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The Dr. Sam Sheppard Trial

by Douglas O. Linder

On July 4, 1954, Marilyn Sheppard, the wife of a handsome thirty-year-old doctor, Sam Sheppard, was brutally murdered in the bedroom of their home in Bay Village, Ohio, on the shore of Lake Erie. Sam Sheppard denied any involvement in the murder and described his own battle with the killer he described as "bushy-haired."

Did Sam do it? It's rare for a murder mystery to endure for over half a century. Almost always, if the mystery is not fully resolved at the trial, subsequent admissions, previously uncovered clues, or more sophisticated forensic tests reveal what the trial did not. Not so with the Sam Sheppard case. Facing two different juries, twelve years apart, Sam Sheppard was found guilty by one jury, not guilty by the next. Even over the past decade, partisans continued the debate. A third jury in 2000, asked to consider awarding the Sheppard family damages for wrongful imprisonment, sided with county prosecutors. In 2001, a book on the Sheppard case concluded that Sam was clearly innocent. Two years later, another book on the case argued just as forcefully that the first jury got it right: Sam was guilty as charged.

Apart from the large unanswered question of guilt, the Sheppard case deserves to be considered among the nation's most famous because it produced a landmark U. S. Supreme Court decision on fair trial rights and launched the career of a flamboyant young defense attorney named F. Lee Bailey. The case is also remarkable for the unlikely collection of notable figures that touched the case, including columnist and quiz show star Dorothy Kilgallen, Cleveland Browns quarterback and NFL Hall-of-Fame member Otto Graham, and chief Nazi propagandist, Joseph Goebbels. The case also was widely associated with a popular early 60s' television show, *The Fugitive*.

Fourth of July, 1954

The evening of Saturday July 3 had been a pleasant one at the home of Sam and Marilyn Sheppard. Friends from their neighborhood, Don and Nancy Ahern and their two children, joined the Sheppard family for drinks and a casual dinner. From a screened porch, the Sheppards and Aherns finished dinner and watched the sun set over Lake Erie. Don Ahern brought his two children back home, put them to bed, and drove back to the Sheppards. After Marilyn tucked their seven-year-old son, Chip, into his upstairs bedroom, the two couples sat down to watch the movie *Strange Holiday* on one of the two available television channels. Marilyn sat on Sam's lap until Sam, having had a long and trying day in the emergency room at Bay View Hospital, moved to a daybed in the living room and fell asleep. Shortly after midnight, Marilyn showed the Aherns to the door.

At 5:40 the next morning, Spencer Houk, the mayor of Bay Village, was roused by a phone call. On the line was his friend Sam Sheppard. "My God, Spence, get over here quick," Sam exclaimed, "I think they have killed Marilyn." Houk quickly dressed and, with his wife Esther, drove the short distance to the Sheppard home, where they found

the bare-chested Sheppard in his den leaning back in a swivel chair and holding his neck.

Asked what had happened, Sheppard offered a mumbled and--on the face of it--improbable account. Sheppard said that he was sleeping downstairs on the daybed when he heard Marilyn shout, "Sam!" According to his story (which he repeated later to police officers), Sheppard ran up the dimly lit stairs to their bedroom where he saw a white "form" standing next to his wife's twin bed. He grappled with the form, but was hit on the back of his neck and lost consciousness. When he came to, he took Marilyn's pulse and determined her to be dead. After checking Chip's room next door and finding his son sleeping unharmed, Sheppard ran downstairs, where he saw the form again--this time running out the back door leading to the Lake Erie shore. Sam chased the form down the stairs toward the lake, again battled with the tall "bushy-haired" form. Sam described what happened after he "lunged or jumped and grasped" the form on the beach: "I felt myself twisting or choking, and this terminated my consciousness." When he revived in the breaking dawn, wet and somehow now missing his t-shirt and watch, he went back into the house and called Mayor Houk. Sheppard remained vague about many details: he didn't know how many intruders were in the bedroom when he first was injured, and he couldn't even be certain of the sex of the fighting "form" (calling the intruder a "biped" in one interview). He attributed his inability to be more specific to the effects of having been knocked out.

At 6:00, Bay Village police officer Fred Drenkhan arrived at the Sheppard home. Drenkhan found Marilyn's body lying face up in her bed, with her face turned toward the door. Her pajama top was pulled up, baring her breasts. Her pajama bottom had been removed from one leg, leaving her pubis exposed. Her legs had been pulled beneath the wooden bar and the foot of her bed. Marilyn's face was all but unrecognizable. Over twenty curved gashes cut deeply into her face and scalp. Blood outlined her body, staining the cover and pillow. On the walls and closet doors were dozens of spots of blood. An autopsy would later determine her time of death at "about 4:30 A.M." The autopsy also showed Marilyn to have been pregnant with a four-month-old male fetus.

Investigating the rest of the home, Drenkhan found evidence of either a robbery or a staged robbery. Sheppard's black medical bag stood on end in the hallway, its contents spilled out on the wooden hallway floor. In the den, a high school track trophy of Sam's and a bowling trophy of Marilyn's lay scratched and broken on the floor. Drenkhan discovered the drawers of Sheppard's desk opened--but all in an oddly even way and nothing appeared to be missing.

While police continued their investigation of the Sheppard home, the best NFL quarterback of his time, Otto Graham of the Cleveland Browns, decided to stop by and see what all the ruckus was about at his neighbor's home. Otto's wife, Beverly, was a good friend of Marilyn's; while Otto sweated away in training camp, Sam Sheppard would take Marilyn and Beverly water skiing in Lake Erie. Even though the crime scene had not yet been secured, officers allowed Graham to inspect the Sheppard's bedroom. *The Saturday Evening Post* quoted Graham on what he thought as he viewed the blood-spattered room: "Oh my God. It looks like someone stood in the middle of the room

with a great big can of red paint and a brush and flicked it all around. This wasn't a couple of blows. Oh no. Whoever did it, they had to be out of their mind."

Cuyahoga County Coroner Sam Gerber and an investigator arrived at the Sheppard home shortly before 8:00. As Gerber listened to Officer Drenkhan's report of his preliminary investigation of the crime scene, his suspicions of Sam Sheppard rose. Sheppard's account of events made little sense. The neatly pulled out desk drawers were not what he'd expect from a robbery. There did not appear to have been a forced entry. Gerber conducted his own investigation on the assumption that the crime was a domestic homicide. As a result, he devoted less effort to recovering fingerprint and blood evidence than might have been expected in a neutral investigation.

Completing his preliminary work at the Sheppard home, Gerber was driven to Bay View Hospital so that he might interview one of its newest patients, Dr. Sam Sheppard. Gerber interviewed Sheppard for just ten minutes. He gathered Sam's clothes, including his waterlogged shoes, belt, boxer shorts, and pants. On the trousers he spotted a large bloodstain on the left knee, suggesting that he had knelt in blood. Later that day, back in the Sheppard home, Gerber was overheard telling a detective, "It's obvious that the doctor did it." Gerber ordered two young detectives to visit Sheppard in his hospital room in the hope of gaining a full confession. The detectives did not achieve their mission: Sam stuck to his improbable story. When Detective Robert Schottke directly accused Sheppard--"I don't know about my partner, but I think you killed your wife"--, Sheppard insisted, "I loved Marilyn." Before the long day was over, Sheppard would have two more notable guests see him in his hospital room: future Hall-of-Famer Graham and Cleveland's most famous criminal defense attorney, Bill Corrigan.

The Investigation Intensifies

The Sheppard murder quickly became an obsession of Cleveland newspapers. The morning after the Marilyn Sheppard's death, a large picture of her ran below the Cleveland Press's banner headline, DOCTOR'S WIFE MURDERED IN BAY VILLAGE. Below the photo of Marilyn was a picture of Sam in his hospital bed, with an orthopedic brace around his neck. The accompanying story was sympathetic to Sam and suggested that "drug thieves" were suspected in the "bludgeoning."

Before long, however, as facts and rumors emerged and mixed, the press would turn increasingly hostile toward Sam Sheppard. No one played a larger and more critical role in the intensifying attacks on Sheppard than the influential (called by many "Mr. Cleveland") editor of *The Cleveland Press*, Louis B. Seltzer. On July 8, the paper accused the Sheppard family of trying to thwart the murder investigation, quoting Assistant Prosecutor John Mahon: "In my twenty-three years of criminal prosecution, I have never seen such flagrant stalling as in this case by the family of Dr. Samuel Sheppard." The next day, the Press reported on page 1: "Doctor Samuel H. Sheppard declined to submit to a lie detector test for questioning about the slaying of his attractive wife." The same day, an editorial in the paper criticized the pace of the investigation: "The principal problem is the fact, that, for whatever reasons, the investigative authorities were slow in getting started, fumbling when they did, awkward in breaking through the protective

barriers of the family, and far less aggressive than they should have been in following out clues, tracks, and evidence." By July 21, the Press made a full-throated cry for Coroner Gerber to publicly question Sheppard with a front-page editorial headlined, "WHY NO INQUEST? DO IT NOW, DR. GERBER."

In the days following the murder, investigators focused on the search for a possible motive. A neighbor's report that Marilyn had told her that Sam was sterile from too much time near x-ray equipment led police to speculate that the murder might have been retaliation for Marilyn becoming pregnant with another man's child. Tests of the fetus, however, dispelled that theory. Before long, Sam's appetite for extramarital sex soon emerged as favored theory for why a successful doctor might want to kill his attractive and pregnant wife. Bay Village Police Chief John Eaton learned from Nancy Ahern that Sam was seeing a nurse from Bay View Hospital, and had showered her with gifts.

The subject of extramarital affairs came up on July 10 at sheriff's headquarters, where Sam Sheppard voluntarily appeared for questioning about the murder. Police had learned the name of a possible partner, a lab technician living in California named Susan Hayes. Asked, "Did you ever have an affair with a Sue Hayes?" Sam replied that they had been nothing more than "good friends." In fact, Sam Sheppard and Susan Hayes had been a good deal more than close friends. Shortly after they first met in 1951 when Hayes performed lab work for Sheppard's emergency calls, their relationship turned sexual--with torrid encounters either in Sheppard's car or the intern's apartment. Later, when Susan Hayes confirmed that their relationship was indeed sexual, the public saw Sheppard as a liar with a motive to kill.

The very day that the *Cleveland Press* editorialized for Sam Gerber to hold an inquest, the coroner responded by scheduling an inquest to begin the next day in a Bay Village school gymnasium. The gym was packed for the afternoon session of July 22, when Sam Sheppard--still wearing his neck brace--sat at a table and answered Gerber's questions. Sheppard's attorney, Bill Corrigan, was forced by Gerber to watch the proceedings from the stands. Sam's account of events struck many observers as unnaturally detached and cool. Asked, for example, whether he ran or walked to catch "the form" he followed down to the beach, Sam replied: "I can't give you a specific recollection. I proceeded as rapidly as I could."

Called back for further questioning the next morning, Sheppard faced questions concerning his relationship to Susan Hayes. Sticking with his attorney's advise to "deny any sexual relations" (on the theory that the questions were irrelevant and likely to be ruled inadmissible in a criminal trial), Sheppard answered "Absolutely not" when asked by Gerber, "Did you and Sue Hayes at any time sleep in the same bed?" The crowd seemed to cheer on Gerber as he pressed Sheppard with more specific questions concerning a particular four-night stay at a private home in southern California a few months before the murder. When Bill Corrigan, watching the spectacle from his perch in the stands, shouted at a private court reporter he had hired to report audience hooting and hollering in the transcript he was preparing, Gerber ordered the defense attorney forcibly removed from the gymnasium. The mostly female crowd of spectators cheered wildly.

While the inquest satisfied one demand of Louis Seltzer's paper, the colorful editor soon had another one. A week after the show in Bay Village's school gymnasium, the Cleveland Press ran an editorial headline, QUIT STALLING-- BRING HIM IN. The page 1 editorial argued that Sheppard should be brought to police headquarters for a grilling: "Everybody's agreed that Sam Sheppard is the most unusual murder suspect ever seen around these parts. Except for some superficial questioning during Coroner Sam Gerber's inquest he has been scot-free of any official grilling into the circumstances of his wife's murder." On cue, police arrested Sheppard that evening at 10:30 at the home of his parents. Over the next two days, two teams of detectives grilled Sheppard for twenty-two hours. Still, however, they were unable to extract a confession. Sheppard stuck to his story.

On August 16, a grand jury met to consider evidence against Sheppard. They listened as Mayor Houk described a conversation with Marilyn in which she called her husband "a Jekyll and a Hyde." Susan Hayes, flown back to Ohio from her new home in California, described the intimate nature of her relationship with "Doctor Sam." Police investigator Inspector James McArthur told the jury that he saw premeditation in the many blows--with Sheppard's philandering providing the motivation. He told jurors that there was "some evidence" that Sam wanted a divorce, but Marilyn refused to give him one. On August 17, just one day after Sheppard has been released from jail on \$50,000 bail, the grand jury returned a first-degree murder indictment against him and he was re-arrested.

The 1954 Trial

The trial of Sam Sheppard opened on October 18, 1954 in the Cleveland courtroom of seventy-year-old Judge Edward Blythin. Celebrity journalists flocked to the city for a trial that promised sex, mystery, and intrigue in abundance. One of those on hand as jury selection began was Dorothy Kilgallen, a syndicated columnist and popular star of the television quiz show "What's My Line?" In an early report from Cleveland, Kilgallen wrote, "The fact that at this stage it is equally possible for the rational mind to find him innocent or guilty is what may make the Sheppard trial a celebrated cause to rank with....the classic puzzle of Lizzie Borden." Shortly after she wrote that sentence, Kilgallen had a surprising and disturbing conversation with Judge Blythin. Called back to the judge's chambers during a break in jury selection, Kilgallen listened in shock as the judge described the case as "open-and-shut": "He's guilty as hell" the judge explained. (Kilgallen chose to keep the judge's remarks a secret until the judge's death nearly a decade later, knowing that the judge intended the remark to be off the record. Had she reported Blythin's prejudgment, it could very likely have been the basis for a successful motion to remove him from the case.)

The trial began with a series of defeats for the defense. Most significantly, Judge Blythin denied defense motions to move the trial out of Cleveland and to delay the trial until publicity about the case could die down. The trial would proceed with a jury already

familiar with many of the facts--and the rumors--surrounding the Sheppard murder. All but one member of the jury admitted having read about or seen televised reports on the case. The jury's assignment to impartially judge the facts presented in the trial became further complicated when Cleveland papers published each of their photos and names

On November 3, the seven men and five women of the jury were bussed to the Sheppard home and led on a tour that included the bedroom where the murder took place, the den with the desk and its evenly pulled out drawers, and the stairs leading to the beach--covered by waves on this windy and overcast day--where Sam claimed to have wrestled with the bushy-haired intruder. Sheppard, cuffed to a deputy, followed behind the citizens who would judge his fate. When the tour stopped in the room of his son Chip, Sheppard sobbed at the sight on the dresser of a stuffed teddy-bear.

The next day, jurors listened to opening statements. Prosecutor John Mahon told jurors, "A reasonable interpretation of the state's evidence will point the finger of guilt at Sam Sheppard." He said that the evidence would show that "this defendant and Marilyn were quarreling about the activities of Dr. Sam Sheppard with other women" and that "that is the reason she was killed." Fred Gramone, outlining the case for the defense, argued that the evidence would not show Sam Sheppard had a motive to kill. Garmone told jurors that the expecting couple had just "enjoyed the best four months of their marriage."

The first prosecution witness was Dr. Lester Adelson, who over nearly two days on the stand, succeeding in proving that Marilyn Sheppard indisputably died a violent death. He displayed gruesome color autopsy slides, as jurors and spectators gasped. Sam Sheppard, who sought but was denied permission to leave the courtroom during the slide show, stood in a corner of the room with his back to the screen. On cross-examination, Bill Corrigan tried to establish that Sheppard died from choking on her own blood, but Adelson was firm: "Mrs. Sheppard died because she was beaten to death. She was alive when those blows, or some of them, were struck because hemorrhages found in her brain could not otherwise have developed."

Patrolman Fred Drenkan's testimony laid the groundwork for the prosecution's circumstantial case for Sheppard's guilt. Drenkan left little doubt that he found Sheppard's story of a fight on the beach with a large "bushy-haired" man implausible. He told the jury that he found no signs of a struggle inside the home, no indication of forced entry, and that there were no reports that night of prowlers in the neighborhood.

Coroner Sam Gerber, the prosecution's star witness, picked up the chase where Drenkan left off. Gerber testified that a bloody stain on Marilyn's pillow appeared to have been caused by the murder weapon. In perhaps the most damning statement of the entire trial, Gerber told the jury: "In this bloodstain I could make out the impression of a surgical instrument." Defense attorney Corrigan jumped to his feet to demand the remark be stricken, but Judge Blythin denied the motion. Gerber offered two color slides of the pillow stain. As the image of the pillow appeared on a screen in the courtroom, Gerber used a pointer to direct the jury's attention to what appeared to be the outline of a claw-like object. Gerber handed the pillowcase to the jurors, who passed it around and--like a

Rorschach test--drew their own conclusions about the abstract shape. (During cross-examination, Corrigan suggested that the imprint was simply the result of an overlay of the pillow caused by its rumpling when the blood was still wet. Gerber, however, persisted in his contention that the blood imprint revealed far more than that.) In a second slide show later in the day, Gerber produced slides showing Sam Sheppard's blood-splattered watch--blood which, Gerber hinted, must have come from Marilyn as she was brutally battered by her husband.

Detective Robert Shottke followed Gerber to the stand. Shottke identified inconsistencies in Sheppard's story, telling jurors that in one telling he was first hit by the form going upstairs, in another version clubbed in the hallway, and in still another account in the murder room itself. Shottke also set the stage for Susan Hayes by testifying that in his interrogation of Sheppard, Sam had insisted that he and the laboratory technician were nothing more than "good friends."

Before the jury could meet Susan Hayes, however, they heard from a parade of investigators. Fingerprint expert Jerome Poelking testified that the only fingerprint he recovered from the bedroom came from the headboard of Marilyn's bed and "was identical with the left thumb of Sam Sheppard." On cross-examination, Corrigan forced Poelking to concede that the thumb print might have been left well before the night of the murder. "Did you ever hear of a man coming into a bedroom and kissing his wife at night?" Corrigan asked. Mary Cowan, chief medical technologist in the coroner's office, testified that Marilyn had Group O blood--and that the blood tested on Sam's trousers appeared to be Group O blood, but was not entirely conclusive.

On December 1, twenty-four-year-old Susan Hayes, referred to previously in the trial only as "Miss X," was led into Judge Blythin's courtroom. Answering questions in a flat voice, the attractive witness described her intimate relationship with Sam Sheppard. Prosecutor Fred Garmone's last question for the last witness in the prosecution's case in chief hinted at a possible motive for the July 4 murder: "In all this period you have told us about, in which your activities with Sam were going on, you were aware, were you not, that he was a married man?" "Yes," Hayes answered. With that, John Mahon stood to announce, "Your honor, the state rests." The defense moved for a directed verdict of acquittal but, predictably, Judge Blythin returned to court the next day and announced that he was denying the defense motion.

One of the major goals of defense attorney Bill Corrigan was to persuade the jury that his client suffered a serious injury on the night of his murder--an injury that it would be difficult, if not impossible, to self-inflict. While it is possible, of course, that Sheppard's injury could have been caused by Marilyn trying to fight off her attacker, Corrigan hoped that the jury would believe that the injuries provided strong support for Sam's story about grappling with a bushy-haired intruder. Dr. Steven Sheppard testified that when he first saw Sam on the morning of July 4, "I thought he was dead." Touching his neck, Steven Sheppard said, "There were muscle spasms--involuntary movements." Sam was "blacking out" and had to be "practically dragged" out of his house to the hospital. Corrigan called four attending doctors and three nurses from Bay View Hospital who

confirmed Sam's injuries. Nurse Anna Franz testified that Sam's "feet were all shriveled up, as if they had been in water a long time." Dr. Gervase Flick, a radiologist, testified that an x-ray of Sam revealed a probable fracture of his second cervical vertebra. Dr. Clifford Foster told jurors he found swelling at the base of Sam's skull. Dr. Charles Elkins testified that neck spasms he detected when he examined Sam could not be faked, but showed a real and significant injury.

Except for the parade of witnesses supporting Sam's claim of a serious injury and a few attempts to poke holes in the prosecution's case, the rest of the defense strategy came down to putting Sheppard on the stand and hoping that the jury believed him. Working against him was his tendency toward arrogance and glibness that could undermine efforts to win the jury's sympathy. Sam, wearing a blue suit, white shirt, and knitted tie, walked to the witness stand came on December 9 to begin what would be three full days of [testimony](#).

Sheppard described his relationship with Marilyn as a fairly happy one. He claimed that the topic of divorce never arose between them. Sure, Sam testified, there were some disagreements, as when Marilyn bought an electric dishwasher with money he thought should go to insurance payments, but never anything out of the ordinary in intensity. Marilyn, he always felt, was "in my corner."

Sheppard's description of the events of the murder night roughly tracked his earlier statements. His style, however, was stilted. He "visualized"--rather than "saw"--"forms," he was "stimulated" to go to Marilyn when he heard her cry, found Marilyn "in a bad condition," and later had a "vague sensation" of being in the water after wrestling with the "form" who had "evidence of a good-sized head." Is this what a man whose wife had been murdered would really feel and think? The jury seemed skeptical.

Prosecutor Mahon's cross-examination of Sheppard focused heavily on his relationships with other women. Mahon got Sheppard to admit that, while married to Marilyn, he met a patient in an automobile by a park and kissed her. "Was that part of your treatment, Doctor?" Mahon asked sarcastically. Sheppard also admitted to frequent sexual relations with Susan Hayes over a two-year period. Sheppard said that his brother helped him understand the need to terminate his relationship with Hayes: "Steve explained to me that the sex relation was painful to Marilyn." He emphatically denied telling Hayes at any time that he would seek a divorce from Marilyn. Before allowing Sheppard to return to his seat at the defense table, Mahon asked Sam directly about Marilyn's murder: "Isn't it a fact that you beat your wife to death?" "No, sir," Sam answered. "And after you killed her, didn't you run out of the house toward the beach and injure yourself by falling down the beach steps or jumping off the platform of the beach house?" Sam replied, "That's absolutely untrue, sir--and I think it's very unfair."

Closing arguments began on December 15. Assistant Prosecutor Tom Parrino ridiculed Sheppard's story. Could this man "in the prime of his life" have been "rendered senseless with a single blow"? Why were there "no signs of struggle" in Marilyn's room? How could the assailant have landed 35 blows on Marilyn while Sheppard made his way up

the stairs? Why can't he remember whether he had his T-shirt on? Parrino's list of questions went on and on--and, according to many observers, seemed to move the jury. Peter Petersilge, for the defense, emphasized the glaring weaknesses of the prosecution case: "Five and one-half months since the murder, and after nine weeks of trial, the state still doesn't know how the crime was committed, with what weapon, or why." Defense attorney Corrigan concluded by telling the jurors, "You have the opportunity to turn back the tide--to tell the people of the nation--of the world--that the constitutional right to a fair trial still lives."

Judge Blythin sent the jury to its deliberations on Friday, December 17; they did not return to his courtroom until the following Tuesday. It took them eighteen ballots, but the jury finally had its verdict. Judge Blythin read the verdict form: "We find the defendant not guilty of murder in the first degree, but guilty of murder in the second degree." Blythin sentenced Sheppard to life, with his first eligibility for parole in ten years.

The 1966 Trial

For the next seven years, most of which Sheppard spent at a maximum security prison near Columbus, little went well. In the month after the jury returned its verdict of guilty, Sam's mother committed suicide and his father died of cancer. The Ohio courts rejected his appeals. His pre-trial nemesis, *Cleveland Press* editor Louis Seltzer, published an autobiography trumpeting his role in bringing Sheppard to justice.

A few developments, however, offered some promise. Dr. Paul Kirk, a respected California criminalist, after conducting a thorough investigation of the Sheppard home, published a report concluding that the murderer was left-handed, probably used a flashlight as a murder weapon, and most likely was someone who hated the Sheppards. He reported finding blood in the murder room that came neither from Sam nor from Marilyn. In July 1955, three months after Kirk's report was published, a swimmer who lived next to the Sheppard home found a dented flashlight--not "a surgical instrument"--in shallow water in Lake Erie. Finally, in November 1959, a break for Sheppard came in an unlikely way. Richard Eberling, a man who had washed windows at the Sheppard home around the time of Marilyn's murder, was picked up for larceny. A search of Eberling's home turned up, among many other stolen items, a cocktail ring owned by Marilyn Sheppard. Taking what must have seemed a stab in the dark, a police officer questioning Eberling asked him why his blood had turned up in the Sheppard home in 1954 (in fact, no such finding had been made). Eberling shocked the officer by explaining that he cut himself while removing storm windows at the home a couple of days before Marilyn's murder and had dripped blood throughout the house. These developments, in 1961, were cited by a Chicago reporter, Paul Holmes, in a book about the Sheppard case arguing for the first time that Sam Sheppard was wrongfully convicted.

With the death of William Corrigan in 1961, Sam Sheppard needed a new lawyer. He found one in a young, brash attorney named F. Lee Bailey. In April 1963, Bailey filed a petition for habeas corpus in federal court. Bailey contended, among other things, that prejudicial publicity before and during the 1954 trial violated Sheppard's right to the due

process of law.

The tide that had run against Sheppard for so long seemed to be turning. On a personal level, Sheppard had a new love interest, a buxom blond named Ariane Tebbenjohanns. Tebbenjohanns had begun correspondence with Sheppard from her home in Germany, and then traveled across the Atlantic to be able to visit him in prison. (Unfortunately, from the standpoint of public relations for Sheppard, Tebbenjohanns turned out to have an older sister who was married to--of all people--Nazi propaganda chief Joseph Goebbels.) More helpful to his prospects for freedom, potentially, was the success of a new television series, "The Fugitive," about an escaped doctor wrongfully convicted of killing his wife who spent each episode trying to track down the real killer before the authorities caught up with him and returned him to prison. The show was widely assumed by the public to be loosely based on the famous Sheppard case (although the show's creator claimed otherwise).

In mid-July 1964, Federal District Judge Carl Weinman overturned Sheppard's conviction on federal due process grounds. Weinman used strong language in his opinion, calling the 1954 trial "a mockery of justice" and quoting many of the editorials that pointedly called for Sheppard's arrest or reported incriminatory evidence that was never introduced in the trial. Almost immediately following his release from prison on a \$10,000 bond, Sheppard married Ariane Tebbenjohanns. Sheppard's joy was short-lived, however, because the Sixth Circuit Court of Appeals, on a 2 to 1 vote, reinstated Sheppard's conviction, although allowing him to remain free on bail pending his appeal to the United States Supreme Court.

In February 1966, the High Court heard oral arguments in the Sheppard case, with F. Lee Bailey arguing for Sheppard and Ohio Attorney General (and future United States Attorney General) William Saxbe arguing for the state. About three months later, by a surprising 8 to 1 vote, the Supreme Court reversed the Sixth Circuit and reversed Sheppard's conviction on the grounds that the publicity surrounding the trial prejudiced Sheppard's right to a trial by an impartial jury. It took prosecutors only two days after the Court's decision to announce that they planned to retry Sheppard for the murder of his wife.

The second trial of Sam Sheppard began on October 24, 1966 in the courtroom of Judge Francis Talty. Talty made sure that decorum prevailed and that nothing would be tolerated that might re-create what the Supreme Court called "the carnival atmosphere" of the first trial.

The prosecution case in the retrial differed in significant respects from that presented in 1954. First, Prosecutor Leo Spellacy abandoned the "surgical instrument" as murder weapon theory of the first trial, and Sam Gerber was relegated to a more minor role in its case. (Still, Gerber took the stand, affording F. Lee Bailey an opportunity on cross-examination to force Gerber to concede that he "hunted all over the United States" for a surgical instrument that might match the bloody impression found in the pillow but he "couldn't find one.") Second, Spellacy chose not to dig too deeply into Sam's sex life.

Susan Hayes was not asked to come back to Ohio for a second performance. Instead, the prosecution read Sheppard's July 1954 statement denying his relations with Hayes, leaving jurors to their memories of Sheppard's previous unfaithfulness. The probable motive for the murder, prosecutors suggested, was an argument over Sam's philandering. The new twist in the prosecution's case came when Spellacy questioned Mary Cowan about blood spots found on Sam Sheppard's watch. Cowan testified that a couple of blood spots on the rim of the watch were blood splatter--the product of flying blood--that could, presumably, only have been there if Sam were the murderer. With Cowan's potentially devastating testimony, the state rested its case.

F. Lee Bailey, fortunately for his client, had a counter to Cowan's powerful testimony. Bailey had his forensic expert Dr. Paul Kirk examine color photographs of the watches. On the stand, Bailey asked Kirk about the blood found on the watch. Kirk testified, "For the most part it looks like contact transfer." Kirk conceded that the tadpole-shaped spots along the watch's rim suggested flying blood, but said the "lack of a symmetrical tail" left the issue in "doubt." Bailey saved his trump card on the watch evidence for a prosecution rebuttal witness, blood expert Roger Masters. Bailey projected large pictures of the watch, then pointed to two small spots on the *inside* of the band that appeared to resemble the blood spots on the rim that Mary Cowan had confidently concluded were the result of flying blood. Bailey asked Marsters if he had noticed the spots in question. "No, I honestly can't say that I did," Marsters replied.

Bailey did his homework. He studied the transcript of the 1954 trial and determined not to repeat Corrigan's mistakes. Unlike in the earlier trial, Bailey focused heavily on blood evidence which he argued cleared his client. Bailey questioned Dr. Paul Kirk about the pattern of blood around the murder room which seemed to radiate out from Marilyn's head. Kirk testified that the pattern suggested that the killer was left-handed (Sheppard was right-handed). Kirk also testified that his analysis showed that the largest blood spot in the bedroom, one found on a closet door near Marilyn's bed, was type O (like Marilyn's--Sam's was type A) but had agglutination properties that distinguished it from Marilyn's blood. Kirk's conclusion: the blood on the closet door came neither from Marilyn or Sam.

Bailey also believed it critical to present the jury with at least a plausible alternative killer. He considered, but rejected, Eberling, believing that a 1959 lie-detector test had cleared him of the crime. Instead, Bailey suggested that Esther Houk, angry with Marilyn for having an affair with her husband (there is evidence that Spencer and Marilyn were close, but not that they had sexual relations), killed her--possibly with the help of Spencer Houk. Bailey called a bread delivery man to the stand to testify that he looked in to the kitchen table one morning to see Marilyn drinking coffee with a "distinguished older man." (Bailey was not allowed to show that the delivery man, shown a group of photos, identified the "distinguished older man" as Spencer Houk.) In support of his avenging wife theory, Bailey got Esther Houk to admit that she ignited a coal fire in her fireplace on the morning of the murder, and then introduced national weather reports to show that the temperature that night bottomed out at 69° F. Bailey hoped that jurors would conclude that Houk started her fire to burn bloody clothes and other

evidence of her crime.

The most significant difference between the 1954 and 1966 trials, however was what did not happen at the 1966 trial. Sam Sheppard did not testify. Although Bailey understood the risk that jurors might conclude that a defendant unwilling to take the stand must have something to hide, that was a risk the defense attorney was willing to take. Sheppard's cool, pedantic style did not make a good impression with the 1954 trial. In addition, the 1954 jurors found his story about the murder difficult to swallow--and he didn't want to re-test the story with another twelve people.

In his closing argument, Bailey told the jurors that the real killer was not in the courtroom: "Someone was angry, angry enough to kill, someone who didn't have the strength in her arm that Sam Sheppard had, for indeed he would have crushed that skull like an eggshell..." Despite his earlier hints about a possible motive, Bailey said the case still left many questions unanswered. "Why was that person so angry? What had happened? What had Marilyn done to anger that person? We will never really know."

For most of November 16, 1966, Sheppard's fate lay in the hands of a deliberating jury. The first vote was 8 to 4 for acquittal, but by the evening the minority had come around. Sam Sheppard was a free man.

Epilogue

Sam Sheppard's life held no fairytale ending. He returned to his surgical practice, but with deteriorated skills and a serious drinking problem, he botched two operations, killing both patients. He took barbiturates and evidenced symptoms of kleptomania. Ariane Tebbenjohanns filed for divorce in 1968, after a stormy marriage that included threats and more infidelity from Sam. His relationship with his son was strained. Sheppard's downhill slide eventually led him, in August 1969, to make his debut as a professional wrestler using the name--believe it or not--"Killer Sheppard."

On April 6, 1970, at the age of forty-six, Sam Sheppard collapsed in his kitchen, vomiting blood. Medic called to the scene failed to revive him. A pathologist's report listed the cause of death as liver disease.

The death of Sam Sheppard did not mean an end to the continuing mystery surrounding the murder of Marilyn Sheppard. In 1989, renewed attention focused on Richard Eberling, the Sheppard's window washer, when a jury convicted him of first-degree murder in connection with an insurance scheme involving an elderly widow he had befriended. Eberling did little to quell the speculation about him as the possible murderer, telling various interviewers that he knew more than he would say about the Sheppard case--and even coming close to admitting his guilt. Eberling died in prison in 1998.

In 1997, Sam Reese ("Chip") Sheppard, Sam's son, filed a civil suit against Cuyahoga County on behalf of his father for wrongful imprisonment. Pursuant to a judge's order, both the bodies of Marilyn Sheppard and Sam Sheppard were exhumed for DNA and

forensic analysis.

In 2000, in an eight-week trial, a civil jury reconsidered the evidence of Sam Sheppard's guilt. Sheppard's legal team argued Eberling was the actual killer. They suggested that the murder followed an attempted sexual assault, which Marilyn fiercely resisted. Lawyers for the county argued that the 1954 jury got it right, pointing to blood evidence that they said cleared Eberling. In the 2000 trial, a new potential murder weapon emerged, as Cuyahoga County's attorneys presented evidence that a lamp that had rested on a nightstand between the single beds of Marilyn and Sam was the instrument of death. A neighbor who repaired the lamp and placed it on the table testified, as did officers who told jurors that no such lamp could be found in the bedroom when they investigated the murder on July 4, 1954. Sheppard's lawyers argued that a dented flashlight found in Lake Erie after the crime was the more likely murder weapon, and that blood splatter evidence undercut key evidence against Sam.

The jury ultimately sided with the county. Six of the eight jurors said in interviews they were convinced Sam did it. It's the last answer a jury will ever produce--and, most likely, the one closest to the truth.

<https://www.famous-trials.com/sam-sheppard>