

## ISSUES OF EVIDENCE

### **LESSON #1: THE SHEPPARD MURDER TRIAL**

#### **Pre-Trial Investigation**

On the evening of July 3, 1954, Dr. Sam Sheppard and his wife, Marilyn, hosted a dinner party at their suburban Cleveland home in Bay Village, Ohio. After their guests left, Marilyn retired to the upstairs bedroom. Sam remained downstairs to watch the late movie and fell asleep on the couch in the living room.

As Sam would tell it, he awoke in the middle of the night, believing he heard his wife calling him. When he reached the bedroom, he was struck from behind and fell unconscious to the floor. Upon recovering, he discovered that Marilyn had been brutally murdered. He raced downstairs and saw a bushy-haired man in a white shirt exiting through the back door. Sam chased the intruder across the lawn and lunged at him, but he was overpowered and knocked unconscious a second time.

When he revived Sam staggered up the stairs and re-examined his wife, confirming his worst fears. Then he called his neighbor, Bay Village Mayor, Spencer Houk. Mayor Houk and his wife, Esther, arrived shortly thereafter and notified the Bay Village police.

Sam was questioned briefly by local authorities and then taken to Bay View Hospital for treatment of his injuries, which included bruises, chipped teeth, and fractured vertebra in his neck. He was sedated to relieve the pain and trauma.

Later that day, detectives from the Cleveland police force, who had joined the investigation, arrived at the hospital to gather more information. They asked Sam what he had done in the two to three hours between Marilyn's death and his phone call to Spencer Houk. He didn't know. They also asked why Sam's seven year old son hadn't awakened during the ordeal or why the dog hadn't barked at the "stranger" in their house. He didn't know. In addition, they asked what had happened to the shirt Sam had been wearing that evening. Once again, Sam didn't know.

Then the Cleveland detectives asked about Sam's relationship with Marilyn, specifically whether he had had any extramarital affairs or whether he and Marilyn had ever discussed getting divorced. Sam denied both allegations, but the detectives didn't believe him. After questioning Sam that day, they recommended arresting him for the murder of his wife. However, the Bay Village authorities, who knew him personally, refused to do so.

For the next month, the Cleveland media waged an active campaign against Sam Sheppard. Readers were dismayed to learn that he had refused to take a lie detector test and that he was conferring with a famous criminal defense attorney. Front-page headlines in the Cleveland Press prodded local authorities to act:

Finally, on July 30, Dr. Sam Sheppard was arrested and on August 17, he was indicted for the murder of his wife.

**Political Cartoon Analysis: Trial by the Press**

On the day Dr. Sam Sheppard was arrested, an editorial entitled "Why Isn't Sam Sheppard in Jail?" appeared on the front page of the Cleveland Press. It was one of a number of editorials and cartoons published by editor Louis Selzer, who was convinced of Sheppard's guilt. Selzer believed the Bay Village authorities were dragging their feet and he feared Sheppard's social prominence and family connections would get him off the hook.

The cartoon below is one of a series appearing in the Cleveland Press in the weeks following the murder of Sheppard's wife, Marilyn.

Due to copyright restrictions, we cannot publish the cartoon. However, here is a brief description:

Covering the lower two-thirds of the page are two hands in hand-cuffs. Written on the left hand is the word "Officials" on the right hand is written "Police." In the upper third of the cartoon in the center is a man hidden behind a cloth which has "Murder Suspect" written on it. Flanking this character on the left are two "Lawyers" and on the right four "Friends," all of whom are holding up the cloth which shields the "Murder Suspect." The caption for the cartoon is "Handcuffs on the Wrong People?"

**Questions:**

1. With what issue does this cartoon deal?
2. What is the cartoonist's point of view, concerning this issue?
3. If you were a potential juror, what, if any, effect would daily front page editorials and cartoons of this nature have on you?
4. ~~Answer~~ describe a political cartoon, from the defendant's perspective.

# Due: week #4

## ISSUES OF EVIDENCE

### **LESSON #2: STATE OF OHIO V. SAMUEL SHEPPARD (1954)**

#### **The Prosecution Case**

According to Paul Holmes, a reporter for the Chicago Tribune who covered the Sheppard trial, "the State's case for murder was that Doctor Sam had beaten his wife fatally but had taken time before reporting her death to hide the murder weapon, erase fingerprints from the house, wash blood from himself and inflict trivial injuries on himself to support his story of murder "an intruder with whom he had struggled." (Chicago Tribune, August 20, 1961)

The jury was shown gruesome pictures of the blood-spattered death scene and expert testimony was provided by the coroner's office as to the cause of death. Thirty-five wounds were found on Marilyn's body, including fifteen to the head. Dr. Samuel R. Gerber told the jury he had carefully examined the scene of the crime and had observed the impression of a surgical instrument in the bloody pillowcase on the victim's bed. This testimony was not challenged by the defense, and it was particularly damaging.

Mary Cowan, the coroner's chief medical technologist, analyzed blood samples to determine whether a third person was present at the crime scene. She testified that her results were "inconclusive."

The State claimed there was no forensic evidence to support Sam's story... no fingerprints, no evidence of forced entry, nothing to suggest that an intruder was in the Sheppard home when the murder was committed. Furthermore, the believability of Sam's story was questioned. Why would a murderer savagely beat Marilyn to death, and only knock Sam out? Murderers don't generally leave living witnesses at the scene of a crime.

As for motive, the prosecution called several family friends and neighbors who testified about the Sheppards' marital difficulties, claiming that either Marilyn or Sam had told them they were considering a divorce. A key witness for the prosecution was Susan Hayes, who testified about her two-year affair with Sam Sheppard, including a four-night tryst in Los Angeles earlier that year. She also said Sam had talked about divorcing Marilyn in order to marry her. With this testimony, the prosecution was able to show that Sam lied to legal authorities during the pre-trial investigation.

#### **The Defense Case**

The defense maintained that although Sam may have been unfaithful to his wife, he still loved her and his child. Several witnesses, including Sam's brother, Dr. Steve Sheppard and his wife, Betty, told the jury that Sam and Marilyn were a happy couple.

As for the contention that Sam's injuries were minor and self-imposed several medical experts described Sam's pain and disorientation when he was admitted to the hospital. They also testified as to the seriousness of his neck and spinal cord injuries. One expert commented on the unlikelihood of inflicting such injuries on oneself, noting the high risk

of paralysis.

Sam testified that a bushy-haired intruder with a white shirt had attacked his wife and knocked him out. Two witnesses for the defense stated they had seen a man fitting that description in the vicinity, but both admitted failing to report their observations until a \$ 10,000 reward was offered by the Sheppards. In general, the defense criticized the State's investigation of the murder. They claimed the crime scene had been contaminated by neighbors and reporters before the house was impounded by the police. A cigarette in the upstairs toilet, for example, disappeared without being tested, even though neither Marilyn nor Sam smoked. A trail of blood from the bedroom down the stairs was never tested. Furthermore, no murder weapon was produced. However, since the defense failed to have its own experts examine the scene of the crime, no forensic evidence was presented to challenge the expert testimony of the prosecution witnesses. Likewise, the defense could not refute the testimony of Susan Hayes. In fact, on cross examination, Sam admitted to several other instances of infidelity.

The defense argued that all of the evidence against Sam was circumstantial; he may have committed adultery, but he certainly didn't kill his wife. The defense also argued that the media coverage was prejudicial, creating an atmosphere of guilt in the public mind before the trial ever began.

### **Jury Deliberation**

After six weeks of testimony in the Sheppard trial, the jury met to deliberate. A unanimous verdict was required. On the first ballot, the jury was evenly divided. After 100 hours of deliberation and 17 more ballots, a unanimous verdict was returned.

### **QUESTIONS:**

- 1. What verdict do you think the jury rendered in this case?**
- 2. If you had been a juror, would you have voted for acquittal or conviction?**
- 3. What was the most compelling argument/evidence presented by the prosecution? by the defense?**
- 4. After all the witnesses have testified, attorneys for each side of the case deliver closing arguments to the jury, summarizing the evidence as persuasively as possible and urging the jurors to render a favorable verdict. Choose the prosecution or defense side of the Sheppard case and write a closing argument.**

# Due: Week #6

## ISSUES OF EVIDENCE

### **LESSON #3: THE VERDICT AND NEW EVIDENCE**

#### **The Verdict**

In all criminal cases, the State bears the burden of proof. That is, the State must prove, beyond a reasonable doubt, that the defendant committed the crime for which s/he is being charged.

In the Sheppard murder trial, the jurors had several options. If they believed there was reasonable doubt that Sam Sheppard killed his wife, they could vote to acquit him. Even if there was no reasonable doubt, various alternatives existed. Sheppard could be found guilty of first-degree murder (a capital offense), second-degree murder (a crime punishable by life imprisonment), or manslaughter (a lesser charge with a shorter prison term).

After eighteen ballots, the jury voted unanimously to convict Dr. Sheppard of second-degree murder. Some jurors originally favored the less serious crime of manslaughter, but none voted in favor of the capital crime, first-degree murder. As a result of the jury's verdict, Dr. Sheppard was sentenced to life in prison.

The verdict was appealed on the basis of "newly discovered evidence," but the appeal was denied by a three-judge panel in July, 1955. The Ohio Supreme Court confirmed the verdict of the lower court in April, 1956. In November, 1956, the U.S. Supreme Court refused to hear the case, thus upholding the decision of the lower court.

#### **New Evidence**

The original basis for appeal in the Sheppard case was the discovery of "new evidence." The defense claimed the police impounded the Sheppard home and refused access to the crime scene until after Sam Sheppard was convicted.

Immediately following Dr. Sheppard's conviction, a nationally known criminologist, Dr. Paul Kirk was hired to inspect the murder scene on behalf of the Sheppard family. Dr. Kirk found considerable evidence pointing to Sam Sheppard's innocence, including a blood sample which he said indicated the presence of a third person at the murder scene. He also generated a list of tests the coroner's office should have conducted but didn't, implying that the coroner's investigation was biased.

In addition, the defense claimed the prosecution suppressed evidence which would have created reasonable doubt in the minds of the jurors. The evidence consisted of a laboratory work card on which lab technician, Mary Cowan, recorded test results from blood that was found on Marilyn Sheppard's wristwatch. When she testified at the trial, Ms. Cowan said her results were "inconclusive." Her testimony was not challenged because the defense was unaware of the existence of the work card pictured on the following page.

## Analyzing A Primary Source Document

The following is a list of the information in the coroner's technician's report.

The report card reads: In re: Marilyn Sheppard

Source of specimen: Sheppard home. Identified by Dr. S.R. Gerber as property of Marilyn Sheppard.

Submitted by Dr. S.R. Gerber of Coroner Agency at 10:50 am 7-6-54

Received by M. Cowan

Description of Specimen: 1 stopped vial containing 1 lady's yellow metal wrist watch (Hamilton) with yellow metal wristband. Watch has stopped time indicated: 3:17.

Written on the top of the other side of the report card is: "Turned over to Prosecutor's office"

Laboratory Examination: 7-7-54 Benzidine test on stains on watch-- positive. Crusted stains removed and tested for agglutinins against known A, B, and O cells received from R. Marsters (11:40am 7-7-54). Results inconclusive although there appeared to be slight agglutination of both A and B cells. Observe at intervals over 3 hr period and after 18 hrs. Tested by (signed) M. Cowan at 7/7/54 2:00pm  
Repeated 7/9/54 Similar results.

### Questions:

1. An agglutination test is a standard method of determining blood groups. What blood groups did ML Cowan discover when she tested the "crusted stains" of blood on Marilyn Sheppard's watch?
2. When was the agglutination test conducted? Were the results confirmed?
3. If Marilyn Sheppard's blood was group O and Sam Sheppard's blood was group A, what reasonable deduction could be made by the defense concerning the information on this card?
4. The defense claims this card was never made available to them. Was it made available to the prosecution?
5. A key argument made by the prosecution in the 1954 trial was the lack of forensic evidence indicating the presence of an "intruder" in the Sheppard house at the time of the murder. What justification can you give for the prosecution's position, given the information on this work card?
6. The jury was never shown this laboratory work card, if it had been shown to the jury, do you believe it would have been sufficient to raise "reasonable doubt" in the minds of the jurors? Why or why not?
7. Regardless of the new evidence presented by the defense, all efforts to appeal the verdict of the jury in the Sheppard trial were denied. Write a Letter to the Editor of your local newspaper favoring or opposing this decision by the various courts of appeal.

# Due: week #8

## ISSUES OF EVIDENCE

### **LESSON #4: STATE OF OHIO V. SAMUEL SHEPPARD (1966)**

In formulating their opinions, jurors are required to consider only the evidence presented in the courtroom. However, the jurors in the Sheppard case were not sequestered during the 6-week trial. Day after day, they were exposed to extensive news coverage and editorial commentary of a prejudicial nature when they left the courtroom. In addition, the courthouse itself was a media circus.

On that basis, defense attorney, F. Lee Bailey filed suit in federal court, claiming Dr. Sam Sheppard was denied his constitutional right to a fair trial. District Court Judge Carl Weinman agreed, calling the Sheppard trial a "mockery of justice" and, on July 16, 1964, he ordered Sheppard released from prison. Although his ruling was reversed by a federal appeals court a year later, Sheppard was allowed to remain free, pending an appeal to the U.S. Supreme Court.

In June, 1966, the Supreme Court upheld Weinman's decision, stating: "The massive, pervasive and prejudicial publicity attending petitioner's prosecution prevented him from receiving a fair trial, consistent with the due process clause of the 14th Amendment."

The Supreme Court did not determine the guilt or innocence of Sam Sheppard on the murder charge; the Court simply ruled that he was denied a "fair trial." So, within a few months of the Court's ruling, the State of Ohio retried Sheppard for the murder of his wife a second time. Following new federal guidelines, the jury was sequestered in a hotel for the duration of the trial, their phone calls were monitored and their only news came from censored newspapers. Furthermore, no television cameras were allowed in the courtroom and seating for news reporters was restricted. The trial concluded in a matter of days with a unanimous verdict of "not guilty." Twelve years after his original conviction, Sam Sheppard was a free man.

#### The Search Goes On

A "not guilty" verdict does not mean the defendant is innocent, it only means there is insufficient proof of guilt. Innocence requires proof that the accused did not commit the crime or proof that someone else did.

Dr. Sheppard died four years after his release from prison, penniless, and still professing his innocence. His son, Sam Reese Sheppard has since taken up the cause of clearing his father's name. Consequently, the search for evidence continues. If the younger Sheppard can prove his father's innocence, he may be able to recover damages for false imprisonment.

Sheppard and his attorneys point to DNA and other evidence to implicate Richard Eberling in the murder of Marilyn Sheppard. Eberling, a window-washer for the Sheppards, died in prison in 1998 serving time for another murder.

Aided by a Supreme Court ruling that now requires prosecutors to disclose exculpatory evidence, police records that were suppressed in the 1954 and 1966 trials have recently been made available to Sam R Sheppard.

Among the evidence collected by the police in 1954 was a plaster impression of a freshly made pry mark found on the basement door of the Sheppard house. A copy of the detective's report describes evidence of a forced entry with a wedge-like tool. Given the fact that the prosecution case against Sam Sheppard was based, to a great extent, on the lack of evidence of forcible entry into the house, this disclosure is critical for a finding of innocence and a wrongful imprisonment lawsuit against the State of Ohio.

Also secured from the police was a wood chip from the Sheppards' stairway with blood on it. It was part of a trail of blood that was never tested. The trail led from the bedroom to the main floor and down the basement steps. Prosecutors assumed it was Marilyn's blood that had dripped from the murder weapon. However, defense criminologist Dr. Paul Kirk, noted that Marilyn's two front teeth were missing and theorized that she had bitten the killer, who could have bled on the steps as he exited the building.

In 1997, DNA testing determined that the blood on the stairway was not Marilyn's. It was, however, consistent with Richard Eberling's DNA. Eberling was arrested by authorities in 1959 with Marilyn's ring in his possession. He told authorities he had dripped blood on the Sheppards' steps two days before the murder, when he was washing windows and cut himself. However, a former employee of Eberling's, Vern Lund, has since testified that HE washed the Sheppard's windows on July 2, not Eberling. Another former employee, Ed Wilbert, disclosed the hostile feelings Eberling had for Marilyn because she had caught him stealing and threatened to spread the word.

Eberling's past history indicates stages of psychotic anger and a string of suspicious deaths, culminating with his arrest and conviction for the murder of an elderly woman in 1987. Among the stories revealed by his fellow inmates is Eberling's admission that he killed Marilyn Sheppard, wearing a wig so as not to be recognized in the vicinity, and when Dr. Sheppard came to her aid, he knocked him out twice.

With a wig, Eberling fits the description of the "bushy-haired intruder" given to the police by Dr. Sheppard, including height and weight specifications.

State prosecutors argue that too many key witnesses have died and too much evidence has been lost to try the case again. They claim the DNA samples are unreliable, since the evidence tested was old and may have been contaminated. Problems with the claim of custody may even make the DNA findings inadmissible in court, and the tests cannot be replicated due to the lack of evidence still available to analyze. They also argue that time and money should not be spent proving the innocence of a deceased persons. Furthermore, they claim that litigating this case will open a floodgate of similar complaints, tying up the courts and costing taxpayers money.

Questions:

1. If you were a juror in the civil case for damages against the State of Ohio, which side of the case would you find most convincing?
2. If damages were awarded, what amount would be "fair" in a case such as this?

3. Should policy factors enter into jury deliberation?
4. Assume the role of a news editor. Write an editorial describing what happened in the Sheppard case and how it illustrates the way the American jury system works.