10,960

No. 49 of 1959

RECORD OF PROCEEDINGS

In the Privy Council

On Appeal from the High Court of Australia

BETWEEN

Her Majesty's Attorney-General
for the State of South Australia
APPELLANT

AND

John Whelan Brown
RESPONDENT

RECORD OF PROCEEDINGS

INDEX OF DOCUMENTS.

PART I.

PART I—*continued.*

PART II.

EXHIBITS.

PART I.

In the Supreme Court of South Australia.

No. 1
Information (plea of not guilty entered 17th March, 1959).

No. 1.—INFORMATION (PLEA OF NOT GUILTY ENTERED 17th MARCH, 1959).

SOUTH AUSTRALIA.

1959.

THE QUEEN *v.* JOHN WHELAN BROWN.

Court of Trial

SUPREME COURT, ADELAIDE

JANUARY SESSIONS

INFORMATION OF THE ATTORNEY-GENERAL.

JOHN WHELAN BROWN

is charged with the following offence

STATEMENT OF OFFENCE

Murder (section 11, Criminal Law Consolidation Act, 1935-1956).

PARTICULARS OF OFFENCE

John Whelan Brown, on the 23rd November, 1958, at Pine Valley, murdered Neville Montgomery Lord.

29/1/59

Remanet to February 1959 Sessions.

R. J. PETERSON, Clerk of Arraigns.

27/2/59

Remanet to March 1959 Sessions.

R. J. PETERSON, Clerk of Arraigns.

17/3/59

Arraigned
Plea: Not guilty.

R. J. PETERSON, Clerk of Arraigns.

20/3/59

Verdict: Guilty
Allocutus
Sentence of death pronounced.

R. J. PETERSON, Clerk of Arraigns.

Information, Plea, Verdict and Sentence.

In the Supreme Court of South Australia.

No. 2 Transcript of proceedings. Evidence of witnesses for prosecution.

No. 2.—TRANSCRIPT OF EVIDENCE AT THE TRIAL, 17th MARCH, 1959, TO 20th MARCH, 1959.

CRIMINAL.

TUESDAY, 17TH MARCH, 1959.

Before His Honour Mr. Justice Abbott.

R. *v.* JOHN WHELAN BROWN.

CHARGE—MURDER.

PLEA—NOT GUILTY.

Mr. R. R. St.C. Chamberlain, Q.C., with him Mr. A. Wells, for Crown.
Mr. J. Elliott, with him Mr. N. Birchell, for Accused.

JURY.

M. J. LUDERS	C. H. SMITH
F. J. MCCULLOCH	G. F. L. PAYNE
A. C. FORGIE	S. BACIC
~~C. S. LODGE, Acc.~~	M. I. FENN
L. D. CHALK	G. E. MCGARGILL
G. A. CHURCHER	S. A. WAYE
W. S. MANUAL	

On application of Mr. Elliott, all witnesses ordered from Courtroom, with exception of expert medical witnesses.

10.20 a.m. Mr. Chamberlain opens.

11.06 a.m. Mr. Chamberlain calls—

GILLIAM JUDITH CHAMPION LORD, widow, 27 Rosbury Avenue, Marryatville (Sworn).

Gilliam Judith Champion Lord —Examination.

Examined—My husband's name was Neville Montgomery Lord. He was 32 years old. We have two children, a girl 6½ and boy 2½. My husband was manager of Pine Valley Station. That belongs to a family company, some of my husband's relations. Pine Valley is 65 miles from the nearest town, Morgan. It is north of Morgan. It is a sheep station. My husband had been manager for 9½ years. I have lived up there all my married life. On the 23rd November last, the people at the station were my husband, myself and children, and Mrs. Schiller, the cook, and John Stone the accused. We had another employee named Stokes who was away for the week-end. The accused was the only stationhand at the station that week-end. The cook's room is not part of the main house, it is near the main house. The stationhands, the males, their quarters are about 50yds. away, that is where the accused's quarters were. There are 3 or 4 buildings there is a series of buildings with half a dozen rooms in them. They were fully occupied when we were shearing. The accused and Stokes had separate rooms.

To His Honour—Mrs. Schiller slept in some quarters about 4yds. from main house. These quarters were a bedroom sitting room and bathroom.

Examined—The accused arrived at the station on Thursday afternoon, that is the previous Thursday afternoon. My husband's uncle brought him there. Between Thursday and Sunday night I saw the accused. I saw him on Friday morning in the station kitchen. His job at the station was a general

stationhand. He was in the kitchen because he brought the milk in. Mrs. Schiller introduced him to me. He said something to me. I said good-day to him, he said something to me but I didn't hear what he said as he went out the door. That is all the conversation I had with him. On Sunday night my husband went to bed first. He went to bed about quarter past 9. Something had happened to his clock and I took him in another one. After he went to bed, I was in the kitchen sorting out the clothes, then I went to children's bedroom. They were asleep in bed, I was changing the little boy's nappy. That bedroom in relation to my husband and my bedroom is next to it, and there is a door between the two rooms. There is a door between the children's room and ours. While I was in the nursery I heard a light go on in our bedroom, then I heard a shot. When I heard the shot, I ran into our bedroom. I went through the communicating door. As I went into the bedroom, I didn't see the accused, he came back. As I was running in I didn't see him. I threw myself on the bed, then he came back. I could see my husband had been shot I saw that first. Then I threw myself onto the bed. I don't think I screamed, until I saw the man. While I was on the bed, the accused came back. He said, "Be quiet". He had a rifle at that stage. After trying to make me be quiet he ran out the door. He went out our bedroom door which goes out into the hall.

To His Honour—From the hall, the front door is about a yard away or there is the back door. I didn't see where he went. Both doors, the front and back door would be unlocked. I don't know which one he went out, he could go out either, the front one was a few feet from the bedroom door.

Examined—I went out and found Mrs. Schiller. She was over in her bedroom. The first person to come to the station was my husband's cousin, Mr. Don Lord. He lives on a nearby station 50 miles away. A policeman arrived and a doctor, they arrived during the night about 12 or 1. There was a search conducted with my home as headquarters during the next few days.

Gilliam Judith Champion Lord —Cross-examination.

Cross-examined, Mr. Elliott—Before the accused came to the station I didn't know the accused. As far as I know my husband didn't know him either.

To His Honour—I know my husband didn't know him.

Cross-examined—He was only there a few days, but in that time, there was no cause for complaint about the way he did his work. None whatever. I had only the two conversations with accused, the one in kitchen when he brought the milk in, and the conversation at the time he said "Be quiet". When he brought the milk into the kitchen, that was in the ordinary course of his duties. Before I heard the light being switched on on the Sunday night, I hadn't heard anyone going into the room. When I heard the light go on, I didn't go into the room before I heard the shot. I thought it was my husband turning on the light.

To His Honour—It was an electric light.

Cross-examined—After the shot when I saw my husband lying there, the accused came back into the room. He came within a foot of me. I was then lying on the bed with my husband. The only conversation he had with me was to tell me to "Be quiet". When he told me that he wasn't far from me. His expression on his face I would describe it, as a bit bewildered. That was the expression when he told me to be quiet. Otherwise he seemed to be fairly calm.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for prosecution.
Gilliam Judith Champion Lord —Cross-examination, *continued.*

To His Honour—By 'bewildered' I mean, that I thought he may have been taken aback that I had come from the next room, not knowing there was a door between. He just seemed to be surprised to see me.

Cross-examined—I am almost sure there was no unpleasantness between my husband and the accused. We had been talking a fair bit that week-end and he would have told me if there had been. My husband usually got on very well with his hands. We had lost two hands a little while before, but that was because of a disagreement with Dave Stokes, not on account of any disagreement with my husband. My husband usually treated the hands with consideration and kindness. It was true that he put their convenience and well-being before himself. I have no reason to think he treated the accused any different.

By consent, witness released from further attendance.

11.25 a.m. Court adjourned.

11.40 a.m. Court resumed.

Mr. Chamberlain calls—

MARIAN ELLEN MAUD SCHILLER, wife of Heinrich Adolf Schiller, 4 Elm Grove, Magill (Sworn).

Marian Ellen Maud Schiller—Examination.

Examined—In November of last year I was the cook on the Pine Valley Homestead. I occupied quarters quite close to the house, on the side of the main house. On the Thursday before the Sunday the 23rd November that is the 20th November. I was present at the Pine Valley Homestead. That was the day when the accused came to work at the homestead. He was brought by another Mr. Lord, Mr. Les and a man from Elder Smiths. That was in the afternoon; about half past 2 he came in for lunch. On that day Dave Stokes was also at the homestead and the accused took up his quarters next to Dave Stokes. From then on until Sunday evening the 23rd I saw the accused at meal times. That was in my kitchen. He occasionally helped me to dry the dishes after the meals. I spoke to him in general conversation. I do remember him asking on Sunday evening at tea time when the other station hand was coming back, Dave Stokes. It sticks in my memory. It was in the ordinary course of conversation.

To His Honour—I told him Dave was coming back on the Monday evening, I thought he had Monday off.

Marian Ellen Maud Schiller—Cross-examination.

Cross-examined—On the night of Sunday 23rd about half past 9 I had gone to bed to read. I had put the light out at about half past 9. Shortly after putting the light out I heard something. I didn't recognize it at the time, but I found out after it was a shot. I heard a loud report followed by Mrs. Lord's screams. A matter of seconds after Mrs. Lord came to my room. When she came to my quarters, when I opened the door, she said something to me. She was very upset I went with her back inside the house. She went straight to the 'phone, I stood opposite her in the hall. I subsequently went and saw the deceased on the bed in the bedroom. I remained with her in the house until help arrived. The first person to come was a relative of hers. Later in the early hours of the morning the police officer and doctor arrived.

Cross-examined, Mr. Elliott—I had never seen the accused before he came to work at the station. During the short time he was there he had not had any differences with me. I don't know of him having any differences with

anyone else. It was at meal times I used to see him, that was all. He was a quiet man, I thought he was a very quiet type of man. He seemed a shy person. When he helped me dry the dishes, that was not my suggestion, he volunteered. As far as I could see he was just a quiet ordinary sort of man. I had been a cook at the Pine Valley Station about 4 months. I hadn't been a cook at any stations prior to that. The last time I saw the accused before the shooting was about quarter to 7, round about that time, in the kitchen. That was after tea when he was drying the dishes for me. I didn't notice anything odd about his demeanour, nothing at all. Nothing to suggest he was disturbed or upset. As far as I was concerned, just the usual self he had shown at meals. I didn't attach any significance to his question about Dave Stokes' return. It would be a perfectly normal question from one hand about the return of another. I thought it was. I hadn't myself noticed any unpleasantness between the accused and the deceased while he was there. The deceased himself was a kind considerate sort of man to his employees. I had no reason to think he was any different towards the accused, not at all.

Marian Ellen Maud Schiller—Cross-examination, *continued.*

Re-examined—No questions.

Mr. Chamberlain calls—

ERNEST ARTHUR SPARROW, Senior Constable, stationed at Port Noarlunga (Sworn).

Examined—On the 23rd November last year I was stationed at Morgan. As a result of a 'phone message at night I went to the Pine Valley Station arriving at approximately 2 a.m. on the 24th. There had been heavy rain and we were delayed in getting there. I went into the bedroom at the Pine Valley Station and saw the deceased Neville Lord on the bed. He was lying in a sleeping position. The bedclothes and pillow were soaked in blood. I saw a large wound in his head. He was lying on his right side. Dr. Miller of Waikerie arrived shortly after. He examined the deceased. I found a hole in the bedding and pillow immediately beneath the deceased's head. I was still there when detectives arrived later. I took part in the search for the accused. The search commenced almost immediately after my arrival about 2.30 a.m. I began searching before the detectives arrived.

Ernest Arthur Sparrow—Examination.

Cross-examined, Mr. Elliott—No questions.

Mr. Chamberlain calls—

ROBERT LIONEL MILLER, L.Q.M.P., Waikerie (Sworn).

Examined—On the early morning of 24th November I went to Pine Valley Station as a result of a 'phone message. I got there about 2 o'clock. I examined the late Neville Lord's body, it was still on the bed. It had what appeared to be a gunshot wound in the head. He had died immediately as a result of the wound. I made an examination on the 24th. The skull was completely shattered. Other than that he was a perfectly normal man, the death was as a result of the gunshot wound in the head. The deceased had powder marks on the left side of the wound, that is where the shot had entered. I can't give a definite statement about the distance from which the shot had been fired, but it must have been very close. It was obviously close.

Robert Lionel Miller—Examination.

Cross-examined, Mr. Elliott—No questions.

Witness released.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for prosecution.

Mr. Chamberlain calls—

DONALD VIVIAN LORD, grazier, Balah Station *via* Burra (Sworn).

Donald Vivian Lord—Examination.

Examined—I was the first on the scene after the shooting. Mrs. Lord 'phoned me and I came straight over to Pine Valley. I rang up the police. I saw the body. It was my cousin, Neville Montgomery Lord. That is the body that was examined by the doctor. I saw the accused on the Thursday, going up to Pine Valley. I didn't take him, they called at my station on the way up. A gentleman from Elder Smith and an uncle of mine took him up to Pine Valley. My uncle is one of the owners of the Pine Valley Station.

To His Honour—He is not the father of the dead man. He is an uncle of his.

Examined—I had nothing to do with the accused. I just saw him go through. I joined in the search. I was there the whole time. I looked round the station and the house shortly after getting there, found no trace of him.

To His Honour—I arrived before Constable Sparrow. I was the first to arrive. I got there about 12.30.

Donald Vivian Lord—Cross-examination.

Cross-examined, Mr. Elliott—The Thursday when the accused was on his way to Pine Valley is when I first met the accused. He would be in my presence on that occasion approximately an hour. I noticed he was very quiet. Had hardly anything to say.

To His Honour—He didn't have a meal with us. I was out and when I came back my wife was making tea for my uncle and this chap. They had a glass of ale with us.

Cross-examined—The only thing I noticed about him apart from being quiet, was that he sort of hung his head. He was sitting forward most of the time looking down. I noticed he had some tattoo marking on his hand. The deceased had the reputation of being invariably kind to his employees.

Re-examined, Mr. Chamberlain—Mr. Les Lord, the uncle that brought him to Pine Valley, had selected the accused for the job. I don't know where they got him from. It was my uncle that picked him and decided to give him the job. Max Nankivell is the man from Elder Smiths. He is from the Adelaide office in charge of stock, and was coming up to inspect the stock.

Witness released. Also Mrs. Schiller.

Mr. Chamberlain calls—

JOHN RAYMOND STOKES, station hand, Pine Valley Station *via* Burra (Sworn).

John Raymond Stokes—Examination.

Examined—I have been working at Pine Valley over a period of 6 years. I occupy a room in the men's quarters, which is 100yds. from the house. It is separated from the house. I am usually called 'Dave'. I first saw the accused on Thursday afternoon prior to the shooting. He was given a room adjoining mine in the men's quarters. I didn't see a great lot of him. I got on all right with him. I didn't see anything peculiar or unusual about him, other than he was a quiet shy kind of person. There was a rifle in my room. Looking at rifle produced—that is the rifle. That belonged to the station. There was some ammunition for it, quite a number of rounds of ammunition. I went away to Morgan on the Saturday morning, then on to Burra. I was

away at time of shooting. When I left the rifle was in my room. It had a clip with some ammunition in it, there was a spent cartridge in the barrel and the clip was near enough to full of live ammunition. It holds 10. The ammunition was soft nosed, for shooting kangaroos. I got back to the station in the early hours of Tuesday morning. The search was on for the accused at that time. The rifle was missing, and some of the ammunition. There would be 20 or 30 rounds of ammunition missing. That is besides what was in the clip. There was also a pair of my elastic sided boots. Looking at boots produced—they are the ones. They were in my room and missing when I came home.

Rifle tendered and marked Exhibit "A".

Boots tendered and marked Exhibit "B".

John Raymond Stokes—Cross-examination.

Cross-examined—I had never seen the accused before in my life before the Thursday. I left for Morgan on the Saturday morning. My acquaintance extended through Thursday and Friday.

To His Honour—I left straight after breakfast by car. It was my car. I noticed he was quiet and shy. I noticed he seemed to be well behaved, he was polite to Mrs. Schiller. The rifle was kept just inside the door of the room, as you walk in it is just standing up there. It is not hidden in any way. Anyone could see it by putting their head in the door.

To His Honour—The boots were underneath the bed. They would be about 3 or 4 yards from the door.

Cross-examined—They would not be hidden either. The bullets were kept on the dressing table in full view of anyone looking in the door. On one occasion the accused was in my room talking to me. Mr. Lord was a kind and considerate man to his employees, very kind person. I have no reason to think he was any different towards the accused.

Re-examined—No questions.

Witness released.

Mr. Chamberlain calls—

William John Low—Examination.

WILLIAM JOHN LOW, Sergeant of Police, stationed at Adelaide (Sworn).

Examined—

Photographs tendered and marked CA to CH.

Mr. Elliott objects to certain photographs going in.

Mr. Chamberlain withdraws Exhibits F. G. and H.

Photographs now tendered and marked Exhibit CA to CE.

I went to the Pine Valley Station on the morning of the 24th November. I took the photographs. Looking at CA—that is a view of the front of the homestead showing the room where I saw the deceased. The room is the one with the treble window. The building behind the motor car is the men's quarters. Looking at Exhibit CB—another view of the front of the house.

To His Honour—I don't know where cook's quarters are.

Examined—Looking at CB—on the left of the picture is another building. I believe it is the cook's quarters but I am not sure. Looking at CC—a general view of the house showing men's quarters at the right. Looking at CD—that is the bedroom showing the bed on which the body of the deceased was lying. Looking at CE—that is the same room showing the position in which the body was when I saw it.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for prosecution.

Cross-examined, Mr. Elliott—In Exhibit CE, the door shown is the door to another room. I don't know where it leads to. In Exhibit CD the door shown is the door leading into the passage.

Re-examined, Mr. Chamberlain—No questions.

Witness released.

Mr. Chamberlain calls—

Milton Ermine Mitchell—Examination.

MILTON ERMINE MITCHELL, contractor, Burra (Sworn).

Examined—I was in the party that searched for the accused after the shooting at the Pine Valley Station. I was on the job searching for 5 hours. I started about 6.30 of that morning, that is on Friday 28th November I didn't join until then. I was at Ubaliah Station at 10 o'clock on that Friday. I there saw the accused coming from a disused shed approximately 300 yards distant from our position. There is an old hut nearby, out in the bush. He came from the disused shed. We were near the old hut, which is unused. This would be approximately 25 miles from the nearest station house. He was well out in the bush. I went to Ubaliah, because the station owner of Canegrass had rung me previously. The accused came up to me and the people I was with. I asked him who he was. He said "Stone". He said, "Is he dead?" I said "Yes, dead and buried". I didn't have any more conversation with him than that. I instructed him to get into a utility and he was taken back to Canegrass Station. That is about 25 miles from where we were. I handed him over to Constable Kelly at Canegrass.

To His Honour—I was not in that utility when it went to Canegrass. I put him in the utility and two brothers named Warnes drove him.

Milton Ermine Mitchell—Cross-examination.

Cross-examined—He approached my party from the disused shed. We were all armed. As he approached me by the description I thought it was the man we were looking for. Apart from the conversation I have just deposed to, there was nothing else said. He semed quiet to me. He was not agitated. He hung his head. Apart from those few words he never uttered another word. I knew the deceased by reputation. He had a reputation of being kind to his employees.

Re-examined, Mr. Chamberlain—No questions.

Witness released.

Mr. Chamberlain calls—

Brian Edward Kelly—Examination.

BRIAN EDWARD KELLY, constable, stationed at Renmark (Sworn).

Examined—I am a member of the C.I.B.

To His Honour—Between the 23rd and the 28th November last I was stationed at Renmark.

Examined—On Friday 28th November at about 11.15 a.m. I went to Canegrass Station. That is about 24 miles in a southerly direction from Pine Valley Station Homestead. The accused was there in a utility with two other men. I said to accused "I am a police officer will you come into the homestead with me I would like to have a conversation with you". He then went into the homestead with me at Canegrass. There I had a conversation with him.

To His Honour—He didn't have any arms on him. I didn't search him.

Examined—I could see he didn't have any. I said "What is your full name." He said "John, well it's like this, my name is John Whelan Brown,

but I always use the name of John Stone." I said "On Sunday the 23rd November 1958 you were employed on Pine Valley Station". He said "Yes". I said "At about 9.30 p.m. on Sunday the 23rd November 1958 were you employed on Pine Valley Station and at that time did you go to the bedroom of Neville Montgomery Lord and shoot him through the head." He said "Yes". I said "I want you to understand that you are not obliged to say anything further unless you wish to but whatever you do say may be taken down in writing and used in evidence. Do you understand that". He said "Yes". I said "Did you shoot him with a .303 calibre rifle". He said "Yes". I said "I want you to come with me to Pine Valley Station where you will be later arrested and charged with the murder of Neville Montgomery Lord". The accused said "Yes, I know". I then took the accused to a police utility and drove towards Pine Valley Station. On the way I said "Where is the rifle with which you shot Mr. Lord". He said "Oh, it's about 2 miles from the homestead". I said "Can you take me to it". He said "Yes". After we arrived at Pine Valley Homestead I said to accused "Can you take me to the rifle now". He said "Yes". In company with Constables Cameron and Wundenberg I went in a vehicle and followed footprints to a position about 8 miles S.W. of the Pine Valley Homestead and there leaning across a dead tree trunk I saw a .303 calibre rifle. Looking at Exhibit "A"—yes, that is the rifle. The rifle was loaded in the magazine and cocked, and there was a number of live .303 cartridges on the ground nearby. I said "Is this the rifle that you left here". He said "Yes". I said "Is this the rifle with which you shot Mr. Lord". He said "Yes". I then returned with the accused to the Pine Valley Homestead where Detective Lenton had a further conversation with him. Where the rifle was found was faily heavily wooded country, black oak scrub, wild scrub.

Cross-examined, Mr. Elliott—I made notes of my conversation with accused but I didn't need to look at them to remember what had been said.

Q.—You did not ask the accused when you questioned him, why he had shot Mr. Lord.

A.—No. He was quite docile when questioned. He was obedient to my directions. I was his custodian overnight, that is on the Friday night. I noticed he spoke very little, he didn't speak much. I was awake all night.

To His Honour—He slept only very little.

Cross-examined—By that I mean, he was lying on the bunk in the cell. I was in the same cell with him. There was no bunk there for me to lie on. He seemed to me to be awake most of the time, throughout the night he was awake more than asleep. "Fitful" would not describe it. He didn't go to sleep for a long time. Once he went to sleep he remained asleep for perhaps two hours. Although I was there he had nothing much to say. We did speak on and off, we didn't speak all the time.

Q.—Would that be the dominant characteristic you noted about him this taciturnity?

A.—I don't know what taciturnity means.

Q.—Little speaking.

A.—Well it was not the main thing about him, I have struck a lot of men who have spoken less. That did not strike me as his dominant characteristic. It was marked. Although he slept in the way I spoke about, he was reasonably calm in himself. He appeared so.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for prosecution.
Brian Edward Kelly—
Re-examination.
Lawrence Vernon Lenton —Examination.

Re-examined, Mr. Chamberlain—I have struck people who have had less to say even than the accused. I did not see anything odd or strange about him.

12.43 p.m. Court adjourned to 2.15 p.m.

2.15 p.m. Court resumed 17/3/59.

Mr. Chamberlain calls—

LAWRENCE VERNON LENTON, Detective Constable, stationed at Adelaide (Sworn).

Examined—On Monday 24th November I went with Detective Zeunert and Sergeant Lowe to Pine Valley. I got there early in the morning, about 9 o'clock. I cut open a mattress and found a spent portion of a .303 bullet. On the back verandah about 6ft. from back door I found a spent cartridge case and a live .303 cartridge. The live cartridge was used for a test shot by the ballistic expert. The empty cartridge case is here.

Spent cartridge case tendered and marked Exhibit "D".

Cartridge tendered and marked Exhibit "E".

There was a search from the morning I arrived there until prisoner was found on Friday. Quite a number of people took part in the search including blacktrackers. On Friday the 28th with blacktrackers I went to a hut near Ubaliah Station and recovered this hat now produced.

By consent tendered and marked Exhibit "F".

At 3.30 that same afternoon I had a conversation with accused at homestead at Pine Valley in presence of Detective Zeunert. I recorded the questions and answers on a typewriter as questioning proceeded. When it was finished I asked the accused to read it through. He did so. Then I said "Has it been taken down correctly". He said "Yes". I said "Is it true". He said "Yes". I said "Will you sign the bottom of each page". He said "Will I sign it John Brown or what". I said "Sign it with your usual signature" and he then signed the bottom of each page—"John Stone". Looking at document produced—that is the document, signed by the defendant in my presence. It accurately records the conversation I had with him.

Document tendered and marked Exhibit "G".

(Witness reads document to jury.)

I had another conversation with him in the men's quarters and the next morning I had another conversation at the cells at Morgan. I made notes of the conversation while they were fresh in my memory. I cannot give the conversation without looking at the notes.

By consent permission given to refer to notes.

From notes.

In the men's quarters I said "You realize you are going to be charged with murder". He said "Yes, I knew that I did it, but all the time I was hoping that it was only a dream". I said "The blacktrackers who tracked you through the scrub have told us that for miles you moved through scrub with your boots off, and that you also in the first instance travelled in circles. Why did you do that?" He said "To try and throw them off". I did not know you would have the trackers but I knew there would be a search. If I took my boots off I knew they could not follow my tracks". I said "Where were you going". He said "I was making for the river. I was going to a

river town and was going to give myself up. If I had known what the country was like I would not have tried to do it. I would have given myself up at the homestead". I said "Did you see the planes". He said "Yes, on the Monday I went out on the claypan and waved to them, so that they could see me because I wanted to give myself up, but they would not take any notice of me". I said "Did you hear the vehicles". He said "Yes, I could hear them but I didn't see anyone". I said "What happened this morning". He said "I was pretty weak and I wanted to give up and I didn't think that I could make the river. So I lit a fire to attract the planes. I thought one had seen it because he came over and then flew in the direction of the homestead. A little later I saw a number of vehicles on the road and thought that they had come for me and I left the hut and walked up to them and gave up". He was taken to the Morgan Police Station and charged with murder, and following a police court appearance the following morning I again spoke to him in the cells of the Morgan Police Station. I said "You don't have to answer any of my questions, or say anything more about the matter unless you want to as anything that you do say will be taken down and may be used in evidence. Do you understand that". He said "Yes". I said "I have here a blueprint of the station homestead at Pine Valley". I showed him the blueprint produced. He appeared to look at it. I said "Here is a pencil" and I handed him a lead pencil. I said "Looking at the diagram at the bottom left-hand side of this plan, would you mark with an X where you say you were standing when you shot Lord". He then marked an X on the plan. He put the first cross in the front bedroom nearest the passage door. I said "Would you also mark with an X where you think the bed was on which Lord was lying". And he marked with an X in the front bedroom but further from the passage door. The mark is approximately accurate. I said "There is no connecting door shown in this plan between the two bedrooms, did you know there was such a door". He said "No I didn't know about it". I said "Will you mark with arrows the path you followed". He did so, saying, "I came in the front door here (and marked it) into the bedroom, after I came out of the bedroom and down the passage, I went into the other bedroom (he marked that) looking for Mrs. Lord. When I could not find her I went back to the front bedroom and there she was (he marked that)". I said "You didn't pass her in the passage". He said "No". I said "Then that would suggest that she had gone through the dividing door". He said "Yes, I didn't know that it was there". I said "Where did you go then". He said "Down the passage and out the back door" and he marked that in. I said "You told me that you went to Mrs. Schiller's quarters". He said "Yes". I said "Will you mark the position of the quarters on the plan". He then drew the big X which appears in the bottom left-hand corner of the blueprint. That is reasonably accurate. Shortly after this he was brought to Adelaide.

Blueprint tendered and marked Exhibit "H".

I handed the bullet case found on back verandah to Patterson the ballistic expert, and the .303 rifle and cartridge case.

Cross-examined—I was in charge of this case. I found the accused very docile during his interrogation. I did not see any signs of aggressiveness during the interrogation or at any time. He appeared to answer my questions very frankly. I ascertained the rifle that was used didn't belong to him. I searched all his belongings. He did not have much. He did not possess any

In the Supreme Court of South Australia.

weapon or firearm. I investigated this matter very closely and made all sorts of surrounding enquiries. From all these enquiries I have not been able to find any apparent reason for this killing.

No. 2
Evidence of witnesses for prosecution.

Mr. Chamberlain calls—

IVAN HENRY PATTERSON, Senior Constable stationed at Adelaide (Sworn).

Ivan Henry Patterson—Examination.

Examined—I am the police ballistics expert. That involves a familiarity with firearms and identification of firearms with cartridges that have been fired. I tested the rifle which is in Court Exhibit "A" for any possibility of accidental firing. The rifle is in good order. I was unable to discharge it except when pulling trigger. A weight of 6 lb. 14oz. could be suspended from the trigger without firing the weapon. 7 lb. was sufficient to cause it to fire. That is somewhere about twice the normal safety limit, that is about 3½. I examined the bullet which is in evidence and the cartridge case. Looking at Exhibit "D"—yes. The cartridge case in my opinion was fired from this rifle. The spent bullet was so mutilated as to be useless for comparison. I am able to express a positive opinion about the cartridge case, that it was fired from this rifle. I made a comparison with a comparison miscroscope. That is a comparison with another shell fired from the same rifle.

Cross-examined, Mr. Elliott—No questions.

2.55 p.m. case for Crown.

2.56 p.m. Mr. Elliott opens.

Accused's statement from the Dock.

Accused makes statement from the dock. (See page 55.)

3.17 p.m. Mr. Elliott calls—

Evidence of witnesses for defence.

AUDLEY MUIR STONE, Engineering Draftsman, 5 Buckle Street, Glenelg (Sworn).

Audley Muir Stone—Examination.

Examined—I am the senior draftsman of the British Tube Mills and hold the degree of B.E. I know the accused. He is one of a number of foster children my mother cared for. She is an elderly lady now, she was 89 last month. Over the years, she has had many many foster children. The accused was a mere infant when mother took him he was 2½ weeks old then.

To His Honour—I would be 27 or 28 at that time.

Examined—I am 60 years old next month. The accused is 26. My mother got him from the hospital where he was born. I cannot say what the hospital was. He lived continuously at the home until he was about 14. Since that age he has had various numerous jobs. Between jobs he always came home, and also at Christmas time and other occasions. He called my mother 'Mum' and my home was his home.

To His Honour—I live with my mother. I am unmarried.

Examined—I saw the accused from when he was an infant until he left for Pine Valley Station I would have seen him all the time when he was a litle boy. As a child he was of a very quiet nature from the time he was old enough to go to school, I mean to say, from the time he started school he did not seem to be able to grasp school work or education in any manner of form. You ask him anything about school it didn't seem to register. He could not grasp what you meant by simple little things. He was dull, and very shy; he was very non-communicative. He didn't have a temper, in all

the time I have known him I have not seen him in any temper of any shape or form. He was very obedient in the home, we never had any trouble with him at all. I would describe him as docile. As he grew up, he struck me as rather a weak character, in lots of ways, in more ways than one. He seemed to have feelings of inferiority.

To His Honour—By 'more ways than one' I mean, he was one that could be easily led, and always had the tendency to do things to which he would be led on by other children he played with, he would do them and never realized when you spoke to him, the seriousness of the nature of the thing. He didn't show signs of aggressiveness, we never had trouble in the house between him and the other children. At that time others of his own age were in the house, and not once did we have trouble.

To His Honour—The foster children were all mixed sexes.

Examined—He was a non-communicative child. When he was a youth and a man he was the same, right from the time I would say, I can remember it noticeable from the time he was 14. Just before he went to Pine Valley he stayed about a week at the home. Approximately a fortnight, before he took the position at Pine Valley I noticed about him, that at this particular time he was home he seemed to be much quieter and much less communicative, than he had been at other times. The only thing he told me I said "Have you another position? Where are you going?" He said "I don't know up near Morgan". That particular morning when he left, he was up when I was having breakfast, he said "What time do you have to be at the office?" I said "Round about quarter to 9". He said "I have a taxi calling for me if you like you can come up in the taxi to town".

To His Honour—I did that.

Examined—He volunteered no further information. He said someone had to pick him up at North Adelaide. Other than that I knew nothing. I left him at the Adelaide Railway Station. I got a train to Kilburn. He never associated with girls to my knowledge. I have never heard him speak of them and have never seen him in company with them at Glenelg, where I mostly see him.

To His Honour—At home he associated with them, but I took Mr. Elliott as meaning away from the home itself. With the girls at our home, he would always give them a hand to wipe up dishes or do any homework. Do any work around the place, housework. Other than that, there was none at all, he never on any occasion took them out to a show of any description. From my boyhood I have not lived at my mother's home. I had been away for a short period a few months. I was second engineer in charge at the Cobdogla pumping station at Barmera. With the exception of that absence I was always at home. I was in the services during the first war. Not in the second war.

Audley Muir Stone—
Cross-examination.

Cross-examined—He never confided in me about himself. I had no idea what he was doing at all. He confided in nobody in the house. Generally he tended to go on his own, rather than with others. Since this offence was committed I have seen him from time to time at the Adelaide Gaol. I have noticed that on the first day I visited him, I was well almost astounded to think, he did not seem to me to realize the serious crime he had committed. His only concern was, how my mother was, and that he was sorry he had disgraced her name. Since he has been in gaol I have seen him 3 or 4 times.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Audley Muir Stone—Cross-examination, *continued.*

I have noticed nothing about remorse. That was the part that astounded me. There didn't seem to be any sign of remorse in any shape or form.

3.30 p.m. Court adjourned.

3.42 p.m. Court resumed.

Cross-examined, Mr. Chamberlain—My impression of the accused since I have seen him at the gaol is that he has not the slightest regret for having killed Mr. Lord. I brought the subject up lightly to him. The accused has always been the same sort of a person since he left school. What you could call an introvert. I don't know the expression in its correct term. The man who keeps to himself. The man whose thoughts are turned inwards not outward, that is how I would class him. I never would think of him being locked up in a mental institution. He never showed any signs, I would not have enough knowledge to say whether he was or was not. I am a professional man. I mix with all sorts of people, with university education. I am a fair judge of people to the best of my ability. Sometimes I have been wrong. I knew the boy well it never crossed my mind he was mentally deficient. His outlook remained much the same through the years, did not alter or improve in any way. I noticed in his latter years from the time, one particular occasion, he was sent to sea, and I noticed after that his condition seemed to be more pronounced as he got older than when he first went to sea. From the time he came back, he seemed to be much quieter. From that time on he remained much the same. I have had interviews with Mr. Elliott. I don't know if he has been examined by a psychologist. Only from what I have been told. I know what intelligence tests are. Although he did not do very well at school, I would say he is quite a lot below the average intelligence.

To His Honour—He never seemed to go in for any sport at all, right from a child. The only thing he was fond of was horse riding. I presume he got plenty of that when working; when he came down for a holiday, he would go out and hire a horse and go for a ride, probably on a Saturday. As far as sport he has not been interested in any. When a boy on a Saturday he spent most of his time on the beach, he was fond of swimming, down at the Bay. He was rather a good swimmer I believe.

Cross-examined—He used to come home in between jobs always. He never told me any of the circumstances in which he came to lose the jobs. He was not any more communicative about his other jobs than he was about the last one. Although he didn't tell me much about where he was going on this last occasion, he had not made his own arrangements. Someone rang him up and told him where to go. It was obvious he had arranged where to meet someone and that he had to meet a person at North Adelaide. He just told me the bare facts, and you would have to drag it out of him to get that. He has always been like that. When I was talking with him, if you could get him to talk, he knew what was going on. Sometimes you talk to a person and they don't seem to be with you. That was not like him. He would be listening. He would obviously be following me, probably, I would imagine so. I was out of Court when he read his statement, this is the first time I have been in here.

Q.—Do you know what I mean by the expression self analysis?

A—Self explaining to yourself what is going on in your mind.

Q.—How would you say he was at self analysis?

A.—I would say nil.

Q.—You would not expect him to give a sort of description of what went on in his mind at the time of this killing.

A.—No.

Q.—Would you expect him to be able to put this statement together "On the Sunday evening when it happened I seemed to be acting in a dream. I do not know why I chose Mr. Lord rather than Mrs. Lord or the lady cook. I remember taking the gun and going to the house to the bedroom door and firing the gun. I knew what was happening, my mind did not seem to be working in other ways". Would you expect him to be able to put a sequence of ideas like that together?

A.—Not unless I would say, he had been prompted.

Q.—As far as getting on with people is concerned, he did not make friends readily.

A.—No, no, no. He seemed to be fond of my mother, exceptionally so always, right up to now, definitely. Grateful for what she had done, more than grateful. I remember when he got into trouble in Sydney and got a gaol sentence. I heard about that. He came home after he was released.

To His Honour—I heard about that my mother received a letter from one of the Government departments I could not say whether Welfare or Police, informing her of his misfortune. They explained in the letter that he had got himself into trouble. They only told her the mere detail he had been charged with larceny, but as far as what took place, no.

Cross-examined—When he came home after that, as a matter of fact he never mentioned the case to me or discussed it with me in any shape or form. I did not discuss it with him. I believe my mother spoke to him about it, but I don't know what transpired. He didn't express any regret about that, not in my hearing. My belief is that at time this offence happened he was, I would say, destitute, he was working at a station had to report for National Service and without money.

Q.—Did you have any belief he was regretful for having brought the disgrace on your mother?

A.—I could not say, it was not discussed with me one way or other. Nobody ever has been in his confidence. I can say I was not in his confidence. I do not think my mother was to a large extent, because of the times I have spoken to her in reference to him. He was not one to give a confidence to any person.

Q.—Do you know if he had an intelligence test? Do you know if he had a blood test?

A.—Only the information Mr. Elliott has given me.

To His Honour—My mother is a widow, has been since I was the age of 10. She assisted me through the University and kept me until I could earn my own living. While she kept the accused she received payment from the Welfare Department for him.

Mr. Elliott calls—

ELLEN FAITH EVERETT, wife of Reginald John Everett, Bennie Avenue, Port Noarlunga (Sworn).

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Ellen Faith Everett—Examination, *continued.*

Examined—I know the accused. I have met him. I met him when I was working on a farm at Arthurton, Yorke Peninsula, when John came there to work. That would have been early in 1958. I was working as a laundress on the farm. My husband lived with me there, he didn't work he is an invalid pensioner. By reason of my work he and I received accommodation on the farm. It was to that farm that the accused came. He was working at that farm for about three months while I was there. He was still there when I left in June 1958. On the farm he came as an extra hand during the busy period, he milked the cows and helped on the land. There was one permanent farm worker on this farm, his name was Frank McIntyre. He had his family with him there too. Accommodation was provided for them, they lived in the old farm house when the new house was built for the employer. When the accused was there he was living quite near to where we and the McIntyres lived. His little room was in our yard. I saw the accused fairly often, I would see him in the morning when I went to the house to do my work. He would probably be milking, we would pass the time of day, then most likely see him again at lunch time when I was going back home to my cottage, and probably again in the evening. I found him, always he was very polite, extremely so. Never pass us without a good morning or good night. I never had a lot of conversation with him, he seemed very very quiet, he kept himself rather to himself I would be inclined to say. The last thing I would say was that he showed signs of aggressiveness. He was very fond of the children up there. It is hard to say if he was a lonely man, I didn't mix with him enough to know that, he always kept himself alone, but if we spoke in the evenings he would always say he was going in now to read. And went back to his own quarters. It would be fair to say he wasn't very communicative, he never was as far as I know.

To His Honour—My husband quite often would speak with him. He asked him where he worked and things about it. If you asked him he would always talk with you, but I never found him a man who wanted to talk with us first.

Examined—I volunteered to give evidence in this case, after I saw the picture in the paper, and I couldn't believe it was John. I wrote the Law Society. I mean my husband wrote the Law Society on my behalf.

Ellen Faith Everett—Cross-examination.

Cross-examined—The position is I was quite fond of him. I found him a quiet rather shy, nevertheless a friendly type. We had to make conversation for sure. He was very quiet. You could get him to talk. I regarded him as a quiet shy diffident young man, but otherwise normal. The last thing I would consider would be for him to be locked up in a mental institution. That is the last thing I would have thought of. Had we not been intending to move at that period I would have offered him to sleep in our house rather than him to sleep alone. That is very definite. We left the place before he did on June 30th 1958, he was still there. My employers had a family. We had 10 children where I laundered. When I refer to the children I refer . . . . He knew the children and appeared to be on good terms with them and appeared to be fond of them. The children with whom he mixed were the farm workers children. Those he mixed with he played with quite normally, and the little ones called him Uncle John. He had the outlook and emotions of a perfectly normal young man.

Witness released.

Mr. Elliott calls—

SIDNEY BAILEY FORGAN, legally qualified medical practitioner, 175 North Terrace, Adelaide (Sworn).

Examined—I practise psychiatry. I hold the degree of B.M. and B.S. I was admitted to this at the University of Adelaide in 1926. I practised as a general practitioner in medicine from that date to the outbreak of the last world war. During the war I served with the R.A.A.F. as a psychiatric medical officer. In 1946 I qualified for the Diploma of Psychiatric Medicine. I have been practising solely in psychiatry since 1947. I am the director of the psychiatric clinic at the Royal Adelaide Hospital and have held it since 1947. I am consultant psychiatrist at the Repatriation Commission since 1948. In the course of my duties as a psychiatrist I have been required to examine and testify as to the mentality and personality of many accused persons in this Court and in Lower Courts, in regard to offences ranging from sexual aberrations to murder. And at your request I examined this accused. I first saw him on the 11th December 1958, at the Adelaide Gaol. That was the day before the preliminary hearing of the case in the Court. I had him in the course of this examination, subjected to psychological tests, electrocephelograms and blood tests. On the first occasion I examined him the period of the examination took about one hour and a quarter. Since the preliminary hearing I have read the depositions taken at Morgan. I have read the statement he made to his solicitor and from you I have acquainted myself as far as possible with his past history. Apart from Mrs. Lord's evidence I have been in Court listening to the evidence given in this case. Since the first examination I have had a further examination of the accused for a period of about 1 hour.

Q.—As a result of your examinations, test and information supplied to you and the evidence in this case, what is your opinion as to the accused's mental condition?

Mr. Chamberlain objects: Tests should be produced.

Objection upheld.

4.25 p.m. Court adjourned to 10 a.m. 18/3/59 to enable Counsel to confer.

10 a.m. Court resumed.

Dr. FORGAN continued.

Examined, Mr. Chamberlain on *voir dire*—I am not relying on anything that is not before us. The various tests of which I had the results, did not influence my opinion. None of them.

Mr. Chamberlain withdraws his objection to previous question.

As a result of my examinations as to the mental condition of the accused I found him to be of average intelligence and of a type which we describe as a schizoid personality. That is the shy, retiring, well shut in type of person, who doesn't mix well with others and tends to, well, day dream, live partly at least in a world of imagination, in which the person himself is of much more importance than he is in every day life. Such persons also tend to be shallow in their feelings, in other words, they are so engrossed within themselves that they don't feel deeply, or sympathetically towards other people and their troubles, or misfortunes. This type of person also very often bears a sort of grudge against society in general on account of his own feelings of

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Examination, *continued.*

inferiority, but that is not always apparent, because such people feel so excessively inferior that that side of them is seldom apparent to others. What I have been saying, is that the personality that he possessed is known in psychiatry as the schizoid personality. That is my finding, that he possessed such a personality.

Q.—Has the term "schizoid personality" any reference to schizophrenia?

A.—Yes. The schizoid personality is that type of person who may, not necessarily with any outside cause, develop the mental disease schizophrenia.

Q.—Is that a common mental disease schizophrenia?

A.—Yes.

Q.—In your view what was the mental condition of the accused when he killed Mr. Lord?

A.—In my opinion he at that time lapsed into a temporary state of simple schizophrenia. Schizophrenia is a disease, the symptoms of which can come and go, the attacks of which come and go.

Q.—On what do you base your opinion, that at the time of the offence he was suffering from schizophrenia?

A.—That he committed a completely purposeless, motiveless action of violence, which was quite out of keeping with his normal behaviour.

Q.—Was there any subsequent attitude of mind towards this offence on which you base your opinion?

A.—Yes, from his own description of his inability, for some time, to realize that he had actually committed this deed and secondly his attitude of lack of remorse, lack of feeling about the whole matter.

Q.—Did you also find a lack of understanding of his own conduct?

A.—Yes.

Q.—Was that another ground on which you reached your ultimate opinion?

A.—Yes. That is a significant finding.

Q.—Did you find something in his past history, you told us about his schizoid personality, but was there something in his past history which is commonly found in schizophrenia, as a, well, a common emotional stress? Did you find some habit, is the best way to put it, in his past behaviour which you considered significant in reaching your conclusion?

A.—One factor is, that he had the habit of masturbation from the age of puberty. This preyed on his mind a great deal, and he felt excessively guilty about it, and that state, the habit and its consequences are common to people of the schizoid make up.

Q.—In the attack of schizophrenia from which he was suffering when the offence was committed, what would be, as far as medical science can say, the condition of his mind. How would his mind work, or not?

A.—As far as we are able to tell, in those episodes the person is able to, is in a somewhat trance-like state in which they able to, or they are two people at the same time. One part of their mind is what we call dissociated with the other. Perhaps the best way to describe it is one part of their mind is standing back and looking at the other part which is controlling their actions. That description is not just taken from guess work, but from descriptions by people who suffered from this disorder after they recovered.

Q.—The text book frequently describes schizophrenia as a splitting or splintering of the mind.

A.—Yes. By splintering, it means fragmentation, instead of being split in two parts, it is split up into several parts.

Q.—The accused of course, apparently recovered from this schizophrenia attack.

A.—Yes.

Q.—Is that another characteristic of schizophrenia, attack and recovery?

A.—It is not a characteristic, but it is a common happening, occurrence.

Q.—Would the attack from which he suffered in your view have enabled the accused to know that what he was doing was wrong, at the time he committed the offence?

A.—I consider he would not.

Cross-examined, Mr. Chamberlain: Q.—When you say you considered he would not know he was doing wrong that is only a theory?

A.—Yes.

Q.—It is impossible for you to look into his mind at that time with any confidence?

A.—I couldn't swear to being right. The best thing I can do is to draw such deductions as I can from the circumstances.

Q.—You don't think the accused is suffering from the disease schizophrenia at the moment?

A.—No.

Q.—You don't think he was earlier than the 23rd November last?

A.—No. As far as we know he hadn't suffered from the disease schizophrenia up to then.

Q.—The evidence you have examined would suggest that he had not prior to the 23rd November suffered from the disease schizophrenia?

A.—Yes, that is right, the evidence suggests that.

Q.—The evidence would suggest he has never suffered from the disease schizophrenia after the 24th?

A.—Yes.

Q.—The only day in his life as far as you are concerned, when he suffered from the disease known as schizophrenia was the 23rd November?

A.—Yes.

Q.—What was the duration of the disease in your opinion on that day?

A.—From the time he took up the rifle, until the deed was done.

Q.—Probably a matter of a minute or so.

A.—It depends how long it took him to take the rifle and commit the act. I know by his description what he did. I know he got the rifle walked, perhaps 100 yards or so, 70 yards I got from the evidence here—he walked about 70 yards, looked round, went into the house and shot the man. A matter of a few minutes at the most.

Q.—Out of his whole 25 years he suffered from schizophrenia only for something under 5 minutes?

A.—Yes. During which time he shot a man.

Q.—He is not certifiably mentally defective at the moment?

A.—No.

Q.—Dealing with difference between schizoid personality and the disease schizophrenia. Do you know Maslow and Mittlemann, on "Principles of Abnormal Psychology"?

A.—No.

Q.—Is this a convenient summary of the two things, "Schizoid character, is a personality type characterized by seclusiveness lack of adequate emotional attachment, diminished initiative, and pre-occupation with fantasies"?

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Cross-examination, *continued.*

A.—Yes. That is a good description, it is the substance of what I said just now.

Q.—"Schizophrenia is a psychotic reaction characterized by absence of emotional attachment, and of the experience and expression of normal emotions, by extreme pre-occupation, by unreal ideas, and by bizarre delusions, hallucinations, and behaviour." Is that a good description of the disease "Schizophrenia"?

A.—No. It doesn't allow for varying grades of schizophrenia.

Q.—To be schizophrenia at all it has to be a psychosis, which is a major mental disorder?

A.—Yes.

Q.—In all your experience and your reading, have you ever come across a case of schizophrenia up to this in which the disease was only of 5 minutes duration?

A.—No. In my reading, yes, from personal experience, no. According to American statistics, it is not a rare phenomenon. I have been practising since 1947 as a psychiatrist. A high proportion of my patients are not schizophrenic. A small proportion.

Q.—Out of all the people you examined in your practice you haven't come across a similar case?

A.—Perhaps I should qualify that. I was thinking in terms of a serious crime, such as this, but I have come across episodes lasting a short time a matter of minutes to hours.

Q.—That's an entirely different thing to coming across episodes, of schizophrenic outbursts. When the ordinary schizophrenic has periods when he is quiet enough and occasional outbursts, that is the chronic schizophrenic?

A.—Yes.

Q.—Anyone who suffers from schizophrenia varies in his conduct from time to time?

A.—Yes, that is the nature of the disease, it is characterized by episodes. That assumes the disease is there in the chronic schizophrenic. The person who suffers a continuous attack of schizophrenia.

To His Honour: Q.—Anyone suffering from a continuous attack demonstrates that by a series of outbursts?

A.—Yes.

Q.—Not one single outburst but a series spread over a time?

A.—Yes, that is why I said during a continuous attack of schizophrenia and not an isolated episode as we are considering in this case.

Cross-examined: Q.—Your evidence comes to this, the only evidence you have got that this man suffered from schizophrenia at all was the commission of this crime?

A.—Yes.

Q.—Without the fact that he shot Lord you wouldn't dream of putting him down as a schizophrenic?

A.—Not unless he had committed some other type of bizarre and unpredictable action.

Q.—I am talking about this man and the history you know, the one item of evidence which has convinced you that he is not guilty on the ground of insanity, is that he committed the act of killing a man.

A.—Yes.

Q.—Isn't it one of the fundamental characteristics of schizophrenia that it is a progressive condition?

A.—No.

Q.—Does it come on overnight and go away next morning?

A.—It can.

Q.—Has it ever happened in your own experience among your patients?

A.—Yes. A person can have an attack in which he suddenly becomes schizophrenic even to the degree of having delusions and hallucinations, and the whole matter clear up in a few hours.

Q.—It's all a matter of terms isn't it, there are plenty of people who wouldn't call that an attack of schizophrenia?

A.—Yes they would.

To His Honour: Q.—Suppose it was D.T.'s would you call that schizophrenia?

A.—No.

Q.—That corresponds with having hallucinations and delusions?

A.—Yes, but the two are not exactly the same, and in any case with the D.T.'s there is the alcoholic factor, which would be known.

Cross-examined: Q.—I will see if I can set out in a series of simple steps the process by which you arrive at your opinion. The first thing is you discover a schizoid personality?

A.—Yes.

Q.—The next, you find an unexplained and to you, unexplainable outburst of violence, you deduce from that that the man was suffering for those few minutes from schizophrenia?

A.—Yes.

Q.—You deduce from that in turn that he would be unable to appreciate that his act was wrong?

A.—Yes.

Q.—That's the whole process of your diagnosis?

A.—Yes.

Q.—The mere existence of the mental disorder known as schizophrenia does not, of itself, mean that the person, the patient, does not know that any given act is wrong?

A.—I would have to explain that. There are two types of . . . The answer is not to be given as yes or no. It depends on the type of schizophrenia, of which there are quite a number. The common one who commits acts of violence, is the paranoid and he knows what he is doing and in most cases knows that it is wrong, but feels justified although his reasoning is quite wrong. The simple type of schizophrenic who hasn't gross paranoid ideas or delusions or hallucinations, acts, as far as we know, without any idea whether what he is doing is right or wrong.

To His Honour: Q.—What do you mean by paranoid?

A.—The type who is suspicious and has fixed delusions that he is being persecuted.

Cross-examined: Q.—There are four main groups of schizophrenia, the simple, the paranoid, hebephrenic, and catatonic?

A.—Yes.

Q.—This one is a simple schizophrenic?

A.—Yes.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Cross-examination, *continued.*

Q.—By what evidence do you put this man into the simple schizophrenic group? What evidence do you rely on to say he is a simple schizophrenic?

A.—Because there is no evidence of it being any other type. Therefore he is simple.

Q.—Therefore he wouldn't know that what he was doing was wrong?

A.—Yes.

Q.—If he belonged to any of the other groups he might or might not know?

A.—Yes.

Q.—But belonging to the simple he can't know?

A.—Oh no.

Q.—Belonging to the simple, he might know?

A.—Yes.

Q.—This man might know.

A.—I don't think he did.

Q.—He may have known that his act was wrong.

A.—I do dispute that he may have.

Q.—You don't regard it as even a possibility?

A.—No.

To His Honour: Q.—Supposing he had a motive which he suppressed from you which you don't know, and a motive which he might deem of sufficient importance to lead to this killing. Would that mean he was schizophrenic then?

A.—It could be, that he could still be a schizophrenic with a motive, but I am basing my opinion largely on the fact that there was no ascertainable motive at all. That plays a great part in my diagnosis.

Cross-examined: Q.—Would the defendant himself be able to form any judgement on the subject of whether he knew whether his act was wrong?

A.—At the time or after?

Q.—Now.

A.—Yes.

Q.—You wouldn't be surprised to find him analysing his own feelings reasonably accurately?

A.—Yes, I would not be surprised to find him doing it afterwards reasonably intelligently and accurately.

Q.—If he says in his statement "In my mind there was no idea I was doing wrong" you would accept that as some evidence that he didn't know?

A.—Yes.

Q.—He told you that has he?

A.—Yes.

Q.—You believed him?

A.—Yes.

Q.—There's no external way of telling whether he is telling the truth or not?

A.—No.

Q.—Just a matter of your own impression, the belief in his statement?

A.—Not quite. It fitted in with my knowledge of schizophrenic behaviour. If he made a statement which didn't I wouldn't have believed him.

Q.—Does that come to this, having formed the theory that he was suffering from schizophrenia you wouldn't believe anything that didn't fit it?

A.—You mean I have so much made up my mind that anything he said wouldn't alter it?

Q.—Yes.

A.—Right.

Q.—You were quite happy to believe that he could estimate in this way, his own knowledge of right and wrong?

A.—Afterwards. Yes.

Q.—And that he was able to give a reliable statement as to what his state was at the time of the shooting?

A.—Yes, that is another characteristic of schizophrenia.

I have read the police evidence.

Q.—Remember this question and answer. "Did you know at the time that it was wrong to point a loaded rifle at the person and shoot him." A.—"Yes, I couldn't help myself.".

A.—Yes.

Q.—That is in flat contradiction to his statement to the jury that in his mind there was no idea he was doing wrong.

A.—Yes.

Q.—Which of those two stories do you believe?

A.—I believe that his statement that he didn't know at the time that what he was doing was wrong. The other statement was made under questioning by the police, and being the type of person he is, it is quite easy to imagine him reconstructing without thinking.

Q.—I don't suppose that you are giving that answer spontaneously without thinking about it before. You have anticipated that question and prepared your answer.

A.—Yes.

Q.—The answer is because he was under police questioning you couldn't take much notice of what he said. Is that the real truth?

A.—Yes, in some particulars.

Q.—You realize that in the course of a fairly long questioning he gave a completely accurate description of his movements?

A.—Yes he was being perfectly frank with the police.

Q.—Why shouldn't he be equally frank in that answer as in any other?

A.—Because it is easy enough to give an accurate account of physical action, but not as easy to give an account of one's feelings.

Q.—Well, would it be any easier while he was preparing his statement to jury, to give an accurate analysis of his own feeling, than it would be immediately after he had surrendered to the police?

A.—Yes.

Q.—You see, when a man has been waiting for the police to catch up to him for some days, more or less given himself up, don't you think that's the time rather than any other time, to get the truth out of him?

A.—Not necessarily.

Q.—Do you think you would be more likely to get the truth out of him when he is preparing his answer to the jury?

A.—Yes, because he would have time to consider what his real feelings were, and not what he ought to have felt.

Q.—He would also have time to consider what he had better say if he wanted to set up an answer to the charge, is that a possibility?

A.—Yes.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Cross-examination, *continued.*

Q.—Do you think he realized he had done wrong immediately he saw the result of his action?

A.—I think he may not have realized the enormity of it, but I think he realized after the firing of the rifle and Mrs. Lord's screams, he realized he had done something wrong.

Q.—That is why he ran away?

A.—Yes.

Q.—He had realized that the fact that he ran away was going to be perhaps an obstacle in the way of saying he did not know he was doing wrong?

A.—Yes.

Q.—You devoted a good deal of thought to the answer to that question?

A.—Yes.

Q.—What is the answer to that criticism? That he didn't know he was doing wrong on the basis of the fact he ran away.

A.—I said he realized after he had let off the rifle and Mrs. Lord had been screaming that he had done wrong but did not yet realize the enormity of his action. He ran away because he was not of a clear mind at the time, therefore didn't realize that running away might go against him.

To His Honour: Q.—What you said about a schizoid personality, he doesn't now realize the enormity of the crime?

A.—Yes, he does, but he doesn't appear to have any real feeling about it, he realizes it in his mind, with his intellect, but his feelings are not corresponding.

Cross-examined: Q.—That's another way of saying he is a bit callous about it?

A.—It could be put that way.

Q.—Tell me, I don't know if you have made the estimate, the schizoid personality is not an uncommon one?

A.—No.

Q.—Have you made an estimate of what the probable proportion of the population is with schizoid personalities?

A.—Do you mean what the psychologists would regard as a schizoid personality simply classifying ordinary people?

Q.—I mean what you mean when you say this man has a schizoid personality, but not insane. Now in that same sense in which you apply it to the accused what proportion of the population would have schizoid personalities?

A.—I don't know.

Q.—They are not uncommon?

A.—People with the degree of schizoid personality that the accused has are uncommon.

Q.—Shall we say schizoid personality is uncommon?

A.—Oh no. As I mentioned just now if one is using a term in its broadest sense, about 60 or 70 per cent of the population fall into that category. More than half of us here are schizoids.

Q.—Would you class me as one?

A.—I don't know you well enough for that, but I am if that is any help.

Q.—The opposite type of personality to the schizoid is the cyclothymic?

A.—Yes.

Q.—I ask you as to how you came to this theory. You examined the accused first of all on the day before the preliminary hearing?

A.—Yes.

Q.—That would be the 11th December?

A.—Yes. I spent something over an hour with him.

Q.—At the conclusion of the interview did you come to any conclusion as to whether you would be able to support his defence by evidence?

A.—No.

Q.—At that time you did not think you could?

A.—Yes, but I hadn't come to any conclusion as to how it could be done.

Q.—In other words, the conclusion of the first interview, you thought you could give evidence for him, but did not know quite how?

A.—Being an important case, I had to think carefully before coming to conclusions as to how to manage the case.

Q.—You decided on these various tests, is that so?

A.—That was by the way. I decided to have the tests after the first interview.

Q.—The first test was the intelligence test?

A.—Yes. Done as these tests are usually done, by a psychologist, for the purpose of ascertaining his ordinary level of intelligence.

Q.—What were you looking for when you asked for the intelligence test to be done, or what were you thinking you might get?

A.—Simply a confirmation of my own examination of him.

Q.—Which indicated he was of normal intelligence for his walk of life?

A.—Yes.

Q.—That is what the intelligence test disclosed?

A.—Yes.

Q.—Neither you nor the psychologist discovered any disorders in his thought processes?

A.—No.

Q.—No delusions, no hallucinations?

A.—No.

Q.—The intelligence test was the result you would get from a normal person?

A.—Intelligence, yes. That has no relation to his personality.

Q.—The other test was a blood test?

A.—Yes.

Q.—What were you looking for in blood?

A.—I had to eliminate the possibility of any syphillitic disorder. That was a Wasserman Test and Kline Test, both of them.

Q.—When you say you had to eliminate that, you could give the opinion that this man was a schizophrenic without eliminating syphillis?

A.—Yes.

To His Honour—The effects of syphillitic disease can simulate so many other diseases that I thought it should be eliminated.

Cross-examined—If I found evidence of syphillis, I doubt if I could build the defence around that.

Q.—What could the blood test possibly do?

A.—It, as I explained to His Honour, can disclose syphillitic diseases which can simulate other complaints, but the main factor would be his schizophrenic reaction.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Cross-examination, *continued.*

Q.—Suppose the tests were positive for syphillis, would that make any difference to your opinion?

A.—No.

Q.—What about the electrocephelograph, tell the jury what that tests?

A.—This is an electrical test which is done on a person's brain in order to check as to whether there is any physical damage, such as tumor, scar or epilepsy.

Q.—You regard some such thing as a possible explanation of this young man's conduct?

A.—Yes.

Q.—Again, the electrocephelograph, was that of a normal brain?

A.—Yes, physically normal brain.

Q.—That's all it ever is?

A.—Yes.

Q.—In the explorations you made, you found everything in the three tests which you would find in a normal person?

A.—Yes.

Q.—Then you had another think about the matter?

A.—I was thinking about it all the time. I finally made up my mind for temporary schizophrenia before I saw him the second time; I can't give you a date.

Q.—What was it that made up your mind; what was the ultimate deciding factor?

A.—That I knew that people who were of schizoid personality but otherwise apparently normal citizens, could have outbreaks of actual schizophrenia of short duration. But I have no personal acquaintance with a case of violence of any kind. Therefore, I searched the available literature, and found that schizophrenics in short episodes do commit crimes of violence and the mechanism explaining this is a book called "Crime and The Mind" by Bromberg . . . p. 38 . . . It is marked in the blue book behind you.

11.30 a.m. Court adjourned.

11.43 a.m. Court resumed.

Cross-examined continued.

Q.—The book you referred to "Crime and The Mind" is a study of mental processes that lead to crime generally?

A.—Yes.

Q.—Can we say the general thesis of the book is that crime can be traced to psychological influences?

A.—Yes. And the habitual burglar and so on, they come into the class of neurotics who got into that way of life because of factors operating on their minds.

Q.—The particular passage you refer to is headed "Schizoid Psychopathy"?

A.—Yes.

Q.—Is this man a Schizoid Psychopath?

A.—That depends on the sense in which the word "psychopath" is used, which varies in different schools of thought.

Q.—"Psychopath" is nothing more or less than a mind which is out of order?

A.—Yes.

Q.—Most criminals, particularly habitual criminals, are psychopaths?

A.—Yes.

To His Honour—The bodgies and widgies—some of them are psychopaths.

Cross-examined—The larrikinism among the youths of the community is a psychopathic manifestation, due to the inability of them to adjust themselves to the environment. The psychiatrist view of crime in general is that it is a psychopathic manifestation. That is the general thesis of the book.

Q.—Talking about murder, in the case of schizoid psychopaths—"The mental dynamics can be traced in such cases when the inner conflicts in the offender, which give rise to the delusion, become externalised on the victim"?

A.—Yes.

Q.—Notice in that passage, that the mental processes have led to an actual delusion?

A.—The word "delusion" used in that passage means not a delusion which can be, well, obvious to others. It is a delusion against himself, against the person concerned.

Q.—But it is a delusion?

A.—Yes. Which means an incorrigibly false idea. In this case about himself.

Q.—In other words, it is a false idea there is no talking him out of?

A.—Yes.

Q.—What you have in mind about the defendant, is his feelings that arise from his habit of masturbation?

A.—Yes.

Q.—That's by no means an uncommon habit?

A.—No.

Q.—It is by no means unusual for people who practice it to be ashamed of it?

A.—No.

Q.—And to have serious guilt feelings about it?

A.—Yes.

To His Honour: Q.—You would say it is a wrong thing to do?

A.—Yes.

Q.—If he has guilt feelings, that is a proper feeling to have?

A.—Yes, but his were of a degree that interfered with his whole life.

Q.—Well that might depend on the extent of his masturbation, mightn't it?

A.—I don't think so.

Q.—It could, couldn't it?

A.—You mean, if he masturbated frequently he would feel more guilty.

Q.—He would get more feeling of guilt if he masturbated continuously?

A.—That depends on the individual. I have known people who masturbated frequently, who had hardly any guilt feelings at all, and others who masturbated quite infrequently and yet felt intensely guilty about it.

Q.—That would depend largely on whether the subject felt it was wrong or not?

A.—Yes.

Cross-examined: Q.—I suppose any action such as shooting a man could be traced to some sort of impulse or emotion?

A.—Yes. All human action is the result of some cause. Something led to the impulse in this man to shoot Mr. Lord.

Q.—It's really traceable to his feelings of inferiority and guilt associated with his masturbation which produced an outburst of violence?

A.—Yes.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.
Sidney Bailey Forgan—Cross-examination, *continued.*

Q.—And one of the predominant and conscious characteristics of the human mind, is to justify oneself in one's own eyes?

A.—Yes.

Q.—There would be an element of "playing big" in front of himself in this instance wouldn't there? In such an instance as this, an unmotivated crime of this sort, it is "playing big stuff" in his own eyes?

A.—That could be.

Q.—It could also be influenced by the sight of a happily married attractive young couple in contrast with his own view of his own inadequacy?

A.—That is the thing.

Q.—Of course, most motives for action are on the unconscious level, or a great number of actions?

A.—Every day actions, yes.

Q.—You can trace for an action of ostensibly unexplained violence, you can trace subconscious motives?

A.—Yes.

Q.—Which were undoubtedly present in this case?

A.—Yes.

Q.—Motives I have been discussing with you?

A.—Self-aggrandisement and envy, and frustration.

Q.—That's the explanation for this shooting?

A.—If you go a bit further.

Q.—I want to do it without going further. You won't have that?

A.—No.

Q.—Without going any further can we say that those are the sort of unconscious thought processes that led to the condition in which this crime was committed?

A.—Yes.

Sidney Bailey Forgan—Re-examination.

Re-examined, Mr. Elliott: Q.—What do you mean by the 'subconscious thought process'?

A.—The easiest way to explain it is that they are unconscious. The person himself is not aware of the processes which are going on in his mind.

Q.—Whatever these feelings are, he is not aware intellectually that they are the cause of his action?

A.—No.

Q.—You said that self-aggrandisement, envy and frustration might be the cause of the conduct if you went a little further. My learned friend did not want you to go further. Would you explain what you wanted to say?

A.—That those unconscious feelings that of inferiority and guilt, and general extreme unworthiness in people whose mind has become distorted to the extent that this self accusation amounts to a delusion. That can be projected on to another person, so that instead of the person concerned committing suicide, which would be the ordinary depressive type of person's way out of his extreme unworthiness, there is a likelihood of him seeking a victim and using the victim to expiate his own feelings of guilt and unworthiness.

Q.—Do I understand that, he condemns himself, but instead of punishing himself he punishes a victim instead of himself?

A.—Yes, that is an explanation of why he chose a man to kill and not either of the two women in the house. Because a man more nearly represented himself.

Q.—Any man who might have been there, in your view, would have been in danger of death at that time?

A.—Yes.

Q.—Is that what you meant when you dealt with that passage read by Mr. Chamberlain about delusions?

A.—Yes.

Q.—Mr. Chamberlain asked you about his failure to show the emotions you would expect, after having committed such a dreadful crime, and he said, 'His feelings are pretty callous about it', and your answer 'it could be put that way'.

A.—Yes.

Q.—What would be a fairer way of putting it?

A.—*That he showed the typical schizoid disproportion between his feelings* and the circumstances.

Q.—In other words, there isn't the emotional reaction you would expect in a normal person?

A.—Yes.

Q.—What way was his emotion inadequate or disproportionate?

A.—That he seemed to have no appreciation of the, well, enormity of his actions, or any feeling towards what punishment would be most likely dealt out to him.

Q.—In other words, the ordinary person would have terrible remorse?

Mr. Chamberlain objects.

Question not pressed.

Q.—One other matter, he questioned you about the phenomena of this disease not being present until the 23rd November, being present for a matter of minutes, going away and not coming back?

A.—Yes.

Q.—That is your view of exactly what has happened in this case?

A.—Yes. There are analogies in other illnesses. The best one I can *think of is epilepsy, the person may be an epileptic, but only have a fit or* series of fits at intervals. To add to that, it's not unlikely that in the future this man will have further attacks of schizophrenia. In the same way as the epileptic may have further seizures . . . In physical diseases, there are other examples, such as asthma. Persons suffering from it may be all right, then have an attack, then either further attacks, or never another one.

To His Honour: Q.—Do you mean by that, that if this man is released he could kill someone else?

A.—It could happen.

Re-examined—The book of reference of Bromberg to which Mr. Chamberlain referred, is called "Crime and The Mind". The author is Walter Bromberg, Doctor of Medicine. He is well known in psychiatric medicine, he is an authority on the medico-legal side of psychiatry and regarded as such by psychiatrists.

To His Honour—He is in America.

Re-examined—He was formerly director of the Psychiatric Clinic of the Quarter Sessions of New York, and the Senior Psychiatrist of the Belle View Psychiatric Hospital New York. I have heard of that. It is one of the most famous psychiatric hospitals in the world.

To Mr. Chamberlain: Q.—With all those qualifications, Dr. Bromberg does not talk about 5 minute cases of schizophrenia?

A.—He speaks about schizophrenic episodes in which murder occurs.

In the Supreme Court of South Australia.

No. 2
Evidence of witnesses for defence.

Sidney Bailey Forgan—
Re-examination, *continued.*

Q.—That's quite another thing from saying you can have the disease which lasts only a short time?

A.—No, no difference at all.

To His Honour: Q.—If this particular accused person were released on your evidence, and subsequently committed another killing, would that confirm you opinion that he was a schizophrenic?

A.—That he was a schizoid personality, who was subject to schizophrenic episodes.

Q.—But isn't that almost a definition of the schizophrenic that he is subject to schizophrenic episodes?

A.—I think, attacks, is perhaps a better word, because the average schizophrenic suffers from attacks lasting weeks or months. Whereas in this man it was a sudden short sharp attack.

Q.—What I am trying to get at, a repetition of violence, not necessarily killing, would confirm your view that this was the act of a schizophrenic.

A.—Yes.

Q.—But if no further act occurs, that makes you doubt whether he was a schizophrenic on this occasion?

A.—No, there can be an isolated instance in a man's lifetime.

To Mr. Chamberlain: Q.—He is the sort of man liable to an outburst of violence?

A.—Yes.

Q.—Although he might be certified by all the psychiatrists in Adelaide you would let him go tomorrow with all that potentiality?

A.—Yes.

12.15 p.m. case for accused.

Mr. Chamberlain calls, in rebuttal—

BRIAN JOSEPH SHEA, L.Q.M.P., Mental Hospital, Parkside.

Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Examination,

Examined—I graduated with the usual medical degrees in 1950, at Adelaide. Since 1951 I have specialized in psychiatry. The last 3½ years I have been Deputy Superintendent at the Mental Hospital at Parkside, under the immediate control of Dr. Birch, superintendent of all mental institutions in this State, Enfield, Northfield and Parkside. I have been under Dr. Birch's control and supervision since I have been at Parkside. Before I became Deputy Superintendent I was medical officer at Parkside, Enfield Receiving House and Northfield Mental Hospital. I was also in mental hospitals in Western Australia. I have been engaged entirely in the care of the mentally ill almost all my professional life, for the last 7 years. In Government mental institutions there are approximately 2,600 patients. In Parkside there are 1,750. Last year there were over 600 admissions to Parkside, 1,200 to Enfield and 300 to Northfield. In relation to the admissions at Parkside, it is part of my duty to examine the patients on admission and to check the diagnosis upon which they are admitted. People are sent there, not by us and our staff, but from other sources, but it is part of my duty to check to see if they should have come there. While there I arrange their treatment and examine them for the purpose of discharging.

To His Honour—Those sent there are ordinarily certified by two qualified medical practitioners, but last year we admitted over 100 voluntary patients. The proportion of patients in Parkside suffering from schizophrenia is roughly

40 per cent. It is part of my job to examine them on admission, treat them while there, and examine them for discharge. I am familiar with the disease schizophrenia. In mental hospitals it is the major mental disorder we have to deal with. During the last 6 years I have been doing the medical legal work in psychiatric matters for the Crown in Western Australia and later in South Australia. For approximately the last 3 years it has been part of my regular duty to advise the Crown in relation to all criminal cases in which mental disorders might be suggested. There is a practice with regard to persons charged with murder, it is a special practice. Any person charged with murder whether insanity is in question or not, is examined by a member of the Mental Hospital Staff, and in the vast majority of cases they are done by myself.

To His Honour: Q.—Is it ever done by a man not qualified as a medical practitioner?

A.—No, never.

Examined—In some cases I find mental disorder in persons charged with murder.

Q.—If the mental disorder is of the appropriate degree what do you do?

Mr. Elliott objects.

Question allowed.

A.—I make a recommendation according to what I find.

Q.—In the three years you have been doing this, there have been a number of occasions when you have made recommendations, that have been followed up by removal of the prisoner to a mental hospital without trial?

A.—I have done about a dozen.

To His Honour: Q.—Does the Crown invariably follow your advice on this matter?

A.—It has never not followed it in my experience. They have always followed my advice hitherto.

Examined—I examined the accused in this case on three occasions. (From notes by permission.) On the 3rd December, 1958, on the 10th December, 1958 and on the 11th March, 1959.

Q.—Did you find any evidence of any mental disorder?

A.—No.

Q.—The schizophrenia is a disease that sort of hits you in the eye when examining a schizophrenic, fairly obvious symptoms you can pick up readily?

A.—Yes. The most obvious symptom, is difficulty in establishing contact, or the technical term is rapport. Dealing with them daily it is in most cases a fairly easy thing to pick up. At the conclusion of my first interview my opinion was that I found no evidence of any mental disorder. The other examination was 7 days later and the third about two months later. The purpose in making the three examinations and leaving a substantial interval, was to add further background history to my original examination and also to see if there had been any variation over a period of two months. Three months I think. That is an important aspect of psychiatric procedure. I discussed with the defendant his history, background, habits, including his habits of thought. The general technique of a psychiatric examination—the usual thing is to try and trace his history throughout his life. As he knows it, paying particular emphasis to his level of intelligence, his way of answering the questions, his emotional responses when answering questions and his general attitudes to things in general, and things in his own particular life. Thus to assess his personality. As far as intelligence was concerned the

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Examination, *continued.*

prisoner was within normal limits, appropriate to a man in his situation in life. Emotionally, I found him somewhat shy, but once an adequate relationship had been established, it could be sustained quite well. He appeared to have the appropriate emotions to a given situation. The expression 'rapport'— the 'rapport' between him and me, taking into account his degree of shyness, it was quite satisfactory. We got on quite well. His personality in general terms, I would describe it as tending to be introverted, and introspective, that he would suggest a person who preferred his own company to the company of others; would find difficulty in mixing well with others; and who would be inclined to be brooding and perhaps somewhat ruminative about life in general.

The subsequent examinations did not alter in any way those opinions of him. They left me in the same state of mind, I had an identical opinion at the end of the third examination. Before I started to examine him I had seen the police brief. I did not read the depositions taken in the lower court. I have been present in this Court apart from 5 or 10 minutes, all the time. The police brief contained the statement of the detective of his interview with the accused. From my examination of the defendant, and from my study of the evidence given in this case, I have an opinion as to the question whether at the time of the shooting the accused understood the nature and quality of his act. My opinion is that I believe that at the time of the shooting he knew the nature and quality of his act. In other words he knew he was shooting a man. About the question if he knew the act was wrong, I have an opinion of that. In my opinion, at the time, he knew that such an action was wrong. I discussed that question with him, whether he knew it was wrong, he informed me, he did know it was wrong. I had no reason to doubt that he knew what he was talking about when he said that. I discussed the question of his running away and evading arrest, he told me why he went away. He stated that he wanted to give himself up to the police at Morgan, because if he stayed he was fearful that he might be strung up. I took that to mean strung up on the spot by the local people.

Q.—Do you agree with Dr. Forgan that this man has what could be called a schizoid personality?

A.—Yes.

Q.—You heard the definition I read out in this book about schizoid personality?

A.—Yes.

Q.—Is that an accurate definition in your opinion?

A.—Yes.

Q.—Is it an uncommon thing to find schizoid personalities among ordinary people living ordinary lives?

A.—It is not uncommon. Of the probable proportion of the population, the only figures I can call to mind are those of the American armed forces when selecting troops and the reasons for rejection of people on personality grounds. It naturally varied from State to State, but was in the vicinity of 5 to 10 per cent.

Q.—Is there any difference between saying a man is a schizoid personality and an introvert, or are those expressions used interchangeably?

A.—They can be used interchangeably, and have been used.

To His Honour—It is a loose way of using them. But a well known psychiatrist Jung said he would split people up into two groups, two main basic

personality types, he used the terms 'schizoid' and 'Cyclothymic'. Another psychiatrist Kretschmer preferred to talk about the similar types as introverts and extroverts.

Q.—To call a man a schizoid personality or an introvert is a different thing from saying he suffers from schizophrenia?

A.—Yes.

Q.—Is one of the characteristics of schizophrenia that it is a progressive disorder?

A.—If untreated, yes.

Q.—In your opinion is there such a thing as schizophrenia for five minutes' duration?

A.—Not in my opinion, no.

Q.—Is it a thing that goes gradually and develops?

A.—Yes, unless treated.

Q.—It can have a sudden onset?

A.—I said it would be progressive unless checked by treatment.

Q.—Even if it has a sudden onset, does it have a sudden disappearance without treatment?

A.—No.

12.45 p.m. Court adjourned to 2.15 p.m.

2.15 p.m. Court resumed.

DR. SHEA continued.

Examined: Q.—You said just before lunch that a schizophrenic can have a sudden onset?

A.—Yes. That does not apply to all types, typically of the picture of the schizophrenic is the catatonic type of schizophrenia.

Q.—You notice Dr. Forgan gave the opinion of this being a simple schizophrenia?

A.—Yes, I know the form and I know its characteristics.

Q.—You don't agree the prisoner suffered from simple schizophrenia any more than from any other type?

A.—No, he has not suffered.

Q.—What are the characteristics of simple schizophrenia?

A.—A slowly progressive withdrawal from reality, characterized by loss of drive and initiative, and increasing pre-occupation with the self, leading to a stage of autism, which can be best summarized as almost continuous day dreaming.

Q.—Ultimately do they sit inactive all day and do nothing?

A.—In the final stages, yes.

Q.—Is that type the simple type, ever sudden in its onset?

A.—Not the simple type, no. In any type of schizophrenia, there are mainly periodical outbursts. In between the outbursts the patient would still be suffering from the disease. The patient would be diagnosable as suffering from the disease on examination. That is different from saying you have it for five minutes, never had it before and never have it after.

Q.—One of the illustrations was given by Dr. Forgan as epilepsy. There are epileptic fits?

A.—Yes.

Q.—Are those fits manifestations of an existing condition, or do they just come and go?

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Examination, *continued.*

A.—They are manifestations of an existing condition. They have that in common with schizophrenic outbursts although the analogy is difficult because they are two quite different diseases. I endeavoured to ascertain from the defendant why he had shot Mr. Lord. I did not regard him as being frank with me on that topic. Not completely. Emotionally—I found the accused's reaction to what he has done, I think he was quite disturbed about it, but he was holding himself in tight check. I have heard about his history from the witness Stone and from his statement. That corresponded largely with what he himself had told me. I learned nothing new from the evidence or the statement, including what I learnt from the defendant. I knew of his habit of masturbation. I discussed the relations with opposite sex with him. He has not had success with his relations with women. That failure and his habit of masturbation, I am certain he has brooded over those things. I think they have produced a subconscious impulse in him. The impulse stemming from his feeling of inadequacy and general frustration to boost himself in his own eyes. I considered there may have been some instinctive jealousy of the situation of the husband and wife. I believe he felt isolated and relatively inferior when comparing himself with the happy household nearby. In my opinion it is a combination of those emotions that probably led him to do what he did, that added to a certain sexual frustration. Yes. Although I have that opinion, that does not in any way qualify my view that he still knew that what he was doing was wrong.

Brian Joseph Shea—
Cross-examination.

Cross-examined, Mr. Elliott—I had no difficulty with the diagnosis of this case. From the very first interview I was satisfied that there was no sign of schizophrenia. My subsequent interviews in no way affected my views.

Q.—You didn't have the anxious doubts of Dr. Forgan in reaching a conclusion on this case?

A.—No. I am 30 years old. I have been a doctor from the end of 1950. That makes it over eight years. A shorter time than Dr. Forgan's 33 years. I have practised as a general practitioner for two weeks. I have not my diploma of psychological medicine. I am going to qualify for that as soon as I can.

Q.—Have you ever practised as a psychiatrist in private practice?

A.—No.

Q.—Your practice has been restricted to mental institutions?

A.—Various mental institutions.

Q.—When a patient is admitted or certified by two doctors or admitted voluntarily to a mental institution, they are generally in a pretty advanced state of mental disorder are they not?

A.—Not always, and particularly in the case as regards voluntary patients.

Q.—Would you say more often than not they are in an advanced stage?

A.—Yes.

Q.—So that when you examine admitted patients in the course of your duties, more often than not you have evidence you have symptoms of a dominant type?

A.—Yes.

Q.—You would agree with me I think, that in a mental institution you are not often called upon to recognize mental disorder in its incipient stage?

A.—Depends what you mean by not often.

Q.—That's the exception rather than the rule, in your duties?

A.—Exception, yes, but it is not infrequent.

Q.—In the onset of schizophrenia the early symptoms are often hard to discern. You agree?

A.—Not always.

Q.—I said in the onset of schizophrenia the early symptoms are often hard to discern.

A.—No, I don't agree.

Q.—Would you agree the accused is a shy, shut-in type of personality?

A.—Yes.

Q.—Have you heard of Curran and Partridge's book on "Psychological Medicine"?

A.—No, but I have heard of Curran, if it is Desmond Curran. Desmond Curran is the Senior Consultant Psychiatrist to St. Georges Hospital in London and the Civil Consultant in Psychological Medicine to Her Majesty's Navy. I would agree that he is one of the most eminent names in psychological medicine today.

Q.—Would you agree with this? "In taking the history, careful enquiry should be made as regards increasing introversion and emotional indifference or shallowness. Has the patient done less and less? Has he seemed increasingly vague and dreaming? Has it seemed difficult to get at what he is driving at? In order to establish the diagnosis of a progressive schizophrenia, it is necessary to discover whether the personality of the patient has changed in a schizophrenic way that cannot be accounted for by environmental or developmental factors. The more extroverted the previous personality the more noticeable will be a change towards introversion, seclusion, and emotional shallowness and detachment. The greatest difficulties arise in sensitive, shy, shut-in personalities and in such the nature of the disease is seldom recognized, except in retrospect unless the unrealistic or bizarre quality in the complaints or behaviour betray their schizophrenic origin at the time of their occurrence." Would you agree with that passage?

A.—Yes.

Q.—It warns the practitioner that in this man's case, there is great danger in *not recognizing schizophrenia except in retrospect*?

A.—No.

Q.—Unless *something* he does is so startling or so odd as to show a schizophrenic origin?

A.—Would you mind saying the bizarre part again.

Q.—I read it again. "The greatest difficulties arise in . . . complaints or behaviour . . . origin . . . occurrence." Isn't he warning practitioners that they may not recognize schizophrenia in this accused's type of personality, except afterwards, unless in their complaints or what they do or their behaviour, there is such an unrealistic or bizarre quality that it points to schizophrenia? Isn't that what he is saying?

A.—I believe it is within limits, but this bizarre must continue. I must say it is a continuous course not just an episode.

Q.—In other words you say, if he had gone on after this murder doing other similar things bizarre it would have pointed to schizophrenia?

Mr. Chamberlain objects.

Question reframed.

Q.—You agree with that, but only if the bizarre conduct continues?

A.—Is sustained, yes, and that you can find evidence of schizophrenia within a short time after.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.
Brian Joseph Shea—
Cross-examination, *continued.*

Q.—You will agree that this murder was behaviour of a bizarre and unrealistic type?

A.—Certainly abnormal behaviour, like all murders.

Q.—Would you agree this murder was behaviour of a bizarre and unrealistic type?

A.—Not completely.

Q.—You tell the jury what was the motive, the conscious motive of this murder.

A.—I don't believe anyone knows the conscious motive. I cannot tell you the conscious motive.

Q.—The law takes no heed of unconscious motives.

Question withdrawn.

Q.—Did he show a lack of insight into his behaviour?

A.—His insight was not perfect, but there was no lack of absolute insight.

Q.—Surely that means there was a lack of insight?

A.—I would agree.

Q.—For instance he had no explanation of why he did it, none that you would accept?

A.—Only a partial one.

Q.—It was not, as far as you could see, the murder, what he did was not gainful to him?

A.—No.

Q.—Would you agree, I am going on reading from the passage, with this further statement? "Here again the lack of insight as shown by lack of explanation or excuse, or of realization of the need for these, possesses diagnostic value."

A.—I agree with the statement.

Q.—You said it was lack of insight to a degree?

A.—Yes.

Q.—That was shown by lack of explanation?

A.—Yes.

Q.—And by lack of excuse?

A.—Inability to get an excuse, yes.

Q.—And even lack of realization of the need for excuse?

A.—I will not agree with that in this case. My opinion is he realized fully there should be some reason.

Q.—Do you agree with the writers in this? "The early presenting symptoms may be of a non-specific kind and resemble those of a state of anxiety or depression."

Mr. Chamberlain objects.

Over-ruled.

That refers to schizophrenia in all forms.

A.—I wouldn't agree to it in all cases, but in most cases.

Q.—Do you agree with this—"The early presenting symptoms may be of a non-specific kind and resemble those of a state of anxiety or depression and the true diagnosis may be only permitted or suggested through the development of additional symptoms especially passivity feelings, hallucinations or primary delusions"?

A.—I agree with that.

Q.—Tell me whether you agree with this—"Sudden inexplicable behaviour antisocial or not that seems senseless or startling should always suggest schizophrenia so long as it is not obviously gainful"? Do you agree with that?

A.—I do.

Q.—Would the accused's behaviour on the night of this murder be fairly described as "sudden inexplicable behaviour that seemed senseless or startling and was not obviously gainful"?

A.—Yes.

Q.—It never suggests schizophrenia to you?

A.—Not in the absence of confirmatory signs of schizophrenia, just as that behaviour can occur with other abnormal people.

Q.—I want to know if it did.

A.—No it did not.

Q.—Now you told Mr. Chamberlain that schizophrenia is a progressive disorder and if untreated it progresses?

A.—Yes.

Q.—Isn't it a characteristic of schizophrenia that spontaneous remissions occur quite apart from treatment or not?

A.—Remissions of the acute features may occur, but there will remain evidence of the basic schizophrenic illness.

Q.—It can stop and start—let me put it this way, the course of it, it's liable to be developing and suddenly stop. Correct?

A.—The acute features may stop, yes.

Q.—And when they stop the patient may during a remission, appear normal?

A.—Not to a psychiatrist. "Remission" means that acute features can subside but you will still get symptoms of the basic schizophrenic illness. That's why they use the term "remission" rather than "recoveries".

Q.—Would you agree that schizophrenia in most cases manifests itself between the ages of 15 years and 25?

A.—Certainly in more than half.

Q.—Is this the position from your evidence that this simple schizophrenia never had outbursts of violent behaviour?

A.—No I don't say that, we were talking about the onset of the simple schizophrenia.

Q.—It never began, the disorder never came on in simple schizophrenia with an onset of violent behaviour?

A.—Yes, that's right, not to my knowledge.

Q.—You were certain that a person suffering from simple schizophrenia could never have a sudden attack of violent behaviour?

A.—It would be rare but possible, but not at the onset.

Q.—So that assuming, for the purpose of this question, the accused was a schizophrenic which nobody diagnosed, you wouldn't rule it as impossible that he could have a sudden outburst of violence?

Mr. Chamberlain objects.

Question allowed.

A.—May I ask whether you are talking of simple schizophrenia? If it is simple, I regard it as being most improbable. But not impossible.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.
Brian Joseph Shea—
Cross-examination,

Q.—Particularly in view of the passage I read?

A.—Yes, that's why I asked whether it was simple schizophrenia or schizophrenia in general. Those you have read about are schizophrenia in general.

Q.—Could you tell me this, what were you looking for when you went to see the accused on the first occasion? In the accused I mean. What was the object or purpose of your examination of the accused?

A.—To determine the mental state of the accused and particularly in regard to the offence with which he had been charged.

Q.—You therefore, I take it, were on the lookout, if I use that expression, for symptoms of any mental disorder?

A.—Yes.

Q.—Your mind wouldn't have been directly specifically directing your attention to schizophrenic symptoms?

A.—Not specifically.

Q.—Insanity or a mental defect of the mind, can arise from many causes?

A.—Yes.

Q.—I mean, there can be tumors of the brain leading to defect of the reason?

A.—Rare, but yes.

Q.—There can be arteriosclerosis?

A.—Yes. And numerous other illnesses which produce defect of the mind.

To His Honour—Insanity takes many different forms.

Cross-examined: Q.—This of course, was a very grave matter this enquiry of yours?

A.—Yes.

Q.—It was your duty to see if there were any signs which might lead you to a conclusion one way or the other?

A.—Yes.

Q.—You didn't have an electrocephelogram done?

A.—No, there were no indications for it.

Q.—You knew the defence was getting one anyway?

A.—No, not until later.

Q.—Where you have one of the shut-in personalities like the accused a very careful enquiry into their past history is called for?

A.—Yes.

Q.—To see whether there has been a deterioration in their personality?

A.—Yes.

Q.—To see in other words whether they have got more introverted as time goes on?

A.—If possible, yes.

Q.—And if possible relatives should be seen who can provide information about the accused?

A.—When possible.

Q.—In reaching your opinion you didn't have the advantage of talks with Mr. Stone?

A.—No, but I saw on my first visit to gaol a Mrs. Hunter who had lived with accused for most of their early life anyway, and I had a subsequent 'phone call from Mrs. Hunter.

Q.—Mrs. Hunter told you that she left the home to go to England for an operation when quite young?

A.—I don't know at what age.

Q.—Did she say she was about 9 when she left the home and was taken to England?

A.—No, she told me she saw the accused on quite a few occasions recently.

Q.—She had left the home when about 9?

A.—I didn't know that.

To His Honour: Q.—You have heard the evidence of Mr. Stone and Mrs. Everett?

A.—Yes.

Q.—Having heard all that evidence does that in any way affect your opinion?

A.—No.

Q.—Had you heard all that evidence when you made your first examination would it in any way have altered your view?

A.—I do not consider so.

Cross-examined: Q.—There was a suggestion by Mr. Stone that the accused's introversion had increased in the latter part.

A.—He said since going to sea, at the age of 14.

Q.—Do you remember him saying "Just before he went to Pine Valley he stayed about a week in the home approximately a fortnight before he took the position at Pine Valley I noticed about him that at this particular time he was home, he seemed to be much quieter and much less communicative than he had been at other times"?

A.—Yes, I can recall that.

Q.—He was a layman Mr. Stone?

A.—Yes.

Q.—But might that not suggest a deterioration or sudden change for the worse?

A.—Taking into account the accused as a whole and as I found him, no, it did not suggest that to me.

Q.—You agree that if the person is extroverted the change of personality is much more obviously manifest?

A.—Yes. I took that to mean if he suddenly swung over to being an introvert.

Q.—What I mean is this, with an introverted person, a shy sort of person, the change the psychiatrist is likely to see will be very slight changes, very often?

A.—I am not following that at all I am sorry. Depends what you mean by changes that you see.

Q.—You suspect schizophrenia in one of these shut-in personalities?

A.—Yes.

Q.—You are looking for a deterioration—an increase in introversion?

A.—Yes, of a gross degree.

Q.—But very frequently all you get is a deterioration of a slight degree?

A.—Frequently you mean from changing from a schizoid personality to schizophrenia. Well it may be slight but only if the other symptoms are there to confirm the diagnosis.

To His Honour: Q.—You would not diagnose a schizophrenia on slight symptoms you would want something concrete to confirm the diagnosis.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Cross-examination, *continued.*

Cross-examined: Q.—If there were slight changes in a schizoid personality, you wouldn't regard those as indicating he had suddenly got schizophrenia?

A.—No.

Cross-examined: Q.—That is without the presence of other symptoms?

A.—Yes.

Q.—You don't suggest that you might be wrong in your diagnosis?

A.—I have been wrong before now.

Q.—It's much easier I take it, in diagnosing mental conditions to be wrong by not being able to see enough symptoms in an incipient case, than by misinterpreting florid symptoms in an advanced case?

A.—Naturally the more florid the illness the more likely you are to be correct.

Q.—It's generally known in the incipient stages of anything you generally have less symptoms to guide the diagnostician than when it is fully developed?

A.—Yes.

To His Honour: Q.—Would you say more ambiguous symptoms?

A.—Yes, so many illnesses vary. The symptoms might be consistent with one illness or another or even a third, and until you get more information you can't say.

Cross-examined: Q.—In Curran and Partridge's book dealing with schizophrenia the authors describe as primary symptoms in the full blown case the following, "1. thought disorder; second . . .

3.30 p.m. Court adjourned.

3.45 p.m. Court resumed.

Cross-examined continued.

Q.—In Curran and Partridge's book dealing with schizophrenia, the authors describe as primary symptoms in the full blown case the following—"1. thought disorder; 2. emotional disturbances; 3. disturbances of will and volition; 4. disturbances of motility?

A.—Yes.

Q.—Do you agree they are the 4 primary symptoms to be mostly found in advanced cases of schizophrenia?

A.—Yes. Thought disorder speaks for itself.

Q.—What do you understand by their term 'thought disorder'?

A.—The thoughts of the schizophrenic can frequently be described as branching or inconsecutive, they will frequently commence a sentence with a certain subject, and finish it on an entirely different subject without any obvious association between the two.

Q.—Emotional disturbances, they say "these are emotional reactions tending to be inadequate or inappropriate or both?

A.—I agree.

Q.—Disturbances of will and volition—what does that mean to you?

A.—Frequently with schizophrenics they feel they are being controlled by outside sources, that probably gives the best example, may be in the form of hallucinations, commanding voices. They feel they are powerless to act of their own will or volition.

Q.—There's a lack of initiative or drive?

A.—Yes, they are motility.

Q.—Disturbances of motility means a sudden change from say, inactivity to a sudden activity or *vice versa*?

A.—Yes, or a constant inactivity.

To His Honour—The man day dreaming today is autostic, his thoughts are dreamy rather than concrete.

Cross-examined—You might not have all those symptoms even in a primary case, although most cases would show them.

Q.—In regard to the first symptom, thought disorder, would you agree with this statement—"A poverty of ideas and associations may be all that is noticeable at first"?

A.—Yes.

Q.—In regard to emotional disturbances, would you agree with this statement? "A schizophrenic illness often starts with unspecific vague emotional disturbances. The patient becomes irritable, over-sensitive or depressed, sometimes in reaction to an upsetting experience, sometimes without any demonstrable external cause."

A.—I agree that can occur.

Q.—In relation to disturbances of will and volition, would you agree with this—"Lack of energy is a frequent complaint in the early stages of the illness"?

A.—That applies to the schizophrenic and others.

Q.—"Friends and relatives may describe the patient's poverty of initiative, loss of drive, lack of decision, and determination. More often such disturbances must be inferred from the description of the patient's behaviour and mode of life. His work history is often the best indicator. A psychopathic may frequently change his job because he quarrels with his superior or workmates, but an early schizophrenic can give no adequate reason for such changes or if he does his reasons are illogical or coloured by his abnormal emotional condition".

A.—I agree with all of that.

Q.—In this case we have instance after instance of changing his job.

A.—I know about that, but that has occurred since the age of 14 when he started work.

To His Honour—There are many instances of men changing jobs who are not schizophrenic.

Cross-examined—The onset of schizophrenia is between 15 and 25.

Q.—That is when he has been changing his job.

A.—Do you imply that he has been schizophrenic since 14 or 15?

Q.—With simple schizophrenia the onset may be most insidious?

A.—Yes.

Q.—You know the work of Henderson and Gillespie?

A.—Yes, I was taught from that text book.

Q.—In relation to the fourth primary symptom, disturbances of motility, the authors say, do you agree "The state of apathy may be interrupted by the performance of some sudden impulsive action, so that these patients may suddenly start shouting for no apparent reason, become destructive or attack others"?

A.—That can be applied to the catatonic schizophrenia. It is not one of the primary symptoms to look for in a simple schizophrenia.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.
Brian Joseph Shea—
Cross-examination, *continued.*

To His Honour—It is one of the subdivisions of the four lists of symptoms which would be or could be observed in schizophrenia, particularly the catatonic type.

Cross-examined: Q.—One thing I want to ask you, isn't this the position that with schizophrenia these different types tend to overlap?

A.—Yes.

Q.—You get, as it were, symptoms say, demonstrating catatonic they all tend to overlap, all the forms for schizophrenia?

A.—There is some overlapping, yes. The causes of schizophrenia are still obscure.

Q.—Would you agree with Henderson and Gillespie that a precipitating factor in schizophrenia is worry over masturbation?

A.—It can be a precipitating factor.

Q.—Would you agree with this passage from their book? "Of more long standing factors worry over masturbation is perhaps the commonest. The patient goes on for years ruminating over the habit, till his feeling of guilt is no longer bearable, comes to be projected first as ideas of reference, and later as hallucinations or delusions."

A.—With the possible exception of the first sentence the other yes I agree.

Q.—"Of more long standing factors, worry over masturbation is perhaps the commonest"?

A.—I disagree with that, it is a factor in some cases but not the commonest. I would agree it is a common factor of precipitation.

Q.—One of the difficulties you will agree in diagnosing simple schizophrenia is determining at what stage the person is simply a schizoid personality, and at what stage he has, as it were, drifted into simple schizophrenia?

A.—It is not easy. The symptoms of simple schizophrenia are not dramatic, not to an outside person.

To His Honour—To the medical examiner, I think they are much more obvious.

Q.—Dealing with the onset of simple schizophrenia I want to read a passage of Henderson and Gillespie. At page 297—"In the vast majority of cases a close analysis of the history shows that the patient has exhibited peculiarities and oddities, which perhaps did not seem to have any special significance, until the grosser symptoms presented themselves. We believe therefore that closer attention should be paid to obtaining very complete records of the development of the patient, and that the idiosyncrasies and perversities of childhood should be scanned with more seriousness, because by doing so we may be able to determine traits, which are likely to be followed by more serious symptoms. We would particularly emphasize the importance of noting such traits as day dreaming, fears, solitariness, undue sensitiveness, and bashfulness".

A.—I agree with that.

Q.—The authors obviously recommend as close an enquiry into the child behaviour as is possible?

A.—Yes.

Q.—Both you and Dr. Forgan have not had as intense investigation as you wish?

A.—That is true.

Q.—What we have here, I think, in this case, putting the thing as simply as I can, as fairly as I can in this way, what we have here is a startling senseless act, have we not on the night of the murder?

A.—I prefer to put it we have a sudden explosive action which seems to have no conscious motive.

Q.—In itself, it is suggestive, at first glance, is it not of schizophrenia? Not of itself, not that it proves that, but it is suggestive?

A.—No.

Q.—You wouldn't agree with Curran on that?

A.—If you wouldn't mind quoting the particular reference.

Q.—I quote (page 210) "Sudden inexplicable behaviour, anti-social or not, that seems senseless or startling should always suggest schizophrenia so long as it is not obviously gainful". They only suggest.

A.—Quite.

Q.—Do you agree with that?

A.—I agree with the statement.

Q.—You are not suggesting the behaviour of the accused on the night of the killing, was not sudden, inexplicable behaviour, are you?

A.—No.

Q.—That fits "antisocial or not"?

A.—It was antisocial.

Q.—Senseless or startling?

A.—It would be sudden.

Q.—Should always suggest schizophrenia as long as it is not obviously gainful?

A.—I agree with that statement. As long as you are still saying this is a bald statement, we have not applied it yet.

Q.—Does not that statement describe the behaviour of the accused on the night of the killing?

A.—Not completely.

Q.—Does not it completely describe it?

A.—No.

Q.—What should it say to do that?

A.—It's a question of the senseless part that is significant in this one.

Q.—But the passage, as I remind you said "that seemed senseless or startling".

A.—I agree that describes it.

Q.—If you leave out "senseless" you can apply it to the night of the killing?

A.—I think you could.

Q.—That being so, did it not suggest, not prove schizophrenia to you?

A.—Not of itself, it could have suggested epilepsy or hysteria, or an abnormal action of which we were unable to find the motive.

To His Honour: Q.—If he had schizophrenia on the night of the 23rd November would not you expect him still to have it?

A.—Yes.

Q.—If he still had it, you would be prepared to certify him for Parkside?

A.—I would be prepared to recommend that.

Q.—If this man is released from this trial would you be prepared to recommend his incarceration in Parkside?

A.—No, he is not mentally defective.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.
Brian Joseph Shea—
Cross-examination, *continued.*

Cross-examined: Q.—You said that his conduct on the night would also suggest hysteria?

A.—As a possibility.

Q.—It could not be, you don't think that?

A.—You have to consider it just as you consider anything else.

Q.—Is not the distinguishing factor of hysteria the obvious motive of the patient in the course of hysteria?

A.—I don't follow.

Q.—The behaviour of the hysteric is motivated by some unconscious motive?

A.—Unconscious to them and quite likely to others.

To His Honour—Unconscious as far as they are concerned, and not discoverable by others.

Cross-examined: Q.—I thought the hallmark of the hysteric behaviour was gain?

A.—Not on the conscious level.

Q.—Coming back to description of the night, you would agree it was suggestive of schizophrenia or some other mental abnormality?

A.—Yes.

Q.—That is something suggestive of schizophrenia among other abnormalities?

A.—Yes.

Q.—When you look into the question of the accused you have the worry over masturbation?

A.—Yes.

Q.—A common precipitating factor in schizophrenia?

A.—Yes.

Q.—Then you have a character a schizoid personality, which can easily merge into simple schizophrenia?

A.—Yes which can.

Q.—The strange conduct on the night of the killing, suggestive of schizophrenia or other mental abnormalities?

A.—Yes.

Q.—We have the worry over masturbation, which we agree is a common precipitating factor into schizophrenia.

A.—Yes.

Q.—And we have also the fact that this schizoid personality is the introverted type in whom diagnosis of the early onset of simple schizophrenia is difficult, would you agree with that?

Q.—We have a schizoid personality which makes the diagnosis of an early onset of schizophrenia difficult?

A.—I prefer to say it is less easy to diagnose than going from an extrovert to the schizophrenic. An extrovert can become a schizophrenic.

Q.—We have in the accused, a person showing some lack of insight?

A.—Yes.

Q.—By way of explanation or excuse of this action?

A.—Yes.

Q.—Don't you think in ruling out, in ruling out the possibility that this man is suffering from schizophrenia, you're taking a big risk, of being in error?

A.—No, because all those features you mentioned with the exception of the crime itself are well typical of the schizoid personality, and I am not denying he is a schizoid personality.

Q.—But his being a schizoid personality does not explain the crime does it?

A.—That helps to explain partly why, yes.

Q.—With simple schizophrenia or with any schizophrenia it may take years to develop the full dramatic symptoms?

A.—If it is of that type, it is one of continued deterioration sort of thing.

Q.—In schizophrenia it may take years to come on it is insidious?

A.—To get to the full blown picture, yes.

Q.—I mean, with schizophrenia a man of 25 may start to show schizophrenic symptoms, in their simplest form, the least dramatic?

A.—Yes it does happen.

Q.—To get to the advanced symptoms, it may take years?

A.—Yes.

Q.—Yet here's the point, even though he shows the symptoms identifiably diagnosed at 25, he may have been developing since he was 15, in other words, he may have been in an incipient stage of simple schizophrenia from the time he was 15.

A.—No, I don't agree. You are talking about the illness not the personality. I don't agree.

Q.—How long, over what period would you say, schizophrenia may develop in its incipient form before the symptoms would be manifest to a psychiatrist?

A.—It's not an easy question because it depends on what you mean by stage.

Q.—It has not yet been diagnosed . . . It's not yet manifest symptom upon which it can be diagnosed.

A.—Unless you have something tangible there you can't diagnose it.

Q.—It's recognized that the onset of schizophrenia is gradual?

A.—Yes.

4.29 p.m. Court adjourned to 10 a.m. 19/3/59.

10 a.m. Thursday 19/3/59 Court resumed.

DR. SHEA continued.

Cross-examined: Q.—A few questions on some of the evidence of Dr. Forgan. I take it, although you have a different opinion to him in this matter, you would agree that his opinion is entitled to respect?

A.—By all means, yes.

Q.—Dr. Forgan noted in his examinations of the accused that his attitude contained a lack of remorse. Did you find that?

A.—No.

Q.—You heard Mr. Stone say that he had noticed that the accused had no real remorse?

A.—Yes, I heard that.

Q.—You spoke to Mrs. Fay Hunter?

A.—Yes.

Q.—She told you that he had no real remorse?

A.—She did not put it in those words. She did not convey that idea to me. She conveyed to me that he seemed more upset by the difficulties in which he had placed Mrs. Stone, his foster mother, than any desire to discuss the crime itself.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.
Brian Joseph Shea—
Cross-examination, *continued.*

Q.—Did you find that he had normal feelings of remorse?

A.—At one stage yes. When discussing the crime he broke into tears.

Q.—Dr. Forgan found he had a lack of understanding of his own conduct. Did you find that?

A.—I found that in relation to the killing itself that he had incomplete understanding.

To His Honour—By that I mean, he could explain certain of his thoughts and ideas at the time, but he was unable to explain them in complete detail.

Cross-examined—I know you don't agree that the accused was suffering from an attack of schizophrenia at the time of the offence, but I want to know if you agree with Dr. Forgan's description of what, so far as he says, medical science can say, is the effect of a schizophrenic attack. Do you agree with this "As far as we are able to tell in these episodes, the person is in a somewhat trance-like state in which they are two people at the same time. One part of their mind is what we call disassociated with the other. Perhaps the best way to describe it is one part of their mind is standing back and looking at the other part which is controlling their actions". Do you agree with that statement, as to the processes of the patient's mind in the course of a schizophrenic attack?

A.—In broad outline, that state of affairs may occur in schizophrenia, but it also may occur in hysteria, and even in epilepsy.

Q.—Dr. Forgan was questioned by Mr. Chamberlain on the accused's probable impulses. I want to read the passage to see if you agree with it—"Something led to the impulse in this man to shoot Mr. Lord" Mr. Chamberlain said "It is really traceable to his feelings of inferiority and guilt associated with his masturbation which produced an outburst of violence" and Dr. Forgan said "Yes". Was Mr. Chamberlain putting your view then?

A.—Yes, almost identical. I naturally agree with that.

Q.—I take it was your view that there would be an element of playing big in front of himself?

A.—Yes, or boosting himself in front of his own eyes.

Q.—I take it that it would be your view that he was influenced by the sight of a happily married attractive couple?

A.—That was my opinion.

Q.—And, these feelings, in your view, were subconscious?

A.—Primarily subconscious.

Q.—By subconscious, do you mean feelings of which he was not conscious in his mind?

A.—Or conscious of them, only to a degree.

Q.—I think it is your view that those feelings were his subconscious motives?

A.—Yes.

Q.—Even if you are right, that he had those feelings, they were his subconscious motives, that does not disclose what his conscious motives were?

A.—Not necessarily.

Q.—There was a passage of Dr. Forgan's which I want to see if you agree with. It's a statement which you can agree with or not, a medical statement: "That those unconscious feelings that of inferiority and guilty and general extreme unworthiness in people whose mind has become distorted to the extent that this self accusation amounts to a delusion can be projected on to another person so that instead of the person concerned committing suicide, which would

be the ordinary depressive type of person's way out of his extreme unworthiness there is a likelihood of him seeking a victim and using the victim to expiate his own feelings of guilt and unworthiness''.

Q.—I am asking you if you agree with that statement that is what can happen to a person whose mind is distorted?

A.—I think it is a possible theory in certain cases. It is not new to me.

Q.—At page 50, you yourself gave your view that what led to his act, the accused's act was the result of subconscious feeling and failure, inadequacy, frustration and jealousy.

A.—Yes.

Q.—They were so far as you know, in your view, primarily subconscious?

A.—Yes that is what I said.

Q.—To some extent Dr. Forgan agreed to Mr. Chamberlain that he would be likely to have some such subconscious feelings?

A.—Yes.

Q.—From his history, which you will accept, he had those feelings for quite a long time?

A.—Approximately 3 years.

Q.—A lot of people like him with inadequate feelings, would have had such feelings?

A.—There would be other people, yes.

Q.—From having feelings like that, which were mainly on the subconscious level, he was primarily unaware of them, it is a far cry to going and shooting a comparative stranger?

A.—I don't accept that.

Q.—Even if he had those subconscious feelings, he had had them at least 3 years?

A.—Approximately.

Q.—He had never shot anyone before?

A.—No.

Q.—So he had lived with them for 3 years, we assume, without shooting anybody. You have been able to give your view as to the subconscious feelings which motivated him, you wouldn't like to give your view as to his conscious feelings would you?

A.—Only by recounting what he told me about them.

Q.—It's not . . . it's a pretty drastic reaction to the possession of subconscious feelings like he had, to go to a strange man and shoot him dead?

A.—I agree, it is drastic.

Q.—To say the least, it is a highly irrational reaction?

A.—Depends what you mean by irrational.

Q.—Against reason, against commonsense?

A.—Such an action would be against ordinary calm commonsense, and against reason.

Q.—I didn't mean when I used the word 'irrational' in the sense of sane as opposed to insane.

A.—I understand that.

Q.—And what I am putting to you is that even if you are right, as to his subconscious motives and feelings, his conscious mind must have been a mess when he went across to Mr. Lord's house and shot him?

A.—I would prefer to say he was emotionally disturbed at the time.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Cross-examination, *continued.*

Q.—I am asking him about his mind.

A.—You can't distinguish the two.

Q.—His conscious mind must have been in a state of extreme disorder?

A.—What do you mean by a mind?

Q.—His conscious thoughts.

A.—I do not agree his thoughts were necessarily in disorder.

Q.—Didn't you just agree with me that because he had feelings like you told us, subconscious feelings, it was not reasonable what he did, his conduct was not reasonable, in relation to his feelings, his subconscious feelings?

A.—Yes I did say that.

Q.—Doesn't it follow that his conscious thoughts were in a state of disorder?

A.—Not necessarily.

Q.—You agree . . . you told us you accept that for 3 years he had these same subconscious feelings?

A.—Yes.

Q.—And lived with them apparently?

A.—Yes.

Q.—Without shooting anybody. Doesn't that indicate to you that on the night of the 23rd of November he was under the stress of more than his normal subconscious feeling of inadequacy?

A.—Yes, I agree they had probably built up.

Q.—You agree, it points to new and additional stress?

A.—Possibly.

Q.—You agree to an increase in stress?

A.—Yes, additional or not, it was increased.

Q.—Such as, I know you won't agree with it, such a stress as a schizophrenic attack?

A.—Schizophrenic attack in itself is not a stress.

Q.—It's a matter of words, isn't it, really? Let me put it this way, if you were wrong and your opinion could be, I think you would agree?

A.—I am not infallible.

Q.—If you were wrong, the onset of a schizophrenic attack, could completely explain his abnormal behaviour on the night of the 23rd?

A.—No.

Q.—What is your theory as to this increased stress he suffered, on the night of the 23rd?

A.—I think mainly that it is a culmination of his anxiety which has been going on for a number of months up to 3 years, and with this increase in anxiety his emotions finally became dominant.

Q.—Your view is he reached a peak of anxiety in which he became unable to control himself?

A.—Not unable to control himself.

Q.—Your view is his emotions became very dominant?

A.—Yes.

Q.—Dominant suggests control?

A.—Yes.

Q.—You say his emotions became dominant, and—

A.—And he acted upon those emotions.

Q.—Without his mind working?

A.—No his mind was working, but he was in the grip of a powerful emotion.

Q.—He told the police he couldn't help himself.

A.—I remember that.

Q.—You don't accept that?

A.—I don't accept he could not control himself.

To His Honour—All I say is he did not.

Cross-examined: Q.—These emotions you say were they conscious or subconscious?

A.—Primarily subconscious, but some may have been at the conscious level.

Q.—Well if only some of the emotions were at a conscious level what would his mind, how would his mind be working?

A.—Everyone is dominated by certain subconscious drives and instincts; it happens to all of us. Ordinarily we are able to repress them.

Q.—And all this came from just these feelings of inadequacy, and guilt?

A.—Yes, his brooding about them.

Re-examined, Mr. Chamberlain: Q.—Explain further what you have just said—is motive a matter that even the most intelligent person can analyse and understand in himself.

A.—No.

Q.—In other words the best of us don't always know what it is that has driven us to adopt a certain line of conduct?

A.—Yes, even the best of us do not always understand what leads us into certain lines of conduct.

Q.—Mr. Elliott put to you that this man had evidently been living with these emotions for about 3 years without shooting anyone?

A.—Yes.

Q.—Your answer was that the emotion built up until it ultimately led to action?

A.—Yes.

Q.—Is that a fairly common phenomenon?

A.—You mean with everyday people?

Q.—Is it a fairly common process for people to be able to live with emotions for a long period of time, which nevertheless ultimately build up to a stage where they lead to action?

A.—Yes, of course, it is common.

Q.—Going back to yesterday's cross-examination. My friend asked you if you were going to secure your diploma of psychological medicine.

A.—Yes.

Q.—Have you gone some of the way towards it?

A.—Yes. It is divided into two parts, Part I and Part II. I have completed Part I. The other part requires spending some time in Melbourne, but my professional duties haven't allowed me to do that up to now. My practice has been restricted to mental institutions.

Q.—Is there any better place to find out about insanity than by being in a mental institution?

A.—I can best answer that by giving the facts, in all diplomas of psychological medicine it is necessary that at least 12 months be spent in a mental hospital.

In the Supreme Court of South Australia.

No. 2
Evidence for prosecution in rebuttal.

Brian Joseph Shea—
Re-examination. *continued.*

Q.—You were asked if you thought of ordering an electrocephelograph?

A.—Yes. I didn't do that. I am familiar with the use of the electrocephelograph. It is in common use and practised at Parkside. For some years the only one there was in the State, was at Parkside Mental Hospital. There are some cases where an electrocephelograph examination is called for and in others it is not. In this particular case I saw no reason to call for an electrocephelograph.

Q.—You were asked several times if your opinion would be wrong. You told him you were not infallable. With that concession have you any doubt about the correctness of your diagnosis in this case yourself?

A.—I have no doubt of my diagnosis.

Q.—Yesterday Mr. Elliott put to you a series of factors which he grouped as, 1. schizoid character; 2. outburst of violence; 3. worries over masturbation; 4. some lack of insight. Remembering him putting that to you, with the suggestion that the concurrence of those things was an indication of schizophrenia. You didn't agree with that?

A.—No.

Q.—As a matter of fact you were fully aware of all those circumstances at the time you made your examinations?

A.—Yes.

Q.—Is your opinion in any way affected by any of the text books that Mr. Elliott has quoted to you, or by any of the arguments he addressed to you?

A.—No, I think they are quite sound and good points.

Q.—A passage read to you "that sudden inexplicable behaviour—" I won't give the whole passage.

11.29 a.m. Dr. Forgan released.

11.30 a.m. Court adjourned.

11.43 a.m. Court resumed.

Re-examined continued, Dr. Shea: Q.—Referring to a passage read to you quoted on page 54 of the evidence to the effect that sudden inexplicable behaviour should always suggest schizophrenia, do you take that to mean it suggests schizophrenia as a possibility to be investigated?

A.—I don't take it to mean any more than that—that is the way I took it.

Q.—A passage from Henderson and Gillespie read to you about masturbation being a common precipitating factor to the onset of schizophrenia—do you agree with the evidence already given that masturbation is one of the common phenomena?

A.—Yes. It is common. Also that most people who do it, worry about it.

Q.—All those people don't develop into schizophrenics, or do they? Does it lead to any mental disorder, necessarily?

A.—No.

Q.—If it does lead to schizophrenia, are the symptoms discoverable by psychiatric examination?

A.—Yes.

11.55 a.m. case in rebuttal.

Witness released.

11.56 a.m. Mr. Elliott opens address to jury.

R. *v.* JOHN WHELAN BROWN.

In the Supreme Court of South Australia.

No. 2
Statement of accused from dock.

STATEMENT OF ACCUSED FROM DOCK—

Your Honour and Gentlemen of the Jury:

I shot Mr. Lord but I do not know why. I had no reason to shoot him. He was practically a stranger to me. I went to work at Pine Valley Station on Thursday the 20th November and I think I had only one conversation with him from the Thursday to the Sunday when it happened. I had no cross words with him. I hardly knew him, but I liked him.

On the Sunday evening when it happened I seemed to be acting in a dream. I do not know why I chose Mr. Lord rather than Mrs. Lord or the lady cook. I can remember taking the gun and going to the house and the bedroom door and firing the gun. I knew what was happening but my mind did not seem to be working in other ways.

In my mind there was no reason for what I was doing. In my mind there was no idea, that I was doing wrong, or that there would be any consequences, or that I would be punished afterwards.

I seemed to be doing things without my mind coming into it. Just as if my body was doing things without my mind, just as if some strange person was doing it and I was watching it. Afterwards when I was in the bush I was not sure at first whether I had really done it, or was dreaming.

I am 25 years of age. I will be 26 on the 21st of April. I never knew my parents. I did not know who they are. When I was a baby I was fostered to a lady called Mrs. Stone who lives at 5 Buckle Street St. Leonards. She always had a lot of foster children in her house and I was one of them. Others always came and went. Some had parents. Some did not. No one ever came to visit me. I went to St. Leonards school with the other children. We were known as the Stone children. I was not very good at school. I failed grade 2, grade 5, and grade 6. I left school when I was 14. I was then in grade 6. I was never able to stay long in a job. When I left school I went to the Waterworks. I was there about 6 months. Then I went to a place called Publisher's Limited. I left there because I spent half of my week's pay without paying my board and I ran away to the hills. I got hungry and entered a school house. I was charged with breaking and entering in the Juvenile Court and released on a bond. The Welfare Department got me a job as a cabin boy on a merchant ship. I only went on one trip which lasted about 4½ months.

Then I got a job on a station called Nipalapko Station. I was there for just under a year. Then I went to Mulgathing Station Tarcoola. I stayed there for about 20 months. From Mulgathing Station I went to Mount Wood Station. I was there for about 14 months. Then I went to Balcanoona Station at Copley. I was there for about 4 months. I went back to Mount Wood Station for six months. After this I went to Wadnaminga Station at Mannahill, and was there for 10 months. Then I went to Bimbowrie Station at Olary for 3½ to 4 months. Then I went to Brenda Station at Gadooga. I was there 9 to 10 months. Between these jobs I generally went home to Mrs. Stone's until I got the next job.

After that I went to Retreat East at Cootamundra. I was there for about 8 weeks. I got into trouble again. When I left Retreat East I had no job

In the Supreme Court of South Australia.

No. 2
Statement of accused from dock, *continued.*

and I ran out of money so I broke and entered a school house. I got nothing and I gave myself up and I was released on a bond in the Cowra Quarter Sessions. Under the bond I was to be of good behaviour for one year. I then got a job at Back Creek Station, Oberon. I was there for 8 or 9 weeks. I went back to Gadooga and got a job droving for about 6 weeks.

Then I was out of work again and I went back to Sydney looking for work. I was without money or food. I had no friends. I got desperate and broke into a home and stole jewellery. I tried to sell it and was arrested and I later pleaded guilty and at Darlinghurst Quarter Sessions was sentenced to be imprisoned for 3 years. I served 6 months of my sentence at Long Bay Gaol and the remainder of 6 months at Berrima Training Centre. I was released on the 26th November, 1957. I was released on licence and I went to Brisbane to try and get work but I couldn't get any and I hitch-hiked my way back to Adelaide and went home to Mrs. Stone's.

In January 1958 I went to Paratoo Station Yunta and was there for about 4 months. I left there and went to work for a man called Maloney at Atherton on the Peninsula. I then worked for people called Clasohm. I was there nearly 3 months. At midnight one night I walked off the job and came back home. I was home about a week. I had no job so I left my name and address with the Unemployment Bureau and early in November I got a letter from a Mr. Lord who lives at Fitzroy. In the letter he asked if I would be interested in taking a job at Pine Valley. I rang Mr. Lord and said I would take the job and it was arranged that he would take me up there with him on Thursday the 20th November.

We went to Pine Valley on Thursday the 20th of November in the motor car of an Elder Smith man and arrived at Pine Valley about lunch time. The Mr. Lord who took me was about 50 years old and when we reached Pine Valley Station I was introduced to the other Mr. Lord who managed the station. He was a man between 30 and 40 years of age. I slept in the men's quarters. There was nothing really to do. There was another man called Dave sharing the quarters with me. We did not do much on Friday and Saturday. The weather was wet. On Sunday night I went to bed about 8 p.m. At about 8.30 p.m. I got up and went into Dave's room and took a gun that was in there and went to Mr. Lord's house. Then it happened.

Since I was a lad I have had the habit of masturbation. It has always worried me. I have always been ashamed of it. Until this trouble I had never told anyone about it. But I have told the doctors and my lawyers. I have felt much better as though I lost a big worry.

When I was about 22 years of age I was at Mount Wood Station. There was a man there who was doing the cooking. The other men used to jeer at him saying, "You pull yourself". This man used to get very depressed and one day when we came home he was lying on the floor crying. I thought he was crying because he masturbated like I did and I wanted to speak to him about it, but I never got the courage. But after this incident it worried me more and more. It seemed to me as time went on that I was getting very much like that man. I tried to stop masturbating but after a while when I had not masturbated for some time I would get very depressed and I wanted to avoid other people and I used to have queer feelings come over me. Queer feelings that I was going to do something bad.

In about 1955 I wrote to two doctors. I cannot remember their names now. I picked them out from the telephone book. I was going to see them about myself. But I did not get any replies to my letters. I also wrote to a person named "Jan" who advertises in the miscellaneous column of the *Advertiser*. I wanted to tell him about myself and see if he could help me, but when the time came for the appointment I was very ashamed to go.

It was not until the doctors and my lawyers questioned me about this matter that I spoke about these things. I thought there were only a few people who masturbated like I did. I believed that masturbation sent you mad. I thought if other people knew that I masturbated they would not want anything to do with me. It was on my mind all the time. Yet when I went without masturbating for any length of time I got terribly depressed and these queer feelings would come over me. I would feel I had to be alone. I would feel that I might do something bad. I did not know what.

I left Clasohm's, the last place I was at before I went to Pine Valley because that feeling came over me. I became afraid of what might happen. I got up and walked away. It was midnight. I walked along the road for about 6 miles. Then I lay down in the scrub and slept. In the morning I caught a bus to Adelaide. The feeling had gone when I woke up. It is hard to tell anyone about my sexual trouble. I have always kept it a secret until now.

I have tried to think what could have caused me to do what I did at Pine Valley. I cannot understand it. I had felt queer on the Saturday but I had masturbated and the feeling had gone away. I did not know why it came back on the Sunday night. It came back all of a sudden. Then I do not know what happened to my mind. Sometimes things which are quite close to me will seem to be a long way away. Anything, like a chair, a table or a doorway. When this happens I usually get a strange noise in my head, sometimes it is a buzzing noise, sometimes it is a clicking noise.

When I was at Clasohm's I was tossed by a steer at a rodeo and I fell on my head, but I do not think this affected me because I had the depression and feelings of shame before that, and I used to get these queer feelings that something bad was going to happen.

On the night at Pine Valley my mind started to work as I left the house, and my mind kept saying to me over and over again, "Do you realize what you have done? Do you realize what you have done?"

But I could not believe it. I doubted it. It was when the planes started coming over that I felt sure I had done it.

There is nothing else I can tell you.

In the Supreme Court of South Australia.

No. 3
Trial Judge's summing up to the jury, 20th March, 1959.

No. 3.—TRIAL JUDGE'S SUMMING UP TO THE JURY, 20th MARCH, 1959.

R. *v.* JOHN WHELAN BROWN.

HIS HONOUR, IN CHARGING THE JURY, SAID:—

Gentlemen of the jury, the accused John Whelan Brown stands charged with the crime of murder, the particulars being that on the 23rd November 1958 at Pine Valley he murdered Neville Montgomery Lord.

Murder has been thus defined; "When a person of sound memory and discretion unlawfully kills any reasonable creature in being and under the Queen's peace with malice aforethought, either express or implied, that is murder".

The first element in the crime is that the accused shall be of "sound memory and discretion". Everyone of mature age is presumed by law to be sane and of sound memory and discretion unless the contrary is proved to the satisfaction of the jury. I shall in due course direct you in greater detail on the law regarding insanity, and the burden of proving insanity.

The second element on which you must be satisfied beyond reasonable doubt before you can convict, is that the accused killed Neville Montgomery Lord and killed him unlawfully. The word "unlawfully" means a killing not authorized by law, nor excusable, or unjustifiable on any lawful grounds.

"A reasonable creature in being and under the Queen's peace" for the purposes of this trial includes all human beings living in South Australia.

"Malice aforethought" does not necessarily imply any premeditation but it does imply intention which must necessarily precede the act of killing. Where no malice is expressed or openly indicated the law will imply it from a deliberate cruel act committed by one person against another.

If you find that the accused Brown, who is also known as John Stone, was sane in the *legal sense* on Sunday 23rd November last, you will, I should think, have no difficulty in finding that he intended to kill Neville Montgomery Lord on that day, and that he did in fact kill him.

The burden of proving that the accused had the intention of killing Lord lies on the Crown, who must prove that intention beyond reasonable doubt. If on all the evidence that has been placed before you, you are not satisfied beyond reasonable doubt that the accused intended to kill Neville Lord, when, as he has admitted, he shot him, he cannot be convicted of murder. The intention of the accused is a question of fact, and like other facts, it must be proved by the Crown, and if you should be left with any reasonable doubt that the accused intended to kill Lord, he is not guilty of murder.

Now, gentlemen, in this case there has been no contest by counsel on behalf of the accused on the allegation that he shot and killed Neville Montgomery Lord on the night of Sunday November the 23rd last.

The Crown witnesses who have been called to prove the relevant facts are Mrs. Lord, the widow of the man who was killed and Mrs. Schiller the cook. They were the only persons present, and there has been no effort by the defence to discredit either of them. They were alone in the house with the corpse for some three hours until Donald Vivian Lord, a cousin of the deceased, arrived a little after midnight.

If you accept as truthful the rest of the Crown witnesses, Constable Sparrow and Dr. Miller prove the death of the deceased; Stokes proves that the accused had only started work there on the previous Thursday afternoon, Constable Low proves the taking of the photographs, and Mitchell proves the surrender of the accused on Friday 28th November, after the police and posse of citizens had been hunting him for over 4 days, when the accused's first words, after giving the name of Stone, were "Is he dead?"

Constable Brian Kelly gave evidence of the first police interview with the accused, in which he gave his real name of John Whelan Brown, and the name of John Stone which he uses. He was asked this question—"At about 9.30 p.m. on Sunday the 23rd November 1958 were you employed on Pine Valley Station and at that time did you go to the bedroom of Neville Montgomery Lord and shoot him through the head?" Constable Kelly deposes that the accused replied "Yes". That, if you accept Kelly's evidence, amounts to a confession by the accused of the fact of killing and, subject to the defence of insanity, you may be satisfied from that and the further evidence of the police, which is not controverted or criticized, that the accused had taken the .303 rifle from "Dave" Stokes room, together with ample ammunition, and had gone to the Lords' bedroom and deliberately and intentionally shot and killed Neville Lord, and after speaking to Mrs. Lord, had then decamped and hidden the rifle about 6 miles from the homestead, where he later found it in the presence of Kelly.

Senior Constable Patterson, the Police Department's ballistics expert, tested the rifle and deposes that the strength required to fire it was nearly 7 pounds, about twice the normal safety limit. You may, therefore, feel satisfied that the shooting was no mere accident, but was deliberate and intentional, so far as you may be satisfied that the accused was capable of forming an intention. His evidence may also satisfy you that the empty cartridge found on the back verandah of the house, was fired from that rifle.

The final witness for the Crown was Detective Lenton, who deposes to having taken a full and complete statement in typewriting from the accused, each page of which was signed by him as correct, and which you may take with you into the jury room on your retirement. If you believe that statement, and are satisfied that the accused was not insane, it amounts to an unequivocal confession of the crime charged, on which you will be entitled to bring in a verdict of guilty. The accused neither denies the statement, nor questions the fairness of the detective in taking it, and if you are satisfied on the balance of probabilities that he was sane, in the legal sense, when he shot Lord, the Crown has proved its case.

I direct you that you cannot bring in a verdict of manslaughter in this case. Such a verdict is sometimes open to a jury, but there is no ground in this case for that verdict and it has not been suggested by the defence.

The only verdicts open to you are three, namely, if you are satisfied beyond reasonable doubt of all the elements of murder, and are not satisfied that the accused was insane in the legal sense of that word, your verdict should be "Guilty of murder"; if you are not satisfied beyond reasonable doubt of all or any of the elements your verdict will be "Not Guilty"; or, thirdly, if you think that the accused, at the time he killed Lord (if you are satisfied that he did kill him) was not sane in the legal sense, your verdict should be "Not Guilty on the ground of insanity".

In the Supreme Court of South Australia.

No. 3
Trial Judge's summing up to the jury, 20th March, 1959, *continued.*

You will no doubt recall the very full direction on "reasonable doubt" and its meaning which I gave you at the beginning of this Session. I think I need now only remind you that what is intended by reasonable doubt is some real distrust of the witnesses or of their evidence, founded upon your observation of the witnesses, or upon the other evidence in the case, or otherwise upon judgment or reason. In other words there must be some reason which makes it unsafe for you to convict.

Several of you have served as jurymen in other cases and have seen other procedure than that adopted by the defence in this case. Here the accused has read to you a statement from the dock. No adverse inference is to be drawn against him for having done that. You are to take that statement into account as being possibly a truthful account of the matters to which it relates. You should carefully consider it and endeavour to test it in the light of the evidence of witnesses whom you believe, and in the light of the evidence called by the defence, and in the light of your own experience and commonsense.

Finally, I remind you that although you must take direction on the law from me, for that is one of my responsibilities, you are the sole judges of the facts, and although I may draw your attention to matters of fact, or of medical opinion, which I think it may be helpful for you to consider, nothing that I may say should be regarded by you as an attempt to influence you in coming to your decision.

I am very far from having any such intention. You are to bear in mind the oaths you have taken, and should bring in such verdict as you consider to be right and just on the evidence you have heard in this Court, without regard to the consequences which may follow.

I have already shortly, but I hope sufficiently clearly, directed you on the facts proved by the Crown, and not at all disputed by the accused or his counsel, and if you find from those facts that you are satisfied beyond reasonable doubt that the accused killed, unlawfully and intentionally, Neville Montgomery Lord on the 23rd November 1958, then he is guilty of murder, unless you are satisfied on the balance of probabilities that he was insane, in the legal sense of that word, at the time he did it.

I proceed now to what you may believe to be the most difficult issue in this case, the question of whether, on 23rd November 1958, at the time when Neville Montgomery Lord was killed, the accused was insane, in the meaning of the law. As you have been informed during the progress of this case, it is not insanity in the ordinary acceptance of the term, which excuses a crime. Many people who are insane on one or more subjects, or whose minds are deranged in some way or another, are, nevertheless, responsible in law for the crimes they commit. The test for the kind of insanity that makes the unfortunate person not responsible for a crime is a simple one, and one which has long been the law. It has been clearly stated to you by both Mr. Mr. Chamberlain and Mr. Elliott. If, after careful consideration of the evidence that has been put before you, you are satisfied on the balance of probabilities, that the accused was, on the 23rd November, labouring under a defect of reason due to disease of the mind, by reason of which he either did not know the nature and quality of his act in killing Neville Lord, or did not know that that killing was wrong, then, and only then, your verdict should be not guilty on the ground of insanity. It is possible that if you were asked to decide whether the accused was insane in the sense in which that word is

commonly used among laymen, you might feel very strongly that no one but a lunatic would have killed Neville Lord on the 23rd November for the wholly insufficient reason that the accused has given.

The question, however, for your decision is not quite as simple as that. Without any evidence from the defence of any sort, if the evidence of the Crown fails to convince you beyond reasonable doubt of any of the elements of the crime of murder upon which I have directed you, the accused is entitled to an acquittal and you are not called upon to consider the defence of insanity. If, however, you are satisfied, as perhaps you are, beyond reasonable doubt, that he was guilty of murder unless he was insane in the legal sense when he killed Neville Lord, you must then consider the defence of insanity put forward by the defence. That defence must, as I have said, be proved to your satisfaction on the balance of probabilities. The burden of proving it lies on the accused. The Crown does not have to prove the sanity of the accused because every person is presumed to be sane and legally responsible for his actions until the contrary is proved to your satisfaction. The accused does not have to prove this defence beyond reasonable doubt in the way that the Crown has to prove each element of the prosecution's case. It is sufficient if the accused satisfies you in accordance with the standards which ordinarily apply in civil procedure; in other words, in order that he shall succeed in this defence you must be satisfied in your mind that it is more probable that the accused was insane than that he was sane, using those words in a legal sense, when he killed Neville Lord, bearing constantly in mind the legal definition of insanity which I have already given you. If you are satisfied on the balance of probabilities that when he killed Neville Lord he was labouring under such a defect of reason or disease of the mind that he did not know the nature and quality of the act he was committing, he is not responsible for his death and your verdict is not guilty on the ground of insanity. But in order to find him insane in that way, you would have to be satisfied that he was so deranged that he really did not know what he was doing, as if, for example, he imagined that he was shooting a kangaroo when he shot the deceased or doing some other proper and normal act.

As I understand the defence, that has not been put forward. It is not now suggested that the mind of the accused has ever been affected in that way. On the evidence, it is the opinion of both Dr. Forgan and Dr. Shea that the accused did know the nature and quality of his act when he killed Neville Lord. Indeed, gentlemen, you might find it very difficult to accept a suggestion that the accused did not know the nature and quality of his act in view of his own description of what he did on the night of the charge. It may be put that he, himself, had no doubt, nor has he indeed any doubt now, that what he did was to shoot a human being, namely Neville Lord. You might, indeed think it possible that he did not at first have any definite assurance that he had killed Neville Lord, because, as you may remember, when he surrendered to Mr. Mitchell, the first question he asked was, "Is he dead?" to which Mr. Mitchell replied, "Yes, dead and buried". That question you may think, which was the first that he asked about the act of shooting, might convince you beyond reasonable doubt, that he fully understood that he had shot Neville Lord, and his only doubt was whether the bullet had effectually killed him; although you will be quite satisfied I should think, in finding that whatever may have been the state of his mind, he clearly knew and understood the nature and quality of the act he was committing when he shot Neville Lord.

In the Supreme Court of South Australia.

No. 3
Trial Judge's summing up to the jury, 20th March, 1959, *continued.*

If you are satisfied from the evidence of the accused's conduct and from the evidence of the two medical men who are witnesses in this case, that the accused, Brown, understood and knew the nature and quality of his act when he was engaged in killing Neville Lord, then there remains only one other branch of the question which you have to consider, to be decided. Even if you are satisfied that the accused, on the 23rd November, did fully understand the nature and quality of his act, that does not dispose of the defence of insanity. You have still to consider whether, on the night of 23rd November at the time he was shooting Neville Lord, he was labouring under such a defect of reason from disease of the mind that, even although he knew the nature and quality of his act, he did not know that it was wrong. In other words, if you are satisfied in the way I have said, that the accused knew he was killing Neville Lord, but his reason was so defective by reason of some disease of the mind that he did not know he was doing wrong by killing him, he is entitled to a finding of not guilty because of insanity. You will remember that John Raymond Stokes, who was usually known as "Dave" had a room in the men's quarters and that the accused, when he arrived on the Thursday afternoon prior to the 23rd November, was given a room in the same quarters adjoining Dave's. The rifle which the accused used to shoot Neville Lord was kept in Dave's room. He told you that it belonged to the station and that there were quite a number of rounds of ammunition for it. Dave went away to Morgan on the Saturday morning and when he left, the rifle was in his room; it had a clip with some ammunition in it, there was a spent cartridge in the barrel and the clip was near enough to full of live ammunition. It holds ten rounds. The ammunition was soft nosed for kangaroo shooting. When Dave returned in the early hours of Tuesday morning following the shooting, he found that his rifle was missing and some of the ammunition, some twenty or thirty rounds of ammunition, besides that which was in the clip. There was also a pair of his elastic sided boots missing. All of these articles were in plain view in the room to anyone who looked into it, and the cartridges were kept on the dressing table also in plain view. Before he had left, the accused came into Dave's room and was talking to him.

On the night of the shooting the accused says that he had gone to bed early and that he got up and got the rifle and ammunition just before he went into Mr. Lord's bedroom. The accused himself owned no firearms and probably, had he never seen the rifle and ammunition in Dave's room he might never have thought of shooting anybody. You will remember Mr. Elliott drawing your attention to the fact that there was no motive for this alleged crime. Gentlemen, throughout the centuries of civilization, crimes have repeatedly been committed without any apparent or discoverable motive. That is one of the reasons why, in our childhood, we were taught never to put temptation in anybody's way and what would be temptation for another man, might be no temptation whatsoever to us. You may, perhaps, remember the words of Shakespeare—"How oft the sight of means to do ill deeds makes ill deeds done". There, standing before his eyes in Dave's empty room was the rifle and ample ammunition and there were the means to do ill deeds. Do you think that perhaps those means to do ill deeds made the ill deeds done in this particular case? You may, perhaps, think that on the 23rd November, the accused, when he shot Neville Lord was acting on an uncontrollable impulse—a dreadful impulse which arose suddenly and which he was unable to control. If that view should commend itself to you, it is my duty to direct you that that

is no defence in law. The defence of uncontrollable impulse is unknown to our law, and if that, in your considered view, is the only explanation of the death caused by the accused on the 23rd November, it is your duty to bring in a verdict of guilty of murder.

Before proceeding to discuss the medical evidence which has been called by both sides, I must direct you to the question of whether the accused was sane or insane in the legal sense on the 23rd November when Neville Lord was killed by him—if you are, as I surmise, satisfied beyond all reasonable doubt that he was—it is a question of fact. The issue of insanity in the legal sense is not to be decided by medical men, however eminent. Their evidence of what opinions they may hold is tendered merely to assist you in coming to a decision and you might, if you so choose, discard both their opinions and form your own decision from the facts which are before you. I do not, for one moment, suggest that you do that, but it is your function, especially if you think their opinions are contradictory, to take their evidence into account as being their opinions, but to bear in mind that you yourselves have to decide on the balance of probabilities whether the accused, on the 23rd November, when killing Neville Lord, knew the nature and quality of his act, and knew that it was wrong. You may—perhaps, it is entirely for you—disagree with both of the doctors on different grounds. You may think, with Dr. Forgan, and contrary to Dr. Shea, that the accused on the 23rd November, was suffering from a disease of the mind, namely schizophrenia, and you may agree with Dr. Shea, but disagree with Dr. Forgan, that on 23rd November the accused Brown at that time well knew that what he was doing was wrong. It is for you to decide.

You now have all the material, and it is for you to decide whether the accused has proved to your satisfaction on the balance of probabilities that he had then a disease of the mind and did not know that what he was doing when he shot Neville Lord was wrong. Mr. Elliott, for the accused, has told you gentlemen, that there are only two possible verdicts—the verdict of guilty, or the verdict of not guilty on the ground of insanity, and he has placed his whole reliance on proving to you to your satisfaction on the balance of probabilities that the accused on the night of the 23rd November was suffering from a disease of the mind, and that in consequence of that disease of the mind he did not know that what he was doing was wrong. Mr. Elliott stressed to you the peculiar and almost unexplained fact of this shooting and put it to you that everybody would at once say when they considered it—"The man must be mad".

Well gentlemen, of course that would not solve this thing. It is not a question of whether the accused is mad in the way in which we say a person is mad or insane when he is put in the mental hospital—that is not the question. The question is whether he is insane in the legal sense of that term, that is, suffering from a disease of the mind as a consequence of which he did not know, either the nature and quality of his act—of which Mr. Elliott frankly admits that he did know—or did not know that what he was doing was wrong, which both Dr. Forgan and Mr. Elliott following on, press you to find. Mr. Elliott referred to Mrs. Lord saying that the accused seemed a bit bewildered when he spoke to her. Whether the word "bewildered" which Mrs. Lord used was her own word or was a word put to her by the cross-examining counsel, I am not sure, but it struck me at the time that she was not quite clear as to what the word "bewildered" meant. I then asked her whether she knew

In the Supreme Court of South Australia.

No. 3
Trial Judge's summing up to the jury, 20th March, 1959, *continued.*

what it meant, and she explained that she thought he may have been taken aback that she had come from the next room, not knowing there was a door between. "He just seemed to be surprised to see me." Well gentlemen, if that is all that Mrs. Lord means by the word "bewildered" all it means is that the accused quite naturally, having seen nobody in the room, suddenly hears a scream and goes back, and finding Mrs. Lord there, would naturally be very surprised to find her there. He might also be rather surprised to find that she had thrown herself on the bed beside her dead husband and that she was screaming.

Both of the learned counsel have commented upon the opposing medical man to his detriment, although not anything very serious, but gentlemen, you are bound to consider their evidence without any desire to depreciate them as medical men. One of the issues in this case as it has shaped itself, is whether the accused on 23rd November was actually suffering from that disease of the mind known as schizophrenia. Dr. Forgan forms the opinion that he was, on what you may think is sound ground, or on what you may think is very doubtful ground. He says now that the only time that the accused, so far as he is aware, has suffered from schizophrenia, was for a period not exceeding probably five minutes, when he took up the rifle and commenced to walk towards Lord's bedroom until he had shot Lord and then began his escape from the Pine Valley Station.

Mr. Elliott says that "the duration of the disease is of no consequence." but you will remember that it is one of the real basic principles in Dr. Shea's opinion on which he could diagnose this disease. Dr. Shea declines to believe that a man can have schizophrenia for five minutes and not have it again and not have any symptom upon which thereafter any doctor or psychiatrist can diagnose it. You see, you have to remember this—that Dr. Forgan himself says that the accused is now free from this disease. He is now merely a schizoid personality. That is what Dr. Shea says that he is. Mr. Elliott has placed before you the evidence of Audley Stone, a son of Mrs. Stone, the foster mother of the accused, who has known him since childhood, and the evidence of Mrs. Ellen Martha Everett, who has also known the accused for many years, but I think, gentlemen, that you may perhaps feel that their evidence is not of very much help on the question of whether the accused had this disease of schizophrenia. They undoubtedly help to prove that he was a schizoid character. There is no question about that, but whether that mere fact of being a schizoid character would lead him to kill Lord as he did, there is no evidence before you.

You may, if you choose, when you go into the jury room, take with you the statement of the accused signed by him as John Stone. It comprises about 7 pages of foolscap. You will recall that he was asked by Detective Lenton whether he knew anything about the shooting of Lord on the Sunday night and he said, "Yes"; and he was asked "What do you know about it," and his reply was, "I don't know how to put it," whereupon Lenton asked him a number of questions all of which he seemed to answer perfectly sensibly and plainly. On page 2 of the statement the accused describes very plainly what he did when he shot Lord and how he followed Mrs. Lord into the room when she was singing out, as he put it, and he then ran out the back way. On page 4 he was asked, "After you shot Lord why did you go looking for Mrs. Lord?" and his reply was, "Because I got scared," and when asked what he meant by

that he said, "I don't know". He was asked whether when he went to look for Mrs. Schiller the rifle was freshly loaded, and he said that it was, and he was asked why he went looking for Mrs. Schiller and the accused said, "I just wanted to see where she was," and he was asked "Why?" and his answer was, "Because I thought that she might have rung up and given the alarm".

Well gentlemen, you may ask yourselves why the accused should think that anyone should be wanting to give an alarm about him. Might I suggest to you that he then knew that what he had done was wrong. He did not tell Detective Lenton what he would have done, or whether he would have done anything if he had found Mrs. Schiller, or found that she had given an alarm by telephone. Perhaps, gentlemen, she may think now that she was a fortunate woman that the accused did not find her.

On pages 5 and 6 of the signed statement, Exhibit "G", Detective Lenton said, "Is there any reason you wish to offer for your conduct?" to which the accused replied, "Even though I do recall everything and I did it, I don't think I was responsible for my actions". The detective said, "You knew that the rifle was loaded?" He replied, "Yes". Lenton said "You knew that when you pulled the trigger it would discharge a missile?" and he replied "Yes", and Lenton then asked, "And that if the missile hit anyone it would at least maim them and probably kill them?" to which the answer was, "Yes". The accused was then asked what you may think was a vital question, in view of the course the defence has taken—"Did you know at the time that it was wrong to point the loaded rifle at a person and shoot at them?" The answer you may regard, if it so appeals to you, as the answer to the problem you have to solve. The answer by the accused to that question, "Did you know it was wrong" was "Yes, but I couldn't help it".

Now gentlemen, if you accept the evidence in that statement Exhibit "G", it does not matter whether you think that the accused during that pregnant five minutes on the night of November 23rd was or was not suffering from schizophrenia as Dr. Forgan thinks, if he did know, as he told Detective Lenton he did, that it was wrong to point the loaded rifle at a person and shoot at them. If you accept Dr. Shea's evidence you may have no doubt that the accused was not suffering from any mental disease and did know that he was doing wrong. If you will look at Exhibit "G" on page 6, you will see that after saying "Yes" to that question, the accused went on to say "But I couldn't help myself. I knew it was wrong but I couldn't help myself". These words, gentlemen, may suggest to you that the accused was thereby setting up the defence of "uncontrollable impulse" which you may think is the true explanation of what he did. But, as you will remember gentlemen I have directed you, if that be the true explanation of what the accused did, that is no defence, and he is guilty in law, of the crime charged. You may not like gentlemen, to convict a man of murder who "couldn't help himself", but if you are satisfied beyond reasonable doubt of the truth of that answer, that may be your duty.

Detective Lenton's next question was, "Do you think that you would have pulled the trigger of that rifle if there had been a policeman standing by you?" To that the accused answered, "No". Now, if you accept that answer, you may infer if you think proper that the reason the accused answered "No" is because, again, he knew that pulling the trigger was wrong.

E

In the Supreme Court of South Australia.

No. 3
Trial Judge's summing up to the jury, 20th March, 1959, *continued.*

He was next told by Lenton, "You realize that you are going to be charged with murder" to which he replied, "Yes I knew that I did it, but all the time I was hoping that it was only a dream". Then he went on to describe how he tried to "throw off" his trackers, and how he finally decided to give himself up. Then there is the blue print plan of the station homestead at Pine Valley, with the marks of the accused's movements as made by him.

Now gentlemen, I am not going all through the medical evidence with you. It has been adequately analysed and discussed by both Counsel, and I think I cannot make it any clearer by going through it again. In substance Dr. Forgan says the accused was for about 5 minutes on the night of Sunday 23rd November suffering from schizophrenia, but that he is not suffering from it now and that he would not certify him as a mental defective. Dr. Shea also refuses to certify him now, and says that he never had schizophrenia.

Mr. Chamberlain points out that if you acquit him gentlemen, the accused may ultimately kill someone else. Well gentlemen, you are not to concern yourself with the consequences of your verdict, and if you are satisfied he was not guilty of this crime because of temporary insanity, then the future must take care of itself. Mr. Elliott tells you that if you find him not guilty because of insanity, I must commit him to gaol to await the Governor's pleasure. How long the Governor may be prepared to detain a man whom no one will now say is insane may be problematical but again that is no concern of yours. Even if you find him guilty, the Executive Council may refuse to allow him to hang, but that again is no concern of yours.

You may all wish you had not to decide this case, but you are sworn to try the issue, and I feel sure you will not flinch from whatever you may see to be your duty.

I remind you on one further piece of evidence, the statement of the accused from the dock. Mr. Elliott has drawn your attention to it, and it is entitled to such belief as you may think proper. But gentlemen, you will be careful in accepting it in its entirety. When he says "In my mind there was no idea that I was doing wrong, or that there would be any consequences or that I would be punished afterwards," do you accept that as the truth, when you recall how he ran away, getting rid of the rifle, and his answers to Detective Lenton in Exhibit "G".

He describes in his statement from the dock the effects of masturbation and how he felt when he stopped it, that he might do something bad. He tells you how he walked off at midnight from Clasohms, walked 6 miles, and lay down and slept in the scrub. The feeling had gone when he woke up.

Well gentlemen, one final word. You may, as I have told you find the accused not guilty, which would mean that you are not satisfied beyond reasonable doubt that the accused caused the death of Neville Montgomery Lord intentionally. You may find him not guilty on the ground that he was insane at the time he shot the deceased, which would mean that you are satisfied beyond reasonable doubt that he killed Lord, but that at that time he was suffering from the mental disease of schizophrenia, and did not know that he was doing wrong and that therefore he is not criminally responsible for his acts. Finally, if not satisfied on the probabilities that he was insane, you may find him guilty of murder.

You will now retire to consider your verdict.

11.27 a.m. jury retire.

No. 4.—SUBMISSIONS BY DEFENCE COUNSEL TO TRIAL JUDGE AFTER THE JURY HAD RETIRED—20th MARCH, 1959.

In the Supreme Court of South Australia.

No. 4
Submissions by defence counsel to trial Judge after the jury had retired—20th March, 1959.

Mr. Elliott—The first point I want to draw your attention to, is a factual one. Something I wrote down as you were speaking. I don't know if I have it accurately or not.

His Honour—I may say that I had my summing up typed out before delivering it. I have read it completely.

Mr. Elliott—It is a portion which says—"It is possible if you were asked" then I missed something "that is wholly insufficient reason the accused has been able to give". I suggest that the accused has given no reason. It is not a case of him giving an insufficient reason.

His Honour—He has given his explanation.

Mr. Elliott—I may have it wrong.

His Honour—My recollection is that you have it right.

Mr. Elliott—You were dealing with insanity in the ordinary sense as not being applicable.

His Honour—Yes, I have it now—this is the sentence—"It is possible that if you were asked to decide whether the accused was insane in the sense in which that word is commonly used among laymen, you might feel very strongly that no one but a lunatic would have killed Neville Lord on the 23rd November for the wholly insufficient reason that the accused has given".

Mr. Elliott—I only mention that the accused's statement says "I don't know why". The defence is based—I don't want to take my friend's words—but much of the defence turns on the vital fact that he has given no reason. An insufficient reason in a crime of this sort might be a very vital factor in guilt.

His Honour—How would you like me to correct it?

Mr. Elliott—I would like you to say—"With the absence from the accused of any reason at all".

His Honour—I will correct that. I propose to substitute for the words—"for the wholly insufficient reason that the accused has given" the words "and wholly failed to give any reason for so doing".

Mr. Chamberlain—That is all right.

Mr. Elliott—That is satisfactory to me.

There is another matter which I want to submit to you. I had hoped that in dealing with the accused's acts you might have seen fit to point out to the jury, as was suggested, a statement made by the Court in *Queen* v. *Stapleton* from the point of view of the defence, that when he shot Mr. Lord he had no motive disclosed, whatever might have been his subconscious motive, he had no actual or rational motive.

His Honour—I don't know that I can do that. Rational men are actuated by such unreasonable and strange motives, and by no motives at all, very often. We all know that.

Mr. Elliott—Very good.

There is one other matter I want to ask you to tell the jury. I think you will not accede to this submission, but it is my duty to put it.

In *Stapleton's Case* 86 *C.L.R.* 367 commencing at the top of the page—"Direction to the jury in relation to insanity . . . cases . . . adequate . . . *R.* v. *Porter* . . . rational . . . doing was wrong".

In the Supreme Court of South Australia.

No. 4
Submissions by defence counsel to trial Judge after the jury had retired—20th March, 1959, *continued.*

Now, I ask you to give a further direction to the jury in this matter in accordance with that last passage.

His Honour—I don't think I can do that. I don't feel justified in doing that.

Mr. Elliott—The last matter I wish to raise—

His Honour—You see if I did that I think I would have to go on and say who does stop and reason about it when they are doing a thing of that sort, sane or insane.

Mr. Elliott—I expected you would not accede to that, but it was my duty to make it.

There is one matter before you recall the jury. I ask you to point out to the jury here that even the medical evidence of Dr. Shea does not produce any explanation, any motive in extenuation of the acts of the accused in shooting Mr. Lord. In other words, that what Dr. Shea said in his opinion as to the emotional condition of the accused, still failed to produce any logical reason for what he did.

His Honour—Yes; well, you may perhaps recall the facts in Balaban's case, where the man on his own confession had killed a woman in Paris. He subsequently killed a woman at Thebarton, and then some months afterwards killed his wife, mother-in-law and stepson and nearly killed the maid at the Sunshine Flat. Now if ever a man was insane that man was, in everything but the legal sense. He knew what he was doing and knew it was wrong. Why he did it, one may well wonder. These things—Mr. Chamberlain was trying to refer to them, and you stopped him, quite rightly, I think. But for those of us who do know of those things, there is no necessity to prove any reason for doing a thing after it has been done.

Mr. Elliott—I know it is not legally necessary, but do you feel that in putting the defence to this jury, you ought to leave unsaid the fact that not only does the accused give no reason, but what Dr. Shea opined as the sort of thing which led to the act, still does not show that act as being a rational sequence. In other words, the sequence which followed was still irrational even assuming the doctor was accurate in diagnosing the emotional condition of the accused before he did this act.

Mr. Chamberlain—That is a matter of argument, which my learned friend has very thoroughly put.

His Honour—Yes I am quite satisfied. I don't think I need repeat it.

Mr. Elliott—It is my duty to ask. I have no more submissions.

His Honour—Have you anything more Mr. Chamberlain?

Mr. Chamberlain—No.

His Honour—I propose to correct the words which I have agreed were inaccurate. I don't think I can make any other alterations. Call the jury back.

11.44 a.m. jury return to Court.

No. 5.—FURTHER DIRECTION BY TRIAL JUDGE TO JURY: VERDICT: SENTENCE—20th MARCH, 1959.

In the Supreme Court of South Australia.

No. 5
Further direction by trial Judge to jury: verdict: sentence—20th March, 1959.

11.44 a.m. jury return.

HIS HONOUR TO JURY—

Mr. Elliott has made some submissions to me, and one of his submissions, which he has pointed out which I have made to you I think in error, I am going to try to correct.

I said in the early part of my summing up, or some part of it, "It is possible that if you were asked to decide whether the accused was insane in the sense in which that word is commonly used among laymen, you might feel very strongly that no one but a luntatic would have killed Neville Lord on the 23rd November for the wholly insufficient reason that the accused has given".

Mr. Elliott has pointed out, quite properly I agree, that the accused has given no reason, so it is not a question of the "wholly insufficient reason". These are wrong words I think I used, and I want to correct them in your mind as thoroughly and properly as I can, and what I suggest you should understand for those words, is the words, "and wholly failed to give any reason for so doing".

You may think he was mad for having killed the deceased and wholly failed to give any reason for so doing.

Is that clear to you all?

He has not given any reason in his statement from the dock, or to the police, or to anyone else. He has given no reason, and it is improper to describe it as a "wholly insufficient reason". He has given no reason.

You will consider your verdict.

11.46 jury retire.

12.15 p.m. jury return.

Verdict—Guilty.

Allocutus.

Accused—"No sir".

His Honour in sentencing said—

JOHN WHELAN BROWN, the sentence of the Court is that you be taken to the place whence you came, and thence to the place of execution and that you there be hanged by the neck until you be dead, and may God have mercy on your soul.

In the Full Court of the Supreme Court of South Australia.

No. 6
Notice of appeal to Full Court of Supreme Court of South Australia—26th March, 1959.

No. 6.—NOTICE OF APPEAL TO FULL COURT OF SUPREME COURT OF SOUTH AUSTRALIA—26th MARCH, 1959.

SOUTH AUSTRALIA.

Criminal Law Consolidation Act 1935-1952 Part XI (Criminal Appeals).

R. *v.* JOHN WHELAN BROWN.

To the Master of the Supreme Court.

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE.

Name of appellant—JOHN WHELAN BROWN.

Where convicted—Adelaide Supreme Court in its criminal jurisdiction.

Offence of which convicted—Murder.

Date when convicted—20th day of March, 1959.

Sentence imposed—Sentence of death.

Date when sentenced—20th day of March, 1959.

Name of prison—Her Majesty's Gaol at Adelaide.

I, the abovenamed appellant, hereby give you notice that I desire to appeal to the Full Court against the above conviction or sentence on the grounds hereinafter set forth on page 2 of this notice.

Dated this 26th day of March, 1959.

(Signed) JOHN WHELAN BROWN.

GROUNDS OF APPEAL (as amended by leave):

Misdirection and nondirection (amounting to misdirection) by the Learned Trial Judge in his charge to the jury in that he—

(*a*) failed to instruct the jury, or to instruct the jury adequately as to the test in law to be applied by them in determining the issue of insanity as raised by the appellant's case;

(*b*) failed to put the case for the appellant to the jury;

(*c*) in regard to the appellant's unsworn statement from the dock, warned the jury to be careful "in accepting it in its entirety";

(*d*) in directing the jury that the penalty was not their concern instructed them in such terms as was likely to deflect the jury from a calm and dispassionate determination of the issue of insanity.

Questions to be answered by appellant.	*Answers.*
1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal?	No.
2. Do you desire the Court to assign you legal aid?	No.
Have you any property or means to enable you to obtain legal aid yourself?	No.
3. Is there any solicitor now acting for you? . .	Mr. N. W. J. Birchall of King William Street Adelaide and Mr. L. J. Elliott of 75 Gouger Street, Adelaide.
4. Do you desire to be present when the Court considers your appeal?	Yes.
5. Do you wish to apply for leave to call any witnesses on your appeal?	No.

In the Full Court of the Supreme Court of South Australia.

No. 7—REASONS FOR JUDGEMENT OF FULL COURT OF SUPREME COURT OF SOUTH AUSTRALIA—15th APRIL, 1959.

R. *v.* BROWN.

No. 7
Reasons for judgement of Full Court of Supreme Court of South Australia—15th April, 1959.

JUDGEMENT OF THE COURT: (NAPIER C.J., MAYO AND PIPER JJ.).

This is an appeal against a conviction for murder. We think that it would be difficult to regard the grounds taken in the notice of appeal as raising any question of law, but, following the usual practice in these cases the application for leave to appeal has been heard as the final appeal.

The charge on which the appellant was indicted and convicted was the murder of Neville Montgomery Lord, at Pine Valley on the 23rd November 1958. The defence was insanity. The fact that the appellant had killed Lord was not disputed at the trial, and it was not suggested that he had not known what he was doing. In his unsworn statement to the jury, the appellant said: "I shot Mr. Lord but I do not know why. I had no reason to shoot him. He was practically a stranger to me . . . On the Sunday evening when it happened I seemed to be acting in a dream. I do not know why I chose to shoot Mr. Lord rather than Mrs. Lord or the lady cook. I can remember taking the gun and going to the house and the bedroom door and firing the gun. I knew what was happening but my mind did not seem to be working in other ways".

There was no dispute with respect to the circumstances in which the act was done. They may be stated as follows:

The deceased, Lord, was the manager of a sheep station, Pine Valley, about 65 miles to the north of Morgan. He was 32 years of age, and married, with two children, a girl aged 6½ and a boy of 2½.

The appellant, aged 25, had been working as a station hand, and, on Thursday, 20th November 1958, he was engaged to work, and started work, on Pine Valley. He and another employee, J. R. Stokes (known as 'Dave') had adjoining rooms in the men's quarters, some 50-100 yards from the main house in which the Lord family were living.

On the Sunday, 23rd November, Stokes was away from the station, but he had left in his room a .303 rifle, belonging to the station, and upwards of 20-30 rounds of ammunition.

Up to—and on—the evening of that day the appellant was, to all outward appearances, sane and normal. The cook Mrs. Schiller testified that at about 6.45 p.m. he was drying the dishes for her. She remembered him asking when 'Dave' Stokes was coming back, and said that she had not noticed anything odd about his demeanour—nothing at all.

For what followed on that night, it is convenient to refer to the account given by the appellant, when questioned by Detective Lenton on the Friday following, 28th November.

According to the appellant, he had gone to bed at about 8 p.m. Later—he says at about 8.30, but according to other witnesses it must have been nearer 9.30 p.m.—he got up, and went to 'Dave' Stokes' room where he took the rifle. He says that the magazine was full. (At a later stage he was asked "Prior to coming to the house did you test the loading of the rifle on Dave's bed" and answered "Yes".) With the rifle he made his way to the house. He says that the lights were on and that he could see through the windows. He says:

"I saw Mrs. Lord in another room from where her husband was . . . I walked in the front door. I went into the bedroom (where Mr. Lord was lying in bed asleep). I put the rifle up and aimed it at him and shot him. I went out of the room and I went to see where Mrs. Lord was. She went to the bedroom. I followed her in and she was singing out and I ran out the back way."

He was asked "Where did you go" and continued: "I went to see what the cook was doing . . . I went round the back of her quarters, and I looked through the window but I could not see her there. I then went straight back to my own quarters . . . I went into Dave's room took a pair of boots and a packet of bullets and then took off like. I got scared and ran away".

In reply to a question, whether he had told Mrs. Lord to be quiet, he said "Yes. I told her to shut up." He was asked "Why did you go looking for Mrs. Schiller?" he said "I just wanted to see where she was . . . because I thought she might have rung up and given the alarm".

The search for the appellant went on for four days until, at about 10 a.m. on Friday 28th November, he was seen coming from a disused shed about 25 miles from the nearest homestead. When one of the searchers asked him who he was, he answered 'Stone' (he had been brought up by a foster-mother Mrs. Stone, and used that surname). This was followed by the appellant's question, "Is he dead?"

On that the appellant was taken to the nearest constable, 25 miles away. When cautioned he admitted the fact of the shooting, and directed the constable to a spot—in the scrub about 8 miles south-west of the homestead—where the rifle was leaning across a dead tree trunk. It was loaded and a number of live cartridges were lying on the ground.

Later on the same day the appellant was questioned by Detective Lenton, as already mentioned, but, after obtaining the appellant's account of his actions, the detective put some further questions, the answers to which have a very direct bearing upon the only points which were in dispute at the trial, namely, whether the appellant knew at the time of the shooting what he was doing and that it was wrong. On the first of these points there is the appellant's admission that, prior to coming to the house, he had tested the loading of the rifle on 'Dave's' bed. Then the questioning proceeded:

Q.—You have told me that neither Mr. Lord nor any other person had ever given you any reason to bear him any malice.

A.—Yes.

Q.—Is there any reason you wish to offer for your conduct?

A.—Even though I do recall everything, and I did it, I don't think I was responsible for my actions.

Q.—You knew the gun was loaded?

A.—Yes.

Q.—You knew that when you pulled the trigger it would discharge a missile?

A.—Yes.

Q.—And that if the missile hit anyone it would at least maim them and probably kill them?

A.—Yes.

Q.—Did you know at the time that it was wrong to point a loaded rifle at a person and shoot at them?

A.—Yes. But I could not help myself.

In the Full Court of the Supreme Court of South Australia.

No. 7
Reasons for judgement of Full Court of Supreme Court of South Australia—15th April, 1959, *continued.*

Q.—Do you think that you would have pulled the trigger of that rifle if there had been a policeman standing by you?

A.—No.

Then the appellant was asked about his going to bed and getting up, and told the detective that he had been lying in bed awake and thinking. He was asked "Anything in particular?" and replied "I can't remember that. I don't think so". He was asked "Have you got any worries at all?" and said "No". Then "Q.—Have you been depressed? A.—No. Q.—How long ago is it that you have seen a doctor? A.—Not for a long time. Q.—Have you ever been treated for nerves? A.—No. Q.—Have you ever received any treatment for a mental condition? A.—None at all. Q.—Are you sorry for what you have done? A.—Yes . . . Q.—Did you walk straight into the house and into the bedroom? A.—Yes. Q.—Where were you standing when you pulled the trigger? A.—Near the door. Q.—How far was that from where he was lying? A.—About ten feet. Q.—Did you take sight and aim at his head? A.—Yes, I think so. Q.—What room was Mrs. Lord in? A.—It was the children's bedroom next to the other one".

As the basis for the defence of insanity the witnesses for the prosecution were cross-examined to show that, prior to this act, the appellant's demeanour had at all times been quiet and self contained, and that, as he had told the detective, he had no cause to bear any ill will towards the deceased.

The first witness for the defence was a son of the appellant's foster-mother, who testified that he had known the appellant from childhood. He described the appellant as 'dull, very shy and very non-communicative'. He had never seen the appellant in a temper or showing any signs of aggressiveness; but it had never occurred to him that the appellant was in any way mentally deficient. Another witness, Mrs. Everett had known the appellant for about 3 months, early in 1958, while he was working on a farm on Yorke's Peninsula where she was employed. She described him as a quiet shy diffident young man but otherwise normal. She would never have thought of him as one to be locked up in a mental institution. She said, 'that is the last thing I would have thought of'.

The expert witnesses were Dr. Forgan, a practising psychiatrist called by the defence, and Dr. Shea, Deputy Superintendent of the Parkside Mental Hospital, who was called by the prosecution in reply. They were examined and cross-examined at length, but the divergence in their evidence was, in truth, clear cut and in a narrow compass. They were agreed that the appellant was what psychiatrists refer to as a schizoid personality, or, as a layman might say, an introvert as opposed to an extrovert; but both testified that their examination of the appellant disclosed no sign or symptom of any mental disease or disorder of the mind, and they were agreed that so far as his intelligence went the appellant was within the normal limits appropriate to his situation in life.

Where the experts parted company was that in Dr. Forgan's opinion the appellant had suffered from schizophrenia, and was unable to know that what he was doing was wrong, for so long—and for so long only—as it had taken him to get the rifle and use it as he did; whereas Dr. Shea discredited the possibility of the appellant having suffered from schizophrenia then or at all. He was of the opinion that the appellant had known what he was doing and that it was wrong.

Before opening the appeal Mr. Elliott, for the appellant, was allowed to substitute a revised statement of his grounds of appeal. As so amended, the grounds are—

"Misdirection and nondirection (amounting to misdirection) by the learned Trial Judge in his charge to the jury in that he—

(*a*) failed to instruct the jury, or to instruct the jury adequately as to the test in law to be applied by them in determining the issue of insanity as raised by the appellant's case;

(*b*) failed to put the case for the appellant to the jury;

(*c*) in regard to the appellant's unsworn statement from the dock, warned the jury to be careful 'in accepting it in its entirety'.

(*d*) in directing the jury that the penalty was not their concern instructed them in such terms as (were) likely to deflect the jury from a calm and dispassionate determination of the issue of insanity."

In due course we must deal with these objections seriatim, but, before doing so, it is convenient to deal with what seems to us to be the real complaint that underlies the specific objections, namely, that the charge taken as a whole, was so adverse as to be unfair to the appellant.

It is obvious that the learned Trial Judge was not impressed by Dr. Forgan's evidence, and that he felt unable to reconcile the undisputed evidence, with the theory of the defence. It appears that the learned Judge was acting upon the view expressed by Cockburn C.J., in the *Tichborne* case, where he said:

"I have yet to learn that it is the business of the judge to suppress facts because they make against the accused, or to refrain from pointing out the conclusions to which the facts, as established by the evidence, properly lead; to suggest to the jury arguments or explanations of the unsoundness of which he is, himself, convinced; or to adopt those of counsel when satisfied they are delusive." (Veeder Legal Masterpieces (1903) VI p. 583.)

In these circumstances we think that it is not for this Court to interfere with the discretion of the trial Judge, provided of course that the proper questions have been fairly left to the jury. On the other hand we should, no doubt, be called upon to interfere, if it could be shown that the view of the learned Judge, as it is reflected in his charge to the jury, was not a fair presentation of the evidence. And, for that purpose, we have thought it right to make an independent survey of the evidence.

We are disposed to follow Abbott J. in regarding Dr. Forgan's evidence as unconvincing. It appeared that the witness had examined the appellant, and had been unable to discover any sign or symptom of any mental disorder. He had procured tests to be made (psychological, electroencephalogram and blood test), but without disclosing any suggestion of abnormality. In the result the basis on which he had come to his conclusion, that the deed had been done while the appellant was in a state of schizophrenia—'a somewhat trance-like state'—was that the deed was a completely purposeless, motiveless act of violence quite out of keeping with the appellant's normal behaviour, but the witness was prepared to agree that the evidence suggested that the man had never suffered from the disease up to the time he took up the rifle or after the deed was done, *i.e.*, a matter of five minutes or thereabouts.

In the Full Court of the Supreme Court of South Australia.

No. 7
Reasons for judgement of Full Court of Supreme Court of South Australia—15th April, 1959, *continued.*

Granting—as Dr. Shea was not prepared to concede—that this disease can come like this without any premonitory symptoms, and go like this without leaving any trace, we think that common experience would suggest that this must be a very exceptional phenomenon. And, as Abbott J. pointed out to the jury, the fact to be proved was not that the appellant was suffering from schizophrenia, but that, as the result of a disorder of his mental faculties, he was unable to know what he was doing or that it was wrong.

For the purpose of that question it is difficult to see how the expert evidence could be of any real assistance to the jury, that is to say, in the circumstances of this case. In that connection we may quote from Kenny's Outlines of Criminal Law:

"Many forms of insanity . . . are now habitually treated as being sufficient evidence to show that one or the other of these exemptive defects was also actually present. A man who after killing his child goes forthwith to the police station to surrender himself and gives a lucid account of what he has done would certainly seem to know the nature and quality of the act committed and to know that in doing it he did wrong. Yet if he had previously shown some symptoms of madness, and had killed this child with no discoverable motive and with no attempt at concealment, a judge would probably encourage a jury to regard these facts as evidence of his labouring under such insanity as would justify them in pronouncing him irresponsible. The mere fact that a crime has been committed without any apparent motive is, of course, not sufficient of itself to establish any similar immunity. It should be noted that as the law now stands it is for the jury and not for medical men, of whatever eminence, to determine the issue of insanity". (See new edition by Turner (1952) p. 71, but the same appears in earlier editions and to much the same effect is Stephen's History of the Criminal Law (1883) vol. III p. 436).

The case of *R.* v. *Porter* (1933) 55 C.L.R. 183, was, no doubt, in the same category as the example given by Kenny.

But in the present case the appellant was able to give a lucid account of what he had done, which, as Kenny points out, would go some way to show that he knew what he was doing, and that it was wrong. And, further, the undisputed facts are that, when he was giving this account of his actions, he told the detective that he knew that he was doing wrong, and, what is more, it appeared that he had acted as he might have been expected to act if he well knew that he had done something that no one ought to do.

Speaking for ourselves, we should find it very difficult to believe that the appellant would or could have given this account of his actions, if he had been acting in the 'somewhat trance-like' state predicated by Dr. Forgan's evidence. It is important to observe that, when he comes to the point, the words are not put into his mouth. He says, "I put the rifle up and aimed it at him and shot him . . . I went to see where Mrs. Lord was . . . I followed her in and she was singing out and I ran out the back way". Then when he was asked whether he had told Mrs. Lord to be quiet, his answer, "I told her to shut up". The impression that this conveys to us, is of something clearly and distinctly recollected, as opposed to the indefinite outline of a nightmare. And, in the same way, the appellant's account of going to look for Mrs. Schiller and his reason for doing so, ". . . I thought she might have rung up and given the alarm," is, we think, significant. That is of a piece with his going to Dave's room for more ammunition before running away and taking the rifle with him.

It seems to us that the natural conclusion, on this evidence, is that the appellant well knew what he was doing, and that it was wrong. The obstacle to accepting that conclusion is, of course, Dr. Forgan's opinion to the contrary, but we feel bound to say that we find it difficult to follow the reasons which the witness gave for rejecting the appellant's answers to Detective Lenton.

In the first instance he was "quite happy to believe that the appellant could estimate his own knowledge of right and wrong" after the event; but, when faced with the question, "When a man has been waiting for the police to catch up to him for some days, and more or less given himself up, don't you think that's the time—rather than any other time—to get the truth out of him?" his answer was "not necessarily". When asked to deal with the fact that the accused had run away, his answer was "he realized after he had let off the rifle and Mrs. Lord had been screaming that he had done wrong, but did not yet realize the enormity of his action. He ran away because he was not of a clear mind at the time, therefore did not realize that running away might go against him". That seems to us, with all respect, to be an unrealistic way of regarding the appellant's account in which he speaks of Mrs. Lord as 'singing out', and says that he told her to 'shut up'.

The witness had said elsewhere that a person suffering from simple schizophrenia might know that what he was doing was wrong and the note proceeds: "Q.—This man might know? A.—I don't think he did. Q.—He may have known that his act was wrong? A.—I do dispute that he may have. Q.—You don't regard it as even a possibility? A.—No."

This is, of course, opposed to Dr. Shea's evidence, which is as follows: ". . . He knew he was shooting a man . . . In my opinion at the time he knew that such an action was wrong. I discussed that question with him, whether he knew it was wrong, he informed me he did know that it was wrong. I had no reason to doubt that he knew what he was talking about when he said that. I discussed the question of his running away and evading arrest. He told me why he went away. He stated that he wanted to give himself up to the police at Morgan, because if he stayed he was fearful he might be strung up. I took that to mean strung up on the spot by the local people".

In these circumstances we think that Abbott J. was justified in putting this point to the jury as the crux of the case. This he did in the following passage: "The accused was then asked what *you may think* was a vital question, in view of the course the defence has taken. 'Did you know at the time that it was wrong to point the loaded rifle at a person and shoot at them?' The answer you may regard, *if it appeals to you,* as the answer to the problem you have to solve. The answer by the accused to that question 'Did you know it was wrong?' was 'Yes, but, I could not help it'." (Italics are ours.)

Turning to the grounds of appeal, it may be convenient to deal, in the first instance, with objection (*c*), that 'the trial judge warned the jury to be careful in accepting the appellant's unsworn statement in its entirety'. We think that this has been answered by what we have already said. The passage to which this objection applies is: "I remind you of one further piece of evidence, the statement of the accused from the dock. Mr. Elliott has drawn your attention to it and it is entitled to such belief as you may think proper. But gentlemen, you will be careful in accepting it in its entirety. When he says 'In my mind there was no idea that I was doing wrong or that there would

In the Full Court of the Supreme Court of South Australia.

No. 7
Reasons for judgment of Full Court of Supreme Court of South Australia— 15th April, 1959, *continued.*

be any consequences or that I would be punished afterwards', do you accept that as the truth when you recall how he ran away, getting rid of the rifle, and his answers to Detective Lenton in 'Exhibit G'."

It seems to us that there can be no objection to a judge saying that 'there is a difficulty in believing that (the defence) in view of so and so' (see *Immer and Davis* (1917) 13 C.A.R. 22, 32) and it is, of course, common practice to confront a witness with a statement inconsistent with the evidence that he is giving.

In our opinion there is no substance in this objection, or in objection (*d*) namely, that in directing the jury that the penalty was no concern of theirs, the learned Judge instructed them in terms likely to deflect them from a calm and dispassionate determination of the issue of insanity. We can see nothing in what Abbot J. said, that would be likely to have any such effect.

The first objection, namely '(*a*) that the trial Judge failed to instruct the jury—or to instruct them adequately—as to the test in law to be applied in determining the issue of insanity as raised by the appellant's case', is designed to raise the question whether the jury should have been given some such direction as was given in *R.* v. *Porter* (*ubi. supra*) and approved by the Full High Court in *R.* v. *Stapleton* (1952) 86 C.L.R. 358).

We think that it must be conceded that the charge to the jury was designed to hold them somewhat strictly to the rule laid down in McNaughton's Case, but we do not think that any valid objection can be taken to the direction that 'uncontrollable impulse' could not be recognized as affording immunity (*Sodeman* v. *The King* (1936) 55 C.L.R. (H.Ct.) 192 P.C.232). The question that remains on this aspect of the case is whether, in the circumstances of the case, it was incumbent on the Judge to explain to the jury that the issue of insanity involved an enquiry as to how far the accused was capable of reasoning when the act was committed.

It seems to us, as we have said, that the facts of this case bear no resemblance to those of *Porter's* case and the same may be said of *Stapleton's* case where—as we gather—the fact that the accused was labouring under a disease of the mind was virtually undisputed, and the act had been done when he was manifestly in a state of unreason. We can see nothing in the present case to call for any exceptional treatment. It seems to us that, if the special direction was called for in this case, it would be required in every case, and in Stapleton's case it is expressly stated that this is not so.

It follows that in our opinion this objection fails.

The remaining objection (*b*), is that the learned Judge 'failed to put the case for the appellant to the Jury'. Mr. Elliott's complaint was that Abbott J. had, nowhere in his charge to the jury, stressed the argument upon which the defence depended, namely, that, so far as the evidence went, the act was—in Dr. Forgan's words—completely purposeless, motiveless and out of keeping with the appellant's normal behaviour. It must be conceded that in dealing with that subject the learned Judge was less pointed—less helpful to the defence—than another Judge might, perhaps, have been. For example:

> "You will remember Mr. Elliott drawing your attention to the fact that there was no motive for this alleged crime. Gentlemen throughout the centuries of civilisation crimes have repeatedly been committed without any apparent or discoverable motive . . . You may perhaps think that

on 23rd November the accused when he shot Lord was acting on an uncontrollable impulse—a dreadful impulse which arose suddenly and which he was unable to control. If that view should commend itself to you, it is my duty to direct you that that is no defence in law."

and again—

"Mr. Elliott stressed to you the peculiar and almost unexplained fact of this shooting and put it to you that everybody would at once say when they considered it—'The man must be mad'.

Well gentlemen, of course that would not solve this thing. It is not a question of whether the accused is mad in the way in which we say a person is mad or insane when he is put in a mental hospital—that is not the question. The question is whether he is insane in the legal sense of that term, that is etc., etc."

For the purpose of this objection Mr. Elliott relied upon *Dinnick's* case ((1909) 3 C.A.R. 77) where the conviction was quashed. That was a case in which the defence was a claim of right, which had not been left to the jury. But we think that the authority which rules the present case is *Immer and Davis* ((1917) 13 C.A.R. 22) where *Dinnick's* case was distinguished by a strong court of five judges (Avery J. was one and no less than three of the others subsequently sat in the House of Lords). In distinguishing *Dinnick's* case, the Court referred to *Stoddart's* case ((1909) 2 C.A.R. 217, 245-6) where the Court of Criminal Appeal had said:

"It is no misdirection not to tell the jury everything which might have been told them. Again, there is no misdirection unless the judge has told them something wrong or unless what he has told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood . . . Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by counsel for the prosecution and the defence respectively. This Court does not sit to consider whether this or that phrase was the best that might have been chosen . . . but to deal with valid objections to matters which may have led to a miscarriage of justice."

and in Immer's case (at p. 24) the Court went on to say:

"That is the rule which we must bear in mind in considering this or any other case, and a distinction must be made between instances where accused is represented by counsel and where he is not . . .

What is the real grievance in regard to this summing up? It is true that . . . the Chairman did not go through all the evidence and deal with every point separately. He said at the beginning that he did not propose to do so because the jury had heard all the evidence and had listened to counsel's speeches. Certainly he said that the position relied upon by the defence was a difficult one to take up, but he did not say that it *could* not be taken up, and a judge is entitled to say to a jury, in reference to the defence, 'There is a difficulty in believing that (the defence) in view of so and so'. Applying the principles which I have read from authorities, and regarding the summing up as a whole, and not taking a word here and a line there and divorcing them from their context, we have come to the conclusion that the summing up in this case did not violate the rules laid

In the Full Court of the Supreme Court of South Australia.

No. 7
Reasons for judgment of Full Court of Supreme Court of South Australia— 15th April, 1959, *continued.*

down by this Court, although we do not say that it was a model summing up. A summing up is sufficient if it is not unfair to the accused and if points are not withheld *which it is reasonable to suppose are not already properly before the jury . . .*"

That seems to be the practice in England. (*R.* v. *Bradshaw* (1910) 4 C.A.R. 280, 284: *Abramovitch* (1912) 7 C.A.R. 145, 147: *R.* v. *Trueman* (1913) 9 C.A.R. 20, 24: *R.* v. *Beecham* (1921) 3 K.B. 446: *R.* v. *Duncan* (1944) 30 C.A.R. 70, 76: *R.* v. *Aberg* (1948) 2 K.B. 173, 175). It has been the practice in South Australia (*R.* v. *Kennewell* (1927) S.A.S.R. 287, 303: *R.* v. *Pullman* (1942) S.A.S.R. 262, 269) and, apparently, in New South Wales (see *R.* v. *Branscombe* (1921) 21 S.R. N.S.W. 363, 371) and Victoria (see *R.* v. *Davis and Cody* (1937) V.L.R. 226, 236-7: see also per Cussen *J.* in *R.* v. *Peacock* 33 A.L.T. 120, 137).

The case of *Athanasiadis* v. *The Queen* (H.Ct., unreported, March 1958) to which Mr. Elliott called our attention was, we think, a different case. There the High Court set aside the verdict of the jury on the ground that the summing up was so unfair to the accused that the trial could not be regarded as a fair trial. That objection had not been taken by the statutory appeal to the Court of Criminal Appeal, either in the notice of application for leave to appeal, or on the argument before that Court. But, however that may be, the objection was one which must, of necessity, depend upon the circumstances of the particular case, and we cannot attribute to the High Court any intention to over-rule the authorities to which we have referred.

In the present case it is manifest that the point upon which Mr. Elliott relied, was before the jury from first to last through the whole hearing. Applying the rule laid down in the case of *Immer and Davis* (*ubi. supra*) we think that the summing up of the learned trial Judge was sufficient.

It follows that the appeal must be dismissed, but, for the information of those whom it may concern, and, indeed, out of respect for the able and earnest argument addressed to us on the part of the appellant, we think it right to add that, for the purposes of this appeal, we have been constrained to consider the weight of the evidence upon the question that was put to the jury. While we have really no doubt that the verdict was right in point of law (in so far as the appellant must be taken to have known what he was doing and that it was wrong) nevertheless we think that there is ground for surmising that the appellant may have suffered from some such abnormality of mind as might, under the recent amendment of the law in England, be held to diminish his responsibility. That opinion is based very largely upon the evidence of Dr. Shea.

No. 8.—ORDER OF FULL COURT OF SUPREME COURT OF SOUTH AUSTRALIA DISMISSING APPEAL—15th APRIL, 1959.

In the Full Court of the Supreme Court of South Australia.

No. 8
Order of Full Court of Supreme Court of South Australia dismissing appeal—15th April, 1959.

SOUTH AUSTRALIA.

IN THE SUPREME COURT.

CRIMINAL APPEALS JURISDICTION.

No. 12 of 1959.

THE QUEEN

AGAINST

JOHN WHELAN BROWN.

Wednesday, the 15th day of April, 1959.

The appeal of the abovenamed John Whelan Brown against his conviction of the offence of murder at the Criminal Sittings of the Supreme Court held at Adelaide in the State of South Australia on the 17th day of March 1959 and following days coming on for hearing before the Full Court on the 9th and 10th days of April 1959 UPON READING the Notice of Appeal dated the 26th day of March, 1959 AND UPON HEARING Mr. L. J. Elliott and Mr. N. J. W. Birchall of Counsel for the Appellant and Mr. R. R. St.C. Chamberlain Q.C. and Mr. W. A. N. Wells of Counsel for the Honourable the Attorney-General for South Australia THIS COURT DID RESERVE its judgment on the said appeal AND the said appeal standing for judgment this day THIS COURT DOTH DISMISS the appeal.

By the Court,

(L.S.) K. H. KIRKMAN, Master.

This Order is filed by Nicholas John Wardlaw Birchall of City Mutual Life Building, 118 King William Street, Adelaide, Solicitor for the said John Whelan Brown.

In the High Court of Australia.

No. 9
Notice of motion for special leave to appeal to High Court of Australia—28th April, 1959.

No. 9.—NOTICE OF MOTION FOR SPECIAL LEAVE TO APPEAL TO HIGH COURT OF AUSTRALIA—28th APRIL, 1959.

IN THE HIGH COURT OF AUSTRALIA.

SOUTH AUSTRALIA REGISTRY.

1959 No. 3.

BETWEEN

JOHN WHELAN BROWN

Proposed Appellant

AND

THE QUEEN

Respondent.

TAKE NOTICE that the High Court of Australia will be moved at Sydney in the State of New South Wales or at such other place as may be deemed expedient on the 7th day of May, 1959, at 10.30 o'clock in the forenoon or so soon thereafter as counsel can be heard or on such other date as may be determined, by counsel on behalf of JOHN WHELAN BROWN for special leave to appeal to the High Court of Australia against the judgment delivered on the 15th day of April, 1959, of the Full Court of the Supreme Court of South Australia dismissing the appeal of the abovenamed John Whelan Brown against his conviction by the Supreme Court on the 20th day of March, 1959, for the murder of Neville Montgomery Lord. The grounds of appeal are as follows:—

1. That the Learned Trial Judge misdirected the jury in that he—
   (*a*) failed to instruct the jury, or to instruct the jury adequately as to the test in law to be applied by them in determining the issue of insanity as raised by the appellant's case;
   (*b*) failed to put the case for the appellant to the jury;
   (*c*) in regard to the appellant's unsworn statement from the dock, warned the jury to be careful "in accepting it in its entirety";
   (*d*) in directing the jury that the penalty was not their concern instructed them in such terms as was likely to deflect the jury from a calm and dispassionate determination of the issue of insanity.

2. That the Full Court of the Supreme Court of South Australia in accepting as sufficient the direction of the Learned Trial Judge was wrong in dismissing the appeal of the said John Whelan Brown against his conviction.

3. That the Full Court of the Supreme Court of South Australia should have allowed the said appeal and entered a verdict of Not Guilty on the grounds of insanity or alternatively ordered a new trial.

4. That the Learned Trial Judge did not at any stage of his direction present to the jury the defence made by the appellant himself.

5. That the Learned Trial Judge did not sufficiently nor accurately present to the jury the effect of the evidence of the expert witness called for the defence nor its bearing upon the defence presented by the appellant.

In the High Court of Australia.

No. 9
Notice of motion for special leave to appeal to High Court of Australia—28th April, 1959, *continued.*

DATED this 28th day of April, 1959.

(Sgd.) N. J. W. BIRCHALL,
118 King William Street, Adelaide. Solicitor for the Proposed Appellant.

To the Registrar,
South Australia Registry,
High Court of Australia,
Adelaide.

And to the Honourable the Attorney-General for the State of South Australia.

This Notice is filed by Nicholas John Wardlaw Birchall of 118 King William Street, Adelaide, Solicitor for the proposed appellant.

In the High Court of Australia.

No. 10 Reasons for judgment of the Full Court of the High Court of Australia— 20th May, 1959.

No. 10.—REASONS FOR JUDGMENT OF THE FULL COURT OF THE HIGH COURT OF AUSTRALIA—20th MAY, 1959.

BROWN *v.* THE QUEEN.

Dixon C.J., McTiernan J., Fullagar J., Kitto J., Taylor J.

JUDGMENT.

The applicant, John Whelan Brown, on 20th March last was convicted before the Supreme Court of South Australia of murder and sentenced to death. He appealed from his conviction to the Full Court of the Supreme Court but his appeal was dismissed. On 7th May he applied to this Court for special leave to appeal from the dismissal of his appeal. The case was fully argued before us and we took time to consider our judgment. The case is not an easy one but we have come to the conclusion that having regard to the tenor of the judge's charge to the jury the conviction cannot be allowed to stand and there must be a new trial. As there is to be a new trial it is probably undesirable to discuss the case at all fully, but to make clear the reasons for our conclusion it is necessary to state at least the bare facts.

The charge against Brown was that on 23rd November 1958 at Pine Valley he murdered Neville Montgomery Lord. Brown's defence to the charge was that at the time he did the act he was insane. The defence meant in the circumstances that at the time of committing the act Brown was labouring under such a defect of reason from disease of the mind that he did not know that he was doing what was wrong.

Brown was a young man of about twenty-five or twenty-six years of age. He was brought up until he was about fourteen by a foster-mother named Mrs. Stone, now a very old woman. She received him from a hospital where he was born. Nothing is known of his parentage. There were other foster children but Brown is described as shy, as quiet and uncommunicative, as easily led, as docile without any temper and as dull and not able to grasp school work. At about fourteen he left Mrs. Stone's home and took various jobs including those of a station hand. He seemed to hold none of them for very long, and he would always come back to Mrs. Stone. He got into various difficulties and he contracted a secret vicious habit of which doubtless he was ashamed. Shortly before 20th November 1958 he was engaged in Adelaide as a stationhand for Pine Valley which is a sheep station about sixty-five miles north of Morgan. Mr. Neville Montgomery Lord was a member of a family to whom the station belonged and he had been the manager of the station for some years. He was thirty-two years of age and lived at the homestead with his wife and two young children. There was a station cook, a woman whose room was adjacent to but not part of the main building. The men station hands, of whom there was only one other, lived in the men's quarters perhaps 75 to 100 yards away. On the morning of Thursday, 20th November, 1958, Brown was picked up in Adelaide by a car proceeding to Pine Valley and taken to his new job. He met Mr. Lord on arrival at the station that afternoon. He was given his room in the men's quarters and made the acquaintance of the other station hand and the cook. The latter saw him at meal-times during the next

three days and he helped her with the drying of dishes. Nothing occurred to excite comment. Brown seemed quiet and well-behaved. Mr. Lord saw little of him and all were sure that nothing had passed between them that could excite any hostility in Brown to Mr. Lord. The other station hand went off for the weekend. In his room there stood visible from the door a .303 rifle and there were some cartridges in the room with soft-nosed bullets for shooting kangaroos. On Sunday night, 23rd November, Mr. Lord went to bed about a quarter past nine. Mrs. Lord busied herself for a little longer and went to the children's room between which and the bedroom there was a communicating door. She was attending to a child when, as she says, she heard the electric light go on in the bedroom. Then there was a shot. She ran through the communicating door and saw her husband lying on the bed shot—shot through the head. She threw herself on the bed. Brown came back through the passage door. She screamed and he told her to be quiet, and after trying to quieten her he ran out of the bedroom door into the hall or passage. That led to the front door, about a yard distant and also to the back door. She described him as looking bewildered and explained that she meant that she thought he might have been taken aback that she had come from the next room, not knowing there was a door between. She did not see him again. She found the cook in her bedroom and they telephoned for help. A doctor and a policeman arrived two or three hours later. Her husband was dead. Brown had disappeared. A search for him extended over the next four days. On the morning of Friday, 28th November, he came from some disused buildings some twenty-five miles from the homestead of a station named Canegrass and gave himself up. Canegrass homestead itself is twenty-four miles south of Pine Valley homestead. As Brown gave himself up he asked "Is he dead?" He had carried the rifle for a time but had abandoned it at a place about six miles from Pine Valley homestead. He answered the questions put to him by the police then and thereafter without any apparent reservation. According to his answers he had gone to bed in his quarters at about half-past eight on the Sunday night. He remained awake thinking and then got up and got the rifle from the room of the other station hand and there tested the loading of the rifle on the bed. He took the rifle and cartridges; the magazine was full. He went across to the house, wearing socks but no boots or shoes. The lights were on and through the window he could see Mrs. Lord in another room. He walked in the front door, went to the bedroom, put the rifle up, aimed it at Mr. Lord and shot him. He was under the blanket and appeared, so Brown thought, to be asleep. He said he went out of the room to see where Mrs. Lord was. She went into the bedroom and he then returned. He tried to quieten her and then ran out the back way. He went to the cook's quarters to see where she was. In answer to a question why he did so, Brown answered "Because I thought that she might have rung up and given the alarm." Her light was then on but he could not see her through the window. He then returned to his quarters and took his hat, the rifle, and a pair of boots from the other station hand's room, and set off. He said that neither Mr. Lord nor any other person there had given him any reason to bear malice or had any argument with him. Then he was asked questions and gave answers as follows:—"Is there any reason you wish to offer for your conduct?" "Even though I do recall everything and I did it, I don't think that I was responsible for my actions." "You knew the rifle was loaded?" "Yes." "You knew that when you pulled the trigger it would discharge a missile?" "Yes."

In the High Court of Australia.

No. 10
Reasons for judgment of the Full Court of the High Court of Australia— 20th May, 1959, *continued.*

"And that if the missile hit anyone it would at least maim them and probably kill them?" "Yes." "Did you know at the time that it was wrong to point a loaded rifle at a person and shoot at them?" "Yes. But I could not help myself."

Next morning the same police officer says that he put the question "You realize you are going to be charged with murder?" to which Brown answered "Yes. I knew that I did it, but all the time I was hoping that it was a dream." This officer said under cross-examination that during his interrogation Brown was docile and showed no signs of aggressiveness; his belongings, which were few, included no firearm or weapon. He had investigated the matter very closely and had made all sorts of surrounding inquiries; from all these inquiries he had been unable to find any apparent reason for the killing.

In support of the defence of insanity evidence was given by Dr. Forgan who is the Director of the Psychiatric Clinic at the Royal Adelaide Hospital. As a result of his investigation of Brown and his consideration of the circumstances of the case he adopted the view, according to his evidence, that Brown had at the time he killed Mr. Lord lapsed into a temporary state of simple schizophrenia that had passed. He accepted a definition of schizophrenia as a splintering of the mind, a fragmentation of the mind. He maintained that while it was not characteristic of schizophrenia that an attack should come and go yet it was a common occurrence. To the question on what he based his opinion that Brown had been suffering from schizophrenia Dr. Forgan put first the fact that he had committed a completely purposeless, motiveless action of violence which was quite out of keeping with his normal behaviour. Dr. Forgan added other factors. He found in Brown a lack of understanding of his own conduct and a lack of remorse. He found that he had had a schizoid personality, a type of personality that might develop the mental disease of schizophrenia. A definition of schizoid character which Dr. Forgan accepted is a personality type characterised by exclusiveness, lack of adequate emotional attachment, diminished initiative and preoccupation with phantasies. He considered that because of schizophrenia Brown would not have been able at the time when he killed Mr. Lord to know that what he was doing was wrong.

As might be expected, in cross-examination the arguments for the prosecution which arose upon the view which Dr. Forgan expressed were put to him with some force. As far as Dr. Forgan knew Brown had not suffered from an attack of schizophrenia before 23rd November 1958 and he had not done so since: it lasted only from the time he took up the rifle until the deed was done and now he was not certifiable as mentally defective. All this he accepted. He accepted too the suggestion that but for the shooting of Mr. Lord he would not have put Brown down as suffering from schizophrenia, that is, unless he had committed some other type of bizarre and unpredictable action. As to the question put to Brown by the officer of police, namely, "Did you know at the time that it was wrong to point a loaded rifle at a person and shoot them?" and Brown's answer "Yes. But I couldn't help myself," Dr. Forgan said in effect that it was under questioning by the police and that it is easy to imagine a person of the type Brown is reconstructing without thinking. It was easy enough for him to give an account of his physical actions but not as easy to give an account of his feelings. He reiterated his belief that Brown did not know at the time that what he was doing was wrong. "He realized after he had let off the rifle and Mrs. Lord had been screaming

that he had done wrong but did not yet realize the enormity of his action. He ran away because he was not of a clear mind at the time, therefore didn't realize that running away might go against him." In rebuttal Dr. Shea was called for the prosecution. He had specialized in psychiatry and for the last three-and-a-half years had been Deputy Superintendent of the Mental Hospital at Parkside. He too had examined Brown, more than once, and had considered the facts of the case. He did not agree that simple schizophrenia could have a sudden onset and disappear. "In any type of schizophrenia, there are mainly periodical outbursts. In between the outbursts the patient would still be suffering from the disease. The patient would be diagnosable as suffering from the disease on examination." Dr. Shea was of opinion that Brown had not suffered from schizophrenia and that when he shot Mr. Lord he knew that what he was doing was wrong. Dr. Shea accounted for Brown's shooting of Mr. Lord as follows. He was certain that Brown had brooded over his vicious habit and his failure in his relations with the opposite sex. "I think," said Dr. Shea, "that they have produced a subconscious impulse in him: the impulse stemming from his feeling of inadequacy and general frustration to boost himself in his own eyes. I consider there may have been some instinctive jealousy of the situation of the husband and wife. I believe he felt isolated and relatively inferior when comparing himself with the happy household nearby. In my opinion it is a combination of those emotions that probably led him to do what he did, that added to a certain sexual frustration. Yes. Although I have that opinion, that does not in any way qualify my view that he still knew that what he was doing was wrong." Dr. Shea was not asked whether the condition of mind he described amounted to a psychosis but it may be assumed that he would not have regarded it as within the category. Nevertheless it appears to involve an abnormality of mind and an irrationality of conduct. That, however, could affect only the first element or elements to be made out in support of a plea of insanity, namely that there was a defect of reason from "disease" of the "mind". One may suppose that is why Dr. Shea said that it did not qualify his view that Brown still knew what he was doing was wrong. From the foregoing description of the case it will be seen that it was this element that formed the real issue. Few, if any, facts or circumstances were in controversy. All the elements which but for the plea of insanity would make the crime of murder were there and undenied. But upon the plea of insanity no one said there was any ascertainable motive for the act. Schizophrenia was denied but the explanation of the act suggested for the prosecution might be taken by a jury to involve a disordered or unbalanced mind. What however was strongly contested was the conclusion that by reason of his condition of mind Brown at the time of committing the act did not know that what he was doing was wrong.

The learned Judge who presided at the trial (Abbott J.) began his summing up with a description of the crime of murder. After dealing with various matters relating in the main to the charge apart from insanity and giving the jury an appropriate instruction as to their responsibility as judges of the facts and a warning against regarding anything his Honour might say as to matters of fact or of medical opinion as an attempt to influence the jury in coming to their decision, the learned Judge turned to the defence of insanity. He told them that it was not insanity in the ordinary acceptation of the term that excused crime. He then directed them in the "well-known formula" that if they were satisfied that Brown was on 23rd November

In the High Court of Australia.

No. 10
Reasons for judgment of the Full Court of the High Court of Australia— 20th May, 1959, *continued.*

labouring under a defect of reason due to disease of the mind, by reason of which he either did not know the nature and quality of his act in killing Neville Lord or did not know that that killing was wrong, then and then only their verdict should be not guilty on the ground of insanity. His Honour went on to say that though it was possible that if they were asked to decide whether Brown was insane in the sense in which the word is commonly used among laymen they might feel very strongly that no one but a lunatic would have killed Neville Lord for the wholly insufficient reason that the accused had given, the question for their decision was not as simple as that. In a redirection his Honour subsequently told the jury that the accused had given no reason and it was not a question of wholly insufficient reason. The charge then took up the burden of proof and after that dealt with that branch of the statement of what will afford a defence of insanity which depends on the party accused labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing. His Honour said that as he understood the defence that had not been put forward. He went on, however, to deal with the words "the nature and quality of the act" and the evidence affecting that matter, and of necessity in a manner showing it to be untenable in fact. The charge then turned to what was in fact the actual defence, namely that owing to a defect of reason from disease of the mind Brown did not know that he was doing wrong. The treatment of this question began with a reference to the rifle and ammunition in the room of the absent station hand, whose name was Dave. After setting out the facts relating to this and recalling Brown's statement that he had gone to bed on the Sunday night and had then got up and taken the rifle, the charge to the jury proceeded in a manner which we think very much open to objection. It is desirable to set out the passage in full. "The accused himself owned no firearms and, probably, had he never seen the rifle and ammunition in Dave's room he might never have thought of shooting anybody. You will remember Mr. Elliott" (who was counsel for Brown) "drawing your attention to the fact that there was no motive for this alleged crime. Gentlemen, throughout the centuries of civilisation, crimes have repeatedly been committed without any apparent or discoverable motive. That is one of the reasons why, in our childhood, we were taught never to put temptation in anybody's way and what would be temptation for another man, might be no temptation whatsoever to us. You may, perhaps, remember the words of Shakespeare—'How oft the sight of means to do ill deeds makes ill deeds done'. There, standing before his eyes in Dave's empty room was the rifle and ample ammunition and there were the means to do ill deeds. Do you think that perhaps those means to do ill deeds made the ill deeds done in this particular case? You may, perhaps, think that on the 23rd November, the accused, when he shot Neville Lord was acting on an uncontrollable impulse—a dreadful impulse which arose suddenly and which he was unable to control. If that view should commend itself to you, it is my duty to direct you that that is no defence in law. The defence of uncontrollable impulse is unknown to our law, and if that, in your considered view, is the only explanation of the death caused by the accused on the 23rd November, it is your duty to bring in a verdict of guilty of murder".

At a later point in his charge to the jury the learned Judge returned to the answer that Brown had given to the question of the police officer whether he knew at the time that it was wrong to point a loaded rifle at a person and shoot him, namely the answer "Yes. But I could not help myself". His

Honour said, "These words, gentlemen, may suggest to you that the accused was thereby setting up the defence of 'uncontrollable impulse' which you may think is the true explanation of what he did. But, as you will remember gentlemen I have directed you, if that be the true explanation of what the accused did, that is no defence, and he is guilty in law, of the crime charged".

The objections to these passages which of course must be taken together are, we think, very serious. The foundation of the case in support of the plea of insanity was that Brown's act in shooting Mr. Lord as he lay asleep lacked any motive actuating a sane mind. Upon this the evidence was entirely one way. Irresistible impulse as such had not been raised as a defence and no one had suggested that it could amount to a defence. The manner in which the first of the foregoing passages discounted the importance or effect of the absence of ascertainable motive put this cardinal matter, to say the least of it, in a false light. It was not at all unlikely to produce an adverse effect upon the jury with respect to that very element in the case for Brown which if one were guided by the evidence there was no reason to doubt. What follows immediately concerning temptation and the sight of the means to do ill deeds might not carry any very clear meaning to the jury but its tendency could hardly be anything but prejudicial. For it might be taken by them as suggesting that the prisoner, finding a weapon available, was prompted to use it to shoot Mr. Lord, for a reason which existed but was not ascertainable. Then the possibility is introduced of the jury thinking it was uncontrollable impulse. The result is a direction about uncontrollable impulse which, if understood literally, is clearly erroneous in point of law. For it is a misdirection to say that if the jury think that the true explanation of what the accused did was that he acted under uncontrollable impulse, that is no defence and he is guilty in law of the crime charged. It is a misdirection the operation of which might be to exclude the prisoner's defence and to determine the verdict. Whatever the learned Judge may have had in mind in using the word "only" when he first gave the direction about uncontrollable impulse the second statement says in plain terms that because the killing was done under uncontrollable impulse, if that were the jury's opinion, therefore it amounted to murder and they must convict the prisoner. It may be true enough that although a prisoner has acted in the commission of the acts with which he is charged under uncontrollable impulse a jury may nevertheless think that he knew the nature and quality of his act and that it was wrong and therefore convict him. But to treat his domination by an uncontrollable impulse as reason for a conclusion against his defence of insanity is quite erroneous. On the contrary it may afford strong ground for the inference that a prisoner was labouring under such a defect of reason from disease of the mind as not to know that he was doing what was wrong. The law has nothing to say against the view that mind is indivisible and that such a symptom of derangement as action under uncontrollable impulse may be inconsistent with an adequate capacity at the time to comprehend the wrongness of the act. This was put succinctly by Greer J. during the argument of the case of *R.* v. *Ronald True* 1922 16 C.A.R. 164 at p. 167, in stating how in an earlier case he had directed the jury. His Lordship said, "What I really told the jury was that the definition of insanity in criminal cases was the one laid down by the judges in McNaughton's Case, but that men's minds were not divided into separate compartments, and that if a man's will power was destroyed by mental disease it might well be that the disease would so

In the High Court of Australia.

No. 10
Reasons for judgment of the Full Court of the High Court of Australia— 20th May, 1959, *continued.*

affect his mental powers as to destroy his power of knowing what he was doing, or of knowing that it was wrong. 'Uncontrollable impulse' in this event would bring the case within the rule laid down in McNaughton's Case". For that reason, even if no more had been said than that uncontrollable impulse does not amount to a defence, the fact that the subject was mentioned would make it necessary to put before the jury the true operation of uncontrollable impulse as a possible symptom of insanity of a required kind and degree.

The foregoing are not the only passages in the charge to the jury which we think are open to objection. But the passage to which we shall next refer, though we think that as it was put in the summing-up it cannot be supported, may be but the outcome of what occurred earlier at the trial. Toward the end of his charge to the jury his Honour said this, referring to the learned Prosecutor for the Queen: "Mr. Chamberlain points out that if you acquit him gentlemen the accused may ultimately kill someone else. Well gentlemen, you are not to concern yourself with the consequences of your verdict, and if you are satisfied he was not guilty of this crime because of temporary insanity, then the future must take care of itself. Mr. Elliott" (counsel for the prisoner) "tells you that if you find him not guilty because of insanity, I must commit him to gaol to await the Governor's pleasure. How long the Governor may be prepared to detain a man whom no one will now say is insane may be problematical, but again that is no concern of yours. Even if you find him guilty, the Executive Council may refuse to allow him to hang, but that again is no concern of yours." The topic with which this passage deals seems first to have been introduced at the trial by a question put by the learned Judge to Dr. Forgan. That witness had been questioned about his opinion of the transient nature of the attack of schizophrenia from which in his opinion Brown had suffered and he had instanced as analogous the behaviour of various diseases from epilepsy to asthma. His Honour interposed and asked, "Do you mean by that, that if this man is released he could kill someone else?" To this Dr. Forgan answered "It could happen". A little later the learned Judge returned to the same matter and asked, "If this particular accused person were released on your evidence and subsequently committed another killing would that confirm your opinion that he was a schizophrenic?" To which Dr. Forgan answered that he was "a schizoid personality subject to schizophrenic episodes". No doubt when to a capital charge the defence of insanity is raised, it may sometimes be thought necessary or at all events proper to inform the jury of the legal consequences of a verdict of not guilty on the ground of insanity. Where this is so, it is a matter which obviously requires discreet and careful handling. But in the present case, notwithstanding the learned Judge's statement that it was not the jury's concern, the introduction and treatment of the question whether a verdict of not guilty on the ground of insanity might result in Brown's killing someone else could hardly operate otherwise than to distract the minds of the jury from an unprejudiced consideration of the defence of insanity. If it be said that logically considered the hypothesis involved in what was said is that the prisoner was a schizophrenic and insane, it may be answered that to the jury it may have been just as likely to suggest that even on that hypothesis an acquittal on the ground of insanity would carry with it a responsibility on the part of the jury for any future act of violence which the accused might commit. There is another passage in the summing up, the last passage we shall quote, which might convey to the jury a not dissimilar impression. In referring to

Brown's statement to the police officer that he looked for the woman cook (whose name was Mrs. Schiller) because he thought she might have rung up and given the alarm, his Honour said, "Well, gentlemen, you may ask yourselves why the accused should think that anyone should be wanting to give an alarm about him. Might I suggest to you that he then knew that what he had done was wrong. He did not tell Detective Lenton what he would have done, or whether he would have done anything if he had found Mrs. Schiller, or found that she had given an alarm by telephone. Perhaps, gentlemen, she may think now that she was a fortunate woman that the accused did not find her". It is difficult to see how the jury could understand this passage except as importing that though Brown was in sufficient possession of his faculties, he would or might have shot Mrs. Schiller had he found her.

It is not outside the province of a judge at a criminal trial to put to the jury a view which he may take of a piece of evidence or of facts. How far he should go must depend upon circumstances. But if he does so and puts views adverse to the prisoner it increases the importance of his putting clearly and in its true light the case made for the prisoner, or for that matter the case for him that fairly arises on the evidence, however little validity in fact the judge may be inclined to ascribe to it. It is difficult to resist the impression that the position taken up by Dr. Forgan was not placed before the jury by the summing-up in a way which could be understood and appreciated. Perhaps that arose from the evident difference between the view expressed by the learned Judge about the absence of known motive and the central significance the witness placed upon the motiveless character of the act. Doubtless it is true, as the learned Judge pointed out, that the jury might reject the views of the experts but this possibility leaves untouched the defect in the summing-up. Nor did the rejection of the view that Brown had suffered from schizophrenia necessarily dispose altogether of the question whether there had existed a disease or disorder of the mind which might satisfy the prerequisite condition required by the formula. In all the circumstances we think that the cumulative effect of the positive objections to those passages in the charge which we have discussed is such that the conviction ought not to be allowed to stand. As will be seen from what has been said we find ourselves unable to agree with the judgment of the Full Court. Our order is that special leave to appeal be granted to the applicant, that his appeal be treated as instituted and be disposed of instanter and that the appeal be allowed, the conviction and sentence quashed and that there be a new trial upon the information.

In the High Court of Australia.

No. 11 Order of the Full Court of the High Court of Australia allowing appeal —20th May, 1959.

No. 11.—ORDER OF THE FULL COURT OF THE HIGH COURT OF AUSTRALIA ALLOWING APPEAL—20th MAY, 1959.

Before Their Honours the Chief Justice Sir Owen Dixon, Mr. Justice McTiernan, Mr. Justice Fullagar, Mr. Justice Kitto, and Mr. Justice Taylor.

Wednesday, the 20th day of May, 1959.

UPON APPLICATION made to the Court at Sydney in the State of New South Wales on the 7th and 8th days of May 1959 on behalf of the abovenamed John Whelan Brown (hereinafter called "the Applicant") AND UPON READING the Notice of Motion dated the 28th day of April 1959 the two several affidavits of Nicholas John Wardlaw Birchall sworn on the said 28th day of April 1959 and the 1st day of May 1959 respectively and the documents marked as an exhibit to the last mentioned affidavit all filed herein AND UPON HEARING Mr. L. J. Elliott and Mr. N. J. W. Birchall of Counsel for the Applicant and Mr. W. A. N. Wells of Counsel for the Respondent THIS COURT DID ORDER on the said 8th day of May 1959 that the said application should stand for judgment and the same standing for judgment this day accordingly at Melbourne in the State of Victoria THIS COURT DOTH ORDER that special leave be and the same is hereby granted to the Applicant to appeal to this Court from the order made on the 15th day of April 1959 by the Full Court of the Supreme Court of South Australia dismissing an appeal by the Applicant against his conviction in the Supreme Court of South Australia on the 20th day of March 1959 upon the Information of the Attorney-General of the State of South Australia that on the 23rd day of November 1958 at Pine Valley he murdered Neville Montgomery Lord AND THIS COURT DOTH FURTHER ORDER that the appeal be treated as duly instituted and be disposed of instanter AND THIS COURT DOTH FURTHER ORDER that the said appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the said order of the Full Court of the Supreme Court of South Australia be and the same is hereby discharged AND in lieu thereof THIS COURT DOTH ORDER that the said conviction and the sentence of death pronounced by his Honour Mr. Justice Abbott be quashed and that there be a new trial of the Applicant upon the said Information.

By the Court,

K. H. KIRKMAN, District Registrar.

No. 12.—ORDER IN COUNCIL GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL.

At the Court at Balmoral the 12th day of August, 1959.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT
LORD CHAMBERLAIN
MR. SECRETARY MACLAY
SIR MICHAEL ADEANE
DOCTOR NKRUMAH

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 28th day of July 1959 in the words following, viz.:—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Your Majesty's Attorney-General for State of South Australia in the matter of an Appeal from the High Court of Australia between the Petitioner and John Whelan Brown Respondent setting forth (amongst other matters) that the Respondent was tried in the Supreme Court of South Australia on the information of the Petitioner charging that on the 23rd November 1958 at Pine Valley he murdered Neville Montgomery Lord contrary to Section 11 of the Criminal Law Consolidation Act 1935-1956: that neither "murder" nor "insanity" is defined by the Act and accordingly the law applicable thereto is the common law of South Australia: that on the 20th March 1959 the Respondent was found guilty by a unanimous Verdict of the Jury and sentenced to death: that the Respondent appealed to the Full Court of the Supreme Court of South Australia which on the 15th April 1959 dismissed the Appeal: that the Respondent made application to the High Court of Australia for special leave to appeal to that Court and on the 20th May 1959 the said Court ordered that special leave to appeal be granted and the Appeal treated as instituted and disposed of instanter and the Appeal allowed the conviction and sentence quashed and that there be a new trial upon the information: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgement of the High Court of Australia dated the 20th May 1959 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgement of the High Court of Australia dated the 20th day of May 1959:

"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the

In the Privy Council.

No. 12
Order in Council granting leave to appeal to Her Majesty in Council.

hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW. 10

PART II.

EXHIBITS.

List of Exhibits.

In the Supreme Court of South Australia.

List of exhibits.

A. Rifle.
B. Boots.
C. Photographs C.A. to C.E. (not printed).
D. Spent cartridge case.
E. Cartridge.
F. Hat.
G. Signed statement of accused.
H. Blueprint.

Exhibit "G"—Signed Statement of Accused.

In the Supreme Court of South Australia.

Exhibit "G"—Signed statement of accused.

LAURENCE VERNON LENTON Detective Constable stationed at Adelaide.

About 3.30 p.m. on Friday the 28th November 1958 in company with Detective Zeunert I had a conversation with the accused at Pine Valley.

I said. "We are police officers. This is Detective Zeunert and my name is Lenton. I want you to understand that you are not obliged to answer any questions or to say anything at all unless you want to as anything that you do say will be taken down in writing and may be given in evidence. Do you understand that?"

He said. "Yes."

I said. "What is your full name?"

He said. "John Whelan Brown but I go under the name of my foster mother and am known as John Whelan Stone."

I said. "How old are you?"

He said. "25."

I said. "Your occupation."

He said. "Station hand."

I said. "I believe that you started work here at the Pine Valley Station as a station hand on last Thursday week."

He said. "That is right."

I said. "What time did you get here?"

He said. "I arrived on the afternoon."

I said. "Do you know who brought you up here?"

He said. "A man from Elder Smith and a Mr. Lord."

I said. "Was it the boss of the station?"

He said. "No. I think that it was the owner."

I said. "The name of the station manager was Neville Montgomery Lord. Did you meet him?"

He said. "Yes, I met him on the arrival at the station."

I said. "On the night of last Sunday Lord was shot through the head whilst he was in his bed do you know anything about that?"

In the Supreme Court of South Australia.

Exhibit "G"—Signed statement of accused, *continued.*

He said. "Yes."
I said. "What do you know about it?"
He said. "I don't know how to put it."
I said. "Well shall I ask you questions?"
He said. "Alright."
I said. "I believe that the quarters which you occupied were about 70 yards from the station homestead where the Lord family lived."
He said. "Yes."
I said. "You occupied a room in the quarters and a man named Dave had the adjoining room."
He said. "Yes."
I said. "On Sunday was Dave at home?"
He said. "No. He left on the Saturday."
I said. "Do you know when he was due back?"
He said. "I am not sure but it was either Monday or late Sunday."
I said. "Did you go to his room and take a .303 rifle from there?"
He said. "Yes."
I said. "When?"
He said. "On Sunday."
I said. "Do you know what time?"
He said. "I think it was about half past eight at night. I was in bed and I got up and went and got it."
I said. "Is that the rifle there?" Indicating rifle produced.
He said. "That is it."
I said. "Did you take anything else from his room at the time?"
He said. "Yes."
I said. "What was that?"
He said. "Bullets."
I said. "How many?"
He said. "The magazine was full."
I said. "What did you do then?"
He said. "I came up here."
I said. "By that you mean to the homestead?"
He said. "Yes."
I said. "What part?"
He said. "The front."
I said. "Yes."
He said. "I saw Mrs. Lord in another room from where her husband was."
I said. "Were the lights on in the house?"
He said. "Yes."
I said. "And you could see through the windows could you?"
He said. "Yes."
I said. "Go on."
He said. "I walked in the front door. I went into the bedroom. I put the rifle up and aimed it at him and shot him. I went out of the room and I went to see where Mrs. Lord was. She went to the bedroom. I followed her in and she was singing out and I ran out the back way."
I said. "Where did you go?"
He said. "I went to see what the cook was doing."
I said. "By the cook you mean Mrs. Schiller?"

He said. "Yes."

I said. "Go on."

He said. "I went round the back of her quarters and I looked through the window but I couldn't see her there. I then went straight back to my own quarters."

I said. "Was there a light on in the cook's quarters when you went there?"

He said. "Yes."

I said. "When you returned to your own quarters what did you do?"

He said. "I went into Dave's room took a pair of boots and a packet of bullets and then took off like. I got scared and ran away."

I said. "The boots you took from Dave's room. Are they the ones you are wearing now?"

He said. "Yes."

I said. "Is this your hat?" Showing him the hat produced.

He said. "Yes."

I said. "Were you wearing it when you ran away?"

He said. "Yes."

I said. "On Sunday night when you came to the house. Had it been raining?"

He said. "Yes."

I said. "Was it raining at the time when you came to the house?"

He said. "I think so."

I said. "You have told us that you went into the bedroom and aimed the rifle and shot Lord."

He said. "Yes."

I said. "When did you load the rifle?"

He said. "I don't know. It could have been in my room. It could have been on the way over. It might have been in the room but I don't think that it was there."

I said. "This bedroom that you talk about where is it situated?"

He said. "Over there" and indicated the bedroom in which I had found the deceased person's body.

I said. "When you went into the bedroom was Mr. Lord in bed?"

He said. "Yes."

I said. "Under the blankets?"

He said. "Yes."

I said. "Did he appear to be asleep?"

He said. "Yes, I think so."

I said. "Did you speak to him or say anything?"

He said. "No."

I said. "After you shot Lord why did you go looking for Mrs. Lord?"

He said. "Because I got scared."

I said. "What do you mean by that?"

He said. "I don't know."

I said. "When you went out the back way. Did you work the bolt of the rifle?"

He said. "Yes."

I said. "On the back verandah, just outside the door I found an empty .303 cartridge case and also one complete bullet. Did they come from your rifle?"

In the Supreme Court of South Australia.

Exhibit "G"—Signed statement of accused, *continued.*

He said. "Yes."

I showed him the cartridge case and bullet produced and—

I said. "These are the ones I found are they from your rifle?"

He said. "They could be."

I said. "What did you have on your feet when you came over to the house?"

He said. "Socks. No boots or shoes."

I said. "When you went looking for Mrs. Lord after you had shot her husband. The rifle would not have been loaded."

He said. "Yes."

I said. "But when you went to find Mrs. Schiller it was."

He said. "Yes."

I said. "Why did you go looking for Mrs. Schiller?"

He said. "I just wanted to see where she was."

I said. "Why?"

He said. "Because I thought that she might have rung up and given the alarm."

Zeunert said. "The bullets you took from Dave's room. Were they .303?"

He said. "Yes."

Zeunert said. "Prior to coming to the house did you test the loading of the rifle on Dave's bed?"

He said. "Yes."

Zeunert said. "Which way did you go when you left the house?"

He said. "East."

Zeunert said. "How far did you go carrying the rifle?"

He said. "Six miles."

I said. "You took the police there today and recovered it?"

He said. "Yes."

I said. "Prior to your coming to this station had you ever met Mr. Neville Lord?"

He said. "No."

I said. "At any time had Mr. Lord ever had an argument with you?"

He said. "No."

I said. "Had he himself or any member of his family given you any reason to bear any malice towards him?"

He said. "No."

I said. "As for Mrs. Lord when was the first time that you met her?"

He said. "Sunday morning. I think it was Sunday. I am pretty sure."

I said. "When and where was that?"

He said. "It was in the kitchen in the morning when I brought the milk in."

I said. "Did you speak to each other?"

He said. "I said how do you do or something like that."

I said. "And that is all the conversation you have ever had with her?"

He said. "Yes."

I said. "On the night that you shot her husband, Mrs. Lord has told me that she saw you in the bedroom and that you spoke to her then. She was most upset and does not know exactly what you did say but it was something to the effect that she was to keep quiet."

He said. "Yes I told her to shut up."

I said. "Was that because she was hysterical?"

He said. "Yes."

Zeunert said. "When she was lying on the bed with her dead husband whom you had just shot?"

He said. "Yes."

I said. "You have told me that neither Mr. Lord nor any other person had ever given you any reason to bear him any malice."

He said. "Yes."

I said. "Is there any reason you wish to offer for your conduct?"

He said. "Even though I do recall everything and I did it, I don't think that I was responsible for my actions."

I said. "You knew that the rifle was loaded?"

He said. "Yes."

I said. "You knew that when you pulled the trigger it would discharge a missile?"

He said. "Yes."

I said. "And that if the missile hit anyone it would at least maim them and probably kill them?"

He said. "Yes."

I said. "Did you know at the time that it was wrong to point a loaded rifle at a person and shoot at them?"

He said. "Yes. But I couldn't help myself."

I said. "Do you think that you would have pulled the trigger of that rifle if there had been a policeman standing by you?"

He said. "No."

I said. "Earlier you told me that you got up from your bed to go to Dave's room. Now by that do you mean that you were in bed at the time?"

He said. "Yes."

I said. "Were you undressed?"

He said. "Yes I was in shorts. That's what I go to bed in."

I said. "How long had you been in bed?"

He said. "About half an hour."

I said. "Was the light out?"

He said. "Yes."

I said. "Had you been asleep?"

He said. "No. I hadn't been asleep."

I said. "What had you been doing?"

He said. "Lying in bed thinking."

I said. "Anything in particular?"

He said. "I can't remember that I don't think so."

I said. "Have you got any worries at all?"

He said. "No."

I said. "Have you been depressed?"

He said. "No."

I said. "How long ago is it that you have seen a doctor?"

He said. "Not for a long time."

I said. "Have you ever been treated for nerves?"

He said. "No."

I said. "Have you ever received any treatment for a mental condition?"

He said. "None at all."

I said. "Are you sorry for what you have done?"

He said. "Yes."

In the Supreme Court of South Australia.

Exhibit "G"—Signed statement of accused, *continued.*

I said. "What class were you in when you left school?"
He said. "Grade 6."
I said. "And is that all the schooling you have had?"
He said. "Yes."
I said. "How old were you when you left school?"
He said. "14."
I said. "Since leaving school at 14 you have spent your time working on stations and farms?"
He said. "Yes."
I said. "You say that Mrs. Stone is your foster mother?"
He said. "Yes."
I said. "Do you know anything at all about your parents?"
He said. "I don't know anything at all about them."
I said. "Have you ever served as a member of the armed forces at all?"
He said. "No."
Zeunert said. "Have you ever received any head injuries during your life?"
He said. "No."
Zeunert said. "How long were you in the house after you shot Lord?"
He said. "About a minute."
Zeunert said. "Did you walk straight into the house and into the bedroom?"
He said. "Yes."
Zeunert said. "Where were you standing when you pulled the trigger?"
He said. "Near the door."
Zeunert said. "How far was that from where he was lying?"
He said. "About 10 feet."
Zeunert said. "Did you take sight and aim at his head?"
He said. "Yes I think so."
I said. "What room was Mrs. Lord in?"
He said. "It was the children's bedroom next to the other one."

JOHN STONE

No. 13.—CERTIFICATE OF THE PRINCIPAL REGISTRAR OF THE HIGH COURT OF AUSTRALIA VERIFYING RECORD.

In the High Court of Australia.

No. 13. Certificate of the Principal Registrar of the High Court of Australia verifying record.

I, MICHAEL DOHERTY, Principal Registrar of the High Court of Australia DO HEREBY CERTIFY as follows:—

THAT this Record contains a true copy of all the proceedings judgments and orders in the cause in which Her Majesty's Attorney-General for the State of South Australia is the Appellant and John Whelan Brown is the Respondent so far as the same have relation to the matters of this appeal and a copy of the reasons for the respective judgments pronounced in the course of the proceedings out of which the appeal arises.

THAT the Respondent herein has received notice of the Order of Her Majesty in Council giving the Appellant Special Leave to Appeal to Her Majesty in Council AND has also received notice of the despatch of this Record to the Registrar of the Privy Council.

Dated at ~~Melbourne~~ Sydney in the State of ~~Victoria this~~ New South Wales this tenth day of November, One thousand nine hundred and fifty-nine.

W. Doherty

Principal Registrar of the High Court of Australia.