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; Lilienthal'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 ofthe 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

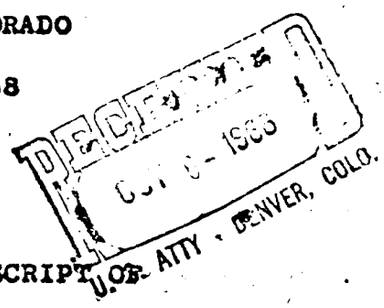
By: _____
B. H. Timmins, Jr.
Assistant United States Attorney

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 9168



JOHN J. KING,

Plaintiff,

vs.

NICHOLAS deB. KATZENBACH, Attorney General of the United States,

Defendant.

TRANSCRIPT OF

COURT'S RULING

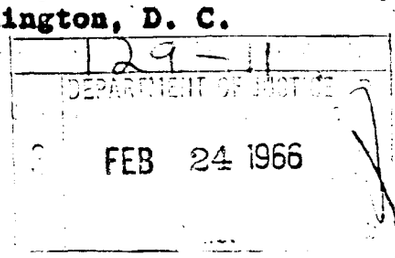
Courtroom "D"
U. S. Courthouse
Denver, Colorado
October 4, 1965

WHEREUPON, the above-entitled cause came on for hearing at the hour of 9:35 a.m. o'clock, on the 4th day of October, 1965, before the Honorable WILLIAM E. DOYLE, Judge, presiding.

Appearances:

For the Plaintiff: James S. Holmberg, Attorney at Law, Denver, Colorado, and William C. Garrett, Attorney at Law, Dallas, Texas, of counsel

For the Defendant: Lawrence M. Henry, United States Attorney for the District of Colorado, and Fred W. Drogula, Attorney for the Department of Justice, Washington, D. C.



THE COURT: If the seizure proceedings are valid, this Court is ousted of jurisdiction, because it does not have before it the very subject matter which would be necessary in order to carry out its decree.

To be sure, this is an action that depends on personal jurisdiction, but it also requires the presence of the property in order to be able -- for the Court to be able to carry out its decree, because they are claiming a right to have a -- not damages, not compensation; the plaintiff is claiming the right to have the specific property on the basis that he is the owner. And he is demanding in his prayer for relief that the defendant be ordered to deliver this specific item of property.

Consequently, if the property is outside this District, and is in the custody of the law in Dallas, Texas, this Court lacks power to enter such a decree, and, thus, lacks jurisdiction over the subject matter. And this is, as I view it, essential.

It would appear that the Government maintains that the exclusive jurisdiction is the district of seizure. And I am not going to prejudge that. I think it is a question that should properly be determined by the Court that has issued the preliminary order of seizure. And it seems to me that it would not be appropriate for me to pass on the very same question that that Court is going to have to pass on when that

Court's jurisdiction is questioned when the validity of the seizure is brought into issue. And it seems to me that this is a number one step in the disposition of this case.

So, therefore, the proceedings here will not be dismissed, but, at the same time, they will be suspended, and this file will be closed, until such time as the proceedings in Texas - in Dallas - before Judge Estes have been completed.

The file can be reopened, and will be, upon the motion of plaintiff showing good cause, which would be that the seizure, as ordered, has not been made absolute; that the Court has deferred, or for other reasons has declined jurisdiction of the case.

So, if you will prepare an order I will sign it.

MR. DROGULA: Your Honor, may the defendant have leave to renew its motion to dismiss if Judge Estes rules that he has jurisdiction and accepts the case?

THE COURT: You can make any motion you like at any time, of course.

MR. DROGULA: Thank you, Your Honor.

THE COURT: But, I don't think you need any specific reservation on that.

Very well.

(WHEREUPON, the proceedings were concluded)

* * * * *

C E R T I F I C A T E

I, August M. Helart, Official Court Reporter for the United States District Court for the District of Colorado, hereby certify that the foregoing proceedings were taken by me in machine shorthand and thereafter reduced to typewritten form under my direction and supervision; that the foregoing pages 1 through 3 constitute a true and correct transcript of that portion of the proceedings herein transcribed.

Dated at Denver, Colorado, this ____day of October, 1965.

AUGUST M. HELART, C.S.R.
Official Court Reporter

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 BRIEF IN SUPPORT OF FORFEITURE

file
DJC
129-11

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IN THE DISTRICT COURT OF THE UNITED STATES

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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 BRIEF IN SUPPORT OF FORFEITURE

The firearms involved in this forfeiture action are the rifle used on November 22, 1963, in the assassination of President John F. Kennedy and the revolver used on November 22, 1963, to kill Patrolman J. D. Tippit of the Dallas Police Department. These firearms were purchased and acquired by Lee Harvey Oswald from firearms dealers in Chicago, Illinois, and Los Angeles, California, who were licensed under the provisions of the Federal Firearms Act (15 U.S.C. 903). In purchasing the rifle from the licensed firearms dealer in Chicago, Lee Harvey Oswald used the name A. Hidell, and in purchasing the revolver from the licensed firearms dealer in Los Angeles, California, Lee Harvey Oswald used the name A. J. Hidell. The firearms were shipped by the firearms dealers to the named person, "A. Hidell" or "A. J. Hidell," as shown, at P. O. Box 2915, Dallas, Texas. Lee Harvey Oswald, as Lee H. Oswald, was the named subscriber to P. O. Box 2915, Dallas, Texas.

The Government asserts that the rifle, with appurtenances, and the revolver, with appurtenances, became forfeited to the United States under the provisions of Section 905(b), Title 15, United States Code, because they were involved in violations of provisions of Chapter 18 of Title 15, United States Code, that is, of the Federal Firearms Act. The violations of this Act were the showing of the names "A. Hidell" and "A. J. Hidell" on the firearms dealers' required records as the purchaser of these two firearms, when in truth and in fact

these firearms were not sold to and disposed of to "A. Hidell" or "A. J. Hidell" but to Lee Harvey Oswald.

I. JURISDICTION OF THE COURT OVER THE RES AND OF THESE FORFEITURE PROCEEDINGS

(a) Executive Seizure and Nature of Proceedings.

The claimant asks for dismissal of the libel on the grounds that the Denver Action (John J. King v. Nicholas deB. Katzenbach, Attorney General of the United States, United States District Court for the District of Colorado, Civil Action No. 9168) was instituted long prior to the institution of this proceeding and involves the same controversy. Claimant contends that the court in the Denver Action has jurisdiction to dispose of all matters in controversy in this libel action.

The procedure to forfeit property seized for violation of the revenue laws (made applicable to this action by 15 U.S.C. Section 905(b)) is a proceeding in rem. Rule 10 of the Admiralty Rules; Section 7323(a), I.R.C. Lilienthal's Tobacco v. United States, 97 U.S. 237, 261 (1877).

Section 7323(a), supra, specifically provides that the proceedings in rem are to be in the United States District Court for the district where the seizure is made. See, The Brig Ann, 13 U.S. 288, 290 (1815); Rush v. United States, 256 F.2d 862 (10th Cir. 1958); Clinton Foods v. United States, 188 F.2d 289, 292 (4th Cir. 1951), cert. den. 342 U.S. 825.

In proceedings in rem, venue is jurisdictional. Only the court having jurisdiction over the district where the seized property is located has jurisdiction over the proceeding. No other court has jurisdiction. Lion Bonding Company v. Karatz, 262 U.S. 77, 88-89 (1923); Ellenwood v. Marietta Chair Company, 158 U.S. 105 (1895); Fettig Canning Company v. Steckler, 188 F. 2d 715 (7th Cir. 1951), cert. den. 341 U.S. 951; United States v. 11 Cases, etc., 94 F. Supp. 925 (D.C. Ore. 1950); United States v. 91 Packages, 93 F. Supp. 763 (D.C.N.J. 1950). The prior filing of the action in Denver does not affect the jurisdiction of the District Court for the Northern District of Texas. It is conceded by the claimant that the weapons were seized in Dallas, Texas (Exceptions and Answer of Claimant, Par. 5) and it has never been contended that the seized weapons were within the jurisdiction of the Denver court. Thus, the Denver court has never acquired jurisdiction over the res and cannot adjudicate the

forfeiture of the weapons. See Wabash Railroad v. Adelbert College, 208 U.S. 38, 54 (1908); Murphy v. John Hofman and Company, 211 U.S. 562, 569 (1909); and all cases cited above. The Denver court recognized its lack of jurisdiction over the property involved in the Action against the Attorney General in its Order granting the Attorney General's motion to stay further proceedings until the forfeiture proceedings in Dallas were finally concluded.

It is apparent that the Dallas court has jurisdiction over this proceeding and that it is the only court which has or can have such jurisdiction. Accordingly, the Libel should not be dismissed.

The initial seizures of the rifle and the revolver were by officers of the Dallas Police Department on November 22, 1963.

An initial "seizure" by local police officers is valid and such a seizure may be "adopted" by the Revenue Service and the property proceeded against by forfeiture. In United States v. One Studebaker Seven Passenger Sedan, 4 F.2d 534 (9th Cir. 1925), the seizure was made by police officers of the city of Spokane, Washington, and it was contended that there could be no forfeiture unless the automobile was seized by the Commissioner, his assistant, inspectors, or some officer of the law, and that city police officers were not officers of the law within the meaning of the seizure statutes. To this, the court stated, "The fact, therefore, that the original seizure was made by police officers constituted no defense to the proceeding." Further, the court stated, "So that it is wholly immaterial in such a case who makes the seizure or whether it is irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause." See also Taylor, et al v. United States, 44 U.S. 221, from which the last quote in the above paragraph was originally taken.

The United States may adopt seizures. In this regard the primary authority appears to be United States v. One Ford Coupe, 272 U.S. 321, 322 (1926). See also Harman v. United States, 199 F. 2d 34 (4th Cir. 1952), which dealt with the adoption of the seizure originally made by state officers.

The United States may seize property for its illegal use on a date prior to the seizure. In Harman v. United States, (supra), the court stated:

> "Forfeiture is asked not on account of what was found at the time of seizure but of what had occurred prior thereto; and vehicles may be forfeited for violations of law occurring prior to seizure as well as when they are seized flagrante delicto."

Sanders v. United States, 201 F.2d 158 (5th Cir. 1953), is to the same effect.

The seizures of the firearms by officers of the Executive Department of the Government by adoption of the seizures of the Dallas police officers was a step in the obtaining of jurisdiction by this court. In United States v. 673 Cases of Distilled Spirits and Wines, 74 F. Supp. 622, 631 (D. Minn. 1947), the court stated that the liquor was in the possession of the Federal Government at the time the Libel was filed and that, therefore, the court obtained jurisdiction.

Actually the claimant, John J. King, invoked the jurisdiction of this court by filing the claim and cost bond pursuant to 26 U.S.C. 7325. He may not now attack the jurisdiction of the court but has, in effect, conceded such jurisdiction.

(b) Validity of Judicial Seizure by the United States Marshal for the Northern District of Texas.

The claimant appears to contend that since the weapons are stored in the vault of the Special Agent in Charge, Federal Bureau of Investigation, Dallas, Texas, the weapons have not been properly brought into the possession of the Marshal and the court as required by law so as to give the court jurisdiction to determine the action. In this regard, it is stated in the case of Averill v. Smith, 84 U.S. 82, 94 (1872) that:

> "Imported goods when seized and subsequently attached by the marshal are sometimes deposited with the collector for safe custody . . ."

Constructive possession by the Marshal of a vehicle stored by the Revenue Service has been tacitly recognized in Comptroller General Opinion A-5619 dated January 8, 1925, (4 Comp. Gen. 594). The Comptroller General assessed the payment of storage charges against the Marshal's fund and pertinently stated:

> "When the narcotic agent notified the marshal or the district attorney of the fact of seizure and the place of storage the duty and responsibility of seeing that the vehicle was promptly disposed of was upon the Department of Justice, and such duty and responsibility cannot be avoided by delay in assuming actual custody or control of the vehicle."

In this case the Marshal made a proper return of service, stating that he seized the weapons and left them stored in the vault of the Special Agent in Charge, Federal Bureau of Investigation, Dallas, Texas. This would appear to be a proper return of service and not open to challenge by this claimant. Murray v. Hoboken Land and Improvement Company, 59 U.S. 272, 286 (1855). In any event, this exception by the claimant is not well founded since it rests on the assumption that jurisdiction of the court depends on a proper seizure by the United States Marshal. This is not the case. Jurisdiction in proceedings in rem attaches on the seizure of the property by the seizing officers, The Brig Ann, supra; property in possession of the seizing officers is in the custody of the court, The Josefa Segunda, 23 U.S. 312 (1825). Thus the court obtained jurisdiction over the weapons no later than the time that the Libel was filed. The action by the court in issuing a Warrant of Seizure and Monition to the United States Marshal was in itself an exercise of jurisdiction over the property. Accordingly, since the court has jurisdiction over the proceeding, the Libel should not be dismissed.

(c) Validity of Government's Movement of the Respondent Firearms to Washington, D. C. and Return to Dallas, Texas.

The claimant asks for dismissal of the Libel on the grounds that the Attorney General, without the claimant's approval, consent or knowledge, caused the respondent weapons to be transported from Washington, D. C., to Dallas, Texas, and that such transportation was wrongful and tortious and could not confer jurisdiction on the court.

Claimant concedes that the weapons were seized and detained by police officers of the City of Dallas, Texas, and that the Department of Justice took custody of the weapons and receipted for the same to the City of Dallas. Claimant alleges that he 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, and that he is now the sole owner thereof. He further alleges that he has made several demands for delivery of the weapons and that such demands were wholly refused.

It is clear that the weapons were legally in the custody of the Department of Justice, an agency of the United States. See United States v. One Ford Coupe, 272 U.S. 321, 325 (1926). The claimant's demands asserted at most a claim

against property lawfully in the custody of and detained by the United States. If the property is subject to forfeiture as the Libel alleges, the claimant had no interest in the property and could have acquired none. See United States v. Stowell, 133 U.S. 1 (1890), wherein it was held that the forfeiture of property takes effect immediately upon the commission of the prohibited act and the right to the property vests in the United States. When condemnation of the property is obtained, it relates back and avoids all intermediate sales even to purchasers in good faith.

The proper procedure for determining the rights to such property is by a proceeding in rem, either administrative or judicial, in the judicial district where the property was seized. The Brig Ann, supra; Rush v. United States, supra; In re Loria, 25 F. Supp. 549 (W.D. N.Y. 1938). Thus it is apparent that the Attorney General's action in causing the weapons to be transported from Washington, D. C., to Dallas, Texas, was taken for the purpose of returning the weapons to the only jurisdiction where the rights of all parties, including this claimant, could be adjudicated. The action of the Attorney General was not "wrongful and tortious," but was lawful and appropriate under the circumstances.

(d) Effect of Estoppel, Laches, or Abandonment on Validity of Government's Claim of Forfeiture.

The respondent firearms were seized on November 22, 1963, and were at all times thereafter answerable to officers of the Federal Government. Forfeiture action against the firearms could have been commenced at anytime after adoption of the seizure; however, such forfeiture action was not commenced until the publication of the first notice of seizure, on August 18, 1965, as required by 26 U.S.C. 7325. It might be urged by the claimant that the delay in instituting the forfeiture proceedings constituted abandonment of the Government's rights to the firearms, that the Government should be estopped from asserting title thereto because of the delay, and that the Government's action is barred by laches.

Mere acquiescence, laches, lapse of time, or nonaction on the part of the public or the public agents or officers does not ordinarily work an estoppel. 31 C.J.S. Estoppel § 132, p. 686. No estoppel arises from mere delay in bringing suit. City and County of San Francisco v. United States, 223 F. 2d 737 (9th Cir. 1955), cert. denied 350 U.S. 903.

The Supreme Court has had numerous occasions in the past to consider the application of these doctrines to the United States as a party litigant. Following is a chronological treatment of some of these cases with pertinent quotations:

United States v. Beebe, 127 U.S. 338, 344 (1888):

> "The principle that the United States is not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right, or to assert a public interest, is established past all controversy or doubt."

Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917):

> "As a general rule laches or neglect of duty on the part of officers of the Government is no defense to a suit by it to enforce a public right or protect a public interest."

Chesapeake & Del. Canal Co. v. United States, 250 U.S. 123, 125 (1919):

> "It is settled beyond controversy that the United States when asserting 'sovereign' or governmental rights is not subject to either state statutes of limitation or to laches."

United States v. Summerlin, 310 U.S. 414, 416 (1940):

> "It is well settled that the United States is not bound by state statutes of limitations or subject to the defense of laches in enforcing its rights. * * * The same rule applies whether the United States brings its suit in its own courts or in a state court."

The Supreme Court, reviewing an alleged abandonment by the Federal Government of lands under the ocean within the three mile limit off California, held in United States v. California, 332 U.S. 19, 40 (1947), opinion supplemented 332 U.S. 804, rehearing denied 332 U.S. 787, petition denied 334 U.S. 855:

> "The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property, and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act."

In Kern Copters, Inc. v. Allied Helicopter Service, Inc., 277 F.2d 308, 313 (9th Cir. 1960), it was argued that the Government had abandoned a crashed helicopter. The court held:

"The Army's failure to seek to recover the remains for eighteen months does not constitute an abandonment. Congress has the power to provide for the disposition of property of the United States * * * and the power must be exercised by the authorized authority * * * and in the authorized manner * * *. Inactivity, or neglect, upon the part of Government officers is insufficient to cause the Government to lose its property." (Emphasis added)

In Grove Laboratory v. Brewer and Company, 103 F. 2d 175 (1st Cir. 1939), a trade-mark trade-name case, it was held that abandonment requires an intent to abandon. Authority cited is Emilie Saxlehner v. Eisner and Mendelson Company, 179 U.S. 19, 45 L.Ed. 60 (1900).

28 U.S.C. 2462 establishes a five-year limitation period within which the Government must institute forfeiture proceedings. Providing the Government does not allow the five-year statute of limitations to run, the only thing a court can do is to order the seizing officer to institute forfeiture proceedings or to abandon the seizure. See In Re Behrens, 39 F.2d 561 (2nd Cir. 1930); Slocum v. Mayberry, 15 U.S. 1; and Standard Carpet Company, Inc. v. Bowers, Collector of Internal Revenue, 284 Fed. 284 (U.S.D.C. N.Y. 1922). It is not contended by claimant in this case that the five-year statute of limitations has run. It cannot be seriously asserted that the Government has unnecessarily delayed the filing of the Libel. For many months after the seizure of the weapons in Dallas on November 22, 1963, they were being used as essential exhibits in the investigation by the President's Commission on the Assassination of President John F. Kennedy. The forfeiture proceedings were commenced after that investigation was completed and after the Report of the Commission was submitted to President Lyndon B. Johnson on September 24, 1964.

II. DOES A FIREARM BECOME FORFEITED TO THE UNITED STATES BY REASON OF A RECORD KEEPING VIOLATION RELATING TO THE SALE OF THE FIREARM?

The claimant contends in his Exceptions and Answer filed October 8, 1965, that the facts averred in the Libel are insufficient to constitute a cause of action and prays that the Libel be dismissed and that the weapons be ordered delivered to him forthwith.

Section 905(b), Title 15, U.S.C., provides, "Any firearm or ammunition involved in any violation of the provisions of this chapter or any rules or regulations promulgated thereunder shall be subject to seizure and forfeiture, and all provisions of Title 26 relating to the seizure, forfeiture, and disposition of firearms as defined in Section 2733 (now section 5848) of Title 26 shall, so far as applicable, extend to seizures and forfeitures incurred under the provisions of this chapter. (Chapter 18, sections 901-909)." Thus, in order to state a cause of action for the forfeiture of the respondent firearms,

the Libel must allege facts which show (1) a violation of the Federal Firearms Act (15 U.S.C. 901-909) or regulations thereunder, and (2) that the respondent firearm or firearms were involved in the violation. It is submitted that the Libel in this case properly alleges facts on which the court could find both that the Act had been violated and that the respondent firearms were involved in such violations.

(a) Violation of the Federal Firearms Act.

Section 903(d) provides "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." (June 30, 1938, ch. 850, § 3, 52 Stat. 1251.) Section 907 provides "The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter." (June 30, 1938, ch. 850, § 7, 59 Stat. 1252.)

Pursuant to the above authority, the Secretary has promulgated regulations requiring that the records of every licensed dealer should "show and include: * * * (c) the disposition made of each firearm including the name and address of the person to whom sold and the date of disposition." 26 CFR Part 177, section 177.51. This regulation is clearly reasonable and necessary to effectuate the purposes of the Act which are to regulate the manufacture of and the shipment in interstate commerce of all firearms (S. Rept. No. 82, 75th Cong., 1st Sess.). Levis v. United States, 170 F.2d 43 (9th Cir. 1948).

Section 905(a) provides in part "Any person violating any of the provisions of this chapter or any rules and regulations promulgated thereunder, * * * shall, upon conviction thereof, be fined not more than $2,000 or imprisoned for not more than five years, or both." It is well established that Congress can provide that the violation of an administrative regulation is a criminal offense. McKinley v. United States, 249 U.S. 397 (1919); United States v. Grimaud, 220 U.S. 506 (1911).

Section 2 of Title 18 U.S.C. provides "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. "(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." The purpose of this section is to remove the necessity for employing the language of aiding, abetting, procuring, etc. in the definition of every

federal crime and it has been held that subsection (b) is not restricted to the subject of parties responsible for crimes, but enters into the very definition of the crime itself. Pereria v. United States, 202 F.2d 830 (5th Cir. 1953) aff'd 347 U.S. 1 (1953).

The dealers who sold the respondent firearms were both licensed dealers under the Federal Firearms Act and, as such, were required to keep the records prescribed by section 177.51, supra. The requirement of this regulation that the dealer keep a record showing the name of the person to whom a firearm was sold obviously means the true name of the purchaser. See Wemsley v. United States, 171 F.2d 78 (9th Cir. 1948), cert. den. 336 U.S. 904, where the court stated at p. 82: "* * * It cannot be said that the law (as here) may require certain important and pertinent information to be entered on a prescribed form for the use of a public official in aid of law enforcement, but must tolerate such information when it is false."

Claimant has admitted for the purpose of this action and the Stipulation of Facts so shows, that Lee Harvey Oswald was the purchaser of these weapons and that the records of the dealer showed as the purchaser of these weapons the name of a person other than Lee Harvey Oswald. Thus, it is apparent that the records of the dealers were false in that the true name of the purchaser was not shown. Claimant also admits for the purpose of this action that the falsity of the records was caused by the use of a fictitious name by Lee Harvey Oswald in purchasing the weapons from the dealer.

It is well established in Federal law that one who procures, or causes another to commit an offense, is guilty as a principal. United States v. Giles, 300 U.S. 41 (1937); United States v. Gooding, 25 U.S. 460 (1827); United States v. Nasser, 301 F.2d 843 (7th Cir. 1962), cert. den. 370 U.S. 923; United States v. Ingles, 292 F.2d 374 (7th Cir. 1961), cert. den. 368 U.S. 920; Londos v. United States, 240 F.2d 1 (5th Cir. 1957), cert. den. 353 U.S. 949; Meredith v. United States, 228 F.2d 535 (4th Cir. 1956); Roesbee v. United States, 223 F.2d 261 (6th Cir. 1955); Roesbee v. United States, 178 F.2d 121 (8th Cir. 1949); Lewis v. United States, 170 F.2d 40 (9th Cir. 1948); and Pereria v. United States, supra. A comprehensive discussion of this doctrine is set forth in United States v. Ingles, supra, at page 370.

The defendant need not be present at the time of the offense charged. Implicit also in the provisions of section 2 of Title 18, U.S.C., is the further fact that the defendant need not be the actual perpetrator of the offense. Hyde v. United States, 225 U.S. 347, 362 (1912); Moses v. United States, 297 F.2d 621, 626 (8th Cir. 1961).

The person or agent through whom the defendant acts can be innocent or also culpable of an offense himself. Conviction of the principal actor is not a prerequisite to conviction of an aider and abettor or of the person who caused the unlawful act. Meredith v. United States, supra; Londos v. United States, supra.

The defendant need not be within the class of persons against whom the statute violated is directed. It is sufficient if he causes another person who is within the ambit of the statute to violate it. For example, in United States v. Giles, supra, the defendant was charged with making and causing to be made false entries in the ledger of the bank in which he was employed as a teller. He had withheld and secreted certain deposit slips so that, upon reaching the bookkeeper, the entry of the remaining deposit slips caused an understatement in the liability of the bank to the depositors of the secreted slips. However, at no time had the defendant himself made any false entries. The charge was laid under 12 U.S.C.A. § 592 which makes criminal the making of "any false entry in any book, report, or statement" but does not make criminal the act of secreting the deposit slips per se. Nevertheless, the Court affirmed defendant's conviction indicating that:

> "It seems to us that defendant is as fully responsible for any false entries which necessarily result from the presentation of these pieces of paper (deposit slips) which he caused to be prepared as he would if he had given oral instructions in reference to them or had written them himself." 300 U.S. at page 49.

In United States v. Inciso, supra, the defendant was not a "representative of any employees" as that term was used in a statute making it an offense for such "representative" to receive or accept from the employer of such employees any money or other thing of value. Nevertheless his conviction was sustained on the grounds that he caused the labor union, which was the "representative," to receive money in violation of the statute. Some other cases where the defendant was not the person against whom the statute violated was directed are:

United States v. Nasser, supra; Lewis v. United States, supra; Meredith v. United States, supra; Boushea v. United States, supra; Foushee v. United States, supra; Walker v. United States, 192 F.2d 47 (10th Cir. 1951).

While we are not aware of any case wherein the defendant was charged with causing a licensed dealer under the Federal Firearms Act to make a false entry in the records required by regulations to be kept by the dealer, a close analogy is presented by the facts in Walker v. United States, supra. There the defendant was convicted of several violations of 18 U.S.C. 1001. One count charged that the defendant knowingly and willfully made a false representation when, in procuring a prescription for narcotics, she gave to the issuing doctor a false address, which he entered on the prescription. Another count charged her with knowingly and falsely making a false writing in giving a false address to a druggist at the time of obtaining an exempt preparation. The requirements for the recording of her name and address were contained in regulations (26 CFR sections 151.168 and 151.185 (1949 Ed.)). These regulations imposed the duty of properly preparing the required record on the practitioner (doctor) and the druggist, respectively, but imposed no requirement directly on the defendant. Nevertheless, her conviction on both counts was affirmed. Thus, there is an exact parallel to the instant case: A regulation under the Federal Firearms Act required the dealers to maintain records showing the name and address of the purchaser of a firearm. The purchaser gave the dealers a false name, thus causing the dealers to maintain a false record. Under Walker, the person giving the false information (Lee Harvey Oswald) has violated the statute.

(b) Forfeiture of the Weapons

There are no reported cases of forfeitures for violations of the record keeping requirements of the Federal Firearms Act.[1] There are, however, precedents under other statutes for the forfeiture of property involved in or related to violations of record keeping requirements.

1/ There are no reported cases of forfeiture for any violations of the Act. Rarely is the value of seized firearms sufficiently high to require judicial proceedings for forfeiture and few claimants have filed a claim and cost bond to transfer administrative proceedings to the District Court. However, there is now pending in the District Court for the Western District of Texas, El Paso Division, a forfeiture proceeding entitled United States v. 3,256 Firearms, et al, Civil No. 2705, which is based in part on alleged violations of the same record keeping provisions of the Act which are in issue in this case.

In Thacher's Distilled Spirits, 103 U.S. 679 (1880) (affirming United States v. 102 Packages, Fed. Case No. 13,851 (C.A.N.Y. 1878)), the Court upheld the forfeiture of certain distilled spirits seized from an innocent third party. The rectifier who sold the spirits to the third party claimant had previously made a false entry in a return (the return was required by regulations) with respect to the seized spirits. The Court, at page 682, stated: "We are of the opinion that it was in regard to the whiskey now seized that the false entry was made, and the forfeiture attached to it."

In One 1941 Buick v. United States, 158 F.2d 445 (10th Cir. 1946), the Court of Appeals agreed with the trial court that the failure of a retail liquor dealer to keep the records required by law was sufficient basis for the forfeiture of a vehicle used to transport liquors to the retail premises. The dealer had paid the required occupational tax and his only violation of Federal law was the failure to keep the required records.[1]

Although, as noted above, there are no reported cases of forfeitures for violation of the record keeping requirements of the Federal Firearms Act, we believe that it is clear beyond argument that the respondent weapons were "involved in" violations of regulations promulgated under the Act. The respondent weapons were the very subject of the false entries which Lee Harvey Oswald caused the dealers to make. If these weapons had not been sold, there would have been no false entry and no violation of the Act. If these weapons had been sold and the entry in the records shown the true name of the purchaser, there would have been no violation of the Act. Thus, it would appear that no precedent is necessary to show that the respondent weapons were so completely "involved in" the violation that their forfeitability is established beyond doubt.

This conclusion is reinforced, if reinforcement is necessary, by the holding in Thacher's Distilled Spirits, supra, and One 1949 Buick v. United States, supra.

1/ There are several forfeiture cases where the charge was the failure to pay tax as a dealer and the failure to keep records. See United States v. Windle, 158 F.2d 196 (8th Cir. 1946); Kent v. United States, 157 F.2d 1 (5th Cir. 1946), cert. den. 329 U.S. 785; Seib v. United States, 150 F.2d 673 (8th Cir. 1945); and United States v. 3,935 Cases of Distilled Spirits, 55 F. Supp. 84 (D.C. Minn. 1944). Since none of these cases base the forfeiture squarely and solely on the record keeping violation, they are of doubtful precedent value in this case.

III. WERE THE USES OF THE NAMES "A. HIDELL" AND "A. J. HIDELL" BY LEE HARVEY OSWALD IN ORDERING THE RESPONDENT RIFLE AND REVOLVER SUCH AS TO CONSTITUTE USE OF A FALSE AND FICTITIOUS NAME?

Lee Harvey Oswald used the name "A. Hidell" in ordering the respondent rifle from Klein's Sporting Goods Company, Inc., Chicago, Illinois. Lee Harvey Oswald also used the name "A. J. Hidell" in ordering the respondent revolver from Seaport Traders, Inc., Los Angeles, California. There is nothing to indicate that prior to the ordering of these firearms Lee Harvey Oswald had ever used the Hidell name. Contemporaneous with the ordering of these firearms, Lee Harvey Oswald resided at 214 Neely Street, Dallas, Texas, where he was known as Lee Harvey Oswald and not as A. J. Hidell. Mrs. Marina Oswald had never heard of the Hidell name, or of its use by Lee Harvey Oswald, until after May 29, 1963, when Lee Harvey Oswald required Mrs. Oswald to sign Fair Play for Cuba membership cards with the name of A. J. Hidell as the New Orleans chapter president. Lee Harvey Oswald apparently did use the name A. J. Hidell while in New Orleans during May to August 1963; however, Lee Harvey Oswald apparently attempted to set A. J. Hidell up as a person separate and apart from himself and he did not apply this name to himself. This is shown by the presence of both names on the Fair Play for Cuba membership cards, by the presence of both names on the "Hands Off Cuba" handbills, by his statements to radio broadcaster William Kirk Stuckey of New Orleans Station WDSU, and by his arrest record in New Orleans on August 9, 1963.

Although Lee Harvey Oswald did forge a smallpox vaccination certificate showing the physician as Dr. A. J. Hideel, this again was the name attributed to some other person since the person vaccinated was Lee Harvey Oswald. The use of the nickname "Alex" by Lee Harvey Oswald while in Russia and in some correspondence with Mrs. Marina Oswald could not have been associated with the name "Hidell" since Mrs. Marina Oswald did not know of the name "Hidell" until after May 29, 1963.

If the name Hidell had been used by Lee Harvey Oswald to such an extent as to constitute another name for him, it appears that he would have used this name instead of the name "O. H. Lee" in renting a room contemporaneous with the killing in Dallas on November 22, 1963. Although Lee Harvey Oswald did have forged identification cards, showing his picture and the name "Alek James Hidell," on his person at the time of his arrest, he also had genuine cards showing his picture and the name Lee Harvey Oswald. No person has been found who knew Lee Harvey Oswald by the name "Hidell."

In United States v. Warszower, 113 F.2d 100 (2d Cir. 1940), the defendant was convicted for having obtained and used a passport showing the name of Wiener. The conviction was under Section 220 of Title 22, which is now Section 1541 of Title 18, United States Code. The statute makes unlawful the willful and knowing use of a passport secured by reason of any false statement. The application for the passport had false statements concerning the name, the citizenship, the place of birth, and also a statement that the applicant had never resided outside the United States. The defendant had come to the United States from Russia, had used the name of Warszower at the time of his entry, and had claimed Russian citizenship and birth. In the application for the passport he claimed to be Wiener of United States citizenship and birth and claimed to have never resided outside the United States. The defendant is shown to have used the name of Wiener on prior occasions, particularly in 1917 when he registered for the draft. There was in this case no particular discussion of whether or not the showing of the name of Wiener in the application was a false statement, but the legal point discussed was the use of admissions to convict the defendant. It was ultimately held that the showing of the name Wiener on the application of Warszower was a false statement even though the name of Wiener had been used by this defendant on prior occasions, and although it was not shown that the name of Wiener was taken from some other person. The case does discuss the use of a forged birth certificate for Wiener.

In Dear Wing Jung v. United States, 312 F. 2d 73 (9th Cir. 1962), the defendant was convicted under Section 1001 of Title 18, U.S.C., of making a false statement in a matter within the immigration and naturalization jurisdiction. The false statements were in the naturalization proceedings of the defendant's wife. The defendant stated that his true name was Dear Kai Gay and claimed to be a citizen of the United States. The defendant's true name was Dear Wing Jung and he was not a citizen. The court stated that the false representation was material because the Government needs to know the true name and nationality of a person who offers himself as a witness in an applicant's behalf. The defendant in this case apparently had posed as Dear Kai Gay for a number of years and had a wife and children in the United States.

In State v. Ferris, 76 S. 608, at 609, 142 La. 198, there was a prosecution under a statute making it unlawful to order liquors through the use of a name of another person. The court said that the Louisiana statute should be interpreted as making it unlawful to use a name other than his own for the purposes stated in the statute. The court also said that it was immaterial whether the name used was of a real or a fictitious person.

In Hensley v. United States, 171 F.2d 78 (9th Cir. 1948), there was a conviction for the showing of false names and addresses on required records by a wholesale liquor dealer. The wholesale liquor dealer was required to show the name and address of the person to whom liquors were sent out (Sec. 2857, Internal Revenue Code of 1939). The court stated at page 82, "It cannot be said that the law may require certain important and pertinent information to be entered on a prescribed form for the use of a public official in aid of law enforcement, but must tolerate such information when it is false."

In Keith v. United States, 250 F. 2d 355 (5th Cir. 1957), a case arising in the Dallas Division of the Northern District of Texas, the defendant was prosecuted for failing to make an entry in records required of a wholesale dealer in liquors. As a part of proof of willfulness the Government witness testified concerning numerous entries which were false. The court held that the proof of false entries in 109 other recorded dispositions in which purchasers were listed by fictitious names was relevant to establish intent, motive, design, purpose and practice as the effect of the two acts (failure to make entries or making false entries) is the same, i.e. to create an incorrect and unreliable record for the Government's use.

In Transcontinental Insurance Company of New York v. Minning, 135 F.2d 479 (6th Cir. 1943), Albert Minning held title to realty and obtained fire insurance. Because of fear of a civil suit, Albert Minning and his wife, Lillian Minning (nee Schlarman), prepared and filed a deed purporting to convey this property to Mrs. E. Schlarman. Later, Lillian Minning prepared a deed purporting to transfer this property from Mrs. E. Schlarman to Mrs. E. Minning. Still later, Lillian Minning prepared a deed purporting to transfer this property from Mrs. E. Minning to C. King. Then, approximately 13 years after the first spurious transfer Albert Minning prepared a deed purporting to transfer this

property from C. King to Albert Minning. There was a fire loss and the insurance company attempted to avoid coverage on the basis that there was no title in claimant. The insurance company claimed that Mrs. Lillian Minning adopted the names E. Schlarman and E. Minning so as to make them her own. The insurance company then claimed that since the property was owned by Lillian Minning prior to her attempted transfer to C. King, a fictitious person, and as the transfer to the fictitious person was void, the named insured did not have an insurable interest at the time of the loss. The court said there was no evidence that Mrs. Minning used these names or was known by them in the community. The court further stated that something more than a limited use is necessary to show that Mrs. Lillian Minning had adopted the names Mrs. E. Schlarman and Mrs. E. Minning as her own. Ohio law provided that a deed to or from a person not in being, or a fictitious person, was void. The court concluded that the attempted transfers were void and title remained with Albert Minning throughout this time.

We must conclude that Lee Harvey Oswald was not also known as A. J. Hidell and therefore his use of the false and fictitious names of "A. Hidell" and "A. J. Hidell" in ordering the respondent rifle and revolver caused a failure on the part of the firearms dealers to maintain accurate records of the disposition of firearms.

IV. CONCLUSION.

We have shown that Lee Harvey Oswald caused two licensed firearms dealers to fail to keep accurate records of the disposition of firearms, as required by law. The respondent firearms were the firearms concerning which the inaccurate records were kept and therefore were involved in the violations of the record keeping provisions of the Federal Firearms Act. Section 905(b) of Title 15, U.S.C., prescribes a forfeiture of firearms involved in any violation of this Act, and we submit that the firearms have become forfeited to the United States.

We therefore urge that the Court order that the respondent revolver and rifle become and are forfeited to the United States and that such firearms be disposed of according to law.

Respectfully submitted,

MELVIN M. DIGGS
United States Attorney

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

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

This is to certify that a copy of this brief has [illegible]
claimant [illegible] by mailing a copy thereof to [illegible]

[illegible]
Assistant U. S. Attorney

(Date)

TABLE OF CASES

TABLE OF STATUTES AND REGULATIONS CITED

Using Fictitious or Assumed Names

At common law it was generally held that a person could use any assumed name he chose in carrying out his normal business activities. This rule was grounded in the premise that names were intended primarily as a means of identifying the person. This rule prevails to a large extent today.

There are, however, two exceptions to the rule. These are where a particular statute prohibits the use of an assumed or fictitious name, or where the use of the assumed or fictitious name is for the purpose of defrauding others. As stated in Kropp Forge Co. v. Employer's Liability Assurance Corp., 159 F. 2d 536 (C.A. 7, 1947):

> Without abandoning his real name a person may, in the absence of statutory prohibition, 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, unless he does so in order to defraud others through mistake of identity, it being the identity of the individual that is regarded, and not the name that he may bear or assume.

See also Kreuter v. United States, 201 F. 2d 33 (C.A. 10, 1952) where the Court states:

> In the absence of a statutory prohibition, a person, without abandoning his real name, may adopt or assume a name, and he may use such assumed name to identify himself in the transaction of his business, the execution of contracts and the carrying on of his affairs. But he must not use it to defraud others through mistake of identity.

See also 38 Am. Jur., Names § 11, pp. 600-601.

29-11

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 9168

JOHN J. KING,

Plaintiff,

v.

NICHOLAS deB. KATZENBACH, Attorney General of the United States,

Defendant.

TRANSCRIPT OF HEARING

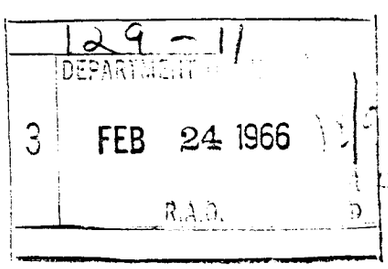
Courtroom "D"
U. S. Courthouse
Denver, Colorado
October 4, 1965

Whereupon, the above-entitled cause came on for hearing at the hour of 9:35 a.m. o'clock on the 4th day of October, 1965, before the Honorable WILLIAM E. DOYLE, Judge, presiding.

Appearances:

For the plaintiff: James S. Holmberg, Attorney at Law, Denver, Colorado, and William C. Garrett, Attorney at Law, Dallas, Texas

For the defendant: Lawrence M. Henry, United States Attorney for the District of Colorado, and Fred W. Drogula, Attorney for the Department of Justice, Washington, D. C.



P R O C E E D I N G S

THE COURT: The next matter is King v. Katzenbach. Is counsel ready?

MR. HENRY: Ready.

MR. HOLMBERG: If it please the Court, I'd like to present Mr. William C. Garrett, a member of the Bar of the Supreme Court of Texas, who is here this morning to argue for the plaintiff. And I move that he be admitted for that purpose.

THE COURT: Very well. You have been admitted by the highest court of Texas, have you, Mr. Garrett?

MR. GARRETT: Yes, Your Honor.

THE COURT: Very well. So ordered.

MR. HENRY: If it please Your Honor, I would, at this time, like to specially move the admission of Mr. Fred W. Drogula, D R O G U L A, who has been admitted to the Supreme Court of the State of Kentucky, and of the Court of Appeals of the District of Columbia, as well as the District Court of the District of Columbia.

THE COURT: Very well. You will be admitted for the purposes of this case.

The matter before the Court is the defendant's motion to dismiss, is this correct?

MR. DROGULA: That's correct, Your Honor.

THE COURT: You may proceed.

MR. DROGULA: Thank you. If it please the Court, the plaintiff in this action seeks to recover from the Attorney General of the United States the firearm, a rifle, which was used in the assassination of President John F. Kennedy, and a pistol which caused the death of Patrolman J. D. Tippit, T I double P I T, of the Dallas Police Department.

These weapons were taken into custody in Dallas, Texas, and were later surrendered to the possession of the President's Commission on the assassination of President Kennedy for use as evidence in its proceeding.

THE COURT: This appears in the--these are allegations of the pleadings?

MR. DROGULA: No, Your Honor. These are allegations of fact which I am stating. The pleading in this case recites that the plaintiff purchased from Mrs. Marina Oswald, the widow of Lee Harvey Oswald, all right, title, and interest to the rifle and pistol in question. He alleges that she acquired title----

THE COURT: Will you get me a yellow pad, please. (Request directed to law clerk)

Go ahead.

MR. DROGULA: He alleges that after acquiring this claim of ownership, he made demand upon Nicholas Katzenbach, the Attorney General of the United States, for possession of these firearms; that this demand has not been complied with.

For relief he is asking this Court to enter an order directing the Attorney General to return these weapons to his custody.

THE COURT: Well, how is the fact of the present custody, in its nature and character, brought to the attention of the Court? Do I have to take judicial notice of it; is there any proof?

MR. DROGULA: No, sir, the only--we have submitted as affidavits, attached to our motion to dismiss, a copy of a bill which has been introduced into the Congress of the United States, and attached thereto is a House Report which the House Judiciary Committee attached to the bill when the House of Representatives passed it.

This House Report contains information demonstrating the fact that these firearms were, indeed, the weapons used in the assassination of President Kennedy, and the death of Officer Tippit, and also explains the background of the requested legislation. That is an attachment to Exhibit B.

THE COURT: What you are really asking me to do, then, is to consider your motion to dismiss as a motion for summary judgment?

MR. DROGULA: Well, not that, Your Honor. The fact----

THE COURT: It's a speaking motion to dismiss. In other words, the motion to dismiss usually just questions the

legal sufficiency of the allegations of the complaint, doesn't it?

MR. DROGULA: Well, may I say this, Your Honor. The material relating to the President's Commission, and the subsequent legislation which has been introduced, is not directly relevant to the Government's motion today. I was making this statement of facts merely to supply the background for our argument.

The theory of our motion to dismiss is not based upon the presence in the Congress of H. R. 9545, but rather upon the existence in another court of a statutory forfeiture proceeding against the very firearms which are involved in this case. I was----

THE COURT: How is that brought to my attention?

MR. DROGULA: Well, we have attached, as exhibits to our motion to dismiss, copies of the pleadings on file in the United States District Court for the Northern District of Texas. Also attached--that is attached as Exhibit E to our motion. Attached as Exhibit C are copies of certain claim papers, and certain related forfeiture papers filed by the Internal Revenue Service, which commenced the forfeiture proceeding.

THE COURT: So, really, you are arguing that there is another action pending that has precedence over this?

MR. DROGULA: That's correct, Your Honor.

THE COURT: All right. I will hear you on that then.

MR. DROGULA: Very well. As I mentioned, although I won't go into it in detail in view of the Court's comment, these weapons were taken into custody following the assassination, and surrendered to the President's Commission for use in its proceeding.

When that Commission concluded its inquiry the weapons were delivered into the custody of the Attorney General with the recommendation that it be preserved for historical purposes. But, subsequent to that date, on August 4th, 1965, to be exact, the Internal Revenue Service made a determination to institute administrative forfeiture proceedings against these firearms, and their appurtenances, upon the ground that they had been involved in a violation of the Federal Firearms Act.

Now, the first step under 26 U.S.C. Section 7325, in instituting an administrative forfeiture proceeding, is to have the weapons appraised by three qualified appraisers.

The statute, by its specific terms, states that if the appraisal by these appraisers is less than twenty-five hundred dollars then the Internal Revenue Service may proceed administratively against the firearms. On the other hand, if the appraisal is more than twenty-five hundred dollars the United States Attorney must immediately commence a libel action against the firearms in the United States District Court where

the weapons were seized.

The appraisals in this case came to considerably less than twenty-five hundred dollars, so the Internal Revenue Service caused to be published in Dallas newspapers an advertisement to the effect that these proceedings had been commenced. In addition, specific letters were addressed to the plaintiff, and his counsel in this case, notifying him that he had thirty days within which to file a claim to these firearms if he wished to contest the condemnation proceedings.

This claim was filed along with the bond in the amount of two hundred and fifty dollars to guarantee costs, and again, according to the express provisions of Section 7325 of Title 26, the Internal Revenue Service transferred the entire matter to the United States Attorney for the Northern District of Texas.

I might mention that it was necessary to commence this forfeiture proceeding in the Northern District of Texas, because, again, a specific statute, Title 26 Section 7323(a), states that a forfeiture proceeding shall be an action in rem and shall be commenced in the United States District Court for the district in which the weapons were seized.

In this case, of course, the weapons were seized in Dallas, Texas, so that it was necessary for the Government to commence the forfeiture proceeding in Dallas, Texas.

Now, after receiving the plaintiff's claim in the

administrative forfeiture proceeding, the United States Attorney for the Northern District of Texas requested leave from Chief Judge Joe Ewing Estes, of that court, to commence a libel action against the weapons which are involved in this case.

Chief Judge Estes signed an order granting leave to commence the libel action on September 10th, 1965. Also in that order, which is attached to our motion as Exhibit E, Judge Estes directed that a writ of attachment issue to the marshal to attach these goods pending further order of the court.

Now, pursuant to this order, on September 10th, 1965, the Clerk for the Northern District of Texas, at the direction of Judge Estes, issued a warrant of seizure. Now, this warrant of seizure, a certified copy of which we have just received, and which I have and I will hand up to the Court in just a moment, directs the United States Marshal for the Northern District of Texas to attach these firearms where they are presently located in Dallas, Texas, and to hold them pending completion of the libel action.

Before I get too far ahead of myself, I would like to mention that the thrust of the forfeiture proceeding is as follows: When Lee Harvey Oswald purchased the firearms originally, he did so under a fictitious name, the name of A. J. Hidell.

Regulations promulgated pursuant to the Federal

Firearms Act, however, require that dealers in firearms must maintain accurate records showing the names and identities of purchasers of firearms and certain other information. The thrust of the Internal Revenue administrative proceeding, and the thrust of the libel action filed by the United States Attorney, is that these weapons were therefore involved in a violation of the Federal Firearms Act, because the purchase caused a fictitious entry to be made in records under the Federal Firearms Act. I just mention this as information. This is the matter which is before Judge Estes in the Northern District of Texas.

Now, after receiving the warrant of seizure, which the Clerk issued on September 10th, 1965, the United States Marshal did, in fact, attach and seize the weapons which are the subject matter of this suit.

In a return filed upon the warrant of seizure, the Marshal made this statement, "On September 10, 1965, I executed this writ by seizing....", he then goes on to describe the weapons which are involved in this suit, "...by delivering a copy of this order granting leave to file libel and libel of information to Mr. Gordon Shanklin, Special Agent in Charge Federal Bureau of Investigation at his offices Room 200 Mercantile Securities Building 1810 Commerce Street, Dallas, Texas, and leaving the above stored in his vault where seized, at 5:00 p.m."

Now, if the Court will permit me, I would like to hand up a certified copy of this warrant of seizure for the purposes of this argument.

THE COURT: Do you want that marked as an exhibit, or what?

MR. DROGULA: Beg pardon, Your Honor.

THE COURT: What are you doing with it? What are the mechanics here of your bringing it to my attention; are you introducing it in evidence, or attaching it to your motion?

MR. DROGULA: I would like to consider it appended to our motion to dismiss, if the Court please. On Friday last we filed a supplemental memorandum in support of our motion.

THE COURT: Well, we will permit it to be marked as an exhibit to the motion. We will give it the next letter, and----

MR. DROGULA: It will be Exhibit F, Your Honor.

THE COURT: Exhibit F. And we will just let it stand until I have an opportunity to hear counsel, if he has an objection to it.

MR. DROGULA: Very well, Your Honor. On this basis, the argument in support of our motion to dismiss goes in two directions. First of all, we say that the Northern District of Texas now has jurisdiction, not only of the forfeiture proceeding because by statute the forfeiture proceeding had to be brought in that district, but it now has actual custody of the

firearms involved herein.

THE COURT: Why did it have to be instituted there?

MR. DROGULA: Well, a statute of Congress, Your Honor, 26 U.S.C. Section 7323(a) provides that forfeiture proceedings shall be considered actions in rem and shall be brought in the district in which the weapons were seized.

Now, these weapons were seized following the assassination, and the death of Patrolman Tippit, in Dallas, Texas. So, it is that court.

And there are several authorities in support of that proposition, Your Honor. Gerth against the United States, cited in our supplemental memorandum, 132 Federal Supplement 894, where the court squarely stated that the forfeiture proceedings are to be commenced where the weapons are seized, pursuant to this provision in 26 U.S.C.

So that our argument is that since these weapons are in the custody of the Northern District of Texas, if the forfeiture proceeding is successful, these weapons will be condemned to the Government. And, obviously, the plaintiff in this action, wherein he seeks possession, cannot recover. On the other hand, on 28 U.S.C. Section--excuse me for a moment--2465, provides that if the claimant, Mr. King, is successful in the forfeiture proceeding in Dallas, Texas, the court will direct the weapons to be returned to him forthwith.

Now, Mr. King, as I understand it, according to the

procedure, has until next Monday, October 11th, in which to file a motion to intervene in the libel action in Dallas. If he does so, he will have an opportunity to present all claims of ownership and make any argument which he could make in this court. If he is successful in defeating the forfeiture proceedings, he will recover the weapons. If he is not successful, they will be forfeited to the Government.

But, we take the position that under the statute that the forfeiture proceeding is the exclusive remedy provided by Congress.

An examination of the forfeiture provisions, and the cases decided under them, would demonstrate that the courts have construed the forfeiture statute as being an exclusive remedy, and that a plaintiff may not file an independent action for the return of property if a forfeiture proceeding, libel action, is pending. The courts have said that all of his rights are protected in the libel action. That court has jurisdiction by act of Congress. It has jurisdiction by writ of attachment over the property. He may file a motion to intervene, make his claims of ownership, and that once this is commenced the jurisdiction is withdrawn from all other courts.

In our supplemental memorandum we cite the case of Wabash Railroad against Adelbert College, 208 U. S. 38 at page 54. This language appears to be particularly appropriate here. This is on page 2 of our supplemental memo.

"When a court of competent jurisdiction has, by appropriate proceedings, taken property into its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts.

"The latter courts, though of concurrent jurisdiction, are without power to render any judgment which invades or disturbs the possession of the property while it is in the custody of the court which has seized it."

Now, we say that the court which has seized it is the Northern District of Texas, and that according to the exclusive remedy which Congress has provided, it is the court which must determine the issues involved here.

Now, the other applicable provision which we consider to be dispositive on this point is 28 U.S.C. Section 2463, which is quoted on the first page of our supplemental memorandum.

Now, this statute provision "All property taken or detained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." And the Gerth case cited at the bottom of page 1 squarely holds that the phrase "courts of the United States having jurisdiction thereof" means the courts in which the forfeiture proceeding is pending; courts which have jurisdiction over the res. So that that section squarely holds that they are not repleviable.

Now, I think, generally, plaintiff's complaint in this case can be construed as an attempt to replevy these firearms from the custody of the Attorney General. But, of course, as the warrant of seizure now shows, they are in the custody of the Northern District of Texas, which court, by Congress, has been designated as the district in which these issues should be resolved.

Now, the authorities cited in our original memorandum, commencing at page 5, all hold that the forfeiture proceeding which Congress has specified must be deemed exclusive, and that a plaintiff has no independent right to maintain an action for the return of property because he has an adequate remedy under the administrative procedure supplied by Congress.

In United States against One 1955 Oldsmobile Sedan, which is a Western District of Pennsylvania decision in 1960, cited at 185 (sic) Fed. Supp. 903, the owner of an automobile which had been seized by Internal Revenue filed, as the plaintiff has done here, an action for its return. A forfeiture proceeding had been commenced, but the plaintiff did not participate. Just as the forfeiture proceeding is now in the Northern District of Texas. And the court granted----

THE COURT: Did you tell me that the plaintiff in this case has made a claim in the forfeiture proceeding?

MR. DROGULA: Yes, Your Honor, under the regulations, and under the statute, whenever Internal Revenue files an

administrative forfeiture proceeding any claimant has thirty days in which to come in and file a claim. On September 3rd, 1965, this plaintiff filed an elaborate claim with Internal Revenue setting forth his basis of his claim of ownership, setting forth the source of his title, and challenging the validity of the forfeiture.

This filing of the claim made it necessary for Internal Revenue to transmit the entire proceedings to the United States Attorney for the Northern District of Texas for the commencement of a libel action, wherein this plaintiff may have all his rights determined in a court of law.

THE COURT: What relief does he demand in this claim?

MR. DROGULA: Well, in this claim, Your Honor, he----

THE COURT: Delivery of the weapons?

MR. DROGULA: Yes, Your Honor. Well, in this--he claims to be the owner, and he challenges the legal basis upon which the forfeiture is premised, and he--and in there he also denies, I believe, the jurisdiction of that court----

THE COURT: Oh.

MR. DROGULA: --because he--well, he makes the allegation----

THE COURT: He doesn't request, then, affirmative relief from the U. S. courts?

MR. DROGULA: It's my understanding that he does not,

Your Honor. It was not necessary for him to do so at that stage.

Now, at the next step in the proceeding, which is the filing of a motion to intervene in the libel action in the district court, at that time he must make an affirmative claim setting up his ownership, challenging the forfeiture, and demanding the property. As I say, this motion to intervene, as I understand the procedures, must be filed by next Monday.

Now, the basis for this, however, and the fairness of it all, is set out in a decision of the Ninth Circuit, Thompson----

THE COURT: Is this in your brief?

MR. DROGULA: Yes, sir. This is on page 7 of our original memorandum. Now, this case was decided under the predecessor statute, which is the same procedure as obtains today, but it involves a different amount.

There the plaintiff had filed a claim for the return of property and the court dismissed it, saying, "You have a perfectly adequate remedy. You can participate in the forfeiture proceedings. And if you win you will get your property."

And the quotation on that page, the court said-- points out that he may file a claim and a bond, and when this is done, starting the second sentence in the first paragraph of the quotation, "The authority of the collector is at an end, and the whole matter is automatically transferred to a court of

law, where all the parties in interest are given their day in court and a full opportunity to be heard.

"This remedy would seem to be full, complete, and adequate. True, the claimant is not given a right of action in his own name; but this in no wise detracts from the adequacy of the legal remedy. He is given the right to compel the Government to institute proceedings in which his rights may be fully heard and determined, and it is entirely immaterial whether he appears in court as a plaintiff in an action of law, or as a claimant in a proceeding at law to declare a forfeiture.

"The very object of the statute would seem to be to give parties claiming the seized property a right to have their claims determined in a court of law, instead of compelling them to resort to some other proceeding, or to invoke some other remedy."

Now, the plaintiff, in the brief opportunity I had to examine their memorandum filed this morning, seems to suggest that after the claim has been filed, at that point any court--any court--can entertain the proceeding transferred from the collector in the Thompson-Schwaebe case. However, this is plainly not correct, because as I mentioned, the statute requires that the district court which entertains the action is the district court for the district in which the weapons were seized. This is specified by statute.

So that under the procedure outlined in the Schwaebe

case, this plaintiff has filed a claim and has thus terminated all proceedings before Internal Revenue, and he now has an opportunity to intervene in the court proceedings wherein, under the Schwaebe case, all of his rights can be heard and determined.

The other authorities which we have also cited in here, as I mentioned, in the United States versus One 1955 Oldsmobile Sedan, the court granted the Government's motion to dismiss for lack of jurisdiction, and it said so with respect to the very section we are relying on here today. And the quotation on page 5 of our original memorandum, the court said, "Section 7325, Title 26 U.S.C.A., provided movant with an adequate remedy at law to contest the legality of the seizure and forfeiture of his automobile."

And at the end of that quotation, the court said, "Also it seems eminently clear that the court in the matter under consideration does have jurisdiction to order the return of the automobile to the movant."

So, again, our argument in support of our motion to dismiss takes two roads. First, we say that this very detailed procedure, which Congress has created, is an exclusive remedy. And under these cases it is the remedy which plaintiff must pursue. Secondly, we say that the Northern District of Texas has taken custody and control, and that they are entitled to retain custody and control until the forfeiture proceeding is