TITLE 3
CIVIL DIVISION

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TITLE 3: CIVIL DIVISION

ORGANIZATIONAL NOTE

On February 13, 1953, the Claims Division of the Department was renamed "Civil Division." On June 20, 1953, the Customs Division was abolished and its functions were transferred to the Civil Division. Accordingly, all references in outstanding publications to "Claims Division" or "Customs Division" should be read as meaning "Civil Division."

The current organization to handle the work load of the Civil Division includes eleven sections denominated as follows:

Admiralty and Shipping
Appellate
Court of Claims
Customs
Frauds
General Litigation
Government Claims
Japanese Claims
Patent
Torts
Veterans Affairs

Special instructions concerning the work of particular sections are placed after the more general instructions which follow immediately.

TITLE 3: CIVIL DIVISION

GENERAL INSTRUCTIONS

The protection and prosecution of the interests of the United States in civil and criminal litigation is the function and duty of the Attorney General of the United States, except as to situations where specific statutes permit the legal divisions of specified Government agencies to represent these agencies in certain special types of civil litigation. By delegation of the Attorney General, the Assistant Attorney General in charge of the Civil Division has supervision over the functions described under Civil Division, Title I, *supra*.

It will be obvious that effective and economical discharge of these delegated functions depends on the mutual interest, enthusiasm, confidence, and support of the Civil Division and the United States Attorneys. The Civil Division in Washington maintains close liaison with the national offices of the various Government agencies, and stands ready to collect and forward at the earliest possible moment such information as is essential to the preparation of complaints, pretrial conferences, answers, motions, etc., and will thereafter keep in close touch with all developments in each case. While the burden of litigating cases against the United States, and cases referred to him by the Civil Division or by the various Government agencies direct, rests primarily on the United States Attorney, the Civil Division will always be fully available and eager to assist in the collection of information, discussion of legal and factual problems, briefing, or any other function, with respect to a case, which would best serve the Government's interest. United States Attorneys should not hesitate to request such assistance.

At the same time, the interests of the Government require the assumption on the part of United States Attorneys of correlative duties of cooperation. The Civil Division must be advised at once of every change in the status of every matter within its jurisdiction regardless of whether suit has been instituted, and, as to matters in litigation, it must be informed as far in advance as possible of the dates of pretrial conferences, trials, hearings, or arguments, and of any continuances. In addition, prompt report should be made to the Civil Division of an infringement of the property or other interests of the Government warranting the institution of civil proceedings; and United States Attorneys should report to the Civil Division any property belonging to the United States which is not receiving proper care, any claim in favor of the United States not officially lodged with them which in their opinion can be collected, and any default of any officer or

employee of the Government engaged in the collection of any debt due the United States or of the customs revenue, or in the disbursement of Government funds.

In coordinating the efforts of the many United States Attorneys' offices, the Civil Division hopes to bring to bear in each case the full weight of knowledge and technique accrued from the litigation of cases in all districts. There is presented in the remainder of this Title an accumulation of information which past experience indicates United States Attorneys most frequently require. Where appropriate, there have been imposed such limitations on the practice of United States Attorneys as are necessary to the effective handling of the Department's business.

ACTIONS BY THE GOVERNMENT

No civil action in the name of the United States or an officer thereof, in cases within the jurisdiction of this Division, should be begun without the specific authority of the Civil Division, except where the United States Attorneys are authorized in this Title to commence suit at the direct request of a department or agency or in cases of emergency where it is necessary to protect the interests of the Government, in which cases the necessary action should be taken and the Civil Division notified immediately.

When advice or information is desired as to the institution, conduct or disposition of any suit within this Division's jurisdiction, by or against the United States, request therefor should be transmitted to the Civil Division accompanied by a clear and succinct statement of facts, the points of law involved, the authorities deemed applicable, and the opinion of the United States Attorney.

All actions must be brought in the name of the United States of America and instituted in a Federal court, unless specific authority to do otherwise is granted by the Civil Division. Except in emergencies, two copies of the complaint or libel must be submitted for the consideration of the Civil Division prior to the institution of any action. In cases where United States Attorneys are authorized to start suit at the direct request of a department or agency, two copies of the complaint or libel should be transmitted to the interested department or agency. Wherever appropriate, the prayer of each complaint for a money judgment should include a demand for interest and costs.

It should be noted that claims in favor of the United States are not barred by state statutes of limitations (*United States* v. *Summerlin*, 310 U. S. 414 (1940)).

Except in the direct reference cases described below, United States Attorneys should not close cases without prosecution nor close cases already in litigation, unless specific prior approval for such action has been received from the Department.

ACTIONS AGAINST THE GOVERNMENT

The district courts have jurisdiction of suits against the United States or its agencies or officers only when the immunity of the sovereign has been waived by Congress. (*F. H. A.* v. *Burr*, 309 U. S. 242; *Kiefer & Kiefer* v. *R. F. C.*, 306 U. S. 381.)

United States Attorneys are not authorized to consent to suits against the United States, its officers or agents, and where jurisdiction of suits against the United States exists by statute, they are not authorized to waive objections as to venue or agree to substitutions, third party joinders and the like, without first clearing such matters with the Civil Division which in turn will clear them with the affected agencies.

The Attorney General has designated the Deputy Attorney General and the Administrative Assistant to the Attorney General to accept service of pleadings and process for him. In the absence of specific authority from the Attorney General or his designees, United States Attorneys have no authority to accept such service.

It will expedite the collection of relevant data from interested agencies if the Civil Division receives two copies of the summons and complaint rather than merely the one copy which the Federal Rules of Civil Procedure require plaintiffs to mail to the Attorney General; and it is requested that United States Attorneys, where feasible, seek the cooperation of plaintiffs' counsel in this respect by asking them to transmit direct or through the United States Attorney one or more additional copies of such documents when effecting service of the original on the Attorney General.

REPRESENTATION OF GOVERNMENT OFFICERS AND EMPLOYEES

It is the general policy of the Department to afford counsel and representation to Government officers and employees when suits for injunction, mandamus, etc., are brought against them in connection with their performance of their official duties. In situations where time does not permit communication through Department heads in Washington, United States Attorneys may, upon the request of a local officer of a federal agency, afford counsel and representation to Government officers and employees in such cases. In the case of all

such requests, the Civil Division should be promptly notified and advised by the United States Attorney of the circumstances of the case. It is the policy of the Civil Division to remove to the Federal district courts, pursuant to 28 U. S. C. 1442 (a), cases of this type which are instituted in state or municipal courts. Note that a removal must be effected within 20 days (28 U. S. C. 1446 (b)). When time permits, the United States Attorney should obtain the approval of the Civil Division before effecting a removal; but if time does not permit, the United States Attorney may effect the removal and promptly send the Civil Division two copies of the removal papers filed.

It is also the Department's policy to afford counsel and representation to Government employees and servicemen who are sued civilly or charged with violation of local or State criminal laws as a result of the performance of their official duties. This shall apply wherever property damage, personal injury or death has resulted, or when a substantial Federal interest is involved. Otherwise, except where unusual circumstances exist, the United States Attorneys shall decline (such as in minor traffic violations) to make court appearances on behalf of employees or servicemen, unless specifically requested to do so by the Civil Division.

The potential liability of the United States makes it important to ascertain as early as possible the basic facts, extent of injury or damage, and the names of witnesses in every case, civil or criminal, based upon the alleged dereliction of Government employees or servicemen. For the same reason, pleas of guilty should be entered in criminal cases only after careful consideration of all factors involved. United States Attorneys should also give consideration to the advisability of removing such cases from state courts to United States district courts (see 28 U. S. C. 1442–1449; 50 U. S. C. 738).

GENERAL JURISDICTIONAL PRINCIPLES

As to immunity of Government officers from personal liability done under color of office, see *Gregoire* v. *Biddle*, 177 F. (2d) 579 (C. A. 2); *Spalding* v. *Vilas*, 161 U. S. 483. Suits to enjoin enforcement of an allegedly unconstitutional act of Congress may be heard only by a 3-judge District Court (28 U. S. C. 2282; *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171).

District courts outside the District of Columbia have no jurisdiction over officers of the Government stationed in Washington. *Blackmar* v. *Guerre*, 342 U. S. 512.

In a suit brought against a subordinate officer, the head of the department or other superior officer is an indispensable party where the relief sought would require the superior officer to take action,

either directly or through a subordinate. *Williams* v. *Fanning*, 332 U. S. 490; *Hynes* v. *Grimes Packing Co.*, 337 U. S. 86.

Where the defendant officer leaves office pending suit, the plaintiff must substitute his successor within six months after he takes office, or the suit abates. Rule 25 (d), Fed. Rules Civ. Proc.; *Snyder* v. *Buck*, 340 U. S. 15; *Ex parte La Prade*, 289 U. S. 444.

A suit for specific relief against a Government officer is an unconsented suit against the United States and is beyond the district courts jurisdiction where the relief sought, although nominally against the officer, would actually be against the Government, e. g., by affecting the Government's property rights or functions. *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682; *Mine Safety Appliances Co.* v. *Forrestal*, 326 U. S. 371; cf. *Land* v. *Dollar*, 330 U. S. 731. The jurisdiction of the district courts over such suits is limited to cases alleging that the officer's action is unauthorized by law or that he is proceeding under an unconstitutional statute. *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682; *Donaldson* v. *Read Magazine*, 333 U. S. 178; *Ramspeck* v. *Federal Trial Examiners Conference*, 344 U. S. — (March 9, 1953).

The district courts outside the District of Columbia have no jurisdiction to issue a writ of mandamus or its equivalent in such cases. *Marshall* v. *Crotty*, 185 F. 2d 622 (C. A. 7); *McIntire* v. *Wood*, 7 Cranch. 504.

The district courts' jurisdiction over suits by Government employees for alleged wrongful discharge is limited to determining whether the employee received the protection of prescribed administrative procedure. The courts may not review the merits of the administrative determination. *Bailey* v. *Richardson*, 182 F. 2d 46 (C. A. D. C.); *Carter* v. *Forrestal*, 175 F. 2d 364 (C. A. D. C.).

MISCELLANEOUS LITIGATION MATTERS

Advice as to Papers Filed in Litigation

Two copies of all papers filed by any party or by the court including subsequent pleadings, orders, proposed findings, judgments, opinions or other papers of record, briefs, memoranda, and offers in compromise must be forwarded promptly to the Civil Division. When circumstances permit, copies of any of the foregoing instruments which are to be filed on behalf of the Government should be submitted to the Civil Division before filing the originals.

Assistance By Other Attorneys

United States Attorneys shall conduct and direct all cases except as otherwise provided, i. e., Court of Claims cases, admiralty and shipping cases, or other cases which the Department has advised the United States Attorney will be handled specially. There is no objection to United States Attorneys receiving assistance from attorneys connected with other offices of the Government in the preparation and trial of cases, but it should be understood that such attorneys assist only, and do not conduct, direct, or control cases in which they may be interested. (28 U. S. C. 507.) The situation is the same in those cases (involving Government corporations and the operations of the Maritime Administration) where the Government enjoys the benefit of insurance, and underwriters nominate trial counsel to assist the United States Attorney with the case. Such trial attorneys are only "of counsel" to the United States Attorney. They do not control or direct the conduct of cases in which they interested, and they may not sign pleadings or briefs on behalf of the Government or its officers, employees, or agents.

Assistance to Civil Division Attorneys

From time to time, attorneys from the Civil Division, involved in the handling of United States Court of Claims, patent, and other cases which are not the responsibility of United States Attorneys, are required to perform their duties at places within various judicial districts. United States Attorneys are requested to assist such attorneys in obtaining office space, stenographic facilities and similar accommodations wherever it is feasible.

Advice as to Constitutional and Other Questons

The Civil Division must be informed promptly and its attention specifically called to the pleadings raising constitutional questions or disputing in any way the right of the United States to maintain a proceeding.

Stipulations

In no case should a United States Attorney enter into an agreed statement of facts, a stipulation to abide the result in another case, or a stipulation concluding the substantive rights of the United States, without specific authority from the Civil Division.

Substitution of Party

In order that steps for the substitution of a successor may be taken, if advisable, the United States Attorney should inform the Civil

Division as quickly as possible when a Government officer who is a party in a case originating in his District dies or ceases to hold office.

Disbarment Proceedings

United States Attorneys must give serious consideration to the institution of disbarment proceedings in the Federal courts in all appropriate cases, including the following: (1) where a practitioner in the Federal courts has been convicted of a criminal offense in any court; (2) where a practitioner in the Federal courts has been disbarred by a state court; (3) where a practitioner in the Federal courts, in the conduct of Federal litigation, has employed unethical tactics justifying disbarment.

Duties Under Bankruptcy Act

The Bankruptcy Act (11 U. S. C. 32) imposes certain duties on United States Attorneys with regard to applications for discharge in bankruptcy. The United States Attorneys will cooperate with the courts in the administration of these provisions as far as practicable and will render to the courts with respect thereto every possible assistance.

Duty to Assist Court With Deposited Funds

In connection with the distribution of funds deposited in court, the United States Attorney is required to assist the court actively, as *amicus curiae*. In the case of petitions under Admiralty Rule 42 and 46 U. S. C. 626–628 for the return of funds of deceased or deserting seamen, copies of the petition and all supporting papers must be served upon the United States Attorney, the Attorney General, and the United States Shipping Commissioner. The United States Attorney in all such cases must appear as attorney for the United States as another claimant to the funds. Information for use in asserting the Government's claim is ordinarily provided by the Shipping Commissioner.

Proposed Findings and Conclusions

In all actions in the Federal courts, tried upon the merits without a jury, care should be taken to have proper findings of fact and conclusions of law entered by the court as provided by Rule 52a, Fed. Rules Civ. Proc. When possible two copies of the requests for findings should be transmitted to the Civil Division for comment and discussion before filing.

Prior Review of Proposed Judgments

In complex cases involving unusual legal situations, proposed judgments should be submitted to the Civil Division for comment as far in advance of the time for submission or entry as is possible.

Decrees Involving Sale of Personal Property

When drawing an order or decree in which personal property is to be sold under court order or decree, it is suggested that the United States Attorneys give consideration to the desirability of incorporating therein an appropriate direction to the Marshal to publish notices of sale in those cases where, by a court rule or otherwise, it is necessary or desirable that such notice be given.

COLLECTIONS

A large part of the work of United States Attorneys' offices and the Civil Division is devoted to the collection of claims asserted by various agencies of the Government. The following general policies and procedures will govern these collection efforts in most cases. For special comments on the collection of fines and forfeited bail bonds, see this Title, page 30.1 *et seq.*

Inability to Find Debtor: Absence from District

Where a claim is referred to the United States Attorney and the debtor cannot be found within the district after diligent search, the claim should be transmitted to the Civil Division accompanied by a complete report. If a debtor has removed to another district, the United States Attorney should transmit the claim, with a report of the steps theretofore taken, to the United States Attorney for the proper district, with the request that the collection efforts be continued. The Civil Division should be promptly informed of such transfer and furnished with copies of the letter forwarding the claim to the other United States Attorney, who should in turn advise the Civil Division of its receipt.

Demand

In collection cases, regardless of whether demands for payment have previously been made by representatives of the agency concerned, the United States Attorney should, unless practical considerations dictate otherwise, promptly demand payment of the full amount of the claim plus interest. When payment is made, its receipt and transmission to the Department should be accomplished in accordance with procedures described in Title 8, under collections.

In the collection of claims where default in payment is largely caused by the straitened financial condition of the debtors, it is suggested that proposals of the debtors and their efforts, in good faith, to liquidate the claims by the payment of installments in amounts proportionate to the total claims and within a reasonable time, should be encouraged. Where debtors are gainfully employed, but refuse to make voluntary payments, garnishment proceedings may be instituted.

If after a reasonable period the demand is not met with payment or where dispersion of assets is feared, suit should be brought forthwith. Where such remedies are appropriate, the United States Attorney may seek attachments, garnishments, or other available relief. Under Rule 64, Fed. Rules Civ. Proc., these remedies are governed by local procedure. A bond is not required when such remedies are sought by the United States. (See 28 U. S. C. 2408.) However, the Federal courts do not generally take jurisdiction *in rem* except in admiralty. These remedies are granted in Federal courts only as ancillary relief after personal service has been obtained. (*Davis* v. *Ensign-Bickford Co.*, 139 F. (2d) 624.)

Judgments

Upon the entry of judgment in favor of the United States, the United States Attorney is expected to take immediate steps to collect upon it and to take such action as may be necessary, under State laws, to make the judgment a lien upon the property of the judgment debtor. If the debtor has property in other districts, the United States Attorney should also arrange for the registration of the judgment in those districts, and for such further action as may be necessary to make the judgment a lien on that property. (See 28 U. S. C. 1963.)

While judgments in favor of the United States do not outlaw, liens resultant therefrom may. (28 U. S. C. 1962.) However, such liens can be perpetuated by bringing a new suit on the old judgment, and this should be done whenever it appears probable that a lien may outlaw.

If the judgment is not promptly paid, execution should be placed in the hands of the United States Marshal and the United States Attorney should assist him in locating property of the debtor, and should see to it that prompt and diligent action is taken by the Marshal, reporting any delinquency to the Attorney General.

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), and supplementary proceedings to discover and recover concealed property should be vigorously prosecuted.

Procedures in Aid of Collection

Coincident with the perfecting of the judgment and normally prior to the issuance of execution, the United States Attorney, if sufficient information is not already at hand, should make such investigation as the facilities of his office will permit to determine whether the judgment debtor has property subject to execution. Part of this investigative work can be carried out through consultation or correspondence with the agencies or officials who refer cases to the United States Attorney for prosecution. Property investigations of financial worth and as to concealment of assets may be referred to the local office of the FBI if the case involves more than $250.00. The United States Marshal and his deputies can in some cases, without interfering with their regular duties, make inquiries for needed information. Probation officers, and postmasters in the smaller communities, may also be able to furnish United States Attorneys with much valuable information.

Supplementary proceedings should be used where there is any hope of success. Under Rule 69 (a), examination may be made in all cases, when necessary, of the debtor, relatives, friends, and other interested persons, so that the United States Attorney's office may be fully informed as to the debtor's financial condition. Such examination may be made in the manner provided in the rules for taking depositions. (Fed. Rules Civ. Proc. 26 to 37, 45 (d).)

Execution and Sale

If property subject to execution is found, a writ of execution should be issued and a levy made if such procedures are required by local law to perfect or preserve the judgment lien; but no execution sale should be ordered unless the United States Attorney is informed either that some governmental agency will bid at the sale, or that bids of substantial amounts by outsiders are to be expected. If no such property is found, execution should not be issued unless required by local law to perfect or preserve the judgment lien, or unless the United States Attorney has reason to believe the issuance of execution will induce voluntary payment.

Where collection efforts have not resulted in liquidation of the indebtedness the Civil Division should be informed. At the same time a list of unpaid judgments should be maintained in the office of the United States Attorney and efforts should be continued to enforce collection.

Liquidation Proceedings

In any receivership, bankruptcy, or other liquidation proceeding, or in a proceeding against a decedent's estate, proofs of claim as to matters other than taxes will ordinarily be prepared by the General Accounting Office or the interested agency, and forwarded for filing

to the United States Attorney. The United States Attorney should watch closely the applicable time limit for filing proofs of claim, which in bankruptcy is six months from the first date set for a meeting of creditors (11 U. S. C. 93 (n)) and which is controlled by local law in the case of decedents' estates. If the time limit is about to expire, the United States Attorney should prepare and file a preliminary proof of claim himself.

Attention is called to the rights and priorities of the United States under Section 3466 R. S. (31 U. S. C. 191) with regard to receiverships, assignments for benefit of creditors, and insolvent estates. Note also the personal liability imposed by Section 3467 R. S. (31 U. S. C. 192) as amended by Section 518 of the Revenue Act of 1934 upon every executor, administrator, assignee, or other person who, in paying debts of the person or estate for whom or for which he acts, fails to observe the priority in payment prescribed by law in favor of the United States. In bankruptcy matters the priority of the United States is determined under Section 64 (a) of the Bankruptcy Act.

When a claim is disallowed in whole or in part in any receivership, bankruptcy or other liquidation proceeding the United States Attorney should promptly report the matter to the Civil Division with a recommendation with respect to review or appeal. The recommendation should show the date within which a petition for a review or an appeal must be filed, and if in the case of a review an extension cannot be secured and the time is too short to enable the Civil Division to consider the matter, a protective petition for a review or an appeal should be filed and this information included in the report. Complete information concerning the case together with copies of papers necessary in considering the advisability of a review or an appeal should be furnished the Civil Division. A review of a referee's order or an appeal should not be prosecuted without obtaining the Civil Division's authorization. On appeals generally, see Title 6, Appeals.

Security for Deferred Payments

Whenever payment of a claim or judgment is to be deferred for any reason, the United States Attorney should require the debtor to give the maximum available security; such as mortgages on current and to be acquired assets, consent judgments, commercial security bonds, assignment of accounts, and the like. Whenever security is taken the United States Attorney should take all necessary steps (recording, filing, notice, etc.) required or permitted by local practice to insure maintenance of the Government's security position.

COMPROMISES

The Attorney General has plenary power to compromise claims by and against the Government. (38 Op. A. G. 98.) By delegation to the Assistant Attorney General in charge of the Civil Division, the exercise of the power to compromise in most cases within the Division's jurisdiction has been lodged in the Civil Division. Except in certain categories of cases noted below under the heading "Government Claims Section" (which cases United States Attorneys have authority to litigate, compromise, or close, subject to certain stated limitations), and the Office of Price Stabilization cases discussed below, the function of United States Attorneys with regard to compromise is to recommend to the Attorney General through the Civil Division whether the offer in compromise should be accepted or rejected.

Any amount offered in payment or satisfaction of a claim by the Government should be regarded as an offer in compromise whenever the amount offered is less than the total of the basic claim, the interest on that claim, and the taxable costs already incurred. Wherever possible, United States Attorneys should indicate in correspondence concerning offers the total amount sought to be compromised, and the component amounts which make up that total.

Bases of Acceptance of Offers in Compromise

In determining the acceptability of offers in compromise United States Attorneys will be guided exclusively by the following rule. Compromise offers cannot be accepted unless (1) there is doubt in the case as to a question of law, (2) there is doubt in the case as to a question of fact, or (3) there is doubt that a judgment, if secured, could be collected in an amount larger than that offered. See 38 Op. A. G. 98.

Where acceptance is recommended on the basis of either of the first two elements of this rule, the United States Attorney should discuss such matters fully in his letter of recommendation.

Where acceptance of the offer is recommended on the basis of doubtful collectibility, the United States Attorney should procure and consider a sworn statement of the debtor reflecting his assets and liabilities, general financial and personal circumstances, the disposition of such property as was owned at the time the debt was incurred, present and prospective earning capacity, together with a report containing such additional significant data as may be available. It is suggested that when substantial compromise offers are made by going business concerns, the United States Attorney consider the advisability of requiring from the offeror (1) its agreement to waive any and all claims against

the United States, including its rights under the loss-carry-forward and loss-carry-back provisions of the Internal Revenue Code, at least in so far as these rights are affected by the compromise, (2) its consent to an investigation of financial condition by representatives of the Department, and (3) its agreement to have conducted at its own expense an independent appraisal of its assets at "forced sale" and "market" values by an appraiser whose selection is subject to the United States Attorney's approval.

Offers Incorporating Deferred Payment Plans

Normally, the debtor should be required to pay the full amount of the offer immediately. However, the productive value of the debtor's assets in use should be considered, and if the circumstances warrant and the Government's interest would best be served thereby, a suitable installment payment plan to pay the amount of the offer may be indicated. If such a plan is proposed, security for the deferred payments should be required, such as a note with confession of judgment provisions where such clauses are valid, mortgages on current and to be acquired assets, security bonds, etc. In addition, the compromise agreement and whatever security documents are drawn should contain an acceleration clause making the entire amount due upon default in any installment payment, and should provide for interest on the deferred payments.

Consummation of Compromises: Claims in Favor of the Government

Compromises of claims in favor of the Government are consummated by the receipt of funds by the United States Attorney and the dismissal with prejudice of the pending suit. The United States Attorney has no authority to execute a release, but where some formal evidence of settlement is necessary it may be provided by the execution of a stipulation and order of settlement, containing such recitals as may be thought appropriate, and concluding with the dismissal of the action.

No particular form or blank is required by the Civil Division in submitting offers. It is sufficient if the offer is in writing, is definite in its terms, and is signed by the proponent or his authorized representative. Offers should be addressed to the Attorney General.

When a compromise offer is made, the United States Attorney normally shall require that the offeror submit with it a certified or cashier's check or money order for the amount offered, drawn or endorsed unconditionally to the order of the Treasurer of the United States. The United States Attorney then shall forward to the Civil Division (a) the written offer, (b) the check or money order, (c) his

recommendation of acceptance or rejection and the reasons therefor, and (d) the available statements regarding the debtor's financial status, where inability to pay is a basis for the offer.

Consummation of Compromises: Claims Against the Government

The manner of consummating accepted compromises varies according to the type of claim, the jurisdictional act under which suit is brought and the agency involved.

Compromise of Federal Tort Claims Act suits is ordinarily effected by the entry of a court approved "Order of Approval of Compromise." The Attorney General is authorized by 28 U. S. C. 2677 to arbitrate, compromise, or settle certain claims with the approval of the court. When the Civil Division advises the United States Attorney that a compromise settlement is authorized, a written stipulation reciting the basic facts of the case and the terms of the agreement should be prepared and executed by the United States Attorney and opposing counsel for submission to the court for approval. See 28 U. S. C. 2677. The court's approval may be evidenced by endorsement on the stipulation or by the entry of a separate order of approval. The latter is preferable. The approval should not take the form of a judgment. Judgments against the United States must be certified to the Treasury Department which in turn periodically reports them to Congress for appropriation, and payment is finally effected by the General Accounting Office. On the other hand, compromises are paid from appropriated funds by the agency involved. See 28 U. S. C. 2672.

Compromise of most suits brought against the Government under the Tucker Act (28 U. S. C. 1346 (a)) and the Admiralty Claims Acts (46 U. S. C. 741–752; 46 U. S. C. 781–790) can only be consummated by entering a consent judgment or decree and then asking Congress for a special deficiency appropriation for its payment. However, for the settlement of certain claims arising out of the operations of certain government corporations and the shipping operations of the Maritime Administration, funds are available from special appropriations or from insurance. Compromises in such cases may be consummated by payment and dismissal in the same way as in claims in favor of the Government, or by the entry of an order of approval of compromise in the same manner as claims under the Federal Tort Claims Act.

The Department's policy in the compromise of suits against the Government does not permit the payment of interest or costs either before or after the entry of a judgment, decree or order of compro-

mise. In order to avoid any misunderstanding or confusion, it is important that the United States Attorney, and not opposing counsel, draft the judgment, decree or order of compromise, and that he exercise care to include the statement that the sum to be paid is "without interest and without costs and disbursements."

In all cases terminated by judgment or decree, the United States Attorney must exercise care to insure that the lien of the claimant's attorney and of any partial subrogee or assignee is satisfied and a proper satisfaction is entered of record of the consent judgment or decree. For this reason, it is practically indispensable that the funds for payment of the judgment or decree pass through the United States Attorney's hands so that he may deliver them to opposing counsel in exchange for the necessary satisfaction piece and the release of any lien which may be involved. Instructions in greater detail concerning this aspect of the matter are found under the heading "Payment and Satisfaction of Judgments Against the United States."

PAYMENT AND SATISFACTION OF JUDGMENTS AGAINST THE UNITED STATES

To prevent difficulties in payment, due to irregularities of form, the United States Attorney should regularly prepare the form of judgments and decrees against the United States and should not leave the preparation to opposing counsel. In this way, the United States Attorney may insure that the judgment or decree provisions respecting interest, costs and attorneys' fees are in accordance with the applicable statutes. Ordinarily, interest, costs and attorneys' fees may not be imposed upon the United States and should not be inserted in the judgment or decree unless the court expressly so directs. The court may allow interest against the United States at the rate of four percent per annum from the entry of judgment under the Tucker Act, Federal Tort Claims Act or Public Vessels Act. Under the Suits in Admiralty Act the court may for special reasons in proper cases allow interest to run from the date of filing of the libel. If costs are awarded against the Government, the allowable items are expressly restricted and specified by the various jurisdictional statutes, which must be carefully observed. Attorneys' fees may never be allowed against the Government, except that under the Federal Tort Claims Act (28 U. S. C. 2678) the judgment should provide for a reasonable attorneys' fee of not exceeding twenty percent "to be paid out of but not in addition to the amount of judgment" recovered by the plaintiff.

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In judgments and decrees under the other jurisdictional statutes, a similar provision may be inserted if directed by the court but is not required by the statutes.

Except where Government corporations or insured claims are involved, payment of judgments against the United States is made only pursuant to "certificates of settlement" stated by the General Accounting Office by checks issued by the Treasury Department, Division of Disbursement. In the majority of instances, payment of the judgment or decree must first be specifically appropriated for by the Congress in a deficiency appropriation act pursuant to the request of the Treasury Department. It is accordingly necessary for the United States Attorney to furnish the Civil Division with certified copies of the judgment or decree in order that they may be sent to the Treasury Department and the General Accounting Office.

Since the decision in *United States* v. *Aetna Casualty Co.*, 338 U. S. 366, holding that the Government is not protected from partial subrogation and similar assignments and liens by operation of law, it is imperative that United States Attorneys make certain that any lien or partial assignment which the claimants' attorneys or compensation or other insurance carriers may have upon the judgment or decree is fully satisfied. For similar reasons, it is important that the judgment or decree is marked satisfied of record. For this purpose, it is essential that the funds for payment of the judgment or decree pass through the hands of the United States Attorney in order that he may deliver them only in exchange for a proper satisfaction of the judgment or decree and proper releases of any liens.

In view of the procedure followed in paying judgments or decrees, however, this requires the greatest care on the part of the United States Attorney to insure that the check in payment of the judgment or decree is forwarded through him and not directly to the judgment claimant. The General Accounting Office states its certificates of settlement only upon receipt of an application for payment signed by the judgment claimant in person and not by his attorney, together with a certified copy of the judgment or decree. However, unless the application expressly directs that the check in payment is to be mailed in care of the United States Attorney, the General Accounting Office and the Division of Disbursement frequently mail it directly to the claimant or to his attorney, with the result that the claimant fails to pay the amounts of the liens and to satisfy the judgment of record. The United States thus continues liable to the lien holders and may be required to pay a second time.

If the United States Attorney is to avoid this possibility, he should obtain a letter of application to the General Accounting Office, signed by the claimant of the judgment or decree and asking that payment be made in care of the United States Attorney. One signed and two unsigned copies of this letter of application, together with two certified and two uncertified copies of the judgment, should be forwarded to the Civil Division. The Civil Division will in turn forward them to the General Accounting Office at the same time as it forwards a copy of the judgment to the Treasury Department for inclusion in the next deficiency appropriation.

SPECIAL INSTRUCTIONS

The work conducted by the Court of Claims, Customs, Patent and Supreme Court Sections is handled by attorneys within the Civil Division and normally does not become the responsibility of United States Attorneys.

The following pages include, under section headings, information and instructions which United States Attorneys may require with relation to the particular types of cases handled by each of the remaining seven sections of the Division.

ADMIRALTY AND SHIPPING SECTION

The Admiralty and Shipping Section has general supervision over the defense and prosecution of all claims by or against the Government, its officers and agents, arising out of shipping and maritime matters, and of all litigation in any way involving workmen's compensation, whether under Federal or State law. This includes a large amount of litigation on the civil side of the federal courts and in the state courts, in addition to all Government cases in the admiralty courts.

Many of the most important and technical shipping and maritime cases handled by the Section are correctly brought under the Federal Tort Claims Act or the Tucker Act. In addition, substantial numbers of suits, the exclusive jurisdiction for which is in admiralty, are by mistake of the plaintiff brought under the Tucker or Federal Tort Claims Acts. In regard to those shipping and maritime cases in which suit is brought on the civil side of the court, the instructions in this Title relating to the handling of other civil litigation by and against the Government, and to the representation of Government officers, employees, agents and cost-plus contractors equally apply. The

numerical bulk of the business of the Section is, of course, under the Admiralty Claims Acts (46 U. S. C. 741–752; 46 U. S. C. 781–790).

Certain categories of cases involving civil penalties and forfeitures for violation of the laws relating to inspection and registration of vessels and to obstruction and pollution of navigable waters, interference or damage to aids to navigation, and many similar matters are referred directly to United States Attorneys by the local offices of the Coast Guard, the Bureau of Customs and the Army Engineers. The procedure for handling these direct reference cases corresponds generally to that prescribed for the direct reference cases handled by the Government Claims Section.

The majority of all shipping and maritime cases, except such direct reference cases, are tried by trial attorneys of the Admiralty and Shipping Section. For this purpose, the Section maintains trial offices in the United States Post Office Building, San Francisco 1, California, for the handling of matters in California, Oregon, Washington, Alaska, and Hawaii, and in the United States Court House, Foley Square, New York 7, N. Y., for the handling of matters in the Southern and Eastern Districts of New York and the District of New Jersey. The United States Attorney will be notified in every case whether the trial of the case or the briefing and argument of the appeal will be handled by the Civil Division or by him. If the case is to be handled by the United States Attorney, he will be furnished with detailed instructions.

In order to expedite the handling of correspondence, all communications in shipping and maritime matters should include in the caption of the letter the name of the vessel or vessels involved and the nature and date of the occurrence giving rise to the claim. In West Coast cases, United States Attorneys should also send to the San Francisco admiralty office copies of all letters addressed to the Civil Division, and, to the Civil Division, copies of all letters addressed to the San Francisco admiralty office. As far as possible a copy of all libels and other pleadings should also be sent to the San Francisco admiralty office.

Pursuant to the provisions of section 2 of the Act of August 18, 1942 (Public Law No. 704, 77th Congress) the following judicial districts have been selected, for the convenience of the United States, for the institution of proceedings under the Act:

(a) As to prizes captured on the Atlantic or Arctic Oceans or the connecting waters of either, the Southern District of New York.

(b) As to prizes captured on the Pacific or Indian Oceans or the connecting waters of either, the Northern District of California.

FRAUDS SECTION

Fraud Cases

The principal responsibility of the Frauds Section is the enforcement of the heavy civil sanctions provided by the False Claims Act (31 U. S. C. 231–235). Certain other statutes, notably the Contract Settlement Act of 1944, as amended (41 U. S. C. 119), and the Surplus Property Act of 1944 (50 U. S. C. App. 1635 (b)), repealed and reenacted as the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 489 (b)) contain special provisions regarding frauds against the Government. United States Attorneys should become familiar with the double damage and forfeiture provisions of these Acts, and the useful alternative remedies they provide.

United States Attorneys are urged to be vigorous in enforcement of both the criminal and the civil sanctions against fraud. It should be kept in mind that both kinds of sanctions are supported by important Government interests. Expeditious enforcement of the civil sanctions serves the purpose not only of making the Government whole for losses it has suffered, but of providing—as do the criminal sanctions—a strong deterrent to fraudulent conduct in similar situations, and an impetus to the establishment and maintenance of the highest ethical standards among those in the business community who have dealings with the Federal Government. While in most situations criminal proceedings will take precedence over civil actions, United States Attorneys may prosecute both types of cases simultaneously when satisfied that pursuit of the civil claim will not jeopardize the outcome of the companion criminal case, subject to approval of the Criminal Division. In any event, civil fraud complaints should be filed at the earliest practicable moment and should seek the fullest amount of statutory damages and forfeitures authorized by the applicable statutes together with interest and costs. This same full amount should be considered the true amount of the Government's claim in the consideration of offers in compromise.

In many cases the facts which support criminal convictions under 18 U. S. C. 287 and 1001 and similar statutes will also support civil liability for fraud, the chief difference between the two classes of cases being the measure of the burden of proof; beyond a reasonable doubt in criminal cases, and by a preponderance of the evidence in civil cases. Whenever the criminal case is tried first and results in conviction, United States Attorneys are urged to use the criminal record, under the doctrine of *res judicata*, as the basis for a motion for sum-

mary judgment in the civil case, thus reducing to a minimum the burden and costs of litigating the civil case.

Efficient economical use of the investigative facilities of the FBI indicates the desirability of concurrent investigation of issues common to both the criminal and civil trials. Except where urgent compulsions require concentration on preparation of criminal cases, United States Attorneys should avoid piece-meal investigation by the FBI by directing full investigation at the outset into all issues, including those issues which are of principal importance in the civil case, such as the extent of damage to the Government.

Statutes of Limitations

A serious question exists as to the applicability to the Government of the six-year statute of limitations found in the False Claims Act. Some district court cases hold the statute to be applicable only to informers who bring suit for the joint benefit of themselves and the United States, and not to the United States itself. An additional statute of limitations question of somewhat broader scope has been raised with respect to the applicability to suits by the United States (to enforce civil fines, penalties, or forfeitures) of the 5 year limitation in 28 U. S. C. 2462. Until these questions are authoritatively determined, United States Attorneys should not regard the statutes as providing a bar to suits brought by the United States, and should not recommend the closing out of cases on this ground. From time to time where a complaint is filed which does present the question of the applicability of these statutes of limitations, United States Attorneys should observe the precaution of including a count in common law fraud, unjust enrichment, or payment by mistake, as to which there are no statutes of limitations, where the facts will support such theories.

Subsidy Cases

Under Section 2 (e) of the Price Control Act of 1942, as amended (50 U. S. C. App. 902 (e)), subsidies were paid by the Government to certain qualified processors and producers of various commodities during the period 1943–46. Payment of the subsidy was normally conditioned on compliance with applicable price control and other regulations, such payments having been made provisionally, subject to later audit. There still exist about 300 meat subsidy cases, spread throughout about 45 judicial districts, which involve the recapture of meat subsidies previously paid on the invalid or defective claims of the applicants. Cases involving subsidies paid on commodies other

than meat will be the subject of separate instructions issued on an *ad hoc* basis.

All United States Attorneys' offices thus far concerned with these cases have received copies of a memorandum on the meat subsidy program, and copies of a separate memorandum on the litigation of such claims, which latter memorandum includes a sample motion, sample complaints, and a sample memorandum on the crucial legal question involved in these cases. Copies of these memoranda will be sent to interested United States Attorneys upon request.

In view of the age of these cases, and in spite of the fact that no statute of limitations is applicable to these suits by the Government, United States Attorneys are urged to renew their demands for the amounts due and to liquidate the cases as soon as is practicable.

GENERAL LITIGATION SECTION

Tucker Act Cases

The district courts have no jurisdiction of suits against the United States where the claim exceeds $10,000 (28 U. S. C. 1346 (a) (2)); the claim is for pension or for compensation of officers or employees of the United States (28 U. S. C. 1346 (d): *Brenner* v. *United States*, 343 U. S. 112); another defendant is joined (*United States* v. *Sherwood*, 312 U. S. 584); the remedy provided by statute is administrative only (*United States* v. *Babcock*, 250 U. S. 328); or the claim is founded on a contract implied in law (quasi-contract), as distinguished from a contract implied in fact (*B. & O. R. R. Co.* v. *United States*, 261 U. S. 592; *United States* v. *Minnesota Mut. Invest. Co.*, 271 U. S. 212).

Where a Government contract contains a provision for determination of disputes by the contracting department, such determination is conclusive except for actual fraud. *United States* v. *Wunderlich*, 342 U. S. 98; *United States* v. *Moorman*, 338 U. S. 457.

Interest on judgments against the United States is allowable only when expressly provided for by statute or contract. *United States* v. *New York Rayon Co.*, 329 U. S. 654; *United States* v. *Thayer-West Point Hotel*, 329 U. S. 585. See 28 U. S. C. 2411.

Suits to Enforce Governmental Functions

The district courts have jurisdiction of such actions. 28 U. S. C. 1345. Such actions may be specifically provided for by statute, such as injunctions under the Taft-Hartley Act, or they may be maintained to enforce statutes which do not specifically provide for such

remedy. *In re Debs*, 158 U. S. 564; *United States* v. *United Mine Workers*, 330 U. S. 258.

Participation in Suits Involving Government "Cost-Plus" Contractors

Frequently the Department of Justice is called on to defend suits against so-called "cost-plus" contractors, particularly those contractors whose contracts with the United States provide for reimbursement to the contractor for recoveries arising out of any suits in connection with the performance of the contract, as well as for reimbursement of the fees and costs of such litigation. In view of this factor of reimbursement, it is in the interest of the Government to furnish legal representation for the contractor whenever his desire to be represented by the Government coincides with the request of the interested Government agency (most frequently the Departments of the Army, Navy, or Air Force, or the Atomic Energy Commission). Generally, the request to the United States Attorney for representation of the contractor will be made by the agency through the Civil Division, but if it is not so made, United States Attorneys should act on behalf of the contractor only when requested to do so by a local officer representing the contracting agency. The Civil Division should be advised immediately when such a request is made.

Since these cases are relatively few in number and generally arise in but few judicial districts, detailed instructions for their handling will be issued as the occasion arises. For the most part, the instructions contained in this Manual will apply, but special outstanding instructions on the handling of representation agreements, compromise, and costs as they affect these suits will be sent to United States Attorneys on request. If for any reason the United States Attorney feels that representation of the contractor by his office is inappropriate in a particular case, the Civil Division should be informed promptly, so that if the ultimate decision is not to defend the suit, the contractor may have time to make suitable arrangements for representation by private counsel.

Intervention in Actions Questioning the Constitutionality of an Act of Congress

Upon authorization by the Solicitor General, the United States may intervene as a party in any action in a Federal court in which the court certifies to the Attorney General that the constitutionality of an act of Congress affecting the public interest is drawn in question. (28 U. S. C. 2403.)

Filing of Briefs Amicus Curiae in Cases Affecting Interests of the United States

Where an action in a State or Federal court to which neither the United States nor one of its officers or agencies is a party involves an issue affecting the interests of the United States, such as the interpretation or application of an act of Congress or a departmental regulation, the Department may file a brief *amicus curiae* to inform the court of the Government's position on such issue. When knowledge of the pendency of such cases comes to the United States Attorney, he should promptly so inform this Department.

Renegotiation Cases

There are two major contract renegotiation acts; the Acts of April 28, 1942 and March 23, 1951. The 1942 Act with amendments enacted prior to February 25, 1944, applies to contractors and subcontractors whose fiscal years ended on or before June 30, 1943. (See 50 U. S. C. App. 1191 (1) for citations to Statutes at Large; id. 1191 (e).) The 1942 Act as amended on February 25, 1944, and subsequently, applies to contractors and subcontractors whose fiscal years ended after June 30, 1943, and before January 1, 1947. (Id. 1191.) The 1951 Act applies to amounts received or accrued by contractors and subcontractors from January 1, 1951, to December 31, 1953. (Id. 1212 et seq.)

Claims arising under the Acts are of two types: those based upon agreements between contractors or subcontractors and Secretaries of the Departments or the War Contracts Price Adjustment Board or the Renegotiation Board, and those based upon unilateral determinations or orders which were issued by those agencies if a contractor or subcontractor did not execute an agreement.

Agreements are final and conclusive and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, may not be annulled, modified, set aside or disregarded by any court or Government agency. Unilateral determinations may be reviewed only by the Tax Court of the United States. However, the filing of a petition in the Tax Court for review does not operate to stay a collection suit. Hence, there are no *bona fide* defenses to a collection suit, except as to the amount of any payments, and after an answer is filed, a motion for summary judgment or for judgment on the pleadings is indicated. (See *Lichter, et al.* v. *United States*, 334 U. S. 742.)

Collection suits should be brought in the name of the United States. Interest on those based upon the Act of 1942 should be demanded

from the date of the original demand for payment at the rate of 6 percent per annum (see *United States* v. *Philmac Mfg. Co. et al.*, 192 F. (2d) 517; cf. *United States* v. *Abrams, et al.*, 197 F. (2d) 803 cert. denied 344 U. S. 855) and on those arising under the Act of 1951 at the rate of 4 percent per annum. (See 50 U. S. C. App. 1212 (b) (2).) Form complaints are forwarded with each renegotiation claim or, if omitted, will be furnished upon request.

Office of Price Stabilization Cases

Authority to litigate.—Section 706 (b) of the Defense Production Act of 1950, as amended (50 U. S. C. App. 2156 (b)), provides that "All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General."

United States Attorneys have been and are authorized to initiate and handle the following civil actions in connection with violations of price stabilization regulations and orders issued under Title IV of the Act and subpoenas issued under Section 705 of the Act:

(a) All injunction suits under Sections 409 (a) and 706 (a) of the Act (50 U. S. C. App. 2109 (a) and 2156 (a));

(b) All treble damage actions under Section 409 (c) of the Act (50 U. S. C. App. 2109 (c)) in which the known or estimated treble damages do not exceed $50,000; and

(c) All actions for the enforcement of administrative subpoenas and similar orders under Section 705 of the Act (50 U. S. C. App. 2155).

Authority to file actions for treble damages in excess of $50,000 should be requested from the Civil Division, the request containing a full presentation of the case and the United States Attorney's views. Authority to file suits for restitution under Sections 409 (a) and 706 (a) of the Act (50 U. S. C. App. 2109 (a) and 2156 (a)), in accordance with the holding of the Supreme Court in *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946), should similarly be requested from the Civil Division. Such restitution actions are not subject to the one-year limitation upon treble damage actions contained in Section 409 (c) of the Act. Actions against the United States, its officers, and agencies in connection with such regulations and orders should be reported at once to the Civil Division, and the United States Attorney should proceed to take all necessary action to protect the Government's interests.

Termination of controls; saving clause.—Section 706 (b) of the Act contains not only general jurisdiction and venue provisions concerning such actions, but also a saving clause which provides that the termination of the authority granted in any title or section of the Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. Section 717 of the Act, as amended (66 Stat. 296; 50 U. S. C. App. 2166), provides for the termination of Title IV as of the close of business April 30, 1953. In view of the quoted provision of Section 706 (b), the termination does not affect either any pending suit for damages for a violation of a price stabilization regulation or order under Title IV, or any suit which may be filed for such a violation.

All commodities and services were decontrolled by the Director of Price Stabilization on or before March 17, 1953. (General Overriding Regulation 44, Amendment 1 (18 F. R. 1567).) This decontrol not only mooted all pending injunction actions for the enforcement of price stabilization regulations and orders issued under Title IV, but precludes the bringing of any such actions, with the exception of injunction suits for the enforcement of the record-keeping and inspection provisions of such regulations and orders as a necessary incident to a treble damage action. General Overriding Regulation 44, Amendment 1, expressly provides that the termination of price controls does not affect the requirements regarding the preservation of records as to past transactions. Section 205 (a) of the Act (50 U. S. C. App. 2155 (a)) expressly authorizes the President to obtain information necessary to enforce or administer the Act for two years after the Act expires.

The liability of price stabilization violators for overcharges as prescribed by Section 409 (c) of the Act, as amended, has not been diminished or altered by such termination and decontrol, and is, in effect, expressly preserved by Section 706 (b) of the Act, discussed above.

Investigations in violation cases.—Efforts were made by the Department, United States Attorneys, and the Office of Price Stabilization to complete the investigation and preparation of all violation cases before the offices and staff of the Office of Price Stabilization were closed and dispersed. Some investigation doubtless remains to be done. Discovery and pretrial techniques available under the Federal Rules

of Civil Procedure should be used to the fullest extent possible. When necessary, investigation by the FBI may be requested. For the present, these investigations should be requested through the Civil Division. The United States Attorney should direct his request, with a full statement of the necessity for the investigation, to the Civil Division for transmission to the Bureau. Such investigations may be had only in cases in which the claimed single overcharges are known or estimated to amount to $1,500 or more. Such investigation should also be requested only if the data available indicates that such supplementary investigation affords a reasonable opportunity for successful prosecution. The United States Attorney should exercise his sound discretion as to the necessity of the Bureau investigation for the purposes of the successful prosecution of the action.

Office of Price Stabilization Manual.—The Department has asked the Office of Price Stabilization in March 1953 to furnish each United States Attorney two copies of the OPS Manual for Special Agent-Attorneys, as supplemented. This Manual contains an outline of the common procedural and substantive problems and principles involved in these actions. It will doubtless be found very helpful, but is not to be taken in its expressions of policy as a statement of the policy of the Department of Justice.

District court jurisdiction in stabilization cases.—The district courts have no jurisdiction or power to consider the validity of the price stabilization regulations or orders issued under Title IV for violations of which these actions are brought. Such questions of validity may be raised only in the Emergency Court of Appeals. (Sec. 408 (c) of the Defense Production Act of 1950, as amended (50 U. S. C. App. 2108 (c)); *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503; *Lockerty* v. *Phillips*, 319 U. S. 182; *United States* v. *Ericson*, 102 F. Supp. 378; (these cases are also pertinent to the constitutionality of the Act)). As recognized in the cited cases, the district court may consider attacks by the defendant upon the constitutionality of the Act as distinguished from the constitutionality of the regulation or order.

Procedure for Emergency Court review of validity.—Suits may be filed in the Emergency Court of Appeals to test the validity of price stabilization regulations or orders only after the denial of a protest directed to the administrative agency under Section 407 of the Act, or after the district court in which the enforcement action is pending has granted leave for such a suit to be filed. The district court may grant such leave only upon application by the defendant, the application must be filed within five days after judgment, and it must

specify the objections to be raised in the Emergency Court of Appeals. The district court may grant the requested leave only after judgment, with respect to any objection which it, in the exercise of its sound discretion, finds is made in good faith and with respect to which it finds that there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with Section 407 of the Act. (Sec. 408 (d) (1) (50 U. S. C. App. 2108 (d) (1)); see *United States* v. *Cohen*, 163 F. 2d 667 (C. A. 3); *United States* v. *Steiner*, 152 F. 2d 484 (C. A. 7); *United States* v. *Schenley Distillers Corporation*, 61 F. Supp. 601, 603; *United States* v. *Aronin*, 57 F. Supp. 186.) The court may stay the proceedings after granting leave during the 30-day period in which the complaint may be filed in the Emergency Court of Appeals pursuant to leave and during the pendency of the proceedings in the Emergency Court of Appeals, and in the Supreme Court if a petition for certiorari is filed with that court after judgment in the Emergency Court of Appeals.

Dismissal of injunction suits.—In view of the decontrol of all commodities and services, United States Attorneys may take appropriate action by stipulation or motion to obtain the dismissal without prejudice of pending injunction actions under Rule 41, Fed. Rules Civ. Proc., unless the injunction sought relates to records which may be necessary in connection with a restitution or treble damage action. The specification of dismissal without prejudice is necessary to avoid possible prejudice to a restitution or damage action in the light of *United States* v. *Munsingwear*, 340 U. S. 36. All injunction suits will be considered closed without formal action for dismissal unless such formal action is considered advisable by the United States Attorney himself, or upon request of the defendant or the court, subject to reopening if pertinent to a restitution or treble damage action.

Compromise of stabilization cases.—The United States Attorneys are authorized to accept offers in compromise of cases in which the claimed single overcharges do not exceed $500, provided, however, that no such cases shall be compromised for less than the single overcharges not barred by the statue of limitations without prior clearance with the Civil Division. The policies and standards generally applicable to Civil Division compromises shall be followed in all such cases. In each such case, a report setting forth the basis and reasons for the acceptance should be sent to the Civil Division. All offers in compromise of cases in which the amounts of the claimed single overcharges exceed $500 should be submitted to the Civil Division, as in other cases, with the United States Attorney's recommendations and reasons.

United States Attorneys must keep the Civil Division fully and promptly informed of all developments in these actions.

GOVERNMENT CLAIMS SECTION

The Government Claims Section has the function of supervising the collection and litigation of claims in favor of the United States, not otherwise assigned in the Civil Division, when these are referred to the Department by the General Accounting Office, the Executive Departments, and Government agencies and corporations. The section also supervises the defense of suits against the United States under 28 U. S. C. 2410.

Direct Reference Cases

The following categories of cases will be referred direct to the United States Attorneys by the agency in which the case originates:

(a) Claims of the Federal Crop Insurance Corporation of the Department of Agriculture, in which the gross amount due the Government does not exceed $5,000, arising under the Federal Crop Insurance Act (7 U. S. C. 1508 et seq.), (1) upon promissory notes covering premiums, (2) for refunds of erroneous or excessive indemnities paid by the Corporation, and (3) for refunds of indemnities plus payment of premium resulting from voidance of contracts by the Corporation.

(b) Claims of the Farmers Home Administration of the Department of Agriculture, where the gross amount due the Government does not exceed $5,000, arising under the Farmers Home Administration Act of 1946 (7 U. S. C. 1000 et seq.), (1) upon promissory notes covering loans, (2) against converters of property in which the United States has an interest as mortgagee, and (3) claims for damage to Government property.

(c) Claims of the Federal Housing Administration, where the gross amount due the Government does not exceed $5,000, based upon promissory notes insured under the National Housing Act (12 U. S. C. 1703).

Liquidation of Direct Reference Claims

In the three categories of cases listed above, dealing with claims under the Federal Crop Insurance Act, the Farmers Home Administration Act, and the National Housing Act, United States Attorneys are authorized to litigate, compromise or close out such claims subject to the following limitations:

(a) A claim may be compromised only if (1) there is doubt as to the debtor's liability, or (2) the debtor is financially unable to pay the full amount of the Government's claim. If the claim has gone to judgment, it may be compromised for less than the gross amount of the judgment only upon the ground of inability to pay.

(b) A claim may be compromised on the basis of doubtful legal liability only if there are substantial legal or factual questions involved and the amount offered fairly reflects the Government's chances of ultimately prevailing on the disputed issues in litigation.

(c) A claim may be compromised on the basis of inability to pay only if a satisfactory showing has been made that the amount offered in settlement equals or exceeds the amount which the Government could collect by execution upon the assets of the debtor. An affidavit fully reflecting the assets and liabilities of the debtor must be obtained in all instances. Where in the circumstances of the particular case it appears desirable, the FBI may be requested to verify the debtor's affidavit.

(d) No offer in compromise may be accepted without first obtaining the written views of the agency or department in which the claim originated; except that the Federal Housing Administration need not be consulted where the basis of acceptance is the debtor's inability to pay more.

(e) A claim may be closed out without collection only if (1) the claim is so without merit legally or factually as not to justify the time and expense of further efforts to collect; (2) the cost of collection under the circumstances would exceed the amount of the claim; or (3) the claim is wholly uncollectible. Ordinarily, a claim will fall in the latter category only if the claimant has been discharged in bankruptcy.

(f) No claim may be closed as being without legal or factual merit without first obtaining the written views of the agency or department in which the claim originated.

(g) In each instance in which a case is compromised or closed under the foregoing authority, a memorandum should be prepared by the United States Attorney for his files fully reflecting the action taken and the reasons therefor. A copy of such memorandum must be forwarded to the Civil Division.

(h) The United States Attorney's recommendation that an offer in compromise be accepted or rejected, or that a case be closed, must be forwarded to the Civil Division for final action if:

(1) there is a divergence of views between the United States Attorney and the agency or department originating the claim as to the action to be taken;

(2) the claim involves a new point of law or otherwise constitutes a precedent; or

(3) in the opinion of the United States Attorney, a question of policy is or may be involved.

(i) In corresponding with the Civil Division concerning any of these claims, the United States Attorney should forward with his letter copies of all pertinent correspondence, pleadings, and other documents, since the Department will not have full files on these claims in Washington. Correspondence concerning (1) additional factual details, documents, witnesses, credit reports, and similar matters, or (2) the compromise or closing out of a claim, may be addressed directly to the agency or department originating the claim. However, only the United States Attorney and his duly appointed assistants are authorized to exercise any control whatsoever over the handling of any claim which has been referred to his office for collection, and the entire responsibility for the manner in which such claims are handled rests with him.

(j) Correspondence regarding claims originating in the Department of Agriculture should be addressed (1) to the Regional Attorney of the Department of Agriculture nearest the United States Attorney, if the claim was referred to him by the Regional Attorney, or (2) in all other instances to the Office of the Solicitor, Department of Agriculture, Washington, D. C. Correspondence regarding claims originating in the Federal Housing Administration should be addressed to the Federal Housing Administration, Washington, D. C., Attention: General Counsel; except that payments on such claims should be addressed—Attention: Agent Cashier.

(k) Payments received on such claims must be by certified check or bank draft, or money order, payable or endorsed to the order of the Treasurer of the United States, and must be forwarded by the United States Attorney directly to the agency or Department in which the claim originated.

(l) Decisions adverse to the Government in litigation involving such claims must be reported to the Department in accordance with procedures discussed in Title 6, Appeals.

Collection of Criminal Fines and Forfeited Bail Bonds

Policies and procedures governing the collection of claims and judgments generally are found in this Title at pages 8–11. The following comments relate specially to the collection of criminal fines and forfeited bail bonds.

Remission of fines.—Any person against whom a fine is outstanding and who desires to apply for remission of a part thereof and wishes to demonstrate his good faith by making a part payment should be advised to make payment to the clerk of the court. He should be informed that the money so paid will be applied to the fine and, irrespective of the outcome of his petition, will not be refunded to him.

Investigations.—An important part of this work is the conducting of investigations for the following purposes:

(a) To learn, before sentence, the ability of an accused to pay a fine:

(b) To ascertain whether a proposed poor convict, seeking release as such, is entitled to such release under the statute.

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.

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.)

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. Except where an obligor consents to waive the protection afforded by state homestead exemption laws, the officer taking the bond should satisfy himself that the property stated in the bond is sufficient aside from exemptions.

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, unless the costs are paid and the Government has been reimbursed for any expenses incurred.

Default on bond.—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, and related matters pertaining to financial responsibility, to the FBI without waiting to ascertain the results of action by the sureties. Cases involving $250 or less should not be referred to the Bureau, but should unusual circumstances in such 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.

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 course is directed by the court, local custom, rule or statute.

United States Attorneys should take jurisdicition 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.

Procedure on forfeited bail bonds.—In the handling of bail bonds in case of defendant's failure to appear and institution of forfeiture proceedings it is most advantageous to have the United States Commissioner send the original bond, together with a certified transcript

of the removal proceedings, to the clerk of the court in the district to which removal is had. Upon forfeiture of the bond the order of forfeiture and original bond should be sent or delivered to the United States Attorney of the district in which suit on the bond is to be prosecuted. An extra copy of the bond should be retained in each of the participating offices as a copy may be used to prove the original in the event of its loss. Cash or securities deposited by a surety as collateral on a bail bond cannot be applied in satisfaction of a fine imposed on the defendant who appeared in accordance with the obligation of the bond, but a cash or security deposit made by the defendant as security for his attendance may be so applied. (*Rudd* v. *United States*, 138 F. 2d 745; *United States* v. *Widen*, 38 F. 2d 517; *United States* v. *Werner*, 47 F. 2d 351.)

Liens.—In case a release of the lien resulting from a fine or judgment is desired, it should be shown that the lien is unenforceable or that the amount tendered for the release is the equivalent of that which the Government should expect to recover by the enforcement of the lien.

JAPANESE CLAIMS SECTION

Validity of Renunciation of Citizenship

During World War II, the right to renounce citizenship given by 8 U. S. C. 1481 (7) (formerly 8 U. S. C. 801 (i)) was exercised in the vast majority of cases by persons of Japanese ancestry during the period of their exclusion from designated west coast areas and their detention in the relocation centers of the War Relocation Authority, principally at the Tule Lake Relocation Center at Newell, California. Jurisdiction of the District Courts over suits brought to set aside such renunciations is conceded where the action comes within the provisions of 8 U. S. C. 1503 (a) and (b) (formerly 8 U. S. C. 903), e. g., a suit against the Secretary of State for denial of a passport to a resident renunciant. Jurisdiction is contested where the officer sued is no longer denying a right or privilege as a national of the United States even though plaintiff's citizenship has not been established, e. g., a suit against the Attorney General based on plaintiff's former internment as an alien enemy under 50 U. S. C. 21. As a consequence of certain court decisions (*Acheson* v. *Murakami*, 176 F. 2d 953 (C. A. 9); *McGrath* v. *Abo*, 186 F. 2d 766 (C. A. 9); cert. den. 342 U. S. 832, this Department does not oppose relief in cases where the facts come fairly within their coverage, provided that the suits are within the jurisdiction of the courts and that the Government files do not disclose evidence of disloyalty to the United States. Before making this determination, the Civil Division requires the submission of an affidavit by the plaintiff covering a number of subjects, which affidavit is considered in conjunction with all available Government records on the claimant; and if the case is deemed to come within the coverage of the judicial decisions mentioned, such affidavit is stipulated into the court record, in lieu of other evidence, with advice to the court that the Government will not oppose the entry of a judgment in plaintiff's favor thereon.

A similar affidavit procedure is employed in advising other Government agencies as to the litigating position that this Department will take in the event that an application for administrative action is denied a renunciant on the ground that he is not a national, e. g., denial of a passport; so that in most if not all future suits in which jurisdiction can be conceded this Department already will have taken the position that the cases do not come within the coverage of the *Murakami* and *Abo* suits; hence, further processing of the cases looking to their submission on plaintiff's affidavits will normally be inappropriate. For obvious reasons it is especially important to keep

in close touch with the Civil Division in the handling of this kind of litigation.

Evacuation Claims

The Attorney General's authority to determine claims arising under 50 U. S. C. App. 1951–87 has been delegated to the Assistant Attorney General in charge of the Civil Division. Such claims are processed by home office and field attorneys of the Civil Division; the United States Attorneys have no responsibility in such matters except upon specific request by the Assistant Attorney General.

TORT CLAIMS SECTION

Administrative Settlements Under Federal Tort Claims Act

The following procedure will apply in all cases which may give rise to claims for administrative settlement by the Department of Justice under the Federal Tort Claims Act (28 U. S. C. 2672).

Any officer or employee of the Department of Justice involved in an incident resulting in damage to or loss of property, or personal injury or death which may give rise to a claim for money damages shall make an immediate detailed report of the facts to his superior, using the standard forms which are prescribed for that type of accident. The officer or employee should secure the names and addresses of witnesses and submit the same and any other pertinent data with his report.

The case should be thoroughly investigated by the Division or Bureau concerned at the earliest possible time while the facts are fresh. Signed statements of all witnesses should be obtained, if possible. Photographs of the scene should be taken if helpful to show the manner in which the accident occurred, or the damage resulting from it.

In cases of serious personal injury, death or major property damage the FBI should be notified as soon as possible after the accident and given an opportunity to undertake the required investigation. The United States Attorney for the district may be called upon for advice as to the nature and scope of the investigation required in such cases.

The record thus established shall be retained in the files of the Division or Bureau concerned for use if a formal claim is filed within the time limit permitted by the Act.

If a suit is filed, the Civil Division of the Department of Justice will call upon the Division or Bureau concerned for a full report on the case.

If a claim is filed under 28 U. S. C. 2672 for payment in an amount which does not exceed $1,000, the following procedure will apply:

The claim shall be examined upon receipt in the Division or Bureau concerned to determine its completeness. Any missing receipts, doctor or hospital bills, or other papers ordinarily required in determining validity of the claims will be secured prior to final action. A brief resume of the facts shall be prepared to support recommendation for payment or nonpayment. The claim, with all of the foregoing papers, will then be forwarded to the Civil Division of the Department for review as to the legal aspects and determination of legal liability.

Use of FBI in Tort Investigations

The FBI is responsible for investigating all claims or potential claims in excess of $1,000, except: (1) suits brought against Government employees in state or local courts, and (2) special investigations for Congressional committees which are considering legislation for the relief of the plaintiff. Accordingly, its investigative facilities should be utilized when necessary for the proper defense of suits filed against the Government under the Federal Tort Claims Act. In utilizing such investigative facilities every effort should be made to avoid duplication of effort and reinvestigation of phases of cases when the agency as a result of whose activities the claim has been filed, or the action has been brought, has placed in the United States Attorney's hands sufficient information to enable him to properly handle the claim or defend the action. Where only the question of liability is involved, only that aspect of the case should be investigated. Similarly, where only the question of damages, or any other issue, is of concern, any request made by the United States Attorney should be for investigative coverage of that phase of the case only.

It should not be implied from the foregoing that a reinvestigation should never be requested. In a case of sufficient importance and where the information furnished the United States Attorney is inadequate to enable him to properly represent the interests of the Government, he should have a reinvestigation made. Requests for such action, however, should be made only after thorough consideration of the necessity therefor.

VETERANS AFFAIRS SECTION

Insurance Cases

When suit is brought to recover upon a contract of insurance, the United States Attorney should forward a copy of the complaint to the Department immediately with advice as to the dates of filing and service. Upon receipt of a copy of the complaint, the veteran's file

will be secured from the Veterans Administration and forwarded with suggestions as to the proper responsive pleading and the defenses to be asserted. Two copies of all pleadings filed should be forwarded to the Department. Frequently, considerable delay in identifying the veteran and locating his claims file occurs in the Veterans Administration, thus necessitating the securing of extensions for the filing of responsive pleadings. When this happens, the United States Attorney will be advised in ample time to secure the necessary extensions.

A trial by jury should be demanded when the answer is filed, subject to waiver at the time of trial.

In any suit involving a contract of insurance, a recommendation for administrative review and a finding by the Veterans Administration permitting the claim to be paid upon stipulation may be submitted to the Department when investigation (1) develops new evidence not previously considered by the Veterans Administration which in the opinion of the United States Attorney warrants payment of the claim, or (2) discloses that the testimony of the principal witnesses relied upon by the Veterans Administration in the denial of the claim will be unfavorable to the Government. The recommendation should fully state the grounds for payment of the claim and should be accompanied by the file pertaining to the case.

The testimony of witnesses residing more than 100 miles from the place of trial should ordinarily be developed by deposition. However, when it is indicated that the personal appearance of a witness is essential to the proper defense of the case, this may be accomplished by filing a motion and securing an order for the appearance of the witness, as provided by 38 U. S. C. 445.

When the testimony of an employee of the Veterans Administration not residing within the district in which the action is brought is deemed essential, the Department will, upon receipt of advice to that effect, arrange for the personal appearance of such witness through the Central Office of the Veterans Administration.

When an examination to ascertain the present physical and mental condition of an insured is deemed advisable, the Department, upon receipt of a request for such examination, will arrange with the Veterans Administration to have the insured report to a designated hospital or regional office for that purpose.

Contracts of United States Government life (converted) insurance specifically limit the retroactive payment of total permanent disability benefits, as well as the refund of any premiums which may have been paid for the period subsequent to the commencement date of the disability, to a date not exceeding 6 months prior to the submission of

due proof of such disability. It has been held that failure to aver or prove that the requisite proof of claimed disability had been given to the Veterans Administration was failure to aver or prove a jurisdictional matter in relation to the payment of such benefits. (*United States* v. *Meyer*, 76 F. (2d) 245. See also *United States* v. *Raives*, 48 F. (2d) 582.) It is, therefore, necessary to establish the date of submission of due proof in every suit on a contract of such insurance when maturity is claimed by reason of the occurrence of total permanent disability, and the judgment should recite the date that due proof was submitted. Due proof may be regarded as any evidence which reasonably apprises the Veterans Administration of the condition of the insured's health; but such proof cannot be deemed to have been submitted as of a date prior to the filing of the claim for total permanent disability benefits.

When judgment is entered in favor of a person whose competency to handle the proceeds of the insurance is deemed to be sufficiently doubtful to warrant an investigation, the Civil Division should be so advised in order that the Veterans Administration may inquire into his competency before payment is made under the judgment.

The following portions of the Veterans Administration file in any case in which litigation is instituted may be made available for inspection to a plaintiff or his or her attorney:

(a) The military and medical records pertaining to the insured, except such portions as are privileged under Section 11 of the Selective Service Regulations.

(b) Applications for insurance, applications for reinstatement and conversion, information as to lapse or present status of the insurance, and also information concerning beneficiary designations.

(c) Claims for insurance benefits, and denials thereof by the Veterans Administration.

(d) Reports of examinations by Government physicians, names and addresses of such physicians where available, and information as to hospitalization of the insured in Government hospitals.

(e) Information as to compensation or other benefits paid to or on behalf of the insured.

No other information may be furnished from the Government's file except under an order of the court or upon authorization by the Civil Division.

When original exhibits from a Veterans Administration file are withdrawn for use at the trial, leave to substitute photostatic copies thereof should be secured from the court. It is imperative that great

care be taken to prevent the loss of such records because compensation, hospitalization, and other gratuitous benefits are frequently dependent upon their being in the file.

Every attorney representing the Government in a suit upon a contract of insurance is charged with the duty of moving for a directed verdict at the conclusion of all the evidence, and in the event the motion is denied and a jury verdict rendered for the plaintiff, he should move for judgment notwithstanding the verdict in accordance with the procedure and the time limitations prescribed by Rule 50 (b), Fed. Rules Civ. Proc. In cases where it is proposed to stipulate findings of fact covering the whole case, upon which a judgment may be based, such stipulations must be submitted to the Civil Division for approval before they are agreed to or submitted to the court.

United States Attorneys are without authority to join in any proposed agreement of the claiming parties which would provide for payment of the insurance in a manner contrary to the administrative finding and contrary to the express terms of the contract.

Costs and interest are not taxable against the United States in insurance cases. See *United States* v. *Worley*, 281 U. S. 339.

Attorney's fees in insurance cases are payable only to the extent and in the manner provided by 38 U. S. C. 551.

United States Attorneys may not enter into agreements providing for the assignment of National Service Life Insurance by designated beneficiaries who have been found by the Veterans Administration not to be within the permitted class, nor to enter into agreements for assignments by designated beneficiaries who are within the permitted class, to persons not within the permitted class of beneficiaries. (See 38 U. S. C. 816.)

United States Attorneys should forward for the approval of the Department proposed findings of fact, conclusions of law and judgment prior to their entry. In cases in which the court insists upon an immediate entry of judgment, a copy thereof should be immediately forwarded to the Department so that it may be examined and instructions issued with respect to any amendments that may be found to be necessary, and to insure the filing of any necessary motions within the 10 day period provided by the Federal Rules of Civil Procedure.

Judgments for plaintiffs should be couched in general terms, leaving exact computations of amounts payable thereunder to the Veterans Administration. All facts essential to such computations must appear in the findings of fact or the judgment, for example, (a) the date of the occurrence of death or total disability; (b) in a case involving converted insurance the date of the submission of due proof; (c)

dates determinative of the apportionment of benefits among the several claimants, such as the date of the death of the beneficiary; and (d) the percentage of recovery awarded as attorneys' fees. In those cases in which the court insists upon the judgment containing exact computations showing the amounts payable, United States Attorneys should ask the court's permission to release the file to the Civil Division so that, if necessary, computations may be obtained from the Veterans Administration.

The sole responsibility for the preparation and trial of insurance cases rests with the United States Attorneys and that responsibility may not be delegated except upon prior authority from the Civil Division.

Veterans Administration Loan Guarantees

Title III of the Servicemen's Readjustment Act of 1944 (38 U. S. C. 694, et seq.) provides for the partial guarantee by the Veterans Administration of loans made to veterans for the purchase or construction of property to be occupied by the veteran as his home, for the purchase of farms and farm equipment, and for the purchase of business property. It is provided that the loan will be guaranteed if the price paid by the veteran for the property or construction does not exceed the reasonable value thereof as determined by proper appraisal made by the Veterans Administration.

Violations of statutes and regulations concerning the financial aspects are generally criminal in nature, and are concerned primarily with fraud or misrepresentation made to a Government agency in connection with the securing of Government guaranty or insurance of the loans made to the veteran purchaser. Such violations include not only the so-called "side payment" or "under the table" cases, but also false representations and misrepresentations made by the seller, appraiser, lending institution, and others concerned in the matter. Prosecutions of such violations should be based upon 18 U. S. C. 1001. For the information and guidance of United States Attorneys, sample counts of indictments involving violations of Title III of the Servicemen's Readjustment Act, brought in various districts, are found in the Appendix of this Title.

Section 503A, which was added to the Servicemen's Readjustment Act of 1944 by Public Law 142, 82d Congress, provides for treble damage actions against persons who knowingly sell property to veterans at prices in excess of the reasonable value thereof, if payment therefor is made through a Veterans Administration guaranteed loan. The policy behind this treble damage sanction arises from a recog-

nition that the veteran purchaser is likely to be under economic duress and that the primary responsibility for compliance with the law rests on the seller.

As a matter of litigation policy, the Department of Justice construes the Act to be applicable only to those cases where the offense occurred after September 13, 1951, the date of enactment of Section 503A. It seems clear, however, that neither the veteran nor the United States is precluded from instituting suit and obtaining recovery under the Act even in those cases in which the veteran has knowingly made, effected or participated in a sale for such excess consideration. Upon conclusion of the criminal proceedings, a report of the case should be transmitted to the Civil Division for advice and instruction with respect to the institution of civil action.

Compromise of Insurance Suits

38 U. S. C. 445 (b) authorizes the Attorney General to compromise suits upon contracts of yearly renewable term insurance upon the recommendation of the United States Attorney. There is no statutory authority to compromise suits upon other types of insurance.

Veterans' Reemployment Matters

Section 9 (d) of the Universal Military Training and Service Act, 62 Stat. 614, as amended (50 U. S. C., App. 459 (d)), and the acts antecedent thereto provide that United States Attorneys shall represent veterans who apply for the enforcement of their reemployment rights with private employers if reasonably satisfied that they are entitled to the benefits claimed. Field Representatives of the Bureau of Veterans Reemployment Rights, Department of Labor, perform the service of counselling veterans concerning their reemployment rights. These representatives also assemble data in support of the veterans' claims and attempt to work out amicable settlements between veterans and their former employers. Accordingly, initial inquiries and requests for assistance should be referred to the nearest Field Representative of the Bureau of Veterans' Reemployment Rights.

In the event the Field Representative is unable to work out an amicable settlement in a given case and the veteran signs a request that his claim be referred to the Department of Justice, a complete dossier concerning his case will be assembled by the Field Representative and forwarded to the Civil Division through the Office of the Solicitor of the Labor Department. If the veteran's case folder indicates a reasonable basis for the assertion of the right claimed and the legal

questions involved remain at large, the matter will be referred to the appropriate United States Attorney with the suggestions of the Civil Division. The FBI should be called upon to conduct such further investigation as may be necessary for a proper determination of the question of whether or not suit should be instituted on behalf of the veteran or for the successful prosecution thereof. Requests for additional administrative files should be directed to the Field Representative of the Bureau of Veterans' Reemployment Rights who initially developed the case. Should the United States Attorney refuse to represent the veteran, he should be advised of his right to employ private counsel.

In the event the United States Attorney undertakes to represent the veteran with regard to his reemployment rights, the Department should be advised of significant developments and, if a judgment adverse to the veteran is entered, prompt action should be taken to comply with title 6, page 2 of this Manual, inasmuch as the veteran has but 30 days within which to note an appeal. Unless advised to the contrary, a protective notice of appeal should be filed on behalf of the veteran immediately before the expiration of the appeal period. If the Solicitor General determines that the Department will not represent the veteran on appeal, the veteran should be advised promptly in order that he may retain private counsel to perfect his appeal if he wishes to do so.

FORMS

FORM 1. SAMPLE COUNTS OR INDICTMENTS

VETERANS AFFAIRS SECTION

Violation: 18 U. S. C. 1001 (Making false statements)

The Grand Jury charges:

COUNT ----------

That on or about the 30th day of April 1947, within the State and District of Arizona, one WALTER E. FULFORD, a defendant herein, willfully and knowingly made and caused to be made a false and fraudulent statement and representation to the Veterans Administration, an agency of the United States of America, concerning a matter within the jurisdiction of said agency, that the purchase price and cost of Lot 2 in North Haven, a subdivision of the Northeast Quarter of the Northeast Quarter of the Northwest Quarter of Section 26, Township 2 N., Range 3 E. of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, with the improvements thereon, to one Donald J. Eicholz, was and would be the sum of $7,600, well knowing at the time that this statement and representation was and would be false and fraudulent in that the cost and purchase price of said property to the said Donald J. Eicholz far exceeded the sum of $7,600 and said false and fraududent statement was made with respect to the issuance and making of a Home Loan Guaranty of Loan to said Donald J. Eicholz for the purchase of said property under and by virtue of Title III, Servicemen's Readjustment Act of 1944, as amended, and the rules and regulations duly made and issued pursuant thereto.

COUNT ----------

That on or about the 28th day of February 1947, within the State and District of Arizona, one WALTER E. FULFORD, defendant herein, willfully and knowingly made and caused to be made a false and fraudulent statement and representation to the Veterans Administration, an agency of the United States of America, concerning a matter within the jurisdiction of said agency, that the purchase price and cost of Lot 16 in North Haven, a subdivision of the Northeast Quarter of the Northeast Quarter of the Northwest Quarter of Section 26,

Township 2 N., Range 3 E. of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, with the improvements thereon, to one Stuart Robinson Lyon, was and would be the sum of $8,400, well knowing at the time that this statement and representation was and would be false and fraudulent in that the cost and purchase price of said property to the said Stuart Robinson Lyon far exceeded the sum of $8,400, and said false and fraudulent statement was made with respect to the issuance and making of a Home Loan Guaranty of Loan to said Stuart Robinson Lyon for the purchase of said property under and by virtue of Title III, Servicemen's Readjustment Act of 1944, as amended, and the rules and regulations duly made and issued pursuant thereto.

COUNT ----------

The Grand Jury charges:

On or about the 13th day of February 1947, at Pittsburgh, in the County of Allegheny, in the Western District of Pennsylvania, the defendants David G. Kyle and Theodore Dangelico did cause the Fort Pitt Federal Savings and Loan Association, Pittsburgh, Pennsylvania, to make and use a false certificate, they, the said defendants, knowing the same to contain fictitious statements and entries, in a matter within the jurisdiction of an agency of the United States, to wit, the Veterans Administration of the United States, which certificate is known as "V. A. Form 4–1820 February 1946," for the purpose of inducing the said Veterans Administration to guarantee a loan to Robert H. Stump, a veteran eligible for such guaranty under the provisions of Title III, Servicemen's Readjustment Act of 1944, as amended (Act of June 22, 1944, Chapter 268, Title III, 58 Stat. 292, as amended; Title 38 U. S. C. A. Sec. 694), in that they, the said defendants, did cause the said Fort Pitt Federal Savings and Loan Association to certify that a certain home, to wit, a certain piece of ground situate in Scott Township, Allegheny County, Pennsylvania, being Lot No. 58 in the Bower Hill Addition No. 2, upon which is erected a two-story brick dwelling with integral garage and known as 2018 Brookfield Road, Pittsburgh, Pennsylvania, then being sold to the said Robert H. Stump, by the defendant Theodore Dangelico, was being sold for a total cost of $10,000, and did cause the said Fort Pitt Federal Savings and Loan Association to certify further "that the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, alterations or improvements, does not exceed the reasonable value thereof as determined by proper appraisal dated January 22, 1947, made by F. A. Ward, an appraiser designated

by the Administrator"; they, the said defendants, well knowing that the said certificate contained fraudulent and fictitious statements and entries, in that the total cost of the said home and price to be paid therefor to the defendant Theodore Dangelico, by the veteran, was not $10,000, as represented in said certificate, but that in truth and in fact, the total cost of the said home and the price to be paid therefor by the veteran was $12,000.

Form 2. Appearance Bond

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

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of _____ Dollars ($_____).

The condition of this bond is that the defendant _____ is to appear in the District Court of the United States[1] for the _____ District of _____ at _____[2] in accordance with all orders and directions of the Court[3] relating to the appearance of the defendant before the Court[3] in the case of *United States* v. _____, File number _____; and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the District Court of the United States for the _____ District of _____ against each debtor jointly and severally for the amount above stated together with interests and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this _____ day of _____, 19____, at _____.

_____,	_____
Name of Defendant	Address
_____,	_____
Name of Surety	Address
_____,	_____
Name of Surety	Address

Signed and acknowledged before me this _____ day of _____ 19____.

Approved: _____.

[1] If appearance is to be before a commissioner, change the words following "appear" to "before _____, United States Commissioner."

[2] Insert place.

[3] Change "Court" to "Commissioner" if necessary. See Note 1.

Form 3. Justification of Surety

I, the undersigned surety, on oath say that I reside at _____ _____; that my present occupation or employment is _____, located at _____; 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 | Bail Bond Judgment for $_____
vs. | Docket No. _____, Dated _____
_____, et al. |

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]