

UNITED STATES GOVERNMENT

Memorandum

TO : Assistant Attorney General
Criminal Division

DATE: 3-31-65

FROM: *MJS* Assistant Attorney General
Office of Legal Counsel

Walker

SUBJECT: Proposed legislation relating to the acquisition of items of evidence pertaining to the assassination of President Kennedy.

This is in reply to your request for an expression of the views of this office concerning a proposed bill designed to provide for the acquisition by the United States of title to certain items of evidence pertaining to the assassination of President Kennedy. That bill declares that it is in the public interest for the United States to preserve those items for public use; requires the Attorney General to acquire those items for the United States by gift, purchase, condemnation, or otherwise; provides for custody of those items by the Administrator of General Services; and confers jurisdiction upon the United States District Court for the District of Columbia over proceedings under the legislation.

I am inclined to feel that it would be preferable to have the legislation--

1. Declare that the national interest requires that all right, title, and interest in and to those items of evidence be vested in the United States and requires that those items be preserved for public use, rather than declaring merely that such ownership would be in the public interest.
2. Authorize the Attorney General to determine which of the items should be acquired by the United States and provide for the publication of those determinations in the Federal Register.
3. Provide that upon the publication of such determination, all right, title, and interest in and to the items described in the determination shall vest in the United States.

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4. Provide that the authority of the Attorney General to make those determinations shall expire within one year from the date of enactment of the Act.

5. Provide that any person aggrieved by any such vesting may, within one year from the date of publication of the pertinent determination in the Federal Register institute a proceeding in the Court of Claims for recovery of just compensation.

6. Provide that all such items be placed in the custody of the Administrator of General Services for preservation under such rules and regulations as he may prescribe.

7. Provide that those items are to be deemed to be the personal property and a part of the official records of the United States for the purposes of laws relating to the administration, custody, and protection of personal property and records of the United States, including, but not limited to, Sections 2071 and 2111 of Title 18 of the United States Code.

Inasmuch as the proposed legislation would, in effect, constitute a seizure or taking by the United States of personal property, I feel that we should state the justification for that action in the strongest possible terms. Accordingly, I suggest that the legislation declare that the national interest requires Federal ownership of the items rather than declare merely that Federal ownership would be in the national interest which could be construed as implying that Federal ownership is desirable but not crucial.

I also feel that it would be preferable to have the legislation, by its own terms, expressly take all right, title, and interest in and to any item which the Attorney General, during the one-year period following the enactment of the legislation, determines that the United States should acquire and preserve. This would give the United States immediate and undisputed ownership of each such item as soon as the determination of the Attorney General is filed for publication in the Federal Register. I am assuming, of course, that there is no intent to acquire all exhibits or

even all Commission exhibits (see Vol. XVI of the Hearings of the Commission, pp. 801-826) which the Commission considered.

Claimants would be given one year from the date the pertinent determination is published in the Federal Register within which to file claims for just compensation with the Court of Claims. In those instances in which potential claimants do not file claims within the one-year period, the Government would avoid unneeded, and possibly embarrassing, negotiations and litigation that could drag on for years and delay acquisition of clear title to those items. This approach would also obviate the need for determining the persons or classes of persons, known and unknown, who might have interests in specific items, and the need for tracing those persons or serving constructive notice upon them. Furthermore, unless such an approach is adopted, the department might be compelled to engage in unwelcome negotiations and litigation involving the interests of the widows, children, and estates of President Kennedy, Lee Oswald, and Officer Tippit, respectively, and the interests of the State of Texas. A somewhat related question was raised shortly after the death of President Kennedy as to whether his papers could be turned over to the Kennedy Library or whether they had to be included in his estate. The family wanted to donate them to the Library, but the executor of the estate felt that he might be legally obligated to require that they be included in the estate, particularly since minor children, who could not waive their interests in the papers, were among the beneficiaries of the estate. I am sure that the Kennedy family would prefer to avoid negotiations and possible litigation concerning the coat, shirt, and tie of the late President.

If title to the items is automatically taken by the legislation, upon a published determination of the Attorney General, persons who have interests therein would, in effect, be permitted to waive their interests simply by refraining from filing claims within the one-year period prescribed. Guardians and executors could decide that the interests of their charges and estates, respectively, are too remote or insignificant to warrant filing a claim. This would substantially lessen the burden which would be imposed upon this department by the legislation.

Conferring jurisdiction upon the Court of Claims, rather than upon the United States District Court for the District of Columbia, would appear to be preferable because of the nature of the items involved. Their intrinsic value is small or insignificant, but their exploitation value might be considerable. A newspaper item has indicated that the Oswald rifle and revolver have been valued at \$10,000.

I feel that it would be preferable to have the Court of Claims, an expert body, determine their value rather than have a jury do so. I am assuming, of course, that if jurisdiction were conferred upon the United States District Court for the District of Columbia, or any other United States district court, that the procedures that would be followed would be similar to those prescribed for land condemnation proceedings by Rule 71A of the Rules of Civil Procedure which call for juries except when other tribunals are specifically prescribed by law.

However, if it is decided that jurisdiction should be vested in one or more United States district courts, consideration should be given to substituting commissioners for jurors as is done in Section 25 of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831x) (see note at the end of Rule 71A, 28 U.S.C., p. 5190).

Accordingly, I suggest the adoption of a bill along the lines of the attached draft.

The foregoing discussion deals only with the technical aspects of the legislation itself and proceeds on the assumption that legislation of this type would be valid. It is clear, of course, that the Federal Government can take private property (real, personal, or mixed) if the public interest requires such taking and if provision is made for the payment of just compensation (see Section 2(d) of the Act of Aug. 20, 1937, as amended, 16 U.S.C. 832a(d); the Act of Oct. 16, 1941, 55 Stat. 742; and Title II of the Defense Production Act, 64 Stat. 799). It is possible, of course, for an owner to challenge the Government's determination that a particular seizure is in the public interest, but the courts are usually disinclined to go behind such

determinations. If a statutory finding is made in this case, I feel it will be accepted by the courts and that the validity of the statute will be sustained. However, I would like to make it clear that I am not expressing an opinion as to whether the public interest does, in fact, require Government ownership of all of the exhibits described in the list that accompanied your draft of the legislation. It would seem desirable that a fairly firm decision as to which exhibits should be acquired by the Government be made before the proposed legislation is presented to the Congress, but a final decision does not have to be made immediately and can, instead, be made during the year that follows the enactment of the legislation.

WASHINGTON POST, March 27, 1965

Oswald's 'Estate'

DALLAS — Lee Harvey Oswald's widow, Marina, received legal rights to his property, including the rifle he used to kill President Kennedy. The rifle and the .38-caliber pistol with which Oswald killed policeman J. D. Tippit were valued at \$10,000 because of their historical interest — the price bid by a gun collector. Both weapons are now in the possession of the Department of Justice. Mrs. Oswald was appointed community administrator for the property and posted bond of \$5000 — half the property's value — as required by law.

A BILL

Providing for the acquisition and preservation by the United States of certain items of evidence pertaining to the assassination of President John F. Kennedy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby declared that the national interest requires that the United States acquire all right, title, and interest, in and to, certain items of evidence, to be designated by the Attorney General pursuant to section 2 of this Act, which were considered by the President's Commission on the Assassination of President Kennedy (hereinafter referred to as "items"), and requires that those items be preserved for public use.

SEC. 2(a) The Attorney General is authorized to determine, from time to time, which items should, in conformity with the declaration contained in the first section of this Act, be acquired by the United States and be preserved for public use. Each such determination shall be published in the Federal Register.

(b) Whenever the Attorney General determines that an item should be acquired by the United States and be preserved

for public use, all right, title, and interest in and to that item shall be vested in the United States upon the filing of that determination with the Office of the Federal Register for publication in the Federal Register.

(c) The authority conferred upon the Attorney General by subsection (a) of this section to make determinations shall expire one year from the date of enactment of this Act, and the vesting provisions of subsection (b) of this section shall be valid only with respect to items described in determinations filed with the Office of the Federal Register within that one-year period.

SEC. 3. Jurisdiction is hereby conferred upon the United States Court of Claims to hear, determine, and render judgment upon any claim for just compensation for any item or interest therein acquired by the United States pursuant to the provisions of section 2(b) of this Act: Provided, That the claim is filed within one year from date of the publication in the Federal Register of the determination by the Attorney General with respect to such item.

SEC. 4. All items acquired by the United States pursuant to section 2 of this Act shall be placed under the jurisdiction of the Administrator of General Services for preservation for public use under such rules and regulations as he may prescribe.

SEC. 5. All items acquired by the United States pursuant to section 2 of this Act shall be deemed to be personal property and records of the United States for the purposes of laws relating to the custody, administration, and protection of personal property and records of the United States, including, but not limited to, sections 2071 and 2111 of title 18 of the United States Code.

SEC. 6. There is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.