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CRIMINAL DIVISION

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PROCEDURE

GENERAL

Criminal and Judicial Codes

The Federal Criminal Code was revised, codified and enacted into positive law by Section 1 of the Act of June 25, 1948 (P. L. 772, 80th Cong., 2d Sess., 62 Stat. 684) as Title 18 U. S. C., entitled "Crimes and Criminal Procedure". Section 21 of that Act preserves any then existing rights or liabilities under the schedule of laws repealed by that Section. By another Act of June 25, 1948 (P. L. 773, Sec. 1, 62 Stat. 869), at the same session of Congress, the Judicial Code of the United States was also revised, codified, and enacted into positive law as Title 28 U. S. C., entitled "Judiciary and Judicial Procedure". Section 39 of that Act contains a schedule of repealed laws, with a like preservation of existing rights or liabilities thereunder. These new Titles 18 and 28 of the United States Code both became effective on September 1, 1948.

Criminal Division Bulletin

The inaugural issue of the United States Attorneys Bulletin on August 7, 1953 (Volume 1, No. 1) ended the separate publication of the Criminal Division Bulletin, which has now merged in the new Bulletin covering all the Divisions of the Department of Justice.

The last issue of the Criminal Division Bulletin dated July 27, 1953, was Volume 12, No. 12 for the Part I material dealing with substantive criminal law, and Volume 8, No. 12 for Part II, entitled "Federal Rules of Criminal Procedure" which commenced with the Bulletin issue of February 25, 1946, approximately one month before the new procedural rules went into effect on March 21, 1946. Part II covered procedural developments, successive court interpretations of the rules, and related changes in Department policy. Both these services to the United States Attorneys and the Division staff will be continued through the medium of the United States Attorneys Bulletin in which the rules material will appear as an appendix, separately paged. The material on the rules should be filed as heretofore in a separate binder under each rule number for ready access.

October 1, 1953

INVESTIGATIONS

Investigations and fact finding inquiries having to do with litigation handled by the Department and the United States Attorneys are performed by the FBI or by one of the other numerous investigative units attached to other agencies of the Government.

The various field offices of the FBI are in a position to advise attorneys in the field as to what agency of the Government is charged with the responsibility of originating, investigating and developing cases in a particular field. It is important that attorneys respect the different spheres of jurisdiction of the numerous investigative units and that they not request one agency to perform or assist in performing investigative activity which is assigned to another unit or agency. Attorneys are likewise advised not to become involved in disputes or differences between two or more investigative agencies as to which has jurisdiction of a particular violation. Since relations between this Department and other departments of the Government are handled by the Deputy Attorney General, such differences should be brought to the attention of this official of the Department.

While investigation of the facts of a case is part of the preparation of a case, attorneys should recognize the clear division of jurisdiction and responsibility in this respect and refrain from the conduct of investigations which are the prime function of public investigative units. This separability of function does not, of course, preclude an attorney from the interview and examination of witnesses in advance of the formal presentation or institution of proceedings. Attorneys in the field should not attempt to supervise investigations or investigative personnel in the ordinary sense but should feel free to make suggestions as to the direction, scope and emphasis of investigative activity, and as to the priority and importance of a case in relation to other matters being handled at the same time.

REFERRAL PROCEDURES

Cases Directly Referred to United States Attorneys

The following categories of cases, under the supervisory jurisdiction of the Criminal Division, are initially referred direct to the United States Attorneys by the agency in which the case originates:

Migratory bird and other fish and wildlife violations.
Food, Drug and Cosmetics Act.
Suits for civil penalties under the Federal Trade Commission Act.

War Risk Insurance and other cases originating in the Veterans Administration.
Federal Seed Act.
Insecticide Act.
All cases of theft, conversion, embezzlement or fraud arising in the administration of the Farm Credit and Farm Security programs.
Workmen's Compensation and related compensation statutes administered by the United States Bureau of Employees' Compensation, Department of Labor.
Railroad Unemployment Insurance Act.
Social Security Act.
28-Hour Law cases (cruelty to stock).
Federal Hours of Service Act.
Federal Safety Appliance Act.
Postal Law violations.
Motor Carrier Act (criminal proceedings for enforcement of Part II of Interstate Commerce Act, 49 U. S. C. 322).
Violations of the Securities Act of 1933, as amended (15 U. S. C. 77a, et seq.).
Violations of the Securities Exchange Act of 1934, as amended (15 U. S. C. 78a, et seq.).
Violations of the Investment Advisers Act of 1940, as amended (15 U. S. C. 802–1, et seq.).

AUTHORIZING PROSECUTION

Prosecution of any case should not be instituted in any district without the express authorization of the United States Attorney or his representative. In a great number of cases, prosecution is authorized on the basis of an oral statement of the facts to the United States Attorney or his Assistants by a representative of an investigative agency. While this practice is desirable and necessary in the great majority of cases, it is suggested that in all cases involving doubtful situations or complicated features, it is of considerable value to postpone the granting of authority until the submission and review of a written report.

Before authorizing prosecution in cases, many United States Attorneys and their Assistants solicit the opinion of the investigative officer as to what he thinks of the case. While the opinion of an investigator having a first-hand knowledge of the case is of considerable benefit in evaluating a case, attention is invited to the fact that some

of the investigative agencies or units have strict rules prohibiting investigative personnel from giving opinions of this character. Such rules do not, of course, prevent the attorney from obtaining the views of the investigator concerning the availability and character of the evidence to be relied upon, the value and credibility of prospective witnesses, and the strength and weaknesses of the case as a whole.

Specific Authorization Before Prosecution

Because of the importance of adopting a uniform and consistent prosecutive policy throughout the various districts, no prosecutions will be instituted without specific authorization from the Department in the following types of violations:

Atomic energy, espionage, sabotage, treason, sedition, Subversive Activities Control Act and other subversive activities, 42 U. S. C. 1810, 1816; 18 U. S. C. 791–798; 2151–2156; 2381–2390; 50 U. S. C. 786–788.

Civil rights, peonage and slavery cases under 18 U. S. C. 241–243; 1581–1584.

Consumer credit cases under 50 U. S. C. App. 2133.

Elections and Political Activities in general, 18 U. S. C. 591–612, and possible riders attached to annual appropriation acts.

Fair Labor Standards Act, 29 U. S. C. 201 et seq.

Federal Corrupt Practices Act, 2 U. S. C. 241–248.

Federal Housing Act, 18 U. S. C. 1010.

Foreign Agents Registration Act, 22 U. S. C. 611.

Hatch Act, 18 U. S. C. 594, 595, 598, 600, 601, 604, 605, 608, 609, 611.

Kickback statute, 18 U. S. C. 874.

Labor Management Relations Act, 29 U. S. C. 157, 159 (h).

Military areas or zones—violations in such areas of regulations issued by the Department of the Army under 18 U. S. C. 1382–1383.

Railway Labor Act (railroads and airlines), 45 U. S. C. 152, 181.

Strikebreakers statute, 18 U. S. C. 1231.

STATUTE OF LIMITATIONS

The statute of limitations applicable to most federal noncapital offenses is the three years specified in 18 U. S. C. 3282. However, certain criminal offenses have their own limitation provisions. Violations of the bankruptcy laws (concealment of assets) are governed by 18 U. S. C. 3284; violations of the internal revenue laws by 26

U. S. C. 3748; violations of the espionage laws (18 U. S. C. 792–794) by Section 19 of the Internal Security Act of 1950 (64 Stat. 1005), now codified at 18 U. S. C. 792 *note;* violations relating to misuse, etc., of citizenship or naturalization papers, and passport frauds by 18 U. S. C. 3291, and actions to recover penalties and forfeitures accruing under the customs laws by 19 U. S. C. 1621. The statute of limitations with respect to capital offenses has been abolished by 18 U. S. C. 3281 and with respect to fugitives from justice by 18 U. S. C. 3290.

Contempts constituting crimes under 18 U. S. C. 402 must be prosecuted within one year from the date of the act complained of as provided in 18 U. S. C. 3285. Violators of the customs laws or the slave trade laws of the United States are prosecuted within five years next after the commission of the offense under 18 U. S. C. 3283.

The wartime suspension of the limitation statute under 18 U. S. C. 3287 has now lapsed, but inasmuch as this provision has been, since the 1948 revision, part of positive criminal law, it becomes automatically applicable to offenses involving fraud or attempted fraud against the United States, etc., "when the United States is at war".

COMPLAINTS

The complaint is a statement of the essential facts constituting the offense with which the person whose arrest is sought is charged, made for the purpose of obtaining a warrant for the arrest of such person. It is one of the legally accepted modes of instituting a criminal proceeding. *United States* v. *Kilpatrick*, 16 Fed. 765, 769; *United States* v. *Simon*, 248 Fed. 980. The complaint must be made upon oath before any justice or judge of the United States, any United States Commissioner, or any judicial officer named in 18 U. S. C. 3041. See Rule 3, Fed. Rules Crim. Proc. The accused must be informed of the nature of the accusation (U. S. Const. Amend. VI). *United States* v. *Cruikshank*, 92 U. S. 542. Complaints made by private citizens must be approved by a United States Attorney (18 U. S. C. 3045), before the arrest warrant issues for internal revenue law violations.

Ordinarily, a complaint for the arrest of a person believed to be guilty of an offense against the United States should be presented to a United States Commissioner, if one is conveniently near. However, an agent or representative of the Department or of any other branch of the Government service should not be required to travel a considerable distance in order to present a complaint to a Commissioner when

one of the State officials enumerated in the statute (18 U. S. C. 3041) is near at hand and available. Under such circumstances the complaint should be presented to one of such state or local officials, but when a warrant of arrest is so obtained and is served by a local peace officer the person arrested should be turned over to the United States Marshal at the earliest possible time. The provisions of Rule 5 (a), Fed. Rules Crim. Proc., require that when a person who has been arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

ARRESTS

Warrant of Arrest

Arrests will ordinarily be made pursuant to a warrant issued by a United States Commissioner or other judicial officer designated in 18 U. S. C. 3041, upon the filing of a verified complaint or information (based upon supporting affidavit of probable cause), or upon the return of an indictment. Warrants of arrest should be secured as soon as possible after the defendant's identity has been established, unless peculiar conditions make such a course inadvisable.

Officers to Whom Directed

Warrants must be directed to state or federal officers empowered to make arrests for the violation of law charged to have been committed by the accused. (Rules 4 (a) and 9 (a).) Federal officers having general power to arrest for any violation of federal statutes are United States Marshals and their deputies, 18 U. S. C. 3053, and Special Agents of the FBI, 18 U. S. C. 3052. In most instances warrants will be directed to one or both of those officers. Certain other federal officers and agents are empowered to execute warrants of arrest and to make arrests for violations of specific federal statutes which it is their duty to enforce.

Contents of Warrant

The content of the warrant is specified in Rules 4 (b) (1) and 9 (b) (1). See also Form No. 12 included in Appendix of Forms to Rules volume in 18 U. S. C. A.

Description in Warrant

When warrants are sent to the United States Marshal for service or to other districts in the United States, a description of the person wanted should accompany the warrant if possible. Very often there

are two or more persons of the same name in the community and lack of a description results in confusion. The description should include information concerning the race, height, weight, age or any unusual mark or identification of the person wanted. John Doe warrants must contain a sufficient description of the person to be apprehended to enable him to be identified with reasonable certainty.

Procedure on Arrest

Under Rules 4 (c) (2) and 9 (c) (1) the original warrant has efficacy throughout the United States, and an arrest may be made under its authority even though the arresting officer does not have physical possession of the warrant. (Rules 4 (c) (3) and 9 (c) (1).) However, the arresting officer is required to inform the defendant of the nature of the offense and of the fact that a warrant has been issued and to exhibit it to the defendant, upon his request, without unnecessary delay. These provisions have created a uniform Federal practice in respect to the making of arrests without physical possession of the warrant.

Reissuance: Separate Warrants

Rules 4 (c) (4) and 9 (c) (2) permit a warrant returned unexecuted or a summons unserved to be kept alive and reissued as long as the complaint is pending. The practice of issuing more than one warrant or summons upon a single complaint is now made uniform by Rules 4 (a) and 9 (a). Where there are several defendants, it is frequently desirable from a practical standpoint that a separate warrant be issued for each defendant in order to facilitate arrest and return, especially if the defendants are apprehended at different times and places.

Summons: Corporate Defendants

Both Rule 4 and Rule 9 contain provisions permitting the use of a summons in place of a warrant. Except as to corporate defendants such procedure is new to federal criminal practice. Often there is no need to arrest persons charged with petty offenses or technical violations of law. It has been customary, in some localities, for the United States Attorney in cases involving minor infractions of the law to telephone the defendant or his attorney and agree upon a time for preliminary hearing or arraignment. The Rules sanction this informality by adopting the use of a summons. When the proceeding is founded upon a complaint, a summons may be issued upon request of the United States Attorney. (Rule 4 (a).) However, where the proceeding is founded upon an indictment or information the sum-

mons may be issued either by direction of the court or upon request of the United States Attorney. (Rule 9 (a).) The summons may be served by any person authorized to serve a summons in a civil action.

Service on Corporation

Where the defendant is a corporation, service is accomplished by delivering a copy of the summons to an officer, or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The failure to respond to a summons is not contempt of court, but is ground for issuing a warrant. (Rules 4 (a) and 9 (a).)

Duty of Arresting Officer

Upon making an arrest, whether with or without a warrant, the arresting officer is charged with the duty of taking the accused *without unnecessary delay* before the nearest United States Commissioner or the nearest judicial officer having jurisdiction under 18 U. S. C. 3041, for a hearing, commitment, or bail. (Rule 5.)

Mere unlawful detention before presentment to a committing magistrate, however, standing alone and without more, does not invalidate a confession made during its continuance, *unless the detention produced the disclosure. Pierce* v. *United States*, 197 F. 2d 189 (C. A. D. C.), analyzing the *McNabb* (318 U. S. 332), *Mitchell* (322 U. S. 65), *Upshaw* (335 U. S. 410), and *Carignan* (342 U. S. 36) decisions of the United States Supreme Court.

Rule 5 makes no change in the statutory law of arrest without a warrant, as distinguished from arrest without the physical possession of a warrant already issued. See 18 U. S. C. 3050, 3052, 3053 and 3053. *Carroll* v. *United States*, 267 U. S. 132.

PRELIMINARY HEARING

United States Commissioners Manual

United States Attorneys and their Assistants should have a copy of the "Manual for United States Commissioners" (1948 revision), which may be obtained for official use from the Administrative Office of the United States Courts, Supreme Court Building, Washington, D. C. The topics entitled "The Practice to be Followed in Informing the Defendant as to his Rights" (p. 8); "Conduct of Preliminary

Examination" (pp. 9–11); and "Binding Over and Discharge" (pp. 11–12) are informative as to the approved practice for conducting a preliminary hearing.

"Unnecessary Delay": Decisions on

Rule 5 (a), Fed. Rules Crim. Proc., provides that accused persons, upon arrest, shall be taken by the arresting officer "without unnecessary delay" before the committing magistrate. The reason for this rule is "to abolish unlawful detention". *United States* v. *Carignan*, 342 U. S. 36, at 44–45.

The question of whether or not delay is necessary and the period of time during which such a delay would be deemed not unreasonable will depend upon the circumstances of each case. The words "without unnecessary delay" as used in Rule 5 (a) do not require that arrested persons be taken before a United States Commissioner except during the latter's regular office hours. *Symons* v. *United States*, 178 F. 2d 615.

In approving this rule Congress did not intend to exclude entirely judicial consideration and review of the reasonableness of a delay in preliminary hearing. *Haines* v. *United States*, 188 F. 2d 546, cert. denied 342 U. S. 888.

The importance of a speedy preliminary hearing is further emphasized by the so-called "*McNabb* rule" (*McNabb* v. *United States*, 318 U. S. 332) whereby the Supreme Court has enforced, while restricting its application, a judicially created federal rule of evidence affecting confessions and admissions apart from their voluntary character, which is the constitutional test of the admissibility of such statements in criminal trials.

As restated in *Upshaw* v. *United States*, 335 U. S. 410 at 413, under the *McNabb* rule a confession is inadmissible "if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, * * *." But in *United States* v. *Mitchell*, 322 U. S. 65, the Supreme Court had earlier modified the *McNabb* rule by holding that subsequent illegal detention did not render inadmissible prior confession volunteered promptly when taken into custody by the police. In its latest pronouncement on this subject, *United States* v. *Carignan*, 342 U. S. 36, the Supreme Court has further clarified the uncertainty resulting from the *Upshaw* decision, by declining to extend application of the *McNabb* rule, which is based upon illegal detention, to situations where a prisoner in the lawful custody of police officers under a Commissioner's commitment upon a criminal

charge, confessed while so detained to the commission of another criminal offense for which he was subsequently tried and convicted.

While the *McNabb* rule, therefore, is not pertinent to proceedings at the preliminary hearing proper, it does provide an exclusionary test at any subsequent trial in addition to the constitutional guarantees against coerced confessions. The defendant has the burden of showing that the delay in bringing him before the Commissioner or other judicial officer was unnecessary, but the Government must make affirmative proof that admissions or confessions made while in custody and before such appearance were voluntary. *United States* v. *Leviton*, 193 F. 2d 848, 854, cert. denied 343 U. S. 946; *United States* v. *Walker*, 176 F. 2d 564, cert. denied 338 U. S. 891.

Pleas Abolished

Pleas by an accused person when first brought before a Commissioner are excluded, as a plea of guilty at this stage has no legal status or function except to serve as a waiver of preliminary examination. *Wood* v. *United States*, 128 F. 2d 265, 271–272. Rule 5 (c) expressly provides for a waiver of examination, thus eliminating the necessity for a provision as to plea.

Right to Counsel

The right to have counsel assigned does not apply to proceedings before a committing magistrate, although an accused person is entitled to be represented by counsel of his own choosing at a preliminary hearing, and should be so advised. *Setser* v. *Welch*, 159 F. 2d 703, cert. denied 331 U. S. 840; *Council* v. *Clemmer*, 177 F. 2d 22.

GRAND JURY

18 U. S. C. 3321 and 28 U. S. C. 1861–1865, 1867 deal with grand juries, as does Rule 6, Fed. Rules Crim. Proc. The Rule makes no provision in relation to the *method* (qualifications, exemptions, apportionment) as distinguished from the *time*, of summoning and selecting grand jurors so that the statutory provisions must be complied with.

Manner of Drawing

The requirements of 28 U. S. C. 1864 relating to the manner of drawing grand jurors should be strictly observed, and United States Attorneys are requested to call the matter to the attention of the clerks, jury commissioners and other interested officials in order that any irregularity may be avoided.

INDICTMENT AND INFORMATION

The use, nature and contents of the indictment and the information are covered by Rule 7, Fed. Rules Crim. Proc. Prosecution should be by information, where the offense is not capital or infamous or where prosecution by indictment is waived, unless in an exceptional case it is considered important that the matter be considered by a grand jury.

Waiver

Rule 7 (b) permits a defendant charged with an offense punishable by imprisonment for over one year or at hard labor to be prosecuted by information if, after he has been advised of the nature of the charge and of his rights, he waives in open court prosecution by indictment. Waiver may be made in either the district of prosecution or the district of arrest. *United States* v. *East*, 5 FRD 389. Although prosecution by information is not obligatory under the Rule when indictment is waived (*Rattley* v. *Irelan*, 197 F. 2d 585), a defendant so electing should ordinarily be prosecuted by information, especially when he is confined in jail through inability to make bail. Waiver must be made in open court, but can be *signed* beforehand. *United States* v. *Jones*, 177 F. 2d 476.

Departmental Assistance; Furnishing Copy

In all cases of moment involving any novel, difficult or doubtful question of criminal pleading, whenever possible, a draft of the proposed indictment should be submitted to the Department seasonably in advance of presentation to the grand jury, for examination and suggestion, together with a brief statement of facts not appearing upon the face of the indictment, or probable deficiencies in the proof. The return of indictments in important criminal cases should be reported promptly and a copy of the indictment furnished when practicable.

Warrant Based on Information

A warrant of arrest may issue against a defendant named in an *information* only when the information "is supported by oath" (Rule 9 (a)). That means a sworn statement by the United States Attorney, or by one conversant with the facts, in a supporting affidavit that there exists probable cause for filing the information charging a federal offense. Under Rule 9 (a) the United States Attorney may on his own initiative (Rule 7 (a)) institute a criminal proceeding merely by signing an information which his oath of office is sufficient to support. But to obtain issuance of a warrant of arrest, the Fourth Amend-

ment to the United States Constitution (which provides that no warrant shall issue without probable cause supported by oath or affirmation) and Rule 9 (a) require that probable cause be established upon the oath of someone having knowledge of the facts.

Reindictment

Statutory provisions permit the return of a new indictment which is not barred by the statute of limitations whenever the original indictment is found to be defective or insufficient for any cause and the period prescribed in the statute of limitations has expired or will expire before the end of the next regular term of the court at which such indictment was returned. The new indictment may be returned not later than the end of the next succeeding regular term of court, following the term at which the original indictment was found defective or insufficient, during which a grand jury shall be in session (18 U. S. C. 3288 and 3289).

Endorsement; Names of Witnesses

Endorsement on the back of a bill of indictment of names of witnesses before the grand jury is authorized *only* in cases involving treason or capital offenses (see 18 U. S. C. 3432).

RULE 20 TRANSFERS

Procedure

Rule 20, Fed. Rules Crim. Proc. provides that a defendant may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending and to consent to disposition of the case in the district in which he was arrested, subject to the approval of the United States Attorney for each district.

By saving the time and expense of removal proceedings and travel to the district where the offense was committed, in cases where the defendant does not desire to contest the accusation against him, Rule 20 made a noteworthy reform. However, where the defendant is not aware of this new provision, obviously much of the benefit of the Rule is lost. It is, therefore, important that every accused, arrested in a district other than that in which the offense was committed, be informed of Rule 20 so that he may have an opportunity to request a transfer if he so desires.

Advising Defendant of Rule Procedure

The United States Attorney should ascertain that every such defendant arrested in his district is advised of Rule 20 before he is ordered removed. The Marshal or other arresting officer should inform the United States Attorney whenever he takes into custody a defendant who is wanted in another district. Care must be taken to insure that the defendant understands that the decision whether he will plead guilty rests entirely with him, and that if he requests a transfer both United States Attorneys must consent.

Action by United States Attorneys

If the defendant upon arrest in another district is willing to consent, under Rule 20, to a transfer of the charges and to agree to plead guilty and thus dispose of his case in the arresting jurisdiction, the United States Attorney in the demanding jurisdiction is notified and furnishes a copy of the pending indictment or information to the United States Attorney in the arresting jurisdiction to be shown to the defendant. The necessary consents are exchanged and filed with the court clerk in the district of origin who transmits his file, including these documents and the original indictment or information, or certified copies thereof, to the court clerk in the district of arrest before defendant enters his plea. Should the defendant change his mind and plead not guilty or the court decline to accept his plea of guilty or nolo contendere (*Singleton* v. *Clemmer*, 166 F. 2d 963), the case must be retransferred to the district of origin.

Exchange of Information, Files, Etc.

The clerk's file will not normally contain any of the investigative reports and other material which the United States Attorney will have received and placed in his own file. These documents are of informational value to the attorneys and the sentencing judge in the other district, and frequently that file is also forwarded, or the investigative agency is requested to submit duplicate reports to the second district, by the United States Attorney in the district of origin. Should the latter request that his file be returned after sentence has been imposed, that request may be complied with. Correspondence between the attorneys can usually effect this exchange of material. The originating United States Attorney should advise the Marshal of his district as to the disposition made of the arrest warrant and the case as well.

Utilization of Rules 1 (b) and 20 Together

When warrant of arrest issues upon complaint, Rules 7 (b) and 20 may be utilized together. The waiver of indictment under Rule 7 (b) may be made in the district of arrest but care must be taken that the information is on file in the district of the offense before the defendant in the district of his arrest is permitted to sign a formal written consent to the desired transfer. The consent to transfer under Rule 20, however, does not have to be made *in open court* as does the waiver of indictment under Rule 7 (b). The important thing to remember is that either an information or an indictment must be "pending" before a defendant may elect under Rule 20 to have his case transferred for disposition in the district of his arrest.

REMOVALS

Arrest in Nearby District

Rule 40, Fed. Rules Crim. Proc., entitled "Commitment to Another District; Removal" effected an important reform by eliminating in subdivision (a) necessity of removal proceedings when arrest is made in a nearby district as therein defined. Subsection (a), however, makes a distinction between (1) cases of arrest without a warrant or with a warrant issued upon a complaint, and (2) cases of arrest with a warrant issued upon an indictment or information. When the arrest is made in a case of the second type the Rule requires that a defendant shall be taken before the district court in which the prosecution is pending (unless he gives bail before a commissioner in the district of arrest). *Butler* v. *United States*, 191 F. 2d 433. It is clear therefore that in this type of arrest there is no removal proceeding. A different procedure is specified by subsection (a) of Rule 40 for cases where the arrest is made without a warrant or with a warrant issued upon a complaint. In such cases the defendant must be taken before the nearest available commissioner, or other nearby officer empowered to commit, for the purpose of affording him a preliminary hearing in accordance with Rule 5. That hearing *is not a removal proceeding* however but merely a preliminary hearing, identical to those afforded to defendants arrested in the same district where the crime is committed, to determine whether there is probable cause to hold them for the grand jury. Although subsection (a) abolishes removal proceedings, the Rule does not contemplate that any defendant be taken to another district upon a *complaint* charge until a determination that probable cause exists has been made in the district of his arrest.

Arrest in Distant District

When arrest is made in a distant district as defined in Rule 40 (b) the procedural requirements therein set forth must be strictly complied with before a warrant of removal issues. The hearing may be had before a United States Commissioner or judge of the district court, but the warrant of removal may issue only by order of the judge. The removal procedure authorized under this Rule is distinguished from statutory extradition proceedings. *United States* v. *Godwin*, 191 F. 2d 932.

Cooperation Between United States Attorneys and Marshals

Although the arrest in the distant district is promptly made the removal hearing under Rule 40 (b), if not waived, cannot be completed until certified copies of the complaint, indictment, or information and the warrant arrive from the requesting United States Attorney in the district where the charges are pending. In some districts it may happen that the warrant of arrest is forwarded from the office of the United States Marshal rather than the United States Attorney in that district. Cooperation between the offices of the United States Marshal and the United States Attorney in both districts is therefore essential. The United States Attorney in each district should seek to work out a satisfactory procedure with the Marshal whereby each will know of receipt of a warrant and supporting papers. When a warrant is sent to another district the United States Attorney and the Marshal should see to it that at the same time the supporting papers and additional information are forwarded for the use of the United States Attorney, the United States Commissioner and the district judge in the district of arrest. While continuance of the hearing for a reasonable time is permitted under subsection (4) of Rule 40 (b), a warrant issued in the district in which the offense was committed must be presented before a defendant may be removed as provided in the Rule.

Difference Between Indictment and Information or Complaint

If the prosecution is by *indictment*, a warrant of removal is mandatory upon production of a certified copy of the indictment and proof, by admission or otherwise, that the defendant is the person named therein. *Singleton* v. *Botkin*, 5 FRD 173; *Hemans* v. *Matthews*, 6 FRD 3, aff'd 158 F. 2d 9. But if prosecution is by *information or complaint*, a certified copy thereof must be produced and proof made

of probable cause for belief that the defendant is guilty of the offense charged before a removal warrant issues.

Bail

Bail for appearance in the district of the offense in accordance with Rule 46, may be had if a warrant of removal issues (Rule 40 (b) (3)).

Appeal

An order of removal is not appealable. *Meltzer* v. *United States*, 188 F. 2d 916.

ARRAIGNMENT, PLEA, AND TRIAL

Arraignment

The term "arraignment" refers to the bringing of a defendant who has been indicted or against whom an information has been filed, before the United States district court for the purpose of requiring him to enter a plea. Except in cases of petty offenses triable before United States Commissioners, appearances of defendants before United States Commissioners or other judicial officers after arrest are not regarded as arraignments.

Procedure on Arraignment

The procedure to be followed in arraigning a defendant is governed by Rules 10 and 43, Fed. Rules Crim. Proc. Where the defendant is a natural person charged with offenses which constitute a felony his presence at the arraignment is required under Rule 43. When the prosecution is for offenses punishable by fine or by imprisonment for not more than one year or both, Rule 43 allows the court, with the written consent of the defendant, to permit arraignment in the defendant's absence. Corporate defendants may appear by counsel. While Rule 10 requires that arraignment *must* be in open court, it does not make the reading of the indictment mandatory, but allows the prosecutor to state the substance of the charge. However, that Rule specifies that a defendant *must* be given a copy of the indictment or information before he is called upon to plead. If defendant is represented by counsel, service upon his attorney is sufficient compliance with the Rule. *United States* v. *Shepherd*, 108 F. Supp. 721. There is no charge for such copies and they must be furnished at arraignment. The attorney in charge of the case should have an extra copy of the indictment or information prepared for each defendant named therein and the attorney representing the Government at the arraignment

should ascertain that docket entries are made showing that this provision of Rule 10 has been fulfilled.

Right to Counsel

The constitutional right of representation by counsel exists not only when a defendant stands trial, but also at the time of arraignment and in connection with his plea as well as at sentence. *Johnson* v. *Zerbst*, 304 U. S. 458. When a defendant appears in court without an attorney to represent him, Rule 44 requires the court to advise him of his right to counsel and to appoint such an attorney unless the defendant expressly states that he wishes to proceed without an attorney or is able to obtain counsel. *No plea, regardless of its nature, should be entered until the defendant has obtained or been furnished with an attorney or expressly waived his right to such assistance.* *Walker* v. *Johnston*, 312 U. S. 275; *Cherrie* v. *United States*, 184 F. 2d 384.

In any case in which the defendant has not retained counsel, unless he has expressly stated that he wishes to conduct his own defense, the United States Attorney is requested to bring the matter to the attention of the court, in order that the defendant may have the assistance of counsel.

Docket Entries

It is of utmost importance that the entries in the docket of the clerk of the court show whether or not the defendant in a criminal case was represented by counsel. If the defendant was represented by counsel the docket entry should show the name or names of such counsel. If the defendant is not represented by counsel the docket entry should clearly disclose that the defendant was fully informed of his right to counsel and that with full knowledge of that right he expressly waived the assistance of counsel. Proper docket entries will eliminate the possibility of the defendant later successfully claiming that his constitutional rights were denied because he did not have the assistance of counsel. (See also Title 8, Office Files and Records.)

Pleas

Rule 11, Fed. Rules Crim. Proc., relates to the entering of pleas by the defendant. A defendant may plead guilty, not guilty or, with the consent of the court, nolo contendere. The plea of nolo contendere has the *effect* of a plea of guilty in a criminal case. *United States* v. *Norris*, 281 U. S. 619. The court may refuse to accept a plea of guilty or nolo contendere. Under Rule 11 a plea of guilty cannot be accepted

by the court without a determination that it is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead, stands mute, or if the court refuses to accept a plea of guilty, a plea of not guilty must be entered on behalf of the defendant by the court. A plea of not guilty must likewise be entered for a corporation which fails to appear.

Nolo Contendere

United States Attorneys are instructed not to consent to a plea of nolo contendere except in the most unusual circumstances and then only after their recommendation for so doing has been reviewed and approved by the Assistant Attorney General responsible or by the Office of the Attorney General. (Memo No. 42, August 25, 1953.)

Assignment of Cases

With the consent of the judge, a definite number of cases should be assigned for trial each day during the time allowed for the transaction of criminal business. Such assignments should be made with particular reference to the attendance of witnesses, in order that they may be examined and discharged at the earliest possible opportunity.

Trial Instructions: Furnishing Copy

Whenever a court's instructions to the jury in a criminal case have been carefully worked out, a copy should be submitted to the Department, provided authority has been granted for reporting the case, or the court has prepared written instructions in advance and is willing to furnish a copy.

Alternate Jurors

Whenever a jury trial is likely to be protracted, the United States Attorney should suggest to the court the desirability of calling and impanelling one or two alternate jurors (Fed. Rules Crim. Proc., Rule 24 (c); Fed. Rules Civ. Proc., Rule 47 (b)).

DISMISSALS

Except as specifically set forth below, United States Attorneys should not dismiss a case until after they have received authority from the Department of Justice.

Dismissal Without Prior Authorization

United States Attorneys need not obtain authority to dismiss cases supervised by the Criminal Division in the following situations:

(a) where the defendant is dead or by reason of permanent insanity incapable of defending the charges against him;

(b) where a superseding indictment or information has been returned;

(c) where the criminal liability involved in the charge against the defendant has been compromised;

(d) where the defendant has pleaded guilty, or nolo contendere, or has been convicted after trial, on one count of an indictment or information or under another indictment based upon the same transaction and the United States Attorney believes that the punishment imposed is adequate and that further prosecution would not result in an additional sentence. (An exception to this rule must be made in classes of cases where it is desirable to obtain conviction on several types of charges, e. g., misbranding and adulteration under the Food, Drug and Cosmetics Act, fraud and failure to register under the Securities Act of 1933. In these cases specific authority should be obtained);

(e) where the defendant is serving an adequate sentence imposed by a State court for an offense growing out of the same transaction which is the subject of the federal charge, and the United States Attorney believes that federal prosecution would not result in any additional sentence [An exception to this rule must be made in wagering tax cases (26 U. S. C. 3285–3294). In these cases specific authority should be obtained];

(f) where the indictment or information has been pending for more than three years, the defendant is a fugitive, the violation is of a relatively minor character, and the United States Attorney has been informed by the investigating agency that all investigative leads have been exhausted;

(g) where the offense is a violation of the Fugitive Felon Act and the offender, after being apprehended has been turned over to the prosecuting authorities of the state from which he fled. Disposition by the state should be made before dismissal in such cases;

(h) where the offense is a violation of the customs and narcotics laws and the crucial evidence against the defendant is inadmissible because obtained by an unlawful search and seizure, or for any other reason;

(i) where the offense is a violation of the customs and narcotics laws and as the result of the evidence adduced upon the trial of codefendants for the same violation the United States Attorney is convinced of the defendant's innocence;

(j) where the offense is a violation of the customs and narcotics laws and the defendant is not a dangerous or habitual offender, his offense was a petty one and the failure to prosecute him would facilitate the conviction of dangerous or habitual offenders who might otherwise escape;

(k) where libel suits have been instituted under the Federal Food, Drug and Cosmetic Act and the United States Attorney has been informed by the local station of the Food and Drug Administration that the product is not available for seizure.

It is emphasized that the above list is not a direction but an authorization to dismiss, if in the opinion of the United States Attorney this course is advisable. United States Attorneys must satisfy themselves that the conditions upon which dismissals are authorized have been complied with.

Authorization for Dismissal

In every criminal case of prosecution by indictment or information where it is proposed to dismiss the proceeding, or dismiss as to certain defendants (except in cases where a plea has been entered and sentence imposed as to one or more counts), the Assistant United States Attorney handling the case should prepare in duplicate the form, Authorization for Dismissal of Indictment and Information (Appendix, form 1), setting forth his reasons for the recommended dismissal or request for permission to write the Department for authority to dismiss.

In offices having a large number of Assistants or where the organization of the office warrants, the original and copy of the form should be submitted to the Assistant United States Attorney, who authorized the prosecution, for the listing of his approval or disapproval and his reasons therefor. The original and copy should then be submitted to the Chief of the Criminal Section in such office for his action. The original form should remain in the case file and the copy should be forwarded to the Assistant Attorney General in charge of the Criminal Division.

In smaller offices and those in which there is no division of personnel into sections, the Assistant United States Attorney handling the case should submit the original and copy of the form to the United States Attorney for his action. Thereafter, it should be forwarded to the Department as provided in the preceding section. If the space allowed on the form is for any purposes inadequate a memorandum sufficiently outlining the reasons for the recommendation should be attached to the form.

The procedures set out above are designed to preserve a permanent short form record, for the files of the United States Attorney and the Department, of the reasons underlying each dismissal or request for authority to dismiss, as well as of the names of the officials passing

thereon. The procedure is applicable in all cases of dismissal, including those in which prior authority to dimiss is required and those requiring no such authority. In those cases in which prior authority to dismiss must be obtained a letter in duplicate requesting authority to dismiss and containing the reasons for such request should accompany the form.

Similarly, when requesting authority from the Department to close the file in a given case, the *letter* should set forth sufficient facts to warrant the action requested, together with an expression of opinion by the United States Attorney. This is especially important in cases involving *fraud* and *misconduct in public office.*

Dismissal of Complaints

United States Attorneys are not required to obtain prior authorization from the Department to dismiss complaints made under Rule 3, Fed. Rules Crim. Proc., before Commissioners or other officers empowered to commit persons charged with offenses against the United States (see 18 U. S. C. 3041). While there may be instances in which such approval should be sought before dismissal, as, for example, in a case where the complaint was filed upon specific instructions from the Department, or there is some other reason in a particular case for requesting approval, the Department's policy is to leave decisions with respect to dismissal of complaints within the discretion of the United States Attorneys, subject only to the requirements of Rule 48 (a), Fed. Rules Crim. Proc., as applied in their respective districts.

Rule 48 (a) provides in part that the Attorney General or the United States Attorney may *by leave of court* file a dismissal of an indictment, information or *complaint.* The Advisory Committee's final draft of the rule submitted to the Supreme Court did not require leave of court for a dismissal. The Committee's note to the rule states that the word "complaint" was included with indictment and information in order to clarify the power of the United States Attorney to enter a *nolle prosequi* of a prosecution during the interval before an indictment is found, when the defendant has been held for grand jury action. In adding the requirement of leave of court for a dismissal, the Supreme Court did not distinguish between a complaint, on the one hand, and an indictment or information, on the other.

The Department interprets the requirement that leave of court must be obtained for dismissal of a complaint as applicable only to those complaints upon which the accused has been held to answer in

the district court after a preliminary examination before a commissioner. In such cases it is believed that there can be no dismissal of the complaint without leave of court simply because the case has not been presented to the grand jury. The United States Attorney must have leave of the court to dismiss, whether given in a prior blanket authorization to dismiss complaints, or in each instance.

Where, on the other hand, a complaint made before a commissioner has served no other purpose than the issuance of a warrant of arrest, and has resulted neither in an arrest nor a holding to answer in the district court, it is believed that the commissioner may dismiss the complaint without consulting the court. The Department reached this conclusion, which has been communicated to the Administrative Office of the United States Courts, on the basis of the control exercised over complaints by the United States commissioners under Rule 4 (a) and (c) and Rule 5 (c). Under those rules a commissioner may issue a warrant of arrest upon a showing of probable cause in a complaint filed before him; he may discharge a defendant brought before him following arrest on a complaint for which no probable cause is shown; and he has authority to cancel an unexecuted warrant of arrest. It would seem, therefore, that the commissioner can exercise a like control over a complaint that has served only as a basis for issuing a warrant of arrest, whether or not the warrant is actually executed, or is still outstanding as a basis for a detainer. This interpretation of the rule has not been judicially tested, and in each district the United States Attorney must be governed by the district court's interpretation of Rule 48 (a) in that respect.

Care should also be taken that the United States Marshal of the district is promptly informed by the United States Attorney of the dismissal of a complaint, whether by the court or the commissioner, in order to facilitate cancellation of unexecuted arrest warrants, as provided in Rule 4 (c) (4). Such notification is also important when a warrant of arrest is outstanding in connection with a detainer, as the warrant will have been forwarded by the Marshal of the district where it was issued, to the Marshal in the district of detention, who will have to return it to the Marshal of the issuing district for cancellation by the commissioner after the complaint has been dismissed.

SENTENCE

Clarity of Sentence

It is the duty of the United States Attorney or his Assistant, whichever tried the case, to examine each sentence before it is signed by the sentencing judge pursuant to Rule 32 (b), Fed. Rules Crim. Proc.

The prosecutor should assure himself that the sentence presented for signature is a definite sentence as to duration; clear as to intent; within the maximum punishment authorized; and conforms exactly to the sentence orally pronounced. Sentences should be so plainly worded and so specific in their directions as to leave no reasonable doubt in the minds of those charged with their execution. *United States* v. *Daugherty*, 269 U. S. 360, 363. Whenever a judgment is open to doubt on any point it should be called to the attention of the court promptly for appropriate amendment.

Apropos of the foregoing some of the things to be borne in mind are that:

(a) A separate judgment should be rendered, signed, and entered in each criminal case.

(b) The judgment must specify whether separate sentences imposed under different counts or under different indictments shall be served consecutively or concurrently, and the order of service if directed to run consecutively.

(c) A sentence imposed during incarceration under another federal sentence should specify whether it is to be served concurrently with, or consecutively to, such earlier sentence.

(d) A sentence of imprisonment cannot commence to run until the defendant is committed thereunder to the institution designated for service of such sentence or is available for such commitment. 18 U. S. C. 3568. See *Gunton* v. *Squier*, 185 F. 2d 470 (C. A. 9); *Strewl* v. *McGrath*, 191 F. 2d 347, 348 (C. A. D. C.), cert. denied 343 U. S. 906.

(e) A direction in the judgment that the sentence shall run concurrently with time owing by the defendant as a parole violator or conditional release violator under a previous sentence is beyond the power of the court and, therefore, ineffective. See *Zerbst, Warden* v. *Kidwell*, 304 U. S. 359, 362; *Tippitt* v. *Wood*, 140 F. 2d 689 (C. A. D. C.).

(f) A single or general sentence may not be split into part imprisonment and part probation. See *White, Warden* v. *Burke*, 43 F. 2d 329 (C. A. 10).

(g) The court lacks power to specify a particular institution for service of sentence or enter directions as to matters relating to custody. Objection should be made to such orders and if such orders are entered ex parte, motions to vacate them should be made. The Director, Bureau of Prisons, should be notified promptly of the issuance of such orders by telephone or telegraph.

Imposition Without Delay

Sentence should be imposed after conviction without unnecessary delay (Rule 32) and any undue delay should be reported by letter to the Attorney General with full particulars.

Effective Date of Sentence

When a prisoner serving a state sentence is brought into federal court for prosecution which ends in conviction and imposition of sentence, such sentence should direct that it become effective upon lawful release from state custody. Any direction designed to make the federal sentence effective before the defendant comes into federal custody contravenes the provisions of 18 U. S. C. 3568.

Fines and Costs

In every case where such action might have a salutary effect the court should be requested to add to sentence having a fine the provision that the defendant "stand committed until paid." If the judgment includes a fine or fine and costs, imprisonment for nonpayment thereof is unauthorized unless the judgment as pronounced specifically directs such imprisonment. The language of the statute (18 U. S. C. 3569), *viz* "fine, or fine and costs" is not regarded as authorizing imprisonment for nonpayment of costs when only costs are assessed. When a fine is paid by or for a convict who is in confinement under a "committed sentence" the keeper of the jail or prison should be notified immediately.

Recommendation Concerning Parole

If a defendant is sentenced to imprisonment for more than one hundred and eighty (180) days, inquiry should be made immediately of the court whether or not it has any recommendation to make with respect to the paroling of the defendant when eligible. Any such recommendation is to be included on Form 792 (Appendix, Form 10) for the information of the Board of Parole.

JUDGMENT—COMMITMENT FORM

The appendix to the Federal Rules of Criminal Procedure contains Form 25 which combines Judgment and Commitment. Rule 58 points out that the forms in the appendix are illustrative and not mandatory. Nevertheless, the Department regards Form 25 as a model and recommends its universal use. If the blank spaces in the form are insufficient to record the entire judgment as pronounced an additional sheet may be used. Such addition should be securely attached to Form 25 and must be signed by the court. Rule 32 (b) requires every judgment to be signed by the court and entered by the clerk.

there is any hope of success. Under Rule 69 (a), examination may be made in all cases, when necessary, of the defendant, relatives and friends, and other interested persons, so that the United States Attorney's office may be fully informed as to the defendant's financial condition. Such examination may be made "in the manner provided in these rules for taking depositions." (Fed. Rules Civ. Proc. 26 to 27, 45 (d).)

Pending Appeal

Fines and costs in criminal cases may be collected during the pendency of an appeal unless the defendant procures a stay of execution as to that part of the judgment. Rule 38 (a), Fed. Rules Crim. Proc., provides, among other things, that the trial court or court of appeals "may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets."

Orders for payment into the court of the whole or a substantial part of the fine pending appeal should be requested in all proper cases. The above provision for "any appropriate order to restrain the defendant from dissipating his assets" should receive the careful attention of all United States Attorneys.

Installment Payments; Garnishment

Debtors who are execution proof should be encouraged to pay in installments if full payment is not immediately possible. Where defendants are gainfully employed, but refuse to make voluntary payments, garnishment proceedings may be instituted where such proceedings are permitted.

Probation; Fine Commitment

Where defendant is sentenced to a fine and imprisonment and is placed on probation, the United States Attorney should make every effort to have the payment of the fine within a limited period "in one or several sums," made the condition of the probation. (18 U. S. C. 3651.)

Pauper's Oath

If a prisoner, held for nonpayment of a fine, or fine and costs, is discharged from custody, under 18 U. S. C. 3569, relating to indigent convicts, his debt to the Government is not likewise discharged. The only effect of such discharge is to release the prisoner from further confinement and not to satisfy, set aside, or vacate the claim of the Government against the defendant, or to prevent its enforcement by execution. (See *Allen* v. *Clark*, 126 Fed. 738; *Grier* v. *Kennan*, 64 F. 2d 605.)

Prompt and vigorous action is required in the collection of forfeited bail bonds and the United States Attorneys must see that proper attention be given to these matters.

Sureties

Rule 46 (e), Fed. Rules Crim. Proc., provides that every surety, except a corporate surety, shall justify by affidavit and may be required to describe the property by which he proposes to justify the encumbrances thereon, together with the number and amount of other bonds and other undertakings for bail entered into by him and remaining undischarged and all of his other liabilities. The Rule also provides that no bond shall be approved unless the surety thereon appears to be qualified.

Subsection (d) of the same Rule provides that "one or more sureties may be required, cash or bonds or notes of the United States may be accepted and in proper cases no security need be required." Where sureties are required, careful examination should be made into their qualifications with a view to reducing to the lowest possible limit the number of uncollectible judgments on forfeited appearance bonds.

Officers taking bonds should be required as far as possible to learn definitely at such time whether the proffered surety is or is not able to pay the penalty of the bond.

Forms of appearance bond, with affidavit annexed (Appendix, Forms 2, 3 and 4), which provide for an explicit statement of the surety's property and obligations, and for detailed statements of the other bonds, if any, on which the proffered surety is at that time responsible, may be obtained from the Department.

All returns of nulla bona executions or other indications of inability to pay bonds, should be immediately investigated to ascertain what officer or other person is responsible for that result.

United States Attorneys should vigorously prosecute, under the criminal laws for perjury or false swearing, those sureties who have sworn falsely as to their property when signing bonds.

Forfeitures

Prompt action is urged in taking forfeitures at the term in which the defendant fails to appear and in making motions at the same term for judgments of default and execution under Rule 46 (f) (3). If it is found that a forfeiture or judgment should not have been taken, the court has ample authority under subsections (f) (2) and (f) (4) of Rule 46 to set aside the forfeiture or remit the judgment in whole or in part if the bond was filed on or after March 21, 1946. Otherwise the surety must prove that the principal was not wilfully absent. (*Taylor* v. *Taintor*, 83 U. S. 366.)

United States Attorneys should object to the vacating or setting aside of forfeitures particularly unless the costs are paid and the Government has been reimbursed for any expenses incurred.

Default; Investigations

While the efforts of sureties to find and surrender their principals are often helpful, United States Attorneys should promptly refer all cases of default, involving over $250, to the FBI without waiting to ascertain the results of action by the sureties. All matters pertaining to financial responsibility and available resources of such judgment debtors should also be referred to the Bureau, which will make all necessary investigations. Cases involving $250 or less should not be referred to the Bureau, but should unusual circumstances in a case require investigation the matter should be referred to the Deputy Attorney General. It should be noted that under Rule 46 (f) (3) there is no longer any necessity for instituting an individual action to recover on a forfeited appearance bond, but the liability of principals and sureties may be enforced on motion.

The FBI, in investigating debtors for the purpose of ascertaining their financial ability to pay, frequently encounters individuals who profess ignorance of their obligations to the United States. United States Attorneys should communicate with such debtors, inform them of their obligations, and suggest that appropriate arrangements be made for settlement of the debt. All methods and means of collection at the disposal of the United States Attorneys should be exhausted before resort is made to the FBI in such cases.

Waiver of Homestead Exemption

Because of the liberal homestead exemption laws in various states, it is frequently found that the only property on which levies could otherwise be made for payment of such a judgment is exempt under such state homestead laws, which fact may not have been known to

the officers taking the bond. Therefore, except where an obligor consents to waive his exemptions, the officer taking the bond should satisfy himself that the property stated in the bond is sufficient aside from exemptions.

Where judgment debtors have disposed of their property in circumstances indicating that the action was taken to defeat the judgments of the Government, the property may be pursued into the hands of the subsequent owners. (*Pierce* v. *United States*, 255 U. S. 398.)

Fine Judgments

Fine judgments cannot be compromised by the Department as this is the prerogative of the President. (*Constitution of the United States*, Art. II, Sec. 2; 19 Op. A. G. 344.) Petitions for Executive clemency should be addressed to the Pardon Attorney. Fines, or judgments taken as a result of fines, do not draw interest. (*Pierce* v. *United States*, 255 U. S. 398, 405; *United States* v. *Jacob Schmidt Brewing Co.*, 254 Fed. 714.) They abate with the deaths of fine debtors whose estates cannot be charged therewith. (*United States* v. *Mitchell*, 163 Fed. 1014, aff'd 173 Fed. 254; *United States* v. *Jacob Schmidt Brewing Co.*, 254 Fed. 714; *Dyar* v. *United States*, 186 Fed. 614.) They are not dischargeable by bankruptcy. (*Collier on Bankruptcy*, 14th ed., Vol. 1, p. 1596; *Parker* v. *United States*, 153 F. 2d 66; *In re Thomashefsky*, 51 F. 2d 1040.) Fines and judgments based on fines or appearance bonds should direct that the costs be paid, unless a different cause is directed by the court, local custom, rule, or statute.

United States Attorneys should take jurisdiction over the collection of fine judgments entered in OPA and other cases arising under war agencies, and over the handling of appearance bond forfeitures in such cases, whether or not such fine or forfeiture judgments have already been entered or are entered hereafter.

Compromise of Forfeited Appearance Bond

The two grounds upon which the Attorney General is authorized to compromise a judgment upon a forfeited appearance bond are: (1) where there is doubt as to the proof, and (2) where the judgment debtor is unable to pay the judgment in full.

When an offer to compromise an appearance bond is presented to the United States Attorney's office, the United States Attorney should have the proponent prepare and submit to him an affidavit of financial ability, on the printed form furnished by the Department, and which is set out below. Such affidavit, duly sworn to, should be transmitted

DELIVERY OF ARMED FORCES PERSONNEL FOR CIVIL PROSECUTION

The enactment of the Uniform Code of Military Justice (Public Law 506, 81st Congress, c. 169, Section 1; 64 Stat. 108; 50 U. S. C. 551–736) has necessitated the revision of established procedures with reference to the delivery to civil authorities of military personnel charged with the commission of civil offenses. Whereas, under former Article of War 74, it was mandatory that the military authorities, except in times of war and in certain other instances, deliver military offenders to civil authorities, Article 14 of the Uniform Code of Military Justice provides:

(a) Under such regulations as the Secretary of the Department may prescribe, a member of the Armed Forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of the said court-martial sentence.

Pursuant to the authority contained in Article 14, the Department of the Army has issued Army Regulation 600–320, C 1, dated September 18, 1951, and the Department of the Air Force has issued Air Force Regulation 111–11, dated October 11, 1951. Both regulations, drafted after conferences with representatives of the Department of Justice, enunciate the policy of the military to cooperate fully with civil authorities.

Article 14 of the Uniform Code of Military Justice authorizes any commanding officer exercising general court-martial jurisdiction to surrender military personnel under his command to civil authority when charged with civil offenses. When making the request for surrender, the following information should be furnished to the military authorities:

(1) A copy of the indictment, presentment, information or warrant.

(2) Sufficient information to identify the person sought as the person who allegedly committed the offense.

(3) A statement of the maximum sentence which may be imposed upon conviction.

With respect to Army personnel, the Army Regulation provides that if the request for surrender is based only upon a warrant, the commanding officer may initiate an inquiry to determine whether reasonable cause exists for the issuance of the warrant. However, if the warrant is accompanied by a written statement of the United States Attorney that a preliminary official investigation of the offense charged shows that there is reasonable cause to believe that the offense was committed by the person named in the warrant, the

commanding officer may effect the surrender without further inquiry being made.

The Army Regulation provides a form of receipt to be executed by the civil authority when the surrender is made, the form being as follows:

In consideration of the delivery of _____ (Grade and name), _____ (Service number), United States Army, to the civil authorities of the _____ (United States), _____, at _____ (State of _____) (Place of delivery), for trial upon the charge of _____, I hereby agree, pursuant to the authority vested in me as _____ (Official designation), that the commanding officer of _____ (General court-martial jurisdiction) will be informed of the outcome of the trial and that said _____ will be returned to the Army authorities at the aforesaid place of delivery or to such other Army installation as may be designated by the authorities of the Department of the Army, without expense to such Department or to the person delivered, immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, unless the Army authorities shall have indicated that return is not desired.

The arrest will be made, in the usual course of events, either by the United States Marshal or a Special Agent of the FBI. Neither of these officers is in position to comply with the terms of the required agreement and the execution of the form should be made by the United States Attorney. To prevent any delay, the United States Attorney should execute and deliver the required form to the civil arresting officer for transmittal to the military authorities.

With respect to Air Force personnel, the Air Force Regulation provides that the commanding officer of a command exercising general court-martial jurisdiction, or a wing or base commander when authorized by the officer exercising general court-martial jurisdiction, may authorize the delivery to civil authority of a member of the Air Force under his command, when such member is accused of a civil offense. The Regulation, however, distinguishes between offenses punishable by imprisonment for more than one year and those offenses punishable by imprisonment for a lesser period, vesting discretion in the case of the latter offenses in the commanding officer to determine whether the delivery will be made.

The request, regardless of the period of permissible punishment, should be accompanied by the indictment, information or warrant. In instances where the request for surrender is based solely upon a warrant, the United States Attorney should furnish to the Air Force authorities a written statement to the effect that an indictment will be sought and that substantial grounds exist for the belief that an indictment will be returned.

The Air Force, as a condition for delivery of the offending airman, requires an agreement from the civil authorities that the airman will, at the appropriate time, be returned to Air Force control. The agreement is similar to that required in the case of Army personnel.

With respect to Navy and Marine Corps personnel, inasmuch as the commanding officers of naval bases, stations and commands are authorized to deliver enlisted men of the Navy, Marine Corps and Coast Guard (in time of war) into custody of civil authorities (Federal, State, Territorial and local) upon presentation of proper warrant, United States Attorneys should make the necessary arrangements for surrender directly with the local officers.

If disciplinary proceedings are pending against the individual or he is undergoing sentence, prior specific authority from the Navy Department in Washington, D. C., must be obtained by the local commanding officer before the individual may be surrendered to the civil authorities. Also, the local officer may, if unusual circumstances exist, refer the request for surrender to the Navy Department for approval. In such cases, it may be desirable, after applying to the commanding officer, to request the Criminal Division to undertake negotiations with the Navy Department to expedite action upon the request.

Every effort should be made to prosecute civilly military personnel who commit offenses involving violations of federal criminal law, after entrance in the armed forces, except in the following instances:

(1) Where a person is held by the military authorities to answer, or who is awaiting trial, or result of trial, or who is undergoing sentence for a crime or offense which is at least as serious as the civil offense with which he is charged and delivery will materially impede or inconvenience military administration.

(2) Where a person is charged with a trivial or insubstantial civil offense, such as a minor traffic violation, and appropriate punitive action can be taken by the military authorities.

(3) Where a person is charged with an offense involving a violation of a federal criminal statute, but the United States Attorney deems prosecution more appropriate by the military. In those

instances the United States Attorney, before making a final decision, is requested to communicate with the Criminal Division.

Where a civilian (not subject to military law) is implicated in a violation of a federal criminal statute with a member of the armed forces and if it is desired to prosecute the civilian, delivery of the military offender should be requested for civil prosecution.

It is the policy of the Department not to forego or dismiss prosecution solely because offenders are about to become members of the armed forces. The armed forces are not to be regarded as correctional institutions or used as an alternative for punishment for crime; military service is the performance of a patriotic duty. In exceptional cases, *imminent* military service may be considered, together with other factors, in deciding against prosecution if: the offense is trival or insubstantial, involving little injury to the public or the Government; the offender is generally of a good character, has no record or habits of anti-social behavior and does not require rehabilitation through existing criminal institutional methods; and failure to prosecute the particular case will not seriously impair observance of the law in question or respect for law generally. Any effect upon a decision not to prosecute because of the fact of imminent military service should be vitiated if the offender is not inducted within a reasonable period.

No proceedings in any of the categories mentioned below should be instituted without advance authorization by the Department:

(a) Habeas corpus to secure the release of members of the armed forces held by state authorities for trial on criminal charges.

(b) Violations of criminal statutes where such violations constituted interference with effective prosecution of the war effort, such as frauds in connection with war material contracts, the making of false representations to Government agencies concerned with the war, etc.

United States Attorneys are to extend all possible courtesies and assistance to service courts and their officers in securing the issuance of process to compel the attendance of witnesses, in accordance with the provisions of 22 U. S. C. 703 which provides for the arrest of members of the armed forces of the United Kingdom and Canada within the United States and authorizes United States district courts, upon application, to compel attendance of witnesses before service courts.

HABEAS CORPUS

An habeas corpus proceeding making a collateral attack upon a sentence may not be entertained by the court in the district where

a federal prisoner is serving his sentence unless the court which imposed the sentence has denied his motion under 28 U. S. C. 2255 to vacate, set aside, or correct the sentence. That statute excepts cases where the motion would be inadequate or ineffective to test the legality of detention. Illustrative of the exception would be an attack upon the computation of sentence as made by prison authorities.

When an application for habeas corpus or a motion to vacate sentence under 28 U. S. C. 2255 is filed in a case which has been investigated by the FBI, the United States Attorney should notify the Special Agent in charge of the FBI field office, covering his particular district, since many such applications and motions relate to allegations of mistreatment by, or misconduct on the part of, agents of the Bureau. Where extra copies of the habeas corpus petition or the motion to vacate are not available, or facilities for making copies do not exist, notification by telephone or brief memorandum will suffice.

Motion To Vacate Sentence Under Section 2255

Among the principal procedural questions settled by the courts under 28 U. S. C. 2255 are the following:

(a) This statute confers no broader right of attack upon a judgment and sentence than was possible before its passage by an habeas corpus proceeding. *Barnes* v. *Hunter, Warden*, 188 F. 2d 86, 88 (C. A. 10).

(b) This section may not be invoked for relief from errors occurring during trial. A motion under this section cannot be substituted for an appeal from conviction. *Parker* v. *United States*, 184 F. 2d 488, 490 (C. A. 4).

(c) A motion under this section may not be entertained unless the prisoner is in actual custody. *Crow* v. *United States*, 186 F. 2d 704, 706 (C. A. 9); *United States* v. *Bradford*, 194 F. 2d 197, 200 (C. A. 2).

(d) Production of a prisoner under this section before the trial court depends upon the issues raised. If the motion raises substantial issues of facts within the prisoner's knowledge, the court should secure his appearance at a hearing by causing issuance of a writ of habeas corpus ad testificandum. *United States* v. *Herman Hayman*, 342 U. S. 205, 223.

INTERNATIONAL EXTRADITION

International extradition proceedings are governed by treaties with foreign countries. Under most of these treaties there is no

obligation on the part of the Attorney General or the United States Attorneys to represent a foreign government seeking the extradition of a fugitive found in the United States. Although informal advice and assistance may be given to the representative of a foreign government, when requested, the latter should retain private counsel, if counsel is necessary. United States Attorneys should not formally participate in requests for extradition by foreign governments unless specifically authorized to do so by the Attorney General.

Assistance to Demanding Government

Where a treaty such as that with Mexico provides that the legal officers of the United States shall assist the officers of the demanding government before the magistrate in securing the arrest and extradition of a fugitive, the request for extradition generally is forwarded to this Department by the Secretary of State. If the request and all documents submitted appear to be in order the United States Attorney, in whose district the fugitive is said to be taking refuge, will be directed by the Department to apply to the Extradition Commissioner, district court or other appropriate officer for a warrant for the arrest of the fugitive and have him brought before said officer for a hearing on the extradition request pursuant to 18 U. S. C. 3184. In some instances, the representative of the foreign government seeking the extradition of a fugitive may be advised to contact the United States Attorney, who will be instructed by the Department to assist said representative by every legal means within his power, if the treaty so provides.

Complaint for Demanding Government

In cases where the United States Attorney has been authorized to file a complaint for the representative of the demanding government, the following form has been found to be adaptable, but the form and language should be strengthened wherever possible:

In the _____ District of _____.

In the matter of the extradition of _____ a fugitive from the justice of _____.

The honorable The Judge of the _____.

Your complainant, the attorney of the United States for the _____ District of _____, under oath, deposes and says:

That, in the above matter, he acts for and in behalf of the Government of _____;

That he is informed, through diplomatic channels, that the said _____ is duly and legally charged with having committed the crime of _____ in the said _____;

That the said _____ has fled outside the boundaries of the said _____; that warrant for the arrest of the said _____ cannot be served in said _____; and that the said _____ has sought an asylum within the jurisdiction of the United States and may be found in the State of _____ and the city of _____ at _____;

That the said crime of _____, which the said _____ is charged to have committed in said foreign country is among the offenses enumerated in the treaty existing between the United States and the said _____, proclaimed _____;

That said crime of _____ is more particularly referred to in articles _____, sec. _____ of said treaty as follows:

That, through the diplomatic channel, your complainant is informed and believes that requisition for the herein-named fugitive, _____, is about to be made, accompanied by the formal papers upon which demand for extradition is founded;

Whereupon, your petitioner, acting under the authority and in the behalf stated, prays the consideration of this petition and that a warrant may issue for the arrest of the said _____ charged as aforesaid, that he may be brought before a commissioner or magistrate qualified to act in extradition matters, to the end that evidence of criminality may be heard, and, if on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of said treaty, said magistrate or commissioner shall certify the same to the Secretary of State, at Washington, D. C., in order that warrant may issue upon the requisition of the proper authority of said foreign government for the surrender of the said _____ according to the stipulations of said treaty, and for such other action as the said commissioner or magistrate is required under the provisions of said treaty and the laws of the United States to take.

Dated at _____
_____ District } ss:
of _____

Before me _____ for the _____ District of _____ personally appeared

the complainant, _____, the attorney of the United States for the _____, District of_____ on the _____, 19___, who being duly sworn, says that the foregoing information is true, as he verily believes.

The United States Attorney will represent the foreign government at the hearing. If the Extradition Commissioner or other magistrate before whom the matter is brought finds from the documents and other evidence submitted by the foreign government that there is probable cause for the extradition, he will, unless the fugitive in the meantime sues out a writ of habeas corpus, which he may do, report his findings to the Secretary of State, who will issue a warrant for the surrender of the accused to the demanding country.

Extradition of Fugitive From Foreign Land

If this Government desires the extradition of a fugitive who has fled to a foreign land, this Department makes a request upon the State Department which takes the matter up with the foreign government in which the criminal is found. All requests for extradition must be made through the Attorney General.

Essentials for Extradition Proceedings

Before making application to the Attorney General, for extradition proceedings, the United States Attorney should assure himself of the existence of the following essentials:

(a) The warrant of arrest issued in this country cannot be served owing to the flight of the accused to a known locality in a foreign country.

(b) A treaty of extradition is in existence between the United States and the country of asylum.

(c) The offense committed in this country is (1) among those enumerated in such foreign treaty, and (2) is made criminal by the laws of both countries.

(d) Sufficient evidence in the possession of the United States Attorney for presentation to the surrendering government to make out a strong case—such a case as would justify the committal of the accused under the laws of this country.

The extradition treaties existing between the United States and foreign countries may be found printed in the several volumes of the Statutes at Large or in Malloy's "Treaties, Conventions, International Protocols, etc." but if the United States Attorney is unable to ascer-

tain that a treaty exists between the United States and the country of asylum or that the offense committed in the United States is extraditable, he should apply to the Attorney General for such information prior to the preparation of the necessary papers.

Arrest and Detention of Fugitive; Procedure

Pending the preparation of the formal papers, it is sometimes necessary to secure the arrest and provisional detention of the accused, and, in such a case, if the further flight of the fugitive is feared, application should be made to the Attorney General, by telegram or letter, for his arrest and detention. Such application should contain the following information:

(a) The name in full of the accused and his assumed name or names, if any;

(b) A physical description of the accused;

(c) The place and address in the foreign country where the accused can be found;

(d) The date of the indictment, if an indictment has been filed;

(e) The specific offense or offenses charged;

(f) The date of the commission of the offense and the place where committed; and

(g) Whether a warrant of arrest has been issued and the reason for nonservice in this country.

It should be borne in mind that the request for provisional detention does not take the place of the application for extradition and the formal papers hereinafter mentioned.

In the event the fugitive is arrested and detained in the foreign country, the United States Attorney requesting the arrest will be promptly advised. After making a request for the provisional arrest of a fugitive, the application for extradition and the other necessary papers should be promptly prepared and forwarded in duplicate to the Attorney General.

The preparation and submission of the formal papers should be expedited as much as possible as failure to do so may result in the escape or release of the fugitive.

In treaties with some foreign countries, the period of detention is limited to 40 days after arrest. In other jurisdictions, however, the practice is generally observed, after the arrest of the fugitive, to continue the hearing for a week, and, upon motion, to grant a further continuance. In some instances these continuances have been limited to two or three weeks.

The essentials stated above having been found to exist, a letter similar to the following should be sent, in triplicate, to the Attorney General in transmitting the formal papers:

SIR: I transmit herewith a copy, in duplicate, duly authenticated, of the indictment, warrant of arrest with the Marshal's return thereon, and the evidence upon which the charges in the indictment are based, in the case of the *United States* v. _____ indicted _____, 19__, in the United States District Court for this District, charged with having committed the offense of _____ in violation of _____.

I hereby request that demand be made upon the Government of _____ _____ to which the defendant has fled, for the surrender of the said _____, to be brought back to this District for trial under said indictment.

The name of the accused is _____ (include any assumed name), his physical description is as follows: _____ _____

and he may be found at _____.

The specific offense charged against him is as follows: (If the offense charged is embezzlement, larceny, or the like, the actual amount involved should be stated, indicating from whom taken, and whether it is of a public or private nature, or in case of injury, the name of the person injured. The date and place should also be given in every case.)

I suggest _____ as the person to be named in the President's warrant as the agent of the United States to receive and convey the fugitive to the place of trial in this District.

This request for the surrender of the fugitive is made solely for the purpose expressed in this application, and not to enforce the collection of a debt or to avoid the penalty of a bail bond, or for any private purpose, and, if the application is granted, the criminal proceedings shall not be used for any other purpose.

Respectfully,

_____

The agent selected to receive the fugitive from the hands of the foreign authority and convey him to this country should be able to identify the accused in the event identity is not disclosed or is denied at the hearing abroad.

As stated, two sets of the following papers, one set to be retained in the office of the Secretary of State and the other to go abroad, should accompany the application for extradition:

(a) The indictment.

(b) The warrant of arrest, with the Marshal's return indorsed thereon.

(c) The evidence upon which the charges made in the indictment are based.

All such papers should have formal, legal captions.

The indictment should be a true copy of that paper as filed in the office of the clerk of the United States district court. He should attach to such copy a certificate to the effect that it is a true copy of the indictment filed in the case of the *United States* v. _____ _____, No. _____, pending in the United States District Court for the District of _____. To this the clerk should sign his name and official title, and affix the seal of the court.

The warrant of arrest, which in the case of a fugitive has been returned into court with the Marshal's indorsement of nonservice, is a part of the records of the court of which a copy should be prepared by the clerk and certified in the manner indicated for the copy of the indictment.

If the evidence was reduced to writing at the time it was given to the grand jury, it should be properly authenticated under the seal of the court and transmitted with the other papers to the Attorney General, but if the evidence was not reduced to writing, original affidavits of a sufficient number of the witnesses who appeared before the grand jury to make a strong case, should be secured.

The affidavits should be prepared with formal captions, showing the title of the case, the docket number and the court in which it is pending. They may be executed before any person lawfully authorized to administer oaths and to execute such papers, but preferably, in cases involving violations of a federal statute, before a clerk or deputy clerk of a United States court, or a United States Commissioner.

The officer before whom the affidavits or depositions are executed should affix his official signature and seal to each of them.

After the clerk, or his deputy, has certified any paper, or the United States Commissioner has affixed his jurat to any paper executed before him, official identity should be established by the usual certificate of a judge of a United States court under the seal of the court.

If it would cause undue delay or be impracticable for other reasons to secure the services of a Federal officer, the affidavits may be executed before a duly authorized State officer, whose official identity should be established under seal in accordance with the State law.

Extradition proceedings may be begun before the defendant has been indicted.

In such cases a copy of the following papers, in duplicate, and duly authenticated, should accompany the application for extradition, signed by the United States Attorney:

(a) Complaint properly signed and sworn to, made by an officer or person having knowledge of the facts and executed before a duly authorized officer, preferably a United States judge or a United States Commissioner, or a clerk or deputy clerk of a United States court.

(b) Warrant of arrest, with the Marshal's return indorsed thereon.

(c) Original affidavits reciting facts to support the charges made in the complaint. The suggestions heretofore made as to affidavits for use in cases where the fugitive has been indicted apply to cases where he is merely charged with having committed an offense and where an indictment has not yet been returned.

When the defendant, after trial and conviction in this country, has fled to a foreign jurisdiction, the papers necessary to secure his return should consist of a copy of so much of the record of the court as will show:

(a) That conviction was obtained after a regular trial.
(b) The date of such conviction.
(c) The offense of which the fugitive was convicted.
(d) The specific law violated.
(e) The sentence, if imposed, and the date of such imposition.

If, at the time of his flight, the defendant was at large on bail, the copy of the court proceedings should show the proceedings involving the forfeiture of his bond and the issuance, if any, of the process of court to effect his arrest.

The record of the court should be prepared in duplicate with proper formal captions and should be authenticated officially by the clerk of the court under its seal; the latter's official identity being established by the certificate of the United States judge under the seal of the court.

The actual and necessary expenses incurred and paid by the agent in the execution of the President's warrant in cases of fugitives from the justice of the United States should be stated in an itemized account, supported by proper vouchers, and sworn to. The account should be forwarded direct to the Department of State for audit and payment.

JUVENILE DELINQUENTS

Procedure

The procedure authorized by the Federal Juvenile Deliquency Act (18 U. S. C. 5031–5037) shall be applied, without prior authority

from the Department, in the cases of all persons who have not reached their eighteenth birthday when they violate a law (or laws) of the United States not punishable by death or life imprisonment, excepting only those:

(a) Who refuse consent in writing;

(b) Whose cases can properly be diverted to state authorities or to the District of Columbia under 18 U. S. C. 5001;

(c) Whose cases, in the opinion of the United States Attorney, should be handled under regular criminal procedure in the public interest. In any case falling within this exception the United States Attorney shall submit promptly to the Department a statement of the facts and reasons supporting his opinion. He shall then await instructions as to whether he is authorized to invoke regular criminal procedure.

Diversion of Juveniles

Consistent with a proper regard for the maintenance of Federal justice, consideration should be given to diversion of Federal juvenile violators to State authorities in their home communities for appropriate disposition under State law. Such diversion is vested in the discretion of the United States Attorney under 18 U. S. C. 5001. While diversion may be invoked in any case where it best serves the interest of the United States and the juvenile violator, it should receive special attention as to violators of tender years.

Jurisdiction

The date of the violation is regarded as determinative of jurisdiction. Instructions issued by the Attorney General stated that "the procedure authorized by this Act shall be applied in the case of all persons who have not reached their eighteenth birthday at the time of the offense." That interpretation now has judicial approval. In *United States* v. *Fotto*, 103 F. Supp. 430, the court held that the language of the Act contemplates procedure thereunder as to any person under eighteen when violating a law even though no proceeding is begun before the eighteenth birthday, unless the Attorney General directs that adult procedure be followed.

Method of Procedure

No set form is required either for the "information" filed against the juvenile, or for the written "consent" of the juvenile as a prerequisite to procedure under the Act. The United States Attorney should assure himself that the juvenile understands his rights and

the consequences of such consent, if given. The consent shall be prepared by the United States Attorney and must be signed in the presence of the judge after the latter has fully apprised the juvenile of his rights and the consequences of his consent, as required by the statute (18 U. S. C. 5033). The consent should contain a statement that the court has informed the juvenile as indicated.

Sentence: Probation: Fine

The language of the statute (Section 5034) authorizes a court, upon a finding of juvenile deliquency, to place the juvenile on probation or commit the delinquent to the custody of the Attorney General for a period not exceeding minority. The Department is of the view that this specific authorization excludes power to impose a fine.

MENTAL DEFECTIVES

18 U. S. C. 4244–4248 formalize the procedure for (1) the examination and disposition of persons believed to be insane or mentally incompetent to stand trial, (2) the disposition of convicted persons believed to have been mentally incompetent at the time of trial, and (3) the detention beyond the expiration of sentence of persons who are insane and who will probably endanger the safety of officers, property, or other interests of the United States.

Under Section 4244 it is the duty of the United States Attorney to file a motion for judicial determination of the mental competency of an arrested person charged with an offense against Federal law if there is reasonable cause for belief that such person is mentally incapable of understanding the proceedings against him or of assisting in his own defense. Thereupon the court must cause examination of the accused by a psychiatrist and for that purpose may order commitment to any hospital or other facility. If the psychiatrist's report to the court indicates mental incompetency a hearing must follow, upon due notice and the court must make a finding.

If the court finds, after hearing, that the accused person is or was mentally incompetent, it may commit such person pursuant to Section 4246 to the custody of the Attorney General until mental competency to stand trial is restored or the charges are dismissed. It is considered that the first sentence of Section 4246, authorizing such commitment, applies only to those whose mental incompetency is found by the court to be temporary. Therefore the court should make a finding in each case whether the mental disability is temporary or permanent. That is the holding of an appellate court in *Wells, by Gillig* v. *The Attorney General*, 201 F. 2d 556 (C. A. 10). In conformity with its

conclusion, that court held further that the commitment authorized by Section 4246 cannot be made if the court finds that the mental incompetency is of a permanent nature. It premised that conclusion on the doctrine that the care of the permanently insane is the duty of the respective States.

The legislative history of these statutes and the committee hearings had thereon are persuasive of the view that when an accused person is found to be permanently insane, or that his mental incapacity to understand the proceedings against him is of a permanent nature, the provisions of Section 4247 should be invoked. The second sentence of Section 4246 authorizes the court, after a hearing pursuant to Section 4244 or 4245, to determine whether the conditions specified in Section 4247 exist and, if so, to make commitment in accordance with Section 4248. Under Section 4247, if the court finds that the accused is mentally incompetent, and that if released he would probably endanger the safety of the officers, property, or other interests of the United States, and that suitable arrangements for care and custody (assumption of responsibility by the State) are not otherwise available, it may order commitment under Section 4248 until one or the other of the conditions specified in Section 4247 no longer exists.

Consonant with the foregoing the Department's position is that if the mental disability is temporary the accused should be committed to the custody of the Attorney General until he is able to stand trial; if the condition is adjudged to be permanent and the prisoner dangerous, efforts should be made to transfer him to state custody, but if no State will accept him resort should then be had to the hearing in accordance with Section 4247. This course of procedure finds support in the sections discussed and will safeguard the general public against release of dangerous persons when state custody cannot be accomplished.

In any effort to interest state authorities in assuming responsibility for the care and custody of an accused as contemplated by Sections 4247 and 4248, the United States Probation Officer may be of assistance. Completion of arangements with the state in such a case should be speeded because it is contrary to the policy of the Department to retain mental incompetents in jail or other facilities any longer than necesary. Where such a transfer is effected the criminal charge against the accused should not be dismissed without the Department's approval.

OFFERS IN COMPROMISE

Authority to Compromise

Compromise offers may be considered only when authorized by statute. Some of the statutes may include a provision authorizing the Attorney General to act. However, such authority as to others is lodged in the Attorney General by reason of the reference of a case to the Department (United States Attorney) for prosecution or suit. See Sections 3 and 5 of Executive Order 6166 (5 U. S. C. 124–132).

The majority of offers in compromise within the assignment of the Criminal Division come to the Department in customs, internal revenue and related liquor law, narcotic law and Contraband Transportation Act cases. However, others occasionally may be submitted in firearms, gambling tax, immigration, civil aeronautics, slot machine and other types of cases.

Offers in compromise may in many instances, such as those under the internal revenue and related liquor laws, the customs laws and the Contraband Transportation Act, be considered and acted upon by the appropriate officials of the Treasury Department, prior to reference of a case to the Department for prosecution or suit. Thereafter the jurisdiction to act on offers is in the Department of Justice.

Types of Liability Subject to Compromise

The Assistant Attorney General, Criminal Division, by delegation from the Attorney General has jurisdiction, within statutory and the above limitations, of offers in compromise submitted in respect to the following types of liabilities in cases referred to the Department for prosecution or suit:

(1) Criminal, forfeiture, civil penalty and tax liability in cases arising under the internal revenue laws respecting liquor, narcotics, marihuana, firearms, tobacco, gambling occupation and device, and other similar regulatory tax provisions (not including income, excess profits, estate, gift, wagering, manufacturers' excise or social security tax cases or those arising under the tax provisions of the District of Columbia Unemployment Compensation Act, the Bankhead Cotton Control Act, the Bituminous Coal Act, the Carriers Taxing Act, and other nonregulatory excise tax laws and the Agriculture Adjustment Act and acts amendatory thereto, of which the Tax Division has jurisdiction) from the time the case is referred to the Department, or United States Attorney, for prosecution or suit and while the criminal or forfeiture phases are pending. See

26 U. S. C. 3761. Thereafter any undisposed of tax phase, including tax penalties, is within the jurisdiction of the Tax Division.

(2) Civil penalty, forfeiture and duty liability under the customs laws, in the same circumstances except that when the criminal, penalty or forfeiture phases are no longer pending, such jurisdiction is in the Civil Division. See 19 U. S. C. 1617, as affected by Executive Order 6166 (5 U. S. C. 124–132).

(3) Forfeiture liability under the Contraband Transportation Act (49 U. S. C. 784, 19 U. S. C. 1617 and Executive Order 6166), the Slot Machine Act (18 U. S. C. 1177, 19 U. S. C. 1617, and Executive Order 6166), and laws to protect the "Dry States" (18 U. S. C. 3615 and 26 U. S. C. 3761).

(4) Federal Alcohol Administration Act (27 U. S. C. 207 and Reorganization Plan No. IV—See 5 U. S. C. 133t).

(5) Other types of cases within the assignment of the Criminal Division that arise occasionally.

Compromise of Criminal Liability; Civil Liability

There is no statutory authority to compromise criminal liability under the customs laws, the Slot Machine Act, or the laws to protect the "Dry States." Neither criminal nor forfeiture liability under the Indian liquor laws may be compromised. It is the long established policy of the Department not to compromise criminal liability incurred under the narcotic laws. Compromises of criminal liability in gambling tax cases are not favored. No offer covering any civil liability will be accepted, if it is concluded that such action would jeopardize the success of any contemplated or pending criminal prosecution. The views of the United States Attorney in that respect will be given great weight.

In internal revenue liquor cases the general policy is not to compromise wilful criminal liability involving any appreciable tax loss, especially if the evidence reasonably would sustain the charge, or the offenders are notorious liquor law violators, "racketeers" or members of so-called "criminal syndicates". Offers covering criminal liabilities of illicit distillers and traffickers in considerable quantities of nontaxpaid liquor, are not entertained except in very rare and unusual circumstances. Also, generally the criminal liability of wholesale liquor dealers and others responsible for the shipment or introduction of large quantities of liquor into "dry" areas should not be compromised. However, where the violation is not flagrant or is technical,

or the evidence is weak, or the other surrounding circumstances do not justify prosecution, compromises of criminal liability may be warranted. It should be borne in mind that the various laws relative to liquor are complicated and often are violated unwittingly or through carelessness. Some involve trivial or no tax loss, but do warrant some punishment short of criminal prosecution. If all reported cases were prosecuted the court dockets would be crowded and the judges probably would object to their courts being turned into "police courts". This in turn may adversely affect the successful prosecution of the really important cases.

Liquor Cases

There may be liquor cases where forfeiture, tax and criminal liability are made the subject of an offer. From the criminal angle the above observations are pertinent. Respecting the forfeiture phase, principally the question is whether the amount offered, compared with the value of the property, taking into consideration the sufficiency of the evidence and probable expenses of prosecution, including depreciation and storage charges, would justify acceptance. The congestion of the court docket which would unreasonably delay consummation of forfeiture may be a factor. As to the tax liability, the sufficiency of the evidence, and collectibility are the principal considerations. Usually offers are accepted subject to payment of any tax due. Acceptance of offers in compromise from notorious criminals or "racketeers" is not favored.

Forfeiture Compromises

Although forfeitures of seized property may be the subject of compromise, no compromise of the forfeiture of contraband articles, such as illicit spirits, stills, or narcotics, will be accepted. However, the liability to forfeiture of tax-paid liquor, such as that seized under the floor stocks tax or other internal revenue laws may be compromised. Such liquor usually is of little value to the Government in view of 26 U. S. C. 2805, which prohibits the sale of forfeited liquor.

Procedure

If the following outlined procedure is adhered to much unnecessary delay in the Department's final action on offers in compromise will be avoided. While expeditious action is highly desirable in all cases, it is of particular importance in forfeiture cases in which storage charges usually are accumulating and the property subject of the offer is depreciating in value.

Offers in compromise should be submitted in writing by the proponent or his authorized representative to the Department for final action through the office of the United States Attorney for the district in which the liability arose. Offers may be tendered either before or after institution of action. A certified check, cashier's check or money order payable to the Treasurer of the United States, in the full amount of the offer, should accompany the offer when transmitted to the Department. The written offer should set forth the exact terms thereof, including an agreement that in the event of acceptance the proponent will pay the costs and expenses (storage charges), especially in forfeiture cases. Usually offers are accepted subject to the payment by the proponent of court costs and out of pocket costs to the Government, including any storage charges. Often the latter expenses are to be paid by the proponent to the person to whom the Government or any of its agencies has obligated itself.

A copy of the investigating agency's report or reports respecting the alleged liability should accompany the offer unless the United States Attorney has reason to believe the Department already has received a copy. If the United States Attorney has no copy available for transmission, a detailed statement of the essential facts upon which the Government's case is based should be forwarded.

The Department should be advised of the status of any related court proceedings, and of the probable effect the acceptance or rejection of such offer would have on same.

If practicable in important cases the United States Attorney should obtain a statement of the views of the field office of the investigating agency. This, together with his recommendation giving detailed supporting reasons as to the merits of accepting or rejecting the offer, should be transmitted to the Department. Upon receipt of an offer in the Department, except in minor or routine cases, the views and comments thereon of the headquarters office of the investigating agency is sought. This data is essential so that a memorandum brief showing the reason for the action taken by the Department may be prepared. By delegation of authority the Assistant Attorney General, Criminal Division, may take final action on such offers, except that if the claim of the Government made the subject of an offer exceeds $100,000, the approval of the Attorney General is required.

The United States Attorney is informed by letter or telegram of the acceptance or rejection of the offer, giving the basis of such action if it is not in accord with the recommendation of the United States Attorney. The United States Attorney should promptly advise the proponent or his counsel in writing of such action. If the offer is

accepted and covers criminal liability, included in an indictment or criminal information, the United States Attorney may seek dismissal as to the proponent. If the accepted offer covers forfeiture liability, he may cause dismissal of the libel and authorize the release of the seized property or cause any bond filed in lieu thereof to be canceled. If the accepted offer covers civil penalties the suit to collect them may be dismissed as to the proponent. However, the indictment or information, suit or libel should not be dismissed or the property released if the terms of the offer and acceptance have not been fully complied with or if the United States Attorney is otherwise directed by the Department. The compromise medium should not be used to deprive any bona fide claimant of seized property to his day in court if he desires a hearing on the merits of the forfeiture. If the offer is rejected the United States Attorney should proceed as if no offer had been submitted, unless otherwise directed by the Department.

Any wholly unsubstantial offer, or one submitted for the apparent purpose of delaying prosecution or suit, may be rejected summarily by the United States Attorney. Thereupon the United States Attorney should make refund and proceed with the case. However, when any bona fide offer is tendered, the United States Attorney may, if the interests of the United States will not be jeopardized thereby, withhold further proceedings pending submission to and consideration of the offer by the Department.

PAROLE

Eligibility

As a result of Public Law 98, 82d Congress, approved July 31, 1951, which amended 18 U. S. C. 4202, all Federal prisoners, other than juvenile offenders or committed youth offenders, serving a definite term or terms of over 180 days may be released on parole after serving one-third of their term or terms. It is immaterial whether such minimum term of over 180 days, or any longer term, is composed of several sentences of less than 180 days ordered to run consecutively. Neither is any distinction made as to terms of imprisonment comprising a sentence imposed under a misdemeanor conviction and one imposed under a felony conviction. If ordered to be served consecutively they are aggregated to determine the date of parole eligibility. The statute also provides that a prisoner sentenced to a term of more than 45 years shall become eligible for consideration for parole after serving 15 years of his sentence.

Reports

To enable the United States Board of Parole to make appropriate determinations, all United States Attorneys should cooperate in the completion and forwarding of Form 792 in triplicate (Appendix, Form 10) on such cases committed to Federal institutions. On cases committed to non-Federal institutions, the Board will request the form only when application is made for parole. As this report will contain the only official information regarding the nature of the offense committed by a parole applicant in this category, the importance of the report to the Board will be readily appreciated.

The United States Board of Parole frequently considers a case several months prior to the date of actual eligibility for parole. Hence the importance of forwarding the parole report, in full and complete form, promptly after conviction, to the institution where the prisoner is confined.

Warrant for Arrest of Parole Violator

When a person during the period of supervision on parole or conditional release, which extends to the expiration of the maximum term of sentence in either case, is convicted and committed under sentence to a federal penal institution, the Board of Parole issues its warrant for the subject's arrest as a violator of parole. Such warrant is placed on file with the institutional authorities for execution when the subject becomes eligible for release under the latest sentence. A direction in the latest sentence that it shall be served concurrently with time owing as a parole violator on the previous sentence is ineffective because the Board of Parole is not required to order execution of such warrant prior to the date indicated. See *Zerbst, Warden* v. *Kidwell*, 304 U. S. 359, 362; *Tippitt* v. *Wood*, 140 F. 2d 689 (C. A. D. C.).

PRISONERS

Prosecution of Prisoners Serving Sentences

United States Attorneys should not postpone the prosecution of defendants on outstanding indictments merely because they are presently serving sentences, but should take the initiative in bringing such cases to trial. Prisoners in custody under sentence are not deprived of the constitutional right to a speedy and public trial, and unreasonable delay often results in serious prejudice to the Government as well as the accused. Detainers subject a prisoner to certain

institutional restrictions and prevent him from being considered for parole. If prosecution on the outstanding indictment is delayed until after a defendant is eligible for conditional release and a consecutive sentence is then imposed, he loses the benefit of aggregated good time under 18 U. S. C. 4161 which he would receive if he were tried and convicted while still in prison under the first sentence.

In Federal Institutions

Where a defendant is incarcerated under sentence in a Federal penal institution a writ of *habeas corpus ad prosequendum* should be obtained for his production at the trial. Such a writ is addressed to the warden having actual custody of the prisoner and to the United States Marshal of the district where the trial will take place. The Marshal to whom it is addressed will execute the warrant unless contrary procedure is authorized by the Department.

In State Institutions

If the defendant is incarcerated in a state institution the consent of State authorities should be sought to have him produced under a similar writ solely for the purpose of Federal trial, with the understanding that he will be returned immediately upon its conclusion. Should State authorities care to produce the prisoner at the place of trial and return him under State guard the writ should be addressed

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to the warden or superintendent of the State institution; if not, then to such warden or superintendent and to the United States Marshal of the district where the trial will take place.

Dismissal of Pending Indictment

In any case where the United States Attorney concludes that because of the expense of producing a defendant for trial, or because the defendant has already been adequately punished, or for similar reasons, further prosecution is not warranted or worth while, immediate action should be taken to dismiss the pending indictment in accordance with established procedures.

Notice to FBI re Granting Leave

Since many State penal institutions grant so-called furloughs or leaves of absence to prisoners against whom Federal detainers have been filed, United States Attorneys, in requesting local prison authorities to detain prisoners against whom federal charges are pending, should include specific instructions that the FBI be advised before any leave is granted to such prisoners. In this way, the Bureau will not only be apprised of the fact that a prisoner of interest to it and against whom a federal detainer has been filed is on vacation, but it will be in a position to take such steps as may be necessary in connection with the proposed leave.

Habeas Corpus: Procedure

A Federal prisoner serving a sentence may be produced to testify or to be prosecuted in another district only upon a writ of habeas corpus in proper form. Writs of *habeas corpus ad testificandum* or *ad prosequendum* must be directed to the Marshal of the judicial district out of which such writ issues and to the warden or superintendent having the prisoner in custody. The warden or superintendent upon being served with such writ shall surrender the prisoner into the custody of the Marshal, at such institution, who shall thereupon become responsible for the prisoner.

The direction in the writ of *habeas corpus ad prosequendum* or *ad testificandum* that the prisoner shall be returned to the custody of the warden or superintendent upon the conclusion of his testimony or trial shall be strictly observed, unless contrary directions are received from the Director, Bureau of Prisons while the prisoner is in the custody of the Marshal. Writs *ad testificandum* must not be used to produce Federal prisoners for examination by United States Attorneys or investigative agencies.

Alcatraz Prisoners

Prisoners in Alcatraz Penitentiary may not be produced in response to writs of habeas corpus *ad testificandum* or *ad prosequendum* unless the matter has first been submitted to the Director, Bureau of Prisons. The necessity for such production must be clearly established.

Civil Cases

Except in the most meritorious cases United States Attorneys should oppose the granting of writs of *habeas corpus ad testificandum* in civil cases. In most instances the prisoner's deposition should suffice, and such deposition may be secured upon appropriate court order and at the convenience of the warden of the institution where the prisoner is in custody.

Request By Local Prosecutor

Whenever a State prosecutor or other local officer inquires about the procedure required to secure appearance of a Federal prisoner in State court, either for prosecution or as a witness in a criminal case, the inquirer should be advised to submit the facts in writing to the Director, Bureau of Prisons, Department of Justice, Washington, D. C.

PROBATION

Authorization

18 U. S. C. 3651 authorizes a trial court, after conviction for any offense not punishable by death or life imprisonment, to suspend imposition of sentence, or impose sentence and suspend its execution, and place the defendant on probation for a period not exceeding five (5) years. Probation is authorized whether the offense is punishable by fine or imprisonment, or both. Where the statute violated makes both fine and imprisonment mandatory, a fine may be imposed and execution of sentence suspended and probation granted.

Corporations

Some trial courts have imposed fines upon corporations found guilty of violating law, suspended execution thereof in whole or in part, and placed such corporations on probation. Such practice has ample support by virtue of the fact that Section 3651 as a remedial statute is to be liberally construed and its language places convicted corporations within its purview.

Effective Date

Probation may be granted at any time before service of sentence is begun but not thereafter. *United States* v. *Murray*, 275 U. S. 347. This rule has been held also applicable, after entry upon imprisonment under multiple sentences running consecutively, as to any such sentence which has not begun to run by lapse of time. *Kirk et al. v. United States*, 185 F. 2d 185 (C. A. 9).

Apportionment of Sentence; Appeal

A single or general sentence may not be apportioned between imprisonment and probation. *White, Warden* v. *Burke*, 43 F. 2d 329 (C. A. 10). An appeal may be taken from a judgment of conviction which is suspended as to execution, *Berman* v. *United States*, 302 U. S. 211, or as to its imposition, *Korematsu* v. *United States*, 319 U. S. 432.

Jurisdiction; Transfer and Limitation of Jurisdiction

Among the several provisions of Section 3653 there are two of real importance. One authorizes the transfer of jurisdiction over a probationer from the district which granted probation to another district through mutual consent of the respective courts, a process repeatable from district to district without limit. When that occurs the transferee court is substituted for the transferor court for all purposes except a change in the probation period. The other provision limits jurisdiction over the probationer to the five (5) year period specified by Section 3651, with the further proviso that jurisdiction terminates upon expiration of any lesser probation period fixed by the court unless a violation occurs during such fixed period. For example, if a defendant is placed on probation for three (3) years, the court may issue a warrant during that period, or within the five (5) year period specified by 3651 for a violation occurring during the three (3) year period. In the absence of a violation of probation during the three (3) year period the court's jurisdiction is terminated when that period expires.

REMISSIONS OF FORFEITURE

Petitions seeking remission or mitigation of forfeitures and civil penalties may be considered only when authorized by statute. Those coming within the jurisdiction of the Criminal Division relate almost entirely to seizures of property under the internal revenue liquor and related liquor laws and the Contraband Transportation Act (nar-

cotics, firearms and counterfeiting), and seizures of property and penalties under the Customs laws. However, occasionally petitions may be submitted in Slot Machine Act, coin operating device, civil aircraft and other cases coming within the assignment of the Criminal Division.

It should be borne in mind that the courts have exclusive jurisdiction to remit or mitigate forfeitures of vehicles seized under the Indian liquor laws (18 U. S. C. 3619), and that after a decree of forfeiture has been entered against a vehicle seized under the internal revenue liquor laws, the court has exclusive jurisdiction to remit or mitigate the forfeiture (18 U. S. C. 3617). However, the petitioner before the court in these cases has the burden of establishing compliance with the prerequisites to allowance set forth in the statute. If remission is granted by the court, since that is an adverse judgment to the Government, the question of whether or not an appeal should be noted must be submitted to the Solicitor General. Hence the necessary papers for that purpose should be transmitted to the Department promptly and steps should be taken to preserve the res pending decision by the Solicitor General respecting the taking of appeal.

The provisions of the customs laws (19 U. S. C. 1613 and 1618) respecting remission or mitigation of forfeitures and penalties by the Executive branch of the Government, have been made applicable also to such liabilities in respect to the internal revenue laws, the Contraband Transportation Act, the Slot Machine Act and the laws to protect the "Dry States." See 26 U. S. C. 3726; 27 U. S. C. 224; 49 U. S. C. 784; 18 U. S. C. 3615, and 15 U. S. C. 1177. Section 1613 authorizes granting of relief to a claimant out of the proceeds of sale of forfeited property. Section 1618 relates to the remission or mitigation of the forfeiture of the res. Most petitions are filed for consideration in accordance with the provisions of Section 1618.

Procedure

Prior to reference of a case to the Department (United States Attorney) for prosecution or suit, jurisdiction to act on such petitions is in the seizing agency. (Seizures under the Slot Machine Act are made by agents of the FBI.) Thereafter, pursuant to Executive Order 6166 (5 U. S. C. 124–132), the jurisdiction to act on petitions is in this Department. Such reference in liquor law violation cases occurs when the appraised value of the seized property exceeds $500 or a claim and a cost bond are filed. Customs and Contraband Transportation Act cases are referred when the value exceeds $1,000 or a

claim and a cost bond are filed. It should be noted that while the court has exclusive jurisdiction to remit or mitigate forfeitures of vehicles seized under the internal revenue liquor laws after a decree of forfeiture is entered, the Department exercises such jurisdiction after reference of a case to it and prior to the entry of such a decree. The courts have no authority to remit or mitigate forfeitures of other types of property seized under the internal revenue laws, nor in respect to any seizures under the Contraband Transportation Act, the Slot Machine Act, or other liquor laws, except Indian liquor laws, as indicated above.

Petitions for the consideration of the Criminal Division should be under oath, addressed to the Attorney General and filed through the United States Attorney for the district where the seizure was made. Such petitions should set forth the interest of the petitioner in the subject of the petition, the basis of the petition and if the claimant, such as a finance company, is founding his petition on a conditional contract of sale, copies of the contract or mortgage, the note which is secured thereby, the purchaser's application or statement upon which the sale was based, and any other pertinent papers should accompany the petition. Such petitions and attachments should be filed in triplicate.

Upon receipt of a petition and attachments the United States Attorney should forward a copy thereof immediately to the seizing agency with a request that the allegations in the petition be investigated and its findings reported to him, together with a recommendation on the merits of the petition. The Department should also be informed of the filing of such a petition. Thereafter when this report is received the petition with attachments and the data furnished by the seizing agency should be transmitted to the Department, together with the United States Attorney's recommendation. Unless the papers set forth the facts in respect to the seizure the United States Attorney also should advise the Department in that respect.

If a good faith petition is filed and it appears that the interests of the United States will not be jeopardized thereby, further action in the case may be withheld pending submission and consideration of the petition.

When these papers are received in the Department, a memorandum brief setting forth the basis of the action taken is prepared. The United States Attorney is advised of such action and should immediately notify the petitioner or his counsel in the matter. If the petition is allowed the seized property may be released upon compliance with the terms of allowance indicated in the letter from the Depart-

ment. However, should any other bona fide claimant indicate a desire to contest the forfeiture on the merits, the forfeiture should be consummated and the court should be requested to include in its decree the provisions of such allowance. If the petition is denied the case should proceed as if no petition had been filed.

Petitions are considered on the basis of whether the petitioner has shown that the forfeiture was incurred without willful negligence, or without any intention to defraud the revenue or to violate the law. They are addressed to the discretion of the Attorney General and action by him thereon is not subject to review by the courts, except possibly on the basis that it was arbitrary or capricious. See *General Finance Company, etc.* v. *United States*, 45 F. 2d 380; *United States ex rel. Walter E. Heller and Company* v. *Mellon*, 40 F. 2d 808, cert. denied 281 U. S. 766, and others. No exact rule which would apply to such discretionary action in each case may be given. However, if a petitioner has placed his property in, or has permitted property in which he claims an interest, to be in the possession of a person with a record or reputation for law violations, usually petitions are denied unless the petitioner establishes that a reasonable effort had been made to ascertain the moral character of that person, such as previously having made a good faith inquiry of a law enforcement agency in that respect. Failure to make such an inquiry under these circumstances is considered to be negligence. This pattern follows largely the requirements of 18 U. S. C. 3617, which is not binding insofar as administrative action is concerned, since the provisions of that section only relate to the prerequisites to allowance by the court in internal revenue liquor vehicle cases.

The filing of a petition for remission or mitigation of forfeiture is on the assumption, at least for the purpose of action on the petition, that the property is forfeited. Hence, the major consideration in acting on petitions is not whether the evidence is sufficient to consummate the forfeiture, but whether the petitioner has established his good faith, innocence and lack of negligence. There may be instances where mitigation of the forfeiture or penalty would be justified.

In allowing petitions, such allowance only relates to the actual interest of the petitioner in the property. Thus if a finance company is claiming through a conditional sales contract or chattel mortgage, etc., only the unpaid balance on the contract is allowable, less any unearned interest, finance charge (time price differential or mark-up charge) or insurance. The United States Attorney may request the seizing agency to compute such amount. If the deter-

mined interest of the petitioner in the property exceeds its appraised value, such property may be released upon notice from the Department of the allowance of the petition, and payment of costs and out-of-pocket expenses to the United States. If the appraised value is greater than the determined interest of the petitioner, the property may be released upon the payment of such difference by the petitioner, plus costs and out-of-pocket expenses to the United States. The amount of the difference between the allowed interest in the property and its appraised value should be paid to the United States Attorney in the form of a certified check, cashier's check, or money order, made payable to the Treasurer of the United States, which should be transmitted to the Department and thus covered into the Treasury.

The sum paid as costs and expenses may be paid by the petitioner to the appropriate official, i. e., the Clerk of Court or the United States Marshal, as the case may be, or preferably, in regard to any outstanding storage charges, to the person to whom the Government or any of its agencies is obligated.

Petitions should be disposed of promptly, particularly those relating to property under seizure, to avoid depreciation and storage charges. Therefore, the United States Attorney is urged to make every effort to see that the necessary papers respecting petitions are forthcoming and transmitted to the Department for action expeditiously.

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SPECIFIC VIOLATIONS

AGRICULTURAL LENDING AGENCIES

Cases involving violations of 18 U. S. C. 658 and 15 U. S. C. 714m, are usually referred directly to United States Attorneys by Regional Attorneys of the Department of Agriculture. United States Attorneys are authorized to dispose of the criminal phase of such cases without prior clearance from the Department, and should notify the Regional Attorney of such disposition by letter, a copy of which should be sent to the Criminal Division.

Investigations of violations of these two code sections, in which the agency involved is the Farmers' Home Administration, will be made by the Department of Agriculture and reports of such investigations will be furnished the United States Attorney in whose district the matter is to be prosecuted. Investigations of violations of 18 U. S. C. 658, which concern agencies of the Department of Agriculture other than Farmers' Home Administration will be investigated by the FBI, and the reports submitted by it directly to the United States Attorney who requested the investigation.

ANTI-RACKETEERING ACT

18 U. S. C. 1951 is based, with some changes in phraseology and arrangement, on the Act of July 3, 1946, c. 537, 60 Stat. 420 (known as the "Hobbs Act") which amended, and in effect repealed, the Act of June 18, 1934, c. 569, §§ 1–6, 48 Stat. 979, 980 (popularly called the "Coleman Act").

The statute applies to anyone who in any way obstructs, delays, or affects interstate commerce by robbery or extortion as defined in subsection (b); attempts or conspires to do so; or commits or threatens physical violence to any person or property in furtherance of a plan to do so. Violation of the statute is a felony punishable by a fine of not more than $10,000, or by imprisonment for not more than twenty years, or both.

Prior authorization is not necessary to institute prosecutions for violation of this statute in those cases where there is evidence of actual or threatened force or violence. In cases not involving the use or threat of force or violence the matter should be referred to the Criminal Division for instruction.

For the application of the Act to obstructions of interstate commerce by violence see *United States* v. *Kemble*, 198 F. 2d 889, cert. denied 344 U. S. 893.

BANKING LAWS

18 U. S. C. 656 prohibits theft, embezzlement, abstraction and misapplication by a bank officer, director, agent or employee. For definitions of embezzlement, abstraction and misapplication see *United States* v. *Northway*, 120 U. S. 327; *United States* v. *Harper*, 33 Fed. 471. With respect to the offense of misapplication, it is necessary to show that funds were actually withdrawn from the possession and control of a bank or converted in some form so that the bank was deprived of the benefit thereof. For cases pertinent to the offense of misapplication, see *United States* v. *Martindale*, 146 Fed. 280; *United States* v. *Heinze*, 218 U. S. 532; *Mulloney* v. *United States*, 79 F. 2d 566, cert. denied 296 U. S. 658.

Paragraph 3 of 18 U. S. C. 1005 prohibits the making of false entries in any book, report, or statement of a Federal Reserve Bank, member bank, national bank or insured bank. The crime of making false entries includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent required by the statute. The aim of the statute is to give assurance that upon an inspection of a bank, public officers and others will discover in its books of account a picture of its true condition. *United States* v. *Darby*, 289 U. S. 224. See also *United States* v. *Giles*, 300 U. S. 41, and *Hargreaves* v. *United States*, 75 F. 2d 68, cert. denied 295 U. S. 759.

Cases involving violations of 18 U. S. C. 656 and 1005 are usually reported to United States Attorneys by examiners from the office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation. After an examiner submits a report, he considers the case out of his hands. If the United States Attorney desires a further investigation, he should refer the case to the local office of the FBI with a request for an investigation. United States Attorneys should address all correspondence regarding a criminal prosecution to the Criminal Division, Department of Justice, and not to the office employing the examiner.

United States Attorneys should not refrain from prosecuting an individual who is guilty of a violation of the banking laws solely because the officers of a bank do not desire prosecution, or because of

the real or fanciful dangers to the bank. The fact that restitution is made in a case is a matter for the court to consider after a plea of guilty or a conviction, and has no bearing on the question of whether a criminal prosecution should be instituted except as it may affect the probability of a conviction. See *Duvall* v. *United States*, 94 F. 2d 911.

Whenever the State first takes jurisdiction of a case involving irregularities on the part of officers or employees of State-member banks or insured non-member State banks, and promptly prosecutes and sentences a defendant, no Federal prosecution is necessary unless there is a clear miscarriage of justice in the State proceedings.

Cases involving embezzlement and false entries committed in Federal Credit Unions are prosecuted under 18 U. S. C. 657 and 1007. Reports of irregularities are usually submitted to United States Attorneys by Regional Attorneys of the Department of Health, Education and Welfare. When a further investigation is desired in a particular case, the case should be referred to the local office of the FBI.

CIVIL RIGHTS, PEONAGE, AND INVOLUNTARY SERVITUDE VIOLATIONS

The principal statutes available for civil rights prosecutions are 18 U. S. C. 242 and 241.

18 U. S. C. 242, a misdemeanor statute, applies to *willful* deprivations of the civil rights of inhabitants (not just citizens) made under color of law. *Screws* v. *United States*, 325 U. S. 91; *Williams* v. *United States*, 341 U. S. 97. The statute is aimed at State (or Federal) officials, but private persons can be prosecuted thereunder if they aid and abet violations by officials. Police brutality cases constitute the commonest violations of the statute.

18 U. S. C. 241, a felony statute, applies to conspiracies to injure citizens in the exercise of Federal rights. Private persons as well as officials can violate the statute. Rights which arise from the relation of the victim and the Federal Government (e. g., right to safe custody in the hands of a Federal officer, right to inform of the violation of Federal law, rights conferred by Federal laws such as 29 U. S. C. 157, etc., right to vote in Federal election and have ballot counted as cast, etc.) are clearly within the statute. Application of 18 U. S. C. 241 to Fourteenth Amendment rights, where 18 U. S. C. 242 would apply were a substantive offense involved, has not been decisively adjudicated by the Supreme Court and is left in doubt by the Court's latest decision, *United States* v. *Williams*, 341 U. S. 70. 18 U. S. C.

371, alleging conspiracy to violate 18 U. S. C. 242, should, until further notice, be employed in conspiracy cases in the latter category.

Other more specialized criminal statutes bearing upon civil rights and which are not discussed below are: 18 U. S. C. 243 (official exclusion of jurors because of race or color); 18 U. S. C. 244 (discrimination by theater or amusement personnel against person wearing uniform of Armed Forces); 18 U. S. C. 601 (deprivation for racial or political reasons of Federal relief or other employment benefits); 18 U. S. C. 1505 (intimidation of witnesses before Federal courts, etc.); 18 U. S. C. 2234 (use of unnecessary severity by Federal officer in executing search warrant); 18 U. S. C. 2235 (malicious procurement of Federal search warrant); 18 U. S. C. 2236 (search by Federal officer of private dwelling or building without warrant, except as incident to arrest, etc.).

18 U. S. C. 1584 applies to the willful holding to involuntary servitude. There need be no proof that the victim was held for payment of a debt. Existence of a real or claimed debt is required under 18 U. S. C. 1581, *Clyatt* v. *United States*, 197 U. S. 207, 215; *United States* v. *Reynolds*, 235 U. S. 133, 144, which applies to the holding or returning of a person to peonage or the arrest (not necessarily under color of law—see *United States* v. *Gaskin*, 320 U. S. 527, 528) with the intent of placing him in or returning him to peonage.

18 U. S. C. 1583 applies to the kidnapping of a person with the intent that he be sold into involuntary servitude or held as a slave. Other provisions of that Section and other Sections (1585, 1586, 1587, and 1588) apply to the slave trade.

Investigation

Preliminary investigations of violations of the foregoing statutes may be conducted by the FBI on its own initiative or at the request of the United States Attorney or of the Criminal Division. Criminal Division approval of full-scale investigations or of institution of any prosecutive action under these statutes is required. Indictment forms should be cleared with the Criminal Division.

If *bona fide*, vigorous, investigative or prosecutive action is being taken or is about to be taken by the local authorities, Bureau investigation may usually be deferred. Departures from this general policy may, however, be required in certain instances involving serious violations and in cases where ultimate Federal prosecution or investigation would be jeopardized by the delay.

Mediation

In the absence of special circumstances, the United States Attorney should, in the first instance, resort to a mediative conference with the subject in lieu of prosecution in cases involving deprivation of religious freedom through unconstitutional application of leaflet distribution or flag salute ordinances or regulations, or in similar situations. If the facts are not strong enough for prosecution, the mediative approach may also be used in other situations to forestall repetition of discriminatory misconduct.

False Accusations and Imputed Misconduct

False accusations of civil rights violations or other misconduct imputed to FBI agents must not stand unchallenged. The Special Agent in Charge should be notified at once of such charges and be given full opportunity to refute them. If the charges are made in the course of judicial proceedings, the United States Attorney or his Assistant should see to it that such refutations are made a matter of record in the trial court and are included in any appellate record.

COUNTERFEITING AND FORGERY

Most of the criminal statutes relating to counterfeiting and forgery embodied in 18 U. S. C. 471–509 are primarily designed to safeguard obligations of the United States and foreign governments and also coins and currency. The United States Secret Service has investigative jurisdiction over violations of those laws. Reports of investigation are made directly to the United States Attorneys.

The voluntary discontinuance of the manufacture of paper money similar to genuine currency may be a satisfactory alternative to the prosecution of a reputable manufacturer.

The mere act of passing a single counterfeit note is not sufficient to create an inference that the passer had knowledge of its spurious nature, and, barring other indicia of scienter, prosecution is generally not warranted. *United States* v. *Ruffino*, 67 F. 2d 440.

18 U. S. C. 494 and 495 are useful in those cases in which the forged or counterfeit writing does not fall in the classes prescribed in the other Sections. For example, the paper involved may not come within the definition of "obligation or security of the United States" as set out in 18 U. S. C. 8 but nevertheless may constitute a "writing" within the meaning of the term as used in Sections 494 and 495. Section 495 has been held to be applicable in prosecutions involving the forgery of

indorsement on a Government check on the ground that the words "other writing" are sufficient to bring such conduct within the terms of the statute. *Prussian* v. *United States*, 282 U. S. 675.

CUSTOMS LAW VIOLATIONS

The principal statutes involved are included in Title 19, United States Code; 18 U. S. C. 541–552 and 21 U. S. C. 171, et seq. Criminal prosecutions usually are based under 18 U. S. C. 545 (smuggling, etc., of goods generally) and 21 U. S. C. 174 (smuggling, etc., of narcotics).

The Bureau of Customs primarily is charged with the enforcement of such laws. Violations are referred for prosecution direct to the United States Attorney by the Collector of Customs, the Department receiving a copy of such reports. The criminal phase is reported immediately but forfeiture reports are withheld by the Collectors of Customs for sixty days.

In general the chief objects of enforcement are to protect the revenue on imported articles and to prevent the smuggling into the United States of prohibited articles. The policy with respect to prosecutions is somewhat similar to that in internal revenue cases. Deliberate and willful frauds, especially when the violation may involve substantial losses of duty, or is part of the operation of a "smuggling ring", or involves the clandestine importation of contraband, such as narcotics or marihuana intended for sale, should be prosecuted vigorously.

Importations not only contrary to the customs laws and regulations but those contrary to the other laws of the United States or valid regulations may subject the violators and the property involved to the criminal, civil penalty, or forfeiture sanctions of such laws. Thus any of such types of cases may be referred to the United States Attorney for prosecution or suit.

Compromise and Forfeiture

Criminal liability under the customs laws may not be compromised. However, compromise offers and petitions for remission of forfeitures and civil penalties may be considered by the Department in cases referred for prosecution or suit. The courts have no powers of remission in customs cases.

Property seized under the customs laws is referred to the United States Attorney for disposition if the value thereof exceeds $1,000 or a claim and a cost bond are filed. Illegally imported goods are subject to forfeiture under 18 U. S. C. 545, while 19 U. S. C. 483 applies to vehicles, etc., used in the importing or subsequent transporta-

tion, etc., of smuggled goods, as does the Contraband Transportation Act in certain instances.

Unless the forfeiture is remitted administratively or compromised or the United States Attorney declines prosecution because of the insufficiency of the evidence, the forfeiture should be consummated through the filing of a libel, a copy of which should be furnished to the Department. Such proceedings should conform as near as may be to those in admiralty. See 28 U. S. C. 2461.

Forfeited liquor may not be sold but must be disposed of pursuant to 26 U. S. C. 2805. Contraband narcotics are administratively forfeited and disposed of by the seizing agency.

Limitations of Actions

The limitation on bringing actions, criminal, civil penalty and forfeiture, is five years. See 18 U. S. C. 3283 and 19 U. S. C. 1621.

Libels: Judgment

To avoid unnecessary expenses (storage charges) and depreciation of property, especially in vehicle seizure cases, libels should be disposed of as expeditiously as the circumstances in the case may permit, without jeopardizing the criminal case or the rights of claimants. If there is a default, default judgment or decree should be sought promptly.

Where property decreed forfeited has been requested for official use by the General Services Administration such request should be reflected in the decree, a copy of which must be transmitted immediately to the General Services Administration, Washington, D. C.

The United States Attorney should keep the Department currently advised respecting the developments in important criminal, penalty and forfeiture cases reported to him.

DEPENDENTS ASSISTANCE ACT OF 1950

Allowances for the dependents of enlisted men were originally provided in the Servicemen's Dependents Allowance Act of 1942 (37 U. S. C. 201–221). This Act, as amended, was repealed by the Career Compensation Act of 1949 (37 U. S. C. 231–319), effective October 1, 1949, making provision, among others, for quarters allowances for servicemen, the allowances varying, conditioned on whether or not dependency is claimed and on the serviceman's rank and rating. The Dependents Assistance Act of 1950 (50 U. S. C., App. 2201–2216) modified certain provisions of the Career Compensation Act of 1949, providing, among other things, for increases in

quarters allowances for enlisted men with dependents, to be paid only when the enlisted member has in effect an allotment of his own pay not less than the sum of his basic quarters allowance plus an additional sum of his own base pay, depending on his service rating. The allotment is paid monthly to the member's dependent or dependents.

Although the Servicemen's Dependents Allowance Act of 1942, as amended, contained four criminal sections (37 U. S. C. 216–219), neither the Career Compensation Act of 1949 nor the Dependents Assistance Act of 1950 provide specific criminal penalties. In the absence of penal provisions, prosecution for the fraudulent application for, and receipt of, allowances under the Dependents Assistance Act of 1950 should be instituted under the general criminal statutes, *viz.* 18 U. S. C. 286, 287, and 1001.

Investigations are made in these cases by the FBI. Complaints to United States Attorneys alleging fraud in connection with the obtaining of allowance benefits should be referred to the local office of the FBI for development. Reports of investigation are referred directly to the United States Attorney, copies being furnished to the Department.

Prosecution should be instituted in these cases by the United States Attorney without awaiting authority from the Department. Where the only offender is an enlisted man, subject to military jurisdiction, he should not be prosecuted in the civil courts, except in aggravated cases. The facts developed should be referred to appropriate military authorities for courts-martial or other disciplinary action.

Section 302 (b) of the Career Compensation Act (37 U. S. C. 252 (f)), provides for increased quarters allowances based on dependency for commissioned officers. Cases have been reported involving officers who falsely applied for quarters allowances based on dependency to which they were not entitled under Section 302 (b). Where officer offenders are still on active duty, disciplinary action should be left to appropriate military authorities rather than prosecution of such offenders in civil courts. Prosecution for violations of this section by officer personnel, reported after termination of their active military service, should be instituted under 18 U. S. C. 287 and 1001.

FAIR LABOR STANDARDS ACT

Investigations of criminal cases arising under 29 U. S. C. 215, 216 (a) are conducted by the Wage and Hour Division of the Department of Labor.

Complaints of violation of the Act should be referred to the Administrator of the Wage and Hour Division of the Department of Labor.

Authorization from the Attorney General is a prerequisite to the institution of any proceeding, civil or criminal, to enforce any of the provisions of this Act. Civil enforcement proceedings brought by the Administrator of the Wage and Hour Division will be handled by Wage and Hour Attorneys, and suits brought against the Attorney General, United States Attorneys, etc., challenging provisions of the Fair Labor Standards Act will be under the jurisdiction of the Antitrust Division. After investigation, cases which in the opinion of the Department of Labor warrant prosecution will be referred to the Criminal Division of the Department of Justice for transmittal to the appropriate United States Attorney for prosecutive action.

Since Fair Labor Standards Act criminal cases are thoroughly investigated before reference for prosecution and since the overwhelming proportion of these cases are disposed of on pleas of guilty, the Department feels that, except in unusual circumstances, it is desirable to proceed by information.

In the preparation and trial of criminal cases, United States Attorneys may call upon the Regional Attorney and his staff, Wage and Hour Division of the Region covering their respective districts, for such further investigation or for such assistance in preparing the case for trial as they may deem necessary.

The prosecution of cases under the Act shall be conducted by United States Attorneys and their regular assistants. The designation of Special Assistants will not be made, except in very unusual cases, in which event it will be necessary that strong justification be made by the United States Attorney for such appointment. Where it appears that the Government's interest cannot be served adequately unless a Special Assistant is appointed, such an appointment will be made. However, it must be understood in any such instance that the control of the litigation must in fact remain in the United States Attorney to the same extent and with like responsibility as if assigned to a regular Assistant United States Attorney.

These instructions are not intended to prevent full utilization of the services of Labor Department Attorneys where necessary for adequate preparation and prosecution of cases under the Act. Labor Department Attorneys may appear at the counsel table to give such assistance to the United States Attorney as may be possible in the average case. The United States Attorneys and their regular Assistants will, however, conduct the actual prosecution of the cases.

United States Attorneys are requested to keep the Department currently advised as to the progress of cases and to make formal requests for authority to dispose of cases in any way other than by trial on the merits.

Forms of indictments and informations, briefs, and opinions on questions of law which have arisen in previous prosecutions of such cases will be furnished upon request.

All matters pertaining to appeals, including procedure to be followed in the preparation or approval of the record and the preparation of briefs and argument in the appellate courts, will remain subject to the control and direction of the Department.

FALSE STATEMENTS IN APPLICATIONS FOR FEDERAL EMPLOYMENT (18 U. S. C. 1001)

The applicability of 18 U. S. C. 1001 to the making of false statements in applications for Federal employment is well established. See *United States* v. *De Lorenzo*, 151 F. 2d 122 (CA 2). In recent years, however, the number of cases of this type received in the Department have increased considerably. While the Civil Service Commission forms required to be executed by applicants (Standard Forms 57 and 60) contain numerous interrogatories, false answers to questions addressed to prior arrests or other criminal history, educational background, membership in Communist or Fascist organizations and employment history, most often represent the basis for prosecution.

Cases involving alleged falsification of applications for Federal employment are referred to the Department for consideration and, if the facts indicate the necessity for criminal prosecution, the Criminal Division transmits the case to the proper United States Attorney. Investigation of these cases is made by the FBI.

There are referred to United States Attorneys for prosecution cases of this type which appear to involve willful falsification of facts material to the applicant's employment by the Federal Government and as to which the Department urges vigorous prosecution.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

Referral of Cases

All seizure (libel for condemnation) and criminal cases, except those involving undecided or important questions of law or policy, will be referred direct to the appropriate United States Attorney by the Department of Health, Education and Welfare. All injunc-

tion cases will be referred by that Department to the Department of Justice.

If the product involved is (a) butter which is deficient in fat, short-weight, filthy or decomposed, (b) cream which is filthy or decomposed, (c) crab meat which is contaminated, or was produced under insanitary conditions whereby it may have become contaminated with coli of fecal origin, (d) fresh fruits and vegetables bearing spray residue in amounts which may be injurious to health, or (e) blueberries which are contaminated by maggots or larvae, the request for seizure may emanate from the appropriate field station of the Food and Drug Administration.

Dismissal Where Goods Not Available

United States Attorneys may dismiss libel suits without prior authority where they are informed by the local station of the Food and Drug Administration that the product is not available for seizure.

Forms in Seizure Actions

Set out in the Appendix (Forms 5, 6, 7 and 8) are examples of the forms which should be used in connection with the filing of libels of information, claims, consent decrees of condemnation, and bonds. The bond form should be used in all situations where goods are released for salvaging or reconditioning after the entry of a decree of condemnation pursuant to 21 U. S. C. 334 (d). In some instances, it will be necessary to alter the forms of decree of condemnation and libel of information to fit the particular circumstances, but an attempt should be made at all times to adhere as closely as possible to the recommended forms.

Forwarding Copies of Pleadings

In the event any injunction complaint, libel of information, or criminal information or indictment forwarded to the United States Attorney by the Department of Justice or the Department of Health, Education and Welfare is changed in any fashion, or if the pleading is prepared by the United States Attorney, a copy of the document as filed should be forwarded to the Department, the Department of Health, Education and Welfare, and the local station of the Food and Drug Administration, together with the date of filing.

Removal of Libel Actions

The removal of a seizure action to another district for trial is authorized only as provided for in Section 334 (a) and 28 U. S. C.

1404 (a) has no application to seizure actions. *Clinton Foods, Inc.* v. *United States*, 188 F. 2f 289 (C. A. 4), cert. denied 342 U. S. 825; *Fettig Canning Co.* v. *Steckler*, 188 F. 2d 715 (C. A. 7), cert. denied 341 U. S. 951.

The Department should be notified immediately of all requests or motions made for the removal of libel actions.

Post-Seizure Samples

Orders authorizing the taking of post-seizure samples pursuant to 21 U. S. C. 334 (c) should be so drawn as to allow both the Government and the claimant an opportunity to take a like sample at the same time, in the presence of a representative of the Department of Health, Education and Welfare. Frequently, an attempt is made to obtain a stipulation from a United States Attorney that the Government's case will stand or fall on the analytical results of a post-seizure sample. Such procedure is not authorized by the Act, and a stipulation to that effect should not be entered into.

Disposition of and Payment for Samples

If samples which United States Attorneys have on hand and which have been used in the prosecution of a case have no material value in the opinion of the local officials of the Department of Health, Education and Welfare, they may be destroyed or such other disposition made of them as the United States Attorney deems proper. Where the local officials of the agency believe the samples are of material value, they should be shipped to such officials. If a claimant in whose favor a libel suit results demands payment for samples taken for the use of the Government after seizure, and files a claim with the Marshal, the claim should be transmitted to the Department of Health, Education and Welfare.

Procedure for Disposing of Condemned Product

The statutory procedure set out in 21 U. S. C. 334 (d) is the exclusive method of dealing with any product that is proceeded against by libel for condemnation under the Act, and in every case a decree of condemnation must first be entered before any disposition can be made of the article seized. *In re United States*, 140 F. 2d 19 (C. A. 5).

The person petitioning as owner for the release of the product must appear in the proceeding as claimant and establish his ownership of the goods. The district court may provide in its discretion,

in the decree or by subsequent order after entry of a decree (except with respect to articles which may not, under 21 U. S. C. 344 or 355, be introduced into interstate commerce), for the salvaging of the article by the claimant. The decree or order may provide that the claimant, upon the furnishing of a good and sufficient bond conditioned that the article shall not be sold or disposed of contrary to the provisions of the Act or the laws of any state in which sold, and the payment of costs, may take back the article condemned or some portion thereof and bring it into compliance with the Act, or denature it so that it may be used for animal feed, fertilizer or other useful purpose, under the supervision of the Department of Health, Education and Welfare. Costs should include all storage charges incurred by the Government. The bond should be in an amount approximately twice the value of the article or portion thereof which is released for salvaging. The decree or order may direct, if the claimant so requests and such procedure is feasible, that the commodity be destroyed and the containers and cartons turned over to the claimant.

Whether the seized article may be released to the claimant under this section is in the sound discretion of the trial court. *338 Cartons * * * of Butter* v. *United States*, 165 F. 2d 728 (C. A. 4). A condemned article cannot be released to the owner for export. *United States* v. *Kent Food Corp.*, 168 F. 2d 632 (C. A. 2), cert. denied 335 U. S. 885; *United States* v. *O. F. Bayer & Co.*, 188 F. 2d 555 (C. A. 2).

If the owner does not obtain a decree releasing the goods to him for salvaging, the court may direct, if the condemned article is an edible food product, that, under the supervision of the Department of Health, Education and Welfare, the product be brought into compliance with the Act by the United States Marshal and sold to the highest bidder, or that it be turned over by the United States Marshal to a charitable or public institution for consumption. Under no circumstances should any edible food be destroyed. If the condemned article is not an edible food product, but can be used for animal feed, fertilizer or other useful purpose, the court may direct that, under the supervision of the Department of Health, Education and Welfare, the product shall be sold by the United States Marshal to the highest bidder or turned over to a charitable or public institution.

A decree or order may provide that the condemned product be disposed of after it has been denatured under the supervision of the Department of Health, Education and Welfare. This should not be done, of course, if the cost of the denaturing and sale will exceed the amount to be derived by the Government therefrom. In some in-

stances, the cost may be lessened appreciably by requiring the purchaser, if the condemned product is sold, to denature the product at his own expense under the supervision of the Department of Health, Education and Welfare.

In all instances, the condemned product should be disposed of as directed in the decree or subsequent order, and this direction should be specific. For example, the decree or order should not provide that the condemned product be destroyed by the United States Marshal "or disposed of otherwise pursuant to the Act." If the product is to be destroyed because it cannot be salvaged for any useful purpose, the decree should so state. If the product is to be turned over to a public or charitable institution, the decree should name the institution and the purpose to which the product is to be put. (If necessary an amendment to the decree should be obtained.) In this connection, it should be noted that in no event should the condemned product be turned over gratis to any private individual or concern.

Expert Witnesses

When the services of an expert witness are needed, the United States Attorney should communicate by letter or telegram with the Department of Health, Education and Welfare. The United States Attorney should inform the general counsel of that Department by letter or telegram whenever inspectors or other personnel of that Department are needed in any capacity in connection with litigation under the Federal Food, Drug, and Cosmetic Act, instead of issuing subpoenas for them. The fees of expert witnesses are paid by that Department.

Reports on Termination of Cases

The Department should be furnished (and a copy forwarded to the Department of Health, Education and Welfare and the local station of the Food and Drug Administration) with the name of the claimant or defendant, if any; the plea entered by claimant or defendant; the verdict, decision or judgment and date thereof; if a criminal case, the recommendation, if any, made by the United States Attorney with respect to punishment, and the sentence and date thereof; and if a libel action, a copy of the judgment and decree of condemnation and date thereof, together with a statement of the disposition of the property seized. Where a libel for condemnation action has been dismissed because the goods were not available for seizure, a copy of the order of dismissal should likewise be transmitted to the Department of Justice, the Department of Health, Education and Welfare, and the local station of the Food and Drug Administration.

Keeping Res Intact for Appeal

In the event a trial court decides a libel action adversely to the Government and enters an order directing that the product proceeded against be returned to the claimant, the execution of such order must be stayed or the subject matter of the suit will no longer be present and the Government's right of appeal will be lost automatically. Consequently, every step should be taken to keep the goods intact in the possession of the Marshal in the event of a decision adverse to the Government, pending the determination of the Solicitor General with respect to the taking of an appeal. If necessary, a protective notice of appeal should be filed pending such determination.

FEDERAL HOUSING ADMINISTRATION VIOLATIONS

The National Housing Act of June 27, 1934 (12 U. S. C. 1702–1732) created the Federal Housing Administration. The penalty provisions of that Act (12 U. S. C. 1731 a–f) were repealed by the Act of June 25, 1948, revising Title 18, United States Code, entitled "Crimes and Criminal Procedure". In the following table are listed the subsections of the repealed Section 1731, opposite each of which are listed the now applicable sections of Title 18:

Title 12, Section 1731 (a).	Title 18, Section 1010.
Title 12, Section 1731 (b).	Title 18, Section 493.
Title 12, Section 1731 (c).	Title 18, Section 657, 1006.
Title 12, Section 1731 (d).	Title 18, Section 709.
Title 12, Section 1731 (e).	Title 18, Section 1008.
Title 12, Section 1731 (f).	Title 18, Section 1009.

Most frequent violations of the Act have centered principally under 18 U. S. C. 1010, involving the falsification of moving papers filed in connection with Title I, Home Improvement Loans. For example, *Cohen* v. *United States*, 178 F. 2d 588, cert. denied 339 U. S. 920. This Section penalizes persons who assist borrowers to obtain home improvement loans where false statements are made or caused to be made in processing such loans. *Ross* v. *United States*, 197 F. 2d 660, cert. denied 344 U. S. 832. Prosecutions in these cases often include charges of conspiracy to make or cause to be made an instrument known to be false for the purpose of influencing FHA to insure a home improvement, or conspiracy to pass a statement known to be false for the same purpose. *United States* v. *Uram*, 148 F. 2d 187 (C. A. 2).

The Federal Housing Administration, through its general counsel, investigates allegations of fraud in the procurement of home im-

provement loans, submitting its reports and all evidentiary material direct to the Department when the evidence supports the allegation of fraud. If, after examining the evidence submitted, the Criminal Division determines that criminal prosecution is warranted, it refers the case to the appropriate United States Attorney.

If complaints of the above character are submitted to the United States Attorney from any other source, they should be immediately referred to the General Counsel, Federal Housing Administration, Vermont Avenue and K Street NW., Washington, D. C., for investigation and appropriate attention.

FOREIGN AGENTS REGISTRATION ACT

The statutory regulations governing the registration of agents of foreign principals are set out in the Foreign Agents Registration Act of 1938, as amended (22 U. S. C. 611 et seq.). The administration and enforcement of the provisions of this Act are under the supervision of the Department of Justice by virtue of Executive Order No. 9176 dated May 29, 1942 (7 F. R. 4127). The policies and procedures pertinent to the administration of the Act are outlined, in a very comprehensive and detailed manner, in 7 F. R. 4717 (June 25, 1942) and in 15 F. R. 6785 (October 7, 1950).

Before instituting grand jury proceedings in prosecutions under this Act, United States Attorneys shall obtain an express authorization from the Department. This authorization may be obtained by telegraph or telephone in cases where time does not permit authorization by letter.

In view of the provisions of Section 2 (a) of the Act that no person shall act as an agent of a foreign principal unless he has filed the necessary registration statement with the Attorney General, and that every person who becomes an agent of a foreign principal shall file with the Attorney General a registration statement, venue in prosecutions for violations of the Act may be had either in the jurisdiction where the defendant has acted as an agent of a foreign principal or in the District of Columbia where the registration statement is required to be filed with the Attorney General.

FOREIGN ASSETS CONTROL REGULATIONS

Pursuant to the authority granted in the Trading With the Enemy Act (50 U. S. C. App. 5 (b)), the Secretary of the Treasury has promulgated regulations prohibiting transfers of money, credits and other

interests to nationals of certain designated foreign countries (31 C. F. R. 500.101 to 500.808, issued December 18, 1950). Investigations of violations of the Foreign Assets Control Regulations are conducted by the Treasury Department and cases are referred by that Department to the Department of Justice, which in turn refers the cases to the United States Attorneys.

FUGITIVE FELON ACT

The Fugitive Felon Act (18 U. S. C. 1073) does not supersede or replace State rendition proceedings but is meant to aid States in the return of fugitives. Each case must be decided on its own merits in the discretion of each United States Attorney. It is believed that the following procedure will prove most effective:

(a) If it should be impracticable because of the time element to secure an indictment prior to the filing of the complaint under the Fugitive Felon statute, the local prosecuting attorney or the local police officers should present in written form a request for the filing of such complaint, which should be filed preferably before a United States Commissioner. Before a complaint under the statute is justified, sufficient evidence must be shown that a case under the Fugitive Felon Act may be made out. It is not necessary at the time that prosecution in the Federal court be contemplated under the Fugitive Felon Act.

(b) After the arrest of the violator under the Federal warrant the demanding State authority should be immediately notified and requested to institute interstate rendition proceedings at once. If for any reason the State is unwilling to do this, a complete statement of all the facts should be forwarded to the Department immediately and instructions awaited before proceeding further.

(c) In those instances where State rendition procedure has been attempted in the first instance and has failed to secure the return of a fugitive charged with the commission of crimes enumerated in the statute, and thereafter a United States Attorney is for the first time requested by the local or State authorities to institute action under the Act, he will forward to the Department immediately a complete statement of all pertinent facts and await instructions before proceeding further.

(d) No complaint should be authorized under that portion of the statute punishing the flight to avoid giving testimony until a criminal proceeding has actually been instituted in the State court.

In those States where a preliminary hearing is held before a committing magistrate prior to the filing of an information or indictment, and an offense punishable by imprisonment in a penitentiary has been charged, it would seem that the United States Attorney is justified in authorizing a complaint under the fugitive witness clause of the statute if there is any evidence to indicate that the witness fled in order to avoid testifying.

The Fugitive Felon Act should not be used in cases where a parent is charged with the kidnaping of a minor child.

GOVERNMENT RESERVATIONS: OFFENSES ON

When cases are reported to United States Attorneys involving offenses committed on lands occupied by military and naval reservations, forts, arsenals, post offices, etc., United States Attorneys should first ascertain whether the Federal Government has acquired exclusive or concurrent jurisdiction over the lands. See Paragraph 3 of 18 U. S. C. 7 and the statutes in the Criminal Code applying to crimes committed in "the special Maritime and Territorial jurisdiction in the United States." Under R. S. 355, as amended by the Acts of February 1 and October 9, 1940 (40 U. S. C. 255), the United States obtains no jurisdiction over acquired lands unless and until it formally accepts jurisdiction. See *Adams* v. *United States*, 319 U. S. 312. Under a procedure inaugurated after the passage of the Act of February 1, 1940, the Criminal Division receives copies of letters of acceptance from the federal land acquiring agencies, and transmits one copy of each letter of acceptance to the United States Attorney in the district where the land is situated.

With respect to lands acquired prior to February 1, 1940, there is a presumption that the Federal Government accepted such jurisdiction as was offered by the State law, in the absence of evidence of a contrary intent on the part of the acquiring agency or Congress. *Mason Co.* v. *Tax Comm'n.*, 302 U. S. 186; *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525. If the question of jurisdiction over a particular piece of land has not been previously decided judicially, the United States Attorney should make appropriate inquiry, usually of the local office of the Federal agency which acquired the land, to satisfy himself that the requisite jurisdiction exists. In case of doubt, the Criminal Division should be consulted before instituting proceedings.

Questions concerning civil or political rights of inhabitants of Government land, such as voting, liability for local licenses and taxes, residence, etc., should be submitted to the Lands Division.

IMMIGRATION AND NATURALIZATION CASES

Cases of illegal entry into the United States in violation of 8 U. S. C. 1325, notwithstanding the provisions of Section 1329, should be prosecuted in the district where the alien actually entered or attempted to enter, and not in the district where found. See the Sixth Amendment to the Federal Constitution. However, any alien who enters the United States after exclusion or deportation in violation of 8 U. S. C. 1326, may be prosecuted in the district where he is apprehended, even though the entry was made through another district, if the indictment is based on the "at any time found" clause in Section 1326.

In cases where the removal of an alien charged with illegal entry is desired, United States Attorneys for the district where the offense has been committed must advise the Department fully of all the facts in the case and await instructions before proceeding by information or indictment against the person whose removal is desired.

Report must be made promptly to the Department of the outcome of all habeas corpus proceedings arising under the immigration laws, and if adverse to the Government, all papers and a recommendation as to appeal should be submitted. No appeal should be noted by the United States Attorney until so authorized by the Department.

In cases within the purview of 8 U. S. C. 1251 (b), as to convictions had in the Federal district courts, the United States Attorney shall, at the time of imposition of sentence, advise the court or judge of the possibility of deportation so that the court or judge may exercise discretionary power to recommend to the Attorney General against deportation if he shall deem it advisable or warranted. United States Attorneys shall make no recommendation relative to deportation of the alien. Should the opinion of the United States Attorney be requested as to whether or not the alien should be deported, he should advise the court that he will be glad to take the matter up further and give the benefit of his recommendation after he has considered the whole record.

A complete revision of prior laws was made by the Immigration and Nationality Act, 66 Stat. 166, 8 U. S. C. 1001 et seq., effective December 24, 1952. Regulations promulgated thereunder were published in 17 Fed. Reg. 11469 et seq., No. 247, December 19, 1952.

Section 1324 removes the vagueness in previous statutes, 8 U. S. C. 144, as amended, and the difficulties imposed by *United States* v. *Evans*, 333 U. S. 483, and *United States* v. *DeCadena*, 105 F. Supp. 202, in prosecutions for harboring, transporting, or concealing illegal alien entrants.

8 U. S. C. 1252 (a) provides for judicial review of "any determination of the Attorney General concerning detention, release on bond,

or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability." As to final decisions of deportability, the Supreme Court in *Heikkila* v. *Barber*, decided March 16, 1953, 345 U. S. 229, held that under the prior statute, 8 U. S. C. 155 (a), such actions are reviewable only by habeas corpus.

In naturalization proceedings where the decision admitting the alien to citizenship is adverse to the recommendation of the naturalization officer, report and recommendation as to appeal is made to the Department promptly by the Immigration and Naturalization Service and all papers in the case submitted for consideration of the question of appeal by the Department. A copy of the report of the naturalization examiner in attendance at the hearing is submitted to the United States Attorney by the Service. No appeal should be noted by the United States Attorney until so authorized by the Department.

8 U. S. C. 1451 (a) authorizes the revocation of naturalization upon the ground that it was "procured by concealment of a material fact or by willful misrepresentation." The prior statute contained the additional ground of revocation for "illegality", which was construed to relate to irregularities in procedure, not necessarily involving fraud. Subdivision (d) relates to revocation upon the ground of presumptive fraud based upon consular certificates, and such cases usually are not contested.

Section 1451 does not contain the previous ground of illegal procurement as a basis for revoking naturalization. While the requirement of a high degree of proof in such cases, established in *Schneiderman* v. *United States*, 320 U. S. 118, remains unchanged, the Department will continue to institute actions under this Section for fraudulent procurement of naturalization by concealment of Communist affiliation. This question was not passed upon in the *Schneiderman* case, *supra*, page 131, fn. 7.

The present law is retroactive and thus applies to naturalization obtained at any time. Although the specific ground of illegality has been removed from the statutory provisions, the Department is continuing a program to denaturalize, upon the ground of mental reservation and concealed retention of foreign allegiance, those naturalized persons who have subsequently demonstrated by speech, writings and conduct, a preexistent disloyalty and lack of attachment to the fundamental principles of our Government.

No suits shall be instituted by the United States Attorneys to revoke naturalization under 8 U. S. C. 1451 until so directed by the Department. Notwithstanding that under 8 U. S. C. 1421 (a) jurisdiction

may lie in various courts of the States, all such actions shall be filed in the Federal district courts as there is no appropriation available for the expenses of proceedings in State courts. However, this does not apply to the expense of filing in State courts certified copies of the judgment as may be required by subdivision 1451 (h).

In all cases involving the revocation of naturalization where the defendant is absent from the district where he last resided in the United States, publication must be made in accordance with the provisions of 8 U. S. C. 1451 (d) even though a consent and waiver has been obtained from the naturalized person involved, unless such might have been obtained subsequent to institution of the action and may be treated as a consent, or confession of judgment. Utmost care should be used to comply strictly with the state statute in each case. It is not necessary to obtain prior approval of the expense of publication, since it is done pursuant to court order.

IMPERSONATION AND PROTECTION OF THE UNIFORM

Impersonation of Federal officers or employees impairs the integrity and prestige of the Government service and accordingly should be vigorously prosecuted under 18 U. S. C. 912 or 913. Prosecution, however, is normally not indicated if the individual goes no further than to attempt to impress a female acquaintance. If a civilian wears a military uniform unlawfully, prosecution should normally be initiated under 18 U. S. C. 702. If a member of the Armed Forces commits such offense, prosecution should normally be left to the military or naval authorities, but if prosecution should be declined by the military or naval authorities, advice should be requested in unusual cases from the Criminal Division.

INDIAN LIQUOR LAW VIOLATIONS

The principal statutes involved are 18 U. S. C. 1151 (defining Indian country); 18 U. S. C. 1154 and 1156 (penalizing the introduction into or possession of intoxicating liquor in Indian country and the sale thereof to Indians); 18 U. S. C. 3113, 3618 and 3619 (forfeiture provisions), and 18 U. S. C. 1152 (general applicability of United States laws).

Investigation

Investigations and reports of violations are made by Indian agents under jurisdiction of the Commissioner of Indian Affairs, Department of the Interior. The cases usually are reported direct to the United States Attorney for prosecution, no copy of the report coming

to the Department. However, occasionally an important or novel case may be submitted to the Department for consideration and reference to the United States Attorney.

Classes of Indians Covered

The Indians to whom the sale of liquor is prohibited either within or outside of Indian country are: Indians to whom allotments of land have been made while title to such land is held in trust by the Government; Indian wards of the Government under charge of any Indian superintendent or agent; and Indians, including mixed bloods, over whom the Government, through its departments, exercises guardianship or control.

Prosecution

Although failure to recognize a purchaser as a protected Indian does not absolve the seller, it is the policy not to prosecute for sales of liquor to Indians in places remote from Indian country when the seller was unaware of the prohibition. The emphasis should be on preventing liquor being introduced into Indian reservations or sold to Indians on or in the vicinity of such reservations. Criminal liability under the Indian liquor laws may not be compromised.

Seizures: Forfeitures

Liquor and other property, mostly vehicles, used in violation of the law may be seized and forfeited. Such liquor may not be sold but must be disposed of in accordance with 26 U. S. C. 2805. Forfeitures are consummated through libels, which pursuant to 28 U. S. C. 2461 (b) should conform as near as may be to proceedings in admiralty. Such actions also may be brought pursuant to the internal revenue laws if a violation of such laws also is involved. Forfeitures of vehicles under the Indian liquor laws may not be compromised or remitted administratively, but may be remitted by the courts in accordance with 18 U. S. C. 3619.

Where property decreed forfeited has been requested for official use by the General Services Administration such request should be reflected in the decree, a copy of which must be transmitted immediately to the General Services Administration, Washington, D. C.

INTERNAL REVENUE AND RELATED LIQUOR LAWS

The internal revenue laws respecting liquor are found principally within 26 U. S. C. 2800–4048 (Sections 2800–4048, Internal Revenue Code). Some of these sections relate entirely to liquor (its taxation,

manufacture, occupation and distribution from the revenue standpoint as well as the criminal, civil penalty and forfeiture provisions). Others also concern internal revenue taxes on other articles and occupations, and include seizure and forfeiture provisions, etc., applicable to internal revenue laws generally. Related statutes are 27 U. S. C. 201–212 (Federal Alcohol Administration Act); 27 U. S. C. 121–122 (interstate commerce laws); 18 U. S. C. 1261–62 and 3615 (protection of the dry states); 18 U. S. C. 1263–1265 (labeling packages, etc., of liquor shipped). Still other sections of the internal revenue laws and of the general laws of the United States, as well as certain provisions of the customs laws, particularly 19 U. S. C. 1613 and 1618 as provided in 26 U. S. C. 3726, as to remissions of forfeiture, are applicable. See elsewhere in the United States Attorneys Manual as to Indian liquor Laws.

Investigations

Violations of such laws primarily are investigated by agents of the Alcohol and Tobacco Tax Division, Treasury Department, and generally are reported for prosecution direct to the United States Attorneys by that Division. In rare instances involving important or novel cases such reports may be submitted to the Department for consideration and reference by it to the United States Attorneys for action. Otherwise no copies of violation reports are received in the Department, except those involving conspiracies and Federal Alcohol Administration Act violations. The receipt of any of such reports from the Alcohol and Tobacco Tax Division by the United States Attorney with an appropriate request therein for prosecution or suit, by delegation constitutes the authority required by 26 U. S. C. 3740 to commence action. If such authority is questioned the Department should be contacted immediately.

Cases may be adopted by the Alcohol and Tobacco Tax Division and reported to the United States Attorney for prosecution. However, evidence illegally obtained by State officers working in cooperation with Federal officers, or pursuant to an understanding, express or implied, with the Federal officers, may not be admissible. See *Gambino* v. *United States*, 275 U. S. 310, and other pertinent cases.

Limitation of Actions

The limitation on bringing indictment or filing criminal informations for both substantive and conspiracy offenses is either three or six years, depending on whether there was fraud, etc., involved. See 26 U. S. C. 3748. Limitations do not run during the time the offender

is absent from the district where the offense was committed. Suits to enforce fines, penalties and forfeitures must be brought within five years of the time the claim accrued. See 28 U. S. C. 2462. Property seized under any revenue law may not be replevied. See 28 U. S. C. 2463. In the case of an adverse judgment a certificate of reasonable cause for the seizure should be sought pursuant to 28 U. S. C. 2465.

Prosecution

The emphasis is on prosecutions of illicit distillers, large scale traffickers in nontaxpaid liquor, including diverters of industrial alcohol, and the principals involved in appreciable and willful frauds on the revenue. Especial attention is given to the prosecution of conspiracy cases, particularly those involving criminal syndicates or "racketeers" operating extensively. The primary aim is to protect the revenue on liquor. However, wholesale liquor dealers and others who transport or conspire to ship large quantities of taxpaid liquor into dry areas through false practices entailing Federal liquor law violations should be prosecuted vigorously. Such violations usually are of 26 U. S. C. 3253, 2857, 2831, 3270–74, 3793 and 3116; 18 U. S. C. 371 or 27 U. S. C. 203.

In minor cases where the United States Attorney believes the defendants will be adequately punished under State laws, he may turn such cases over to the appropriate State authorities for such disposition. In other minor cases where the United States Attorney considers prosecution is not warranted and he is unable to dispose of the cases by way of compromise he may return them to the Alcohol and Tobacco Tax Division for disposition.

Seized Property

Liquor and other personal property, mostly vehicles, used in the violation of the law may be seized and referred to United States Attorneys for proceedings to forfeit. This occurs where the appraised value of the property exceeds $500 or a claim and a cost bond are filed. Property of less value, unless the claim and bond are filed, is disposed of by advertisement and sale by the Alcohol and Tobacco Tax Division pursuant to 26 U. S. C. 3724. Seizures of real estate used as distillery premises may also be referred to the United States Attorney for libels. However, libels against realty in some instances may be inadvisable. They should be brought only after consideration of the extent and value of the property subject to forfeiture, exclusive of the interest therein of persons who had no knowledge that the distillery was on their property, in which event such interest is not for-

feitable. Unless forfeitures of either personalty or realty are remitted or compromised by the Department in accordance with the law, or the United States Attorney declines prosecution because of the insufficiency of the evidence and so advises the seizing agency, the forfeitures should be consummated through the filing of libels, a copy of which should be transmitted to the Department. The proof in such cases is by a preponderance of the evidence. Pursuant to 28 U. S. C. 2461 the proceedings should conform as near as may be to those in admiralty. They should be brought in the district where the property is found. See 28 U. S. C. 1395 (b). Forfeited liquor may not be sold but must be disposed of in accordance with 26 U. S. C. 2806. The disposition of forfeited real estate in accordance with 26 U. S. C. 3795 is by the Commissioner of Internal Revenue. The General Services Administration may make application for any forfeited property for official use of a designated agency pursuant to 40 U. S. C. 304. Where property decreed forfeited has been requested for official use by the General Services Administration such request should be reflected in the decree, a copy of which must be transmitted immediately to the General Services Administration, Washington, D. C.

Compromises: Remission of Forfeitures

It is the general policy not to compromise criminal liability in cases involving the manufacture of untaxpaid liquor or the trafficking in such liquor, especially where the tax fraud is substantial. However, there may be rare instances where such action would be appropriate.

After reference of seized property to the United States Attorney for libel, the Department may entertain offers in compromise or petitions seeking remissions of forfeitures as to all types of seized property. See Executive Order 6166 (5 U. S. C. 124). Action may be taken by the Department on petitions respecting vehicles seized under the internal revenue liquor laws until the entry of a decree of forfeiture. Thereafter, only as to vehicles so seized, the courts have exclusive jurisdiction to remit or mitigate forfeitures pursuant to 18 U. S. C. 3617. If a petition is filed with the court the field office of the Alcohol and Tobacco Tax Division should be requested to investigate and report respecting the claims of the petitioner. Unless the petitioner has clearly complied with all statutory prerequisites set forth in subsection (b) the petition should be opposed vigorously. The burden is on the petitioner to show such compliance pursuant to subsections (b) (1) and (2), and as to (b) (3) if the contract was with a person having a record or reputation for liquor law viola-

tions. The courts are not authorized to remit forfeitures in respect to other types of property seized either under the internal revenue laws, or, except as to Indian liquor law violations (18 U. S. C. 3619), property seized under any other laws of the United States. See the reasoning in *United States* v. *One 1941 Plymouth Sedan, etc.*, 153 F. 2d 19 (C. A. 10); *United States* v. *Gramling*, 180 F. 2d 498 (C. A. 5); *United States* v. *Andrade*, 181 F. 2d 42 (C. A. 9). As to compromises and remissions of forfeiture see pertinent paragraphs of the United States Attorneys Manual.

Disposition of Seized Property

To avoid unnecessary expenses (storage charges) and depreciation of property, especially in vehicle seizure cases, libels should be disposed of as expeditiously as the circumstances in the case may permit, without jeopardizing the criminal case or the rights of claimants. If there is a default, default judgment or decree should be sought promptly.

The United States Attorney should keep the Department currently advised respecting the developments in important criminal and forfeiture cases reported to him for prosecution. He should advise the Department promptly of any adverse decision either as to remission of forfeiture or as to forfeiture and should preserve the res pending determination of the question of appeal by the Solicitor General.

KICKBACK STATUTE

Investigations under 18 U. S. C. 874 are generally conducted by the FBI but cases may arise in consequence of investigative activities of other agencies, such as the General Services Administration. If, following a report to the Criminal Division, any particular complaint appears to deserve a full investigation, the Criminal Division will arrange for it through the FBI.

Complaints made to United States Attorneys of violations of the Act should be forwarded by them to the Criminal Division of the Department with a full statement of the alleged facts.

Prior authorization is required from the Department before instituting any prosecution under this Act.

KIDNAPPING

United States Attorneys should give special attention to cases involving violation of the Federal kidnapping statute (18 U. S. C. 1201, 1202). Charges against a defendant being held for such an offense should not be dismissed without specific authority from the Department.

With respect to the meaning of the word "otherwise" in the phrase "and held for ransom, reward or otherwise" attention is directed to the following cases: *Gooch* v. *United States*, 297 U. S. 124; *United States* v. *Parker*, 103 F. 2d 887, cert. denied 307 U. S. 642; *Brooks* v. *United States*, 199 F. 2d 836.

Important details relating to kidnapping cases should be reported promptly to the Department.

MILITARY MEDALS AND INSIGNIA

Prosecutions under 18 U. S. C. 701 or 704 should be commenced only after ascertaining that the "regulations" governing entitlement to such badge, medal, etc., adverted to in the exclusion clauses of the above-cited statutes have been published in the Federal Register as required by 44 U. S. C. 307. As a matter of practice, the wife, mother or sweetheart of a person awarded a military medal should be warned to refrain from wearing the medal rather than be criminally prosecuted for the first violative wearing. On the other hand, unscrupulous dealers in military medals should be vigorously prosecuted.

MOTOR CARRIERS

The Bureau of Motor Carriers of the Interstate Commerce Commission may refer directly to the appropriate United States Attorneys criminal cases arising in connection with the enforcement of Section 222 of the Interstate Commerce Act, Part II (49 U. S. C. 322), relating to unlawful operation by motor carriers. Communications relative to such matters as additional investigation by the referring agency, arranging for the attendance of or information as to witnesses, etc., should be transmitted directly from the United States Attorney to the referring agency. Advice should be sought from the Criminal Division in regard to policy, novel questions of law, or other factors of such importance as to merit the attention of the Department. Reports on the status or disposition of such cases should be directed also to the Criminal Division. Contemporaneously with the transmittal of a routine report to the Criminal Division concerning the status or disposition of a case, a copy of such report should be directed to the referring agency, and the original report to the Criminal Division should bear a notation that this has been done. The procedure outlined in this section relates only to the institution and conduct of such proceedings. Dismissal of cases after they have been begun will be governed by the same procedure as heretofore in force.

NARCOTIC LAW VIOLATIONS

The principal statutes involved are: 21 U. S. C. 171–185 (Narcotic Drugs Import-Export Act); 21 U. S. C. 188, et seq. (Opium Poppy Seed Act); 26 U. S. C. 2550–2564 and 3220–3228 (Harrison Narcotic Act); 26 U. S. C. 2590–2606 and 3230–3238 (Marihuana Tax Act), and 49 U. S. C. 781–788 (Contraband Transportation Act). Most of the criminal prosecutions are for violations of 26 U. S. C. 2553 (a), 2554 (a), 2591 (a), 2593 (a) and 21 U. S. C. 174. Forfeitures usually are consummated pursuant to the Contraband Transportation Act.

The Bureau of Narcotics, Treasury Department, primarily is charged with the enforcement of such laws, although the Bureau of Customs also functions in respect to illegal importations. Violations are reported for prosecution direct to the United States Attorney by the District Supervisor of Narcotics or the Collector of Customs. The Department receives no copy of the Bureau of Narcotics investigative reports, except those involving licensed doctors, dentists, veterinarians, druggists and manufacturers, but does receive copies of the Customs reports.

Prosecution

Narcotic and marihuana law violators who traffic in such drugs should be vigorously prosecuted. The principal object of enforcement is to eliminate or curtail the sources of supply and to prosecute the importers, dealers, and traffickers in illicit narcotics and marihuana. The emphasis should be on prosecutions of the sellers or purveyors, particularly those who deal with minors, and not the mere addict possessors. Such addicts often are persuaded voluntarily to enter appropriate hospitals for treatment, but criminal prosecutions of such cases in some instances may be justified so as to compel an addict to undergo complete treatment and to be committed for that purpose if necessary. Moreover, prosecutions for such minor offenses which are considered to be local in character may well be and often are left to the state or local authorities. Not falling within such minor category are cases against persons, whether addicts or not, who engage in the importation or transportation or are in possession of these drugs under circumstances reasonably indicating that the drugs were intended for use in the illegal traffic, and cases against those who otherwise are habitual criminals.

In prosecutions for serious offenses by traffickers in heroin and opium two counts may be charged, one under the internal revenue laws and the other under the Narcotic Drugs Import and Export Act. There is no lawful use of heroin.

Compromises: Remission of Forfeiture

It is the policy of the Department not to compromise criminal liability in narcotic or marihuana cases. However, compromises of and petitions seeking remission of forfeiture of property seized in such cases, usually vehicles, may be considered.

Mandatory Penalties Under Boggs Act

Public Law 255, 82d Congress, amends 21 U. S. C. 174 (Section 2 (c), Narcotic Drugs Import and Export Act) and the criminal penalty provisions of the internal revenue laws respecting narcotics and marihuana (26 U. S. C. 2557 (b) (1), 2596 and 3235). It fixes mandatory minimum and maximum prison terms of from 2 to 5 years for first offenses; 5 to 10 years for second offenses, and 10 to 20 years for third or subsequent offenses. It also provides a mandatory fine of not more than $2,000 for each offense. It does not preclude suspension of sentence or granting of probation to first offenders. It does preclude suspension of sentence or probation upon a second or subsequent conviction. It uses amended Section 2557 (b) (1) to provide identical penalties for violations of either the narcotic or marihuana tax laws, the penalties for which were heretofore found in that Section and Section 2596, respectively. For the first time, it provides increased penalties upon second and subsequent convictions under such marihuana laws. It also broadens the scope of the term "prior convictions" to include any prior conviction, the penalties for which are now prescribed in amended 21 U. S. C. 174 and 26 U. S. C. 2557 (b) (1), or were provided in the antecedents of either, and 26 U. S. C. 2596. These new penalties apply to conspiracies as well as to the substantive offenses.

Such new penalties apply to all violations committed subsequent to the effective date of Public Law 255, November 2, 1951, but not to those committed prior thereto, as otherwise they would be *ex post facto*. However, previous convictions for any of the violations now specified in 21 U. S. C. 174 or 26 U. S. C. 2557 (b) (1), irrespective of whether such violations occurred before or after November 2, 1951, constitute prior convictions requiring mandatory prison terms for second and third or subsequent offenders, when sentence is imposed for a violation committed after November 2, 1951. *Beland* v. *United States*, 128 F. 2d 795. Nevertheless, the prior conviction and the violation upon which it was based, both must have occurred prior to the date of the violation for which sentence is to be imposed to be considered a previous conviction requiring the mandatory sentence provided for second, third, and subsequent offenders.

A United States Attorney having reliable information that a person convicted of a violation occurring after November 2, 1951, previously has been convicted, must file an information with the court setting forth such prior conviction or convictions. In so proceeding, unless there is other competent proof thereof, the United States Attorney previously should have obtained a certified record of such prior conviction or convictions.

At the time sentence is to be imposed upon a conviction or plea of guilty the court's attention should be invited to the provisions of the above penalty statute. If the sentence is not imposed in accordance with the provisions of the above Public Law 255 the Department should be advised immediately. Such sentence, if illegal, seemingly may be corrected. See *Bozza* v. *United States*, 330 U. S. 160.

Disposition of Seized Property

All narcotic drugs and preparations coming into the possession of the United States Attorney in connection with violations of any anti-narcotic acts, which are no longer necessary as evidence, should be delivered to the narcotic agent in charge of the narcotic agents reporting such violations, for proper disposition. The Bureau of Narcotics disposes of seized contraband narcotics.

Property, such as vehicles, seized because of its use in violation of the narcotic or marihuana laws is referred to the United States Attorney for disposition, if it has an appraised value of more than $1,000 or if a claim and a cost bond are filed. Unless the forfeiture is remitted or compromised in accordance with law, or the United States Attorney declines prosecution because of the insufficiency of the evidence, the forfeiture of such property should be consummated through filing a libel, a copy of which should be forwarded to the Department. Such proceedings should conform as near as may be to those in admiralty cases. See 28 U. S. C. 2461. Congress has not extended jurisdiction to the courts to remit or mitigate forfeitures in such cases.

Where property decreed forfeited has been requested for official use by the General Services Administration such request should be reflected in the decree, a copy of which must be transmitted immediately to the General Services Administration, Washington, D. C.

In order to avoid unnecessary expenses and depreciation, libels should be disposed of as expeditiously as the circumstances in the particular case will permit, without jeopardizing the criminal case or the rights of claimants. If there is a default in the libel, default judgment or decree should be sought promptly.

The United States Attorney should keep the Department currently advised respecting the developments in important criminal or forfeiture cases reported to him.

NATIONAL MOTOR VEHICLE THEFT ACT

The legislative history of the National Motor Vehicle Theft Act, as amended (18 U. S. C. 2311–2313), does not indicate that the statute was enacted solely for the purpose of prosecuting gangs of automobile thieves. Individual cases as well as those involving gangs should be prosecuted. The Department's obligation under the law is to investigate and prosecute such cases whenever it appears that there has been a violation of the Federal statute, notwithstanding a concurrent and perhaps more flagrant violation of the local laws.

Automobile thefts are a major criminal problem throughout the country, and it has been the Department's experience that Federal investigation and prosecution of individuals as well as organized groups in this field have had a salutary effect in discouraging the development of car theft rings which would further aggravate the problem.

With reference to the meaning of the word "stolen" as used in the National Motor Vehicle Theft Act, the case of *United States* v. *Adcock*, 49 F. Supp. 351, holds that the word "stolen" should not be construed in the technical sense of what constitutes larceny, but in its well-known and accepted meaning of taking the personal property of another for one's own use without right or law, and that such taking can exist whenever the intent to do so comes into existence and is deliberately carried out, regardless of how the party so taking the car may have originally come into possession of it. This interpretation of the word "stolen" was approved in *Davilman* v. *United States*, 180 F. 2d 284, (C. A. 6). See also *United States* v. *Sicurella*, 187 F. 2d 538 (C. A. 2) and *Collier* v. *United States*, 190 F. 2d 478 (C. A. 6). However, in situations where both title and possession to the car intentionally pass, the courts have held that the car is not "stolen" within the purview of the Act. *Hite* v. *United States*, 168 F. 2d 973 (C. A. 10); *United States* v. *O'Carter*, 91 F. Supp. 544; also *Loney* v. *United States*, 151 F. 2d 1 (C. A. 10).

Venue. In all cases arising under this Act, prosecution should be instituted in the district into which the stolen motor vehicle is last brought unless it should appear that by reason of unusual circumstances it is inexpedient to institute prosecution in that district. In the event that unusual circumstances should exist, the United States Attorney in the district into which the motor vehicle has been brought

will at once communicate by telegraph with the United States Attorney in the district from which the car was originally brought, advising of the facts in the case and requesting him to institute prosecution, at the same time stating the circumstances by reason of which it is inexpedient to prosecute in the district into which the motor vehicle has been brought. The facts and the reason for requesting that such action be taken must be reported promptly to the Criminal Division. Prosecutions under 18 U. S. C. 2313 (receiving, concealing, selling, etc.) should be instituted only in the district wherein those violations occur.

NATIONAL STOLEN PROPERTY ACT

Under the provision of 18 U. S. C. 2314 pertaining to falsely made, forged, altered, or counterfeited securities prosecution should not be instituted in the following cases:

(1) Where the basis for prosecution is insufficiency or lack of funds in the drawer's bank.

(2) Where a fictitious name is used by the drawer, but it is the name he customarily uses and in drawing the check in this manner he does not intend to falsify his identity.

Since it is the Department's view that the responsibility for prosecuting "bad" check cases rests primarily with local authorities, exceptional circumstances of the following character should be present before prosecution is instituted under Federal law:

(1) Successful prosecution in a State is precluded because evidence, witnesses or the defendant are without the State.

(2) The defendant is known to have passed checks in many jurisdictions.

(3) The acts of the defendant do not constitute a violation of State law or the punishment that would be imposed by the State is inadequate in view of the frequency and scope of the defendant's activities.

(4) The charge is to be brought in conjunction with other Federal charges.

In addition, the term "falsely made" as used in this provision of 18 U. S. C. 2314 has reference to the manner in which the writing is made or executed rather than its substance or effect. A "falsely made" instrument is one that is fictitious, not genuine, or in some particular is something other than what it purports to be without regard to the truth or falsity of the facts therein. *Wright* v. *United States*, 172 F. 2d 310. The genuine making of a writing which contains false or

misleading statements is not "false making" or forgery. *United States* v. *Staats*, 49 U. S. 40; *United States* v. *Davis*, 231 U. S. 183; *United States* v. *Glasener*, 81 Fed. 566.

Cases involving violations of this statute are investigated by the FBI and reports are submitted directly to United States Attorneys.

NEUTRALITY ACT VIOLATIONS

Violations of the Neutrality Act (22 U. S. C. 452) prohibiting the export of arms, ammunition, and implements of war enumerated in Presidential Proclamation 2776, dated March 26, 1948, without a license from the Secretary of State, are investigated by the Bureau of Customs and are referred directly to the United States Attorneys by the Bureau of Customs. While approval of the Department is not required prior to the institution of prosecutions, United States At-

torneys should keep the Department advised of all indictments returned and the status of prosecutions thereunder.

NON-COMMUNIST AFFIDAVITS

Section 9 (h) of the Labor Management Relations Act (29 U. S. C. 159 (h)) requires union officers to file with the National Labor Relations Board a non-Communist affidavit in order that the union may avail itself of the benefits granted by the Act. A number of cases have arisen involving possible prosecution for violation of 18 U. S. C. 1001 for false swearing to these affidavits. If any such cases are reported to the United States Attorneys prior authorization must be received from the Department before instituting prosecution in these cases.

PERJURY

Prosecutions for perjury under 18 U. S. C. 1621 have recently presented some difficult questions. A statement is not properly the subject of prosecution where the false testimony is not material to the issue presented. The test of materiality of false testimony is whether the testimony has the natural tendency to influence, impede or dissuade the investigating body from pursuing its investigation. *United States* v. *Moran*, 194 F. 2d 623, cert. denied, 343 U. S. 965. An indictment drawn in the alternative is defective unless the prosecutor alleges which of two inconsistent sworn statements was false. *United States* v. *Buckner*, 118 F. 2d 468. As to the quantum of proof necessary, the general rule is that the uncorroborated testimony of one witness is not enough as a matter of law to prove the crime of perjury. There must be either two witnesses, or one witness and corroboration by other independent evidence. *United States* v. *Remington*, 191 F. 2d 246, cert. denied 343 U. S. 907; *United States* v. *Hiss*, 185 F. 2d 822, cert. denied 340 U. S. 948. See also *United States* v. *Seavey*, 180 F. 2d 837, cert. denied 339, U. S. 979.

POSTAL VIOLATIONS

If a United States Attorney has reasonable grounds to believe that nonmailable matter is or is about to be in the mails and proposes to secure a search warrant for such matter he should proceed as follows:

(a) give notice to the Post Office Inspector in charge of the division embracing the district in which such mail is or is expected to be;

(b) upon receipt of notice from the postmaster that the suspected mail has been located he should, within 48 hours, while such mail is held, obtain and have served a search warrant and take such mail into his possession;

(c) if it is determined that there has been a violation of law he should immediately take the necessary prosecutive action in accordance with instructions, and if the law has not been violated the mail should be promptly restored to the postmaster;

(d) a record must be kept of all mail matter taken from the postmaster under search warrant. This record should show:

1. A description of the suspected mail, including the names and addresses of the addressee and the sender, if any is shown and the grounds for believing that the mail contained nonmailable matter.

2. The date the Post Office Inspector in charge was notified.

3. The exact time when the mail was received in the particular post office concerned and when notification was received from the postmaster that said mail was in his possession.

4. A copy of the search warrant and its supporting papers, when it was applied for, when issued, and when executed.

5. A description of the contents of the mail matter seized.

6. A statement of the action taken thereafter with regard to the mail matter. If the mail matter was restored to the postmaster as not mailed in violation of law, the statement should show the date of restoration. If the mail matter was retained as mailed in violation of law, the statement should show the subsequent action taken.

In any case where material is submitted to the United States Attorney's office for clearance before mailing, extreme care should be exercised in expressing any sort of informal opinion regarding the placing of such material in the United States mail.

In cases where Federal prosecution for the unlawful importation, transportation or sale of obscene literature is not possible under 18 U. S. C. 1461 or 1462 because the obscene literature was not transported by mail or transported interstate by express or other common carrier, proper cooperation with State and local authorities should be extended.

Mail Fraud

18 U. S. C. 1341. All complaints involving the use of the mails to defraud, whether interstate or intrastate, are investigated by the Post Office Department. If securities are involved the complaint

should also be submitted to the Securities and Exchange Commission. Reports submitted to United States Attorneys by the Post Office Inspector of the district need not be forwarded to this Department as arrangements have been made for copies thereof to be transmitted by the Chief Inspector.

United States Attorneys should not undertake prosecution under this statute unless complaints have been investigated and official reports thereof submitted by the investigating agencies.

Ordinarily prosecutions should not be undertaken if the scheme employed consists of some isolated transaction between individuals, in which case the parties should be left to settle their differences by civil or criminal litigation in State courts. On the other hand, if the scheme is in its nature directed at defrauding a class of persons, or the general public, through the use of the United States mails, serious consideration should be given to prosecution under this statute.

Persons making complaints at United States Attorneys' Offices of violations of this statute should be referred to the local Post Office Inspector in charge. If the complaint relates to fraud in the sale of securities through instrumentalities of interstate commerce, the person complaining should be referred to the nearest regional office of the Securities and Exchange Commission.

In case the United States Attorneys are in doubt as to matters of policy, the matter should be taken up with the Department. Mail fraud prosecutions are considered of major importance, and the Criminal Division will be glad to furnish assistance to United States Attorneys in appropriate cases.

Cases under this statute usually are referred direct to United States Attorneys by Post Office Inspectors and by the Regional Administrator of the Securities and Exchange Commission. Occasionally, however, investigations by the FBI, notably in bankruptcy and fraud against the Government matters, disclose violations of the mail fraud statute. A copy of the report of the investigation is forwarded to the Department by these agencies at the same time the report is furnished to the United States Attorney. The Department should be currently advised of all developments after the case is received in the office of the United States Attorney.

Separate mailings in execution of a single scheme may be the basis of several counts, with punishment imposed on each count. *Badders v. United States*, 240 U. S. 391.

One of the principal objectives in mail fraud prosecutions is to secure with certainty evidence of the use of the mails in furtherance

of the scheme to defraud since the use of the mails is the gravamen of the offense. Decisions have made it clear that any use of the mails after the scheme has reached fruition would not constitute a violation of the statute. *Stapp* v. *United States*, 120 F. 2d 898; *United States* v. *McKay*, 45 F. Supp. 1007.

Kann v. *United States*, 323 U. S. 88, a leading case construing the mail fraud statute, emphasized that the mailing must be "for the purpose of executing the fraud." The courts in recent decisions have distinguished the ruling in *Kann* v. *United States* which was carefully limited to the particular facts of that case. *Bauman* v. *United States*, 156 F. 2d 534; *United States* v. *Kuiken*, 196 F. 2d 223, cert. denied 344 U. S. 867; *United States* v. *Vidaver*, 73 F. Supp. 382. The basis of the decisions in the three cases just cited was that the acts of the defendants in a series of the same type of fraudulent transactions involving the cashing of worthless checks in different cities and causing them to be placed in the mails was a part of a continuing scheme in which use of the mails was a means of concealment.

In cases where the decision in *Kann* v. *United States* may present a possible obstacle, the indictment should be drawn and such proof adduced as will support the existence of a continuing scheme to defraud.

RAILROAD UNEMPLOYMENT INSURANCE ACT AND RAILROAD RETIREMENT ACT

The Railroad Unemployment Insurance Act, 45 U. S. C. 359 (a), provides for prosecution in cases where false claims are knowingly made for the purpose of causing unemployment insurance benefits to be paid.

The penal provisions of the Railroad Retirement Act, as amended, 45 U. S. C. 228 (m), punishes the filing of false or fraudulent statements or claims for the purpose of securing retirement and other benefits.

Investigations in all cases arising under the above-mentioned acts are conducted by the Railroad Retirement Board through its regional offices.

Railroad Retirement Board Regional Directors refer all cases involving alleged violations of the Railroad Unemployment Insurance Act direct to appropriate United States Attorneys and furnish notice of that action to the Department.

The Chairman of the Railroad Retirement Board refers directly to the Department all cases involving alleged violations of the Railroad

Retirement Act. If the Department determines that criminal prosecution is warranted, it refers such cases to the appropriate United States Attorneys.

Irrespective of the fact that the amount of each false claim is small, vigorous prosecution should be undertaken in those cases wherein a claimant knowingly intended to defraud the Government.

The offenses proscribed by the penalty provisions of each Act are misdemeanors. Accordingly, prosecution should be instituted by way of information unless, in an exceptional case, it is deemed advisable that the matter be considered by a grand jury.

RAILWAY LABOR ACT (RAILROADS AND AIRLINES)

Investigation of all cases arising under the *criminal* provisions of 45 U. S. C. 152 and 181 will be conducted by the FBI.

Complaints of violations should be cleared by United States Attorneys through the Criminal Division. The statute presents many difficult questions and it is desirable that there be a uniform and consistent enforcement policy throughout the country. If, following a report to the Department, any particular complaint appears to deserve a full investigation, the Criminal Division will make the necessary arrangements with the FBI.

Any civil suits arising under the Act will continue to be handled by the Antitrust Division.

SAFETY APPLIANCE ACTS

The Secretary of the Interstate Commerce Commission will refer direct to the appropriate United States Attorneys cases involving violations of the Safety Appliance Acts (45 U. S. C. 1–16). The Commission's Secretary will submit to the United States Attorney a copy of each report made by the Commission's inspectors relating to the case, one copy of every letter forwarded to and received from the carrier, and an original and two copies of a proposed form of complaint. Cases involving novel questions of law will be submitted to the Criminal Division, which will also be supplied with copies of all materials (including the complaint) sent United States Attorneys on all Safety Appliance Act cases. Further correspondence should be exchanged directly between the United States Attorney and the Commission. Copies of all such correspondence should be forwarded to the Department. The United States Attorney should advise the I. C. C. of all developments in the case, including the filing of the complaint, the docket number, the trial date, the position taken by the railroad, the proposed settlement of the case, etc.

Most of these cases are concluded without trial, but if a trial seems to be necessary, the I. C. C. should be informed as far in advance as possible of the date of trial. The inspectors and one of the I. C. C. attorneys will report to the United States Attorney and, subject to his directions, will assemble the evidence to be adduced (large parts of which frequently must be obtained from the defendant's records and notes of the inspectors) and perform such other duties incident to the preparation of the case for trial as the United States Attorney desires. The principal witnesses (the inspectors) need not be subpoenaed. Arrangements for their appearance should be made with the I. C. C. The assistance of I. C. C. attorneys, who are thoroughly familiar with the Acts, the orders of the I. C. C. issued thereunder and court decisions with respect thereto, and are well informed with respect to railroad records and practices, will be valuable in presenting contested cases, involving as they do technical matters related to railroad operations and practices. In the discretion of the United States Attorney, the facts may be agreed upon and stipulated with the defendant's attorneys and submitted to the court for decision. However, the proposed stipulation should first be submitted to the Commission or its attorney for approval.

The statutory penalty of $100 for each offense is mandatory on the court when a violation is shown. *United States* v. *Gulf C. & S. F. Ry.*, 4 F. (2) 722, 724. No case shall be settled except upon the basis of a judgment on each count for $100 with costs, to which the Government is entitled as a matter of right, 28 U. S. C. 1918 (a). Acceptance of the penalty without the entry of judgment is not permitted.

SECURITIES ACT, SECURITIES EXCHANGE ACT AND INVESTMENT ADVISERS ACT

Except for cases involving novel questions of law or other factors of such importance that they should first be brought to the attention of the Department, all violations of the Securities Act of 1933, as amended (15 U. S. C. 77a et seq.), the Securities Exchange Act of 1934, as amended (15 U. S. C. 78a et seq.), and the Investment Advisers Act of 1940, as amended (15 U. S. C. 80b–1, et seq.), will be referred directly to United States Attorneys by the Securities and Exchange Commission. Copies of the investigative reports, however, will be sent to the Department where they will be fully considered and, in proper cases, the Department will communicate with United States Attorneys concerning any matters it considers of importance. Because the Department considers such cases of great importance it will keep in close touch with United States Attorneys concerning

them. Such cases should be handled as expeditiously as possible and the Department should be kept advised of all action taken with respect to them.

Prosecutions for violations of the above Acts may be instituted without first obtaining authority from the Department in those cases where the violations are brought to the attention of the United States Attorneys by the Securities and Exchange Commission. Where such notification is made by any agency or department, or any source, other than the Commission, no prosecutions should be instituted without first obtaining authority from the Department.

Cases in which the United States Attorney disagrees with the recommendations of the Commission as to the institution of prosecution, or the grounds of prosecution, or the persons to be prosecuted, should be referred to the Department with a full statement of the reasons for disagreement.

Securities Act of 1933

The preamble of the Securities Act of 1933 states that it is an Act "to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes." This Act as amended embraces both civil and criminal liabilities as to persons and corporations connected with the issuance, underwriting and sale of securities.

15 U. S. C. 77x, the penalty provision, expressly requires a violation to be "willful" before criminal liability attaches. The Department's primary concern is with criminal violations, since there are administrative and civil court proceedings by the Securities and Exchange Commission for violations not committed willfully and knowingly, and civil actions by aggrieved investors. Section 77x makes it a crime willfully to violate "any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission." It also contains a specific provision with respect to false representations and omissions of material facts willfully made in *registration statements*. Therefore, the statute embraces numerous separate criminal offenses which fall into two general groups as follows:

Violations of fraud and registration provisions. Major violations under the Act fall under Section 17 (a) of the Act (15 U. S. C. 77q) which contains the fraud provisions of the statute and which has been the basis for numerous court decisions interpreting the statute and affecting its scope and operations. Section 77q is similar to the language of the mail fraud statute. *Coplin* v. *United States*, 88 F. 2d 652, cert. denied 301 U. S. 703; *Pace* v. *United States*, 94 F. 2d

591; *Landay* v. *United States*, 108 F. 2d 698, cert. denied 309 U. S. 681; *Nemec* v. *United States*, 191 F. 2d 810. The Act has been held constitutional, *Kopald-Quinn* v. *United States*, 101 F. 2d 628, cert. denied 307 U. S. 628; *S. E. C.* v. *Jones*, 85 F. 2d 17, cert. denied 299 U. S. 581; *Bogy* v. *United States*, 96 F. 2d 734, cert. denied 305 U. S. 608; *United States* v. *Monjar*, 147 F. 2d 916, cert. denied 325 U. S. 859; and insofar as it pertains to fraudulent sale of securities by mail, does not impliedly repeal provisions of the mail fraud statute. *United States* v. *Rollnick*, 91 F. 2d 911; *Edwards* v. *United States*, 131 F. 2d 198, cert. denied 317 U. S. 689.

To constitute a violation of Section 77q (a), it must be willful (15 U. S. C. 77x), *Stone* v. *United States* (reversed on other grounds), 113 F. 2d 70; there must be a sale, *Bogy* v. *United States*, 96 F. 2d 734, cert. denied 305 U. S. 608, of a security, *S. E. C.* v. *Joiner Leasing Corp.*, 320 U. S. 344, *Atherton* v. *United States*, 128 F. 2d 463, *United States* v. *Riedel*, 126 F. 2d 81, within the meaning of 15 U. S. C. 77b (3); there must be a use of the mails, *Kopald-Quinn* v. *United States*, *supra*, or any means or instruments of transportation or communication in interstate commerce, *Coplin* v. *United States*, 88 F. 2d 652, cert. denied 301 U. S. 703; *Kelling* v. *United States*, 193 F. 2d 299; there must be an employment of a device, scheme or artifice to defraud, or the employment of other practices set out in paragraphs 2 and 3 of 15 U. S. C. 77q (a), *Holmes* v. *United States*, 134 F. 2d 125, cert. denied 319 U. S. 776. This section also applies to shipments of forged bonds in interstate commerce, *Seeman* v. *United States*, 90 F. 2d 88 (reversed on other grounds), but see *Seeman* v. *United States*, 96 F. 2d 732, cert. denied 305 U. S. 620. It should be emphasized that no securities are exempt from the provisions of this fraud section.

Section 77q (b) is particularly designed to meet the evils of the "tipster sheet" as well as articles in newspapers or periodicals that purport to give an unbiased opinion, which opinions in reality are bought and paid for. *House Report No. 85, 73d Cong., 1st Sess. p. 24.* Unlike Section 77q (a), a scheme or artifice to defraud is not an element of this offense.

15 U. S. C. 77e (a) (1) and (2) makes it unlawful to do the acts defined therein unless a registration statement is "in effect". This refers to a registration statement filed with the Securities and Exchange Commission. *United States* v. *Bronson*, 145 F. 2d 939; *Danziger* v. *United States*, 161 F. 2d 299, cert. denied 332 U. S. 769; *Kaufman* v. *United States*, 163 F. 2d 404, cert. denied 333 U. S. 857; *Jones* v. *S. E. C.*, 298 U. S. 1; *S. E. C.* v. *Chinese Consol. Assoc.*,

120 F. 2d 738, cert. denied 314 U. S. 618. The elements of this violation are the use of the mails or means or instruments of transportation or communication in interstate commerce, a sale (which includes attempts or offers to sell), and the fact that a registration statement is not in effect, which would include a situation where the effectiveness of the registration statement has been suspended or where it has been revoked.

15 U. S. C. 77e (b) (1) makes it unlawful to use the mails or means of interstate commerce to transport a prospectus which fails to meet the requirements of 15 U. S. C. 77j which provides the information required to be included in the prospectus. Likewise, under Section 77e (b) (2), it is unlawful to transport a security unless preceded or accompanied by a prospectus meeting the same requirements. Certain securities and transactions, as set forth in Sections 77c and 77d, are exempt from the provisions of Section 77e. Section 77q, however, still is applicable to such securities and transactions. Section 77x contains the special provision pertaining to false statements and omissions in registration statements. The false statements and the omissions must be willful and each must be of a material fact. The statute does not define "materiality" and in the case of making any untrue statement of a material fact, the question becomes one of fact in each particular case. This specific provision is limited to matters contained in a registration statement.

Violations of rules and regulations. The Commission has been given both general and specific rule-making power which must be confined to the field covered by the statute. Under this particular statute, the Commission's rules and regulations are primarily concerned with questions of exemption from registration and with the material that is required to be filed with it. Consequently, these rules become pertinent in connection with criminal prosecutions for the most part only when violation of Section 77e, hereinbefore referred to, or a false filing, is involved.

Securities Exchange Act of 1934

The Securities Exchange Act of 1934, as amended (15 U. S. C. 78a, et seq.), designed to prevent inequitable and unfair practices on securities exchanges and in the over-the-counter markets, and to regulate such exchanges and markets, became effective July 1, 1934, with certain sections becoming effective as enumerated in Sections 78hh and 78hh–1. Subsequently, on June 25, 1938, important amendments were made to Sections 78o, 78q, 78cc, and 78ff.

As to criminal liability, the provisions of the Act may be classified into three general groups:

(1) Absolute and unqualified prohibitions; i. e., statutory provisions prohibiting the doing of certain acts under all circumstances. (Sections 78e, 78h (d), 78i (a) 1–5, 78k (b), 78o (a) and (d), 78o (e) (1) and (2), 78p (c), 78t (b) and (c), 78u (c), 78x (c), and 78z.)

(2) Prohibitions involving promulgation of rules and regulations, i. e., statutory provisions referring in general terms to the prohibitions of certain acts, the extent and details of such prohibitions to be determined by the rules and regulations of the Securities and Exchange Commission and the Federal Reserve Board. (78g (c), 78h (a) (b) (c), 78i (a) (6), 78i (b) and (c), 78j (a) (b), 78k (a), 78n (a) (b), 78o (c) (3), 78w (a), and 78dd (a).)

(3) Affirmative requirements, i. e., statutory provisions requiring the doing of certain acts, some of which are absolute as in Section 78p (a). Other requirements are generally indicated and subject to specification by rules and regulations. (78l, 78m, and 78q (a) (b).)

The general penalty provision is found in Section 78ff. Section 78ff (a) punishes (1) "willful" violations of the Act and the rules and regulations thereunder, and (2) the "willfully and knowingly" making of false or misleading statements in applications, etc., required by the Act to be filed.

The principal sections of this statute under which criminal prosecutions have arisen are Section 78i (manipulation), Section 78o (a) (failure to register by broker-dealer), Section 78o (c) (fraud by broker-dealer), Section 78j (b) (fraud or manipulation by any person in connection with security listed on stock exchange), Section 78h (c) (improper hypothecation of customer's securities), Section 78q (a) (keeping of books and statements and filing of reports), and Section 78ff (making of false statements in documents filed). It should be noted that under Section 78ff the offender may escape imprisonment as distinguished from fine, for violation of a rule or regulation, if he proves that he had no knowledge of such rule or regulation. Of course, if the rule or regulation is in terms of fraud (see Rules X10B–5 and X–15C1–2), it would be most difficult for a defendant to convince a jury that he did not know that the Commission had promulgated the rule; the burden of proof on this issue would be on the defendant.

Immunity. Section 78u (d) grants immunity to anyone compelled to testify *after having claimed* his privilege against self-incrimination in a proceeding *instituted by the Commission.*

Investment Advisers Act of 1940

The Investment Advisers Act of 1940 (15 U. S. C. 80G–1–21), has for its purpose supervision and control of the operations of investment advisers by the Securities and Exchange Commission. The Act prohibits any investment broker from making use of the mails or any means or instrumentality of interstate commerce in connection with his business unless registered with the Securities and Exchange Commission. The Act further provides rules governing registration, as well as the denial or suspension thereof.

Title II, Section 206, of the Act (15 U. S. C. 80b–6) prohibits, among other things, transactions by registered investment advisers through the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to employ any scheme or artifice to defraud the client or to indulge in any practice or transaction which operates as a fraud upon any client or prospective client. This section also requires full disclosure by the investment adviser to a client, either in the purchase or sale of any security, of the capacity in which the investment adviser acted.

Penal provisions for the making of material misstatements, unlawful representations or other violations of the Act are provided in 15 U. S. C. 80b–17.

SECURITY CONTROL OF AIR TRAFFIC

By agreement between the Department of Justice and the Civil Aeronautics Administration, cases involving violation of regulations contained in Part 620 of the Civil Aeronautics Regulations for prosecution under 49 U. S. C. 704 are referred to the United States Attorneys directly by the Regional Attorneys of the Civil Aeronautics Administration. Prior approval of the Department is not required for prosecution.

SELECTIVE SERVICE ACT OF 1948, AS AMENDED; UNIVERSAL MILITARY TRAINING AND SERVICE ACT, AS AMENDED

The Selective Service Act of 1948 was amended and reentitled the Universal Military Training and Service Act in 1951. The importance of effective enforcement of the Act cannot be overemphasized in connection with the preparedness program in which this Nation is

engaged. While every effort should be made to secure compliance with the provisions of this law and to maintain intact the availability for service of those individuals having obligations to discharge, willful violators must, of course, be prosecuted vigorously.

Closing Cases

In order to prevent a willful violator from escaping both punishment and service, great care should be taken in making final determination as to whether a case should be closed. Should there exist doubtful or unusual cases, the Criminal Division will be glad to be of assistance upon request.

United States Attorneys are authorized to close files involving fictitious and false registrations if the investigation and other available information disclose that the registrant's identity cannot be established. This authorization does not include cases in which indictments have been secured, and no blanket authority is given to recommend dismissal of indictments in such cases. In any case in which it is deemed advisable to dismiss, the usual procedure of securing prior approval of the Department should be followed.

Second Delinquency

Delinquency cases involving subjects who have been convicted and have served sentences for a previous refusal to comply with their obligations under the Act present certain questions of law and policy. The facts in such cases should be reported to the Criminal Division before second prosecutions are instituted.

Source Material

Since practically all Selective Service cases involve various regulatory provisions not found in the Act, it is important that the necessary source material be kept available. It is also well to remember that cases may require the application of regulatory provisions that have since been amended. Whenever there exists any uncertainty as to the applicable provisions, the Criminal Division is prepared to furnish you with the necessary information and citations.

Mental Incompetents

Special effort should be made to prevent the conviction of mental incompetents under the Selective Service Act. Persons in this category have frequently pleaded guilty to such charges and their mental status has not been discovered until their examination by the Bureau of Prisons' physicians.

Investigations

As a general rule, investigations should not be discontinued before the facts have been developed sufficiently to disclose the presence or absence of a willful violation, even though the subject may not presently be eligible for induction. Thus, a delinquency case should not be closed merely because the delinquent is twenty-six years of age or older, if the delinquency occurred when the registrant was in an age group subject to call for induction.

Appeals

In view of the Department's responsibility for enforcement, which is closely associated with the administration of the Act, it is important that the Department be kept fully advised of all appeals. The United States Attorneys should inform the Criminal Division as soon as possible when an appeal is taken and set out the issues that will be involved. Thereafter, copies of the transcript and appellant's brief should be forwarded to the Criminal Division as soon as available. What further action is to be taken by the Department will depend on the issues involved in the individual cases. In some instances it will be advisable to consult with National Headquarters of Selective Service. In certain important cases, the Criminal Division will want to review the United States Attorney's brief before it is printed or collaborate in its preparation. In other cases, the Criminal Division will merely submit any suggestions or new authorities which may be available. Of course, in many cases there will be no necessity for the Criminal Division to take any action. Nevertheless, in order to assure adequate and uniform treatment of the many new issues that are presented, it is necessary for the Department to be advised of the facts in all appeal cases.

Habeas Corpus

If inductees attempt to obtain release from the Armed Forces by means of writs of habeas corpus, the United States Attorney will represent the respondents. It is important that the Criminal Division be advised at once of the filing of such a writ and of the facts involved, in view of the importance of the decisions in such cases to the administration of the Act.

Cooperation With Selective Service

In the interest of close cooperation with the Selective Service System in cases of unusual importance, the Director of Selective Service has been assured that the United States Attorneys will respond fully to

the requests of and cooperate with the Selective Service System in the utilization of aid offered by it in the preparation and presentation of cases involving the Universal Military Training and Service Act. The complexities and ramifications of the regulations of the Selective Service System and the Department of Defense pursuant to this Act make such cooperation essential.

Because of the heavy case load resulting from prosecutions for violation of the Act, as well as habeas corpus proceedings and civil suits against officers and employees of the Selective Service System and of the military establishments, the Director of the Selective Service System has advised that he will make available to United States Attorneys brief digests of current cases involving the Selective Service law, as well as points and authorities which may be useful in types of cases which are currently prevalent. The Director has offered also in cases which may be of extraordinary operational significance to the Selective Service System to designate an officer from his staff to assist United States Attorneys in the preparation and presentation of such cases. It is understood, of course, that such a working arrangement will not alter the primary responsibility of United States Attorneys in the handling of these cases. Similarly, the Secretary of Defense will make available to the United States Attorneys in extraordinary cases involving the military establishments a member of the Judge Advocate General's Corps to assist and be associated with them in the preparation and presentation of these cases.

Form

United States Attorneys are requested to furnish the Department with pertinent data regarding each delinquent against whom prosecution has been instituted. Such data should be forwarded on the form, Report of Disposition of Selective Service violations (Appendix, Form 9).

Depositions: Subpoenas

Attention is directed to the fact that in several recent cases the delinquent, who claimed to be a conscientious objector, has either secured or attempted to secure, pursuant to Rule 17, Fed. Rules Crim. Proc., an order to take the depositions of the members of the Presidential Appeal Board, Selective Service System, or has served upon these officials or the Special Agent in Charge of the local office of the FBI, or the Deputy Attorney General, or the United States Attorney's office, a subpoena duces tecum with a view to securing agency files concerning the delinquent. United States Attorneys are re-

quested to report such attempts to the Department immediately. Instructions in each case will then be issued.

Registrars

It is believed that a substantial number of convictions for failure of conscientious and religious objectors to register would be obviated if the United States Attorneys were designated as registrars under the Universal Military Training and Service Act to register persons who had refused to submit themselves for registration. Under the provisions of Section 1642.31 of the Universal Military Training and Service Act, it appears that there is sufficient authority for United States Attorneys or their assistants to act as such special registrars.

Additional authority for this action may be found in 28 U. S. C. 507. Therefore, in any pending religious objector cases in which prosecution has been instituted, United States Attorneys and their Assistants are authorized and directed to register any and all such defendants at any time during the course of the prosecution when the registrant either agrees to register or to furnish the information necessary to complete such registration. If and when such registration is effected, proper steps should then be taken to secure the dismissal of the action. Every effort should be made to obtain registration of men in this category whenever possible.

IMPORTANT DECISIONS

The following is a list of important decisions involving the administration and enforcement of the Universal Military and Service Act.

Constitutionality of the Act: *United States* v. *Herling*, 120 F. 2d 236 (C. A. 2); *Dodez* v. *United States*, 329 U. S. 338; *Self* v. *United States*, 150 F. 2d 745 (C. A. 4); *Humes* v. *Pescor*, 148 F. 2d 127 (C. A. 8); *Tatum* v. *United States*, 146 F. 2d 406 (C. A. 9).

Venue: *United States* v. *Anderson*, 328 U. S. 699; *United States* v. *Van Den Berg*, 139 F. 2d 654 (C. A. 7); *Shurin* v. *United States*, 164 F. 2d 566 (C. A. 4), cert. denied 333 U. S. 837.

Second prosecution not double jeopardy: *Goodrich* v. *United States*, 146 F. 2d 265 (C. A. 5).

Interference by force and violence: *Bagley* v. *United States*, 136 F. 2d 567 (C. A. 5); *Burwell* v. *United States*, 137 F. 2d 155 (C. A. 4); *Moore* v. *United States*, 128 F. 2d 974 (C. A. 5); *Helton* v. *United States*, 143 F. 2d 933 (C. A. 6), cert. denied 323 U. S. 765.

Counseling evasion: *Baxley* v. *United States*, 134 F. 2d 937 (C. A. 4).

Conspiracy to violate Act: *United States* v. *O'Connell*, 126 F. 2d 807 (C. A. 2); *Singer* v. *United States*, 323 U. S. 338.

Bribery of Selective Service officials: *United States* v. *Kemler*, 133 F. 2d 235 (C. A. 1); *Cohen* v. *United States*, 144 F. 2d 984 (C. A. 9), cert. denied 323 U. S. 797.

Sufficiency of Indictments: *United States* v. *Wernecke*, 138 F. 2d 561 (C. A. 7), cert. denied 321 U. S. 771; *United States* v. *Wagoner*, 143 F. 2d 1 (C. A. 7), cert. denied 323 U. S. 730.

SLOT MACHINE ACT

Manufacturers of and dealers in gambling devices having places of business located in the State of Illinois should register and file monthly reports, as required by 15 U. S. C. 1173, with the Attorney General at the office of the United States Attorney for the Northern District of Illinois.

Manufacturers of and dealers in gambling devices having places of business located in "States" other than the State of Illinois should file the required registration and monthly reports with the Attorney General at the Department of Justice Building, Washington, D. C.

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the FBI of the Department of Justice are authorized and designated to make seizures of gambling devices under 15 U. S. C. 1177.

Other than the authority granted in the preceding paragraph, United States Marshals are authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of gambling devices under 15 U. S. C. 1177 as are imposed upon collectors of customs or any other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws.

A "dealer" in gambling devices has been judicially interpreted to be one who buys and sells gambling devices in the usual course of trade; one who buys to sell again. *Smith* v. *McGrath*, 103 F. Supp. 286; *United States* v. *200 Gambling Devices*, 103 F. Supp. 886.

STRIKEBREAKERS, TRANSPORTING

Investigation of all cases arising under 18 U. S. C. 1231 will be conducted by the FBI.

Complaints of violations should be cleared by United States Attorneys through the Criminal Division. If, following a report to the

Department, any particular complaint appears to deserve a full investigation, the Criminal Division will arrange for it with the FBI.

SUBVERSIVE ACTIVITIES

Espionage (18 U. S. C. 793, et seq.); Sabotage (18 U. S. C. 2151, et seq.); Atomic Energy (42 U. S. C. 1801–1819); Treason (18 U. S. C. 2381); Misprision of Treason (18 U. S. C. 2382); Sedition (18 U. S. C. 2387–2388); and kindred offenses.

Authorization of Prosecution

Except as hereinafter noted, the determination whether an arrest should be made and prosecution instituted will be primarily the responsibility of the United States Attorney, subject to the approval of the Department. The Atomic Energy Act of 1946 specifically provides that the Attorney General shall authorize all prosecutions thereunder; hence, this decision may not be made by United States Attorneys. In addition, prior approval of the Attorney General is necessary before prosecution may be instituted for sedition (18 U. S. C. 2387, 2388) and for violations of the Smith Act (18 U. S. C. 2385), including conspiracies to commit the substantive offenses. Likewise the United States Attorney should not decline prosecution of cases in the aforementioned categories until the matter is submitted to the Department.

Reporting Violations

The FBI has been instructed that whenever it appears from information in the possession of the Bureau that a violation of Federal law may have been committed, the circumstances should be brought to the attention of the United States Attorney without delay, for the purpose of taking such action as he may deem advisable by way of prosecution or otherwise.

Prior Authorization for Prosecution. Espionage and Smith Acts

With respect to violations of 18 U. S. C. 793, 794 and 18 U. S. C. 2381, 2382, prosecution should not be instituted without prior Departmental approval except in the case of an emergency, such as the possible escape of prospective defendants or the causing of irreparable damage if immediate action is not taken. In the absence of an emergency, the United States Attorney before taking action with respect to any of the violations in the caption, with the exception of violations of 18 U. S. C. 795–797, will first submit in writing to the Depart-

ment for its approval his recommendations and the reasons therefor in respect to any prosecutive action, including the application for search warrants, warrants of arrests, or the presentation of evidence to a judge, United States Commissioner, or to a grand jury.

Authorization in Emergency

In cases of emergency, however, the United States Attorney is authorized to take such necessary action as may be appropriate, provided that he shall immediately advise the Department by telephone or telegraph setting forth briefly the facts of the case, the action taken, and the necessity for proceeding without the prior approval of the Department. In addition, a more detailed written report should be submitted promptly to the Department by air mail special delivery.

Furnishing Information, Copies of Decisions, Etc.

Immediate notice should be given to the Department of any proceeding instituted by other agencies or private litigants under laws relating to neutrality, espionage, sabotage, and like offenses, and copies should be furnished of all rulings, decisions and instructions to juries in proceedings instituted under or affecting such laws.

Reporting Information to FBI

Report should be made promptly to the nearest office of the FBI of all information received which pertains to espionage, sabotage, or other activities relating to the public welfare and the national defense. In so far as it is possible and practicable, persons initially submitting such information to the offices of United States Attorneys should be instructed to furnish this information to the nearest office of the Bureau.

Sabotage

Inquiries: Referral. Inquiries from officers of the Provost Marshal Branch, requesting information from United States Attorneys concerning suspected or established incendiarism or other sabotage of war material, war premises or war utilities, including the disposition of such cases, should be referred to the Office of the Deputy Attorney General. Such officers should be courteously advised that the FBI transmits to interested intelligence agencies exhaustive statistics on such cases and such information is kept current daily. Such inquiries, therefore, should be made to the Department of the Army, Air Force or Navy, as the case may be, in Washington.

Publicity. No information should be given to the press or to anyone else concerning any of the foregoing cases until after either a complaint has been filed with the United States Commissioner, or an indictment has been found by the grand jury and made public. Moreover, even under such circumstances, only such information as is limited to matters of public record should be made public.

Witnesses. Witnesses subpoenaed in any case involving security matters shall not be released without the prior approval of the Department of Justice until the proceeding in which the witnesses have been subpoenaed has been concluded. In any procedure relating to security matters, United States Attorneys and their Assistants are cautioned that they are not to interview or subpoena confidential informants of the FBI without prior consultation and consent of the Department of Justice.

Espionage

Interpretation. With regard to espionage violations, it is noted that the words "national defense" as used in former Section 31 of Title 50 are similar to the words "common defense" as used in the Constitution, Article I, Section 8, Clause 1, giving Congress the power to provide for the common defense. It is a generic concept of broad connotation, referring to the military and naval establishments and related activities of national preparedness. The evil punished is the obtaining or furnishing of the guarded information either to the hurt of the United States or to the gain of another nation. It is not necessary to prove that the "advantage" to a foreign nation is an advantage as against the United States and that the information obtained was to be used to the injury of the United States. It is the function of the court to instruct concerning the kind of information which is violative of this section and it is the function of the jury to determine whether the information secured was of the defined kind. *Gorin* v. *United States*, 312 U. S. 19.

Further, with respect to espionage violations, the court, in *United States* v. *Heine*, 151 F. 2d 813 (C. A. 2), cert. denied 328 U. S. 833, placed a restrictive interpretation on the phrase "information relating to the national defense." 50 U. S. C. 32 (1946 edition), does not cover, said the court, "information about all those activities which become tributary to 'the national defense' in time of war." In this case the court held it was "lawful to transmit any information about weapons and munitions of war which the services had themselves made public; . . . and information which the services have never thought . . . necessary to withhold". Although conceding that the definition of the phrase as used by the Supreme Court in *Gorin* v. *United States*, *supra*,

creates "a penumbra of some uncertainty," the court felt the latter case contained nothing contrary to its holding here. However, it is noteworthy that the circuit court thought it necessary to explain the possible inconsistency between the language of the *Gorin* case and the *Heine* case.

Treason

With respect to treason the case of *United States* v. *Monti*, 100 F. Supp. 209, is noteworthy in that it is the first time that a defendant in a treason case confessed in open court to the crime of treason. The Constitution provides that there must be present the testimony of two witnesses to an overt act or a confession by the defendant in open court. With respect to adhering to enemies of the United States, giving them aid and comfort, it is necessary that the United States actually be at war at the time the crime of treason is committed, *United States* v. *Fricke*, 259 Fed. 673.

There have been many trials by military tribunals of persons subject to military jurisdiction on charges amounting to treason, and a number of executions (see *Ex parte Quirin*, 317 U. S. 1, 42, fn. 14).

SUBVERSIVE ACTIVITIES CONTROL ACT

The provisions of the Subversive Activities Control Act of 1950 relating to registration and annual reports of Communist organizations are contained in 50 U. S. C. 786–788. The administration of the above sections of the Act is assigned to the Internal Security Section, Criminal Division, Department of Justice. The general regulations applicable to the registration of Communist organizations are contained in 15 F. R. 7011 (October 20, 1950).

Before instituting grand jury proceedings in prosecutions under this Act, United States Attorneys shall obtain an express authorization from the Department. This authorization may be obtained by telegraph or telephone in cases where time does not permit authorization by letter.

THREATENING COMMUNICATIONS

18 U. S. C. 875, 876 and 3239 deal with threatening communications originating in the United States. Section 3239 provides that any defendant, upon motion duly made, has the right to be tried in that district where the communication was first placed in motion, that is, in the mails or in interstate commerce by any means whatsoever. Therefore, unless exceptional circumstances necessitate different procedure, prosecutions under these sections should be initiated in the

district in which the threatening communication was mailed or otherwise placed in interstate commerce.

Violations of Section 876 which involve (1) mailing of threats to injure the person or property of any person, (2) mailing of threats to kidnap any person, and (3) mailing of any demand or request for ransom or reward for the release of any kidnapped person, should be referred to the FBI. All other violations of this section should be referred to the postal authorities.

For the meaning of "threat" in these sections see *United States* v. *Daulong*, 60 F. Supp. 325, and *United States* v. *Metzdorf*, 252 Fed. 933.

TWENTY-EIGHT HOUR LAW

The Office of the Solicitor of the Department of Agriculture will refer direct to the appropriate United States Attorneys cases involving violations of the Twenty-Eight Hour Law (45 U. S. C. 71, et seq.), except those which involve novel questions of law or policy. The Office of the Solicitor will submit to the United States Attorney a copy of each report made by Agriculture's inspectors relating to the case, one copy each of every letter forwarded to and received from the carrier, and an original and two copies of a proposed form of complaint. In addition, the transmittal letter will recommend the amount of the penalty which Agriculture believes should be exacted. United States Attorneys may assume that the Criminal Division approves the amount of the penalty recommended by the Department of Agriculture unless advised to the contrary. Cases involving novel questions of law or policy will be submitted to the Criminal Division.

No case shall be settled except upon the basis of the entry of a judgment. Every judgment in favor of the Government must be in an amount not less than the statutory minimum penalty of $100 for each violation, in addition to costs to which the Government is entitled.

In construing the Twenty-Eight Hour Law the courts have held that the word "knowingly" means simply "with knowledge of the facts", and that a carrier knowingly violates the statute when, with knowledge of how long animals have been confined without rest, feed, and water, it prolongs the confinement beyond the statutory limit. *St. Louis-S. F. R. Co.* v. *United States*, 169 Fed. 69; *St. Joseph S. Y. Co.* v. *United States*, 187 Fed. 105; *Oregon-Washington R. & N. Co.* v. *United States*, 205 Fed. 337; *United States* v. *Illinois Central R. Co.*, 303 U. S. 239. They have construed the word "wilfully" under the Act to mean "intentionally", "purposely", or "voluntarily". *United States* v. *Union Pacific R. Co.*, 169 Fed 65; *United*

States v. *New York C. and H. R. R. Co.*, 165 Fed. 888; *United States* v. *Atchison T. & S. F. R. Co.*, 166 Fed. 160. A knowing confinement becomes willful also, when it was due to a cause which could have been anticipated or avoided by the exercise of due diligence and foresight. *Boston & M. R. R.* v. *United States*, 117 F. 2d 428; *United States* v. *Atlantic C. L. R. Co.*, 173 Fed. 764. The burden of proof that the overconfinement was not due to such a cause is upon the carrier. *Boston & M. R. R.* v. *United States*, *supra*; *New York C. & H. R. R. Co.* v. *United States*, *supra*; *United States* v. *Atchison T. & S. F. R. Co.*, *supra*; *Chicago & N. W. R. Co.* v. *United States*, 246 U. S. 512.

Where animals are loaded on a train at different times, a separate penalty accrues when the statutory period for the animals first loaded expires, and separate penalties accrue as the statutory period expires with respect to the animals loaded at later periods. *Baltimore & Ohio Southwestern Railway Company* v. *United States*, 220 U. S. 94.

WHITE SLAVE TRAFFIC ACT

The White Slave Traffic Act makes it an offense knowingly to transport any woman or girl in interstate or foreign commerce or in the District of Columbia or in any territory or possession of the United States for the purpose of prostitution, debauchery or for any other immoral purpose. Commercialism is not essential to a violation of the Act. *Caminetti* v. *United States*, 242 U. S. 470. However, as a general rule prosecution should not be instituted in the so-called "non-commercial" cases.

In view of the ruling of the court in *Gebardi* v. *United States*, 287 U. S. 112, if the evidence discloses that the woman or girl did nothing more than acquiesce in her transportation by a man no prosecution should be instituted against them for conspiring to violate the Act. However, under certain circumstances involving more active participation than mere acquiescence and consent to her transportation, a woman or girl may be guilty of conspiring with a man to violate the Act. *United States* v. *Holte*, 236 U. S. 140.

As to specific cases, the Department must rely upon the discretion of the United States Attorneys who have first-hand knowledge of the facts and opportunity for personal interviews with the witnesses, and who thus will be able to ascertain what circumstances of aggravation, if any, attend the offense; the age and relative interest of the parties, the motives of those urging prosecution, and what reasons, if any, exist for thinking the ends of justice will be better served

by a prosecution under federal law than under the laws of the State having jurisdiction.

As a guide to the exercise of sound discretion in noncommercial cases, consideration may be given to prosecution in such cases as the fraudulent overreaching of previously chaste young women or girls, or cases where State laws are inadequate, involving married women with young children who are living with their husbands. Cases having the appearance of blackmail should, as far as possible, be avoided.

Note:

There might be confusions due to filing errors of the print original:

There are duplicated forms on the Pages 113-117.

APPENDIX

Form 1. Authorization for Dismissal of Indictment and Information

United States of America
vs.
_____

File No. _____
Indictment No. _____
Viol. _____

Authority is requested to:

(1) Dismiss Indictment ☐ Information ☐ in the above case.

(2) Write Attorney General for permission to dismiss.

Reasons _____

I have ☐ have not ☐ discussed this action with the investigating agency.

Recommendation of investigating agency (if discussed):

Dated _____ (Signed) _____
Assistant U. S. Attorney

* * * * * * *

After discussing the proposed dismissal and the reasons therefor with the Assistant U. S. Attorney assigned to the case, I concur ☐ disagree ☐.

Reasons _____

Dated _____ (Signed) _____
Assistant U. S. Attorney authorizing complaint

* * * * * * *

Upon consideration of the foregoing, authority to dismiss ☐ permission to write Attorney General requesting authority to dismiss ☐ is granted ☐ denied ☐.

Dated _____ (Signed) _____
Assistant U. S. Attorney in charge of Criminal Division; U. S. Attorney

* * * * * * *

Note.—The purpose of this form is to provide a short form record of (1) dismissals and requests to the Attorney General to authorize dismissals; (2) the reasons therefor; and (3) officials authorizing such dismissals or requests for authority to dismiss.

To be executed in duplicate; original to be preserved with the case file and duplicate to be forwarded to Assistant Attorney General in charge of the Criminal Division. Additional copies for retention by U. S. Attorney's office optional.

290115—54——2

Form 5. Form of Libel of Information

In the District Court of the United States for the _____ District of _____, _____ Division.

_____ Term, A. D., 19__

UNITED STATES OF AMERICA *v.* _____	No. _____, _____ Libel of information

To The Honorable Judges of The United States District Court For The _____ District of _____.

Now comes the United States of America, by _____, United States Attorney for the _____ District of _____, and shows to the Court:

and that my net worth is the sum of _____ Dollars ($_____).

I further say that my property consists of _____ (homestead to be designated) _____; that I am indebted in the sum of _____ Dollars ($_____), my principal creditors being _____; that any and all bonds and undertakings for bail previously entered into by me and remaining outstanding are as follows:

_____.
Surety

Sworn to and subscribed before me this _____ day of _____, 19____, at _____.

_____.

Note.—The above forms for Appearance Bond and Justification of Surety may be found in the Appendix of Forms of the Federal Rules of Criminal Procedure. On the Justification of Surety Form, additional statements in justification have been added. Accordingly, when a printed Justification of Surety form is used, another Justification of Surety should be added.

Form 4. Affidavit to Be Filed With All Offers in Compromise

In the United States District Court, _____ District of _____

The United States of America
vs.
_____, et al.

Bail Bond Judgment for $_____
Docket No. _____, Dated _____

In support of my offer to compromise the above judgment against me, I make the following answers and statements under oath:

1. Address at time of signing bond _____
2. Present address _____
3. Present occupation or employment _____
4. Do you still own the property listed on bond justification? ____ If not, how was title divested? _____
5. Do you own any other real estate? _____ If so, how is title held? _____
6. What is its assessed value? $____ Present market value? $____
7. Description of real estate owned (Homestead to be designated) _____
8. List all liens against real estate, giving dates, amounts and holders _____
9. Have you any interest in any real estate, the title of which is in the name of another? _____ If so, who holds the title and what is your interest? _____

10. Do you own any personal property other than implements of trade and/or household goods? _____ Stocks? _____ Bonds? _____ Other securities? _____
11. Do you have a bank account? _____ What bank or banks? _____
_____
Amount on deposit in checking account $_____
Savings account? $_____
12. What is your present average monthly income? $_____
13. What do you estimate your present net worth to be? $_____
14. Have you any estate in expectancy within the next five years?
_____
15. Have you disclosed all your assets, real and personal, whether held in your name or not? _____
16. Give any other reasons why you think your offer should be accepted:

I have made the above answers and statements voluntarily in support of my offer to compromise the above judgment, and I hereby agree that any material false statement made by me will nullify and void any action taken thereon by the Government.

_____
Judgment Debtor

Subscribed and sworn to before me, this _____ day of _____, 19____, at _____

_____
Notary Public

[SEAL]

Form 5. Form of Libel of Information

In the District Court of the United States for the _____ District of _____, _____ Division.

_____ Term, A. D., 19__

UNITED STATES OF AMERICA *v.* _____	No. _____, _____ Libel of information

To The Honorable Judges of The United States District Court For The _____ District of _____.

Now comes the United States of America, by _____, United States Attorney for the _____ District of _____, and shows to the Court:

1. That this libel is filed by the United States of America and prays seizure and condemnation of a certain article of food, as hereinafter set forth, in accordance with the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et seq.).

2. That _____ Company shipped in interstate commerce from _____, _____, to _____, _____, via _____, on or about _____, 19__, an article of food consisting of ____ cases, more or less, each containing ____ cans of a food labeled in part: _____

3. That the aforesaid article was adulterated (misbranded) when introduced into and while in interstate commerce, within the meaning of said Act, 21 U. S. C. 342 (a) (3), in that it consisted in whole or in part of a decomposed substance.*

4. That the aforesaid article is in the possession of _____, at _____, or elsewhere within the jurisdiction of this Court.

5. That by reason of the foregoing, the aforesaid article is held illegally within the jurisdiction of this Court, and is liable to seizure and condemnation pursuant to the provisions of said Act, 21 U. S. C. 334.

WHEREFORE, libellant prays that process in due form of law according to the course of this Court in cases of admiralty jurisdiction issue against the aforesaid article; that all persons having any interest therein be cited to appear herein and answer the aforesaid premises; that this Court decree the condemnation of the aforesaid article and grant libellant the costs of this proceeding against the claimant of the aforesaid article; that the aforesaid article be disposed of as this Court may direct pursuant to the provisions of said Act; and that libellant have such other and further relief as the case may require.

Dated: _____, 19__.

UNITED STATES OF AMERICA

By _____
United States Attorney

*Where the seizure is predicated upon adulteration or misbranding while held for sale after shipment in interstate commerce, the first line of the paragraph should read: "That the aforesaid article was adulterated (misbranded) while held for sale after shipment in interstate commerce * * *."

Form 6. Form of Claim

In the District Court of the United States for the _____ District of _____, _____ Division.

_____ Term, A. D., 19__

United States of America
v.
_____

No. _____, _____
Claim

Now appears before this Honorable Court _____ Company, a corporation duly organized and existing under the laws of the State of _____, with its principal place of business in the City of _____, State of _____, intervening in this proceeding for the interest of itself as owner of the article(s) above described, and makes claim to the said article(s) as the same is attached by the United States Marshal for this district under process of this Court at the instance of the United States of America, libelant;

And said claimant avers that it is the true and bona fide sole owner of the said article and that no other person is the owner thereof; wherefore it prays to defend accordingly.

_____ Company
By: _____
_____
Proctor for Claimant

State of _____
County of _____ } SS:

_____, being duly sworn, deposes and says that he is the _____ of _____ Company, the corporation which is described in and which executed the foregoing Claim; that he has authority to act on behalf of the corporation in this matter and that he signed said Claim pursuant to said authority; that he has read said Claim and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief; and that he knows that the seal affixed to said Claim is the seal of said corporation and was duly affixed as such.

_____

Sworn to before me this ____ day of _____, 19 __.

_____
Notary Public

Form 7. Form of

CONSENT DECREE OF CONDEMNATION

In the District Court of the United States for the _____ District of _____ Division.

_____ Term, A. D., 19__

United States of America *v.* _____	No. _____, _____ Decree of condemnation

On _____, 19__, a libel of information against the above described article was filed in this Court on behalf of the United States of America by the United States Attorney and the Assistant United States Attorney for this district. The libel alleges that the article proceeded against is a food which was shipped in interstate commerce and is adulterated in violation of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 342 (a) (3)). Pursuant to Monition issued by this Court, the United States Marshal for this district seized said article on _____, 19__. Thereafter, _____ Company of _____, _____ intervened and filed claim to said article. Claimant consents that a Decree, as prayed for in the libel, be entered condemning the article under seizure.

The court being fully advised in the premises, it is on motion of the parties hereto—

ORDERED, ADJUDGED, AND DECREED that the said article under seizure is adulterated in violation of 21 U. S. C. 342 (a) (3), and is therefore hereby condemned pursuant to 21 U. S. C. 334 (a); and it is further

ORDERED, ADJUDGED, AND DECREED, pursuant to 21 U. S. C. 334 (e), that the United States of America shall recover from said Claimant court costs and fees, and storage and other proper expenses, as taxed herein, to wit, the sum of $_____; and

Claimant having petitioned this Court that the condemned article be delivered to it pursuant to 21 U. S. C. 334 (d), it is further

ORDERED, ADJUDGED, AND DECREED that the United States Marshal for this district shall release said article from his custody to the custody of claimant for the purpose of converting said article into stock feed if claimant, within 20 days from the date of this decree, (a) pays in full the aforementioned court costs and fees, and storage and other proper expenses of the proceeding herein, and (b)

executes and files with the clerk of this Court a good and sufficient penal bond with surety in the sum of _____ Dollars ($_____), approved by this Court, payable to the United States of America, and conditioned on the claimant's abiding by and performing all the terms and conditions of this Decree and of such further Orders and Decrees as may be entered in this proceeding; and it is further

ORDERED, ADJUDGED, AND DECREED that:

1. After the filing of the bond in this Court, the claimant shall, at its own expense, cause the article to be shipped to its plant at _____, _____. When the article arrives at the _____ plant, claimant shall give written notice to the _____ Station, Food and Drug Administration, Federal Security Agency, _____, that the article has arrived and that claimant is prepared to convert it into stock feed under the supervision of a duly authorized representative of the Federal Security Administrator.

2. The claimant shall at all times, until the article has been released by a duly authorized representative of the Federal Security Administrator, retain intact the entire lot of goods comprising the article for examination or inspection by said representative, and shall maintain the records or other proof necessary to establish the identity of said lot to the satisfaction of said representative.

3. The claimant shall not commence conversion operations until it has received authorization to do so from a duly authorized representative of the Federal Security Administrator.

4. The claimant shall at no time, and under no circumstances whatsoever, ship, sell, offer for sale, or otherwise dispose of any part of said article or of the article into which it is converted until a duly authorized representative of the Federal Security Administrator shall have had free access thereto in order to take any samples or make any tests or examinations that are deemed necessary, and shall in writing have released such article for shipment, sale, or other disposition.

5. Within 30 days from the date of the filing of the bond in this Court, claimant shall complete the process of converting said article into stock feed at its _____, _____, plant under the supervision of a duly authorized representative of the Federal Security Administrator.

6. The claimant shall abide by the decisions of said duly authorized representative of the Federal Security Administrator, which decisions shall be final. If claimant breaches any conditions stated in this Decree, or in any subsequent Decree or Order of this Court in this pro-

ceeding, claimant shall return the article immediately to the United States Marshal for this district at claimant's expense, or shall otherwise dispose of it pursuant to an Order of this Court.

7. The claimant shall not sell or dispose of said article or any part thereof in a manner contrary to the provisions of the Federal Food, Drug, and Cosmetic Act, or the laws of any State or Territory (as defined in said Act) in which it is sold or disposed of.

8. The claimant shall compensate the United States of America for cost of supervision at the rate of $_____ per day per representative for each day actually employed in the supervision of the conversion process, as salary or wage; where laboratory work is necessary, at the rate of $_____ per day per person for such laboratory work; where subsistence expenses are incurred, at the rate of $_____ per day per person for such subsistence expenses. Claimant shall also compensate the United States of America for necessary traveling expenses and for any other necessary expenses which may be incurred in connection with the supervisory responsibilities of said Federal Security Administrator.

9. If requested by a duly authorized representative of the Federal Security Administrator, claimant shall furnish to said representative duplicate copies of invoices of sale of the released article, or shall furnish such other evidence of disposition as said representative may request.

The United States Attorney for this district, on being advised by a duly authorized representative of the Federal Security Administrator that the conditions of this Decree have been performed, shall transmit such information to the Clerk of this Court, whereupon the bond given in this proceeding shall be canceled and discharged; and it is further

ORDERED, ADJUDGED, AND DECREED that if the claimant does not avail itself of the opportunity to repossess the condemned article in the manner aforesaid, the United States Marshal for this district shall retain custody of said article pending the issuance of an order by this Court regarding its disposition; and it is further

ORDERED, ADJUDGED, AND DECREED that this Court expressly retains jurisdiction to issue such further Decrees and Orders as may be necessary to the proper disposition of this proceeding, and that should the claimant fail to abide by and perform all the terms and conditions of this Decree, or of such further Order or Decree as may be entered in this proceeding, or of said bond, then said bond shall on motion of the United States of America in this proceeding be forfeited and judgment entered thereon.

Dated at _____, _____, this _____ of _____, 19____.

_____
United States District Judge

We hereby consent to the entry of the foregoing Decree.

_____
United States Attorney

_____
Assistant United States Attorney

_____
Proctor for Claimant

Form 8. Form of Bond

In the District Court of the United States for the _____ District of _____, _____ Division.

_____ Term, A. D., 19__

United States of America
v.
_____

No. _____, _____.
Bond

KNOW ALL MEN BY THESE PRESENTS: That _____, as Principal, and _____, a corporation duly organized under the laws of the State of _____, and having a place of business at _____, as Surety, are held and firmly bound unto the United States of America in the sum of _____ ($_____) Dollars, for the payment of which to the United States of America they bind themselves, their representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, on _____, 19, ____, a decree was entered in the above-described proceeding, a copy of which Decree is hereto annexed, marked Exhibit A, and made a part hereof;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall abide by and perform all the terms and conditions of said Decree and of such further Orders and Decrees as may be entered by the above-designated Court in this proceeding, then this obligation shall become null and void; otherwise it shall remain in full force and effect.

And the said Principal and Surety covenant and agree that, by entering into and furnishing this Bond, they submit themselves, and each of them, to the jurisdiction of the above-designated Court and irrevocably appoint the Clerk of Said Court as their agent upon whom

any papers affecting their liability on said Bond may be served, that their liability on and under said Bond may be enforced on motion made in and to said Court without the necessity of an independent action, and that said motion and notice thereof may be served on the said Clerk of said Court.

Signed with our hands and seals this _____ day of _____, 19____.

_____

By _____
Principal

_____

By _____
Surety

Attest:

_____
Secretary

Bond approved _____, 19____.

UNITED STATES ATTORNEY

_____ Division _____ District of _____

_____, 19___.

Form 9. Report of Disposition of Selective Service Violations

United States *v.* _____
Selective Service No. _____
Violation _____
Indictment or information filed _____ Plea _____
Date of trial and result _____ Appeal noted _____
Salient facts and remarks _____

Respectfully,

United States Attorney.

Form 10. Report on Convicted Prisoner by United States Attorney

Institution _____
Register No. _____

This form is to be completed in triplicate; the yellow and blue copies to be mailed to the Warden or Superintendent of the institution to which committed, the white copy to be retained.

While this report is the only one which will be requested, the Board of Parole will appreciate receiving a report of any later facts which might bear upon the case.

By Direction of the Attorney General.

Name _____ Age ____ Offense _____
Alias _____ Date of sentence _____
Residence _____ Term imposed _____
Citizen of _____ Fine: (Committed or not) _____
(County) (State)
_____ Trial Judge _____
(Post-office address)
Marital status _____ Court docket no. _____
Defense Attorney _____
Has appeal been filed _____ Date of filing _____

1. Did prisoner enter plea of Guilty or Not Guilty? _____
   Maximum term possible _____
2. Is prisoner WANTED by you or other authorities, or for deportation? By whom? For what?
3. Give date and details of offense committed, including any aggravating or mitigating circumstances. (Continue on separate sheet if necessary.)
4. Co-defendants (if any) and sentences imposed.
5. Was prisoner of assistance to the Government? Explain ____
   _____
6. Has he ever been tried on probation? Where? With what success?
7. Do you regard prisoner as a menace to society, an habitual criminal, an occasional offender, a victim of temptation, or a mental case?
8. Who are known, or suspected to be associated with him in crime?
9. Against what persons should we be on guard for spurious offers of employment, or misleading statements?
10. What reputable citizens or agencies have knowledge about the prisoner's family?
11. Additional comment which shows the extent and intensity of public injury, or other information of use to determine parole risk _____
12. Your comment relative to Parole _____
13. The Judge's comment relative to Parole _____

Date _____
Signed _____
United States Attorney.
City _____
District _____