

until you get a chance to listen to what everybody has to say. All right?

MS. HARRIS: Okay.

MR. HEAD: As I mentioned yesterday, it is not going to be handed to you on a silver platter. You will have to work hard, starting with the first witness all the way through.

MS. HARRIS: Right.

MR. HEAD: As you know, the Defendant is charged, among other things, with aggravated murder, and you will be told by the Court that you can't get involved in the penalty aspect of the case. If you convict this man, you can't be concerned with what his penalty might be. Does anybody have a problem with that? That is entirely up to the Court. You are to decide the facts of the case. Okay? I'll tell you and the Court has permitted me to tell you that this is not a capital case. In other words, this is not a death penalty case. All right? So, you know that. Let me ask you, Ms. Davis, you will follow the law and when you get all the facts of the case and decide what it is, can you come to a fair and just verdict without considering the fate of this young Defendant?

MS. DAVIS: Yes.

MR. HEAD: Ms. Harris, how about you?

MS. HARRIS: Yes.

MR. HEAD: Ms. Holtzman?

MS. HOLTZMAN: Yes.

MR. HEAD: Everybody else? Very good. As you know, the

Defendant is also charged with raping this 13-year-old victim. The Defendant is a male and so is the 13-year-old victim, homosexual by about any kind of definition, I suppose. Ms. Brown, do you think of someone who has homosexual tendencies as perhaps only being interested sexually with one of the same sex?

MR. BOSTICK: May we approach the bench?

THE COURT: Certainly.

(Whereupon the following was had at the bench:)

MR. BOSTICK: The Defense, of course, thinks that the first question asked by the Prosecutor was correct. If he had not done so, he would be remiss. But, the sex questions and those I perceive as coming are misleading and we object.

THE COURT: Overruled at this time.

(Whereupon counsel returned to their respective tables.)

MR. HEAD: Did you understand my question?

MS. BROWN: Will you repeat that?

MR. HEAD: Do you think of a person that has homosexual tendencies as being a person who is only interested in having sex with a member of the same sex as he is?

MS. BROWN: No, not necessarily.

MR. HEAD: What I am asking you is, do you think that someone who has homosexual tendencies could have heterosexual tendencies?

MS. BROWN: Yes, I think so.

MR. HEAD: How about anybody else? Do you have a problem

with that? Ms. Baker, do you think that someone who has homosexual tendencies is more likely to exhibit -- and he is a male, is more likely to exhibit effeminate characteristics?

MS. BAKER: Not necessarily.

MR. HEAD: How about anybody else? Okay. I take it by your silence you don't think so, either. Ms. Barker, do you think a person who has homosexual tendencies would necessarily be proud of having those tendencies or would be content or happy with those tendencies?

MS. BARKER: It just depends on the person himself. Some would try to hide it; some wouldn't care what other people thought. It depends on the person himself.

MR. HEAD: Good answer. Do you all feel like Ms. Barker does? I take it by the nods, you do. We are getting into the area that we call circumstantial evidence. Your Honor, we had requested the Court yesterday if you could read the charge on circumstantial evidence.

THE COURT: I would be happy to. I am going to read the charge both on direct and circumstantial evidence so that it makes some sense to the ladies and gentlemen of the prospective jury. Ladies and gentlemen, any fact in this case may be proven either by direct or circumstantial evidence. Direct evidence means exactly what the name implies, that is, it is evidence which directly proves a fact without you having to infer that fact from some other fact. Direct evidence usually is the testimony given by a witness who has

seen or heard the facts to which he testifies. It also includes exhibits which are admitted during the trial. Circumstantial evidence on the other hand is the proof of facts by direct evidence from which you may infer the fact in question. The law makes no distinction between direct and circumstantial evidence as to the degree of proof required, and the facts may be proven by either type of evidence or any combination of them. Each type of evidence is accepted as a reasonable method of proof. Very well. Do you want anything further on that?

MR. STEPHAN: Yes, we would like further instructions.

MR. HEAD: Let's go all the way. I have a copy out of Ohio Jury Instructions that might suffice.

(Whereupon the following was had at the bench:)

MR. STEPHAN: We would ask the Court to instruct on the grounds in paragraph 3 of the Ohio Jury Instructions standard form and also Provision No. 4. At this point in time, we would not require or not request an instruction on paragraphs 5 or 6, but would ask the Court that after the evidence is submitted, to consider instructing on those additional paragraphs, 5 and 6.

THE COURT: Do you have a position on that?

MR. STEPHAN: Excuse me, Your Honor. In order that we don't mislead the jurors in this case, perhaps it would be advisable to continue on with the provisions in Instructions 5 and 6. If you don't give it to them now and give it in your closing instructions, we may create confusion. I would withdraw my former position and

ask that the Court instruct on all of it.

MR. HEAD: We concur on that.

(Whereupon counsel returned to their respective tables.)

THE COURT: Ladies and gentlemen, I told you the definition of circumstantial evidence and the definition of direct evidence and how they differ from each other. Now the request has been made that we tell you a little bit more about how to use the various types of evidence that you will hear in the case. In the absence of direct evidence, circumstantial evidence by itself will justify a finding of guilty if the circumstances are entirely consistent with the Defendant's guilt and are wholly inconsistent or irreconcilable with any reasonable theory of the Defendant's innocence and are so convincing as to exclude a reasonable doubt of the Defendant's guilt. The sufficiency of circumstantial evidence to prove a fact or to prove guilt depends, among other things, on whether reason and common sense lead us from the facts proved by real or direct evidence to the facts sought to be proved. If you determine that the connection between what is proved and what is sought to be proved is strong enough to support a finding of proof beyond a reasonable doubt, then circumstantial evidence is sufficient. On the other hand, if you find that the connection is so weak that you cannot say the fact sought to be established has been proved beyond a reasonable doubt, then circumstantial evidence is insufficient. Where the evidence is both direct and circumstantial, the combination of the two must satisfy you of the Defendant's guilt beyond a reasonable doubt. You

may not make one inference from another inference, but you may draw more than one inferences from the same set of facts or circumstances. If the circumstances create inferences that are equally consistent with either innocence or guilt, those inferences must be resolved in favor of the Defendant's innocence. You may proceed.

MR. HEAD: Thank you, Judge. Is there anybody here who hasn't heard of circumstantial evidence before the Court gave you the instruction on it? No hands are raised. Of course, we all have, haven't we? The thing is most of the times when you are watching a television cop show or whatever, the stuff that the detective calls circumstantial evidence isn't circumstantial evidence to you because you have that corroborative eye of the television camera seeing everything being laid out, and the cop picks it up and by the end of the show all the circumstantial evidence ties together to go to the suspect. You already saw who the suspect was at the beginning of the show. You don't get a feel of circumstantial evidence quite like you will in this trial we will have today. To give you maybe a little example, and this is a simplified one, --

MR. BOSTICK: We object to examples. We feel they are more appropriate as an extension of counsel's argument.

THE COURT: I think we will let counsel go on this type of topic. Overruled.

MR. HEAD: Thank you, Your Honor. Let's say for instance you are in your home and the windows are closed and the shades are drawn. You can't see outside. You hear a sound that sounds to you

like thunder, and you hear pitters and patters on your windows and roof that sound like rain. Further, you see your spouse come in and he or she is dripping wet. Then you go outside shortly thereafter. You don't see -- it is not raining, but you see on the ground and on the pavement and on the cars and everything wetness. The streets are wet, the sidewalk is wet and everything like that. You had no direct evidence that it was raining, did you? You didn't actually see it rain, but by taking all those circumstances together it would be reasonable to infer it was raining that day, wouldn't it? Okay. That is circumstantial evidence. That is a very simplified example. This case that we are going to have for you and start putting on today and tomorrow is almost totally circumstantial evidence, and it will be more complicated than that simplified example that I gave you. Ms. Stegemoller, did you have a problem following my example?

MS. STEGEMOLLER: No.

MR. HEAD: I like to say that in circumstantial evidence cases you have to work a little bit harder. Once again, it isn't handed to you on a silver platter. Can you do that for us?

MS. STEGEMOLLER: Yes.

MR. HEAD: Does anybody have a problem with that? Okay. Mr. Bloomstrom, you have heard the Court's definitions. If you only have circumstantial evidence, the evidence has to be wholly consistent with the theory of guilt or entirely consistent with the theory of guilt or wholly inconsistent or irreconcilable with any reasonable

theory of the Defendant's innocence. If you were to have two theories, one by the State and one by Defense, does that automatically mean you have to resolve it in favor of the Defense?

MR. BLOOMSTROM: No.

MR. HEAD: Why do you say that?

MR. BLOOMSTROM: One can be built on inferences whereas the other is built more around direct facts. You would have to view the one built on more direct facts and then the other.

MR. HEAD: Okay. How about anybody else? Did you hear what Mr. Bloomstrom said? Do you agree with what he said, essentially? Mr. Ebright, how about you?

MR. EBRIGHT: I basically feel that way, yes.

MR. HEAD: Do you understand that in the definition if there is a theory that may be inconsistent or irreconcilable with one's guilt, it has to be a reasonable theory? Did you hear the Court say that to you?

MR. EBRIGHT: Yes.

MR. HEAD: Do you understand that?

MR. EBRIGHT: Yes.

MR. HEAD: How about everybody else? Do you have a problem with that concept? Okay. You understand that a case can be proved and one can be convicted totally on circumstantial evidence? Do you have a problem with that? Okay. A lot of times when you hear about circumstantial evidence, you think maybe that is not as good as direct evidence. You heard the Court's instruction on that in the

law itself. If it is entirely consistent with the Defendant's guilt and wholly inconsistent or irreconcilable with any reasonable theory of the Defendant's innocence. Does anybody have a problem with that concept?

MS. ENOCH: Does it carry the same weight as direct evidence?

MR. HEAD: Yes, ma'am.

MS. ENOCH: That is what you are telling us?

MR. HEAD: Yes, ma'am. As long as it is entirely consistent and wholly inconsistent with any reasonable theory.

MS. ENOCH: I understand.

MR. HEAD: Along that same line, and Judge mentioned this, too, there is no difference in the degree or the degree of the burden of proof. It is still based on a reasonable doubt concept. Does anybody have a problem with that? Very well. Thank you very much. We will pass for cause.

THE COURT: Thank you. Counsel for the Defendant?

MR. BOSTICK: Thank you, Your Honor. Good morning. As the Court indicated yesterday, my name is Bob Bostick, B-O-S-T-I-C-K. If you perhaps do not hear what I am saying or don't understand what I am saying, please raise your right hand. Your left hand will be okay as well. Sometimes my wife raises both of them and says, speak up. Stop mumbling. Usually, when it is grass cutting time. Associated with me in this case, and you have seen this gentleman and you have met him, his name is Wayne P. Stephan. I mention that for

the reason that both Wayne and I are associated in our individual offices with other attorneys here in the City of Dayton. Associated in Wayne's office with Wayne are the following persons. I mention this because there may be some ones of you who are acquainted with some of these gentlemen or ladies, and if that be the case, we should like to know. Patrick Flanagan. Does anyone know or is anyone acquainted with Patrick Flanagan in Mr. Stephan's office? Louis Hoffman. James Swaim, S-W-A-I-M. Anybody ring a bell with anybody? Of course, Mr. Stephan. Therese Geiger. Robert Hickey. Catherine Gough, G-O-U-G-H. I hope I pronounced Cathy's name correctly. Associated in my office with me in the practice of law are two other individuals, Donn Clendenon and Nick Gerren. Yes, ma'am.

MS. McCAFFREY: Donn Clendenon has been a customer of ours through the years. We have a small business downtown.

THE COURT: Could you get her name?

MS. McCAFFREY: I am also acquainted with his wife.

MR. BOSTICK: If you will, please tell us your name when we get to you.

MS. McCAFFREY: Janet McCaffrey.

MR. BOSTICK: Thank you.

MR. MORROW: Mr. Clendenon, I know him. I also know his wife.

MR. BOSTICK: Anyone else?

MR. DYE: Fred Dye. I know Patrick Flanagan through acquaintances.

MR. BOSTICK: Your name again, sir?

MR. DYE: Fred Dye.

MR. BOSTICK: We will get back to you, Mr. Dye. Anyone else before me here in the 12 or the eight ladies and gentlemen to my left? Does Nicholas Gerren, G-E-R-R-E-N, ring a bell with anybody? All right. Mr. Morrow, you are seated before me. Let me start with you with respect to your acquaintance or knowledge of Mr. Clendenon. You are one of the gentlemen, of course, that visited with us with respect to the special voir dire yesterday. You understand the principle of impartiality and fairness and what have you?

MR. MORROW: Yes.

MR. BOSTICK: Would your knowledge of Mr. Clendenon have any influence on you in this case?

MR. MORROW: No, it would not.

MR. BOSTICK: He is not here assisting us. Now that I have told you he is in one of our offices, you shan't forget that, is that true? It would have no bearing on this case and it shouldn't have.

MR. MORROW: No.

MR. BOSTICK: You mentioned his wife. The same questions with respect to his wife.

MR. MORROW: Yes.

MR. BOSTICK: Members of the prospective panel, because, after all, you haven't been sworn in finally, there is still another oath you will have to take, the voir dire -- sometimes we say voir

dire -- gives us an opportunity to become acquainted with you, your background, learn certain attitudes about you, all for reasons that are pretty clear now. I like to think of this as like a job interview. Of course, you didn't pick this job, did you? You were summoned to come here. In any event, we are going to ask some of the kinds of questions and probe even further in that fashion. I hope that you won't feel that any of us, either the Prosecution or the Defense, are prying. It is terribly, terribly, terribly important that we know what is on your mind, your attitudes, and what have you. I am going to start, if I may, by asking each one of you some individual questions. Most of you have all filled out the questionnaire, but I did look again last night and I am missing one or two. You will forgive me. I may have to ask those questions over only of those persons whose questionnaires are not here. Others, I will expand upon and go from there. If you will, give me a moment to get acclimated. Last evening, No. 1 was on the left. Now, No. 1 is on the right. I don't think it will be much of a problem here. Ms. Enoch, am I pronouncing your name correctly?

MS. ENOCH: Yes, that is correct.

MR. BOSTICK: I don't have your questionnaire. May I please ask you some background information?

MS. ENOCH: Yes.

MR. BOSTICK: You live where, ma'am, in our County?

MS. ENOCH: Oakwood, on Far Hills.

MR. BOSTICK: You have lived in our County how long now?

MS. ENOCH: Thirty-four years.

MR. BOSTICK: Your family is comprised of?

MS. ENOCH: I am divorced. I have a little girl who is four. Her name is Kirsten.

MR. BOSTICK: Your place of employment?

MS. ENOCH: Kettering City schools. I teach at Greenmont School.

MR. BOSTICK: How long have you been a teacher?

MS. ENOCH: Twelve years.

MR. BOSTICK: Do you enjoy your work as a teacher?

MS. ENOCH: Yes, I do.

MR. BOSTICK: I have a sister and aunt who taught a number of years. They seem to enjoy it. You have never been asked to serve on a jury before, have you?

MS. ENOCH: No, sir.

MR. BOSTICK: And I think from the show of your hand yesterday and today, you have never been a victim of a crime?

MS. ENOCH: No, I haven't.

MR. BOSTICK: Never sued or been sued?

MS. ENOCH: No.

MR. BOSTICK: Never made a claim against anyone?

MS. ENOCH: No.

MR. BOSTICK: No one has made claims against you?

MS. ENOCH: No.

MR. BOSTICK: Any close friends or associates, law

enforcement people?

MS. ENOCH: No.

MR. BOSTICK: A lot of us have neighbors or friends or classmates who are in law enforcement. Do you drive an automobile?

MS. ENOCH: Yes.

MR. BOSTICK: What kind of subjects do you teach?

MS. ENOCH: I have first grade. I teach everything.

MR. BOSTICK: That is a very impressive age, is it not?

MS. ENOCH: Yes, it is.

MR. BOSTICK: May I ask what you do, ma'am, in your spare time, should you have any?

MS. ENOCH: I play tennis, I read, I take care of my child.

MR. BOSTICK: That is a full-time job in and of itself.

MS. ENOCH: Yes.

MR. BOSTICK: Do you have time to watch television?

MS. ENOCH: A little. That is not my favorite thing.

MR. BOSTICK: What are your preferences when time is available for television and books?

MS. ENOCH: Historical novels, mostly.

MR. BOSTICK: Do you belong to any clubs or organizations?

MS. ENOCH: Quail Run Tennis Club, a sewing circle, that is all.

MR. BOSTICK: Mr. Young, I am going to ask you some of the same questions. We do have your questionnaire, and we won't

repeat any information on there, of course. How long have you been at your present place of employment?

MR. YOUNG: About 10 years.

MR. BOSTICK: And you work at Dayton Blueprint Company, do you?

MR. YOUNG: Yes, sir.

MR. BOSTICK: Are you in a supervisory capacity after 10 years?

MR. YOUNG: A group leader.

MR. BOSTICK: How many persons do you supervise?

MR. YOUNG: Seven.

MR. BOSTICK: Seven?

MR. YOUNG: Yes.

MR. BOSTICK: How long have you been supervising?

MR. YOUNG: About eight years, maybe.

MR. BOSTICK: Were you in this line of work before you went to work for Dayton Blueprinting?

MR. YOUNG: No, sir. I was in the Army. I was drafted.

MR. BOSTICK: Were you overseas in the Army?

MR. YOUNG: No, sir.

MR. BOSTICK: While you were in the service, did you have anything to do with court-martials?

MR. YOUNG: No, sir.

MR. BOSTICK: Nothing whatsoever?

MR. YOUNG: I was a personnel specialist and, of course,

I was in charge of the record keeping. Not per se. Every once in a while you might run into a court-martial file.

MR. BOSTICK: I take it that because of the nature of your work, there was no cause for you to read the law or --

MR. YOUNG: No, sir.

MR. BOSTICK: Or examine the law while you were in the service?

MR. YOUNG: No, sir.

MR. BOSTICK: You are not acquainted with any law enforcement people?

MR. YOUNG: My brother-in-law is a part-time patrolman for the City of Bellbrook.

MR. BOSTICK: The City of what, sir?

MR. YOUNG: Bellbrook.

MR. BOSTICK: Are there occasions when you discuss with your -- brother-in-law did you say?

MR. YOUNG: Yes, sir.

MR. BOSTICK: Do you discuss crime in general with your brother-in-law?

MR. YOUNG: No. He has a regular full-time job and does this part-time. It is pretty rare when I do see him.

MR. BOSTICK: On the facts of this case as you see them, a couple Fridays from now, in the event you feel firmly convinced that this young man is not guilty, would the fact that you have a relative who is a part-time law enforcement officer, would that

embarrass you at all?

MR. YOUNG: No, sir.

MR. BOSTICK: It shouldn't, should it?

MR. YOUNG: It shouldn't.

MR. BOSTICK: What about your other activities, sir?

What do you do in your spare time?

MR. YOUNG: Sports, mainly; maintenance around the house.

We have a new-born child.

MR. BOSTICK: That takes up quite a bit of time?

MR. YOUNG: Yes, sir.

MR. BOSTICK: Do you belong to any organizations?

MR. YOUNG: No, not at the present time.

MR. BOSTICK: In the past, have you?

MR. YOUNG: Just sport clubs, racquetball.

MR. BOSTICK: All right. Ms. -- would you pronounce your name?

MS. STEGEMOLLER: Stegemoller.

MR. BOSTICK: Ms. Stegemoller. How about you? What do you do in your spare time?

MS. STEGEMOLLER: I am very busy. I can. I cook. I bake. I have a garden. I love to garden. I do Cub Scouts. I love to sew. I love to read.

MR. BOSTICK: You are very active. What preference, for example, do you have in reading materials or books?

MS. STEGEMOLLER: I love magazines.

MR. BOSTICK: I notice that you are a Cub Scout leader. That brings you in contact with a number of children.

MS. STEGEMOLLER: Yes.

MR. BOSTICK: They are usually about what age?

MS. STEGEMOLLER: I have eight-year-olds.

MR. BOSTICK: I have got two youngsters. It has been a long time since they were eight years old, but they were Cub Scouts. You have two youngsters, nine and five?

MS. STEGEMOLLER: Yes, sir.

MR. BOSTICK: Trapper and Fawn.

MS. STEGEMOLLER: Yes.

MR. BOSTICK: Let me ask you this. With respect to your association with other youngsters, including your own, would that influence your decision in this case at all?

MS. STEGEMOLLER: No.

MR. BOSTICK: Not one bit?

MS. STEGEMOLLER: Not one bit.

MR. BOSTICK: Ms. Davis. I got an easy one that time, didn't I? How about your spare time activities, if any?

MS. DAVIS: Swimming and reading. I go to school part-time, so that takes up a lot of my leisure time.

MR. BOSTICK: You are attending?

MS. DAVIS: Sinclair.

MR. BOSTICK: May I ask what your subject is?

MS. DAVIS: Business.

MR. BOSTICK: Do you have time to belong to any organizations or clubs?

MS. DAVIS: Through the school year, I volunteer with the Girl Scouts and also with sports organizations, children's sports organizations in West Carrollton. My daughter was involved in soccer and cheerleading. I was a cheerleading coach last year.

MR. BOSTICK: You, of course, work and/or reside in the area of West Carrollton?

MS. DAVIS: Right.

MR. BOSTICK: Based upon that, and this crime got quite a bit of notoriety, which occurred in your back yard as it were, you have had time to think about that? Would that influence your decision in this case at all?

MS. DAVIS: No. I think I can disassociate prior knowledge.

MR. BOSTICK: You understand, of course, Ms. Davis, as does everyone else, that you are to make your decision based upon the evidence that comes from that witness stand over there?

MS. DAVIS: Right.

MR. BOSTICK: And nothing else. Do you understand that?

MS. DAVIS: Right.

MR. BOSTICK: You, of course, can do that, can't you?

MS. DAVIS: Right.

MR. BOSTICK: You consider yourself fair and impartial, do you?

MS. DAVIS: Yes, I do.

MR. BOSTICK: Ms. Harris.

MS. HARRIS: Yes.

MR. BOSTICK: May I ask about your leisure time activities, if you have time for any?

MS. HARRIS: I like to bowl. My little girl plays baseball. My sons coach baseball teams. I am usually watching baseball most of the time.

MR. BOSTICK: Do you have time for clubs or organizations?

MS. HARRIS: No, not really. I have always been into most activities with my children.

MR. BOSTICK: Because of your association with your children, as are many of us, and based upon the nature of this offense, would that influence your decision, that fact alone, in this case?

MS. HARRIS: Not at all.

MR. BOSTICK: It shouldn't, should it?

MS. HARRIS: That is right.

MR. BOSTICK: Ms. Holtzman?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Ms. Holtzman, you were called for jury duty before, weren't you?

MS. HOLTZMAN: I think it was the 12th. This has been the only time.

MR. BOSTICK: This has been the only time?

MS. HOLTZMAN: Yes.

MR. BOSTICK: You have never been called and excused before?

MS. HOLTZMAN: Oh, yes, a long time ago.

MR. BOSTICK: The kids were small?

MS. HOLTZMAN: Yes.

MR. BOSTICK: They have grown up now, haven't they?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Do you have any grandchildren?

MS. HOLTZMAN: Four.

MR. BOSTICK: May I ask their ages, please?

MS. HOLTZMAN: Oh, one is about six weeks old, one about 16 months old, and one about three and a half, and the other one is almost five.

MR. BOSTICK: All right. You are a housewife, of course?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Your hubby is retired, is he?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Where did he work?

MS. HOLTZMAN: Ohio Bell.

MR. BOSTICK: What did he do there, if you know?

MS. HOLTZMAN: He worked on cable tests. Don't ask me his official title.

MR. BOSTICK: Has he been retired long?

MS. HOLTZMAN: No, not quite a year. He had a heart

attack and had to retire.

MR. BOSTICK: Has he built up enough strength that you people have had leisure time activities in the past year?

MS. HOLTZMAN: Yes. We have a garden. He is babysitting with our three and a half year old from Detroit while I am here.

MR. BOSTICK: And enjoying every minute of it?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Do you or your hubby belong to any organizations?

MS. HOLTZMAN: Not anymore.

MR. BOSTICK: Used to?

MS. HOLTZMAN: Yes.

MR. BOSTICK: Mr. Morrow, we are back to you again, sir. You are not acquainted, may I ask, with any law enforcement people as far as you know?

MR. MORROW: No. I am not.

MR. BOSTICK: You work at DESC, do you?

MR. MORROW: Right.

MR. BOSTICK: May I ask what you do there?

MR. MORROW: I am a supervisor.

MR. BOSTICK: How many persons do you supervise?

MR. MORROW: Twelve.

MR. BOSTICK: How long have you been such a supervisor?

MR. MORROW: In supervision, about 15 years.

MR. BOSTICK: All right. What does Mrs. Morrow do?

MR. MORROW: She is an elementary school teacher.

MR. BOSTICK: Do you recall what grade she teaches?

MR. MORROW: First.

MR. BOSTICK: First grade. Mr. Morrow, if you have any spare time, sir, how do you spend it?

MR. MORROW: Sports. Preferably golf.

MR. BOSTICK: I won't ask your handicap, sir, if you promise not to ask mine. Mr. Ebright?

MR. EBRIGHT: Yes.

MR. BOSTICK: You are a field service technician at Diebold, Inc. Where is that located?

MR. EBRIGHT: Webster, off Needmore, Dayton.

MR. BOSTICK: May I ask what they do there?

MR. EBRIGHT: We deal in bank alarm systems, automatic banking machines, and so forth.

MR. BOSTICK: Your company probably stays busy, don't they?

MR. EBRIGHT: Yes, we do.

MR. BOSTICK: How long have you been there?

MR. EBRIGHT: I have been there a little over two years now.

MR. BOSTICK: You have lived in this County how long, sir?

MR. EBRIGHT: Thirty-three years.

MR. BOSTICK: You have two youngsters, two boys, I believe?

MR. EBRIGHT: One girl and one boy.

MR. BOSTICK: Stephanie would be a girl, wouldn't she?

MR. EBRIGHT: Yes.

MR. BOSTICK: Because of that fact alone, would you be swayed for or against whatever side that you eventually end up?

MR. EBRIGHT: I don't believe so.

MR. BOSTICK: You shouldn't be because of that fact, should you?

MR. EBRIGHT: No.

MR. BOSTICK: You consider yourself fair and impartial, don't you?

MR. EBRIGHT: Yes, I do.

MR. BOSTICK: Should you have any leisure time activities, sir, how do you spend it?

MR. EBRIGHT: Right now I am trying to finish construction on my house, but I like to bowl and play baseball.

MR. BOSTICK: Ms. Brown?

MS. BROWN: Yes.

MR. BOSTICK: You are a housewife, ma'am?

MS. BROWN: Right.

MR. BOSTICK: And you have a youngster about four?

MS. BROWN: Yes.

MR. BOSTICK: A little girl?

MS. BROWN: Yes.

MR. BOSTICK: Your husband does what at Inland?

MS. BROWN: Production work.

MR. BOSTICK: He has been there how long?

MS. BROWN: Sixteen years.

MR. BOSTICK: I used to work at Inland myself a few years ago. How long have you and your family lived here in Dayton?

MS. BROWN: My husband is from Dayton. I have been here 11 years, from New Jersey.

MR. BOSTICK: You came from New Jersey?

MS. BROWN: Yes.

MR. BOSTICK: Do you have very much spare time with the youngster at the house?

MS. BROWN: I am sorry?

MR. BOSTICK: Do you have much spare time with your youngster at the house?

MS. BROWN: When I do, I like to do all the yard work.

MR. BOSTICK: What do you save for the husband to do?

MS. BROWN: Rest on the couch. He's got it made.

MR. BOSTICK: I am going home quickly and tell my wife what you said. Ms. Baker?

MS. BAKER: Yes.

MR. BOSTICK: Your husband works at Dayton Progress, is that true?

MS. BAKER: Yes.

MR. BOSTICK: How long has he been there?

MS. BAKER: I think almost seven years.

MR. BOSTICK: He is a machinist, is he?

MS. BAKER: Yes.

MR. BOSTICK: Do you work outside the home, ma'am?

MS. BAKER: No, I don't.

MR. BOSTICK: You have two youngsters at home?

MS. BAKER: Right.

MR. BOSTICK: They keep you busy?

MS. BAKER: Very.

MR. BOSTICK: What do you and Mr. Baker do in your spare time, weekends, and holidays?

MS. BAKER: Well, when we are not working on the garden, we like to go canoeing and bike riding.

MR. BOSTICK: That's a lot of fun.

MS. BAKER: Yes.

MR. BOSTICK: Ms. Barker?

MS. BARKER: Yes.

MR. BOSTICK: You have lived in Montgomery County how long now?

MS. BARKER: Twenty-one years.

MR. BOSTICK: You are at Monsanto and Mound Laboratory?

MS. BARKER: Yes, sir.

MR. BOSTICK: Where is that located?

MS. BARKER: Miamisburg, on Mound Road.

MR. BOSTICK: You have been there how long?

MS. BARKER: Since June 1.

MR. BOSTICK: Of this year?

MS. BARKER: Yes.

MR. BOSTICK: Good, good. I know generally what Monsanto makes. What do you do in your department?

MS. BARKER: I am a small parts worker.

MR. BOSTICK: May I ask you, as I have asked the other members of the prospective panel, what you do in your spare time, should you have any?

MS. BARKER: I spend a lot of time with ceramics. I like swimming, bowling, bike riding.

MR. BOSTICK: Do you belong to any clubs or organizations?

MS. BARKER: No, I don't anymore.

MR. BOSTICK: Ms. Barbee?

MS. BARBEE: Yes.

MR. BOSTICK: We didn't have a questionnaire on you. I think we got your information yesterday.

MS. BARBEE: Yes.

MR. BOSTICK: You have youngsters at home, do you?

MS. BARBEE: One.

MR. BOSTICK: A boy or a girl?

MS. BARBEE: A girl.

MR. BOSTICK: Her age?

MS. BARBEE: Ten.

MR. BOSTICK: You and Mr. Barbee, should you have any spare time, what do you like to do?

MS. BARBEE: I sew a lot, bowl, go to church.

MR. BOSTICK: Ms. Haines?

MS. HAINES: Yes, sir.

MR. BOSTICK: How long have you lived in our County?

MS. HAINES: Twenty-five years.

MR. BOSTICK: You are employed outside the home, are you?

MS. HAINES: Yes.

MR. BOSTICK: May I ask what you do?

MS. HAINES: I am an engineering technician at Inland.

MR. BOSTICK: Where is that located?

MS. HAINES: On West Third Street.

MR. BOSTICK: You have been doing that how long now?

MS. HAINES: Twenty-three years.

MR. BOSTICK: Should you have any spare time, ma'am,
what do you like to do?

MS. HAINES: I am very active in Boy Scouts.

MR. BOSTICK: You have been active for some time in Boy
Scouts?

MS. HAINES: Yes.

MR. BOSTICK: What age Boy Scouts do you usually come in
contact with?

MS. HAINES: I work with the boys from 11 to 18, but I
am also involved in the training of adult leaders.

MR. BOSTICK: So, you spend a lot of hours outside the
home, don't you?

MS. HAINES: Yes.

MR. BOSTICK: It is enjoyable, I would imagine?

MS. HAINES: Yes.

MR. BOSTICK: Your association with these youngsters between 11 and 18 is not going to cause you, at least that fact alone will not sway your decision should you be seated on our permanent panel?

MS. HAINES: No, sir.

MR. BOSTICK: It shouldn't, should it?

MS. HAINES: No.

MR. BOSTICK: Mr. Ward, you have quite a background in law enforcement?

MR. WARD: Yes, sir.

MR. BOSTICK: You still know people, of course, who are in law enforcement, is that correct?

MR. WARD: Yes, sir.

MR. BOSTICK: I suppose, Mr. Ward, -- I have been doing what I have been doing a long time, and I suppose I have certain attitudes and opinions about things. Would that be true of you in your profession? I will call it a profession because that is what it is.

MR. WARD: Well, I think after you hear certain facts, you naturally get an opinion, yes.

MR. BOSTICK: Well, my point is, if you have got one at all, based upon your long association in law enforcement, you yourself,

I think in excess of 10 years?

MR. WARD: Correct.

MR. BOSTICK: Could you set that aside and listen to the facts of this case and be a fair and impartial juror?

MR. WARD: Yes, sir.

MR. BOSTICK: Could you, really?

MR. WARD: Yes, sir.

MR. BOSTICK: You wouldn't go back to the night you were investigating a case in the cold and try to insert facts, would you?

MR. WARD: No.

MR. BOSTICK: You wouldn't be influenced solely because law enforcement got on there, and you are still a member by way of an associate member, would that affect you at all?

MR. WARD: No, sir.

MR. BOSTICK: You could truly put all that out of your mind?

MR. WARD: Yes, sir.

MR. BOSTICK: That is tough sometimes. You know that, don't you?

MR. WARD: Yes.

MR. BOSTICK: You have thought about this over the night?

MR. WARD: Very definitely.

MR. BOSTICK: Because we asked you yesterday, didn't we?

MR. WARD: Yes.

MR. BOSTICK: Should you have spare time, Mr. Ward, what

do you like to do?

MR. WARD: Well, besides working at NCR, I attempt to sell real estate. I also belong to organizations in which I am a State officer and I am local chairman of the Retired Citizens Committee in that organization. It is pretty involved.

MR. BOSTICK: And the name of that organization?

MR. WARD: United Commercial Travelers.

MR. BOSTICK: We'll give you a plug there.

MR. WARD: Yes.

MR. BOSTICK: Ms. Neumaier, I think you were the lady that said yesterday you ran into a classmate you hadn't seen in 10 years and lo and behold he was in the Prosecutor's Office?

MS. NEUMAIER: Yes.

MR. BOSTICK: I'll bet you were glad to see him?

MS. NEUMAIER: Yes.

MR. BOSTICK: Did you recognize one another right off?

MS. NEUMAIER: No. We passed each other twice before he recognized me.

MR. BOSTICK: That's like all the rest of us. We have to rush home and look in the yearbook.

MS. NEUMAIER: I wasn't sure I had the right name when I asked him after he recognized me.

MR. BOSTICK: Did he update you on what he has been doing? He probably doesn't have too much time.

MS. NEUMAIER: No. He just told me he has been -- I

don't remember what he said -- a couple years, and he had a six-week-old baby boy.

MR. BOSTICK: Did he show you a picture?

MS. NEUMAIER: No.

MR. BOSTICK: Well, certainly, that fact won't influence you in this case?

MS. NEUMAIER: No.

MR. BOSTICK: It shouldn't influence you, is that true?

MS. NEUMAIER: Right.

MR. BOSTICK: What do you do in your spare time, should you have any?

MS. NEUMAIER: I camp. I do ceramics, water ski. In the winter, I snowmobile.

MR. BOSTICK: You do all of that?

MS. NEUMAIER: And pitch a few baseballs to my four-year-old.

MR. BOSTICK: That's super. Mr. Griffith?

MR. GRIFFITH: Yes.

MR. BOSTICK: You have lived in the County how long, sir?

MR. GRIFFITH: Nine years.

MR. BOSTICK: Before that, you lived where?

MR. GRIFFITH: Kentucky.

MR. BOSTICK: You are a molder, are you?

MR. GRIFFITH: Yes.

MR. BOSTICK: At Dayton Casting Company?

MR. GRIFFITH: Yes.

MR. BOSTICK: That is heavy work, isn't it?

MR. GRIFFITH: Hot, too.

MR. BOSTICK: I have still got a burn. I used to work in the foundry myself. I'll never forget that. You have got two small youngsters?

MR. GRIFFITH: Yes.

MR. BOSTICK: You are not going to let that influence you one way or the other in this case?

MR. GRIFFITH: No.

MR. BOSTICK: It shouldn't influence you, should it?

MR. GRIFFITH: No.

MR. BOSTICK: You consider yourself fair and impartial?

MR. GRIFFITH: Yes.

MR. BOSTICK: You don't have any friends or associates or neighbors in law enforcement, do you?

MR. GRIFFITH: No.

MR. BOSTICK: Mr. Morris?

MR. MORRIS: Right.

MR. BOSTICK: You have lived in our County how long, sir?

MR. MORRIS: Thirty-seven years.

MR. BOSTICK: And you are retired now?

MR. MORRIS: Right.

MR. BOSTICK: May I ask what you did, sir?

MR. MORRIS: Worked in the Accounting Department at

Chrysler Corporation.

MR. BOSTICK: Were you in a supervisory capacity with Chrysler before you retired?

MR. MORRIS: No.

MR. BOSTICK: I suppose you have a lot of spare time now?

MR. MORRIS: Right.

MR. BOSTICK: How do you spend part of it?

MR. MORRIS: I do a lot of work at church, and I have taken up golf. I do a lot of reading and a lot of traveling.

MR. BOSTICK: What preference do you have in the materials that you read, sir?

MR. MORRIS: Novels. Nothing specific.

MR. BOSTICK: Do you read a lot of mystery novels?

MR. MORRIS: No. I like intrigue a little bit more than mystery.

MR. BOSTICK: Do you watch sports on television?

MR. MORRIS: Some.

MR. BOSTICK: All right. Mr. Bloomstrom?

MR. BLOOMSTROM: Bloomstrom.

MR. BOSTICK: Forgive me, sir. I should have my glasses on. You have lived in our County how long?

MR. BLOOMSTROM: Three years.

MR. BOSTICK: And before that?

MR. BLOOMSTROM: I lived in Greene County for four years.

MR. BOSTICK: And before that?

MR. BLOOMSTROM: I lived in Franklin County in Columbus for five years.

MR. BOSTICK: And before that?

MR. BLOOMSTROM: Hamilton County since I was born.

MR. BOSTICK: You are in sales?

MR. BLOOMSTROM: Yes.

MR. BOSTICK: We might have guessed that. What do you sell, sir?

MR. BLOOMSTROM: Bicycles.

MR. BOSTICK: Your wife, does she work outside the home?

MR. BLOOMSTROM: No.

MR. BOSTICK: You have a small child, do you?

MR. BLOOMSTROM: Yes.

MR. BOSTICK: You and Mrs. Bloomstrom, and your youngster, what do you do in your spare time?

MR. BLOOMSTROM: Most of my spare time has been baby-sitting, lately, but I like to play golf and in the winter I like to ski.

MR. BOSTICK: Where do you go skiing?

MR. BLOOMSTROM: In Bellbrook.

MR. BOSTICK: That is a big mountain out there. Do you have to operate the snow machine?

MR. BLOOMSTROM: Just about. Pray for snow.

MR. BOSTICK: Ms. Basford, you have lived in our County how long?

MS. BASFORD: Nineteen years.

MR. BOSTICK: And before that?

MS. BASFORD: Wayne County, Indiana.

MR. BOSTICK: You have been teaching how long now?

MS. BASFORD: I taught for five years and was home for seven and taught three, and full-time for three more.

MR. BOSTICK: The ages of the students that you teach?

MS. BASFORD: Freshmen to senior half the day, junior girls in the afternoon.

MR. BOSTICK: Have you always taught those?

MS. BASFORD: Secretarial.

MR. BOSTICK: You don't have any particular association or acquaintances in law enforcement, do you?

MS. BASFORD: No.

MR. BOSTICK: Your spare time is spent how, ma'am?

MS. BASFORD: Driving my daughters to their events.

MR. BOSTICK: Ms. Ball?

MS. BALL: Yes.

MR. BOSTICK: Ms. Ball, you have lived in our County how long?

MS. BALL: Fifty-eight years.

MR. BOSTICK: You have seen Montgomery County grow in that length of time, haven't you?

MS. BALL: Sure have.

MR. BOSTICK: Your family is how large?

MS. BALL: Six children, 13 grandchildren, and I have a daily job.

MR. BOSTICK: You have a daily job?

MS. BALL: Yes.

MR. BOSTICK: Where do you work?

MS. BALL: The S. S. Kresge Company, a division of K-Mart Corporation.

MR. BOSTICK: In which part of the County is that store?

MS. BALL: Airway Shopping Center.

MR. BOSTICK: Do you do any babysitting the grandkids?

MS. BALL: Yes.

MR. BOSTICK: Every chance you get?

MS. BALL: Every chance I get. I love them.

MR. BOSTICK: What is the age of the youngest and oldest?

MS. BALL: Twenty-one years old is the oldest. The youngest is two.

MR. BOSTICK: Very good. The job interview is not over yet. I have got more general questions to ask all of you. I do want to thank you for allowing me to get those personal questions in, and I think it helps. I really do. In that regard, I want you folks to be just as open as you have been. Will you promise to do that? And just as honest as you have been. Let me ask you in the interest of time, all of you, and I am speaking of these 12 here and these eight here. We will get to you folks, eventually. Please pay attention, though. Do any of you have any particular attitude toward

crime and criminal justice in general? Anybody at all? Anybody in front of me? Raise your hand. Anybody over here? Any particular attitude about crime and criminal justice? All right.

Anybody feel that the courts are too soft on crime? Raise your hand. Anybody feel the opposite, that courts are too tough on crime? All right.

(No hands raised.)

MR. BOSTICK: It has been mentioned to you both by the Court and the Prosecution, and aptly so, the words burden of proof, reasonable doubt, and presumption of innocence. I believe that those sets of words are those that are most spoken in the Anglo-Saxon jurisprudence, as it were; and you know by now, do you not, that the Prosecution has the burden of proof, and that burden of proof is beyond a reasonable doubt. Does everybody understand that? Yesterday, I believe I heard the Prosecutor mention to you something about shadow of a doubt. This case is not about that. No criminal case in our justice system in the State of Ohio talks about shadow of a doubt. Do you understand that? We are satisfied with beyond a reasonable doubt, and it is beyond. I underscore beyond a reasonable doubt. Does everybody understand that? All right.

That burden of proof never changes. Does everybody understand that? We start out the case with the burden of proof being on the backs of the Prosecution, and it stays there until the very end. Does everybody understand that? It never switches. Does anybody have a different connotation about that?

Yesterday, you were asked and there was a discussion about reasonable doubt, and you heard what reasonable doubt is. It is based on reason and common sense. Would anyone disagree with the proposition that if there is one reasonable doubt that lingers in your mind or minds, in that event, the Prosecution has not proved its case beyond a reasonable doubt. Does everyone understand that? How about over here?

MR. HEAD: Your Honor, we will object to that. Reasonable doubt is an actual element of the crime, perhaps.

THE COURT: Overruled.

MR. BOSTICK: Thank you, Your Honor. It is true, and I hasten to add, and the Prosecutor already knows about this, that the Prosecution must prove its case, each and every element, beyond a reasonable doubt. Judge Kessler, Judge John Kessler yesterday went over with you the different charges. He spoke of them in terms of counts. Remember that? And, you are going to hear more of that. In those charges are certain elements that will be spelled out to you time and time again. Will you listen, each and every one of you, for the elements that are connected with these allegations, these counts? Will you do that? It is these elements, each and every one, that the Prosecution must prove beyond a reasonable doubt. Does everybody understand that? Does it kind of connect up now? All the elements beyond a reasonable doubt with respect to each of the charges. Does everybody understand that? If there is a lack of proof on any of the elements of any of the charges, the verdict must be what? Not guilty.

Would you agree over here the verdict must be not guilty? If I asked the question why, the answer simply is because the Prosecution, in that event, based upon all the evidence, would not have sustained its burden. Do you understand that? It is difficult because we spend four years in law school learning this and want to have you learn it in two or three days. We understand the predicament you are going through. Bear with us. It is important. Does everybody understand that?

Let me ask each of you as honestly as I can, you have all indicated to the Court that you would follow the Court's instructions. Remember you said that yesterday? You nodded your head. You have all indicated that you understood these principles we are talking about, burden of proof, reasonable doubt, and presumption of innocence. You have all indicated that, haven't you? I want you now to look deep inside of yourself, and I want to ask you this question; do you believe it? Raise your hand if you believe it, what we have been talking about. Do I see everybody's hand? Raise your hand over here if you believe it. All right.

You understand, of course, we are not mouthing words to you. Does everybody understand that? This is a real live situation. Trials by juries go way back. I think back, our beginning of the Anglo-Saxon is attributed back to 1215 where it talks of trials by your peers. You, as the sole judges of the facts, are a part of this, to continue that process, based upon your sworn duty and obligation. Does everybody understand where I am coming from? So,

it is something that you have to believe; not just say, oh, yes, I go along with that. We are looking inside of you today, if we may, to determine how you feel. Do you understand? If you feel differently, let us know. Now is the time. Ring the bell if you feel different. You are entitled to. You may not end up on this jury, but you are entitled to feel differently.

Based upon all that has been said to you yesterday and today, is there any one of you that believes this youngster is guilty as he sits here now? Raise your hand. Don't be ashamed. Raise your hand. I take it then that none of you, based upon what we have discussed and your fairness and your impartiality, believe this youngster is guilty as he sits here, and you shouldn't, right? Would anybody disagree with that?

May I ask this question of all of you. Let me say this before I ask the question, with the Court's permission. The order of trial, you know, up until this point, we have gone through opening remarks by the Court, and we are into the voir dire. What is to follow once this is concluded will be the opening statements of counsel, which is kind of a preview of what counsel believe the evidence will show; and there will be a view of the scene. You will go on the bus and look at different things. We will come back to this courtroom or a courtroom in this Courthouse, and we will then get into the evidence. The Prosecution will put on its evidence first. Do you all understand that? That is the way we proceed. Mr. Wayne Stephan and I, we agree with that. When we were Prosecutors, we put on the evidence first,

too. There is nothing wrong with that. Does anybody know the reason why they put on their evidence first? I bet you do. They have the burden of proof, don't they? They are the ones that have got to prove to you beyond a reasonable doubt that this youngster is guilty. Isn't that true? So, they should go first. They have got that awesome burden. We don't disagree with that.

The Defense then, in the scheme of things, puts on its evidence, if it cares to, after which counsel sums up. Sometimes it is referred to in the books as counsel's arguments. I like to think we sum up what we think the evidence has shown. In opening statements, we tell you what we think it is going to show. When we sum up, we say, look, this is what we think it has shown or hasn't shown. Does everybody follow me so far? Then, Judge John Kessler is going to tell you, it is called instructing you, on what the law is and some other instructions. Then you are going to go into the corner behind you, into the jury room and deliberate. Do you follow me so far? Why did I get into all of that? I will tell you why. Is there anyone who feels that they can't keep an open mind until the case has been submitted to you? Because now is the time we should know. Anybody? Anybody going to jump to conclusions part way through the Prosecution's case just because they got to go first? That is absurd to think that, isn't it? You people are reasonable. So, you would need to hear all the evidence, wouldn't you, before you came to a conclusion? Anybody disagree with that? That is the way it should be. It would be awful to swear to be fair and impartial and then to make

up your mind someplace in between. That would make a mockery of our system, wouldn't it, based upon all that has been told you. I merely use that as a short cut. It is not necessary for me to keep saying this to you. You are intelligent persons. Is there anyone who would require this youngster to prove that he is innocent? Would anybody require him to prove he is innocent? Raise your hand if you do. Be honest about it. What is the reason? You know what the reason is. He is presumed innocent. He doesn't have to prove anything to you, does he? Are you satisfied with that? We are not just talking about this young lad. We are talking about anyone who is accused. It applies to everybody.

Now, let me ask you this. We have all heard the old adage where there's smoke, there's fire. Who hasn't heard that? Raise your hand. I don't know, maybe we heard it from our grandparents or something. It is something you can't shake out. Where there's smoke, there's fire. Where there's smoke, there's fire. Does anyone truly believe, based upon all that you know, that that time-worn saying should be applied to the facts of this case by a fair and impartial, reasonable, intelligent jury? Raise your hand if you think so. It shouldn't be, should it? There is no place in these proceedings for the feeling where there's smoke, there's fire. Do you understand that?

This young man is presumed to be what? Innocent. He is not presumed to be guilty. Isn't that true? Where there's smoke, there's fire has no application in these proceedings.

The law says you can't speculate on the innocence or guilt, and the law says that in terms of indicating what your obligations are. The Prosecutor has indicated to you, and very aptly so, that reasonable doubt is present, and the Judge is going to tell you this again, when, after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced of the truth of the charge. That makes sense, doesn't it? I don't see anything in there, do you, which says where there's smoke, there's fire. So, you are not going to apply that.

We have got a number of witnesses who may testify in this case. Remember that long list that was read yesterday? We are required to give one another the names of the prospective witnesses. That doesn't mean that every name on that list will testify, but these are what we call potential witnesses. I am sure it is no more than what you do in your respective jobs, draw up a check list or proposal for tomorrow. That is what we have done. Yesterday, we talked about credibility of witnesses. The Judge is going to tell you about that. Let me ask you this. As the trier of the facts, and that is what you are. You know, really, you are the judges of the facts. You are judges when it comes to the facts. Did you know that? There is no one else in this courtroom who can tell you what to do about the facts, but who? Yourself. So, you are judges. You won't wear a robe, but you are judges. You are word supreme. Do you understand that? As judges of the facts, you will be told, and I am going to suggest to you again, you can believe everything that you hear. We know that, don't we? You can

Voir Dire

believe some of what you hear or, by golly, you don't have to believe anything. Do you understand that? That you hear and see from the witness stand. There are certain guidelines that the Court will give you and, again, with the Court's permission and because I want you to know beforehand, you will be told that you are to apply certain tests of truthfulness. That is awful when you have got to apply tests of truthfulness, but we are all human beings. These tests include, quickly, and I will ask you to consider that when you hear these witnesses. That is what we are getting at. I am not just standing up here taking up your time. The appearance of each witness on the stand. How they appear to you. His or her manner of testifying. We have all got reason and common sense. We can look at somebody, basically, and tell if they are nervous. Nervousness is one thing, but if they are unduly nervous in connection with what they have got to say -- the reasonableness of the testimony. What is reasonable and what is not reasonable. The law does not require you to leave your common sense in the glove compartment of the car. You have got to bring it up here with you. Does anybody disagree with that? The opportunity that that witness had to see or hear that about which he is speaking. That makes sense, doesn't it? To hear and know the things concerning what he or she is testifying to. His or her accuracy of memory. We can see a lot of things and, depending upon your distraction, we won't remember it. You have got to consider that. How frank a person is or how frank a person is not. I mentioned openness and honesty. You have got to look for that.

That makes sense, doesn't it? How intelligent that person is that is trying to tell you something. This is an important one. The interest and bias that person has, if any. How interested is he in selling you this information? We are not through yet. Together with all the facts and circumstances surrounding the testimony. There, again, it says, judges, you have got to take in everything else as well. These are just some of the things. Applying these tests, you will assign or give to the testimony of each of these witnesses such weight as you deem proper. Get the point? We are back to the place of the beginning. Such weight as you deem proper may mean nothing, right? It may mean a little of something. You have got to sift, separate the wheat from the chaff. You judges have got to do that. You can do that, can you not?

I would be remiss if I didn't ask you again, and please forgive me. You have all indicated that you wouldn't necessarily give any more credibility to a police officer than you would any other witness, and I assume you still feel the same way. Mr. Ward feels that way, don't you? You are such a good example of what I am trying to do here. By the same token, you wouldn't give them any less credibility? Some of us will, on some given occasion. That is true of the Defense witnesses, if any, isn't that true? But, you are going to apply the guidelines and standards I have gone through here.

Yesterday, the Prosecutor indicated to you a known fact about all of us, except he couched it in terms of police officers, I believe, that in the event you determine that mistakes have been

made. He said that. I didn't. Or that there was some evidence missed. I think the term he used, and I am not quoting him, was would you hold that against him. Well, let me ask you this. Would you take that into consideration with the law that is going to be given to you by Judge Kessler? You would, would you not? A mistake is a mistake, no matter how honestly made, isn't that true? It doesn't have to be vicious.

If there is evidence that you require in determining proof beyond a reasonable doubt that is not there, not forthcoming, as judges of the facts, you have a right to assign that credibility or lack of it as you want, isn't this true? Will you promise to do that? All right.

Did you know, folks, I know you do, but did you stop to think or will you stop to think this young man is entitled to your individual judgment? You know we have a jury of 12. That is a good system. It has worked for hundreds of years. So, we are talking about your collective judgment. How do you get there? We are talking about your individual judgment. Let me ask you quickly, do you all understand that your duty is to give to your decision your individual judgment? I will tell you how to get there in a minute. Does everybody agree to that? You also have a duty not to just go back in the room and prop your feet up and say, I have got my mind made up, by golly, and not talk to your neighbors. You understand that, don't you? After you talk to your neighbors, and when I say neighbors, fellow jurors, and they try and persuade you, based upon

their views of the facts, and they are entitled to do that, and your mind remains unchanged, then you have fulfilled your duty. Right? Is there any one of you that would change your mind simply because you find yourself in the minority? Would anybody do that? That wouldn't be fair and honest, would it?

I would like to say something else to you jurors. I am going to ask you to be courageous. I will get to that in a few minutes, but it ties in here. Sometimes to stand up, and in this case after you have heard all the evidence and discussed it with your neighbor and come to a conclusion, you have a quiet pride in saying you have made your decision, you haven't been stubborn. We don't want stubborn people on the jury. None of us do. But, you have made up your mind. Do you understand? And you are not going to change just because you are in the minority or because the hour gets late, 5:00 o'clock, 6:00 o'clock, 9:00 o'clock in the morning. Will anybody say, I have got to go home? You can't do that, can you?

I am doing all of the talking. I guess that is the way the system is made. If you disagree, speak up. All right? Will you people who remain on the permanent panel and receive that second oath and after all of the orders of procedures have gone on and you get back in your deliberation room, will you discuss with your fellow jurors reasonable doubt and presumption of innocence and burden of proof along with all the other things we have talked about? Will you do that? Is there anybody that will not do that? And, if you find and when you find, subject to your review of the facts,

reasonable doubt, would you point that out to your fellow jurors? Would you? Do you promise to do that? And if you haven't seen what he has seen and he points out what he believes, or she, reasonable doubt, will you listen at least?

You know, what we are really talking about, it all boils down to two words that we would want to apply to all of us. This youngster is due a fair shake, isn't he? Isn't that what we are talking about? While we are talking about a fair shake, this was an atrocious crime. I don't think there is anyone within the sound of my voice that wouldn't agree with that. Isn't that true? Can you put that aside? You are going to see pictures and all that. Can you put that aside and get down to the business of these proceedings and determine whether or not this young man is guilty or innocent of committing the acts? Can you do that?

We, as human beings, have an awful barrier sometimes. The first things we hear, we make up our minds. You are not to do that here. That wouldn't be fair. That wouldn't be honest. You wouldn't be serving your duty. You wouldn't be fair to yourself. You wouldn't feel very good about it, would you? Would you, ma'am?

MS. ENOCH: No.

MR. BOSTICK: Would anybody feel good about that, get carried away because of what happened, the castration, the strangulation, and close your mind? Would anybody do that? You couldn't look at yourself in the mirror again, could you? You wouldn't be following the law.

Let me take a few minutes to discuss with you, if I may, circumstantial evidence. It was read to you what circumstantial evidence is, and I shall not reread it. I would, however, in speaking of circumstantial evidence, point out two things. Motive, the Prosecutor said, and the Prosecutor is exactly right on this point, is not one of the elements of any of these charges. Do you understand that? You will not hear the word motive mentioned in the allegations of elements. However, we believe the Court will indicate to you and the law is such, and with the Court's permission, motive or lack thereof, whether there is a motive or not, becomes an important question, and you should take it into evidence where, in this type of situation, the evidence is purely circumstantial and the identification of the perpetrator is not shown by direct evidence. Do you understand that? In speaking of circumstantial evidence, and the Court has read it to you, -- well, let me say this to you, first. The Prosecutor gave you an example. Incidentally, when we object, as I believe I did, and this is just an example, you are not to hold that against either side, of course. We, as officers of the court, have an obligation to object when, in our opinion, we feel the materials to be elicited are objectionable. In any event, the Prosecutor gave you what he felt to be an example of circumstantial evidence. I assume he thought it was a good one or he wouldn't have given it to you. That is the part about it raining and you are inside and hear something on the roof. You go outside and you see your patio wet and you assume it is raining. That is one inference