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## 54/08/03 Corrigan Moves To Speed Appeal

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# CORRIGAN MOVES TO SPEED APPEAL

## Aims Motion to Advance Argument on Setback

BY GEORGE J. BARMANN

That big, fat brief case Attorney J. Corrigan sets down with a thump on courtroom counsel tables yielded up another move late yesterday in the defense of Dr. Samuel H. Sheppard: notice of appeal.

The lawyer filed notice in Appellate Court that he would appeal a decision by Common Pleas Judge Frank J. Merrick which denied his application for a writ of habeas corpus for Dr. Sam, charged with murder.

Corrigan had contended, at the hearing in Lakeside Courthouse in the morning, that the Bay Village doctor had been "illegally arrested" on a warrant issued by Bay Village Council President Gershom M. M. Barber.

Barber signed the warrant because the mayor of Bay Village, J. Spencer Houk, a close personal friend of Dr. Sam, disqualified himself. The mayor, who would be a witness in the case, was present when Sheppard was charged.

### Quotes '41 Law

Judge Merrick, in refusing freedom to the doctor, quoted a 1941 state law which he said gave a Council president full powers to act as a magistrate regardless of the presence of the mayor.

The judge, after getting affirmative answers to two questions—"Is Bay Village a city?" and "Is Barber the duly elected president of the Council?"—brushed aside and oral arguments and said: "Is that all the evidence, gentlemen? The law is clear. The writ will be refused. The prisoner is ordered remanded to the custody of the sheriff."

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# Corrigan Acts to Speed Appeal on Ruling

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Corrigan noted that, in the normal course of events, Appellate Court would not be able to hear the appeal for about six weeks. He said he would file a motion to advance the hearing. He added: "I suppose that will take a day or so."

## Faces Hearing Saturday

Sheppard is to appear at the Bay Village Hall at 1 p. m. Saturday for a preliminary hearing on the charge that he murdered his wife, Marilyn, in their home July 4. At that hearing it will be determined whether he will be bound over to the county grand jury.

The hearing yesterday lasted 50 minutes.

It started with Judge Merrick's questioning and ended with Corrigan calling across the room to Sheppard in a loud voice: "I'll see you this afternoon, Sam." The packed courtroom listened to every word of the proceedings.

Dr. Sam, wearing his familiar neckpiece, was accompanied from his County Jail cell by Sheriff Joseph M. Sweeney and Deputies Carl A. Rossbach and David Yettra. They sat behind him at one of the counsel tables. Corrigan and the other Sheppard attorney, Arthur E. Peterzilge, sat close to the prisoner.

## Chief Story Attends

Across the room, at another table, were Chief Assistant County Prosecutor Saul S. Danaceau, Assistant County Prosecutors John J. Mahon and Thomas J. Parrino, Chief of Police Frank W. Story and Richard S. Weygandt, Bay Village law director.

In the audience were Dr. Richard N. Sheppard, brother of Dr. Sam, and the prisoner's father, Dr. Richard A. Sheppard. Mayor Houk, Chief of Police John Eaton of Bay Village and Police Lieut. Clifford Mercer and Patrolman Fred F. Drenkham of the Bay Village Police Department were also there.

Photographers lighted the whole courtroom with their flash pictures of Dr. Sam. Movie and television cameras whirred. A crowd of spectators, mainly

women employees of Lakeside Courthouse, oozed through the door despite Judge Merrick's ban against them. The judge came in, and the hearing started.

"Our contention, your honor," began Corrigan, "is that the warrant on which the defendant was arrested shall be issued by a judge, clerk or magistrate. In order to issue a warrant, an affidavit charging criminal violation must be filed before one of these three.

## Calls Warrant Illegal

"We contend that the magistrate in Bay Village law is Mayor J. Spencer Houk, and by law he has jurisdiction in criminal cases. In the absence or disability of the mayor, then the powers must be assigned to a justice of the peace.

"We claim that the warrant on which Sam Sheppard was arrested is defective because at the time it was issued the mayor was in the city and he was not disabled. The confinement of the defendant in County Jail is under illegal warrant . . .

"We realize that it would mean no great difficulty to put this defendant in jail under a regular warrant, but we must raise the question so there will be no usurpation of power by people not entitled to exercise it."

At this point Judge Merrick asked his questions about Bay Village and got his affirmative answers. He remarked: "If these answers are correct the answer in this case is very simple and can be arrived at rather quick-

ly." He then cited the 1941 state law and said Barber had full magistrate powers.

## Questions Mayor Houk

Corrigan then read from sections of the Ohio General Code to support his case and said he wanted to put his evidence in the record. He called to the stand Mayor Houk and began (this is a partial report):

Q—Were you in the city (of Bay) on the 30th of July?

A—I was.

Q—All day?

A—Yes.

Q—Were you present in the City Hall on the 30th at the time Sam Sheppard was brought before a man named Barber?

A—I was.

Q—Did you work that day?

A—Part of it.

Q—When did you leave home for the hall?

A—10 a. m.

## In County, Says Mayor

Q—Were you in the city in the afternoon?

A—I believe I was.

Q—Were you away from the county in July?

A—No.

Q—Did you assist in the arrest?

A—No.

Q—Were you present at the

time of the arrest?

A—No.

Prosecutor Mahon then took over the questioning:

Q—You have been a friend of Sam Sheppard's a long time?

A—Yes.

The questions and answers concerned the murder morning when Dr. Sam telephoned the mayor and told him to get over to the house "quick." Corrigan began objecting to each of these questions and was overruled. Mayor Houk went on to say he saw Marilyn and presumed she was dead.

Copies of the warrant and affidavit were put in the record. Then Lieut. Mercer and Patrolman Drenkham were heard. Barber testified to his election and office and told about signing the warrant and presiding at the hearing. Mahon introduced a copy of the Bay Village charter, which lists the duties of the Council president.

When the testimony and evidence were complete Judge Merrick announced his ruling.

Dr. Sam was taken out through the crowd for the ride back to jail. He was handcuffed again. His brother, Dr. Richard, reached over and patted Sam on the back as he was taken out.