



12-17-2015

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Cleveland Press

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### Recommended Citation

Cleveland Press, "54/12/17 Blythin Outlines Possible Verdicts in Charge to Jury" (2015). *All Articles*. Book 69.  
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# Blythin Outlines Possible Verdicts in Charge to Jury

In the colorful accent of his Welsh birthplace, Common Pleas Judge Edward Blythin today gave Dr. Sam H. Sheppard's murder trial jury the legal directions they must follow to find a verdict.

Speaking slowly and deliberately, the 70-year-old former mayor of Cleveland read from a written manuscript.

Here is a condensation of his charge:

"The law places upon the trial judge the obligation of outlining to you at this point in this proceeding the issues that are to be here determined and to state to you the principles of law which are to govern you in the determination of those issues.

"When we refer to determining issues, we are merely referring to determining what the facts are.

"It has undoubtedly occurred to you that deciding what the facts are in a case of this kind is a very important function. It is, in fact, an all-important function and is exclusively your function.

"With it I have nothing whatever to do, and if by anything that has been said or done during the progress of this trial, or by something that is now said, or by some emphasis which you may think I place on something I may now say, there is created in your minds some impression that I have formed some opinion as to what the facts are in this case, you are now instructed to disregard and dismiss such impression entirely and to proceed to arrive at your own conclusions on the basis of instructions now being given to you.

the act of malicious killing need not be the result of deliberation and premeditation."

## Defines Manslaughter

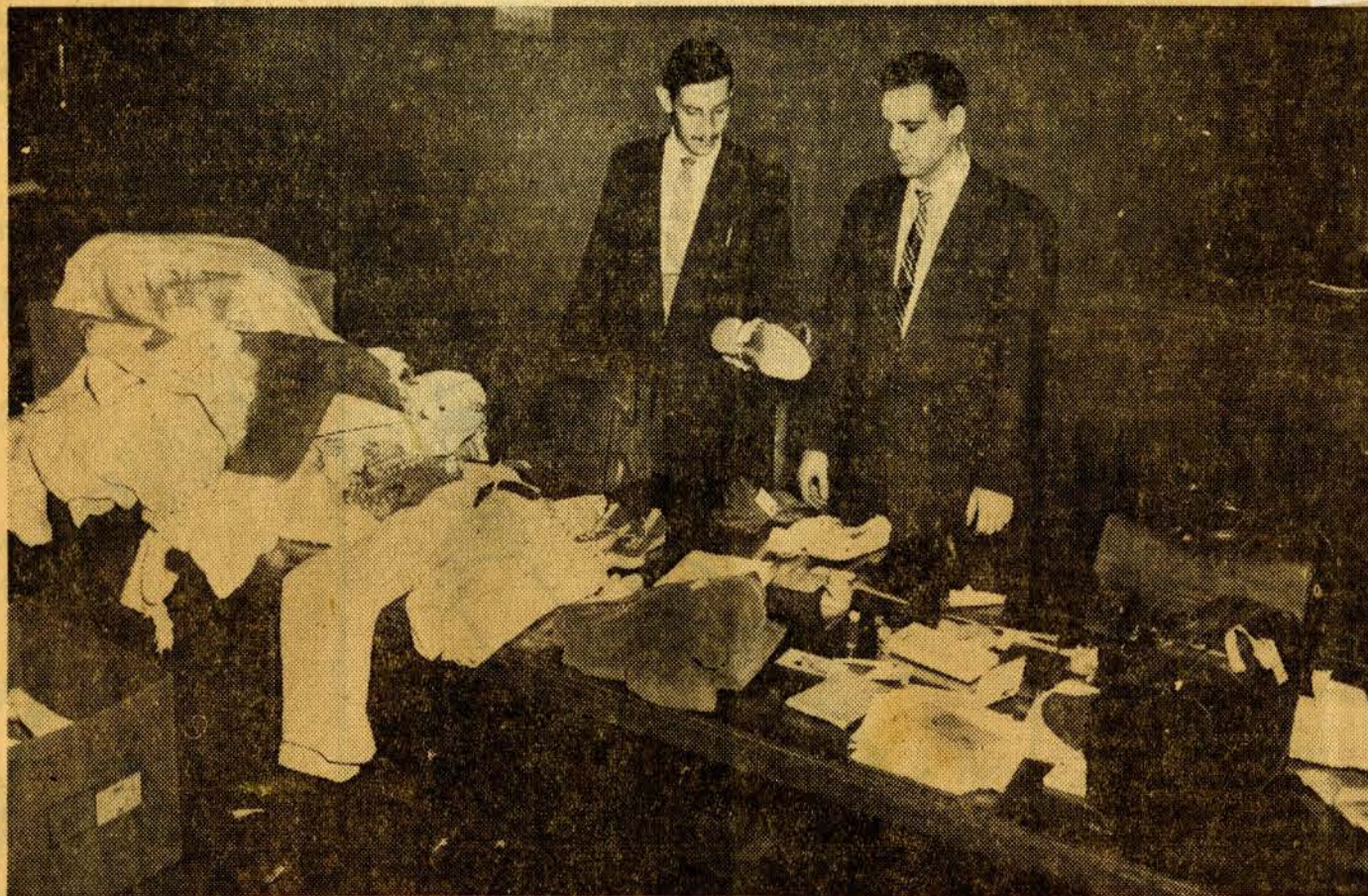
He defined manslaughter as: "It is that killing which is done in the heat of passion due to some provocation, and takes place before enough time has elapsed to permit such passion to cool down and thereby avoid the unfortunate killing."

## He warned the jurors:

"... it is not to be your privilege to be generous by rendering your verdict finding him guilty of a lesser offense when and if in the judgment of the 12 of you the evidence discloses beyond a reasonable doubt his guilt of a higher offense."

Then the charge went into the difference between direct evidence and circumstantial evidence. The judge used these stories to illustrate the difference:

"Let us assume that I had on a certain day a very fine cherry tree in my yard. The family happens to be away on that day and when I return about 5 o'clock in the evening I find my cherry tree chopped down.



**MASSIVE ARRAY OF EXHIBITS** introduced by state and defense in the Sheppard murder trial were arranged for jury inspection today as they deliberated Dr. Sam's fate. More than 200 exhibits were introduced and have been in custody of court reporters Norman Stern (left) and Sanford Lester.

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### Jury Is Sole Judge

"You are the sole judges of the facts in this case.

"Coming, however, to state the principles of law which are to govern you in your determination of the issues in this case, it is my function, and mine alone, to state those and it is your duty as jurors to follow those principles without question or challenge; and that is true even though you may believe that the court is not stating those principles correctly or that the law ought to be different to that which is stated to you.

"Jurors are not judges of the law but are judges of the facts on the basis of the law as stated by the trial judge."

Judge Blythin then explained how Sam H. Sheppard came to be on trial, namely as a result of indictment by the Grand Jury. Then he added:

"The fact that an indictment has been filed raises no presumption whatever of guilt of any crime.

### Burden Is On State

"A defendant in a criminal case is presumed to be innocent until he is proved guilty of the crime charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he shall be acquitted. This presumption of innocence places upon the state the burden of proving him guilty beyond reasonable doubt."

In defining "reasonable doubt" the judge read to the jurors the law of Ohio, namely:

"A reasonable doubt is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

Judge Blythin then went into minute detail in explaining that the indictment charges a violation of the Ohio law that says in part:

"No person shall purposely, and either of deliberate and premeditated malice, kill another."

### Explains Charge

Here are some excerpts of his explanation:

"If a deadly instrument or weapon is used wilfully and in a manner calculated to destroy life a jury may infer the intent or purpose to kill by such instrument or weapon."

"When we speak of malice in common parlance and in everyday affairs we usually refer to ill-will, bitterness, hatred, spite or jealousy. In a legal sense, malice does not mean those things but may include one or more of them.

"To do an act maliciously in a legal sense is to do an act without just cause or excuse for doing it, and with a design and intent to injure another. It is an act expressive of a disregard of social duty and of a heart bent on mischief."

"The law does not fix a time for which such deliberation and premeditation must have existed. It may be for months, weeks, days, hours, or a very short period of time."

### Discusses Degrees

Before explaining to the jurors the various degrees of guilt possible in their verdict, Judge Blythin told them:

"If, therefore, you find that Sam H. Sheppard purposely and either of deliberate and premeditated malice killed Marilyn Sheppard in Cuyahoga County it will be your duty to find him guilty of murder in the first degree."

Then he discussed second degree murder, saying the elements were "precisely the same as first degree murder with the one exception that

### "Direct Evidence"

"I proceed to investigate and first make inquiry of my next door neighbor, Mr. Smith. I ask him if he saw any stranger doing anything in my yard on that day. He replies: 'Yes, I saw George Washington chop it down with an ax.' That would constitute direct evidence.

"Let us now consider a case of circumstantial evidence in the same connection. Assume that on inquiry of Mr. Smith, my neighbor, he, in answer to my question, says that he did not see anyone chopping down my tree.

"I then ask him: 'Did you see anyone about my place today?' He replies: 'Yes, I saw George Washington walk along your driveway from the yard to the street with an ax on his shoulder.'"

"Here is evidence of a fact which does not directly prove who chopped down my cherry tree but which permits a natural and fair inference that George Washington can well be the person who chopped down that tree."

### Discusses Inferences

Then he instructed:

"It is for you to determine how much of circumstantial evidence adduced in this case is credible and what fair inference are to be drawn from it. You are instructed that any inference drawn must in every instance be drawn from a proven or established fact.

"In other words, you are not to draw a second and further inference upon an inference but that is not to say are confined to drawing only one inference from one fact.

"There is no limit to the number of independent inferences that may be drawn from a fact."

Judge Blythin told the jurors "the law does not require the state to prove motive in this case."

### Character Evidence

And that the defense was permitted to introduce evidence of Dr. Sam's "general conduct and reputation" because "it is a matter of common knowledge that people of good character and reputation do not generally commit serious or major crimes."

As he neared the end of his instructions, Judge Blythin pointed out the jurors should determine which witnesses told the truth, which lied.

He said:

"You may take into consideration the demeanor of a witness on the witness stand; his willingness or unwillingness to answer questions put to him; the reasonableness, or otherwise, of the answers given by him; the opportunity which he had, if any, to observe and know the things that he testifies to.

"In addition, you may take into consideration the interest, if any, which a witness has in the outcome of this trial.

"You are privileged to believe all that an individual witness testifies to, or disbelieve all of it. You may believe part and disbelieve part of it but you are not to do so on the basis of any prejudice, sympathy, motive or aim other than to arrive at what the actual truth is.

### Can Recommend Mercy

Then the judge said:

"With the penalty, if any, which will be imposed in case of finding of guilt you have nothing to do excepting in one instance. In the event that you find the defendant guilty of murder in the first degree you will have the duty of determining whether or not you will recommend mercy.

"You are not obligated to recommend mercy and your discretion in that matter is not subject to the dictation or control of any others or in any sense. You are not to recommend mercy out of considerations of prejudice, sympathy or favor, or for the purpose of avoiding what you may con-

sider an unpleasant task or duty.

"If you find the defendant guilty of murder in the first degree and do not recommend mercy it will be the obligation of the court to sentence the defendant to death. If you find the defendant guilty of murder in the first degree and do recommend mercy, the penalty imposed will be imprisonment in the penitentiary for life."

The judge discussed the process of deliberation thusly:

"In arriving at final judgment, it is the duty of every juror to fairly and patiently listen to the views of his or her fellow jurors on the evidence and to join in a reasonable manner in a common effort to correctly evaluate it and, upon it, to arrive at a just verdict.

"That is not to say that any juror must surrender his or

her judgment to that of any other person when that judgment is honest and real after fair discussion and collaboration. The foreman will also have the duty of affixing his signature to the form of verdict upon which all jurors have agreed. It is not necessary that any juror other than the foreman sign the verdict.

"You will also have with you in your jury room the exhibits which have been admitted in evidence in this case. Those exhibits are evidence and are to be considered as such by you as such to the same extent that you consider the spoken word."

After describing the verdict planks, Judge Blythin finished with:

"If and when you have agreed upon a verdict, your foreman will sign the form which is expressive of your findings."