live prior to living there?

A I lived in Cleveland, in South Euclid.

Q And at what address in South Euclid?

A 2058 Miramar Boulevard.

Q How long did you live there?

A I lived there for approximately seven years.

Q Are you a native to Cleveland, sir?

A Yes, sir.

Q What school system did you attend in the Greater Cleveland Area?

A John Adams, as far as high school is concerned.

Q Did you go to college after finishing at John Adams?

A Yes, sir, I did.

Q What college did you attend?

A Ohio State University.

Q When did you complete your work at Ohio State?

A In 1953.

Q And you are presently attending the Cleveland Marshall Law School?

A Yes, sir.

Q How long have you been in attendance at that school?

A Three years.

Q How long must you continue in that school in order to obtain a law degree?

A One more year.

Q Sir, in the course of your instructions as a law student, have you had courses in evidence?

A I am taking a course in evidence now.

Q Have you had courses in criminal law?

A Yes, sir.

Q Have you had courses in Constitutional law?

A Yes, sir.

Q Have you had courses in trial procedure?

A No, sir.

Q Now, being a law student, you have an idea or a concept of what the law is from what you were taught in law school, is that correct?

A Yes, sir.

Q Now, sir, assuming that if you are selected as a member of this jury, and you find that the law that Judge Talty gives to you conflicts with what you think the law is, or with what you have been told the law is in law school, would you be able to put out of your mind what you have learned in law school and have learned from the law professors, and accept the law that Judge Talty gives you?

A Yes.

Q Judge Talty will instruct you among other things that you are to concern yourself only with what occurs in this courtroom, that is to say, with regard to the facts you are to rely only on the facts as you determine them to be from what you hear from witnesses and what you have learned from exhibits that are received in evidence, do you understand that?

A Yes, sir.

Q He will further instruct you that you are to concern yourself only with the law that you receive in this courtroom and no other law, do you understand that, sir?

A Yes, sir.

Q Do you feel, sir, that in view of your experience that you will be able to accept the facts only, those that occur in this courtroom by way of testimony of witnesses and from the exhibits that are offered in evidence?

A I feel I would be able to.

Q What is your present employment?

A I am a salesman.

Q With what firm?

A New United Company.

Q What is the product that that company deals with?

A We sell paint and paint sundries.

Q Specifically what do you do?

A I sell to hardware stores, discount houses, paint stores.

Q Do you have an area or a fixed route?

A Yes.

Q And what is that fixed route?

A Well, it is the Cleveland area, Cuyahoga County, and the suburbs.

Q How long have you been employed with that firm?

A Ten years.

Q How old are you?

A 35.

Q What did you do prior to working for that firm?

A I was in the service.

Q What branch of the service were you in?

A The Air Force.

Q How long were you in the service?

A For two years.

Q Are you married, sir?

A Yes, sir.

Q Do you have a family?

A Yes, sir.

Q What are the ages and the names of your children?

A The youngest is Dianne, and she is four. The middle one is Marcy, and she is six. The oldest one is Pamela, and she is eight.

Q Is Mrs. Eisenberg employed outside the home?

A No.

Q Was she employed at one time outside the home?

A Yes.

Q What type of employment was she engaged in?

A She was a dental secretary.

Q I am sorry, I didn't hear you?

A A secretary to a dentist.

THE COURT: A dental secretary,
counselor.

MR. CORRIGAN: I see.

Q Where were you living in 1954?

A I was living in North Africa.

Q Did you have occasion in 1954 -- you realize this is the case of the State of Ohio vs. Sam H. Sheppard?

A Yes, sir.

Q In 1954 did you have occasion to read anything in the newspapers or hear anything on radio, or see anything on television in connection with this case?

A Very little that I can remember. I was in French Morrocco from 1954 until 1956, and, actually, I can't remember reading or hearing anything about it, except that I heard that there was a trial.

Q Did you read or see anything in the news media since 1954?

A Yes, sir.

Q How recent did you see or read something in the news media since 1954?

A I read of the appeals.

Q Did you follow those appeals quite closely?

A No.

Q Did you read them as a matter of law, that is to say, did you read any judicious decisions in connection with the appeals?

A Yes.

Q As a result of reading the decisions on appeal, did you arrive at any conclusion or fixed opinion as to the

righteousness of the cause one way or the other?

MR. BAILEY: I object.

Q Answer that yes or no.

MR. BAILEY: I object.

THE COURT: Sustained, counselor.

Objectionable as to form.

Q Did you arrive, sir, at any legal opinion after reading those opinions on appeal?

MR. BAILEY: I object.

THE COURT: Sustained as to form,
counselor.

Q Did you arrive at any opinion in this matter predicated on that which you read or that which you heard or that which you saw?

A I don't understand the question, sir.

Q You read about this in law books?

A Yes, sir.

Q Now, from what you read did you arrive at any opinion relative to this case?

MR. BAILEY: I object again as to
form.

THE COURT: Overruled.

A No, I don't think I have.

Q Will you answer this question yes or no; did you find yourself in accord with the opinions that were expressed in

the cases that you read?

MR. BAILEY: I object.

THE COURT: Objection sustained.

Q Apart and aside from reading any case law as it relates to this case, did you read any books or magazines relative to this case?

A No.

THE COURT: I am sorry, counselor,
I didn't hear his response?

A No.

THE COURT: Thank you.

Q Have you talked with anybody about this case?

A No.

Q Has anyone ever talked to you about this case?

A No.

Q Have you talked about this case in law school?

A No.

Q Has any professor or instructor spoke about this case in any law class that you attended?

A No, sir.

Q Now, sir, if you are chosen as a member of this jury, and if a police officer testifies, would you solely because he is a police officer give greater weight or credibility to his testimony than you would a lay person?

A No.

Q If a public official were to testify, and let us assume the Coroner of Cuyahoga County or one of his deputies, would you give greater weight to his testimony simply because he is a Coroner or Deputy Coroner, as opposed to somebody who would be let us assume an un-official doctor?

A No.

Q Do you, sir, have in your family or in your relatively immediate acquaintanceship any members of law enforcement agencies, such as members of police departments, sheriff departments, and the like?

A No, sir.

Q Do you know, or are you relatively closely acquainted to a member of the prosecuting attorney's staff?

A No, sir.

Q Now, sir, as a student at the Cleveland Marshall Law School, have you had occasion to participate in any program through the school where you would sit in on criminal cases tried in this Criminal Court of Cuyahoga County?

A No, sir.

Q As a student at Cleveland Marshall Law school, are you a member of the staff of the Cleveland Marshall Law Review?

A No, sir.

Q As a student at the Cleveland Marshall Law School, have you had the opportunity of listening to any lectures made to the students by any members of the prosecuting attorney's

office?

A Yes, sir.

Q And who among the prosecuting attorney's office did you hear lecture at Cleveland Marshall Law School?

A I can't remember their names.

Q Can you recall the subject matter of the lecture?

A Yes.

Q Will you tell us what that subject matter was?

A They were discussing the recent criminal decisions as far as -- my mind has gone blank there.

THE COURT: Just relax, Mr. Eisenberg.

You will be all right. Take your time.

Q May it suffice to say for the moment that they were discussing recent decisions?

A Yes, yes.

Q In the course of that discussion did they mention the Sheppard case?

A No, sir.

Q As a result of these discussions did you formulate any opinion as relates to recent decisions?

MR. BAILEY: I object.

THE COURT: Overruled.

A No, I just accept them.

Q When you say that you accepted them, does that mean that you agreed with them?

MR. BAILEY: I object.

THE COURT: Objection sustained.

Q If you are selected as a member of this jury, sir, and the time arrives when you are called upon to deliberate this matter with your fellow jurors, and you find that among your fellow jurors are eleven lay people who have had no people in the law, would the fact that you have attended three years of law school cause you to be unable to participate fully and completely with them in an objective discussion of the facts as you determine them to be in the courtroom, and the law as Judge Talty tells you the law to be?

A No, sir.

Q All of us have concepts of what the law should be. I shouldn't say all of us, but many of us do, and assuming that you do, sir, would you be able to put out of your mind any concept that you may have of what the law should be, and accept the law as it is, as Judge Talty tells you the law is?

A Yes.

Q Do you, sir, have a family physician?

A No, sir.

Q Do you know the difference between an M.D. and an osteopath?

A Yes, I do.

Q If Judge Talty were to tell you that in law an osteopath and an M.D. are on the same level, would you accept that in-

struction of law?

A Yes.

Q Would you regard them as being on the same level?

A Yes.

Q Have you ever had any connection with the Bay View Hospital in Bay Village?

A No.

Q Have you had any connection with the hospital -- I believe you live in Richmond Heights?

A Yes.

Q Have you had any connection with the hospital at Richmond Heights?

A No.

Q Or have you had any connection with Brentwood Hospital in the Harvard-Lee area?

A No.

Q MR. CORRIGAN: Pass for cause, your Honor.

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THE COURT: Counselor Corrigan, before you pass for cause, excuse me, you may remember, counselor, that there are some Eisenbergs in town who are members of the legal profession. Would you inquire, sir, in that area? There is a Gilbert Eisenberg.

MR. CORRIGAN: Thank you, your Honor.

By Mr. Corrigan:

Q Are you related to any attorneys?

A No, sir.

MR. CORRIGAN: Thank you. Your Honor, pass for cause.

MR. BAILEY: No questions are necessary, your Honor. Pass for cause.

THE COURT: Mr. Eisenberg, would you be good enough, sir, to take the chair here that Miss Denk just left.

Counselor Bailey, the option is with the defense, I believe.

MR. BAILEY: Yes, your Honor. May we approach the bench first for a motion?

THE COURT: Yes.

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