

UNITED STATES ATTORNEYS BULLETIN

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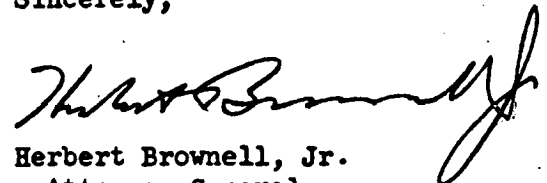
TO: UNITED STATES ATTORNEYS

United States Attorneys should have a medium of their own through which to exchange information and ideas. The new United States Attorneys Bulletin should serve this purpose admirably.

The Bulletin will contain summaries of important court decisions, information on changes in policies and procedures, suggestions for the improvement of operating efficiency, and similar material. In this way, closer touch will be maintained between the Department in Washington and you in the field, and you will be kept informed not only of what is being done within the Department but of recent developments in the various United States Attorneys offices throughout the country.

It is our hope that you will look on the Bulletin as your own publication, designed for your information and assistance, and that your continued interest in it will be reflected in suggestions and recommendations for its improvement.

Sincerely,



Herbert Brownell, Jr.
Attorney General

UNITED STATES ATTORNEYS

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
Alabama, northern	Frank M. Johnson, Jr.	356 Federal Bldg. Birmingham 1
Alabama, middle	Hartwell Davis	Court House & Custom House Montgomery 1
Alabama, southern	Percy C. Fountain	St. Joseph & St. Louis Sts. Mobile
Alaska, Div. #1	Patrick J. Gilmore, Jr.	Juneau
Alaska, Div. #2		Nome
Alaska, Div. #3	Seaborn Jessie Buckalew, Jr.**	3rd and F Streets Anchorage
Alaska, Div. #4	Robert J. McNealy**	Fairbanks
Arizona	Edward W. Scruggs	Tucson
Arkansas, eastern	James T. Gooch	Capitol Ave. & Arch St. Little Rock
Arkansas, western	Charles W. Atkinson	South 6th St. & Parker Ave. Fort Smith
California, northern	Lloyd H. Burke	U.S.P.O., 7th & Mission Sts. San Francisco
California, southern	Laughlin E. Waters	312 N. Spring St. Los Angeles 12
Canal Zone	Rowland K. Hazard	P. O. Box 605 Ancon, Canal Zone
Colorado	Charles S. Vigil	Denver 1
Connecticut	Simon S. Cohen	New Haven 9
Delaware	Leonard G. Hagner	11th & King Streets Wilmington 99
District of Columbia	Leo A. Rover	D between 4th & 5th St., N.W. Washington 1, D. C. (U. S. Court House)

*NOTE: United States Attorneys are located in United States Post Office Buildings unless otherwise indicated.

** Court Appointment

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
Florida, northern	George Harrold Carswell	Tallahassee
Florida, southern	James L. Guilmartin	Tampa 1
Georgia, northern	James W. Dorsey	Forsyth & Poplar Sts. Atlanta
Georgia, middle	Frank O. Evans	Macon
Georgia, southern	William C. Calhoun	Augusta
Guam	John P. Raker**	Agana
Hawaii	Albert William Barlow	King and Richard Sts. Honolulu 1
Idaho	Sherman F. Furey, Jr.	Boise
Illinois, northern	Otto Kerner, Jr.	219 S. Clark St. Chicago 4
Illinois, eastern	Clifford M. Raemer	East St. Louis
Illinois, southern	John B. Stoddart, Jr.	600 E. Monroe Springfield
Indiana, northern	Joseph H. Lesh	Fort Wayne
Indiana, southern	Jack Chapler Brown	221 Ohio & Pa. Sts., Indianapolis
Iowa, northern	Francis E. Van Alstine	321 Sixth & Pearl Sts. Sioux City
Iowa, southern	Roy L. Stephenson	East 1 & Walnut Sts. Des Moines
Kansas	George Templar	Topeka
Kentucky, eastern	Edwin R. Denney	P. O. Box 1490 326 Fed. Bldg. Lexington
Kentucky, western	Charles F. Wood**	Broadway & 6th Streets Louisville
Louisiana, eastern	George R. Blue	New Orleans

* See note on page two

** Court Appointment

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
Louisiana, western	T. Fitzhugh Wilson	424 Texas St. Shreveport
Maine	Peter Mills	156 Federal & Pearl Sts. Portland
Maryland	George C. Doub	Baltimore 2
Massachusetts	Anthony Julian	Devonshire & Water Sts. Boston, Massachusetts
Michigan, eastern	Frederick W. Kaess	313 Wayne & Fort Sts. Detroit 26
Michigan, western	Wendell A. Miles	N. Ionia & Pearl Sts. Grand Rapids
Minnesota	George E. MacKinnon	221 Federal Court Bldg. 223 Market & 6th Sts. St. Paul 2
Mississippi, northern	Noel Malone	Aberdeen
Mississippi, southern	Joseph E. Brown	South West & Capitol Sts. Jackson 116
Missouri, eastern	Harry Richards	U. S. Court House & Custom House 1114 Market Street St. Louis 1
Missouri, western	Edward L. Scheufler	Grand Ave. & 9th Street Kansas City 6
Montana	Krest Cyr	Butte
Nebraska	Joseph T. Votava	306 Post Office Building Omaha 1
Nevada	James W. Johnson, Jr.	Reno
New Hampshire	Robert D. Branch, in charge	Capitol & N. State Sts. Concord
New Jersey	William F. Tompkins	Newark
New Mexico	Paul F. Larrazolo	Albuquerque

* See note, page two

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
New York, northern	Anthony J. Caffrey**	Clinton Square, Syracuse 1
New York, southern	J. Edward Lumbard	U. S. Court House, Foley Square New York City 7
New York, eastern	Leonard P. Moore	271 Washington St. Brooklyn
New York, western	John O. Henderson	U. S. Court House, Court & Franklin Streets Buffalo 1
North Carolina, eastern	Charles P. Green	Third Floor, P. O. Bldg. Raleigh
North Carolina, middle	Bryce R. Holt	Greensboro
North Carolina, western	James M. Baley, Jr.	Asheville
North Dakota	Powless W. Lanier	Post Office Building Fargo
Ohio, northern	John J. Kane, Jr.	Superior & Wood Sts. Cleveland
Ohio, southern	Hugh K. Martin	Columbus
Oklahoma, northern	Whitfield Y. Mauzy	Boulder Ave. & 2nd Street Tulsa
Oklahoma, eastern	Frank D. McSherry	5th St. & West Broadway Muskogee
Oklahoma, western	Robert E. Shelton	Oklahoma City
Oregon	Henry L. Hess	Main & Broadway Sts. Portland
Pennsylvania, eastern	Joseph G. Hildenberger**	U. S. Court House, 9th & Chestnut Philadelphia
Pennsylvania, middle	J. Julius Levy	Scranton
Pennsylvania, western	John W. McIlvaine	Grand St. & 7th Ave. Pittsburgh

* See note, page two

** Court Appointment

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
Puerto Rico	Pascual Amado Rivera**	P. O. Box 3391 San Juan
Rhode Island	Jacob S. Temkin	Providence
South Carolina, eastern	Benjamin Scott Whaley	Charleston
South Carolina, western	John C. Williams	East Washington & S. Irvine St. Greenville
South Dakota	Clinton G. Richards	Federal Building Sioux Falls
Tennessee, eastern	John C. Crawford	Georgia Ave. & E. 10th St. Chattanooga
Tennessee, middle	Armistead O. Denning**	230 Custom House Broad St. & 8th Ave., S. Nashville
Tennessee, western	Millsaps Fitzhugh	Memphis
Texas, northern	Frank B. Potter	W. 10th St. & Burnett St. Fort Worth
Texas, southern	Brian S. Odem	205 Post Office Bldg. Houston
Texas, eastern	William M. Steger	Tyler
Texas, western	Charles F. Herring	Alamo & E. Houston Sts. San Antonio (mail to Austin)
Utah	A. Pratt Kesler	Salt Lake City 1
Vermont	Jos. A. McNamara	Burlington
Virgin Islands	Cyril Michael	St. Thomas
Virginia, eastern	L. S. Parsons, Jr.	Norfolk
Virginia, western	John Strickler	Church Ave. & 3rd St. Roanoke
Washington, eastern	William B. Bantz	Lincoln St. & Maine Ave. Spokane

* See note, page two

** Court Appointment

<u>District</u>	<u>Name</u>	<u>*Headquarters</u>
Washington, western	Charles P. Moriarty	U. S. Court House, 5th Ave. & Madison Seattle
West Virginia, northern	Howard Caplan	Fairmont
West Virginia, southern	A. Garnett Thompson	Charleston
Wisconsin, eastern	Timothy T. Cronin	517 E. Wisconsin Ave. Milwaukee 1
Wisconsin, western	Frank L. Nikolay**	215 Monana Ave. Madison 1
Wyoming	John F. Raper, Jr.	Cheyenne

* See note, page two

** Court Appointment

GENERAL

Material relating to the Federal Rules of Criminal Procedure is set out in the Appendix. As noted thereon, each issue should not be destroyed, but should be retained for permanent use.

* * *

On April 6, 1953, the Executive Office for United States Attorneys was created as a part of the Office of the Deputy Attorney General. Its functions, performed under the immediate supervision and control of the Deputy Attorney General, are to provide general executive assistance and supervision to the offices of United States Attorneys. The first Chief of the Executive Office for United States Attorneys was James R. Browning. Mr. Browning, a native of Belt, Montana, was appointed to the Department of Justice in 1941 and served successively in the Antitrust Division, the Civil Division, and the Office of the Attorney General. On July 31, 1953, he resigned from the Department to enter private practice.

Mr. C. R. Kennell, formerly Chief Examiner in the Administrative Division, has been named Acting Chief of the Executive Office for United States Attorneys.

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Perry W. Morton, 46, of Lincoln, Nebraska, on July 29, 1953, entered on duty as Assistant Attorney General in charge of the Lands Division. Mr. Morton is a graduate of the University of Nebraska, and its Law School. He has been engaged in practice at Lincoln for 22 years, specializing largely in real estate law. He was a pioneer in the development of title standards which in recent years have been adopted by 17 states and are now under consideration by several others.

* * *

Mr. David L. Luce of Berkeley, California, formerly Executive Assistant to the Assistant Attorney General in Charge of the Criminal Division, has been appointed Chief of the Criminal Section of the Tax Division. Mr. Luce, a graduate of the University of California and Hastings College of Law at San Francisco, California, served six years in the District Attorney's Office for Alameda County, California. He was Chief, Special Investigating Division, State of California, Franchise Tax Board, for one and one-half years. His career to date also includes four years in the United States Navy.

Mr. Meyer Rothwacks who formerly headed the Criminal Section has been transferred to the Appellate Section of the Tax Division.

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CRIMINAL DIVISION

SEARCH AND SEIZURE

Consent to Search. In the case of Nelson v. United States, decided by the Court of Appeals for the District of Columbia Circuit on July 2, 1952, the Government has filed a petition for a writ of certiorari to review the judgment reversing Nelson's conviction on the ground that certain documentary evidence introduced at the trial had been obtained by the Kefauver committee as the result of an unconstitutional search and seizure. Nelson, while on the stand before the committee, had agreed to turn over to a committee investigator, who went with him to his home, a book containing a record of his receipts of money. Instead, he turned over a number of other documents which the committee referred to the United States Attorney and which were the subject of a motion to suppress. The Court of Appeals, Judge Prettyman dissenting, held that Nelson's consent, given after questioning by the Committee without having been told of his right to counsel or his privilege against self-incrimination, amounted to consent under "the brooding omnipresence of compulsion." The Government's petition points out that the majority opinion erred in equating Nelson's consent given in open hearing with a situation where consent to search is given by an arrested person in the secrecy of jail, and that, to the extent that the opinion seems to hold involuntary as a matter of law, consent given after request is made by a person clothed with official authority, it conflicts with a long line of decisions.

BRIBERY

Trial; Prejudicial Publicity. On June 26, James P. Finnegan, former Collector of Internal Revenue for the First Collection District of Missouri, filed a petition for a writ of certiorari to review the judgment of the Court of Appeals for the Eighth Circuit affirming his conviction on two counts charging that, while he was collector, he received compensation for services rendered in matters in which the United States was an interested party. The principal contention in the petition is that the defendant was deprived of a fair and impartial trial by reason of prejudicial publicity. Petitioner attempts to spell out a conflict with Delaney v. United States, 199 F. 2d 107 (C.A. 1). The Government's brief in opposition points out that the Delaney case was very different because there the public hearing before the committee and the newspaper publicity occurred after the indictment, whereas in this case the legislative hearings had been completed prior to indictment.

Moreover, Finnegan made no showing before the trial court similar to that made by Delaney and a longer period elapsed before Finnegan's appearance and trial than was true in the Delaney case.

CIVIL RIGHTS

Wilfulness; Establishing Wilfulness in Civil Rights Prosecution of Law Enforcement Officer for Mistreating or Killing an Inhabitant without Due Process of Law. To establish a violation of the Civil Rights Statute under 18 U.S.C. 242, it must be proved, among other things, that the defendant acted "wilfully," that is, with the "specific intent" to deprive the victim of a federal right made definite by decision or other rule of law, Screws v. United States, 325 U.S. 91, 101-107 (1945). It is not sufficient that the defendant had a generally bad purpose. In determining whether "specific intent" was present, the jury may consider all the attendant circumstances, such as the malice of the defendant, the weapons used, the character and duration of the assault, the provocation, etc. Screws v. United States, *supra*, p. 107.

The United States Attorney is always confronted with a difficult task in establishing the requisite specific intent in these prosecutions, with the possible exception of third-degree cases (Williams v. United States, 341 U.S. 97 (1951)). The Criminal Division will be glad to furnish helpful information and copies of suggested trial instructions to the jury designed to clarify the issues. In the recent trial in the Southern District of Florida of United States v. Minnick, reported in the Criminal Division Bulletin for March 30, 1953, Vol. 12, No. 4, page 4, involving a wilful deprivation of life without due process of law, Assistant United States Attorney Frederick W. Botts prepared and used a series of questions on cross-examination which developed the intent and knowledge of the defendant police officer to the extent that the jury could reasonably have inferred that this particular defendant had acted with the requisite wilfulness (specific intent). As stated by Assistant United States Attorney Botts in a letter to the Department, these questions "go as far as we can to overcome the unfavorable instructions which we are sure to get from any Court, which follows the law as laid down by the Supreme Court" in the Screws case.

The questions had the effect of eliciting from the defendant-officer the nature and extent of his experience as a policeman and of establishing defendant's knowledge concerning his powers as such an officer as well as the circumstances under which they might be exercised. Specifically, it was shown that the defendant knew he was not authorized to take life in order to overcome resistance to arrest for a misdemeanor; that the only justification for taking life in such a case is to protect himself or a fellow officer from serious bodily injury; that he was aware of the right of the victim not to be deprived of liberty or life without

due process of law, which is fundamental; that he knew the suspect (victim) had the right to be secure in his person and not to be subjected to summary punishment by police officers; that he was aware that the suspect had the right to be tried by a court in an orderly manner, by due process of law, and if found guilty to be sentenced and punished in accordance with law; and that the actions he took against the suspect were such as would probably deprive him of the foregoing rights. In essence, by this line of questioning it was developed that the defendant, an experienced officer, was cognizant of the basic constitutional rights of all inhabitants and of his official powers and duties, yet notwithstanding he engaged in conduct which deprived the victim of his rights. The prosecutor elicited answers from the policeman upon which any jury could have reached the conclusion, necessary in a prosecution under Section 242, that the defendant had acted in open defiance or wilful disregard of the known rights of the victim (see Screws, supra, 325 U.S. 91, at pages 105-106).

CONSPIRACY

Forged Passports - Fraudulently Obtained Visas. The case of United States v. George K. Jue, involving a conspiracy to import Chinese aliens into the United States with the use of forged Chinese passports and fraudulently obtained visas, was presented to the grand jury in the Northern District of California commencing on June 30, 1953. Six days were required for presentation, during the course of which thirty-two witnesses were interrogated.

The grand jury returned a one-count indictment on July 14, 1953, charging a conspiracy under 18 U.S.C 371 by George K. Jue as defendant, to defraud the United States of its governmental function and right of administering the immigration laws, the Foreign Service and the Immigration and Naturalization Service, free from corruption and to defraud the Government of the honest and faithful services of a vice consul. Thirty co-conspirators were named in the indictment but not charged.

Staff: Case presented by Thomas E. DeWolfe and Rex A. Collings, Jr., Trial Section, Criminal Division.

SUBVERSIVE ACTIVITIES

Smith Act; Conspiracy to Violate. United States v. Joseph Kuzma et al, Eastern District of Pennsylvania. An indictment was returned by a federal grand jury on August 3, 1953, charging Joseph Kuzma, Sam Gobeloff, Benjamin Weiss, David Dubensky, Thomas Nabried, Irvin Katz, Walter Lowenfels and Sherman Marion Labovitz, with conspiracy to advocate the overthrow of the Government by force and violence in violation of 18 U.S.C. (1946 ed.) 10 and 11, and 18 U.S.C. (1948 ed.) 371 and 2385. This represents the tenth prosecution against the national, state and district leadership of the Communist Party.

To date ninety-three Communist Party functionaries have been indicted for violation of the Smith Act. Convictions have been obtained against 51 defendants. Two trials are now in progress; one in the Western District of Pennsylvania and the other in the Western District of Washington.

Staff: Matter presented to grand jury by Thomas K. Hall and Bernard V. McCusty, Internal Security Section, Criminal Division.

ANTI-RACKETEERING

Conspiracy - Perjury. On July 23, 1953, thirteen superseding indictments were returned by a federal grand jury in the Eastern District of Missouri against fourteen union representatives charging violations of the Anti-Racketeering statute. Another indictment has been returned against four of these union representatives charging violations of the same statute. One perjury indictment has also been returned against a former union representative.

The defendants are charged with violations of 18 U.S.C. 1951, which prohibits interference with interstate commerce or the movement of goods in interstate commerce by robbery or extortion, and attempts or conspiracies so to do. The indictments allege in various counts that the defendants did conspire to, attempt to or did interfere with interstate commerce or articles moving in interstate commerce by attempting to obtain or obtaining the payment of money from contractors induced by the wrongful use of actual or threatened force, violence or fear, or under color of official right.

Staff: Case presented by William W. Crowds, serving as United States Attorney under Court appointment, Assistant United States Attorneys Ted Bollinger and Marvin C. Hooper; (E.D. Mo.), and James J. Sullivan, Trial Section, Criminal Division.

INTEGRITY OF GOVERNMENT OPERATIONS

Obstruction of Justice - Perjury. United States v. Lee B. Schumacher, Eastern District of Illinois. As an aftermath of the so-called "Finnegan" grand jury proceedings, the defendant was indicted in February, 1952, charged with obstruction of justice and perjury before the grand jury (18 USC 1503 and 1621). Following disposition of certain pre-trial motions, the cause was set for trial on June 1, 1953. During the latter part of May, one Salomon, a material witness for the government, suffered a cerebral accident. The psychiatrist and internist in attendance upon the material witness advised government counsel that such witness was physically unable to testify at the trial. In order promptly to obtain the opinion of impartial medical experts, the government filed a motion under Rule 28 of the Federal Rules of Criminal Procedure for the appointment by the court of a disinterested psychiatrist and a disinterested internist who were unknown to the witness. The government's motion was granted and a psychiatrist who was a member of the American Psychiatric Association and an internist who was a member of the American Association of Internal Medicines were appointed for the purpose of examining the government witness and of testifying at a pre-trial hearing with reference to the witness' physical condition. At the pre-trial hearing the physicians testified that it would be deleterious to the physical well-being of the witness to be in compulsory attendance upon the court at commencement of the trial June 1. Accordingly, the government moved that the trial date be vacated and its motion was granted.

During the course of testimony adduced by expert medical witnesses, referred to in the pre-trial hearing, there was testimony to the effect that Salomon's future availability as a witness was conjectural, problematical, and speculative. In order to supplant any deficiencies that might have existed in the case by virtue of the probability that Salomon would be unable to testify, a superseding indictment was returned on July 9, 1953, alleging the matters charged in the first indictment and, in addition thereto, perjury before special agents of the Intelligence Unit, Bureau of Internal Revenue, United States Treasury Department. The grand jury which returned this indictment was the successor to the grand jury which returned the first indictment in February of 1952, making it necessary that evidence touching on all points of that indictment be heard by the presently-convened grand jury.

The new case has been assigned to Judge Hulen, of the Eastern District of Missouri, for trial. On July 20, 1953, when the defendant appeared before the Court with counsel, Judge Hulen ordered that any defense motions be filed by September 1, 1953, and set September 22, as the date for hearing such motions and for arraignment.

Staff: Evidence presented to grand jury by W. Francis Murrell, Assistant United States Attorney, (E.D. Mo.), and Thomas E. DeWolfe, Trial Section, Criminal Division.

SURPLUS PROPERTY

Conspiracy - Conversion of Government Property. United States v. Max Genser, Alvin Reina, and Abraham Greenband, Northern District of California. Defendants Genser and Greenband entered pleas of nolo contendere to a nine-count indictment, charging violations of 18 U.S.C. 371 and 641 by conspiring to commit offenses and to defraud the United States, and conversion of Government property. Defendant Reina was tried to the court on June 25 - 26, 1953. He was found guilty, given six months' imprisonment and fined \$5,000. Greenband was fined \$7,500, sentenced to imprisonment for a year and a day and placed on probation for two years, probation to begin after the expiration of the prison sentence. Genser was put on probation for three years and fined \$3,500.

The case grew out of surplus property disposal frauds perpetrated by the defendants, who obtained from an Army depot in California some 20,000 cases of pad matches which had been allocated to the State of Washington for redistribution to educational institutions in that state, under the donable program of the Office of Education of the Federal Security Agency (now the Department of Health, Education and Welfare). The defendants by appearing at the Army depot and representing themselves as authorized haulers for the State of Washington secured the property and diverted it to purchasers in Casper, Wyoming and Los Angeles, California.

The defendant Greenband was previously convicted on surplus property conspiracy charges by a jury in the District of Idaho and paid a fine of \$10,000.

Staff: Matter presented to grand jury at Sacramento, California by Floyd J. Mattice, Trial Section, Criminal Division. Case against defendant Reina tried by Assistant United States Attorney William H. Lally, (N.D. Calif.)

* * *

LANDS DIVISION

CONDEMNATION PROCEEDINGS

Review of Committee's Award - Effect of Deposit After Judgment - United States v. Hirsch (C.A. 2) -- In proceedings to condemn an aircraft plant near Stratford, Connecticut, a committee composed of three retired state judges valued the property at \$3,100,000, and the district court confirmed their report. Upon appeal, the Government contended that evidence of statements made by Government officials was

erroneously admitted but the Court of Appeals held that there was sufficient other competent evidence to support the finding and there was no indication that the Committee gave weight to the statements. The Government also contended that a finding of the Committee that prospective purchasers of the property would have assumed that a two-year lease of the property by a manufacturer of aircraft engines which had been negotiated would be consummated and would be renewed for an additional three years was erroneous. A majority of the Court of Appeals rejected this contention, Judge Frank dissenting.

After filing its appeal, the Government had made a deposit pursuant to a motion reciting that it was done to stop the running of interest and was without prejudice to the right to recover funds if the judgment were reversed. The owner appealed from orders denying his objections to such deposit but the Court of Appeals affirmed. It applied the usual rule that a judgment-debtor may pay the judgment without waiving his right to appeal and obtain restitution if the judgment is reversed.

Staff: Harry T. Dolan, Special Assistant to the United States Attorney, Brooklyn, New York, and John C. Harrington, Lands Division.

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IMMIGRATION AND NATURALIZATION SERVICE

Court review challenging qualifications of Board of Special Inquiry - Tom We Shung v. Brownell (C.A. D.C.). An alien who was excluded from the United States by a Board of Special Inquiry* brought proceedings for declaratory judgment contesting the order of exclusion. He challenged the competency of the Board members and the fairness of the proceeding. The Court of Appeals, affirming the judgment of dismissal below, found on July 2, 1953 that the Board was properly constituted and, if not, that any deficiency was waived by plaintiff's failure to make timely objection in the administrative hearing. See U.S. v. L. A. Tucker Truck Lines, 344 U.S. 33. The court also questioned the availability of declaratory judgment to review an order of exclusion, in the light of Heikkila v. Barber, 345 U.S. 229, which held that the only avenue for questioning a deportation order was by writ of habeas corpus.

* (After December 24, 1952 exclusion hearings have been conducted by a single Special Inquiry Officer.)

Staff: Lewis A. Carroll, Assistant United States Attorney (D.C.)

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