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R. S.

February 3, 1966

Mr. Malvin M. Diggs
United States Attorney
Dallas, Texas

Attention: Mr. B. H. Timmins, Jr.
Assistant U. S. Attorney

Re: One 6.5 mm, Mannlicher Carcano Military
Rifle, Model 91-38, Serial No. C2766
With Appurtenances, and One .38 Special
S & W Victory Model Revolver, Serial No.
V510210, With Appurtenances

Dear Mr. Diggs:

Thank you for your letter of January 28, 1966 transmitting
copies of various documents filed at the pretrial conference in
the above entitled case.

The only question involved in Plymouth Sedan v. Pennsylvania,
380 U.S. 698 is whether evidence obtained in violation of the Fourth
Amendment may be relied upon to sustain a forfeiture. No similar
consideration exists here and while the Court speaks of forfeiture
proceedings as being quasi-criminal in character, that is so only
insofar as Constitutional guaranties, including the Fourth Amendment,
are concerned.

We are, therefore, in agreement with your view that the Libelant
need only prove that Oswald deliberately and with knowledge, used the
fictitious name in ordering the weapons, caused the dealers to make
false entries in their records. To prove this element, even in a

Records
Chrono
Mr. Cella
Mr. Kern
Policy file

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criminal prosecution, it is not necessary that the Government prove that the defendant in fact had an evil intent. In false statement prosecutions the word "wilfull" means no more than that the forbidden act is done deliberately and with knowledge. See, e.g., Hirsch v. Immigration Service, 308 F. 2d 562 (C.A. 9, 1962); Neely v. United States, 300 F. 2d 67 (C.A. 9, 1962). You will note that in Neely, the Court refers to McBride v. United States, 225 F. 2d 249 (C.A. 5, 1955); Corcoran v. United States, 229 F. 2d 295 (C.A. 5, 1956).

We appreciate your keeping us informed of these matters.

Sincerely,

FRED H. VINSON, Jr.
Assistant Attorney General
Criminal Division

By:

CARL W. BELCHER
Chief, General Crimes Section

PLEASE ADDRESS ALL MAIL TO
UNITED STATES ATTORNEY
P. O. BOX 133

United States Department of Justice

BHT:neo

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF TEXAS
DALLAS, TEXAS 75221

January 28, 1966

AIRMAIL

Mr. Carl W. Belcher, Chief
General Crimes Section
Criminal Division
Department of Justice
Washington, D. C. 20530

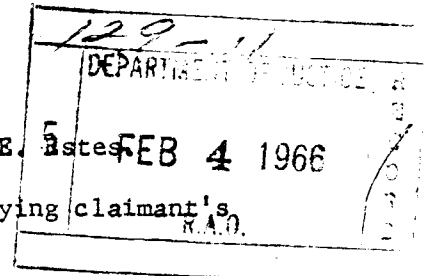
ATTENTION: Joseph J. Cella

Re: One 6.5 mm, Mannlicher Carcano Military Rifle,
Model 91-38, Serial No. C2766 With Appurtenances,
and One .38 Special S & W Victory Model Revolver,
Serial No. V510210, With Appurtenances
Dept. Ref: FMV:CWB:pem 129-11

Dear Mr. Belcher:

I enclose copies of the following documents which were filed at the pre-trial conference yesterday:

- (1) Stipulation of Facts (The exhibit numbers are inserted in this copy but the exhibits are not attached. If you wish a copy of the stipulation with all exhibits attached, please advise, and I will have additional copies prepared to send you.)
- (2) The Government's Proposed Findings of Fact and Conclusions of Law.
- (3) Claimant's Proposed Findings of Fact and Conclusions of Law.
- (4) The brief for Claimant King.
- (5) The Pre-Trial Order entered by Judge Joe E. Estes
- (6) Order signed by Judge Estes and filed denying claimant's motion to dismiss.



I have previously furnished you copies of the Government's brief which was filed yesterday. You will note from the pretrial order that the case is set for oral argument on February 21 and that both sides may

Mr. Carl W. Belcher

-2-

January 28, 1966

file supplemental briefs on or before February 7. We are now working on an additional brief which will be directed principally to the contested issues of law as set out in paragraph 4(b) and (c) of the pretrial order. As soon as a draft of that brief is complete, I will furnish it to you prior to the deadline for filing.


It was my impression of the pretrial that Judge Estes was inclined toward our view of the forfeitability of the weapons. However, he expressed some concern as to the necessity for proving Oswald's intent to cause a falsification of the records by ordering in the fictitious name. In that connection he raised the question as to whether he could properly consider the subsequent use of the weapons in the attempted shooting of General Edwin A. Walker, the assassination of President Kennedy, and the shooting of Dallas Policeman J. D. Tippitt as circumstances from which an inference could be drawn of Oswald's intent to mislead and falsify at the time of the order. The Judge seems to be concerned as to the import of One 1958 Plymouth Sedan v. Pennsylvania, 380 U. S. 698 (April 29, 1965). He theorizes that under this case our forfeiture proceeding is a penalty for a criminal offense and we must, therefore, prove an evil intent to commit an unlawful act, to establish the intent to cause a falsification of the records. It is our present view that the facts of the subsequent use of the weapons are not necessary or proper considerations, and that we need only prove that he knowingly used the fictitious name Hidell in ordering the weapons and that this was not by mistake or accident, thus causing the inaccurate entry in the gun dealer's records.

In any event, I have asked Mr. Jim Gauding, Assistant Regional Counsel, who is working with me on the case, to explore this aspect of the case for incorporation into our supplemental brief and for use in reply to questions by the Court at argument. I know that Mr. Gauding will be in contact with Mr. John McCarren on this question. We will appreciate your views concerning the significance of the above cited case and its application to our present case.

I will be in touch with you as the case progresses to trial date.

Yours very truly,

MELVIN M. DIGGS
United States Attorney

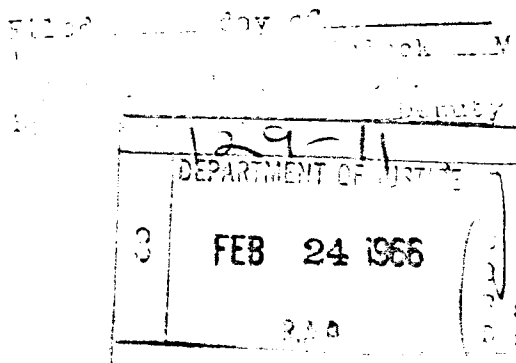

B. H. TIMMINS, JR., Assistant
United States Attorney

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
 Libelant,)
 v.)
)
 ONE 6.5 MM. MARELICHER-CARCANO)
 MILITARY RIFLE, MODEL 91-38,)
 SERIAL NO. G2766, WITH AFFUR-)
 TEMENTANCES, AND ONE .38 SPECIAL)
 S&W VICTORY MODEL REVOLVER,)
 SERIAL NO. V510210, WITH)
 AFFUREMENTANCES,)
)
 Respondents.)

CIVIL ACTION NO. 3-1171



PRETRIAL ORDER

1. The motion to dismiss for lack of jurisdiction has been denied by separate order of this date.
2. There are no other pending motions.
3. All of the facts and exhibits are set forth in the stipulation by the parties filed herein. The only differences between the parties on fact issues are fundamentally matters of characterization. Those differences are reflected in the separate proposed findings of fact and conclusions of law submitted by each of the parties.
4. The contested issues of law are the following:
 - a. Does the Federal Firearms Act permit forfeiture under the facts stipulated in this action?
 - b. Does Public Law 89-318, dealing with items of physical evidence before the President's Commission on the Assassination of President John F. Kennedy, provide the exclusive remedy by which the government can take the military rifle and revolver in question?
 - c. Does the forfeiture of the military rifle and revolver under the Federal Firearms Act deny claimant King due process of law and just compensation guaranteed by the Fifth Amendment of the Constitution of the United States?
5. It is anticipated that neither party will offer any witnesses so that the case will be handled solely on stipulations,

102-11
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briefs and oral argument.


6. Both parties may submit additional requested findings of fact, conclusions of law, and reply or supplemental briefs provided they are filed with the Clerk of the Court on or before February 7, 1966.

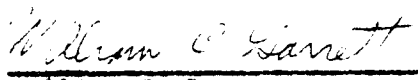
7. This case is set for trial on the merits Monday, February 21, 1966, at 9:30 a.m.

ENTERED at Dallas, Texas, this 27 day of January, 1966.


UNITED STATES DISTRICT JUDGE

MELVIN M. DIGGS
United States Attorney


B. H. Timmins, Jr., Assistant
United States Attorney


William C. Garrett
Attorney for Claimant

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
 Libellant,)
)
 v.)
)
 ONE 6.3 mm. MANNLICHER-CARCANO)
 MILITARY RIFLE, MODEL 91-38,)
 SERIAL NO. C2766, WITH)
 APPURTENANCES, AND ONE .38)
 SPECIAL S&W VICTORY MODEL)
 REVOLVER, SERIAL NO. V510210,)
 WITH APPURTENANCES,)
 Respondents)

CIVIL ACTION NO. 3-1171

JAN 27 1966

Filed _____ day of _____
 19__ at 1:50 o'clock P.M.
 RAMELLE HAMILTON, Clerk
 By _____ Deputy

ORDER DENYING MOTION TO DISMISS

Claimant John J. King's motion to dismiss for lack of jurisdiction contained in the "Exceptions and Answer of Claimant" filed herein is hereby DENIED.

1. Claimant King's "First Exception to the Jurisdiction of this Court" is without merit because the United States District Court for the Northern District of Texas, wherein the military rifle and revolver in question were seized, has jurisdiction of this in rem libel of information for forfeiture. 26 U.S.C. (I.R.C. 1954) 7323; Yettig Canning Co. v. Steckler (7 Cir., 1951), 188 F.2d 715, certiorari denied 341 U.S. 951.

2. Claimant's "Second Exception to the Jurisdiction of this Court" is without merit because the military rifle and revolver seized are properly in the custody and control of the United States Marshal and this Court by virtue of due and proper judicial process issued by this Court. 26 U.S.C. 7232; Averill v. Smith, 34 U.S. 82, 90, 94.

3. Claimant's "Third Exception to the Jurisdiction of this Court" is denied for the reasons stated in paragraphs (1) and (2) above, and because federal officers may adopt seizures of local officials. United States v. One Ford Coupe, 272 U.S. 321, 325 (1926); Herman v. United States, 199 F.2d 34 (4 Cir., 1952); United States v. One Studebaker Seven-Passenger Sedan, 4 F.2d 534 (9 Cir., 1925).

SIGNED and ORDERED ENTERED at Dallas, Texas, this 20 day of January, 1966.

DEPARTMENT OF JUSTICE
 3 FEB 24 1966

UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Libelant,

v.

ONE 6.5 mm. MANNLICHER-CARCANO
MILITARY RIFLE, MODEL 91-38,
SERIAL NO. C2766, WITH APPURTENANCES,
AND ONE .38 SPECIAL S&W VICTORY MODEL
REVOLVER, SERIAL NO. V510210, WITH
APPURTENANCES,

Respondents.

CIVIL NO. 3-1171

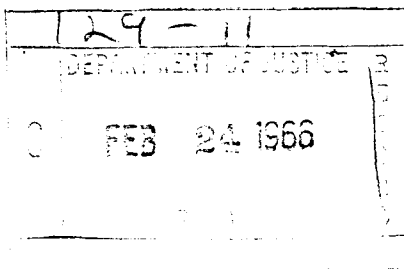
GOVERNMENT'S REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now comes the United States of America by and through its attorney, B. H. Timmins, Jr., Assistant United States Attorney for the Northern District of Texas, and requests the Court to make the following findings of fact and conclusions of law.

I. Findings of Fact

1. That on November 22, 1963, in Dallas, Texas, officers of the Dallas Police Department seized and detained the respondent 6.5 mm. Manlicher-Carcano Military Rifle, Model 91-38, serial number C2766, with appurtenances, and the respondent .38 Special S&W Victory Model Revolver, Serial No. V510210, with appurtenances, which respondents are hereinafter referred to as the "rifle" and the "revolver," respectively. (Alleged in libel; admitted in claimant's answer.)

2. That at sometime after November 22, 1963, and prior to the institution of this forfeiture action, alcohol and tobacco tax officers of the Internal Revenue Service adopted the seizure of the rifle and of the revolver as property seized as forfeited to the United States. (Paragraph II, page 5 of claimant's answer admits government's publication of notice of seizure of respondent firearms as forfeited.)



3. The Internal Revenue Service commenced administrative forfeiture proceedings against the rifle and the revolver in accordance with Section 7325, Title 26, United States Code, and thereafter, the claimant John J. King filed a claim and a bond for costs as required by that statute. (Alleged in libel of information; admitted in paragraph II, page 5, of claimant's answer.)

4. The respondent rifle and revolver were in the possession of agents of the Federal Government at the time the libel was filed and were stored within the Dallas Division of the Northern District of Texas. (Stipulation of Facts #6, #37; allegation in libel; admitted in answer.)

5. The rifle was purchased on or about March 20, 1963, by Lee Harvey Oswald from Klein's Sporting Goods Company, Inc., Chicago, Illinois, a dealer in firearms holding a license under the provisions of the Federal Firearms Act (15 U.S.C. 901, et seq.) (Stipulation of Fact #9, 10, 11, 21.)

6. The revolver was purchased at sometime during the period January 27, 1963 and March 13, 1963, by Lee Harvey Oswald from Seaport Traders, Inc., Los Angeles, California, a dealer in firearms holding a license under the provisions of the Federal Firearms Act (15 U.S.C. 901, et seq.) (Stipulation of Fact #12, 13, 14, 24.)

7. In the purchases of the rifle and of the revolver Lee Harvey Oswald used the name of "A. Hidall" and "A. J. Hidall," respectively, and used the address of Post Office Box 2915, Dallas, Texas. (Stipulation of Fact #10, 11, 18, 12, 19.)

8. Post Office Box 2915, Dallas, Texas, was rented by Lee Harvey Oswald during the period October 9, 1962 to May 14, 1963, using the name Lee H. Oswald. (Stipulation of Fact #15, 16, 17.)

9. The licensed dealers in firearms who sold the rifle and the revolver to Lee Harvey Oswald did not know that the purchaser was Lee Harvey Oswald, but knew only the name "A. Hidall" or "A. J. Hidall" as shown in the purchase orders. (Stipulation of Fact #36.)

10. The licensed dealers in firearms kept records of the receipt and disposition of firearms as required by Section 903(d), Title 15, U.S.C., and showed the purchaser of the rifle on such records as "A. Hidall," and the purchaser of the revolver as "A. J. Hidall." (Stipulation of Fact #22, 23, 25, 26.)

11. The licensed dealers in firearms shipped the rifle and the revolver to "Hidell" but these respondent firearms were actually received by Lee Harvey Oswald. (Stipulation of Fact #27.)

12. The wife of Lee Harvey Oswald first heard of the name "Hidell" after May 29, 1963, while the name was being used in connection with pro-Castro activity in New Orleans, Louisiana. (Stipulation of Fact #20.)

13. Lee Harvey Oswald had not used the name "A. Hidell" or "A. J. Hidell" in referring to the person Lee Harvey Oswald to such an extent as to be also known as "Hidell" during January to March 1963, when he purchased and received the respondent rifle and revolver. Lee Harvey Oswald was not also known as "A. Hidell," or "A. J. Hidell," or "Hidell" when he ordered the respondents rifle and revolver from the licensed firearms dealers. The use of the name "Hidell" by Lee Harvey Oswald constituted the use of a fictitious name. (Stipulation of Fact #20.)

14. Lee Harvey Oswald, by ordering the rifle and the revolver in a fictitious name, caused the sellers of these firearms to show, on their required records of disposition of firearms, a fictitious name as the purchaser rather than the true name of such purchaser, and thereby caused a violation of provisions of Chapter 18, Title 15, United States Code.

15. The rifle and the revolver were the subject of a fictitious entry in the required records of disposition and were therefore involved in violations of the record keeping provisions of the Federal Firearms Act (15 U.S.C. 903(d)).

16. The rifle and the revolver became forfeited to the United States because of their having been involved in violations of provisions of the Federal Firearms Act.

17. Claimant, John J. King, acquired his interest, if any, in the rifle and the revolver with knowledge that these firearms were in the possession of the United States and subject to claims adverse to him or to the person selling such firearms to him. (Stipulation of Fact Nos. 30, 31, and Exhibit described in Stipulation No. 30.)

18. Forfeiture of the rifle and of the revolver took effect immediately upon their involvement in the violation of the Federal Firearms Act in March 1963,

and the right to the property vested in the United States at that time.
The firearms became property of the United States and the claimant, John J.
King, acquired no interest therein as a result of his attempted purchase of
such from Marina Oswald.

II. Conclusions of Law

1. An initial seizure by local police officers is valid and such seizure may be adopted by the Revenue Service and the property proceeded against by forfeiture. (United States v. One Studebaker Seven Passenger Sedan, 4 F.2d 534 (9th Cir. 1925); Taylor, et al v. United States, 44 U.S. 197 (1845); United States v. One Ford Coupe, 272 U.S. 321, 325 (1926); Harman v. United States, 199 F.2d 34 (4th Cir. 1952)).

2. Where the government publishes notice of seizure in accordance with Section 7325(2), Title 26, United States Code, and claimant files claim and bond for costs in accordance with Section 7325(3), Title 26, United States Code, and where United States Attorney for judicial district of seizure files libel of information against the seized property, the United States District Court for the district of seizure obtains jurisdiction over the seized property for forfeiture proceedings in accordance with law. (26 U.S.C. 7323, 7325)

3. A United States Marshal in making a judicial seizure of property, under a monition of the District Court, may leave the property deposited with some other governmental agency for safe storage, answerable to the orders of the Court. (Averill v. Smith, 84 U.S. 82, 94 (1872); Comptroller General Opn. A-5619, Jan. 8, 1925 (4 Comp. Gen. 594).)

4. The United States District Court for the Northern District of Texas, Dallas Division, has jurisdiction over forfeiture proceedings against the respondent rifle and revolver. (26 U.S.C. 7323)

5. A person might use a name other than that given him at birth and may adopt such name as his own, but more than a limited use of the name is necessary to show that such person has adopted the name as his own. A person may not use a fictitious name to fraudulently conceal his true identity and later maintain that his limited use of the assumed name made such his adopted name and therefore not fictitious as to him. Transcontinental Insurance Company of New York v. Minning, 135 F. 2d 479 (6th Cir. 1943).

6. Section 903(d) of Title 15, United States Code, and Section 177.51 of Title 26, Code of Federal Regulations, in requiring licensed dealers in firearms to maintain complete and adequate records of the disposition of firearms, and particularly requiring such records to show and include the name and address of the person to whom each firearm is sold, require that the records show the true name of the purchaser and the showing of a fictitious name of such purchaser

is contrary to the provisions of such law and regulations. (Hensley v. United States, 171 F. 2d 78 (9th Cir. 1948)).

7. The showing of a fictitious name of the purchaser on records required to be kept by licensed dealers in firearms is a violation of provisions of Chapter 18, Title 15, United States Code, and of rules and regulations promulgated thereunder, and the firearm which is the subject of the entry in the records is involved in a violation of the provisions of such chapter and regulations promulgated thereunder and is therefore subject to forfeiture. (15 U.S.C. 903(d), 905(a), 905(b). Thacher's Distilled Spirits, 103 U.S. 679 (1880)).

8. Lee Harvey Oswald violated Sections 903(d) and 905(a), Title 15, United States Code, by causing the failure of the licensed firearms dealers to keep accurate records of the dispositions of firearms even though Lee Harvey Oswald was not present when the fictitious name was entered on the required records, and was not the person required to keep the records, and even though the dealers may have been innocent of any wrongdoing. (18 U.S.C. 2; Hyde v. United States, 225 U.S. 347, 362 (1912); Moses v. United States, 297 F.2d 621, 626 (8th Cir. 1961); Meredith v. United States, 238 F. 2d 535 (4th Cir. 1956); Londos v. United States, 240 F. 2d 1 (5th Cir. 1957); United States v. Giles, 300 U.S. 41 (1937); Walker v. United States, 192 F. 2d 47 (10th Cir. 1951).)

9. Internal Revenue forfeitures are in rem proceedings. It is the thing which has offended and the guilt or innocence of a claimant to such property is not a factor in determining whether or not such property became forfeited. (Rule 10 of Admiralty Rules, 28 U.S.C., Section 7323(a), Title 26, United States Code; Lillenthal's Tobacco v. United States, 97 U.S. 237, 261 (1877); United States v. One 1958 Pontiac Coupe, 298 F. 2d 421 (7th Cir. 1962); J. W. Goldsmith, Jr.-Grant Co. v. United States, 254 U.S. 505, 65 L.Ed. 376.(1921).)

10. Forfeitures under the Federal Firearms Act (15 U.S.C. 901, et seq.) follow Internal Revenue procedures. After forfeiture the jurisdiction of the Court is limited to ordering disposition in accordance with Section 5862(b), Title 26, United States Code. Power of the Court to grant remission of forfeiture is limited to Internal Revenue liquor cases, and jurisdiction to grant remission of forfeiture in this case would be only with the administrative agency (15 U.S.C. 905(b); 26 U.S.C. 5862(b); 18 U.S.C. 3617; United States v. One 1958 Pontiac Coupe, 298 F. 2d 421 (7th Cir. 1962); United States v. One 1953 Oldsmobile Sedan, 132 F. Supp. 14 (W.D. Ark. 1955).)

11. Forfeiture of property under Internal Revenue procedures occurs at the time such property became involved in a violation of law and the right to the property vests in the United States. Formal declaration of forfeiture made at some later time relates back to the moment of involvement in the violation and avoids all intervening owners even though they may be innocent purchasers. (United States v. Stowell, 133 U.S. 1 (1890).)

Respectfully submitted,

MELVIN M. DIGGS
United States Attorney

By: _____

E. H. Timmins, Jr.
Assistant United States Attorney

Of Counsel
James F. Gauding
Assistant Regional Counsel
Internal Revenue Service

Model Revolver, Serial No. V510210, with appurtenances (hereinafter collectively called the "Weapons") which are the subject of the Libel herein, to their owner, Claimant herein. A true and correct copy of the Complaint in the Denver Action is attached hereto as Exhibit A and incorporated herein. The defendant in the Denver Action has filed various dilatory motions therein but has not yet answered therein.

2. The Denver Action was instituted long prior to the institution of the Libel herein and involves the same controversy as the Libel herein. The Court in the Denver Action has jurisdiction fully to dispose of all matters in controversy in this Libel action.

WHEREFORE, in the alternative to the other prayers herein, Claimant prays that the Libel be dismissed.

B. Second Exception to the Jurisdiction
of This Court

3. The United States Marshal's Return endorsed on the Warrant of Seizure and Monition herein states that the Marshal left the Weapons stored in the vault of Mr. Gordon Shanklin, Special Agent in Charge, Federal Bureau of Investigation, at his offices Room 200, Mercantile Securities Building, 1810 Commerce Street, Dallas, Texas. The Weapons have not been properly brought into the possession of the Marshal and this Court as required by law to give this Court jurisdiction to determine this action.

WHEREFORE, in the alternative to the other prayers herein, Claimant prays that the Libel be dismissed.

C. Third Exception to the Jurisdiction
of This Court

4. The Weapons were respectively the rifle used by Lee Harvey Oswald (also sometimes known as A. J. Hidell) in the assassination on November 22, 1963 of John F. Kennedy, late President of the United States and the pistol used by Oswald in the slaying on the same date of J. D. Tippitt, late of the Dallas, Texas police force.

5. As stated in Article II of the Libel, the Weapons were seized and detained by police officers of the City of Dallas, Texas in the performance of their official duties in Dallas County, Texas on November 22, 1963. On or about that date the Federal Bureau of Investigation, a branch of the Justice Department of the United States, took custody of the Weapons and receipted for same to the City of Dallas.

6. On or about December 31, 1964, Claimant purchased from Marina N. Oswald, individually and as community survivor of Lee Harvey Oswald, all of her right, title and interest in and to the Weapons. Subsequently by Bill of Sale and Contract dated March 25, 1965, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein, Claimant purchased from Marina N. Oswald, individually and as Community Administratrix of Lee Harvey Oswald, all right, title and interest in and to the Weapons. Claimant

has at no time conveyed any of his interest in the Weapons and continues to be and now is the sole owner thereof.

7. At various dates in February, March and April of 1965 Claimant and Claimant's attorney made demand upon the Department of Justice and other representatives of the United States for delivery to Claimant of the Weapons. Such demands were wholly refused without reason or justification, and specifically without any claim or statement being made by the United States or any of its representatives that the Weapons were subject to any seizure or forfeiture.

8. Sometime prior to May 24, 1965 the Attorney General of the United States decided and determined to retain the Weapons indefinitely. Such decision and determination were made without any attempt to consider or establish the ownership of the Weapons or to declare a seizure or forfeiture by or to the United States under any provision of law.

9. On August 16, 1965 the Attorney General of the United States, without Claimant's approval, consent or knowledge, transported, or caused to be transported, the Weapons from Washington, D. C. to Dallas, Texas. Such transportation was wrongful and tortious in violation of Claimant's legal rights and Libelant cannot avail itself thereof to confer jurisdiction on this Court.

WHEREFORE, in the alternative to the other prayers herein, Claimant prays that the Libel be dismissed.

D. Exception in the Nature of a
General Demurrer

The facts averred in the Libel are insufficient to constitute a cause of action.

WHEREFORE, in the alternative to the other prayers herein, Claimant prays that the Libel be dismissed and that the Weapons be ordered delivered to Claimant forthwith.

E. Answer to Libel

I.

Claimant admits that at all times Libelant was and is a sovereign power. Except as herein expressly admitted, Claimant denies each and every allegation of Article I of the Libel.

II.

Claimant admits the allegations of the first paragraph of Article II of the Libel. With respect to the second paragraph of Article II of the Libel, Claimant admits that the Weapons are now stored at Room 200, Mercantile Continental Building, 1800 Commerce Street, Dallas, Texas; that notice of their seizure was published; that thereafter and on September 3, 1965 John J. King, 27 Sunset Drive, Englewood, Colorado, filed a claim, alleging an interest in the Weapons, and a bond for costs as provided by Section 7325(3), Title 26, United States Code; that John J. King, represented by William C. Garrett, Kilgore & Kilgore, 1800 First National Bank Building, Dallas, Texas, may intervene and claim some interest in the Weapons.

Except as herein expressly admitted, Claimant denies each and every allegation of Article II of the Libel.

III.

Claimant admits that Lee Harvey Oswald used a name other than the name "Lee Harvey Oswald" in purchasing the Weapons. Claimant further says that the name so used by Lee Harvey Oswald was the name "A. J. Hidell" or "A. Hidell," by which name he frequently went. Except as herein expressly admitted, Claimant denies each and every allegation of Article III of the Libel

WHEREFORE, in the alternative to the other prayers herein, Claimant prays that the Libel be dismissed and that the Weapons be ordered delivered to Claimant forthwith.

William C. Garrett

William C. Garrett
Attorney for Claimant

KILGORE & KILGORE
William C. Garrett
Charles F. Hawkins
1800 First National Bank Building
Dallas, Texas 75202
R11-6784

Attorneys for Claimant

Of Counsel:
HOLMBERG & POULSON
James S. Holmberg
1700 Broadway
Denver, Colorado 80202

V E R I F I C A T I O N

STATE OF TEXAS I
 I
COUNTY OF DALLAS I

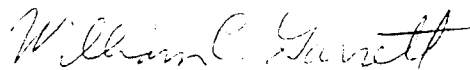
WILLIAM C. GARRETT, being duly sworn, deposes and says:

I am a member of the firm of Kilgore &

Kilgore, Attorneys for the Claimant herein. I have read the foregoing pleading and know the contents thereof. The matters therein are alleged upon information and belief, and I believe them to be true.


The source of my information and the grounds for my belief as to the matters therein stated are my personal knowledge of matters therein set forth in which I personally participated, documents referred to therein and documents annexed thereto as Exhibits, public reports of events referred to therein, and statements made by Claimant.

The reason this Verification is not made by Claimant is that the Claimant resides in the State of Colorado and is not present within this District at the time of the preparation and filing of this pleading.



William C. Garrett

SWORN to before me this 8th day of October, 1965.



Notary Public in and for
Dallas County, T e x a s

SUE PARISH
Notary Public, in and for Dallas County, Texas
My Commission Expires June 1, 19 67.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
United States District Court
Denver, Colorado

MAY 24 1965

E. WALTER BOWMAN
CLERK

Civil Action No. 9168
BY _____

JOHN J. KING,)
)
Plaintiff)
)
v.)
)
NICHOLAS deB. KATZENBACH,)
Attorney General of the)
United States,)
)
Defendant.)

C O M P L A I N T

JOHN J. KING, plaintiff, complaining of defendant,
NICHOLAS deB. KATZENBACH, Attorney General of the United States,
alleges:

1. Plaintiff is a citizen of the State of Colorado, residing at 27 Sunset Drive, Englewood, Colorado. Defendant is, and has been at all times since prior to February 1, 1965, the Attorney General of the United States, duly qualified and acting as such, and is a citizen of the District of Columbia. The matter in controversy exceeds, excluding all interest and costs, the sum of Ten Thousand Dollars (\$10,000). This court has jurisdiction of this action because of the diversity of citizenship of the parties and also, in the alternative, under the Act of October 5, 1962, 76 Stat. 744, United States Code, Title 28, Sec. 1361.

2. Under the provisions of United States Code, Title 28, Sec. 1391, as amended by the Act of October 5, 1962, 76 Stat. 744, this action is properly brought in this judicial district, such district being the district in which the plaintiff resides, and the summons and complaint may be served by delivering same to

the defendant by certified mail beyond the territorial limits of this judicial district.

3. Plaintiff is the owner of the following described personal property:

RIFLE: Caliber 6.5 mm. Mannlicher-Carcano Italian military rifle, Model 91/38, serial number C2766, with attached 4-power telescopic sight stamped "Ordnance Optics Inc.," "Hollywood California," together with two-piece sling strap and cartridge clip marked "SMI" "952," as more fully described on pages 553 through 555 of Appendix X, Report of the President's Commission on the Assassination of President Kennedy, and identified as Exhibit #139 of that Commission.

REVOLVER: Caliber .38 Special Smith & Wesson Victory Model revolver, serial number V510210, as more fully described on pages 558 and 559 of Appendix X, Report of the President's Commission on the Assassination of President Kennedy, and identified as Exhibit #143 of that Commission, together with the holster for said revolver.

4. The defendant, under color of his office as Attorney General of the United States, now has, and at all times since prior to February 1, 1965, has had, custody and control of the said personal property.

5. Plaintiff has heretofore requested and demanded that defendant deliver to plaintiff the above-described firearms, which are the personal property of plaintiff. Defendant does not own the above-described firearms and has no right under any law to retain such firearms in his custody, either for his own account or in his official capacity as Attorney General of the United States. Defendant has nevertheless refused and failed and continues to refuse and fail to deliver such firearms to plaintiff, and defendant threatens to withhold such firearms from plaintiff permanently. Such refusal and failure on the

part of defendant has deprived and continues to deprive plaintiff of his property without due process of law.

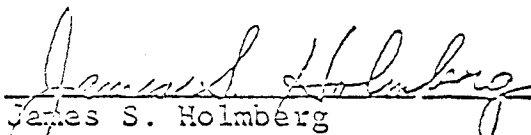
WHEREFORE, plaintiff demands:

A. That defendant be required to deliver up to plaintiff the aforesaid firearms;

B. That defendant pay to plaintiff the costs of this action; and

C. That plaintiff have such other and further relief as is just.

Respectfully submitted;


James S. Holmberg

HOLMBERG AND POULSON
1700 Broadway
Denver, Colorado 80202
Telephone: 623-3268

Attorney for Plaintiff

Of Counsel:

William C. Garrett
Charles F. Hawkins
KILCORE & KILGORE
1800 First National Bank Building
Dallas, Texas 75202
Telephone: RIVERSIDE 1-6784

EXHIBIT B

BILL OF SALE AND CONTRACT

THIS BILL OF SALE AND CONTRACT, made this 25th day of March, 1965, by and between MARINA N. OSWALD, individually and as Community Administratrix of the Estate of Lee Harvey Oswald, Deceased (hereinafter called "Seller"), and JOHN J. KING (hereinafter called "Buyer"),

W I T N E S S E T H:

1. In consideration of Five Thousand Dollars (\$5,000.00) heretofore paid by Buyer to Seller on December 31, 1964, and Five Thousand Dollars (\$5,000.00) today paid to Seller, the receipt of which is hereby acknowledged, and in consideration of Buyer's agreeing to pay the further contingent payments hereinafter provided, Seller, individually and as Community Administratrix, hereby BARGAINS, SELLS, ASSIGNS, and CONVEYS to Buyer, his heirs and assigns, all right, title and interest in and to the following described personal property:

RIFLE: Caliber 6.5 mm. Mannlicher-Carcano Italian military rifle, Model 91/38, serial number C2766, with attached 4-power telescopic sight stamped "Ordnance Optics Inc.," "Hollywood California," together with two-piece sling strap and cartridge clip marked "SMI" "952," as more fully described on pages 553 through 555 of Appendix X, Report of the President's Commission on the Assassination of President Kennedy and identified as Exhibit #139 of that Commission.

REVOLVER: Caliber .38 Special Smith & Wesson Victory Model revolver, serial number V510210, as more fully described on pages 558 and 559 of Appendix X, Report of the President's Commission on the Assassination of President Kennedy, and identified as Exhibit #143 of that Commission, together with the holster for said revolver.

2. In consideration of this transfer, Buyer covenants and agrees not to cause or permit public exhibition or display of either of the aforesaid rifle and revolver during the lifetime of Marina N. Oswald; and Buyer further covenants to use his best efforts to prevent such public exhibition or display by others.

3. If and when Buyer obtains possession of the above described personal property, free of all adverse claims thereto, he covenants and agrees to make an additional payment of Thirty-Five Thousand Dollars (\$35,000.00) to Seller. In the event that Buyer is not able to obtain such possession free of conflicting claims to all of the above-described personal property, he may, at his election, either

[i] Reassign and convey all of his right, title and interest in and to the above-described personal property to Marina N. Oswald and her children or their legal representatives, as their interests may appear, it being understood that no repayment to Buyer shall be due in such event and that upon such reassignment Buyer shall have no further obligations whatsoever hereunder; or

[ii] Waive, in writing, the fact that he has obtained possession of only part of such property or that there are any conflicting claims and make the full payments.

It is understood that Buyer will make reasonable efforts to obtain full possession of the above-described personal property, but Buyer shall determine in his sole discretion when and if he desires to cease such efforts and make the election above provided.

4. It is understood that Seller will pay and discharge all obligations to Mr. Declan Ford with respect to this transaction, and the Buyer will pay and discharge all obligations to Mr. William Bateman and for legal services of Buyer's attorney with respect to this transaction.

IN WITNESS WHEREOF, this Bill of Sale and Contract is
executed this 25th day of March, 1965.

Witnesses:

Mrs. Katya Ford
Wm. C. Blalock

Marina N. Oswald
Marina N. Oswald, individually
and as Community Administratrix
of the Estate of Lee Harvey
Oswald, Deceased

S e l l e r

Carly York
Nancy Lueder John J. King
John J. King

B u y e r

I, MRS. KATYA FORD, hereby certify that I have read and
explained the foregoing instrument to Marina N. Oswald in the
Russian language prior to her execution thereof, this 25th
day of March, 1965.

Mrs. Katya Ford
Mrs. Katya Ford

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Libelant,

v.

ONE 6.5 mm. MANNLICHER-CARCANO
MILITARY RIFLE, MODEL 91-38,
SERIAL NO. C2766, WITH APPUR-
TENANCES, AND ONE .38 SPECIAL
S&W VICTORY MODEL REVOLVER,
SERIAL NO. V510210, WITH AP-
PURTENANCES,

Respondents.

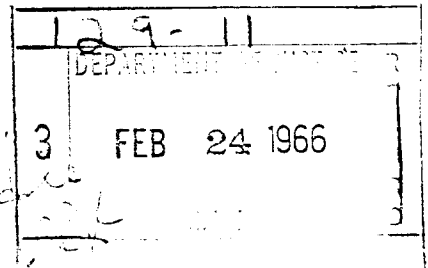
CIVIL NO. 3-1171

CLAIMANT'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. Both of the weapons involved here were ordered by Lee Harvey Oswald under his assumed name "Hidell."

2. Each of the firearms dealers selling the weapons entered the sale as a sale to "Hidell" and shipped the weapons to "Hidell" without any knowledge or reason to believe that "Hidell" was an assumed name occasionally used by the individual who was given the name "Lee Harvey Oswald" at birth.



3. Each of the firearms deals^{concerned} concerned kept the records required by § 903(d) of Title 15 U.S.C.

4. Each of the weapons concerned was received by the person generally known as Lee Harvey Oswald.

5. Each of the weapons was community property of Lee Harvey Oswald during his life, and Claimant John J. King acquired ownership of each of the weapons by purchase from Marina N. Oswald as community survivor and as Community Administratrix of the Estate of Lee Harvey Oswald, making an initial payment of \$5,000 on December 31, 1964, and a further payment of a second \$5,000 on or about March 25, 1965.

6. Under the terms of his purchase of these weapons, Claimant King is to pay the further sum of \$35,000 upon receiving possession of the weapons.

7. At the time of his purchase of these weapons, Claimant John J. King had no actual notice or knowledge of a claim of title thereto by the United States.

8. The United States did not publicly or to the knowledge of King assert the forfeiture claimed here until on or about August 16, 1965.

9. Following the death of Lee Harvey Oswald until the purchase of the weapons by John J. King, the weapons were owned one-half by the widow of Lee Harvey Oswald and one-half by his minor children, subject to community administration.

Conclusions of Law

1. Neither of the licensed firearms dealers who shipped the weapons here involved violated any provisions of the Federal Firearms Act by reason of such shipment. [This is, in effect, stipulated by Stipulations 22 and 25, stating that both dealers kept the required records. The only violation claimed here is one concerning record-keeping.]

2. Oswald's ordering the weapons concerned under an assumed name was not a violation of 15 U.S.C., § 903(d). [Brief of Claimant, pp. 1-7]

3. Section 905(b) of Title 15 U.S.C. provides forfeiture in cases where the firearms are involved in the violation, as by the illegal shipment, transportation, sale, or purchase, but has no application where the claimed violation is a licensed dealer's failure to keep records required of licensed firearms dealers under § 903(d) of Title 15 U.S.C. [Brief of Claimant, pp. 9-10]

4. In its enactment of Public Law 89-318 (which was introduced originally as H.R. 9545), specifically applicable to the weapons concerned here and providing for just compensation in the event that the United States acquires title, the Congress has clearly shown its intent that the general provisions of the Federal Firearms Act should not be construed as governing the disposition of the same weapons. [Brief of Claimant, pp. 16-22]

5. Construction of the Federal Firearms Act resulting in forfeiture under the circumstances of this case would raise serious constitutional problems under the Fifth Amendment which are avoided by the construction adopted here.

[Brief of Claimant, pp. 22-26]

Respectfully submitted,

KILGORE & KILGORE

By *William C. Garrett*
William C. Garrett

1800 First National Bank Building
Dallas, Texas 75202

Attorneys for Claimant
John J. King

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

UNITED STATES OF AMERICA, I
 I
 Libelant, I
 I
 v. I
 I
ONE 6.5 mm. MANNLICHER-CARCANO I
MILITARY RIFLE, MODEL 91-38, I
SERIAL NO. C2766, WITH APPURTE- I
NANCES, AND ONE .38 SPECIAL S&W I
VICTORY MODEL REVOLVER, SERIAL I
NO. V510210, WITH APPURTENANCES, I
 I
 Respondents. I

CIVIL NO. CA-3-1171

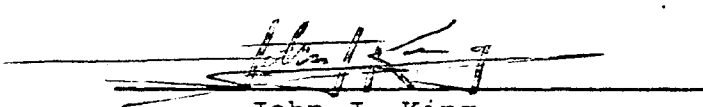
CLAIM OF OWNER

TO SAID HONORABLE COURT:

AND NOW appears JOHN J. KING, intervening for himself as owner of one 6.5 mm. Mannlicher-Carcano Military Rifle, Model 91-38, Serial No. C2766, with appurtenances, and one .38 Special S&W Victory Model revolver, Serial No. V510210, with appurtenances, before this Honorable Court, and makes claim to the said one 6.5 mm. Mannlicher-Carcano Military Rifle, Model 91-38, Serial No. C2766, with appurtenances and one .38 Special S&W Victory Model revolver, Serial No. V510210, with appurtenances, as the same are proceeded against at the instance of the United States of America, the Libelant, and the said Claimant, John J. King, avers that he was, at the time of the filing of the Libel herein, and still is, the true and bona fide sole owner of said

one 6.5 mm. Mannlicher-Carcano Military Rifle, Model 91-38, Serial No. C2766, with appurtenances, and one .38 Special S&W Victory Model revolver, Serial No. V510210, with appurtenances, and that no other person is the owner thereof;

WHEREFORE, he prays to defend accordingly.



John J. King

KILGORE & KILGORE

William C. Garrett
Charles F. Hawkins
1800 First National Bank Building
Dallas, Texas 75202


Proctors and Attorneys for Claimant

Of Counsel:

HOLMBERG & POULSON
James S. Holmberg
1700 Broadway
Denver, Colorado 80202

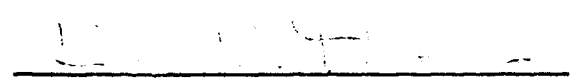
THE STATE OF COLORADO }
 }
COUNTY OF D E N V E R }

John J. King, being duly sworn, deposes and says that he is the claimant described in and who executed the foregoing claim; that he has read said claim and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.



John J. King

SWORN TO BEFORE ME this
4th day of October, 1965.



Notary Public

October 18, 1965

ing

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Libelant,

v.

ONE 6.5 mm. MANNLICHER-CARCANO
MILITARY RIFLE, MODEL 91-38,
SERIAL NO. C2766, WITH APPURTENANCES,
AND ONE .38 SPECIAL S&W VICTORY MODEL
REVOLVER, SERIAL NO. V510210, WITH
APPURTENANCES,

Respondents.

CIVIL NO. 3-1171

JAN 27 1963

Filed _____ day of _____
19____ at _____ o'clock _____ M
RAMELLE HAMILTON, Clerk
By Elizabeth McCallister Deputy

STIPULATION OF FACTS

It is stipulated and agreed for the purpose of the above-shown action and for no other purpose, even though the parties thereto may be identical, that the hereinafter outlined facts may be taken as true. Neither party agrees that any particular fact hereinafter stipulated is relevant or material to the issue.

1. The rifle and revolver described in the Libel of Information are herein respectively called the "Rifle" and the "Pistol."
2. That on November 22, 1963, Eugene Boone, Deputy Sheriff, Dallas County, Texas, and Seymour Weitzman, Deputy Constable, Dallas County, Texas, discovered the rifle with telescopic sight on the sixth floor of the Texas Book Depository Building, Dallas, Texas. (President's Commission Report, page 79.)
3. That on November 22, 1963, Lt. J. C. Day, Dallas Police Department, removed the rifle and telescopic sight from the sixth floor of the Texas Book Depository Building, Dallas, Texas, and took such rifle to the Dallas Police Department office as property taken as evidence in connection with the assassination of President John F. Kennedy. (PCR, p. 79)
4. That the right palm print of Lee Harvey Oswald was found on the underside of the barrel of the rifle by Lt. J. C. Day, Dallas Police Department. (PCR, pp. 122-123.)
5. That on November 22, 1963, in Dallas, Texas, Dallas police officers took the respondent pistol from Lee Harvey Oswald. (PCR, pp. 178-179.)

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6. That the respondent rifle and respondent pistol were transferred between various places and persons as follows:

(a) November 22, 1963, the rifle was received by an F.B.I. agent from the Dallas Police Department.

(b) November 23, 1963, the rifle was taken to the F.B.I. Laboratory, Washington, D. C., by an F.B.I. Special Agent.

(c) November 24, 1963, the rifle was returned to the F.B.I. vault in Dallas, Texas, and later on that date was turned over to Dallas Police Chief Jesse E. Curry.

(d) November 26, 1963, Dallas Police Department returned the rifle to F.B.I. Special Agent for return to the F.B.I. vault.

(e) November 27, 1963, rifle was taken to F.B.I. Laboratory, Washington, D. C., by Special Agent, F.B.I.

(f) February 5, 1964, rifle delivered to President's Commission on the Assassination of President John F. Kennedy.

(g) February 6, 1964, rifle returned to F.B.I. Laboratory.

(h) February 17, 1964, rifle delivered to President's Commission.

(i) February 17, 1964, rifle returned to F.B.I. Laboratory.

(j) March 11, 1964, rifle delivered to President's Commission.

(k) March 11, 1964, rifle returned to F.B.I. Laboratory.

(l) March 17, 1964, rifle delivered to President's Commission.

(m) March 30, 1964, rifle returned to F.B.I. Laboratory.

(n) March 31, 1964, rifle delivered to President's Commission.

(o) May 8, 1964, rifle returned to F.B.I. Laboratory.

(p) July 2, 1964, rifle delivered to President's Commission.

(q) July 2, 1964, rifle returned to F.B.I. Laboratory.

(r) August 13, 1965, rifle shipped from F.B.I. Laboratory, Washington, D.C., to F.B.I. office, Dallas, Texas, arriving in Dallas, Texas, on August 16, 1965.

(s) At sometime during the period March 17, 1964 to March 30, 1964, rifle was tested by the Weapons Evaluation Branch, Department of the Army, Aberdeen Proving Ground, Maryland. Also, during or about March 1964, the rifle was tested at Edgewood Arsenal, Maryland.

(aa) November 22, 1963, in Dallas, Texas, officers of Dallas Police Department took the pistol, and on this same date turned the pistol over to a Special Agent of the F.B.I.

(bb) November 23, 1963, the pistol was taken to the F.B.I. Laboratory, Washington, D. C., by a F.B.I. agent.

(cc) November 24, 1963, the pistol was returned to the F.B.I. vault in Dallas, Texas, and later on this date was turned over to Dallas Police Chief Jesse E. Curry.

(dd) November 26, 1963, the pistol was returned to the F.B.I. Special Agent by the Dallas Police Department.

(ee) November 27, 1963, the pistol was taken to the F.B.I. Laboratory, Washington, D. C., by F.B.I. Special Agent.

(ff) February 5, 1964, the pistol was delivered to the President's Commission on the Assassination of President John F. Kennedy.

(gg) February 6, 1964, the pistol was returned to the F.B.I. Laboratory.

(hh) March 25, 1964, the pistol was delivered to the President's Commission.

(ii) March 30, 1964, the pistol was returned to the F.B.I. Laboratory.

(jj) April 1, 1964, the pistol was delivered to the President's Commission.

(kk) May 1, 1964, the pistol was returned to the F.B.I. Laboratory.

(ll) August 13, 1965, the pistol was shipped from the F.B.I. Laboratory, Washington, D.C., to F.B.I. office in Dallas, Texas, arriving in Dallas on August 16, 1965.

7. On November 29, 1963, by Executive Order No. 11130, President Lyndon B. Johnson created the Commission to investigate the assassination on November 22, 1963, of John Fitzgerald Kennedy, the 35th President of the United States. (PCR Foreword.)

8. Attached hereto as Exhibits Nos. 1 and 2 are true and correct copies of Senate Report #851 and House Report No. 813 on H. R. 9545 providing for the acquisition and preservation of certain items of evidence pertaining to the assassination of President John F. Kennedy.

9. That the rifle was shipped to one A. Hidell, P. O. Box 2915, Dallas, Texas, on March 20, 1963, by Klein's Sporting Goods Company, Inc., 4540 West Madison Street, Chicago 24, Illinois. (PCR, pp. 118-119.)

10. That the order for the rifle was on a coupon clipped from the American Rifleman Magazine; that this order coupon was signed, in handprinting, A. Hidell, P. O. Box 2915, Dallas, Texas; and that this printing on the face of the mail order coupon was in the handprinting of Lee Harvey Oswald. (PCR, p. 119.)

11. Attached hereto as Exhibits 3, 4, 5, and 6 are true and correct photographic reproductions accurately depicting information contained on the originals of documents reflecting the order, invoice for shipment, and payment for the rifle.

12. That at sometime during the period January 27, 1963 and March 13, 1963, Seaport Traders, Inc., a division of George Rose and Company, Inc., Los Angeles, California, received an order for the pistol, which order was signed A. J. Hidell, and the address was shown as Post Office Box 2915, Dallas, Texas. (PCR, p. 174.)

13. That on March 13, 1963, an invoice was prepared by Seaport Traders, Inc., Los Angeles, California, covering the sale of the pistol to A. J. Hidell, Post Office Box 2915, Dallas, Texas, and this revolver was shipped to the name and address shown on the invoice on March 20, 1963. (PCR, pp. 174 and 173).

14. Attached hereto as Exhibits 7, 8, 9, 10, and 11 are true and correct photographic reproductions accurately depicting information contained on the originals of documents reflecting the order, invoice for shipment, and shipment for the pistol.

15. That Post Office Box 2915, Dallas, Texas, was rented in the name of Lee H. Oswald from October 9, 1962 to May 14, 1963. (PCR, p. 119.)

16. That Post Office Box 2915, Dallas, Texas, was rented by Lee Harvey Oswald from October 9, 1962 to May 14, 1963. (PCR, pp. 119-120.)

17. Attached hereto as Exhibit 12 is a true and correct photographic reproduction accurately depicting information contained on the original document reflecting renting of Post Office Box 2915, Dallas, Texas, by Lee H. Oswald.

18. That the mail order for the rifle was made by Lee Harvey Oswald using the name A. Hidell. (PCR, p. 569.)

19. That the mail order for the pistol was made by Lee Harvey Oswald using the name of A. J. Hidell. (PCR, p. 570.)

20. The individual who mailed the purchase orders, referred to in stipulations 10 and 11 above, was given the name Lee Harvey Oswald at birth. (PCR, p. 377.) In the purchase of the rifle in March 1963, Lee Harvey Oswald used the name "A. Hidell," and in the purchase of the pistol, Lee Harvey Oswald used the name "A. J. Hidell." (PCR, pp. 119-121.) The post office box to which the rifle and pistol were sent was rented in the name of Lee H. Oswald. (PCR, p.119)

At the time of his arrest on November 22, 1963, Lee Harvey Oswald carried on his person a forged Selective Service Notice of Classification in the name of "Alek James Hidell" and a forged United States Marine Corps Certificate of Service in the name of "Alek James Hidell." (PCR, pp. 571-574.) He also had on his person a Selective Service Notice of Classification, a Selective Service Registration Certificate, and a United States Marine Corps Certificate of Service, all in the name of Lee Harvey Oswald. (PCR, pp. 571-574.) Lee Harvey Oswald rented a room at 1026 N. Beckley Avenue, Dallas, Texas, in the name of "O. H. Lee" where he lived on November 22, 1963, and his landlady at this address did not know him as Lee Harvey Oswald. (PCR, pp. 182, 419.) Among Lee Harvey Oswald's effects at 1026 N. Beckley Avenue, Dallas, Texas, there was found a vaccination certificate dated June 8, 1963, showing vaccination of Lee Harvey Oswald by "Dr. A. J. Hideel," P. O. Box 30016, New Orleans, Louisiana. The signature of Dr. A. J. Hideel was in the handwriting of Lee Harvey Oswald. There was no P. O. Box 30016 in New Orleans; however, Lee Harvey Oswald rented box 30061 in New Orleans on June 3, 1963, and "A. J. Hidell" was shown as an additional person entitled to receive mail there. (PCR, pp. 121-122.)

In May 1963, Lee Harvey Oswald, while in New Orleans, joined a New York organization called Fair Play for Cuba Committee. (PCR, p. 290) He caused to be printed handbills headed "Hands Off Cuba" and had membership cards for a local New Orleans FPCC Chapter. (PCR, p. 291.) Lee Harvey Oswald's membership card for the New Orleans Chapter of FPCC showed member name as Lee Harvey Oswald and also showed "A. J. Hidell" as chapter president. (PCR, p. 292.) Mrs. Marina Oswald helped Lee Harvey Oswald by writing the name "Hidell" on the membership cards at the insistence of Lee Harvey Oswald. (PCR, p. 292.) Some of the "Hands Off Cuba" handbills showed the name and address of "L. H. Oswald, 4907 Magazine Street, New Orleans, Louisiana"; whereas others showed "A. J. Hidell, P. O. Box 30016, New Orleans, Louisiana." (PCR, p. 409.) Lee Harvey Oswald was the only member of the FPCC Chapter which he attempted to organize in New Orleans. (PCR, p. 407.) He was arrested by New Orleans Police on August 9, 1963, for disturbing the peace because of a street fight in connection with the distribution of the "Hands Off Cuba" handbills. He was arrested as Lee Harvey Oswald. (PCR, p. 436.)

Mrs. Marina Oswald first heard of Lee Harvey Oswald's use of the name "Hidell" in connection with the pro-Castro activity in New Orleans, which was after May 29, 1963. (PCR, pp. 122, 290). The name "Alek," however, was a nickname used by Lee Harvey Oswald in Russia, and he signed "Alek" to some letters written to Marina Oswald. (PCR, p. 122.)

Lee Harvey Oswald and Marina Oswald were known by the name Oswald by the Paine family in Irving, Texas, where the family lived in October and November 1963. (PCR, p. 438.)

21. That during the calendar year 1963 Klein's Sporting Goods, Inc., 4540 West Madison Street, Chicago 24, Illinois, was a licensed dealer in firearms and held license No. 36-2601 issued pursuant to Section 903, Title 15, United States Code, a part of the Federal Firearms Act.

22. That Klein's Sporting Goods, Inc., Chicago, Illinois, kept records required by Section 903(d) of Title 15, United States Code, and as to the respondent rifle these records showed such firearm as shipped to A. Hidell, P. O. Box 2915, Dallas, Texas.

23. Attached hereto as Exhibits 13, 14, and 15 are true and correct copies of records of the sale of the rifle made by Klein's Sporting Goods, Inc.

24. That during the calendar year 1963, Seaport Traders, Inc., 1221 South Grand Avenue, Los Angeles, California, was a licensed dealer in firearms and held license No. 95-1437 issued pursuant to Section 903, Title 15, United States Code, a part of the Federal Firearms Act.

25. That Seaport Traders, Inc., Los Angeles, California, kept records required by Section 903(d) of Title 15, United States Code, and as to the respondent pistol these records showed such firearm as shipped to A. J. Hidell, P. O. Box 2915, Dallas, Texas.

26. Attached hereto as Exhibits 8, 9, 10, and 11 are true and correct copies of records of the sale of the pistol made by Seaport Traders, Inc., a mail order division of George Rose and Company.

27. The rifle and the pistol shown above as shipped to Hidell were actually received by the individual generally known as Lee Harvey Oswald. (PCR, pp. 128, 171.)

28. The rifle was used by Lee Harvey Oswald in the assassination of President Kennedy and the pistol was used by Lee Harvey Oswald in killing a Dallas Police Officer. (PCR, pp. 19, 20, 129, 176.)

29. On December 31, 1964, Marina N. Oswald, widow of Lee Harvey Oswald, individually and as community survivor, sold to John J. King all right, title and interest which she had in and to the rifle and pistol for and in consideration of Five Thousand Dollars (\$5,000.00) paid by buyer to seller. A true and correct copy of that Bill of Sale and Contract covering this transaction is attached hereto as Exhibit 16.

30. That on March 25, 1965, Marina N. Oswald, individually and as community administratrix of the Estate of Lee Harvey Oswald, sold to John J. King all right, title, and interest over which she had power of sale as such administratrix in and to the rifle and pistol for and in consideration of an additional Five Thousand Dollars (\$5,000.00) that day paid by buyer to seller. A true and correct copy of that Bill of Sale and Contract covering this transaction is attached hereto and marked Exhibit 17.

31. At the time of the purchases by John J. King, referred to in stipulation Nos. 29 and 30 above, John J. King knew that the rifle and pistol were in the possession of agents of the United States. At the time of the purchases referred to in stipulation Nos. 29 and 30, John J. King had no actual notice or actual knowledge of a claim of title thereto by the United States.

32. At no time prior to publication of the notice of seizure of the pistol and rifle and the forfeiture proceedings on or about August 16, 1965, had the United States or any of its representatives ever asserted to claimant, John J. King, any claimed right of forfeiture.

33. On May 24, 1965, John J. King filed an action for the recovery of the rifle and pistol in the United States District Court for the District of Colorado. True copies of the Complaint, Defendant's Motion to Dismiss Plaintiff's Complaint, or alternatively to stay further proceedings, and the order dated October 8, 1965, in that action are attached and marked Exhibit 18.

34. On or about June 17, 1965, the Attorney General of the United States submitted to the Vice President and the Speaker of the House of Representatives a proposed bill to authorize him to condemn the rifle and the pistol and other items of evidence introduced before the President's Commission.

35. That on or about August 4, 1965, the Alcohol and Tobacco Tax Division of the Internal Revenue Service determined to commence forfeiture proceedings against the rifle and the pistol. The forfeitability of these firearms had been considered by the Department of Justice and the Treasury Department in considering methods of preserving these firearms for historical purposes. The Department of Justice filed a memorandum in John J. King's Denver action stating, in part as follows:

"This forfeiture proceeding had previously been withheld upon the hope that the prosecution of the present action could be postponed pending enactment of H. R. 9545. If plaintiff has any lawful property interest in the firearms, he could then have been paid just compensation. Plaintiff, however, has vigorously opposed defendant's efforts to continue this action and it thereby became necessary for Internal Revenue to file its proceeding."

36. That at the time of the sale and delivery of the rifle and of the pistol by the licensed firearms dealers, such dealers had no knowledge or reason to suspect that the person to whom such weapons were shipped had any name other than that shown in the order forms.

37. That since seizure of the rifle and of the pistol on November 22, 1963, such firearms have continuously remained in custody of the President's Commission or of units of the Federal Government or of the City of Dallas, Texas, as shown in stipulation No. 6 above. These firearms at no time have been released to anyone for nongovernmental use.

38. In an interview on or about August 15, 1963, Lee Harvey Oswald falsely informed a Special Agent of the Federal Bureau of Investigation that, since he had received his membership card in the New Orleans Chapter of the Fair Play for Cuba Committee, he had spoken with "Hidell" on several occasions on the telephone. He also stated that he had never personally met "Hidell." (Hearing before President's Commission on the Assassination of President Kennedy, Vol. XVII, Exhibit 826, page 759.)

39. During an interview on or about August 17, 1963, by William Kirk Stuckey of New Orleans radio station WDSU, Lee Harvey Oswald falsely stated that he, Oswald, was not president of the New Orleans Chapter of the Fair Play for Cuba Committee, but was the secretary and that "this other gentleman, Hidell, was the president." Lee Harvey Oswald then exhibited his membership card showing Oswald as secretary and Hidell as president. (PCR, p. 729, Hearings Vol. XI, page 162.)

40. On November 24, 1963, Lee Harvey Oswald told Captain Will Fritz, Dallas Police Department, that he, Oswald, did not know anyone by the name A. J. Hidell, and he, Oswald, falsely told Captain Will Fritz that he had never used the name "A. J. Hidell" as an alias. During the course of that interview Lee Harvey Oswald stated to Captain Will Fritz of the Dallas Police Department that he did not know anyone by the name "A. J. Hidell" and he falsely stated that he had never heard of the name before.
(PCR, page 636.)

41. The rifle and pistol were acquired by Lee Harvey Oswald during his marriage to Marina N. Oswald.

42. The information set forth on pages 741 through 745 of the President's Commission Report correctly shows the financial situation of Lee Harvey Oswald during the period covered so far as can be ascertained.

Dated at Dallas, Texas, this 26th day of January, 1966.

MELVIN M. DIGGS
United States Attorney

By: B. H. Timmins, Jr.
B. H. Timmins, Jr., Assistant
United States Attorney

William C. Garrett
William C. Garrett
Attorney for Claimant

A TRUE COPY - MAR 15 1966
ATTEST:
RAMELLE HAMILTON, CLERK,
By Ramele Hamilton Deputy

CIVIL NO. 3-1171

IN THE

DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

UNITED STATES OF AMERICA,

Libelant,

v.

ONE 6.5 mm. MANNLICHER-
CARCANO MILITARY RIFLE, MODEL 91-38,
SERIAL NO. C2766, WITH APPURTENANCES,
AND ONE .38 SPECIAL S&W VICTORY MODEL
REVOLVER, SERIAL NO. V510210, WITH
APPURTENANCES,

Respondents.

BRIEF OF CLAIMANT

1291-11	
DEPARTMENT	
3	FEB 24 1966
R.A.G.	

William C. Garrett
Eugene R. Lyerly
KILGORE & KILGORE
1800 First National Bank
Building
Dallas, Texas 75202

Attorney for Claimant

file
W.C.G.
E.R.L.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

UNITED STATES OF AMERICA,

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Libelant,

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v.

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ONE 6.5 mm. MANNLICHER-CARCANO
MILITARY RIFLE, MODEL 91-38,
SERIAL NO. C2766, WITH APPUR-
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S&W VICTORY MODEL REVOLVER,
SERIAL NO. V510210, WITH AP-
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CIVIL NO. 3-1171

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Respondents.

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BRIEF OF CLAIMANT

I. THE LAW DOES NOT PROVIDE ANY FORFEITURE OF
WEAPONS UNDER THE FACTS PRESENTED HERE.

The entire basis of the Government's contention is the
fact that Lee Harvey Oswald ordered the weapons involved
using the name Hidell, which was neither his most customarily
used name nor the name given him at birth. The fundamental

defect in the Government's position is that there is simply no law providing for the forfeiture of weapons ordered under an assumed name.

The claimed forfeiture is based upon an alleged violation of two sections of the Federal Firearms Act, 15 U.S.C. §§ 903(d) and 905(b), and the Act's attendant regulations. The Government's contention is that Oswald, but somehow not the licensed dealer shipping to him, violated § 903(d), which provides as follows:

"(d). Licensed dealers shall maintain such permanent records of importation, shipment and other disposal of firearms and ammunition as the Secretary of the Treasury shall prescribe."

Three insurmountable difficulties to the Government's position are:

First, that § 903(d) imposes no duty on purchasers in contrast to other sections of the Act which will be discussed hereafter. In other words, there is found in the Act no provision whatsoever as to how the purchaser will fill out an order form for a rifle.

Second, even if § 903(d) and the regulations thereunder could by any wild flight of the imagination be

construed as regulating purchasers, there is no requirement whatsoever that the purchaser use any certain name, such as his given name, or his full name, and no prohibition whatsoever against the common law right to use an assumed name; and

Third, a reading of the Federal Firearms Act as a whole shows that the forfeiture provisions of § 905(b) are applicable only to situations where the weapon, not some dealer's record, is involved in the violation, as in the case of shipment made in violation of § 902.

A. Section 903(d) of the Firearms Act Imposes No Duties Upon Purchasers Who Are Not Dealers.

The clear import of § 903(d) is that it was intended to apply, and does apply, only to "licensed dealers." In fact, each of the four subsections of § 903 relates only to the licensing of manufacturers and dealers, with no corresponding duties imposed upon any receivers or purchasers from such manufacturers or dealers. By contrast, the other prohibitive section of the Act, § 902, makes repeated reference to receivers and purchasers and the acts which such receivers and purchasers are prohibited from doing. This contrast shows

that the Congress intended to bring only licensed dealers under the terms of § 903(d). It therefore follows that no one other than a licensed dealer--no purchaser, no receiver--could be in violation of § 903(d).

The regulations adopted by the Secretary of the Treasury pursuant to § 903(d) also clearly reflect that the only duty prescribed is one upon licensed manufacturers or dealers. The regulations, 26 C.F.R. § 177.51, provide for the keeping of firearms records as follows:

"Each licensed manufacturer or dealer shall maintain complete and adequate records reflecting the production or receipt (whether by importation, acquisition from other licensees, or otherwise), and the disposition, at wholesale or retail, of all firearms (including firearms in an unassembled condition, but not including miscellaneous parts thereof) physically or constructively received or disposed of in the course of his business. Entries in such records shall be posted at the time of each transaction, or in each instance not later than the close of business on the day next succeeding the day on which the transaction occurs. The records prescribed by this section shall be in permanent form, and shall be retained on the business premises for a period of not less than 10 years from the date the transaction occurs or until discontinuance of business by the licensee. Where the business is discontinued and succeeded by a new license, the records will appropriately reflect such facts and will be delivered to the successor. Where discontinuance of the business is absolute, the records will appropriately reflect that fact and should be delivered to the Director for disposition. The records will show and include:

"(a) A full and adequate description of each firearm, including (1) the manufacturer thereof; (2) the manufacturer's serial number stamped thereon; (3) the caliber or gauge of the firearm; (4) the model and type of firearm; and

"(b) The name and address of each person from whom each firearm (if not the manufacturer's own product) was received together with the date of acquisition; and

"(c) The disposition made of each firearm including the name and address of the person to whom sold and the date of disposition. * * *"

On the facts stipulated in this case it is obvious that the dealer has not violated the duties imposed upon him by the above-quoted regulation. Those dealers kept all the records required by law [Stipulations 22, 25]. They shipped the weapons to "Hidell," the man who had ordered them, without knowledge that Hidell usually went by the name of Oswald. In other words, the dealers kept a record of the name and address of the person to whom they sold. If birth certificates, affidavits, and passports were required with orders for rifles, Congress would presumably have so provided.

B. Neither Section 903(d) nor the Above-Quoted Regulations Purport to Restrict the Individual's Right to Use Assumed or Chosen Name.

A name is but a means of identifying a person, of distinguishing him from other persons, and under common law a

person may use any name he chooses as a means of identifying himself.

In the early case of Martin v. Hemphill, 237 S.W. 550 (Tex. Comm. App., 1922) the Commission held that the appellant Martin had the right to assume the trade name of "McDonald Bros.," or any other name, and at 237 S.W. 552 quoted with approval the following language from Cyc. Vol. 29, p. 270:

"Without abandoning his real name a person may adopt any name, style or signature wholly different from his own name by which he may transact business, execute contracts, issue negotiable paper and sue or be sued. Such assumed or fictitious name may be either a purely artificial name or a name that is or may be applied to natural persons."

The judgment of the Commission was adopted by the Supreme Court of Texas.

In Presley v. Wilson, 125 S.W. 2d 654 (Tex. Civ. App., 1939, Dallas) err. dismd., judg. correct, the Court, at page 656, stated the rule as to names in general, as follows:

"It is merely a custom for persons to assume the name of their parents, but it is not obligatory nor punishable to adopt another name; hence it is generally held that a person may adopt any name in which to transact business, and may sue and be sued by such name. Since the object and purpose of describing a person by his name is to identify him, the general rule is that one may be designated in legal proceedings by the name by which he is commonly known, although not his true