



11-23-1966

66/11/23 Letter from F. Lee Bailey to Chief Drenkhan

F. Lee Bailey

How does access to this work benefit you? Let us know!

Follow this and additional works at: https://engagedscholarship.csuohio.edu/sheppard_police_later

Recommended Citation

Bailey, F. Lee, "66/11/23 Letter from F. Lee Bailey to Chief Drenkhan" (1966). *Police Documents - Later years*. 3.
https://engagedscholarship.csuohio.edu/sheppard_police_later/3

This Article is brought to you for free and open access by the Police Documents at EngagedScholarship@CSU. It has been accepted for inclusion in Police Documents - Later years by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.

LAW OFFICES
F. LEE BAILEY
FORTY COURT STREET
BOSTON
523-4975
CABLE-HABEAS

CHARLES M. BURNIM BERNARD A. KANSKY

I. J. SCHREIBER (R.I.)

K. T. WESSELHOEFT
CHIEF INVESTIGATOR

MARSHFIELD OFFICE
66 EARLDOR CIRCLE
PHONE 545-1005

November 23, 1966

Fred M. Drenkhan, Chief
Bay Village Police
Bay Village, Ohio

Dear Chief Drenkhan:

Please accept my apology for failing to call you on Friday as I had indicated. I was engaged in a rush project at the time, and had to leave Cleveland the next morning in order to go to New Jersey. I must start another murder trial there two weeks from today, and there is much to be done. Further, I think it is best that I set to print the information you have requested, in order that there be no vagueness or misunderstanding. On behalf of my client, Dr. Samuel H. Sheppard, I ask that you give your earnest attention to this matter, for the murder of Marilyn Sheppard is not a closed case until the murderer is brought to book.

I assume that your inquiry to me as to what information we might possess bearing on the case arises from public statements I have made and suggestions to the jury made in the course of trial. I therefore herein set forth all that I presently know about this matter, and submit it to you subject to the conditional privilege that nothing contained herein will become the subject of civil litigation so long as it is suggested in good faith; upon the latter you may rely. I have given this murder deep consideration for five years now, and have had innumerable conferences with many of

the parties involved bearing on the question of who may have committed it. My conclusion is based upon all of the circumstances which I know or believe to be true, and the deductive reasoning which those circumstances permit or compel.

I. GENERAL IDENTITY: It is my conclusion that the killer of Marilyn Sheppard was no stranger. This is a conclusion which was correctly reached by the police. However, as a jury has said, that killer was not Sam. If a stranger committed the crime, then the chances of solution are slight. But I believe that a stranger did not, because:

1. There was no sign of forcible entry, as you know. This could have been because the doors were not locked, or because the killer had a key.

2. No motive is shown by the evidence which fits a strange intruder. The dishevelment of the house appears to be more a cover than a quest for valuables, as the worthless things taken tend to indicate. No burglar would hit a woman 25 or 35 times; he would run away. And it is doubtful that a stranger, having murdered Marilyn, would pause to ransack solely to attain value; and nothing of value was taken.

3. It is likely that any stranger would have viewed the entire first floor before ascending the stairs. In the course of such a view, Sam would have been discovered. No stranger, aware that Sam was sleeping on the couch would go to the second floor to look around or to attack or approach Marilyn; at least not without disposing of Sam first. However, one familiar with the floor plan, who had reason to believe that Sam was not at home, would enter at the Lake Road door and proceed through the kitchen and up the stairs if he or she knew where Marilyn slept. Under the lighting conditions then prevailing, Sam might well not have been seen.

4. The killer or killers demonstrated familiarity with the home and real estate with other conduct. The Lake door had been locked, but he or they left by that door with

Sam in pursuit. Someone negotiated the difficult stairs to the beach, still with Sam in pursuit. No stranger could have done this. A stranger would have escaped through the door he had entered, unless there were some potential witness positioned near that door. I think we are satisfied that no one was so positioned. A person familiar with the terrain would know that the safest way home, with no lighting to afford a possible view to passers-by, was out the north door and through the back yards.

5. Both J. Spencer and Esther Houk were familiar with the floor plan of the Sheppard home, Marilyn's bedroom, and the path home via the Scheules back yard. This they have admitted in court.

II. MOTIVE: A frenzied killer of this nature offers two possible explanations: a psychotic with an urge to destroy who happened into the bedroom, or a person who was greatly angered against Marilyn for personal reasons. The other circumstances in the case unquestionably exclude a wandering psychotic. Therefore Marilyn was killed by someone she knew and had given cause to hate her, or by someone she did not know who might have arrived in her bedroom at the time of the crime and who then got cause to hate her. One possible motive is feminine jealous hatred, sparked to action by some event disturbing to the killer. A jealous killing requires a woman killer. Therefore, please consider the following known facts in support of the thesis that Esther Houk could have killed Marilyn because she caught Marilyn and J. Spencer Houk in the act of intercourse, or in a position where they were about to engage in such an act:

1. J. Spencer Houk was during the eight-month period preceding Marilyn's death, and probably for a longer time, having an affair with Marilyn. It is doubtful that this was strictly a carnal affair, for Houk's attentions to Marilyn suggest that he loved her. Jack Krakan, the Spang Bakeries man who happened in on them twice (he positively identified Houk as the man he saw, both to officials and to reporter Katherine Post, before the first trial) saw Marilyn standing with a nightgown slipped off her shoulders and below her breasts, in the hall. He saw Houk kissing her breasts. I did not elicit this detail at

trial because of young Sam Sheppard. Krakan also saw Marilyn hand Houk a key, and tell him not to tell Sam about it. The key is relevant to Jay Hubach's testimony, as I shall mention below.

2. A young girl named Jean Disbro, now married, living in Connecticut and named Jean Foreman, used to visit Marilyn every morning. Jean had strong emotional ties to Marilyn, and probably loved her; Jean's family life was rocky. Every morning Houk would drop by for coffee, and perhaps something more. As a matter of custom, Jean would leave when Houk appeared. At one point he became angry and said, "Are you living here now?" Just prior to her death, Marilyn one morning asked Jean to remain, indicating that she did not wish to be alone with Houk. Marilyn may have been breaking off the affair with Houk, or trying to. I had Jean in Cleveland for the trial, but did not use her because Judge Talty curtailed our case against Houk, and for other reasons; however, I have no doubt but what she is telling the truth. She can also tell you that Esther Houk, after the murder, asked Jean to report to her what was going on in the Sheppard family, and what was being said.

3. Dorothy Sheppard had Sam and Marilyn living with her in 1953 for a time because of a fire in Sam's house. Houk appeared there for coffee. Dorothy and Richard went on a trip, leaving the house to Sam and Marilyn. Marilyn did not wish to keep Dorothy's children. Young Sam was in school. There is every reason to believe that Houk's visits continued after Dorothy and Richard departed. He admitted to some of these at trial.

4. Houk was such a person as would have known the short route to Marilyn's bedroom. He had a key to the house. He knew (although he now denies this) that Sam ordinarily left his dressing room light on when he went out at night to the hospital. On the night in question he might well have

further concluded that Sam was out, because there was a car missing. Lester Hoverston was supposed to be staying with Sam, and his car should have been in the drive. Houk did not know that Hoverston had gone to Kent. He could well have concluded from the dressing room light and the missing car that Sam and Hoverston had gone down to the hospital for some reason. This would have left the way clear for an approach to Marilyn.

5. The position of Marilyn's pajamas at the time her body was found is of extreme significance. The top was pushed up over the breasts. The bottoms were off one leg. This is consistent with, and only with, hurried intercourse. The pajamas were not ripped or torn, so rape is out. Dr. Adelson testified that there is no way of determining that Marilyn did not have intercourse, short of ejaculation, prior to being killed. I can fathom no other possible explanation for the pajamas.

6. I am sure that the above circumstances occurred to investigators, and that efforts were immediately made to identify any persons who might know Marilyn so intimately that intercourse under these circumstances would be attempted. I assume that no one other than Houk was ever isolated.

7. Esther Houk is an unusually unsightly woman. Such people are ordinarily most resentful of beauty, and most insecure in their own romantic relations. It is unlikely that Esther had no wind of what was going on between Houk and Marilyn. If on the night in question she discovered at some point that Houk had left the house, she might well know where to look for him. Such a trip would be taken on foot, which would prompt the taking of a flashlight. The flashlight would have been in her hand when she arrived at the house; whispered noises from the second floor could easily have caused her to ascend the stairs. If she turned the beam on Marilyn and Houk, she then had cause for murder, the frenzied

kind of murder shown by the physical evidence to have occurred. The wounds on Marilyn could well have been inflicted by a flashlight, and by beating with hands. I believe that Esther is lefthanded, or was at the time of the incident. A check of her blood type, and that of Houk, has been made and is available to police. The injuries shown are consistent with the strength of a woman, more so than a man. The number of wounds is consistent with the act of a woman flooded with jealous hate.

8. Sam's spontaneous reference to Marilyn's killers was always "they", indicating that he somehow sensed the presence of more than one person. Had Sam come charging up the stairs while Marilyn was being beaten, he would have necessarily been felled else he interrupt and apprehend the killers. The first blow was struck to his mouth, breaking the teeth. A second was struck to the eye, leaving a hematoma. A third blow was struck to the back of the neck, and with great force. This will be explained below. We had always thought the next blow was delivered by something heavier than a human hand, perhaps the murder weapon. But the person who hit Sam, Houk, was not holding the weapon. I have reason to believe that the neck blow was delivered with a foot.

III. PHYSICAL EVIDENCE: The physical evidence found by investigators all comports with complicity in the Houks, and some of it specifically implicates them. More important, it fits rather well the thesis of murder which has been suggested above. I note the following:

1. The Green Bag: The green bag, found by Larry Houk, contained Sam's watch, ring and key chain. It was supposed to contain Marilyn's watch, but the no doubt shaky-handed murderer failed to get it into the bag; it (her watch) was found at the point in the den where the green bag was picked up - from Sam's tool box. This is the spot where the other items were placed in the bag, quite clearly.

2. Sam's Watch: Sam's watch was ripped from his left wrist, as evidenced by the broken link on the elbow side of the band. It was covered with blood, some of which appears to be spatter. Two of the spatter drops were on the inside of the connecting link on the twelve (noon-midnight) juncture of the watch and band, indicating that the watch was off the wrist, held in a murderer's hand, while blood was flying. While the murder was in progress or immediately after it had been accomplished, a decision was made to simulate a burglary. This was not done to throw suspicion away from Sam, but to suggest a stranger as the culprit, thus distracting police from the guilty neighbors.

3. The Key-Chain was ripped from Sam's pocket in a way that suggests he was lying on the floor at the time of the taking. The key chain was of no value, and would not have attracted a thief. It was, however, a gold something which attracted the hurried simulators of thievery who had killed Marilyn.

4. Sam's Ring was removed from his unconscious body as it lay on the floor, as were the other items. The fracture of the onyx setting is puzzling, and might have occurred if the murder weapon were swung at him and he warded off the blow with the ring.

5. Marilyn's Watch: Marilyn's right wrist was covered with wet blood (witness the streaming) when her watch was pulled away. This removal was accomplished, then, immediately after the murder. It is curious to note that Mary Cowan had difficulty in grouping the blood on both watches, and found it so slow to agglutinate that although she thought type O was indicated, she termed the tests inconclusive. There was more than enough blood on both watches for easy grouping. The large spot on the wardrobe door which Dr. Kirk determined did not come from Sam or Marilyn, and could not have come from the murder weapon, was also type O which agglutinated very slowly.

This suggests that the blood on the watches may have come from the same source as that on the wardrobe door: to wit, the killer.

6. Marilyn's Teeth: It is clear from the nature of the break in the teeth, and the place where they were found, that something inside Marilyn's mouth was jerked out, catching the teeth. This could have been the weapon, or it could have been the killer's finger. If it was the finger, this would account for (1) the striking of additional blows in retaliation for extreme pain, (2) the large spot on the wardrobe door, and (3) the slow-to-agglutinate blood on both watches which must have been handled by the murderer, or one of them. Assume that when Marilyn screamed, Houk may have tried to silence her by placing a hand over her mouth. This could well result in a bitten finger. Marilyn's dentist confirms that she had soft teeth which would break easily.

7. Fingerprints: No significant fingerprints were found, but there was evidence that some had been wiped away. This Sam would never do. A stranger might wipe, but this is not likely. The Houks would have to wipe, for the presence of their fingerprints would be most damning evidence under the circumstances.

8. Blood Trails: The reconstruction of the weapon-swing by Dr. Kirk is, I think, undeniable. Important is the fact that the blows were a long, low, almost loping sidearm swing with a full windup. One with the strength of a man would more likely have delivered a short, hard chopping blows. With the windup shown, even assuming a light weapon (would you believe a flashlight weapon?) more damage should have resulted to Marilyn's skull if an arm with male power had been doing the swinging. Otherwise, the blood trails are consistent with any left-handed killer.

IV. CONDUCT OF THE HOUKS: Perhaps the most incriminating facts insofar as the Houks are concerned involves their conduct after they received Sam's call. The very fact that he called Houk rather than yourself is significant, as more fully explained in the section relating to hypnosis, below. However, it is necessary to plot their known post-murder conduct both in terms of their innocence and guilt in order to determine its bearing on the issue in question.

Always to be remembered is the fact that Houk was given, according to his recent sworn testimony, only the following information: "Spen, come quick, I think they have killed Marilyn!" Subsequent conduct of Houk must be measured against, and only against, the receipt and consideration of this information.

Bearing in mind the relationship between Houk and Sam, which was congenial but not intimate, as well as the fact that Houk says he believed Sam when he got this call - he did not think Sam to be drunk or delusional - he might reasonably have:

- (a) Called the police. A friend confronted with two or more killers, either present or recently departed, certainly needs or deserves the help of the police.
- (b) Grabbed a weapon. If Houk felt that he would answer the emergency with personal action, he could hardly have gone into such potential danger without a weapon.
- (c) Protected his loved ones. With no specific information as to who or where "they" might be, Houk ought to have alerted his wife, locked the doors to his home, and then gone to Sam's aid.
- (d) Responded immediately. If Houk felt that he personally could be of aid, he ought to have hurried to the scene with alacrity.

Houk of course did none of these things. He got up and got dressed. He allowed his wife to get dressed, and in fact waited for her. (The Houks disagree about this). He took no weapon. He did not lock his house. He drove his car for 100 yards (his leg was not that game, as he had often walked to the Sheppards' in the past). He entered the Lake Road door with no precautionary measures, with his wife beside him. He asked Sam what had happened, and learned that Sam didn't know.

Esther Houk's conduct is also significant. She did not hesitate to accompany her husband. She feared nothing. She did not lock their house against the possible "they" killers who could have been in the area. She entered Sam's house without hesitation. She was not told where Marilyn lay, but without checking the first floor where Sam was found, made a bee-line for the bedroom, without knowing what dangers might be there.

In sum, all of the immediate post-murder conduct of the Houks is consistent with their guilt. If guilty, they would have known that there was no danger. Spencer would have felt that Esther was principally joint responsible, and would have ordered her to come along and help him do whatever might have to be done. They would both know where the body lay, without being told. They would have left their house dressed for any contingency, with the car to run with if necessary. They would have wanted to know (1) whether Sam remembered any person, and (2) whether Marilyn, who did remember someone necessarily, was beyond human articulation. If Marilyn had been alive, they would have killed her. If Sam had remembered either of them as the killers they would have killed him. They placed no calls to the police until they had ascertained that both possibilities were negative.

There is additional incriminatory conduct:

1. ITEM: Esther Houk asked Jean Disbro to keep track of what the Sheppards were doing and saying.

2. ITEM: Spencer Houk kept very close track of the investigation. He could have been on the alert to discover any outbreak of information or investigational trend pointing to him or his wife.

3. ITEM: Esther had a large and hot fire on July 4th during the early morning hours. The outside air temperature at the time it was ignited (according to her story) was not, according to official records put in evidence, less than 69 degrees. The temperature inside the Houk home at the time would have to have been higher, and would not attract one to the notion of a fire. If killers possessed a bloody T-shirt and some bloody personal clothing, they could be put beyond the realm of potential evidence by fire. Esther testified that the fire was of cannel (sp?) coal. Katherine Post viewed the grate and said that large logs were evidenced only by their unburnt ends.

4. ITEM: No weapon or T-shirt was ever found. The search made for them was intensive. If no stranger was the killer, secretion of these items in the home of the killer is likely. The Houks' home was never searched.

5. ITEM: Houk asked Steve Sheppard for a secret and hurried meeting at the Hospital, and it was held in the parking lot. He asked Steve to induce Sam to plead guilty.

6. ITEM: After Sam had been arrested, Houk took a lie-detector test. It was administered by Dave Cowles of Cleveland, never a top-ranked examiner. At the time of the test, officials were committed against Sam, and would have been embarrassed to switch defendants even if Houk had confessed. Dave Cowles (and others who knew him) have done some talking in twelve years. Houk did not clear this test. Assuming the charts are still on file, submitting them to some recognized authority would provide illuminating information.

7. ITEM: On the day it became known that Steve Sheppard had accused Houk, Houk walked into the barber shop of Frank Martin, whom he knew well. He appeared to be in a daze. He sat down in a chair, but did not greet Frank. After about a minute he got up and went out, still apparently in a shocked daze, and still with no sign of recognition or acknowledgement to Frank.

8. ITEM: At the commencement of trial, Houk went to the Lakeside (?) Hospital on the East Side. He had never been to the East Side for medical aid before. The hospital which he entered was affiliated with Western Reserve, and was no doubt known to Sam Gerber. Houk had a nervous breakdown. This is consistent with (1) Houk's guilt, and/or (2) his qualms about exposing an innocent man - Sam - to the risk of conviction without 'fessing up.

9. ITEM: Houk's conduct at the butcher shop was odd after the murder, as Jay Hubach can tell you. There is some indication that he may have been blackmailed by certain individuals.

10. ITEM: A key to the Lake Road door was found under the wastebasket on November 11, 1954, in the presence of Hubach. It was not there during the month or so following the murder. Houk had such a key in December, 1953. He had access to the home at all times, and admits that he was in there between murder and conviction. Planting the key in the home would point suspicion toward no one. No strange killer would have done this even if he had a key, and there is no indication that one had been stolen.

11. ITEM: On the morning of the murder, Chief Eaton called a representative of the Cleveland Press to say that Sam's wife had been brutally murdered, that Sam hadn't done it, and that the murderer was local and should be in custody soon. The name of this reporter slips my mind at the moment, but a recording of this reporter's statement was taken by Harv Morgan of KYW's "Contact" show in July, 1964, and broadcast over the air in conjunction with a show

that I did live with Sam. I assume that the Chief had a reason for this statement, and that someone in the department must know or have an idea what it was. The reporter's name is ascertainable, since the tape is on file at KYW, now in Philadelphia. I am initiating efforts to get his name.

V. SAM SHEPPARD'S RECOLLECTION: Sam of course said that he was knocked out as he entered the murder room, which was borne out by his injuries. A corollary of traumatically-induced unconsciousness is retrograde amnesia. Also, as consciousness of the human brain is lost, the last sense to maintain function is the sense of hearing. Sounds heard while all other senses are unconscious register only in the subconscious mind, and are sometimes there retained. This is why doctors operating on borderline patients are advised never to say "he is dead" even though the patient is anaesthetised, since the patient may thereafter subconsciously believe that he is dead and suffer serious psychological consequences. Under the circumstances, it is possible that Sam saw his assailant but did not record the identity in his memory because of retrograde amnesia, and heard what was being said in the murder room while he was inert on the floor, even though he recorded what he heard only in his subconscious. With these thoughts in mind, please consider the following:

1. Sam called Houk. He should under the circumstances have called the police, but he called Houk because, he said, Houk's number "came to mind." This is consistent with Sam having seen Houk or heard him, without having recorded this fact positively in his memory.

2. While Sam was in prison two convicts learned that he was undergoing surgery. They decided to inject him with sodium pentothal while he was still in the recovery room, to get his confession while he was drugged, and to use it to blackmail the Sheppard family. One convict was Richard Nolan, who is now free and living in Chicago. The other had a name which I do not recall (I think it was Ybarra) and he has died - he came from Youngs-

town. (This incident is reported in Argosy Magazine, rather circumspectly but truly nonetheless). While drugged, Sam was asked "Who killed Marilyn?" He answered, "Spn."

3. In order to make sure that no accusations were wrongly hurled, having in mind the power of a trial lawyer to suggest most any relevant thing in a murder trial with complete immunity, and the responsibility which goes with that power, I caused Sam to be placed under hypnosis by Dr. William J. Bryan, Jr. of Los Angeles, one of the world's leading authorities on hypnosis, and a lawyer to boot. I have had some experience with hypnosis myself, and witnessed the session in question. I saw Sam relive the murder very violently, and saw him at one point cast himself to the floor, missing a piece of furniture by less than two inches which would have split his skull had he hit it. I believe that he could not and did not feign this hypnotic experience. In its course he related that Houk assaulted him at the top of the stairs, that he was felled and then the back of his neck was "stomped", and that while lying on the floor he heard someone say "Shall we kill him too?" He also remembered that the person who went through the Lake door seemed to be limping slightly.

The latter two of these three items could not of course be used as evidence at trial. Nonetheless, each is documented and available for your further inquiry and consideration.

VI. CONCLUSION: This is by and large what I know about the murder at the moment. Should you indicate interest in solving this case, you may be assured of every cooperation on my part and that of my client. I suggest that you show both Houks this letter, and interrogate them as the questions it raises. Further lie tests on their part would be most useful, as would hypnotic interrogation should they care to submit. If the Houks are truly innocent, I would like to be the first to know, since I am not sufficiently anxious to exonerate Sam as to pin this murder on innocent people.

I point out in closing two important items. First, the bloody fingerprint which Jay Hubach saw on the bannister on the morder morning was not erased by any Cleveland Police Officer, but yet it disappeared. The Houks had great opportunity to do this. Second, it is reported that Larry Houk was taken by his mother to view the body, after which he vomitted. Larry was at the time a large boy who was thought to have a crush on Marilyn. He found the green bag. Perhaps he is involved in some way. This aspect is at least worth investigation.

I have seen people indicted, and indeed convicted, on far less evidence than this letter sets forth. Sam Sheppard is a prime example, for certainly the case against the Houks is stronger than the one offered against him. I hope that you will take some action; our investigation will continue, and a suit may be brought against the Houks for wrongful death by Samuel R. Sheppard, who does not need to decide what course he will follow until he reaches his majority and the statute of limitations has begun to run against him.

I believe that this matter should be cleaned up by your department, or at least that an effort should be made in that direction. I will await your response to this letter before taking any further action.

Very truly yours,


F. LEE BAILEY

FLB:fvb