

THE PRESS

NEWSPAPERS

The Press on Trial

The small press alcoves on the south side of the courtroom were jammed. Reporters who could not find space lined the corridor beyond and scribbled notes as best they could. Court secretaries who normally stick to their typewriters peered through the brass latticework at the cause of all the hubbub: Dr. Sam Sheppard, 42. With the unwitting help of the press, Sheppard had



SAM SHEPPARD & CURRENT WIFE
Between one and six.

finally managed to have his case heard by the Supreme Court of the U.S.

A decade ago, the Supreme Court had declined to review Sheppard's life sentence for the murder of his wife. Then, in 1964, he was released from jail by U.S. District Judge Carl Weinman, who did not rule on the doctor's guilt or innocence but ordered a new trial. The press, he said, had kept the defense from getting an unbiased verdict.

"If ever there was a trial by newspaper," wrote Weinman in his decision, "this is a perfect example. And the most insidious violator was the Cleveland Press. For some reason, the paper took upon itself the role of accuser, judge and jury. The journalistic value of its front-page editorials, the screaming slanted headlines and the nonobjective reporting was nil, but they were calculated to inflame and prejudice the public. The Cleveland Press showed no respect for its responsibilities."

Escaping the Media. In a split decision, the Circuit Court of Appeals in Cincinnati reversed Weinman, but Sheppard stayed on bail. He listened intently last week as his attorney, F. Lee Bailey, recalled once more the "circus publicity" of the trial. The reason for such banner headlines as WHY ISN'T SAM

SHEPPARD IN JAIL?; QUIT STALLING, BRING HIM IN; Bailey contended, was that Cleveland Press Editor Louis Seltzer (who recently retired) thought that only his paper could prevent a cover-up of the murder. Once the trial began, Bailey argued, Seltzer pressed for a conviction so that his paper would be protected against libel suits.

Joining the case as a friend of the court, Bernard A. Berkman of the American Civil Liberties Union argued that Trial Judge Edward Blythin should have removed the trial to a "remote county" of Ohio. In view of the "massive publicity," Berkman went on to say, the defendant had a right to choose his own place of trial. In that circumstance, said Chief Justice Earl Warren, "where we have so many news media—television, radio, newspapers—no trial would be had in a big city if the defendant wanted to go some place else."

In an effort to prove that court officials as well as newspapers were prejudiced, Bailey told how Judge Blythin had confided to Hearst Columnist Dorothy Kilgallen in a pretrial interview that Sheppard was "guilty as hell." Ohio Attorney General William Saxbe contended that Kilgallen's affidavit had never been sworn. Because Kilgallen as well as Judge Blythin have since died, Saxbe maintained that the statement could not be rebutted and was inadmissible. Bailey retorted that an assistant attorney general of Ohio had accompanied him when he talked with Kilgallen, and they agreed that her statement did not have to be sworn because of her "eminence and integrity." This presented the court with the odd situation in which the attorney general's office agreed to the taking of a statement, then objected to it later in court.

Pinning Responsibility. Both Bailey and Berkman were careful not to put the court in the position of having to choose between the First Amendment, which guarantees a free press, and the Sixth Amendment, which guarantees a fair trial. Asked whether he was pinning responsibility for the press coverage on the newspapers or on the court officials, Berkman did not hesitate to opt for the court officials. "There is nothing in what we propose," he said, "which would in any way inhibit the freedom of the press." Berkman suggested that the court should set some ground rules for trial coverage in order to avoid prejudicial reporting in the future.

Up to now, the Supreme Court has required evidence that jurors were influenced by prejudicial coverage before it ordered new trials. In the Sheppard case there is no proof that the jurors were actually influenced by the press. But if the court agrees with Sheppard that the unfavorable publicity is proof enough, then the state of Ohio must bring him to trial again within 60 days or let him go free.