

Monday Morning Session, October 18, 1954.

THE COURT: We have here the case of the State of Ohio against Sam H. Sheppard, and the first matter we will inquire into the motion of the defendant for a continuance.

I would like to hear you on that question, Mr. Corrigan.

MR. CORRIGAN: If the Court please, the very atmosphere of the court this morning signifies that we are in a case which is unprecedented in this County. The corridors are full of people. When I came into the room this morning there were at least 15 or 20 photographers. At the entrance to the courtroom there are television lights. There is in the -- inside the bar, a long table occupied by reporters, one, two, three, four, five, six, seven, eight, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, and directly behind the bar, the two rows and part of the third row are occupied by reporters. The last row in the courtroom is occupied by some friends of Dr. Sheppard, the defendant.

The table that is inside the bar is within about six inches of the last chair in the jury box.

It is interesting to me, your Honor, that with the Western civilization hanging on an edge, that all this talent comes here and is devoted to a murder case in a little village in Ohio.

Now, in the first place, we don't think that this hearing is such as is provided for in the Constitution of the State of Ohio. It provides for a public trial. It doesn't provide for a trial for the benefit of publicity for newspapers, and the atmosphere this morning is such that I don't see how we can receive a fair and impartial trial. The influence on the jury that is called here, seeing all these people writing up this case, must be detrimental to the interests of this defendant.

Even your Honor yourself, when you tried to mount the bench this morning, found your place occupied by a photographer taking pictures, and you had to remove him from the bench.

I think that we had this same situation that occurred in the case of the Government versus Delaney -- or Delaney versus the Government in the city of Boston, Massachusetts, a very similar situation, where a great deal of publicity and clamor resulted in the

Court reversing the hearing.

Now, I do want also to put before the Court at the same time, and I would like it considered at the same time, my motion for a change of venue, because --

THE COURT: I would like to know, Mr. Corrigan, what you expect to show on the motion for a change of venue. The only grounds stated in the motion for continuance is that the publicity is at fever heat, and you believe that the cause ought to be continued until that quiets down.

MR. CORRIGAN: Yes.

THE COURT: Now, I would like to know what you expect to show on your motion for a change of venue, if you are going to proceed on that now.

MR. CORRIGAN: On my motion for change of venue, I have subpoenaed a great many witnesses.

THE COURT: What will they show? I mean, just the nature of the testimony.

MR. CORRIGAN: They will show that starting on the 4th of July a great deal of publicity was published about this case in the Cleveland newspapers. Not only that, but demands were made by the Mayor of the City of Cleveland that the defendant be arrested. That editorials were written in the Cleveland Press

demanding the arrest of the defendant. That the character of the publicity in this community was of such a character that the minds of the people of this community were poisoned against the defendant. He was convicted by accusation and convicted before he was indicted.

As your Honor knows, the Grand Jury that heard this case -- the foreman of the Grand Jury said that he was under pressure, and that every member of the Grand Jury was under pressure to bring this indictment. We will show that the --

THE COURT: Mr. Corrigan, that was not his testimony before this Court. His testimony before this Court was -- and I asked him these questions specifically -- what the pressure was. Was the pressure to indict someone, and he said, no, it was pressure to find out what was going on, and he made that very clear.

MR. CORRIGAN: I won't argue with the Court on that subject, because I have the written record and that will take care of that.

The man has been discussed and his family has been discussed, and the Bay Village Hospital has been discussed in every saloon and barroom and tavern in the community. I have communications from various

people, not only in Cleveland, but throughout the United States, condemning the defendant.

The picture of his murdered wife was circulated throughout this community and was shown at cocktail parties, and so forth.

Now, I realize that there are cases in the State of Ohio in which it is held that the fact of publicity alone is not a reason for change in venue. They have held that in some cases, but I submit to your Honor, and you know it, that there has never been a case in this community or in the State of Ohio, and I doubt if there was ever one in the United States of a murder that received the publicity that this murder received, and we are confident that when we get through and show you what has happened in this community, that you will grant this motion.

THE COURT: Mr. Mahon, I would like to hear from you as to what your general views are on these, both of them.

MR. MAHON: If your Honor please, first on the motion for a continuance. It seemed to me that to continue this case, when it would come up again you would have the same publicity that you have today. We did have a period of a couple of weeks

in which this matter did lie dormant as far as publicity is concerned, and then last week, as the trial date approached, again we had the publicity started up again. That same condition will be true if it was continued for six months or for a year. As soon as the approach of a trial date would come along, you would have a revival of all of that publicity. That is something that the Court cannot control.

There isn't any question but what there has been an awful lot of publicity, and for that reason, I don't think that the motion is well taken for a continuance.

Now, as to the motion for a change of venue, the basis for that motion is because of also the publicity that this matter has received. As I said before, there is no question but what it has received a large amount of publicity, not confined strictly to this community, but all over the State, all over the nation, and if you move this case to any other community in the State of Ohio, they have had publicity in those counties comparable to the publicity that you have had here in this County.

I suppose that the defense in this case at this time wants to offer evidence to bring before the

Court the amount of publicity that has been circulated in this particular County, at least. It seems to me that the fair approach to this question is to determine whether or not we can obtain in this County 12 men and women to sit as jurors, 12 men and women who will say under oath that they are not biased or prejudiced; that even though they have read of articles concerning this case, that they have no opinions that can be set aside -- cannot be set aside; that they can sit here as jurors and listen to the evidence in the case and listen to the law that your Honor will instruct them on, and be guided in their deliberations as to the guilt or innocence of this defendant solely and only on the evidence that they obtain in this courtroom applying the law that your Honor will instruct them on, and not be influenced in the slightest by anything that they might have heard in gossip or otherwise, or anything that they might have read in the newspapers or any other source of publication.

Now, it seems to me that that is the simple way to determine whether or not a fair, impartial jury can be empaneled to try this case.

We might go over many items of evidence here on this motion, copies of newspapers, the replaying

of tapes that have been circulated through the radio and television stations, but that will not answer the question, and the Court would be unable to come to any conclusion from that evidence, without having the jurors as they take these seats state whether or not they can be fair, just and impartial jurors, and it seems to me that that is the first step that we should take before the Court makes a ruling that a change of venue should be granted in this case.

MR. CORRIGAN: If the Court please, just a word in reply to Mr. Mahon.

I think I would be remiss in my duties as a lawyer if I did not raise this question. I have a very strong feeling about it, which is shared by many members of the Bar and many members of the Court, that this type of publicity about a man who is charged with a crime should not be tolerated in this community, and I am strengthened in my position by the No. 1 attorney of the United States, Attorney General Brownell, and on September the 25th or the 24th, in speaking before the American Bar Association on this subject -- not before the American Bar Association, but before the Federal Bar Association on this subject, he prodded the lawyers to take action,

and he called upon the lawyers to take action in this kind of a matter and, of course, only the lawyers can do it, because the lawyers are the only ones that have the cases that will appear in court.

It is all right to pay lip service to fair trials, and so forth, out on a platform, but right here is where the question of fair trial arises, right in this courtroom and the courtrooms throughout the land, and he says, and he stated in this speech -- I am quoting from the New York Times of Saturday, September the 25th. I have the original speech. I know that this is a correct quote.

"If the people are to continue to retain confidence in the integrity of the Bar and the judiciary, and in the proper administration of justice, every effort must be exerted to providing procedures by which an accused may obtain a fair trial. Request for workable balance between a fair trial and a fair press fully merits the attention of the press and the Bar and the publishers."

Now, here we are confronted with just about the -- just the thing that Mr. Brownell is calling attention to. He is calling attention to the courts and to the lawyers of the United States, and for that reason, I think the Court ought to put its stamp of

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disapproval on it and continue this case for a reasonable time until all this furor that has arisen dies down.

I want to call the Court's attention also to this fact that is unprecedented in this Courthouse and in this County:

That there has been erected in the courtroom three loud speakers and -- what do you call that? -- and a microphone in front of the witness.

Now, I haven't anything more to say. I know the Court can size up the situation and knows the situation just as well as I do.

THE COURT: Well, now, gentlemen, on the motion for a continuance, that is certainly more simple than the other, and the only ground stated in the motion for a continuance, or shall I say claim, is that the publicity has been such as perhaps has not been equalled or anything near equalled in this community in many years, if ever, in connection with a case of this kind, and that that ought to be permitted to quiet down.

This Court has never yet found any way in the world of quieting down publicity if newspapers and news media care to expound. In this country we are pledged to some kind of freedom of the press,

perhaps, that as far as I know, no other country begins to equal, and in this field it is far more liberal than it is even in England where we got the idea in the first place, and I know of no ground whatever to believe that if we pass this case for a month, two months, or any period of time, the publicity will not again flare up in just the same manner as it is now, and I am not passing on the extent of the publicity in any way, shape or manner. And it is true, and the Court well knows it, the public generally know it, all counsel at this table know it, that while there was no action in this case in this court, this case went into the want ad columns as far as the publicity was concerned, and it comes to the first page only when some action has taken place in this court.

The courts of Ohio have passed on this very question. The case of Snook against State in the 34 Ohio Appellate, page 60, where they had the same -- precisely the same question raised there, and the court held that the mere fact that publicity was something that people did not particularly enjoy was not sufficient to, in and of itself, to justify a continuance, and that in any and all events, it was within the discretion of the trial court as to whether

or not a continuance should be granted.

Now, coming to the question of change of venue, that is somewhat bound up in this same thought. It is the general rule in a self-governing people that they discipline themselves and each other, of course, and that when people are charged with commission of crime, the people of their own community should pass judgment both on the facts and on the law involved, and under the common law, where we got our law, there was no right of change of venue whatever. In Ohio there is a right under proper conditions for a change of venue by reason of a statute specifically providing for it, but the courts have also held that the best test of whether or not there should be a change of venue, whether a fair and impartial trial can be had in the venue of the claimed crime, that the best test is that of whether or not a fair and an impartial jury can be secured.

Counsel states that he would have a good deal of evidence, but the Court is faced with the proposition that certainly the best evidence is that test: Inquiry of the people themselves; and if we are going to say that there is a case just on its face where a fair and impartial jury cannot be had, then we are stating

a lack of faith in the jury system.

This Court has -- the more he sees of the trial of cases, and even though there be errors on the part of juries -- I think we had one serious one here last week -- even though there be those errors, this Court becomes more and more pledged every day to the justice of the jury trial, and a feeling that it is one of the shining lights of the democratic process. One great legal light has said that a jury trial, as we know it, and as we practice it, is one of the greatest achievements of the English speaking people.

This Court is not now in a position to know at all whether we can have a fair and impartial jury in this case. His belief, based on experience, is that we certainly can, but he certainly will not proceed with this case in this County at all if it appears by any reasonable picture that a fair and an impartial jury cannot be had.

This defendant before this Court is in no different position to any other defendant, excepting as he claims by reason of this publicity that has followed the commission of the crime, of which he may not be guilty at all, but certainly someone committed a crime, no doubt. The Court, however,

does not want to bar his right to a complete claim and complete review -- a complete claim that this Court did not act correctly and a review of that matter or all matters by the higher courts, and I think that in order to save time and our energy, and also without any injustice whatever to the defendant in this case, the proper procedure on the motion for change of venue would be to team the effort to secure a fair and impartial jury and consider that the best evidence.

This Court will now state that he believes now definitely that it is the best evidence. If the Court becomes convinced that we have a fair and impartial jury, the Court will so state, and counsel will then have an opportunity to disagree with the Court, if he wishes to, and to also place in the record any evidence which he believes should be there in order to have a proper review by appellate courts. That procedure has been followed in this court. It has been followed by this member of this Bench. It has been followed in other counties in the State, and it has been affirmed by the appellate courts.


There is a case in the⁴³ Ohio Appellate report precisely on this question, the case of Richards against the State of Ohio, 43 Ohio Appellate 212, in which the

appellate court sustained the lower court in following that procedure. In that case, the trial court overruled the motion for a change of venue before his attempt to secure a fair and impartial jury, but did so without prejudice to the defendant. I suppose there was a suggestion that if it developed that he could not get a fair and impartial jury, he would set aside his ruling and reverse himself and start all over.

So this Court feels now that the motion for continuance should be and it will be overruled, and exceptions noted.

The motion for change of venue will be held in abeyance, and we will proceed at 1:15 this afternoon in an effort to determine whether or not we can secure a fair and impartial jury. If we are not able to do that, there will be no question in this Court's mind at all but what this case ought to go out of Cuyahoga County, whatever may be the effect of that.

It is the Court's judgment, but having no value whatever in this case, that you couldn't find a County in the State of Ohio where you wouldn't have the same difficulties that you claim you have here, and these are the rules under which we now operate,

and we will have to move under them for good or
for ~~little~~ *ill.* 

So the Court will now hold ruling on the
motion for change of venue and proceed to the attempt
to secure a fair and impartial jury.

MR. CORRIGAN: If the Court please, I
don't want to inconvenience a lot of people. I have
subpoenaed a number of them -- a number of people
on the question of change of venue, and I understand
that some of them are here. I have subpoenaed
newspapers, and I understand the newspapers are here.

Now, is it my understanding, your Honor,
that you will not hear that evidence?

THE COURT: That is right, not at
this time. We may come to hear it. We may not even
need to hear it at all, either one way or the other,
in open court.

MR. CORRIGAN: Now, then, so that I have
the record clear, can I set forth in the record that
I subpoenaed on this change of venue, radio stations
WDOK, WERE, WEWS, WGAR, WHK, WJMO, WJW, WTAM, WXEL,
WSRS, WNBK. They are both radio stations and
television stations in Cleveland. That I have also
subpoenaed the Cleveland Press to bring to this courtroom
all the issues of its editions between -- I will withdraw

that.

I have subpoenaed these radio stations and these television stations to bring to this courtroom all the announcements that they have made and the broadcasts that they have made in regard to Dr. Sam Sheppard, in regard to this case from July 5th to October the 17th, 1954.

I have subpoenaed the Cleveland Press and the Cleveland Plain Dealer and the Cleveland News, three newspapers of this community of general circulation, to bring to this courtroom all issues of all editions between July 4th and October 17th.

I subpoenaed Dr. Gerber to bring here to this -- who is the Coroner of the County -- to bring here many letters that he received at the County Morgue in regard to this case.

I have subpoenaed John Corlett to bring to this courtroom the picture of Marilyn Sheppard that he circulated around through the city and in the Courthouse.

I have subpoenaed Paul McDevitt, to whom the picture was handed in the Courthouse.

I have subpoenaed Dr. John E. Cridler to bring here the picture that he circulated in the vicinity of 105th Street.

I have subpoenaed Edward F. Shuster to bring to this courtroom magazines of general circulation in the city of Cleveland. He is distributor for a magazine service, magazines that refer to the case of Dr. Sheppard.

I have subpoenaed George R. Klein of the Klein News Service, also to bring magazines that are circulated generally throughout the city of Cleveland and have been circulated generally throughout the city of Cleveland, and that refer to the case of Dr. Sam Sheppard.

I have subpoenaed Leo Jadus Photo Service Company to bring here photographs taken at the inquest in Normandy School in this case.

I desire, your Honor, to introduce all this matter in evidence before this Court on the question of change of venue prior to the empaneling of the jury.

THE COURT: You mean at this time?

MR. CORRIGAN: At this time, yes.

THE COURT: Oh, no. The Court will overrule that request, with the understanding that it is done without prejudice and without passing upon the motion, and with the right to you to make your record if we do find what the Court deems to be

a fair and impartial jury.

MR. CORRIGAN: Just so that I have my record straight, I make a tender of all this evidence, and I say that if this evidence were to be permitted, it would show the animosity that has been built up against this defendant in this community, and would show that his arrest is the result of demands and urging by newspapers and public officials in this County.

I also forgot to say that I have subpoenaed Mr. B. R. Winston, the foreman of the Grand Jury, to show that enormous pressure was put on the Grand Jury when this indictment was returned.

THE COURT: That tender will be shown, and exceptions will be noted to the Court's action in his ruling.

MR. CORRIGAN: May I have what I have stated, your Honor, also be considered as having been made in advance of my motion for a continuance?

THE COURT: Surely.

MR. CORRIGAN: Note an exception to the ruling of the Court.

Now, I have the witnesses here, and I don't want to hold them here. I wonder how I can arrange that so I can have them here if it is necessary.

THE COURT: If you will bring them in the court, the Court will caution them that they are under subpoena.

MR. CORRIGAN: Well, would you bring all the witnesses in? Are there any witnesses here that came in response to my subpoena?

THE COURT: While we are waiting, may we have perfect quiet, please, while we are waiting? The Court will proceed at 1:15 to assemble the prospective jurors in this courtroom, and no one will be permitted into the courtroom until after we have disposed of the checking of prospective jurors in the courtroom, so will you please be patient?

There is another matter the Court would like to mention now, and that is that the air gets quite heavy here at times, especially when there is a group of people in this small courtroom. I would like to ask that you refrain from any smoking in this courtroom during the period of this trial. We will try in every possible way to keep the air as clear as possible here so that counsel will be helped. It is not an easy task to try these cases, and counsel really need every help we can give them.

Now, Mr. Corrigan.

MR. CORRIGAN: If there are any witnesses, will you come forward here?

(Names of witnesses taken by Mr. Corrigan.)

THE COURT: Are you ready?

MR. CORRIGAN: Yes.

THE COURT: I take it that you are all men. No ladies, are there?

Gentlemen, those of you who have been subpoenaed to appear here this morning on a motion for continuance or for the motion for change of venue are excused for the moment, but you are to understand that you are still under subpoena here and may later be required here to testify. You will be excused unless and until you are contacted by someone officially at the convenience of the defendant and his counsel, the counsel for the State and the Court.

Now, please understand that those subpoenas are still in effect.

Does that take care of it?

MR. CORRIGAN: Yes. I suppose I ought to get their telephone numbers, so that I will --

THE COURT: Will you do that after we adjourn?

MR. CORRIGAN: Yes.

THE COURT: The Court will now be

adjourned until 1:15 this afternoon.

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(Thereupon at 11:50 o'clock a.m. an adjournment was taken to 1:15 o'clock p.m., Monday, October 18, 1954, at which time the following proceedings were had):