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## 54/08/13 Highlights of Merrick Ruling in Sheppard Prejudice Case

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**MSL**

ACADEMIC ENDEAVORS



# Highlights of Merrick Ruling in Sheppard Prejudice Case

Here are excerpts from Common Pleas Judge Frank J. Merrick's ruling transferring preliminary hearing of the murder charge against Dr. Samuel H. Sheppard from Bay Village Mayor's Court:

It is axiomatic that persons accused of crime are entitled to a fair hearing surrounded by all constitutional and statutory guarantees. In case of doubt, such doubt should be resolved in favor of the accused.

While it is true that at all times all administrators of justice should be alert to these guarantees it is especially so where the charge is a very serious one and the possible punishment severe. The charge in the instant case is murder in the first degree, which in many instances is punishable by death.

The right to fair trial is a fundamental conception in the administration of criminal law no matter how revolting the crime charged may be. This is something the law contemplates and guarantees and which should be the aim of both the law and the court.

## Should Be Vigilant

The court should be astute and vigilant in seeing that the accused has a fair and impartial trial. Where the life of a human being is at stake the moral responsibility is increased by the jealous care with which the law regards life, and the trial of one thus charged calls for the strictest observance of the statutory provisions made for the protection of such life.

The verdict and judgment must not be the reflex of the clamor of the populace or the result of passion, prejudice or ill will against the accused. Whether guilty or not a defendant is entitled to a fair trial.

The accused is entitled to a trial before an unbiased, unprejudiced and disinterested judge, and if it is found that the judge before whom he is to be tried is not so qualified he may secure a judge who is.

Coming to the facts in this case, it is apparent beyond the



**PRELIMINARY HEARING** on the murder charges against Dr. Samuel H. Sheppard will be conducted by Common Pleas Judge William K. Thomas (left), designated today by Judge Frank J. Merrick, who granted a "writ of prejudice" against Bay Village Council President Gershon M. M. Barber.

peradventure of a doubt that the magistrate discussed the case with many persons and expressed a variety of opinions as to certain phases of the investigation and procedure.

It is admitted that he had these conversations both before and after he knew he was to be the magistrate in the case. He expressed distress at the delay in making the arrest and preferring the charges.

This court believes the witnesses who recited the statements of the magistrate as to the methods which should be followed in obtaining a solution of the case.

## Not Province of Judge

There is no doubt but what he said that he would change his opinion if confronted with evidence. This is not the province of a judge or magistrate. He must not have an opinion in advance of hearing facts.

At that period in the process he must and should have no opinion and leave his mind open subject to proof from established facts. To reverse this guarantee and require proof to dislodge or modify an earlier acquired notion or conviction is to subject the defendant to a process not anticipated or permitted under our laws.

In view of the circumstances



**REMOVED** as magistrate for the Sheppard case was Bay Council President Gershon M. M. Barber.

surrounding the nature and investigation of the crime and under preliminaries leading to the arrest of the accused it is not unusual or strange to find a public official of the affected community thrown into the maelstrom of conversations, accusations, and rumors which are found to abound in all such occurrences.

## Reserves Decision

But those likely to be drawn into the matter in an official capacity should reserve their decisions and bridle their tongues. This is especially true where the case may require their judicial determination.

Magistrate Barber appears to this court to be a fine upstanding citizen who might try to do his very best in arriving at a just decision, but the court is likewise of the opinion that he has expressed himself on several occasions to the indication that he had a predisposition of thought and opinion and that it might require some proof to entirely dislodge the impressions gathered by him from sources other than the facts presented in open court. This court finds that such state of mind disqualifies him to sit further in the matter.

Accordingly, a transfer must be ordered by this court. The nature of the charge and wide public interest in the case immediately commands that where geographical jurisdiction does not control that a competent fair and impartial judge who is available should be designated.

I have asked my associate on this bench, Judge William K. Thomas, to accept this assignment by transfer. He has acceded to my request.