

THEREUPON the defendant, further to maintain the issues on his part to be maintained, called as a witness KATHRYN CAPODICE, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF KATHRYN CAPODICE

By Mr. Bailey:

Q Will you tell us your name, please?

A Kathryn Capodice, C-a-p-o-d-i-c-e.

Q Did you at some time use the name Post?

A Always when I worked for a newspaper.

Q In July, 1954, were you employed?

A Yes, sir.

Q By whom?

A By the Lorain Journal.

Q That is the newspaper in Lorain, Ohio?

A It is.

Q Where did you live at that time?

A I lived in Cleveland, Ohio.

Q And do you recall the address?

A Yes. 11501 Mount Overlook Road.

Q Had you ever worked for other newspapers previous to the Lorain Journal?

A Yes.

Q How long had you been working at the Lorain Journal as of July 4, 1954?

A One month.

Q Who was the editor of the paper?

A Colonel Edward C. Lapping.

Q Was there at some point on or about July 4th, brought to your attention as a newswoman that there had been a murder in Bay Village?

A Yes, sir.

Q And whether or not you covered that murder or wrote any stories about it for the Lorain Journal?

A I did, sir.

Q Did you at some time meet with Coroner Samuel Gerber in connection with your coverage of the murder?

A Yes, sir.

Q When was the first time that Doctor Gerber in connection with the Sheppard case?

A It was on July 6, 1954.

Q At that time, did Doctor Gerber give you anything?

A Yes, sir.

Q And what was that?

A He gave me some pictures that were photographed from another angle at the Sheppard home.

We did not have a photographer and he volunteered and he gave me the pictures.

Q And were those for use of the newspaper?

A Yes, sir.

Q Now, as a result of this favor by the coroner, did you at some later time have occasion to meet with him?

A Yes, sir.

Q At whose suggestion was the meeting held?

A At Colonel Lapping's.

Q Who contacted Coroner Gerber and arranged the meeting?

A I did.

Q Between July 4, 1954, and the date that this meeting was arranged -- by the way, can you tell us approximately when you called him to arrange this meeting?

A It was shortly after he gave me the pictures.

Q Between July 4, 1954, and the date of your actual meeting with Coroner Gerber, how many times did you call him?

A One time, sir.

Q Did you ever call him fifteen times?

A Never.

Q Where did the meeting take place?

A It took place at the Castle-on-the-Lake, which is a restaurant in Lorain, Ohio.

Q And who was present?

A Colonel Lapping, myself, and Doctor Gerber.

Q Did you have something to eat?

A Yes, sir.

Q Do you remember the specific day or date?

A No, I don't.

Q You said it was shortly after the 6th?

A It was at the end of -- it was in the middle to the end of July, of 1954.

Q What was the purpose in asking Doctor Gerber to lunch?

A To thank him for the gracious gesture of having favored us with the pictures.

Q I take it the lunch was on the newspaper?

A (No response)

Q What time did you meet on that date, do you recall?

A It was about 4:30 in the afternoon.

Q While you were having something to eat, did you have some conversation between yourself, the Coroner, and Colonel Lapping?

A Yes, sir.

Q Did you talk about the Sheppard case at all?

A No, sir.

Q Can you tell us whether or not there was ever any discussion in the course of that conversation about a potential woman suspect from Elyria?

A There never at any time was anything along those lines discussed.

Q Was there any talk about any woman suspect from any place?

A There was.

Q Who injected the name of this woman suspect into the conversation?

A Colonel Lapping.

Q Did Doctor Gerber make any statement at that time with reference to his opinions about the cause of the murder?

A He did.

Q And what did he say?

A Well, the remark that I am going to quote the Coroner as saying, came only after a good bit of preliminary discussion, but before the dinner ended he said --

MR. SPELLACY: Objection.

THE COURT: Sustained.

Q Was there any talk by the Coroner about a woman connected with the murder?

A Yes, there was.

Q What did he say in that context?

A He said that only a woman could have been guilty, because a man would have done a cleaner job and not continued on after their adversary was finished.

Q You clearly remember that statement by the Coroner?

A I distinctly remember it.

Q At some time following the murder did you have occasion to interview Mrs. Houk?

A Will you rephrase that question?

Q Yes. At some time after the murder did you have an occasion in connection with your coverage of the case, to interview Mrs. Esther Houk?

A I did, yes, sir.

Q Were you in her home?

A Yes, sir.

Q In what part of the home?

A In the living room.

Q Did you make any observations with reference to the fireplace when you were in her home?

A Yes, sir.

Q What did you see in the fireplace?

A I saw the remains of the logs that were in the fireplace.

Q Was there a grill in the fireplace, something to hold the logs?

A There was a fire basket, and the logs were in the fire basket.

Q What did you see of the logs, so-called?

A Just the ends.

MR. SPELLACY: May we have a time,  
Judge?

MR. BAILEY: Yes.

Q When did these observations take place?

A On the 6th or 7th of July, 1954. I don't recall which.



Q Did you have some conversation with Mrs. Houk about her activities on the night of July 3rd and the morning of July 4th?

A Yes, sir.

Q And what did she tell you that she had been doing?

MR. SPELLACY: Objection.

THE COURT: Sustained.

MR. BAILEY: May we approach the bench and offer proof?

THE COURT: Yes.

(Thereupon Court and Counsel conferred at the Court's bench out of the hearing of the jury, as follows:)

MR. BAILEY: This is to contradict the State's witness, Esther Houk, and this witness would testify in substance that she interviewed Mrs. Houk and noticed the burned logs in the fireplace, and Mrs. Houk told her several points about a very fascinating magazine article or story that she had been reading early in the morning of July 4th, and that after mention was made of this one or more times by Mrs. Houk, this witness asked Mrs. Houk, "What was the story that you were reading?" And Mrs. Houk said, "I don't remember."

THE COURT: Is that your proffer?

MR. BAILEY: That is my offer of proof.

MR. CORRIGAN: No objection to that. We will withdraw the objection. That is not inconsistent with her testimony.

THE COURT: This is my point. I will sustain the objection.

Please let us go forward.

MR. BAILEY: May I show for the record, the inconsistency?

THE COURT: Yes. Are you claiming one?

MR. BAILEY: Yes. The inconsistency being that although it is not unusual for Mrs. Houk at this time, that is to say, in her testimony in this case, to be unable to remember the magazine article she was reading twelve years ago, that within a forty-eight hour period after the incident had occurred, that it is highly unusual, since this is the way she accounts for her time, the defense attempting to show that is how her time was spent.

THE COURT: Objection sustained, gentlemen.

(Thereupon proceedings were resumed within the



hearing of the jury, as follows:)

THE COURT: Please proceed,  
Counselor.

By Mr. Bailey:

Q Now, Madam, did you ever meet or encounter a man named Jack Krakan?

A Yes, sir.

Q Had you ever met him before the murder of Marilyn Sheppard?

A No, sir.

Q At some time subsequent to the murder did you meet him?

A I did, sir.

Q And was there one meeting or were there several?

A There were several.

Q And did you have some conversation with him about something he had observed in the house?

A I did, sir.

Q Did you ever have occasion to take his affidavit with reference to what he had observed in the Sheppard house at some time?

A Yes, sir.

Q And did his conversation -- without telling us what it was -- did it have reference to any individual that had been seen in the house?

A Yes, sir.

Q And did you determine who that individual was by his reference to some means of identification?

A Yes, sir.

Q And who was it?

MR. SPELLACY: Objection.

MR. CORRIGAN: Objection.

THE COURT: Sustained, and

Counselor will not proceed or pursue that line of inquiry. You may make a proffer if you wish, Counselor.

MR. BAILEY: I will make a proffer.

(Thereupon Counsel and the Court conferred at the Court's bench out of the hearing of the jury, as follows:)

THE COURT: Mr. Bailey, please proceed.

MR. BAILEY: The witness would say that the witness Mr. Krakan identified J. Spencer Houk of Lake Road, Bay Village, as the man he had seen in the home in December, the same man who was the recipient of the key.

THE COURT: Anything further, Counselor?

MR. BAILEY: Yes, there certainly is.

The defense has every right to prove that the crime was not committed by the defendant, but by a third person.

This is a substantial piece of circumstantial evidence tending to show --

THE COURT: Hold it down, keep your voice down, please.

MR. BAILEY: That J. Spencer Houk was the recipient of a key to the Sheppard home given him by Marilyn Sheppard.

The evidence will show that the key was not present in the home on July 4th, and that it was not present several days thereafter, perhaps months while the investigation was active.

And that same key, at least by inference, is the one which was found in the presence of Sergeant Hubach on November 11, 1954; circumstantial evidence to show the key could only have been deposited by someone who had access to the house, a number of these, other than the officials, J. Spencer Houk, as the evidence shows.

MR. CORRIGAN: This witness is not testifying to what somebody else told her, that

somebody else at the time not then being under oath, we are denied the opportunity of cross-examining this other witness.

MR. BAILEY: You have already cross-examined him.

MR. CORRIGAN: Not on that. It is pure hearsay as with regard to this witness here, and should go out for that reason, and for the reason that we are also denied the opportunity of cross-examining him on any identification that he made.

MR. BAILEY: You could have cross-examined him when he was here.

THE COURT: Let the record show that the objection is sustained.

The testimony is precluded on the basis that it is rank hearsay, and predicated on that which would be highly speculative and conjectural.

Please proceed.

MR. BAILEY: The evidence will show that this witness pointed to a picture of J. Spencer Houk and said, "That is the man that I saw," and he gave affidavits naming J. Spencer Houk as the man he saw in the house, in December.

THE COURT: Hold it a moment.

Are you finished, Counselor?

MR. BAILEY: Yes.

THE COURT: (Addressing the jury)

Ladies and gentlemen of the jury, please  
be at ease and visit amongst yourselves, if you  
wish.

In support of its ruling, the Court  
cites for the record, 21 Ohio Jurisprudence, 2nd,  
at page 536, and quotes from it as follows:

"Where identification of a person  
is one of several seen together, at a  
specific time and at a designated location,  
becomes material, photographs of the person  
in question shown to be good likenesses of  
him, and to have been shown to the witness  
shortly after the time in question, who  
was then able to identify the photographs  
as the likenesses of the person in question,  
may properly be used by such a witness" --  
and underscore witness -- "to identify the  
person after the lapse of several years."

And let the record show that this Court  
requested that the term at that point be under-  
scored.

And the ruling stands, and let's

proceed, gentlemen.

MR. BAILEY: If it please the Court, I bring to the Court's attention the fact that I could not properly bring out from the witness Krakan, whose picture he had identified because that was hearsay.

But this witness saw him identify the picture as the man he had seen in the house, and this witness knows who that picture represented.

Krakan never saw J. Spencer Houk from December, 1953, until he took this witness stand, and the most he could say is, "I identified a picture and somebody said that it was Houk."

Now, he could say he saw a newspaper picture, but that, too, is hearsay, the fact that a newspaper captions a picture J. Spencer Houk is not competent evidence that it is Mr. Houk.

I am putting this evidence in the only proper way it can be offered. This witness can say that Krakan looked at this picture and he said that is the man. I saw the picture and I knew that was a picture of J. Spencer Houk, because I knew J. Spencer Houk.

THE COURT: I understand your position, Counselor.



Let the record show that the Court's ruling stands.

Further in support of its ruling the Court cites Chapter 13, Hurd and Long, at paragraph 13.1, page 246 and 247, and Counselor is instructed not to pursue this line of questioning with this witness any further.

MR. BAILEY: All right. I wish to make a further objection to an order of the Court that I not be permitted to proceed further to lay the foundation for what I regard as entirely proper evidence.

(Thereupon proceedings were resumed within the hearing of the jury, as follows:)

MR. BAILEY: You may examine, sir.

CROSS EXAMINATION OF KATHRYN CAPODICE

By Mr. Corrigan:

Q When did you first go to work for the Lorain Journal?

A I believe a month before the Sheppard case.

Q A month before the Sheppard case; specifically what were your duties there?

A I was hired specifically just to report the Sheppard case.

Q The Lorain Journal was interested in reporting the

Sheppard case?

A Yes, they were.

Q And they hired you for that purpose?

A Right.

Q Where had you worked before working for the Lorain Journal?

A I had worked for other newspapers.

Q Keep your voice up, please.

A I had worked for other newspapers.

Q Other newspapers?

A Right.

Q What other newspapers?

A The Hearst Newspapers.

Q What Hearst Newspapers?

A I worked for the Herald American, which is now defunct.

Q The Herald American where?

A 326 West Madison Avenue, Chicago, Illinois.

Q How long did you work for the Herald American?

A About a year and a half.

Q When did you work for the Herald American?

A From about August of 1946 until about eighteen months later.

Q Where did you work after working for the Herald American?

A I worked for the Washington Herald Post as special services.

Q Where was that employment?

A It was in Washington, D. C.

Q How long did you work in that employment?

A I would say about two years.

Q Then where did you go to work after that?

A I worked in Hearst Management.

THE COURT: I am sorry, I cannot hear you.

A I worked in Hearst Management.

Q Where was that at?

A That was in New York.

Q How long did you work in Hearst Management?

A About eighteen months.

Q Then where did you work after that?

A I came home and I went to work for the Lorain Journal. Mr. Lapping had worked for Hearst and he became the editor.

Q I see. You came home -- is Lorain your home?

A No, sir. Cleveland, Ohio is.

Q Cleveland, Ohio, is your home?

A Yes.

Q How long did you continue to work for the Lorain Journal?

A Partway through the Sheppard case.

Q Partway through the Sheppard case. Now, somewhere through the Sheppard case did you leave the Lorain Journal?

A Yes, sir.

Q And when was that?

A Sir, I would say about in October of 1954.

Q Then where did you go to work?

A I went in business for myself.

Q I see. What type of business did you go into?

A The mortgage loan business.

Q The mortgage loan business?

A Yes.

Q What was the name of this business that you ran for yourself?

A It was Capodice Mortgages.

Q Capodice Mortgages?

A It was located at 750 Broadway in Lorain, Ohio.

Q Specifically what was the function of this mortgage finance business?

A The function of it was the procurement of FHA and GI loans for the brokers in Lorain, financing of commercial shopping centers, for people who asked for it. That was the function of it.

Q Did you go into this business with someone else?

A No, sir.

Q Alone?

A Yes, sir. Charles E. Miller of Miller Insurance shared the office with me. But it was my own business, and

the insurance was a separate department.

Q How long did you continue in that business?

A I would say about two and a half years.

Q And that would bring us then up to somewhere around 1957, is that correct?

A No, sir. In between 1954, I stopped working and I didn't do anything. And in 1960 I opened up the mortgage loan -- in 1959, I opened the mortgage loan office.

Q Now, you said in between 1954 and what date you stopped working; you were at the Lorain Post in 1954?

A No, sir, the Lorain Journal.

Q The Lorain Journal. And then --

A I stopped working.

Q You stopped working, for how long a period of time did you stop working?

A I stopped working from 1954 until 1958 or '59 when I got my real estate license.

Q I see. When did you go into the mortgage loan business?

A I went in about April of 1959.

Q I see. So you didn't go into the private business immediately after leaving the Lorain Journal?

A No, sir.

Q What did you do by way of employment during that period of time?

A I had a perfectly good husband who enjoyed supporting

me.

Q I see, and your husband's name?

A John Capodice.

Q Were you married to Mr. Capodice when you worked for the Lorain Journal?

A I surely was.

Q Were you married to Mr. Capodice when you worked for the Hearst newspapers?

A I surely was.

Q Were you married to Mr. Capodice when you worked in Washington, D. C.?

A I married Mr. Capodice April 28, 1937, in Cleveland, Ohio.

Q But the point is you were married at the time you were working in Washington, and in New York, and for the Lorain Journal, is that correct?

A That is correct, sir, yes, sir.

Q So that after you left the Lorain Journal then Mr. Capodice supported you solely from that point on, is that correct?

A Sir, I was always supporting me one hundred percent. Whatever I made was a sheer bonus.

Q I see. Where did you live after leaving the Lorain Journal?

MR. BAILEY:

I object, your Honor.



This is irrelevant.

THE COURT: After she left the Lorain Journal, Counselor?

MR. BAILEY: After all the transactions she testified to were past, yes, taken at the beginning of the first Sheppard trial; where she lived after that is irrelevant, and I object.

THE COURT: May I see Counselor?  
(Thereupon Court and Counsel conferred at the Court's bench out of the hearing of the jury.)

THE COURT: Overruled. Please proceed, Counselor.

MR. BAILEY: In view of the representations at the bench, my objection is withdrawn.

MR. CORRIGAN: Mr. Reporter, will you read the last question back, please?

THE COURT: Mr. Reporter, please read the last question.

(Following question was read by the reporter:)

"I see. Where did you live after leaving the Lorain Journal?"

A I lived at 3104 Colorado Avenue, Lorain, Ohio.

Q With whom did you live at that address?

A I lived there with my husband, and I lived there with Colonel Lapping whom I had known previously.

Q This is the same colonel that is the editor and the publisher of the Lorain Journal?

A He is not the publisher. I never said that. He was the editor.

Q The editor?

A The Horwitz family is the publisher.

Q Is this his home on Colorado Avenue?

A No, it isn't. It was a rental home.

Q How long did you live at that address after leaving the Lorain Journal?

A I lived there two years.

Q Then, where did you live after that?

A I bought my own home in Lorain.

Q Did you continue to live in your own home then thereafter?

A Of course.

Q Are you living in that home today?

A No, sir. I sold it and I bought another -- I still own it, and I bought another home that I am living in today.

Q Now, have you lived continuously in Lorain ever since 1954?

A No, sir.

Q Where else did you live, other than Lorain?

A Avon Lake, which is where I live now.

Q Avon Lake?

A Right.

Q Did you live anyplace else other than Avon Lake?

A No, sir.

Q Now, you indicated that you had a meeting with Doctor Gerber, is that correct?

A Yes, sir.

Q Doctor Gerber gave you some pictures in connection with the Sheppard case?

A He surely did.

Q Then the colonel advised you to call Doctor Gerber for the purpose of having Doctor Gerber have dinner with you and he, so that you may return the kind gesture for him turning the pictures over to you, is that correct?

A One hundred percent.

Q Did you have any difficulty reaching Doctor Gerber?

A None whatsoever.

Q Where did you call him?

A I called him at the County Morgue.

Q And did you talk with his secretary?

A No, I didn't. I asked for Doctor Gerber. I don't know who answered the phone.

Q Then you subsequently did talk with Doctor Gerber?

A Mr. Corrigan, I did talk with Doctor Gerber, yes, and

he accepted my invitation.

Q Yes. At that time did the colonel tell you when to fix the date for the dinner?

A He said any time at Doctor Gerber's convenience.

Q Then it was by mutual arrangement between you and Doctor Gerber as to when it was convenient for him, is that correct?

A Right.

Q You say at that time, there was no discussion about a woman in Elyria being involved in this matter?

A Absolutely none whatsoever.

Q Was there some discussion between Doctor Gerber and you and the colonel relative to the Lorain Journal being desirous of scooping the Cleveland Press on a story?

A None whatsoever.

Q I see.

A We didn't even have a photographer on this trial. That is how interested we were in scooping anyone about anything at anytime. We were giving it the minimum coverage.

Q But you were hired to cover this trial as a reporter?

A Yes, sir.

Q And that was your sole function?

A Sir, you asked me that and I told you.

Q And did you cover it, as a matter of fact, did you not?

A Until October of that year. You just asked me that.

Q What was your reason for leaving the paper midway through that trial or during October of that year?

A For the simple reason the Lorain Journal was not the kind of paper anyone would like to work for. The wages were poor. We were overworked and underpaid, and I could no longer go on.

Q You advised the colonel of that?

A I did.

Q And then you left on your own accord?

A I did.

Q And you had made this determination as to being overworked and underpaid in working for them in a period of how long?

A From July until October.

Q July until October. What was significant about noticing some burnt logs in the fireplace of Mrs. Houk's home?

A It was significant to me that anybody would have a fire at that time of year. It seemed very strange.

Q Did you see any coal in that fireplace or in the vicinity of the fireplace?

A Everything had been burned out pretty well. Mrs. Houk told me that there had been some coal in it, as I recall, or at least she did. This is twelve years ago.

Q Did you see any coal?

A I didn't get up and make a minute inspection to find



out.

Q But you saw some logs?

A Yes, I did.

Q And on what date was this?

A It was on July 6th or 7th, 1954.

Q Did you comment at that time about there being burnt logs in the fireplace?

A I don't remember. I did bring to Doctor Gerber's attention that I thought it was odd she had a fire, when he came to dinner.

Q Now, this name, Mrs. Post, you used that in connection with your writing?

A Right. Post is my maiden name. It is my father's name.

Q Other than covering the Sheppard case, have you been a reporter with these other newspapers?

A No, because I was always in special services and special assignment.

Q Now, what do you mean by special services and special assignment?

A I mean that I covered anti-vivisection for the Hearst newspapers, which was in accord with Mr. Hearst's personal wishes. That was one special assignment that I had for them.

Q Which Mr. Hearst is this?

A Mr. William Randolph Hearst.



Q Is he alive today?

A No, sir.

Q How long has he been dead?

A He died in the early 50's, I would say.

Q It was his wish that you be employed and given special assignments with his newspaper, is that correct?

A Right.

Q How long have you known the colonel that edits or did edit the Lorain Journal?

A I would say from 1943.

Q Is the colonel still alive?

A He is.

Q Where is he living now?

A He is living in Buffalo.

Q How long has the Lorain Journal been out of business?

A It is not out of business.

Q It is still in business?

A It publishes every single day.

Q How long has the colonel been disassociated with the Lorain Journal as editor?

A As near as I can recall, since September of 1956.

Q You had testified that Doctor Gerber said that only a woman could do this, is that correct?

A Yes.

Q And the colonel heard that?

A He was sitting there, he must have.

Q You were at that time, employed by the Lorain Journal for the purpose of writing about the Sheppard case, is that correct?

A Mr. Corrigan, you have asked me that nine times. That is correct and you are right.

Q Now, did you at any time, write in the Lorain Journal that Doctor Gerber said, "Only a woman could have done this"?

A No, sir.

MR. CORRIGAN: No further questions.

MR. BAILEY: Thank you very much.

No further questions.

THE COURT: You are excused.

THE WITNESS: Thank you, your Honor.

THE COURT: Ladies and gentlemen of the jury, it is after four o'clock, and we have had a long day.

While you are away on your overnight adjournment, you will bear in mind the instructions given you on each occasion when you leave this room.

You shall not discuss this case or what you have heard of it amongst yourselves. You shall not permit anyone else to discuss it with you, nor shall you permit yourselves to overhear

anything that relates to this case by any means of communication, having in mind and specifically in detail the admonition with respect to printed material, radio, and television.

We will stand adjourned, ladies and gentlemen, until 9:15 tomorrow morning.

(Thereupon an adjournment was taken to 9:15 a.m., Saturday, November 12, 1966, at which time the following proceedings were had:)