

51- Does either one of these decisions bear on possible damage suits?
It appears to me that both do and that whichever way the SC decision goes the old
decision is in point. HW 12/3/78

Agents Lacked Search Warrant

Target of FBI Raid Asks High Court to Hear Claim

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By Morton Mintz

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It was 9:30 on the night of March 15, 1975, when four FBI agents and two police detectives armed with revolvers, shotguns, and tear gas equipment barged into Elizabeth Ann Norton's Alexandria apartment, looking for Patricia (Patty) Hearst, the fugitive newspaper heiress.

The search, the government later admitted, was a mistake but one made "in good faith" by the agents who thought they had a good lead on Hearst's whereabouts.

Norton, then an employee of a Washington telephone answering service, was shaken by the experience and sued the federal government, winning a \$12,500 award in an Alexandria trial.

Her claim, however was overturned by an appeals court and her lawyers have asked the Supreme Court to consider the case.

The case affects "Hundreds if not thousands of persons with claims against the government," said John D. Grad, attorney for Norton, now 24, who returned to her West Virginia home saying she was "pretty disgusted" by the incident.

The agents had gone to the Alexandria apartment less than ½ hours after an anonymous caller—now believed to have been a hostile neighbor—told Alexandria police that Hearst was occupying Apt. 10 at 649 Notabene Dr.

Without getting a search warrant, four FBI agents and two city detectives, all in plain clothes went to the vicinity. Each carried a revolver. They also had two shotguns and tear gas equipment.

After a check of the area, agent Robert J. O'Brien knocked on the door of the apartment, where a light was burning and a stereo playing. It was 9:30 p.m.

"Who is it?" Norton asked. Told that it was the FBI, Norton asked for identification. O'Brien requested her to open the door so that he could show it to her. She refused, wanting first to be satisfied that he was from the FBI.

The men then tried to force their way in. With that Norton, visibly shaken unlocked the door. Revolvers

drawn, the men entered, put Norton under guard and made a search. They departed after telling her that the anonymous tip may have been a hoax or an attempt to harass the woman.

Supported by evidence that the experience had inflicted serious psychological damage, Norton filed a suit for damages against the agents, the police officers, and the federal government.

Nearly two years ago, U.S. District Judge Robert R. Merhige Jr. held "that, at the moment of entry, the facts and circumstances . . . were not sufficient to warrant a prudent man into believing that Ms. Hearst was inside the apartment." The agents and detectives consequently had violated Norton's "rights under the Fourth Amendment to be secure from unreasonable searches and seizures," he said.

Merhige ruled that the government had to pay Norton \$12,500 under the federal Tort Claims Act because it could not assert the same "good faith" immunity defense he allowed from the FBI employees.

The issue of such claims dates back to 1973, when federal narcotics agents made what Merhige termed "a series of ill-conceived and highly publicized" raids in Collinsville, Ill.

Under the claims law then the raid victims had no recourse against the government. Sen. Charles H. Percy (R-Ill.) successfully sponsored an amendment to the claims law to allow law suits in such cases.

Merhige concluded that the amendment gave Elizabeth Norton a right to sue the government.

He rejected the Justice Department's claim that the government was insulated from suit by the doctrine of sovereign immunity, which allows the government to be sued only with its consent.

Strongly disagreeing, Circuit Judge Harrison L. Winter wrote for himself and Circuit Judge H. Emory Widener Jr. that Congress had waived government liability only when the conduct of its law-enforcement agents is "intentional and abusive," as it was in the Collinsville raids.

In this regard, Winter wrote that the courts must be guided not by "Senator Percy's intent nor the intent of the committee staff, but rather the intent of Congress."