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Defendant's Motion to Admit Other Acts Evidence and Character Evidence Relative to Samuel H. Sheppard, Pursuant to EVID. R. 404

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

2000 MAR 10 P 1:34

CHARLES MURRAY, AMINISTRATOR

Plaintiff

v.

STATE OF OHIO

Defendant

CASE NUMBER 312322

JUDGE RONALD SUSTER

**DEFENDANT'S MOTION TO
ADMIT OTHER ACTS EVIDENCE
AND CHARACTER EVIDENCE
RELATIVE TO SAMUEL H.
SHEPPARD, PURSUANT TO EVID.
R. 404**

Defendant, by and through counsel, William D. Mason, Cuyahoga County Prosecutor, and A. Steven Dever, Assistant Prosecutor, moves this honorable court to admit evidence relative to other acts and character of Samuel H. Sheppard. The grounds for this motion are that such evidence is admissible under Evid. R. 404(B), all as is set forth fully in the brief attached hereto and expressly incorporated herein by reference.

Respectfully submitted,

WILLIAM D. MASON, CUYAHOGA
COUNTY PROSECUTOR

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BRIEF IN SUPPORT OF MOTION

INTRODUCTION

In its memorandum opinion dated March 5, 2000, this court addressed a multitude of evidentiary issues. The instant motion pertains to two specific areas. First, the court's opinion that evidence of Samuel Sheppard's character as a person who is violent or peaceful, is not admissible in this civil case. Second, the court's opinion that only evidence of a current, and not prior extramarital affairs is permissible.

I. THE STATE IS ENTITLED TO INTRODUCE REBUTTAL EVIDENCE.

Rebutting evidence is that which is given to explain, refute, or disprove new facts introduced into evidence by the adverse party; it becomes relevant only to challenge the evidence offered by the opponent. 6 Wigmore on Evidence (Chadbourn Rev. 1976) 672, 679. A party has an unconditional right to present rebuttal testimony on matters which are addressed in the opponent's case in chief; and, it is error for a court to deny a party the right to explain or rebut testimony which concerns material that is being introduced for the first time during opponent's case in chief. *State v. Grinnell*, (1996) 112 Ohio App.3d 124.

The court has repeatedly allowed statements by plaintiff's witnesses referring to Sam H. Sheppard's good character. The court has allowed numerous witnesses to testify on direct examination to Samuel Sheppard's character as happily married, respectable, decent, family man. Specifically, Mildred Adler testified on direct examination that Samuel Sheppard wanted another child. She further testified upon questioning by the

Sheppard team that Dr. Sheppard was very fond of Ms. Adler's daughter and that he would like to have a daughter. This stands in stark contrast to his statements to colleagues that Marilyn Sheppard's pregnancy was an unwanted mistake caused by failing to use birth control. Ms. Adler testified that Samuel Sheppard never lost his temper with Marilyn and that he and Marilyn had a tension free marriage and appeared to be good friends.

In stark contrast, the court has refused to permit the introduction of competent evidence by defendant contradicting these assertions by various plaintiff's witnesses.

The defendant finds this imbalance of rulings to be troubling in that the jury is being deprived a full accounting of the dynamics of the relationship between Dr. Sam and Marilyn Sheppard.

Marilyn Sheppard's sister-in-law, Dorothy Sheppard was examined on direct and stated that Sam and Marilyn Sheppard had a normal relationship, "... very much interested in each other ..." and that Sam was thrilled about the pregnancy.

Mr. Gilbert directed Dr. Hall, who testified that even though he did not know the couple very well, that the Sheppard relationship was not troubled and was compatible.

A neighbor and young friend of the family, Jim Redinger testified on direct examination that he would occasionally sleep over at the Sheppard home and that the Sheppards appeared to love each other, that theirs was a mutually respectful marriage.

Finally, the victim's son, Samuel Reese Sheppard testified on direct that his parents loved each other very much and that the "open marriage" was a result of Marilyn's sexual problems. See, Exhibit A, trial diary of Dr. Sam Sheppard. This

testimony is incredible given Marilyn Sheppard's statement that she was disgusted and angered by Sam's behavior and was going to "drag him through the mud".

All of these witnesses have attempted to establish the good character of Samuel Sheppard. The State is now entitled to offer evidence in rebuttal. The State intends to show that Samuel Sheppard was not the respectable, happily married family man that the plaintiff has painted him to be. For example, the state's evidence would show that Marilyn Sheppard was furious with her husband's adulterous affair and shortly before her death, planned to make public her absolute disgust with her husband's extra-marital affairs and the family's cover-up.

To deny the State the opportunity to present contra evidence would create a patently unfair situation, and ultimately, the denial of a fair trial. The failure to allow the State to introduce testimony in rebuttal to the testimony that has been presented by plaintiff would amount to reversible error.

Defendant is Entitled to Present Rebuttal Testimony Even in View of a Failure to Object, Where Plaintiff has Opened the Door.

This court has cited the State's failure to object to the plaintiff's introduction of character evidence as a reason to prohibit the State from presenting evidence in rebuttal. However, the failure to object to the use of incompetent evidence does not preclude a party from later offering other evidence in rebuttal. *State v. Schmidt* (1979), 65 Ohio App.2d 239, 242-243.

State v. Schmidt, supra, was a murder case in which the court determined that although the State could not introduce evidence of the victim's good character and reputation, where such incompetent evidence had been admitted, evidence to the contrary

offered by the defendant is admissible to rebut the tainted evidence. The court went on to determine that despite the fact that the defendant had not objected to the character testimony presented by the State, the defendant was still entitled to present evidence contra to rebut or explain the tainted evidence. *Id.* 243. According to the precedent set forth in *Schmidt*, and as the plaintiff has opened the door to character evidence, the State may now offer its rebuttal.

“The concept of ‘opening the door’ is based upon a theory that it is unjust to prevent a party from introducing irrelevant evidence to rebut irrelevant evidence that was submitted by the opposing party.” *State v. Croom* (Ohio App.8 Dist. 1996), 1996 WL 17314. Where inadmissible, immaterial or irrelevant evidence has been admitted on behalf of one party, similar evidence may be admitted to rebut it. *State v. Crissman*, (1971) 31 Ohio App.2d 170. See also, *Ohio Edison Co. v. Dessecker* (1993), 89 Ohio App.3d 164. “[Where a defendant] offered mitigating testimony of a broad nature: that he ‘brings a lot of joy. He brought a lot of joy to * * * people around.’ [He] thus opened the door to ‘other evidence’ in rebuttal—evidence showing that McNeill did not bring joy to others.” *State v. McNeill* (1998), 83 Ohio St.3d 438, at 446.

The State is entitled to present rebuttal evidence despite its failure to object to the plaintiff’s character testimony. The option to object can be a tactical decision and, in this case, one which the State cannot be penalized for exercising. As the plaintiff has “opened the door”, the opportunity for rebuttal by the State is imperative in the interest of fairness and justice.

II. THE STATE OF OHIO IS ENTITLED TO INTRODUCE EVIDENCE OF SAMUEL SHEPPARD 'S EXTRAMARITAL ACTIVITY, STATEMENTS, AND OTHER ACTS TO PROVE MOTIVE PURSUANT TO EVID. R. 404 (B).

A. Motive

The State of Ohio asserts that the murder of Marilyn Sheppard was an act of domestic violence. In order to support that premise, the State will introduce evidence of those stress factors which developed over years of betrayal, adultery, humiliation and neglect and which, in the early morning hours of July 4, 1954, exploded into a domestic homicide. The State contends that this evidence will establish motive.

Motive is that “moving power which impels to action for a definite result, that which incites or stimulates a person to do an act.” See Black’s Law Dictionary, Abridged Fifth Edition, “motive”. Proof of motive is relevant in criminal cases, even though it is not an element of the offense. *State v. Lancaster* (1958), 167 Ohio St.391.

Evid.R. 404 (B) provides that evidence of other crimes, wrongs, and acts of a person are admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Evidence of other acts is admissible if relevant and if it tends to show other purposes, such as motive. *State v. Galan* (1990), 67 Ohio App.3d 68. The State’s intent is to present evidence of Samuel Sheppard’s “other acts”, namely those consistent with marital strain. As the State intends to present evidence of Samuel Sheppard’s “other acts” only to establish motive, and not to show his criminal propensity, and because these acts are relevant evidence of motive, they are admissible under Rule 404(B).

“In order for other acts to be admissible, two conditions must be met. First there must be substantial proof that the alleged other acts were committed by the defendant.

Second the evidence must tend to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.” *State v. Clark* (Feb.1, 1996), Cuyahoga App. No. 67305, 1996 WL 38873. See also *State v. Soke* (1995), 105 Ohio App.3d 226. The evidence and testimony the State will present meets both of these requirements. The State has a right to prove motive. Accordingly, the above-described relevant evidence should be admitted under Evid. R. 404 (B).

In the Court’s March 5, 2000, ruling, the state was directed that it must show a connection in time between the affairs of Sam H. Sheppard and the victim’s death. That ruling was based on the court’s rationale that without an ongoing affair Sam Sheppard had no motive to murder his wife. This rationale may or may not be correct, but it misunderstands the State’s theory of why this murder occurred.

The State is *not* pursuing a theory in this case that Sam Sheppard murdered his wife to enable another relationship with some other woman or as a component of an ongoing extra-marital affair. Our theory rests on the sound historical and psychological basis that a strained marriage is the environment in which domestic violence erupts. A strained marriage is proved by evidence of anger, resentment, unhappiness and emotional injury on *both sides* of the relationship. Sam Sheppard’s murderous rage that resulted in the death of his wife arose from just that strained marriage environment.

Furthermore, the state can conclusively demonstrate that the adulterous relationship between Sam H. Sheppard and Susan Hayes had not concluded at the time the Sheppards returned from California, that Sam H. Sheppard and Ms. Hayes remained in contact with each other and that the ongoing relationship was the source of marital friction until the time of Marilyn Sheppard’s death.

With specific regard to extramarital activity as motive, the sequence of events in the disintegration of the Sheppard marriage is distinguishable from those events in the case of *Lesley v. Mississippi* (1992), 606 So.2d 1084, cited by this court in its March 5, 2000 opinion. The *Lesley* trial court admitted evidence of an old affair, eight years past. That affair was long since concluded and, as such, the evidence can reasonably be characterized as remote.

In this case, the best plaintiff is able to argue is that the affair with *Susan Hayes* ended in late March 1954. However, the trial diary of Sam Sheppard and comments of Susan Hayes indicate ongoing communication until July 1954. The State will present evidence that Marilyn Sheppard knew of these communications. The State will present evidence that the affair was not in fact over in March of 1954.

In contrast, as recently as four months prior to the murder of Mrs. Sheppard, Dr. Sheppard drove with Marilyn Sheppard to Los Angeles, California for a vacation. Sheppard proceeded immediately to Los Angeles where he met Susan Hayes, leaving Marilyn to be taken to northern California to stay with a colleague and his wife. Hayes and Sheppard were houseguests for an entire week at the home of a fellow physician and his wife, both of whom knew Sam was married to Marilyn. Sam Sheppard and Susan Hayes shared a bedroom in that home while Marilyn Sheppard stayed alone elsewhere. Susan Hayes and Sam Sheppard openly attended social events together where friends of Mrs. Sheppard and Dr. Sheppard were present. Sheppard purchased a watch, a dress, and shoes for Hayes. They were together when Sam Sheppard traded in his wife's car for a Lincoln Continental.

The fact that Sheppard left California in mid-March 1954, did not conclude the affair. At her trial deposition, Susan Hayes testified on direct that upon Sheppard's departure, the relationship was not terminated. Dr. Sheppard did not end the affair. He promised to write to Ms. Hayes, and in fact, he did write. She, in turn, wrote to him with eight letters exchanged between them. In her direct testimony, Hayes characterized the relationship as sexual and a friendship. After the Sheppards' return from California, Mrs. Donna Bailey, secretary at the Sheppard Fairview Park Clinic, accidentally opened a love letter to Sheppard from Ms. Hayes.

From Sam Sheppard's trial diary, admissible under Evid. R. 804 (B) (3), it is revealed that three days prior to Marilyn Sheppard's death, Dr. Lester Hoverston, a philandering bachelor friend of Sam, a gossip, and an unwelcome houseguest in Mrs. Sheppard's view, taunted Mrs. Sheppard with tales of Sam's frolics with other women. See, Exhibit B. From that trial diary, it is apparent that Dr. Samuel Sheppard "learned of Marilyn's pregnancy only two days previous to her murder." See, Exhibit C.

The history of intense marital tension, coupled with Hoverston's revelations and the recent revelation about Marilyn Sheppard's pregnancy, comports with the opinion testimony given by plaintiff's expert Dr. Emanuel Tanay. He offered the expert opinion that a rage homicide has predictable characteristics including a triggering event occurring approximately three days prior to the event, referred to by the witness as the "three day syndrome."

According to Dr. Tanay, who authenticated and confirmed his written work, “The Roots of Murder,” during his testimony at trial:

“Between sixty and eighty percent [of homicides] there is an intense emotional relationship between murderer and victim. Homicide, so to speak is most often an affair of the heart. . . Murder is born out of the conflict of hate and love. Murder marks the end, the tragic end, of a very ambivalent relationship. . . People invariably kill the people they love and hate for no one else is important enough to provoke murderous rage.”

The mounting anger and frustration in the marriage and in the household resulting from those incidents is a likely motive for a heated argument that escalated into the use of violence. The characteristics of the homicide tend to show a rage type killing consistent with an instantaneous eruption of events, precipitated by an argument between two emotionally attached individuals that culminated in death.

In *State v. Banks* (1986), 31 Ohio App. 3d 57, the defendant was being prosecuted for murder. The defendant testified that he loved his wife and wouldn't do anything to harm her or their unborn child. On appeal the reviewing court determined that it was not error to allow testimony concerning the defendant's prior acts of violence against the victim/spouse as those “other acts” were relevant to the issues of intent and purpose.

Similarly, in *State v. Buckland* (Nov.9, 1983), Wayne County No. 1885, 1982 WL 3907, the court upheld the prosecution's use of “other acts” to prove motive. In *Buckland* the testimony in issue was that of a witness who testified about several conversations she had with the defendant. The court concluded that because the conversations were offered to show motive, they were admissible under Evid. R. 404 (B). *Id.* at *3. Where other acts testimony concerns events which are inextricably related to the crime charged, the evidence is admissible. *State v. Kelley* (1993), 89 Ohio App. 3d 320 .

Applying the principles set forth in *Banks* and *Buckland*, the admission of evidence of Samuel Sheppard's extramarital affairs with Susan Hayes and with other women regardless of their dates of initiation and conclusion is clearly permissible for the purpose of establishing motive. There can be no doubt in anyone's mind that a married man who engages in repeated extra-marital affairs will cause stress and strain in his marriage. There is substantial proof that Samuel Sheppard committed these other acts: He admits in his own 1954 testimony to having an affair with Susan Hayes. Also, Susan Hayes herself will testify to the affair. It is within the province of the jury to assign weight to this evidence. It is the court's purview to allow the testimony as proper under Evid.R. 404 (B).

B. **Statements of Marilyn Sheppard to Donna and Robert Bailey Relevancy**

In this court's March 5, 2000 opinion, the court questions both the relevance and prejudicial effect of Marilyn Sheppard's statement to Donna and Robert Bailey that she "intended to drag Dr. Sheppard's name through the mud." That statement shows Mrs. Sheppard's state of mind. *State v. Apanovitch* (1987), 33 Ohio St.3d 19. The jury is entitled to draw the reasonable inference that a woman stating such an intention is likely to engage in an argument with her husband on the issue of his behavior and the state of their marriage.

Dr. Bailey had known both Sam and Marilyn Sheppard in Los Angeles, California. Often, when Sam was unable to attend a social event due to professional obligations, he would request Dr. Bailey, then a single man, to escort Mrs. Sheppard to dances or parties. Dr. Bailey and Marilyn Sheppard were good friends.

In August of 1953, Bailey and his bride moved to Cleveland to intern at Bayview Hospital. For a short time, the Baileys lived in Sam and Marilyn's home, and shortly were able to move to the apartment above the Sheppard clinic at W. 222nd and Lorain in Fairview Park. Mrs. Bailey worked as a secretary in the Sheppard Clinic. It was in that way that she accidentally opened a love letter sent by Ms. Hayes to Dr. Sheppard by way of the Fairview Park clinic. That letter was received by the clinic after March of 1954.

Late spring of 1954, Marilyn Sheppard stated to Mr. and Mrs. Bailey that she wanted that letter. She told him that Sam had done it (i.e. cheated on her) again. Dr. Robert Bailey will testify that Mrs. Sheppard was visibly upset and angry and threatened that if a divorce took place, she would drag Sam's name through the newspapers and ruin him professionally and financially. She said that she had been so hurt in the past, that she was beyond hurt now, and that she would now watch him suffer. He will testify that Marilyn Sheppard was upset about Sam Sheppard's affairs on occasions prior to 1954.

Dr. Bailey was in Cleveland on vacation in between his third and final year of osteopathic school in California. Just days prior to returning for his final year, Marilyn Sheppard visited him. She was upset to the point of tears over Sam's adulterous affairs and the state of their marriage and begged Dr. Bailey to not return to California and stay in Cleveland to provide emotional support for her. Dr. Bailey reluctantly left for school and will testify that he was haunted by that decision because he felt that Marilyn was so distraught that she may injure herself or worse.

Moreover, the Baileys learned that Dr. Sheppard humiliated Marilyn Sheppard by giving her bills to pay out of the hospital's checking account for gifts that he had purchased for other women. Mrs. Sheppard was particularly hurt by the bill for the watch

(purchased for Ms. Hayes) as she had herself repeatedly asked Dr. Sheppard for a white gold wristwatch for years to match her wedding and engagement ring. The fact that Sam Sheppard could openly buy a watch for another woman but not for his wife is evidence of Dr. Sheppard's utter disregard for his marital vows and contrary to the testimony of plaintiff's witnesses characterizing his marriage to Marilyn as stable and happy. It should also be noted that during this time period, Mrs. Sheppard became pregnant with her second child. The evidence to be presented will show that Dr. Sam Sheppard was unhappy about the prospects of another child. This further complicated an already troubled marriage.

This evidence further establishes motive by first demonstrating Marilyn Sheppard's state of mind in the weeks just prior to her death. She was furious with her husband's adulterous conduct. She was upset and hurt. Marilyn Sheppard's verbalized intent to destroy her husband's name and reputation is a necessary and relevant detail in that it may easily be inferred that she was angry with her husband's conduct. Such a conflict is exactly the type of triggering event plaintiff's expert Tanay referred to that could have sparked a heated argument that escalated into an act of domestic violence and, ultimately, Mrs. Sheppard's death.

C. Prejudice versus Probative Value, Evid. R. 403

The U.S. Supreme Court analyzed the question of Evid. R. 404 (B) other act evidence in light of Evid. R. 403 in the case of *Huddleston v. U.S.* (1988), 485 U.S. 681; 108 S.Ct. 1496. Evid. R. 403 allows the court to exclude relevant evidence where, among other things, "its probative value is substantially outweighed by the danger of unfair prejudice." The determination must be made whether the danger of undue

prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other factors appropriate for making decisions of this kind under Rule 4032. *Huddleston v. U.S.* , *supra*, at 1500. (“It is anticipated that with respect to permissible uses for such evidence, the trial judge may exclude it only on the basis of those considerations set forth in Rule 403, i.e. prejudice, confusion or waste of time”).

The U.S. Court of Appeals, Sixth Circuit , in a thorough analysis of DNA evidence under *Daubert*, evaluated whether or not such evidence was more prejudicial than probative. “We must look at the evidence “in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect”. *U.S. v. Bonds* (1993), 12 F.3d 540, 567, citing *U.S. v. Zipkin* (1984), 729 F. 2d 384, 389. For a Rule 403 violation to occur, the admitted evidence must result in “unfair prejudice” in that the evidence must suggest a decision on an impermissible basis. **Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.”** *U.S. v. Bonds, supra* 12 F.3d 540 at 567. Emphasis Added.

In this case, the state has no other means to prove motive, except by presenting this evidence. Evidence of Samuel Sheppard’s adulterous conduct is highly probative evidence of the chain of events that erupted into domestic violence. While unpleasant, and perhaps damaging to plaintiff’s version of events, such evidence is not prejudicial under the proper analysis and should be admitted.

The State of Ohio contends that the death of Marilyn Sheppard was an act of domestic violence. Spousal abuse and domestic violence have been recognized in today's society as the product of troubled and strained relationships.

For this court to allow the perpetuation of false information regarding Sam Sheppard's relationship with his wife prevents a full accounting from being presented. It is contrary to fairness and justice and is a disservice to history.

Respectfully submitted,

WILLIAM D. MASON, CUYAHOGA
COUNTY PROSECUTOR

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Admit Other Acts Evidence and Brief in Support was hand delivered to Terry Gilbert, counsel for plaintiff, this 10th day of March, 2000 in court room 20 B, 1200 Ontario Street, Cleveland, Ohio 44113.

A. Steven Dever/CF

A. Steven Dever

At this point I wish to make clear that all during the past few years since Chip was born exclusive of the 1st yr. I was never denied sexual relations as such. I usually had to be the aggressor however and my experiences with other women generally filled the role of the female taking an active aggressive part. I never wished to push myself on anyone and though I knew Marilyn loved me as no other person could (she displayed it in other ways) sex was not a big part in her life. It was improving all the time however as I had hoped it would. Marilyn realized better than anyone that she was not a terrific sexual partner during this period. For this reason she did not get extremely upset when she was told of the girly like Louisa Dadeborn and Sue Hayes, but she did get upset when I'd dance with other girls at a dance or talk with another girl at a party. She didn't like my attentions to other girls at any time but she recognized my need for a sex she had not had since Chip but recaptured since Chip.

FC

As mentioned before Horvater arrived at our house in July of 1952. He was accepted as a Resident at the Hosp. and though Marilyn was not happy about it he stayed with us. I felt sorry for him because his marriage had not worked out, lost his residency at the Co. Hosp and he was very depressed.

There were several stories as to why he had lost the Residency at the Co. Hosp. He claimed that the administration wanted to give the position to the son-in-law of the local police chief but it is obvious that he was given the air because of incompetency. He displayed this in his work at Bay View. Dr R.A.S. and the others are very tolerant and put up with a lot of stupidity as well as ~~some~~ lack of dependability (He would go to sleep at his Apt. after pulling the phone jack so no-one could reach him.) -

STATE'S
EXHIBIT

B

He had several love-affairs
locally as you know - the sticks
etc. -

He ~~fully~~ disliked the new
fellowship program we set up and
stated such - He had stayed in
our home about 3 mo I'm told, I
really don't remember. All of this
time he told Marilyn great stories
about my very women ~~etc~~ & also
false stories about all of our
family. Marilyn now better because
she and I talked about most every-
thing and she knew of Sue. However
I told her I had a girl in Youngstown
etc. He also told other people and
it got back to Marilyn, she developed
a deep hate for Hovesten, I explained
to her how this was a sort of
pathology with him and he didn't
mean to be malicious about it.

She didn't care what I said
she knew him for what he was
and she hated him. She told me
she had - had to put him in his
place a time or two, ^{he had made approaches} but she
always took care of herself as
far as that was concerned and I
knew he approached almost all
women he contacted. -

- When Hovester wanted to apply for
a Residency in Dayton we were all
happy for it overcome the distasteful
job of terminating his work with
us. He went to Dayton and soon
was tagged by the Surgeon in chief as
incompetent. His Residency was terminated
by action of the Drs and board of
Trustees.

- He finished the end of June and
asked to come stay a few days with

us before going on to Calif.

Worilyn said if he came she would do nothing for him (make his bed, cook for him or anything).

I said ok but we'd let him sleep here if he wanted. Worilyn was not too hospitable to him, but she had reason. —

He talked about Margaret & Sue to her every chance he got and told us about them also trying to let Worilyn hear just enough to make her mad.

When he arrived Thursday afternoon (I think) he said he'd gotten a letter from Margaret Keizer. I told her it had come from her in 3 yrs and displayed little or no interest but he got a kick out of Worilyn's reaction. —

I always felt sorry for Hoveston
for some reason realizing he is
a misfit and has had difficulty
in his life but he never could
stop talking about people.

He told me atrocious things about
Dr's Foster, Sprague, Birch and
others here and many of the Dr's
in Dayton, I'm sure he told
them many things about me
and our group. —

~~Friday~~

Thursday evening he went out to
dinner at Cavalier and returned
after Marilyn had gone to bed.
I was watching T.V. when he
walked in the back door
(which was unlocked - at least I
didn't let him in). Marilyn was
still awake and I went to bed.

Hovester made arrangements to
go to Kent for golf Sunday as
I understand. He may have stopped
back at my home to pick up toilet
articles but his toilet case was
left because Steve picked it up when
he went to the house to get toilet
articles for me. — His tooth brush
was there and Steve brought
~~it~~ it too thinking it was mine.
I used it thinking it was Monty's.
I can't understand why he didn't take
his toilet case or at least his tooth
brush. He's always been very clean
about his teeth and scrubbed them
two or three times per day. Don't
know about shaving equipment.

then as the T. U. movie was over
-Hovester said he wanted to get
up and watch some brain surgery
that I'd planned for Fri A.M.,
He didn't come to Hosp with
me Fri A.M. however, but
showed up at the Hosp as I
was completing the job as I recall
about 10:00

Friday evening Marilyn & I went
to Steve's house for the dinner and
made known the expected baby.
^{I don't know what Marilyn says}
Hovester had said he wanted
to come to the Hosp Sat A.M.

for surgery but again he decided
not to come or at least he
didn't show up till after 9:00
-I had completed the surgery and
recall showing him the huge blood
clot. I'd removed from the ^{pts. head} ~~surgery~~.

learned of Marilyn's pregnancy only two days previous to her murder. Finally I'll state that I hope sincerely that some day soon I'll be able to submit this for publication and possibly add further details, so that the true wonderful dynamic Marilyn Sheppard might be known to the world rather than the very poor ~~picture~~ picture that Eleanor Harris has given.

Note:

(1) The picture of Marilyn on the first page of ~~the~~ Harris article is extremely poor and like the entire article is not a true representation.

(2) I have never transported any portion or portions of a human body over any state line. This is a bold lie and I intend to challenge it. Since when, however is it against the law for a Dr. to study anatomic specimens. (is it uncommon?) Dr's often study anatomic specimens and it would be queer if they did not.

(3) No mention was made of the quite complete insurance program purchased & designed to protect Marilyn in every way possible.

(4) Marilyn's ^{outstanding} ability as a swimmer, horse back riding, house keeping,