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8-28-1956

56/08/28 Blythin Will Be Rapped in Sam's Plea

Cleveland Plain Dealer

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Cleveland Plain Dealer, "56/08/28 Blythin Will Be Rapped in Sam's Plea" (1956). *All Articles*. 590.

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Blythin Will ✓ Be Rapped in Sam's Plea

Plain Dealer 8-28-56
**Supreme Court Will
Get Writ Today**

Common Pleas Judge Edward Blythin "obviously" favored the prosecution in the Sheppard murder trial, the U.S. Supreme Court will be told today.

The charge that Blythin did not act fairly or impartially in his conduct of the trial was contained in a defense petition for a writ of certiorari.

Defense Counsel William J. Corrigan left Cleveland for Washington last night to file the document with the nation's highest court.

The tribunal will be asked to consider the appeal of Dr. Samuel H. Sheppard, Bay Village osteopath who was convicted of second-degree murder in the killing of his wife. He is serving a life sentence.

If the nine justices agree to take the case under advisement oral arguments will be scheduled. In the meantime Saul S. Danaceau and Gertrude Bauer Mahon, assistant county prosecutors, have 30 days to oppose the defense motion.

The Supreme Court could ignore the appeal or—if it rules in favor of the defense after hearing arguments — it could remand the case to Common Pleas Court for a second trial.

Judge Blythin — as well as the jury—was depicted as having come under the influence of press, radio and television. Because of this the defendant was not accorded a fair trial, it was alleged.

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Sheppard Plea to Supreme Court Will Rap Blythin

★ From First Page

The fair trial issue was the first of seven arguments advanced by Corrigan in the petition. Collaborating with him were three other defense lawyers—Paul M. Herbert, Fred W. Garmone and Arthur E. Petersilgé.

The petition covered 65 pages.

There also was an appendix of 176 pages containing reproductions of newspaper articles and photographs, including excerpts from publications outside Cleveland which criticized coverage of the case.

The first argument was that an unprecedented amount of publicity given to the case featured "fact, fiction, rumor, suspicion, quotation and misquotation . . . so blended as to be indistinguishable."

"Viciously Derogatory"

Much of it was "viciously derogatory . . . for the purpose of inflaming the community against the petitioner," the brief continued.

"All of which produced a tremendous pressure for his arrest and conviction and resulted in the creation of such an atmosphere of hysteria . . . as to make the trial a mere legal device for registering the verdict already dictated by the news media."

Despite the existence of these

conditions, repeated defense motions to shift the trial to another county and to postpone it were denied, the brief pointed out.

After reviewing press coverage of investigation in the first argument, defense lawyers cited reporting of the trial itself in the second argument. This included a description of facilities for newsmen.

Judge Blythin was slammed especially hard in the third argument, which contended that the defense was prevented from exercising its last peremptory challenge when the jury was being impaneled.

At this point it was recalled that a juror (later found to have been convicted of a morals offense) had been sworn. The defense lost its last challenge after the state maneuvered to bounce the juror off the panel, the brief said.

"Usefulness Destroyed"

"(Prosecutors) decided they did not want (the juror)," the petition asserted, "and thereupon developed a plan, with the knowledge and assistance of the court, whereby the usefulness of (the) juror was destroyed."

"The state adopted the outlined method to get rid of (the juror) and this indicated that the court . . . was not acting fairly or impartially but was obviously favoring the prosecution."

The fourth argument asserted prejudicial error was committed when two bailiffs permitted the jurors to make telephone calls from their hotel while they were deliberating the case.

In the fifth argument the state was attacked for seizing the murder home and retaining possession of the keys until the trial was over, "thereby preventing (the defendant) from discovering evidence essential to his defense."

The sixth argument assailed the Ohio Supreme Court for "admitting the case on constitutional questions . . . and then failing to pass upon those questions."

"Roman Holiday"

"By the characterization of the trial as being held in the atmosphere of a 'Roman holiday,' it follows that the Supreme Court of Ohio concluded that the trial . . . fell to the levels of the depraved and barbarous spectacles which took place in the Roman arena," the brief said.

"Having made that finding, it dismisses the prejudicial campaigns of the newspapers."

The final argument was that the state's high court was "illegally constituted" when it heard the appeal. This was because Chief Justice Carl V. Weygandt appointed his own substitute when he disqualified himself, it was related.

The defense held that, in the absence of the chief justice, Ohio law requires that a substitute for him be selected by the senior member of the tribunal.

Judge Blythin could not be reached for comment last night.