

THEREUPON, the defendant, further to maintain the issues on his part to be maintained, called as a witness DR. CHARLES ELKINS, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. CHARLES ELKINS

By Mr. Bailey:

Q Will you give us your name, please, sir?

A Doctor Charles W. Elkins.

Q Where do you live, doctor?

A Tucson, Arizona.

Q What is your address in Tucson?

A 6230 Miramar Drive.

Q And your profession?

A I am an M.D. with a specialty in neurological surgery.

Q Do you have a practice in Tucson, Arizona?

A That's correct.

Q Where are your offices there?

A 601 North Wilmot.

Q In 1954 did you practice in Cleveland?

A I did, sir.

Q Do you know the defendant, Doctor Sam Sheppard?

A I do.

Q Had you known him prior to July 4th, 1954?

A Yes, I did.

Q Doctor, would you give us your educational background and your qualifications as a neurosurgeon?

A I took my undergraduate work at Ohio Wesleyan University in Dover, Ohio, which institution I graduated from in 1932.

I attended Ohio State University the following year for a short period of time, and entered Western Reserve School of Medicine in 1933, and from this institution I graduated with a Doctor of Medicine in 1937.

The next year I served my internship, which was a general internship, at Cleveland City Hospital.

In 1938 I was house officer in neurology and neurosurgery at the Boston City Hospital, Boston, Massachusetts.

The following year I served as a fellow in neurological surgery at the Lady Clinic, Boston, Massachusetts.

My final year in Boston was 1940, '41, at which time I returned to Boston City Hospital as resident in neurosurgery.

In 1941 I returned to Cleveland and entered the private practice of neurological surgery in this town.

Very shortly afterwards the war was declared, World War 2, and I was sent to Australia with the Western Reserve University unit, whose unit, which was known as the Lakeside unit. I spent approximately two years as Chief of Neurosurgery at that institution, in Melbourne, Australia.

Returning to the United States I was Chief of Neuro-

logical surgery at Fitzsimmons General Hospital in Denver, Colorado, for a short period of time, because just before D-day my outfit was moved or my service was moved to the east coast, where for approximately two years I was Chief of Neurological surgery at the Newton D. Baker General Hospital.

After my discharge from the army I returned to Cleveland, and again I entered the practice of neurosurgery.

I served on the staffs of several hospitals, including Lakewood Hospital, Lutheran Hospital. I was on the staff of Cleveland City Hospital.

I was also attending neurosurgeon at the Veterans Hospital, the Crile Veterans Hospital.

Subsequently I was made chief consultant at the Veterans Hospital.

I was made chief of neurosurgery at Cleveland City Hospital then. It is now, I understand, Cleveland Metropolitan Hospital.

I was made assistant professor of neurological surgery at Western Reserve University and was on the staff of the University Hospitals.

In 1954 I elected to move my family to Tucson, Arizona, and I have been practicing neurosurgery in that city since 1954.

Q Are you affiliated with any hospitals in the Tucson, Arizona, area?

A Yes, we have several major hospitals. St. Mary's, Tucson Medical Center, Pima County Hospital, and the Veterans Hospital in that city.

MR. CORRIGAN: May I object at this time? I don't think that that answer was responsive to the question, your Honor.

THE COURT: It may stand. I agree with your objection, however. Please proceed, Counselor.

Q My question, doctor, was whether or not you are affiliated with any of the hospitals you just named?

A Yes, sir.

Q Doctor, whether or not you are certified by the American Board of Neurosurgery?

A I have been certified by the American Board of Neurological Surgery.

Q As of when?

A I think 1948.

Q Doctor, what is the specialty of medicine which is the business of neurosurgeons?

A Neurological surgery deals particularly with the diseases to the nervous system which are surgical in nature. It deals with injuries to the nervous system, the brain, spinal cord, and other nerves in the body.

Q Do you know what the specialty of Doctor Sam Sheppard

was when he was a practicing physician in 1954?

A I believe I do.

Q What was it?

A I believe that he did general surgery. I also am acquainted with the fact that he had some training in neurological surgery and I believe this was in California.

Q Did he ever consult with you professionally for advice on difficult cases?

A Yes, he did.

Q And whether or not any cases were ever referred to you by Doctor Sam Sheppard?

A That is correct.

Q Did you know a Doctor Richard Hexter in Bay Village when you were here in 1954?

A Yes, I did.

Q And do you know whether or not he had any specialty in medicine?

A I think Doctor Hexter was a general practitioner in medicine.

Q Did he ever refer any cases to you for neurological treatment?

A I believe he did.

Q How long had you known Doctor Sam Sheppard prior to July 4th?

A I can't be sure. I would say two years, perhaps.

Q Approximately how many neurosurgeons were practicing in the Cleveland area in July, 1954, if you know?

A I would estimate that ten were in this general area.

Q By the way, do you know Doctor Spencer Braden?

A I am acquainted with Doctor Braden.

Q Did you know him in 1954?

A Yes, I did.

Q And did he have a specialty?

A He was a neurological surgeon.

Q Doctor Elkins, I call your attention to July 4th, 1954, and ask you whether or not on that date you had occasion to see Sam Sheppard?

A I recall distinctly seeing Doctor Sam Sheppard on July 4th.

Q Where was he when you first saw him?

A At the Bay View Hospital.

Q Did you consult with him as one physician to another, or was he a patient?

A I was asked to see him as a patient.

Q Had you ever seen him before as a patient?

A No, sir.

Q Had you ever treated him for anything?

A No, sir.

Q Now, when you saw him on this day, can you describe his condition when you first saw him, your observations?

A May I perhaps refer to the hospital chart which I have here?

Q Yes; that is State's Exhibit 72, I believe, for the record.

A Over "Report of Consultation" -- and there is no date on this sheet of paper, but I recall distinctly it was on July 4th, that I stated, "Doctor Sam was alert and answers questions lucidly. "

"There is a swelling of the right periorbital tissue," which means tissue around the eye.

"The pupils are equal and react," and by that I interpret that certain pupillary reactions occur when light is flashed in the eye, or when vision is changed from near to far vision, pupils contract and expand.

He moves all his extremities well. I stated that there were no Baginski's. This is a reflex which is obtained by stroking the sole of the foot, and an abnormal response is the toes will fan and the large toe will be extended or drawn upward.

The normal response is for the toes to curl and the large toes to move downward, the large toe to move downward.

I reported that he had voided. This was an important part of the history. I was trying to determine the extent of his injuries. When an individual is able to void voluntarily, the attention of the examiner is somewhat

drawn away from certain types of injuries, which may or may not be permanent.

He complained of headache in the occipital region which is the base of the skull.

He had a collar in place. We call it a cervical collar. Therefore, at that time I noted that the neck was not examined on that date. I advised that he be sedated, and that fluids be urged, because I recall that he looked as if he needed fluids. In other words, he was in a state of dehydration.

I felt that he was sick, and deserved to be watched carefully for development of any further evidences of damage to his nervous system.

Q I take it that on your first encounter with Doctor Sam Sheppard following the death of his wife you did not do a detailed neurological examination?

A That's correct.

Q Is the reason that you didn't do that related to the condition in which you found him?

A Not only in this individual but with any individual who I believe to be sick, I try to determine the state of the patient in relationship to consciousness, just where he stands, is an emergent matter, and if it is not then I delay more meticulous examinations for future date.

Q Did you on some future date, that is, after July 4th,



1954, do a more meticulous examination?

A Yes, sir, under date of July 6, 1954, I then proceeded to more carefully evaluate what actually was going on in this nervous system.

Q Prior to the beginning of this examination on July 6th had you studied and interpreted any X-rays?

A I believe I had seen an X-ray of his neck.

Q Did you find anything abnormal about the X-ray that you observed?

A I thought there was a small chip fracture demonstrable on this set of X-rays.

Q Would you explain to the jury, doctor, what a chip fracture consists of, where it is found, or where it was found in this case?

A A chip fracture simply means a small piece of bone or fragment which has broken away from its main body. It can lie close to or at some distance from the main body.

In particular relationship to the bones of the neck, the bodies of the vertebrae are cylindrical and they have borders, and if a small piece of bone has been broken off, it can usually be seen as an abnormality on appropriate X-ray.

Q If a chip, doctor, is broken away from the main body of the cervical vertebra, what is it that holds it in place or suspends it, in the same general area as the main body

from which it was broken?

A There are certain ligaments and muscles that hold this chip within close proximity to the main vertebral column.

THE COURT: Counselor, before you

proceed, does the record reflect when Doctor Elkins reviewed this X-ray to which he makes reference?

Q Do you recall the date on which you first saw X-rays of the neck of Sam Sheppard that disclosed a chip fracture?

A I believe it was on July 4th.

Q Can you tell us what examination you conducted of the defendant on the 6th day of July?

A Well, in the first place I talked to him, and his complaints at that time now became somewhat focused on his urinary tract. He complained of urgency on urination.

Q What does that mean, doctor, urgency?

A A desire to urinate frequently and not being able to contain the bladder. The urgent nature of performing the act of voiding.

Q All right, continue.

A He had been incontinent of fecal material on that morning. He had attempted to pass gas and had soiled his sheet with fecal material.

This is an abnormal thing, and, again, it focuses the examiner's attention on what is going wrong with this nervous system, or what has gone wrong with this nervous system.

He furthermore complained of numbness over the left hand in what we call the ulnar distribution, and this is part of the ring finger or digit 4, and all of the little finger or digit 5.

So I proceeded then with my examination.

The bruise or ecchymosis around the right eye had improved.

I again noted that his pupils were equal and reacted. This I have tried to explain in my previous examination, the meaning of this.

The movements of his eyes were normal, the extra-ocular movements. In other words, he could look to the right and he could look to the left, up and down, and do this in a conjugate fashion. The eyes moved together.

There was no evidence of muscle weakness. This part of the examination has to do with the functions, not so much of the spinal cord, but of the brain itself.

I noted there were no facial weakness, there was no facial weakness. This, again, is part of the examination of the nervous system above the spinal cord.

The muscles that move the face are part of the supra-spinal cord nervous structures.

I examined him for diminution of sensation over this sensory distribution of the ulnar nerve, and he responded that there was decrease in sensation.

Some of the small muscles of the hand which were also supplied by this nerve seemed weak to my examination.

I made note now that the left triceps reflex was absent or not obtained. The right one was. The triceps muscle is behind the arm above the elbow. It is the muscle in which we use to strike a downward blow with a hammer. The reflex is obtained by sharply tapping the tendon of the triceps muscle, and the response to it, the normal response to the tapping of this triceps tendon is his extension of the forearm on the arm.

Q Would you, doctor, for the benefit of the jury, just point to the place where the tap is made to test the triceps muscle?

A Just above the elbow.

Q Where your index finger now is?

A Where my index finger now is.

Q Thank you, doctor. Go ahead.

A For clarification the response of the normal triceps reflex is extension which is downward movement of the forearm, in contradistinction to a reflex which is obtained on the other surface of the arm, at this area, which is the biceps reflex, where the normal response is flexion of the arm.

Doctor Sheppard had a normal biceps muscle on both sides. His triceps reflex on the right side was present,

and was absent on the left side. This to me represented neurological abnormality.

I next made note that the right abdominal reflexes -- and there are two, upper and lower -- were active, but the left abdominal reflexes were absent.

These reflexes are obtained by stroking the abdomen with a reasonably sharp object, and the normal response is an involuntary contraction of the abdominal muscles.

The absence of the left abdominal reflexes, particularly when they were associated with an absence of the left triceps reflex, again, to me indicated a neurological abnormality.

The reflexes which are called the cremasteric were both absent. These reflexes are obtained by, again, stroking the inner surface of the thigh, and the normal response is a sudden involuntary retraction of the scrotum and testicles.

This did not occur in Doctor Sheppard at the time of the examination and again indicated to me a neurological abnormality, particularly when it was related to the absence of the abdominal reflexes on the left, and the absence of the triceps reflex on the left.

Now, at this point I would like, your Honor, to correct my previous statement. I believe it was on July 6th that I observed these X-rays, because I have a note that, "Cervical X-rays show chip fracture spinous process of C-2."

This is under this date of July 6th.

On that morning I performed a spinal tap. This is done by inserting a needle into the space which contains cervical spinal fluid, and this needle is usually inserted in the low back.

I found the pressure to be normal, 150 millimeters of water, 150 millimeters of spinal fluid. I reported normal dynamics. This is medical terminology, and it simply means that by pressure on the jugular veins in the neck, while recording the pressure with a pneumonometer of the spinal fluid in the normal region, that there was a normal rise and fall of the spinal fluid.

This indicates to the examiner that there is no mass lesion causing a block in the pathway of the flow of cervical spinal fluid.

On this day I examined Doctor Sheppard's neck and found, I stated that local examination disclosed tenderness over the spinous process of C-2. This is high on the neck, with spasmodic contractions of the muscles in the neck to pressure.

I had the spinal fluid sent to the laboratory for certain examinations, including cell count and protein determination.

My impression at this time is that Doctor Sheppard had sustained a cervical spinal cord contusion, or bruise.

This concluded my examination.

Q Did you ever after July 6th make a subsequent examination of the defendant Sam Sheppard?

A I believe I did, approximately one month later, I examined Doctor Sheppard at the County Jail.

Q And did you make specific examination with reference to the reflexes that you had found absent on the 6th day of July?

A This is a matter of recollection, because I don't have a copy of that examination here. But I believe that his reflexes were now, had now returned.

The triceps reflex was obtainable. The cremasteric reflexes were back; and as I recall, however, they were weaker than I would anticipate them to be in an individual of thirty-some years of age.

And the same thing is true with his left abdominal. I felt that while it was returning, that it was still weak.

Q Doctor, what kind of shape was Doctor Sam Sheppard in when you examined him in July and August, physical shape, other than the difficulties that you have noted for us?

A Well, I felt that he was an athletic type of individual, with strong heavy musculature, well coordinated.

Q Do you say that the cremasteric reflex, the one indicated by a stroking of the inside thigh, is present in every human being, or is it sometimes absent as a matter of

course?

A It is sometimes absent as a matter of course, as a matter of age, really.

Q Is its absence related to the age of the patient?

A Its absence can be related either to the age of the patient, or some disease of the nervous system.

Q And did you find from Doctor Sheppard's history that he had any disease of the nervous system that would cause the absence of the cremasteric reflex prior to July 4th?

A I don't believe that he did have.

Q Whether or not a young man, that is, a patient thirty years of age, as you examined, the reflex would be more or less unusual than an older gentleman?

A The absence of this reflex in a young individual would certainly be more unusual than in an older individual.

Q Doctor, you spoke in terms of reflexes; will you tell the jury what a reflex is and what makes it work, why you tap?

A A reflex is totally involuntary. While some may be simulated, to a trainer examiner it is quite evident that the reflex is being simulated.

Insofar as the abdominal reflex and the cremasteric reflexes, I do not believe that they can be simulated.

Now, there is an anatomical pathway for all reflexes. There is the sensory path of the reflex, where the stimulus



which in the case of a knee jerk where you tap the tendon below the patella, or the knee cap, is carried through the sensory nerve to the spinal cord, and then is without voluntary action sent out through the motor portion of this channel to reach the muscle, the muscles involved.

In a normal individual, without disease, without injury, or without any reason for this reflex to be interfered with, there is the jerking of the leg which occurs involuntary.

Q All right. Doctor Elkins, having in mind that Doctor Sam Sheppard had training in neurology, do you have an opinion as to whether he had the power, if he had wanted to do so, to make his reflexes appear absent despite your examination so that you would be fooled and think that they were absent because of injury?

MR. SPELLACY: Objection.

THE COURT: Sustained.

Q Can the absence of these reflexes in your opinion be feigned?

A I think the absence of certain reflexes might be feigned. But in this instance I don't think it would be possible.

Q Doctor, as part of your present practice, do you have some experience with automobile injury cases and other kind of personal injury cases?

A Unfortunately, yes.

Q Have you had experience with the so-called whiplash injuries?

A Yes, I have.

Q Can you tell us whether or not the field of neurology has developed tests in order to determine whether or not claimed injuries actually exist to the spinal cord or the nervous system in general?

A I think in most instances if there is a spinal cord injury, that this can now be pretty well determined by a trained observer.

Q And have you made a number of such examinations for litigants?

A Yes, I have.

Q And have you testified in court before?

A Yes, I have.

Q Doctor, what about muscle spasm, what is that indicative of to you when you find it in the back of the neck as you did in this instance?

A In this instance I felt that there had been an injury to the muscles of the neck.

Q What is it that you objectively observed when you say you see spastic activity?

A Well, either at rest or upon stimulation such as pressure, the muscles contract, and, as we say, go into

spasm, and it hurts.

Q Now, you had indicated, by the way, I believe you said your impression was a contusion of the spinal cord?

A That's right.

Q Will you tell us or explain to us how you are able to arrive at this conclusion based on the examination you made and the reflexes which you found to be absent, why do these reflexes indicate damage to the spinal cord?

A Well, in summary, we have an individual who in the first place stated that he had been hit, who had tender spastic muscles in the neck, who had an X-ray that to me at that time demonstrated a fracture at the level at which he was tender; who had an absent triceps reflex on the left; an absent left abdominal reflex, and both cremasteric reflexes were not obtained.

This added up to me to be an individual who had injury to his spinal cord, because through this spinal cord runs the sensory motor pathways that I have mentioned.

Q How is the spinal cord carried in the spine itself? First of all, what is it, what does it consist of, the spinal cord?

A Well, the spinal cord consists of all those pathways running to and from the brain.

The pathways running to the brain generally are the sensory pathways.

Those pathways running away from the brain are the motor or motion pathways.

That is a simple explanation of what consists of the spinal cord.

The spinal cord is the direct extension of the stem of the brain. It is encased in a bony canal called the spinal canal and extends from the base of the skull down to approximately the first lumbar vertebra. That is high on the low back in the adult.

At each segment or each vertebra there are nerves that go out from the spinal cord, and these are the motor nerves, and there are nerves that come in and these are the sensory nerves.

Q Now, is the spinal cord protected in any way from abuse?

A It is encased in a bony canal. In the front there is a heavy, rather heavy body, or cylindrical piece of bone, and then arches past backward from this body, and meet in the middle, and form the protrusions which everyone can feel in the midline up and down the back, and these are called the spinous processes.

Q These are the bumps that one feels?

A The bumps up and down the back.

Q And whether or not these protect the spinal cord in the normal course of activity?

A Yes, this is a protective bony mechanism over nervous

tissue.

Q Will you tell us how a contusion in the spinal cord may be caused?

MR. SPELLACY: Objection.

THE COURT: It is general in character, Counselor. The question is proper but will you restate it, please.

MR. BAILEY: Let me be more specific, then.

Q Can the application of force to this area between, for instance, the 2nd and 3rd cervical vertebrae, cause a contusion of the spinal cord if that force is sufficient?

A It can.

Q Now, would you distinguish for the jury the difference between a concussion and a contusion of the spinal cord, if there is such a difference?

A There is a difference. It is pretty impossible to state shortly after injury, unless it is a devastating injury with total paralysis, to determine whether or not there has been a concussion or a contusion.

A contusion simply means a bruise, as a result of a more severe force applied to the nervous system than would be a concussion.

A concussion simply may be described as damage to nervous tissue which is not permanent, but is transient,

and that recovery takes place within a reasonable length of time, a few weeks, a few months.

Q Doctor, have you done much work with paraplegics?

A Yes, I have.

Q What is a paraplegic?

A A paraplegic is an individual who is paralyzed in one or more extremities, one or all four.

If all four extremities are paralyzed the individual is then known as a quadraplegic.

Q That is both arms and both legs?

A Both arms and both legs. This can occur from injury. It can occur from other diseases of the nervous system.

Q If there is a severance of the cord or any part of the cord, can that be repaired?

A No.

Q If there is a contusion or bruise to the cord, does that tend to heal itself, or is some treatment needed?

A Frequently it can heal itself.

Q Does that depend on its original severity whether or not it will heal?

A Yes, I think that is a fair statement.

Q Doctor, when on August 6th, if that was the date, about a month after your first examination, you saw the defendant in the jail and noticed the return in part at least of some of these reflexes, did that tend to confirm or

contradict your original diagnosis of contusion of the spinal cord?

A I sort of changed my mind. I thought perhaps it was a concussion of the spinal cord rather than a contusion, because of the rapidity of the recovery.

Q I see.

A Although one can't be one hundred percent. This again becomes a matter of terminology. This could have been a mild contusion, or a severe concussion. But it certainly wasn't a severe contusion.

Q The difference, I take it, between a concussion and a contusion can be one more or less of degree?

A It is a matter of degree.

Q Is this the first case in which you had ever seen or diagnosed a spinal contusion or concussion?

A It certainly was not.

Q Did you have much experience with diagnosis of and treatment of spinal cord injuries prior to this time?

A Yes, I did.

Q Now, doctor, having in mind the injury which you found from the evidence which you discovered, can you say whether or not in your opinion this injury could have been inflicted by Doctor Sheppard himself on his own neck?

MR. SPELLACY: Objection.

(Thereupon counsel and the Court conferred at the Court's bench out of the hearing of the jury.)

THE COURT: Let the record reflect that the objection is withdrawn.

MR. SPELLACY: Objection is withdrawn.

THE COURT: Doctor, do you know what the question is, sir?

THE WITNESS: I believe I do.

THE COURT: Please proceed.

A I think it would be most difficult for an individual to self-inflict this type of an injury. I must qualify this by saying there are lots of ways of injuring yourself.

If you wanted to throw yourself in front of an automobile you certainly could sustain this type of an injury.

Q Or jump out of a second story window?

A Or out of a second story window.

Q My question was whether or not, doctor, it would be in your opinion possible or reasonably medically probable that one just by hitting his own neck with the leverage one could get on the arm, normal body condition, would be sufficient to knock off a chip from the vertebra and contuse the spinal cord?

MR. SPELLACY: I object to that question.



THE COURT:

Sustained, Counselor.

Q Doctor, you indicated in some people the cremasteric reflex, which is demonstrated by movement of the testicles and the scrotum, is always absent, in some people I believe you said it is not found?

A That's correct.

Q If you have an individual where the cremasteric reflex is naturally absent, whether or not on later examination it would appear, as you have testified about Doctor Sheppard on your jail examination?

A I don't believe this comes and goes.

Q So if it is absent naturally it is absent all the time?

A I would think so.

Q Was the recovery of the cremasteric reflex consistent with the state of apparent recovery of the other reflexes on your second examination, from your recall?

A This was part of the whole picture.

Q And was there a consistent degree of recovery throughout the whole system so far as you could see?

A I felt this was true.

Q And was the extent of this recovery that led you to modify your opinion insofar as the severity of the injury was concerned?

A That's right.

Q Doctor, can you tell us what happens or what may happen to an individual who is knocked unconscious by a blow in the area of the base of the skull or the back of the neck with respect to his memory for events immediately preceding the concussion?

MR. CORRIGAN: Objection, your Honor.

THE COURT: Sustained.

Q Do you have any experience in this phase of neurology as to the effect upon memory of concussive injuries?

A I certainly do.

THE COURT: Sustained on a different basis, Counselor.

MR. BAILEY: May we approach the bench so I may make my offer of proof?

THE COURT: Yes.

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

MR. BAILEY: I think the doctor would testify, and I will make as my offer of proof, his testimony that where a concussive injury is experienced, the normal and sometimes probable result may be amnesia or partial amnesia for events immediately preceding the injury.

MR. CORRIGAN: I have no quarrel with

that but it will vary from case to case. Somebody can go into a coma forever, somebody can have amnesia for a minute or an hour or a month.

MR. BAILEY:           You can bring that out on cross.

MR. CORRIGAN:        You have an area of absolute speculation and it doesn't relate to this case here, and I think it is immaterial and irrelevant.

MR. BAILEY:           No, the defendant contends since you put in his statements, you claim a variation, he certainly is entitled to show that if the jury believes he was struck they could also find on the basis of the testimony of this expert, that his confusion as to the events as he charged up the stairs just before he was struck, and as to the events on the beach, and his general confusion in wandering about the house, was caused at least in part by the amnesia result of being concussed on two separate occasions.

MR. CORRIGAN:        Again, I will withdraw the objection. It has no place. But I will withdraw the objection.

MR. BAILEY:           All right.

THE COURT:           You are withdrawing

the objection?

MR. CORRIGAN: Yes.

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

THE COURT: Let the record show the objection is withdrawn.

MR. CORRIGAN: I will withdraw the objection, your Honor.

THE COURT: Doctor, do you have the question in mind?

THE WITNESS: This one I would like repeated.

THE COURT: Do you wish the reporter to read the question back, Counselor, or do you wish to restate it.

MR. BAILEY: Well, if the objection has been withdrawn to that specific question, perhaps we better have the reporter read it back.  
(Last two questions were read by the reporter.)

THE COURT: Doctor, do you have the question in mind?

A Yes; and I have experienced this.

Q Can you tell us what may happen to a person who gets a concussion insofar as his memory is concerned?

A An individual who has been knocked unconscious by a

blow anywhere around the head may have the foggiest of memory of events immediately preceding the accident or injury, and as a matter of fact may never recall events previous to this.

This is known as retrograde amnesia, and it occurs fairly frequently.

In automobile accidents, and I think of it as a sort of situation --

MR. SPELLACY: Objection now to that.

THE COURT: Sustained.

Q You say it is a fairly common phenomenon in connection with injuries to the head or the base of the skull?

A Retrograde amnesia is, yes.

MR. SPELLACY: May I object to that.

He didn't say with regard to injury. He said with regard to concussions.

THE COURT: Sustained as to that conclusion drawn by the doctor.

Please proceed, Counselor.

Q You say, doctor, that retrograde amnesia occurs only when concussion is present, or an injury generally?

A I meant to imply that retrograde amnesia only occurs in injuries which produce at least concussion, and unconsciousness.

Q Did you in this case have an opinion as to whether or

not the defendant suffered a concussion?

A My first impression was that he had had a concussion of the brain.

Q And is a concussion consistent with the damage which you found by way of the X-rays and the neurological examination?

A I believe this is two matters. I think that we did not become aware of the spinal cord findings until 48 hours.

But the fact that he had been unconscious, according to the history that was given to me, was quite compatible with either a blow of the high cervical region or around the vault of the skull, that concussion in either areas can produce unconsciousness.

Q What very briefly is a brain concussion?

A A brain concussion can be defined similarly to a spinal cord concussion. This is in a different location, results of an injury which is reversible and may produce light unconsciousness for a brief period of time, with complete recovery of function of the nervous system, with the possible exception that if the concussion is of sufficient severity there may be confusion or absence of memory of events occurring about the time of the accident.

Q Are you able to say that a vagueness of recollection as to the events immediately preceding the sustaining of the injury causing confusion, is consistent with such an injury?

A That's correct.

Q Now, Doctor Elkins, do you recall whether or not at some time in the course of your examinations of Doctor Sam Sheppard you conferred or spoke with Doctor Sam Gerber?

A Yes, sir, I did.

Q Had you known him prior to the occurrence of the murder of Marilyn Sheppard and your subsequent examinations of Sam?

A Yes, I had known him.

Q Did you recognize him when you saw him and conferred with him?

A That is correct.

Q Doctor, did you ever say to Doctor Sam Gerber that there was nothing wrong with Sam Sheppard?

A I did not, sir.

Q Do you recall whether or not Doctor Gerber ever conferred with you to get your opinions as to the extent of the injuries?

A I believe that he discussed them with me.

Q Do you remember when that might have been?

A I think this was on the 6th of July.

Q Was this following your neurological examination where you found the reflexes absent?

A That is correct.

Q And did you hold back any information from Doctor Gerber at that time?

A Not that I would recollect.

Q Had you worked with Doctor Gerber before and cooperated with him?

A Yes, I had.

MR. BAILEY: Your witness, sir.

THE COURT: May I see counselors, please?

(Thereupon counsel and the Court conferred at the Court's bench out of the hearing of the jury.)

THE COURT: Ladies and gentlemen of the jury, we will have a brief morning recess, and while you are away on your recess 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.

We will stand recessed briefly.

(Thereupon a recess was had.)

THE COURT: Counselor Spellacy or Corrigan?

MR. SPELLACY: Mr. Eberling.