

Office Memorandum • UNITED STATES GOVERNMENT

TO : Howard P. Willens

DATE: December 11, 1964

FROM : Lloyd L. Weinreb

SUBJECT: Disposition of Personal Property Now Held by
President's Commission

This memorandum contains a brief summary of the law on points which have appeared troublesome to some of the people concerned with the problem of whether and how to continue the Government's possession and establish its ownership of the evidentiary items and memorabilia of the assassination now in the possession of the President's Commission. The summary is followed by specific recommendations for each of the items in question. (There may be a drizzle of unanswered questions here and there, for which I am sorry; into every life a little rain must fall.) I presume throughout that the purpose for which the items specified are to be returned is that they may be included in the "record" of the investigation of the assassination for the use of future historians and possibly for public display.

I. Summary of Relevant Legal Issues.

[Included here are only those issues which seemed particularly troublesome. For an exhaustive and exhausting analysis of the law of eminent domain see Federal Eminent Domain, A Manual Prepared in the Lands Division of the U.S. Department of Justice (1940). The Manual is a little out of date now but is the fastest route to information on any aspect of condemnation proceedings.]

A. Tangible Personal Property Is Subject to Condemnation.

See Russian Volunteer Fleet v. United States, 282 U.S. 481 (1931) (contracts for the construction of two ships and the ships being constructed); United States v. New River Collieries Co., 262 U.S. 341 (1923) (coal); United States v. Buffalo Pitts Co., 234 U.S. 228 (1914) (machinery); Dexter & Carpenter, Inc., v. United States, 275 Fed. 566 (D. Del. 1921) (coal); Long Island Water Supply Co. v. Brooklyn, 166 U.S. 685 (1897) (water supply system -- acquired by city).

The general principle is that "all private property is held subject to the demands of a public use." Long Island Supply Co., supra, at 689. In West River Bridge Co. v. Dix, 47 U.S. (6 How.) 507 (1848), Mr. Justice Daniel, speaking for the Court, reviewed the history and theory of eminent domain. He said in part:

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" . . . [I]n every political sovereign community there inheres necessarily the right and the duty of guarding its own existence, and of protecting and promoting the interests and welfare of the community at large. This power and this duty are to be exerted not only in the highest acts of sovereignty, and in the external relations of governments; they reach and comprehend likewise the interior polity and relations of social life, which should be regulated with reference to the advantage of the whole society. This power, denominated the eminent domain of the state, is, as its name imports, paramount to all private rights vested under the government, and these last are, by necessary implication, held in subordination to this power, and must yield in every instance to its proper exercise." Id. at 531.

See, also, Georgia v. City of Chattanooga, 264 U.S. 472, 480 (1924); Crozier v. Fried. Krupp Aktiengesellschaft, 224 U.S. 290, 305 (1912); New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650, 673 (1885); Greenwood v. Freight Co., 105 U.S. 13, 22 (1881).

B. Purposes For Which Property May Be Condemned.---

Congress can exercise the power of condemnation in aid of any of its constitutional powers. Berman v. Parker, 348 U.S. 26 (1954); United States v. Gettysburg Electric Railway Co., 160 U.S. 668 (1896); Luxton v. North River Bridge Co., 153 U.S. 525 (1894); Cherokee Nation v. Southern Kansas Railway Co., 135 U.S. 641, 656 (1890).

In United States ex rel. Tennessee Valley Authority v. Welch, 327 U.S. 546, 551 (1946), the Court said that it was "the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority." This rule, which would virtually remove the question of "public use" from judicial review, is not established. See id. at 555, 556 (Reed, Jr., concurring); id. at 557 (Frankfurter, J., concurring). But it was almost, if not quite, reiterated in Berman, supra, at 32: "The role of the judiciary in determining whether that power [of eminent domain] is being exercised for a public purpose is an extremely narrow one."

The courts have upheld the taking of private property in aid of a re-development plan, Berman, supra; for national park sites, United States v. Dieckmann, 101 F. 2d 421 (7 Cir. 1939); Morton Butler Timber v. United States, 91 F. 2d 884 (6 Cir. 1937); and in order to preserve historic sites, Gettysburg Electric Railway Co., supra; Barnidge v. United States, 101 F. 2d 295 (8 Cir. 1939).

In view of the above, there is no serious question that condemnation of the property involved here for the purpose of an historical record or display would be permissible. Compare the policy declaration in the National Historic Sites Act, 16 U.S.C. § 461: "It is declared that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States." A taking for the purposes of the Act was upheld in Barnidge, supra.

C. The Power of Eminent Domain Resides in Congress, and Its Exercise Must, Therefore, Be Authorized By Congress.---

See United States v. North American Transportation & Trading Co., 253 U.S. 330 (1920); Hooe v. United States, 218 U.S. 322 (1910); Smith v. United States, 32 Ct. Cl. 295 (1897). This rule is suggested also by the cases cited above which treat the power of eminent domain as a means whereby Congress effects its constitutional purposes.

II. Recommendations.

A. The following items are the property of the Government and should simply be retained without any further action except, if necessary, some formal notice transmitting custody of them to the Commission (or Archives). (I assume that all of these items are the property of the Federal Government. If that is not correct, a letter should be written to the appropriate State agency advising that the property will be made a part of the permanent record of the assassination. In the unlikely event that a demand is made for their return and title is actually in the State or State agency, the items should be condemned, as described hereafter. There is no barrier to condemnation of State property. If no demand is made for their return, they should simply be retained, as above.)

- Item No. 9. replica of sack
- 13. barrel cast of Oswald's rifle
- 14. rifle
- 23. cartridge
- 24. components of cartridge
- 25. cartridge and components of cartridge
- 26. cartridge and components of cartridge
- 27. cartridge and components of cartridge*/
- 30. test cartridges
- 35. test bullets*/
- 49. test bullets*/

B. The following items were abandoned, Abel v. United States, 362 U.S. 217, 241 (1960); Hester v. United States, 265 U.S. 57 (1924), and are now in the Government's possession. Unless someone else's right intervened (because of a

*/ Not included in Cella memorandum; description taken from attachment to Rankin letter to Acting Attorney General.

prior appropriation) the Government was entitled to appropriate them, Abel, supra, and has title to them.

I have no idea whether Governor Connally has title to metal taken out of his wrist or whether Tippit's widow has title to the bullets removed from his body. It is possible also that some of the items, such as the cartridges found in the Depository, were recovered by state police rather than federal officials and that only possession was surrendered to the Federal Government. It may be also that the Depository acquired some interest in the cartridge and cartridge cases abandoned there.

Formal condemnation of items of this nature would clearly be inappropriate. I recommend that a letter from the Commission, on behalf of the President, be written to each person or authority who might possibly assert any interest in any of these items. The letter should not suggest that such person or authority has any interest to assert. It should simply advise that the item in question will be made a part of the permanent record of the assassination. If any claim is asserted, a decision can then be made whether to institute condemnation proceedings or to deny the claim, retain the item, and remit the claimant to the Court of Claims. If no claim is asserted, the items should simply be retained; the fact that a letter was sent to possible claimants and no claim was made should prevent difficulties in the future.

- Item No. 2. cartridge recovered from Depository
11. bullet from stretcher
 15. cartridge case
 16. cartridge case
 17. cartridge case
 18. bullet fragment from President's car
 19. bullet fragment from President's car
 29. cartridge cases from Tippit murder scene
 31. bullet recovered from Tippit's body
 32. bullet recovered from Tippit's body
 33. bullet recovered from Tippit's body
 34. bullet recovered from Tippit's body
 39. lead particles found in President's car
 40. lead residue found on windshield of President's car
 41. metal fragment from Governor Connally's wrist
 42. metal fragments from President's head

*see W. supra
condemnation of*

C. Items 51, 52 and 53 are the President's coat, shirt, and tie. A letter should be written to Mrs. Kennedy advising her that the Commission wishes to make them a part of the permanent record of the assassination and requesting her approval. If she asks for the items, they should be given to her. Otherwise, they should simply be retained.

D. The following items can probably be acquired by forfeiture, since they were "involved" in a violation of the provisions of Title 15, chapter 18, and the regulations promulgated thereunder. 15 U.S.C. § 905(b). The violation was Oswald's use of a false name when he purchased the rifle and revolver. This contributed to a violation of 26 CFR § 177.51, which requires dealers in firearms to keep records of the disposition of the firearms.

There are established procedures for forfeiture, which is under the direction of the Internal Revenue Service. For present purposes, the significant feature of the procedures is that a forfeited firearm is not subject to public sale, etc. Under 26 U.S.C. § 5862(b), a forfeited firearm shall be delivered "to the Administrator of General Services, General Services Administration, who . . . may transfer it without charge to any executive department or independent establishment of the Government for use by it."

With respect to items 20, 21 and 22, the Cella memorandum states that the "shim" is an "integral part" of the rifle. If so, it is forfeited along with the rifle. But, since these three items are listed separately from the rifle, they are apparently detachable from it. (Plainly I don't know what a "shim" is-- a bit of drizzle.) And the regulation does not require records to be kept of "miscellaneous parts" of firearms. (The provisions of 15 U.S.C. § 905(b) do apply to parts of firearms. 15 U.S.C. § 901(3)).

* ¹ The Internal Revenue Service should be asked to advise on the status of these items, with respect both to the violation of the regulations and to the coverage of the regulations. If these items are indeed subject to forfeiture, they should be turned over to the Internal Revenue Service for such a proceeding. The President should instruct the Administrator of General Services to turn these items over to the Commission after forfeiture. If they are not subject to forfeiture, they should be condemned, as described hereafter.

(I would not rely on Mrs. Marina Oswald's "gift" of the rifle to the United States. The revolver would in any event have to be forfeited or condemned, and the rifle might as well go along with it. If she wishes to interpose no claim, that will be fine. Assuming that the rifle belonged to Oswald at the time of his death--where was it found? Was it perhaps abandoned?--Mrs. Oswald probably lacked authority to relinquish all interests in it [a question of Texas law]. In any event, it is as well to preclude any future claim from her or anyone else that the "gift" was not binding because made under strain, etc.)

- Item No. 1. rifle with sight
- 3. revolver
- 20. shim
- 21. shim
- 22. shim

H. That leaves the items which will have to be acquired by condemnation. Congress should enact legislation the substance of which is as follows:

1. Congress recognizes the importance of the items in question as physical evidence of the assassination, a major event in our history. In order to preserve these items both as evidence and as "objects of national significance for the inspiration and benefit of the people of the United States" [language borrowed from the National Historic Sites Act, 16 U.S.C. § 461, which should be modified as appropriate], they should be acquired for inclusion in the permanent record of the investigation of the assassination.
2. The President's Commission is authorized and directed to prepare a list of items which should be retained in the permanent record of the investigation of the assassination and absolute title to which is not already in the United States.
3. The Secretary of the Interior is authorized and directed to institute condemnation proceedings in the United States District Court for the District of Columbia to condemn the items specified by the Commission and secure title in them for the United States.
4. Such proceedings shall be carried on according to Rule 71A of the Federal Rules of Civil Procedure, with the proviso that the issue of compensation shall be determined by a commission of three persons appointed by the court, as described in subdivision (h) of Rule 71A.
5. There is authorized to be appropriated for compensating the present owners of such property as shall be condemned in the above proceedings an amount equal to that which shall be determined to be just and adequate compensation for the property so condemned.

Explanation of the suggested provisions:

- (1) Congress should include in the statute a statement of the public purpose which justifies exercise of the power of condemnation. The provisions of the National Historic Sites Act are available as a guide, if necessary. See, also, 16 U.S.C. § 469, which provides for the preservation of "historical and archeological data (including relics and specimens)."
- (2) You may want to consider whether Congress should not specify the particular items to be condemned. It seems preferable for that not to be included in the statute but to be referred to the Commission. The list would in any event have to come from the Commission. The only objection to leaving it to the Commission is the open-ended nature of the authorization. I suppose that stated as I have stated it above, the Commission could decide that the Depository was a fine piece of physical evidence and place it on the list. But I see no

cause for concern about this, and I am not delighted with the idea of Tippit's button and Marina's bracelet finding a permanent place in the Statutes at Large as well as the Archives. As for who should decide what goes on the list, I see no authority other than the Commission which would be appropriate.

(3) I choose the Secretary of the Interior because I don't know whom else to choose. He has responsibility for administering the National Historic Sites Act, which is the closest thing to what is involved here. I choose the District Court for the District of Columbia because the items in question are located within the District now.

(4) Rule 71A is a comprehensive guide to condemnation proceedings in the district courts. I specify that the determination of just compensation shall be made by a commission because there are too many emotional factors involved here to leave that issue to a jury. There are other possibilities, but I think the commission idea is as good as any.

(5) Some appropriation is necessary.

As I understand it, at the completion of a condemnation proceeding, the Government has absolute title to the property condemned, so long as it has given proper notice to all parties, etc. Consequently, I see no need for a provision terminating all rights not asserted in the proceedings. Indeed, I think any such provision would be superfluous or unconstitutional. If the Government does not give the notice required by due process (presumably embodied in the statute) and there is someone with a solid claim to some of this property, then there would have been a taking without just compensation.

The essential requirement of condemnation proceedings, and indeed of the various other methods suggested for acquiring the items which the Commission wants to retain is that the Government's title be above attack later on. I suppose that there are people who would pay a lot of money for memorabilia of Booth today. However, the Government's power to condemn is always available if it is needed in the future, which means that a second consideration is entitled to some weight. The business of acquiring these items should be accomplished with as little fuss as possible. It is time that the assassination became history and not news. Within the limits set by the Commission's determination of what should be retained and the need to acquire solid title, I would choose the quietest, least public method of acquiring the items. If a fuss is made about a single item which is not truly essential to the historical record (or for which photographs and models would be an adequate substitute), I recommend that the Commission consider whether it would not be better to return that item to the claimant than to create unnecessary publicity concerning the acquisition of these items.

In any event, these are the items which, as of now, will have to be condemned:

- Item No. 4. holster
- 5. cartridges
- 6. shirt
- 7. grey jacket*/
- 8. blue jacket*/
- 10. bracelet
- 12. cartridges
- 28. cartridges**/
- 31. button from Tippit's uniform
- 36. cardboard box from Depository
- 37. cardboard box from Depository
- 38. cardboard box from Depository
- 43. billfold with photograph
- 44. wallet containing cards
- 45. small items (bus transfer, key, ring, etc.)
- 46. Hidell coupon to order pistol
- 47. Irving Sports Shop repair tag
- 48. blanket
- 50. bullet from General Walker's home

*See
in
Memorandum*

Some of these items, such as the mail order coupon for the pistol and the repair tag have no intrinsic value. If the owner of such items can be established beyond reasonable doubt and if the owner will transfer all title to the United States, there is no need to go through condemnation proceedings. For since condemnation is the only safe method of acquiring the items which have

* / These items may have been abandoned. But, unlike the cartridges and cartridge cases left at the Depository and elsewhere, these items have some intrinsic value, and to be sure of a firm title I would take the condemnation route.
**/ Not included in Cella memorandum; description taken from attachment to Rankin letter to Acting Attorney General.

value, I think it best to follow that method in any case where there is any doubt at all of the title which would be acquired by any other means.