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62/10/31 Letter from F. Lee Bailey to Paul Holmes

F. Lee Bailey

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STATE'S
EXHIBIT

96

LAW OFFICES
F. LEE BAILEY
FORTY COURT STREET
BOSTON 8

DEFENDANT'S
EXHIBIT

PERGALD-Bayonne, N. J.

C
1115199

CHARLES E. ORCUTT, JR.
ASSOCIATE

LA 3-4975
CA 7-6132

October 31, 1962

Mr. Paul Holmes
Chicago Tribune
Chicago 11, Illinois

Dear Paul:

I realize that our correspondence is flying back and forth these days at a rate which is more confusing than amusing, but things seem to be popping along in good fashion and I am anxious to keep them just that way. I have perhaps not had an opportunity to mention to you in our recent correspondence that Russell Sherman had a conference the other day with Mr. Guy Hardy, one of the town officials in Bay Village. He is a lawyer whom I met with Steve and Faust several months ago, and he seems to be an intelligent and mature individual. He has some definite feeling that the suspect Eberling should be further investigated by an investigator of competence. As you know, Faust and Seacrest made much noise about what they had allegedly found, but we never got to see it. Hardy feels that we should keep after this aspect and on the basis of the information he has, Russell is inclined to agree. I suggested that Russell and Steve confer with a view toward hiring a good, reliable professional investigator. They did so, as a result of which Steve suggested that all prior investigative results which were paid for by the Sheppard family have been discounted by officials on that basis alone. In order to avoid a repetition of this situation, Steve felt that perhaps the investigator should be retained and controlled by an independent third party or agency. As a for instance, he had in mind Argosy Magazine and Paul Holmes (in reverse order).

I am not in favor of turning the matter over to Argosy Magazine, for I suspect that they are principally interested in sensational

reporting and secondarily interested in the drudgery of such hard-core investigation as is necessary to the production of any satisfactory evidence in this case. However, I did agree with Steve in a phone conversation the other day that the matter should be put to you for your consideration and judgment. While it is certainly true that whoever handles the investigation should be local in order to permit constant conferences with Russell Sherman and, indirectly, with myself, Steve does have a point; if the information on Eberling, assuming it to be of significance, were produced by someone not directly connected with the Sheppards or Sam's attorneys it might not be quite so summarily disregarded by the authorities. At any rate, let us have your thoughts on the matter as soon as is convenient so that we can get going as quickly as possible.

One of the problems in Eberling's situation, which also exists with respect to Houk, is the fact that he has taken and ostensibly passed a polygraph test concerning his involvement in Marilyn Sheppard's death. The more I learn about David Cowalls of Cleveland, the less credence I am disposed to place in the test on Houk. I was informed by Bob Swonker of Bay Village that Eberling had been tested by investigators from the Bureau of Criminal Investigation in London, Ohio. At the moment I don't know which one. Russell is attempting to find this out for me, and to also get a list of the questions that were asked and the charts if possible. I know that this will be difficult, but he has been promised the unofficial cooperation of the Chief of Police of Bay Village, Jay Hubach, who reportedly feels quite strongly that Sam is innocent.

Keep in touch, and keep 'em rollin'

Sincerely,

FLB:fvp

P. S. I am going down to Washington, D. C. next week to confer with Edward Bennett Williams about the advisability of instituting proceedings in either the Supreme Court of the United States or the Federal District Court in Cleveland. After studying the case of "Mad Dog" Irvin in Indiana, I am constrained to believe that this might be enough of a "hook" to hang new proceedings in the Supreme Court upon. There is, of course, one very substantial

distinction which might be fatal to the use of the Irvin case as authority in the Sheppard case: In the Irvin case eight of the twelve jurors admitted that before they came to court they believed Irvin to be guilty because of the things they had read about him in the newspapers. It was ruled, as you know, that the statement of these same jurors that they could nonetheless give Irvin "a fair trial" was not sufficient to cure the defect. This element was not, so far as I know, present in Sam's case. At any rate, I will talk with you further on this matter as things develop. I am presently planning to file an action in one of these two courts immediately following the December hearings in the Ohio Supreme Court.