

Sheppard Conviction Upset by High Court

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The Supreme Court upset the murder conviction of Dr. Sam Sheppard yesterday, holding that the trial judge "did not fulfill his duty" to protect the jury from massive publicity.

By focusing on a judge's failure to control the "carnival atmosphere" of the Cleveland osteopath's 1954 trial, the Court declined to view the famous case as a conflict between rights of "fair trial and free press."

At the same time, the Court indicated that news media are subject to court warnings about the "impropriety" of publishing material not brought out at trial and warnings to "check the accuracy of their accounts."

Sheppard, who served nine years of a life sentence for the bludgeon-slaying of his wife, Marilyn, told newsmen his first reaction was "Thank God," and his second thought was that he still seeks vindica-

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tion of his protests of innocence.

While a county prosecutor weighed the possibility of a retrial, Sheppard's lawyer, F. Lee Bailey, said it would have to take place "in some Ohio community not infected with deep-set prejudice or influenced by an irresponsible press."

Ten years ago the Supreme Court refused to consider Sheppard's first attempt to overturn his second-degree murder conviction. But his habeas corpus petition, which came after a series of Supreme Court decisions on pre-judicial publicity, won him release at the hands of a Federal judge who found the trial "a mockery of justice."

However, a divided 6th U.S. Circuit Court of Appeals reversed the Federal judge, ruling that Sheppard had failed to overcome the presumption that judges and jurors are fair and can disregard outside influences. Nevertheless, the lower court allowed Sheppard

to remain free on bond. He has lived near Cleveland with his second wife, whom he met through prison correspondence.

The 8-to-1 decision was announced by Justice Tom C. Clark, the author of last year's decision that television had disrupted the serenity of the fraud trial of Billie Sol Estes. Justice Hugo L. Black dissented without explanation.

Clark said that because of the "massive and pervasive" publicity and a series of failures by the trial court to guard the jury during trial, Sheppard did not have to show specific prejudice.

Attacks Recalled

He recited "headline stories" that began to attack the socialite doctor shortly after he reported his wife's death. The stories and editorials ridiculed Sheppard's claim that a "bushy haired" assailant had entered his suburban home on Lake Erie and knocked him unconscious. They demanded, "Stop Stalling—Bring Him In" for questioning at police headquarters.

Failure to insulate the jury from the influence of pretrial publicity was not of itself sufficient to find the trial unfair, Clark said, but it provided the "setting" for later rulings that made a "bedlam" out of the trial and "celebrities" out of the jurors.

Clark recited these "flagrant episodes" during the trial:

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• A defense lawyer's attempt to poll the community for possible prejudice against Sheppard was denounced in one editorial as "jury tampering."

• While the jurors were being selected, a radio station broadcast charges that Sheppard had thrown roadblocks in the way of the prosecution and had conceded his guilt by hir-

ing a prominent criminal lawyer. Judge Edward A. Blythin, who is now dead, said the radio station "doesn't have much coverage" when asked to protect against such events.

• A two-inch headline asked "Who Will Speak for Marilyn?" while the jury was being screened. When the jury visited the scene of the crime, reporters were there and a newspaper's helicopter flew overhead.

• Radio commentator Bob Considine accused Sheppard of perjury and likened him to Alger Hiss. The Judge refused to ask the jurors if they had heard the broadcast and denied a continuance, saying, "We can't stop people, in any event, listening to it."

• An 8-column headline told of a witness who would tell of Sheppard's "Jekyll-Hyde" temper in "bombshell" testimony. No such testimony was produced but Judge Blythin rejected motions to delay or transfer the trial.

• Walter Winchell broadcast a report, heard by at least two jurors, that a woman in New York had called herself Sheppard's "mistress" and said she had borne him an illegitimate child. The Judge simply accepted the jurors' statements that they were unaffected.

• A policeman told newsmen that Sheppard was a "bare-faced liar" in charging that they had mistreated him. The story appeared but the policeman never testified.

• During jury deliberations, jurors were secluded for the first time but were allowed unsupervised calls to their homes.

Clark said that while neither side had asked earlier that the jury be sequestered, the judge should have taken it up with counsel on his own initiative. But he said the Judge, who was in the middle of a heated campaign for re-election, "lost his ability to supervise."

"Newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially Sheppard," Clark said.

'Could Have Been Avoided'

The Judge's fundamental errors were compounded by his ruling that he lacked pow-

er to control the publicity, Clark said. "The carnival atmosphere could easily have been avoided since the courtroom and courthouse premises are subject to the control of the court."

Clark said the Judge could have limited the number of newsmen, shielded witnesses from interviews and instructed prosecutors and police not to talk outside the courtroom.

He said the Judge could also have warned the news media about their reporting, but added that Sheppard could have been protected "without corresponding curtailment of the news media."