

POLICE

Testimony of - Lt. J. C. DAY, Dallas Police Dept., April 22, 1964, 4H249-78
Affidavit June 23, 1964, 7 H 402

Lt. Day's testimony followed that of Chief Curry and Capt. Fritz, both of whom he presumably heard.

He is ~~23 years old~~ 50 years old, a high school graduate, a 23-year employee of the Dallas police department.

On the day of the assassination, he was not in his fourth floor office, but was in the basement when "about a quarter of one ... a rumor swept through there that the President had been shot." I returned to my office to get on the radio and wait for the developments. Shortly before 10'clock I received a call from the police dispatcher to go to 411 Elm Street, Dallas," the address of the Depository. On arrival, he was directed to the sixth floor by inspector Sawyer, who he says was at the front door.

Note that here there was a lapse of from 15 to 25 minutes after the police knew of the alleged source of the shots before the expert in identification was even called in.

When he couldn't figure out how to run the elevator, he climbed to the sixth floor. (p.249)

His responsibility for 7 years had been "immediate supervision of the crime-scene search section. It is our responsibility to go to the scene of the crime, take photographs, check for fingerprints, collect any other evidence that might be available, and primarily we are to assist the investigators with certain technical parts of the investigation." He has a station wagon that is "equipped with fingerprint equipments, cameras, containers, various other articles that might be needed at the scene of the crime." He has had training in fingerprints from local, State and Federal agencies, and has been assigned to the bureau for 15 years. He took photographs "of the three hulls as they

2 - Day

were found before they were moved." He identifies exhibits 715 as one, with the actual photography by Detective R. L. Studebaker. Shown exhibit 716, he also identifies ~~xxxx~~ ^{and says} a third shell, not clearly visible, ⁱⁿ /715, is clearly visible here. (p.250)

He was "advised when I got there nothing had been moved." His testimony is that he was on the scene prior to the discovery of the rifle, although to this point the question has not been asked.

He doesn't believe any of the boxes were moved prior to his arrival, and shown exhibit 482, the one with the two Negroes in the fifth floor window, he said the boxes appeared, on his arrival, to be in the same position visible in exhibit 482.

He describes, "two stacks of them, (boxes) one behind the window sill that you see here." They were, he said, "2 feet 11 inches back from the wall." (p.251)

Asked to make further identification of the boxes visible in exhibit 482, he seems uncertain and asks what time "this was taken" and Belin explained within a minute of the assassination.

Then the following exchange, which shows that in Day's opinion, the boxes that were so large a part of the Commission's reconstruction of the shooting were moved prior to his arrival:

"Mr. Day: What I am getting at, this box doesn't jibe with my picture of the inside.

Mr. Belin. You are pointing now to the other box on Exhibit 482. You say that does not jibe with the chart that you have here that you brought with you of boxes that you had inside.
Let me ask you this: When did you prepare your chart of boxes inside?

~~Mr. Day: You are talking now about Exhibit 715 and Exhibit 716?~~

~~Mr. Belin: Yes, sir; don't jibe with that box there.~~

3 - Day

Mr. Day. This chart here was prepared on the 25th. However, pictures were made immediately after my arrival.

Mr. Belin. You are talking now about Exhibit 715 and Exhibit 716?

Mr. Day. Yes, sir; don't jibe with that box there.

Mr. Belin. What I am asking you then is this: Is it possible that the box that is shown on Exhibit 482 is not shown on Exhibit 715 and Exhibit 716? By that I mean not the box that you see a corner of, but I am talking about the other box that is clear to the west of the easternmost window.

Mr. Day. I just don't know. I can't explain that box there depicted from the outside as related to the pictures that I took inside.

Mr. Belin. In other words, what you are saying is that on the sixth floor window the westernmost box on Exhibit 482, you cannot then relate to any of the boxes shown on Exhibits 715 or 716?

Mr. Day. That is correct.

Mr. Belin. Do you wish to correct your testimony with regard to the X you placed on the fourth box on the stack in Exhibit 716?

Mr. Day. Yes; that is just not the same box. It is not the same box. This is the first time I have seen No. 482.

Mr. Belin. All right, We will substitute for 716 then a copy of the picture without the X mark on it." (p.252)

Note that moving, unless the box or boxes moved had just been bumped into, normally would have involved fingerprints. Note also that the exhibits, especially 480 and 481, and the enlargement, 482, were used for purposes of identification in the testimony of other witnesses, of whom I recall Brennan immediately offhand. Asked about these boxes visible in 481 and the enlargement thereof, 482, Day replies, "I still don't quite understand that one in relation to pictures here unless something was moved after this was taken before I got there." Belin

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4 - Day

makes clear its the westernmost box, or the one toward the center post in Exhibit 482 (17 H 200).

It should be noted that this picture was taken after the assassination.

Day did take fingerprints of ~~the~~ empty rifle shells, or as he calls them, "hulls", with negative results. I recall no ~~reference~~ reference to fingerprints in the report. However, there remains some confusion about the identification of the hulls, which may or may not be cleared up in Day's subsequent affidavit. Note that at the time Day says he turned the shells over, the container had on it only his name:

"Mr. Day. Were taken, I processed these three hulls for fingerprints, using a powder. My Sims picked them up by the ends and handed them to me. I processed each of the three; did not find fingerprints. As I had finished that, Captain Fritz sent word for me to come to the northwest part of the building, the rifle had been found, and he wanted photographs.

Mr. Belin. All right, You have mentioned these three hulls. Did you put any initials on those at all, any means of identification?

Mr. Day. At that time they were placed in an envelope and the envelope marked. The three hulls were not marked at that time. Mr. Sims took possession of them.

Mr. Belin. Well, did you at any time put any mark on the shells?

Mr. Day. Yes, sir.

Mr. Belin. All right. Let me first hand you what has been marked as 'Commission Exhibit' part of 'Commission Exhibit 543-544,' and ask you to state if you know what that is.

Mr. Day. This is the envelope the shells were placed in.

Mr. Belin. How many shells were placed in that envelope?

Mr. Day. Three.

5 - Day

Mr. Belin. It says here that, it is written on here, 'Two of the three spent hulls under window on sixth floor.'

Mr. Day. Yes, sir.

Mr. Belin. Did you put all three there?

Mr. Day. Three were in there when they were turned over to Detective Sims at that time. The only writing on it was, 'Lietu. J. C. Day.' Down here at the bottom." (p.253)

At 10 o'clock that night, there were only 2 shells in the container, at a time when "we were getting ready to release to the FBI/a ... a group of stuff." It was at this time, Day says, he put the additional marking on the container. He didn't put his identifying mark on the shells until 10 o'clock that night. At that time the shell had been opened. He admits "I didn't examine it too close at that time." The subject is changed without his being asked why he didn't put an identifying mark on the shell at the time of discovery. However, without being asked specifically, he said that "I told you in our conversation in Dallas that I marked these at the scene." After "~~never~~ reviewing my records ... I did not mark them at the scene ..." As of the day of his testimony, "I noticed that the third hull ... does not have my mark on it."

In other words, Day cannot prove these were the shells that were found. (p.254)

At this point Belin reveals that 2 weeks previously "I went into extended questions and answers as contrasted with just asking you ..." In short, a thorough rehearsal.

But Day thinks the unmarked hull also was found at the Depository Building. He used the word "think". His reason was the presence on it of othe initials "G. D." which he says are those of Capt. George Doughty,

6 - Day

under whom he worked. But Doughty was not at the scene. He said the shell was "retained by homicide division when the other two were originally sent in with the gun." Presumably the reference is to the rifle and the FBI. Belin points out "It appears to be flattened out here. Do you know or have you any independent recollection as to whether or not it was flattened out at the small end when you saw it?" Day's response was, "No, sir; I don't."

Day identifies all 3 shells as "of the same caliber". (p.255) He says he has no other testimony with regard to the cartridge cases.

Note there has been no testimony about the manufacture, for example. Manufacturer, it would seem, would be an extremely important part of the questioning about the rifle shells. It would also seem that, if the Commission didn't ask, the lieutenant would volunteer the information.

At this point McCloy refers to a "narrative", hand written by Day. Perhaps it will show up later, but there is no Day exhibit of any kind identified as the Day exhibit in the appropriate volume of the 26.

When he turned the envelope with the empty shells over to the detective Sims, he did not seal it. (p.256) It is obvious, then, that no one could testify with any certainty as to the shells. One may presume, but in the failure of the police to seal the envelope, there is no way of knowing whether or not the shells were exchanged, examined, altered, etc.

After turning the empty cartridges over to Detective Sims, Day says, "I met Captain Fritz. He wanted photographs of the rifle before it was moved ... He definitely told me it had not been moved, and the reason for the photographs he wanted it photographed before it was moved."

He is shown Exhibit 718 (17 H 501) and identifies it as follows:

7 - Day

"This is a photograph made by me of the rifle where it was found in the northwest portion of the sixth floor, 411 Elm Street, Dallas." While it may be safe to presume he took the picture at the exact moment he testified, it is conspicuous he does not say when he took the picture. In the table of contents, this photograph is described as follows: "Photograph of rifle hidden beneath boxes in northwest corner of sixth floor of the Texas School Book Depository Building." Note it does not say what rifle.

There then follows this exchange:

"Mr. Belin. Is Commission Exhibit 718 a print from the same negative as Commission Exhibit 514?

Mr. Day. The same negative?

Mr. Belin. Yes, sir.

Mr. Day. No, I don't think so. This is a copy of this picture.

Mr. Belin. You are saying 514 was made, I assume, as a copy of 718. By that you mean a negative, a second negative, was made of 718 from which 514 was taken?

Mr. Day. Yes, sir.

Mr. Belin. Otherwise it is the same?

Mr. Day. Yes, sir.

Mr. Belin. 718 appears to be a little clearer and sharper.

Mr. Day. You can tell from looking at the two pictures which is the copy.

Mr. Belin. Was any other picture of that rifle made in that position?

Mr. Day. Nos. 22 and 23 were both made.

Mr. Belin. Your pictures which you have marked No. ^{22 and}~~22~~ No. 23 were both made, one was made by you, is that Commission Exhibit 718 -

8- Day

Mr. Day. Yes, sir.

Mr. Belin. And the other was made by -

Mr. Day. Detective Studebaker.

Mr. Belin. Whose knee appears?

Mr. Day. Yes, sir; showing. Identical shots, we just made both to be sure that one of us made it, and it would be in focus.

Mr. Belin. For this reason I am introducing only 718, if that is satisfactory." (p.257)

This may all be strictly the McCoy. There may be a legitimate police need for duplicating a negative rather than making extra prints, although it does not immediately come to mind. Also, unless these pictures are cropped, and cropped in a strange way, they are not identical. 514 (17 H 224) shows more and possibly different background. It shows less foreground. Less of the righthand side shows, and the angles do not seem to be the same, that is, the camera seems to have been in not exactly the same position. Also, the lighting seems to be brighter in Exhibit 514. Yet Day says 514 is from a negative made from the negative of 718. Belin also points out "718 appears to be a little clearer and sharper." So he also believes they are not identical.

There is at this point no other reference to photographs "22 and 23". Note also that if Studebaker's knee appears, there should have been some testimony on the taking of fingerprints before anybody got up on top of all those boxes.

Day said he took his picture when "I was on top of a stack of to the boxes/south of where the gun was found." (p.257) He was kneeling, facing north and downward. He was asked to mark Exhibit 719, a photograph of the area, showing where he was kneeling and with an arrow showing where the rifle was found. There is a light line on the back

9 - Day

wall that might indicate an arrow, but I find no X for the spot in which he was kneeling. The only description elicited from him about the position of the rifle is "Was the rifle resting on the floor or not?" He replied it was.

Larry, I don't recall the exact description in the report, but I believe that the statement of Boone, Weitzman and Day bear no resemblance to the representation of where and how the rifle was found. The report makes it seem as though just casually in the course of going past someone had tossed the rifle behind some boxes.

Day then describes what followed:

"Mr. Day. Captain Fritz was present. After we got the photographs I asked him if he was ready for me to pick it up, and he said, yes. I picked the gun up by the wooden stock. I noted that the stock was too rough apparently to take fingerprints, so I picked it up, and Captain Fritz opened the bolt as I held the gun. A live round fell to the floor." (p.258) In this case, Day marked the live round at the scene. Asked what happened then, he replied, "

"Mr. Day. Captain Fritz took possession of it. I retained possession of the rifle.

Mr. Belin. Did you process this live round at all for prints?

Mr. Day. Yes, sir; I did. I did not find any prints.

Mr. McCloy. Before Captain Fritz ejected the live cartridge, did you dust the rifle for fingerprints?

Mr. Day. Not before.

Mr. Belin. Did you dust the bolt for fingerprints?

Mr. Day. Yes, sir.

Mr. Belin. Before the live round was ejected?

Mr. Day. No, no; the only part that Captain Fritz touched was the

10 - Day

round nob. I looked at it through a glass and deciddd there was not a print there, and it would be safe for hin to open the bolt.

Mr. Belin. You did this before it was ejected, before the live round was ejected?

Mr. Day. Yes, sir.

Mr. Belin. Who held the rifle while you looked at it with the glass?

Mr. Day. I held it.

Mr. Belin. In one hand?

Mr. Day. One hand, using the glass with the other." (pp.258-9)

What necessity existed for opening the bolt is not asked or indicated. Note, however, that Lt. Day also thought the nob on the bolt was a likely place for fingerprints, and the fact that he thought there were none there is a clear indication that the gun was wiped. Note also that examination by magnifying glass cannot be as good as the use of powder or other means, else he would have examined the other objects in the same manner.

Day found "traces of two prints visible." I told Captain Fritz ... it should go to the office where I would have better facilities for trying to work with the fingerprints."

Abput the hiding place:

"Mr. Belin. Do you have any estimate as to how wide or what the width was of that particular area in which the rifle was placed? In other words, the area between the boxes, how much space was there?

Mr. Day. It was just wide enough to accommodate that rifle and hold it in an upright position." (p.259)

Then Belin asks if the location where the rifle was found was "completely surrounded by boxes ..." without at first making himself

11 - Day

clear to Day, who ultimately replied: "There were four parallel lines of boxes. The second line from the north side was not completely filled. In other words, there was vacant places in this particular line." (p.259)

Then Day identifies the rifle that was found (p.260) by his name scratched on the stock.

At this point, for the first time in anything I have seen and entirely by accident, the Commission admits the sling attached from the side and not the bottom of the rifle. Intentionally or otherwise, especially in discussion of the picture, this has been a big secret; but Belia asks Day if he had marked the rifle "on the sling side of the stock ..." Day noted the serial number of the gun before it left his possession.

He found the fingerprints too rough to lift and photographed them instead. They were unclear. He described finding fingerprints on the barrel after removing the wood. He said, "A faint palmprint came off." He was about to use photography "to bring off or bring out a better print ..." when he was notified by the chief's office the rifle was going to be released to the FBI. He went no further. (p.260)

Note that in this sequence of testimony, there is neither questioning about nor volunteering information about whether or not it is normal for a bullet to be placed into the clip without a fingerprint being left upon it, whether or not the same is true of the clip. Nor, for that matter, is there any questioning about whether or not the almost total absence of prints from the weapon is normal. Of the prints he was able to bring out better in his laboratory, Day said that while he was not able to positively identify them, he thought they were "the right, middle and right ring finger" of Oswald. The rifle was released to the FBI 11:45 p.m. the night of the 22nd, and the lifted fingerprint,

12 - Day

Exhibit 637, not until Nov. 26 (p.261). After return by the FBI on the 24th, "on November 26 we received instructions to send back to the FBI everything that we had."

Briefly again, Belin returns to the location of the rifle at the time Day picked it up. Again he avoids asking how difficult a feat it had been to hide the rifle there, how much time it would have taken, whether or not fingerprints were sought or found, etc.

Day could not prove the fingerprints were Oswald's. All he could say about the palmprint was that "it appeared to be his right palm", but he hadn't finished his work, hence, could not make specific identification.

He says palmprints are "just as good for identification purposes" as fingerprints. (p.262)

Asked "whether or not you can positively identify the print shown on Commission Exhibit 637 as being from the right palm of Lee Harvey Oswald ... " (Exhibit 637), he replied, "Maybe I shouldn't absolutely make a positive statement without further checking that. ... I think it is, but I would have to do some more work on it."

Possibly very important admission: End of side 1

Then comes this I think quite important admission reference to which I have not seen elsewhere: "Mr. Belin. 'Were there newsmen on the sixth floor at the time the rifle was found, if you know?' Mr. Day. 'I think there was.'" Belin goes no farther. If there was free access to the sixth floor at the time the rifle was found (I do not recall the question having been asked with respect to the location of the empty shell) then it could hardly be said that the building was secured at that time. Others placed the time at 1:22, Day at 1:23.

13 - Day

Day volunteers a statement about Marina to the effect that Capt. Fritz came to his fourth floor office, in which Marina was but from which she did not want to move her because the place "was so jammed with news cameramen and newsmen" (p.263) and asked Day to bring the rifle down to Fritz's office. Day said he was able to do so although he hadn't finished his work with the prints, "without disturbing the prints". Marina had an interpreter but of her identification or lack of it Day said "But I didn't understand what she said."

After initially taking the rifle to his office from the Book Depository, with FBI Agent Odum, presumably in an FBI car, and locking the rifle up, Day returned to the depository and was there from about 3 until about 6 "directing the other officers as to what we needed in the way of ~~phot~~ photographs and some drawing, and so forth." Apparently during this period they checked the boxes around the window for prints.

Note, again no reference to any fingerprinting of the boxes in the area where the rifle was found.

Day then identified exhibit 722 (17 H 504) as a view from the easternmost window of the south side of the sixth floor of the Depository Building looking at Houston. It was taken, he said, about 3 or 3:15 p.m.. (p.264) When asked "At the time you took Exhibit 722 had any boxes been moved at all?" His reply was "Yes, sir." No further questions.

Asked to "state if you know what that is." with respect to Exhibit 724, Day replied "This is a view from the same window looking southwest down Elm Street. Actually this is the direction the shots were fired. When this picture was made---" At this point Belin

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14 - Day

interrupted to say he thought he had skipped a number. (p.264)
And at the top of the page, Belin says "When 722 was made, you---"
At this point Day interrupted to say "I did not know the direction
the shots had been fired."

Belin's next response begins "All right."

When Day said that at sometime after 3 p.m. he did not know
in what directions the shots had been fired, and he is in charge
of the identification work, and all the cops in Dallas had been
pouring over that place for two and a half hours, one can only
wonder what Day and the other cops were doing?

Asked again about "those boxes in the window" Day replied
"They had simply been moved in the processing for prints. They
weren't put back in any particular order." Belin makes this clear
by asking "So 724 does not represent, so far as the boxes are con-
cerned, the crime scene when you first came to the sixth floor;
is that correct?" and Day says it is correct.

Day identified Exhibit 723 as "the ~~shot~~ southeast corner of
the sixth floor of the Texas School Book Depository Building.",
a picture taken by Detective Studebaker, under his direction and
supervision showing also "two metal boxes." Day identified these
as their fingerprint equipment "that inadvertently got into the
picture with a wide-angle lens." Day encircled his fingerprint
equipment, but ~~once~~ once again, with a magnifying glass, I cannot
find the circle. He also gave the wrong side of the picture to
begin with. This all may be of no consequence, but here we have
the identification expert who on more than one occasion mis-
identifies objects in the picture and, if in fact he made marks
on the picture, makes them so that they cannot be made out (unless

15 - Day

the Commission substituted a different picture).

This photograph is actually taken from the North of the building looking to the South presumably almost directly at the pile of boxes stacked around the window from which the Commission says the fatal shots were fired.

Then with the introduction of Exhibit 725 (17 H 505) and Day's identification of it as "a view of the same window as 723 except it shows the full length of the aisle", Day is asked "Was 725 taken before the boxes were moved, if you know?" to which he replied "To the best of my knowledge, nothing had been moved."

It is of course possible that Belin and Day were not ~~talking~~ talking about the same thing. But Day had already testified of the only boxes involved in any testimony about the moving of boxes had been moved. It is of course possible Day could have misunderstood the question and had interpreted it to mean boxes perhaps in the foreground of the picture. But on the question of the boxes talked about, on adjoining pages he has given two directly contradictory statements about the same boxes.

When Exhibit 726 was introduced he identifies it as "the next aisle over, or the next aisle west of the aisle shown in 723." He says this picture was taken on the 25th and that boxes had been moved between the time of the taking of 723 and 725. (p.265)

Shown Exhibit 727 (17 H 506) he says it is a view of the South wall of the depository looking East on the sixth floor and when questioned says it also was taken on the 25th.

~~When~~ Then he is shown Exhibit 728 (17 H 507) and he describes it as "the third aisle from the east side of the building, sixth floor... taken on November 22". The pop bottle Belin saw in the picture

16 - Day

Day said he noticed when he got there. This picture shows a two-wheel cart and Day said generally "To the best of my knowledge nothing had been moved there." He said there was a brown paper sack which does not show in the picture and he doesn't remember where it had been located. There is no question asked about why the sack had been moved, if it had been moved, or how the sack which he had described as "like a lunch sack" escapes his memory while the pop bottle doesn't.

There follows this exchange which I regard as important:

"MR. DAY. 'Yes, sir.'

MR. BELIN. 'You mentioned a sack that would have been at that third aisle. Was any kind of a sack found on the sixth floor, if you know?'

MR. DAY. 'Yes, sir.'

MR. BELIN. 'What other kind of a sack was found?'

MR. DAY. 'A homemade sack, brown paper with a 3-inch tape found right in the corner, the southeast corner of the building near where the slugs were found.'

MR. McCLOY. 'Near where the hulls were found?'

MR. DAY. 'Near where the hulls. What did I say?'

MR. McCLOY. 'Slugs.'

MR. DAY. 'Hulls.'

MR. BELIN. 'I'm going to hand you what has been marked as Commission Exhibit 729 and ask you to state if you know what this is.'

MR. DAY. '729 is a photograph of the inside wall, south and east walls, right at the corner of the building at the sixth floor of the Texas Book Depository.'

MR. BELIN. 'I notice some pipes on the right portion of this

17 - Day

picture as you face it, and I also notice a box.'

'I will first ask you to state if this picture was taken before or after anything was removed from the area.'

MR. DAY. 'The sack had been removed.'

MR. BELIN. 'Had any change been made of the position of that box that is set off by itself in the center of the picture?'

MR. DAY. 'I don't think the box---well, it is possible the box ~~has~~ had been moved. This is an approximate position of it. The box had been dusted for powder and---dusted for prints. The black powder is visible on it. It is possible the box may have been moved a tiny bit.'

MR. BELIN. 'Where was the sack found with relation to the pipes and that box?'

MR. DAY. 'Between the sack and the south wall, which would be the wall at the top of the picture as shown here.'

MR. BELIN. 'You mean between---you said the sack.'

MR. DAY. 'I mean the pipe. The sack was between the pipe and the wall at the top of the picture.'

MR. BELIN. 'That wall at the top of the picture would be the east wall, would it not?'

MR. DAY. 'Yes, sir; laying parallel to the south wall.'

MR. BELIN. 'Did the sack--was it folded over in any way or just lying flat, if you remember?'

MR. DAY. 'It was folded over with the fold next to the pipe, to the best of my knowledge.'

MR. BELIN. 'I will now hand you what has been marked as Commission Exhibit 626 and ask you to state if you know what this is, and also, appears to be marked as Commission Exhibit 142.'

18 - Day

MR. DAY. 'This is the sack found on the sixth floor in the southeast corner of the building on November 22, 1963.'

MR. BELIN. 'Do you have any identification on that to so indicate?'

MR. DAY. 'It has my name on it, and it also has other writing that I put on there for the information of the FBI.'

MR. BELIN. 'Could you read what you wrote on there?'

MR. DAY. ' "Found next to the sixth floor window gun fired from. May have been used to carry gun. Lieutenant J. C. Day." '

MR. BELIN. 'When did you write that?'

MR. DAY. 'I wrote that at the time the sack was found before it left our possession.'

MR. BELIN. 'All right, anything else that you wrote on there?'

MR. DAY. When the sack was released on November 22 to the FBI about 11:45 p.m., I put further information to the FBI reading as follows: "FBI: Has been dusted with metallic magnetic powder on outside only. Inside has not been processed. Lieut. J. C. Day." '

MR. BELIN. 'Did you find anything, any print of any kind, in connection with the processing of this?'

MR. DAY. 'No legible prints were found with the powder, no.'

MR. BELIN. 'Do you know whether any legible prints were found by any other means or ϕ any other place?'

Mr. DAY. 'There is a legible print on it now. They were on there when it was returned to me from the FBI on November 24.' (p.266-7)

Note that Day does not say that he personally found the sack. Note he does not say when it was found. Note he is not asked nor does he say why it does not appear in the picture. He is not asked when the picture was taken but from his previous testimony - the pictures

19 - Day

were taken beginning about 3 or 3:15 or before Capt. Fritz called him over at approximately 1:22. If the pictures were taken by someone else they could have been taken in his absence. Even when he talks about the time the sack was found he does not say he found the sack or when it was found. This sack should have appeared in photographs that were taken at the time and before anything was moved.

Also note that with respect to the prints that the FBI was able to develop with silver nitrate, he is not asked why he didn't use it or why he didn't use silver nitrate on the rifle, or whether had the rifle not been so handled or mishandled by ^{the} police ~~still~~ silver nitrate might not also have turned up fingerprints on it.

Day then says in response to a question that presumes that Day had found the bag, something not in his testimony "I released it to the FBI agent." (P.267)

Day is just as vague as most of the other police even where it is not especially convenient to be vague. They seem as a matter of policy to avoid saying anything they can possibly avoid saying. He does not say what agent and he is not asked. Belin continues to skirt around ^{it} by asking if Day took the bag to the station with him to which he replied negatively saying "I left it with the men when I left." He expected ~~Dept~~ Detective ^{Hicks and} Studebaker "to bring this in with them when they brought other equipment in." So by inference the bag was found immediately, whether or not by Day, and either was not photographed or does not show in the photographs. There certainly should be some questioning about this. ^{They} ~~There~~ are not and the subject is changed to samples of the wrapping paper and tape used at the book depository being collected, on the 22nd. Then several photographs are introduced which Day identifies as the wrapping area but he says

20 - Day

they were not taken ~~of~~ until April 13, 1964 after Day had spoken to Belin. "I didn't have a previous picture of this wrapping bench." Day thinks the location is approximately the same as it was on November 22. He identifies the roll of tape from which they took a sample as "the north roll" on the "east side of the bench" but he admits there ~~the~~ were other tape dispensers "but I didn't notice them at the time".

Recall, Larry, this is the testimony of the identification expert, the man who went down to the wrapping room to get samples of the materials available in the depository from which the bag could have been made. This is the care and these are the powers of observation for this is the ~~the~~ integrity of the expert. (p.268)

Asked if the machine had a lever ~~of~~ he replied "I don't remember. I don't think we used the lever."

He is then shown exhibit 733 (17 H 509) a view he describes as the sixth floor corner. Question, taken from a little bit to the west and showing some boxes piled diagonally adjacent to the open window. I may be wrong but the window seems to have been opened further. He says "The boxes in front of the window, to the best of our knowledge, in the position they were in when we arrived there on November 22, 1963."

This exhibit and 734 are described in the Table of Contents as "Photographs of the southeast corner of the sixth floor of the Texas School Book Depository Building showing ~~the~~ position of boxes near the window as reconstructed ^{on} November 25, 1963."

Before going into the rest of this point I want to ask the question why it had to be reconstructed on the subsequent date when the photographer was there so shortly after the assassination

20 - Day

on the 22nd?

But this description and these exhibits should be compared with several others earlier in this volume. Exhibit 511 on p.222 described as "Photograph of the area near the assassination window, depicting (my emphasis) location of two of the rifle cartridge cases, when ~~found~~^{discovered.}" This photograph appears to have been part of the FBI report from the lettering at the bottom of the picture. There was no need to have a picture "depicting" when real pictures of the real situation were taken. If this is a picture of the real situation, then although the description makes no reference to it, the position of a box on the window sill in the background slightly to the left of center bears no resemblance to the location of this box in Exhibit 733. The box in 511 is up against the far lefthand side or east side of the window sill.

Exhibit 512 which also appears to be part of the FBI report from the ~~by~~ lettering, also showing the location of cartridge cases, also shows the manner in which these boxes are stacked. The angle of these boxes is clearly different from the angle in Exhibit 733. The identification of 512 ~~is applied~~ in the Table of Contents is almost identical with that of 511.

Also Exhibit 510, p.221, which shows a different relationship of the boxes to the window and to each other. They are at a different angle. In the Table of Contents it is similarly described, including the repeated use of the ~~the~~ word "depicting" and Exhibit 504, described in the Table of Contents as "Photograph of 'Rolling Readers' carton near the southeast corner window of the sixth floor of the Texas School Book Depository Building," on p.216, shows still a different and still a contradictory version of the location

22 - Day

of the same boxes. In this case the top box is almost parallel with the east wall, with its bottom pointing to the west, it is at an angle with the box below it apparently the same as the angle of a diagonal thrown through the top box, from the lower righthand corner to its upper lefthand corner, as it is looked on from above, and the box upon which it is likewise is at an angle approximately the same to the box upon which it in turn is resting. 504 and 509 are either identically the same except for a mark put upon 509, or they are extremely close to the same. They are not at all like 733 in their arrangement, nor are they like 510 and 512, the box shown on the window sill in 511 is not on the window sill at all in 504 or 509 and in 512 the highest box is not the one on the window sill for, as in the case of 504 and 509, overlapping it. The position of the tape used to seal boxes are not the same, nor is the same side of the boxes up in the various pictures. Nor is Exhibit 733 the same as Exhibit 1301 appearing in the report on p. 138 and labeled to show where various prints of various kind were found on various boxes. It is a misrepresentation of the location of the boxes quite close to 1301 and may, although the pictures are taken from different elevations and different angles, be identical so far as the location of these three boxes is concerned although there does seem to be some difference. 1301 has the type of lettering at the bottom of the picture that I believe indicates that it was part of the original FBI report.

1301 is described in Volume 22 as "Photograph of southeast corner of sixth floor of Texas School Book Depository Building, showing arrangement of cartons shortly after shots were fired."

Going back to Day's complicity in this fantasy he has said

23 - Day

only that the boxes were "to the best of our knowledge, in the position they were in when we arrived there on November 22, 1963."

This is not enough by any means. Day is a policeman represented as a trained man skilled in his craft who knows his responsibilities and ~~there~~ there is no excuse for him not having a picture showing exactly what this situation was.

But if Day is telling the truth about the position of these boxes, almost everybody else is lying, and lying in this context is perjury.

These are the boxes upon which the Commission says the assassin ~~allegedly~~ allegedly rested his weapon.

The kindest thing that can be said about all of this is that the Commission rivals its witnesses' inability to distinguish between fact and fiction.

This is the reconstruction of the major crime at least of the century. In such a context, it is not possible to label ~~these~~ liberties taken with facts as mere sloppiness. Even sloppiness is without an excuse in such an investigation and by such a Commission. It is almost as ~~if~~ though the Commission undertook to misrepresent the location and relationship of these boxes to themselves and other things in the window in as many different ways as possible.

(Note to Larry - I wonder if it wouldn't be worthwhile to consider this as one of the photographic exhibits---a collection of all these different and contradictory representations of the same situation, or perhaps even just a couple of them).

These boxes clearly were moved and moved and moved. It is clear they were moved either by the police or in the absence of the

24 - Day

police. If the Commission's lawyers, whose function it is to be sensitive/^{to} and to detect all such things, ever ~~noticed~~^{noticed} this, they are profoundly indifferent. Nor any witness who I have yet seen called any such error to the Commission's attention.

Not that Mr. Belin doesn't want to appear as a real Sherlock Holmes. He points out another box, this one in Exhibit 729 on p.507, and asks about the place on it that appears to be ~~top~~ torn and then elicits from Day this explanation ~~After~~

"MR. DAY. 'After I returned to the sixth floor of the Texas School Book Depository after delivering the gun to my office, we processed the boxes in that area. This particular box was processed and a palmprint, a legible palmprint, developed on the northwest corner of the box, on the top of the box as it was sitting on the floor.'

MR. BELIN. 'Then what did you do when you developed this print?'

MR. DAY. I placed a ~~piece~~ piece of transparent tape, ordinary Scotch tape, which we use for fingerprint work, over the developed palmprint.'

MR. BELIN. 'And then what did you do?'

MR. DAY. 'I tore the cardboard from the box that contained the palmprint.'

MR. BELIN. 'Then what did you do?'

MR. DAY. 'The box was left in its position, but the palmprint was taken by me to the identification bureau.'" (p.269)

Here a clear admission by Day that "we" didn't dust the boxes for fingerprints until after his return from his office a time he earlier placed as 3 to 3:15 p.m.. He has earlier admitted that newsmen---and we have already learned that to the police anybody who said he was was a newsman---had been in the

25. - Day

area. We have no way of knowing who had or had not access to the area. But on the basis of Day's testimony alone we have to presume that anybody who wanted to get there could. This is the same area talked about ~~of~~ above, the area of the open window. Notice that Day has said the box was left in position. It is clear he is trying to say whether he says it or not that the box had been unmoved. But here again even this box, on which by the Commission's reconstruction Oswald was sitting while he was waiting for the President to get shot, is in contradiction to other similar exhibits. Exhibit 1312, 22 H 485, shows ~~the~~^a reenactment with a man sitting near the window on a different box or at least what appears to be a much smaller box, with his feet and the lower extremities of his body in the position occupied by the boxes used as a gun rest. Exhibits 729 and 1302 (22 H 479) are very similar and ~~raise the~~^{may be} identical. Each of these pictures has a lettering at the bottom that I believe indicated they come from the FBI report. Each shows the same general area, and each shows the box that is here the subject of ~~of~~ Lieutenant Day's testimony, the box that "was left in it's position." Somebody besides Day then move it. Comparing pictures, Exhibits 1301 and 1302, it is clear that in 1302 the box is closer to the east wall of the building. The pipes in this case constitute a point of comparison. The box in 1302 comes westward to a point approximately the middle of the two pipes. The box in 1301 seems clearly to come farther to the west.

These same two exhibits, 1301 and 1302, appear on facing pages (p. 138-139) of the report on a slightly larger scale. They are used to show the location of the wrapping paper bag and of various palmprints.

26 - Day

I point this out to show the importance of the integrity of the evidence as presented to the Commission. Not only is this obviously of basic importance, but it becomes even more important when used by the Commission as part of the structure of this report.

Testifying about the same box at the top of p. 267 Day did admit "well, it is possible the box had been moved. This is an approximate position of it."

Larry, there is something out of context here but its important. I have been looking for it and didn't find it ~~Ø~~ 'til just now, by accident. On p. 267 is Day's description that I quoted above of the location of the sack when found and its condition. I repeat it here. Belin has asked of the sack "was it ~~folded~~ folded over in any way or just lying flat, if you remember?" Day's response "It was folded over with the fold next to the pipe, to the best of my knowledge."

Nor referring again to the report version of ~~13~~ Exhibit 1302 we find that the sack, instead of being folded over and between the pipe and the wall, is clearly illustrated with dotted lines as being extended flat on the floor, extending from the area of the pipes, perhaps two or three inches to the east of them pipes, to very close to the east wall. It is at no point represented as close to the south wall. And it is dotted in perfectly flat.

Here again we have absolutely basic testimony. If this sack was folded there had to be fingerprints. Not just one but fingerprints plural.

(There have been many digressions, but the material quoted from Day in Volume IV at this point has reached the bottom of p. 269)

27 - Day

And I digress again, Larry. Here by either version we have the picture of an unhurried man. He either carefully and neatly folded the improvised sack up and put it between the pipe and the wall or laid it out carefully and flat. The many pictures of this sack appearing throughout the report in the ~~V~~ various volumes bear out Lieutenant Day's version. The creases in the sack in the narrow dimension are clear and sharp. But the contradiction here between the Commission's representation in it's report and the testimony of the man represented as having found the sack is sharp and clear.

Here there is references to other exhibits having to do with this box appearing in this volume, especially Exhibit ~~488~~⁶⁴⁹ (17 H 297). Day said he put his writing on this exhibit on November 22, 1963. He also identifies the signature of R. L. Studebaker, his detective, and the legend "Southwest corner box 18 inches from wall." Belin calls to his attention "the name 'W. H. Shelley' written on there. Do you know when this was put on?" Instead of answering Day said he believed Shelley was the assistant manager of the depository. Belin rephrased the question and asked "Did he put it on at the time you found the box?" Day replied "No, sir." Belin then asked directly "Do you know when that was placed there?" In a confused answer Day finally says it was on November 25th.

Need I say that Belin doesn't question or ask about the complete pointlessness of a measurement taken under these circumstances and three days after the assassination?

But Day says he put his handwriting on there on the 22nd, the day of the assassination. His handwriting reads "From top of box Oswald apparently sat on to fire gun." Studebaker was more reserved. He said "From top of box subject sat on." Day's lack of

28 - Day

precision is also noteworthy for two other reasons; first, the Commission did not say that Oswald sat on the box (and how did they know on the 22nd that Oswald sat on a box?) when he fired the gun. They said he sat on the box while waiting to shoot the President. Also, the box as described by Day in the several preceding pages was not in a position for Oswald or anyone else to have sat on it while firing the gun.

Mr. McCloy, at the end of this discussion of where the piece of the box came from and where the box was, ^{introduces} ~~produces~~ a new kind of direction and a new way of describing it in these words "It depends on where that box was. It is kind of a removable direction, isn't it?" At this point the subject changed, ^{with} /No further questioning or explanation from McCloy, Belin or anyone else.

Belin asks about Exhibits 653 and 654 (17 H 300) and then switches to 641 (17 H 292). Asking Day "to state if you know what these are." Day describes 641 as "a box found in front of the window. ... Apparently the gun had rested across this. This is the top box now of two that were sitting in the window."

Of course there were not two boxes "sitting in the window". Belin asks if it appears in Exhibit 715, one of the many versions of this box in the window, and far from the clearest, but like all the others it does not show more than one in the window.

It is possible that what they meant was that the box in question was the top one of the two not in the ~~in~~ window. In that event it could not have shown in Exhibit 715. But had Belin referred to any of the number of exhibits I referred to earlier he could have found one in which all three boxes were and have arrived at the specific identification of this particular box in relationship to

29 - Day

the others, if not with respect to its location. Belin then clarifies it by telling Day "In other words, what you are saying is that the box, 641, is not the box which is shown in the window on 715?" To which Day agrees. There have been several other cases where Day either misspoke himself or erred, with or without intent, such as this one. But ~~where~~^{where} uncorrected and undetected they build up a false record.

Then Day identifies Exhibit 653 as the box that was in the window. Day says he put a mark indicating the direction of north on this box but he is not asked nor does he say when. He merely says it was the way he found the box, before he moved it. We have no way of knowing whether or not it was moved before Day got there. There is no reason to presume that it was not and there is ~~every~~^{every} reason to presume that it was, because Mooney testified that he leaned out this window and called to the police below when he found the empty shells at that location. (p.270) He found no prints on ~~the~~ this box and ~~those~~ knows of anyone else who found any. It ordinarily this is the box which the Commission has concluded was the top box of the pile before it was knocked over and whoever lifted it had to hold it securely since it contained ~~reading~~ weighty contents, ~~ten~~ school books. Note the following ~~excerpt~~ excerpt and what it indicates:

"MR. BELIN. 'If you put your initials on or your name on on November 25, how do you know this was the same box that was there when you first came?'"

MR. DAY. 'There was a scar on the top of or the top side of this box that was sitting there. I noticed that at the time. I thought the recoil of the gun had caused that. I later decided that

31 - Day

presumption is justified in an inquiry of this sort especially.
(p. 271)

On being asked about Exhibit 733 Day concedes that to the best of his knowledge it is a "reconstructed photo". Asked by McCloy "Is there any indication on any of these boxes that could tell you where the rifle rested?" he concedes there is not. He went further and said "I couldn't find a thing there."

With permission of Commissioner McCoy Belin decides to return the original of the palmprint of Oswald, Exhibit 735, made by the police, to the police department and^{to} make a Xerox copy for the Commission. Belin then tells Day "As I understand it, these are the last original copies you have of palmprints of Lee Harvey Oswald." But Day knows that other palmprints, made by the police but not in his presence, "were sent to the FBI." He says that Exhibits 628 and 629 "are still not the originals. They had my name on it when I saw them sign it. But I did compare these with ones I saw made personally of Oswald, and I can say this is his left hand, his left palm, and his right palm." (p.272)

Then Belin turns to Exhibit ~~733 735~~⁵⁷³ (17 H 258) and^{Day} identifies it as a slug removed ~~from~~ by a detective under his command from the wall of the home of former General Edwin Walker. He does not know whether any ballistic identification was made of this slug with regard to any rifle and said he "released that to the FBI agent B. D. Odum on December 2, 1963, at 4:10 p.m.". It has not been in his possession since then. And when the question is repeated in^a slightly different form he said that prior to the time this slug was given to the FBI^{"It} had not been compared with any rifle, to the best of my knowledge." Then instead of the original Belin

32 - Day

introduces into the record the Xerox copies of Oswald's palmprints, Exhibits 735 and 736.

Then Belin introduces still another picture of a rifle, number Exhibit 737, and Day identifies it as "This is the rifle found on the sixth floor of the Texas School Book Depository November 22, 1963." He says it is a picture that he himself took at 9 or 9:30 p.m., November 22nd. As I have already pointed out with respect to the pictures of the rifle, this one shows only one shade, with everything having the same shade, and not at a 90° angle to the rifle, so that there is a distorted representation of the rifle. It does not show this conclusively, but it does seem to show the attachment of the sling to the left side of the rifle. It appears on 17 H 511. On the following page is Exhibit 738 which Day identifies as a photograph he took "of most of the evidence that was returned to the FBI the second time on November 26, 1963." (p.273)

Introduced and identified by Day as "a view of the Texas School Book Depository made from about a half block south looking north on Houston Street on November 22, 1963." He does not say who made it or what time of the day it was. From the ~~sharp~~ shadows it was toward the end of the day and after things had quieted down and the area had been fairly well cleared out. The picture shows virtually no traffic and the open and closed windows in the depository building were as they were earlier in the day. They then return to Exhibit 738 from which Day identifies certain items: a shirt (Exhibit 150), a revolver which Day did not identify with his mark, a blanket (Exhibit 140), "A live round." which he identifies as the one Capt. Fritz ejected from the rifle, two spent cartridge shells and the

33 - Day

envelope in which they were, the piece of cardboard with the palm-print (torn off the box which was marked Exhibit 648), "one .38-caliber slug, and a button off a policeman's uniform" (when asked of the slug "do you know where that came from?" his reply was "I didn't personally collect that. It was in the stuff that was given to vince Drain." What does a single .38-caliber slug and a button off a policeman's uniform have to do with this? One can presume that they are connected with Tippett but if they are there should be more than one slug for example. And why does Belin drop the questioning at this point with no further reference of any kind?), the homemade paper bag. (p.274)

He has mentioned a plastic box identified with the "Dallas County Hospital District" and in looking over his inventory subsequently describes it as "a bullet fragment taken from the body of John Connally at Parkland General Hospital in Dallas." Only one fragment from the Governor?

Further describing the objects supposedly represented in Exhibit 738 he says "There was one other article released with this, an envelope containing the three negatives I made of the prints on the side of the magazine housing of that 6.5 rifle, which I did not definitely identify as belonging to Oswald."

He then identifies Exhibit 740 if it can truly and honestly be said they identified anything, as "a photograph looking northeast toward the Texas School Book Depository. This shows Elm Street at the point at which the President was shot." It ~~is~~ sure as Hell shows the point at which the President was shot - it shows all of Elm Street ! It was taken "sometime after 3 o'clock" on November 22, 1963. He is not asked by whom. He does not say he took it.

34 - Day

(And he previously testified that he was at the book depository beginning about 3 or 3:15). There are objects in the photograph that I believe should be identified, 1) objects that are resting upon the grass, and the other a ~~pipe~~ sewer and manhole cover which I believe figures in other testimony having to do with a bullet having struck ~~it~~ in the area. There is no reference to these objects. This is the manner of the questioning and the identification. It does not ^{constitute} ~~constitute~~ identification. Also this picture shows no traffic, no people, and only one or perhaps more cars that are in the background and may be police vehicles. It and Exhibit 739 are the only ones I have yet seen showing the front of the depository after the assassination and these pictures appear carefully selected to show nothing that would compromise the position of the police or the Commission. By this I mean I have seen no pictures showing people in the area of the front door, people who could have gone in or gone out, police officials who were there, what they were or were not doing, etc.

Exhibits 741-3, 17 H 513-4, are described as photographs of the area of the second floor lunchroom. The first exhibit presents the view from the inside out. Although Day is not in question or testimony ~~he~~ ^{that} identified these pictures is used to identify and describe them. Belin with respect to 741 says "There appear to be two doors shown..." Day's response is simply "This is outside of the door that is closed with the window in it."

This is an important point to which I will return in a moment. Exhibit 742 is described as "taken from a position of the stairway leading to the first floor" and 743 as "a photograph of the stairway leading to the third floor from the second..." Nothing further is

35 - Day

said of these photographs at this point, but they amount to photographic deceit. They do not make clear that there are two doors leading to the lunchroom even though Belin referred to seeing two doors in the picture. The outside door runs diagonally across the opposite corner of an area almost square from the stairs. The entire area including the stairs is approximately 35 feet in each direction. But the area is not square. The entrance to the lunchroom is opposite and facing the stairs but at an angle of about 45° to the adjacent walls. The entrance to the lunchroom by the diagonal door is about 10 feet farther from the wall than the one by the stairs from the first floor. The picture does point out there is an additional doorway inside. The outside door is solid except for a small window. The inside door seems to be solid. But in any event the inside doorway limits the vision of someone looking in from the outside. By taking the photograph of the door from the indefinitely described points and using it in this context, the Commission makes it appear as though it would have been necessary for anyone going from the first floor past the second to the third to go right past the entrance to the lunchroom. This is the opposite of what is true. Exhibit 743 does not show the same area, does not in fact show the stairway leading to the third floor, and does not show anything identifiable as the entrance to the lunchroom. Also, Exhibit 741, the view out of the lunchroom clearly does not show any stairway. I do not know how or where the exhibits are used. They are not used in Day's testimony. The Commission's reconstruction (Report 151) is that Truly was dashing up the stairs with the officer behind him. They had found on the first floor that ^{neither} the elevator

36 - Day

was there and the automatic one wouldn't respond (I may be wrong but I believe this is in contradiction to the testimonies of the Negroes who were on the fifth floor). Truly apparently ran to the top of the flight from the first floor to the second floor and was on his way from the second floor to the third floor when the officer, behind him, according to the report "caught a glimpse of this man, just, you know, a sudden glimpse... walking in the vestibule toward the lunchroom". He is not represented as having seen the door closing, for it closes by an automatic mechanism, he saw the man through the very small window of the vestibule door. If Truly did it is not referred to at this point in the report. Unless the closing mechanism on the door slammed it, this description/^{would} seems improbable.

Regardless of the above, the photographs introduced at this point in Day's testimony deceptively misrepresent the physical situation of the lunchroom and the vestibule door. Day is asked "Is there any other evidence pertaining to fingerprints or palm-prints that you have not discussed?" This of course meant any and all, and certainly related to boxes in the area where the gun was found. Day said "I can't think of any at the present time. I believe that pretty well covers my participation in this investigation."

Hence unless Day has his fingers crossed with the phrase "at the present time" or is not testifying truthfully, he did not examine the area in which the gun was found for fingerprints. Nor can he think of any evidence "pertaining to the rifle" that he has not discussed or could think of at that time. Then he is asked a general question "Is there any other thing that you did pertaining to the investigation of the assassination of the President that

37 - Day

you can think of at this time?" He thinks of the paraffin tests. (p. 275) He says the paraffin test was negative. It was done only to keep someone from saying later "why didn't you do it?" It was their first experience with paraffin tests. The nitrate test on the hand was positive. There is no discussion of this, no effort to show whether Day or anybody else believed a positive nitrate test of the hand had any significance. There is the elucidation of Day's opinion that the negative rifle nitrate test on the face was without significance. Belin then switches back to the bag and the small area on the southeast corner of the sixth floor in which it was found (p. 276) and questions Day about the size of this area.

This area according to Day was two feet seven inches between the east wall and the easternmost pipe and $19\frac{1}{2}$ inches from the box to the south wall. Of ~~our~~ course we don't know whether the box was moved. He accounts for the discrepancy between this and the earlier quoted figure of 18 inches by giving an idea of the scientific precision with which he functions: "If you will note there are six boards. I thought they were 3 inches wide. On doublechecking I found they were $3\frac{1}{2}$ inches wide which would make a $1\frac{1}{2}$ -inch difference in six boards." Actually there were more than six boards because the floor is not laid parallel to the south wall and the boards can clearly be seen at a diagonal cut.

Referring next to the picture 734 described as "reconstruction of the boxes in the window" Day says "It is an approximate location. I may be a little too far from the west to what they actually were when we got there on November 22."

Actually the opposite is true as comparison with other exhibits

38 - Day

alleged by the Commission to show the same thing is true/ will clearly reveal. But there is one about which there can be no doubt, that is Dillard's Exhibit C (R66) which shows the position of the top box and shows that Day's reconstruction was too far toward the west.

He could think of nothing else that would help the Commission on either murder.

He identifies Exhibit 744 (17 H 515) as a photograph of Officer M. N. McDonald with the scratch on his face that he reportedly sustained in capturing Oswald, taken by Detective Craft, under Day's "supervision".

Exhibit 745 (17 H 516) is a photograph of Don Ray Ables, Dallas ~~Police~~ Police Department ^{jail} ~~clerk~~ clerk, who was placed in one of the line-ups but Day doesn't know which one. (p. 277) In thanking him Belin refers to his "splendid cooperation".

In a final reference to fingerprints on the boxes, note there is no reference to the imprint of his buttocks and he is supposed to have sat there.

Affidavits (7 H 401-2)

End of Side 2

39 - Day

The May 7, 1964, affidavit refers to his testimony that he didn't remember who returned the two cartridges the night of Nov. 22, 1963. He says that, "Since returning to Dallas, Detective C. N. Dhority has called my attention to the fact he brought the three hulls in an envelope to me and asked me to check them again for fingerprints, even though I had checked them when they were picked up on the sixth floor of the Texas School Book Depository." The shells were returned about 10 p.m. and it was then that Day scratched his identifying mark upon them.

The second affidavit is dated June 23, 1964, and is intended to "clear up confusion regarding the three spent 6.5 hulls ... " Day and Detective Sims picked them up and placed them in an envelope in the presence of Detective Studebaker. He says, "The envelope was marked and dated by Sims and Day." He makes a mistake in the time of the day at which he turned over these "hulls" to the FBI, saying it was before the assassination. He also found that on June 8, 1964, when the hulls "were back in Dallas and were examined by Captain G. M. Doughty and myself at the local FBI office," he found that with a magnifying glass and under good light that his name was also on the third hull.

Although in the affidavit of June 7 he had specifically stated that he scratched his name on the hulls about 10 p.m. on Nov. 22, he in this affidavit says, "I do not remember whether it was at the window when picked up or 10 p.m. November 22, 1963, when they were returned to me by / ^{Dhority} ... it had to be one or the other, because this is the only time I had all three hulls in my possession."

He began this affidavit by saying he made it "to clear up confusion".

Day has testified that he took the photographs of the rifle that, when used in previous testimony, were not identified as having been taken by Day. This is Exhibit 718, 17 H 501. It is quite possible that the Commission used this and perhaps other pictures taken by Day or other detectives, mislabeling them as depictions or not labeling them. I believe it is in the testimony of Boone and

40 - Day

Weitzman that this will have to be checked very carefully. In the case of Weitzman, it is Weitzman Exhibit D, 21 H 73, and this clearly is not the same picture. In the case of Boone, it is photograph identified as Exhibits 514-7, 17 H 224-6. Exhibit 514 is not identically the same as Exhibit 718. Whether or not they are from the same negative and an enlargement cropped in a different fashion, I can not positively state. The lighting seems different, and a few individual features of some of the identifiable objects seem different. For example, the spots on the floor near the muzzle end of the rifle in 514. Another example is the box immediately to the left of this point of the rifle, the single box to the left of the 2 boxes that are on the right hand edge of his picture in the background. The angles of the righthand lids do not seem identical. The lighting at the very end of the muzzle end of the rifle is different. There is more shadow in 718.

This is complicated by the appearance of exhibits identified as "Studebaker exhibits" (21 H 643-9). These are not identical with the Day exhibits. Studebaker Exhibit C is similar to but not identical with Weitzman Exhibit D.

What this may all mean is that these may have been pictures taken at the time of discovery of the rifle by both Studebaker and Day, and by improper identification and description by the Commission, one may be lead to believe that they are of different origin. With respect to the Weitzman picture, the testimony of Studebaker pretty clearly identifies it as his photograph, whether the Commission did or not. His testimony, if that word may be used to describe the words that came from him, is summarized separately.