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Ohio v. Fred Ahmed Evans: Trial record transcript, 1969

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1969

## Volume 09 (Part 3 of 3)

Cuyahoga County Court of Common Pleas

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Q (By Mr. Laurie) Well, you did say that your county  
avails themselves of this service?

THE COURT:  
instances, he said.

In twelve

Q (By Mr. Laurie) In 12 instances, right. Did you get 12 matches in those 12 cases?

A These did not all involve bullets. They involved tools and tool marks that were used in cases of burglary and robbery.

Q Tell me, Doctor, did they call come out in a matched result, whatever it was?

A No, in some instances, they did not match them.

MR. LAURIE: That is all.

THE WITNESS: That's the whole purpose of the test.

MR. LAURIE: That's all I have.

REDIRECT EXAMINATION

BY MR. TOLLIVER:

Q Just one last question, Doctor, what you are testifying to is that in your experience, with this neutron test, that what you did was made the attempt to make the comparison, is that right, sir?

A Of course we don't determine the results. They may match or they may not match. That's why you do the test.

Q But you availed yourself of that service, is that right?

A Yes.

Q And in this particular case, that service was available, but it was not taken advantage of, is that right,

sir?

A Yes.

MR. TOLLIVER:

That's all.

THE COURT:

Anything further?

MR. LAURIE:

No.

THE COURT:

You are excused.

MR. TOLLIVER:

Thank you, Doctor.

(Witness excused.)

- - -

THEREUPON, the Defendant, further to maintain the issues on this part to be maintained, called as a witness JOSEPH F. MENGEL, who, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FLEMING:

Q Lieutenant, will you speak up so everyone can hear you and state your full name to the Court and spell your last name, please?

A Lieutenant Joseph F. Mengel, M-e-n-g-e-l.

Q And a Lieutenant in the Cleveland Police Department?

A Yes, I am.

Q How long have you been so employed?

A Four years, as a Lieutenant.

Q And how long have you been a police officer?

A 23 years.

Q You have been four years as a Lieutenant with the Cleveland Police Department?

A Yes, I have.

Q And what is your specific assignment at the present time?

A I am the officer in charge of the General Records Division of the Cleveland Police Department.

Q The General what?

A Records Division.

Q You were summoned to come here and testify?

A Yes, I was.

Q You were summoned to bring certain things with you?

A Yes, I was.

Q What were those records that you were supposed to bring?

A Records --

MR. LAURIE: Objection.

THE COURT: Overruled.

THE WITNESS: Records and

duty reports involving certain zone cars and police vehicles between a certain period.

Q And included among the vehicles for records that you were to bring with you to court was Vehicle No. 591, is that correct?

A Yes.

Q And Vehicle No. 591 is a police ambulance assigned to the Fifth District, is that correct?

A Yes, it is.

Q And did you bring those records with you?

A No, I did not.

Q Will you tell the Court and jury why you didn't bring those records with you?

A I didn't have sufficient time to retrieve them from storage.

Q Can you bring them with you tomorrow? Can you bring them here tomorrow morning?

A I would need --

Q I beg your pardon?

A I am going to need at least two days.

Q Two days?

A Yes, the records are in storage in the First District, which is West 157th and Lorain. They are out there now.

Q These records reveal the tours of duty of this vehicle, 5917

A Yes, it would.

Q Reveals the mechanical repairs made on this vehicle, is that correct?

A Yes, they would.

Q And would reveal just everything that has been done with regard to this vehicle from the time you purchased it until the present time, is that correct?

A It would reveal the activities of the men assigned to that vehicle for any given time.

MR. FLEMING: May we approach the bench for a moment, your Honor?

MR. LAURIE: May we have the subpoena, Lieutenant?

(Whereupon a conference was held between Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: Lieutenant, you had a subpoena there that asked for records pertaining to about 10 cars, something like that, is that right?

THE WITNESS: Yes, sir.

THE COURT: Counsel indicates it could be more than that, approximately 10?

MR. LAURIE: Over several months.

THE COURT: From July 1, 1968 until I believe May 19th, something like that, 1969?

THE WITNESS: Yes.

THE COURT: Counsel has indicated they are interested really only in the records of car 591, which was an ambulance.

MR. FLEMING: Yes.

THE COURT: From what periods to what periods?

MR. FLEMING: From the 22nd day of May, up until the present date.

MR. LAURIE: Objection.

THE COURT: To the present



date, you mean today?

MR. FLEMING: Up to until when  
was that removed, that bullet?

THE COURT: April 18th.

MR. LAURIE: Object to  
anything before the 23rd.

THE COURT: Lieutenant, is  
it possible to procure these and have them here  
by 9 o'clock tomorrow morning, just the one car  
and for this period of time?

THE WITNESS: Is that for car  
591?

THE COURT: 591.

MR. FLEMING: That is right,  
make it about July 21st to April 18th.

MR. LAURIE: Objection.

THE COURT: July 21st.

Make it, Doctor -- Lieutenant, July  
21st, from July 21st up until April 20th, is that  
what you are saying?

MR. FLEMING: Until April 18th.

THE COURT: Of this year?

MR. TOLLIVER: That would be  
through the 18th.

THE COURT: Well, make it

the 20th, so you have a leeway of a day or so.

THE WITNESS: All right.

THE COURT: Lieutenant, you could get your men after that right away and have it here by 9:15 tomorrow morning?

THE WITNESS: I will get them right on it, sir.

THE COURT: We have confidence in your ability to get it here by 9 o'clock tomorrow morning.

Is there anything you have before he gets these records?

MR. FLEMING: Nothing further at this time, your Honor.

MR. LAURIE: Nothing further, Judge.

THE COURT: You are excused.  
(Witness excused.)

MR. FLEMING: May we approach the bench?

(Whereupon a discussion was held between Court and counsel, outside the hearing of the jury and off the record.

THE COURT: We will take our

afternoon recess.

Don't talk to anybody outside the court room and don't let anybody talk to you.

You will be called back as soon as we have matters ready for you.

(Short recess taken.)

MR. FLEMING: If it please the Court, your Honor, I believe that Defendant's Exhibit C, which is Jones autopsy report, has not been offered. We offer it into evidence at this time.

THE COURT: The autopsy report of Lieutenant Jones. Is there any objection?

MR. CORRIGAN: No objection, your Honor.

(Defendant's Exhibit C was received in evidence.)

MR. FLEMING: Defendant's Exhibit D, E-1, E-2, which are the addendum to Jones, we offer.

MR. CORRIGAN: No objection, your Honor.

MR. FLEMING: And F, which is the addendum to Golonka.

MR. CORRIGAN: No objection.

THE COURT: They will be admitted.

(Defendant's Exhibits D, E-1, E-2, and F, were received in evidence.)

MR. FLEMING: Everything is in,

down to N, O, and P, which were rejected by the Court, I believe.

Q, R, and S, your Honor, depict 1384 Lakeview. We offer them at this time.

MR. CORRIGAN: No objection.

THE COURT: They will be admitted.

(Defendant's Exhibits Q, R, and S were received in evidence.)

MR. FLEMING: Z is the report rejected by the Court.

And CC is a photograph, also depicting 1384.

THE COURT: It will be admitted.

(Defendant's Exhibit CC was received in evidence.)

MR. FLEMING: GG, HH, and II are photographs of Taylor.

MR. CORRIGAN: No objection.

THE COURT: Admitted.

(Defendant's Exhibits GG, HH, and II, were received in evidence.)

MR. FLEMING: AAA is a photograph of Williams.

MR. CORRIGAN:

No objection.

THE COURT:

Admitted.

(Defendant's Exhibit  
AAA was received in  
evidence.)

MR. FLEMING:

KKK, LLL, MMM, and

NNN.

MR. CORRIGAN:

No objection.

THE COURT:

Admitted.

(Defendant's Exhibits  
KKK, LLL, MMM, and  
NNN were received in  
evidence.)

MR. FLEMING:

Triple Q, Triple P,

and Triple Q, are the coroner's reports on Johnson.

MR. CORRIGAN:

No objection.

THE COURT:

Admitted.

(Defendant's Exhibits  
OOO, PPP, and QQQ  
were received in  
evidence.)

MR. FLEMING:

Triple Z is the

scientific identification report on Brown.

MR. CORRIGAN:

I object to Triple Z,

your Honor.

THE COURT:

Triple Z will be

refused.

(Defendant's Exhibit  
ZZZ was rejected.)

MR. FLEMING: All the quadruples are in, except the medical reports, which was withdrawn, HHHH, and YYYY, which was made a State's Exhibit. I think you made that, that is McMillin's medical report.

That is it, your Honor.

THE COURT: Anything further at this time, Mr. Fleming?

MR. FLEMING: It was our understanding, your Honor, that we don't have any more evidence at this time, and we have no objections to the State presenting its rebuttal evidence at this time.

MR. LAURIE: The State will call Dr. Ashby as a rebuttal witness.

REBUTTAL

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, and to rebut the evidence offered on behalf of the Defendant, called as a witness MARSHALL WINSTON ASHBY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Sir, will you give us your full name and spell your last name?

A Marshall Winston Ashby, A-s-h-b-y.

Q Please keep your voice up loud and clear. Tell us what is your profession or occupation?

A I am General Surgeon employed by the City as Police Surgeon at the Police Medical Bureau.

Q You are a Doctor of Medicine?

A Yes, sir.

Q And where have you received your formal training to be a physician?

A I was graduated from Medical College, Washington, D.C., Howard University Medical School, and I did my first year of training as an intern at St. Alexis Hospital



here in Cleveland,

I did two years of surgical residence here at St. Alexis and one year, Homer Phillips, and finally two years at Freedman's Hospital, which is a training hospital for Howard University Medical School.

Q And you are now practicing locally in this city or this community?

A Yes, sir.

Q And you are licensed to practice medicine in the State of Ohio?

A Yes, sir.

Q And besides your private practice, I think you said you also are the doctor for the Cleveland Police Department?

A Yes, sir.

Q And how long have you been the doctor for the Cleveland Police Department?

A Approximately 14 months now.

Q And on or about the month of July, 1968, were you working in that capacity, too, as a doctor for the Cleveland Police Department?

A Yes, sir, I was, sir.

Q In line with your duties as a doctor for the Department, did you -- did there come a time when you did some medical studies or work with a patient by the name of

William McMillin --

A Yes, sir.

Q -- tow truck driver for the City of Cleveland?

A Yes, sir.

Q Did you bring with you, sir, at the request of the State some negatives -- X-rays of Mr. William McMillin?

A Yes, sir.

Q May I see them?

(The documents were handed to counsel.)

MR. TOLLIVER: Judge, may we, for the record, object and approach the bench and explain our reasons for the objection?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

(Thereupon the following proceedings were had in the chamber of the Court out of the presence of the jury):

THE COURT: Doctor, are you familiar with the records pertaining to this patient, Mr. McMillin?

THE WITNESS: No, I am not.  
I didn't see this.

(The document was handed to the witness.)

THE COURT: There is an X-ray report attached to that.

THE WITNESS: I saw the X-ray report.

THE COURT: Well, are the X-ray reports -- just flip that over. They are attached there.

MR. LAURIE: There's two sheets there.

THE COURT: Are the X-ray reports that you see there reports of X-rays that you have examined or you have with you in Court here today?

THE WITNESS: Yes, sir.

THE COURT: All right. Now, there is testimony in this record by a nurse in which she was asked these questions:

"In other words, does this record, pertaining to that X-ray record, reveal that the patient was injured by anything other than shotgun pellets?"

And she said, "No."

THE WITNESS: Yes.

Q Is it your interpretation of the X-rays and also a complete reading of the X-ray report that you can testify

that the patient was injured by something other than shotgun pellets?

THE WITNESS: Yes, sir.

THE COURT: Now, this is

based upon your reading of the X-ray report that is part of that record there and also the X-ray plates themselves?

THE WITNESS: Yes, sir, plus

based on the fact that I removed some of them.

MR. FLEMING: Can we ask him

a question or two about these records?

THE COURT: Yes.

MR. FLEMING: Now, is there

anyplace in these records that reveals that there is something other than -- that the patient was wounded by something other than pellets?

THE WITNESS: Yes, sir, on the

emergency admission sheet, in which it indicates that "A right flank large penetrating wound."

MR. FLEMING: Where are you

reading?

THE WITNESS: "A right flank

large penetrating wound" (indicating). This indicates something other than injury by a pellet and also, it mentions also "A large right flank

4547

wound" in the diagnosis, "penetrating caliber?

Number 30?"

MR. FLEMING: But the record itself doesn't state that the --

THE WITNESS: Also, the interpretation of an X-ray alluded to the fact that it was something other than a gunshot pellet.

MR. FLEMING: But it doesn't state that?

THE WITNESS: It doesn't state in clarity that there was,

MR. FLEMING: Anywhere in that record, does it state, in clarity -- I believe the testimony in this case was from the nurse that she wasn't qualified to testify as to whether or not the patient had any other wounds, other than pellets, but insofar as reading that record there was no indication that there was any other wound, other than a pellet wound, with clarity?

Is that the fact?

THE WITNESS: With clarity, there is indication that there was injury other than with pellets. I mean -- I mean, this was what you are saying about this other woman was her opinion; but when I read the record, I see differently.

MR. TOLLIVER: Can we ask this

question: Because you are a doctor, you are able to interpret what this particular report shows, is that right?

THE COURT: Because he is able to read the writing there, he is able to interpret this?

THE WITNESS: This is the first time I have read this or seen this, but it helps. But it is not the first time I saw the X-rays.

MR. TOLLIVER: I understand that, but I am saying: This is the first time you have seen this report?

THE WITNESS: This particular report here (indicating), but not the X-ray reports and interpretation.

MR. TOLLIVER: I understand that. Now, the question was, that a nurse who read this, not being a doctor, made the appraisal that, from the record, it did not -- put it this way -- did not show specifically some other wounds in the body, other than a shotgun pellet?

THE WITNESS: I would beg to differ with you, sir. It does state here, with clarity, there was a large right flank wound.

It not only mentions it once, but it

mentions it twice.

THE COURT:

Okay, gentlemen.

MR. FLEMING:

Doctor, what does

that mean, a large flank?

THE WITNESS:

A wound is an

open lesion --

MR. FLEMING:

Just a minute.

THE WITNESS:

Yes, sir.

MR. FLEMING:

Assuming that

you hadn't read the X-ray report and that you weren't familiar with the X-rays, as you are --

THE WITNESS:

Yes, sir.

MR. FLEMING:

-- reading that

"large flank wound," what would you interpret it to be?

THE WITNESS:

I would interpret

first "large," meaning something other than small; on the right side, the "flank" referring to the side; a "wound," meaning open lesion, and "open lesion" could be either cuts or a penetrating wound.

THE COURT:

Okay.

-- --



(Thereupon proceedings were resumed in the courtroom, in the presence of the jury, as follows:)

Q (By Mr. Laurie) Doctor, showing you what has been marked as State's Exhibit 264, which was identified as a Forest City Hospital emergency room record of a one William McMillin, will you look at that first, Doctor.

MR. FLEMING: May the record show our continuing objection to this testimony on the basis that it is not proper rebuttal, your Honor?

THE COURT: It may so show, and the objection is overruled.

(Document handed to the witness.)

Q Have you looked at it, Doctor?

A Yes, sir.

Q Can you tell us, Doctor, if that exhibit shows whether Mr. McMillin had received other wounds, other than a shotgun pellet or pellets wounds?

A Yes, sir. It states twice there were other wounds other than gunshot wounds -- the pellet wounds.

Q Does that record reflect that X-rays were also taken of this patient; and, if so, did it reflect the other type wounds?

A Yes, sir, it did.

Q And now you are looking to the attached sheet to the exhibit, is that right, for your answer?

A Yes, sir. This radiologist's interpretation of the films.

Q Pursuant to this report and the work that you may have done on Mr. McMillin, did you bring some X-rays which correspond to that report?

A Yes, sir.

MR. TOLLIVER: May I object, Judge. There was no testimony about X-rays.

THE COURT: The X-ray report is attached.

MR. LAURIE: Right on there.

MR. TOLLIVER: My objection.

THE COURT: The purpose of the rebuttal -- come up.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

Q (By Mr. Laurie) Doctor, will you tell the jury, using that exhibit I showed you, State's Exhibit 264, and explain to the jury what in that record reveals wounds, other than a shotgun pellet wound or wounds in the body of Mr. McMillin?

A Well --

Q Speak up loud.

A In the record of the complaints, they list:

"Multiple shots (pellets) wounds. Neck, right chest, right thorax, arms, back," and the physical examination also reveals "right flank large penetrating wound."

Q What does that specific tell you, if anything, Doctor?

A It means, of the right side of the abdomen, there was a large penetrating wound, a large wound, better than a small; of course, this is arbitrary, but "penetrating," it went beyond the surface of the skin and it was large enough to be recognized as a hole or a cavity.

Q And that is consistent with a wound other than a shotgun pellet?

A Yes, sir.

Q All right, then, proceed.

What if anything else explains other types of wounds?

A On the diagnosis, final diagnosis of the doctor, he wrote down, he wrote: "Multiple shot wounds, one large right flank wound penetrating."

Q What does that mean, Doctor?

A "Penetrating," going beyond the skin surface.

Q And "large flank wound?" means what?

A Right side.

Q In size, again, is that consistent with something other than a shotgun pellet wound?

A Yes, sir.

Q All right. What else, in line with that same subject matter, is on that report?

A As far as the interpretation of the X-rays?

Q Yes.

A In the interpretation of the X-rays --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

MR. LAURIE: It's in the record.

THE WITNESS: It's on the report, sir.

THE COURT: The objection is overruled.

Q (By Mr. Laurie) Go ahead.

A It states: "In the A. P. projection," meaning from front to back, "there are gunshot pellets overlying the abdomen. There is one radiopacity within the soft tissues overlying the right lateral aspect of the mid-abdomen," referring to this area (indicating), where the large penetrating wound was present.

Q Is that particular phase of it inconsistent with some wound other than a shotgun pellet wound?

A Yes, sir.

Q Continue, Doctor.

A Also, giving testimony to the fact that there was other than pellets within the soft tissue, there is an interpretation of the right thigh X-ray, which says:

"There are metallic fragments and pellets within the soft tissues of the proximal and midportion of the thigh."

Q Is that consistent with the fragments -- is that consistent with fragments of both shotgun pellet wounds and other type gunshot wounds?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A Yes.

Q (By Mr. Laurie) All right, Doctor.

Did you remove a fragment from the body of McMillin, other than gunshot pellets or pellet?

MR. TOLLIVER: Objection.

THE COURT: Sustained.

Q Were some X-rays taken to substantiate this report?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Sustained.

MR. LAURIE: That's all we have.

- - -

CROSS-EXAMINATION

BY MR. FLEMING:

Q Doctor, I believe that the record will reveal that Mr. Corrigan yesterday cross-examined a registered nurse by the name of Mrs. Harrison and during that examination he asked these questions and she gave these answers;

"You said most of the wounds were pellet wounds, is that correct?"

And her answer was, "Yes."

And that is correct, isn't it, most of the wounds are pellet wounds?

A Most, not all.

Q "You said most of the wounds were pellet wounds, is that correct?"

And her answer was "Yes."

That is correct, isn't it?

A Yes, sir.

Q He asked, "What were the others, that were not pellet wounds?"

"Answer: I, myself, did not observe any other wounds on his body, because by that time I was taking care of another patient. The doctor was with him then."

His question then was: "But there were other wounds, other than pellet wounds; is that correct?"

And her answer was, "I cannot testify to that, exactly. You would have to -- that would probably have to be from the records."

Mr. Corrigan's question: "Do the records show any deeply-embedded slugs in his body?"

And her answer was, "No."

Now, is there anyplace in that record where it is shown that there were any deeply-embedded slugs in the patient's body?

A Yes, sir.

Q Where is that, Doctor?

A In the X-ray reports attached to this report.

Q And in what manner?

MR. LAURIE:  
full answer, Judge?

May we have the

THE COURT:  
your answer?

Had you completed

THE WITNESS:  
rephrase your question, please.

You asked me --

MR. FLEMING:

Yes.

THE COURT:  
minute.

Pardon me just a

Mrs. Bourne, please read the question and the part of his answer.

(The question and answer were read by the

reporter.)

A In the manner of the interpretation of the shot --

Q No, my question isn't one of interpretation, Doctor.

My question is does that record state anywhere that there were deeply-embedded slugs in the patient's body?

A It does not attach to the name or nomina "slug."

Q Beg pardon?

A It does not attach the name or nomina "slug" to the radiopacity which was observed.

Q No --

THE COURT:

He said the

word "slug" is not used.

Q My question is this, Doctor, anywhere in that record, is there any statement that there is a deeply-embedded slug in that patient's body?

A According to the nurse --

Q You can answer that yes or no, not interpretation.

MR. LAURIE:

Objection.

A My interpretation, yes.

Q Not interpretation. Is it stated on that record?

A Not the word "slug."

MR. FLEMING:

All right.

You may inquire.



REDIRECT EXAMINATIONBY MR. LAURIE:

Q What is used in lieu of the word "slug" in that report?

MR. TOLLIVER: Objection.

THE COURT: Is there a word that is synonymous with slug?

THE WITNESS: Yes, sir.

Q Or words?

A To be non-committal, the radiologist would use a term --

Q Pardon?

THE COURT: "To be non-committal, a radiologist would use a term," he hasn't finished.

A They would use a term such as radiopacity --

MR. FLEMING: What does radiopacity mean?

THE WITNESS: Not able to be penetrated by X-rays. In other words, it reflects the X-rays, interprets it as a sharp shadow on the X-ray film.

Radiology is the study of shadows. X-rays pass through the body at different rates,

striking soft tissue and bone and reflecting off them at different speeds. This reflects on an X-ray film.

MR. FLEMING: I see.

MR. TOLLIVER: I would object to that question and ask that the answer be stricken.

THE COURT: Overruled.

MR. LAURIE: That is all, Doctor. Thank you.

(Witness excused.)

MR. LAURIE: The State has no other rebuttal witnesses, your Honor.

THE COURT: Then you expect to have no others?

MR. CORRIGAN: No, sir.

MR. LAURIE: Wait a while.

At this point, I believe the State has a few more exhibits it would like to offer into evidence, however. I believe we stopped with State's Exhibit 250, at an earlier date.

I'd like to offer into evidence State's Exhibits 251, 252, 253, 254, and 255.

THE COURT: Do you have them there?

MR. FLEMING: We have an objection to this one (indicating). That has already been done. This is a second copy. That is the second photo.

THE COURT: I am familiar with it.

MR. LAURIE: And State's Exhibit 259.

MR. FLEMING: Same objection to these.

MR. TOLLIVER: Same objection.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

MR. LAURIE: We will withdraw State's Exhibits 251 through 255.

Your Honor, I also will offer 260, 261, and 262.

THE COURT: They are in.  
They are already admitted.

MR. TOLLIVER: Note our objection.

THE COURT: Mrs. Bourne indicates they were admitted yesterday.

MR. LAURIE: I think that's all I have. I think they are all in, Judge.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: Ladies and gentlemen, we will go a little bit further in the admonition that I have been giving you time and time again, although I am sure each one of you could repeat it and say it better than I can on each occasion we have been talking about the time you leave the courtroom.

We are at this stage of the case, with the

possible exceptions of some testimony by the lieutenant that was here before and the possibility of one other witness, you have heard all of the evidence in this case.

Now, the case is far from concluded, as you will understand. All of the evidence must still be put into the record here, whatever other witnesses may still appear, but I am certain that they won't be any more than the ones I have indicated, so you will have some idea as to the procedure.

When the evidence is concluded, the procedure then is for each side to argue the case to the jury. We will give you admonitions with reference to that, and I won't repeat it now.

However, the law provides that in all lawsuits the plaintiff, in this case, the criminal case, the State of Ohio is the plaintiff; that the attorneys for the plaintiff have the right to give the opening and closing argument; that is, the attorneys, one of the attorneys for the State of Ohio would first argue the case to you.

Under the law, the entire argument which would probably be given by -- a portion at least by both Mr. Fleming and Mr. Tolliver, at least I assume, that would then be given; and the final

argument would be given then by the attorneys for the State of Ohio.

The law provides it may be done in this case. This is the way, of course, it will be done.

After the arguments are concluded, the Court will give his general instruction and, pursuant to a request that was made in conformity with the law, the instructions will be given by the Court, in writing, to the jury, and they will have it with them in their jury room.

This will be read to you in court, and with you prior to the time you go to deliberating the case.

Don't anticipate that this case is going to be in your hands tomorrow, even though we are at this stage of the proceedings, as I have indicated to you, but I just want to give you some idea as to the status of the case.

We are at the stage, in any event, where, at least you know that except for the two instances I have mentioned to you, you heard all the evidence in the case.

So we will adjourn at this time.

Is that satisfactory?

THE BAILIFF:

Satisfactory.

THE COURT:

Until 9:15

tomorrow morning.

Once again, while you are outside the courtroom, don't talk with anybody. Don't talk with each other about the case until twelve of you will have plenty of opportunity to talk with each other about the entire case but, in the meantime, don't talk to each other about the case. Don't permit anybody to talk to you about the case.

We will adjourn court until 9:15 tomorrow.

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(Thereupon an adjournment was taken to 9:15 o'clock a.m., Wednesday, May 7, 1969,

at which time the following proceedings were had:)

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