

Sirhan trial transcript

12-23-68 164

1 to take up and that is the matter of conferences in
2 chambers on matters without requiring the necessity of
3 the defendant's presence.

4 MR. COOPER: Yes, your Honor please.

5 At this time, if your Honor please, I would offer
6 to stipulate and to have the defendant make a statement
7 agreeing that from time to time there are matters that are
8 not formal in nature but only informal in character where
9 it would be helpful both to the Court and counsel for the
10 Prosecution and Defense to confer from time to time in
11 the absence of the defendant.

*see pgs 2651 + 2
and pgs 3900 + 3901 +
3967*

12 Do you agree to do that?
13 *(Sirhan)*
THE DEFENDANT: Yes, I do.

14 *(Judge Herbert Walker)*
THE COURT: You join in that?

(see below)

15 MR. HOWARD: I will join.

16 THE COURT: Anything further, gentlemen?

17 *(Chief Defense Counsel)*
MR. COOPER: There is one other thing, your Honor
18 please. I think possibly that we should agree in the
19 record, and I request, and now since the case is now set
20 for trial for the 7th of January, and as I have read in
21 the newspaper there is a flu epidemic of an Oriental
22 origin, I think for the sake of everyone, so that we will
23 not have to ask for a continuance, that Mr. Sirhan should
24 be given a flu shot and I think that the Court should
25 consent and the defendant.

26 THE DEFENDANT: Yes, sir.

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*Sirhan wasn't told about Spec. Ct. # Chapter XVIII a
the agreement bet. prose. & defense
to stipulate to ballistics. Why not prove up foundation?*

1 and I will pick those up in order and ask for a stipulation
2 that this is the bullet or bullet fragment removed from,
3 ^{say} let us Elizabeth Evans, the victim alleged in Count 5 of
4 the Indictment.

5 MR. COOPER: No question about it.

6 MR. FITTS: Up to that point then we have no
7 particular difficulty.

8 Mr. Wolfer I would also want to testify with
9 respect to a bullet fragment that was removed from the
10 Senator's head.

11 MR. COOPER: That will be stipulated to.

12 MR. FITTS: That, of course, was done during the
13 course of surgery and the doctor is going to follow Mr.
14 Wolfer, so --

15 MR. COOPER: Well, now, let me ask you this -- I
16 would object to the necessity of calling that doctor in
17 view of the fact that we are stipulating that all of these
18 others were taken. It merely emphasizes gory details and
19 at this point I would object. That evidence would be
20 cumulative.

21 THE COURT: You make your objections when the time comes.
22 I don't want to sit here in chambers and rule on this, that
23 or the other.

24 I think we ought to get out there and get on
25 with the trial now.

26 Make your objections out there in court and I

Remember the secret sweet heart deal 3 days earlier to stipulate to ballistic evidence. Sison was not informed ~~at~~ this ultimate betrayal by his defense attorney. Prosecution lacked foundation/no problem - look up a deal to stipulate to ballistic evidence 4120

1 LOS ANGELES, CALIFORNIA MONDAY, FEBRUARY 24, 1969
2 9:20 A.M.
3 - - -
4 (The following proceedings were had in
5 chambers.)
6 MR. MC COWAN: My first one is 3790, Line 1.
7 This is Mr. Compton speaking, "Are we going
8 to a new subject of the Times article?" And he made no
9 differentiation.
10 THE COURT: There would be.
11 MR. MC COWAN: We could insert "instead" between
12 "subject" and "of".
13 THE COURT: What is your next?
14 MR. MC COWAN: The next one, and I just wanted to
15 ask the Court if he could recall. This is 3801 and it
16 was Mr. Cooper speaking, Line 11, and this is first the
17 Court speaking.
18 "At the time of that comment I cited the
19 case of Jones vs. Nevada, which I think held. I
20 think you had some quarrel with it."
21 And then Mr. Cooper said, "We are agreeing
22 to it."
23 Did he say that?
24 THE COURT: That is right. He didn't mean he was
25 agreeing to Jones vs. Nevada, but he was agreeing to give
26 the psychiatric information back and forth.

6

(The following proceedings were had in open court, within the presence and hearing of the jury.)

THE COURT: People vs. Sirhan, let the record show the parties and counsel present, and the jury is in the jury box.

You may proceed, gentlemen.

MR. FITTS: De Wayne Wolfer, please.

THE CLERK: You do solemnly swear the testimony you are about to give in the cause now pending before this Court shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated, please.

State your name, please.

THE WITNESS: It is De Wayne A. Wolfer, and that is D-e W-a-y-n-e W-o-l-f-e-r.

DE WAYNE A. WOLFER,

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

DIRECT EXAMINATION

BY MR. FITTS:

Q Your occupation, sir?

A Police Officer for the City of Los Angeles, assigned to the Scientific Investigation Division, Crime

1 Laboratory, where I act as a criminalist -- the study of
2 firearms -- and as a ballistics expert.

3 Q What is your rank and title?

4 A I am a police officer.

5 Q A sergeant?

6 A No, just a police officer.

7 Q Just a police officer.

8 If the Court please, if you will bear with me,
9 I have a number of exhibits which I wish to mark for
10 identification. Initially, I would say, before I proceed
11 -- and there are a number of these -- they have been the
12 subject of conversation with Mr. Cooper and there will be
13 stipulations offered with respect to some of these.

14 MR. COOPER: That is correct, your Honor.

15 MR. FITTS: First of all, I have an envelope which
16 contains an expended bullet; may that be marked People's 47
17 for identification?

18 THE COURT: So marked.

19 MR. FITTS: May it be stipulated, Mr. Cooper, that
20 this expended bullet was removed from the vicinity of the
21 sixth cervical vertebra of Senator Robert F. Kennedy at
22 the time of the autopsy which was performed upon him?

23 MR. COOPER: So stipulated. It may be received in
24 evidence then.

25 What is that exhibit number again?

26 THE COURT: 47 is the number I have.

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MR. COOPER: Thank you.

MR. FITTS: I have a large evidence envelope and, for the purpose of identification, it contains, in the upper left-hand corner the designation Item Numbers 25 and 27. It contains two vials containing bullet fragments.

May that be marked as People's next in order, as People's 48?

THE COURT: In evidence, Mr. Cooper?

MR. COOPER: I have no objection, your Honor.

THE COURT: In evidence.

MR. FITTS: And the next, Mr. Cooper, is a bullet fragment contained with the vials as part of Exhibit 48, which was removed from the head of Senator Robert F. Kennedy, both during the course of surgery performed upon him prior to his death and later upon the autopsy performed subsequent to his death.

MR. COOPER: So stipulated.

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MR. FITTS: I have a photograph, your Honor, a colored photograph, depicting an enlargement of the bullet fragment that has been marked People's 49.

MR. COOPER: For identification.

MR. FITTS: In an envelope, which is for identification purposes, bearing the designation, the number in the upper left-hand corner, Item 57. It contains a vial containing two bullet fragments.

May that be marked People's 49?

MR. COOPER: 50 is the next one.

THE COURT: Is that in evidence?

MR. COOPER: Two bullet fragments, and where did that come from, Counsel?

MR. FITTS: May it be stipulated -- but, I am getting a little bit ahead. And this is from the alleged victim in Count III of the Indictment, Mr. Paul Schrade.

MR. COOPER: So stipulated.

MR. FITTS: I have another envelope for identification purposes with the designation in the upper left-hand corner, Item 105.

May this envelope and its contents be marked People's --

MR. COOPER: What was that, 105?

THE COURT: He is getting to that next.

MR. COOPER: Pardon me.

MR. FITTS: Exhibit 51.

2. 1 MR. COOPER: Tell me first and then maybe we
2 can stipulate.

3 MR. FITTS: Item 51 contains one expended bullet,
4 and may it be stipulated that the expended bullet contains

5 THE COURT: Is that an expended bullet or shell?

6 MR. FITTS: Bullet.

7 THE COURT: Oh, all right.

8 MR. FITTS: That bullet is contained within an
9 envelope which I have now given the designation 51, and
10 it was removed from the body of Irwin Stroll, the victim
11 alleged in Count III of the Indictment.

12 MR. COOPER: So stipulated, your Honor, and this is
13 for the purposes of this case only. And may it be marked
14 51 and I make that because of the civil suit.

15 MR. FITTS: We understand.

16 THE CLERK: In evidence?

17 MR. COOPER: In evidence in this case only.

18 MR. FITTS: I have another envelope bearing for
19 identification purposes only the designation in the upper
20 left-hand corner Item 113, 114 and 115. Item 113 would
21 be all that would be material in this lawsuit, Mr. Cooper.
22 It is an extended .22 caliber bullet.

23 May it be marked People's 52 for identifica-
24 tion?

25 THE COURT: So marked.

26 MR. FITTS: For identification at this time.

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THE COURT: For identification.

MR. COOPER: As long as he lets me know where it came from.

MR. FITTS: All right, and may it be stipulated, Mr. Cooper, that this is an expended bullet which is contained in this envelope, People's 52 and given a designation on the cover of the envelope as Item 113 and it is a bullet which was removed from the person of Ira Goldstein, the victim alleged in Count IV of the Indictment.

MR. COOPER: So stipulated, but shouldn't 114 and 115 be removed if they are not material.

MR. FITTS: Item 114 has the notation "M.T." standing for medical treatment, and the other is 115, a receipt for property.

MR. COOPER: I would suggest, your Honor please, they be removed from the exhibit as being immaterial to the issues of this case.

MR. FITTS: I have no objection to that, however, for convenience, and in order to expedite what we are doing here, may they be removed at the time the witness examines the contents.

MR. COOPER: I don't care.

THE COURT: Let's put them in a smaller envelope within the bigger envelope : can't you do that?

MR. FITTS: Yes, your Honor. The only thing I am

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concerned about is the bullet.

THE COURT: I know, but the other should be put in an envelope but not received in evidence.

MR. FITTS: Fine, your Honor, but for the purpose of moving along this can be done at the time of the witness' testimony.

THE COURT: 52 is in evidence?

MR. COOPER: Yes, your Honor.

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1 MR. FITTS: And an additional envelope for
2 identification purposes only, and in the upper left-hand
3 corner a designation Item 45, consisting of two bullet
4 fragments, and may it be stipulated that these bullet
5 fragments were removed from the head of Elizabeth Evans,
6 the victim alleged in Count V of the Indictment.

7 MR. COOPER: So stipulated, your Honor.

8 MR. FITTS: It would be People's 53 then in evidence,
9 Mr. Cooper?

Bv. 10 MR. COOPER: Yes, so stipulated.

11 MR. FITTS: I have an envelope bearing for
12 identification purposes only in the upper left-hand corner
13 the designation number 56, Item 56, as one expended
14 bullet.

15 May that be marked People's 54 for
16 identification, Mr. Cooper?

17 In case you want to offer it in evidence,
18 may it be stipulated that this is a bullet which was
19 removed from the person of William Weisel, the victim
20 alleged in Count VI of the Indictment.

21 MR. COOPER: So stipulated. It may be received in
ev 22 evidence.

23 THE COURT: In evidence, People's 54.

24 MR. FITTS: Now, to get back to you, Officer Wolfer.

25 MR. COOPER: Are those the only ones you have? Are
26 you finished?

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MR. FITTS: Yes.

Your Honor, I think this stipulation will save a couple days testimony.

THE COURT: Undoubtedly there is no question about that.

MR. FITTS: I would make it even more.

THE COURT: Well, it amounts to saving the testimony of a doctor passing it to a nurse who passes it to a police officer and all of the rest of them.

MR. COOPER: Yes.

MR. FITTS: About 20 witnesses.

Q BY MR. FITTS: Officer Wolfer, you have previously identified yourself as one versed in the science of ballistics, is that true, sir?

A That is correct.

Q What is that science?

A Ballistics is the science, a study of flight patterns of projectiles and we have internal ballistics and we have external, and that is from the time the bullet is fired or leaves the muzzle of the gun and flies through the air until it terminates.

Q What education and experience have you had or undergone to prepare yourself for this particular field?

A In this particular field, in the field of formal education I have my Bachelor's Degree from the

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1 with the California State College at Long Beach.

2 I have given papers before professional groups,
3 am a member of the American Academy of Forensic Science
4 and a member of the California State Association of
5 Criminalists.

6 That's essentially my background.

7 MR. COOPER: Mr. Fitts, do you think I should have
8 an opportunity to take him on voir dire?

9 MR. FITTS: Would you like to, Mr. Cooper, or do
10 want to reserve that for cross?

11 Q BY MR. FITTS: Officer, I have placed before
12 you the exhibits which I have marked for identification,
13 all but one of which has been received into evidence at
14 this time. They are Exhibits 47 to 54, Exhibit 49 being
15 marked for identification only, and being a picture
16 enlargement of a bullet fragment.

17 With the exception of that picture, I now ask
18 you to examine the contents of the envelopes which are
19 before you in evidence, and when you have examined them
20 all, would you tell me if you have seen them before?

21 MR. COOPER: I will stipulate he has seen them all
22 before, if -- pardon me.

23 Maybe I shouldn't have done that.

24 MR. FITTS: I think the stipulation in this instance
25 might save a little time. It might be tedious if he
26 examines them all at this time.

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I offer to stipulate at this time that
Sergeant Wolfer has seen the bullets and bullet fragments
contained in Exhibits 47 to 54 in evidence.

Is that an acceptable stipulation to you, Mr.
Cooper?

MR. COOPER: That's an acceptable stipulation.

MR. FITTS: I take it, sir, that those bullet
fragments came to you in the due course of police
procedure at the laboratory, is that correct, sir?

THE WITNESS: That's correct.

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1 Q BY MR. FITTS: And they were delivered to
2 you for some purpose, were they not?

3 A That's correct.

4 Q With reference now to the pictorial enlargement
5 which is 49, and directing your attention --

6 MR. COOPER: That's 49 for identification?

7 MR. FITTS: Yes, that's for identification only.

8 Q -- and to the bullet fragments contained in
9 People's Exhibit 48, marked immediately preceding it,
10 which by stipulation contains bullet fragments removed
11 from the head of Senator Kennedy, does that picture which
12 you hold in your hand, People's 49, bear some relation
13 to Exhibit 48, sir?

14 A Yes, it does.

15 Q What is that?

16 A This picture which has been marked for
17 identification here is a fragment taken from People's
18 Exhibit Number 48. It was taken and photographed at my
19 direction and in my presence to show certain portions of
20 the identifying features of the bullet.

21 MR. COOPER: Counsel, with the permission of the Court
22 may I just ask some questions on voir dire with respect
23 to that picture?

24 THE COURT: Yes.
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VOIR DIRE EXAMINATION

BY MR. COOPER:

Q Officer, do you have a small photograph of that same picture?

A Yes, counsel, I probably do.

Q You don't have it with you?

A No. I could probably get it.

MR. COOPER: Could we approach the bench, if your Honor please?

THE COURT: Yes, certainly.

1 (The following proceedings were had at
2 the bench, outside the hearing of the jury.)

3 MR. COOPER: If your Honor please, there is before
4 your Honor this enlarged photograph of a bullet fragment
5 and I am taking this up now because it will follow in
6 logical sequence, and two photographs of the head of the
7 deceased Senator Kennedy.

8 We intend to object to all three of these
9 photographs; to wit, the enlargement of the bullet and
10 the two photographs of Senator Kennedy, on the ground
11 that they are highly inflammatory.

12 I have heretofore, just as I have stipulated
13 to the foundation of these bullets, offered to stipulate
14 that there is no question but that these bullets and
15 bullet fragments came from the head of Senator Kennedy and
16 from each of the victims.

17 I note with respect to these two photographs
18 of the deceased Senator Kennedy they intend to show by that
19 that on the ear there is powder tattooing, and we will
20 stipulate that there was powder tattooing on the ear of
21 Senator Kennedy; that the gun was held as close as the
22 witness wants to testify that it was held.

23 I realize the prosecution has a right to prove
24 its case; at the same time, number one, with respect to
25 this bullet fragment, it looks like a bullet from an
26 exceptionally large revolver --

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MR. FITTS: May I interrupt you at that point? We have the bullet fragment. The bullet fragment can be shown to the jury and it will be explained that this is an enlarged magnification of it.

The purpose of having an enlarged magnification is to have the witness's testimony -- if I may briefly summarize what I expect -- your Honor will observe that in the color photograph there are what appear to be small gold areas. I expect that the witness will testify that this is indicative that this was Mini-Mag ammunition.

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Further, there are visible to the trained eye, and particularly under microscopic examination, certain indications that that bullet fragment was fired from a gun bearing the same rifling specifications as the weapon, People's 6 in evidence, in this case. It is illustrative of his testimony.

MR. COOPER: He could testify to that orally, if your Honor please.

In view of the defense that has been announced as early as voir dire and the nature of the cross examination of these witnesses; from the nature of the examination of all of the witnesses; these photographs are highly inflammatory.

We will stipulate that these fragments did come from Senator Kennedy; we will further stipulate they came from the gun.

If they want to go through them, as they possibly have the right to do, and have this witness testify as an expert, I have no objection to his testifying as an expert; but I do object to this enlarged photograph, because he could testify to it without the photograph.

Secondly, with respect to the photographs of Senator Kennedy, they do nothing but inflame the jury. I don't think it is the kind of thing that should be in evidence, in any event, having in mind the Kennedy family.

It's highly prejudicial to the defendant's

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1 rights.

2 MR. FITTS: With reference to the circumstances of
3 the shooting, your Honor, your Honor has heard Karl
4 Uecker and any number of witnesses who attempted to
5 describe what happened; one witness has put the muzzle of
6 the revolver some three or four feet from the Senator's
7 head, others have had it at varying ranges. The only way
8 we can clear up whatever ambiguity there may be there and
9 to show the truth is by the testimony of this witness who,
10 on the basis of the powder tattooing and the experiments
11 that he performed with respect thereto, will testify
12 that the muzzle range with respect to the Senator's head
13 was about one inch.

14 Now, I think the prosecution is entitled to
15 present that.

16 MR. COOPER: Your Honor, we have no objection to
17 his testifying that he observed these powder burns and
18 we have no objection to his testifying to whatever his
19 opinion is, but I don't feel it's necessary to illustrate
20 it. We don't quarrel that it was held within one inch.

21 THE COURT: Well, I think the prosecution has a
22 right to present its case, whatever they think should be
23 presented.

24 There are plenty of cases which hold that these
25 types of photographs are not inflammatory. I have had
26 dozens of them up before the Court that were a lot more

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1 inflammatory than these.

2 MR. COOPER: But in the circumstances of this case,
3 if your Honor please, I feel that it would be highly
4 prejudicial and highly inflammatory so far as the defendant
5 is concerned; and it could be done without these.

6 THE COURT: I appreciate that is true, but I still
7 think the prosecution has a right to present their case
8 the way they think it should be presented.

9 Now, we are in a position of talking about two
10 photographs which have no identification on them whatsoever,
11 so there might be some question as to the ruling --

12 MR. COOPER: Well, when the time comes --

13 THE COURT: Just so you won't have to make these
14 objections all over again when the time comes, is there
15 any reason why these can't be marked 56 and 57, respectively
16 for identification?

17 MR. FITTS: They could be at this time, your Honor.
18 The only reason I haven't marked them now is that there
19 are going to be three phases of this witness's testimony
20 and I wanted to mark some of the exhibits with respect to
21 one phase, and then go into the next phase.

22 THE COURT: Well, there are two photographs, one
23 purporting to be of the Senator's head, partially shaven,
24 with sutures showing, and red crayon marks on it; one
25 purporting to be the Senator's head with sutures showing
26 and somebody is holding his ear with rubber gloves.

1 I will overrule the objection at this time as
2 to all three of them.

3 MR. COOPER: Without in any manner, shape or form,
4 if your Honor please, relinquishing the objections
5 heretofore made, since your Honor has made this ruling,
6 what is the necessity for the two photographs when one
7 will suffice?

8 MR. FITTS: Well, that isn't true. The testimony
9 of the witness is going to indicate the reason for having the
10 two photographs with reference to the expert opinion of
11 the witness in placing the muzzle of the revolver. That
12 is with reference to the powder tattooing.

13 THE COURT: It will be deemed then when these come
14 in it won't be necessary for Mr. Cooper to reiterate his
15 objections.

16 MR. COOPER: I'll just make the objection on the
17 grounds heretofore made.

18 THE COURT: I want the record clear that you have
19 objected to it.

20 MR. COOPER: If your Honor please, considering the
21 Kennedy mystique and the respect in which he was held by all
22 the people in this country, we still hold this is highly
23 inflammatory.

24 THE COURT: Well, when I ask you if you have said
25 everything you've got to say, let's stop there. I know,
26 I realize what has happened, but I want to give you all the

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time in the world to say what you want to say, and when I rule on it, I don't think something else should be put in the picture.

MR. COOPER: If your Honor please, my associate suggested that.

THE COURT: I heard it.

1 (The following proceedings were had in
2 open court, within the presence and hearing of
3 the jury.)

4 THE COURT: With respect to the photograph the
5 witness is now about to testify to, the objection will be
6 overruled.

7 Q BY MR. FITTS: As I recall, Officer Wolfer,
8 I directed your attention to People's Exhibit 49 and
9 correct me if I am wrong -- you have stated in substance
10 that that was an enlarged color photograph of one of the
11 little fragments contained in Exhibit 48, a fragment
12 removed from the head of Senator Kennedy, is that true, sir?

13 A That's correct.

14 Q Needless to say, that is a photograph taken
15 with a considerable amount of magnification, is that
16 correct?

17 A That's correct.

18 MR. COOPER: 49 is now in evidence, your Honor?

19 THE COURT: Yes.
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1 Q BY MR. FITTS: For the purpose of illustrating
2 to the jury the degree of magnification, 49 seems to depict
3 a rather large piece of shrapnel. Would you look at
4 People's 48 and find an object which is the subject of the
5 photograph being People's 49?

6 A No, for the Court records, I am now holding the
7 two exhibits side by side.

8 Q Display them to the jury.

9 A Yes.

10 Q And you happen to know the degree of
11 magnification?

12 A Offhand, no.

13 Q It appears to be several hundreds, though,
14 doesn't it?

15 A Yes, it does.

16 Q All right, I think now for the purpose of
17 your testimony you may return to Exhibit 49, to the file
18 which contains the fragments that are in evidence and
19 which is in this envelope which has been returned to the
20 large envelope.

21 At some other time you testified that those
22 exhibits before you you did see perhaps before you received
23 a certain weapon?

24 A Yes, I did.

25 Q I direct your attention now to People's 6 in
26 evidence, a .22 which I have here, an Iver Johnson revolver

1 Have you seen that before, sir?

2 A Yes, I have.

3 Q Were you requested at the time you had People's
4 6 for identification in your presence, and the bullet
5 fragments, People's 48 through 54, excluding of course
6 Exhibit 49 as a photograph, were you instructed to perform
7 certain ballistic experiments to determine, if possible,
8 whether or not any of the projectiles contained in those
9 exhibits had been fired by Number 6 in evidence?

10 A I was.

11 Q In reference to that task, what did you do, sir?

12 A I then took the gun to a water recovery tank,
13 the gun that is marked People's Exhibit 6 now.

14 Q Yes.

15 A And fired People's Number 6 again into a
16 water recovery tank at the Police Department, 150 North
17 Los Angeles.

18 Q And a water recovery tank, what is a water
19 recovery tank?

20 A That is a tank that is approximately ten feet
21 in length. It is imbedded in the floor of the Police
22 Building, and into which, we fire into an eighteen-inch
23 column of water for the purpose of recovering the expended
24 projectile from the weapon and the water slows it down
25 without any great damage to it and that allows us to have
26 a good bullet for comparison purposes.

* *Wolfer did not have Rev 48 (Item 24+25 - but given phantom #26+27) in his possession on 6-6-68.*

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Q With reference to ammunition which you selected for making these test shots, had you been informed at this time as to the condition of the ammunition that would probably be used?

A I had.

Q And in that connection what did you do in choosing ammunition for these test shots?

A I took the batch number and, further, having information of where the ammunition was purchased from, went to the location and purchased an additional batch number of this ammunition for the purpose of these test firings.

Q Did you purchase the ammunition from the Lock, Stock 'N Barrel?

A That is correct, in San Gabriel..

Q Now referring to the batch number, when you are talking about batch numbers, is this powder batches?

A Yes and no. I would have to explain this. This may not be the same batch of powder. It is the same batch of lead. It is the same batch of priming compound, in other words, when they produce the ammunition at the factory, they may produce anywhere from five to seventy-five thousand rounds at one time. They then take and mark the flap of the box which is housing it with a number for ballistic purposes, as well as for later identification. This batch would then indicate that it was all manufactured at one manufacturing process.

