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1590 AMERICAN CONSULATE GENERAL

Berlin, Germany, September 16, 1933.

SUBJECT: Transmitting memorandum of conversation with Staatssekretaer Dr. Preisler of the Prussian Ministry of Justice, with respect to the attitude of the courts in cases involving Americans.

THE HONORABLE

THE SECRETARY OF STATE

WASHINGTON.

SIR:

I have the honor to refer to my confidential despatch No. 1463 of July 28, 1933, in which I brought to the attention of the Department certain considerations of importance in connection with the administration of justice in Germany, and also to my despatch No. 1515 of August 18 in which I presented concrete evidence of the discriminatory action of the courts in the cases of Walter Orloff, Oskar Yoost and Torsten T. Johnson..

The Department is aware from these despatches and from other reports of this Consulate General that a charge of high treason was brought against Orloff on the basis of mere denunciation; that Torsten T. Johnson was given a six months' sentence for an alleged derogatory remark concerning the Chancellor although the evidence was exceedingly slender; but that on the other hand a German who also happened to be a National-Socialist and a non-Jew, was given a fine of fifty marks

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by a Berlin court for twice having assaulted and seriously injured an American, named Fuhs, who happened to be a Jew.

In my despatch No. 1520 of August 21 reporting the attack on Dr. Mulvihill on Unter den Linden in Berlin, I brought out that the S.A. man who had attacked Dr. Mulvihill had been arrested with unusual promptness by the authorities.

Since that time, however, the Consulate General has received no news as to when this S.A. man will be tried or if he will be tried. If an S.A. man is attacked or in any way molested, his offenders are brought to trial at once and given very severe sentences. As in the case of Mr. Yoost, who attacked the American, Fuhs, his trial did not take place for months after the attack, and the court proceedings were a travesty of justice as reported in my despatch No. 1515, I thought it advisable in order to prevent a repetition of such an incident which our Government might have to take notice of, to call upon Staatssekretaer Dr. Freisler, who is the active head of the Prussian Ministry of Justice. I called on him on September 13 and have to transmit herewith a memorandum covering my conversation with him. I should state in this connection that Dr. Freisler has shown himself to be most interested and most understanding of the etire situation and willing to take active measures. It was he who was of considerable assistance in making possible the stoppage of the proceedings for high treason

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against Walter Orloff, and arranging for his deportation. It was through him that we were able to get a rapid pardon for the seaman, Torsten T. Johnson, who had been condemned to six months' imprisonment in Stettin. I believed it advisable that he should know what had actually happened in the Berlin court which comes under his jurisdiction and which had tried in such a farcial manner Yoost for his attack on Fuhs. I detailed to Dr. Freisler the Yoost trial along the lines of Mr. Geist's report transmitted with my despatch No. 1515 of August 18. He expressed regret, but I gathered that he was not surprised that such an incident could take place in a court. He assured me that he would immeddately go into the matter although the sentence could no longer be changed, and I gathered the distinct impression that the judge and the assessors who formed the court during the Yoost trial, would be called to account by the Prussian Ministry.

I informed Dr. Freisler that I was particularly interested also in bringing the farcial trial of Yoost to his attention as in the Mulvihill case an S.A. had been arrested, in this instance very promptly by the police, but that so far we had no information as to when he would be tried. I said that it would be extremely unfortunate if the trial of this S.A. man should be a repetition of the farcial Yoost trial, to which he agreed. I said that if this S.A. man were ~~k~~off as ~~easily~~ light and the proceedings were conducted in a manner similar to the Yoost trial, the Consulate General would have to report the facts minutely to the Department of State, which I believe under the circumstances would

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not be able to ignore such proceedings and would be under the necessity of making representations of a formal character through the Embassy. Dr. Freisler stated that under no circumstances must a repetition of the Yoost trial come about and that he would immediately take the necessary steps to inform himself with regard to what had already been done about the trial of the S.A. man in the Mulvihill case.

Dr. Freisler expressed appreciation of my having brought this to his attention and in my presence instructed Dr. von Hake, his personal Referent, to immediately prepare the draft for a general order to all the prosecuting attorneys in Prussia, to the effect that immediately when any person is accused of having attacked a foreigner, the prosecuting attorney must bring the case to the attention of the head of the Ministry of Justice. Dr. Freisler stated that such an order would beissued very shortly as he wished himself to see that such cases of attacks on foreigners were properly punished.

I also took the opportunity, although this isnot mentioned in the memorandum which accompanies this despatch, of calling Dr. Freisler's attention to the fact that so far as the Consulate General knows no action has been taken against the two policemen who witnessed the attack on Mr. Bossard, an American, reported in my despatch No. 1565 of September 2. I pointed out that we

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had informed the police of the time and place when this attack took place so that it was easily possible for the Police Presidium to have determined what two officers had been on duty at the particular spot and failed to give Mr. Bossard protection when he was attacked by a group of Hitlerjugend. I said that I realised that it was not within his competence to take up this case, but that he must appreciate the effect on public opinion in the United States of the failure of a police officer to give protection to a person subjected to an unprovoked assault on the streets of Berlin. I said that I did not know whether they had committed a crime which would come within the competence of the Prussian courts, but that they had undoubtedly been guilty of a breach of discipline and of duty, but that obviously no action had been taken, and that this must be borne in mind in connection with the general consideration which our Government had to give to these attacks on American citizens.

I went into these matters at this length with Dr. Fréäsler as I have found that he has an understanding of the importance of these matters; and as he is powerful in party circles I have considered it useful to discuss these cases with him at length. The action which he has taken already has been very helpful in improving the situation so far as action by any one individual in so important a general situation as that prevailing in Germany can be helpful.

Respectfully yours,

George S. Messersmith,
American Consul General.

Enclosure:

Copy of memorandum.

310/800 GSM:HP

A true copy of the signed original.