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54/08/07 Doctor Fears Prejudice In Bay

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DOCTOR FEARS PREJUDICE IN BAY

Asks Shift of Hearing on Arrest

Dr. Samuel H. Sheppard is convinced he could not receive a "fair hearing" in Bay Village Mayor's Court.

This belief was cited today by his five-lawyer defense staff in a new legal effort to shift the 30-year-old osteopath's preliminary hearing on a charge of premeditated wife-slaying away from the West Side suburb.

Chief Defense Counsel William J. Corrigan filed an "affidavit of prejudice" demanding that Bay Village Council President Gershom M. M. Barber be barred from presiding at the hearing.

The action automatically suspended the preliminary hearing set for 10 a. m. Monday at Bay Village City Hall.

Instead, the legal battle over the July 4 murder of Marilyn Reese Sheppard will shift back to Lakeside Courthouse Monday, where Common Pleas Judge Frank J. Merrick will preside at a 10 a. m. hearing on the prejudice motion.

If Merrick finds that Barber cannot give Dr. Sheppard an impartial trial, he may order the preliminary hearing shifted to the mayor's court of another suburb, or to the Cleveland Municipal Court.

Determine Cause

Purpose of the preliminary hearing is to determine whether there is "probable cause" to hold Dr. Sheppard to the Grand Jury for possible indictment.

Prosecutor Frank T. Cullitan has authority to take the case directly to the Grand Jury if he believes the defense is "stalling."

Barber signed the warrant for Dr. Sam's arrest when Bay Village Mayor J. Spencer Houk, a close friend of the 30-year-old osteopath, disqualified himself.

Houk, first person summoned to the Sheppard home at 28924 Lake Rd. by Dr. Sam on the murder morning, said he could not preside at the preliminary hearing since he was being called as a witness.

Action on Prejudice

The law requires that a charge of prejudice against a magistrate be determined by the Chief Justice of the Cuyahoga County Common Pleas Court.

However, Chief Justice Samuel Kramer was granted a summer-long vacation by the other judges, who designated

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Asks Hearing Shift, Fears Bay Prejudice

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the Room 1 judge as acting chief justice.

Judge Merrick ordered Sheriff Joseph Sweeney to bring Dr. Sheppard from County Jail to the Monday hearing.

Corrigan's affidavit charged that Barber had "made statements, both public and private, indicating his opinion of the guilt of the defendant."

The part-time Council president, who is a tax consultant, had also "characterized the failure to arrest the defendant" before July 10 as "silly," the affidavit said.

Corrigan said Barber "has stated that the accused re-

ceived preferred treatment from Bay Village officials."

This referred to the long period after the murder during which Mayor Houk and Bay Village Police Chief John Eaton refused the recommendation of Coroner Samuel R. Gerber and Cleveland homicide detectives that Dr. Sheppard be arrested and charged with his wife's murder.

It was Judge Merrick who last Monday denied Dr. Sheppard a writ of habeas corpus. Corrigan then sought his client's immediate release on the claim that Barber was without legal authority to sign the murder warrant.

The Court of Appeals yesterday rejected the defendant's petition for a writ of prohibition barring Barber from presiding at the preliminary hearing.

In this action, Defense Counsel Timothy McMahan argued that Barber lacked legal authority to preside over the Bay Village Mayor's Court when Houk was available.

Cites Evasive Attack

Richard S. Weygandt, Bay Village law director, termed the action "an evasive attack which should not be tolerated by this court."

Weygandt will oppose the new move to disqualify Barber at the Monday hearing. He will be aided by Assistant Prosecutors Saul S. Danaceau, John J. Mahon and Thomas Parrino, the team assigned to prosecute Dr. Sheppard.

Corrigan, still refusing to acknowledge Barber's authority, despite the two previous court rulings, contested his "power and jurisdiction" in the new petition. He accused Barber of "bias and prejudice," and having "an interest" in the case.

He also stated that Barber had refused to delay Dr. Sheppard's July 30 arraignment to permit him to be represented by counsel.