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Dr. Sam Faces Fight on Trial Out of City

Dr. Samuel H. Sheppard's attorneys must prove that the Bay Village osteopath could not receive a "fair trial" in Cuyahoga County to win transfer of the case to another Ohio courthouse.

Defense Attorneys William J. Corrigan and Fred Garmone have indicated that they will file a formal motion for such a "change of venue" before the case is called for trial Oct. 18 at the Criminal Courts Bldg.

Veteran courthouse observers could recall no recent murder case in which the trial was moved away from Cleveland on the defense claim that public opinion was "inflamed" against the defendant.

Opinion Doesn't Bar

The legal theory is that having an opinion does not necessarily disqualify a prospective juror, provided he or she can swear to decide the case on the evidence presented in the courtroom.

A prospective juror is not automatically disqualified because he or she has read newspaper articles about the defendant.

Should it be impossible to select a jury from the 75 persons called on the special venire for a first degree murder case, the judge may order additional prospective jurors called to

court the next day.

Or the judge could then, at his discretion, grant a motion for a change of venue.

Can't Appeal Ruling

There is no appeal from the judge's ruling on this point.

Should the judge grant such a motion, he may transfer the trial to any of Ohio's 87 other counties.

Probable procedure would be for the jurist to contact the judges of the county where he desires to set the trial to ascertain if their dockets would accommodate the case, and if they are willing to accept it.

Dr. Sheppard's lawyers have said in courtroom and public statements that he could not receive an impartial trial in Cuyahoga County because the Cleveland police and newspaper accounts have "convicted him in the public mind."

Hits Defense Charge

Assistant Prosecutor John J. Mahon retorts that it is ridiculous to suggest that an impartial jury of 12 men and women cannot be obtained in a county with 1,500,000 population.

The law provides that a defendant be tried in the county

where an alleged crime was committed. In the case of Dr. Sheppard, indicted for the murder of his pregnant wife, Marylyn, in their Bay Village home, that would place the trial in Cleveland, the seat of Cuyahoga County.