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# PRESSING CHARGES: The Impact of the Sam Sheppard Trials on Courtroom Coverage and Criminal Law

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# PRESSING CHARGES: The Impact of the Sam Sheppard Trials on Courtroom Coverage and Criminal Law

## **Abstract**

Tali Yahalom, College '09, History

## Roman Holidays: The Role of Publicity in Criminal Trials

The media sensationalized the 1954 trial of Sam Sheppard (accused of murdering his wife), his acquittal, and post-prison years. The intense coverage set journalistic and legal precedents, motivating various judges to address, in legal terms, the media's role during pretrial investigations and courtroom proceedings. This thesis uses newspapers, magazines and court opinions to explore the extent of the media blitz, and addresses the question of whether the press compromised justice. This thesis also examines the case's continuing relevance: Why was this particular case so popular? Why did the public react with a collective desire to convict Sheppard? As an indelible presence in American public memory, how did the case change the legality and culture of trial coverage in the US? The recurring presence of the trial in publicity-related cases today highlights the irreconcilable tension between a public's right to a free press and a defendant's right to a fair and speedy trial.

## **Comments**

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**PRESSING CHARGES:  
The Impact of the Sam Sheppard Trials on  
Courtroom Coverage and Criminal Law**

Tali Yahalom

University of Pennsylvania  
College of Arts and Sciences  
History Department  
Spring 2009

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2008–2009 Penn Humanities Forum  
Undergraduate Mellon Research Fellowship

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\* \* \*

The formulation, research and writing of this thesis have been a true collaboration. The idea was conceived in the office of Professor Sarah Igo, who told me to pick a subject that reflected my passions: journalism and law. I am grateful to her for patiently brainstorming this topic with me and for always remaining confident that I could pull it off.

Professor Sally Gordon, my primary advisor, gave me many much-needed pep talks, pushing me to “wrestle this thesis to the ground” and come out on top. Her critical feedback and analysis motivated me to strive for perfection, and her profound knowledge of American jurisprudence helped me understand the complicated legal cases explored in this thesis.

Professor Kathy Peiss, my secondary advisor, gave me equal attention, challenging me to question the role of the Sheppard trials in American public memory and specifically guiding me to the archives of *New York Journal-American* reporter Dorothy Kilgallen, who turned out to be a major – and entertaining – figure in this project. Professor Kristen Stromberg-Childers, who directed my thesis seminar, likewise provided me with ongoing support throughout the year and helped me maintain perspective while doing this rigorous work. I am lucky to have worked with such enthusiastic advisors, who remained consistently dedicated to making this thesis the best it could possibly be.

My trip to Cleveland, Ohio, in October 2008 was, without a doubt, my favorite part of this project. There, I met Doris O’Donnell, a vivacious, hospitable and generous journalist whose endless resources turned out to be a goldmine, and her guidance and sense of humor gave me invaluable insight into the Sheppard story. Doris connected me to Fred Drankhan, Doris Lange, Brent Larkin and Bill Tanner, all of whom changed their schedules at the last

minute to accommodate my research needs, giving me unlimited access to all of their private, unpublished documents relating to the trials and sharing their memories of 1954 Bay Village, Ohio, with me. Much of my research would have been impossible without the help of Bill Barrow and Lynn Bycko, who oversee the Special Collections Department at the Cleveland State University Library. The two spent countless hours unearthing and sharing their compilation of newspaper articles and photographs preserved from Sam Sheppard's murder trial.

Other incredibly patient people assisted me at the Bay Village Historical Society, Cuyahoga County Courthouse, Special Collections Department at the Kent State University Library, Cleveland Public Library, New York Public Library and Van Pelt Library – I have yet to ask a question that one of them cannot answer.

I thank the Penn Humanities Forum and the Center for Undergraduate Research and Fellowship's College Alumni Society for generously funding this work and for trusting that this topic was worth investigating.

My family and friends provided an unconditional support system throughout this 15-month-long project, watching me disappear into the depths of various libraries but always welcoming me back with open arms. I am particularly grateful to my fellow American history thesis-writers, whose late-night cheerleading, complaining and consistent humor made this demanding project such a positive experience.

I still do not know who murdered Marilyn Sheppard, and I am not sure that matters when examining the larger lessons and historical turning points that this saga teaches.

But I did have a lot of fun telling this story.

My mother taught me to turn puzzles into art, to find beauty in unsolvable mysteries and to confront challenges with a smile. She did this through unconditional love and support, equipping me with everything I need to find my way.

This thesis is a testament to her.

## ILLUSTRATIONS

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A big murder trial possesses some of the elements of a sporting event.

... Before a big horse race, or football game, or baseball series, the newspaper writers and fans sit around of an evening and argue the matter with some heat. At a trial, the newspapermen – and women – do the arguing, but without the heat. They lack partisanship in the premises. That is furnished by the murder trial fans.

Perhaps you did not know there are murder trial fans. They are mainly persons who have no direct interest in the affair. They are drawn by their curiosity.

... I am not one of those who criticize the curiosity of the gals who storm the doors of the courtroom, as we say in the newspaper stories of a trial. If I did not have a pass that entitled me to a chair at the press table, I would probably try an end run myself.

... It strikes me that the courtroom, with a murder trial in issue, develops a competitive spirit, if I may call it such, more tense and bitter than is ever produced on any field of sport. Of course, this is not surprising when you consider that as a rule of human *life* is at stake.

The trial is a sort of game, the players on the one side the attorneys for the defense, and on the other attorneys for the State. The defendant figures in it mainly as the prize. The instrument of play is the law – it is the ball, so to speak. Or perhaps I might call it the puck, for it is in the manner of hockey more than any other sport that it is jockeyed carefully back and forth by the players.

And the players must be men well schooled in their play, men of long experience and considerable knowledge of what they are doing. They must be crafty men, quick of thought and action, and often they are very expensive men.

... The game of murder trial is played according to very strict rules, with stern umpires called judges to prevent any deviation from these rules.

... It is a strange game, this game of murder trial, as played under the rule of circumstantial evidence. I suppose if a defendant is really innocent he has all the worst of it for a time, yet, paradoxically enough, if he is guilty, he has all the best of it.

- Damon Runyon, *Trials and Other Tribulations*<sup>1</sup>

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

- First Amendment to the United States Constitution

\* \* \*

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

- Sixth Amendment to the United States Constitution

## **INTRODUCTION: FREE PRESS AND FAIR TRIAL**

“Freedom of the press, properly conceived, is basic to our constitutional system. Safeguards for the fair administration of criminal justice are enshrined in our Bill of Rights. Respect for both of these indispensable elements of our constitutional system presents some of the most difficult and delicate problems for adjudication.”

- U.S. Supreme Court Justice Felix Frankfurter<sup>1</sup>

The relationship between the press and the American justice system is tenuous at best and hostile at worst. Each group accuses the other of “base motives in its dealings and opinions.”<sup>2</sup> Newspapers, for example, complain that lawyers and judges withhold access to information, deliberately violating their Constitutional right to a free press. Conversely, court officials maintain that, in their efforts to turn a profit and sustain a healthy readership, editors and reporters veer from their purported aim of public enlightenment and instead publish sensational, biased or distorted products. These sorts of media blitzes, they say, distract the purveyors of fact and impede upon the right of the accused to a fair trial by an impartial jury. It is difficult to ascertain which group wields greater power, considering that the media possess a more direct means of reaching the public, while depending upon the court system to provide access and news worth reporting. This tension is mirrored by the competing Constitutional claims advanced by each side; as the press corps touts the First Amendment – which guarantees a free press – the court retorts with the Sixth – which assures the defendant a fair and speedy trial by an impartial jury – though neither denies or addresses the other. Though the two groups have, in recent history, arrived at some compromises in order to coexist, the challenge of continuously disseminated information presents a grave challenge to this delicate balance.

Of all the publicity-related cases that dealt with free press-fair trial issues during the media explosion of the 1960s – a time when the growing presence of the press threatened

courtroom decorum and juries' impartiality – Sam Sheppard's case was undoubtedly the most important in terms of providing actual guidance for the judicial handling of pretrial media coverage. On November 16, 1966, five months after the U.S. Supreme Court reversed Sheppard's conviction of second-degree murder, a new Cleveland, Ohio, jury of seven men and five women returned a verdict acquitting him of the crime, thus ending what had been described as "the 'trial of the generation' – one of the most sensational circumstantial evidence murder cases in American history."<sup>3</sup> The Court ultimately deemed Sheppard's 1954 conviction unconstitutional because of the circus-like publicity before, during and after his trial. Throughout his murder trial in 1954, the spectacle of the press set the agenda, combined news with entertainment, creating a "teledlitigation" of his 10-week stint in court in which Sam Sheppard tried to prove that he did not bludgeon his wife, Marilyn Sheppard, to death.<sup>4</sup>

The first chapter of this thesis draws on the articles and photographs published in Cleveland's three main newspapers, the *Cleveland Press*, *Cleveland Plain-Dealer* and *Cleveland News*, to demonstrate the salacious coverage that occurred between the murder and the first trial, which captivated Sheppard's Bay Village, Ohio, community as well as all neighboring towns. Sam Sheppard was lambasted publicly, both by county attorneys and a vindictive press, and he was further subjected to a five-and-a-half hour session without counsel at an inquest held in the local high school's gymnasium. There, he was grilled mostly about an extramarital affair with a woman named Susan Hayes, providing the press with enough fodder to fill their front and inside pages. It focuses on local coverage to demonstrate that the local Cleveland media took advantage of their editorial clout to indict Sheppard in the press. This chapter also incorporates interviews by the author with journalists and police

officers who worked on the Sheppard case and provided invaluable insight into Bay Village life in the 1950s.

The second chapter similarly relies on primary material, including articles, photographs and cartoons printed in national newspapers, along with court documents, to illustrate that a biased, aggressive press impacted the courtroom proceedings, hindering a speedy trial and jury impartiality. It examines the trial through national newspapers, specifically the *New York Times*, *Los Angeles Times*, *Washington Post*, *New York Herald-Tribune*, *New York Daily News* and *New York Journal-American*. Whereas local newspapers are expected to cover nearby crimes, the national media attention paid to a relatively ordinary murder story in an otherwise obscure Ohio town was remarkable. The aim of these two chapters is not to recreate the trial or investigation in their entirety or to argue Sheppard's innocence or guilt. Rather, they explore the extent of the media blitz and address the question of whether a circus-like atmosphere during the investigation and trial compromised Sheppard's Constitutional right to a fair and speedy trial. The first two chapters also survey public opinion during the time of the murder, pretrial investigation, trial and Sheppard's imprisonment, using letters to the editors, opinion columns and recent interviews to gauge whether there was a disconnect between the parts of this saga that news editors considered newsworthy and what the public wanted to read.

As trial information became more readily available in the 1950s and 1960s, it became increasingly difficult, if not impossible, to prevent that news from reaching the jury box. Throughout the first half of the twentieth century, printing methods became quicker and cheaper, and newspapers were published daily in larger quantities. At the same time, photographic techniques developed and offered intimate visuals of the news being reported.



“The newspapers were not always right,” explains legal scholar Eric Younger in an article in a 1977 edition of the *Stanford Law Review*, “but they were always there . . . And out of the first mazes of wire and crystal, new media were emerging to compete for the public ear with newspapers and word of mouth.”<sup>5</sup> In other words, for the first time in history, harsh realities literally invited themselves into the American home, from daily newspapers at the breakfast table to blaring televisions in the living room. The dominance of McCarthyism during this time meant that fear and suspicion of authority became deeply embedded in the American psyche, and when Jack Ruby’s shooting of Lee Harvey Oswald, the convicted assassin of President John F. Kennedy, was broadcast live on national television, American citizens – future jurors – began to rely more heavily on the press for information about the world. People grew more dependent on the media and learned to expect that reporters would deliver them with all the information they could possibly want.

During criminal trials of a sensational nature, an unfettered press can make a fair trial difficult, if not impossible. The U.S. Supreme Court’s reversal in 1966, an opinion known as *Sheppard v. Maxwell*, marked both a necessary recognition of the potentially adverse effects of a booming media on the courts as well as a revolutionary departure from the courts’ tendencies to deal with this boom by virtually ignoring it. In ordering a new trial, the Court made explicit what the Cuyahoga County trial court should have done in 1954: pause the trial until publicity had died down or order a change of venue. Chapter Three explores the state of the relationship between the press and the courts prior to Sheppard’s trial in 1954 and how that relationship evolved through 1966, when the Court reexamined, and ultimately reversed, the guilty conviction. The Sheppard case was brought to the Court’s attention during a time when publicity-related issues were becoming ever more prevalent. To this end, the chapter

casts the Court's decision against the publicity-related cases that preceded it – including *Irvin v. Dowd* in 1961, *Rideau v. Louisiana* in 1963, *Estes v. Texas* in 1965 and *Turner v.*

*Louisiana* in 1965 – and looks at the legal precedents that made the reversal possible.

Chapter Three explores the ways in which the *Sheppard* decision buffeted the interaction between court officials and news reporters, paying special attention to the lingering questions that the decision posed for future cases of a similar nature.

Beyond legal history, the Sheppard saga has also played a recurring role in American public memory. Sam Sheppard never really left American popular culture: movies, television programs, magazine features and academic law reviews from recent history have memorialized the story, spinning his larger-than-life persona even further away from reality. In the aftermath of his wife's murder, Sam Sheppard became a household name and a permanent fixture in the media; immediately after a U.S. District Court agreed to hear the first appeal in 1964, newspaper reporters and legal experts began continuously referencing the trial as the benchmark for all publicity-related legal issues. The Sheppard case marked the first time the courts took a hard look beyond the courtroom and police station in order to evaluate whether a criminal defendant's Constitutional right to a fair trial was abused, and when they found that it had been, they effectively changed American legal and media history.

This thesis argues that after the Cleveland press made a mockery of the judicial system by using its own black-and-white pages to investigate – and assert – Sam Sheppard's guilt, an unethical approach mimicked by editors around the country, the U.S. Supreme Court was motivated to address, in legal terms, the growing tensions between the press and the courts. The coverage provided an impetus for judicial groups and media officials to establish guidelines that reporters and trial judges alike would have to follow in the courtroom,

marking a turning point in press-court relations. *Sheppard v. Maxwell* acknowledged, for the first time in American judicial history, the inherent disruption in any reportorial coverage that takes place inside the courtroom, the danger in assuming that a trial judge will act responsibly and the reality that, sometimes, the press itself may directly contaminate or compromise justice. The case signaled a clear change from the era of benign neglect to the era of preventative action, holding that the trial courts should “actively assume responsibility to ensure that the defendant’s Sixth Amendment rights are preserved.”<sup>6</sup> The importance of *Sheppard*, then, was that it absorbed the lessons learned in earlier cases and took the final step forward to provide proactive measures to ensure a free trial in criminal cases.

But as the justices involved in the 1966 case transformed the law and set legal precedents, they left their successors with a slew of residual challenges to confront, such as issues of media restriction and the public’s increasing reliance on instant electronic mass communication. The epilogue examines whether the *Sheppard* decision in 1966 really offered a means for the court to harness an aggressive media, especially given the virtually uncontrollable media that is active today. As the epilogue shows, salacious courtroom coverage has not really dwindled since 1954, and the ongoing development of electronic mass communication raises important, if unanswerable, questions about the future of American trials and criminal justice.

In the aftermath of *Sheppard v. Maxwell*, the courts were forced to figure out a way to deal with the rapidly growing press in a way that would maintain a decorous courtroom without infringing on the media’s rights of access. The delicacy of this task created immense conflict between the courts and the press, causing serious confusion on both sides that raised questions about the constitutionality of press restrictions and the role of the jury in the

criminal justice system. Nowhere was this more apparent than in Sam Sheppard's saga, a story whose media coverage and legal attention continues to haunt the American public until today. There is a reason that this story is such a hard case; it is impossible to figure out completely and it continues to generate heated debate and controversy today. Nobody knows who murdered Marilyn Sheppard, and to use this story to try and identify the killer, 50 years later, is to miss the point of what this episode teaches about American legal and media history. In the end, from this sensationalistic uproar emerged a story about the far-reaching, potentially dangerous power of an unfettered press, and the societal need to address, especially in legal terms, the role of publicity before, during and after a criminal trial.

## **CHAPTER ONE: SIN, SEX AND SUBURBIA**

“It was a calculated risk – a hazard of the kind which I believed a newspaper, sometimes in the interest of law and order and the community’s ultimate safety, must take. I was convinced that a conspiracy existed to defeat the ends of justice, and that it would affect adversely the ends of justice, and that it would affect adversely the whole law-enforcement machinery of the County if it were permitted to succeed. It could establish a precedent that would destroy even-handed administration of justice.”

- *Cleveland Press* Editor Louis Seltzer<sup>7</sup>

### **I. Bay Village, Ohio**

Driving along Lake Road in Bay Village, Ohio, visitors are put at ease by the sycamore trees and peonies that separate the land from Lake Erie’s grey waters. Small houses are decorated with wind chimes, scarecrows and landmark certificates, proudly nailed to front doors to confirm deep roots in the town’s history. Pride and loyalty abound in this little hamlet, only five and a half miles long and one mile wide at its widest point.<sup>8</sup> Here, doors are rarely locked, traffic lights are scarce and most of the older residents have never lived anywhere else. Like most American small towns, Bay Village is a place whose green pastures and idyllic landscapes lured early pioneers to come and develop the land. As time went on, it began to evolve from a small fishing and farming center to an affluent resort for wealthy and elite families. Dotted with cottages, it offered a convenient retreat from the city, only 12 miles away.

In October 1948, Ella and Will Matthews sold their family mansion to the Cleveland Osteopathic Association, which transformed it into the Bay View Osteopathic General Hospital. The 85-bed hospital offered modern facilities and, in 1952, added a \$385,000 wing to meet the growing demand for treatment. Having doctors and nurses close by provided a sense of security to the townspeople, who, until this point, had to drive into the city if they sought medical attention. By this time, the entire Sheppard family, trained in Osteopathy,

was on staff at the hospital, where Richard Sheppard Sr. led as chief of staff and his three sons, Richard, Stephen and Sam, worked as osteopaths. The Sheppards served Bay Village and the surrounding areas for more than 30 years, making them established members of the local Cleveland community. The new hospital was also significant in Bay Village's development: now a destination for professional men and women, it began attracting working men and women from Cleveland, recalled journalist Doris O'Donnell, who has lived in the area for over 80 years. This transition essentially legitimized Bay Village: no longer just a resort, it became a place to lead a successful life, one where residents could enjoy suburban luxuries but still get into the city in under 30 minutes.<sup>9</sup> The modernization and expansion, however, came with costs. For one, the picturesque town harbored dirty secrets. O'Donnell, then working for the *Cleveland News*, said she often heard reports of "sex clubs" and spouse-swapping parties.<sup>10</sup> These rumors about intruders and sexual infidelities would be examined closely during one particular summer, when wild rumors pervaded the entire town, inspiring O'Donnell to tag that season as one of "sin, sex and suburbia."<sup>11</sup>

\* \* \*

## II. The Murder of Marilyn Sheppard

Sam Sheppard lived with his wife, Marilyn, about four miles down the road from his family's hospital, in a Dutch Colonial overlooking Lake Erie in the more affluent section of Lake Road.<sup>12</sup> In his memoir, *Endure and Conquer*, Sam Sheppard would later write that the couple, junior high-school sweethearts, became "caught up in the swirl of suburban life. [They] enjoyed [their] home and social life together. Marilyn joined the local dance club, took part in potluck groups and other informal gatherings. She became president of the Women's Osteopathic Auxiliary, a member of the Bay Village Women's Club, and was active in church work." Popular members in the community, they were good friends with the

Mayor, Spencer Houk, and often entertained their friends' kids by hosting basketball games in their backyard.<sup>13</sup> It rattled the entire neighborhood, therefore, when Marilyn Sheppard was murdered on the early morning of July 4, 1954.



**Figure 1:** Marilyn and Sam Sheppard's wedding portrait. *The Cleveland Memory Project*, Cleveland State University Library.

Fred Drenkhan, now a retired Bay Village police chief, vividly remembers that day. Drenkhan was three hours away from finishing his all-night shift on what had been a quiet holiday weekend. At around five in the morning, he received a call from Houk instructing him to rush over to the Sheppards' house immediately. When Drenkhan got there, he found Marilyn Sheppard lying on a twin bed, savagely beaten and stabbed to death. "It was beyond our capacity to really investigate [the scene] and we needed some help," Drenkhan recalled.<sup>14</sup>

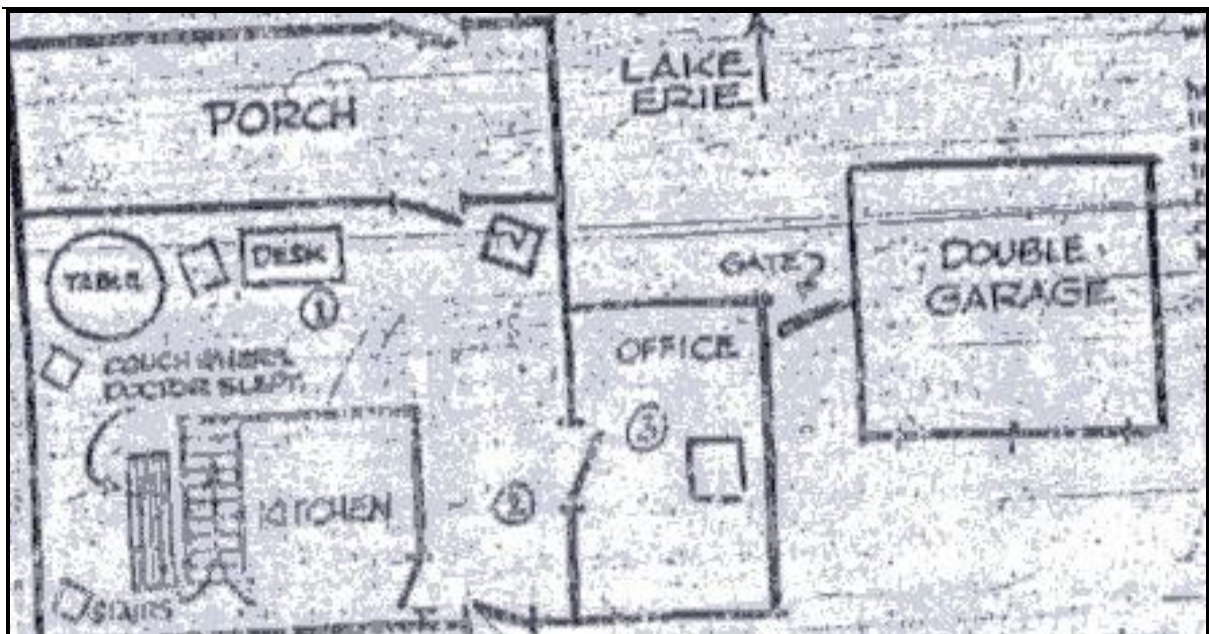
The department brought in Cuyahoga County Coroner Samuel Gerber and Cleveland police officers, to help, transforming this small town crime into a statewide case. Gerber worked with the detectives and policemen to piece together every scrap of visible crime evidence. They then conferred with ranking Cleveland officials to prepare evidence for an eventual prosecution of a suspect. However, a lack of forensic evidence, coupled with Bay Village's inexperience with this type of crime, slowed down the process and did not lead to an arrest until three weeks after the murder.<sup>15</sup>

Cleveland police sergeant Harold Lockwood used written reports and interviews with the cops first on the scene to decipher the limited evidence. He prepared a scenario of the crime based on the physical condition of the murder scene inside the Sheppard home and the surrounding area. Lockwood, along with detective John Doyle, worked on this report under the direction of Cleveland deputy inspector James McArthur, who later helped the prosecutor's office prepare an indictment as a prelude to the trial.<sup>16</sup> The next day, the *Cleveland Press* declared in a bold headline, "Doctor's Wife Murdered in Bay Village, Drug Thieves Suspected in Bludgeoning."<sup>17</sup> That was the last time, at least in the *Press*, that serious consideration would be given to the possibility that Sam Sheppard was not the murderer. The Lockwood-Doyle report, published on July 25, 1954, ultimately stated that the evidence tended "to prove a strong case against the victim's husband, Sam Sheppard."<sup>18</sup>

In domestic homicides, the investigative focus is usually on the spouse, but this case was decidedly different. The general news cycle during this summer had been so slow until this point that, in the days prior to the murder, the local newspapers were mostly filled with stories from other cities, such as one about a 12,000-year-old skull discovered in New Mexico and another about a collision between two trains in France.<sup>19</sup> Furthermore, because



the Bay Village community was so insular and believed itself to be protected from urban crime, the public grew especially hungry for a suspect for two main reasons. First, living in an atmosphere of fear that characterized this post-World War Two era of McCarthyism, the Bay Village community could not grapple with the idea that a murderer had been running rampant in their pristine little town. Second, the story, with its inherent celebrity and scandal, became *the* topic of daily conversation, thus fueling the public's interest to the point of obsession. The local newspapers naturally took advantage of this interest, filling their content with not only detailed articles but also photographs of the crime scene and detailed maps of the scene of the murder. The *Cleveland Plain-Dealer*, for example, printed an entire photo album with images of the investigation and how the Sheppard family was coping with the tragedy.<sup>20</sup> The *Press* included a hand-drawn diagram of the Sheppard's home, indicating which areas were significant in the investigation:



**Figure 2:** An artist's sketch of the Sheppard's first floor shows the couch where Sam Sheppard said he had been sleeping during the murder. It was located at the foot of the stairs leading to the upstairs bedroom. The numbers indicate (1) a ransacked living room desk, (2) Sam Sheppard's medical bag in the hallway and (3) Sam Sheppard's desk, which was rummaged. *Cleveland Press*, July 5, 1954.

The basic narrative stated that Marilyn Sheppard had been bludgeoned to death in her sleep and that Sam Sheppard had been discovered “beaten and dazed” in the living room of their home a few hours later.<sup>21</sup> Sam Sheppard’s side of the story, according to his memoir, went like this:

The next thing I knew, Marilyn was screaming or moaning my name. ... Then I felt I was struck down from behind, but can’t say for sure. ... I spotted a figure between the front door of the house and the front door of the porch ... I gave chase, but lost sight of this intruder on the stairs heading down to the beach. By the time I got to the landing where the beach house was located, the figure was on the beach. I bolted down the remaining stairs and tackled this individual from behind. ... I went back up the stairs to the bedroom where Marilyn was. I looked at her and felt for her pulse on her neck. When I touched her, I thought she was gone. It’s hard to explain my reaction. I guess I thought I would wake up and find out that it was all a horrible, fantastic dream.<sup>22</sup>

The actual series of events that occurred during those early morning hours may never be known for certain, but as the investigation continued, Sam Sheppard’s account was deemed unbelievable.

Bay Village divided over Sheppard’s culpability, but everyone in the town had an opinion. To this day, when the subject comes up, most will vehemently defend their reasoning as if the murder happened yesterday. Cleveland’s three competing daily newspapers, the *Press*, *Plain-Dealer* and *Cleveland News*, along with a nascent television presence, focused intensively and unremittingly on the Sheppard case, and it became a contest among reporters and broadcasters to see who could snag the best story. Every available reporter went to Bay Village, and they talked to everyone, no matter how peripheral.<sup>23</sup> *News* reporter Doris Lange, for example, was assigned to do all the “pieces of color,” focusing on people related and close to the Sheppards.<sup>24</sup> The media also sought interviews with Bay Village policemen. “Being the first officer on the scene,” Drenkhan said,

“I had an awful lot of pressure at the onset, but I had called in assistants and the chief of police was there, and he was trying to fend off the calls. The pressure put on by the press.”<sup>25</sup>

Doris O’Donnell, one of the primary *News* reporters on the story, said that the coverage “got so crazy. ... Because [the Sheppards] lived on the lake, and had double garages, and because it was a professional person and his wife, that’s what made it.”

O’Donnell, pointing out that newspapers at the time paid particular attention to unusual crimes that involved wealthy white people, added that, in addition to the Sheppards’ high standing in the community, the family’s decision to shut out the media catalyzed the frenzy. “By setting up the barrier between the news media and the police department, and the Sheppard family, this is how the newspapers decided to go after it. And [*Press* editor] Louis Seltzer was the leader of the crowd,” she added. No reporter ever got a chance to interview Sam Sheppard, but these sorts of roadblocks seemed to feed the reportorial beast. *Press* reporter Bill Tanner remembers the murder as a “great story, [one that] involved people with money and people with professions and good-looking people. It made for good photographs. ... And white, suburban crime was good reading.”<sup>26</sup>

Indeed, the sensationalism that quickly developed around the murder was due largely to the fact that the Sheppard clan was well-known in and around Cleveland. Within a few days, newspapers and radio reports hinted that Sam Sheppard was not cooperating with the inquiry and that when he did begrudgingly cooperate, there were discrepancies in his statements.<sup>27</sup> For example, when Sam Sheppard’s brothers hospitalized him to be treated for a neck injury, they used his hospital stay as a reason to stop further police questioning, citing emotional and physical stress. The Cleveland newspapers, in turn, reported on his hospitalization, but the story emphasized the difficulty in obtaining a proper interview with

Sam Sheppard, as well as his apparent exasperation – which they translated into paranoia – with having to deal with the public. On July 7, when Sam Sheppard, accompanied by a police officer, wore an orthopedic collar and dark glasses to his wife’s funeral, the Bay Village community began to view him not as a benefactor of the community, but as a man with much to hide. These early suspicions only intensified when Sam Sheppard’s attorney, Anthony Corrigan, refused to let his client take a lie-detector test, fearing the police would manipulate the results.<sup>28</sup>

\* \* \*

### III. The Cleveland Media

“No one has really wanted to escape being drawn into conversation and conjecture and controversy about the Sheppard case, which pales anything on the crime fiction stands. At breakfast and over cocktails, it’s ‘Dr Sam’ and ‘Susan Hayes’ and ‘Lawyer Corrigan’ and ‘Why the delay?’”

- *The Cleveland Press*<sup>29</sup>

As editor of the *Press*, Louis Seltzer was known as a formidable and well respected man throughout Cleveland and its suburbs. “When Louis Seltzer spoke, politicians shook,” O’Donnell said, calling him a “little guy [but] the king of journalism.”<sup>30</sup> A *Saturday Evening Post* profile from July 10, 1954, described Seltzer as “the most paradoxical character among a million residents in the city of Cleveland ... a slight and balding man who has spent the last 40 years studying, criticizing, praising and harassing, nagging, encouraging and loving his hometown.”<sup>31</sup> The “little Caesar,” it continued, used his clout to opine on such subjects as “how to develop the Lake Erie water direction, how to feed the baby and care for the lawn, warns city judges to work harder, tells the city council where to build downtown auto parks and highway bridges, and explains, patiently but firmly, to the Cleveland major-league baseball team why it is playing the wrong man at first base.” It followed, therefore, that when the murder occurred, rattling the entire community and transfixing people across the country,

Seltzer capitalized on this opportunity to exercise his editorial power and issue his opinions to his 311,800 subscribers as candidly and frankly as he could. Seltzer, who instilled loyalty into his doting reporters by creating a jovial yet serious newsroom, commanded respect within the newsroom and greater Cleveland community. The profile, in a particularly amusing anecdote, goes on:

[Seltzer] sets the pace by rumpling the hair of a busy rewrite man, by ripping a sheet of paper from a reporter's typewriter and dropping it on the floor, by doing anything to jar employees out of the idea that they can get in a rut and keep on working for the *Press*. On one occasion, a firecracker exploded under the seat of a reporter who was talking on the telephone with a prominent clubwoman. 'Gracious! What was that noise?' the woman exclaimed. 'Oh, that was just a firecracker under my chair,' the reporter said. 'Well, how rude! I'll certainly tell Mr. Seltzer about it.' 'I wouldn't bother, madam,' the reporter replied wearily. 'It was Mr. Seltzer who lit it.'<sup>32</sup>

After growing impatient that the police had still not arrested a suspect two weeks after the murder, Seltzer worked with his senior editor, Louis Clifford, to unleash a crusade against Sam Sheppard. Seltzer believed he was justified in this plan to push town officials, once remarking "the *Press* is no assembly line for syndicated material or routine news. We want to break the pattern and get into the roots of our town."<sup>33</sup> This approach certainly affected how Seltzer orchestrated the *Press*' coverage of the Sheppard story. In his autobiography, *The Years Were Good*, Seltzer wrote that he suspected the Sheppard family of restricting access to the public in order to protect his guilty story until interest in him subsided.<sup>34</sup> This suspicion, which Seltzer used as fuel for aggressive, vindictive reportage, further reflected the general divisive relationship between the Sheppard family and the media. For example, prior to Marilyn's murder, the Sheppards manipulated the press, mostly to promote their hospitals and its services. "As osteopaths, they were held to a lower standard of Ohio state medical regulations ... than were registered medical doctors," O'Donnell explained in her memoir. "It was well known to us reporters that the three brothers would

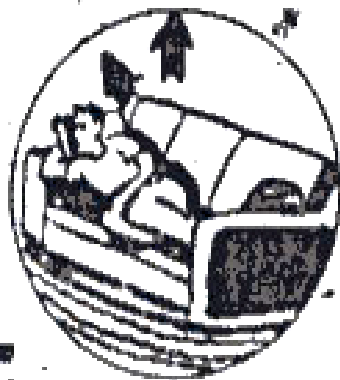
take turns calling the daily papers with stories” of their life-saving medical procedures, a luxury they could afford because their branch of medicine had less restrictive disclosure policies. O’Donnell acknowledged that she intuitively “watched the trial as though [she] was on the jury,”<sup>35</sup> a perspective that undoubtedly colored her reporting, but added that other factors, such as the unusually long time that elapsed between the crime and Sam Sheppard’s arrest, allowed the media to dig up a catalog of stories and anecdotes to help convict Sam Sheppard.<sup>36</sup> The Sheppards’ tense interactions with the press are also evident from some reporters’ recollections of their initial exchanges with the family following the murder. Tanner, who was assigned to cover Sam Sheppard’s family, said that, though the Sheppards were generally considered an “upstanding family ... [one] got the feeling that something funny was going on.”<sup>37</sup> Tanner, who admitted that he was “very tough” on the family, described Stephen Sheppard, the middle brother, as “very angry, understandably, but also very nasty. He and I kind of had words ... I lost my contact with them after [that night that Sam Sheppard was arrested] because I was very tough on them and insisting that they tell [the press] everything.”<sup>38</sup>

In the weeks leading up to Sam Sheppard’s arrest, the Cleveland media circuit, and especially the *Press*, took it upon itself to use its influence to pressure the city and state police forces to arrest a suspect, namely Sam Sheppard. To this end, they cast him in a negative light and painted him as an insensitive womanizer so that the public would not sympathize with him. According to these reports, Sam Sheppard returned to work only a week after his wife was found dead, though he insisted that she would not have wanted him to neglect his responsibilities; could not remember his wedding date; carried around a revolver for protection, an “unusual” choice, according to sources in that story; and, while

waiting for a policeman to escort him to Marilyn's funeral, played records in his private room at Bay View hospital.<sup>39</sup>

Discoveries of physical evidence slowly leaked to the public, though they offered largely circumstantial arguments. For example, a stained t-shirt found in the river near the Sheppard's home was quickly linked to Sheppard because of its size and the fact that Sheppard had been missing a shirt the morning after the murder. This discovery was given prominent coverage in the newspaper, with a screaming bold headline that insinuated that the authorities had finally uncovered incriminating evidence.<sup>40</sup> As July wore on and the investigation lagged, headlines became increasingly sensational, and the newspapers frequently printed editorials on their front pages above the fold and even as the lead story. Sometimes, the papers offered pictorial summaries of what was believed to have transpired during the time of the murder. For example, this cartoon, titled "The Sheppard Murder Clock," appeared on the *Press* front-page on July 14, 1954:

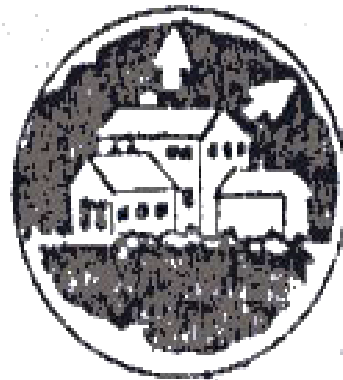
# The Sheppard Murder Clock



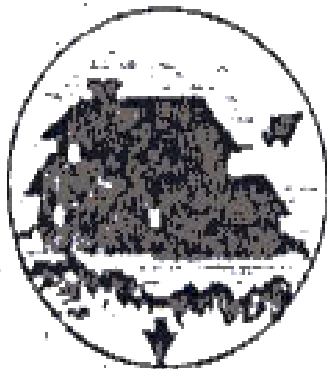
11 P. M. Dr. Sam falls asleep on couch



12:30 A. M. Mr. and Mrs. Don Ahern leave for home.



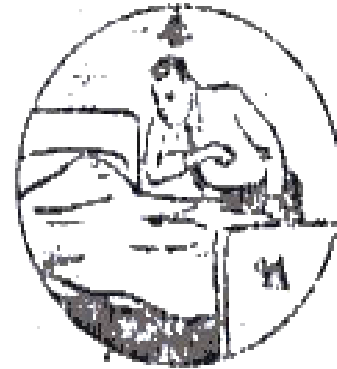
2 A. M. Passersby claim Sheppard home is dangerous



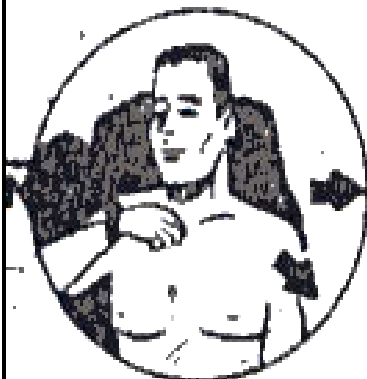
2:30 A. M. Three lights are seen in home.



3:15 A. M. Marilyn's watch stopped.



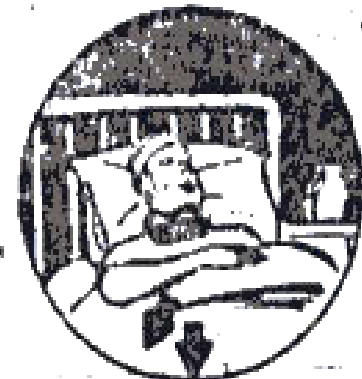
4 A. M. Coroner says Marilyn died by this time.



4:15 A. M. Dr. Sam's watch stopped.



5:50 A. M. Dr. Sam reports murder to Mayor Houk.



6:30 A. M. Dr. Sam is a patient in Bay View Hospital.

Figure 3: "The Sheppard Murder Clock." *Cleveland Press*, July 14, 1954.



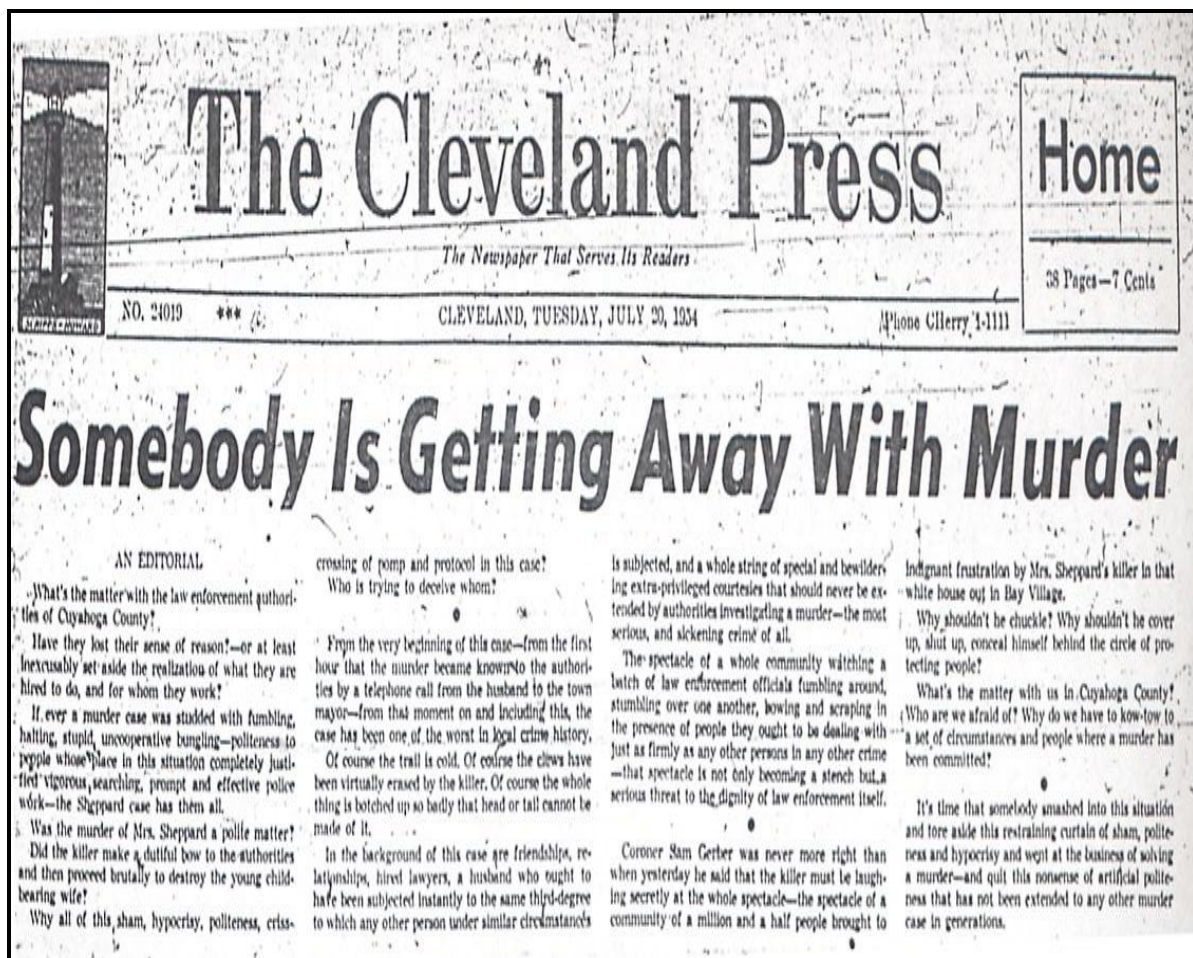
Particularly controversial headlines included the one for a *Press* editorial printed on July 20, “Somebody is Getting Away with Murder”<sup>41</sup> and, in a later edition on the same day, “Sheppard Set for New Quiz, Getting Away with Murder,” in case it was unclear who that “somebody” was. In that piece, the author harangued:

What’s the matter with the law enforcement authorities of Cuyahoga County? ... Why all of this sham, hypocrisy, politeness, crisscrossing of pomp and protocol in this case? ... The case has been one of the worst in local crime history. ... In the background of this case are friendships, relationships, hired lawyers, a husband who ought to have been subjected instantly to the same third-degree to which any other person under similar circumstances is subjected, and a whole string of special and bewildering extra-privileged courtesies that should never be extended by authorities investigating a murder – the most serious and sickening crime of all.<sup>42</sup>

Here, Seltzer, who wrote the editorial alone, attacked the police for using a double-standard as well as Sam Sheppard’s family for conspiring to protect the most likely suspect. Seltzer argued that town officials were protecting Sam Sheppard – the “husband” in the piece – because of his standing in the community. The second accusation referred to a list of 11 questions that Seltzer had sent to Sam Sheppard and his lawyer on July 15. Seltzer considered the responses, which were published on July 17, 1954, “noninformative” and “inconclusive.”<sup>43</sup> For example, when continuously pressed to explain how he himself would have handled the investigation, or to describe his thoughts on whether he had been treated fairly by city officials, Sheppard repeated that he was either unqualified or unwilling to answer.<sup>44</sup> The *Press*’ Bill Tanner explained, “I think our feeling generally, and the editors’, was that the Sheppards were using their money and influence in the community to cover up what really happened.” Tanner’s doubts were amplified by initial interactions with the Sheppard clan. On the day of the murder, in one conversation with the oldest brother, Richard Sheppard, Tanner said that “one of the things that made [him] suspicious of [Sam

Sheppard] right from the start was that ... when [Richard] walked into the house [the night of the murder, he] looked at Sam and said, 'Did you do this?' and, to me, that meant that it was not unthinkable."<sup>45</sup>

Because of this pressure, nobody in the community was surprised when the coroner responded to the editorial by conducting a public inquest at Bay Village's Normandy School. "If it hadn't been for the newspaper urging this, it probably wouldn't have happened," Tanner said.<sup>46</sup>



**Figure 4:** Seltzer broke with journalistic tradition and printed this inflammatory editorial on the July 20, 1954, front-page of the *Cleveland Press*. The next day, the coroner ordered a public inquest. Louis Seltzer, "Someone Is Getting Away with Murder," *Cleveland Press*, July 20, 1954.

The *Plain-Dealer* bolstered the sense of urgency with an editorial on July 18, arguing that “the reason for public anxiety and irritation over the Sheppard case is that almost everyone feels the direction of the investigation has been faulty.”<sup>47</sup>

\* \* \*

#### **IV. The Inquest**

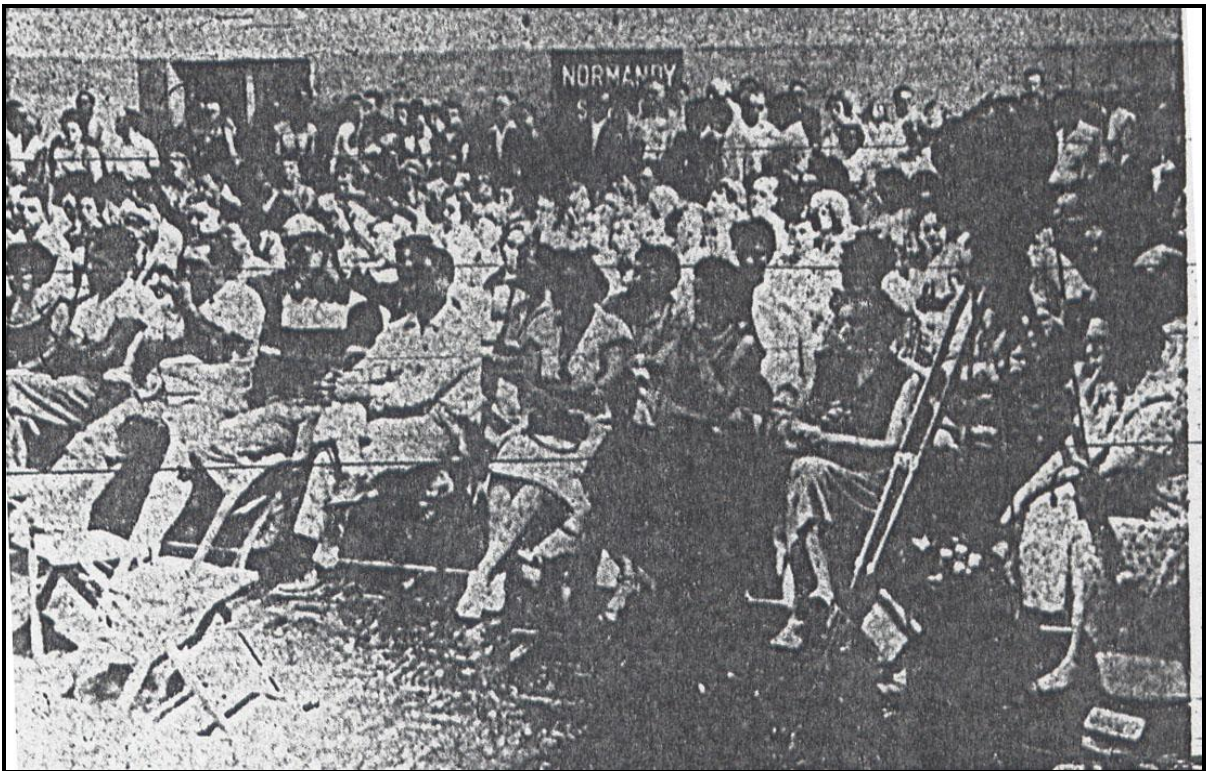
“If all this clamor and repetitious review of the case sells newspapers, it is a sad commentary on the readers of Cuyahoga County and still sadder as to the newspapers themselves.”

- James Shaffer, Cleveland resident<sup>48</sup>

The hearing started at 9 a.m., and 40 people, mostly housewives, showed up. At least 20 more came as the inquest progressed.<sup>49</sup> O’Donnell described the chaos that ensued at the local school where the proceeding was held: “The place was packed with women and kids and bicycles and then Sam shows up ... and so Dr. Gerber is trying to question him and Bill Corrigan [Sam’s attorney] is questioning Sam. All of a sudden, they get into a big fight and Dr. Gerber orders Corrigan out because he was objecting to all the questions. ... Everybody was getting tense about it.”<sup>50</sup> These photographs illustrate how the room was teeming with members of the community, eager to catch a glimpse of this enormous story and, in many cases, hopeful that this interrogation would quickly lead to an arrest:



**Figure 5:** Esther Houk offers testimony at the inquest. A crowded audience listens intently as she speaks about her friendship with Sam and Marilyn Sheppard. Special Collections, Cleveland State University Library.



**Figure 6:** The auditorium where the inquest was held became even more crowded when Sam Sheppard took the stand. Special Collections, Cleveland State University Library.

That day, the *Press*, on its front page, advertised “2 full pages of inquest text and pictures,” and it transcribed the question-and-answer exchange that took place in the auditorium.<sup>51</sup>

Newspapers printed Sheppard’s testimony as well as multiple pictures of him, including this series of headshots that revealed his changing moods:



**Figure 7:** A candid camera catches Sam Sheppard as he testifies at the inquest into the slaying of his wife, Marilyn Sheppard. *Cleveland Press*, July 22, 1954.

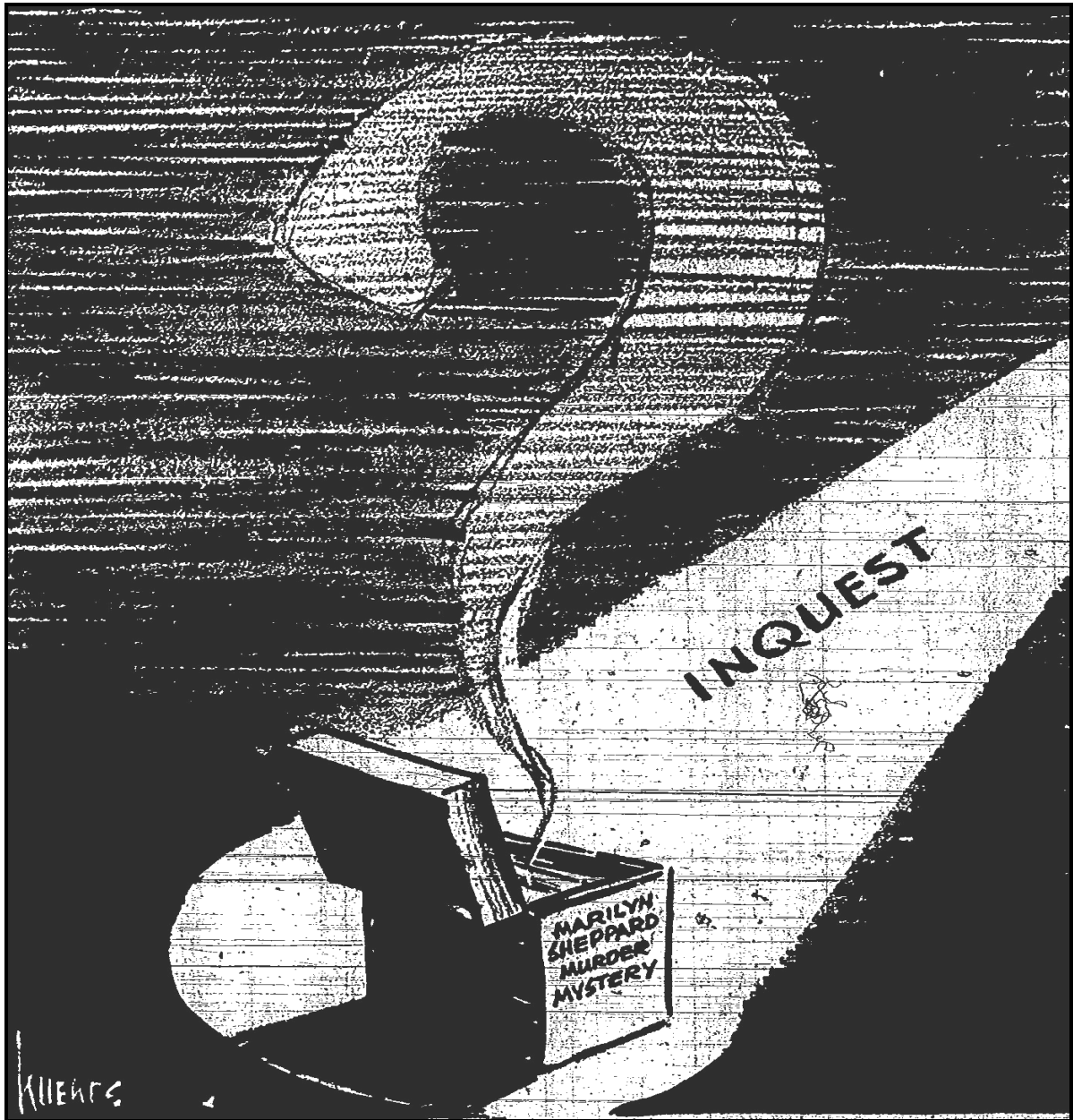
For two days, Sam Sheppard delivered a play-by-play of everything he could remember until that point and futilely tried to justify his decision to call Houk – instead of the police – when he found his wife dead. But the media was not satisfied with Sheppard’s testimony, and on the second day that he was on the stand, the *Plain-Dealer* ran an editorial titled “Get That Killer!” that pointed to “a noticeable lack of cooperation on the part of the dead woman’s husband ... who has refused to take a lie detector test, and who yesterday rejected proposals that he submit to a truth serum test.”<sup>52</sup> The editorial, echoing the majority opinion, continued, “it is clear, now, that because of the social prominence of the Sheppard

family in the community, and friendships between principals in the case and the law enforcement bodies of Bay Village, kid gloves were used throughout all preliminary examinations.” The local coverage grew so obsessive and intrusive by this point that daily newspapers featured photo albums with pictures of all the major players involved. On July 23, 1954, for example, the *Plain-Dealer* ran this cramped spread of eight images from the inquest:



**Figure 8:** Clockwise, from left to right: Sam, Stephen and Richard Sheppard leaving the inquest; Cleveland Police Chief Frank Story and Inspector James McArthur leaving the Sheppards' home; Mayor Spencer Houk; Spectators at the inquest; Sam Sheppard's attorneys Arthur Petersilge and William Corrigan; Bay Village Police Chief John Eaton; Larry Houk; Esther Houk. *Cleveland Plain-Dealer*, July 23, 1954.

The same paper also expressed the magnitude of the inquest with a cartoon, conveying how crucial it was that these hearings yield an actual murder suspect:



**Figure 9:** Below this cartoon was a quote from former U.S. Secretary of State Daniel Webster, “Every unpunished murder takes away something from the security of every man’s life.” *Cleveland Plain-Dealer*, July 23, 1954.



Sheppard's testimony was followed by Thomas Reese, Marilyn's father, who said that though he did not know the murderer's identity, he would "insist that no stone is left unturned to solve this terrible crime."<sup>53</sup> But the real star witness was Susan Hayes, a former Bay View Hospital technician with whom Sheppard had had an affair. The *Press* was so obsessed with her that on July 29, they printed four pictures of her above any articles:



**Figure 10:** The captions under these four photographs say "I'm not beauty; just an auburn haired girl," "Grandfather will be disappointed; I was his favorite," "I didn't want to lie – but I was confused," "I feel a lot better since I have told the truth." Hayes testified about her affair with Sam Sheppard, reluctantly telling the public about the gifts he gave her and the intimate experiences they shared when he visited her in California the previous March. *Cleveland Press*, July 29, 1954.

The Cleveland newspapers, especially the *Press*, clamored for Sam Sheppard's arrest. On July 27, the *Press* led with the front-page story, "Indictment of Doctor Near," and reported that the indictment was a "virtual certainty ... as authorities pushed toward a climax their investigation of the mystery of what happened in the Sheppards' lakefront home." This confidence was driven by the introduction of Hayes as a probable motive and, according to Gerber, the "crucial fact which has confronted investigators since the murder morning: ... the lack of any physical evidence to prove the presence in the house anyone other than Dr. Sheppard and his sleeping son, Sam (Chip) Jr., 7, at the time of the slaying."<sup>54</sup> In one of its less subtle headlines, the *Press* ran another front-page story: "Arrest Sheppard Now, City Tells Bay Police"<sup>55</sup> alongside another front-page editorial, "Why Don't Police Quiz Top Suspect?"

**The Cleveland Press**  
*The Newspaper That Serves Its Readers*  
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**Final**  
 60 Pages—7 Cents

# ARREST SHEPPARD NOW, CITY TELLS BAY POLICE

## Why Don't Police Quiz Top Suspect?

AN EDITORIAL

You can bet your last dollar the Sheppard murder would be cleaned up long ago if it had involved "average people."

They'd have hauled in all the suspects to Police Headquarters.

They'd have grilled them in the accepted, straight-out way of doing police business.

They wouldn't have waited so much as one hour to bring the chief suspect in.

Much less days.

Much less weeks.

Why all this toney, high-level bowing and scraping, and super-cautious monkey business?

Sure it happened in suburban Bay Village rather than in an "ordinary" neighborhood.

So what?

What difference should that make?

When they called the Cleveland police in everybody thought:

"This is it. Now they'll get some place."

Now we'd have vigorous, experienced, expert, big-time action.

They'd get it solved in a hurry.

They'd have Sam Sheppard brought in, grill him at Police Headquarters, like the chief suspect in any murder case.

But they didn't.

And they haven't.

In fairness, they've made some progress.

But they haven't called in Sam Sheppard.

Now proved under oath to be a liar, still free to go about his business, shielded by his family, protected by a smart lawyer who has made monkeys of the police and authorities, carrying a gun part of the time, left free to do whatever he pleases as he pleases, Sam Sheppard still hasn't been taken to Headquarters.

What's wrong in this whole mess that is making this community a national laughing stock?

Who's holding back—and why?

What's the basic difference between murder in an "ordinary" neighborhood and one in a Lake Rd. house in suburban Bay Village?

Who is afraid of whom?



## Doctor Lies, Susan Says; Tells of Gifts

Cleveland police demanded late today that Bay Village authorities arrest Dr. Samuel H. Sheppard on a charge of murdering his pretty wife, Marilyn.

The proposal was outlined to Bay Village Police Chief John Eaton at a conference in Central Police Station.

It was proposed by Detective Chief James McArthur and Homicide Capt. David Kerr that Dr. Sheppard be picked up and brought before Bay Village Mayor J. Spencer Houk.

Houk, a friend of Dr. Sheppard who was the first person summoned by the youthful couple to his home on the July 4 murder morning, would then hold the suspect for the Grand Jury.

Dr. Sheppard would then be held in jail, since no bail is permitted on a charge of first-degree murder. This would permit Cleveland detectives to question Dr. Sam in the same fashion they question any other murder suspect here.

This dramatic demand came after Dr. Sheppard's sworn testimony was contradicted by Susan Hayes, his companion during a California trip last March.

he couldn't because of his marriage to Marilyn.

THEY EXCHANGED A HALF-DOZEN LETTERS during the three months before Marilyn's murder.

THEY HAD INTIMATE RELATIONS during more than a week's stay at the home of a Los Angeles osteopath.

A possible motive for the murder of Mrs. Sheppard was established with Miss Hayes' story, James McArthur said.

Says Arrest Planned

"An arrest is planned," he said, "some time in the future—as soon as the investigation is completed."

Prosecutor Frank T. Cullinan said that Dr. Sheppard gave Susan such gifts as a signet ring, a suede jacket and various knickknacks.

The jacket, he said, was given to Miss Hayes about 4 year ago—at a time, according to previous testimony, when Mrs. Sheppard complained of their need for new furniture.

Cullinan said Dr. Sheppard had one date with Miss Hayes in the Cleveland area. Their in-

DR. SAM TALKED OF MARRIAGE to her—but said

Turn to Page 12, Column 4

**Ban on Sprinkling Set by Suburbs**

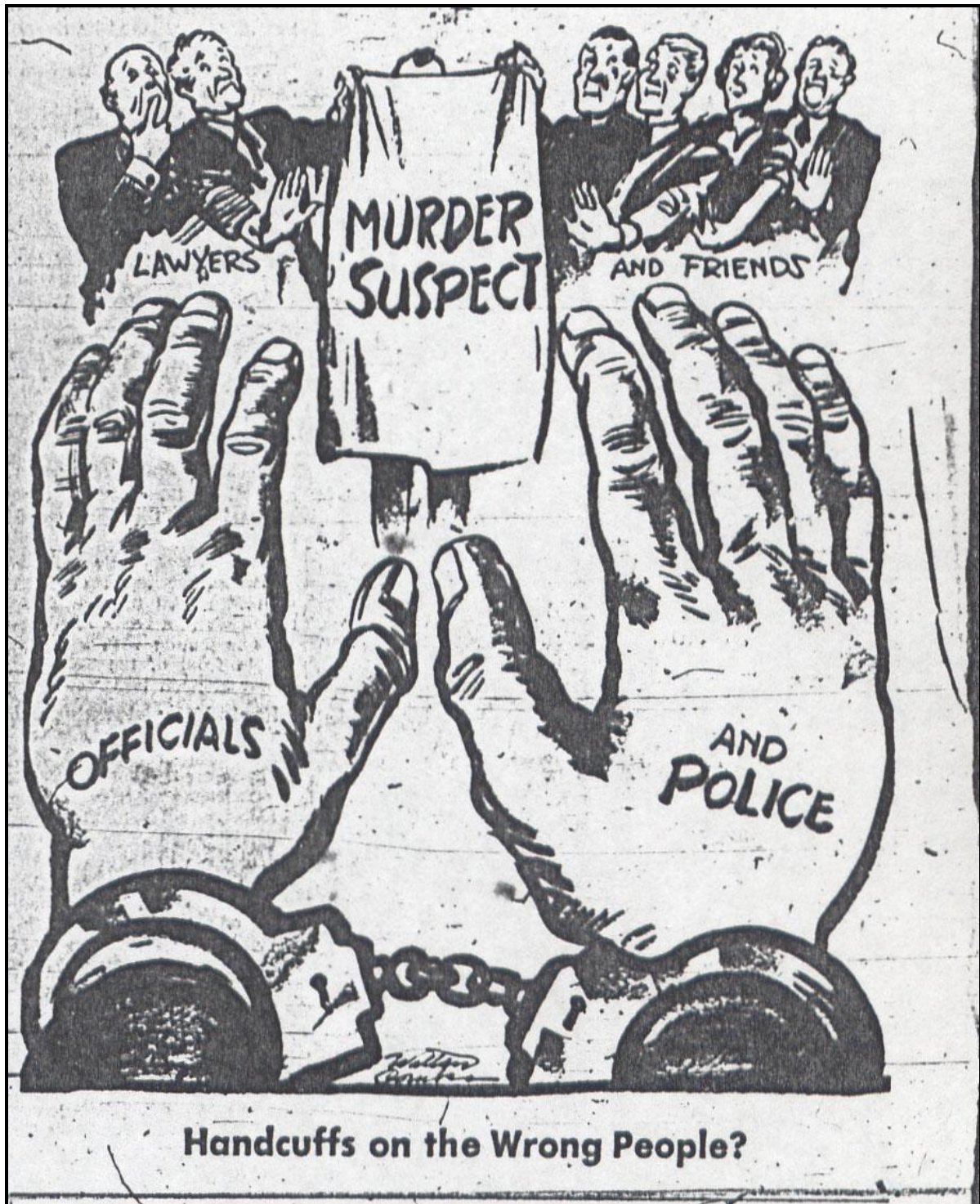
Figure 11: Sam Sheppard was arrested three days after this editorial was published. *Cleveland Press*, July 28, 1954.

In the editorial, the *Press* editorial staff reiterated what they believed to be the double standards being applied to Sheppard:

You can bet your last dollar the Sheppard murder would be cleaned up long ago if it had involved 'average people.' ... Now proved under oath to be a liar, still free to go about his business, shielded by his family, protected by a smart lawyer who has made

monkeys of the police and authorities, carrying a gun part of the time, left free to do whatever he pleases as he pleases, Sam Sheppard still hasn't been taken to Headquarters. ... It's just about time that somebody began producing the answers – and producing Sam Sheppard at Police Headquarters.<sup>56</sup>

On July 29, the *Press* wrote, “Arrest Up to Bay Mayor,”<sup>57</sup> and featured a cartoon on the front page that argued that Sam's lawyers and friends were not only shielding him from authorities but also indicting the officials and police merely for doing their jobs:<sup>58</sup>



**Figure 12:** This front-page comic represented the sentiment that had pervaded the Bay Village community since the murder: Sam Sheppard's lawyers and friends were hiding the real suspect from police and city officials. *Cleveland Press*, July 29, 1954.

Two days later, in an equally heated front-page editorial, the *Press* staff wrote:

Maybe somebody in this town can remember a parallel for it. The Press can't. And not even the oldest police veterans can, either. Everybody's agreed that Sam Sheppard is the most unusual murder suspect ever seen around these parts. . . . **This is a murder. This is no parlor game. This is no time to permit anybody – no matter who he is – to outwit, stall, fake or improvise devices to keep away from the police or from the questioning anybody in his right mind knows a murder suspect should be subject to – at a police station.** . . . What the people of Cuyahoga County cannot understand, and The Press cannot understand, is why you are showing Sam Sheppard so much more consideration as a murder suspect than any other person who has ever before been suspected in a murder case. Why?<sup>59</sup>

Here, the *Press* demonstrably had reached its breaking point and explicitly called for Sheppard's arrest. The language here reflects not only the fear that Sheppard could walk free but also the newspaper's expectation that city and state officials would unquestioningly adhere to what it instructed in its coverage – namely, arrest Sheppard.

\* \* \*

### **The Arrest and Pretrial Investigation**

Drenkhan, a longtime friend of Sam Sheppard's, arrested the osteopath on July 31. Drenkhan defended the department's decision not to arrest him earlier, saying that the officers did not have the requisite proof or evidence for an arrest. But somehow, he said, the press learned about the date of the arrest in advance, and reporters and cameramen stationed themselves outside Sam Sheppard's home, Bay Village City Hall and at various spots along the 20-minute drive to the Cleveland police department. Drenkhan had anticipated the media parade, and instructed his colleagues to meet him at Sam Sheppard's house instead of waiting to be picked up in order to avoid unnecessary stops. To Drenkhan's disappointment, once Sam Sheppard was in custody, the car needed gas, and that extra stop at the gas station inadvertently invited throngs of reporters and cameramen to witness firsthand Sam Sheppard going down to jail.<sup>60</sup> The *Press*' July 31 final edition reads like a celebratory issue and

includes a full page of pictures chronicling the arrest and drive to jail. In an attempt to demonstrate the Sheppard family's mood that night, a front-page piece in the *Press* includes a conversation between Tanner and Stephen Sheppard. Tanner had been waiting outside the house, aware that Sam Sheppard was inside and assigned to keep track of his movements.<sup>61</sup> "Stephen was very angry, understandably but also very nasty,"<sup>62</sup> Tanner later said, referring to their conversation in which, among other things, Stephen Sheppard told Tanner that he was "wasting" his time and that he should "go out and get ... a real story."<sup>63</sup>



**Figure 13:** A cartoon published in the *Cleveland Press* illustrates the Cleveland community's obsession with the trial and the public's addiction to the newspapers whose coverage fed their endless curiosity. Bill Roberts, *Cleveland Press*, August 14, 1954.

Though these excited headlines reflected the general mood in Bay Village, the glitzy coverage of the divisive case also angered some readers. It is unknown how many readers wrote letters to editors expressing their disapproval of the three newspapers' heavily opinionated content, but the *Plain-Dealer* published a few that demonstrate the public's exhaustion by and condemnation of how the press had gone about tackling this story. On August 7, Neil Smith, a reader from Toledo, Ohio, wrote that 120 miles away from the murder, the Toledo community was talking about how the coverage of the case had been "anything but proper." Smith lamented that the newspapers' "misleading headlines" successfully swayed his friends to assume Sam Sheppard guilty, and he questioned why this case should be considered unusual. "There is a possibility that he is involved," Smith wrote, "But there is also a possibility that he is not. Surely the press can give the public facts without distortion. Why don't they?" Finally, Smith foreshadowed the tremendous legal controversies that would erupt later on, writing that "no one after reading the stories could possibly sit on a jury in an unbiased manner."<sup>64</sup> The *Plain-Dealer* also included a letter from Cleveland resident James Shafer, who similarly criticized the press for its behavior: "We have a system for legal administration in this country. Why not give it a chance to collect a jury not saturated by artificial foreknowledge of what the verdict should be?"<sup>65</sup> Another reader, Martha Chave, asked the newspaper for "a little less Sheppard stuff and photos." She added, "This is important as news to a certain extent, but not to the extreme."<sup>66</sup> During the 20-mile "manacled ride" from his house to Bay Village City Hall to County Jail, Sam Sheppard commented bitterly that the "extreme" had worked and, "apparently, the *Press* got its way." Drenkhan said Sam Sheppard referred to the series of front-page editorials that the investigation of the murder be pushed to a conclusion and, when Drenkhan reminded him



that this ride was “official” and that he should not discuss the case, Sheppard “settled sullenly in the backseat.”<sup>67</sup>

Pleas to release Sheppard from prison were denied, and the investigation continued for a couple of months until the trial finally began on October 18, 1954. During this time, news about Sam Sheppard’s affairs with at least five other women leaked to the public, a point that the prosecution would use to prove that Sheppard had been motivated to kill his wife in order to create more time with his mistresses.<sup>68</sup> Once the investigation began, Corrigan began to appeal for a change of venue, this time for Sam Sheppard’s hearing, and argued that the town had been too tainted with adverse publicity to give his client a fair hearing.<sup>69</sup> The local media continued covering the investigation on a daily basis, printing pictures when Sam Sheppard’s furniture was removed for inspection and a detailed account of the statement of Lester Hoversten, who stayed at the Sheppards’ house during the three days before the murder and whom the Sheppard family later tried to pin as a murder suspect.<sup>70</sup> Further, though Sam Sheppard was released on \$50,000 bail on August 16, he was ultimately indicted on first-degree murder and rearrested without bail one month later.<sup>71</sup> As the coverage continued, never losing steam or momentum, editors incorporated evocative graphics to complement the stories. When a Sheppard relative released a statement that Sam Sheppard had written in prison to proclaim his innocence, the *Press* printed an excerpt that resembled a torn sheet of notebook paper:

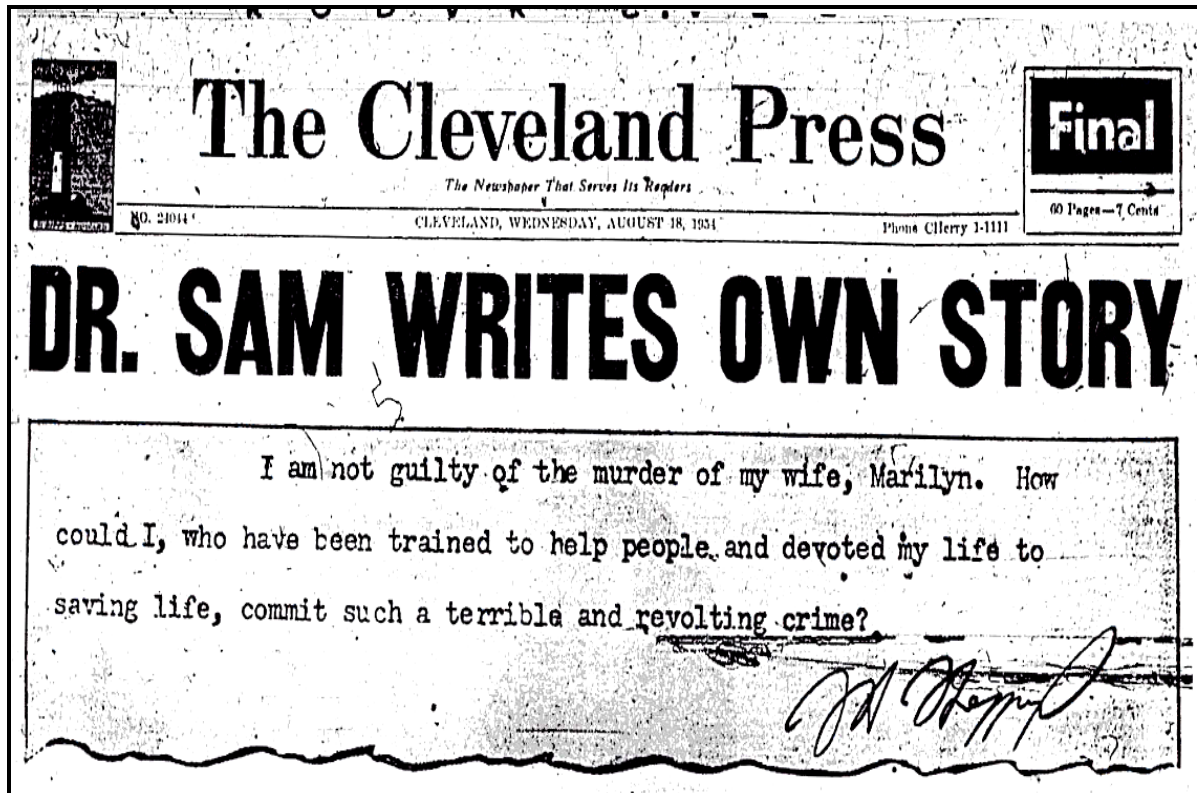


Figure 14: "Dr. Sam Writes Own Story." *Cleveland Press*, August 18, 1954.

The attention would only intensify as the October trial date neared, and reporters from as far afield as London would be flown in to provide up-to-the-minute reports from the witness stand. Sam Sheppard would spend the better part of the next several weeks in prison, waiting for his trial to begin. He wrote in his memoir, "I still had enough faith in the American system of justice to feel that when all the facts were laid on the line before a jury, I would be vindicated."<sup>72</sup> But as the next 10 weeks would show, Sam Sheppard's fair trial and impartial jury were sacrificed for the sake of salacious, profitable coverage, spinning his story into one that would prove far too complicated to decide with a Cleveland-based jury.

## CHAPTER TWO: TRIAL BY NEWSPAPER

“What transpires in the courtroom is public property. ... Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.

- U.S. Supreme Court Justice William Douglas<sup>73</sup>

The decision to bring Sam Sheppard to trial caused a great stir in Bay Village, arousing excitement and finally quelling fears that this alleged murderer would walk free. His interrogation in prison ignited a sense of exhilaration within the already hysterical community, and the trial, which began on October 18, 1954, in the Common Pleas Court of Cuyahoga County in Cleveland, Ohio, became such a hotbed of debate that even store clerks started refusing service to customers who held opposing opinions about Sam Sheppard's culpability.<sup>74</sup> A drumbeat of Sheppard-related stories filled Cleveland's three competing newspapers, each vying with the other to generate new stories that might add color to the tale. Interviews with reporters active during the Sheppard trial, as well as memoirs and clippings preserved in various scrapbooks, suggest that the journalists assigned to this story had a difficult time suppressing their own biases, whether because of their editors' politics or because of their own predispositions that stemmed from growing up mere miles away from the Sheppards. The Sheppard family's tendency to manipulate the media for its own advantage, calling in personal favors for coverage of their hospital, did not cast them in a positive light: the reporters, especially the ones working for Cleveland-based papers, harbored resentments and frustration toward the self-important Sheppards. Newspaper articles, including the pretrial ones written solely to energize readers about upcoming copy, demonstrate the inordinate attention paid to this case. As a result of this unfettered coverage, the question of determining Sam Sheppard's guilt, the reason for the trial in the first place,

became virtually irrelevant for reporters and readers alike. In effect, what mattered most was not whether Sam Sheppard murdered his wife, but rather how many stories reporters could tease from each court session and how each publication could exploit the case enough to boost circulation numbers.

Publicity concerning the Sheppard case began when the crime was originally reported, and the obsession did not wane after the arrest or the indictment. The local press continued to cover the trial relentlessly and employed an overworked staff to keep up with the unfolding drama. More remarkable, however, was the national media's interest in this case. The Cleveland papers were expected to cover a local trial to satisfy its readership, but the national and international media acquired an unquenchable thirst for this story and gave it unusually close attention: editors not only syndicated articles or news briefs from wire services but also sent reporters to Bay Village, Ohio, to cover the story directly from the scene. In Los Angeles, the Sheppard case got second or equal billing to the smog controversy, the city's biggest local story in months; in Boston, dailies printed at least one related front-page picture per day; Chicago papers, like the *Chicago Tribune* and *Chicago Sun*, published banner headlines and page-one photos even before the trial began; *The Akron Beacon Journal*, *The Pittsburgh Post Dispatch* and the Hearst newspapers, including *The Fort Worth Star-Telegram*, *Minneapolis Star Tribune*, *Houston Post* and *St. Louis Post-Dispatch*, all syndicated stories, many melodramatic, about the trial; and New York's evening papers and tabloids, such as the *New York Herald-Tribune*, *New York Daily News*, *New York Post* and *New York Journal-American*, aggressively covered the story as if the murder had happened on the Upper East Side.<sup>75</sup> Coverage was translated into French and other languages, and the foreign press wrote about the osteopath's "fight against the electric

chair” with the same curiosity as their American colleagues.<sup>76</sup> Sam Sheppard’s story, laden with drama, rumors and scandal, completely hijacked the media, courtroom and general public.

Retelling the story of Marilyn Sheppard’s murder in court took nearly 10 weeks, and the press covered everything from the jury selection to the aftermath of the verdict with the same aggressive, relentless treatment that is given to world leaders and celebrities today. Taking measures that would later prove unconstitutional, court officials colluded with the press by facilitating their access. A long table was put in behind the single counsel table inside the courtroom, stretching across the entire room, with one end less than three feet from the jury box. Twenty press representatives, mostly from Cleveland newspapers and three wire services, sat around the table, and behind them were four rows for television and radio news representatives; reporters from out-of-town newspapers and magazines; and, in the last row, important visitors, witnesses and members of the Sheppard family. There is a limited supply of photographs that convey the media’s claustrophobic presence in the courtroom, but a select few, preserved at the Cleveland State University Library’s Special Collections department without any captions or identifying details, convey the intensity:



**Figure 15:** Court reporters furiously scribble on notepads in an attempt to capture every second of the highly sensationalized trial. Special Collections, Cleveland State University Library.



**Figure 16:** Though cameramen were not permitted inside the courtroom, they waited right outside the door with cameras in hand, always prepared to snap a quick shot of any of the case's primary players. Special Collections, Cleveland State University Library.

This photograph, part of a photographic series entitled “Annals of Crime” posted on a public blog, offers a general view of the courtroom from the point of view of a cameraman:



**Figure 17:** A broadcast journalist captures a bird’s eye view of the 1954 trial. The entire courtroom was flooded with members of the press throughout its entire 10 week duration. Tom Sutpen, “Annals of Crime,” [tsutpen.blogspot.com/2008\\_06\\_01\\_archive.html](http://tsutpen.blogspot.com/2008_06_01_archive.html).

At the front of the courtroom, the defense aimed to paint the 30-year-old defendant as an even-tempered, well-liked, reputable man – hardly the type to crush his wife’s skull with repeated angry, savage blows. The State, backed by most of the media, would counter that the ostentatious, womanizing, over privileged osteopath murdered his high school sweetheart to make room for a prettier and younger lab technician named Susan Hayes.

Despite a two million word-transcript, 87 witnesses and nearly 300 exhibits, the 1954 trial left much in limbo, raising legal and moral questions that would take 10 years to address.<sup>77</sup> The questionable conditions under which Sam Sheppard stood trial proved suspect enough for an Ohio federal court and, later, the United States Supreme Court, to review Sam

Sheppard's guilty verdict on the ground that this entourage of reporters – stalking the courthouse, trailing Sam Sheppard's family, friends and acquaintances – prevented him from receiving a fair trial.<sup>78</sup> The appellate courts eventually blamed the judicial system, and specifically the trial judge, for failing to protect Sam Sheppard from a trial by newspaper and decided that an unregulated press made it impossible for an impartial jury to deliver a constitutionally sound verdict. But it would take 10 years of life in prison for any judge to reach these conclusions, and those officials who quickly dismissed Sam Sheppard's many appeals as ridiculous would eternally be haunted by their indiscretions. By 1966, public opinion would veer from the conviction that Sam Sheppard had killed his wife to the truism that the media frenzy that hounded Sam Sheppard, sacrificing his constitutional right to a speedy and public trial in exchange for several months' worth of riveting stories, had, indeed, compromised justice.

\* \* \*

### **I. Reporting the 1954 Trial**

“Never get murdered. If you've got to go, go discreetly. Just stop breathing but without the coaxing of mayhem. Your relatives and a small handful of friends will be saddened for a time ... But at least you'll have the consolation of knowing that utter strangers are not rummaging through your bed clothes months later in full view of a note-taking press and radio corps.”

- *International News Service Reporter Bob Considine*<sup>79</sup>

National reporters harbored biases toward the Sheppard family, albeit less personal ones than their Cleveland-bred colleagues. *International News Service* reporter Bob Considine, for example, admitted in one of his nationally syndicated columns that “it's hard to stay impartial in a murder trial. You get to hate the defendant or like him or feel sorry for him. You are impressed with this or that lawyer, or get a story from one and feel vaguely grateful. You might remind yourself that you should strive for and achieve that zenith of



impartiality.” He continued that the Sheppard murder trial was one of “extreme intimacy,” with 50 reporters and a handful of relatives serving as the “spectators in Judge Blythin’s legal Turkish bath.”<sup>80</sup> Ira Henry Freeman echoed these sentiments in the *New York Times*: “To some extent, the press do not merely report, but also create news about this sensational case.”<sup>81</sup> To bolster his point, he cited a battle for credit between two of Cleveland’s leading newspapers:

The *Scripps-Howard Press* ... has boasted that its editorial campaign begun July 20 ‘forced’ a coroner’s inquest and the indictment of Dr. Sheppard. The *Plain-Dealer* counters that it had discovered vital information about Miss Hayes, who is the state’s star witness. This controversy was debated on the radio Oct. 18. [In addition to this debate,] it was said to be a newspaperman who discovered the criminal record of a juror, overlooked by the police.”<sup>82</sup>

This exchange would later come up in Sam Sheppard’s appeal to the Supreme Court of Ohio as proof that he had not received a constitutionally fair trial. The scrutiny with which the media observed the Sheppard family only intensified once the trial began. Reporters generally wrote about every point made by both sides, but their literary styles and preconceptions revealed themselves most clearly during the jury selection, testimonies about Sam and Marilyn Sheppard’s marriage, including Sam Sheppard’s extramarital affairs, and observations of Sam Sheppard himself.<sup>83</sup>

Despite the aggressive coverage and the widely touted belief that he was guilty, Sam Sheppard did not deviate once from his alibi throughout all of his trials, appeals to various courts and even after his eventual release from prison. On that July 4 night, he maintained, he fell asleep in his living room after entertaining neighbors the night before and, while he slept, Marilyn Sheppard was beaten to death by a bushy-haired assailant. Bay Village authorities were criticized for dallying and quarreling over jurisdiction, taking almost three weeks to hold a coroner’s inquest. It was then revealed that Sam Sheppard had been having an affair

with Susan Hayes, a medical technician formerly employed at the Bay Village Hospital and later in Los Angeles, where Sam Sheppard had lived for a week the previous March. The osteopath, 30 at the time, was finally arraigned on August 17 with an October 18 trial date.

### **a. The Eve of the Trial**

It took 17 days to pick a jury out of the 75 citizens who were called. During this time, Corrigan recognized and argued about what he considered to be adverse publicity even before the trial began. He filed two motions asking that the trial be taken out of the county and that it be postponed until the prejudicial effects wore off. He additionally issued subpoenas to 23 people as witnesses to support his contention that the community had been saturated with unfavorable reports about Sam Sheppard, but to no avail: Cuyahoga County Common Pleas Judge Edward Blythin, who would be presiding over the case, steadfastly refused to delay the case because of the furor.<sup>84</sup> On a personal level, Corrigan claimed not to understand the commotion about this case, telling reporters that it was a “run-of-the-mill murder trial. Why all the curiosity about it?”<sup>85</sup>

Because Ohio law dictates that a jury must be chosen a month in advance of the slated trial date, all of the names and addresses of the prospective jurors were published in Cleveland’s three newspapers weeks before the case officially began, enabling their families, friends and general public to contact and discuss the case with them.<sup>86</sup> The jurors also received anonymous telephone calls, letters, advice and threats from various individuals.<sup>87</sup> The week before the trial, the harassment became so bad that Blythin reported that “crank” letters were sent to at least three people called for jury duty as well as to himself and other officials.<sup>88</sup> As the *Washington Post* reported, the two-page letters sent to prospective jurors contained two pictures, which showed Sam Sheppard with police chief Frank Story and state

witness Lester Hoversten, and stated, “Time alone can tell which is the worst criminal,” and was signed “With infinite love for all honest human beings, I am All-a-Yodhevauhe of Cleveland, Ohio.” Another letter to Blythin, written in longhand and signed “Amad Nora Heaveday,” charged that ““Dr. Sam’ was being kept in jail, unable to catch the real murderer, while police were hunting things they could not prove to be the murder weapon.” One jurist reported that copies of these letters were also sent to U.S. President Dwight Eisenhower, Cleveland Mayor Anthony Celebrezze and Cleveland Sheriff Joseph Sweeny, “who was accused in the letter of being in on the ‘world-wide’ plot against Sheppard.<sup>89</sup> Indeed, the tedious, difficult jury selection, coupled with the public’s morbid curiosity, only highlighted the intense atmosphere that had surrounded the Sheppards since the July 4 murder. A jury of seven men and five women was finally selected, but were not sequestered during the trial; after a day in court, they could go home, where they had access to newspaper, radio and television reports.<sup>90</sup>

# Trial of the 4th Estate

By Burris Jenkins Jr.



**Figure 18:** A cartoon published in the *New York Journal-American* mocked the lengthy juror selection process and conveyed the chaos that ensued from the beginning of this high-profile trial. "Trial of the 4<sup>th</sup> Estate," Burris Jenkins Jr., *New York Journal-American*, October 26, 1954.

The extensive coverage in such mainstream press further demonstrates the tremendous national interest in the story. Newspapers with large national readerships, specifically the *New York Times*, *Los Angeles Times* and *Washington Post*, not only syndicated articles from different wire services during the trial but also sent reporters to Cleveland to produce frequent, if not daily, firsthand coverage. The New York tabloid circuit also participated in this media parade, and papers including the *New York Herald Tribune*, *New York Daily News* and *New York Journal-American* all published stories that were complemented by enormous spreads of pictures featuring the trial's main cast of characters and by cartoon renditions of the courtroom that would be circulated to readers thousands of miles away.

On October 17, the day before the trial was set to begin, the *New York Daily News* printed a rundown of the "wife-slaying whodunit" by outlining the main points expected from the defense and prosecution alongside four headshots of the key players, Marilyn Sheppard, Sam Sheppard, Susan Hayes and Edward Blythin:

# Dr. Sam on Trial Tomorrow



Mrs. Marilyn Sheppard  
*Who slew her?*



Dr. Samuel Sheppard  
*Insists he's innocent.*



Susan Hayes  
*Shared a bedroom*

## Blood and Sex Mark Wife-Slaying Whodunit

By THEO WILSON

(Staff Correspondent of THE NEWS)

Cleveland, Oct. 16.—Cleveland's most sensational whodunit in years, the Sheppard case, will go to trial here Monday in a packed courtroom so small that newspapermen will outnumber the spectators.

Dr. Samuel Sheppard, 30, the osteopathic surgeon charged with murdering his blonde, pregnant wife, Marilyn, 31, goes on trial in a courtroom which can hold only 40 persons, to the disappointment of hundreds of Clevelanders.

The case contains all of the elements of a best-selling murder story—blood, violent death, mystery and sex. \*

### Will Ask Postponement

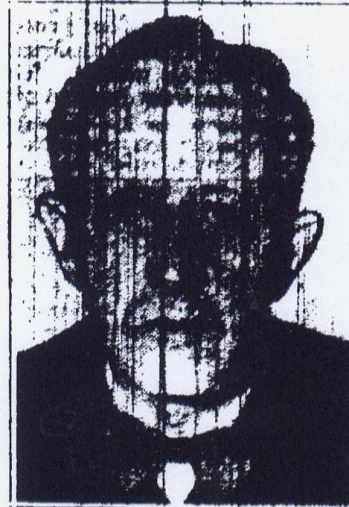
Defense counsel William J. Corrigan says public opinion is so inflamed and prejudiced against Sheppard that he wants Common Pleas Judge Edward Blethen to

fied the assault "splattered her skull and pulpified her brain."

The heart of the mystery lies in the completely contradictory evidence—and the fact that some key evidence has never been found.

Sheppard says he fell asleep downstairs, heard his wife scream, rushed upstairs and was "remembered." He has testified he was grappled with a "dark, curly-haired" man through the window onto the lawn, and that he fell on the lake shore.

There were indications—rings, sacked drawers, vanished money—that the killer had staged, or



Judge Edward Blethen  
*Asked to delay or shift trial*

Figure 19: Four photographs of the case's most prominent figures complement an article published on the eve of the trial. *New York Daily News*, October 17, 1954.

The article teased that “the heart of the mystery lies in the completely contradictory evidence – and the fact that some key evidence has never been found,” emphasizing the trial’s most controversial components and effectively securing a devoted readership for the next 65 days.<sup>91</sup>

On the same day, the *Los Angeles Times* likewise devoted almost half of its second page to an article reported by the United Press, giving its readers a thorough recap of the trial's back-story. The piece begins with a sensational lede, "six hours in the life of Dr. Samuel H. Sheppard will decide next week whether he lives or dies," a reference to the early morning of July 4, when "Sheppard's pregnant wife Marilyn was murdered by a fiendish assailant who hacked her 27 times on the face and head."<sup>92</sup> The eight column-wide article continues with similarly titillating statements, from hypotheses – "If the State succeeds, Sheppard may die in the electric chair"<sup>93</sup> – to salacious anecdotes – "Investigators discovered flaws beneath the otherwise joyful surface of their relationship"<sup>94</sup> – to a detailed rundown of the investigation and inquest that occurred after the murder. The piece, to an extent, is also self-referential, making note of the tremendous publicity that the case had already received, and concludes: "The trial has attracted such interest that Common Pleas Judge Edward Blythin, who will hear the case, has reserved almost the entire courtroom for reporters, radio and television personnel. Upwards of 50 out-of-town newspapers will cover the trial."<sup>95</sup> The premonition proved true two days into the trial, when the *New York Times*' Ira Henry Freeman reported, "Except eight or 10 seats in the last row, all places in the courtroom not occupied by participants and attendants are filled by the press. There is a constant flow of afternoon newspapermen and radio newsmen in and out of the courtroom to send off new leads."<sup>96</sup>

The *Journal-American*, however, published the most exaggerated coverage of all, mostly because of its prized celebrity reporter, Dorothy Kilgallen, who flew to Cleveland on a daily basis and used her candid, colorful style of reporting – during the trial, for example, she described a female juror as "an emotional biscuit packer, a Judy Holliday character who

at first promised comedy relief<sup>97</sup> – to tell her readers about the high profile murder trial in an otherwise obscure Ohio town. Kilgallen, known nationally for her frequent presence on the Sunday night television show “What’s My Line?” had considerable clout among legal affairs journalists: she obtained the first exclusive interview with Bruno Hauptmann, the convicted kidnapper and killer of Charles Lindbergh’s baby, and drew a murder confession from Gladys McKnight, a teenage girl who had slain her mother with a hatchet.<sup>98</sup> In the days before her first trip, national papers, including the *San Francisco Call Bulletin*, Chicago’s *Herald American*, the *INS* and the *Associated Press*, syndicated her articles and columns, building anticipation to her Cleveland debut by promising a “play-by-play” about the case that “promise[d] to develop into one of the most outstanding trials.”<sup>99</sup> The newspapers boasted that Kilgallen’s reporting would grant them a “front-row seat” at the “murder trial of the century.”<sup>100</sup>

Throughout the trial, Kilgallen’s presence in particular exacerbated the media’s already conspicuous and intrusive presence in the courtroom. O’Donnell recalled in her memoir: “Commuting to Cleveland on early flights for the Sheppard trial was tricky for [Kilgallen]. At first she arrived on time – but frazzled. A tiny hat was pinned to her flyaway hair, seams were split on her cotton blouses, and her lipstick was awry. This was a woman in a terrific hurry, one trying to cover all the bases.”<sup>101</sup> Kilgallen’s presence rattled the jurors, too, and when Bette Marie Parker, a prospective juror, was asked by the defense counsel whether she would be influenced by the presence of so many reporters, she smiled and said no, adding that all her friends wanted to know if she had received an autograph from Kilgallen. After Parker was eventually dismissed for discussing the trial with her friends, she



asked the newsmen for Kilgallen's autograph, illustrating that the jurors were often distracted by factors that had nothing to do with Sheppard's culpability.<sup>102</sup>

Kilgallen quickly became famous for her evocative language and vivid descriptions, writing for the *Detroit Times* that "drama follows [Sheppard] wherever he goes, and cloaks him."<sup>103</sup> But as much as the spotlight followed Sam Sheppard, it followed the New York columnist, too, and Kilgallen frequently received telegrams from editors at other papers congratulating her on her reporting and informing her of their decision to sign on to her syndicated columns.<sup>104</sup> Kilgallen's closely followed reporting even caught Ernest Hemingway's eye. In a biographical profile in London's *Sunday Times*, reporter Robert Harling wrote that the "trial has everything the public clamors for," and quoted Hemingway's description of the trial, which he was following in Cuba, as "the greatest human story of all" as well as his praise for Kilgallen as "damn good."<sup>105</sup> Kilgallen's stories were often accompanied by graphics drawn by popular cartoonist Burris Jenkins Jr., whose cartoons and editorialized captions, the likes of which are more commonly found in gossip rags, offered exaggerated – though sometimes helpful – visualizations. To top it off, the *Journal-American* also syndicated an almost daily column by *INS* reporter Bob Considine, who used the space to ruminate about the trial.

Some of Jenkins' more sensationalized cartoons included:

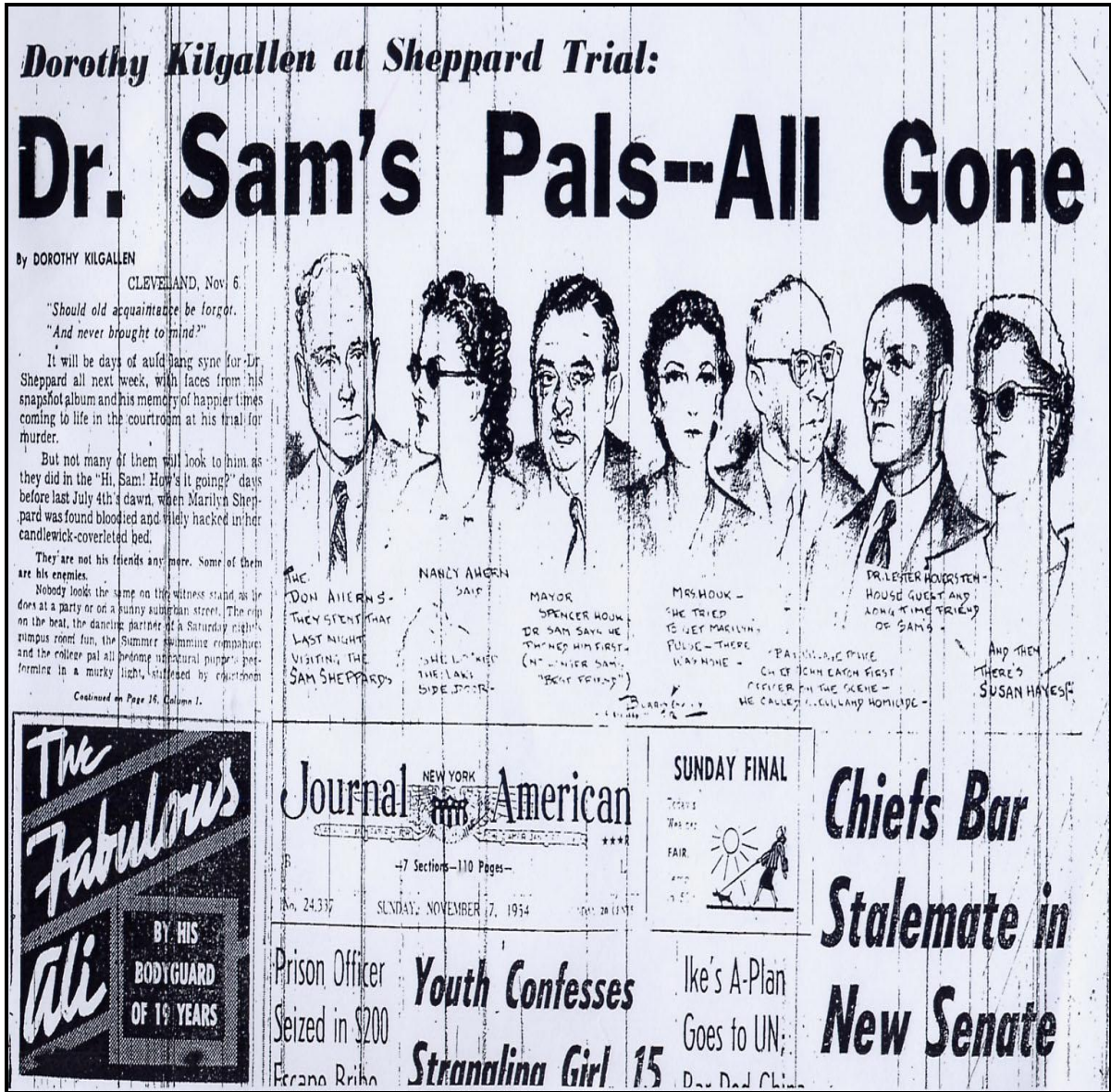


Figure 20: Jenkins lamented the toll of the trial on those people close to Sam Sheppard. Jenkins drew from left to right, Don Ahern, Nancy Ahern, Mayor Spencer Houk, Mrs. Esther Houk, Bay Village Police, Dr. Lester Hoversten and Susan Hayes. Burris Jenkins Jr., *New York Journal-American*, November 7, 1954.

## Book of the Month



By Burriss Jenkins Jr.



**Figure 21:** Jenkins, like the reporters, sought to generate as much hype as possible even before the trial officially began. The image illustrates the love triangle connecting Sam Sheppard to Marilyn Sheppard, “the murdered wife,” and to Susan Hayes, “the other woman.” The three are drawn behind a large book with the title “The Trial of Dr. Sheppard,” foreshadowing the inordinate amount of time that it would take attorneys to prove Sam Sheppard’s guilt or innocence in court. “Book of the Month,” Burriss Jenkins Jr., *New York Journal-American*, October 16, 1954.

Another cartoon pieced together the different theories about the murderer's real identity:



Figure 22: The prosecution's primary witnesses included Bay Village Police Chief John Eaton, Coroner Samuel Gerber, Mayor Larry Houk and Dr. Lester Hoversten. Burris Jenkins Jr., *New York Journal-American*, November 12, 1954.

Despite its inflated style, the *Journal-American*, in a move to relay basic facts lucidly and, succinctly, published a simple numbered chart to summarize the attorneys' opening statements. Jack Lotto, another *INS* correspondent, outlined these points:

#### STATE

- 1 – The murder occurred with the front door double-locked and the back door 'closed.'
- 2 – There was no evidence of a struggle or forced entry.
- 3 – Dr. Sheppard was 'infatuated' with Susan Hayes and had affairs with other women.
- 4 – Sheppard spoke of divorcing his wife.
- 5 – Premeditation is proved by the fact nothing was missing in the murder room, meaning the missing weapon had been carried into the bedroom where Mrs. Sheppard was killed.
- 6 – A bloody trail wended from the upstairs scene of the crime to the basement.

## DEFENSE

- 1 – Sheppard was ‘clobbered’ by the intruder who murdered Mrs. Sheppard
- 2 – The front door may have been locked but there is no reason why it could not have been unlocked later.
- 3 – Dr. Sam got blood over himself when he felt his wife’s pulse.
- 4 – He loved his wife and child. Turned over his pay to her, signed over the house to her and made her the beneficiary of his life insurance.
- 5 – The last four months of Marilyn Sheppard’s life were ‘the happiest.’
6. Dr. Sheppard was a ‘gentle’ man who could not murder.
- 7 – The defense expects to bring witnesses to dispute the State’s contention of divorce talk by Dr. Sam.
- 8 – The doctor was ‘seriously injured’ in his clash with the intruder, suffering a ‘badly battered’ face and an injured spinal cord.<sup>106</sup>

The *Journal-American* also published cartoon renditions of the attorneys on both sides:



Figure 23: “The Defense Attacks,” Burris Jenkins Jr., *New York Journal-American*, October 20, 1954.

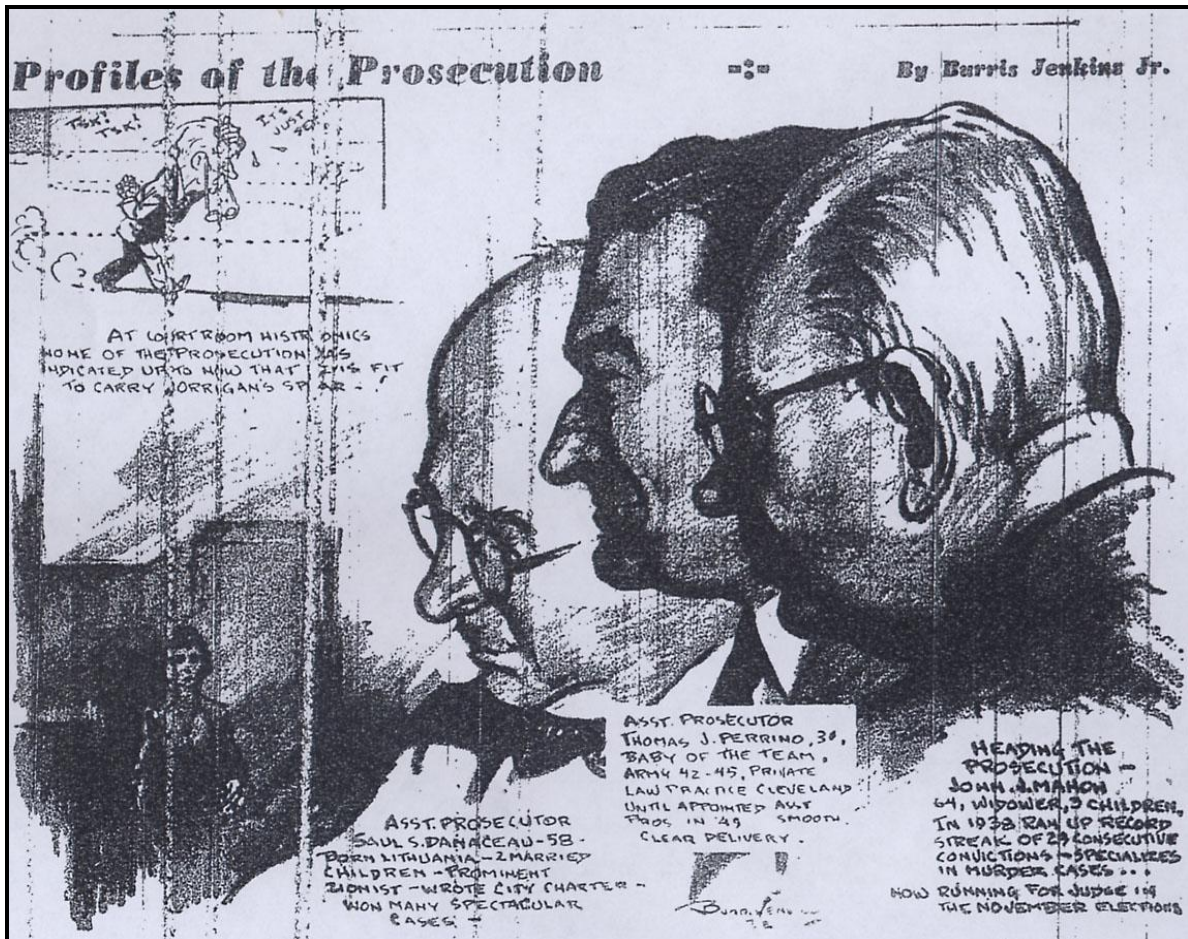


Figure 24: "Profiles of the Prosecution," Burris Jenkins Jr., *New York Journal-American*, October 25, 1954.

*LIFE* Magazine also sent a cartoonist, Arthur Shilstone, to the trial to capture the saga through drawings.<sup>107</sup> These renditions followed everyone from the jurors to the press to Sam Sheppard himself:

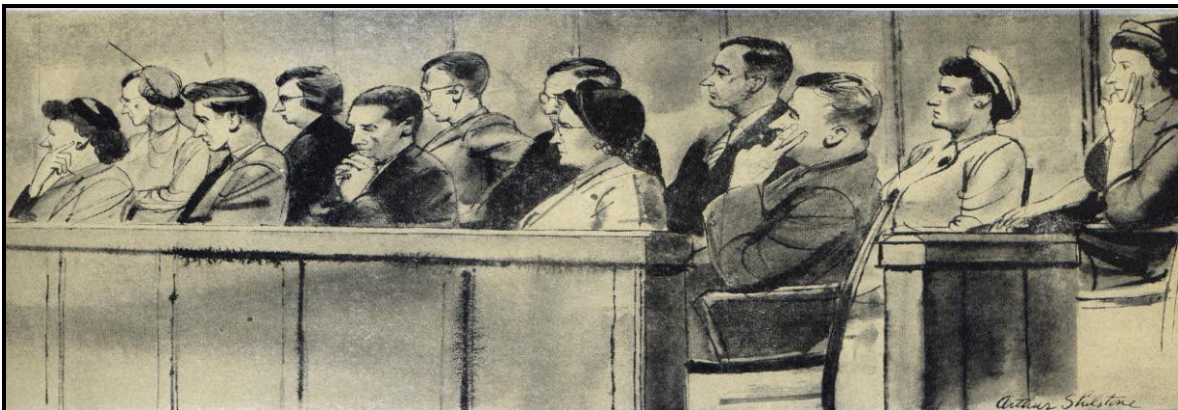


Figure 25: A solemn jury of seven men and five women listens to evidence. Arthur Shilstone, *LIFE*, November 22, 1954.



**Figure 26:** A sketch of Dorothy Kilgallen reflects the celebrity journalist's fame and how her presence alone disrupted the decorum of the courtroom. Arthur Shilstone, *LIFE*, November 22, 1954.



**Figure 27:** Sam Sheppard enters the courtroom in handcuffs, buffering the image of him as a figure of ominous drama. Arthur Shilstone, *LIFE*, November 22, 1954.

On the first day of Sam Sheppard's trial, as it did almost every day until the jury reached its verdict, the *Journal-American* used most, if not all, of its front-page to sell the Sheppard story to its readers. That day, "Dorothy Kilgallen Writes: DR. SAM FACES COURT 'LIKE A MOVIE STAR'" was printed in enlarged, bold letters above the paper's masthead, and the inside pages packaged a full spread of photos and biographies of the case's main players. The only graphic on page one is a large cartoon of Sam Sheppard, drawn by cartoonist Burriss Jenkins Jr., in front of his Bay Village home with captions outlining the series of events that took place on July 4.<sup>108</sup>



Figure 28: "Dr. Sam Faces Court 'Like a Movie Star.'" Burriss Jenkins Jr., *New York Journal-American*, October 18, 1954.





**Figure 29:** A Closer look at the sketch shows Jenkins' narration of what he believed happened during the time of Marilyn Sheppard's murder. Burriss Jenkins Jr., *New York Journal-American*, October 18, 1954.

Determined to keep the story relevant – and, in most cases, in the front pages of their papers – national editors published detailed stories about the prolonged jury selection, summarizing the exchanges between the prospective jurors and the attorneys along with the judge's reasons for approval or dismissal.<sup>109</sup> The jury stories, all reported by wire services, relayed the growing tension between William Corrigan, Sam Sheppard's main lawyer, and Blythin over whether the overwhelming publicity would prejudice the jury, pitting Corrigan's

insistency for a change of venue or postponement against Blythin's refusal to do so. On October 19, for example, the *Los Angeles Times* wrote, "Corrigan argued that Blythin should postpone the hearing indefinitely because of publicity. Blythin overruled the motion, *as he did yesterday.*"<sup>110</sup> This tension thickened as the subject of Hayes, with whom Sam Sheppard had a four-month affair, crept up in every juror's interrogation. Corrigan worried that "some people have very strong feelings on sex aberrations, and considered them worse than murder." He used this reasoning to claim that these sorts of predispositions would inevitably prevent impartiality.<sup>111</sup>

Similar page-filler tactics were executed on slow days or when the court simply was not in session. On Election Day, for example, when the court had a day off, the *Journal-American* published a front-page summary of the trial up until that point, stating the obvious: Sam Sheppard "shared his tiny jail cell with a big question mark ... as his trial for the murder of his lissome wife took an Election Day intermission."<sup>112</sup>

# Dorothy Kilgallen at Trial:

## Talkative Juror Barred

### Defense 'Spots' Her

Photo in Picture Section

By DOROTHY KILGALLEN

CLEVELAND, Oct. 22.—Like Perry Mason closing in on a hostile witness in the last chapter of a murder mystery novel, the defense in the trial of Dr. Samuel Sheppard today achieved the disqualification of a jury candidate in such slick and speedy fashion that Attorney William J. Corrigan was asked if he had put a wire-tap on some of the prospective jurors' phones.

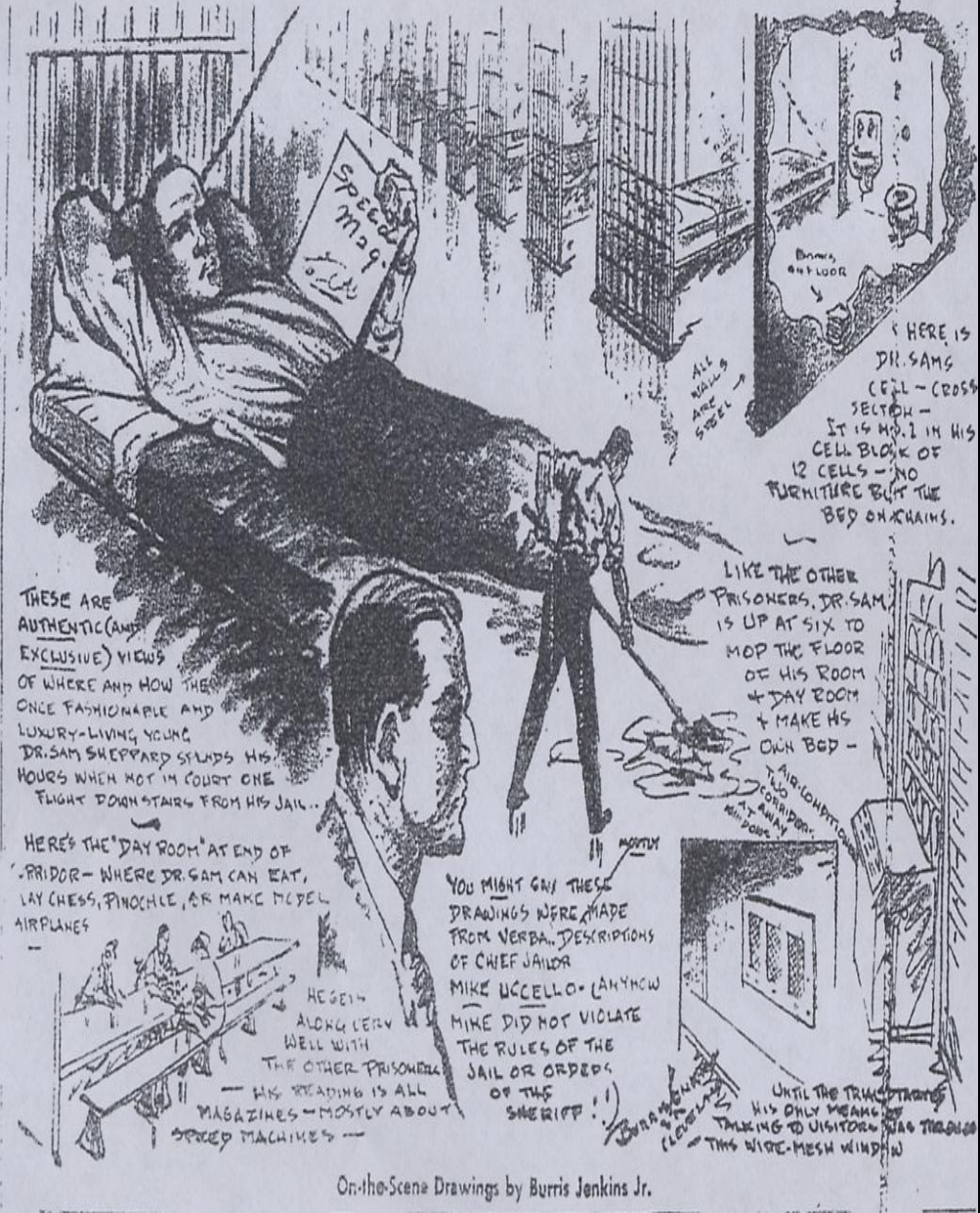
Corrigan denied it emphatically.

He went further and detailed that the defense had been "tipped" by anyone to the fact that the prospective juror, vivacious brunette Mrs. Betta Marie Parker, had talked to a friend about the Sheppard case even after receiving the judge's admonition not to discuss the trial with anyone.

#### H-T SIZED HER UP

Corrigan insisted his wife's success in having Mrs. Parker eliminated was due purely and simply to his—and his associates'—uncanny ability to size up her personality.

"You can always tell a woman like that," he snapped as he exited from the court-



On-the-Scene Drawings by Burris Jenkins Jr.

Figure 30: Sam Sheppard's prison cell, Burris Jenkins Jr., *New York Journal-American*, October 22, 1954.

Likewise, on Thanksgiving, Jenkins captioned a large drawing of Sam Sheppard with exaggerated comments about how “Thanksgiving for Dr. Sam manifested itself in this wide yawn at recess ... His meal today? No turkey – Just Roast Beef.”<sup>113</sup>



Figure 31: “Sam’s Thanksgiving.” Burriss Jenkins Jr., *New York Journal-American*, November 25, 1954.

Emphasizing the juror selection process only attracted more press: the *Herald Tribune* dispatched Margaret Parton to Cleveland on October 20 and the *New York Times* sent Ira Henry Freeman on the eighth day of the jury-less court and, in early December, added William Farrell to the Sheppard trial beat.<sup>114</sup> Most newspapers capitalized on the growing resentment that existed between Blythin and Corrigan. The *Los Angeles Times*, in one headline, likened Sam Sheppard to the short-tempered Corrigan, who, according to the article, waved his hands in anger in the courtroom, “hitting the ceiling” and “snapping” at Blythin.<sup>115</sup> The *Post* similarly used these episodes to print headlines like “Sex Called Heart of Case against Dr. Sheppard,”<sup>116</sup> and the *Herald Tribune* headlined its story on this matter with the black-lettered title, “Sheppard Judge Bars ‘Sex’ Quiz.”<sup>117</sup> Though these papers were not yet sending their own reporters to Cleveland, editors customized the headlines and selected which text to include, thus controlling the flavor and tone of the stories. The jury was finally sworn in October 28 after a droning 10-day process. Corrigan’s objections and motions to postpone or move the trial continued through this day, and he argued that “all the jurors except [one] have admitted reading about this case, listened to radio and television comments on it, and have heard people express opinions about it. They say they can overturn these expressions, but human nature being what it is, I doubt it.”<sup>118</sup> These arguments, however, were ineffective, and Bythin dismissed all of them.

The hyperbolic *Journal-American* paid special attention to Sam Sheppard’s reactions to the juror selection process, using its typical, above-the-newspaper’s-own-title headline to state: “Dr Sam’s eyes test each juror.” In this story, Kilgallen explained:

Unsmiling ‘Dr. Sam’ Sheppard is playing a role known only to a few at his trial for wife-murder – helping his counsel screen the prospective jurors by giving each candidate for the jury box a psychological ‘eye’ test. As each venireman takes the witness stand to be examined for qualifications, the handsome neurosurgeon fixes

him with an intense gaze, never letting his eyes drop while the questioning is in progress. And he reports to his lawyers whether or not the juror-to-be looks his way or avoids his stern blue gaze.<sup>119</sup>

Kilgallen frequently sat next to Considine and, one day, when she detected disdain in Sam Sheppard's expression during an interrogation of an unattractive, talkative woman, she scribbled a note to Considine: "Sam doesn't like her." When the woman was subsequently dismissed, Kilgallen smiled triumphantly and wrote that "the handsome young doctor, loaded with sex appeal and attractive to women all his life, is at this crucial hour, wary of women and fearful of their judgment."<sup>120</sup>



Figure 32: "Whispers," Burris Jenkins Jr., *New York Journal-American*, October 21, 1954.

Kilgallen, like most of the press corps, came to Cleveland believing that Sam Sheppard was guilty, but her apparent attraction to him stood out in her writing through frequent mentioning of his good looks and irresistible charm. She described him as a “boyish athlete” whose smiles, however rare, “emphasized his congruity as the defendant in a ‘crime of fury’ – the bloody bludgeon killing of his pregnant wife, Marilyn.” During an interrogation of the juror Thomas Solli, who apparently had a complicated relationship with another juror, Edmund Verlinger, Kilgallen wrote that Sam Sheppard, “seated in a casual pose at the counsel table, looked no older and no more dangerous than a medical student sitting in a university classroom, which was what he was doing not many Autumns ago.”<sup>121</sup> In fact, in a piece syndicated in the *Washington Post*, Kilgallen devoted an entire column to describing Sam Sheppard, despite the fact that the press was not permitted to confer with him. Kilgallen had managed to glean from his family, acquaintances and trial evidence that he was a “pipe-smoker, a two-martini man ... [resembling] Marlo Brando ... [and] Henry Fonda. ... fond of classical music and has [a] terrible taste in underwear.”<sup>122</sup> She seemed to realize the oddity in reporting these types of trivial anecdotes, and poked fun at herself when she added: “It adds up, sometimes in wildly contradictory fashion, to the portrait of a well-built, good-looking fellow who was a hard-working doctor, a persistent athlete, and not unkind to his wife, unless he happened to murder her.”<sup>123</sup>

Kilgallen seemingly wavered between her initial inclination that Sam Sheppard killed his wife and a developing trust in his character, even wondering whether he was gravely misunderstood. Kilgallen marshaled all the preliminary evidence that militated against Sheppard’s credibility, including Richard Sheppard’s instinctive question of his brother’s innocence; the paradox between Sam Sheppard’s decision to sleep in a corduroy jacket and

the fact that the jacket was found folded neatly on the couch; and the absence of sand in his hair despite having been unconscious along a lake.<sup>124</sup> She constantly returned to the question of motive, something which she deemed necessary for the jury to understand even though Ohio law did not require one for a first-degree murder conviction, and stressed that the State would need to show “a series of events so neatly consecutive and so closely knit that the most obtuse juror can see it all in his mind like a smoothly unreeling movie.”<sup>125</sup>

Establishing a motive was a primary aim for the prosecution, too, whose principal argument stemmed from the assertion that the couple often fought about the doctor’s extramarital affairs, especially one that lasted four months with one of his nurses, Susan Hayes. Coupled with the Sheppards’ marriage, which the State portrayed as deteriorating and only superficially intact, this claim furthered the idea that the adulterous Sam Sheppard could definitely not be trusted. As John Mahon, assistant county prosecutor, attempted to prove that Sam Sheppard killed his wife after nine years of marriage in order to carry on with his affair with Hayes, Corrigan and his three-person defense team tried to substantiate the story of an unknown murderer. The papers indulged their journalistic clichés, that pretty, rich people are more interesting, and more deceptive, than poor, ordinary ones, and portrayed Sheppard as dubious and deceitful as a means of casting doubt on his credibility. To that end, reporters devoted considerable attention to retelling the couple’s story and focused on Hayes’ testimony.

### **b. Sam and Marilyn Sheppard’s Marriage**

The jury that would decide Sam Sheppard’s fate saw two versions of his marriage to Marilyn. Stories reported on Don Ahearn, a businessman and one of the Sheppards’ good friends – and the last known person to see Marilyn before her death – who testified that Sam



Sheppard was a “‘good, decent fellow’ who got along well with his wife, was kind to children and never lost his temper.”<sup>126</sup> But Ahearn’s wife, Nancy, was the first to confirm for the court that Sam Sheppard had been considering divorce only four months earlier, though she added that Marilyn Sheppard had never said she was unhappy or contemplating divorce, and testified that, as far as she knew, Sam Sheppard never abused his wife.<sup>127</sup>



Figure 33: Don Ahearn, one of Sam and Marilyn Sheppard's good friends, takes the stand, piecing together the night he spent with the couple just hours before the murder. Burris Jenkins Jr., *New York Journal-American*, November 9, 1954.

When Sam Sheppard's brother, Richard, and his wife, Betty, were called to the witness stand, they buttressed the defense's argument that, although the couple spoke of divorce, they were still happy.<sup>128</sup> Despite the testimony's ordinary quality – it is not uncommon for witnesses to speak about a defendant's personal life and characters – the press obsessed over stories about Sam and Marilyn Sheppard's relationship, with provocative headlines like “Spurned ‘Potential Love’ May Have Killed Wife, Statement by Dr. Sheppard Suggests,”<sup>129</sup> “Sheppard Talked Out of Divorce, Witness Says,”<sup>130</sup> “Susan Hayes Details Trysts With Doctor,”<sup>131</sup> “Mayor a Constant Visit of Marilyn,”<sup>132</sup> “Susan Tells On Dr. Sam, Reveals 2-Year Romance”<sup>133</sup> and “Dr. Sheppard Says: ‘I Didn’t Love Susan.’”<sup>134</sup>

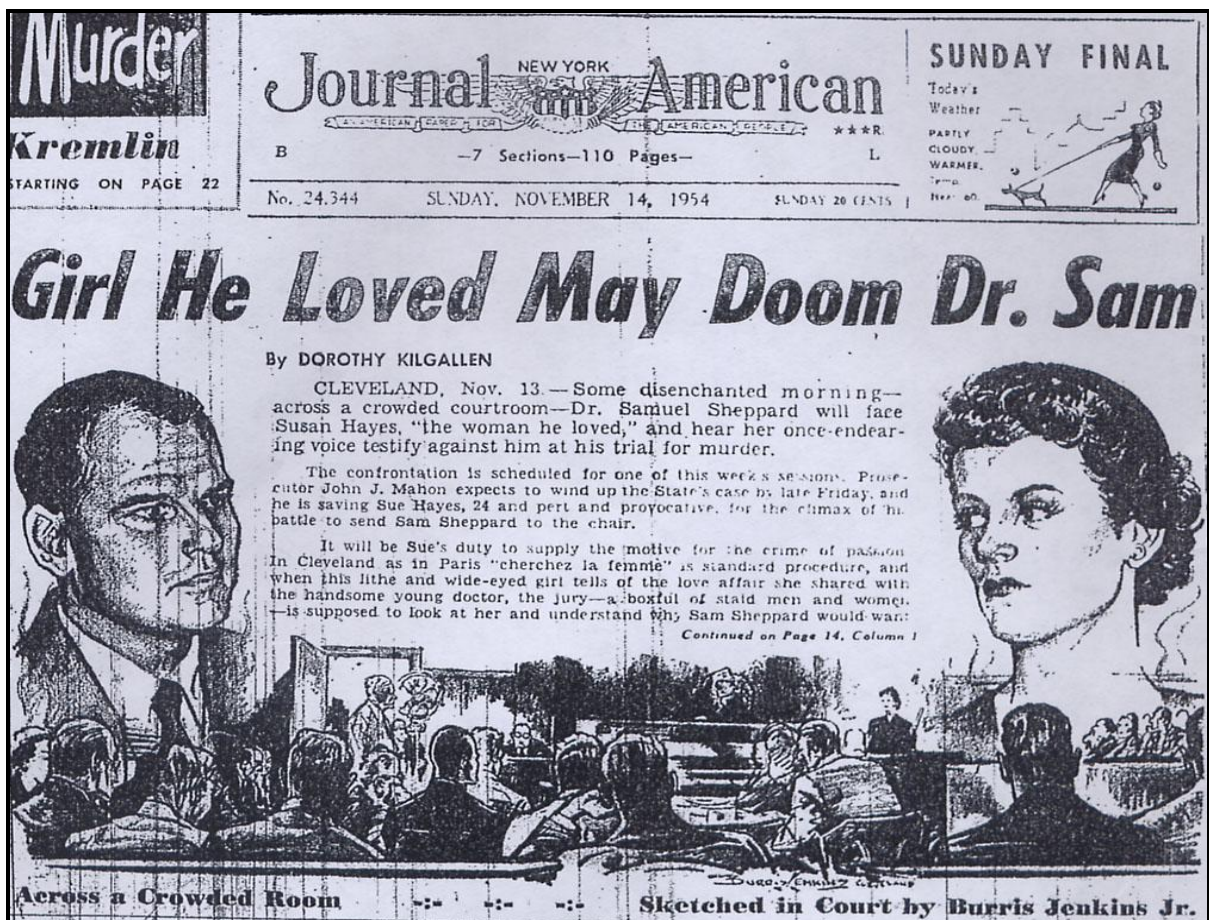


Figure 34: A cartoon in the *New York Journal-American* illustrates the media's obsession with the scandalous affair between Sam Sheppard and Susan Hayes. Burriss Jenkins Jr., *New York Journal-American*, November 14, 1954.



Figure 35: "Link Dr. Sam to Susan Hayes," Burt Jenkins Jr., *New York Journal-American*, November 18, 1954.

The press had known about Hayes for a long time, and many reporters, especially O'Donnell, went to great extremes to unfold as much as they could about this mystery woman, a Katherine Hepburn-type with reddish-brown hair and little freckles, whom the prosecution portrayed as the most destructive tear in the Sheppards' marriage. The local press, long familiar with the rumors about the Sheppard family, had an advantage in knowing where to locate the controversial figures in Sam Sheppard's life. One particular anecdote from O'Donnell, relaying how she tracked down Hayes, offers such a good example of the media's desperation and perverse interest that it justifies breaking this chapter's restriction to national coverage for one paragraph. At the end of the summer, when the trial news flow had hit a lull because of the drawn out investigation, O'Donnell drove her convertible to Rocky River, a city in Cuyahoga County, parked her car in front of Hayes' parents' house, and sat under a shaded tree with a bottle of milk and a book, just watching the door. O'Donnell remembered: "Finally, I see this girl running across the grass to me, and ... it's Susan! And she said, 'I gotta get away from my mother, would you take me for a ride?'"<sup>135</sup> O'Donnell said she felt sorry for Hayes, a "prisoner of the police" because of the investigation and, now, a "prisoner of her mother." The two women drove around aimlessly for about two and a half hours, and O'Donnell asked the 24-year-old, "Could you imagine Sam killing his wife?" Hayes did not offer a straight answer, but thanked O'Donnell "profusely," saying "that was the nicest thing anyone's ever done for her." At the behest of her editor, O'Donnell churned three consecutive stories for the *News* from that afternoon. "It was a murder of elimination," O'Donnell later reasoned, Sam Sheppard "wanted to get rid of his wife to marry Susan," but his parents, the leaders of the "Sheppard dynasty," vehemently condemned divorce, so "Sam was boxed in ... and was at the end of his rope."<sup>136</sup>

Reports on the affair with Hayes pumped the rumor mill about the Sheppards' marriage. The *Post* printed three-column excerpts from Hayes' exchange with the prosecution and the *Los Angeles Times* used nine columns stretched across three pages to narrate and transcribe her testimony.<sup>137</sup> As the state's much anticipated star and final witness, the Los Angeles-based nurse "detailed in a near-whisper ... a 15-month illicit love affair with [Sam Sheppard] – climaxed by a week of sharing the same California bedroom."<sup>138</sup> Hayes also testified that the osteopath "gave her a ring, professed his love for her ... and said he loved his wife very much, but not so much as a wife." Their intimacies, she said, began late in 1952, "as a series of stolen moments of love in his automobile and in an apartment he maintained outside his home."<sup>139</sup> The defense urged Blythin to instruct Hayes that she did not have to answer any incriminating or degrading questions, but Blythin refused, saying she was "presumed to know her constitutional rights."<sup>140</sup> After the State rested its case with Hayes' testimony, the defense made a "well-nigh unprecedented two-hour and 24-minute plea for a dismissal," and Arthur Petersilge, one of Sam Sheppard's attorneys, contended that divorce was not a motive in this case, though he later added, "If that's what Sam had in mind, to divorce his wife, why would he kill her? It's an easy matter to get a divorce. If divorce was what he had in mind, it wasn't worth it. He certainly didn't have to kill her to get to Susan Hayes. He had her whenever he wanted."<sup>141</sup>

Most interesting, however, is the disparity among the papers' coverage of this explosive day in court. Whereas the *Post* and *Los Angeles Times* reached unusual levels of intensity with their multiple in-depth stories, the *New York Times* downplayed Hayes' testimony tremendously. For example, when its competitors were running provocative stories, its headline focused on the defense's motion for dismissal and gave Hayes minimal

attention in the subheadline, “Woman Tells of Relationship with Doctor – Prosecution Winds Up Its Case.”<sup>142</sup> The *New York Times* article, pushed back to page 36 in contrast to the page two and three spots in the *Los Angeles Times* and *Post*, respectively, concentrated on the plea for appeal and did not mention the affair until the sixth paragraph. Even that characterization was relatively lackluster, and the reporter spent more time describing Hayes’ as a doe-eyed brunette in a black dress than focusing on her illicit participation in a romantic scandal. This article, like the general tone of those before it, suggested that the *Times* condemned the media’s mockery of justice or, at the very least, sought to downplay the court-based circus to differentiate itself from its competitors. To that end, it is the only article to quote Blythin’s statement that the facts presented thus far were “equally consistent with the innocence of the defendant as with guilt.” Mahon’s response that Blythin’s question was “for a jury to decide” foreshadows the later criticisms that Blythin often acted inappropriately by divulging his personal feelings while on the bench.<sup>143</sup>

In general coverage in the New York papers – aside from the *New York Times* – was markedly different from coverage in the national press, and Kilgallen, along with her colleagues Margaret Parten from the *Herald Tribune* and Theo Wilson from the *Daily News*, wrote pieces that ranged from snarky to romantic to so tangential to the trial that they rendered the courtroom proceedings effectively irrelevant. Like its national counterparts, the *Herald Tribune* printed a front-page story on the day of the Sheppard trial, alerting the public to this crucial event but also alluding to the controversial publicity that had been surrounding the case. The story, “Sheppard on Trial Today, To Fight for Venue Change,” painted Sam Sheppard not as a murderer, but as someone lovingly surrounded by familial support and who, most likely, was having his constitutional rights violated. Whereas other stories printed

that day unquestioningly linked Sheppard with the “murder of his wife,” as the *Los Angeles Times* often did in articles previously referenced, the *Herald Tribune* focused on the challenge to justice and opened the story with a portrayal of the Sheppard family “rallied around the thirty-year-old osteopath” and with quotes from Richard Sheppard, the oldest brother, supporting Sam Sheppard’s innocence and the family’s determination to be “with Sam as much as possible.”<sup>144</sup>

### c. The Sheppard Family in Court



Figure 36: From the cartoon: “These are the Sheppards – who appear almost daily in court – as if the whole family stands together before the bar of justice – if not on a charge of murder, certainly on trial for the good or bad opinion of their word.” Burriss Jenkins Jr., *New York Journal-American*, October 24, 1954.

Throughout the trial, the press carefully observed the interactions between Sam Sheppard and his two brothers, who sat with their wives in the back of the courtroom,



chatting with reporters and exchanging encouraging smiles with their youngest brother, the defendant.<sup>145</sup> Early in the trial, Blythin barred Sam Sheppard's family from visiting him at his seat before the court convened, during brief recesses and at the end of the day "on the theory that the jury might be influenced by the visible signs of affection between the indicted man and his family."<sup>146</sup> For Sam Sheppard, the baby of the family, "the ban seemed to have been a real blow," and the following morning, Kilgallen reported, "he sat with clenched jaws, the veins in his forehead corded with what looked like anger – an unusual display for a man usually described as 'expressionless.' By recess time, he had regained control and merely gave his family a long and wistful look as they shrugged helplessly and moved out into the corridors. Standing alone, for the first time, he looked forlorn."<sup>147</sup> The obsession with the Sheppard family manifested itself most intensely in the *Journal-American*, whose columns by Considine often focused on different relatives, like Sam and Marilyn Sheppard's son, Chip, whom Considine described as "a very old seven-year-old"<sup>148</sup> because of all the emotional baggage he had recently acquired. In another column, Considine simply transcribed the last letter written by Marilyn Sheppard before her death, an indication of how anxious the press was to obtain any scrap of unreported news.<sup>149</sup>

#### **d. The Legend of Sam Sheppard**

The jury also saw two contradictory versions of Sam Sheppard's character, and when he was finally called to the witness stand, his testimony was printed, sometimes in its entirety, in every newspaper. The State brought in Marilyn's cousin, Thomas Weigle, to expose Sam Sheppard's terrible temper, which the jury was expected to interpret as the source of a murderous rage. Weigle testified that, in August 1953, Sam Sheppard threw a fit and gave his 7-year-old son, Chip, an "unmerciful beating" because Chip had been running

around imitating Indians he had seen on television.<sup>150</sup> Prosecutors also sought to cast Sam Sheppard as deceptive via the testimony of a woman who said that Sam Sheppard had taught her how to feign an injury, the very maneuver that Sam Sheppard claimed had been inflicted upon him by his wife's murderer.<sup>151</sup>



Figure 37: "Dr. Sam's Changing Moods," Burris Jenkins Jr., *New York Journal-American*, December 14, 1954.

In his closing argument, assistant prosecutor Thomas Parrino attacked the defense's contention of an intruder-killer as incredible and unconvincing, reminded the courtroom of Sam Sheppard's infidelity and other holes in his alibi and derided the idea that a burglar could have committed the crime, since rings and money had been left untouched in the house. Petersilge retorted: "It's not our job to show that Sam did not kill her. It's the state's job to show that he did," adding that the detectives assigned to the case had concentrated on "pinning it on Sam" instead of pursuing an open-minded and thorough search for the real killer.<sup>152</sup> The defense counsel invoked a point-by-point rebuttal and held that the State, relying solely on circumstantial evidence, had failed to prove the defendant guilty. But by the time Sam Sheppard took the witness stand, his character was so tainted by his portrayal in the press that his testimony sounded anticlimactic. The press had spun his story so far away from reality, creating a larger than life version of the real person, that questioning Sam Sheppard, the actual subject of inquiry, seemed redundant.



**Figure 38:** Cameramen zoom in on Sam Sheppard in the courtroom. Special Collections, Cleveland State University Library.

On December 13, soon after the State completed its case against Sam Sheppard, the *Washington Post* published an editorial conveying the media's – and general public's – fatigue that had begun to spread. Responding to the defense's announcement that, six weeks into the trial, it still intended to call at least 20 more witnesses to the stand, the editorial surmised that “the explanation [for that] probably lies in the inordinate publicity given to the case.” The editorial also said that “the case has been constantly before the attention of newspaper readers everywhere in the country ... [because] according to old-fashioned journalistic measurements, the story had all the elements of a great circulation-building sensation: (a) it involved persons of certain social respectability; (b) it had rich overtones of cruelty and of sexual scandal ... (c) it possessed a sufficient degree of mystery.” The editorial further criticized the “special writers ... [who] felt free to tell the world about their personal analyses of the testimony and their personal impressions of principals and witnesses,” a decision that would inevitably raise the question of “whether a fair and impartial trial is really possible in such an atmosphere.” Anticipating the argument that would later emerge based on the inherent conflict between the First and Sixth Amendments, the editorial concluded:

The only hopeful sign is that a large part of the public appears to be getting very tired of the Sheppard story. Some editors seem to have dropped it entirely and others are running it only on inside pages. And even those publishers who hurried whole teams of writers to Cleveland in the hope of providing a tonic for flagging circulations may discover in the end they have spent their money to no particular purpose.<sup>153</sup>

Though it consistently relied on wire services and syndicated columns instead of paying to send its own reporters to Cleveland, the *Post*, whose polished reputation had been built on enterprising political reporting, certainly engaged in the very sort of obsessive, opinionated coverage that it was now criticizing.

### e. The Jury's Deliberations and Verdict

The jurors' deliberations lasted five days and, during this time, they interacted with the press more intimately. Curious onlookers, newspaper and television reporters, radio commentators and photographers deluged the corridor of the staircase that connected the jury room to the courtroom, creating ample opportunity for casual, unmonitored conversation between everyone present. Corrigan later wrote that "card games were in progress in the courtroom, groups were visiting, a great number of people milled inside and outside of the courtroom, and the courtroom and corridors resounded with laughter, loud talk and noises. The floors of the courtroom and corridor became stained and dirty, and strewn about were papers, cigarette butts, empty paper cups and various litter."<sup>154</sup>



**Figure 39:** Members of the Sheppard jury have breakfast in a Cleveland hotel in their second day out. The aggressive press strove to capture the jury as often as possible in order to provide fresh material during the long deliberations process. *New York Daily News*, December 19, 1954.

Indeed, this atmosphere was not conducive to profound and undisturbed debate about Sam Sheppard's role in his wife's murder. The media further published screaming headlines and front-page stories describing the jury's deliberations, a bizarrely serious effort considering the lack of access – and, therefore, newsworthy information – to the jurors' private conversations. The *Los Angeles Times* printed a front-page story just to report that the jury remained undecided and sequestered in a hotel after two days.<sup>155</sup> The *New York Times* published an article every day the jury deliberated.<sup>156</sup> Other reporters used this time to focus on angles that were not specific to the verdict at all, like the cost: Considine devoted an entire column to calculating the financial toll of the trial on everyone involved, and another to deciphering – in retrospect – each juror's facial expression throughout each testimony.<sup>157</sup>



**Figure 40:** Reporters from the *Cleveland Press* congregate in the newspaper's office, waiting to hear Sam Sheppard's verdict. *Cleveland Memory Project*, Cleveland State University Library.

Finally, on December 21, the jury voted to convict Sam Sheppard for second-degree murder and Blythin sentenced the osteopath to life imprisonment. Sam Sheppard escaped the electric chair by this verdict, which ruled out the possibility of an intruder-murderer and determined that he “purposely and maliciously, but without premeditation, hacked his pregnant wife in the bedroom of their home.”<sup>158</sup> The charge dropped to second-degree murder because the jury concluded that premeditation, necessary for a first-degree murder charge in Ohio, had not been proven. When Sam Sheppard heard the sentencing, he told the courtroom in a loud but choked voice, “I am not guilty and I feel that there has been proof presented before this court that has definitely proved that I couldn’t have performed this crime.”<sup>159</sup> Despite having consistently presented an appearance of complete disbelief throughout the trial, Sam Sheppard, reporters wrote, shot the jury a rueful look as he was led out of the courtroom.<sup>160</sup> Corrigan immediately filed a motion for a new trial and, though he did not post bail, Blythin temporarily suspended the execution of the sentence pending the disposition, keeping Sam Sheppard in Cuyahoga County jail rather than at the one in Columbus.<sup>161</sup> As the Sheppard family exited their last day in court, “packs of photographers and newsmen” bombarded them.<sup>162</sup> Though Blythin placed no injunction on jurors from talking about the case, they refused any comment as police officers conducted them through a pressing, shouting mob of reporters to taxicabs outside the courthouse. They made this decision, jury foreman James Bird later explained during a press conference, because they figured anything they said could be used by Corrigan in his future appeal.<sup>163</sup>

As expected, the press had a field day with the verdict. The *New York Times*, *Los Angeles Times* and *Washington Post* printed the story on their respective front pages.<sup>164</sup> The *Daily News* plastered its covers with screaming headlines, dwarfing all other current events:





Kilgallen, appalled by the decision, excoriated the jury: “The prosecutors for the State of Ohio did not prove he was guilty any more than they proved there are pin-headed men on Mars. . . . This is the first time I have ever seen what I believed to be a miscarriage of justice in a murder case. It is the first time I have ever been scared by the jury system and I mean scared.”<sup>165</sup> Unlike her colleagues, Kilgallen contended that the State had not presented enough evidence for the jury to convict Sam Sheppard beyond a reasonable doubt, nor was she swayed that Susan Hayes was, indeed, the motive for the murder, especially because the suave osteopath had not contacted the nurse in four months. She subscribed to Richard Sheppard’s evaluation of the prosecution case, which he shared with her in an exclusive interview: “It makes as much sense to say Dr. [Sam] Sheppard killed Marilyn because she made him blueberry pie that night and he distinctively told her wanted apple.”<sup>166</sup> Interestingly, though none of the reporters had been permitted to meet Sam Sheppard, the elusive osteopath dispatched his brother, Richard Sheppard, to thank Kilgallen for the article she wrote that expressed this argument, and added that it could not have been better if he had written it himself.<sup>167</sup> But the *Plain-Dealer*, in a move that directly reflected its editorial standpoint, dropped her column the next day, retroactively admitting the biases it so clearly held all along.<sup>168</sup>

Kilgallen was not the only one to express discomfort with the verdict, and news stories began to intimate a general sense of shock and disbelief in the verdict, as well as a reluctant acknowledgment that the story of Sam Sheppard was far from over. Considine lamented that Sam Sheppard could still be declared innocent given the news about Corrigan’s appeals and the Sheppard family’s announcement of a \$10,000 reward for any news about the so-called real killer. Considine also offered anecdotes about reactions from the Cleveland

community, such as one cab driver who told him: “Listen, Mac, around here, this verdict was the biggest upset since the Giants took four in a row from us in the series. Everybody I hauled last Summer and Fall said Sam was guilty but would beat the rap. Then, today when the word came in, everybody I carried said, ‘Poor Sam, he got a bum break.’ Well, that’s life.”<sup>169</sup>

After a 47-day trial, many journalists belatedly expressed serious reservations about the role of the press throughout the proceedings. About two weeks into the trial, the *New York Times*’ Freeman had sarcastically quipped, “standing amid the publicity that has surrounded the Court ... one appreciates the ‘professional’ opinion that the Sheppard murder case is the most sensational in Cleveland’s modern history. It is to Cleveland what the Snyder-Gray murder case was to New York in 1927 or the Hall-Mills case to New Brunswick, N.J., in 1926. Like both those famous trials, it has attracted nation-wide interest.”<sup>170</sup> Two months later, Everett Norlander, managing editor of the *Chicago Daily News*, called the Sheppard story “grossly overplayed” and “disgraceful,” warning that “the press will be answering its critics for years to come on what it has done with this story.”<sup>171</sup>

Two days after the verdict was announced, the *Post* published an editorial that challenged the notion that an impartial jury had been selected for this case and insinuated that the publicity surrounding the trial had made the entire proceeding “more difficult than it needed to be.” Specifically, the editorial board said that the fact that it took the jury five days to agree on a verdict suggests “an uncertainty which was hardly diminished by the pleadings to which it listened.” The editorial concludes:

For a long time, prosecutors have been winning fame and defense attorneys have been winning fortune ... [because of journalists’] rhetorical skill. No doubt this kind of contest is very interesting, and perhaps even edifying, for a jury. It is less certain,

however, that it promotes the judicial calm and detachment with which a jury is supposed to determine an issue of fact.

The *Toledo Blade* also published an editorial that week, noting that “the press never left any doubt of the verdict it expected, which was not surprising in view of it having plunged so deep into the process of administering justice by its own rules.”<sup>172</sup> Later, in a December 22 editorial, the same newspaper declared that “during the long-drawn-out trial, the Cleveland papers, and a good many others, treated it like a Roman holiday. With a man’s life at stake, they competed with one another in whipping the evidence up into one sensation after another, forgetting that “the rights of a free press are [not] paramount to that of a fair trial.”<sup>173</sup>

The juxtaposition of trial-related stories and other political, business and international news additionally confirms the high priority that editors across the country had given to the Sam Sheppard case, a degree of importance that would not lessen even in the aftermath of the trial. When the trial first started in mid-October, it shared top billing with Secretary of Labor James Mitchell’s midterm report on the Eisenhower administration that the *Herald Tribune* published and New York Senator Irving Ives’ charge that the state’s governor, Averell Harriman, had been involved in a shipping line scam, a scandal so big that it brought Eisenhower to New York.<sup>174</sup> Even witness testimonies were given primary coverage, and when Stephen Sheppard took the stand, the *Herald-Tribune* deemed the story important enough to sandwich between news about Korea seeking U.N. action on jailed fliers and the pope’s emergency visit to the hospital.<sup>175</sup> When the verdict was finally announced two months later, the *Los Angeles Times* printed the headline right beside another one about a two-minute earthquake in Northern California that killed one person, injured 20 and caused upward of \$1,000,000 in damages.<sup>176</sup> Later that same week, the *Journal-American* placed its headline about a custody battle over Sam and Marilyn Sheppard’s son above a piece about

the U.S. Court of Appeals' groundbreaking vote on the 1950 International Security Act, which required the Communist Party to register as Russian-dominated.<sup>177</sup>

\* \* \*

## II. The Aftermath of the 1954 Trial

“The Sheppard trial is a labyrinth of dead ends, jungle trails that peter out in the thicket, and hung participles. It is an event wherein, to paraphrase, seldom is heard a definitive word and the witnesses are all cloudy and gray.

- *International News Service Reporter Bob Considine*<sup>178</sup>

The growing debate over whether the news reporters were moonlighting as jurors directly affected Sam Sheppard's case. Corrigan, a former newspaper reporter, sought a new trial: “This is a vicious case,” he said, “there are grounds for a new trial because of prejudice against the defendant, judicial error . . . and Sam's trial by newspapers.”<sup>179</sup> In a five-page motion, written in the days following the guilty conviction, Sam Sheppard's three lawyers stressed that the “verdict was influenced by passion and prejudice,”<sup>180</sup> discussing the interactions between the press and the jury and the negligent treatment of Sam Sheppard. The motion stressed the jury box's close proximity to a table reserved for 20 reporters from the over 50-person press corps and stated that, each day, the jurors' photographs were taken and then published in various newspapers, illustrating not only their distractions but also how easy it was for members of the press to reach them outside of the courtroom. For example, reporters stalked the family of an alternate juror, Mrs. Mancini, and wrote about how her relatives fared while she was in court. The motion also made note of various members of the Cleveland community who voiced their opinions about the trial in the jurors' earshot, and reprimanded the court for not adequately dealing with it. The coverage became so obsessive, the motion argued, that after the defense and prosecution rested, the jurors were photographed each time they left or entered the courthouse, ate at court-appointed dining

halls and went to the hotel where they were quarantined during deliberations. This setup made it nearly impossible for the jurors to travel normally, as “the corridor and the section of the courthouse through which they passed was cluttered with groups of photographers, radio commentators and television.” Further, during their sequestration, the jurors were accompanied by two male officers of the court, so at night, the five female jurors were left unattended and could essentially do whatever they wanted.<sup>181</sup> On one occasion, the jury separated into two groups for the benefit of the press: the “distaff side” comprised of the five female jurors and the “male section” included the men. The media was equally intense about their coverage of Sam Sheppard, and photographers took his picture “several hundred” before the court session began.<sup>182</sup>

Ironically, Chief Assistant Prosecutor John J. Mahon likewise incorporated the media attention into his argument, but from the opposite angle. Mahon argued: “As far as articles in the [Cleveland] *Press* go, I have seen many articles, such as the space afforded to Sam Sheppard to tell his side of the story. Statements from his lawyers have appeared in the *Press*, setting forth their position. Many articles beneficial to the defense have appeared. We can’t control what’s published.”<sup>183</sup> Indeed, when they were being selected for this case, many jurors testified that they had followed the Sheppard story in the papers, a story that included mostly angry or vengeful headlines, but that testimony did not affect the selection.

Blythin, in a 35-page memorandum rejecting the defense’s motion for a new trial, vehemently sided with Mahon, as he often did, and pointed to the two-sided nature of the publicity, writing that Sam Sheppard’s attorneys held press conferences “to the apparent delight of counsel for the defense.”<sup>184</sup> Blythin’s tone fluctuated from sarcastic to almost offensive in response to the defense’s claim that he acted unjustly; he wrote that the only

conclusion from the defense's assertion that Sam Sheppard could not have a free trial in Ohio "must be that the defendant cannot be tried at all on an indictment for murder in the first degree. Such a claim furnishes its own anger."<sup>185</sup> Blythin later stated that Corrigan's complaint that the jury substituted the presumption of guilt for that of innocence "is not worthy of serious comment" and, with regard to the issues of jury sequestration, that "human beings ... cannot be wrapped in cellophane and deposited in a cooler during trial and deliberation." Blythin further underplayed the notion that pretrial coverage contaminated the case by saying that Cuyahoga County's liberal-leaning tendencies made it the "best" place to try "a much publicized" crime, adding that inflammatory or polarizing issues, like "race, corruption [or] killing an officer," did not exist here. Rather, he said, this case was simply a "mystery." Blythin was not at all convinced that the "jealously guarded" jurors, whom he described as "intelligent, sincere, patriotic and fair," had been exposed to anything detrimental to their decision-making abilities and, going one step further, insinuated that the defense's arguments undermined the public's "faith in our decent fellow citizens and ... [the] value [of] the jury system." He finally went so far as to justify the press' photographic obsession with the jury, saying that such coverage is a matter of "news interest" and that "exposures to public attention are not matters of prejudice."<sup>186</sup>

Despite this debate, some reporters did not take issue with Judge Blythin's performance during the trial and believed that he had maintained an orderly, decorous courtroom. Blythin was a "stickler for process" and, one day, when Kilgallen's late arrival disrupted the entire courtroom, he began locking the doors at 9:00 a.m. sharp, O'Donnell said in an interview.<sup>187</sup> In addition, Blythin had identification slips pasted along the rows of benches in the courtroom so that members of the press would know where to sit.<sup>188</sup> Tanner,

who was also in the courtroom nearly everyday, added, “Blythin kept a stern hand on the case and refrained from letting anybody act up ... A lot of what you hear about the Sheppard case is not really what happened.”<sup>189</sup>

Still, though he strove for orderliness, Blythin facilitated the press’ imposing presence in the courtroom, leaving no question that he gave them prime treatment throughout the entire trial. For example, he met with newspaper reporters, photographers, television personnel and radio commentators during the week before the trial and oversaw the construction of extra tables to be used by the press corps. He also assigned them all the rooms on the courthouse floor, including the assignment room, which is otherwise used for separate cases, and had private telephone lines installed in them. Rooms were also reserved for radio commentators on the courthouse’s third floor, which also hosted the jurors’ deliberation room. One room, used by the radio station WSRS, continued its broadcasting through the trial, its recesses and the entire time that the jury was deliberating next door.<sup>190</sup> Blythin defended his actions here, saying that these steps were taken to “control the situation so as to minimize and, if possible, eliminate confusion during the trial.” He added simply, “the courtroom is small.”<sup>191</sup> Nevertheless, it seems Blythin’s decision-making process was politically motivated, and that it was important for him to gain favor in the press is indisputable. Once mayor of Cleveland, Blythin had been a judge of the Common Pleas since 1948, and was running for reelection to a six-year term, causing him to be particularly sympathetic to the press during the Sheppard trial because of the heightened scrutiny that came during this tense election season.<sup>192</sup> Blythin’s continual dismissal of Sheppard’s appeal would later come back to haunt him, and he would become a major source of blame for Sam Sheppard’s denial of justice.

Despite being locked up in prison, Sam Sheppard remained a strong presence on the front pages of most newspapers long after the trial ended, largely due to an emerging feeling of sympathy for him as well as to the tragic breakup of his family. Once Sam Sheppard was imprisoned, the press eased up on him, perhaps because they were no longer propelled by the community's fear of and seething hatred for the murder suspect. In one *AP* article syndicated in the *Journal-American*, the wire reporter began a story: "Shorn of the comfort and prestige that has marked his life, a shocked and bitter young man sits alone today in his tiny county jail cell." The story continues to describe a visit made by Sam Sheppard's pastor, who relayed how Sam Sheppard was feeling at the time.<sup>193</sup> The same paper desperately strove to keep the story in the news, publishing a front-page story one week later that it marketed as having the exclusive, inside story about what went on behind the scenes during the jury's deliberations. That story is sympathetic, too, describing the reporter's post-trial interviews with Marilyn Sheppard's relatives, who did not have any "adverse" comments about Sam Sheppard's innocence.<sup>194</sup> On Christmas, the *Herald Tribune*, hungry for a story, published a piece about the Sheppard family's Christmas plans, melodramatically writing that this would be "a Christmas without [Sam Sheppard], who sat alone in a county cell under guard and under a life sentence in the Ohio penitentiary." The story continues: Sam Sheppard's son would have celebrated this Christmas "with a baby brother or sister who died with his mother. Now, he alone will represent the Sam Sheppard family at the Christmas observance."<sup>195</sup>

On January 7, 1955, three weeks after her son's conviction, Sam Sheppard's 62-year-old mother, Ethel, committed suicide with a .38-caliber revolver. She had been staying with her middle son, Stephen Sheppard, who found her sprawled across a four-poster bed next to a



card table with a note: “Dear Steve: I just can’t manage alone without Father ... Mother.”<sup>196</sup>

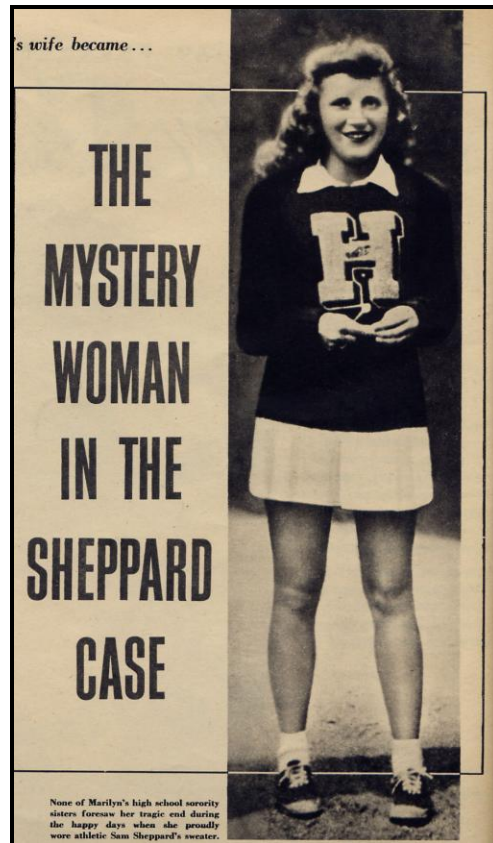
Sam Sheppard’s father, Richard Sheppard Sr., was ill with the lung disease pleurisy at the time, and his family had been told earlier that day that he was in serious danger of pneumonia. Ethel Sheppard had also suffered a mild heart attack during her son’s trial and spent some time in her family’s Bay Village hospital.<sup>197</sup> The physical toll on the Sheppard family continued 10 days later, when Richard Sheppard Sr. died from his respiratory ailment, marking the third death in the Sheppard family.<sup>198</sup> Sam Sheppard, now an orphan, was allowed to attend both funerals.<sup>199</sup> Interestingly, though the story about Richard Sheppard Sr.’s death was buried deep inside newspapers, stories that more directly incorporated Sam Sheppard, like his mother’s sudden suicide and his permission to attend his father’s funeral, received front-page coverage. Similar attention was paid later that week, when it was reported that the now-deceased Richard and Ethel Sheppard left their sons \$196,000.<sup>200</sup>

The press corps’ unshakable obsession with Sam Sheppard continued through the following years, albeit to a lesser extent. Though the stories were shortened and came out less frequently, the news wires reported a wide range of updates in Sam Sheppard’s life. These briefs included the Sheppard family’s decision to hire Paul Kirk, a criminologist, to look for physical evidence that would support the osteopath’s unwavering claim of innocence; the different appeals issued by Sam Sheppard’s attorneys and the corresponding judges’ considerations; Sam Sheppard’s performance in a prison show called *Vandals Scandals of 1956*; and even his change of employment in prison.<sup>201</sup>



**Figure 41:** Sam Sheppard is surrounded by newsmen as he enters the Ohio Penitentiary for a test to determine if he has cancer. Sheppard was one of 171 prisoners who volunteered to have live cancer cells injected into their bodies in a test to determine if cancer would develop and grow in a healthy body. By this point in 1961, the press treated Sheppard less like a party involved in a murder trial and more like a celebrity. *Cleveland Memory Project*, Cleveland State University Library.

The content of these mini updates only offered the bare minimum of the original stories, paling in comparison to the pieces published just two years prior, but they still indicate that, for one reason or another, even editors at the reputable *New York Times* still deemed Sam Sheppard's story worthy of comprehensive coverage several years after his murder trial.



**Figure 42:** On April 3, 1955, almost a year after the murder, *American Weekly*, a Chicago-based lifestyle magazine, printed a story that aimed to tell Marilyn Sheppard's biographies through interviews with relatives, friends and neighbors. The first image is captioned "None of Marilyn's high school sorority sisters foresaw her tragic end during the happy days when she proudly wore athletic Sam Sheppard's sweater," and the second groups together the three women most affected by the trial: Marilyn Sheppard, Ethel Sheppard and Susan Hayes. *American Weekly*, April 3, 1955.

As time went on, though, the story did not change much, and regardless of how many times Sam Sheppard tried to appeal his conviction, he was served with the same rejection by the courts. In 1956, Judge J. Matthias Bell rejected an appeal of the guilty conviction, echoing Blythin's sentiments and rationales. Bell, representing the Ohio Court of Appeals, acknowledged the exorbitant amount of publicity that shadowed Sheppard throughout the trial, calling it a "Roman Holiday" rife with "murder and mystery, society, sex and suspense," but concluded that the question of whether Sheppard was afforded a fair, Constitutionally-sound trial "is not to be decided on the volume of the publicity or the tendency such publicity may have had in influencing the public mind generally," but on his "guilt or innocence."<sup>202</sup> Bell stated that there was no evidence of partiality among the jurors, writing that, "if the jury system is to remain a part of our system of jurisprudence, the courts and litigants must have faith in the inherent honesty of our citizens in performing their duty as jurors courageously and without fear or favor," a reiteration of Blythin's remarks about the obligation to trust human integrity in order for the jury system to function. He additionally pointed out that of the 75 prospective jurors called to this case, only 14 were excused because they admitted personal biases or preconceived decisions about Sam Sheppard's guilt or innocence.<sup>203</sup>

On November 13, 1956, Sam Sheppard appealed for the first time to the U.S. Supreme Court, which denied him a hearing.<sup>204</sup> He complained about several flaws he deemed unconstitutional during his trial; each dealt, in some capacity, with the issue of publicity. The appeal referenced the WHK radio station broadcast of a debate on the eve of the trial, when *Press* reporter Forrest Allen and *Plain Dealer* city editor James Collins debated which paper deserved more credit for Sheppard's indictment. The appeal also

incorporated many of the points previously made by Corrigan in 1954, including the bizarre nature of the furniture accommodations that were set up for the enormous press corps, their overbearing presence and so on.<sup>205</sup> The Court ruled that it did not find that a reason for the case to merit reconsideration, though it clarified that this denial did not imply approval of the Supreme Court of Ohio's decision to deny Sam Sheppard's appeal.<sup>206</sup> As these judges continually dismissed the appeals, deeming them ridiculous and unwarranted, Sam Sheppard would have to wait another eight years in prison, until July 15, 1964, to find a court to agree that he had, indeed, been denied a fair trial by an impartial jury.

### CHAPTER THREE: TABLOID JUSTICE

“The law can take us only a little way toward the ideal of fairness for all. What we desire from the instrumentalities of communication which citizens see or hear, where personality becomes a vital factor, is responsibility to different elements in the community; and this is largely beyond the reach of law.”

- Law Professor Zechariah Chafee Jr.<sup>207</sup>

At the core of this media frenzy lurks the question of whether justice was compromised for the sake of salacious press coverage. The issue loomed on the eve of Sam Sheppard’s conviction, during the 1954 trial, and throughout his appeals to various courts. But it was not until July 15, 1964, after roughly 10 years in jail, that Sam Sheppard found a court to agree he had been denied a fair trial. In a stinging criticism of Blythin – the judge who presided over the 1954 murder trial – and of the Cleveland press, U.S. District Judge Carl Weinman declared that the “fundamental” question here involved whether Sam Sheppard was afforded his right to a fair trial, as required by the Sixth Amendment of the U.S. Constitution.<sup>208</sup> Coverage of the 1954 murder trial represented a new way in which trials were handled by the press and viewed by the public, upsetting the delicate balance between a defendant’s right to a fair and speedy trial and the press’ right to disseminate information, as spelled out in the First Amendment. The courts’ subsequent evaluations of the value of public trials and their consensus that publicity must not compromise justice were byproducts of the new, more aggressive ways in which the media were now covering the courts. The resulting reversal of Sam Sheppard’s murder conviction in 1966 produced a landmark U.S. Supreme Court decision that laid the groundwork for an ongoing dialogue about this glaring deficiency in the American criminal justice system: how to ensure a fair trial with a free press.

The Court’s actions in 1966 were a necessary response to two concerns: the press’ growing power and the justice system’s heightened sensitivity to fair trial concerns. Though

the 1966 decision, known as *Sheppard v. Maxwell*, certainly deserves credit for changing the law, it is important to explore the historical and legal factors that paved the way for such action and sparked the free press-fair trial dialogue. Legal scholars point out that by 1961 there was “much dissatisfaction in the U.S. with existing efforts to resolve the conflict between a free press and an impartial trial,” namely with verdicts that the public deemed to have been determined by excessive publicity, as well as in the court’s general failure to harness or prevent unfair news coverage.<sup>209</sup> The U.S. Supreme Court, addressing this growing disapproval, issued a series of reversals of criminal convictions due to prejudicial coverage: In several publicity-related cases that the U.S. Supreme Court reviewed in the 1960s – *Irvin v. Dowd* in 1961, *Estes v. Texas* in 1965 and *Sheppard v. Maxwell* in 1966 – the Court held that the defendants had been denied a fair trial because of the media’s behavior during each trial.<sup>210</sup> An analysis of these publicity-related cases that preceded the 1966 decision demonstrates that the 12-year ordeal of Sam Sheppard’s case marked an attitudinal shift from Blythin’s “benign neglect” to the subsequent “affirmative action” taken by trial judges on the subject.<sup>211</sup> Because of the strides made by the trials before it, the 1966 case was able to bequeath great benefits to the American judicial system by “motivating trial courts and prosecutors to take affirmative action [and] prevent the adverse effects of prejudicial publicity.”<sup>212</sup>

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## I. A Growing Media Threatens the Courtroom

“The theory of our system is that conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.”

- U.S. Supreme Court Justice Oliver Wendell Holmes<sup>213</sup>

In cases of great public interest, openness leads to publicity, which may threaten, or appear to threaten, the fairness of a trial or the lives of the jurors, witnesses or defendants. Tension thus arises among the legal system’s three-pronged mission of achieving fairness between the arguing parties, preserving openness in judicial proceedings and remaining committed to freedom of expression.<sup>214</sup> *Sheppard v. Maxwell* was not the first time that the judicial system was forced to grapple with the deeply rooted tension between the rights to a free press and a fair trial. The question of what sort of power a trial judge has in order to harness an aggressive press is deeply rooted in American jurisprudence. In fact, judicial efforts to control newspaper comment about pending cases began stirring controversy at the turn of the twentieth century: For example, in *Toledo Newspaper Co. v. United States*, the Court upheld a contempt finding against a newspaper for “obstructing justice by publishing a series of articles calling into question a judge’s integrity if he decided a pending case differently than the newspaper felt it should be resolved.”<sup>215</sup> This early publicity-related case in 1918 sustained the authority of a trial judge to punish for contempt any publicity that had a “reasonable tendency” to influence the mind of a judge.<sup>216</sup> Despite this advance, the relative impotence of trial judges to restrain the press meant that the media coverage of the celebrity murder trials of the early 1900s, such as Bruno Hauptmann’s trial in 1935, appeared just as salacious as that of earlier cases.

As new mass communication techniques began to find their place in American households, the press corps exploited radio and film to transmit sensationalized information



during the trial of Bruno Hauptmann, who was charged with kidnapping and murdering the pilot Charles Lindbergh's 20-months-old son. The implications of this type of sensationalism were significantly increased by now with the introduction of cameramen and their facility for visual and verbal on-scene coverage.<sup>217</sup> Indeed, because the New Jersey-based trial took place mere miles away from New York, the nation's "media nerve center," reporters successfully transformed the case into a nationwide sensation, making it the natural starting point for a trial by newspaper. In an article titled "Some Object Lessons on Publicity in Criminal Trials," legal scholar Oscar Hallam describes the media during this trial as "abhorrent, as cameramen took movies and still photographs in brazen violation of a court order limiting pictures to before and after court sessions."<sup>218</sup> The enormity of these abuses prompted the American Bar Association to describe the trial as "perhaps the most spectacular and depressing example of improper publicity and professional misconduct ever presented to the people of the U.S. in a criminal trial."<sup>219</sup>

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## **II. Remedial Legal Solutions to New Media**

This introduction of photography into the public sphere meant that many courts were now forced to address a hitherto unfettered, camera-happy press corps that had not had any significant experience working with or in the courtroom. The ABA began its effort in 1937 to limit press access to the courtroom by passing Canon 35 of its "Canons of Judicial Ethics," broadly offering – but not enforcing – provisions about the impermissibility of cameras in the courtroom. In 1952, faced with the introduction of television and the growing use of photography in general, the ABA amended the Canon, making it more specific and forceful. Some highlights, with the 1952 amendments appearing in italics, state:

The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting or *televising* of court proceedings, are calculated to detract from the essential dignity of the proceedings, *distract the witness in giving his testimony*, degrade the court, and create misconceptions with respect thereto in the mind of the public, and should not be permitted. . . . *This restriction shall not apply to the broadcasting or televising, under the supervision of the court, of such portions of naturalization proceedings ... as are designed ... for the purpose of publicly demonstrating ... the serious nature of naturalization.*<sup>220</sup>

This restriction pitted newsmen against judges, with the former insisting that the rapidly developing technology did not actually disrupt the courtroom; that it was the role of the trial judge, not an outside decree, to determine the existence of a courtroom disruption; and that because a trial is a public affair, the newspapers should be allowed to represent it to the public to as great an extent as possible. This last argument encapsulated the basic conviction among editors, namely that this right to disseminate information was the foundational principle of a democratic society, a means to increased public understanding and appreciation of legal processes or, at the very least, a reasonable way of monitoring the courtroom for judicial irresponsibility.

Other attempts to address the media's right of access to the courtroom related directly to the media frenzy that hounded the individuals involved in the Hauptmann case, such as the formation of a special committee – comprising members of the ABA along with media representatives – to recommend standards about publicity in criminal trials. The committee agreed that lawyers “should not be allowed to broadcast arguments, issue argumentative press bulletins or engage in any other form of public discussion during the progress of a case. . . . It also approved, in part, recommendations restricting discussions by jurors and witnesses.”<sup>221</sup> In short, the group called on participants in a particular case to refrain from engaging in interviews and the issuing of arguments or bulletins. Sheppard's case, however, exposed the chinks in the committee's respectable, but short-sighted, review, most notably

the unaddressed need to impose controls on police or other non-legal officials who may contribute to pretrial publicity. In addition, the original report strikingly did not discuss the court's responsibility to protect a defendant's Sixth Amendment rights. As one legal scholar put it, "it was quite typical of the blasé, let-the-chips-fall-where-they-may attitude of the courts to trial publicity right through the late 50s."<sup>222</sup> The Sheppard case illustrated the real need to emphasize the responsibility and authority of the trial judge, especially if the defendant's right to a fair trial ever became jeopardized.

Despite the Hauptmann experience, by the middle of the twentieth century the judicial system had still not found an adequate, comprehensive way of dealing with the problems posed by the increasingly pervasive press. This spirit of benign neglect reared its head again in 1952, when Chad Stroble was charged with the murder of a six-year-old girl in California. Shortly after Stroble's arrest, his lawyer released a confession of guilt to the press and publicly declared his belief in Stroble's guilt and sanity. As a direct result of this media attention, the California Supreme Court found that the defendant's trial and arrest spurred "notorious widespread public excitement, sensationally exploited by newspaper, radio and television," and condoned the coverage as an "overstimulation ... of the usual public interest in that which is gruesome."<sup>223</sup> Still, the U.S. Supreme Court did not reverse the conviction and supported the decision with statements from individual jurors promising that they would presume the defendant innocent when contemplating a verdict. In other words, no one on Stroble's side had satisfactorily quantified how publicity had a detrimental effect on impartiality.<sup>224</sup> U.S. Supreme Court Justice Felix Frankfurter, however, dissented:

To have the prosecutor himself feed the press with evidence that no self-restrained press ought to publish in anticipation of a trial is to make the State itself through the prosecutor, who wields its power, a conscious participant in trial by newspaper,

instead of by those methods which centuries of experience have shown to be indispensable to the fair administration of justice.<sup>225</sup>

This opinion, though in the minority, signaled the beginning of the shift that ultimately set the stage for *Sheppard* in 1966.

In 1957, with the rapid growth of the media, the issue of allowing still photography and television in the courtroom became a “highly dynamic one,” largely because of the press corps’ energized drive “to extend their area of privilege within the courtrooms.”<sup>226</sup> As legal scholars Gilbert Geis and Robert Talley wrote in a criminal law journal published at the time, the relatively new pressure to produce quick and comprehensive copy to an increasingly news-hungry public yielded “divergent tendencies to relax and to harden the rules against photographers; that is, there ha[d] been a strong tendency for jurisdictions, when pressed, to crystallize what had previously been a rather vague attitude.”<sup>227</sup> One year later, in *Marshall v. United States*, the Court reversed a conviction of guilt in a drug-related trial because newspapers had printed information about the defendant’s previous convictions on unrelated charges.<sup>228</sup>

The Court modified this approach even further in 1961, when Leslie Irvin was convicted for a murder committed in Indiana. Shortly after Irvin’s arrest, the prosecutor issued press releases from the police announcing that his client had confessed to six murders, causing Irvin’s counsel to move for a change of venue because of inflammatory publicity. Though the jury stated that they could keep an open mind about Irvin’s innocence or guilt, the Court ultimately reversed Irvin’s guilty conviction, writing in a unanimous opinion that “it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which two-thirds of the members admit, before hearing any testimony, to possessing a belief in this guilt.”<sup>229</sup> This decision is

significant because the Court, for the first time, made a judgment call about the unquantifiable effect of pretrial publicity and reversed a conviction despite the fact that the jurors insisted they had remained impartial.

The Court continued to develop its condemnatory approach to pretrial publicity in the 1963 case of *Rideau v. Louisiana*, in which a filmed interview of the defendant's confession to robbery-murder charges was broadcast over a local television station. The Court concluded that televising any sort of testimony is inherently prejudicial and directly violates a defendant's right to a fair trial. A great deal of these legal concerns stemmed from the growing usage of television as a new form of mass communication, and these budding issues soon emerged into tremendous legal battles between the courts and the press that would center around the question of how much access the media should have to the courtroom.

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### III. 1964: Sam Sheppard Returns to Court

“The Court now holds that the prejudicial effect of the newspaper publicity was so manifest that no jury could have been seated at that particular time in Cleveland which would have been fair and impartial regardless of their assurances or the admonitions and instructions of the trial judge.”

- U.S. District Court Judge Carl Weinman<sup>230</sup>

On July 15, 1964, U.S. District Judge Carl Weinman of Dayton, Ohio, reviewed five volumes of green-covered scrapbooks of news clippings from the Cleveland papers – the *Press*, *Plain Dealer* and *News* – and examined their coverage as well as some of their questionable editorial decisions, including the publication of a list of 75 men and women who had been drawn as prospective jurors.<sup>231</sup> He characterized the coverage as excessive, inflammatory and consistently prejudicial, writing that “if ever there was a trial by newspaper, this is a perfect example. ... Such a complete disregard for a sense of propriety results in a grave injustice not only to the individual involved but to the community in

general. Public officials, the courts and the jury are unable to perform their proper functions when the news media run rampant, with no regard for their proper role.”<sup>232</sup> Weinman also highlighted Blythin’s behavior throughout the trial, writing that the newspapers kept running a picture of Blythin, who was up for reelection, and gave him specific advice about how to run his courtroom. As a result, Weinman argued, Blythin relinquished the courtroom to the press instead of ordering a change of venue.

Blythin’s professionalism was compromised in other ways, as well. For one, Weinman wrote, in a meeting inside his chambers with the journalist Kilgallen, Blythin said in reference to the trial: “Mystery? It’s an open and shut case ... [Sheppard] is as guilty as hell. There’s no question about it.”<sup>233</sup> That particular exchange became public information in 1964, when Kilgallen participated in a Book Night at the Overseas Press Club, where literary agents, writers, and attorneys, including Bailey, gathered to discuss the famous Hall-Mills murder case of the 1920s. The Sheppard case, along with Kilgallen’s coverage of it, came up in the discussion, and Kilgallen relayed the ‘guilty as hell’ exchange with Blythin. “Sam Sheppard should collect fifty million dollars,” she said, “because he had the worst trial I ever saw.”<sup>234</sup> The revelation staggered the audience, but Kilgallen rightfully defended her choice not to disclose that information 10 years earlier, saying that “things said to a reporter in confidence should be kept in confidence.”<sup>235</sup> Weinman, finally, held that the jury’s access to the media and to communication with friends and family made it virtually impossible for them not to acquire biases toward Sheppard.

Sheppard was released from prison a day after Weinman’s decision and, by the end of the week, he married Ariane Tebbenjohanns, a “svelte German divorcee who had corresponded with him while he was in prison,” but the image of Sheppard as a manipulative

murderer had been engraved in the public's – and in the court's – minds. Ten months later, the sixth U.S. Court of Appeals reversed the District Court's decision and ordered Sheppard back to prison.<sup>236</sup> Though appellate courts traditionally deal with questions of law, not fact, the Court of Appeals challenged the content of Weinman's opinion and his presumption that the jurors had ignored Blythin's instructions not to read the newspapers. Sheppard reiterated his claims in a second petition to the U.S. Supreme Court, which finally agreed to review his conviction.<sup>237</sup>

It should be noted that during this time period, Sheppard's celebrity status did not wane at all. On July 24, 1964, the *Los Angeles Times* printed a story saying that Comedian Henry Morgan refused to go on a television program after hearing the osteopath describe his 10 years in prison as a living hell on that same program. Moran said, "I think it was nauseating. Why should he be treated as a citizen?" adding that he did not believe a TV show should "tell some jokes, put a murderer on and play a tune."<sup>238</sup> This dispute also marked a departure from the claim of victimization that the Sheppard family said had been inflicted upon them from the press; by using airtime for their own advantage and cause, the family was reinstating its manipulative approach that the affluent family had taken toward the media before Marilyn Sheppard's murder 10 years earlier. The *Chicago Tribune* paid similar attention by sending a reporter to the city's Loop Hotel to cover Sam Sheppard's wedding ceremony to Ariane Tebbenjohanns, and the *Los Angeles Times* listed the couple's honeymoon as one of five of the most important national stories going on in the summer of 1964.<sup>239</sup> As the press strove to keep Sam Sheppard in the news, his celebrity continued to resonate throughout the country and reporters followed him with the same aggression and relentless treatment that had helped land him in jail.

The most explicit crossover between the rights of a free press and trial was next brought to the Court in 1965, during the case of *Estes v. Texas*. The problem of an indecorous atmosphere colored the trial of Billie Sol Estes, a notorious swindler who had been brought to court for charges that he had sold farmers fertilizer tanks and other related equipment that did not exist and then persuaded his customers to sign and deliver to him chattel mortgages on their property. Estes eventually appealed his conviction up to the U.S. Supreme Court, “opposing the overly public nature of the proceeding on due process grounds,” and the Court reversed the conviction “on finding that the very presence of the cameras had presumptively prejudiced his ability to receive a fair trial.”<sup>240</sup> Whereas the Court in *Irvin* had quantified the effects of publicity – its opinion references the number of jury members who admitted to being influenced by the press – Justice Tom Clark, who wrote the majority opinion for *Estes*, acknowledged that, ordinarily in a due process claim, “we require a showing of identifiable prejudice to the accused. ... Nevertheless, at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process.”<sup>241</sup> In other words, the Court made a serious departure from measuring publicity and began to adapt a rule of “inherent prejudice,”<sup>242</sup> demonstrating a heightened sensitivity to the right to a fair trial.

That same year, using language that “would have a direct bearing upon the issues soon to be presented in *Sheppard*,” Chief Justice Earl Warren wrote an opinion in the case of *Turner v. Louisiana* – in which deputy sheriffs who were witnesses in the case were also custodians of the jury – that spelled out “the danger posed by the power of modern media” to the criminal justice system:

Broadcasting in the courtroom would give the television industry an awesome power to condition the public mind either for or against the accused. ... Television directors



could give the community, state or country a false and unfavorable impression of the man on trial. ... To permit this powerful medium to use the trial process itself to influence the opinions of vast numbers of people, before a verdict of guilt or innocence has been rendered, would be entirely foreign to our system of justice.<sup>243</sup>

Still, it is important to note that despite the Court's growing awareness of the threats posed by modern media, and even despite its new willingness to recognize prejudice without necessarily being able to quantify it, by 1965, the Court had done nothing to indicate how the conflict should be handled in the future. The solutions in *Stroble*, *Irvin*, *Rideau* and *Estes* had all been remedial, reversing unjust convictions without delineating preventative measures to avoid similar errors in the future.

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#### **IV. The 1966 Reversal**

“The fact that many of the prejudicial news items can be traced to the prosecution, as well as the defense, aggravates the judge's failure to take any action. ... Effective control of these sources ... might well have prevented the divulgence of inaccurate information, rumors, and accusations that made up much of the inflammatory publicity.”

- U.S. Supreme Court Justice Tom Clark<sup>244</sup>

The lurid publicity that had surrounded Sam Sheppard's trial reemerged as the focal point of all arguments between the defense and prosecution at a U.S. Supreme Court argument on February 28, 1966. The case was presented as an illustration of the contention that prejudicial newspaper articles could be proof enough of an unfair trial, even without evidence that jurors had been swayed by the publicity. Both sides concurred that the judges, prosecutors and policemen – not the press – were responsible for protecting the jury from media-induced prejudice or bias, though the attorneys, F. Lee Bailey for Sam Sheppard and Ohio Attorney General William Saxbe for the State, disagreed on the effect of inflammatory coverage. Bailey pushed for the Court to utilize this opportunity to make a definitive statement about the dangers of prejudicial publicity, saying that newspapers, especially the

*Press*, prodded law enforcement officials to prosecute Sam Sheppard and support the theory that he and his family were covering up facts. Bailey further stressed that Sam Sheppard “had to prove his innocence before the jury would find him guilty.”<sup>245</sup> Saxbe countered that the entire jury system would be undermined if an “emotional issue” were admitted as grounds to overturn a conviction.<sup>246</sup> The Court, in an almost unanimous decision – Justice Hugo Black dissented without comment – concluded that Cuyahoga County law and police officials had erred in assuming it lacked power to control the press. Justice Tom Clark reviewed the news media’s conduct during the course of the trial and found that Blythin did not utilize his authority in the courtroom to protect Sheppard’s Constitutional right to a fair trial.<sup>247</sup>

In his opinion for the court, Clark demonstrated a keen recognition of the road paved for this decision by the earlier publicity-related cases that preceded this one. He wrote:

The press coverage of the Estes trial was not nearly as massive and pervasive as the attention given by the Cleveland newspapers and broadcasting stations to Sheppard’s prosecution. ... For months the virulent publicity about Sheppard and the murder had made the case notorious. Charges and countercharges were aired in the news media beside those for which Sheppard was called to trial.<sup>248</sup>

An analysis of his ruling shows that not only was the media circus more severe during Sam Sheppard’s murder trial in 1954, but the decision itself introduced a brand new precedent to the law. Clark wrote that “legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper,” a nod to *Bridges v. California*, a case in 1941 that ruled that restraining journalists, specifically from pretrial coverage, is unconstitutional unless it interferes with the administration of justice.<sup>249</sup> The Constitutional right of “freedom of discussion” should “not be allowed to divert the trial from the ‘very purpose of a court system to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures,” Clark explained, citing *Cox v. State of*

*Louisiana*, a case in 1965 that held that a state government cannot employ “breach of the peace” status to peaceful demonstrators even if their protests may incite violence.<sup>250</sup> The “bedlam” at the courthouse that other reporters, lawyers and public citizens relayed confirmed that “this deluge of publicity reached at least some of the jury.” To this end, Clark concluded that “the carnival atmosphere at [the] trial could easily have been avoided since the courtroom and courthouse premises are subject to the control of the court,” and reprimanded Blythin for neglecting to insulate the witnesses or “control the release of leads, information, and gossip to the press by police officers, witnesses, and counsel for both sides.”

Clark noted the increasing prevalence of “unfair and prejudicial news common on pending trials,” basing this observation on the publicity-related cases outlined earlier, and issued a series of preventative measures for future trial judges to follow.<sup>251</sup> In popular cases that attract armies of newsmen and photographers, he instructed, trial judges should control the release of information to the press by police officers, witnesses and opposing counsel, including a prohibition against “extrajudicial statements by any lawyer, party, witness or court official which divulged prejudicial matters.”<sup>252</sup> Moreover, a defendant’s guarantee of a fair trial is violated if the totality of circumstances reveals that the news media prejudice the trial. Furthermore, Bailey told the *Los Angeles Times* that “as a result of the Sheppard case in Cleveland, [the state of] Ohio ... [implemented] a law requiring jurors to be locked up as soon as they are selected from a case [in order] to shield them from outside influences,” though this claim is unsubstantiated.<sup>253</sup> The Court’s description of the 1954 trial show that that there was good reason to believe that the jury’s verdict was not based solely on evidence received in open court.

In the end, Clark remanded the case to the District Court and ordered that Sam Sheppard be either released from custody or retried within a reasonable period.<sup>254</sup> A few days later, Cuyahoga County Prosecutor John Corrigan announced that Sam Sheppard would stand trial for a second time, a decision that was revealed to a packed press conference in Cleveland's Criminal Court Building and earned a front-page spot in the *New York Times*, confirming that the story of Sam Sheppard had yet to lose the public's attention.<sup>255</sup> The serenity of this second trial marked a stark contrast to the first, and the comparison made this one seem akin to "three and a half weeks in a nursing home," as *Cleveland Plain-Dealer* reporter Robert Stock put it.<sup>256</sup> According to Common Pleas Judge Francis Talty's rules, only 14 seats were reserved for reporters; interviews with witnesses and jurors were prohibited until after the verdict was announced; no cameras, sketches, tape recorders or typewriters were allowed inside the courtroom; and, for the first time in Cuyahoga County judicial history, the 12 jurors and two alternates were locked up in the city's Statler Hilton for the entire trial.<sup>257</sup> Sam Sheppard did not take the stand in this trial, in which 31 witnesses testified, compared with 70 at the earlier one; the jury took nearly 12 hours to reach this verdict, whereas the verdict took five days in 1954.<sup>258</sup> Newspapers still paid daily attention to the developments in this trial and, in November, when the *Los Angeles Times* offered a roundup of the country's most pressing news stories, it included Sam Sheppard's acquittal alongside President Lyndon Johnson's recovery from surgery.<sup>259</sup> Finally, on November 16, 1966, Sam Sheppard was freed after a jury found him not guilty of killing his wife.

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## V. *Sheppard v. Maxwell* Revolutionizes the Law

During criminal trials, stories are often replete with editorial comment on the evidence and the conduct of the proceedings. In cases that arouse strong public feeling, like

the Sheppard trial, the press is likely to become highly partisan, sometimes, as law professors Richard Donnelly and Ronald Goldfarb point out, by “trying to outdo the [attorneys] in procuring evidence and published material ruled inadmissible because of its prejudicial.”<sup>260</sup> It is difficult to understand how instructing jurors to avoid reading or listening to commentary on the trial – and, instead, to consider only the evidence presented in court – may realistically protect inflammatory material or external reports from influencing them. The 1966 reversal of Sam Sheppard’s conviction responded to this issue, contending that it is not imperative to qualify the degree of prejudice that may impact a jury, but that it is enough to establish that prejudice exists at all and could, therefore, preclude impartiality on the part of the jury.

Although the cases immediately preceding *Sheppard* had demonstrated the Court’s increasing sensitivity to due process concerns, in 1966 the Court for the first time expressed dissatisfaction with merely remanding the case for retrial. *Sheppard* provided an impetus for bar associations, judicial groups and press and media organizations to formulate and agree upon rules and standards for press coverage of criminal trials. For example, the Judicial Conference of the United States, a Congressional policy-making body concerned with the administration of U.S. Courts, issued recommendations that directly incorporated the conclusions of *Sheppard*, namely: restricting the release of information by attorneys by penalty of disciplinary actions; prohibiting prejudicial disclosures by court personnel; and regulating trial proceedings to insulate them from prejudicial influences. Amazingly, these recommendations were then adopted by federal district courts throughout the nation. Three months later, a judge presiding over a murder trial in Indio, California, based his decision to restrict the jury’s access to daily court transcripts on Clark’s opinion in *Sheppard*. The judge, Warren Slaughter of a Superior Court in Riverside County, California, additionally upheld an

earlier ruling instructing attorneys in the case not to make statements or comments to news media at any time during the trial.<sup>261</sup> Another significant result of *Sheppard* included the compilation of a list of measures available to trial judges that the ABA Standards on Fair Trial and Free Press issued in 1968 to combat the effects of biased publicity. These tactics included: the exclusion of the public from pretrial hearings, hearings outside the presence of the jury; continuances; changes of venue; waiver of jury trial; voir dire examination; and jury sequestration. Though the Committee did not explicitly espouse statutory restrictions against the news media, it strongly recommended a limit on the dissemination of information on the premise that most prejudicial publicity stems from the press.<sup>262</sup>

Beyond these exhaustive guidelines, different cases embody specific examples of how the precedents established in *Sheppard* had a ripple effect on the legal system. In the 1968 *Maine v. Superior Court*, the defendants were accused of murder, kidnapping, rape and assault with intent to commit murder. However, the community-wide interest and intense media coverage, including the publication of purported confessions, led the court to follow a more liberal standard for allowing a change in venue. The California High Court rejected the traditional approach of reviewing whether the trial court had exercised its discretion and instead followed the example set by *Sheppard*, using “an independent evaluation to determine the ... likelihood that prejudicial publicity will prevent a fair trial.”<sup>263</sup>

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## **VI. Unresolved Issues from *Sheppard***

“Publicity equals prejudice. Prejudice equals publicity. They go together. Judges and lawyers must be bold. They must break the connection.”

- Steven Helle, Illinois State Bar Association Media Law Committee<sup>264</sup>

In *Sheppard*, the U.S. Supreme Court directed trial judges to ensure that defendants are protected from convictions based on outside, press-based information. But these

instructions, which included change of venue or prohibition of court personnel from speaking to the media, convinced some judicial officials that the Court's opinion in *Sheppard* was actually an attempt to curb the press corps' access to the courtroom and the free flow of information. Ironically, after winning the reversal, Bailey publicly stated that he had no real quarrel with the news media, saying that his principal complaint was "against the authorities ... [and that his] purpose [was] to dispel the notion that [his] case was for suppression of news media."<sup>265</sup> The growing stigma attributed to the press corps in the wake of the press-related cases of the 1960s overturned the assumption that an expanding press was a positive step, especially for a defendant. As a result, a series of legal cases soon emerged that called into question various aspects of the press' freedom.<sup>266</sup>

On October 17, 1966, a few months after Sheppard's release from prison, nine of the out-of-town reporters who covered the 1954 murder trial wrote a letter to the U.S. Supreme Court, expressing shock and disapproval at Clark's comments on the state of the decorum in the courtroom. More importantly, they defended "the American press against charges of 'trial by press' and 'prejudicial pretrial publicity'" and responded to charges that they participated in a "Roman circus."<sup>267</sup> The letter argued that Blythin was an effective trial judge and rejected the widespread accusation that the courtroom was plagued by severe chaos. "At the time of the trial," they wrote, "we never believed that the American press as a whole would be condemned 12 years later for local stories about revelations made by police, defense and prosecuting attorneys."<sup>268</sup> Foreshadowing the ways in which *Sheppard* would be misconstrued as a rebuke to the media, these nine reporters explicitly said that, because of the trial of Sam Sheppard, there emerged "a tendency to put the American press as a whole on trial."<sup>269</sup> University of Illinois journalism professor Steven Helle makes a similar case in an

article about the inherent prejudice in publicity, and writes that “it is the responsibility of the court, not the media, to ensure a fair trial. . . . The press has no obligation to preserve the defendant’s Sixth Amendment rights.”<sup>270</sup>

Jack Landau, a legal affairs expert and a member of the Reporters Committee for Freedom of the Press, specifies the range of direct effects spawned by *Sheppard* in the 1976 issue of the *ABA Journal*. Landau argues that subsequent courts have misinterpreted the Court’s opinion in *Sheppard* – specifically misconstruing Clark’s statements about considering sanctions “against a recalcitrant press” and necessary steps to “protect [the courts’] processes from judicial outside interference”<sup>271</sup> – to justify barring the press from a panoply of activities, including barring the press from reporting public record pretrial judicial proceedings; hearing a secret witness; publishing any opinion about guilt or innocence; sealing off an entire criminal trial; and requiring reporters to sign an agreement not to report parts of a public court proceeding as a condition for admittance into a courtroom.<sup>272</sup> Not surprisingly, these restrictions exasperated the press so much that by 1975, almost 200 cases were brought to various courts to seek legal relief from decrees believed to have violated First Amendment rights. The reality, however, as articulated by U.S. Supreme Court Justice Tom Clark, was that the guidelines set forth by the Court in the *Sheppard* case were aimed not at newspapers, but at judges who were “not judicious” in managing their courtrooms.<sup>273</sup>

Confusion from *Sheppard* also ensued in the courts, with different judges taking conflicting stances on parallel cases. For example, defendants in the Watergate cover up case were forbidden to talk to the press by order of Chief Judge John Sirica of the U.S. District Court from the District of Columbia, but an order issued by Judge Gerhard Gesell of the same court in the Watergate-related trial of former White House aide Dwight Chapin



authorized the defendant to communicate with the press as he so chose.<sup>274</sup> It is clear, then, that though the issue of free press-fair trial certainly burst onto the national stage in the 1940s and was eventually enshrined in 1966 with the *Sheppard* case, there was no real reconciliation of the problem but rather a heightened exposure of all the old problems that have comprised the free press-fair trial conflict throughout history.

The reversal of Sam Sheppard's murder conviction catalyzed the notion that the publicity generated in a reporter's search for truth is likely to taint the minds of potential jurors and interfere with the defendant's right to an impartial jury. This viewpoint reached its zenith in June 1973, when *Washington Post* columnist Joseph Alsop predicted that "information disclosed in public hearings by the Senate Watergate Committee would make it impossible to find 12 impartial jurors to decide any subsequent criminal case."<sup>275</sup> Residual legal concerns – that perhaps the courts should monitor the jury's sources of knowledge about the case – opened the door to a "dangerous judicial review of the fairness of journalistic stories and comment."<sup>276</sup> To that end, Special Prosecutor Archibald Cox called upon the Senate Watergate Committee to suspend public hearings in order to prevent pretrial publicity from hindering a fair trial. After this request was denied, Cox took his case to U.S. District Court Judge John Joseph Sirica, relying on *Sheppard* to argue his cause. Cox specifically invoked the Court's 1966 opinion about keeping the jury free from outside influences, a statement he translated as a vote in support of jurors who have no knowledge whatsoever of the case at hand. The confusion here is that this interpretation, in addition to being a stretch from the Court's original intentions, contradicts the very purpose of the jury as outlined in the Constitution. Indeed, "the hallmark of the early jury was that its members would be of the vicinage with knowledge of the events at issue."<sup>277</sup>

These examples of the sort of confusion and tension in the post-*Sheppard* world demonstrate not only the enormity of the free trial-free press issue but also the ripple effect that *Sheppard* had on the law. The *Sheppard* case pushed the U.S. Supreme Court to take explicit action to address, in legal terms, the prejudicial effects of publicity and press coverage. Though Clark's decision was certainly replete with flaws, opening up a legal can of worms with serious challenges that would need to be addressed, it was by no means a mistake. At the very least, it stressed the importance of an ongoing conversation about how to reconcile free press-fair trial tensions and where to find a reasonable middle ground for the press and the court. The reality that the reversal did not succeed in solving the issue in its entirety is not a reflection of its flaws as much as it is a result of how tremendous the free press-fair trial conflict really is. Still, the subsequent rapid development of mass communication, along with the press' increasingly aggressive coverage of high-profile trials, meant that the decisions established in *Sheppard* would prove to be a holding action at best, not really dealing with the question of whether the right to a fair trial is abridged by these newer forms of publicity. Various criminal trials throughout the 1980's and 1990's would serve as legal barometers, testing the effectiveness of *Sheppard* and demonstrating that, in the end, the justices who ruled in Sam Sheppard's trial effectively did little to prevent future media circuses from interfering with popular cases.

## CONCLUSION: GOSSIP NEVER DIES

“The [Sam Sheppard] case still captures the public imagination because it shows the evil of a legal system when it is blind to innocence.”

- *New York Times* 1998 Editorial Board<sup>278</sup>

The successful reversal and subsequent acquittal in 1966 meant more than freedom for Sam Sheppard and more than plaudits for Bailey; it turned both of them into national celebrities. Bailey was sometimes known as “The Flee,” a lawyer with the word “TRIAL” printed on his license plate, and he became renowned as a “master of colorful phrases,” a “suave, impeccably dressed” lawyer who excelled by speaking directly to jurors, driving his points home in a “calm, pleasant voice.”<sup>279</sup> The amount of publicity attached to the Sheppard cases, especially to the 1966 reversal that created courtroom guidelines for trial judges in future cases, soon shadowed his name, too. The young defense lawyer quickly became the go-to person for high profile cases that were seen as lost causes, including the Boston Strangler, a name attributed to the murderer of several Boston-based women in the 1960s, and Carl Coppolino, a man accused of murdering his wife with an injection of poison.<sup>280</sup> As Bailey rocketed into national prominence, telling the *New York Times* that he “can’t say no to a case if it has any of three qualities: professional challenge, notoriety or a big fee,” so did Sam Sheppard.<sup>281</sup> The two names became inextricably linked, jointly namedropped at the mere mention of free trial-fair press debates, discussions of high profile murder trials and in the depths of each other’s memoirs and biographies.

If there are any doubts about Sam Sheppard’s role in American public life, one needs only to look at the obituary that the *New York Times* wrote on page A1 after he died in 1970. The lengthy tribute included a headshot and was given the same priority as are pieces to commemorate world leaders and famous actors. In great detail, it recapped both trials, Kilgallen’s coverage in 1954, Sheppard’s life in prison and his bizarre post-prison years,

which included a third marriage, two malpractice suits against him and a brief stint as a wrestler – ironically known as “The Killer” – before he lost his life to alcoholism and drug addiction at the age of 46.<sup>282</sup> Even death did little to detract from Sheppard’s celebrity; five years after Sheppard died, NBC ran a three-hour documentary titled “Guilty or Innocent: Sheppard Murder Case.”<sup>283</sup> Indeed, the national media did not let go of their prized subject, and the osteopath’s passing provided a goldmine for reporters, filmmakers, television producers and legal scholars, who could now write about the case, make movies, broadcast dramas and more.



**Figure 43:** Magazine Stories about Sam Sheppard from the 1960s - (1) On July 24, 1964, *Time* ran a piece about Weinman’s 1964 decision that Sam Sheppard had been tried by a prejudicial Cleveland press and thus did not receive a fair trial. (2) *Argosy*, a monthly men’s interest magazine, published two stories about Sam Sheppard, both of which were advertised on the magazine’s front pages. In November 1964, *Argosy* writer Gene Lowall wrote a seven-page story, which included the first face-to-face interview with Sam Sheppard, about the osteopath’s theories on the murder and his 10-year prison stint. The piece was complemented by one photo of Sam Sheppard with a microphone shoved in his face, and another of him with his second wife, Ariane, sitting on a couch surrounded by a dozen microphones and tape recorders. (3) *The Lowdown*, a bimonthly tabloid, printed a photograph of Sam Sheppard on the cover of its January 1965 issue with the caption “We Said It Before – Dr. Sam Sheppard Still Is Not Guilty!” The story featured an editorial by the magazine’s editors, who vehemently argued Sam Sheppard’s innocence, along with a point-by-point defense of this position. (4) The second *Argosy* piece about Sam Sheppard, published in November 1965, included an article drawn from a series of interviews with Sam Sheppard about his theories on how, and by whom, his wife was murdered. The editors’ comments that are interspersed throughout the narrative are demonstrably sympathetic toward him. (5) An article published in the March 1967 issue of *True*, also a men’s interest magazine, includes an excerpt from Sam Sheppard’s memoir, *Endure and Conquer*, that is preceded by a foreword from his attorney, F. Lee Bailey. These national magazine pieces, only a sampling of what was published during this decade, illustrate not only the country’s continuing obsession with this story but also the apparent shift in public opinion. As the 1954 murder became a thing of the past, it seemed that popular opinion rallied in support of Sam Sheppard’s innocence, or at least in support of the belief that his denial of a fair trial now made him a victim.

In 1989, Thomas Cullinan, a playwright, reworked a radio script about the Sheppard story, “The Constitution and Sam Sheppard,” into one that would be suitable for a television production.<sup>284</sup> Similarly, obituaries for reporters who covered Sam Sheppard at the peak of his notoriety, along with obituaries for any of the dozen or so authors who published books about the Sheppard story, earned top placements in the press.<sup>285</sup> The most famous recreation of this story is “The Fugitive,” a television show that aired on ABC from 1963 through 1967. Though it was widely speculated that the show was inspired by the Sam Sheppard story – it followed the tale of a young doctor falsely accused of murdering his wife – the show’s producers say that the plot was the product of their own creativity, not the Bay Village saga.<sup>286</sup>

The 1954 murder trial further became the benchmark for media blitzes in cases that involved prejudicial publicity. It was often alluded to years later, such as in the 1966 murder trial of Richard Speck, who was charged with the murder of eight nurses. In this Chicago-based case, Gerald Getty, Speck’s lawyer, motioned for a change of venue on grounds that adverse coverage would prevent a fair trial. The *Los Angeles Times* reporter who wrote about this story compared this development to Sam Sheppard’s story, explaining that Getty’s efforts made sense in a post-Sheppard world that now behaved with a heightened sensitivity to prejudicial media coverage.<sup>287</sup> Almost a decade later, when U.S. Vice President Spiro Agnew was tried for extortion, tax fraud and bribery, his lawyers argued that the news media had published so many damaging claims against their client that it would be impossible for him to receive impartial treatment. With this line of defense, reporters expanded the story to discussions of free press-fair trial issues, invoking the 1966 *Sheppard* decision.<sup>288</sup> As Sam

Sheppard once again became a household name from coast to coast, law journals, newspapers and magazines learned to incorporate the trial into their arguments and analyses as much as possible. In the 1982 murder trial of Jean Harris, a school headmistress charged with murdering a well-known cardiologist, the jury was sequestered for eight days. The *New York Times* court reporter peppered his story about this legal development with a reference to the jury sequestration issues that had emerged during the Sam Sheppard case.<sup>289</sup> Similarly, when the issue of photographic coverage in the courtroom reemerged as a hot topic for courts in the 1980s, newspaper articles and court opinion frequently cited the Sheppard case as the ultimate example of a press corps run amok in order to illustrate the dangers of having cameramen in the courtroom. This illustration established an alternative to the U.S. Supreme Court's opinion, which now rejected the view that such reportage inherently deprives a defendant of a fair trial.<sup>290</sup> Support for televised courtroom proceedings increased at this time, perhaps because of the public's increased tolerance for and reliance on a widespread media as well as the fact that the anti-press sentiment of the Sheppard era was finally receding. In an editorial about the merits of broadcasting trials, the *New York Times* argued that "experiments with courtroom television, however, have softened the official hostility. ... [and that] the lens can capture courtroom scenes with little distortion, distraction or histrionics – at least at the appellate level where there are no witnesses, jurors or defendants."<sup>291</sup>

The trials of Sam Sheppard set the standard for a modern-day trial by newspaper. The 1954 murder case embodied a collision between an inherently interesting story and a newly developed media, and the 1966 reversal recognized the latent dangers there, thus providing trial judges with guidelines to protect the courtroom, especially the defendant and the jury,

from the press. The landmark 1966 U.S. Supreme Court decision became the most popular legal reference for subsequent stories that were at least loosely related. Still, the case's recurrent role in American public memory is also due to happenstance, a coincidental mix of a politically-motivated trial judge, an insular town with no prior experience of dealing with a communal tragedy and a country plagued by fear creates an urgent need to know everything happening in a bleakly uncertain world. Taken individually, these factors were not unique to the Sheppard saga – the case of Bruno Hauptmann, for example, is also sometimes assumed to be the first example of a courtroom tainted by a media frenzy – but the combination of these components yielded a decision that ultimately set important precedents in American legal and media history.

There is no question that local and national press coverage of the murder, investigation and trial further compromised justice by preventing a fair trial with an impartial jury. The court's recognition in 1964 that the media had made egregious errors in their coverage paved the way for a reversal of the conviction in 1966 but, as chapter three illustrates, that opinion would not have been possible had it not been for the publicity-related cases that preceded it. Those cases, namely *Irvin v. Dowd* in 1961, *Rideau v. Louisiana* in 1963, *Estes v. Texas* in 1965 and *Turner v. Louisiana* in 1965, laid the groundwork for Clark's decision not only to condemn the circus-like atmosphere that contaminated the murder trial but also to establish guidelines for trial judges to prevent such salacious coverage in the future. This thesis demonstrates that the Sam Sheppard saga stands out in American history because it forced the American judicial system to address, for the first time, the inevitable intersection of a newly developed press, a fear-riddled society, a murder story



replete with tragedy, violence and sex and, finally, a Supreme Court finally ready to start an ongoing dialogue about how to reconcile the right to a free press with the right to a fair trial.

The American legal system operates on the premise that all defendants are innocent until proven guilty, and regardless of whether this should be the assumption, there was never really a point during which Sheppard was presumed innocent. Sheppard's story, and the lessons gleaned from it, leaves open many important questions, such as how much the public should or should not know about a given case, and it is clear that the American public continues to feed off the type of voyeurism that became so popular 50 years ago. The 1954 and 1966 cases marked a turning point in American legal and media history, offering a continual reminder of the delicate balance between a free press and a fair trial, and the danger that looms if either side is allowed to tip the scale in its favor.

## **EPILOGUE: GOOGLE MISTRIALS**

“A society that makes entertainment out of the administration of criminal justice is sick.”

- U.S. Supreme Court Justice Ruth Bader Ginsburg<sup>292</sup>

Neither Sheppard nor Bailey ever faded entirely from public memory, but the duo were thrust back into the spotlight in the summer of 1994, when former football star O.J. Simpson was brought to trial for the murder of his ex-wife, Nicole Brown, and her friend, Ronald Goldman. The media circus mimicked that of 40 years earlier. The Simpson-obsessed press constantly drew parallels between Sheppard and Simpson, and reporters, seeking to contextualize the Simpson case, initially cast it as the Sheppard of the 1990s. Moreover, Bailey, who had been in a brief professional eclipse at that point, returned to the legal scene when he was brought back to represent Simpson on his defense team; not surprisingly, most mentions of Bailey in the press were linked to Sheppard.<sup>293</sup>

About a year after Simpson was found not guilty, the Sheppard story reemerged yet again in the press, this time because of Sam and Marilyn Sheppard’s son, Chip, now 48 and known as Sam Reese. In 1996, Sam Reese began his ongoing mission to solve his mother’s murder, deducing that modern forensic evidence and the possibility of a new suspect – Richard Eberling, the Sheppard family’s longtime window washer – would finally enable him to solve this mystery and exonerate his father’s name through a wrongful imprisonment lawsuit.<sup>294</sup> Newspaper editors, it seemed, still had not grown tired of the story, and the national media covered the story on a regular basis. Lasting well into the late nineties, Reese’s exoneration effort faced resistance, specifically from Cleveland’s chief prosecutor, Stephanie Tubbs Jones, who initially refused to reopen the investigation.<sup>295</sup> As a strained relationship between the Sheppard clan, the media and the courts reemerged, reporters began to refer to the original Sheppard murder trial as “the O.J. Simpson trial of the 1950’s,”

allowing younger readers to follow a case that was deeply rooted in almost 50 years of American history.<sup>296</sup>

By 1998, the Ohio Supreme Court granted Reese the chance to clear his father's name in court, mainly because new DNA evidence showed that blood spattered at the Sheppard house did not match that of either Sam or Marilyn Sheppard, indicating that a third person was present at the scene. The *New York Times*, in an editorial titled "Injustices in the Sheppard Case," lamented that "the case still captures the public imagination because it shows the evil of a legal system when it is blind to innocence," a statement that veered considerably from the tone of the stories published in this newspaper 50 years earlier. The piece summed up the case's 50-year history: "The Sheppard case still polarizes lawyers and politicians who feel compelled to defend their actions in the earlier investigation."<sup>297</sup> Finally, on April 12, 2000, five decades after the Cleveland jury first convicted Sam Sheppard, another batch of jurors rejected the challenge, finding that Sheppard had not been wrongfully imprisoned.

Reese inspired yet another series of media portrayals, such as CBS' 1998 fact-based TV movie, "My Father's Shadow: The Sam Sheppard Story," in which Reese, according to a review in the *New York Times*, "argues and anguishes with the specter of the man who was at the center of one of the most sensational murder trials of this century."<sup>298</sup> In 2003, the grotesquely funny play "Bexley, OH," portrayed a prim, scandal-free, Protestant Ohio suburb in the 1950's and 1960's that is shaken to its core after a murder in a nearby affluent town. In a bizarre illustration of the public's infatuation with the Sheppard saga, playwright Prudence Wright Holmes told the *New York Post* that her father inspired her to write the play because, when she was a child, he used to frighten her by telling her that "Dr. Sam" was under the bed

and by driving his family every Sunday to prison to yell at Sam Sheppard.<sup>299</sup> Even members of the Sheppard family have turned a profit from this never-ending tale. Reese co-authored a book with lawyer Cynthia Cooper in 1995 that was titled “Mockery of Justice: The True Story of the Sam Sheppard Murder Case,” and produced a CD in 2002 called “The Frame,” a compilation of 10 songs, such as “Through Prison I Grew” and “Motherless Child,” which he also wrote.<sup>300</sup>

The Sheppard cases resonated with Americans who lived through the first two trials, as well as with legal experts and journalists who study free press-fair trial issues. But today, no one is more transfixed by this saga than the residents of Cleveland, Ohio, and its neighboring towns. Bay Village still bears traces of the whole story: its historical society features an entire exhibit devoted solely to the Sheppard family’s story and, at the Special Collections department at Cleveland State University’s library, one can find an entire chest of newspaper clippings and photographs that document the saga. The Cleveland public library maintains a similar binder of articles.

But most impressive is the passion with which members of the Bay Village and greater Cleveland communities speak about the trial today. Brent Larkin, the current editorial director at the *Cleveland Plain-Dealer*, published dozens of columns about the story in the 1990s, resurrecting an obsession over something that his parents used to discuss at the dinner table on a nightly basis when he was a seven year old.<sup>301</sup> Larkin, who subscribes to the theory that Sam Sheppard was guilty, wrote about the story’s recurrent role in American history, contrasting the “gaggle of tough print reporters armed with nothing but pencils and notebooks” in the Sheppard case with the coverage of Simpson – “nothing short of a Roman orgy.”<sup>302</sup> Larkin called Reese’s attempt to convict Eberling living proof that “every four or

five years, someone surfaces with the cockamamie idea designed to prove Dr. Sheppard did, or did not, bludgeon his wife” because no one wants the saga to go away.<sup>303</sup> He also featured a provocative account given by Eddie Watkins, a former inmate who served time with Sheppard at Ohio State Penitentiary. Watkins said that, one afternoon in prison, Sheppard was so furious after losing an intense game of chess that “he said something like, ‘You lucky son of a bitch. I could kill you like I killed Mar—.’” These columns, rife with titillating narrative, used the familiar story to captivate latter-day readers, illustrating the obsessive appeal that the tale continues to have among the American public.

Larkin’s disdain for Sheppard mirrors the unwavering charge with which reporters in 1954 attempted to chase Sheppard to jail. His columns were so inflammatory that, in May 1997, Terry Gilbert, Reese’s lawyer, wrote Larkin a letter accusing him of engaging in “one of those ‘kind of enjoy it’ things that editorial writers do simply to liven up the controversy,” and asked him to “concede that it is possible that justice went awry in the Sheppard case and that the doctor [was] innocent.”<sup>304</sup> The request had little effect and, when legal action was pending to have Sheppard declared innocent, Larkin wrote a letter to the U.S. Marshals Service, seeking an interview with a man named Edmund Eugene Flott who was reported to have gone into the witness protection program for an unrelated crime.<sup>305</sup> According to Larkin, Flott testified in 1966 to the FBI and Cleveland police that Sam Sheppard concocted plans in prison to frame another person for his wife’s murder.<sup>306</sup> The two never met, but Larkin continued to write controversial columns about the saga well into 2000.<sup>307</sup> This type of coverage, together with the books that have been written about the Sheppard cases, demonstrate the ongoing connection and curiosity that the public feels toward the case, while simultaneously pitting the Sheppard family against members of the law and the press yet

again. After political science professor Jack DeSario and Cuyahoga County prosecutor William Mason wrote *Dr. Sam Sheppard on Trial, Case Closed*, Stephen Sheppard wrote a three-page diatribe lambasting the authors for writing a completely false book and listing dozens of reasons to proclaim his brother's innocence.<sup>308</sup>

It had always been clear that, in the small town of Bay Village. Sam Sheppard could not possibly obtain a fair trial because the judicial system, whether for lack of effort or lack of means, did not protect him from an unfettered, relentless press. The question then evolves to one of determining whether increased access, be it via additional reporters, photographers or television cameras, serves the public good. Though recent history has witnessed such dramatic advances to mass communication, the basic sensationalistic approach to coverage of crime and the legal system that pervaded Sam Sheppard's lifetime continues to dominate current programming. Moreover, if the public's interest was aroused by a local Cleveland murder involving a family that was unknown outside of the Bay Village community, then it follows that high crimes with national resonance, or even local crimes covered by a stronger and more pervasive press corps, would captivate even more people, thereby setting up the same free press-fair trial challenges on an even larger scale. As communications technology has evolved, from a reporter's prose description and an artist's sketchpad rendition, to a camera's blinding lights and an incessantly updated blogosphere, the media progressively has given the public a more intimate view of the American criminal justice system. The Internet and its social networking websites, the explosion of dramatic law-based television dramas and the intense media coverage of legal cases make the continuation of trials by media inevitable, since these sorts of cases are the very sources of so many national obsessions and entertainment programming.

Scandalous legal cases have long captured the attention of the public and the media, and Americans' fascination with crime and justice stories is not new. But, as political science scholars point out, "these types of cases have occurred with greater frequency since the 1990s, and the almost total cultural immersion accompanying such events as those involving Rodney King [a black victim of police brutality], O.J Simpson, ... and Terry Schiavo [involved in a controversial medical ethics case] represents a new phenomenon. Even before a case goes to trial, journalists now quickly produce supermarket-quality books telling true crime stories in explicit and graphic details."<sup>309</sup> Examples of this coverage include fictional television movies about Martha Stewart, one of which included a portrayal of her trial and conviction before her actual trial for charges related to securities fraud began, and tabloid stories about the rumored affairs between Simpson and his prosecutor, Marcia Clark. Essentially, journalists are doing what their predecessors did in the 1950s and 1960s, sensationalizing crime stories by producing titillating copy. The only real difference is that, now, the mainstream press regularly focuses on these salacious stories that were once limited to the tabloids.<sup>310</sup> Most, if not all, media now use legal investigations and trials as entertainment fodder, covering grossly intimate and irrelevant details of a given story. Though this tactic has become more acceptable in recent years, its origins can be traced back to the 1950s and 1960s, when national newspapers first ran controversial, invasive and up-to-the-minute stories about the Sheppard case.

*Sheppard v. Maxwell* in 1966 positively impacted the law, taking the first step of spelling out specific rules that a trial judge should follow in order to deal with a disruptive media, but the rules laid out by Clark proved largely ineffective in the long run. If anything, media frenzies in high profile case have only increased over time and are, in fact,

institutionalized through such media outlets as Court TV. Today, press overkill is even more likely; the overwhelming presence of television cameras outside the courtroom and homes of victims and defendants extends the attention on a given case, inviting the general public to speculate on the defendant's guilt or innocence and, as a result, making it nearly impossible to find 12 impartial individuals to serve on a jury. In the last couple of years, the use of BlackBerrys and iPhones by jurors to gather and send out information about cases has subverted trials around the country, "upending deliberations and infuriating judges," as *New York Times* reporter John Schwartz put it.<sup>311</sup> Transgressions of courtroom decorum now include posting trial updates on Twitter and Facebook, using mobile Internet browsers to research a defendant's personal history and uploading Google Maps to review the scene of a crime. Whatever the jurors' intentions, these commonplace research tactics violate the legal system's complex rules of evidence and unlawfully expose the public to jury deliberations. The risk has grown more immediate, and such tides of publicity turn the issues of a trial into the subjects of debate on every talk show and in every living room. The implications of this dilemma have challenged the courts' ability to catch up with a rapidly growing press. Judges have yet to find a way to coexist with the Internet-based media, once again testing the very prospect of an impartial jury and raising questions about whether a fair trial is still even possible.



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## INTRODUCTION: FREE PRESS AND FAIR TRIAL

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<sup>4</sup> Janice Schuetz, ed., *The O.J. Simpson Trials: Rhetoric, Media and the Law, The Media Spectacle and the O.J. Simpson Trial*, by Diane Furno-Lamude (Carbondale: Southern Illinois University Press, 1999), 19.

<sup>5</sup> Eric Younger, "Some Thoughts on the Defense of Publicity Cases," *Stanford Law Review* 29, no. 3 (1977): 591.

<sup>6</sup> Steven Helle, "Publicity Does Not Equal Prejudice," *Illinois Bar Journal* 85 (1997): 18.

## CHAPTER ONE: SIN, SEX AND SUBURBIA

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<sup>8</sup> Virginia L. Peterson and Sally Irwin Price, *Bay Village* (Charleston: Arcadia Publishing, 2007), 7.

<sup>9</sup> Doris O'Donnell. Interview by author. Boston Heights, OH. October 18, 2008.

<sup>10</sup> Doris O'Donnell interview.

<sup>11</sup> O'Donnell, Doris, *Front-Page Girl* (Kent: Kent State University Press, 2006), 63.

<sup>12</sup> *Bay Village*, 106-7.

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<sup>14</sup> Fred Drenkhan. Interview by author. Bay Village, OH. October 19, 2008.

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<sup>21</sup> Byline Not Printed, "Bay Doctor's Wife Murdered," *Cleveland Plain-Dealer*, July 5, 1954.

<sup>22</sup> *Endure and Conquer*, 11-13.

<sup>23</sup> Doris O'Donnell interview.

<sup>24</sup> Doris Lange. Interview by author. Morning Hill Heights, OH. October 18, 2008.

<sup>25</sup> Fred Drenkhan interview.

<sup>26</sup> Bill Tanner. Interview by author. Cleveland, OH. October 18, 2008.

<sup>27</sup> Byline Not Printed, "Dr. Sheppard Offers to Bare List of Patients With Grudge," *Cleveland Press*, July 13, 1954.

<sup>28</sup> Colin Wilson, "The Slaying: Savagery by the Lake," *Murder in Mind* 28 (1998): 11.

<sup>29</sup> Byline Not Printed, "Marilyn's Murder Has Kept Town Talking for a Month," *Cleveland Press*, August 4, 1954.

<sup>30</sup> Doris O'Donnell interview.

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<sup>33</sup> *Ibid.*

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<sup>35</sup> *Front-Page Girl*, 74.

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<sup>38</sup> *Ibid.*

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- <sup>88</sup> International News Service, "Crank Letters May Delay Murder Trial," *Washington Post*, October 16, 1954.
- <sup>89</sup> *Ibid.*
- <sup>90</sup> *Dr. Sam*, 32.
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