TITLE 7

MISCELLANEOUS LEGAL MATTERS

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TITLE 7: MISCELLANEOUS LEGAL MATTERS

ANTITRUST DIVISION

GENERAL

No proceeding, civil or criminal, under the Federal antitrust laws should be instituted without first obtaining authority from the Department.

It is important that special attention be given to handling complaints of violation of the antitrust laws such as the Sherman Act, including the Miller-Tydings Amendment, the Clayton Act and the Robinson-Patman Act. United States Attorneys are urged to establish some definite procedure for receiving complaints from persons professing knowledge of such violations, for obtaining the necessary details concerning such complaints, and for promptly transmitting that information together with the United States Attorney's observations or recommendations to the Antitrust Division of the Department. In those cities in which the Antitrust Division maintains temporary field offices, procedures should be adopted which will insure that persons complaining of antitrust law violations are directed to the Antitrust Division field office.

The widest publicity should be given to the adoption of such procedures and to the fact that businessmen or consumers should bring their complaints, together with all available details, to the office of the United States Attorney where their complaints will receive prompt and cooperative attention. Persons who have been injured as a result of illegal discrimination should be assured that they can relate their difficulties to the office of the United States Attorney with the assurance that their identity will remain confidential.

DIRECTORY OF FIELD OFFICES

Chief	Earl A. Jinkinson	Room 400, U. S. Court House 219 South Clark Street Chicago 4, Illinois
Chief	Robert B. Hummel	601 Public Square Bldg. Cleveland 13, Ohio
Chief	John W. Neville	726 Federal Building Detroit 26, Michigan

Acting Chief	James M. McGrath	1602 U. S. Post Office and Court House Los Angeles 12, California
Chief	Richard B. O'Donnell	235 U. S. Court House Foley Square New York 7, New York
Acting Chief	William L. Maher	510 Jefferson Bldg. 11th and Chestnut Streets Philadelphia 7, Pennsylvania
Chief	Lyle L. Jones, Jr.	Room 854, Flood Building 870 Market Street San Francisco 2, Calif.
Chief	Edward M. Feeney	712 U. S. Court House Seattle 4, Washington

COMPROMISES

While authority has been conferred on United States Attorneys to compromise and settle some types of direct reference cases, no such authority is conferred with respect to cases supervised by the Antitrust Division, and all such compromises must be submitted to the Antitrust Division for approval.

CAR SERVICE ORDERS (49 U. S. C. 1 (15) and 1 (17) (a))

The Interstate Commerce Commission under these sections of the Interstate Commerce Act has the authority to find that an emergency exists as a matter of fact in every part of the country in car service in interstate and in intrastate traffic. Pursuant to this authority the Commission issues directives, commonly referred to as "car service orders", to meet such exigencies. Authorization from the Attorney General is a prerequisite to the institution of any proceeding to enforce the provisions of these sections. The investigations are conducted by the Bureau of Inquiry of the Interstate Commerce Commission. After investigation, cases which, in the opinion of the Bureau of Inquiry, warrant prosecution, will be referred to the Antitrust Division of the Department of Justice for transmittal to the appropriate United States Attorney for prosecutive action.

In the preparation and trial of these cases, United States Attorneys may call upon the Regional Attorney, Bureau of Inquiry, of the region covering their respective districts, for such further investigation or for such assistance in preparing the case for trial as they may deem necessary.

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

May 1, 1954

Because of the plenary power given by the Congress to the Commission to declare the existence of an emergency in car service, the provisions of these sections have been constantly attacked.

The following is a list of the important decisions involving the administration and enforcement of these sections:

(1) *Interpretation: United States* v. *Thompson*, 58 F. Supp. 213, 216; *L. D. McFarland Co.* v. *Southern Pacific Co.*, 263 I. C. C. 579, 581; *Iversen* v. *United States*, 63 F. Supp. 1001, 1005.

(2) *Presumption of Existence of Emergency: United States* v. *Thompson*, 58 F. Supp. 213, 216.

PARTS I AND II OF INTERSTATE COMMERCE ACT

In direct reference cases relating to the enforcement of Part I of the Interstate Commerce Act the direct reference may be made by the Bureau of Inquiry of the Interstate Commerce Commission. The discussion of the disposition of criminal cases under the Elkins Act, set forth above, applies to criminal actions under Part I of the Interstate Commerce Act. Civil actions under Part I should be handled in accordance with the procedures outlined below for Part II of the Interstate Commerce Act.

In direct reference cases relating to the enforcement of Part II of the Interstate Commerce Act, the direct reference may be made by the Bureau of Motor Carriers of the Interstate Commerce Commission. Communications relating to such matters as additional investigation by the referring agency, arranging for the attendance of or information as to witnesses, etc., should be transmitted directly from the United States Attorney to the referring agency, with copy to the Antitrust Division. In civil cases, advice should be sought from the Antitrust Division in regard to policy, novel questions of law or other factors of such importance as to merit the attention of the Department. Reports on the status or disposition of civil cases should be directed to the Antitrust Division, rather than to the Criminal Division. Contemporaneously with the transmittal of a routine report to the Antitrust Division concerning the status or disposition of a case, a copy of such report should be directed to the Bureau of Motor Carriers and the original report to the Antitrust Division should bear a notation that this has been done. The procedure outlined in this paragraph relates only to the institution and conduct of such proceedings. Dismissal of cases after they have been begun will be governed by the same procedure as heretofore in force. Compromise and settlement of cases will be handled as set forth above.

ELKINS ACT

The Elkins Act (40 U. S. C. 41, 42, 43) contains civil and criminal sanctions.

Its purpose is to prohibit acts within the transportation field resulting in concessions, rebates, and unlawful advantages to shippers.

Enforcement of the Elkins Act is a duty and responsibility of the Attorney General (49 U. S. C. 41 (3) and 43).

The intent of Congress in enacting this legislation was "to cut out by the roots every form of discrimination, favoritism and inequity" (*United States* v. *Koenig Coal Co.*, 270 U. S. 512).

Because of the public interest in carrying out this congressional intent, United States Attorneys are directed not to agree that any case under this act be disposed of on any basis other than by trial on the merits, without the express authority of the Assistant Attorney General in charge of the Antitrust Division; and especially United States Attorneys are directed not to agree without express authority from such Assistant Attorney General that the minimum penalty be imposed, where the condemned acts are wilful or deliberate or where the facts are aggravated.

Investigations of such cases are usually conducted by the Interstate Commerce Commission's Bureau of Inquiry.

After investigation the Bureau sometimes refers the matter to the United States attorney for prosecution. These referrals are made under Section 12 of the Interstate Commerce Act (49 U. S. C. 12) which provides that the Commission is required to execute and enforce the provisions of Part I of the Act; and upon request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute *under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of this part and for the punishment of all violations thereof.*[1]

The Attorney General has authority to institute and conduct litigation in order to establish and safeguard government rights and properties *United States* v. *California*, 332 U. S. 19, 27, (1947); the Attorney General is the chief legal officer of the U. S. Government (5 U. S. C. 291); he may furnish legal services for the various departments and bureaus of the government (5 U. S. C. 306); he

[1] In this connection, 28 U. S. C. 507 and 507 (b) provide that except as otherwise provided by law, it shall be the duty of each United States Attorney, within his district, to prosecute for all offenses against the United States; and that the Attorney General shall have supervision over all litigation to which the United States or any agency thereof is a party and shall direct all United States Attorneys, Assistant United States Attorneys and attorneys in the discharge of their respective duties.

may conduct any kind of legal proceedings on behalf of the United States (5 U. S. C. 310); he may argue any case in any court in which the United States is interested (5 U. S. C. 309).

By Section 5 of Executive Order No. 6166, June 10, 1933, (5 U. S. C. A. note following sections 124–132), it is provided that "the functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States, and defending claims and demands against the Government, . . . now exercised by any agency or officer are transferred to the Department of Justice."

Notwithstanding referrals of Elkins Act cases by the Commission under Section 12 of the Interstate Commerce Act (49 U. S. C. 12), express authority from the Assistant Attorney General in charge of the Antitrust Division must be obtained by the United States Attorney before filing any such case so referred by the Commission.

Since some of such cases are criminal in nature and since some of them are disposed of on pleas of guilty or *nolo*, it is generally proper, except in unusual circumstances, to proceed in criminal cases by information after obtaining proper authority from such Assistant Attorney General.

The United States Attorneys may call upon the Regional Attorneys of the Commission's Bureau of Inquiry for information and such assistance in preparing these cases for trial as may be deemed necessary or desirable; but the prosecution thereof shall be conducted by the United States Attorneys and their Assistants.

The designation of Special Assistants will not be made except in unusual cases. If the appointment of a Special Assistant be thought necessary the request therefor must be supported with facts showing the justification therefor. Such appointments will be made where justified but nevertheless control of, and responsibility for, the litigation will continue to be with the United States Attorneys.

These instructions are not intended to prevent the full utilization by the United States Attorneys of the services of the Bureau of Inquiry. Bureau attorneys may appear at the counsel table and may render such counsel, aid and assistance as the United States Attorney may desire but the United States Attorneys and their Assistants shall actually conduct, control and be responsible for the prosecution.

United States Attorneys are directed to keep the office of the Assistant Attorney General in charge of the Antitrust Division informed currently as to the progress and status of the cases and to ask such office formally for authority to dispose of them except in instances where they are tried on the merits.

The office of such Assistant Attorney General will, upon request, furnish forms of complaints, indictments, and informations used in other cases and briefs on questions of law which have arisen in other cases.

Any activity of United States Attorneys in cases which are appealed must be authorized by the office of such Assistant Attorney General in order to avoid conflicts in contentions and policy. All matters respecting the preparation of the record on appeal shall be the responsibility of the United States Attorneys, subject to the direction of such Assistant Attorney General. The preparation of briefs in appellate courts shall be the responsibility of the United States Attorneys. Such briefs must be approved by such Assistant Attorney General prior to filing in order to avoid conflicts in arguments and policy.

Nolo Contendere

United States Attorneys are directed not to consent to pleas of *nolo contendere* except in most unusual circumstances and then only with the express approval of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division (Attorney General's Memo No. 42).

Sentences

No recommendation of sentence is to be made except when the court requests it. The Assistant Attorney General in charge of the Antitrust Division prefers that the matter of sentence be left entirely with the courts without suggestion from the United States Attorneys.

If the court asks for information to aid it in sentencing, the United States Attorney should make an appropriate statement of the facts and explain the manner in which the defendant sought to defeat the intent of the act along with any other information requested by the court.

If the court asks for a recommendation as to sentence the United States Attorney may make one but only when he has previously obtained the approval of the recommended sentence by such Assistant Attorney General.

Handling and Disposition of Civil Cases

The same rules herein outlined for observance in the institution, compromising, disposition, and other handling of criminal cases shall be observed in civil cases.

Emergency Handling

It is recognized that extraordinary occasions will arise, as when the defendant changes his plea, or when he pleads *nolo* or guilty in a surprise move, or when the court proposes to enter judgment or impose sentence immediately upon completion of a trial.

It is possible that in such an instance, the United States Attorney will be confronted by a request from the court for a recommendation. It is possible that the United States Attorney in such a situation will find himself without clearance from the Assistant Attorney General in charge of the Antitrust Division on any recommendation which the United States Attorney might wish to make.

In such a case, where no postponement of sentence or entry of judgment is possible and efforts to reach the office of such Assistant Attorney General by telephone are not practicable or possible, the United States Attorney may exercise his discretion in making a recommendation to the court, subject, however, to what is said above about aggravated cases, making a full report of his recommendation and the circumstances relating thereto to the office of such Assistant Attorney General at the earliest practicable time.

The following is a list of important decisions involving the administration and enforcement of the Elkins Act:

(1) *Constitutionality and Interpretation: Armour Packing Company* v. *United States*, 209 U. S. 56; *New York Central & H. R. R. Company* v. *United States*, 212 U. S. 481; *United States* v. *Adams Express Company*, 229 U. S. 381; *Standard Oil of Indiana* v. *United States*, 164 Fed. 376, cert. den., 212 U. S. 579.

(2) *Persons Subject to the Act: United States* v. *American Express Company*, 199 Fed. 321; *Mutual Transit Company* v. *United States*, 178 Fed. 664; *New York Central & H. R. R. Company* v. *United States*, 212 U. S. 481.

(3) *Failure to File and Publish Tariffs: United States* v. *Illinois Terminal Railroad Company*, 168 Fed. 546; *United States* v. *Merchants' & Miners' Transportation Company*, 187 Fed. 363; *United States* v. *Miller*, 223 U. S. 599; *Atchison, Topeka & Santa Fe Ry. Company* v. *United States*, 170 Fed. 250; *Spencer Kellogg & Sons, Inc.* v. *United States*, 20 F. 2d 459.

(4) *Rebates, Concessions and Discriminations: United States* v. *P. Koenig Coal Company*, 270 U. S. 512; *United States* v. *Great Northern R. Company*, 157 Fed. 288, writ of error dismissed, 214 U. S. 530; *United States* v. *Michigan Portland Cement Company*, 270 U. S. 521; *United States* v. *Delaware, Lackawanna & W. R. Company*, 152 Fed. 269.

(5) *Transportation in Interstate or Foreign Commerce: United States* v. *Vacuum Oil Company*, 158 Fed 536; *Standard Oil Company of New York* v. *United States*, 179 Fed. 614; *Armour Packing Company* v. *United States*, 209 U. S. 56.

(6) *Departures from Schedules; Devices: Louisville & Nashville Railroad Company* v. *Mottley*, 219 U. S. 467; *New York, New Haven and Hartford Railroad Company* v. *Interstate Commerce Commission*, 200 U. S. 361; *American Express Company* v. *United States*, 212 U. S. 522; *Chicago & A. Railway Company* v. *United States*, 156 Fed. 558.

(7) *Penalties and Prosecutions: United States* v. *Standard Oil Company*, 148 Fed. 719; *Spencer Kellogg & Sons, Inc.* v. *United States*, 20 F. 2d 459; *Chicago & A. Railway Company* v. *United States*, 156 Fed. 558; *Hocking Valley Railway Company* v. *United States*, 210 Fed. 735; *Sunday Creek Company* v. *United States*, 210 Fed. 747.

ACTIONS AGAINST THE UNITED STATES

The United States is represented by attorneys of the Antitrust Division in suits to enjoin, set aside, suspend, or to determine the validity of, final orders of the Interstate Commerce Commission; Federal Communications Commission, Secretary of Agriculture under the Packers and Stockyards Act, 1921, as amended, and the Perishable Agricultural Commodities Act, 1930, as amended; and of the Federal Maritime Board entered under authority of the Shipping Act, 1916, as amended and the Inter-Coastal Shipping Act, 1933, as amended. It is important that copies of the complaint or petition in these types of cases be immediately forwarded to the Antitrust Division, and that the Antitrust Division be notified of the date on which the United States Attorney was served. Also, appeal papers served upon United States Attorneys in such cases should be forwarded to the Antitrust Division without delay.

FEDERAL BUREAU OF INVESTIGATION

PARTIAL LIST OF MATTERS INVESTIGATED BY THE FBI

Among the Federal statutes investigated by the FBI are the following:

General Crimes

Anti-Racketeering
Antitrust
Assaulting or Killing Federal Officer
Bank Robbery
Bills of Lading Act
Black Market in Railroad Tickets
Bond Default
Bondmen and Sureties
Bribery
Civil Aeronautics Act
Civil Rights
Conspiracy (in matters under FBI jurisdiction)
Contempt of Court
Copyright Matters
Crimes on Government Reservations Other than Indian
Crimes on Indian Reservation
Crimes within the Maritime Jurisdiction
Eight Hour Day Law
Election Laws
Escaped Federal Prisoners, Escape and Rescue
Espionage
Extortion
Falsely Claiming Citizenship
False Entries in Records of Interstate Carriers
Federal Regulation of Lobbying Act
Federal Tort Claims Act
Federal Train Wreck Statute
Fraud Against the Government
Fraudulent Practices Concerning Certain Military and Naval Documents and Seals of Departments or Agencies of the United States
Government Property — Theft, Robbery, Embezzlement, Illegal Possession and Destruction
Harboring
Illegal Manufacture, Use, Possession or Sale of Emblems and Insignia
Illegal Use of Government Transportation Requests
Illegal Wearing of the Uniform and Related Statutes
Impersonation
Internal Security Investigations
Interstate Transportation of Gambling Devices
Interstate Transportation of Lottery Tickets
Interstate Transportation of Obscene Matter
Interstate Transportation of Prison-Made Goods
Interstate Transportation of Stolen Cattle
Interstate Transportation of Stolen Motor Vehicle or Aircraft

TITLE 7: MISCELLANEOUS LEGAL MATTERS

Interstate Transportation of Stolen Property
Interstate Transportation of Strikebreakers
Involuntary Servitude and Slavery
Irregularities in Federal Penal Institutions
Kickback Racket Act
Kidnaping
Labor Management Relations Act, 1947
Migratory Bird Act
National Bankruptcy Act
Obstruction of Justice
Patent Matters
Perjury
Railway Labor Act
Red Cross Act
Sabotage
Security Matters
Selective Service Act, 1948
Servicemen's Dependents Allowance Act of 1942
Soldiers and Sailors Civil Relief Act of 1940
Subversive Activities
Tariff Act of 1930
Theft From Interstate Shipment
Unreported Interstate Shipment of Cigarettes
Unlawful Flight to Avoid Prosecution, Custody, Confinement and Giving Testimony
Veterans Administration Matters
War Risk Insurance—National Service Life Insurance
White Slave Traffic Act

Accounting Matters and Civil Cases

Admiralty Matters
Alien Property Custodian Matters
Ascertaining Financial Ability to Pay Claims, Fines and Judgments
Contract Settlement Act
Court of Claims
Evacuation Claims—Public Law 886, 50 USC App. 1981
False Claims (Civil) Dependents Allowance Act of 1950
Federal Reserve Act
Federal Tort Claims Act
Mail Frauds (Accounting Phases)
National Bankruptcy Act
National Bank Act
Renegotiation Act
Servicemen's Readjustment Act of 1944

Applicant Investigations

Application for Executive Clemency
(Only those cases where originally convicted of an offense within jurisdiction of FBI)
Application for Pardon after Completion of Sentence
Mutual Security Agency—Applicants
Coast Guard Screening Board
Departmental Applicants
FBI Applicants
Applicants under Public Law 298, 82d Congress, wherein investigation is conducted by the FBI for certain sensitive positions, and in cases where the Civil Service Commission investigation has developed derogatory

loyalty information; applicable to the following:
Atomic Energy Act
International Development Program
Greece-Turkey Aid Bill
Special Preemployment Inquiries

SOME BASIC FBI POLICIES

The FBI is a career service. Its employees are selected without regard to political affiliation and political considerations.

The FBI is a fact-finding and reporting agency. Special Agents of the FBI do not make recommendations nor do they draw conclusions. A decision as to whether there is to be prosecution is the responsibility of the United States Attorney's office and Special Agents are not authorized to express an opinion as to such matters. Just as it is the responsibility of the FBI to conduct investigations, it is the responsibility of the United States Attorney's office to authorize or decline prosecution. Even in investigations of applicants for Government positions, the FBI expresses no opinion, conclusion, or recommendation.

Special Agents of the FBI are not authorized to participate in any case which is not within the jurisdiction of the FBI. No investigations are to be conducted by Special Agents of strictly local, county or State violations. If some other agency of the Federal Government has partially completed an investigation, the FBI will not enter into such investigation which has already been partially made.

The cooperative services of the FBI, such as fingerprint identification and technical laboratory examinations are available to local, county, State and Federal enforcement and investigative agencies.

COOPERATIVE SERVICES OF THE FBI

Fingerprint Identification

The FBI maintains an Identification Division which is a national clearinghouse of information based on fingerprints of arrested persons. As of March 28, 1953, there were 127,162,846 fingerprint cards on file in this division. These represented not only the fingerprints of arrested persons, but fingerprints submitted by the Civil Service Commission, military services, et al.

When the fingerprints of an arrested person are received from a law enforcement agency they are searched through the files and the contributing agency is advised of any previous record in these finger-

print files. If there is no previous record, the contributing agency is so advised. In arrests made in cases investigated by the FBI the criminal record is included in the reports of Special Agents. The Identification Division of this Bureau also makes identifications of latent fingerprints, receives and records wanted notices, and renders many other services wherein fingerprint identification is pertinent.

Services of FBI Laboratory

Examples of the types of examinations the FBI Laboratory is equipped to make are as follows: Chemistry, Serology, Toxicology; Physics, Spectrography; Documents, Handwriting, Typewriting; Cryptanalysis; Microscopy, Firearms Identification, Hairs and Fibers, Soils, Toolmarks.

Evidence will not be examined by the FBI laboratory if any evidence in the same case has been or will be examined by any other experts in the same scientific field on behalf of the Government. This policy is desirable not only to eliminate duplication of effort but also to insure the examination of evidence in the condition at time of recovery, enabling the proper interpretation to be placed on the examiner's findings and the subsequent proper court presentation and testimony.

When the technical services of the FBI laboratory are desired the local office of the FBI should be contacted. (See United States Attorneys Circular 4113, dated Dec. 9, 1949.) The United States Attorney may make known to the local office of the FBI a desire to obtain the services of Laboratory experts when there is a need for the expert testimony of Laboratory technicians in connection with the prosecution of a case in which the United States is a party in interest. A requisition to the Department for authority to obtain the services of such experts from other services should not be submitted. Physical evidence to be examined, in so far as possible, should be submitted to the local FBI office for transmittal to the FBI laboratory in Washington.

Training

In addition to operating training schools for its own personnel, the FBI also operates the FBI National Academy which was inaugurated by Director Hoover in 1935, for the purpose of training carefully selected police executives and instructors. Requests of local, county, and State law enforcement officials for police training schools are acted upon favorably and hundreds of local schools are operated annually by the FBI in keeping with such requests.

Uniform Crime Reporting

The vast majority of law enforcement agencies in larger towns and cities throughout the United States voluntarily submit reports concerning offenses known to the police. This permits the compilation and publication of a semiannual bulletin entitled, "Uniform Crime Reports," which reflects the information submitted by the police as to the extent, trend and fluctuation of crimes throughout the Nation. A copy of this semiannual bulletin will be made available to the United States Attorney upon request.

FBI REPORTS

In cases where decisions of the United States Attorney as to prosecution are involved, the reports of investigations are submitted directly to the United States Attorney's office by the local field office of the FBI. These reports are strictly confidential. Files containing FBI reports or any information obtained from the FBI shall not be furnished to any person outside the Department of Justice except as provided in Order No. 3229, Revised, dated January 13, 1953, and in Supplement No. 4, Revised, of Order No. 3464, dated January 13, 1953, and accompanying memorandum bearing the same date entitled "Authorization Under Order No. 3464, Supplement No. 4, Revised. (For further information on the production of documents in criminal cases, see Criminal Division memorandum on this subject, dated March 15, 1954.)

When copies of reports are disseminated for the United States Attorney copies of the same reports are generally sent to the appropriate division of the Department in Washington, such as the Criminal Division or Civil Division of the Department.

Under Departmental instructions there is to be set forth in the reports submitted by FBI Agents the specific reason of the United States Attorney or the Assistant United States Attorney as to why prosecution is declined. These reasons are set forth for the Department's information and copies of the reports containing such decisions and opinions of the United States Attorney and his staff are furnished to the office of the United States Attorney, as well as to the Department.

MISCELLANEOUS

If there is any investigative problem about which the United States Attorney is concerned, he should have no hesitancy at any time in discussing such matters with the Special Agent in charge of the local FBI office. We of the FBI are pleased to be associated with the United States Attorneys within the framework of the Department of Justice.

May 1, 1954

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OFFICE OF ALIEN PROPERTY

TRADING WITH THE ENEMY ACT CASES

In the performance of his functions under the Trading With the Enemy Act, as amended, the Attorney General is involved in a wide variety of civil actions, as plaintiff, defendant or intervenor. The conduct of such litigation is within the authority and under the supervision of the Director of the Office of Alien Property. Such litigation includes:

(a) Summary proceedings brought by the Attorney General, as successor to the Alien Property Custodian, pursuant to Section 17 of the Trading With the Enemy Act to obtain compliance with a vesting order, in which the relief sought is an order compelling the holder of vested property to deliver it to the Attorney General.

(b) Actions for return of vested property brought against the Attorney General, or the Treasurer of the United States, pursuant to Section 9 (a) of the Trading With the Enemy Act, by claimants whose property was vested as enemy owned or controlled and who allege that they are not enemies and that the seizure of their property was mistaken.

(c) Miscellaneous actions brought by or against the Attorney General arising out of the management or administration of vested property such as infringement suits involving vested patents or copyrights, actions to collect rent or evict tenants from vested property, corporate reorganizations involving shares of stock owned by the Attorney General, actions to collect vested debts owing to enemies, etc.

(d) Probate proceedings in which the Attorney General has vested the interest of an enemy beneficiary in an estate or trust and then enters the probate proceedings as successor in interest to the enemy beneficiary.

In all cases, (a) through (d) above, the proper party is the Attorney General, as successor to the Alien Property Custodian. In actions for return of vested property, the Treasurer of the United States is also a proper party defendant.

(e) Actions involving the Foreign Funds Control program, whereby United States assets owned by various foreign countries or

nationals of such foreign countries were blocked during World War II, and actions involving the Treasury Department's Foreign Assets Control program whereby assets belonging to China, except Formosa and North Korea or their nationals, have been blocked.

In the event any civil litigation involving the Trading With the Enemy Act comes to the attention of the United States Attorney where it appears that the Office of Alien Property has not been otherwise notified, the United States Attorney should immediately communicate the facts to the Director of the Office of Alien Property, Department of Justice, Washington 25, D. C.

OFFICE OF LEGAL COUNSEL

CONSCIENTIOUS OBJECTOR CASES

Authority and Responsibility

Section 6 (j) of the Universal Military Training and Service Act (P. L. 51, 82d Cong., 1st sess., ch. 144) requires the Department of Justice to make inquiry, hold a hearing, and make a recommendation to the Selective Service System in regard to the character and good faith of the conscientious objector claim of any Selective Service Registrant who appeals from a denial of such claim by a local board of the Selective Service System.

It is the responsibility of the United States Attorney to see that conscientious objector cases referred to him by the district appeal board are processed with a minimum of delay. Except in unusual circumstances, the Department considers 90 days to be sufficient time for completion of the inquiry and hearing in conscientious objector cases.

Once a case is referred to the United States Attorney, the Selective Service System can take no further action until the Department's recommendation is made. Delay in processing cases has the effect of deferring the registrant for that period of time. Unusual delays develop an undesirable situation for the Selective Service System at the local level, and subject the Department of Justice to the possibility of adverse criticism.

Procedure

Each district appeal board will transmit the files in conscientious objector cases to the United States Attorney for that judicial district. Immediately upon receipt of each such file the United States Attorney shall cause the date of its receipt to be stamped thereon. The file shall then be examined to determine whether the Department has jurisdiction. If it is determined that the Department has jurisdiction in the case, the file shall be forwarded for inquiry to the local field office of the FBI. If the Department is without jurisdiction, the file shall be returned directly to the appeal board. When the investigation has been completed the entire file and the report of the investigation shall be assigned for hearing to a duly appointed Hearing Officer. The Hearing Officer will then, after at least 10 days notice, hold a hearing

and makes a recommendation to the Department of Justice with respect to the character and good faith of the objections of the registrant. Upon receipt of the report and recommendation of the Hearing Officer, the Department of Justice will make its recommendation to the appeal board, and will advise the United States Attorney and the Hearing Officer concerned, of the final action taken in the case.

If a registrant has removed to another State, it is the policy of the Department, where feasible, to transfer the case to a Hearing Officer in the judicial district of the registrant's current residence. Should the registrant request that his case be transferred, the United States Attorney is hereby authorized to transfer the entire Selective Service file and FBI report to the United States Attorney in the judicial district in which the registrant currently resides, requesting that the usual hearing be held and that the report and file be submitted to the Conscientious Objector Unit of the Department of Justice, Washington, D. C. In no instance should a file be transferred to another judicial district until the complete current address of the registrant has been obtained from the local board. This address should be set forth completely in the letter of transmittal.

Jurisdiction

In deciding whether or not the Department of Justice has jurisdiction in a given case the United States Attorney should determine that, (a) a substantial conscientious objector claim has been made, (b) the conscientious objector claim has been considered by the local board and has been found to be *not sustained* by that board, (c) the registrant is a person subject to induction under the Act and (d) the registrant has been afforded all material, substantive and procedural rights.

The Department has no jurisdiction if the registrant does not make a substantial conscientious objector claim, usually evidenced by his completion of the Special Form for Conscientious Objector, Selective Service System Form No. 150. Any statement, however, which sets forth the allegation that the registrant is, by reason of his religious training and belief, conscientiously opposed to war in any form, is considered to be a substantial claim. The registrant may claim to be conscientiously opposed to combatant training and service only, or to both combatant and noncombatant training and service. The fact that the registrant may claim other classifications in addition to one of the conscientious objector classifications is not fatal to the Department's jurisdiction.

The date the registrant made his conscientious objector claim should be compared with the date of the latest classification action of the local

board to assure that the local board has given consideration to such claim. The conscientious objector claim is considered to be *not sustained* when the local board has considered such claim, and in its latest classification has placed the registrant in a class other than the conscientious objector class claimed by the registrant. A conscientious objector claim is considered to be sustained, and the Department is without jurisdiction, if the local board in its latest action classified the registrant in the particular conscientious objector classification the registrant claimed.

A registrant may be exempt from training and service under the Act because of age. Few persons are liable for induction after they reach the age of 26, but those persons who were deferred for reasons of dependency, fitness, or the national health, safety or interest, on or after June 19, 1951, are liable for induction until they reach the age of 35. Special registrants are liable for induction until they reach the age of 51. (See secs. 4 (a), (i) and 6 (h), Universal Military Training and Service Act.)

Veterans who served honorably for a period of 12 months or more on active duty between September 16, 1940, and June 19, 1951, or between December 7, 1941, and September 8, 1945, for a period of 90 days, are not liable for induction except after a declaration of war or national emergency made by the *Congress*. This rule applies to all persons except special registrants who are liable for induction to age 51, regardless of prior service. (See secs. 4 (i) (2) and 6 (b), Universal Military Training and Service Act.)

If a registrant has been denied a *material* right under the Act or the Selective Service Regulations, the file should be returned to the appeal board for correction. The following are examples of errors which have been considered by the courts to be fatally prejudicial to the registrant: (a) failure of the local board to grant a personal appearance when request therefor was timely made, (b) failure of local board to forward the registrant a notice of classification (SSS Form No. 110) after his latest classification, (c) failure of the local board to allow the registrant to prepare an additional statement for his file on appeal. (See Secs. 1624.1, 1624.2 (d) and 1626.12, Selective Service Regulations.)

Should it not be entirely clear that the registrant is claiming exemption from service as a conscientious objector, or if for any other reason, there is a question as to the jurisdiction of the Department of Justice in the case, the United States Attorney shall forthwith transmit the file to the Conscientious Objector Unit of the Department of Justice at Washington, D. C., for a determination of the question.

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Loss of Jurisdiction

Should a registrant voluntarily enlist in the Armed Forces prior to the hearing, the Department loses jurisdiction and the Selective Service file should be returned directly to the appeal board.

Should the registrant voluntarily withdraw his claim as a conscientious objector the Department loses jurisdiction in the case. The withdrawal statement must be in writing. No *oral* statement of the registrant can be considered a withdrawal, and in no case should withdrawal be suggested to the registrant. In the majority of cases the desire to withdraw the claim is communicated to the Hearing Officer, who will in such event return the entire file and the written withdrawal to the United States Attorney. The United States Attorney should forward a copy of the withdrawal statement to the Conscientious Objector Unit of the Department of Justice, and return the entire Selective Service Cover Sheet together with the original withdrawal statement to the appropriate appeal board. The FBI report should be removed from the Selective Service Cover Sheet and filed in the office of the United States Attorney.

Records and Notices

Each United States Attorney shall keep a record of all cases received by him from the appeal board. This record may be in any form convenient to the office concerned, so long as it reflects the status of each case at all times.

A notation of the receipt of the file and of its transfer to the FBI shall be made on the record and the Conscientious Objector Unit of the Department of Justice shall be notified of such receipt and transfer.

A notation shall be made on the record when the file and report of the FBI are returned to the United States Attorney, and when the case is assigned to the Hearing Officer. The Conscientious Objector Unit of the Department of Justice shall be furnished the name of the Hearing Officer to whom the case is referred and the date of referral.

Whenever a file is returned to the appeal board or transferred to another jurisdiction a notation shall be made on the record and the Conscientious Objector Unit of the Department of Justice shall be notified immediately.

Handling Documents

The Selective Service files in these cases contain original and confidential documents which are the property of the Selective Service System. Every care should be exercised to assure their proper han-

dling to prevent loss or disclosure to unauthorized persons of any material contained therein.

The United States Attorney should examine the FBI reports carefully to assure that all logical leads have been developed and that the investigation has been CLOSED, before the case is assigned for hearing. Care should also be exercised to assure that the investigative report *in its entirety* is forwarded to the Hearing Officer with the file.

Expediting Cases

Upon determination of the jurisdictional question in the affirmative, the United States Attorney should forward the case *immediately* to the FBI. When the report of the FBI is completed, he should refer the case to the Hearing Officer *without delay.*

Special handling should be given the cases of registrants who are approaching the maximum age for induction. (See Jurisdiction, above.) It is important, therefore, to note the date of birth of each registrant when the file is received from the appeal board. If the registrant is approaching the maximum age for induction, the FBI and the Hearing Officer should be requested to expedite the case. If the registrant is so close to the maximum age for induction that processing within the required time is impossible, the file may be returned to the appeal board. In the interest of the Government, however, every reasonable effort should be made to process such cases.

The United States Attorney should estimate his requirements so that a sufficient number of Hearing Officers can be appointed by the Attorney General to assure that the cases are heard promptly. It should be borne in mind that Hearing Officers serve gratis and the Department does not wish to burden them unduly. As a matter of general policy it is considered advisable to have at least two Hearing Officers in each judicial district unless the work load is extremely light. The Department should be advised if a Hearing Officer anticipates an extended vacation or if for some other reason he will not be able to handle his cases for a considerable period of time. The United States Attorney should feel free to recommend to the Department that additional Hearing Officers be appointed or to make any other suggestions which he thinks might be helpful in expediting the handling of cases within his district.

Hearing Officers

Hearing Officers are appointed by the Attorney General as Special Assistants to the Attorney General and serve at his pleasure. The Attorney General outlines the general requirements of the office in his

letter tendering the appointment. Detailed instructions on the conduct of the hearing and preparation of the report are furnished the Hearing Officers by the Conscientious Objector Unit of the Department of Justice.

The office of the United States Attorney is regarded as the administrative channel for securing regularization and uniformity in the dispatch of conscientious objector cases. The United States Attorney should cooperate with the Hearing Officers to the fullest extent in administrative matters.

Neither the United States Attorney nor his assistants should undertake to appraise the evidence, or express an opinion as to the merits of any conscientious objector claim. Representatives from the office of the United States Attorney, the office of the United States Marshal, and the FBI are not required to attend the hearings, and, as a matter of policy, should not attend unless requested to do so by the Hearing Officer.

Each registrant is entitled to a 10-day notice of hearing and to a fair and impartial hearing. If the United States Attorney has reason to believe that a Hearing Officer is not providing proper notice and hearing, the Conscientious Objector Unit, Department of Justice, should be notified immediately.

Hearing Officers occupy a quasi-judicial position and the mental process by which they arrive at a conclusion or recommendation is not a proper subject of inquiry by the courts. United States Attorneys should not subpoena Hearing Officers as Government witnesses in cases arising under Section 12, Universal Military Training and Service Act, unless specifically authorized to do so, in a particular case, by the Conscientious Objector Unit of the Department of Justice. Should a defendant in such a case attempt to subpoena the Hearing Officer, the United States Attorney should make every effort to have the subpoena quashed. In a memorandum dated January 31, 1952, in the United States District Court, Southern District of New York, the motion of the Government to quash such subpoenas was granted in five cases arising under the Act. Copies of the opinion may be obtained from the Conscientious Objector Unit, Department of Justice, Washington, D. C.

Stenographic Assistance

Should the Hearing Officer require stenographic assistance, personnel of the office of the United States Attorney should be made available if at all practicable. Where this is impracticable, request for authority to incur expense for such stenographic assistance as the Hear-

ing Officer may require should be submitted on Form 25–B (Title 8, Appendix, form 23) to the Administrative Assistant Attorney General in advance. In an emergency, authority should be requested by wire with confirmation by Form 25–B.

In the majority of cases the Hearing Officer will be able to prepare his reports from personal notes taken at the hearing. In unusual cases the Hearing Officer may wish to have a transcript of the hearing. Because the testimony is usually not lengthy or involved, a competent stenographer from the office of the United States Attorney should be capable of making the transcript. If it becomes necessary to use a reporter, a contract reporter should be used whenever feasible. Authority to employ the contract reporter should be requested on Form 25–B, as indicated above. The use of reporters should be restricted as far as possible to avoid unnecessary expense.

If the detail of stenographic assistance should result in arrearages in the other work in the office of the United States Attorney, specific request may be made by him to the Department for authority to employ temporary personnel to bring such work to a current status.

Travel Allowance

It is anticipated that registrants will appear for hearing at the official headquarters of the Hearing Officer as designated in such Officer's letter of appointment. Only in unusual circumstances should it be necessary for the Hearing Officer to hold the hearing in any other place.

Authority for travel by Hearing Officers must be obtained in advance by the United States Attorney from the Administrative Assistant Attorney General on Form 25–B, showing the reason for the travel, the points between which the travel is to be made, and an estimate of the time of absence from headquarters. Hearing Officers will be allowed the same remuneration for travel as are United States Attorneys. (See Title 8, under Travel.)

Office Space

Suitable space for holding hearings is usually available in federal buildings. The United States Attorney should consult with the Hearing Officer in arranging a mutually agreeable location.

Often Hearing Officers who are engaged in the active practice of law find it more convenient to hold hearings in their own offices. There is no objection to this practice so long as the United States Attorney finds the facilities adequate and no expense accrues to the Government for the use of the space.

Liaison With the Selective Service System

It is highly desirable for the office of the United States Attorney to establish liaison with the State Selective Service Headquarters and the district appeal board. Many matters of mutual interest may be expedited by informal arrangement with these agencies.

The United States Attorney or the Assistant United States Attorney who is charged with handling conscientious objector cases should be thoroughly familiar with the Selective Service Regulations as well as the Universal Military Training and Service Act. This knowledge is considered basic to the proper handling of the cases and to the maintenance of effective liaison with the Selective Service System on a professional basis.

Cooperation of the State Director of Selective Service may frequently be necessary to assure that files returned to the district appeal board, pursuant to the instructions set out under Jurisdiction above, are properly corrected. It should be borne in mind that in requesting the cooperation of the Selective Service System the decision as to the action to be taken rests with the Selective Service System.

Selective Service representatives may, from time to time, wish to discuss the status of pending cases with the United States Attorney. The United States Attorney should cooperate with such representatives and give them whatever assistance he can.

Reporting Significant Cases

Many cases which get into the courts involve questions of great importance with respect to the conscientious objector program. Some of these cases are not reported and are, therefore, not available to the Conscientious Objector Unit of the Department of Justice or to all United States Attorneys. United States Attorneys should request the courts to give memoranda opinions in cases involving questions of importance. When oral opinions are given in such cases, an effort should be made to take down the opinions stenographically. All such cases should be reported to the Conscientious Objector Unit of the Department for dissemination to all districts.

OFFICE OF THE PARDON ATTORNEY

Receipt of pardon applications should be acknowledged, and correspondence of the Department concerning it should be answered promptly.

Reports must be submitted with all promptness consistent with other official duties. In case of necessary unusual delay, the Department should be advised of the reasons therefor and as to when the report may be expected.

A report must be made upon the facts, stating specifically:

(a) What the applicant did that constituted the offense of which he was convicted, the extent of his wrongdoing and the circumstances connected therewith—so far as known.

(b) A reply to such statements of the petitioner as need reply, particularly to claims of innocence or of injustice or of unfairness of trial.

(c) In cases of violation of the national banking law, bankruptcy, embezzlement of postal funds, use of mails to defraud, or dishonesty of any kind, as accurate a statement as possible of the amount of money involved or the loss sustained, should be given.

(d) The names, sentences, time and place of confinement of all codefendants and confederates convicted should be stated. If there were none, a statement to this effect should be made.

The applicant's prior criminal record and general reputation, so far as known, should be stated.

A definite recommendation for or against clemency should be submitted, the facts of the case being borne in mind, so far as known, including those subsequently developed, and the extenuating circumstances, if any. In submitting recommendations United States Attorneys are expected to express their individual views, irrespective of the view of any other official of the Government. When commutation is recommended, a definite statement should be made as to the extent to which the sentence should be commuted, whether fines, costs, or penalties have been imposed and paid, and, if not, whether the recommendation includes remission or reduction thereof.

If a United States Attorney did not himself try the case, he should submit such a statement of the facts as he is able to make and his own recommendation, and also obtain the statement and recommendation

of his predecessor, if the latter tried the case, or of any assistant United States Attorney or special attorney for the Government who had charge of or took part in the trial.

If remission of fines, costs, or penalties is asked, a report on applicant's ability to pay should be made, a report by the appropriate agency being requested, if need be. If remission is recommended, the extent should be stated. In all cases it must be stated whether the applicant was ordered to stand committed for nonpayment.

No allowance for time spent in jail before sentence should be recommended, except in extraordinary circumstances.

The President has nothing to do with the granting of paroles. He can, however, grant commutations upon conditions somewhat similar to parole. The two are, however, materially different in essential respects. Conditional commutation is a form of clemency used sparingly and is extended to prisoners who are not entitled to complete discharge, but whose release under restraint appears to be warranted. In a proper case it is competent to recommend a commutation either to expire at once, or to a specified term, upon conditions similar to parole.

United States Attorneys are expected, in every instance, to transmit with their reports the statement and recommendation of the trial judge, if obtainable, and if not obtainable, to state so, setting forth the reasons therefor. If a judge is temporarily out of his district and cannot be reached, his address should be stated and the probable date of his return.

The docket entries form which accompanies every application for executive clemency must be filled out. This should be done with absolute accuracy, the offense of which the applicant was convicted being stated specifically and clearly, and the statute under which conviction was had, stated. It is not sufficient merely to cite the statute violated or to describe the offense generally, as "Conspiracy," "Violation of the National Prohibition Act," etc. The offense must in every instance be stated in plain language and in sufficient detail to indicate clearly the nature and character of the crime committed.

It is permissible, if the exigencies of a case require it, for a United States Attorney to submit his report and recommendation, together with the other reports he is required to secure, in advance of and without a definite request from the Attorney General; but in every such instance the docket entries referred to in the preceding paragraph must be enclosed, and there must be a full report upon the facts as required above. Clemency for a prisoner on parole should not be recommended without specific instructions.

The petition and accompanying papers, including the docket entries form, should be returned without fail and in every instance the judge's recommendation should be transmitted or its absence explained.

Before reporting on an application for pardon after completion of sentence, the agent in charge of the local office of the FBI should be requested to institute a thorough investigation of the record and conduct of the applicant. When the report of the investigation has been received and considered, the recommendation of the United States Attorney, together with a brief statement of the petitioner's offense, should be submitted. The requirements as to procuring the recommendation of the trial judge, and other officials, should be observed as in other cases. The United States Attorney should submit docket entries for all federal offenses committed by the applicant in his district.

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BUREAU OF PRISONS

Under the provisions of 18 U. S. C. 4002, the Director of the Federal Bureau of Prisons may contract with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of all persons held under authority of any enactment of Congress.

Persons who will be placed in nonfederal institutions under authority of Federal statutes include prisoners to be held prior to a hearing or conviction, to await trial, for temporary detention while being transported to another institution, to serve short sentences, as parole and conditional release violators, and as witnesses; and persons to be detained for the Immigration and Naturalization Service.

Contracts for this purpose are in effect with about 630 local jails and other detention institutions. In order to maintain uniform standards of control and treatment of Federal prisoners, a statement of Rules and Regulations Governing Custody and Treatment of Federal Prisoners in Nonfederal Institutions is included in each contract and payments under the contract are subject to the provisions of the Rules and Regulations.

Several provisions of those Rules and Regulations are of direct interest to United States Attorneys:

4. *Photographing and publicity.*—Institution officials have no authority to give out publicity concerning Federal prisoners. They shall not give out personal histories or photographs of the prisoners or information as to the arrival or departure of prisoners or permit reporters to interview them. They shall not permit the photographing of Federal prisoners by reporters, news photographers, or other persons not connected with the institution. The institution officials may photograph Federal prisoners as a means of identification for official use only.

5. *Visits.*—Visits to Federal prisoners shall be in accordance with the institution's prescribed rules. The rules should permit visits from identified members of the prisoner's family, his attorney, and in the case of prisoners awaiting trial, persons with whom he may need to confer to prepare the defense of his case. Institution officials have the right to deny a visit to any prisoner when in their opinion such a visit would not be in the best interest of society or might endanger the security of the institution.

If the United States Attorney considers that visits or communications to a Federal prisoner awaiting trial or hearing are against the public interest and so advises the officials, visits will not be

permitted without the written approval of the United States Marshal on each occasion.

6. *Attorneys.*—Every Federal prisoner must be granted the right to counsel of his own choosing. However, in the case of certain prisoners awaiting trial, the Bureau of Prisons may consider it necessary to require that the sheriff, jailer, United States Marshal, his deputy, or other officer, be present at an interview between a prisoner and his counsel, and in such a case will issue special instructions accordingly. If a prisoner is serving a sentence, the official in charge of the institution may postpone an interview by an attorney, if in his opinion it would not be proper to permit it, pending advice from the United States Marshal or the Director of the Bureau of Prisons, which he should request promptly. Except where the safe custody of the inmate is involved, a prisoner awaiting trial should be permitted to correspond with his accredited attorney without having his mail examined.

7. *Mail.*—Federal prisoners will be permitted to correspond, within reasonable limits and subject to inspection by institution officials, with their families and friends, their attorneys, and, in the case of prisoners awaiting trial, with persons whom they need to contact in preparing for trial. They must be permitted to write to the Attorney General, the Director of the Bureau of Prisoners, the Pardon Attorney, the United States Marshal, and the United States District Judge and with their attorneys as provided in paragraph 6, without their letters being opened or read by institution officials.

Copies of the full contract and Regulations are available from United States Marshals or the Bureau of Prisons.

May 1, 1954