

ORIGINAL

CRIMINAL DISTRICT COURT

PARISH OF ORLEANS

STATE OF LOUISIANA

STATE OF LOUISIANA

versus

CLAY L. SHAW

NO. 198-059

1426(30)

Section C

PROCEEDINGS in Open Court on

February 28, 1969,

B E F O R E :

HONORABLE EDWARD A. HAGGERTY, JR.

JUDGE, SECTION C

Dietrich & Pickett, Inc.

Stenotypists

333 ST. CHARLES AVENUE, SUITE 1221
NEW ORLEANS, LOUISIANA 70130-522-3111

I N D E X

'IN REBUTTAL

WITNESS DIRECT CROSS

DR. JOHN MARSHALL NICHOLS 2 41

PETER SCHUSTER 47, 56 52, 73

E X H I B I T S

EXHIBIT NO. IDENT. OFFERED REC'D.

S-79 28 28

S-80 27 28

S-81 27 28

S-82 31 (Not Admitted)

S-83 62 68

S-84 63 68

S-85 66 68

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

. . . . Pursuant to the adjournment
of Thursday, February 27, 1969, the
Proceedings herein were resumed at
10:00 o'clock a.m. on Friday,
February 28, 1969, appearances being
the same as heretofore noted in the
record

THE COURT:

Are the State and the Defense ready?

MR. ALFORD:

The State is ready, Your Honor.

MR. DYMOND:

We are ready, Your Honor.

THE COURT:

Call your next witness.

MR. ALFORD:

The State at this time calls

Dr. John Nichols.

...oOo...

DR. JOHN MARSHALL NICHOLS,

a witness called for and on behalf of the State,
having been first duly sworn, was examined and
testified as follows, on Rebuttal:

DIRECT EXAMINATION

BY MR. ALFORD:

1 Q Please state your name for the record.

2 A Dr. John Nichols.

3 THE COURT:

4 Mr. Alford, are you submitting the witness
5 as an expert?

6 MR. ALFORD:

7 Yes, Your Honor. He has been previously --

8 THE COURT:

9 I am aware of that. I just want to
10 clarify. Mr. Dymond, do you wish to
11 ~~traverse the witness as an expert?~~

12 MR. DYMOND:

13 I don't think that is necessary again,
14 Judge.

15 THE COURT:

16 I didn't think so either. I just wanted
17 the record to show I have previously
18 ruled that he was an expert.

19 MR. DYMOND:

20 Yes, I know you have, Judge. I don't see
21 any reason to go through the
22 formality.

23 THE COURT:

24 Let it be noted in the record that I again
25 rule the Doctor is an expert in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

field of pathology and forensic
pathology and can give his opinion
in those particular fields.

All right, you may proceed.

BY MR. ALFORD:

Q Your name is Dr. John Marshall Nichols? Is
that correct?

A That is correct, sir.

Q Dr. Nichols, are you familiar with the human
anatomy?

A Reasonably so, sir.

Q Are you familiar with the human skeletal
structure?

A Reasonably so, sir.

Q More specifically, Doctor, are you familiar
with the anatomy, with the human anatomy
in the region of the human neck?

A Yes, sir.

Q Doctor, at this time I wish to give you the
following hypothet, and at the conclusion
of my giving you this hypothet, I will
ask you several questions:

Assume that a man was struck by a
rifle bullet which impacts at a location
in his neck, said location being

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

approximately five inches down from the right mastoid process and approximately five inches from the right acromion and approximately two inches from the mid line; that the resulting wound measures approximately seven millimeters by four millimeters; that this pellet then follows a path which causes it to exit at a point in the frontal neck region at the approximate location of the tie knot, and in making this exit the shirt is torn around the collar button and there is a nick in the tie on the left side of the knot; that this wound measures approximately five millimeters in diameter; and, finally, that in making the alleged path no bones are fractured, and further that this lack of fractures is verified by X-rays of the region of the neck.

Now, first of all, Doctor, is there anything inconsistent in the facts which I have given you in this hypothetical situation?

A You have mentioned a measurement two inches from the mid line. I don't understand

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that, sir. Is that in the front or in the back?

Q This is in the back portion.

A No, sir. The proposition you have stated is impossible, sir.

Q Well, disregarding Doctor -- or let me ask you this: Why are these facts impossible?

A Because if the bullet entered two inches from the mid line in the back, it would absolutely be required to strike one of the cervical vertebrae, sir.

Q Now disregarding the fact of the wound being two inches from the mid line, Doctor, in your expert opinion do the facts which I have stated enable you to determine the minimum lateral or right-to-left angle at which a bullet would have to pass in order to make these wounds which I have described?

A If the bullet comes out in the front in the mid line, it is quite easy to calculate the minimum lateral angle that it had to go in and missed a bone, yes.

Q Now, Doctor, considering this right-to-left angle, could a bullet which entered and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

exited at the point which I have described,
have been fired from the northeast window
of the sixth floor of the Texas School
Book Depository into President Kennedy's
neck on November 22, 1963?

MR. DYMOND:

I object to that, if the Court please.

This witness is not qualified to
testify to that, he is not.

MR. ALFORD:

Your Honor, I haven't completed the
question.

THE COURT:

Wait, Mr. Alford, let me hear his objec-
tion, please.

MR. DYMOND:

He is not qualified to testify to that,
it is outside the field of his
specialty in which he has been
qualified as an expert.

THE COURT:

I agree with you, Mr. Dymond. I sustain
the objection.

MR. ALFORD:

All right.

1 BY MR. ALFORD:

2 Q Dr. Nichols, what would be the minimum
3 right-to-left angle at which the bullet
4 causing the wound I have described would
5 have had to enter the body, and why is
6 this so, sir?

7 A 28 degrees, sir, the bullet had to be fired at
8 a minimum of 28 degrees or greater.

9 Q And why is this, Doctor?

10 A Because if the angle is less than that, the
11 cervical vertebra will be fractured.

12 Q (Exhibiting document to witness) Doctor, I now
13 show you what for purposes of identifica-
14 tion I have marked as "S-78." Now I would
15 ask you to please inspect this and tell me
16 what it represents, if you know.

17 A This represents a schematic diagram of the
18 human neck at about the level of C,
19 cervical C-6 or C-7 at which point the
20 bullet is alleged to have emerged from
21 President Kennedy's neck. The drawing was
22 done at my personal request and under
23 my personal direction and supervision in
24 the summer of 1967, and it accurately
25 depicts the minimum lateral angle that a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

bullet could go through the neck without striking bone.

Q (Exhibiting document to witness) Now, Doctor, I show you what for purposes of identification I will mark as "S-79," and ask you whether or not you can identify this.

A This is a faithful photographic reproduction of the sketch.

Q Is there anything included in the sketch which is not included in the photograph?

A The total qualities, the black and white rendition of some portions are not completely similar.

Q Now, Doctor, have you had occasion to view and examine the Zapruder film, sir?

A Yes, sir, I have.

Q And do you have an expert opinion as to the approximate location in reference to the Zapruder film, in which President Kennedy was first struck by a bullet?

MR. DYMOND:

Object, if the Court please. This is outside the field of his expertise.

MR. ALFORD:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

May it please the Court, --

THE COURT:

How in the world, Mr. Alford, can you
have Dr. Nichols tell us what bullet
hit the President.

MR. ALFORD:

I will strike the word "bullet." I will
rephrase the question.

BY MR. ALFORD:

Q Dr. Nichols, from your viewing of the Zapruder
film, have you been able to determine at
what point the President appears to
react to some stimulus?

A He appears to react at frame 200.

MR. DYMOND:

I object to that, if the Court please.

MR. ALFORD:

On what ground?

MR. DYMOND:

Once again that is outside --

MR. ALFORD:

Your Honor, --

THE COURT:

Let me get something straight. When he
makes an objection, will you please

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

keep quiet until I hear the
objection, because when you are
talking I can't hear his objection.
Will you please do that?

MR. ALFORD:

Yes, sir.

THE COURT:

Mr. Dymond, I will be glad to hear you.

MR. DYMOND:

Your Honor, again I object on the ground
that this is outside the scope of
this witness' expertise. He has not
been qualified in the field of
photography, and therefore --

THE COURT:

Mr. Dymond, this was covered in the
original testimony of Dr. Nichols, as
I recall it, and you made the same
objection, that he was not qualified
in the field of photography, and I
overruled you then.

MR. DYMOND:

If the Court please, we would like to
make an additional objection then
that this is repetitious and has no

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

place in re-direct examination.

THE COURT:

What are you rebutting there, Mr. Alford?

MR. ALFORD:

Please the Court, this is simply a preliminary question which the State intends to link up to rebutting evidence.

THE COURT:

No, sir, you have got to be more specific than that, you have got to tell me what you are rebutting.

MR. ALFORD:

Yes, sir, I will be glad to tell you. On Direct testimony and on Cross-Examination Defense witnesses stated that they were not able to determine the lateral angle, they stated that they did not do it. Dr. Finck specifically refused to state the lateral angle. However, he did state facts, and we have already elicited from this witness that based on the facts which were testified to by Dr. Finck, he feels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that he can state a minimum angle.
We feel like this is perfectly proper
rebuttal.

THE COURT:

Frame 270 tells you the angle that
President Kennedy was struck.

MR. ALFORD:

No, Your Honor. I gave the witness a
hypothet.

THE COURT:

I am aware of that.

MR. ALFORD:

Based on the hypothet, and I only asked
him about the Zapruder film in order
to maintain the continuity of the
testimony.

MR. DYMOND:

Do you want me to say anything further,
Judge?

THE COURT:

I don't understand Mr. Alford's explanation
of what he is rebutting. Are you
rebutting Dr. Finck's testimony?

MR. ALFORD:

Not only Dr. Finck's but also

1 Mr. Frazier's testimony, Your Honor.

2 Mr. Frazier specifically testified
3 that one bullet could have passed
4 through two persons seated in the
5 President's limousine. I am leading
6 up to this. Also Dr. Finck's
7 testimony in certain respects.

8 THE COURT:

9 That was covered in your original
10 presentation of your case.

11 MR. ALFORD:

12 Not by us, Your Honor. They put
13 Mr. Frazier on. Mr. Frazier is the
14 one who stated in his opinion one
15 bullet could have passed through two
16 persons.

17 THE COURT:

18 I can't repeat the testimony, but I am
19 certain that was covered.

20 MR. OSER:

21 If the Court please, the Defense witness,
22 Colonel Finck, testified as to where
23 he found a wound in the President's
24 clothes. Furthermore he testified
25 as to what the track of that wound

1 in the throat was, and, in addition,
2 he said that no bones were broken,
3 and it wasn't until the Defense put
4 on Colonel Finck that it was brought
5 into the facts and into the evidence
6 in this case as to what the
7 description of the President's throat
8 wound was, and this is what we are
9 attempting to rebut at this
10 particular time, Your Honor.

11 THE COURT:

12 I sustain Mr. Dymond's objection, it is
13 repetitious, and besides you are
14 asking for an opinion that is not
15 covered in his expertise for which
16 he was qualified.

17 MR. ALFORD:

18 One moment please, Your Honor.

19 BY MR. ALFORD:

20 Q Now, Dr. Nichols, if two persons were seated
21 in an automobile, one relatively in front
22 of another, and a bullet made a path as
23 I have described to you through the neck
24 of the rear person or the person furthest
25 to the rear in the automobile, in your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

expert opinion, or in your opinion, where
would this person seated in front have to
be seated in order to be struck in the
right armpit?

MR. DYMOND:

If the Court please, we object to this,
first on the ground that it is too
indefinite, vague, "sitting
relatively in the front." Thirdly,
no foundation has been laid to show
that this Doctor ever examined the
wounds of Governor Connolly, he
does not know exactly where the
Governor was sitting with relation
to the late President Kennedy.

THE COURT:

I sustain the objection.

MR. ALFORD:

May it please the Court --

THE COURT:

I sustain the objection, Mr. Alford.

BY MR. ALFORD:

Q Now, Doctor, if at the time that the President
has been as observed in the Zapruder film,
reacting to a stimulus at the first point,

1 would this angle which you have testified
2 to, being a minimum of 28 degrees, have
3 been affected by the direction in which
4 his head were turned, if in fact it was
5 turned?

6 A Only very slightly, sir.

7 Q Would you please explain this.

8 A Yes, sir. When one moves their head, most of
9 the rotation takes place at the top of
10 the vertebral column. We have seven
11 cervical vertebrae. For example, if you
12 move your head seven degrees, you do not
13 get one degree of rotation on the vertebra,
14 you get the majority of the rotation on
15 the top two vertebrae, say five or six
16 degrees of rotation, and down about C-6
17 or C-7 where the bullet emerged, you get
18 practically no rotation. This can be
19 very easily confirmed by any person putting
20 a finger here and moving the head slightly
21 (demonstrating). It is easily seen that
22 practically no rotation takes place at the
23 level that the bullet emerged.

24 Q Now, would the fact that the President's left
25 shoulder were withdrawn from the rear seat

1 affect the lateral angle?

2 A Yes, turning the body at that level would
3 affect it.

4 Q Now, from your viewing of the Zapruder film
5 and various other pictures, were you able
6 to detect any withdrawing of the left
7 shoulder from the seat?

8 MR. DYMOND:

9 Object, if the Court please. The
10 Doctor has testified on Direct
11 Examination when he was here in
12 court before, to the exact location
13 of President Kennedy as though he
14 were in Dealey Plaza when the shots
15 were fired, and this is nothing but
16 repetition of that testimony.

17 THE COURT:

18 I think he has covered that point on
19 Direct Examination. I will sustain
20 the objection.

21 BY MR. ALFORD:

22 Q Now, Doctor, is the fact that there was a
23 wound in the rear neck measuring
24 approximately seven millimeters by four
25 millimeters, and a wound in the area of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the knot of the tie measuring approxi-
mately five millimeters, and said wound
being supposedly the wound of exit, are
these two measurements consistent with a
wound of entrance and a wound of exit?

MR. DYMOND:

If the Court please, the same objection
on this, it was covered on Direct.

THE COURT:

Just a moment. I particularly remember
that you covered this subject very
grossly with Dr. Finck. I don't
believe that subject matter was taken
up by this witness previously. I
will permit the question, I will
overrule your objection.

BY MR. ALFORD:

Q Could you answer the question?

THE COURT:

Now wait. Let me tell you one thing you
left out, Mr. Alford, in your
question, you didn't say it was a
wound in the fleshy part of the neck,
not of the skin. You didn't cover
that point.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ALFORD:

No, I apologize.

BY MR. ALFORD:

Q I would add one additional fact to this question, and that is that this is a wound through a fleshy portion of the body.

A I think in order to answer that question I would need to have somebody of the same measurements as the President, and I would have to go into considerable detail, the position as measured from the mastoid and from the acromion. Assuming that it does miss the vertebral bodies, the bullet could have traversed the neck, yes, and come out at the mid line.

Q I see. Are the measurements of the wound of entrance being seven millimeters by four millimeters, the wound of alleged exit being five millimeters, consistent, based upon your experience in the field of pathology?

MR. DYMOND:

If the Court please, we object there again as to the measurements of the wound of exit. The actual

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

measurements of the wound of exit
have never been firmly established.
Therefore, this hypothet attempts to
go outside the bounds of what has
been proven.

THE COURT:

I overrule the objection. I particularly
recall a previous doctor talking
specifically about having measured
it. I will permit the question.

THE WITNESS:

Generally speaking, the wound of exit in
the overwhelming majority of cases is
larger than the wound of entrance.

BY MR. ALFORD:

Q I see. In the example or the hypothet which I
have given you, is the alleged wound of
exit larger than the alleged wound of
entrance?

A No, sir.

Q Now, Doctor, if you were engaged in the
performance of an autopsy, and in the
course of the performance of this autopsy
you found a wound measuring approximately
seven millimeters by four millimeters in

1 the back or the neck, back of the neck of
2 a person, but you could not determine or
3 find a wound of exit, what procedure
4 would you take at this time?

5 A Before starting this autopsy I would have
6 X-rays made of the entire body, and I
7 would have viewed those X-rays personally.
8 I would have had photographs of the
9 appropriate anatomy of the body made, and
10 then not having found a missile in the
11 body, I would have dissected the track.

12 Q Would there be any other way of accurately
13 determining the path of a bullet under
14 these circumstances, other than through
15 X-rays or dissecting the track?

16 A If the subject was in the exact position at
17 autopsy as at the time the injury was
18 inflicted, and you know that one is the
19 hole of exit and one is the hole of entry,
20 it would be very simple.

21 Q Now, not knowing that, the location of the hole
22 of exit, would it be possible to
23 accurately determine the path of a bullet
24 without having X-rays or dissecting the
25 track?

1 A It would not.

2 Q Doctor, are you familiar with the term
3 "bevelling"?

4 A Yes, I am, in relation to missiles in the
5 skull.

6 Q And to what does this term refer?

7 A It refers to the fact that the hole will be
8 larger on one side of the skull bone than
9 it is on the other side.

10 Q Is this always a valid theory under all
11 circumstances?

12 A No, sir. In order to find and firmly establish
13 the bullet hole of entry and the bullet
14 hole of exit, one has to take into account
15 a large number of things, and this is one
16 of the things that you take into account,
17 but it is not always true, there are
18 exceptions.

19 Q I see. And would the type of missile which had
20 entered the skull affect the validity of
21 this theory?

22 A Very much so, sir. Small caliber bullets such
23 as a .22 and such as .32's from pistols
24 and such things as this, the bevelling is
25 much more pronounced and it is a much more

1 reliable guide. However, with such an
2 impact of such a bullet of the 161 grain
3 6.5 millimeter Mannlicher-Carcano, the
4 head in effect explodes and many fragments
5 of bone are produced. It is very, very
6 difficult under these circumstances to
7 ascertain the point of entry and the
8 point of exit.

9 Q (Exhibiting document to witness) Doctor, at
10 this time I show you what for purposes
11 of identification has been previously
12 marked as "D-28," and I ask you whether or
13 not you are familiar with what is depicted
14 on this sheet of paper.

15 A I am quite familiar with this, sir; I use it in
16 my own lectures, I have seen it in the
17 Warren Report, I have seen it in a
18 publication by Dr. Finck in the Journal
19 of the American Association for Forensic
20 Sciences, I have talked with Dr. Finck
21 about this personally, and I have written
22 him about this.

23 Q I see. Is this a valid theory under all
24 circumstances?

25 A No, it is not a valid theory under all

1 circumstances. With small caliber
2 weapons, the principles that he is
3 attempting to demonstrate here are reason-
4 ably correct. However, with weapons such
5 as 6.5 Mannlicher-Carcanos and such things
6 as 30/30 rifles, this does not apply. ♦

7 Q And, Doctor, if a person were struck by a
8 bullet in the skull, will signs of
9 bevelling or coning always be present?

10 A They do not always occur, sir.

11 Q All right. If signs of bevelling or coning
12 are detected in a particular skull, is
13 this conclusive evidence as to the
14 direction from which the person were
15 shot?

16 A It is not conclusive evidence, sir.

17 Q What additional evidence would you require?

18 A I would require all data that could possibly
19 be brought to bear on this, including
20 photographs taken at the time of the
21 infliction of the wound, either stills
22 or movies or both.

23 Q Now, Doctor, if a person was struck in the
24 head with a relatively high velocity
25 bullet, one traveling at approximately

1 2,000 feet per second, would the effects
2 of bevelling always be present, and, if
3 so, how accurate would it be?

4 A Bevelling would not necessarily always be
5 present, and if it is present, it is
6 suggestive. However, under these
7 circumstances, as I have previously said,
8 the skull breaks into many fragments and
9 one does not even get all the fragments
10 with which to piece together the whole,
11 and you have to speculate in some
12 instances.

13 Q Could bone or what is known as secondary
14 missiles cause bevelling?

15 A Oh, yes, sir.

16 Q Could fragments of bullets cause this bevelling?

17 A Yes, sir.

18 Q Have you ever examined a case in which the
19 theory of bevelling proved to be inaccur-
20 ate, or coning proved to be inaccurate?

21 A I have examined several cases in which I was
22 unable to obtain an adequate amount of
23 bevelling with which to express an
24 opinion.

25 Q I see. And in these cases, upon what evidence

1 or medical evidence did you rely?

2 A I relied upon microscopic sections of skin
3 wounds, and upon eye-witness reports,
4 and such things as powder burns.

5 Q Now, Doctor, you have testified that a bullet
6 entering a neck at the location as I have
7 given you, but not fracturing bone, would
8 have to enter at a minimum left-to-right
9 angle of 28 degrees. Is that correct,
10 sir?

11 A That is correct, sir.

12 MR. ALFORD:

13 May I have these marked as "State 80" and
14 "State 81."

15 THE COURT:

16 Show them to Mr. Dymond:

17 (Whereupon, the photographs referred
18 to by Counsel were duly marked for
19 identification as "Exhibit S-80"
20 and "Exhibit S-81.")

21 BY MR. ALFORD:

22 Q (Exhibiting photographs to witness) Now,
23 Doctor, I show you what for purposes of
24 identification have been marked as
25 "S-80" and "S-81," and I would request

1 that you examine both of these photographs
2 and tell me whether or not you recognize
3 them, and, if so, what they depict.

4 A Yes, sir. Mr. Alford, these are two pictures
5 taken of a skeleton in which I have
6 placed a short-end plated dowel in a
7 position approximately 21 degrees downward
8 and approximately 28 degrees from the
9 right to the left, in such a manner as to
10 get the bullet out at the mid line
11 approximately in the place where one
12 does a tracheotomy incision. I have also
13 indicated on here with letters the
14 mastoid process and the acromion process.
15 These pictures were taken under my
16 personal instruction and supervision, and
17 they faithfully render that which I
18 intended to show, within the degree of
19 accuracy that one can place such a path.

20 MR. ALFORD:

21 May it please the Court, at this time
22 the State wishes to offer, introduce
23 and file into evidence exhibits
24 marked "S-79, S-80," and "S-81."

25 MR. DYMOND:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Your Honor, as to "S-79" we have no objection.

MR. DYMOND:

As to "S-80" and "S-81," if the Court please, we object unless this Doctor is in a position to testify that this is either a picture of the skeleton of President Kennedy or that the relative bone size and bone structure and so forth of all individuals is identical. Otherwise it is our position that these photographs are irrelevant to the case.

THE COURT:

Well, Mr. Alford, if you will rephrase your offer that the pictures are offered as being similar to an ordinary male skeleton, then I will permit the offer --

MR. ALFORD:

Yes, sir.

THE COURT:

-- and overrule the objection.

MR. DYMOND:

To which ruling --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT:

They are not being offered as the skeleton
of President Kennedy?

MR. ALFORD:

That is correct.

THE COURT:

An ordinary male skeleton.

MR. DYMOND:

To exhibits "S-80" and "S-81" Counsel
objects to their introduction and
reserves a bill, making the offer,
the objection, the reason for the
objection, the ruling of the Court,
and the entire record, parts of the
bill.

MR. ALFORD:

At this time, Your Honor, I would
request permission to show these
to the Jury.

(Whereupon, the exhibits in question
were displayed to the Jury.)

THE COURT:

All right. Are you ready to proceed,
gentlemen?

MR. ALFORD:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I would ask that this be marked "S-82."
(Whereupon, the drawing referred to
by Counsel was duly marked for
identification as "Exhibit S-82.")

BY MR. ALFORD:

Q (Exhibiting drawing to witness) Doctor, I now
show you what for purposes of identifica-
tion has been marked as "S-82," and I ask
you whether or not you recognize this,
first of all.

A Yes. This is a drawing, it is a photograph of
a drawing. I had the drawing prepared at
my explicit instructions and directions,
and photographed. The photograph also
represents a faithful rendition of what
I wanted to do.

Q I see. Does this photograph depict a bullet
entering a person at approximately
28 degrees?

A Yes, it does.

Q Does it also indicate a second person, one
sitting relatively in front of the other?

A Yes, it does.

Q I see. Does it indicate the path of a bullet
headed into the first person at 28 degrees?

1 A Yes, it does.

2 MR. ALFORD:

3 May it please the Court, at this time
 4 the State wishes to offer,
 5 introduce and file into evidence what
 6 has been previously marked as "S-82."
 7 The State does not state in its
 8 offer that any two persons depicted
 9 are seated in the exact same
 10 positions as President Kennedy or
 11 Governor Connelly, but as Officer or
 12 Agent Frazier stated, it depicts two
 13 persons, one seated relatively in
 14 front of the other.

15 MR. DYMOND:

16 To which we object, if the Court please.
 17 This drawing which, according to the
 18 Doctor's testimony, represents "what
 19 he wanted it to represent," is
 20 entered or offered for a precise
 21 purpose involving precision. Now,
 22 by this Doctor's very testimony it
 23 represents one person "sitting
 24 relatively in front of the other."
 25 Frankly, I don't know what that means

1 in terms of precision, I don't
2 believe it means anything, and this
3 is obviously a misleading sketch
4 designed to show exactly what this
5 witness wants it to show.

6 MR. ALFORD:

7 No, Your Honor --

8 MR. DYMOND:

9 -- using his own measurements, and by his
10 own testimony not being an exact
11 reproduction of anything except his
12 own sketch.

13 THE COURT:

14 You see, you would have to get the frame
15 from the Zapruder film and then try
16 to calculate at what particular
17 fraction of a second the entrance
18 wound was made, and then you have
19 to find out where Governor Connolly
20 was at that fraction of a second.

21 MR. DYMOND:

22 That is correct.

23 THE COURT:

24 The objection is well taken, I sustain
25 it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ALFORD:

May it please the Court, this witness is familiar with the Zapruder film and, if the Court will allow me, I can question him.

THE COURT:

You can question him on what he has found in the Zapruder film at that precise fraction of a second, but you cannot bolster your own witness by letting him prepare a drawing that aids him in describing his testimony but bolsters him. You can't bolster him, and that is what you are using it for.

MR. ALFORD:

It is simply an illustration of his testimony, that is all.

THE COURT:

He can orally testify to the facts you are trying to put over here. I will sustain the objection, I will not admit "S-82."

BY MR. ALFORD:

Q Now, Doctor, did you have occasion to examine

1 the Zapruder film at approximately
2 frame 225?

3 A Yes, I have.

4 Q At this frame can you detect whether or not
5 Governor Connelly and President Kennedy
6 are sitting relatively in front of each
7 other?

8 THE COURT:

9 Which frame?

10 MR. ALFORD:

11 Frame 225, Your Honor.

12 THE WITNESS:

13 Yes, I can.

14 BY MR. ALFORD:

15 Q Can you detect their exact location in relation
16 to one another?

17 A With a reasonable degree of accuracy, yes.

18 Q Would you please explain this to the Gentlemen
19 of the Jury.

20 A Well, by simple observation with the naked eye,
21 it appears that Governor Connelly is
22 sitting almost exactly in front of
23 President Kennedy, perhaps an inch or so
24 to the left.

25 Q Now, Doctor, should a bullet enter a person at

1 a 28-degree lateral angle, where would
2 another individual seated in front of this
3 person have to be seated in order to be
4 struck by the bullet on the right side of
5 his body?

6 A Very considerably to the left, I would suggest
7 18 inches or so.

8 Q Did you find as a result of your examination of
9 the Zapruder film, that Governor Connelly
10 was seated to the left of President
11 Kennedy?

12 MR. DYMOND:

13 Your Honor, we object to this testimony.

14 This doctor is no better qualified
15 to say what the Zapruder film shows
16 than anybody else, and to have him
17 get on this stand as an expert in
18 the field of pathology and try to
19 tell us what that Zapruder film shows
20 when we have seen it eight times
21 here, borders on the ridiculous I
22 submit!

23 MR. OSER:

24 Your Honor, if the Court please, what the
25 State is attempting to do at this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

time is to rebut the testimony of Agent Frazier. Agent Frazier's testimony was to the effect that in the reconstruction he could line up a shot that would pass through the President's stand-in and the Governor's stand-in by sighting from the sixth floor of the Texas School Book Depository down to either a white chalk mark or a piece of cloth on the back of the stand-in. We are attempting to do, at this particular time now that the Defense or after the Defense has put on Dr. Finck and we ascertained that it was a through-and-through gunshot wound and that no bones were broken -- the Government in its reconstruction did not calculate the lateral angle from right to left passing through President Kennedy's neck. This doctor has testified today that the lateral angle passing right to left would have to be a minimum of 28 degrees because of the bone

1 structure of the human anatomy with
2 which he is familiar. Now at this
3 time we are attempting to introduce
4 this particular exhibit based on the
5 Doctor's research and examination,
6 showing that if a bullet passed ♦
7 through an individual at 28 degrees
8 as described by Dr. Finck, the
9 Defense's witness, what would happen
10 to that bullet and what would be the
11 path of that bullet if it did not
12 hit bone, and this is the reason,
13 Your Honor, this testimony is being
14 offered.

15 THE COURT:

16 You have covered that. You are getting
17 to whether or not it would strike
18 someone in front of him. That was
19 the question.

20 MR. OSER:

21 That is correct.

22 THE COURT:

23 He said the first (person) would have to
24 be 18 inches over to his left. I
25 heard him state that.

1 MR. OSER:

2 Right, Your Honor, and this particular
3 exhibit is to show --

4 THE COURT:

5 I have already ruled on that exhibit --
6 he can answer it orally -- I have
7 ruled the exhibit out. I believe
8 the Doctor has answered your question,
9 he said the person would have to be
10 18 inches over to receive the wound.
11 Didn't you say that?

12 THE WITNESS:

13 Approximately 18 inches.

14 BY MR. ALFORD:

15 Q Doctor, in examination of frame 225 of the
16 Zapruder film, did you find that
17 Governor Connelly was seated 18 inches to
18 the left of President Kennedy?

19 A Very definitely not.

20 MR. DYMOND:

21 We object to that, if the Court please.

22 Once again, this is supposedly an
23 expert in the field of pathology and
24 has been --

25 THE COURT:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And forensic pathology.

MR. DYMOND:

Forensic pathology, too, but not
photography. I haven't heard him
qualified --

THE COURT:

Overrule the objection. We saw it nine
times and I think I could give you
an expert opinion on it myself.

MR. DYMOND:

To which ruling Counsel reserves a bill
of exception, making the question,
the objection, the State's
Exhibit 82, the answer of the witness,
the reasons for the objection, the
ruling of the Court and the entire
testimony parts of the bill.

BY MR. ALFORD:

Q Do you recall the question?

A I have forgotten it.

MR. ALFORD:

Please read it.
(Whereupon, the foregoing question
and answer were read back by the
Reporter.)

1 BY MR. ALFORD:

2 Q Do you wish to further answer that question?

3 A I would confirm just that he was sitting
4 approximately in front and not 18 inches
5 over, perhaps one inch, perhaps, or two
6 inches.

7 MR. ALFORD:

8 The State will tender this witness.

9 MR. DYMOND:

10 Did you tender the witness?

11 MR. ALFORD:

12 Yes.

13 CROSS-EXAMINATION

14 BY MR. DYMOND:

15 Q Doctor, have you ever examined the Presidential
16 limousine which was in Dallas on
17 November 22?

18 A I went to Washington to do so, sir, but --

19 Q Would you kindly answer my question and then
20 explain, Doctor.

21 THE COURT:

22 That is correct, just say yes or no.

23 THE WITNESS:

24 No, I have not, sir.

25 MR. ALFORD:

1 Now he has a right to explain.

2 THE COURT:

3 You can explain.

4 THE WITNESS:

5 (Continuing) I wrote to the Secret

6 Service and asked permission to do

7 this, and they gave me an evasive

8 answer. I went to Washington. They

9 met me at the airport and apologized

10 for having torn it up but gave me the

11 measurements which I have today.

12 BY MR. DYMOND:

13 Q You are the same doctor who sued the

14 Government, are you not?

15 A I am still suing the Government, sir; it is

16 not past tense, it is present.

17 Q Now, Doctor, is my understanding correct that

18 sometimes in writing your autopsy reports

19 you take into consideration the testimony

20 of eye-witnesses?

21 A It doesn't influence my decision.

22 Q Didn't you testify just a few minutes ago that

23 in cases where you might have a skull

24 wound and you can't find bevelling, that

25 you take into consideration the testimony

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

of eye-witnesses?

A If my answer conflicted with my testimony, I would go back and make a reexamination, sir, but my testimony would not affect my protocol in the slightest.

Q So you would not take that into consideration in forming your opinion, is that correct?

A No, I take into consideration my own observations personally.

Q And that is all?

A That is all.

Q And you are testifying now that you didn't say on Direct Examination that you would take into consideration the testimony of eye-witnesses?

A I don't recall the exact phrasing of that question, but if I said that, I would like to withdraw it and amend it: I would obtain testimony or opinions of eye-witnesses without --

THE COURT:

Please.

THE WITNESS:

-- taking them into consideration is another matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DYMOND:

At this time, if Your Honor please, I would like to ask if the Court Reporter can find that answer given by the witness.

MR. ALCOCK:

He acknowledged the possibility of making the statement. He said if he made it he was amending it at this time.

THE COURT:

I agree with you, Mr. Alcock. We are not going to go back.

BY MR. DYMOND:

Q So you don't know whether you made that statement or not? Is that right, Doctor?

A I don't think I did, sir.

Q Now, Doctor, if you couldn't find a point of exit to a body wound where you did find a point of entrance, would you reject the statement of a brother pathologist whom you knew to be qualified, to the effect that he had found a point of exit?

MR. ALCOCK:

Your Honor, that is asking this witness to pass judgment on the testimony of

1 another witness in this case, and
2 this is an objection Mr. Dymond has
3 made repeatedly.'

4 MR. DYMOND:

5 I am not asking him to pass judgment on
6 anything, I am asking him to tell
7 me what he would be willing to
8 consider in arriving at a conclusion,
9 that is all.

10 MR. ALCOCK:

11 I will withdraw the objection.

12 THE WITNESS:

13 Repeat the question, please.

14 MR. DYMOND:

15 Would you read it back.

16 (Whereupon, the pending question was
17 read back by the Reporter.)

18 THE WITNESS:

19 I would consider the possibility that he
20 had made an error. I would talk
21 with him. For example, a neck
22 wound -- I myself personally found a
23 neck wound in the back but no
24 apparent wound in the front, and in
25 this instance it developed that the

1 decedent had his mouth open and the
2 bullet came out the mouth and there
3 was none to see.

4 BY MR. DYMOND:

5 Q Doctor, did you ever examine the remains of
6 President Kennedy?

7 A I have requested to do so, sir, but been
8 rejected.

9 Q Would you answer the question and then explain
10 if you want to.

11 A No, I have not, sir.

12 Q Have you ever seen the X-ray films or X-ray
13 pictures?

14 A No, I have not, sir.

15 Q Have you ever seen the autopsy photographs?

16 A I have not, sir.

17 Q Doctor, weren't you a student under Dr. Finck
18 at the Armed Forces Institute of
19 Pathology?

20 A I attended three lectures given by Dr. Finck,
21 yes, and in that sense he is my mentor,
22 sir. In correspondence with him he refuses
23 to talk to me about the subject. I
24 attempted to do so on many occasions; it
25 was part of my trip to Washington to talk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to Dr. Finck, but he rejected me.

MR. DYMOND:

That is all.

MR. ALFORD:

The State calls Peter Schuster.

...oOo...

PETER SCHUSTER,

a witness called by and on behalf of the State,
having been first duly sworn, was examined and
testified, on Rebuttal, as follows:

DIRECT EXAMINATION

BY MR. OSER:

Q State your name for the record, please.

A Peter Schuster.

Q By whom are you employed?

A Dr. Rabin, Coroner.

Q In what capacity are you employed in the
Coroner's Office, Mr. Schuster?

A Photographer and investigator.

Q How long have you been an employee of the
Coroner's Office?

A Approximately seven years.

Q During that seven years what have been your
duties?

A To photograph violent deaths, investigate them

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for the Coroner.

MR. OSER:

Your Honor, the State is going to attempt
to qualify Mr. Schuster in the field
of photography.

THE COURT:

To give an opinion or to testify to a
specific photograph?

MR. OSER:

Both to give an opinion and testify about
a specific photograph, if the Court
please.

THE COURT:

You gentlemen step up here, please.
(Conference at the Bench off the
record.)

THE COURT:

We are going to take a five-minute recess.
Take the Jury upstairs, please.
(Whereupon, a brief recess was
taken.)

AFTER THE RECESS:

THE COURT:

Now are the State and the Defense ready
to proceed?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. OSER:

We are ready, Your Honor.

MR. DYMOND:

We are ready, sir.

THE COURT:

You may proceed.

BY MR. OSER:

Q Mr. Schuster, how long have you been involved in the area of photography?

A Approximately ten years in photography.

Q Do you have any particular formal education in this area?

A I hold a degree in photography, Social Science in Photographic Technology.

Q Where did you receive that degree, sir?

A Here in town at Delgado Technical Institute.

Q During your career in photography, do you ever have occasion to give any instructions or teach anywhere?

A I taught photography a short time.

Q Where was that?

A At Delgado.

Q Mr. Schuster, can you give us an estimate of approximately how many pictures you take and develop during a year's time in the

1 Coroner's Office?

2 A Oh, I imagine it is around 5,000 or 6,000 a
3 year.

4 Q And do you also have outside photographic work
5 besides that of the Coroner's Office?

6 A Yes, I do work on the outside besides the
7 Coroner.

8 Q Does that also involve taking and developing
9 and printing of photographs?

10 A It does.

11 Q Have you ever had occasion, Mr. Schuster, to
12 analyze any of the products of your own
13 work but that -- I mean have you had
14 occasion to analyze photographs that you
15 have taken while in the Coroner's Office?

16 A I did, sir.

17 Q And can you give me an example of what type of
18 analyzing you have done in the past in
19 regards to photography?

20 A Oh, we have done work on -- for example, on
21 suicides where we have to make extremely
22 large ones showing wounds, the scene of
23 the entrance and exit of bullets, pieces
24 of evidence that may be on the floor and
25 from a normal photograph it can't be

1 detected what it is and extremely large
2 ones are necessary to analyze this
3 particular piece of evidence.

4 Q Have you ever failed to qualify in any of the
5 courts of the Criminal District Court in
6 the field of photography, Mr. Schuster?

7 A . Never, sir.

8 Q Have you ever been qualified in the Federal
9 Courts in the field of photography?

10 A I have, sir, I have.

11 MR. OSER:

12 I tender the witness to Mr. Dymond on his
13 qualifications.

14 THE COURT:

15 Let's see. Would you state the
16 particular field that you wish to
17 have Mr. Schuster qualified in, state
18 specifically what opinions you wish
19 to elicit. Let's see if I understand.
20 You are tendering the witness as an
21 expert in the field of photography to
22 the end that he can give his opinion
23 and interpret and analyze photographs?

24 MR. OSER:

25 That is what we are tendering him on,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Your Honor.

THE COURT:

He is tendered for traverse.

MR. DYMOND:

If the Court please, we will stipulate that Mr. Schuster is an expert in the area of taking pictures and enlarging them. Other than that I would like to traverse, because he is offered beyond that scope. Is that right, Mr. Oser?

MR. OSER:

Yes, sir.

CROSS-EXAMINATION

BY MR. DYMOND:

Q Now, Mr. Schuster, what training have you had in the interpretation of photographs?

A Well, during a two-year course; I couldn't tell you the exact time in this two-year course that was given to the interpretation of photographs, but it was part of the course.

Q Now, just what field did this part of the course that covered interpretation of photographs cover?

- 1 A Enlarging.
- 2 Q Was that identifying objects in photographs?
- 3 A Enlarging and identifying objects.
- 4 Q You have qualified as an expert in that
- 5 particular field of photography?
- 6 A In other words, have I ever qualified in court
- 7 as identifying a specific object in a
- 8 specific picture?
- 9 Q That is correct.
- 10 A I have, sir, identified specific objects in
- 11 specific pictures and enlargements.
- 12 Q Have you ever qualified as a photographic
- 13 analyst?
- 14 A As a photographic analyst? Not that I can
- 15 recall as an analyst.
- 16 Q Have you had any particular training in the
- 17 field of photographic analysis?
- 18 A Part of the two-year course was devoted to
- 19 this.
- 20 Q How much of it?
- 21 A I couldn't remember the exact specific time.
- 22 This was seven or eight years ago.
- 23 Q Have you ever even attempted to qualify as a
- 24 photographic analyst?
- 25 A Not that I can recall, as an analyst.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DYMOND:

If the Court please, we submit that the witness is not qualified as an expert in that field.

THE COURT:

Well, the Article on expert testimony states in Article 464 of the Code of Procedure:

"On questions involving a knowledge obtained only by means of a special training or experience, opinions of persons having such special knowledge are admissible as expert witnesses."

In a footnote it says:

"It is not necessary for a person to have scientific professional or technical training in order to be able to draw inferences or conclusions. He may gain such special knowledge from practical experience and observation in his line of work as to qualify him to express an opinion concerning a fact."

(REPORTER'S NOTE: The above quotation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

is transcribed from the notes as they
lie. The reader is referred to the
source.)

MR. DYMOND:

If the Court please, this witness has not
even had experience in the field of
photographic analysis to the extent
that would qualify him under that
Article.

THE COURT:

You are using the word "analysis"; I
think the word would more properly
be "explain" or "interpret."

MR. DYMOND:

Interpretation or analysis.

THE COURT:

I am going to rule that Mr. Schuster is
qualified as far as I am concerned
as an expert in this field because
of his practical experience over the
years plus his schooling, and I will
permit him to give an opinion or
interpretation or explain in full.

MR. DYMOND:

To which ruling Counsel reserves a bill,

1 making the objection to the
2 qualification of the expert, his
3 entire testimony on the laying of
4 the predicate, the reason for our
5 objection, the ruling of the Court,
6 and all of the testimony up until
7 this point parts of the bill.

8 THE COURT:

9 Very well.

10 You may proceed, Mr. Oser.

11 DIRECT EXAMINATION RESUMED

12 BY MR. OSER:

13 Q (Exhibiting photographs to witness)

14 Mr. Schuster, I now show you State
15 Exhibits S-51 and S-52 and ask you whether
16 or not you have ever seen these exhibits
17 before.

18 A I have, sir.

19 Q And where have you seen them before,

20 Mr. Schuster?

21 A Well, I have had them in my possession. I
22 received them on January 20 from you,
23 sir.

24 Q From me?

25 A From you.

1 Q And how long did you have these pictures in
2 your possession?

3 A Till February 13.

4 Q Of 1969?

5 A 1969.

6 Q While these photographs or pictures or exhibits
7 were in your possession, did you have an
8 occasion to do any particular type of work
9 or examination of these exhibits? If so,
10 what?

11 A I examined these photographs from January 20
12 until February 10, 1969 before anything
13 was done with them.

14 Q Can you tell me, Mr. Schuster, approximately
15 how much time you spent in examining these
16 photographs during that period of time?

17 A Oh, I couldn't estimate the amount of hours,
18 but if I had to, 50 or 60 hours.

19 Q Now, as a result of your having examined these
20 photographs -- and I speak more specifi-
21 cally of State Exhibit 51 -- I ask you if
22 you had occasion to examine it and arrive
23 at any conclusion in regard to a specific
24 area depicted in that photograph.

MR. DYMOND:

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

If the Court please, we object to this now
on the ground that it has no place
in rebuttal. We have offered no
testimony in the presentation of the
Defense's case concerning these
photographs, nor have we offered
testimony concerning anything depicted
in these photographs. The State is
in the midst of rebuttal now, and
this is not rebuttal evidence.

THE COURT:

I will be glad to hear from the State in
reply to Mr. Dymond.

MR. OSER:

If the Court please, this witness is being
offered in rebuttal in reply to the
Defense's testimony that all the
shots came from the rear.

MR. DYMOND:

If the Court please, I submit that if
the Court will examine these
photographs, that they have no
bearing on the question of whether
all the shots came from the rear or
not.

1 MR. ALCOCK:

2 Your Honor, that is a matter of weight;
3 the Jury must decide, not Mr. Dymond.

4 MR. DYMOND:

5 If the Court please, Your Honor can pass
6 on the question of whether it is
7 rebuttal testimony.

8 THE COURT:

9 I pass on the admissibility, not the
10 weight -- the weight is for the Jury.
11 I agree with Mr. Alcock that the Jury
12 should determine the weight. Is that
13 your objection?

14 MR. DYMOND:

15 No, my objection is to the admissibility.
16 They are restricted to rebutting
17 what we put on in the presentation of
18 our case, and these photographs have
19 nothing to do with that.

20 THE COURT:

21 Well, I think it is relevant, I think it
22 is rebuttal, and I think your
23 objection is to weight, not admissi-
24 bility. Therefore, I overrule your
25 objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DYMOND:

To which ruling Counsel reserves a bill, making the question, the entire line of questioning to this witness, the two photographs, S-51 and S-52, the objection, the reasons for the objection, the ruling of the Court and the entire testimony up to now, parts of the bill.

THE COURT:

Would you like to rephrase your question?

MR. OSER:

I will, I will rephrase it.

MR. DYMOND:

Excuse me, Mr. Oser. I would like to have it understood that my bill applies to all questions propounded in connection with these photographs on rebuttal.

THE COURT:

Very well. Let it be noted in the record.

BY MR. OSER:

Q Mr. Schuster, directing your attention to State Exhibit 51, I ask you whether or not you had occasion to examine any particular area contained in that photograph.

1 A I did, sir.

2 Q And what particular area did you examine, sir?

3 A The right top corner.

4 Q And what type of examination did you conduct in
5 regards to the right top corner?

6 A I rephotographed it -- copied it in plain words
7 -- and blew this area up to a great
8 proportion.

9 Q Do you have any such blow ups or exhibits in
10 your possession, with you, sir?

11 A I do.

12 Q May I have them?

13 A Yes (producing blow ups).

14 THE COURT:

15 Show them to Mr. Dymond.

16 MR. OSER:

17 I am, Your Honor.

18 THE COURT:

19 Are these blow ups?

20 MR. OSER:

21 Yes, sir.

22 THE WITNESS:

23 These are, yes, sir.

24 MR. OSER:

25 What is the next State number, if

1 the Court please?

2 THE CLERK:

3 Eighty-three.

4 MR. OSER:

5 I will mark this for identification "S-83."

6 (Whereupon, the photograph referred

7 to by Counsel was duly marked for

8 identification as "Exhibit S-83.")

9 BY MR. OSER:

10 Q (Exhibiting photograph to witness) I show you,

11 Mr. Schuster, what the State has now

12 marked for purposes of identification

13 "S-83," and I ask you if you can identify

14 that particular exhibit. If so, how?

15 A I can identify it; my signature is on the

16 reverse side of the photograph.

17 Q Did you make and develop this particular

18 photograph?

19 A I did, sir.

20 Q And what did you make this photograph from,

21 Mr. Schuster?

22 A From an original 8 x 10, which is marked "S-51."

23 MR. OSER:

24 We will mark the next one "S-84."

25 (Whereupon, the photograph referred

1 to by Counsel was duly marked for
2 identification as "Exhibit S-84.")

3 BY MR. OSER:

4 Q (Exhibiting photograph to witness) I now show
5 you that which has been marked "S-84" for
6 purposes of identification, and I ask you
7 whether or not you can identify that
8 exhibit, and, if so, how.

9 A My signature is on the reverse side of the
10 photograph also.

11 Q And what does that photograph depict?

12 THE COURT:

13 What a minute. The signature being on it
14 doesn't mean anything. You took it?

15 THE WITNESS:

16 It is my signature and I photographed it.

17 THE COURT:

18 I see. You took it yourself. The fact
19 that your signature is on it -- you
20 actually did the work?

21 THE WITNESS:

22 Right.

23 BY MR. OSER:

24 Q And what does that particular photograph, "S-84,"
25 for purposes of identification,

1 represent, Mr. Schuster?

2 A What does it represent?

3 Q Yes. What did you take a picture of, if you
4 did?

5 A Took a picture of -- in my opinion, it was a
6 man.

7 Q And where did you take that?

8 MR. DYMOND:

9 Your Honor, that is the type of testimony
10 that we object to this witness being
11 able to give. He is not qualified on
12 it.

13 THE COURT:

14 Well, I have already qualified him, I
15 ruled on that a few minutes ago.

16 MR. DYMOND:

17 No, he hadn't given that type of answer.
18 If the Court please, we submit on
19 this type of answer this man is not
20 qualified to give it any more than
21 you or I.

22 THE COURT:

23 I disagree with you. I ruled on that a
24 few moments ago.

25 MR. DYMOND:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

All right. To which ruling again I reserve a bill of exception, making the entire testimony, the exhibits S-83 and S-84, the ruling of the Court, the reason for the objection, and all the testimony parts of the bill.

THE COURT:

I ruled, Mr. Dymond, for the sake of the record, that because of his ten years experience and training and schooling he could give his interpretation and could explain a photograph that he took himself.

MR. DYMOND:

Very well.

THE COURT:

That was my ruling a few moments ago.

You may proceed, Mr. Oser.

BY MR. OSER:

Q Mr. Schuster, can you tell me how S-84 for purposes of identification, came about?
How did you come to take this picture?

A Upon blowing up S-83 it was evident, in my

1 opinion, that there was a man in the right
2 corner of S-83, so, in turn, S-83 was
3 enlarged and is now S-84.

4 Q And in doing these blow ups and taking the
5 pictures and developing of the negatives
6 and the printing of the two exhibits you
7 hold in your hand, did you do that
8 yourself?

9 A I did, sir.

10 Q (Exhibiting photograph to witness) I now show
11 you what the State marks for purposes of
12 identification "S-85," and I ask you if
13 you can identify that exhibit.

14 A I identify it as a copy of a photograph I have
15 taken. My signature appears on the
16 reverse side.

17 (Whereupon, the photograph referred
18 to by Counsel was duly marked for
19 identification as "Exhibit S-85.")

20 BY MR. OSER:

21 Q Did you take that particular photograph and
22 develop the negative, and print same?

23 A I did, sir.

24 Q And what does that photograph, which is marked
25 "S-85" for purposes of identification,

1 depict?

2 A It depicts the top rear corner of S-51. On the
3 left side of the photograph and on the
4 right top corner is an extreme blow up of
5 the man in the photograph.

6 Q Am I correct in stating, Mr. Schuster, that
7 S-85 contains S-83 and -84 that you
8 developed?

9 A It does, sir.

10 Q Now, Mr. Schuster, using State Exhibit 51, can
11 you point out for me the area on that
12 particular photograph where you said after
13 you had a chance to observe and examine
14 this particular photograph, that you saw
15 what appears to be a man?

16 A Top right corner right here (indicating).

17 Q Can you circle it for me, please, with this
18 fountain pen?

19 A The whole area that was photographed originally?

20 Q The area in which you found the images, if you
21 found any.

22 A (The witness complied.)

23 Q (Exhibiting photograph to witness) I show you
24 State Exhibit, for purposes of identifi-
25 cation, S-83, and I ask you if you will

1 mark that area also.

2 A (The witness complied.)

3 Q I ask you the same question with regards to
4 S-84.

5 A (The witness marked the exhibit as requested.)

6 Q And the same question in regards to S-85.

7 A (The witness marked the exhibit as requested.)

8 MR. OSER:

9 At this time, Your Honor, if the Court
10 please, the State wishes to offer,
11 introduce and file into evidence
12 that which has just been marked for
13 purposes of identification "S-83,
14 S-84," and "S-85."

15 THE COURT:

16 Is there any objection?

17 MR. DYMOND:

18 Yes, we object on the same grounds that we
19 objected to the testimony of this
20 witness, Your Honor.

21 THE COURT:

22 My ruling is the same.

23 MR. DYMOND:

24 And we would like to reserve the same
25 bill, making these exhibits parts of

1 the bill together with the other
2 material I included in the other bill.

3 BY MR. OSER:

4 Q Now, Mr. Schuster, showing you State Exhibit 85,
5 I ask you whether or not you had an
6 occasion to make any further copies of,
7 S-85?

8 A I did.

9 Q Do you have them with you?

10 A I do.

11 Q Would you compare the copies of S-85 that you
12 have and tell me whether or not they were
13 taken from the same negative and represent
14 the same thing as depicted in S-85.

15 A It does.

16 Q Did you have an occasion, on the copies of
17 S-85, to mark any particular areas on that
18 photograph, on those photographs?

19 A I did.

20 Q And what areas were those, sir?

21 A (Indicating) These two right top corners.

22 Q May I have them, please?

23 A (Photographs handed to Counsel.)

24 Q Mr. Schuster, these fourteen copies, do all of
25 them contain your signature?

1. A It does.

2 MR. OSER:

3 At this time, Your Honor, the State
4 requests permission to display these
5 copies to the Jury before further
6 testimony in connection with this
7 witness.

8 MR. DYMOND:

9 We join in the request, if the Court
10 please.

11 THE COURT:

12 Very well.

13 (Photographs displayed to the Jury.)

14 BY MR. OSER:

15 Q Now, Mr. Schuster, in regards to State Exhibit
16 85, which I now show you, can you tell me
17 what type of analysis or examination that
18 you performed in the particular areas that
19 are circled, and what the results of your
20 examinations were?

21 A Well, this area was photographed, and in
22 reproducing this area to an extremely
23 large (size) it was found -- this man's
24 head was found, this man in this right
25 corner on the larger of the two pictures.

1 MR. DYMOND:

2 Now, if the Court please, I object to
3 this witness saying what was on a
4 larger one. If it is larger than
5 these, let him bring it into court.

6 THE WITNESS:

7 I am speaking of the larger of two on
8 this one sheet.

9 MR. WILLIAM WEGMANN:

10 The larger of the two circles?

11 THE WITNESS:

12 Right. The one circled on the left, I
13 blew it up to what is on the right,
14 to about as large as I think this
15 negative could be blown and still be
16 visibly clear.

17 THE COURT:

18 I believe his question to you was, after
19 the so many hours that you said you
20 examined it, what did your examina-
21 tion consist of. Was that the
22 question?

23 THE WITNESS:

24 In photographing the particular picture
25 from different angles -- not angles

1 but different areas I should say --
2 and studying them with magnifying
3 glasses to find out if there were
4 any people in the pictures, this is
5 the only one, in my opinion, I could
6 say is definitely a person.

7 BY MR. OSER:

8 Q And what led to your opinion, Mr. Schuster, in
9 your mind after having examined this
10 photograph, that that is the image of a
11 man?

12 A Because all his features are there. I mean you
13 can see it is a man by looking at the
14 photograph.

15 THE COURT:

16 I have a magnifying glass if you wish to
17 use it, I mean if you wish to make
18 use of it.

19 THE WITNESS:

20 Now, on the small circle it is much
21 clearer, because the larger you blow
22 up anything the more detail you are
23 going to use, and you can see his
24 head, his collar, his hand, his hair,
25 his eyes, his nose, his whole face

1 as far as I am concerned.

2 BY MR. OSER:

3 Q Can you see anything else in regard to this
4 particular man besides his features, in
5 your opinion?

6 THE COURT:

7 Wait a minute (handing magnifying glasses
8 to jury).

9 THE WITNESS:

10 He appears -- appears to be holding
11 something.

12 MR. OSER:

13 I tender the witness.

14 CROSS-EXAMINATION

15 BY MR. DYMOND:

16 Q Mr. Schuster, am I correct in understanding that
17 you are testifying under oath that you
18 have a firm opinion that that photograph
19 definitely shows a man in it?

20 A In my opinion. In my opinion there is no doubt
21 that is a man.

22 Q Is there definitely a gun there, too?

23 A Now, I didn't say that. I don't know what that
24 is, I have no idea what that is.

25 Q But you can look at that photograph and tell us

1 definitely, in your opinion, there is a
2 man, is that right?

3 A That is right.

4 MR. DYMOND:

5 That is all.

6 MR. OSER:

7 Your Honor, at this time --

8 THE COURT:

9 Just a second, Mr. Oser. The Jury is
10 still examining. Why don't you let
11 them finish examining and then I will
12 hear from you.

13 MR. OSER:

14 I am just asking permission to display
15 the other exhibits to the Jury at
16 the same time, if the Court please.

17 THE COURT:

18 Very well.

19 (Photographs displayed to the Jury.)

20 MR. OSER:

21 If the Court please, the State has no
22 further use of Mr. Schuster, and
23 we ask that he be excused.

24 THE BAILIFF:

25 Order in court, please.

1 THE COURT:

2 Gentlemen of the Jury, you're not supposed
3 to discuss with one another what you
4 see, you have to keep that to
5 yourselves and do that later. Don't
6 confer with one another on what you
7 find on there; you may be tempted to
8 do it but you can't do it.

9 I think they are ready to return
10 the photographs.

11 MR. OSER:

12 May Mr. Schuster be excused from the
13 subpoena, Your Honor?

14 THE COURT:

15 Mr. Schuster, you are excused, released
16 from the legal obligations of the
17 subpoena.

18 I see Dr. Rabin. We are going
19 to take a five-minute recess. Take
20 the Jury upstairs.

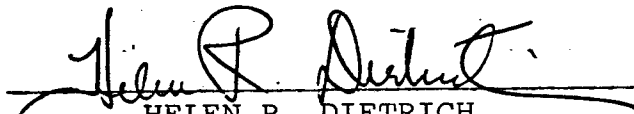
21 (Whereupon, a brief recess was taken.)
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Helen R. Dietrich, do hereby certify:

That the above and foregoing (75 pages of typewritten matter) is a true and correct transcription of the stenographic notes of the proceedings had herein, the same being the testimony of Dr. John Marshall Nichols and Peter Schuster, from the proceedings in Open Court on February 28, 1969, and taken down by the undersigned and transcribed under her supervision, on the day and date heretofore noted.

New Orleans, Louisiana, this 6th day of June, 1969.


HELEN R. DIETRICH
REPORTER