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

DIRECT EXAMINATION

By Mr. Corrigan:

Q Would you kindly state your name for the Court and jury?

A Dr. Charles Elkins.

Q And you are Dr. Charles Elkins?

A Yes, sir.

Q Doctor, you are suffering from some bronchial trouble at the present time?

A Unfortunately, I have a laryngitis.

Q Where do you live, Doctor?

A At the present time I live in Tuscon, Arizona.

THE COURT: You shouldn't have asked that question.

MR. CORRIGAN: What is it?

THE COURT: You should not have asked that question. With the doctor's voice condition, you should not have asked anything about Arizona.

MR. GARMONE: It doesn't speak well

for the Chamber of Commerce.

MR. CORRIGAN: I see. All right.

Q Doctor, you have come to this courtroom from Tuscon, Arizona, to testify in the case of Dr. Samuel Sheppard, correct?

A Yes, sir.

Q You have come without subpoena?

A Yes, sir.

Q You have come without any indication as to any fees or anything else, haven't you?

MR. PARRINO: I object to these leading questions, your Honor.

THE COURT: Yes. We are not interested in that, Mr. Corrigan.

Q Now, when did you move to Tuscon, Arizona?

A Approximately on September 1st of this year.

Q And are you in the practice of medicine in Tuscon, Arizona, and that district?

A Yes, sir.

Q Doctor, I want to qualify you before this jury so that they will know who you are and your professional capacity.

Where were you born?

A I was born in Delaware, Ohio.

Q Where?

A Delaware, Ohio.

Q And what school did you attend as an undergraduate?

A Ohio Wesleyan University.

Q And after you graduated from Ohio Wesleyan University, what medical school did you attend?

A Western Reserve University School of Medicine.

Q Do you remember the year that you graduated from that school?

A I graduated from medicine in 1937.

Q And after graduating did you enter immediately into practice, or did you take further training?

A I took further training, sir.

Q And where was it?

A I served a year's internship at the Cleveland City Hospital.

Q And after that year's internship did you take further training?

A Yes, sir.

Q And where was the next place that you took further training?

A My next year I spent as a house officer in neurology and neurosurgery, neurological surgery, at the Boston City Hospital, Boston, Mass.

Q And how long did you remain in the neurological field or the neurosurgery department in the Boston City Hospital?

A I was there for one year, and then I served as a Fellow in neurological surgery at the Leahy Clinic in Boston, Massachusetts.

Q And that was advancing along in your education, training

and skill?

A Yes, sir.

Q After you finished that particular phase of your life and training, what was the next thing that you did?

A Well, I then returned to Boston City Hospital for another year, and served as the resident neurosurgeon at Boston City Hospital.

Q And after you had completed your year as the resident neurosurgeon at Boston City Hospital, did you leave Boston and go somewhere?

A Yes, sir. I returned to Cleveland. That was in 1941, approximately July 1st of 1941.

Q After you came here in 1941, did you enter into the general practice of neurosurgery in this city?

A I entered into the practice of neurosurgery, yes, sir.

Q Now, so that the jury understands what that term means and what that type of practice is, neurosurgery, would you tell them, Doctor, as briefly and as plainly as you can just what neurosurgery is?

A Neurosurgery or neurological surgery or surgery of the nervous system is ~~that~~ phase of medicine and surgery which deals with diseases, particularly surgical diseases of the brain, spinal cord or peripheral nerves of the body.

Q Now, then, how long did you remain in practice in 1941, when you returned here?

A Until December 7, 1941.

Q And what happened on December the 7th?

A There was a war, sir.

Q And did you participate in that war?

A Yes, sir.

Q And when did you participate and begin?

A Shortly after December 7th, the Fourth General Hospital, or more commonly known as the Lakeside Unit was activated, and I was a member of that organization, and we went to Australia where I spent some two years as a neurosurgeon for the Lakeside Unit, or the Army term, Fourth General Hospital.

Q The Lakeside Unit, that originally was organized by Dr. Crile in the First World War, was it not?

A I believe that to be true, yes.

Q And then when the Second World War came on, it was reactivated?

A Yes, sir.

Q And organized out of leading doctors in this community?

A A group of doctors in the community, yes.

Q Was Dr. Crile connected with that at that time, do you remember?

A I think Dr. Crile was dead before --

Q Was he?

A I think so, yes.

- Q I didn't know.
- A Dr. Crile, Sr., yes. I think he was dead before the war.
- Q Now, then, you went to Melbourne, Australia, as part of that unit in what year?
- A It was in 1942.
- Q 1942?
- A The first month in 1942.
- Q And you were there for a period of two years?
- A About two years.
- Q How large a hospital was it, can you tell the jury?
- A Yes. It varied, actually. According to, as I recall, the Army classifications, we were set up as a thousand-bed hospital. It was what we called or was termed a base hospital.
- Q And in your assignment to that hospital, what were you assigned to be?
- A I was the neurosurgeon for the hospital.
- Q The neurosurgeon. And those were the wounded ~~soldiers~~ ^{soldiers} that were being brought in from the Eastern War Theater?
- A Well, let me put it this way: Many of our casualties came from Guadalcanal, and later on from the New Guinea Campaign.
- Q Now, then, were there many cases that were brought into that hospital that required your services, your particular special service?
- A Yes, sir.

- Q Did you hold a particular rank, an official rank, besides the fact that you were a surgeon, were you also ranked in the Army?
- A Yes. I was commissioned as a Captain. As I recall, I was promoted to Major before I returned to the United States.
- Q Now, then, after you had spent two years in that hospital, were you transferred to any other hospital?
- A I was returned to the United States and assigned for a short period of time as Chief of Neurosurgery at Fitzsimmons General Hospital in Denver, Colorado.
- Q And how long did you stay in the Fitzsimmons Hospital in Denver?
- A I think, sir, it was only about six weeks.
- Q And after that service, did you perform any other service as a neurosurgeon for the soldiers wounded in the war?
- A Yes, sir. I was transferred from Fitzsimmons to Newton D. Baker General Hospital in Martinsburg, West Virginia, where I completed my service in the Army, and I think it was about a year and a half at that hospital.
- Q And where was that hospital located?
- A That is Martinsburg, West Virginia.
- Q And is that a large hospital?
- A Yes, sir. That, too, was known as a base hospital and was set up as somewhere around a thousand-bed hospital.

Q And all this work that you did during that particular period of time was within the field of neurosurgery?

A Yes, sir.

Q When were you discharged from the service?

A As I recall, it was in April of 1945, that I returned.

Q At the time of your discharge, did you receive any special recognition?

A Prior to my discharge, I was notified that I had been awarded the Legion of Merit.

Q Now, following your discharge from the Army, did you return to Cleveland?

A Yes, sir.

Q And when you returned to Cleveland what activity did you enter into professionally?

A I opened an office for the practice of neurosurgery in the Hanna Building, and was appointed, as I recall, as instructor in neurosurgery at Western Reserve University School of Medicine, and assigned as the assistant neurosurgeon at Cleveland City Hospital.

Q Now, then, you continued in the practice of your profession in your specialty in this community until when?

A Until September of this year.

Q During that particular period of time, did your position as instructor of neurosurgery at Western Reserve Medical School change?

- A Yes, sir. As I recall, about a year ago, or a year before I left, I was appointed assistant clinical professor of neurosurgery at Western Reserve School of Medicine.
- Q Would you explain to the jury what that would mean, to be appointed assistant clinical professor at Western Reserve University Medical School?
- A Well, it just simply means that it was a promotion, a little higher grade of the academic rank.
- Q Well, in the process of operating as an assistant clinical professor, did the students view your operations at any time?
- A Yes, sir.
- Q And that was part of their training to come into the hospital where you were performing an operation?
- A Yes, sir.
- Q And is it a fact that after you performed the operation, or during it, or after it, you would then go into the detail of what the operation was and what was done?
- A Yes, sir.

JUROR NO. 5: He wants some fresh water.

MR. CORRIGAN: Oh, he wants fresh water. He has got a bad cold.

THE WITNESS: Thank you.

MR. GARMONE: Here you are. So you don't have to leave. I will get it, Judge.

MR. CORRIGAN:

And it is awfully

hard for him to talk.

Q Now, were you connected, in addition to having this connection with Western Reserve University Medical School, were you connected with any other medical institutions in this community?

A Yes, sir.

Q And will you tell me what they were?

A I practiced neurosurgery at the University Hospitals, I was on the active staff at Lutheran Hospital and Lakewood Hospital. I believe I was on the associate staff of Fairview Park. I first was attending neurosurgeon at the Veteran's, and then later on was made a consultant neurosurgeon at Crile Veterans' Hospital. That was about a year and a half ago.

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Q Now, at the time that you were -- do you remember Dr. Claude Beck?

A Yes, sir.

Q And who was Dr. Claude Beck?

A Dr. Claude Beck was one of my early teachers. I went with Dr. Beck many years ago as a student and our paths crossed many times. He became my area consultant in the Army when I was at Newton D. Baker, and when I returned to Cleveland, I worked under Dr. Beck.

He was the senior neuro-surgeon at Cleveland City Hospital, and I was the junior neuro-surgeon. About two or three years ago Dr. Beck resigned as professor of neuro-surgery at the medical school to devote his -- limit his time to surgery.

About that time, they made me the chief at City and the consultant at Crile, and I think about that time is when I received that promotion on the faculty.

Q And you became the chief then?

A At City and at the Veteran's, yes, sir.

Q And did you occupy that position at the time you left Cleveland?

A Yes, sir.

Q What was your position, I mean in grade, at Lakeside Hospital?

A Well, actually, that's a little difficult to explain.

There are no particular appointments at Lakeside Hospital. The appointment comes from the medical school or the university. Let us say that most of the men who work at University Hospitals are members of the faculty of the medical school. But there is no direct relationship, so far as I was concerned.

Q Of course, we old-timers call it Lakeside. Now it's University.

A I still call it Lakeside.

Q Now, are you a member of any medical associations?

A Yes, sir.

Q And will you tell me what medical associations you belong to?

A I belong to -- at the present time I still belong to the Cuyahoga County Medical Society, Cleveland Academy of Medicine, the American Medical Association.

I am a fellow in the American College of Surgeons and a diplomate of the American Board of Neurological Surgery. I just happen to be the immediate past president of the Ohio Society of Neurological Surgeons.

Q Now, in order to be a member of the American College of Surgeons, is it just something that you can go and join, that a doctor can join, like you join the Elks or the Eagles, or some other organization?

A Well, sir, there are certain requirements for

membership in the American College of Surgeons. I believe that in the first place one has to have been out of medical school for a certain number of years. I think it's seven, but I can't be positive of that; that one has had to engage in further training in the specialty in which he is involved, in my case, in neurological surgery, in other cases, in surgery of the eye or general surgery.

Q Now, in order to save your voice, can I put it shortly this way, Doctor: That in order to be a member of that association or a member of the American Board of Neurological Surgeons that you -- that a doctor must have acquired a certain perfection in his profession?

A Let me put it this way: I, or anybody that belongs to these organizations, have qualified in somebody else's opinion to belong to the organizations.

Q Now, then, Doctor, do you know Samuel Sheppard?

A Yes, sir.

Q Dr. Samuel Sheppard. Did you receive a call to go to see him on the 4th of July of this year?

A Yes, sir.

Q And do you know what time you received that call?

A I can't accurately tell the time, except this way: That I had played golf in the afternoon and had returned home and then I saw Sam, oh, somewhere around between six and seven o'clock that evening of the 4th of July.

Q And where did you see him?

A At the Bay View Hospital.

Q When you went to see him at the Bay View Hospital, did you make an examination of him?

A Yes, sir.

Q And will you tell the jury what kind of an examination you made, how you made it and the purpose in making that examination on that day?

A Certain information had been given to me that Sam Sheppard had been hurt. It was my purpose to determine the severity of injuries to his nervous system, that being my specialty. I was most interested, and occupied myself with, in the first place, determining whether he was going to live or die, whether immediate surgery would be necessary. In other words, what the outlook was for the patient immediately.

Q And did you on that day, after you made the examination, enter upon the chart of the hospital notes?

A I believe I wrote a consultation note.

MR. CORRIGAN: (To Mr. Garmone.)

Will you let me have it?

Q This has been identified in Court, Doctor, as the Defendant's Exhibit YYY, and I want to call your attention to Page 12 of that Exhibit and ask you to look at it and state whether or not those are the notes that you made on the

4th of July?

A This is my handwriting, sir. I don't see any date, but these are the notes I made on the 4th of July.

Q The date isn't on, but you remember it as the notes you made on that day?

A Yes, sir.

Q Now, when you examined him and made your notes on the 4th of July, will you tell the jury what you determined?

A Am I permitted to read this?

Q Yes.

A "Dr. Sam is alert and answers questions lucidly."

Now, if you don't mind, I'm going to stop as I read and explain what this thing means.

Q That's what I want you to do. I want you to explain that to the jury.

A I had been told -- as a matter of fact, Sam told me that he had been hit by an intruder in his home. That's all the farther he went. I wasn't interested in anything else except the history that he was hit.

So when I say that he is alert and answers questions, that meant to me right away that he was not in a serious situation. I mean, does the Doctor who is the specialist have to do something? In other words, you can sit tight because he was alert and his mind wasn't affected.

Q Indicating to you he wasn't going to die?

A

He wasn't going to die, unless I was wrong.

I went on and said that -- well, answers questions lucidly means the same thing, that means clearly. When I asked him, "How do you feel?" he answered and there wasn't -- I mean the answer was lucid.

I said, "There" -- I'm right up to here now.

MR. PARRINO:

Thank you very

much.

A

(Continuing) I said, "There was swelling of the right peri-orbital tissue."

That means around the eye. Now, that didn't -- I mean I wasn't -- I made a note that he had this swelling around his eye. It didn't mean anything to me particularly, except just a part of the examination. In other words, it didn't have any effect on the nervous system, which I was particularly interested in, that's the reason I was there.

However, I go on to say, "The pupils are equal and react."

Now, admittedly this isn't a long and a meticulous examination, but when a patient has been hurt the pupils are equal, that's a sign that certain things are not going wrong. In other words, if the pupils had been unequal, I would have made a note of it and I would have been a little more worried about what was going on inside his

head. When I say "react," I mean they react to light.

A normal pupil, for instance, if you take an individual with a normal pupil and you flash a light in the eye, the pupil will constrict. If you ask an individual to focus his attention on a near object, the pupils will assume a certain size, and if you ask him to look at an object further away, they change size. That's called accommodation.

A more complete statement would have been, "The pupils are equal and react to light and accommodation." This is just a short form of saying they react.

MR. CORRIGAN: (To the jury.)

Can you hear him?

JUROR NO. 12: Yes.

A (Continuing) I further state that, "He moves all of his extremities well."

Now, here again in evaluation of a patient with suspected injury of the nervous system, whether it is brain or spinal cord, it is most important to the examiner to determine whether he can move his arms or legs. If he can move them, chances are that he is not in any serious difficulty right at that time; things can happen later, but not right at that time.

Q

And when you say -- when you come to the conclusion he could move his arms and legs well, that is from your

point of view as a neuro-surgeon, that he could move his arms and legs?

A Yes. I ask him, "Move your arm, move your leg. Let's see how strong it is." Is he weak in one member or the other?

Q And he responded?

A Yes. I point out -- the next statement is, "No Babinskis."

Now, this requires a little bit of explanation, also. The Babinski sign is elicited by lightly stroking the sole of the patient's foot. In a normal response, the toes will curl downward and inward, assume this position, if you can transfer my hand to the foot. (Indicating).

In an abnormal response, the toes to light stroking of the sole of the foot, the toes will spread and the big toe comes up, and that is what is known as a positive Babinski. And if it is present, it is indicative of disease of the nervous system anywhere from the brain down to the end of the spinal cord.

I don't want to use professional terms, but actually the great motor tracts which originate in the cortex of the brain go down through the spinal cord, and these are known as the pyramidal tracts, p-y-r, pyramidal. And disease of this great motor tract anyplace from its origin to the point where the nerves leave the spinal cord may -- and I would like to emphasize "may" -- result in a positive Babinski.

In Sam's case, his Babinskis were negative. So in this instance there was no evidence that he -- by this one test there was no evidence that he had disease of his nervous system.

Q That is one test?

A That is one test. And this is what I noted. I go on and make which to me is a fairly important statement at this time, that "He has voided," which means that he has passed his urine voluntarily.

In this evaluation or total evaluation, if he had not voided, that would be evidence that something had gone wrong with the nervous system which would cause him not to be able to urinate. But I thought enough of it at the time to ask him, "Have you voided?" And he said, "Yes."

So I put it down, "He has voided."

Now, I continue with the statement: "Complains of occipital headache. Cervical collar in place. Neck not examined."

I finish up with an abbreviation, "I-m-p," which means impression.

Q Now, did the complaint of the occipital headache -- and that means a headache that is inclined to be around the occipital bone, the bone in the back of the head?

A That's right.

Q Did it indicate anything to you as a neuro-surgeon?

A Well --

Q Now, all you knew about that was what he told you?

A That's right. You can't feel a patient's pain, that's for sure. In the total evaluation, I mean I had been told -- as a matter of fact, he told me that he had been struck, he had been struck somewhere in the region of the neck, that he had been unconscious.

Sure, when he tells me he's got an occipital headache, I put it down, and if the facts be true, he's got a right to have an occipital headache, but I make a note of it.

Q Now, what happens to a person, how the injury is acquired, that is elicited by you questioning him, is what you doctors call part of the history?

A Will you please repeat that, sir?

Q What a person tells you about how the accident occurred, how they got into the position that they are in where you see them sick is what you call history?

A That's correct.

A Something that we are going to watch. I mean, there are many complications that can occur to these people with injuries that you watch for. They write text books on the complications, but right now I'm not too worried about the outcome so far as Sam's life or death is concerned. He received a concussion, and now he is awake and conscious.

Q Now, did you return there on the 5th of July?

A I believe I did, yes, sir.

Q Is there anything that you have that indicates that you returned on the 5th of July? There is nothing in the --

A Is there nothing in the chart? I don't believe I made a note on the 5th of July.

Q I see. But you did see him on the 5th of July?

A I believe I did, yes.

Q Now, then, did you go in on the 6th of July?

A Yes, sir, I believe I did.

Q Now, will you turn the page and see if there is a record in that hospital chart made by you on the 6th of July?

A Yes, sir. I dated this one as July 6, 1954.

Q Now, on the 6th of July -- and you may refer to those notes which you made, that appear on the chart -- what examination did you make of him on the 6th of July?

A Well, as you will see when we evolve this thing, this is a much more complete evaluation of Sam's status as of the 6th

of July.

Q And what did you find on the 6th of July?

A Well, in the first place, we start out here again with a little bit of history of his status at that time, and I say, "The patient complains of urgency of urination, and this morning when attempting to pass gas, he soiled his sheet with fecal material."

Q Does that indicate anything to you?

A Yes. It made me a little suspicious that something was going on, that these complications I talk about might be setting in. I mean this is history, now, if these facts be true, that something is going on in this nervous system, something has occurred, because it is not normal for an individual to have urgency of urination. Certainly --

Q How about the soiling of the --

A It is not normal for an individual to have -- to soil the bed.

Q For a full-grown person?

A For a full-grown person, but these things can occur in injuries of the nervous system.

Q Is that one of the indications of an injury to the nervous system, the loss of control of the bowels?

A That is one of the indications that an injury to the nervous system might be present.

Q Now, what was the next thing that you noticed, or the next thing that you did?

A I again -- I now make a note that, "He complains of numbness over the ulnar distribution, left."

Now, -- go ahead.

Q Now, I want to ask you a question to make it clear, Doctor, to the jury:

We have used the term, and the term was used "Subjective and objective signs of injury," and that is a term that is used pretty generally medically, isn't it, subjective and objective signs of injury?

A Yes, sir.

Q Would you explain to the jury what those terms mean?

A I will attempt to. The term subjective is usually used in describing a patient's symptoms. In other words, if a patient tells you, "I have a pain in the foot," that is a symptom, and it is subjective because you can't feel the pain in his foot.

If Sam tells me he has got a pain in the back of his head, I accept that he has got a pain in the back of his head, but I can't feel it. That is a subjective complaint.

Now, moving on to objective evidence of disease, there are certain signs in any examination, which, if these signs are present, an individual can't simulate. There is something the examiner can see. That is objective evidence of disease.

Q That is, that the examiner determines from his own examination

whether or not there is a difficulty or a pain present?

A That's correct, sir.

Q Now, in the practice of neurosurgery, and in the examination of a person to determine if there is an injury to the nervous system, or the central nervous system, or the brain, are there certain things that you as a neurosurgeon do to determine that?

A Yes, sir.

Q Irrespective of what the person tells you?

A Yes, sir.

Q And what is the process by which you arrive at a conclusion as to whether there is a derangement of the nervous system, the spinal cord or the brain, without information being supplied by the patient?

A Well, I believe that -- well, that requires a considerable amount of qualification. For instance, as I pointed out, I think the history of the situation is very important. In other words, if a patient gave you the information that he was hit on the big toe, you wouldn't suspect that he'd have an injury of the brain, so I mean the history is important.

Now, the examination is of equal importance. The state of the patient's consciousness is important, whether he can answer questions, whether he can move his extremities. There are certain reflexes that one tests to determine

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Q And is it not an important thing or a very important item in diagnosing an injury to know the facts surrounding the inquiring of the injury?

A I think it is most important to take a history.

Q Now, then, at the conclusion of that examination, you marked down "Impression" -- "Imp.," which stands for impression, and the word behind it is "Brain concussion."

A I put down cerebral concussion.

Q Cerebral concussion. Now, will you explain to the jury what that means when you, as a neurosurgeon, put down the word "Impression"?

A Yes, sir. Impression or imp, as I abbreviated it, to physicians, can really be defined as an unverified opinion. Whenever I look at a patient -- not particularly Sam, -- when I look at a patient I make up my mind, is he sick? Is he not sick? What is going to happen to him? I've got lots of things that can be done, lots of laboratory work to verify an opinion, which had not been done and is not done here, so I make an impression of cerebral or brain concussion on the basis that the man tells me that he has been hit and that he was unconscious. That is all that is necessary to make a diagnosis or an impression of concussion.

Q And it means that that is something that "I will investigate further"?

whether they are present or absent, or if they are present or absent, whether it is normal or abnormal.

This is a very complicated thing and, of course, the nervous system is pretty complicated.

Q Now, did you proceed to determine whether there was -- in your examination, to determine to your own mind, outside of the history, and what you were told about it, from what you could see, did you proceed to determine whether Sam Sheppard was suffering from an injury?

A Yes, sir.

Q Now, what did you do?

A Well, I further went on -- I finished this ulnar distribution business, and if you want me to explain that, that again is a subjective complaint. The ulnar nerves happen to supply the little and the ring finger and half of the middle finger. He complained of numbness in what we call the ulnar distribution. It is one of the two or the three main nerves controlling the hand.

All right. Then I put down "Examination today."

Now, this is as of July the 6th.

"The ecchymosis" -- or the periorbital swelling is another word -- "of the right eye improved. Pupils equally react." I have gone through that.

I go further and say "EOM," which is again an abbreviation, which means extra ocular movements. In other

words, the movements of the muscles controlling the eye. His eye movements were normal. He could look up, he could look down, he could look either side. There was no paralysis of any of his eye muscles, and I pointed out that there was no facial weakness. In other words, the muscles of his face were not weak or not paralyzed.

And I say "There is numbness of the ulnar sensory distribution, left, and weakness of the interossei, left."

I have gone through this ulnar thing.

Now, interossei are a group of muscles controlling the movements, the fine muscles controlling the muscles of the hand.

Now, I tested Sam at this time, as I recall, with a pin, and with pinching, and he said, "It is numb."

I tested his muscle strength by asking him to close his fingers, first left and right on my finger, and he was weaker on the left side than he was on the right side, so I put it down.

Q Is it possible in determining that particular reaction, whether that could be simulated or faked?

A Yes, sir, I think that could be simulated. I think -- again, I mean here is a sensory examination. You hit somebody with a pin and you can't feel it, and they tell you that that is number there than it is there, that can be simulated, and so can a weakness.

Q You have to depend upon the --

A You have to depend upon the honesty of the individual that you examine.

Q The honesty of the individual in that particular test.

Now, did you test any other reflexes?

A Yes, sir. My next statement is, "The left triceps reflex not obtained."

Q And where is that?

A The triceps reflex is elicited by the tapping behind the elbow, behind and above the elbow on the tendon of the triceps muscle. This is the big muscle which causes you to forcefully put your arm down.

Q And what did you find there?

A This left triceps reflex was not obtained, was missing.

Q Now, did that indicate anything to you as a neurosurgeon?

A Yes, sir. It focused my attention that there was a derangement someplace going on in the nervous system.

Q Is it possible for a person to simulate the absence of that reflex?

A No, sir. By definition, an absent reflex cannot be simulated.

Q It cannot. So that your reaction that you obtained there was without the assistance of anything given to you by Dr. Sheppard?

A That's correct, sir.

Q That was from your own knowledge, that situation?

A Yes.

Q Now, then, did you examine any other reflexes, and what do your notes show as to the next reflex that you examined?

A Well, the next statement is bearing out at this time that I was beginning to focus my attention here on something going on, because I made the statement that, "Both biceps reflexes are present."

Now, the biceps is the reflex which is obtained by tapping the tendon of the biceps muscle, and this muscle is the one that brings the arm up. Both of these are present, right and left, and the right triceps was present, the left triceps was absent, which can't be simulated.

The right triceps present, so something is wrong with the mechanism controlling that reflex on the right side -- on the left side, excuse me.

Q Will you tell what you did further as shown by your records?

A My next statement is, "The right abdominal reflexes, active."

Now, there are two abdominal reflexes, an upper and lower. That's beside the point.

I go on to say, "The left abdominal reflexes are absent."

Now, here is a patient with a present right abdominal reflex and absent left abdominal reflex.

Q Could that be simulated?

A No, sir.

Q It cannot. It indicated something wrong in Sam there?

A Something is going on.

Q Now, then, you proceeded to an examination of a further reflex?

A I made the statement that, "Neither cremasteric reflexes" -- "Neither cremasteric reflex" -- this is turned under. I think the word is "obtained."

Now, the cremasteric reflex is a reflex which is -- well, in a male obtained by gently stroking the inner surface of the thigh and the scrotum will jump. Neither of these reflexes were obtained, and I recall at the time of asking Sam whether he ever had them or not, and he said that he supposed so. He recalled that sometime when he was in school that they had tested, as most of us do, tested these reflexes and he had had them at one time, but the absence of a cremasteric reflex, if it has normally been present, the absence of a cremasteric reflex certainly can't be simulated.

Q It cannot be simulated?

A It cannot be simulated.

Q Now, is it a fact, Doctor, that that reflex is more active in youth than in old age?

A I think generally speaking, yes, it is more active in young people -- young male adults or young males.

5 Q As the male grows older, that, like many other things connected with our ability to move and think and talk, decreases?

A I think that if you examine a lot of older individuals, that there would be a greater percentage of absent cremasteric reflexes than if you examined the same number of young people.

Q I will come back to that. You found them both absent, which indicated to you that something is going on in Sam Sheppard's body?

A Yes.

Q Did you examine his neck?

A Yes. Down lower I have got another statement that says, "Local examination of neck," which simply means examination of the site.

"The neck discloses tenderness over the spinous process of C-2" -- that is the second cervical vertebra -- "with spasmodic contraction of cervical muscles to pressure."

Q Now, would you explain, Doctor, to the jury, how you made that examination?

A Well, in the first place --

Q I am talking now of the --

A Of the neck.

Q -- the section of the second cervical vertebra.

A Well, I think, as I recall -- I mean, obviously I had to --

we took the collar off, and I palpated the neck, and as you will get along here a little bit later, I had been informed that there was a possibility that he had a fracture of one of the cervical vertebra, and so I palpated this area.

Q What did you find when you palpated it?

A Well, as I say, "Disclosed tenderness over the spinous process of C-2," and that is one point in the neck he complained of tenderness. Now, let's be fair. Again, this is subjective. He can tell me has got a pain, but I can't feel it myself, so, as I say, I mean this can be simulated, except this:

That when you pressed in this area, his neck muscles went into spasms, and believe me, this can't be simulated. In other words, this is another reflex to the production of pain by pressure. The muscles go into spasm.

Q And that occurred here?

A This occurred here.

Q And you know that that was an objective sign of injury?

A This is an objective sign, yes.

Q Now, after you had completed these examinations, did you come to a conclusion about Sam Sheppard as to whether or not he was suffering from an injury?

A My conclusion here was, again, "Impression: Cervical spinal cord contusion," which means a bruise of the spinal cord

in the neck region.

Q Now, can you state, Doctor, whether a blow in that region that would produce a spinal cord contusion could or would cause unconsciousness?

A Would you repeat that, please, sir?

Q Can you state whether a blow in the back of the head in that particular section where you found this objective sign of injury could produce unconsciousness?

A Yes, sir, a blow could do that.

Q In your experience, can a blow that produces a spinal cord contusion cause unconsciousness, even though there is no fracture present?

A I don't believe that the presence or absence of a fracture is necessarily important in the production of unconsciousness.

Q Will you explain that?

A Well, a person can be rather severely injured, have rather severe injury to the spinal cord without any fracture of the bones surrounding it. The same thing can occur with injury to the brain. It doesn't necessarily mean that -- or a fracture of the skull doesn't have to be present. As a matter of fact, many skull fractures are not particularly significant. It is what goes on underneath in the nervous system that is the significant factor in the whole affair.

Q Has it been your experience, Doctor, over the course of years, and in your study of this matter, that even in fatal

injuries to the brain and to the spinal cord, that no fractures have been present?

A I have seen a great many fatal injuries to the brain and spinal cord where fractures -- particularly the brain, let's put it that way, let's limit it to the brain, if you want to -- where no fractures are demonstrated.

Q I see. Now, then, after your examination of Sam on that day -- and you may refer to your notes -- did you see Sam Sheppard at a future time?

A I believe that I --

Q Well, I am calling attention to the 6th day of August in the County Jail.

A Oh, yes, sir, I examined Sam on August 6th at the County Jail.

Q And you examined him where?

A In the dispensary of the County Jail.

Q Did they have all the equipment there necessary for your examination?

A Whatever they didn't have, I brought along, but it was adequate equipment, yes.

Q So that you had adequate facilities for making that examination in the jail?

A Yes, sir.

Q And I believe that is on the 11th floor?

A I don't recall.

Q Well, it is upstairs. And do you recall that there was a doctor present named Dr. Mankovich?

A Yes. Dr. Mankovich was present.

Q He is the physician for the Jail?

A I believe so, yes.

Q Now, in the examination in the jail of August the 6th, what did you find, or did you find anything different than your examination of July the 6th?

A Yes, sir.

Q Now, tell the jury what you found.

A May I refer to my notes of August the 6th, sir?

Q Yes, you may. Those are your personal notes --

MR. PARRINO: Here you are.

THE WITNESS: I don't mean in there. I mean my personal notes.

A I have this dated as of August 6, 1954, over my signature. Do you want to read this with me?

MR. PARRINO: No.

A "Asked to examine Dr. Sam Sheppard by his brother Steve. Performed exam at County Jail. Sam looked well, and when asked about specific complaints, replied that he still had some neck pain, throbbing occipital headache and occasional right-sided headache. When specifically asked about bladder difficulty, stated that he didn't void until his bladder was quite full.

"Examination: Pupils are equal and react to light and accommodation." You recall I have explained that.

"EOM," which again, as I explained, means extra ocular movements. "The muscles of the eye" -- but I had a couple of more on here -- "fields and fundi."

The fields may be defined as the patient's ability to see out to one side or the other; in certain diseases and abnormalities, the field of vision is cut down.

Now, the fundi consists of the retina and the optic nerve, the vessels which may be seen in the interior of the eye by the use of the ophthalmoscope. I make a statement that, "Extra ocular movements, fields and fundi are normal," and again I say "there is no facial weakness."

Now, I point out that, "There is moderate weakness of the left triceps and left interossei."

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Q Those were the same reflexes that you found absent or weak on the 6th of August -- on the 6th of July?

A Here I'm referring to these little muscles in the hand here. As I recall, I'm now referring to actual weakness of the muscle, the triceps muscle in the back of the arm rather than the reflex. I will come to that later, I believe.

So I am pointing out that there is weakness of the muscle of the triceps and also the small muscles of the hand.

I go on and say that, "There is hyposthesia," which means decreased sensation, "to pin prick over this ulnar distribution on the left," which I have described as the middle or ring finger, and I make a statement here which says, "The left triceps reflex is now present but diminished over the right."

Q It's what?

A This left triceps reflex is now present, it's returned, but it's still diminished.

Q The one you found absent?

A The one I found absent is now present one month or so later.

Q Meaning the fellow was improving?

A That meant to me, if it were Sam or anybody else, that if the individual had injury to the nervous system and was

getting better, I would have been very happy about it.

"Abdominal reflexes present but left tires quicker than the right."

Now, that means to me that, again, the left abdominal reflexes had been absent and one month later they were present, but that I could tire them out and here, again, we've got to go into reflexes. In any normal individual, take a knee jerk, for instance -- we haven't even talked about those -- when you hit the patellar tendon, the leg will fly out, kick out, and if you hit it often or fast enough, that reflex will tire out. In other words, the impulse gets going so fast it catches up with itself.

So that while a reflex may be present, if it tires easily, it may be an indication that there was something wrong with that reflex before. It was absent once, it came back, but it still wasn't normal, in other words.

Q On August 6th?

A On August 6th.

Q All right.

A Now, I state that, "The cremasteric reflexes are present but weak."

These were absent before. They have now come back but they are still weak.

Now, I may interject something here that -- I wanted to be awful certain about this abdominal reflex, and I

really gave Sam a working out and I apologized to him for scratching him --

MR. PARRINO:

I object to this,

if the Court please. Just tell what he did.

A (Continuing) I really gave Sam a working out and apologized to him for scratching his abdomen so many times. I wanted to be sure about this abdominal reflex.

Is that all right, sir?

Q Now, you gave him a working out on the abdominal reflex, and that was for the purpose of determining whether the reflex that had been absent, whether it was present then?

A Yes, sir.

Q And how it compared with the other reflex that was present there?

A Yes, sir.

Q And what did you determine after you gave that working out to that abdominal reflex?

A That the reflex which had been absent had returned but it still was not a normal reflex.

Q I see. And that was true, also, of the cremasteric reflexes?

A Yes, sir.

Q They were absent and they were coming back?

A Yes, sir.

Q It meant to you, as a neuro-surgeon, that this man was getting better?

A Yes, sir.

Q But he wasn't better yet?

A No, he wasn't completely normal.

Q All right.

A At least his reflexes weren't.

Q Yes. Is there anything else?

A Yes. I again point out that, "There is tenderness to pressure over C-2."

That's the second cervical vertebra. And in parenthesis I have, "No spasm now."

Q That is, the spasm had disappeared?

A Yes, sir, on pressure.

Q Yes. But on July 6th it was very definitely there, wasn't it?

A Yes, sir.

Q Anything further?

A I continue further and say that, "Forward and backward neck movements good but lateral motions limited."

Q What does that mean, now?

A Well, he could go like this pretty well, but moving it from side to side, he said, was painful to him. I mean he didn't do it as well, observing him, as he did forward and backward.

Q Any reason to doubt him?

A I have no reason to doubt him, no, sir.

Q Is there anything further, Doctor?

A Yes, sir. I continued and I say, "Other DTR's" -- which is another abbreviation, meaning deep tendon reflexes -- "active and equal."

In other words, they were normal. All the other reflexes that one could test were active and equal.

"There is no ataxia or incoordination."

Now, ataxia and incoordination practically mean the same thing. Normally I can reach out and pick up this glass of water and drink it with one movement without a -- abnormally I might reach for the thing and miss it. That's called ataxia. This is generally tested by asking a patient, with his eyes open or closed or both, to reach up and touch the tip of his nose, and a normal individual can do that without missing the tip of his nose, he can do it a hundred times. In this instance, again, I say that there is no ataxia or incoordination. This part of the examination was normal.

And again I point out that the Babinskis are normal. I explained the Babinski signs.

"Hearing good, sensorium clear. Answers questions readily without hesitation."

Q Now, did your examination of August 6th in the jail confirm your impression of July 6th at the hospital?

A Yes, sir.

Q And tell the jury what conclusion you came to after August 6th?

A My impression was that Sam Sheppard had received a contusion of his spinal cord; that he exhibited certain positive signs of this injury back in July, and that one month later, approximately one month later, that his disease was improving and had improved.

MR. CORRIGAN: I think that that is all.

Do you want a little recess, Doctor?

THE WITNESS: I would appreciate about five minutes.

MR. PARRINO: Yes, that will be fine.

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

(Thereupon a recess was taken at 2:40 o'clock, p.m., after which at 2:55 o'clock, p.m., the following proceedings were had:)

CROSS-EXAMINATION OF DR. CHARLES ELKINS

By Mr. Parrino:

Q Now, Dr. Elkins, if at any time during my questioning you want to stop for a moment, you feel free to do so. And if

I am going too fast at any time, please tell me and we can take it slowly.

A Thank you, sir.

Q Now, how long have you known Sam Sheppard?

A I can't state exactly.

Q Well, how long did you know him before the 4th, approximately?

A Well, I will say two years. I can't be exact on it.

Q And you would associate with him from time to time at various places, is that correct?

A Would you repeat that?

Q I say, you would associate with him from time to time in various places, isn't that a fact?

A No, I wasn't associated with Sam Sheppard.

Q I don't mean professionally, I mean socially.

A No, I wasn't particularly socially acquainted with Sam Sheppard.

Q I see. Well, did you have any contact at all with him?

A Yes, sir.

Q And what was that, please?

A Upon occasion Sam would ask my advice.

Q I see. Now, on the 4th, what time was it that you came to the Bay View Hospital, approximately?

A Approximately six o'clock in the evening.

Q And on whose request was it that you came to Bay View Hospital?

A Steve Sheppard.

Q Now, you state that your first examination was not a meticulous one, isn't that a fact?

A That's what I stated, yes.

Q Yes. It was a cursory examination of the patient, is that correct?

A Well, I wouldn't say it was cursory. That would require a definition.

Q I see. Well, it was not meticulous, in any event?

A Let us say that the examination was sufficient for me to determine what I wanted to determine at that specific time.

Q Well, here just a few moments ago, Doctor, on your direct examination by Mr. Corrigan, you stated, did you not, that it was not a meticulous examination that you made on July 4th of 1954, isn't that correct?

A If I stated that, it's in the record, Mr. Parrino.

MR. CORRIGAN: I don't recall
him saying that.

MR. PARRINO: I'd be glad to
check the record, if you want, Mr. Corrigan.

MR. CORRIGAN: Oh, I won't check
the record. Let it go.

MR. PARRINO: You say you don't
recall it. I'd be glad to have the record
checked, if you want to.

MR. CORRIGAN: Don't waste the
time checking the record.

MR. PARRINO: All right.

Q Now, Dr. Elkins, as I understand the medical definition of shock, it is said to be an acute circulatory failure of the -- or, an acute peripheral failure of the circulatory system, is that correct?

A That requires a qualification. There are several types of shock.

Q Well, let us speak for a moment of traumatic shock and of exposure shock. What is that exactly?

A Well, now, you ask a question, and let's divide it again.

Q All right. Take the one first.

A Traumatic shock?

Q Yes. All right.

A There is a difference between traumatic and exposure shock.

Q All right. We'll take them one at a time, please.

A Without going into a long lecture on traumatic shock and the various substances which are liberated into the blood stream after injury, traumatic shock is simply this: That secondary to injury, which usually must be severe injury, the patient becomes pale, there may be profuse perspiration, the blood pressure usually falls from its normal -- or the patient's normal, let's put it that way, range; the pulse speeds up; the respirations become shallow

and may even be embarrassed labored respirations.

Q Why does blood pressure fall, Doctor?

A Well, again, without going into a long dissertation on the theories of shock, let me point out this: That no one knows absolutely what shock is. I mean almost every half a dozen years there is a theory of shock. Now, one of the prevalent theories is that secondary to an injury there is a substance liberated into the blood stream, a chemical, which by its action alone causes the falling of the blood pressure.

Q I see.

A That, Mr. Parrino, is a theory, sir.

Q Yes. Now, are there other reasons that you know of, medically, as to why blood pressure falls?

A Yes, sir.

Q Would you state them in a general way, please?

A In a general way, if an individual would receive a severe -- a blow of sufficient intensity to damage certain centers at the base of the brain, the blood pressure would certainly fall because here is a center -- there is a center for blood pressure at the base of the brain, there is a center for pulse, there is a center for respiration. These are known as vital areas, and they are located, generally speaking, at the base of the brain in the medulla oblongata.

Q Now, you say that the pulse increases?

A Its rate increases.

Q And what is the reason for that?

A There are certain compensatory mechanisms, Mr. Parrino. If the blood pressure falls, in order to compensate for the falling blood pressure, nature has provided the human being with a compensatory mechanism which increases the pulse rate. In other words, the same amount of blood is to be delivered and it has to be delivered some way, so if the blood pressure falls, the pulse rate increases and there is an effort for nature to deliver the same amount of blood or the blood that is sufficient to supply the organs of the body.

Q Now, what is the normal blood pressure for a person 30 years of age, about six foot tall and about 180 pounds, would you say, approximately?

A I think the insurance statistics point out that that blood pressure is measured somewhere around 120 millimeters of mercury as the systolic pressure, and the diastolic pressure would be 80 millimeters of mercury. We ordinarily say 120 over 80.

Q And what would be the pulse for a person in that same range, average pulse?

A The average pulse, with all other things being equal, should be between 72 and 80 beats per minute.

Q And what of respiration?

A I believe that the normal respiration is somewhere around

16 per minute.

Q Now, Doctor, I am going to state to you that there has been evidence in this case that Sam's, Dr. Sam Sheppard's respiration, normal respiration, as a matter of fact, is approximately 16 per minute. And will you keep that in mind, please? And that Sam's pulse is normally about 80 per minute, and that his blood pressure is approximately, his normal blood pressure, before the 4th was approximately 115 over 74.

Do you have those figures in mind, sir?

A Respiration, 16 per minute; pulse, 80 per minute?

Q Yes, sir.

A Blood pressure 115 over what?

Q 74.

A 74. All right.

Q Now, Doctor, will you look at this Defense Exhibit YYY, referring to Page 6 of this report, you have here blood pressure and pulse taken at various times on that morning, is that correct, at 7 o'clock, 8 o'clock, 9 o'clock, 10 o'clock, 11 o'clock and 12 o'clock, do you not?

A This is not my writing, Mr. Parrino.

Q No, no. I understand that, of course. I don't mean to infer that. I am just showing you a hospital record. That's not your writing, but certain information appears in this hospital record that is not yours, of course.

A All right. It's there. It isn't mine. It's there.

- Q Yes. I don't mean to infer, sir, that you compiled this report. As a matter of fact, here I think we have Dr. Carver, and Dr. Carver's name here at the bottom of this page, Dr. R. Carver, D.O. You had nothing to do with that.
- A Yes.
- Q Your report is way over on Page 12, right?
- A Yes, sir.
- Q And 13. And those are the only two reports that we have in here that belong to you, right?
- A Yes, sir.
- Q Now we are referring to another report here prepared by another physician in the hospital. Do I make myself clear?
- A Yes, sir.
- Q All right. Now, 115 over 74; pulse, 80; respiration, 16, normal.

Now, would you look at the readings of pulse and blood pressure there between the hours of 7, 8, 9, 10, 11 and 12.

Now, do you have an opinion, Doctor, as to whether or not during that time, indicated on that chart between 7 in the morning and 12 at noon, that individual was suffering from traumatic shock?

- A Mr. Parrino, I am going to reserve a prerogative which I think I have, that I am not, in the first place, responsible for anybody else's observations or anybody's signature on a

chart but my own.

Q Of course.

A But I understand that you are presenting to me a series of figures. I don't know whether they belong to Sam Sheppard or anybody else. I don't know whether they belong to you. I understand that these are --

Q Well, they don't belong to me, Doctor. I want you to know that.

A Well, I'm just pointing out that; they certainly don't belong to me, either.

Q Yes. All right.

A But I'm pointing out that these are not my observations, and I don't think that in all fairness I ought to be forced to express an opinion on somebody else's observations.

Q Doctor, I am not forcing you to do anything. I am merely --

A All right. Then I have no opinion.

Q You have no opinion?

A No.

Q Now, Doctor, are there any reflexes that can be controlled?

A Would you repeat that again?

Q Are there any reflexes that can be controlled? Can an individual control certain reflexes?

A By definition, a reflex cannot be controlled. This is an automatic response to a stimulus.

Q Well, are there reflexes that can be faked?

MR. CORRIGAN: Can be what?

MR. PARRINO: Faked, the term you
used, Mr. Corrigan, fake, f-a-k-e.

MR. CORRIGAN: All right.

A Yes, sir.

Q And how many reflexes that you know of are there that can
be faked?

A I don't know the number, sir.

Q But there are several?

A Several.

Q All right. Now, you have described the cremasteric reflex,
have you not, sir? In a general way?

A Yes, sir.

Q Isn't it true, Doctor, that there are some male -- there are
some males in which the cremasteric reflex is normally
absent?

A Yes, sir.

Q And in what percentage of the male population is the --
in your experience -- is the cremasteric reflex normally
absent?

A I can't answer that question, Mr. Parrino. I don't have
the percentages.

Q You haven't made a special study?

A No special study.

Q But you do know from experience, probably in the Army to

some extent, that in some males the cremasteric reflex is normally absent?

A Yes, sir.

Q And where it is normally absent, there need not be necessarily any evidence of brain injury or -- brain injury, right?

A That's correct, sir.

Q And there need be no evidence of nervous system disease?

A That's correct, sir.

Q Or of spinal cord injury?

A That is correct, sir.

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- Q Now, in other words, Doctor, the absence of the cremasteric reflex in and of itself, to you as a doctor, doesn't mean very much? Is that a fair statement, sir?
- A Would you again --
- Q It was badly put. The question was badly put.
- A Yes, it was sort of jumbled up.
- Q Now, the absence of the cremasteric reflex, in and of itself, doesn't have any great importance, is that right?
- A I will answer it this way, and I think this is what you mean: If the cremasteric reflex were the only thing absent, in all probability it would not be significant.
- Q Are there other reflexes, Doctor, that are normally absent in certain individuals?
- A In certain individuals, reflexes may be normally absent.
- Q Thank you, Doctor. Now, where you have a case of injury to the brain, in your experience, have you not found that the use of morphine is contra-indicated, Doctor?
- A Mr. Parrino, I will have to again qualify that. That statement is written in all the text books, and everybody --
- Q Before we get to that. What does that mean, that the use of morphine is contra-indicated in cases of brain injury?
- A Oh, excuse me. I was just going to go into that.
- Q All right. Thank you very much.
- A It has been written that the use of morphine is contra-indicated in brain injury for two main reasons:

One, that it fixes the size of the pupils, and remember we went into the size of the pupils before, so that later on in the patient's course, if complications set in which would result in a change in the size of the pupils, the use of morphine fixes the pupils so it won't change to this light and accommodation business we talked about.

Furthermore, it is written that the use of morphine is contra-indicated in head injuries because it lowers the level of consciousness of the patient and the level of consciousness of a patient is a most important thing in the evaluation of whether this patient needs surgery, whether he is going to live, whether he is going to die, in other words, what is happening to the patient, so that the use of morphine is written that it is contra-indicated.

This statement is written, and must require qualification, because I have found that upon the occasion that the judicious use of morphine in head injuries is very valuable, provided the surgeon knows what he is doing and knows what to look for.

Q I see. In other words, where you have brain injury or where you have a concussion, a person has been rendered unconscious in some instances, isn't that correct, Doctor?

A Again repeat it. I'm sorry.

Q Where you have a concussion, or that results in some brain

injury, you often learn that a person has been knocked out or rendered unconscious, right?

A Yes, sir.

Q Now, as he is revived, where you have a bona fide case of brain injury, there is always a possibility that that person may revert back into unconsciousness? That is always a possibility, isn't that right?

A That is a possibility, yes.

Q And since that is a possibility in cases of concussion or brain damage, the use of morphine is, generally speaking, not indicated, because the morphine may tend to render that person unconscious or put him asleep, so that if he were in that sleep it would be difficult for a physician to determine whether that sleep is due to the morphine, or whether it is due to the injury to the brain?

Now, I don't know that I have put it very well, but do you understand what I mean?

A Well, you put it exactly like I put it a few minutes ago.

Q And that is the way a layman would put it, I take it?

A Well, it was pretty accurate, really.

Q In other words, where you have brain injury, where you have concussion, if you give a person morphine and he is out, appears to be asleep, you don't know as a physician whether he is unconscious because of the morphine or because of the brain injury, that is generally the situation, right?

A I mean, are you asking me whether I don't know the difference between morphine or not?

Q No, no. I say, that is the reason why the use of morphine is contra-indicated where you have brain injury or concussion, isn't that correct?

A I would say that your statement is generally correct, but again I have qualified the thing in saying that I don't always agree with that statement.

In my hands, morphine may be used judiciously.

Q Now, did you prescribe -- withdraw that.

After you were there on the 4th, what time did you leave there that day, Doctor, the hospital, that is?

A I can't tell you --

Q Approximately.

A -- the exact hour. I imagine I was there about an hour.

Q About 7 o'clock, maybe a little later?

A About 7 o'clock, maybe a little later.

Q And did you prescribe morphine for Dr. Sam on that night?

A I don't believe I wrote any orders. I may be wrong. I can look at the chart. I can verify it.

On my consultation, I advised, "Urge fluids and sedation."

I can look at the order sheet. I don't recall writing any orders. Did I?

Q I don't know, Doctor. Take as much time as you wish.

There may be some.

A Mr. Parrino, here is the order sheet, as I see it, for the 4th of July --

Q Is this your order sheet, Doctor?

A No, sir. I haven't got my name on this, so I will answer your question. I didn't prescribe for him.

Q One-quarter grain of morphine -- withdraw that.

What is morphine, by the way?

A Morphine is an opiate, a derivative of the poppy, which has peculiar properties in deadening pain.

Q And what does it do to an individual?

A If an individual is in pain, morphine, as an analgesic will decrease the pain.

Q Now, one-quarter grain of morphine, is that a substantial dose for the average person, in your opinion, Doctor?

A I should think that a quarter- grain of morphine in an adult is the average dose.

Q And what would you say as to one-half grain of morphine?

A It depends upon the situation as to even a half-grain of morphine, depending upon the situation, that might be a small dose.

Q Well, did you prescribe the use of one-half grain of morphine for Dr. Sam on the night of July the 4th?

A I don't believe I wrote any orders.

Q All right. So that you did not?

A Insofar as I know, I didn't.

Q Now, in evaluating injuries, you have stated that you consider two things: The subjective complaints of the patient, on one hand, and what you are able to find yourself objectively on the other hand, is that correct?

A That's correct.

Q And the subjective complaints are those things which the patient orally states to you, isn't that correct?

A That's correct.

Q Now, as you saw Sam for the first time on the 4th, you have stated that your first job was to determine the extent of the injuries?

A I believe I stated that my job was to evaluate the patient.

Q Now, you said something about checking to see if he was going to live or die, is that correct?

A That's right.

Q Had anybody given you the impression that Sam was about to die?

A I don't believe so.

Q From whom did you receive the call, again, please, to come to visit -- to see Sam?

A Steve Sheppard.

Q What time was it that he called you?

A Well, if I got there at six o'clock, it was about 15 minutes before, depending on what time I got there. I left

home immediately and went out there.

Q Do you live around there?

A I lived on Beachcliff, yes.

Q And what did Dr. Steve state to you when he spoke to you?

A As near as I can recall, Steve told me that Sam had been badly hurt, and that he wanted me to see him.

Q Is that all he said?

A That is all I can recall.

Q Now, when you got to the hospital -- of course, you didn't take your medical bag with you to the hospital, did you?

A No, sir.

Q That is not generally done by doctors who are experienced that go into a hospital, is it, Doctor?

A Well, I don't carry a medical bag.

Q Now, where did you first go when you went into the hospital? Directly into Sam's room?

A I believe directly to the room.

Q And you examined Sam, did you?

A Yes, sir.

Q And who was present at that examination?

A I believe Steve was there, and if I recall correctly, at one time or another his brother Richard came into the room.

Q Was Sam coherent at the time you saw him there for the first time?

A As I stated in my first line, "Sam is alert and answers

questions lucidly," sir.

Q He did not seem to be confused, did he, Doctor?

A Sam was not confused.

Q And when you say that he is alert -- "Sam is alert and answers questions lucidly," we can take those terms to mean what they mean generally to the layman, isn't that correct?

A Yes, sir.

Q And he didn't appear to be in any particular pain at that first interview, did he, Doctor?

A Well, I have got it stated down there, "He complains of occipital headache," Mr. Parrino.

Q Oh, yes. Other than the headache?

A That's correct.

Q Other than the headache?

A Yes.

Q And you say on this first report of the 4th, on page 12, "There is a swelling of the right periorbital tissue. Pupils are equal and react," is that right?

A Yes.

Q "Moves all extremities well."

A Yes, sir.

Q He didn't complain of any pain anywhere in his arms or legs, did he?

A I don't believe so.

Q "No Babinski's," right?

A Yes.

Q And, "He has voided."

A Yes, sir.

Q Now, you say if he had not voided that would mean something to you as a doctor, is that correct?

A That's correct.

Q And what would that mean to you if he had not voided during the day?

A Well, it would, of course, depend upon the time element. I mean, if he hadn't voided four hours before, it wouldn't mean anything. If he hadn't voided in 24 hours, or 12 hours, or whatever the time is, I would begin to wonder what was going on, and I would have examined his bladder to see if it was full.

Q So that the statement to you that he had voided indicated that there was no immediate injury to the brain?

A No, sir, it didn't mean that at all. My statement means that I asked Sam had he voided, and he said yes.

Q And you say, "He complains of occipital headache, cervical collar in place, neck not examined."

A Yes, sir.

Q And as a result of that, you have "Impression: Cerebral concussion"?

A Yes, sir.

Q Now, is it true, Doctor, that the only evidence of cerebral

concussion that you have as a result of that examination, that first examination, is what Sam, the patient, told you?

A That is correct, sir.

Q There is nothing in this first -- withdraw that.

There was no objective test or finding by you on that first examination that would indicate that he had a cerebral concussion, is that correct?

A There is no object sign that I elicited on the first examination which would make it positive that Sam had a cerebral concussion, except for the fact that he told me that he was unconscious, and I had no reason to doubt it.

Q Yes, of course. Now, did Sam tell you how long he was unconscious, Doctor?

A No, sir.

Q Did he tell you where he was unconscious?

A I don't believe so.

Q Did he tell you anything about the events that had occurred to him that night or the night before?

A As I recall --

Q At that time.

A At this time, as I recall, in taking a history, I said, "Sam, what happened?"

And as I recall, he said that he was struck in the region of the neck by an intruder in his home, and that he was unconscious, and that is all, the further I went into

history.

Q You didn't ask him how he was struck or by what he was struck?

A No, sir.

Q Or describe the person or any of the details? You were not interested?

A No, sir. I was his doctor. I was not his lawyer.

Q Now, this examination that we have here on page 12 of your report of the 4th, was a complete explanation as to everything that you had done with Sam on that day, isn't that correct?

A Mr. Parrino, this was a preliminary evaluation of a patient.

Q Now, you did not examine his abdominal reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his cremasteric reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his biceps reflexes on that occasion, did you, Doctor?

A No, sir.

Q You did not examine his triceps reflexes on that occasion, did you, Doctor?

A No, sir.

Q Now, Doctor, if Dr. Stephen Sheppard stated that on that

first occasion of the 4th, in his presence, that you examined the abdominal reflexes of Sam Sheppard, that would not be true, would it?

MR. CORRIGAN: Wait a minute.

Object to the question.

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

Q And if Sam Sheppard testified that you examined the cremasteric reflexes, the abdominal reflexes, the triceps reflexes, and the biceps reflexes, on the 4th, the first time that you were there, that would not be true, would it?

MR. CORRIGAN: Object.

THE COURT: Objection sustained.

Q The fact of the matter is, Doctor, as you have fairly stated, you were making a preliminary examination there on the 4th, isn't that correct?

A Yes, sir.

Q And that in no way could be fairly determined by you to be a complete, thorough and painstaking examination of the patient, could it?

A Mr. Parrino, I was called in as a specialist. I did an examination that I thought was indicated to satisfy myself of this individual's condition.

Q Yes, but if Dr. Stephen Sheppard testified here under oath that you, on that first occasion, made a painstaking,

thorough and complete examination of the patient, that would not be correct, would it, Doctor?

MR. CORRIGAN: Object. It is the same question over again.

THE COURT: I think he may answer that.

A The only way I can answer that is that I again am not responsible for anybody's statements.

Q We understand that, Doctor, of course. But when statements are made in this courtroom as to things that you are alleged to have done, and did not do, and quite fairly, then we feel that we have the right to discuss these questions.

MR. CORRIGAN: Object.

A You have the right to ask, and all I can say again is that I am not responsible for anybody else's statements. My examination is my own, and I was as thorough as I thought indicated at the time.

Q What you are saying, Doctor, is that you are not responsible for the statements made by Sam Sheppard -- by Stephen Sheppard in this courtroom under oath, isn't that correct?

A That is quite correct.

Q Now, did you see Sam Sheppard again on the 5th?

A I believe I did.

Q Well, do you remember as a fact that you did, or, I mean, do you just feel that you did?

A Yes, sir. I saw him on the 5th.

Q Do you recall what time that was?

A I think it was around -- oh, it was before noon.

Q And you didn't make any report on that, of course?

A I did not make any notes on that occasion.

Q And who was present -- withdraw that.

Were you called on that occasion to come to the Bay View Hospital?

A I had been invited to take care of Sam as his doctor insofar as his nervous system is concerned, and it was my usual custom to call on my patients as often as I think indicated.

Q Now, before we get to the 5th, Doctor, as the result of your examination of Sam Sheppard on the 4th, did you feel, as his consulting physician, that he could not be subjected to questioning?

MR. CORRIGAN: Object to that.

THE COURT: He may state whether
he --

MR. CORRIGAN: Whether he felt --

THE COURT: -- whether it was
his opinion that his condition was such that he
couldn't be subjected to questioning. I think
that is all right.

A Will you state it again, Mr. Parrino?

Q I will repeat it. As a result of this examination of the

4th, was it your opinion, Doctor, that Sam Sheppard should not be subjected to extensive questioning?

A No, sir.

THE COURT: He may answer that.

Pardon me, I thought you objected. There is a little echo, and I wasn't sure whether you objected.

THE WITNESS: I said no, sir.

Q Was his physical condition such, in your opinion, that he could be subjected to questioning?

MR. CORRIGAN: I object to that.

Now we are getting into the realm of speculation.

MR. DANACEAU: It is not speculation.

He is your expert doctor.

MR. MAHON: It is his opinion.

THE COURT: That is a rather sharp issue here. I think he may answer that as to what his opinion is. He is an expert. He examined him.

MR. DANACEAU: That's right.

MR. PARRINO: Would you read the question?

(Question read by the reporter.)

A Well, I will answer this by saying that I questioned him, talked to him.

Q So that you feel that he was in good enough shape on the 4th when you saw him so that he could answer questions?

A He could answer questions.

MR. CORRIGAN: When did he refuse?

Q Did you ever advise Stephen Sheppard, Richard Sheppard, Sr., Richard Sheppard, Jr., that as a result of your first examination, Sam could not physically stand up to any extensive questioning?

A Mr. Parrino, I have never -- I had never to anyone made the statement that Sam Sheppard could not be questioned at any time from the first time I saw him until the last.

Q Now, on the 5th, you were there at or about 12 o'clock?

A Before noon.

Q And was Steve Sheppard there that day?

A I don't recall, sir.

Q Did you examine any of Sam Sheppard's reflexes on that day?

A I don't recall, sir. I made no note.

Q Did you talk with Sam that day?

A Yes, sir.

Q And I take it you didn't make any note of any conversation between you?

A No, sir.

Q You made no entry into the chart as to anything you did there on the 5th, right?

A Unless it is there. I mean I haven't seen this, you see.

for a long time.

Q Well, you can look at it, if you wish.

A Well, if it is there, you will show it to me. No use me looking for it.

Q Then you returned on the 6th?

A Yes, sir.

Q Did you see Sam on the 7th?

A Yes, sir. Let me qualify this. The 7th was Wednesday, am I correct?

Q I think so, yes.

A Yes.

Q At the hospital?

A Yes.

Q And you made no entry of that on the chart?

A No, sir.

Q Did you see him on the 8th? I think that's the date he was discharged, Doctor.

A I don't know. If you will refresh my memory of the date of the funeral --

Q I think the funeral was on Wednesday, the 7th, and he was discharged from the hospital on Thursday, the 8th.

A I don't believe that I saw him after that -- after the 7th.

Q You were not consulted, then, prior to him being discharged from the hospital, were you?

A No, sir.

Q When was the next time after the 8th that you saw Sam?

A I believe you mean after the 7th, don't you?

Q After he was discharged -- I'm sorry. Excuse me. The last time you saw him was the 7th. When was the next time you saw him after the 7th?

A On August 6th.

Q You were not called upon to examine him at any time between July the 7th and August 6th? Right?

A No, sir.

Q Now, here on July 6th in your report on page 13, it is stated that the plain --

A That is "Pt." That is "Patient."

Q We lawyers refer to it -- I thought it was "Plaintiff" for a moment.

"The patient complains of urgency of urination and this morning, when attempting to pass gas, soiled his sheet with fecal material." Right?

A Yes.

Q You didn't see that, did you, Doctor?

A I saw the fecal material.

Q Was he still in bed at that time, or how --

A He moved around.

Q What?

A He showed it to me.

Q "And he also complained of numbness over the ulnar

distribution," is that correct?

A Yes, sir.

Q Now, that is a subjective complaint, is that correct?

A Yes, sir.

Q Now, when he complained of that to you, as I understand it, the ulnar distribution is this -- is all of this small finger and one-half of the fourth finger, is that correct?

A That's correct.

Q Is that where the -- is that the area where it occurred?

A Right there (indicating).

Q And where you have the numbness over the ulnar distribution, left, we are talking about this area here, right?

A Correct, and up further.

Q Up a little farther?

A Up a little (indicating).

Q Now, did you check that in some way objectively, Doctor?

A I examined it at that time, as I have stated, with a pin, and tested pain sensation.

Q Did I understand you to say that it is something that can be faked?

A This is something that can be simulated, the loss of sensation.

Q How can that be done, Doctor?

A Well, it is simply that you test a patient for pain, you ask him, "Does this hurt you, and do you feel this as a

pin prick?"

And normally the patient will respond -- if the patient is normal, he will respond, "Yes, I feel it is a pin prick."

And you compare one side with the other.

If the patient says, "No, I can't feel it," again, as I have stated before, the examiner can't feel the patient's pain, so the patient can lie and can simulate the loss of sensation, although sometimes it is pretty tough.

Q Now, then, Doctor, you say here that "Cervical X-rays show chip fracture, spinous process, C-2," is that correct?

A That is what I have written.

Q Now, did you see the X-rays of that fracture?

A I was --

Q Let me put the question this way: Did you see any X-rays that morning of the 6th of Sam's cervical vertebra?

A Yes, I believe I did.

Q And did you evaluate what you saw?

A Yes, sir.

Q And what is your opinion, Doctor, as to whether or not you saw a fracture of the spinous process of the second cervical vertebra?

A I did.

Q Was there a fracture there, Doctor?

A I can't say whether there was a fracture there. I saw a set of X-rays which showed a defect in the spinous process of the second cervical vertebra, and at the time, I made the statement that this looked like a fracture, I couldn't tell whether it was recent or old, but that it had looked like a fracture, and I advised -- and I believe this to be correct, although I can't be sure -- these X-rays were taken with Sam's collar in place, and I advised repeating the X-rays without the collar. In other words, I was not certain of this thing.

Q Now, these pictures ~~are~~ X-rays that you looked at, were those the X-rays that had been taken on the 4th?

A I believe they were the first set of X-rays. I can't recall whether the date was on the X-rays or not.

Q I see. Well, let's go back to the 4th, Doctor. At six o'clock on July the 4th did you examine any X-rays of Sam's neck on the 4th?

A I believe that those were the X-rays which I have just described, showing this defect in the spinous process.

Q Well, on the 4th, did you examine any X-rays of Sam's neck?

A I believe I did. These are the ones I just described.

Q And that is what you are talking about on your report of the 6th, is that correct?

A I believe that is correct.

Q So that on the 4th -- withdraw that.

The entry that you have here as to July the 6th was actually a finding that you made on July the 4th, is that correct?

A I suppose it is, yes.

Q Now, those X-rays of July the 4th, do I understand you to say there appears to be some defect in that X-ray picture, is that correct?

A State that again, Mr. Parrino.

MR. PARRINO: Read the question.

(Question read by the reporter.)

A Yes.

Q And what was the defect in that X-ray picture that you saw that was taken on July 4th?

A The particular defect to which I am referring is a particle -- a small particle of bone which was separated or seemed to be, let's put it that way, seemed to be separated from the main body of the spinous process of the second cervical vertebra.

Q And you say that you thought that to be a defect in the picture?

A No, I didn't say that. I said that this piece of bone seemed to be separated from the main body of the spinous

process of the vertebra, and I again repeat that I concluded that this looked like a chip fracture -- that is a common term for a little hunk o f bone -- it looked like a chip fracture, but that I couldn't tell whether it was recent or old from looking at the picture, and advised, since I was uncertain of the thing, that the X-rays be repeated without the collar.

Q And did you advise that on the 4th?

A As near as I can recall, I think that was -- I looked at these X-rays on the 4th, as near as I recall, and I said, "Well, you have got to repeat them because they were uncertain."

Q So that, in other words, putting it briefly, there was something about those X-rays of the 4th that caused you to state that those pictures should be repeated, isn't that correct?

A Correct.

Q There was some degree of uncertainty there of what you saw, in your mind, isn't that correct?

A I was uncertain -- I'll put it that way. It looked like a fracture to me, but I was uncertain whether it was recent or old.

Q Now, did you at any time see another set of X-rays of the same area after that, Doctor?

A Yes, sir.

Q And when did you examine those X-rays?

A The only time that I can specifically recall examining was on the 7th, when Dr. Gerber and I looked at them together. We took the whole bunch together.

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Q And looking at those X-rays on the 7th of the neck, did you find any fracture in the same area?

A In the second set of X-rays this defect was not present.

Q I see. Now, you say you advised that another set of X-rays be taken on the 4th, is that correct? Who did you advise? Was it Dr. Steve?

A As near as I can remember, we were in the X-ray department with their X-ray man, and I can't be specific, but I should guess that Steve was present.

Q I see. Now, in this report here of the 6th, Doctor, you say, "Lumbar puncture done this morning. Demonstrates clear fluid with normal pressure, 150 --"

A Millimeters.

Q -- "of spinal fluid and normal dynamics."

A Correct.

Q What does normal dynamics mean?

A In certain diseases of the spinal cord, such as tumors and in certain injuries, the spinal cord swells to the extent that it blocks the fluid pathway. Now, the fluid pathway actually can be described as the spinal fluid which is formed in the lateral ventricles or normal openings of the brain through the choroid plexuses and is distributed through the third ventricle and the aqueduct of Sylvius and the fourth ventricle out through the foramina of Lushka and Megendie over the surface of the brain down in

the subarachnoid space of the spinal cord, and is absorbed mainly through the veins all over the surface of the brain. This circulation may be interfered with in a situation of neoplasms or tumors of the spinal cord or hemorrhage, in so far as that by pressing upon the jugular veins with a needle in place in the low back, the normal response is that the pressure is transmitted upwards through the jugular veins, is transmitted to the spinal fluid and is recorded in a spinal fluid monometer, and the pressure is ordinarily measured in millimeters of spinal fluid or water. It sometimes may be measured in millimeters of mercury. In this instance, I was trying to determine whether or not a block due to injury was present in between my needle, which had been inserted in the low lumbar region, and the jugular vein, because that is the direction of the transmission of pressure.

Q Was there any block there, Doctor?

A There was no block, as I quote.

Q In other words, that is what you mean --

A By normal dynamics.

Q All right. Now, you say that the spinal fluid pressure is normal, is that correct?

A Yes, sir, that's correct.

Q Now, was there any blood found in his spinal fluid, Doctor?

A I received a report from the laboratory, and I think the

report is on the chart, and I can read it.

"There is one crenated red cell," which probably is a normal finding.

Q I see. In other words, the finding of one crenated blood cell in Sam's spinal fluid is a normal finding, isn't that correct?

A It can be normal, yes. Let's put it: It's not abnormal.

Q All right. Now, as a result of all of your examination there of the 6th, you have here "Impression"?

A Yes, sir.

Q "Cervical spinal cord contusion"?

A Yes, sir.

Q Now, what is a contusion, Doctor?

A A contusion may ordinarily be described as a bruise.

Q In other words, you felt that there was a bruise of the spinal cord, is that correct?

A Yes, sir.

Q Now, was that your total diagnosis as to injury that had been done to Sam, in so far as his spinal cord and brain was concerned?

A Again, will you please repeat that? Was my total what?

Q Was that your total findings as to injuries to the spinal cord and to the brain?

A No. I have many other findings listed there.

Q Well, what is an edema of the brain, Doctor?

A Edema is swelling.

Q And in this report here, do you have any notation of edema of the brain?

A I don't believe so.

Q In your examination of Sam, was there any edema of the brain?

A I couldn't determine that from my examination.

Q You found none, so far -- withdraw that.

You say from the examination that you made and were able to make, you found no edema of the brain? Is that a fair statement, sir?

A No, that is not a fair statement, because you got to see edema, and the only way to see it is open the head.

Q I see. Now, nobody opened Sam's head here, did they?

A No, sir.

Q Will you excuse me for a moment, please?

A Surely.

MR. PARRINO: May I have a moment, please, Judge? Just a moment, please.

THE COURT: Yes.

Q Now, as a result of seeing Sam as you did, Doctor, did you prescribe anything for his injuries, what could be done to help him?

A I believe the only -- can I have that chart again, Mr. Parrino?

Q Yes.

A On my first report on the 4th, I prescribed or advised bed rest and sedation, and I made no other recommendations, at least I made no recommendations in writing.

Q I see. In other words, on the 4th you stated --

A Fluids and sedation.

Q What you advised for Sam on the 4th was fluids and sedation?

A Sedation.

Q And apparently rest, which is not on here?

A That's right.

Q And on the 6th, after that examination, you made no recommendation?

A I wrote no recommendations down.

Q By the way, Doctor, do you have that list of findings that you performed on the 6th, on August 6th?

(Witness hands paper writing to Mr. Parrino.)

Q Thank you very much.

MR. PARRINO: You can go back to Arizona now. That's all.

MR. CORRIGAN: Doctor, there's just a couple of questions that I want to ask you.

REDIRECT EXAMINATION OF DR. CHARLES ELKINS

By Mr. Corrigan:

Q Your diagnosis that you made was independent of the X-rays,

was it not?

A Yes, sir.

Q And a trained neuro-surgeon like you, who has had all your experience, can make diagnoses of brain injury and spinal cord contusion and nervous derangement without X-rays, can't you?

A Yes, sir.

Q Mr. Parrino asked you about shock, and he gave you dropping of the blood pressure, raising of the pulse, clammy body, and so forth. Those things are not shock, are they, Doctor? Aren't they just the results of shock?

A I would say that's a fair statement.

Q Yes. And the question of what shock itself is, as a medical term, has never been clearly defined by the medical profession?

A I tried to indicate that by pointing out that there are many theories.

Q Doctor, you are familiar with the writings of Dr. Crile, are you not?

A Yes, sir.

Q And you know that he worked all his life trying to define shock?

A Yes, sir.

Q And that he come up with an answer towards the end of his life that shock had something to do with the diminution of

the nervous energy that is in a person, that the cells are like a storage battery storing up energy and something happened to separate that energy from the cell; do you remember that?

A This is familiar to me. I can't be specific on it, sir.

Q What?

A This is familiar to me, but I cannot be specific in answering.

Q What I state sounds familiar?

A It sounds familiar, yes, sir.

Q All right. Now, then, Mr. Parrino says the mere absence or the absence of a cremasteric reflex in itself indicates nothing. Do you remember that, it may indicate nothing?

A Yes, sir.

Q That is, Doctor, if I would walk into your office in the normal condition I am today and I say, "Examine my cremasteric reflex," and you didn't find it and that is all you knew about me, or that's all you inquired about me, that wouldn't indicate very much, would it?

A No, sir.

Q It wouldn't indicate anything?

A No, sir.

Q But if you have an injured man and a man who obviously is injured, and the cremasteric reflex is absent, and then you examine him again, say, a month later and find that the

cremasteric reflex is present, does it indicate anything?

A That, to me, was significant.

Q And that's just what you found here, wasn't it?

A Yes, sir.

Q Now, on the 7th, you say you were there and you met Dr. Gerber?

A Yes, sir.

Q Did you tell Dr. Gerber on the 7th, the Coroner of this county, just what you found wrong with Sam Sheppard?

A I believe I did, sir.

Q Were you subpoenaed to the Grand Jury?

A I was not, sir.

Q Were you subpoenaed to the inquest?

A I was not, sir.

MR. CORRIGAN: That is all.

MR. PARRINO: That is all,

Doctor. Thank you very much.

(Witness excused.)

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