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Review of Sheppard's Conviction Focuses on Judge's Impartiality

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Supreme Court Justices focused sharply yesterday on the contention that Dr. Samuel H. Sheppard, appealing the contention that Dr. Samuel H. Sheppard, appealing wife 12 years ago, had been tried by a judge who was convinced of his guilt beforehand.

The trial judge, Edward A. Blythin of Cleveland, is now dead. So is the person who made the major allegation about the prejudgment, newspaper columnist Dorothy Kilgallen, who had asserted that Blythin told her that Dr. Sheppard was guilty.

The case of the suburban Cleveland osteopath, the subject of almost unparalleled sensational newspaper attention in Cleveland from the moment of the murder on July 4, 1954 until the end of the trial five months later, reached the Supreme Court on a second try. In 1956 the Court declined to hear an appeal from the original trial.

Dr. Sheppard has been free on bond pending new legal moves since July 1964, after having been jailed for nine years. He and his second wife, Ariane, sat in the front row of the spectators' seats during yesterday's two-hour argument.

Dr. Sheppard's attorney, F. Lee Bailey of Boston, contended that the prejudicial editorials, headlines and cartoons published by the Cleveland Press in effect instigated the prosecution of his client by Cleveland law officers, controlled their action and predetermined the verdict.

But, clearly not anxious to force the Supreme Court into having to rule between the Sixth Amendment rights to a trial before an unbiased jury and the First Amendment guarantees of press freedom, Bailey insisted his case did not rest on a finding of law violations by the newspaper.

Rather, he asserted, the trial judge had legal remedies to disinfect his court from the

refused to hear the earlier appeal, Bailey mentioned the Kilgallen deposition, which declared that Judge Blythin had told the late columnist before the trial began that Dr. Sheppard was "guilty as hell," that the trial was "an open and shut case . . . there's no doubt about it."

Led by Chief Justice Earl Warren, seven of the nine members of the court joined in detailed questions about the document and the issue, real or hypothetical, of a trial judge's prejudgment of guilt. Ohio Attorney General William B. Saxbe argued that the

deposition was not a part of the record and that in any event it was unsworn to, not subjected to cross examination and was rank hearsay about a dead man's statement. He was sharply challenged, however, on most of these points.

The Justices bristled noticeably when Saxbe had begun his argument—to the effect that the lower courts had afforded Dr. Sheppard a trial of textbook punctiliousness—by referring to the "proven guilt" of Sacco and Vanzetti despite the agitation of the "bleeding hearts."