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# The Trial of Sam Sheppard



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## Part III: The Appeal

By Mark J. Phillips and Aryn Z. Phillips

The murder of Marilyn Sheppard in her bedroom during the early morning hours of July 4, 1954, remains one of America's most notorious unsolved crimes. Young and beautiful, the mother of one child and pregnant with another, her bludgeoning death transfixed a nation. Every circumstance of her death and the nine-week trial of her husband that followed became fodder for an unprecedented crush of newspaper coverage. In what the United States Supreme Court later called "a carnival," Sam Sheppard was convicted of her bludgeoning death.

Sam Sheppard spent ten years in a maximum-security state penitentiary in Columbus, Ohio. During all of that time, his remaining family and legal team sought to overturn his conviction. On January 3, 1955, the trial court overruled the motion for a new trial, which had been based on numerous erroneous decisions occurring during the trial and deliberation—including

Sam's arraignment before trial on a capital charge in the absence of counsel; the inability of Sam's defense attorney William Corrigan to represent him during the inquest; the refusal of the court to change the venue of the trial in the face of massive adverse publicity; the publication of the list of potential jury members in advance of trial; the failure to sequester the jurors during the trial; the trial judge's decision to set aside a major portion of the courtroom to representatives of the news media; the police seizure of Sam's house and exclusion of Sam

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and his representatives from the house for the duration of the trial; and other claims.

On May 9, 1955, the trial court denied a supplemental motion for a new trial on the grounds that Sam's retained experts had since investigated the house and could demonstrate the presence of blood in the house that did not come from either Marilyn or Sam. In July 1955, the court of appeals affirmed the conviction and the denial of the motion for a new trial. On May 31, 1956, the Ohio Supreme Court affirmed the court of appeals, with two judges dissenting. On November 14, 1956, the United States Supreme Court denied a petition for certiorari, and subsequently denied an application for rehearing. On September 5, 1960, the Ohio Supreme Court denied an application for habeas corpus.



The jury for the Sheppard murder case poses for a picture in the courtroom in 1954.  
Photo courtesy of Cleveland State University, Michael Schwartz Library, Special Collections.

After six years of fighting on Sam's behalf, defense lawyer William Corrigan died in July of 1961, and attorney F. Lee Bailey, just a year out of law school, was selected by Sam's brother Stephen to prosecute the appeal. Bailey was then in his early thirties. Brilliant, talented, and always controversial, he had studied at Harvard but had dropped out in 1952 to join the Marine Corps, where he received aviator wings in 1954. In 1960, he received his law degree from Boston University, ranked first in his graduating class.

By 1963, Sam and Bailey had moved their arguments to the federal courts. On April 11, 1963, they filed a petition for a writ of habeas corpus in the United States District Court, contending that Sam had not received a fair trial. The district court granted the writ, but the United States Court of Appeals reversed. The matter finally reached the United

States Supreme Court, which in the now famous Sheppard v. Maxwell, 384 U.S. 333, 363 (1966), ruled:

Since the state trial judge did not perform his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we must reverse the denial of the habeas petition. The case is remanded to the district courtroom with instructions to issue the writ and order that Sheppard be released from custody unless the State puts him to its charges again within a reasonable time.

Bailey argued the case before the United States Supreme Court, where he won the retrial for Sam. The case established Bailey's reputation as a skilled defense attorney, and was the first of his many high-profile cases, which included the defense of the confessed Boston Strangler; the defense of United States Army Captain Ernest Medina in the My Lai Massacre court-martial in 1971; the unsuccessful defense of Patty Hearst in her prosecution for armed bank robbery after being kidnapped by the Symbionese Liberation Army; and the acquittal of O.J. Simpson in 1995. The State of Ohio did retry Sam soon after.

At his new arraignment on September 8, 1966, Sheppard loudly pleaded, "Not guilty." Attorney Bailey was by his side. Unlike in the original trial, this time neither Sheppard nor Susan Hayes took the stand, a strategy that proved to be successful when a not guilty verdict was returned on November 16, 1966.

*"Young and beautiful, the mother of one child and pregnant with another, her bludgeoning death transfixed a nation. Every circumstance of her death and the nine-week trial of her husband that followed became fodder for an unprecedented crush of newspaper coverage. In what the United States Supreme Court later called "a carnival," Sam Sheppard was convicted of her bludgeoning death."*

Sam's life never returned to the normality it had before the early morning hours of July 4, 1954. Days after his release from prison following the Supreme Court's decision in the summer of 1966, Sam married Ariane Tebbenjohanns, a German divorcee who had corresponded with him during his time in prison. Tebbenjohanns endured her own bit of controversy shortly after her relationship with Sam was announced, confirming that her half-sister was Magda Ritschel, the wife of Nazi propagandist chief Joseph Goebbels. Tebbenjohanns emphasized that she held no Nazi views. Their marriage was short-lived, and they divorced on October 7, 1969.

After his acquittal, Sam co-authored *Endure and Conquer*, presenting his side of the case and giving insight into his years in prison. F. Lee Bailey wrote the forward. Sam also returned briefly to practicing medicine in Youngstown, Ohio, but he was sued twice for medical malpractice by the estates of dead patients and left the practice.<sup>1</sup> Later, Sheppard enjoyed a brief career as a professional wrestler—in the ring going by the name The Killer and teaming with partner George Strickland in matches across the United States. Just six months before his death, Sheppard married George's daughter, Colleen Strickland.

Sam died of liver failure on April 6, 1970, having by the end of his life become an alcoholic drinking as much as two fifths of liquor a day. He was forty-six and had enjoyed his liberty for only four years. He was buried in Forest Lawn Memorial Gardens in Columbus, Ohio, where his body remained until 1997, when it was exhumed for DNA testing as part of the lawsuit brought by his son, Sam Reese Sheppard, to clear his father's name. After the tests, the body was cremated, and the ashes were laid to rest in a mausoleum at Knollwood Cemetery in Mayfield Heights, Ohio, next to those of Marilyn.

In 1963, ABC premiered *The Fugitive*, the drama series created by Roy Huggins, starring David Janssen as Richard Kimble, a doctor falsely accused of his wife's murder and given the death penalty. En route to death row, Kimble's train derails and crashes, allowing him to escape and begin a cross-country search for the real killer, a one-armed man played in the series by Bill Raisch. *The Fugitive* was a hit and ran for four seasons, ranked as No. 36 on the TV Guide list of the 50 Greatest TV Shows of All Time. As originally conceived, the story called for the murder of Dr. Kimble's wife to have been committed by a "red-haired" man, but studio lawyers told Huggins that it was too similar to the "bushy-haired" intruder described by Sam.<sup>2</sup>

Huggins denied basing the series on Sam Sheppard, although the show's film editor, Ken Wilhoit, was married to Susan Hayes, Sam's lover and the star witness in the 1954 trial. The series was remade as a 1993 feature film starring Harrison Ford as Dr. Richard Kimble. Grossing \$368,000,000 in box office business from a \$44,000,000 budget, the film was a major financial success and was nominated for seven Academy Awards, including Best Picture.

In 1995, Sam's son, Sam Reese Sheppard, used his father's estate to file a lawsuit against the State of Ohio for Sam's wrongful imprisonment. Under state law, Sheppard had to prove that his father was innocent, a far more difficult legal standard than that of Sam's re-trial, where acquittal was required unless he was found guilty beyond a reasonable doubt. In September of 1997, Sam Reese Sheppard had his father's remains exhumed in order to conduct DNA testing and exclude Sam's

blood from the bloodstains found in the home. In response, the State of Ohio had the bodies of Marilyn and the fetus she was carrying exhumed in 1999, so that they could perform their DNA tests.

The wrongful imprisonment civil trial commenced in February 2000, with F. Lee Bailey as the first witness. After two months of testimony, seventy-six witnesses, and hundreds of exhibits, the jury deliberated just three hours on April 12, 2000, before returning a verdict in favor of the State of Ohio. On appeal, the Eighth District Court of Appeals ruled in favor of the State on the grounds that a wrongful imprisonment claim could be made only by the person actually imprisoned, and not by a family member such as Sam Reese Sheppard. Legal standing to bring such a claim, the court of appeals found, died with the person who had been imprisoned. The appeals court decision was affirmed by the Supreme Court of Ohio later that year.

Nearly fifty years after Marilyn's brutal murder, the trials finally came to an end. After tens of thousands of transcript pages in the numerous trials, ten books, thousands of newspaper articles, a television series, and a major motion picture, no one knows who killed her.

The bludgeoning death of Marilyn Sheppard and the spiraling descent of her husband from respected physician to prisoner and wrestler and finally his ignominious death have fascinated Americans for two generations. Something intangible about the Sheppards, other than just celebrity, combines into an elixir that continues to enthrall. And in that mix it is impossible to separate the story from the storyteller, to determine if the national media found a story of interest to its readers and reported it, or if they fanned a tiny ember into an undeserved firestorm. Jack P. DeSario and William Mason in *Dr. Sam Sheppard on Trial*—their recounting of the 2000 trial of the civil suit filed by Sam Reese Sheppard, in which Mason was lead counsel for the State of Ohio—write that when the pretrial proceedings got underway in 1999, the prosecutor's office was handling several gruesome cases, including that of Mary Jo Pesho, a Parma wife and mother who had been abducted at a mall and tortured, raped, and murdered in the back of a van; and that of Thomas McCarthy, a serial rapist who broke into a young woman's home, hung her up by her thumbs, and tortured and raped her. Either of these stories would have warranted extensive media coverage, yet when Marilyn's casket was transported that same year to the coroner's office for DNA testing, the drive turned into a public spectacle, with fleets of satellite trucks, television vans, and helicopters.<sup>3</sup>

Ohio Supreme Court Justice Bell captured it well in the opening paragraph of his decision in 1956:

Murder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a

degree perhaps unparalleled in recent annals. Throughout the preindictment investigation, the subsequent legal skirmishes and the nine-week trial, circulation-conscious editors catered to the insatiable interest of the American public in the bizarre . . . . In this atmosphere of a 'Roman Holiday' for the news media, Sam Sheppard stood trial for his life.<sup>4</sup>

## ENDNOTES

<sup>1</sup>Jack P. De Sario and William D. Mason, *Dr. Sam Sheppard on Trial* 79 (Kent, Ohio: Kent State University Press, 2003).

<sup>2</sup>Cynthia L. Cooper and Sam Reese Sheppard, *Mockery of Justice* 30 (New York: Onyx, 1997).

<sup>3</sup>DeSario & Mason at 3, 51.

<sup>4</sup>*State v. Sheppard*, 135 N.E.2d 340, 342 (Ohio 1956).



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