

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

and

U. S. ENERGY RESEARCH AND DEVELOPMENT
ADMINISTRATION,

Defendants.

Civil Action

No. 75-226

Deposition of CORTLANDT CUNNINGHAM

Washington, D.C.
February 24, 1977

Pages 1 thru 59

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320 Massachusetts Avenue, N.E.
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For the Defendants:

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Also Present:

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 National Archives and Records Service
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 Federal Bureau of Investigation
 Washington, D. C.

C O N T E N T SWITNESS:DIRECT

Cortlandt Cunningham

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E X H I B I T SPLAINTIFF'SIDENTIFIED

Number 1

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Number 2

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P R O C E E D I N G S

Whereupon,

CORTLANDT CUNNINGHAM

was called for examination by counsel for the plaintiff,
and having been first duly sworn by the notary public, was
examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. LESAR:

Q Would you state your full name, please?

A Cortlandt Cunningham.

Q And where are you presently employed?

A With the FBI.

Q In what unit of the FBI?

A I am the Chief of the Firearms and Toolmarks.

Q And how long have you been an employee of the FBI?

A For over 23 years.

Q What is your training -- just briefly.

What does your training consist of?

What types of examinations and tests are you qual-
ified to perform?

A Firearms identification and related subjects, as
well as toolmark examinations.

Q Now, you are in -- in 1963, what was your -- from

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November 22nd, 1963, what was your employment and position?

A I was a special agent supervisor in the Firearms-
Toolmarks Unit.

Q That is a unit of the FBI laboratory?

A It is.

Q How many units of the FBI laboratory are there?

A That is a difficult question to answer, sir, inas-
much as there are several sections in the FBI laboratory in
the scientific analysis section which is -- I am a part of.

We have several units -- separate units in that
section, but there are other sections.

Q There are other sections.

All right.

Could you specify the units in your section?

A Firearms-Toolmarks, Instrumental Analysis, Serology,
Minerology, Hairs and Fibers, Spectrographic -- that seems to
be --

Q Would the Spectrographic include neutron activation
analysis?

A Actually, they are separate.

Q They are two separate units?

A At the present time, yes, sir.

Q In 1963, were they separate?

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A No.

Q They were one unit, then, in the section in which you were then employed?

A Yes, sir.

At that time, it was known as the Physics and Chemistry Section.

Q All right.

Now, would it be customary in the investigation of a criminal case, for the various units of this section to confer with one another in the investigation of a case?

A The usual procedure is that a case is assigned to a principal examiner, and if there is any other work to be done outside of that particular unit, then associate examiners are assigned to the case from the units that will also perform examinations on the evidence.

Q Let me make sure I understand this.

Who would make the assignment?

A On the case?

Q Yes.

A Originally, the case is assigned to a particular unit by the number one man of the section -- only as to who is going to be the principal unit on the case. After that, the unit chief assigns the case to one of his examiners.

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Q Who determines -- you said that there were various sections.

Who determines which section is to handle the case?

A That would depend on who -- which unit would have the most work in the particular case.

Q All right.

Now, let us take specifically, the case of the assassination of President Kennedy.

What section of what unit was the principal unit in charge of that investigation?

A You mean from a laboratory standpoint?

Q Yes.

A The Physics and Chemistry section as it was then.

Q And who was in charge of that section?

A At that time, Roy Jebbins (phonetic).

Q And the section in which you were employed at that time was a different section?

A No, sir.

Q You were part of that section?

A Yes, yes.

Q Who, then, determines what tests are performed?

A It all depends on the case.

Q Well, let us take the case of the assassination of

President Kennedy.

Who determined what tests were made?

A In a case of this magnitude, everybody from the Assistant Director, down, so that every exam that had to be done or should be done, were done.

Q What would be the form of this decision?

How would it be communicated?

A Well, it depends on the piece of evidence.

In other words, when we get a piece of evidence in, what can be done with this particular piece of evidence?

Q Now, ordinarily, would the Director of the FBI ask what could be done with it?

Would he confer directly with the lab?

How would the process be initiated?

A Well, the work would be done strictly in the laboratory.

I'm sorry, but I do not even know about the Director communicating with anybody.

Q And what I am interested in first, are the kinds of tests that would be performed and who determines them.

The request, as I understand it, comes to the A section of the FBI laboratory.

In this case -- in the case of President Kennedy,

it came to the Physics and Chemistry section.

Now, would the request -- who would the request come from?

Who would initiate the decision or the requests as to what tests were going to be conducted?

A As I say, it would be my opinion, that in a case of this magnitude, that the section chief and the assistant -- at that time, the No. 1 man --

Q Mr. Jebbins?

A Yes.

Q So that the request would have come from -- to Mr. Jebbins?

A Also, Mr. Frazier was the No. 1 examiner on the case

Q And so the communications, then, would be from Mr. Jebbins to Mr. Frazier?

A Yes, sir.

Q Mr. Jebbins would submit a piece of evidence to Mr. Frazier and ask that that certain test be performed on it?

A No, sir.

The evidence was being turned over to the Firearms unit by whoever brought it in. They were personally delivering it right to the Firearms unit.

Q To the Firearms unit?

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A Yes, sir.

Q But then, Mr. Frazier -- did Mr. Frazier act on his own in conducting the test or did he confer with Mr. Jebbins?

A I am sure he conferred with Mr. Jebbins.

Q This would be the normal procedure?

A Not in a normal case.

No, sir.

Q How would it differ from a normal case?

A Well, if a case comes in to a unit at the present time, if it is a routine case, I would determine what examinations --

Q I see.

But in the case of President Kennedy's assassination you think that there would have been conferences between Mr. Jebbins and Mr. Frazier as to what tests should be performed?

A I'm sure that would have been discussed.

Yes, sir.

Q Now, would those conferences be recorded in any form?

A No, sir.

Q There would be no notes taken on them?

A Not that I know of, sir.

Q It would be purely verbal?

A Yes, sir.

Q Would this -- would there be any follow up on this?

Would Mr. Jebbins send to Mr. Frazier a formal request that certain -- for certain types of tests?

A A formal request?

Q A written request for certain types of tests?

A I don't think so.

Q He would not?

A No.

Q Then the next stage, I assume, is the carrying out of the tests -- or let me ask this way -- would there be conferences between Mr. Frazier and anyone else as to these tests?

A He would certainly confer with the person in the other units who were going to make examinations in the case.

Q Well, would there be any written record of those conferences?

A No, sir.

Q The tests are then carried out.

Now, normally, are they carried out by a single individual or more than one?

A Under normal circumstances, it would be carried on by one person.

Q With respect to the assassination of President

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Kennedy, did that differ?

A Yes, sir.

It differed.

Q There was normally more than one person involved?

A In Firearms, we had three people involved.

We all made the examination.

Q Yes.

Now, you conduct an examination.

Now, are notes made on the examination?

A Yes, sir.

Q And what happens to the notes once they are made?

A They are preserved.

Q Are they put into a report, then, on the test?

A I do not understand your question, sir.

Q Well, you conduct a test, on, say, ballistics examination, and you have made certain notes on what transpired and what you observed during the examination.

Now, is a formal report or a written report, made on that examination?

A That is correct.

Q And who would this be submitted to?

A Mostly -- they would be submitted to the Field Office that submitted the evidence.

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Q Would they -- what is the distribution of the copies?

A I do not know.

I know that Dallas was receiving all the reports.

Other dissemination, I do not know.

Q Within the Bureau itself, what would be the dissemination?

How many copies would be made and who would they go to?

A At the present time, sir, I cannot recall.

In other words, I know there is always one copy of the report that goes to file.

Q Would there be more than one file that a report would normally go in?

A Normally, no, sir.

Q If distribution is made to other persons, would that be true?

A No, sir.

In other words, there were other -- I cannot recall.

There were many copies to each report -- again, due to the importance of the case -- because everybody had an interest in the case.

Q Well, now, when the report is made, would there be -- would copies be circulated to the other units in the section

that is doing the test?

A Normally, no, sir.

Q In the case of President Kennedy's assassination?

A I do not really recall, but I do not believe that -- unless the other unit asked for a copy, it would not be done. It would be strictly the principal unit.

Q If you conduct a given test and -- does the examiner sometimes, in consequence of that test, suggest that further tests be conducted?

A It could be.

Q And would he make these suggestions in writing?

A No, sir.

Q How would he communicate with the suggestion that there be further tests?

A He would communicate it to the principal examiner, who would have been Mr. Frazier.

Q To Mr. Frazier.

Verbally?

A Yes, sir.

Q Not in written form, right?

A No, sir.

Q And would Mr. Frazier then make a recommendation as to whether or not the further tests would be conducted?

A Again, in a case of this magnitude, it would have been done.

Q Would Mr. Frazier's direction that further tests be done be in written form?

A No, sir.

Q Why not?

A It is just not our procedure.

Q In -- what are the purposes for which you conduct tests?

Does it include, for example, preparation of testimony in a court case?

A Do you mean the principal reason for conducting that test?

Q Well, just give me -- if you can give me what you feel is the principal reason, yes.

A The FBI is in power to conduct examinations for other Federal agencies, local law enforcement agencies and criminal cases.

Q And what -- why are the -- so you are saying that the tests are carried out to determine what?

A Whatever they ask for.

Q Whatever is asked for.

And you say that it is in power to do this as part of

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its law enforcement purposes?

A Yes, sir.

Q And part of that includes the trial of persons who are accused of crimes?

A The trial, sir, is incidental to the examination.

Q Yes.

But what I am driving at, is whether, in making the tests and in making the reports on the tests, you must also prepare for trial -- to testify at trial?

A That would be done at the time of the trial.

Q But you do normally prepare to testify at trial?

A I do not understand, sir.

Q Well, the purpose of the tests, is it not, ultimately is so that evidence can be produced at a trial of a person accused of a crime?

A Yes.

Q Yes.

Now, in preparing for that, you would make reports, wouldn't you?

For example, you have got the District Attorney out in Dallas --

Let's go off the record a moment.

(A short recess.)

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BY MR. LE SAR: (Resuming)

Q Back on the record.

All right. I believe I was trying to ascertain whether or not reports are customarily made in order to prepare for an Agent's testimony in a criminal proceeding.

A A report, whether the case is going to court or not, is always prepared on the examinations conducted.

Q And then if the case goes to trial, would there be additional reports made?

A No, sir.

Q How would the District Attorney who is conducting the case know what to examine the Agent who is going to testify on without a report?

A The copy of the report would be furnished the United States Attorney's office.

Q A copy of the original report?

A I believe that is the correct way.

Q Then there would be no other report provided to the prosecutor other than the original FBI laboratory report?

A No, sir. The FBI -- that's the only report that is prepared, the original report going to the Field Office.

Q I see.

Now, suppose the U. S. Attorney has additional

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questions that are not answered in the field report. How is this handled?

A I believe it would be handled directly with the Field Office.

Q Well, would there be -- my understanding is that you give the U. S. Attorney only your initial report. There is no follow-up, or no report made to prepare him for the questions that he should ask the Agent when the Agent takes the stand?

A Only one report -- laboratory report -- is furnished, and that is furnished to the Field Office.

Q And then the Field Office would make it available to the prosecutor?

A Yes, sir.

Q In the standard testing procedures, is there normally anyone who verifies the results of the tests or examination?

A Under normal circumstances? No, sir.

Q In the case of President Kennedy's assassination?

A Yes, sir. In the Firearms portion, there were three of us working on it.

Q In ballistics examinations -- which I gather is what you are expert in?

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A Firearms identification, sir.

Q Yes.

Could you describe the procedures that you go through in making an identification, testing to see whether or not an identification could be made?

A Yes, sir.

Q Would you do that?

A First the evidence is marked, and then -- can we limit it to a bullet and a gun?

Q Yes.

A First the evidence is marked, and then a bullet is examined, first for caliber, type, and its physical characteristics.

Q By "physical characteristics" you mean such things as weight?

A Yes, sir.

Q And you would weigh it immediately upon --

A Yes, sir.

Q And by "physical characteristics" you mean whether or not it's distorted, or mutilated?

A That would be noted, but what I meant by physical characteristics -- whether or not it's a lead bullet, or a jacketed bullet, and the -- in the case of the assassination, we

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were dealing with a military type bullet. That is what I meant by physical characteristics.

Also, whether or not the bullet has cannellures in it -- those are the grooves.

Q Right.

A Then the bullet would be examined for the rifling characteristics of the weapon from which it was fired.

Q Now, how would that examination be performed?

A Microscopically.

Q Under a comparison microscope?

A No, sir. Under a zoom-scope.

Q Zoom-scope? At what stage would you examine -- well, let me -- I've interrupted you.

What are the next stages in the procedure?

A After you have microscopically determined the general rifling characteristics present on the bullet, the bullet is examined microscopically for the presence of any individual characteristics or marks which might be of value for identifying that bullet as having been fired from a particular weapon, to the exclusion of all other weapons.

Then --

Q May I interrupt just a second?

If -- let's assume that you can not make that iden-

tification positively on the basis of an examination under the microscope.

What is the next step?

A I don't understand the question.

Q Well, are there any other procedures that you might employ to determine whether or not it is identifiable, or can be excluded as having been fired from that particular weapon?

A There is no way of looking at or examining a bullet to positively determine whether it's identifiable. All you can do is examine it for the presence of any microscopic marks which could possibly be of value.

Q All right. Then what do you do?

A Then you examine the weapon.

Q How is that conducted?

A Well, you -- first, you would run a patch through the barrel to determine whether or not the weapon had been fired since the last cleaning.

Then you would generally check it over to see its operating condition.

Q What do you mean by that?

A That is to determine whether or not the weapon is in --

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Q Can be fired?

A Can be fired.

Q And in the case of a Mannlicher-Carcano, which was used by Oswald, you've made that examination?

A Examined it to find out if it was -- generally speaking, was the gun in working order.

Q And you made a report on that?

A I don't know if it's in the notes or not, sir. I can't recall.

Q Normally, you would put that type of observation in the report, would you not?

A I personally wouldn't, no, because the only time I make any personal notes, I have found something wrong with the weapon. If I don't make any notes, then I know I found it to be in normal working order.

Q So the absence of notes would indicate that Oswald's rifle was in working order?

A I did not make the notes on Oswald's rifle, sir.

Q Are you familiar with who did?

A Yes, sir.

Q Who was that?

A Mr. Frazier.

Q Do you know what the results of his examination

were?

A As I recall, we found the weapon to be in normal operating condition.

Q In this examination that you were making of the bullet that you received, do -- does part of that examination consist of determination of whether or not there are any residues on the bullet?

A What kind of residues?

Q Well, human residues; for example, blood, tissue?

A I do not recall, sir, whether that was done on -- in this case.

Q Would it normally be done?

A No, sir.

Q Why not?

A Well, if a bullet is taken out of a body, and is known to be taken out of a body, there would be no advantage to running a blood examination, would there?

Q Well, let's assume that it is supposed to have struck two different bodies.

A In a normal case?

Q Well, let's take the case of the assassination of President Kennedy, where we have a bullet which is alleged to have struck both President Kennedy and Governor Connally.

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A I do not recall whether that examination was made.

Q But based on the fact that the bullet was alleged to have struck both men, would it not have been advisable to conduct an examination to see whether or not there were any residues which would enable that determination to be made?

A It's very possible that it was made.

Q Let's take the other part of it.

Suppose that the bullet was not found in the body; would that be subject to examination? Would you look for residues of other kinds?

A Routinely?

Q Yes.

A No, sir.

Q In the case of the assassination of a President?

A I can not recall whether any other examinations were made.

Q Would you, in the course of examining the bullet, determine whether or not it had -- whether there was anything which suggested the bullet had been tampered with or was in other than a -- in the condition in which it would have been found at the scene of the crime?

A Only if such indications were present would any notes be made like that. When you examine the bullet, the

bullet is in a condition you normally expect.

Q If the bullet had been cleansed, you would make notes on that normally, put that in your report?

A How would you know that, sir?

Q Well, suppose that someone had made the information available to you?

A I would put that in the notes if somebody had told me; yes, sir.

Q Would that tend to make you suspicious of the bullet?

A Nothing like that occurred in this case, sir, that I know of -- that I have any knowledge of.

Q You were unaware that the bullet which is alleged to have wounded both President Kennedy and Governor Connally was cleansed?

A I did not know that; no, sir.

Q All right.

We have gone through the sort of -- what I gather is the first couple of stages of your procedure in making a ballistics examination, and you've marked the bullet and you've observed it, and commented on its characteristics, weighed and examined it under the microscope.

What else do you do?

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A As I recall, I was up to the place where I was preparing to fire the rifle -- fire the rifle using cartridges similar to those represented by evidence that you have.

Q Nor, ordinarily, this is for comparison purposes, is it?

A Yes, sir.

Q To determine whether or not the bullet that you have as an evidentiary specimen can be determined to have been fired from that particular rifle?

A Yes, sir.

Q Does that also include a determination as to whether or not the bullet can be excluded as having been fired from that particular rifle?

A Of course.

Q Now, when you made -- you fire similar ammunition from the rifle which is your specimen?

A (No audible response).

Q What do you do then?

A You make a microscopic comparison with the test bullets and the evidence bullet on a comparison microscope.

Q Now, as I understand it, you have the test bullet and the comparison bullet --

A Yes, sir.

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Q -- and you place them both under a comparison microscope?

A Yes, sir.

Q And look at them to determine whether or not they seem to be identifiable or whether or not there are characteristics which exclude their having been fired -- would exclude their having been fired from the same weapon?

A May I add --

Q You may.

A There are three conclusions that can be reached in firearms identification:

One is identification, that the bullet was fired from that weapon to the exclusion of all other weapons.

The second conclusion you can reach is non-ident; that's when the general rifling characteristics of the weapon are different than the general rifling characteristics displayed on the surface of the bullet. That is, the number of left lands and grooves, widths of the lands and grooves, twists of the rifling -- direction of twists of the rifling.

The third conclusion is "no conclusion;" that is where you have a case where everything is similar -- the general rifling characteristics are similar; however, the individual characteristic marks on the evidence bullet do not match the

characteristic marks from the test bullets, or there are not sufficient microscopic marks on the evidence bullet for identification purposes. In other words, the surface is smooth except for the rifling impressions.

Q All right.

Now, you look through the comparison microscope and you make a determination as to one of these -- you reach one of these three conclusions.

How is that reported?

A That is placed in the notes.

Q And are photographs taken of the two bullets?

A Under normal circumstances, no. In this -- in the assassination of President Kennedy, yes; they were.

Q And that would be true of other major political crimes like the assassination of Doctor King?

A I did not work that case.

Q You did not.

How do you request -- recover the test-firing samples?

A At the time of the assassination of President Kennedy, we were recovering tests in cotton waste material.

Q So the firing is done by firing the specimen into a cotton tube, or something, is it?

A Yes, sir. This particular case, we had -- we still have -- a very large recovery box for recovering rifles. The -- if it were done today, we would use water recovery, but we did not have it at the time.

Q How many times would you ordinarily test-fire a rifle for comparison purposes?

A Normally twice, sir.

Q Only twice?

A Yes, sir.

Q Is there any particular reason why you don't do it more often? Is that sufficient to reach a definitive conclusion?

A Yes, sir.

Q Now, after you have compared a bullet under a microscope, and reached conclusions, or compared fragments, do you recommend any further tests?

A For instance, sir?

Q Well, suppose that you can not make a comparison. Would you then recommend that some other method other than ballistics be used to further determine whether or not there was any way to identify the bullet as having been fired from a particular rifle?

A I know of no other way, sir.

Q Are you familiar with the spectrographic and neutron activation analysis tests?

A Yes, sir, but that still can't positively identify a bullet as having been fired from a particular weapon.

Q Can it identify a bullet as having made a particular wound, or being associated with a particular fragment, a particular crime?

A This is not my specialty, sir. I do not think so.

Q Do you recall, in the course of your investigation of President Kennedy's death, were a spectrographic and neutron activation analysis made?

A Yes, sir.

Q And were reports on those two tests made available to you?

A Not to me, no, sir.

Q You never recall having seen those reports?

A Oh, yes, sir; I've seen the reports, but you -- I thought you mean did they furnish me with the results.

They furnished Mr. Frazier with the results.

Q The results -- but you -- saw them?

A Yes, sir.

Q At the time, in 1963-1964, or subsequently?

A I don't recall, sir.

Q What was the form of the reports that you saw?

A It was a copy of the outgoing report to the Dallas Field Office.

Q As of what date?

A It was the first report, if I recall.

Q Do you recall how long it was, how many pages?

A It was a very large report, sir.

Q Very large report.

I believe you said that that was the first report to the Dallas Field Office?

A As I recall, sir.

Q Were there subsequent reports to the Dallas Field Office?

A Yes, sir.

Q Did they also include spectrographic and neutron-activation analyses?

A I don't -- neutron-activation analysis, I do not believe, was reported in that first report. It was strictly spectrographic.

Q Is there any reason why it was not?

A Because it wasn't done at that time.

Q Do you know when it was done?

A No, sir; it was subsequently.

Q Do you have any idea of when it was, approximately?

A No.

Q How long after the assassination was it made?

A No, sir.

Q Normally, how soon after the evidentiary specimens were received would such tests be carried out?

A Sir, this is not in my field, and some other people -- other witnesses could probably answer these questions much more fully.

Q Well, I understand that we would expect a much more definitive answer from some of the other witnesses, but if you have any knowledge or feeling, I would appreciate a general answer to it.

A No, sir, I don't.

Q What about within your own field of expertise in ballistics identification? How soon after you receive evidentiary specimens are the tests carried out?

A That depends on the particular Examiner's workload.

Q In the case involving the assassination of the President?

A It was done immediately.

Q And how soon after the tests are done are the reports on it made?

A In this particular case, immediately.

Q Did you ever have occasion to examine the bullet, 399, the bullet which is alleged to have struck both President Kennedy and Governor Connally?

A I didn't.

MR. LE SAR: Mr. Johnson, could you pass that over, and this is -- the Archivist, Mr. Johnson, has passed a small container with a bullet.

(Archivist hands exhibit -- a bullet -- to witness.)

BY MR. LE SAR: (Resuming)

Q Is that the bullet that you examined?

A Yes, sir.

Q Did you make any report on your observations as to the state of this bullet?

A I personally?

Q Yes.

A No, sir.

Q But I believe you stated that you did examine it?

A Yes, sir, I did.

Q And what -- when and for what purpose?

A To determine whether or not that bullet had been fired from a rifle found in the Book Depository.

Q And that was the only purpose of your examination?

A Yes, sir.

Q Did you make any observations on the state of that bullet?

A No, sir.

Q Would you characterize it as in virtually pristine condition?

A No, sir.

Q Why not?

A Because there was mutilation.

Q Where is the mutilation present on the bullet?

A The base is flat, as you can see (indicating).

Q Yes. Other than a slight flattening of the base, is there any other mutilation on the bullet?

A I don't recall from my examination of the bullet.

Q Do you see any other present now? Just on --

A Well, with the naked eye --

Q With the naked eye?

A No, sir.

Q Can you identify any places on that bullet from which samples were removed for scientific testing?

A No, sir. I don't know.

Q If you look at it now?

A Yes, sir, the base appears to --

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Q To have had a sample removed?

A Yes, sir, but there again, somebody else --

Q How about the nose? Does there appear to have been a sample removed from the nose?

A Yes, sir.

Q Now, ordinarily, you spoke of weighing the bullet, and I assume this bullet was weighed when it was received by the FBI Laboratory?

A Yes, sir.

Q Would it not have been weighed again after those specimens were removed?

A No, sir.

Q How much would such a bullet normally weigh?

A As I recall, sir, 161 grains, approximately.

MR. WEISBERG: That's close.

BY MR. LE SAR: (Resuming)

Q How much would have been removed -- might have been removed by removing those samples?

A I have no idea, sir.

Q How much weight would ordinarily be lost in firing the bullet?

A Very little, sir.

Q You don't -- would you state in terms --

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A No, sir.

Q You wouldn't care to? Okay.

Are you familiar with the history of this bullet?

By that I mean --

A I have no first-hand knowledge, no, sir.

Q Are you familiar with the -- the facts stated in the Warren Report, that this bullet is alleged to have transited the President's neck, without striking a bone, that it then is alleged to have smashed four inches of the President's fifth rib -- excuse me -- of Governor Connally's fifth rib, and that it smashed Governor Connally's wrist, and penetrated Governor Connally's thigh for several inches, without damaging the tibia, but leaving a fragment in it?

A Yes, sir.

Q You're familiar with that?

In your experience, would you normally expect a bullet which had done that amount of damage to have suffered more mutilation or damage than that bullet has?

MR. RYAN: I just want to note an objection for the record, as to the relevancy of this line of questioning. I don't think it has any pertinence to your FOIA request for spectrographic and neutron-activation analyses.

MR. WEISBERG: What reports is that?

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MR. RYAN: The reports for neutron-activation and spectrographic analysis.

I'll permit the witness to answer that question if he can.

THE WITNESS: I can not answer the question.

BY MR. LE SAR: (Resuming)

Q Why not?

A Because it's not possible. It is possible that it could have done that; yes.

Q But my question was: based on your extensive experience, would you expect this bullet to have done that?

A On the basis of my experience, I have seen many bullets that have caused a good deal of damage and not been mutilated at all.

Q But have you seen any that have suffered as little damage as this bullet has and caused as much damage as this -- as is alleged to this bullet?

A Yes, sir.

Q You have seen such bullets?

A Yes, sir. Heavy, slow-moving bullets do not have a tendency to blow -- to break up.

Q A slow-velocity bullet?

A Relatively speaking.

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Q How would you define a slow-velocity bullet?

A Well, rifle bullets down around 2,000 feet per second, is not -- I can't remember exactly the muzzle velocity of this particular kind of ammunition, but if I recall, it's somewhere around 2,100 feet per second, and that is not what you would call a high-velocity rifle bullet.

Q What would be a line of demarcation between a low and a medium velocity?

A Well, the bullets -- we have many bullets of this weight. Up close to 3,000 feet per second.

Q Would be -- that would be high-velocity?

A That would be high-velocity.

Q Are you familiar with the Department of Justice Autopsy Panel Report, which was issued in 1967?

A No, sir.

Q Under the direction of Ramsey Clark?

A No, sir.

Q You were not consulted in connection with the issuance of that report?

A Not I, sir.

Q Was anyone in the FBI Laboratory?

A Not that I know of, sir.

Q That report states that there are fragments in the

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President's neck, based on their examination of the X-rays.

Q Can you see any place on that bullet where a fragment could have come from?

A The base here (indicating).

Q Only from the base?

A From superficially looking at it, yes, sir.

Q When you examined the bullet under the microscope, did you observe any marks on it?

A I observed many marks on it.

Q Could you determine what caused those marks?

A Many -- most of them are caused by the bullet passing down the barrel.

Q Yes. When a bullet strikes an object, such as cloth or clothing, could that scar, or leave a mark on the bullet?

MR. RYAN: Well, just for the record, I want to again object. I think we have gotten off the line of relevancy, which is the existence of additional reports allegedly not furnished by the FBI. Same relevancy objection.

MR. LE SAR: For the record, I am attempting to determine whether or not certain observations or tests were made, and whether or not they were put in the reports that we have not obtained.

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THE WITNESS: A bullet of that type?

BY MR. LE SAR: (Resuming)

Q Yes.

A Going through cloth?

Q Yes.

A I would not expect it to mark; no, sir.

Q Would you expect it to be marked if it struck bone?

A You can get mutilation; yes, sir.

Q Did you observe any such mutilation in your examination of the bullet?

A As I stated previously, there is mutilation of that bullet.

Q Other than the slight deformity at the base of the bullet, did you observe any marks on the bullet?

A No major.

Q Nothing which would suggest that it has struck bone?

A It could have struck bone and not be mutilated.

Q Could it have struck bone and not been scratched?

A I do not recall, sir, whether or not there was any microscopic mutilation on it or not.

Q If there was not, would that indicate to you that it did not strike bone?

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A Not necessarily, no, sir; it depends on the hardness of the jacket.

Q But in probability, would it indicate to you that it was probable that it struck or did not strike --

MR. RYAN: Same objection, for the record.

THE WITNESS: I have no opinion on that, sir.

BY MR. LE SAR: (Resuming)

Q The facts stated by the President's Commission on President Kennedy's assassination indicate that in addition to the fragments which the 1967 Autopsy Panel report found in President Kennedy's neck, that there was a fragment in Governor Connally's wrist, a 3.5 millimeter fragment in Governor Connally's chest, a fragment in Governor Connally's thigh.

Is it possible that all of those fragments could have come from this bullet?

A I have no opinion on that, sir.

Q Can you -- from determining -- excuse me; let me confer with Mr. Weisberg a second.

(Discussion off the record)

BY MR. LE SAR: (Resuming)

Q Can you, as you now observe that bullet, show where the 3.5 millimeter fragment in Governor Connally's thigh could have come from on that bullet?

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A Sir, I have no opinion. I have no way of knowing.

Q All right.

Do you know what the diameter of that bullet is?

A Approximately .263.

Q And does that afford you any basis for making an opinion as to where a fragment 3.5 millimeters long could have come from?

A No, sir.

Q I would ask you to examine the base of the bullet again and see if you can determine from that where there was a sample cut out. Is it clear?

A I don't know where a sample was cut out, sir.

Q Mr. Cunningham, you spoke earlier of the ballistics examination that you would normally make, and indicated that in a case of the magnitude of the assassination of President Kennedy, you would take comparison photographs of the bullets that you examined under the comparison microscope?

A Yes, sir.

Q I want to show you a photograph and see whether or not this is the kind of photograph that you would take for —

A This is not a photograph taken from a comparison microscope.

Q Is there any evidentiary purpose that could be

served by such a photograph?

A No, sir, but again, every piece of evidence in this case was photographed.

Q Yes, I understand that.

I want to show you another photograph and ask you: is that the kind of photograph that might be taken in preserving records of a specimen received?

A Not by the FBI.

Q Not by the FBI? Why not?

A That's a very bad photograph.

Q It is? Why do you say that?

A It's too dark, focus is not good. It does not look like an FBI photograph.

Q All right.

So you would ordinarily expect the FBI would have better photographs of, say the grooves?

A Yes, sir. I don't ever recall seeing this photograph.

Q No. For the record, it is not a photograph associated with the assassination of President Kennedy. I simply wanted to determine whether or not the FBI would make comparable photographs.

You would make comparable photographs?

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A Under normal circumstances, no.

Q But in the case of a major political assassination?

A Well, in the case of the assassination of President Kennedy, yes, sir.

MR. LE SAR: For the record, I would like to submit — not these photographs (indicating), but Xerox copies of them, so we can later determine what we were talking about.

May I see that first one here (indicating)?

BY MR. LE SAR: (Resuming)

Q Would you agree that this is a Xerox copy of the first photograph that I showed you?

MR. RYAN: I don't believe so.

THE WITNESS: No, sir.

MR. LE SAR: Somewhere here I've got a Xerox of that.

Excuse me; let me go — just run and Xerox these.

MR. WEISBERG: Would you like me to do that?

MR. LE SAR: Yes, why don't you?

MR. WEISBERG: Here it is (indicating).

THE WITNESS: That would be it.

MR. LE SAR: For the record, Mr. Cunningham has identified a Xerox of a photograph as being a Xerox of it, and I would like to submit this as Plaintiff's Exhibit 1.

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That was the first of the two photographs which I showed Mr. Cunningham.

(The document referred to was marked for identification as Plaintiff's Exhibit No. 1)

BY MR. LE SAR: (Resuming)

Q And now I showe you a Xerox which I believe is a Xerox of the second photograph I showed you; is - that correct?

A Yes.

MR. LE SAR: I would like to have this marked as Plaintiff's Exhibit 2, which is a photograph of the second photograph that was just shown to Mr. Cunningham.

(The document referred to was marked for identification as Plaintiff's Exhibit No. 2)

BY MR. LE SAR: (Resuming)

Q I believe you testified that you had seen copies of the spectrographic reports, or at least some of them, that were done by the FBI in connection with President Kennedy's assassination.

Did you ever see any reports on the neutron-activation analysis which was performed?

A I do not recall, sir.

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Q Would it have been normal for such reports to have been made?

A I don't recall that either, sir.

Q Well, have you seen, in other cases in which neutron-activation analyses were done -- have you seen copies of those reports?

A Well, they're being done every day.

Q Do you occasionally see copies of them?

A Yes, I see copies of those reports.

Q And what would be the form? They would come to you in typewritten form?

A Well, the Examiner -- in other words, in a normal case, if there is neutron-activation, if my man is Number 1, he will get the neutron-activation dictation and that will be incorporated into one report.

Q Yes?

A And then it comes to me for reading. Yes, sir.

Q And what would be the nature of that report? What would it set forth?

A The results of the examination.

Q And it would give a commentary on the significance of those results? For example, would it state whether or not the tests indicated that a -- say, you've got a question whether

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or not a particular fragment came from a particular bullet; would the report state whether or not the neutron-activation analyses were able to determine that?

A I don't think you can determine that.

Q You can not by -- would it state whether or not a particular fragment could be excluded from having come from a particular bullet?

A Yes, sir. You can exclude.

Q You can exclude, but you can not --

A Identify.

Q -- identify? I see.

Can you say that it is possible that a fragment came from a particular bullet?

A It is possible to say that it could have come from that source or another source with the same composition.

Q Would you then -- would the report then set forth the reasons why for that conclusion?

A It already set the reason that they were compositionally similar or dissimilar.

Q And it would explain -- it would explain also the -- what it was in the examination that caused the Examiner to conclude that it was either similar or dissimilar?

In other words, if it's a case where the fragment,

say, has a higher percentage of antimony --

A They would not be specific; no, sir.

Q They would not be specific?

A I have never seen them being specific on that report.

Q But they would state if it could be excluded: --

A Yes, sir.

Q -- from having been fired from that -- as having been associated with that particular source? They would say that?

A If the composition is different, completely different, they would say so.

Q What -- would the report ordinarily list the elements that were found present in the source?

A No.

Q Why not?

A They're of no value.

Q It has value as a record of value for trial preparation of testimony, doesn't it?

A The Examiner would have that in his notes.

Q I see.

A It would have no value in a report.

Q Now, would you -- suppose you've got a case in which

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there are a number of fragments and a number of objects which are alleged to have been struck by a bullet, one or more bullets; would you then make comparisons of the composition of each of the fragments with each of the bullets and each of the objects struck to determine whether or not -- which fragment came from which source, or which object was struck?

A This question concerns beyond the scope of my expertise.

Q All right.

You indicated that the reports would state whether or not the fragment, or the object struck by a fragment or a bullet, is similar to an alleged source, or dissimilar.

How do you define the similarity?

A In that particular field, I don't know, sir.

Q Yes.

MR. LE SAR: I suggest that we take a break. I think we should take a short break after -- I'm going to ask you one more question.

BY MR. LE SAR: (Resuming)

Q Can you recall what report you saw in connection with the investigation into President Kennedy's assassination? Specifically what types of examination were made? Could you

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just give me your recollection of the type of tests that were done?

A What do you mean, sir?

Q Well, I realize that this is 1964 we are talking about, but you were involved in that investigation and the reports came across your desk, and I am asking for your recollection --

A They were coming across Mr. Frazier's desk.

Q But you were transmitted -- some of them you saw, I gather?

A Yes, I saw some of them, of course.

Q Can you recall any of them that you saw?

A Not specifically.

Q Can you recall the general nature of any of them?

A No, sir; it's been too long.

Q All right.

Can you recall any reports that were prepared to be given to the Warren Commission?

A As a report, sir?

Q Yes.

A Or a piece of correspondence? What do you mean?

Every day I had -- I was putting on correspondence to the Warren Commission in regard to the evidence.

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Q Any statement as to the evidence?

A They were going out -- by that, sir, we were telling them -- well, we were telling them what was delivered and what was picked up.

I believe that every time evidence -- there was a letter, I would get it back -- what we picked we got back.

Q What you transmitted.

Do you recall any tests or examination that they requested to be performed?

A I don't recall any; no, sir.

MR. LE SAR: I think we should take a short break, say for 15 minutes, and then return.

MR. RYAN: How much more do you think you'll have with Mr. Cunningham?

MR. LE SAR: I think that we are pretty close to the end, of not there. I want to confer with Mr. Weisberg for a few minutes.

(Whereupon a short recess was taken.)

MR. LE SAR: All right, we can resume now.

BY MR. LE SAR: (Resuming)

Q Mr. Cunningham, I have just a couple of quick questions.

You testified that you did see correspondence

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exchanged with the Warren Commission with respect to FBI tests and reports?

A No, I didn't testify to that.

Q What did you testify to?

A I testified -- you asked me whether or not I had seen correspondence -- any correspondence between the Warren Commission and the FBI, and my answer was yes, sir, because every day I generated some correspondence.

Q Was there -- did you see any documents that reflected some step other than the final correspondence which was exchanged -- in other words, rough drafts of correspondence which would state facts, the facts contained in FBI examinations?

A No, sir, I don't recall that.

Q You don't recall that?

Do you remember -- do you recall the reports that you yourself made about your examinations?

A All the reports of examinations in the FBI Laboratory were made by Mr. Frazier, whether I initially conducted them, or he initially conducted them, or Mr. Killian initially conducted them.

Q You did not make any report to Mr. Frazier or anyone else?

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A No, sir. I made up notes on some of the evidence, especially the Tibbett evidence.

Q But there was nothing other than the lab work sheets and your own notes that were transmitted to Mr. Frazier or to some other official?

A They were never transmitted to anybody, sir; the report was made up from the notes, and then Mr. Frazier made an examination of that evidence, and then Mr. Killian made an examination of that evidence, and they agreed with my notes, and then my notes weren't changed -- if they agreed with my notes.

In other words, Mr. Frazier made notes on what he initially examined.

Q Yes.

Well, you conducted some examinations, and you made notes on those examinations at the time you conducted them?

A Only if it was an initial examination.

Q In other words, if someone else made the initial examination, you did not make notes?

A No, sir, I did not.

Q Is that a customary procedure at the FBI?

A The reexamination of evidence is not a customary procedure in the FBI.

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Q I see.

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So that when you were the person that initially examined a piece of evidence and you made notes on that examination, then how did you communicate those to other FBI Laboratory officials, including Mr. Frazier?

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A Mr. Frazier was present. The three of us were working right together.

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Q He was always present? There was nothing you did -- no examination you made without the others present?

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A Only one.

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Q What was that one?

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A I was the one who took the rifle over to the Naval Research Laboratory and had it rechronographed.

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Q For -- for -- to determine --

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A Muzzle velocity. Yes.

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Q Did you make a report on the muzzle velocity?

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A All I had were the notes. No report was ever made on it, no, sir. This was just examination we thought that should be done.

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Q Okay. Now, I want to make something of a little -- get something a little clearer in my mind about what can be determined from an examination -- a ballistics examination under comparison microscope.

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When you examined a bullet or remnant of a projectile under a microscope, can you determine from the markings on it that that specimen did not come from a rifle, from "a" particular rifle?

A I stated, sir, you would not make that examination on a comparison microscope; the only way you could say that that bullet was not fired from that weapon was if the general rifling characteristics were different.

Q Well, let's assume -- could you make a microscopic examination of markings -- and here I'm not talking about lands and grooves, but other markings left on a specimen as a result of its having struck something which -- or as a result of its having been scored or marked in some way -- in the firing, other than the lands and grooves?

A Are you talking about the individual characteristics marks imparted to the bullet by the barrel?

Q By the barrel; yes.

A Well, you could make -- I would not, and nobody in the FBI Laboratory examining it would make -- if the general rifling characteristics are the same, you would never say that the bullet could not have been fired from that weapon.

All you would say is: it's a no-conclusion case.
All you can say is that nothing was found to indicate that it

was fired from that weapon in its present condition, because you do not know what happened to that --

Q By "general rifling characteristics," you mean --

A That's the caliber, and the number of lands and grooves in the barrel, the number of -- widths of those lands and grooves, and the direction of the twist in the rifling.

Q Now, is it not possible that there would be some other marks that would enable you to determine the specimen had not been fired from that particular weapon -- rifle?

A I don't know what -- any marks?

Q Well, would there be some irregularity in the barrel, for example, that might impart something to the bullet as it was -- as it traversed the barrel, that would distinguish it?

A As having not been fired?

Q As having not been fired.

A I can only repeat that if the general rifling characteristics are the same, and you are dealing with the same caliber and the same type bullets, I would never "non-ident" on the basis of individual characteristic marks, because you do not know what happened subsequent to the first -- from the time the bullet was removed from a body until the time you got the weapon.

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Q How about -- is that also true for the absence of individual characteristics?

Suppose that you have a specimen rifle; you test-fire it and the bullets that you retrieve from those test-firings have certain individual characteristics, and can you, on the basis of that, exclude a bullet alleged to have come from that rifle?

Do you understand the question?

MR. RYAN: I just want to make the same relevancy objection. Go ahead.

THE WITNESS: I don't understand the question.

BY MR. LE SAR: (Resuming)

Q Well, you have bullet fired down a rifle barrel, and it leaves certain general -- what you referred to as general rifling characteristics. It also may leave individual characteristics.

Could you give me an example of an individual characteristic?

A A mark is a mark, sir.

Q Any mark on the bullet?

A Yes.

Q So you might get a rifle that, in addition to the general rifling characteristics, left an individual mark, and

every time you fired the bullet down that rifle, it would leave a mark, a mark very similar to that mark. But that mark was not -- it would not be considered a general rifling characteristic?

A No, it's an individual characteristic mark.

Q You then examined the bullet, which is, say, removed from the body of a victim, and it does not have that mark. Would you then determine -- would you then determine that it could be excluded as having been fired from that rifle?

A No, sir. I repeat: if the general rifling characteristics are the same, you can not non-ident. All you can do is give a "no-conclusion."

MR. LE SAR: All right; fine. Thank you.

I think that concludes the examination.

MR. RYAN: We would like to have signature on the deposition.

(Whereupon, at 12:02 PM, the taking of the instant deposition was concluded.)

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C E R T I F I C A T E

I certify that I have read the foregoing 43 pages deposition and that it is a true and correct record of the testimony given by me.

CORTLANDT CUNNINGHAM

Subscribed and sworn to before me this _____ day of _____, 1977.

Notary Public in and for the District of Columbia.

My Commission expires _____.

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CERTIFICATE OF REPORTER

I, William H. Dillingham, III, the reporter, do hereby certify that the testimony of said witness, pages 16 thru 58, was taken by me stenographically and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Reporter

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CERTIFICATE OF NOTARY PUBLIC

I, Janet L. Moore, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me by Stenomask, and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Janet L. Moore
Notary Public in and for
The District of Columbia

My commission expires August 31, 1981.

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