

1 completed, and that for this reason that court now has exclu-
2 sive jurisdiction.

3 The plaintiff is not entitled to an order from this
4 Court asking for a return of the firearms until the Northern
5 District of Texas determines whether or not the weapons are
6 forfeitable, and, therefore, should be condemned to the Govern-
7 ment.

8 And, under the cases, again, this plaintiff may inter-
9 vene in this proceeding and present the arguments.

10 Now, briefly in reviewing the memorandum which the
11 plaintiff has filed this morning, I have noted certain comments
12 upon the arguments.

13 THE COURT: Why don't you let him argue his memo and
14 you can reply to it.

15 MR. DROGULA: Oh, very well, Your Honor.

16 THE COURT: I wouldn't anticipate what he is going
17 to say.

18 MR. DROGULA: Very well, Your Honor. On that basis,
19 then, I would just like to conclude by referring----

20 THE COURT: It's good work if you can make both
21 arguments, you know.

22 MR. DROGULA: Well, if I were getting two fees, I
23 suppose that would be all right, Your Honor.

24 I would like to conclude by referring the Court to
25 the case of DeBonis versus United States, cited on page 6 of

1 our original memorandum. In that case a plaintiff sued for
2 damages for the illegal seizure and sale of his truck follow-
3 ing completion of a forfeiture proceeding. The significant
4 point about that case is that earlier, while the forfeiture
5 proceeding was in progress, the plaintiff had filed an inde-
6 pendent complaint for the return of his truck.

7 The court dismissed that complaint on the ground that
8 "The rights of the plaintiff will be adjudicated in forfeiture
9 proceedings as provided by the Internal Revenue laws," citing
10 the predecessor to the statute here relied upon.

11 It then went on and subsequently dismissed his suit
12 for damages, saying, "The plaintiff here did not file a claim
13 under this section of the Act to which the learned judge
14 referred and the truck was duly sold; neither has he filed
15 with the secretary a petition for remission. Since he failed
16 to contest the forfeiture in the manner directed by the law
17 he cannot now claim that the truck was not legally forfeited."

18 I would like to conclude, again, by stating very
19 briefly that the fallacy of plaintiff's present suit is that
20 the issue of the forfeitability of these weapons must be liti-
21 gated in the Northern District of Texas. Unless, and until,
22 that forfeiture is defeated, this plaintiff is clearly not en-
23 titled to the relief he seeks.

24 Moreover, the defendant, the Attorney General, could
25 not respond to an order pursuant to plaintiff's complaint by

1 delivering the weapons into the plaintiff's custody, because he
2 does not have custody. The custody is presently in the United
3 States Marshal for the Northern District of Texas, being held
4 pursuant to further order of Chief Judge Estes.

5 In the Adelbert College case, referred to a moment
6 ago, the Supreme Court said that once the property is taken
7 into possession, jurisdiction is thereby withdrawn from all
8 other courts, and no court should make an order interfering
9 with that jurisdiction as long as it is in their custody and
10 possession.

11 On this basis, we respectfully submit that plaintiff's
12 complaint should be dismissed. Alternatively, we have asked
13 that the proceeding here be stayed pending completion of the
14 forfeiture proceeding in Dallas. This is mainly based on the
15 case of Stowell against the United States, which is cited on
16 page 7 of our original memorandum, in which the Supreme Court
17 held that the Government's right and claim to forfeitable items
18 vests at the moment the violations occur.

19 Therefore, if these firearms are forfeitable the
20 Government's title to them vested at the moment Lee Harvey
21 Oswald used a fictitious name to purchase these weapons.

22 Under that theory, plaintiff in this case is plainly
23 not entitled to possession unless and until the forfeiture is
24 disallowed, because until that time right and title to the
25 firearms is in the United States of America.

1 So, we would ask the Court to stay these proceedings,
2 alternatively to our motion to dismiss, until Judge Estes has
3 decided the forfeiture proceedings.

4 If he decides them adversely to the plaintiff, the
5 guns will be condemned. If he decides them for the plaintiff,
6 as I have mentioned, under 28 U.S.C. Section 2465, the weapons
7 will be returned to the plaintiff forthwith. On that basis we
8 respectfully conclude our original presentation.

9 MR. GARRETT: Your Honor, I think the--aside from the
10 description of proceedings, at least the fact statement that
11 the Attorney General has given seems quite satisfactory, except
12 in just one respect.

13 Of course, there is no evidence before this Court, or
14 indication of any kind, as to any seizure in Dallas at the time
15 of the assassination. And under the Internal Revenue laws,
16 and--it can't be assumed by this Court, and a reading of the
17 Warren Commission report would indicate that there was no such
18 --the Warren Commission indicates the Dallas Police Department
19 took the weapons and later turned them over to the FBI for
20 some ballistic work.

21 I think, probably, this motion is a motion to dismiss
22 for want of jurisdiction; that this Court does not have juris-
23 diction, is the only basis for it.

24 Now, then, we have cited in our brief the statutory
25 sections under which jurisdiction and venue are both proper in

1 this Court.

2 As I understand it, there is no dispute but what when
3 this action was brought this Court had jurisdiction. This is
4 the prior action. Prior to these administrative forfeiture
5 proceedings, prior to any action in Dallas. So, the question
6 here--the issue, certainly, is that this Court had jurisdiction.
7 The question is: Has the defendant destroyed the jurisdiction
8 by his subsequent actions and filings.

9 Now, then, the first of these subsequent--I might
10 mention that it's clear, and the defendant's memo concedes,
11 that at the time this action was commenced, a number of months
12 ago here in Denver, the weapons were not in Texas. The weapons
13 were in the District of Columbia. And subsequent to this
14 action, and very recently, in the month of September, they were
15 taken down to Dallas, and an administrative forfeiture pro-
16 ceeding was instituted.

17 Now, I think we should keep two things clear; the
18 administrative proceeding in Dallas and the subsequent court
19 action. The one reason these briefs don't meet too well is
20 that until Saturday, when we received a different ground, the
21 whole ground of the prior memorandum and argument was that the
22 administrative procedures, which even then had been long termi-
23 nated, that they somehow took jurisdiction away from this Court.

24 Now the argument is shifted more to the subsequent
25 court action in Dallas, depriving this Court of jurisdiction.

1 What this administrative proceeding is, is a summary
2 way for the Government to clear title to property that it picks
3 up one place and another. In connection with various criminal
4 proceedings, different items of property come into the possession
5 of the United States, usually seized in connection with a
6 crime. And this summary procedure is one where they can clear
7 title very easily where no one wishes to contest it.

8 Under the third paragraph of the section providing
9 for it, and I understand the Government is arguing to the same
10 effect, that when the claimant comes in, puts up a bond, and
11 states that he claims it, then it's--that's all over. Then it
12 has to go to the courts. They contend only the Dallas courts.
13 We contend that the whole matter is before this Court.

14 But, I think on the administrative proceedings, the--
15 they are over with. They were long subsequent. They don't, in
16 any way, deprive this Court of jurisdiction.

17 Now, all of the cases which the Attorney General has
18 cited on that point, the ones in his original memorandum--every
19 single one of them--involve this situation.

20 THE COURT: I would be coming into conflict with the
21 U. S. Court for the Northern District of Texas, though, regard-
22 less, at this stage, would I not? In other words, the court
23 there has jurisdiction over the property here involved, and I
24 couldn't carry out a decree if I were to enter it for you at
25 this stage.

1 MR. GARRETT: Your Honor----

2 THE COURT: Until that other action is disposed of,
3 at least, isn't that right?

4 MR. GARRETT: I don't believe you can judge that
5 question at this time, Your Honor.

6 THE COURT: Well, mustn't I, though? In other words,
7 it all goes to whether this case is, at least, temporarily
8 moot, because the property has passed out of the hands of the
9 defendant. And he wasn't under any injunction, was he, not to
10 maintain the status quo? He could take any proceedings he
11 wished, could he not, as far as I was concerned? The case was
12 filed, and that is all. But, he was not enjoined from pursuing
13 other remedies.

14 MR. GARRETT: No, Your Honor. I would--we haven't
15 answered yet in Dallas. The time to intervene has not appeared,
16 and we will certainly contest that jurisdiction on the ground---

17 THE COURT: But, you filed a claim in the administra-
18 tive proceeding, is that right?

19 MR. GARRETT: Yes. And that terminated that, and,
20 therefore, it's over. I might say we cited in our brief, in a
21 subsequent action, if we have to file a claim, that doesn't in
22 any way surrender our right to urge the priority of this Court
23 as the Court first having jurisdiction over the controversy.

24 Now then, as far as the court action in Dallas goes,
25 we certainly plan to move to dismiss that action, Your Honor,

1 on the ground of the prior jurisdiction of this Court. And
2 also upon the ground that there has not been a seizure in
3 Dallas.

4 The cases we have cited in our memorandum--I might
5 state that these are courts of concurrent jurisdiction, both
6 federal courts. In that situation the law does not usually
7 permit both to run concurrently. And the court that first has
8 jurisdiction of the controversy is the one that proceeds.

9 Now, these cases hold that upon proper application,
10 which we haven't made to this Court, we could request an injunc-
11 tion against the other side prosecuting that action. We think,
12 perhaps, the better way to handle it is to present that ques-
13 tion to Judge Estes on a motion to dismiss that action because
14 of the prior jurisdiction in this Court.

15 Now, I think--well, first, let's state that there is
16 no question but what these are the same controversies. Here
17 plaintiff is saying, "I own this gun, and the Attorney General
18 has it and won't surrender it."

19 In the Dallas action, the contention of the United
20 States is that the United States owns it. As was argued here,
21 if the United States has title to this weapon its title obtained
22 when Mr. Oswald ordered the weapon.

23 Now, I don't want to get into the merits of this
24 action, I don't believe it's before us yet. But, of course,
25 there is no regulation against using a false name and ordering

1 a gun.

2 THE COURT: Oh, they may have acquired the right to
3 seize it by virtue of the assassination. They, perhaps, prefer
4 to proceed this other way, but----

5 MR. GARRETT: Your Honor----

6 THE COURT: Could they not? In other words, doesn't
7 the Government have a broad power, or any government, to seize
8 contraband or material used in connection with the perpetration
9 of a crime?

10 MR. GARRETT: Not any general power, no. I mean----

11 THE COURT: Federal?

12 MR. GARRETT: There are specific statutes----

13 THE COURT: Federal crime.

14 MR. GARRETT: Well, the assassination, quite clearly,
15 was not a federal crime, Your Honor. The Congress, I believe,
16 has passed a bill to change that, but, at this time, it was
17 not.

18 But, the forfeiture claim is that title clearing
19 procedure based upon the theory----

20 THE COURT: I appreciate that.

21 MR. GARRETT: --that title passed to the Government
22 at the time of violation in this case at the time Oswald ordered
23 the gun. I believe we are pretty well agreed on that.

24 THE COURT: It's going to stand or fall on that, is
25 that right?

1 MR. GARRETT: Yes, Your Honor. Now then, that is
2 their claim of ownership. The only one we know about at this
3 time. That is clearly a defense in this action. In other
4 words, these are the same--this is the same controversy. This
5 is certainly the prior action.

6 Now, we have cited a large number of cases here that
7 the prior action shall proceed. These cases include ones where
8 in a subsequent action a res, or a thing, is seized.

9 To quote from Learned Hand, at the top of page 8 of
10 our memorandum, is from a case which is squarely on that point;
11 that is, the state court proceeding had been started in which
12 a receiver had not actually taken the rents, but he had the
13 right to eventually obtain them. In a subsequent federal pro-
14 ceeding certain rents and properties had actually been physically
15 seized, and the question was which action should proceed.

16 And as Learned Hand said, "Priority between courts
17 in point of jurisdiction depends, not upon the day when the
18 property comes into their possession but upon that of the
19 commencement of the first suit in which possession can be
20 taken."

21 In addition to the fact that that is a defense, the
22 statutes granting jurisdiction over our basic action here pro-
23 vide--these are quoted on page 5 of our memorandum, 28 U.S.C.
24 Section 1346, "United States as defendant----

25 THE COURT: I know. But, if we don't have any

1 jurisdiction over the subject matter here, how in the world can
2 we--jurisdiction is power to deal with the res, is it not? In
3 this instance because you are really--you are demanding specific
4 performance in this instance, aren't you?

5 MR. GARRETT: Yes, Your Honor.

6 THE COURT: This is in the nature of an equitable
7 suit for restitution of the thing, isn't it?

8 MR. GARRETT: I am not sure.

9 THE COURT: And I would be powerless if it's in the
10 custody of the law somewhere else. What can I do about it?
11 I can order Katzenbach all day long to return it. If he hasn't
12 got it----

13 MR. GARRETT: Actually he does have it, in fact,
14 Your Honor. He does have it. It was not seized. It was left
15 with the Department of Justice. It was just paper seizure, we
16 consider.

17 THE COURT: He says now, today, that it's in the
18 custody of the law in Texas.

19 MR. GARRETT: It's in the custody of the Department
20 of Justice, as it has always been, Your Honor.

21 THE COURT: That isn't what he tells us. He says,
22 "It's in the custody of the judge in Dallas", isn't that right?

23 MR. GARRETT: Well, Your Honor, we have--seizure to
24 get in rem jurisdiction in a libel is one where the court's
25 officer, the marshal, in order to make a valid seizure, needs

1 to produce to the fullest possession of which he is capable.
2 And we cite the Yokohama case in our brief, stating that you
3 get this jurisdiction if it's capable of being taken into the
4 marshal's office. It must be so to constitute a valid seizure.

5 The return that has been furnished here, the marshal's
6 return, says that he left the above property stored in the
7 vault where seized. That is in the vault of Gordon Shanklin,
8 Special Agent in Charge Federal Bureau of Investigation.

9 But, even aside from that point, Your Honor, I think
10 more important, because I have no question of what they might
11 in the future perfect that seizure----

12 THE COURT: Is it now in the custody of the law?

13 MR. GARRETT: Yes. If their seizure is valid, it is.
14 But, I think Your Honor should assume that Judge Estes will
15 follow the authorities on this subject.

16 THE COURT: Oh, I am confident that he will.

17 MR. GARRETT: Which will require him----

18 THE COURT: I think he will. I think he will follow
19 the law without question.

20 MR. GARRETT: And under the authorities, he should
21 properly defer to the prior jurisdiction of this court and
22 surrender that possession.

23 I might mention that the Department of Justice could
24 just as well have brought that gun to Denver as they did to
25 Dallas.

1 THE COURT: I am not offended, really.

2 MR. GARRETT: Actually, I have some difficulty in
3 knowing why they want two actions pending.

4 But, one thing that is particularly important here,
5 I think, is that the general principle, and this applies even
6 where the subsequent action--the general principle is that the
7 court that first has jurisdiction of the controversy will pro-
8 ceed to its determination as between two federal courts. And
9 there are innumerable cases we have cited on that on page 8 and
10 the following pages of the brief.

11 A case particularly in point that I didn't emphasize,
12 because I didn't realize the shift in grounds, are the Eastport
13 Steamship Company cases at the bottom of page 10.

14 THE COURT: Of your brief?

15 MR. GARRETT: Yes, Your Honor. In those cases the--
16 well, they basically involve the same situation. They are the
17 same case. But, the plaintiff, the steamship company, was
18 suing the United States for its failure to pay a judgment that
19 they had obtained against it. The United States said, "We've
20 got a libel action going in another jurisdiction where it might
21 be determined that we don't owe quite this much. That we've
22 got some other claims."

23 The United States therefore moved for dismissal and
24 a stay until the libel could be finished. The court in which
25 these decisions were rendered, however, said that that is a

1 defensive matter in this court and we can try that out for the
2 purpose of this action. This court has the jurisdiction and it
3 should proceed regardless of the libel.

4 I believe these cases that are cited would show----

5 THE COURT: Wouldn't this be different, though, where
6 it's just a money judgment that is in issue, from a case in
7 which a specific item of property is in issue which is now
8 within the jurisdiction of one of the courts? In other words,
9 would you not--in the latter type situation, the res is an
10 essential to the jurisdiction of the court. You can't deal
11 with it.

12 MR. GARRETT: The res is not essential here to the
13 jurisdiction of this court in any way, Your Honor.

14 THE COURT: Supposing he doesn't have it, the defend-
15 ant Katzenbach? He doesn't have the res. It's a futile order
16 to tell him to deliver what he doesn't have.

17 MR. GARRETT: As I say, I think the best answer to
18 that, Your Honor, is that the--we expect, of course, to ask
19 Judge Estes to dismiss that action on account of the priority
20 of jurisdiction here. Under the general rule of priority of
21 jurisdiction we would assume that he would. I think we have
22 to decide the law on that here because it's come up first here.

23 Then with his dismissal, that leaves this court's
24 jurisdiction----

25 THE COURT: Well, it doesn't make any difference then

1 whether property is--whether it's specific property or not, is
2 the answer to my question?

3 MR. GARRETT: You do have the controversy here. The
4 quote from Learned Hand covers that. This is a commencement of
5 suit in which possession can be taken. That is at the conclu-
6 sion of this action, in the event this plaintiff were success-
7 ful, the order would be for the delivery of the property. That
8 was exactly the situation involved in that Second Circuit case
9 which held that even----

10 THE COURT: Which one was this now?

11 MR. GARRETT: At the top of page 8, Your Honor,
12 Emil versus Hanley. It involved a federal versus state matter,
13 but, actually, it's even stronger than we need here. The
14 federal courts are more prone to let two actions proceed where
15 one is state and one federal, than they are to have two federal
16 actions proceeding.

17 THE COURT: Right.

18 MR. GARRETT: Those cases we've got there show that
19 if--the thing has moved rather rapidly on this. We had no
20 notice that this was going to come up in Dallas until it
21 started happening. But, we could, at this point, move for an
22 injunction against further proceedings there. As I say, we
23 think it's better to submit that to Judge Estes.

24 THE COURT: I do, too. I'd be very reluctant to
25 enjoin Judge Estes.

1 MR. GARRETT: I might say, first, I'd like to dis-
2 tinguish clearly, and have those out of the way, the cases that
3 are cited in the original memorandum of the Attorney General.
4 Those are all cases which this happened. The property was
5 seized, administrative proceeding was started, notice was pub-
6 lished, the owner of the property had notice of it--the original
7 owner--he didn't do anything. Well, then, that perfected the
8 Government's title. He didn't file a claim, didn't file a
9 bond, and didn't do anything to stop the proceeding. And then,
10 subsequently, he goes into court and says, "I want a decree
11 ordering the Government to deliver it to me. That proceeding
12 was void. It's not due process."

13 The courts there say, "Well, you had your chance over
14 there. You had to follow that procedure. That is all those
15 cases say. Actually, in those cases, the Government's forfeiture
16 action was first, and they were not applicable, anyway.

17 We have filed the bond, we have terminated that----

18 THE COURT: Wouldn't it be practical to remove this
19 case to Dallas and let Judge Estes handle the whole works, and
20 if you prevail on your contention down there, that the court
21 lacks jurisdiction, nevertheless, he's got all of the witnesses
22 close at hand and he is in a good position to determine the
23 facts, and it will avoid this conflict between two federal
24 courts which the Supreme Court time and again has condemned and
25 deplored.

1 MR. GARRETT: That's right, Your Honor. And the rule
2 that is laid down is the one of priority. The court with juris-
3 diction first attaches. It should be resolved. I might mention,
4 that we don't even consider it is discretionary. If it were,
5 we might see which is the most convenient forum.

6 I don't know of any witnesses particularly involved
7 in this matter. The forfeiture presents largely a legal ques-
8 tion.

9 THE COURT: Of course----

10 MR. GARRETT: I don't think anybody is going to con-
11 test the thoroughly developed facts. The Warren Commission
12 traced this weapon step by step, order by order. It's plainly
13 a legal question as to whether the forfeiture lies under the
14 facts. So that I don't believe there are witnesses there.

15 The other thing is that in the Dallas action they
16 claim this is forfeited. If the court holds that it has not
17 been forfeited, they haven't surrendered whatever claims they
18 might be able to think of. Whereas here we claim ownership,
19 "give us the gun".

20 They say if forfeited by operation of these regula-
21 tions, and so forth, that is a defense here. But if they have
22 any other defenses, if they would answer and put them up, we
23 can dispose of them all. So this action is dispositive which-
24 ever way it goes.

25 The Dallas action would be dispositive only if the

1 Government wins.

2 THE COURT: I mean, if this action were transferred,
3 why, you would have a right to assert your claim there.

4 MR. GARRETT: Well, of course, I think we can say,
5 "Well, why should we? Make them serve theirs here, because we
6 filed first." We selected a forum. At the time it was the only
7 forum we had, other than Washington, D. C., under the venue
8 statutes.

9 THE COURT: Right.

10 MR. GARRETT: Now, then, another factor on venue is
11 that the bill to condemn this weapon that the Attorney General
12 has introduced into Congress has now passed the House. It's
13 been reported out of the Senate at Committee, so it stands
14 before the floor of the Senate. And I am afraid, unfortunately,
15 that it's probably going to pass. It looks that way.

16 The venue it permits is either the Court of Claims
17 or the district where the plaintiff resides. There, again,
18 if that were to be brought into this action, there again, that
19 would be here. And we have no--we haven't any option to bring
20 it in Dallas.

21 So that considered as a discretionary matter between
22 courts, that is one thing. I also feel--one thing I want to
23 emphasize, is that Judge Estes hasn't, in any way, implicated
24 that he wants to hang on to it. As a matter of fact, the
25 papers that were filed with him, the leave that was obtained

1 from him, did not, in any way, reveal that there was this
2 action pending.

3 THE COURT: Do you have any objection to this docu-
4 ment being brought to the attention of the Court that they
5 tendered this morning?

6 MR. GARRETT: The certified copy of the process that
7 was--no, Your Honor. That is satisfactory. No use deciding
8 this on something that is not the true facts. I am satisfied
9 that is the process that was served. It says on its face, of
10 course, that they didn't keep it. They didn't take the goods,
11 they left them there. And for all we know, why, this action
12 may be in Alaska the next time with another motion to dismiss.

13 THE COURT: You are not contemplating that move, are
14 you?

15 MR. GARRETT: Oh, I am just worried about the next
16 place they will take it. I mean, the Attorney General gives it
17 --in their original memorandum, they say they didn't have it,
18 that the Treasury had it. Actually, they now say they were
19 wrong that the United States Marshal had it at the time.

20 I have been trying to brief, and I don't know quite
21 what we are arguing against. But, I think there is just one--
22 that the courts could invent a number of very fancy rules for
23 priority of jurisdictions, but, actually, on these cases it's
24 settled down pretty well to a remarkably workable, simple rule,
25 "first come first served."

1 THE COURT: Everybody being equal.

2 MR. GARRETT: Yes. And I think if anything it's
3 tilted a little that way. Under two venue statutes, and juris-
4 diction, the thing is here. I mean, contemplated one under a
5 proposed statute.

6 THE COURT: Don't you think I can ever lose juris-
7 diction if I lose the subject matter; assuming that I had it?

8 MR. GARRETT: I think it's possible in certain cases,
9 where a ship sails abroad without a valid seizure. But, here
10 we are on in personam jurisdiction over the United States.
11 The only case I can think of where the court loses jurisdiction
12 is strictly in rem, and only in rem. Your jurisdiction is
13 complete. If it's only in rem jurisdiction, and if the res
14 weren't validly and effectively seized, and it goes aground,
15 or outside the jurisdiction, then the court can lose it by the
16 subsequent actions of someone taking it away. But, if there is
17 no jurisdiction, I can see no reason for it to be lost. That
18 should certainly continue.

19 Here, of course, the Attorney General has admitted
20 in his letter to the Speaker of the House that he has intro-
21 duced into this proceeding that he needs legislation in order
22 to have a valid basis for the permanent retention of this
23 property.

24 Of course, he pretty well concedes--I don't see any-
25 thing but a quibbler in saying he doesn't own it. Now, having

1 put that in here that he doesn't own it, having declined to
2 answer at this time our complaint that we own it, I think it
3 ought to be assumed for this motion that we are the owner. We
4 are, as owners of this property, come into this Court seeking
5 to recover it.

6 Can the defendant seek jurisdiction around by taking
7 our property without our permission, without leave of this
8 Court, and put jurisdiction over this controverted property
9 wherever he wishes? We have cited the case here--actually,
10 very few people that take other people's property rush into
11 court, so it's hard to find the cases. But, the case cited
12 here says that the--that under those circumstances the law won't
13 recognize this in rem jurisdiction.

14 Mr. King lives here. By taking his property to other
15 places, they shouldn't be allowed to get jurisdiction over his
16 property and force him to chase them around. The court there
17 stated that--well, actually, what happened there is a creditor
18 of a debtor that took the debtor's property, he got hold of
19 the debtor's property and he took it into the State of Kansas
20 in order to get it seized there to try to get a judgment
21 against the property in quasi in rem in Kansas, and the
22 Missouri court said, "Well, the Kansas court can't have juris-
23 diction. It would be a fraud in law to let people seize prop-
24 erty, take it across state lines, and have the other state
25 claim jurisdiction in rem." Seemingly, that principle is fully

1 applicable here.

2 And I say, too, as a matter of discretion, I think
3 that--I wish that we had had the chance to present this to
4 Judge Estes first. I noticed that although some of these cases
5 the judges are fighting to grab the case, and that mostly there
6 is a more general tendency to defer. But, I don't think Your
7 Honor, in view of those cases, should feel any tendency to
8 defer to Judge Estes. We feel we have adequate authority to
9 show him that he should defer to this court.

10 I might answer these cases in the other memorandum.
11 First, this statute on the "property shall not be repleviable",
12 that doesn't mean you can't get back your property from the
13 United States ultimately. Sorry I didn't--this, of course,
14 again, we received Saturday. But, I went through that, and,
15 of course, by research that means we can't get the property,
16 and required them to bond back as it might be in an ordinary
17 sort of pleviables. It means we get the property and keep it
18 pending the lawsuit.

19 This case of Gerth isn't applicable. All that was
20 is the Treasurer had seized Gerth's property. He claimed on a
21 tax claim against a man named Naples (phonetic spelling). So,
22 Naples wasn't--Naples, apparently, wasn't contesting it so much,
23 because he was the taxpayer that owed the money. Gerth came
24 into that court and said, "Hey, that's my property. Give it
25 back to me." And the Government said, "We didn't consent to be

1 sued in this matter in this forum." And the court held, "that
2 since we've got jurisdiction on the other matter, why, we will
3 fully determine the title of the property, and the United States
4 will have to be sued in this proceeding."

5 The Wabash Railroad case is considerably off the
6 point. That arose out of railroad reorganization. There a
7 federal court--it was a federal versus state, for one thing.
8 Both actions had been allowed to proceed. The federal court
9 had had a judicial sale of some type and a purchaser had bought
10 the property. The state court then, still proceeding, came
11 along and ordered its sale, and the court said that the federal
12 court's jurisdiction to order the sale continued to protect the
13 purchaser since in order to have a good sale it had to protect
14 the purchaser. But, that was not about which should proceed.
15 It was prior actual determination and that they should stop the
16 state court from interfering with the purchaser's title.

17 The Covell versus Heyman case is, again, a state and
18 federal conflict.

19 THE COURT: We are a little less reluctant to enjoin
20 the state courts, Mr. Garrett.

21 MR. GARRETT: Much less reluctant, right.

22 THE COURT: We do not like to enjoin one another.

23 We will take a few minutes' recess. You will have an
24 opportunity to conclude then.

25 MR. GARRETT: Fine. Thank you, Your Honor.

1 (Whereupon the proceedings were recessed at 10:50
2 o'clock a.m. and reconvened at 11:05 o'clock a.m.)

3 MR. GARRETT: Your Honor, I might just finish briefly.
4 The Government has quoted a venue statute as to where it can
5 bring a forfeiture proceeding, in its original memorandum at
6 page 2.

7 THE COURT: Place of seizure?

8 MR. GARRETT: No, 26 U.S.C. 2373, a proceeding for
9 the nature and venue of the proceedings to enforce forfeiture.
10 It's clearly labeled a venue statute, and the jurisdictional
11 sections on forfeitures confer jurisdiction generally on all
12 district courts.

13 In other words, there is no want of power in this
14 court. And even beside the fact that there is special permis-
15 sion to bring in any counterclaims, offer defenses, or anything
16 the United States has----

17 THE COURT: Well, the statute does say that it shall
18 be brought in the district where such seizure is made, doesn't
19 it?

20 MR. GARRETT: Yes. But, I think it's labeled a venue
21 section wherein, of course, parties can waive venue. It's not
22 a want of power in the court, I don't believe.

23 The jurisdictional statute on page 10 of our brief
24 we quote, "The district courts shall have original jurisdiction,
25 exclusive of the courts of the states, of any action or

1 proceeding for the recovery or enforcement of any fine, penalty,
2 or forfeiture, pecuniary or otherwise, incurred under any act
3 of Congress."

4 That is even aside from subsection C of Section--of
5 23 U.S.C. Section 1346, saying that when jurisdiction is in our
6 action the United States has jurisdiction over anything back
7 over. And I think you can't just focus on that one venue
8 statute.

9 One thing I might address myself briefly to is, Your
10 Honor mentioned the possibility of transfer, which, of course,
11 the court could in a proper case do on its own motion. There
12 has no motion been made for transfer. And, of course, the
13 motion to dismiss leaves us in this position, that there is
14 some limitation on our claim against the Government. I am sorry
15 I don't know exactly what. But, if we are dismissed here, and
16 not on the merits but for want of jurisdiction, then we have
17 got no action pending and are subject to the risk that in Dallas
18 the court says this is purely a forfeiture action. We find
19 it's not forfeited, but the Government may have some other
20 claims, then we have to go file again and maybe limitations
21 have run.

22 As far as the transfer goes, I haven't had an oppor-
23 tunity to refresh myself on this. But, I know that the Supreme
24 Court has generally recognized that the plaintiff has quite a
25 heavy voice in choosing a forum. That venue gives him--is not

1 conclusive in any way, but something should be given to his
2 selection. And I might state one feeling, one reason we don't
3 feel it would be to our convenience to be in Dallas. As I say,
4 there is a very good chance that this controversy will end up
5 as a trial to determine the value of property taken by the
6 United States. In Dallas we feel that the community has con-
7 siderable guilt feelings in connection with the assassination,
8 and that a jury might remove its guilt feelings with Mr. King's
9 property. And we would get a fairer trial away from the scene
10 of the assassination.

11 And on the law, why, I believe a forum nonconvenience
12 transfer requires it to be transferred--just quoting the
13 language of Section 404a, "to another district or division
14 where it might have been brought."

15 Now, as I recall the cases under that, I believe
16 it's been held that the forum to which it is transferred has
17 to be a forum of both jurisdiction and venue, and that since we
18 might not have brought--that is, Mr. King had no right, as a
19 resident of Denver, to sue the United States in Dallas on his
20 present action. Nor, under the Attorney General's proposed
21 bill on a claim for damages from a condemnation action would
22 Mr. King have any right to bring it in Dallas. So, I feel
23 there might be a want of power in the Court to make that trans-
24 fer. We submit that the Court should simply determine that as
25 the court of first jurisdiction this should not be dismissed.

1 Then, of course, we will proceed in Dallas to ask the court
2 there to recognize the priority of jurisdiction here. And,
3 hopefully, there will be no conflict. If there should be a
4 conflict, I am sure the point could be raised again in this
5 Court or there.

6 Thank you.

7 THE COURT: Thank you, Mr. Garrett.

8 MR. DROGULA: If it please Your Honor. By way of
9 response to Mr. Garrett's remarks, I would like to say first of
10 all----

11 THE COURT: Before we go any further, there is one
12 fact I want to get clear. And that is, where this weapon--
13 these weapons are now, and what is their legal status. There
14 seems to be a dispute of fact between you on that.

15 MR. DROGULA: Well, I do not believe there is a dis-
16 pute of fact. I believe there is a dispute as to the legal
17 effect of what the facts are.

18 THE COURT: May I have this document that you tend-
19 ered?

20 (Document handed to Court)

21 THE COURT: So, the Marshal seized the weapons.

22 MR. DROGULA: That is true, Your Honor. And I don't
23 think that there is anything particularly unusual about the
24 fact that they were left in the custody of the Federal Bureau
25 of Investigation. The fact remains that they have been seized

1 and are held subject to the orders of the court.

2 Neither the FBI agent who has possession, nor the
3 Attorney General, can, of course, do anything with those wea-
4 pons without leave of Judge Estes.

5 THE COURT: Actually, the writ of Judge Estes hasn't
6 been fulfilled.

7 MR. DROGULA: Yes, sir. It says, "to attach the said
8 goods, wares, and merchandise and detain the same in your
9 custody."

10 Now, I think the point that the plaintiff is making,
11 they are trying to draw a distinction between custody and
12 possession. Now, quite often, of course, United States Marshals
13 take custody of items they could never take possession of, such
14 as parcels of real estate or large buildings, or----

15 THE COURT: No such practical problem here.

16 MR. DROGULA: Well, there is to a certain degree,
17 Your Honor.

18 THE COURT: Why? What is it?

19 MR. DROGULA: These items, both firearms, were
20 delivered under guard to Dallas, Texas, for the commencement
21 of these forfeiture proceedings. They are kept very securely
22 in a vault. I don't know whether the United States Marshal
23 has similar facilities, but I can easily understand why it
24 might have been felt it would be more secure to leave them where
25 they were than handle them again and keep them in his office

1 until further order of Judge Estes. But, the practical thing
2 is, I believe, that it is clear that they are in legal custody.

3 In any event, if there is some defect in the return,
4 I would suggest that that would be a matter which they could
5 raise an argument to Judge Estes. And if the Marshal from that
6 district has not complied with the direction of the Judge, I
7 don't think there is any question that legal custody is with
8 the United States Marshal.

9 From the date they are required by the court they
10 will be taken into possession of the Marshal and brought physi-
11 cally before the court for disposition.

12 THE COURT: You don't think the Department of Justice
13 is an arm of the court, do you?

14 MR. DROGULA: No, sir.

15 THE COURT: I don't either.

16 MR. DROGULA: Only to the extent that the United
17 States Marshal's office, I understand, is, organizationally,
18 within the Department of Justice. But beyond that certainly
19 not.

20 But, the Marshal very often tacks up his seizure
21 notice on a barn door, something like that, and that is still
22 as much within the custody of the court as if it were in the
23 courtroom.

24 THE COURT: Well, what you are saying, at least it
25 complicates life as far as my jurisdiction is concerned, and it

1 is not for me to decide?

2 MR. DROGULA: Exactly, Your Honor, with all due
3 respect.

4 THE COURT: Whether Judge Estes' order has been com-
5 lied with or not----

6 MR. DROGULA: Yes, sir.

7 THE COURT: --that it's beyond my power, anyhow, is
8 what you are saying?

9 MR. DROGULA: Yes, sir. It's a writ served by the
10 Northern District of Texas.

11 THE COURT: And that there is no power in this court
12 to collaterally consider it?

13 MR. DROGULA: That is true. I might also say, in
14 dovetailing this into the argument which the plaintiff has
15 made, that I feel that there must be some confusion as to the
16 basis of jurisdiction he alleges in this court. He speaks of
17 28 U.S.C. Section 1346, which is the suit against the United
18 States as a defendant.

19 But, of course, he is not suing the United States as
20 a defendant. He is suing the Attorney General as an individual.

21 THE COURT: Well, he's brought it under the venue
22 statute, hasn't he?

23 MR. DROGULA: Well, he's brought it under the venue
24 statute.

25 THE COURT: That permits him to bring it in the

1 district rather than the District of Columbia?

2 MR. DROGULA: I have no quarrel with the venue. I
3 am speaking of jurisdiction. What he is suing, as I understand
4 it from his complaint, is the Attorney General.

5 THE COURT: True.

6 MR. DROGULA: Who is acting outside of his statutory
7 authority. He is not suing him as an agent of the Government
8 performing an official duty, because if he were doing so this
9 would plainly be a--but it's simply the equity jurisdiction of
10 this court over an individual whom the court, by reason of the
11 venue statute----

12 THE COURT: I think that is true.

13 MR. DROGULA: Well, proceeding on that, the signifi-
14 cance of that for the purposes of our argument, Your Honor,
15 is that it is evident that this action is nothing more than
16 Your Honor has characterized it as a suit in equity asking for
17 injunctive relief, directing the defendant to deliver these
18 firearms into the possession of the plaintiff.

19 Now, the whole argument, as I understand it, of the
20 plaintiff----

21 THE COURT: Well, specific restitution.

22 MR. DROGULA: Yes, Your Honor.

23 THE COURT: It's an action that I think has a lot of
24 early recognition. In other words, where an item of personal
25 property has some unique quality about it, whereby there is no

1 claim adequate, and speedy remedy of law, damages wouldn't
2 compensate----

3 MR. DROGULA: Exactly.

4 THE COURT: --I suppose it has to be an extraordinary
5 piece of property. I suppose that the court having jurisdic-
6 tion over the property and the persons can decree, sort of like
7 a replevin action at law, specific delivery of that particular
8 piece of property, isn't that right?

9 MR. DROGULA: Exactly.

10 THE COURT: And this is really the theory on which
11 they are going, although their complaint doesn't set it all up.

12 MR. DROGULA: That is true. In that contention, then,
13 we feel that their whole argument is based on this priority of
14 jurisdiction theory. They seem to think that because this
15 suit is first in point of time that that precludes the juris-
16 diction from attaching, or at least continues the jurisdiction
17 of this court notwithstanding Judge Estes' proceeding in
18 Dallas.

19 They have cited a number of authorities----

20 THE COURT: They cite some cases that seem to question
21 your----

22 MR. DROGULA: The problem with all those cases, and
23 this is basic distinction between the situation presented
24 there and the situation presented here, is that nowhere in
25 those cases was there a specific statute which gave one court

1 priority in jurisdiction over all other courts.

2 Now, I have not had an opportunity, since I just
3 received this brief this morning, to study these cases. But,
4 I think it can be said that they are probably cases where a
5 suit could be brought anywhere and one plaintiff manage to get
6 to the courthouse first, and the court said, "Well, since you
7 are first here you are first served."

8 But, here we have a very different situation, because
9 here we have an act of Congress which requires that this for-
10 feiture proceeding be brought in Dallas.

11 In other words, the allegation which the plaintiff
12 makes that we could plead this forfeiture matter as a defensive
13 matter in this court, is completely in error. We could not
14 answer and make as a defense that forfeiture proceeding, be-
15 cause the venue statute requires that forfeiture proceedings
16 be brought in the district in which the firearms were seized.
17 Now, that is very clear.

18 THE COURT: I think it's true that some of these
19 federal venue statutes are really jurisdiction in their char-
20 acter.

21 MR. DROGULA: Well, certainly this one is, Your
22 Honor.

23 THE COURT: I have encountered that before.

24 MR. DROGULA: Because we have in our memorandum cited
25 the case of Rush against the United States, on page 4. That is

1 a Court of Appeals case arising out of Oklahoma in 1953, 256
2 Federal 2nd 862. And in that case the Internal Revenue Service
3 commenced an administrative forfeiture proceedings against some
4 property and concluded it without contest. An attack was
5 brought then in another district, the district in which the
6 weapons were seized, and the plaintiff there alleged that the
7 forfeiture was void because the forfeiture proceedings had not
8 been brought in the district in which the items were seized.
9 And the court there agreed saying, "Clearly that is correct.
10 This venue statute requires that the forfeiture be commenced
11 in that district." So, I think, it's clear that this is juris-
12 dictional here.

13 And we have also cited the Gerth case in our supple-
14 mental memorandum to this same effect. I don't think that
15 there is any doubt, at all, but that Judge Estes, if as counsel
16 were doing, going to speculate as to his decision in that
17 matter, would recognize that unlike our priority of jurisdic-
18 tion cases here you have a specific act of Congress giving
19 Judge Estes jurisdiction above all other courts. So that the
20 analogy which counsel attempted to draw breaks down to the con-
21 trary. This court could not give complete relief, because Your
22 Honor could not determine whether these weapons are forfeitable.
23 Judge Estes must do that pursuant to 26 U.S.C. Section 7323(a).

24 On the other hand, Judge Estes has abundant and ample
25 jurisdiction to consider any claim which the plaintiff may care

1 to make in this proceeding. The authority which we cite on
2 page 2 of our supplemental memorandum, the Adelbert College
3 case, the last sentence, after the court has already said that
4 when a court of competent jurisdiction has by appropriate pro-
5 ceedings taken property into its possession through its offi-
6 cers, the property is thereby withdrawn from the jurisdiction
7 of all other courts. The last sentence says, "For the purpose
8 of avoiding injustice which otherwise might result, a court
9 during the continuance of its possession has, as incident
10 thereto and as ancillary to the suit in which the possession
11 was acquired, jurisdiction to hear and determine all questions
12 respecting the title, the possession or the control of the
13 property."

14 So, Judge Estes has ample jurisdiction, both under
15 the Adelbert College case and under 28 U.S.C. Section 2465.

16 THE COURT: You have no objection to this court re-
17 taining this case until they have had an opportunity to present
18 their viewpoint to Judge Estes?

19 MR. DROGULA: If you are asking that as a----

20 THE COURT: So long as the proceedings here are sus-
21 pended.

22 MR. DROGULA: Well, we have asked for that relief
23 alternatively, Your Honor.

24 THE COURT: It won't do any harm. I mean, if he says
25 that he is apprehensive about all the problems that arise in a

1 lawsuit following dismissal, limitations and this kind of
2 thing----

3 MR. DROGULA: Yes, sir. Well, I might mention this
4 just to clarify----

5 THE COURT: No sense in subjecting him to all those
6 hazards, at least.

7 MR. DROGULA: Well, I might say his danger, or his
8 fear of limitations, is completely mistaken here, because he
9 was basing that upon his theory that his action is against the
10 Government. He repeatedly said that his action is against the
11 Government, and, therefore, there are limitation problems.

12 However, as I pointed out, and Your Honor has agreed,
13 this is not a suit against the Government, so that he has no
14 limitation problems. He would, in no way, be prejudiced by a
15 dismissal of this suit. That is the thrust of all the cases we
16 have cited.

17 THE COURT: Well, there is no point of creating any
18 hazard on it, is there? Except you might feel better----

19 MR. DROGULA: Yes, Your Honor.

20 THE COURT: --winning the case. But, I don't know
21 whether that has any great social value, or not.

22 MR. DROGULA: Yes, sir. Well, our main concern, of
23 course, is that this proceeding not go forward and in any way
24 affect Judge Estes' jurisdiction, since he has taken the res
25 into his custody. And we didn't want anything to happen in

1 this proceeding which might embarrass Judge Estes, or might
2 affect his ability to grant complete relief which the statute
3 contemplates. That is our primary concern here today.

4 So that while we think it is clear that the action
5 should be dismissed, since the statute provides an exclusive
6 remedy----

7 THE COURT: You don't want me to prejudge the juris-
8 diction of Judge Estes, though?

9 MR. DROGULA: Not at all, Your Honor.

10 THE COURT: That is what I would do if I dismiss it.

11 MR. DROGULA: Well, yes.

12 THE COURT: I would say that he has got exclusive
13 jurisdiction.

14 MR. DROGULA: Yes. Well, I will differ----

15 THE COURT: And he might be embarrassed to reverse
16 me.

17 MR. DROGULA: No, Your Honor. I don't think that
18 could happen, at all. I think the statute is abundantly clear
19 that Judge Estes has exclusive jurisdiction.

20 THE COURT: True. But, shouldn't they have a clear,
21 unrestricted right to present it to him without my butting in
22 and prejudging it? Do you want a precedent, too----

23 MR. DROGULA: No, sir.

24 THE COURT: --for that case?

25 MR. DROGULA: No, sir. No dismissal on this case

1 would operate----

2 THE COURT: I don't say it would be a valuable one,
3 but, at least, it would be a precedent. It's better than
4 nothing, I guess.

5 MR. DROGULA: I don't see how this court, under the
6 authorities we have cited, would have jurisdiction, regardless
7 of any ruling which Judge Estes made.

8 THE COURT: No. I am merely saying that if you per-
9 suaded me, that if I should now dismiss the case on the ground
10 that the District Court for the Northern District of Texas has
11 exclusive jurisdiction, why, then the Department of Justice
12 could say, "Well, the Colorado court believed this", and it
13 would place him in a position of repudiating my decision. And,
14 so, they wouldn't get a clear opportunity to question his juris-
15 diction.

16 MR. DROGULA: I see Your Honor's point, although I
17 honestly don't feel that Judge Estes, although Your Honor would
18 have ruled, I don't think that that would make any----

19 THE COURT: You don't think he would be influenced?

20 MR. DROGULA: Well, I think he would give it all due
21 consideration.

22 THE COURT: You are very candid, I must say.

23 MR. DROGULA: I think he would give it all due con-
24 sideration, Your Honor.

25 THE COURT: But, you think he finally would disregard

1 it anyway?

2 MR. DROGULA: Well, the statute is just so clear,
3 Your Honor. He has the res, he has the parties. They must
4 intervene any claim--the question of transfer claim up here.
5 Well, that would not be necessary because it wouldn't add any-
6 thing, at all, to the jurisdiction that Judge Estes already
7 has. He can give the plaintiff any relief this court can give
8 them.

9 THE COURT: Well, you may be right. But, I think he
10 ought to decide it independently without any help from me. I
11 mean, that is the way it strikes me.

12 Do you wish to get in the last word?

13 MR. GARRETT: I might just note, briefly, one thing.
14 The statement that Judge Estes has jurisdiction of the parties,
15 I hope to find in the Admiralty Rules some way that we can
16 appear specially and contest the jurisdiction there, because
17 they don't, at this time, have any jurisdiction over Mr. King.
18 And it seems to me that he's got some inconvenience to him to
19 have to litigate some eight hundred miles from his home.

20 THE COURT: Well, they probably don't need any juris-
21 diction over his person. If it is, in truth, an action in
22 rem, why, he probably has to respond.

23 MR. GARRETT: As regards the contention which has
24 been made that the cases we cite don't involve any ones where
25 there is a subsequent in rem action that was in any manner

1 arguably exclusive. Well, those last two cases, the Eastport
2 Steamship Company cases, are exactly on point there. That is
3 the plaintiff was suing the United States for money. The
4 United States contended that that should be dismissed or stayed
5 pending a libel action that had special venue requirements.
6 And they contended that the judge believed that the libel
7 couldn't be brought in his court. However, he held that he
8 should not dismiss or stay, because, although he didn't have
9 that whole case, he could decide for the purpose of his action
10 whether or not that other case was validly--the merits of it.
11 He could decide the facts and the law on it for the purpose of
12 determining his own action. And, accordingly, the court there
13 refused both the dismissal and the stay. But on that narrow
14 point those two cases are directly in point. I would develop
15 it more fully if I had been aware that the shift was going to
16 be made to the relying on the court action there as opposed to
17 the administrative proceeding.

18 In connection with the question of whether there
19 actually is jurisdiction down there, whether there has been an
20 adequate seizure, there has been an allusion to barns, and
21 that barns don't readily move. And if this court considered--
22 considering this as an equitable action for restitution, it
23 seemed to me this court had some voice in this property, and
24 without its leave the property was taken down to Dallas.

25 THE COURT: I could have reduced it, I suppose. I

1 mean, I could have entered an order compelling them to deliver
2 it to this court, and then I would have firmed up my juris-
3 diction. But, this was not done. And they were free to do
4 anything they wished with it.

5 MR. GARRETT: The property was in controversy here.
6 I wonder if against a private individual I brought a case to
7 recover my automobile in this court and the defendant drove it
8 away to some distant point, if the court would have any feeling
9 it should defer to the jurisdiction of that distant point?

10 THE COURT: If I didn't have the car, and if it were
11 a replevin action, I would have to.

12 MR. GARRETT: Here I don't believe there is any
13 question----

14 THE COURT: In other words, that is why in the
15 replevin suit the court orders the Marshal to take possession
16 of the property so as to firm up its jurisdiction of both the
17 person and the subject matter.

18 MR. GARRETT: Here Your Honor has complete jurisdic-
19 tion over the person, that I say that there is no reason that
20 the order can't be entered. Of course, we will have to present
21 the question of priority of jurisdiction to Judge Estes. But,
22 regardless, his decision--these Eastport cases would indicate
23 that even if that action continued, that Your Honor should con-
24 tinue this case. And it also--that case was precisely on point
25 in the stay. The court denied a stay.

1 The Government asked for there, under very similar--
2 identical argument as to the exclusiveness of the libel pro-
3 ceeding. The court saying, "We are not going to handle all
4 that libel, but we are going to determine here whether or not
5 the Government's claim is valid, but only for the purposes of
6 this action."

7 And I believe that that can certainly be done here,
8 Your Honor.

9 THE COURT: Thank you, Mr. Garrett.

10 (Whereupon the Court uttered his ruling from the
11 bench which has previously been transcribed)

12 (Whereupon the proceedings were concluded)

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REPORTER'S CERTIFICATE

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STATE OF COLORADO)
) ss.
City and County of Denver)

I, August M. Helart, hereby certify that I am an Official Reporter of the United States District Court for the District of Colorado, that I reported in Stenotype the proceedings at the foregoing hearing in the above-entitled cause, and that the foregoing and hereto attached 60 pages of typewritten matter, numbered from 1 to 60, inclusive, constitute a full, true and accurate transcript of the oral proceedings had at said hearing.

Dated at Denver, Colorado, this _____ day of October, 1965.

August M. Helart
Official Court Reporter

Mr. John F. McCarren, Chief
Litigation Branch, A&T Legal Division

Mr. Nolte

C. Nolte

Oswald Firearms Case

The below "points" with appropriate cases cited are intended to refute possible arguments which Mr. King may raise in the Oswald Firearms Case.

(1) 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.

(a) United States v. One Studebaker Seven Passenger Sedan, 4 F.2d 534 (C.A. 9, 1925). In this case 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 by 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.

We have already researched the problem as to whether the United States may adopt seizures. In this regard

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Case

the primary authority appears to be United States v. One Ford Coupe, 272 U.S. 321, 322.

See also Harman v. United States, 199 F.2d 34 (C.A. 4, 1952) This case also dealt with the adoption of the seizure originally made by state officers.

(2) The right of the United States to seize property for its illegal use on a date prior to the seizure.

(a) Harmon v. United States, (supra), wherein 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." and cases cited therein.

(b) Sanders v. United States, 201 F.2d 158 (C.A. 5, 1953).

loss
possession of property as necessary for jurisdiction of court.
(3) It was held in the case of United States v. 673 Cases of Distilled Spirits and Wines, 74 F. Supp. 622, 631 (U.S.D.C., Minn. 1947) that "In the instant case, the liquor was in possession of the federal government at the time the libel was filed. Therefore, this ~~quote~~ court obtained jurisdiction" Moreover, counsel for claimants have conceded jurisdiction of this Court, ... " It would appear that since Mr. King filed a claim and cost bond transferring the jurisdiction to the Federal court in Dallas, he has conceded the Dallas court's jurisdiction of the forfeiture and cannot now ~~tax~~ same.
ATTORNEY

(4) 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

(C.A. 2, 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) There is no question in this case that the five-year statute of limitations has run and that the Government has unnecessarily delayed the filing of the libel.

(5) It is indicated that the claimant may maintain that the Government has abandon the seizure. Any such allegation would not be well founded. As for a definition of the word abandonment, see Grove Laboratory v. Brewer and Company, 103 F.2d 175, wherein the Court stated that "Abandonment, in the strict sense, rests upon intent to abandon" This case admittedly does not involve a seizure by the United States but clearly points out the necessity for there being an intent to abandon the thing at issue. From my understanding of the case, there is not one iota of evidence indicating that the Government intended to abandon the weapons in question.

(6) What is a seizure?

It was held in the case of Pelham v. Rose, 76 U.S. 103 that "The seizure of the property, as thus seen, is made the foundation of the subsequent proceedings. It is essential to give jurisdiction to the Court to decree a forfeiture. Now, by the seizure of a thing is meant the taking of a thing into possession, the manner of which, and whether actual or constructive, depending upon the nature of the thing seized. If applied to subjects capable of manual delivery, the term means caption; the physical taking into custody." In this case the return executed by the marshal, as I understand it, avers that he has taken possession of the firearms even though he has left them deposited for safekeeping with another government agency.

An interesting case which is somewhat analogous to the situation at hand is United States v. Twenty-one Pounds, Eight Ounces of Platinum, 147 F.2d 78 (C.A. 4, 1945). This case involved the "seizure" by agents of

the Federal Bureau of Investigation ^{"seized"} of a quantity of Platinum which was intended to be exported in violation of law. The platinum was later proceeded against in forfeiture proceedings by the Commissioner of Customs. The statute involved provided that forfeiture proceedings must be instituted within ten days from the "date of seizure". Ten months elapsed from the time the Federal Bureau of Investigation seized the platinum until the institution of forfeiture proceedings. The Court indicated that the statutory seizure was not made at the time the Federal Bureau of Investigation agents took possession of the platinum and that "the taking of goods into possession by the collector did not lose its character as a statutory procedure because the goods were taken from the control of another government agency which, having performed its duty in the successful prosecution of the conspiracy, voluntarily gave up the goods." The Court indicated that the Federal Bureau of Investigation "seized" the platinum as evidence of the violation of the statute involved and it "was their duty as prosecuting officers to seize any property connected with the crime and preserve it for use at the trial." It further pertinently stated "That the taking of possession of property by one government agent does not necessarily invalidate a later seizure by another government agent acting in pursuance of statute. It follows that the prior possession of the F.B.I. in the exercise of their lawful authority to prosecute for crime did not invalidate or take the place of the subsequent seizure of the Collector of Customs for the purpose of forfeiture."