

**TITLE 9**

**INTERNAL SECURITY DIVISION**

U. S. Attorneys Manual 1970

# TITLE 9

## INTERNAL SECURITY DIVISION

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The functions of the Department assigned to the Internal Security Division, as described in Title I, are performed by five sections: Administrative, Appeals and Research, Civil, Criminal, and Registration.

### Criminal Section

#### Procedure

A substantial portion of the work of the Internal Security Division is the prosecution in the Federal courts of criminal matters involving the internal security of the United States. In this connection attention is directed to the instructions contained in Title II of this Manual which describe the functions of the Criminal Division. The instructions therein contained which do not conflict with the directives in the following paragraphs should be followed; but experience in security matters has demonstrated that unique or novel problems requiring special handling often arise in the course of investigations and prosecutions in this field. Special instructions are set forth in this section of the Manual, which relate solely to the investigation, preparation, and presentation in the district courts of internal security cases. Close coordination and the complete exchange of views and information between the U.S. attorneys and this Division are of paramount importance because of the wide public interest in such matters and the special problems which frequently arise, including the necessity of coordinating action with other interested Departments of the Government, especially the Departments of State and Defense.

#### *Investigation*

Investigations of subversive activities in violation of Federal laws in the United States and its territories and possessions are principally conducted by the Federal Bureau of Investigation. The results of such investigations are furnished to the Internal Security Division for review and analysis. On the request of this Division, reports are furnished to the appropriate U.S. Attorney for his review and comments when a particular case is considered for

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prosecution. In no event is a U.S. Attorney authorized to terminate an investigation relating to a security matter.

In any instance where evidence of subversive activities is brought initially to the U.S. Attorney, he should furnish promptly such information to the local office of the Federal Bureau of Investigation, and, where circumstances warrant, forward the information to the Internal Security Division. While investigation of the facts of the case is part of preparation for presentation and trial, the U.S. Attorney should recognize the clear division of jurisdiction and responsibility in this respect and refrain from the actual conduct of investigations, which is the primary responsibility of the Federal Bureau of Investigation. It is of particular importance in the internal security cases that the U.S. Attorney should coordinate all phases of his preparation with the Bureau.

*Referral Procedures*

As a general rule, all cases involving subversive activities originate in the Internal Security Division and are referred to the field for appropriate handling. In some circumstances, for example, cases involving contempt of court or obstruction of justice, the matter may be brought initially to the attention of the U.S. Attorney without prior referral from this Division. And for referral of contempt of Congress cases see page 10 of Title 9.

*Authorizing Prosecution*

Prosecution of any case involving subversive activities shall not be instituted without the express authorization of the Assistant Attorney General in charge of the Internal Security Division or higher authority. It is essential that this directive be strictly followed.

It is recognized that a situation may develop where time is of the essence. If it appears that a prospective defendant is about to flee the jurisdiction or that even a short delay would result in injury to the United States, the U.S. Attorney is authorized in his discretion to take whatever action he deems appropriate to preserve the best interests of the Government. In any such instance the U.S. Attorney must immediately notify the Internal Security Division as to the action taken and the attendant circumstances.

*Fugitives*

Where a public indictment has been returned against a defendant in an internal security case or where a defendant in such a

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case has become a fugitive from justice, the occasion may arise when such defendant may contact the U.S. Attorney for the purpose of surrendering himself in answer to the indictment or to serve his sentence, as the case may be. In any such instance, the U.S. Attorney or his assistant should suggest to such defendant or his spokesman that the surrender be made directly to the FBI or to the U.S. Marshal. If the defendant or fugitive insists upon surrendering to the U.S. Attorney or to his assistant, the surrender should, of course, be accepted.

In any event, whenever the U.S. Attorney or his assistant receives any indication that a fugitive or unarrested defendant in an internal security case may be about to surrender, the U.S. Attorney or his assistant should immediately notify by telephone the local office of the FBI, the Internal Security Division, and the official to whom a warrant for the arrest of the defendant may have been issued. In the event the surrender of the defendant or fugitive is made directly to the U.S. Attorney or an assistant, the prisoner should be turned over to the custody of the U.S. Marshal forthwith and notification of that action should immediately be communicated to the Internal Security Division and the FBI.

The essential thing is the immediate notification that is required to be given to the Internal Security Division and to the FBI. This procedure is, of course, designed to permit the FBI to interrogate the prisoner at the earliest time possible and, therefore, more effectively carry out its investigative functions. It will also permit the Internal Security Division to advise the U.S. Attorney of any special circumstances connected with the case and to issue any appropriate advice (such as the amount of bail to be requested or the fixing of a trial date) prior to the defendant's appearance in court for arraignment.

*Statute of Limitations*

For a general discussion of the statute of limitations, see this heading under Title 2: Criminal Division.

An amendment to Title 18, U.S.C., Section 794, passed by the 83d Congress and signed into law on September 3, 1954, increases the penalty for peacetime espionage under subsection (a) thereof from imprisonment for not more than 20 years to punishment by death or by imprisonment for any term of years or for life. Since a peacetime violation of subsection (a) has been made a capital offense, prosecution for such offenses not barred by the statute of limitations as of the effective date of the amendment may be

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brought at any time. Section 19 of the Internal Security Act of 1950, effective September 23, 1950, increased the statute of limitations for violations of Sections 792 and 793 to 10 years of offenses not then barred by the statute of limitations.

Section 228 of the Atomic Energy Act of 1954, Public Law 703, Ch. 18, 83d Congress, 2d session, effective on August 30, 1954 (amending the Atomic Energy Act of 1948), increases the statute of limitations for noncapital offenses prescribed or defined in Sections 224 to 226, inclusive, from 3 to 10 years, so as to conform with the statute of limitations applicable to the espionage statutes.

*Method of Commencing Action*

A determination as to whether an action should be initiated by means of a complaint and warrant of arrest or an indictment or information is to be made in conjunction with the Internal Security Division. The rules of procedure relating to complaints, arrests, preliminary hearings, and grand jury proceedings as set forth in Title 2 of this Manual are to be followed whenever applicable. A copy of the proposed indictment or information in any internal security case should be referred by the U.S. Attorney to the Internal Security Division for its comments prior to the return or filing thereof.

*Publicity*

No information should be given to the press or to anyone else concerning cases relating to internal security until after either a complaint has been filed with the U.S. Commissioner, or an indictment has been found by the grand jury and made public. Moreover, even under such circumstances, only that information which is a matter of public record and within departmental press guidelines may be made public (see 28 C.F.R. Sec. 50.2).

*Witnesses*

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

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*Rule 20 Transfers*

Rule 20, Federal Rules of Criminal Procedure, provides that a defendant may state in writing that he wishes to plead guilty or *nolo contendere*, to waive trial in the district in which the indictment or information is pending, and to consent to disposition of the case in the district in which he was arrested. No Rule 20 transfer in a case involving internal security shall be approved or consented to by a U.S. Attorney without the prior authorization of the Internal Security Division.

*Pleas*

Rule 11, Federal Rules of Criminal Procedure, relates to the entering of pleas by the defendant. A defendant may plead guilty, not guilty, or with the consent of the court, *nolo contendere*. In cases relating to internal security, the plea of *nolo contendere*, or of guilty to a lesser offense, shall be opposed by the U.S. Attorney in all instances except where the Internal Security Division has expressly authorized the acceptance of such a plea. No count of a multiple-count indictment shall be dismissed without the express approval of this Division because the defendant has pleaded guilty to one or more of the remaining counts of the indictment.

*Dismissals*

Except in cases where the defendant is dead and conclusive proof of that fact is presented to the court, no case of a security nature shall be dismissed by the U.S. Attorney, nor shall he consent to such dismissal, without the express prior authorization of the Internal Security Division.

*Motions*

(a) *General.*—In most cases which involve subversive activities, the Government is faced with an unusual number of pretrial and trial motions. The following are the motions most frequently made: Motion to dismiss on grounds of constitutionality and because of defects in the indictment; motion to dismiss or to secure an indefinite continuance on the grounds of "prejudicial climate" in the community; motion to dismiss on the grounds of irregularities before the grand jury; motion to dismiss on the grounds that the grand jury and petit jury were improperly impaneled (this

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motion usually attacks the entire method of selection of jurors within the particular district); motion for bill of particulars; motion for pretrial production and inspection pursuant to Rules 16 and 17(c), Federal Rules of Criminal Procedure; motion for severance on the grounds of prejudice if more than one defendant is involved; motion for change of venue on the ground of prejudice; motion to proceed in *forma pauperis*; and motion for production of confidential Government documents.

During the course of answering the many motions filed in past security cases, this Division has prepared extensive legal memoranda in connection therewith. Any such memoranda concerning the aforementioned motions or any other legal problems arising in internal security cases will be forwarded immediately to the U.S. Attorney upon request.

Because of the importance of presenting uniform arguments to the courts in the various districts of the country, it is essential that this Division be consulted on any legal problems involving unusual situations in internal security cases. It is also requested that copies of all pleadings filed in any case involving internal security be forwarded immediately to this Division.

(b) *Production of Documents*—In many cases concerning security matters, the defense has moved either prior to trial, during the trial, or at both times, for the production of various documents in the possession of the Government. In most instances, the documents sought are reports made to the Federal Bureau of Investigation by confidential informants. The production of such reports is governed exclusively by Section 3500 of Title 18, U.S.C. (see *Campbell v. United States*, 365 U.S. 85, 373 U.S. 487; *Palermo v. United States*, 360 U.S. 343; *Rosenberg v. United States*, 360 U.S. 367).

Motions for production pursuant to Section 3500 of material or information contained in the files of the Department should be vigorously opposed when it appears to the U.S. Attorney that the defense is not entitled to such production. In such instances where the motion is granted and production is ordered by the court, the U.S. Attorney will immediately advise this Division of the order and the pertinent facts relating thereto. The U.S. Attorney will inform the court that he is not authorized to produce or disclose the material or information sought until he has received proper authorization from this Division. In the event the court refuses to grant the time necessary for the receipt of instructions and/or authorization or, time having been granted, production is not

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authorized by this Division, the U.S. Attorney will respectfully decline to produce the material or information sought, even though it results in the striking of a Government witness' direct testimony or the dismissal of the prosecution.

Where a motion is made for production of material or documents contained within the files of the Department of Justice pursuant to Section 3500 and it is clear to the U.S. Attorney that the defense is entitled to production, unless prior authorization to produce has already been granted to the U.S. Attorney by this Division, the same procedures as outlined above shall be followed. (See Memo No. 243 from the Attorney General to all U.S. Attorneys dated Jan. 31, 1958.)

In the case of all other motions demanding the production by the Government of any documents which are classified, or in any instance where a subpoena is served on any employee of the Department of Justice calling for the production or disclosure of materials in the files of this Department the U.S. Attorney should immediately inform the court or other issuing authority that such materials may not be produced without the express authority of the Attorney General. The U.S. Attorney should request time from the court and should immediately advise this Division of all the facts concerning the demand for the production of such documents.

Legal memoranda for use in opposing these motions are available in the Division and will be furnished promptly on request. See also Criminal Division memorandum of March 15, 1954, entitled "Production of Documents" which was forwarded to the U.S. Attorneys with the United States Attorneys Bulletin of April 2, 1954.

If the court declines to defer a ruling until instructions from the Attorney General have been received, or if the court rules adversely on an asserted claim of privilege, the person upon whom such demand is made will respectfully decline to produce the material or information sought, *United States ex rel Touhy v. Ragen*, 340 U.S. 462. Such refusal should be based on Departmental Order No. 381-67, published in the Federal Register on July 4, 1967.

*Immunity*

Public Law 600, 83d Congress, 2d Sess., 68 Stat. 745, 18 U.S.C. 3486, provides for the grant of immunity to a witness in certain congressional investigations and criminal proceedings in

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order to compel his testimony despite a claim of privilege against self-incrimination under the Fifth Amendment.

Of particular interest to U.S. Attorneys is subsection (c) of the statute which pertains to proceedings before grand juries and courts involving interference with or endangering the national security or defense by certain enumerated crimes of a subversive nature, and which sets out the procedure to be followed by the U.S. Attorney in applying for a grant of immunity. Prior approval of the Attorney General is necessary before making application to a court for an order for a witness to testify and produce evidence.

The Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 90th Cong., 2d Sess.), contains an immunity section which also covers proceedings before grand juries and courts involving violations of the treason, sabotage, espionage, and atomic energy laws. It also contains provisions for granting immunity for violations of a number of statutes administered by the Criminal Division. This immunity statute has been added to Title 18, United States Code as Section 2514. Prior approval of the Attorney General is also necessary under this statute before making application to a court for an order for a witness to testify and produce evidence.

In *Ullman v. United States*, 350 U.S. 422, the Supreme Court upheld the constitutionality of Section 3486, reaffirming its earlier decision in *Brown v. Walker*, 161 U.S. 591.

The court further held that the district judge, to whom the Government must apply for an order instructing the witness to testify, has the duty only to ascertain whether the statutory requirements are complied with by the grand jury, the U.S. Attorney, and the Attorney General. The Statute affords no discretion to the district judge to deny the order on the ground that the public interest does not warrant it. In addition, the court concluded that the immunity provisions, when utilized, protect witnesses from State, as well as Federal prosecution.

The *Ullman* decision was held controlling in the subsequent case of *United States v. Fitzgerald*, 235 F. 2d 453, cert. denied 352 U.S. 842, wherein the Court of Appeals for the Second Circuit declared that a witness cannot be relieved of the compulsion to testify by refusing the immunity conferred under the statute.

In the case of *Philip Bart*, 304 F. 2d 631, the Court of Appeals for the District of Columbia Circuit held that the Government's application must allege and present a sufficient showing that one

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of the listed offenses is under investigation and that the violation threatens the national security or defense either presently or potentially. The court stated that normally the application and supporting documents should be served in accordance with Rules 5 (a), (b), and 6 (d), F.R.C.P., but for good cause shown, the court may shorten the period of notice, or vary its form.

**Violations of Specific Criminal Statutes**

*Atomic Energy Act of 1954*

The Atomic Energy Act of 1946 (42 U.S.C. 1801-19, 1952 ed.) was amended by the Atomic Energy Act of 1954 (P.L. 83-703), effective August 30, 1954 (42 U.S.C. 2011-2296, 1958 ed.). Section 2271 (c) specifically provides that no action shall be brought against any individual for any violation of the Act without authorization from the Department of Justice nor until the Atomic Energy Commission has been advised thereof. Any action brought under Sections 2272-2275 or 2276 must be directly authorized by the Attorney General.

Sections 2274 (a), 2275, and 2276 of Title 42 make the offenses outlined therein, namely, unauthorized communication of, receipt of, or tampering with, restricted data, punishable by death or imprisonment for life, but such penalty may be imposed only upon recommendation of the jury. (*Cf. Jackson v. U.S.* 390 U.S. 570 (1968).) In the Atomic Energy Act of 1946 such penalty could be imposed upon recommendation of the jury only where the offense was committed with intent to injure the United States.

The penalties contained in Section 2277 for disclosure of restricted data to unauthorized persons are without regard to the offender's intent or scienter at the time of disclosure, thus making punishable disclosures resulting from carelessness or loose talk not previously punishable under the 1946 Act.

Section 2278 of Title 42 increases the statute of limitations for noncapital offense prescribed or defined in Sections 2274 to 2276, inclusive, from 3 to 10 years, so as to conform with the statute of limitations applicable to the espionage statutes. The Atomic Energy Act does not repeal or limit the provisions of the Espionage Act. *Rosenberg v. United States*, 346 U.S. 273.

Section 2280 of Title 42 authorizes the Attorney General to institute injunction proceedings against persons who are engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of the act or any regulation

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or order issued thereunder. See *Bigelow v. United States*, 267 F. 2d 398.

*Contempt of Congress*

The Internal Security Division has jurisdiction over prosecutions under Section 192 of Title 2, United States Code, where witnesses having Communist Party or other subversive connections are involved. Section 194 of Title 2 is the companion statute to Section 192 and sets forth the referral procedure.

Under the provisions of 2 U.S.C. 194, contempt of Congress cases are referred directly by the Congress by means of certification of the President of the Senate or Speaker of the House of Representatives to the appropriate U.S. Attorney "whose duty it shall be to bring the matter before the grand jury for its action." The U.S. Attorney should immediately notify this Division (or the Criminal Division, if no internal security aspect is involved) of the receipt of such a case upon direct referral by the Congress. This Division (or the Criminal Division, as the case may be) should also be advised of the circumstances surrounding the nature of the contempt and of the U.S. Attorney's legal appraisal of the alleged offense. The matter should not be presented to the grand jury until this Division (or the Criminal Division) has had an opportunity to communicate with the reporting U.S. Attorney. This procedure will permit a proper coordination in the various districts on matters of mutual concern to the Department and to the Congress. No prosecution is to be initiated by the U.S. Attorney until there has been a certification pursuant to Section 194 and there has been prior authorization by this Division.

Violation of Section 192, commonly known as the contempt of Congress statute, may be committed by failing to appear in answer to a summons, *Dennis v. United States*, 171 F. 2d 986, affd., 339 U.S. 162; failing to produce papers in answer to a summons, *McPhaul v. United States*, 364 U.S. 372; *Fields v. United States*, 164 F. 2d 97, cert. denied; 332 U.S. 851; refusing to be sworn as a witness, *Eisler v. United States*, 170 F. 2d 273; cert. dismissed, 338 U.S. 883; leaving the hearing without being excused after appearing in answer to a summons, *Townsend v. United States*, 95 F. 2d 352, cert. denied, 303 U.S. 664; or, having appeared, by refusing to answer a question pertinent to the inquiry, *In re Chapman*, 166 U.S. 661.

The elements of the offense which must be charged and proved by the Government in Section 192 cases are that the witness (1)

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was summoned to give testimony or to produce papers; (2) upon a matter which the committee was authorized to inquire about, and (3) failed to do so (or that, having appeared, he refused to answer a question pertinent to the inquiry, as proscribed by the second clause of Section 192), and (4) that the failure was willful. See, *Quinn v. United States*, 349 U.S. 55; *Empak v. United States*, 349 U.S. 190.

An indictment must state the subject under inquiry at the time of the defendant's alleged default or refusal to answer. See, *Russell v. United States*, 369 U.S. 749. The mere allegation in the indictment that the questions are pertinent is sufficient. The manner in which the questions are pertinent is a matter of proof and, therefore, need not be pleaded in the indictment. *Braden v. United States*, 272 F. 2d 653, affirmed, 365 U.S. 431. Whether the questions are pertinent to the subject under inquiry may be proved by evidence aliunde but it should be presented to the court in absence of the jury. *Keeney v. United States*, 218 F. 2d 843. But cf. *United States v. Orman*, 207 F. 2d 148. The pertinency of the questions to the subject is a matter of law to be decided by the court. *Sinclair v. United States*, 279 U.S. 263; *Braden v. United States*, 365 U.S. 431. Where a witness before a committee objects on the grounds of pertinency and the subject matter under inquiry has not "been made to appear with indisputable clarity," the committee must "state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto." *Watkins v. United States*, 354 U.S. 178. The "awareness of pertinency" on the part of the witness is a matter of fact for the jury's determination. *Turoff v. United States*, 291 F. 2d 864.

In *Barenblatt v. United States*, 360 U.S. 109, the Supreme Court upheld the validity of the authorization resolution of the House Committee on Un-American Activities against the contention that it was void on the ground of vagueness. The *Barenblatt* decision also held that an inquiry into Communist infiltration of education was a valid subject of congressional inquiry and that it was not a violation of the petitioner's rights under the First Amendment to ask him about his membership in the party. See also *Wilkinson v. United States*, 365 U.S. 399, and *Braden v. United States*, *supra*, in which the court upheld an inquiry into Communist infiltration of basic southern industries and Communist Party propaganda activities in the South.

A refusal to testify is often based on the privilege against self-

incrimination afforded by the Fifth Amendment. The courts have broadly construed the privilege against self-incrimination. *Hoffman v. United States*, 341 U.S. 479; *Jackins v. United States*, 231 F. 2d 405. Claims of privilege have been upheld even where the questions in themselves are innocuous and there are no facts before the courts other than statements of counsel to demonstrate that the questions called for answers which could furnish a link or a lead to further incriminating answers. *Hoffman v. United States, supra*; *United States v. Coffey*, 198 F. 2d 438.

A witness has no privilege against being incriminated by the production of records he holds in a representative capacity. It has been so held as to the records of the Communist Party, *Rogers v. United States*, 340 U.S. 367; as to the records of the Civil Rights Congress, *McPhaul v. United States*, 364 U.S. 372; *United States v. Field*, 193 F. 2d 92; and as to the records of the Ku Klux Klan, *Shelton v. United States*, 404 F. 2d 1292, cert. den., 393 U.S. 1024. Nor does the witness have any privilege regarding his testimony on matters auxiliary to their production. *Corn v. United States*, 354 U.S. 118, 125-126. A witness has no privilege to protect others and to refuse to disclose their names. *Rogers v. United States, supra*, at 371.

The committee or subcommittee must comply with its own rules and a failure to do so could vitiate prosecution. *Yellin v. United States*, 374 U.S. 109; *Shelton v. United States*, 327 F. 2d 601.

Other important cases construing the statute are: *Deutch v. United States*, 367 U.S. 458; *Hutcheson v. United States*, 369 U.S. 599; *United States v. Rumely*, 345 U.S. 41; *United States v. Bryan*, 339 U.S. 323; *McCran v. Dougherty*, 273 U.S. 135; *Davis v. United States*, 269 F. 2d 357, cert. denied, 361 U.S. 919; *Barsky v. United States*, 167 F. 2d 241, cert. denied, 334 U.S. 843; *United States v. Josephson*, 165 F. 2d 82, cert. denied, 333 U.S. 838.

### *Espionage*

The Federal espionage laws are found in Chapter 37 of Title 18, United States Code, Sections 792-798, inclusive.

Former Section 791 limited the scope of the Chapter to the territorial United States and the admiralty and maritime jurisdiction of the United States and the high seas. Public Law 87-369, Section 1, October 4, 1961, 75 Stat. 795, repealed Section 791, thus making the Chapter applicable no matter where the offense was committed. Under the former Section, espionage committed against the United States in a foreign country was not punishable under the provisions of the chapter. See, for example, *Scarbeck v. United States*,

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317 F. 2d 546, cert. denied, 374 U.S. 856, where the appellant was convicted under 50 U.S.C. 783(b) for communicating classified information to an agent of a foreign country while appellant was employed at the U.S. Embassy in Warsaw, Poland. Such an offense is now indictable under 18 U.S.C. 794.

An amendment to Section 794, passed by the 83d Congress and signed into law on September 3, 1954 (P.L. 777), increases the penalty for peacetime espionage under Subsection (a) thereof from imprisonment for not more than 20 years to punishment by death or by imprisonment for any term of years or for life. Since the peacetime violation of Subsection 794 (a) is now a capital offense, prosecution for such offenses not barred by the statute of limitations as of the effective date of the amendment may be brought at any time. Section 19 of the Internal Security Act of 1950, effective September 23, 1950, 64 Stat. 1005, increased the statute of limitations for violations of Sections 792 and 793 to 10 years on offenses not already barred by the statute of limitations. (See "Historical and Revision Notes" under 18 U.S.C. 792.)

Whether the material involved in a particular case is information connected with or relating to the national defense within the meaning of Chapter 37 of Title 18 is a question of fact to be determined by the jury under proper instruction from the court. "National defense" has been construed as "a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness." However, the connection of the information to the national defense must not be a "strained one nor an arbitrary one." It must be "reasonable, direct, and natural." *Gorin v. United States*, 312 U.S. 19, 32. Moreover, "information relating to the national defense" does not include information from sources lawfully accessible to the general public, information which the Government has either made public or has never deemed appropriate to be withheld. *United States v. Heine*, 151 F. 2d 813, cert. denied, 328 U.S. 833.

In prosecutions for violations of the provisions of Chapter 37 of Title 18, it is incumbent upon the Government to introduce into evidence the national defense information upon which the prosecution is predicated. Accordingly, the Government in each instance must determine whether the public interest requires that the crime go unpunished because of the threat to national security which would result from the production in open court of the pertinent national defense information.

In the *Scarbeck* case, *supra*, the Court of Appeals for the District

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of Columbia held that foreign service dispatches classified as secret or confidential pursuant to executive order and the foreign service manual were "classified as affecting the security of the United States" within the meaning of 50 U.S.C. 783(b), and that the function of the jury was to determine merely whether the documents were in fact classified. In effect, the Government was not required to prove that the documents had been properly classified.

*False Statements*

The Internal Security Division has jurisdiction over cases which involve false statements concerning membership in Communist or other subversive organizations made to agencies and departments of the United States in violation of Title 18, U.S.C., Section 1001, and similar statutes.

Some of the most frequent cases arise in connection with the filing of applications for Government employment, loyalty certificates for personnel of the Armed Forces, personnel security questionnaires submitted to the Department of Defense and the Atomic Energy Commission for security clearance.

Most Government forms that deal with the subject inquire as to both past and present membership in the Communist Party or other subversive organizations. There are some forms of affidavits that are worded only in the present tense as was true of affidavits formerly required under Title 29, U.S.C., Section 159(h). In prosecutions based on false statements contained in these forms, the Government has successfully established its case by evidence of membership in the subversive organization both prior to and after the execution of the statement.

Questions of venue may arise in cases where a false statement is prepared in one judicial district and forwarded to be filed with a Government agency in another district. The essence of the offense defined in 18 U.S.C. 1001 is the making or using of a false statement in a matter within the jurisdiction of a department or agency of the United States. The crucial step is the fact of filing, which brings the matter within the jurisdiction of an agency of the United States, so it has been held that the locus of the crime is in the district where the law requires the document to be filed. *Travis v. United States*, 364 U.S. 631; *United States v. Valenti*, 207 F. 2d 242. The preparation of documents in one district which the defendant later delivered personally to the agency in another district is not an offense triable in the first district. *Reass v. United*

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*States*, 99 F. 2d 752. It has been held that the preparation in one district of false documents which are mailed to a U.S. agency in another district permits venue to be laid in either district, under the Continuing Offense Statute, 18 U.S.C. 3237. *DeRosier v. United States*, 218 F. 2d 420, cert. denied, 349 U.S. 921. But cf. *Travis v. United States*, *supra*.

The first clause of Section 1001 requires that the falsification by the defendant be of a material fact. The Tenth and the District of Columbia Circuits held that this requirement must also be read into the remaining clauses of the section. *Gonzales v. United States*, 296 F. 2d 118, cert. denied, 365 U.S. 876; *Weinstock v. United States*, 231 F. 2d 699; *Freidus v. United States*, 223 F. 2d 598. The Second Circuit has taken a contrary view. *United States v. Silver*, 235 F. 2d 375, cert. denied, 352 U.S. 880. In those circuits where materiality is considered to be an essential element the courts have held that a statement is material if it has a natural tendency to influence or was capable of influencing the decision of the agency. *Gonzales v. United States*, *supra*.

The courts tend to look with disfavor on prosecutions based upon unsworn oral statements to Government investigators. *Paternostro v. United States*, 311 F. 2d 298. In some cases, however, prosecutions based on false oral statements have been upheld. *Marzani v. United States*, 165 F. 2d 133, aff'd, 335 U.S. 895; *United States v. Silver*, *supra*. Permission for prosecution in such circumstances must be obtained from the Assistant Attorney General, Internal Security Division, before initiating prosecution (Memo No. 318, July 23, 1962 from the Deputy Attorney General to all U.S. Attorneys).

#### *Foreign Assets Control Legislation*

Pursuant to the authority granted in the Trading with the Enemy Act (50 U.S.C. App 5(b)), the Secretary of the Treasury has promulgated regulations prohibiting transfers of money, credits, and other interests of nationals of certain designated foreign countries (31 C.F.R. 500.101 to 500.808, as amended). Investigations of violations of the Foreign Assets Control Regulations are conducted by the Treasury Department, and cases are referred by that Department to the Department of Justice, which, in turn, refers the cases to the U.S. Attorneys.

#### *Labor-Management Reporting and Disclosure Act of 1959*

On June 7, 1965, the Supreme Court in *United States v. Archie*

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*Brown* held unconstitutional as a bill of attainder Section 504 of Title 29, which declared it to be unlawful for a person to serve as an officer or employee (other than an employee performing exclusively clerical or custodial duties) of a labor organization or of an employers' association, or as a labor consultant, while a member of the Communist Party or for 5 years after the termination of his membership.

*Neutrality Laws*

Chapter 45 of Title 18, entitled "Foreign Relations," generally covers the conduct of American citizens and persons within the United States with respect to foreign governments. The Federal Bureau of Investigation has investigative jurisdiction over certain of these laws involving our foreign relations, 18 U.S.C. 951-962. No prosecution under these statutes should be initiated without the express prior approval of the Internal Security Division. In those instances where arrests must be made in order to prevent the commission of the offense, and time does not permit obtaining approval of the Internal Security Division, the U.S. Attorney is authorized in his discretion to take whatever action he deems appropriate to preserve the interests of the Government. In this event, the U.S. Attorney should immediately notify the Internal Security Division as to the action taken and the attendant circumstances.

Violations of 22 U.S.C. 1934 (Mutual Security Act) and the rules and regulations promulgated thereunder, 22 C.F.R. (1962 Supp.) 121, et seq., prohibiting the importation and exportation of arms, ammunition and implements of war without a license from the Secretary of State, are investigated by the Bureau of Customs. Unless the unlicensed shipment has no relevance to the foreign relations of the United States (e.g. smuggling small quantities of weapons), prosecution of violations of 22 U.S.C. 1934 should not be undertaken without prior approval of the Internal Security Division. However, as in cases under the neutrality laws, the U.S. Attorney is authorized to take whatever action is necessary to prevent the commission of an offense where time does not permit seeking prior authorization from the Internal Security Division. In most instances commission of the crime can be precluded by the seizure of the munitions pursuant to the provisions of 22 U.S.C. 401. Where this means is employed, consideration will then be given by the Internal Security Division to the prosecution of the individuals involved, if the facts warrant such action.

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*Perjury*

Prosecutions for perjury under Section 1621 of Title 18, U.S.C., frequently arise in matters involving internal security. Some of the most common instances occur in connection with testimony before grand juries and congressional committees and the submission of statements to Government agencies required by law to be under oath. The Internal Security Division is responsible for all perjury cases involving subversive persons or matters pertaining to security. It has long been established that perjury may be predicated upon the giving of false testimony in ex parte investigations and administrative proceedings. *Wolley v. United States*, 97 F. 2d 258, cert. denied, 305 U.S. 614.

The essential elements of the crime of perjury are: (1) an oath authorized by a law of the United States; (2) taken before a competent tribunal, officer, or person; and (3) a false statement willfully made as to facts, material to the hearing. *United States v. Debrow*, 346 U.S. 374, 376.

The evidentiary requirement in a perjury case generally enunciated by the Federal courts is that the Government must establish the perjurious conduct by the direct testimony of two witnesses or the direct testimony of one witness plus corroborating circumstances. *Weiler v. United States*, 323 U.S. 606. However, a perjury case may also be proved by an accumulation of documentary evidence, supplemented by identification of the defendant as a party to some of the documents and statements by the defendant. *Maragon v. United States*, 187 F. 2d 79, cert. denied, 341 U.S. 932. In instances where the Government seeks to prove perjury through the testimony of one witness plus corroborating circumstances, the corroboration must consist of evidence aliunde which tends to establish the crime of perjury independently of the testimony of the witness. *United States v. Neff*, 212 F. 2d 297. The ultimate issue of the action is not the objective falsity of the accused's statements but his subjective belief concerning the falsity of his testimony. Such may be proved either by direct evidence or by evidence of overt acts committed by the accused which are inconsistent with his statement. *United States v. Remington*, 191 F. 2d 246, cert. denied, 343 U.S. 907.

The two definitions of materiality most frequently relied upon by the courts in prosecutions for perjury under Section 1621 are (1) whether the false testimony was capable of influencing the tribunal on the issue before it; *Blackmon v. United States*, 108

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F. 2d 572; *United States v. Henderson*, 185 F. 2d 189; or (2) whether the false testimony had a natural effect or tendency to influence, impede, or dissuade the grand jury, court, or other investigative body from pursuing its investigation. *United States v. Parker*, 244 F. 2d 943, cert. denied, 355 U.S. 836; *United States v. Siegel*, 152 F. Supp. 370, affirmed 263 F. 2d 530, cert. denied, 359 U.S. 1012. Generally it has been held that the actual effect of the false testimony is not the determining factor, but rather its capacity to affect or influence the tribunal. *United States v. Henderson, supra*.

In perjury arising from testimony given before congressional committees, it has been held that to constitute a competent tribunal the committee must be pursuing a bona fide legislative purpose and a perjury indictment cannot be founded on false responses to questions which were not propounded for the purpose of eliciting facts in aid of the legislative purpose. *United States v. Cross*, 170 F. Supp. 303; *United States v. Icarus*, 140 F. Supp. 383.

*Port Security Act*

Section 191 of Title 50 U.S.C. empowers the President, upon a finding that the security of the United States is endangered by reason of actual or threatened war, or invasion or insurrection or subversive activity, or disturbances or threatened disturbances of international relations, to issue rules and regulations to safeguard waterfront facilities subject to the jurisdiction of the United States.

Pursuant to the powers vested in him by this statute, the President, on October 18, 1950, issued Executive Order No. 10173, which prescribes certain regulations for the protection of waterfront facilities. These regulations pertain to clearances for access to restricted areas and similar measures designed to safeguard waterfront facilities. Enforcement of these regulations is under the supervision of the U.S. Coast Guard. The pertinent rules and regulations presently in force may be found in 33 C.F.R. 6.01 through 6.19-1. Section 192 of Title 50 contains the penalty provisions for offenses under Section 191.

*Sabotage*

The Federal sabotage laws are found in Title 18, U.S.C., Sections 2151 through 2157. Section 2151 covers definitions of the terms used in the chapter. Section 2152 relates to the protection

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of fortifications and harbor defenses, and Sections 2153 through 2156 pertain to the defective production of or the injury or destruction of defense materials and utilities. Public Law 777, 83d Congress, enacted September 3, 1954, broadens the scope of the sabotage provisions by expanding the definitions to cover modern technical developments, amends Sections 2153 and 2154 to make the provisions applicable in time of national emergency as well as in time of war, and amends Sections 2155 and 2156 to add conspiracy provisions. Section 2157 provides for the temporary extension of Sections 2153 and 2154 until 6 months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2914, 15 F.R. 9029) or such earlier date as may be prescribed by concurrent resolution of the Congress.

*Sedition*

Sedition and related offenses are covered in 18 U.S.C. 2387-2391. Section 2387 makes criminal in time of peace activities similar to those prohibited by Section 2386 in time of war. It is based upon Sections 9-11 of Title 18 U.S.C. (1940 ed.), the validity of which sections was upheld in *Dunne v. United States*, 138 F. 2d 137, cert. denied, 320 U.S. 759. Section 2387 is not intended to limit expressions of opinion or of criticism of the Government or of its policies (civil or military) or of any officials or officers or their actions so long as such expressions are not made with intent to bring about the unlawful situations covered by this section and so long as they do not have a natural tendency and a reasonable probability of effecting these forbidden results. *Dunne v. United States, supra*.

Section 2388 is based upon Section 33 of Title 50, U.S.C., which was held not to violate the First Amendment. *Schenck v. United States*, 249 U.S. 47. Under Subsection (a) of Section 2388 relating to insubordination and recruitment, two major elements are necessary, i.e., specific intent and the existence of a clear and present danger, as enunciated in the *Schenck* case, and both elements must be proved beyond a reasonable doubt. *Hartzel v. United States*, 322 U.S. 680.

Section 2391 of Title 18 has continued the effectiveness of Section 2388 until 6 months after the termination of the national emergency proclaimed by the President on December 16, 1950 (15 F.R. 9029), and provides that "acts which would give rise to legal consequences and penalties under Section 2388 when performed during a state of war shall give rise to the same legal

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consequences and penalties when they are performed during the period above provided for.”

*Rebellion or Insurrection*

Section 2383 penalizes those individuals who incite, assist or engage in any rebellion against the authority or laws of the United States. This statute, although, similar to the offense of treason (*United States v. Greathouse*, C.C. Cal., 1863, 4 Sawyer 457), is designed to encompass overt acts of rebellion directed against the Federal Government.

*Seditious Conspiracy*

Seditious conspiracy is covered in 18 U.S.C. 2384. Force is an essential element of the offense described in this section, and mere solicitation or entreaty, without a purpose of applying or using force to accomplish the ends sought to be attained, is without the intendment of this section. See *Wells v. United States*, 257 F. 605.

The force contemplated, however, must be force directed against the officers of the Government charged with duty. A conspiracy to prevent by force private individuals from producing goods to fulfill their contracts with the Government was held not to be punishable under former Section 6. *Haywood v. United States*, 268 F. 795, cert. denied, 256 U.S. 689. (See also *Anderson v. United States*, 273 F. 20, cert. denied, 257 U.S. 647; *Baldwin v. Franks*, 120 U.S. 678.)

An overt act is not an ingredient of an offense under this section. *Bryant v. United States*, 257 F. 378; *Enfield v. United States*, 261 F. 141.

*Smith Act*

The Smith Act was originally part of the Alien Registration Act of 1940, and is now found in Title 18, U.S.C., Section 2385. In brief, the act proscribes teaching or advocating the duty or necessity of overthrowing or destroying the Government of the United States by force or violence, publishing or circulating literature which so teaches or advocates, organizing or helping to organize a group or assembly of persons who so teach or advocate, membership in any such group or assembly knowing the purposes thereof, or conspiring to do any of the foregoing. In *Dennis v. United States*, 341 U.S. 494, the constitutionality of the teaching

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and organization section of the Act was upheld, and in *Scales v. United States*, 367 U.S. 203, the Supreme Court upheld the constitutionality of the membership provisions. In the latter case, the Court also held that Section 4(f) of the Internal Security Act of 1950, which provided, in part, that neither "the holding of office nor membership in any Communist organization by any person shall constitute per se a violation" of that act or any other criminal statute, did not repeal pro tanto the membership clause of the Smith Act by excluding from the reach of that clause membership in any Communist organization.

Public Law 87-486, June 19, 1962, 76 Stat. 103, amended the act by defining the word "organize" to include "the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units." This provision was added as a result of the holding in *Yates v. United States*, 354 U.S. 298, that the term "organize" applied only to those acts entering into the creation of a new organization and not to acts thereafter performed in forming new units or regrouping existing ones.

The Smith Act supersedes State statutes proscribing the same conduct against the United States. *Pennsylvania v. Nelson*, 350 U.S. 497. However, it does not proscribe prosecution by a State for conduct which is directed against the State itself. *Uphaus v. Wyman*, 360 U.S. 72.

Although intent is referred to in only one provision, it is an essential element of proof in any violation of the statute. *Dennis v. United States*, *supra*; *United States v. Schneiderman*, 102 F. Supp. 87. In addition to the general intent, it must also be proved that the defendant had the further specific intent to cause or bring about the overthrow or destruction of the Government by force and violence as speedily as circumstances would permit. *Dennis v. United States*, *supra*; *Scales v. United States*, *supra*.

The *Dennis* case also reformulated the "clear and present danger" test originally stated in *Schenck v. United States*, *supra*, for the constitutionality of statutes limiting freedom of speech. The existence of a clear and present danger is a question of law for the court. *Dennis v. United States*, *supra*, and see *United States v. Dennis*, 183 F. 2d 201, for a discussion of the facts in the case.

In *Yates v. United States*, *supra*, the court held that the proscribed advocacy of violent overthrow is of advocacy phrased as an incitement to action, not as a statement of an abstract principle. Approved forms of instructions on advocacy appear in the

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Court of Appeals and Supreme Court opinions in *Dennis*.

Because of the nature of Smith Act cases, it is the established practice in each prosecution to assign one or more attorneys from the Internal Security Division to assist the U.S. Attorney in the presentation of such cases to the grand jury and in the trial thereof.

*Treason*

The crime of treason is covered in Title 18 U.S.C., Section 2381.

There have been no recent prosecutions instituted under the levying war clause of the treason statute. However, the clause prohibiting the giving of aid and comfort has been invoked by the Government since the beginning of World War II in the following cases: *Cramer v. United States*, 325 U.S. 1; *Haupt v. United States*, 330 U.S. 631; *Stephan v. United States*, 133 F. 2d 87, cert. denied, 318 U.S. 78; *Chandler v. United States*, 171 F. 2d 921, cert. denied, 336 U.S. 918; *Best v. United States*, 184 F. 2d 131, cert. denied, 340 U.S. 939; *Gillars ("A. S. Sully") v. United States*, 182 F. 2d 962; *Burgman v. United States*, 188 F. 2d 637, cert. denied, 342 U.S. 838; *United States v. Monti*, 100 F. Supp. 209; *D'Aquino ("Tokyo Rose") v. United States*, 192 F. 2d 338, cert. denied, 343 U.S. 935; *Kawakita v. United States*, 343 U.S. 717.

In proceeding under the aid-and-comfort clause, it is necessary to prove the following elements of the offense:

(1) A duty of allegiance owed by the defendant to the United States, which duty is implicit in citizenship acquired by birth or naturalization. In addition, there are early decisions holding that aliens who enjoy the protection of the United States owe a local and temporary allegiance to the country, for a breach of which they may be punished for treason.

(2) A specific intent to betray, which requirement does not appear in the constitutional or statutory definition of the offense but which is deduced from the concept of adherence to the enemy. *Chandler v. United States*, *supra*.

(3) The commission of at least one overt act of aid and comfort provable by the testimony of two witnesses. The minimum function that an overt act must perform in a treason prosecution is that it shows sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. *Cramer v. United States*, *supra*.

(4) The enemy character of the persons aided and comforted. The District Court stated in *United States v. Fricne*, 259 F. 673,

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that treason under this clause can only take place during time of war. The few cases which define enemies under the statute are not illuminating on the question whether a formal declaration of war by Congress is a condition precedent to the existence of enemies within the purview of the statute. Generally, the courts have defined the term as meaning "subjects of a foreign power in a state of open hostility with us." *United States v. Greathouse* 26 Fed. Cas. 18, No. 15254.

Following the reversal of the *Cramer* conviction by the Supreme Court, the Department has adopted the practice of requiring the jury to make special findings with respect to each overt act, in addition to returning a general verdict of guilty or not guilty. This evolved as a result of the court's language (footnote, p. 36) that "the verdict in this case was a general one of guilty without special findings as to the acts on which it rests. Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient."

*Passport Matters*

The Internal Security Division has jurisdiction over prosecutions under Sections 1542, 1543, and 1544 of Title 18, United States Code and Sections 1185 (a) of Title 8, United States Code when the individuals have subversive connections, or where travel to a restricted country is involved. In these cases the expressed authorization of the Assistant Attorney General in charge of the Internal Security Division must be obtained before prosecution is instituted.

It might be noted that Section 1185(b), which deals with the travel of American citizens abroad, has been highly limited in its application by the Supreme Court in *Laub v. United States*, 385 U.S. 475 (1967) and by the Circuit Court of Appeals for the District of Columbia in the case of *Lynd v. Rusk* (C.A.D.C. 1967), 389 F. 2d 940. Any information, received by any U.S. Attorney's office indicating that any of the foregoing statutes have been violated by any individual with a subversive background, should be immediately conveyed to the Internal Security Division.

*Appropriation Riders*

A number of appropriation bills passed by Congress contain a provision to the effect that no funds appropriated under the particular act shall be paid to anyone who advocates or belongs

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to an organization that advocates the overthrow of the U.S. Government, and that anyone who advocates or who is a member of an organization that advocates the overthrow of the Government and accepts employment, the salary or wages for which are paid from any appropriation contained in the act, shall be guilty of a felony. Such a provision raises constitutional problems. See *United States v. Robel*, 389 U.S. 258 (1967), *Elfbrandt v. Russell*, 384 U.S. 11 (1966), *Keyishian v. Board of Regents*, 385 U.S. 589, and *Roma Stewart v. Washington* (D.C.D.C. three judges) 301 F. Supp. 610.

#### *Miscellaneous*

Violations of other general statutes not primarily concerned with internal security may on occasion relate to security matters. As in other cases involving subversive activities, prosecution shall not be instituted without the express authorization of the Assistant Attorney General in charge of the Internal Security Division or higher authority. The following general statutes may be involved in cases relating to internal security:

Accessory after the fact, 18 U.S.C. 3; Harboring, 18 U.S.C. 1071 and 1072; Jumping bail, 18 U.S.C. 3146; Obstruction of justice, 18 U.S.C. 1501-1507; Bonding cases arising out of Anti-Castro activity, 18 U.S.C. 112, 831, et seq., 837 and 2275, and related statutes.

#### **Civil Section**

The Civil Section initiates and defends civil actions in the district courts relating to internal security matters, and represents the Attorney General in proceedings before the Subversive Activities Control Board. The Section supervises libels of forfeiture instituted by U. S. Attorneys arising under the Mutual Security Act of 1954 (22 U.S.C. 1934), the Neutrality Laws (18 U.S.C. 456 et seq.), the Trading with the Enemy Act, 50 U.S.C. 5(b), and certain fisheries laws (16 U.S.C. 1081, et seq. and 16 U.S.C. 1091, et seq.). It represents the Attorney General in all proceedings under 28 C.F.R., part 41, looking to the designation of organizations under Executive Order 10450; and renders prelitigation advisory opinions to Federal departments and agencies in regard to internal security matters.

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**Suits Instituted for and on Behalf of  
the United States**

Unless a statute provides otherwise the Attorney General is authorized and empowered to institute or cause to be instituted, and to prosecute, all civil suits and proceedings deemed necessary to safeguard or enforce the rights of the United States. *United States v. United States Fidelity & Guaranty Co.*, 106 F. 2d 804; *United States v. American Bond & Mortgage Co.*, 31 F. 2d 418, and cases cited. It has been held that in such suits it must appear of record that the Attorney General brings or authorizes the filing of the complaint, controls the litigation, and is responsible for the management of the case. *United States v. Mullan*, 10 Fed. 785.

Such actions relating to internal security matters will normally be filed by the U.S. Attorney "acting under and pursuant to the authority of the Attorney General of the United States". U.S. Attorneys will receive a written request from the Attorney General to institute such actions. If it becomes necessary to request orally that such a suit be brought, written confirmation will be sent at the earliest opportunity.

The letter authorizing the suit will normally be accompanied by a suggested draft complaint and other appropriate pleadings, which will be prepared by the Civil Section. The division of the work in each case between the Civil Section and the U.S. Attorney will usually be decided by mutual agreement on a case to case basis.

Requests for injunctive relief received from the Atomic Energy Commission under 42 U.S.C. 2280 are processed by the Internal Security Division and handled as stated above.

**Suits in Which the United States or an Officer  
or Employee Thereof Is a Defendant**

The Civil Section is responsible for the defense of internal security cases in which the United States, its officers, or employees are named as defendants.

Such cases may arise in various areas:

Federal employee security (5 U.S.C. 22-1 and Executive Order 10450). See, *Vitarelli v. Seaton*, 359 U.S. 535; *Service v. Dulles*, 354 U.S. 363; *Cole v. Young*, 351 U.S. 536; *Peters v. Hobby*, 349 U.S. 331; *Barger v. Mumford*, 265 F. 2d 380; *Jones v. Sum-*

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*merfield*, 265 F. 2d 124, cert. denied 361 U.S. 841; *Harrison v. McNamara*, 380 U.S. 261; *Soltar v. Postmaster General, et al.*, 277 F. Supp. 579.

Military and naval discharges for national security reasons. See, *Harmon v. Brucker*, 355 U.S. 579; *Orloff v. Willoughby*, 345 U.S. 83; *Bland v. Connally*, 293 F. 2d 852; *Davis v. Stahr*, 293 F. 2d 860; *Van Bourg v. Nitze*, 388 F. 2d 557; *Kauffman v. Secretary of the Air Force*, 269 F. Supp. 639.

Industrial Security (Executive Order 10865). See, *Greene v. McElroy*, 360 U.S. 474; *Taylor v. McElroy*, 360 U.S. 709; *Silver v. McNamara*, 296 F. 2d 591; *McNamara v. Remenyi*, 391 F. 2d 128 (Feb. 28, 1968); *Shoultz v. McNamara*, 282 F. Supp. 315.

Passports and travel control laws. See, *Zemel v. Rusk*, 361 U.S. 1 (travel to Cuba); *Aptheker v. Secretary of State*, 378 U.S. 500 (holding unconstitutional Sec. 6 of the Subversive Activities Control Act of 1950); *Kent v. Dulles*, 357 U.S. 141; *Porter v. Herter*, 278 F. 2d 280, cert. denied, 361 U.S. 218 (travel to China); *Lynd v. Secretary of State*, 389 F. 2d 240.

Enforcement by the Coast Guard of statutes, Executive orders, and regulations relating to the security of vessels and waterfront facilities (33 C.F.R. parts 121 through 126). See, *Homer v. Richmond*, 272 F. 2d 517; *Parker v. Lester*, 227 F. 2d 700; *McBride v. Smith*, 390 U.S. 411; *Schneider v. Smith*, 390 U.S. 17.

Suspension of social security and veterans' benefits. See, *Fleming v. Nestor*, 363 U.S. 603; *Thompson v. Gleason*, 317 F. 2d 901; *Wellman v. Whittier*, 259 F. 2d 163; *Reed v. Gardner*, 261 F. Supp. 87; *Weiss v. Garner*, 263 F. Supp. 184.

Seizures pursuant to the Mutual Security Act of 1954 (22 U.S.C. 1934), the Neutrality Laws (15 U.S.C. 956 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 5 (b), 16; 31 C.F.R., (parts 600, 605)). See *United States v. Quong*, 303 F. 2d 499.

Security of military and naval installations. See, *Cafeteria Workers Union v. McElroy*, 367 U.S. 886; *United States v. Aarons*, 310 F. 2d 341.

Suits affecting security programs administered by the Department of Justice. *I.W.W. v. Clark*, 385 F. 2d 687; *DuBois Clubs v. Clark*, 389 U.S. 309.

On May 24, 1965, the Supreme Court in *Lamont v. Postmaster General* and *Fixa v. Heilberg*, 381 U.S. 301, held unconstitutional Section 305 (a) of the Postal Service and Federal Employees Salary Act of 1962, 76 Stat. 840, which provided for the detention of mail matter of foreign origin containing Communist propaganda.

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Public Law 87-748, 76 Stat. 744, approved October 5, 1962, 28 U.S.C. 1361, extended jurisdiction to all district courts of the United States of suits in the nature of or akin to mandamus for injunctive relief against Government officials. See Memo 337 and 362, Attorney General to all U.S. Attorneys, dated January 18, 1963, and November 8, 1963, respectively. Since it is no longer necessary that a plaintiff suing a head of a department or agency sue in the District of Columbia, it is anticipated that an increasing number of such actions will be filed in the district of the plaintiffs' residences.

Upon being served with the summons and complaint in a case involving internal security matters, the U.S. Attorney should immediately send two copies of the pleadings and other papers to the Civil Section of the Internal Security Division with a letter of transmittal setting out any background information known to the U.S. Attorney about the action. Pending instructions from this Division, he should take all action appropriate to protect the interests of the Government. Because these cases are sensitive in nature and it is necessary to assure uniformity of response to the issues presented, it is important that the U.S. Attorney take no action going to the merits of the case until after advice from or consultation with the Division. Such procedure is particularly necessary in cases attacking the constitutionality of a Federal statute or seeking to curtail the operation of a Federal program. If the U.S. Attorney has any doubt whether a particular case relates to internal security matters, he should promptly inquire of this section.

It will be necessary that the U.S. Attorney and the Civil Section cooperate closely. In cases outside the District of Columbia the U.S. Attorney will conform pleadings and other papers to the local rules and practice, and will be responsible for serving and filing all pleadings. Necessarily the allocations of responsibility for preparation of pleadings going to the merits, preparation for trial or hearing, and for oral argument will have to be decided on a case to case basis. No internal security case may be compromised or settled without prior approval by this Division.

**Interest of the United States in Pending Suits**

U.S. Attorneys should immediately advise this Division of the filing in any court, State or Federal, in their districts of any case

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in which the issues relate to internal security matters, so that the Division may advise him of whatever action the Attorney General desires to take under 5 U.S.C. 316.

**Forfeiture for Subversive Activities**

Under the provisions of 38 U.S.C. 3505(a) no individual convicted after September 1, 1959 of any offense listed in 3505(b) of this Title has any right to gratuitous benefits under laws administered by the Veterans Administration based on military service commencing before the date of the commission of such offense and no other person is entitled to such benefits on account of such individual. Section 3505(a) further provides that after receipt of a notice of the return of an indictment for such an offense, the Veterans' Administration shall suspend payment of such gratuitous benefits pending the disposition of the criminal proceeding.

Under the provisions of 38 U.S.C. 3595(1) the Attorney General is required to notify the Administrator of Veterans' Affairs in each case in which an individual is indicted or convicted of an offense listed in Clauses (1), (3) or (4) Subsection 3505(b) of this title.

The U.S. Attorney should notify the Chief of the Civil Section, Internal Security Division, of these cases in which an individual has been indicted or convicted after September 1, 1959 of the offenses listed in 38 U.S.C. 3505(b) (1), (3), or (4).

**Subversive Activities Control Act of 1950**

The Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.) (as amended January 2, 1960 (Public Law 90-237, 81 Stat. 765)) provides that when the Attorney General has reason to believe that an organization is a Communist-action or a "Communist-front" as these terms are defined in the act, or that an individual is a member of a Communist-action organization, he shall file with the Subversive Activities Control Board a petition for an order determining such organization to be a Communist organization or individual to be such a member. Similar proceedings are held by the Board when the Attorney General files with it a petition for a determination that an organization is "Communist-infiltrated" within the definition in Section 784(4A) of the Act. The Act provides for a full adversary proceeding before the Board with testimony under oath, subpoenas, cross-examination, and a transcript or record. The regulations issued by the

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Attorney General and applicable to registrations under the Act are in 28 C.F.R. 11.1 et seq. (26 C.F.R. 9509). In all proceedings before the Board the Attorney General is represented by the Civil Section.

**Designation of Organizations Pursuant to the Federal Employee Security Program**

Under the provisions of Section 12 of the Executive Order 10450, "Security Requirements for Government Employment", the Attorney General is required to furnish directly to the head of each Executive department and agency the name of each foreign or domestic organization, association, movement, group, or combination of persons which the Attorney General, after appropriate investigation and determination, designated as totalitarian, Fascist, Communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of Government of the United States by unconstitutional means. Membership in or affiliation with a designated organization is one factor to be considered by the departments and agencies of the Federal Government in connection with the employment or retention in employment of individuals in Federal service.

The procedures to be followed in designation proceedings are set forth in 28 C.F.R., Part 41.

The administration of the designation program is under the jurisdiction of the Civil Section and all inquiries relating thereto, including requests for copies of the list of organizations designated pursuant to this program, should be directed to the Internal Security Division, Attention: Chief, Civil Section.

**Registration Section**

The Registration Section administers and enforces three registration statutes: The Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611-621) and two related statutes (18 U.S.C. 219 and 613); the Voorhis Act (18 U.S.C. 2386); and the Act of August 1, 1956 (50 U.S.C. 851-857).

The Section has jurisdiction of criminal and civil litigation arising under these statutes. Arrangements will be made on a case-by-case basis for cooperation between the U.S. Attorney and the attorneys of the Section. In cases involving any of the above

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listed statutes the U.S. Attorney should notify this Section promptly and send to the Chief of the Section copies of the necessary pleadings and such other information as is available to him.

The administration and enforcement of the provisions of the Foreign Agents Registration Act are under the supervision of the Department of Justice by virtue of Executive Order 9176, dated May 29, 1942 (7 F.R. 4127). The current rules and regulations promulgated pursuant to the act are set forth in the Department of Justice Order No. 376-67, 32 F.R. 6362.

On July 4, 1966 the President of the United States signed into law a bill designed to amend a number of sections of the Foreign Agents Registration Act which included a new definition of the term "agent of a foreign principal." Under this revised definition, a person must act within the United States not only in an agency capacity but must also engage in at least one of four categories of specific activities for or in the interest of a foreign principal, namely:

1. Political activity as newly defined in the act;
2. Public relations counsel, publicity agent, information-service employee or political consultant;
3. Solicit, collect, disburse or dispense contributions, loans, money or other things of value, or
4. Represent a foreign principal before any agency or official of the Government of the United States.

The registration requirements of the Act do not apply to certain agents of foreign principals, such as duly accredited diplomatic or consular officers of a foreign government, officials of foreign governments, and members of the staff of a duly accredited diplomatic or consular officer.

Under the amended Act the scope of the so-called commercial exemption from registration, as provided by Section 613(d), has been broadened to include activities that do not serve predominantly a foreign interest, even though they may be political in nature. This Section as modified by Section 611(q) has particular application to activities involving domestic corporations with foreign subsidiaries as well as foreign corporations with U.S. subsidiaries.

A specific exemption from registration for attorneys has also been included in the new amendments to the Act. Section 613(g) exempts any person qualified to practice law who represents a disclosed foreign principal before any court of law or any agency of the Government of the United States. Legal representation under this provision however does not include attempts to influence or

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persuade agency personnel or officials outside of the course of established agency proceedings, whether formal or informal.

An agent of a foreign principal who is required to register and willfully fails to do so is subject to criminal prosecution, and failure to comply with this obligation is a continuing offense for as long as such failure exists, notwithstanding any statute of limitation or other statute to the contrary.

The Act, as amended, now makes it unlawful for a registrant to continue to act on behalf of his foreign principal for more than 10 days after being notified of a deficiency in his registration statement unless the deficiency is corrected within the 10-day period. In addition, the amended Act also makes it unlawful for an agent of a foreign principal required to register to enter into a contract with his principal under which the payment of a fee is contingent upon the success of any political activity to be undertaken by the agent.

Prior to initiation of grand jury proceedings in prosecutions under this Act, U.S. Attorneys shall obtain an express authorization from the Department. This authorization may be obtained by telegraph or telephone in cases where time does not permit authorization by letter. Venue may be had either in the jurisdiction where the defendant has acted as an agent of a foreign principal or in the District of Columbia where the registration statement is required to be filed with the Attorney General.

The Foreign Agents Registration Act has been held to be constitutional. *United States v. Peace Information Center*, 97 F. Supp. 255. See, *Viereck v. United States*, 139 F. 2d 847, cert. denied, 321 U.S. 794; also *Communist Party v. Control Board*, 367 U.S. 1, 139, 173, citing *Viereck v. United States*, 318 U.S. 236.

The Registration Section maintains a list of approximately 500 active registration statements as well as over 2,500 names of individuals who have filed short form registration statements in support of primary registrations. The short form registration statement is required of all persons affiliated with a registrant who engage directly in activity in furtherance of the interests of the foreign principal except employees or agents of the registrant whose services on behalf of the foreign principal are rendered in a clerical, secretarial or in a related or similar capacity.

Information relating to the administration and enforcement of the Act as well as to forms for registration may be obtained by writing to the Registration Section, Internal Security Division, Department of Justice, Washington, D.C. 20530.

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The Act amending the Foreign Agents Registration Act in 1966 also amended Chapter 29 of Title 18 of the United States Code by adding Section 613 pertaining to contributions made by agents of foreign principals. Political contributions made by an agent of a foreign principal in his capacity as such agent in connection with any election, convention or caucus for any political office have been made illegal by this new Section. In addition, the solicitation or acceptance of such political contributions is also illegal.

The same Act of 1966 likewise amended Chapter 11 of Title 18 of the United States Code by adding Section 219 relating to officers and employees of the United States acting as agents of foreign principals. This amendment makes it illegal for an officer or employee of any branch or agency of the Government of the United States to act as an agent of a foreign principal in such a manner as to require his registration under the Foreign Agents Registration Act.

This prohibition, however, does not apply to the employment of an agent of a foreign principal as a special Government employee in any case where the head of the employing agency certifies that such employment is required in the national interest.

Public Law 893, 84th Congress, 2d Sess., approved August 1, 1956 (50 U.S.C. 851-857), requires the registration with the Attorney General of certain persons who have knowledge of or have received instruction or assignment in the espionage, counter-espionage or sabotage services or tactics of a foreign government or foreign political party. The rules and regulations promulgated pursuant to this Act are set forth in 21 F.R. 5928, 28 C.F.R., 1962 Supp., 12.1 et seq.

The Voorhis Act (18 U.S.C. 2386) requires registration with the Attorney General of certain organizations the purpose of which is to overthrow the Government or a political subdivision thereof by the use of force and violence. The rules and regulations promulgated thereunder are set forth in 6 F.R. 369, 28 C.F.R. 10.1 et seq.

As in the case of prosecutions under the Foreign Agents Registration Act, U.S. Attorneys should obtain express authorization from the Department before commencing any prosecution under these Acts for failure to register. Additional information about the above Acts may be obtained from the Registration Section.

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**TITLE 9: INTERNAL SECURITY DIVISION****Appeals and Research Section**

The Appeals and Research Section is responsible for the supervision of cases in appellate courts involving the statutes with which the Internal Security is concerned. In general the procedure to be followed in handling appeals is that described in Title VI of this Manual. In each case the U.S. Attorney will be advised promptly whether the appeal will be briefed and argued by the Appeals and Research Section or by his office, or a division of labor will be agreed upon.

The Section is responsible for preparing the recommendation to be made to the Solicitor General as to whether an appeal should be taken or a petition for certiorari filed, so in cases where the District Court or the Court of Appeals has rendered a decision adverse to the Government, the U.S. Attorney should forward promptly to the Chief of the Section his recommendation and a statement of his views with copies for the Section which has been responsible for the case previously. Copies of all papers filed by either party in connection with an appeal should also be forwarded to the Chief of the Section which was responsible for the case in the trial court.

**Collections**

Procedures for collections of criminal fines imposed in Internal Security cases are described in Title 2: Criminal Division, under "Collection of Criminal Fines and Forfeited Bail Bonds."

By statute (18 U.S.C. 3565) criminal fines may be enforced by execution against the property of the defendant in like manner as judgments in civil cases. Detailed procedural steps for collections of civil judgments are set forth in Title 3: Civil Division, under "Collections." Such procedural steps should be closely followed in collections of fines and judgments imposed in Internal Security cases. For further guidance, direct all inquiries to the attention of the "Collection Attorney, Internal Security Division."

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