

RG	<u>56</u>	
Entry	<u>66-A-816</u>	
File	<u>0.05-Scope of Special Licenses</u>	0.05
Box	58	

MAY 18 1941

Dear Sir:

Reference is made to your memorandum of March 5, 1941.

With respect to the inquiry contained in the first paragraph of your memorandum, you are advised that it is the view of this Department that a license is necessary to effect the transfer of securities from a blocked safekeeping account to a blocked safe deposit box held in the name of a person for whom the securities were kept.

In regard to your second inquiry, whether or not a special license authorizes a certain transaction depends upon the wording of such special license, interpreted in the light of all the facts and circumstances surrounding the issuance of such license. It is suggested that in any case in which stock is registered or inscribed in the name of a foreign country designated in the Order, or national thereof, any application to deal with such stock should specifically mention such fact.

Very truly yours,

J. W. Pehle,  
Assistant to the Secretary.

Mr. Wilbert Ward,  
The National City Bank of New York,  
New York, New York.

AG:JED:mcc - 5-15-41

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0.05

MAY 5 1941

Attention: Mr. R. E. Slade

Dear Sir:

Reference is made to your letter of April 21, 1941, with which you enclosed a copy of a letter dated April 18, 1941, addressed to you by the Wells Fargo Bank & Union Trust Company.

You may advise the Wells Fargo Bank & Union Trust Company that it is hereby authorized under license No. S. 7. 1941 to continue its practice of transferring funds from the blocked account of Helger Glasel or Mary Glasel to the account of Mrs. Mary Glasel and also to transfer funds from such blocked account to an account in the name of Theodore Glasel, from each of which accounts withdrawals may be made only for the living expenses of Mrs. Mary Glasel and Theodore Glasel, provided that (1) the total funds so transferred from the blocked account of Helger Glasel or Mary Glasel do not exceed \$1,000 per month and (2) any funds remaining at the end of each month in the account of Mrs. Mary Glasel and the account of Theodore Glasel are credited back to the account of Helger Glasel or Mary Glasel from which they originated.

Very truly yours,

(Signed J. W. Peble)

J. W. Peble  
Assistant to the Secretary

Federal Reserve Bank of San Francisco,

San Francisco, California.

JRJ:tas - 4-29-41

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REPRODUCED AT THE NATIONAL ARCHIVES

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File 0.05-Scope of Special Licenses  
Box 58

0:05  
Scope of Special Licenses

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 File Ans. Sec. of Sp. Lic  
 Box 58

0-05

In reply please  
 refer to: (17634, 21124)

8/10/42

My dear Mr. Koppang:

Reference is made to your letters of June 6 and 20, 1942 and of July 10, 1942 regarding a communication dated June 2 received from Mr. Park T. Grimes of the Grimes Royalty Company, Tulsa, Oklahoma, together with copy of a letter from the Sun Oil Company, Dallas, Texas.

Enclosed is a copy of our reply to Grimes Royalty Company.

Very truly yours,

JW

J. W. Pehle,  
 Assistant to the Secretary.

Mr. Henry O. Koppang,  
 First Vice President,  
 Federal Reserve Bank of Kansas City,  
 Kansas City, Missouri.

Enclosure.

JHK

345517

J. H. Pressley  
Mgr. of Land Dept.

John A Ritter  
Supt. Production Dept.

SUN OIL  
SOUTHW  
First Nat.  
DALLAS,

General Officers: Philadelphia, Pa.  
Box 58

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Box Special Licenses

J. Edgar Pew. Vice Pres.  
General Director  
Philadelphia, Pa.

Jno G. Pew  
Asst to Vice Pres. and  
Director  
Dallas, Texas

June 1, 1942.

Division Order #219  
Sun Oil Co.'s - H.D. McKinley

Grimes Royalty Company,  
National Mutual Bldg.,  
Tulsa, Oklahoma.

Attention: Mr. Park T. Grimes

Gentlemen:

Your letter dated May 8, 1942, and the instrument attached were referred to our Legal Department. Its opinion is as follows:

The so-called Trading with the Enemy Act of 1917 (40 Stats. 415) as several times amended, provides, in Sec. 5(b) thereof (CCH Sec. 14,101) that in time of war or national emergency, the president of the United States may, through such agency as he may select, regulate transactions between persons subject to the jurisdiction of the United States and the nationals of any foreign country. Under Executive Order No. 8389, as issued April 10, 1940 (CCH Sec. 14,353), as amended, the president prohibited practically all financial and trading transactions whatsoever between nationals of the United States and nationals of all foreign countries designate in the order, unless specifically authorized by the Secretary of the Treasury by means of regulations, rulings, license or otherwise. Effective June 14, 1941, Switzerland became one of the foreign countries designated in said order, for the purpose of implementing the control of German and Italian assets in this country. Thereunder the Secretary of the Treasury issued General License No. 43 (CCH Sec. 14,806.12), effective April 10, 1940, to the Swiss American Corporation, New York, and to the New York Agency of Credit Suisse, and Swiss Bank Corporation, and said three banking corporations were thereby generally authorized to deal in foreign exchange, but nationals of Switzerland, residing in Switzerland, have never been generally licensed. It thus appears that

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the banks specifically named in the several licenses sent to you by Mr. Grimes have been specifically authorized to deal in foreign exchange with nationals of Switzerland. However, one of the specific transactions forbidden by said Executive Order No. 8389 (Section 1 (B)), is a payment to any banking institution within the United States to the credit of any national of foreign country unless specifically licensed by the Secretary of the Treasury.

"Accordingly, Sun Oil Company is prohibited by said Executive Order No. 8389 from paying any money whatsoever whether for royalty or otherwise to any Swiss national residing in Switzerland or into any bank in the United States to the credit of any such Swiss national, unless licensed by the Secretary of the Treasury. Other restrictions even prohibit your corresponding with or writing to or sending any messages whatsoever to any such Swiss national unless you have secured a license from the Secretary of the Treasury on form TFE-1.

"Turning now to the particular circumstances presented by your letter, I am of the opinion that for the reasons which follow, you will not be safe in making payment to the specified Swiss national:

1. You apparently have been furnished with nothing to show that the grantees in any of the several instruments ever agreed to the transactions or ever accepted the instruments. If any of the specified banks in New York have any powers of attorney from the grantees which would authorize the transactions, we should be furnished with either the originals or certified copies. Since you are prohibited from writing to any of the grantees themselves, I would suggest that Mr. Grimes be advised of these matters. They should also furnish to us satisfactory evidence that the several transactions have been closed and the instruments accepted by the grantees or by their authorized agents.

2. The said Trading with the Enemy Act provides that regulations and licenses in these matters may be issued by the president "through any agency that he may designate." Said Executive Order No. 8389, authorizes the Secretary of the Treasury to issue such licenses. In the instant case the licenses to Park T. Grimes appear to be executed by Mr. Henry O. Koppang, vice president of the Federal Reserve Bank of Kansas City. I find no authority either by statute or by executive order which would authorize Mr. Koppang to execute such license, or which would permit the Secretary of the Treasury to delegate such authority to him. If there is such authority, it should be cited to us.

3. Each of the several licenses specifically provides that

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it is not transferrable. Each of them is to "Park T. Grimes, Grimes Royalty Company", as licensee. None of them is to Sun Oil Company. Mr. Grimes has apparently sent to you what purports to be a typed copy of a letter from Hon. J.H. Fehle, Assistant Secretary of the Treasury, dated March 4, 1942, and addressed to the Federal Reserve Bank of Kansas City, but even if this is a true and correct copy, I am of the opinion that you would not be safe in relying upon it as an adequate license to Sun Oil Company.

4. Each of the several licenses specifically provides that it may be revoked or modified at any time and if the license was issued as a result of willful misrepresentation on the part of the applicant, Park T. Grimes, the license may be declared void from the date of its issuance or from any other date. Even if such a license were issued to Sun Oil Company as licensee, Sun Oil Company would not be safe in relying upon such a license, because Sun Oil Company has no knowledge of the circumstances surrounding the issuance of the license and should not assume the burden of any such uncertainties."

If you have the Powers of Attorney referred to in this opinion kindly send the originals or certified copy of them to us after which the file will be referred again to our Legal Department. Also kindly furnish us with satisfactory evidence that the several transactions have been closed and instruments accepted by the grantees or by their duly authorized agents.

Yours very truly,

(signed) George H. McNally

GHM/fr.

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File

0.05-Scope of Special Licenses

Box

0.05

Scope of Special Licenses

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Entry	66-A-816	
File	0.09-We aR	Not in a Position to Advise
Box	58	<i>precedent</i>

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*0.09*

In reply please refer to: 79480

Dear Mr. Cobliner:

Reference is made to your letter of November 25 addressed to the Secretary of the Treasury requesting that German assets in this country be utilized to reimburse you for your property interests in Germany which may have been seized by the German authorities.

Although all German assets in the United States have either been vested or blocked by this Government they are not available at the present time for the purpose of paying claims against the German government or its nationals.

As you may be aware, the German assets in this country are not sufficient to satisfy all American claims against Germany. In order to avoid preferential treatment to one American claimant over others with equally valid claims, it is necessary to keep these assets immobilized until a governmental policy has been established with respect to their ultimate disposition. As yet no such policy has been established, and we regret, therefore, that we are not presently in a position to assist you.

Sincerely yours,

Orvis A. Schmidt  
Director

Mr. Siegmund Wolf Cobliner  
230 West 108th Street  
New York, New York

*Mesa*      *MEL*      *gwalk*      *oflaherty*

10A1k:McLocker:cre 12-7-44

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Entry 66-A-816  
File We are Not in a Position to Advise  
Box 58

009

JAN 22 1942

Dear Sirs:

Reference is made to your letter of December 2, 1941, with enclosure, which was addressed to the Department of State and referred to this Department for reply.

Enclosed for your information are copies of Executive Order No. 8389, of April 10, 1940, as amended, the Regulations issued pursuant thereto, and license application Form TFE-1.

On the basis of the facts submitted, it would appear that the payment of the debt referred to in your letter of December 2, 1941, may be made only pursuant to license.

Under General License No. 1 payments may be made to blocked countries or nationals thereof by deposit into a blocked account in a domestic bank in the United States in the name of the blocked country or national thereof who is the ultimate beneficiary of such payment, provided the terms and conditions of such general license are complied with.

Application for special licenses authorizing any transactions not covered by any general license may be made to the Federal Reserve Bank of Atlanta on the enclosed license application Form TFE-1.

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 File 909-1112  
 Box 58 in a Position to Advise

This Department is not in a position to advise you relative to any contractual or other obligations you may be under arising from the transaction referred to.

Your attention is directed to section 130.4 of the Regulations, pursuant to which reports are required to be filed on Form TFR-300, with respect to all property subject to the jurisdiction of the United States on the dates specified therein in which any foreign country or national thereof had any interest on such dates. Copies of Form TFR-300 and of Public Circular No. 4, containing instructions for the preparation of such reports, are available at the Federal Reserve Bank of Atlanta.

The time for filing such reports expired on October 31, 1941. Any such reports required to be filed which have not already been submitted should be filed with the Federal Reserve Bank of Atlanta as soon as possible, and in no event later than January 31, 1942. Each report so filed should bear at the top of its first page an appropriate reference to this letter, including the date hereof.

Very truly yours,

(Signed J. W. Poble)

J. W. Poble,  
 Assistant to the Secretary.

Higgins Industries, Inc.,  
 City Park Avenue,  
 New Orleans, Louisiana.

Enclosures

JHK  
 JHK:ghs 1/14/42

FH

HDA

BLT

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File We Are Not in a Position to Advise

Box 58

0:09

We Are Not in a Position to Advise

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 Box 58

7.7.  
 JRG  
 0.14

APR 29 1941

Dear Sirs:

Attention: Mr. H. F. Glade

Reference is made to your letter of April 4, 1941 and enclosures.

You may advise the Bank of California National Association that payments under its Letter of Credit to nationals of any of the foreign countries designated in Executive Order No. 8389, as amended, would appear to come within the operation of such Executive Order and may, accordingly, be affected only pursuant to license. Thus, a license should be obtained before payments are made in the Netherlands East Indies or Indo China or other French possessions.

In the future a license should also be obtained by the Bank of California National Association before any Letter of Credit authorizing payments to nationals of any of the foreign countries designated in the Executive Order is issued.

Very truly yours,

(Signed J. W. Pehle

J. W. Pehle,  
 Assistant to the Secretary.

Federal Reserve Bank of San Francisco,  
 San Francisco, California.

JRF:ldh 4/11/41

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Entry 66-A-816  
File 0.14 [unclear]  
Box 58

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APR 18 1941

Dear Sirs:

Attention: Mr. H. F. Slade

Reference is made to your letter of March 11, 1941.

As a general rule it has been found desirable to advise persons wishing to obtain in excess of \$500 per month for living, traveling or similar personal expenses in the United States to apply for a special license authorizing payments in the total amount which they desire, and to insert the phrase "Beneficiary to be excluded from privileges granted under General License No. 11" in licenses authorizing such payments. It is suggested that you follow this practice in the future.

Very truly yours,

(Signed J. W. Pehle

J. W. Pehle  
Assistant to the Secretary

Federal Reserve Bank of San Francisco,  
San Francisco, California.

JRJ:JED:mk 4/17/41

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File 014 Applied for Lic  
Box 58

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APR 17 1941

Dear Sir:

Reference is made to your letter of  
April 7, 1941.

Enclosed for your information are copies  
of a pamphlet entitled "Documents Pertaining to  
Foreign Funds Control" and license application Form  
TFE-1 (Revised).

Application for a license authorizing the  
transaction to which you refer may be made to the  
appropriate Federal Reserve Bank.

Very truly yours,

(Signed J. W. Pehle)

J. W. Pehle,  
Assistant to the Secretary.

W. L. Dwyer, Esq.,  
Weeping Water, Nebraska.

Enclosures

JRJ:ldh 4/15/41

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 File all copies of letter  
 Box 58

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APR 3 1941

Dear Sir:

Reference is made to your letter of March 26, 1941.

Enclosed for your information are copies of Executive Order No. 6389 of April 10, 1940, as amended, the Regulations issued thereunder and license application form TFE-1 (Revised).

Application for a license to engage in any of the transactions prohibited under the Executive Order may be made to the appropriate Federal Reserve Bank.

Very truly yours,

(Signed J. W. Peble)

J. W. Peble,  
 Assistant to the Secretary.

Orville O. Sanborn, Esq.,  
 61 Broadway,  
 New York, New York.

Enclosures

JRJ:mcc - 4-2-41

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File Applicatins for Special Licenses

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Applications for Special Licenses

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File 0.17-Policy Statements  
Box

0.17

Policy of the United States Government with respect to  
Enemy-owned firms

Letter No. 23948

The Secretary of State transmitted to this Department a copy of a note from the Minister of the Union of South Africa concerning a report that the United States Government is following a more drastic policy than that of the Government of South Africa with respect to enemy-owned firms. The Secretary wished to be informed as to what reply might be made to the note under reference.

In our reply to the Secretary of State we advised:

"You may wish to advise the Minister of the Union of South Africa that this Government has pursued the policy of bringing about liquidation of business enterprises controlled or owned wholly or substantially by nationals of Germany, Italy or Japan who are within those countries, if the business enterprises are not deemed necessary in the war effort or in the public interest. If continued operation of such business enterprises is deemed necessary, the policy has been to recommend vesting by the Alien Property Custodian. You may wish to communicate with the Alien Property Custodian concerning action taken by him upon the recommendation of this Department with respect to the vesting of such interests."

We further advised that:

"... it may be deemed desirable to inform him that as it is the policy of this Government to cut off financial and commercial transactions subject to its jurisdiction with nations outside the Western Hemisphere when of benefit to the aggressor nations, it is likewise the policy of the United States Government to eliminate all financial and commercial transactions between the United States and real and juridical persons in the other American Republics which are inimical to the defense of the Hemisphere.

"This control is accomplished primarily through the medium of the Proclaimed List of Certain Blocked Nationals authorized by the President on July 17, 1941. Such list

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contains the names of individuals and firms within the other American Republics (including allied countries), within the neutral countries of Europe, and within certain other countries. Names of individuals and firms are placed upon the Proclaimed List if their activities are deemed inimical to the defense of the Hemisphere. It should be noted, however, that such List does not include persons or firms within the British Commonwealth of Nations or the Union of Soviet Socialist Republics."

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## Currency

Importation of United States currency from Switzerland

Letter No. 23755

We received a letter from Mr. Harrison Parsons of the New York Times inquiring as to the policy followed by this Department in refusing to grant an application for the release of \$354.00 in United States currency which had been acquired in Switzerland after March 13, 1942, and had been surrendered to Customs officials upon his arrival in this country for deposit in the Federal Reserve Bank of New York.

In reply this Department advised:

"As long as United States currency can be brought into the United States, where it is legal tender, it will have full value and ready marketability throughout the world. As long as it retains its value and marketability in the European currency markets, the Germans can readily dispose of the United States currency which they have looted from their victims. In this way the enemy acquires in the neutral countries of Europe strategic commodities for his war machine, and foreign exchange and other assets with which his espionage and propaganda activities are carried on.

"When you purchased your \$354.00 in Switzerland, you may not have bought it from a German agency, although many so-called exchange dealers in Switzerland are known to be acting directly for the enemy, but you did make it that much easier for the enemy to sell looted currency in the Swiss market. You and other Americans who bought currency in this manner were, in effect, trading indirectly with the enemy. This is the reason that we must do everything possible to prevent people from buying dollar currency in the black markets of Europe.

"One of the first steps which we have taken in this direction is to prevent the importation of United States currency. We believe that if people cannot bring it into this country, they will not be so willing to acquire it. The soundness of our position is established by the fact that you were able to acquire the currency at a substantial discount. The size of that discount is a partial measure of the success of our currency program. It is also a measure of the profit which can be obtained by evading the United States controls. Because of it, we have been strict and we intend to be stricter about releasing currency that is imported into this country in spite of our controls."

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We called attention to the fact that the currency was acquired after March 13, 1942, the effective date of General Ruling No. 6A, and added:

"Our records indicate that when your application for release was denied, you were advised by the Federal Reserve Bank of New York that a new application would be considered if accompanied by supporting factual and documentary evidence as to the manner and date of its acquisition."

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Policy Statements

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 Applicatn Wires  
 Box 58 (FFC)

DECLASSIFIED  
 Authority NND 978020  
 By SAH NARA Date 8/26

0.20

CONFIDENTIAL

July 14, 1942

Mr. Foley

Mr. Bernstein

Re: Legal Aspects of Activities and Accomplishments handled during  
 June 1942, by or under the Direction of Mr. Bernard Bernstein.

WORK RELATING TO FOREIGN FUNDS CONTROLHAWAIIAN "SCORCHED EARTH PROGRAM"

On June 25, 1942, the civil and military authorities in the Territory of Hawaii promulgated with minor changes the Department's program, described in previous reports, for replacing ordinary United States currency in Hawaii with United States currency overprinted for use only in Hawaii. Representatives of the Department are presently in Hawaii, completing administrative arrangements for the currency substitution and working out the details of the Department's program for dealing with securities in Hawaii. (Messrs. Luxford and Murphy)

DESTRUCTION OF CURRENCY IN THE CANAL ZONE

The Treasury Department has issued an order establishing a procedure for the destruction in the Canal Zone of currency unfit for further circulation. This measure curtails unnecessary use of available shipping facilities and relieves Canal Zone banks from high and unnecessary war risk insurance charges. (Mr. Luxford)

CURRENCY CONTROL

This office has advised missions in various of the Central and South American countries of measures which those countries might adopt to increase the effectiveness of the Treasury Department program for eliminating importation into the United States of United States currency in which blocked nationals have an interest. Information has been obtained and relayed to the public concerning the denominations and serial numbers of United States currency believed to have been imported into the Central and South American countries with the purpose of smuggling it into the United States. (Messrs. DuBois, Luxford, and Rains)

CONFERENCE WITH FOREIGN EXCHANGE COMMITTEE

At a conference in New York with representatives of the Foreign Exchange Committee and the Federal Reserve Bank of New York, Messrs. Pehle and Bernstein expressed themselves as in general agreement with the practices

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followed by the New York banks in utilizing General License No. 1. Certain liberalizations of General License No. 1 were discussed and further work is being done in connection with these proposals. The conference also canvassed the extent to which, in view of General Ruling No. 12, bankers should be given protection when they effect transactions under misapprehensions of fact or of the effect of Treasury Department licenses. (Messrs. Luxford, Golding, Daum)

#### ALIEN PROPERTY CUSTODIAN

Further conferences were held with Judge Rosenman, representatives of the Office of the Alien Property Custodian, and representatives of the Bureau of the Budget, and representatives of the Department of Justice in respect to the proposed amendment of the Executive Order establishing the Office of Alien Property Custodian. (Messrs. Luxford and DuBois)

#### PHILIPPINE PROPERTY AND OBLIGATIONS

In conjunction with the Philippine Government, the Department of the Interior, and other interested Government agencies, the Treasury Department has considered the advisability of a moratorium upon Philippine obligations which will postpone defaults upon the obligations of persons having substantial portions of their assets in the Philippine Islands. Consideration has also been given to the advisability of voiding transfers of Philippine property effected with the acquiescence of the Japanese. (Messrs. Luxford and Cook)

#### INSURANCE

We assisted in the preparation of an "Action Guide" covering policy in handling applications for licenses to pay premiums on life insurance policies where the insured is an enemy national. In general, enemy nationals will not be permitted to keep up their life insurance policies by payments from abroad. However, persons in the United States who have a beneficial interest in such policies will be permitted to pay the premiums in cases where hardship would otherwise result. (Messrs. Aarons and Kehl)

#### CARTEL AGREEMENTS

It was decided this month that we should cooperate with the Anti-Trust Division of the Department of Justice in working out a procedure for compulsory filing of all international business agreements of cartel type. Representatives of the Legal and Administrative Divisions and of Monetary Research held a conference with Corwin Edwards of the Anti-Trust Division to set this plan in motion. Study is now being given to the TFR-300 census reports with a view to obtaining background in this field. Anti-Trust Division is giving consideration to the manner of defining the

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Texas Herold

An investigation of the files and personnel of the Texas Herold, Taylor, Texas, a German language newspaper, was concluded this month by Treasury representatives in cooperation with the Federal Bureau of Investigation. The company is presently blocked as German due to the fact that ownership of a substantial portion of outstanding obligations is vested in certain German nationals who are now interned. The investigation disclosed that the paper followed a pro-Axis line before December 7 which it has only slightly modified since that date. The results of the investigation have been presented to the Department of Justice and determination will be made in the near future as to what further action should be taken with respect to this publication. (Messrs. Clay, Proctor, and Fulda)

Rossiya

An investigation of Rossiya, New York City, a Russian language newspaper, was also concluded this month. The editor and publisher of Rossiya, Nicholas P. Rybakoff, a former colonel on the General Staff of the Russian Imperial Army, and the newspaper itself have been the subject of recent attacks in the press, principally by two other Russian language newspapers and by P.M. It has been charged that Rybakoff is a paid agent of Japan and that he is closely associated with the Russian Fascists in Harbin, Manchuria, and with Anastase Vonsiatsky, of Thompson, Connecticut, a Russian Fascist, who recently pleaded guilty to charges of espionage. The investigation revealed that although Rybakoff was once associated with Vonsiatsky, this relationship was terminated as long ago as 1936. No direct connection with the Russian Fascist movement was disclosed. The report of this investigation will also be submitted to the Department of Justice for a determination of what further action with respect to this publication should be taken. (Messrs. Clay, McMurray, and Moore)

Compagnie Generale Transatlantique (French Line)

The French Line, although its income is negligible, has been expending approximately \$150,000 per month. An investigation is now being conducted to determine where the funds for these expenditures are being derived and what use is being made of said funds. Some of these funds are being used to support unemployed French sailors who are located in this country and in Latin America. It is not known, however, what the rest of the funds are being used for or what the other activities of the French Line are at this time. (Messrs. Clay and Marks)

Sterling Products

The investigation in New York of Sterling Products, Inc. was completed this month. The report of the investigation states that, subject to substantiation by investigation of purchasers and of executive personnel

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INTERPRETATIONS - LEGAL REVIEW - LITIGATION PROBLEMS

Correspondence was handled which involved questions of interpretations of the Executive Order, Regulations, rulings and licenses. (Miss Hodel, Miss Klein, Miss Goode and Mr. Brenner)

Examination was made of applications for licenses involving litigation, including the preparation of rulings on the legal sufficiency of documents submitted and of memoranda of recommendations. (Messrs. Reeves and Wolf)

A proposed public circular or public interpretation has been drafted, expressing the position of the Department in regard to the licensing of judgments involving blocked funds. Study is also being given to a proposed ruling to be issued by the Alien Property Custodian on service of process from persons who reside in enemy territory. (Mr. Reeves)

LATIN AMERICA

School for State Department Representatives

Members of the Legal and Administrative staffs participated in the conduct of the training school for men who are being sent to South and Central America to act as advisers to the Missions and the local governments. The session from June 3 to June 13, 1942, was devoted to Foreign Funds Control with lectures and discussion by the legal and administrative men on particular topics. A considerable amount of work was done in preparing material for this school and in conducting the school. (Messrs. DuBois, Luxford, Sherbondy, Lawler, Clay, Klaus, Aarons, Mann and Rains)

Inter-American Conference

Members of the Legal Staff, in conjunction with members of Mr. Pehle's and Mr. White's staffs, participated in the preparation of material for the Inter-American Conference on Systems of Economic and Financial Control, which convenes in Washington on June 30, 1942.

This material consisted of:

- (1) A handbook (which was translated into Spanish) setting forth in broad outline the major policies which this Government is following, through financial and property controls, to effectuate Resolution V adopted at the Third Meeting of the Ministers of Foreign Affairs of the American Republics at Rio de Janeiro in January 1942. (Messrs. DuBois, Lawler, Aarons, Mann, Rains, Kehl and Miss Goode)

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We were informed that Mr. Armando Hamel, of the Caja Reinsurance Institute, the governmental reinsurance monopoly of Chile, is on his way to the United States to negotiate reinsurance treaties with United States insurance companies. In view of the pending instructions in the field of reinsurance, and after consultation with the State Department, it was decided to advise United States insurance companies not to enter into reinsurance treaties with the Caja until the matter had first been discussed with the Treasury Department. Representatives of the principal insurance organizations which might be interested in the Caja business were so advised. (Mr. Kehl)

#### NEUTRAL COUNTRIES

Comprehensive instructions were prepared and sent to our Embassy in London concerning dealings by branches of United States firms in the neutral European countries with firms in enemy and enemy-occupied territory. (Mr. DuBois)

#### MEMORANDA

##### Effect Given By Courts of The United States To Actions Taken In Territory Under Military Occupation By Friendly Or Enemy Powers

This office is preparing a memorandum dealing with the above subject. Discussions of the subject have been held with the Board of Economic Warfare in connection with requisition by the latter of property belonging to foreign nationals. (Messrs. Luxford and Zarky)

##### Power of the Treasury Department to Require Swiss Banks to Reveal Confidential Information

A memorandum was written sustaining the power of this Department to require Swiss banks to reveal information concerning their stock ownership, notwithstanding the existence of a Swiss statute imposing penal sanctions upon corporate officers who reveal such information. (Mr. Daun)

##### Japanese Evacuation Program

This office studied the Tolan Committee's report on the Japanese evacuation program and the propriety of the Treasury Department's delegation of power to the Federal Reserve Bank of San Francisco to effect such program. (Mr. Golding)

345545

RG	56
Entry	66 A 816
File	Applctn Wires
Box	58 (FEC)

DECLASSIFIED  
 Authority NND 978020  
 By SAH NARA Date 8/26

CONFIDENTIAL

CONFIDENTIAL

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Application Wires

CONFIDENTIAL

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RG	56
Entry	66 -A-816
File	Genl Lic NO. 42-Individuals Not Within
Box	58

DECLASSIFIED  
 Authority MND 978020  
 By SAH NARA Date 8/26

1.11

**CONFIDENTIAL**

## Inter-Office Interpretation No. 11

*1-5-42*

*not used as of 7/20/42*

**SUBJECT: Status Under General License No. 42 of Nationals of Blocked Countries, Who, Residing in the United States, Represent Blocked Countries of Nationals Thereof.**

Inquiry has been made as to whether a national of a blocked country, residing in the United States on February 23, 1942, may be regarded as entitled to the privileges of General License No. 42 if he is, or has been, since the effective date of the Order, acting or purporting to act directly or indirectly for the benefit or on behalf of (1) any blocked national or (2) any blocked country, including the government thereof.

(1) The Treasury has replied that such person may be regarded as entitled to the privileges of General License No. 42, provided that the terms and conditions thereof are complied with, and provided that it is possible to segregate his personal funds from those held by him in connection with his representation of and/or employment by any blocked national. Any funds so held in a business or representative capacity, and segregated as such, are to be regarded as blocked. If, in any case, such segregation cannot be made, the person in whose name the funds are held should be regarded as not entitled to the privileges of General License No. 42.

(2) The Treasury has replied that persons who are or who have been, since the effective date of the Order, acting or purporting to act directly or indirectly for the benefit, or on behalf of any blocked country,

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Box 58

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- 2 -

including the government thereof, may not be regarded entitled to the privileges of General License No. 42. If such persons are blocked nationals for any reason in addition to such representation, all their funds are to be blocked. If they are "nationals" only because of such representation, they are to be considered as blocked only to the extent of such representation, and the segregation rule should be applied.

JHKlein:kob 5/30/42

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RG 56  
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File 1.11 General Lic  
Box 58

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Authority MND 978020  
By SAH NARA Date 8/26

1.11

12/20/41

MEMORANDUM FOR THE FILES

Re: Roger Nutt

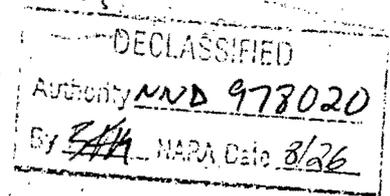
In view of instructions by the Attorney General to United States attorneys, in which it was stated that the F.B.I. was authorized "To apprehend and detain a number of specified alien enemies whom the Attorney General deems dangerous to the public peace and safety of the United States." , it would appear valid to hold that any person detained does not come within General Licenses Nos. 42 and 42A because he is a national for reasons other than citizenship.

Changed

JRK:hjc--12/20/41

f. h. k.

RG 66  
 Entry 66-A-816  
 File 111 General Lic  
 Box 58



1.11

8 1941

Dear Sir:

Reference is made to your letter of November 10, 1941, in which you proposed a suggested amendment to General License No. 42.

Enclosed are copies of Executive Order No. 8389 of April 10, 1940, as amended, the Regulations issued thereunder, General Licenses Nos. 11, 42, and 53, and license application Form TFE-1.

General License No. 42 is not applicable to persons who were not domiciled and residing in the United States at all times on and since June 17, 1940, regardless of whether before that date they had resided and done business in the generally licensed trade area as defined in General License No. 53.

You will note that General License No. 53 authorizes, subject to the terms and conditions stated therein, all transactions ordinarily incident to export and import trade between the United States and any member of the generally licensed trade area, provided such transactions are not by, or on behalf of, or pursuant to the direction of any person whose name appears on The Proclaimed List or any blocked country or national thereof not within the generally licensed trade area, and provided they do not involve property in which any person whose name appears on The Proclaimed List or any blocked country or national thereof not within the generally licensed trade area has any interest.

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RG 66  
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 Box 58

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 By SAH NARA DATE 2/21

- 2 -

Your attention is directed to General License No. 11, under which payments and transfers of credit in the United States not exceeding \$500 in any one month are authorized from blocked accounts in banking institutions within the United States upon the order of the person in whose name the account is held, provided that such payments or transfers of credit are needed for living, traveling, and similar personal expenses in the United States, and provided that the other terms and conditions of the general license are complied with.

Application for special licenses covering any transactions not authorized by any general license may be made to the appropriate Federal Reserve Bank on the enclosed license application Form TFE-1.

In view of the important objectives of the freezing control your continued cooperation is earnestly solicited.

Very truly yours,

(Signed J. W. Fehle)

J. W. Fehle,  
 Assistant to the Secretary.

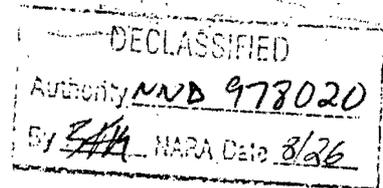
Mr. Curtis W. Opper,  
 495 West End Avenue,  
 New York, New York.

Enclosures

LCE:MTG:sh 12/5/41.

345551

RG 56  
 Entry 66-A-816  
 File 1/11 General Lic  
 Box 58



NOV 2 1941

Dear Sir:

Reference is made to your letter of October 25, 1941, in which was enclosed your correspondence with the Department of State.

Enclosed for your information are copies of Executive Order No. 8389 of April 10, 1940, as amended, the Regulations issued thereunder, and General License No. 42.

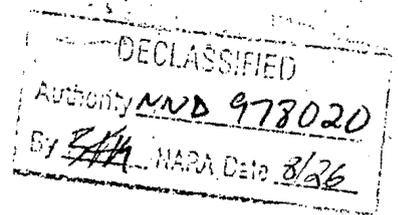
It is the view of this Department that persons present in the United States under temporary visas cannot be said to be domiciled in the United States within the meaning of General License No. 42. Accordingly, it would appear that you are not entitled to the privileges of such general license.

Under section 130.4 of the Regulations, reports are required to be filed with respect to all property subject to the jurisdiction of the United States on the dates specified therein in which any foreign country, whether blocked or not, or any national thereof had any interest on such dates. Copies of Form TFR-300 and of Public Circular No. 4, containing instructions for the preparation of such reports, are available at the various Federal Reserve Banks.

The time for filing reports on Form TFR-300 expired on October 31, 1941. Any such reports required to be filed with respect to your property which have not already been submitted should be filed with the Federal Reserve Bank of San Francisco as soon as possible and in no

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Entry 66-A-816  
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Box 58



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event later than November 29, 1941. Each report so filed should bear at the top of its first page an appropriate reference to this letter including the date hereof.

Very truly yours,

J. W. Pehle

J. W. Pehle,  
Assistant to the Secretary.

Mr. Kurt Sanders,  
115 Bay Laurel Drive,  
Menlo Park, California.

Enclosures

RP:sb 11/4/41.

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RG 56  
Entry 6-A-816  
File 111 General Lic  
Box 58

DECLASSIFIED  
Authority MND 978020  
By SAH NARA Date 8/26

1.11

OCT 20 1941

My dear Mr. Osners:

Reference is made to your letter of September 22, 1941, to conference with representatives of this Department and to material submitted in regard to Mr. Rudolph Gustave Maron.

On the basis of the facts submitted, it would appear that Mr. Maron is a national of Germany, as defined in Executive Order No. 8389 as amended, and that he is not entitled to the privileges of General License/42.

In accordance with your request, the material submitted is returned to you herewith.

Very truly yours,

(Signed) E. H. Woley, Jr.

Acting Secretary of the Treasury.

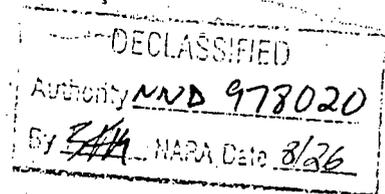
Honorable Frank C. Osners, Jr.,  
House of Representatives.

Enclosures.

JHK:PH/abt  
9/26/41

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RG 56  
 Entry 66-A-816  
 File 111 General  
 Box 58



MEMORANDUM FOR THE FILES

RE: Rudolphe Gustav~~s~~ Maron--Application for ruling as to nationality, or for license as generally licensed national

FACTS:

Born in Germany, 1899; married to a German; Jewish.

August 12, 1936, left Germany to take care of business interests in Amsterdam, "with the special permission of the Minister of Economics of the German Reich." October 1936 the German authorities ordered him back, and he was immediately placed in "protective custody", ordered to liquidate his business, and then he and his family were ordered to leave Germany, which was done on December 23, 1936, when he returned to Amsterdam. On June 26, 1937 all his assets were seized by the Gestapo.

January 14, 1938, his citizenship in Germany was cancelled, by decree, copy of which is in the file. Holland recognized this, and gave him a passport for aliens, which stated he was stateless, not conferring Dutch citizenship.

August 19, 1939, he left Amsterdam on a temporary business trip in Canada and the United States. September 8, 1939, he entered the United States on visitor's visa, planning to stay here only a couple of months. He was traveling on this Dutch alien's passport.

He has been in the United States continuously since September 8, 1939, except for a few days' visit in Canada in May 1941, when he finally was granted permission to enter Canada to reenter the United States under an immigration quota visa.

He claims that prior to March 1940 he started proceedings to make it possible for him to become a permanent resident of the United States, and finally, on December 21, 1940, he was granted the privilege of preexamination, but it was not until May of the next year that Canada granted him permission to enter there.

Under date of October 31, 1939, there is a letter from a lawyer showing that at that time Mr. Maron was trying to get a quota visa.

Under date of June 21, 1941, there is a letter from Henry F. Butler, Esq., of Washington, stating that on March 4, 1940, Mr. Maron consulted him with reference to obtaining a quota visa, and that he has been in constant communication with him on this matter ever since--at least until the time he finally got the visa. (Mr. Butler's letter adds the fact that Mr. Maron was in France from June 1935 until August 1936, when he went to Holland. This fact appears nowhere else, but would seem to be immaterial, and would not have the effect, I believe, of impugning Mr. Maron's honesty.)

His reasons for wanting the license or ruling are that he finds nobody will take him as a business associate because of the difficulties involved in having their business considered "national".

If the facts are as stated (we do not have the original of the application, and FFC cannot get recent applications because they are not briefing them), it would seem that Mr. Maron is a national of Germany, within

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RG 56  
Entry 66-A-816  
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Box 58

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Authority MND 978020  
By SAH NARA Date 3/26

our ruling on "statelessness", but I believe the license should be granted to regard him as a generally licensed national.

JHK

JHK:jhk

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RG 56  
Entry 66-A-816  
File 1.11 General Lic  
Box 58

DECLASSIFIED  
Authority MND 978020  
By SAH NARA Date 8/26

1.11

AUG 22 1941

Dear Sirs:

Reference is made to your letter of June 27, 1941.

It is the view of this Department that Dr. Jacob Kirach is not a generally licensed national under General License No. 42.

Very truly yours,

(Signed J. W. Pehle

J. W. Pehle,  
Assistant to the Secretary.

Horrocks and Lamb, Engrs.,  
Shorsham Building,  
Washington, D. C.

TMA:JRJ:mcc - 8-4-41

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RG 56  
Entry 66 A 816  
File Gnl License No. 42-  
Box 58

DECLASSIFIED  
Authority MND 978020  
By *[Signature]* Date 2/28/88  
Individuals Notable

*Changed later*

JUL 25 1941

My dear Mr. Marcantonio:

Further reference is made to your letter of June 26, 1941, addressed to the Secretary of State, a copy of which has been referred to this Department for consideration. You enclosed with your letter an affidavit executed on June 25, 1941, by Leo Neumann and Alice Neumann.

Enclosed are copies of Executive Order No. 8389 of April 10, 1940, as amended, the Regulations issued thereunder, General License No. 11, General License No. 42, and license application Form FBI-1 (Revised), which you may wish to transmit to Leo and Alice Neumann.

From the information submitted, it would appear that Leo and Alice Neumann are nationals of a blocked country within the meaning of the Order. It is the view of the Department, upon the basis of all the facts and circumstances, that Mr. and Mrs. Neumann cannot be said to have been domiciled in the United

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File 111 General Lic  
Box 58

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Authority MND 978020  
By SAH NARA Date 8/26

- 2 -

States on June 17, 1940, within the meaning of the Order and, therefore, may not be regarded as generally licensed nationals under General License No. 12.

Very truly yours,

(Signed) E. H. Foley, Jr.

Acting Secretary of the Treasury.

Honorable Vito Marcantonio,

House of Representatives.

Enclosures

JBJ:hug  
7/14/41

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RG 56  
Entry 66-A-816  
File 1.11 General Lic  
Box 58

DECLASSIFIED  
Authority MND 978020  
By SAH NARA Date 8/26

1.12

SEP 13 1941

Dear Sir:

Reference is made to your letter of September 4, 1941, previous correspondence in regard to Dr. and Mrs. Leo Neumann, and conference with a representative of this Department on September 3, 1941.

This Department will give further consideration to your request for ruling in regard to the status of Dr. and Mrs. Neumann upon receipt of certified copies of certificates of arrival Nos. 2-367976 and 2-867977 referred to in your letter and of the declarations of intention made by Dr. Neumann and Mrs. Neumann.

Very truly yours,

(Signed) J. W. Pehle

J. W. Pehle,  
Assistant to the Secretary.

Maximilian Bader, Esq.,  
70 Pine Street,  
New York, New York.

JHK:eb 9/9/41.

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RG 56  
Entry 66\_A\_816  
File Gnl License No. 42-Individuals  
Box 58

DECLASSIFIED  
Authority NND 978020  
By BAH DATE 8/26  
42-Individuals  
Not Within

CONFIDENTIAL

CONFIDENTIAL

1.11  
General License No. 42 - Individuals,  
Not Within

345561

CONFIDENTIAL

RG 56

Entry 66-A-816

File 1.19-General License 42A-General

Box 58

DEC 23 1941

Dear Sir:

We have your letter of December 8, 1941, with which was enclosed a copy of a letter of December 3, 1941, addressed to you by the American Miska Corporation.

The Department is not in a position on the basis of the facts submitted to determine whether Dr. J. J. Polak may be regarded as a generally licensed national within the meaning of General License No. 42A. However, if at any time on or since the effective date of the Order, he has acted or purported to act for the benefit of, or on behalf of the Algemeene Kunstrijde Unie. N. V., American Miska Corporation, or any other national of a blocked country, he is excluded from the privileges of General License No. 42A pursuant to paragraph 3(b) thereof.

You are advised, however, in response to the last paragraph of your letter, that it is the view of this Department that the mere fact that an individual has been temporarily absent from the United States does not exclude him from the provisions of General License No. 42A if the conditions of such General License are complied with. Whether any absence may be said to be

345562

RG 56  
Entry 66-A-816  
File 42-4241  
Box 58

JAN 6 1941

Dear Sirs:

Enclosed for your information is a copy of a letter from this Department to Dr. G. de Suto-Hagy. A copy of this letter has also been sent to the National City Bank of New York, 26 Broadway Branch, New York, New York.

Very truly yours,

(Signed J. W. Pehle)

J. W. Pehle,  
Assistant to the Secretary.

Federal Reserve Bank of New York,  
New York, New York.

Enclosure

MTG:wb 11/21/41.

345563

RG 56  
 Entry 66-A-816  
 File 66-4244  
 Box 58

November 21, 1941.

MEMORANDUM FOR THE FILES

Re: Dr. G. de Suto-Nagy.

Dr. de Suto-Nagy, a citizen of Hungary, entered the United States on May 22, 1939 on a visitor's visa. Since arrival he has been residing in New Haven, where he has engaged in scientific research and teaching at Yale. After entering he sought to change his status from that of a visitor to that of a permanent resident. (It does not appear at what time he began such negotiations for a change in status.) His application for a nonquota immigration visa, sent to the United States Consul in Havana, Cuba, for pre-examination, met with approval in May 1940. He was unable at that time, however, to obtain a transit visa to Cuba but finally received one in August 1940, whereupon he went to Cuba, obtained his nonquota immigration visa there, and returned to the United States, being admitted for permanent residence on September 2, 1940. He has since applied for United States citizenship.

Dr. de Suto-Nagy has two bank accounts, one in New York and one in New Haven. The New York account is blocked but the New Haven account was unblocked on the advice of the Federal Reserve Bank of Boston, which took the view that Dr. de Suto-Nagy was a generally licensed national under General License No. 42, as construed by Confidential Circular No. 37 dated September 30, 1941.

It is clear that the Federal Reserve Bank of Boston is under a misconception with regard to the meaning of Confidential Circular No. 37, which is limited in application to nonquota immigrants described in section 4(c) of the Act of May 26, 1924, as amended (U.S.C. title 8, sec. 204(c)); namely, those born in certain countries in the Western Hemisphere and their wives and unmarried children. Moreover, this circular applies only if the alien entered the United States on a nonquota immigration visa prior to June 17, 1940 and if he has been domiciled and residing here since then.

Since on June 17, 1940 Dr. de Suto-Nagy still had the status of a visitor and since he did not make his entry for permanent residence until September 2, 1940, it follows, under our constructional precedents with regard to the domiciliary requirements of General License No. 42, that he was not domiciled in the United States on June 17, 1940 for the purposes of the general license.

MTG:sb 11/21/41.

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RG

56

Entry

66-A-816

File

F.O.S. General Ledger, etc.

58

Box

- 2 -

temporary within the meaning of this rule depends on all the facts and circumstances in any particular case. On the facts submitted it would appear that Dr. Polak's absence may be said to be temporary within this rule.

Very truly yours,

(Signed J. W. Fehle)

J. W. Fehle  
Assistant to the Secretary

Mr. C. L. Guthrie,  
Federal Reserve Bank of Richmond,  
Richmond, Virginia.

JK:rk:12/13/41

VHK

FH

BLT

345585

RG	56
Entry	66-A-816
File	1.19-Genl License 42A-General 1.19
Box	58

DEC 5, 1941

Dear Sir:

In your letter to this Department, dated November 8, 1941, you inquired whether, on the basis of facts therein stated, you might be considered a generally licensed national.

In reply, I am enclosing for your information a copy of General License No. 42A. On the basis of the facts set forth in your letter, it would appear that you may be regarded as a generally licensed national entitled to the privileges of General License No. 42A, provided that the terms and conditions of such general license are complied with.

You will note that the general license provides that it shall not be deemed to suspend, cancel, or otherwise modify the requirements relating to reports on Form TFR-300 with respect to the property interests of persons generally licensed thereunder.

The time for filing reports on Form TFR-300 expired on October 31, 1941. Any such reports required to be filed which have not already been submitted should be filed with the appropriate Federal Reserve Bank as soon as possible, and in no event later than December 20, 1941. Each report, so filed, should bear at the top of its first page an appropriate reference to this letter including the date thereof.

Your attention is directed to the fact that a statement that Form TFR-300 has been filed is one of the prerequisites to obtaining the privileges of the general license and that such statement, along with

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Entry 66-A-816  
File 705 General ledger mta  
Box 58

- 2 -

the other statements required in section 2 of the general license, must be filed with the appropriate Federal Reserve Bank by December 27, 1941.

Very truly yours,

/s/ J. W. Pahle  
Assistant to the Secretary.

Dr. G. de Suto-Nagy,  
93 Cottage Street,  
New Haven, Connecticut.

Enclosure

345587

REPRODUCED AT THE NATIONAL ARCHIVES

RG 56  
Entry 66-A-816  
File F.O.S. General License  
Box 58

1-19  
General License No. 12A - General

345568

RG 56  
Entry 66-A-816  
File 1.28-Special License No. 1  
Box 58

~~500~~  
✓  
128

APR 3 1942

Attention: Mr. John R. Hall

Dear Sirs:

Reference is made to your letter of February 16, 1942.

Enclosed for your information are copies of Executive Order No. 8389 of April 10, 1940, as amended, the Regulations issued pursuant thereto, and license application Form TFE-1.

Application for special licenses authorizing payment out of blocked accounts in the United States may be made, by or on behalf of any interested party to a transaction, to the appropriate Federal Reserve Bank on the enclosed license application Form TFE-1.

It is believed that you may be particularly interested in the enclosed Special Regulation No. 1 and press release issued by Lieutenant General De Witt.

The Department appreciates the spirit of cooperation expressed in the second page of your letter. Your suggestions have been noted and are receiving the consideration of the Department.

Very truly yours,

(Signed J. W. Pehle)

J. W. Pehle,  
Assistant to the Secretary.

Affiliated Merchants Association,  
331 H. W. Hollman Building,  
354 South Spring Street, at Fourth,  
Los Angeles, California.

Enclosures

JRM:ia:ujo-2/31/42

345569

RG 56  
Entry 66-A-816  
File 1.28-Special License No. 1  
Box 58

## AFFILIATED MERCHANTS ASSOCIATION

Licensed By and Bonded to The State of California

331 H. W. HELLMAN BUILDING  
354 So. Spring Street, At Fourth  
Los Angeles, Calif.

Feb. 16, 1942

Hon. Henry W. Morgenthau, Jr.  
Secretary of the Treasury  
Washington, D. C.

Sir:

We take this opportunity to inquire as to just what action is being contemplated regarding property belonging to alien enemies which has been frozen by the Treasury department. Our reason for making this inquiry is that we represent a goodly amount of merchants in the city of Los Angeles to whom there is due and owing a considerable amount of money by enemy aliens; that for more than two months now all of the assets of these enemy aliens have been frozen and their businesses closed, thereby preventing them from paying their just obligations and preventing their creditors from taking any remedial action on their own behalf. This situation is creating a great hardship on these creditors who are wholesale merchants in this city and also owners of property in which the closed businesses are located. At the same time the fixtures in these businesses are deteriorating both in quality and in value, thereby lessening the assets of the alien enemy to the detriment of their creditors.

We have attempted to gain some information as to what procedure will be taken in these matters from the San Francisco office of the Federal Reserve Bank but they seem to know of no plan as yet.

We, as agents for wholesalers of meat, lumber, groceries, dairy products, etc., have had a great deal of experience with the oriental population of southern California for the past ten years and therefore are familiar to a great extent with their methods of doing business and their general attitude. The writer has conferred with several of these aliens whose businesses are now closed and has found from these conferences that their businesses could be liquidated with their consent

345570

Hon. Henry W. Morgenthau, Jr. - page 2

in order to pay their various creditors. Many of these wholesalers as a result of the closing order have found themselves severely short of operating funds.

We believe that a Custodian should be appointed in this district with all possible haste to alleviate the present situation. We further believe that with our knowledge and contacts, together with our equipment and personnel we would be of assistance to such Custodian or for that matter we could act as such Custodian for the purpose of liquidating these assets and paying the various creditors whatever is justly due them.

Hoping that you will see fit to act favorably upon this suggestion, we are

Respectfully yours,

AFFILIATED MERCHANTS ASSOCIATION

By /s/ John R. Wall

JRW:mf

OFFICE  
SECRETARY OF TREASURY  
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TREASURY DEPARTMENT

GENERAL COUNSEL OFFICE  
IN ..... OUT .....  
1942 FEB 20 PM 3 49

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RG 56  
Entry 66-A-816  
File 1.28-Special License No. 1  
Box 58

1.28 Special License No. 1  
1.28

RG	56
Entry	66-A-816
File	4.05 - General Policy Matters
Box	58

4/05-

MEMORANDUM FOR THE FILE:

June 8, 1944

Re: NY 840593  
Rosalie Sara Salomatin.

The above application was discussed at the luncheon conference June 2 and it was the consensus of opinion that in view of the fact that the transaction was initiated in 1940, and in view of the other exceptional circumstances presented, the application should be approved.

The argument was advanced that inasmuch as the application involved a debit to a real enemy account, it should not be approved even though a case of hardship was disclosed. The persons advancing this argument felt that in so far as real enemy funds were concerned, the policy should be as rigid as though the funds had been vested. However, the prevailing opinion was that a flexible approach should be preserved even in cases of this type and it was therefore agreed that the application be approved.

On grounds of:

- a. Hardship
- b. small amount involved
- c. Date of original instructions
- d. Date of follow up, and date of arrival in U.S. of such follow up paper

13/  
I. G. Alk

e. Licensing policy at time of receipt of paper

Copies to Messrs. Lunsford, Schmidt, Fox, Koscovits, Ray, Pollak

- alt. f. That ultimate release would probably be warranted under these circumstances even though vested

IGAlk:gab 6-3-44

345573

RG 56  
Entry 66-A-816  
File 705 General Policy Matters  
Box 58

4.05  
General Policy Matters

REPRODUCED AT THE NATIONAL ARCHIVES

RG 56  
Entry 66-A-816  
File DIVIDER  
Box 58

TRANSACTIONS UNDER  
SPECIAL LICENSE  
7-60

345575

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F7  
F6

U.S. TREASURY DEPT. FOREIGN ASSETS CONTROL.

"Forms TFR-300 and TFR-500 to be used in reporting foreign property."

SAMPLE TFR-300 Forms  
Complted Forms No Longer Exist

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TREASURY DEPARTMENT

345576

**REPORT FORM TFR-300 SERIES A: To Be Used by (1) Individual Nationals Not Engaged in Business to Report for Themselves, and (2) Other Persons to Report Property Interests of Such Nationals. (Instruction 2.)**

**Nationality.**—The person concerning whose property report is being made is a national of the following country or countries (Instruction 4):

**BEFORE PREPARING THIS REPORT READ CAREFULLY THE INSTRUCTIONS IN SECTIONS I, II, III, AND IV OF PUBLIC CIRCULAR No. 4**

**TO THE SECRETARY OF THE TREASURY:**

The undersigned, pursuant to the Regulations of April 10, 1940, as amended, issued under Executive Order No. 8389, as amended, hereby makes the following report:

**PART A: NAME OF THE NATIONAL WHOSE PROPERTY IS REPORTED**

Name \_\_\_\_\_  
(First name) (Middle name) (Last name)

Last known address \_\_\_\_\_  
(Number) (Street) (City) (State or country)

\_\_\_\_\_  
(Profession or occupation) (Citizen of)

**PART B: NAME OF PERSON MAKING REPORT (Instruction 5).**

Name \_\_\_\_\_

Address \_\_\_\_\_  
(Number) (Street) (City) (State)

Business of reporter \_\_\_\_\_

\_\_\_\_\_  
(Citizen of or organized under the laws of) (National of)

Relationship between the person making the report and the national whose property is being reported \_\_\_\_\_  
(As agent, trustee, nominee, custodian, debtor, banker, broker, etc.)

FOR TREASURY USE ONLY		
2T		3B
4N		5L
6C		
7S		
8T		9B
10N		11C
12R		
13S		
17P		18S

**PART C, SCHEDULE I: PROPERTY TYPES (Instruction 6).**

Type number	Property type	Value in U. S. dollars of property held on opening of business on		For Treasury use only
		June 11, 1941 (a)	June 1, 1940 (b)	
<b>CLASS A: BULLION, CURRENCY, AND DEPOSITS—</b>				
1.	Bullion _____			1111
2.	Currency and coin _____			1122
3.	Demand deposits payable in the United States _____			1133
4.	Other deposits payable in the United States _____			1144
<b>CLASS B: FINANCIAL SECURITIES—</b>				
5.	United States Government obligations _____			1212
6.	State, municipal, and other local government obligations _____			1223
7.	Bonds of domestic corporations _____			1255
8.	Common stocks of domestic corporations _____			1266
9.	Preferred stocks of domestic corporations _____			1277
10.	Foreign securities held in the United States _____			1288
11.	Warrants, scrip, rights, and options; other securities _____			1299
<b>CLASS C: NOTES AND DRAFTS; DEBTS TO AND CLAIMS BY NATIONAL—</b>				
12.	Checks, drafts, acceptances, and notes _____			1310
13.	Letters of credit _____			1328
14.	Debts, claims, demands, and contracts _____			1395
<b>CLASS D: MISCELLANEOUS PERSONAL PROPERTY; PERSONAL PROPERTY LIENS—</b>				
15.	Warehouse receipts, bills of lading _____			1415
16.	Options and futures in commodities _____			1426
17.	Goods and merchandise for business use, except jewelry, etc. _____			1481
18.	Jewelry, precious stones, and precious metals _____			1482
19.	Machinery, equipment, and livestock, for business use _____			1483
20.	Objects of art and furnishings for personal use _____			1484
21.	Liens on and claims to personal property, not otherwise classified _____			1497
<b>CLASS E: REAL PROPERTY; MORTGAGES; OTHER RIGHTS TO LAND—</b>				
22.	Lands and buildings for personal use _____			1516
23.	Lands and buildings other than for personal use _____			1527
24.	Mortgages on real property; other rights to land _____			1598
<b>CLASS F: PATENTS, TRADE-MARKS, COPYRIGHTS; FRANCHISES—</b>				
25.	Patents, trade-marks, copyrights, and inventions _____			1607
26.	Franchises, concessions, licenses, and permits _____			1618
<b>CLASS G: ESTATES AND TRUSTS—</b>				
27.	Interests in estates and trusts _____			1629
<b>CLASS H: PARTNERSHIP AND PROFIT-SHARING AGREEMENTS—</b>				
28.	Interests under partnership and profit-sharing agreements _____			1620
<b>CLASS I: INSURANCE POLICIES; ANNUITIES—</b>				
29.	Surrender value of insurance policies; present value of annuities _____			1685
<b>CLASS J: OTHER PROPERTY—</b>				
30.	Other property, not classifiable under types 1 to 29 _____			1700
	<b>TOTAL GROSS VALUE OF PROPERTY (sum of 1 to 30)</b>			<b>1700</b>

(The sum of the values entered for each property type must equal total gross value of property.)

After completing the above schedule, again read carefully Section III of Public Circular No. 4, relating to property interests. Have you reported the value of all property you are called upon to report herein? Answer YES or NO. If not, explain fully.





**PART E: ADDITIONAL INFORMATION CONCERNING NATIONAL WHOSE PROPERTY IS REPORTED.**

1. State any name other than that given in Part A by which he has been known or under which he has held property since January 1, 1939.

2. State his citizenship and address on January 1, 1939, and on June 1, 1940, if different, respectively, from the citizenship or address given in Part A of this report.

3. State the date of his latest entry into the United States \_\_\_\_\_, the type of visa (immigrant, visitor, etc.) under which he was admitted \_\_\_\_\_, and his alien registration number \_\_\_\_\_.

4. If the person concerning whose property this report is being made is a national of a foreign country by reason of any fact other than that such person has been a subject or citizen of a foreign country, state the facts determining his nationality as defined in Section 5 E. of Executive Order No. 8389, as amended.

5. State the name and address of any person who on June 1, 1940 or June 14, 1941 leased or granted the use of any safe deposit box, safe, or other receptacle for the safekeeping of property, (a) which was maintained in the national's own name or jointly with others, or in which property belonging to the national was kept whether or not he had access thereto, and (b) to which he had access as deputy, attorney, or otherwise. Give the number or other designation of such box, safe, or other receptacle.

Name of lessor or grantor	Address	Exact title in which box held	Box number or designation	Indicate whether held June 1, 1940, or June 14, 1941, or both

6. State the name, address, and nationality of any person other than the national having any interest in any box, safe, or other receptacle, or the contents thereof, reported under question 5 above, and describe the nature of the interest.

7. If the contents of any box, safe, or other receptacle reported in question 5 above are not entered in Part C of this report, state the reason therefor.

8. State the name, address, nationality, and business of any person or firm by whom he has been employed, or for whom he has been agent, under a power of attorney or otherwise, at any time since January 1, 1939.

Name	Address	Nationality	Business

9. List directorships and executive offices in any business enterprise held by him at any time since January 1, 1939, giving the name, address, nationality, and business of the enterprise.

Name	Address	Nationality	Business

**AFFIDAVIT OF PERSON MAKING REPORT (Instruction 10)**

STATE OF \_\_\_\_\_ }  
 COUNTY OF \_\_\_\_\_ } ss:  
 I, \_\_\_\_\_, swear (affirm) that I am the person, or that I am  
 the \_\_\_\_\_ of the \_\_\_\_\_ making this report,  
(State relationship of affiant to the person making this report) (Name of partnership, association, corporation, or other entity making this report)

that I am authorized to make this affidavit, and to the best of my knowledge and belief that the statements set forth in this report are true and accurate and all material facts in connection with said report have been set forth therein.

(Signature of affiant)

(Address of affiant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1941.

[NOTARIAL SEAL]

My commission expires \_\_\_\_\_

(Officer administering oath)

NOTE.—This report will not be accepted unless properly signed and sworn to before an officer authorized to administer oaths, whose seal should be affixed.

PART I. PERSONS WHO PRESENTLY OWN

NAME OF PERSON MAKING REPORT

Name (1) (2) (3) (4) Value in U. S. dollars of property held as of opening of business on Jan. 1, 1941 Jan. 1, 1942

Address (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20)

Business (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20)

(Others of or organized under the laws of) (National of)

AFFIDAVIT OF PERSON MAKING REPORT (Instruction 10)

STATE OF ) ss: COUNTY OF )

I, , swear (affirm) that I am the person, or that I am

the (State relationship of affiant to the person making this report) of the (Name of partnership, association,

corporation, or other entity making this report), making the reports on Form

TFR-300 Series A consecutively numbered to and attached hereto and made a part hereof, that I am authorized to make this affidavit, and to the best of my knowledge and belief that the statements set forth in said report forms are true and accurate and all material facts in connection with said reports have been set forth therein.

(Signature of affiant)

(Address of affiant)

Subscribed and sworn to before me this day of , 1941.

[NOTARIAL SEAL]

(Officer administering oath)

My commission expires

NOTE.—This report will not be accepted unless properly signed and sworn to before an officer authorized to administer oaths, whose seal should be affixed.

THIS AFFIDAVIT COVERS ALL REPORTS MADE ON FORM TFR-300 SERIES A



should be affixed.

REPORT FORM TFE-300 SERIES C-2: To Be Used by Organizations to Report Interests of Nationals in Holdings of Financial Securities. (Instruction 2)

BEFORE PREPARING THIS REPORT READ CAREFULLY THE INSTRUCTIONS IN SECTIONS I, II, III, AND VI OF PUBLIC CIRCULAR No. 4

TO THE SECRETARY OF THE TREASURY:

The undersigned, pursuant to the Regulations of April 10, 1940, as amended, issued under Executive Order No. 8389, as amended, hereby makes the following report:

Nationality.—The person concerning whose property report is being made is a national of the following country or countries (Instruction 10):

Number (Instruction 9 (a))

PART A: NAME OF NATIONAL INTERESTED IN SECURITIES.

Name (First name) (Middle name) (Last name)

Last known address (Number) (Street) (City) (State or country)

Citizen of or organized under the laws of

PART B: NAME OF ORGANIZATION ISSUING SECURITIES (Instruction 11).

Table for Treasury Use Only with columns 2T, 3B, 4N, 5L, 6C, 7S, 8T, 9B, 10N, 11C, 12R, 13S, 17P, 18C.

PART C: TYPE AND TITLE OF SECURITY (Instruction 12).

- 1. Type of security (bonds, notes, common stock, preferred stock, etc.)
2. Full title of the issue
3. Market price or estimated value of June 14, 1941

PART D: SECURITY HOLDINGS IN WHICH NATIONAL HAD AN INTEREST (Instruction 13).

Table with 4 main columns: (a) EXACT NAME IN WHICH SECURITIES HELD, (b) NUMBER OF SHARES OR FACE VALUE OF BONDS, (c) MARKET VALUE OF SHARES OR BONDS, (d) UNPAID DIVIDENDS OR INTEREST. Sub-columns for June 14, 1941 and June 1, 1940.

If the holdings of the national are reported as of a date other than June 1, 1940, give the date as of which the holdings are reported (Instruction 14).

(Date in lieu of June 1, 1940)

PART E: ADDITIONAL INFORMATION (Instruction 15).

1. State the name, address, and nationality, of any person, other than the national, having any interest whatsoever, direct or indirect, in any security listed above, including any arising under powers of attorney and any other powers or rights to deal with the security or arising under any agreement restricting the national's use of the securities, and describe the nature and amount of such interest.

2. Describe any adverse or other claims, including any legal actions or proceedings whatsoever, asserted or existing against or with respect to any security listed above, stating the names, nationalities, and addresses of the adverse or other claimants and all relevant facts regarding the nature and origin of the claims, including the exact title of legal actions or proceedings and the court in which they were brought.

THIS REPORT IS COVERED BY THE GENERAL AFFIDAVIT ON FORM TFE-300 SERIES C-1

345583





REPORT FORM TFR-300 SERIES F

AFFIDAVIT (Instruction 10)

NAME OF BANK MAKING REPORT

Name \_\_\_\_\_

Address \_\_\_\_\_  
(Number) (Street) (City or county) (State)

(Citizen of or organized under the laws of) (National of)

AFFIDAVIT OF BANK MAKING REPORT (Instruction 10)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

I, \_\_\_\_\_ swear (or affirm) that I am the person, or that I am the \_\_\_\_\_ of the \_\_\_\_\_  
(State relationship of affiant to person making this report) (Name of partnership, association, corporation or other entity making this report)

making the reports on the report Forms TFR-300 Series F consecutively numbered \_\_\_\_\_ to \_\_\_\_\_ attached hereto and made a part hereof, that I am authorized to make this affidavit, and to the best of my knowledge and belief that the statements set forth in said report forms are true and accurate and all material facts in connection with said reports have been set forth therein.

\_\_\_\_\_  
(Signature of affiant)

\_\_\_\_\_  
(Address of affiant)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1941.

[NOTARIAL SEAL]

\_\_\_\_\_  
(Officer administering oath)

My commission expires \_\_\_\_\_

NOTE—This report will not be accepted unless properly signed and sworn to before an officer authorized to administer oaths, whose seal should be affixed.

THIS AFFIDAVIT COVERS ALL REPORTS MADE ON FORM TFR-300 SERIES F

345586





FOREIGN OFFICE

Report of the O'Sullivan Committee  
on the progress made in the disposal  
of internal restitution claims in the  
British Zone of Germany

30th June, 1951

LONDON: HIS MAJESTY'S STATIONERY OFFICE

1951

PRICE 1s. 3d. NET

345588

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REPORT OF THE COMMITTEE APPOINTED TO  
EXAMINE THE PROGRESS MADE IN THE DISPOSAL OF  
CLAIMS UNDER BRITISH MILITARY GOVERNMENT  
LAW 59 IN THE BRITISH ZONE OF GERMANY AND  
UNDER ORDINANCE 180 IN THE BRITISH SECTOR  
OF BERLIN

I

JUDGE D. N. O'SULLIVAN TO THE PARLIAMENTARY UNDER-  
SECRETARY OF STATE FOR FOREIGN AFFAIRS

*Supreme Court,  
Rathaus, Herford.  
B.A.O.R. 15*

My Lord,

*2nd July, 1951.*

I have the honour to submit herewith the Report of the Committee of Enquiry appointed by you, by your Warrants of 17th May, 1951, and of 4th June, 1951.

Our report is unanimous.

I have the honour, &c.

D. N. O'SULLIVAN.

**Report of the Committee appointed to examine the progress  
made in the Disposal of Claims under British Military  
Government Law 59 in the British Zone of Germany and  
under Ordinance 180 in the British Sector of Berlin**

**MEMBERS OF THE COMMITTEE**

His Honour Judge D. N. O'SULLIVAN (Chairman).  
Mr. Alexander Levvey EASTERMAN.  
Professor Norman BENTWICH.

**PART I.—INTRODUCTION**

1. We were appointed by Warrant of the Right Honourable Baron Henderson, Parliamentary Under Secretary of State for Foreign Affairs, with the approval of the Secretary of State for Foreign Affairs, to examine the progress made in the disposal of claims under Law 59 in the British Zone of Germany and under Ordinance 180 in the British Sector of Berlin; to ascertain the causes of any delays in the disposal of such claims; and to make recommendations concerning any action which might be taken by the United Kingdom High Commissioner, prior to the relinquishment of reserved power in the field of restitution, to remove or reduce the causes of any delays in the disposal of claims.

Mr. C. J. Audland was appointed Secretary and was succeeded for the latter part of our tour by Mr. E. S. Haworth.

A record of our itinerary and a list of persons whom we interviewed is in Appendix I to this Report.

2. We wish to express our appreciation of the excellent arrangements made for our tour and of the facilities put at our disposal. The efficiency of the arrangements for transport and accommodation enabled us to make, in a short time, a comprehensive examination of the progress in the disposal of restitution claims and to see in operation something of the machinery of restitution. We also desire to express our gratitude for the great help afforded us by Judge Hulse, Deputy Chief, Administration of Justice Division, Office of the United States High Commissioner for Germany, and Mr. Loewenthal of the United States Property Division, during our visit to Frankfurt. The work of our secretaries has been of great value throughout and we wish also to thank them.

3. We may, in this Report, have over-simplified some of the complex problems with which we were confronted. The justification we offer is the urgent nature of the enquiry and the necessity for urgent remedial action.

**PART II.—THE SYSTEM ESTABLISHED TO EFFECT INTERNAL  
RESTITUTION IN THE BRITISH ZONE OF GERMANY**

4. In implementation of the policy of the Allied Powers to ensure restitution of identifiable property to victims of Nazi oppression a British Military Government Order, General Order No. 10, was brought into effect on 20th October, 1947. This provides, among other matters, for submission of claims to the Central Office for the Administration of Property (*Zentralamt für Vermögensverwaltung*) at Bad Nenndorf and for the blocking of all property to which it relates. The Central Office was required to perform the functions of a Central Filing Agency.

5. General Order No. 10 was followed much later, on 12th May, 1949, by Military Government Law No. 59 for the British Zone of Germany. The basic principles of this law are set out in Article I, paragraph 1, as follows:—

“The purpose of this Law is to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible) to persons, whether natural or juristic, who were unjustly deprived of such property between 30th January, 1933, and 8th May, 1945, for reasons of race, religion, nationality, political views or political opposition to National Socialism . . . .”

6. (i) Though the expressed purpose of the law was “speedy restitution” the machinery to accomplish this has, in the event, proved to be cumbersome and conducive to delay. The Central Filing Agency is required to transmit all petitions for restitution to the appropriate “Restitution Agency.” These Agencies, of which there are several in each *Land*, are German tribunals consisting of a President and a requisite number of members qualified to hold judicial or higher administrative office. Their function is to grant petitions where no answer has been filed within the time prescribed. Where such answer has been filed and the parties have failed to reach an amicable settlement, the Agency must forward the petition to the appropriate “Restitution Chamber” of the *Landgericht*. The Agency also has certain powers of summary dismissal of a petition as, for example, where the petition does not disclose a cause of action.

(ii) The Restitution Chamber is composed of a Presiding Judge and two Associate Judges appointed by the Minister of Justice of the appropriate *Land*. The function of the Chamber is, after oral hearing in public, “to adjust the legal relations of the parties” in accordance with the provisions of the Law.

(iii) From a decision of the Restitution Chamber an appeal lies to a third German tribunal, the Civil Division of the *Oberlandesgericht*.

(iv) Finally, a “Board of Review” appointed by the United Kingdom High Commissioner may review all decisions and orders made under Law 59. This Board consists of three members, one of whom, the President, must be a judge of the Allied High Commission Supreme Court for the British Zone, and another of whom must be a legally qualified person.

(v) There are, thus, numerous stages through which a petition might pass, and we will later make some reference to the possibilities of procrastination and delay at some of these stages.

7. Delay is, indeed, inherent in a system which may involve proceedings before so many separate tribunals, and our Committee considered the advisability of recommending some drastic curtailment of these processes. We have, however, decided that, at this time, fundamental changes in the machinery would be difficult to achieve and would, therefore, tend to retard rather than to accelerate fulfilment of the purpose of Law 59: and we have confined ourselves to recommendations to which it might be possible to give speedy effect.

### **PART III.—PROGRESS GENERALLY IN THE DISPOSAL OF CLAIMS**

#### **The British Zone**

8. A not inconsiderable proportion of our time has been taken up in enquiries as to the incidence of work actually accomplished by the tribunals to which reference has been made. We found some difficulty in ascertaining, from the official statistical compilations put at our disposal, what percentage

of cases have finally been disposed of. The statistics furnished to us refer to "claims" filed in the Central Filing Agency, and "claims" transmitted by the Central Filing Agency to the Restitution Agencies. Our enquiries elicited that a "claim" often has to be split up by the Restitution Agency into several separate cases or proceedings because it may relate to separate properties (sometimes situated in different areas) and to different defendants ; and that, therefore, the total number of claims transmitted to the Agencies represent, on an average, at least double that number of separate cases. The figures furnished to us as to disposals relate, however, to cases and not claims. We were finally able to arrive at the following simple conclusions which have been accepted as correct by Mr. Kelly, the Head of the Internal Restitution Section :—

Total number of cases arising out of claims transmitted to the Restitution Agencies up to 31st May, 1951	Approximately 63,786
Total number of cases finally disposed of up to 31st May, 1951	Approximately 16,000

According to these figures the proportion of cases hitherto passed to the Agencies and finally disposed of is, therefore, *25 per cent.* Many of the matters transmitted to the Restitution Agencies have passed beyond the Agency stage and are now in process of being dealt with by other restitution tribunals: by "final disposal" of a case we mean, therefore, that there has been a rejection, withdrawal, settlement or final order and that it is no longer pending before any restitution tribunal.

9. (i) The 63,786 cases referred to above will eventually, however, be greatly exceeded. The bulk of claims already submitted to the Restitution Agencies are by individuals claiming in their own right or as heirs of deceased persons ; and by regulation these individual claims were required to be filed by 30th June, 1950.

(ii) Law 59 also contemplates the filing of claims for unclaimed or heirless property, and two statutory bodies upon whom has devolved the right to prefer such claims have been set up. These are the Jewish Trust Corporation which is concerned with Jewish property, and the General Trust Corporation concerned with the property of persons other than Jews. Regulations provide that claims by the Jewish Trust Corporation are to be submitted by 1st February, 1952, and claims by the General Trust Corporation by 15th May, 1952.

(iii) The General Trust Corporation has been set up comparatively recently and has hardly started to function. There is no means, therefore, of making an estimate of the claims likely to be submitted by it, but they are thought to be few in number.

(iv) The Jewish Trust Corporation has been functioning since August, 1950 and has already submitted a large number of claims. Many thousands of these are still with the Central Filing Agency. It is Mr. Kelly's estimate that, taking into consideration the Jewish Trust Corporation claims already pending in the Central Filing Agency, and the further number likely to be filed by the prescribed date, the figure of 63,786 will be increased to 120,000 ; and that, therefore, the 16,000 cases finally disposed of represent under *14 per cent.* of the total.

10. It is manifest that at the present rate of progress it will take several years for all petitions to be dealt with. Mr. Kelly is of the opinion that the

rate will be accelerated as the tribunals gain experience. On the other hand, other witnesses express the view that there has been a tendency to keep the more difficult cases in abeyance and that those cases already finally disposed of are, generally speaking, of the less complex kind. We are not inclined to the more optimistic view.

#### **Berlin**

11. (i) Berlin Ordinance No. 180 which closely follows British Military Government Law No. 59 became effective on 26th July, 1949 in the British, United States and French Sectors of Berlin. The Filing Office, Restitution Agency, and Chamber set up by virtue of this Ordinance are common to all three sectors; and there is a uniform right of appeal to the *Kammergericht*, the Berlin equivalent of the *Oberlandesgericht*.

(ii) An anomaly exists, however, as regards the exercise of final appellate powers. There are three separate tribunals of final instance, and the right of access to them is not uniform. These are the Board of Review (as set up under British Military Government Law No. 59), for claims originating in the British Sector, the Court of Restitution Appeals (as set up under the United States Law 59) for claims originating in the United States Sector, and the equivalent in the French Sector of these two tribunals, for cases originating in the French Sector.

12. The period for filing claims, whether from individuals or statutory bodies, has expired and it is possible to arrive at a more certain assessment of the cases disposed of in Berlin than for the British Zone. The number of cases which are or have been before the Restitution Agencies in Berlin are, approximately, 93,000 (a figure not much below the anticipated total for the British Zone). Of these 93,000 cases, less than 5 per cent. have been finally disposed of. It will be manifest therefore, that the position in Berlin is very unsatisfactory indeed.

#### **The United States Zone**

13. The United States Military Government Law No. 59 (Restitution of Identifiable Property) became effective on 10th November, 1947. The subsequent British Military Government Law No. 59 is based upon it and follows it in all essential particulars.

14. From the official reports and statistics kindly placed at our disposal by Judge Hulse and Mr. Loewenthal it would appear that, up to 30th April, 1951, approximately 115,000 claims had been lodged with Restitution Agencies in the United States Zone. Of these claims, approximately 42,728 have been finally disposed of, a proportion of 37 per cent. Of the total of 115,000, approximately 66,776 were individual claims of which 31,319 have been disposed of, a proportion of 47 per cent. for individual claims. These figures do not take into account approximately 14,000 claims arising in *Land Hesse* which were filed by a statutory body (corresponding to the Jewish Trust Corporation) and are the subject of a comprehensive settlement entered into with the *Land* Government who have assumed responsibility.

#### **The French Zone**

15. The restitution law in the French Zone is simpler than its British and American counterparts. Time did not permit of a visit to the French Zone but we understand that the rate of progress there has been speedier than in either of the other two Zones. From reports (which we have been unable to verify) the French Restitution Authorities have disposed of some 60 per cent. of the total claims filed. It must, however, be noted that the number of claims in the French Zone is much smaller.

### Comparative Statement of Progress in the three Western Zones and Berlin

16. On the basis of such information as we were able to acquire, proportion, therefore, of final disposals to the totals involved, may, for the three Zones and Berlin be summarised as follows:—

French Zone	...	...	...	...	60 per cent.
*United States Zone	...	...	...	...	37 per cent.
British Zone	...	...	...	...	14 per cent.
Berlin (three Western Sectors)	...	...	...	...	5 per cent.

\* It is to be observed that the more recent figures furnished in Appendix III by the United States High Commissioner show a final disposal of approximately 50 per cent.

### PART IV.—CAUSES OF DELAY IN THE BRITISH ZONE AND RECOMMENDATIONS WITH RESPECT TO THEM

#### A. Political

17. (i) Before referring to delays of an administrative nature or arising out of the operation of the law itself, we wish to draw attention to a matter of general consideration which seems to us calculated to defeat the policy of internal restitution, and therefore to be fundamental.

(ii) Many witnesses have called attention to the growing belief and hope among Germans that the restitution legislation will be abandoned or drastically modified when the Occupation Statute<sup>(1)</sup> is brought to an end. There is also an increasing tendency to regard the "restitutors" rather than the victims of Nazi oppression, as deserving of sympathy, and to decry and oppose the policy of restitution.

(iii) In the three Western Zones of Germany there have come into existence associations whose expressed object is to organise opposition to the restitution laws. These bodies have of late intensified their activities and are attacking, for political motives, the principles underlying restitution.

(iv) A memorandum of 28th May, 1951 (a copy of which, with its attachments, is to be found in Appendix II) prepared by the United States restitution officials and kindly put at our disposal, indicates the extent to which this movement has progressed in the American Zone. We have heard similar evidence in regard to the British Zone and Berlin.

(v) The effect of this propaganda is to frustrate amicable settlements and protract proceedings. It is also calculated to affect the work of the German authorities concerned and to retard their (already unsatisfactory) rate of progress. There is indeed, evidence of a decline in recent weeks of the number of cases settled and the situation is unlikely to improve should there be a relinquishment of the reserved power in the field of restitution. The problem involves such factors as the attitude taken by present-day Germany to her own past, the unstable political situation in Germany and the anticipated change in West German relations with the Occupying Powers.

(vi) We do not desire to embarrass His Majesty's Government in the negotiations now in progress with the Federal German Government; but it seems clear that unless early steps are taken to combat the propaganda of these German organisations the policy of internal restitution will be gravely affected.

<sup>(1)</sup> "Germany No. 1 (1949)," Cmd. 7677 (Annex I) and "Germany No. 2 (1951)," Cmd. 8252 (Annex VII).

(vii) Since the completion of our tour it has come to our notice that Mr. McCloy, the United States High Commissioner has addressed a letter to the Ministers-President of the United States Zone making it clear that the restitution of property to victims of National Socialist persecution will continue in accordance with the existing law and that the holders of property subject to restitution will not be relieved of their obligations imposed by the law. Mr. McCloy's letter has been released for publication in the press and by radio. We attach, as Appendix III, a copy of the "Press Release" issued by the United States Authorities.

(viii) We would urge that similar action be taken by the United Kingdom High Commissioner at an early date.

#### B. Administrative

18. Though the Agencies and Chambers are supposed to be fully employed in restitution cases and the *Oberlandesgerichte* supposed to devote the necessary time to restitution appeals, there is congestion in the work of all three of these tribunals, as is shown by the following table based on returns for the last seven months:—

	Cases pending in October 1950	Cases pending on 1st May, 1951
Agencies ... ..	31,090	32,835
Chambers ... ..	2,988	5,374
<i>Oberlandesgerichte</i> ... ..	96	336

This shows that, while during the last seven months the Agencies have almost been able to keep abreast of their work, the number of cases pending in the Chambers have nearly doubled, and those pending in the *Oberlandesgerichte* are approximately four times as great. It is manifest that unless drastic steps are taken to deal with this state of affairs the situation will rapidly deteriorate.

19. In addition to the causes of delay referred to in other parts of this Report, there are certain administrative factors which, in our view, contribute to the slow progress of the work. These are in order of importance:—

(a) *The insufficiency of judges in the Agencies, Chambers and Oberlandesgerichte.*—This, we consider, is a major cause of the congestion.

(b) *A tendency on the part of some of the judges to avoid a full day's work.*—We visited the Agencies at Düsseldorf and Hanover and in neither of these had the judges arranged sufficient work to occupy them for the day on which we attended. There were four judges at Düsseldorf: One judge had fixed three cases for hearing and the remaining three had each one case to hear. We were present during the proceedings before one of the judges who had a single case. The hearing of this lasted about half an hour and it was then adjourned for six weeks. We could see no adequate reason for such a prolonged adjournment. While this case was in progress, another judge was sitting in the same room and enquiries elicited that he was unable to proceed with his own business because he had no separate accommodation.

It did not appear to us that on the day we visited the Agency at Hanover there was a great deal more work in progress. The judge whose Court we attended adjourned his only case after a short hearing. He seemed a reasonable and intelligent person but appeared to lack any sense of urgency in relation to his work.

There is reason to believe that the situation at Bielefeld is no better. Mr. Kelly, who had paid a recent visit to the Bielefeld Agency, reported that:

"Out of six judges attached to the Agency and Chambers at that town, one was sick, another on leave and none of the remaining four was available at 3.30 p.m."

We are unable to say whether these three instances are typical of what is occurring in Agencies throughout the Zone. It may be that in other Agencies the judges devote more time to their duties. It may also be said that most of the judges are old men dealing with a law which is both complex and of a nature foreign to them. It is to be emphasised that the judges in the Agencies have no powers to adjudicate, and contested cases must be passed on to the Chamber. It was our impression that they tend, nevertheless, to concern themselves too much with the details of a case. They are also prone to writing unnecessarily long and complicated orders.

(c) *The inadequacy of court and office accommodation.*—The nature of the accommodation varies considerably at different places. It is our view that the work of the Agencies and Chambers is, on the whole, adversely affected by insufficiency of accommodation.

(d) *Deficiencies in Staff.*—We found many indications that the Agencies and Chambers were insufficiently staffed and we have no doubt that this factor materially contributes to the delays.

(e) *Delays arising in the taking of accounts.*—Under various provisions of Law 59 necessity arises for the taking of accounts as, for instance, the necessity to calculate net profits under Article 27. There are indications that the decision of the main legal issues in a case tends to be delayed while time is spent by the judges on the examination of accounts, work which should be performed by suitably qualified members of their staffs.

(f) *Prolonged adjournments of proceedings.*—The judges in the Chambers and Agencies are inclined to grant unnecessarily long adjournments. The hearing of the case which we attended in the Restitution Chamber at Hanover was adjourned for thirty days at the defendant's request to enable him to discuss with his wife an offer of settlement. The judge was asked by the Committee why two days would not have sufficed. He failed to give any reason. Such delays are by no means confined to cases in which the defendant asks for an adjournment. Many long adjournments are given to enable counsel for claimants who frequently live abroad, to communicate with their clients as to the acceptance of some proposed settlement.

20. (i) We recommend that immediate steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the *Oberlandesgerichte* to hear restitution appeals. The measure of the increase will have to be related to the requirements in each *Land*. Statistics indicate, for instance, that the greatest congestion, at all levels, occurs in North Rhine/Westphalia. We were informed that difficulty is experienced in finding suitable judges. This might be overcome by transferring judges from the Agencies to the Chambers and appointing suitably qualified and reliable lawyers to the Agencies.

(ii) We recommend that the staffs of the Agencies and Chambers be increased, and that persons experienced in account taking should be included, in the staff of every Restitution Chamber. Such persons need not, necessarily, be qualified accountants.

(iii) Immediate steps should be taken to ensure adequate office and court accommodation for all Restitution Authorities.

(iv) We are not, ourselves, in a position to make detailed recommendations in respect of judges, staff and accommodation, but an experienced officer

appointed in pursuance of the recommendation in paragraph 21 below could  
soon assess requirements in this respect.

The tendency of judges to grant long adjournments will be checked by  
adopting the recommendation made in the next paragraph.

21. (i) We agree with the evidence of Mr. Kelly and other witnesses that  
the administrative delays are largely attributable to the lack of an adequate  
system of control and supervision of the restitution machinery. We recom-  
mend that a system should be devised and put into immediate effect, to  
ensure systematic examination and supervision of the machinery by  
experienced officials of the High Commission with an adequate staff. The  
responsible officials should be required to report to the appropriate High  
Commission authority who would take action to remedy any defects in the  
machinery.

(ii) We understand that a senior United States official (with an American  
assistant and a German Legal Adviser) has for the past two years exercised  
such supervisory duties in the United States Zone, and we have reason to  
believe that the more rapid progress in restitution matters in the American  
Zone is, to an appreciable extent, attributable to this.

(iii) We would further urge that the Federal Government should be  
required to agree to a continuance of the system of inspection after the  
relinquishment of reserved powers. We are strongly of the view that unless  
such an arrangement is entered into, there is little or no hope of the restitu-  
tion law being implemented.

### C. Difficulties and Uncertainties of the Law

#### (a) *Difficulties of proving a right of Succession*

22. (i) In the case of persons whose claims under Law 59 are founded  
upon a right of succession, the Restitution Agencies and Chambers have  
adopted the practice of demanding that the claimant should produce a Certifi-  
cate of Inheritance from a German Probate Court. This procedure tends,  
in certain cases, to defeat the purpose of Law 59 and, in any event, causes  
considerable delay in the decision of restitution claims, and great incon-  
venience to the claimants. In Appendix IV is a note setting out, by way of  
example, some of the legal difficulties with which claimants, who have had  
recourse to these German Probate Courts, are confronted.

(ii) Law 59, it appears to us, is intended to be comprehensive. It  
contemplates, in our view, that claimants are entitled to establish a right of  
succession before the Restitution Authorities, and for this purpose are entitled  
to the benefit of the special rules of evidence framed to meet exigencies and  
difficulties arising in consequence of the persecution to which the claimants,  
or their predecessors in title, were subjected.

(iii) Part VIII of Law 59 deals with "General Rules of Procedure."  
Article 41 of this Part refers to "Basic Principles" and lays down in  
paragraph 1:

"the restitution proceedings shall be commenced by petition and the  
proceedings shall be conducted in such a manner as to bring about a  
speedy and complete restitution. . . ."

Paragraph 2 of the same Article refers to the difficulties confronting a  
claimant as a result of persecution. It provides:

"In ascertaining the relevant facts the Restitution Authorities shall  
take fully into account the circumstances in which the claimant finds him-  
self as a result of measures of persecution for the reasons referred to in

Article 1. This shall apply in particular where the production of evidence is rendered difficult or impossible through the loss of documents, the death or non-availability of witnesses, or similar circumstances. German declarations made by the claimant or his witnesses shall be admissible notwithstanding the subsequent death of the person making any such declaration."

Article 42, which relates to the right of succession, says that:

"1. Any person who founds a claim upon a right of succession on death shall be required to prove such right.

2. Foreign Law shall be proved where it is unknown to the Restitution Authorities."

This article seems clearly to contemplate that it is before the Restitution Authorities that proof as to a right of succession is to be adduced.

Article 43 lays down certain rules as to the presumption of death. These are framed to meet the difficulties of claimants and are not in complete conformity with similar presumptions arising under German Law.

(iv) It was never, it appears to us, intended that a claimant for restitution under Law 59 should be relegated to an ordinary German court to prove any part of his claim, and one consequence of so relegating him is to deprive him of the benefit of the special rules of evidence provided for in Law 59.

(v) We consider that Article 42 should be amended so as to remove any possible doubt as to its application. It should be made abundantly clear in the Article that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We consider that the appropriate authority before whom the right of succession should be proved is a judge of the Restitution Chamber. Some witnesses were of opinion that the judges of the Chambers lack the necessary experience in matters of inheritance and succession. Assuming this to have some validity, we would suggest that certain judges be selected to adjudicate on these matters and that each group of Chambers should have one judge for this purpose.

*(b) Difficulties of converting Reichmark Claims into Deutsche Mark Claims*

23. (i) The question of the conversion rate of Reichmarks into Deutsche Marks arises in relation to certain monetary claims under Law 59. Instances of these are the claim, under Article 27, to net profits derived from the affected property by the restitutor or his predecessor in title; and the claim, under Article 36, by the restitutor for the repayment of any consideration received by the claimant for the restituted property.

(ii) Law 63, the Conversion Law, which came into force on 27th June, 1948, provides, in respect of general debts (which includes all claims for the payment of money), a conversion rate of one Deutsche Mark (the new currency) for every ten Reichmarks (the old currency).

(iii) Neither the United States Restitution Law 59 (which came into force before the Conversion Law) nor its British counterpart (which came into force after the Conversion Law) make any provisions as to the rate of conversion of Reichmarks into Deutsche Marks.

(iv) The United States Court of Restitution Appeals, in a judgment of 28th April, 1950, held that the conversion rate of certain monetary claims (then the subject of consideration by the Court) was ten Reichmarks to one Deutsche Mark. The *ratio decidendi*, apparently, was that, since Law 59 was already in force when Law 63 was enacted, the provisions of Law 63 govern the conversion rate for monetary claims arising under the earlier law.

(v) The Board of Review (the final Appellate authority for the British Zone) in a judgment delivered on 27th March, 1951, took a contrary view. It decided in relation to claims arising under Sections 27 and 36 of the British Law 59, that, as the British Law came into force after Law 63, the application of Law 63 is excluded; and that since Law 59 gives no specific guidance in the matter each case must be considered on its merits.

(vi) Numerous witnesses have said that the effect of the Board of Review's decision is to frustrate settlements and delay restitution proceedings, by encouraging controversy as to the rate of conversion. It appears to us that the Board's ruling, though clearly expressed, has been misunderstood (or professed to be misunderstood) in many quarters; but that, in any event, considerable delay and trouble would be avoided if the rate of conversion in respect of monetary claims arising under Law 59 is fixed by legislation to conform with Law 63. We would urge, therefore, that the necessary amendments to this end be introduced without delay.

*(c) Matters of principle arising under Law 59, not yet decided*

24. (i) Certain cases involving important matters of principle have a tendency to be held up by the Chambers pending authoritative decision by the Board of Review. There have not yet, for instance, been any decisions by the Board of Review as to the meaning of the term "identifiable property" (*feststellbare Vermögensgegenstände*) in Law 59, and whether it would include such items as the sale proceeds of goods sold by auction, or the Flight Tax (*Reichfluchtsteuer*) which a Jew on leaving Germany had to pay.

Such matters would ordinarily, however, only reach the Board of Review by way of appeal, and an appeal may be delayed or may never be filed.

(ii) In our view the difficulty might be overcome were the United Kingdom High Commissioner acting under Regulation 6 (issued pursuant to Law 59) Article 3 (5) to direct the Board of Review to give advisory opinions on some of these important matters.

*(d) Necessity for a General Claims Law*

25. The absence of a General Claims Law for the whole of the British Zone leads to the filing of many claims for restitution which do not, strictly, fall within Law 59 but nevertheless require time to be scrutinised. There is at present such a law in force in all *Länder* in the American Zone and in certain *Länder* in the British Zone. In our own opinion the enactment by the Federal Government of a General Claims Law would greatly facilitate the disposal of restitution cases.

*(e) Unwillingness of German Public Authorities to give effect to orders of Restitution Authorities.*

26. There is evidence before us of the unwillingness of *Land* Registries and other public authorities to recognise the judgments and awards of the Restitution Agencies and Chambers. The remedy lies in an appropriate amendment to Law 59. We understand that such an amendment is already under consideration.

*(f) Delays occasioned by consideration of claims against the former German Reich*

27. It is estimated that nearly half the petitions filed relate to claims to recover moveable property appropriated by the former German Reich. The Federal Government has not yet assumed liability for these claims and any

order for restitution could not, in present circumstances, be effective. In view of the congestion in restitution proceedings, it is, in our view, expected that consideration of claims against the Reich for compensation and for the restitution of moveable property should be deferred, if the claimant so desires, until arrangements have been concluded as to the satisfaction of these liabilities. We recommend that administrative action be taken to this end.

(g) *Omission in Law 59 to give retrospective effect to amicable settlements*

28. Article 12 of Law 59 gives retrospective effect to orders for restitution but makes no reference to amicable settlements effecting restitution. It has been stated to us that this omission tends to frustrate settlements. We therefore recommend that Article 12 be amended so as to include such amicable settlements. An amendment to the same effect has been made in the law of the United States Zone.

(h) *Uncertainty as to the incidence of the proposed Equalisation of Burdens Law*

29. We were informed that a comprehensive Equalisation of Burdens Law is now under examination, but that no decision has yet been taken as to the exemption from the proposed tax of properties which are the subject of claims to restitution. This uncertainty is, undoubtedly, an obstacle to the conclusion of amicable settlements. The claimants hesitate to take back property which may be subjected to heavy taxation or to agree to a money settlement calculated on the basis that the property will be subject to this burden. Defendants, likewise, are reluctant to agree to settlements on the basis that the property will be exempt. Claimants urge strongly that it would be a manifest injustice to impose on victims of persecution any liability for burdens for which they bear no responsibility. It would facilitate settlements therefore, if an early decision were taken in this matter.

**PART V.—CAUSES OF DELAY IN BERLIN AND  
RECOMMENDATIONS WITH RESPECT TO THEM**

30. (i) Our observations as to the delays in the British Zone and our recommendations with regard to them apply with additional emphasis to Berlin, where, as already indicated, less than 5 per cent. of the cases have been dealt with. It has been reported to us by an official British witness of ability and experience that the Senat Minister of Justice shows lack of interest in restitution, that judges are afraid to deal with difficult cases and hope for "better times," that there is shortage of staff and accommodation in the Chambers and Agencies, and that the *Kammergericht* being also engaged in other matters cannot give restitution cases sufficient attention.

(ii) We have already pointed out, in paragraph 11, that there are three separate tribunals of final instance for Berlin. In addition, therefore, to the recommendations made in Part IV with regard to the British Zone we would suggest that there should be set up a Tripartite Court of Appeal to hear appeals from the three Western Sectors of Berlin. We also recommend that some of the judges of the *Kammergericht* should be employed exclusively on the hearing of restitution appeals.

(iii) There are also indications, in the evidence, of calculated obstruction in the Probate Courts and *Land* Registries. We consider that the most effective means of dealing with this (and the other causes of delay) is by appointing a special Allied official to exercise supervision over the Berlin Restitution Authorities.

## PART VI.—THE BOARD OF REVIEW

31. (i) No material delay occurs at present in proceedings before the Board of Review. Up to 30th May, 1951, the Board had received 98 petitions, of which 52 have been finally disposed of. 35 of the remaining 46 petitions are not yet ripe for hearing as the case records are incomplete. The other 11 petitions will be heard in the near future.

(ii) It is clear to us, however, that in the event of a general acceleration in restitution proceedings the work of the Board of Review will become congested unless steps are taken in advance to meet the situation. The President of the Board of Review, Judge Rogers, is also a Judge of the Allied High Commission Supreme Court in the British Zone. He is at present engaged at least three days a week in the business of the Board of Review; and if, as we consider inevitable, the work of the Board increases, it will take up still more of his time. It will also probably necessitate the full-time employment of one or more of the other members of the Board and will certainly require additional staff. We recommend that Judge Rogers be invited to report immediately as to his requirements in this respect, and that his recommendations be given effect to. It is to be emphasised that many of the cases which reach the Board of Review are complicated and their records (after they have passed through the Courts below) extremely voluminous. They necessarily therefore, require considerable "devilling" before they are in a form to be conveniently and expeditiously dealt with by the Board.

(iii) There are two procedural matters which tend to cause delay. The first is that a party has a right to demand an oral hearing before the Board of Review. Frivolous appeals are often filed, and we consider that Law 59 should be amended so as to leave it to the discretion of the Board to decide whether an oral hearing be granted.

(iv) The other matter relates to the time in which appeals are to be filed. Under regulations at present in force an appeal from the Restitution Chamber must be lodged with the Board of Review within two months, in the case of a resident in Germany, and four months in the case of a non-resident, from the date of the service of the Chamber's order; in the case of an appeal from the *Oberlandesgericht* the time is 3 months from the date of the decision.

(v) These periods are, it seems to us, unnecessarily long, particularly in view of the fact that the Board is empowered in proper cases to extend the time. We recommend, therefore, that the appropriate regulation (Regulation No. 6) be amended to provide that, for petitions from both the Chambers and the *Oberlandesgerichte*, the time for filing the appeal be reduced to one month in the case of persons resident in Germany and to three months for foreign residents, the power given to the Board to extend the time being retained.

## PART VII.—RECOMMENDATION AS TO RETENTION OF THE EXISTING RESTITUTION LAW AND MACHINERY

32. (i) It is our view, already expressed in paragraph 7 above, that fundamental changes in the machinery of restitution would not tend to accelerate the fulfilment of the purpose of Law 59.

(ii) We also consider that, at the present time, any discussions as to fundamental changes of principle in the restitution law would tend to cause uncertainty and to encourage anti-restitution propaganda.

(iii) We recommend, therefore, that Law 59 (subject to the minor changes recommended above) should remain unaltered and any contractual

arrangements should include specific provision whereby the Federal Government accepts responsibility for—

- (a) preserving and implementing the Law,
- (b) executing the orders of the Restitution Authorities, and
- (c) maintaining the system of Allied supervision of the Restitution tribunals.

(iv) We consider it essential that appellate and revisional powers should continue to be exercised by Allied Courts after the relinquishment of reserved powers. We believe that for a considerable time there will be sufficient work to occupy the whole time of the Board of Review as the hearing of claims by the restitution authorities is speeded up. If it is decided later to have a single Court of Appeal for the three Western Zones, we think it important that it should have upon it a majority of Allied members.

#### **PART VIII.—LIABILITY FOR CLAIMS AGAINST THE REICH**

33. (i) As we have mentioned in paragraph 27 the Federal Government of Germany has not yet accepted liability for claims against the former Reich arising out of acts of confiscation of moveable property (including bank accounts, insurance and sums levied by oppressive taxation on persons forced to leave Germany).

(ii) We consider that immediate steps should be taken to ensure acceptance by the Federal Government of their liability; and that any contractual arrangements with the Federal Government should include provisions as to the acceptance of this liability and specific financial guarantee for its discharge. This guarantee might be discharged by payment to a body such as the Bank of International Settlements, of a proportion of the funds to be derived from the Equalisation of Burdens Tax, or other sources.

#### **PART IX.—DESIRABILITY OF OVERALL SETTLEMENTS**

34. (i) We hope that our recommendations with regard to the machinery of restitution, if put into immediate effect, will materially hasten the disposal of claims. But in view of the great congestion of cases in the British Zone these improvements alone will not ensure complete disposal within a predictable period and we therefore attach importance to the suggestions which immediately follow.

(ii) The overall settlement (referred to in paragraph 14 above) made in the United States Zone in relation to *Land* Hesse suggests the feasibility of similar settlements with *Land* Governments in the British Zone. The Jewish Restitution Successor Organisation (a statutory body) with the assistance of the United States authorities, concluded an agreement for payment of a lump sum in respect of 14,000 cases of heirless and unclaimed property, in consideration of the assignment of the claims to the *Land* Government. We were informed that similar agreements are being negotiated with the other *Land* Governments in the United States Zone and that it was hoped, in this way, to dispose of all the claims of the Successor Organisation.

(iii) Such overall settlements would be of enormous advantage in the British Zone, and we would recommend that the Trust Corporation should be invited to formulate the aggregate of their claims for each *Land*, and that the British Authorities should initiate negotiations with the appropriate German Authorities before the relinquishment of reserved powers. The *Land* Government could, if necessary, be assisted by the Federal Government in the financing of these settlements. Similar negotiations for settlement of the claims of the Jewish Trust Corporation against the Reich should be initiated with the Federal Government.

**PART X.—RECOMMENDATIONS AS TO PAYMENT OF  
RESTITUTION CLAIMS**

35. (i) Compensation awarded to claimants who are resident outside the Federal Territory is at present required by law to be paid into a blocked account in Germany. If the expressed purpose of Law 59 to bring about complete restitution is to be fulfilled, it is necessary to remove these restrictions so as to permit of funds being transferred abroad. We recommend that early action be taken to remove the restrictions and that provision be inserted in the contractual arrangements with the Federal Government to ensure that they are not re-imposed.

(ii) This matter and the question of the discharge of claims against the Reich are of Tripartite concern and should, we think, be regarded as an integral part of the financial settlement with the Federal Government. The payment of restitution claims is, it appears to us, an obligation upon the Federal Government no less binding than the payment of pre-war debts.

**PART XI.—SUMMARY OF RECOMMENDATIONS**

36. The following is a summary of our recommendations. The more important are printed in bold type:—

**Political**

(i) That the United Kingdom High Commissioner should make a statement of the nature of that recently made by the United States High Commissioner, to the effect that restitution of property in accordance with the existing law will continue; and that such statement be given extensive publicity in the British Zone.

(ii) That any contractual arrangement with the Federal Government should include an obligation by that Government (a) to preserve and implement the Restitution Law (b) to execute the orders of the Restitution Authorities and (c) to maintain Allied supervision over Restitution Tribunals.

**Administrative**

(iii) That steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the Oberlandesgerichte to hear restitution appeals.

(iv) That the office staffs of the Agencies and Chambers be increased, and that persons experienced in account taking be appointed to these staffs.

(v) That steps be taken to ensure adequate office and court accommodation for all Restitution Authorities.

(vi) That a system be put into immediate effect to ensure proper examination and supervision of the machinery of restitution.

(vii) That administrative action be taken to arrange that claims against the former German Reich for restitution of movable property be deferred, at the request of the claimant, until decision has been taken as to the liabilities of the Reich.

**Legal**

(viii) That Article 42 of Law 59 be amended to make it clear that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We suggest that the Restitution Chamber is the proper authority to adjudicate in this matter and that groups of Chambers should each have one judge for this purpose.

(ix) That the Reichmark/Deutsche Mark conversion rate in respect of monetary claims arising under Law 59 be fixed by legislation to conform with Law 63.

(x) That recourse be made by the United Kingdom High Commissioner under Regulation 6, Article 3 (5), to direct the Board of Review to advisory opinions on important matters of principle not yet decided.

(xi) That the Federal Government be approached to enact a General Claims Law.

(xii) That Law 59 be amended so as to ensure effect being given to orders of the Restitution Authorities by German Public Authorities.

(xiii) That decision be taken, before the relinquishment of reserved power, with regard to exemption from the proposed Equalisation of Burdens Law of properties which are the subject of claims to restitution.

(xiv) That Article 12 of Law 59 be amended so as to provide that retrospective effect is given to amicable settlements effecting restitution.

#### **Berlin**

(xv) That the recommendations specified above should be put into effect and that in addition :—

(a) There should be set up a Tripartite Court to hear appeals from the three Western Sectors of Berlin.

(b) Certain judges of the *Kammergericht* should be employed exclusively in the hearing of restitution appeals.

(c) An Allied Officer should be appointed to exercise supervision over the Restitution Authorities.

#### **The Board of Review**

(xvi) That the President of the Board of Review be invited to report immediately as to his requirements to meet an anticipated increase of appeals ; and that his recommendations be given effect.

(xvii) That Law 59 be amended so as to leave it to the discretion of the Board of Review to decide whether an oral hearing be granted.

(xviii) That Regulation 6 be amended to provide that, in respect of petitions from the Chambers and *Oberlandesgerichte*, the time for filing an appeal be reduced to one month in the case of persons resident in Germany and to three months for foreign residents, the power given to the Board to extend the time being retained.

#### **Financial**

(xix) That the German Federal Government be urged to accept liability for the restitution claims against the German Reich and that the contractual arrangements with the Federal Government should provide for the continuance of this liability and for specific guarantees for its discharge.

(xx) That the Jewish Trust Corporation be invited to formulate an aggregate claim for each *Land*, with a view to an overall settlement and that the British Authorities, before the relinquishment of reserved powers, initiate negotiations to this end with the German Authorities.

That similar negotiations be initiated with the Federal Government for the overall settlement of the claims of the Corporation against the Reich.

(xxi) That action be taken to remove restrictions on the transfer of sums paid for restitution into blocked accounts of claimants who are resident outside the Federal territory ; and that provision be inserted in the contractual relations to ensure that the restrictions are not reimposed.

D. N. O'SULLIVAN.

A. L. EASTERMAN.

NORMAN BENTWICH.

30th June, 1951.

## APPENDIX I

### Itinerary and List of Witnesses

1. We assembled at Wahnerheide on 28th May, 1951, moved from Wahnerheide to Düsseldorf on the morning of 29th May, 1951, from Düsseldorf to Herford on the evening of 30th May, 1951, from Herford to Bad Nenndorf and Hanover on 31st May, 1951, from Hanover to Hamburg on 1st June, 1951, from Hamburg to Frankfurt (in the United States Zone of Germany) on the night 3/4 June, 1951, and returned to Wahnerheide on the afternoon of 5th June, 1951.

2. While in Germany we interviewed the following persons:—

Mr. M. J. P. Kelly	...	Head of the Internal Restitution Section, Chancery, and member of the Board of Review.
Mr. R. C. Swayne, M.B.E.	...	Member of the Board of Review.
Dr. Burgner	...	United Restitution Office.
Mr. J. W. Laski	...	Senior Legal Assistant, Land Commissioner's Office, Düsseldorf.
Dr. F. W. Engels	...	Rechtsanwalt, Düsseldorf.
Dr. Schumacher	...	German Judges of the Restitution Agency, Düsseldorf.
Dr. Kohlen	...	
Dr. Stein	...	
Senatspräsident Strafen	...	
Dr. Kalbheun	...	
Dr. Kruger	...	Landgerichtsdirektor } Judges of the Restitution Chamber.
Dr. Steeger	...	
Mr. H. D. Barton, M.C.	...	Senior Property Control Officer, Düsseldorf.
Herr Kaulvas	...	Landesbeauftragter für gesperrte Vermögen.
Dr. Artl	...	Land Ministry of Justice.
Dr. Geller	...	Senatspräsident.
His Honour Judge Graham Rogers	...	President of the Board of Review and Judge of the Court of Appeal.
Mr. E. A. Marsden	...	Secretary of the Board of Review and Registrar of the Supreme Court.
Dr. Klostermann	...	Senatspräsident, Head of German Staff of Central Claims Registry.
Dr. Harting	...	Member of the Staff of the Central Claims Registry.
Dr. Blumberg	...	United Restitution Office.
Herr Erdmann	...	Office Manager } General Trust Corporation.
Herr Kornke	...	
Dr. Hornig	...	Ministerialräte of the Ministry of Justice, Hanover.
Dr. Deume	...	
Dr. Holzweg	...	
Dr. Zander	...	
Dr. Altmann	...	Landgerichtsrat, President of the Hanover Restitution Agency.
Mr. W. F. Pickering	...	Amtsgerichtsrat, President of the Hanover Restitution Chamber.
	...	Member of Land Commissioner's Legal Staff and alternate Member of the Board of Review.
Dr. Schindler	...	Jewish Trust Corporation.
Mr. Simon	...	
Dr. Willer	...	
Dr. Asschenfeldt	...	
	...	Senatspräsident, Hamburg.
	...	Oberregierungsrat in charge of Restitution Agency work, Hamburg.

Dr. Van Damm	...	...	Legal Adviser to the Jewish Community in the British Zone of Germany.
Mr. Wollheim	...	...	Chairman of the Jewish Community in British Zone of Germany.
Judge F. G. Hulse	...	...	Deputy Chief, Administration of Justice Division, Office of the United States High Commissioner for Germany.
Mr. Loewenthal	...	...	Official of the United States Property Division.
Mr. Livneh	...	...	Consul-General of Israel.
Dr. Schwartz	...	...	Legal Adviser of the Jewish Agency for Palestine.
Mr. Lieber	...	...	German Legal Adviser to the United States Property Division.
Mr. Ferencz	...	...	} Jewish Restitution Successor Organisation.
Dr. Weiss	...	...	
Dr. Mai	...	...	
Dr. Blumenthal	...	...	Legal Aid Department of the United Restitution Office in the United States Zone of Germany.
Mr. J. E. Edney, M.B.E.	...	...	United Restitution Office, Berlin.
Mr. T. W. Garvey	...	...	United Kingdom Property Control Officer, Berlin.
			Head of External Affairs Branch, Chancery

Written statements have been submitted to us by the following organisations:

- Jewish Trust Corporation for Germany, Ltd.
- United Restitution Office, London.
- World Jewish Congress (British Section), London.
- Board of Deputies of British Jews, London.
- Council for the Protection of the Rights and Interests of Jews from Germany, London.
- Arbeitsgemeinschaft der Vertretungen politisch, rassisch und religiös Verfolgter, Berlin.

## APPENDIX II

### MEMORANDUM BY UNITED STATES OFFICIALS DEALING WITH RESTITUTION

28th May, 1951.

#### Opposition to the Restitution Program

Reference is made to a memorandum of 11th May, 1951 addressed to you by Mr. "A," citing certain rumors circulating among the German public which are detrimental to restitution and proposing that it may be considered whether Mr. McCloy should write a letter to the Ministers President outlining present and future policies with respect to restitution. Mr. "A" also proposes that such letters should then be released to the press so as to acquaint the public with the facts.

The following information on the same subject has been prepared to show that behind the rumors mentioned by Mr. "A" there is a steadily growing and well organised resistance against restitution as provided for under MG Law No. 59 which, if not counteracted, may seriously jeopardise the early completion of the program.

The Federal Association of Restitutors (an organisation established for the express purpose of protecting the interests of restitutors) has drastically intensified its activities in attacking the basic principles of MG. Law No. 59 with increasing bitterness. (Annex "A.") The aims of the organisation are gaining support from some political parties and from part of the German press. It continues to win followers and only recently a branch office in Kassel has been added to its many offices already existing throughout the federal territory.

On 3rd April, 1951 the association submitted a draft restitution law to the Law Committee of the Federal Parliament. The law is intended for promulgation in the three Western Zones and Sectors of Berlin (Annex "B.") and completely reverses the basic principles of MG. Law No. 59. In substance the draft law removes the presumption of duress for all transactions made prior to 14th June, 1938 and gives full protection to purchasers in good faith. Moreover, the law shifts the liability to make restitution to a very large extent from the individual restitutor to the Federal Government. (Annex "C.") It also provides that Jewish heirless and unclaimed properties will go to the Federal Government, thereby excluding Jewish successor organisations or trust corporations as claimants for such properties. (Annex "D.") Further it is intended that all cases which have been finally adjudicated under presently existing restitution laws are to be reopened. (Annex "E.")

In April a motion was introduced into the Bavarian Parliament asking the Bavarian Government to advise the Federal Republic that "the restitution of Jewish properties should be mitigated" and that the court of last resort should be a German Court. This motion was unanimously accepted by the Law Committee of the Parliament in a session on 8th May, 1951, during which speakers criticised MG Law No. 59 and its interpretation by the Court of Restitution Appeals. (Annex "F.")

A series of articles appearing in the *Kasseler Post* of April 4, 5, 9 and 10, 1951 were clearly designed to demonstrate that the application of MG Law No. 59 leads to inequitable and untenable results for the restitutors. (Annex "G.") In its issue of 17th April, 1951 that paper published an article under the caption "Don't buy restituted property" warning readers not to acquire properties having been restituted as a result of MG Law No. 59, because such properties might at some later date have to be returned to the persons who owned them prior to restitution. (Annex "H.")

Articles concerning restitution which appeared in the *Frankfurter Rundschau* and the *Frankfurter Allgemeine Zeitung* of 13th and 14th April, 1951, respectively, although more moderate, point in the same direction as those appearing in the *Kasseler Post* by expounding the view that restitutors suffer undue hardship under MG Law No. 59 and that the law should be changed. (Annex "I.")

In consequence, holders of properties subject to restitution are now more hopeful than ever that the present United States policy with respect to restitution may give way to German public pressure so as to permit a drastic modification of the restitution law. (Annex "J.") It has been observed that any modification of present policies affecting Germany acts as a booster for rumors that a change in the restitution law is imminent. In this connection Dr. "B," in charge of the administration of MG Law No. 59 in *Land Hesse* and a well-known authority in the field of restitution, mentioned the recent clemency actions with respect to certain Landsberg prisoners as having caused such a reaction.

Statistical restitution progress reports indicate that amicable settlements in the 4 months period from January to April 1951 have decreased as compared to the last 4 months in 1950. The fact that there has been a decrease in settlements despite a recent amendment of MG Law No. 59, specifically designed to increase such compromises by providing that all losing parties be assessed court costs and fees can largely be attributed to the aforementioned conditions.

The foregoing indicates that a statement by Mr. McCloy as to the present and future United States policy with respect to restitution, as proposed by Mr. "A," is timely. Moreover, restitution was last mentioned publicly by Mr. McCloy in his radio address of October 1950. Since then, many changes have taken place in the relationship between the Allies and the Federal Republic, and for this reason also a re-statement of United States policy in the field of internal restitution is desirable.

ANNEX "A" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of February 1951*

For years now innocent people who were more or less successful in life must submit, trembling, grumbling, or protesting to the duress and the menace of a law which reminds all of us too distinctly of the legislative period of the 1,000 years (Reich)\* and must therefore be similarly branded as terrorising and humiliating the basic rights of man.

For the attentive reader of this magazine, the columns of which are full of concrete examples which, although they may appear unreal, are actually real, then end result is as clear as it is shocking: opportunism, burlesque, distortion of law and facts, such as would be suitable for a cabaret, piracy reminding us of the atrocious practice of forcible dispossession of property once before prevalent (in Germany)\*, greedy grabbing of properties at any price, even at the price of honor, such disgusting manifestations flare up in the shadow of these laws for restitution of confiscated property and discriminate against the earnest form of the German Courts.

\* Parentheses supplied.

ANNEX "B" TO APPENDIX II

*Translation of extract from letter of 2nd April, 1951, from the Federal Association for Loyal Restitution published in "Die Restitution" of April 1951*

The "Bundesvereinigung fuer loyale Rueckerstattung" submits the draft of a Federal Restitution law.

The draft has undertaken the attempt, recognised as extremely difficult, to co-ordinate the restitution laws of the three Western Zones and the Western Sectors of Berlin\* and to arrive simultaneously at conclusions which, upon transfer of the legislative power in the field of restitution to the Federation, will result in a solution satisfactory for both parties.

\* Italics supplied.

ANNEX "C" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

*Part II.—Confiscation under Duress*

(1) Property shall be considered confiscated under duress within the provisions of this law, if the person entitled thereto has, within the material period, been deprived of the right of ownership, the right of possession or of any other right or an expectancy of acquisition thereof without his consent, and if the loss is due to—

- (a) a governmental act or the abuse of such act; or
- (b) measures taken by the NSDAP, its formations or affiliated organisations.

if such acts and measures were based on regulations effective within the material period, or were arbitrarily carried through. In the case of (a) the Federation, in the case of (b) the custodian of the NSDAP and its affiliated organisations shall be liable to make

restitution. They may, however, hold liable for indemnification any purchaser who was not in good faith to the extent to which the latter has not paid a fair purchase price.

(2) Property shall further be considered confiscated under duress if the person entitled thereto has, between 30th January, 1933, and 15th September, 1935, lost the right of ownership or any other right referred to in paragraph 1 with his consent and if the loss resulted from a transaction which primarily was caused by duress specifically directed against his person and which had been or should have been known to the purchaser.

(3) In the case of alienations which have been effected between 16th September, 1935, and 14th June, 1938, the presumption "confiscated under duress" is available if the claimant proves that a fair purchase price had not been paid or that, as in paragraph 2, he was caused by duress to alienate his property.

(4) In the case of all alienations having been effected after 14th June, 1938, the duress shall be presumed, if the claimant belongs to a group of persons listed in Article 1, paragraph 1. Persons of foreign nationality also, whether they were domiciled within the former territory of the Reich or abroad, shall be entitled to restitution if they had to alienate property located in Germany and belong to a group of persons listed in Article 1, paragraph 1. The same shall apply to Germans living abroad if the prerequisites of paragraph 1, Article 1, are present. With respect to alienations having been made after 14th June, 1938, the Federation which has on its part a claim for indemnification against the profiteer, shall be liable to make restitution.

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ANNEX "D" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

*Federal Fund for Restitution*

(1) With the effective date of this law the successor organisation of the United States and British Zones and in West Berlin, and the restitution fund of the French Zone (special property) shall discontinue their activities. . . .

(2) These organisations shall be replaced by the "Federal Fund for Restitution" which shall collect all heirless and all unclaimed confiscated properties. . . .

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ANNEX "E" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

*Avoidance of Final Judgments and Settlements*

The draft law does not contain a final version of this provision.

There must be a possibility to reopen the proceedings in individual restitution cases even if the grounds for such reopening result solely from the amendment of the law.

(TRANSLATION)

*Motion introduced on 8th May, 1951, to the Committee for Questions of Law and Constitution of the Bavarian Parliament*

*Motion by Dr. Fischer and fellow-members concerning Amendment of Military Government Law No. 59, Restitution of Identifiable Property in the United States Zone of Occupation*

Dr. FISCHER:

... Ordinance No. 120 which is in force in the French Zone knows the so-called principles of equity which is missing in the laws of the American and English Zones. The judges of the Restitution Chambers again and again complain that a clause providing for the alleviation of hardships is missing. . . .

The American procedure (of restitution) compared with the French and the English ones has proved to be the most severe. . . . The American appellate Court has adjudicated already a great number of cases and has often administered the law in a manner which is inconsistent with the German sense of justice and with the German understanding of law. . . . The German judges take the view that it is inconsistent with the principle of judicial independence that they shall be bound by a single judgment, an order, or an Advisory Opinion which almost have the formal force of laws. As a consequence, several judges, particularly in Munich, have already filed their resignation. The rulings of CORA are being opposed because it is alleged that CORA in principle does not consider the German interest . . . . As to the administration of the law by CORA the difficulties can only be removed if the assignment of German judges can be achieved.

The following amendments should be pursued:—

1. A clause providing for the alleviation of hardship should be inserted in Military Government Law No. 59 as it is the case in the French Zone. This will furnish a broader basis for the adjustment of the legal relations of the parties in interest in application of the law, so that undue hardship can be avoided.

2. The administration of Military Government Law No. 59 shall also in the court of last resort be placed exclusively or predominantly into German hands.

3. The Regulation No. 9 to Military Government Law No. 59 shall be repealed. This would achieve that single decisions of CORA have no longer the importance which almost reaches the formal force of law.

4. It is of greatest importance that the entire restitution program is carried through by legislation and administration of the law uniform in the federal territory. It is an impossible situation that exactly this extraordinarily important field is treated so differently in the different zones of occupation and in the American Zone even to the detriment of German interests. . . .

DR. ZDRALEK\* also supports the motion. It is essential to openly demonstrate to the Americans that it cannot go on like this, and the German judges in the Restitution Chambers should be backed up because they actually do no longer know what to do. What is presently being done in matters of restitution is no longer mischief but must be considered a crime against the Bavarian people.

*Resolution:* The motion by Dr. Fischer and fellow-members is unanimously accepted.

\* Dr. Zdralek is the newly-appointed President of the Bavarian Land Compensation Office which was formerly headed by Dr. Auerbach.

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ANNEX "G" TO APPENDIX II

Translation of extract from the "Kasseler Post" of 4th April, 1951

*Shackles for the Law in the Restitution Statute*

.....  
The restitution law by far exceeds its purpose of returning confiscated property. If it is maintained, for example, that the established legal presumptions are no more than acknowledged principles of law, one can only answer: That is not true!

Translation of extract from the "Kasseler Post" of 5th April, 1951

.....  
If a purchaser is convinced that he has acted as an honourable man, it is his duty to express his conviction with all means at his disposal and to fight for his right. This is not only a matter of money but also of honour! The supposition that all purchasers of Jewish property have on principle exploited the need of the former owner, must be considered an unbearable collective defamation, and the requirement to prove to JRSO the contrary a likewise unbearable imposition.

ANNEX "H" TO APPENDIX II

Translation of extract from "Kasseler Post" of 17th April, 1951

*Don't buy Restituted Property!*

.....  
In further substantiating the proposed restitution law the law committee is requested to make a decision with respect to the proceedings already concluded. Therefore, the warning of the *Interessengemeinschaft*: Don't buy restituted properties, for it could be possible that they have to be returned!

ANNEX "I" TO APPENDIX II

Translation of extract from "Frankfurter Rundschau" of 30th April, 1951

.....  
This is one of hundreds if not of thousands of cases. There are cases which are not bad but there are also such which are worse. The worst is that there is no remedy against those decisions because they are not based on a German but on an American law. Only the Federal Government can make the attempt to cause the United States to amend those provisions. The Federal Government has done that—up to this time in vain.

ANNEX "J" TO APPENDIX II

Translation of extract from "Die Restitution" of May 1951

(Letter from a reader)

.....  
All purchasers in good faith will regard a restitution and the conversion of their payments 1:10 as injustice and as an act of duress and strive for a reopening of the proceedings and the return of their property at any possible opportunity. We have experienced after all within a short period *how times and the sense of justice change.*\*

\* Italics supplied.

## APPENDIX III

### Statement by United States High Commissioner

Press Release Issued by Public Relations Division, Office of Public Affairs

Frankfurt-a-Main.

12th June, 1951.

#### *United States High Commissioner Reaffirms the Policy For Restitution of Identifiable Property*

The United States High Commissioner has stated in a letter to the four Ministers-President of the United States Zone, released to-day by HICOG, that restitution of property to victims of National Socialism persecution will continue in accordance with the provisions of Military Government Law No. 59.

The letter of the High Commissioner was written as the result of letters and comments in the German press, proposals circulated by pressure groups and statements attributed to certain German officials, all of which encourage speculation as to the future policy of the United States with respect to Military Government Law No. 59.

Holders of property subject to restitution will not be relieved of the obligations imposed by the law, Mr. McCloy said in his letter, addressed to:—

Minister-President Dr. Hans Ehard (Bavaria).  
Minister-President Georg August Zinn (Hesse).  
Minister-President Dr. Reinhold Maier (Wuerttemberg-Baden).  
Senatspräsident Wilhelm Kaisen (Bremen).

Among groups encouraging speculation as to future policy of the United States concerning restitution is an association, mainly established to protect present holders of property against those deprived thereof under National Socialism. This organisation recently submitted a draft restitution law to the Law Committee of the Federal Parliament which seeks to reverse the basic principles of Military Government Law No. 59.

The basic principles of Law No. 59 are that identifiable property shall be restored as quickly as possible to persons "who were wrongfully deprived of such property within the period from 30th January, 1933, to 8th May, 1945, for reasons of race, religion, nationality, ideology or political opposition to National Socialism," and that "property shall be restored to its former owner or his successor in accordance with the provisions of this law, even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated."

The activities of anti-restitution groups and individuals have led holders of property subject to restitution to hope that present United States policy might give away to public pressure, thus creating a tendency to litigate rather than to participate in amicable settlements.

The current restitution report shows that of the 117,246 petitions received by restitution authorities between 10th November, 1947, and 31st December, 1948, about half or 58,252 have been disposed of as of 31st May 1951; 32,324 cases were disposed of by amicable settlement, and 19,399 by withdrawal, while only 2,963 were disposed of by decision, and 3,566 by dismissal. Thus, almost 90 per cent. of all cases disposed of have been voluntarily settled. The total estimated value of property restituted to 31st May, 1951, is 626,888,809 DMs.

The text of Mr. McCloy's letter, dated 11th June, 1951, is as follows:—

My dear Senate President, (My dear Mr. Zinn, My dear Mr. Ehard, My dear Mr. Maier):

"During recent months there have been brought to my attention letters and comments appearing in the German press, proposals circulated by organisations, and statements attributed to *Länder* Government officials which appear to encourage speculation on the policy of the United States with respect to restitution of identifiable property under United States Military Government Law No. 59.

In view of the publicity given the criticism and suggestions relating to United States Military Government Law No. 59, I take this opportunity to reaffirm the policy of my Government that persons and organisations deprived of their property as a result of National Socialist persecution should either have their property returned or be compensated therefor. I can further advise you that there is no intention to depart from these principles as expressed in Military Government Law No. 59, and I do not anticipate any future developments which will relieve the holder of property subject to restitution from the obligations imposed by this Law.

It is suggested that you make known to the officials of your Government engaged in the administration of the restitution law that United States policy remains unchanged in this respect. To allay any doubts which may have arisen in the mind of the general public, I am taking the liberty of releasing this letter to the press.

Sincerely yours,

JOHN J. McCLOY,  
United States High Commissioner for Germany."

#### APPENDIX IV

##### Note as to difficulties of proof of Succession

1. As proof of a right to inherit, German Civil Procedure requires that an heir shall produce a Certificate of Inheritance (*Erbschein*) from a Probate Court (*Nachlassgericht*). In order to obtain this certificate the heir is required to prove certain facts by production of public documents. For example, death is to be proved by production of a Death Certificate or a Judicial Declaration of Presumption of Death. (Sections 2354/56 of the German Civil Code).

The German Law of 4th July, 1939 (*Reichsgesetzblatt I*, 1186) sets out in paragraph 7 the circumstances under which death may be presumed and lays down certain requirements as to public notice (*Aufgebotsverfahren*), and the observance of time limits.

In order to modify these requirements and permit of the presumption of death being drawn more easily in respect of persons who have disappeared under exceptional circumstances, the Central Legal Office for the British Zone, on 16th December, 1946, passed an Ordinance (*Verordnungsblatt* for the British Zone, 1947, No. 1, Page 10) with the consent of British Military Government which amended the German Law of 1939 by inserting (as paragraph 7 (a)) the following provisions:—

- (1) "Any person who was arrested before 8th May, 1945 on political, racial or religious grounds, or who was forcibly deported or who was placed in a concentration camp or other place of forcible detention, will be considered as having been in danger of his life.
- (2) In these cases the period of time as provided for in Section 7 will begin on 8th May, 1945.
- (3) If no other date of death can be determined 8th May, 1945 will be determined as the date of death. This also applies if the time of death has to be determined (section 44, sub-paragraph 1)."

The Federal Government of Germany by a law dated 15th January, 1951, (*Bundesgesetzblatt I*, 59) amended this paragraph so that it no longer specifically relates to persons who died as a result of Nazi persecution, and at the same time reintroduced the procedure of public notice, though in an abbreviated form.

2. Article 43 of Law 59 lays down a special presumption as to the death of a "persecuted person" and it had been held by the Oberlandesgericht at Hamburg that, in view of the purpose of Law 59 to effect "speedy restitution," the special presumption under Article 43 was intended (as is obvious) to take the place of the ordinary rules of German law, and to eliminate the cumbersome public notice procedure.

This decision was, however, on 5th December 1950, overruled by the Federal Supreme Court at Karlsruhe (*Neue Juristische Wochenschrift* No. 4 of 15th February, 1951, page 151) who held that the presumption under article 43 was only applicable to

proceedings before the Restitution authorities; and that if the claimant applied for a Certificate of Inheritance from the Probate Court for use in restitution proceedings the ordinary rules of German law would apply.

3. The 11th Regulation, enacted on 25th November, 1941, to the German Citizenship Law of 15th September, 1935 deprived all Jews, living abroad, of their citizenship and confiscated their property; and it also enacted that persons who had been so deprived of their property could not inherit from a German national. The effect was, therefore, that a Jew who went abroad (whatever the force of circumstances) could not inherit his family property in Germany.

Control Council Law 1 which became effective on the entry of the Allies into Germany deprived various fundamental Nazi laws, including the Reich Citizenship Law of 15th September 1935, of effect.

A Probate Court in Berlin has, however, recently held that Control Council Law 1 does not have retrospective effect; and that consequently it does not affect the estate of a person who died before Control Council Law 1 was promulgated. Therefore, according to this decision a Jewish claimant for restitution living abroad cannot, in view of the 11th Regulation, claim the property of anyone who died in Germany before Control Council Law 1 came into operation.

4. It need hardly be stressed that the effect of the Federal legislation referred to in paragraph 1 above and the judicial decisions referred to in paragraphs 2 and 3 tend to defeat the purposes of Law 59.

II

PARLIAMENTARY UNDER-SECRETARY OF STATE FOR FOREIGN  
AFFAIRS TO JUDGE D. N. O'SULLIVAN

Foreign Office, S.W. 1,  
12th October, 1951.

Dear Judge O'Sullivan,

I desire to express to you and your assessors my appreciation of the Report which you sent to me under cover of your letter of 2nd July, 1951.

The Committee over which you presided fulfilled a most useful function in examining the causes of delay in the disposal of restitution claims in the British Zone of Germany. I am sending to you herewith, in the annexed memorandum, a statement of the views of His Majesty's Government on the several recommendations of your Committee and of the consequent action which has been taken by the United Kingdom High Commissioner in Germany with the approval of the Secretary of State for Foreign Affairs.

You will no doubt have noted the helpful statement on this subject made by the Federal Chancellor in the *Bundestag* on 27th September. In case you have not had the full text, I enclose it herein.

Yours sincerely,

HENDERSON.

ENCLOSURE No. 1

*Recommendations*

1. That the United Kingdom High Commissioner should make a statement of the nature of that recently made by the United States High Commissioner, to the effect that restitution of property in accordance with the existing law will continue; and that such statement be given extensive publicity in the British Zone.

2. That any contractual arrangement with the Federal Government should include an obligation by that Government (a) to preserve and implement the Restitution Law, (b) to execute the orders of the Restitution Authorities, and (c) to maintain Allied supervision over Restitution Tribunals.

3. That steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the *Oberlandesgerichte* to hear restitution appeals.

4. That the office staffs of the Agencies and Chambers be increased, and that persons experienced in account taking be appointed to these staffs.

5. That steps be taken to ensure adequate office and court accommodation for all Restitution Authorities.

*Comments*

This Recommendation was acted upon and Sir Ivone Kirkpatrick wrote on 27th July to the Ministers President in the British Zone of Germany (see enclosure No. 2 for a copy of the letter). Full publicity has been given both in Germany and in the United Kingdom.

This Recommendation is being covered in discussions which are at present proceeding with the German Federal Government.

Ministers of Justice of the *Land* Governments in the British Zone have been requested to take appropriate action to give effect to these Recommendations.

*Recommendations*

6. That a system be put into immediate effect to ensure proper examination and supervision of the machinery of restitution.

7. That administrative action be taken to arrange that claims against the former German Reich for restitution of movable property be deferred, at the request of the claimant, until a decision has been taken as to the liabilities of the Reich.

8. That Article 42 of Law 59 be amended to make it clear that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We suggest that the Restitution Chamber is the proper authority to adjudicate in this matter and that groups of Chambers should each have one judge for this purpose.

9. That the Reichmark/Deutsche Mark conversion rate in respect of monetary claims arising under Law 59 be fixed by legislation to conform with Law 63.

10. That recourse be made by the United Kingdom High Commissioner under Regulation 6, Article 3 (5), to direct the Board of Review to give advisory opinions on important matters of principle not yet decided.

11. That the Federal Government be approached to enact a General Claims Law.

12. That Law 59 be amended so as to ensure effect being given to orders of the Restitution Authorities by German Public Authorities.

13. That decision be taken, before the relinquishment of reserved power, with regard to exemption, from the proposed Equalisation of Burdens Law, of properties which are the subject of claims to restitution.

14. That Article 12 of Law 59 be amended so as to provide that retrospective effect is given to amicable settlements effecting restitution.

*Comments*

Sir I. Kirkpatrick's staff responsible internal restitution has been strengthened.

It is agreed that this is desirable, and steps are being taken to avoid general delays arising from the arrears of such claims.

This Recommendation is accepted and an amendment to Law 59 will be promulgated in the near future.

There are certain practical difficulties, but urgent consideration is being given to the most satisfactory means of removing delays attributable to uncertainty regarding the conversion rate.

It is not considered desirable that the Board of Review should give opinions on hypothetical issues. Major issues of principle can be settled by legislation. It may, however, be possible to expedite consideration by the Board of appeals involving important questions of law.

Discussions with the German Federal Government on the enactment of a General Claims Law are proceeding.

An amendment to Law 59 will be promulgated in the near future.

The Equalisation of Burdens Law has not yet been enacted, nor are its eventual provisions yet certain. There are, however, obvious difficulties about exempting German nationals from German taxation of general application.

An amendment to Law 59 will be promulgated in the near future to give retrospective effect in the absence of agreement to the contrary, to amicable settlements concluded in the future.

### Recommendations

(Berlin) That the recommendations specified above should be put into effect and that in addition—

- (a) There should be set up a Tripartite Court to hear appeals from the three Western Sectors of Berlin.
- (b) Certain judges of the *Kammergericht* should be employed exclusively in the hearing of restitution appeals.
- (c) An Allied Officer should be appointed to exercise supervision over the Restitution Authorities.

16. That the President of the Board of Review be invited to report immediately as to his requirements to meet an anticipated increase of appeals; and that his recommendations be given effect.

17. That Law 59 be amended so as to leave it to the discretion of the Board of Review to decide whether an oral hearing be granted.

18. That Regulation 6 be amended to provide that, in respect of petitions from the Chambers and *Oberlandesgerichte*, the time for filing an appeal be reduced to one month in the case of persons resident in Germany and to three months for foreign residents, the power given to the Board to extend the time being retained.

19. That the German Federal Government be urged to accept liability for the restitution claims against the German Reich and that the contractual arrangements with the Federal Government should provide for the continuance of this liability and for specific guarantees for its discharge.

20. That the Jewish Trust Corporation be invited to formulate an aggregate claim for each *Land*, with a view to an overall settlement and that the British Authorities, before the relinquishment of reserved powers, initiate negotiations to this end with the German Authorities.

That similar negotiations be initiated with the Federal Government for the overall settlement of the claims of the Corporation against the Reich.

21. That action be taken to remove restrictions on the transfer of sums paid for restitution into blocked accounts of claimants who are resident outside the Federal territory; and that provision be inserted in the contractual relations to ensure that the restrictions are not reimposed.

### Comments

When action has been taken in pursuance of the Report in the British Zone of Germany, appropriate steps will be taken to apply Recommendation No. 15 in the British Sector of Berlin.

The President of the Board of Review has stated his requirements and the necessary administrative arrangements are in hand.

It is agreed that such discretion is desirable and amending legislation to cover this point will be promulgated shortly.

Legislative action is being taken to reduce the time for filing appeals as recommended.

Discussions are proceeding at the present time with the German Federal Government.

His Majesty's Government welcome the suggestion that overall settlements may be arranged in the British Zone of Germany by the Jewish Trust Corporation, and the matter is being discussed with Ministers President of the *Land* Governments in the British Zone.

Discussions are proceeding at the present time with the German Government.

The liberalisation of German exchange control restrictions on foreign-owned Deutschemmark balances in the Federal Territory can be expected to take place gradually as the German foreign exchange position improves. In the meantime, it is open to owners of such balances who are resident outside Germany to sell them for foreign exchange to purchasers who wish to invest the Deutschemarks.

ENCLOSURE No. 2

The United Kingdom High Commissioner for Germany to the Ministers President  
the British Zone of Germany

Wahnerheide,

27th July, 1951.

My dear Minister President,

It seems to me to be desirable that you should know of His Majesty's Government's intentions with regard to the completion of the programme for restitution of identifiable property to victims of Nazi persecution.

My Government is firm in its determination to see the process of restitution completed. As you are aware discussions are now in progress between the Allied High Commission and the Federal Government, the object of which is to consider the problem of placing the relationship between that government and the governments of the United Kingdom, the United States and France on the broadest possible contractual basis. While it would be improper for me at this stage to enter into details I feel that you should know that my Government intends to ensure that provision is made in the contractual arrangements for the preservation of the law now regulating restitution in the British Zone (British Military Government Law No. 59), and for the continued execution of the programme called for thereunder.

I should be obliged if you would bring this letter to the attention of the German authorities in your *Land* engaged on restitution work and if you would take such steps as are open to you to see that my Government's views become known to the public.

In view of the general interest in this matter I propose to release the text of this letter to the press at 4 p.m. on 31st July, 1951.

Yours sincerely,

L. A. KIRKPATRICK.

ENCLOSURE No. 3

*Statement by the Federal Chancellor of Germany in the Bundestag on  
27th September, 1951*

World public opinion has on various occasions recently concerned itself with the attitude taken by the Federal Republic towards the Jews. Here and there doubts have been expressed whether in respect of this important question the new State is guided by principles which take into consideration the terrible crimes of a past era and place the relationship between the Jews and the German people on a new and sound basis.

The attitude of the Federal Republic towards its Jewish citizens has unequivocally been laid down in the Basic Law. Article 3 of the Basic Law provides that all persons shall be equal before the law, and that no one may be discriminated against or privileged because of his sex, descent, race, language, homeland and origin, creed, or his religious and political opinions. Article 1 of the Basic Law further provides:

"The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledges inviolable and inalienable Rights of Man as the basis of every community, of peace and of justice in the world."

These rules of law are directly applicable and impose an obligation on every German citizen—and especially on every civil servant—to reject any form of racial discrimination. In the same spirit, the Federal Republic has also signed the Convention for the Protection of Rights of Man drafted by the Council of Europe,<sup>(2)</sup> and has pledged itself to put into practice the legal concepts embodied therein.

These rules of law can, however, become effective only if the attitude from which they spring is adopted by the whole nation. This is, therefore, in the first place a problem of education. The Federal Government deems it a postulate that the churches and the educational departments of the *Länder* do in their field everything within their power, in order to ensure that the spirit of humane and religious tolerance should not only be recognised in a general way, but also become a reality among the

<sup>(2)</sup> "Miscellaneous No. 1 (1951)," Cmd. 8130.

entire German people, and especially among the German youth, so as to govern their attitude of mind and their actions. This is an essential task incumbent upon the educational authorities, a task which needs for realisation the support of the example set by the adults.

In order to ensure that this educational work should not be disturbed and the domestic peace in the Federal Republic be maintained, the Federal Republic has decided to combat relentlessly any groups which are still engaged in fomenting hatred against the Jews. Proposals for an amendment of the Penal Code have been submitted to the *Bundestag* providing, *inter alia*, for severe punishment for the propagation of racial hatred. The Federal Government will apply these provisions most vigorously as soon as they have come into force.

The Federal Government, together with the overwhelming majority of the German people, are conscious of the immeasurable suffering inflicted upon the Jews in Germany and in the occupied territories during the National Socialist régime. The overwhelming majority of the German people abhorred the crimes committed against the Jews and had no part in their perpetration. During the time of National Socialism there were many Germans who, under personal risks, extended help to their Jewish compatriots for religious reasons, obeying the commands of their conscience, or feeling ashamed of the disgrace brought upon the good name of Germany. But unspeakable crimes have been perpetrated in the name of the German people, which impose upon it the duty to make moral and material restitution, both as regards damage inflicted upon individual Jews, and as regards Jewish property to which no longer any individual claimants exist. In this field, first steps have already been taken, but very much remains to be done. The Federal Government will see to it that restitution legislation will come to an early completion, and that it will be implemented in a just and fair manner. Part of the identifiable Jewish property has been restituted. Further restitutions will follow.

With regard to the extent of restitution—a very great problem in view of the enormous destruction of Jewish assets by National Socialists—the limits set to German financial capacity by the bitter necessity of having to provide for innumerable war victims and to care for refugees and expellees must be taken into consideration.

The Federal Government is prepared, in conjunction with representatives of Jewry and of the State of Israel—which has admitted so many homeless Jewish refugees—to bring about a solution of the financial aspect of the restitution problem, in order thus to pave the way towards clearing the psychological atmosphere, blackened by untold suffering. The Federal Government is deeply imbued with conviction that the spirit of true humanity must revive and bear fruit. The Federal Government considers it the foremost duty of the German people to foster this spirit with all its power.



FOREIGN OFFICE

Report of the O'Sullivan Committee  
on the progress made in the disposal  
of internal restitution claims in the  
British Zone of Germany

30th June, 1951

LONDON: HIS MAJESTY'S STATIONERY OFFICE

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**Report of the Committee appointed to examine the progress made in the Disposal of Claims under British Military Government Law 59 in the British Zone of Germany and under Ordinance 180 in the British Sector of Berlin**

**MEMBERS OF THE COMMITTEE**

His Honour Judge D. N. O'SULLIVAN (Chairman).  
Mr. Alexander Levvey EASTERMAN.  
Professor Norman BENTWICH.

**PART I.—INTRODUCTION**

1. We were appointed by Warrant of the Right Honourable Baron Henderson, Parliamentary Under Secretary of State for Foreign Affairs, with the approval of the Secretary of State for Foreign Affairs, to examine the progress made in the disposal of claims under Law 59 in the British Zone of Germany and under Ordinance 180 in the British Sector of Berlin; to ascertain the causes of any delays in the disposal of such claims; and to make recommendations concerning any action which might be taken by the United Kingdom High Commissioner, prior to the relinquishment of reserved power in the field of restitution, to remove or reduce the causes of any delays in the disposal of claims.

Mr. C. J. Audland was appointed Secretary and was succeeded for the latter part of our tour by Mr. E. S. Haworth.

A record of our itinerary and a list of persons whom we interviewed is in Appendix I to this Report.

2. We wish to express our appreciation of the excellent arrangements made for our tour and of the facilities put at our disposal. The efficiency of the arrangements for transport and accommodation enabled us to make, in a short time, a comprehensive examination of the progress in the disposal of restitution claims and to see in operation something of the machinery of restitution. We also desire to express our gratitude for the great help afforded us by Judge Hulse, Deputy Chief, Administration of Justice Division, Office of the United States High Commission for Germany, and Mr. Loewenthal of the United States Property Division, during our visit to Frankfurt. The work of our secretaries has been of great value throughout and we wish also to thank them.

3. We may, in this Report, have over-simplified some of the complex problems with which we were confronted. The justification we offer is the urgent nature of the enquiry and the necessity for urgent remedial action.

**PART II.—THE SYSTEM ESTABLISHED TO EFFECT INTERNAL RESTITUTION IN THE BRITISH ZONE OF GERMANY**

4. In implementation of the policy of the Allied Powers to ensure restitution of identifiable property to victims of Nazi oppression a British Military Government Order, General Order No. 10, was brought into effect on 20th October, 1947. This provides, among other matters, for submission of claims to the Central Office for the Administration of Property (*Zentralamt für Vermögensverwaltung*) at Bad Nenndorf and for the blocking of all property to which it relates. The Central Office was required to perform the functions of a Central Filing Agency.

5. General Order No. 10 was followed much later, on 12th May, 1949, by Military Government Law No. 59 for the British Zone of Germany. The basic principles of this law are set out in Article I, paragraph 1, as follows:—

“The purpose of this Law is to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible) to persons, whether natural or juristic, who were unjustly deprived of such property between 30th January, 1933, and 8th May, 1945, for reasons of race, religion, nationality, political views or political opposition to National Socialism . . . .”

6. (i) Though the expressed purpose of the law was “speedy restitution” the machinery to accomplish this has, in the event, proved to be cumbersome and conducive to delay. The Central Filing Agency is required to transmit all petitions for restitution to the appropriate “Restitution Agency.” These Agencies, of which there are several in each *Land*, are German tribunals consisting of a President and a requisite number of members qualified to hold judicial or higher administrative office. Their function is to grant petitions where no answer has been filed within the time prescribed. Where such answer has been filed and the parties have failed to reach an amicable settlement, the Agency must forward the petition to the appropriate “Restitution Chamber” of the *Landgericht*. The Agency also has certain powers of summary dismissal of a petition as, for example, where the petition does not disclose a cause of action.

(ii) The Restitution Chamber is composed of a Presiding Judge and two Associate Judges appointed by the Minister of Justice of the appropriate *Land*. The function of the Chamber is, after oral hearing in public, “to adjust the legal relations of the parties” in accordance with the provisions of the Law.

(iii) From a decision of the Restitution Chamber an appeal lies to a third German tribunal, the Civil Division of the *Oberlandesgericht*.

(iv) Finally, a “Board of Review” appointed by the United Kingdom High Commissioner may review all decisions and orders made under Law 59. This Board consists of three members, one of whom, the President, must be a judge of the Allied High Commission Supreme Court for the British Zone, and another of whom must be a legally qualified person.

(v) There are, thus, numerous stages through which a petition might pass, and we will later make some reference to the possibilities of procrastination and delay at some of these stages.

7. Delay is, indeed, inherent in a system which may involve proceedings before so many separate tribunals, and our Committee considered the advisability of recommending some drastic curtailment of these processes. We have, however, decided that, at this time, fundamental changes in the machinery would be difficult to achieve and would, therefore, tend to retard rather than to accelerate fulfilment of the purpose of Law 59: and we have confined ourselves to recommendations to which it might be possible to give speedy effect.

### **PART III.—PROGRESS GENERALLY IN THE DISPOSAL OF CLAIMS**

#### **The British Zone**

8. A not inconsiderable proportion of our time has been taken up in enquiries as to the incidence of work actually accomplished by the tribunals to which reference has been made. We found some difficulty in ascertaining, from the official statistical compilations put at our disposal, what percentage

of cases have finally been disposed of. The statistics furnished to us refer to "claims" filed in the Central Filing Agency, and "claims" transmitted by the Central Filing Agency to the Restitution Agencies. Our enquiries elicited that a "claim" often has to be split up by the Restitution Agency into several separate cases or proceedings because it may relate to separate properties (sometimes situated in different areas) and to different defendants; and that, therefore, the total number of claims transmitted to the Agencies represent, on an average, at least double that number of separate cases. The figures furnished to us as to disposals relate, however, to cases and not claims. We were finally able to arrive at the following simple conclusions which have been accepted as correct by Mr. Kelly, the Head of the Internal Restitution Section :—

Total number of cases arising out of claims transmitted to the Restitution Agencies up to 31st May, 1951	Approximately 63,786
Total number of cases finally disposed of up to 31st May, 1951	Approximately 16,000

According to these figures the proportion of cases hitherto passed to the Agencies and finally disposed of is, therefore, 25 per cent. Many of the matters transmitted to the Restitution Agencies have passed beyond the Agency stage and are now in process of being dealt with by other restitution tribunals: by "final disposal" of a case we mean, therefore, that there has been a rejection, withdrawal, settlement or final order and that it is no longer pending before any restitution tribunal.

9. (i) The 63,786 cases referred to above will eventually, however, be greatly exceeded. The bulk of claims already submitted to the Restitution Agencies are by individuals claiming in their own right or as heirs of deceased persons; and by regulation these individual claims were required to be filed by 30th June, 1950.

(ii) Law 59 also contemplates the filing of claims for unclaimed or heirless property, and two statutory bodies upon whom has devolved the right to prefer such claims have been set up. These are the Jewish Trust Corporation which is concerned with Jewish property, and the General Trust Corporation concerned with the property of persons other than Jews. Regulations provide that claims by the Jewish Trust Corporation are to be submitted by 1st February, 1952, and claims by the General Trust Corporation by 15th May, 1952.

(iii) The General Trust Corporation has been set up comparatively recently and has hardly started to function. There is no means, therefore, of making an estimate of the claims likely to be submitted by it, but they are thought to be few in number.

(iv) The Jewish Trust Corporation has been functioning since August, 1950 and has already submitted a large number of claims. Many thousands of these are still with the Central Filing Agency. It is Mr. Kelly's estimate that, taking into consideration the Jewish Trust Corporation claims already pending in the Central Filing Agency, and the further number likely to be filed by the prescribed date, the figure of 63,786 will be increased to 120,000; and that, therefore, the 16,000 cases finally disposed of represent under 14 per cent. of the total.

10. It is manifest that at the present rate of progress it will take several years for all petitions to be dealt with. Mr. Kelly is of the opinion that the

rate will be accelerated as the tribunals gain experience. On the other hand, our witnesses express the view that there has been a tendency to keep the more difficult cases in abeyance and that those cases already finally disposed of are, generally speaking, of the less complex kind. We are not inclined to the more optimistic view.

#### **Berlin**

11. (i) Berlin Ordinance No. 180 which closely follows British Military Government Law No. 59 became effective on 26th July, 1949 in the British, United States and French Sectors of Berlin. The Filing Office, Restitution Agency, and Chamber set up by virtue of this Ordinance are common to all three sectors; and there is a uniform right of appeal to the *Kammergericht*, the Berlin equivalent of the *Oberlandesgericht*.

(ii) An anomaly exists, however, as regards the exercise of final appellate powers. There are three separate tribunals of final instance, and the right of access to them is not uniform. These are the Board of Review (as set up under British Military Government Law No. 59), for claims originating in the British Sector, the Court of Restitution Appeals (as set up under the United States Law 59) for claims originating in the United States Sector, and the equivalent in the French Sector of these two tribunals, for cases originating in the French Sector.

12. The period for filing claims, whether from individuals or statutory bodies, has expired and it is possible to arrive at a more certain assessment of the cases disposed of in Berlin than for the British Zone. The number of cases which are or have been before the Restitution Agencies in Berlin are, approximately, 93,000 (a figure not much below the anticipated total for the British Zone). Of these 93,000 cases, less than 5 per cent. have been finally disposed of. It will be manifest therefore, that the position in Berlin is very unsatisfactory indeed.

#### **The United States Zone**

13. The United States Military Government Law No. 59 (Restitution of Identifiable Property) became effective on 10th November, 1947. The subsequent British Military Government Law No. 59 is based upon it and follows it in all essential particulars.

14. From the official reports and statistics kindly placed at our disposal by Judge Hulse and Mr. Loewenthal it would appear that, up to 30th April, 1951, approximately 115,000 claims had been lodged with Restitution Agencies in the United States Zone. Of these claims, approximately 42,728 have been finally disposed of, a proportion of 37 per cent. Of the total of 115,000, approximately 66,776 were individual claims of which 31,319 have been disposed of, a proportion of 47 per cent. for individual claims. These figures do not take into account approximately 14,000 claims arising in *Land Hesse* which were filed by a statutory body (corresponding to the Jewish Trust Corporation) and are the subject of a comprehensive settlement entered into with the *Land* Government who have assumed responsibility.

#### **The French Zone**

15. The restitution law in the French Zone is simpler than its British and American counterparts. Time did not permit of a visit to the French Zone but we understand that the rate of progress there has been speedier than in either of the other two Zones. From reports (which we have been unable to verify) the French Restitution Authorities have disposed of some 60 per cent. of the total claims filed. It must, however, be noted that the number of claims in the French Zone is much smaller.

### Comparative Statement of Progress in the three Western Zones and Berlin

16. On the basis of such information as we were able to acquire, proportion, therefore, of final disposals to the totals involved, may, for the three Zones and Berlin be summarised as follows:—

French Zone	...	...	...	...	60 per cent.
*United States Zone	...	...	...	...	37 per cent.
British Zone	...	...	...	...	14 per cent.
Berlin (three Western Sectors)	...	...	...	...	5 per cent.

\* It is to be observed that the more recent figures furnished in Appendix III by the United States High Commissioner show a final disposal of approximately 50 per cent.

### PART IV.—CAUSES OF DELAY IN THE BRITISH ZONE AND RECOMMENDATIONS WITH RESPECT TO THEM

#### A. Political

17. (i) Before referring to delays of an administrative nature or arising out of the operation of the law itself, we wish to draw attention to a matter of general consideration which seems to us calculated to defeat the policy of internal restitution, and therefore to be fundamental.

(ii) Many witnesses have called attention to the growing belief and hope among Germans that the restitution legislation will be abandoned or drastically modified when the Occupation Statute<sup>(1)</sup> is brought to an end. There is also an increasing tendency to regard the "restitutors" rather than the victims of Nazi oppression, as deserving of sympathy, and to decry and oppose the policy of restitution.

(iii) In the three Western Zones of Germany there have come into existence associations whose expressed object is to organise opposition to the restitution laws. These bodies have of late intensified their activities and are attacking, for political motives, the principles underlying restitution.

(iv) A memorandum of 28th May, 1951 (a copy of which, with its attachments, is to be found in Appendix II) prepared by the United States restitution officials and kindly put at our disposal, indicates the extent to which this movement has progressed in the American Zone. We have heard similar evidence in regard to the British Zone and Berlin.

(v) The effect of this propaganda is to frustrate amicable settlements and protract proceedings. It is also calculated to affect the work of the German authorities concerned and to retard their (already unsatisfactory) rate of progress. There is indeed, evidence of a decline in recent weeks of the number of cases settled and the situation is unlikely to improve should there be a relinquishment of the reserved power in the field of restitution. The problem involves such factors as the attitude taken by present-day Germany to her own past, the unstable political situation in Germany and the anticipated change in West German relations with the Occupying Powers.

(vi) We do not desire to embarrass His Majesty's Government in the negotiations now in progress with the Federal German Government; but it seems clear that unless early steps are taken to combat the propaganda of these German organisations the policy of internal restitution will be gravely affected.

<sup>(1)</sup> "Germany No. 1 (1949)," Cmd. 7677 (Annex I) and "Germany No. 2 (1951)," Cmd. 8252 (Annex VII).

(vii) Since the completion of our tour it has come to our notice that Mr. McCloy, the United States High Commissioner has addressed a letter to the Ministers-President of the United States Zone making it clear that the restitution of property to victims of National Socialist persecution will continue in accordance with the existing law and that the holders of property subject to restitution will not be relieved of their obligations imposed by the law. Mr. McCloy's letter has been released for publication in the press and by radio. We attach, as Appendix III, a copy of the "Press Release" issued by the United States Authorities.

(viii) We would urge that similar action be taken by the United Kingdom High Commissioner at an early date.

#### B. Administrative

18. Though the Agencies and Chambers are supposed to be fully employed in restitution cases and the *Oberlandesgerichte* supposed to devote the necessary time to restitution appeals, there is congestion in the work of all three of these tribunals, as is shown by the following table based on returns for the last seven months:—

	Cases pending in October 1950	Cases pending on 1st May, 1951
Agencies ... ..	31,090	32,835
Chambers ... ..	2,988	5,374
<i>Oberlandesgerichte</i> ... ..	96	336

This shows that, while during the last seven months the Agencies have almost been able to keep abreast of their work, the number of cases pending in the Chambers have nearly doubled, and those pending in the *Oberlandesgerichte* are approximately four times as great. It is manifest that unless drastic steps are taken to deal with this state of affairs the situation will rapidly deteriorate.

19. In addition to the causes of delay referred to in other parts of this Report, there are certain administrative factors which, in our view, contribute to the slow progress of the work. These are in order of importance:—

(a) *The insufficiency of judges in the Agencies, Chambers and Oberlandesgerichte.*—This, we consider, is a major cause of the congestion.

(b) *A tendency on the part of some of the judges to avoid a full day's work.*—We visited the Agencies at Düsseldorf and Hanover and in neither of these had the judges arranged sufficient work to occupy them for the day on which we attended. There were four judges at Düsseldorf: One judge had fixed three cases for hearing and the remaining three had each one case to hear. We were present during the proceedings before one of the judges who had a single case. The hearing of this lasted about half an hour and it was then adjourned for six weeks. We could see no adequate reason for such a prolonged adjournment. While this case was in progress, another judge was sitting in the same room and enquiries elicited that he was unable to proceed with his own business because he had no separate accommodation.

It did not appear to us that on the day we visited the Agency at Hanover there was a great deal more work in progress. The judge whose Court we attended adjourned his only case after a short hearing. He seemed a reasonable and intelligent person but appeared to lack any sense of urgency in relation to his work.

There is reason to believe that the situation at Bielefeld is no better. Mr. Kelly, who had paid a recent visit to the Bielefeld Agency, reported that :

“Out of six judges attached to the Agency and Chambers at that town, one was sick, another on leave and none of the remaining four was available at 3.30 p.m.”

We are unable to say whether these three instances are typical of what is occurring in Agencies throughout the Zone. It may be that in other Agencies the judges devote more time to their duties. It may also be said that most of the judges are old men dealing with a law which is both complex and of a nature foreign to them. It is to be emphasised that the judges in the Agencies have no powers to adjudicate, and contested cases must be passed on to the Chamber. It was our impression that they tend, nevertheless, to concern themselves too much with the details of a case. They are also prone to writing unnecessarily long and complicated orders.

(c) *The inadequacy of court and office accommodation.*—The nature of the accommodation varies considerably at different places. It is our view that the work of the Agencies and Chambers is, on the whole, adversely affected by insufficiency of accommodation.

(d) *Deficiencies in Staff.*—We found many indications that the Agencies and Chambers were insufficiently staffed and we have no doubt that this factor materially contributes to the delays.

(e) *Delays arising in the taking of accounts.*—Under various provisions of Law 59 necessity arises for the taking of accounts as, for instance, the necessity to calculate net profits under Article 27. There are indications that the decision of the main legal issues in a case tends to be delayed while time is spent by the judges on the examination of accounts, work which should be performed by suitably qualified members of their staffs.

(f) *Prolonged adjournments of proceedings.*—The judges in the Chambers and Agencies are inclined to grant unnecessarily long adjournments. The hearing of the case which we attended in the Restitution Chamber at Hanover was adjourned for thirty days at the defendant's request to enable him to discuss with his wife an offer of settlement. The judge was asked by the Committee why two days would not have sufficed. He failed to give any reason. Such delays are by no means confined to cases in which the defendant asks for an adjournment. Many long adjournments are given to enable counsel for claimants who frequently live abroad, to communicate with their clients as to the acceptance of some proposed settlement.

20. (i) We recommend that immediate steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the *Oberlandesgerichte* to hear restitution appeals. The measure of the increase will have to be related to the requirements in each *Land*. Statistics indicate, for instance, that the greatest congestion, at all levels, occurs in North Rhine/Westphalia. We were informed that difficulty is experienced in finding suitable judges. This might be overcome by transferring judges from the Agencies to the Chambers and appointing suitably qualified and reliable lawyers to the Agencies.

(ii) We recommend that the staffs of the Agencies and Chambers be increased, and that persons experienced in account taking should be included, in the staff of every Restitution Chamber. Such persons need not, necessarily, be qualified accountants.

(iii) Immediate steps should be taken to ensure adequate office and court accommodation for all Restitution Authorities.

(iv) We are not, ourselves, in a position to make detailed recommendations in respect of judges, staff and accommodation, but an experienced officer

appointed in pursuance of the recommendation in paragraph 21 below could  
soon assess requirements in this respect.

The tendency of judges to grant long adjournments will be checked by  
adopting the recommendation made in the next paragraph.

21. (i) We agree with the evidence of Mr. Kelly and other witnesses that  
the administrative delays are largely attributable to the lack of an adequate  
system of control and supervision of the restitution machinery. We recom-  
mend that a system should be devised and put into immediate effect, to  
ensure systematic examination and supervision of the machinery by  
experienced officials of the High Commission with an adequate staff. The  
responsible officials should be required to report to the appropriate High  
Commission authority who would take action to remedy any defects in the  
machinery.

(ii) We understand that a senior United States official (with an American  
assistant and a German Legal Adviser) has for the past two years exercised  
such supervisory duties in the United States Zone, and we have reason to  
believe that the more rapid progress in restitution matters in the American  
Zone is, to an appreciable extent, attributable to this.

(iii) We would further urge that the Federal Government should be  
required to agree to a continuance of the system of inspection after the  
relinquishment of reserved powers. We are strongly of the view that unless  
such an arrangement is entered into, there is little or no hope of the restitu-  
tion law being implemented.

### C. Difficulties and Uncertainties of the Law

#### (a) *Difficulties of proving a right of Succession*

22. (i) In the case of persons whose claims under Law 59 are founded  
upon a right of succession, the Restitution Agencies and Chambers have  
adopted the practice of demanding that the claimant should produce a Certifi-  
cate of Inheritance from a German Probate Court. This procedure tends,  
in certain cases, to defeat the purpose of Law 59 and, in any event, causes  
considerable delay in the decision of restitution claims, and great incon-  
venience to the claimants. In Appendix IV is a note setting out, by way of  
example, some of the legal difficulties with which claimants, who have had  
recourse to these German Probate Courts, are confronted.

(ii) Law 59, it appears to us, is intended to be comprehensive. It  
contemplates, in our view, that claimants are entitled to establish a right of  
succession before the Restitution Authorities, and for this purpose are entitled  
to the benefit of the special rules of evidence framed to meet exigencies and  
difficulties arising in consequence of the persecution to which the claimants,  
or their predecessors in title, were subjected.

(iii) Part VIII of Law 59 deals with "General Rules of Procedure."  
Article 41 of this Part refers to "Basic Principles" and lays down in  
paragraph 1:

"the restitution proceedings shall be commenced by petition and the  
proceedings shall be conducted in such a manner as to bring about a  
speedy and complete restitution. . . ."

Paragraph 2 of the same Article refers to the difficulties confronting a  
claimant as a result of persecution. It provides:

"In ascertaining the relevant facts the Restitution Authorities shall  
take fully into account the circumstances in which the claimant finds him-  
self as a result of measures of persecution for the reasons referred to in

Article 1. This shall apply in particular where the production of evidence is rendered difficult or impossible through the loss of documents, the death or non-availability of witnesses, or similar circumstances. German declarations made by the claimant or his witnesses shall be admissible notwithstanding the subsequent death of the person making any such declaration."

Article 42, which relates to the right of succession, says that:

- "1. Any person who founds a claim upon a right of succession on death shall be required to prove such right.
2. Foreign Law shall be proved where it is unknown to the Restitution Authorities."

This article seems clearly to contemplate that it is before the Restitution Authorities that proof as to a right of succession is to be adduced.

Article 43 lays down certain rules as to the presumption of death. These are framed to meet the difficulties of claimants and are not in complete conformity with similar presumptions arising under German Law.

(iv) It was never, it appears to us, intended that a claimant for restitution under Law 59 should be relegated to an ordinary German court to prove any part of his claim, and one consequence of so relegating him is to deprive him of the benefit of the special rules of evidence provided for in Law 59.

(v) We consider that Article 42 should be amended so as to remove any possible doubt as to its application. It should be made abundantly clear in the Article that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We consider that the appropriate authority before whom the right of succession should be proved is a judge of the Restitution Chamber. Some witnesses were of opinion that the judges of the Chambers lack the necessary experience in matters of inheritance and succession. Assuming this to have some validity, we would suggest that certain judges be selected to adjudicate on these matters and that each group of Chambers should have one judge for this purpose.

*(b) Difficulties of converting Reichmark Claims into Deutsche Mark Claims*

23. (i) The question of the conversion rate of Reichmarks into Deutsche Marks arises in relation to certain monetary claims under Law 59. Instances of these are the claim, under Article 27, to net profits derived from the affected property by the restitutor or his predecessor in title; and the claim, under Article 36, by the restitutor for the repayment of any consideration received by the claimant for the restituted property.

(ii) Law 63, the Conversion Law, which came into force on 27th June, 1948, provides, in respect of general debts (which includes all claims for the payment of money), a conversion rate of one Deutsche Mark (the new currency) for every ten Reichmarks (the old currency).

(iii) Neither the United States Restitution Law 59 (which came into force before the Conversion Law) nor its British counterpart (which came into force after the Conversion Law) make any provisions as to the rate of conversion of Reichmarks into Deutsche Marks.

(iv) The United States Court of Restitution Appeals, in a judgment of 28th April, 1950, held that the conversion rate of certain monetary claims (then the subject of consideration by the Court) was ten Reichmarks to one Deutsche Mark. The *ratio decidendi*, apparently, was that, since Law 59 was already in force when Law 63 was enacted, the provisions of Law 63 govern the conversion rate for monetary claims arising under the earlier law.

(v) The Board of Review (the final Appellate authority for the British Zone) in a judgment delivered on 27th March, 1951, took a contrary view. It decided in relation to claims arising under Sections 27 and 36 of the British Law 59, that, as the British Law came into force after Law 63, the application of Law 63 is excluded; and that since Law 59 gives no specific guidance in the matter each case must be considered on its merits.

(vi) Numerous witnesses have said that the effect of the Board of Review's decision is to frustrate settlements and delay restitution proceedings, by encouraging controversy as to the rate of conversion. It appears to us that the Board's ruling, though clearly expressed, has been misunderstood (or professed to be misunderstood) in many quarters; but that, in any event, considerable delay and trouble would be avoided if the rate of conversion in respect of monetary claims arising under Law 59 is fixed by legislation to conform with Law 63. We would urge, therefore, that the necessary amendments to this end be introduced without delay.

(c) *Matters of principle arising under Law 59, not yet decided*

24. (i) Certain cases involving important matters of principle have a tendency to be held up by the Chambers pending authoritative decision by the Board of Review. There have not yet, for instance, been any decisions by the Board of Review as to the meaning of the term "identifiable property" (*feststellbare Vermögensgegenstände*) in Law 59, and whether it would include such items as the sale proceeds of goods sold by auction, or the Flight Tax (*Reichsfluchtsteuer*) which a Jew on leaving Germany had to pay.

Such matters would ordinarily, however, only reach the Board of Review by way of appeal, and an appeal may be delayed or may never be filed.

(ii) In our view the difficulty might be overcome were the United Kingdom High Commissioner acting under Regulation 6 (issued pursuant to Law 59) Article 3 (5) to direct the Board of Review to give advisory opinions on some of these important matters.

(d) *Necessity for a General Claims Law*

25. The absence of a General Claims Law for the whole of the British Zone leads to the filing of many claims for restitution which do not, strictly, fall within Law 59 but nevertheless require time to be scrutinised. There is at present such a law in force in all *Länder* in the American Zone and in certain *Länder* in the British Zone. In our own opinion the enactment by the Federal Government of a General Claims Law would greatly facilitate the disposal of restitution cases.

(e) *Unwillingness of German Public Authorities to give effect to orders of Restitution Authorities.*

26. There is evidence before us of the unwillingness of *Land* Registries and other public authorities to recognise the judgments and awards of the Restitution Agencies and Chambers. The remedy lies in an appropriate amendment to Law 59. We understand that such an amendment is already under consideration.

(f) *Delays occasioned by consideration of claims against the former German Reich*

27. It is estimated that nearly half the petitions filed relate to claims to recover moveable property appropriated by the former German Reich. The Federal Government has not yet assumed liability for these claims and any

order for restitution could not, in present circumstances, be effective. In view of the congestion in restitution proceedings, it is, in our view, expected that consideration of claims against the Reich for compensation and for the restitution of moveable property should be deferred, if the claimant so desires, until arrangements have been concluded as to the satisfaction of these liabilities. We recommend that administrative action be taken to this end.

*(g) Omission in Law 59 to give retrospective effect to amicable settlements*

28. Article 12 of Law 59 gives retrospective effect to orders for restitution but makes no reference to amicable settlements effecting restitution. It has been stated to us that this omission tends to frustrate settlements. We therefore recommend that Article 12 be amended so as to include such amicable settlements. An amendment to the same effect has been made in the law of the United States Zone.

*(h) Uncertainty as to the incidence of the proposed Equalisation of Burdens Law*

29. We were informed that a comprehensive Equalisation of Burdens Law is now under examination, but that no decision has yet been taken as to the exemption from the proposed tax of properties which are the subject of claims to restitution. This uncertainty is, undoubtedly, an obstacle to the conclusion of amicable settlements. The claimants hesitate to take back property which may be subjected to heavy taxation or to agree to a money settlement calculated on the basis that the property will be subject to this burden. Defendants, likewise, are reluctant to agree to settlements on the basis that the property will be exempt. Claimants urge strongly that it would be a manifest injustice to impose on victims of persecution any liability for burdens for which they bear no responsibility. It would facilitate settlements therefore, if an early decision were taken in this matter.

**PART V.—CAUSES OF DELAY IN BERLIN AND  
RECOMMENDATIONS WITH RESPECT TO THEM**

30. (i) Our observations as to the delays in the British Zone and our recommendations with regard to them apply with additional emphasis to Berlin, where, as already indicated, less than 5 per cent. of the cases have been dealt with. It has been reported to us by an official British witness of ability and experience that the Senat Minister of Justice shows lack of interest in restitution, that judges are afraid to deal with difficult cases and hope for "better times," that there is shortage of staff and accommodation in the Chambers and Agencies, and that the *Kammergericht* being also engaged in other matters cannot give restitution cases sufficient attention.

(ii) We have already pointed out, in paragraph 11, that there are three separate tribunals of final instance for Berlin. In addition, therefore, to the recommendations made in Part IV with regard to the British Zone we would suggest that there should be set up a Tripartite Court of Appeal to hear appeals from the three Western Sectors of Berlin. We also recommend that some of the judges of the *Kammergericht* should be employed exclusively on the hearing of restitution appeals.

(iii) There are also indications, in the evidence, of calculated obstruction in the Probate Courts and *Land* Registries. We consider that the most effective means of dealing with this (and the other causes of delay) is by appointing a special Allied official to exercise supervision over the Berlin Restitution Authorities.

arrangements should include specific provision whereby the Federal Government accepts responsibility for—

- (a) preserving and implementing the Law,
- (b) executing the orders of the Restitution Authorities, and
- (c) maintaining the system of Allied supervision of the Restitution tribunals.

(iv) We consider it essential that appellate and revisional powers should continue to be exercised by Allied Courts after the relinquishment of reserved powers. We believe that for a considerable time there will be sufficient work to occupy the whole time of the Board of Review as the hearing of claims by the restitution authorities is speeded up. If it is decided later to have a single Court of Appeal for the three Western Zones, we think it important that it should have upon it a majority of Allied members.

#### **PART VIII.—LIABILITY FOR CLAIMS AGAINST THE REICH**

33. (i) As we have mentioned in paragraph 27 the Federal Government of Germany has not yet accepted liability for claims against the former Reich arising out of acts of confiscation of moveable property (including bank accounts, insurance and sums levied by oppressive taxation on persons forced to leave Germany).

(ii) We consider that immediate steps should be taken to ensure acceptance by the Federal Government of their liability; and that any contractual arrangements with the Federal Government should include provisions as to the acceptance of this liability and specific financial guarantee for its discharge. This guarantee might be discharged by payment to a body such as the Bank of International Settlements, of a proportion of the funds to be derived from the Equalisation of Burdens Tax, or other sources.

#### **PART IX.—DESIRABILITY OF OVERALL SETTLEMENTS**

34. (i) We hope that our recommendations with regard to the machinery of restitution, if put into immediate effect, will materially hasten the disposal of claims. But in view of the great congestion of cases in the British Zone these improvements alone will not ensure complete disposal within a predictable period and we therefore attach importance to the suggestions which immediately follow.

(ii) The overall settlement (referred to in paragraph 14 above) made in the United States Zone in relation to *Land Hesse* suggests the feasibility of similar settlements with *Land Governments* in the British Zone. The Jewish Restitution Successor Organisation (a statutory body) with the assistance of the United States authorities, concluded an agreement for payment of a lump sum in respect of 14,000 cases of heirless and unclaimed property, in consideration of the assignment of the claims to the *Land Government*. We were informed that similar agreements are being negotiated with the other *Land Governments* in the United States Zone and that it was hoped, in this way, to dispose of all the claims of the Successor Organisation.

(iii) Such overall settlements would be of enormous advantage in the British Zone, and we would recommend that the Trust Corporation should be invited to formulate the aggregate of their claims for each *Land*, and that the British Authorities should initiate negotiations with the appropriate German Authorities before the relinquishment of reserved powers. The *Land Government* could, if necessary, be assisted by the Federal Government in the financing of these settlements. Similar negotiations for settlement of the claims of the Jewish Trust Corporation against the Reich should be initiated with the Federal Government.

## **PART X.—RECOMMENDATIONS AS TO PAYMENT OF RESTITUTION CLAIMS**

35. (i) Compensation awarded to claimants who are resident outside the Federal Territory is at present required by law to be paid into a blocked account in Germany. If the expressed purpose of Law 59 to bring about complete restitution is to be fulfilled, it is necessary to remove these restrictions so as to permit of funds being transferred abroad. We recommend that early action be taken to remove the restrictions and that provision be inserted in the contractual arrangements with the Federal Government to ensure that they are not re-imposed.

(ii) This matter and the question of the discharge of claims against the Reich are of Tripartite concern and should, we think, be regarded as an integral part of the financial settlement with the Federal Government. The payment of restitution claims is, it appears to us, an obligation upon the Federal Government no less binding than the payment of pre-war debts.

## **PART XI.—SUMMARY OF RECOMMENDATIONS**

36. The following is a summary of our recommendations. The more important are printed in bold type:—

### **Political**

(i) That the United Kingdom High Commissioner should make a statement of the nature of that recently made by the United States High Commissioner, to the effect that restitution of property in accordance with the existing law will continue; and that such statement be given extensive publicity in the British Zone.

(ii) That any contractual arrangement with the Federal Government should include an obligation by that Government (a) to preserve and implement the Restitution Law (b) to execute the orders of the Restitution Authorities and (c) to maintain Allied supervision over Restitution Tribunals.

### **Administrative**

(iii) That steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the Oberlandesgerichte to hear restitution appeals.

(iv) That the office staffs of the Agencies and Chambers be increased, and that persons experienced in account taking be appointed to these staffs.

(v) That steps be taken to ensure adequate office and court accommodation for all Restitution Authorities.

(vi) That a system be put into immediate effect to ensure proper examination and supervision of the machinery of restitution.

(vii) That administrative action be taken to arrange that claims against the former German Reich for restitution of movable property be deferred, at the request of the claimant, until decision has been taken as to the liabilities of the Reich.

### **Legal**

(viii) That Article 42 of Law 59 be amended to make it clear that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We suggest that the Restitution Chamber is the proper authority to adjudicate in this matter and that groups of Chambers should each have one judge for this purpose.

(ix) That the Reichmark/Deutsche Mark conversion rate in respect of monetary claims arising under Law 59 be fixed by legislation to conform with Law 63.

(x) That recourse be made by the United Kingdom High Commissioner under Regulation 6, Article 3 (5), to direct the Board of Review to advisory opinions on important matters of principle not yet decided.

(xi) That the Federal Government be approached to enact a General Claims Law.

(xii) That Law 59 be amended so as to ensure effect being given to orders of the Restitution Authorities by German Public Authorities.

(xiii) That decision be taken, before the relinquishment of reserved power, with regard to exemption from the proposed Equalisation of Burdens Law of properties which are the subject of claims to restitution.

(xiv) That Article 12 of Law 59 be amended so as to provide that retrospective effect is given to amicable settlements effecting restitution.

#### **Berlin**

(xv) That the recommendations specified above should be put into effect and that in addition :—

(a) There should be set up a Tripartite Court to hear appeals from the three Western Sectors of Berlin.

(b) Certain judges of the *Kammergericht* should be employed exclusively in the hearing of restitution appeals.

(c) An Allied Officer should be appointed to exercise supervision over the Restitution Authorities.

#### **The Board of Review**

(xvi) That the President of the Board of Review be invited to report immediately as to his requirements to meet an anticipated increase of appeals ; and that his recommendations be given effect.

(xvii) That Law 59 be amended so as to leave it to the discretion of the Board of Review to decide whether an oral hearing be granted.

(xviii) That Regulation 6 be amended to provide that, in respect of petitions from the Chambers and *Oberlandesgerichte*, the time for filing an appeal be reduced to one month in the case of persons resident in Germany and to three months for foreign residents, the power given to the Board to extend the time being retained.

#### **Financial**

(xix) That the German Federal Government be urged to accept liability for the restitution claims against the German Reich and that the contractual arrangements with the Federal Government should provide for the continuance of this liability and for specific guarantees for its discharge.

(xx) That the Jewish Trust Corporation be invited to formulate an aggregate claim for each *Land*, with a view to an overall settlement and that the British Authorities, before the relinquishment of reserved powers, initiate negotiations to this end with the German Authorities.

That similar negotiations be initiated with the Federal Government for the overall settlement of the claims of the Corporation against the Reich.

(xxi) That action be taken to remove restrictions on the transfer of sums paid for restitution into blocked accounts of claimants who are resident outside the Federal territory ; and that provision be inserted in the contractual relations to ensure that the restrictions are not reimposed.

D. N. O'SULLIVAN.

A. L. EASTERMAN.

NORMAN BENTWICH.

30th June, 1951.

## APPENDIX I

### Itinerary and List of Witnesses

1. We assembled at Wahnerheide on 28th May, 1951, moved from Wahnerheide to Düsseldorf on the morning of 29th May, 1951, from Düsseldorf to Herford on the evening of 30th May, 1951, from Herford to Bad Nenndorf and Hanover on 31st May, 1951, from Hanover to Hamburg on 1st June, 1951, from Hamburg to Frankfurt (in the United States Zone of Germany) on the night 3/4 June, 1951, and returned to Wahnerheide on the afternoon of 5th June, 1951.

2. While in Germany we interviewed the following persons:—

Mr. M. J. P. Kelly ... ..	Head of the Internal Restitution Section, Chancery, and member of the Board of Review.
Mr. R. C. Swayne, M.B.E. ... ..	Member of the Board of Review.
Dr. Burgner ... ..	United Restitution Office.
Mr. J. W. Laski ... ..	Senior Legal Assistant, Land Commissioner's Office, Düsseldorf.
Dr. F. W. Engels ... ..	Rechtsanwalt, Düsseldorf.
Dr. Schumacher ... ..	} German Judges of the Restitution Agency, Düsseldorf.
Dr. Kohlen ... ..	
Dr. Stein ... ..	
Senatspräsident Strafen ... ..	
Dr. Kalbheun ... ..	
Dr. Kruger ... ..	} Landgerichtsdirektor } Judges of the Restitution Chamber.
Dr. Steeger ... ..	
Mr. H. D. Barton, M.C. ... ..	
Herr Kaulvas ... ..	Senior Property Control Officer, Düsseldorf.
Dr. Artl ... ..	Landesbeauftragter für gesperrte Vermögen.
Dr. Geller ... ..	Land Ministry of Justice.
His Honour Judge Graham Rogers	Senatspräsident.
Mr. E. A. Marsden ... ..	President of the Board of Review and Judge of the Court of Appeal.
Dr. Klostermann ... ..	Secretary of the Board of Review and Registrar of the Supreme Court.
Dr. Harting ... ..	Senatspräsident, Head of German Staff of Central Claims Registry.
Dr. Blumberg ... ..	Member of the Staff of the Central Claims Registry.
Herr Erdmann ... ..	United Restitution Office.
Herr Kornke ... ..	Office Manager } General Trust Corporation.
Dr. Hornig ... ..	Manager }
Dr. Deume ... ..	} Ministerialräte of the Ministry of Justice, Hanover.
Dr. Holzweg ... ..	
Dr. Zander ... ..	
Dr. Altmann ... ..	Landgerichtsrat, President of the Hanover Restitution Agency.
Mr. W. F. Pickering ... ..	Amtsgerichtsrat, President of the Hanover Restitution Chamber.
Dr. Schindler ... ..	Member of Land Commissioner's Legal Staff and alternate Member of the Board of Review.
Mr. Simon ... ..	} Jewish Trust Corporation.
Dr. Willer ... ..	
Dr. Asschenfeldt ... ..	
	Senatspräsident, Hamburg.
	Oberregierungsrat in charge of Restitution Agency work, Hamburg.

## APPENDIX III

### Statement by United States High Commissioner

Press Release Issued by Public Relations Division, Office of Public Affairs

Frankfurt-a-Main.

12th June, 1951.

#### *United States High Commissioner Reaffirms the Policy For Restitution of Identifiable Property*

The United States High Commissioner has stated in a letter to the four Ministers-President of the United States Zone, released to-day by HICOG, that restitution of property to victims of National Socialism persecution will continue in accordance with the provisions of Military Government Law No. 59.

The letter of the High Commissioner was written as the result of letters and comments in the German press, proposals circulated by pressure groups and statements attributed to certain German officials, all of which encourage speculation as to the future policy of the United States with respect to Military Government Law No. 59.

Holders of property subject to restitution will not be relieved of the obligations imposed by the law, Mr. McCloy said in his letter, addressed to:—

Minister-President Dr. Hans Ehard (Bavaria).  
Minister-President Georg August Zinn (Hesse).  
Minister-President Dr. Reinhold Maier (Wuerttemberg-Baden).  
Senatspräsident Wilhelm Kaisen (Bremen).

Among groups encouraging speculation as to future policy of the United States concerning restitution is an association, mainly established to protect present holders of property against those deprived thereof under National Socialism. This organisation recently submitted a draft restitution law to the Law Committee of the Federal Parliament which seeks to reverse the basic principles of Military Government Law No. 59.

The basic principles of Law No. 59 are that identifiable property shall be restored as quickly as possible to persons "who were wrongfully deprived of such property within the period from 30th January, 1933, to 8th May, 1945, for reasons of race, religion, nationality, ideology or political opposition to National Socialism," and that "property shall be restored to its former owner or his successor in accordance with the provisions of this law, even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated."

The activities of anti-restitution groups and individuals have led holders of property subject to restitution to hope that present United States policy might give away to public pressure, thus creating a tendency to litigate rather than to participate in amicable settlements.

The current restitution report shows that of the 117,246 petitions received by restitution authorities between 10th November, 1947, and 31st December, 1948, about half or 58,252 have been disposed of as of 31st May 1951; 32,324 cases were disposed of by amicable settlement, and 19,399 by withdrawal, while only 2,963 were disposed of by decision, and 3,566 by dismissal. Thus, almost 90 per cent. of all cases disposed of have been voluntarily settled. The total estimated value of property restituted to 31st May, 1951, is 626,888,809 DMs.

The text of Mr. McCloy's letter, dated 11th June, 1951, is as follows:—

My dear Senate President, (My dear Mr. Zinn, My dear Mr. Ehard, My dear Mr. Maier):

"During recent months there have been brought to my attention letters and comments appearing in the German press, proposals circulated by organisations, and statements attributed to *Länder* Government officials which appear to encourage speculation on the policy of the United States with respect to restitution of identifiable property under United States Military Government Law No. 59.

The Federal Association of Restitutors (an organization established for the express purpose of protecting the interests of restitutors) has drastically intensified its activities in attacking the basic principles of MG. Law No. 59 with increasing bitterness. (Annex "A.") The aims of the organization are gaining support from some political parties and from part of the German press. It continues to win followers and only recently a branch office in Kassel has been added to its many offices already existing throughout the federal territory.

On 3rd April, 1951 the association submitted a draft restitution law to the Law Committee of the Federal Parliament. The law is intended for promulgation in the three Western Zones and Sectors of Berlin (Annex "B.") and completely reverses the basic principles of MG. Law No. 59. In substance the draft law removes the presumption of duress for all transactions made prior to 14th June, 1938 and gives full protection to purchasers in good faith. Moreover, the law shifts the liability to make restitution to a very large extent from the individual restitutor to the Federal Government. (Annex "C.") It also provides that Jewish heirless and unclaimed properties will go to the Federal Government, thereby excluding Jewish successor organizations or trust corporations as claimants for such properties. (Annex "D.") Further it is intended that all cases which have been finally adjudicated under presently existing restitution laws are to be reopened. (Annex "E.")

In April a motion was introduced into the Bavarian Parliament asking the Bavarian Government to advise the Federal Republic that "the restitution of Jewish properties should be mitigated" and that the court of last resort should be a German Court. This motion was unanimously accepted by the Law Committee of the Parliament in a session on 8th May, 1951, during which speakers criticised MG Law No. 59 and its interpretation by the Court of Restitution Appeals. (Annex "F.")

A series of articles appearing in the *Kasseler Post* of April 4, 5, 9 and 10, 1951 were clearly designed to demonstrate that the application of MG Law No. 59 leads to inequitable and untenable results for the restitutors. (Annex "G.") In its issue of 17th April, 1951 that paper published an article under the caption "Don't buy restituted property" warning readers not to acquire properties having been restituted as a result of MG Law No. 59, because such properties might at some later date have to be returned to the persons who owned them prior to restitution. (Annex "H.")

Articles concerning restitution which appeared in the *Frankfurter Rundschau* and the *Frankfurter Allgemeine Zeitung* of 13th and 14th April, 1951, respectively, although more moderate, point in the same direction as those appearing in the *Kasseler Post* by expounding the view that restitutors suffer undue hardship under MG Law No. 59 and that the law should be changed. (Annex "I.")

In consequence, holders of properties subject to restitution are now more hopeful than ever that the present United States policy with respect to restitution may give way to German public pressure so as to permit a drastic modification of the restitution law. (Annex "J.") It has been observed that any modification of present policies affecting Germany acts as a booster for rumors that a change in the restitution law is imminent. In this connection Dr. "B," in charge of the administration of MG Law No. 59 in *Land Hesse* and a well-known authority in the field of restitution, mentioned the recent clemency actions with respect to certain Landsberg prisoners as having caused such a reaction.

Statistical restitution progress reports indicate that amicable settlements in the 4 months period from January to April 1951 have decreased as compared to the last 4 months in 1950. The fact that there has been a decrease in settlements despite a recent amendment of MG Law No. 59, specifically designed to increase such compromises by providing that all losing parties be assessed court costs and fees can largely be attributed to the aforementioned conditions.

The foregoing indicates that a statement by Mr. McCloy as to the present and future United States policy with respect to restitution, as proposed by Mr. "A," is timely. Moreover, restitution was last mentioned publicly by Mr. McCloy in his radio address of October 1950. Since then, many changes have taken place in the relationship between the Allies and the Federal Republic, and for this reason also a re-statement of United States policy in the field of internal restitution is desirable.

ANNEX "A" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of February 1951*

For years now innocent people who were more or less successful in life must submit, trembling, grumbling, or protesting to the duress and the menace of a law which reminds all of us too distinctly of the legislative period of the 1,000 years (Reich)\* and must therefore be similarly branded as terrorising and humiliating the basic rights of man.

For the attentive reader of this magazine, the columns of which are full of concrete examples which, although they may appear unreal, are actually real, then end result is as clear as it is shocking: opportunism, burlesque, distortion of law and facts, such as would be suitable for a cabaret, piracy reminding us of the atrocious practice of forcible dispossession of property once before prevalent (in Germany)\*, greedy grabbing of properties at any price, even at the price of honor, such disgusting manifestations flare up in the shadow of these laws for restitution of confiscated property and discriminate against the earnest form of the German Courts.

\* Parentheses supplied.

ANNEX "B" TO APPENDIX II

*Translation of extract from letter of 2nd April, 1951, from the Federal Association for Loyal Restitution published in "Die Restitution" of April 1951*

The "Bundesvereinigung fuer loyale Rueckerstattung" submits the draft of a Federal Restitution law.

The draft has undertaken the attempt, recognised as extremely difficult, to co-ordinate the restitution laws of the three Western Zones and the Western Sectors of Berlin\* and to arrive simultaneously at conclusions which, upon transfer of the legislative power in the field of restitution to the Federation, will result in a solution satisfactory for both parties.

\* Italics supplied.

ANNEX "C" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

*Part II.—Confiscation under Duress*

(1) Property shall be considered confiscated under duress within the provisions of this law, if the person entitled thereto has, within the material period, been deprived of the right of ownership, the right of possession or of any other right or an expectancy of acquisition thereof without his consent, and if the loss is due to—

- (a) a governmental act or the abuse of such act; or
- (b) measures taken by the NSDAP, its formations or affiliated organisations,

if such acts and measures were based on regulations effective within the material period, or were arbitrarily carried through. In the case of (a) the Federation, in the case of (b) the custodian of the NSDAP and its affiliated organisations shall be liable to make

restitution. They may, however, hold liable for indemnification any purchaser who was not in good faith to the extent to which the latter has not paid a fair purchase price.

(2) Property shall further be considered confiscated under duress if the person entitled thereto has, between 30th January, 1933, and 15th September, 1935, lost the right of ownership or any other right referred to in paragraph 1 with his consent and if the loss resulted from a transaction which primarily was caused by duress specifically directed against his person and which had been or should have been known to the purchaser.

(3) In the case of alienations which have been effected between 16th September, 1935, and 14th June, 1938, the presumption "confiscated under duress" is available if the claimant proves that a fair purchase price had not been paid or that, as in paragraph 2, he was caused by duress to alienate his property.

(4) In the case of all alienations having been effected after 14th June, 1938, the duress shall be presumed, if the claimant belongs to a group of persons listed in Article 1, paragraph 1. Persons of foreign nationality also, whether they were domiciled within the former territory of the Reich or abroad, shall be entitled to restitution if they had to alienate property located in Germany and belong to a group of persons listed in Article 1, paragraph 1. The same shall apply to Germans living abroad if the prerequisites of paragraph 1, Article 1, are present. With respect to alienations having been made after 14th June, 1938, the Federation which has on its part a claim for indemnification against the profiteer, shall be liable to make restitution.

#### ANNEX "D" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

##### *Federal Fund for Restitution*

(1) With the effective date of this law the successor organisation of the United States and British Zones and in West Berlin, and the restitution fund of the French Zone (special property) shall discontinue their activities. . . .

(2) These organisations shall be replaced by the "Federal Fund for Restitution" which shall collect all heirless and all unclaimed confiscated properties. . . .

#### ANNEX "E" TO APPENDIX II

*Translation of extract from article in "Die Restitution" of April 1951*

##### *Avoidance of Final Judgments and Settlements*

The draft law does not contain a final version of this provision.

There must be a possibility to reopen the proceedings in individual restitution cases even if the grounds for such reopening result solely from the amendment of the law.

In view of the publicity given the criticism and suggestions relating to United States Military Government Law No. 59, I take this opportunity to reaffirm the policy of my Government that persons and organisations deprived of their property as a result of National Socialist persecution should either have their property returned or be compensated therefor. I can further advise you that there is no intention to depart from these principles as expressed in Military Government Law No. 59, and I do not anticipate any future developments which will relieve the holder of property subject to restitution from the obligations imposed by this Law.

It is suggested that you make known to the officials of your Government engaged in the administration of the restitution law that United States policy remains unchanged in this respect. To allay any doubts which may have arisen in the mind of the general public, I am taking the liberty of releasing this letter to the press.

Sincerely yours,

JOHN J. McCLOY,  
United States High Commissioner for Germany."

#### APPENDIX IV

##### Note as to difficulties of proof of Succession

1. As proof of a right to inherit, German Civil Procedure requires that an heir shall produce a Certificate of Inheritance (*Erbschein*) from a Probate Court (*Nachlassgericht*). In order to obtain this certificate the heir is required to prove certain facts by production of public documents. For example, death is to be proved by production of a Death Certificate or a Judicial Declaration of Presumption of Death. (Sections 2354/56 of the German Civil Code).

The German Law of 4th July, 1939 (*Reichsgesetzblatt* I, 1186) sets out in paragraph 7 the circumstances under which death may be presumed and lays down certain requirements as to public notice (*Aufgebotsverfahren*), and the observance of time limits.

In order to modify these requirements and permit of the presumption of death being drawn more easily in respect of persons who have disappeared under exceptional circumstances, the Central Legal Office for the British Zone, on 16th December, 1946, passed an Ordinance (*Verordnungsblatt* for the British Zone, 1947, No. 1, Page 10) with the consent of British Military Government which amended the German Law of 1939 by inserting (as paragraph 7 (a)) the following provisions:—

- (1) "Any person who was arrested before 8th May, 1945 on political, racial or religious grounds, or who was forcibly deported or who was placed in a concentration camp or other place of forcible detention, will be considered as having been in danger of his life.
- (2) In these cases the period of time as provided for in Section 7 will begin on 8th May, 1945.
- (3) If no other date of death can be determined 8th May, 1945 will be determined as the date of death. This also applies if the time of death has to be determined (section 44, sub-paragraph 1)."

The Federal Government of Germany by a law dated 15th January, 1951, (*Bundesgesetzblatt* I, 59) amended this paragraph so that it no longer specifically relates to persons who died as a result of Nazi persecution, and at the same time reintroduced the procedure of public notice, though in an abbreviated form.

2. Article 43 of Law 59 lays down a special presumption as to the death of a "persecuted person" and it had been held by the Oberlandesgericht at Hamburg that, in view of the purpose of Law 59 to effect "speedy restitution," the special presumption under Article 43 was intended (as is obvious) to take the place of the ordinary rules of German law, and to eliminate the cumbersome public notice procedure.

This decision was, however, on 5th December 1950, overruled by the Federal Supreme Court at Karlsruhe (*Neue Juristische Wochenschrift* No. 4 of 15th February, 1951, page 151) who held that the presumption under article 43 was only applicable to

proceedings before the Restitution authorities; and that if the claimant applied for a Certificate of Inheritance from the Probate Court for use in restitution proceedings the ordinary rules of German law would apply.

3. The 11th Regulation, enacted on 25th November, 1941, to the German Citizenship Law of 15th September, 1935 deprived all Jews, living abroad, of their citizenship and confiscated their property; and it also enacted that persons who had been so deprived of their property could not inherit from a German national. The effect was, therefore, that a Jew who went abroad (whatever the force of circumstances) could not inherit his family property in Germany.

Control Council Law 1 which became effective on the entry of the Allies into Germany deprived various fundamental Nazi laws, including the Reich Citizenship Law of 15th September 1935, of effect.

A Probate Court in Berlin has, however, recently held that Control Council Law 1 does not have retrospective effect; and that consequently it does not affect the estate of a person who died before Control Council Law 1 was promulgated. Therefore, according to this decision a Jewish claimant for restitution living abroad cannot, in view of the 11th Regulation, claim the property of anyone who died in Germany before Control Council Law 1 came into operation.

4. It need hardly be stressed that the effect of the Federal legislation referred to in paragraph 1 above and the judicial decisions referred to in paragraphs 2 and 3 tend to defeat the purposes of Law 59.

II

PARLIAMENTARY UNDER-SECRETARY OF STATE FOR FOREIGN  
AFFAIRS TO JUDGE D. N. O'SULLIVAN

*Foreign Office, S.W. 1,  
12th October, 1951.*

Dear Judge O'Sullivan,

I desire to express to you and your assessors my appreciation of the Report which you sent to me under cover of your letter of 2nd July, 1951.

The Committee over which you presided fulfilled a most useful function in examining the causes of delay in the disposal of restitution claims in the British Zone of Germany. I am sending to you herewith, in the annexed memorandum, a statement of the views of His Majesty's Government on the several recommendations of your Committee and of the consequent action which has been taken by the United Kingdom High Commissioner in Germany with the approval of the Secretary of State for Foreign Affairs.

You will no doubt have noted the helpful statement on this subject made by the Federal Chancellor in the *Bundestag* on 27th September. In case you have not had the full text, I enclose it herein.

Yours sincerely,

HENDERSON.

ENCLOSURE No. 1

*Recommendations*

1. That the United Kingdom High Commissioner should make a statement of the nature of that recently made by the United States High Commissioner, to the effect that restitution of property in accordance with the existing law will continue; and that such statement be given extensive publicity in the British Zone.

2. That any contractual arrangement with the Federal Government should include an obligation by that Government (a) to preserve and implement the Restitution Law, (b) to execute the orders of the Restitution Authorities, and (c) to maintain Allied supervision over Restitution Tribunals.

3. That steps be taken to increase the number of judges in the Restitution Agencies and Chambers, and to ensure a sufficiency of judges in the *Oberlandesgerichte* to hear restitution appeals.

4. That the office staffs of the Agencies and Chambers be increased, and that persons experienced in account taking be appointed to these staffs.

5. That steps be taken to ensure adequate office and court accommodation for all Restitution Authorities.

*Comments*

This Recommendation was acted upon and Sir Ivone Kirkpatrick wrote on 27th July to the Ministers President in the British Zone of Germany (see enclosure No. 2 for a copy of the letter). Full publicity has been given both in Germany and in the United Kingdom.

This Recommendation is being covered in discussions which are at present proceeding with the German Federal Government.

Ministers of Justice of the *Land* Governments in the British Zone have been requested to take appropriate action to give effect to these Recommendations.

*Recommendations*

6. That a system be put into immediate effect to ensure proper examination and supervision of the machinery of restitution.

7. That administrative action be taken to arrange that claims against the former German Reich for restitution of movable property be deferred, at the request of the claimant, until a decision has been taken as to the liabilities of the Reich.

8. That Article 42 of Law 59 be amended to make it clear that the Restitution Authorities shall, if the claimant so desires, adjudicate upon his right of succession, and in so doing shall be bound by the terms of Article 41 in regard to evidence. We suggest that the Restitution Chamber is the proper authority to adjudicate in this matter and that groups of Chambers should each have one judge for this purpose.

9. That the Reichmark/Deutsche Mark conversion rate in respect of monetary claims arising under Law 59 be fixed by legislation to conform with Law 63.

10. That recourse be made by the United Kingdom High Commissioner under Regulation 6, Article 3 (5), to direct the Board of Review to give advisory opinions on important matters of principle not yet decided.

11. That the Federal Government be approached to enact a General Claims Law.

12. That Law 59 be amended so as to ensure effect being given to orders of the Restitution Authorities by German Public Authorities.

13. That decision be taken, before the relinquishment of reserved power, with regard to exemption, from the proposed Equalisation of Burdens Law, of properties which are the subject of claims to restitution.

14. That Article 12 of Law 59 be amended so as to provide that retrospective effect is given to amicable settlements effecting restitution.

*Comments*

Sir I. Kirkpatrick's staff responsible internal restitution has been strengthened.

It is agreed that this is desirable, and steps are being taken to avoid general delays arising from the arrears of such claims.

This Recommendation is accepted and an amendment to Law 59 will be promulgated in the near future.

There are certain practical difficulties, but urgent consideration is being given to the most satisfactory means of removing delays attributable to uncertainty regarding the conversion rate.

It is not considered desirable that the Board of Review should give opinions on hypothetical issues. Major issues of principle can be settled by legislation. It may, however, be possible to expedite consideration by the Board of appeals involving important questions of law.

Discussions with the German Federal Government on the enactment of a General Claims Law are proceeding.

An amendment to Law 59 will be promulgated in the near future.

The Equalisation of Burdens Law has not yet been enacted, nor are its eventual provisions yet certain. There are, however, obvious difficulties about exempting German nationals from German taxation of general application.

An amendment to Law 59 will be promulgated in the near future to give retrospective effect in the absence of agreement to the contrary, to amicable settlements concluded in the future.

### Recommendations

(Berlin) That the recommendations specified above should be put into effect and that in addition—

- (a) There should be set up a Tripartite Court to hear appeals from the three Western Sectors of Berlin.
- (b) Certain judges of the *Kammergericht* should be employed exclusively in the hearing of restitution appeals.
- (c) An Allied Officer should be appointed to exercise supervision over the Restitution Authorities.

16. That the President of the Board of Review be invited to report immediately as to his requirements to meet an anticipated increase of appeals; and that his recommendations be given effect.

17. That Law 59 be amended so as to leave it to the discretion of the Board of Review to decide whether an oral hearing be granted.

18. That Regulation 6 be amended to provide that, in respect of petitions from the Chambers and *Oberlandesgerichte*, the time for filing an appeal be reduced to one month in the case of persons resident in Germany and to three months for foreign residents, the power given to the Board to extend the time being retained.

19. That the German Federal Government be urged to accept liability for the restitution claims against the German Reich and that the contractual arrangements with the Federal Government should provide for the continuance of this liability and for specific guarantees for its discharge.

20. That the Jewish Trust Corporation be invited to formulate an aggregate claim for each *Land*, with a view to an overall settlement and that the British Authorities, before the relinquishment of reserved powers, initiate negotiations to this end with the German Authorities.

That similar negotiations be initiated with the Federal Government for the overall settlement of the claims of the Corporation against the Reich.

21. That action be taken to remove restrictions on the transfer of sums paid for restitution into blocked accounts of claimants who are resident outside the Federal territory; and that provision be inserted in the contractual relations to ensure that the restrictions are not reimposed.

### Comments

When action has been taken in pursuance of the Report in the British Zone of Germany, appropriate steps will be taken to apply Recommendation No. 15 in the British Sector of Berlin.

The President of the Board of Review has stated his requirements and the necessary administrative arrangements are in hand.

It is agreed that such discretion is desirable and amending legislation to cover this point will be promulgated shortly.

Legislative action is being taken to reduce the time for filing appeals as recommended.

Discussions are proceeding at the present time with the German Federal Government.

His Majesty's Government welcome the suggestion that overall settlements may be arranged in the British Zone of Germany by the Jewish Trust Corporation, and the matter is being discussed with Ministers President of the *Land* Governments in the British Zone.

Discussions are proceeding at the present time with the German Government.

The liberalisation of German exchange control restrictions on foreign-owned Deutschemark balances in the Federal Territory can be expected to take place gradually as the German foreign exchange position improves. In the meantime, it is open to owners of such balances who are resident outside Germany to sell them for foreign exchange to purchasers who wish to invest the Deutschemarks.

ENCLOSURE No. 2

*The United Kingdom High Commissioner for Germany to the Ministers President  
the British Zone of Germany*

*Wahnerheide,*

*27th July, 1951.*

My dear Minister President,

It seems to me to be desirable that you should know of His Majesty's Government's intentions with regard to the completion of the programme for restitution of identifiable property to victims of Nazi persecution.

My Government is firm in its determination to see the process of restitution completed. As you are aware discussions are now in progress between the Allied High Commission and the Federal Government, the object of which is to consider the problem of placing the relationship between that government and the governments of the United Kingdom, the United States and France on the broadest possible contractual basis. While it would be improper for me at this stage to enter into details I feel that you should know that my Government intends to ensure that provision is made in the contractual arrangements for the preservation of the law now regulating restitution in the British Zone (British Military Government Law No. 59), and for the continued execution of the programme called for thereunder.

I should be obliged if you would bring this letter to the attention of the German authorities in your *Land* engaged on restitution work and if you would take such steps as are open to you to see that my Government's views become known to the public.

In view of the general interest in this matter I propose to release the text of this letter to the press at 4 p.m. on 31st July, 1951.

Yours sincerely,

I. A. KIRKPATRICK.

ENCLOSURE No. 3

*Statement by the Federal Chancellor of Germany in the Bundestag on  
27th September, 1951*

World public opinion has on various occasions recently concerned itself with the attitude taken by the Federal Republic towards the Jews. Here and there doubts have been expressed whether in respect of this important question the new State is guided by principles which take into consideration the terrible crimes of a past era and place the relationship between the Jews and the German people on a new and sound basis.

The attitude of the Federal Republic towards its Jewish citizens has unequivocally been laid down in the Basic Law. Article 3 of the Basic Law provides that all persons shall be equal before the law, and that no one may be discriminated against or privileged because of his sex, descent, race, language, homeland and origin, creed, or his religious and political opinions. Article 1 of the Basic Law further provides:

"The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledges inviolable and inalienable Rights of Man as the basis of every community, of peace and of justice in the world."

These rules of law are directly applicable and impose an obligation on every German citizen—and especially on every civil servant—to reject any form of racial discrimination. In the same spirit, the Federal Republic has also signed the Convention for the Protection of Rights of Man drafted by the Council of Europe,<sup>(2)</sup> and has pledged itself to put into practice the legal concepts embodied therein.

These rules of law can, however, become effective only if the attitude from which they spring is adopted by the whole nation. This is, therefore, in the first place a problem of education. The Federal Government deems it a postulate that the churches and the educational departments of the *Länder* do in their field everything within their power, in order to ensure that the spirit of humane and religious tolerance should not only be recognised in a general way, but also become a reality among the

<sup>(2)</sup> "Miscellaneous No. 1 (1951)," Cmd. 8130.

entire German people, and especially among the German youth, so as to govern their attitude of mind and their actions. This is an essential task incumbent upon the educational authorities, a task which needs for realisation the support of the example set by the adults.

In order to ensure that this educational work should not be disturbed and the domestic peace in the Federal Republic be maintained, the Federal Republic has decided to combat relentlessly any groups which are still engaged in fomenting hatred against the Jews. Proposals for an amendment of the Penal Code have been submitted to the *Bundestag* providing, *inter alia*, for severe punishment for the propagation of racial hatred. The Federal Government will apply these provisions most vigorously as soon as they have come into force.

The Federal Government, together with the overwhelming majority of the German people, are conscious of the immeasurable suffering inflicted upon the Jews in Germany and in the occupied territories during the National Socialist régime. The overwhelming majority of the German people abhorred the crimes committed against the Jews and had no part in their perpetration. During the time of National Socialism there were many Germans who, under personal risks, extended help to their Jewish compatriots for religious reasons, obeying the commands of their conscience, or feeling ashamed of the disgrace brought upon the good name of Germany. But unspeakable crimes have been perpetrated in the name of the German people, which impose upon it the duty to make moral and material restitution, both as regards damage inflicted upon individual Jews, and as regards Jewish property to which no longer any individual claimants exist. In this field, first steps have already been taken, but very much remains to be done. The Federal Government will see to it that restitution legislation will come to an early completion, and that it will be implemented in a just and fair manner. Part of the identifiable Jewish property has been restituted. Further restitutions will follow.

With regard to the extent of restitution—a very great problem in view of the enormous destruction of Jewish assets by National Socialists—the limits set to German financial capacity by the bitter necessity of having to provide for innumerable war victims and to care for refugees and expellees must be taken into consideration.

The Federal Government is prepared, in conjunction with representatives of Jewry and of the State of Israel—which has admitted so many homeless Jewish refugees—to bring about a solution of the financial aspect of the restitution problem, in order thus to pave the way towards clearing the psychological atmosphere, blackened by untold suffering. The Federal Government is deeply imbued with conviction that the spirit of true humanity must revive and bear fruit. The Federal Government considers it the foremost duty of the German people to foster this spirit with all its power.

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# CONFIDENTIAL

## APPENDIX 'D'

J. L. Simpson

The following comments are submitted on these papers:-

I.CJ 4108/71/182. In view of the considerations contained in the letter of the Administration of Enemy Property Department in CJ.334/334/182 dated December 15, 1948, I feel that there is no choice but to accept the conclusion arrived at in Mr. Carter's letter that German-owned foreign securities and currencies are external assets, even if the documents were located in Germany. My conscience as a lawyer is somewhat troubled by this solution, especially as Mr. Carter seems to me to overstate considerably in his letter the legal effect which any administrative action may have. Whether the Courts in all the countries of issue will agree that there is power in Military Government or in the various local Custodian to vest property in this manner and at the present stage seems to me highly doubtful. But in view of the stand taken at the quadripartite discussions I admit that no other solution is possible.

(Signed) J. COHN

345650

(TRANSLATION)

*Motion introduced on 8th May, 1951, to the Committee for Questions of Law and Constitution of the Bavarian Parliament*

*Motion by Dr. Fischer and fellow-members concerning Amendment of Military Government Law No. 59, Restitution of Identifiable Property in the United States Zone of Occupation*

Dr. FISCHER:

. . . . Ordinance No. 120 which is in force in the French Zone knows the so-called principles of equity which is missing in the laws of the American and English Zones. The judges of the Restitution Chambers again and again complain that a clause providing for the alleviation of hardships is missing. . . . .

The American procedure (of restitution) compared with the French and the English ones has proved to be the most severe. . . . . The American appellate Court has adjudicated already a great number of cases and has often administered the law in a manner which is inconsistent with the German sense of justice and with the German understanding of law. . . . . The German judges take the view that it is inconsistent with the principle of judicial independence that they shall be bound by a single judgment, an order, or an Advisory Opinion which almost have the formal force of laws. As a consequence, several judges, particularly in Munich, have already filed their resignation. The rulings of CORA are being opposed because it is alleged that CORA in principle does not consider the German interest . . . . . As to the administration of the law by CORA the difficulties can only be removed if the assignment of German judges can be achieved.

The following amendments should be pursued:—

1. A clause providing for the alleviation of hardship should be inserted in Military Government Law No. 59 as it is the case in the French Zone. This will furnish a broader basis for the adjustment of the legal relations of the parties in interest in application of the law, so that undue hardship can be avoided.
2. The administration of Military Government Law No. 59 shall also in the court of last resort be placed exclusively or predominantly into German hands.
3. The Regulation No. 9 to Military Government Law No. 59 shall be repealed. This would achieve that single decisions of CORA have no longer the importance which almost reaches the formal force of law.
4. It is of greatest importance that the entire restitution program is carried through by legislation and administration of the law uniform in the federal territory. It is an impossible situation that exactly this extraordinarily important field is treated so differently in the different zones of occupation and in the American Zone even to the detriment of German interests. . . . .

DR. ZDRALEK\* also supports the motion. It is essential to openly demonstrate to the Americans that it cannot go on like this, and the German judges in the Restitution Chambers should be backed up because they actually do no longer know what to do. What is presently being done in matters of restitution is no longer mischief but must be considered a crime against the Bavarian people.

*Resolution:* The motion by Dr. Fischer and fellow-members is unanimously accepted.

\* Dr. Zdralek is the newly-appointed President of the Bavarian Land Compensation Office which was formerly headed by Dr. Auerbach.

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ANNEX "G" TO APPENDIX II

Translation of extract from the "Kasseler Post" of 4th April, 1951

*Shackles for the Law in the Restitution Statute*

.....  
The restitution law by far exceeds its purpose of returning confiscated property. If it is maintained, for example, that the established legal presumptions are no more than acknowledged principles of law, one can only answer: That is not true!

Translation of extract from the "Kasseler Post" of 5th April, 1951

.....  
If a purchaser is convinced that he has acted as an honourable man, it is his duty to express his conviction with all means at his disposal and to fight for his right. This is not only a matter of money but also of honour! The supposition that all purchasers of Jewish property have on principle exploited the need of the former owner, must be considered an unbearable collective defamation, and the requirement to prove to JRSO the contrary a likewise unbearable imposition.

ANNEX "H" TO APPENDIX II

Translation of extract from "Kasseler Post" of 17th April, 1951

*Don't buy Restituted Property!*

.....  
In further substantiating the proposed restitution law the law committee is requested to make a decision with respect to the proceedings already concluded. Therefore, the warning of the *Interessengemeinschaft*: Don't buy restituted properties, for it could be possible that they have to be returned!

ANNEX "I" TO APPENDIX II

Translation of extract from "Frankfurter Rundschau" of 30th April, 1951

.....  
This is one of hundreds if not of thousands of cases. There are cases which are not bad but there are also such which are worse. The worst is that there is no remedy against those decisions because they are not based on a German but on an American law. Only the Federal Government can make the attempt to cause the United States to amend those provisions. The Federal Government has done that—up to this time in vain.

ANNEX "J" TO APPENDIX II

Translation of extract from "Die Restitution" of May 1951

(Letter from a reader)

.....  
All purchasers in good faith will regard a restitution and the conversion of their payments 1:10 as injustice and as an act of duress and strive for a reopening of the proceedings and the return of their property at any possible opportunity. We have experienced after all within a short period *how times and the sense of justice change.*\*

\* Italics supplied.

Dr. Van Damm ... ..	Legal Adviser to the Jewish Community in the British Zone of Germany.
Mr. Wollheim ... ..	Chairman of the Jewish Community in British Zone of Germany.
Judge F. G. Hulse ... ..	Deputy Chief, Administration of Justice Division, Office of the United States High Commissioner for Germany.
Mr. Loewenthal ... ..	Official of the United States Property Division.
Mr. Livneh ... ..	Consul-General of Israel.
Dr. Schwartz ... ..	Legal Adviser of the Jewish Agency for Palestine.
Mr. Lieber ... ..	German Legal Adviser to the United States Property Division.
Mr. Ferencz ... ..	} Jewish Restitution Successor Organisation.
Dr. Weiss ... ..	
Dr. Mai ... ..	
Dr. Blumenthal ... ..	Legal Aid Department of the United Restitution Office in the United States Zone of Germany.
Mr. J. E. Edney, M.B.E. ... ..	United Restitution Office, Berlin.
Mr. T. W. Garvey ... ..	United Kingdom Property Control Officer, Berlin.
	Head of External Affairs Branch, Chancery.

Written statements have been submitted to us by the following organisations:

- Jewish Trust Corporation for Germany, Ltd.
- United Restitution Office, London.
- World Jewish Congress (British Section), London.
- Board of Deputies of British Jews, London.
- Council for the Protection of the Rights and Interests of Jews from Germany, London.
- Arbeitsgemeinschaft der Vertretungen politisch, rassisch und religiös Verfolgter, Berlin.

## APPENDIX II

### MEMORANDUM BY UNITED STATES OFFICIALS DEALING WITH RESTITUTION

28th May, 1951.

#### Opposition to the Restitution Program

Reference is made to a memorandum of 11th May, 1951 addressed to you by Mr. "A," citing certain rumors circulating among the German public which are detrimental to restitution and proposing that it may be considered whether Mr. McCloy should write a letter to the Ministers President outlining present and future policies with respect to restitution. Mr. "A" also proposes that such letters should then be released to the press so as to acquaint the public with the facts.

The following information on the same subject has been prepared to show that behind the rumors mentioned by Mr. "A" there is a steadily growing and well organised resistance against restitution as provided for under MG Law No. 59 which, if not counteracted, may seriously jeopardise the early completion of the program.