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**ANNUAL REPORT OF THE
ATTORNEY GENERAL OF
THE UNITED STATES**

FOR THE FISCAL YEAR ENDED JUNE 30

1966



333807

DEPT. OF JUSTICE

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REPORT OF THE
ATTORNEY GENERAL

Department of Justice, Washington, D. C.

To the Senate and House of Representatives of the United States
of America in Congress assembled:

I have the honor to report on the business of the Department of
Justice for the fiscal year 1966.

Detailed descriptions of the activities of the various offices,
divisions, and bureaus of the Department are annexed and made
a part of this report.

Respectfully,

RAMSEY CLARK
Attorney General

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REPORT OF THE DEPUTY ATTORNEY GENERAL RAMSEY CLARK

The Office of the Deputy Attorney General during the past year discharged the general operational duties assigned to it, among which continued to be that of assisting the Attorney General in the over-all supervision and management of the Department. The responsibility accompanying the discharge of this function included assisting the Attorney General in the formulation of major Departmental policies and programs and the development and improvement of procedures for their practical achievement. Coordination of the activities of the several Departmental divisions and units is maintained through the Office of the Deputy Attorney General which also supervises and directs the work of the various United States Attorneys' and Marshals' offices located throughout the country, as well as other Departmental offices located in the field.

OFFICE OF CRIMINAL JUSTICE

The bulk of the Office of Criminal Justice's attention in the fiscal year ended June 30, 1966, was devoted to three major areas: a large number of District of Columbia projects, various aspects of bail reform, and staff work leading to the formation of the District of Columbia and National Crime Commissions. The Office also continued its work on the implementation of the Criminal Justice Act.

A. District of Columbia Projects

Research for a comprehensive report on the District of Columbia Court of General Sessions was undertaken and preliminary drafts of the report (soon to be published as an Office monograph) were written and distributed for comments. The report will delve into many aspects of police, prosecution, defense bar and citizen involvement with a metropolitan intake court, and identifies a broad range of resources and procedures which are needed to enable the court to deal effectively with the large volume of persons charged with urban crime.

Other illustrative District of Columbia projects included preparing the Department's presentation to the Comptroller General in support of Judge Greene's decision in the *Walker* case which

applied the Criminal Justice Act to the United States Branch of the Court of General Sessions; helping to develop procedures for making transcripts available to indigents at General Sessions, in line with the *Tate* decision; supporting and helping to broaden the D.C. Bail Agency Act, which established the first legislatively-created bail fact-finding organization in the United States; and assisting the Circuit Judicial Conference in developing a program concerning wider use of street citations and stationhouse release by the police.

B. Bail Reform

The Office did much of the staff work which culminated in the enactment of the Bail Reform Act of 1966 (P.L. 89-465), and has helped coordinate a Department Committee concerned with implementing the Act throughout the federal courts. It continued the widespread dissemination of bail reform information to state courts and local organizations in all parts of the country. It initiated a study of the operation of the summons system in the federal court of San Francisco; assisted in developing proposals for studying the predictability of crime by persons on bail; and surveyed the incidence of pretrial detention in cases involving Rule 20 transfers. The Office also joined with the Vera Foundation in October 1965 in co-sponsoring a national institute on the operation of pretrial release projects, and helped edit and publish the proceedings of that institute and of a London bail conference, together with a summary of recent bail developments, in a volume entitled *Bail and Summons: 1965*.

C. National Crime Commission

In the beginning of the fiscal year, the Office was involved in developing work plans for the President's Commission on Law Enforcement and Administration of Justice and the President's Commission on Crime in the District of Columbia, as well as in formulating the background material for Congressional enactment of the Law Enforcement Assistance Act of 1965.

Since the establishment of the Commissions in July 1965, and the creation of the Office of Law Enforcement Assistance in the fall of 1965, the Office of Criminal Justice has worked closely with the National Commission and has proposed or advised on several Assistance projects. The major crime commission work has included making on-the-scene studies of the lower criminal courts

in Baltimore, Detroit and Denver; drafting part of a report on sentencing practices; and preparing a report on bail reform.

D. *Legislation*

In addition to the Bail Reform and Bail Agency Acts, the Office devoted time to several other pieces of proposed legislation in the criminal field. In connection with Senator Hruska's bill, S. 2722, to provide for appellate review of sentences in federal criminal cases, a comprehensive study was made of sentence review systems in several states and in Great Britain. When the study disclosed that many of the objections raised in the past to appellate review have been overcome in experience elsewhere, the Department revised its previous stand against the legislation. The Office also analyzed S. 2855 and H.R. 12442, companion bills submitted by Senator Tydings and Representative Schweiker to provide for federal hearings before private bondsmen may transport bail jumpers across state lines. The Office's analysis of the relationship of these bills to bail reform and to experience elsewhere led to Department testimony favoring a different remedy, i.e. that such transportation be completely forbidden, and that extradition be the only permissible method of removing bail jumpers from one state to another.

E. *Miscellany*

The Office devotes a great deal of time to serving as a source of information and assistance needed by persons in and out of the Federal Government, in relation to problems of both criminal and civil justice. The Office continued its work in assisting in the implementation of the Criminal Justice Act. It participated in the work of an intradepartmental committee developing legislation to reform procedures for dealing with persons whose mental competency to stand trial in federal criminal courts is in issue; worked with the Criminal Division and Bureau of Prisons on a project seeking to reconcile Dyer Act prosecution policy with the policy favoring diversion of juvenile offenders to their home jurisdictions; and assisted the Civil Service Commission in developing the new federal policy to minimize the prejudicial effect of arrest and conviction records on federal employment. The Office also worked closely on occasion with a number of organizations engaged in civil poverty problems, including the National Advisory Committee of the Office of Economic Opportunity's Legal Services

Program, the D.C. Circuit Judicial Conference Committee on Civil Legal Aid, and the United Planning Organization's Neighborhood Legal Services Project in the District of Columbia.

LEGISLATIVE AND LEGAL SECTION

The task of maintaining liaison between the Congress and the Department of Justice is one of the most important phases of the work of the Office of the Deputy Attorney General. All proposed legislation prepared in the Department, or in which the Department has an interest, is handled through the Office of the Deputy Attorney General.

The Legislative and Legal Section of the Office of the Deputy Attorney General is responsible for maintaining liaison between the Department and the Congress, coordination and preparation of the Department's Legislative Program, and the preparation and submission of reports on pending and proposed public and private (other than private immigration) legislation, and on enrolled bills. The records of the Section show that the legislative work load continues to be high as it has in the past several Congresses.

During the 89th Congress the Section received 2,130 requests for views on pending or proposed private relief and public legislation and on proposed reports of other agencies. Of these, 1,572 were disposed of along with 21 requests carried over from the 88th Congress. Appendix A below furnishes a breakdown of the requests received and their disposition.

Private immigration bills are also referred to the Department. These requests are submitted by the Congressional Committees directly to the Immigration and Naturalization Service and are responded to by that Service directly. The reports make no policy recommendations; they merely state the facts in each case as reflected in the Service records.

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APPENDIX A
STATUS REPORT—89th CONGRESS, FIRST & SECOND SESSIONS
LEGISLATION REFERRED TO LEGISLATIVE & LEGAL SECTION

	PUBLIC BILLS			PRIVATE BILLS			Grand Total
	1st Session	2nd Session	Total	1st Session	2nd Session	Total	
PUBLIC & PRIVATE BILLS REFERRED:							
By Congressional Committees.....	906	469	1,375	70	46	116	1,491
By Budget Bureau (Drafts, etc.).....	190	149	339	18	10	28	367
By Budget Bureau (Enrolled).....	86	129	215	15	26	41	256
By Miscellaneous Sources.....	8	7	15	—	1	1	16
Total.....	1,190	754	1,944	103	83	186	2,130
PUBLIC & PRIVATE DISPOSED OF:							
To Congressional Committees.....	375	303	678	41	29	70	748
To Budget Bureau (Drafts, etc.).....	148	129	277	15	9	24	301
To Budget Bureau (Enrolled).....	86	129	215	15	26	41	256
To Miscellaneous.....	5	10	15	—	1	1	16
To Congressional Miscellaneous Action.....	49	53	102	1	2	3	105
Total.....	663	624	1,287	72	67	139	1,426
Deferred Action.....			11			1	12
At Budget for Clearance.....			128			6	134
TOTAL DISPOSED OF.....			1,426			146	1,572
Reports to Budget on Requests Received in 88th Congress.....			21			—	21
Total.....			1,447			146	1,593
PENDING—PUBLIC & PRIVATE:							
In Divisions.....			117			12	129
In Section.....			401			28	429
TOTAL PENDING.....			518			40	558

Appendix B on the following page is a comparison of legislative activity back through the 87th Congress, including public bills and private immigration bills.

APPENDIX B
LEGISLATIVE ACTIVITY—87TH THROUGH 89TH CONGRESS
REQUESTS FOR REPORTS

	From Committees			From Budget			From Miscellaneous			Grand Total
	1st Session	2nd Session	Total	1st Session	2nd Session	Total	1st Session	2nd Session	Total	
87th CONGRESS—1961-1962										
Public Bills.....	1,021	520	1,541	261	270	531	12	11	23	2,095
Private Claims.....	53	48	101	29	49	78	3	1	4	183
Private Immigration.....	2,203	1,038	3,241	257	282	539	—	—	—	3,780
Total.....	3,277	1,606	4,883	547	601	1,148	15	12	27	6,058
88th CONGRESS—1963-1964										
Public Bills.....	932	276	1,208	259	192	451	11	6	17	1,676
Private Claims.....	74	35	109	34	39	73	—	—	—	182
Private Immigration.....	2,335	989	3,324	100	96	196	—	—	—	3,520
Total.....	3,341	1,300	4,641	393	327	720	11	6	17	5,378
89th CONGRESS—1965-1966										
Public Bills.....	906	469	1,375	276	278	554	8	7	15	1,944
Private Claims.....	70	46	116	33	36	69	—	1	1	186
Private Immigration.....	3,581	1,215	4,796	136	124	260	—	—	—	5,056
Total.....	4,557	1,730	6,287	445	438	883	8	8	16	7,186

REQUESTS DISPOSED OF

	To Committees			To Budget			To Miscellaneous			Action *			Grand Total
	1st Session	2nd Session	Total	1st Session	2nd Session	Total	1st Session	2nd Session	Total	1st Session	2nd Session	Total	
87th CONGRESS													
1961-1962													
Public Bills.....	552	407	959	235	377	612	12	7	19	81	124	205	1,795
Private Claims.....	43	32	75	28	49	77	3	1	4	1	4	5	161
Private Immigration.....	1,778	1,157	2,935	257	282	539	—	—	—	—	—	—	3,474
Total.....	2,373	1,596	3,969	520	708	1,228	15	8	23	82	128	210	5,430
88th CONGRESS													
1963-1964													
Public Bills.....	479	234	713	212	317	529	9	6	15	31	118	149	1,406
Private Claims.....	48	30	78	31	35	66	—	—	—	1	15	16	160
Private Immigration.....	2,009	965	2,974	100	96	196	—	—	—	—	—	—	3,170
Total.....	2,536	1,229	3,765	343	448	791	9	6	15	32	133	165	4,736
89th CONGRESS													
1965-1966													
Public Bills.....	375	303	678	234	386	620	5	10	15	49	64	113	1,426
Private Claims.....	41	29	70	30	41	71	—	1	1	1	3	4	146
Private Immigration.....	3,229	993	4,222	136	124	260	—	—	—	—	—	—	4,482
Total.....	3,645	1,325	4,970	400	551	951	5	11	16	50	67	117	6,054

*Congressional or Deferred Action prior to completion of report by Department.

With respect to the Department's Legislative Program, the Congress considered 46 items as set forth in Appendix F. Twenty-eight of these items were enacted. They include 10 items which were a part of the President's Program: (1) Constitutional amendment relating to Presidential inability and succession to the Presidency and Vice Presidency; (2) Voting Rights Act; (3) exemption from the antitrust laws for voluntary agreements and programs in the banking field to safeguard the nation's balance of payments; (4) appropriations to fund the President's National and District of Columbia Crime Commissions; (5) Law Enforcement Assistance Act; (6) immigration reform legislation; (7) Reorganization Plan transferring Community Relations Service to Justice Department; (8) American Revolution Bicentennial Commission; (9) Commission on Revision of Federal Criminal Laws; and (10) extend the Law Enforcement Assistance Act to June 30, 1970. Other major items on the Program of the Department which were enacted included: (1) presidential assassination legislation; (2) legislation to facilitate the rehabilitation of prisoners; (3) legislation to provide for the acquisition of items related to the assassination of President Kennedy; (4) bail reform legislation; (5) narcotics legislation; (6) establish a statute of limitations re actions brought by Government; (7) amendments to the Federal Tort Claims Act; (8) authorize granting of costs on judgments against the United States; and (9) enlarge compromise authority on U.S. claims. The enacted items of the Department's Legislative Program are shown in attached Appendix C.

A number of significant items were not enacted, including a constitutional amendment relating to the election of the President and Vice President and reforming the Electoral College, a constitutional amendment providing for four year terms for House members, Civil Rights Act of 1966, immunity and firearms control legislation. Appendix D shows the status of these and the remaining unenacted proposals at the close of the Congress.

Officials of the Department appeared before Congressional Committees on 182 occasions. The Attorney General appeared before various Committees 51 times; the Deputy Attorney General appeared 23 times. Appendix D shows a breakdown of these appearances by Division.

APPENDIX C

DEPARTMENT OF JUSTICE ENACTED
LEGISLATIVE PROGRAM

89TH CONGRESS

Of the 46 items considered by the Congress, 28 were enacted. By category they are as follows:

On President's Program:

PRESIDENTIAL INABILITY

Constitutional Amendment on which Congressional action was completed on July 6, 1965, provides for continuity in the Office of President in the event the President becomes disabled and for the filling of vacancies in the Office of Vice President. As of October 26, 1966, 31 states have ratified this Amendment.

VOTING RIGHTS ACT

Public Law 89-110, approved 8/6/65, provides for the enforcement of the guarantees of the Fifteenth Amendment to the Constitution that the right to vote shall not be abridged or denied on account of race, or color; provides for the appointment of Federal examiners in certain areas of the country; outlaws literacy tests in such areas; declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting and directs the Attorney General to institute litigation to test the poll tax where used.

ANTITRUST EXEMPTIONS IN BANKING

Public Law 89-175, approved 9/9/65, provides for the exemption from the Antitrust laws of certain voluntary agreements or programs entered into by the banking community to assist in safeguarding the balance of payments position of the United States.

FUNDING OF CRIME COMMISSIONS

Public Law 89-196, approved 9/21/65, authorizes the appropriation of \$1,500,000 for funding the President's

108-0

APPENDIX D

BREAKDOWN BY DIVISION OF APPEARANCES BY
OFFICIALS OF DEPARTMENT BEFORE
CONGRESSIONAL COMMITTEES DURING 89TH CONGRESS

Attorney General	51
Deputy Attorney General	23
Deputy Attorney General's Office	5
Solicitor General	2
Internal Security Division	4
Antitrust Division	13
Tax Division	5
Civil Division	15
Civil Rights Division	3
Criminal Division	12
Lands Division	4
Administrative Division	6
Federal Bureau of Investigation	2
Immigration and Naturalization Service	5
Office of Legal Counsel	8
Bureau of Prisons	7
Pardon Attorney	2
Board of Parole	2
Board of Immigration Appeals	2
United States Attorney, District of Columbia	3
Executive Office for United States Attorneys	2
Executive Office for United States Marshals	2
Office of Criminal Justice	2
Office of Law Enforcement	2
	182

Includes appearances before Appropriations committees

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

The Executive Office for United States Attorneys provides general executive assistance and supervision to the offices of the United States Attorneys located throughout the 93 judicial districts of the United States and its possessions. It also maintains liaison between the United States Attorneys' offices and the several bureaus, offices, and divisions of the Department, as well as other federal agencies. The prompt disposition of all older cases pending

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REPORT OF ASSISTANT ATTORNEY GENERAL
JOHN W. DOUGLAS
IN CHARGE OF THE CIVIL DIVISION

The Civil Division directs and supervises the general civil litigation of the United States, the conduct of which is divided between the Division itself and the United States Attorneys' offices. This litigation includes all suits and claims by and against the Government arising out of the activities of its departments, agencies, instrumentalities, officers and employees excepting, principally, tax and antitrust suits and legal proceedings concerning the acquisition of property by the United States.

Litigation conducted or directed by the Civil Division is carried on in nearly all of the courts in the country, both federal and state, and in many foreign countries. The volume of cases handled by the Division is extremely large, amounting to a total of 20,833 cases during fiscal year 1966. This workload was comprised of 10,989 pending cases brought forward from fiscal 1965 and 9,844 new cases which developed during the year. In fiscal 1966 the Division concluded 7,776 cases bringing the closing inventory to 13,057 cases. Of those concluded, 4,470 were suits against the United States, in which recoveries were limited to \$19,662,000 or 3.6% of the \$538,000,000 originally claimed. In the remaining 3,306 cases concluded where the Government was the claimant, \$49,500,000, or over 54% of the \$91,000,000 was recovered.

Actual collection of money by the Civil Division amounted to an all time high of \$90,000,000, a substantial increase over the \$78,000,000 collected in fiscal 1965 and \$42,800,000 in fiscal 1964. This large increase was due in part to the operation of a Collection Unit in the General Claims Section for supervising the collection of all Civil Division judgments, now in its third year of operation. The inventory of 13,057 cases at the close of fiscal year 1966 involved claims totaling approximately \$1,747,000,000.

The significance of the Division's work transcends both the volume of cases involved and the amount of money brought into issue, for the Division each year defends a wide variety of suits brought to challenge the constitutional validity of acts of Congress and to allege the unconstitutionality or statutory impermissibility of various administrative actions. Moreover, the Division has responsibility for suits on behalf of the Government to enforce the

orders of administrative agencies and for suits involving mandamus and injunction against Government officials. It is also among the Division's duties to bring suits under the Taft-Hartley Act to enjoin strikes which threaten the national health and safety, and to bring enforcement proceedings under the Labor-Management Reporting and Disclosure Act of 1959. The importance of these areas of responsibility is manifest.

The work of the Civil Division is conducted by its 195 lawyers who are assigned to the Division's nine sections. These sections are: (1) Admiralty and Shipping, (2) Appellate, (3) Court of Claims, (4) Customs, (5) Frauds, (6) General Claims, (7) General Litigation, (8) Patent, and (9) Torts. A brief description of the functions of these sections and a summary of a few of the more important cases concluded by each during the past year are given below.

Trading with the Enemy Act and under Section 207 of the International Claims Settlement Act; claims for the payment of debts owed by the prevesting owners of vested property filed under Section 34 of the Trading with the Enemy Act and under Section 208 of the International Claims Settlement Act. The Office also represented the Attorney General's interest in alien property litigation in the federal district courts and in estate and trust litigation in state courts of first instance. A Comptroller's Unit performed the Office's accounting, including the closing of accounts pursuant to the task of liquidating the Office. Of the 62,000 alien accounts established during the 23-year history of the Office only 380 remain to be closed at the end of this fiscal year. The Office's Property Liquidation Unit performed the actual work of liquidating all forms of property vested by the Attorney General under the Trading with the Enemy Act.

During fiscal 1966 substantial progress was made in terminating the remaining functions of the Office. Thus a total of 110 debt and title claims were closed. Included among the remaining 42 title and 10 debt claims were 43 claims which could not be processed because of pending litigation. Of the 51 cases pending in state and federal courts, 21 were closed leaving a balance of 29 cases for disposition. The Office also obtained final distribution of vested interests in 74 of the 112 estates and trusts which were open on its records during the fiscal year; liquidated 3 of the remaining 8 business enterprises and disposed of 103 of the 121 blocks of securities carried on its records.

Included among the assets held by the Office of Alien Property was a valuable collection of oriental art consisting of 44 pieces of jade, stone, and bronze objects which had been vested in 1951. S. 2266 which would authorize the transfer of these objects of art to the Smithsonian Institution was passed shortly after the close of the fiscal year. Pub. L. 89-503 (July 18, 1966).

In addition, the responsibility for the administration of Foreign Funds Control Regulations issued under Section 5(b) of the Trading with the Enemy Act and Executive Order 8389 of April 10, 1940, as amended, was transferred back to the Secretary of the Treasury on May 13, 1966 by Executive Order 11281. This responsibility which originally had been administered by the Secretary of the Treasury had been transferred to the Office of Alien Property on October 1, 1948.

OFFICE OF ALIEN PROPERTY

The Office of Alien Property ceased to exist as an organizational entity within the Civil Division on June 30, 1966. The Office has been responsible for conducting litigation arising out of World War II vesting of alien property, and has discharged all responsibilities involved in the administration and liquidation of vested assets. In its final years, the Assistant Attorney General of the Civil Division has served as Director of the Office. Its staff of 7 attorneys and other professional and non-professional employees was supervised by its Deputy Director. The few functions which remained at the close of fiscal 1966 will be performed by the part time services of Civil Division personnel.

The Claims Unit of the Office processed title claims for the return of vested property filed under Sections 9(a) and 32 of the

Among the significant cases involving the Office during this year have been the following:

Von Clemm, et al. v. Kennedy (S.D. N.Y.). This proceeding was brought under Section 9(a) of the Trading with the Enemy Act. Plaintiffs are an American citizen and a partnership engaged in importing transactions, principally importing diamonds and semi-precious and synthetic stones from Europe. Plaintiffs were suing under the Trading with the Enemy Act for approximately 1 1/2 million dollars realized by the Government from the seized property. In 1942, the plaintiff von Clemm was convicted of conspiracy to violate the Presidential freeze order relating to Belgium and the Netherlands. The principal question in the case was whether von Clemm's activities were such as to classify him as an enemy within the meaning of Section 2 of the Trading with the Enemy Act and therefore ineligible to sue under Section 9(a) of the Act. Various individuals intervened as parties defendant under the principle established in *Kaufman v. Societe Internationale*, 343 U.S. 156. After a trial in 1964, the District Court sustained the Government's position by finding that von Clemm had failed to meet the burden of establishing that he was not an enemy and thus concluded that he was ineligible to sue under Section 9(a). This decision was affirmed by the Court of Appeals for the Second Circuit.

Aterforsäkringsaktiebolaget "Atlas" (Claim No. 4036); *Sjö och Brandforsäkringsaktiebolaget "Svenska Veritas"* (Claim No. 4037). These claimants seek the return of approximately \$465,000 representing the proceeds received by this Office from the sale of certain shares of stock issued by the Pilot Reinsurance Company of New York and registered in the names of the claimants prior to vesting. Claimants are both Swedish insurance companies. In 1939 the claimants and the Muenchener Rueckversicherungs-Gesellschaft, a German insurance company, entered into individual "Deposit and Purchase" agreements under the terms of which Munich transferred its shares of Pilot to claimants purportedly in order to provide security for certain of Munich's unfulfilled obligations to transfer premium payments and damage reserves to the claimant companies. The said "Deposit and Purchase" agreements provided *inter alia* that Munich should have the option to repurchase the Pilot shares within a period of 5 years at a stated price. The Claims Unit contended that the parties did not intend

a *bona fide* sale but that, on the contrary, Munich, Atlas and Veritas were engaged in a conspiracy to cloak Munich's ownership of Pilot and thus avoid possible seizure in the event of war between Germany and the United States. The claimants have denied the Claims Unit contention. These complicated claims were pending for disposition in the Office at the close of the fiscal year.

Honda, et al. v. Katzenbach; Okamoto, et al. v. Katzenbach; and Kondo, et. v. Katzenbach (D.C.). These class actions were commenced by several thousand holders of yen certificates of deposit for the purpose of obtaining payments totaling approximately \$20,000,000 on their certificates from available funds of the Yokohama Specie Bank which total about \$10,000,000 and which were vested under the Trading with the Enemy Act. The claims of nearly all of these plaintiffs were dismissed on the ground of abandonment when they failed to submit the original certificates of deposit upon which their claims were based, as they had been requested to do by the Office of Alien Property. None of the plaintiffs had timely filed complaints for review in accordance with the requirements of Section 34(f) of the Act and, therefore, they were not included in the compromise settlement of *Abe, et al. v. Kennedy* (D.C. D.C.) involving similar claims.

This litigation was opposed by the Office of Alien Property on jurisdictional grounds under Section 34(f) of the Act, which imposed an absolute bar on the litigation of these claims at this late date. Plaintiffs contended, however, that the Government is estopped from asserting Section 34(f) as a bar since the dismissal of their claims because of their failure to submit their certificates of deposit was unreasonable. The position of the Government was sustained by the District Court by entry of an order on March 31, 1965 dismissing the complaint on jurisdictional grounds. The Court of Appeals for the District of Columbia affirmed on January 13, 1966. 356 F.2d 351 (C.A.D.C.). Plaintiffs' petition for a writ of certiorari was filed on May 23, 1966.

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U.S. Dept. of Justice.

**ANNUAL REPORT OF THE
ATTORNEY GENERAL OF
THE UNITED STATES**

FOR THE FISCAL YEAR ENDED JUNE 30

1967



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REPORT OF ASSISTANT ATTORNEY GENERAL
IN CHARGE OF THE CIVIL DIVISION
EDWIN L. WEISL, JR.

GENERAL

The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other Divisions of the Department. It is thus responsible for the general litigation of the Government, both by and against the United States or against Cabinet members and other federal executives in their official capacities. The cases arise out of both the commercial and purely governmental business of all federal departments, agencies and instrumentalities, and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all federal courts, as well as in State courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 200 attorneys, and by the United States Attorneys and their staffs under the Division's direction and supervision.

Excluding a huge volume of customs cases, and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 21,341 cases during fiscal year 1967. This workload was comprised of 13,057 cases which were still in various stages of litigation at the end of fiscal 1966, plus 8,284 new cases which developed during the year. The Division terminated 8,580 cases in fiscal 1967, thus leaving 12,761 cases pending at the end of the year. Of those concluded, 4,369 were suits against the United States in which a total of \$652,427,609 was sought. Recoveries were held to \$32,572,382, or 5% of the aggregate claim. The Government was plaintiff in the other 4,211 cases, claiming a total of \$136,614,338. Judgments and settlements in these cases amounted to \$84,880,255, or a recovery of 62%.

Collections by the Civil Division amounted to an all time high of \$133,074,322, as compared with \$90 million in fiscal 1966 and \$78 million in fiscal 1965. These collection figures include some payments received during the year under the terms of compromise agreements reached in prior years, and also a figure representing the value of any property obtained by the Government in connection with fiscal 1967 litigation. The annual amount collected out of litigation on behalf of the Government has, in fact, increased substantially each year since fiscal 1961. This is attributable in part to

greater emphasis generally, and particularly to the efforts of a United States Solicitor General, the writing of briefs on the merits in some of the established in the General Claims Section to specialize in procedure cases, and the preparation of briefs in opposition or petitions for certiorari in all other cases. In the United States courts of appeals for collecting on judgments, and to instruct and advise on procedure and the appellate courts of the United States, this responsibility judgment measures which will help to insure maximum collection.

The 12,761 cases pending at the close of fiscal year 1967 involve briefing and arguing a majority of the cases, including aggregate claims of \$1,977,446,180. These cases and dollar statistics involve most of the appeals which present issues of special importance to do not, however, provide an adequate indication of the significance of the Government and those in which the appeals are on behalf of the of the Division's work. Comparatively small claims frequently present United States from adverse decisions in the lower courts; the assignment of selected cases to attorneys in other sections of the Division; assignment of all other appellate cases to the United States a large percentage of the Division's most important cases do not. Attorneys for handling under Section supervision, and the preparation seek the recovery of money. In the course of a year, Civil Division of memoranda to the Solicitor General recommending for or attorneys defend a wide variety of suits attacking the constitutionality of acts of Congress, or challenging the constitutionality of States.

statutory authority of administrative actions; defend any other. In fiscal year 1967, the Section's 21 attorneys worked on 173 injunction suits or mandamus actions against department heads in the Supreme Court. The Court disposed of 136 of these and other federal officials; conduct court actions to enforce administrative cases during the year, of which 125 were favorable to the Government. In the U.S. circuit courts of appeals, Appellate Section attorneys and the United States Attorneys or their Assistants handled to enforce the provisions of the Labor-Management Reporting and Disclosure Act of 1959, and various other civil enforcement proceedings including suits under the emergency provisions of the Taft-Hartley Act to enjoin strikes and lock-outs which threaten national health and safety.

The Assistant Attorney General directs the handling of this litigation by the staff of 200 Division attorneys and its supervision. The Appellate Section argued 340 of the 476 appeals decided; winning 280 or 81% of the handling of cases assigned to the 93 United States Attorneys of them. The Section also prepared 849 memoranda for the Solicitor offices, through nine separate areas of litigation, or sections, with the General on 849 Division cases decided against the Government during which the most practicable degree of further specialization is practiced. These memoranda analyze the decisions and conclude with recommendations for or against appeal and certiorari.

are the following: (1) Appellate, (2) Admiralty and Shipping, (3) Court of Claims, (4) Customs, (5) Frauds, (6) General Claims, (7) General Litigation, (8) Patent, and (9) Torts. A brief description of the functions of these sections and a summary of a few of the more important cases concluded by each section during the past year are given below.

APPELLATE SECTION

The Appellate Section has responsibility for all appellate cases and matters developing out of Civil Division litigation in lower courts. In the Supreme Court of the United States, this includes the briefing and argument of Division cases by assignment from the

On July 1, 1967, there were 546 appellate cases pending. Both the number of appeals and the year end inventory of such cases have gone up at a much faster rate than the annual increase in the Government's general litigation. Although the Section terminated a total of 1,485 cases during the year, there remained a closing inventory of 546 cases—as compared with 298 cases which remained pending at the end of fiscal 1962. Summaries of decisions rendered during fiscal year 1967 in some cases handled by the Appellate Section appear below.

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ALIEN PROPERTY MATTERS

The Office of Alien Property ceased to exist as an organizational entity within the Civil Division at the end of fiscal year 1966. The Office conducted all litigation arising out of World War II vesting of alien property and discharged all responsibilities involved in the administration and liquidation of vested assets. Since fiscal 1966, its residual functions have been performed by using part-time services of Civil Division personnel under the direction of the Assistant Attorney General for the Civil Division. Beginning in 1963, the Assistant Attorney General has also served as Director of the Office of Alien Property.

Alien property cases and matters remaining at the end of fiscal 1967 consisted of 40 title claims which were filed for the return of vested property under Sections 9(a) and 32 of the Trading with the Enemy Act; nine claims for the payment of debts owed by the pre-vesting owners of vested property which were filed under Section 34 of that Act; seven cases involving the Attorney General's interest in alien property which were still in litigation in federal courts; one major case, *J. Robert Bonnar, et al. v. United States*, now pending in the Court of Claims; nine cases pending in state courts which involve the Attorney General's interest in estates and trust proceedings where the collection of vested assets has not yet been effected, and an estimated 6,400 claims established by the decision of the Supreme Court in *Hondo v. Clark*, 386 U.S. 484, which was rendered on April 10, 1967. In addition, the May 29, 1967 decision of the Supreme Court in *Afroyim v. Rusk*, may require the re-opening of approximately 50 dismissed claims for the recovery of vested property filed by claimants who lost their U.S. citizenship under Section 401(e) of the Nationality Act of 1940 by voting in foreign elections during and after World War II. Five businesses remain to be liquidated. Of these, two must await the settlement, or disposition by administrative hearing, of 35 title claims and eight debt claims which had to be held in abeyance until the recent decision in *von Clemm, et al. v. Kennedy* was rendered. Other un-

liquidated assets include 16 stock and bond holdings, and one copyright interest.

In all, the Civil Division had 190 alien accounts as of June 30, 1967. A total of slightly more than 62,000 alien property accounts were established during the past 23 years.

The *Honda* decision, reported briefly above with other significant decisions in Appellate Section cases, and the disposition of three very valuable paintings represent the most noteworthy alien property litigation and business concluded during the year.

The paintings, a Rembrandt, a Terborch and a Tischbein were vested in 1947. Pursuant to Public Law 89-619, approved October 4, 1966, these paintings were transferred on March 1, 1967 to the Federal Republic of Germany where they are held in trust for eventual transfer to East Germany's Weimar Museum in accordance with the terms of an agreement between the United States and the Federal Republic of Germany.

Honda, et al. v. Katzenbach; Okamoto, et al. v. Katzenbach; and Kondo, et al. v. Katzenbach, 356 F. 2d 351 (C.A. D.C.); 386 U.S. 484. These class actions were commenced by several thousand holders of yen certificates of deposit for the purpose of obtaining payments in the aggregate amount of \$20 million on their certificates from available funds of the Yokohama Specie Bank totaling about \$12 million which were vested under the Trading with the Enemy Act. The claims of nearly all of these plaintiffs were dismissed on the ground of abandonment when they failed to submit the original certificates of deposit upon which their claims were based, as they had been requested to do by the Office of Alien Property. None of the plaintiffs had timely filed complaints for review in accordance with the requirements of Section 34(f) of the Act, and were therefore not parties to the compromise settlement of *Abe, et al. v. Kennedy* (D.C. D.C.) involving similar claims. This litigation was opposed on jurisdictional grounds under Section 34(f) of the Act, which imposes an absolute bar on the litigation of these claims. Plaintiffs contended, however, that the Government is estopped from asserting Section 34(f) as a time bar because the dismissal of their claims upon failure to submit their certificates of deposit was unreasonable.

The position of the Government was sustained by the District Court, and an order dismissing the complaint on jurisdictional grounds was entered on March 31, 1965. The Court of Appeals for the District of Columbia affirmed on January 13, 1966.

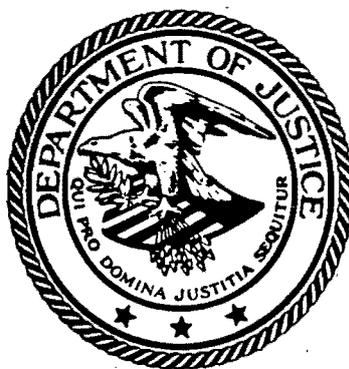
The Supreme Court, however, analogized the debt claims legislation to proceedings in bankruptcy, and pointed out that one who files a late claim in a bankruptcy proceeding is not absolutely barred from all recovery, but may share in any assets remaining after the timely creditors have been paid. Stating that the congressional purpose in allowing debt claim suits would be best served by giving a similar treatment to the limitations provision of Section 34, the Court held that the limitations period was "tolled" pending disposition of the prior and timely *Abe-Aratani* action brought by persons with similar debt claims, and that plaintiffs were entitled to have their own debt claims satisfied out of any vested assets remaining after disposition of the timely suit. In reaching this result, the Court stressed that the Government was a mere stakeholder of money which would otherwise go to the War Claims Fund under the provisions of Section 39 of the Act for distribution to other claimants, and that the usual rules regarding the "jurisdictional" nature of statutes of limitation were inapplicable.

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FISCAL YEAR 1968

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Note: In Tables I, II, V, VI and XVII, criminal case statistics, were furnished by the Administrative Office of the U. S. Courts.

United States in over 400,000 cases before the Customs Court, of which a record 43,000 were terminated.

The wide variety of general civil litigation cases is indicated by the titles of the Civil Division's eight sections: Frauds, Patents, Torts, Admiralty, Customs, Court of Claims, General Claims, and General Litigation.



The Civil Division, headed by Assistant General EDWIN L. WEISL, JR., handles the heaviest case load within the Department.

General Civil Litigation

The Civil Division and the 93 United States Attorneys working under its guidance handle all civil litigation to which the United States is a party that has not been specifically delegated to other elements of the Department or, under a few statutes, to other Federal agencies. Thus they are, taken as a group, the Department's general practitioners. In 1968, they defended over 4,000 suits against the United States involving claims totalling over \$480 million and held adverse judgments to less than \$40 million. They brought 3,884 actions on behalf of the United States and recovered nearly \$70 million. The Civil Division also represented the

In some areas, Civil Division attorneys handle virtually all of the cases within its general jurisdiction. For example, importers' suits to recover allegedly overpaid customs duties, brought in the United States Customs Court, are defended by the 14 attorneys in the Civil Division's Customs Section located in New York City. At present there is a backlog of over 400,000 cases in the Customs Court. However, in 1968 the Court rendered decisions in 286 test cases that will clear the way for a sub-

stantial number of dispositions, sustaining the Government's position in 68 percent of them. In one test case, the Court upheld the Government's contention concerning the basis of valuing plywood imported from Japan. The decision, which was affirmed on appeal, will affect nearly 53,000 other cases which were suspended pending decision of the test case (1).

The Patent Section of the Justice Department, staffed by attorney-engineers and attorney-scientists with experience in a variety of scientific fields, defends patent infringement suits against the United States in the Court of Claims, handles infringement litigation by or against the Government in other Federal Courts, and represents the United States before the Board of Patent Interferences. In 1968, 325 patent cases were in litigation and 109 were decided. Twenty-five years ago most litigation in the patent field concerned mechanical inventions; today most cases involve electronic, chemical, computer, aeronautic, atomic energy, and space devices or processes.

In 1968 Civil Division attorneys in the Court of Claims Section represented the United States in over 1,000 Court of Claims cases involving total claims against the Government in excess of \$390 million. These claims arose out of construction, procurement, and other Government contracts, contract terminations, Government requisitions of private property, rate disputes arising out of the transportation of Government property, salary allowances and retirement pay claimed by civilian and military personnel, and general claims founded on statutes, administrative regulations, and special Acts of Congress. Of these, 290 suits were terminated with recoveries against the Government in the amount of \$15 million.

Attorneys in the Admiralty Section handle all maritime jurisdiction cases by and against the United States. In 1968 they dealt with over 2,700 such cases, obtaining favorable judgments or settlements in 878 of them. One significant decision established the responsibility of ship owners for injuries incurred on board by Government employees in the course of carrying out their duties (2). Another saved the Government from liability to pay for excess shipping costs due to delay caused by a carrier's negligence (3).

In other areas, the bulk of general civil litigation is handled by United States Attorneys under the general guidance of the Civil Division. For example, most tort claims against the United States are handled by United States Attorneys, in some instances with relatively close supervision by the Torts Section of the Civil Division. Others are handled by Division Attorneys. In 1968, nearly 3,000 cases and claims, totaling \$692 million, were in process. For example, one major commercial airline crash in Cincinnati resulted in a suit, which was ultimately defeated, based on the contention that a significant cause of the crash was the failure of Federal Aviation Administration Air Traffic personnel to transmit weather information to the aircraft (4). Another contended, again unsuccessfully, that injuries at a Cleveland urban renewal project were caused by carelessness and inadequate supervision by Government employees (5). Industrial accidents, sonic booms, medical malpractice and the alleged responsibility of the Government to protect threatened informers in criminal cases gave rise to other tort actions in which the Department represented the United States in 1968.

Fraud cases brought by the United States arise out of a wide variety of

For references numbered (1), (2), etc., see case citations under this section in GLOSSARY.

Government activities involving private parties and the Government, including Government procurement contracts and federally-aided programs. These cases are handled primarily by United States Attorneys with the guidance and assistance of the Civil Division Fraud Section. In 1968, 1,382 individual matters referred to the Justice Department were investigated and 162 cases were filed. Judgments and settlements totalling \$18 million were obtained in 250 cases brought in 1968 or earlier on behalf of Government agencies.

Most cases within the jurisdiction of the Civil Division's General Claims Section are handled by its attorneys; claims of \$15,000 or less are handled by United States Attorneys. At the end of 1968, there were over 4,000 cases pending in this category, totalling about \$483 million. During the year, the Department concluded 3,378 suits, recovering \$59 million for the Government through court judgments or negotiated settlements. These cases include suits arising out of Government contracts, mortgage foreclosure actions in Federally-financed housing projects, and other subsidy support and development programs.

Approximately 70 percent of the cases within the jurisdiction of the General Litigation Section of the Civil Division are brought against the United States under such Federal statutes as the Social Security Act, Agricultural Adjustment Act, Civil Service and Veterans Preference Act, the Tucker Act (as to district court jurisdiction) and special jurisdictional acts of Congress. Almost all of these cases are handled by the United States Attorneys under the guidance of the Section. The remaining 30 percent of these cases, handled by "General Lit" attorneys, are extraordinarily diversified as to subject matter

and type of legal action and constitute a major segment of the Division's most important litigation. They involve the defense of suits seeking injunctions or other relief against Federal officials or judicial review of administrative orders issued by Federal agencies; defense of suits demanding disclosure of information under the Freedom of Information Act; intervention in litigation challenging the constitutionality of acts of Congress; renegotiation litigation in Federal District Courts and the Tax Court; prosecution of suits under the emergency provisions of the Taft-Hartley Act to enjoin strikes and lock-outs affecting the national health or safety; prosecution of actions under the Labor Management Reporting and Disclosure Act of 1959, and actions generally which relate to the enforcement or protection of Federal rights and interests.

In 1968, Department of Justice attorneys were involved in 4,478 cases in this category and the defense of 275 injunction suits, including fifty suits for injunctive or declaratory relief relating to military service, the Selective Service System or the military reserve obligations of citizens.

In the Labor-Management Act enforcement area, "General Lit" Section attorneys successfully upheld the right and responsibility of the Secretary of Labor to declare a union election null and void and to direct a new election under the supervision of his department in order to protect the union members' right to fair and democratic procedures (6). In another case, the court accepted the Department's argument that the Secretary of Labor's role in protecting the public interest in democratic union elections would be ineffective if limited only to the protection of an individual

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member's right to run for a specific office (7).

In two cases challenging the extension of services on illegal competition grounds, the Courts upheld the right of national banks to provide data processing services to the public and supported the authority of the Comptroller of the Currency to permit national banks to render travel agency services.

In a sharply different case, but one illustrative of the broad range of its responsibilities, the Civil Division intervened in New Jersey litigation to establish the right of residents of military installations, located within the State, to State welfare type benefits.

During 1968, Civil Division attorneys and members of United States Attorneys' staffs were involved in nearly 1,000 appellate cases in the general civil litigation category, obtaining favorable dispositions in 77% of the 432 decisions rendered. They briefed and argued cases in the several Courts of Appeals and assisted the Office of the Solicitor General in the preparation of briefs or petitions for certiorari to the Supreme Court. Attorneys of the Civil Division were involved, under the authority of the Solicitor General, in 183 Supreme Court cases during 1968; 143 of the Court's 151 dispositions were favorable to the Government.

In general civil litigation cases handled by the Solicitor General, the Supreme Court during the year upheld the constitutionality of recent amendments to the Fair Labor Standards Act extending minimum wage and overtime provisions to cover state hospital and school employees; strengthened the right of the Secretary of Labor to intervene in union elections; permitted taxpayer suits to challenge Federal expenditures where they alleged violations of specific constitutional limitations on

the spending power; and upheld the exclusive jurisdiction of the President and the Congress to conduct the Nation's foreign affairs.

During 1968, other appellate courts affirmed the "plenary power and supervision" of the Attorney General over all litigation to which the United States or an agency thereof is a party; affirmed the right of the Federal Trade Commission to issue factual news releases concerning adjudicatory proceedings pending before it; protected the right of Federal officers to perform their duties without State interference, and exonerated the Government from liability for flood damage to property as part of a canal relocation project.

The Civil Division also exercises responsibility for litigation involving the United States in the courts of foreign countries. During 1968, 419 foreign cases in process involved claims against the United States totalling over \$17 million, while suits on behalf of the United States sought to recover more than \$40 million. This international litigation involved such diverse issues as the interpretation of the Peace Treaty with Austria following World War II, contract disputes in connection with military construction in Turkey, and the right to recover medical care claims under Belgian law.

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GENERAL CIVIL LITIGATION

The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other Divisions of the Department. It is thus responsible for the general litigation of the Government, both by and against the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both the commercial and purely governmental business of all Federal departments, agencies and instrumentalities, and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts, as well as in State courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 203 attorneys, and by the United States Attorneys and their staffs under the

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Division's direction and supervision.

Excluding a huge volume of customs cases, and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 24,842 cases during fiscal 1969. This workload was comprised of 13,602 cases which were still in various stages of litigation at the end of fiscal 1968, plus 11,240 new cases which developed during the year. The Division terminated 9,320 cases in fiscal 1969, thus leaving 15,522 cases pending at the end of the year. Of those concluded, 4,425 were suits against the United States in which a total of almost \$460 million was sought. Recoveries were held to under \$24 million, or 5.2 percent of the aggregate claim. The Government was plaintiff in the other 3,585 cases, claiming a total of over \$117 million. Judgments and settlements in these

cases amounted to over \$70 million, or a recovery of 60 percent.

The following list of the Division's nine sections gives some indication of the range of its cases: Frauds, Patents, Torts, Admiralty, Customs, Court of Claims, General Litigation, General Claims, and Appellate. In addition, the Division has a small Foreign Litigation Unit.

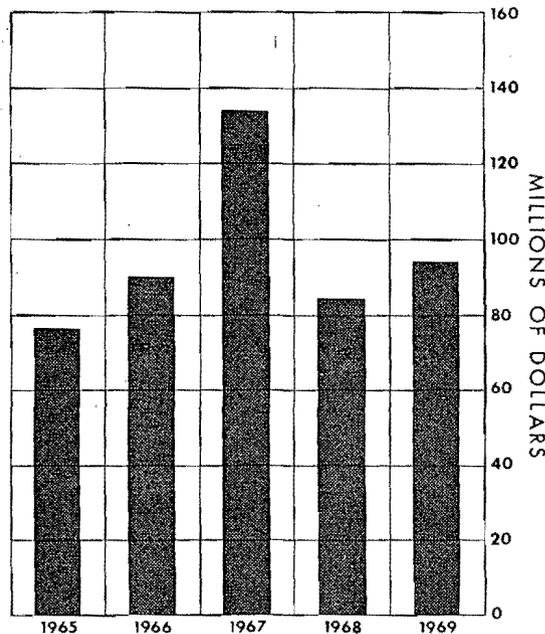
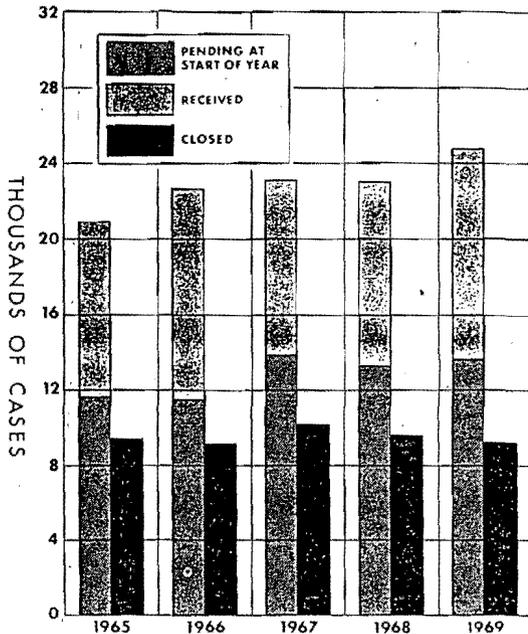
The Admiralty Section, with offices in Washington, New York, and San Francisco, handles all maritime jurisdiction cases by and against the United States. The Division's admiralty litigation has increased during the past few years because of the shipping operations and other maritime activity in support of the world-wide military and economic obligations of the United States. Its varied caseload, including suits ranging from ship collisions to the

CIVIL DIVISION

WORKLOAD DATA

COLLECTIONS

FISCAL YEARS 1965-1969





WILLIAM D. RUCKELSHAUS (right), Assistant Attorney General of the Civil Division, in conference with members of his staff in preparation for testifying before the

Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary on Customs legislation introduced by the Department.

minor mishaps of seamen, develops out of the Section's general responsibility for representing the interests of the United States as the world's largest shipowner. In 1969 the Section handled 3,092 such cases, terminating 1,028. Of the terminated cases, 273 involved claims on behalf of the Government with over \$5 million awarded to the United States.

The Court of Claims Section attorneys represented the United States in 1,045 Court of Claims cases involving total claims against the Government in excess of \$417 million. The Section's caseload consists predominately of suits based on construction, procurement and service contracts with the Government and the termination of such contracts; claims involving transportation of Government property and for just compensation under the Fifth

Amendment arising out of Federal requisition of private property; all claims for salary allowances and retirement pay claimed by civilian and military personnel, and general claims founded on statutes, administrative regulations, and special Acts of Congress. Of these, 243 suits, with a total amount claimed of \$40 million, were terminated with recoveries against the Government just under \$4 million, representing a 90 percent savings to the United States.

The Customs Section has received special attention during 1969 because of the very significant increase in its caseload which has risen from 186,000 at the end of fiscal 1963 to over 431,000 cases at the end of fiscal 1969. In order to relieve this situation, the Civil Division is presently putting in operation a computer-based information storage and retrieval system which will allow

prompt and complete access to the details of all of these hundreds of thousands of cases. The Division has also drafted legislation to revise outmoded provisions in the present customs law.

An often overlooked but extremely important function of the Civil Division is its collection activity. In 1969, the Civil Division collected \$94 million, which includes over \$41 million in cash and the balance in the value of property obtained. This figure represents an increase of \$10 million over the previous year.

The attorneys of the General Claims Section, with responsibility for approximately 3,500 cases aggregating over a quarter of a billion dollars, collected \$73 million of the above amount. The Section's caseload includes suits arising out of Government contracts, mortgage foreclosure actions in Federally-financed housing projects, bankruptcy, insolvency, corporate reorganization and arrangement proceedings. In 1969 General Claims attorneys recovered over \$600,000 in the first treble damage action for unlawful rebates under the Elkins Act.¹

Possible civil fraud action considered by the Division pervades the spectrum of Federal activities, including the negotiation and performance of procurement contracts, the granting of loans or other benefits by Government agencies, and the financial support or underwriting of projects in the national interest, such as housing, foreign aid and agriculture, and grants or other monetary assistance in the welfare, job training, education, and medical aid areas. Attorneys from the Frauds Section have been involved to a large extent during the year with claims against Government contractors for overpricing, particularly in connection with the manufacture of military hardware. Al-

leged gross improprieties in major "community action programs" have also increased. In 1969, the Frauds Section, with the assistance of the United States Attorneys, worked on a total of 681 cases, terminating 159 with two and a half million dollars being awarded to the United States. Collections for the year amount to nearly \$3 million.

The 6,380 cases handled by the General Litigation Section during the year were extraordinarily diversified as to subject matter and type of legal action and constitute a major segment of the Division's most important litigation. Typical of the suits which this Section defends are actions for injunctions, declaratory judgments or writs of mandamus to review decisions by heads of Government agencies. The attorneys are also involved in litigation challenging the constitutionality of acts of Congress. These actions include, among others, suits to review decisions by the Secretary of Health, Education and Welfare made pursuant to the Elementary and Secondary Education Act and Higher Education Facilities Act, suits against the Secretary of Agriculture to review rulings of the Food Stamp Program, and suits against the Secretaries of Defense, Army, Navy, and Air Force contesting Selective Service classification and induction into the military service.

In 1969, General Litigation attorneys were successful before a statutory three-judge court in upholding the constitutionality of the Anti-Pandering Act, 39 U.S.C. §4009, which provides for administrative and judicial enforcement to restrain mailers from sending pandering advertisements to objecting recipients.² At the direction of the President and pursuant to the Labor Management Relations Act of 1947, the United States enjoined the continuation

For references numbered (1), (2), etc., see case citations under this section in GLOSSARY.

of an industry-wide strike in the maritime industry.³

The Patent Section is responsible for the Government's patent, trademark and copyright litigation. This litigation involves the defense of patent infringement suits against the United States in the Court of Claims, representation of the Government in Board of Interferences and court proceedings to determine priority of invention, and patent infringement cases in Federal district courts. Although the Patent Section had only 225 cases pending at the end of fiscal 1969, the monetary importance to the Government is as great as any other general category of Federal litigation.

Many of the Section's pending cases involve the most recent technological advances in the electronic, chemical, aeronautic, space, atomic energy and computer fields. They reflect the full range of the Government's peace-time and military procurement and research. The Section attorneys are selected for their background in engineering, chemistry, or electronics.

Most of the 3,280 tort actions involving the United States in 1969 were handled directly by the 93 United States Attorneys, with overall supervision and support from the Torts Section of the Civil Division. These cases are brought pursuant to the Federal Tort Claims Act and involve substantial claims for personal injury, death and property damage allegedly caused by the negligence of civilian and military personnel in the course of performing their official duties. The Torts Section in Washington does handle almost exclusively the two most important type of cases in terms of potential liability—aviation accident cases and medical malpractice suits.

Litigation arising out of aviation accidents involving commercial airlines

and privately-owned aircraft continues to pose a substantial source of tort liability to the United States. With increasing frequency the Department of Justice is called upon to defend the conduct of air traffic control personnel employed by the Federal Aviation Administration which has areas of responsibility in the control, direction and guidance of commercial and private aircraft and for the dissemination of weather data pertinent to flight operations. In view of the ever increasing reliance of the general public upon the airplane as a mode of transportation and the increasing ownership and operation of private aircraft, it is to be anticipated that the United States' involvement in this area of tort litigation will continue to increase. At the present time the Department is a party defendant in 446 such actions.

During 1969, the Foreign Litigation Unit handled cases in 29 foreign countries drawing into issue the activities of almost every Government agency carrying on programs abroad. These suits involved such diverse issues as the suability of Government officers for acts performed in the course of official duties; the interpretation of treaties providing for the establishment and maintenance of American military bases abroad; and the right of the United States to sue in foreign courts to enforce loan agreements concluded with private parties as part of the Government's foreign aid programs. The Government collected \$4 million as part of a settlement of suits arising from the disposal of military housing which became surplus to the Government's needs upon the withdrawal of NATO forces from France.

In United States courts, the Foreign Litigation Unit handled a variety of

cases concerned with questions of international law and foreign law. In one such suit, the highest court of the State of New York, in a case of first impression, reversed two lower courts and accepted the Government's argument that a rule of public international law precludes the assessment by state and local governments of taxes on real property owned by foreign states and used for governmental purposes.

The Appellate Section, which has responsibility for all appellate cases and matters developing out of Civil Division litigation in lower courts, briefs, and argues cases in the United States Courts of Appeals and State Appellate Courts and assists the Solicitor General in the preparation of briefs or petitions for certiorari to the Supreme Court. In 1969, the Section worked on a total of 1,345 cases. Of these cases, they received favorable dispositions in 142 of the 148 Supreme Court decisions. The Section also won 433 or 84 percent of the 515 cases decided by the Courts of Appeals.

In cases in which briefs were prepared by the Section to the Supreme Court, the Court accepted the Government's position that the Court of Claims has no power to render a declaratory judgment against the United States, but is limited to cases involving "actual, presently due money damages."⁴ The Court also decided two significant cases involving Section 10(b)(3) of the Selective Service Act, which precludes a registrant from challenging in court his classification or processing by his draft board before induction.⁵

At the Court of Appeals level, the Section briefed and argued a number of important cases. The District of Columbia Circuit upheld the validity of a regulation, issued under the National Traffic and Motor Vehicle Safety Act, requiring head restraints on passenger

cars.⁶ In another suit challenging the constitutionality of the Civil Disorders and Riot Act, 18 U.S.C. 231, the Seventh Circuit held that the defendants, in prosecutions thereunder arising from the disorders in the 1968 Democratic National Convention, had presented no substantial constitutional question.⁷ The Sixth Circuit held that a Government employee, driving in the course of his employment, was immunized from personal liability under the Federal Drivers' Act, 28 U.S.C. 2679, even where the plaintiff is a co-employee who has no tort remedy against the United States.⁸

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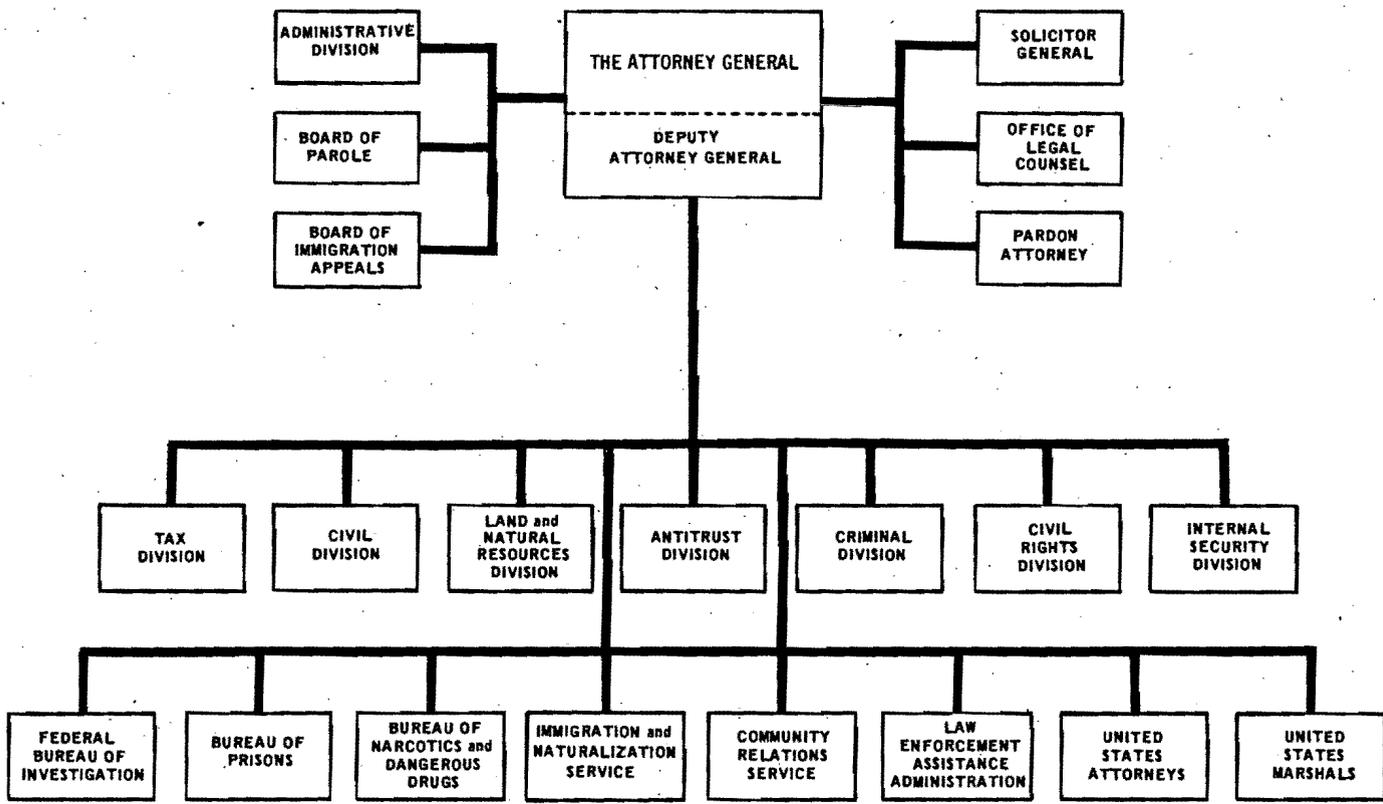
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CIVIL DIVISION

William D. Ruckelshaus
Assistant Attorney General

The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other divisions of the Department. It is thus responsible for the general litigation of the Government, in cases both by and against the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both the commercial and purely governmental business of all Federal departments, agencies, and instrumentalities, and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts, as well as in State courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 203 attorneys, and by U.S. attorneys and their staffs under the Division's direction and supervision.

Excluding a huge volume of customs cases, and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 27,707 cases during fiscal 1970. This workload was comprised of 14,860 cases which were still in various stages of litigation at the end of fiscal 1969, plus 12,847 new cases which developed during the year. The Division terminated 8,350 cases in fiscal 1969,

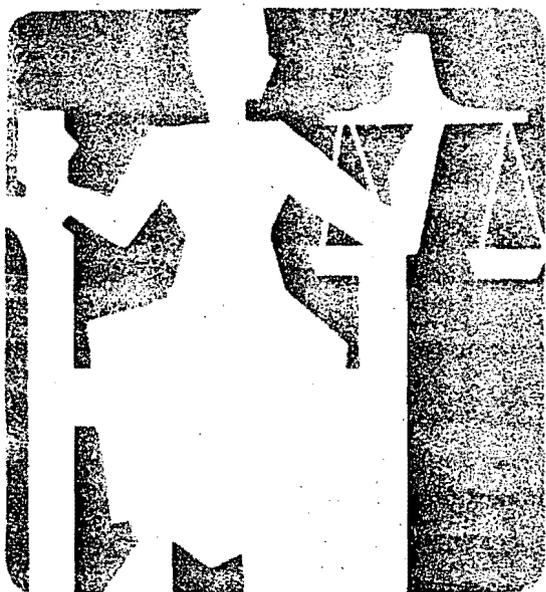
thus leaving 19,357 cases pending at the end of the year. Of those concluded, 4,717 were suits against the United States in which a total of \$472,669,086 was sought. Recoveries were held to \$20,959,303 or 4.5 percent of the aggregate claim. The Government was plaintiff in the other 3,633 cases, claiming a total of \$118,044,927. Judgments and settlements in these cases amounted to \$67,289,213, or a recovery of 57 percent.

These case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may have lasting, far-reaching effects on Government operations. Moreover, a large percentage of the Division's most important cases do not seek the recovery of money, but attack the constitutional validity of acts of Congress or challenge the constitutionality or statutory authority of administrative actions.

The following list of the Division's nine sections gives some indication of the range of its cases: Admiralty, Court of Claims, Customs, Frauds, General Claims, General Litigation, Patent, Torts, and Appellate. In addition, the Division has a Foreign Litigation Unit. Following is a brief description of the functions of these groups and a summary of their more important cases in fiscal 1970.

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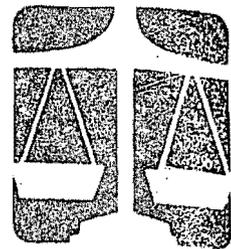
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civil division

L. Patrick Gray, III/Assistant Attorney General



The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other divisions of the Department. It is thus responsible for the general litigation of the Government, in cases both initiated by or brought against the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both the commercial and purely governmental business of all Federal departments, agencies, and instrumentalities, and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts, as well as in State courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 196 attorneys, and by the U.S. Attorneys and their staffs, under the Division's direction and supervision.

Excluding a huge volume of customs cases, and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 30,966 cases during fiscal 1971. This workload was comprised of 19,357 cases which were still in various stages of litigation at the end of fiscal 1970, plus 11,609 new cases which developed during the year. The Division terminated 9,555 cases in fiscal 1971, thus leaving 21,411 cases pending at the end of the year. Of those cases concluded, 5,720 were suits against the United States in which the plaintiffs sought a total of \$765,679,245. Recoveries were held to \$181,131,742 or 23.65 percent of the aggregate claims. The Government was plaintiff in the other 3,835 cases, claiming a total of \$158,671,900. Judgments and settlements in these cases amounted to \$105,600,327, or a recovery of 66.55 percent.

These case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may have lasting and far-reaching effects on Government operations. Moreover, a large percentage of the most important cases do not involve a money judgment, but involve attacks upon the constitutional validity of acts of Congress, or challenge the constitutionality or statutory authority of administrative actions.

The Division is composed of nine sections: Admiralty, Court of Claims, Customs, Frauds, General Claims, General Litigation, Patent, Torts, and Appellate. In addition, the Division has a Foreign Litigation Unit. The following brief description of the functions of these subdivisions and the summary of their more important cases during fiscal 1971 gives some indication of the diversity of litigation within the Civil Division.

ADMIRALTY AND SHIPPING SECTION

The Admiralty Section, with offices in Washington, New York, and San Francisco, handles all maritime jurisdiction cases by and against the United States. The Division's admiralty litigation has increased in the last few years because of expanded shipping operations and other maritime activity in support of the worldwide U.S. military and economic obligations. In addition, water pollution cases involving oil spillage from tankers are increasing.

The Section's varied caseload, including suits ranging from ship collisions to minor mishaps of seamen, derives from the Nation's position as the world's largest shipowner. In 1971 the Section handled 2,891 such cases, terminating 1,039. Of the terminated cases, 351 involved claims on behalf of the Government, with \$1,980,080 awarded to the United States.

One of the more important claims against the Government was resolved in *Petition of United States, as Owner of the USS. YANCEY*, E.D. Va., Civil No. 495-70-N. On the early morning of January 21, 1970, the USS. YANCEY, Navy amphibious attack cargo ship, began dragging anchor and drifted until she crashed into the Chesapeake Bay Bridge Tunnel, near Norfolk, Va. The resulting damage was extensive, involving the collapse of several spans of the bridge structure.

As the prospective damage exceeded the Navy's maximum administrative claims settlement authority of \$1 million (10 U.S.C. 7622), the Department of Jus-

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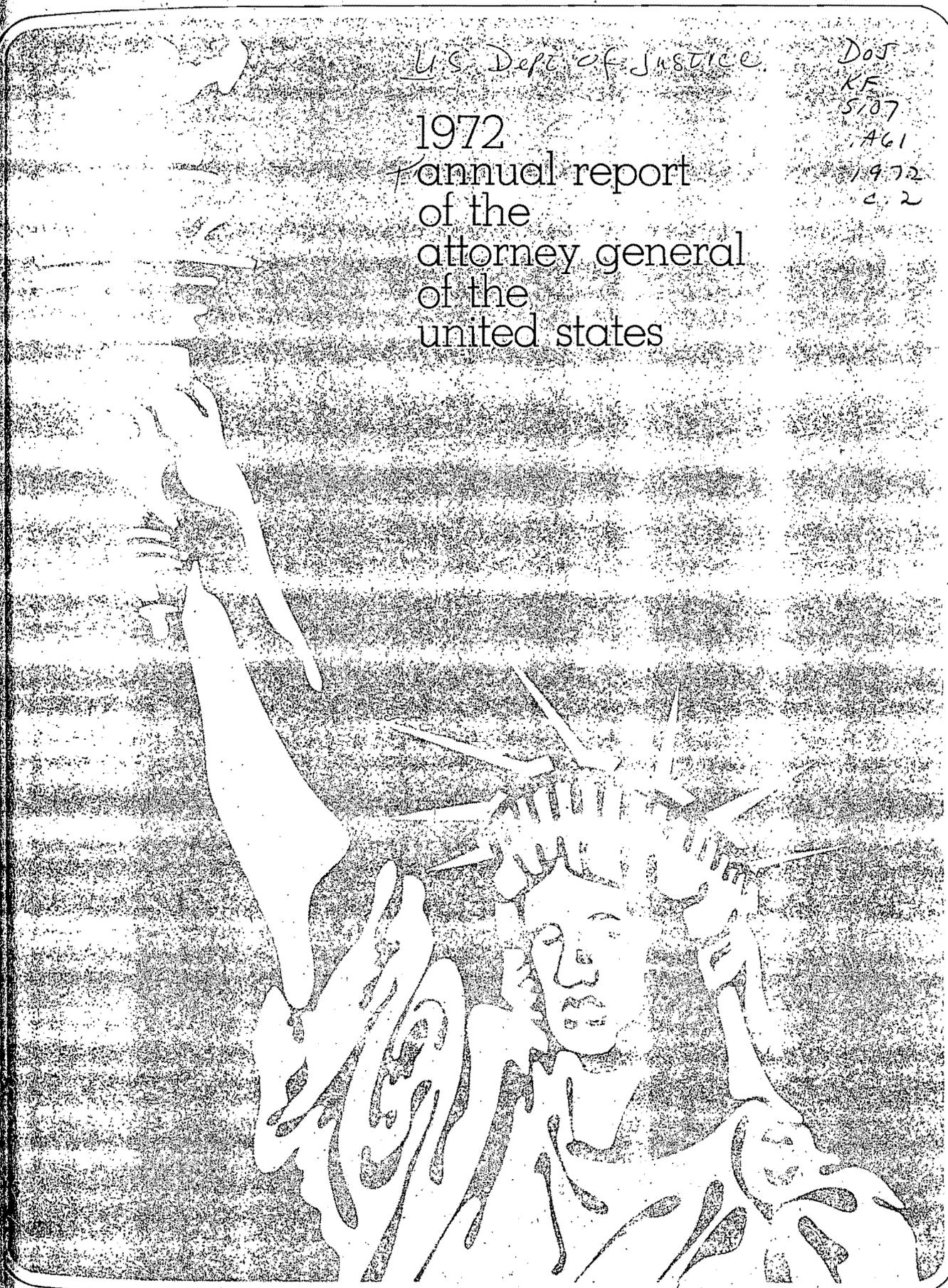
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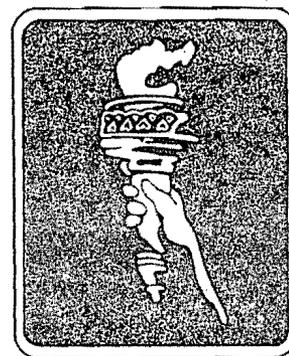


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Civil Division

Harlington Wood, Jr.
Assistant Attorney General



The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other divisions of the Department. It is thus responsible for the general litigation of the Government, in cases both initiated by, or brought against, the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both the commercial and purely governmental business of all Federal departments, agencies, and instrumentalities, and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts, as well as in State courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 202 attorneys, and by the U.S. Attorneys and their staffs, under the Division's direction and supervision.

Excluding a huge volume of customs cases, and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 35,280 cases during fiscal year 1972. This workload was comprised of 21,411 cases which were still in various stages of litigation at the end of fiscal year 1971, plus 13,869 new cases which developed during the year. The Division terminated 10,636 cases in fiscal year 1972, thus leaving 24,644 cases pending at the end of the year.

A portion of these terminations were suits against the United States in which the plaintiffs sought a total of \$1,756,133,764. Recoveries were held to \$49,081,408 or 2.79 percent of the aggregate claims. The Government was plaintiff in a number of other cases, claiming a total of \$161,727,655. Judgments and settlements in these cases amounted to \$93,364,883, or a Government recovery rate of 57.72 percent.

These case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may have lasting and far-reaching effects on government operations. Moreover, a large percentage of the most important cases do not involve a money judgment, but involve attacks upon the constitutional validity of acts of

Congress, or challenge the constitutionality or statutory authority of administrative actions.

The Division is composed of ten sections: Admiralty, Appellate, Court of Claims, Customs, Economic Stabilization, Frauds, General Claims, General Litigation, Patents and Torts. The Division has a Foreign Litigation Unit and a Judgment and Collections Unit. In addition, the Assistant Attorney General has a Special Litigation Counsel and staff to work on important and unique cases. The following brief description of the functions of these subdivisions and the summary of their more important cases during fiscal year 1972 give some indication of the diversity of litigation within the Civil Division.

ADMIRALTY AND SHIPPING SECTION

The Admiralty Section, with offices in Washington, New York, and San Francisco, handles all maritime jurisdiction cases by and against the United States. This includes the defense and prosecution of all claims by or against the Government, its officers and agents, arising out of shipping and maritime matters including both contracts and torts. The contract claims arise out of contracts involving water transportation of cargoes or passengers, dredging, vessel mortgages, vessel repairs, wharfage, seamen's wages, and others. The tort claims result from accidents occurring or consummated upon navigable waters. The Section's varied caseload derives from the Nation's position as the world's largest shipowner. In addition, the Section handles all litigation in any way involving workmen's compensation, whether under Federal or State law.

In fiscal year 1972 the Section handled 2,466 such cases, terminating 862. Of the terminated cases, 274 involved claims on behalf of the Government, with \$5,682,765 awarded to the United States.

One of the Section's more important cases was in *Petition of Chinese Maritime Trust, as owner of the SIAN YUNG*, Civil No. 71-161 (S.D.N.Y., April 28, 1972). The SS *SIAN YUNG* sank in the Panama Canal on December 6, 1970, and remains an obstruc-

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ADDENDUM

Numerous organizational and personnel changes have taken place within the Department of Justice since the close of the 1973 fiscal year. Since the Attorney General's Annual Report must reflect the structure and activities on June 30, 1973, organizational charts and agency titles reflect the Department's structure as of that date.

The organization chart for the Department of Justice has undergone numerous changes. An updated chart has been included at the end of the Report which reflects the present structure. The names of heads of organizations are also listed on the chart.

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Civil Division

The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other divisions of the Department. It is thus responsible for the general litigation of the Government in cases both initiated by, or brought against, the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both commercial and purely governmental business of all Federal departments, agencies and instrumentalities and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts as well as in state courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 232 attorneys and by the U.S. attorneys and their staffs under the Division's direction and supervision.

Excluding a huge volume of customs cases and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 42,397 cases during the year. This workload was comprised of 25,725 cases which were still in various stages of litigation at the end of the 1972 year plus 16,672 new cases which developed during the year. The Division terminated 16,093 cases in 1973, leaving 26,304 cases pending.

A portion of these terminations were suits against the United States in which the plaintiffs sought a total of \$853.4 million. Recoveries were held to \$40.7 million or 4.7 percent of the aggregate claims. The Government was plaintiff in a number of other cases, claiming a total of \$236.3 million. Judgments and settlements in these cases amounted to \$172.4 million or a Government recovery rate of 72.9 percent.

These case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present

crucial questions of law and the decisions may have lasting and far-reaching effects on Government operations. Moreover, a large percentage of the most important cases do not involve a money judgment, but involve attacks upon the constitutional validity of acts of Congress, or challenge the constitutionality or statutory authority of administrative actions.

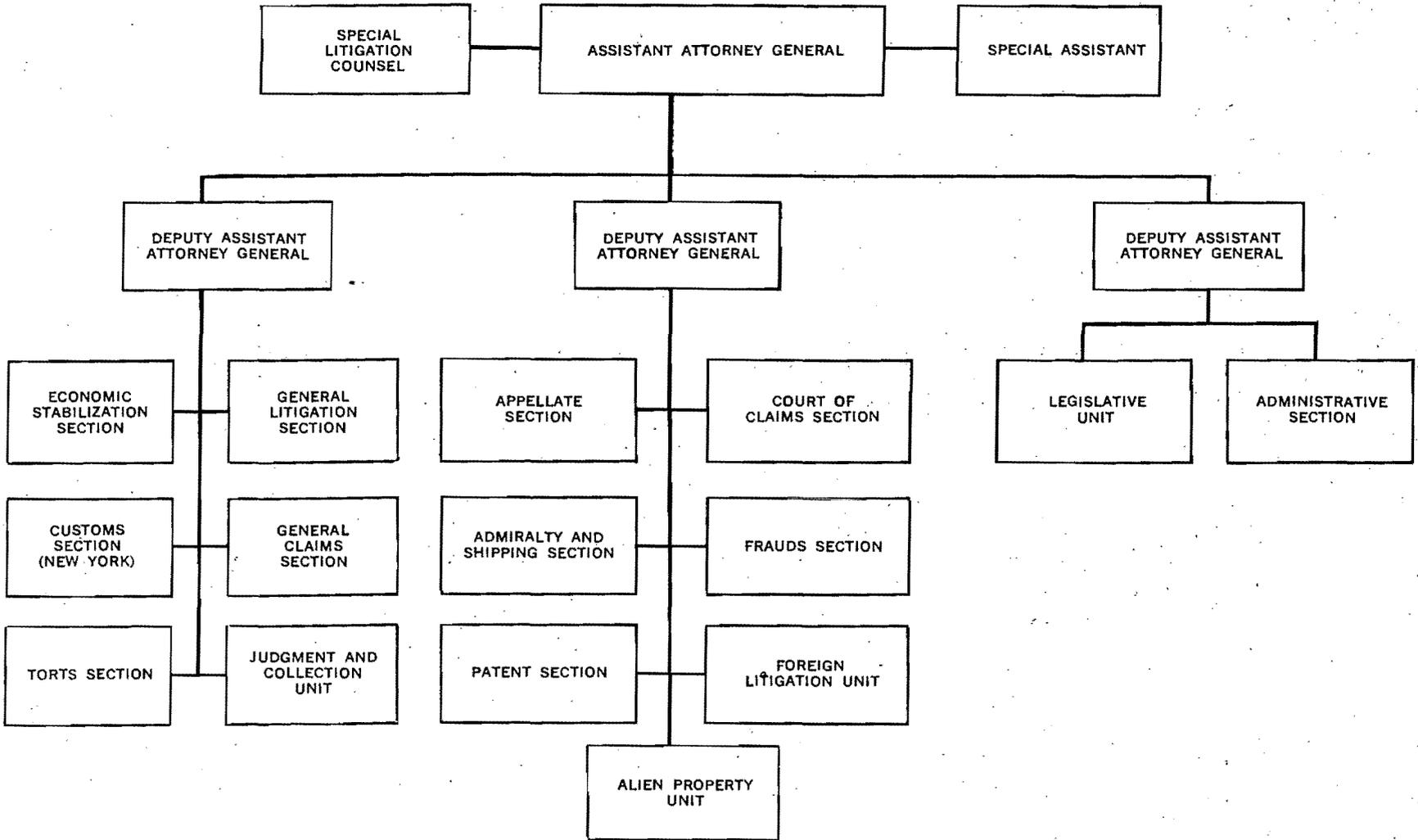
The Division is composed of ten sections, a Foreign Litigation Unit and a Judgment and Collections Unit. In addition, the Assistant Attorney General has a Special Litigation Counsel and staff to work on important and unique cases. The following brief description of the functions of these subdivisions and the summary of their more important cases during the year give some indication of the diversity of litigation within the Civil Division.

Admiralty and Shipping Section

The Admiralty Section, with offices in Washington, New York, and San Francisco, handles all maritime jurisdiction cases by and against the United States. This includes the defense and prosecution of all claims by or against the Government, its officers and agents, arising out of shipping and maritime matter including both contracts and torts. The contract claims arise out of contracts involving water transportation of cargoes or passengers, dredging, vessel mortgages, vessel repairs, wharfage, and seamen's wages. The tort claims result from accidents occurring or consummated upon navigable waters. The Section's varied caseload derives from the Nation's position as the world's largest shipowner. In addition, the Section handles all litigation involving workmen's compensation, whether under Federal or state law.

In 1973 the Section handled 2,138 such cases, terminating 766. Of the terminated cases, 219 involved

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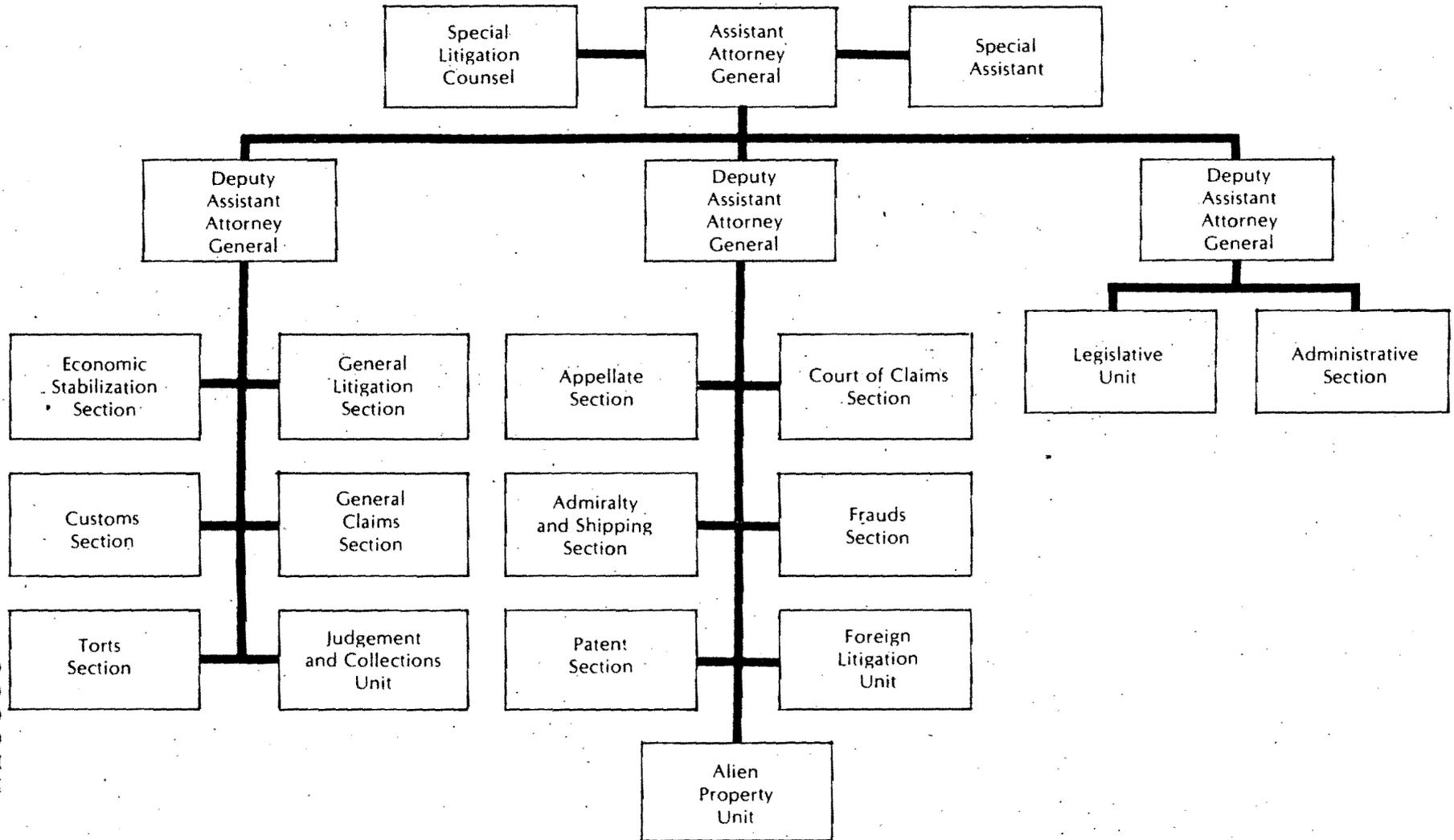
The Civil Division is responsible for the general litigation of the Government in cases both initiated by, or brought against the United States or against Cabinet members and other Federal officers in their official capacities. The cases arise out of both commercial and purely governmental business of all Federal departments, agencies and instrumentalities and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts as well as in state courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 232 attorneys and by the United States Attorneys and their staffs under the Division's direction and supervision.

Excluding a huge volume of customs cases and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 45,334 cases during the year. This workload was comprised of 26,304 cases which were still in various stages of litigation at the end of the 1973 year, plus 19,030 new cases which developed during the year. The Division terminated 15,775 cases in 1974, leaving 29,559 cases pending. Of those concluded, 45 percent were suits against the United States in which a total of over \$1.9 billion was sought. Recoveries were held to \$84.3 million or 4.3 percent of the aggregate claim. The Government was plaintiff in the other 55 percent of the cases terminated, claiming a total of \$221.2 million. Judgments and settlements in these cases amounted to \$127.3 million or a recovery of 47.5 percent. Collections by the Civil Division amounted to \$90.9 million in fiscal year 1974, which included \$49.3 million in cash and the balance in the value of property obtained. These collection figures

include some payments received during the year under the terms of compromise agreements reached in prior years as well as collections obtained by the Government in connection with fiscal year 1974 litigation. Case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may have lasting and far-reaching effects on Government operations. Moreover, a large percentage of the most important cases do not involve a money judgment, but involve attacks upon the constitutionality or statutory authority of administrative actions. Finally, among the most important points to be noted about the Civil Division is the incredibly broad range and diversity of its activities. While each of the other Divisions is organized about a unifying theme or coherent body of substance, the Civil Division is the repository for all functions not otherwise assigned and, as such, is vested with the responsibility for meeting the Government's legal needs in many, if not most, of its operations. In consequence, the Division encompasses a series of discrete and distinct legal specialities, ranging from admiralty to torts, customs to foreign litigation, which often have as little in common as one division does with another.

The full scope of the Division's operations is reflected in the varied sections and units that make up its organization. The Division is composed of ten sections, a Foreign Litigation Unit and a Judgment and Collections Unit. In addition, the Assistant Attorney General has a Special Litigation Counsel and staff to work on important and unique cases. The following brief descriptions of these subdivisions and the summary of their more im-

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U.S. DEPARTMENT OF JUSTICE

The Civil Division represents the interests of the United States in all types of cases except those within the specialized fields of the other divisions of the Department. It is responsible for the general litigation of the Government in cases both initiated by, or brought against, the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both commercial and governmental business of all Federal departments, agencies and instrumentalities and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal and state courts as well as the tribunals of foreign countries. In general, the litigation is conducted by the Division's staff of 252 attorneys and by the U.S. Attorneys and their staffs. However, complete responsibility for litigation has been delegated to the U.S. Attorneys for the handling of certain classes of cases.

Excluding a high volume of customs cases, the Division worked on a total of 43,844 cases during fiscal year 1976. This workload was comprised of 24,301 cases which were still in various stages of litigation at the end of fiscal year 1975, plus 19,543 new cases which developed during the year. The Division terminated 19,192 cases in fiscal year 1976, thus leaving 24,652 cases pending at the end of the year. Of those concluded, 54 percent were suits against the United States in which a total of over \$7 billion was sought. Recoveries were held to \$80 million or 1.1 percent of the aggregate claim. The Government was plaintiff in the other 46 percent of the cases terminated, claiming a total of \$321 million. Judgments and settlements in these cases amounted to \$157 million or a recovery of 49 percent.

These case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may, therefore, have lasting, far-reaching effects on Government

operations. Moreover, a large percentage of the Division's most important cases do not seek the recovery of money but attack the constitutionality of statutory authority of administrative actions. The Civil Division is constantly involved in the forefront of many of the important social, political and economic issues of the day which are fought out in the context of litigation. As such, a substantial portion of its efforts in terms of the utilization of personnel is devoted to the handling of difficult, novel, sensitive, and important litigation which demands close supervision and coordination at many levels of the federal bureaucracy. Much of this important litigation requires efforts on a scale proportionately greater than the numbers of cases involved might suggest.

The Division is composed of 11 sections, a Foreign Litigation Unit and a Judgment Enforcement Unit. In addition, the Assistant Attorney General has Special Litigation Counsel to work on important and unique cases. The following brief description of the functions of these subdivisions and the summary of some important cases during the year give an indication of the diversity of litigation within the Civil Division.

Admiralty & Shipping Section

The Admiralty & Shipping Section represents the interest of the United States in all litigation relating to ships, shipping, or navigable waters. The Section is also responsible for certain workmen's compensation matters. This activity includes the defense and prosecution of tort and contractual claims of a maritime nature as well as the enforcement of various navigation and maritime-related statutes. The Section's caseload ranges from massive marine disasters, ship collisions, and shipping company reorganizations to minor cargo damage and seamen's wage and injury

pose license fees on oil imports. The Supreme Court, in sustaining the government's position, ruled that the legislative authority of the President to limit imports in the interest of national security allowed the President to use such license fees as well as quotas, and that the legislation contained sufficient standards to be considered a proper delegation of legislative power to the Executive.

In a major decision involving implementation of the Social Security Act, the Supreme Court upheld the constitutional validity of the Department of Health, Education and Welfare's (HEW) procedures for terminating Social Security disability benefits. Under the procedure sustained by the Court, the claimant receives notice and a "paper" hearing prior to termination, but the oral evidentiary hearing follows termination of monthly benefits. In this major constitutional case, the Court distinguished the Social Security disability program from the welfare context where prior oral hearings had been required. This decision is of extraordinary importance to HEW and it has broad implications for procedural due process throughout HEW and other government agencies.

The Supreme Court also reversed a lower court decision and upheld (6 to 2) the Army's decision to bar Dr. Benjamin Spock from campaigning on Ft. Dix during the 1972 presidential campaign. The Court held that military bases are not "public forums" for First Amendment purposes even though civilians are generally permitted on most areas of the bases. Further, the Court held that the tradition of a politically neutral military establishment under civilian control justifies the total bar of political campaigning on military bases. Finally, the Court also upheld the military regulation which prohibited distribution of leaflets on military bases unless the leaflets have been submitted in advance to the Commander and found not to present a clear danger to the loyalty, discipline, or morale of the troops.

Courts of Appeals Cases:

The Appellate Section also handles a large volume of litigation in the U.S. Courts of Appeals. In one of the leading cases during fiscal year 1976, the Appellate Section obtained a reversal of a district court judgment which had invalidated regulations of the Secretary of Agriculture governing the amount of intramuscular fat (marbling) necessary for beef to qualify for highest retail grades ("prime", "choice", "good"). The Court of Appeals for the Eighth Circuit accepted the government's argument that the revised regula-

tions were legally promulgated and that the Secretary of Agriculture reasonably concluded that the regulations, which would have the effect of eliminating the processing and consumption of fat, were in the interest of the meat industry and the public.

In an important decision regarding the implementation of the Freedom of Information Act, the District of Columbia Circuit held that the government is entitled to a stay of judicial proceedings for the processing of Information Act requests when it can show that an agency is exercising due diligence in handling the high volume of requests received but cannot, despite a commitment of adequate personnel and resources, meet the 10-day deadline of the 1974 Freedom of Information Act Amendments. The court of appeals' opinion ratified the procedures adopted by the Federal Bureau of Investigation (FBI) and by the Deputy Attorney General's office for processing Information Act requests on a "first-in, first-out" basis. The procedure applies even when dissatisfied requestors go to the court to seek to expedite their request.

Finally, in a major Medicare decision the Section persuaded the Fifth Circuit that HEW has a common law right to recoup Medicare payments which were made to providers of Medicare services where HEW has determined that the medical services were unnecessary. The court of appeals also accepted the Section's argument that HEW's recoupment rights do not interfere with or constitute unwarranted supervision of the practice of medicine by individual doctors.

Commercial Litigation Section

The Commercial Litigation Section is responsible for perhaps the broadest variety of cases in the Civil Division. The activities of the section include: the conduct of all suits on claims for money or property on behalf of the United States Government not otherwise specially assigned within the Department of Justice; the enforcement of veteran's reemployment rights in private industry, including seniority rights and claims for pay and other employment related benefits; representation of the interests of the United States Government in significant bankruptcy litigation including corporate reorganization proceedings and arrangement proceedings; and the conduct of reparation cases before the Interstate Commerce Commission.

In one case during fiscal year 1976, the United States sued the operators of airports in New York, Newark, Tampa, and Denver, which had refused to reimburse the Federal Aviation Administration for

costs incurred when the federal government supplied federal officers to serve as airport security personnel. The officers were needed to enable the airport operators to comply with anti-hijacking screening requirements imposed in 1972 by federal regulations. The airports contended that they were under no obligation to reimburse the United States. The Court awarded the United States \$734,000. A loss could have exposed the United States to liability to those airports which had reimbursed the Government for similar supplementary personnel.

In another case, the section sought recovery of approximately \$20 million on account of loans extended or guaranteed by the Economic Development Administration. The loans had been made in connection with a project for the construction of a sugar refinery in Maine. The refinery was planned as part of an effort to stimulate cultivation of sugar beets in certain Maine counties. The project was unsuccessful. On the government's motion for summary judgment, the Court rejected all the defenses advanced by the defendants and awarded judgment in the full amount of the government's claims.

Actions currently pending in the Commercial Litigation Section arise from programs of virtually every government agency. For example, there were pending at the end of the fiscal year 295 cases involving defaulted loans on multifamily projects (principally apartment dwellings), insured by the Department of Housing and Urban Development (HUD). More than \$400 million was involved in these cases.

Court of Claims Section

The Court of Claims Section carries out the statutory responsibility of the Attorney General to defend the United States in the large majority of suits brought in the Court of Claims.

In 1976, Section attorneys represented the United States in 1,923 cases, involving claims in an asserted total amount exceeding \$1 billion. Of these claims 1,088 were terminated with \$24.3 million awarded to the claimants and \$425,656 awarded to the Government. Of the 1,088 cases terminated, 889 represented the conclusion of a six-year litigation project to resolve some 900,000 separate claims brought by shippers of household goods for military personnel transferred to and from overseas posts. Based upon five litigated test cases, computer programs were developed, in conjunction with the General Accounting Office, to resolve all the 900,000 claims without further litigation. Judg-

ments were entered for more than \$16 million. The GAO reported substantial savings to the Government in the resolution of this complicated litigation in this manner.

During the court term, October 1975-July 1976, the Court of Claims scheduled 173 oral arguments of which 104 were presented by attorneys from the Court of Claims Section. During this same term of Court, 127 published decisions were issued, of which 63 were on cases handled by attorneys in the Court of Claims Section. The Government prevailed in 44 of these decisions and partially prevailed in nine.

Each of the decisions which the Court determined to publish represented a significant ruling concerning those contracting, regulatory, personnel, or other activities of the Federal Government which generate monetary claims against the United States.

In one case, *Samuel Wathen, Jr. v. United States*,¹ the Court ruled on the claim of an Internal Revenue Service agent who contested his dismissal from his Government position. Mr. Wathen had been dismissed as a result of his killing his mistress. Following the incident, Mr. Wathen was indicted for murder, but after psychiatric and psychological examination, the State of Maryland confessed his plea of not guilty by reason of insanity and he was committed to an appropriate state hospital for three months, after which he was declared sane and released. The Court sustained the IRS's removal action and decision not to reinstate the plaintiff, noting that "surely plaintiff's conduct, however legally faultless, could in the agency's discretion be found to have run afoul of these admonitions [IRS regulations] against bad public relations and notoriously disgraceful conduct prejudicial to the Government and falling short of the highest moral standards."

The Court of Claims also dismissed a case, *McCloskey & Co. v. United States*,² brought by the company that constructed Robert F. Kennedy (RFK) Stadium in Washington, D.C. In a decision which traced the complicated financing procedure used for the stadium construction, the Court ruled that Congress had made it clear that no federal public funds were to be involved in the construction and that McCloskey could not, therefore, sue the Federal Government for its construction claims.

In the case of *Merritt-Chapman & Scott Corp. v. United States*,³ the Department and the plaintiff's counsel cooperated with the Court, the American Bar Association and the Federal Judicial Center in an experiment involving the presentation of oral argument to the Court of Claims in Washington, D.C., by counsel located in New York City. The experiment was

successfully accomplished by means of "Picturephone" facilities furnished by the American Telephone & Telegraph Company. Tentative conclusions were that long distance oral argument, by means of two-way video transmissions, is feasible.

The case of *Ronald L. MacDonald v. United States*,⁴ involved the issue whether certain aspects of the system of military justice, enacted by Congress as applicable to persons in the military service, are constitutional. The Court rejected plaintiff's attack on the validity of his court-martial conviction for assault with intent to commit murder. The Court noted that, on the presentation made in this case, "... we cannot hold that the current plan is so deficient or so unfair that it necessarily deprives court-martial accused, who are subject to conviction and imprisonment under it, of due process of law."

In the case of *Velma L. Crone, et al. v. United States*,⁵ the named plaintiffs were parents and spouses of American servicemen who were placed in missing-in-action (MIA) status during the Vietnam war. The servicemen had, since May 1970, been determined, pursuant to the Missing Persons Act, *as amended*, 37 U.S.C. § 551-57, to be deceased. The plaintiffs sought to challenge the findings of death as invalid in the absence of a hearing on the question. The Court dismissed the claims of those plaintiffs who were not actual dependents of the missing servicemen under the Act. As to the plaintiffs who qualified for "dependent" status, the Court ruled that they have the right to challenge the administrative findings of death under a standard which would uphold the findings, unless they can be shown to have been "arbitrary" or "capricious."

Customs Section

The Customs Section is responsible for all litigation incident to the appraisal and classification of imported goods. This litigation includes the defense of all suits in the United States Customs Court, and in conjunction with Appellate Section presenting all Customs appeals to the Court of Customs and Patent Appeals. This litigation generally arises as the result of the administrative denial of an importer's challenge to the duties assessed upon imported goods by the United States Customs Service under the Tariff Act of 1930, as amended by the Tariff Schedules of the United States (1963).

The Section resolves many cases through the normal litigation process, by means of dispositive mo-

tions, trials and appeals. However, a significant amount of litigation is resolved through other means such as negotiation, compromise, and/or abandonment by the plaintiff.

At the beginning of fiscal year 1976, there were 123,892 cases pending in the Customs Court. Of that number, the Court disposed of 23,094. 3,543 new cases were filed bringing the number of cases pending in the Court at the close of fiscal year 1976 to 104,341.

During fiscal year 1976, the Government prevailed in 61.5 percent of the 88 test cases decided by the Customs Court. Although the total percentage of cases in which the Government prevailed decreased 1.4 percent from the previous fiscal year, the percentage of Court of Customs & Patent Appeals cases in which the Government prevailed increased to 61.3 percent.

The subject matter of the cases which come within the responsibility of the Section is as varied as the types of merchandise which are imported into the country. Individual cases may present factual issues involving such subjects as chemistry, metallurgy, geology, and sciences, arts, and trades.

One of the more notable cases which was litigated by the Section involved the validity of Presidential Proclamation 4074, pursuant to which a supplemental duty was imposed upon most imports. The Customs Court held that the Proclamation was invalid and the Court of Customs and Patent Appeals reversed. The supplemental duties collected under the Proclamation approximated \$481 million, and had the Government not prevailed in the appellate court, this amount would have been subject to refund.

Another notable case involved a challenge to the manner in which the Customs Service, utilizing the American selling price of comparable merchandise, had valued imported shoes. The proper classification of "off-white" ceramic decanters and an alloy powder composed of iron and silicon were two other important issues during fiscal year 1976.

Under the Trade Act of 1974, American manufacturers now possess the right to challenge a decision of the Secretary of the Treasury not to impose a countervailing duty upon merchandise imported from a particular country. One of the suits filed pursuant to this statute challenges the Secretary's decision not to impose a countervailing duty upon certain steel products imported from members of the European Economic Community. A decision adverse to the Government could result in a significant disruption of the trade relations between the United States and its major trading partners and in the imposition of countervailing duties totalling approximately \$1.5 billion.

penalties totaling approximately \$400,000. In another affirmative suit, the United States successfully enjoined a major shipbuilding contractor from ceasing work on a number of aircraft carrier-type vessels needed by the United States Navy.

Patent Section

The Patent Section handles the Government's patent, trade secret, trademark and copyright litigation. However, it is the patent area that consumes the great bulk of the Section's time and resources. Most of the Section's patent work involves the defense of the Government and its agencies including, most frequently, the Department of Defense, the Energy Research and Development Administration, the National Aeronautics and Space Administration, and the Departments of Agriculture and Interior. Suits against the United States are brought by private individuals and corporations for the infringement of their patent rights. The litigation is tried in one of four forums: the United States Court of Claims, the Board of Interferences of the Patent and Trademark Office, the United States district courts, or the Court of Customs and Patent Appeals. It should be noted that the Section does not usually become involved in conflicts between the Government and its employees over research and development contracts. Such matters are handled administratively.

Many patent cases involve very sophisticated technology and require a general understanding of complicated pieces of equipment. Most cases will involve a determination and evaluation by the Court of the extent to which the patent advances the state of the art to which it pertains. There is also the issue of whether the equipment alleged to infringe the patent actually uses the improvement specified in the patent or, on the contrary, uses a technique substantially different in structure and principle of operation from that in the patent. These questions arise in areas such as: electronics, communication equipment, military ammunition fuses, computers, chemical processes and drugs, aerodynamics, high speed aircraft, and missiles and their guidance systems. The litigation of patent issues requires a very high degree of nonlegal technical knowledge in any of a number of discrete, rigorous, technical disciplines. Seventeen patent infringement cases in the Court of Claims were terminated during fiscal year 1976. In three of these cases, a total of \$387,500 was paid by the Government. The other 14 were dismissed.

Torts Section

The Torts Section is responsible for the defense of suits against the United States, its officers and agents, sounding in tort and seeking money damages for negligent and wrongful acts or omissions committed by government employees while acting within the scope of their employment. The Section is also responsible for the prosecution of affirmative tort claims on behalf of the United States. Such cases arise when negligence of private persons causes damage to government property. The Section also institutes action when government-provided medical care and treatment has been provided to civilian and military personnel injured under circumstances giving rise to tort liability on the part of private persons.

The major area of the Section's responsibility is the defense of suits against the United States under the Federal Tort Claims Act. Through this Act the United States has waived, with certain exceptions, its immunity from suit in tort. On September 30, 1976 approximately 3,600 cases were pending against the United States involving an aggregate of over \$16 billion in damages. These cases arise out of activities such as the operation of motor vehicles, the maintenance of government premises, the provision of medical care and treatment, the control and regulation of aviation traffic, government construction projects and government regulation of private industry in the field of occupational health and safety.

In fiscal year 1976, 1,560 cases and administrative claims were terminated by settlement or judgment. These cases and claims involved damage claims totaling in excess of \$1 billion and resulted in awards totalling over \$43.9 million.

Fiscal year 1976 was marked by a continuation of the increasing volume and complexity of litigation involving the United States under the Federal Tort Claims Act. Some 358 new cases were filed alleging medical malpractice; 277 new cases arising out of aircraft accidents were commenced; and 78 suits were brought against federal employees individually, principally involving law enforcement officers in actions alleging common law torts and violations of constitutional rights.

The United States is a defendant in the numerous suits arising out of the crash of an Eastern Airlines plane near the Kennedy Airport in New York City in which 110 people died. The suits seek to recover in excess of \$50 million. The suits have been consolidated for discovery purposes and discovery is continuing. The United States is also involved in litigation arising out

of the crash of a C5A aircraft departing from Saigon, Vietnam, in what was popularly known as the "Baby Lift" flight. In that crash approximately 135 people were killed and 30 people were injured. Those suits also have been consolidated for discovery purposes in the federal court for the District of Columbia.

During the last fiscal year, settlement agreements were consummated to provide payment for damages caused by a forest fire allegedly caused by federal activities. Pursuant to the numerous settlement agreements the United States settled many claims for a total amount of \$2.7 million. During fiscal year 1976, this Section concluded litigation arising out of the crash of a Delta Airlines plane at Boston, Massachusetts, in which 89 individuals died. The United States was a defendant in litigation seeking recovery in excess of \$40 million. The District Court decided that the United States could not be held liable for the incident upon which the suits were based.

Foreign Litigation Unit

The Foreign Litigation Unit, consisting of three attorneys, represents the United States before foreign tribunals in civil cases brought by or against the United States abroad. The Unit also provides legal representation to civilian and military personnel and to foreign service officers who are sued abroad as a result of acts performed in the course of their Government service. It handles litigation arising out of construction, procurement and service contracts entered into with foreign contractors; employment contracts with foreign nationals; damage claims for personal injury or death resulting from the operation of Government-owned vehicles or vessels abroad; disputes involving Government-owned real estate abroad; tax claims asserted by foreign states or their political subdivisions against Government-owned property; admiralty claims; bankruptcy proceedings; and appellate proceedings.

The Unit's staff and foreign counsel worked on 232 cases in 29 foreign countries during fiscal year 1976 including the transition quarter. This workload comprised 154 cases that were still in various trial and appellate stages at the end of fiscal year 1975. The Unit terminated 56 foreign cases resulting in awards in favor of the Government in excess of \$13.6 million. The principal collection resulted from a civil suit brought in the Supreme Court of Hong Kong, leading to the recovery of monies embezzled by a former civil-

ian employee of the Government in Saigon, South Vietnam, which were secreted in various Hong Kong banks. Approximately \$38,000 was paid by the United States during the fiscal year to satisfy judgments rendered by foreign tribunals against the Government and to pay extrajudicial settlements of claims.

The Unit is also assigned the responsibility for the receipt, processing and execution of requests for international judicial assistance transmitted by foreign authorities, both under the Hague Service Convention of 1965, TIAS 6638, 20 UST 361, and under The Hague Evidence Convention of 1968, TIAS 7444, 23 UST 2555. The Unit processed 1,950 such requests representing an increase of approximately 40 percent over the preceding fiscal year. The Unit also represented the Government's interests in court whenever execution of foreign judicial assistance requests resulted in litigation.

Judgment Enforcement Unit

This Unit supervises litigation and other activities connected with collecting and enforcing civil judgments obtained by or referred to the Civil Division. In addition to executions, garnishments, and supplementary proceedings, the Unit attends to enforcement of the Government's judgments in bankruptcies, receivership proceedings and estate matters, in actions against third-party converters, and in actions to set aside fraudulent conveyances. It also acts to perfect or renew the Government's lien position, and to protect it in foreclosure, quiet title, partition, condemnation, and interpleader actions. During fiscal year 1976, it directly supervised and participated in more than 1,170 cases in which the individual judgments exceeded \$10,000 and assisted U.S. Attorneys in more than 10,000 cases involving judgments in smaller amounts. There were 906 cases pending at the end of the fiscal year, involving judgments in favor of the United States totalling \$176.7 million. The following cases illustrate the variety of work handled by the Unit.

Enforcing collection of a money judgment is often more challenging than obtaining the judgment itself. This is particularly true where the debtor is a defunct and insolvent corporation. For example, the United States, in December 1971, obtained an \$800,000 default judgment against Intermountain Capital Corporation (ICC) which appeared to be uncollectible. A year later it was learned that ICC had owned, briefly, a valuable 80-acre tract of land which was now the

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U.S. Dept. of Justice

**Annual Report
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Starting with the 1975 Annual Report there is NO mention in the text of the Office of Alien Property, the Alien Property Unit (that was still in the organization chart) or their functions.

Civil Division

The Civil Division represents the interests of the United States in cases not within the specialized fields of the other divisions of the Department. It is responsible for the general litigation of the Federal Government in cases both initiated by, or brought against, the United States or against Cabinet members and other Federal executives in their official capacities. The cases arise out of both commercial and governmental business of all Federal departments, agencies, and instrumentalities and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts as well as in State courts and the tribunals of foreign countries by the Division's staff of 240 attorneys or by the U.S. attorneys and their staffs.

Excluding a high volume of customs cases, the Division worked on a total of 48,406 cases during fiscal year 1975. This workload included 29,747 cases that were still in various stages of litigation at the end of fiscal year 1974, plus 18,659 new cases. The Division terminated 16,875 cases in fiscal 1975, leaving 31,531 cases pending at the end of the year. Of those concluded, 47 percent were suits against the United States in which a total of more than \$28 billion was sought. Recoveries were held to \$70.4 million or 0.2 percent of the total claim. The Government was plaintiff in the other 53 percent of the cases terminated, claiming a total of \$223.4 million. Judgments and settlements in these cases amounted to \$129.7 million, a recovery of 58 percent.

These statistics do not, however, indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law, and the decisions may have far reaching effects on Government operations. Moreover, a large percentage of the most important cases defended by the Division for various agencies of Government do not seek the recovery of money but attack the constitutionality or statutory authority of administrative actions. The Civil Division is in the forefront of many of the important social, political, and economic issues

of the day which are decided by litigation. A substantial portion of its personnel is devoted to the handling of difficult, novel, sensitive, and import litigation that demands close supervision and coordination at many levels of the Federal bureaucracy.

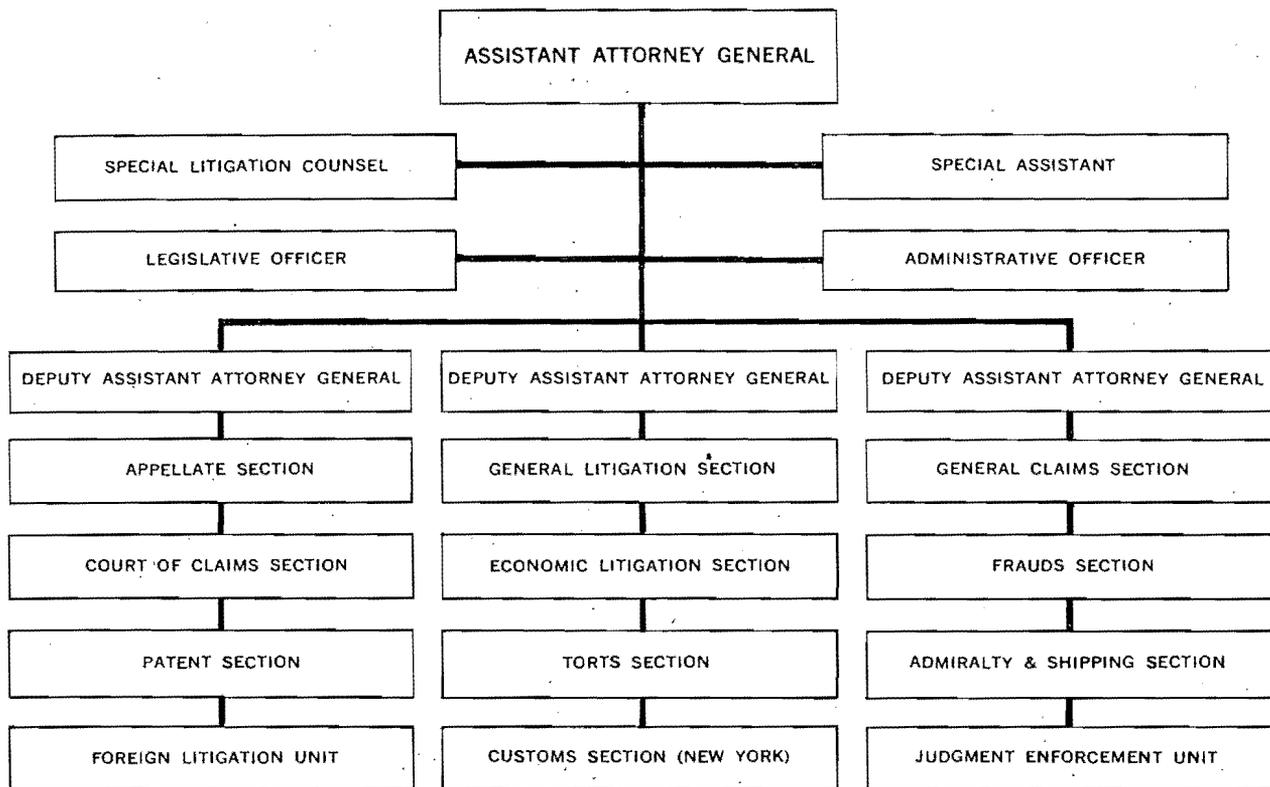
The Division is composed of 10 sections, a Foreign Litigation Unit and a Judgment Enforcement Unit. In addition, the Assistant Attorney General has a Special Litigation Counsel and staff to work on important and unique cases. The following description of the functions of these subdivisions and the summary of some important cases during the year give an indication of the diversity of litigation within the Civil Division.

Admiralty and Shipping Section

The Admiralty and Shipping Section represents the interests of the United States in all litigation relating to ships, shipping, or navigable waters, as well as in certain workmen's compensation matters. This activity includes the defense and prosecution of both tort and contractual claims and the enforcement of various navigation and maritime-related statutes. The Section's caseload ranges from massive marine disasters, ship collisions, and shipping company reorganizations to minor cargo damage and seamen's wage and injury claims, all of which arise out of U.S. activity as the world's largest shipowner. The Section is staffed with 22 attorneys, with offices in Washington, New York, and San Francisco. Its primary clients are the Army Corps of Engineers, in its maintenance of the Nation's immense system of inland waterways; the Coast Guard, in the exercise of its service or regulatory functions and in providing assistance to merchant shipping; the Department of Agriculture, in its role as a major shipper of cargo, and, of course, the Navy.

In 1975, the section handled 1,626 cases, terminating 496 and ending the year with 1,130 still

CIVIL DIVISION



APU not on chart in 1975
but is on chart in later years

pending. Of the 496 that were terminated, 185 involved claims on behalf of the Government, with \$2,461,151 awarded to the United States. Of the remaining 311 cases, involving claims against the United States totaling \$78,958,055, only \$3,737,009, or less than five percent of the total sought, was awarded.

The largest number of cases prosecuted on behalf of the Government comprised claims arising out of collisions with Government vessels and those involving damage to Government cargo being shipped on private vessels. The largest category of claims asserted against the United States comprised cases involving the defense of wrongful death or personal injury actions arising out of three basic situations: collisions with ships of the U.S. Government; accidents aboard U.S. vessels, or aboard private vessels with allegations of Government negligence; or negligence charged against the Coast Guard in its search-and-rescue operations.

Appellate Section

The Appellate Section is responsible for all matters developing out of lower court civil litigation.

That responsibility embraces a wide range of functions, including: Coordination of communications between all interested parties on the side of the Government; caseload management; provision of expertise; and the actual prosecution or defense of appellate cases in the Federal circuit courts of appeals, State appellate courts and the U.S. Supreme Court.

Communications:

The Section is the prime communication conduit for all interested parties in an appeal. Thus, inquiries from various U.S. attorneys offices, by whom the cases were generally tried in the lower court, or from the various client agencies, concerning the status of an appeal will generally be directed toward the Appellate Section.

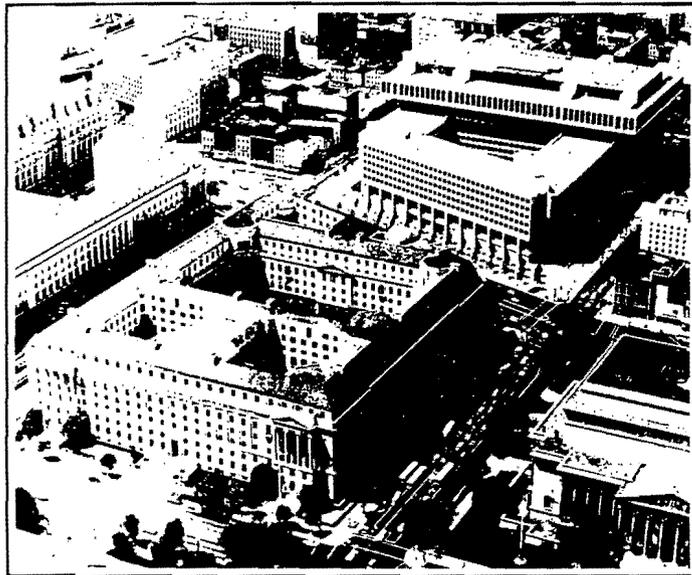
Caseload Management:

The Section analyzes all adverse trial court decisions to determine whether an appeal should be undertaken and submits its recommendation for final approval by the Solicitor General. Where the appeals have been approved, or taken against the United States, the Section is responsible for the appeal,

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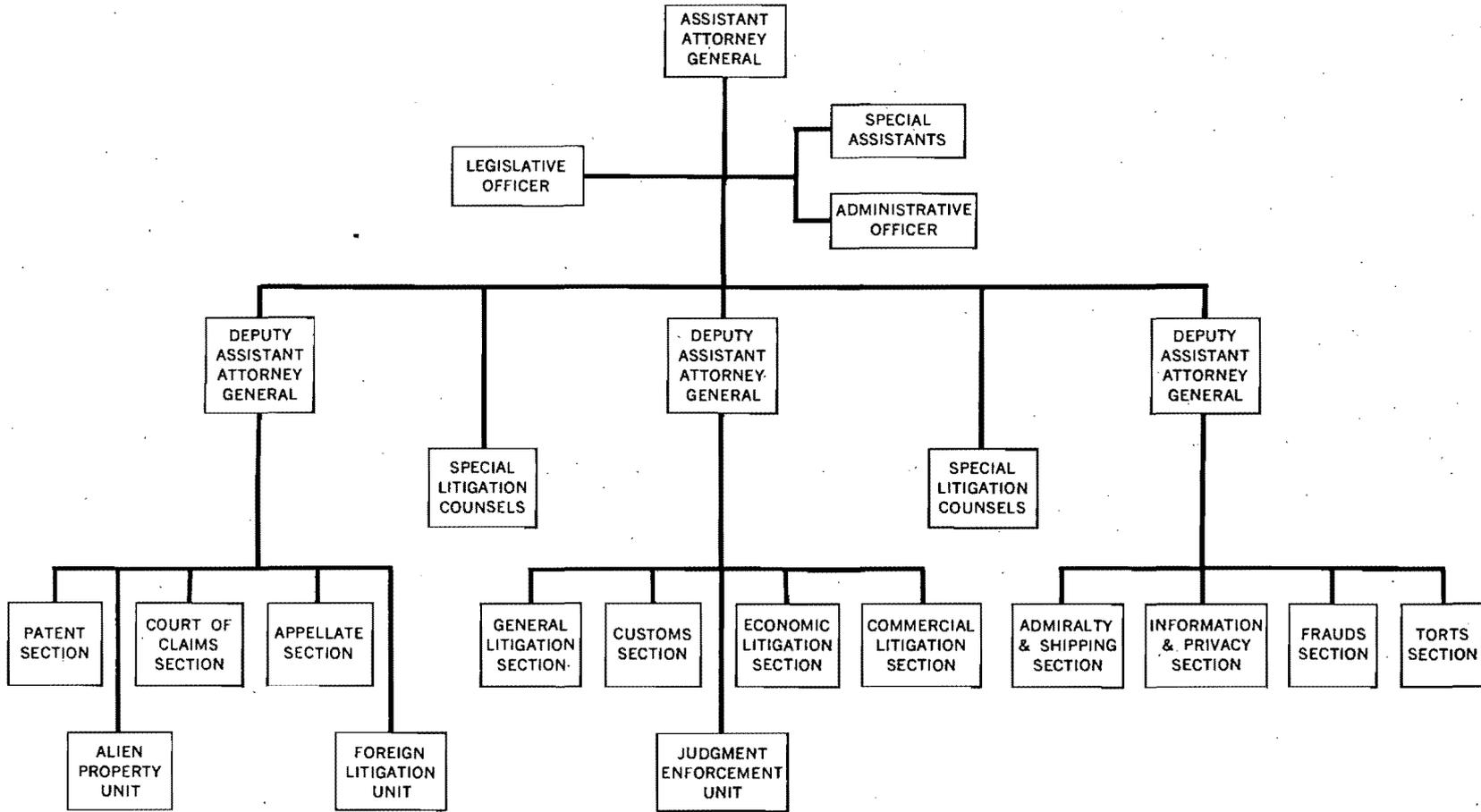
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CIVIL DIVISION



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Civil Division

Barbara A. Babcock
Assistant Attorney General

The Civil Division litigates for the United States or members of Congress, Cabinet members and other Federal executives acting in their official capacities. The work of the Division is virtually as broad and varied as the activities of Government. Since the departments and agencies of the Government engage in innumerable commercial ventures similar to those of a modern corporation, such as buying, selling, construction, shipping, production of energy, insurance and banking, the litigation arising from such activities encompasses the complete spectrum of legal problems encountered by private business enterprises. In addition, the Division litigates the highly significant policy issues, often rising to Constitutional dimension, associated with Government. Thus, the Division offers its attorneys the nearest equivalent to the litigation experience available in a large law firm with a general practice.

Because many of the important social, political, and economic issues of the day become the subjects of litigation, the Civil Division spends much time and attention on difficult and novel issues of law. Such cases often arise in the context of attacks upon the constitutionality or statutory validity of actions of various components of the Federal bureaucracy. The benefit to the Government in such cases cannot always be measured in monetary terms, but is nevertheless substantial.

To the extent that money collected or recovered can be a measure of the importance of the Division's work, the following facts are interesting: almost \$12 billion was at issue in the more than 13,000 cases received during Fiscal 1977 and approximately \$61 billion was involved in the 12,000 cases terminated; pending at the close of the fiscal year were over 24,000 cases in a total dollar amount of \$56 billion; the cases terminated during the year resulted in an aggregate award to the Government of \$135 million. This was over three times the total amount awarded to the opponents. Because the Division acted as plaintiff in only about one-third of the cases closed during Fiscal 1977, these awards highlight the favorable results obtained by the Division in representing the Government's interests.

A profile of the 279 attorneys that comprise the Division is just as diverse as the caseload handled by the Division. The "Civil Division attorney" comes from all parts of the United States, with roots that touch at least 33 states. Approximately 50 law schools are represented including most of those ranked among the best. In some cases, the Civil Division attorney is the recipient of several advanced legal degrees or advanced degrees from other disciplines, such as accounting, economics, business, the physical sciences, history, political science, mathematics and linguistics.

The Civil Division attorney entered Government service after an accomplished academic career, ranking in the top of his or her graduating class and well represented on law reviews, moot courts or in other significant activities. Prior to entering on duty the majority of attorneys combined these academic "rites of passage" with outstanding legal experience, forming a cross-section of some of the most prestigious law firms, corporations, legal aid and public interest law organizations, clerkships with both state and Federal courts and affiliation as faculty members with some of the most respected legal education institutions. Despite this accumulation of experience and honors, the average age of the line attorney in the Civil Division is about 31. At this relatively young age, the degree of litigative responsibility delegated to the Civil Division attorney would be difficult to match in any other legal environment. The more seasoned attorneys promoted to roles of supervision and management provide guidance gained through several years of substantive public service.

The Civil Division is truly heterogeneous, composed of men and women, blacks, whites and Hispanics. Recent attorney hires further reflect this pattern as 41 percent of those hired since May 1976 were women and 12 percent were either black or Hispanic.

The Civil Division attorney is assigned to one of 15 sections or units: Admiralty and Shipping, Alien Property, Appellate, Aviation, Commercial Litigation, Court of Claims, Customs, Economic Litigation, For-

eign Litigation, Frauds, General Litigation, Judgment Enforcement, Information and Privacy, Patents, and Torts. All of these components are located in Washington, except the Customs Section, stationed in New York City. In addition to its Washington headquarters the Admiralty and Shipping Section maintains field offices in New York and San Francisco.

The staff of the Civil Division performs four principal functions, which are essentially interdependent: (1) supervision of United States Attorneys and other advisory responsibilities; (2) litigation activity; (3) major or "special" litigation; and (4) special projects.

Supervision and Advisory Responsibilities

The supervision function is the process of assisting field offices on cases for which they have primary responsibility. "Supervision" includes establishing and enforcing litigation policy, ensuring uniformity in governmental positions and practices, providing expertise on particular problems that arise in litigation, coordinating between agency general counsels' offices and United States Attorneys' offices, and generally providing support and back-up.

The Division performs a number of other advisory functions. For example, the Torts Section assists in the handling of administrative claims filed under the National Swine Flu Immunization Program of 1976 Act. These claims are initially received by the Department of Health, Education, and Welfare and are forwarded to the Civil Division's Tort Section. Section attorneys consider and process each claim and prepare a recommended decision for HEW.

The Appellate Section plays a critical advisory role in matters arising in Civil Division litigation. In particular, the Section analyzes all adverse trial court decisions to determine whether an appeal should be undertaken and submits its recommendation for final approval by the Solicitor General. Many of the appeals that are taken are assigned to the United States Attorneys' offices for handling. Like the trial sections, the Appellate Section is available to provide assistance and expertise to the United States Attorneys.

Litigation Activity

The Division's litigation activity involves the direct handling of cases by Division attorneys either individually or in small groups of co-counsel. A number of different factors may call for the direct handling of a particular case by the Civil Division, rather than as-

signment to a United States Attorney: the case deserves special emphasis, either because of its significance or a strong need for expertise; the United States Attorney's Office cannot commit necessary resources to the particular litigation; the suit presents special problems of coordination and liaison, which mandate handling from Washington; the litigation is novel, sensitive, controversial or otherwise of peculiar significance to a client, thus requiring close attention at higher levels of the Civil Division; or the case is a particularly good training vehicle.

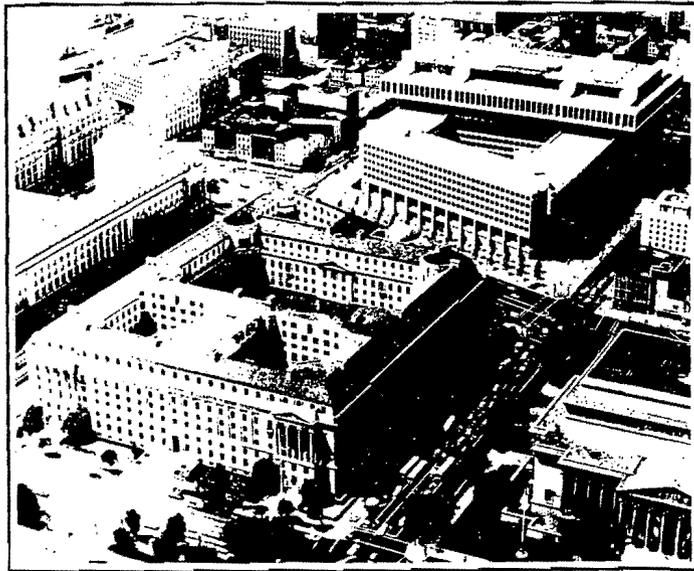
The Division's litigation activity falls into three broad categories, each encompassing a number of areas of substantive law. The first category involves cases sounding in tort, and includes not only suits under the Federal Tort Claims Act but also suits against individual officers or employees seeking personal money judgments against them, actions in conversion, cargo damage, ship collision and Jones Act suits, workmen's compensation matters, and actions to recover damages for vessel-caused pollution in navigable waters. The Division also prosecutes affirmative tort claims on behalf of the United States, including claims under the Medical Care Recovery Act.

The second category involves litigation of a basically commercial nature: all contract actions, cases arising under grants, subsidies or insurance undertakings by the Government, foreclosures, bankruptcies, renegotiation and patent or copyright infringement suits. Related to these commercial cases are civil fraud, bribery and anti-kickback cases, the collection of civil fines and penalties, and judgment enforcement.

The third category involves litigation challenging the propriety or lawfulness of various governmental programs: all injunction and most mandamus suits, cases charging that statutes or regulations conflict with the Constitution or other laws, proceedings for judicial review of orders of administrative agencies, suits under the Customs laws, military and civilian pay suits, actions to cancel patents for fraud on the Patent Office, cases arising under the Freedom of Information, Privacy, or Sunshine Acts, and suits charging agencies of the United States with discrimination in employment.

Civil Division litigation in all these categories provides the attorney the opportunity to appear and argue in different forums. Much of the Division's trial litigation is handled in the various United States District Courts throughout the country. In addition, Civil Division attorneys regularly appear before the United States Court of Claims and the Customs Court. They also represent the interests of the United States in

The Annual Report of the Attorney General of the United States 1978



Last Annual Report with Alien Property Unit on organization chart
There is NO mention in text of why it was dropped

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Civil Division

Barbara Allen Babcock
Assistant Attorney General

The Civil Division litigates on behalf of the United States, its departments and agencies, members of Congress, Cabinet officers and other Federal employees acting in their official capacities. The work of the Division is virtually as broad and varied as the activities of Government. Because the departments and agencies of the Government engage in countless commercial ventures, such as buying, selling, construction, shipping, production of energy, insurance and banking, the litigation arising from such activities covers the spectrum of legal problems encountered by private business enterprises. In addition, the Division confronts significant policy issues, in defending and enforcing various Federal programs. Thus, the Division offers its attorneys a variety of litigation experience available in a large general practice law firm.

The 300 Civil Division attorneys represent more than fifty different law schools. Many have received advanced degrees in law or other disciplines, such as accounting, economics, business, and the social and physical sciences.

Organization

During fiscal year 1978, the Division implemented a major reorganization designed to serve better the litigation needs of the Government. In essence, the reorganization moved the Division from a fairly rigid system of 15 specialized sections to a more flexible organization based on three broad substantive branches, each managed by a team of senior supervisory attorneys. The reorganization allows the Division to employ specialists where they are needed and provides the flexibility to shift personnel to areas where more extensive resources are required. The institution of the management team concept is improving decision-making by permitting management to spend more time on litigation matters that are important to client agencies in the Government.

The reorganized Civil Division consists of a Torts Branch, a Commercial Branch, and a Federal Programs Branch. Approximately one-third of the resources of the Division is allocated to each branch.

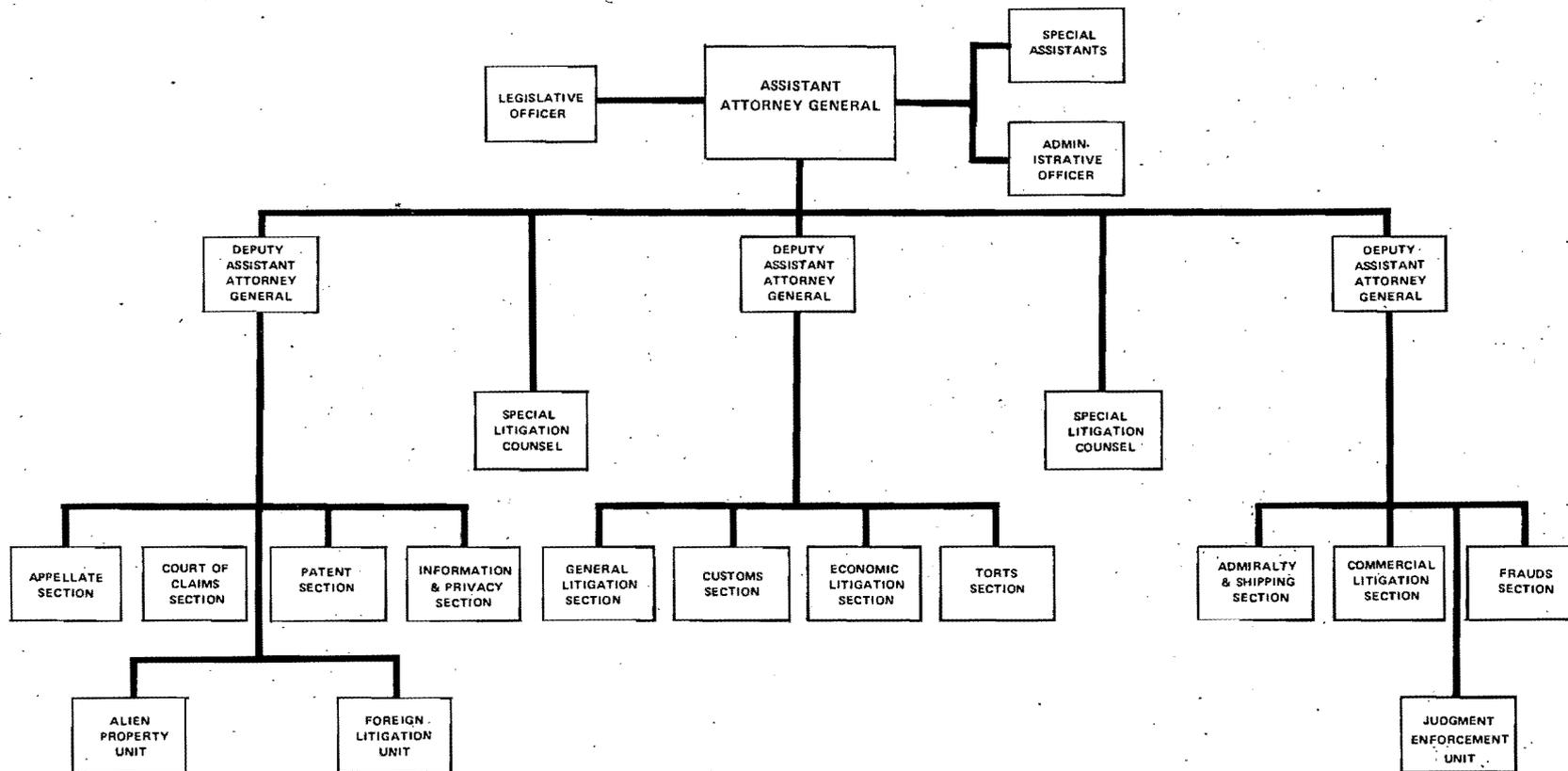
The Torts Branch represents the United States, its agencies and employees in cases sounding in tort. In addition to suits under the Federal Tort Claims Act, this Branch also handles suits seeking money judgments from government officials, actions in conversion, cargo damage, ship collision and Jones Act suits, workmen's compensation matters, and actions to recover damages for vessel-caused pollution in navigable waters. The Torts Branch also prosecutes affirmative tort claims on behalf of the United States, including claims under the Medical Care Recovery Act.

The Commercial Branch handles all contract actions, cases arising under grants, subsidies or insurance undertakings by the Government, foreclosures, bankruptcies, renegotiation, and patent and copyright infringement suits. This Branch also pursues the Government's affirmative civil claims arising from fraud, bribery, or other official misconduct, as well as the collection of civil fines or other money judgments awarded to the United States.

The Federal Programs Branch handles litigation against the Federal agencies, Cabinet officers, and other officials which challenge their government activities. The work of the Branch includes enforcement litigation aimed at remedying statutory or regulatory violations, the defense of employment policies and personnel actions, litigation relating to the disposition and availability of government records, customs-related cases, judicial review of agency decisions and injunctive and mandamus actions charging that statutes or regulations are invalid under the constitution or other laws. The Branch also includes the appellate staff, which conducts appellate litigation for the entire Division.

In all Branches, the Civil Division performs

CIVIL DIVISION



three interdependent functions: (1) litigation activity; (2) supervision of U.S. Attorneys and other advisory responsibilities; and (3) special projects.

Litigation Activity

Division attorneys handle litigation directly in those cases that require expertise, or that present novel, sensitive, or controversial issues of particular importance to the client agency or to the Government as a whole. The following representative cases handled during fiscal year 1978 illustrate the significance and diversity of the Division's caseload.

Torts Branch

In addition to defending the United States and its employees in a variety of traditional tort actions, the Torts Branch is confronted with more litigation between private parties in which one or both of the parties seek to involve the Federal Government. In one such case, for example, the widow of baseball player Roberto Clemente sued the United States and alleged that employees of the Federal Aviation Administration (FAA) were negligent when they failed to warn her husband and other passengers that an aircraft was overweight and lacked a proper flight crew. At issue was whether the FAA had a duty to members of the public to learn and forewarn them of any irregularities in aircraft operation. The First Circuit Court of Appeals rejected plaintiff's theory of liability, noting that to hold otherwise would expose the Government to "limitless liability."¹

Similarly, the United States has been named a third-party defendant in the numerous suits arising from the failure of the Franklin National Bank, the largest bank failure in American history. Franklin ranked as the Nation's 20th largest bank in terms of deposits before it closed in October, 1974. The suits seek to recover damages estimated to be in the billions of dollars. Twenty-two actions filed in the Eastern and Southern Districts of New York have been consolidated for discovery purposes. More than 80,000 pages of deposition testimony have been taken, and the Government has produced more than 400,000 documents. The case involves important issues concerning the Nation's bank regulatory scheme and liability under the Federal Tort Claims Act.

In the Sunshine Mine litigation, the United States was named as a defendant in 60 wrongful death actions, in connection with a fire in the

Sunshine Mine at Kellogg, Idaho. The suit was based on allegations of negligence by Federal mine inspectors. The trial resulted in a judgment in favor of the United States on all claims.

In a major aviation disaster trial, the estates of approximately 100 victims sued for damages as a result of the crash of a Pan American 707 aircraft landing at Pago Pago Airport in American Samoa. Suits were filed against Pan American, the Boeing Company, and the United States. Additionally, Pan American sued the United States. After a trial that lasted nearly eight months, final judgment was entered in favor of the United States.

During fiscal year 1978, the Torts Branch also concluded a major maritime case involving a Norwegian oil tanker that ran aground entering the harbor at Portland, Maine. The accident ripped a 300-foot gash in the vessel's hull allowing 500,000 gallons of oil to spill into Hussey Sound and Casco Bay. Claims of more than \$100 million were filed against the ship and its pilot by property owners, lobstermen, fishermen, and the State of Maine. The ship in turn sued the United States for its hull damage and for contribution alleging that the Coast Guard maintained buoy that marks the ledge was off-station at the time of the grounding. The resulting litigation involved three years of discovery, a month long trial, and an extensive appeal, following which the Government was totally exonerated.

The Torts Branch is also responsible for all litigation and administrative claims arising out of the Swine Flu Program of 1976. At the beginning of fiscal year 1978, two suits were pending and 914 claims arising out of the program had been received. As of the end of the fiscal year, 193 suits arising out of the claims were pending while 2,078 claims have been received.

Commercial Branch

During fiscal year 1978 this Branch put special emphasis on the recovery of money lost by the United States as a result of fraud, corruption or other misfeasance. For example, the Government won recovery of \$389,000 in Federal funds fraudulently obtained by a Detroit computer school, from the Department of Health, Education and Welfare under its Basic Educational Opportunity Grant program.² Also during fiscal year 1978, the Civil Division concluded a settlement of a mortgage fraud suit that resulted in a recovery of \$2 million for the United States.³ Mortgage fraud settlements in Dallas and Detroit resulted in the recovery of another \$855,000.

Three cases involving congressional misconduct were resolved by the Civil Division in fiscal year 1978. In one case,⁴ the appellate court affirmed a judgment against a former congressman for \$40,000 arising from a conflict of interest involving his acceptance of fees for representing a client before various Federal agencies. The Civil Division also obtained a \$40,000 judgment against a former congressman for using his office clerk-hire salaries to defray personal expenses for automobiles and children's tuition.⁵ In a third suit,⁶ the Department entered into a compromise by which the former administrative assistant to a congressman agreed to pay almost \$40,000 in restitution of money he had obtained by converting payroll checks to his own use. Civil recovery for misconduct in the Executive Branch was also pursued in fiscal year 1978. For example in August the Division obtained a \$600,000 judgment against a former General Services Administration employee who established a fictitious company to defraud the Government through the submission of fictitious building supply vouchers.⁷

The Commercial Branch has also been involved in a variety of Federal bankruptcy activities. One of the more complex proceedings involves the bankruptcy of Pacific Far East Lines, Inc.⁸ At the time of the bankruptcy proceeding, the firm owed the Federal Maritime Administration \$104 million. In addition to filing and pursuing Maritime's claim, the Branch took steps to protect the debtor's assets.

Much of the work of the Commercial Branch involves litigation over Federal contracts. An unusual action for specific performance of a contract arose out of a contract the Department of the Navy entered into with the Newport News Shipbuilding and Dry Dock Company for construction of nuclear powered vessels. The Navy decided to exercise an option clause in the contract to obtain construction of a nuclear powered guided missile frigate. The shipyard refused to construct the vessel under the option, and the United States has sued for specific performance of the contract option for construction.⁹ Settlement discussions have taken place, and an important preliminary ruling by the Fourth Circuit Court of Appeals has sustained the authority of the Attorney General over settlement matters.

The Commercial Branch is also responsible for protecting the interests of the United States in railroad reorganization proceedings. There are 14 railroad reorganizations in progress in which the United States is a party. The United States is a creditor in these proceedings and, through the Department of Transportation, a representative of the public interest. During the past year, the Penn

Central reorganization plan was approved by the Court, voted upon favorably by the creditors, confirmed by the Court, and consummated on October 24, 1978. The Government has received securities and cash in satisfaction of claims exceeding \$50 million. A similar plan has been negotiated with the Lehigh Valley and is now awaiting reorganization court approval.

Also within the Commercial Branch is the Office of Foreign Litigation, which represents the United States before foreign tribunals in civil cases brought by and against the United States. The staff and foreign counsel worked on 244 cases in 19 foreign countries during fiscal year 1978, resulting in actual collections on behalf of the Government of \$781,525. An additional \$103,299 has been awarded to the United States by foreign courts but not yet collected. An amount of \$11,400 was awarded by foreign tribunals against the United States during the same period. The staff also represented the United States in approximately 100 domestic cases involving questions of international and foreign law. The Office of Foreign Litigation also assigned responsibility for the receipt, processing and execution of requests for international judicial assistance transmitted by foreign authorities, both under the Hague Service Convention of 1965, and under The Hague Evidence Convention of 1968. The Office processed approximately 1,800 such requests during 1978—a representation of the Government's interests in American courts whenever execution of foreign judicial assistance requests resulted in litigation in this country.

The Commercial Branch also includes a Judgment Enforcement Unit which conducts litigation and other activities to collect judgments obtained by the rest of the Division. One of the most formidable judgment enforcement undertakings in fiscal year 1978 involved locating, acquiring, and liquidating many and varied purchases of William C. Sibert. Sibert was a government clerk who embezzled \$850,000 of money from his employer, the Department of Transportation. After Sibert was convicted and sentenced for his crime, the Civil Division obtained a civil fraud judgment against him for the embezzled funds. However, during a ten-week span Sibert had spent or given away almost all of the embezzled money, purchasing, among other things, a house with a pool, shares of stock, a dozen luxury autos, a houseboat, and over \$50,000 worth of jewelry, furniture, televisions, stereos, video cassette recording systems, Arizona real estate, and a top-notch go-go bar. As a result of the considerable efforts

the Judgment-Enforcement Unit, which included seizure of liquid assets, auction sales of personal property, judicial foreclosure sales of the real estate, and settlements with recipients of Sibert's generosity, over \$550,000 of the embezzled funds were recovered.

Federal Programs Branch

Enforcement of statutory programs through litigation ranked high on the Federal Programs Branch list of priorities for the fiscal year 1978. In the energy area, for example, the Department of Justice filed a number of civil suits to enforce the Nation's petroleum pricing regulations issued under the Economic Stabilization Act and the Emergency Petroleum Allocation Act. In one significant matter, a complaint was filed in the Middle District of Florida against six individuals and five companies alleging that the defendants engineered a scheme to overcharge the Florida Power Corporation for refined oil.¹⁰ The United States is seeking to recover approximately \$6 million from the defendants for the alleged overcharges. The same defendants have since been indicted on charges of conspiracy and mail fraud in connection with the same scheme.

The Department also filed a civil complaint in the Eastern District of New York seeking approximately \$10 million to \$12 million in alleged overcharges from the Howard Oil Company. In another case, involving enforcement of Department of Transportation recall orders under the National Highway Traffic and Safety Act, an injunction and civil penalties were awarded against Ford Motor Company. The Company was penalized the statutory maximum of \$800,000 and ordered to recall defective windshield wipers that were found to impair safety. In still another case, General Motors was penalized the statutory maximum after unsuccessfully appealing a District Court recall order concerning defective carburetors.

During fiscal year 1978, the Civil Division was confronted with litigation to halt three nationwide strikes of overriding economic interest to the country. When the labor dispute between the United Mine Workers and the coal companies threatened to disrupt the mining and delivery of bituminous coal and industrial production, the President invoked the national emergency provisions of the Taft-Hartley Act. After a report by the emergency board convened under the Act, the President instructed the Attorney General to initiate a suit for an injunction against the strike. The Federal Programs Branch

filed a complaint on behalf of the United States to enjoin the strike. As a result of the suit, a temporary restraining order was issued, production increased, settlements were reached with some large producers, the emergency situation was effectively ended, and subsequently labor and management resolved their dispute. Some months later, the Civil Division initiated litigation in connection with a threatened strike by employees of the U.S. Postal Service. Although strikes by Federal employees are illegal, two major postal unions issued edicts requiring strikes if a new collective bargaining agreement could not be reached before the expiration of the old one. On the basis of these union provisions, the Civil Division obtained a temporary restraining order from the U.S. Court for the District of Columbia. Under this restraining order, the parties agreed to mediation and binding arbitration that ultimately settled the dispute. In related actions, the Civil Division coordinated the efforts of U.S. Attorneys' offices in San Francisco and New Jersey to obtain restraining orders against wildcat strikes at postal facilities at those locations.

Within weeks of the postal settlement, the President exercised his power to create an emergency board under the provisions of the Railway Labor Act in connection with a strike by railway clerks that had shut down most of the nation's railroads. Although there was no precedent for a suit under the circumstances of this case, the Civil Division filed a suit to end the rail strike and the District Court issued a restraining order requiring the strikers to return to work and protecting them from reprisals. As a result of negotiations in which the Department of Justice played a central role, the parties agreed on the language of a final injunction.

During the fiscal year 1978, the Federal Programs Branch filed suit to enforce secrecy agreements entered into by Central Intelligence Agency employees as a condition of their employment. Such agreements are an important tool in preventing unauthorized disclosure of classified information by employees of the intelligence community.¹¹ In another case, the Civil Division obtained an important decision recognizing the strong public interest in protecting the nation's military and state secrets privilege in an action challenging the intelligence collection operations of the National Security Agency.¹²

The Branch also litigated issues during fiscal year 1978 that were important to the conduct of foreign affairs and diplomatic initiatives. In *Edwards v. Carter*,¹³ 61 members of the House of Representatives challenged the proposed Panama Canal Treaty, asserting that United States property could

only be disposed of by an Act of Congress, not by treaty. The Federal Programs Branch argued this unique constitutional issue before the United States Court of Appeals for the District of Columbia, which held that disposition of United States property interests in the Canal Zone by means of the treaty power is constitutionally permissible. In another matter, a U.S. Senator challenged the President's intention to return the Crown of St. Stephen to Hungary. The Senator urged that the agreement to return the crown amounted to a treaty requiring ratification by the Senate. At a hearing a few days before Secretary of State Vance departed for Hungary with the crown and other coronation regalia, the District Court denied the Senator's motion for a preliminary injunction finding that the agreement to return the crown was a proper executive agreement and not a treaty requiring ratification.¹⁴ In yet another case with foreign relations implications, the Court of Appeals for the District of Columbia Circuit affirmed on technical grounds a District Court dismissal of a challenge to United States' involvement in socioeconomic programs of Saudi Arabia.¹⁵

Defense of agency programs challenged in court continued to be an active area for the Branch. Department of Energy litigation, for example, resulted in a series of favorable decisions in the U.S. Temporary Emergency Court of Appeals upholding and expanding that agency's regulatory programs. In one case,¹⁶ the Temporary Emergency Court of Appeals ruled that the Department of Energy had been given authority by Congress to regulate natural gas liquids, including condensate. The Court also ruled¹⁷ that natural gasoline, a liquid derivative of natural gas, was subject to price regulations, although not specifically mentioned by product name in the Emergency Petroleum Allocation Act.¹⁸ The Energy Department's regulatory authority was also upheld in cases involving the regulation of natural gas condensate and solvents.¹⁹

Other significant agency regulatory programs were also successfully defended during fiscal year 1978. In a case involving the Department of Interior, the Court held valid a rule requiring detailed financial disclosure by State employees performing Federally funded activity in regulating surface coal mining pursuant to the Surface Mining Control and Reclamation Act of 1977.²⁰ A challenge to the Department of Treasury's trigger-price program, an important tool in enforcing the anti-dumping provisions of the customs laws, was defeated²¹ and regulations promulgated by the National Credit Union Ad-

ministration permitting Federally chartered credit unions to offer share drafts to their members was upheld.²² The Federal Programs Branch also successfully defended the validity of a key element of the President's policy to improve the farm economy in a case involving farm support loans for wheat and feed grain.²³

Supervision and Advisory Responsibilities

Those cases that the Civil Division does not handle directly are assigned to the U.S. Attorneys' Offices throughout the country. The majority of such cases are supervised by Civil Division attorneys. This supervisory function includes establishing and implementing litigation policy, ensuring uniformity in governmental positions, providing expertise, coordinating with agency general counsels and generally providing support and legal advice.

An example of the Civil Division's advisory function is the establishment of a Joint Policy Review Committee with the Civil Rights Division. The Committee meets regularly to review litigation strategy and policy in an effort to ensure that the Government speaks with one voice in cases involving civil rights issues.

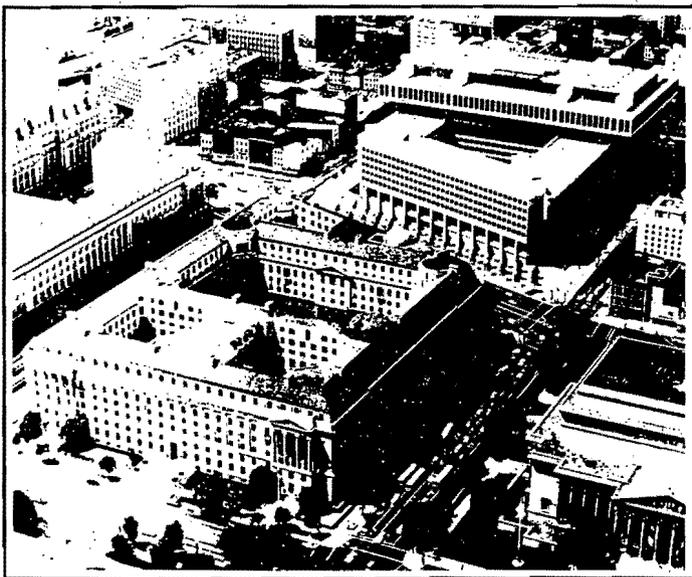
Special Projects

A major special project during fiscal year 1978 was the Division's proposed amendments to the Federal Tort Claims Act. These amendments would make the United States exclusively liable for constitutional torts committed by Federal employees and set up a disciplinary mechanism to ensure that employees are held accountable for their actions in the absence of civil liability. These amendments were not enacted by Congress and it is anticipated that this project will continue in the next fiscal year.

A related project involves the application and refinement of the Department's guidelines for providing representation to Federal officials in damage actions arising from conduct undertaken in the course of their employment. This project includes the retention and billing of private counsel in cases where the direct representation of an employee presents a conflict of interest for the Department. ~~Although this project would become unnecessary if~~

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The Annual Report of The Attorney General of the United States 1979



No mention of Alien Property functions
Civil Division is restructured and there is NO
mention of former functions regarding
alien property

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Civil Division

Alice Daniel
Assistant Attorney General

Because the Civil Division litigates on behalf of the United States, its 98-plus departments and agencies, members of Congress, Cabinet officers and other federal employees acting in their official capacities, its work spans a large number of complex factual and legal issues. From the tragedy of the People's Temple in Guyana through the challenge to President Carter's termination of the Mutual Defense Treaty with Taiwan, Civil Division attorneys were deeply involved in securing solutions to problems of national significance.

The matters handled by the 338 attorneys and 293 support personnel of the Division involve a broad range of public policy issues. In line with this, Division attorneys are provided with the unique opportunity to test the training they receive and to refine their litigation skills in many situations every year.

At the same time, the Division acknowledges that the amount of litigation generated annually surpasses its resources. Increased emphasis has been placed on improving our working relationships with client agencies. This has entailed a corresponding emphasis on identifying better ways to use agency counsel in litigation.

The Division is organized into three Branches—Commercial, Federal Programs, and Torts.

Commercial Litigation Branch

This Branch pursues the Government's affirmative civil claims arising from fraud, bribery, or other official misconduct, and the collection of civil fines or other money judgments awarded to the United States. These areas involve two of the Attorney General's highest litigation priorities: white-collar crime and improved procedures in collection enforcement activity. The Branch also handles all contract actions, cases arising under grants, subsidies or insurance undertakings by the Government, foreclosures, bankruptcies, renegotiation, patent and copyright infringement suits, and customs related cases.

In fiscal year 1979, this Branch continued to emphasize the recovery of money lost by the United States as a result of fraud, corruption, or other misconduct. The Branch was responsible, for example, for bringing a number of actions related to a nationwide Department of Agriculture audit and investigation of hundreds of export grain elevators.

One of the most significant of these "grain cases,"¹ which sought damages under the False Claims Act for fraudulent invoices for grain paid for or financed by the United States, was recently settled for \$4 million.

In another group of cases in which it is representing the Department of Agriculture, the Branch has negotiated settlements that to date have resulted in the recovery of approximately \$750,000.

The Branch also devoted significant resources to the development of civil claims arising out of widespread investigations of the General Services Administration. Concerted efforts by criminal prosecutors to investigate allegations of fraud and corruption involving General Services Administration programs and employees resulted in the referral to the Civil Division of cases involving individual incidents of misconduct or monetary loss. During the past year, the Branch began several lawsuits against contractors and General Services Administration employees to recover the government's losses. In some instances, these efforts have also involved taking steps to attach or otherwise freeze known assets of convicted civil defendants and potential defendants.

A number of cases involving Congressional misconduct were handled by this Branch. In addition to instituting suit² against one Congressman for abuses of his office payroll, the Branch assisted in the handling of the suit³ against a former Congressman for a conflict of interest involving receipt of legal fees in a matter concerning a claim for federal funds.

In January, 1979, following the mass murder-suicide that occurred at the People's Temple in Guyana, the United States filed suit⁴ for \$4.3 million against the Temple and related entities to recover the cost of transporting back to the United States the bodies of the Americans who had died in the incident. Simultaneously with this suit, the Temple filed a state receivership proceeding in California. Substantial assets belonging to the Temple have been located in Panama, and Civil Division attorneys are cooperating with the receiver for the Temple in efforts to transfer those assets to the federal district court here, where the government has filed suit.

A substantial amount of the work of the Branch involves litigation concerning federal contracts. By settling the suit⁵

for approximately \$182.3 million, the Branch brought to a conclusion the last of a number of cases instituted for specific performance of major Navy shipbuilding contracts. Under the settlement, the contractor, which has agreed to deliver the ship to the Navy in about one year, will receive approximately its cost as payment, rather than the substantially higher amount it had sought and had initially received pursuant to court order.

The Branch also includes the Office of Foreign Litigation, which represents the United States before foreign tribunals in civil cases brought by and against the United States and which also represents the government in domestic cases involving questions of international and foreign law. During fiscal year 1979, for example, the Office's staff worked with foreign counsel in Panama to obtain the release of the People's Temple assets located there. In another case,⁶ the Office is representing the government's interests as a civilly damaged party in criminal proceedings that have been brought in Switzerland against a Swiss couple who defrauded the Internal Revenue Service out of approximately \$475,000 by submitting false tax refund forms. To date, assets worth in excess of \$200,000 have been identified and are being pursued. The Office has also been involved in several challenges to the validity of an Executive Order issued by President Ford prohibiting aliens from employment in the Federal Competitive Service. At the close of fiscal year 1979, two district courts and one Court of Appeals⁷ had upheld the validity of the Order, and another appellate court decision was pending.

Federal Programs Branch

This Branch handles litigation against the Federal agencies, Cabinet officers, and other officials. The work of the Branch includes enforcement litigation aimed at remedying statutory or regulatory violations; the defense of employment policies and personnel actions, litigation relating to the disposition and availability of government records, judicial review of agency decisions and injunctive and mandamus actions charging that statutes or regulations are invalid under the constitution or other laws. The Branch also includes the appellate staff, which conducts appellate litigation for the entire Division.

For this Branch, 1979 opened and closed with litigation of national and international significance.

When Progressive magazine threatened to publish highly sensitive information on thermonuclear weapons, Branch attorneys immediately sought and obtained injunctive relief⁸ striking, at least at the district court level, a balance between civil liberties and national security. After Branch attorneys obtained a second injunction against another periodical, the matter came to an abrupt end when a letter

relating to these secrets was published by a party not named in the court's injunctions.

The highly visible controversy surrounding the "H-Bomb" case was soon matched as the Branch was called on to defend President Carter's decision to terminate our nation's 1954 Mutual Defense Treaty with Taiwan,⁹ involving our diplomatic relations with the People's Republic of China. As the fiscal year closed, Judge Gasch ruled that the President could not terminate the treaty without the consent of Congress. Because the treaty is due to end on January 1, 1980, and because of the magnitude of the foreign relations interests at stake, the Branch obtained an expedited appeal before an *en banc* court of appeals.

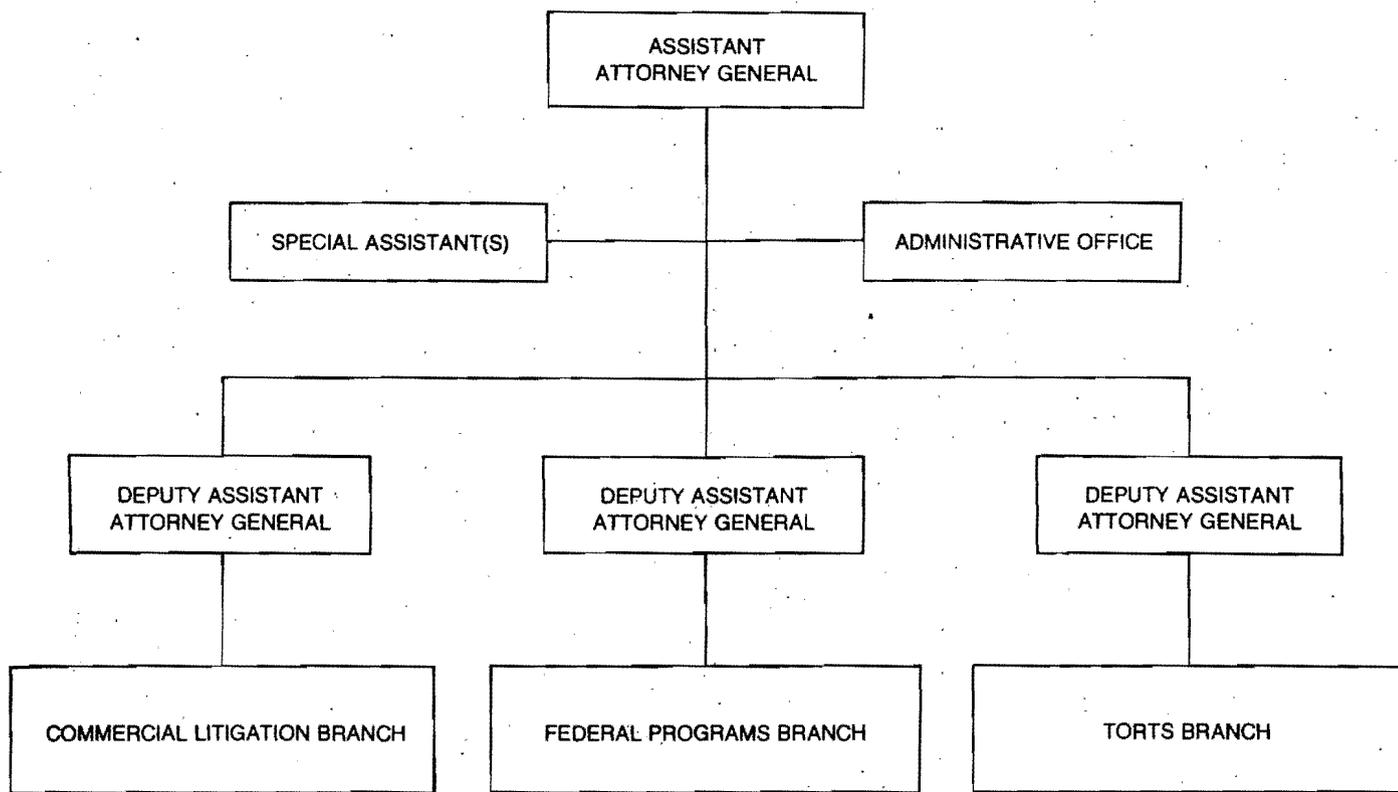
Meanwhile, an attack on alleged Executive Branch lobbying in support of the SALT II Treaty generated by several members of Congress and the American Conservative Union goes forward.¹⁰

Domestically, the Branch litigated highly controversial cases involving the limits of executive power.

In the Wage and Price case, the President's decision to restrict government contracts to those firms certifying compliance with the wage and price guidelines was successfully defended.¹¹ Equally significant was a case where the Branch secured a court's refusal to review a decision by the Attorney General not to prosecute.¹² The Equal Rights Amendment also surfaced and the Branch defended against a challenge to the extension of time for its ratification.¹³ And litigation over the Archivist's processing of the Nixon tapes completed another round when the court ruled that the former President lacked a privacy interest in his recordings, paving the way for public access to them.¹⁴ In addition, the Branch defended against an attack on the President's appointment of Abner Mikva for a Federal judgeship¹⁵ and defeated an attempt to enjoin the State Department from allowing Ian Smith, then Prime Minister of Rhodesia, to visit this country.¹⁶ Finally, our representation of the Central Intelligence Agency drew the Branch into challenging a former employee's publication of material in violation of his pledge of secrecy,¹⁷ while privacy was at issue when a court ruled that regulations authorizing the copying of information on the outside of envelopes for purposes of national security violated the First Amendment and that regulations authorizing "mail covers" to investigate crimes and locate fugitives were constitutional.¹⁸ Subsequently, the Postal Service issued revised regulations that responded to the court's concerns.

This year the Branch more actively pursued an affirmative role in the development of administrative law. For example, the Branch established access by the Department of Health, Education and Welfare to nursing homes receiving federal funds;¹⁹ gained judicial approval of Departments of Transportation and Health, Education and

Civil Division



Welfare guidelines designed to increase the handicapped's access to public transportation;²⁰ and secured judicial approval of the Department of Housing and Urban Development's thermal insulation regulations.²¹

When airline deregulation was threatened by California's regulations, the Branch succeeded in having them declared unconstitutional²²—a result also achieved by the Branch in its challenge to New York City's requirement that operators of nuclear reactors obtain permits.²³ The Branch also obtained a ruling upholding the constitutionality of the National Flood Insurance Program on the ground that Programs that provide benefits to states cannot be challenged for coercing state participation.²⁴ When Sears Roebuck and Co. asked the court to order the Government to chart a path of compliance between the affirmative action requirements and requirements based on veteran status, age and handicap, the Branch won a dismissal.²⁵ And, in 1979, the Branch participated in the largest settlement in the history of the Interstate Land Sales Regulation. When the settlement was violated by certain developers, the Branch represented the agency in its first attempt to seek contempt.²⁶

Finally, as the energy crisis translated into longer lines

at the pump, the Branch obtained an injunction against a service station's use of a private rationing system²⁷ and defeated Maryland's attempt to enjoin the Department of Energy's gas allocation regulations.²⁸ When the Department of Energy indicated that it would attempt to alleviate the gas shortage by referring a large number of affirmative suits, the Branch established a system for promptly providing U.S. Attorneys with authorization and with sample pleadings—a strong cooperative effort between the Transportation and Energy Departments and the White House.

Increasingly important litigation has been generated by all of the federal agencies under the Freedom of Information Act (FOIA). The Branch defeated an attempt to secure responses of Senators and state nominating commissions to a judicial appointment questionnaire.¹⁹ The court found that the responses were the collective product and property of the President, the Attorney General and those who responded. In a second highly sensitive matter—a request for the memorandum written by members of the State Department's Legal Adviser's Office on the rights of parties to the Middle East controversy—the Branch successfully asserted the attorney-client and governmental deliberative



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Annual Report of the Attorney General of the United States



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Annual Report makes NO mention of teh Act of August 23, 1988 that abolished the remaining functions of the Office of Alien Property

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Civil Rights

Major litigative efforts in the field of civil rights involved voting rights and housing and education discrimination. Ten years after the Civil Rights Division challenge to Dallas County (Selma), Alabama's at-large election system for county commissioners and school board members, a special election was held in which black candidates were elected to half of the seats on the panels. In addition, the Division prevailed in its suit alleging that the City of Yonkers, New York intentionally concentrated public and subsidized housing in one area in order to maintain residential and school segregation.

General Litigation

The Department's role as "the government's lawyer" generated a heavy workload of complex cases during the year. For example, litigation related to damage claims from exposure to asbestos, radiation, and toxic substances grew more common. The Civil Division handled cases involving damage claims of billions of dollars, millions of pages of technical evidence and tens of thousands of claimants. While claimants sought awards of \$40.9 billion in cases closed in 1988, actual awards and settlements in those cases totaled only \$90 million.



Three blacks were among the county commissioners taking office in Dallas County (Selma), Alabama as a result of ten years of Department litigation under the Voting Rights Act of 1965. Photo courtesy of Alvin Benn, "Montgomery Advertiser"

The 101 convictions obtained as a result of Federal Bureau of Investigation civil rights cases in 1988 more than doubled the previous year's total. Cases ranged from the murder of a Denver radio talk show host by members of an anti-Semitic organization to the beating and mistreatment of inmates by prison guards in Maryland and Alabama.

Civil proceedings conducted by the Tax Division resulted in the collection of over \$39 million in back taxes during the year. Besides supporting the Internal Revenue Service's collection efforts, the Division defended the government in suits brought by taxpayers. Tax Division staff also secured appellate rulings restricting tax shelters that were worth as much as \$8 billion in saved revenue.

Chapter IX - Legislative and Regulatory Activities

There were three major aspects to the Department's legislative and regulatory activities. First, the Department worked with Congress on legislative enactments related to the administration of justice. Second, Department components made and executed plans for the effective implementation of laws, regulations and guidelines. Finally, Department staff maintained regular liaison with Congress.

Legislative Enactments

Department staff worked extensively with Congress on legislative proposals which were consolidated in the Anti-Drug Abuse Act of 1988. Most of the provisions of the act related directly to anti-drug abuse efforts. They were summarized in Chapter I of this report, "Elimination of Illegal Drug Activity." However, other provisions of the act addressed a variety of other criminal justice issues. These provisions included:

- Criminalization of additional aspects of child pornography.
- Addition of criminal provisions dealing with interstate receipt or possession for sale of obscene material.
- Restoration of provisions for prosecution of certain public corruption schemes under mail and wire fraud statutes which had been limited by the 1987 Supreme Court case, McNally v. U.S.
- Codification of the powers and structures of the U.S. Marshals Service, which previously had existed primarily by regulation.
- Reauthorization of the Crime Victims Assistance Act of 1984, the Justice Assistance Act of 1984 and the Public Safety Officer's Benefit Act of 1976.

Another significant legislative achievement was the Major Frauds Act of 1988, which provided Federal prosecutors with a significantly enhanced mechanism for rooting out and

prosecuting procurement fraud. The act covered contracts with the U.S. government for amounts of \$1 million or greater. It increased penalties for violators, provided protection for "whistleblowers" who report fraud, eliminated the attorney fee payment loophole in defense fraud and authorized additional Assistant U.S. Attorneys to prosecute fraud.

The Department undertook extensive efforts in support of the enactment of significant court reform legislation, including the Judicial Improvements and Access to Justice Act of 1988. The Department also supported passage of the Supreme Court Mandatory Jurisdiction Act, which eliminated technical requirements from the Supreme Court's jurisdiction. The act gave the court greater discretion in controlling its docket.

The Federal Employees Liability Reform and Tort Compensation Act of 1988 limited remedies for ordinary torts committed by Federal government employees acting within the scope of their employment to suit against the U.S. under the Federal Tort Claims Act. The legislation was enacted in response to the 1988 Supreme Court decision in Westfall v. Erwin.

The Inspector General Amendments of 1988 provided for a Department of Justice Inspector General. Considerable Departmental effort went into negotiations with the Conference Committee on compromise language for the bill.

The negotiations were driven by the Attorney General's belief that he alone must have the authority to investigate allegations of misconduct by officers and employees of the Department. The compromise therefore recognized the existence and authority of the Office of Professional Responsibility (OPR) and required the Inspector General to refer to OPR any allegations relating to the conduct of attorney, investigative or law enforcement personnel.

The FBI/DEA Senior Executive Service Act adjusted the status, pay and benefits of senior executives in those agencies using the governmentwide Senior Executive Service as a model.

The Intelligence Authorization Bill also addressed compensation for the Department's law enforcement personnel. It created a demonstration project on employee mobility and retention for the Federal Bureau of Investigation's New York Field Office. The project was designed to help offset the high cost of living in the area.

Implementation of Laws, Regulations and Guidelines

The Department moved rapidly to implement changes in laws, regulations and guidelines affecting its activities during 1988. Examples range from legislative activity which brought program changes in such areas as civil rights and environmental law to issuances in the areas of freedom of information and sentencing guidelines.

Department components responded to several legislative changes in the area of civil rights. For example, a new statute gave the Federal Bureau of Investigation new jurisdiction to investigate damage to religious buildings and threats to persons exercising their religious freedoms.

The Civil Rights Division planned for a significant expansion of Departmental authority in the fair housing area. The Fair Housing Amendments of 1988 added authority to seek damages, civil penalties and injunctive relief for victims of discrimination or against the "pattern and practice" of discrimination.

The new law also provided authority to seek relief in cases of discrimination on the basis of handicap and familial status. Previous legislation had provided authority to seek relief when discrimination was on the basis of race, color, religion, national origin or sex.

The Department moved quickly to establish the Office of Redress Administration in the Civil Rights Division following signature of the Civil Liberties Act. The act apologized to and provided restitution for persons of Japanese ancestry who suffered because of evacuation,

internment or other action taken by the U.S. government during World War II.

The Civil Rights Division estimated that more than 60,000 persons who were evacuated or interned were eligible for payments. The new Office began immediate operations so that eligible individuals could be identified, located, and have their statuses verified so that restitution could be made.



Americans of Japanese ancestry pick up information on eligibility for restitution under the Civil Liberties Act. Photo courtesy of T. Umeda, "Honolulu Advertiser"

Congressional reauthorizations of the Clean Water Act and the Safe Drinking Water Act expanded criminal sanctions against violators. The Land and Natural Resources Division began planning for aggressive enforcement of the new provisions.

The Civil Division prepared for a substantial increase in workload as a result of the National Childhood Vaccine Act, which established a trust fund for payment of claims of injury or death as a result of treatment with vaccines. The Division began development of procedures for review of as many as 1,500 claims per year, many of which will involve complex medical issues and require litigation.

Publication of "The Attorney General's Guidelines on the Law Enforcement Provisions of the Freedom of Information Reform Act of 1986" was completed by the Office of Legal Policy (OLP).

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t: The Control of Alien Property

Supplement

to

Trading with the Enemy in World War II

By

MARTIN DOMKE

New York
Central Book Company
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TO

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Abbreviations

- C: Commerce Clearing House, War Law Service
D.S.B.: U. S. Department of State Bulletin
F.R.: Federal Register
T: *Trading with the Enemy in World War II* (New York 1943)

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CHAPTER VI

STATELESS PERSONS FORMERLY OF ENEMY NATIONALITY

Page 85: The German denationalization decree of
November 25, 1941

The application of the German decree abroad has been recognized in *U. S. ex rel. Schwarzkopf v. Uhl*, 137 F. 2d 898 (C. C. A. 2d, August 18, 1943, see *infra* to T 110), where it is said: "There is no public policy of this country to preclude an American court from recognizing the power of Germany to disclaim Schwarzkopf as a German citizen". The same reasoning obviously underlies *Kleve v. Basler Leben*, 182 Misc. 776, 45 N. Y. S. 2d, 882 (December 27, 1943; see *infra* to T-314), where the confiscation of a life insurance policy by the German Government is considered. The court said at p. 887: "The plaintiffs make the point that they are no longer German nationals and that it was by ceasing to be German nationals that their property was confiscated by the German Government. Unfortunately, that fact cannot alter the power of the German Government over the assets".

The recognition of the German decree abroad does not, however, prevent the stateless refugees from being considered alien enemies. Said the court in note 3 of the aforementioned *Schwarzkopf* decision: "The cancellation of the citizenship of native born German citizens would not exclude them from the application of the Alien Enemy Act, as they would still remain 'natives' of Germany". In the same case, Appendix p. 10 of the brief for respondent-appellee contains a statement of the Treasury Department, dated May 8, 1943, reading as follows: "The Treasury Department has consistently made the following ruling under Executive Order 8389 of April 10, 1940, as amended: Any individual whose citizenship is cancelled or revoked or who is expatriated or who endeavors to renounce or to divest himself of citizenship under the laws or decrees of the Government of any foreign country does not cease to be a national of such country merely by reason of such cancellation or revocation of citizenship or such expatriation or divestment of citizenship". In Appendix p. 7 of the same brief a memorandum of the Department of State of August 3, 1942, has been submitted, reading as follows: "The Department of State acknowl-

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"German and Austrian refugees have to be considered stateless if they were subject in their country of origin to a measure of withdrawal of nationality". The statement was quoted in *Duché v. Goldstrom et Soc. La Foncia*, Court of Appeals, Paris, January 23, 1946, where German Jewish refugees were not classified as nationals of enemy nations and therefore not excluded from the benefits of French legislation on the reintegration of tenants ejected without consent (Ordinance of November 14, 1944), Sirey 1946. 2.35.

Page 88: Displaced persons

Displaced persons in the U. S. Zone in Germany for whom an immigration preference was established, (1946) 14 Dept. State Bull. 635, are reported to number not less than 532,000 (Monthly Report of Military Governor U. S. Zone, No. 10, of May 20, 1946, p. 21). About 330,000 are considered to be non-repatriable. "Included in this figure are persons who are stateless as well as persons who do not wish to return to their native countries", *ibid.* No. 9 of April 20, 1946, p. 22. Displaced persons remaining in the U. S. occupied areas of Austria amounted to 201, 127; Military Government Austria, Report of the United States Commissioner, No. 4, February 1946, p. 86.

The term "displaced persons" was applied in the aforementioned report of the United Nations Special Committee on Refugees and Displaced Persons, issued June 1, 1946, to those deported from their country of nationality or former habitual residence by Axis or satellites regimes, such as forced laborers or deportees for racial, religious or political reasons.

Page 89: Emergency Refugee Shelter in Fort Ontario, New York

Legal questions involved in the status of certain groups of refugees within the United States are dealt with by Levy: *Acquisition of Nationality in the Emergency Refugee Shelter*, (1945) 39 Am. J. Int. L. 13. Cp. the *Ling Yee Suey* case, *supra*, p. 38.

See *Refugees*. Investigation of problems presented by refugees at Fort Ontario Refugee Shelter. Hearings before Subcommittee 6, 79th Cong., 1st Sess., pursuant to H. Res. 52 (June 25 and 26, 1945). The statement of the President on immigration to the United States of certain displaced persons and refugees in Europe, of December 22, 1945, (1945) 13 Dept. State Bull. 981, also provided, with regard to the Oswego Refugees, for the adjustment of the "immigration status of the members of this group who may wish to remain here, in strict accordance with existing laws and regulations" or, as stated in the Directive of the same day, *ibid.* 983, for measures

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"to settle the cases of those aliens presently interned at Oswego through appropriate statutory and administrative processes". Resettlement of its 924 residents throughout the United States was achieved in the beginning of February 1946.

Page 89: War Damage Insurance

By Memorandum No. 29 of the War Damage Corporation, of April 22, 1943, stateless refugees were exempted from the prohibition against insurance of property of enemy nationals. § 301 (b) exempts "all aliens of the age of 14 years or older which at present are stateless but who at the time at which they became stateless were citizens or subjects of Germany, Italy, or Japan".

Page 89: Status of refugees in Canada

With regard to approximately 3500 refugees still in Canada under non-immigrant status, an Order in Council of October 26, 1945, P. C. 6687, (1945) 4 Canadian War Orders and Regulations 123, stated in determining their status under the provisions of the Immigration Act, that "many of these refugees had become stateless and espaced from the country of their birth and citizenship prior to the outbreak of war, others succeeded in leaving their homes prior to invasion by enemy forces, the majority having been deprived of their property and possessions".

Page 90: "Refugee Aliens" in Australia

In *Commonwealth of Australia v. Grunseit*, (1943) 17 Australian L. J. 22 (High Court of Australia, May 6, 1943), the question was considered whether a Rumanian had the status of a "refugee alien" under the National Security (Aliens Service) Regulations of February 3, 1942, Statutory Rules 1942 No. 39.

Page 97: Stateless Persons as "generally licensed nationals"

Further reference is made to General Ruling No. 4, as amended September 3, 1943, 8 Fed. Reg. 12285, which provides under (7): "Any person licensed as a 'generally licensed national' shall, while so licensed, be regarded as a person within the United States who is not a national of any blocked country; provided, however, that the licensing of any person as a 'generally licensed national' shall not be deemed to suspend in any way the requirements of the Order [8389] and Regulations relating to reports" (T 435, 441). On the other hand, by General License No. 11, as amended

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May 25, 1945, 10 F. R. 6057, certain payments for living expenses from blocked accounts in domestic banks "held in the name of an individual within the United States" were authorized to the extent of \$1000.00 in any month.

Page 98, n. 57: Czecho-Slovak Refugee Fund

Adde: Accounts of the Czecho-Slovak Financial Claims Fund and of the Czecho-Slovak Refugee Fund, House of Commons Papers Session 1945-46, No. 106.

Page 99: Indemnification of victims of Nazi persecution

The discussion of the specific questions of domestic and international law to be considered with regard to the indemnification of victims of Nazi persecution is outside of the scope of this book. Suffice it to refer to some publications: Marx: *The Case of German Jews vs. Germany. A legal Basis for Their Claims against Germany* (N. Y. 1944) and (1945) 7 Jewish Social Studies 265; the publications of the N. Y. Institute of Jewish Affairs: Tartakower and Grossmann: *The Jewish Refugee* (1944), and Robinson: *Indemnification and Reparations. Jewish Aspects* (1944; First Supp. Febr. 1945, Second Supp. Jan. 1946, Third Supp. May 1946); Goldschmidt, *Legal Claims Against Germany* (N. Y. 1945), and some of the material published in the four pamphlets of Axis Victims League, Inc. (N. Y. 1944, 1945).

Hofmannsthal, *Draft of Proposed Restitution Law for Axis and Axis Occupied Countries*, (1945) 20 N. Y. Univ. L. Q. R. 245, suggesting the creation of an International Trustee to protect the rights of owners of property seized by Axis powers, points out at p. 260: "The International Trustee must be independent of all governments; in fact, it may be obliged sometimes to protect rights of individuals against governments. This organ of international authority could accomplish these ends much more efficiently than could a private individual" (referring to this writer T 313).

Law No. 52 of the American Military Government for Germany, on the Blocking and Control of Property (Military Government Gazette, Germany No. 1, 21 Army Group Area of Control, first promulgated September 18, 1944) provides in art. 1 (2) that "Property which has been the subject of duress, wrongful acts of confiscation, dispossession or spoliation from territories outside Germany, whether pursuant to legislation or by procedures purporting to follow forms of law or otherwise is hereby declared to be equally subject to seizure of possession or title, direction, manage-

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ment, supervision or otherwise being taken into control by Military Government".

The blocking of all property acquired in the so-called Aryanization process in Germany (see T 178) was ordered by the Military Government on June 12, 1945, in interpretation of sec. 2 (1) of the aforementioned Law No. 52. A letter of June 27, 1945, of the Military Government Detachment ELD2, Company D, 2nd RCA Regiment, to the Acting Director of the Reichsbank, Frankfurt on the Main, relating to the property of so-called Aryanized firms pointed out: "While there is no intent that property acquired for full value, in due course of law and with the full consent of the former owners be subjected to any restrictions not imposed on other unblocked business enterprises, the entire so-called aryanization process was predicated upon such disregard for the rights of former non-Aryan owners, that duress, dispossession and wrongful acts of confiscation must be inferred in the absence of absolute proof to the contrary. The relatively unsupported statements of present owners as to the proper manner in which their properties were acquired in the aryanization process does not constitute such absolute proof, neither does the stipulation that the process was consummated in full accordance with then existing German law suffice, since patently, such laws were entirely discriminatory to the rights of the non-Aryan former owners". The Monthly Report of the Military Governor U. S. Zone, Germany, dated October 20, 1945, No. 3 (Property Control, p. 4), however, stated: "The number of claims for property taken under duress or by forced sale is increasing. It is not sufficiently well understood by the public that Military Government only takes this property into control and that claims for indemnification must be processed through German courts".

A directive issued August 23, 1945 by the Public Welfare Section of the Office of Military Government (formerly G-5 division of the Army) declares that "German nationals who have been persecuted because of race, religion or activities in support of the United Nations will be entitled to the same assistance priorities granted United Nations displaced persons". For a detailed description, see Report of Earl G. Harrison to the President of the United States on his "Mission to Europe to inquire into the conditions and needs of those among the displaced persons in the liberated countries of Western Europe and in the SHAEF [Supreme Headquarters American Expeditionary Forces, now Combined Displaced Persons Executive] area of Germany—with particular reference to the Jewish refugees—who may possibly be stateless or non-repatriable", August 1945, (1945) 13 Dept. State Bull. 456. For further

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details, see Monthly Report of the Military Governor U. S. Zone, dated January 20, 1946, No. 6 (Displaced Persons, Stateless Persons and Refugees, p. 2).

Similar provisions are contained in the Directive to the Commander in Chief of U. S. Forces of Occupation regarding the Military Government of Austria, transmitted on June 27, 1945 and released October 28, 1945, (1945) 13 Dept. State Bull. 661. Art. 55(b) provides for the impounding or blocking of "property which has been the subject of transfer under duress, or wrongful acts of confiscation, disposition or spoliation, whether pursuant to legislation or by procedures purporting to follow forms of law or otherwise". It is further said that "property taken from Austrians under the conditions stated in (b) above should be restored as promptly as possible, subject to appropriate safeguards to prevent the cloaking of Nazi, German or militaristic influence".

In liberated European countries, some of the legislative measures aiming at the nullification of decrees under enemy occupation included provisions for restitution of rights and interests. For a survey, see pages 7 and 128 and Nehemiah Robinson, *Indemnification and Reparation* (Second Supplement, January 1946), which refers to legislation concerning indemnification and also to court practice and the factual situation. Some of the legislative provisions enacted in many European countries are reproduced in translations in "*Restitution. European Legislation to Redress the Consequences of the Nazi Rule*" (London, The Wiener Library), also published in January, 1946.

A further question arises with regard to claims for property losses abroad advanced by American citizens who were not citizens of the United States at the time of the occurrence of the damage. Claims are generally advanced by one country against another only on behalf of claimants who were nationals of the country presenting the claims at the inception of the claim and continuously thereafter. This practice may however be modified in connection with international negotiations regarding the settlement of such claims.

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APPENDICES
STATUTES AND REGULATIONS

UNITED STATES

No change in appendices B, C, E, G, H, J, M.

Appendix A: p. 385.

Sec. 10(a) has been repealed by sec. 13 of Public Law 690, of August 8, 1946.

Sec. 20 has been amended by sec. 2 of Public Law 322, of March 8, 1946, to read as follows:

No property or interest or proceeds shall be returned under this Act, nor shall any payment be made or judgment awarded in respect of any property or interest vested in or transferred to the Alien Property Custodian unless a schedule of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services in connection with such return or payment or judgment, has been furnished to, and approved in accordance with this section by, the President or such officer or agency as he may designate, or the court, as the case may be. In the case of any return of, or the making of any payment in respect of, any such property or interest or proceeds (other than pursuant to an order of a court), the President or such officer or agency as he may designate may make such modifications, if any, as are appropriate, and shall approve such schedule only upon determining that the individual fees do not exceed fair compensation for the services rendered and that the aggregate of the fees does not exceed 10 per centum of the value of such property or interest or proceeds or of such payment. Any person aggrieved by the determination of the President or of such officer or agency as he may designate may petition the district court of the United States for the district in which he resides to review the determination, and shall name the person or agency making the determination a party defendant. The court hearing such petition for review, or a court awarding any judgment in respect of any such property or interest or proceeds, as the case may be, may make such modifications, if any, as are appropriate, and shall approve such schedule only upon determining that the individual fees do not exceed fair compensation for the services rendered, and shall approve an aggregate of fees in excess of 10 per centum of the value of such property or interest or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved hereunder, or retaining for more than thirty days any portion of a fee, accepted prior to approval hereunder, in excess of the fee as approved, shall be guilty of a violation of this Act.

Sec. 32 has been added by Public Law 322, of March 8, 1946.

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Appendix F: p. 445.

General Ruling No. 11, as amended, reads as follows:

(1) *Trade and Communication with an Enemy National Prohibited.* Unless authorized by a license expressly referring to this general ruling, no person shall, directly or indirectly, enter into, carry on, complete, perform, effect, or otherwise engage in, any trade or communication with an enemy national, or any act or transaction which involves, directly or indirectly, any trade or communication with an enemy national.

(2) *Acts and Transactions by an Enemy National Prohibited.* Unless authorized by a license expressly referring to this general ruling, no enemy national who is within the United States shall, directly or indirectly, enter into, carry on, complete, perform, effect, or otherwise engage in, any financial, business, trade, or other commercial act or transaction.

(3) *Certain Transactions Licensed Under Section 3(a).* Every act or transaction prohibited by section 3(a) of the Trading with the Enemy Act, as amended, is hereby licensed thereunder unless such act or transaction is prohibited by paragraph (1) or paragraph (2) hereof or otherwise prohibited pursuant to section 5(b) of that Act and not licensed by the Secretary of the Treasury. Attention is directed to the fact that the General License under section 3(a) of the Act, issued by the President on December 13, 1941, does not license any act or transaction not authorized hereunder.

(4) *Definitions.* As used in this general ruling and in any other rulings, licenses, instructions, etc.:

(a) The term "enemy national" shall mean the following:

(i) The Government of any country against which the United States has declared war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any agent, instrumentality, or representative of the foregoing Governments, or other person acting therefor, wherever situated (including the accredited representatives of other governments to the extent, and only to the extent, that they are actually representing the interests of the Governments of Germany, Italy, and Japan and Bulgaria, Hungary, and Rumania);

(ii) The government of any other blocked country having its seat within enemy territory, and any agent, instrumentality, or representative thereof, or other person acting therefor, actually situated within enemy territory;

(iii) Any individual within enemy territory, except any individual who is with the armed forces of any of the United Nations in the course of his service with such forces or who is accompanying such armed forces in the course of his employment by any of the Governments of the United Nations or organizations acting on their behalf;

(iv) Any partnership, association, corporation or other organization to the extent that it is actually situated within enemy territory;

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(v) Any person whose name appears on The Proclaimed List of Certain Blocked Nationals, and any person to the extent that he is acting, directly or indirectly, for the benefit or on behalf of any such person; *provided* that no person so acting shall be deemed to be an enemy national if he is acting pursuant to license issued under the Order or expressly referring to this general ruling; and

(vi) Any person to the extent that he is acting, directly or indirectly, for the benefit or on behalf of an enemy national (other than a member of the armed forces of the United States captured by the enemy) if such enemy national is within any country against which the United States has declared war; *provided* that no person so acting shall be deemed to be an enemy national if he is acting pursuant to license issued under the Order or expressly referring to this general ruling.

(b) The term "enemy territory" shall mean the following:

(i) The territory of Germany, Italy, Japan, Bulgaria, Hungary, and Rumania; and

(ii) The territory controlled or occupied by the military, naval, or police forces or other authority of Japan. Such territory shall be deemed to be those portions of Burma, China, French Indo-China, Hong Kong, British Malaya, the Netherlands East Indies, the Philippine Islands and Thailand occupied by Japan, and any other territory controlled or occupied by Japan.

(c) The term "The Proclaimed List of Certain Blocked Nationals" shall mean The Proclaimed List of Certain Blocked Nationals, as amended and supplemented, promulgated pursuant to the President's Proclamation of July 17, 1941.

(d) The term "trade or communication with an enemy national" shall mean any form of business or commercial communication or intercourse with an enemy national after March 18, 1942, including, without limitation, the sending, taking, obtaining, conveying, bringing, transporting, importing, exporting, or transmitting or the attempt to send, take, obtain, convey, bring, transport, import, export, or transmit,

(i) Any letter, writing, paper, telegram, cablegram, wireless message, telephone message, or other communication, whether oral or written, of a financial, commercial, or business character; or

(ii) Any property of any nature whatsoever, including any goods, wares, merchandise, securities, currency, stamps, coin, bullion, money, checks, drafts, proxies, powers of attorney, evidences of ownership, evidences of indebtedness, evidences of property, or contracts;

directly or indirectly to or from an enemy national after March 18, 1942; *provided, however*, that with respect to any government or person becoming an enemy national after March 18, 1942, the date upon which such government or person became an enemy national shall be substituted for the date March 18, 1942.

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and orders of Prize Courts [of Allied or Associated Powers] on or after September 1, 1939, concerning ships or goods [of such countries] or the payment of costs", Italy: art. 76(1c), text *supra* p. 254; Hungary: art. 32(1c); Rumania: art. 30(1c); Bulgaria: art. 28(1c); Finland: art. 29(1c).

The Peace Treaties further reserve the right of each of the Allied and Associated Powers "to examine, according to a procedure established by it, all decisions and orders of [former enemy] Prize Courts involving ownership rights of its nationals", Italy: Annex XVII(A), text *supra* p. 264; same text in Annex VI(A) of the Treaties with Rumania and Finland.

Page 118: Loss of enemy character

A particular situation is presented in the Peace Treaties of February 10, 1947, inasmuch as the Axis satellite countries waive all claims (on their own behalf and on behalf of their nationals) against Germany and German nationals outstanding on May 8, 1945, "except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939". Property in Germany of the respective country or of its nationals "shall no longer be treated as enemy property and all restrictions based upon such treatment shall be removed". The restoration and restitution, however, "shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany", Italy: art. 77(4), text *supra* p. 255; same text, Hungary: art. 30; Rumania: art. 28; Bulgaria: art. 26; Finland: art. 28.

Page 120: Defrosting of assets

To the list of countries whose blocked accounts may be released under the certification procedure of General License No. 95, as amended, Greece was added on October 15, 1946, Switzerland and Lichtenstein on November 30, 1946, Poland on January 7, 1947, and Austria on January 16, 1947, 11 F. R. 11987, 13960, 12 F. R. 96, 251. On the measures to be taken in Switzerland to identify any property in which there had been an enemy interest, see decrees of the Swiss Federal Council of November 19, 1946 on the deblocking of Swiss assets in U. S. A., *Neue Zuercher Zeitung* No. 2107, of November 20, 1946, p. 2.

Wartime controls on foreign assets have now been withdrawn by generally licensing all blocked countries but Germany and Japan, Portugal, Spain, Sweden and Tangier, these latter countries being defined as "excepted countries" in General License No. 94, as amended November 30, 1946, 11 F. R. 13959. As to the unblocking of Austrian

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assets in the United States, authorized on January 16, 1947, under the certification procedure of General License No. 95, the Austrian Government claimed title to such assets which were transferred to German ownership after the Anschluss (March 1938) but prior to the blocking of Austrian assets in the United States (June 14, 1941), following Public Interpretation No. 19, of February 8, 1946, which declared void the transfer of such assets. The Report of the United States Commissioner, Military Government Austria, No. 9 (July 1946) states on p. 171: "The U. S. Treasury Representative indicated, however, that special arrangements would have to be made regarding the recovery of these original Austrian assets, since conflicting claims of the Alien Property Custodian were likely to exist in most cases".

Page 129: Restitution

For the definition of the term "restitution" as adopted in March 1946, see *A Year of Potsdam. The German Economy since the Surrender*, Economics Division, Office of Military Government for Germany (U. S.) p. 170.

The Peace Treaties of February 10, 1947 contain detailed provisions with regard to restitution which are fully reprinted *supra* p. 255 as to Italy, art. 78; corresponding provisions are included in the Treaties with Hungary: art. 24; Rumania: art. 24; Bulgaria: art. 22; Finland: art. 24.

A German Restitution Law, drafts of which were submitted by the Council of States (Laenderrat) to Military Government U. S. Zone, provides in its sect. 1, as basic principle, "to effect to the largest extent possible the restitution of identifiable property to persons who were wrongfully deprived of such property within the period from January 30, 1933 to May 8, 1945 on racial, religious or ideological grounds or on account of their political opposition to National Socialism". A Law on the Establishment of a Special Fund for Measures of Restitution provides interim awards for the economic relief and rehabilitation of those rendered destitute by Nazi persecution. "This is the first step in passing from spot relief methods to a planned program which will provide uniform assistance for racial, religious and political persecutees", Monthly Report, Military Governor, U. S. Zone, September 1-30, 1946, n° 15 p. 5.

In Austria, the law "On the Registration of Aryanized Property Confiscated in connection with the Ascension to Power of the National Socialists", effective as of September 14, 1946, provided for the registration of that class of property with the Ministry for Property Control and Economic Planning of the Austrian Federal

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Government pending final decision as to rightful ownership. The Austrian Government has been contemplating a series of five Restitution Laws setting forth in detail the methods and procedures to be used in effecting restitution of property. The "First Federal Law on Restitution of Dispossessed Property, Administered by the Federation and by Federal Provinces", of September 14, 1946, dealt with that class of property which had been taken by the German Reich and had not passed to a third party. Further laws covering all properties which had been confiscated, aryanized, or through other means taken from the rightful owners during the period of German occupation, continue to be under consideration by the Austrian Government.

Page 126: Commissar legislation

See notes by Mazeaud, Sirey 1946. 2. 13, and Lyon-Cahen, Sirey 1946. 5. 137, and Sarraute et Tager, *La restitution des biens spoliés*, Rec. Dalloz 1946, Jurispr. 67, commenting on thirty-one court decisions rendered on the application of the Ordinances of April 21, 1945 and June 9, 1945 (Rec. Dalloz 1945, Leg. 90, 122). Cp. further the *Distex* decision of the special court (*Raad voor het Rechtsherstel*, The Hague, April 29, 1946) established under the Dutch decree E 100 of September 17, 1944, mentioned *supra* p. 7, *Tribunalen in Nederland and Andere Na-Oorlogsche Rechtspraak* 1946, n° 230 p. 397.

Page 129: United States-France Agreement

In implementation of art. 7 of the Agreement of May 28, 1946 between the United States and France, providing *inter alia* for the equality of treatment of the respective nationals, mentioned *supra* p. 129, the State Department released on January 15, 1947 information concerning the war damage compensation for American nationals in France (time limits, evidence, etc.), (1947) 16 D. S. B. 166.

Page 131: Military Government in occupied territories

Law No. 29 of the Allied Control Council, regarding the Delivery of Certified Copies of Documents, authorizes representatives of Military Government to furnish to representatives of the United Nations certified copies of documents from the files of German public offices and private concerns. The law will, "as one of its benefits, expedite the securing of evidence required in U. S. court cases involving property believed to be German-owned and fraudulently transferred before the war to American or neutral firms".

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ministration of the estates of deceased residents of the Commonwealth should proceed with all reasonable expedition". In Regulation 2 to General Order No. 6, of January 7, 1947, 12 F. R. 175, prescribing the sending of copy of process to the Office of Alien Property, it was stated that "designated enemy country" within the meaning of General Order No. 6 shall mean "any foreign country against which the United States has declared war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania), but this provision is not applicable to any service upon persons within such country who is not a citizen or subject of Germany or Japan".

Page 147: Statute of Limitations

Detailed provisions as to periods of prescriptions are embodied in Annex XVI(B) of the Peace Treaty with Italy, text *supra* p. 263, and in the corresponding texts of Annex V(B) to the Treaties with Hungary, Rumania, Bulgaria and Finland.

Page 157: Office of Alien Property

The Office of Alien Property Custodian was terminated and its functions transferred to the Attorney General by Executive Order 9788 of October 14, 1946, 11 F. R. 11981 (as corrected 12123). The Office of Alien Property was established in the Department of Justice (11 F. R. 12045, 14135); its organization and delegations of final authority were dealt with in amendments to Part 500, Title 8, Chapter II, Code of Federal Regulations, of October 17, 1946, and December 2, 1946, 11 F. R. 12436, 14155. See further Terminal Report of the Custodian, of October 14, 1946, and for a survey of Substantive Rules (as of August 21, 1946), 11 F. R. 9988, and of Rules of Procedures, *ibid.* 177A-627 and *supra* p. 249. Cp. Duncanson, *The Representational Function of the Alien Property Custodian*, (1946) 15 Fordham L. R. 82, and Fallon, *Enemy Business Enterprises and The Alien Property Custodian*, *ibid.* 222.

In *Vahle v. Markham*, 5 Federal Rules Decisions 315 (D. C. Pennsylvania, May 28, 1946), it was held that the Custodian acquires title to the property of an alien upon seizure of the property or the issuance of a vesting order, thus following the *Brennero* decision, *supra* p. 149.

In *Central Hanover Bank & Trust Co. v. Markham*, 68 F. Supp. 829 (D. C. N. Y., October 11, 1946), an action of a trustee to recover shares vested by the Custodian and dividends collected thereon, it was held that the Custodian may seize the interests and the corpus of the trust the beneficiaries of which were residents of Germany, notwithstanding N. Y. Personal Property Law sec. 15 (prohibiting

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assignments of trust interests) inasmuch as, by virtue of sec. 12 of the Trading with the Enemy Act, "he may handle the property as though he were the absolute owner, although he does not have to do anything other than to preserve it" (p. 831).

The decision in *Overseas Finance Corp., Ltd. (Uebersee Finanz Korporation v. Markham*, mentioned *supra* p. 162) was reversed by the Court of Appeals, District of Columbia (unreported, No. 9187, October 21, 1946; C. 9280), a majority holding that sec. 5(c) of the Act, as amended, which authorized the vesting of property of any foreign national, did not nullify sec. 9(a) of the Act which gave any person not an enemy or an ally of an enemy the right to sue for the recovery of the property held by the Custodian. Petition for writ of certiorari was granted by the Supreme Court of the United States on February 17, 1947 (No. 934). See also Vesting Order 7913, of December 12, 1946, 11 F. R. 14559.

The Federal Tort Claims Act (Title IV of the Legislative Reorganization Act of 1946, Public Law 601), of August 2, 1946, expressly exempts from its application, sec. 421(e), "any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended."

Page 160: Conflicting Custodial Claims

Particular problems are involved in the treatment of property in the United States which belongs to corporations in allied countries owned by Germans or Japanese, or to corporations in Germany or Japan which are controlled by Americans or non-enemy foreign nationals. Further problems will arise concerning the method of treatment of interests of non-enemy nationals who have been associated in business with Germans and Japanese, not only in the United States but also in other Allied countries. See Terminal Report, Office of Alien Property Custodian, of October 14, 1946, p. 5. Such inter-custodial questions have been discussed at the meetings held since November 6, 1946, at the Inter-Allied Reparation Agency in Brussels, Belgium.

Page 160: Notices of Claims

As to payment of debts under sec. 34 of the Trading with the Enemy Act, as amended, see Rules of Procedure (sec. 601.60), Form APC-1C, December 17, 1946, 11 F. R. 14588. In *Matter of John Mangels*, dec'd, N. Y. L. J., December 21, 1946, p. 1846, where lawyers sought compensation for services rendered to a (German) legatee prior to the outbreak of war, it was held, that

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the allowance and collection of claims are governed exclusively by the aforementioned sec. 34(i) of the Act, which "supersedes sections 231a and 231b of the Surrogate's Court Act, which must yield to the federal statute".

Page 168: Administration of enemy property

As to the liquidation of the New York agency of the Yokohama Specie Bank mentioned *supra* p. 169, see *Application of Standard Vacuum Oil Co.*, 65 N. Y. S. 2d 367 (September 13, 1946), and on the question of turn-over directives of the Custodian addressed to the Superintendent of Banks ordering him to surrender funds which were claimed as trust moneys by bondholders, *In re Yokohama Specie Bank, Limited*, 66 N. Y. S. 2d 289 (November 12, 1946).

In the case of the *Silesian-American Corporation*, where the unreported decision of the District Court, *supra*, p. 172, was affirmed, 156 F. 2d 793 (July 3, 1946; order of October 14, 1946, denying certiorari vacated and petition for writ of certiorari granted February 17, 1947, No. 346), certain Swiss banks asserted that the shares vested by the Custodian has been pledged to them as security for loans. These banks announced their intention of holding the debtor and its trustee liable for any action which either might take to their prejudice; the District Court declined, however, to consider whether the Swiss banks owned any interest in the vested shares, and the Swiss banks did not appeal from that decision. Thus a constitutionally adequate remedy was considered available to a non-enemy foreign national whose property had been vested pursuant to the Trading with the Enemy Act, as amended by the First War Powers Act. It was further held that under sec. 8 (a) of the Act the issuer of stock certificates representing shares which were vested by the Custodian, may not refuse to cancel the outstanding certificates and to issue new ones to the Custodian on the ground that the shares are held in pledge by persons who are non-enemy nationals.

Restrictions on the sale or transfer of vested shares (of the American Bosch Corporation) were considered in an opinion of the General Counsel APC, F-13, of September 9, 1946. On September 10, 1946, General Order No. 35, 11 F. R. 9924, was issued, prohibiting any interest in the stock of designated key corporations vested and sold by the Custodian from being transferred to or acquired by any person not an American national. Order No. 1 of the same day, 11 F. R. 9990, and Orders No. 2 and 3 of October 14, 1946, *ibid.* 12782, designated the American Bosch Corporation, Schering Corporation, and General Aniline & Film Corporation as key corporations within the meaning of General Order No. 35.

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As an example of postwar administration of enemy property, namely, the exchange of bearer into nominative shares, the Norsk Hydro-Elektrisk Kvaestofaktieselskab may be mentioned. German influence (I. G. Farben) has always prevailed in this Norwegian corporation. Pursuant to sec. 9 of the Norwegian Act regarding Enemy Property of March 22, 1946 and Royal Decrees of September 6, 1946 and October 6, 1946, the Directorate for Enemy Property in Oslo ordered the delivery before December 31, 1946 of all bearer shares of that corporation to be replaced by nominative certificates in order "to make it possible to determine which of the bearer certificates of stock are under enemy control and thereby enable the Norwegian Government to fulfill its obligations under Article 6a of the Agreement on Reparations from Germany". That latter article provides the disposal of enemy assets within the jurisdiction of each signatory government in a manner to preclude their return to German ownership or control. Shares which belonged on May 9, 1945 to enemies (nationals of Germany and Japan and judicial persons with seat in those countries) or enemy controlled persons fall within the purview of the aforementioned Norwegian legislation on enemy property.

Page 174: War damage claims

The use of seized property for the satisfaction of claims is expressly recognized in the Peace Treaties of February 10, 1947. Each of the Allied and Associated nations shall have the right to apply property within its territory and belonging to the former-enemy country or to its nationals, "to such purposes as it may desire within the limits of its claims and those of its nationals" against the former-enemy country or its nationals, Italy: art. 79(1), text *supra* p. 258; corresponding provisions in the Treaties with Hungary: art. 29(2); Rumania: art. 27(2); Bulgaria: art. 25(2). Certain property to be exempted from this use is enumerated in paragraph 6, text *supra* p. 259. All "property, or the proceeds thereof, in excess of the amount of such claims, shall be returned", with the exception of industrial property, *ibid.* paragraphs 1 and 4. It is further provided that the liquidation and disposition of such property "shall be carried out in accordance with the law of the Allied and Associated Power concerned", and that the former-enemy owner "shall have no rights with respect to such property except those which may be given him by that law", *ibid.* paragraph 2. The foreign government further undertakes to compensate its nationals whose property is taken and not returned to them, *ibid.* paragraph 3. The Treaty with Finland, however, does not contain corresponding clauses but provides for

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the restoration of all Finnish assets in the territory of the Allied and Associated Powers, art. 27, text *supra* p. 280. With regard to the Treaty with Italy, it was stated on behalf of the American Delegation to the Paris Peace Conference on October 8, 1946, (1946) 15 D. S. B. 710: "The total of such claims will be small, and we hope to negotiate an agreement with the Italian Government with regard to them. In fact, subject to this one special arrangement and to cases of war criminals and the like, we see no reason why all the \$60,000,000 of Italian assets in the United States should not be returned to Italian ownership although the necessary legislation had not yet been enacted".

A bill H. R. 873 was introduced by Representative Beckworth on January 13, 1947, to create an Enemy Property Commission, to provide for the disposal of all German, Japanese and Italian property in the United States for the satisfaction of all damage claims against those countries "in consequence of hostilities or of any operations of war".

The U. S. Department of State has not yet issued regulations for registration of claims for the various kinds of loss or damage sustained as a consequence of war. The presentation of claims is facilitated by detailed *Suggestions for Preparing Claims* in three memoranda of the State Department: claims for loss of or damage to property (real or personal), of December 20, 1945; claims for personal injury or loss of life, of January 5, 1946; and recovery of property lost during the Nazi regime (estates, bank deposits), not dated.

The Peace Treaties of February 10, 1947 provide that when property in former-enemy countries has not been returned to United Nations nationals within six months from the coming into force of the Treaty, application shall be made to the respective country's authorities not later than six further months, "except in cases in which the claimant is able to show that he could not file his application within this period", Italy: art. 78(2), text *supra* p. 256; Hungary: art. 26(2); Rumania: art. 24(2); Bulgaria: art. 23(2); Finland: art. 25(2).

The Peace Treaties embody in detail the principles under which compensation is to be given to United Nations nationals for losses and damages suffered during the war. Reference is made to art. 78 of the Treaty with Italy, reprinted *supra* p. 255, and the corresponding provisions in the Treaties with Hungary: art. 26; Rumania: art. 24; Bulgaria: art. 23, and Finland: art. 25.

See further Recommendations of the Committee on Treatment of Property Rights in the War Settlement, Section of International and Comparative Law, American Bar Association, Report of Oc-

tober 5, 1946, p. 8; letters (to the Editor) by Professor John Hanna, N. Y. Times September 1, 1946, Section E p. 6, col. 6, and November 5, 1946, p. 24 col. 7; Hyde, *Protection by the United States of American-Owned Property in War-Stricken Areas*, (1946) 46 Columbia L. R. 519; and, for an informative survey, Cowles, *Recovery in American Claims Abroad*, (1946) 25 Harvard Business Review 92.

In Mexico, a decree of September 13, 1945, *Diario Oficial*, September 28, 1945, transl. (1946) 1 World Trade L. J. 369, provided for the registration of Mexican war claims with the Intersecretarial Committee on Property and Transactions of the Enemy. In Brazil, a War Claims Commission was established by Decree No. 8553 of January 4, 1946, *Diario Oficial*, January 15, 1946, to receive claims for war damages, evaluate enemy property seized by Brazil, and act generally in matters concerning the handling of all claims arising from the war. In Argentina, a decree was passed on January 24, 1947, empowering the government to buy all assets in Argentina of business firms that formerly belonged to nationals of Axis countries (N. Y. Times, January 25, 1947, p. 1).

Page 178: War claims against the Allied Powers

Claims against the Allied and Associated Powers were waived by the Axis satellite countries on their own behalf and on behalf of their nationals "arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war [with the respective country] at the time". These claims will be "completely and finally . . . henceforward extinguished, whoever may be the parties in interest", Italy: art. 76, text *supra* p. 254; Hungary: art. 32; Rumania: art. 30; Bulgaria: art. 28; Finland: art. 29.

Page 184: Anti-trust violations

In *Kind v. Markham*, mentioned *supra* p. 184, (D. C. N. Y., June 28, 1946; C. 9279), a case dealing with the beneficial ownership of the stock of an American enterprise, Graef & Schmidt, Inc. by the (German) Kommanditgesellschaft J. A. Henckels, it was held that the term "control" as used in regulations under the Trading with the Enemy Act, namely Ex. Order 9193 of July 6, 1943, must be given "a meaning somehow equivalent to a property right or akin to ownership real or beneficial" and does not apply to a trustee as appointee of an American court for the benefit of American citizens. See further *Final Determinations of the Vested Property Claims Committee* (1946) p. 91.

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immoral about an agreement to transfer shares the sale of which is temporarily restricted by law, if the agreement is made contingent upon the subsequent removal of these restrictions”.

In *Fujikawa v. Sunrise Soda Water Works Co.*, 15 Law Week 2364 (C. C. A. Ninth, December 5, 1946), it was held that the denial by the Treasury Department of a license for a Japanese-owned bank to continue operation during the war does not excuse the bank from paying interests to depositors for the period from the beginning of the war to the liquidation, inasmuch as its officers had failed to apply for a special license to that effect.

In *re Fry; Chase National Executors and Trustee Corp., Ltd. v. Fry*, 201 L. T. 301, (Ch., May 15, 1946), a gift of shares by a donor in the United States was considered imperfect because of lack of the British Treasury license which was required by reg. 3A of the Defence (Finance) Regulations 1939 to effect the transfer.

It may be noted that the delivery of estate property situated in the United States cannot be conditioned upon compliance with tax laws of foreign countries; as to France, see *Estate of Emmanuel van Praag*, N. Y. L. J., February 17, 1947, p. 643 (with further references).

Page 195: Generally licensed trade area

General License No. 53 has been amended on January 1, 1947, 12 F. R. 96, to remove the remaining blocking control over practically all persons in China, the Netherland East Indies, French Indo-China, Turkey, and the non-European colonies and territories of the liberated countries. Thus the freezing regulations generally now apply only to the property of and current transactions with persons in Germany and Japan, in Spain, Sweden, Portugal and Tangier, to pre-armistice assets of residents of Switzerland and Lichtenstein, and to the property of certain German and Japanese nationals (persons and corporation) wherever located which are subject to the provisions of General Ruling No. 11A (see *supra* p. 25).

Page 204: Inheritance rights

In *Allen v. Markham*, 156 F. 2d 653 (C. C. A. Ninth, May 22, 1946, reh. den. July 17, 1946), it was held that the California Statute (Ch. 895, Laws 1941) is constitutional and valid and that the Trading with the Enemy Act, as amended by the First War Powers Act, “contains no hint or suggestion that property to be inherited after December 8, 1941 should not be subjected to confiscation although that which had been theretofore inherited, would be so subject. Thus Congress by ignoring the Treaty [with Germany of 1921]

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effectively provided for breaking or suspending or abrogating the reciprocal inheritance provision of the Treaty. To award the decedent's property to the Alien Property Custodian would be to give him a right in direct contradiction to the right of aliens under the Treaty which he contends is in full effect" (p. 662). The case is actually again pending before the Supreme Court of the United States. See further as to reciprocal inheritance rights of aliens (Danes), *In re Nielsen's Estate*, 165 P. 2d 792 (S. C. Montana, February 5, 1946).

Page 206: Character of foreign exchange legislation

See further the Memorandum to the (British) Exchange Control Bill (November 1946, Cmd. 6954), where it is said: "The Bill, and our system of Exchange Control, are fully consistent with our obligations to the International Monetary Fund and under the Anglo-American Financial Agreement. Indeed, the Bill is a necessary condition of our fulfilment of these obligations".

The point of view emphasized *supra* p. 206, namely, that the concept of public policy alone will no more prevail in refuting extra-territorial operations of foreign exchange legislation, has already been recognized to a certain degree in the provision of the Peace Treaties of February 10, 1947, whereby compensation paid to United Nations nationals for war damages shall be free usable in Axis satellite countries "but shall be subject to the foreign exchange control regulations which may be in force [in that country] from time to time", Italy: art. 78(4c), *supra* p. 256; Hungary: art. 26(4c); Rumania: art. 24(4c); Bulgaria: art. 23(4c); Finland: art. 25(4c).

Cp., however, *Marcu v. Fischer*, 65 N. Y. S. 2d 892 (September 16, 1946), a proceeding of the administratrix of an estate of an absentee from Belgium against partners of the absentee, where it was held that "a substitution of blocked and non-transferable francs for American securities—physically here—would be confiscatory as to a non-resident of Belgium; and any such decree is without extra-territorial effect."

Page 210: Foreign exchange rates

The Peace Treaties of February 10, 1947 provide that the basis of calculation for the settlement of reparation payments will be the United States dollar at its gold parity, i. e. \$35 for one ounce of gold, Italy: art. 74(A6), text *supra* p. 250; Hungary: art. 23(2); Rumania: art. 22(2); Bulgaria: art. 21(3); Finland: art. 23(2).

As to values of foreign moneys, adde to page 214 *supra*: Circular of October 1, 1946, published in Federal Register of December 19, 1946, p. 14514.

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Page 208: Compensation of Americans for foreign nationalization

The Polish Industries Nationalization Act of January 3, 1946, mentioned *supra* p. 208, is reprinted in transl. in Sharp, *Nationalization of Key Industries in Eastern Europe* (Foundation for Foreign Affairs, Washington, 1946) p. 75; see further Gidynski, *Nationalization of Industry in Poland*, N. Y. L. J. October 18, 1946, p. 935; Goldenberg and Metzger, *The Polish Nationalization Law*, (1946) 15 D. S. B. 651. An Agreement between the United States and Poland of April 24, 1946, (Treaties and other International Acts Series 1516) provides in sec. 4 that the government "will make both adequate and effective compensation to nationals and corporations of the other country whose properties are requisitioned or nationalized". A further agreement of December 27, 1946, (1947) 16 D. S. B. 28, covers principles of compensation for American owners of enterprises taken over pursuant to the Polish nationalization law (see *supra* p. 295).

As to the Czechoslovakian decrees of October 24, 1945, printed in Sharp, l. c. p. 57, the Agreement between the United States and Czechoslovakia of November 14, 1946, (1946) 15 D. S. B. 1004, provides in sec. 7 that the governments "will make adequate and effective compensation for nationals of one country with respect to their rights or interests in properties which have been or may be nationalized or requisitioned by the Government of the other country". See Oatman, *Nationalization Program in Czechoslovakia*, (1946) 15 D. S. B. 1027, 1031. As to the Yugoslavian law of December 4, 1946, nationalizing private economic enterprises, see (1946) 15 D. S. B. 1150.

An equal basis of treatment of foreigners and nationals has also been agreed upon in the Peace Treaties of February 10, 1947, inasmuch as the respective governments "shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property [in the respective country] and in the allocation of foreign exchange for the importation of such materials as applies to nationals [of the respective country]", Hungary: art. 26(4d); Rumania: art. 24(4d); Bulgaria: art. 23(4d); Finland: art. 25(4d).

In a report of the United States Associates, International Chamber of Commerce, entitled "The Transition From a War to a Peace Economy" (New York, June 1946), it is said at p. 12: "Property rights and interests of which the nationals of any United Nation are the beneficial owners, including the assets of corporations owned by the nationals of any other United Nation, wherever such property rights and interests may be situated, should not be utilized for the

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purpose of reparations. Provision should be made either for restoration to their owners as promptly as possible, of those rights and interests which have been so utilized, or for adequate compensation therefor" (italics supplied). A similar resolution as to war losses and indemnification was adopted by the Thirty-Third National Foreign Trade Convention, in its Proposed Foreign Economic Policy for the United States (November 13, 1946), XI, p. 14.

Page 212: Extraterritorial effect of foreign decrees

See further, as to the non-recognition of extraterritorial effects of foreign decrees, *Bernstein v. van Heyghen Freres S. A.*, unreported (D. C. S. D. N. Y., November 6, 1946, Civil 37-368), where, in an attachment procedure, it was said with regard to German expropriation acts: "These acts (of the German government under the Nazi regime) were performed within German territory and are not subject to review in our courts". It may be submitted, however, as to whether acts which were allegedly committed by the Gestapo, a criminal organization under the terms of the Judgment of the International Military Tribunal at Nuremberg, and thus invalid even under the concept of German law, do not constitute an exception to the rule of "not sitting as a judge" over acts of foreign authorities.

Page 223: Litvinow Agreement

The Litvinow Agreement, mentioned *supra* p. 223, was considered in the Opinion of the Attorney General of August 20, 1946, vol. 46 No. 111, reprinted (1946) 15 D. S. B. 1068.

Page 223: General Aniline and Film Corp.

See Supp. Vesting Order 7874, of October 14, 1946, 11 F. R. 13887, vesting dividends on stock of that American corporation, as "beneficially owned by I. G. Farbenindustrie A. G.", and the articles in N. Y. Times of December 22, 1946 and January 20, 1947, regarding Interhandel A. G., formerly I. G. Chemie, Basle (Switzerland).

Note: Some cases mentioned *supra* have meanwhile been reported; references are as follows:

- Page 6: *Banque Mellie Iran*: 64 N. Y. S. 2d 804;
- 17: *Rosenau*: 65 Idaho 408;
- 23: *United Societies Committee*: 186 Misc. 576;
- 41: *Matter of Dieudonne*, 186 Misc. 642;
- 51: *Citizens League*, cert. den. December 9, 1946;

NOTE

General Order No. 21, as amended (*supra* p. 160), has been further amended on February 27, 1947, 12 F. R. 1457, to the effect that unless persons who claim return of vested property file claims before July 1, 1947, the property may be reduced by the payment of valid debts of the former owners. Debt claims against persons or corporations whose property was vested between December 18, 1941, and December 31, 1946, have to be filed by June 1, 1947, pursuant to Bar Order No. 1, of February 25, 1947, 12 F. R. 1448, in accordance with sec. 34(b) of the Trading with the Enemy Act, as amended by Public Law 671 of August 8, 1946 (text *supra* p. 231). As to property acquired by the Office of Alien Property after January 1, 1947, see Gen. Order 34, Reg. 2, Gen. Order 20, Reg. 1, and Gen. Order 5, Reg. 1, of March 3, 1947, 12 F. R. 1544.

Special licenses no longer need be obtained under the Trading with the Enemy Act, as amended, to carry on current business transactions, and to communicate with persons in Germany and Japan. Permission must be obtained, however, from appropriate Military Authorities in the two countries, and other regulations in those areas must be complied with, amendments of March 4, 1947, to General Licenses No. 94 and 95, as amended (*supra* pp. 297, 298), to Public Circular No. 25, and to General Ruling No. 11A, as amended (*supra* pp. 25, 294), 12 F. R. 1457-1459. Public Circular No. 34, of January 2, 1947 (*supra* p. 300), was revoked on March 4, 1947, 12 F. R. 1459. These amendments do not involve the relaxation of controls on transactions regarding German and Japanese assets blocked on December 31, 1946; they remain subject to the vesting by the Office of Alien Property, Department of Justice.

AVS

THE AMERICAN COMMISSION FOR THE PROTECTION
AND SALVAGE OF ARTISTIC AND HISTORIC
MONUMENTS IN THE WAR AREAS

MEMORANDUM FOR MEMBERS AND ADVISERS OF
THE AMERICAN COMMISSION

No. 5

January 7, 1946

Monuments, Fine Arts and Archives in the Far East

Lt. Commander George Stout reports that MFA & A is now a subsection, directly under General Dyke, Chief of CI & E. Major Laurence Sickman reported for duty early in December, and has made an inspection trip to Korea to survey the situation there.

The Sub-Section is studying the problem of works of art looted from China, as well as the protection of properly owned and administered monuments, sites and collections in Japan.

Resitution

On Wednesday, October 24, a ceremony was held at the Rijksmuseum in Amsterdam in celebration of the restoration to the Dutch of twenty-six pictures by Dutch masters which had been looted from Holland by the Germans and recovered by American Military authorities in the American Occupation Zone in Germany. The ceremony was attended by some thirty American and Dutch officials and military personnel, including the U.S. Ambassador to the Netherlands, and the Netherlands Minister for Education, Arts and Sciences, as well as about a hundred private individuals. The recovered pictures were placed on exhibition in one of the galleries of the Museum. Nearly all of these pictures had been found in repositories in Austria and southern Bavaria, and had been taken by American MFA&A officers to Munich where they were identified. They were not the property of Netherlands national museums, but were considered important from the point of view of Netherlands national interest. They will eventually be returned to their individual owners. Outstanding among the paintings were Rembrandt's last "Self-Portrait", dated 1669; Rembrandt's "The Peacocks" and "Clemency of Titus"; Rubens' "Diana Bathing"; and Jan Steen's "Iphegenia". Two additional military truck-loads of looted paintings were a short time later delivered to the Rijksmuseum.

Painted panels by the Master of Hohenfurt, found in the Alt Aussee salt mine, and about 18 cases of objects from the Army Museum in Prague were returned to Prague in October and

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paraded through the streets with signs stating that they were the first installment of stolen works of art being returned by General Eisenhower. These works have been formally transferred to the Czechoslovakian Government.

106 works of art including 48 paintings have been transferred to the French at Wiesbaden. In all, some 7000 art objects have thus far been restored to France, Belgium, The Netherlands, and Czechoslovakia.

The Crown jewels and other heirlooms of the Holy Roman Empire have been returned to Vienna from Nuremberg and placed under heavy guard in the National Bank Building. The collection, consisting of 30 pieces, including the Crown of Charlemagne and the Bible of Charlemagne, were taken to Nuremberg by the Nazis shortly after the Austrian Anschluss in 1938, and were recovered by the American Army

It has been decided that the caskets of Frederick the Great, Field Marshal Von Hindenburg and his wife, and Friedrich Wilhelm the First, now at Marburg, be safeguarded for some time to come by the military government and that they not be turned over to German authorities.

Personnel

Charles H. Sawyer, former Assistant Secretary-Treasurer of the Commission, resigned on December 31, 1945, and will soon return to his former position as Director of the Worcester Art Museum. Mr. Charles Seymour, Curator of Sculpture at the National Gallery of Art will be the Acting Assistant Secretary-Treasurer until February, when it is expected that Lamont Moore, a former MFA & A officer, who has just returned from the European Theater, will take over the position.

Captain Calvin Hathaway is still in Washington and continues to give the Commission advice and suggestions on personnel for the European Theater. He expects to return to Berlin very soon.

Major Bancel LaFarge has arrived in the United States on temporary leave.

Mr. Horace Jayne returned from China in late November, and is again at the Metropolitan Museum in New York.

The Order of the Crown of Italy, with the rank of Commendatore, was presented by Dr. Vittorio Ivella, Cultural Attache of the Italian Embassy in Washington, to Professor Theodore Sizer, Director of the Yale Art Gallery. Professor Sizer, who was on active duty as a Major in the Army Air Forces, was cited for his services with the Allied Control Commission in Sicily and Italy. The ceremony took place November 14th in the Italian Room of the Yale Art Gallery.

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Authority NAD 76566b	Entry	3208 Bern CONFIDENTIAL
By BT NARA Date 6/6/00	File	840.1 JEWS
	Box	7

American Legation,
Bern, August 21, 1942.

Dear Mr. Elting:

Please refer to your memorandum of August 8, 1942, reporting a conversation with Mr. Gerhart M. Riegner, Secretary of the World Jewish Congress in Geneva, during the course of which Mr. Riegner left with you a telegram with a request that it be transmitted to Rabbi Dr. Stephan Wise, President of the American Jewish Congress, 330 West 42nd Street, New York City.

The Legation transmitted the substance of Mr. Riegner's telegram to the Department of State for delivery to Dr. Wise in its discretion, but is now in receipt of telegraphic instructions from the Department which indicate that it is disinclined to deliver the message in question in view of the apparently unsubstantiated character of the information which forms its main theme.

It is suggested that you may so inform Mr. Riegner, advising him at the same time that if corroboratory information comes to his attention that he should not fail to advise you with reference thereto, whereupon further consideration will immediately be accorded the matter.

Sincerely yours,

JKH

Howard Elting, Jr., Esquire,
American Vice Consul,
Geneva, Switzerland.

JKH:mjb

8/21/42
JEWS IN EUROPE
333917

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Authority NAD 765666	Entry	3208 Bern Confidential
By BT NARA Date 6/6/00	File	840.1 JEWS
	Box	7

DOCUMENTS

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Submitted to His Excellency the Honorable Leland HARRISON,
Minister of the United States of America in Berne:

AIDE MEMOIRE concerning the persecution of the
Jews of Europe.

ANNEXES:

Note regarding the German policy of deliberate
annihilation of European Jewry. (Statistical data)

Note regarding Hitler's instruction concerning
the annihilation of the Jews of Europe.

Instructions of the French Ministry of the
Interior re: deportation of Jews.

Two notes containing extracts from letters
received from Warsaw with photostats attached.

Report of a Jewish refugee deported from Belgium
and escaped from Russia.

Report concerning the Jews in Latvia.

Geneva, October 22nd, 1942.

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Authority NWD 765006	Entry	3208 Bern CONFIDENTIAL
By BT NARA Date 6/6/00	File	840.1 JEWS
	Box	7

MEMOIRE

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CONCERNING THE PERSECUTION OF THE JEWS OF EUROPE.

1./ The present situation of the Jews in Germany, Poland, the other German-occupied countries and the Vassal-states of Slovakia and Croatia can be summed up as follows:

Four million Jews are on the verge of complete annihilation by a deliberate policy consisting of starvation, the ghetto-system, slave-labour, deportation under inhuman conditions and organised mass-murder by shooting, poisoning and other methods. This policy of total destruction has been repeatedly proclaimed by Hitler and is now being carried out.

2./ All demarches sofar undertaken especially by the Vatican have proved fruitless. Nevertheless any action should be considered which could alleviate if only to some extent the present most desperate situation so that at least part of the Jews might be saved.

In this respect it is essential that public denunciations of the perpetrators of these crimes should be broadcasted, and those making profit of the property stolen from the Jews should be publicly warned that they also will be held responsible for the acts of lawlessness committed against the Jews.

3./ All the facts concerning the persecution of the Jews should be placed on record, all available evidence should be collected and the material thus obtained should be examined in the light of the declarations issued by the Allied Governments

Jewish pop. of Europe, 1931, according to World Almanac 9, 282,000

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regarding the punishment of those who are responsible for or have taken part in the atrocities described. In this respect we venture to suggest that the Jews should be regarded like the other persecuted nations (Poles, Czechs, Norwegians, Belgians, etc.) and that a special machinery should be created in close cooperation with Jewish bodies to investigate the position.

1932
 World Almanach
 Hungary 476,000
 Italy 50,000
 Roumania 900,000
 Bulgaria 43,000
 France 220,000
 1,689,000

4./ Urgent measures should be taken to save the 1 Million 300.000 Jews still living in the semi-independent states of Hungary, Italy, Roumania, Bulgaria and Vichy-France.

In this respect it is suggested that friendly representations should be made through appropriate channels, in the first place through the Vatican, to the Governments of Italy and Hungary who so far have shown some restraint in their anti-Jewish policy by giving expression to the hope that they will not follow the German example of ruthless extermination of the Jews.

In the case of Roumania, where more than one-half of the Jews have already been destroyed or have been deported to the parts of the Ukraine now described as "Transnistria", a stern warning should be transmitted to the Government of Marshal Antonescu. There are still 270.000 Jews living in Roumania who might be saved. New anti-Jewish decrees have just been issued and the deportations from Roumania to Transnistria are continuing.

In the case of Vichy-France it is suggested that the Government of the U.S.A. should exercise the strongest possible pressure to stop the brutal deportations. So far all interventions have been in vain. Mr. Laval has made public statements which are quite untrue. He has said that "only" foreign Jews -

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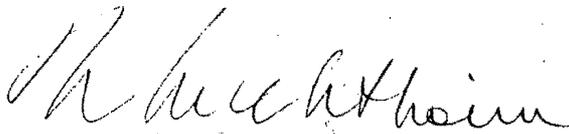
(press-reports are even speaking of "stateless Jews") - who came to France in 1936 or later are affected while the orders issued clearly indicate that all Jews of various nationalities who settled in France since 1936 and most of the foreign Jews who came there since 1933 - including those who fought for France - are liable to be deported. (cf. text of orders annexed). Mr. Laval also pretends not to know what is happening to the deportees while the inhuman form of deportation alone shows what is happening and will happen to the deported men, women and children.

The immediate and unconditional stoppage of these deportations should be asked for as the only means of saving tens of thousands of Jews in Vichy-France from torture and death.

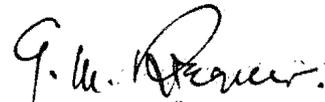
There are also strong indications that before long the French Jews in Vichy-France will be treated in the same way as the foreign Jews.

In the cases of Roumania and Vichy-France any steps which can be taken should be taken with the greatest possible speed because the arrests and deportations already begun are steadily continuing.

Geneva, 22. October 1942



R. Lichtheim
THE JEWISH AGENCY FOR PALESTINE



Dr. G. M. Riegner
THE WORLD JEWISH CONGRESS

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NOTE

regarding the German policy of deliberate annihilation
of European Jewry.

1. The following figures show the policy of constant and deliberate annihilation of all European Jewish communities now being carried out :

1. Germany. (Old Reich) *World Almanach, 1932*
5,640,000

Of the 500,000 Jews residing in Germany in 1933, about 300,000 have emigrated or have died prematurely until 1939. At the beginning of the world war there remained only 200,000. As a result of suicides and starvation, but mainly owing to mass deportations, the number of the Jews in the Old Reich was reduced to 110,000 by May 1st 1942, of whom 52,000 resided in Berlin. Of these 110,000 Jews, about 40,000 were at that date occupied in German industry by way of forced labour, while nearly all others had to live on charity. Since May 1942 new mass deportations having taken place, the present number of Jews in the Old Reich has decreased to a number certainly not exceeding 40 - 50,000.

2. Austria.

Of the 190,000 Jews living in Austria at the moment of the Anschluss (1938), about 100,000 have emigrated until the outbreak of the war, while about 85,000 Jews remained in Vienna. The present number of the Jews in Austria is only 12 - 15,000; the rest of the Austrian Jews have been deported.

3. Protectorate Bohemia and Moravia.

Of the 90,000 Jews living in the Protectorate in 1939, very few were able to emigrate during the short period between the occupation of Prag and the beginning of the war. Due to the mass deportations, there remained in the whole of the Protectorate on July 1st 1942 22,000 Jews and about 8,000 converted non-Aryans. Of these 30,000 people 15,000 were residing in Prag. Since July 1942 the deportations have constantly continued.

The above mentioned figures do not include the number of Jews recently concentrated in Theresienstadt, a big center of deportees at the Czecho-German frontier, where 40,000 Jews of old age, i.e. between 65 and 85 years of age, have been sent to from various countries in addition to 7,000 younger Jews engaged in local works and thousands of others passing through this special Ghetto-town on their way to Poland or Russia.

4. Poland.

It is estimated that of the 3,300,000 Jews living in the Polish State at the beginning of the war, there were after the German invasion about 1,650,000 in the General-Gouvernement and 300,000 Jews in the Polish territories soon annexed by Germany, while the remainder of some 1,3 Million Jews lived in or had fled to the Polish territories occupied by Soviet Russia. Of this latter category the large majority, about 1 Million, came also under

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German rule after the outbreak of the war with Russia and the following occupation of these territories. Some 300,000 Polish Jews are said to have fled to the interior of Soviet Russia. Therefore some 3 Million Polish Jews should be living by now in the General-Gouvernement and to this figure should be added hundreds of thousands of Jews deported to the General-Gouvernement from other countries of Western and Central Europe. But even German statistics lately published give the number of all Jews in the General-Gouvernement as being 2,092,000, thus admitting that one million and several hundred thousand have perished. The Polish Government has stated two months ago that according to their reports 700,000 Polish Jews have been killed or starved to death.

But these figures and the above-mentioned German statistics do not yet take into consideration that meanwhile again large numbers of Jews in the General-Gouvernement have perished. No exact figures are available, but the last reports received from Warsaw indicate that mass deportations and executions have again taken place in the big ghetto of Poland. In a letter dated September 12th, it is asserted that no Jews are left in the big Jewish center of Warsaw, where only last year some 600,000 Jews were living. Another report states that of the 250,000 Jews who have been living in Litzmannstadt (Lodz), in the territory annexed by Germany, there remain at present only those working for the Wehrmacht. Similar reports have been received from Galicia. Expulsions, deportations and mass executions are continuing thus decimating Polish Jewry to the point of complete annihilation.

5. Baltic States.

a) Latvia.

Of the 100,000 Jews living in Latvia in 1939 there are now only 4,000 left. According to a reliable report, 24,000 of the 28,000 Jews of Riga were killed by machine-guns during two nights of December 1941. The whole of the Jewish population in the provinces has been annihilated already during July and August 1941.

b) Lithuania.

In 1939 there were 150,000 Jews in Lithuania. No reports concerning their fate have been available. There are persisting rumours that they have shared the fate of Latvian Jewry.

c) Estonia.

A community of some 5,000 Jews existed in Estonia. It is reported that they succeeded in fleeing to Russia at the outbreak of the hostilities between Russia and Germany.

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6. Belgium.

Of the 85,000 Jews who were in Belgium in 1940, a certain number had fled to France at the moment of the German invasion; but about 75 % of the Belgian Jews remained in the country. Due to the mass deportations which took place during the last months, the present number of the Jews in Belgium has become insignificant. According to reports received from refugees recently arrived there are at present not more than about 5,000 Jews in Brussels and some 1,000 Jews in Antwerp.

7. Holland.

According to various reliable reports, one-third of the 150,000 Jews of the Netherlands have already been deported. Other reports state that the number of the deported Jews is even higher. The Dutch Nazis declared publicly that the whole of Dutch Jewry is to be deported until June 1943.

8. Yugoslavia.

Of the 70,000 Jews who lived in Yugoslavia at the beginning of the war some 30,000 were in Croatia, about 8,000 in Old Serbia, and the rest in the various provinces later annexed by Hungary, Italy a.s.o. Of the Jews living in Croatia 4,000 managed to escape to Italy. Nearly all the others have either been killed or imprisoned in labour camps where they are starving. The total of the Jews in Old Serbia have disappeared.

9. Greece.

There were about 72,000 Jews residing in Greece. According to German press reports of July 1942, male Jews between 18 and 45 years of age are drafted for slave labour; 60,000 Jews were registered at that moment in Saloniki. No direct reports are available.

10. France.

It is estimated that of the 300,000 Jews in France, 50,000 have already been deported, 10,000 of whom of foreign nationality from the non-occupied zone. Reliable sources state that before long the total of French Jewry in the non-occupied zone, numbering about 150,000, will also be deported.

11. Rumania.

Of the 900,000 Jews living in Rumania in 1939, 325,000 Jews of Bessarabia and Bucovina came under Soviet rule in consequence of the Russian occupation in 1940; 150,000 Jews were living in the territories later attached to Hungary. Afterwards the Jews of Bessarabia and Bucovina came again under Rumanian rule, when these territories were reoccupied by Rumania. According to

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the official figures published by the German and Rumanian press, there are by now not more than 270,000 Jews in Rumania. It is officially stated that the whole of the province of Bessarabia has been cleared of the Jews and that with the exception of 16,000 Jews who remained in Czernovitz, no Jews are residing any more in the Bucovina, all of them having been deported to the territory of Transnistria (Russia) occupied by Rumania. Reliable private sources state that large numbers of Jews in Bessarabia have been killed on the spot. The Rumanian Government itself admitted that since October 1941, about 185,000 Jews have been deported to Transnistria where there are by now only 112,000 left; the remainder have probably perished. The Government announced at the same time that during 1943 all Jews still residing in Rumania will be deported.

12. Bulgaria.

There are 50,000 Jews living in Bulgaria. About 8,500 of them are already used for forced labour. The deportation measures have just started.

13. Slovakia.

Of the 90,000 Jews living in Slovakia in 1939, 70,000 have already been deported. It has been announced that 20,000 will follow soon.

14. Italy.

The number of the Jews in Italy is about 45,000, of whom 35,000 Italian Jews and about 10,000 Jews of various nationalities. The latter are mostly sheltered either in internment camps or live in forced residences. Compulsory forced labour has recently been introduced for Italian Jews. Although the Italian Jews have been eliminated from their social and economic positions, no deportation measures have yet been adopted against them.

15. Hungary.

~~At the beginning of 1939 there were 450,000 Jews in Hungary. Owing to the partition of Czechoslovakia, Rumania and Yugoslavia, there are now about 450,000 Jews in Hungary.~~ An anti-Jewish legislation has been adopted depriving the Jews of nearly all the positions they formerly held in the economic and social life. About a year ago 17,000 Polish and stateless Jews were deported from Hungary to Poland, where they are supposed to have perished. Since that day no further deportations have taken place. Thus Hungary contains now the largest Jewish Community of Europe living under tolerable conditions.

II. From reliable reports it results that the deportation measures taken against the Jews mean for the greater part of them, if not for all, complete annihilation.

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A great number of the deported people are starving in the trains in consequence of the indescribable inhuman conditions in which the transports are carried out. According to a report from a German source, many of the deportees from the Western countries are no longer alive when reaching the German frontier but are killed before by various methods. Younger deportees are being taken to work either in the industries of Silesia or for the construction of fortifications in the coastal zones of France or at the Eastern front. Those unfit for work are killed, and those engaged in slave labour are nearly worked to death and if unfit for work they also are killed. Persisting rumours say that young Jewish girls and women after having been sterilised are brought to the military brothels.

In the East-European countries, notably in Poland, pogroms and mass executions on a large scale are constantly taking place. Thus the deliberate policy of extermination of European Jewry is systematically carried out quite in accordance with the announcements made in the last speeches of the Head of the German Government.

Geneva 22. October 1942

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~~Note regarding Hitler's instruction concerning the
annihilation of the Jews of Europe.~~

=====

1. In the first days of August 1942 the Geneva Office of the World Jewish Congress received an information from a reliable German source, to the effect that in the Führer's Head-Quarters a plan had been discussed according to which the total of the Jews living in Germany and the German occupied and controlled countries, numbering from three and half to four million, should - after having been deported to and concentrated in certain regions of Eastern Europe - be exterminated by one stroke, in order to solve once and for all the Jewish question in Europe. This action was reported as having been planned for the autumn of 1942. The ways and means how this plan should be executed, were still under consideration.
2. On August 8, the Geneva Office of the World Jewish Congress submitted the above information to the American Consul in Geneva, asking him
 - a. that the Government of the United States be informed without delay,
 - b. that the competent Services of the United States Government be requested to make investigations as to the reliability of this information and
 - c. that the President of the American and the World Jewish Congress, Dr. Stephen S. WISE in New-York, should simultaneously be informed of the situation.
3. On August 24, the American Consul in Geneva informed the Geneva Office of the World Jewish Congress that the American Legation at Berne had transmitted the substance of the message to the Department of State for delivery to Dr. Stephen S. Wise in its discretion but that the Department of State had indicated that it was disinclined to deliver the message to Dr. S.S. Wise in view of the apparently unsubstantiated character of the information which formed its main theme.

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At the same time the American Consul in Geneva asked the Geneva Office of the World Jewish Congress to inform him, if and when any corroboratory evidence came at hand.

4. Meanwhile the substance of the above mentioned information has been confirmed by the fact that large scale deportation measures have taken place in nearly all European countries as well as by various reports received concerning mass executions of Jews. A further confirmation was given by Hitler himself in his last speech of September 30, in the Sport-Palast in Berlin.
5. The Geneva Office of the World Jewish Congress is now in a position to implement its previous information by the following details.

In addition to its first report the above mentioned German source has now stated that the plan to exterminate the Jews of Europe, which in the second half of July was still under discussion in the Führer's Head-Quarters has meanwhile become a reality by an order issued by the Führer. The draft-project had been submitted to Hitler by Hermann BACKE, Secretary of State for Economics. Mr. Backe is said to have based the plan on economic reasons, as the difficult food situation would be eased by the annihilation of about four million persons who otherwise would have to be fed.

Although the anti-Jewish policy has always been one of the main points of the National-Socialist program, an important section of the Party was for various reasons opposed to Mr. Backe's plan. In the first place Dr. Frank, Governor General of the occupied Polish territories, who about the same time ceased to be a minister of the Reich, opposed the plan on different economic reasons. He drew attention to the shortage of labour in the General-Gouvernement and the East of Europe generally; he declared that large numbers of Jews in the eastern countries were artisans or specialized in other industrial callings particularly needed and lacking in Poland.

In spite of this opposition the plan submitted by Mr. Backe was accepted by Hitler, and at the end of July the Führer signed an

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order according to which all European Jews on whom the Germans could lay hands, should be deported to Eastern Europe and should be destroyed.

Our German informer assures us that he himself saw this order at the Führer's Head-Quarter.

Our informer has for a long time been known to several persons in Switzerland in close contact with us, as being a man of the highest standard and of perfect reliability. He is a prominent German industrialist and belongs to the inner circle of advisers about war-economy to the German Government. He has access to the Führer's Head-Quarter. He is known to be opposed to the Nazi system, and when disclosing the first information at the beginning of August, he stated that he had left Germany for the special reason of informing the outside world in order to facilitate any possible counter-measures. It should also be recalled that during his visit at the beginning of August he reported about the replacement of Field-Marshal von Bock, which had taken place about two weeks prior to his arrival here, an information which later proved to be correct.

Also other information coming from the same source has subsequently been confirmed by events.

Geneva 22nd October 1942

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BY AIR POUCH

NO. 49-Political

AMERICAN CONSULATE

Geneva, Switzerland, October 29, 1942.

~~STRICTLY CONFIDENTIAL~~

SUBJECT: Affidavit re Order for Extermination
1-1055 of the Jews.

THE HONORABLE
THE SECRETARY OF STATE,
WASHINGTON.

SIR:

I have the honor to invite reference to my strictly confidential despatch No. 44-Political of September 28, 1942, entitled "Jewish Persecutions" and to submit herewith the affidavit of Professor Paul GUGGENHEIM, Professor of International Law at the Graduate Institute of International Studies at Geneva, and a member of the Swiss Bar, in which he gets forth under oath certain information furnished to the affiant by an authoritative Swiss personality of Geneva international circles concerning the order of Hitler demanding the extermination of the Jews. The identity of Professor Guggenheim's informant cannot be divulged.

The actual material in the affidavit submitted herewith may be given publicity provided the name of Professor Guggenheim is withheld and replaced by a simple reference to "a citizen of Switzerland". I have known Professor Guggenheim for over a year and I view him as an intellectual possessed of integrity, reliability and sincerity.

Indicative of the futile search for a solution of the problem involved, and of the character of the "humanitarian" sources one may, in desperation, seek to tap in order to find somewhere the Good Samaritan, I am reporting the close of the conversation which Professor Guggenheim declares he had with his distinguished informant who inquired what eventual steps might be taken to relieve the tragic situation. Professor Guggenheim tells me he replied that he was certain that the Red Cross could do nothing in this matter, but that perhaps the Japanese Government could render service since it is not anti-Semitic and on

several

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several occasions has aided European Jewish refugees in Manchuria and at Kobe in facilitating their departure for America.

Professor Guggenheim's informant, it is stated, has taken the former's suggestion into consideration and will take steps to acquaint the Japanese Legation at Bern, and eventually if possible the Japanese Embassy at Berlin, with the information in question. The proceedings contemplated in this paragraph should be kept in strict confidence.

Respectfully yours,

Paul C. Squire

Paul C. Squire
American Consul

Enclosure:

Professor Guggenheim's affidavit,
as stated.

In triplicate to Department.
Copy to American Legation, Bern.

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TRIPLICATE

Confederation of Switzerland }
 City and Canton of Geneva } S.S
 Consulate of the United States }

Enclosure No. 1 to Despatch
 No. 49-Political.

Before me, Paul C. SQUIRE, Consul of the United States of America in and for the consular district of Geneva, Switzerland, duly commissioned and qualified, personally came Professor Paul GUGGENHEIM who, being duly sworn deposes and says that -

He is professor of International Law at the Graduate Institute of International Studies at Geneva, a member of the Swiss Bar, and a member of the Executive Committee of the International Student Service, residing at 23 Avenue Beau Sejour, Geneva; that he has had an interview with a very important Swiss personality of Geneva international circles and that this person knowing Professor Guggenheim to be a representative of the World Jewish Congress and to have many relations in the Jewish world was desirous of furnishing, and did furnish, the affiant the information contained in paragraphs 1 - 6 inclusive below:

1. There exists an order of Hitler demanding the extermination (Ausrottung) of all Jews in Germany and in the occupied countries up to December 31, 1942.
2. Both Himmler, and Frank (Governor of the General Government of Poland) opposed this order, not for humanitarian reasons, but for reasons of assuring the useful employment of Jews. Hitler, however, reiterated his order in September 1942 because it had not been executed previously. Professor Guggenheim's informant is under the impression that the order is in the course of being executed.

Up to the month of September Professor Guggenheim's informant was enabled to make personal intervention in individual cases at the German Consulate General at Geneva, where he applied to the German official, Mr. Albrecht Van Kessel. Mr. Van Kessel begged Professor Guggenheim's informant to intervene no longer beginning with September since such steps were entirely useless and futile.

3. The existence of Hitler's order mentioned herein has reached Professor Guggenheim's informant through two sources each independent of the other, as follows:
 - (a) An official of the German Ministry of Foreign Affairs at Berlin;
 - (b) An official of the German Ministry of War at Berlin.

4. Professor

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4. Professor Guggenheim's informant confirms all the bad news given by Dr. Gerhart RIEGNER, Secretary of the World Jewish Congress at Geneva, and Mr. Richard LICHTHEIM of the Jewish Agency for Palestine, at Geneva, concerning the Jewish situation in Latvia except that with respect to the details of the assassination of Jews as well as the number killed, there are numerous divergencies in the various reports. It is only in the essential that these reports are unanimous. Many Latvian Jews are even now still succeeding to escape.
5. The order of Hitler herein mentioned is also confirmed by a Swiss citizen with whom the informant is acquainted and who is at Belgrade, Yugoslavia, and who has always intervened in favor of the Jews. The German authorities told the same Swiss citizen that the Jewish question is one of high electrical tension (Starketrom) and that it was not necessary for him to occupy himself with it. The Swiss acquaintance of the informant is convinced that there are no more Jews within the confines of Serbia proper.
6. The Jews of Estonia left the country with the Russian Army.

(Signed) PAUL GUGGENHEIM

Subscribed and sworn to before me this 29th day of October, 1942.

Paul C. Squire
 Consul of the United States of America.

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By BT NARA Date 10/9

DOX
RG 59
Entry COF (1950-54)
File 392.41-BE/6-2750
1423

STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO: Mr. Brown - S/S
FROM: Mr. Byington - WE
SUBJECT: Suggested reply to Mr. Blaustein, American Jewish Committee

DATE: June 30, 1950

In reference to Mr. McClelland's telephone conversation of today with you, I am pleased to enclose a draft reply to Mr. Blaustein's letter of June 27 for the Secretary's signature.

The specific technical points discussed are non-contentious in the sense that the Department's position on them virtually coincides with the American Jewish Committee's. In other words, we are already pressing for precisely what they want.

As mentioned verbally, Mr. Blaustein (who is Chairman of the Board of Directors of the Amoco Oil Co.) is a friend of the President's and an important contributor to the Democratic Party.

Enclosure:

Draft reply to Mr. Blaustein

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THE



Handed to Mr. Byington - WE on June 29, 1950.
AMERICAN JEWISH COMMITTEE

386 FOURTH AVENUE, NEW YORK 16, N. Y. Cable Address, "WISHCOM, NEW YORK"

Telephone MURRAY HILL 5-0181

JACOB BLAUSTEIN, *President*
IRVING M. ENGEL, *Chairman Executive Committee*
VICTOR S. RIESENFELD, *Chairman Administrative Committee*
ALBERT H. LIEBERMAN, *Treasurer*
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AMERICAN BUILDING
BALTIMORE 3, Md.

June 27, 1950

Honorable Dean Acheson
Secretary of State
State Department
Washington, D. C.

Dear Mr. Secretary:

I write in connection with certain matters which are of considerable interest to the American Jewish Committee and in which the Department of State has previously taken a sympathetic and active interest.

It is my understanding that negotiations are now proceeding in Bern, Switzerland between the Government of Switzerland and the Governments of the United States, Great Britain and France. These negotiations concern problems arising out of the Swiss-Allied Accord of May 1946 on German External Assets and related problems. Involved in the Accord are certain problems which are of high importance to this organization and to others interested in humanitarian activities.

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1 - The Allied Governments and the International Refugee Organization have requested an advance from the Swiss Government of approximately 17 million Swiss francs to be paid over to the International Refugee Organization and to be used for rehabilitation and resettlement of the unfortunate victims of Nazi action. Despite the negative answer which I understand has been received by the Allies from the Government of Switzerland, I trust that the question will once again be raised in the discussions in Bern and that the urgent needs of the present situation will be strongly pressed on the Swiss Government.

2 - The Swiss have construed the phrase contained in the Accord 'Germans in Germany' to include persecutees who were present in Germany during the period of the war. These persons were 'Germans' only by the most remarkable stretching of the concept of nationality. I have been assured by authorities in German law that persecutees, particularly racial persecutees, were not considered by the Germans to have German nationality in any real sense. Moreover, these persons were in Germany, for the most part, only in the sense that they were kept in concentration camps in Germany. I am advised that the negotiating history of the Swiss-Allied Accord indicates an intent to exclude the assets of persecutees from seizure pursuant to the

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By BT NARA Date 6/9

BOX

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Box

59

COF (1950-59)

1423

TO: Hon. Dean Acheson, Sec. of State, Washington, D.C. 6-27-50 SHEET 2

Accord, and the Legal Adviser of the Department of State has advised Mr. Seymour J. Rubin, representing the American Jewish Committee, that this is the interpretation placed on the Accord by the Department of State.

I should like to reiterate the continued and strong interest of the American Jewish Committee in this point and to emphasize that we consider the matter to be important not only from the point of view of the sums which might be involved and the injustice of depriving persecutees of their small savings, but also from the point of view of principle. The United States has stood firm on the principle that the assets of persecutees are not the assets of our enemies; and this principle has been enacted into law in the United States. This point should be insisted upon in the discussions.

3 - The question of so-called heirless property will, it is understood, also be discussed in Bern. New evidence of the attitude of the United States toward this problem is found in the recent unanimous action of the Interstate and Foreign Commerce Committee of the House of Representatives in adopting S. 603, a bill which would return heirless property in the United States to a qualified successor organization so that such property could be used for rehabilitation and resettlement of persecutees. This bill has already been passed unanimously by the Senate. It is hoped that the United States will insist that similar, equitable treatment be applied to the problem of heirless assets in Switzerland.

The past efforts and understanding of the Department of State in connection with these problems has been much appreciated. It will be extremely gratifying if the United States can press its point of view with respect to these problems on the other participants in the negotiations in Bern and, in the interest of justice and equity, work out a settlement which will resolve these various problems in the manner above suggested.

Sincerely yours,

Jacob Blaustein,
President

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By BT NARA Date 6/9

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RG 59
Entry COF (1950-54)
File 392.41-BE/6-2750
Day

JUL 14 1950

Dear Mr. Blaustein:

Thank you for your letter of June 27 concerning certain problems under the Swiss-Allied Accord of May 1946 in which the American Jewish Committee has an understandable and continuing interest.

The position of the Department of State is essentially the same as that of your Committee with respect to the three issues you mention: 1) obtaining a further advance from the Swiss Government of some 17 million francs for the International Refugee Organization; 2) excluding the assets in Switzerland of former racial persecutees from liquidation under the Accord; and 3) making the heirless property in Switzerland of Nazi victims available for the rehabilitation and resettlement of persecutees.

The Quadripartite Conference on the Swiss-Allied Accord which was scheduled to begin in Bern on June 22 was canceled because of the imposition by the Swiss Government of conditions which were not acceptable to our Government. The Department of State nevertheless will continue to press for an equitable solution of these problems.

Sincerely yours,

DEAN ACHINSON

Mr. Jacob Blaustein, President,
The American Jewish Committee,
American Building,
Baltimore 3, Maryland.

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