

Thereupon STEPHEN ALLEN SHEPPARD resumed the stand and was examined and testified further, as follows:

CROSS EXAMINATION (CONTINUED)

By Mr. Parrino:

Q Now, Dr. Sheppard, I think last Friday we were at the point where you had been in Marilyn's room for the second time, is that correct?

A Yes.

Q And after that second visit to Marilyn's room, you came downstairs into the living room, is that correct?

A No, I didn't.

Q Where did you go, please?

A I believe I said the other day, and my recollection is, that Dr. Richard, Larry Houk, Officer Cavanaugh, Mrs. Houk and I went down the hall to the east bedroom. We looked in Chip's room and into the little dressing room and then back into the bathroom.

Q And as you looked into Chip's bedroom, you saw nothing which you thought to be an unusual disturbance in that room, is that correct?

A Yes, sir. The bed was unmade, but other than that, nothing.

Q And would the same apply as to other rooms that you visited

or looked into?

A I saw no evidence of any disturbance and nothing of any importance with the exception of the cigarette butt which was drawn to my attention by the officer.

Q Now, what time was it, sir, that you saw that cigarette butt, about?

A It must have been around eight o'clock in the morning, Mr. Parrino.

Q Now, who was upstairs at the time that you saw this cigarette butt in the toilet bowl?

A Larry Houk, Mrs. Houk, Officer Cavanaugh, Dr. Richard Sheppard and I.

Q And there were other persons downstairs, isn't that correct?

A I presume there were.

Q Well, you say you had some conversation with a police officer relative to that cigarette butt, is that correct?

A Yes, sir.

Q And was that a Bay Village police officer or --

A Bay Village, yes.

Q And what was his name?

A As I said, I believe it was Officer Cavanaugh.

Q Now, eventually, you did come downstairs?

A That's right.

Q And as you came downstairs, where is the first place that you went to?

A At that time I went back into the living room. Mrs. Houk, I believe I mentioned, had pointed out this trail of water. I had gone upstairs and put my hand in the wet patch by the bed. I then went back into the living room and down to the beach.

Q You say that you saw some what you thought to be water in the vicinity of Marilyn's bed, is that correct?

A Yes, sir. I didn't see it, I felt it.

Q And how did you determine that it was water?

A Smelled it, touched it, rubbed my finger across the damp patch in the rug.

Q Coming downstairs, did you go into the den?

A Into the den?

Q Yes.

A After I came up from the beach, I believe is when I went into the den, sir.

Q Well, what time was it when you went down to the beach?

A I can estimate it must have been somewhere around 7:45.

Q Were you alone when you went down to the beach?

A As I recall, Mayor Houk and I went down, or he went part way. He may have stayed up at the top of the hill. I'm not terribly sure of that. I know I was alone when I was down looking under the deck of the beach house.

Q Well, when you got down to the base of the stairs there leading to the beach, you looked at the beach, of course,

didn't you?

A Yes. I looked at it from the deck, also.

Q And there on the beach you saw a great number of fingerprints -- a great number of footprints, didn't you?

A I honestly don't remember seeing any footprints.

Q Well, did you look for footprints?

A No, I didn't.

Q Well, were you looking for anything in particular?

A I was looking at the water, the amount of beach that was there. I wasn't taking any -- making any particular study of it, but I remember remembering that, and I was looking for anything that would be out of the ordinary. And there may have been footprints there, but apparently they didn't register as being out of the ordinary, if I did notice them.

Q What was the appearance of the water?

A The water was choppy. Out beyond the protection of the Huntington pier it was quite choppy, and it was coming in -- the wavelets were coming in from the northeast. The wind was from the northeast, also, but there was -- Dr. Sam's beach is in the lee of the big T-shaped westerly pier of Huntington beach, and for that reason there was, I would say, less disturbance of the water at the foot of the stairway there than there was out beyond the T-shaped pier.

Q And how many feet of beach was there?

A I would guess --

Q There in front of the pier or in front of the steps?

A At the foot of the steps, you mean?

Q Yes.

A Well, there was certainly five feet from the foot of the steps to the water's edge. The beach was rocky, and I believe from the steps themselves up to the big concrete bulkhead must be pretty close to three feet.

Q Did you step onto the beach yourself?

A As I say, I don't recall stepping on the beach. I went to the foot of the stairs and there is a -- I think there is a concrete block there, sort of a landing. I stood on that.

Q And you don't recall that you placed your foot or feet on the beach at any point there, is that correct?

A I could have. I honestly don't remember.

Q Was it at that time that you found these two pairs of gloves?

A I then went back up to the deck of the beach house.

Q To where?

A To the deck. In other words, I was down below and I looked up underneath the deck from down there, and then I went back up to the deck itself and leaned over the side of the deck, and it was at that time that I found the two pairs of gloves.

Q Showing you what is marked for identification as State's Exhibit -- as Defense Exhibit NNN, will you look at that

picture, please, and tell us if in that photograph you can see the point where you found these gloves?

A No, sir.

Q Where would that be with relation to the picture?

A It would be behind --

Q Excuse me.

A Surely. It would be on behind the house on the opposite side corresponding with this edge of the deck, the southerly edge of that deck and this end of the deck, the opposite side of this end of the deck. (Indicating.)

Q Well, how far was it from the steps leading up the hill there, how many feet was it from those steps that you found the gloves?

A Well, it was between the little house itself and the steps, about halfway between, and I think they must be only, oh, maybe two feet in between the steps and the deck -- rather, two feet between where the steps come down to the deck and the house itself and just about in the middle is where I found them. I would judge it would be, then, about a foot from where the stairway comes down.

Q Showing you what is marked for identification as State's Exhibits 23 and 24, are those the gloves that you saw?

A I believe they are, sir.

Q And will you please place those -- withdraw that.

Will you step down here, please, sir?

A Surely.

(Witness leaves the witness stand.)

Q On this chair, so that the jury may see, will you kindly place those gloves in the position and manner that they were in when you first saw them?

A Surely. If we let this seat portion of the chair represent the ground, the deck itself would have been about so high off of the ground. We will let this portion of the chair arm represent the edge of the deck itself. The gloves were roughly that position, just under the edge of the deck, and, as I recall, the fingers pointing toward the lake.

MR. PARRINO: May we have the record show that the four gloves, your Honor, are piled on top of one another.

Is that correct, Doctor?

THE WITNESS: Yes.

MR. PARRINO: And that the two canvas gloves are beneath and the two leather gloves are on top of the canvas gloves.

Is that correct?

THE WITNESS: Yes, it is.

MR. PARRINO: Thank you.

(Witness returns to witness stand.)

Q Now, you didn't pick those gloves up when you first saw them, did you?

A I didn't pick them up at any time, sir.

Q You called Chief Eaton at that time?

A I went to the top of the stairs, and I saw Chief Eaton and Dr. Richard coming out of the garage. I spoke to Chief Eaton, and I told the Chief and Dr. Richard that I had found a pair of gloves under the deck of the beach house, that I would like to show them to him.

Q And then you did show him the gloves?

A I did.

Q And as you showed him the gloves, you stated last Thursday, I believe, that he picked them up and took them away with him?

A That's right.

Q Did you do any other searching down there that morning down on the beach, that is?

A No, I don't believe I did.

Q You returned upstairs then?

A That's right.

Q Where did you go then?

A That is the time that I went into the study. I think I stepped into the kitchen, then I went into the study. That is when I kicked over this -- or caught this drawer on my trouser cuff.

Q And that was an accident, of course, wasn't it?

A Yes, it was.

Q Now, will you describe what you saw in that room at that time?

A In the study? I saw the -- it is difficult to differentiate what I saw at that time and what I knew was there and what I have seen since, but I will try to tell just what I saw at that time.

Q Well, you were able to tell us what you saw in Marilyn's room the first time you went up there, weren't you?

A Yes.

Q For a period of one minute?

A In relation to her, yes, sir.

Q Now, you were in the den for longer than one minute on this occasion, weren't you?

A I thought you had in mind everything I saw in the study, sir.

Q All right. You tell us what you saw.

A I saw the red chair, the big overstuffed red chair; I saw the desk; I saw the desk lamp; I saw the drawers on the floor; I saw material in the drawers; I saw drawers on the floor to the left of the desk itself, and then I saw drawers behind the desk, and on the right -- to the right side of the desk. I don't mean to say clear around, but as they would be pulled on the right side of the desk. Apparently they had either been dropped or placed below

there, and at sometime this morning, and it must have been at this time, I recall seeing these trophies at the foot of the trophy case or the shelf where they were ordinarily kept. I believe that is when I saw those.

Q Do you recall seeing those trophies on the first time that you were there that morning?

A No, I don't, and at no time did I ever see the watch except in a photograph.

Q Well, did you go behind the desk?

A I stepped --

Q In the den.

A I stepped over this pile of drawers to get behind the desk. My attention was attracted by one of the officer's remarks to the drawers stacked behind the desk, and as I stepped over these drawers, the cuff of my trousers caught on this drawer on top, and I actually did get behind the desk, but I was embarrassed and upset because I realized that I had done something I shouldn't when I knocked this drawer over, and I immediately left, so I didn't stay there and look around, and I didn't make any attempt to see anything behind the desk. I did notice these drawers, as I mentioned.

Q Now, I show you what is marked for identification as Defense Exhibit E.

A Yes, sir.

Q Excuse me. I will turn it this way so that the jury may see.

You did not see what is portrayed in this photograph behind the desk on the second occasion that you were there that morning, is that correct?

A The only thing I noticed, sir, was these drawers which I mentioned, which I thought had been taken out of the right side of the desk.

Q You didn't see Marilyn's watch on the floor?

A No. As soon as I kicked that drawer over, I left immediately. I didn't see --

Q Excuse me.

A I didn't see this box or these tools down here. I didn't see any of this. I saw these drawers, and that's all I recall seeing, sir.

Q In other words, you did not make a very close inspection or examination of the condition or appearance of the den? Would that be a fair statement?

A It would be a fair statement that I didn't make any evaluation of what was behind the desk. I had some idea what was in front of the desk, but as soon as I kicked this drawer over, frankly, I was embarrassed and upset, and I --

Q Yes. You told us that. But you did make a more complete examination and evaluation of what you saw in Marilyn's room on your second trip there, isn't that correct?

A I made a more complete evaluation of the room itself, the walls and the floor, and that sort of thing, than I did in

the den. Is that what you had in mind?

Q Yes.

A Yes, that is true.

Q Now, was this about the time that Dr. Gerber arrived?

A When I was in the den, no. That was before Dr. Gerber arrived.

Q Well, how long after that was it that Dr. Gerber arrived?

A I would guess half an hour.

Q And you stated that as Dr. Gerber arrived he asked everyone in the house to leave?

A That is true.

Q Did you leave?

A I did.

Q That didn't include the police officer, did it?

A It included everyone.

Q Well, did he leave also?

A Yes. He stepped out into the front yard on the brow of the hill. He called all of us out. He went out and waited until everybody else came out, everyone.

Q Then I suppose there was some conversation out there between Dr. Gerber and the authorities that were at the scene?

A No. They all went back in the house. He then made some attempt to evaluate and find out who was in charge. You see, Chief Eaton still had on his overalls, and he couldn't

tell, of course, who he was. I don't think May Houk -- I doubt if he knew who Mayor Houk was. Mayor Houk had on old clothes. We all probably looked like a bunch of bums, and Coroner Gerber came in and told us all to get out and was quite upset about it, and after he threw everybody out, apparently he found out who was who in relation to the police department. Of course, Officer Drenkhan had on his uniform and Callahan -- or Cavanaugh had on his.

Q How long was it before Dr. Gerber left to go to Bay View Hospital?

A I would guess 20 minutes, or so.

Q And what time would that be, approximately?

A It must have been pretty close to 9 o'clock, because, as I recall, Dr. Gerber arrived about 8:30.

Q Was Dr. Gerber alone when he left?

A No. He went with Chief Eaton.

Q As you saw Dr. Gerber and Chief Eaton leaving the house, it was then that you and your brother Richard got into an automobile and went toward the hospital, also, isn't that right?

A We not only saw them leave, I overheard Dr. Gerber ask Chief Eaton where Dr. Sam was, and Chief Eaton told him he was in Bay View Hospital. They then started to get into the cruiser, and Dr. Richard and I followed then.

Q Well, then it was Chief Eaton that told Dr. Gerber that Sam was at the Bay View Hospital?

A Yes. He knew that.

Q You didn't tell him that?

A No, sir. Dr. Gerber didn't speak to me at that time.

Q So Dr. Gerber didn't know who you were, is that correct --

A I'm sure --

Q -- when he left for Bay View Hospital?

A I'm sure he didn't know who I was.

Q And he didn't know who Richard was, or had he been introduced to Richard?

A No, not to my knowledge.

Q So overhearing the conversation that they were going to Bay View Hospital, you and Richard jumped into your car or into a car and went directly to Bay View Hospital also?

A My car, yes.

Q And that was because -- withdraw that.

You knew from that conversation you overheard that Dr. Gerber wanted to speak to Sam, isn't that correct?

MR. GARMONE: Object to the question.

How would he know?

THE COURT: It doesn't follow, Mr.

Parrino.

Q Well, as the result of this conversation that you heard between Eaton and Dr. Gerber, you felt that they were going to the hospital to question Sam, isn't that correct?

MR. GARMONE: Objection.

THE COURT: Well, let him answer.

A No.

Q Well, you went to the hospital at that point with your brother --

A May I tell you what I felt, what I thought?

Q Well, do you feel that is necessary at this time, sir?

A You asked me if I felt that they were going to question him.

Q Well, if you want to tell us, go ahead.

A I felt that they were interested, that particularly Dr. Gerber was interested in his condition, and that he wanted to go to the hospital and talk to the doctor that was in charge of the case and find out how seriously he had been injured.

Q I see. Well, Doctor, as a matter of fact, isn't it true that you wanted to be present when the Coroner and the Chief got there, to the hospital, that is, so that you could see what was going to take place in so far as Sam's being questioned was concerned?

MR. GARMONE: Object to the question. There is no such testimony.

THE COURT:

He may answer

that.

A I didn't have that in mind, Mr. Parrino. I was the doctor in charge of Dr. Sam's case. A physician was going to the hospital seeking Dr. Sam. I wanted to be there, hoping that I could be of any help to him, if he wanted to go to the chart, if he wanted to examine Dr. Sam. I was the doctor in charge, and I felt that I should be there.

Q All right.

A Whether or not he questioned Dr. Sam, frankly, never even entered my mind at that time.

Q And then it was at the hospital that the Coroner recovered some trousers that belonged to Sam?

A That's true.

Q And a billfold and some other property, is that correct?

A Everything he had with him when he came into the hospital Dr. Gerber obtained at that time.

Q After a short time Dr. Gerber and Chief Eaton left the hospital?

A Well, Chief Eaton left immediately and went to change his clothes, and Dr. Gerber came into the hospital and stayed for possibly a half hour, 45 minutes, I would guess.

Q When he left, what did you do? Did you leave, also?

A This was after Dr. Gerber left. I went back to Dr. Sam's room, I believe, and stayed with him a short time.

Q Did you leave the hospital again that morning?

A Yes, sir.

Q What time was that?

A Shortly thereafter, I believe I went over to Dr. Richard's house and had some coffee.

Q Do you recall what time that was?

A I'm sorry, I can't give you the exact time. I would judge it was somewhere around, oh, possibly 10:00 or 10:30.

Q Did you return to the hospital again after that?

A Yes.

Q What time was that?

A It must have been somewhere around quarter of eleven, because I was there when Officer Schottke and Gareau arrived on the scene. I think they came in sometime pretty close to that.

Q And Schottke and Gareau went in to question Dr. Sam then?

A That's right.

Q And how many times did you interrupt that questioning?

A I think possibly I stepped into the room four times.

Q And how long did that questioning take?

A I would estimate about an hour.

Q After Schottke and Gareau completed their questioning, did you go into Dr. Sam's room again?

A Yes.

Q Did you leave the hospital that morning after that

questioning?

A That's when I went out, had lunch, went down to the Metropolitan Park. I think I misstated myself here the other day and said it was later than that.

Q You say you misstated?

A I believe so. I checked my notes and --

Q What did you misstate?

A Well, I have the impression -- I should say that as I recall, what I said the other day, I indicated that it was later than that or, at any rate, that I had come back in more nearly toward three o'clock. As I say, I have gone over my notes since then, and actually, I went out for lunch somewhere around noon and went down into this Metropolitan Park, went home and changed my clothes, and I got back somewhere around one.

Q Now, when did you first discover that you had made that misstatement?

A Well, I thought about it over the weekend.

Q Well, when did you discover that you made that misstatement? Was it on Friday, Saturday or Sunday?

A Well, I think it was Thursday, when Mr. Corrigan was questioning me, it occurred to me first and then I tried to think about it and reviewed some of the things that I had taken notes on, tried to remember the sequence. You see, I didn't remember just exactly when each person came

in and when each person left, but I did know that Officer Schottke and Gareau were there before Dr. Foster came in, and at one point that they -- after I had spoken about these other things, I was looking at the chart, and the chart was signed by Dr. Foster at 2:50 p.m. so that brought to mind the probability that I was in error on that time. I know Schottke and Gareau came in before Foster, then Foster, then Dr. Hexter and then Dr. Elkins. The sequence I am sure of, the exact times I can't say. And, as I say, Dr. Elkins didn't write on the chart, so I can't refer to the chart and give the exact time on that. But Foster did --

Q Well, it was Thursday that you felt that you discovered that misstatement, is that correct, as to the time?

A I believe it was Thursday. At least when I was looking at the chart.

Q What time was it that Schottke and Gareau were at the hospital the second time on July 4th?

A My recollection is shortly after one.

Q And they questioned Sam on that occasion, right?

A That's true.

Q And that is the occasion on which Schottke made certain accusations as against Sam, isn't that correct?

A That's right.

Q Now, you talked to Sam after that? I say, you spoke with

Sam after that, of course?

A Surely. That is when I learned of the accusation.

Q And what was the accusation that Schottke made to Dr. Sam?

A Well, I can only tell you what Dr. Sam told me.

Q Yes. That's what -- well, you told us that the other day, didn't you?

A Yes, sir.

Q Will you repeat it, please, and tell us -- withdraw that.

I want you to state to this jury what Dr. Sam said to you and the manner in which he said it.

A I stepped into the room when Officer Schottke and Gareau left. I was struck by the fact that Dr. Sam was completely changed over his appearance when I had seen him last. He was agitated, he was upset, he was crying, and I said, "For cryin' out loud, what happened, what's wrong?"

And he said, "Those officers think I killed Marilyn."

Q And is that how he said it, as you now described it?

A Well, he was more upset than I have indicated. You want my voice to sound like his, or that sort of thing?

Q Well, any inflections of the voice and gestures, and so forth. Describe what he said and how he said it.

A You want his exact words?

Q No. To the best of your memory, sir, not the exact words.

A He said, "Those cops think I killed Marilyn."

I said, "Well, what makes you think that?"

He said, "Well, the thin, skinny guy, just before they were going to leave, leaned over the end of the bed and he said, 'I don't know what Chief Eaton thinks and I don't know what my partner thinks, but I think you killed your wife.'"

Just like that, that's what he told me.

Q I see. And when he described that to you, did he point his finger at you in the way that you have just pointed?

A He said that the officer pointed his finger.

Q But he didn't gesture the way you just gestured to the jury, though, did he?

A I think I gestured to Mr. Mahon.

Q Well, he didn't gesture -- withdraw that.

A He did it this way. (Indicating). He didn't stick his arm clear out, but he did make a gesture, Mr. Parrino.

Q Yes. But here on the witness stand today and last Friday, as you now demonstrate that gesture, you are over-emphasizing it to some extent, aren't you?

A No, sir. I don't believe so, except that I may have reached my arm out farther than he.

Q I see.

A And I would also say that I am not nearly as agitated and upset as he, and I am not crying as he was.

Q I understand. Now, after he told you these things, what is the first thing that you did?

A I became very upset.

Q You left the room, of course?

A Well, I re-assured him, tried to, at least, and then I left the room and made a telephone call.

Q Now, after that event, when was the first time you spoke to Mr. Corrigan?

A Sunday evening sometime, I believe around 6:30, is the first time I ever saw Mr. Corrigan.

Q And where was Mr. Corrigan when you saw him?

A He was coming down the ramp of the west wing of the Bay View Hospital.

Q Was that on July 4th?

A Sunday, July 4th.

Q And what time again, please?

A I believe it was about 6:30.

Q And you had some conversation with Mr. Corrigan, of course?

A I met him at that time.

Q Now, on July 5th, did you see any police officers at the hospital?

A Yes, sir.

Q And who did you see there?

A Well, the guard was there 24 hours a day.

Q That guard never prevented you from entering Sam's room, did he?

A Oh, of course not.

Q He didn't prevent any member of your family from entering the room, did he?

A He made no attempt to do that, sir.

Q And he prevented none of the nurses from entering the room, did he?

A No. I think he was there to prevent Dr. Sam from leaving, sir.

Q I see. What time did the police officers arrive there?

A Monday?

Q Yes.

A I'll have to look at my notes, sir.

(Witness looks at notes.)

I don't have a note on the time. However, Officers Rossbach and Yettra arrived Monday morning. I think it must have been around 8:30, 9:00.

Q And you advised him at that time, did you not, that you felt that Sam was in no shape to be questioned, isn't that correct?

A That's completely correct, sir, yes.

Q And they left?

A That's right.

Q Did you go to Sam's house that morning?

A Yes, sir.

Q What was the purpose of that visit to Sam's home on the morning of the 5th?

A

On the morning of the 5th, I went to Dr. Sam's house to get his electric razor, tooth brush, that sort of thing, so that he could clean up.

ke 5 Q What time was that?

A I think it was sometime around 10 o'clock.

Q Did Sam make a request for his electric razor?

A No. I noticed that he was becoming pretty shaggy, and I told him that if he liked, I would try to get some of his personal effects out of the house, some toilet articles.

Q What part of his body did you notice was becoming shaggy?

A Excuse me, sir. At that time he said that he had an unpleasant taste in his mouth as a result of this blood that had been on his teeth, and he asked if I could get into the house and bring him a tooth brush.

Q A what?

A A tooth brush. So that is the only request that he made. I got the other things because I felt that he would need them.

Now, you ask me what part of his body was shaggy, sir?

Q Sir, now, will you answer my questions, please, as I ask them? We will get to the other part of his body. Will you do that, please?

A I'll try --

Q We will get to the tooth brush. The question that I asked you was: What part of his body was shaggy?

A He had whiskers on his face.

Q Did he make some statement about his whiskers?

A Not that I recall.

Q Did he make some statement about a tooth brush?

A He said that he had a foul taste in his mouth.

Q And did he say he wanted his tooth brush?

A He said he'd like to brush his teeth.

Q Did he say anything about tooth paste?

A Not that I recall. He may have. I assumed that he needed or wanted tooth paste.

Q Now, don't you have tooth brushes and tooth paste for patients at the hospital there, sir?

A There may be tooth brushes on sale up in the Guild Room. I don't really know. It is possible.

Q But was Sam feeling any pain at that time?

A Yes, sir.

Q And was Sam complaining about his beard at that time?

A No, he wasn't complaining about his beard.

Q Well, did he say anything about being uncomfortable because he needed a shave?

A It is entirely possible. I pointed out to him that he needed a shave, and he had this collar affair on. He may have agreed. He may have said that it was irritating his skin. I honestly don't remember, Mr. Parrino. My recollection is that he didn't complain about his beard.

Q All right. But you did go over to the house and get his tooth paste and his tooth brush and his electric razor?

A That's right. I brought them back to the hospital in a little kit, toilet case.

Q Who was at the house when you got those articles?

A Officer Drenkhan, Dr. Gerber, Chief Eaton, and others that I didn't know.

Q Did you obtain anything else from the house at that time?

A I don't believe so. I don't recall taking anything else.

Q Was anything else obtained at the house -- withdraw that.

Did any other member of your family obtain any other articles from the house?

A Yes, sir.

Q What did they obtain?

A I think the girls got some clothing. They got some clothing
can't
on Sunday. I honestly/say just what day they got the
clothing. They got some on Monday, I'm quite sure. If
that is what you refer to?

Q Yes.

A I think they did.

Q And they got some of Chip's clothing, also, didn't they?

A That's what I recall.

Q On the 6th, did you see any police officers at the hospital?

A That was Tuesday. Yes, sir.

Q And what time did you see them there?

A I'm sorry. I can't give you an exact time on that. I
believe it was in the morning.

Q Who were the officers?

A At the hospital?

Q Yes.

A I don't have any note on Tuesday morning with regard to who were the officers. As I say, I saw the guard.

Q Well, you say you do have a note, though, that there were officers at the hospital, right?

A No, sir, I didn't say that.

Q Well, --

A I said that I saw police people, officers at the hospital, and I say that the guard was there. Now, as I check my notes, that was Tuesday, the day of the visitation. That was the day that Dr. Sheppard, Sr., my brother and I went over to the Mayor's office and we saw officers overs there, but I don't recall, and I don't have a note that we saw them -- that I saw them at the hospital that day, from looking at these notes.

Q At any time?

A At the hospital, I don't recall.

Q Did you see the police officers at the hospital the following day, on the 7th?

A Yes, I did.

Q And what time was that?

A Well, I saw Officer Hubach when he came to escort us over to the funeral home and on over to the funeral itself, and, of course, I saw him all the way over and all the way back,

and then after we returned I saw Officers Rossbach and Yettra and, of course, I saw the guard.

Q I see. And did the officers question Sam at the hospital on the 7th?

A Do you refer to Officers Rossbach and Yettra?

Q Yes.

A They started to.

Q And you told them that, in your opinion, you felt that it was better that they should not question him, isn't that correct?

A Yes, that's correct.

Q Now, on the 8th, the police officers were again at the hospital on the 8th, were they not?

A On the morning of Thursday, the 8th, Officers Rossbach, Yettra, Gerber, Drenkhan, Schottke and Gareau were there, in addition to the regular guard.

Q And Mr. Corrigan was there?

A He came later, sir.

Q Did someone call Mr. Corrigan at that point?

A No, sir.

Q Was Mr. Petersilge there?

A He came later with Mr. Corrigan.

Q Well, before Mr. Corrigan arrived, was there some attempt made to question Sam?

A Yes, sir.

Q And you prevented that questioning, didn't you?

A I tried.

Q And where were you when you tried to prevent that questioning?

A In Dr. Sam's room.

Q Later, you say that Mr. Corrigan arrived, of course, isn't that correct?

A Yes.

Q And that sometime later that day Sam was questioned by certain police officers, is that a fact?

A That is a fact.

Q By what police officers was he questioned?

A Officer Rossbach, Officer Yettra and Officer Drenkhan.

Q And you made the suggestion, did you not, that Officer Drenkhan should assist and participate in the questioning of your brother, did you not?

A I made the suggestion that someone who knew Sam be present.

Q Well, did you make the specific suggestion that --

A We discussed --

Q -- Drenkhan be present during that questioning?

A I think after we discussed it, we arrived at the conclusion that Drenkhan would be a good one to have there, or, at least, a person who knew Sam. I don't think I specifically picked Drenkhan out and said, "I want Drenkhan and nobody else."

I'm sure I didn't.

Q Well, you say that there was an agreement that Drenkhan was a

good one to participate in that questioning?

A He was a man that was known to us. We didn't know any of these other men, you see.

Q He was friendly with Sam, wasn't he, from your own knowledge?

A He knew all of us, sir, everybody at the hospital.

Q And --

A Frankly, --

Q -- Sam was acquainted with other members of the Bay Village Police Department, wasn't he?

A Yes, of course.

Q But you specifically insisted, did you not, that Officers Schottke and Gareau were not to participate in the questioning of your brother, isn't that correct?

A I requested that they not. It wasn't my place to insist on anything, sir.

Q And they did not, sir, participate in the questioning of your brother; that is a fact, isn't it?

A That is a fact, yes.

Q During the questioning of your brother by Rossbach, Yettra and Drenkhan, you went into the room from time to time where that questioning was taking place, didn't you?

A No, sir.

Q Not at all?

A I could have been in once or twice over a period of four hours, but I don't believe more than that.

Q Well, then, the answer to the question is that you did, from time to time, go into that room where he was being questioned?

A I believe ~~that~~ I went in each time that he was being questioned by anyone to check on his condition.

Q And how many times did you go into the room on the 8th while he was being questioned?

A This was by Rossbach, Yettra and Drenkhan?

Q Yes.

A I believe, as I stated, twice. Certainly no more than that. Possibly not even that.

Q You say that each time that your brother would be questioned you would go into the room from time to time, isn't that correct?

A That's correct.

Q Now, after they had questioned him for some time, a statement was made to Rossbach and Drenkhan and Yettra that it was felt that he had been questioned enough, and that the questioning should terminate, is that correct?

A I heard that such a statement was made.

Q And do you know by whom it was made?

A Dr. Sheppard, Sr.

Q And upon that statement being made, the questioning, in fact, did terminate, isn't that a fact?

A Shortly thereafter, I believe it did. I wasn't down there.

Q Now, this questioning on the 8th occurred only after Dr. Gerber had issued subpoenas to various people there on the scene, isn't that correct?

A He had issued subpoenas on several occasions and tore them up.

Q And the reason that he stated that he was issuing these subpoenas to various people there on the scene was because he insisted that Sam Sheppard be questioned by the police officers, isn't that correct?

A Well, I can't evaluate his motives in issuing the subpoenas. I can give you my opinion.

Q Well, the first time that he issued subpoenas to whom were they issued?

A He rushed out and instructed Officer Rossbach to write up a subpoena. In fact, he and Mr. Corrigan had a great interplay of legal gibberish that meant nothing to me, except that he kept threatening to issue subpoenas, and when he finally had one written out, I believe it was subpoenaing Dr. Sam. He said "if we can't talk to him here, we will take him downtown."

Q I see. Did you receive a subpoena at that time, the first round?

A No, I didn't -- the first round?

Q You say subpoenas were prepared a number of times there that day?

A Yes, and then ultimately torn up.

Q Now, did you receive a subpoena there the first time that they were prepared?

A I didn't receive one at any time that day.

Q Now, you say that someone went over to Sam to give him a subpoena?

A Officer Rossbach entered the room and started to issue the subpoena, sir.

Q Now, what was said by Gerber at the time that the subpoena was given to Sam, or about to be given to Sam?

A He kept talking about the powers that he had, and how the State said that he could do certain things, and how the statutes stated certain things, how he was going to force the issue on this if it became necessary. A lot of things like that. I don't recall the exact words what he said just as the subpoena was being issued.

Q Well, you do say, however, that Dr. Gerber stated that, "We are going to question Sam or Dr. Sam, and we will either question him here or we will question him downtown." Wasn't that said?

A In essence, that was part of the conversation, yes.

Q And then, of course, Mr. Corrigan began to talk, and there was a considerable confusion there, is that correct?

A There was hubbub.

Q And then that subpoena was torn up, you say?

A Yes.

Q Was there another subpoena prepared for Dr. Sam after that?

A Yes, there was.

Q And that was still -- withdraw that.

During that time there was still talk that Dr. Sam should be questioned there at the hospital, isn't that correct?

A Surely. That is what the whole thing was about.

Q And was the second subpoena given to him?

A I think he had it in his hand at one time. I'm not completely sure of that, sir.

Q And it was only after the second subpoena had been drawn and presented that an agreement was reached as to who was going to question Dr. Sam, isn't that correct?

A Well, that was later determined, yes.

Q What time did that questioning finish on the 8th?

A When were the officers through with Dr. Sam?

Q Yes.

A It was close to 5 o'clock, sir.

Q There was some agreement, wasn't there, at that time, that Sam was to go to his home on the 9th to look around and see what he could find, as to whether anything would be missing or not at his home, isn't that a fact?

A I don't know what the agreement was. I know that he

ultimately went. I think it was Friday, the 9th. You see, I wasn't there.

Q Well, on what day was it that Sam was discharged from the hospital?

A Thursday.

Q Were you present when he was discharged?

A Yes, sir.

Q How did he leave the hospital?

A We took him a wheel chair out to my station wagon and put him in and folded up the wheel chair and put it in back.

Q Thursday, that would be the 8th, wasn't it?

A Yes, sir. I'll check it. Yes, sir.

Q Now, Dr. Sheppard, was it really necessary for him to be removed from that hospital in a wheel chair?

A I felt that it was the safest thing to do. I think he could have made it without.

Q On the 9th, he did go to his home, did he not, referring to Sam?

A Friday the 9th, yes.

Q Yes. And did he use the wheel chair when he went to his home?

A No, he didn't. Not to my knowledge. I wasn't there.

Q Well, did he need to use the wheel chair for movement on the 9th, as you felt that he needed it on the 8th?

A No. He got along -- I think he went by foot after he got to the house on the 9th.

Q So between the 8th and the 9th, then, he no longer needed the wheel chair?

A Well, he was able to get by without it on the 9th. Apparently, he didn't need it on the 9th.

Q All right. Now, you say that you were not present at the home, so that you do not know what occurred there?

A That's right.

Q On the 10th, Sam came down to the County Jail to be questioned, isn't that a fact?

A Saturday, the 10th.

Q Yes. And did you accompany him downtown?

A Yes, I did.

Q And did he need a wheel chair on that day?

A He didn't need a wheel chair at any time after Thursday.

Q You went up into the fourth floor of this building when you came downtown, isn't that right?

A Yes.

Q And Mr. Petersilge was with you, wasn't he?

A Yes, sir.

Q And Dr. Sam, of course?

A That's right.

Q And Dr. Sam was questioned on that day?

A Yes, sir.

Q Now, at any time during the questioning -- withdraw that.

As a matter of fact, during that questioning you did, in about the middle of it, examine Sam, didn't you?

A I was allowed to come in and take his blood pressure, and I listened to his heart, and that sort of thing.

Q And where did that take place?

A In the jail.

Q And as you took his blood pressure, what was it?

A Well, I can't give you the exact figures, but it was within normal range.

Q Did you make a note of it?

A No, sir.

Q What else did you check?

A Pulse.

Q What was that?

A Somewhere around 75 or 80.

Q Did you make a note of that?

A No, sir. I made a mental note that it was within normal range.

Q Well, you say it was 75 or 80 and that would be within normal range, is that correct?

A I would say so, under the circumstances.

Q And then you left -- withdraw that.

And then he returned to the point where he was being questioned, is that a fact?

A I think I saw him at the point where he was being questioned in a place where there were bars all around, and I then went back to where I had been waiting outside in the Sheriff's office.

Q I see. Now, when was it that you came down to the Prosecutor's office to make the statement?

A That statement was made on Friday, July 9th, the same day Dr. Sam went out to go over the house.

Q Did you ever come down to the police station, the Central Police Station, that is, at any time, Dr. Sheppard?

A Yes, sir.

Q When was the first time you came down to the police station, the Central Police Station of the Cleveland Police Department?

(Witness looks at notes.)

THE COURT: Do you know the date, Mr. Parrino? If you do, let's be helpful because it is not easy to remember these dates, there's so many.

MR. PARRINO: Well, I don't know the first date that he was down there, your Honor.

THE COURT: All right.

Q Well, you might look on the 28th of July. That might be helpful to you, sir.

A Thank you. I don't have anything about it on the 28th.

Q Well, will you look on August 12th, please?

A Yes, sir.

Q What?

A Yes, sir. I believe that was the first time. I could have been down on the 28th, but I don't have a note on it. I was down there any number of times, sir.

Q Well, these notes that you have here that you have been referring to are notes of information that you think

important that you prepared, isn't that correct?

A Yes, sir.

Q And the fact that you were down at the police station on the 28th would be an important note, would it not?

A I should think so, but I don't honestly believe I was there on the 28th. I may have been. I have notes on several other things. I think I would have made a note of it.

Q I see. Well, did you speak to any police officers at the Central Police Station on or about the 28th?

A As I say, it's entirely possible. I was in and out of there any number of times.

Q Well, wasn't the purpose of your visits to the Central Police Station from time to time to give to police officers the names of persons who you felt might in some way be implicated in the death of Marilyn Sheppard?

A May I precede --

MR. GARMONE: Object to the question. Let him describe what he went down to the police station for and not --

THE COURT: Have you found something on the other question?

THE WITNESS: Yes, I have.

THE COURT: All right. Let's dispose of that first, then.

A I have a note here on July 27th, which was Tuesday, which deals with Chip being questioned by Officer -- I am sorry -- Inspector McArthur, Dr. Gerber, Mr. Danaceau. But I wasn't present then. That's the only thing I have with regard to on or about the 28th.

Q Where did that take place, by the way?

A That was at the Morgue. That was on July 27th.

Q Yes. Now, did you come to the police station, sir, from time to time to give to police the names of persons who you felt might be in some way involved or implicated in the death of Marilyn Sheppard?

MR. GARMONE: Objection.

THE COURT: Oh, he may answer that.

MR. GARMONE: Exception.

A I gave them all the information that I had at my disposal at various times.

THE COURT: No. The question is, Doctor: Were some of these visits for that purpose? Wasn't that the question?

MR. PARRINO: Yes.

A I was called down and questioned, I presume, for that purpose. For example, I think you referred to -- or I may have -- to the 12th.

MR. GARMONE: The 11th of August.

THE WITNESS: No. I think it was the 12th of August. I was called to the police station and questioned, and there were times when I called the police station on the telephone and asked to speak to the officers, and there certainly were times when I passed information on that I had received.

I have received literally hundreds of letters and telephone calls, and I have gone through them and tried to pick out the things that were of any significance. I was called back to the police station, Central Police Station, on August 13th, also.

Q Yes. Now, my question, sir, is this: Did you from time to time give to police the names of persons, specific names of specific people, who you felt to be implicated in the death of Marilyn Sheppard?

MR. GARMONE: Objection.

THE COURT: He may answer that.

MR. GARMONE: Exception.

A Well, there were any number of people that were investigated. I gave some names to Inspector McArthur and Chief Story. You see --

Q Then the answer to the question is simple, that you did

give specific names of specific people to the Cleveland Police Department, is that a fact?

A Also the Sheriff's office, also the Bay Village Police Department.

Q Well, how many names did you give?

A How many people were discussed?

Q Yes.

A Possibly a half a dozen.

Q And when did you begin doing that?

A In relation to Central Police Station?

Q Yes.

A At the inquest, on one of the days of the inquest I spoke to Chief Story. Chief Story and Inspector McArthur were present at the inquest, and at that time there was an announcement in the papers that the Cleveland Police Department was going to take over and be in complete charge. Up to that time, as you know, there had been five separate agencies working on this thing.

I went to Chief Story at that time -- Dr. Richard and I both went to Chief Story, and I told Chief Story that I was elated that at last some one agency was going to take charge of this particular thing and I said, "I haven't known whom to talk to about problems."

I told him that I was elated, as I say, that they were going to take charge.

And he said, "Well, if you get any information, let us hear from you."

So when I got information, I let them hear from me.

Q So you say you told Chief Story that you were elated that the Cleveland Police Department was now going to participate as the head of this investigation, is that correct?

A I told him that I was elated that some one agency was going to take charge at last. Up to now there had been five separate and distinct agencies investigating simultaneously with no indication that anyone knew what the other four was doing.

Q And you knew that Chief Story was the head of the Cleveland Police Department, did you not?

A Certainly.

Q But you were not elated when members of the Cleveland Police Department tried to question your brother on the 8th, were you?

A Hardly.

Q But now at the time of the inquest you were elated that the Cleveland Police Department was taking over the investigation?

A I was happy that somebody was taking it over and was going to be in charge.

Q All right. Now, did you name any specific people or persons as suspects to the Chief at that time?

MR. GARMONE:

Objection.

THE COURT:

He may answer

that yes or no.

A No.

Q What?

A No.

Q When was the first time that you first named a suspect to the Cleveland Police Department?

A I think the first time I was asked about a suspect was when I was called down to the police station on the 12th. I think that was --

THE COURT:

You mean the 12th

of August?

THE WITNESS:

August, yes, sir,

the 12th of August, that's right.

Q Did you name a suspect at that time?

A Let me check the date. (Witness checks notes.) Yes, August 12th.

(Mr. Parrino looks at witness' notes.)

Q I can't read that. Did you name a suspect at that time?

MR. GARMONE:

Object to the

question.

THE COURT:

He may answer

whether he did or not. He may answer yes or no.

A I was asked about a suspect.

Q Well, did you name one?

A I accused no one.

Q Did you name a suspect?

MR. GARMONE: Objection. He
has answered the question. He said he was
asked about a suspect and he accused no one.

THE COURT: And he what?

MR. GARMONE: And he accused
no one. I think the answer is very specific
to the question that was asked.

THE COURT: All right.

Q Did you discuss a suspect?

A Yes.

Q And who brought the name of the suspect up?

A It was either --

Q It certainly was not the police?

A It certainly was.

Q It was. And what was the name of that suspect?

MR. GARMONE: Objection.

THE COURT: Objection sustained.

Q How many suspects did you name -- withdraw that.

How many suspects did you discuss with the Cleveland
Police after that?

MR. GARMONE: Objection unless

we have some specific dates that he is making reference to.

THE COURT:

Oh, he may answer.

A I think I have said that there were about a half a dozen that were discussed or that I was questioned about or that I gave information about as it came to me, sir.

Q Well, how many were there specifically that you gave information about without having the police suggest that person?

THE COURT:

You mean how many he originated?

MR. PARRINO:

That's right.

THE COURT:

If any.

A I think possibly four or five, sir.

Q Now, on or about the 28th of August, do you recall being at the Central Police Station?

A The 28th of August? I thought you said the 28th of July. I'll have to check that.

(Witness checks notes.)

A Yes, sir.

Q And did you discuss a suspect at that time?

A It's entirely possible.

Q And with whom was that?

A Oh, I think it must have been Inspector McArthur. I saw

Inspector McArthur, Chief Story, Captain Kerr, Officer Todd. There were any number of officers that I saw and talked to on various occasions.

Q And after you had that conversation with the police, did the police immediately call someone down or have someone come to the police station?

A I don't know how immediate it was.

Q Well --

A The only time that I remember --

Q A short time thereafter, did someone come down to the police station?

A The only time that that took place, to my recollection, was the 12th rather than the 28th, sir.

Q August 12th?

A I believe that's right. The next day is when that occurred, yes, sir.

Q Now --

MR. CORRIGAN: I object to the examination along this line, your Honor. It is apparent that the police and this man were discussing various people and making an investigation.

THE COURT: That is exactly what we are developing, that that was done.

MR. CORRIGAN: Well, what does it

mean?

THE COURT: I don't know.

MR. CORRIGAN: It means absolutely nothing.

THE COURT: I am not sure about that, Mr. Corrigan. I don't know.

MR. PARRINO: It means this, your Honor -- if Mr. Corrigan wants to know, I'll be glad to tell him.

MR. GARMONE: Put your questions to the witness, and we will raise objections.

MR. PARRINO: If he doesn't want to know, then I will continue with my questioning.

MR. GARMONE: Go right ahead.

THE COURT: Will you have a recess at this point?

MR. PARRINO: Any point is a good point for a recess with me, Judge.

THE COURT: Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. Please do not discuss this case.

(Recess taken at 10:40 a.m.)

- - - -

Q

Now, Dr. Sheppard, you say, of course, that you did give the names of some possible suspects to the police officers from time to time, isn't that correct?

A

Yes.

Q

And you know, do you not, that the information that you gave to the police was checked out by the police from time to time, wasn't it?

MR. GARMONE:

Objection on the ground that he is not the best evidence on that subject.

MR. PARRINO:

Well, I am asking him.

MR. GARMONE:

If the best evidence is available, you certainly don't get it in a secondhand manner.

THE COURT:

I don't think we ought to go into a great detail of police investigation of matters that are not here.

The objection will have to be sustained.

MR. PARRINO:

All right, sir.

Q

Just this question, sir: Did you ever call the police and ask them about what, if anything, was being done as to that information?

MR. GARMONE:

Objection.

THE COURT:

He may answer.

A Yes, sir.

Q Who did you call?

A I spoke to Inspector McArthur. I not only called him, I came down and talked to him on several occasions.

Q As to the suspects?

A The entire problem.

Q How?

A The entire problem.

Q As to those suspects, though?

A That was part of it, yes.

Q Didn't he say that those matters were checked out?

MR. GARMONE: Objection.

A Yes --

THE COURT: Yes, I think the objection will be sustained.

MR. PARRINO: Under the Court's instructions, then, your Honor, we will not go into that subject further at this time.

THE COURT: The point the Court wants to make is that it is perfectly all right to give the general picture of what the conduct was, but the details of those things we are not going into here.

MR. PARRINO: Thank you very much,
Judge.

Q Now, how long after Sam was injured on the 4th was it that he started back at his work?

A I believe that he returned to the hospital the following Monday, which would be the 12th. I think he went -- I think he made rounds, and that sort of thing.

Q On the 12th?

A I believe. I'm not terribly certain, but I think that is true.

Q Will you look at your book, please, and see if it contains that information?

A Surely. There is no note here with regard to his returning to work on the 12th. There are other things, though, that lead me to believe that that is true.

Q And on the 12th --

THE COURT: August 12th, we are
speaking about?

THE WITNESS: July.

MR. PARRINO: July 12th.

MR. GARMONE: July 12th.

Q And when you say he made his rounds, you mean, of course, that he went to the rooms of some of his patients to visit them and to administer to them, is that correct?

A No, sir.

MR. GARMONE: Object.

MR. PARRINO:

How?

THE COURT:

He may answer that.

MR. GARMONE:

I will withdraw the
objection.

A No, sir.

Q Well, what was the nature of his work on the 12th?

A When I say he made his rounds, I mean that he was present at the hospital and made rounds of those who were in the hospital.

Q Oh, I see. In your knowledge, does Sam have patients that he visits at their homes?

A Very few.

Q Well, did he do anything of that?

A I have no idea. I'm sorry. I understand -- I did learn later -- I don't know this of my own knowledge -- but I did hear he stopped to see, I think it was Grandmother Houk.

Q Yes. And when was that?

A I don't know when.

Q Does your notebook have any information about when he did that?

A Oh, no, sir.

Q Do you have any information as to any other patients that he visited beside Grandma Houk?

A No, sir.

Q So far as you know, was that the only one?

MR. GARMONE:

Objection. This testimony

falls into the hearsay rule, and --

THE COURT: Well, no. It could have some bearing, I think.

MR. PARRINO: Yes, it could, your Honor.

Q So far as you know --

A So far as I know, that is the only patient he saw outside the hospital. I assume you refer to a house call, what we call home call?

Q Yes.

A I don't know of anyone else that he went to see, no, sir.

Q Do you recall a picture appearing in the newspapers of Dr. Sam, and I believe of yourself, and perhaps Richard and your father at a bedside where Sam was examining a patient after his injury?

A I recall a picture of Dr. Sam examining a patient. There was no one else in the picture than he and the patient, though.

Q Was he alone at that time in that picture?

A That is my recollection.

Q I see.

A I'm sure I wasn't there.

Q Well, when was that picture taken?

A I don't know.

Q At whose request was that picture taken?

A I presume the photographer requested permission to take it, and, as I say, I wasn't there. I don't really know, Mr. Parrino.

Q Do you know when it was that that picture of Sam examining his patient or this patient, as to when that was taken?

A When?

Q Yes.

A Oh, no. As I said, I don't know when. I was not there.

Q Well, in that picture did Sam have the orthopedic collar on?

A Yes. He wore that off and on for six or eight weeks.

Q Who first suggested that he wear this orthopedic collar, by the way?

A I did.

Q When did he first began to wear the orthopedic collar?

A As soon as we could get it to him. I think it was just before he went to the funeral. He wore the temporary collar until then, started to wear that within half an hour after he got to the hospital. As soon as we got it made and got it to him, he wore that.

Q In your opinion, was it really necessary for him to wear that orthopedic collar for six or eight weeks?

A Yes, sir.

Q After Sam was taken to the hospital on the morning of the 4th, at what time was he administered any drugs or sedatives?

for the first time?

A Almost immediately.

Q And what was he given?

A 100 milligrams of demerol.

Q What time was that?

A Prior to 7 o'clock. I can't give you the exact time, sir. I can say that it was about quarter of 7, because I was there.

Q By whom was it administered?

A Mrs. Franz, a registered nurse.

Q On your order?

A Yes.

Q But the exact -- withdraw that.

Here on the left of this page No. 20, referring to the hospital chart, you have specific times as to when medicines were given to Sam, isn't that correct?

A Yes, sir.

Q And these are in blue ink, some of them, are they not?

A Those in blue ink, that means the day nurse administered those, and, of course, the red ink refers to the night nurse.

Q But the time in which the -- the specific and exact time in which 100 milligrams of demerol was given to Sam is not recorded on that chart, is that correct?

A That's correct.

Q All right. Now, when you first -- withdraw that. When

Sam was first taken to the hospital there, your tentative diagnosis was that he had a concussion of the brain, is that correct?

A No. When we first brought him in, the only thing that I had established was that he was in shock, sir.

Q Is that all?

A That is all that I felt definite about.

Q When did you first come to the conclusion that he might have concussion of the brain?

A I came to the conclusion that he might have it as soon as I saw him, but I hadn't established the facts. It certainly wasn't a definite diagnosis. The shock was the chief problem when we brought him to the hospital.

Q I'm sorry. Did you finish, sir?

A I say the shock -- the condition of shock, I felt was the chief problem when we first brought him into the hospital.

Q You were sure of that in your mind?

A Yes. I felt the thing to do was treat him for shock, then study and see what other problems were present.

Q Well, isn't it true that you also felt when you first took him to the hospital that there was some possible injury to the vertebra?

A He complained of pain in the neck, surely.

Q And isn't it true at the time you took him to the hospital that you felt that he had some possible concussion of the

brain?

A Certainly it would be possible, yes.

Q And isn't it true that you felt that he had some possible contusion of the spinal cord?

A Not at that time, sir.

Q When did you first come to that conclusion?

A When I checked the reflexes.

Q Now, would you explain to the jury what happens when a person has a concussion of the brain, what happens inside the brain?

A Concussion means -- I'm sorry -- you want me to tell what happens.

An impact is delivered to the side of the head, or the top of the head, some portion of the head, and the brain, which is enclosed within the skull, is caused to shake. It is suspended in a fluid called spinal fluid, and the brain, of course, is subjected to this impact.

Is that what you have in mind?

Q Yes.

A Then a bruising and a swelling of the brain itself, the brain tissue takes place. That may be moderate in amount, in which case the individual immediately rises and goes about their business, and may be able to talk and to be reasonably coherent.

NS
MAG

Q Now, what happens to --

A Excuse me, sir.

Q Oh, you didn't finish. I'm sorry.

A However, the swelling that takes place in the brain, or in any of these tissues, is progressive. In other words, it doesn't all occur immediately. The injury takes place, the person loses consciousness, and for the next 24 to 48 hours the swelling continues just as when you sprain your ankle, it isn't completely swollen at first, it may take several hours. But that progressive swelling produces the symptoms that were described.

Q And that progressive swelling of the brain would result in what doctors call intracranial -- withdraw that.

And that swelling is what doctors would call -- would produce, rather, an increase in the intracranial pressures, isn't that correct?

A Yes, sir.

Q Now, where you suspect intracranial pressures, doctor, is it wise to use or to administer demerol to a patient?

A Where you suspect intracranial pressures?

Q Yes, as a result of a concussion.

A You mean increased intracranial pressures?

Q Yes. Is it wise, medically, to administer demerol to a patient?

A It was certainly acceptable in this case. If the patient

is unconscious, certainly it wouldn't be.

Q Well --

A I used -- I'm sorry. Go ahead.

Q When intracranial pressures increase, what happens to respiration?

A It slows.

Q And what effect, if any, would demerol have to respiration?

A Very little.

Q Would not demerol likely slow respiration even more?

A In excessive amounts.

Q Did you consider 100 milligrams of demerol an excessive amount?

A I considered it the standard dose for this age group and size individual.

Q Now, later that morning Sam was X-rayed, was he not?

A Yes, he was.

Q Were you present when he was X-rayed?

A No, I was not.

Q So that you do not know how that work was performed, do you, of your own knowledge?

A No, sir.

Q Do you know how he was transported from his room to the X-ray room?

A I know, but I wasn't there.

Q Well, how was he?

A Gurney cart.

Q And what was his position when the X-rays were taken, if you know?

MR. GARMONE: Objection.

He said he wasn't there when they were taken. So how would he know?

THE COURT: He is asking him if he knows.

A I have no idea.

Q What time was it that these X-rays were taken?

A I think it was seven or shortly thereafter.

Q I guess the chart does show it at seven o'clock. Is that the note here?

A Yes, sir. And it says -- well, it indicates that he went to X-ray at about seven, and it indicates that he returned from X-ray at eight.

Q All right. Now, when were these X-rays prepared, these plates? Is that what they are called, plates?

A Yes, sir, the films.

Q The films?

A Yes.

Q When was that prepared for your inspection?

A Well, they were developed immediately upon their being taken.

Q Did you look at them?

A Later, yes.

Q What time?

A I believe it was around eleven, and I looked at them many times since.

Q Were you alone when you looked at them the first time?

A Yes, sir.

Q From whom did you receive them?

A No one.

Q Where did you get them?

A The dark room, the X-ray dark room, the developing room.

Q So far as you know, were you the first one, among the doctors, at least, that examined those X-rays?

A I have no idea.

Q Well, does the chart show that anyone else examined those X-rays before you did and made some finding on this chart or interpretation?

A There is a note that Dr. Flick examined the X-rays, and he says at 12:30 p.m. That, "There is no evidence of fracture in the wet film."

I don't believe there is any -- I don't see any notation of anyone else reviewing the films prior to that time, sir.

Q All right. Now, you say that Dr. Flick examined those X-rays at 12:30 p.m. and stated that there was no evidence of fracture on the wet film, is that correct?

- A In the skull X-rays, yes, sir. That involved just the head.
- Q Did he examine the other X-rays, does it say there?
- A Not here. It says back here in the report.
- Q Well, we will get to that later, then, Doctor.
- Now, you say you looked at the X-rays for the first time at or about eleven, was it?
- A Yes, sir.
- Q And what did you see?
- A At that time I didn't see any evidence of any fracture or dislocation. The films, of course, were wet and people who read X-ray films know that they are completely undependable until they are completely dry.
- Q And how long did it take the X-rays to -- the plates or negatives to dry?
- A Well, they usually are left in the water in a big tank in the dark room until the process of development is complete, and they are then placed in a dryer. I don't know just what time they were placed in the dryer.
- Q What time did you next look at them?
- A I think it was the next day.
- Q On the 5th?
- A Yes.
- Q Didn't you look at them on the 4th at all?
- A I think I said I looked at them around eleven o'clock.
- Q Well, they dried before the 5th, didn't they?

A Well, it's not my function, sir, to read the X-rays.

Q Yes, but you were interested in determining what was the extent of the damage to your brother's spine, weren't you?

A I was very interested. That's why I called in a specialist who reads the X-rays, and he came out.

Q Well, you were sufficiently interested to look at some wet plates, weren't you?

A Surely.

Q But you were not sufficiently interested to look at the plates again on the rest of the day on the 4th, is that correct?

A No, sir. The fact is, I didn't look at them, but it wasn't because of any lack of interest.

Q All right. Now, on the 5th did you look at those plates?

A Yes, sir.

Q What time was it that you looked at them?

A It must have been somewhere between nine and ten o'clock, sir.

Q Who was present?

A I don't believe anybody was. I just walked into the -- no, I believe Dr. Flick was there.

Q What is that science called, the examination of X-ray plates?

A Roentgenology, sir.

Q Roentenology?

A Roentgenology. Dr. Roentgen is the inventor of the X-ray

tube. It's called an X-ray tube. His name is attached to the study of X-ray.

Q You are not a specialist in Roentgenology, are you?

A Not at all, but I do look at all the X-rays of my own patients.

Q What did you see when you looked at that X-ray at nine o'clock?

A A fracture of the second cervical vertebra.

Q Shortly after that, did you make an announcement that Sam was suffering from a broken neck?

A I think I was asked about that every day, possibly every hour on the hour from the time he was brought into the hospital.

Q Well, on the 5th --

A At some time on the 5th I am sure I said that I thought that he had a broken neck, that he had a fractured second cervical vertebra.

Q And you stated to the newspapers and to the public in general that he had a broken neck, didn't you?

A I think I said it to a number of people, sir.

Q Well, you stated to the newspapers or to the reporters that Sam had a broken neck, didn't you?

A I may have. I think what I said was that he had a chip fracture of the second cervical vertebra, and they said, "What's that?"

And I said, "A fracture of one of the bones in the neck."

Q Well, did you say that he had a broken neck?

A I don't recall my exact words.

Q Would that be in your notebook?

A No, sir.

Q Well, the fact of the matter is that Sam didn't have a broken neck, isn't that correct?

A No, sir.

Q And the fact of the matter is that he didn't have --

THE COURT: Well, wait a minute. Doctor, I am not sure what that "No, sir" means. He did not have a broken neck or is it not correct, which?

THE WITNESS: My opinion was at that time that he had a fracture of the second cervical vertebra, and that is my opinion now and it has been all the time.

Q But the actual fact is that Sam never had a broken neck, isn't that correct?

A No.

THE COURT: You mean it is not correct?

Q In other words --

A I mean that in my opinion he had a fracture of the second

cervical vertebra. That was my opinion when I saw the X-rays on Monday, and it is my opinion right now.

Is that what you have in mind, sir?

Q Yes.

A Well, that's my opinion.

Q But the truth of the matter is -- here, let's put the question this way: In reality, as a fact, did Dr. Sam ever have a broken neck?

A Not prior to July 4th.

Q After July 4th, did he have a broken neck?

A He had it on July 4th.

Q But you later discovered that diagnosis to be wrong, isn't that correct?

A The X-ray man told me that he was unable to find the evidence of fracture that he found in the first film.

Q Well, we will get to that in a moment, Doctor.

Along the back we have a series of vertebrae, isn't that correct?

A Yes, sir.

Q And the first seven vertebrae, beginning at the top of the neck, are they called the cervical vertebrae?

A Yes, they are.

Q And there are seven of them?

A That's correct.

Q And the first cervical vertebra is called the atlas, is

that correct?

A Yes, sir.

Q And the second cervical vertebra is called the axis, is that correct?

A Yes, sir.

Q Now, following the seven cervical vertebrae, we then have 12 thoracic or dorsal vertebrae, is that true?

A Right, normally.

Q There can be one more in some instances?

A Some people have excessive vertebrae.

Q And below the thoracic vertebrae we have five lumbar vertebrae, is that correct?

A Normally, yes.

Q And below that we have five sacral vertebrae?

A No.

Q How many?

A The sacrum is a solid bone made up of segments, and it is different from the vertebrae in the other portions of the body. There are five sacral segments, however, but they are not considered vertebrae, sir.

Q I see. Are there any segments below that point?

A The coccyx, which is known as the tail bone, at the lowermost end of the sacrum, and it varies; some people have three little bones in their tail bone, others have more and some have less.

Q Now, between the vertebrae, there are areas, or there are substances that are called cervical discs, are there not?

A No -- well, in the cervical area, yes, but in between each pair of vertebrae is an area called a disc. It is an intervertebral disc. In the cervical area it would be called a cervical disc.

Q Do you know what percentage of the cervical area is composed of cervical discs?

A What percentage of the distance or the length of the cervical area -- how much of that is made up of discs?

Q That's right.

A I can guess. I don't know, no.

Q Now, in these X-rays did you find, or did you diagnose that there was any injury to the cervical discs?

A No, sir.

Q Now, on the second cervical vertebra, you have a neural arch, do you not?

A Yes.

Q And what is the neural arch?

A That is the portion of the vertebra which courses around behind, forms a little tunnel through which the spinal cord passes. There is a neural arch in the vertebrae. The cord goes down through that little tunnel. Is that what you refer to?

Q Yes.

A Yes.

Q Now, that is a very vital part of the vertebra?

A Every part of the vertebra is vital.

Q Was there any injury or damage to the neural arch as result of you looking at this X-ray?

A I didn't see any, sir.

Q Now, what is the transverse process of the second cervical vertebra?

A There are two, they jut out on either side. They are vestibular rib structures, actually, which means that they are little bones that are in a similar position to the ribs, only the ribs attach lower down to the dorsal or thoracic vertebra.

Q What is attached to the transverse process in the cervical area?

A Muscles, fascia. They are struts or places where the guy wires attach so that motion of the head and neck can take place.

Q Now, on this first examination, you say that you saw a fracture of the spinous process of the second cervical vertebra, is that a fact?

A I believe I said that was on Monday. The first examination was on a Sunday. That was the wet film. It didn't show in the wet film.

Q On Monday?

A That is what you are talking about, on Monday?

Q Yes.

A Yes, sir.

Q Now, the spinous process of the second cervical vertebra is that substance -- I want to withdraw that for a moment.

All of the vertebrae or, at least, the cervical vertebra and the thoracic vertebra form a canal, a sort of a canal for the spinal cord, do they not?

A Lumbar, too, sir.

Q The lumbar, also?

A Down as low, I think, the middle of the third lumbar, at which the cord terminates. However, the canal goes on down.

Q Where does the spinal cord terminate?

A Well, it varies in different individuals. Some people in the middle of the second, others, the middle of the third.

Q Second or third what?

A Lumbar vertebra. That point is called filum terminale, which is a little, tiny shred or filament. That is a continuation of the spinal cord, and there is a structure there known as the cauda equina, which means horse's tail, and represents the fanning-out of all the spinal nerves at that point, but the canal, you see, is present. I thought you referred to the canal.

Q No. The spinal cord itself, as a matter of fact, -- doesn't the spinal cord itself terminate at the base of the twelfth

thoracic vertebra?

A No.

Q It goes below that?

A Yes.

Q And how far below that does it go?

A I have told you, sir, that it terminates in various areas in various people. Now, we are referring to adults, and it terminates at about the middle of the second or third lumbar vertebra, insofar as cord structure itself. At that point, the filum terminale comes on down, and the cauda equina is in evidence, the horse's tail.

Q Well, we will return to that in a moment, Doctor.

A Very well.

Q Now, this fracture -- withdraw that.

The spinous process that was supposed to be fractured is a substance or a bone in the spinous process or in this part of the vertebrae that is farthest from the spinal cord of any other part of that vertebra, isn't that correct?

A I'm sorry. Is the spinous process -- let's talk about the spinous process.

Q Yes, all right.

A The spinous process is a bony projection from the vertebra, and it juts posteriorly. Is that what you have in mind?

Q It juts posteriorly, is the farthest from the spinal cord and closest to the skin of any other part of that vertebra,

isn't that correct?

A I think that is true.

Q Now, this fracture of the spinous process, in your experience as a doctor, have you ever heard of such an injury occurring to an individual that would be riding in an automobile where the automobile comes to a direct and immediate stop and there is a shaking of the head, as result of which they have a fracture of the spinous process of the second cervical vertebra? Have you ever heard of that?

3 A I have heard of the whiplash lesion, but usually the body of the vertebra itself is involved rather than the spinous process. It would be somewhat unusual, I believe, for the spinous process to be involved.

As I say, I am not an orthopedist, and I don't do a great deal of that type of work.

Q Well, that could be, could it not?

A Oh, I think it is possible, yes.

Q Now, the spinous process, is that part of the vertebra to which certain ligaments are also attached? Is that not right?

A When I say fascia and muscles, I had in mind ligaments, also, sir. It is all --

Q Now, isn't this true, that an injury to the spinous process would not be looked upon in the same light that an injury to the neural arch would be of the same vertebra, is that

correct?

A Well, I think the point, sir, is that any force or injury sufficient to fracture or injure the spinous process would be sufficient to injure any other portion of the vertebrae or the cord itself, you see.

Q Well, my point that I wish to make is this:

An injury to the spinous process, as compared to an injury to the neural arch is not especially serious, is it?

A It may be. I would have been terribly concerned if we had a fracture of the neural arch. Is that what you mean?

Q Yes.

A Do I think that is ordinarily more serious?

Q Yes.

A Ordinarily, I believe that it is more serious to have a fracture of the neural arch. Certainly you can have complete severance of the spinal cord without any fracture of the neural arch or the spinous process. In other words, the fracture itself, the visualization of the fracture in the neural arch or in the spinous process is no criterion whatsoever of the degree of injury to the cord.

Is that what you are getting at, sir?

Q Yes. Now, as a matter of fact, when you have a bona fide fracture of the spinous process, to say that that person is suffering from a broken neck, that is using the term broken neck rather loosely medically, isn't it, sir?

A A fracture of a cervical vertebra is, in the minds of the average person, a broken neck.

Q Was that the only -- I want to withdraw that.

Now, when Sam was first brought into the hospital, did you examine his body, sir, the exterior, arms, legs, elbows, and so forth?

A When he was first brought into the hospital, that is the time I made this examination that I have described several times. Shortly thereafter.

Q Were there any bruises on his arms?

A No, sir.

Q Were there any bruises, lacerations, contusions, or abrasions any place on his arms?

A No, sir.

Q Were there any bruises, lacerations, contusions, or abrasions on his legs, his knees?

A Are you through?

Q Yes.

A No, sir.

Q Were there any of those on his abdomen or on his shoulders?

A No, sir.

Q Were there any of these bruises, lacerations, contusions or abrasions on any part of his body except the left side -- was it the left side or right side of his face?

A The right, sir.

Q (Continuing) The right side of his face and the back of his neck?

A Yes, sir.

Q There were others?

A Yes, sir.

Q Where?

A There was a discoloration and superficial bruise mark on the left at the root of the throat, and there was a very superficial abrasion at the dorsum -- at the back of the left ring finger.

Q Have you mentioned that abrasion at the root of the throat before, sir?

A In this room?

Q Yes.

A I don't believe I have.

Q Well, you were asked by Mr. Corrigan to describe his condition, weren't you, on direct examination?

A Yes.

Q But you didn't state that he had that abrasion at that time, did you?

A No.

Q Has your memory been refreshed since that time?

A No. I remember it at this time because you asked me the specific question: Were there any others?

Q Is there any notation as to that injury at the base of the

throat in this chart anywhere?

A Yes, sir.

Q In your examination?

A No, sir.

Q It is not?

A No, sir.

Q All right. In anybody else's examination?

A Yes, sir.

Q Which one is that, please?

A Dr. Clifford C. Foster.

Q Will you point that out to me, please?

A Page 11, sir, a consultation sheet written at 2:50 p.m. on July 4th. That was Sunday, the 4th.

Q What does he say?

A What does he say? "Findings" --

Q As to ~~that~~ particular area.

A Oh. Under "Diagnosis," item No. 3, "Contusion of left side of neck."

Q Of the left side of the neck?

A Yes.

Q Where would that be?

A Well, according to this, it could be any place.

Q Well, it doesn't say that there is an abrasion, as you describe it, of the base of the throat, does there?

A It doesn't specifically say that here, sir. Now, let me see.

He says something else here. "A contusion is noted on the left side of the neck anteriorly."

Yes, sir. That would be the one I referred to. Right there. You see?

Q Yes, I see it.

THE COURT: You did not mention the one in the lip, either? He is asking you for all of them, and I think you did not mention the one within the lip.

THE WITNESS: Didn't I say that yesterday?

THE COURT: Yes, you did the other day, but not now.

THE WITNESS: Well, he has asked me just to read this one about the neck, sir, I think. There are many other things here that I could mention. You see under "Diagnosis" --

THE COURT: You were asking for all of them, weren't you, Mr. Parrino?

THE WITNESS: No, sir, I didn't get that understanding.

Were you?

MR. PARRINO: I was asking --

THE WITNESS: Just about that one in the neck?

MR. PARRINO: That's right.

THE WITNESS: That's what I thought.

THE COURT: All right.

Q Now, referring to this chart here, the hospital chart, on page 4, whose report is that?

A That is the intern's report, sir.

Q And what is the intern's name?

A The intern who wrote this is Robert Carver.

Q Now, I direct your attention to the portion of this report here under "Onset and Course."

A Yes, sir.

Q It states here, "The patient struck down by unknown assailants at his home early" --

A "In early a.m."

Q -- "in early a.m. Was brought into the hospital around 6:30 a.m." Is that correct?

A That is what it says, sir.

Q Now, it states here that your brother was struck down by unknown assailants, and the plural is used, is that correct?

A That's what it says here, sir.

Q And that was at 6:30 in the morning?

A What was at 6:30?

Q This report.

A Oh, no. That is written sometime later.

Q It was?

A Yes. It says that he was brought in around 6:30 a.m.

Q When was this report written?

A I can't tell you.

Q Well, doesn't this report give information as to when it was written, sir?

A There is no date or time placed on the routine history and physical examination sheet, which is done by the intern. This is part of the intern's training program, sir.

Q Well, you stated, of course, that this entire chart is a meticulous report of everything that happens insofar as the patient is concerned at the Bay View Hospital, isn't that correct?

A That's right.

Q But the time of this report as to when it was made is not recorded in it, is that correct?

A The intern didn't write it on this report, sir.

Q But the intern did write in the report that the defendant, your brother, was struck down by unknown assailants, plural, isn't that correct?

A That's what it says.

Q Now, there were certain X-rays taken of your brother, of course, on the 4th. Was there another set of X-rays taken of your brother?

A Yes, there were.

Q And what part of his body was X-rayed the second time?

A I think there were films taken of the neck, and there was -- I think there was a face and sinus study, chest X-ray, films, postural/ that sort of thing. A more complete study was done involving other areas. The consultants had suggested certain other pictures to be taken. I can tell you exactly, if you want me to.

Q First tell us when the second series of X-rays were taken.

A According to this, it was on the 7th.

Q And what parts of Sam's body were X-rayed on the 7th?

A Sinuses, the upper jaw area, the area surrounding the eyes. These were facial films.

The neck, the lumbar spine, which you referred to, being in the area of the low back, the pelvis, and that's it.

Q Were the cervical vertebrae X-rayed?

A Yes. That is lateral neck, sir.

Q Were the thoracic vertebrae X-rayed?

A At this time, the 7th, no. They were -- I'm sorry -- they would show in the standing lumbar spine, I believe.

Q Well, don't you know?

A They would definitely show in the film that was taken on the 4th, and I'm certain --

Q No. Let's talk about the 7th for the moment.

A And I'm certain that some of the thoracic vertebrae would show in the standing lumbar spine, sir.

Q But the thoracic vertebrae were not specifically photographed,

is that correct, or X-rayed?

A At any time?

Q On the 7th.

A No.

Q Were the lumbar vertebrae X-rayed on the 7th?

A Yes.

Q Were the sacral vertebrae or the sacral segments X-rayed on the 7th?

A Yes.

Q Now, coming to the cervical vertebrae, those in the neck, on the 7th did you examine those X-rays, sir?

A Not until later.

Q When did you examine them?

A I think it was on the 8th before Dr. Sam left the hospital.

Q And did you see any fracture of the spinous process and the cervical vertebrae at that time?

A No.

Q On those plates?

A No.

Q In other words, the second time you looked at these -- withdraw that.

On the second set of X-rays of the cervical spine you saw no fracture, right?

A Correct.

Q Now, did you see any fracture at any other point along Sam's

spine on the X-rays of the 7th?

A No, sir.

Q Now, referring again to the X-rays of the 4th that you examined, other than the fracture of spinous process was there any other fracture to any other part of the spine?

A Nothing that I noticed. I said, I think it was in this courtroom several days ago, that he had an old fracture in the area of the sacrum. That was pointed out, but we didn't feel that that was of any importance in this situation.

Q But there were no other fractures on the X-rays of the 4th other than that which you have already described, is that correct?

A I saw none. You refer to the cervical region?

Q Yes.

A I saw none.

Q Well, do the hospital records show that there was any other injury to the spine?

A Yes, sir.

Q And what do they show?

A Spinal cord contusion.

Q Do the X-ray records show that there were any other fractures of the vertebrae along any point?

A Do the X-ray reports show any evidence of bony injury?

Q Yes.

A At any point along the spinal cord other than the second cervical vertebra?

Q That's right.

A Not to my knowledge, sir.

Q And as to the X-rays of the 7th, there was no finding of any fractures at any point along the vertebrae on that day, is that correct?

A I think the report says that the previous findings could not be duplicated.

Q Now, who ordered the second set of X-rays taken?

A Dr. Flick and I agreed that it would be well to get repeat films. I think Dr. Elkins suggested it, also. I ordered it.

Q Was the reason for that that the X-rays that were made on the 4th were not found to be satisfactory?

A I don't believe so. May I look at this?

Q Yes.

A There was nothing unsatisfactory about the film taken on the 4th. There was something unsatisfactory about the one taken on the 7th. There was an artifact, which means a mark on the film that interfered with the interpretation. That was the picture that was negative for fracture. The one on the 4th was, as far as I could tell, and in the opinion of the roentgenologist, apparently completely satisfactory.

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Q Now, as a matter of fact, Dr. Sheppard, isn't it a fact that the second series of X-rays were ordered on the 7th because the first set of X-ray films of the 4th were not satisfactory?

A Not to my knowledge, sir. I'll be glad to read you what it says here.

Q No. The jury will have this entire report and they can read it.

A It clearly states that it was unsatisfactory on the 7th, and it doesn't say so on the 4th, so the assumption is that they were all right on the 4th, sir. That's the only thing I can go on.

Q So that on the 7th the X-rays showed no fracture of the cervical vertebrae, but on the 4th they did show a fracture of the cervical vertebrae, is that correct?

A Absolutely.

Q When did you first talk to Dr. Elkins?

A Sunday, the 4th.

THE COURT: You mean about
this case?

MR. PARRINO: Yes, about this
case, your Honor.

A Sunday, the 4th of July.

Q And what time was it that you first spoke to him?

A Sometime around two, I believe.

Q Where was it that you first spoke to him?

A When I was in the hospital. I was at the nurse's station in the west wing. He had been out on the golf course. We had been trying to get him for some time, and he finally called in and said that he would come over.

Q And when he came over, of course, you did examine Sam together?

A I was present, sir.

Q And what type of an examination did he make of Sam?

A Neurologic examination. At that time I was -- I was present each time he was in, yes, sir.

Q And did he make, I think what you described here Friday as a thorough, competent and complete neurological examination of your brother, is that correct?

A I said that. I'm afraid I misstated myself. The complete, thorough neurologic examination was made either the next day or the following day. He came in and checked him over and evaluated him and gave his opinion on Sunday.

Q Now, here Friday in answer to one of Mr. Corrigan's questions, when you stated that Dr. Elkins made a thorough and complete neurological examination on the 4th, that was a misstatement again, wasn't it?

A I don't think I said he made it on the 4th, sir. If I did, I misstated myself. I meant to indicate that Dr. Elkins did make a complete and thorough and painstaking

neurologic examination. If I indicated that it was on the 4th, I was in error.

Q Well, didn't you say that he made this complete, thorough and painstaking examination on the 4th?

A I may have --

Q On direct examination?

A As I say, I may have indicated that he made it on the 4th, but I am trying to tell you now that if I did, it was an error, that I meant to say that he made a complete, thorough, painstaking neurologic examination during Dr. Sam's stay. It could have been Monday or it could have been Tuesday.

Q Well, that was another misstatement that you made, then, is that correct?

MR. GARMONE: Object to the question as to its form.

THE COURT: I think that is objectionable, Mr. Parrino.

MR. PARRINO: All right.

Q The fact of the matter is that you called in Dr. Elkins so that he would make a painstaking, thorough and complete examination of your brother, who you thought to be suffering from some neurological injury, isn't that correct?

A I called him in because I felt I needed help.

Q Well --

A He came in and evaluated Dr. Sam, and as I told you before, these things are progressive. Now, he checked him on Monday, and he felt certain things were present; he checked him -- I'm sorry -- he checked him on Sunday, he felt certain things were present; he checked him on Monday, there were more things apparently present; he checked him on Tuesday, the picture was becoming progressive. I think it was at that time that he decided to do a spinal tap.

Q All right. But the fact of the matter is, sir, that on the 4th -- withdraw that.

When Dr. Elkins spoke to your brother in your presence on the 4th, he was not in a state of confusion or anxiety at that time, was he?

A Dr. Elkins wasn't, Dr. Sam was.

THE COURT: You mean his brother.

MR. PARRINO: Well, the question was poorly stated, your Honor.

Q At the time that Dr. Elkins examined Sam, was Sam in a state of confusion and anxiety at that time?

A He was able to answer questions lucidly, he responded. He seemed to be oriented. I am certain that he was upset.

Q Well, this is different from the condition that you had

previously described that Sam was in, isn't that correct?

A Oh, by this time he had made considerable improvement, yes, sir.

Q I see. So that when Elkins saw your brother, Elkins specifically states here on this report of the 4th, which is not dated, "Dr. Sam is alert and answers questions lucidly," isn't that correct?

A Yes. I believe I read that the other day.

Q Yes. Now, Dr. Elkins further states that there is a swelling of the right --

A Periorbital.

Q -- periorbital tissue?

A Yes, sir.

Q Where would that be, again?

A Around the eye and the right side.

Q And what is this, please?

A Pupils.

Q "Pupils are equal and react"?

A Yes, sir.

Q And what does that mean?

A That means that when he shined a light into the eye, that the pupil responded to light, and it means that when he tested the pupillary reflex for accomodation for distance, that they also reacted there.

Q Now, if there was some brain injury in Sam, would the

pupils equally react?

A He could have had destruction of part of the brain and still had normal pupillary reaction, sir.

Q All right. Now, Dr. Elkins further states, "Moves all extremities well." That means that he moved his arms well, his legs well and he seemed to have no apparent difficulty in his movements, isn't that correct?

A To me it means he wasn't paralyzed, sir.

Q Is that all it means to you?

A As Dr. Elkins writes it there, he is examining a man who has received an injury and I think he is evaluating whether or not he is able to move these arms and hands and feet and legs. He is looking for paralysis, you see.

Q Well, he didn't find any paralysis, did he?

A He says he moved all extremities well. I am sure he didn't find any.

Q There are some forms of brain injury which, when they occur, result in some paralysis, do they not?

A Surely.

Q Now, further he states, "No Babinskis. He has voided. Complains of occipital headache. Cervical collar in place. Neck not examined. Impression: Cerebral concussion."
"Advice"?

A Yes, sir.

Q What is that, please?

A "Average fluid." That means go ahead and give him average fluid intake.

Q "And sedation," and it is signed C. W. Elkins?

A Right.

Q Now, when Elkins was there, then, the first time, he did not examine the abdominal reflexes, did he?

A I think he did, but unfortunately he doesn't have it there, so I can't testify to it. I know that he examined neurologically on several occasions all of these reflexes, and I honestly can't say.

Q Well, if he had examined them, good medical practice would require that he place them on the chart, wouldn't it?

A One would think so.

Q And you were with him during this time, weren't you?

A Surely.

Q And if he had examined them and he had forgotten to put them on the chart, wouldn't it be logical that you would ask him to place that information in his report?

A Well, I don't ordinarily dictate the practices of the consultants that come in. If they put their findings down, I am happy and grateful that they have come in.

Q All right. So the fact of the matter is, then, that his report does not show that he checked the reflexes -- that he checked the abdominal reflexes, isn't that correct?

A There is no notation with regard to the abdominal reflexes

on that report of consultation, sir.

Q And this report also shows -- does not show that he examined the cremasteric reflexes, does it?

A It neither says that he did or that he did not.

Q And this report does not say anything about the biceps reflexes, does it?

A No, sir.

Q And this report says absolutely nothing about the triceps reflexes, does it?

A No, it doesn't.

Q Now, as I have this report before me, it does not constitute a complete and thorough neurological examination, does it?

A He certainly didn't write everything he did, if that is what you mean.

Q No. As I see this report here before me, this report would indicate -- would not indicate a complete and thorough neurological examination, would it?

A The report itself, no, sir.

Q Well, when Dr. Elkins came into the hospital there to make this consultation -- examination, did he have his medical bag with him?

A He did not have a bag with him that I saw.

Q All right. Now, when osteopaths come to your hospital to visit a patient, do they make a practice of bringing their medical bags with them?

A Some do, some don't.

Q What is your experience when you go into a hospital? Do you bring your medical bag with you?

A Into the hospital?

Q Yes.

A Never.

Q Never. So that the fact that Dr. Hexter did not bring his medical bag into the Bay View Hospital when he made an examination of Sam is not particularly unusual among medical men, isn't that correct?

A No.

Q Because in --

A I'm sorry, it's unusual in that the fact that he didn't bring his bag, didn't carry everything he owned in with him certainly isn't unusual, but the fact that he didn't bring his own diagnostic instruments -- your stethoscope you stuff in your pocket, possibly Baumometer, tongue depressor, that sort of thing, most doctors do carry those things into the hospital, particularly a stethoscope because the stethoscope is notably undependable. No doctor likes to listen to a heart or a pair of lungs through any stethoscope but his very own, because he is used to listening through it and that is what he depends on. If he listens through somebody else's stethoscope, he might hear all sorts of things that aren't dependable.

Q Yes. But there are many doctors who do not bring those sort of things into a hospital, isn't that correct?

A I think most of them don't carry their bag, if that is what you are referring to.

Q And that is not especially unusual, is it?

A It is not unusual at all, to carry a doctor's bag into a hospital.

MR. PARRINO: I think it is about time for lunch, your Honor.

THE COURT: Ladies and gentlemen of the jury, we will now adjourn for the noon hour and return at 1:15 this afternoon. In the meantime, please do not discuss this case or any feature in connection with it.

(Thereupon, at 12:00 o'clock, noon, an adjournment was taken to 1:15 o'clock, p.m., at which time the following proceedings were had:)

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Monday Afternoon Session, December 6, 1954.

(1:15 o'clock p.m.)

Thereupon STEPHEN ALLEN SHEPPARD resumed
the stand and was examined and testified further,
as follows:

CROSS EXAMINATION (CONTINUED)

By Mr. Parrino:

Q Now, Dr. Sheppard, after July the 4th did young Chip leave
the city at any time?

A Yes, he did.

Q When was that, please?

A 7-11-54. One week after the 4th, sir.

Q On January 11th --

MR. GARMONE: July 11th.

Q July the 11th he left town, right?

A (Witness nods affirmatively.)

Q Where did he go?

A To a camp in Pennsylvania.

Q For what period of time was he gone?

A Before he returned again, or the entire camp session?

Q Before he returned again.

A We were ordered to return Chip on July 23, 1954, at the
inquest, and my wife and I drove over to Pennsylvania to

the camp on Sunday, the 25th, and brought him back on Sunday, July the 25th.

Q Yes. Of course, though, he did not in any way testify at the inquest, did he, young Chip?

A He was subpoenaed.

Q Did he testify?

A He was questioned.

Q As a witness at the inquest?

A At the morgue. It was part of the inquest proceedings.

Q Now, listen, Dr. Steve, do you understand my question, sir?

A Well, I think --

THE COURT: You mean at Normandy School?

MR. GARMONE: Why don't you put the question to him?

MR. PARRINO: The question was this --

THE WITNESS: I thought you wanted to know --

MR. GARMONE: Just a minute.
Dr. Gerber had testified in this courtroom before the jury that there was a continuance of the inquest hearing at the Normandy School auditorium, and that he did examine some of the witnesses at the County Coroner's office in the auditorium that was specifically built for that.

MR. PARRINO: Thank you, sir, and that is a one-hundred-percent misstatement. You know that, of course, Fred.

MR. GARMONE: Well, that is a matter of opinion.

Q Young Chip did not testify as a witness at the inquest that was held at Normandy School, did he?

A No.

Q Now, since your testimony last Friday have you discussed any phases of your testimony with Mr. Corrigan?

A Nothing about what I had previously testified. I have spoken with him about today.

Q Well, my question is: Since last Friday have you discussed any phases of your testimony with Mr. Corrigan?

A Yes.

Q And with Mr. Garmone?

A He was present.

Q And Mr. Petersilge?

A No.

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Q Now, in your testimony of last Thursday, you were asked by Mr. Corrigan as to the type of examination that Dr. Elkins made of your brother on July 4th, 1954, were you not?

A My recollection is that I was --

Q No. Were you asked that or weren't you asked that?

A I don't know.

Q You don't know. Now, were you asked this question:

"Q And will you" -- on Page 3588 of the record --
"And will you tell what kind of an examination Dr. Elkins made of Dr. Sam?" Referring to the examination of the 4th.

Do you recall that?

MR. GARMONE:

Will you read

the question --

A I don't know that it said anything about the 4th, sir.
That's the thing I didn't know.

Q Well, will you read this series of questions here to yourself, sir, and see whether or not the examination of the 4th was not discussed during that questioning?

(Mr. Parrino hands witness transcript of
testimony.)

A On the previous page, 3587, it says, "Did he," referring to Dr. Elkins, "come that afternoon?"

Then on Page 3588 appears the question:

"And will you tell what kind of an examination

Dr. Elkins made of Dr. Sam?"

Q Yes.

A "He made a complete, thorough, painstaking neurological examination," which is completely true.

Q Now, did he make that examination on the 4th?

A He made part of it on the 4th. The examination I referred to there was made during Dr. Sam's stay in the hospital. I thought that's what he had reference to.

Q I see. In other words, you say now that -- well, let's go over all these questions, shall we?

A I perhaps said that --

Q Now, just a moment, please.

Now, here on Page 3585 we are talking about the events of the 4th.

"And on the morning of July 4th, was there an X-ray technician in attendance in the hospital?"

Is that correct?

A In the hospital.

Q Yes.

A Yes.

Q "There was one called in." Is that correct?

A Yes, sir.

Q And here on the balance of that page we continue to talk about the events of the 4th, do we not?

MR. GARMONE:

Will you specify

that the balance of that page makes reference to the radio -- or the --

THE WITNESS: X-rays.

MR. PARRINO: If you want me to, I will read it all.

MR. GARMONE: No. Will you tell the jury that the balance of that page has to do with the lab technician and the X-ray pictures that were taken?

MR. PARRINO: Yes. That's fine.

MR. GARMONE: Is that correct?

MR. PARRINO: Yes, sure.

MR. GARMONE: All right.

Q Now, my statement is that the rest of the information on that page relates to the 4th?

A That's right.

Q All right. And the rest of the information on the next page relates to the 4th, also?

A Partly.

Q Now, let's see. Well, let's read it, shall we?

MR. GARMONE: Is there a mention of July 4th on 3866?

THE COURT: Let Mr. Parrino put his questions. Then if there is anything to clear up, you can do it later.

Q "Q And on the morning of July 4th, was there an X-ray technician in attendance in the hospital?

"A There was one called in.

"Q And who was that?

"Mrs. Irene Huge.

"Q And you know that she is an expert technician?

"A Yes, sir.

"Q How long had she been with Bay View Hospital?

"A I don't really know. A couple of years.

"Q Do you know what her past was before she came there?

"A She received her training at the Cleveland City Hospital, I believe.

"Q She was that?

"A She received her training in X-ray" --

(Witness points to transcript.)

Q "She was what?

"A She received her training at Cleveland City Hospital, I believe.

"Q I see.

"A I think she worked at Mount Sinai for a number of years too. This is nothing definite.

"Q Now, then, was that the technician that had taken those pictures that morning?

"A Yes, sir.

"Q Do you have, in addition to the technician, a properly trained -- what is that name, now, they use? -- rent --

"A Roentgenologist?

"Q Yes, Roentgenologist.

"A Yes, sir.

"Q And who was that?

"A Dr. Flick.

"Q Is the ordinary physician competent to interpret X-ray pictures, or does it require special training?

"A I would say that it requires special training to interpret certain problem X-rays. The ordinary physician or general practitioner should be able to and should look at the X-rays on all of his own cases and familiarize himself with them, and certainly pick out such things as gross fractures, tuberculosis, pneumonia and that sort of thing, but to make certain that nothing is overlooked, all X-rays, in properly run hospitals are submitted to and read by qualified X-ray specialists. That doesn't prevent the attending physician from looking at" --

(Witness points to transcript.)

Q (Continuing) "the attending doctor from looking at and reading the films, however.

"Q Well, in fact, any member of the jury can look at an X-ray, and if there is a gross fracture or something

of that kind, they can see it, can't they?

"A. Surely.

"Q. You don't have to be an expert?

"A. That's right.

"Q. Now, then, when you talked about the X-rays, he said that" --

MR. CORRIGAN: Why is all this
being read over again, your Honor?

MR. PARRINO: Just to establish
that --

MR. CORRIGAN: Why don't you get
what you want to establish from --

MR. DANACEAU: Mr. Garmone inter-
rupted him. He was doing that very thing. It
is because of the interruption that he is doing it.

THE COURT: Just a minute,
gentlemen. Let's find out what Mr. Parrino's
purpose is in reading the entire record.
We will have a terrific record here of something
that is merely repetitious if we are not careful.

MR. PARRINO: I am just trying
to establish, your Honor, that the testimony
that we referred to on Page 3588 was an event
that occurred on July 4th.

THE COURT: That's right.

The doctor has testified this morning, quite frankly, that he previously made some statement as to the extent of the examination that seemed to refer to the 4th but it probably was on the 5th. Isn't that right, Doctor?

MR. PARRINO: No, that is not it, your Honor.

THE COURT: Well, he suggested that this morning.

MR. GARMONE: That is a correct statement.

MR. PARRINO: If I may be permitted to read this, your Honor, I will be finished in a minute.

THE COURT: All right. Go ahead.

Q "Now, then, when you talked about the X-rays he said he didn't want to see them?

"A He said he didn't think it would be necessary. He said --

"Q I see. All right. Now, then, you went up the hall, and when you went up the hall with him, where did you go?

"A Well, I saw him out to the doorway, out to the ambulance entrance. He left, he got in his car and

went away -- no, I am sorry, that's wrong. I saw him up at the end of the hall. He asked if there were someplace that he could write this up. And I said I thought probably the best place would be the library upstairs."

(Witness points to transcript.)

Q "the record library upstairs. He said, 'Someplace where he could be alone.'

"And he went up there. I told him how to get there. He went up, and I didn't see him anymore.

"Q Did he leave at the hospital a copy of his report?

"A No, sir."

MR. GARMONE: You are talking about Dr. Hexter.

MR. PETERSILGE: You are talking about Dr. Hexter.

MR. PARRINO: Yes, but we are coming to the --

MR. GARMONE: All right.

MR. PARRINO: -- to the pertinent portion of this now.

THE WITNESS: Are you relating all this to the Court, all this about tuberculosis and pneumonia and how doctors read X-rays, and all that?

Q Well, we are talking about the events of the 4th when Dr. Hexter was there. After Hexter left, it was then that Elkins came, now, isn't that right? Yes or no.

A Yes.

Q All right. Now, reading further, referring to Elkins, I presume --

A No.

Q Referring to Hexter?

A Yes.

Q "Did he talk to you about his findings or anything of that kind before he left?

"A No, sir.

"Q Did he discuss anything about the case with you?

"A At no time.

"Q Now, then, did Elkins come that afternoon?"

Was that question asked?

A It says, "Now, then, did Dr. Elkins come that afternoon?"

Q Was that question asked?

A Yes, sir.

Q And did you say "Yes, sir"?

A I did.

Q Was this question asked -- now, this all still refers to the 4th, does it not?

A Surely.

Q "What time did Dr. Elkins arrive on the scene?

"A Shortly after Dr. Hexter."

Was that asked and was that answer made?

A Yes.

Q All right. Was this question asked:

"And when Dr. Elkins came, what did he do?

"A He went to the switchboard and asked for me.

"Q And after you met him, what was the next thing that Dr. Elkins did?

"A We went to the chart -- we went through the chart together."

"Q Went to what?

"A We went through the medical chart together.

"Q And where was the medical chart at that time?

"A At the nurse's desk.

"Q And did Dr. Elkins discuss the case with you and the entries on the medical chart?

"A Yes, he did.

"Q Did he at that time examine the X-rays?

"A No.

"Q After he discussed this case with you and went over the medical chart, then what was the next thing that was done by Dr. Elkins?

"A He went in and took a history and made an examination of Dr. Sam."

Now, those questions were asked and answers made,

were they not?

A Yes, sir.

Q Now, was this question asked:

"And will you tell what kind of an examination
Dr. Elkins made of Dr. Sam?"

Was that question asked?

A Surely.

Q And did you say: "He made a complete, thorough, painstaking
neurological examination"? Did you answer in that way?

A I did.

Q Now, did Dr. Elkins make a complete, thorough and painstaking
neurological examination?

A Yes.

Q You say that he did, on the 4th?

MR. GARMONE: Your question
didn't include the 4th, Mr. Parrino.

MR. MAHON: Oh, well.

MR. PARRINO: We went through
all of this to prove we are talking about the
4th.

THE COURT: There is a sequence
to them that is perfectly clear there. All
right. Let the doctor answer.

MR. GARMONE: Let him answer.

A Did he make a complete, thorough, painstaking neurological

examination of Dr. Sam?

Q On the 4th of July, that's right.

A That was not the most complete and painstaking examination he made, no.

Q You still have not answered the question, sir. On the 4th of July, did Dr. Elkins made a complete, thorough and painstaking examination of Dr. Sam?

MR. GARMONE: I don't want to interrupt this examination, but I am going to object on the grounds it is repetitious, because this morning he went over this same subject.

THE COURT: Well, I know, but --

MR. GARMONE: And used the report --

THE COURT: Apparently there is some disagreement here, but it is clear in the Court's mind. But let him clear it up.

MR. GARMONE: All right.

A Well, Mr. Parrino, it was certainly sufficient to satisfy Dr. Hexter as the consultant. It was not a complete, thorough, painstaking neurologic examination such as he made a day or two later. Is that what you are interested in?

Q To satisfy who?

A To satisfy Dr. Elkins, I thought I said.

MR. MAHON: You said Dr. Hexter.

THE WITNESS: Did I? I'm sorry.

Q Well, in your opinion as an osteopath, and in charge of this patient, this patient's progress, at that time did you think that Dr. Elkins made a thorough, painstaking and complete neurological report or examination?

MR. GARMONE: Objection on
the grounds it's repetitious.

THE COURT: He has already
said no.

MR. PARRINO: All right.

Q Now, the next question was this, was it not:

"And did he at that time check the reflexes?"

And did you answer, "He did"?

A Yes.

Q Did he check the reflexes?

A Yes.

Q Is all of that information recorded in his report?

A No.

Q Did you ask him to record any of that information in his report?

A No.

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Q All right. Now, although you were in charge of the patient, Dr. Elkins was called in as an expert with whom you could consult as to your brother's condition, is that not a fact?

A Yes, sir.

Q Now, when is the next time that Dr. Elkins came to the hospital?

A I believe it was the next day.

Q That was insofar as your brother's difficulties were concerned?

A Oh, yes.

Q To examine your brother, of course?

A That is my recollection.

Q And as I understand your testimony, you spoke to him every day and consulted with him by the telephone, isn't that correct?

A Well, the least important part of a consultant --

Q No. Listen. Did you or did you not say that you consulted and spoke with the man relative to your brother's condition on the telephone?

A I did.

Q And you did that on several occasions, did you not?

A Surely.

Q After the 4th, is that right?

A Oh, yes.

Q Now, what examination did Dr. Elkins make or treatment did he give and prescribe for your brother on the 5th?

A He checked his progress, and we discussed again the possibility of a subdural hematoma. That's what he was primarily concerned about on Sunday, and --

Q Did he make a report on that?

A Did he write it?

Q Yes.

A I think we have gone over what he wrote.

Q On the 5th.

A Oh, no, no.

Q Now, will you look through this chart, please, and see if you find any report of Dr. Elkins made on July the 5th?

A There is no report in this chart which deals with Dr. Elkins' visit on the 5th, that I know of.

Q But somebody that would be looking at this chart would not have the benefit of the information of any supposed examination of Dr. Sam by Dr. Elkins on July the 5th, isn't that right?

A Some casual observer looking at the chart?

Q Yes.

A No.

Q Would some doctor looking at the chart know that Dr. Elkins was there on the 5th?

A Not from looking at the chart.

Q As a matter of fact, there is nothing in the chart that says he was there on the 5th?

A There is nothing here that says Dr. Elkins was present in the hospital on the 5th, sir.

Q And you say that this chart of Dr. Sam's ^{was}/meticulously kept?

A Above average, sir.

Q Now, he did, however, return there on the 6th again, isn't that correct?

A That's right.

Q Dr. Elkins, we are speaking about.

A Yes.

Q Now, on the 6th -- of course, on page 13, Dr. Elkins' report of the 6th, there is no information as to the time that he made his examination, is there, whether it was morning, afternoon or night, is there?

A May I look?

Q Yes.

A He has made no notation with regard to time.

Q Weren't you checking these things as you went along, Doctor?

A I was checking my own things, sir.

Q Now, he said something here about "this morning" -- "The patient rather complains of urgency in urination, and this morning when attempting to pass gas soiled his sheet with fecal material," is that correct?

A That is what it says, sir.

Q Now, would that indicate a possible brain injury to you?

A I think that is more suggestive of spinal cord injury, sir.

Q Now, when did this passing of fecal material by the patient become most pronounced?

A Well, it wasn't pronounced at any time. It was a -- as I have described, a transitory incontinence that came and went. I can't say that it was most pronounced on any one particular day.

Q Was this question asked you, sir, last Friday:

"Q. Did you see him on Monday, July the 5th?

"A. I did.

"Q. Will you describe what you first noticed about his condition on Monday?

"A. He was worse.

"Q. How did he demonstrate that?

"A. There was a swelling around" -- "The swelling around his head and face was worse. The reflexes were more pronounced. The loss of reflexes, I should say, were more pronounced. He, by this time, had developed a demonstrable weakness of the left arm which, the day before, had been manifest only by a sensation which he described as numbness. The tendency to lose control of the bowel and bladder was pronounced beginning on Monday."

Now, will you now answer the question, Doctor, as to when the tendency to be able to control the bladder became

pronounced?

A Bowel and bladder?

Q Yes.

A On Monday.

Q On Monday. So there was a time, then, when -- withdraw that.

Dr. Elkins in his report notes that, "This morning when attempting to pass gas, his sheet was soiled with fecal material," that is correct, is it not?

A That is what it says.

Q But Dr. Elkins didn't see that, did he?

A I presume he did.

Q You presume he did?

A I saw it.

Q Now, this was on Tuesday, is that correct, the 6th?

A July the 6th.

Q Would be a Tuesday. You say that this condition became pronounced on Monday --

A Excuse me. The tendency. You just read it to me, sir. The tendency toward this incontinence became pronounced or apparent on Monday. The condition and the tendency are two separate things, sir.

Q I see. Well, did he soil his sheet on Monday at any time?

A Not to my knowledge.

Q He soiled it on Tuesday?

A Yes.

Q Did he soil it on Wednesday?

A Not to my knowledge.

Q Or Thursday?

A No.

Q Then he only soiled his sheet on this one occasion with this fecal material?

A That's right.

Q Which could be evidence of spinal cord injury, is that correct?

A That's correct.

Q Now, Doctor, in your experience in hospitals, do you know of any instance where there would be a patient, without any evidence whatsoever of spinal cord injury, that would soil his sheet or her sheet with fecal material?

A Of course.

Q Yes. So that is not especially unusual in hospitals, is it?

A No.

Q Now, other than in Dr. Elkins' report, there are nurses' records as to what they find, isn't that correct?

A Yes, sir.

Q Is there any place in this report where any nurse or employee of the Bay Village Hospital -- or Bay View Hospital makes a note as to the soiling of the sheet with this fecal material?

A No, sir.

Q There is not?

A There is not.

Q That would be extremely important in a case of this kind, would it not, sir?

A For the employee, the nurse or the aide, who takes the linen away to note it, sir, is that what you mean?

Q To make some record of it.

A Oh, there is a record.

Q And you claim, of course, that Dr. Elkins saw that, but you don't know for sure, isn't that correct?

A I said that I saw it. I know that.

Q Well, did you make a record of it anywhere?

A No. Dr. Elkins made a record of it.

Q Do you depend upon his entries -- withdraw that.

Do you not make independent entries of your own as to the patient's progress during his course of his stay at the hospital?

A Surely.

Q And that would be a very important factor to record in the chart, would it not?

A It certainly would be of interest.

Q But you didn't bother to record it, did you? In your own handwriting?

A Not the soiled linen, sir.

Q All right. What was your total -- withdraw that. What is

total of the spinal cord and brain injuries that you attributed to Sam in your final diagnosis?

A You want brain and spinal cord only, sir?

Q Just those two, please.

A "Final Diagnosis: 7-7-54, written 7:30 p.m. Cerebral concussion and contusion; 2 cerebral edema; 5 contusion of spinal cord."

That is all, sir.

Q Now, the entry as to cerebral edema, would you look through all of the reports of Dr. Elkins again, please, and see if at any place in his reports he states specifically that Sam had, as one of his injuries, cerebral edema?

A I don't have to look through, sir.

Q You have looked already, have you?

A I know it isn't there.

Q It is not there?

A You couldn't have concussion without cerebral edema, sir.

Q Well, does Elkins have that -- does he use those words in his report?

A No, sir.

Q Now, cerebral edema is an increase of fluid in the brain, isn't that correct?

A Well, there is more to it than that, but essentially, yes.

Q Well, I am not a doctor. I am doing the best I can, and I think that rather fairly describes it, doesn't it?

A No, I don't think it does.

Q It does not?

A It is a collection of fluid, an increase in the amount of fluid in the cells themselves and in the spaces between the cells, whereas, an increase of the fluid in the brain would refer to the -- possibly to the ventricles, and I'm sure that is not what you mean.

Q Well, would it be fair to say that an edema is a swelling?

A That includes it.

Q And edema of the brain would be a swelling of the brain, isn't that correct?

A Yes.

Q Now, where you have an edema of the brain there is an increase of intracranial pressures, is there not?

A Ordinarily.

Q In other words, a human being has fluid along the spinal cord, and this fluid extends up into the brain, does it not?

A It surrounds the brain and actually into the brain itself in the ventricles, yes.

Q And where you have this cerebral edema, or this swelling, you would have an increase in spinal pressure, would you not?

A Not always. That is a matter of degree, sir. You can have a good deal of cerebral edema without an increase in spinal fluid pressure.

Q Did Sam have a good deal of cerebral edema?

A I don't believe so. His spinal fluid pressure was pretty close to normal.

Q He had enough cerebral edema for you to record it, did you not?

A You mean did he not?

Q I will reword it. Sam had sufficient cerebral edema for you to record it in your final diagnosis, did he not?

A He did.

Q So then you thought it to be significant, did you not?

A Certainly.

Q And one of the ways to tell and determine exactly whether or not there is a rising spinal pressure is to take a lumbar puncture, is it not?

A Well, that is one of the ways to measure lumbar -- I should say that is one of the ways to measure the spinal fluid pressure. It is no indication of rising and falling unless you take subsequent punctures.

Q Yes, but you can measure spinal fluid pressure, can you not?

A Yes, indeed.

Q And you do that by means of an instrument that we call a monometer, isn't that a fact?

A Surely.

Q And you take this instrument -- is it a needle?

A No, it is not.

Q What is it?

A The monometer?

Q Yes.

A It is a glass tube about so high, which is calibrated with lines indicating millimeters.

Q What part of the instrument do you insert into the human body?

A A spinal needle is inserted into the spinal subdural space.

Q You know what I am talking about, don't you, Doctor?

A Certainly.

Q You take this needle and you place it into the body between the third and fourth lumbar vertebrae, generally, do you not?

A That is the ideal place, yes.

Q And the reason for that is because you do not want to insert this needle into the spinal cord because of some injury you might do to the spinal cord, isn't that right?

A That's right.

Q So that the spinal cord does not extend down to the third and fourth lumbar vertebrae, does it?

A Nobody said it did.

Q Well, how low did you say that it extended, this morning?

A The middle of the second lumbar vertebra. It may extend lower. Usually it ends in that general area.

Q So the spinal pressure was -- Sam's spinal pressure was examined, was it not?

A Yes. It was measured.

Q And Dr. Elkins's report has some information on that, does it not?

A Yes, it does.

Q And what does it say as to the spinal pressure?

A "150 millimeters of spinal fluid."

Q What does that mean?

A It means that is the spinal pressure or the pressure of the spinal fluid as measured in the monometer.

Q Doesn't that mean that the pressure of Sam's spinal fluid was normal?

A It is within the upper range of normal.

Q Let's read Dr. Elkins' report and see what it says, "Lumbar puncture done this morning. Demonstrates clear fluid with normal pressure."

Now, he is the specialist?

A That's right.

Q Was Sam's pressure normal or not normal?

A It was within the upper ranges of normal, sir.

Q Now, when you have a person with edema and an increasing spinal pressure or an increased spinal pressure, one of the ways to relieve that would be by drawing the spinal fluid from the spinal column, isn't that correct, or drawing spinal fluid from the body?

A To relieve the pressure or the cerebral edema, sir?

Q Either one.

A Yes.

Q Why did you ask me the question, then, as to pressure or cerebral edema?

A Because it won't relieve cerebral edema at all, sir. It may make it worse.

Q Now, you didn't have to do that with Sam, did you?

A A lumbar puncture?

Q That is, no fluid had to be removed from him to relieve any pressures there, did there?

A I didn't feel it was necessary, sir.

Q And neither did Dr. Elkins?

A Not until the 6th. I think his idea here was primarily diagnosis rather than therapeutic.

Q I didn't ask you what his idea was.

A You are asking the difference between a diagnostic procedure, which is to determine the extent of injury; a therapeutic procedure is part of treatment. In other words, to take out spinal fluid, that is treatment. I don't believe he did this as part of treatment. I think he did it as part of diagnosis, as indicated here.

Q Well, why don't --

THE COURT: Why don't you ask the question whether any was drawn?

THE WITNESS: It was.

Q And was that drawn for the purpose of treatment?

A I believe it was drawn for the purpose of diagnosis, as I have said.

Q Now, listen, my question was: Was it drawn for the purpose of treatment? Do you understand that question?

A Yes.

Q Now, was it drawn for the purpose of treatment? Yes or no.

A Not primarily.

Q Yes or no.

A It was certainly part of the treatment, but that wasn't the primary function. I can't give you a yes or no on that, sir. I'd like to.

Q All right. Now, another way of relieving cerebral edema would be by injecting certain substances into the body, isn't that correct, into the veins?

A There is such a way, yes.

Q You can inject glucose into the veins, can you not?

A You can inject any number of things.

Q Well, that has been done, hasn't it, for that type of ailment?

A Surely. There is a great deal of question as to whether it is of any benefit, however.

Q But that wasn't done for Sam?

A No.

Q And you can inject sucrose into the veins, can you not?

A Surely.

Q And that wasn't done in Sam's case, was it?

A It wasn't necessary, sir.

Q In other words, --

A That whole theory is in the discard basket, sir. You are thinking of dehydration, injection of hypertonic solutions for the purpose of dehydration, and that has been discarded within recent years, and that is why Dr. Elkins wrote on the chart to give him the average amount of fluids on July the 4th instead of limiting fluid and giving him hypertonic fluid to dehydrate him. Dr. Elkins specifically said give him plenty of fluids.

Q Now, Doctor, will you confine yourself to answering questions, please, without making any speeches?

A I'm sorry. I thought you wanted to get the real basis of this.

Q Now, was the spinal fluid examined for the presence of blood?

A Yes, sir.

Q And if blood is found in the spinal fluid, what does that mean?

A Usually injury. It may mean any number of things. Certainly injury, certainly hemorrhage. It may mean increased permeability of the blood vessels. In other words, the vessels have lost their ability to contain the blood cells. It may mean a decrease in vitamin C, that sort of thing.

Q Well, was there any blood found in Sam's spinal fluid?

A Yes.

Q A significant amount?

A I believe so.

Q Is that what Elkins says?

A I have no idea what Elkins says.

5 Q Well, here you have the laboratory findings -- where was this blood sent to be examined -- withdraw that.

Where was this spinal fluid sent to be examined?

A Lutheran Hospital, Cleveland, Ohio.

Q And you have read the reports, the laboratory reports of Lutheran Hospital on that subject, have you?

A Yes, sir.

Q And it says here, does it not, on page 14 of the hospital records: "There was one crenated blood cell" --

A "Red blood cell," sir.

Q -- "cell count: One crenated red blood cell."

A Yes, sir.

Q That is not unusual, is it, Doctor, when you make a lumbar puncture?

A Yes, it is.

Q It is?

A It is of the utmost significance, sir.

Q Did Elkins think so?

A I have no idea what Elkins thinks, sir.

Q Did you ask him?

A I don't think that I saw this report until some days later.

Q So you didn't ask him, then?

A No. By then Dr. Sam was up and around, and we felt that he was making adequate recovery, sir.

Q This laboratory finding from the Lutheran Hospital states, does it not, "Spinal fluid clear, colorless," does it not?

A Yes.

Q Would that not indicate that the spinal fluid was normal?

A No.

Q It would not?

A It would suggest that, but it certainly doesn't indicate it in any way that is dependable. That is why we look at these things under the microscope and run the chemistry -- chemical analyses.

Q Now, Dr. Sheppard, your brother Richard from time to time went in to see your brother Sam, did he not?

A Yes, sir.

Q And did he make any entries in this chart?

A At no time.

Q Your father, from time to time, went in to see Sam, did he not?

A Yes, sir.

Q Did he make any entries in this chart?

A Never.

Q Well, the two of them, they are like Dr. Hexter and Dr. Gerber, neither of them made any entries in the chart either,

did they?

A They are not at all like Dr. Hexter or Dr. Gerber in any way.

Q In any way.

A Professionally or otherwise.

Q Did your father and brother go in to see Sam to examine him at any time?

A No, sir.

Q Did they examine him at any time?

A No, sir. They went in as visitors and members of the family. I was the doctor in charge, and they did not interfere in any way, and if they had written on the chart, I would have been unhappy about it, and they know it.

Q In other words, it is true, isn't it, that the only persons that record information -- withdraw that.

It is true, is it not, that the only doctors that record information in the chart are doctors from whom the patient is receiving treatment?

A No.

Q That is not a fact?

A Any doctor that examines a patient in a hospital, regardless of who sends him or why he does it, should write on the chart, and it should appear in the chart.

Q Incidentally, how many sets of X-rays were taken of Dr. Sam?

A Since July 4th?

Q From July the 4th until he was discharged from the hospital.

A Two, I think. There were others taken, however.

Q You think two?

A I'm certain that there were two separate days on which X-rays were taken. Now, what do you mean by sets? I have no idea how many sets of X-rays -- if you mean the X-rays of the cervical region as one set, the X-rays of the pelvis as another set, on two separate days X-rays were taken on Dr. Sam during the time he was in the hospital, to my knowledge.

Q Well, how many X-rays were taken of his neck?

A I don't know.

Q Don't you have any idea?

A I can't tell you how many, sir. Probably half a dozen.

Q There were one series of X-rays taken on the 4th, isn't that correct?

A That's right.

Q Then there was a second series of X-rays taken on the 7th, wasn't there?

A There were a series -- I should say there was a series of X-rays taken on the 4th, which included not only the neck, the skull -- you mean the whole -- everything?

Q Yes.

A Yes, sir. I am with you.

Q And those showed a fracture?

A Which ones?

Q Cervical fracture, on the 4th?

A That is true.

Q Then there was another series of X-rays taken on the 7th, was there not?

A Yes, sir.

Q And in those X-rays in which the cervical area was shown, they could not be clearly read, isn't that correct?

A I think the X-ray man says that there were artifacts present.

Q Does that mean that they could not be clearly read or interpreted?

A I would say they are not completely dependable films, and I think he did recommend some more. I think he did.

Q So then a third series of X-rays were taken of the same cervical area, is that not right?

A I believe that's right. I didn't actually see that third set, however, to my recollection.

Q And the reason that the second series of X-rays were not dependable was that there was, as you say, some artifact in the film, is that correct?

A He describes it as streaking in his report. I'm not -- yes, an artifact.

Q Now, the second time that the X-rays were taken of the neck, was Sam wearing his collar?

A No, sir.

Q He wasn't. The third time that the X-rays were taken, was

Sam wearing his collar?

A No, sir.

Q The first time that he took the X-rays, was Sam wearing the collar?

A Now, you mean during the period that the picture was taken?

Q Yes.

A The first time he had the felt -- the temporary felt collar on, yes, sir.

Q Now, on the second time.

A Yes.

Q On the 7th, was he wearing any kind of a collar on that occasion?

A At the time the picture was taken, no.

Q On the third occasion was he wearing any type of a collar at that time?

A As I have said, I wasn't present at any of these times, but the report indicates that he was not.

Q Now, referring to page 25 of this hospital report, what does it state here, "Lateral neck"? Would you read that to us, please? Beginning here, "The lateral neck." Read that aloud, please.

A "Lateral neck" -- this is dated 7-7-54, "Patient erect. Comes down at 72-inch distance."

I think that should be cone, c-o-n-e, down. "There is

evident white streak through the film which detracts from its value. This film does not show finding interpreted on a previous film as a chip fracture of the spinous process of C-2. That is the second cervical vertebra. There is a white streak running through the film in this area."

Now, --

Q Would you read the rest of that, please?

A Before we leave that, could we read the original --

Q Would you mind reading the rest of it, please?

A This is not the original X-ray report. As I said, when I first looked at the chart, I don't even know what this is.

Q Would you mind reading it, please?

A What?

Q You haven't completed the portion that I want you to read.

A Oh, I see. I'm sorry.

"Collar removed. Patient's neck cleaned with alcohol. Second 72-inch film of the lateral neck, Patient erect, was taken. This film does not show the finding previously interpreted as a chip fracture."

Q Now, was the collar removed after the second series of X-rays were taken?

A It says so here. I wasn't there.

Q So when you testified a moment ago that he was wearing no collar at the time of the taking of the second series of X-rays of the neck, that is not correct?

MR. GARMONE: Object to that.

He said he wasn't there and he had no knowledge of it.

MR. PARRINO: Just a moment, please.

He said that a moment ago. Don't you remember, Fred?

MR. GARMONE: He said he wasn't there.

How would he know whether he was wearing a collar or not.

MR. DANACEAU: Why did he say so if

he wasn't there?

MR. PETERSILGE: He said repeatedly

he wasn't there.

THE WITNESS: Repeat the question,

please.

Q Your testimony that he was not wearing this orthopedic collar at the time that the second X-ray was taken is not entirely correct?

MR. GARMONE: Objection.

THE COURT: Let him answer.

A I would like to say that during that testimony, I pointed out to you that in Dr. Flick's report, he said that the collar was removed during the session, during the second session, or whatever you want to call it, the series of X-rays,

and that is exactly what I read. The collar was removed.

Now, it is entirely possible that he had a picture taken during this second session with it on, and apparently he did, but the thing that stuck in my mind was that in this report it said the collar was removed, and I also specifically said I wasn't there, sir.

Q All right. Fine. Will you excuse me a moment?

A Surely.

Q Now, Doctor, I believe you further testified that persons have various reflexes, do they not?

A Yes.

Q You have abdominal reflexes, triceps reflexes, biceps reflexes?

A What was that first one?

Q Abdominal reflexes.

A Then did you say triceps?

Q Yes, reflexes of the triceps muscles?

A Yes.

Q Biceps?

A Right.

Q Cremasteric?

A Right.

Q And you further testified that something concerning a neural arc, did you not?

A No. You spoke of the neural arch.

Q Yes.

A The other day I spoke of the reflex arc, a-r-c-h, reflex arc -- a-r-c, I'm sorry.

Q All right. Now, as a particular part of the body is stroked, such as, if I remember correctly what your testimony was, you hit a person here in the vicinity

of the knee, and as a result of that impact certain sensory nerves take that impulse to a particular spot on the spinal cord, did you not, they carry it up through the body to a particular level of the spinal cord?

A Yes, sir.

Q And there it is returned, that impulse is returned by means of a series of motor nerves to the point at which the impact occurred, is that not correct, as a result of which the body will move?

A Body?

Q Or the leg will move?

A There is more to it than that, but generally, yes.

Q Substantially, that is a true statement, is it not?

A Well, it doesn't go back to exactly the same area. And the reflex you are describing is a stretch reflex, which is different from that involved in a sensory or receptor nerve organ, but you are describing a reflex arc, yes.

Q Yes. Now, the touching or striking various parts of the body, whether it be on the leg, here on the ankle, on the knee, on the thigh, or on the shoulder, or in the stomach or in the abdomen, the impulse will be carried through the series of sensory nerves to a specific place on the spinal cord, isn't that correct?

A Are we still speaking of reflexes?

Q Yes.

A Well, you don't just bang anyplace on the arm or leg or hand or foot to elicit a reflex, if that's what you are speaking of. If you touch any of these places that you described, there is a sensory nerve that picks up the impulse and takes it to a place.

Q Well, Doctor, will you tell us -- tell me, rather, at which level of the spinal cord are the abdominal reflexes located?

A I would like to refer to my notes on that, sir.

The centers are from the seventh to the twelfth thoracic vertebrae, sir.

Q When did you make those notes?

A Weeks ago.

Q And I presume that you have in your notes recorded the level at which the cremasteric reflex is located?

A Surely.

Q Where is that?

A First lumbar. It is also abolished in pyramidal lesions or as a result of destruction of a nerve center, particularly in the first lumbar vertebra, sir.

Q Now, if I understand you correctly, you stated that where you see a person with the absence of reflexes, of any reflex, you immediately see a red light, which to you means danger; did you say that?

A In referring to stretch or tendon reflexes, yes, sir.

Q Well, when you used that expression, you did not make any reservations, did you, Doctor?

A No. But we were talking about tendon and stretch reflexes.

Q You made the flat statement, did you not, that the absence of reflexes is something that causes you to see a big red light meaning danger?

A In reference to the stretch and deep tendon reflexes, yes.

Q Well, let's get down to the cremasteric reflex. If you observed somebody with the absence of the cremasteric reflex, does that to you -- is there shown to you, automatically, a big red light meaning danger, with the absence of the cremasteric reflex?

A Yes, sir. It is a suggestive sign of difficulty. It means further investigation should follow.

Q Exactly. In and of itself, however, it means very little, does it not?

A It means trouble.

Q In and of itself, however, it means very little, does it not?

A To me it means trouble.

Q There must be some associated symptoms, must there not?

A Such as head injury?

Q Yes.

A Such as swollen right side of the face?

Q Yes.

A Such as all the teeth in the right upper jaw being loose?

Q All right. Now, a person without head injury, a person without these upper teeth being loosened -- what other injury did you mention?

A The right side of the head swollen.

Q -- a person without the right side of the head being swollen, could still possibly have an absence of the cremasteric reflex, could he not?

A Hardly unilateral, sir.

Q How?

A I say, it would be unlikely that it would be absent on only one side in a normal individual.

Q Well, let's get to the bilateral aspect of that particular statement.

A I made no comment with regard to the bilateral, sir. I said it was absent on the left.

Q So that let's get to the bilateral situation, then. You say that the cremasteric reflex is bilateral, is that correct?

A In the normal adult male, yes.

Q And what does bilateral mean?

A Both sides.

Q So that where you have a situation where a male has an absence of the cremasteric reflex on both sides, that in and of itself does not mean that you see a big red

sign meaning danger, does it?

A It certainly does. In the absence of any injury, I would think immediately of multiple sclerosis, sir, and that is danger.

Q Well, does it mean injury to the brain, necessarily?

A No. It means trouble, it means difficulty.

Q In other words --

A Let's look and find out what the trouble is, that's what it means to me, sir.

Q Yes, but in and of itself, a bilateral absence of the cremasteric reflex in and of itself is not particularly significant, isn't that correct?

A It is of the utmost significance to me.

Q To you?

A To me.

Q All right.

A It does not prove anything in and of -- by itself, but it is a warning sign.

THE COURT: Let me ask you --

I think what you are trying to get at is: Can it be that there is an absence of reflex and really no real trouble at all?

THE WITNESS: Definitely, but

it is a tremendous hazard to assume that.

Q Now, as to the absence of the abdominal reflexes -- how many

are there, by the way?

A Four.

Q How?

A Four.

Q When you see a person with the absence of the abdominal reflex, do you then see this big red light that you talked about being in danger?

A Yes, sir.

Q Have you ever had any experience where a person would not have the abdominal reflexes where there would be no danger?

A Not just on one side, sir.

Q On both sides -- or on all four sides?

A The abdominal reflexes are frequently lost normally after the age of 40, sir.

Q So there you would have a case, after the age of 40, where the absence of the abdominal reflexes would not in and of themselves mean any special danger to you, isn't that right?

A If they are over 40 and none of the reflexes are absent, it would certainly not have the significance that it would have if only one or two are gone.

Q Yes. But where they are gone, all of them --

A All four?

Q -- after the age of 40, that doesn't necessarily mean danger, does it?

A It means that I would investigate it to find out why.
I certainly wouldn't assume that it was just because
they were over 40. A lot of people over 40 have them.

Q Well, where you have a woman that has bore a half a dozen
children --

A She is what, sir?

Q Has had a half a dozen or more kids, is that person
likely -- withdraw that -- is there likely to be an absence
of the abdominal reflex in that situation?

A Not particularly, sir. The mere fact that a woman has
children doesn't mean that she can't have good muscle tone.

Q Well, have you ever in your experience seen that, a woman
that has a number of children, that has lost these reflexes,
the abdominal reflexes, that is?

A Have I ever seen it?

Q Yes, evidence of that?

A Yes, I have seen that. Some of them were 60, 70 years old.

MR. CORRIGAN: Some of them
were what? I didn't get that.

MR. GARMONE: 60 or 70 years
old, he said.

Q Now, Doctor, what effect, if any, does brain injury have
on blood pressure?

A Brain injury?

Q Yes.

A I presume you mean concussion?

Q Concussion, cerebral edema, spinal cord injury, how does that affect blood pressure?

A We are talking about different things now.

Q Well, Sam had all these things?

A I know, but he also had shock and a number of other things. Let's talk about brain injury, concussion and cerebral edema.

Q Yes.

A If the brain injury and cerebral edema are sufficient to cause a dangerous increase in the spinal fluid pressure, there is a change in the blood pressure. It typically drops.

Q With brain injury the blood pressure drops?

A It may also rise.

Q It may also rise? Well, what does it do, drop or rise?

A I don't believe there is any real rule of thumb on that, sir.

Q Well, as a matter of fact, sir, it rises, does it not?

A When the cerebral spinal fluid pressure rises to dangerous levels, the characteristic response is an elevation of the blood pressure. I have also seen it drop, though.

Q Yes. Blood pressure drops in instances where you have shock, does it not?

A Not always.

Q Not always. Well, let me see if I understand a little bit about shock, and I probably don't understand it too well, Doctor, but I know you will correct me if I am wrong.

A I'll try, sir.

Q Now, the blood, the arterial blood is pumped through the arteries by the heart, is it not?

A Yes, sir.

Q And as the blood -- withdraw that.

The heart pumps the blood containing oxygen through the arteries, isn't that correct?

A Yes, sir.

Q And from the arteries it goes to parts of the body where smaller arteries are located, is that a fact?

A Yes.

Q And from these smaller arteries it goes still further to smaller arteries that are called capillaries, does it not?

A Right.

Q And from these capillaries this fresh blood, shall we call it, or oxygenated blood, reaches through every part of the tissue of the human body and, in a manner of speaking, feeds that tissue, does it not?

A All the live tissue, yes.

Q And then the process continues where after those tissues are fed, that the small veins, or veinules, as they are called, take this same blood up after this process of

feeding has been completed, it is taken up in the veinules to the veins and ultimately back through the heart, is that not correct?

A Well, it went through the lungs after it --

Q Yes. Well, eventually it gets back to the heart?

A Yes.

Q That is the process of circulation, right?

A In essence, yes.

Q Now, then, this oxygenated blood passes through the arteries, through the arterioles, it passes through the capillaries and it feeds this tissue. Now, where you have a state of shock, what happens to the capillaries?

A Nobody knows.

Q Well, what does science think happens to the capillaries?

A They think something different every year, sir.

Q Beg your pardon?

A I say, they think something different every year.

Q Well, have you ever heard anywhere the theory that the capillaries dilate?

A Surely.

Q And what does that mean?

A Expand.

Q The diameter of the capillaries expands, is that correct?

A That's right.

Q And what happens to the arteries? They constrict, do they

not? Isn't that correct?

A The arteries constrict when the capillaries expand?

Q Yes.

A I have heard the theory.

Q Yes. And as these capillaries expand, the heart, in an attempt to pump this blood, oxygenated blood or food to the capillaries where the tissues can be fed, attempts to compensate for these expanded capillaries and pumps at a faster rate, does it not?

A I have heard that theory, yes.

Q Well, that is the way it happens, does it not?

A No.

Q It doesn't. And because the various tissues of the body are not receiving the proper food or oxygenated blood, that is what causes a person in a state of shock to have this ashen gray color, isn't that a fact?

A That is quite true.

Q Yes. Now, as you look through this medical chart, do you find anywhere in there that Sam had an ashen gray color at any time when he was admitted to the hospital?

A The chart is not complete, sir.

(Mr. Parrino hands two pages of the chart
to the witness.)

A Thank you.

THE COURT:

Why don't you

fasten that in there so that it will not be falling off all the time?

MR. PARRINO:

I think we might

as well do that now, sir.

A No, it doesn't say that, sir.

Q Does it say anywhere in this chart that Sam had a cold, clammy sweat when he was admitted to the hospital?

A It doesn't say that he had a cold, clammy sweat, sir.

Q All right. Now, what is Sam's -- withdraw that.

I think you stated that Sam's normal blood pressure is approximately 115 over 74?

A Somewhere right around there, yes.

Q Now, on admittance to the hospital, is it not a fact that Sam's blood pressure here on Page 5 was 120 over 70?

A I don't believe so.

Q What does it say there?

A It says 120 over 70, but we have no way of knowing when Dr. Carver took that. This is the routine history and physical taken within the first 24 hours after admission. It could have been anytime in that period.

Q I see. All right. Well, what was Sam's blood pressure at the time he was taken into the hospital, do you know?

A I don't know until we got him there. When he arrived, it was 140 over 90, sir.

Q And that is at what time?

A Seven o'clock.

Q That is within normal limits, isn't it, sir?

A Not for him.

Q Not for him? He is special?

A He is an athlete, sir. And he is special, in my opinion.

Q Yes. Now, you say that where you have brain injury, that something unusual happens to the blood pressure, does it not?

A No. I think you said that, sir.

Q Well, does something unusual happen to brain pressure -- to blood pressure in a brain injury and in cervical vertebrae injury and spinal cord injury, does something happen to blood pressure?

A Does something happen to the blood pressure --

Q Yes. Does it increase or fall?

A I'm sorry, I am trying to get this question now.

Q Well, I will withdraw the question.

A All right.

Q Where you have brain injury, does blood pressure rise?

A Not always.

Q Where you have significant brain injury, does blood pressure rise?

A If the injury is sufficient to produce cerebral edema, which in turn is sufficient to increase the cerebral spinal fluid pressure to a dangerous level, it may,

assuming that a sufficient period of time has elapsed since the injury occurred for these changes to take place. I wish I could give you a yes or no, but I can't.

Q I see. But where you have cerebral edema, blood pressure does rise, is that correct?

A Dangerous cerebral edema will produce a rising blood pressure, but it frequently doesn't develop for 24 or 48 hours after the injury, sir.

Q When did you diagnose that Sam had cerebral edema?

A I felt that he had cerebral edema when I saw him in the house and when we tried to get him out to the car. The chief symptom of cerebral edema is dizziness, sir.

Q All right. Was that the only indication that you ever had that Sam had cerebral edema, was that he was dizzy?

A No, sir.

Q Well, in determining if he did or didnot have a serious cerebral edema, it would be important to see exactly what his blood pressure was and keep a careful eye on that, isn't that correct?

A Surely.

Q Now, apparently that was done on the 4th, was it not?

A Yes.

Q And where you have a brain injury, what happens to pulse?

A Usually it is --

Q A serious brain injury?

A Usually it slows.

Q Now, on the 4th, did -- withdraw that.

What is Sam's normal pulse?

A Somewhere around 70.

Q On the 4th, did Sam's pulse ever slow?

A Below 70?

Q Yes.

A Not according to that record, sir.

Q According to this record, the rate of pulse of -- Sam's rate of pulse on the 4th was at eight o'clock, 70?

A 72.

Q 72. At nine o'clock, 84; at ten o'clock, 84; at twelve o'clock, 88, isn't that correct?

A That's what it says there, sir.

Q Well, this is a correct record, is it not?

A Surely, but it is also recorded other places.

Q All right. We will get to the other places in a moment.

A I know, but that is what it says there. That is what I am trying to answer for you.

Q Yes. Well, at this particular time, on the 4th of July, his pulse never did slow, as you call it, correct?

A I can't say that it never did slow.

Q As a result of this record that we have before us, on

A At eight o'clock, it was 72. That's the best we can say. At nine o'clock it was 84; at ten o'clock, was 84, and at noon it was 88. The assumption is that it was within that range the entire period.

Q Is this it here?

A There it is.

Q All right. Now, what are we looking at here, Doctor?

A The nurse's notes.

Q This is on Page 20, right?

A Yes.

Q And the information apparently here on the 4th is what we read a moment ago here as to pulse, at least, is that correct?

A Well, these are the independent observations of the nurse, apparently.

Q All right. So pulse here was, apparently -- is that eight o'clock here?

A Yes, sir.

Q At eight o'clock, 72?

A That's right.

Q Nine o'clock, 84?

A Yes.

Q Ten o'clock, 84?

A That's right.

Q Twelve o'clock, 88, right?

A Yes, sir.

Q On the 5th, the next day, his pulse was: Eight o'clock, 80, two o'clock, 88?

A That's right.

Q What date is this here? The 6th, the pulse was 88?

A That's at eight o'clock in the morning, sir.

Q Yes. At four o'clock in the afternoon, 88?

A That's right.

Q On the 7th at eight o'clock in the morning, 80?

A That's right.

Q Is that the last of it?

A No, sir.

Q And here on the 8th it was 74, apparently, at nine o'clock in the morning?

A That's right.

Q So that at no time while he was in the hospital was Sam's pulse slowed below --

A 70.

Q -- 70, is that correct?

A That's completely correct.

Q All right. Now, we have here on the 4th a taking of his blood pressure, which would be important in a case where you have possible severe brain damage, is that not right?

A That's right.

Q Now, on the 5th, did anybody bother to take Sam's blood pressure at the hospital?

A I have no idea.

Q Well, what does the chart say on that?

A There is nothing in the nurse's notes.

Q Well, look at the whole chart and see if anybody bothered to take his blood pressure at any time on the 5th?

A If they did, there is no mention of it. We have one here at 2:15, however, on the 4th which didn't appear earlier.

Q We are talking about the 5th, aren't we?

A I know. I thought you wanted to get all the --

Q Well, apparently nobody took his blood pressure on the 5th, isn't that right?

A Well, they didn't record it, if they did.

Q Well, in your hospital, if they took it, it would be in this chart, wouldn't it?

A I should think so.

Q Yes. Now, getting to the 6th, did anybody take his blood pressure on the 6th?

A There is no evidence of it.

Q It would be important to have his blood pressure, would it not, on the 6th?

A No. If it were important, it would be taken.

Q All right. Did anybody take his blood pressure on the 7th?

A No.

Q So the only time anybody took Sam's blood pressure in your hospital was on the 4th of July, the day he was admitted, right?

A It was taken for a sufficient time to determine that it was stablized. That is what we were looking for.

Q I see. In other words, he had what you call a stable blood pressure, is that correct?

A We took it for some six hours until it was stablized, and we knew which way it was going; and, clinically, from the standpoint of a head injury, he made progress.

Q All right.

MR. PARRINO: I think it is about time for a recess, your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, we will have a few minutes' recess at this point. Please do not discuss this case.

(Recess had at 2:40 o'clock, p.m.)

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(After recess, at 3 o'clock p.m.)

Q Now, Dr. Sheppard, do you know of any marital difficulties that existed between Sam and Marilyn at any time?

A Nothing of any major importance, sir.

Q Was there ever any marital difficulties between them during which breakup or divorce was contemplated?

A There was discussion of such a possibility between Marilyn and me in 1950, sir.

Q In what part of 1950 was it that there was a discussion of a possible breakup or divorce between Sam and Marilyn?

A August 10, 1950.

Q And where did that take place?

A In my office at -- my old office on Lorain Road, 21535 Lorain Road.

Q Did you ever have any conversation with Sam about that?

A I mentioned it to him, sir.

Q When did you mention it to him?

A Sometime later. I don't recall the exact day.

Q Well, how long after-was it that you talked to Sam -- that you spoke with Marilyn was it that you mentioned it to Sam?

A Possibly two weeks. I will have to guess on that. I don't really know.

Q That is your best judgment?

A That is a guess.

MR. PARRINO:

I have no further questions,

your Honor.

REDIRECT EXAMINATION OF STEPHEN ALLEN SHEPPARD

By Mr. Corrigan:

Q Doctor, you were asked if -- in your examination by the prosecutor how you happened to go upstairs immediately, that you didn't go down to the cellar or go somewhere else when you arrived in the morning. Will you give your explanation to the jury?

A As I said, at that time, I assumed that she was upstairs. The best explanation I can give -- the only explanation that I can give was that it was at 6:15 on Sunday morning, and I felt that she was upstairs in the bedroom.

Q Did you see any people in the house that gave you any indication of where she was?

A I can't specifically say that any one person said she was upstairs. It is possible that someone did, but I hesitate to name anyone because, as I say, I can't really point anyone out who said, "She is upstairs."

I did hear people running up and downstairs, although I honestly don't recall seeing anyone.

Q You were asked why you didn't take your medical bag, by the prosecutors, when you got in the automobile that morning. Have you any explanation for that, that you can tell the jury?

A Yes, sir, I have.