

Thereupon FRED J. BROWN, being first duly sworn, was examined and testified as follows:

EXAMINATION OF PROS. JUROR FRED J. BROWN

By the Court:

Q Your name is Fred J. Brown?

A Yes, your Honor.

Q And you live at 12401 Signet Avenue?

A That's right, sir.

Q That is in the southeast section?

A That's right, sir.

Q Are you a married man, Mr. Brown?

A Yes, sir.

Q Have you a family?

A Yes, sir.

Q What does the family consist of?

A I have a daughter eight and a son three.

Q Do those three people, your wife and those two children and yourself constitute the entire family?

A Yes, sir.

Q How long have you lived on Signet?

A Approximately six years, sir.

Q And what is your occupation?

A United States postal clerk.

Q And how long have you been a postal clerk?

A Since 1948.

Q And are you employed at the general post office?

A No, sir. At 5300 Chester Avenue, Station B.

Q Have you ever been a juror before?

A No, your Honor.

Q Ever been a witness in a case in court?

A Outside of the police court -- I mean traffic court.

Q Do you know anyone of the people who are around this table and who were mentioned to you a week ago last Monday morning?

A What do you mean, sir? You mean personally --

Q Yes, personally.

A No, sir.

Q Do you know any of them by any association at all other than just knowing who they are?

A No, sir.

Q Do you know the County prosecuting attorney of this County or any member of his staff?

A Personally, no.

Q Do you know the Sheriff or any member of his staff?

A No, sir.

Q Or the Coroner, Dr. Gerber, or any member of his staff?

A No, sir.

Q I take it that you have heard of this case, this Sheppard case before?

A Yes, sir.

Q By what means did you learn of it? ✓

A Well, through the radio broadcast and the headlines in the paper.

Q Have you discussed it with other people? ✓

A Yes, sir.

Q Have you ever expressed an opinion as to the guilt or innocence of Dr. Sheppard to anyone?

A No, sir.

Q As a result of what you read or heard or discussed about the matter, have you formed an opinion as to the guilt or innocence of Dr. Sheppard?

A No, sir, I haven't.

Q You understand, Mr. Brown, that it is the function of a jury to weigh evidence, and the jury is the only body which has a right to weigh evidence, and the jury decides all the questions of fact under instructions given to them as to the law by the Court, and then they only determine the guilt or innocence of a defendant, and they do so by weighing the evidence of all of the witnesses and all the evidence and without regard to the station in life, the profession or occupation or what-not of those witnesses; all testimony is alike when first produced, and the jury puts it to one test, and one only: What is true and what is not true, without regard to where it comes from. Do you understand that rule?

A Yes, sir.

Q And could you listen to the testimony here and disregard everything that you have heard or known or discussed about the Sheppard case and confine your judgment to that testimony fairly and impartially under the rules of law that the Court will give you?

A Yes, sir, your Honor.

Q Have you any objection, in a proper case, to capital punishment?

MR. CORRIGAN: Object.

THE COURT: Overruled.

A No, sir.

Q Have you received at any time any communication of any kind or nature by mail, by telephone, telegraph, or whatever it may be, about this Sheppard case?

A No, sir.

Q Now, the State here is seeking to empanel a perfectly fair and impartial jury, a jury that will now presume Sam Sheppard to be innocent and will consider him innocent until all the evidence together in the case convinces a jury that he is guilty beyond a reasonable doubt. Could you sit here, presume him innocent now, and continue to presume him innocent until you hear all the evidence, and even then, unless you are then convinced from the evidence that he is guilty beyond a reasonable doubt?

MR. CORRIGAN: I want to object to the question, your Honor. You state --

THE COURT: I withdraw the question.

MR. CORRIGAN: You said that the State was seeking a fair and impartial jury --

THE COURT: Sir?

MR. CORRIGAN: You stated that the State was seeking a fair and impartial jury. We are, too.

THE COURT: I beg your pardon. I meant to -- I just slipped. My question still stands, then.

19 Q You understand that the State and the defense want that kind of a jury, and there is no difference whatever between them? I slipped. I meant to say it, but I didn't do it. Could you on that basis, knowing that both sides of the trial table want an absolutely fair trial, could you give it to them on the basis which I have stated to you?

A Yes, sir, your Honor.

THE COURT: All right. This is Mr. Parrino, assistant County prosecuting attorney.

MR. PARRINO: Judge, it is now approximately quarter to 12. I believe that my questioning will extend beyond the noon hour. If the Court would desire to adjourn now and reconvene at one o'clock, at the Court's pleasure --

THE COURT: If all parties will agree to be here at one o'clock, we will adjourn now.

Is that agreeable to everybody?

MR. DANACEAU: Will it be all right to have it at 1:15 instead of 1:30? I believe you said one o'clock.

THE COURT: Yes. But we are taking --

MR. DANACEAU: I don't want to make an issue out of it.

THE COURT: What is our time, one or 1:15?

MR. GARMONE: We are agreeable with Mr. Danaceau, 1:15.

MR. DANACEAU: The parties would like to have it 1:15, both sides.

THE COURT: Ladies and gentlemen of the panel, -- let's have it quiet a moment, please -- we will now adjourn until 1:15 this afternoon.

MR. CORRIGAN: Did you want to say something?

PROS. JUROR SOLLI: I want to talk to both of you and the Judge. I don't feel so good.

MR. CORRIGAN: He wants to talk to both of us and the Judge.

MR. PARRINO: He says he doesn't
feel good.

THE COURT: Sir?

MR. PARRINO: Mr. Solli states he
doesn't feel so good, he wants to talk to the
Judge.

THE COURT: He had better come
to chambers, and will counsel on both sides come in?

Will you please observe the caution which
the Court has expressed to you? Do not discuss
this case at all, not even among yourselves, in
the meantime.

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(Thereupon at 11:45 o'clock a.m., an
adjournment was taken to 1:15 o'clock p.m., of
the same day, at which time the following pro-
ceedings were had):

AFTERNOON SESSION, OCTOBER 27, 1954, 1:15 P.M.

S THE COURT: Mr. Solli, in view of what you said to counsel and the Court about your state of health and your immediate problem concerned, of course, with your health, both counsel have agreed that you may be excused on that basis. Thank you very much. ✓

PROSP. JUROR SOLLI: Thank you.

MR. PARRINO: Has the Court completed his questioning?

THE COURT: Yes.

Thereupon FRED J. BROWN resumed the stand and was examined and testified further as follows:

EXAMINATION OF PROSPECTIVE JUROR FRED J. BROWN:

BY MR. PARRINO:

Q Mr. Brown, I am about to ask you some questions some of which will be similar to those that Judge Blythin has already asked you, and when I have completed my questioning of you, then counsel for the defendant will question you concerning certain parts of your background, your general qualifications to serve here as a juror in this trial, and the questions, of course, will be similar to those questions that have been

asked of these many other people that have preceded you to the witness stand. You understand that, of course?

A Yes.

Q And in asking you these questions, we have no desire to pry into your personal affairs for reasons of our own but merely to satisfy the Court and the defense counsel and the defendant and the State and you, yourself, that you could be of service in this case. It is with that in mind that I ask you these questions.

Now, did I understand you to say, Mr. Brown, that you had read some little about this case?

A Yes, sir.

Q And do you recall when it was that you first read about the case?

A I imagine it was about, well, when it first broke, in July.

Q And I presume that you continued to read about it thereafter so long as it was in the newspapers, because it was a matter of some public interest?

A On and off, not in any detail.

Q Not in any detail, is that correct?

A That's correct.

Q Then I take it about the time that you were summoned as a juror you probably saw something further about the case, did you?

A I did.

Q Now, as a result of seeing what little you have seen in the newspapers, you have not formed an opinion, of course?

A No, sir.

Q One way or the other as to the guilt or the innocence of the defendant here, is that correct?

A That's right.

Q Now, if persons have expressed any opinion to you, either at work or at home or among your friends, the opinion that may have been stated to you does not affect your judgment here and now, is that correct?

A That's right.

Q So that as a prospective juror you are perfectly capable, are you, of coming into this room, taking all of the evidence as you hear it in this room to be the facts in this case; that is your position, is it, sir?

A That's right.

Q You have never appeared as a juror before, I think you told Judge Blythin?

A That's right.

Q And I think you said something about being a witness in some cases in Municipal Court, traffic violations or something?

A Yes. I was involved in an accident. I wasn't but a woman ran into me, and I had to see that my car got fixed, that's all.

Q It was a conflict of opinion, I presume, at the time as to who

was at fault?

A My prime interest was getting my car fixed, seeing the insurance taking care of my car.

Q That's only natural, of course.

A Yes.

Q And that is your only experience?

A That is right, sir.

Q Now, in the State of Ohio, Mr. Brown, we have laws pertaining to capital punishment, of course. You know, do you, that where a jury hears a case in this state of first degree murder and returns a verdict of guilty, that in that case the law provides that the punishment will be death in the electric chair? You know that, of course?

A Yes, sir.

Q And do you have any religious beliefs or conscientious beliefs that would make it impossible for you to serve on a jury where the penalty would be death?

A No, sir.

Q You could enter into service in a case of this kind?

A Yes, sir.

Q Now, I am sure that you have some understanding, Mr. Brown, as to what your duties will be as a juror in this trial, do you not, sir?

A Yes, sir.

Q And principally, I would say that the function of any jury is

to determine what the facts are in a given case. You are the judges of the facts, in other words; Judge Blythin is the judge of the law. You folks in the jury box will listen carefully to what each of the witnesses has to say during the course of the trial in order to determine what the facts are. Will you do that, please?

A Yes, sir.

Q And give to all of the witnesses your undivided attention so that you will be in a position to know what all of the facts are when you deliberate as a juror at the conclusion of the case, you will do that, of course?

A Yes, sir.

Q Now, you know that Judge Blythin, of course, has a very important and specific function in this trial, and that will be to describe for this jury at the conclusion of all of the evidence what the law is that applies in this case. He will state for you what constitutes first degree murder, he will describe for you what constitutes premeditation and malice, all of the technical terms of law with which you may not come into contact, Judge Blythin will describe them all to you at the proper time. And the question that I have to ask you is this:

When that time arrives, will you listen to whatever Judge Blythin states to you at that time and take all that law and apply it to the facts in the case? Will you do that,

please?

A Yes, sir.

Q And, of course, we know from our experiences that many people have many views as to what the law is in particular cases, but for the purposes of this case you realize that it becomes important that you take and accept only those rules of law which Judge Blythin gives to you as being applicable in this particular case, is that correct?

A Yes, sir.

Q Now, you have stated, of course, except for what you have read in the newspapers and may have heard, that you are not acquainted with any of the parties who will participate in this lawsuit, is that a fact, sir?

1 A That's right.

Q Have you at any time had any contact whatsoever with Bay View Hospital?

A No, sir.

Q Or anybody who has been a patient of that hospital?

A Not that I know of, sir.

Q So far as you know?

A Not that I know of, sir.

Q No one that has been associated or connected with the defendant or any members of the defendant's family in any way, so far as you know?

A No, sir.

Q And the same would apply, of course, to the prosecution, to Mr. Mahon, to Mr. Danaceau or to myself, is that a fact, sir?

A That's right, sir.

Q Are you acquainted with Mr. Merle McCurdy, who is in our office, personally acquainted with him?

A No, sir.

Q Now, Mr. Brown, in judging the facts in this case, his Honor, Judge Blythin, will state to you that you folks are the judges of the credibility of the witnesses. Now, that is a rather high-sounding phrase which means substantially that it will be for you as a juror to determine which of the witnesses is telling the truth and which of them, if any, may not be telling the truth. And it will be for you to determine how much weight you will apply and attach to all of the witnesses who testify in this trial. Do you understand that, sir?

A Yes, sir.

Q So that he will lay down for you certain exact standards which you jurors will apply to the testimony of all of the witnesses. Will you take those standards and apply them in this case?

A Yes, sir.

Q Now, being the judge -- rather, the jury, being the judges of the credibility of the witnesses, Judge Blythin will state

to you that you may believe who you choose to believe and you may disbelieve who you choose to disbelieve. Will you take that law and apply it to the case should Judge Blythin so state to you?

A Yes, sir.

Q And he will state to you that in judging this case, in judging the facts, in judging the weight or the value that you will give to all of the witnesses, you may take into account how they testify; in other words, as you see a person on the witness stand or on the street or at your work, you may gain certain impressions by the way that they conduct themselves, whether they appear to you to be forthright and sincere or whether they do not have those qualities; and if a person seems forthright and sincere and direct with you as a witness, will you attach greater weight to the testimony of that witness as he testifies? Will you do that, sir?

A Yes, sir.

Q And on the contrary, if he does not appear to have those qualities, I take it that you will attach less weight to the testimony of that particular person, is that your position?

A It all depends.

Q Well, I take it, then, that this is the way you feel: If, as you hear a person speak and talk on the witness stand, he

appears to be backward or not sincere, doesn't seem to be forthright to you, that you will take that into consideration in evaluating his testimony? Will you do that, please?

A (No response.)

Q I am probably not making myself clear.

A Yes, that's right. State it in another way, will you, please?

Q Yes. Now, as a person testifies, as he sits there where you sit, if he seems to be honest and sincere and direct to you as you see him, as you hear him talk, you will attach a certain amount of weight to his testimony because of that, will you not?

A Yes, sir.

Q And then if he does not have those qualities, if he seems to be not sincere and not direct and gives you the impression that he is not telling all, on the basis of his demeanor on the witness stand, then, I take it you will add less weight to the testimony of that particular witness. Now, should Judge Blythin state to you that you may do that, you may evaluate witnesses on that basis, will you follow the Judge's instructions in that respect?

2 A Yes, sir.

Q Similarly, when a person has told his story on the witness stand, whoever that person may be -- he may be a witness for the State, he may be a witness for the defense; any person at

all -- if after you hear what that person has to state you come to the impression that, "Well, what he states to me now certainly appears to be reasonable, so I will believe it," will you take that position, sir?

A In consideration with other facts along with it, yes.

Q In other words, if a person gives you a story, you add it up, you consider it carefully and you say to yourself, "Well, that sounds logical, that sounds reasonable, so I will believe that," will you take that position?

A Yes, sir.

Q And then, on the other hand, if as a person testifies it seems to you that what he is saying could not be because it doesn't sound reasonable or doesn't sound logical, would you take and give that particular phase of the witness's story less weight than you might otherwise do? Will you do that?

A Along with the facts, yes, sir.

Q Yes. So if the Judge states to you that you as a juror may also take into the account the interest or the lack of interest that a juror -- rather, that a witness has in the case, will you follow the Court's instructions in that regard?

A Yes, sir.

Q Now, for instance, if a witness who testifies would have some important and direct interest in the outcome of this trial, you might weigh that as a juror, might you not, sir?

A Yes, sir.

Q And you would give that such weight as you would think reasonably you should in a trial of this kind?

A I have to, sir.

Q Beg your pardon?

A I have to.

Q And if the Court states to you that you should use that as one of the guides or gauges in judging the testimony of the witnesses, will you follow the Judge's instructions in that regard?

A Yes, sir.

Q So in judging the testimony of any witness, you will take into account whether they appear to be sincere to you, whether their story seems to be reasonable or unreasonable, whether it is probable or not probable, whether they have an interest in the case, in the outcome of the case, or whether they do not have an interest in the outcome of the case, and you may take all of this into consideration in judging the credibility or the truthfulness of a witness. Will you do that, please?

A Yes, sir.

Q Now, I have stated to you, and I am sure that you appreciate, that you may take and apply those rules for all the witnesses, the State's witnesses and the defense witnesses, and I anticipate that there will be many; you understand that?

A Yes, sir.

Q And that same rule of evaluating the testimony of witnesses applies to the testimony of the defendant himself, Sam Sheppard. You realize that, of course, do you not?

A Yes, sir.

Q And you will give and apply the same standards of evaluating testimony to the testimony of the defendant should he testify as a witness in this case, is that correct, sir?

A Yes, sir.

Q Now, Judge Blythin in his charge to you at the conclusion of the trial will state that as a juror you may take into account both direct evidence and circumstantial evidence. He will describe both of these to you, and I am sure that you will take and accept his description of direct evidence and circumstantial evidence and apply that description in this case. Will you do that, please?

A Yes, sir.

Q And so far as you now know, do you have any prejudices against circumstantial evidence?

A No, sir.

Q Do you realize that direct evidence is something that a person would be able to testify to as a result of what he, that witness, has himself seen or heard of felt, something that he himself has first knowledge of? You realize that?

A That's the definition of it?

Q Of direct evidence.

A Yes, I see that.

Q In other words, if you see some accident on the street, you could come into a court of law and tell directly what you saw as a witness to that event, and that would be direct evidence. You understand that, of course?

A Yes.

Q And circumstantial evidence would be the reasonable inferences that would follow from proven facts. Let me attempt to explain that to you in some way, if I may, please, Mr. Brown.

Now, do you own an automobile, sir?

A Yes, sir.

Q Now, let us assume for a moment that you would park your automobile in front of your house some night, and as you are sitting in the parlor of your home you hear a tremendously loud crash. So you rush from your home, you go outside and there you see your car. Before the crash, let us assume that you heard the screeching of an automobile as though somebody were making a rapid or quick stop; that after you hear the screech of the brakes, you hear this loud crash. You go outside and you see the back of your car, which has been demolished, and you see long skid marks leading from an automobile up to your automobile, you see long skid marks on the road leading right up to your car. That there is another car that has run into your car there, also, and that car is completely demolished, also, and that car that ran into

your car has produced 60 feet of skid marks, let us say.

Do I make myself clear, sir?

A Yes, sir.

Q So you see these 60 feet of skid marks. You have heard the loud screeching of brakes when you were in your home. You heard this loud noise, and you see that both cars are demolished. And you speak to the driver of this car that bumped into your car, and he states to you that he is sorry, that at the time of the accident he was only going 20 miles per hour. Would you believe that man?

A No, sir.

Q And why wouldn't you believe him?

A From the skid marks.

Q Now, you didn't see him bump into your car, did you?

A No, sir.

Q There are no other witnesses other than this driver of the car, are there?

A No, sir.

Q But when he states to you that he was going 20 miles per hour, you say you would not believe him, is that correct?

A No, sir.

Q That is because you heard the screeching of brakes, you heard this loud crash, you see these skid marks, you see that both cars have been demolished, and on the basis of all of these things you have an impression in your mind, do you not?

A That is right.

Q And what is that impression you have in your mind, please, as to whether he was going 20 miles an hour or not?

A Well, he was prevaricating. He was probably going at a much faster speed than that.

Q In other words, although you haven't seen any part of it, you can reasonably come to the conclusion that this man was going in excess or faster than 20 miles per hour?

A That is right.

Q Now, that is a simple example, sir, of circumstantial evidence.

You will follow the Court's instructions as to circumstantial evidence to the letter as he gives them to you in this case, will you not, sir?

A Yes, sir.

Q Now, during the time that you have had or read some comment about this case in the newspapers, sir, did you at any time read a story in the local papers titled, "Dr. Sam's Own Story"? Did you ever read that, if you remember?

A No, I never read it.

Q And do you recall reading any of the stories that were -- statements that were issued to the newspapers by Mr. Corrigan and Mr. Garmone? Do you recall having read any of those, please?

A I don't recall.

Q And do you recall having read any of the statements that were issued to the papers by Dr. Stephen Sheppard, the brother of the defendant, do you recall that?

A I don't recall.

Q You appreciate, of course, Mr. Brown, that this defendant comes into this courtroom charged with the crime of murder in the first degree, do you not?

A Yes, sir.

Q And that he is here by reason of an indictment presented by the Grand Jury? Do you know in a general way what an indictment is, sir?

A Well, not in the legal way.

Q Well, let me explain it to you so that you will have it in your mind. An indictment is merely an instrument in writing that is given to the defendant charging him with the crime of -- whatever that crime may be, in this case murder in the first degree. It is an instrument in writing that is given to him so that he may fully realize and appreciate the nature and character of the crime with which he is charged, so that he may be able to come into court to defend that charge. You understand that?

A Yes, sir.

Q And the Court will state to you that the indictment is not evidence, that although you as a juror will have that indictment with you, that it does not constitute evidence in this

case. And will you take the Court's instructions in that regard?

A Yes, sir.

Q Now, you appreciate, do you, Mr. Brown, that Judge Blything, being the presiding personality over this trial, is here for various reasons, as I have stated to you, one of them being that he is to give you the law at the conclusion of the case. And you have stated that you will follow the law that Judge Blythin gives to you, is that correct?

A Yes, sir.

Q Now, furthermore, Judge Blythin will preside over this trial so that during the course of the trial, no doubt, there will be numerous objections by the defense side of the table and by the prosecution side of the table, in all probability. Some witness will say something, or one of the lawyers will say something that one side or the other will not think is proper. This happens all the time in a court of law. You understand that, do you?

A Yes, sir.

Q And we all have our own impressions as to what we, as lawyers, may think the law is in a particular instance. And there must be some central force that ultimately decides what the law is in a trial, and in this case that is Judge Blythin.

Now, as these objections are made, sometimes by the State and sometimes by the defense, Judge Blythin will have to

rule upon them. In other words, he is going to have to decide who is right and who is not right, isn't that correct?

A That's right.

Q Now, when Judge Blythin states, when an objection is made, that the objection is sustained, then it will be your duty to disregard whatever has been said in that particular respect up to that point. You understand that?

A Yes, sir.

Q Now, where the objection is made and the objection is overruled, then it will be for you to take and accept as part of the evidence that which a particular witness is saying. You understand that?

A Yes, sir.

Q Now, of course, during the course of the trial Mr. Mahon may get up and make a statement to the Court in the presence of the jury, or Mr. Corrigan or Mr. Garmone or any of the gentlemen on the other side of the table may get up and make some statement to the Court. Now, you see, they are not on the witness stand at the time they make such a statement, of course, and that which they say at that point certainly is not evidence. You appreciate that, do you?

A Yes, sir.

Q That the evidence comes to you only from the witness stand, is that not correct?

A Yes, sir.

Q So that whatever these gentlemen may say, and the possibilities are that I may be one of them that may sometimes state something that is a comment to the Court, and what I say is not evidence because I haven't taken the witness stand. You understand that, of course?

A Yes, sir.

Q So that you will not take as evidence any comments of counsel at any time as they speak from the floor, isn't that correct?

A Well, if that is the procedure, yes, sir.

Q And the Court will state that to you, that the comments of counsel here as we speak to the Court, and sometimes even as we speak to the jury in our opening statement or in our closing argument, that is not evidence. You understand that, don't you?

A Yes, sir.

Q That the evidence, as you well know, is that evidence which comes to you from the witnesses, and we lawyers, of course, are not witnesses unless we take the witness stand, isn't that correct?

A That's right, sir.

Q Now, in any case, Mr. Brown -- of course, you know that it is very important that all cases be decided on law and on fact, and that insofar as is humanly possible, you do not permit any of your emotions of prejudice or bias or sympathy to enter

into a verdict. You know that, don't you?

A Yes, sir.

Q So I ask you, if I may, please, will you at any time let any form of prejudice enter into your verdict in this case?

A No, sir.

Q Will you let bias of any character enter into your verdict in this case?

A No, sir.

Q And similarly, and quite important, also, will you let sympathy of any kind enter into your verdict in this case?

A No, sir.

Q Will you let sympathy for the defendant enter into your verdict in this case?

A No, sir.

Q Will you let sympathy for the family of the defendant enter into your verdict in this case?

A No, sir.

Q Your verdict, then, will respond to the facts as you hear them in the courtroom, will it, sir?

A Yes, sir.

Q It will respond to the facts as you hear them in the courtroom together with the law as Judge Blythin gives it to you?

A Yes, sir.

Q Is that the position you take?

A Yes, sir.

Q Now, Mr. Brown, you are a man of sound judgment. I ask you to look into your mind at this time, if you will, please, and I am sure that you have been giving to this case very serious thought since you have been summoned as a juror, have you not?

A Yes, sir.

Q Look into your mind now and tell us, on the basis of what little you have known about the case, what little you have been told by Judge Blythin and myself, whether or not you feel that there is any possible reason why you could not serve as a juror in this case?

A There is no reason that I can think of, nothing at all.

Q Then you are perfectly free and willing to take the law as Judge Blythin gives it to you?

A Yes, sir.

Q To take the facts as you hear them in the courtroom?

A Yes, sir.

Q And arrive at a verdict which is in your best, sound, conscientious, honest judgment, fair and impartial to the defendant, Sam Sheppard, is that correct, sir?

A Yes, sir.

45 Q And to the State of Ohio?

A Yes, sir.

Q Who we have the privilege of representing, is that correct?

A Yes, sir.

Q Fair to both sides, and let the chips fall where they will?

A Yes, sir.

MR. PARRINO: Thank you very much.

THE COURT: . That is Mr. Garmone of the defense counsel, Mr. Brown. He would like to put a few questions to you.

EXAMINATION OF PROSPECTIVE JUROR FRED J. BROWN:

BY MR. GARMONE:

Q Mr. Brown, some of the questions that I will ask will be more or less repetitious to the questions that were asked of you by his Honor, Judge Blythin, and the questions that Mr. Parrino asked you. However, you appreciate the fact that we have a responsibility to inquire into the qualifications of a person before they become members of the jury, do you not?

A Yes, sir.

Q Now, you did say that you had read some articles in the newspapers and had heard some radio comments and television comments about this case. Did at any time during any of those periods, or did you at any time during any of those periods form in your mind an opinion that you may never have expressed to anyone?

A Well, I'll tell you how I felt about it. I was disinterested in the whole case.

Q You were just disinterested in it?

A That's right. I was away for part of the summer, in August, and I read no more than anyone else. I saw the headlines in the paper, read maybe one or two lines and then let it go. I didn't have any opinion.

Q But as a result of what little you did read and what little comments you did hear, you didn't come to any conclusion in your mind about this matter?

A No. It wasn't for me to form any opinion on it. That's the way I felt about it. I mean, I was disinterested.

Q You felt that it wouldn't be fair for you to form any opinion on the statements that you read or the stories that you heard by way of radio or television, is that right?

A That's right, sir.

Q Now, you are connected with the postal system of our government, right?

A That is right, sir.

Q And you are at 5300 Chester Avenue.

A That is right, sir.

Q Station B?

A That is right, sir.

Q Now, are you an inside or an outside man?

A I am an inside man.

Q And have you been an inside man for a period of years, or is that just a --

A A period of years, since I have been in the Service.

Q Since you have been in the Service you have been an inside man?

A Yes, sir.

Q About how many people would you say are employed at Station B that you come in contact with every day?

A Well, we have about 15 or 16 clerks, and I don't know, about 75 carriers.

Q And you probably see one another every day?

A Well, the clerks, yes.

Q Now, from the time that the stories first broke in the newspapers, was there any discussion around Station B about Sam Sheppard or any member of the Sheppard family?

A Yes, sir.

Q And during that period, were there some opinions expressed by some of your fellow workers?

A Yes, sir.

Q And when would you say was the last time you heard an opinion that was expressed by a fellow worker prior to the date that you were officially notified that you were to be called as a prospective juror in this case?

A Well, let's see, it must have been back in July, because I left on vacation the 9th of August and didn't get back until about the 18th or 19th of August.

Q Sometime around the 18th or 19th of August?

A No. It was before then. It was in the last part of July, I imagine.

Q The latter part of July?

A This discussion of the case simmered out.

Q The discussion kind of faded out, is that right?

A That's right, sir.

Q Now, during the period that expressions were made to you about what your fellow workers thought about the matter, did you, in turn, say anything to them as to how you felt?

A Like I told you before, I was always disinterested in the case. I mean, I didn't form any opinion on it. It didn't matter one way or the other to me.

Q And you wouldn't permit to creep into your mind what the opinions of those fellow workers were while you were sitting here and listening to the facts that you hear in this courtroom, would you?

A No, sir.

Q You see, sometimes when we hear statements made by people that we are in close contact with every day, we kind of bury them back in our subconscious mind and somewhere along the line you may hear a statement of fact by a witness that will correspond with a statement that was made by one of your fellow workers, and it may bring it back to life again.

Do you think that you can disregard all the expressions that were made to you by your fellow workers and just take

what you hear in this courtroom?

A Yes, sir.

Q Have you read any accounts of this case since the time that you were brought in here on the 18th of October of this year?

A Yes, sir. No more than the headlines or something. I have not read any complete articles on the case.

Q Well, in addition to the headlines that you read, did you sort of just scamper over some of the other material that constituted or made up the headline?

A No, sir.

Q Just gazed at it?

A No, sir.

Q Only read the headlines?

A That's all, through seeing it on somebody else's paper. I didn't even buy a paper. We get a paper at home at night, but I don't bother to look at it.

Q You don't bother to look at it?

A Outside of the sport page.

Q Well, I'm glad to hear that. Mr. Moravec is an admirer of the sport page, too.

So then you have no knowledge of what the newspapers have carried from the time that you were brought in here on the 18th of October, is that right?

A That's right, sir.

Q And during the course of the trial, if you are chosen as a juror, the Court will admonish you from time to time that you are not to read any articles in the paper, and I know it is hard to do. If I were in your place, I would probably have a difficult time. We all have a certain degree of curiosity that we grow up with.

But you do feel, do you, Mr. Brown, that you can follow the Court's admonitions in that respect to the letter?

A Yes, sir.

Q You see, what we must guard carefully -- and I think that you will agree with me -- the only facts that any of these ladies and gentlemen are to consider, if they are going to give this young man a fair and impartial trial, are the facts that they will hear in this courtroom. And sometimes we in our examination think that we deal too much on that subject matter, but we can't be too impressed. We've got to make you realize that it is important that the only facts that you are to consider are the facts that you hear in this courtroom.

And I think that you appreciate that, do you not, Mr. Brown?

A Yes, sir.

Q Now, on the question of facts, Judge Blythin in his instructions on the law will tell you that you are the sole judge of

the facts, that I, Mr. Parrino, Mr. Danaceau or Mr. Mahon, and even his Honor, Judge Blythin, cannot interfere with your interpretation of those facts; that you, Mr. Brown, have the full right and the full authority to give those facts the interpretation that you think they are worthy of, regardless of what the Court may intimate or his feelings may be on a particular subject matter, setting aside what you may gather my feelings may be on the same subject matter, those facts are for you to interpret. And you will follow that instruction of the law, will you not?

A Yes, sir.

Q Now, if after you have heard all the facts in this case, and Judge Blythin gives you the law that is applicable to the facts that you have listened to, you decide that the State has failed to convince you beyond a reasonable doubt of Dr. Sam Sheppard's guilt, would you hesitate in joining with the other members of the jury in returning a verdict of not guilty?

A No, sir.

Q If after you have absorbed all these facts and have given them the consideration that they are deserving of, which I know you will do, and after there has been a discussion with your fellow jurors on the facts that you have heard in this case, you are then still firm in your conviction that the State of Ohio has failed to convince you beyond a reasonable

doubt of Sam Sheppard's guilt, would you at that point hesitate to vote for a verdict of not guilty?

A Yes.

Q You would or you would not?

A I would have to be sure within myself.

Q Within yourself?

A Within myself.

Q Before you would return --

else
A Regardless of what anybody/would think.

Q Regardless of what anybody else would think?

A That's right. I would have to be -- I would have to have it within myself.

Q But you would be willing at the same time to discuss with the other members of the jury the overall factual picture?

A That's right.

Q And if you still think that at that time, after the discussion, that you haven't been convinced beyond a reasonable doubt of Dr. Sam Sheppard's guilt, you wouldn't hesitate to return of not guilty? You would do that, would you not?

A Yes, sir.

Q Now, on the question of law, Mr. Parrino covered that subject matter rather thoroughly. That is the Court's function. Any phase of this case that deals with the law rests with his Honor, Judge Blythin.

You know, you and I sometimes in our everyday problems

have some ideas of what we think is right and what we think is wrong. The best example is this: There may be something come up in Station B sometime where your idea of the situation may differ from some of your fellow workers. It is only human nature. And sometimes if we are chosen as jurors we get an idea that we think that we know what the law is or what the law ought to be. If you get any notions on that subject, you can set them aside, can you not, and follow the instructions of Judge Blythin?

A Yes, sir.

Q I don't believe there has been too much mention made about the indictment in this case. I think Mr. Parrino said to you if you understood what the indictment represented, and your answer was that you had some idea on it, is that correct?

A I asked him to give me a definition of the indictment, and he gave me a definition of it.

Q An indictment is an instrument that is returned by the Grand Jury of this county that apprises the man of what he has been charged with and what he must come into court to answer.

Now, before the returning of an indictment there is presented to that Grand Jury witnesses, and the witnesses that are presented are only those witnesses that the State of Ohio takes in and offers. In other words, it is a one-sided hearing. Sam Sheppard wasn't afforded the opportunity of presenting his side of the story, nor was he privileged with

presenting any of the witnesses that he may have to tell his side of the issue.

So because of that fact it is a one-sided hearing, and the Court will tell you, that although you take with you to your jury room a copy of that indictment, that you are at no time or under any circumstances whatsoever to consider it as evidence in this case.

Now, will you follow that theory of law?

A Yes, sir.

Q Now, is there any question in your mind, Mr. Brown, as to whether or not the fact that there has been an indictment returned against Sam Sheppard, that there is any presumption of guilt as he now sits in the chair on the other side of the table?

A No, sir.

Q You presume Sam Sheppard to be innocent at this time, is that right?

A Until proven guilty.

Q That is the law, and Judge Blythin will instruct you that that is the law.

Now, in conjunction with the latter part of your answer, until proven guilty, that burden of proof is with the gentlemen on this side of the table who represent the State, and it never changes, it never switches over to the other side of the table to Sam Sheppard. It is incumbent at all

times throughout the trial of this case that you be convinced beyond a reasonable doubt of the defendant's guilt, it is incumbent upon the State to satisfy you to that extent.

That is the law and the Court will so instruct you that that is the law. And will you follow it as such?

A Yes, sir.

Q Now, do you know Inspector McArthur, this gentleman here?

A Yes. His Honor, Judge Blythin, introduced him to us the first day we were in here.

Q Only from the introduction that you had in the courtroom?

A That's right.

Q And this is Sergeant Lockwood. He is also a member of the Cleveland Police Department. Do you know him other than the introduction which you had the first day here?

A No, sir.

Q Now, members of Inspector McArthur's division of the Cleveland Police Department will testify in this case, detectives that work under him. Would the fact that they are police officers cause you to give their testimony greater consideration than you would a layman only because they are police officers?

A No, sir, outside of the fact that I would gather that a policeman would have more facts in the case than an ordinary layman.

Q Well, now, let's talk about that a while. Maybe I don't understand you.

A Maybe I don't understand you.

Q Probably my question wasn't clear.

THE COURT: Let's get an understanding here.

Q Well, we are going to try, Judge, with a little patience.

You say that only -- that you may feel that a policeman has a greater understanding of the facts than a layman would have?

A No, sir. I would say it this way: He would have more access to the facts than the ordinary layman.

Q Well, then, putting this question to you: For the reason that he has more access to the facts than an ordinary layman, would that cause you to give their testimony greater consideration?

A I have to consider the facts. I would have to consider the facts that he presented.

Q Well, if you felt in your mind that he had greater access to the facts than a person, a fellow citizen that we may bring in off the street to testify on the same statement of fact, would you under that picture give the police officer greater consideration than the person that we bring in off the street testifying on the same set of facts?

MR. PARRINO: I object to that.

THE COURT: I think that is --

A Yes, sir, I would.

MR. PARRINO: If the Court please --

MR. GARMONE: May I --

MR. PARRINO: Just a moment.

THE COURT: We are getting along all right. It is a perfectly proper basis for the gentleman to give consideration to the opportunity which a person has to know the things that he testifies to, and that is exactly what he is trying to say.

MR. CORRIGAN: I except to the statement of the Court.

THE COURT: Go ahead, Mr. Garmone.

MR. GARMONE: Are we all through now?

MR. DANACEAU: Yes.

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Q Now, on that same subject, supposing that Captain Kerr, who works directly under the supervision of Inspector McArthur, was called upon as a witness in this case and he offered for your consideration as a juror testimony relating to some of the incidents that brought about the charge that Sam Sheppard now faces, and there was brought into this same courtroom a gentleman who in no way is associated with the office of Inspector McArthur but who would occupy the same witness chair as Captain Kerr, and he would relate to you facts relating to the incident or incidents relating to the charge that Sam Sheppard now faces, are you of the opinion now that you would have to consider Captain Kerr's testimony with greater

degree because he is Captain Kerr than you would the citizen that was brought in to testify on behalf of Sam Sheppard?

A I will answer it this way: I would have to take into consideration, not because he was Captain Kerr, but because I feel since he works there he would have more access, as I said before, to the facts in the case than the ordinary layman on the street, and it would also depend on what you would be questioning about. I would have to take all that into consideration, too.

Q Well --

A Maybe this layman doesn't know anything about the case, I mean just what he read in the papers.

Q Well, supposing that he was testifying on the same issues that a police officer was testifying on, would you give the policeman greater weight because he is a policeman rather than what he says than you would the layman who is not a policeman?

A It would all depend. I mean, I can't answer it vaguely. I mean, it all depends on what they are going to be asked in relation to the --

Q Well, Mr. Brown, supposing that you were in the jury box and a police officer took the stand, and he told you a story that had bearing on the case of the State of Ohio versus Sam Sheppard. As against that, an ordinary citizen, a layman such as you and I and other members of this jury, was placed

in that witness chair and you were in this jury box, and he would submit for your consideration testimony that has bearing on the case of the State of Ohio versus Sam Sheppard, would you because of the fact that the first witness you heard was a member of the Cleveland Police Department consider him with greater consideration than you would the second witness that you heard who was not associated with the Police Department?

I ask you to be frank in your answer. That is all we ask you to do. And I am satisfied that you want to be frank in your answer.

A Yes, I want to be frank with my answer, but I still say it would depend on what question you would be asking these people. I mean, it might be some intricate facts of the case that an ordinary layman wouldn't know anything about.

Q Well, regardless of the question, regardless of the question, would you give the policeman, because he is a policeman, more consideration or a greater edge on the yardstick of measure --

A No, sir; no, sir.

Q -- than you would an ordinary citizen or a layman because one is a police officer and the other man is a fellow citizen who is not connected with the Police Department?

A Well, when you put it that way, I couldn't give the policeman any greater consideration because when they all get in this

witness box here, layman or policeman, you are under oath and supposed to give an answer to the best of your knowledge.

Q Best of your knowledge?

A That's right.

Q And when you measure the testimony, you use the same yardstick?

A That's right.

Q There is no question in your mind about that, is there, now?

A That's right.

Q Now, there will be some doctors called into this case, doctors who are members of the medical side and doctors who are doctors of osteopathy. Do you have any ideas or feel that there is any distinction between doctors of medicine and doctors of osteopathy?

A I don't know that much about medicine. Will you define it?

Q Well, I don't think I am able to define it, now that you ask me, because I have never been able to draw the distinction between the two.

A I have no idea --

Q Well, suppose a man has a degree of doctor of medicine and another doctor has a degree of doctor of osteopathy, would you feel because the one person had a degree of doctor of medicine that he should be looked upon with greater light than the gentleman who has a degree of doctor of osteopathy, or will you use a yardstick that is equal in measuring both?

A I would use a yardstick that is, you know, take it all into consideration.

Q I can say this to you, Mr. Brown: That the examination that doctors of medicine take and that the examination that doctors of osteopathy take is one and the same, and under the law, they have a right to engage in the same kind of practices. So you have no feelings about doctors on one side of medicine and doctors on the other side, osteopathic?

A No, sir, no feeling whatsoever.

Q Do you know anybody that is connected with Dr. Gerber's office?

A Not that I know of, no, sir.

Q Well, I will try and name some of the doctors who are associated out there with Dr. Gerber. Dr. Adelson, do you know him, or have you ever heard of him?

A No, sir.

Q Do you know a Dr. Sunshine?

A No, sir.

Q Dr. Chamberlain?

A No, sir.

Q Do you know a young lady by the name of Mary Cowan?

A No, sir.

Q Then you know no one that is connected with Dr. Gerber's office?

A No.

Q Now, that brings me to a question that is similar to the question that I asked you about the police and the layman. Would the fact that doctors who are connected with the coroner's office cause you to give them more consideration than you would doctors who would be brought in to testify for the defense only because they are connected with the coroner's office, or would you treat them both alike?

A I would have to treat them both alike.

Q You don't feel that the coroner's office would have access to a greater amount of facts than doctors who are not associated with the coroner's office, do you?

MR. MAHON: Objection to that.

MR. DANACEAU: Just a minute. Objection.

MR. MAHON: Read the question back.

(Question read by the Reporter.)

THE COURT: It will be sustained.

Q Well, would you look upon the testimony of doctors who are connected with the coroner's office with greater consideration than you would the doctors who Dr. Sheppard will bring in here to testify on his behalf?

MR. MAHON: I object to it in that form.

MR. GARMONE: I haven't completed the question yet.

MR. MAHON:

Pardon me.

Q (Continuing) Because of the fact that they are connected with the coroner's office?

A You couldn't state that question some other way? I mean, how would I -- it all depends on what -- like I told you, it all depends on what the doctors from the coroner's office would be brought in here to testify to.

Q Well, supposing that they were brought in here to testify on a subject matter or a statement of fact that was the same, that is, doctors from the coroner's office would testify to some facts that were similar to the facts that would be testified to by doctors who were brought in here in behalf of Dr. Sheppard, would you, because they are connected with the coroner's office, be apt to give their testimony more consideration than you would this other group of doctors who are not associated with the coroner's office?

A If the facts were presented -- or, I will put it this way: If both parties, the doctors from the coroner's office and the other doctors, have access to the same facts, I would have to treat both the same. But if the coroner's office had access to certain facts that I didn't -- I mean that the other doctors didn't have access to, I would have to give the coroner's office more consideration.

THE COURT:

Mr. Brown, I am not sure

that you get Mr. Garmone's point. Let's see if we can

clear it up.

Without regard to their access to the facts, just forget that for the moment, what Mr. Garmone wants to know is: Would you give more weight to the testimony of a doctor because he is connected with the coroner's office than you would to a doctor that is not connected with the coroner's office?

PROSP. JUROR BROWN: No, sir.

Q I assume, then, that you would treat them alike, is that right?

A Yes, sir.

Q Now, Mr. Brown, the only purpose of our examination is to determine in our minds whether we feel, and to help you determine in your mind whether you feel you can sit as a fair and impartial juror in this case. Now, Sam Sheppard is entitled to a fair and impartial trial, and you are satisfied that you can give him that trial, is that right?

A Yes, sir.

Q I ask you now to search your conscience and determine for yourself, without any further examination, whether you are able to accept the responsibility that you will receive as a juror in deciding the guilt or innocence of this young man?

A I am able and willing to assume the responsibility.

Q Are you able to assume the responsibility, if chosen as a

juror, one step farther than the guilt or innocence of this man, this young man, that is, you will have with you the authority to take the life of a human being. And do you feel that you are ready to accept that responsibility fairly and impartially?

A Yes, sir.

MR. GARMONE: Thank you very much.

THE COURT: Will you take that seat
at the end there in that first row, Mr. Brown, please?

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