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54/08/02 Judge Merrick Hears Warrant Challenge

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Pleas Heard by Merrick

Hearing of Dr. Sam Sheppard's plea for freedom opened officially at 10:22 a. m. today when Judge Frank Merrick entered the courtroom. All the other principals already were in the room.

Judge Merrick asked quickly, "Is the sheriff here?"

Sheriff Joe Sweeney stood up. "By what authority do you hold this defendant?" Judge Merrick asked.

At this point Assistant County Prosecutor John Mahon walked to the judge's bench and handed him a copy of the first degree murder warrant.

After a brief pause Judge Merrick ordered Attorney William J. Corrigan to proceed with his statement in support of the habeas corpus writ.

Corrigan said:

"We contend that the warrant on which the defendant was arrested shall be issued by a judge, clerk or magistrate.

"In order to issue a warrant, an affidavit charging criminal violation must be filed before one of these three.

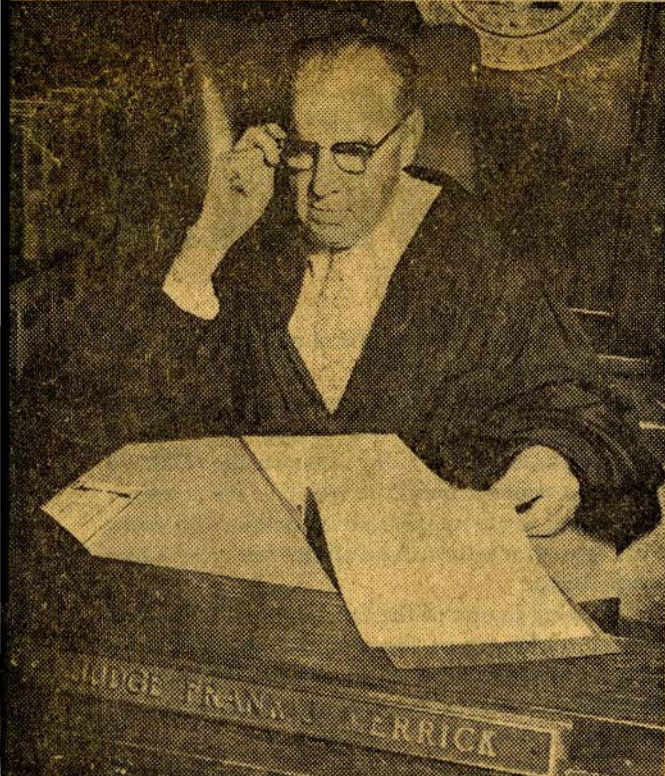
"We contend that the magistrate in Bay Village law is Mayor J. Spencer Houk, and by law he has jurisdiction in criminal cases."

May Assign Duties

Corrigan cited a section of the Ohio code which specifies, he said, that in the absence or disability of the mayor he may assign his duties to a justice of the peace.

Corrigan said Bay Village does have a justice of the peace.

"We claim the warrant on

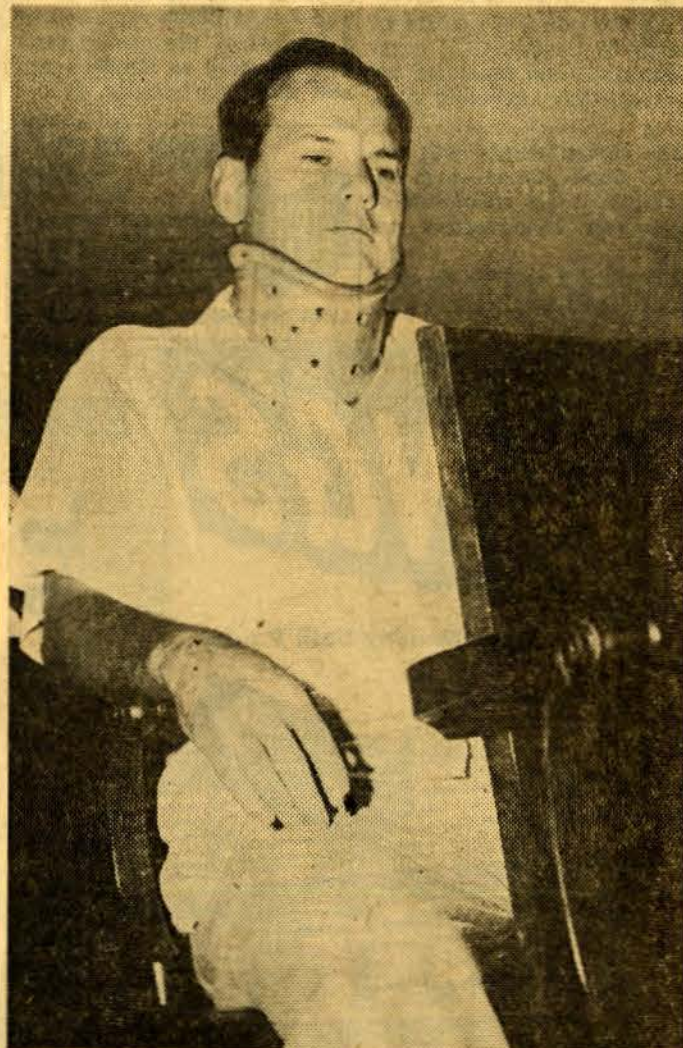


JUDGE FRANK J. MERRICK denied the legal move to free Dr. Samuel Sheppard today and ordered him returned to County Jail.

Merrick Hears Warrant Attacked, Defended

Rules Council Chief Also a Magistrate

(Continued From Page One)



BACK TO HIS NECK BRACE, Dr. Sam Sheppard waits anxiously at the trial table for Judge Frank J. Merrick's ruling on the osteopath's bid for freedom.



BAY VILLAGE OFFICIALS, Mayor J. Spencer Houk and Police Chief John Eaton were at today's hearing at Lakeside Courthouse.



BROTHER AND FATHER of Dr. Sam, Richard N. Sheppard and Richard A. Sheppard watch grimly as habeas corpus writ is denied.

which Sam Shepapr was arrested is defective because at the time it was issued the mayor was in the city and he was not disabled," said Corrigan.

"The confinement of the defendant in the County Jail is under an illegal warrant signed by G. M. Barber, who is president of the City Council. He was not authorized to issue the warrant in view of the presence of the mayor.

"We realize that it would mean no great difficulty to put this defendant in jail under a regular warrant, but we must raise this question so there will be no usurpation of power by people not entitled to exercise it."

At this point Judge Merrick

Quotes 1941 Law

raised two questions, the answers to which, he said, would help in a speedy solution.

"Is it conceded," Judge Merrick asked, "that Bay Village is a city and it has no police court or municipal court? Is it conceded that Barber is the duly elected president of the city council?"

Saul Danaceau and John Mahon, of the prosecutor's office nodded in the affirmative.

Judge Merrick then said: "Under a law passed in 1941 the council president of a city is given the full power of a magistrate regardless of the presence of the mayor.

"That is why an agreement on the answers to these two questions make this case simple."

Judge Merrick then read to the attorneys the section which he said gives to a council president the full powers of a magistrate. The section he quoted was 705-14 of the Ohio General Code.

Danaceau Cut Off

Saul Danaceau started, "Your honor, the city charter of Bay Village—" He was cut off by Merrick, who said, "That has no effect here. We are guided by the section governing courts."

"If these facts will be conceded," Merrick continued, "we will have to go no further."

Corrigan then read a section of the Ohio General Code which he said will be the guiding law in this case. The gist of it went, "The mayor of a municipal corporation, has within the corporation, all powers of the sheriff . . . the mayor shall award all writs."

Section Disputed

Reading from the section, Corrigan said, "the mayor shall be disqualified if at the time of arrest he assists in the arrest or is a witness in the arrest."

Merrick said, "But that section is not exclusive."

Merrick then read from the Ohio General Code the statute governing magistrates and their powers.

Then Corrigan said, "Despite all this I want to put my evidence in the record. I can't do that in conversation."

He then said, "I want to call as my first witness Mayor Spencer Houk."

Houk Called First

Q.: (By Corrigan.) Your name.

A.: J. Spencer Houk.

Q.: Your address.

A.: 29104 Lake Rd., Bay Village.

Q.: What is your position in the city?

A.: I am mayor.

Q.: When were you elected?

A.: November, 1953.

Q.: Is Bay a city?

A.: Yes, it is.

Q.: Were you in the city on the 30th of July?

A.: I was.

Q.: All day?

A.: Yes.

Q.: Were you present in the City Hall on the 30th at the time Sam Sheppard was brought before a man named Barber?

A.: I was.

Worked That Day

Q.: Did you work that day?

A.: Part of it.

Q.: When did you leave home for the hall.

A.: 10 a. m.

Q.: Were you in the city in the afternoon? (Houk paused.)

A.: I believe I was.

Q.: Were you away from the county in July?

A.: No.

Corrigan then said, "That's all." He turned around and said, one other question, "Were you the arresting officer?"

A.: No.

Mahon Begins Queries

Q.: Did you assist in the arrest?

A.: No.

Q.: Were you present at the time of the arrest?

A.: No.

Houk was next questioned by Assistant Prosecutor Mahon.

Q.: You have been a friend of Sam Sheppard's a long time.

A.: I have.

Q.: Close?

A.: Yes.

At this point Corrigan began objecting to everyone of these

questions, and was overruled each time.

Tells of Call

Q.: On the morning of the 4th of July you received a call from Sam Sheppard?

A.: I did.

Q.: Did you go to his home in response to the call?

A.: I did.

Q.: What was the call?

A.: To the best of my memory, Sam Sheppard said, "My God, Spen, get over here quick. I think they've killed Marilyn." I said, "What," and he repeated, "My God, Spen get over here quick."

Q.: You went?
A.: Yes.
Q.: You saw Sam Sheppard?
A.: Yes.
Q.: You saw Marilyn Sheppard?
A.: Yes.

Saw Slain Woman

Q.: How did you find her?
A.: She was horribly beaten about the head.
Q.: Was she dead?
A.: I presume she was.
Q.: Did you observe things about the home that morning?
A.: Yes.
Q.: You were questioned by the police in regard to this case?

A.: Yes.
Q.: You have been questioned by me?
A.: Yes.

Witness at Inquest

Q.: You expect to be called as a witness in this case?
A.: Yes.
Q.: You were a witness at the inquest held by the coroner?
A.: Yes.
Mahon said, "That's all."
Corrigan said, to Houk: "Did you bring the warrant?"
A.: No.
Q.: Did you ever have it in your possession?
A.: No.

Then Corrigan turned to Bay Village Solicitor Richard Weygandt and asked: "Do you have the warrant?" Weygandt said, "No, not with me."

Copy Is Introduced

Saul Danaceau and Corrigan then agreed between themselves in the courtroom to put into the record a copy of the warrant and a copy of the affidavit naming Sheppard, charging him with the murder. Judge Merrick then questioned Houk briefly.

Q.: Was Mr. Barber elected?
A.: Yes, he was elected by the people to Council, and as president by the council.
John Mahon said to Houk "You have a judge in Bay Village?"
A.: No.

Policeman Heard

Lieut. Clifford Mercer of the Bay Police Department was questioned by Corrigan, but when it developed that he was unable to identify the Sheppard murder warrant he was excused.

Patrolman Fred Drenkhan, also of the Bay Force, identified a copy of the warrant.

Barber, the council president, testified under quizzing by Corrigan that he was elected last November and took office Jan. 1 of this year.

Q.: On July 30, 1954, was the murder affidavit presented to you by Police Chief John Eaton?
A.: Yes, it was.
Q.: Where?

A.: At my home about 9:15 p. m.

Signed Warrant

Q.: Did you sign the warrant?
A.: Yes.
Q.: After you signed the warrant did you later see Sam Sheppard?
A.: Yes, about 10:15 p. m.

Q.: Did you preside at the hearing in the Bay City Hall?
A.: Yes.

Q.: Was the defendant represented by counsel?
A.: No.

Q.: Did you commit Sam Sheppard to jail?
A.: Yes.

Mahon introduced a copy of the Bay Village charter which cites duties of the Council president. Mahon read a section

which specifies that the president of Council has all the rights and duties as other members of the Council, and in addition, when the mayor is absent or disabled, must perform his (the mayor's) duties.

In a single question under redirect examination, Corrigan asked:

"Was the mayor present in the City Hall while Sam Sheppard was arraigned before you?"
A.: Yes.

This concluded all of the evidence and testimony.

Judge Merrick immediately informed attorneys that he did not wish to hear any oral arguments. He then announced in one speedy, brief sentence the decision that sent Sam Shep-

pard, manacled to a deputy sheriff, back to the County Jail.

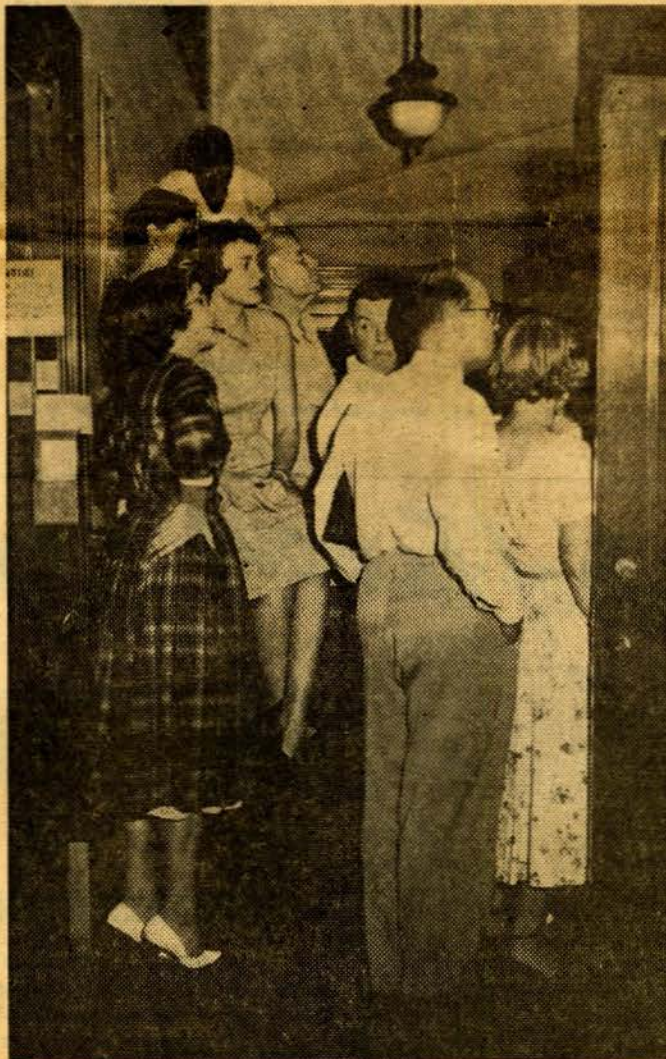
Court's Ruling

Here is what the judge said: "The writ is refused. The prisoner is ordered remanded to the custody of the sheriff."

Sheppard was escorted by two deputies and Sheriff

Sweeney through the crowd of spectators, into the court house hallways, down the elevator to the first floor, out a side door and into a waiting county car, for the ride back to jail.

As Sheppard walked out of the courtroom Attorney Corrigan called out to him in a loud voice, "I'll see you this afternoon, Sam."



CURIOUS CROWD gathers outside of Judge Frank Merrick's courtroom to catch glimpse of the murder suspect.