

Published by Executive Office for United States Attorneys,
Department of Justice, Washington, D. C.

January 8, 1954

RECEIVED

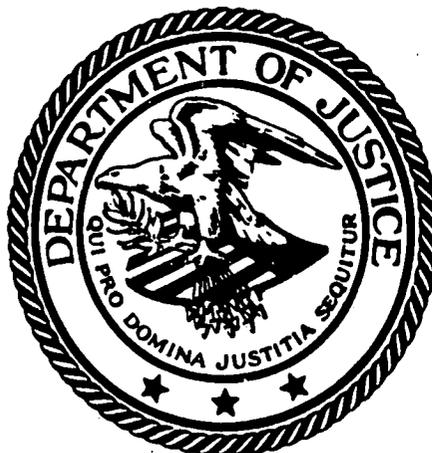
JAN 11 1954

U. S. ATTORNEY
LOS ANGELES, CALIF.

United States
DEPARTMENT OF JUSTICE

Vol. 2

No. 1



UNITED STATES ATTORNEYS
BULLETIN

RESTRICTED TO USE OF
DEPARTMENT OF JUSTICE PERSONNEL

UNITED STATES ATTORNEYS BULLETIN

Vol. 2

January 8, 1954

No. 1

New United States Attorneys

<u>District</u>	<u>Name</u>	<u>Date</u>
South Carolina, eastern	N. Welch Morrisette, Jr.	Dec. 29, 1953 **
Mississippi, southern	Robert E. Hauberg	Dec. 30, 1953 **
Nevada	Madison B. Graves	Dec. 30, 1953 **
Puerto Rico	Ruben Rodriguez Antongiorgi	Dec. 16, 1953 *

* Court Appointment

** Recess Appointment

* * *

United States Attorneys Manual

Because of the press of year-end business there will be no correction sheets issued for the United States Attorneys Manual for the month of January. It is regretted that this lapse in the continuity in the correction sheets has been necessary. In this connection, United States Attorneys are reminded that the Executive Office for United States Attorneys is always pleased to receive any suggestions which the United States Attorneys may have for the improvement of the Manual in any respect.

* * *

United States Attorneys Bulletin

The United States Attorneys Bulletin was established primarily for the information and use of the United States Attorneys and it was intended that some of the material carried therein should be contributed by the United States Attorneys themselves. Descriptions of cases which normally would not be reported to the Department should be submitted to the Executive Office for United States Attorneys in order to afford them broader coverage and to furnish other United States Attorneys with information which might prove helpful in analogous cases.

* * *

Prohibition of Outside Activities

The attention of all United States Attorneys is invited to Order No. 36-53, dated December 31, 1953, which sets out existing Departmental policy with regard to outside activities for Department of Justice personnel.

* * *

CRIMINAL DIVISION

Assistant Attorney General Warren Olney III

NARCOTICS

Penalties - Necessity for Filing Information Showing Prior Convictions, Pursuant to Public Law 255, 82nd Congress, 1st Session (Boggs Act), after Conviction and before Imposition of Sentence. In the unreported case of United States v. Buford Baldwin, Cr. 6366, Southern District of Ohio, Eastern Division, the District Court on December 3, 1953, in effect held that unless information showing prior convictions is duly filed after conviction and before sentencing, so as to give the defendant the opportunity of denying and contesting the fact that he is the same person previously convicted, he must be sentenced as a first offender. This decision pin points the necessity of United States Attorneys filing the required information showing prior convictions within the time specified by the mandatory provisions of the above statute.

POSTAL OFFENSE

Burglary - Larceny. United States v. Walter R. Carroll, (D. C. Ore.). On November 20, 1953, a Federal Grand Jury returned a two count indictment charging the defendant with burglary of a post office at Umatilla, Oregon, and the larceny of a package containing \$20,000, in violation of 18 U.S.C. 2115 and 1708, respectively.

Staff: Rex A. Collings, Jr. (Criminal Division) presented the matter to the Grand Jury.

* * *

TAX DIVISION

Assistant Attorney General H. Brian Holland

Peak-load of Criminal Tax Cases

From November through March each year a great many more criminal income tax cases are referred to the Department of Justice for prosecution than are referred during other months of the year. The reason for this seasonal increase in the number of referrals is that in many instances the processing of cases by the Internal Revenue Service is not completed until shortly before the expiration of the period of limitations, which is likely to fall between January 1st and March 15th. Thus the Service is now forwarding large numbers of fraud cases involving returns for the year 1947, filed in 1948, and on the basis of past experience it is to be anticipated that many more will be received by the Tax Division during the next ten weeks.

Accordingly, United States Attorneys' offices in districts in which venue for tax prosecutions lies must be prepared for a peak load of such cases between now and March. The Criminal Section of the Tax Division is endeavoring to process cases as promptly as possible without sacrificing thoroughness of review, and every effort will be made, where prosecution is warranted, to refer cases to United States Attorneys well in advance of the expiration of the statutory period.

The exigencies of the situation may, in a few instances, call for prompt action in order to toll the statute. If no grand jury is in session, the statute may be tolled by filing a complaint as provided in Section 3748 of the Internal Revenue Code.

Prosecution Memoranda

In order to render greater assistance to United States Attorneys to whom criminal tax cases are referred, the Tax Division will henceforth forward a copy of the review memorandum prepared in the Criminal Section if the circumstances are such that the memorandum will be likely to be of value in preparing the case for presentation to the grand jury. Such memoranda are confidential, should be retained at all times by the United States Attorneys, and should be considered part of their official files.

Conferences in Criminal Tax Cases

There have been indications that some United States Attorneys have not fully understood the policy of the Department in regard to the holding of conferences with taxpayers and their representatives in connection with criminal tax cases. It is the general policy to grant one conference in Washington, if requested, in order to permit the taxpayer

to present defensive material before a decision concerning prosecution is reached. Additional conferences in Washington are discouraged, and it is believed that ordinarily no useful purpose will be served by granting conferences in the United States Attorneys' offices after cases have been forwarded for prosecution. However, United States Attorneys are entirely free to confer with taxpayers or their representatives after cases have been referred to them by the Department for prosecution if they consider it advisable to do so. It is requested that copies of any conference memoranda be forwarded to the Department for incorporation in the files. In the event a United States Attorney, as a result of such a conference or otherwise, disagrees with the views of the Department regarding prosecution, he should communicate promptly with the Tax Division, stating as fully as possible the reasons for his disagreement and requesting further instructions.

* * *

OFFICE OF ALIEN PROPERTY

Assistant Attorney General Dallas S. Townsend

U. S. Citizen Stockholder in an Enemy Corporation Whose Assets Were Vested by Alien Property Custodian May Sue for his Proportionate Interest in the Vested Assets of the Corporation under Sec. 9(a) of the Trading With the Enemy Act. Taterka v. Brownell (S.D.N.Y., November 23, 1953). Plaintiff, an American citizen, brought suit against the Attorney General, as successor to the Alien Property Custodian, for the loss of the value of his shares of stock in two German corporations, whose American assets were vested under the Trading With the Enemy Act. Defendant moved for summary judgment on the ground, inter alia, that the plaintiff, a stockholder in the enemy corporations, had no right, title, or interest in the assets vested from these corporations. The Government argued that the holding of the Supreme Court in Kaufman v. Societe Internationale, etc., 343 U.S. 156,

"that when the Government seizes assets of a corporation organized under the laws of a neutral country, the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings must be fully protected"

was limited to cases of non-enemy or neutral corporations and could not be extended to include rights of stockholders in enemy corporations (cf. Albert v. McGrath. 104 F. Supp. 891, D.C. S.D. Cal., 1952, pending on Appeal, C.A. 9).

Disagreeing with this interpretation of the Kaufman opinion, the District Court denied the Government's motion for summary judgment. In its short memorandum opinion the Court relied entirely on the fact that the dissenting opinion in the Kaufman case had stated that the majority opinion could logically cover the case of a stockholder in an enemy corporation. The District Court stated that it felt "bound to accept the result, determinative of the issue here posed, which the minority said would flow from the holding, particularly when the majority chose to remain mute thereon."

Staff: James D. Hill, David Schwartz and Ernest S. Carsten
(Office of Alien Property).

Attorneys' Fees against Accounts Vested under the Trading With the Enemy Act. Paramount Pictures, Inc., et al. v. Sparling (Dist Ct. of App., Calif.). On December 8, 1941, the Superintendent of Banks of the State of California took possession of the Los Angeles Branch of the Yokohama Specie Bank, Ltd., and the Secretary of the Treasury revoked the license under Executive Order No. 8389, as amended, by virtue of which the Bank had done business since July, 1941. The Alien Property Custodian subsequently vested, under the Trading With the Enemy Act, the net proceeds remaining after the liquidation of the Bank, and also the accounts of individual enemy depositors.

Appellants were four depositors who filed claims for the principal amounts of their deposits and interest with the Superintendent. He allowed the claims as to principal but rejected them as to interest on the ground that he was prohibited by supervening federal law from paying depositors without a license, and that the delay in payment was thus excused because of impossibility. Thereupon the appellants brought action for a determination that they were entitled to interest. The Alien Property Custodian, to whom the Attorney General succeeded, intervened.

In the principal litigation it was held that the Superintendent had not proved impossibility of performance, because the officers of the bank should have applied to the Secretary of the Treasury for a special license permitting continued limited operation of the bank in order to pay creditors. The depositors were, as a consequence, held entitled to interest. 93 Cal. App. 2d. 768; hearing denied by Supreme Court, 93 Cal. App. 2d. 777; cert. den. 339 U.S. 953.

Subsequently, counsel for the four depositors applied for a decree that they were entitled to fees from the entire fund of interest created in favor of all depositors by their efforts. The Superior Court denied the application. The District Court of Appeal, in an opinion by Dooling, J., filed December 22, 1953, reversed. It held that the trial court erred in denying an award of fees in reliance on cases in which the public officer in charge of the fund took a neutral position. In this litigation the Superintendent had consistently opposed the allowance of interest, and but for the interposition of the appellants there would have been no one to urge upon the trial court the legal right of the depositors to interest or to support the judgment of the trial court on appeal. Since counsel had rendered services which substantially benefited the depositors as a class, the trial court had power to allow counsel fees, and the order was reversed with directions to the trial court to determine the motions on their merits as a matter of discretion.

The Court of Appeal also held, however, that the award of fees should not run against the accounts of any depositors which the Alien Property Custodian had vested, since all proceedings to enforce such payments out of vested property must be asserted under the Trading With the Enemy Act.

Staff: Valentine C. Hammack, James D. Hill, George B. Searls
(Office of Alien Property).

* * *

ADMINISTRATIVE DIVISION

Administrative Assistant Attorney General S. A. Andretta

SUBSISTENCE ALLOWANCE

After much urging the Department finally authorized in Memo No. 50 the maximum subsistence allowance for United States Attorneys and Marshals - \$9 instead of \$8 - with the proviso, however, that payments at the increased rate be made only if there were sufficient funds in the quarterly allotment available to each office.

Memo No. 50 has not been well understood. It removes the requirement that special authority be obtained to pay the \$9 statutory maximum rate. Other rates remain in effect for their special circumstances - \$6 - \$7 - and \$8 (after fourteen days at one place). Approached from another angle, Memo No. 50 amends the rates in paragraphs 2 of Circular 4095, and 3 (as previously amended by Supplement 1, Circular 4095). Pages 109 and 110 corrected December 1, 1953, Title 8, United States Attorneys' Manual, set out the current rates in full.

SCHEDULING WITNESSES' APPEARANCES

The Department continues to receive complaints that the United States Attorneys fail to furnish the United States Marshals' offices subpoenas and other writs in ample time to consolidate trips - and also to allow witnesses and other persons served sufficient time to appear. Bad public relations result, not to mention increased expenses and work load. Marshals are constantly being urged to save on travel. Proper planning and scheduling will not only save money but will result in better acceptance of civic duties the public is called upon to perform when subpoenaed, etc.

ADMIRALTY CASES

In suits for the recovery of damages to aids to navigation the amounts recovered are available for payment into revolving funds of the United States Coast Guard and the District Engineers. Accordingly, any such payments should be forwarded to the Department of Justice for transmission to the affected agency in order that our records may be cleared and any adjustments made to deduct costs, etc., included in the total collection. United States Attorneys' offices should take note of this rather novel procedure because much confusion can arise if the collection is paid into the registry of the court or is deposited by the clerk of the court into "Miscellaneous Receipts."

INCREASED SOCIAL SECURITY DEDUCTIONS

Beginning on and after January 1, 1954, the deduction for social security will be increased from 1-1/2% to 2%, on salaries subject to FICA. Salary Table No. 35 which has been sent to you shows the new 2% rate.

United States Attorneys are cautioned to remember that maximum deductions will hereafter be \$72 (2% of \$3600) instead of \$54. The employer's contribution will also be 2%.

ACCURATE FINANCIAL REPORTS

Apparently a number of the United States Attorneys (and United States Marshals) do not understand the importance of financial reports as outlined in Memo No. 18 dated June 8, 1953, particularly the Report of Disbursements and Obligations - Form No. 111.

This report was designed to provide the Department with information necessary to comply with reporting requirements of the Bureau of the Budget and the General Accounting Office. The Treasury Department now has required a change in reporting. Information contained on the Form No. 111 will be used by the Department to supply that information. Obviously the statistics furnished by the 94 Marshals on Form No. 111 are of utmost importance, not only to the Department of Justice but to three other agencies in the Government.

The expenditure portion of the form must agree with the Marshal's account current and so far very few errors have occurred. The outstanding liability portion of the form, on the contrary has given considerable difficulty. A variety of errors have been found. Several districts have included regular salary payrolls under the heading "All Other General Expenses" on items 10(c) or 13(d). Salaries are not involved and should not be reported. One United States Attorney reported a figure under "All Other etc.," which was greater than his total disbursements for the last fiscal year, including salaries! Clearly it was an error. Several districts did not include outstanding liabilities for court reporting. The Accounts Branch is placed in an embarrassing position by such erroneous reports.

The Marshals' Forms 111 now serve several agencies and purposes. They must be accurate. They must be complete and in the Department by the eighth calendar day of the month. Unpaid obligations such as the transcript which was ordered, but not yet delivered, much less not billed; - the traveler's reimbursement voucher which hasn't been submitted; - advertising, not billed, etc. - all must be reported as outstanding liabilities. If you don't know the exact

amount, include your estimate. Continue to include that figure month after month until the bill is actually paid, when you will report it under the appropriate paid heading. Each Government Transportation Request issued is a special problem.

The Marshal prepares his Form 111 in part from figures you furnish him. These figures should be complete, accurate, and timely. Errors will be avoided and everybody will benefit.

PAY PERIODS AND TAXES

Alternate Saturdays mark the ends of pay periods. December 19 is an example. The next pay period ends January 2. Marshals' and Attorneys' salaries for that period will be paid January 4 or later because the preceding Friday, a normal work day, is January 1, a holiday. Payment on December 31 for Friday, January 1, would be an advance payment and therefore prohibited by law. You cannot date checks for that pay period December 31 because they would have to include pay for January 1.

Any salary payments in January 1954 for work performed in December 1953 are to be at the pay rates given in Pay Table 35. You will note that the tax deductions are smaller and the FICA deductions are higher.

INCURRENCE OF OBLIGATION

Memo Nos. 17 and 27 of 1953 authorize the expenditure of funds for general expenses. Circulars 4168 and Supplements 1 and 2 thereto deal with the administrative control of expenses and the penalties for violation of the law prohibiting deficiencies. (United States Attorneys Manual, Title 8, page 100.)

At the end of the last quarter there were no less than 18 instances in which there were apparent obligations over the amount allotted. Some were mistakes and some were actual over-obligations. In no instance should such an obligation have been incurred without advice to the Department which would have endeavored to provide additional funds to cover. Please bear in mind that committing the Government to pay with funds that are not available is a very serious business. At least let the Department know what is going on so it can protect you. We know that sometimes you get orders to carry out for which you have insufficient funds. We know that if you don't carry out the orders you are called to task by the court. Let us know what your situation is so that we can help if possible.

IMMEDIATE ACTION CORRESPONDENCE

The Department receives from 10 to 15 thousand pieces of mail per day. Most of this mail must be checked against indices and processed before it is delivered to the legal divisions for action. It takes from 6 to 8 hours from the time it is received until it reaches the attorneys to whom the cases are assigned. Most of the mail that is received from the City Post Office in the afternoon does not reach the attorneys before the next day.

In many instances communications from United States Attorneys which require immediate action are received beyond the time in which action must be taken. In order to avoid any serious embarrassment to the Department which may result from these delays, it is requested that all communications meeting a "deadline" or where immediate action is required be conspicuously marked so that they may be handled special. Words such as, "DEADLINE", "IMMEDIATE ACTION REQUIRED" typed in caps on a tag and securely stapled to the communication will be of considerable assistance to the Records Administration Branch in identifying and expediting this mail. In addition, mail schedules should be consulted in order that the proper means of communication may be used to insure delivery within the time limit in which action is to be taken.

* * *