

CROSS EXAMINATION OF DOCTOR SAMUEL R. GERBER

By Mr. Bailey:

Q Doctor Gerber, you prior to July of 1954 had had experience with quite a number of homicide investigations, had you?

A Yes, sir.

Q About how many would you estimate, roughly?

A Well, from -- oh, around two thousand.

Q I assume you had been involved on prior occasions in bludgeonings such as this one?

A Yes, that type of violence, yes, sir.

Q This wasn't the first case of this type that you ever investigated, was it?

A No, sir.

Q When you arrived on the morning of July 4th, 1954, you said you got there at about 9:00 o'clock, was it?

A I beg your pardon. I said ten minutes to eight.

Q I am sorry, that's right, you did. You saw Officer Schottke and Gareau then?

A I didn't say that.

Q I am asking you what time you saw them, if you recall?

A I do. I saw them just around 9:00 o'clock.

Q What time did you go to the hospital to see Doctor Sheppard?

A I left shortly -- I saw them just as I went to the hospital, which was around 9:00 o'clock.

Q Did you have any time to converse with them prior to your departure for the Bay View Hospital?

A Not to any degree. What I can remember was, "What is happening, you know what to do, you have been around long enough, go ahead and do what you think you should do."

Q So you gave them no specific instructions but relied on their expertness?

A Yes.

Q You were gone how long before you returned to the Sheppard house?

A I was gone approximately thirty minutes, forty minutes.

Q Now, immediately upon your arrival I suppose you conferred with some of the people who were already there?

A Yes, sir.

Q Officer Drenkhan, perhaps?

A Chief Eaton was there. He was in charge.

Q Yes. Officer Drenkhan was also there?

A Officer Drenkhan, yes.

Q You learned that he had been a first official on the scene?

A Drenkhan, yes, sir.

Q And I take it you took from him the resume, such information as he had been able to accumulate prior to your

arrival?

A Yes, sir.

Q You talked also with one or both of the Houks, did you?

A I talked to both of them.

Q You inquired of them as to what they had discovered when they arrived first on the scene?

A Not immediately, but I did during that morning.

Q Well, prior to the time you went to interview Doctor Sheppard at the Bay View Hospital, had you learned from the Houks what their experience had been?

A Yes, sir.

Q And you had been up to the murder room before you went to see Doctor Sheppard?

A Yes, sir.

Q By the way, Coroner, did you seal off that room in order to preserve the evidence?

A Physically?

Q Yes.

A No. By instructions, yes.

Q What instructions did you give?

A I gave instructions to Chief Eaton that no one was to be allowed on the premises, in the house, or any place about the house, unless he had direct control of and knew what ^{they} were doing, and unless they were officially investigating the case.

Q Now, had you personally made any search of the

premises between ten minutes of eight and 9:00 o'clock while you were there?

A Just to walk around the lower floor, but a detailed search, no, sir.

Q Having examined the body of the decedent, did you immediately have some idea what kind of instrument it would take to inflict this damage?

A I didn't make an examination that would indicate what sort of a weapon may have been used, or object, until around 10:30.

I satisfied myself that the person was dead, and that she had been assaulted or beaten about the head.

Q And that an instrument had been used, obviously?

A Some kind of an object or instrument, yes, sir.

Q And had you viewed the lacerations?

A No, they were covered with blood and they couldn't be viewed very readily until the face and head had been cleaned up.

Q So that all you could immediately conclude was that somebody had beaten her about the head with something?

A Yes, sir.

Q Did you notice when you first went into Marilyn Sheppard's bedroom a spatter of blood on the walls and ceiling and adjacent bed?

A I noticed some splatters of blood and this was on a

portion of the east wall, and the doors that would be on my right as I walked into the door.

When I got to the foot of the bed, I noticed there was some splatter of blood on the south wall immediately in the vicinity of the head of the bed.

I noticed a couple of blood splatters on the opposite bed, and one blood splatter way over on the southwest end -- on the south wall on the west end.

There was nothing on the west wall, and there was nothing on the north wall.

Q Do you have some photographs of the scene that would help us to examine the blood spatter that you saw?

A There were blood photographs and they were taken by Patrolman Drankhan and Detective Grabowski. Whether they are here or not, I don't know.

Q Do you have any in your office that you can furnish us with?

A Yes, we have copies of the photographs.

Q These are photographs showing the murder room the way it appeared to you on the morning you examined it?

A Yes, sir.

Q Would it be possible when we have our recess for you to get those photographs down here, doctor?

A Yes, sir. Some are already here.

Q Now, you say you observed no spatter on the west wall,

is that right?

A On the west wall -- it could have been an occasional one, but there wasn't, as far as I can remember right now, without refreshing my mind, over toward the west wall there was nothing except on the south wall.

Q Now, did you examine these blood spots in order to make a determination as to how they had gotten on the wall?

A From my --

MR. SPELLACY: May I object and find out what time we are talking about, what day?

MR. BAILEY: The first examination of the room, if it please the Court.

THE COURT: Please proceed.

A From my observation and from what I could see readily, I came to the conclusion they were splatters.

Q It is possible, is it not, doctor, to examine a blood spot on the wall to determine the direction from which it hit the wall, and to some degree the velocity, by the shape of the spot, is that true?

A On occasions.

Q Yes.

A I wouldn't take that categorically as one hundred per cent, but there are in some instances that this can be told.

Q That is to say that when the blood spot hits the wall and almost stops it tends to run a little way and leave a

trail, like a polliwog tail?

A It depends on the quantity that hits the wall or the object you are talking about.

Q Now, did you make an examination of the spots that you could see to determine whether or not they would indicate direction and velocity?

A I turned this matter over to Detective Grabowski and his associates.

Q Then it was not your function on that morning to evaluate and examine the physical evidence in the murder room, is that correct?

A That's right, sir, other than to make observations.

Q Well, as to the wall behind you, that is to say, the east wall which had a wardrobe door, I believe --

A Yes, sir.

Q -- which door was covered with spatters of blood, also --

A Yes, sir.

Q Did you make some specific observations of that door?

A I made observations and I directed that photographs be made of this door.

Q And do you have those photographs, do you?

A They are here some place.

Q Did you notice on that morning, Doctor Gerber, on your first examination that one of the blood spots on that door was quite a bit larger than any of the rest?

A Yes, sir.

Q And did you further notice that its shape was somewhat different than the other spots which appeared on the door?

A Only I -- I noticed that it was larger, and as to its shape, I can't say that I gave it any particular attention to it at that particular time.

Q Insee. Did you at some later time take notice of the difference between the shape of the large spot and the shape of the other spots which appeared on the door?

A Yes, I tried to compare it to some of the smaller spots.

Q And did you determine as a result of this examination that the large spot had struck the door at a much lower velocity than any of the others?

A I wouldn't call it a lower velocity.

Q Did you find any distinction, doctor?

A My conclusion was that it was greater volume, greater mass.

Q Of course, there was a good deal of blood about the room, on the bed, on the person of the decedent, on the walls, and so forth?

A Wait a minute. There was a good deal of blood on the decedent. There was a good deal of blood on the bed.

There were splatters of blood on the door, on the two doors, and on the wall at the head of the bed. I wouldn't

call that a good deal.

Q Perhaps my term is too vague, doctor. There were quite a number of individual spots located on the walls of that room, were there not?

A Yes, sir.

Q Could you give us an approximation of the number of spots?

A No, sir.

Q More than several hundred?

A I didn't count them. The photographs would speak for themselves.

Q Doctor, did you make an effort to determine whether or not any of the blood spots that were seen by you in that room would type out as belonging to someone other than Marilyn Sheppard?

A I didn't, but somebody in our office did, yes, sir.

Q So that I take it these spots were removed and analyzed at some point?

A They were handled, the way the laboratory technicians handle blood. Some were removed, some were not removed.

Q Do you know how many were removed and analyzed for typing?

A No, sir.

Q Well, did you at some time receive a report of the work that had been done in this regard?

A Yes, I did, but not as to the number that were tested. I received a report as to the results.

Q Now, the blood which was on and about the person of the victim was type O, was it not?

A That was reported to me, yes, sir.

Q What about the blood in the rest of the room, do you know what type that was?

A As far as I can remember, it was O.

Q Do you know whether an effort was made to further sub-group any of the blood to see if there was a distinction?

A There was made an effort to sub-group.

I don't know whether it was sufficient to sub-group the wall splatters, but I know definitely the blood of the victim was sub-grouped, and the blood on the sheets, the bed clothes, was sub-grouped.

Q Do you know today, doctor, whether any of the blood which was found in the room was from a type different than that possessed by Marilyn Sheppard?

A As far as I can recall, it had been reported to me there was no other sub-groups, or, no other types.

Q Do you know whether or not the large spot on the wardrobe door which we were discussing a moment ago was tested for type?

A It was not tested.

Q It was not?

A It was not tested.

Q This was the largest quantity of blood anywhere in the room except on the bed and on the person of the decedent, was it not?

A There were other areas of blood there, and I can't say whether this was the largest quantity or not.

My directions were to test what was sufficiently necessary to do, and not disturb anything until such time as it may become necessary.

Q Well, did you direct anyone not to test any individual spots?

A Oh, no, no. I am talking about the whole room now.

Q To whom did you delegate the task of making these examinations and tests in the murder room of the blood?

A The task of testing the blood was under the direction of Mary Cowan.

MR. SPELLACY: Pardon me, doctor?

THE WITNESS: Mary Cowan.

Q Can you tell us whether or not she individually made the tests that we have described?

A q You would have to ask her. I think she is going to be a witness here.

Q Fine. In any event, this is something you did not do personally?

A That's right.

Q Doctor, you found, did you not, in the murder room some other small pieces of physical evidence at some juncture?

A Yes, sir.

Q Can you tell the jury what you found?

A Well, when the body was removed, two chips of teeth were found under the body.

Q These I believe are the chips in the glass jar, which are now numbered three, but we have agreed at the time of the murder were two in number, one of which is quite a bit larger than the other, and I refer to Exhibit 34.

A Yes, and I have a photograph of these if you would like to see them.

Q Well, we will take your word for it that there were two.

One of these is about half a tooth, is it not?

A No, it is not half a tooth. It is the front of a tooth. It is a front face of a tooth.

Q But a good-sized chip?

A It is a good-sized chip.

Q Did you examine this chip in order to make a determination as to the direction of the force that caused it to break?

A I made some observations as to what I thought was the directions.

Q Now, if a tooth is smashed in from the front, doctor,

there will be an angle to the break, will there not?

A There would be various angles depending on the method of attack or approach, the contact with the tooth.

Q But as opposed to a tooth which is broken off in the front and yanked off in the back, there is a difference in the angle, as against one which is smashed in from the front, is there not?

A One that is smashed in from the front would have a different line of cleavage than the one that would be smashed in from the -- where?

Q Pulled out.

A Oh, pulled out.

Q In other words, if I took a hook and put it in behind the tooth and yanked it out, the cleavage angle would be different than if I smashed it in with a ball peen hammer?

A Yes. I wouldn't expect to get the face of the tooth if you pulled it out.

Q You wouldn't expect to get the face of the tooth?

A That's right.

Q Of course, this tooth was found outside the body?

A Yes, sir.

Q And you never had any evidence that it was inside the mouth?

A I Yes, I determined it was inside the mouth.

Q No, no, I mean after it was broken, so far as you know, that tooth was never after it was broken inside the mouth or

throat at any time?

A I don't know what you -- I know that it belonged to Marilyn Sheppard.

Q There is no question about that. Now, did you make an examination to determine how it might have become broken?

A No, I just made some observations.

Q You did take note of the fact that it was found under the body rather than the mouth or down the throat?

A Yes.

Q Did you take note of the angle of cleavage of the tooth?

A I took note of the angle of cleavage, yes.

Q And from that were you able to come to the conclusion that the tooth was broken as it was yanked out?

A I came to an opposite conclusion.

Q You did?

A Yes, sir.

Q Did any reason appear why the tooth was not lodged down the throat?

A Yes.

Q Why?

A Because if a person is hit on the jaw and hit on or about the upper jaw, and the two jaws are knocked together, the chips of teeth, if any come loose, will generally come out and not go back into the mouth.

Q Did you find any damage to the underside of the jaw

of Marilyn Sheppard indicating any jar of force applied there?

A I didn't find any particular damage to the underside of the jaw.

Q Doctor, having in mind the fact that there is no way to tell precisely, isn't it true that the cleavage of this tooth is consistent with it having been broken off by something yanking it out of the mouth?

A It is not consistent with that.

Q You say that it is not?

A It is not.

Q How does this tooth chip differ from one which would have been broken off that day?

A Because you would have more of the inside surface of the tooth, not the external or the outside surface of the tooth.

Q And is that your judgment and experience in such matters?

A Yes, sir.

Q There is no question about that in your mind?

A Q There is no question in my mind. I have seen too many.

Q All right; so you say that the force that broke this tooth was the lower teeth pushing up against it when a sharp blow was applied to the jaw?

A Or the upper jaw pushing down against the lower jaw by a force being applied around about the nose, on either side

of the nose, or the upper jaw.

Q When an ordinary human jaw is closed, the upper teeth protrude over the lower teeth, do they not, a normal bite?

A In most people, yes, in most bites, yes.

Q I assume you checked Marilyn Sheppard's bite when the autopsy was done?

A Yes.

Q She had a normal bite?

A Yes.

Q So when her jaw was closed hard, the lower teeth would fit inside the upper teeth, true?

A She would normally -- you would normally suppose that she would do this.

Q Is it your hypothesis that this tooth was broken by a lower tooth hitting the back of a front upper tooth and breaking it out?

A Yes, they came in contact with each other. Whether the force was applied to the lower jaw, or the force was applied to the upper jaw, I don't know.

Q All right. The immediate striking surface of this tooth was in all probability a lower tooth, is that right?

A It had to be, plus the other, plus other striking surfaces.

Q And the lower tooth would have hit the inside of the upper tooth, wouldn't it and broken it off?

A Not the inside. You don't bite all the way in. You bite at a medial portion of the tooth.

Q Where did the lower tooth hit the upper tooth to cause this fracture?

A At the bottom of the tooth, but how far in I can't say.

Q Here, or underneath?

A Underneath.

Q If it is underneath, it had to go up behind?

A It doesn't go all the way up behind.

Q To some distance?

A To some distance. Only a portion of the biting surface --

Q Yes, but --

A That is in front of the lower tooth.

Q Understood, doctor. But the point is that the force was in back of the front tooth, not in front of it, because it was a lower tooth, is that your opinion?

A No, I did not say that.

Q Well, tell us what you did say?

A I said that if the striking surface was around the upper jaw, that these jaws, the upper and lower jaw, could have closed --

Q Hard?

A -- hard, and that the tooth or portion of the tooth had been broken off, and that is the face of it.

Q And the force which broke the tooth would have been a lower tooth, true?

A No, this was a part of the force, because you had to have some other force also.

Q You mean the simple snapping shut of the jaw with external force applied would not have caused this fracture?

A Not necessarily, no, sir.

Q And you say in your opinion the fracture could not have been caused by something that Marilyn Sheppard was biting on being yanked out of her mouth?

A Absolutely.

Q No question about it?

A No question in my mind. That didn't happen.

Q All right. Did you have any indication, doctor, from your examination of the murder room that Marilyn Sheppard had put up some kind of a struggle in the course of being butchered?

A Yes, sir, by the defense wounds on the hand, on the left hand, and on the right hand, too.

Q Was there anything to suggest that perhaps the murderer himself, or herself, might have been bleeding as well from some wound suffered in the battle?

A I couldn't say no, but we didn't find any evidence of any other blood.

Q Did you look for it?

A Well, in examining blood, if you only find one type, that is looking for it.

Q You are satisfied that you made a diligent search looking for other possible blood types?

A Yes, sir.

Q Now, you typed the blood of the defendant Sam Sheppard, didn't you?

A I didn't, no, sir.

Q Was it done, do you know?

A I can say this, that he refused --

Q I am asking you --

A -- to have his blood typed.

Q I am asking you, did you know in the course of your investigation the blood type of Sam Sheppard?

A I think it was subsequently, at what particular day, it was subsequently told to me, and if I remember correctly it was an A.

Q Type A?

A Yes, sir.

THE COURT: May I see Counselors,
please?

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

THE COURT: Ladies and gentlemen
of the jury, though we have been going just a

short while, we are going to have a recess at the moment, or, we will have our morning recess at this time.

While you are away on your morning recess, you will bear in mind^{the} instructions given you on each occasion when you leave the room, and that is you shall not discuss this case or what you have heard of it amongst yourselves, nor permit yourselves to overhear anything about this case, by any means of communication,

We will have our morning recess.

(Thereupon a recess was had.)

THE COURT: Counselor Bailey, please. Proceed.

MR. BAILEY: Your Honor, might I have Mr. Romito read back the last question and answer, please?

THE COURT: Mr. Reporter, you may read it.

(The record was read by the reporter.)

THE COURT: Please proceed.

By Mr. Bailey:

Q Type A blood, is that correct?

A This is what I was told.

Q There are four basic groups of blood, are there not?

A Yes, sir.

Q A, B, O, and AB, are those the four groups?

A Yes, sir.

Q Marilyn Sheppard had an O?

A Yes.

Q And Sam Sheppard had an A?

A Yes, sir. I don't know whether he had an A or not.

This is what I was told.

Q That was your information. Do you know whether or not any A blood was found in the murder room?

A No, sir.

Q Now, Coroner, so that I understand your procedure, when you delegate the work that is to be done, such as the examination of the murder room that you had Miss Cowan do, are the results as a matter of course reported back to you?

A Yes, sir.

Q So that you may make a decision as to what else is to be done, if anything?

A Yes, sir.

Q In other words, you superintend the investigation from the Coroner's Office?

A Yes, sir.

Q Now, in this instance you were working with the Cleveland Police Department?

A Yes, sir.

Q And with the Bay Village Police Department?

A Yes, sir.

Q And with the Sheriff's Office, as well?

A Yes, sir.

Q And with the Prosecutor's Office?

A Well, I can't say that we worked -- they were independent.

Q Did you make some reports to them and keep them advised as to progress of the investigation?

A Oh, yes, sir.

Q So this was more or less a joint effort by several agencies?

A Yes, sir.

Q But of those agencies, you were the only one which had a physician to investigate, is that not true?

A (No response.)

Q You were the only doctor involved in the investigation?

A Oh, no. Doctors in our office were involved.

Q I mean the Coroner's Office.

A Oh, yes.

Q Yours was the only agency with doctors?

A Yes.

Q So only medical doctors would be within your sphere of authority in the course of the investigation?

A Yes.

Q I take it that both you and the Cleveland Police

Department have laboratory facilities?

A Yes.

Q Is it a fact, though, that in this case the bulk of the laboratory work was done by the Coroner's Office?

A Yes. I don't know whether it was the bulk, but it was a whole lot of it, because some of it was done by the Cleveland Police.

Q Finger-printing, for instance, was their responsibility?

A Some blood work was done there, too.

Q They did some blood work there?

A Yes.

Q And Miss Cowan did some?

A Yes.

Q Did anybody else in your office besides Miss Cowan do blood work, if you know?

A I was just trying to remember. She was the one who did most of it. She may have had some help when she thought it was necessary. But she was responsible.

Q Is it fair to say that she was the Lab Chief at the time?

A Yes.

Q So that the work was either done by her or under her supervision?

A That's right.

Q And in the course of the investigation she would report to you from time to time what progress she had made and the

findings she had made?

A Yes, sir.

Q Now, in addition to the blood that was apparent and the tooth fragments, were some other objects of physical evidence found in the murder room?

A On the next day, yes, sir.

Q And you had taken precautions to see, of course, from the time you arrived until the following day, and on subsequent days, nothing was done to disturb such evidence as might be present?

A I issued those instructions.

Q Were some officers placed in custody of the premises so that no one could come in and disturb the evidence, to your knowledge?

A I issued instructions. Just how they were carried out would have to be determined from the Bay Village Police Department.

Q And in any event, physical objects found by you or your representatives on Monday, July 5th, were probably present on Sunday, the 4th, because of the precautions taken, isn't that a fair statement?

A I would assume that, yes, sir.

Q And you did assume it in your investigation?

A Yes, sir.

Q Now, what physical evidence was discovered on Monday?

A Two small objects. One appeared to be some nail polish, which came from a toe nail, appeared to come from a toe nail, and a piece, a small piece, of leather or leatherette.

Q The leatherette I take it was never traced to any larger piece?

A It was never traced.

Q I assume that it was compared against the belt which Doctor Sam Sheppard was wearing when he was first encountered by the Houks, this belt right here which is marked for the record as State's Exhibit 43?

A Yes, sir.

Q And there was found to be no basis of comparison between the fragments of blood found on July 5th and this belt, is that true?

A That's right.

Q However, this belt when you first looked at it was in a water-soaked condition, was it not?

A Yes.

Q Just as with the shoes and the wallet?

A They were damp, yes, sir.

Q But they had obviously been soaking in water, isn't that true?

A They had been wet.

Q Now, I believe you stated that you found some polish, nail polish, and you caused that to be examined in the

laboratory, did you?

A Nail polish, yes.

Q Acetate, acetone tests were made to determine --

A I again gave this to Miss Cowan and she was responsible for the determination.

Q And she gave you back a report?

A Yes, but I would have to look up the report to give you an answer.

Q There was a small fragment of some lacquer substance consistent with nail polish?

A Yes, sir.

Q And this indicated to you the presence of at least one woman, nail polish, isn't that true?

A Yes, it would indicate that.

Q The decedent was a woman?

A Yes, sir.

Q And you made, I assume, some investigation to determine whether or not this polish came from the decedent or from some other woman, did you?

A Certainly made an attempt to determine whether or not it came from the decedent.

Q And you found that the decedent at the time of her death was not wearing nail polish, didn't you?

A I said toe nail polish.

Q Just a minute. Did you find she was not wearing polish

on her fingernails at the time of her death?

A Yes, sir.

Q That is true, is it not?

A Yes, sir.

Q And isn't it also true that you made no effort whatsoever to compare the chip of toe polish with the toe nail polish she was wearing?

A Miss Cowan would have to answer that.

Q You testified in a prior trial, did you not, did you not answer such a question yourself?

A Maybe I did.

Q Were you not examined, Coroner Gerber, on page 400 of the transcript, "There was no comparison between the specimen that was found on July 5th with the polish that was on Marilyn Sheppard's toes, was there?"

Answer: "No, sir."

A Not by me.

Q By anyone?

A That I can't answer. I answered only for myself.

Q Don't you know whether or not such a comparison was made?

MR. SPELLACY: Objection.

A I don't recall.

THE COURT: Sustained. Argumentative.

Q Did you seek to determine through your laboratory or

your technicians whether or not this chip of polish came from her toe nails or from some other source?

A I said I don't remember whether it came -- whether there was a determination that it came from her toe nails, that is, Mrs. Sheppard's toe nails, or somebody else.

Q Do you say that you never in the course of your investigation, as you conducted it in July of 1954, made a determination as to whether or not that polish had come from another woman?

MR. SPELLACY: Objection.

THE COURT: He may answer.

A We didn't have any other person to associate this nail polish with, other than the deceased.

Q I see; and yet as of today you are unable to tell us whether or not this polish could have or not have come from the toe nails of the deceased?

A That's right.

Q And, of course, if it did not come from the deceased's toe nails, then it would have to come from some other woman?

A No, sir.

Q It did not?

A No, sir.

Q If it didn't come from the deceased's toe nails, is there anything in the investigation that would tell us where it did come from?

A No, sir, there isn't anything.

Q Coroner Gerber, could it have come from another woman?

MR. SPELLACY: Objection.

THE COURT: Sustained, now,
Counselor.

Q Is there someone who did some work on the nail polish that would be able to tell us, if you know, whether or not this polish came from Marilyn Sheppard's toe nails?

MR. SPELLACY: I object.

THE COURT: I believe he has
answered, Counselor, but he may answer again.

Do you understand the question, doctor?

THE WITNESS: I think I do.

A I can answer -- I know that an investigation was made to try to determine where the nail polish came from, and to determine the age of the nail polish, and this nail polish could not be associated with -- finger nail -- or, toe nail polish, could not be associated with anybody other than the deceased.

Q But could it have been associated with her, did you find that out?

A What is that?

Q Could it be associated with her?

A Yes.

Q In other words, then, you do say that the chemical base

was tested --

A I am not talking about the chemical base. I am talking about a physical base.

Q I see. Did you personally examine this chip before you turned it over to your laboratory?

A Yes, sir.

Q And did you determine on one side of the chip there were ridges and grooves consistent with having come from a nail of some sort, finger or toe?

A I don't recall.

Q Was any other physical evidence found in the murder room at any time in the course of the investigation that you know about?

A Well, there was the clothing.

Q The decedent's clothing?

A Worn by the decedent. And the shoes, there was a pair of sneakers and a pair of shoes, and the decedent's clothing.

Q Now, prior to the time you went to Bay View Hospital in company of Chief Eaton, to interview the defendant Sam Sheppard, had you received some information that he was injured or claimed to be?

A The information that I received was that there were two people dead.

Q Two people dead?

A Yes, sir.

Q In other words, you initially thought that Sam himself was dead from what was told to you, is that right?

A That's right.

Q But when you arrived and found that he was alive, did you make an effort to determine just how badly he was hurt?

A Yes, sir.

Q Did you talk to the hospital personnel?

A Oh, I talked to the police, and the mayor and his wife, were there, and I asked him how badly Doctor Sheppard was hurt.

Q No, when you got to the hospital, Doctor?

A You asked me if I made any inquiry.

Q At the hospital. There were no doctors on the scene when you arrived there?

A No, sir.

Q Nobody was present who had made a medical examination of Doctor Sam Sheppard?

A No, sir.

Q So when you got to the hospital, did you seek out such medical people as had examined and treated him to find out how badly he was hurt?

A I did not, because Doctor Stephen Sheppard was right alongside of me.

Q Well, did you ask Doctor Stephen Sheppard?

A Yes.

Q And did he give you some history from his examination

of Sam?

A He didn't give me any history, because by the time --

Q Just did he give you some history?

A No.

Q He did not?

A No.

Q Did you ask him for any?

A No, I did not.

Q Did you learn that prior to your arrival Sam had been X-rayed?

A Yes, sir. That was after I got into the room.

Q Did you ask Sam himself what injuries he had suffered?

A I asked him how he felt.

Q Did you ask him what injuries he suffered, where he was injured?

A No, I asked him how he felt and whether or not he could talk to me, and he felt like he could talk to me.

Q He was able to talk?

A Yes, sir.

Q Did you learn at any time that there was a claimed injury to the back of his neck?

A Yes, sir.

Q And did you personally examine the back of his neck?

A No, sir.

Q Now, doctor, you have held a license for how many years

prior to 1954?

A A long time. I got it in 1922.

Q Have you practiced privately since you became Coroner?

A For the first twelve or fourteen years, yes, sir.

Q And I assume you have examined quite a number of human beings to determine the extent of their illness?

A I have.

Q Diseases and injuries both?

A Yes, sir.

Q Will you tell the Court and jury what spasm is, muscle spasm?

A What was the question?

Q Will you tell the jury what muscle spasm is?

A Muscle spasm is an irritation of the fibers in the muscles that causes them to either jerk, or if large enough to observe, to convulse, and maybe on occasions have some pain.

Q In order to check for muscle spasm, do you palpate the surface where the muscle spasm is thought to occur?

A You observe and you palpate.

Q To palpate simply means to touch?

A Yes, you try to see what reaction the patient may have.

Q Now, having in mind Doctor Sheppard claimed an injury to the back of his neck, did you make any effort to observe for spasm or palpate the surface?

A I did not.

Q You did not?

A No.

Q Is that because you were at that point satisfied that he did have an injury to the back of his neck?

A No, sir, it was not.

Q But you made no effort to check it yourself?

A No, I took his brother's word for it.

Q Then you were satisfied that the injury --

A No, I wasn't satisfied he had it. I took his brother's word that this is what he was claiming.

Q Did you attempt to learn from the hospital personnel anything more about Doctor Sam's condition when he arrived there?

A I was talking -- no, sir.

Q You had been given some information that he had found himself in Lake Erie, half in and half out the water, just prior to his call to Mayor Houk, you had been told that, hadn't you, that that was his story?

A No, no. Doctor Sheppard told me.

Q When Doctor Sheppard told you that, did you make an effort to determine whether or not anyone could tell from examination of his skin how long he had been in the water?

A I was there in an official capacity, not as his physician.

Q I understand that. But you were there to investigate a murder, were you not?

A No, I wasn't investigating Doctor Sheppard. I thought Doctor Sheppard had been injured and I observed him and talked to him and I felt that he was not severely injured.

Q You felt that without an examination?

A By my observation and I took his pulse.

Q When you were practicing medicine, doctor, did you make determinations and diagnoses without examinations of your patient?

A No, I did not.

Q Why didn't you do that to Doctor Sam Sheppard?

A I took the man's pulse, felt his pulse, and ^{he} didn't have any rapid pulse.

Q Doctor --

A I wouldn't think he was hurt very badly.

Q You didn't think so?

A No, that's right.

Q Doctor Gerber, did you determine that he had no injury to the back of his neck by taking his pulse?

A No, I wouldn't do this. I saw him move around and he talked to me. He had no objections. He didn't complain of any pain when I was in the room.

Q But you never asked him where his injuries were?

A He volunteered.

Q He told you the back of the neck?

A Yes.

Q And you never checked it?

A No, I had no right to check.

Q You didn't ask him whether you could have permission to check it, did you?

A Oh, I --

Q Did you?

A I didn't have any right to check, and I wouldn't ask to.

Q And you wouldn't ask?

A That's right.

Q Did Doctor Sheppard tell you that his teeth had been loosened and chipped by the assailant?

A No, sir.

Q Did you learn that at any time in the course of the day as you investigated?

A I learned that he claimed this later on in the day.

Q Now, of course, chipped teeth are easy enough to see on visual inspection?

A When he was talking to me, he didn't have any chipped teeth that I could see.

Q Did you examine his teeth?

A No, sir.

Q Did you ever cause them to be examined by somebody competent in the field of dentistry?

A Yes -- not dentistry; medicine, though.

Q You chose a medical doctor to examine his teeth?

A I didn't choose him. But there was a medical doctor chosen.

Q Was this at your direction?

A At my direction I asked the Chief of Police to get a doctor.

Q You asked the Chief of Police to select a physician?

A Yes.

Q There are various specialties within the field of medicine, are there not, that you are aware of?

A Yes, sir.

Q In order to determine damage, for instance, to the spinal cord, a specialist would be required, is that true?

A Well, unless it is so self-evident that even a lay person could recognize it.

Q Of course. But many injuries to the spinal cord and nervous system generally are not immediately visible even to a general practitioner, isn't that true?

A It depends. They may have suspicion of it, but it may not be directly attributable to a spinal cord injury.

Q The practice within the profession is to refer close questions of that sort to a specialist in the field of neurology?

A That's right, sir.

Q Now, with a question of injury to the back of the neck, the area of the spinal cord, to Doctor Sheppard, did you cause him to be examined by a neurologist?

A I didn't, but he was.

Q By a neurologist?

A Yes, sir, by a team of physicians.

Q On the fourth of July?

A No, no.

Q On the fifth of July?

A What is that?

Q On the fifth of July?

A No.

Q On the sixth of July?

A I had -- on the fifth or sixth I had a report from a neurologist.

Q Was that Doctor Elkins?

A That was Doctor Elkins.

Q Doctor Elkins was an eminent neurologist in Cleveland at the time, wasn't he?

MR. SPELLACY: Objection.

Q If you know?

THE COURT: He may answer.

Q Do you know?

A Well, call him eminent. He was prominent.

Q Prominent but not eminent?

A I don't know. I am not trying to distinguish whether Elkins was prominent or eminent, but he was well-known and well-liked.

Q He was a board certified neurologist, wasn't he?

A Yes, but that wouldn't necessarily make him eminent.

Q Were you satisfied prior to the time you had conversation with him, Doctor Gerber, that he knew the business of neurology as an expert?

A Well, Doctor Elkins in my mind was a person who was a good physician, he was a good specialist.

Q What was his specialty?

A He was a neurologist, and since I talked to him, to get to Doctor Sheppard, I said, "How badly is Doctor Sheppard hurt?" He said he didn't hurt badly.

Q He said that to you?

A Yes, sir.

Q After examination?

A What?

Q When did he say that to you, Doctor Gerber?

A He said that on Tuesday, on Tuesday night.

Q Did you ask him what injuries he found?

A Yes.

Q What his examination consisted of?

A Yes, sir.

Q And he told you that he found an absence of reflex in

the entire left side?

A Oh, he never said that.

Q He never said it?

A No, sir.

Q Did he give you any report?

A Verbally, yes.

Q And did you make a report of what he told you?

A No, sir.

Q Did you ever have him examined by someone of your selection?

A Not my selection.

Q Of course, Doctor Elkins did not examine Doctor Sheppard at your request, did he?

A No, sir.

Q It was at the request of the Sheppard family?

A That is why I took his word for it, because he examined at Doctor Sheppard's request, or the three Doctor Sheppards or the four Doctor Sheppards; and he told me very definitely that this man was not hurt.

Q Doctor, do you recall in the last trial that Doctor Elkins gave some testimony?

A I didn't hear his testimony.

Q Well, did you learn --

A But he testified, yes.

Q You learned what he testified to, didn't you?

A I can't tell you, no, I didn't.

Q You don't remember?

A No.

Q Do you recall whether or not you were ever called back in after he testified to testify to the conversation you have just told us about?

A Specifically? I don't even recall that.

Q Is this the first time you told anyone that Doctor Elkins told you Sam wasn't hurt?

A Oh, no. I told this on numerous occasions.

Q You didn't testify to it at the last trial, did you?

A Because nobody asked me.

Q Nobody asked you. You didn't bring it to the attention of the Prosecutor, this conversation?

A If I did, I don't recall. I probably did.

Q If you did, he didn't use it, is that true?

A He didn't use it.

Q Now, what about the chipped teeth, did Doctor Elkins examine those, to your knowledge?

A No, not that I know of.

Q Well, did you talk with a man who examined Sam's teeth in order to find out if he really had an injury to his teeth?

A Chipped teeth? I was talking about the chipped teeth of Marilyn. I wasn't talking about -- I don't know whether Doctor Sheppard had any chipped teeth or not.