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AMERICAN CONSULATE GENERAL

Berlin, Germany, July 28, 1933.

SUBJECT: Certain considerations in connection with the  
administration of justice in the German Reich.

THE HONORABLE

THE SECRETARY OF STATE

WASHINGTON.

SIR:

I have the honor to bring to the attention of the Department for background purposes certain considerations in connection with the administration of justice in the Reich, which will undoubtedly have a very serious influence upon the internal situation, upon the international reputation of the country and upon its commercial and economic relations with the rest of the world.

I have in previous despatches brought to the attention of the Department the fact that one aspect of the anti-Semitic movement has been the removal from the courts and from the judicial administration, from the Supreme Court at Leipzig to the lowest courts, of all judges and of all judicial officers who are Jews or who cannot show a clear Aryan background as far as the grandparents. While about two-thirds of the Jewish lawyers in the country have been re-admitted to the

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practice of the law, the general public sentiment is such and the apparent psychology of the courts so far manifested such, that it is not likely that any business can be entrusted to Jewish lawyers which will have to come before the courts. The business of the re-admitted Jewish lawyers will largely be in the nature of office work and in a consulting capacity. The regulations which have been made under the new laws and under the newly organized law associations and by the universities and higher schools are such that no person of Jewish origin, except in a few exceptional cases, can hope in the future to be admitted to the practice of law. The National-Socialist Government has therefore practically arrived at what it has called the cleaning out of the courts and the freeing them of all Jewish influence.

What is more significant, however, is that the Ministers of Justice in the various States, including Prussia, in their frequent declarations to the press are constantly emphasizing what they call the previous domination of the courts and of judicial procedure and principle by a Jewish attitude. They emphasize that in their opinion the general judicial procedure and the principles of law which have controlled in Germany, have been un-German and that they are going to put into effect a new system of legal procedure and a new set of legal principles. As late as July 26, the Reichskommissar of the Ministry of Justice, Dr. Frank, in an address which he made in Munich, made declarations which cannot but be disturbing. He said that he hoped

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that by November a new criminal code would be ready which would really represent the needs of the German people, and that later in the year there would follow the new corporation law. In fact, in his speech he indicated that now that the reorganization of the courts themselves had taken place, the reorganization of the entire system of German jurisprudence is about to begin. To anyone who is familiar with what has recently been happening in Germany, these declarations can only be exceedingly disquieting.

As of particular interest I may quote the following translation of a section of his speech:

"Finally, I may assure you that the administration of justice is definitely occupying itself with the question of the legal status of the press and that the National-Socialist Government is interested in the freedom of the press and its expression. This freedom of the press is entirely in accord with the National-Socialist aims. A German only develops and can only develop in freedom. That we should have won this freedom through our struggle is a service of which National-Socialism may be proud. "

When one considers, as I have already informed the Department, that the press, the radio, the theatre and all public opinion forming means in Germany are under the absolute control of the Ministry of Propaganda and Public Enlightenment, that is of the National-Socialist party, and that there is no such thing as freedom of the press, the hollowness and the patent insincerity of such statements is apparent. Any newspaper or publication in Germany which attempts to publish anything which is not in entire accord with

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the views of the present Government and the National-Socialist party, is suppressed and the editors placed in prison. On every newspaper or publication there are representatives of the Government or of the party who absolutely control the news and the color which is given to it. For the man who is the real head of the Ministry of Justice of the Reich to speak therefore of the freedom of the press as one of the achievements of the National-Socialist Government, is inconceivable to an objective observer. For him to say that the German can only develop in freedom is in reality to say that under existing circumstances no German has any chance to live, for individual freedom is practically entirely suppressed. What is more particularly significant, however, is that a statement as that above quoted, which is so blatantly false and misleading, should have been made by the man who will sit as the last person to revise the new German criminal code and the civil and corporation codes, which are now in preparation.

So much has been said in the last months with regard to the new codes and to the new life which they will give to German judicial procedure, that the actual situation in the judicial procedure becomes of special importance as an index of the future. The fact is that the object of the reorganization of the courts and of the new codes to be issued is the so-called coordination of the courts with the National-Socialist Government.

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The courts like every other element of German life are to be made a part of the National-Socialist political system. It can only mean that there will be a special right for those who come under the protection of the party, and that the interests of those who do not have the protection of the party will have no adequate protection in the courts. It means a revolution in the German judicial system and the placing into effect of principles which would be considered abhorrent in other civilized countries. It is necessary to speak of it in this frank manner in order that the true situation be understood.

The Department is aware from previous despatches that the right of "habeus corpus" has long been suspended. The number of persons imprisoned and in concentration camps who have been deprived of their liberty without due process of law, has been estimated anywhere from 16,000 to 80,000. It is impossible to secure a definite figure. No attempt is being made to bring these persons before a tribunal and there is no way to get their release from prison or concentration camps, except through the good will or the special grace of the party. Men are placed in prisons or in concentration camps merely because they are personally distasteful to some members of the party; because their political activity is feared; because they have been occupying an important position in the professional or business fields which is envied by a competitor;

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because they have been denounced as having made some insignificant remark which has been turned into high treason. It is enough to say that it is sufficient for a person to be in somebody else's way to put him into a concentration camp or in prison. To my personal knowledge, the head of one of Germany's great business enterprises has been in a concentration camp for three months. A pretense at judicial proceedings against him had been made, but the courts had to dismiss them as no evidence could be found. Nevertheless he remains in one of the worst concentration camps in the country. Before this situation the judicial system in Germany is at present prostrate and has no effect.

Probably the most disturbing feature of the situation is that the S.A. men who represent the armed force of the National-Socialist party, are obviously considered as above and beyond the law. It is significant to observe that so far as it has been possible to learn not a single S.A. man has been brought before the courts for the outrages which they have committed against the personal liberty and persons of German citizens and of foreigners in the country. I have in my despatch No. 1454 of July 26, 1933, brought to the attention of The Department the fact that in the cases of the attacks upon American citizens since March 5, 1933, in only one instance have the police arrested the S.A. men involved, and in that

case



case they were not brought before the courts, but were excluded from the party and from the S.A. On the other hand, in every instance in which an S.A. man has been injured in the many conflicts which have taken place since the 5th of March, the so-called attackers of the S.A. men have been promptly brought before the courts or the special tribunals and have been given the severest punishments which the law permits. In this connection it is also particularly interesting to note that our Consul in Breslau has reported that on the desk of the Police President of Breslau there is a photograph of the five S.A. men who before March 5 murdered in cold blood a German citizen. They were condemned to death and on the accession of the National-Socialist party were pardoned. The police throughout Germany, which are in fact a very splendid and well-trained body of men, have been and are powerless before the S.A., and while they in a few special cases have arrested S.A. men, in most cases they refuse to interfere, knowing that their position in the police force is in danger.

There is therefore in reality already in Germany a dual system of justice, which up to the present has no basis in law or judicial procedure. There is one law for those who are the so-called enemies of the National-Socialist regime, and there is another for its adherents. It is much to be feared that the new codes which have been so long and so loudly heralded as being in preparation, will give a legal

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basis for this discriminatory treatment before the law, of German citizens.

There have recently been cases of the death penalty being passed upon and inflicted on German citizens accused of being responsible for the death of S.A. men. From the information which is available it is reasonable to believe that in many of these cases these persons on whom the death penalty has been inflicted were simply defending themselves against unprovoked attacks on them by S.A. men, in other words acting in pure self-defense. This has not prevented a regularly organized judicial tribunal from passing the death sentence several times over against the same individual.

In my strictly confidential despatch No. 1454 already referred to, in which I reported to the Department the unprovoked attack on Mr. Philip Zuckerman, an American citizen, I had the opportunity to point specifically to the difficulties which there are in getting action against S.A. men. The police in the city of Leipzig have shown a willingness to find the offenders, and probably can do so, but up to the present they have not done so. They will not take the usual energetic and effective steps which they can take until they have been informed by the S.A. higher leadership in the Leipzig district that they can proceed. I need not say that in this particular case we shall insist that the attackers be found and brought before the proper tribunal, and to this end I have had

conversations



conversations with the Acting Minister of Justice of the Reich and with the Acting Ministers of the Interior for the Reich and for Prussia. The memoranda covering these conversations are transmitted with my despatch No. 1454 and are of particular interest in connection with the subject of this despatch. The Department will note from these conversations that these higher authorities of the Government who are also important in the party organization, recognize the necessity for a changed attitude towards S.A. men. I am confidentially informed that at a meeting which took place in Berlin last Saturday, Minister Goering stated that a general pardon would have to be issued by law for the offenses of S.A. men up to date, but that hereafter for the sake of party discipline and the good reputation of Germany it would be necessary that S.A. men be brought before the courts in the same manner as other offenders. These are brave words and I have no doubt that they represent the attitude of the Minister and of the higher leadership of the Government and of the party. Whether, however, they are as yet able to carry out such an order, is a question which <sup>can</sup> only be determined by acts, and we as yet have none of these on which to base a judgment. That it is a step which will have to be taken is apparent, but it is equally apparent that it has not yet been taken in practice.

If this double legal system in criminal and  
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political cases is apparent, it is apparent also in the economic field, but not so much so. As a typical case may be pointed out the case of the Lahusen brothers in Bremen. These two brothers were arrested before March 5 as being responsible for the famous Nordwolle firm in Bremen going into bankruptcy, which involved tremendous losses in Germany and in other countries. The Lahusen brothers are members of the National-Socialist party. After March 5 they were placed at liberty, and then there began to appear in the newspapers accounts to the effect that they had been persecuted because they were members of the National-Socialist party. The result of these articles was so disturbing in the business world that it was necessary for the party to issue a statement which appeared in the press all over Germany, that the Lahusen brothers had been re-arrested and placed in prison on the ground of attempting to bring about public disturbances for private acts. It cannot, however, be denied that the civil courts, which have to deal with business cases, are ~~as~~ just as much under the influence of the National-Socialist Government as the other tribunals. In a decision of the German Supreme Court of November 15, 1932, which will be reported upon in another despatch, the court stated that unfair competition had been practiced by a certain German firm and laid down in the decision certain general principles in accordance

with



with the practice in other countries in this connection. In a decision in a similar case of the Federal Supreme Court on March 10, 1933, the previous decision was quoted as being no longer applicable as a new set of circumstances had arisen. It is quite clear from this decision that the Supreme Court was influenced by the National-Socialist Government and its then attitude towards foreign firms and goods. The situation in the German civil courts is frankly such at this time that any foreign firm which has a matter pending in the courts, has reason to fear that the case will not be judged on its merits. This is having a very real effect on American and British and other foreign firms which have had long standing connections with German firms. They hesitate to enter into any contracts or into any engagements which might come before a German court for adjudication. They fear, and from what is actually happening have reason to fear that purely commercial cases in which foreigners are involved, will not be judged by the court on the basis of the law and the evidence, but on the basis of the highly nationalistic prejudices and ideas which prevail. This can in the long run only be exceedingly dangerous to Germany's economic interests. It is unnecessary to add that similarly within the country German business men fear that party prejudice will show itself in the decisions in purely business cases. A firm with strong party affiliations does not  
hesitate

hesitate to use them in connection with a legal proceeding.

The extreme limits to which the disregard of personal liberty is carried was shown recently in the arrest of five relatives of Mr. Philip Scheidemann. Mr. Scheidemann, the well-known Socialist leader, was in the United States and published an article in the "New York Times" to which the Government and the party took exception. The State Secret Police, therefore, on July 13 arrested five of Mr. Scheidemann's nearest relatives in Germany as a retaliatory measure and placed them in a concentration camp where, so far as it is possible to determine at this moment, they still are. These relatives had committed no offense against the German law and were deprived of their liberty merely as a threat to other Germans outside of the country that similar measures would be taken against their relatives in the country if they wrote with any frankness and accuracy regarding the situation in Germany. The Department is aware also of the case of former Oberbürgermeister Dr. Adenauer of Cologne, who is one of Germany's most distinguished citizens of the days prior to March 5, 1933. He on several occasions could have been Chancellor of the Reich. Dr. Adenauer is now in a monastery in the vicinity of Cologne and if he should issue from there, would be arrested. According to the "Berliner Tageblatt" of July 11, 1933, an endeavor was being made by the Government to bring

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about the arrest of Dr. Adenauer on the ground of high treason. To those who know him and his fine character and his devotion to Germany and her interests, it is inconceivable that he should be guilty of such a charge as high treason; and it is a sad commentary on the German judicial system that there is even the possibility of such proceedings being started against a man who has rendered such services to his country.

There is a great deal more which could be said in this despatch concerning the practical inability of the present German judicial system from acting on those principles on which it proceeded prior to March 5, 1933, and which principles were and are those which prevail in other civilized countries. It is necessary in judging the German situation to recognize clearly that there is for the present a double system of justice, one for those within the party and one for those without it; one for German interests according to the National-Socialist standards and one for so-called non-German interests according to their standards. The eventual effects on German life and on German relations with other countries of such a system need not be gone into as they are so obvious. The effect on German commerce, internal and external, is equally clear. That the present discriminatory practice may be perpetuated in the new codes under preparation, is as disquieting an element for the long outlook as any in the German situation.

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Although the impression given by this despatch that the German judicial system has broken down for the time being is, I believe, the only correct <sup>one</sup> ~~thing~~ which an objective observer can have, I should like nevertheless to state that there are among the judges and the officials of the judiciary those who are by no means happy with this state of affairs. They recognize all the implications and all the dangers and would like nothing better than to do their duty. These, however, are for the time being prostrate before the general movement and are utterly powerless. They have to be silent and to confine themselves to the status quo, for otherwise their positions would immediately be gone. It is not improbable that there still remains a sufficient number of judges and officials of the courts who would be able to carry on in the old way if they had an opportunity, but circumstances are constantly decreasing this number.

Respectfully yours,

George S. Messersmith,  
American Consul General.

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