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## Personal Reflections on the Reliability of Jury Verdicts

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## PERSONAL REFLECTIONS ON THE RELIABILITY OF JURY VERDICTS

SAM REESE SHEPPARD<sup>1</sup>

Good morning. It has been difficult for me to return to the scene of the crimes—I note plural, the *crimes*—because certainly my mother’s death was a crime and, certainly, I think everybody in this room believes it is a crime when a citizen is taken from the street, his freedom is stripped from him, he is put in a cell and wrongly convicted. That certainly can be an international crime, such that in that Amnesty International could get involved. So to me, Cleveland is the scene of the crimes.

I think this is indicative of a justice system that is so arrogant it does not even have a name for what happened to my dad in 1954. Our justice system does not even have a name for a failed trial. I would like you to think a bout that. The justice system has no dignified mechanism, either in the federal system or in the state system, to deal with the very serious and real problem of wrongful conviction. There is no mechanism; there is no safety valve. I believe that we too often see a young prosecutor go out and go for the “kill,” so-to-speak, with a conviction. The prosecutor gets his or her name in the paper, everything binds together, the media makes a commitment, and the law enforcement people make a commitment. If the prosecutor has the wrong person, it is too bad if there is a conviction. Five or ten years later, when these people are in the legislature, or maybe, they are a governor and they are dealing with an innocent person, there is no safety valve. That is where the system becomes evil. Good people make mistakes and can do bad things, but our system needs to change in its consideration of incorrect decisions by human beings.

It is interesting, when I was contacted about speaking here today, much of what I was asked to do was to make a victim’s impact statement. I think victim’s impact statements are problematic, but in the memory of my loved ones I will tell you a little bit of what happed to our family. Not only did my pregnant mother die with a young male in utero, but my dad’s life was destroyed. In addition, my grandmother Sheppard committed suicide shortly after her darling youngest son had been wrongly convicted. My grandfather Sheppard died of massive gastric ulcers after his life dream had been shattered. His dream had been to build the Cleveland Clinic. On my mother’s side, my mother’s father committed suicide years later and several relatives became alcoholics and dysfunctional. Such tragedy does not happen just to

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<sup>1</sup>Sam Reese Sheppard is the son of Dr. Sam and Marilyn Sheppard. For the last several years Mr. Sheppard has worked with lawyers, scientists, and investigators to solve his mother’s murder. The story is in the book CYNTHIA L. COOPER & SAM REESE SHEPPARD, *MOCKERY OF JUSTICE: THE TRUE STORY OF THE SHEPPARD MURDER CASE* (1995). He is an advocate for alternatives to the death penalty and for serious prison reform. Mr. Sheppard has served on several board of directors including being a founding board member of Murder Victims’ Families for Reconciliation, the National Coalition to Abolish the Death Penalty, and the Massachusetts Citizens Against the Death Penalty, among others. Presently, he is an advisory board member for Citizens United for Alternatives to the Death Penalty and Journey of Hope from Violence to Healing. Mr. Sheppard makes a living as a part-time registered dental hygienist and as a lecturer throughout the United States on the *Sheppard* case and its many ramifications.

the Sheppard family. There are children out there with fathers and relatives on death row. We need to look at our prison system, which is, I believe, creating dysfunctional people through overreaction and retribution. There are hundreds of children of victims who are not receiving the social, psychological, and spiritual help they need.

As to the history of this case, I feel sorry for the jurors. The jurors in "unfair" trial number one. I call it the "unfair trial" because there is no legal term for an unfair trial. I challenge the legal community to come up with a name—for the general public must know that the system fails once in a while. There is a man, who might show up at this conference, who is a juror from the original "unfair trial." His life mission is to go around and say that he was right about a trial that does not legally exist. The original "unfair trial" was thrown out by the United States Supreme Court.<sup>2</sup> That is a pretty tragic spot to be in.

The next jury I call the "silent jury." It is a jury that has never been mentioned at all. It is the jury of the prisoners in the old Ohio State Penitentiary who stood up in standing ovation and clanged their cups across the bars, as my dad, doc, the "solid square," exited the Ohio State Penitentiary. The "silent jury" is the hardest jury there is. They did not tolerate women killers in those days. My dad did hard time. "Hard time," in reality, means time done by an innocent man. It is a term that has lost its original meaning over time.

The third jury is what I call the "fair trial." The trial of 1966 was decided in terms of reasonable doubt. Lastly, I call what happened here in Cleveland last year, the fourth jury decision, the "show trial." I felt that I was sitting through an exercise in Russia where we were confronted with the Secret Service, the U.S. Army, and the FBI who all testified in support of the defendant, the State's case. We were confronted with a massive show of force, by the State, to crush me, a citizen trying to reform the system. In the civil trial, a law enforcement officer testified that it is legal for the police to lie. It is legal for the police to lie! Where does it begin? Where does it end? Maybe the whole crime is a lie, a fabrication. That is where we can lose to ideology. It is pretty serious if the police will lie in order to get certain individuals off the streets.

It is a trial where after a few days, a photograph of my parents showed up in the *Plain Dealer*. I went into the trial and the photographers, thinking that they were being nice, made up three photographs of my parents. I walked into the courtroom and they handed the photographs to me, as if they were a gift. They were giving me photographs of my parents. I realized at that point that the images had been taken without my permission. These news people had not photographed the images. I ask the people at this symposium to help me recover the photographic images of my own parents which have been taken from me and my family.<sup>3</sup>

This is Cleveland, where I have been accused of being everything from a basket case to a gold digger. I have been called an American Hero by the President of the University of Notre Dame. I do not quite care what anybody calls me. I consider myself to be an activist for change.

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<sup>2</sup>Sheppard v. Maxwell, 384 U.S. 333 (1966).

<sup>3</sup>See JAMES NEFF, *THE WRONG MAN: THE FINAL VERDICT ON THE DR. SAM SHEPPARD MURDER CASE 22-23* (2001) (discussing the possible theft of photographs from the Sheppard house).

It is difficult after ten years of seeking an honorable reconciliation and cooperative effort with the State to get kicked in the teeth at every turn. My lawyer and I worked very hard. We would build information, then we would try cooperatively to deal with the prosecution. The prosecution would then take the information and pat us on our backs. The next week they would stick a knife in our backs. We have had ten years of backstabbing. We have had situations where I have been told by sitting judges in this district, to get a life, and that I was in it for the money.

Imagine having your dad nearly executed by the State. Having his life ripped away from him and slowly degraded in the Ohio State Penitentiary. Having your mother and father's love betrayed by the State! Ask yourselves, what would you do?

At least this conference confirms the importance that this case has in legal history. I thank the law school and Ms. Falk for doing that. I thank the organizers. I thank my lawyers, Terry Gilbert and George Carr, for their very hard and unpaid work. I thank the surviving members of my mother's family, who are here this morning.

There is an interesting book just published called *Crooked River Burning*. It is a fictional history of Cleveland which is not really flattering. If you are interested in the Sheppard case, this book shows some of the sociological background of those times and the power plays that went on.

According to my informal conversations with a number of individuals working with the news media covering the third trial, staffing decisions at major news organizations in the Cleveland area were made in such a way that the most experienced reporters were either reassigned or taken off coverage of the case. For instance, although James F. McCarty had written numerous stories about the Sheppard case during the years preceding the third trial<sup>4</sup> and had received an award for his reporting on the Sheppard murder case,<sup>5</sup> no stories under this byline appeared in the Plain Dealer during the actual trial.<sup>6</sup> Most of the Plain Dealer coverage of the trial was written by James Ewinger and John F. Hagan.<sup>7</sup> Similarly, Joe Dirck, who had won the reporting award with McCarty, wrote more than 30 columns about the Sheppard case in the years before the 2000 trial, but his coverage ended with a column dated January 30, 2000.<sup>8</sup> Dirck was viewed as showing sensitivity to the

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<sup>4</sup>From December 10, 1992 to September 8, 1999, McCarty authored more than 40 stories appearing in the Plain Dealer about the Sheppard case; the next story he wrote for the Plain Dealer about the Sheppard case appeared on October 31, 2001. See Lexis/Nexis news database.

<sup>5</sup>*Plain Dealer Gets 7 Top Awards*, PLAIN DEALER, Sept. 27, 1998, at 2B ("For criminal justice reporting, James F. McCarty, Michael Sangiacomo, Michael O'Malley, Mark Rollenhagen, Joe Dirck and Doris O'Donnell took second place for detailing and evaluating new findings in the Sam Sheppard murder case.").

<sup>6</sup>See *supra* note 4, and accompanying text.

<sup>7</sup>See, e.g., James Ewinger & John F. Hagan, *Sheppard Loses; Jurors Issue Rapid Verdict*, PLAIN DEALER, Apr. 13, 2000, at 1A.

<sup>8</sup>See Lexis/Nexis news database; See also, Joe Dirck, *Lost Boy in Photo Still Defends Dad*, PLAIN DEALER Jan. 30, 2000, at 1B.

Sheppard case<sup>9</sup> and, according to one report, was amazed that Sheppard “has not been treated more sympathetically in this town, . . .”<sup>10</sup> Dirck, who no longer works for the Plain Dealer, is now a spokesman for the Northeast Ohio Public Energy Council.<sup>11</sup>

What would I hope to come out of a conference like this? First, selfishly, I would hope that it would help us with our new legal endeavor. Second, I hope that we can contribute to serious legal work that deals on realistic and dignified grounds on the problem, both federally and statewide, of wrongful incarceration. This problem does exist, and it is a larger problem than we think. Third, I would suggest a national and state conference in which the legal community and the scientific community come together and begin straightening out confusing vocabulary used by their fields. For example, the scientific community says “contaminated DNA” and people in the street throw up their hands and think oh no, it is just some spoiled stuff; they are trying to pull a fast one on us. In the scientific community “contaminated DNA” means that there is some extra DNA that is not quite explainable. In this case, Mr. Ebberling’s DNA was in all those samples in the murder room.<sup>12</sup>

I have a quiz question from the newspaper. The question asks: What is junk DNA? The answers to the question include: (a) new biotech bond financing, (b) science slang for strings of genetic material without any clear use, or (c) the stuff left on lab coats during research projects. The correct answer to the question is: (b). Therefore, junk DNA could literally be the secret to the universe. In the courtroom, contaminated DNA is called junk. The general public believes the court, and that is a big problem for both the prosecution and defense.

Personally, I declare in the sense of this case, that I have reached the end of my tether in many ways. I am burnt out. I am rather bitter. I am certainly disgusted and angry. In the spirit of reconciliation, I would just like to share in closing, the short saying that I have closed many talks with throughout the country over the years.

This was written by a survivor of Auschwitz (anonymously).

Remember not only the men and women of good will, but also those of evil will. And in remembering the suffering they have inflicted upon us, let us honor the fruits that we have borne thanks to this suffering. Our comradeship, our compassion, our humility, our courage, our generosity, the greatness of heart that has come out of all of this, and when they come

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<sup>9</sup>Terry Gilbert, *Another Disappointed Customer Frank Kuznik's "Terrible Burden,"* Letter to the Editors, CLEVELAND SCENE, Apr. 27, 2000 (“Kuznik was one of the few local journalists to show sensitivity to the Sheppard case, as did former Plain Dealer columnist Joe Dirck.”).

<sup>10</sup>Frank Kuznik, *Out of the Past: Forty-six Years After His Mother's Murder, Sam Reese Sheppard has Returned to Cleveland, Seeking Vindication and Bringing Decades of Doubt, Pain, and Guilt Home to Roost,* CLEVELAND SCENE, Jan. 27, 2000. (“For a while, Dirck lobbied for better and broader coverage of the revived case. But his editors were indifferent, and eventually he settled into flying solo from his slot on B-1. The PD will be forced into expanded coverage once the trial starts, but up to now it’s given the Sheppard story short shrift. Whether that is due to bad judgment or institutional bias is debatable. Either way, it’s hard to ignore the overtones of ’54, particularly in the newsroom.”).

<sup>11</sup>Michael Scott, *Mentor Decides to Stay with NOPEC Consortium,* PLAIN DEALER, July 17, 2002, at B7.

<sup>12</sup>See NEFF, *supra* note 3, at 196, 331, 337, 364.

to the judgement, let all the fruits that we have borne, be there forgiveness, and our reconciliation.<sup>13</sup>

I thank you.

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<sup>13</sup>Peace Abbey, Sherborne, MA. on their "card" (on file with author).