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54/08/12 Testimony on Doctor's Writ Plea

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Testimony on Doctor's Writ Plea

Following is a capsule review of today's testimony in the hearing before Common Pleas Judge Frank J. Merrick on the request of Attorney William J. Corrigan to have the first degree murder preliminary hearing transferred from Bay Village Court:

Corrigan asked for, and was granted, a separation of witnesses.

Corrigan then called Mrs. Leah Jacoby Montgomery as his first witness.

At that point when photographers appeared in the courtroom Judge Merrick said, "there will be no pictures taken while this court is in session."

"Anybody taking any pictures while the court is in session, I want it understood, will go straight to jail."

CORRIGAN STARTS EXAMINATION

Corrigan asked the preliminary questions.

She gave her name, address, 1673 Glenmont Rd., Cleveland Heights. She said she has worked for the Cleveland Press for

seven years and is currently assigned to cover the West Side suburbs.

Q.—Do you report activities of Bay Village?

A.—Yes.

Q.—On July 29, do you recall having a conversation with Mr. Barber of the Council of Bay Village?

A.—Which day?

At that point Corrigan handed her a copy of a Cleveland Press story that appeared on the 29th.

A.—The story appeared on the 29th of July and is related to a conversation that took place on the 28th between 7:30 and 8 p. m. It was a conversation with Barber after the Bay Council meeting.

Q.—Does the story state that Barber said the delay of Dr.

Sam Sheppard's arrest was 'silly'?

A.—He did.

Q.—Are there other quotes in the story made by Barber?

The witness reading from the newspaper read the following quotation, "Another silly 12-hour delay—another reason for our community to be made a laughing stock by Clevelanders."

Then she read another quote, "Do you think anyone in Council would be getting preferred treatment that Dr. Sheppard is getting? I don't think I would get that treatment."

Bay Law Director Richard Weygandt cross-examined the witness.

Q.—Was this a special meeting of Bay Council?

A.—Yes.

STATEMENT NOT OFF RECORD

Q.—Before making any of these statements to you did Mr. Barber say they were off the record?

A.—Not that I recall.

Weygandt then repeated the statements as quoted in the newspaper.

Q.—Of your own recollection, are you sure he said that?

A.—Yes—to my recollection. Called by Corrigan was Bay

Councilman George J. Serb who operates a filling station on Lake Rd. He lives 25856 Lake Rd.

COUNCILMAN TELLS OF BAY SESSION

In his preliminary testimony he said he is now in his third term as a Bay councilman. He was examined by Fred Garmone. Garmone asked Serb about a Council committee meeting held on the night of July 21 at Council President Gersham Barber's home.

Q.—Who presided?

A.—It was an informal meeting, but Barber led the discussion.

Q.—Was there anything said by Barber regarding the Sam Sheppard case?

A.—Yes.

Q.—Relate it.

A.—Barber stated that the purpose of the meeting was to establish certain responsibilities in case of the arrest of Dr. Sam Sheppard.

Serb quoted Barber as saying that "the Cleveland police were proposing the question of responsibility in false arrest and where it would fall."

SAID "SAM SHOULD BE IN JAIL"

Serb continued, "As nearly as I can recall Barber stated that Dr. Sam Sheppard should have been in jail."

Q.—Any further statements by Barber?

A.—Barber stated that in his opinion if Dr. Sam Sheppard were arrested and jailed and subjected to interrogation the case would be solved in a matter of hours.

Richard Weygandt cross-examined the witness.

Q.—In connection with statements Barber made at this meeting, during the discussion did he make any qualifying statements that would indicate he was prejudiced?

Q.—But he had already expressed his opinion that Sam Sheppard was guilty. Is that right?

A.—I would say so.

The first witness called by the county to refute the prejudice charge was Lester W. Schaffer, of 27905 Osborne Rd., Bay Village, a councilman.

Q.—Were you present at the special Council meeting held on July 28?

A.—Yes.

Q.—After the meeting adjourned were you present at any conversation held with Barber relative to the Sheppard case?

A.—Yes, I was one of the last to leave.

Q.—As reported in the Press of July 29, they quoted Mr. Barber as saying, "Do you think anyone in Council would be getting the same preferred treatment Dr. Sheppard is getting. I don't think I would get that treatment."

A.—Yes, I was one of the last to leave.

Q.—What did he say?

A.—He called me and told me that regardless of what was said or printed, in his own mind he was not prejudiced.

At this point Serb offered Judge Merrick certified copies of minutes from Council meetings in Bay and after examination of the copies by Judge Merrick and lawyers on both sides

Q.—Did you hear those statements made by Mr. Barber?



Gershom M. M. Barber, Council president (left), and Bay Law Director Richard S. Weygandt.

the words about Sam Sheppard being guilty or did you infer that from his words?

A.—I don't recall the words he actually used.

Q.—Did you ever hear Barber use the expression that the door was always open?

A.—Yes, several times.

Weygandt then asked that the witness's earlier testimony be stricken. Judge Merrick overruled the motion.

'OPINION' SHIFT TALK AGAIN RELATED

Redirect examination by Garmone:

Q.—Did Barber tell you that if he were given evidence that Sam Sheppard was not guilty he would change his opinion?

A.—Yes.

Q.—Was that subsequent to the first conversation six days ago?

A.—Yes.

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ROBERT L. SWANKER Cites Barber 'bias'

Sheppard case and expressed opinion with people at Normandy School? (the place where the inquest was held).

A.—Yes, but my opinions were qualified.

Q.—You have received a lot of telephone calls about the Sheppard case?

A.—Not many.

Q.—You talked with dozens of people about this case?

A.—I would say, no, less than half dozen.

Q.—You had no experience as a judge and you're not a lawyer?

A.—I am not a lawyer and the only experience I've had has been in Police Court. I've had no legal training.

Q.—You do know Mr. Swanker and he is a good friend of yours and he was at your home?

A.—Yes sir.

Q.—Now, Mr. Swanker wouldn't say anything on the witness stand that was not true would he?

A.—He will have to answer that himself. He is a reliable person.



Bay Village Councilmen Dale A. Smith (left) and Lester W. Schaffer.



Bay Councilmen Clifton A. Gielow (left), and George J. Serb.

posed by asking, "You had legal counsel, did he?"

A.—I didn't ask him.

Barber then went through the hearing step-by-step and asserted that Sheppard had not asked for legal counsel during the course of the hearing, only after the hearing was over.

On further direct examination by Weygandt:

Q.—Did you read the charge to him?

A.—Yes.

Q.—Did you ask him if he had counsel?

A.—Yes. I made the statement: "You are entitled to legal counsel."

Barber then pointed to Weygandt and said, "You requested that the hearing be postponed. I agreed and then I said that he could be taken to the County Jail."

Q.—Did you ask him for his plea?

A.—I'm sorry, I asked him how he pleaded and he said "Not guilty."

Q.—After the plea what transpired?

A.—You asked if there could be a postponement of the hearing. And I said all right, and then I ordered Dr. Sheppard removed to County Jail. Then, after that, I believe someone asked about the attorney and Dr. Sheppard said he was on his way. Dr. Sheppard asked if he could wait there for his lawyer and I said, "No, there would be no abrogation of his civil rights if he were removed to County Jail and his lawyer visit him there."

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that Dr. Sam Sheppard could not be afforded the full and complete hearing which this matter calls for, and we hope you will submit this matter to a court or a magistrate who will do so."

In Weygandt's closing statement he cited a legal decision that a statement by a magistrate that he has no bias or prejudice is sufficient to allow him to hear the case. He cited another ruling that tentative opinions formed from newspaper stories are not sufficient to overthrow trial judges' integrity.

Garmone in reply said only that testimony showed that Barber said "The door is closing in on Dr. Sam."

they were refused and returned to Serb.

The next witness was Robert L. Swanker, of 537 Cahoon Rd., Bay Village. He is an engineer with Standard Oil of Ohio. Under direct examination by Garmone, Swanker said he had known Barber about 10 years and had been employed as the Bay director of public service for three years, his service ending about a year ago.

Q.—Did you have a conversation with Mr. Barber about a week or 10 days ago regarding the Sheppard case?

A.—Yes.

Q.—Where?

A.—At Barber's residence.

Q.—Are you able to give the day?

A.—I think it was on a Friday—probably six days ago.

SAYS BARBER BELIEVED DOCTOR GUILTY

Q.—Will you relate the substance of the conversation to Judge Merrick?

A.—Well, we of course discussed this problem and in general . . .

Q.—Can you give his words?

A.—I can give my best recollection, but I'm afraid I can't repeat his words.

Q.—What is your best recollection?

A.—In general, Barber thought that Dr. Sam Sheppard was guilty as charged.

Q.—And this was six days ago in his home?

A.—Yes.

Weygandt cross-examined the witness.

Q.—Did Barber make any additional statements to you?

A.—There was a lot of conversation, I presume you get the idea that his mind could be changed, and I believe it could be changed if he were given particular evidence about Sam Sheppard's innocence.

An objection by Garmone was sustained by Judge Merrick.

Q.—Can you relate any further conversation with Mr. Barber?

WILLING TO CHANGE HIS OPINION

A.—Yes, he told me definitely that his mind was open and that if he were to see evidence that Dr. Sam Sheppard was not guilty he would certainly change his opinion.

Weygandt dismissed the witness but Assistant County Prosecutor John Mahon intervened, consulted with Weygandt and then Weygandt put these additional questions to the witness:

Q.—In the first conversation you had with Barber, did he use

A.—No.

The witness was cross-examined by Fred Garmone.

Q.—When was this conversation?

A.—About a half hour after the meeting.

Q.—Who participated in the conversation?

A.—Barber, Miss Jacoby and myself.

—Where did you go after you had this conversation?

A.—I went directly home.

Q.—Could there have been some conversation between Mr. Barber and Miss Jacoby that you didn't participate in?

A.—No. I watched them drive away in their cars.

The next witness was Gersham M. Barber, 563 Bradley Rd., Bay Village, who said he had served as president of Bay Council for three years.

Q.—You read the statement in the Press in July 29 attributed to you. One statement referred to spoke of "preferred treatment" that Dr. Sheppard was receiving. Did you make that statement?

A.—Not that statement.

Q.—Do you entertain any ill will or hostility against Dr. Sam Sheppard?

A.—No. I would go out of my way to give him a fair trial.

DENIES STATING DR. SAM WAS GUILTY

Q.—Are you biased or prejudiced?

A.—No.

Q.—Do you know of any reason why you should be disqualified or why you couldn't give a fair and impartial hearing?

A.—No, I do not.

Q.—Could you give a fair and impartial trial?

A.—Yes sir.

Q.—Have you ever made a statement in which you stated that Dr. Sam Sheppard was guilty of the murder of his wife?

A.—I have not.

CORRIGAN BEGINS CROSS-EXAMINATION

The witness was then cross-examined by William J. Corrigan.

Q.—You are employed as an accountant at the Joseph and Feiss Co.?

A.—Yes.

Q.—You have discussed this matter with employes at Joseph and Feiss?

A.—Yes.

Q.—You have expressed an opinion?

A.—No, unless qualified.

Q.—You have expressed an opinion that Dr. Sam Sheppard is guilty.

A.—No sir.

Q.—You have discussed the

BARBER QUESTIONED BY JUDGE MERRICK

Q.—(Judge Merrick) When did you first learn you would be the magistrate in this case?

A.—On July 30. It came with terrific impact.

Q.—You state that you have never expressed an opinion unless you have qualified them?

A.—I have always given room for doubt.

My father practiced law for 50 years in this county, his father before him was a Common Pleas judge and I mention this because I am aware of the responsibility of a lawyer. I can't recall to the best of my knowledge of saying other than "Looks like the door is closing on Dr. Sheppard or that it looks bad for Sam," but I'm sure that I never said that he was guilty.

I did say, "The door seems to be closing on him, but is always open a crack."

The witness again was cross-examined by Corrigan.

Q.—You say your grandfather was a judge?

A.—Yes, my father was an attorney.

Q.—Did you ever study constitutional law?

A.—Yes, I majored in political science at Oberlin.

Q.—What time was Sam Sheppard brought before you?

A.—10:30 p. m.

Q.—What was the date on which Marilyn Sheppard was killed?

Barber started to answer and Corrigan said, "I'll refresh your recollection. It was on July 4."

Q.—Was Dr. Sheppard brought before you at 10:30 p. m. on July 30 at the Bay City Hall?

A.—Yes.

Q.—How many newspaper reporters were there?

Weygandt's objection was sustained by Judge Merrick.

A.—There were about 20 people there including about a half-dozen photographers.

Q.—When Dr. Sam Sheppard was brought before you, who majored in political science, did you wait until his lawyer arrived?

A.—No.

Barber at this point stated that there was no abrogation of Sheppard's civil rights.

Corrigan in his next question challenged Barber's explanation, pointed to the time of the hearing and also that "This man was charged in the press as the murderer of his wife."

SAYS HE CONDUCTED HEARING PROPERLY

Barber said he had conducted the hearing properly and had legal counsel. Garmone inter-

Leah Jacoby was then recalled to the witness stand as a rebuttal witness by Corrigan and briefly questioned on her earlier testimony. Both sides then rested their cases and Garmone delivered closing arguments on Dr. Sheppard's behalf.

He told Judge Merrick that his side had established a "very clear and concise case" of Barber's prejudice.

"You have a right to come to that conclusion," Garmone said "that Barber does have an opinion and has expressed one and