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## 54/08/12 Judge Studies Prejudice Bid

Cleveland Press

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# Judge Studies Prejudice Bid

Obviously tense and nervous, Dr. Samuel H. Sheppard entered Courtroom 7 on the third floor of Lakeside Courthouse at 10:15 a. m. today to hear arguments on his contention that he could not receive a "fair hearing" before Bay Village Council President Gershom Barber.

When the hearing ended at noon, Judge Merrick announced he will make his ruling, from which there is no appeal, tomorrow.

Flanked by Sheriff Joseph Sweeney and Deputy Carl Rossbach as guards, Dr. Sam walked down the aisle past 60 spectators.

Two spectators reached out and patted him on the back encouragingly — his older brother, Dr. Richard N. Sheppard, and Robert L. Swanker, former Bay Village service director.

Dr. Sam looked straight ahead, almost staring, his eyes shining, almost at the point of tears.

His chief defense counsel, William J. Corrigan, handed him a book of maps of Cuyahoga County. Dr. Sheppard pointed out a few places.

He folded his hands in his lap and fidgeted as Common Pleas Judge Frank J. Merrick opened court.

"We will dispense with opening statements," Judge Merrick announced. "We will proceed with the evidence. Mr. Corrigan, the burden of proof

is on you. Proceed."

Dr. Sam, wearing a gray suit and black tie, listened—without appearing to pay particular attention—as the first witness, Press Reporter Leah Jacoby, took the witness stand

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# Dr. Sam Attends "Prejudice" Hearing, Enters Courtroom Tense and Nervous

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and answered Corrigan's questions.

**Q.: Did you have a conversation with Mr. Barber about July 28?**

**A.:** Yes.

**Q.: Where?**

**A.:** In Council Chamber of Bay Village City Hall, after the council meeting.

### Remarks on Delay

**Q.: Did Barber state that the delay in the arrest of Sam Sheppard was silly?**

**A.:** He did.

Corrigan handed the reporter a July 29 Press and asked her to read three quotations that this story said were quotations of Barber.

**A.:** (Miss Jacoby reading): "Another silly 12-hour delay. Another reason for our city to be a laughing stock. Do you think any member of Council would get the preferred treatment that Dr. Sam has?"

**Q.: Did Mr. Barber make those statements to you?**

**A.:** Yes.

### Begins Cross-Examination

Cross-examination by Bay Law Director Richard S. Weygandt.

**Q.: Did Mr. Barber say these remarks were off the record?**

**A.:** He didn't say.

**Q.: Is it your best recollection that Mr. Barber made the statement about 'would anybody else get preferred treatment?'**

**A.:** To my best recollection he said that.

### Quiz Councilman

George J. Serb, a Bay Village councilman, then was questioned by Attorney Fred Garmone of Dr. Sam's five-man legal staff. Serb lives at 25856 Lake Rd., Rocky River, and operates a filling station at 22827 Lake Rd., Rocky River.

He was questioned about a meeting of the Council held on July 20 and a committee of the whole meeting held the following night in Barber's home.

**Q.: Was there any statement made by Barber at that committee meeting relative to the Sheppard case?**

**A.:** Barber said the purpose of our meeting was to establish certain responsibilities in case of the arrest of Sam Sheppard. He said the Cleveland Police Department had posed a question of responsibility in case of false arrest. Barber said he believed Dr. Sam Sheppard should have been in jail. He said, in his opinion, that if Dr. Sheppard had been jailed and put through the regular interrogation process the case would be solved in a matter of time or hours.

The next witness was Robert L. Swanker, 537 Cahoon Rd., Bay Village, a Standard Oil Co. engineer and formerly service director in Bay Village.

**Q.: Have you had any conversation with Mr. Barber about the Sheppard case?**

**A.:** Yes, I have.

**Q.: Where?**

**A.:** At the Barber home?

**Q.: When was that?**

### Thought Sheppard Guilty

**A.:** I think it was Friday, six days ago. We discussed this problem. He said he thought



**LESTER W. SCHAFER**, Bay Village councilman, denied in today's hearing that Council President Barber had made prejudicial remarks about Dr. Sam.



**BAY VILLAGE ACTING MAGISTRATE** Gershon M. M. Barber, who was to hear the preliminary case against Dr. Samuel H. Sheppard, waited with Bay Councilman Dale Smith to testify in today's prejudice hearing.



**ROBERT SWANKER**, former service director for Bay Village, was a witness for Dr. Sam.

Sam Sheppard was guilty, as charged.

Cross-examination by Weygandt.

**Q.: Have you had any other conversation about the case since then?**

**A.:** Yes. Mr. Barber told me his mind was open and he would change his opinion if he was shown additional evidence.

**Q.: Did he say the door was always open?**

**A.:** Yes, several times.

**Q.: When was the last time you and Mr. Barber talked about this matter?**

**A.:** Last night at 10 p. m.

### Dr. Sam Appears Angry

A recess was called at this point and Dr. Richard came up to the trial table and shook hands with his brother and sat down beside him. Dr. Richard and Dr. Sam and Attorney Arthur Petersilge had an animated conversation, Dr. Sam appearing to be angry about something.

Attorney Corrigan joined them and they were overheard discussing the night of Dr. Sam's arrest and how Dr. Sam had said to the acting mayor that his "attorney is on the way here."

After the recess Corrigan announced that he had con-



cluded presentation of his evidence.

Judge Merrick overruled Weygandt's request that the case be dismissed and said the balance of the testimony should be presented and both sides would have an opportunity for full arguments when the case was over.

Lester W. Schaffer, a Bay councilman and an account executive with the Griswold-Eschelman Co., then was quizzed by Weygandt about the special council meeting held July 28.

**Q.:** After that meeting was there any conversation in which you and Barber participated relative to the Sheppard case?

**A.:** Yes.

#### Read Story Excerpts

Weygandt then read excerpts from The Press story in which Barber was quoted as saying that Sheppard was being given "preferred treatment."

**Q.:** Did you hear Barber say any of these things?

**A.:** No.

**Q.:** Did you hear Barber say this: 'Do you think anyone on the council would get the preferred treatment that is being given to Sam Sheppard?'

**A.:** I did not hear Barber say that. I made that statement.

#### Barber Called

Gershom M. M. Barber, Bay Council president and the man who issued the murder warrant and whose right to preside at the Sheppard hearing is under attack, was then called as a witness. He lives at 553 Bradley Rd., Bay Village, and is an accountant.

**Q.:** You have read the statement attributed to you in the July 29 issue of The Cleveland Press? Did you say you thought Sam Sheppard was getting preferred treatment, that you wouldn't get such treatment?

**A.:** I did not make that particular statement.

**Q.:** Have you made a pre-determination of guilt in this case?

**A.:** No, I would go out of my way to see that he gets a fair trial.

**Q.:** Is there any reason why you couldn't hold a fair and impartial hearing?

**A.:** No.

**Q.:** Have you ever said definitely, "Dr. Sheppard is guilty?"

**A.:** Never, without qualification.

#### Cross-Examined

Cross-examination by Attorney Corrigan:

**Q.:** You have discussed this case at Joseph & Feiss where you work?

**A.:** Yes.

**Q.:** You've talked about it with a number of people a number of times at Joseph & Feiss, haven't you?

**A.:** Yes.

**Q.:** And you said he was guilty, didn't you?

**A.:** I did not say it in that way.

**Q.:** You've had a number of telephone calls at your home about this case?

**A.:** Yes.

**Q.:** You have talked to dozens of people about this matter, haven't you?

**A.:** Less than half a dozen strangers on the phone.

**Q.:** Have you had any experience as a judge?

**A.:** Only in police court.

**Q.:** Have you had any legal training?

**A.:** No.

#### Questioned by Judge

Judge Merrick asked Barber several questions.

**Q.:** When did you first learn you might be the magistrate in this case?

**A.:** About 7:50 p. m., July 30. (The night Dr. Sheppard was arrested.)

**Q.:** You had never heard of it before then?

**A.:** No, the thought never occurred to me. It hit me with a terrific impact.

**Q.:** You say you always qualified your statements. Would you explain that?

**A.:** My father and my grandfather were lawyers, and my grandfather was a judge. This concerns a man's life, I have

never made any definite statements of guilt. I have said it looks bad for Sam, and that the door seems to be closing on Sam. But I deny implicitly that I am prejudiced in this case. He'll get a fair trial with or without all these delaying actions.

#### Corrigan Resumes

Corrigan then resumed questioning.

**Q.:** You are a college graduate?

**A.:** I graduated from Oberlin College as a political science major.

**Q.:** Then you must have studied the Constitution of this country?

**A.:** Yes.

**Q.:** When was Sam Sheppard brought before you?

**A.:** 10:30 p. m.

**Q.:** How many reporters were there?

**A.:** I imagine there were approximately 20 people of the press there.

**Q.:** When Sam Sheppard was brought before you, a political science major, did you wait for his attorney or even think to ask him if he wanted counsel? You were told, weren't you, that his counsel was on the way?

**A.:** I was told that after he was brought before me.

**Q.:** You had a hearing at 10:30 at night and you say you can be fair?

**A.:** Yes.

#### Barber Again Quizzed

Weygandt re-questioned Barber.

**Q.:** On the night he was brought before you did you read the charge to him?

**A.:** Yes. I read the charge and told him he was entitled to legal counsel. He pleaded not guilty.

**Q.:** Was there any statement about an attorney coming out before the hearing was adjourned?

**A.:** No. There was no statement about an attorney until after the hearing was adjourned. I told him, "You can wait for your attorney at the County Jail."

In his closing arguments Attorney Garmone said in part:

"You have a right by his (Barber's) demeanor and his action on the stand to believe the man does have an opinion and that he has expressed an opinion and that there is no question that Dr. Sam couldn't be afforded the kind of hearing this matter calls for.

"There are plenty of unbiased courts in this county that will afford him the kind of a full hearing he is entitled to.

"Regardless of what the multitude may think, in view of this hysteria, we might call it, this man is entitled to a proper hearing under the American system of jurisprudence. He has the right to the presumption of innocence guaranteed in our Constitution."

#### "Loose Charges"

Weygandt answered by charging the opposing attorneys with making "loose charges and immaterial assumptions."

He asked the judge to stick to the law in rendering his decision, and cited two cases where he said courts had overruled affidavits of prejudice under similar circumstances.

At the conclusion of the hearing Judge Merrick announced that the case would be marked "submitted," with a decision to be given tomorrow. As handcuffs were snapped on Dr. Sam for the trip back to County Jail, his brother, Dr. Richard, shook hands with him.

Said Dr. Sam: "Say hello to mother, tell her I am fine."