

First, I will show it to the investigating officer, and to the defense. Doctor, I'm first of all going to show you a copy of this book. Do you recognize this book?

A: Yes.

Q: And does this book have any particular meaning to you being a with regards to its validity?

A: Yes, this is a relatively standard text used for gross anatomy course of medical school and there are multiple editions of it

Q: Now, doctor I am going to ask you to look at the diagram on page 68 and ask you to indicate the area which you have said - before you do that, I want you to refer to your medical records you have before you, on page 6. I see you have an indication - says one centimeter stab wound in the 6th intercostal space. this refresh your recollection as to what your opinion was as location of the stab wound.

A: I believe I thought it was in the 7th intercostal space,

Q: Having an opportunity to reflect on the report which you have do you think that that number might have stuck in your mind because that was where the chest tube was placed? Is that possible?

A: No, I believe I put in my physical exam, page 8 -

Q: Yes, here it is here. Is this your handwriting?

A: Right.

Q: And that says 7th ICS, which means what?

A: Intercostal space.

Q: Okay, fine, now could you please indicate with the blue mark the place where you believe this would be on the diagram?

CPT SOMERS: Excuse me, doctor. If we are going to mark on this as an exhibit the edification of the investigating officer, then I definitely that it be marked by the accused.

MR EISMAN: I will have it marked.

COL ROCK: And introduced in evidence, or a copy thereof?

MR EISMAN: Yes.

WIT: How do you wish this marked?

COL ROCK: Circle the area.

WIT: The space?

MR EISMAN: Right.

Q: Now could you sign your name here, doctor and the date also.

(Witness complied.)

Q: Thank you, very much. If I may at this time ask that this copy of Grays Anatomy be marked as Accused Exhibit - at page 68, and at this time there would be any objection from the government investigating officer if we could have photo copies made of this page?

CPT SOMERS: None by the government.

MR EISMAN: And although it would not show the colors, I think the same - possibly we could wait to see what the photocopies look like.

COL ROCK: Accused Exhibit 29 is a copy of page 68 from the book entitled Grays Anatomy, 28th edition.

MR EISMAN: I will have copies made of this page, and if they are agreeable to the counsel for the government and the investigating officer, we will be able to possibly just have them - or the single page available at that time.

Q: Now doctor, you have described the wound that - as a stab wound approximately one centimeter in length. Is that correct?

A: Yes.

Q: And were you able at any time to determine the depth which - which the wound finally reached?

A: No.

Q: Were you able to probe it or would that be a normal standard to do of a wound like that?

A: No.

Q: Now you've testified that the - I believe my recollection was the minimum depth which, in your opinion, would - the wound would to have been, would be 5/8ths of an inch to penetrate the tissue whatever as involved in a lung. Is that correct?

A: Yes.

Q: In addition to a lung being under, between the - I withdraw t
In addition to the lung in that area, what other vital organs
portrayed in that diagram in the 7th intercostal space?

A: Well, the diaphragm is in this area. It only shows part of i
liver is in this area.

Q: Now doctor is it possible to know, except under clinical cond:
the exact location, not only in height but in position, betw
front and back of the chest as to where the liver is exactly :
at any given time without being able to look at that place at

A: Well, you can - you mean the position of the liver?

Q: Right, where it is sitting at any given moment in regards to i
to that section of the lung.

CPT SOMERS: Object, that's irrelevant.

CPT BEALE: The objection is overruled. You may answer the question, doct
you can.

A: We use percussion, utilizing difference in the sound by - as a
to indirectly evaluate the position of the liver, the size of
a - it's relatively good in some people, and in other people i
almost useless.

Q: Well, by using that method, would you be able to say at this t
sitting there, exactly in inches from the outside of your ches
the 7th intercostal region, where your liver is?

CPT SOMERS: I object. It's irrelevant.

Q: In reference to the depth of it?

CPT BEALE: Just a second, counsel. Again, your objection is overruled.

I see the point he's driving at. Can you answer that question

A: I couldn't give you an exact answer in inches. I could give y
rough estimate.

Q: But you could not, assuming you were inflicting this type of w
on yourself, know in advance whether or not you'd be touching t
liver?

CPT SOMERS: I object. This question is irrelevant.

MR EISMAN: I withdraw that question if there is any problem. I think the
of it might have been - but -

Q: Now, doctor, if you, as a medical, medically trained person in
to inflict a pneumothorax on yourself, would you do it in the
the 7th intercostal space, or would you have any other area of
which would be preferable to that?

CPT SOMERS: I object. Now what this witness would do in such a situation
relevant here.

CPT BEALE: Well, the point is, counselor, that - of course, it is not app
to us that this is, in fact, the prosecution's aim to show the
wounds were self-inflicted, but as an expert witness in this
area, being a doctor, and self-inflicted wounds, I can see wh
does, perhaps, have some relevancy. I don't know that that is
your position. If it's not, you can so state, then of course
be irrelevant.

MR EISMAN: As a matter of fact, if the government would state at this tim
they do not intend to allege that Captain MacDonald inflicted
wounds, I will withdraw the question and release the witness.

CPT SOMERS: The government intends to make no such statement.

CPT BEALE: Okay, then, very well. Your objection is overruled, and doct
you can, you may answer the question.

WIT: Would you repeat it?

Q: If you were going to inflict a pneumothorax on yourself, ^{would} you
in the area of the 7th intercostal space, or would you chose s
area?

A: I would choose some other area.

Q: And why would you do that?

A: Well, as is already indicated that there are some vital struc
this area that could make the condition much more serious.

Q: Getting away from the particular injury, one of the areas of
which you've described was puncture wounds of the left pector

Could you indicate to the Colonel where this is on yourself, by pointing to the approximate area?

A: This is the muscle in this area that's relatively prominent on the chest, right in here.

Q: And describe, I believe, four puncture wounds which you recollect as having been in that area - that you saw - is that correct?

A: That's right.

Q: Now your testimony that there were no other of that type injury at this time that is all you can recollect under the circumstances?

A: You mean no other puncture wounds?

Q: Of approximately superficial nature which you might not have noted because of the emergency nature of your treatment?

A: You mean any other place on the body similar type puncture wounds?

Q: Right.

A: I could not say for sure that there were no other puncture wounds. These aren't very large, sir.

Q: And would you say these were your primary concern and the emergency treatment which you were attempting to administer would be the serious type of injuries?

A: That's right.

Q: Now you've stated that there was at the time, because of the nature of the treatment which the doctors were performing on Captain [redacted] that the normal thing would not be to probe the puncture wounds - is that correct? Unless there had been some indication of the possibility of bleeding as was coming from the lung. Is that correct?

A: Yes, there was no indication at the time to probe these.

Q: And therefore, you couldn't estimate whether or not the depth of the wounds were anything less than what would cause a pneumothorax - you understand my question? In other words, assuming there were wounds of the left pectoral region, which did not cause a pneumothorax or go into any other vital organs, is there anyway for you to estimate at the time whether they were sixteenth of an inch deep, or quarter of an inch deep or anything up to the point it would have punctured a vital organ?

A: No.

Q: Is it possible that one or more of these puncture wounds could have touched the lung and the lung could have healed itself if it were not a serious puncture?

A: Yes.

Q: And would this be a normal phenomena if the wound did not go deeply to cause extensive bleeding?

A: Yes.

Q: Doctor, getting to the next injury or injuries which you've described to the investigating officer, you've described an injury which you can't recollect seeing on the head. Could you once again indicate to the investigating officer - I'm not certain whether you were asked to indicate it by the prosecution, but indicate where this injury was?

A: This was on the forehead, midleft of the midline. It was a little bit swollen. There was an area of black and blue or ecchymosis which was slightly abraded. There was no laceration. There was no depression under the skin.

Q: Would you say doctor - the last term, no depression, could you explain to the investigating officer why you looked for a depression? And what a depression means?

A: Well, should an individual sustain a depressed skull fracture, cerebral status at that time, and a significant amount of post-traumatic compromise. It's a - an emergency that most - well, there are many medical opinions, but the majority of them will indicate a depressed skull fracture should be elevated immediately. This is the

Q: Now, in describing a wound to the head, can you make a valid statement of its relative seriousness merely by describing what it looks like to the eye?

A: No.

Q: And isn't it a fact that in many cases there is - isn't it a fact that in many cases there is no medical relation to what the injury looks like on the surface as to what damage it causes to the brain?

A: That's right.

Q: Since you are now in a training program regarding neurosurgery, do you regard any injury to the head to be significant of this

A: No.

Q: As a matter of fact, hasn't it been said by Hippocrates that no injury is so slight that it should be neglected.

CPT SOMERS: What Hippocrates may have said is irrelevant here; I object.

COL ROCK: Objection sustained. I don't think we need to bring in any historical matters into this proceedings, counselor.

Q: Now, we've had prior testimony of people who were at the MacDonald household, first the MP's who arrived in the MacDonald house, the first people to see Captain MacDonald, and one or more of them testified that Captain MacDonald was manifesting - I believe that was - all the signs of shock. Would that be consistent with the signs which you observed in the hospital later, or would it be inconsistent with the injuries? I'll rephrase it that way.

A: First of all, I don't know what they - what they said when they saw him manifest signs of shock. The second place is professions; they are not even medics. At the time I saw Captain MacDonald he showed no evidence of having been in shock.

Q: When you say, having been in shock, are there varying degrees regarding the seriousness and signs which are shown?

A: Yes.

Q: And assuming that Captain MacDonald was seen by a nonprofessional who described what, in their training, they saw as the signs of shock and I think the descriptions were - manifested that he was cold, his teeth were chattering - he felt faint or felt that he might lose consciousness or in some type of semi-comatose state that he arrived at, at which point he was given mouth-to-mouth resuscitation. Given those facts is it possible that the body's recuperative powers are such that, that by the time he arrived at the hospital, that was not a serious form of shock, but his recuperative powers could have brought him to the condition of this sort?

CPT SOMERS: I object to that question. First to the way it's phrased as long and involved, and very difficult to answer. Second, as a hypothetical into which the defense is attempting to lead the witness to a conclusion which I do not believe he can possibly do with a hypothetical question, and therefore I object to it.

COL ROCK: The objection is overruled, with that portion trying to make a simple question for my benefit.

Q: Is it possible, doctor, that by the time Captain MacDonald was taken to the hospital, which I believe from the time which has been stated would have been a minimum of a half an hour from the time that you saw him - is it possible that the recuperative powers would have taken him back to the condition, sort of from being on the verge of some area of shock?

A: Well, it's possible. It wouldn't be very serious shock.

Q: But it is possible?

A: It is possible.

Q: When you say very serious shock, you are referring to shock which could result in death, aren't you, doctor?

A: Well -

Q: I don't know the medical terms, but there are varying degrees from minor to extremely serious, aren't there?

A: Yes.

COL ROCK: Counsel, how much longer do you think your questioning will continue?

MR EISMAN: I honestly couldn't estimate at this point, sir. I honestly can't estimate. It could be an hour or two hours at this point.

COL ROCK: I would suggest then, if counsel for the government agrees, to take a break at this time for lunch.

CPT SOMERS: Sir, immediately following lunch I have another witness whom I want to use then because that's the only time I can schedule him. I know in your mind how we set this up with Doctor Jacobson, but I do certainly have a request that I be permitted to do that.

COL ROCK: I am having certain conferences prior to our meeting at 1330 and I would like to have the current witness available at 1330

CPT SOMERS: I can do that, sir.

COL ROCK: I will make certain decisions by 1330 relative to our proceedings this afternoon. Any further discussion?

MR EISMAN: The only thing I think might be a problem - I remember the doctor that he has to go on duty later in the afternoon today. We would like to have his leisure time, not his work time, away from him. There is another witness who might be on the stand for a long time, they will have to wait and then go on duty, so -

COL ROCK: What time do you go on duty, doctor?

WIT: I go on surgical call at 4:30 today, 1630 hours.

COL ROCK: We will take that into consideration this afternoon.

MR EISMAN: I'm pretty certain I could complete my cross examination by then but the question is, you know, he might have to come back again which might be another problem time wise.

COL ROCK: I think we will be able to resolve that at 1330 this afternoon

CPT SOMERS: I will say, sir, that this witness can be made available Monday at the convenience of this hearing, practically.

COL ROCK: This hearing will be recessed until 1330.

(The hearing recessed at 1113 hours, 17 July 1970.)

(The hearing reopened at 1435 hours, 17 July 1970.)

COL ROCK: This hearing will come to order. Let the record reflect that all those that were present at the recess are currently in the hearing with the exception of the witness, and Captain Thompson, assistant counsel for the government.

I have been informed that the government desires to call as a witness Mr Caverly to testify this afternoon. The defense counsel states that he objects to this procedure. I have decided that since this witness is now available to testify and will not be so available until approximately three weeks from today, he will so testify this date. I have carefully considered the pros and cons of this procedure as per

to me by counsel for both sides. Therefore, Mr Eisman and Captain Somers, I do not desire to hear further argument. The defense is noted for the record. Captain Somers, you may proceed.

MR EISMAN: Sir, if I might impose an objection at this point. Our objection is not placed on record. Because of the seriousness of the problems we are faced with at this point, I must respectfully request you to place these on the record so that any reviewing authority will get the full benefit of what our objections are so that they might adequately act on them. Without our objection being placed on the record, we will not have an adequate opportunity to express our opinion.

COL ROCK: I'm sorry, counselor, but these proceedings are being conducted for the benefit and I wish to proceed. Please continue.

MR EISMAN: At this time, I would respectfully state, based on the disciplinary rules of the American Bar Association, Disciplinary Rule 6-102 states - a lawyer shall not, in Section 2, handle a legal matter if the preparation is inadequate under the circumstances. So I feel on this witness I cannot adequately represent my client with this witness, and I cannot be present so that it could be said that I was here to hear testimony and I will at this time absent myself, but I again request you to place at least state for the record the reasons for this so that the record will be perfectly clear as to what is necessary. This is a conflict of interest offense and I believe that no harm would be done by at least placing our reasons for this action on the record, and at that time I would also state that as civilian counsel I have instructed Captain Douthat and Lieutenant Malley, under the applicable provisions of the Code, that they are not permitted to act on behalf of Captain MacDonald with this witness, and they are not permitted to cross-examine or in any way question this witness because, in my opinion, they are also in the same position as I am. They would be in violation of the disciplinary rules and I cannot place them in that position, therefore under my instructions, they will not continue or be permitted to cross-examine this witness and have no authorization to do so from either counsel or Captain MacDonald.

COL. ROCK: Captain MacDonald, your civilian attorney, Mr Eisman, has stated you do not desire that Mr Eisman represent you during the testimony of Mr Caverly. Is this your desire? I am addressing my remarks to the accused.

MR EISMAN: I have, as counsel for the accused, I have instructed him not to answer any questions in this regard. He has consulted with his counsel and I'm authorized to speak for Captain MacDonald, and I have instructed Captain MacDonald not to answer any questions in regarding this since I have stated the position of the defendant.

COL. ROCK: Mr Eisman, this is a military proceeding, and I am within my right and procedures to conduct this in a military procedural manner and I am addressing these remarks to Captain MacDonald. I will again repeat the question. Captain MacDonald, your civilian attorney Mr Eisman, has stated that you do not desire that Mr Eisman represent you during the testimony of Mr Caverly. Is this your desire?
(Accused failed to answer.)

CPT BEALE: Mr Eisman, do I understand you that you are prohibiting your client to answer the question of the Article 32 investigating officer?

MR EISMAN: I am advising him, as his attorney, that there is no duty upon him in this matter to answer when I have been authorized by him to speak for him. I feel it would be a violation of his constitutional rights at this point to answer that question, and it would be a violation of his rights under the 5th Amendment to answer any question regarding this because of the seriousness of the matter; and I am instructing or ordering him not to answer that question.

CPT BEALE: Would you please state for this proceeding how a question concerning whether or not he cares to be represented by you in these proceedings infringes upon his constitutional rights?

MR EISMAN: Because at this point there is an attempt by the prosecution to place him in this position through denying us our right to a pre-arrest interview, after they have stated we have that right, after the

Department of Justice said they had no objection, and finally be told just today by the US Attorney that this -

CPT BEALE: Now, just - just a minute. You are getting into something that Rock has already ruled he doesn't particularly care - he's already considered all the arguments. The point now is, are you prohibiting your accused from answering Colonel Rock's questions?

MR EISMAN: May I consult with military counsel regarding this matter?

CPT BEALE: Yes, you may.

MR EISMAN: The basis upon which I made that statement on Captain MacDonald upon the case of 26 CFR 692, a matter of United States versus G says that all dealings with the accused are through his counsel, this is set in the Military Justice Trial Procedure, at Department Army Pamphlet provided for the use of the defense in this matter is the basis upon which I have advised Captain MacDonald that he is authorized to speak in this matter; but since all dealings are through his counsel, this is the defendant through his counsel, and there is no need served by interrogating Captain MacDonald in this matter.

CPT BEALE: Mr Eisman, he will not have an attorney for this portion of the hearing if, in fact, what you say is true. Therefore, the Article 32 officer is completely within his power and duty to address his remarks personally to the accused, and these proceedings are being conducted for the benefit of Colonel Rock, and he must know in his own mind that Captain MacDonald personally makes this determination.

MR EISMAN: The rule specifically says all matters must be dealt with through his counsel. I am still counsel. I do not resign from the case. I have stated my position, and on my advice he will not speak.

CPT BEALE: You stated that you will not be present in this hearing room if Caverly testifies, and if you are not going to be, then Captain MacDonald is going to answer the question of whether or not he desires you to be present in here.

MR EISMAN: At this time, Captain MacDonald has a statement to make for the hearing.

CPT BEALE: Very well.

ACCUSED: Sir, it is my position that I will continue to keep Mr Eisman attorney present in the room. However, it is also my position Mr Segal will do the cross examining of this witness. This was my original understanding and I have received no further indication from my chief defense counsel on this matter. As Mr Segal had planned to do the cross examination I will not permit Mr Eisman to cross examine this witness, but I will keep him in the room as my attorney. Will I allow either of my appointed military defense counsel to examine this witness on the matter.

COL ROCK: It is my understanding then that you have excused Mr Eisman for the next portion of the proceedings, and so if that is your desire

ACCUSED: No, sir, that is -

COL ROCK: To the extent of the cross examination of the next witness.

ACCUSED: I prohibit him from cross examining the witness but I do not exclude him from this hearing.

COL ROCK: And that is your choice?

ACCUSED: That is right, sir.

COL ROCK: Captain MacDonald, I want you to understand that I do not have a say in your selection of counsel or how they represent you. That is your decision, sir. If Mr Eisman is not present or is not used at a specific request, then you will be represented by both Captain and Lieutenant Malley. Their participation during this portion of the proceedings is a matter I leave in your discretion. Do you understand this?

ACCUSED: Yes, sir, but I instructed them not to cross examine this witness. Furthermore it is my understanding that Mr Segal would be allowed to cross examine this witness.

COL ROCK: There has been no such understanding.

CPT DOUWHAT: May I say something for the record, sir?

COL ROCK: Negative, not at this time. We'll give you five minutes to confer with your counsel again, and please give me your personal answer to whether or not you want Captain Douthat and Lieutenant Malley

represent you during this portion of the proceedings next come or whether you desire to have any of your counsel represent you on cross examination purposes of the witnesses. This hearing will be recessed for five minutes.

(The hearing recessed at 1448 hours, 17 July 1970.)

(The hearing reopened at 1502 hours, 17 July 1970.)

COL ROCK: This hearing will come to order. Let the record reflect that the parties that were present at the beginning of the break are still in the hearing room.

Captain MacDonald, I address this next question to you, sir. Do you still adhere to your statement that you do not desire any counsel to participate in the cross examination of the next witness?

ACCUSED: Sir, I respectfully submit that I desire Bernard L. Segal, my defense counsel to be present and I authorize no further participation of either Mr Eisman, Captain Douthat or Lieutenant Malley in the cross examination of Mr Caverly of the FBI since the United States has prohibited Mr Caverly from being interviewed by my counsel so because Mr Eisman, Captain Douthat and Lieutenant Malley have because this they would be violating the canons of ethics to participate in cross examination. I desire them to be present in the courtroom. But due to the fact that only Mr Segal is prepared to examine this witness, and since he will return on Monday, I order that this witness wait until Monday, since my life is hanging in the balance in this room.

COL ROCK: So noted on the record. Counsel for the government, proceed.

CPT SOMERS: At this time, the government requests permission, in calling the witness of the FBI to bring Mr James Proctor, attorney, who is licensed to practice law by the Supreme Court for the highest court of the State of North Carolina, and who is an Assistant United States Attorney, to be present and to assist the government in the presentation of the witness' testimony only, and to take no active part in this proceeding.

MR EISMAN: Sir, this hearing was ordered closed by the investigating officer pursuant to a letter by General Flanagan. To my knowledge the hearing was ordered closed to everyone except the mother of Captain Macomber. Unless there is a clarification from General Flanagan, I would like to be permissive in permitting anyone else in this hearing room. If we are going to have him in, I insist you let the public and press in also at this time.

COL ROCK: This objection is sustained. Proceed counsel.

CPT SOMERS: Yes, sir. At this time, sir, I would request five minutes. I can guarantee that I'll need no longer than that.

COL ROCK: This hearing will be recessed for five minutes.

(The hearing recessed at 1505 hours, 17 July 1970.)

(The hearing reconvened at 0848 hours, 21 July 1970.)

COL ROCK: This hearing will come to order. Let the record reflect that the accused and counsel for the government are present. At this time I would like to present to counsel for both sides of the Third Volume of the proceedings. At the close of our last session, I believe, Doctor Jacobson was on the stand. Is counsel for the government prepared to bring the man on board here?

CPT SOMERS: Yes, sir.

COL ROCK: Please proceed.

MR SEGAL: Just one moment, please, Captain Somers. I do want to apologize to the court for the fact that Mr Eisman and I were not here at the recess hour yesterday at 1330 hours. I understand that the court was properly advised as to the fact that we were unavailable. I am sorry, but neither of us was in a position to contact the investigating officer, and the court has now been properly advised by the media as to the general circumstances of what happened. However, I am sorry that we were not available, because it is our desire to certainly go forward with as much speed as possible.

COL ROCK: Your comments are noted. No apologies are necessary, counsel. Please.

(MAJOR SEVERT H. JACOBSON was recalled, was reminded of his
and testified as follows.)

COL ROCK: I believe at the end of our proceedings the other day, that for the accused, I believe, had finished with their questioning. I am not certain. Is that correct?

MR EISMAN: No, sir. At this time if I may continue the cross examination Jacobson, and then Mr Segal will take over since he did not examine. There is only a few more questions.

Questions by MR EISMAN:

Q: Doctor Jacobson, do you have a copy of the medical reports of MacDonald, Exhibit A-28?
was
(The witness/handed Exhibit A-28.)

If you'll turn to the page with regard to the medicinal treatment of Captain MacDonald, if you will locate that please. Now, doctor, with regard to the sedatives or sleeping pills could you tell me, from the first time that Captain MacDonald was given any medicines, sedatives or sleeping pills, according to the medical records?

A: Yes, this is on page 32 of the order sheet. Nembutal, 200 milligrams.

Q: All right, first of all would you please explain to the investigating officer what Nembutal is?

A: It's phenobarbital, one of the intermediate acting - intermediate duration barbiturates, sleeping pill type.

Q: Now what would be considered the normal dose of Nembutal?

A: Well, it depends on what you are looking for. If you are looking for just a sedation, perhaps 50 to 100 milligrams. If you are looking for sleep or marked sedation, maybe 100 to 200.

Q: Would 200 milligrams be considered a large dose of Nembutal?

A: It's the - probably an upper limit on what we call hypnotic dose, sleep type dose, in an attempt to put somebody to sleep.

Q: Now, normally speaking, I know you can't give a specific time but on Captain MacDonald's particular physiologic functions, when looking for this type of sleep with a 200 dose of Nembutal, 20

dose of-Nembutal, approximately how long in your medical experience would you feel the effects would last?

A: Well, it's an individual thing, but the average - the average length of it is from three, four to six hours duration. Like I say, it's individual.

Q: I understand. Now, doctor, when was the next medication?

COL ROCK: Excuse me. Doctor, did you indicate the time he received this?

WIT: Yes, it's on the - been written on the chart and I've initialed and it was given at 5:25.

Q: Now, at six a.m., thirty-five minutes later does the records indicate that any other medicine was given to Captain MacDonald?

A: Yes, he was given Vistoril.

Q: How large a dose, doctor?

A: 100 milligrams, and this was also given IV.

Q: By the way, when you say IV, what is the effect - in other words, does a dose get to the system any faster, or make it any stronger as compared to, say taking a pill?

A: Yes, it's almost immediate.

Q: What is Vistoril?

A: It's a mild tranquilizer.

Q: And the 100 milligrams would be considered what type of dose of Vistoril?

A: Well, it's a relatively strong dose.

Q: Now at 7:30, doctor, if you'll look further on, did Captain MacDonald receive any further medicinal treatment?

A: Yes, at 7:30 he received 50 milligrams of demerol, again IV.

Q: What is demerol for the record?

A: This is a narcotic agent - primarily an analgesic agent to reduce pain.

Q: Does it also have some effect on the mind? Normally, does it have a sedating effect on the mind, or does this just go to the area of pain?

A: No, this has a - it has a psychological effect, produces maybe euphoria. Again, it's individual, maybe some drowsiness.

Q: Now at 8:23, doctor, further on the records, is it indicated that any further medication was given to Doctor MacDonald?

A: Yes, Demerol again was given, IV.

Q: Now the medicines which you have described thus far, Nembutal, and Demerol - would they each have individual effect, or in your opinion, would they all have some type of accumulative effect on a patient receiving it?

A: Well, in this sequence, one would think that they would have an additive or junctive effect, producing perhaps a little more sedation and reducing the pain.

MR EISMAN: I have nothing further at this time.

Questions by CPT SOMERS:

Q: Doctor Jacobson, do you know how many x-rays were taken ⁱⁿ the morning of Captain MacDonald's chest?

A: I cannot recall specifically how many were taken. The only ones taken, and perhaps the only ones taken, at the time he was in the emergency room were two chest x-rays.

Q: Did both of these x-rays show the pneumothorax?

A: No, the first one, as I recall, did not show a pneumothorax, and we could not delineate a pneumothorax.

Q: Doctor, do you have an opinion as to how deep these pectoral wounds were they superficial or deep?

A: Well -

MR EISMAN: I'm going to object, because the doctor has answered my question and he could not tell.

CPT SOMERS: The doctor saw the wound. If he has an opinion, he can give it.

CPT BEALE: I think he did answer that question that he did not probe it, and he did not probe it, correctly, so the objection is sustained.

Q: Did you satisfy yourself, insofar as your treatment was concerned, that the injury to Captain MacDonald's head was not dangerous?

MR EISMAN: I'm going to object to the form of the question. It sort of puts the onus on Doctor Jacobson who was the emergency room treating patient and he has stated that his primary concern was - was looking for a more serious wound, or the possible life-endangering wound, as opposed to something which might be determined later to be serious, a

the question, as posed, is an unfair one to Doctor Jacobson, relative form of the treatment which he was specifically given to Doctor MacDonald, because there was another physician who treated him, who was the actual treating physician, not Doctor Jacobson. If that question is going to be asked, I think it should be asked of the treating physician, not Doctor Jacobson, who was acting properly in an emergency situation.

CPT BEALE: The objection is sustained.

MR EISMAN: Thank you, sir.

CPT SOMERS: May I ask the basis of sustaining it? Can I rephrase the question or am I not to go into this area?

CPT BEALE: The questions have all been answered to the satisfaction of the examining officer.

Q: Doctor Jacobson, do you know why Captain MacDonald was placed in that particular room he was placed in in the emergency room?

A: Well, the room off to the right is - is used to, by us for the purpose that we may have to do some intensive resuscitative measures. We know the status - if there's any question in our mind that the patient requires some resuscitation, some immediate intensive care, we go into this room. It is a room that is fully equipped for anything from cardiac arrest to putting an air way in, suction, anything.

Q: Doctor Jacobson, did the fact that Captain MacDonald was a doctor have anything to do with the -

MR EISMAN: I would object. That's completely improper, to reflect on the hospital in that regard.

CPT BEALE: Objection sustained.

Q: Doctor with respect to Captain MacDonald's specifically, do you know what the effect of the drugs that the defense has discussed which were given to him was on him?

A: Well, I - I can't really answer that in any completeness as far as the drugs that had been given him. I saw him around seven o'clock and we had given him the Nembutal and Vistoril, and at the time, I was not alert to question, although he was - he was much more sedated

than when he came in. We could speak to him and he would answer would answer rationally. As far as after the Demerol, I didn't didn't see him until, again, probably until about ten o'clock, couldn't tell you exactly the effect after he got his second dose of Demerol.

CPT SOMERS: No further questions.

COL ROCK: Doctor Jacobson, can you determine from the wounds what type of weapons have been used? This is based on any experience factors that you have or from your medical knowledge.

WIT: By type; do you mean blunt, sharp -

COL ROCK: Yes, more specifically, ice pick type or knife type.

WIT: Well -

COL ROCK: Club, baseball bat.

WIT: As far as the head wound, all I could say, it was a blunt - as far as the others, all I can say is sharp, and I couldn't give you more specific.

COL ROCK: All right. Do you know from any medical records regarding Captain MacDonald whether he is left or right handed?

WIT: No, I don't know.

COL ROCK: Do you know whether he wears glasses?

WIT: No.

COL ROCK: Do you consider that he was in great pain while he was under your observation?

WIT: Well, he was about the time we put the chest tube in and after the chest tube was put in, the reason for the second dose of Demerol the

COL ROCK: During the time that you were with the patient, were there any other people, not medical personnel, but individuals such as CID agents or others interviewing or questioning Captain MacDonald?

WIT: I don't recall any - any nonmedical people in with him at the time that I was with him, because usually the times I was with him, I was doing some sort of procedure or examination. I do know that I asked if they could see him, and I believe initially we said that

could not talk to him. I believe Doctor Bronstein said that, not absolutely sure of that, but I believe I recall it.

COL ROCK: But during the time that you were with him, you were working medically and therefore it was inappropriate to question him.

WIT: That's right.

COL ROCK: If a person has a partially collapsed lung, a pneumothorax, is estimation can that individual go into a state of shock if it the order of magnitude of 20 to 40%? In other words, is that the side effects of that type of injury?

WIT: Well, certainly this is an individual thing and I would think remains a possibility.

COL ROCK: A possibility?

WIT: Yes, again, it's individual.

COL ROCK: I understand that. I have no further questions. Does either have any further questions of the doctor?

MR EISMAN: I have no further questions.

COL ROCK: Does counsel for the government?

CPT SOMERS: No, sir.

COL ROCK: Doctor Jacobson, you are advised that you will discuss your testimony with no person other than counsel for the government or counsel accused. Do you understand that, sir?

WIT: Yes, sir.

COL ROCK: You are excused subject to recall.

WIT: Thank you.

(Witness saluted the IO and departed the hearing room.)

COL ROCK: Is counsel prepared with the next witness?

CPT SOMERS: Counsel for the government now requests a thirty minute recess.

COL ROCK: For what purpose, sir?

CPT SOMERS: For the purpose, among others, of bringing the witness here, his way, I believe; and number two, other preliminary matters.

COL ROCK: We'll take a recess.

MR. SEGAL: May we just inquire if the counsel for the government would
us who the next witness is so that we may also get our work

COL. ROCK: Yes, I think that's reasonable.

CPT SOMERS: The next witness is Mr Ivory.

(The hearing recessed at 0912 hours, 21 July 1970.)

(The hearing reopened at 0957 hours, 21 July 1970.)

COL. ROCK: This hearing will come to order. Let the record reflect the
parties that were in attendance at the recess are currently
hearing room. Is the government ready to proceed?

CPT THOMPSON: The government is ready to proceed, Colonel Rock. However
the time that the government calls its next witness, Mr Will
we would like to settle a preliminary matter. On the 13th of
this counsel, the first day in the hearing, a ruling was made
myself from verbally assisting the government in the present
this case. The ruling was made by Colonel Rock on that day
my participation on that same day. I appeal/^{-ed}this ruling to
General Flanagan, and it is my understanding that an indorsement
been sent down by Major General Flanagan requesting that the
set forth in my appeal be followed. He is interested in the
of this hearing. The government is still of the belief my
would, in fact, aid in expediting a final determination of
of all matters set forth, and at this time we would request
Rock reconsider the matter favorably to the government, and
to present evidence - argue issues, and in any other way a
government by vocally and verbally participating in the pre
of the case. Thank you very much. The record should refle
honor, that my appeal in a letter dated 13 July 1970, was p
the defense in the case, and I believe they in fact, althou
seen them, made comments on that particular appeal.

COL. ROCK: The comments of the counsel are noted. I have in fact rece
indorsement addressed to me by the appointing authority, Ge
Flanagan, in which he states that he leaves to my discretio