

Memorandum

TO : Mr. J. Edgar Hoover
Director, Federal Bureau of Investigation

DATE: MAR 22 1971

FROM : L. Patrick Gray, III
Assistant Attorney General, Civil Division

LPG, III:Goldbloom:rnk
78-73-149

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cc
SUBJECT: Marina N. Oswald Porter, et al v.
United States - USDC ND Texas,
Civil Action No. CA-3-4247-C

Mr. Tolson	/
Mr. Sullivan	/
Mr. Mohr	/
Mr. Bishop	/
Mr. Brennan	CDK
Mr. Callahan	/
Mr. Casper	/
Mr. Conrad	/
Mr. Dalbey	/
Mr. Felt	/
Mr. Gale	/
Mr. Rosen	/
Mr. Tavel	/
Mr. Walters	/
Mr. Soyars	/
Tele. Room	/
Miss Holmes	/
Miss Gandy	/

The above action is a claim brought under the Federal Tort Claims Act for alleged loss or damage to personal property of Lee Harvey Oswald while such property was in the possession and control of the Federal Bureau of Investigation. As you know, this Department rejected the administrative claim presented to the Bureau by letter of July 17, 1970, a copy of which was forwarded to your office. Thereafter, the above suit was brought under the Tort Claims Act and a pretrial conference was conducted by the court on March 17, 1971.

The facts surrounding the institution of this suit are as follows:

Following the submission of the Warren Commission Report in 1964, Congress deemed it advisable that the Government permanently retain possession of certain of the items of evidence considered by the Warren Commission in its investigation of the assassination of President Kennedy. In November 1965, Public Law 89-318 was enacted to establish authority for the preservation of evidence used by the Warren Commission. Section 2 of the Act authorized the Attorney General to designate which of the items of evidence were to be retained and provided that, upon publication of his determination in the Federal Register, title to such items would vest in the United States. The Attorney General's determination was published in the Federal Register on November 1, 1966. 31 F.R. 13968 et seq. Section 3 of Public Law 89-318 vested the Court of Claims and the Federal District Courts with jurisdiction to hear, determine, and

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render judgment upon any claim for just compensation for any item acquired by the United States pursuant to the Act.

A timely suit was filed by the widow of Lee Harvey Oswald, Marina N. Oswald Porter, in the Federal District Court for the Northern District of Texas to recover just compensation for the value of certain personal property which belonged to Lee Harvey Oswald and/or Marina Oswald. That suit, Marina N. Oswald Porter, et al v. United States of America, Civil Action No. 3-2282, N.D. Texas, has already been tried and is awaiting decision by the District Judge.

The evidence in that case was presented to a Master in Chancery who was appointed by the District Court. A hearing was conducted in Washington, D.C. on January 27 and 28, 1969, and additional proceedings were thereafter conducted in Dallas, Texas. At the time of the hearing the items of property were examined at the Archives by the Master in Chancery, the expert witnesses for both Mrs. Oswald and the United States, and the attorneys for the respective parties.

Examination of the property disclosed that many of the items, documentary in nature, had been treated with some chemical process which resulted in a staining or discoloration of the documents. At that time we were informed by personnel at the Archives that these items were in that condition when received from the FBI Laboratory, and that such staining had occurred through the investigative analysis performed on the documents to determine whether any hidden messages or codes were present in the documents. Accordingly, the Government presented evidence as to the value of the documents on the date of taking, November 1, 1966, and urged that the value be determined as of that date based upon the documents in a stained and discolored condition. The difference in value, according to the Government's witness, between the documents in their stained condition as against their original condition was approximately \$60,000. The Government's witness testified that the present value of the property involved amounted to approximately \$10,500, and that if all the property were in good collector's condition it would be valued at approximately \$70,000.

At the trial and thereafter, the Government asserted that any staining resulting from investigative examination was proper investigative technique in light of the circumstances regarding the crime involved and information otherwise available as to Oswald and therefore the chemical treatment did not amount to a "taking" of the property under settled principles of law which preclude recovery for damage to property resulting from the lawful exercise of the sovereign's police power. See Y.M.C.A. v. United States, 395 U.S. 85; United States v. Caltex, Inc., 344 U.S. 149; United States ex rel T.V.A. v. Powelson, 319 U.S. 266, 284; Hamilton v. Kentucky Utilities Co., 251 U.S. 146, 154-157; Juragua Iron Co. v. United States, 212 U.S. 297. We also urged upon the court that such damage did not amount to any negligence.

Without issuing an opinion discussing its reasons, the court entered a preliminary order instructing the Master to value the property as urged by the Government, i.e., in its condition as of November 1, 1966. The Government has raised a number of other defenses in the just compensation action which have not as yet been resolved by the court and are not relevant to the issues involved in this memorandum.

As a result of the court's preliminary ruling, plaintiff asserted this claim under the Federal Tort Claims Act for the alleged damage to the property. An Answer has been filed, a copy of which is enclosed, asserting all of the relevant defenses to this claim.

It will now be necessary to develop the facts for use in defense of the tort suit. This case is assigned to Irwin Goldbloom of this Division, and we would appreciate an opportunity to confer with one of your agents to develop the facts for use in the defense of this action.

At the pretrial conference before the court on March 17, 1971, it was agreed that the Government would file a motion together with affidavits relating to the legal defenses asserted by the Government in this case. Accordingly, the basic thrust of our affidavits will be the nature of the treatment of the documents involved and the propriety of the techniques used in light of the circumstances of this case.

We appreciate your cooperation in this matter.

Enclosure