September 9, 1965

CC:SW:AT-1623
JFG

[redacted]
United States Attorney
Northern District of Texas
P. O. Box 153
Dallas, Texas 75221

Re: One 6.5 mm. Mannlicher-Carcano
Military Rifle, S/N C2766, and
One .38 Special S&W Victory Model
Revolver, S/N V510210.
Case No. Tex-N-4195 (FFA-Civil)
Alcohol & Tobacco Tax

Dear Mr. [redacted]

There are enclosed the original and ten copies each of a Libel of Information, a Request for Leave to File Libel, and an Order Granting Leave to File this Libel. These documents are for the purpose of proceeding judicially to forfeit the rifle used to kill the late President Kennedy and the revolver used to kill a Dallas police officer. This is the same case concerning which we furnished you these pleadings on July 22, 1965. The pleadings previously furnished you were not used since the Department of Justice decided that we should commence administrative forfeiture proceedings and have prospective claimants invoke the jurisdiction of the court. We are also enclosing a claim and a cost bond filed on behalf of [redacted] Mr. [redacted] supports his claim with a copy of the bill of sale showing him to have purchased these firearms from Mrs. Marina Oswald. Mr. [redacted] is represented by [redacted] Attorney at Law, [redacted] Texas, and there is attached to the claim and cost bond a power of attorney signed by Mr. [redacted] and requesting that correspondence relating to this case be sent to Mr. [redacted] If there is a declaration of forfeiture and a taxing of costs in this matter, the only costs of which we are aware are the advertising costs incurred in complying with Section 7325 of Title 26, United States Code. A statement concerning these costs will be sent to the United States Marshal for the Northern District of Texas by the Assistant Regional Commissioner, Alcohol and Tobacco Tax.

000001

We are also enclosing a Form 226-A, Appraisement List, covering these two firearms in this case. This appraisement list shows the

TO: [redacted]

FROM: [redacted]

SUBJ: Possibility of forfeiture of Oswald weapons

Statement of Facts*

On March 13, 1963, [redacted] Chicago, Illinois, received a coupon clipped from the March 1963 issue of the "American Rifleman" magazine for the order of one 6.5-millimeter Mannlicher-Carcano Italian Military Rifle (carbine) and a four-power sight. The order coupon and its envelope bore the name and mailing address ~~of one~~ "A. Hidell", Post Office Box 2915, Dallas, Texas. Both the coupon and the envelope had been made out in the handprinting of Lee Harvey Oswald. Accompanying the coupon was a United States Postal Money Order for $21.45 which was also signed in the name of "A. Hidell" and this too was in Oswald's handwriting. On March 20, 1963,

129-11

* [illegible]

[redacted] mailed the rifle and sight to the above post office box which the Dallas postal records establish was rented in the name of Lee Harvey Oswald. The rifle so mailed was a model 91/38 Italian carbine manufactured in 1940 and bore the serial number C 2766. The sight was an inexpensive four-power Japanese scope.

Sometime after January 27, 1963, [redacted] Inc., a mail-order division of George Rose & Co., Los Angeles, received a mail-order coupon for one Smith and Wesson .38 Special Caliber revolver. On March 20, 1963, a .38 Special S&W revolver with a ~~two-and-one-quarter~~ 2¼ — inch barrel bearing the serial number V 510210 was shipped via Railway Express. It appears that Oswald employed the same fictitious name ~~and address~~ in ordering the revolver as he had in ordering the aforementioned rifle. As a result of

their seizure, both weapons are now in the hands of the Federal Bureau of Investigation.

Questions Presented

1. Whether one who, in order to purchase a firearm, supplies a licensed dealer with a fictitious or false name and address is a "procurer" of a Federal Firearms Act violation within the meaning of section 2, Title 18, U.S.C.?

2. Assuming an affirmative answer to question # 1, whether the firearms so purchased by the procurer of the violation is "involved in" said violation so as to render the firearm forfeitable under section 5(b) of the Federal Firearms Act, 15 U.S.C.A., ~~Section~~ 905(b)?

Discussion of Law

Subsection (d) of section 903, Federal Firearms Act, provides:

> "Licensed dealers shall maintain such permanent records of importation, shipment, and other disposal of firearms and ammunition as the Secretary of the Treasury shall prescribe."

And section 907 provides:

> "The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter."

Pursuant to the above authority, the Commissioner of Internal Revenue has promulgated regulations requiring that

the records of every licensed dealer should "show and include: * * * (c) The disposition made of each firearm including the name and address of the person to whom sold and the date of disposition." 26 CFR 177.51 (1958). In addition, section 903 creates an offense for the violation of any of the provisions of the Act or any of the rules and regulations promulgated thereunder. This same section also provides for forfeiture of any "firearm or ammunition involved in any violation of the provisions of" the Act or regulations.

The initial question, therefore, is whether the making of a false entry by a dealer with respect to the information required to be kept under section 177.51, supra, under the circumstances of this case is a violation of the Act. In the absence of any language to the contrary, it is clear that there cannot be such a violation without some element of guilty

knowledge on the part of the dealer. Stated differently, in order for the dealer [redacted]) to commit such a violation he would have had to enter the name of a fictitious purchaser in his records with knowledge that no such person existed or that the name was not that of the purchaser. We may conclude, therefore, that [redacted], not having reason to know of Oswald's use of the alias "A. Hidell", committed no violation cognizable under the Federal Firearms Act.

The next question is whether Oswald procured [redacted] to violate the record-keeping requirements of section 177.51. Stated differently, the question is whether Oswald perpetrated the gravamen of the offense by causing an innocent intermediary [redacted] to make a false entry so as to fraudulently conceal his true identity.

While there is nothing in the Federal Firearms Act which provides for "procuring or causing" such a violation, section 2 of Title 18, United States Code provides:

"(a) Whoever commits an offense against the United States, or aids, abets, conceals, commands, induces, or procures its commission, is a principal.

"(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. As amended Oct. 31, 1951, c. 655, 17b, 65 Stat. 717."

This section was passed to remove the necessity of employing the language of aiding, abeting, procuring, etc., in the definition of every Federal crime, and it has been held that subsection (b) is not restricted to the subject of parties responsible for crimes but enters into the very definition

of the crime itself. Pereria v. United States, 202 F.2d 830 (5th Cir. 1953), aff'd, 347 U.S. 1, 74 S. Ct. 358, 98 L.Ed. 435 ( ).

While the doctrine of respondeat superior is not generally adhered to in the criminal law, Tucker v. United States, 299 Fed. 235 ( ) ("There is no master and servant among wrongdoers."), a principal may, however, be liable for the criminal act of his agent "* * * as where the principal, with requisite criminal intent, actually procures, hires, incites, encourages, authorizes or directs another to commit such criminal act * * * " 22 C.J.S., Criminal Law, section 84A, page 247. Indeed, this notion of procuring or causing another to commit an offense is well

ingrained in Federal law and is the essence of the offense contemplated by section 2 of the Criminal Code, supra. For example, in United States v. Inciso, 292 F. 2d 374 (7th Cir. 1961), it was noted:

> "The courts have uniformly construed the word 'cause' * * * to mean a principal acting through an agent or one who procures or brings about the commission of a crime. One acting in such capacity is chargeable as a principal in the crime and punishable accordingly." [citations ommitted] ~~likewisextha~~

Likewise the reviser's notes on the addition of subsection (b) to section 2, Title 18, supra, indicate that:

> "'The section as revised makes clear the legislative intent to punish as a principal not only one who directly commits an offense and one who 'aids, abets, counsels, commands, induces or procures' another to commit an offense, but also anyone who causes the doing of an act which if done by

him directly would render him guilty of an offense against the United States.

"'It removes all doubt that one who puts in motion or assists in the illegal enterprise or causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.'" See also cases cited, Inciso, supra, at page 378.

Therefore, assuming that Oswald possessed the intent to furnish [redacted] with a fictitious name in order to frustrate any subsequent attempts on the part of Federal authority to trace the ownership and/or location of the firearm, it may be concluded that Oswald procured or caused a violation of the Federal Firearms Act. This conclusion is reasoned as follows: The two elements of the offense are first, the actus reus ~~is~~ the making of a false entry in those records required to be kept by a licensed

dealer; and secondly, the mens rea — the intent to conceal the true identity of the actual purchaser of the firearm; and, therefore, under section 2(b), 18 U.S.C. [redacted] act of making the false entry may be imputed to Oswald vis-a-vis the agency theory. [illegible]

In United States v. Giles, 300 U.S. 41 57 S.Ct. 340, 81 L.Ed. 493 (1936), reh. den. 300 U.S. 687, 57 S.Ct. 505, 81 L.Ed. 888, the defendant was charged with making and causing to be made ~~said~~ false entries in the ledger of the bank in which he was employed as a teller. He had withheld and secreted certain deposit slips so that, upon reaching the bookkeeper, the entry of the remaining deposit slips caused an understatement in the liability of the bank to the depositors of the secreted slips. However, at no time had the defendant

himself made any false entries. The charge was laid under 12 U.S.C.A. sec. 592 which makes criminal the making of "any false entry in any book, report, or statement" but does not make criminal the act of secreting the deposit slips per se. Nevertheless, the Court affirmed defendant's conviction indicating that:

> "It seems to us that defendant is as fully responsible for any false entry which necessarily result from the presentation of these pieces of paper [deposit slips] which he caused to be prepared as he ~~did~~ if he had given oral instructions in reference to them or had written them himself."

300 U.S. at page 49.

The Giles case, supra, was not decided under section 2, 18 U.S.C., but Meredith v. United States, 238 F.2d 535 (4th Cir. 1956), in a similar fact situation, held that under 18 U.S.C.A., sec. 2:

> " * * * conviction of the principal actor is not a prerequisite to conviction of the aider and abettor. It need only be established that the act constituting the offense was in fact committed by someone." See also Nye & Nissen v. United States, 336 U.S. 613, 69 S.Ct. 766, 93 L.Ed. 919 (194); Londos v. United States, 240 F.2d 1 (5th Cir. 1957), [illegible].

It has also been held that:

> " * * * the [defendant] under that section [18 U.S.C.A., sec. 2] need not be present at the time of the offense charged [citations omitted]. Implicit,

also, in its provisions is the further fact that a party need not be the actual perpetrator of the offense." Moses v. United States, 297 F.2d 621, 626 (8th Cir. 1961).

While no case could be found employing the notion of procuring a Federal Firearms Act violation, there is a helpful analogy in the area of narcotics violations. For example, in Lewis v. United States, 170 F.2d 43 (9th Cir. 1948) the defendant was charged with procuring "to be falsely and fraudulently executed [a physician's prescription] required by the provisions of the Internal Revenue Law and Regulations. * * * That said description was falsely executed in that it contained a false and fictitious name and address of the patient named therein." 170 F.2d at page 43. This indictment charged a violation of a

regulation promulgated by the Commissioner of Narcotics and Commissioner of Internal Revenue which required that "* * * all prescriptions for drugs * * * shall bear the full name and address of the patient." 26 CFR 151.168 (1938). The facts disclose that defendant, a patient, had supplied his physician with a false address in obtaining a prescription for narcotics. Section 2, 18 U.S.C.A., was not utilized, but section 3793 of the Internal Revenue Code of 1939 (now section 7206(3), Internal Revenue Code of 1954), which makes criminal the procuring of a false or fraudulent document required to be made by the internal revenue laws or regulations, was found to have been violated.

The Lewis decision was not a difficult one to reach in view of the specific Code reference to procuring the making of a false document. However, in the subsequent case of Walker v. United States, 192 F.2d 47 (10th Cir. 1951), under a similar fact situation, the court affirmed a conviction under

said that one unlawfully acquires a firearm when he causes a licensed dealer to commit a violation of the firearms record-keeping requirements.

Assuming then that Oswald was guilty of a Firearms Act violation the final question is whether the weapons purchased by him were "involved in" ~~this~~ the violation within the meaning of 15 U.S.C.A., sec. 905(b) so as to render the firearms forfeitable. No case could be found construing the words "involved in" in section 905(b), however, since, as has already been noted, [redacted] cannot be held criminally responsible for the false entry by virtue of its lack of criminal intent and since it was Oswald who possessed that intent, any effort on the part of the Government to insure compliance with the record-keeping requirements would be completely frustrated if it were denied the remedy of forfeiture. As a practical matter,

Cf 15 - Ryan
284 F.S. 164, 176

the only deterrent to procuring false entries ~~would~~ to be made in dealers' records ~~and the only means whereby~~ through which the Government can ~~may learn~~ trace the ownership history of any given weapon is to have the remedy of forfeiture at its disposal. Thus, to leave the Government remediless under the particular facts of this case would clearly remove one avenue of enforcement of the Federal Firearms Act.

TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE: On November 22, 1963, one 6.5 millimeter Mannlicher-Carcano Military Rifle, Model 91/38, Serial No. C2766, with appurtenances, and one .38 Special S&W Victory Model revolver, Serial No. V510210, were seized in Dallas, Dallas County, Texas, for violation of 15 U.S.C. Chapter 18. Any person claiming an interest in said property may file a claim and a cost bond in the penal sum of $250.00 as provided by Section 7325, Internal Revenue Code, with the undersigned on or before
(30 days from the date of first publication of the notice); otherwise the property will be forfeited and disposed of according to law. [redacted], Supervisor in Charge, Alcohol and Tobacco Tax, Room 807, Wholesale Merchants Building, 912 Commerce Street, Dallas, Texas.

MAY 23 1978

[redacted] Chief
FOIA/PA Branch
Federal Bureau of Investigation
Room 6296
Washington, D.C. 20535

Dear [redacted]

This is in response to your request dated May 4, 1978, requesting ATF recommendations as to disclosure of a three-page document which was originated by ATF.

A copy of the document is returned with deletions recommended in yellow.

We would deny the marked names by FOIA subsection (b)(7)(C) and (D) and the other information under (b)(7)(A) and/or (b)(7)(D).

Sincerely yours,

[redacted]
(Disclosure)

Enclosure

[redacted] 23-78

CODE	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
SUR-NAME	FOIA [redacted]	[redacted]	[redacted]				
DATE	[redacted]	[redacted]					

ATF F 1325.8 (2-75)
REPLACES ATF FORM 92 (9-73) WHICH MAY BE USED

CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

000049

4-698 (4-29-77)

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

DATE:

BY COURIER SERVICE

TO: Assistant to the Director
Bureau of Alcohol, Tobacco and Firearms
Department of the Treasury
1200 Pennsylvania Avenue, N.W.
Washington, D. C.

MAY 4 1978

RECEIVED
ATF
MAY 05 1978
ASSISTANT TO DIRECTOR
(DISCLOSURE)

FROM: Chief
Freedom of Information/Privacy Acts (FOI/PA) Branch
Federal Bureau of Investigation

SUBJECT: FOI/PA REQUEST OF HAROLD WEISBERG

[X] In connection with the FOI/PA request of the above-named individual, the FBI surfaced 1 unclassified document(s) which originated with your agency. The document(s) are being referred to you for direct response to the requester. A copy of the requester's initial request is enclosed for your convenience. We will advise the requester that your agency will correspond directly concerning this matter.

[ ] During the course of reviewing FBI documents pursuant to the above request, _____ FBI document(s) containing information furnished by your agency were located. Please review your information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, and citing the exemption(s) claimed.

[ ] In connection with the FOI/PA request of the above-named individual, the FBI surfaced _____ classified document(s) which originated with your agency. The document(s) are being referred to you for direct response to the requester. A copy of the requester's initial request is enclosed for your convenience. Please advise us if the classification of the document(s) is changed, so that we may amend our files. We will advise the requester that your agency will correspond directly concerning this matter.

[ ] During the course of reviewing FBI documents pursuant to the above request, _____classified FBI document(s) containing information furnished by your agency were located. Please review your information (outlined in red) and return the document(s) to us, making any deletions you deem appropriate, citing the exemption(s) claimed, and advising if the document(s) still warrant(s) classification.

[ ] See Continuation Page for additional information.

If you have any questions concerning this referral please contact [redacted]

Enclosure(s) (2) [ ] Classified Material Attached

FBI/DOJ

Draft (mark up)
AD(D) Copy

Supervisor in Charge, ATT
Dallas, Texas

January 22, 1963

Special Investigat[redacted]
Denver, Colorado

SAC SI-543(NFA)(PFA):Minuteman

On January 15, 1963 [redacted] Minuteman member for [redacted] called the ATT office [redacted] to state that he had "defected" from the Minuteman and wished to furnish information to the Alcohol and Tobacco Tax.

On [redacted] at the ATT Office in [redacted] the following are statements made by [redacted] without prompting:

[redacted]

one exact duplicate of these 3 pages withheld

000051

[redacted]

There do exist 19 "strike teams" throughout the U. S. with from 5 to 20 members each. These are the persons who would be primarily responsible for carrying out the assassination assignments.

[redacted]

Minutemen plan to start Black power riots in Summer of 1968 if they do not start on their own.

Minutemen will attempt to provoke Federal Officers into taking more action against Minutemen members and private citizens in an attempt to make people more resentful of the U. S. Government.

Minutemen are planning to blow up the FBI Office in New Haven, Connecticut. This is intended to be a night time attempt not intended to hurt anyone but to embarrass the FBI.

The Minutemen are planning to commit some bank robberies as a source of revenue. That the possibility exists that armored car robbery in Chicago recently may have been committed by Minutemen.

It is planned that the next time a Minutemen member testifies for the Government, an effort will be made to blow up the courtroom.

It is planned that all gun caches belonging to Minutemen will be booby trapped.

[redacted]

Minutemen planned to send warning letters to persons considered subversive and may be planning to send "bombs" through mail.

[redacted]

[redacted]

One strike team in Kansas has been assigned to free [redacted] if he is arrested.

None of the foregoing information has been checked at this time.

This memorandum is furnished for information purposes only.

[redacted]

[redacted]

JAMES H. LESAR
ATTORNEY AT LAW
1231 FOURTH STREET, S. W.
WASHINGTON, D. C. 20024

TELEPHONE (202) 484-6023

December 23, 1975

FREEDOM OF INFORMATION REQUEST

r. Harold Tyler, Jr.
eputy Attorney General
. S. Department of Justice
ashington, D. C. 20530

ear Mr. Tyler:

On behalf of Mr. Harold Weisberg, I am requesting that you rant him access to the following records pertaining to the assassination of Dr. Martin Luther King, Jr.:

1. All receipts for any letters, cables, documents, reports, memorandums, or other communications in any form whatsoever.

2. All receipts for any items of physical evidence.

3. All reports or memorandums on the results of any tests performed on any item of evidence, including any comparisons normally made in the investigation of a crime.

4. All reports or memorandums on any fingerprints found at the scene of the crime or on any item allegedly related to the crime. This is meant to include, for example, any fingerprints found in or on the white Mustang abandoned in Atlanta, in any room allegedly used or rented by James Earl Ray, and on any registration card. It should also include all fingerprints found on any item considered as evidence in the assassination of Dr. Martin Luther King, Jr.

5. Any taxicab log or manifest of Memphis cab driver James McCraw or the cab company for which he worked.

6. Any tape or transcript of the radio logs of the Memphis Police Department or the Shelby County Sheriff's Office for April 4, 1968.

7. All correspondence and records of other communications exchanged between the Department of Justice or any division thereof and:

R. A. Ashley, Jr.
Harry S. Avery

James G. Beasley
Clay Blair
David Calcutt
Phil M. Canale
John Carlisle
Robert K. Dwyer
Gov. Buford Ellington
Michael Eugene
Percy Foreman
Gerold Frank
Roger Frisby
Arthur Hanes, Jr.
Arthur Hanes, Sr.
W. Henry Haile
William J. Haynes, Jr.
Robert W. Hill, Jr.
William Bradford Huie
George McMillan
William N. Morris
Jeremiah O'Leary
David M. Pack
Lloyd A. Rhodes
J. B. Stoner
Hugh ~~Stoner,~~ Jr.
Hugh ~~Stoner,~~ Sr.

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8. All correspondence or records of other communications pertaining to the guilty plea of James Earl Ray exchanged between the Department of Justice or any division thereof and:

Rev. Ralph Abernathy
Rev. James Bevel
Rev. Jesse Jackson
Mrs. Coretta King
Rev. Samuel B. Kyles
Rev. Andrew Young
Harry Wachtel

9. All notes or memorandums pertaining to any letter, cable, or other written communication from or on behalf of the District Attorney General of Shelby County, Tennessee, or the Attorney General of Tennessee to the Department of Justice or any division thereof.

10. All notes or memorandums pertaining to any telephonic or verbal communications from or on behalf of the District Attorney General of Shelby County, Tennessee, or the Attorney General of Tennessee to the Department of Justice or any division thereof.

11. All tape recordings and all logs, transcripts, notes, reports, memorandums or any other written record of or reflecting any surveillance of any kind whatsoever of the following persons:

Judge Preston Battle
Wayne Chastain
Bernard Fensterwald
Percy Foreman
Gerold Frank
Arthur Hanes, Jr.
Arthur Hanes, Sr.
Renfro Hays
Robert W. Hill, Jr.
William Bradford Huie
James H. Lesar
Robert I. Livingston
George McMillan
Judge Robert McRae, Jr.
Albert Pepper
Carol Pepper
James Earl Ray
Jerry Ray
John Ray
Richard J. Ryan
J. B. Stoner
Russell X. Thompson
Harold Weisberg

This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

12. All tape recordings and all logs, transcripts, notes, reports, memorandums or any other written record of or reflecting any surveillance of any kind whatsoever on the Committee to Investigate Assassinations (CTIA) or any person associated with it in any way.

This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

13. All records pertaining to any alleged or contemplated witness, including any statements, transcripts, reports, or memorandums from any source whatsoever.

14. All correspondence of the following persons, regardless of origin or however obtained:

Bernard Fensterwald
Percy Foreman
Robert W. Hill
William Bradford Huie
James H. Lesar
Albert Pepper
Carol Pepper
James Earl Ray
Jerry Ray
John Ray
J. B. Stoner
Harold Weisberg

15. All letters, cables, reports, memorandums, or any other form of communication concerning the proposed guilty plea of James Earl Ray.

16. All records of any information request or inquiry from, or any contact by, any member or representative of the news media pertaining to the assassination of Dr. Martin Luther King, Jr. since April 15, 1975.

17. All notes, memoranda, correspondence or investigative reports constituting or pertaining to any re-investigation or attempted re-investigation of the assassination of Dr. King undertaken in 1969 or anytime thereafter, and all documents setting forth the reasons or guidelines for any such re-investigation.

18. Any and all records pertaining to the New Rebel Motel and the DeSoto Motel.

19. Any records pertaining to James Earl Ray's eyesight.

20. Any records made available to any writer or news reporter which have not been made available to Mr. Harold Weisberg.

21. Any index or table of contents to the 96 volumes of evidence on the assassination of Dr. King.

22. A list of all evidence conveyed to or from the FBI by any legal authority, whether state, local, or federal.

23. All reports, notes, correspondence, or memorandums pertaining to any effort by the Department of Justice to expedite the transcript of the evidentiary hearing held in October, 1974, on James Earl Ray's petition for a writ of habeas corpus.

24. All reports, notes, or memorandums on information contained in any tape recording delivered or made available to the FBI or the District Attorney General of Shelby County by anyone whomsoever. All correspondence engaged in with respect to any investigation which was made of the information contained in any of the foregoing.

25. All records of any contact, direct or indirect, by the FBI, any other police or law enforcement officials, or their informants, with the Memphis group of young black radicals known as The Invaders.

26. All records of any surveillance of any kind of The Invaders or any member or associate of that organization. This is meant to include not only physical shadowing but also mail covers, mail interception, interception by telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

27. All records of any surveillance of any kind of any of the unions involved in or associated with the garbage strike in Memphis or any employees or officials of said unions. This is meant to include not only physical shadowing but also mail covers, mail interception, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants.

28. All records containing information which exculpates or tends to exculpate James Earl Ray of the crime which he allegedly committed.

This request for disclosure is made under the Freedom of Information Act, 5 U.S.C. §552, as amended by Public Law 93-502, 88 Stat. 1561.

Sincerely yours,

Jim Lesar

Jim Lesar

firearms to have a value of $52.50. We believe that these firearms were appraised by appraisers who did not know that the weapons were those formerly owned by Lee Harvey Oswald and no value was included because of the particular guns involved. In the claim the claimant asserts on page 2 as item (4) that the value of the property is greatly in excess of $2,500 and any appraisal that may have been obtained at a value of $2,500 or less was obtained and made in bad faith. The claimant then states that this proceeding by the Internal Revenue Service is wholly void. Notwithstanding some belief on the part of the claimant that these proceedings are invalid, he has still availed himself of the provisions of law relating to these proceedings and has filed the acceptable claim and cost bond to transfer the jurisdiction to the United States District Court. We believe that the principle of law stating that a person availing himself of the benefits of a particular statute may not attack the validity of such statute is applicable to this matter and that Mr. [redacted] will not now be heard to attack the appraisal and procedures leading to his invoking the jurisdiction of the United States District Court. In Fahey v. Mallonee, 332 U.S. 245, 91 L. Ed. 2030 (1947), it is stated that a court will not pass on the constitutionality of a statute in the interest of one who has availed himself of its benefits. Also, in Atlanta Beer Distributing Co. v. Alexander, 93 F. 2d 11 (5th Cir. 1937), the Appellate Court stated that the validity of a licensing act could not be attacked in an action for a permit or license under such act, and in Thomas J. Malloy & Co. v. Berkshire, 143 F. 2d 218 (2nd Cir. 1944), it was stated that the validity of the licensing statute could not be attacked in an action seeking a license, and further that if the applicant felt that the licensing act was unconstitutional, he should not have asked for a permit under such act but should have proceeded to operate without a permit or license. We believe that now the court will have jurisdiction of this forfeiture action and the claimant, having invoked the jurisdiction of the court, may not refuse to participate in the forfeiture action and later assert lack of jurisdiction of the court.

This office now has authority to authorize and sanction suits in these libel proceedings. You are, therefore, under this delegation authorized to commence forfeiture proceedings of the above-shown property. The commencement of this suit has been authorized and sanctioned in accordance with the provisions of Section 7401 of Title 26, United States Code. We assume that the Attorney General, or his delegate, will direct that this action be commenced.

AT-1623

Mr. [redacted]
United States Attorney - 3 - 9-9-65

We have no case report covering the seizure of these firearms, and the Alcohol and Tobacco Tax has not been involved in this case except to the extent of assisting the Department of Justice in attempting to accomplish the forfeiture of these firearms. We have used the Report of the President's Commission on the Assassination of President John F. Kennedy as our source of information concerning these firearms. We will work with you in obtaining a list of the witnesses and some statements of the testimony to be expected by each such witness. From material on page 79 of the Warren Commission Report, as furnished by the Superintendent of Documents, the rifle was first discovered by Deputy Sheriff [redacted] and Deputy Constable [redacted] These men found the rifle with the telescopic sight. These men apparently did not handle this rifle and Lt. [redacted] of the Dallas Police Department took the weapon to the police department headquarters for examination. The purchase of this rifle is covered on page 118 of the Report, which shows its purchase from [redacted], Chicago, Illinois, and as shipped to [redacted], on March 20, 1963. This purchase can be established by Warren Commission Exhibits 773, 788, and 791, and the Exhibit No. 7 of [redacted] a vice-president of [redacted] These exhibits are shown on page 120 of the Report and also are discussed on pages 566 and 567 of the Report. That the documents covering the order of this rifle in the name of [redacted] were actually prepared by Lee Harvey Oswald and in his handwriting may be established by the testimony of two experts on handwriting and questioned documents. This is covered on pages 119, 566, and 567 of the Report. These experts are [redacted] of the Treasury Department and [redacted] of the Federal Bureau of Investigation. Lt. [redacted] of the Dallas Police Department lifted a print of the palm of a hand from the barrel of this rifle and Mr. [redacted] of the Federal Bureau Investigation Identification Division has stated that this print was that of Lee Harvey Oswald. The purchase of the revolver by [redacted] is covered on page 174 of the Commission Report. The firearm was purchased from [redacted] California, and its purchase is covered by Commission Report Exhibit No. 790 and the exhibits 2, 4, and 5 of [redacted] office manager of [redacted] These exhibits are shown on page 173 of the Commission Report. The handwriting experts [redacted] and [redacted] also testified that these documents relating to the purchase of the revolver are in the handwriting of Lee Harvey Oswald. The revolver, according to pages 178 and 179 of the Commission Report, was seized from Lee Harvey Oswald by Dallas Police Officers [redacted] and [redacted]

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AT-1623

Mr. [redacted]
United States Attorney - 4 - 9-9-65

Forfeiture of property seized occurs at the time of the illegal use bringing about its forfeiture. The forfeiture of these two firearms, therefore, occurred at the time they became involved in the record keeping violation of the Federal Firearms Act. Mr[redacted] acquired his interest in these firearms, if he could have acquired any such interest, after the seizure of the weapons, and at a time when they were still in the possession of the Federal Government. The bill of sale and contract between Marina N. Oswald and [redacted] shows, in substance, that Mr. [redacted] was buying property subject to adverse claim. The bill of sale makes provision for the inability of the buyer to obtain possession of the property covered by the contract. We have authority for the position that a person attempting to purchase property after it has been seized by the Federal Government does not acquire any right, title, or interest to such property if the property did in fact become forfeited prior to such purchase by the prospective claimant. We now have a case pending in the El Paso Division of the Western District of Texas in which property was sold to a claimant after seizure by the Government and the prospective claimant was denied leave to intervene in the forfeiture action. We will consider this matter further with Mr. [redacted] and will furnish him a brief on this subject, if desired. If you have any questions concerning this matter, please let us know.

Very truly yours,

[redacted]

Enclosures

cc: Asst. Reg. Comm., A&TT
Sup. in Charge, A&TT, Dallas

003004

IEG:hts

October 21, 1965

CC:SW:AT-1523
JFS

Mr. [redacted]
United States Attorney
Northern District of Texas
P. O. Box 153
Dallas, Texas

Attention: [redacted]
Assistant United States Attorney

In re: United States v. One 6.5 mm.
Mannlicher-Carcano Military Rifle,
S/N C2766, et al
Civil Action No. CA-3-1171

Dear Mr. [redacted]

In accordance with telephone conversations between Mr. [redacted] and Assistant Regional Counsel [redacted] we are enclosing the original and five copies each of a proposed pretrial order and a stipulation of facts in this case. The pretrial order was prepared for use in the early negotiations with Mr. [redacted] with the thought that such document would be modified before agreement between the parties is reached. This pretrial order was prepared with the thought that Mr. [redacted] would waive the jurisdictional exceptions which he has raised. The pretrial stipulation also does not cover certain facts relating to jurisdiction which might be waived by Mr. [redacted] rather than having him press his exceptions. The particular fact which we have not covered in the stipulation is the adoption of the earlier seizure for purposes of establishing a seizure for forfeiture purposes. The answer of Mr. [redacted] seems to admit the seizure for forfeiture purposes since he does admit the notice published in accordance with Section 7325(2) and admits having filed the claim in behalf of [redacted]. He appears, however, to deny that the guns are in the custody of the Supervisor in Charge, as alleged in the Libel of Information, and unless he waives his objection, he maintains that the retention of the guns in the F.B.I. storeroom does not constitute constructive custody on the part of the United States Marshal. If Mr. [redacted] does agree that there are no jurisdictional questions, the facts stipulated in the order and in the stipulation would be sufficient to support a forfeiture of the respondents.

The facts shown in the stipulation are in the pretrial order, except they are stated more specifically in the stipulation than in the general language used in the pretrial order. The source of the facts in the

AT-1623

[redacted]
United States Attorney - 2 - 10-21-65

stipulation are the report of the President's Commission on the Assassination of President John F. Kennedy, the answer filed by [redacted] in this case, the Federal Firearms Act as contained in Section 901, et seq. of Title 15, the regulations which are Part 177 of Title 26, Code of Federal Regulations, and two reports of investigation concerning the records of the transactions kept by the two firearms dealers selling the firearms to Lee Harvey Oswald. We are showing below the place in the various reports where the information contained in the fact stipulation may be found.

Stipulation Number	Warren Report Page	Answer	Other
1	79		
2	79		
3	81		
4	118	Pg. 6, III	
5	119	Pg. 6, III	
6	119		
7	119, 121		
8	122, 123		
9	179	Pg. 3, C-3	
10	174		
11	174		
12	121, 181		
13	181		
14	569	Pg. 6, III	
15	570		
16			Copy of license
17			Law and Regulations
18			Report - Chicago
19			Report - Los Angeles
20			Law & Regulations

After you have had an opportunity to examine these documents, we will be glad to meet with you and Mr. [redacted] in an effort to draw up a pretrial order for use in this case.

Very truly yours,

[redacted]
Regional Counsel

JFG:hts

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(For possible consideration)

CC:AT-GEA

Honorable [redacted]
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C.

Attention: Mr. Chief,
Section.

In re: Firearms of Lee Harvey Oswald

Dear Mr[redacted]

This refers to the telephone conversations of Mr. [redacted] Criminal Division, Department of Justice, and M[redacted] Acting Chief, Litigation Branch, Alcohol and Tobacco Tax Legal Division, Office of Chief Coumsel, Internal Revenue Service, on November 16, 1964 and subsequent dates concerning the problem of disposition of the firearms used by Lee Harvey Oswald on the date of assassination of President Kennedy.

The firearms in question were obtained from dealers under a fictitious name. The name was entered on firearms records prescribed by 26 CFR 177.51 under authority of section 3(d) of the Federal Firearms

129-11

Act (15 U.S.C. 903(d)), requiring, among other things, the name and address of the person to whom sold. The entry of the fictitious name and address violated such requirement of law and regulations. Consequently, the firearms are subject to forfeiture under section 5(b) of the Act (15 U.S.C. 905(b)).

As the agency charged with the administration and enforcement of the Federal Firearms Act, the Internal Revenue Service is prepared to take appropriate forfeiture action under the provisions of the Act with respect to these firearms. In order for such action to be taken, it will, of course, be necessary for the Internal Revenue Service to obtain possession of the firearms.

In the event of perfection of forfeiture, the firearms could be retained pursuant to provisions contained in 40 U.S.C. 304f, et seq. The firearms, therefore, could be retained by such Federal agency as may be deemed appropriate under the circumstances.

This matter is presented for your consideration and any proposal you may wish to make.

Very truly yours,

[redacted]
Director, Alcohol and Tobacco Tax Division

U.S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
WASHINGTON 25, D.C.

OFFICE OF
CHIEF COUNSEL

CC:AT-JFM

NOV 10 1965

[redacted]
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D. C.

Attention: M[redacted], Chief
General Crimes Section

In re: United States v. One 6.5 mm. Mannlicher-Carcano Military Rifle, Model 91-38, Serial No. C2766, with appurtenances, and One .38 Special S&W Victory Model Revolver, Serial No. V510210, with appurtenances

Dear Mr[redacted]

Attached is a memorandum of points and authorities with respect to the four "exceptions" raised by [redacted] claimant in this action, in the document entitled "Exceptions and Answer of Claimant."

We understand that the claimant may withdraw at least the three exceptions which attack the jurisdiction of the court. It is possible that he may also withdraw his fourth exception which is in the nature of a general demurrer. In any event, however, it seems certain that the case will ultimately resolve itself into a legal argument on the points set forth in the attached memorandum under the discussion of claimant's fourth exception.

Since it is possible that the claimant may agree to a complete stipulation of facts, we have not attempted to comment on his "Answer to Libel."

The claimant's pleadings do not disclose the nature of the legal arguments he will use to contest the forfeiture, and we have not attempted to anticipate and rebut possible defense contentions except in a general way. When the claimant's contentions are made known, we will be available to assist in answering them.

Very truly yours,

[redacted]
Chief Counsel

[redacted]
Director
Alcohol and Tobacco Tax
Legal Division.

Attachment

In re: United States v. One 6.5 mm. Mannlicher-Carcano Military Rifle, Model 91-38, Serial No. C2766, with appurtenances, and One .38 Special S&W Victory Model Revolver, Serial No. V510210, with appurtenances.

I. FIRST EXCEPTION TO THE JURISDICTION OF THIS COURT

The Claimant asks for dismissal of the Libel on the grounds that the Denver Action (John J. King, v. Nicholas deB. Katzenbach, Attorney General of the United States, United States District Court for the District of Colorado, Civil Action No. 9168) was instituted long prior to the institution of this proceeding and involves the same controversy. Claimant contends that the court in the Denver Action has jurisdiction to dispose of all matters in controversy in this Libel action.

The procedure to forfeit property seized for violation of the revenue laws (made applicable to this action by 15 U.S.C. section 905(b)) is a proceeding in rem. Rule 10 of the Admiralty Rules; Section 7323(a), I.R.C. Lilienthal's Tobacco v. United States, 97 U.S. 237, 261 (1877).

Section 7323(a), supra, specifically provides that the proceedings in rem are to be in the United States District

Court for the district where the seizure is made. See, The Brig Ann, 13 U.S. 288, 290 (1815); Rush v. United States, 256 F.2d 862 (10th Cir. 1958); Clinton Foods v. United States, 188 F.2d 289, 292 (4th Cir. 1951), cert. den. 342 U.S. 825.

In proceedings in rem, venue is jurisdictional. Only the court having jurisdiction over the district where the seized property is located has jurisdiction over the proceeding. No other court has jurisdiction. Lion Bonding Company v. Karatz, 262 U.S. 77, 88-89 (1923); Ellenwood v. Marietta Chair Company, 158 U.S. 105 (1895); Pettis Canning Company v. Stoddard, 188 F.2d 715 (7th Cir. 1951), cert. den. 341 U.S. 951; United States v. 11 Cases, etc., 94 F. Supp. 925 (D.C. Cre. 1950); United States v. 91 Packages, 93 F. Supp. 763 (D.C.N.J. 1950). The prior filing of the action in Denver does not affect the jurisdiction of the District Court for the Northern District of Texas. It is conceded by the Claimant that the weapons were seized in Dallas, Texas (Exceptions and Answer of Claimant, Par. 5) and it has never been contended that the seized weapons were within the jurisdiction of the Denver court. Thus, the Denver court has never acquired jurisdiction over the res and

cannot adjudicate the forfeiture of the weapons. See Wabash Railroad v. Adelbert College, 208 U.S. 38, 54 (1908); Murphy v. John Hofman and Company, 211 U.S. 562, 569 (1909); and all cases cited above. The Denver court recognized its lack of jurisdiction over the property involved in the Action against the Attorney General in its Order granting the Attorney General's motion to stay further proceedings until the forfeiture proceedings in Dallas were finally concluded.

It is apparent that the Dallas court has jurisdiction over this proceeding and that it is the only court which has or can have such jurisdiction. Accordingly, the Libel should not be dismissed.

II. SECOND EXCEPTION TO THE JURISDICTION OF THIS COURT

The Claimant appears to contend that since the weapons are stored in the vault of the Special Agent in Charge, Federal Bureau of Investigation, Dallas, Texas, the weapons have not been properly brought into the possession of the Marshal and the Court as required by law so as to give the Court

jurisdiction to determine the action. In this regard, it is stated in the case of Averill v. Smith, 84 U.S. 82, 94 (1872) that:

> "Imported goods when seized and subsequently attached by the marshal are sometimes deposited with the collector for safe custody . . . "

Constructive possession by the Marshal of a vehicle stored by the Revenue Service has been tacitly recognized in Comptroller General Opinion A-5619 dated January 8, 1925, (4 Comp. Gen. 594). The Comptroller General assessed the payment of storage charges against the Marshal's fund and pertinently stated:

> "When the narcotic agent notified the marshal or the district attorney of the fact of seizure and the place of storage the duty and responsibility of seeing that the vehicle was promptly disposed of was upon the Department of Justice, and such duty and responsibility cannot be avoided by delay in assuming actual custody or control of the vehicle."

In this case the Marshal made a proper return of service, stating that he seized the weapons and left them stored in the

vault of the Special Agent in Charge, Federal Bureau of Investigation, Dallas, Texas. This would appear to be a proper return of service and not open to challenge by this Claimant, Murray v. Hoboken Land and Improvement Company, 59 U.S. 272, 286 (1855). In any event, this Exception by the Claimant is not well founded since it rests on the assumption that jurisdiction of the court depends on a proper seizure by the United States Marshal. This is not the case. Jurisdiction in proceedings in rem attaches on the seizure of the property by the seizing officers, The Brig Ann, supra; property in possession of the seizing officers is in the custody of the court, The Josefa Segunda, 23 U.S. 312 (1825). Thus the court obtained jurisdiction over the weapons no later than the time that the Libel was filed. The action by the court in issuing a Warrant of Seizure and Monition to the United States Marshal was in itself an exercise of jurisdiction over the property. Accordingly, since the court has jurisdiction over the proceeding, the Libel should not be dismissed.

III. THIRD EXCEPTION TO THE JURISDICTION OF THIS COURT

The Claimant asks for dismissal of the Libel on the grounds that the Attorney General, without the Claimant's approval, consent or knowledge, caused the respondent weapons to be transported from Washington, D. C., to Dallas, Texas, and that such transportation was wrongful and tortious and could not confer jurisdiction on the court.

Claimant concedes that the weapons were seized and detained by police officers of the City of Dallas, Texas, and that the Department of Justice took custody of the weapons and receipted for the same to the City of Dallas. Claimant alleges that he purchased from Marina N. Oswald, individually and as community survivor of Lee Harvey Oswald, all of her right, title and interest in and to the weapons, and that he is now the sole owner thereof. He further alleges that he has made several demands for delivery of the weapons and that such demands were wholly refused.

It is clear that the weapons were legally in the custody of the Department of Justice, an agency of the United States. See United States v. One Ford Coupe, 272 U.S. 321, 325 (1926). The Claimant's demands asserted at most a claim against property

lawfully in the custody of and detained by the United States. If the property is subject to forfeiture as the Libel alleges, the Claimant had no interest in the property and could have acquired none. See United States v. Stowell, 133 U.S. 1 (1890), wherein it was held that the forfeiture of property takes effect immediately upon the commission of the prohibited act and the right to the property vests in the United States. When condemnation of the property is obtained, it relates back and avoids all intermediate sales even to purchasers in good faith.

The proper procedure for determining the rights to such property is by a proceeding in rem, either administrative or judicial, in the judicial district where the property was seized. The Ruiz Ann, supra; Rush v. United States, supra; In re Loria, 25 F. Supp. 549 (W.D.N.Y. 1938). Thus it is apparent that the Attorney General's action in causing the weapons to be transported from Washington, D. C., to Dallas, Texas, was taken for the purpose of returning the weapons to the only jurisdiction where the rights of all parties, including this Claimant, could be adjudicated. The action of the Attorney General was not "wrongful and tortious," but was lawful and appropriate under the circumstances.

Even if it were to be conceded that the action of the Attorney General was wrongful in some respects, this would not divest the Dallas court of jurisdiction over the res. Rush v. United States, supra, at page 365. For a discussion of jurisdiction of the court notwithstanding allegations of irregularities in the seizure and detention of the property, see United States v. 673 Cases, 74 F. Supp. 622, 630 (D.C. Minn. 1947).

For the reasons set fourth above, it is submitted that the Libel should not be dismissed.

IV. EXCEPTION IN THE NATURE OF A GENERAL DEMURRER

The Claimant contends that the facts averred in the Libel are insufficient to constitute a cause of action and prays that the Libel be dismissed and that the weapons be ordered delivered to him forthwith.

Section 905(b), Title 15 U.S.C., provides "Any firearm or ammunition involved in any violation of the provisions of this chapter or any rules or regulations promulgated thereunder shall be subject to seizure and forfeiture, and all provisions of Title 26 relating to the seizure, forfeiture, and disposition of firearms as defined in section 2733 [now section 5848] of Title 26

shall, so far as applicable, extend to seizures and forfeitures incurred under the provisions of this chapter. [Chapter 18, sections 901-909]." Thus, in order to state a cause of action for the forfeiture of the respondent firearms, the Libel must allege facts which show (1) a violation of the Federal Firearms Act (15 U.S.C. 901-909) or regulations thereunder, and (2) that the respondent firearm or firearms were involved in the violation. It is submitted that the Libel in this case properly alleges facts on which the court could find both that the Act had been violated and that the respondent firearms were involved in such violations.

Violation of the Act

Section 903(d) provides "Licensed dealers shall maintain such permanent records of importation, shipment, and other disposal of firearms and ammunition as the Secretary of the Treasury shall prescribe." (June 30, 1938, ch. 850, § 3, 52 Stat. 1251.) Section 907 provides "The Secretary of the Treasury may prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter." (June 30, 1938, ch. 850, § 7, 52 Stat. 1252.)

Pursuant to the above authority, the Secretary has promulgated regulations requiring that the records of every licensed dealer should "show and include: * * * (c) the disposition made of each firearm including the name and address of the person to whom sold and the date of disposition." 26 CFR Part 177, section 177.51. This regulation is clearly reasonable and necessary to effectuate the purposes of the Act which are to regulate the manufacture of and the shipment in interstate commerce of all firearms (S. Rept. No. 82, 75th Cong., 1st Sess.). Lewis v. United States, 170 F.2d 43 (9th Cir. 1948).

Section 905(a) provides in part "Any person violating any of the provisions of this chapter or any rules and regulations promulgated thereunder, * * * shall, upon conviction thereof, be fined not more than $2,000 or imprisoned for not more than five years, or both." It is well established that Congress can provide that the violation of an administrative regulation is a criminal offense. McKinley v. United States, 249 U.S. 397 (1919); United States v. Grimaud, 220 U.S. 506 (1911).

Section 2 of Title 18 U.S.C. provides "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a

principal. "(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." The purpose of this section is to remove the necessity for employing the language of aiding, abetting, procuring, etc. in the definition of every federal crime and it has been held that subsection (b) is not restricted to the subject of parties responsible for crimes, but enters into the very definition of the crime itself. Pereria v. United States, 202 F.2d 830 (5th Cir. 1953) aff'd 347 U.S. 1 (1953).

The dealers who sold the respondent firearms were both licensed dealers under the Federal Firearms Act and, as such, were required to keep the records prescribed by section 177.51, supra. The requirement of this regulation that the dealer keep a record showing the name of the person to whom a firearm was sold obviously means the true name of the purchaser. See Hensley v. United States, 171 F.2d 78 (9th Cir. 1948), cert. den. 336 U.S. 904, where the court stated at p. 82: " * * * It cannot be said that the law (as here) may require certain important and pertinent information to be entered on a prescribed form for the use

of a public official in aid of law enforcement, but must tolerate such information when it is false."

Claimant has admitted for the purpose of this Exception that Lee Harvey Oswald was the purchaser of these weapons and that the records of the dealer showed as the purchaser of these weapons the name of a person other than Lee Harvey Oswald. Thus, it is apparent that the records of the dealers were false in that the true name of the purchaser was not shown. Claimant also admits for the purpose of this Exception that the falsity of the records was caused by the use of a fictitious name by Lee Harvey Oswald in purchasing the weapons from the dealer.

It is well established in Federal law that one who procures, or causes another to commit an offense, is guilty as a principal. United States v. Giles, 300 U.S. 41 (1937); United States v. Gooding, 25 U.S. 460 (1827); United States v. Nasser, 301 F.2d 243 (7th Cir. 1962), cert. den. 370 U.S. 923; United States v. Inciso, 292 F.2d 374 (7th Cir. 1961), cert. den. 368 U.S. 920; Londos v. United States, 240 F.2d 1 (5th Cir. 1957), cert. den. 353 U.S. 949; Meredith v. United States, 238 F.2d 535 (4th Cir. 1956); Foushee v. United States, 223 F.2d 261 (6th Cir. 1955); Foushee v. United States, 173 F.2d 131 (8th Cir. 1949);

Lewis v. United States, 170 F.2d 43 (9th Cir. 1948); and Pereria v. United States, supra. A comprehensive discussion of this doctrine is set forth in United States v. Inciso, supra, at page 378.

The defendant need not be present at the time of the offense charged. Implicit also in the provisions of section 2 of Title 18 U.S.C. is the further fact that the defendant need not be the actual perpetrator of the offense. Hyde v. United States, 225 U.S. 347, 362 (1912); Moses v. United States, 297 F.2d 621, 626 (8th Cir. 1961).

The person or agent through whom the defendant acts can be innocent or also culpable of an offense himself. Conviction of the principal actor is not a prerequisite to conviction of an aider and abettor or of the person who caused the unlawful act. Meredith v. United States, supra; Londos v. United States, supra.

The defendant need not be within the class of persons against whom the statute violated is directed. It is sufficient if he causes another person who is within the ambit of the statute to violate it. For example, in United States v. Giles, supra, the defendant was charged with making and causing to be made

false entries in the ledger of the bank in which he was employed as a teller. He had withheld and secreted certain deposit slips so that, upon reaching the bookkeeper, the entry of the remaining deposit slips caused an understatement in the liability of the bank to the depositors of the secreted slips. However, at no time had the defendant himself made any false entries. The charge was laid under 12 U.S.C.A. § 592 which makes criminal the making of "any false entry in any book, report, or statement" but does not make criminal the act of secreting the deposit slips per se. Nevertheless, the Court affirmed defendant's conviction indicating that:

> "It seems to us that defendant is as fully responsible for any false entries which necessarily result from the presentation of these pieces of paper [deposit slips] which he caused to be prepared as he would if he had given oral instructions in reference to them or had written them himself." 300 U.S. at page 49.

In United States v. Incisa, supra, the defendant was not a "representative of any employees" as that term was used in a

statute making it an offense for such "representative" to receive or accept from the employer of such employees any money or other thing of value. Nevertheless his conviction was sustained on the grounds that he caused the labor union, which was the "representative," to receive money in violation of the statute. Some other cases where the defendant was not the person against whom the statute violated was directed are: United States v. Nasser, supra; Lewis v. United States, supra; Meredith v. United States, supra; Boushea v. United States, supra; Fooshee v. United States, supra; Walker v. United States, 192 F.2d 47 (10th Cir. 1951).

While we are not aware of any case wherein the defendant was charged with causing a licensed dealer under the Federal Firearms Act to make a false entry in the records required by regulations to be kept by the dealer, a close analogy is presented by the facts in Walker v. United States, supra. There the defendant was convicted of several violations of 18 U.S.C. 1001. One count charged that the defendant knowingly and willfully made a false representation when, in procuring a prescription for narcotics, she gave to the issuing doctor a false address, which he

entered on the prescription. Another count charged her with knowingly and falsely making a false writing in giving a false address to a druggist at the time of obtaining an exempt preparation. The requirements for the recording of her name and address were contained in regulations (26 CFR sections 151.168 and 151.185 (1949 Ed.)). These regulations imposed the duty of properly preparing the required record on the practitioner (doctor) and the druggist, respectively, but imposed no requirement directly on the defendant. Nevertheless her conviction on both counts was affirmed. Thus, there is an exact parallel to the instant case: A regulation under the Federal Firearms Act required the dealers to maintain records showing the name and address of the purchaser of a firearm. The purchaser gave the dealers a false name, thus causing the dealers to maintain a false record. Under Walker, the person giving the false information (Lee Harvey Oswald) has violated the statute.

Forfeiture of the Weapons

There are no reported cases of forfeitures for violations of the record-keeping requirements of the Federal Firearms

Act.[1] There are, however, precedents under other statutes for the forfeiture of property involved in or related to violations of record-keeping requirements.

In Thacher's Distilled Spirits, 103 U.S. 679 (1880), (affirming United States v. 102 Packages, Fed. Case No. 13,851 (C.A.N.Y. 1878)), the Court upheld the forfeiture of certain distilled spirits seized from an innocent third party. The rectifier who sold the spirits to the third party claimant had previously made a false entry in a return (the return was required by regulations) with respect to the seized spirits.

1/ There are no reported cases of forfeiture for any violations of the Act. Rarely is the value of seized firearms sufficiently high to require judicial proceedings for forfeiture and few claimants have filed a claim and cost bond to transfer administrative proceedings to the District Court. However, there is now pending in the District Court for the Western District of Texas, El Paso Division, a forfeiture proceeding entitled United States v. 3,256 Firearms et al., Civil No. 2705, which is based in part on alleged violations of the same record-keeping provisions of the Act which are in issue in this case.

The Court, at page 682, stated: "We are of the opinion that it was in regard to the whiskey now seized that the false entry was made, and the forfeiture attached to it."

In One 1941 Buick v. United States, 153 F.2d 445 (10th Cir. 1946), the Court of Appeals agreed with the trial court that the failure of a retail liquor dealer to keep the records required by law was sufficient basis for the forfeiture of a vehicle used to transport liquors to the retail premises. The dealer had paid the required occupational tax and his only violation of federal law was the failure to keep the required records.[1]

1/ There are several forfeiture cases where the charge was the failure to pay tax as a dealer and the failure to keep records. See United States v. Windle, 153 F.2d 196 (8th Cir. 1946); Kent v. United States, 157 F.2d 1 (5th Cir. 1946), cert. den. 329 U.S. 785; Seib v. United States, 150 F.2d 673 (8th Cir. 1945); and United States v. 3,935 Cases of Distilled Spirits, 55 F. Supp. 84 (D.C. Minn. 1944). Since none of these cases base the forfeiture squarely and solely on the record-keeping violation, they are of doubtful precedent value in this case.

Although, as noted above, there are no reported cases of forfeitures for violation of the record-keeping requirements of the Federal Firearms Act, we believe that it is clear beyond argument that the respondent weapons were "involved in" violations of regulations promulgated under the Act. The respondent weapons were the very subject of the false entries which Lee Harvey Oswald caused the dealers to make. If these weapons had not been sold, there would have been no false entry and no violation of the Act. If these weapons had been sold and the entry in the records shown the true name of the purchaser, there would have been no violation of the Act. Thus, it would appear that no precedent is necessary to show that the respondent weapons were so completely "involved in" the violation that their forfeitability is established beyond doubt.

This conclusion is reinforced, if reinforcement is necessary, by the holding in Thacher's Distilled Spirits, supra, and One 1949 Buick v. United States, supra.