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Sam Appeals on Prejudice

By AL OSTROW

Dr. Samuel H. Sheppard today charged that the seven-man, five-woman jury that ruled him guilty of wife murder was poisoned by prejudice.

In a brief filed with the Ohio Supreme Court, the neuro-surgeon convict asked immediate freedom and vindication or a new trial.

The 86-page document written by Paul M. Herbert of Columbus, former lieutenant governor and new chief of Dr. Sam's legal defense team, included:

CHARGES OF BIAS and judicial misconduct against Common Pleas Judge Edward Blythin, who presided over the 10-week trial in which the Bay Village osteopath was found guilty of second-degree murder in the July 4, 1954, slaying of his wife Marilyn.

ACCUSATIONS that Bailiffs Eddie Francis and Si Steenstra broke the law by permitting jurors to telephone their families during their five-day deliberation "lockup."

STATEMENTS that, during the trial, some jurors listened to radio broadcasts in which commentators Walter Winchell and Bob Considine made remarks prejudicial to the defendant.

DR. SAM'S THEORY that the real killer might be found among his wife's "spurned lovers" and "potential lovers."

A CLAIM that Dr. Sam, although an admitted philanderer, had a "good character" and "propensities for peacefulness which would be directly contrary to engaging in mad violence."

CHARGES THAT POLICE disregarded or improperly investigated clues which supported the husband's insistence that he was twice knocked unconscious by the "maniacal killer" who murdered Marilyn.

Charge Illegalities

Twenty-two pages of the brief were devoted to an attack on the "misconduct of the jury and the officials in charge of the jury during its deliberation."

Herbert declared that the

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jury was illegally separated—the men in one group, the women in another—to have their pictures taken by newspaper photographers at the Carter Hotel.

He said two jurors admitted hearing the “completely false” Winchell broadcast.

“This was an example of a direct violation by two members of the jury,” Herbert wrote, “of the instructions given them by the court not to listen to any communications or conversation or other information involving the case” outside the courtroom.

Blythin, he continued, refused to ask the jurors if they had heard a broadcast in which Considine “compared Sheppard with Alger Hiss, a traitor to his country.”

Give Sam's Version

Herbert's brief included a complete statement by Dr. Sam in which the husband reviewed his version of the murder and his marital life.

He said his dead wife had a “jealous streak” and many “potential lovers . . . three that I know of . . . I am certain that there were more.”

Dr. Sam said his home life—before being shattered by Marilyn's murder—had “no bickerings or any petty quarrels” because “she respected my decisions on all matters.”

Point by point, Herbert reviewed the state's evidence, and found most of it equally favorable to the defendant, provided it were viewed in the belief that Dr. Sam is a life-saving medical man without a vicious temper.

If the state's claim that Dr. Sam's vanished T-shirt was spattered with his wife's blood

was true, Herbert argued, then more than one bloodspot would have been found on the husband's trousers.

The blood on Dr. Sam's wristwatch was not from Marilyn, but from the killer Dr. Sam battled in his bedroom and on the Lake Erie beach, the lawyer declared.

He suggested that the green bag in which the wristwatch and other jewelry was found could have been planted in the Sheppard back yard long after Dr. Sam was removed from the premises.

Herbert argued that unexplained fibers and pieces of leather found in the murder bedroom were the signature of the “real killer.” Police, he said, tried unsuccessfully to connect them with Dr. Sam.

“A reasonable inference,” the attorney declared, “is that the assailant wore a leather jacket. The fibers were scratched loose by frantic struggle of the victim.”

Hearing Apr. 17

Assistant Prosecutor Saul S. Danaceau will have 30 days to file a written reply to the defense brief. Oral arguments are scheduled for Apr. 17.

If his conviction is sustained, Dr. Sam's final appeal may be carried to the U. S. Supreme Court on the claim that his constitutional right to a fair trial was violated.

Laying the groundwork for such an appeal, Herbert reiterated the contention of his associate, William J. Corrigan, the former chief defense counsel, that newspaper publicity prejudiced public opinion against Dr. Sam and made it impossible to seat an impartial jury in Cuyahoga County.