"Ladies and gentlemen of the jury, now that you have been sworn as jurors for the trial of this case and you are about to leave this courtroom, the Court is going to do what the law of this state calls for and requires that he shall do. I have already stated to you what the law prescribes, and I will state it again in order that there be no misunderstanding whatever about it.

"You are not to talk to anyone about this case or any matter in connection with it at any time during the progress of this trial. You are not to permit others to talk to you about it. You are not to remain anywhere where other people are talking about it among themselves, whether they have an interest in the case or not. You are not to discuss it among yourselves, either in your jury room or elsewhere.

"It is the duty of a person who has been selected as a juror to sit here patiently and wait until all the evidence has been received and the instructions of the Court have been received and you are in your jury room for deliberation and decision before you discuss the matter in any manner, and in the meantime, you are individually to keep your own counsel and not to form any opinion or judgment whatever until the final step when you are in your jury room for deliberation and decision of this case.

"Will you be good enough to observe that caution during the progress of the trial? And I would suggest to you, as I have already done so—I don't know whether you were all here at that time or not—that you do not read the newspapers and you do not now listen to comments over the radio or by any other means until this case has been disposed of. Have somebody preserve those things for you until some future day when you will have lots of time to look them over.

"Now, without any formality at all, we will be adjourned until 9:15 tomorrow morning."

(It should be noted that the portion of the admonition which dealt with talking about the case, or allowing anyone to talk to them, was phrased in direct and commanding language. That portion of the admonition pertaining to news media employed the words "I would suggest to you."

Subsequent to October 28 a form of this "admonition" was given just four additional times up to the charge of the Court on December 17. On three of those occasions the word "suggest" was employed. Finally on December 3, the trial judge employed the somewhat more direct language, "Please do not read newspapers," etc.)

Thus by the 28th of October, basic judicial rulings on four of the major measures available to the trial judge to protect due process had been made.

On November 2, 1954, the trial was adjourned for election day. The trial judge was re-elected overwhelmingly.

On November 3 the jury as finally constituted was sworn in. The subsequent events of that day were recorded in the following colloquy on the morning of November 4:

"MR. CORRIGAN: If the Court please, I desire to renew my motion for a continuance of this case, for a change of venue, for the withdrawal of a juror and for a mistrial.

"(To the reporter): Would you read what I dictated yesterday?

"(Thereupon the following was read by the reporter, being taken at 11:00 o'clock a.m., Wednesday, November 3, 1954:

'After the jury was discharged at the end of the morning session, at the request of the newspapers, the jury was brought back into the room and sat in the room for a matter of—how long, 15 minutes, 10 minutes?

'Mr. Clifford: 10 minutes, yes.

'Mr. Corrigan: (Continuing) And were subjected to photography, photographing and television cameras by at least 10 cameramen who mounted themselves on chairs, the judge's bench and various parts of the room. This was all done out of the presence of defendant, Sam Sheppard.')

"MR. CORRIGAN: I also want to introduce, as part of my motion, Defendant's Exhibits 63, 64 and 65.

"(Defendant's Exhibits 63, 64 and 65 were marked for identification.)

"MR. CORRIGAN: When the jury visited the premises yesterday under the order of the Court, there was at least 40 reporters there, a great number of cameramen, and the Cleveland Press hired a helicopter which continued to swing over the house and take pictures with a great deal of noise and racket.

"When the jury went through the house, it was accompanied by a reporter of the Cleveland Press, Mr. Brady.

"So I renew all my motions at this time.

"THE COURT: They all be overruled, and exceptions noted."

(It should be noted that subsequent discussion developed that Brady's accompaniment of the jury at the Sheppard home had been with the trial judge's prior knowledge and with the consent of the defense, which had been given by one of defendant's attorneys.)

Monday evening, November 22, the trial record shows still another objection to news media trial privileges, the rulings of the trial judge denying requested relief, and a cautioning of defendant's brother concerning trial publicity.

"MR. CORRIGAN: I desire to renew my motion for a change of venue and a continuance of this case. Ever since we have started in this case, the halls and the rooms surrounding the Court House—or, surrounding the court room have been filled with reporters and photographers and television operators.

"The assignment room and the witness room have been occupied entirely by newspaper reporters, radio and television operators. On each morning the defendant has been brought into court at least 10 minutes before the beginning of the trial, and then for that period of time has been subjected by many photographers and television cameras, against his will, to be photographed.

"This morning—what is today?

"THE COURT: The 22nd.

"MR. CORRIGAN: November 22nd, there was erected in front of the Court House television cameras,

WNBK. They were there when the jury was entering the Court House. The judge participated in being televised, as did Mr. Mahon and Mr. McArthur.

"We, therefore, renew the motions heretofore made, ask for the withdrawal of a juror and a continuance of the case.

"THE COURT: Of course, that will be overruled and exceptions noted.

"MR. CORRIGAN: Now, then, we request the court that the rights of the defendant be protected in this court room, and that he be not compelled to submit to photographing and the television camera as he has been every morning with the knowledge of the court.

"We request that the Sheriff be ordered not to bring him into court until such time as the jury is seated.

"THE COURT: Well, that is more than one request. The court will make his position clear.

"First, there has been no photographing in the court room except upon strict orders of the court that it was to be done before court hours in the morning or after court hours in the evening and with the consent of counsel for the defendant.

"MR. CORRIGAN: I have given no consent to that.

"THE COURT: And let the record show that counsel for the defendant and the defendant, himself, have been voluntarily photographed in the court room from time to time during the progress of this trial.

"MR. CORRIGAN: I haven't been voluntarily photographed. Neither has the defendant. We have been compelled to be photographed. We can't escape it.

"THE COURT: Oh, no, I don't think that is so, Mr. Corrigan, and the court will say to you that the defendant is not to be photographed in the court room at all without your consent.

"MR. CORRIGAN: Well, if there has been any consent by anybody in this matter, the consent is withdrawn.

"THE COURT: All right. Now, as to the defendant being brought into the court room he is to be brought into the court room prior to the opening of the trial

each day and just before the jury enters. That has been our effort since the beginning of this trial.

"Now, the Court wants to say a word. That he was told—he has not read anything about it at all—but he was informed that Dr. Steve Sheppard, who has been granted the privilege of remaining in the court room during the trial, has been trying the case in the newspapers and making rather uncomplimentary comments about the testimony of the witnesses for the State.

"Let it be now understood that if Dr. Steve Sheppard wishes to use the newspapers to try his case while we are trying it here, he will be barred from remaining in the court room during the progress of the trial if he is to be a witness in the case.

"The Court appreciates he cannot deny Steve Sheppard the right of free speech, but he can deny him the right of the privilege of being in the court room, if he wants to avail himself of that method during the progress of the trial.

"MR. CORRIGAN: The statement of the Court about Steve Sheppard making uncomplimentary remarks about the testimony of witnesses is paralleled by the tremendous amount of publicity that is put in the Cleveland newspapers, especially headlines, since the beginning of this case, which has misrepresented entirely the testimony."

These motions for change of venue, continuance, and mistrial were renewed repeatedly thereafter (including the close of prosecution proofs and the close of defense proofs) and were similarly denied.

DUE PROCESS VIOLATIONS

"The theory of our system is that the 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."[9] Justice Oliver Wendell Holmes.

It is, of course, too late in legal history to doubt the power and the duty of a federal District Court to review

[9] *Patterson* v. *Colorado*, 205 U.S. 454, 462 (1907).

on habeas corpus a state court conviction claimed to have been based upon violations of applicable federal constitutional commands. 28 U.S.C. § 2241; *Fay* v. *Noia*, 372 U.S. 391 (1963); *Townsend* v. *Sain*, 372 U.S. 293 (1963); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963).

It is likewise beyond challenge that the "due process" requirement of the Fourteenth Amendment[10] mandates state criminal court observance of minimum federal constitutional standards such as trial on a charge "fairly made and fairly tried in a public tribunal" before "an impartial judge," *In re Oliver*, 333 U.S. 257, 278 (1948); *Tumey* v. *Ohio*, 273 U.S. 510 (1927); *In re Murchison*, 349 U.S. 133 (1955); an "impartial jury" (if, as all do, the state elects a jury system), *Irvin* v. *Dowd*, *supra* at 721-722; *Rideau* v. *Louisiana*, *supra;* and a "verdict . . . based upon the evidence developed at the trial," *Turner* v. *Louisiana*, *supra* at 472. See also *Thompson* v. *Louisville*, 362 U.S. 199 (1960); *Garner v. Louisiana*, 368 U.S. 157 (1961).

In January of 1965 the United States Supreme Court said:

"The requirement that a jury's verdict 'must be based upon the evidence developed at the trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury. [See footnote.] 'The jury is an essential instrumentality—an appendage—of the court, the body ordained to pass upon guilt or innocence. Exercise of calm and informed judgment by its members is essential to proper enforcement of law.' *Sinclair* v. *United States*, 279 U.S. 749, 765. Mr. Justice Holmes stated no more than a truism when he observed that 'Any judge who has sat with juries knows that in spite of forms they are extremely likely to be impregnated by the environing atmosphere.' *Frank* v. *Mangum*, 237 U.S. 309, at 349 (dissenting opinion).

"In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public court room where there is full judicial protection of the

[10] The Fourteenth Amendment to the United States Constitution provides in applicable part: ". . . nor shall any state deprive any person of life, liberty, or property without due process of law; . . ."

defendant's right of confrontation, of cross-examination, and of counsel. . . ."

[Footnote] "The Sixth Amendment provides:
'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 wherein the crime shall have been committed. . . .' (Emphasis supplied.)"

Turner v. *Louisiana, supra* at 472-473.

If ever a jury could be said to be likely to have been "impregnated by the environing atmosphere," it was surely this jury. And I do not see how this Court can safely conclude that the jury verdict was based only on "the evidence developed against defendant . . . from the witness stand."

However applicable to this trial these standards may be, they are also generalizations. I would affirm the District Judge's writ in this case on the basis of specific due process violations which occurred during trial and for all of which there were both preventive measures beforehand and remedies afterward available to, but unused by, the trial judge.

At trial the principal issues upon which testimony was presented to the jury were 1) motive, 2) credibility, and 3) reputation. On each issue the evidence presented and inferences argued by prosecution and defense were in sharp conflict. On each issue the jury could have believed either side.

But on these same crucial issues, as the trial progressed the news media supplemented the total record with material never heard in the courtroom. Much of this material, though highly prejudicial to defendant, was relevant and admissible if a witness could have been found who was prepared to testify to it under oath in the courtroom and face cross-examination. Some material, though equally prejudicial, was obviously inadmissible under any circumstances.

The United States District Judge listed 30 different instances of objectionable news media communications which he felt were prejudicial. We shall discuss only five of these.

1. On Friday, November 19, 1954, a police officer of the Cleveland Police Department gave testimony during this trial which tended to contradict some portions of defend-

On November 21, at 6:30 p.m., there was a radio broadcast which was heard in Cleveland over Station WHK in which Mr. Robert Considine made a comparison between defendant and Alger Hiss. Defendant's confrontation by Officer Shottke was compared to Alger Hiss' confrontation with Whittaker Chambers.

At the time in 1954, Alger Hiss' conviction was fresh in the national consciousness.

Robert Considine was one of the national commentators occupying reserved seats in the courtroom during this trial.

On November 22, at the commencing of court, defendant's counsel moved for a continuance of the trial, based on prejudice resulting from the Considine broadcast and asked the trial judge to question the jury as to whether they heard the broadcast.

The judge denied both motions, saying in part:

> "Well, I don't know, we can't stop people in any event, listening to it. It is a matter of free speech, and the court can't control everybody.
>
> "MR. MAHON: I think that the court has instructed the jury that they are not to read about it or listen to the broadcasts. It was a general instruction that was given at the time the trial started.
>
> "THE COURT: We are not going to harass the jury every morning.
>
> "MR. CORRIGAN: I can't help it, Judge. If you don't, that's all right with me. I make my exception.
>
> "THE COURT: It is getting to the point where if we do it every morning, we are suspecting the jury. I have confidence in this jury, and we must have confidence or the jury system is of no value whatever to anybody."

Prior to dealing with this motion, the trial judge (as we have noted) had just denied a defense motion for continuance based upon a television program conducted on the steps of the courthouse the same morning, where among others, the prosecutor and the trial judge had appeared. The trial judge's picture at this appearance was published in one of the Cleveland papers on the day these motions were heard and denied (See Appendix C).

2. On November 24 The Cleveland Press published a front page eight-column headline: "Sam Called a 'Jekyll-

Hyde' by Marilyn, Cousin to Testify." The first three paragraphs of the news story follow:

> "Two days before her death, murdered Marilyn Reese Sheppard told friends that her accused husband, Dr. Samuel H. Sheppard, was 'a Dr. Jekyll and Mr. Hyde.'
>
> "The prosecution has a 'bombshell witness' on tap who will testify to Dr. Sam's display of fiery temper—countering the defense claim that the defendant is a gentle physician with an even disposition.
>
> "One of Mrs. Sheppard's 'Dr. Jekyll and Mr. Hyde' statements was made to Bay Village Mayor J. Spencer Houk as recently as last June, The Press learned." (See Appendix J).

No such testimony was ever introduced at the trial.

Five of the jurors had testified that they received The Cleveland Press at their homes.

On November 26 defense counsel renewed his motions for change of venue and continuance and a mistrial, basing them on the Jekyll-Hyde story in The Cleveland Press, which he introduced as an exhibit (See Appendix J).

Defense Counsel also based his motions on a Thanksgiving Day edition of The Cleveland Press which contained pictures and interviews in the home of Mrs. Mancini—one of the jurors (See Appendix I).

The trial judge, without reference to the Jekyll-Hyde matter, overruled the motions, noting that Mrs. Mancini had not been home at the time of the interview and picture taking. He made no inquiry of the jurors as to either matter.

3. On December 5, Walter Winchell, in a nationwide broadcast heard and seen in Cleveland through WXEL television and WJW radio, stated that a Carol Beasley, who was under arrest in New York for robbery, had stated that she was defendant's mistress and had had a child by him. On December 6 these facts were related to the trial judge who responded:

> "THE COURT: Well, even, so, Mr. Corrigan, how are you ever going to prevent those things, in any event? I don't justify them at all. I think it is outrageous, but in a sense, it is outrageous even if there were no trial here. The trial has nothing to do with it in the Court's mind, as far as its outrage is concerned, but——
>
> "MR. CORRIGAN: I don't know what effect it had on the mind of any of these jurors, and I can't find out unless inquiry is made.
>
> "THE COURT: How would you ever, in any jury, avoid that kind of a thing?"

At defense counsel's insistence the judge did query the jury as to whether any had heard the Walter Winchell broadcast the previous night. Two jurors responded that they had.

Thereupon the judge asked, "Would that have any effect on your judgment?" Each said, "No."

The trial judge accepted this inadequate assurance.[11] He did not reprove the two jurors for failing to heed his "suggestion" that they not listen to TV or radio. He did not order them or the rest of the jury not to do so again. He told the jury "to pay no attention whatever to that type of scavenging." He then proceeded with the trial.

4. On December 9, 1954, defendant took the witness stand.

During part of his direct testimony he testified to oral promises and oral abuse by various members of the Cleveland Police Department Homicide Bureau who interviewed him extensively after his arrest.

On December 11, the Cleveland News, printed a front page story under the headline " 'Bare-Faced Liar,' Kerr says of Sam." The story quoted Captain David E. Kerr, head of the Homicide Bureau, to the same effect and adding:

> " 'If ever a person was handled with kid gloves, it was Dr. Sam,' said Kerr. 'In 800 homicide cases we have not had a single voice raised against our methods, until this one from the Bay Village doctor.' " (See Appendix K).

Captain Kerr never appeared as a witness at the trial.

5. After the close of evidence and the arguments and the charge had been given, this jury was locked for its deliberations on verdict. These continued for five days and four nights. Subsequent to the rendering of the ver-

[11] Cf. *Coppedge* v. *United States*, *supra*.

dict it became known to the defense that the individual jurors had been permitted repeated phone calls to their homes. This knowledge was made the basis for a motion for new trial made by defense counsel.

The stipulation of facts agreed on by the parties before the United States District Judge gives the details on this issue:

> "After arguments and charge were complete, the jury was directed to retire to deliberate its verdict. They were placed in charge of two bailiffs, Edgar Francis and Simon Steenstra. The deliberations lasted for more than four days, during which time the jury was kept (except when at court deliberating) in the Carter Hotel in downtown Cleveland. They, together with the bailiffs, occupied the entire seventh floor of the hotel. Bailiff Steenstra had made arrangements whereby the telephones in the rooms occupied by the jurors were disconnected so that no calls could be placed or received.
>
> "The record does not indicate the times, the number of calls, or the identity of the juror-callers, but it is clear that both Steenstra and Francis permitted jurors to place outside calls from their (the bailiffs') rooms between the time the jury took the case (December 17, 1954) and the time the verdict was rendered (December 21, 1954). The calls were placed by the jurors. No records were kept as to the numbers called, the parties called, talked with, or the calling jurors. The bailiffs sat next to the phone as the conversations took place, but could only hear that half of the conversation made by the juror; what was said *to* the jurors could not be heard by the bailiffs. The Court was never asked for permission to allow the jurors to make these calls, and no permission was ever given." (Emphasis in original)

THE UNITED STATES DISTRICT JUDGE'S HOLDINGS

Concerning the first four of the events we have cited (and others) Judge Weinman said:

> "[S]pecial note must be given to the attempt of the newspapers to influence the jury. It was startling to find photographs of the entire jury and of individual jurors (at times giving their home addresses) in no less than 40 issues of the Cleveland newspapers. The Court need not be naive, and it does not stretch its imagination to recognize that one of the purposes of photographing the jurors so often was to be assured that they would look for their photographs in the newspapers and thereby expose themselves to the prejudicial reporting." *Sheppard* v. *Maxwell*, 231 F. Supp. 37, 63 (1964).
>
> "It is clear beyond doubt, because of the sheer volume of publicity which attended the trial, that the jury read and heard about the case through the news media." (Footnote omitted.) *Sheppard* v. *Maxwell*, *supra* at 62.

Rule 52(a) of The Federal Rules of Civil Procedure states in part that "findings of fact shall not be set aside unless clearly erroneous. . . ." This rule is applicable to review of federal habeas corpus proceedings. *United States ex rel. Crump* v. *Sain*, 295 F.2d 699 (C.A. 7, 1961), *cert. denied*, 369 U.S. 830 (1962); *Rushing* v. *Wilkinson*, 272 F.2d 633 (C.A. 5, 1960). See also Cases Annotated at n.57, 28 U.S.C.A. Rule 52.

In this trial all jurors, save one, freely admitted reading about the case before trial.

This jury was never locked up for the nine weeks of trial.

At least seven of the jurors took newspapers at their homes. Five of them took The Cleveland Press. The news media were given extraordinary prominence and privileges in the courtroom.

No admonition of an unequivocal nature concerning the jury not reading or listening to material about the trial was given until after a month of testimony.

The judge allowed himself and the jury all through the trial to be the constant subject of newspaper photography.

When queried on the one occasion when inquiry was allowed, two jurors testified to hearing the Walter Winchell broadcast.

They were not reproved nor were they or the other jurors told not to do it again.

The two newspaper stories were front page stories in newspapers of general circulation. The Cleveland Press

"Jekyll-Hyde" story was topped by an eight-column, double banner front page headline.

The two broadcasts were by nationally prominent commentators broadcasting on prime time in Cleveland.

With these facts before us, I do not see how we can say that the District Judge's holding is "clearly erroneous."

The District Judge's opinion in respect to these instances of prejudicial trial publicity is founded upon ample precedent.

Newspaper articles actually read by a juror or jurors which convey highly prejudicial information not admissible or admitted at trial have long been recognized as constituting such essential unfairness as to justify the setting aside of the verdict and the granting of a new trial. *Mattox* v. *United States*, *supra*; *Krogmann* v. *United States*, *supra*.

Where flagrantly prejudicial newspaper articles are prominently printed in newspapers of general circulation during a trial wherein the jury is not sequestered, there is a presumption that some jurors have seen them and that defendant has been prejudiced thereby. *Harrison* v. *United States*, 200 Fed. 662 (C.A. 6, 1912); *Marson* v. *United States*, *supra*; *Krogmann* v. *United States*, *supra*; *Briggs* v. *United States*, 221 F.2d 636 (C.A. 6, 1955).

Unless this presumption of prejudice is overborne by careful inquiry of the jurors and, in appropriate cases, by strong admonitions to disregard, a motion for new trial should be granted. *Krogmann* v. *United States*, *supra*; *Marson* v. *United States*, *supra*; *Briggs* v. *United States*, *supra*; *United States* v. *Accardo*, *supra*.

As we have seen, the admonitions in this trial were infrequent and equivocal when given. And minimal inquiry was limited to the single instance of the Winchell broadcast.

In concurring in *Irvin* v. *Dowd*, Mr. Justice Frankfurter said:

> "Not a Term passes without this Court being importuned to review convictions, had in States throughout the country, in which substantial claims are made that a jury trial has been distorted because of inflammatory newspaper accounts—too often, as in this case, with the prosecutor's collaboration—exerting pressures upon potential jurors before trial and even during the course of trial, thereby making it extremely difficult, if not impossible, to secure a jury capable of taking in, free of prepossessions, evidence submitted in open court. . . . For one reason or another this Court does not undertake to review all such envenomed state prosecutions. But, again and again, such disregard of fundamental fairness is so flagrant that the Court is compelled, as it was only a week ago, to reverse a conviction in which prejudicial newspaper intrusion has poisoned the outcome. *Janko* v. *United States*, *ante*, p. 716; *see, e.g.*, *Marshall* v. *United States*, 360 U.S. 310. See also *Stroble* v. *California*, 343 U.S. 181, 198 (dissenting opinion); *Shepherd* v. *Florida*, 341 U.S. 50 (concurring opinion)." *Irvin* v. *Dowd*, *supra* at 730 (concurring opinion.)

In my opinion "the disregard of fundamental fairness is so flagrant" in this case as to require the District Judge's writ.

On the fifth issue, pertaining to juror phone calls during jury deliberations, Judge Weinman found:

> "This Court finds prejudicial error because the right to a fair and impartial trial as guaranteed by the due process clause of the Fourteenth Amendment includes the right to have a jury which is not permitted, after it begins its deliberations, to have unmonitored telephone conversations with third persons. As stated quite simply in *Mattox* v. *United States*, 146 U.S. 140, 150
>
> 'Private communications, *possibly* prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least until their harmlessness is made to appear.' (Emphasis added.)
>
> "There is nothing in the record to show the harmlessness of that part of the telephone conversations which the bailiffs could not hear. Accordingly, petitioner's constitutional rights were violated." *Sheppard* v. *Maxwell*, *supra* at 71.

Here, too, the District Judge has sound precedent in support.

The federal courts (including the United States Supreme Court and this Court) have created and given effect to the presumption that any unauthorized communication with a

juror is prejudicial absent effective rebuttal. *Mattox* v. *United States, supra; Stone* v. *United States, supra; Little* v. *United States, supra; Wheaton* v. *United States, supra; Johnson* v. *United States*, 207 F.2d 314 (C.A. 5, 1953), *cert. denied*, 347 U.S. 938 (1953); *Ryan* v. *United States*, 191 F.2d 779 (C.A. D.C., 1951), *cert. denied*, 342 U.S. 928 (1951).

The presumption is even stronger when there is communication with a member or members of the jury after charge and during jury deliberation concerning the verdict. *Mattox* v. *United States, supra; Wheaton* v. *United States, supra; Little* v. *United States, supra.*

In 1892 Chief Justice Fuller, speaking for a unanimous Court, said:

> "It is vital in capital cases that the jury should pass upon the case free from external causes tending to disturb the exercise of deliberate and unbiased judgment. Nor can any ground of suspicion that the administration of justice has been interfered with be tolerated. Hence, the separation of the jury in such a way as to expose them to tampering, may be reason for a new trial, variously held as absolute; or *prima facie*, and subject to rebuttal by the prosecution; or contingent on proof indicating that a tampering really took place. Wharton, Cr. Pl. and Pr. §§ 821, 823, 824, and cases cited.
>
> "Private communications, possibly prejudicial between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear." *Mattox* v. *United States*, *supra* at 150.

There is absolutely no way by which we can know that these phone calls—totally unmonitored as far as the outside party is concerned—were harmless. I believe that Judge Weinman was correct in relying on this ground also.

THE OPINION OF THE COURT

For the reasons stated, I find myself in disagreement with the Court concerning the fundamental issues of this appeal.

My brothers have, however, written a careful and scholarly opinion. I concur with the result reached in three out of the five of the issues discussed therein.

The federal courts, of course, do not review claimed federal constitutional violations until state remedies have been exhausted. Thorough as have been petitioner's efforts in this regard, it cannot be clearly established that claimed violations of defendant's Fifth Amendment rights (through lie detector testimony) have been presented to the Ohio Supreme Court. Nor have the belated witness statements as to the trial judge's comments on defendant's guilt ever been considered by that body.

I also agree with my brothers that the clamorous and frequently abusive publicity *prior* to trial, plus the trial judge's denial of change of venue, probably did not, of themselves, rise to the level of constitutional violations.

As Judge O'Sullivan notes, the number of jurors with fixed opinions about this case as of the time the jury was seated does not show the same extent of deep and abiding community prejudice demonstrated in *Irvin* v. *Dowd*, *supra*, and *Rideau* v. *Louisiana*, *supra*.

Of some weight in the consideration of the pretrial publicity issue is a concern for that particular declaration of rights which our forefathers chose to put first among the amendments. If the exercise of freedom of speech or press in reporting or exp g crime could serve to immunize a person charged wit.. crime from prosecution and trial, shortly the demands for limitation of this historic right would become extremely pressing. The smarter criminal would know how to find a means to immunize himself from trial by securing publication of a well-timed if adverse story. The power of the press to aid in maintaining the integrity of government by exposing corruption or special privilege would be largely nullified.

In one of the relatively few cases where the United States Supreme Court has set aside State court convictions because of pretrial publicity, Mr. Justice Clark noted:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to

the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Spies* v. *Illinois*, 123 U.S. 131; *Holt* v. *United States*, 218 U.S. 245; *Reynolds* v. *United States*, *supra* [98 U.S. 145]." *Irvin* v. *Dowd*, *supra* at 722-23.

To return to the basic problems of this appeal, it is clear that the District Judge considered the claimed violations of due process against the background of the trial itself and cumulatively in relation to each other. His opinion notes:

"Any one of the above mentioned factors, i.e., the insidious, prejudicial newspaper reporting, the refusal of the trial judge to question jurors regarding an alleged prejudicial radio broadcast and the carnival atmosphere which continued throughout the trial, would be sufficient to compel the conclusion that petitioner's constitutional rights were violated. But when they are cumulated, this Court cannot, unless it were to stretch its imagination to a point of fantasy, say the petitioner had a fair trial in view of the publicity during trial." *Sheppard* v. *Maxwell*, *supra* at 63.

Against this view, I read the Court's opinion as holding that no one of the complaints of contacts or communications with this jury was sufficient *standing alone* to represent invasion of petitioner's due process rights.

If we were to assume that the five instances of unauthorized communications to this jury, considered as entirely isolated incidents, did not rise to constitutional magnitude,[12] we still could not by such dissection of this trial ignore our constitutional duty to look at the trial as a whole and to determine from the total record whether the Fourteenth Amendment command of due process had been violated.

These five events which occurred during this trial, when considered cumulatively and against the trial background related at the outset, leave no doubt of the validity of the

[12] As to the instances of communications numbered 1, 2, 3, and 5 herein, there is little reason to accept such an assumption.

District Judge's holding that "petitioner was not afforded a fair trial as required by the due process clause of the Fourteenth Amendment."

Any other view would deny common sense as effectively as saying that since no single one of the 35 wounds was necessarily fatal, Marilyn Sheppard was not murdered.

Patently there can be judicial error which against the background of one case might be harmless, but which against the total circumstances of another case might violate substantial rights. *United States* v. *McMaster and Wolff*, ... F.2d ... (C.A. 6, 1965) (Nos. 15,828-29, Decided March 25, 1965. Cf. *Krulewitch* v. *United States*, 336 U.S. 440 (1949); *Kotteakos* v. *United States*, 328 U.S. 750 (1946).

The background facts of a case wherein due process violations are claimed are never irrelevant. *Irvin* v. *Dowd*, *supra*; *Rideau* v. *Louisiana*, *supra*.

In *Marshall* v. *United States*, 360 U.S. 310 (1959), the United States Supreme Court dealt with a claim of prejudice because inadmissible material from news accounts had reached the jury during trial. Noting the large discretion that the trial judge had in ruling on the issue of prejudice, the Court nonetheless reversed for new trial stating that "each case must turn on its special facts."

The "special facts" of this case compel my vote for affirmance. They come as a distinct shock to the conscience of this former state court judge.

As we have noted, Judge Weinman's duty to review petitioner's federal constitutional claims concerning his state court trial cannot be disputed. *Fay* v. *Noia*, *supra*; *Townsend* v. *Sain*, *supra*; *Gideon* v. *Wainwright*, *supra*.

I read such cases as *Turner* v. *Louisiana*, *supra*; *Rideau* v. *Louisiana*, *supra*; *Irvin* v. *Dowd*, *supra*, as applicable *a fortiorari* to the fact situation heretofore outlined and as authority for issuance of the writ, unless a new trial is ordered.

I would affirm.

APPENDIX A

PRETRIAL ORDER
AGREED STATEMENT OF FACTS

"Petitioner, Samuel H. Sheppard, was in July, 1954, a resident of Bay Village, Ohio, a suburb on the west side

of Cleveland. He was a doctor of osteopathic medicine, specializing in Surgery, and a member of the staff of the Bay View Hospital. He was thirty years of age and was married to Marilyn Reese Sheppard, also thirty. They had been married for nine years and had one son, aged seven. Petitioner and his family lived in a house on the shore of Lake Erie, which house was owned by Marilyn. Petitioner was associated in the practice of medicine with his father and two older brothers, all doctors. He was in comfortable financial circumstances.

"On the night of July 3, 1954, petitioner and his wife entertained friends, Don and Nancy Ahearn, in their home. The Ahearns left at approximately 12:30 a. m., July 4, 1954; Marilyn saw them to the door, for petitioner was or appeared to be asleep on a couch in the living room. The evening had been a congenial one, and the Ahearns observed no indications of hostility between petitioner and his wife (who was pregnant) at any time during the evening. In fact, there were overt manifestations of affection between them.

"Shortly before 6:00 a. m. a telephone call was received from petitioner by J. Spencer Houk, mayor of Bay Village and a friend of petitioner. Houk lived two houses distant from the home of petitioner. Houk heard petitioner say:

> 'My God, Spence, get over here quick, I think they have killed Marilyn.'

Houk dressed and with his wife, Esther, drove within a short time the few hundred feet to petitioner's home. Upon arrival the Houks found petitioner on the first floor of the house. His face showed some injury, and he complained of pain in his neck. Esther Houk went up to the bedroom, at the suggestion of petitioner, to check on the condition of Marilyn Sheppard. She found Marilyn lying in a pool of blood on the bed. She was dead. The room was covered with splattered blood. It was determined that she had suffered some thirty-five blows about the head by some blunt instrument, causing death. There was some conflict as to how long she had been dead when discovered by the Houks.

"The story given by petitioner to police and at the trial, was substantially as follows: As he was sleeping on the couch, he was awakened by a noise coming from the second floor. He thought he heard his name called. He went up the stairs, which was dimly lit by a light in the hall. He recognized only a white 'form' standing next to the bed

where his wife slept. He grappled with the form, and was struck on the back of the neck which rendered him unconscious. Before losing consciousness petitioner heard loud moans, as if from someone injured. When petitiner recovered consciousness, he examined his wife, found or thought that she was dead, determined that his son (in an adjacent room) had not been harmed, and then, hearing noise of some sort on the first floor, ran down. He saw a form running out the door of the house nearest to Lake Erie, and pursued it to the shore. There he struggled again, and again lost consciousness. When he came to, he went back to the house, re-examined his wife, and called Mayor Houk. Petitioner was unable to establish (1) the number of people in the bedroom at the time of the first encounter or the time of said encounter; (2) the duration of his unconsciousness on either occasion, or (3) the sex or identity of any of the single or several assailants he encountered. He stated that his perceptions had been vague because he was asleep at the outset of the chain of events, and unconscious twice as it progressed.

"In the course of interrogations by police and the County Coroner, petitioner was asked if he had had sexual relations with one Susan Hayes, an ex-employee of the hospital, in March, 1954, in Los Angeles. Petitioner denied this, but later admitted it when confronted with her statement of the affair. The state contended that Miss Hayes was the motive for a premeditated murder, but the jury returned a verdict of murder in the second degree.

"The murder of Marilyn Sheppard capitvated the attention of news media in an unprecedented manner. Editorials on the first page of a leading Cleveland newspaper, and news media generally, set up a hue and cry for a solution to the crime. An inquest was demanded and held, and petitioner's arrest was suggested most strongly by at least one leading newspaper. On July 30, 1954, petitioner was arrested; he was admitted to bail, and indicted a few days later, on August 17, 1954. He has been in custody ever since.

"The trial began on October 18, 1954, and on December 17 of the same year the cause was submitted to a jury in the Court of Common Pleas of Cuyahoga County. On December 21st the verdict of guilty of murder in the second degree was returned, and petitioner was sentenced to life imprisonment in the state penitentiary at Columbus, Ohio. . . .

"The details of the trial, which fill over seven thousand pages in the bill of exceptions, are not recited here; it is the understanding of counsel for both sides that it was not the purpose of this history to describe the voluminous evidence.

"On January 3, 1955, the trial court overruled a motion for new trial which had been based on numerous assignments of error occurring during trial and deliberation. . . .

"On May 9, 1955, the trial court denied a supplemental motion for new trial on ground of newly discovered evidence and based upon the affidavit of Paul Leland Kirk, a criminologist, who claimed to have demonstrated that blood tests made in the murder room proved the existence of blood which did not come from the defendant or the deceased. This evidence was not obtained until after the verdict had been returned.

"On July 20, 1955,[1] the Court of Appeals of Cuyahoga County affirmed the conviction of petitioner; and on July 25, 1955 the same Court affirmed the denial of the second motion for new trial. . . .

"On May 31, 1956, the Ohio Supreme Court affirmed the action of the Court of Appeals as to the case in chief, but did not discuss or pass upon the alleged newly discovered evidence. Two Judges dissented, expressing the view that Sheppard should be accorded a new trial. . . .

"On November 14, 1956, the Supreme Court of the United States denied a petition for certiorari; application for rehearing was denied on December 19, 1956. . . .

"On September 5, 1960, Chief Justice Weygandt denied an application for a writ of habeas corpus in the Ohio Supreme Court; the petition therefor was dismissed on May 5, 1961.

"On April 11th, 1963, petitioner filed a petition for a writ of habeas corpus in this Court, which is the action giving rise to this order.

"Petitioner, Samuel H. Sheppard, has at all times maintained that he was not guilty of the murder of his wife, and that he knew no more about said death than he told at the trial."

[1] "It is a minor point, but the Court notes that several of the dates of decisions are incorrectly stated."

Blythin, Mahon Win Races For Common Pleas Bench

BY SEVERINO P. SEVERINO

Two prominent figures in the Dr. Sam Sheppard murder trial —Judge Edward Blythin and Prosecutor John J. Mahon—were boosted to certain victory in the Common Pleas Court race here today.

Meanwhile, Frank J. Merrick, veteran of the Common Pleas bench, was a shoo-in for the Probate Court seat and Albert A. Woldman won the scramble for the Juvenile Court bench.

William K. Thomas, incumbent, seemed to be a cinch over J. J. P. Corrigan in another race for a Common Pleas judgeship.

Five Unopposed

Those who will retain their judicial jobs for lack of opposition were Donald F. Lybarger, Daniel H. Wasserman, Harry A. Hanna, Joseph H. Silbert, Parker H. Fulton, Arthur H. Day and Walter T. Kinder in Probate Court.

Judge Blythin, presiding at the Sheppard murder trial, handed Fred W. Frey the most one-sided trouncing of the election. In 1,400 precincts of 2,080 Blythin led his opponent 208,835 to 47,137.

Mahon, veteran assistant county prosecutor who leads the prosecution forces in the Sheppard case, coasted in over Perry B. Jackson who sought to elevate himself from the municipal bench where he has presided for many years.

Mahon led Jackson by more than 8,000 in returns from 1,400 precincts.

Long Sought Bench

If Mahon isn't victim of a colossal reversal in the remaining ballots, he will realize a dream of many years. Long one of the ablest on the county's criminal prosecution staff, he has sought the Common Pleas bench several times before without success.

A Mahon victory may be one of several setbacks of the Cleveland Bar Association endorsements. His opponent Jackson was the choice of the Bar Association. Judge Blythin, however, was a Bar endorsement.

Judge Frank J. Merrick seemed to be the certain victor in the Probate Court bench race as he led his opponent Percy A. Miller by a substantial majority of 187,505 to 43,078 in 1,400 precincts reported. Merrick was a Cleveland Bar Association endorsee.

Woldman emerged victor over four other hopefuls who sought to unseat him from the Juvenile Court bench. He was pushed hardest by Clayborne George, veteran lawyer and Negro leader, who trailed Woldman by 17,000 votes in returns from 1,400 precincts. Trailing Woldman and George were John F. McCrone, B. Bill Murad and Michael P. O'Brien.

The major upset in the judicial race, was fashioned by John Mahon who, in toppling Perry Jackson, defeated a strong runner in elections of past years.

Otherwise the election was without spectacular event such as an overturn of any incumbent. Merrick, one of the perennials of the judicial bench, safely engineered a shift from a Common Pleas to a Probate Court seat.

CONGRATULATIONS!

Two of the principals in the Sheppard murder drama, Common Pleas Judge Edward Blythin, left, and Assistant County Prosecutor John Mahon, congratulate each other upon winning in their respective judicial races. Blythin won re-election, and Mahon realized a 35-year ambition when he won over Municipal Judge Perry B. Jackson in their contest for a seat on the Common Pleas bench.

APPENDIX C

SIDEWALK INTERVIEWS of Sheppard trial figures were conducted on television this morning. Inspector Robert Fabian, formerly of Scotland yard was holding the microphone in front of Criminal Courts Bldg. as Judge Edward Blythin breezed by.

CORNERED by reporters, Common Pleas Judge Edward Blythin announced he was going to let the Sheppard murder jury continue to deliberate despite the record-breaking period it has been out. At right is Plain Dealer Reporter Ford Simon. Next to him is Bob Considine, International News Service star correspondent.

FINAL SAM SHEPPARD JURY was photographed in court today by permission of Judge Edward Blythin as court recessed before the jury was to be taken to the Bay Village murder scene. Front row, left to right: Howard L. Barrish, Mrs. Elizabeth A. Borke, Edmond L. Verlinger, William C. Lamb, Mrs. Louise K. Feuchter, Jack Hansen. Back row: Mrs. Ann W. Foote, Mrs. Beatrice P. Orenstein, James C. Bird, Frank Moravec, Frank J. Kollarits, Mrs. Louella Williams and alternate Mrs. Lois Mancini.

Actor Corrigan Raps Photographing of Jury

Puffing a big cigar, William J. Corrigan, defense lawyer for Dr. Sam Sheppard, staged quite an act in court today while cameramen photographed the Sheppard murder trial jury.

As Judge Edward Blythin recessed court for lunch he granted photographers long-waited permission to take pictures of the jurors in the jury box.

They came into the room, some perching on chairs, some on tables, some on the judge's bench.

"Wait a minute," Corrigan roared. "I want to count something. There's one, two, three —yeah, seven photographers taking pictures of the jury, making a show out of this. A man's on trial for his life."

But the criminal lawyer was talking to a judgeless bench. Only cameramen and a few reporters were on hand.

"I Object . . ."

Corrigan sat down again at the rear end of the trial table, puffing his cigar, watching proceedings. More cameramen entered, calling to the jurors, "Look this way, please," and "Hold it a moment, please."

Judge Blythin stuck his head in through the door directly behind his bench.

"If the court please," shouted Corrigan at Blythin, "I object to all this."

But Blythin just picked up a book off the bench and vanished without saying a word.

Then Corrigan called to Bailiff Edgar Francis: "Francis, will you call the court stenographer back?" In a moment the court reporter reappeared and set up his stenotype machine right by the defense lawyer, who dictated as he smoked.

"After the jury was discharged at the end of the morning session, at the request of the newspapers the jury was brought back into the room and sat in the room for a matter of—15 minutes?—no, 10 minutes, and were subjected to photography and television cameras by at least 10 cameramen who mounted themselves on chairs, the judge's bench and various parts of the room."

Corrigan paused a moment to puff his cigar, then said: "This was all done out of the presence of the defendant, Sam Sheppard."

Then he told the court reporter, "Just be able to read this off in court so that I can take exception."

He turned his attention back to his cigar.

The Clevelan

The Newspaper That Serves Its Rea

NO. 24113 CLEVELAND, SATURDAY, NOVEMBER

35 RESCUED IN TEI

Women Jurors Give Colorful Backdrop To Drab, Grim Scene at Murder Trial

RICHARD McLAUGHLIN

Housewives all, mothers all t one, the six women on the m Sheppard jury have ushed into the background eir normal family routines serve -- how long nobody ows—as judges of evide e the nation's most sensation- [illegible] ugh baby kidnap-murder case. e trial in which, so far, for comfort in conservative clothing to keep them warm outdoors and at ease during the long hours in the jury box.

All Like Small Hats

They all favor small, off-the face hats and all wear earrings. Four of the six have short hair [illegible] hair-dos frame their faces.

Take Mrs. Elizabeth Borke, forward.

Next to her sat Mrs. Beatrice P. Orenstein, 33 - year - old mother of two. She wore a turquoise sweater with a white cardigan over it, and a light colored skirt. A string of pearls was knotted in front and her hat was well back on [illegible] 12712 Phillips Ave., East Cleveland.

piece gray suit with white cuffs and a white collar with broad lapels. Pearls were tight about her throat and right wrist and she had on a black off-the-face hat, which set off her bangs and long curling brown hair.

There's nothing pleasant [illegible] women have been going about for three weeks.

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Bay Policeman Describes Scene of Murder

Continued from Page 24

about the night chain on the Lake Rd. side of the Sheppard house.

Q.: Was that all right when you first arrived?

A.: It was all right when I examined it on the morning of July 5 after my arrival.

Q.: When did you next see that chain?

A.: I saw it the next day, July 5.

Q.: Describe the condition of that night chain when you saw it on July 5.

A.: The portion where the chain hooks onto the frame of the door had been pulled out. That is attached to the door by four screws and these had all been pulled out.

(State's Exhibit 19, Marilyn's watch, was handed to Garmone and he studied it very carefully. Dr. Sam pulled out his book "Meditations in a Prison Cell" and read it. After Garmone finished with Marilyn's watch, Dr. Sam called Corrigan over to his side and they had a long conversation, with Sam doing most of the talking.)

Cross-Examination

At 11:20 a. m. Patrolman Drenkhan completed his direct testimony and Defense Council Corrigan began cross-examination.

Q.: In the time you have been in the Police Department you knew Dr. Sheppard and Marilyn well?

A.: Yes.

Q.: You knew them socially as well as officially?

A.: Yes.

Q.: You visited them at their home?

A.: Not socially.

first time since the trial began Sam Sheppard spoke aloud in the courtroom. He looked across the trial table to where Corrigan was standing in front of the jury box and said, "It was at the corner of Cahoon and Center Ridge Rd."

As Corrigan started to repeat the roads Sheppard turned his head toward Drenkhan on the witness stand and said, "No, it was Clague Rd."

Corrigan then said, "The point is this, when there was an accident in that city Dr. Sheppard was the one you called and he responded, is that right?

A.: Yes, sir.

Q.: Did you come to a conclusion as to what kind of man Dr. Sheppard was up to July 4?

A. I felt he was a very capable doctor and I felt himself well in emergencies.

Q.: What was your opinion as to temperament?

A.: Very cool.

Q.: Even-tempered?

A. Yes.

Q.: Did you ever see him lose his head?

A. No.

Q.: Did you ever see him angry?

A.: No.

Q.: Did you ever notice the conduct of Dr. and Mrs. Sheppard when they were together?

A.: Average, normal.

Q.: The same as you and your wife?

A. Yes.

Jurors Get Acquainted, Forget Trial at Lunch

AS THEY EAT. the Sheppard jurors become well acquainted. Mrs Luella Williams (left) takes a cup from

Noon recess at the Sheppard murder trial is a highlight each day for members of the jury, offering welcome relief from the ardors of weighing every word of testimony.

Most of the jurors eat their lunches right in their jury room, bringing sandwiches from home or ordering them from a restaurant nearby. This saves them time and money and gives them a chance to talk with each other -- about everything but the trial itself. That's forbidden.

To take these informal "jury at lunch" pictures, Press Cameraman Glenn Zahn got the permission of Judge Edward Blythin and had Bailiff Edgar Frahers stand with him in the jury room as witness to the fact that Zahn spoke not a word to the jurors.

TWO FEET HIGH on a [illegible]or Howard [illegible]

THERMOS BOTTLES of hot coffee brighten up lunches of the Sheppard

APPENDIX H

[illegible] THER is Judge Edward Blythin [illegible] hall of Criminal Courts Bldg. from [illegible] ker Fulton and Arthur Day in Courtroom [illegible] al, in which the defendant Curtis F. [illegible] g his fate to a panel of three judges. [illegible] opard jury reaches a verdict. Blythin

After the death of a daughter, Mary Jane, in 1924, Mrs. Mahon and her husband reared the daughter's six children. She was one of the oldest members of St. Philomena's Catholic Church.

She is survived by the judge elect; another son, James of Hollywood, Fla., a retired sales manager of the P. G. [illegible] Co.; two daughters, Miss [illegible], a private secretary at [illegible] who lived with her mother, and Mrs. Rose Esse [illegible] Ave. Surviving are eight grandchildren and [illegible] great-grandchildren.

Services in St. Philomena's Church will be announced later. Flynn-Frock Funeral Home, 1[illegible] Euclid Ave., East Cleveland, is in charge of arrangements.

defendant Jomo "Burning Spear" Kenyatta, against charges of inciting the Mau Mau fighting in Kenya.

Other prize winners included Prof. [illegible] Santi [illegible] of Colombia, Chilean Poet Nicolas [illegible] Playwright [illegible] Prof. Felix [illegible] [illegible] Prof. [illegible] [illegible] secretary general of the French [illegible]

No Americans were on the list. The Stalin prizes usually vary from 200,000 rubles to 50,000 rubles. For purposes of foreign exchange Russia values the ruble at four to the American dollar.

In the Pittsburgh trial of James J. Flannery for murder in 1922 the jury [illegible] 14 days to bring in a verdict finally acquitting Flannery [illegible] a charge of [illegible]

The [illegible] trial [illegible] David [illegible] son [illegible] for a 1933 wife murder was discharged [illegible] after a [illegible] son eventually was set free.

[illegible] 40 hours for a Honolulu [illegible] to return a [illegible] conviction against Navy Lieut. Thomas H. Massie and others charged with first degree murder [illegible] the kidnap killing of a man accused with attempting to rape Mrs. Massie.

[illegible] the courthouse.

A buzz brought [illegible] [illegible]

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And [illegible] dren at the [illegible]

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Foreign Policy [illegible] Names Witmo[illegible]

[illegible] director of the World Affairs [illegible] [illegible] Brooks Emeny, [illegible] dent of the Cleve[illegible] who founded FPA [illegible] and Clayton [illegible] Press [illegible] deputy chairman [illegible] cratic National Co[illegible]

THE CLEVELAND PRESS, Thursday, Nov. 3

Harried Dad Barely Gets By as Mom Aids Sheppard Jury

[illegible]CHING FOR MOM to [illegible] become the habit of Nancy Mancini and her sister Kathy, in the past six weeks.

GRANDMA TAKES OVER in feeding Nancy Man[illegible] months, while Mrs. Lois Man[illegible] is hearing Sheppard trial testimony.

By RICHARD McLAUGHLIN

[illegible] wonder [illegible] of the women [illegible] year-old Sheppard trial have been getting along [illegible] Wm. Mancini [illegible]

[illegible] Mancini home at [illegible] Stockbridge Ave., the new [illegible] routine goes like this:

DAD UP EARLIER than usual, fixing breakfasts for self and daughters, Kathy, 7, and Nancy, 17 months.

MRS. LOIS MANCINI dressing up and leaving promptly at 8:15 a.m. for her da[illegible] the [illegible]

"And I've had to run shopping errands downtown that I ordinarily would never do."

Mrs. Fisher, an active club-woman and volunteer worker, has had to give up numerous [illegible] to pinch-hit for her daughter.

She has lived with the Mancinis since she became a widow [illegible] She said Lois lost her [illegible] in World

DOUBLE DATE with his daughters while Mom's in the jury box finds Will Mancini helping Kathy with her school work while giving Nancy a ride.

BEST COPY AVAILABLE

APPENDIX J

The Cleveland Press

The Newspaper That Serves Its Readers

NO. 24128 CLEVELAND, WEDNESDAY, NOVEMBER 24, 1954 Phone CHerry 1-1111

Fi

32 Pages

SAM CALLED A "JEKYLL-HYDE" BY MARILYN, COUSIN TO TESTI

Two days before her death, murdered Marilyn Reese Sheppard told friends that her accused husband, Dr. Samuel H. Sheppard, was "a Dr. Jekyll and Mr. Hyde."

The prosecution has a "bombshell witness" on tap who will testify to Dr. Sam's display of fiery temper—countering the defense claim that the defendant is a gentle physician with an even disposition.

One of Mrs. Sheppard's "Dr. Jekyll and Mr. Hyde" statements was made to Bay Village Mayor J. Spencer Houk as recently as last June, The Press learned.

Houk, according to his statement to the authorities, expressed surprise at Marilyn's account of a display of Sam's anger.

"You don't know that guy," he quoted the murder victim as replying. "He's a regular Dr. Jekyll and Mr. Hyde. . . ."

Mrs. Sheppard used the "Jekyll-Hyde" expression frequently in confidential conversations during the past several years, friends and relatives have told the murder investigators.

The "bombshell witness" is Thomas Weigle, 26, of 15807 Nelamere Rd., East Cleveland, Marilyn's first cousin.

Weigle and his wife, Miriam, and son, Gordon, visited Sam and Marilyn Sheppard's home at 28924 Lake Rd., Bay Village, a Sunday in March 1952.

The two women were in the kitchen. Weigle testified, while he and Dr. Sam were watching a western movie on television. The Sheppards' only son, Sam (Chip) Jr., then five years old, was playing in the room.

Chip, Weigle said, tapped his father's arm—"once playfully or accidentally."

"Sam's face reddened," Weigle continued. "He whisked the boy up, tossed him across his legs, and began beating him on his back, legs and buttocks.

"As he struck the boy repeatedly, Sam said: 'Don't you ever hit me again. . . . Don't you . . . again!' . . ."

Weigle said he was astonished. "I told [illegible] take it easy. . . .' But he ignored me. I ex[illegible] it, so I got up and walked out of the livin[illegible] continued to beat the boy all the time I [illegible] out."

When he went into the kitchen, Weigle s[illegible] Marilyn: "Does this happen very often?"

And she answered, he said: "You ought [illegible] of the tirades he goes into around here."

Weigle said the word "tirade" fixed [illegible]

Turn to Page 3, Column 3

Describes 50 [illegible]

'Bare-Faced Liar,' Kerr Says of Sam

Capt. David E. Kerr, head of Cleveland's homicide bureau, today called Dr. Samuel H. Sheppard a "bare faced liar" for his testimony that homicide detectives mistreated him.

"If ever a person was handled with kid gloves, it was Dr. Sam," said Kerr. "In 800 homicide cases we have not had a single voice raised against our methods, until this one from the Bay Village doctor."

Detectives accused by Dr. Sheppard of subjecting him to a cruel inquisition, promising him steak dinners or freedom on bond if he would confess or plead insanity, were Robert Schottke, Patrick Gareau, Lawrence Doran, Adelbert O'Hara, James McHugh, Peter Becker, and Charles Lonchar.

The osteopath said that O'Hara called him a "dirty low down s-o-b," and insulted members of his family and told him he had ruined Bay View Hospital and Mayor Spencer Houk of Bay Village.

"Lies—nothing of that sort transpired," said Capt. Kerr. "There was no third degree, no offer of a deal—that's ridiculous. We can't make deals. That's up to the court."

Detectives who questioned Dr. Sheppard in relays in County Jail last August said they were rarely alone with the prisoner because his lawyers "spelled each other off" in interrupting their interrogation.

CLEVELAND NEWS

0-20 (Rev. 1-26-66)

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DeLoach
Mohr
Wick
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UPI-115
(BAILEY)
NEW YORK--F. LEE BAILEY, THE BOSTON CRIMINAL LAWYER WHO WON NATIONAL FAME REPRESENTING DR. SAMUEL H. SHEPPARD, DISCLOSED TODAY HE HAD AGREED TO PLAY HIMSELF IN A MOTION PICTURE ABOUT THE SHEPPARD MURDER CASE.
3/1--TS245PES

These signatures stop at nothing.

REC- 56 63-

MAR 7 1967

WASHINGTON CAPITAL NEWS SERVICE

67 MAR 8 1967

Dr. Sam [redacted]ard
33 Hoselst[redacted]
Duisburg
West-Germa[redacted]

Nov. [redacted], 1967

Dear Sirs,

after careful consideration [redacted] and I have come to the decision that we will not pursue [redacted] This I insist upon because of the unfortunate publicity and embarassment to our families and me.

We trust that you will use the utmost discretion in this particular matter.

However, the fact remains that [redacted] broke and entered our home during the night season on numerous occasions between December 1966 to February 1967. During one or more of these entries and atrocious activity [redacted] stole - among other things - a diamond cluster ring belonging to my first wife and my Royal portable type-writer. Of most importance to you is the fact that this gunman also stole my 38 Automatic Military officer's side weapon. This gun was given to me by Mr. Claude Wisdom who is now deceased. [redacted] In this way perhaps you can substantiate the origin of this weapon and obtain the serial number which I do not know. I need not tell you to what use this weapon might be put. Therefore, I report this theft more for my protection than any material loss.

These latter matters we intend to pursue and in lieu of all of these facts we assume that [redacted] since this was obtained under duress.

Very sincerely,

Dr. Sam H. Sheppard

Dr. Sam H. Sheppard

ps. Please let me hear from you as soon as possible.

63-3206-14

REC-69

NOV 20 1967

59 NOV 27 1967

RA

November 17, 1967

AIRMAIL

REC-69 63-320615

b7C [redacted]

Dear [redacted] Ohio

[redacted] letter of November 12th [redacted] letter of November 13th have been received.

A careful examination of the information submitted in your communications fails to disclose any violation of Federal law within the investigative jurisdiction of the FBI; therefore, there is no action this Bureau can take with respect to the matters you mentioned.

MAILED 9
NOV 17 1967
COMM-FBI

Sincerely yours,

J. Edgar Hoover

John Edgar Hoover
Director

1 - Cleveland - Enclosures (2)
Attention SAC: Bring pertinent information in the attached to the attention of appropriate local authorities.
1 - Bonn - Enclosures (2)
1 - Foreign Liaison - Enclosures (2)

NOTE: Dr. Sheppard is well known as the individual who was convicted for the 1954 murder of his wife. This conviction was set aside. He was subsequently retried and acquitted. Dr. Sheppard has since remarried and recent news articles available indicate he and his wife, Ariane, plan to live on the French Riviera.

[redacted] (6) b7C

9 NOV 27 1967

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

4-750 (Rev. 9-21-94)

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552		Section 552a
☐ (b)(1)	☐ (b)(7)(A)	☐ (d)(5)
☐ (b)(2)	☐ (b)(7)(B)	☐ (j)(2)
☐ (b)(3)	☑ (b)(7)(C)	☐ (k)(1)
_____	☐ (b)(7)(D)	☐ (k)(2)
_____	☐ (b)(7)(E)	☐ (k)(3)
_____	☐ (b)(7)(F)	☐ (k)(4)
☐ (b)(4)	☐ (b)(8)	☐ (k)(5)
☐ (b)(5)	☐ (b)(9)	☐ (k)(6)
☐ (b)(6)		☐ (k)(7)

☐ Information pertained only to a third party with no reference to the subject of your request.

☐ Information pertained only to a third party. The subject of your request is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

_____ Pages were not considered for release as they are duplicative of _____

☐ For your information: _____

☐ The following number is to be used for reference regarding these pages:

_____

XXXXXX
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XXXXXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
XNO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXXXX

FBI/DOJ

November 27, 1967

Airtel

REC 39

To: SAC, Cleveland (62-1430)

From: Director, FBI

DR. SAMUEL H. SHEPPARD
INFORMATION CONCERNING

Reurairtel 11-21 67.

The copies of the two letters which were previously forwarded to your office were received in envelopes postmarked in Germany. For your information, the Bureau did not receive the original of either of these letters and it is not known to whom the originals were sent.

67C

NOTE: A copy of a letter dated 11-12-67 from [redacted] and a copy of a letter dated 11-13-67 from Dr. Samuel H. Sheppard were received at the Bureau and the envelopes containing them bore postmarks in Germany. These letters were acknowledged by outgoing 11-17-67 [redacted] and copies were furnished the Cleveland Office with instructions that office bring pertinent information in these communications to the attention of appropriate local authorities. [redacted] Dr. Sheppard's letter of 11-13-67 advised he [redacted] reported [redacted] had also stolen a gun from the Sheppard's residence.

[redacted] (5)

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
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Felt
Gale
Rosen
Sullivan
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Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

FBI
DEC. 0 DE LOACH

FD-36 (Rev. 5-22-64)

FBI

Date: 11/21/67

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIR MAIL (Priority)

TO: DIRECTOR, FBI

REC 39

FROM: SAC, CLEVELAND (62-1430)

RE: DR. SAMUEL H. SHEPPARD
INFORMATION CONCERNING

b7C

Re Bureau letter, 11/17/67, [redacted] with two enclosures.

b7D

On 11/20/67, [redacted] was provided with copies of those letters forwarded to Cleveland by the Bureau. One of the letters, as the Bureau will recall, [redacted] and the second letter was written by Dr. SHEPPARD himself, wherein he makes reference to [redacted] a charge of theft of a gun [redacted]

b7C
b7D

[redacted] was not known to him as being one of the former inmates of the Ohio State Penitentiary (OSP) with whom Dr. SHEPPARD has been known to associate since his release from the penitentiary. [redacted] pointed out that there have been numerous individuals who have called at the SHEPPARD residence in Bay Village during the period of his release until the time of his re-trial, many of whom were identified as ex-convicts from the OSP.

REC 39 62-1430-16

[redacted]

C. C. & Bishop

Airtel to Cleveland 11-27-67

3 - Bureau
2 - Cleveland
[redacted]

b7C

9 NOV 22 1967

Approved: (5) Sent _____ M Per _____

Special Agent in Charge

CORRESPONDENCE

b7C
b7D

[redacted] at this point he can attach no significance to the letter directed by Dr. SHEPPARD to the Bureau, which refers to a stolen portable typewriter, diamond cluster ring, and a .38 automatic.

[redacted] stated he must, [redacted] assume that SHEPPARD has some particular thought in mind by calling this information to the attention of the FBI and not to local authorities.

[redacted] information tends to indicate that Dr. SHEPPARD is in the United States, although he realizes that SHEPPARD could be in Germany or possibly may have mailed letters [redacted] and then had these letters mailed in Germany.

[redacted] these two letters received by the Bureau bore postmarks in Germany.

For the information of the Bureau, [redacted] approximately ten days ago Dr. SAMUEL H. SHEPPARD filed an open suit in Cuyahoga County Community Court against the "Cleveland Plain Dealer"; Dr. SAMUEL GERBER, Cuyahoga County Coroner; and Mr. LOUIS B. SELTZER, former Editor of the "Cleveland Plain Dealer", which is a Scripps-Howard paper, charging libel.

[redacted] will quietly and discreetly make inquiries into the allegations set forth in these two letters referred to him, and will with considerable interest follow any of SHEPPARD's activities, primarily because of the fact he characterizes SHEPPARD as an inveterate liar, deceitful, cunning, and without question a potentially dangerous individual.

The Bureau is requested to advise Cleveland, [redacted] whether these two letters were postmarked in Germany.

6-20 (Rev. 1-30-74)

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dir.:
Admin. ____
Comp. Syst. ____
Ext. Affairs ____
Files & Com. ____
Gen. Inv. ____
Ident. ____
Inspection ____
Intell. ____

1-22-83 01:44 AES

POLICE NO CLOSER TO FINDING SHEPPARD MURDER WEAPON
BY MIKE CASEY

CLEVELAND (UPI) -- THREE MONTHS AGO, POLICE THOUGHT A PAIR OF FIREPLACE TONGS COULD CLEAR OR CONDEMN THE LATE DR. SAM SHEPPARD IN HIS WIFE'S SLAYING, BUT POLICE SAY THEY NOW ARE NO CLOSER TO SOLVING THE NEARLY 30-YEAR-OLD MYSTERY.

SHEPPARD'S WIFE, MARILYN, WAS BATTERED 35 TIMES WITH A BLUNT INSTRUMENT IN THE COUPLE'S BAY VILLAGE HOME ON JULY 4, 1954, AND THE KILLING TOUCHED OFF ONE OF THE MOST SENSATIONAL MURDER CASES OF THIS CENTURY. THE MURDER WEAPON WAS NEVER DISCOVERED.

BAY VILLAGE POLICE HOPED THAT THE PAIR OF FIREPLACE TONGS, FOUND BURIED LAST NOVEMBER BY A NEIGHBOR NEAR THE FORMER SHEPPARD HOME, WOULD BE THE BIG BREAK IN THE CASE.

THE TONGS WERE SENT TO THE FBI BUT THE AGENCY FOUND NO TRACES OF FINGER PRINTS, BLOOD OR HAIR ON THEM, BAY VILLAGE POLICE LT. HOWARD JANSSEN SAID.

"NOTHING TO INDICATE THAT IT WAS LINKED TO THE MURDER," SAID LT. HOWARD JANSSEN. "WHAT WE HAVE IS A BIG QUESTION MARK."

POLICE CHIEF PETER GRAY SAID EVEN THOUGH THE CASE IS NEARLY 30 YEARS OLD, THE DEPARTMENT GETS A FEW CALLS A YEAR ABOUT MRS. SHEPPARD'S KILLER, BUT NO ONE ELSE HAS BEEN ARRESTED.

CUYAHOGA COUNTY CORONER DR. SAMUEL GERBER, WHO HEADED UP THE SHEPPARD INVESTIGATION, INSPECTED THE TONGS BEFORE THEY WERE SENT TO THE FBI AND DOUBTED THEY WERE USED BY THE KILLER.

"THE WOUNDS TO MARILYN SHEPPARD WERE VERY DEEP. THOSE TONGS WOULDN'T HAVE MADE THOSE TYPES OF WOUNDS," GERBER SAID, SHORTLY AFTER THE TONGS WERE DISCOVERED.

JANSSEN SAID HE WILL ATTEMPT TO DATE THE TONGS TO SEE IF THEY COULD HAVE BEEN USED IN THE KILLING.

SHEPPARD WAS CONVICTED AFTER A SENSATIONAL MURDER TRIAL THAT MIXED SEX, WEALTH AND MYSTERY, AND CAPTURED THE NATION'S ATTENTION. TRIAL TESTIMONY INDICATED THAT THE WEALTHY SUBURBAN DOCTOR HAD AN AFFAIR WITH A WOMAN AT HIS HOSPITAL, AND THE PROSECUTORS USED THE AFFAIR AS A POSSIBLE MOTIVE FOR THE KILLING.

BECAUSE OF THE PUBLICITY SURROUNDING THE CASE, THE U.S. SUPREME COURT ORDERED A NEW TRIAL AND SHEPPARD WAS CLEARED.

SHEPPARD, WHO DIED IN 1970, MAINTAINED THAT HIS WIFE'S MURDERER WAS A BUSHY-HAIRED INTRUDER, WHO KNOCKED HIM UNCONSCIOUS.

WASHINGTON CAPITAL NEWS SERVICE

NOT RECORDED
11 MAR 7 1983