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54/12/21 Verdict Today, Is Hint By Jury; 'We Can Do It; Foreman Says

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VERDICT TODAY, IS HINT BY JURY; 'WE CAN DO IT,' FOREMAN SAYS



RETURNING from the Sheppard jury deliberation room, Bailiff Edgar Francis sought to dodge photographers, but Plain Dealer Photographer Marvin Greene caught him as he left the jury room.



ANOTHER DAY ENDS FOR THE JUDGE. His papers under his arm, Common Pleas Judge Edward Blythin walks out of his chambers in the Criminal Court Building. The Sheppard trial jurors had left a few minutes before for their hotel seclusion.

PANEL LOCKED UP AGAIN FOR NIGHT; 5TH DAY COMING

Blythin Sends Note to Deliberation Room After More Than 80 Hours of Waiting; Sam's Lawyers and State Silent on Development

BY TODD SIMON

Jurors in judgment on the Sheppard murder case think they can reach a verdict today, they told Edgar Francis, bailiff, last night in reply to a note he took up to them from the judge.

Quick evasion tactics by Francis failed to throw off all news hunters. He slipped across the hall to another courtroom, went up the stairs to the jury room floor and hastily stepped across to where his jury was rounding out its fourth day.

When he brought the word of the foreman to Common Pleas Judge Blythin, coming down his backstairs route, the judge called in attorneys.

"We ought to be getting something done pretty soon," Judge Blythin was overheard saying to two lawyers who defended Dr. Samuel H. Sheppard against the charge that he beat his wife to death.

Foreman Confident

Francis made his trip upstairs with Judge Blythin's question penned on a yellow piece of paper. That was at 10:05.

He said later that the foreman consulted the other jurors and then came out with this quote: "We think we can do it. I know we can do it." Francis came curlycueing down again and went to the judge.

The judge notified Dr. Sam's legal team, William J. Corrigan, Arthur E. Petersilge and Fred W. Garmone, and the assistant county prosecutor there, Thomas J. Parrino.

Then he had the prisoner brought down. It was 10:17. Three minutes later the judge had the jury down in its box.

Everyone had had warnings, at least by rumor, that the judge was going to make some sampling of the jury's progress at 10. So all of Dr. Sam's team of relatives and friends, plus the news corps, were in their seats.

Dr. Sam kept licking his lips.

Sent to Hotel

"All rise, please!" The judge took the bench.

"Ladies and gentlemen of the jury, we are arrived again at a rather late hour," he said. "You had better go to your hotel to have a good night's rest and return here at 9:15 tomorrow morning."

Then the usual warning, "Don't talk," and the jurors were packed off once more to Hotel Carter rooms to return to work a fifth day.

"They are not 'revoluting,'" said the judge, pleased and pink-faced from the exciting news.

"They are going to try it another day. Nobody is suffering yet. Persistence is a wonderful thing."

Watching all this, hawk-like, for a possible error were Dr. Sam's attorneys. They had wanted the jury brought down and asked in open court whether they thought they could beat out an agreement.

Petersilge said: "I'm not a criminal lawyer, but I've never heard of anything like this."

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Verdict Today, Jury Hints in Answering Blythin Note

(Continued From First Page)

The other Sheppard lawyers would not talk. Neither would Prosecutor Parrino.

Dr. Sam's fate had been dangled for almost 84 hours in the jurors' collective lap when Bailiff Francis dodged out with

a law book to take downstairs, talked with Corrigan in the hall, slipped into Courtroom 3, then dark, to make his end run.

Francis ended his night travels panting and mopping a wet brow and neck. An old ball player who does not look his age, 70, he was tuckered out from trying to stay out of camera lenses and away from the quizmasters from the newspapers.

The hint of his first jog to the jury came after a 4 p. m. huddle of attorneys in Judge Blythin's office. While they talked over the apparent deadlock there, more than 40 reporters and photographers milled and sweated in the judge's tiny antechamber.

No Deadline Set

After the closeted attorneys filed out in the glare of photo lamps, newsmen poured through the open millgate to cram Judge Blythin's still smaller office. He told them:

"We are going to let them deliberate. I did not set a deadline. I cannot say what will happen at 6. I cannot say what will happen at 11 any more than I can about 6.

"I did not say I was sure to send word to the jury or ask them. It was you newspaper boys that had that thought.

"I am not setting a precedent.

Fate is setting it." 541221-10
cont. 3
Asked if his decision to keep the jurors was based on some word from up in their stuffy sanctum, he said: "I have had no communication from the jury. None at all."

It was not odd that the jurors had not spoken up. Judge Blythin has warned them time and time again: "Do not communicate with anyone about this case."

Once, giving them their legalistic launching at a meal-time break, he told them: "Do not communicate even with your bailiffs on anything except matters beyond and outside of this case."

Time Stands Still

Nevertheless, the judge said he was sure the jurors knew enough to speak up in court or via the bailiffs if they had hit a blank wall.

Yet, outside of false alarms and irrelevant emergencies, nothing had made their buzzer sound in Blythin's office.

By a freak accident all electric clocks in the building stopped.

So when the electric clock in the courtroom stopped at 11:10 and stayed there, it hardly raised an eyebrow among the card-playing, cigarette-smoking newsmen keeping their watch.

Time had stood still more than three days at that point for them and the faithful Shepard brothers and their wives.

At 5:30 p. m., clock going again, the straight-faced jurors came down and got their briefest recess talk so far.

"Ladies and gentlemen of the jury, you will now go to your hotel to eat in the company of your bailiffs," said the judge. "Please return at your convenience after the dinner hour, here to continue your deliberations."

Jurors Cautioned

The jurors stood up in their box. The judge told them to be careful not to discuss the case until their return.

At that point they had slept on, worried over and hassled about death, prison or freedom for Dr. Sam for nearly 80 hours.

Unless the length of time became "coercive," Judge Blythin

the head prosecutor. He, like Blythin, will be sitting at criminal court with Judge Hanna.

Judge Parker Fulton, also there, would be free to sit in the bank of judges. One more member of the bench would be sent there from Lakeside Court-house to make up the trio.

Jurors Inscrutable

But there still was no certainty that the present jury was jammed for good.

"After trying to read something from their faces each time they go to eat," said one of the charter members of the Shepard trial's news fraternity, "all they look is hungry."

Somebody walked out of the Hotel Carter restaurant in the boots of Juror 9, James C. Bird, while the panel was eating dinner. Bird, who has taken on an official look, assigning fellow jurors to cabs and keeping count of them on the way out of court, found somebody else's boots there.

Steaks helped to run up a dinner bill of \$50.57 and added to the jurors' now quite clubby cheerfulness.

To mask the newspaper rack,

from which headlines howled at everyone in the lobby, Bailiff Francis stood in front of it while his flock waited for their four-cab convoy back to the court-house.

Juror Bird was the only bread-winning member of the jury who had been able to keep working at his regular job while the trial went on. He would leave court and go to his night job in the ticket office of the Cleveland Union Terminal. But once the jury got the case and was locked up that stopped.

Bird is the only college graduate in the jury. He once taught school in West Virginia.

was confident that keeping the jurors this long was legal and desirable.

"There are more than 12 of you in this room," he joshed reporters hurling questions at him after his attorneys' meeting broke up, "so I can't impanel you as a jury."

"But I'd wager you'd have difficulty agreeing on this case in this much time just like any common laymen from the street."

Ohio lets its judges decide how much time is enough in such a spot. It even permits judges to tell juries that verdicts are to be desired, and not to be too hard-headed about it.

Judge Blythin has not yet pulled that tool out of the judicial kit.

Weigh Asking Bail

Defense Attorney Garmone was pressed to say what the Shepard strategy might be if the jury deadlocks and is let go.

He said Dr. Sam's law corps was considering asking for bail again if that happened. But Garmone would not say whether a hung jury would be used as one argument in favor of letting Dr. Sam loose between trials.

Judge Blythin was not moved to free Dr. Sam on bond when his counsel battled for it before Blythin this fall.

But starting Jan. 3 there will be a new presiding judge in the criminal branch, Harry A. Hanna.

Reporters with a flair for speculating have been asking the defense: "Will you go to bat next time before three judges instead of a jury?"

Judge Blythin would probably decline to try the case again, if that must be. The new common pleas judge, John J. Mahon, would also decline, having been