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MR. BAILEY: May we approach  
the bench, your Honor?

THE COURT: Counselors. Be at  
ease, ladies and gentlemen, and you may visit  
amongst yourselves if you wish.

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

THE COURT: Counselor Bailey  
and Corrigan, have you reached a stipulation,  
and will you read it to the record, please, what-  
ever your stipulation is?

MR. BAILEY: We have, your Honor.  
As with the witness Doctor Foster this morning,  
it is agreed between the State and the defense  
that the testimony from the 1954 trial of  
Gervase Charles Flick, the roentgenologist men-  
tioned by Doctor Steve Sheppard, who is now de-  
ceased, may be read into the record under the  
same terms and conditions.

THE COURT: Will you spell the  
name for the record.

MR. BAILEY: G-e-r-v-a-s-e, Charles,  
Flick, F-l-i-c-k.

THE COURT: Thank you.

MR. BAILEY: His testimony, your

Honor, commences on page 5868 of the record of the first trial. The direct examination was conducted by Mr. William Corrigan.

(Reading:)

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

"DIRECT EXAMINATION OF GERVASE CHARLES FLICK

"By Mr. Corrigan:

"Q Will you state your name?

A Gervase Charles Flick.

Q Why do you read your name off an envelope?

A What's that?

Q I say why do you read your name off an envelope?

A Why?

Q Yes.

A Well, I don't have to. I know my name; I think I do right now, anyway.

Q I saw you take the envelope out and read your name off.

A Well, I am careful.

Q How do you spell your name?

A G-e-r-v-a-s-e.

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"Q What is your business or profession?

A Osteopathic radiologist, an osteopathic physician.

Q And where do you live, Doctor?

A 3137 Rocky River Drive, Cleveland.

Q How long have you lived in this community?

A I think three years yesterday.

Q And where did you live prior to coming here?

A Well, for 23 years, or a little better, I was in Boston, Massachusetts, at the Boston -- The Massachusetts Osteopathic Hospital as radiologist, and previous to that I was in Delaware, Ohio, at the old sanitarium down there from January, '25, until almost '28. That is when I started.

Q Do you specialize in some branch of medicine or surgery?

A Well, I specialize in radiology, diagnostic and therapeutic. In Boston I was doing quite a bit of internist work. In Delaware I was doing internist work with radiology, because it was a smaller hospital, 50-bed hospital.

Q The term that is used by doctors for that particular specialty is roentgenologist, is that the term that is used?

A Yes, roentgenologist, in honor of Roentgen, who discovered it.

Q Discovered the X-rays?

A That's right. In 1903, about, I think.

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"Q And in order to be a roentgenologist, and recognized as such, does it require special training?

A Yes, it does.

Q And have you had that special training?

A Yes. I am the second osteopathic radiologist in Ohio. There was only one here when I started practice here, so I --

Q Now, then, do you do the radiology work at Bay View Hospital?

A Yes. I think we do close to eight thousand cases a year. It runs between 25 and 30 a day.

Q And the taking of the picture of the X-ray, the picture itself, do you take the picture?

A No. I haven't taken any pictures since I have been here. We have technicians that do that.

Q There are people specially trained to operate those machines and take the pictures?

A That's right.

Q Now, Mrs. Huge was here yesterday and testified that she took some pictures of Sam Sheppard.

A That's right.

Q You are familiar with those X-ray pictures?

A Yes.

Q Is that correct, Doctor?

A Yes, I am familiar with them.

Q Now, after the picture is taken, does it require the

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interpretation--the interpretation of those pictures, does that require special training and knowledge?

"A Yes, it does.

Q Do you have that?

A I should think I was qualified.

Q Now, the X-ray pictures that were taken or films that were taken on the 4th day of July, did you examine those?

A I did.

Q Now, I will hand them to you. I will hand you what has been marked in this courtroom as State's Exhibits 46-B, C, D, E, F, G, H, J, L, M and P.

Will you look at those films that I have just given to you, Doctor, and state whether or not you can identify them with July the 4th, 1954, and Sam Sheppard?

A Yes. These films have the imprint of Bay View Hospital and Sam Sheppard's name, and, as I recall, I identified these for Doctor Gerber several months ago.

Q And where were they the last time that you saw them, Doctor, before you saw them today?

A Well, Doctor Gerber's office, I suppose. I don't know how to identify it by any other classification.

Q When did you see them in Doctor Gerber's office?

A I don't know that date.

Q Well, if you can approximate it. Was it along in July of this year?



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"A I would say so.

Q Do you recall the date of the -- the time -- never mind the date -- do you recall the time of the inquest that was held in Bay Village? Did you know of that event?

A Well, I didn't have much to do with that.

Q No. Did you know --

A I recall that there was one made.

Q Now, was it after that that you were in Coroner Gerber's office?

A Yes.

Q And were you requested by him to bring those films to his office?

A That's right, I was.

Q And did he then take possession of them?

A Yes. I identified them and he took possession.

Q And that was the last you saw of them?

A That's the last I have seen them.

Q Until you have seen them today?

A That's right.

Q Now, those films that I have handed to you, does one of them show an X-ray of the second cervical vertebra?

A Yes, it does.

Q And which film is that that shows the --

A This film.

Q That is marked State's Exhibit 46-J.

Now, Doctor, this picture that the jury has just looked at shows the outline of the bony part of the jaw and shows the head resting upon the atlas of the spinal column, and it shows the cervical vertebrae, that is the vertebrae that is in the neck, is that right?

A That's right.

Q And when you talk about the second cervical vertebra, first you have the atlas upon which the head rests and twists and turns, and then the next vertebra is number what, the next bone?

A Well, the third. Atlas, axis and third. The third cervical.

Q So the second cervical vertebra would be the bone of the spine just below the axis, is that right?

A Yes, first, second and third.

Q First we have the bone that we twist our head on, that the head rests on, and the next bone is the second cervical vertebra. Did your examination of that film show in which direction the picture was taken?

A Well, it shows that it was taken with the film on the left side.

Q The film on the left side?

A Yes.

Q And the rays that were penetrating through the neck were coming from the right side?

"A That's right.

Q And the result of those rays penetrating through the neck, through the lower part of the jaw, how was that registered on the film that was on the left side, just what is the process of that?

A Well, it penetrates the bone, and you get an idea of the bone density.

Q Well, the result is that some of the rays go through, do they not?

A Yes, and hit the film.

Q And hit the film, and some of the rays are stopped by the bony structure?

A Yes.

Q And the bony structure then throws a shadow on the film, is that not so, Doctor?

A You see the rays that penetrate, the rays that penetrate have to meet the film before they, of course, would give you a picture.

Q Well, in X-rays we are dealing with shadows, aren't we?

A Yes.

Q Now, then, did you see in examining that film any injury, or what indicated to you there was an injury to the second cervical vertebra?

A Well, I saw a shadow that was consistent with a



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separation of what we call the inferoposterior, the lower back tip.

"Q There was a chip there?

A Well, yes -- tip. I said the tip. The separation of the tip, which would be a chip. The chip refers to the size. That was a little thing, and, of course, it is what we characterize as a chip fracture.

Q That's a c-h-i-p, chip fracture?

A Yes, chip, just like a wooden chip.

Q And in this Exhibit 2 -- no -- Defendant's Exhibit YYY, page 23 --"

MR. BAILEY: Which was the hospital record, your Honor, and our Exhibit 72.

"Q -- appears your report, does it not, or a copy of your report?

A Yes.

Q And do you have your original report here?

A This is my original report.

Q Well, taking your original report, you have the term lateral neck in it?

A Lateral neck.

Q And does that refer to this film marked as --

A The one we showed around.

Q What?

A It refers to the film we showed around. It refers to

this film.

"Q That we showed to the jury?

A That's right.

Q And what is your statement as reported on that particular film, lateral neck?

A I said, "There is a chip fracture in the inferoposterior margin of the second cervical vertebral spinous process."

That's called the spinous process, that one in the back."

Q Is there anything further that you state as to the lateral neck?

A Yes, there is.

"There is a rather marked hypertrophic change at C-5-6. As a matter of fact, there is bridging between these vertebral bodies."

And that refers to this. I mentioned this and then I mentioned this. (indicating)

Q Oh, you've got to get down here because the jury can't see what you are talking about unless I hold it up.

"Thereupon the witness leaves the witness stand and stands in front of jury."

Q Now, point out --

A Well, this is the chip that I saw, but down here is what I call a bridge. See, there are various terms to describe that, lipping or spiking or bridging. Lipping,

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spiking or bridging.

Q And this --

A This other is the chipping.

Q That is up here on the second cervical?

A It's right here, it's right below. Yes, second.

Q Right below.

A This other is the fifth and sixth."

"Mr. Corrigan: All right."

MR. BAILEY: That concludes the  
direct examination of Doctor Flick.

Cross examination was as follows by

Mr. Parrino:

"CROSS EXAMINATION OF DR. GERVASE FLICK

"By Mr. Parrino:

Q Now, Doctor Flick, when was the first time that you  
saw Sam Sheppard on the 4th, if you saw him on the 4th?

A I saw him at 12:30. I wrote on the chart that I found  
no evidence of skull fracture. I wrote on his chart in the  
progress notes.

Q And how did you determine that?

A What?

Q When you say you found no evidence of skull fracture,  
how do you come to that conclusion?

A Well, I reviewed all these films, of course. The two

apparent re-focalized films here. All the rest of them were in here, see.

"Q Let me get this correct. I'm sorry, but I want to understand this, if I can.

At 12:30 p.m., July 4th, was the first time that you saw Sam, right?

A That's right, I saw him.

Q These pictures or X-ray film that we have here are those that were taken by Eileen Hoge, is that correct?

A Yes.

Q And do you have any information as to what time those pictures were taken?

A Well, no, except earlier in the morning. As I remember, they sent for me with the idea that I should come and interpret the skull films to see --

Q I see. And what time did you arrive there that morning?

A Well, I can't tell you definitely, but I would say that it was about -- it must have been around ten o'clock or a little later I looked over the films.

Q How?

A It was around ten o'clock on Sunday, July 4th, or possibly a little later.

Q What time was it when you first went over the films?

A Well, I went over the films that morning.

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"Q About what time?

A Well, let's say between ten and 12:30 sometime.

Q Where were the films when you went over them for the first time?

A I think they were in my office.

Q Was anyone present at that time?

A Not that I recall. Do you mean while I was interpreting?

Q Yes.

A Not that I recall.

Q How did the films get to your office?

A Well, I don't -- I can't tell you exactly whether Mrs. Huge put them there or whether a resident or an intern put them there.

Q Did Doctor Steve put them there?

A I wouldn't know. I wasn't -- you see, I didn't get there until ten o'clock.

Q I see. Then all that you know is that shortly after you got there you found the films in your office ready for your examination and interpretation, is that correct?

A That's right.

Q You did not examine the films at all while they were wet?

A No, I don't think I did. I don't know whether I did or not, but I don't think I did.



"Q After an X-ray is taken, I presume that that negative, if I use the correct word, is developed, is that correct?

A Well, it isn't a negative until it is developed.

Q I see. Well, this film that we have here before us, how long does it take that film to dry?

A Well, in our dryer, with very few films in it, they should dry anywhere within 25 to 30 minutes.

Q And then after you remove the film from the X-ray camera, you can take that film, develop it and within 25 or 30 minutes, it is in the process of being dried, is that correct?

A In the process of being dried?

Q Yes.

A Yes, I would subscribe to that.

Q And then within a half hour, let us say, that film will be dry, ready for your interpretation, is that correct?

A Yes, I would say so.

Q Now, while the film is -- withdraw that.

Have you ever looked at film, X-ray film, that was still wet?

A Oh, daily, almost.

Q That is when you are in a hurry and you want to immediately --

A Well, an emergency or something.

"Q Yes. When there is some grave and serious emergency and you want to look at it quickly, isn't that correct?

A That's right.

Q Now, as you look at wet film, isn't it a fact, Doctor, that if you examine it carefully enough you can see on wet film substantially everything that you can see on dry film, isn't that a fact?

A No, I don't subscribe to that.

Q You wouldn't. Well, then, why is it that in the case of an emergency you look at wet film?

A Well, you do the best you can in a case of emergency. That's why, I understand, it's an emergency.

Q I see. But even on wet film you can get fairly substantial impressions as to what is the nature and extent of a particular injury, is that right?

A You are getting kind of complicated now.

Q How?

A You are getting kind of complicated, fairly substantial and a lot of relative words.

Q Well, I'll withdraw the question.

Even on a wet film, you can see pretty well what the nature of an injury is?

A It depends on how gross it is.

Q I see. Were the injuries very gross in this case?

A Well, here they are.

"Q No, I am asking you this question, sir: Were the injuries very gross in this case?

A As regards size, no; as regards effect, they may have been. It depends on what category you are talking of.

Q As regard to size, they were not gross, is that correct?

A No, not visually gross.

Q Yes. And as regard lto -- what is that other word you used?

A Category, importance. That wouldn't be very big to put in your hand; it would be pretty big in your eye.

Q As regard to size, they were not very gross, these injuries, is that correct?

A That's right.

Q But as regard to effect -- that is the word you used -- as regard to effect, they may have been, isn't that correct?

A Yes. That is, indirectly they may have been as regard to effect.

Q Well, that is what you said?

A Yes, that's what I am saying, as regard to effect, but you'll have to distinguish now between effect on the bone or effect on the tissue around it.

Q Now, at whose order were these X-rays made?

A I don't know that, either. They weren't made at my

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orders.

"Q Under whose directions were these X-rays made?

A That, you would have to ask -- that would be a question for Mrs. Hoge to answer, not me.

They hand me a package. I don't know how the package was made up.

Q According to the information you had, who were the doctors in charge of Sam?

A Doctor R. N., Doctor R. A., that would be his older brother and father.

Q Doctor R. N., that's Richard N. Sheppard, according to your records, was in charge of this patient, is that correct?

A Partly.

Q Doctor Richard Sheppard, Sr., was also in charge of this patient, does your record show?

A Partly, but it really means that I make records for these people, these doctors whose names are here.

"Referring doctor: R. A. Sheppard, R. N. Sheppard," means that I make -- that I see that they are sent records. That's what it really means.

Q Well, does your information show that Doctor Stephen Sheppard is in charge of this patient?

A Yes. His name is on, too. Doctor S. A. Sheppard. Three Sheppards are on.

"Q So all of them, according to your official records which you have with you, were in charge of the patient, is that correct?

A No. That's a wrong inference. All of them that appear here were to get copies of this report. That's all it means to me.

Q All right. How many copies of this report were there?

A Well, according to our signal with my secretary and me, there were six copies. She gives my initials, her initials, and then the number of copies she made.

Q And who got these six copies?

A I got one of them.

Q You got one.

Q Presumably these three doctors got one.

Q Well, don't you know?

A I can't follow them out. I am not a messenger boy. I just do what I am told to do.

Q I see. Well, don't your records show who got the three others?

A (No response.)

Q Well, let me ask you this: Did Richard get a copy, according to your records?

A I don't know. She was told to send him one. That's what this tells me.

Q Did Steve get a copy?



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"A Presumably, from this, I would say it was sent to him.

Q And Richard, Sr., got a copy, according to that?

A Yes.

Q And what happened to the other two copies?

A Well, I suppose one went on the chart.

Q One went on the chart.

A That accounts for five, doesn't it?

Q Yes.

A I don't know who got the sixth one.

Q All right. Now, when did these people get these copies, according to your records?

A Well, the girl wrote this -- typed this report on the 6th. That would be Tuesday, with the 4th on Sunday.

Q They wouldn't be mailing these copies to Richard and Steve and Richard Sr., would they, at the hospital there?

A This is when she wrote them.

Q What is that, please? 7-6-54?

A Yes. Sunday was the 4th, Monday the 5th, Tuesday the 6th.

Q According to this information on that record you brought into this courtroom, copies of your official report as to the nature and extent of the injury to Sam's neck were not sent to Richard, Richard Sr., and Steve until two days later, July 6, 1954, is that right?

"A Now, wait. The content of this was sent to them on the 6th.

Q All right.

A Is that all right?

Q That's fine. Thank you. Now, do you have that view of the neck there again, please, of the second cervical?

A That's it.

Q Now, we are referring to State's Exhibit 46-J again. Was this the only X-ray taken of the cervical vertebrae of Sam's neck?

A Taken when?

Q On the 4th.

A Yes, it's the only one I know of.

Q Well, this was the only X-ray that was submitted to you by Mrs. Huge, apparently, that had a view of the second cervical, is that correct?

A Well, I think maybe if we looked on some of these others of the lateral skulls we might find something. I don't know.

No, that's cut off. Well, these are over exposed, of course, that low down, so they wouldn't be of any diagnostic quality.

Yes, that's the only one.

Q Now, when you got to your office that morning after being called, all of the film that has been shown to you

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here this morning was in your office awaiting your interpretation, isn't that correct?

"A Well, I am pretty sure it was.

Q Will you check that, please?

A How can I check it? I don't know whether it was in there or not. I don't know whether it was in my office when I went there.

Q Well, you looked at -- withdraw that.

A I looked at all these films on July the 4th.

Q And you looked at all these films on July 4th when you arrived at your office that morning?

A That's right.

Q And at that time all of the films that were in your office that we have here in the courtroom were dry, isn't that correct?

A Yes, I would say so.

Q And in that film that was -- withdraw that. Do you have a film here of the jaw area, Doctor, in here somewhere? Would you pick it out, please?

A I don't think I have the jaw except in the --

Q Here it is, I think.

A This is the one we are talking about.

Q Yes. The jaw area would be --

A Oh, yes. I see what you mean. It is the same film.

Q And we are referring now to State's Exhibit 46-J

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again. Did you ever see that?

"A Have I ever seen this?

Q Yes.

A This is the one we handled this morning.

Q And when you saw that in your office on the morning of the 4th, you say you did examine it, of course?

A Yes.

Q And that includes the jaw area?

A Here is the jaw here.

Q Well, this picture includes that area?

A Yes.

Q And this film was dry at the time you examined it in your office, isn't that correct, on the morning of the 4th?

A Yes, I'm pretty sure that's correct.

Q Now, there are certain markings, arrows, and the like, on this exhibit, are there not, Doctor?

A Yes.

Q Now, were there any marks on the exhibit, this negative or film when you first saw it?

A No. These are my marks.

Q All of them here?

A Well, this is not my marking.

Q All the markings that are made --

A This pencil thing was my marking.

Q Pencil or pen, are those all yours, sir?

"A Yes, I numbered them. I called attention to this portion. I saw this that I wondered what it might be, and, of course, this (indicating).

Q Now, in this exhibit -- and we will continue to refer to State's Exhibit 46-J until we speak of it otherwise -- you have here the picture of the vertebrae, the cervical vertebrae, do you not?

A Yes.

Q And shown here is the second cervical vertebra, is it not?

A Second cervical vertebra.

Q Vertebra?

A Singular.

Q I am sorry. And within the second cervical vertebra and other vertebrae, there is an opening, is there not, Doctor?

A Between the two? I don't quite get that.

Q Well, what is the name of the opening in the vertebrae through which the spinal cord passes? Does it have a name?

A Yes. The spinal canal. It runs down vertically.

Q Is that the only name that it has?

A Well, I don't know what other names --

He wants to know what the name of the canal is that runs down through the spinal column. Is that --



"Q Yes.

A Well, I call it the spinal canal.

Q All right. Now, on this picture you have an arrow pointing in the region of the spinous process of the second cervical vertebra, is that correct?

A That's right.

Q And this arrow points to -- would you step down here, please.

(Witness does as requested.)

Q This arrow points to the very tip of the spinous process, is that correct?

A Well, you can be a little more specific. It is the under part and posterior part, the back part and under part.

Q As you can clearly see in this picture, the spinous process is this area that I am pointing at back in here, is it not?

A That's right.

Q And the spinous process, that is part of the vertebrae that is closest to the skin in the back, isn't that correct?

A That's right.

Q And it is that part of the vertebrae that is farthest from the spinal cord, isn't that correct?

A Yes.

Q It extends backward and downward, as you can clearly

5 see in this picture, isn't that correct?

"A Yes, that's right.

Q Now, would you please point to the area in this picture where it is claimed that there was some fracture of the spinous process? With the back of my pen. Don't mark it up.

A This much is spinous process. The tip of the hook -- the continuity of the border was interpreted as interrupted in what we call a postero-inferior portion of the spinous process.

Q And can you see that on that film, Doctor?

A Yes. I can see it in the bright light. You can see a black line running through there.

Q Now, just point to the same area so that the jurors at this end can see it, please.

A I have to hold it. You can't see it except in bright light. I am pointing to what we call the chip in the chip fracture.

Q Point to it again, please.

A The continuity of this outside line is interrupted right through there, so that the reasoning is that you have --

Q When you say right through there, Doctor, you were pointing right --

A The black line there.

"Q This area in here at that tip?

A That's right.

Q The lower tip of the spinous process, is that correct?

A That's right.

Q Now, Doctor, I presume that you have interpreted X-rays where you would find a dislocation of a vertebra, would you not?

A Yes.

Q And where you would have a dislocation of the vertebra, in many instances there might be some pressure of that vertebra up against the spinal cord, is that a fact?

A Yes.

Q And that would be classed as an extremely serious injury, isn't that correct?

A That's right.

Q Now, an injury or a fracture of the spinous process certainly would not be classed as an extremely serious injury, would it, Doctor?

A Not in itself, no.

Q Not in itself. Now, a spinous process, as it is shown here, is that portion of the vertebra to which muscles may be attached or ligaments may be attached, is that not correct?

A Yes.

"Q Now, a fracture, if I understand it correctly, is a separation of the normal continuity of the bone, is that a description of it?

A Yes, that is correct, with certain modifications. I mean sometimes it isn't grossly separated.

Q It was not grossly separated in this case, was it?

A Yes. You have a black line between it.

Q Well, Doctor, did you experience some little difficulty in arriving at the conclusion that there was a fracture of the spinous process in the second cervical vertebra?

A Did I?

Q Yes.

A Well, I took a lot of time to it.

Q Well, was there some doubt in your mind, as you first looked at it, that there was a fracture there?

A Well, I presented two things: Is this a fracture or is this an artifact?

A Well, first tell the jury what an artifact is?

A Well, an artifact is from the same Latin stem as artificial is. It is something that -- well, it is just a happenso, in the lingo of X-ray interpretation.

So, for instance, a kidney may be taken out and maybe a week or two weeks afterwards you get a film of that area, and you will think you saw the kidney. Well, of course,

there is no kidney there. Now, that would be an artifact.

An artifact would be where something happened in the process of taking a film.

For instance, maybe they will pull them out of the envelope fast and you will have streaks of lightning across, and all that sort of thing. That would be artifact.

It is something that -- well, let's for instance, take the Mona Lisa and suppose that the man that painted it didn't want her smiling, and it just happened that she was smiling, that would be an artifact.

It wouldn't be something that was intended, there was no intent. It was something that was just a happenso when the thing was -- well, it could be in the Cassett, in the film, in the way the -- the direction of the film, all that sort of -- direction of the ray and all that sort of thing. That would be called an artifact.

So the question, of course, in interpretation would be: Is this something that just happened or is this a fracture?

Now, then, of course, remembering that a roentgenologist is also a doctor, and that he has to infer a lot of things, then he is interested in what we call the context of the situation. And you would have to include that in your reasoning. I guess that is as nearly as I can explain an artifact.



9 "Q That's it. Now, summarizing all that, would it be a fair statement to say that an artifact is something that occurs in an X-ray which prevents a true picture of what might be actual injury?

A Once you have established that it is an artifact, your definition would hold.

Q An artifact, then, prevents a true reading, right, a true reading of the film? That's all it amounts to, isn't that correct?

A An established artifact.

Q Yes.

A Now, no generalities. An established artifact would prove that.

Q Well, when you first looked at this film, there was some thought in your mind, was there not, that there might be an artifact in this film?

A That's right.

Q Now, for how long was it that you continued to have this impression as you were looking at that film?

A Well, if you will notice, when I wrote my report on Sunday, I said -- I didn't say anything about it. I kept that -- of course, I noticed this thing and I kept it in reserve and I studied it several times, for instance, and I discussed also, for instance, with Doctor Gerber and Doctor Elkins.

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"Q Well, you did notice some, what you thought to be some artifact in this film as you first looked at it, did you not?

A Well, I wanted to ponder it more, if that's -- I don't know what the thought is in the back of your head, but I wanted to ponder it more.

Q You did ponder it more, I presume?

A Yes. I looked at it and I reasoned that if it was one, it had to be recent because because there was no -- it wasn't pulled away as you would expect from an old accident.

Q For what period of time was it that this problem as to whether or not there was an artifact existed in your mind?

A Well, there must -- now, wait a minute. What is that again? Let's have that, the first part of that sentence.

"(Question read by the reporter.)"

A I am going to change that and say the possibility of an artifact existed in my mind until I made out the report on 7-6. That would be 48 hours, when I said, "Lateral neck: There is a chip fracture in the inferoposterior margin of the second cervical vertebral spinous process."

Q Well, in the first report that you made --

A That's it.

Q -- to anyone as to a -- withdraw that.

You say that the first report you made was on the 6th,

1 then, is that right?

A The first written report.

Q Yes."

THE COURT: I am sorry, counselor,  
the first what?

MR. BAILEY: The first written  
report, your Honor.

THE COURT: Please proceed. I  
didn't hear the word "written."

MR. BAILEY: May I see how much  
further this goes, your Honor? I am about ready --

THE COURT: Should we have a  
recess at this time, gentlemen?

MR. BAILEY: My throat would  
appreciate it, your Honor.

THE COURT: Mr. Ferguson or Mr.  
Patrick, can we get some air in here during the  
recess, please?

Ladies and gentlemen of the jury, we  
will have our afternoon recess, and while you are  
away on your recess, you will bear in mind the  
instructions given you on each occasion when you  
depart from the room, and that is you shall not  
discuss this case or what you have heard of it  
amongst yourselves; you shall not permit anyone

else to discuss it with you, nor permit yourselves to overhear anything that relates to this case by any media of communication.

We will have our afternoon recess.

(Thereupon a recess was had.)

THE COURT: Please proceed, counselor, when you are ready.

MR. BAILEY: Yes, your Honor; I am picking up the cross examination of Doctor Gervase C. Flick, at page 5900.

Do you have, Mr. Romito, the last question and answer I read?

(Record was read by the reporter.)

MR. BAILEY: (Reading:)

"A I made the report about the skull fracture immediately, 12:50 -- 12:30 July 4th I wrote it on the progress record.

Q As to the skull fracture?

A Yes.

Q Did you find a skull fracture?

A No. I wrote on there that I did not find a skull fracture, but that's what I was sent for.

Q Well, on the 4th, did you make a report anywhere saying that there was a possibility of an artifact in this film?

A Not a written report.

"Q You didn't record that on the hospital chart, did you?

A No.

Q Did you record any of the findings that you made as to this film on Sam's hospital chart?

A Yes. I made the report that there was no evidence of skull fracture.

Q And is that the only entry you made?

A I wrote that at 12:30 on the 4th.

Q Now, you say that between the fifth and sixth cervical vertebrae you find some what you refer to as hypertrophic changes?

A Hypertrophic bridging.

Q Bridging?

A There it is. (indicating)

Q I see.

A A stalactite-stalagmite formation, the one above sending down a little bonecicle and the one below sending up a little bonecicle and they meet.

Q Well, might that indicate some growth of bone in that area?

A That's what I figured, that it was probably an old football injury.

Q I see. Well, that in no way was involved with any injuries that Sam might have received on the morning of

the 4th, isn't that correct?

"A That's right, but it becomes important later on.

Q I see. But that arrow that you have between --

A It looked like there might be a piece of bone there.

Do you see that?

Q Well, was there?

A I couldn't say that there was. I just marked it and put a question there. You have to have suspended judgment once in a while.

Q All right. Now, you later learned that there was not, did you not?

A A fracture further down?

Q Yes.

A No. As a matter of fact, I didn't learn anything about that.

Q Well, as to this arrow and question mark that you have here in the region of C-4, the fourth cervical --

A Do you see that shadow there?

Q Yes.

A Well, I didn't know -- it's possible there might have been something knocked off there. You see, here's the long bone, here's the short bone, here's the long bone again (indicating).

Q I see. Now, there were some more X-rays taken again on other days?



"A. Yes.

Q And when those X-rays were taken, you described that there was no fracture anywhere on the cervical vertebrae, isn't that correct?

A No. I discovered that the other X-rays did not show it. I ordered a repetition of this technique with the man on his back, the weight of his head on the table.

I ordered this same technique repeated so that I could work out whether or not that was an artifact or that was a fracture.

Had it occurred the second time, of course, the probability of its being an artifact would be lessened. Then if I had done it again and it happened again, then I would say it was definitely a fracture.

Q Well, when were the next X-rays taken of the neck?

A Well, I guess they were taken 7 -- they were taken 7-6. I asked for checks, you see.

Q In other words, on this occasion you ordered a second series of X-rays taken because you wanted to be sure that what you saw in the first series was correct, isn't that right?

A Well, you wouldn't hardly have an artifact happen two successive days. That was the idea.

Q Well, sir, my question is this: You had the second series of X-rays taken because you wanted to be sure what

36  
25

you had seen in the first series was correct?

"A That's right.

Q Yes. Now, will you look at these, please -- and let's keep these apart so we don't confuse them -- now, which of these was taken on the second series and what is the order in which they were taken, if you can tell me?

A Let's count these the first.

Q Yes, those are all the first. I think these are all the second.

A This is the second. And it showed, instead of the black streak, it shows a white streak across there, which starts way down below and goes way up over.

Q Is this in the region of the second cervical?

A That is, right across that black mark. So --

Q Before we get to that, in other words, on this second X-ray that was taken, there was an artifact in this film, is that correct?

A That's right.

Q So --

A In that portion of the film.

Q When was this taken, by the way?

A This was taken on the 6th.

Q Was this --

A See, we had a holiday. Sunday and then we had a holiday Monday.

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"Q I see here that this is dated -- July 7, 1954, is that correct?

A No.

Q Well, would you read that, please, in typing?

A Yes. It says that on there, but it was corrected above.

Q And then typed here we have "date" and in type we have July -- or, 7-7-54, isn't that correct?

A Yes.

Q And that's crossed out, is that correct?

A Yes.

Q And then above it you have another date?

A 7-6.

Q Now, who changed the date on this X-ray film?

A Probably Kerner, the man who took the film.

Q Well, do you know, Doctor?

A I know I didn't do it, and I know the report is given as dictated -- yes, the girl copied it that way.

Q Well, the fact of the matter is, Doctor, you don't know who it was, of your own knowledge, that changed the date on this film, referring to State's Exhibit No. 46, isn't that right?

A Yes, that's right. I don't know who changed it. Is it changed consistently?

Q Yes. I don't know if it is.

"A Yes, there's a white -- Kerner always used a white pencil, so it would be --

Q All right. What is this information that is contained in this area here? What is that called?

A We call that a plate.

Q And who puts the plate in the position that it is here?

A When the film is taken, there is lead on the film which leaves you an unused portion of the film here.

Then we have a machine, and that goes in, and a light is thrown on it so that the plate is recorded on the film, and the technician takes it automatically.

Q Shall we look at that plate together, Doctor, and we see here on this plate "Bay View Hospital," is that right?

A That's right.

Q "Name: Sheppard, Dr. Sam, 7-6-54, X-ray No. 54-5506. Date: 7-7-54," with a line through it, is that right?

A Yes, that's right.

Q And then you have "Referred by," is that right?

A Yes.

Q "Referred by R. N. S." Would that be Richard N. Sheppard?

A Yes. And then this, too.

Q And "SAS." Would that be Stephen Sheppard, Stephen A.

Sheppard?

"A Yes.

Q And then you have "R.A.S.," and that would be Richard A. Sheppard, right?

A Yes.

Q So apparently this was referred to whoever took these pictures by all three of these doctors, isn't that right? Isn't that right?

A Well, that's right, as far as that printing goes, but--

Q Now, it also says here, "Age: 30. Height" -- what is that? -- "6-1 or 6-5"?

A Six feet.

Q Six feet. "Weight: 180"?

A That's right.

Q So then after you examined State's Exhibit 46, you discovered an artifact in it. What did you do then?

A I told them to clean his neck with alcohol and to take the film without the collar.

Q Now, who did you tell that to?

A I told that to Kerner.

Q Apparently, then, this second X-ray was taken as Doctor Sam had his orthopedic collar on, is that right?

A Yes.

Q Now, you asked him to wash his neck, did you not?

A Well, cleaning it off with alcohol.

"Q Or to clean it off with alcohol. Now, was the reason for that that there might be some salve on the neck that might interfere with the X-ray?

A Well, yes. That was to make sure that he had a neutral neck, if you want to --

Q Well, exactly, then, why was it? Will you tell the jury, please?

We may not understand these things as to why it was that you gave the instructions to have this technician wash Sam's neck before this third X-ray of the neck was taken.

A Because I wanted to have proof that there would be no artifacts on the second -- on this film. This would be the third film.

Q And if there were something on the neck it is possible that that might produce an artifact, isn't that right?

A Possible, yes.

Q Now, thereafter, then, a third X-ray was taken of the neck. Do we have that here?

A Well, I don't know.

Q I think these are all we have here. Look them over, please.

A This must be it. It is written on. This we don't want (indicating.)

Q Well, keep them all here. These are separate from



1  
those others.

"A Yes. This is the third one. "Collar off and neck cleansed with alcohol. Patient erect. 72 inches."

Q Now, we are referring to State's Exhibit 46-K, is that right, Doctor?

A Yes.

Q 46-K?

A That's right.

Q And the film with the artifact in it that was taken on the second occasion would be 46-I?

A I.

Q Okay?

A Yes.

Q Now, on this film, 46-K, do you see any artifact in this film?

A No, I don't.

Q You don't?

A No.

Q Now, in this film -- withdraw that.

This is a film of the same area that we have in --  
I want to withdraw that.

Referring to State's Exhibit 46-K, 46-K is the same area as 46-I, is it not?

A What do you mean 46-K? Is that the Number one film or Number two film?

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"Q Well, they show the same region of the neck, the cervical area of the neck, do they not?

A Oh yes, yes.

Q And in 46-K, the last picture that was taken, do you see any fracture of the spinous process of the second cervical vertebra?

A No, I don't.

Q Now, in other words, Doctor, the results of the X-rays-- the third X-ray film that you examined, and that was taken on the 6th, did not show a fracture of the spinous process that you interpreted in the X-ray film of the neck taken on the 4th, isn't that right?

A That's right, but what you are forgetting is that I ordered --

Q Doctor, I am not forgetting anything, sir.

A Well, I know. That makes it worse, as far as I can see.

Q Now, do you want to add something to your answer, sir?

A Yes, I want to add something to my answer.

Q Add as much as you wish.

A You take a fracture where you find it, when you find it, and lots of times they are very difficult to demonstrate. The first technique was with the man on his back at 36-inch distance.

The second was 72-inch distance. Sure it didn't show

it, but it didn't prove that it wasn't on the first at 36 inches.

"Q Now, on the 6th, at the time the second film was taken of Doctor Sam's neck, was that from a lying position or from a standing position that that film was taken?

A Sitting, I think.

Q Does it so state in your report, Doctor?

A I think it is written on the films. I think it is written on the films. Oh, the second time -- the one with the white streak?

Q Yes.

A "Patient's neck cleaned with a" -- oh, no. Second 72-inch film of the lateral neck. "Patient erect." That may have been standing, I don't know.

Q So he was standing?

A Yeah.

Q As to the third film, was he lying, sitting or standing, do you know?

A Well, as a matter of fact, the one I just read to you was the third film.

Q Well, how about the second one?

A The second film, "Lateral neck, patient erect, coned down at 72-inch distance. There is evident a white streaking through the film which detracts from its value. This film does not show findings interpreted on the previous

film as a chip fracture of the spinous process of C-2."

"Q Well, Doctor, my question is: Was he standing, sitting or lying down?

A It says "Patient erect."

Q How was he? Don't your records show other than "Patient erect"? What does that mean?

A It means that his trunk was vertical.

Q And it doesn't say then if he is sitting or standing?

A No, it doesn't say.

Q As to the second X-ray of his neck, at what distance was that X-ray taken?

A That is after he was cleansed with alcohol?

Q The second picture was taken -- well, let's put it this way: The first picture that was taken on the 6th.

A The first picture that was taken on the 6th?

Q Yes.

A Was 72 inches, patient erect.

Q As to the second picture taken on the 6th; what was the distance?

A Second, 72 inches. Film on the lateral neck. Patient erect.

Q Now, referring to the picture taken on the 4th, was the patient, according to your records, lying, sitting or standing when that was taken?

A He was supine.

45

"Q Where does that say that on your report?

A No, it doesn't say.

Q It doesn't say, does it?

A No.

Q Does the report on the 4th as to the picture that was taken on the 4th, does that report tell you the distance at which that picture was taken of the neck?

A No, I don't think it does.

Q Do you know at what distance the picture of the neck was taken?

A Yes.

Q At what distance?

A 36 inches.

Q Now, you say that the pictures that were taken on the 6th were both taken at 72 inches, right?

A That's right, yes. That's right.

Q Now, is there any technical reason why you did not have the pictures on the 6th taken at 36 inches again, please?

A Yes. They ignored my -- Huge didn't take the second picture. Doctor Kerner -- or Mr. Kerner took the second picture and took it at 72 inches.

Q Now, we are referring now to the first X-ray or the first picture of the 6th, aren't we?

A Yes.

"Q Did you give instructions that that picture was to be taken at any specific distance?

A Yes. I asked for it at 36 inches. I didn't write them. As a matter of fact, I thought until I measured them -- when Doctor Gerber came in and Doctor Elkins measured them and saw that they were smaller, and then I knew that they hadn't taken them the way I wanted them.

Q So then, as to the first pictures that were taken on the 6th, you gave instructions for those pictures to be taken at 36 inches, is that right?

A Yes.

Q And that wasn't done?

A That's right.

Q Now, then, after you found that there was some artifact or defect in those first pictures of the 6th, you wanted another set of pictures taken, right?

A Yes.

Q Of the neck?

A Yes.

Q And did you again give instructions that those pictures were to be taken at 36 inches?

A No. I assumed that the first one was taken at 36 inches.

Q So then we have -- you have no pictures in your possession that were taken at the same distance that the first



pictures were taken, is that right?

"A That's right. The first ones were taken at 36 inches.

Q Now, to summarize your findings as to those pictures, Doctor, would you state to me whether or not this is a correct summary of what you found, as to the pictures, or as to the picture of the neck that was taken on the 4th, there was what you thought might perhaps be a fracture of the spinous process in the second cervical vertebra; as to the first picture that was taken on the 6th, there was an artifact, so you could not accurately read that picture --

A Because --

Q Just a moment. As to the third picture that was taken on the 6th -- as to the second picture that was taken on the 6th, you found no evidence of fracture any place on the neck, isn't that right?

A That's right.

"Mr. Parrino: You may inquire.

"REDIRECT EXAMINATION OF GERVASE CHARLES FLICK

"By Mr. Corrigan:

"Q Doctor Flick, in the first picture that was taken on the 4th of July, that was taken by a technician named Mrs. Huge?

A That's right.

Q The distance was 36 inches?

A That's right.

"Q And Doctor Sam was lying down?

A He was supine.

Q And when you examined that film, after you pondered over it and examined it, you found a chip fracture, didn't you?

A That's what I -- that was my conclusion and that's the way I wrote it.

Q And that shows on the film?

A Yes.

Q You also found, did you not, between the fifth and sixth cervical vertebrae some evidence of bony deposits that showed on that film of July the 4th?

A Yes. What I call -- I think I called it bridging.

Q Bridging. Now, you tell the jury what that is, so they will understand what that was on the 5th and 6th cervical vertebrae.

A Well, the borders of the bodies start shooting out little bony spikes. The sixth shot its spike out and up. The fifth shot its spike out and down, so that there was practically bridging. That's what we call bridging. They go out and up.

Q That was a building of bony deposits?

A That's what is called an osteophyte, and an osteo means bone, and phyte means a plant, an excrescent.

Q And that takes some time to develop, doesn't it?

"A Oh, yes.

Q Is that what causes arthritis?

A Well, it is a manifestation of the groundwork of an arthritis.

Q And you found that present in this film of July the 4th?

A That's right.

Q And you determined that that was the result of something that occurred a long time ago?

A Well, frankly, it isn't -- I thought he got it hurt playing football.

Q Now, then, when the second films were taken on the 6th of July, it was a different technician, wasn't it?

A Different technician and different technique.

Q On those particular films, the films were taken with the body erect --

A Trunk erect, at least.

Q And the distance was 72 inches?

A That's right.

Q Now, in examining those films of July the 6th, the two films that were taken on July the 6th, do you find any evidence on those films of the bony deposit that you found on the film of July the 4th?

A No, none at all.

Q Now, then, does it occur in the taking of X-rays that

you will get one result from one sort of technique and another result from another technique?

"A It certainly does.

Q And can you explain that to the jury, and have you had experience in that occurrence, in occurrences of that kind?

A Yes, I have.

Q Will you tell the jury?

A Well, as I said this morning, you take your fractures where you find them because very often you have what you call hidden fractures.

I have in mind the one I took the day before yesterday. I took a child's leg. On the first film it didn't show at all; on the second film it showed a fracture.

Q Yes. Now, although the film did not show a fracture in the first instance, the child still had a broken leg, didn't it?

A Yes.

Q Now, then, you were asked the question by Mr. Parrino in regard to the fracture that appeared on the spinous process, and he stated, "That that of itself is not serious, is it, Doctor?"

And your answer was, "No."

Do you have anything to add to that?

A Well, I did, I think, at that time. The thing of itself

is just a piece of bone knocked off of there, but the position of that chip would mean that the blow had to hit it at right angles, and you don't know how much jar there might be to a nerve or to the spinal cord; and, of course, that's only speculation for me, but it had to be a pretty violent blow hit from a certain direction.

Q But you do know this, Doctor: That in order to chip a bone or a piece of bone off the spinal column, it requires force?

A Yes.

Q And what type of force?

A Well, mechanical force.

Q Of what type of -- how heavy a blow?

A Well, a pretty heavy blow, I would think.

"Mr. Corrigan: That is all.

"RE-CROSS EXAMINATION OF DR. GERVASE C. FLICK

"By Mr. Parrino:

"Q But, Doctor, after this third -- withdraw that. After the second picture was taken on the 6th from a distance of 72 inches, and you found that there was no evidence of any fracture on the neck, you did not order another picture of that neck taken from a distance of 36 inches, did you?

A No, I did not at that time, as I told you before.

Q Now, Doctor, referring to this hospital record, on page 25, is this your report, sir?

"A That's my writing.

Q Now, when was this report made? What is this date up here, please? What does that represent?

A 7-7.

Q And is that the date on which this report was made?

A The date 7-7 should read 7-6.

Q Well, on what date was this report made, then?

A Well, this is it, it was made on the 7th -- it was made on the -- it apparently was made on the 8th, but it should read up here 7-6. This means the films were taken on the 6th, which would be Tuesday.

Q Yes.

A But the report was made on the 8th, which was Wednesday. That is, that's when the girl put it down.

Q But on the 6th -- withdraw that.

It was on the 6th, was it not, that you knew that the second and third pictures were taken from a distance of 72 inches, isn't that correct?

A Say that again.

Q What?

A Say that again.

Q It was on the 6th after the second and third pictures were taken that you knew that those pictures were taken at a distance of 72 inches, isn't that correct?

A Let's see. Let me see that. Well, I don't know. I



found it out when I was conferring with Doctor Gerberrand Doctor Elkins, because I noticed that when we put them all up there together, the one was smaller, and I measured them in front of them and saw that this was --

Q Doesn't your report here of the 8th specifically state:

"Lateral neck: Patient erect, come-down at --"

A Cone.

Q Comb?

A Cone; put a small spot on it.

Q Well, there's a letter missing from that word, then?

A Oh, yes, that's an "m" instead of a "n".

Q It's "cone-down at 72 inches"?

A Yes.

Q Well, you knew at that time, did you not, that the pictures were taken at 72 inches on the date that this report was made, July 8th, 1954?

A Yes. I wrote it on the 8th.

Q Yes. On what date did you make this entry here, "the date 7-7-54 should read 7-6-54, G. C. Flick, D.O."? What date did you write that?

A I wrote that on the 8th.

Q All right. So that on the 8th you did read this report and determined that the date up here was wrong, so you corrected it?

"A Yes.

Q And then in reading the report, you knew that those X-rays of the 6th were taken at a distance of 72 inches?

A Yes, and I knew it on the 8th.

Q Yes, that's right.

A I knew it on the 8th.

Q All right."

MR. BAILEY: And that terminates the testimony of Doctor Flick.

THE COURT: Gentlemen, is it agreed by and between counselors that if Doctor Flick had testified in this room this afternoon, that his testimony would be as has been read by Mr. Bailey?

MR. CORRIGAN: It is so stipulated by the State, your Honor.

MR. BAILEY: And the defense.

THE COURT: Ladies and gentlemen of the jury: You will consider what has been read as evidence and testimony in this case.

Counselor Bailey, have you called another witness?

MR. BAILEY: I have, your Honor.

THE COURT: Thank you.

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