



4-5-2000

State's Motion to Exclude Testimony of John Wilson

A. Steven Dever
Cuyahoga County Assistant Prosecutor

William D. Mason
Cuyahoga County Prosecutor

Kathleen A. Martin
Cuyahoga County Assistant Prosecutor

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FILED IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2000 APR -6 A ID: 22

CHARLES MURRAY, SPECIAL ADMNSTR.,	:	CASE NO. 312322
	:	
Plaintiff,	:	JUDGE SUSTER
	:	
v.	:	
	:	<u>STATE'S MOTION TO</u>
STATE OF OHIO,	:	<u>EXCLUDE TESTIMONY</u>
	:	<u>OF JOHN WILSON</u>
	:	
Defendant.	:	

State of Ohio by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, and Assistant Prosecutor, Kathleen A. Martin, moves this Honorable Court to exclude the testimony of John Wilson. The grounds for this motion are that Wilson's testimony is not proper rebuttal, relies almost exclusively on facts not in evidence and that the process of "psychiatric autopsy" as applied in this case is unreliable under the Daubert criteria, all as set forth in the memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



Kathleen A. Martin (0040017)
A. Steven Dever (0024982)
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-5870
Attorneys for Defendants

MEMORANDUM IN SUPPORT

A. INTRODUCTION

Plaintiff proposes to present Dr. John Wilson as an expert on rebuttal. Defendant submits that his appearance on rebuttal is improper for the reason that his testimony does not properly rebut evidence presented by defendants.

Dr. John Wilson is a psychologist who has opined that Samuel H. Sheppard suffered from post- traumatic stress disorder (PTSD) following the murder of Marilyn Sheppard and for the remainder of his life. Plaintiff has not identified why this is appropriate rebuttal testimony. Defendant cannot imagine any proper rebuttal purpose.

Plaintiff's counsel has suggested that the "psychological autopsy" establishes an explanation why Sam Sheppard's accounting of events was incomplete. This is not proper rebuttal. It is an attempt to bolster the testimony of Dr. Fallon elicited by Plaintiff in his case in chief. The issue of whether Shepard's alleged concussion explains his "incomplete accounting" of events was put in issue by the Plaintiff in his case in chief. Dr. Fallon testified that an incomplete accounting of events by Sam Sheppard is consistent with Sheppard's alleged brain concussion. Dr. Wilson's testimony to the same effect is not rebuttal. It supports an issue raised in Plaintiff's case in chief and should have been presented then.

In addition, Dr. Wilson has based his opinion almost exclusively upon facts not in evidence. Wilson purportedly performed a "psychological autopsy" of Samuel H. Sheppard. There is no basis in the transcript of Wilson's videotape deposition, his

discovery deposition or his report to support the conclusion that such a process is reliable under the criteria set forth in *Daubert v. Merrell Dow Pharmaceuticals* (1993), 509 U.S. 579 .

B. IMPROPER REBUTTAL

Rebuttal testimony is not for the purpose of bolstering a party's case in chief. A rebuttal witness can only provide testimony in response to new matters introduced by a party opponent. See, *Moore v. Retter* (10 Dist. 1991), 72 Ohio App.3d 167, 174. The general rule is that:

[a] party upon whom the affirmative of an issue rests is bound to give *all* his evidence in support of the issue in the first instance, and can only give such evidence in reply as tends to rebut the *new matter* introduced by his opponent. (emphasis added).

Id. at 174. See, also, *Cities Service Oil Co. v. Burkett* (1964), 176 Ohio St. 449, 452 (stating that “[u]ndoubtedly, the proper time for the introduction of evidence in support of a litigants’ own case is during the introduction of his evidence in chief...”); *Burke v. Schaffner* (10 Dist. 1996), 114 Ohio App.3d 655 (refusing to allow rebuttal witness to testify since there was no “new” evidence to rebut). “A party upon whom the affirmative of an issue rests is bound to give all his evidence in support of the issue in the first instance, and can only give such evidence in reply as tends to rebut the new matter introduced by his opponent.” *Burke v. Schaffner*, (1966), 114 Ohio App.3d 655, 665.

C. DR. WILSON'S TESTIMONY IS PRECLUDED BY EVID. R. 703

The testimony of Dr. Wilson must be excluded because Dr. Wilson's opinions are based almost entirely on facts or data not perceived by him and not admitted in evidence in this case. Evid. R. 703; *Mahan v. Bethesda Hosp., Inc.*(1992), 84 Ohio App. 520 .

Dr. Wilson bases his opinions in large measure upon conversations he had with Dr. Stephen Sheppard and Sam Sheppard's second wife, Ariane, see video deposition transcript, pp. 24-26, attached. In addition, he relied upon various documents, most of which have not been admitted in the trial of this case. See p.2 of Wilson opinion report, attached. Of the eighteen groups of documents, at least thirteen categories have not been admitted into evidence. These include: Medical report of William F. Fallon, Jr. MD, Director, Division of Trauma MetroHealth Medical Center, dated July 29, 1999; statement and testimony of Dr. Sam Sheppard, U.S. Senate Subcommittee to investigate juvenile delinquency. Senate judiciary Committee, July 8, 1969; *Endure and Conquer*, book by Samuel H. Sheppard, 1966, World Publishing Co., Cleveland, Ohio; Summary of trial testimony of Samuel H. Sheppard; Report of Tim McMahon, November 23, 1954, memo regarding Dr. Charles Elkins; Interview with Sam Reese Sheppard, October, 1999; Psychological report, Ohio Penitentiary, dated August 18, 1955, Medical records, Adult Correctional Units, dated December 12, 1962; Sociology report, Ernest T. Gilbert, not dated; Pardon and Parole Commission Report, dated January 29, 1963; and, Ohio Pardon and Parole Commission Report, dated January 3, 1963.

Additionally, Dr. Wilson relied on information ascertained from F. Lee Bailey's book, *The Defense Never Rests*, also not admitted into evidence in this case. video deposition transcript, p. 25.

D. WILSON'S "PSYCHOLOGICAL AUTOPSY" PERFORMED TO EXPLAIN SAM SHEPPARD'S LIFE BEHAVIOR, IS NOT RELEVANT OR RELIABLE.

Dr. Wilson has never provided trial testimony of a "psychological autopsy" and has apparently only once performed a "psychological autopsy" for litigation. video deposition transcript, pp. 75-77. In that case, the purpose of his testimony was to determine triggering stimuli and reasons for a suicide. That is, the litigation issue was directly relevant to the cause of death of the individual who was the subject of a "psychological autopsy". Dr. Wilson has never testified to a diagnosis of PTSD for a person he never interviewed. video deposition transcript, p.54.

Unquestionably, the ordinary method of providing an accurate and reliable psychological diagnosis includes interviewing and, perhaps, testing the subject. A "psychological autopsy" does not include these measures. As such, the purpose of a "psychological autopsy" is very narrow and its reliability is suspect.

The limited purposes of a "psychological autopsy" center around issues directly related to the mode of death of the subject of the "psychological autopsy". These include assistance in determining the mode of death when death occurred under equivocal circumstances. That is, in determining whether the death was natural, accidental, suicide, or homicide. In circumstances where a death was determined to be suicide, a "psychological autopsy" may be useful in determining the triggering stimuli for the

suicide when that information is useful for reasons including therapeutic resolution for survivors or the gathering of information for the treatment of future patients.

The “psychological autopsy” performed regarding Sam Sheppard was not for any purpose connected to the mode of his death. Instead, its purpose seems to be to serve as a basis for establishing injury to Sam Sheppard as a consequence of his alleged wrongful imprisonment, clearly not a subject relevant to this proceeding. Alternatively, according to pp5-6 of Dr. Wilson’s opinion report, the purpose seems to be to form the basis of Dr. Wilson’s opinion that the alleged “wrongful conviction and incarceration of Dr. Samuel H. Sheppard had long-lasting post-traumatic impacts to his psychological well-being and subsequent adult psychosocial functioning in terms of career, social interpersonal relationships and overall adaptive and coping behaviors.” There is no rebuttal relevance to this opinion. It does not rebut evidence submitted by the State of Ohio.

E. DR. WILSON’S TESTIMONY SHOULD BE EXCLUDED UNDER EVID. R. 403.

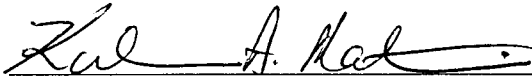
Allowing the jury to hear testimony from Dr. Wilson which, in effect, opines that Sam Sheppard’s life was completely destroyed in order to explain why Sheppard did not give a full accounting during the hours and days following the murder of Marilyn Sheppard would result in prejudice far outweighing any probative value of the testimony advanced by Plaintiff. Since this proceeding is not about injury and hardships allegedly suffered by Sam Sheppard, Dr. Wilson’s testimony will also confuse the jury regarding the only pertinent issue of whether Plaintiff has established the innocence of Sam Sheppard regarding the death of Marilyn Sheppard.

CONCLUSION

Dr. Wilson's testimony is based upon materials not perceived by him or admitted into evidence. It is offered to support Dr. Fallon's testimony and is thus not proper rebuttal. It consists of an unreliable "psychological autopsy" addressing no issues related to the mode of death of Sam Sheppard, the subject of the "psychological autopsy". Dr. Wilson's testimony is confusing, irrelevant and unduly prejudicial. It should be excluded.

Respectfully submitted,

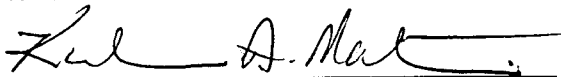
WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



Kathleen A. Martin (0040017)
A. Steven Dever (0024982)
Cuyahoga County Prosecutor's Office
The Justice Center, Courts Tower
1200 Ontario Street
(216) 443-5870
Attorneys for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Exclude Testimony of Dr. Wilson was served this 6th day of April, 2000, by hand delivery, upon Terry Gilbert, at Court Room 20-B, 1200 Ontario Street, Cleveland, Ohio 44113.



Kathleen A. Martin
Assistant Prosecuting Attorney

1 State of Ohio,) SS:
2 County of Cuyahoga.)

3 - - -

4 IN THE COURT OF COMMON PLEAS

5 - - -

6 ALAN DAVIS, et al.,)
7 Plaintiffs,)
8 v.)
9 STATE OF OHIO,)
10 Defendant.)

Case No. 312322
Judge Ronald Suster

11 - - -

12 THE VIDEOTAPED DEPOSITION OF
13 JOHN P. WILSON, B.C.F.E., D.A.B.P.S.

14 TUESDAY, JANUARY 18, 2000

15 - - -

16 The videotaped deposition of JOHN P. WILSON,
17 B.C.F.E., D.A.B.P.S., a witness, called for examination
18 by the Plaintiffs, under the Ohio Rules of Civil
19 Procedure, taken before me, Cynthia A. Sullivan,
20 Registered Professional Reporter and Notary Public in
21 and for the State of Ohio, pursuant to notice, at the
22 offices of Terry Gilbert, Esq., 1700 Standard Building,
23 Cleveland, Ohio, commencing at 2:15 p.m., the day and
24 date above set forth.

25 - - -

1

2 APPEARANCES:

3

4 On behalf of the Plaintiffs:

5 GORDAN FRIEDMAN, ESQ.
6 TERRY H. GILBERT, ESQ.
7 Friedman & Gilbert
8 1700 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113
(216) 241-1430

9

10 On behalf of the Defendant:

11 DEAN BOLAND, ESQ.
12 Assistant Prosecuting Attorney
13 Cuyahoga County Prosecutor's Office
14 The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

14

15

- - -

16

17 ALSO PRESENT:

17

18

Thomas A. Moran, J.C.D., B.C.E.T.S.
Tyler J. Dorsey, Videographer

19

- - -

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22

23

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1 suffering from those, the shock and the trauma that he
2 suffered in July of '54?

3 A. Yes.

4 Q. How do you know that, from whence do you get that
5 conclusion?

6 A. Yes. I know it from a number of sources. First
7 of all, when one looks at the medical records there is
8 evidence of this kind of confusion and disorientation
9 and problems with piecing together everything that
10 happened. That was noted by numerous medical examiners
11 who examined him during this period of time.

12 Secondly, in his own testimony in the trial he
13 talks about that period of time and his own
14 disorientation and confusion and difficulty trying to
15 piece all of the parts of the puzzle together.

16 Thirdly, I spoke to his brother, Stephen, who in
17 fact transported him to the hospital on July the 4th,
18 1954, and he was able to corroborate that many of these
19 same kind of psychological injuries, that is, the
20 shock, trauma and post-traumatic affects, were present.

21 Fourth, I spoke with his wife, Ariane, whom he
22 married later after he was discharged from prison who
23 had spoken with him, you know, at length and in an
24 intimate way about all of these experiences, and she
25 was able to also provide information that suggested

1 that. So there are numerous sources of information
2 that converge in showing that the shock, trauma and
3 post-traumatic impacts started on July 4th and then
4 carried forth I believe all the way to the end of his
5 life.

6 Q. Now, you've indicated that you do have an opinion
7 as to whether or not he was suffering from
8 post-traumatic stress disorder during the course of his
9 incarceration, his wrongful incarceration, and even
10 upon his release after he was acquitted.

11 A. That's correct.

12 Q. Could you share with us the source of your
13 conclusion and opinion of that?

14 A. Well, the source for that, the data source for
15 that, one, comes from my interview with his ex-wife,
16 Ariane, again who is now residing in Dusseldorf,
17 Germany. I spoke with her personally. I have spoken
18 with his brother, Stephen.

19 Also, there is information from a book that he
20 wrote called Endure and Conquer in which he discloses
21 the effects of incarceration upon him as a person.
22 There is also information from his attorney, F. Lee
23 Bailey, in his book called The Defense Never Rests who
24 comments on his, Dr. Sheppard's, mental state in that
25 book.

1 Beyond that there is additional information
2 contained in testimony that Dr. Sheppard gave before
3 the Senate subcommittee that was chaired by Senator
4 Dodd at the time in July of 1969, and in that testimony
5 he details a number of the types of experiences he had
6 while incarcerated which were of the nature of violence
7 or sexual assault or to himself or other inmates. And
8 as well there's in fact information in some of the
9 psychological reports that were conducted and written
10 up while he was incarcerated.

11 So there is numerous sources of data that point
12 to the existence of these symptoms that we're
13 discussing.

14 Q. Well, while we're dealing with his period of
15 incarceration, what took place during the period of
16 time that Dr. Sheppard was incarcerated that would
17 enhance, prolong, exacerbate him from suffering or his
18 PTSD, the trauma that he was suffering?

19 A. Well, there are a number of things during that
20 period of time while he was incarcerated that would
21 exacerbate or enhance or intensify his PTSD.

22 First of all, we need to make it really clear
23 that everyone understands this, that the foundation
24 stone of his PTSD was the murder of his wife, and that
25 was traumatic and that's the shock and the horrific

1 A. No question about it.

2 Q. Do you think it's traumatic for a person to
3 actually commit a crime such as murder?

4 A. It depends on the person.

5 Q. So it can be traumatic for an individual who has
6 actually committed a murder to then try and live on
7 their life after that?

8 A. Yes.

9 Q. And does Sam Sheppard's diagnosis by you of
10 suffering from PTSD, does that indicate to you whether
11 or not he is the killer of Marilyn Sheppard or not?

12 A. No.

13 Q. You've testified between 50 and a hundred times
14 or so before on PTSD on trials?

15 A. Yes.

16 Q. But you've never testified to a diagnosis of that
17 for a person you have never spoken with?

18 A. Correct.

19 Q. Okay. This is the first time, right now?

20 A. Correct.

21 Q. Okay. And the references you make in your
22 report, Defendant's Exhibit 1, referring you to the
23 fifth full paragraph on page 3 where you make
24 references to minor problems with sexual intimacy, do
25 you see that paragraph?

1 moment. Go off the record for a second.

2 (Thereupon, there was a discussion
3 off the record.)

4 - - -

5 REDIRECT EXAMINATION

6 BY MR. FRIEDMAN:

7 Q. Dr. Wilson, you have testified today before the
8 jury as to your opinion as to whether or not Dr. Samuel
9 Sheppard was suffering from post-traumatic stress
10 disorder in 1954 which carried through actually until
11 his death in 1970, correct?

12 A. Correct.

13 Q. Now, do you feel that you had enough material to
14 reach those conclusions?

15 A. Yes.

16 Q. Had you not been given enough material to reach
17 those conclusions and enough documentation, would you
18 have so noted it to the counsels for the estate of Sam
19 Sheppard?

20 A. Yes.

21 Q. Now, you've indicated also that you never have
22 testified as to the results of a psychological autopsy
23 that you've talked about, that this is the first
24 situation that you've done trialwise, correct?

25 A. Trialwise, correct.

1 Q. Have you -- but have you engaged in psychological
2 autopsies for purposes of any other court proceedings?

3 A. Yes.

4 Q. Could you tell us what they were for?

5 A. Well, the one that comes to mind right away was a
6 case involving a Viet Nam veteran who committed
7 suicide, and his estate was asking the Veterans
8 Administration for family benefits due to his death
9 because he suffered post-traumatic stress disorder and
10 depression although it was never diagnosed such by the
11 V.A.

12 So the question in front of the Court was whether
13 or not such a diagnosis would have been appropriate
14 and, therefore, the treatment and so forth would have
15 been appropriate as well. I was supplied in that case
16 with voluminous information both in terms of medical
17 records from the Veterans Administration and reports of
18 individuals who knew the person and other people who
19 had examined him and was asked to do a psychological
20 autopsy and render an opinion based on his service
21 record, his medical record and his post-discharge
22 record whether or not he suffered the symptoms of
23 post-traumatic stress disorder that would have led to
24 his depression and suicide.

25 Now, I constructed a psychological autopsy in

1 that case which was in fact accepted by the Court.

2 That led to a successful conclusion for his family.

3 Q. Okay. So you really have engaged in creating
4 psychological autopsies on prior occasions?

5 A. Yes.

6 Q. This is merely the first time that you are going
7 all the way to litigation, correct?

8 MR. BOLAND: Objection.

9 A. Correct.

10 Q. You indicated regarding Sam Sheppard suffered
11 from depression and self-medication upon his release
12 from confinement in prison.

13 A. (Indicating).

14 Q. Is depression and self-medication part of the
15 equation, part of PTSD, post-traumatic stress disorder?

16 A. Absolutely. In fact, the scientific data that we
17 have based on epidemiological studies shows that if you
18 suffer from post-traumatic stress disorder, that the
19 comorbidity or codiagnosis of major depression is
20 50 percent. And if you have both PTSD and major
21 depression, then the comorbidity with alcoholism or
22 substance abuse ranges from 60 to 90 percent.

23 So the risk factors, to say it very simply, that
24 if you're positive for post-traumatic stress disorder
25 and positive for major depression, the risk factors for



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John P. Wilson, Ph.D., B.C.F.E., D.A.B.P.S.

Phone: (216) 932-9865
Fax: (216) 932-9658

Thomas J. Moran, B.C.F.T., B.C.E.T.S., J.C.D.
Chief Operating Officer (C.O.O.)

www.fc-ptsd.com

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2000 JAN - 18
PROSECUTING ATTORNEY
CUYAHOGA COUNTY

December 19, 1999

Mr. Terry Gilbert, ESQ.
Attorney at Law
1700 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

RE: STATE VS. DR. SAM SHEPPARD

PRELIMINARY CONFIDENTIAL PSYCHOLOGICAL REPORT ON DR. SAM SHEPPARD

At your request, I have reviewed the documents listed in this report to formulate an initial opinion regarding the psychological stress response state of Dr. Sheppard, especially the effects of his wrongful incarceration, in connection with the alleged murder of his wife.

QUALIFICATIONS OF THE EXAMINER

Dr. John P. Wilson is a licensed psychologist in the states of Ohio (#1538) and Texas. Dr. Wilson is a professor of psychology at Cleveland State University, where he specializes in the study and treatment of Post-Traumatic Stress Disorders (PTSD). Dr. Wilson's certifications include: Board Certified Forensic Examiner (B.C.F.E.), American College of Forensic Examiners: Diplomate, American Board of Psychological Specialties (D.A.P.S.) in Trauma Abuse, American College of Forensic Examiners; Fellow of the American Academy of Experts in Traumatic Stress; Diplomate in Forensic Traumatology, American Academy of Experts in Traumatic Stress; and Advisory Board Member of the National Center for Post-Traumatic Stress Disorder. Professional affiliations include: American Psychological Association: Fellow, American Institute of Stress; Past President International Society for Traumatic Stress Studies; Board Member, European University for Mental Health and Human Rights. A curriculum vitae lists all publications by the expert.

DOCUMENTS REVIEWED IN PREPARATION OF THIS REPORT

1. Medical report of William F. Fallon, Jr., M.D., Director, Division of Trauma, MetroHealth Medical Center, dated July 29, 1999.
2. Statement and testimony of Dr. Sam Sheppard, U.S. Senate Subcommittee to investigate juvenile delinquency. Senate Judiciary Committee, dated July 8, 1969.
3. Endure and Conquer, book by Samuel H. Sheppard, 1966, World Publishing Company, Cleveland, Ohio.
4. Summary of trial testimony of Samuel H. Sheppard.
5. Bay View Hospital Records.
6. Medical Consultation, Dr. C.C. Foster, 1954.
7. Medical Consultation, Dr. C. Elkins, dated July 6, 1954.
8. Bay View Hospital records, admission date July 4, 1954; discharge date July 8, 1954.
9. Physical examination of Dr. Sheppard by Woodrow Bashline.
10. Report of Tim McMahon, November 23, 1954, memo regarding Dr. Charles Elkins.
11. Interview with Sam Reese Sheppard, October, 1999.
12. Psychological report of Anthony H. Whobrey, Ph.D., dated December 12, 1962.
13. Classification summary, Ohio Penitentiary, dated February 14, 1956.
14. Psychological report, Ohio Penitentiary, dated August 18, 1955.
15. Medical records, Adult Correctional Units, dated December 12, 1962.
16. Sociology report, Ernest T. Gilbert, not dated.
17. Pardon and Parole Commission Report, dated January 29, 1963.
18. Ohio Pardon and Parole Commission Report, dated January 3, 1963.

BRIEF PSYCHOSOCIAL HISTORY

Dr. Samuel H. Sheppard was born on December 29, 1923. He was raised in Cleveland Heights, Ohio. He attended Cleveland Heights High School, was President of his

class, and participated in football, basketball, and track. He attended Hanover College in Indiana for 2 years and also took courses at Case Western Reserve University during the summer months.

He enrolled in the College of Osteopathic Physicians and Surgeons in Los Angeles, California. He had an internship in 1947 at Los Angeles County General Hospital. He completed a residency in neurosurgery under supervision of Dr. R. A. Sheppard in 1951 in Cleveland, Ohio.

Dr. Sheppard worked in California until 1951 when he returned to the Cleveland area and began to practice medicine. He worked at Bay View Hospital and was on call for any and all emergencies. In 1952, he offered medical services to the police officers of Westlake and Bay Village on a pro-bono basis. Dr. Sheppard was appointed co-medical head of civil defense medical units in Bay Village, Ohio.

At Bay View Hospital, Dr. Sheppard was in charge of all accidents until they could be turned over to another department of medical care. Dr. Sheppard was also connected to other hospital medical facilities in Amherst, Akron, Youngstown, and Grove City, Pennsylvania.

Dr. Sheppard met his wife Marilyn Reese Sheppard at Roosevelt Junior High School. Mrs. Sheppard was one year ahead of Dr. Sheppard in school. In high school and college they were "pinned" and pledged to marry each other. In 1945 the couple married in Los Angeles. They had one son, Sam Reese Sheppard who was born on May 18, 1947 in Los Angeles, California. After the Sheppards moved to Bay Village, young Sam attended elementary school in Bay Village and after the murder, attended schools in Rocky River, Ohio and the Culver Military Academy in Indiana through the 12th grade.

Dr. and Mrs. Sheppard were active in the neighborhood and community. They were active in sports, recreation, and activities and social events. Following the birth of Sam Reese Sheppard, there were minor problems with sexual intimacy which resolved by the time of her second pregnancy in March, 1954. They announced the pregnancy on Friday, June 2, 1954 at a dinner held at the home of Dr. Steve Sheppard. The dinner was a celebration of the pregnancy and the couple was excited by the good news shared with family.

On Saturday July 3, 1954, Mrs. Sheppard made arrangements for the July 4th celebration at their home with guests and hospital interns. Dr. Sheppard worked on July 3rd at the hospital. It was a busy day, during which he lost a young male child who had been struck by a utility truck. He left the hospital around 5:00 p.m. and returned home. At 6:00 p.m. the Sheppard's had cocktails at the Ahern's house, who were nearby neighbors. While there, he was called back to the hospital to attend a patient. Later, at the Sheppard home, the Ahren's and Sheppard's had dinner on the outside porch. After the meal, the wives watched television and Dr. Sheppard fell asleep lying on the couch while Mr. Ahern listened to the Cleveland Indians baseball game.

The Ahern's left to walk home and Mrs. Ahern attempted unsuccessfully to awaken Dr. Sheppard before the couple left. At that point, Mrs. Sheppard retired to her bedroom. Dr. Sheppard was awakened by his wife crying out, which he believed to be a pregnancy related convulsion. He proceeded upstairs and encountered a "form of some type;" grappled with it and was subsequently struck from behind. He lost consciousness and later came to; saw his badly beaten wife and checked on his son, "Chip." He reported being confused at the time, but pursued the "form" out to the beach where he lost consciousness again. Upon awakening in the morning, he returned to the house and eventually discovered that Marilyn was dead. He called his neighbors, Mr. and Mrs. Houk, and requested assistance. Mr. Spencer Houk was the Mayor of Bay Village at the time.

Dr. Sheppard was taken to Bay View Hospital by his brother where he was admitted on July 4 and discharged on July 8, 1954. On July 30, 1954, Dr. Sheppard was arrested. On December 17, 1955, after hours of jury deliberation, Dr. Sheppard was convicted of second degree murder. He was sentenced to life in prison at the Ohio Penitentiary in Columbus, Ohio. Dr. Sheppard was incarcerated in Columbus from December, 1955 until 1964 when his conviction was overturned by the Supreme Court of the United States.

STRESSORS OF INCARCERATION

Beyond the trauma of discovering the brutal murder of his pregnant wife, Marilyn Reese Sheppard, and the subsequent events of the first and second trials, Dr. Sheppard experienced a number of stressors associated with his incarceration in the Ohio State Penitentiary. These stressors were also preceded by witnessing the raping of a 16-year-old boy by five inmates in the Cuyahoga County Jail. He stated that he tried to intervene and was physically assaulted. He also witnessed the raping of a 17-year-old boy while in the Cuyahoga County Jail and based on his recommendation, the boys were taken to City Hospital due to rectal tears for medical treatment.

In the way of summary form, Dr. Sheppard experienced many stressors during the period of time from being in solitary confinement in Cuyahoga County Jail until his release from the Ohio State Penal Facility in Columbus, Ohio.

- Defended a 17-year-old boy, Steve Garrison, by assaulting a larger inmate who was attempting to sexually abuse Mr. Garrison.
- He was placed in solitary confinement to discourage communicating with attorney, family and others for six days. He reports of being chained to two doors in a standing position. He states that it was dark, with very little air, and no toilet privileges or food. Experienced physical and psychological exhaustion and stood in his own excrement during this time period.
- On another occasion, was once again placed in solitary confinement for 3 days under the same conditions listed above.

- Reports being beaten with rubber hoses on four occasions leaving scars on his back.
- Inmate named Charlie Bowman suffered from gastric ulcer. placed in solitary confinement who complained of pains. Dr. Sheppard requested to treat Mr. Bowman which was denied. Subsequently, Mr. Bowman hemorrhaged and died while in the "hole." Dr. Sheppard carried his body out of the "hole" and found the experience to be traumatic.
- Treated an inmate who had been stabbed 9 times in chest; 4 times in abdomen and 3 times in leg. Associate Warden instructed Dr. Sheppard to let the prisoner die "because he didn't deserve to live." Dr. Sheppard disobeyed the order and treated the patient who lived.
- Dr. Sheppard was asked by inmates to steal narcotics. On at least one occasion, caught an inmate stealing medication from the medical infirmary and fought the inmate to get the drugs back.
- Experienced repeated episodes of depression, helplessness, isolation, degradation, dehumanization (i.e., he was referred to by his prison identification number).
- Because of his work as a doctor in the prison, Dr. Sheppard became aware of sexual and physical assaults; episodes of brutality, inhumanity and sheer exploitation of persons.

The events of his incarceration and the stressors encountered, appear to have left post-traumatic scars to the psyche of Dr. Sheppard. He lost his wife, family, prestigious career, standing in the community and the inability to regain his identity as a proud, productive and highly skilled physician. He lost his relationship as a father to his son, Sam Reese Sheppard and the opportunity to raise another child who was in Marilyn Sheppard's womb at the time of her death. The brutality experienced during incarceration left Dr. Sheppard a shattered individual whose views on life and humanity had been tainted, if not destroyed forever. The post-traumatic impacts of the stressors of incarceration changed his personality, coping behavior and capacity to regain his professional identity.

The post-traumatic impacts to Dr. Sheppard are consistent with the scientific literature on wrongful conviction and incarceration, the stresses associated with confinement, sensory deprivation and existence in an environment of omnipresent threat. The relevant scientific literature indicates that clinical depression, post-traumatic stress disorders (PTSD), identity confusion, loss of self-esteem and profound changes in personality and behavior, substance dependence, and suicidal ideation, are among the common consequences of such experiences of incarceration. Additionally, wrongful conviction also makes salient the psychological task of dealing with how a system of justice can fail and lead to irreversible losses which make the task of processing the emotional impact of such experiences difficult and in some cases, impossible. The review of the documents provided suggest that the wrongful conviction and incarceration of Dr. Samuel H. Sheppard had long-lasting post-traumatic impacts to his psychological well-being and subsequent adult psychosocial

functioning in terms of career, social interpersonal relationships and overall adaptive and coping behaviors.

It is the opinion of this expert that the murder of Marilyn Sheppard was a traumatic event for Dr. Samuel H. Sheppard. The documents reviewed suggest that he was in a state of acute psychological distress with symptoms of a post-concussive head trauma. Under current diagnostic standards, Dr. Sheppard would likely have been diagnosed as suffering from an Acute Distress Disorder and Post-Traumatic Stress Disorder. His behavior pattern as observed and reported in the medical records listed and the documents reviewed are entirely consistent with having suffered a traumatic event (i.e., murder of wife and physical assault) which would not only produce acute stress disorder and post-concussive disorder but likely lead to the later development of post-traumatic stress disorder, depression and post-traumatic personality changes in psychosocial functioning.

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Date

John P. Wilson, Ph.D.

John P. Wilson, Ph.D., B.C.F.E., D.A.B.P.S.
Diplomate, Board Certified Forensic
Examiner, American College of Forensic
Examiners

Fellow, American Academy of Experts in
Traumatic Stress

Fellow, American Institute of Stress, New York
Diplomate, American Board of Psychological
Specialties, Trauma and Post-Traumatic
Stress Disorder

Board Certified Expert in Forensic Traumatology,
American Academy of Experts in Traumatic
Stress

Licensed Psychologist #1538, Ohio

Professor of Psychology, Cleveland State
University, Cleveland, Ohio