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

Cleveland Plain Dealer

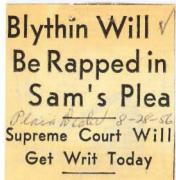
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Common Pleas Judge Edward Blythin "obviously" favored the prosecution in the Sheppard murder trial, the U.S. Supreme Court will be told today.

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.

(Continued on Page 4, Column 4)

Sheppard Plea to Supreme Court Will Rap Blythin

From First Page *

The Im. first of seven are vanced by Corrigan in the tition. Collaborating with him were three other defense law-model M. Herbert, Fred and Arthur E. The fair trial issue was the Petersilge.

The petition covered 65 pages.

There also was an appendix 176 pages containing repro-uctions of newspaper articles of ductions including exand photographs ots from publications Cleveland which crit cerpts out side Cleveland which criticized coverage of the case. The first argument was that

unprecedented amount of an an unprecedented amount of publicity given to the case fea-tured "fact, fiction, rumor, sus-picion, quotation and misquota-tion . . . so blended as to be indistinguishable.'

"Viciously Derogatory"

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

produced a sure for his "All of which s pressure for conviction and tremenduous tremenduous pressure for in-arrest and conviction and re-sulted 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 wh jury was being impan At this point it was that a juror (later f when the impaneled.

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

"Usefulness Destroyed"

"(Prosecutors) decided they d not want (the juror)," the stition asserted, "and theredid not want petition asser petition asserted, "and there-upon developed a plan, with the knowledge and assistance of the rt, whereby the usefulnes (the) juror was destroyed. usefulness court of

"The state adopted the out-lined 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 assert-prejudicial error was com-itted when two bailiffs perbailiffs pered mitted mitted when two bunness tele-mitted 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 pre-venting (the defendant) from discovering evidence essential to his defense. The sixth a

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

"Roman Holiday"

"By the characterization the trial as being held in atmosphere of a 'Roman he day,' it follows that the S of being held in f a 'Roman holiday, preme Court of Ohio concluded that the trial . . . fell to the levels of the depraved and barplace in the Roman arena," the brief said.

"Having made that finding, it dismisses the prejudicial cam-paigns of the newspapers."

paigns of the newspapers. The final argument was that the state's high court was "ilthe state's high course legally constituted" when heard the appeal. This was heave Chief Justice Carl be 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 sub-stitute for him be selected by the senior member fo the tribunal.

Judge Blythin could not be reached for comment last night.