

August 22, 1945.

Some general observations.

- (1) To date the main problem is de-nazification. But very soon it will be found out that the men with a clear anti-Nazi record are by no means those most qualified for the administrative-technical job.
- (2) At the present the military government and the Group CC have to operate with oversimplifications (example: ~~all~~ the Germans are sadistic; the Germans are subservient; the Germans wait until they are told. Very soon the time will come when oversimplifications will have to be discarded in favor of genuine analysis and well balanced value judgment. Will it be possible to get rid of ingrained oversimplifications?
- (3) There is a quaint mixture between being glib and being suspicious. They are glib in most external matters (no good plumbing) but they are suspicious in all major matters (the Germans would immediately remilitarize, the Germans would follow a new Hitler)
- (4) One of the main organizational problems is the fact that many officers are commanded to do the job, only a minority shows real enthusiasm.
- (5) The staff is inordinately expanded. We are falling over each other feet. Few are fully employed. People are set to work on problems of which they have not the slightest idea and very little professional qualification. (Example: Stephens has to deal with the immensely difficult and explosive problem of what to do with the army officers.)
- (6) We on the middle level know nothing of what is going on on the top level. This does not mean that there is no policy we have no means for determining it. But we should know more of the over-all picture in order to adjust our day-to-day jobs to it.
- (7) My impression is that we badly underestimate the vitality and zest for life of the German people. If they were left alone they would rebuild with amazing speed and efficiency. Of course that could not be permitted because while rebuilding their civilian plant they would reconstruct their folkish pride and the war were fought in vain. But I see no practical solution except constant control. But nobody really thinks that we are going to stay here forever.
- (8) The main difficulty in my section is that the people although well-intentioned and well meaning, generalize too much along the lines of what is done in the United States. Federalism over there and here mean two entirely different things. There is also a lot of anti-New Deal slogans that centralization means tyranny.
- (9) The more I read ~~all~~ in the material on German law brought out by Shear or the British or USFET the more I feel that the job is done.

Some general points

(1) To take the process of justification, But the man with a clean conscience - Vapi
record are by no means always the most justified

competently only from the technical viewpoint, wholly neglecting sociological and psychological aspects. The new criminal procedure code for example which is printed to date only in German, is a retrogression behind 1933 even though it deals with the denazification problem competently. But it does not matter too much since the Germans will modify it anyway the first moment they are at liberty to do it.

(9) I am reading the economic set-up for the Länder. Very interesting and, on the whole, well- done. But does anyone in his senses really think that ~~one~~ one can split up Germany into a few Länder without regrouping it completely?

(10) I am pleased to learn that in the manpower division there are trade union men (CIO and AF of L). This means that if they are able to learn, the job will be handled with sense.

(10) They are trying to knock out the Nazi laws (process of denazification. But at the same time they wish to reestablish individual rights. How is it possible to maintain emergency conditions and simultaneously reestablish equality before the law?

August 23, 1945.

(1) The people in the Civilian administration section are about to draft directives (Richtlinien) to be sent to the governments of the Länder according to which each land is to reestablish its Gemeindefverfassung according to Landesrecht . No objection except that the Bavarians will make this an instrument of party control which no American supervision will be able to prevent.

(2) If the same technique is applied to the Civil Service we will have competing systems of public officials which will offer competing conditions to their employees. This measure would endanger the unity of Germany even more than any other. I do not know how to interpret this situation to the people of the lagl division since they know nothing at all of conditions of pre- Hitler Germany. They are well informed about what Hitler has done (although in a somewhat stereotyped and oversimplified fashion) but their lack of knowledge of the Weimar republic and German historical developments is simply appalling

(3) De- Nazification: The moment you de- nazify too much one touches the existence of the Weimar constitution. This problem should be approached with extreme care since the constitution is unworkable while , on the other hand, an outright repeal of the constitution by the occupation authorities would be an ill-advised, psychologically unfortunate move. The problem needs a good deal of caution and investigation.

(4) The problem of de- nazification of personnel:

for the time being it is alright to throw out all Nazis or those in the mandatory arrest categories. In the long run it will be impossible to operate on such a mechanical basis. The non- employment of Nazis will occur in all professions, and guidance should be given

by somewhat more elastic directives, how to handle this problem.

(5) There is also the question of equality before the law and the promise that no discrimination for political reasons is further permissible, as in the Potsdam agreement. How is this to be reconciled with the continued- and necessary discrimination against former Nazis? What about the freedom of political organization if only pro- democratic parties are permitted?

(6) The question of eligibility turns up in the elections for the shop stewards. The same problem will turn up in all elective offices. Solution: let Nazis be voters, but not candidates for office and make their acceptance of office if elected impossible

we have , therefore two related problems:

(a) readmission of former Nazis to civilian life which will become indispensable since the few democrats cannot run the country.

(b) non- admissibility of certain categories of Nazis for public office and particularly for elective office.

this may turn on the question: Are there good nazis and bad Nazis. I find among many Germans the contention that a man has joined the party mainly for opportunism or professional considerations and has not been active in it. Is this a good distinguishing factor?

August 25, 1945.

Judge Madden listens to a short lecture of mine concerning the Weimar constitution. He seems impressed by the fact that individual rights are not protected absolutely but only relatively that is "within the limits of the ordinary law". I am trying to convey to him the idea that the Potsdam agreement contains a number of inconsistencies, namely one that Germany shall enjoy freedom of speech, press etc while it is denazified. Now denazification is nothing which can be done right now or which would cease after some time. It is a permanent process of vigilance. Hence, there must be a clause to be inserted into all elective laws to the effect that anti- democratic parties and programs are not admissible. He wants me to make a rough draft of this idea. I could never sell this to any Americans because they believe that freedom of speech etc are absolutes, not accessible to any limitations. I think I have lived and worked the last ten years in vain.

Interesting incident. I was just talking with Brabner Smith about the intended repeal of the Erbgesundheitsgesetz. I am strongly in favor of preserving it, perhaps after wiping out some discriminatory parts against the Jews. Brabner Smith had been over to see the medical authorities who held the law 100% sound and had found no abuses. At this moment Col. Bradford came in took us over to Fahy and Fahy seemed very angry that the law had not been repealed since he had approved Cpt. Finley's recommendation to that effect some weeks ago in Höchst. I made the observation that the law had been accepted in Conn and that, if marriages without medical license would be permitted, vene-

diseases would bring about many cripples a few years hence. But it made no impression on him. Reason: The church was against this and similar laws from the start. We are not reckoning with the imponderables and a perfectionist like myself is always at a loss to realize that things just are not done on a rational basis.

Record of operations. -1-

Tuesday, August 7, 1945

Left Hrodsk a. Muir for Berlin at 10³⁰

by plane

arrived Berlin, Tempelhof 12²⁰

to H.G. Zellerbach by car

Registration, Belasting

No work.

Wednesday, August 8, 1945

Office: 9²⁰.

With Judge Wadden and Johnson in town for
interviews people. Received assignment for Landel
afternoon: Cities from Feltz.

↓ Recd report on Landel cities

Participation in interrogation of candidates

for R. Ministry of Justice

Left office 5⁵⁰

Evening: visited house in Gollum with Col.
Kressenich

Thursday, August 9, 1945

Office: 8³⁰ Study of basic documents

Conf. with Col. Zellerbach Smith on report of
Kriegsministerium

afternoon: Participation in interrogation of candidates
for Ministry of Justice

Conf. with Dr. Ruge (German lawyer) about
Kriegsgericht.

August 9th (cont'd) Study of settlement laws
8³⁰ stop conference.

Friday, August 10, 1945

Office 8⁴⁵

To A. A. (Johann) Nicholas) via Col.

Robert Smith: re: report of Kriegswaffen

1st Corp. with 2 Colonels (one Col. Fisher,
and R. A. Jekuboff on same problem.

return to office at 12¹⁰

afternoon: research on agricultural reform laws

evening: with James P. Lorch, Maj. Evans & Col. Jensen
at P. Lorch's house near Ely St. 82.

Saturday, August 11, 1945

Office 9⁰⁰ Routine matters

with Robert Smith at Bismarck Hotel

Conference with Dr. Emil Lange on subject of Krieg-
swaffen document. return to H. G. 1¹⁵

2⁰⁰ Work on J. C. 1067.

Conference to Ministry of Justice Section

work on J. C. 1067

left office 5⁴⁵

Sunday, August 13, 1945

Office 8³⁵

Conf. with J. Lorch about East German.

Monday, August 13, 1945 (contd.)

Transfer moves to Technical Branch
discussion with J. P. M. Allen & F. J. about
my activities. I told him if I make letter
to which branch I am assigned. I explained
that we should go down to the level of technical
operations in order to have how things are
actually done.

It is agreed that I remain in R. H. of Instrn
branch
current matters.

Beginning to type draft on agricultural reform
land with Malles & J. J. J. J.
I met with Col. McCloskey (Civil Administration
branch). He wishes me to participate in the setting up
of administrative courts. I decided that a central
advisory board would be of service with the
administration. He suggested that I should
discuss present administration, but rather
to include, as had been 1062, advisory administration.
I said that the two aspects are inseparable.

I met with Col. McCloskey: Proposed that I write
a program of my plans
for agricultural reform.
Inconveniently I participate in the transcription
of parole guidelines for R. H. of Instrn

Left office 6:30

Tuesday, August 14, 1945.

office 8:30

work on current material
work on agricultural reform program

conference with Lt. Col. Seydel on the reopening of administrative courts
lunch with Col. Seydel

1.30 With Col. McComsey and Lt. Col. H. Davies of the Civil Administra-
tion section to British Group CC headquarters. Conference with Col Rathbone

and Major Graveson on the Reichsverwaltungsgericht. The British have taken the building on the Hardenbergstrasse under their supervision. They have asked the President a number of organizational questions,

we agreed that the reopening of the court for legal operations is by no means urgent and should be postponed until the problem of decentralization or the maintenance of the central structure has been decided on. The British seem efficient and well informed, both officers are barristers.

Visit with Major Graveson in the building on the Hardenbergstrasse which, with exception of some damage on the roof, seems relatively well preserved. It is suggested to place Capt. Biel in the building as the American operating officer for the control of the technical rehabilitation.

returned 4.30.

wrote memo on the arrest of Carl Schmitt-work on agricultural reform program.

left office at 6.00.

Wednesday, August 15, 1945.

Office 8.30

work on agricultural reform memo.

visit with Col. McMemdon in Col. Wilsons (Chamberlains) office (Public Safety officer) tried in vain to get procedure in motion to have Carl Schmitt arrested. Nobody seems interested to assume jurisdiction. One bureau refers to another.

Various efforts to reach Col. Foersterling in this matter.

after noon: finished work on agricultural reform memo.

Started work on memo to Fahy on general aspects of the Legal Division.

left office 6.30.

evening at home

Thursday, August 16, 1945.

office 8.30

finished work on memo to Fahy on general matters.

Ct. Col. Hotchkiss brings a memo for Fahy press conference wrote 2 pages on Weimar legal system, changes by Nazis and presents situation.

afternoon: went over to Public Safety Division, 20 Bolzmannstrasse in order to get Carl Schmitt arrested. Found little interest. Talk with Cpt. Hess (seemingly former German, well informed)

Major Wynie (?), uninterested. "He will go into the matter and if

Schmitt appear to make trouble for the occupation" we will arrest him for you;" I countered "You need not arrest him for me, but for the de-nazification of Germany"

3.30 - 6.00 Conference with Fahy, Phleger, Madden, Bradford, McLendon

Major White, Col. Finlay and Major Oppenheimer from Sheaf on (a) organization of judicial administration (decision: no Reich Ministry of Justice, but administration through president of

of Obelandesgericht.

(b) introduction by military Government law of a new criminal procedure code which Oppenheimer and the British have elaborated. the latter is a streamlined version of the code existing before Hitler, with abolition of the Eröffnungsbeschluss. Judge Madden believes that it is not our business to give the Germans a better criminal code, they should go back to what they had in 1933. Oppenheimer argues, with a good deal of sense, that the system of 1933 was too costly and cumbersome for the restricted conditions prevailing now. I reserved judgement until I had studied the code.

left office 6.10

evening' visit from Cpt. Biel

Fri day, August 17, 1945.

official holiday because of V-J- day
breakfast with Raasch and two Britishers of the Japanese Intelligence section (Mitchell, Lt Comm).

office 9.30 work on current matters.

afternoon: excursion to Brandenburger Tor

evening: discussion with H. Heneman about general situation.

Saturday, August 18, 1945

office 9.00

9.30 - 1.00

Conference with Fahy, Madden Phleger, Oppenheimer, Finlay, White, Bradford, McLendon: policies concerning

(1) introduction of a criminal procedure code. The project is draft in German and distributed by the British in the British zone as the law to be applied in their zone. It was discussed whether we should go back to 1933 and say that the Germans should apply the law as it existed at that time, disregarding the Nazi legislation. This is basically Judge Madden's opinion. Oppenheimer and I disagree since 1933 the social structure of Germany has been changed, to revert to the old law would deprive the Germans of many reasonable and progressive laws introduced by the Nazis. This led to the problem of denazification in general: it was suggested by Oppenheimer Finlay that a priority list of denazification should be set up and acted upon. It would seem impossible to rewrite their entire legislation while it would be equally inopportune to strike out the entire law since 1933. No definite conclusion was arrived at. Incidentally it was discussed that no duplication of the work of USFET and Group CC should occur.

A number of problems require submission to four powers council; we should not act on our own without trying to achieve a uniform policy for all Germany. I contended that different legal systems for the different zones would economically and politically be unbearable.

Other problems discussed: power of German courts to deal with violations of curfew and identity regulations. Madden believed that German courts would be reluctant to apply these regulations, I countered that Germans are used to such military restrictions and that the courts would, at least for the time being, apply the laws of this nature faithfully and not evasively.

Other problems: relaxation of mandatory arrest categories. Death sentences. Submission of all or certain types of cases and judgments

to USFet or GCC for revision or at least notification in order to check on the German courts.

The Bavarian problem: Hogner proposed as minister of justice of Bavaria. The Bavarian clerical government seems to have gone farther than other zones in the reestablishment of their own state system.

lunch with Fahy, Madden Finaly, Oppenheimer.

2.00- 3.15' discussion with Oppenheimer on current problems I contend that the objective of the occupation should be to reintegrate "western and Southern Germany into the Western world, Eastern Germany is lost anyway.

work on current matters. memo ~~drafted~~ ~~on~~ ~~the~~ ~~subject~~ ~~of~~ ~~the~~ ~~equalization~~ ~~of~~ ~~war~~ ~~damages~~ ~~ordnance~~ ~~of~~ ~~Berlin~~ ~~Magistrat~~.

Sunday, August 19, 1945.

office 12. 45 to 4.00 on private matters.

Monday, August 20, 1945.

office 8.30 finished memo on equalization fund tax.

wrote memo on Finaly's (USFETs) memo on denazification.

tried to reach Cpt. Paulsen, legal officer of Food and Agriculture after lunch on large landed estates.

conference with Cpt. Paulsen on (1) hereditary farms; large landed estates (2) Whermacht land to be reclaimed. No statistic or operational data are available. Major Wickens of USFET the only person who has such material has not yet written it up, but has been requested to do so. Paulsen agrees with me that no legislation can be made unless on the basis of factual material. In our zone there are few oversized estates, the only one which he knows of is that of the Hohenzollern in Württemberg. He recommends to speak with Major Graveson of the British unit who made a study. He wishes to abolish the hereditary farm act. He proposes to charge food and agriculture division with the task to submit within six weeks a factual study on all three problems, with recommendation for the legal division what to do. At the present time we are operating in the dark because of the absence of facts and data.

Legal Division has made a draft for the reclamation of the Whermacht land by way of a military government law. He feels that this law does not divest title from the Reich, only transfers such land to the Länder. Moreover, no law is required since the authorities may deal with the situation by simple instructions. At the present time no such land is out of cultivation since the local authorities have given it to farmers for use or even matters have seized it. The problem is by no means urgent.

We agreed to remain in touch. He send statistical data in landwirtschaftliche Statistik 1939/40, zusammengestellt vom Verwaltungsamt des Reichsbauernführers.

wrote memo for Fahy on foregoing situation.

study of agricultural statistics according to Landwirtschaftliche Statistik 1939/40, nach amtlichen Quellen zusammengestellt vom Verwaltungsamt des Reichsbauernführers.

These statistical data were investigated under the viewpoint of entials (Fideikomisse), oversized estates, Erbhöfe.

conference with Judge Madden about future work.
he disagrees on the Erbhofirage (which, to my mind, is wholly non-urgent)

left office 6.10

went to bed at 8.00 sick with fever (bad cold).

Tuesday, August 21, 1945.

office 8.50.

brief memo to Madden on proposed CC law on the wearing of uniforms
finished memo on policy of denazification for Fahy.

began work on Rechtsanwaltsordnung
conference with Cpt. Riemer, Manpower division, on the reorganization of labor law and labor courts. proposed to send out questionnaire to those trade unions officials which have been reinstated concerning the requirements of labor courts. For the time being wages and hours are excluded from trade union activities. elections for shop stewards are in progress, Nazis re forbidden to be candidates. (sensible provision which however, will not prevent infiltration of Nazis into the trade unions).

afternoon conference with Major Mautz about officials for Reich Ministry of Justice.

study of economic set up of Germany which is actually an administrative decentralization.

work on plan to trip to Hamburg.

Conference with Stephens of the Legal Division about what to do with German general staff officers and other officers to be considered potentially dangerous for the rebuilding of the German war machine. I read a statement according to which certain categories are to be placed under strict surveillance for an indefinite period, with restrictions on movement, occupation, ineligibility for appointive and elective offices etc. The plan seems to me wholly unworkable because no surveillance will prevent plotting if plotted is desired. The only solution is the breaking up of the German war potential by complete disarmament and keeping Germany permanently disarmed. Whether this can be accomplished technically I do not know.

wrote short memo for Madden on wearing of uniforms by demobilized Germans.

studied Reichsrechtsanwaltsordnung of 1936 and wrote brief comments.

left office 6.00

cocktails with members of the legal staff.

evening at Baldness (Sarre, Miss Virchow, Dr Veit, Dr. Schulz-Henke.

Wednesday, August 22, 1945.

office 8.55.

rewrote memo on wearing of uniforms.

conference with Geniz Guradze of the Manpower division.

discussion of the opening of labor courts .
I recommend (a) repealing the law on the organization of national labor of October 1, 1934. (b) establishing of local labor courts, and of labor courts of appeal in connection with the Oberlandesgerichte (not the Landgerichte) for reasons of saving manpower.
conference with Drabner Smith on denazification.
preparation of trip to Hamburg.

reading of current material (particularly on the economic structure of the American zone which seems rather well advanced.)

but the opportunity to regroup the Reich along non- historical that is non dynastic lines, is again being missed. Example: confusion existing in "essen and Hessen Nassau. It would have been much better to resort to a radical measure of Zusammenlegung: Hesse right of the Rhine, Frankfurt, Hessen Nassau including Kassel and the Southern part of the Rheinprovinz including Wiesbaden should be treated as one land, Württemberg and Baden should be merged, from Bavaria Main Franconia should be cut off and given to Frankfurt. The duplication of effort (organization through new districts of the occupation on the one hand, traditional set-up on the other) complicates the situation. The old system will inevitably win.

left office 6.00

Thursday, August 23, 1945.

trying to discover " leads" for names to be suitable for office from various sources (material sent over by Tempner, from "Aufbau and other material in the files)

at request of Judge Madden: organized (at least I hope I organized) a check-up on existing translations of German laws, It is found that numerous laws which we need in the legal division exist already in translation in other divisions.

began, at request of Madden , to check existing selection of Justice ministry personnel

lunch with van Wagoner (former instructor at Yale): of Internal Administration Division. They are working on the Gemeindeordnung, in the following way: they establish Richtlinien (directives) to be sent to the ministries of the Interior of the States which thereafter are authorized to work out their own laws. (a revival of the Richtlinien gesetzgebung of the Weimar republic, a rather dangerous technique since we are unable to control the abuse, by the governments of the Länder, of what they understand by, or interpret into, our Richtlinien.

another illustration of the wholesale confusion which exists in Group CC. USFET proposes to write or rewrite this law, in the meantime it is done by another agency.

abstracted leads for possible candidates from various Prisoner of sources. Not very much found.

Drove to British Group CC in order to obtain material from Major Graveson, did not meet him, left note. Return at 4. 45.

at request of Judge Madden went over recommendations worked up by Mr. Dickmann.

Madden instructs me to go over to the Civilian Administration section and to find out what they are doing concerning local government and civil service.

continued search for leads in the material of Prisoners of War
on legal personnel in Northern Germany.

various discussion with Brabner Smith on denazification.

the entire thing is done with so much amateurishness that
the project seems rather discouraging. The difficulty
is that the moment one touches on constitutional provisions
one must per force revive the Weimar constitution which
is undesirable on policy grounds.

left evening: talk with Col. Jones and another man from the

Political Division

left office 6. 35.

at my house. Lt. Witten and Sergeant Rosenberg.

Friday, August 24, 1945.

office 8. 35.

current work

staff meeting of entire legal division.

Fahy: cooperation with other divisions.

de-nazification.

Germany should be treated as a uniform area.

as many questions as possible should be regulated
on the national level.

work for Madden on Ministry of Justice personnel.

lunch: with Col. H. P. Jones, Civil Administration, and Mr.
von Gävernitz (OSS man)

2.00 conference with Colonel Jones, he will telephone
about a conference concerning some general problems of civil service

call on Harold Zink (major)

2.30 with Brabner Smith and Taracoucio to Schloss
to find out where the library of the Institut für Auslandsrecht
has gone. It has been evacuated partly, other parts have

been destroyed.
visit to Reichskanzlei. return 5.30

this was my afternoon off.

evening at home

Saturday, August 25, 1945.

office 8.30.

study of German Civil Service law (Deutsches Beamtengesetz
of 1937.

with Col. Neslen to supply office for rations etc for
trip.

visit to Sven Hedin strasse 19, Zehlendorf, Institut für
ausländisches Recht. Nobody met there except maid. Left message
for Dr- Günther Weiss.

Wrote memo on visit for Brabner Smith

after lunch: Wrote memo on personnel of Ministry of Justice for
Judge Madden.

study of civil service act.

began memo on some points of de-nazification.

conference with Judge Madden: explained to him that one should not go
back to the Weimar constitution and why.

the need for a pool of German lawyers as assistants in redrafting
he approved of the idea to have the German papers digested and in-
structed me to talk with Lt. Col. Seydel.

proposed, at my request, to let me draft a clause concerning the el-
igibility to be applied in all electoral matters.

run-in with Fahy on the question of the Erbgesundheitsgesetz.

Fahy had approved knocking out of the statute weeks ago in Frank-
furt. Brabner Smith had seen the medical authorities who considered
the law and its practice wholly sound and unobjectionable.

But the law must be repealed, reasons unknown (but known to me).

continued study of German beamtengesetz

left office 6. 25.

Sunday, August 26, 1945.

no work in office

Monday, August 27, 1945.

office 8.10

read Henenmans study on economic conditions in Western Germany.
very good summary.

conference with Judge Madden: should admission of Nazis to bar etc be permitted some time in the future? I believe that in the long run the country cannot be run by the handful of recognized anti- Nazis, not enough to go round and not efficient enough professionally. Without having given the matter more thought I proposed to draw the line as follows: (a) activists and zealots, regardless of date of admission to party, should not be employed and if possible, permanently excluded.

(b) men who joined the party before 1933 deserve respect because it required at that time courage to do it. A Those old party members are men who acted out of conviction. However, even then there were some who were bad eggs and joined the party for reasons of personal advancement since they could not get along otherwise. This refers primarily to lawyers, less to judges.

(c) men who joined after 1933 should be excluded if their previous political record was democratic, socialist or or left persuasion, Double membership seems particularly obnoxious.

(d) I would be least hard on men who joined after 1939 when they felt that the Reich was in danger and party membership was to some extent merged with patriotism.

(e) the entire problem must be based on the policy level and cannot be treated just by hunches or personal impressions. Judge Madden proposes to end out a team which would assist the local people to select the ~~ALLS/ITON/NOPE/~~ men from among the Nazis. I answered that this is premature would be a good plan.

selected leads from material given by Fearnside.

Günther

conference (with Drabner Smith) with Dr. Gunner Weiss of the
Institut für Auslandsrecht(see special report)

wrote memo for Madden on proposed denazification law, raised some basic objections.

organized with Seydel and Sergeant Rosenbegr the clipping service for the legal revision of the Berlin and other German papers.

lunch with Babner Smith

new conference with Dr- Gunther Weiss.
continued search of material for leads.

wrote short office memo to Major Gordon on organization of clipping service.

left office 6. 40

Tuesday, August 28, 1945.

left for trip to Northern Germany with Col.
Neslen.

Tuesday, August 28, 1945.

10.45 Left Berlin- Dahlem with Lt. Col. Neslen and Driver Coutur.
on autobahn to Magdeburg and Wehstadt. arrived 1.00

lunch with American group in Wehstadt

left Wehstadt 2.00 route via Bad Eilsen (on Autobahn), Minden,
Arückeburg to Lübbecke, British Headquarters of Group CC arrived 4.00

conference with Brig. General Umbar and his staff(Lt. Col. Wilson,
Romberg and another man) British do not give clearance for visit
in British zone but want to inform their field detachments in advance.
will notify us on Saturday latest at Bremen.

5.30. left for Bremen via, Bahndne , Stralsen(?), Diepholtz,
bossum.

8.00 dinner at Bossum with British detachment (local)

arrived Bremen 9.30 search for billets, Finally landed in officers
house Riensburgerstrasse 45.

Wednesday, August 29, 1945.

breakfast officers mess Atskeller.

conference with legal detachment of enclave (Military Government?
Lt. Col. Wiesnosaki, Major Watson, Cpt. Guthrie, Major Landen (?)

conference with Dr. Dietrich Lahusen, former lawyer, now appointed
President of Landgericht Bremen.

lunch in officers mess Escarpe 19=

~~did~~ attended session of military court (Lt. Gross) concerning
false statement on Fragebogen

call on Dr. Vanssen.

4.00 - 5.30 conference with Wiesnaskis office with Vanssen, Lahusen,
Dr. Dtrohmeiyer and tow other lawyers and the entire staff on
readmission of former Nazis to the bar.

5.30 - 6.30 corerence with Senator Dr. Theodor Spitta, Mathaus.

evenign with Neslen at mes. home at 8.45.

Thursday, August 30, 1945.

Thursday, August 30, 1945. Bremen

left to house Riensburgerstrasse 43 at 8. 10
breakfast in mess Contrescapre 19

9. 9.30 conference with Major Watson of Military Government Legal
Detachment on general problems of jurisdiction and organization.
Conference was conducted by Lt. Col. Neslen.

930- 10.30 Conference with Dr. W. Nolzing Hauff, Senator for
financial administration, Rathaus.

1030 - 11.00 Conference with Dr. E.F. Weinmann, Rechtsanwalt,
who works in the Rathaus for the time being,

11.00- 12. 30 Conference with Rechtsanwalt Dr. Hermann Janssen,
Sandstrasse 6.

lunch in same mess. meeting Mr. Clover, Petroleum division Group CC.

1.30 - 3.00 work in office of Military Detachment, helped to get
German law for Dienstverweigerung for American Cpt.

3.00 drove out to 26 Mesumer Heerstrasse, St. Magnus.

3. 30 - 4 5.15: conference with Mr. Reichard Ahlers, Rechtsanwalt
and Präsident der Landesirche.

return 5. 30. walk with Neslen

supper same place.

home at 8.30

Friday, August 31, 1945.

wrote notes before breakfast

left 8.15 for mess.

8.45 to 9.30 general discussion with Detachment officers Guthrie ,
Watson, MacAllister, Gross and Neslen. Policy of denazification discussed
the field detachments wish to make exemptions from the mandatory
dismissal policy Guthrie reports that at Frankfurt it was announced
that German industry should be uprooted and transferred and
Germany should be converted into an agricultural country,

visit in Sühneverfahren für Privat klage) my opinion is that these
Privatklagen should be stopped for the time being, the Germans
should get along without them. The judicial personnel is insufficient
because the courts are expected to maintain all peace time opera-
tions which is not suitable for a restricted economy.

11- 12.30 conference with Murmester, Justizamtman, Grundbuchamt

lunch with various officers of the Detachment.

afternoon: various Germans are presented to me in order to
(a) determine their loyalty(b) obtain a knowledge of their bad
treatment by the CIC detachment of Bremen Military Government
which is said to be " anti- German"

conference with H. Wolters, appointed sneator for labor and food,
(discovered, evidently on the basis of OSS lists, by professor
Dohrn in a, after the surrender). Informant belonged before
1933 to the Young Communist League, after 1933 was arrested, tried
for high treason together with Richard Krebs (Valtin, out of the
night), sine for 7 1/2 years to Fulhsbüttle, survived inhuman tr

treatment, became representative of a large motor company in Bremen, for which he travelled while maintaining

this underground organization.

First rate communist type, intellectual, very educated, the first person I met who was aware of what was going on in other countries. Says that communism is dead in Germany that is Russian communism. Believes that the socialist Einheitsfront is the logical conclusion. At present leads the Kampfband against fascism which is composed of all parties, inclusive big business, but the latter recently made its own organization Aufbau, however, without being pointed against labor. Says that he and his groups are fully cooperating with big business which though capitalistic is not anti-labor. Expected to be elected by vast majority in case elections at the local level will be held.

Reports about labor: German labor is unwilling to work because under the Nazis they were only slave supervisors and did not do the hard work themselves. Erdarbeiten were made by Jews and Jewesses, and the Germans had only to stand by and supervise them.

Believes that Nazism is dead beyond resurrection but not nationalism. Hitler utterly discredited by his failures and those of his friends, but swing to the left to be expected in the elections may not last.

Excellent type, but how long will he last in this conservative environment of reactionary big business and beamten-mentalität? I wish him good luck.

Frau Bollmeyer and Herr Glässl(?), Bollmeyer was Präsident der Handelskammer since 1933 to 1945. Party member since 1932, before member of Völkische (Herr von Gräfe) friend of Ludendorff. He is in jail

but through effort of Guthrie he was freed and is now under house arrest. An outrageous case of intervention by the legal detachment in the arrest of an out and out Nazi. Wife says that he wished to resign but remained at the request of his friends in order to avoid that a wild Nazi would take his place. Joined in 1932 because of the autarchy plank in the Nazi platform, which would have been the merchants' doom. This is he reasons that he

remained. He is generally well spoken of in the community, more efforts to free him than for anyone else. Naturally because he is the most influential man in the community, should have remained in jail.

wives of two judges who wish to be reinstated. One was Landgerichtsdirektor in 1933, was not promoted allegedly (opposition of Freisler), but after Thieack became Minister of Justice in 1943 he was made Landgerichtspräsident. Was member since 1933. Outrageous case that this man should be liberated.

Mrs. Breckencamp, wife of the Landgerichtsdirektor who was president of the commercial chamber of Landgericht, she is different, B became member in 1937, had never any political activity and should possibly be considered for reappointment in case party members are to be admitted.

Case of a judge who was from 1940- to 1945 Vorsitzender of the Sondergericht, Outrageous case. Old time judge, appointed before 1914, about my age. Judge Richter from 1919- 1933 (evidently not very able) joined party in 1933, was appointed Vorsitzender in 1940 when Sondergericht Bremen was established (before the Bremen cases had been sent to Hamburg). Has convicted 900 persons, signing 42 death sentences. Wishes to be reinstated. Outrageous support of the American detachment. Says he did only his duty. I told him that he violated his oath as judge and that he is the worst type of human being that came under my eyes.

Bremen, August 29, 1945.

The most distressing and amazing development I found here is that the distinction between the bad Nazis and the good German people is wholly obsolete and far passed over by the fraternization between the American Military Detachment and the German legal profession. There can be little doubt that the automatic arrest categories as well as the policy of mechanical denazification are both wrong and at best a makeshift until more refined categories of involvement have been elaborated. But what we are supposed to do is now to distinguish between the good and the bad Nazis, and the problem of the German guilt is wholly absent. Not a single one of the anti-Nazi lawyers I talked to seemed to be aware ~~that~~ that the Nazis were the majority of the German people. The arguments are: After May 1, 1937 (day when the Berufsbeamtengesetz entered into force) no judge or employee could remain in office unless he became a member of the party. (This is incidentally not true, there were some, though not many who even thereafter withstood pressure and did not sign up). Consequently they were nominal Nazis - "enn Nazis" - who remained in order to save their existence. Many remained in order to avoid that "wild" Nazis would be placed in their position, the old argument of 1933 "um Schlimmeres zu verhüten". When I asked in the meeting with Lanusen Janssen etc what, in their opinion, constitutes the attitude of a bad or ardent Nazi, they answered a person who abuses his office. We are thus asked to distinguish between "wild" and "mild" Nazis, and they admitted (Dr. Spitta) that such a distinction is difficult since one cannot prove interior motivations except by facts which do not exist. Bremen is a very self-contained community, with an old tradition (Lanusen mentioned the Stadtreinheit of 965 given by Ott the Great), everybody knows everybody and it is perfectly feasible that here few wild Nazis existed. Yet they wish to see readmitted to office or to the Bar even judges who were on the Sondergericht, that court which sent numerous people to long terms of jail because of heimtückische Anträge on Schwarzen. The American team seemed not impressed by the situation and Major Watson said to me, in answer to one of my remarks, that one cannot reconstruct with hate, meaning that I, as former German would be animated by hate. I expressed my opinion to the effect that if we admit four months after surrender all Nazis except the few

bad case- Lahusen said fewer than a dozen or so would be excluded- the German people would never learn that the regime was wrong, only they would believe that it did not succeed. It was also argued that the ardent Nazis had come from outside and had fled when the regime collapsed, so that genuine Bremensers would not be affected by any exclusion. The proposal is that the bar and the courts establish purification committees which, on the basis of what the "environment" (expressed in Dr. Janssen) thinks of a man, would decide whether he should be reinstated or not, a repetition of the experience of after 1919 when no German court could bring itself to condemn a war criminal. These "good" Germans- none of them is a Nazi at heart, are such good Germans that they wish to minimize the guilt even on the party and continue as if nothing has happened. Two grievances were mentioned (Lahusen, Spitta): arrest of many people without hearing after the collapse. It was said that this is a continuation of the Nazi practice of arrests without trial. People would be taken away and the family would know where they are. The Americans have continued Gestapo techniques. That this refers only to Nazis of certain categories, made little impression. The people said Lahusen, are so imbued by the idea of the Rechtsstaat, that they are shocked if a person is arrested without a hearing, without being brought within 24 hours to the proper judge. Obviously they do not believe that some sort of justice consists in some sort of retribution. None of them mentioned Jews or persons ousted for racial or political reasons, except Lahusen, who mentioned that his former partner Lipshitz, went to Amsterdam and that he had seen him there. That Lipshitz probably was killed he did not mention. The other grievance is that the dismissal of former party members from office would disturb business, a construction firm for example is threatened with the dismissal of 150 employees and cannot continue operations. This disturbs the "Aufbau".

So what?

Dr. Heino Bollinger, Staatsanwalt. Interviewed for Reichs-ministry of Justice.

we left off at 6-15. Very strenuous after noone because of interviewing and transcribing.

evening with Cpt. Guthrie, Cpt. MacAllister, Major Watson.
Basic discussion: these men have become soft and are completely taken in by the Germans, they are dangerous for the purposes of occupation and should be removed. Their ethical standards are unquestionably high, they are moral persons, but weak and muddle headed and they do not know any German

home around 9.15.

Saturday, September 1, 1945.

left house at 8.15.

call on Sr. Spitta, Rathaus who hands me the list of suggestions
9. 45 To Dr. Dr. Walter Lisco, Händelstrasse.

10.30 returned to Justizgebäude.

conference with Dr. Appel// Arnold Appel, Amtgerichtsdirektor

lunch at 12.00

1.00 received wire from General Clay advising return after visit to Hamburg. Telephone to Hamburg British Military Det-

left for Hamburg 1. 45-

arrived Hamburg Military Detachment 3. 30.

conference with Squadron Commander Carton (?) and Major Spence

5. 30 billies in Hotel Atlantic.

dinner at 8. 10.

evening: discussion with Carton, Spence and another officer who is a theatrical producer in London.

Sunday, September 2, 1945.

9. 45 Tried to reach Rudolf von Laun, Woldsen strasse 11, Hamburg 20. left message.

10.30 visit with Elisabeth Reinbold, Alsterkrugschaussee 60.

full discussion of situation in University.

informant was Party member since 1939, allegedly in order to obtain a position in the seminars of the University where she is librarian, assistant and secretary. Report on University situation on separate sheet.

lunch at 1.30.

3. 45 - 6.15 visit with Buschendorff, Vorlke sen, Dr. Dühne.

returned Hotel at 7. 40.

evening

Monday, September 3, 1945.

Monday, September 3, 1945.

left hotel with Col. Neslen 8. 30.

dall on Arthur Heckscher (recommended by Sargeant Rosenberg)
Hamburg, Heinrich Barth strasse 8. Informant was not a lawyer,
but his brother who was sentenced to penal servitude for
Rassenschande and afterwards killed in Auschwitz. No further
leads obtained.

10.00 meeting with British detachment and visit with Dr.
Wilhelm Kiesselbach, Präsident of the Oberlandesgericht
in his office.
10.15- 11. 30.

conference with Dr. Voglerm asistant to W. Kiesselbach,
Landgerichtsdirektor.

conference with Landgerichtsrat Willers.

afternoon:conferance with

Dr. Ruscheweyh.

Dr. Petersen

Professor Dr. Würdinger.

end of interviews at 5.15.

left for Berlin 6.00 by car.

arrived Hauenburg 7.00

left Hauenburg over ponton bridge at 8.00

arrived Berlin at 3.00 PM.

Tuesday, September 4, 1945.

slept morning. left for office 12.00

afternoon:

digesting material and writing of notes/ concerning last ttrip

left office 5. 50.

dinner with Lt Col. Charles Morgan

Wednesday, September 5, 1945.

office 8. 55.

conference with Trabner Smith on laws to be included in the
de- nazification decree of Group CC

10.00 - 11. 25.

conference with Madden, Col. Marsh, Lt. Col. Neslen : report on
trip to Hamburg. practically all details were left to special
reports. madden wants me to write up my experiences, separating the
various issues. Marsh says that the British want me to
continue the job but wish to have a British member present.
continued writing up notes from Hamburg.

11. 30 - 1.00 work on British proposal to implement the legal
provisions of the Potsdam agreement.

lunhc with Professor Wells Bryn Mawr.

2.10 conference with

Länder
codes by the German Länder. Elections to be held in January
I emphasized that the vote should not be restricted but that eligibility
should not be granted to Nazis.

Friday, September 7, 1945.

office 8. 10

work on memo on psychology of denazification.

9. 15- 11. 15: conference with Dickmann, Fearnside and Urman
on list for the Ministry of Justice.

conference with Tany and Bradford on Institut für Auslandsrecht.

11-30- 12: conference with Pollock on regrouping of Germany
on a rationalized federal basis. We agree that decentralization
is unworkable and would not lead to pacification.

joined by Col. Hughes (discussion of the transportation
system which likewise has to be decided as to whether it should be
organized by zones or on a centralized basis. The French
are encouraging the breaking up of Germany., the Russians are
obeying the Potsdam declaration in the letter though not in the
spirit.

12. 20 - 1. 10 Conference with Col. MacCumsey: he plans to convene
a group of administrative law experts under the leadership of
Jellinek in Heidelberg who are to live together for six months and
draft administrative codes for the various Länder. I raised the following
objections:

(a) codes of this nature would ~~low~~ interfere with the
power of the occupation authorities because the Germans
would insist that an authorized code would establish rights which
the Mil. Gov could not disregard.

(b) A code of this kind would be geared to the optimum of
German life before the war and thus would not consider the
contracting economy and the restrictions on the living standard
of the Germans,

(c) a code would be difficult to disregard when written because of the
prestige of the group. Nobody among the Americans would be
qualified to review and criticize it.

(d) Jellinek is not to be considered as a respectable leader

(e) the entire scheme is premature.

lunch with MacCumsey.

conference with Bradford concerning the Institut of Foreign Law.

2. 15 - 5. 30. With Braber Smith to Dr. Ludwig Ruge,

Tannenmaumallee 8 (Neu Westend) for discussion of
Erbhofgesetz. Ruge confirms my opinion that law as
such is good and necessary, but wishes to amend it

(a) elimination of compulsion to become an Erbhof baur
(this would be difficult since many people would not
join voluntarily) (b) introduction of cooperatives?

work on memo

left office 6.15

dinner with Lind, Major White, Asey, Dav. Glaser.

evening at home

Saturday September 8, 1945.

office 8. 25.

Wednesday, September 5, 1945 (Continued)

2.10 conference with: Fahy, Madden, Seydel, Phleger and the British team (Brig. Wilberforce, Col. (?), Perkins) on the planned "law" concerning the reorganization of German justice.

The program is about the most sensible thing I have seen since I came to Berlin.

Madden asked me to submit the typed points I had prepared (with half an hour's notice). Among these were:
(a) inconsistency of Potsdam program which proclaims the reestablishment of the various freedoms while not providing for the permanent exclusion of Nazis and non-democratic parties and programs. A militant democracy cannot dispense with such restrictive provisions. The program of the British is too absolute. Fahy proposed to take care of this situation by a restrictive clause in the preamble which is a sound solution. I pointed out that one has to distinguish between the short range and the long range program. The long range program must be left to the Germans.

appointment on the basis "of experience, merit and legal qualification", as the British propose. I pointed out what the system of appointment and promotion was. Change in term was agreed. Discussion on the merger between the career of Staatsanwalt and Richter.

Discussion on the legal character of the document: law, directives statement of principles? I explained the nature of the bill of rights under Weimar.

The problem of the Ministry of Justice, The British are in favor

end 5.50.

conference with Fearnside on legal education.
typed out notes concerning trip.

made list of persons eventually available for Ministry of Justice
left office 6.50.

dinner with Dickmann. After dinner at Dickmanns house.

Thursday, September 6, 1945.

office 8.50

wrote memo on de-nazification

conference on German law with Brabner Smith.

with Brabner Smith out to Dr. Ruge, Tannebergallee to make arrangements for meeting

after lunch: conference with Dickman and Major Wary (Civil Service) on the question of including the officials of administrative courts and disciplinary courts among the civil service provisions. The whole question raised is utterly silly.

I explained to him that article 1 of Civil Service act has to be rewritten to include loyalty of the official to the democratic-constitutional state, in order to force him to abandon political allegiance to any totalitarian or authoritarian regime. The Civil Service people drafted the German law to suit the new situation.

work on report on trip

evening: supper with Rogers Wells of Bryn Mawr. Discussion of local government situation, General Clay authorized the drafting of directives which serve for the reenactment of German municipal

Saturday, September 8, 1945.

office 8. 10

conference with Cpt. Biel concerning rewriting of administrative codes by a group of German lawyers under Walter Jellinek

at Heidelberg

conference with Judge Madden concerning the Institut for foreign law.

Conference with Madden on subject mentioned before (administrative codes)

conference with McLendon on Institut for foreign law. He

instructs me to get in touch with the education section

in order to find out about the jurisdiction over the Kaiser

Wilhelm-Institut.

Conference with Major Mary and Dickmann concerning draft of civil service code.

Conference with Col. Neslen on report on Bremen.

memo to Madden on developments described above.

left office 1. 10

visit at the billeting office.

afternoon off, wrote letters.

Monday, September 10, 1945.

office 8. 10.

dictated memo on trip (general memo, not special memos on various aspects).

conference with Major Oscar Reinmuth, Education (as ~~single~~ participant only, discussion was conducted by Fearnside. Law schools to be reconstructed by Germans themselves.

We establish planning committees composed of decent men and let them submit plans for reconstructing university life,

I saw a list of Heidelberg people which contained very good names next to dubious characters (Ranke) The reconstruction is evidently done locally by the Mil. Gov Detachments.

There seems no coordinated plan except generalities about access of all regardless of sex, race, political convictions (this is doubtful. Should one omit all former Nazis?)

problem for legal divisions: legal curriculum, admission to law school, holding of examinations for those who have completed the law school and for those who have completed the Vorbereitungsdiens. The number seems to be rather negligible.

All other problems (admission on merit, numerus clausus etc) are to be left to the Germans themselves with which I disagree

Reinmuth is not as incompetent as many others, but he has his preconceived American ideas which at times are obsessions and this makes it impossible for him to see the German problems in their own light. A German juristische Fakultät is not an American Law School. it does not operate through competition with other enterprises. It is something divorced from the persons running it at a given time. There are fewer university professors and most of them, at least the average are far superior to their American colleagues. A Munich Privatdozent was usually as good as most full professors, with the exceptions of the big names in USA.

afternoon: wrote on memo concerning psychology of denazification.
evening: concert of Chambermusic Philharmoniker, Argentinien
allee.

left office 5. 15.

evening worked at home on restrictions of subversive parties
(for Roger Wells, Local Government Branch, Internal Administra-
tion Division)

Tuesday, September 11¹¹, 1945.

office 8. 20.

wrote and dictated memo concerning draft of a democratic
credo law to be used for the communal elections(at request of
Roger Wells, Local Government section).
conference with Cap. Harrison Williams public Safety Section
on measures to be taken for the restoration of the Dezenat
1 A(political squads) of the German police. I recommended
to restore the Dezenat only if proper pre- 1933 personnel could
be found.

work on memo of psychology of denazification,

afternoon: work on memo on denazification.

left office 5.00PM

evening "Fidelie" , Deutsches Opernhaus, Charlottenburg,
with Bradford and Charles Morgan

Wednesday September 12, 1945.

office 8. 30

work on denazification memo

10. 30 visit from Dr. Günther Weiss, Institut für Foreign Law.

He showed me correspondence with Dr. Havemann, Leiter of the
Kaiser Wilhelm Gesellschaft, suspending him from service
in the Institut(allegedly because of his approaching the US occupation
authorities, and because of his membership in the SS) I told him that
I could give him no protection against the Gesellschaft and that the
entire matter was under advisement. Brabner Smith told me that that
we are drafting a law to take over the Institut.

I called on Judge Madden and he told me that I could give no
instructions and that I should tell Weiss that we had the matter under
consideration and that he would get instructions later. Madden told
me that a member of the staff had been requested to find out how is the
boos on our side that is under whose jurisdiction the matter will come.
I told Weiss that he should shift for himself for the time being, without
giving him further instructions. I gave him a pass to come and see
me if further developments necessitated it(this pass I obtained from
Dickmann)

I went over Weiss Fragebogen and found that it contained a false
statement, to the effect that he did not know when his membership in
the SS had ceased while actually he had paid dues until 1939. I returned
the Fragebogen to him for changes which he wished to make and gave
him a new copy.

11. 15 visit from Dr. Lewinski, former Consul General of New York
Dr. L. was sent to Group CC by Mr. Dulles whom he had known in USA.

Dr. L. is supposed to become the Director of the Institut. we talked things
over I told him that I had no jurisdiction, but that I would advise my
colleagues to retain the Institute and to make the Weiss shift a mouthpiece
of dem

use this marvelous opportunity to insert into the civil service code a declaration of loyalty, a sort of democratic credo, for the democratic state.

- shall report my findings to Major Tary and to Judge Madden.

wrote memo on large estates to Judge Madden.

Conference with Col. Marsh on trip to Southern Germany,

Conference with Dickmann and Witten on clipping service for newspapers.
nothing was done in this subject.

left office 6. 10.

evening : Major Graveson at my house.

Saturday, September 15, 1945.

office 8.30

wrote memo on trip to Southern Germany to Marsh.

conferences with Marsh and McLendon on same subject.
started memo on Civil Service Code.

left office 2.30

Sunday, September 16, 1945.

with Charles Morgan to Philharmonic Concert in Titania Palace

afternoon: excursion to Potsdam

evening : music and Balderns.

Monday, September 17, 1945.

office 8. 30.

wrote memo on inheritance of American citizens in Germany.
finished memo on civil service code for Madden.

afternoon: conference with Montenegro on Earl McWhitt. Revised his report

conference with Col. Marsh on planned trip to Southern Germany.

corrected memo on denazification.

left office 6. 10.

Tuesday, September 18, 1945.

office 8. 50

corrected memo on denazification.

conference with Judge Madden on

1. selection of counsel for Nürnberg trials

2 trip to Southern Germany

3 basic objections to tampering with German law.

conference with Dr. Kunze (applied for a job in legal work)

conference with Lt. Col. van Wagonen and Dr. Gotz on
Gemeindeordnung.

finished memo on civil service code.

conferences with Schopler on criminal procedure.

with Brabner Smith on Hereditary Farm act

with Guradze man power / ~~confidential~~ // division on labor courts.

worked on selection of counsel for Nürnberg trials.

left office 6. 10.

democratic information, he went to see Mr. Havemann and to find out about his appointment.

PS Dr. Weiss proposed that I meet Dr. Siegel of the Berlin Faculty and Dr. Kohlrausch who are anxious to meet me. I made an appointment with them for Thursday night at my house Podbielskiallee

after lunch: completed draft on denazification memo.
conference with Cpt. Biel on administrative courts,
went with Brabner Smith to see Professor Hermann Stieve, Anatom of University in order to find out about Erbgesundheitsgesetz.
he is in favor of the law provided that it is sensibly applied and that abuses are avoided. The Nazis used it for destruction of people on a large scale, not for political purposes. for these they did not require sterilization. I am fully in favor of retaining the marriage certificate.
left office 6. 15.

Thursday, September 13, 1945.

wrote memo for Civil Administration, Administrative Court branch on planned meeting of German lawyers in Heidelberg.

two conferences with Cpt. Biel on same subject

conference with Col. MacLendon and Mr. Montenegro concerning the investigation against Carl Schmitt.

studied various materials concerning Schmitt.

read papers top secret obtained from Major Gordon.

worked on civil service code for Major Gary.

conference with Judge Madden on various plans of agricultural reform.

he charged me to see the Food and Agriculture people about statistical data concerning large farms and how far their investigation of the problem has progressed.

corrected draft on denazification memo.

evening: conference at my house with Dr. Walter Erbe, Dekan of the Juristische Fakultät of the University of Berlin (on various phases of reorganization of university life). 8. - 1030.

Friday, September 14, 1945.

office 8. 25.

corrected memo on denazification.

conference with Mr. Elman on draft of a law to break up the large estates,

completed memo on denazification.

lunch with Meneman and Pollock.

study of Civil Service Act

conference with Cpt. Paulsen, Food and Agriculture on material concerning the breaking up of large estates.

conference with Major Gary on Civil Service Act. I told him that the approach is wrong, Cutting out the tangible and visible Nazi features is not sufficient, the entire structure of the Act is a perversion of German official situation. The starting point should be the regulation before 1933 and into it should be worked the good and progressive ideas of the law of 1937. I warned not to rush such a work. The proper method would be to submit the matter of redrafting to German lawyers and give them directives. The subject matter is so technical that it should be approached with utmost caution.

A bad law would do more harm than no law at all. I also advocated to

Wednesday, September 19, 1945.

office 8. 30.

dictated memo on appointment of counsel for Nuremberg trials.
began study of Ehegesetz
conference with Judge Madden on various subjects,
conference with Brabner Smith on difference between custom and
customary law with relation to agricultural holdings.

after lunch: visit of film showing at Park Theater Schöneberg.
film of the Volksgerichtstrial in connection with 20th of July
plot against Hitler.

conference with Professor (Leheirat) Eduard Kohlrausch, famous
criminologist of Berlin University, on various problems of
denazification and organization of law schools
at his apartment Nicolasssee, Am der Rehwiese 3.

3. 55- 5. 35.

returned to office 5. 40

Thursday, September 20, 1945.

office 8. 30

worked and dictated draft of instructions to// concerning
establishment of Gemeindeordnungen (at request of Roger Wells
Local Government Branch) I completely rewrote the German
translation making it more definite and intelligible for
German lawyers to work with. Dictated it to a German
stenographer.

gave to J. Levy, Public Relations, an account of the
content of each law repealed (in epigrammatic form).

lunch with Dr. Ruge and Brabner Smith, discussion of
the eventual economic results if Kriegsschädensgesetzte would be
repealed.

futile chase after Professor Bonnhoffer with Brabner Smith.
lost 2 1/2 hours.

conference with Fahy on various matters. (trip to Munich,
working conditions in office, request of General Smith
that I be "assigned" to regroupment of Germany plan.
denazification policy. Bavarian situation.)

conference with Dickmann on Munich trip.

study of various documents relating to denazification.

left office 6. 30.

Friday, September 21, 1945.

office 8. 20

conference with Roger Wells and Dr. Gotz Local Government
branch, on my redraft of German instructions on Communal
codes.

work on Ehegesetz

drafted memo with Mr. Dickman on South German trip.

drafted memo to Judge Madden on Institute for Foreign law.
left office 5. 35.

Saturday, September 22, 1945.

office 8. 30
work on marriage code reform.
study of various documents.
left office 12. 10.

Monday, September 24, 1945.

office 8. 30
work on Marriage code.
study of material on restitution of property for persons who lost it under duress.
afternoon: staff conference of Justice Ministry Branch
3- 5.10: conference with professor Kohlrausch, 19
Sven Medin strasse, on legal education and reconstruction of law faculty.
conference with Judge Madden on civil service act
evening 7. 30 conference with Dr. Ludwig Ruge and Dr. Walter Schmidt, Tannenbergsallee 8 on reform of the Ehegesetz
afternoon: met Col. Fiarman, Stanford University who is working on war crimes. Asked whether I would favor trials of minor war criminals for crimes committed against Germans by German courts, I strongly dissuaded him because they would not judge properly, either being placed under pressure of the occupation authorities, or if left free, under pressure of German public opinion,

Tuesday, September 25, 1945.

office 8. 45.
all day work on the marriage code, draft completed.
left office 6.10
evening with Charles Morgan and Lt. Col. Lind.

Wednesday, September 26, 1945.

office 8. 30
conference with Dickman on newspaper clipping service.
with Casey to see 82nd Airborne division on requisitions of draperies in Mr. Baldners house, They promised to investigate.
wrote memo on administrative courts and dictated it.
conference with Madden on same.
conference with Dr. Erich Lange on draft of Berlin Magistrat of a new law on administrative courts.
discussed with McLendon the request of Civil Administration that I assist in the study of Reichsreform (new federal grouping of Germany)
left office 6. 25.

Thursday, September 28, 1945.

office 8. 30.

conference with Capt. Biel on result of meeting of Heidelberg lawyers
convened to advise on administrative law.
revised draft on administrative courts reopening.
began study on functions of Lander Ministries of Justice.
conference with Col. Fairman War Crimes Commission, on various problems
of war crimes. He requested me to put on paper my ideas on:
which categories should be tried after the 24 major criminals have
been disposed of namely SS, Gestapo, Wehrmacht Staff etc, by which
courts and through which procedures. I proposed eventual international
supervisory Commission of International Security Organization
for the supervision of the fate of compulsory labor.

lunch with Guradze, Manpower Division.

left office 6.15

Friday, September 29, 1945.

office 8. 30

conference with Judge Madden on war criminals. Assignment to help
clarification whether persons who committed crimes of common law
against fellow Germans should be dealt with by German or foreign courts.
This coincides with the discussion I had yesterday with Col. Fairman.

wrote brief memo on material submitted on the three codes by Prof
Adolf Schönke, Freiburg.
helped to interview and hire Mr. Hanna Kunze.

work on war criminals.

conference with Judge Madden on marriage law.

conference with Madden, Major Wivckens and Mr. Raup & The last
two from USFER) on reform of large estates.

Both agree that the data are insufficient although in our zone
there are 5500 estates over 100 hectares (about 247 acres) but that
90 % of them are forestry, all of them are well managed.

conference to be continued to morrow.

left office 6. 35.

evening with Charles Morgan

Saturday, September 29, 1945.

office 8. 25.

9. 15 - 12- 15 continuation of conference on law for breaking
up the large estates. same participants as yesterday.

It is stated that a law has to be written because General
Clay wishes it. But it is generally agreed among those present
that it is impossible to write a sensible law without
full information on facts and figures. If it is to be
a political law it is to be so drafted that as little
harm as possible can be done by it. I strongly objected
to this procedure which seems to me dishonest, but I am
persuaded that this is the only feasible course to take.

1. 15: conference with Judge Madden on marriage act.

left office at 2.00

Monday, October 1, 1945.

office 8. 30

with Judge Madden to meeting of working party on marriage act (Ehegesetz) in Kammergerichtsbuilding.

from 10- 4.30. lunch in building.

participants: Judge Chardon (Nimes) for French, Graveson and one Canadian for British, Col. Lisiak for Russians.

we discussed articles 1- 23. Continuation "ednesday.

return 5.00

Conference with Major Oppenheimer.

current matters.

left office 6. 15.

Tuesday, October 2, 1945.

office 8. 45.

work on marriage code (preparation for tomorrows meeting)
conference with Major Oppenheimer.

conference with Lt. Jekisch and Mr. Wundisch(Geman)

on decentralization of police administration. In particular:
should the landesrechtliche police codes be preserved?

what should be done with the Strafvergnis of the police?
should the police be dependent on the Minister of te Interior and/or
the Regierungspräsident? and similar problems.

conference with Judge Madden on general organizational problems.

wrote translation of Proclamation of Fundamental
principles of Justice.

left office 8. 55 (went out for dinner at 7.15).

Wednesday, ~~September~~ October 3, 1945.

office 8. 30.

checked translation of Proclamation on Justice.

10.00 meeting on marriage law, cats as on Monday.

11. - 1130 meeting with French and British on my translation
of Proclamation on Principles of German Justice. (Professor Monier for
French.) with minor alterations my translation was accepted.

lunch with the group in Kammergericht.

continued meeting until 5.

return to office 5. 30.

current matters.

wrote report on meeting of translation committee.

left office 6. 10.

Thursday, October 4, 1945.

office 8. 20.

conference with Fahy(on my trip to South Germany and my work).

wrote and dictated memo on Berlin reopening of administrative court

(for Madden)

Conference with Wells and Col. Hatch , Local Government Branch,
on situation in the Länder and the practical effects of decentrali-
tion - read an order (in draft) of Clay to the effect that
the Länder should set up a coordinating Committee for integrating
the Reich administration into the Länder. Hatch explained that this
is done as an intermediary measures until the central agencies
permitted by Potsdam will be functioning. In the long run this
will not work. Everybody in the field agrees that Germany is not

ripe for self-government, that the holding of hunger elections in January (on the local level) is folly that the elections would not mean anything except protest against economic conditions. The Military Detachments are to be withdrawn from Germany, except on the highest level, by July 1946.

We agreed informally that sooner or later a Ministry of Justice would have to take the place of the so-called coordinating committee of the Länder.

Conference with Dr. Paul Tenzel, legal adviser (German) of Internal Administration, Government Branch: query! should the so-called administrative courts (fr. example Disziplinargerichte, Sozialversicherungsgerichte) be placed under the Dienstaufsicht of the Länder-Justizministerien. I objected. General discussion of the problem.

Visit with Cpt. Feranside of Carl Schmitt's house and inspection of library.

conference with Madden on various problems among them proposals to reform certain civil laws (right of the name, testamentary law, right of adoption).

left office 6.20.

Friaday, October 5, 1945.

office 8.30.

drew up some clauses of the marriage act to be discussed by the meeting.

10-4.00 meeting of the working party on the marriage act in Kammergericht, same cast as before, but without the Russian delegate in the afternoon judge Madden was absent.

returned 5.00

conference with McLendon on reorganization of Branch.

left office 6.00

evening with Lt. Col. Christman and Charles Morgan

Saturday, October 6, 1945.

office 8.30.

photographer and visit to billeting office.

conference with Madden on marriage act.

visit of Dr. Erbe, Dean of Law School, at house.

left office 3.45.

Sunday, October 7, 1945.

in office from 11.10- to 12.40. and from 1.00 to 3.15.

work on marriage act, redrafting of clauses left undecided.

Monday, October 8, 1945.

office 8.20.

all day work on marriage act and minor laws of domestic relations.

short conferences with Tany, Madden, Prabner Smith, Ahopler.

Tuesday, October 9, 1945.

office 8. 20.

work on marriage act, preparing the meeting.

Wednesday, October 9, 1945.

meeting of working party on marriage act
with same people (including the Russian delegate) until 4.15.
return to office and routine work.
left office 6.00

Wednesday, October 10, 1945.
office 8. 40.

visit with the Billeting office.

wrote memo on library of Carl Schmitt.

wrote memo for Fahy on Dr. Ruges proposal concerning
cancellation of all claims against the Reich for war compensation
damages.

wrote German draft on law for the modification of family
law and succession law plus memo for Madden.

evening: party at Embassy Club by British for Col Rathbone

Thursday, October 11, 1945.
office 8. 35.

conference with Mr. Hartshorne of Education Department on opening
of universities.

Legal Directorate, with Judge Madden.

Wilberforce, Rathbone (British), Lenoan Moniser(French)

Karasow, Manowski (Russian).

discussion of last articles of Judiciary organization act. (I

helped to straighten out some conflicts in assignment
of jurisdiction to Oberlandesgerichte).

discussion of law against military training and teaching.

I got into the law the clause against use of political symbolism.

the main clause and two others are mainly based on my formu-
lations submitted through Madden.

from 10 to 5.10.

~~eye~~/ left office 6. 45.

evening: conference with Erbe, Law School, Berlin on efforts of

Russians to get control over the University.

Friday, October 12, 1945.

conference (at breakfast with Jim Pollock
office 8. 30.

working party on marriage law. Finished at 3.00.

chase for billets.

conference with Judge Madden on marriage act.

left office 6.10

Saturday, October 13, 1945.

office 8. 30

Saturday, October 13, 1945.

office 8. 30.

wrote translation of law against military training.

conference with Madden about it.

conference with Dr. Hartshorne, Education Department on law faculties and situation of Berlin faculty. Continuation next week with

Major Raylor, room 1120 Service Building.

left office 12. 30

lunch with James Pollock.

Monday, October 15, 1945.

office 8. 20.

checked translation of war against military training.

wrote memo on organization of Ministry of Justice section for McLendon

conference with Madden on new draft of law concerning domestic relations

various conferences with Madden, Gordon, McLendon on personal affairs

conference with Joachim Meintze, Syndicus of Berliner Handelsgesellschaft

on various economic matters, among them reform of corporation law.

evening wrote letters,

left office . 45.

Tuesday, October 16, 1945.

office 8. 30.

corrected memo on organization of Administration of Justice Branch

wrote memo on abuse of § 29 BRB for camouflaging Nazi influences.

afternoon: moved into Max Eythstrasse 32.

conference with Madden on my classification.

study of some work for trip.

left office 6. 30

Wednesday, October 17, 1945.

office 8. 30.

began study of restitution of property problem.

drafted memo for Lt. Col. Brown on it.

conference with Fahy on personal status. I had declared towards

Madden that I would not sign the new contract (the old one expired, on government denunciation, on September 22) unless

I would be graded P 8, according to my salary. The P 8 class

begins with \$8900. In P 7, with title counsel, are all the younger people (also some of the older ones) and I would feel

degraded by this classification, in my branch McLendon

Seydel and Wessenich are P8. Fahy agreed at once to give me

the grading I desired and even asked me which title I would like

to have. I had not thought out this problem otherwise I would have

asked to be titled special assistant to Fahy. Madden had proposed

consultant socialist. The thing was settled by Fahy's consent to

place me in P 8. The organization of the Administration of

Justice Branch is to be temporary only since Seydel and McLendon are on the way out.

conferences with Lt. Liekisch on power of police in the Länder to punish

Übertretungen without judicial procedure. I advised against its retention.

stayed in offic until 8. 30, with interrption for dinner.
completed draft on restitution memo

Thursday, October 18, 1945.

office 8. 55.

attended meeting of the war criminals trial (opening, handing of the indictment)

completed memo on restitution of property taking under duress.

finished up routine matters

preparation for trip

left office 6. 30

Friday, October 19, 1945.

left Berlin Headquarters 10. 45. (driver Cp. Anthoy Sangregory.)
lunch with US Detachment at "emlstaedt.
left "emlstädt 1.00 PM
Braunschweig, Nordheim, Kassel . Kassel 4.30.
arrived Frankfurt 7.130.
overnight at Hotel "xcelsior
evening with Dr. Derenberg.

Saturday, October 20, 1945.

morning conferences with Lt. Col. Finlay and Major Oppenheimer.
left Frankfurt 11.00
Aschaffenburg Bützberg. Würzburg at 4/00/ 3.00
drove around W.
Nürnberg arrived 5.30.
drove around N.
arrived Ingolstadt 7.30(interrupted trip because of heavy fog on Autobahn)

Sunday October 21, 1945.

left Ingolstadt 11.
arrived Munich 12. 30.
billed at Regional Headquarters, Landesversicherungsamt, Holbeinstrasse.
drive around Munich.
call on Col. Ernst, Friedrichstrasse 25.
stayed at Lamontstrasse 11, Bogenhausen.
Monday
Monday, October 22, 1945.

reported to Lt. Col. Jackson at 9.00
conferences with Jackson, Rheinstein, Cp. Cooper, Lt. Neuville.

tried to find Dr. Wilhelm Diess, Adelheidstrasse 24.
call on Dr. Kurt Erhardt, Ohmstrasse 5.
lunch at headquarters. tried to reach Rektor Professor Rehm
University.

2.00 call with Rheinstein, Cooper, Nueville at Minister Präsident Högner
Prinzregentenstrasse 72.00 - 3.25.
call on Geheimrat Eisenberger, Pettenkoferstrasse 35.
call on Justizrat Schramm, Rückertsrasse 5, not found, Private
Laplacestrasse 6, Bogenhausen.
evening with Rheinstein in Deutsche Theater Bar.

Tuesday, October 23, 1945.

9. 45 to 11. 15
call on Justizrat Dr. Veit, Maximilian strasse
conference with him and Rechtsanwalt Dr. Fiedler on list of lawyers for
panel for war criminal trials.
other matters discussed: persons of members to be readmitted to bar.
powers of Anwaltskammer.
members for Reich Ministry of Justice. Both will think out a list of
suitable candidates. Referendare.
problem of the admission of young lawyers who in 1932 were prevented
from being admitted because of racial or political reasons
list should be ready by Thursday.
11. 25 - 1. 30 Conference with Capt Denton, Legal officier of
local Detachment in Rathaus.
I had lunch with him and continued discussion.

admission to bar: he passes on admission only indirectly, people are checked by denazification department (Cap. Baer)

problem of unauthorized practice: lawyers who are not readmitted are not considered as disbarred, law against Winkeladvokaten und Rechtskonsulanten.

ten, therefore, not immediately applicable. Problem should be regulated by bar association.

problem of bar association: he feels that the old system should be restored USFET plan seems to envisage only bar associations on the Verein pattern.

admission of Austrian, Sudetenland and young lawyers who were prevented from taking the bar examination, should be left to local bar association. Intelligent man who knows what is going on. (lawyer in Missouri).

Very outspoken about incompetence of some army personnel.

1.30-145: Conference with Capt Baer, denazification section.

2.00 - 3.15: conference with Dr. Högnér, Minister President. Full report on separate sheet.

drive out to Grünwald: Interview of Dr. Gottlieb, Full, Reichsgerichtsrat a.D., Würnbanner strasse 22. 5.30- 5.15

return to HQ 6.00

Wednesday, October 24, 1945.

left Munich 9.00

Visit in Walddorfriedhof.

Starnberg: visit Mrs. Seidel

11.00 Tutzing interview with Walter Dörr former Regierungspräsident of Borkenfeld (Oldenburg) candidate for Reichs Ministry of Justice

12. - 3.00 visit in Schöffau (Wuth Hütte, talk with Kommerzienrat Scherer)

Garmisch-Partenkirchen: visit Mrs. Mädler.

drive out to Eibsee

drive to Mittenwald arrived at 5.00

5.00 - 7.00 with Dr. Ernst

7.20 - 9.30 return to Munich HQ

Thursday, October 25, 1945.

work at home draft of cable to Fahy

conference with Capt Story.

tried to see Dr. Oskar Maron, Rinnerstrasse 56 and Gundelindenstrasse 8.

call on Ludwig Osthelder, Regierungspräsident in Oberbayern, Seitzstrasse.

tried to call on Dr. Fendt, Ministry of Education.

walked to Hotel "Excelsior" for lunch

2.00 tried to find Dr. Friedrich Burger, Savoyenstrasse 5.5

call on him in Sparkasse und Giroverband.

conference with Dr. Bolles, Vicepresident Dr. Koch, Ministerial

direktor of Ministry of Interior, Prinzregentenrasse

conference with Oberregierungsrat Dr. Raymond Wreschner

Ministry of the Interior, referent for personnel

these conferences took from 3.15 to 5.30

dinner with Capt Story.

evening with Erica Mann

Monday, October 29, 1945.

conference with Max Rhesinstein 9. 9 45.
conference with Dr. Anto Pfeiffer. Staatsrat, Ministerialkanzeli.
call on Bankhuase Seiler, Löwensgrube, check on account.
visit at art building Königsplatz, call on Dr. Muchall Viebrook.
left Munich 1.00 for Stuttgart
stop at Ulm
arrived Stuttgart, Headquarters of Military Government at 5. 15.
conference with Major Howard and Lt Col. AA Cedillo.
evening at mess of headquarters. overnight at Hotel Zeppelin

Tuesday, October 30, 1945.

office 8. 45.
conference with Lt. Col. Cedillo
10. 30 - 12. 45 conference with Dr. Josef Beyerle, Minister of Justice.
lunch at HQ mess Neue Weinsteige.
drive out to Schloss Solitude.
2.30- 5. 00 conference with Dr. Robert Haussmann, president bar association Hohenzollernweg 20.
conference with Minister of Justice Beyerle 5.15 to 6.30
evening at mess.
after dinner work in office Olgastrasse 13.

Wednesday, October 31, 1945.

9. - 10.15 conferences with Lt. Col. Sedillo, Major Howard, Urmann.
conference with Minister President Reinhold Maier Olgastrasse 7
10. 30- 11. 30
11.30 - 12. 45 conference with Dr. Carlo Schmied, Landesdirektor für Justiz und Kultus, Tübingen (of the section Südwürttemberg of the French zone)
lunch at Col. Dawson house with General Draper, Jim Pollock, Walter Dohrn and others.
talked to Gailer, arranged visit with him in Heidelberg
Friday evening Neuenheimstrasse 2.
conference with Carlo Schmied continued until 3.15.
conferences with officers of legal division in Military Gov.
review of various methods for military courts.
evening: social gathering officers club.

Thursday, November 1, 1945.

left Stuttgart 8. 50.
Maulbronn- Bretten Karlsruhe arrived 11. 50
call on Major Loran Lewis Military Government and conference on situation in Baden 12. 45 - 1. 45.
left for Heidelberg 2.00 arrived 3. 10.
billeted in Schlosshotel.
500- 700 call on Frau Marianne Weber.
dinner at Schlosshotel.
evening: Fra Kwast hodapp.

Friday, October 26, 1945.

9.15 - 10.00 Hermann Aumer, general manager of Diamalt Afg
Friedrichstrasse 18
call on Geheimrat Dr. Albert Hehm, rector of University of Munich
discussion of the situation of the law school
10- 11.

11. 30- 1.15 call on Ehard, Staatsrat of Bavarian Ministry of Justice
in Justizpalast on organization of secretaria of conference of
Minister Presidents for the purposes of Rechtsangleichung and other
organizational problems.

lunch in Excelsior.

1. 45. tried to visit Dr. Niemeyer, Keferstrasse 8 e
and Uli Seeck, Klementinenstrasse 4.
call on Dr. Friedrich Burger Bayerischer Sparkassen und Giroverband
Karolinenplatz 5. left Fragebogen.
3. 30 - 6.15 conference with Dr. Anton Pfeifer Chief der
Präsidentkanzlei, Prinzregentenstrasse 7.
returned to HQ 6.30.

evening with Hanfstängl, Eidenmayerstrasse 18.

Saturday, October 27, 1945.

9.00-9 1/2 conference with Professor Carl Böttcher about his
readmission to practice.

10.00- 10 1/2 conference with Rechtsanwalt Hanns Dajn about
various matters of the bar among them the need for a formal
repeal of the Reichsrechtsanwaltsordnung of 1938 and the restora-
tion of the old Anwaltsordnung which permits elections of
the bar; about unauthorized practice etc and about the seeck
succession.

11- 1.00 conference with Staatsrat Ehard and Oberlandesgerichtsrat
Rossner about legal education and various other matters.
lunch in Excelsior with Mr. Clem Archives.

visit on Jewish cemetery to see my fathers grave.

3.00- 5.30 sightseeing in destroyed Munich.

evening

Geiselsberg, G. Falckenberg.

Sunday, October 28, 1945.

left Munich 10.00

Landsberg, Steingaden, Die Wies, Oberammergau, Mittenwald
Walchensee.

3.30- 4.30 conference with Professor Willibald Apelt,
Staatsminister a.D.

drive to Bichl - Tölz - Tegernsee. arrived 51. 45 at Gmund
Eobognerhof, visit with Rieppels.

arrived Munich 10.00

Friday, November 2, 1945.

conference with Paul Rieppel on agrarian reform and other matters at hotel left for Karlsruhe 9. 45. arrived 10. 30.
11.00- 12. 45 conference with Major Lewis and Präsident der Landesregierung Baden Dr. Heinrich Köhler.

lunch with Major Lewis.

.30 - 2. 45 conference with Dr. Fritz Cahn- Garnier, Landesdirektor for finance, Baden.
return to Heidelberg. 4.00

conference with Dr. Martens, Landgerichtspräsident, Dr. Moll, Oberstaatsanwalt and Dr. Hans Anshütz, Landgerichtsdirektor, on all problems of Justizverwaltung in Baden. time 4. 10- 6.10.
return to hotel.

call on Dr. Mariann Weber after dinner.

9.00- 11.00 conference with Dr. Geiler, Ministerpräsident of Greater Hessen, Neuenheimer Landstrasse 2.

Saturday, November 3, 1945.

9. 30. reported to legal division, Military Government, Heidelberg.
Lt. Aathredge not in office.

called on Finanzamt Oberregierungsrat Dr. Strauss to obtain information about procedure taken by Heidelberg to restore Jewish property taken under duress.

10. 45. drive to Mannheim.

11- 15 - 1. 45 meeting of cabinet of Baden with 800 Bürgermeister and Landräte, Speakers; Col. Lisle, Karlsruhe, Präsident of Landesregierung Baden, Köhler, Zimmermann (interior) Bock (education) Martens (Justice) Schnabel (education), Cahn Garnier (finance)

4. 00 call on Professor Alfred Weber. Bachstrasse 24.
walked over Philosophenweg to Schollhotel.

7. 45 - 10. 15 conference with Alfred Geber and Frau Dr. Else Jaffe.

Sunday, November 4, 1945.

10. 30 - 12- 45. conference with Professor Gustav Radbruch, Friesenbergweg 1a, Heidelberg, Dean of the Law School, on all matters of legal life (cooperation between US CC and German authorities, reform of penal code, legal education, University problems, denazification etc)

afternoon: 4. 30 - 6. 30 Dr. Mariann Weber, and Mr and Mrs. Lindemann, agricultural expert. mainly on resettlement problems.

evening: Tobler, Bismarckstrasse 17.

Monday, November 5, 1945.

phoned from headquarters to Mr. Fahy concerning my participation on the conference of the Ministers of Justice to be held on November 6, in Stuttgart. Mr. Fahy declined because only essential officers should attend. I told him that I would drive back to Berlin today.

conference with Professor Karl Engisch, Bergstrasse 167. 11. 30- 12. 30

left heidelberg at. 1. 30.

Mannheim, Frankfurt, Kassel, Fürstenhagen, MCC (Ministerial Collection Center staid there overnight, reported to Major Ryan.

Tuesday, November 6, 1945.

9- 11.00 conference with Major, Ryan, reported to Col. Newman, conference with the four German officials in MCC(Schmeller, Suchomil and to others.)

left Fürstenhagen at 11. 30. lunch with British at Seesen. Helmstedt, Magdeburg. Arrived Berlin 6. 30.

Wednesday, November 7, 1945.

office 8. 30.

tried to report to Fahy and Madden.

organized reports.

straightened out salary situation and matters connected with it.

dictated first report on trip.

conference with Lt. Col Brown on property taken under duress.

with Elman on denazification.

~~Left~~ dictated memo on list of lawyers for Nürnberg trials.

left office 6.00.

Thursday, November 8, 1945.

office 8. 30

worked on notes for trip

two hours conference with Fahy and Madden on trip. Fahy

request me:

a) to write a memo for him on which points he should
be attentive in his forthcoming trip

b) to explain my proposals for better integration of
legal division.

conference with Harris on property control.

conference with Capt. Biel on local government problems.

left office 6.10

Friday, November 9, 1945.

office 8. 45.

straightened out salary questions and made transfer to Amherst.

worked on notes.

wrote brief memo on some sections of property control regulations
(request of Mr. Harris).

afternoon: 2.00 - 4.30 attended meeting of subcommittee of
Coordinating Committee of CC for making translations of two
laws, one on the certification of copies by officers of Mil. gov.,
the other one on the war criminals, the latter was so badly
translated by the French that I started all over again but
could dictate only the first part, the rest being postponed
to next week.

dictated some more of my notes.

left office 6.30

evening: saw Carl Newes and wanted him to take things to Budapest
Saturday, November 10, 1945.

office 8. 15.

worked on notes from trip.

wrote memo for Mr. Fahy on certain points to be observed on
his forthcoming trip to the Zone

dictated notes, worked on memo on Carl Schmitt.

left office 13. 50.

Sunday, November 11 and Monday, November 12 (armistive day)
no work.

dictated letters at home to Mrs. Menzel on Monday,

Tuesday, November 13, 1945.

office 8. 30

conference with Col. Hatch, Local Government branch, on
holding of elections in the Länder, technique of challenge
and exclusion of Nazis.

worked all day on memo concerning the reconstruction of the law-making
process in Germany (proposals resulting from trip)
dictated memo concerning activities and work of Carl Schmitt
conferences with Madden (on Russian proposal to include the law
faculties among the CC agenda) and with Harringer on technical
problems

left office 6.30

evening farewell party for Bradford and Arnold

Wednesday, November 14, 1945.

dictated translation of war criminals law.

conference with Wells on local government elections (exclusion of
Nazis from vote)

afternoon:

conference with Major Wickens on: elimination of provisions privi-
leging ~~children~~ / ~~with~~ families with many children in taxation
succession law, apartments etc.

conference also on various aspects of settlement in agriculture
worked on memo for Fahy on political situation.

conference with Sickmann on Institut for Foreign Law.

left office 6.00

evening at home

T

Thursday,, November 15, 1945.

office 8. 30.

conference with Brown on property taken under duress.

with Wells on municipal elections (I proposed and he agreed that
the quotient of unsuccessful parties that is parties to be excluded
from the distribution of seats should be lowered from 20 - 13 %

I made other amendments of the draft to be submitted to General Clay

but could not do anything concerning the unfortunate exclusion
of Nazis from suffrage)

visit from Ann Junze (she was informed that CIC vetoed her
appointment, She is about to become secretary of a new law journal
which Kohlrausch is to establish).

dictated various letters.

attended in the afternoon (2- 4.30) the meeting of the
subcommittee of the Coordinating Committee on translation of
war criminals act. agreement on all points.

worked on memo on trip.

left office 6. 30.

evening at home (very tired).

Friday, November 16, 1945.

office 8, 25.

Friday, November 16, 1945.

office 8.30

conference with Wells, Lt. Bolton in Pollocks office on the Stuttgart conference, I found that nobody of Civil Administration had attended the conference of the Ministers of Justice in Höchst, Vol. Hatch told me that General Mead had turned the request to reconsider the decision concerning the exclusion of all Nazis from the vote against which we all had advised.

wrote and dictated memo on functional program of legal division.
worked over memo on law making process in Germany, revised it.

left office 6. 50

evening 8- 11: Rheinstein at my house. He is a sentimentalist concerning the German people but agrees with me on the inefficiency of Mil. Gov and on the necessity to remove the jurisdictional conflict between Frankfurt and Berlin by relegating Frankfurt to the second place.

Saturday, November 17, 1945.

office 8. 25.

modified and finished memo on law- making procedure.
conference with Wickens office on functional program
left office 12. 50.

afternoon not in office,
evening Night Must Fall in Onkel Toms Hütte Theater.

Sunday, November 18, 1945.

worked morning at home.
afternoon and evening expedition to see Eugen Onegin in State Opera

Monday, November 19, 1945.

office 8. 35.

wrote memo on new structure of inheritance tax (object: removal of privileges of families with many children, new rates for all group relationships in inheritance tax.) conference with Major Wickens on same subject.

worked all day on marriage act, pulling together the various proposals for the final text.

left at 6. 10

evening at my house: professors Kohlrausch, Rheinstein, Erbe, Dr. Hanna Kunze, Dr. von Lewinski, discussion of problems of university and legal education.

from 7. 30 - 10 30.

Tuesday, November 20, 1945.

office 8. 35.

Tuesday, November 20, 1945.

office 8.30

completed final German ext of marriage act. checked on all figures and references.

read completed memo on law making process and signed it.

discussed with Kaiser MCC request for clarification of status of persons there in the mandatory arrest category.

began work on memo concerning British proposal to establish a group of German lawyers purifying the Reichsgesetzblatt.

left office 6 . 10.

evening at home.

Wednesday, November 21, 1945.

office 8. 25.

completed work on memo on British proposal (see preceding day) conferences with Dr. Ruge (on restitution of property and other matters) with Judge Madden (marriage act and law making process) read material concerning Legal Directorate etc.

left office 6.00

evening at home

Thursday, November 22, 1945.

Thanksgiving. no work

Friday, November 23, 1945.

took influenza shot.

office 9.00

worked on memo on political conditions found on South German trip corrected memo on British proposal.

conferences with Major Marye, Brabner - Smith

wrote some routine matters.

dictated notes of trip.

left office 6. 35.

evening at home

Saturday, November 24, 1945.

office 8. 30

dictated practically all morning first draft of memo on political and social conditions found on trip to South Germany.

talk with Shepard on various matters of branch.

left office 12. 50.

afternoon and evening at home.

Sunday, November 25, 1945.

morning at 11: B- minor mass in Admiralspalast.

afternoon and evening at home.

prepared ovrk for dictatiting denazification memo.

left office 6. 40.

evening at home.

Wednesday November 29, 1945.

office 8. 20.

revised memo on political conditions (the memo is not waht it should be but since it is without influence anyway no further revisions were made).

dictated memo in denazification and comments on the directives for denazification which at present are before the Coordinating Committee. The entire approach should be changed. Exclusion of Nazis from all leading positions regardless of their economic or social importance will never work. I proposed to select certain professions which should be completely denazified while others not dealing with public opinion formation should be dealt with more leniently.

continued study of legislation for the reform of the Rechtsanwaltschaft. No fundamental changes are planned, but the adjustment of the law as of 1933 to the present conditions offers a good many difficulties. It is essential to have the Länder organize their own system within the frame of reference of a general provision.

lunch with Mr. Lane (Department of State , Political Division)
evening with Shepard and Schubert.

listened to speech of General Clay in Harnack House.

evening at home, writing letters.

Thursday, November 29, 1945.

office 8. 40.

worked on law for the reform of the bar. began drafting articles.

conference with Mr. Purvis of Political Division on the Kulturbud zur demokratischen Erneuerung (bechers group' advised strongly against its admission in the American zone.

revised memo on denazification.

conference with Clay in which I pointed out that a conference of the Ministers of Justice is urgently desired. He instructs me to draw up a memo for General Clay with whom he has to take the decision.

He seemed convinced that the step is necessary (he has not read my memo) Telephoned with Henry Umann Stuttgart to find out about ministers of Justice conference. None was held to date, Pollocks coordinating committee sits tight on the entire matter of the Länder organization and all steps have to be taken through him.

working day sharp. very tired.
evening at home

left office 6. 30.

prepared ovrk for dictatiting denazification memo.

left office 6. 40.

evening at home.

Wednesday November 29, 1945.

office 8. 20.

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working day sharp. very tired.
evening at home

left office 6. 30.

Friday, November 30, 1945.

office 8. 25.

revised memo on denazification (it was bad when dictated but sounds better now in its revised form. Its main content is that the vintage principle should be abandoned and that denazification should proceed along the lines of certain professions. Those which are essential for public opinion formation should be kept free of all even the nominal Nazis stood on line for getting money orders for my salary.

began drafting of memo for Fahy submitting to General Clay the request that the committee of the ministers of justice be convened. the most important thing I have done, Difficult to formulate because the people in charge do not know anything of the underlying centripetal forces of the new German federalism which is an essential point of reconstruction.

attended meeting of Interdivisional Committee on German personnel for the central agencies.

plan was fully discussed. Col. Onthank Lt Stauffer in the chair. Ministry of justice is not among the ministries envisaged by Potsdam but the plans should go ahead.

I made various proposals in the discussion. 4.00 - 5.35.
left office 6.15
evening with Lt. Col. Stuart Hughes.
evening at home.

Saturday, December 1, 1945.

office 8. 25.

dictated report on yesterday's meeting, with some suggestions.
revised denazification memo (which now looks much better)
began to draft brief memo for Fahy on Ministry of Justice
conference which he wishes to take up with General Clay

left office 1.00

afternoon musicale at Lt. Col. Brubaker Smith.

Sunday, December 2, 1945.

morning: Mrs. Tenzel came for dictation.
afternoon: concert of Max Baldner
evening at home.

Monday, December 3, 1945.

office 8. 30.

Monday, December 3, 1945.

office 8. 30.

revised final draft of memo on denazification.

revised and signed final draft of memo on committee of ministers of justice made arrangements for meeting of working party on marriage act.

Mr. Purvis, Political Division, consulted me on the plan of a non-partisan non-censored daily sponsored by one Rudolf Kurtz and Paul Wiegler whether it could be allowed in our zone.

worked on reform of the bar.

spent several hours in straightening out (?) difficulties in connection with the boiler to be installed in my house.

left office 7. 10

no good working day, very tired.

evening: party of Legal division in honor of Marsh, Branner Smith, Hudson, Major Marie, Fratcher.

Tuesday, December 4, 1945.

office 9. 00

worked on draft of bill for the reform of the bar. (Rechtsanwaltsordnung)

two conferences with "adden": I tried to convince him that the Committee of the Ministers of Justice should be convened, not connected with the "Länderrat" which is in Pollocks hand.

He felt that Frankfurt would be by-passed and that therefore the plan should be shelved until the merger Berlin-Frankfurt had been accomplished. I objected that this would be too late.

He will discuss it with "ahy".

We agreed, at my request, that I write a letter to Col.

Deutsch, "legal officer in Vienna requesting information on the Austrian setup Control Council and Austrian government.

I dictated a letter to Major Ryan MCO requesting that information be furnished concerning the funds of the Reichsrechtsanwaltskammer.

left office 6. 45. working day B _

evening: call from Professor Rbe.

Wednesday, December 5, 1945.

office 8. 50.

finished first draft of reform of the bar law.

it is not much originality it is because the situation as of 1933 is being restored, but the working in of the numerous amendments after 1933, many of them sensible and not dictated by Nazi ideology made the drafting a rather ticklish job.

I dictated the German draft.

went over the arrangements to have translations of CC business centralized and better organized. To date the translations of CC laws into the German - practically the only language which really matters, is scandalously sloppy and haphazard. I volunteered

to make the translations myself, but was turned down.

Conference with Vells on the organization of the forthcoming census.

I wanted that the Fragebogen characters should be avoided and gave other hints for the phrasing of questions and for the inclusion of items, I advised to get blanks of the preceding Volkszählung and use them as the pattern.

drafted inquiry to Legal Officer Vienna on what is going on in Austria concerning the law making process. This is different from the one in Germany because in Austria there is a central government which does legislate while here we have only the three Länder.

left office 6.30

evening at home, with Dr. Carl Friedrich Sarre, who gave some information on the present Gerichtsbetrieb and what goes on in his law practice.

Thursday, December 6, 1945.

office 9.00

drafted an introduction, to be published by CC, for the new marriage act, in case it is adopted by Four Powers. This is the first such law (that is a law which has no direct political connotations) and which, therefore, should be introduced by some sort of explanation.

conference with Col. Hatch on the duplication of effort between Frankfurt and Berlin, The local government and election codes which the Länder had drawn up under directives of Omgus, were submitted for approval to Berlin, Local government Branch, were commented on by it and various sections were disapproved. Then the whole thing went to General Clay who coordinated it with other divisions and had his own say. Then it went to Frankfurt, Local government branch and they too had a crack at it. Then it went back to Berlin and finally the Länder were informed and had to adjust the laws to the requirements. The procedure is cumbersome, time consuming, in many ways ridiculous. But the Empire builders in Frankfurt do not wish to yield an inch to Berlin. That Mil Government suffers badly from this duplication and dispersal of responsibility is clear to everybody, but nothing can be done about it.

read an interesting document containing Speers opinions on Hitler. It appears more and more that Hitler was the only man of caliber in Germany during the last twelve years.

conference with Madden: the plan to convene the Ministers of Justice for a committee has to be shelved, Mr. "ahy decided. Until the merger with Frankfurt has been accomplished, for the time being it is impossible to by-pass Frankfurt. Later Mr. "ahy "will write his own ticket" (Madden's expression).

I worked four weeks in vain and the only constructive proposal I have seen in the Legal Division is dead. This is Military Government.

Friday, December 7, 1945.

dictated refutation of British proposal to appoint a committee of German lawyers for denazification of law.

I had discussed at length this proposal in my memo of November 20 but nobody cared to read it. The proposal is unworkable though it would relieve the Legal Division of all work to do it.

drafted an introduction for the marriage act by which the CC explains to the German public the main features of the new text.

doubt whether this procedure will be accepted.

attended meeting of the Interdivisional Committee for the German central Government personnel.

The chairman (Col. Onthank) appointed me chairman of a subcommittee to draft the directives (which were so confused at first that they were wholly insufficient).

Discussion of a rather straightforward paper in which it was pointed out that the German civilians whom we hire as consultants are treated badly and that none of the promises made to them (salary, food, accommodation, transportation) is being kept. Typically CC handling of an important matter. When Germans considered for top ranking positions are to be brought up to Berlin for interviews there are no housing facilities for them, they have to stand in line with the street cleaners to get their meals. I asked whether this is deliberate policy (kraut is kraut) or sheer inefficiency. The question was not answered. But the group was evidently indignant about the handling of this important matter.

left office 6.10

evening at home, visit from professor Erbe.

reported on the situation of the Berlin Law School.

had an interview with the Russian central agency for Volksbildung

Saturday, December 8, 1945.

office 8.30.

10-12-20 working party on marriage law in ACA building

the draft I had submitted was accepted, only difference

being the reference to person or party in art 77. We agreed on a compromise.

lunch with the entire group. at ACA restaurant.

returned to office 2.30.

Monday, December 10, 1945.

office 8.45.

studied the municipal codes and elections laws of

the four Länder Bavaria, Württemberg, Baden and Hesse,

Wells had sent them over to me. I found that the situation as of 1933 should have been restored, too much of the Gemeindeordnung of 1936. Many of the provisions should have been disallowed.

even this branch which has an expert like Wells, is unable to check on technical German legislation. To understand local government in Germany one must know more about its tradition (Staatsaufsicht, Budget etc) than they do. But since the matter was merely academic I did not bother to make further suggestions.

badly organized day. Mrs. Menzel did not turn up until late. The draft of the reform of the bar law which reads now very simple is ready in German, but has to be modified. The English translation has to be made and the comments. I wonder whether the entire work is not for the Rönne de Prusse.

began to draft the report to the Legal Directorate on the marriage act. Embarrassing situation since they bestowed a lot of praise on me which I do not wish to incorporate since I am making the report. The rotten interpreter who assisted last Saturday and was supposed to bring me his notes, has not shown up, as usual.

Discussion with Madden whom I seem to have convinced that the British proposal of shifting the entire denazification work to a committee of German lawyers, is unsound.

long discussion with Major Oppenheimer who tried to get information from me on what we are doing here, I treated him with slight irony for which he is wholly unresponsive.

Badly disorganized day.

left office 5.00 (to get to the Lied vunder Erde which was cancelled a second time without informing the public).

Tuesday, December 11, 1945.

office 8.30.

long talk on general political problems with Major Oppenheimer who once again tried in an underhanded way to get information from me on what we are doing. He took from me the draft of the marriage act but did not bring it back as promised.

conference with Shopler on various problems of the reform of the criminal code. We agreed that the provision concerning the Gewohnheitsverbrecher should be drastically changed to eliminate Nazi abuses. I was in favor of omitting it altogether. discussion with Lt. Witten on various problems of restitution of property with Lt. Stauffer on the subcommittee for rewriting the German government personnel directives.

Urmann rang up from Stuttgart to tell that the committee of the Ministers of Justice is meeting on the 18th in Stuttgart. I talked about it to Madden and Fahy and made it clear that I would be the qualified person to go down to attend it. Fahy seemed reluctant, later on Madden came and told me that he would go and that he would welcome my coming along. I am ready to have the show done in case they would not send me. I have been working in this angle, the only important thing the Legal Division is doing for six weeks and if I am left out I am going to resign.

Wells sent me the draft of a vorläufige bayerische Verfassung, a nice specimen of a dictatorship constitution, secession in the offing.

I had talked with Dr. Pfeiffer about it and warned him not to go too far in their ambitions for statehood, this draft surpasses anything

I have seen to date in authoritarian stupidity. Högnér is not a politically minded person he is just plain foolish. I wrote a blistering opinion on it that is against it, and discussed it in the afternoon with Wells. It will be incorporated in full in his statement for Pollock. Principiis obsta, these Bavarians are almost as stupid as the French.

drafted a little speech for Madden which he is to deliver to the Ministers of Justice.

worked on completing the material for the marriage act to be submitted to the other powers and, and finishing the material for the reform of the bar law.

left office 6. 45.

evening: Visit from Dr. Otto Veit, a banker and political economist now appointed by Mil. Gov in Wiesbaden to run the new Hessische Landes bank, Interesting man. But has no clear ideas how to avoid general state default and inflation. Tells that the currency conference recently held in Frankfurt was not attended by any official of Mil. Gov. very tired and bad sleep.

Wednesday, December 12, 1945.

office 8. 40.

conference with "ahy and Madden: I am assigned to go with Madden to Stuttgart. (crisis averted, I would have quit if they had refused to let me go.

meeting of subcommittee of Interdivisional Committee on German governmental personnel (Majors Landau (Finance) and Demuth (Trade and Industry) and Lt Stauffer as secretary. 10.00 - 12.00 we drew up a new directive, much shorter and more to the point as the previous one and we left out all concerning the German consultatns. The latter problem is one of the sore spots of the CC. "e have no good consultatnts because there are none and those we have we treat too badly ("Kraut is Kraut") so that the good experts would not come. The idea of developing the consultatnts as nucleus of the future Reich ministries is absurd. The search for personnel will be very difficult because the searchers know not enough about German psychology. Stauffer will draw up the final text

call from "r. Walter Schmidt. Personal inquiry: he had been protected by Flick (well known industrialist, Essener Steinkohle etc) during the regime . Now Flick and his partner Kalitsch)? have been arrested as war criminals (class industry) He wants to know whether it would be proper to defend them as counsel. Answer, decidedly yes, this is a legitimate objective, no accused is guilty unless convicted, moral as well as legal reasons indicate that he should act as counsel. Further, We confiscated the papers in his office

and the officers told him he could get them back in two weeks.

answer-Nothing can be done about it. He should therefore try to reconstruct the act from other sources.

decent man, intelligent, best material, should be rewarded for heroisms in Nazi resistance.

conference with Fahy and Lt. Col. Maryi on the British project to hand over the entire denazification project to a group of German lawyers. I am against it, wrote two memos against it, Maryi is in favor, Fahy is reserved and does not quite know what to do. I want to give this job to the Länder Ministries of Justice but Fahy says (correctly) that this is no solution on a quadripartite basis. I say that the corresponding agencies of the other powers should be enlisted.

worked on the final stages of report on marriage act. It will be ready Friday.

began to dictate translation of my German text of bar reform project. senseless undertaking, because the text reads differently in English

another problem: how is CC to publish these ~~excessive~~ excessively long German texts? By poster? But this is their problem.

various discussions with Schöpler who denazifies the Criminal code. He does a very good job but is unaffected by the new tendencies of criminal law. Rewriting such a text requires full knowledge of new criminological theory and comparative law.

left office 6. 10

evening: "Party" at home Graveson and Emmaes (British), Lt. Cols. van Wagoner, Stuart Hughes, Professor Wells, Col. Hatch others invited but not appearing: Major Wickens, Lt Col Maryi

Thursday, December 13, 1945.

office 8. 50.

marriage act

at long last I cleared out the entire business. It could have been done much faster and much earlier - after all since October I have been working at it and with it, - but since the OMGU, or at least the legal Division is neither a law office nor my study no rational procedure for operations were applicable. I had a secretary only for the last six weeks.

The bunch of papers is: the German text, a tabulation of articles as synoptical help for the user of the old and the new text, an introduction and a report on the meetings of the working party which I rendered faithfully in the French version although the amiable French had referred no less than twice to my humble person in gratifying terms. What is missing are the translations, God only knows when they will be ready. Of course it is absurd to make translations of a statute drafted in German and written for German legal use.

But this is the rule of the Control Council and nothing can be done about it. Perhaps it will be possible to convince the Legal Directors

of the four powers that the work of their legal experts should be accepted. in good faith without going over it article by article But this too much sense to be expected. I shudder at the thought of having to explain all this to Mr. "ahy or to any American lawyer for that matter.

reform of the bar project:

likewise finished, that is dictated translation into English of the German text, both have to be revised. But it will go out before I leave for Stuttgart.

The German text now looks very simple but it was quite a substantial task to correlate the statutes and ordinances enacted after 1933 with the law of 1878 I think it is a good and sensible law as it stands now. No reason to believe that it will be accepted by CC or even only by our group where Major Oppenheimer is the ruler. (refugee lawyers are indispensable, but if we only could dispense of them!)

this took me almost the whole day.

constitution of Hessen:

I found a note in the Tagesspiegel that Mil. Gov in Wiesbaden had "approved" a constitution of Hessen. Incredibly thought, that a colonel, untouched by knowledge of German constitutional developments should approve such an act which may well spell doom to German unity for a long time to come, or which at least will deeply influence the coming structure of Germany. I telephoned "ells who sees the point and he will inquire in Wiesbaden.

trip to Stuttgart.

Maden informed me that he could not go, for reasons of other work (I presume because the auto trip is too hard for him). They are sending Shepard. OK with me if I can do the talking and steering. But I shudder thinking of the impression this man will make on the Germans who after all are the best available and much better than the good officials in the States. It is just another one of these outrages in personnel selection which vitiate the entire work of OMGUS. I am going to be a good sport, unless he taxes my patience too much) we are leaving Sunday going to Nürbger after Stuttgart and then I hope to have one day in the Bavarian Alps for myself. left office 6. Lo evening with Hudson and McCudry.

evening at home, very tired.

Friday, December 14, 1945.

office 8. 20.

wrote amendments to denazification directive for Shepard.

this is an interesting sidelight if such were needed since the limelight is on it all the time, on the ignorance with which this occupation of Germany had been prepared and how difficult it is even now to get rid of it. In the directives for denazification it had been stated that automatic exclusion from any office is mandatory for all those who held certain offices

on January 30, 1945. Some wise guy had informed them that on this day Hitler was appointed Reich chancellor, consequently that the Hitler regime started on that day. This date runs like a red thread through all official documents. But they were unaware that on that day still the appointees of the Republic held office and thus it happened frequently that a man who had been dismissed by the Nazis after March 5, 1943 or even later, was automatically arrested or is barred from further employment. The stupidity of that arrangement was clear to everybody who knew something. Hundreds of the best officials were disbarred or are unemployable because of this stupid schematization. But now, seven months after unconditional surrender, the damage is not yet remedied. Only by accident read Fahy my memo on this point. I wonder whether General May will be accessible to this amendment.

marriage act:

at long last completed, except for the translations.

reform of the bar act:

completed, has to go now for criticism to the others.

Knowing my refugee colleagues I expect that it will have rough sailing

conference with Col. Hatch:

in the fourth coming census there will be repeated the question: mother-tongue. I pointed out that a abuse had been made in Europe with the statement concerning the Muttersprache, and I proposed that the question would be split in two: a) which language taught by the mother, b) which language now used in daily life. It is likely that many Germans (Sudeteners unreversed) will try to escape in claiming that they are not Germans because their mother tongue was non-German. The question may affect vitally many personal fates. I hope this time the people will study the problem.

Helped Shppler translate various laws. This is a difficult job since none of us is any good in German. We use constantly Anglicism.

lots of routine work among them most interesting article on Austria. The elections do not mean much because the Clericals were anti-semitic, anti-occupation, anti-German and attracted those all who are against everything, among them the many Nazis who did not join the party. That Austria becomes now a clean and decent country again is a travesty of the first magnitude, those bastards were so Nazified that they did not even need nazism to be what they are. On the other hand, Austria is staging an amazingly rapid recovery because it has an excellent staff of civil servants and a very clever intelligentsia.

Shepard and I wanted to go to Munich from Nürnberg, Fahy cut it out. Very silly, since it is Xmas anyway and we do not work for three days. personally I do not care very much, but it is significant for the type of organization we have here. On the other hand, other people's overstaying their leaves quite impudently. This is the army.

Left office 6.10 evening alone at home.

Saturday, December 15, 1945.

office 8. 30.

meeting of Interdivisional Review Board on German consultants.
members: Professor Wells, Professor Major Knappen, Stauffer
as secretary, various enlisted men as investigating staff.
Lt. Czernin of denazification office
three cases dealt (KL. appointed chairman):
a) Sr. Hans Esemann, transportation specialist.
Dr. Ernst K Rein, transportation specialist
Graf von der Recke, forestry specialist.

after examination it was decided to overrule the objections
of Denazification office in the cases 2 and 3 in which it
was clear that the men were anti-Nazi and to some extent, were
as the directives of General Clay require, "known liberals"
(whatever that means). In the case of Esemann, a high grade
specialist of unusual abilities technically, it was decided
to postpone the decision until all publications had been
submitted and read by the office wishing to employ him.
The procedure took three and a half hours, indicating
how impossible is the task of "individualizing the
denazification method when each case has to be dealt on
its merits. All American officers spoke German which was
another advantage otherwise not easily to be attained.
lunch with Stauffer, Wells and Knappen.

Sunday, December 16, 1945.

left Berlin for Frankfurt-Stuttgart at 8. 45.
with Sheppard and Driver Corporal Hugh Smith.

reached Frankfurt without stopping for lunch at 6. 45.
evening with Bodenheimer and Derenberg.

Monday, December 17, 1945.

morning conferences with Lt. Col. Ben Brown, Rheinstein,
Oppenheimer and Urmann.

lunch with the persons mentioned afore.

left for Heidelberg with Major Oppenheimer at 1. 10.
arrived Heidelberg 3. 10.
conference with Major Crum, the University officer with whom
I discussed all problems of the law school of Heidelberg
which was reopened some days ago (or will be reopened in the
near future).

drove to Stuttgart arrived 7.10. supper in the mess of the detachment.

Tuesday, December 18, 1945.

9. 30- Meeting in Villa Reitzenstein, Richard Wagner strasse
with James K. Pollock and his staff.

conference of Ministers of Justice of Bavaria, Württemberg- Baden, Greater Hessen. Presnt. Högnér, Ehard (Bavaria) Zinn(~~Württemberg~~ (Hessen) Deyerle(Württemberg- Baden), and their staff.
on American side! Lt. Col. Brown, Sheppard, Oppenheimer, KL.
agenda and minutes to be presented in separate report.

meeting lasted from 10.00 to 6.00 when the Americans withdrew.

lunch at Col. Dawson's house, with Sedillo, Pollock, Walter Dohrn and others. All ministers and Ehard attended the lunch.

some general impressions:

- a) the meeting was badly organized. The agenda prepared by Pollock and his staff, was submitted to us only on the day of the meeting, we could not check on its contents and were not prepared to check on whether there was duplication.
- b) Brown submitted about 16 points in which Mil. Gov. was interested, many of these were either repetitions of what the Länder were doing or covered fields which Berlin was working on. No coordination between Berlin and Frankfurt.
- c) Owing to the linguistic deficiencies of Brown and Sheppard much had to be translated by Oppenheimer and much time was lost. But the translation was actually an implementation and thus much of what both American speakers did not know could be conveyed properly to the meeting.
- (d) The discussion of the American proposals was unprepared on the part of the Germans. They likewise should be given an opportunity to prepare in advance the American material. The afternoon meeting went awry owing to the effort to answer all American suggestions.
- (e) There should be a full exchange of opinions between the Americans and the Germans. The Germans are real experts and responsible men. They should not be treated with faits accomplis. I tried to discuss each problem on its merits with the Germans, but it was difficult because of the impatience of the other Americans in the group.
- f) in the denazification issue, which occupied most of the meeting Oppenheimer was less rigorous than the Germans themselves. He seemed to protect the Germans against their own proposals. This evoked an unfortunate impression among the Germans. The people present are genuine anti-Nazis, probably the only ones existing and at a later date a less rigorous course would be taken by any responsible German government. It should not be watered down if the Germans wish to do their own housecleaning.
- g) The Germans have no knowledge of what the control Council and of what Frankfurt are doing. It was impossible to explain it to them. We take too much for granted, the Germans, on the other hand, are running away from us.
- h) Hessen seems the most independent country, owing to Geiler who has seemingly no feeling of his limitations, they should be properly curbed.

On the whole the meeting was a success as the first collaboration, on equal terms, with responsible Germans.

Zinn was an efficient chairman, the best man among the Germans was Ehard.

evening: at the detachments mess. at a nightclub, a noisy and useless affair.

Wednesday, December 19, 1945.

morning: tried to obtain the translation of the denazification law in the Ministry of Justice. Arrangements with Dr. Hempken and Dr. Muth concerning the minutes and the exchange of laws of the CC with the Württemberg laws. left Stuttgart at 10.45.

arrived Nürnberg at 1.45.

lunch at the Grand Hotel. arrangements with McLendon on attending the International Military Tribunals meeting. attended the last part of the afternoon meeting (dealing with the criminal organizations).

evening with Frankl.

Thursday, December 20, 1945.

attended morning session of Tribunal.

lunch with Robert Kempner, Chief of Counsel.

afternoon: skipped meeting and came to late for the session.

evening: with Kempner and his party.

Friday, December 21, 1945.

left Nürnberg at 8.00.

McLendon coming with us to Berlin.

via Bamberg, Schweinsfurt, Kissingen Brückenau, Fulda (lunch) Autobahn, Cassel, Braunschweig, arrived there at 6.45.

stayed overnight in Braunschweig.

Saturday, December 22, 1945.

left Braunschweig at 9.30. arrived Berlin at 12.10..
afternoon party at Fahys house.

Sunday, December 23, Monday December 24, Tuesday, December 25, 1945.

no work, was on duty Tuesday afternoon

Wednesday, December 26, 1945.

office 8.20 (office disorganized because of workers in our rooms).

Thursday, December 27, 1945.

office 8. 45.

dictated memo to "ahy on a case reported in the Tagesspiegel, according to which a Stammkammer in Bremen had sentenced a soldier for Fahnenflucht to two years in prison with the addition that he deserved clemency because of his good conduct in the Afrika Korps and as a soldier. The same story as after 1918 only with the difference that this time the judges were "purged" by us and only reliable anti-Nazi were installed, the truth is that in Bremen Cpt Gut Guthrie himself admittedly a Nazi had been legal officer and many persons had been appointed who were just nominal PGs! How nominal appears here.

I am sure nothing will come out of it since we have not organized a systematic revision of the court decisions.

conference with Roge wells on the proposed Bezirksverbände and Kriesordnung of Bavaria. Several loopholes were discovered and some new ideas were inserted.

Studied the denazification proposal of the working party of the Committee of which "ahy is chairman.

Excellent report, progressive and full of understanding of the situation, something rather rare to see and behold in this Group CC.

I am going over the Bavaria draft and will try to put it in shape.

The Bavarian draft puts the responsibility on the Germans which is OK since we are unable to take it on, and differentiates, But any great number of cases will be subject to rule of the thumb solutions.

From 12.00- 1-15 a long talk with "ahy who, for a change, seemed accessible and listening. I explained to him the meeting of the Ministers of Justice and the necessity of organizing the approval of the laws proposed by the Länder. He proposed that all projects would be submitted to the Secretariat in Berlin which would see to it that the proper Division would deal with it. instead of allowing the local regional commander to make the decisions on their own responsibility.

I postponed discussion of the plan to review the court decisions because he seemed to become impatient.

I found him this time more receptive than at other occasions.

In the afternoon I went to the movie The True Glory, an authentic film of the invasion and the war, some very good and gripping pictures, but too many and through repetition too monotonous.

left office 6. 40.

evening at home.

~~Sat~~/ Friday, December 28. 1945.

office 8. 45.

various conferences on trip: with Judge Madden on Oppenheimers conduct of negotiations (I was very positive in my appreciation but left not doubt that German proposals of denazification should not be watered down by American humanitarian considerations).

with Shopler on my project on the reform of the bar act (he noted some inconsistencies which have to be analyzed).

with Madden on the constitution making of the present German governments any constitution they write and have adopted through gullible Mil. Gov. officials are authoritarian and dictatorial anticipating the future and should not be tolerated.

with Harringer on the final formalities for getting the marriage act before the Legal Directorate.

dictated some notes on the so called white list of ministerial personnel. (even this function is in disorder, nothing ~~of~~ is done to analyze and organize the material'.

studied Bavrian draft of the denazification proposal of the three South German governments. Conference on this subject with Col. Bowie of Clays staff and Elman (who is the reporter in the Legal Division and seems to do a good job).

in this conference which lasted for almost two hours, I explained:
a) denazification has slipped out of our hands and takes its natural course which is to peter out after some more or less vigorous efforts on the parts of the anti- nazis who happen to be in control right now. It should have been done by Mil. Gov which, however, is incapable because of lack of personnel and knowledge.

b) the best solution, therefore, is to leave it to the Germans themselves, who, however, will try, in due course, to save as many Mitläufer as possible from disadvantages.

c) it is better to have it done by the Germans themselves than by us, our measures would be replaced as soon as we draw out. The German measures have some chances of being more permanent.

I am to write comments on the German draft. I like to do this although I have some other work right now. The more the better.

not good working day, had to move to another room, great disorder.

am very tired, do not know why.

left office 6. 20

evening at home with proof reading. (gave Madden section IV of the proofs in order to prepare him for the meeting on the German constitutions) he seemed to object to minor points which I had thought were perfectly clear.

Thursday, December 27, 1945.

July 1, 1946. Think of it: there is a people unaccustomed to democracy and congenitally unsuited for it. Nobody knows the actual strength of the parties. The communal elections everybody, from the Minister Presidents down to the worker and farmer, feels, are premature and will not result in any appreciable measurement of public opinion. The communal elections never were barometers of a political nature in Germany. Yet they are to be held because General Clay, on the way out, wishes to democratize Germany. What he is doing is exactly what I described in my book as ramming down the throat of a people an alien form of government.

who is to prepare these constitutions? What should be their content? Their content is dependent on the political parties and their endorsement by the electorate. The electorate is a limited one because of the denazification policy which deprives, against our unanimous advice, substantial minorities and their families of the right to vote. The whole thing is operating in a vacuum. But something has to be done to satisfy the whim of a man of the one man rule set up of Military Government. Clay certainly is a democrat. It could be much worse. But the trouble is that such a well meaning and well intentioned man is led astray by his democratic prepossessions.

I tried as much as I could, and the others were of my opinion, to stall the development. There should be elections for a National Assembly, not before October 1946. All we can do in preparing them is to offer our good services to the Germans and their governments to prepare themselves for the job, by information and advice on foreign experience with constitution writing and the procedures. This is precisely the content of my book. I got most of my ideas into the minutes. We wrote it down. But it is interesting that such an important problem, the problem of Germany and thereby European future, is handled in such amateurish methods.

another illustration: Hessen enacted a constitution, according to reports a n authoritarian one as it could not be otherwise. A government whose only moral justification is the backing by the tank and airplanes of the occupying power. This government assigns to itself the plenitude of powers. The Military Commander in Wiesbaden, Col. Newman, approves it and it is published in the Gesetz- und Verordnungsblatt. Nobody is asked about it, we have not even a copy of it. I proposed I would write to Geiler to get a copy. Here is the situation: the colonel believes he is entitled to approve because the constitution called itself staatsgrundgesetz and he is entitled to approve "Gesetz"!!! They do not know even the fundamentals of the German language. This is Military Government.

left office 9,10.

evening at home, correcting proofs.

Friday, December 28, 1945.

office 8. 30.

day of crisis-

the showdown is on hand. I am cleaning out my desk and expect to go home. Sheppard has intercepted a memo I wrote to Fahy on an outrageous case of judicial sabotage of the democratization and demilitarization policy undertaken by Potsdam, which occurred in Bremen. Three judges allegedly politically reliable have convicted a man of desertion of the Hitler army and sentenced him to two years in prison, with attenuating circumstances that he served well in the Afrika Corps. The Tagesspiegel brought a fulminating (and very good editorial about it). I wrote the thing up for Fahy, pointing to the parallels of 1920 and after. This time it starts early and there is no excuse that there was not a purge of the bench. The bench has been pruned by the most momentous purging movement of all times, called denazification. Yet it happens. Fault of Mil. Gov (Cpt. Gutthrie who appointed his Nazi friends) and fault of us because we did not repeal the Military Code and Code of Military Procedure and have not forced the Germans to review all such cases. But we expect them to punish their own war criminals! Sheppard intercepted the memo and dictated one of his own elaborations which I had not seen. He did not consult me on the issue.

I went to Madden and told him that I would not work under Sheppard. If am not detached I would resign. He seemed surprised but did not take it seriously. I do. I have reached the limit of my patience. I have been here for ~~eight~~ five months and not been given responsibility and work only in so far as I am able to grab it. I am wasting here my health and my time.

Rule to be followed. I must not lose my head.

worked on British translation of marriage act which is rotten. But since any way the German text only will be applied in practice it does not matter. However, if I were a German lawyer I would try to make trouble by relying on substantial differences between the German and British (English) text in case this would help my client. A nice problem intimately tied up to the hopeless effort of legislating in three languages on subjects belonging to a foreign jurisdiction which none of the four occupying powers actually masters.

dictated report on Ministers of Justice meeting.

3. 00- 5.00 Attended with Judge Madden the interdivisional meeting on German constitutions (Wells, Harris (Political Affairs) and a man from the Department of State.

the issue is important enough to be discussed here elaborately. it characterizes the manner in which Germany is governed by one man rule, here General Clay. Incidentally, the clash between the Department of State and the War Department reflects here on the situation the others were so outspoken about the situation that I wondered. For a change my sympathy is with the Department of State and that is something.

Clay had ordered a "target date". favorite military expression for constitutional conventions to be summoned for writing the constitutions and submitting them to the German people. Target date:

Saturday, December 29, 1945.

office 8. 40.

very disorganized morning.

arranged with Harringer for transmittal of translation of marriage act to the British. We have to make a translation of this law although it will be applied by the Germans.

did some preliminary work on the denazification project. This is urgent but I could not bring myself to work in the afternoon. conference with Mr. Purvis, Political Division on various problems of German personnel in political parties,

Shepard told me he had intercepted my memo on the sabotage of German courts because it was not ripe to go to Fahy. I told him the matter would be regulated in the near future.

He told me he had seen this coming and has asked Fahy to be relieved of the responsibility for me, but this was declined. He wished to see me attached to the front office as special consultant. But Fahy disagreed. If this is the case the solution will be very simply and I shall resign without further ado. I am going to take the matter up after the holidays.

afternoon: party at Fahy's house for the other Legal Directorates.
Monday, party at Shepards house.

Sunday, long talk with Karl Brandt who believes that we are in a terrible mess but for different reasons, we are applying Nazi techniques to the Germans (the same old story, the refugees are all incurable sentimentalists.

Wednesday, January 2, 1946.

office 8. 30.

worked all day, in one stretch, on the Bavarian denazification project. It is the beginning of the end of denazification because it transfers the powers to make or to break a man to German committees and the Germans will not wet the bear when the wash its fur. Nothing can be done about it because there is no receptiveness of the population for the denazification. To have been a Nazi was good form in German society, only Communists and other radicals were not Nazis. Hence, the flame of denazification burns fiercely only for the moment and will be extinguished as soon as we turn the back or allow the Germans to do it for themselves.

interruption only when Witten rang me up to ask whether the minutes of the Stuttgart meeting should be translated. It turned out that they had come in a letter addressed to me and that this letter had been opened without consulting me

moreover, a statute which had been translated and even mimeographed was sent up for translation again.

left office 6. 45.

evening at home.

Thursday, January 3, 1946. - 53-
office 8. 40.

I dictated the memo on denazification which is an article by article criticism of the German proposal. I have misgivings to adopt it, but after the mess we have made of denazification- indiscriminately throwing out all nominal members and leaving the more obnoxious non - Nazis wholly unharmed,- I realize that we have to shift responsibility from denazification to the Germans themselves. This will be of course the end of it, The machinery they have devised is so clumsy- by interpolating the political parties- that after a while the zeal of denazification will be extinguished in the cotton wool of popular pressure that Nazism was not a crime and that the war criminals are responsible. Once the twenty men in Nurnberg have died- or were acquitted the desire for revenge on the part of the Germans, little as it is today will be wholly satisfied and the whole issue will fall under the table

as a political law the technique of drafting is entirely new. There are political connotations which have to be caught in verbal forms, something very difficult, the Germans have no experience nor have we. It would be better to study the South American illustrations but the material is not available here.

I had the visit of Dr. Franklin, formerly of the American Consulate in Berlin and of Randall Elliott who wrote the excellent reports on Spain and Portugal for the Foreign Political Associations. Both seem capable and well informed men, after all, there are some good civilians coming up now, and Karl Brandt, USA's foremost agricultural economist, is here too as Murphy's advisor. At long last they are getting some good people here. By the same token: civilians who wear officers uniforms are stopped in Frankfurt and enjoined to remove the buttons etc. It is scandalous that the Air Department has broken every single promise made to us. But we are taking it lying down and the brass hats, that is the fools who write papers about military protocol, are right.

Had lunch with D. Harris of the Political Division and Cpt. Bolton.

Talked about the sins of omission of Mil. Gov. in not supporting the Germans morally. We leave them in the vacuum and do not support them spiritually and intellectually. That we have arranged for physical reconstruction counts for little, the Germans could have done that for themselves. Otherwise we have done nothing for reconstruction except the acceleration of "democratization" of which they know nothing and want nothing of it.

In the afternoon I told Fahy that I am unable to work under Shepard whom I consider unsuited for the job and that I would have to be given more responsibility if they wish we to stay on. He was quite accessible and told me that I have been "very very valuable" and that he will think it over and talk it over with Madden.

evening at home.

Saturday, January 5, 1946.

office 8. 30

wholly disorganized morning.

the denazification memo which was to be ready yesterday could not be completed because Mrs. Menzel was sick yesterday. This morning Oppenheimer from Frankfurt was here and wished to see it, or rather I offered to let him have it because they were working on the report of the working party over the weekend. Thus the unfinished that is unwritten manuscript was handed to Elman. I offered myself to be ready for a discussion the afternoon or on Sunday but nobody cared. What became of the memo I do not know. I have worked on this for six full days, one holiday included. It does not pay in this outfit to do anything beyond the "call of official duty" and even within it.

Another act of sabotage of the branch (Glaser, the Warrant officer is between two fires and has to keep neutral).

Before I left for the Ministers of Justice conference I had completed the draft of a reform of the bar law. I had sent it to Madden and asked Shopler, Gerhardt and Dickmann to comment on it. I received only comments from Ahipler which, on the whole were proper. When I went to work at it again today I could not find it and found out that the papers had been removed from my desk without notifying me. Gerhardt's comments I got finally. They are silly because he does not know anything about the German bar. His objections are mainly drafting points and I did not write an English statute but a German one which is to be translated into English. McLendon wished to have the thing over Sunday. OK with me. I work several weeks on an important subject and it is held up because of incompetence of the people assigned to comment on it. This amount of amateurishness is no longer bearable.

I exploded twice which shows that my nerves are no longer under control towards Glaser, once towards Oppenheimer. But the issue is on the table now and in a few days I know whether I shall resign or continue. But I am not continuing under present conditions.

left office at 12. 50.

Monday, January 7, 1946.

office 8. 40.

current information: instructions that no police authorities are authorized to supervise politically the German people. Political police no longer permitted.

once again badly disorganized and on the whole uselessly spent day. I chased in the morning my manuscript on denazification which Oppenheimer had taken with him (without using it) to find out in the evening that the Germans now will be permitted to write whatever law on denazification they wish. They would not interfere with it and would not even make suggestions.

This implies that the second chapter of denazification is a failure from the start because under the draft proposed now practically no Nazis, or only the worst, would be caught

Friday, January 4, 1946.

office 8. 30.

worked over denazification memo which Mrs. Menzel wrote in record time. I am in doubt whether anybody will read it. Probably the rotten German draft will go into force without much bothering. It is a whitewash effort and a clever one written by the best of anti-Nazis available which is a relative term anyway.

I helped Shopler determine which sections of the criminal code and the Weingesetze strafrechtlichen Inhalts should be stricken out. That should have been done two or three years ago in Washington as I had proposed. But now, eight months after the occupation started we have done next to nothing to denazify the law.

talk with Dr. Friedrich Glum who is advisor of Wells. I knew him from before 1933, he is an elegant man somewhat battered now, coolly observing what will happen, without any enthusiasms and with well concealed disgust and disdain for our fumbling efforts to govern Germany. No shining light, retired from the university in 1937 and does not wish to return there. We agree at least on one point, that democratization of Germany is premature. But to convince the general is more difficult.

afternoon 3.00 - 5. 30 attended with Judge Madden the meeting of the interdivisional committee on German constitutions. Wells runs this show efficiently and there is an intelligent discussion among the four political scientists, at least one group in which the experts outnumber the dilettantes. The program is moderate, that is to hold elections for the constituent assemblies not before October 1946 and to prepare them by Land commissions of experts. I succeeded in selling my idea of a constitutional commissioner, in the mild form of a liaison officer of OMGUS who is to be at the disposal of the Land governments for advice while the constitutional assemblies write the constitutions. At least the supervision of the constitutions (as well as the elections) was conceded. The people in the group are intelligent and see the problems, even Madden can be made to see them because he is willing to learn. had lunch with Guradze. left office 6.00

evening: Karl Brandt and Major Wickers at the house from 9. - to 12.30 I was very tired and therefore was very pleased that Brandt did most of the talking.

I am somewhat better in shape but physically so run down at this time that I do not think I can carry on very much longer.

and the great mass could from the start declare that they are only followers who were taken into the party by force or threat and that they under the terms of the law, are exempted from its operation. The law is an Emmenethaler cheese consisting mainly of holes. protect

No wonder, Oppenheimer leant back heavily in the meeting to protect the good Germans, so much so that the German officials themselves were amazed; how would he be in favor of plugging the loopholes. The issue will be the same as in Italy and Austria: only a superficial gesture of denazification, that is going through the motions, and a neo-fascist or a neo Nazi movement (like l'uomo qualunque in Italy), ready to seize power as soon as we relax. And we are turning over the government to the "good Germans" so rapidly that within a year from now all the Nazis will be back and those who were excluded now will be the heroes and even be compensated by the state for their martyrdom.

I dictated letters to South Germany% Ehard, Beyerle etc (but without authority, I cannot even organize the beginning influx of German law because I have no authority and not at all to do it.

I dictated the report of the meeting of the ministers of Justice for Pollovk. It would have been wiser to let him have the German minutes and make his own translation. But I promised it and I am going to do it.

Conferences with Dr. von Lewinski (he says that the Anwärter und Probedienst der Rechts anwälte is indispensable because the young people do not know a thing and would do only harm if they were left to their own devices without guidance. But Mr. Gerhardt, expert on German law from New Mexico, thinks that it would be unwise to hold the young people in bondage by the "entrenched powers" German laws are rewritten by people who are no German and no German law.

Interesting conference with Dr. Fritz Corsing who works in the Russian Ministry of Justice under Schiffer. The Russians have taken from the German Zentralverwaltung all power of independent legislation and transferred it to the Bundesländer and provinces, same situation as here. I wrote also a brief memo on the parallel situation in the British zone for Fahy. He would not be interested otherwise he would have given instructions to investigate the situation in both zones in order to allow us to make conclusions for the furtherance of German legal unity which everybody of responsibility desires. We in our zone are "democratizing", the Russians are organizing.

Although I kept busy all day I accomplished nothing. The situation is untenable and I rather go home than to continue this kind of tension and frustration.

left office 6. 30.

Tuesday, January 8, 1946.

office 8. 45.

rather disorganized day, without consistent work.
talk with Oppenheimer who is skillfully evading any personal
commitment even as to what he is working on, The secretiveness in this
outfit is excruciating, I wrote six days on this memo on the
German denazification law, now I am told it is useless because this
law will not go into force, it is to be rewritten but
the basic lines of approach are not yet cleared. There is so much
waste motion because of dispersal of responsibility.

I worked on the Institute for foreign law whose existence in the zone
I had discovered last September. The file, wholly disorganized had
been in three different hands, nothing was done, only memos were
written which repeated what had been stated in the German propaganda
issue on the IKaiser Wilhelm gesellschaft. Since I had not authority
the Institut für ausländisches öffentliches Recht which would
have been useful for us, is still out of control. On the other
hand they transferred the library of Karl Schmitt to our building
which again is senseless because most of the books are of a historic
nature and cannot be used properly in the space available.
Waste motion again

I am fighting for my draft of the reform of the bar (% Rechtsanwalts-
ordnung) It took me three weeks to draft something sensible.
and in line with German requirements. It is not a difficult law
to write but it indicates the difficulties one encounters with
our limited facilities and knowledge. The result was a comment
by Shopler who discovered some inconsistencies in drafting which
can be eliminated, and a most stupid comment by Gearhardt who
judges the problem in the light of the experience of New Mexico.
The basic defect is not only the ignorance of the people here
concerning German affairs, but the lofty superciliousness in which
they apply the principles of a pioneer country to an old legal civili-
zation. The probe and Anwärterdienst which the Nazis introduced
and which serves to prevent that untrained lawyers are unleashed
at this time- the young lawyers have learned nothing in the
University and had next to no training as referendare, - aroused
the particular ire of the people because it gives power to "those
entrenched" in power. As if a Rechtspraktikant could not charge
his lawyer if he so desired. Again procrastination, this law
is ready for action now for four weeks and nothing is accomplished.

case of Dr. Gördelers heirs, which I discussed with Rockwell:

Gördeler, leader of the 20 of July putsch, was executed.
his property (in this case an estate in Württemberg, was con-
fiscated for the Reich. He is here request release from blocked
account. A number of interesting problems are involved (none of which
can be dealt with properly by this group because they just do not
have the necessary background): a) do we as Americans consider
those convicted under the Nazi laws as innocently convicted and there-
fore entitled to damages and redress, or release from punishment?

b' Do the German courts as we have established them today,
have the guts and the authority to rescind such laws and convictions
based on such laws? Where is the line to be drawn between
unjust conviction and a conviction justified according to our
standards of justice?

record note

written January 9, 1946.

Friaday, January 4, 1946: Major McCollough(?) with whom I came home on the bus told me en passant, that we would go away for the greater part of January to Frankfurt.

Sunday, January 6, 1946.

Major M. came to my room around 11.30 and told me he has to go to the transportation office and could not get a taxi. I advised him to telephone from the house opposite which he did. I waited with him for the car helped me to get his baggage into the car and he dropped me at the Hüttenweg mess around 12. 15.

I came home from the mess in the evening around 8.00 and found that light was burning in the majors room Suspecting that the light had been left on accidentally I tried to open the door which was locked. I knocked several times and finally a woman appeared whom I recognized as the one whom I had seen in the majors company once in the kitchen. I asked her: "Who are you what are you doing here?" She answered (in German) "I am here at the request of Major C to take care of his things during his absence." (Ich habe den Auftrag vom Herrn Major seine Sachen in seiner Abwesenheit zu betreuen") I answered: "there is no need to take care of his things, we have a housekeeper. Are you living here?" She said "No." I asked again "Are you staying overnight here?" She said again no. I told her that she could not live in the house because this is against regulations and left her.

Monday 10. 30 I found that the housekeeper was talking in the room with somebody I called her out and questioned her and she admitted that the major had ordered her, as the senior officer, to let "Mrs. Noth (?) stay in his room during his absence. He had shown her the travel orders and he would stay away for four weeks. I told her that this is against regulations, that I would not tolerate the living of a German woman on the same floor with me without permission of the billeting office and that I would report the affair to the billeting office tomorrow. I told the housekeeper that she is under an obligation to inform the supervisor who comes daily, of the presence of a German woman in the house, which she admitted as correct. I told her she would be fired if the matter is reported. The housekeeper then suggested that I talk myself to Mrs. Noth and inform her of the situation. We went upstairs, the housekeeper called her out and I told her, that the orders of the major are not valid being against regulations and that she should leave on the next morning not to return until the major is back. I added I do not care what the major does when he is in the house, but during his absence I would not tolerate a German woman on the same floor. She agreed that she would move out tomorrow.

Monday, January 7, 1946.

The housekeeper told me that the woman had moved out but threatened to write the major about it and it would create a great scandal. I answered I would not be concerned about it.

record note:

On Friday, January 25, 1946 I found that the major had returned. The housekeeper, Inge von Gallenck told me the following on the same evening when at about 10 o'clock she knocked at my door and came in. The man was highly incensed about the whole situation, he had told her that he is the senior officer and that his word is the law in the house, he would let the woman (Frau Noth) stay in the house when he returned to Frankfurt in a few days. It was none of my business what he did, he did not interfere with me.

I told her that she had to report the situation on the next day to the supervisor and that I would go to the billeting office for information.

On Saturday, January 26, 1946 I called on Major Hayes (Wac major in the billeting office and told her the story asking for advice. She told me that no German woman is to live in our quarters, except in the basement or attic. If she is found by a checking party she will be arrested for trespass and placed before a military court. She told me that this is not the first and probably not the last case of this kind. I told her I do not wish to make a formal complaint, I only came for information.

When I came home in the afternoon exactly at four, Inge told me that the major wanted to see me. I told her he could see me tomorrow at 10. (I had a guest coming to the house at four)! Nonetheless a minute later the major tried to open the closed outer door, I opened and he tried to come in. I told him angrily that I had no time and would see him tomorrow. He said: I want to talk to you now and as I tried to close the door against him he squeezed his foot into the door so that I could not shut it. He came into the room and began recrimination that he would not allow his friends to be insulted and that I should apologize. At first I kept my temper and said nothing, when he said You are no gentlemen and you should be ashamed of yourself you behave like a kind, I told him brusquely that he was not invited to my room and that he should get out. He went to the inner door of the room and squeezed his foot again into the opening. I went to the bathroom washed etc and returned to my room, he was still waiting and continued to make reproaches in a form not usually used by officers. I told him that he had violated the regulations and he answered he knew the regulations as well as I do. I told him that I would report him and he told me that that he would report me. He continued to shout at me and he assumed a threatening attitude. Since I wished to avoid physical violence on their part I sat down and began to read a paper, he stood there and continued to speak, finally since he got no reaction he left.

On the next morning I sent word to him through Inge that I would be ready to see him downstairs, but he did not show up.

Evening: at my house "r. Willy Schweig Berlin- Schlachtensee, Breisgauer-
strasse 41 who is the Verwalter des beschlagnahmten Judenvermögens
and works Oberfinanzpräsidium, Vermögensverwaltung, Kurfürstendamm
193/194, Dr. Fritz Cosring (who works for the administration of
justice under Eugen Schiffer in the Russian zone) and Lt. Witten
who had arranged the meeting, (7. 15- 9.30)
Interesting aspect of the restitution of property problem.
He wishes to have a preferential treatment for the Jews who remained
in Germany and lost everything while the claimants who went abroad and
saved their lives and even established themselves again in business
should be paid or satisfied only after the first claim had been
settled. The idea is sound, but psychologically impossible.
He told us that the British register such claims with his organization
and that at this time he is working on a Fragebogen in order to
establish the amount and character of the claims.
I told him that we are working on such a law and that he should
have some observations, particular on the nature of the claims
(Judenabgabe, Judenbeschlagnahme, Einsatzbeschlagnahme) in order to
have them considered by the working party.

conference with Lt. Col. Brown on same subject. This is a tremendously
complicated matter and it seems adequately handled by the various
divisions. How long it will take to get them through the
quadrupartite mill God alone knows. One gains respect for the people
at Versailles who wrote this peace treaty with its many technical
provisions in less than four months while we are working
here for more than six months and hardly have started to
scratch the surface of German government.

Received the Hessian constitution which is much better than the
Bavarian draft, less authoritarian and more modest, but
superfluous none the less.

wrote a brief memo for Marye on the question of a Swiss lawyer whether
the BGB is valid for Ehescheidungen.

Fahy came in the afternoon to see me. He seemed worried and not
well disposed toward me. He proposed, without making it definitive,
to transfer me to the Legal Advice branch and to have Dickmann take
my place in the Administration of Justice. He realizes that I would
not get along with Shepard and said Rockwell is a very amiable and
cultured man (which is true). I told him that this would not
satisfy me because I want to do the work for the establishment
of the Reich Ministry of Justice. He felt that he could not attach
me to his office as special assistant or in a similar position
because he could not permit a man to cut out a special niche
for himself, which would be bad for morale. (which again is true).
He evidently does not wish to assume the responsibility for my
freelance work without having it sifted by somebody else which
indicates that he is not self assured because a leader of a group
should welcome independent contributions.
we did not finish it, I asked him whether I should attend the
meeting of the Ministers of Justice next Monday, he wanted to go
himself, But who is to do the actual work of coordinating?
It is almost incredible that this essential work is not
followed up consistently.

I told him that I wish to have more responsibility and that the transfer to the Legal Advice branch would not solve the problem we left it at that.

We discussed thereafter the denazification. It was the first time in 6 months that he gave me an opinion of his own. In other occasions he had only listened to my proposals. Nothing, for example has been done on the collection of South German laws.

I feel that I have lost a round, but I shall not give up. I think the issue occupies too much of my strength, after all it is not so important, another six months will go by fast and half of the time is over, it does not matter where I am and what I am doing. It is more interesting here than in Amherst, that is certain. Why not just stand by, observe, get as much out of it as possible and curb my ambition "to do things"? This government of Germany is lost anyway and a failure which stinks to heaven.

left office 6. 20.

Thür wednesday, January 9, 1946.

office 8. 50.

points which occurred:

should the political parties admit Nazis to membership?
decision rests with political parties, Mil. Gov does not
give instructions or advice on this score.

The memo criticizing the German proposal for denazification finally was completed, corrected and signed and went to Col. Bowie of Clays secretariat, Oppenheimer, E-man, Fahy. Nobody will read it, nobody cares, nobody tells me what they are doing and where the disagreement is. It is 16 pages and pretty good, at least for the historian who in forty years will go over our records.

I wrote a memo concerning Geilers funny constitution for Greater Hesse which the clever Military commander in Wiesbaden had approved without asking anybody because it styled itself Grundgesetz and he has the authorization to approve "Gesetze". Why should an American colonel know the difference between a gesetz and a grundgesetz? If we disallow the Bavarian constitution and allow the Hessian constitution we will be accused of arbitrariness. Otherwise the Hessian instrument is not bad and drawn up with a sense of time conditioned proportions, But there should not be any constitutions.

conference with Dr. von Jawinski on the Institut of foreign law. Several persons had worked on the act (Brabner Smith, Sickmann, others), nothing was accomplished. It is of little importance except that it indicates the failure of Mil. Gov to deal effectively even with minor matters. This case is relevant because of the Zeitschrift which should be prepared, it is the most reputed

journal of foreign and international law in Germany and should be used for the democratization of German legal science.

I am pondering over a new legislative proposal to outlaw denunciations which were made during the Nazi period. § 164 of the Criminal code is inapplicable because the falsche Anzeige is punishable only if it is false while denunciations of true facts even if they led to the execution of a person by the Nazis, cannot be punished by the courts. The whole thing is tied up with the amnesties. It is urgent to do something about it.

Lot of stuff is rolling over my desk which is interesting but so badly mimeographed that I can hardly read it. Of course the work of the technical committees of CC is impressive, what they do in chemistry and trade and industry in order to determine the level of German industry in the future is really something.

Theisntein is here, he wishes to go back on an emergency because of the illness of his wife. Whether he returns he does not know. Oppenheimer will go back in April. I am still undecided but today somewhat more inclined to go in this branch even under Shepard because otherwise nobody else would do the necessary work. The Frankfurt group is being transferred to Berlin with the exception of a few people who are going to stay there. Who is going to do work which is really important for the reconstruction of German law if the three of us are out? Urman and Schubert are nice Austrian lawyers, none of them has practiced before they left. Dickmann is good enough but his interests are non-political. It seems that emane xpert are not desired in the administration of German legal life.

left office 6.00

evening at home

Thursday, January 10, 1946.

office 8.50.

dictated the last sections of the minutes of the conference of ministers of Justice.

began drafting a project which punishes Denunzianten. several cases reported in the papers indicate the persons who denounced people to the Gestapo etc cannot be punished because § 164 Strafgesetzbuch punishes only those who knowingly accuse a person of a false fact while all the Nazi denunciations deal with true facts which brought the perpetrator in trouble. Drafting is difficult.

conference with Dr. Ernst Scharr, formerly Kaiser Wilhelm Gesellschaft who accuses indirectly Dr. Havemann as a communist. This aspect does not concern nor disturb me.

afternoon: 3.20- to 5.00 call on Dr. Eugen Schiffer,, title: Chef der deutschen Zentralverwaltung der justizverwaltung in der sovietischen Zone

Besatzungzone in Deutschland, Momsenstrasse 52 I.

For the most part of the interview his daughter was present. Schiffer is 86 years of age, looking like a well preserved man of 70. Short, somewhat pompous, elegantly dressed in striped trousers and cutaway. White hair, keen eyes, lively speech somewhat hampered by a slight age inhibition in swallowing. Good speaker, old parliamentarian, has charm, intelligence vigour, liberal though thoroughly democratic, German minded (proud of Germany), not embittered by reclusion under Nazis. Was elected to Reichstag in 1912, (in 1903 to Prussian Landtag, held mandate ever since to 1933. Was Secretary of State under Scheide-
mann after 1918, member of the Nationalversammlung and Verfassungsausschuss, Minister of Finances under the republic, leading politician of Deutsche Volkspartei, wrote book "Reform the Justiz in 1928 (his publisher Beckh in Munich requested a new edition only a few days ago).

I emphasized that my visit, brought about through Dr. Corsing, is strictly private and informational, that my authority had not been instructed given me to see him, he reciprocated that on my part his statements are to be kept confidential, consequently the discussion was frank on both sides.

I outlined briefly my career and explained that my personal interest is for the maintenance of German "Rechtseinheit" which is intimately tied up with economic unity of Germany guaranteed in the Potsdam declaration. He agreed fully, his effort is geared to prevent fragmentation of German legal life. At present he is holding the fort without knowing how much he can accomplish.

His relations with the Russians are good, at first he dealt with Karasow, now with the latter's assistant, a Major Nicolaieff. Discussions are conducted through interpreters of his own.

We agreed that through Dr. Corsing we would exchange all legislative material which arises from the Länder.

Soviet zone embraces 5 Länder or provinces: Mecklenburg-Vorpommern, Saxony, province Saxony, Brandenburg, Thuringia, all have their "governments" with legal departments (Justizverwaltungen). Marshal Thukow invited the five administrations with their staff and himself recently for a three days meeting in Karlshorst where they were well treated and had a full interchange of opinions with the Russians.

The central administration which he heads has little power though more than it may appear. He mentioned that recently a rubber stamp was provided by the Russians for his office in which the word "General" was omitted. He is inclined to consider this as an accidental omission.

The Justizverwaltungen of the federated provinces are assuming an independent conduct, Thuringia (Professor Lange) has issued a new penal code. Other provinces likewise are equipped with complete legislative authority.

He complains about lack of information on the Control Council, on happenings in the other zone, that the Russians ask him to draft a law and he never knows what becomes of it, that, his authority

is indefinite. For example he was given a law against "sabotage and diversion" (in the Länder some people destroy machinery which is to go to Russia) he sent out instructions to prosecutors and courts how to handle this law but the law itself was unknown to the authorities and never officially published. He thinks that this is a state of legal anarchy.

The Soviets conduct themselves as if they would remain here forever, also he believes that the central justice administration is meant for permanency.

He prepared with his staff a number of bills and projects which he will transmit to me. Among them are:

reform of the bar
instructions for the appointment of judges and prosecutors,
The Russian wished at first a sort of "Wangsgenossenschaft" of the Rechtsanwälte which would receive all cases and frame them out among the members, he refused to accede to this demand and it was dropped.

His own opinions on the reform of the bar are that there should be a number of chambers for the larger cities. The Probe and Anwärterdienst should be retained by all means. The level of the Anwaltschaft has gone down because of the dirty competition and should be raised again.

The legal fragmentation arouses in him eine seelische Verbitterung, what other peoples have as a matter of course is denied to the Germans. In addition, he feels that without legal unity the economic unity cannot be maintained.

Essential is the creation of a Reich Ministry of Justice. He himself would like to be the Reichsminister der Justiz.

plans also a reform of the marriage act. 1/3 of all cases before the courts are divorces. He got very excited that we write a marriage law without informing the Germans and soliciting their wishes.

Wishes to coordinate the legal efforts of the Länder and thus to prove the right of existence of a central authority.

The courts in the Russian zone are unsatisfactory, many judges have been appointed who wreck the decisions and the law. Somewhere in Saxony the Amtsgericht was closed by the Russians and a man by the name of Enze set himself up as the court, with the help of the police and the Russians.

He prepared a reform of the Schwurgericht in which one judge participates in the conduct of the trial but abstains from voting.

Schöffen should be trained people, not everybody, this is a wrong concept of democracy. Refers to the proposals in his book.

He has people go round to the various courts and check on their administration of justice

The Berlin Magistrat appointed a committee of some 30- to 40 lawyers who go systematically over the entire law since 1933 to denazify it. On my objection that such a group is too cumbersome and would not weed out other obnoxious provisions he consented but thought that more leeway should be given to the Germans and they should be trusted.

His own proposal: every court in case it has doubt as to the validity of a allegedly Nazi provision is to refer the case to him as the final decision.

Names of Ministerpresidents of Länder:

Hoeckner, Mecklenburg,
Hübner, Province Saxony
Paul, Thuringia
Steinhoff, Mark Brandenburg
Friedrich, Saxony

their title is: Präsident des föderativen Landes und der Provinz.

discusses the chaos of the Verwaltungsgerichte in Berlin, one court does not accept cases of the others. Believes that ultimately the administrative jurisdiction should be transferred to the ordinary courts. Gneists distinctions are no longer valid since public law has invaded many fields of private law. Refers to his own activities as Oberverwaltungsgerichtsrat

Russians have ordered him to establish uniform rules for the entire Russian Zone for Justizprügungskommission.

he wished to arrange at once for a second meeting, I told him I would let him know when.

went back to office at 6.00
left at seven

evening: A Bell to Adano (movie)

Friday, January 12/13, 1946

office 8.25.

conference with Judge Madden and Shopler.

The British project of appointing a committee of German lawyers to do the denazification of German law - a plan which I had consistently opposed because of its impracticability and inherent political difficulties came up in the Legal Directorate yesterday and was turned down, but a substitute was found in that the four powers should divide between themselves the material and the denazification under their own steam by whatever methods they would choose. Madden instructed me to do some thinking about it with Rheinstein and Shopler. I said that the material should be divided according to substance and that we would utilize the legal committee of the Länderrat which I had recommended to Fahy all along.

we discussed further my idea of writing a new criminal provision which make denunciations during the Nazi regime which brought people into concentration camps, punishable because some of the arch informers had been acquitted by the courts because § 164 Strafgesetzbuch is based only on information about untrennbar facts. Shopler raised the issue of retroactivity which to mind is ethically not justified. After all this is a revolution and legalistic thoughts should not impede retribution. I looked into the matter and found that Proclamation no. 4 does not mention retroactivity except as stipulated by law which would permit such provisions making denunciations retroactively applicable.

Attended in the afternoon the interdivisional meeting on constitutions which is very efficiently handled by chairman Roger Wells. Jim Pollock attended and gave a nice demonstration of Wampire building for himself. He objected, in an underhanded way, to everything which would disturb his outfit of the coordinating committee of the Ländererrat through which he wishes to have all threads in his own hands. I have no objection to it, but it amuses me, this is the way how human activities are undertaken, and government is more human or affected by human desires than anything else. We discussed particularly the point whether elections on the local and intermediate level should be held on the same day, a thing which I strongly opposed. Clay seems to think that the Stadtkrieselections in May should be combined with the elections for the constituent assemblies, an idea devoid of realism because in this case the local elections would be neglected and the entire interest concentrated on the all important assembly elections for which next May is decidedly too early. It also seems that we are overrating the importance of our zone, what we are doing for 18 million people in whose land few of the natural resources are located, is relatively unimportant. But since it is our zone we magnify the importance. More and more it is apparent that the other zones should be studied and coordinated with our efforts, the British are going more slowly, the Russians perhaps even more slowly, but we push ahead regardless of what the other powers do, evidently because sooner or later we will pull out and let the world know that we did all in our power to "democratize" Germany. I am grinding a number of personal axes in this connection as does everybody else. My idea of the constitutional commissioner has found its way into Wells' draft of our decisions in the form of the liaison officer who assists the constituent assemblies and the governments in writing their constitutions. Pollock at once objected that this seems to be a job cut out for constitutional lawyers. I countered that by that time I would be back in Amherst.

The other point is to prevent that the constitutions must be ratified by a constitutional referendum which would mean that a slight majority will at all would support it. It is the old fight between Montesquieu and Rousseau which is fought over again whenever these problems occur. I am in favor of the representative principle, the masses should not undo what the constituent assemblies have done, I want to wait until the crystallization of public opinion has been possible, the influence of the French precedent is clearer, I presume that the German constitutions will try to create a strong executive.

the

The meeting was interesting because the participants were versed in the subject and only Madden has the American "common sense" which is the substitute for precise knowledge of the subject matter. The meeting last from 3.00 to close to 6.00

Shopler discovered a number of errors in the marriage law for which I am grateful. I did all in my power to check it but with the situation what it is it is impossible to do all the clerical work.

I had two long talks with Rheinstein and one with "ahy". I am convinced now that I am washed out here and that I am going back to the states within a few weeks at the latest.

Rheinstein has trouble with his wife who has become anti-semitic and pro-German if not pro-Nazi and wishes to go back to try to straighten things out. I strongly advised him to do so. But he would come back only if he is given a definite responsibility or job. Same situation I am in. Frankfurt is going to be dissolved (which I had advocated all the time) (Incidentally, Pollock had never seen the draft of the Bavarian constitution on which the Regional commander decides supremely without asking anybody, and God knows on whose advice he relies, in Bavaria perhaps on Lt. Anspach a young German who knows nothing, this is the way how we handle the most important problems of European future). He had several talks with "ahy" and in the evening informed me that he had been given the special assignment of arranging for the denazification as stated before. He had proposed to Judge Madden that he and I do it together, but Madden had categorically declined. So his situation is settled.

I went to "ahy" in the afternoon and asked him whether I would be sent to Stuttgart with him as he had indicated. He declined and said that he himself was not going and that he thinks it unimportant that we attend all meetings. I answered that this is the most important thing we have to do right now because otherwise we would have the fragmentation of German law which we all desired to avoid. He always seems to see the light when I talk to him, perhaps it is his agreeable manner, but nothing is done. Pollock came to see him and evidently in his suave way, persuaded him to let everything be handled by the coordinating committee in Stuttgart. How could we know, on the basis of the miserable German minutes of the meetings, what is going on? We have to discuss the technical matters with the Germans themselves, otherwise things are sliding out of our hands. But he does not know enough about this. Pollock was not enthusiastic about taking one of the legal divisions on his staff. This settles it and I would have no job in this matter. Nor would he send me to Stuttgart on Monday. There should not be always the same person, he said, and he wished Oppenheimer to go. I did not tell him what he had forgotten, that Oppenheimer was there the last time, because he just does not wish me to go.

All these facts are straws in the wind or more: they do not trust me, they do not wish to give me responsibility and probably they would be very glad if I would resign and they could get rid of me without taking the initiative for it.

I am not going to rush the decision but it looks that I shall be out within a few weeks.

Left office at 6.30. evening with Shopler, Rheinstein, later Oppen-

Leaves 5.30

Saturday, January 12, 1946.

office 8. 25.

very chaotic and useless day.

Shopler found that some errors had been made in the text of the marriage law, most of them of a clerical nature which should have been checked herein the office, one of them of a basic nature(I did not change the heading Blutsverwandtschaft because I did not understand that affinity and consanguinity are not Blutsverwandtschaft) but it is characteristic, the three other powers are supposed to check on their own and since none of them had done anything about the law, the error went undetected.

Formerly there was a ministry of justice with an experienced staff.

Now there are some amateur people who write laws for 65 million people. No wonder that such things do happen.

worked on the denunciation project.

attended to a number of smaller things without importance.

had endless discussions about the general situation.

Oppenheimer reluctantly told me, upon direct questioning, that he is to attend the meeting of the Ministers of Justice(Fahy wishes to have another man do it than myself).

general unfriendliness in the office which results from the hybrid situation I have in the branch. The situation reminds me very much of the last year at Yale when everybody except me knew that I would not continue and nobody had the courage to tell me frankly.

left office at 1.00

Sunday, January 13, 1946.

1.00- 3.00 long discussion with Dickman on the reform of the bar project. He objected strongly to my draft and found it "unsatisfactory". On closer scrutiny all of his objections boiled down that he wished to see the entire act rewritten(instead of changing only four articles) which would not help any because in some form one has to indicate which changes are made. In addition, he wanted all Nazis to be excluded which runs counter to the denazification policy and cannot be attained at this stage of the development. Finally he agreed that I use his objections merely as background material. This is the way how things are done in this outfit. There is a German expert and all he does is to criticize superficially some few items without having studied the project as a whole. These are the German experts, let alone the Americans.

I do not mind criticism, but it has to be reasoned and reasonable.

Monday, January 15, 1946.

office 8. 45.

Monday, January 14, 1946.

office 8. 45.

rather uselessly spent day very tiring. (it seems that I need vitamins or that I should get some complete rest.)

I drafted the project for the supplement of the criminal code which contains a provision against denunciations (mentioned before). another one which removes amnesties and pardons and Niederschlagungen during the Nazi period which would prevent prosecution of crimes of Germans against Germans. and finally a provision which mobilizes that Proclamation announced as promise, namely that all Nazi conviction would be quashed. It is all very complicated and I am sure that nothing will come out of it, but at any rate salvavi animam meam.

I began also to dictate/ the report on the visit with Schiffer who impressed me considerably.

Long talk with Lt. Col. Brown on restitution of property plan. They had various committees and conferences with Finance, Economics and of course State, and the law they are writing is about the most unfair and provokingly anti-Semitic they could devise. It is true that no money is available to satisfy claims against the Reich because the Reich is bankrupt and, in addition, the unification movement of Hitler has destroyed the financial independence of the Länder. But I fail to see why a professor who has served for 30 years and then was ousted and now has a moral claim to a pension should be cheated out of his vested rights because there is no money available. If they would confiscate more Nazi property or if they would assign from the foreign assets which are confiscated some slice to the despoiled Jews - most of the claimants are Jews - it would help. And it is a reasonable idea that the Jews who remained in Germany and are completely impoverished, should have a priority and that the individual house or real estate owners residing abroad and having saved their lives should not get their property without being compelled to release some portion of it in favor of their less fortunate countrymen or coreligionists.

They did something very American and wholly idiotic: they made a sort of Gallup poll among the German (sic) People as to whether Jews should be compensated and of course they received a 100% no. As if the Germans, in normal times, or any human being for that matter, would ever be willing to straighten out injustice against others from which they do not have a direct advantage.

This "poll" - now knows what polls of this sort are in the States - convinced the policy makers that the compensation for loss of property should be as little as possible which corresponds to the State Department's general attitude. There will be a howl all over the world once this law is published, and I am held responsible by many because I was in it and they do not know how little I accomplished.

Left office 645. evening with Stauffer and three Britishers who were dull but very British. We had very good steak at Harnack house and were shown through Femina (which was closed) and Royal Club which was dull and tame enough.

Tuesday, January 15, 1946.

dictated in the morning something.

spent all day in the meeting of the Legal Directorate at ACA building.

A Britisher, MacKeschie, was chairman, a vain, pompous pedantic gentlemen who rubbed the Russians always the wrong way.

Madden is a sort of common sense arbiter whenever the discussion runs into a legalistic or, more frequently, a verbal impasse, he is able to give a satisfactory solution. The French delegation is technically the best (Monnier, Lebeque), the Russians (Karshev) are eager to learn and at times makes very intelligent observations considering that he is unaware of the thicket of European legal doctrine. For example an article in the law which repeals some obnoxious provisions of the criminal code, ~~was repealed~~ stated that law which had existed before the (now) repealed law was enacted, would not be revived by repealing these laws. This is a controversial problem in European jurisprudence (and one which would deserve further investigation). He challenged it and he made quite good observations. Those Russians are no fools. Otherwise the entire day was sent in verbal battles for nothing, I always thought that parliaments deteriorate the drafts made by the government experts, but now I see that even a committee of experts deteriorates the draft made by a committee of better experts. Some times the vanity of the British chairman was responsible, sometimes the difficulty of expressing in four three languages the meaning which is not clear even in one of them. We sat until close to 7 PM and were very tired and impatient. Madden handles this sort of our work with great skill and good judgment. Technically, the system still could be improved.

Wednesday, January 16, 1946.

Office 8. 40.

I spent practically all day (from 10.30 to 4.00) with the British (Col. B. de H. Pereira) on establishing a proper

English text of the marriage law. The British had taken care of the translation previously but Graveson told me that their draft was made by a person not knowing law and therefore defective which it was. I had no time to make a good translation if this were possible in view of the divergence of the legal systems. But Pereira had gone carefully over the draft found some 500 errors etc (which is little) and we went over it article by article and finally established a good version. I had lunch with them at the Brunwald mess - they have about 50 small messes spread over their sector, as against the three mass feeding stations we entertain, and the mess is a private house where they have some peace and can relax and they take an hour for lunch and have drinks and eat at reasonable hours, and not at 6 PM as we do, with a whole evening without anything. But the British know that to make their officers comfortable means better work while we do not care about the quality of work and therefore omit nothing to make the officers uncomfortable.

The marriage law is not bad, it is not good either. But what criticism came from the field, is outright silly.

left office 6. 20.

evening: call of Dr. Erbe at my house.

general discussion on law school problems, denunciation law, law journal and other matters.

Thursday, January 17, 1946.

office 8. 30.

went to Directorates meeting at ACA Building.

I hoped that the marriage law would come up but the entire day was spent on the redrafting of the working hours directive which coordinating committee had sent to legal directorate for drafting in legal form. A whole day was wasted on verbalisms, owing to the ineptitude of the British chairman MacAechie. Very little was changed. At first the people tried to improve upon the text by giving it a different interpretation, but MacAechie stopped that soon and we accepted the text of the manpower directive as binding although we changed somewhat its form. The Russians showed enough understanding to make their contribution worthwhile, the French have an ingrained sense of proportion and made many proposals which were logically and from the viewpoint of the systematization justified.

I intervened at one point of basic importance. The draft proposed that no discrimination in working hours should be permissible on account of race, religion or political opinion. I raised through MacAechie the following point: Here is a declaration of non-discrimination.

But actually we are discriminating against the former Nazis because of their political opinion. How can we square the circle? Why not admit that democracy does not have force for former Nazis? This is my idea of militant democracy for which I was fighting now for more than ten years. MacAechie saw the point, the British did not understand it because of the formalization of democracy in the Potsdam agreement, the French, very embarrassed, referred to the Potsdam agreement, the Russians plainly evaded the issue. MacAechie insisted on calling the political directorates attention to the conflict but he was alone, the others did not join him, he had the courage to get it into the minutes. This is one of the basic inconsistencies which run through our entire work. Why not say openly that we confine democracy to the non-Nazis?

the paper had been kicking around for five months. Hence it was so obsolete that it did not even mention that the trade unions by now were operating.

meeting lasted from 10.00 to 6.00

left office 6. 40.

Friday, January 18, 1946.

office 8. 30.

9.00 - 10.00 meeting of interdivisional committee on German constitutions with General Bailey, Chief of Internal Administration branch.

Gailey is new head of the Internal Affairs division, a jolly Southerner (many Southerners are in the group) he presented a letter addressed by Pollock to General Clay, dated January 3, 1946 in which Pollock ~~refers~~ states that all three German Minister Presidents believe that no elections for constituent assemblies should be held in the near future, at any rate not before October 1946. Nonetheless Pollock claims that he has convinced himself that such elections should be held together with the Stadtkreis elections in May. We all were furious, even the quite Wells showed signs of anger, because Pollock had not said a word about this letter when he attended our meeting of January 11 in which we had laid all our cards on the table. It is an underhanded way to curry favor with the General who evidently is on the way out and wishes to have "Germany" democratized before he leaves. Pollock should have informed us about his contrary opinion. This is the way how Military Government is conducted, the experts advise against something and the general does what he pleases.

I made along speech advising against this disastrous course which would inevitably lead to a new failure of the democratic experiment in Germany and discredit democracy permanently and for good in Germany. We all agreed that such a course would be ill advised, particularly since the four powers had agreed to synchronize their democratization policy in their zones. We succeeded also in whittling away some of Pollock's empty statements to which General Clay seemed inclined to accede.

Conference with Dr. Friedrich Glum, German advisor of Internal Affairs. we discussed the careers of the Verwaltungsdienst and I advised that the training for höhere Verwaltungsbeamte and for judges should be identical as it has been the case in South Germany before 1933. Other points were how to democratize the administrative service. I explained that this is a sociological and not a legal problem.

I was told that I should attend the meeting on administrative courts in the place of Mr. Dickman tomorrow. I studied the act, further details see tomorrow.

I finished dictation of the Dr. Schiffer memo. If this section were administered as it should this memo would occasion a closer cooperation with the Russians, but nobody will bother to read it.

left office 21. 4. 45 and dictated at home to Mrs. Menzel.

Saturday, January 19, 1946.
office 8. 30.

meeting of four power working party on administrative courts. American delegate Mr. Wells. After some discussion the Russians declared that they had not convinced themselves of the need to institute administrative courts in their zone and therefore refused further cooperation with this committee. The matter was referred to the Legal Directorate.

This is probably the proper course to take. I had advised against reopening of these courts, at any rate they were Länder jurisdiction even under the Nazis and nothing is gained by making high falutin statements which in practice are not followed. If administrative courts are being established it will serve only for making the Germans recalcitrant in obeying military government because they will claim that arbitrariness if administrative acts has been forbidden and will invoke the state ment against all acts by which they are unduly burdened. The British who had sponsored the plan submitted a second draft which was even vaguer than the first and, in its perforations of the general principle, even more adjusted to their own needs.

lunch with the group at ACA building.

off duty at 1.30.

Monday, January 21, 1946.

office 8.35.

sharp workday.

Cpt. Bolton of IA & C Division asked my advice on the following issue: The Minister presidents have the power to remove officials subject to authorization of MG. What about elected officials? can they also be removed? I dictated a memo offhand in his presence which interpolates a disciplinary committee from among the elected officials and gives the removed official a right to appeal to MG.

Dictated the report on the abortive meeting of the working party on administrative courts in which I made no bones about the inadvisability of regaining administrative courts all over Germany. After all we are decentralizing and here is a subject matter which never before had been under Reich jurisdiction (except for a short time after 1942, establishment of Reichsverwaltungsgericht).

various conferences with Madden who wants implementation of the "mechanics" of exchange of legislation between the various states and Länder. Perhaps I can develop from the mechanics some real system of control.

with Lt Col. Maryi: At the present time they do not even know which is the nationality of the Jews who remained in Germany. Are they Schutzgenossen, non-Germans, German nationals etc? I again pointed out that in repealing the Reichsbürgergesetz "with all executive ordinances", among them the one of November 25, 1941 which made the emigrated Jews stateless, reverted all foreign Jews to German nationality against their will. Not even this important issue has been settled by positive arrangements.

with Konrad Moosmosen who reported that the Russians are

" blocking " in their zone the property of all factories and plants with more than 200 workers, the first step to nationalization. Very alarming deekoplemnt if true, many of the rumours are merely bogeys of anti- Soviet fear.

lots of minor things attended too, stream of documents which I read only perfunctorily.

had duty from 6.00 to 8.00

left office 8. 05.

Tuesday, January 22, 1946.

office 8. 30.

meeting of the Legal Directorate on the marriage law.

The result of more than 7 hours futile discussion is that nothing of the text was changed, inspite of Russian efforts to strike out the wholly secondary provision (which I had restored from the BGB) of the return of gifts in case of dissolution of engagement or marriage. The Russians did not understand it and the parcel goes to the French delegation which spontaneously, that is by virtue of their accurate legal training, discovered that the reference to § 531 of BGB (revocation of gifts) automatically leads to the question of ungerchtfertigter Bereicherung, that is that gifts which at the time of the revocation are no longer physically available must be restored according to their value. I had not thought of it, because I know little of the BGB now, but the clever French found it and if they not convinced the Russians they at least convinced me. Otherwise the discussion centered mainly on unessential points of words, and on a charge of the incompatibility provisions at the end, which are my nightmare because we did not go over the executory provisions and struck them out globally with the proviso that they are repealed insofar as they are incompatible with the act itself, a quid pro quo which I dislike because we should have said expressis verbis which is which.

The discussion was a clear indication of the difficulty of writing a law for Germans in three different languages and from the viewpoint of three different legal cultures, or rather two because the French are close to the German. Monnier, famous professor of Roman law, pointed at one time out that the incriminated provision is as old as Justinian or even older without convincing the Russians or Judge Madden, for that matter. But the entire procedure is wrong. We should write the laws in German and for Germans, or if we do not have the qualified personnel, they should be written, under our supervision by expert German lawyers. What we do is to square the circle, it just does not work. It worked this time because I had put much work into it, but I have Bauchweh when the expert Germans get at my proposal. They will tear it to pieces. And the Härtemilderungsklage is unworkable without

further implementation. But under given conditions it is about the best we were able to produce.

I received a lot of eulogies from the British chairman and the French and even Madden grudgingly acknowledged it. To praise a man is not American official custom and so I modestly and half irritated deprecated the encomiums.

The law it stands now is a strictly technical law and has no references to the "elimination of the Nazi spirit" which is OK with me. They also struck out my Amtliche Begründung, or exposé des motifs, because the Control Council does not stand in need of explaining its actions - a wrong and authoritarian concept which will bear fruits and negative ones at a later date, and the synchronized table of contents which was extremely useful. I did not put up any fight for it, because it is not worthwhile.

on the whole a satisfactory accomplishment. But one in six months and that is damned little if you ask me, and dearly bought.

returned to office at 61. 35.

Wednesday, January 23, 1946.

office 8. 45.

hectic and disorganized day.

Fayh called me in this morning (the first time since August!!!) A paper of General Gailey had arrived which presented an election calendar of such amazing speed, elections for the National Assemblies as early as May, constitutions, completed by September 15, popular referendum on the constitutions on November 3m/, that I protested strongly. Pollock has convinced Clay that it should be done because Clay wants the glory of having Germany "democratized". Is there nobody in the States who ends this disastrous one-man rule? The Regional Commanders were in favor of holding early elections, because in the local (Landkreis) elections last Sunday the Germans showed a participation of 83 % and the elections were orderly! The elections were orderly also under Hitler.

Fayh had the courage to dictate in my presence a letter to General Gailey in which most of my objections were included. Later he lost courage, suppressed the letter and only telephoned to him. Madden who is of my opinion used strong words, but he says six months more or less do not matter. Of course not because the entire policy is wrong.

Cpt. Bolton came to see me about the removal of elected officials. My proposals, slipshod and not thought through, were incorporated in the instruction general Clay will sign and send to the Regional Governments.

conferences with Dr. Friedrich Glum, the people do not even know what havoc proportional representation wrought in Germany and wish to adopt it.

conferences with Arno von Mehlinger who seeks a job, no good, with Konrad Mommsen who is clever and knows what he is talking about,

with Guradze about the unemployment registration law.
with Atauffer about Dr. Hans "esemann that glob man whom was not a Nazi
but whose publication exude nazi spirit and adulation.

dictated memo on Institut for foreign law, nothing will come out of it.
dictated various letters, concerning the legislative ~~gesetz~~ registry of
all Länder legislation.
Telephoned with wells on the election issue, he can do nothing but capi-
tulate.

left office 6. 40.

Thursday, January 24, 1946.

office 10. 45.

was too tired and unwell to get up, but finally decided to
go to the office nonetheless.

attended to current matters.

was unable to continue, left office 2. 50.

Friday, January 25, 1946.

office 8. 30.

conference with Cpt. Bolten on the instructions for the removal
of elected officials I was unable to decide whether elected officials
such as Gemeindevorsteher und bürgermeister Staatsbeamte (mittelbare
sind and thus are subject to Art. 129 and the disciplinary procedure.
I was first of this opinion, changed it after some research, we have not
enough books and finally convinced myself in the afternoon with
Dr. Glum that they are. The whole thing is done in an extremely
amateurish way as everything else in this outfit. We have not yet
decided on the status of officials, but I tried to get into the instruc-
tions a parallel to the Prussian Dienststrafordnung of 1931/1932 which
in § 1 makes it a violation of the duties incumbent on the office
holder if he supports anti-democratic and subversive activities.
I had forgotten that Minister President Braun inserted that
intelligent provision much too late or course, into the law of 1932.

I wrote my "job specification". I am now considered as a specialist
consultant, because of my salary. I do not know what it is and keep
quite for the time being because I do not wish to stir up things more
than I have done lately. But the showdown is not called off it is
merely postponed.

Long conference with Dr. Glum He is instructed to draw up provision
for the training of the lawyers etc, exactly what I have been doing
for several months, this is another proof if such were needed
of the assinine duplication of work. What is civil administration to
do with the training of lawyers? Professor Peters elaborated very
academic plans for the training of the mittlere Justizbeamte.
They are to be fed within half a year of that hybrid thing,
Verwaltungsgesamtheit, the whole stuff of the legal education.

yet this education was one of the few matters which even the Nazis did not centralize, But an unemployed or unemployable colonel wishes this work to be done and therefore it has to be undertaken in the same amateurish way as practically everything else.

Shopler came to ask which authority raises the value of postal stamps. I said of course, Reichspostgesetz of 1924. He found it at once. Sometimes my memory is still good, but there are only modest residues left of what it was once.

conferences with Hans Levy Liquidator of Gebrüder Arnhold, Dresden-Berlin, on the confiscation of an estate of the Arnholds in the Russian zone, I told him: nothing doing. His address: Charlottenburg, Kaiserdamm 28, tel. 32.15 18.

interview with Rudolf Gleimius, Gtow, a former banker, recommended by Frau von Schubert. I telephoned Major Landau about him, he and another man were very unfavorably impressed by him and issued instructions that he should not be hired. The man has excellent technical qualifications, but evidently belongs to the group of rich people who cannot adjust themselves to the conditions of a new impoverished Germany without a Reich. He has a Jewish wife from which comes the big money he has but Landau with whom I talked on the same evening more about the case told me that he told him (Landau) that he could have saved his sister-in-law from the concentration camp "had he known that she would be killed there". This is one of the cases where my own judgment is not dependable. I had the feeling that there is something wrong with the man without being able to lay my hands on a definite thing. He is just not the kind of people I would like to have run Germany, the type of the cultured and powerful generaldirektor who still thinks in terms of past powers. How he could survive as a rich man in the Nazi period with a Jewish wife I do not know. In 1944 when the "Aktion Mitte" started which brought all aryan husbands of Jewish wives into the Arbeitsdienst, he managed to be appointed as real estate expert by the Reichspostministerium and to escape. But I had the feeling that there must be something wrong. I broke the news gently to him, but there was no mistake about his deep disappointment.

Intermittently I studied the new Erbhof law draft made by Shopler about which more tomorrow.

left office 6. 30

Saturday, January 26, 1946.

office 8. 25.

conference with Madden, Brandt, Öt. Col. Davis Shopler on the Erbhof law draft (9.00- 11. 15).

The Erbhofgesetz has been kicked round now since I came over. To my mind it is an excellent law which protects the owner and avoids atomization of agricultural holdings. Its demerits are that the younger children are driven into the cities for work and that no credit is available, but the Nazis took care of that. At first we decided that it should be merely denazified, which would have been comparatively easy. The British wished also to retain it after denazification, the Russians were against it because of its entail character, however, the collective farms are nothing else but entails. I fought with Madden for weeks for retention, he considered it as an arch Nazi measure which should be abolished and he did not understand its mechanics. Then the matter was taken out of my hands, Brabner Smith dabbled in it, with a good deal of zeal and good will, in arrogating people, men who wrote commentaries on it etc. Finally Shopler got hold of it, he has no political vision but good technical he is wrote a new law as a substitute of the Erbhofgesetz to be repealed which retained all its controlling features and extended them to the entire bulk of agriculturally used land, which would devolve an enormous and useless work on the courts and the agricultural authorities to be created.

The land authorities would have control which is correct because agriculture is one of the things which do not lend themselves to centralized or uniform treatment.

We discussed the draft in the usual hurry, it must be ready by Monday when the four powers meet in the working party. Brandt did not impress me greatly, Shopler as it is usual in such cases defended his work successfully, the expert is always superior to those who have not drafted the project, but I got a number of things into it. It is another pertinent illustration of the utter amateurishness with which we are handling here the most important matters affecting millions of people.

I found out that Fahy had given Witten the same job he had assigned to me that is to procure the legislative material from the Länder. I had a long talk with Mautz and found out that Shepard again had intercepted my letter to Major Mahder who wrote me from Stuttgart on this subject. I am sick and tired of this duplication and disorganization.

I wrote a job specification and found that my position in the coming civil service structure is that of a specialist consultant, a 10,000 \$ job which would require special capabilities. I do not care since I would not stay on for a mountain of gold.

left office 12. 50.

saw in the afternoon the exceptionally impressive Nazi film with Leni Riefenstahl's triumph of will power, Hitler's Reichsparteitag of 1934 which was presented in Nürnberg. Million of people with out stretched hand, a solemn gathering of howling derwishes, and now there is not a single Nazi left and none ever was a Nazi. It is nauseating.

Monday, January 28, 1946.

office 8. 35.

Cpt. Nolten appeared again, a regular guest, we are now in agreement on the removal of officials. It is a makeshift measure, but one of practically little importance. The real trouble with elected officials will come only after the beaten opposition has found time to get under way again, this will not be before three or four years when Högnér and others will be indicted as Weislings.

otherwise busy day. The British sent over four pages of technical ob-

jection on their Special Legislative Advisory Committee, consisting of German lawyers, had worked out. If this is all my law is not bad. Most of their points were taken care by us, some of them could have been incorporated if they had come earlier in the game, now it is too late because we cannot start all over again. I made one mistake which was engendered by my German legal training, I could not bring myself, in the case of an error in the person underlying the marriage ceremony, to make this marriage annulled, I had it *nichtig* in that I said *Kann angefochten werden*, in conformity with § 123 BGB, but the expression *kann aufgehoben werden*, is obviously clearer, I restored it.

I started working on the plan to concentrate and integrate the entire legislative material here in Berlin, the rationale as well as the mechanics, an important thing, but I am sure it will not be acted on. It is difficult to formulate because Fahy and the rest know so little.

We had a meeting of the branch. Shepard is thoroughly disliked by everybody else, he is throwing his weight around and just does not know the simplest things. I emphasized again that the decisions of the courts have to be reviewed in order to prevent relapse into the antidemocratic habits as occurred after 1918, but she and brushed it aside saying we cannot become a Supreme court. He just does not understand the problem, nobody of these people does, they think after they have installed allegedly anti-Nazi judges everything is well. It is just the opposite, the Bremen case is still discussed in the papers, perhaps it would be a good idea to make the *Am Altskamm* the receptacle of complaints against reactionary judges. Not help is to be expected from military government, we are "democratizing" and pulling out.

I read a clever- Allportian study on the University of Heidelberg, stemming as it seems from American behaviorism psychology, clever and wholly beside the point. Nobody mentions that Jellinek is a swine.

It was a rather hard day, from 8.30 to 6.45.

left office 6.45. evening at home.

Tuesday, January 29, 1946.

office 8.35.

bad day, not feeling well.

went to Legal Directorate, the marriage law should have been out weeks ago, but the British chairman Maccaskie handles things so clumsily that the agenda were not maintained, after having listened to his explanations on the income tax law (which the Legal Directorate never should be permitted to write or discuss because it has no experts on the matter) I left.

took me several hours to get there and back.

The invitation for the opening of the Berlin University which Erbe had promised to send, did not come.

afternoon I began to dictate the useless memo on the coordination of legislative material.

worked all afternoon in the drowning out noise of a pneumatic drill below my window reverberating in the narrow court yard. this has been going on now for six months.

left office 6.10.

evening with Peter Sherwood (Waldiss son), later at home, tired.

and the officers told him he could get them back in two weeks.

answer-Nothing can be done about it. He should therefore try to reconstruct the act from other sources.

decent man, intelligent, best material, should be rewarded for heroisms in Nazi resistance.

conference with Fahy and Lt. Col. Maryi on the British project to hand over the entire denazification project to a group of German lawyers. I am against it, wrote two memos against it, Maryi is in favor, Fahy is reserved and does not quite know what to do. I want to give this job to the Länder Ministries of Justice but Fahy says (correctly) that this is no solution on a quadripartite basis. I say that the corresponding agencies of the other powers should be enlisted.

worked on the final stages of report on marriage act. It will be ready Friday.

began to dictate translation of my German text of bar reform project. senseless undertaking, because the text reads differently in English

another problem: how is CC to publish these ~~excessively~~ excessively long German texts? By poster? But this is their problem.

various discussions with Schöpler who denazifies the Criminal code. He does a very good job but is unaffected by the new tendencies of criminal law. Rewriting such a text requires full knowledge of new criminological theory and comparative law.

left office 6. 10

evening: "Party" at home Graveson and Emmaes (British), Lt. Cols. van Wagoner, Stuart Hughes, Professor Wells, Col. Hatch others invited but not appearing: Major Wickens, Lt. Col. Maryi

Thursday, December 13, 1945.

office 8. 50.

marriage act

at long last I cleared out the entire business. It could have been done much faster and much earlier - after all since October I have been working at it and with it, - but since the OMGU, at least the legal Division is neither a law office nor my study no rational procedure for operations were applicable. I had a secretary only for the last six weeks.

The bunch of papers is: the German text, a tabulation of articles as synoptical help for the user of the old and the new text, an introduction and a report on the meetings of the working party which I rendered faithfully in the French version although the amiable French had referred no less than twice to my humble person in gratifying terms. What is missing are the translations, God only knows when they will be ready. Of course it is absurd to make translations of a statute drafted in German and written for German legal use.

But this is the rule of the Control Council and nothing can be done about it. Perhaps it will be possible to convince the Legal Directors

Thursday, January 31, 1946.

office 8.40.

I talked with Fahy who is going tomorrow to Nürnberg to see Jackson on the criminal associations (which I personally consider one of the most fruitful innovations of the otherwise sterile Nürnberg trial) Guilt by association is the only way to get rid of subversive associations if there is a way for this. Then he will go to Munich or Stuttgart for a discussion of the denazification issue with the German Minister Presidents. With him are Elman and Oppenheimer, I feel that this is too much of Semitism represented good as the men are. Perhaps this is merely a severe-sensibility on my part and it may be fortunate that Fahy and the others have no misgivings. I have. The Germans, even the men now in control who are decent will say that all hardships of the denazification policy are inspired by Jews. although just the opposite is true. Rheinstein and Oppenheimer are leaning back to get as many "nominal" Nazis back into the fold. But the Regen will originate here and the consequences are easily to be foreseen. It is the same in sending Urman, an agreeable and quite circumspect young Viennese who never has practices in all his life, to Munich to negotiate with these shrewd and versatile Bavarians, No worse choice could be had except a Prussian.

I told Fahy that the denazification policy has slipped out of our hands and that we better admit the failure. Under the new plan 95 % of the Nazis will slip through the meshes of the tribunals for denazification and be reinstated. Probably this could never have been prevented. But The real Nazis should have been put to work abroad, either in Russian labor battalions or in Australia or in anyplace where they would be useful. As to the rest we know that after a period of one or two years maximum they will be in office again, it is a hopeless situation. Under these circumstances I insisted that a machinery be developed which would permit checking by Military Government on the activities of the courts etc. After we will have lots of former Nazis in the offices otherwise neither courts nor administration can be run- there will be an urgent need for finding out what they are doing, The plan to control only the Oberlandesgericht is stupid because they are the oldest and most experienced judges and many cases of importance in which political matters will be involved will never reach them. What should be checked are the lower courts. I found a method which seems not bad: making it a duty of the Anwalt to inform the Anwaltskammer of all breaches of the law or anti-democratic attitude of the courts. Fahy was afraid that this would detract from the independence of the judiciary which is wrong and sociologically unwarranted. There was independence of the judiciary insofar as the courts could undermine the republic under the shield of being bound only by the law. I would rather have judges who must be defenders of the new democratic state if and when it would arise, than to have judges who cynically and legalistically protect reaction and the bourgeois classes because the letter of the law permits it. The Bremen case is a clear straw in the wind.

I am somewhat in the position of the British crown which has the right to be informed, to be consulted and to warn. Although I am not informed and rarely consulted at least I can warn and this is what I consider my function now, in this second stretch of the Journey to Germany, which began last week (this is the 27th week, time goes slowly and flies) I am here um Schlimmes zu verhüten and I am ashamed of it. But there are reasons why I wish to go on with this assignment, I would not be happy now in the States.

Pollock pulled another one of his lousy tricks in Empire building. He induced General Clay to dissolve as of December 20, all German functional committees and to transfer their activities to the Landerrat. This killed the meetings of the Ministers of Justice and after he had the OK from Clay he wrote to Fahy that Fahy should change the instructions. Shepard who knew damn well that I had been working on this for months, gave it to Gearhardt who does not know a thing about it and came to me for help. Result: I advised against it because one cannot give powers to the Ministers of Justice and then take them away without consulting the Minister Presidents whom allegedly we are building up to be our mainstay of the new democracy.

Nothing will be accomplished and another opportunity to place the Legal Division on the map by insisting on representation on Pollocks staff in Stuttgart, has been thrown away.

I showed Fahy an item in the News From Germany according to which Geiler, the enfant terrible of the South German states, had submitted two bills for approval to the Military Commander without informing us although the bills deal with subjects we are working on here. I got authorization to instruct Col. Newman that the projects should be sent up here for approval, Mautz telephoned.

I wrote the new article on the duty of the lawyer to inform the Kammer of all violations of the law by the courts etc. and showed it to Dickman and Shopler, the latter an excellent man but merely a technician, the former not very good in political matters.

Fahy wants to submit the reform of the bar project to the Minister presidents, I tried to get the draft ready, but could not finish it. It will be sent with Elman to him next week.

Rather hard working day. lunch with Elman and Stella Frankfurter, sister of the judge (not very agreeable elderly woman).

left office 6.20.

evening with Kate Vichow at the house and Baldner.

Friday, February 1, 1946.

office 8. 30

I completed the memo on the coordination of legislation which is certainly one of the most important things I have done here "for the record". That anything will come out of it is unlikely. Fahy does not know enough of what "German" federalism" means that he would do anything. But it is in the record. Moreover I read in the paper that the South German Minister Presidents soon will meet with the Oberpräsidenten of the British zone and so the idea takes shape even if we or the USA do nothing. Fahy could not take it with him to Nurnberg.

I completed the draft of the Anordnungsung which now is technically sound. Drafting is not so very easy.

had no good working day, too much noise and visitors. went again over the preposterous South German law on denazification.

Had a letter from Justizrat Ernst pleading for Lippert, who had falsified his Fragebogen. He had omitted or "forgotten" that he was a paying member of the SA and a member of another affiliated organization, but as attenuating circumstances he adds that he has helped a Jew. and he calls his secretary who unearthed the falsification a "Denunziantin". Of course now they are "Denunzianten", formerly they were patriots. And the climax is that the person who intervenes asks me to settle the matter with a "stroke of the pen". That is how matters were settled under the Nazis. This is a very typical document. Ich bin es nicht gewessen, ich habe nie etwas damit zu tun gehabt, und ich hab den Juden geholfen.

Def. office 6. 20

evening at Konrad Mommsens house, Dr. von Bergmann, Herr Skupschinsky (Economic advisor of Soviet) and several American personnel. Interesting discussion. They are not communists but fifth columnists within the Soviet organization. They wish to forestall the social revolution which the Soviets inaugurated they wish to maintain the Reich, in short they are the "white" German nationalists. Mommsen is about the best German I met here, both morally and technically.

came home at 11. 20 very tired, it is a long day, from 7 to 12 PM.

Saturday, February 2, 1946.

did not do very much work in the morning. Read the records of the Oberste Parteigericht which dealt with the acts committed by SA and SS men in connection with the pogroms of November 8/9, 1938. They were all absolved and acquitted because they had acted under orders by their superiors or out of genuine hatred against the Volksschädlinge etc. One man who murdered a Jew and afterwards also shot his wife in cold blood excused himself that we wished to get rid of a witness who would have been harmful to the regime. The court accepted this statement at its face value and found it sufficient for acquittal. The worst that happened was the man was expelled from the party or enjoined not to wear a weapon for 2 years.

and all this is done in the name of the law, the people who sit in this group call themselves "court" and they bring out their decisions in a pseudo-legal form. Interesting is also the lust for sexual details, some of these records read like abstracts from Krafft-Ebing.

In the morning Capt Biel (very disagreeable brash Jewish man who believes that he knows everything but he is useful because he gets things done) showed me the memberlist of a *Partie für König und Vaterland* founded in Bavaria and licensed by Mil. Government as announced the press a few days ago in broad headlines.

In the afternoon Madden called me to a conference with Muccio (Department of State) Wells, Biel, himself. It was to be decided whether the license should be withdrawn. The signers of the document are mainly old reactionaries, catholic dignitaries (Rebsche, Julius Diez the most prominent). I gave a brief lecture on the different types of monarchy and explained that monarchy of the central European version is always authoritarian and therefore should not be licensed. This ~~left~~ left them unimpressed. They are not interested in the ultimate aims of a political party but only whether it is democratically controlled by the members at the time of its inauguration. Since this royalist group chose the form of an *eingetragener Verein* with a typical *Satzung* (mitgliederversammlung etc) there can be no doubt as to the "democratic requirements" of the party as an organization. But the Potsdam agreement did not aim at suppressing, by refusal to license, parties whose aims are anti-democratic. If a party proclaims the Führer principle as its final aim in case it wins the elections this is not forbidden. I really have worked and lived in vain for the last ten years. The notion of militant democracy which has seized all Latin America is wholly unknown hereabouts. The whole thing is another demonstration of preposterous ignorance of common facts of modern political life. But scholars like myself are useless because nobody wishes to listen to anything which does not give practical solutions. I explained to make it a bit thicker that the pretender is the head of the party and that the pretender is not democratically controllable because his authority as royal personage is unchallengeable. This is of course not correct but I felt that I could put it this way in order to move them to action.

The main points of the platform which was attached to the *Satzung* are that Bavaria is to be an independent sovereign state and that the king, of divine right, is the power of the state. These two points could be used as outside reasons for prohibiting the movement. Personally I felt that the party should participate in the elections because they would have such a poor showing that the thing would be killed outright. But this of course is a dangerous tactic, in case misery in Germany will increase as it undoubtedly will, the party will recover from an initial defeat and become more powerful and dangerous later on. It should be principally obnoxious this time.

We decided to make a statement that the party's license is suspended until further investigation by OMGUS. It is of course a scandal that the stupid military V-Commander in Munich who knows nothing about the implications of the situation should be authorized to assent or withhold assent on his own responsibility without requiring confirmation by higher Headquarters.

We conferred from 4.00 - 5.45. in the afternoon.

Monday, February 4, 1946.

office 8. 25.

day completely wasted, nothing to do except work which I assign myself to me. in more than six months Fahy gave me two assignments, one concerning agricultural law in August, the other one when he asked my advice on the German elections, otherwise I could as well have stayed in USA. All important German law functions are filled by Shopler who is in the Erbhog, consumers cooperative, criminal law committee he is a good lawyer but has no political experience and the pedestrian way they are treating the criminal code reform is another one of the many lost opportunities I was not even given the right to make the translations this likewise is assigned to Shopler who works very hard and without being perturbed by anything.

I corrected the final draft of the reform of the bar act which is now being sent to Fahy to be distributed to the three Minister Presidents.

I read the minutes of the last ministers of Justice conference which is very scanty, Oppenheimer did not report up here, why should he, he is making everything alone and does not need any assistance. I am the fifth wheel and I am sick and tired of it.

I organized with Witten the filing of the legislative material. Of course he knows everything better, I worked on such matters for the last ten years, developed the war defense legislation in my articles in 1938, but he knows for himself which categories are to be used. OK with me.

I dictated letters to Hanns Dah, Leo Ernst, Andre Philip (French minister of Finance and economic who heads the constitutional commission of the French National Assembly I want to obtain some material from him,

I received a memo against proportional representation from Hermens to whom I had written about it. Excellent, only some what too much taking everything against PT for granted.

I break my head in inventing some new work for me. I am going to write an article for current History on The Control Council

left office 6. 30.

went to movie Mildred Pierce with Joan Crawford, very well played but nonsensical plot.

Tuesday, February 5, 1946.

I dictated the translation into English of my draft on the redress of National Socialist wrong, quite an important project, one of the first constructive things we would do (to date we only removed existing law and did not create any new law except on a very marginal scale). Translating is very difficult.

read material of South Germany legislation. Would ~~deception~~ occasion much comment but Fahy does not show any interest in anything which is not strictly within his line of vision.

read a very good article in one of the Intelligence reports on the meaninglessness of the recent German elections. But Military Government believes Germany is on the road to democracy because 86 % of the voters went to the polls. Under Gobbels 96 % went.

Saw in the afternoon the second part of the film: The Nazi plan. Less impressive than the first part because the newsreels are badly connected and some of the best parts evidently cut out. All this material could be immensely impressive if put together less for propagandistic than historical reasons. I want to see what actually happened and not how it looks to us now.

left office 6. 45.

evening at the house of Sr. Von Lewisnki. Too tired to do any good.

Wednesday, ~~Jan 14~~ February 6, 1946

office 8. 50.

I spent practically all day, under the incessant pounding from the workshop just above my head, on drafting the law for the redress of National Socialist wrong, using in part the sloppy projects of Bavaria as model. I found out that the Branch had worked on the law for the punishment of the non prosecuted crimes for some time, with the great experts Schubert and Oppenheimer, so that various days of my work are completely lost because this draft in its bad features had gone out. The policy is to allow the German Ministers to do their own legislating and not to interfere. A commendable policy, but it works the other way. They are not capable to resist pressure of public opinion. Therefore they inserted that the prosecution of such unpunished crimes - there are many thousands - should be terminated within one year from the enactment of this law, that is like in Italy, after a certain day everybody is free. Since the courts are short of personnel, it is obvious that the Offizialmaxime does not work and it will happen as in Italy that the purge is just not done. Our people do not know enough to see this. I was not asked.

I read an interesting report on the practice of the German reviewing boards, set up under law no 8 for the appeals of ousted business nazis. About 80 % of the appeals are granted that is the ousted persons are found only nominal Nazis, the boards which are selected by the Landrat work better when political parties are members, in most cases the Catholics are more lenient than the Socialists or Communists, in short, the German people will denazify to the maximum extent of 10 % and the rest will go scot free. Probably that is as it should be because there is no difference between a nominal Nazi and an activist. This is as it should be, all Germany did it and the anti-Nazi are as Nazi as the Nazis, only when the war went wrong they found they were anti-Nazis. And in Italy we have neo-fascism of the Uomo Qualunque.

Discussed over the telephone with Jessenroder of the British element new changes of the marriage law, which their German consultants in London desire. They had four months time to do it. I have the impression that the Russians are deliberately stalling, the Control Council is not the proper legislative instrument, it is much too cumbersome.

Left office 6. 20

evening at home.

Thursday, February 7, 1946.

office 8. 25.

I attended the meeting of the Legal Directorate because the marriage law was again on the agenda. The Russians raised once again the issue of § 73, return of gift made during engagement and marriage in case of divorce, they are stubborn, but the very able French chairman Lenoan, disposed of it very quickly, the Russians inserting their protest into the minutes. But no action was taken, no formal transmittal to the Coordinating committee took place. The entire procedure is slow and cumbersome, this very important law which is now pending since late October could have and should have been accepted within four weeks maximum after I had done the spadework of drafting. It is not only the language difficulty which makes the Control Council such a slow moving instrument, it is even more the lack of proper business organization, or the driving force which gets things done.

The British raised again difficulties with objections received from their German lawyers in London, most of them not founded. The final paragraph which eliminates, or tries to eliminate provisions of other laws not consistent with the new law is badly drafted and will give rise to many difficulties in practice.

Otherwise the meeting was quite interesting, for a change. For example it dealt with a proposal of the Kommandantura to prohibit judges and prosecutors to join a union. In my opinion this move is justified, because judges and Staatsanwälte as state officials do not have the right to strike, or to be a pressure group as unions are. The motion was set aside in a devious way without taking action on the issue itself. Another point was the dissolution of the Mitropa and another the prohibition of Germans to study or to research in aviation and similar matters prohibited them in Germany and outside. As if it were possible to shackle the spirit, even if it is a nefarious spirit. All such prohibitions are not worth the paper on which they are written.

returned to office 4.00.

call from Rudolf Holzhausen, sent by Dr. Pfeiffer, he is the Bavarian delegate to the trade and finance division here, at least a beginning of German participation in a central agency. This is quite a momentous step forward, but the evolution is still far behind the Deutsche Bund of 1815. The Bavarian separatism finds much opposition in the German press.

left office 6. 10.

evening: Peter and Annemarie Suhrkamp by way of a surprise visit, stayed for three hours in spite of my utter exhaustion.

Friday, February 8, 1946.

I dictated a memo to Madden on a Kammergerichtsentcheidung which owing to a faulty translation of the text, misinterprets a Control Council law. This will happen again and again if we make laws for Germans in three languages which they cannot read and pretend that the German text is merely official.

Madden has not sent my memo on the way of legislation in Austria to Mil. Gov. in Vienna for three months. This is the way how things are handled in this outfit. They are just not interested. What is not in their immediate sights they would not care to see. I had a long pep talk with Madden about the interlocking of the denazification failure with the need for reviewing and supervising the courts decisions. He said Germans are human and if a person loses a lawsuit he will complain and the matter will be brought before the public. This is utterly naive because the pressure of public opinion will prevent any such complaint to be aired in public. A decision which is anti-occupation authority will be so popular that no paper would dare mention it in public. The tie is between our failure of denazification and the control of the courts which becomes all the more necessary. He is unconvinced he thinks we will go back sooner or later and the Germans would do as they please. Why, then, have we fought this war? We should at least strengthen the democratic forces of Germany now instead of sacrificing them wantonly to reaction. I told him the story of Uomo Qualunque in Italy of which he had heard nothing. This is the barometer of neo-fascism in Europe, it will occur likewise in Germany.

I wrote most of the day on the difficult drafting job of the law for the redress of National socialist wrongs, one of the most important things we have to do, a really constructive thing. Madden seemed sceptical because he just does not know enough of the situation as reflected by German press. Our press service which Dickmann handles incompetently, is not sufficiently evolved to bring matters to the attention of our people, nor do our people care much to know anything which is not immediately called for to do.

Working conditions are very uncomfortable because I am working under the OMGUS workshop and they are pounding all day long.

saw Dr. Schwarz whom I had recommended for an appointment of a consultant, seems to work.

left office 5.15, went to Quarett of Baldner, Akademie der bildenden Künste, Berlin-Friedenau, very difficult to reach.

Saturday, February 9, 1946.

office 8.40.

conference with Terracouzio on the translation of the marriage law. Shopler came and wanted to know who the paramilitary militias and the armed bands should be prevented in his new criminal code, triumph of dilettantism, that would be the proper title for my new book. finished the memo on the interpretation of legislation ('Kammergericht decision').

had long and futile wait for a car to take my typewriter home, only lieutenants and generals have cars here.

left office 12.50.

Monday, February 11, 1946.

office 8.25.

I dictated first a brief memoir on the Königs und Heimatpartei in Bavaria. I had been instructed to draw up the bylaws and the platform I would have been more circumspect and would have adjusted it better to the Potsdam declaration. But since nobody cares whether a party has democratic aims if only the party is democratically organized the people in Bavaria were right to put into it their old trash about the glorious past of Bavaria under the crown. I have no more interest in Bavaria than I have in Uruguay.

Personally I am in favor of letting the party come out into the open and manifest its strength. The danger is that later when restoration will be going strong in Europe (Austria, Spain and perhaps even France which is not beyond the danger point) the Bavarians will have an organized and recognized party to fall back on.

Spent from 11 to 4 in the ACA building with Terracouzio and Hershenroder of the British element. The latter has gone thoroughly

the translation of the marriage law and disvoted numerous small items which demanded coorection, We worked all day on it, it was "Hershenroders show It is now a pretty good translation as good as it can be when the different systems of law are considered which have to tally in the translation. All this takes an endless time, but it would be faster if our secretariat were less sloppy. Those young people, Barringer, etc just have no sense of accuracy.

I had Herr Holzhausen again in my office He says the German people should be enlightened about what the "azis had done., books pamphlets, a group of " objective " historians. Heavens, these Germans. The papers are full of news but nobody believes them. Even educated people cannot make head and tail of the Nurnberg trial.

left office 6. 20.

evening at home! Robert Kempner of Jacksons staff at the house with Dickman, Shopler, Ellenbogen, Schubert, Urman. These Austrians are something to behold. Kempner told us that the prosecution of the next set of war criminals is doubtful because there is not enough staff to do it. they stayed until 10 30, I was completely exhausted.

Tuesday, February 12, 1946.

office 8. 20.

I handed in my application for " compassionate Leave" in Switzerland I am positive it will not be accepted for some red tape.

otherwise rather busy and inconclusive day.

I commented on Pollocks move to incorporate the Ministers of Justice meeting into the "Landerrat Coordinating committee, one of his empire building tricks,, probably functionally justified though accomplished again by his usual underhanded way. Nothing much to be done about it though it should have been done by consent of the Ministers and not by fiat of military government. Are or are we not building up the self-esteem of the Germans?

I drafted some new articles concerning illegal militais and armed association for Shoplers new criminal code. I looked in vain for a copy of the Italian code of 1932 which would have given the classification of such crimes and valuable formulations. His reform of the criminal code as it may be grandiloquently styled is the most amateurish thing which to date has occurred in "i. Gov. But everything is amateurish.

I brought Wells my memo on the royalist party and talked with him about the communication of information to the Germans, among them, Germans proposals against proportional representation. He seemed to have no objection to handing Germans article to the Germans or to a German newspaper and seemed to think it line with the discussion on such problems which we encourage. I could not talk to him more personally since Biel was present whom I thoroughly dislike.

Cp. Fleischmann of PS came to see me about Dr. Schwarz, a former consul who has a Jewish wife and was dismissed or resigned around 1937.

He seems to be quite a decent fellow, rather bourgeois and beamtenmässig,

but since we have so few unbelastete Germans the Food and Agriculture people would like to use him right away. Why not? Now the thing is that a young Jewish emigre corporal who has not the slightest idea of what is going on because he was much too young when he left Germany is the master over life and death in such cases because none of the higher ups bothers about it or has the linguistic prerequisites to vet a person, much harm is done by such irresponsibility. In this case the corporal complained that the man was not above board because he had referred to his Jewish wife, a decent man would not have spoken about it. Believe it or not, this boy believes that at present a man applying for a job with us should suppress information about his Jewish wife! The Jewish wives and grandmothers are now as much in demand as they were hidden ten years ago. In addition, the coproproal did not know that the foreign Office had protected its Jews until Ribbentrop took over that a man like Ulrich was active until 1938 as the chief aid of Ritter (of whom the corporal never had heard). All this amounts to this: that we are not even capable of intelligently vetting.

Fahy came to see me and gave me the Berlin constitution for study, that is I should not write a memo but just tell him. This is the third direct assignment from Fahy in seven months. He was quite friendly and seemed impressed by the quality of the South German officials whom he met at the denazification issue in Stuttgart.

Fahy said a few rather unimaginative words about David Hudson's sudden death in Stuttgart which has shocked us all because he was only 52.

left office 6.10

the Russians took up the marriage law again today and succeeded in getting an amendment into article 73 (return of gifts) to the effect that small gifts without substantial value or sentimental value should not be returned. A silly move but this is the bargaining situation in the control Council. In order to get a law accepted one has to make compromises even though they may seem senseless or destroy the context of the law. Hershenroder persists with me with petty amendments of the English text. Let him have his way.

evening at home with the first copy of my BW book.

Wednesday, February 13, 1946.

office 8.30.

worked on opinion on Berlin constitution, proposed by the Russians to the Kommandantura. ~~DA/CI~~ CIA & C had decided against it and instructed General Barker to prevent its adoption by the Kommandantura. The document is in reality a community effort to control Berlin, it never should have gotten that far, because Berlin conducts itself as an independent state and the community tries to have it completely under control. But our counterproposal wished to have a "constituent assembly" for the working out of a new constitution and popular ratification, thus unconsciously playing the game of the Russians by admitting that Berlin is a Land in the new Germany set up. A municipal charter never should be worked out by a "constituent assembly" or ratified by the people, because the transient population of Berlin has no stake in the country which would

justify its participation in the framing and the adoption of a charter. The men in IA Division who wrote this knew nothing of German Gemeinrecht and even less of the actual Berlin situation. While I am against voting at this early date in any other subdivision of Germany I am strongly in favor of it for Berlin because the Socialists would gain control and oust the communists. But the Russians never would permit it because they know that would lose it. Thus the whole thing is blind alarm, nothing will come out of it. Madden showed understanding when I discussed it with him and I drafted in a few words the reservations which Fahy will sign when he gives the concurrence of the Legal Division.

I worked on the draft for the redress of National Socialist wrong which is among the most difficult and most futile things I have done so far. It is a long and technical law of some 30 articles. Nothing will come out of it.

Fahy took the draft for the reform of the bar to South Germany to the Minister Presidents, it will take weeks before it will be back. This is per se a good thing to have them give their opinions on our work, but it is too late now, we should have submitted it to the CC long before, it is ready since December.

left office 6. 10.

evening: Dr Erbe with his usual complaints about the Russification of the law school. He is a nice man but rather mediocre and provincial and very uneducated. His political opinions are old fashioned liberalism, with no touch of the wave of the future.

I went in to take my book to General Clay, but he was out. He would not read it anyway but one never knows.

Thursday, February 14, 1946.

office 8. 45.

Discussed with Dickman, Kempner (from Jackson's staff) and Shopler the fees to be paid to the lawyers defending in Nurnberg. We four sophisticated Jewish lawyers drew up something sensible and laid it before Fahy in the afternoon. Vile Köche verderben den Brei. I had done better if I had done it myself. But at least we succeeded in giving the non admitted former Nazis less than the admitted. If they would not be paid by us they would make only as much as manual labor, but this provision of law no 8 is a joke anyway. This was the fourth direct assignment from Fahy in seven months.

I talked with Fahy today about going down to Stuttgart to the meeting of the ministers of justice next Tuesday. He said no but would telephone with Pollock. The long and the short of it is that we have eliminated the empire builders in Frankfurt, but that we are no even more blocked by Pollock the empire builder who objected to the way we were handling the first meeting. I objected too because Brown and Shepard should not have presented a whole morning their rather duplicating material. But this means that we are now wholly dependent on

Pollock for any contact with the South German Länder. It is exasperating, but seemingly nothing can be done about it. I warned and I tried to do things but nobody, lets me, Fahy is not a leader. I shall pass my time until I go back that's all.

The Russians made another amendment of the marriage law. I was not present and got the information through by telephone, Harringer a former law student as the intermediary. This is the way how complicated German technical laws are handled here. But thank God this is done.

I worked on the law for the redress of National Socialist wrongs, very difficult technically.

left office 6.00

had visit from Dr. Ruge.

evening. Dr. Glum and Herr Holzhausen spent the evening at my house. General discussion, not uninteresting, Glum is not a fool and a cultured person into the bargain. Some of these Germans are pretty good.

Friday, February 15, 1946.

office 8.25.

discovered that a whole carton of cigarettes had been stolen from my locked desk.

had quite a turn over of people in my room as if I had some work to do.

They changed article 76 of the marriage law which was rather unclear anyway but now they threw it back to what the controversy about the using of expired grounds for divorce had been before 1933. I do not mind, only that the consequences of such amateurish meddling with the text of a technical law are unforeseeable. I am not good enough a lawyer to visualize all consequences of the changed text right away. The law was accepted, the coordinating committee will hold a special meeting on it Tuesday, and it will be signed (let us hope) as the only business of the Cc on Wednesday.

A man % Gromberg, young man quite intelligent) from the Finance division wished some interpretation of two rather technical sections of the German inheritance tax law of 1925. I did not understand them myself at the first try. I got two commentaries and they had illustrations. They had struck out the two clauses because they felt they were obscure, actually they are very clear if one disentangles oneself from the system of American taxation which of course nobody does. Such technical laws should be written by German experts and not by American OPA officials or if we are lucky by College professors.

Fahy came to my room and told me that he had telephoned with Pollock the meeting of the ministers of justice had been postponed, he (Pollock) will let us know about the need for attending the next one. Result: nothing will be done, three cheers for the little empire builders.

Lichfield, Political Division came to tell me that the Berlin constitution paper was withdrawn because General Barker wished to remain without instructions. I hope he will not give in to the Russians.

the remainder of the day I tried to get the project on the address of National Socialist wrongs into shape. Very difficult German text, but even more so in translating it.

Left office with Mrs. Menzel at 4.30 dictated at home until 7.00

evening movie. (bad)

Saturday, February 16, 1946.

office 8.20.

Madden had advised me to take a copy of my " Political Reconstruction " personally to General Clay. I tried to reach him for several days, finally today he sent word I should see him. I gave him the copy and wrote a dedication to him (with one of those pointed fountain pens which make my handwriting even worse than it is). Then he offered me a cup of coffee (much better than the one in Hüttenweg, silver tray etc) and we began to chat. He was informal, serious, well- balanced, as a matter of fact I liked him, he is more a college professor in appearance than a brass hat, very much different from people like Gailey. He began by saying that the rights book was an accurate blueprint of what we were doing here, I answered that I was differing in my opinions from what we are doing. This led to my favorite thesis of keeping the Western part of Germany together against the eastern part which is definitely lost. He thought that we had more progressed than the Russians, because the latter had an affluence of skilled workers which we had not (why not) and therefore our job was more difficult. He spoke at length on the level of industry and showed himself well-informed. I then touched on the various problems of controversy first proportional representation, he told me that at first the Department of State had prescribed PR afterwards left it to be decided by the Germans themselves. I explained to him summarily the arguments against it which he did not know. Then I discussed the party configuration, the artificial inflation of the Social Democrats which had reached the peak, the fact that communism never has seized a Catholic farmers country. He mentioned the provision against splinter parties with 15 % which of course is the most undemocratic feature.

I was amazed by one of his statements, namely that democracy can implant itself only in a people in times of adversity. I countered by the experience of the Weimar republic, saying that all difficulties of the first worldwar collapse were ascribed to the republic and that this was one of the main reasons of its failure. He said at that time Germany was far badly off than today, the real difficulties came only later. This of course does not confirm his statement at all which seemed to me amazing, but should be thought over. We then began to discuss the personalities of the Minister Presidents, among whom Weiler seemingly captured the imagination of the Americans most. Then the captain who is his secretary interrupted and he cut the discussion off because he had to go.

on the whole the conference was unsatisfactory. He is no fool but he should be more informed about general ideas if he cannot get hold of details which is understandable. I was surprised that he knew me by name. He told me he would like to continue another time.

I told Madden later about it, he left his reserve for the first time and told me something about Roosevelt and his experience with meeting "great men". Roosevelt had not the intellectual brilliancy which everybody praised but he was a past master of generalities. but Madden agreed that he was a great moral force.

I drew up with Shopler and Dickman the regulations for the fees of experts and witnesses in the Nuremberg trial. Later the British telephoned and complained that the whole matter was for the four powers and that we should do nothing without consulting the legal directorate. I tried to reach Fahy about it but could not.

I translated the press release for the marriage law. It was signed in the afternoon in a special meeting by the Coordinating Committee.

left office 1. 10

afternoon concert of Schubert in Hohenzollerndamm Kirche.
evening at home.

Monday, February 18, 1946.

office 8. 35.

nothing of importance. Since I have no responsibilities, nothing happens except when I pick something up.

I finished the German draft and the translation of the law for the redress of National Socialist wrongs which punishes denunciation during the Nazi regime, makes it mandatory to prosecute crimes which did not come before the courts because the perpetrators were Nazis or the victims were Jews etc. which is unjust

unjust convictions and which finally pays some sort of indemnification to the persons unjustly convicted. It is a well drafted law but probably the entire effort was in vain because it will not be acted on.

visit from Ealter Bauer, sent by Ruge: he wishes my intercession (as if I could do something) on behalf of three Germans, to whom he is personally indebted, or whom he knows personally. The record is interesting for the mentality of our so-called anti-Nazi consultants (this man claims to be economic advisor for Clay) 1) Berlin lawyer who forged his Fragebogen and got one year. He is innocent, courts/ did not get the proper testimony, his membership was stricken out by indelible pencil which means that he never was a member. A childish manoeuvre. Case has been reviewed on appeal and pardon had been turned down by Col. Newman, Wiesbaden (incidentally this important official of MG was superintendent of schools in Nassau country.)

Clear imputation of miscarriage of justice on the part of US Mil. Gov, I advised him to keep his mouth shut only if he has new evidence he can make another plea for pardon. It is characteristic how these Germans dare to impute improper motives to the occupation authorities.

n. 2: Dr. Kimmich, one of the 14 labor trustees, arrested as automatic arrest category. was Nazi member, became Ministerialdirektor, stayed in office from 1933 to 1945, one of the big Nazis. Should be released and reinstated in office though not in a political function because he is a first rate specialist and was all the time against the Nazis. What people are these Germans, they serve a cause for 12 years and were against it all the time, how can they be trusted if they are to serve a new case which they disapprove again all the time".

case no. 3: one of the big bank managers, vice president of the Aufsichtsrat of the Deutsche Bank, was arrested in the denazification program of the banking system. Should be released because he was against the regime, did never anything to prolong the war etc.

These are the Nattem an unseren Busen, or "das Grüne Holz". It is beyond belief and still we believe we can bring democracy to those people.

left office 6.00

tired again in vain to collect about 50 % which are due for the expenses from New York to Frankfurt last July. This is now the seventh month since I incurred them, and still I have not the money. SNAfu.

evening at home.

Tuesday, February 19, 1946.

office 8. 35.

I could as well sit in China or on the moon, nobody ever comes to see me except from other divisions, I am out of the branch (which I want to be since I am not interested in the minor and amateurish operations of how to organize the courts of which these boys here know nothing), but I would like to know more of what is going on actually in connections with the political reconstruction, But perhaps I am wrong anyway in the Legal Division which has nothing to do with anything which is not strictly legal. So I am creating jobs for myself, things which I think must be done, more or less constructive but which certainly will not be done because the front office does not see their importance and they have not enough good people to execute good policies. I have gone sour within six months as it was predicted, but perhaps this was inevitable I should have been in the Political Division but this would have meant frustration with the Department of State people. Well, this is the seventh month anyway and spring is not far behind.

I finished the draft of the law on the redress of NS wrongs and made a tolerably good though still very defective English translation this of course should not be my business.

I started working on the minor domestic relations law which embraces the various other laws (Personal status law, testamentary law, law on adoption, names etc), it is mosaic and intricate work, I had submitted a rough draft in October which was ably commented on by the British and the French and I am enlarging it by completely rewriting the thing and going over many more laws. It will take me at least a fortnight to do it.

Mr. Lichfield of the Political Division consulted me on the power of municipal officials to certify official documents.

In the Directorate they gave the Nürnberg German lawyers the same remuneration thus making the Nazi lawyers who were admitted for the sake of fairness the same compensation as the others. This is scandalous, we are missing not a single opportunity to offend our friends and to appease our enemies.

It was a sharp working day none the less.

My request for leave to Switzerland was declined because civilians cannot have furlough before the lapse of nine months which is of course a good policy. But I will try to get it anyway.

Left office at 6. 10

evening at home, writing.

Wednesday, February 20, 1946.

offic 8. 35.

visit from Miss Linton Public Safety and telephone call with Chernin.

on the mandatory arrest and removal category of the members of the Prussian Staatsrat. I am in favor of it, this would make people like Furtwängler and Schmitt impossible. There is a communist movement for getting Furtwängler back, I hope we will not fall for it. Furtwängler would become the center of anti-occupation activities and propaganda and he would again claim that he is an artist and not interested in politics. The same applies to Sauerbruch whom I dislike thoroughly.

Nothing of importance though I kept busy all day.

Madden gave me the go-ahead sign for the denazification of the minor family laws (there is quite a lot to do though much of it is obsolete automatically). It is a difficult job which will keep me busy for some weeks.

I dictated the accompanying note for the finally finished law for the redress of National Socialist injustice. This covering note is all I can do now, Madden will not act and the others will not understand it.

Did some publicity work on the marriage law which was signed today at 2.00 by the Control Council.

talk with Guradze who experiences in "anpower about what I experience in legal.

my application for leave in Switzerland was turned down because civilians do not have the right of absence before nine months have elapsed. Sensible rule considering the incredible rabble which came over to have experience or fun. But hurts me since I am pretty much run down. I drew up some pretextual grounds for temporary duty but since nobody in this group takes any interest in me and I have no ability for strong pulling nothing will come out of it.

left office 7.00

evening visit with Col. Hatch and Lt. Col. Mott. discussion turns around the usual problems, that is that we have no policy or that we are rushing things politically while we procrastinate economically.

Thursday, February 21, 1946.

office 8.50

big headache quite unusual with me. little inclination for work.

The headache disappeared because Kiepfer began to happen. This is one

of the few days where I feel that I am not wholly useless here. I was called right away in the morning to a conference with Madden and Lichfield on the Berlin constitution. General Barker last week had requested to be relieved from instructions because the situation was so much in flux. The staff study

on the Berlin constitution the opinion was withdrawn. Now General Clay sent a hand written note, - in bold Druckbuchstaben, to General Bailey the Chief of the Internal Affairs ~~Section~~ Division asking action, that is democratic elections for a constituent assembly at the earliest date. noting "because this is our creed". I objected that the present draft would treat Great Berlin as a separate land and thus heavily mortgage the future of the Reich and of Prussia. The attacks against Russia are the most common thing at this time coming from Bavaria and even from the Rheinland. I began to study the situation and got the constitution of 1920 and the amending statute of 1931, it is a rather complicated matter but when I have to work in a hurry I can work in a hurry within one hour I had the entire situation figured out. We had another meeting in the afternoon with General Bailey, Mr. Muccio, two majors from IA&C and Madden and Lichfield. I took the meeting more or less in hand although I always plan not to say a word. He proposed to have elections on the basis of the March 30, 1931 statute in April and let the new assembly draw up proposals for the future constitution. An interim solution of giving all members of each occupation power that is fortyfour as an interim body was rejected against my advice because they think the situation can be normalized until April or May which is overoptimistic. I have become now a pretty good draftsman and we condensed the entire thing into two or three paragraphs. Madden is also very adroit in putting the proper emphasis and the proper words. This took me most of the day.

discussed the publicity for the German press with Mr. Dreyer and Mr. Brandt of our Division.

Col Brand, one of my prize students at Yale, came to see me, he is in the Judge and Advocates office in Paris, an intelligent and quiet man. We were both glad to meet again.

I worked with Shopler on the article which forbids military and paramilitary formations in the new Criminal code of Germany.

Left office at 6.10

worked also on the Personenstandsgesetz

left office at 6.10

evening: Dr. Wende, President of the Preussisches Justizprüfungsamt or better of the JPA in the Soviet zone and Dr. Friedrich Glum came to the house for a discussion of almost three hours. Wende is a prominent Russian official, I was very much impressed by his modernity. The Russians have six months training courses for future judges all over their zone, as a sort of Gemeinschaftslager, in Berlin under the leadership of a Mr. Tornow, these students are trained in six months in the entire field of law, most of them had not legal training before. Thereafter they have to pass an examination and are to be attached to various courts as assessors. In due course they may rise to regular judgeships this is a novel experiment for perforating the training system customary in Germany. Other points of interest: Russians have set up a denazification committee of some 30 members which discusses every doubtful paragraph. Discussion also in civil service.

Wende told of the jealousies and difficulties between the various Bundesländer. The authorities in Mecklenburg prohibited their officials to participate in a Berlin conference convened by the Central administration of justice in order to prevent dictation from Berlin. Thuringia is writing a new code of civil procedure. The communist officials of Saxony are looking down on the colleagues of Province of Saxony. There was a quarrel between Potsdam and Berlin about jurisdiction. The President of the Oberlandesgericht Potsdam is at the same time

the Oberstaatsanwalt and the Ministerialdirektor.

It is an almost unbelievable chaos in the Russian zone, but not worse than in ours. I arranged with Ende to meet Schiffer whom he esteems highly next week.

Friday, February 22, 1946.

Washingtons birthday.

I had dinner with Col. Brand and his General his brother in law, an intelligent man and we had a lively and interesting discussion. He said it is rare that one touches so many interesting subjects within a short conference over the dinner table. I went to the trio of Paldner and spent the evening at home writing.

Saturday, February 23, 1946

Office 8.30.

conference with Mr. Mulder, Control Office. He wanted to know my opinion about the Furtwängler case, in particular the legal background because of his membership in the Prussian Staatsrat. In the morning issue of the Tagesspiegel General McLure published his findings, namely that Furtwängler had been one of the high powered props of the cultural structure of the regime, that he had conducted at Hitler's birthday, on various victory celebrations etc. It must be understood that the prominent cultural people, organized in the communist and Johannes R. Becher controlled Kulturbund für Deutschlands Erneuerung issued a public invitation asking for F.'s return to Berlin which is widely discussed here. The communists pose as the cultural freethinkers, indicating that they have no objection if a great artist has collaborated with the Nazis if only he is a great artist while we, the Anglo-Saxons are prudish and reject him. The entire situation is a communist organized pressure group directed against us and the British or against us alone. Also the anti-Nazis are in favor of his return to musical life.

I explained to Mulder that this is the first open revolt of public opinion against the occupation authorities, focussed on a seemingly harmless and neutral subject, namely art. But if public opinion and the Stimme des Volkes succeed to extricate F. from the denazification procedure and thus win a victory over us it would be tantamount to the first entering wedge, similar to the German revolt against the extradition of the war criminals in 1919. We should not do it and resist to the utmost, F. may return at a later date but not now. If we give in now it is the first victory of public opinion with endless consequences. Mulder talked something about the higher principles of justice that if F. actually was not a Nazi he should be admitted, but I told him in strong words that the whole business is not one of ethics but of politics and of politics between us and the Russians, if we give in the Germans can say the Russians helped us to get our Furtwängler back against the American opposition.

Not much work otherwise this morning.

Left office at 12.50.

Monday, February 25, 1946.

office 8. 15.

hectic day, but accomplished little. Frau Menzel not in office. Biel telephoned whether political parties must conform to the Vereinsrecht, I answered that I refuse to dabble in such important matters, if they wish me to participate in the drafting of a law regulating political parties they should give me an official assignment, I am not contributing my experience for the benefit of others without official assignment. There is a limit even to my exploitation as a sucker in this outfit.

Later he came over to inquire what to do about the Liga für Menschenrechte which applies for license in the various sectors. I told him that this is a communist group or front and that there is no need for such a group because protection of human rights is the program of the U.S. occupation. I consider it an affront to reconstitute this group under the changed conditions, it should be rejected.

Terrible fuss with Frankfurt about the publication of the marriage law. Hayden Smith and Brown telephoned, I promised to send German copies down by courier and to send also the English text of the comments by teletype and the German version by courier. Not a single copy of the final German text is available in the Legal Division. I gave the instructions to the people responsible for it. Even such minor matters are left in the air because nobody takes any interest and there are no fixed responsibilities. They just do not care. Things are delayed by days and weeks on end.

I drafted some instructions for the German courts on the marriage law. The silly provision in law no. 2 to the effect that the German courts are forbidden to apply construction to any military government law or to question its validity the latter provision justified in the former is stupid, necessitates some egg-dancing. Also that the law is not applicable to nationals of the United Nations, rather stupid, since they have to get a divorce etc somewhere. Military government is still envisaged under the terms of the Hague convention instead of as the successor of a German Reich government. How could the German courts apply the marriage law or any other law of the CC without "construing" it, whatever that means.

Shepard with Whamm I tried to discuss it did not even see the problem.

Attended staff meeting with Fahy, rather silly performance. Fahy seems to be enamored with the Länderrat (incidentally Brandt whose judgment is about the best I know thinks highly of Pollock and considers him a statesman), Fahy thinks that the marriage act should have been drafted by the Länderrat but forgets that in October no such Länderrat existed. Fahy is ungrateful he does not know that the work was considerable. Some other fools in the Division think we should legislate only for the zone.

% February 25, 1946) continued.

I have a copy of the new denazification law but I have to analyse it for an article in the Sm. Ol. Sc Review which is the next thing I am going to do.

Marcuse came to ask me about the occupation of lawyers dismissed in law offices. I told him they should be excluded. A man who does not have the slightest idea of these things works on German lawyers. One can hardly believe it considering that there are three former German lawyers in the Division who could solve this problem out of hand.

Heessen enacted a Dienstabweisung according to which the government may check (überprüfen) all officials appointed by MG as to their professional ability. The Superintendent of Schools who happens to be Col. and Mil. Commander in Wiesbaden allowed this to pass. Nothing can be done about it. The Germans are just playing havoc with MG.

around 4.30 Wells came to see me and Madden about the Bavarian Royalist party. The thing is serious he was in Munich with Walter Dorn. Henmetr is the driving spirit, our old friend of the Vaterlandspartei, the White terror of 1919, the Stahlhelm etc. He kept away from the Nazis but is alive again. Wells drew up a proposal which makes sense, that is not to withdraw permission to operate from the party in Munich but make its admission outside of Munich dependent on further investigation. Col. Jackson, Mil. Commander in Munich has the only correct approach: Thumbs down and not to let them operate. They are aiming either at a plebiscite which, under present misery conditions, would lead to a majority at least South of the Danube, (not in Franconia and perhaps not in Schaben), or to have in their constitution a state president and making Rupperecht state president, a la Napoleon III. And all this under our noses. Wells suggestion to go slowly is sensible. The wisdom of General Gailly is gaily interspersed with his draft. Mil. Gov is the most rational management I can imagine. People who know nothing (are unbeleckt von Kenntnissen we sued to say) make the decisions, Taht is exactly as it should be. As long as we stay over here Germany never can recover.

I helped Wells to change the text and make it more stringent and in more logical sequence. Madden abstained from advice, he seems not interested at all.

Kaiser Wilhelm Institute: Madden does not want to take action because we have no authority, OK. But he allows me to go ahead on an informal basis. I am not willing to stick my neck out in a matter which is not important enough and will not lead to anything any way.

My draft on the redress of National Socialist injustice is in the Division for criticism. That means it is shelved. Shopler wrote an opinion on the marriage law of which I never had heard a word. This is called cooperation and coordination.

Left office 6.15.

evening Erbe and Sarre at my house until 11.45. to my terror.

Erbe goes to Tübingen, is afraid of the Russians, a small sized liberal but I in his place would probably have done the same. The new things are always terrifying. He does not see that Soviet Russia is making over Germany into something entirely new.

Sarre, on the other hand, has changed from his violently anti-Russian attitude last summer to an admirer of the Soviets and wishes to stay on and to participate. The opportunists smell the new wind, wittern Morgenluft and are ready to change colors.

"We discussed Carl Schmitt, whom he wishes to see freed, various legal matters and his personal things. I like him but I do not trust him. The sum total of the last eight months is that we have lost whatever prestige we had at first and that the Russians are winning the race hands down.

"We discussed: the new tax laws, Verschöllenheit und Todeserklärung, Ferntrauungen und Fernscheidungen, Namensänderung, etc.

Tuesday, February 26, 1946.

long talk with Brand over the breakfast table an eminent man.
office 9.00.

a lot of minor details connected with marriage law, administrative and technical arrangements which I am usually not very willing to undertake. Telephone calls with Lt. Col. Brown in Frankfurt whether the new law changed the dispensation (Befreiungsvorschriften) as they existed under the old law. Answer: no.

conference with Dr. von Lewinski on the Institute, I told him that informally we had taken control and expected his cooperation which he loyally promised.

did some work on the structure of political parties by reading the Argentine report which fortunately is here.

did also some work on the denazification of private law, particularly on Ferntrauungen und Fernscheidungen, the latter should have been taken care of in the marriage law but I did not wish to complicate matters at that time and we intended anyway to have another additional law.

left office at 2.35 for meeting with Dr. Schiffer, had car accident on intersection of Mommsen street and Leibnizstrasse in Charlottenburg.

3.35 - 6.20 meeting with Schiffer in his apartment Mommsenstrasse 52 I

I was again greatly and perceptibly impressed by the vigorous and youthful thinking of the grand old man. We discussed first the general political situation, he was outspoken in condemning the US policy of making Germany weak and powerless, which in his opinion plays into the hands of the Russians who are becoming stronger and are welding Germany under their occupation into a closely knit whole under a strictly centralized administration.

I explained that to my mind the Russians had won the race for the soul of the German people. In the last few months I had observed the attraction of the Soviet system for many formerly violently anti-Soviet intellectuals, the Soviets are less doctrinaire than the western powers and do things while the western powers only proclaim principles of how to do things.

Coming later to more professional subjects he told me that he is now in complete control of the entire Soviet zone as far as administration of justice is concerned. The föderalen Länder are vastly curbed and placed under his exclusive control. These days Gorsing is leaving on an inspection tour to supervise the courts, he does not trust his judges. He likewise has to draw up all legal regulations of the entire Soviet Central administration which gives him the opportunity of influencing the content and not only the formulation and to contribute to unification in the zone.

He Soviets issued an instruction, Statut, for central administration of justice which he let me see and take notes from it. But he could not give it to me for copying. I abstracted it as follows:

Die Justiz Zentral Verwaltung lenkt, überwacht und kontrolliert die gesamte Justizverwaltung in der Sovietzone.

Der Chef macht den föderalen Ländern Vorschläge über Gesetze und Verordnungen, Er überprüft und billigt die von ihnen gemachten gesetzgeberischen Vorschläge.

Er hat die Einrichtung und bezirkliche Abgrenzung der Gerichte.

~~Die Justiz Zentral Verwaltung lenkt, überwacht und kontrolliert~~

Der Chef leitet und kontrolliert die Tätigkeit der Gerichte, Staatsanwälte, Richter, Rechtsanwälte und Notare.

Er sorgt für die Entfernung aller antisowjetischen Elemente von der Justizverwaltung.

Er macht Vorschläge und Empfehlungen an die Länder.

Er hat ein Einspruchsrecht gegen die gesetzgeberischen Vorschläge der Länder.

Er regelt die örtliche Zuständigkeit der Gerichte und bestimmt ihren Sitz und die Abgrenzung ihrer Bezirke.

Leitung und Aufsicht über die Justizorgane.

Lenkt und kontrolliert die Tätigkeit der Justizabteilungen der Zentralverwaltung und der Justizabteilungen der Länder.

Ernennt die höchsten Richterlichen Beamten. Staatsaufsicht über das Personal.

Zulassung der Notare und Rechtsanwälte, Ernennet die Präsidenten der Oberlandesgerichte, Amtsgerichte, der Oberlandesgerichts-Richter, Generalstaatsanwälte.

Ausbildung des Justizpersonals, Regelung des Lehrplans der Universitäten, ~~Referendar~~ ~~Ausbildung~~ ~~Referendar~~ ~~Ausbildung~~ ~~Assessorenprüfung~~, ~~Fortbildung~~ des Justizpersonals durch Kurse, Ernennet alle Beamten der Zentralverwaltung.

All administrative ordinances of the Central Administration are checked (überprüft) by the Chief.

He wishes to have all doubts concerning the applicability or the validity of legal provisions referred to him and to be decided authoritatively by the Central Administration with binding force on the courts.

plans two law journals, one is also mentioned in the Statut.

A meeting was held recently consisting of the chiefs of the administration of justice of the Länder and provinces with the presidents of the Oberlandesgerichte and the Oberstaatsanwälte.

Present are regular meetings for the discussion of legislative plans and coordination of legislation with the Länder. The legislative chaos has come to an end. Legislative authority of the Länder is vastly curbed.

Denunciation! The first case for murder is brought by the Landgericht Magdeburg, based on law no. 10 (crimes against humanity) based on the idea of mittelbare Täterschaft.

Wishes to have a new type of judge, fewer judges in general better paid, after the British pattern.

Verwaltungsgerichte, wishes to abolish them and transfer them to the ordinary courts, with the intention of exchanging administrative and civil law judges frequently.

He told me that he had more power now than any parliamentary minister of justice. His administration is ready to take over whenever the Reich ministry is established.

exercises the vast powers according to Tocqueville pouvoir tempere de bon sense. Appointive power must be left to the Länder, because of patronage (my idea).

The Reich ministry is to be a Reichsjustizamt, more a technical than a political authority.

I told him that the Länder should propose candidates for the ministry. in order to make it a cross section of all Germany.

we both felt that this meeting was of some importance, he said the Ministry of Justice was founded in this room this afternoon.

Personally I feel that the Russians are doing the opposite of what they promised to do in the Potsdam declaration. This is not decentralization but high grade centralization. Heiffer felt that the Ministry of Justice as it exists now in the Russian zone is ready to take over the Reich ministry they are so far ahead on organizing that we cannot catch up with them because of the splitting up of our zone into various semi-independent fragments.

we agreed that next week I would be invited to a meeting with his officials for a full discussion of legislative plans. The meeting is to be a social one and not a professional one.

He will also give me the minutes of the meeting of the Magistrat which deals with individual questions of denazification all of which is important for our work here.

I left him at 6.25.

Wednesday, February 27, 1946.

office 9.00

busy day though rather unproductive

Shopler our Justinian is working on the reform of the criminal code on a quadripartite basis. His material is his knowledge of German law as of 1933 and some superficial commentaries and materials from London (SLUGA reports) and of the library of congress which translated the criminal code into English. He has a lot of common sense and an excellent legal mind but not the slightest theoretical knowledge and no interest in it. While in other countries or in Germany before 1933 the reform of the criminal code took years and years of preparation and study we do it with a sleight of hand. This time the issue of murder came up. Should it be premeditated as before 1933 or with a special casuistic enumeration as under the Nazis of 1941? I am unable to make up my mind in such a hurry.

The problem received some tangible flavor by a request of the Minister Presidents of the Länder and the Oberpräsidenten of the British zone who recently for the first time convened together in Stuttgart. This group submitted to the occupation authorities a dignified statement requesting that the war criminals (it is not clear whether only those now being handled in Nurnberg or all of them) be handed over to German courts in order to be treated by German courts for the crimes they committed against Germans. Nurnberg deals only with crimes against other nations or international crimes. It is a good idea and one which was to be expected to come sooner or later. After all the 21 men in Nurnberg are universally condemned in Germany even the Wehrmacht generals and kein Hahn kräht nach ihnen, since they will be handed away by the Allies why not go through the motions of vindicating the German people and make a trial for them before German courts? I do not wish to say that the men who signed this petition are insincere; probably they hate the Nazis as much as Germans can hate Nazis. That the German by themselves would prosecute any former Nazi who belonged to their own class, that is that the bourgeois and social democrat bourgeois Germans now in control of German political and social life would turn against their own class, for example prosecute Rothenberger or Thierack to name only two, is unlikely. Therefore this gesture of the German political officials is harmless, looks good for the American gullibility and does no harm to German social life.

I told Shopler that there are to be clarified first several points:
a) which court is to handle those cases, the ordinary courts (which are incompetent and would not sentence them adequately though staffed with non-Nazis which is not identical with anti-Nazis), or a special tribunal, a political court, if so how would this court be composed, who would appoint its members etc? b) What law is to be applied? the law as of 1933 or the law as changed under the Nazis? It would be appropriate if these war criminals would be dealt with in accordance with their own laws, but this is clearly impossible, the law as of 1933 would

hardly be adequate. The entire proposal would be a repetition of what happened with the fascist trials in Italy, the Hornberger Schieszen. In due course the pressure of public opinion would be such as to make the objective operation of these courts impossible. It would become a second extradition of war criminals case as in 1919. The Germans even though their leaders may be willing now to do their share will not help towards the purification of public life, only the outright scoundrels, men like Christian Weber, or the minor gangsters, men who never had any social standing and were presented as parvenue, would be caught. The Germans are not a revolution minded people.

I have nothing to do with this matter except through Shopler. He does not see the political implications but may be trusted to handle all legal problems involved very well.

I squeezed myself into the important subject of the organization of political parties. Wells and Biel are preparing a draft directive with the customary nonsensical periods (until March 16) This is very important because all the abuses of the Nazi party could be stopped or forestalled by a sensible draft on propaganda and control of leadership of political parties. But it is too late now since the parties are going strong in the old ruts, Honoratiorenpartei, to use "Max Leber's excellent description. Nor can one introduce primaries in Europe, it was never seriously considered and would not work. It depends of course on the elective system adopted, also the problem of the ties of the deputy to his party in terms of the "attributive representation" etc. I studied the Argentine statute de los partidos politicos which I have for some months, it is very useful. I had a long talk with Wells who is one of the redeeming features of OMGUS, a cultured, moderate and wise man who knows his stuff and knows to enlist other peoples assistance without slighting them. He will convene an interdivisional committee.

My visit with General Clay seems to have had one good result. Clay became thoughtful about the implications of proportional representation and asked for a staff study. Probably it will be handled also by such a committee. Much too late, in the meantime the constitutional commission have been formed in the South German Länder (with Nawiaski, Giese Jellink, for heavens sake what do they know about comparative government, only fossilized old timers, no new blood and new ideas) and the parties have tied themselves down to proportional representation. Such problems should have been prepared by studies in USA and England long before V-G day. Now we have to educate the generals and the German people.

I had an interesting insight into the working of Mi. Gov, today. Pollock wrote a letter to Clay on the subject of the petition of the Minister residents mentioned above in which he emphasized twice the "enormous publicity and news value of this move". He informs the general right away so that the story may not "break" before he knows it. This indicates that Mi. Gov is handled under the viewpoint how the general may benefit therefrom in the

eyes of public opinion. Pollock avoids any substantial opinion on the subject only emphasizing its importance for the general. It is almost unbelievable what these Hitler empire builders do with world shaking issues like the reconstruction of Germany.

I dictated the first draft of the law for the denazification of some sections of private law (Erbrecht, Adoption, Namensrecht, Personenstands-gesetz etc) it is technically simple but very complicated because of the crossreferences of the German statutes and the wide dispersal of the material. This work of course should not be done by me or us but by the Germans themselves. But we have no machinery, any intercourse with the South German ministers goes through Stuttgart and is filtered through Pollock's private interests. It cries to heaven, But I am no longer butting my head against brick walls.

Various minor matters which come over my desk, it is little enough but I take it that the administration of justice branch to which I still belong is inactive anyway.

lunch with Mulder and Shopler.

left office 6.00

evening at home.

Thursday, February 28, 1946.

office 8.25.

disorganized day, with a big low put in the afternoon when my secretary otherwise sensible woman, tried to assert her importance by not answering my summons for dictation. I had waited fifteen minutes and when she came later I told her quietly that I wanted her to come at once because I could not turn to something else unless I had finished dictation of the previous job. She slammed the door, my neighbor, the cranky Kessenich appeared, made a scandal, wrote a complaint to the branch chief, I went to see Mautz, all for nothing because I have no quarrel either with K. nor with the secretary. All this issue to the military set up which operates with superiors and orders to subordinates instead of rational arrangements. I do not take the incident very seriously but it disturbed the afternoon work.

I wrote a short memo on a petition of a former Leipzig lawyer to annul the conviction of Gerdeler. G. is the great hero of the German resistance, everybody was in contact with him, his friend, the 20. of July is the great alibi of the respectable bourgeoisie, the substitute for a genuine resistance movement.

Stauffer sent me the instructions on the German personnel for the central ministries, a thing of basic importance because any time when the French resistance against central agencies is lifted and this depends on the settlement of the Rhine and Ruhr problem, central

agencies will be required, we are very much less prepared than we should. I was invited the evening with Stauffer who has a B mess and gave us good meat, with him Lt. Col. Madlane(?), an aide de camp of Clay. They discussed the organization of how the German consultants and the German candidates for central ministries are to be selected, vetted and established within MG. The whole procedure is in the hands of one Lt. , Stauffer, who is much too young for this job and has doctrinaire attitudes, but on the whole under an older man would be good enough. In addition there are three German-American enlisted men who do very much of the entire job, finding out about the past, evaluating the personality, Now since we intend to hand over the administration if not the government of Germany to the Germans themselves there is nothing more important than to find good men and to install them. For this purpose the machinery is wholly inadequate. We cannot locate them and if located we have no means for checking on them except by superficial mechanical criteria. It is the same thing as everywhere, incompetence and lack of plan though some of the people would know what to do if they had the means. Case in point: Dr. Otto Veit, good economist, half Jew and therefore anti-Nazi, was appointed finance director by Geiler, went down to Wiesbaden, was dismissed by CIC suddenly, is desperate, reasons. He brought with him some letters from the Zone, offered them voluntarily to authorities on the border in Elmstädt, was sentenced for smuggling letters although most of them were authorized by Wiesbaden. I had the story from Saare and the report of Stauffer differs only a little. While we leave in office many obnoxious persons, we are overpunctilious in the case of really good men though they may sometimes make slight mistakes.

Dictated memo on conference with Stauffer for Daby, This memo should have the effect of a bomb and rouse us to action, Nothing will come out of it.

Had a talk with Oppenheimer whom I like now considerably he is a reticent man as befits a man in his position but he agrees basically that things in the legal division are going from bad to worse. The appointment of Shepard for example he deems disastrous.

Dictated to Miss Simons, of Kempners staff, my memories on Hans Frank. Who would have thought that one day all these old stories which at that time were so utterly important and decisive for my future, would come up again, dictated by a dismissed Privatdozent to an emigrated Jewish girl from Karlsruhe for the use by an emigre Jewish official from Berlin? The whole thing sometimes seems to me weird and ghastly. Why was it necessary to draw us in? we have no feeling of revenge and as a matter of fact Frank whom some time in the past I considered the danger of my life, is wholly indifferent to me now.

Had two conferences with Wells and one with Wiesner of Pol. Div on the plan for the statute or law on political parties, This seems to be the most interesting and perhaps most important thing I had come across to date, I am working on the agenda for a comprehensive regulation of political parties which may become instrumental to a revolution in political life in Germany, we are going to have a conference of the

top- ranking people on it next week.

Mautz told me that I would get the furlough in Switzerland. I wonder whether it will be true, I am going to believe it only when I cross the Swiss border, not a moment before.

left office 7. 20.

evening with Stauffer, Lt. Col. MacLane, and another men of St.'s mess.

Friday, March 1, 1936

the army misses no trick to make life uncomfortable. We had used a room in the Hüttenweg mess for our cloth when the check room was too crowded. now this room is forbidden, we have to say in line, three times, once for getting things checked, once for paying for the meal, once for getting things back from the checkroom. Total waste of time at list 6 minutes.

Fahy wrote a strong letter to Gby about the uniform regulations for civilians which enter into force today. I had a talk with Rockwell and Dickmann on this point yesterday, emphasis in particular the fact that our degradation as soldiers would make the worst possible impression on the civilian population for which training buttons are the symbols of authority. The entire move is assinine and silly beyond words

office 8. 40.

Biel came over to ask me about the composition of the constitutional committees in the three Länder, while Baden- Württemberg and Greater Hesse alright are in Bavaria the same old reactionary crowd of Scharnagl, Pfeiffer, Wimmer, with two socialists as trimmings and Nawiaski as legal expert. None of these people with the exception of N, has any idea of the world, they are all narrow Kirchturnspolitiker, Pfiffer is the spiritus rector. God save Bavaria, I am glad that I have no longer to live there. In Hesse they took Walter Jellinek and Giese, in Württemberg Anschütz. It will be interesting from the political science viewpoint but in general the game in Germany is lost.

I worked all day on the denazification of the family law provisions, a tedious work which should not be done by me. But it cannot be helped. In the meantime the really interesting things are done by Oppenheimer who I admit is very able and meritoriously respected but has not political vision. The two important things: coordination of legislation all over Germany and supervision of courts are not being undertaken.

in the afternoon I dictated some points for the agenda of a law on political parties. This is the application of ten years experience to actual life, but it is neutralized by so much channels and red tape and incompetence of the generals that nothing will come out of it.

14th/office

I helped Shopler draft the answer to Pollock on the petition of the Minister presidents to try the war criminals themselves for crimes committed against Germans. Which court, which law which persons?

left office 5. 50.

evening: send-off party for Looney Kessenich, Lind.

it was a nice and some that strained evening with lots of mutual glorification of which I had a modest share. They are all nice people, but in this whole group of some 30 persons are not more than six good men. The younger people, particularly the converted former enlisted men are just rotten and have not the slightest idea.

Saturday, March 2, 1946.

office 8. 15. (it is getting earlier and earlier, but I want to have at least one meal of the day in peace. The overcrowding of the Hüttenwegmess beggars description.

I worked on the law on political parties for which I made a draft of the agenda for the forthcoming conference. It is not what it should be but at least my information as political scientist went into it.
left office 12. 30.

Monday, March 4, 1946.

office 8.30

good work in day, I am always in good humor when I accomplish something.

staff meeting with Ahy. It seems now that he wishes to have more of the people present in order to let them know what is going on. It is still insufficient information.

Several things were of interest: Dis tinct Benin wishes advice on a request of the generalstaatsanwalt beim Kammergericht on the prosecution of informers (Denunzianten) under Control Council law no. 10 which could be stretched if necessary to cover such cases although

I do not see what an informer has to do with crimes against humanity.

It is the curse of Anglosaxon legislation that they use general terms with which a German lawyer cannot do a thing.

I worked three weeks on this subject,adden had my draft it is kicking round somewhere. Only by squeezing me into it could I get hold of the file. This is organization.

Lt. Col. Maryi had been sent to the zone to investigate the automatic and discretionary arrest review boards. Maryi is a soul of a human being but no match for the slick German officials. result: about 10 % of the arrested persons made applications for release which seems a very small percentage considering that 117,000 persons are detained. of these cases hardly one thousand have been acted on, most of the cases resulting in release. Now we are in occupation for nine months and still

there are thousands of persons innocently arrested and held without trial for that time. This we call bringing democracy to Germany. No wonder that the people say! Gott gebe uns das fünfte Reich, das vierte ist dem drittem gleich. Instead of sending Dickman or me they send a man like Maryl. He knows no German, does not know the mentality and has no idea von Tuten und Blasen.

The conference revealed once again that we are completely out of touch with what is going on in the zone in the field of legislation. Pollock has not permitted us to check on the activities of the Länderrat, we receive information on the approval of laws only when we get the German press, we are non-existent. For example the Anwaltsgesetz which I wrote is not yet back, nobody knows anything about it. There are many problems on which I am working on which I should get the opinion of the South German ministers, but nothing is ~~done~~ done.

Rahy showed himself a bit more energetic and better informed than the last time, he is visibly catching on and this after almost 8 months in control. He must be fair, however, it is extremely difficult for him and he did not have proper advice.

The staff meeting had more intelligent discussion than the previous one.

I finished the draft for the agenda on political parties and sent it over to Wells. No good work, but in the haphazard manner we are working here it is good enough.

I was busy all day. I wrote an opinion on five cases of denunciation which the Overstaatsanwaltschaft beim Kammergericht wishes to base on CC law no. 10 (crimes against humanity) and which by MG authorization can be transferred to the German courts. The problem is similar on a minor scale to that which Shpler had a few days ago concerning the trial of the major war criminals by German courts for crimes committed against Germans. The praiseworthy zeal of the Generalstaatsanwalt should not be discouraged but the issue is very involved and cannot be solved just by yes or no.

I dictated comments on the establishment of forums for the trial of tort cases arising against or for Americans in Germany. 250 businessmen are coming over with their cars and they must, of course be protected against injury. These irrepressible fools wish to transfer such cases to German courts, as if we lived in deep peace. When I had the car accident a few days ago the crowd assembled took sides at once against me. How can you expect it otherwise? and these blue in the face men of course must be protected in their precious property rights.

left office 6. 15.

evening at home.

Tuesday, March 5, 1946.

thirteen years ago the Germans voted for Hitler and started the mischief.

office 8. 25.

I dictated an opinion on Gerhardt's rather helpless report on the control of German property by US M.I. Gov. I found that although the branch administration of Justice is officially responsible for the Reich ministry there was no information about the Akademie für deutsches Recht which had been under the Ministry and the Reichsnotarkasse likewise under it. The people who made the chart of the activities of the Reich ministry were just idiots, but we continue to act on their idiotic proposals.

I dictated an answer to a British inquiry concerning the famous Bremen case. Nobody ever told me although I had started the whole thing that at least four opinions had been given in Legal Advice branch two at least in conformity with mine. Nothing ever came out of it although we had responsibility for Bremen. Only the stink which was raised in the German press induced the Generalstaatsanwalt of Berlin to intervene and to quash the Strafvollstreckung, not the sentence itself. Now my law which Madden still has, would cover all these cases. But nothing is done in this disorganized inchoate group. If we had a branch chief who would be alert and aware of what is going on instead of a lousy politician or/and an indifferent army colonel it would be different. But we have the people we deserve.

I began to dictate my opinion on Rheinsteins plan for the organization of the committee or the four powers for the ~~the~~ denazification of the entire German statute book. Rheinsteins ideas are, on the whole, sound, but presuppose that the job can be done by Germans. How well it could be done is evidenced by the protest of Dr. Zinn, Minister of Justice for Hesse against our abolition of the treason section in the criminal code. "He writes that even a state like Greater Hesse must be protected against treason!!! for heavens sake, why? If a person wishes to ~~subvert~~ subvert Greater Hesse he could do so if we would permit it. Once a democratic constitution has been established the situation is different and I would be in favor of protecting the democratic order by stiff provisions directed against monarchists as well as against Bolsheviks. But at this juncture only MG is responsible for "Public order and the idea of Treason" is just hairbrained.

I then had a long conference with "ahy" which lasted for one hour. "He was unusually friendly, polite, even flattering (which means very little in terms of American mores) and listened carefully. I found his grasp of the situation visibly improved though still below the mark of a man who heads such an important division of OMGEZS. I had a two page list of agenda which I could not give because I did not wish to exhaust his patience. I skipped over most things and raised mainly the lack of contact with Stuttgart and the Länder which he countered by saying that Pollock does not want us to participate, not the proper answer. But he is also a politician and he knows that since Pollock is persona gravissima with Clay he, "ahy", cannot kick against the prigs. Nothing dom salvavi animam mean.

He passed my memo on the legislative coordination but did not tell me why, and what action would be taken, except that I should cooperate with Witten. But the point is that the material thus obtained should be used for the coordination of legislation between the four zones.

the simple truth is that the quadripartite action in the long run is impossible because the machinery is too cumbersome. It is a mistake to use it for non-political merely technical legislation. But since there is no other central agency until the future structure of the Reich has been determined some substitute must be found to maintain legal unity or at least uniformity. I never tire to stress this point which seems to me to be the only reason why I came over here. Fahy agrees on principle but he does not realize the importance since he is used to the diversity of 48 states laws. This central agency substitute can be only an agreement between the German authorities of the four zones and if we would establish a system by which we could induce the Russian (Schiffer) to go along it would be extremely beneficial. But this requires some sort of initiative which Fahy and wisely at that is unwilling to take.

The other main point I discussed with him was the complete disorganization of the administration of justice branch. He said he is very much perturbed by it and he wants me to write up some proposals, particularly about revision of German court decisions which would lead to a control of the German courts. I told him that the judges and not even the anti-Nazi judges could not be trusted owing to the pressure of public opinion against them. I was very persuasive on this point and perhaps I convinced him. In this connection, raised the Furtwängler case of which he seemed to know nothing. Of course they do not read German papers and of course they have no time to glance over the very defective summaries of the German press which are submitted to us. At the present time there is no way of checking on German courts and things are sliding out of our hands. We discussed also Military courts which are none of my business but remain influential for the German situation since they are by now the only symbol of our occupation, more and more rooted at that anyway. I got also permission for a week of leave of absence in Bavaria but at this moment I am not sure whether I am going to take it.

Salvavi animam mea, I am here to warn and to "needle" to what effect nobody knows.

left office 6. 20.

evening had a talk with Major Wilson on denazification. Yesterday the Minister President signed the law in Munich, the first great defeat of Ugo on the hands of defeated Germany. There are some people who think alike, such as Lt Chernin and Major Wilson. But we German experts had no hand in it and Oppenheimer has no political insight. We turned denazification over to the Germans because we were incapable of doing it ourselves. It means that the German Nazis except the gangsters and hoodlums, will be treated with kid gloves by the German denazification boards. It is like prohibition, the public disapproves of the law and they will wash the bear without letting his fur. "erzlichste Glückwünsche zum Jahres- und Gesinnungswechsel."

evening conference with Dr. Korte and Frau Eschert on Gordon's licence matter. I told them that the trading with the enemy act would preclude any negotiations except preliminary and non-binding discussions.

Wednesday, March 6, 1946.

office 8. 55.

an interesting contribution to the mentality of democratic non- nazi German officials:

we abolished in the Straßengesetzbuch the paragraphs 80- 94 (Hoch- und Landesverrat) Zin, Hessian minister of justice, protests: ¶ ¶ 80- 94 können nicht gestrichen werden, ohne dass gleichzeitig die bis 1933 geltenden Vorschriften an ihre Stelle treten. Denn wenn auch die Verfolgung von Hoch und Landesverrat derzeit den deutschen Gerichten entzogen ist, kann doch ein Land grundsätzlich auf diesen notwendigen Schutz nicht verzichten. Ein Gesetzversuch, das Staatsgrundgesetz des Landes Gross Hessen gewaltsam zu ändern, muss auch nach deutschem Recht strafbar sein. Gut gebrüllt. Löwe. The Staatsgrundgesetz was enacted by a group of people sitting on the bayonets of the occupation authority, without any mandate from the people. It seems that de Gaulism is not confined to France.

ad (134 a) which punishes attacks against the head of the state, the flag of the Reich and the Länder and other symbols: we abolished it Zinn comments: "Ist eine Vorschrift auf die kein Land verzichten kann. Die Worte " Deutsche Wehrmacht" können als gegenständlich gestrichen werden." These are our trusted democratic officials!!

rather busy day.

Gerhard who is "acting chief" lucus a non lucendo, asked me to redraft the report on the property under the control of Administration of Justice branch. Characteristically the situation of the court buildings etc is not clear. Are they under MG control or handed over to the German Länder. Since our instructions or directives are anything but clear- I have the greatest difficulty of understanding the military lingo- the basic points are always dodged. Gerhadr did not know anything about it. I discovered in this connection that the Academy of German Law and the Reichsnotarkasse are under the former Reich Ministry of Justice! nobody ever bothered to investigate them.

I dictated comments on Rheinstein's plan for the quadripartite committee on denazification of German law. I am always surprised how farsighted I am (or was) . I stressed this point in 1943 in Washington, with the known results. Now we are in Germany for 10 months and this program is to take another ten months at best. It is just funny.

I tried to get information on proportional representation, read Hermens and put something on paper for the conference tomorrow. At least the subject is being discussed instead of being taken for granted. Nothing will come out of it because " we can't interfere with the Germans" What did we come over for I may ask?

I tried to put teeth into our denazification of the bar. Even Dickmann is against it when it comes to organizing the work.

had lunch with Rockwell and Muccio (a som erbarer Heiliger, but no fool).

I went again at the law for the purification of minor domestic relations. It is tedious and difficult to draft. Why do I go through all this trouble? My draft on the redress of NS injustices is still not acted on, Madden gave it to somebody but did not remember to whom. Heavens, what disorganization, But the brass hats won a victory over the brass buttons in making us civilians over to the image of Western Union messenger boys.

duty officer 6-00 to 7.00

left 7.00

evening at home.

Thursday, March 7, 1946

slept
office 9. 15. ~~8.15~~ until 8. 30 (almost exhausted)

could not accomplish much because of intermittent minor matters to be attended.

I dictated the second draft of the project on the purification of the minor domestic relations, this is a sort of mosaic and a very tedious technical thing. I should have a German staff which would do these things (mostly checking on references in the disorganized Nazi Reichsgesetzblatt). But I think by now it is properly in shape and can be written and translated.

dictated a little memo to Madden on the necessary repeal of the laws on the military establishments which to date, nine months after the collapse has not been accomplished.

Dickmann had gone over the photostated records of the Oberste Parteigericht acquitting the murderers of the Jews on November 8/9 1938. These records are the most appalling I have seen. We recommended that the war crimes branch take care of them. Madden returned it: take it to your file which means nothing will be done about it. There is a callousness and lack of understanding in the SD division which can hardly be equalled.

I had a long talk with Karl Brandt about the warfare of the army against the civilians the latest stage of it brought the stripping of a high ranking consultant (Dr de Forrest) of his buttons by two lousy MP, allegedly not acting on orders. The general is said to have apologized and the two men were broken which does not solve the problem of acute discrimination against the civilians, I drafted a sort of letter to the Editor to the New York Times. I do not wish to act alone but if Brandt would go along with me I would submit it to Public Relations for official approval and if they refuse to let it pass make my own conclusions.

left office 6. 15.

evening with Frau von "arnefels and other people .

Frida , March 8, 1946.

Office 8. 25.

morning long talk with Brandt on the same subject.

8. 30 - 12.00 conference on political parties etc with:
Wells, Donald Heath, Chase, Wiesner, Muccio (Political),
Walter Dohrn, Pollock, Madden.

Interesting morning.

Quadrupartite regulation of political parties is underway.
Russians make sensible and seemingly democratic proposals.
This while their compulsory merger between the KPD and SPD is
going full blast. There will be a split in the Socialist party
as it was once after the first world war, only with changed direction.
The merger of the two parties into the Russian zone is unavoidable.
The Socialist in the three other zones will not go along and
there will be a split in all zones, in the three western
zone a Einheitspartei and a SPD, in the Russian zone and
Einheitspartei and an underground SPD (like in Poland).
All this is covered up by clever words of the Russians.

The main point of discussion was the regulation of political
parties, whether by directive of MG, zonal law, German law.
We agreed that it is too late in the game for doing anything,
but that we do nothing, the constituent assemblies will
be composed of the old party bosses and thus democracy and the
system of multiple parties will be once again discredited.
The dilemma was solved by explicit directives to MG on which
a press release will be given out. I took much part in the
discussion but I felt that under present circumstances of
muddle headed procrastination on the part of MG and the double cross
of Högnier in Munich who plays with the monarchists, not more
could be reached. Everything would be different if we would
not rush the elections and would allow things to crystallize.
Pollock showed the very detached attitude of the Königsmacher
towards the minor lights (us), Dohrn said a number of good and
informed things. Sometimes I wonder why I am sitting in .

I warned against precipitating Germany into the new venture of
a state regulation of parties while , on the other hand, the
rank and file of the people is tired of the party bosses and
just waits for being delivered from the domination. Only M.L.
Gov can do it, if left to themselves the vested interests will
prevent any change. Finally it was agreed that a MG directive should
be issued incorporating the democratic principles of election of
officials and candidates into the MG regulations and
to give full publicity for them by a press release.
That a far sighted policy of guidance or political tutelage
should have been adopted from the start instead of the wild growth
of parties is obvious. Dohrn told of the incident in
Hessen where the trade union secretary Knothe had asked Geiler to

to resign after the local elections because he was not backed by a majority. Weiler had refused and MG had stepped in telling the Social Democrats that they determine which government would be in power. When asked by Col Newman which mandate he, Knothe had, he hastily convened the party dignitaries and had himself confirmed in office.

That the parties by now are operating on a nation wide basis is certain. Thus all efforts to control the parties by MG are unavailing, the dynamics of social life are uncontrollable even in a busted state like Germany.

We then proceeded to discuss Proportional representation. Here I had to take the lead. I feel very strongly about it and the others unanimously followed. I was surprised to see the agreement among the Department of State people, especially Wiesner who showed himself very well informed and sober. We all agreed that the majority system is preferable though we would not decide as to the usefulness of accurate representation in a constituent assembly. Perhaps in the latter proportional representation would do no harm since there is no government to control by it. But I said that once PR had intergraded itself it became automatically accepted and it would be utterly difficult to do away with it once it had been used for a regular assembly on the land level. Pollock disagreed. He left early and later sent in a written statement to the effect that

he, on the basis of the study of the electoral laws of many lands, favors PR, when applied in the Swiss or Swedish version. How should the Germans within four weeks study the matter asked. I suggested that I could talk to the Minister president informally to convince them, but it was felt that the thing should be handled above board, I carefully nursed the idea or letting the Germans themselves discover the truth instead of instilling into them our opinions from outside to which the others agreed. Finally Wells, carefully egged on by me, came out with the idea of a joint conference with the Minister presidents and their advisors an idea for which Dohrn fell at once because it is just the thing which the general desires. We discussed it technically, it was set for April 1. It is important to note that we all agreed on the principle but that we had to sell it to the general and that he was more difficult to handle than the Germans. This is Military Government, the one man dictatorship in pr excellence.

The next item was the handling of quasi-political organizations such as the Friends of the Soviet Union or the Liga für Menschenrechte, which is again up for the discussion. (both are communist front organizations). I felt that in the long run these organizations if subversive could be controlled only by the Germans themselves, we are not in a position to follow the activities of each such organization one it had been admitted. All we could do is to screen the sponsors and the program, the control must be left to the Germans themselves therefore only an interim solution had to be found which would bridge over until a representative government would be installed. This was accepted and Political Division will draft the necessary MG regulations.

Finally Dohrn voiced his concern about the increasing nationalistic attitude of the youth organization whose main activities are military training and instilling of nationalism. Nothing else could be expected. I asked who appointed the leaders of such groups and was answered that this is done by the local education officials (German) with the result that our so-called anti-Nazi Germans are already under the pressure of public

opinion. It was proposed to let the political parties take care of the youth organizations, a double edged proposal. But what can you expect when all sports in which youth is interested except ping pong is taken away from them because of its militaristic implications? They are not even permitted to ski or to climb mountains. It is silly beyond words. This is a task of unprecedented magnitude and difficulty. Even a people more familiar with German habits could not have accomplished it.

I was very favorably impressed by the conduct of the meeting. Muccio did not say much nor did Heath, foreign office people rarely do. But Wiesner, Wells, Dohrn were first rate and the Judge when he opened his mouth always had something to contribute.

time: 9.30 - 12.00. 1.30 - 5.00

I was rather tired because I had been on the alert all day.

left office 6. 15.

evening: conference with Kissel of de Gruyter on my Political reconstruction translation.

Saturday, March 9, 1946.

office 8. 20.

I am still in good humor about the things which happened yesterday. After all sometimes a political scientist is not quite useless. I entertained a legal advice bureau of my own this morning. Tschernin PS inquired about the position of a general referent of which I knew nothing though I gave an opinion. It was found out that nine months after unconditional surrender we had forgotten to formally abolish the Wehrmacht and the entire military establishment. I had proposed to write off the various military laws which are still in the statute book, but it seems that the Wehrmacht was only potentially declared dissolved by the Proclamation nr. 2. The Potsdam agreement of course is not self-executing. Since it would look utterly funny to abolish the Wehrmacht now I proposed to Adams who came to me with this question to abolish the various military laws and in this connection repeat the abolition of the Wehrmacht itself. There is a controversy between the powers what the word "shall" means in the various proclamations. Lt. Col. Mott asked me about the Fikssteuergesetz and the concept of Wohnsitz in German law. The British wanted to know whether marriage by proxy is still permissible. I am about to abolish it in the new law of minor domestic relations which is dictated in the second draft. Had a long talk with Brandt on the uniform business, but my ire is already evaporating, writing the letter to the Editor of the Times helped to let off the steam. left office 12. 45.

afternoon call in Nokolassee.
evening at home.

all Sunday at home.

Monday, March 11, 1947.

office 8. 20.

studied briefly the problem of where people have their legal residence for taxation purposes. Taxes are assessed and collected which belong either to a Reich or to a different land, quite accidentally where the persons reside at the time. This situation cries for a Reich finance ministry, there is no chance of getting anything regularized without central agencies. And these stupid Bavarians are separatists and monarchists.

Fahy held a staff meeting in which all members participated. This time there was more interesting information. Among them was the arrest of 12 Schöberg city officials who propagated for the communist party and were arrested by MG. This highly explosive and exceedingly political matter was handed to a Mr. Lehman who knows nothing about politics, for solving some legal problems. This is a matter for Murphy and the high ranking people in the Department of state and not for a young assistant of the legal division. Another point was that a New York publishing house asked for the right to publish Eva Brauns diary, a nice problem, since there is no heir, and the copy right has to be transferred. Or can MG confiscate a copy right for reasons of public safety and thereafter transfer it to a publishing house for private profits? I kept silent and did not report on my work. Fahy sent me a nice letter thanking me for the dedicated copy of my book.

I dictated the two accompanying letters for the law on denazification of domestic relations to the British and the French. It was lots of work, but nothing will come out of it.

This took me until late in the afternoon.

Then we had a staff meeting (Brown, Rockwell, Shepard, Schubert, Maryi, Fratcher) on the South German proposal to deal with the common crimes committed after 1933 which were not prosecuted for political reasons. This is part of my over-all draft on which I had worked for some weeks. The people just did not know what they were talking about. They discussed a bad translation of a technical German law without knowing the differences between Nichteröffnung des Hauptverfahrens und Einstellung des Verfahrens. They related it to crimes against humanity for which law no. 10 had left a small loophole, as if the murder of a Jew in November 1936 was a crime against humanity instead of being a plain murder. All this only because some silly MG regulation had tied these things to minor war criminals. The military mind is just incapable of action unless guided by a regulation. My draft on making denunciation a crime was met with the argument that this is a retroactive law, as if law no. 10 and the entire Nuremberg procedure would not be a retroactive law. If one wishes to wipe out Nazism one has to be unscrupulous and not bother with principles of justice. We are not doing it in Nuremberg. The upshot is that the bad South German law will go back to Stuttgart where it will stay indefinitely (as did my draft on the bar organization) and nothing will come out of it. Oppenheimer does the only interesting things in this division. He was present at the denazification procedure in Munich last week and at the opening of the Oberlandesgericht in Frankfurt yesterday.

Left office 6. 35.

evening: Frau Virchow at my house.

Tuesday, March 12, 1946.

office 8. 20.

not very constructive day. I met Biel who always gets my spirits down. He is just the type of arrogant Nichtskönner who gets ahead and creates more ill-feeling than a dozen other people. He is only interested in his own promotion and self-assertion and has no scruples.

I dictated a brief memo to "ahy" pointing out that release from nationality should be stopped. British did the same. Rather unimportant.

worked on denazification law which is now ready.

had lunch with Stauffer and his henchmen, young people who have too much power for what they are worth. But they have drive and are interested.

went to Schlachtensse, Breisgauerstrasse 41 to see Mr. Schweig who is the former Reich trustee for Jewish property. He is clever and informed on his subject. It is of course tragic that the Jews once again are deceived. They will be treated at best like the other Germans.

No one thinks of compensating them for what they have suffered.

The Legal Division is not exactly anti-Semitic; but callous. They just see no need to do something more than what is required by the *raison d'etat*.

The restitution law will be a great disappointment to many.
left office 6. 30

was too tired to go to a round table on German food situation.
spent evening at home. Very tired.

~~Thurs~~ Wednesday, March 13, 1946.

office 8. 55.

long hard and wasteful day.

Rockwell wanted to discuss the draft of the South Germans on crimes which went unpunished under the Nazis. I tried to convince him that the draft as amended by a committee up here is still bad and that my draft is better, more logical and more adjusted to actual situations.

One of the bogeys of these born American lawyers is the *ex post facto* law, as if one could clean up the German mess without that *ex post facto*. They did it in law no 10 and are doing it all the time in Nurnberg.

But they smell the rat of retroactivity every where and this is a very good defense of intellectual inertia, the most prevalent quality of the Legal Division. All points which I won in the morning were lost in a

conference on the same subject in the afternoon (participants: Fratcher, Shepard, Schubert, Rockwell. Borwb) because Shepard who just is too

stupid to understand any legal situations let alone German ones, insisted that the South German draft be followed as closely as possible.

This is easy, but not exactly governing Germany.

I worked at Shepard's request on the functional program of the Legal Division which is the targets to be reached, described in general terms. Evidently it serves as the basis for that mysterious agency, the Control Office which has the best people of the entire outfit and nobody can explain ~~me~~ what they are doing.

In this program the Ministry of Justice is still described in the terms

chart maker for whom the Ministry just was what the Nazis had on paper and not what it was actually doing. I tried hard to get some sense into it but it is rather hopeless because nothing can be changed what has a place in it before. Much waste motion and paper. I completed the work on the minor domestic relations reform which now goes to the British and French. Nothing spectacular but a good technical job. I, a publicist, am doing private civil law work (doch fragt mich nur nicht, wie), it is silly, and wholly unexpected. My interests in purely legal problems has vanished, I am only interested in large scale developments, such as the political reconstruction etc.

In Munich my old Latin teacher Albert Rehm who happens to be Rektor of the University, shot his mouth off in the consultative assembly against the denazification law which deprives the university of its best men Högnér, later fired him and replaced him by Vossler. Vossler wishes to reform the university in body and in members. Only old men are ruling Germany. Biele came over with these developments, it is ridiculous what this lousy Jewish intellectual without intellect does. I dislike him thoroughly but since he has drive and ambition and Frechheit, it is good to have him here. He is better than ten soft hearted Americans.

I read up on the proportional representation business I do not know yet whether I can use it or not.

lots of minor details (getting the Ration card I for Dr. Ruge which involves endless telephoning to the British), I am busy all day but little comes out of it.

left office 6.15

evening call on Frau von Schubert., came home at 11.

long talk with Lt. Techemin, on sociology of military government.
lunch with Lt. Tom Carroll who just came back from Budapest.

Thursday, March 14, 1946.

office 8.40.

I found out during breakfast that the Soviets made the proposal of transferring the functions of the administrative courts to the ordinary courts. This would break the stalemate about Administrative courts existing for sometime in the Legal Directorate. Du Nobody had asked me, why should they? They have experts like Dickmann and Deubert. I got hold of the correspondence, told Madden that this would help to break down the aloofness of the bureaucracy if they had to answer before the ordinary courts, that it would raise the stature of the judges and contribute to the democratization of justice, in addition to being in line with German tradition. I wrote it up in a hurry, having consulted only one book (Hatschek is an inexhaustible source of information on all such subjects, I wish I could write such a treatise). He took it with him to the meeting.

Afterwards rather split day. Various calls from Germans: Otto Lindemann, an optimistic resettlement expert from Heidelberg who finds that many hundred thousand of new settlers can be settled even in South Germany, if only they are given some foothold, that the farmers are glad

to get rid of their excess land, by Anrechnung on the Vermögensabgabe here is a man, a German who knows what he wants and who is not despairing.

Calls from Glum and Mommsen.

My proposal to withhold from the Regional Military governments the right to decide on important political matters, was taken up by IA and C, Cpt. Scamon a tall man from Stuttgart, able and well informed, came to see me about reformulation of the MG directives. We did it in five minutes by making approval of any new party on any level indirectly dependent on OMGUS approval. Thus it cannot happen again that a Stadtkreiscommodore with a noblewoman as mistress, permits the operation of a royalist party without asking anybody else.

Schubert came about the law we discussed yesterday. I have lost it here. Let them do what they please. This is the first time the South Germans ask us about a law of their own, we keep it here for months and then send it back as bad as it was before.

My work on the denazification of minor portions of private law got stuck because Fahy does not want to sign a German letter (that is I had signed it, and he had the parallel information to the British in English)

Otherwise I lost time, Read Hermens book on PE and am making some abstracts.

left office 6.10.

evening at home.

Friday, March 15, 1946

office 8.25.

I was in hood humor all day in spite of toothache because MG is one of the most amusing institutions ever invented. Found out for Col. Waples Information Control how US publishers can get books imported into Germany (books which might be instrumental to the reeducation of Germany, allegedly one of our aims) this can be done only through the import and export committee which to date has authorized mainly purchase of seeds. Well intellectual seeds and real seeds are close together. We should have brought translations of certain standard works with us in the baggage van when we moved in. Now we are here for nine months and nothing has been done. Nobody could tell me exactly what is going on with the trading with the enemy etc. When we buy a theater ticket we are liable to criminal prosecution.

I dictated much from Mommsen's book as preparation of the meeting in Stuttgart, but in the afternoon I found out that we are far from it. Wells is almost driven crazy by his general (Gailey), nice and ignorant Southerner. He could do nothing about the meeting, Gailey had promised to sell it to General Clay, the Germans should have time to prepare, thus the meeting is doubtful and my vacation which is connected with it,

is off. Perhaps this is good because I have sciatica and tooth ache. I discussed with Wells also the administrative courts, same thing, pressure from above to take some action, lack of thinking from below. If a man like Biel is charged with the investigation one can imagine the research results.

Biel took me over to Edgar Johnson, a new man, professor for Germanic languages university of Nebraska, who is slated to take Pollock's place. Why I do not know. Nice man, was advisor to Clark in Austria, relatively well informed, amiable, rather young, no match for Pollock who in spite of his excessive vanity and self-glorification is doing an excellent job in Stuttgart and is also the person to impress the Germans. Why he should go nobody knows.

I found out that the questionnaire which I drew up in December for Austria and which Madden had delayed, is of vital interest to Political and IA & C Divisions. I am always a few steps ahead of the rest. But likewise I have everything to do on my own instead of being integrated. Most of my work is no longer in the Legal Division.

I promised Wells to draw up the letter to Clay on the proportional representation meeting. Started doing it.

Talked with Heisntein about his plan for the denazification of German law. Long drawn and now rather superficial business.

The reviews of my marriage law in the press are beginning, on the whole not unfavorable. I expect more and deserved criticism from the learned lawyers in the law journals.

Left office 6. 20.

evening with Mrs. Pino, Miss Schäfer, Lt Col. Marye.

Saturday, March 16, 1946.

office 8. 30.

very bad tooth ache. Went to the Dental clinic on Habelscherstrasse 17, mass production on the assembly line, but the young doctor knew his job and convinced me that it had to come out which it did.

Went back at the office a young man came to draft me as a speaker on education for the army forum next Tuesday. I accepted although I know nothing of the actual situation.

drafted in a hurry a letter to General Clay concerning the conference on proportional representation which Wells had no time to do.

Since I am deeply interested in having this conference held I did it. Sent it over to him.

Left office 12. 55.

Sunday, March 17, 1946.

was in office to jot down notes on the education forum, my house has no coal and I had no other place to go.

Monday, March 18, 1946.

Monday, March 18, 1946.

office 8. 20.

I am getting earlier and earlier to the mess because the overcrowding assumed unbelievable proportions. Much time is lost by standing in line. The food is indifferent. Living conditions are uncomfortable, it is a long winter. The billeting office is childish, they removed the key of my bathroom because the major who has moved out had complained that he had no access to it. This is the way how military government treats civilians whom they invited to come over. Instead of telephoning they send an enlisted man. I am beyond ire because two thirds are gone and I am counting the months until I am going back.

much work and discussion, little accomplished.

staff meeting in which the issue of the gazette or law bulletin was brought up on which I had worked since last September. In Germany the courts and the lawyers know nothing of our legislation except from the press. I had insisted on systematic publication of all zonal and Control Council legislation in a separate gazette or through the Gesetzblätter of the Länder. It is an indescribable chaos owing to the American habit of publishing after several month comprehensive issues of the entire existing legislation. Now this takes too much time and, in addition, MG regulations should not be made accessible to German courts. Not even on this basic problem exists unanimity. A conference was held in the afternoon (Rockell, McLendon, Xhepard, Witten, Miss Cunningham, Cpt Jones) which decided according to Witten's and my proposals. But nothing will come out of it for some time.

Otherwise the staff meeting brought little new. Military Court decisions are so divergent that something has to be done. No wonder, personnel is changing all the time, the young lieutenants and captains know nothing of German psychology and German people and so in one district falsification of the Fragebogen results in a fine, in another in five years in prison. The Germans are not afraid of M. Courts, because they discover so little and they punish so lightly. The statistical reports which they submit are not sufficiently broken down and useless. We should have the reins in our hands, but even this horse is riding by itself.

conference with Wells: The Bavarians submitted their electoral law for the constituent assembly. The same mixture as before. Jim Pollock does not want the conference to be held and procrastinates. Wishes to see it postponed until May 10, that is 10 days before the constitutional commissions have to report. He wishes to do everything alone, the same story as with Oppenheimer. I protested, Wells, who is amiable but jumping around under orders of what he calls the hierarchy, agreed that it should be held as soon as possible, with extension to other matters (election of state president, relations between executive and legislative power, emergency powers of executive etc).

had several conferences with Lt. Col. Taylor who is my opposite number at the forum tomorrow.

long conference with McLendon (who is uninformed but has common sense). main problem. supervision of German courts by us, after April 1, Frankfurt is dissolved and we have full responsibility also for the operational phases of MG.

I proposed to set up a system of inspectors, going on circuit in the three Länder reporting to us and to the Ministers of Justice in case we find that redress of defects is required. Main problem: how to check and supervise the court decisions? I proposed a classification of cases and reports on each individual case within the selected categories. This would require a study of the Dienstaufsichtssituation existing now. I have confidence (limited) in the anti-Nazi attitude of the present men in control but not in their successors. Unless we keep the hand on them the courts will do as in 1919 and sabotage the republic. It is even worse this time because after 1919 at least the majority of the Germans was seriously desirous of introducing democratic procedures. This time it is a small minority only. I promised McLendon to draw something up.

Pollock sent the agenda of the coming meeting of the Ministers of Justice. I am trying, for the last time, to be sent to Stuttgart.

I fancy rejects it again I am going to withdraw into my shell and sit out the next four months.

lunch with Einstein who is likewise inclined to keep out of everything, Oppenheimer goes back in April, thus nobody is left who is a good German lawyer plus political vision. The Nachwuchs they have hired does not seem too good.

Left office 6.10

evening at home: we were confined to quarters for military reasons. I wrote the lecture for tomorrow.

Tuesday, March 19, 1946.

office 8. 25.

not much done or accomplished. I cleaned out some minor matters. I dislike the way how things are handled in the division. If I have an idea which is accepted, or are enough event, they charge me with taking it up unofficially with other divisions or agencies which of course means that they do not wish to assume responsibility. I leave it alone.

I read the new Bavarian electoral law, which was submitted by the constitutional commission much on time. The same mixture as before. I dictated some comments. The laws now are permeated by vague political concepts such as "frei von Naziweltanschauung". Heaven knows how they will operate it. None of my business.

We had the discussion on "Spotlight on German education in the evening, about 120 persons attending, a good and good natured crowd, mostly of the younger civilians, but also a goodly number of elderly officers. Lt. Col Taylor, the chief of the education section of IA&C, had the first word, giving the sober statement of how little we accomplished on all levels of education. I gave some ideas on the wider intellectual and historical background. I had a good day in spite of terrific tiredness before and after.

I had a very good manuscript, and I spoke free, sitting on the edge of the table since the first speaker had done the same. We had a reasonably good question time. People realize how little we have accomplished and what we are up against. Some silly questions could be dodged. The thing lasted until 10 PM afterwards I attended a party at Col. Hatch's house, a very sedate and somewhat stodgy affair.

Wednesday, March 20, 1946.

office 8. 55.

I started working on the plan for the supervision or inspection of German courts by MG. At this time there is no supervision at all. If something happens as in the Kammergerichts case and in the Brumene case we learn it from the papers and do nothing even though I try to stir up some action. German judges at this time may be anti-Nazi if they are so inclined but they are legalists and positivists and will apply the law even if it is bad law. There is no judicial review and there should be none. Without such supervision sooner or later the courts will become instruments of reaction and sabotage unwittingly or wittingly the democratization whatever that means.

I have no definite plan except that of checking on court decisions by a system of supervision by MG officers and by enlisting the help of the lawyers of whom at least the socialists and communists will be willing to keep an eye on the judges and prosecutors. I have no definite plan since I do not know the system of supervision instituted by the Präsidents themselves and there is also the problem of the judicial independence which for the time being is suspended anyway. I have been urging this for many months without success.

I attended the divisional meeting on ministerial personnel which is quite important in case agreement on the central German agencies should be reached which will come as soon as the French demand for the West borders of Germany, very justifiably complied with. General Clay has changed his mind. From now on we are to search only for the top ranking man who is to be presented to our candidate to the four powers or the three other powers. and the more subordinate functionaries are to be found by the man who takes charge of the Ministry. This is just the opposite of what we have been doing all along, waste of time. The scheme is also unrealistic because the Länder will present their candidates for the subordinate functions and the ministries will have much more regional composition than before, perhaps the ministry itself will be a sort of Reichsrat in miniature. The federalistic obsessions of the Germans at this time - federalism is only another alibi or escapism, have no limits. I proposed to have at least the undersecretary to be nominated by each power in order to have a sort of bargaining power in case our candidate for the top position would not be accepted. But because the General had made up his mind my proposal was received with ice cold aversion and I had stuck my neck out again in vain but with considerable satisfaction.

I tried to see Fahy for three days, today he called me and I told him about the meeting next Tuesday of the Legal Committee in Stuttgart. He was at once agreeable to sending me down. This is what I had wanted all along, but one has to force his hand and he did not like

Der Fichtebund, the various other Auslandsorganizations were active for the years all over the world. Now, nine months after the occupation was completed, the Department of State begins to be interested in the groups. The people who are doing this work, are evidently good people. I was favorably impressed by Griswold and Tryhern. But all of it is too late, the traces are obliterated and it is too late.

Otherwise rather busy day.

Left office 6. 10

evening: party at Rheinsteins house. Very tired and somewhat distant from it all.

Friday, March 22, 1946.

office 9. 15 (went to the postoffice for getting the money orders away.)

conference with McEndon (on the future Ministry of Justice).

He does not know anything, but at least he listens when I explain it. He has a so common sense and understands the play of politics.

Madden told me that I was put on the committee on federalism which is a subcommittee of the interdivisional committee on governmental structure. It seems that Pollock is giving up his Stuttgart job for which a Mr. Johnson has been brought over in order to take over here when the structure of the Reich will enter the four power stage which, in my opinion is still far from reached. I was pleased that they gave me this job and I talked it over with Layton, who seems to be a good man (he was brought over for this job from finance). I had a long talk with D. in which I explained how federalism should be approached, it is in the study phase now and should not be made into a blueprint for action until we know more about the Russian British and French set-up.

I shall not be at the first meeting because today my travel orders came for Stuttgart Munich etc, which begins next Sunday.

I reported to "ahy in the evening, he held a little speech about letting the Germans run their own affairs, telling me that I should be careful not to take the initiative, in other words, noli me tangere which is the best policy for people who do not know much, I listened with a stony face and when I thanked him for his kind and fatherly words (I used this expression) he and I just laughed aloud because the scene was so funny, he trying to restrain me and I trying not to tell him that MG restraint is the end of MG policies. He is a considerable politician but not exactly what is needed for this job. The Legal Division of OMGZ cannot be run like the Department of Justice. It must have some dynamism of its own.

I went to Dr. Alexander, Education and got from him the very scanty material on Law schools. I am going to look into this on my trip but more for the sake of curiosity than for real reasons. Some second lieutenant has done all in Erlangen etc and he knew of course everything, from personnel to curricula.

I wrote an opinion, stehend freinändig, on the nationality of

it. But since I am powerless and without influence anyway I want to have as much experience as I can and the four naked walls of my room plus the pines in the court yard are no longer interesting to me.

I talked with Mr. Griswold, Political Division, about the Academy of German law. He is sent over here to get at the bottom of such Nazi organizations as had roots and ramifications abroad, such as the Deutsche Akademie. Knows not a word of German but seems agreeable and good man. We will have lunch tomorrow.

Had Lt. Chernin, who is one of the most active and able men here, inquire how to get penicillin for Jutta von Schubert who had been raped by the Russians with known results. He put me in touch with Col. Marshall of the Public Health Division who told me all I wanted to know. For once the machinery worked. This must be said: all people here are personally likeable and helpful and the skunk of a major in my billet is fortunately an exception. His parting shot was to denounce me to the billeting office that I do not give proper access to bathroom with the result that they fetched the key. What a childish procedure. This is the way how they treat respectable adult people. And then they complain that they do not get the proper people over here to do the job.

left office 6. 15.

evening at home getting some sort of order in my mail.

Thursday, March 21, 1946.

spring begins (allegedly)

office 8. 55.

I dictated the long and difficult memo on the administrative supervision of German courts which to my mind is the gravest sin of omission of MG Legal Division to date. The German courts are not supervised at this time and we may expect a sabotage of the very precarious new state as soon as pressure of public opinion will be brought to bear on the non-Nazi Judges which is not identical with anti-Nazi judges now in office. It is difficult to develop a system without knowing anything of the field. Today I talked to Major Potter from Wiesbaden. The Polish laborers are suing their German employees for wage differences and the German courts are granting judgment at suspending at their discretion. This is a problem which cannot be solved by the German courts, because it ramified into reparations. All this implies that we have to check on the German courts and nothing is done at the moment. I make this memo for the sake of the record, as I do most things now.

Long talk with Rheinstein, who has few new ideas. I think I overrated him.

Had lunch with three men of the Political Division who sized me for obtaining information on various Auslandsorganisationen, such as the Fichtebund. As if I would know anything about them. But Griswold who headed the group (the others were Tryhern and Reynolds) had a brief statement from the Department of State with all the available information.

Jews. This problem has been kicking round since last fall when I raised it first in connection with the repeal of the carrying out ordinance of the Reichsbürgergesetz which, in repealing the 11th ordinance, seemed to restore to the Jews residing abroad the German nationality automatically.. I had warned at that time that the repercussions of this senseless repeal would be felt all over South America where Jews would be forced back into German citizenship. At that time nothing came out of it. As I foresaw the problem would soon become urgent, Rockwell had asked Marcuse to write an opinion which was surprisingly good. but I went at it and gave a different interpretation while retaining the same results namely that Jews residing abroad would not regain their German nationality.

lunch with Menke and Hedwig Wachenheim, whom I had not seen for more than 30 years, She recognized me.

left office 6. 20, very tired and with a bad cold.
had a busy and not ineffective day. slept at once.

Saturday, March 23, 1946.

office 8. 20.

dictated memo on federalism for working party.
prepared trip to South Germany
called on Dr. Alexander on law schools
tried to reach well on political parties, he is sick.

Sunday, March 24, 1946

afternoon: conference with General Clay on the alleged criticism of MG policies in the address before the AVC on educational policies.
conference with Mr. Mahy and same subject and general policies of legal division.

left Berlin by train for Frankfurt 6. 18. sleeper.

Monday, March 25, 1946.

arrived Frankfurt 8. 40.
call on Lt. Col. Brown IG Farben building.
left Frankfurt 10. 15. for Heidelberg by car.
arrived Heidelberg, conference with Professor Hadbruch, dean of the law school

lunch at Schlosshotel.
left Heidelberg for Stuttgart 3. 10.
arrived Stuttgart 5. 10 Zeppelin hotel.
conference with Mr. Pollock
evening at mess of MG Weinsteige.

Tuesday, March 26, 1946.

meeting of the Legal Committee of the Länderrat 10- 12. 45.
lunch at Dr. Pollocks mess. 2.00 - 6.15.
evening call on Dr. Brandseph, Zeppelinstrasse 9.

Wednesday, March 27, 1946.

meeting of the Legal Committee of the Länderrat 10- 12. 40.
2.00 - 6.00
lunch at Weinsteige mess, evening at Pollocks mess.

Thursday, March 28, 1946.

conference with Major Braon, acting chief, legal branch Regional MG.
conference with Dr. Beyerle, Minister of Justice of Württemberg- Baden.
10- 12. 30.
worked in the afternoon in the office of MG.

left for Munich by car 5. 00.
dinner in Ulm, arrived Munich 9. 20.
Hotel Excelsior.

Friday, March 29, 1946.

conference with Dr. Diess Ministerialrat and Dr. Konrad, Ministerialdirektor
at Justizministerium 11 Holbeinstrasse.
left for Garmisch by train 12. 35.

Saturday, Sunday in Garmisch. Partenkirchen Hotel Schönblick,
no work.

Monday, April 1, 1946, Garmisch Partenkirchen

9.00 - 1.30. conference with Professor Kisch, Pflegersees trasse 1, Garmisch
on Akademie für deutsches Recht and other subjects, also law schools.

afternoon no work, wrote notes.
evening: call on Mrs. Gertrud Mädler

Tuesday, April 2, 1946.

left for Munich by train 12.35.
arrived 2.40. Hotel Excelsior.

call and conference with Diess, Holbeinstrasse on bar organisation.
evening Seehaus.

Wednesday, April 3, 1946.

morning: call and conferences Regional Military Government.
conferences with Lt. Col. Jackson, Anspach, Freeman, Nobleman.
lunch with Freeman at officer's mess.

afternoon: 3.00 - 5.15 conference with Diess on bar organization.
concert in Prinzregententheater,
evening Hermann Aumer Diamant. Friedrichstrasse.

Thursday, April 4, 1946.

morning: investigated ~~Deutsche~~ Akademie für deutsches Recht
call on Anto Pfeiffer, Staatsrat of the Minister president's chancellery.
Prinzregentenstrasse 7.
10-12.30 conference with Dr. Ehard, Staatsrat im Justizministerium, Hol-
beinstrasse. on various matters, see report.

lunch mess Prinzregentenstrasse
afternoon: calls on Niemeyer, physicians delegate
conference with Professor Müller Erzbach, 145 Ausserer Leopoldstrasse
2.00 - 3.30 on law schools
call on Maron, Rechtsanwalt, Gundelindenstrasse 8,

Miner Hotel.
evening 8.00 - 12.10 meeting with Dr. Pfeiffer and professor "awiaski
at the former house, Hubertusstrasse 9.

Friday, April 45, 1946.

morning, investigated Notariatskasse, conferences with
Amtmann Ernst, Roman Mayr house, Kaufingerstrasse
and call on Justizrat Wiesinger Augustinerstrasse 1.

10.30 - 1.00.
call on University, conferences with Dr. Otto Graf. Staatskommissar für
die bayerischen Universitäten, and Rektor Vossler.
attended opening of the university.

afternoon: Regional MG conferences with Anspach and Jackson and Freeman.
call on Professor Köllreutter, Pullach Margaretenstrasse 6
call on Dr. Franz Joseph Schönngh, Süddeutsche Zeitung, Färbergraben

evening: conference with the provisional board of directors of the bar (Anwaltsausschuss) at the house of Oskar Maron:
present: Maron, Ludwig Hofman, Valentin Teintz, Walter Schwinck, Justizrat Seidenberger, Fischer,

8.00 - 11.

Saturday, April 6, 1946.

left Munich by plane for Frankfurt 10.25. arrived Frankfurt 12.00
left Frankfurt by plane for Berlin 3.00 arrived Berlin Tempelhof 5.00
at home 6.00

evening at home.

Sunday, April 7, 1946.

conference with Lichfield IA & C division on committee on federalism.
studied draft project.

Monday, April 8, 1946.

office 8.15.

"Back at my desk I "plunged" into work which is imaginative because nothing happened. Gerhardt was sent to Strassbourg for the meeting to organize the Rhine shipping (he does not know anything about international law) some of the new Jewish assistants were sent to the Länder. Rheinstein is secretive as usual.

I went to the interdivisional meeting on federal structure which was split into two sections, one dealing with the central agencies to be established under Potsdam, the other for the long range planning. The second section convened today. I did not understand much of the work of the first except that it kept closely within the confines of 1967 and Potsdam, which of course does not help any. I succeeded in eliminating part IV which anticipates rather amateurishly the future program by attaching it again to Potsdam and the zonal organization which has to be overcome if we wish to reconstruct Germany at all. The meeting otherwise worked sensibly and has good men.

I went to Fahy and reported on the trip, to get it over with. He is going home in May, Madden is taking over to August 1, thereafter God knows. Fahy was not friendly and only my effort to keep the meeting on an ironical level prevented another clash. I told him about the miserable situation in Bavarian education and he reproached me again that I wish to reform Bavarian education. He does not realize that the democratization of the law schools is the first step and that without good law teachers in the place of the present bastards there is not the slightest hope of a democratic new deal. I was very brief, told him that I did not discuss the statute of limitations law with the Germans and that I behaved as a paragon of self-effacement. He is not a leader and the main problem: that is how to check on the German courts and the German land legislation escapes his interest and insight.

In the afternoon I attended a meeting of the interdivisional group on ministerial personnel. Here we are the military government with

the greatest power on earth and for four months we are trying to get a house in Berlin with a kitchen where to accommodate the German consultants brought to Berlin. people in whom we have confidence we have to feed with the German manual laborers. It is scandalous, but the red tape and army rigmarole prevents any sensible solution, 12 men are spending time and efforts on a problem which could be solved within 24 hours.

Since now the top man only for the German central agencies has to be proposed by each division the choice of personnel on which we wasted so much time, is relatively simple. Our principle is trust the Germans, with the results known.

I had lots of letters to answer some of them rather unpleasant. My book is a complete failure, or better: it has been wholly ignored by the US press.

left office at 6.00
evening at home writing letters.

Tuesday, April 9, 1946.

office 8. 45.

conference with rman (little nice Austrian, knows nothing but has plenty of good will) How can we run MG with Jewish refugees alone?

angry and completely wasted day. No secretary since Mrs. Menzl, in typically German fashion choose to get herself into the Patent office where she alleges to have more chances and thus leaves me in the lurch.

Long conference with Mcendon who said suave and sweet words about me but left no doubt that they do not care about my expert advice.

Talked to Rockwell about the authorization of release from German nationality by MG, he understood the problem but wanted me to draw up a staff study,

worked on my notes only to find out that the minutes from Stuttgart have arrived and that no comments on my part is all that is required. Very tired of the whole thing and unable to concentrate. It is better to throw up the sponge and to go back.

long talk with Oppenheimer, clever man, not unduly conceited, but does not see the political consequences of this letting the reins slip.

evening discussion in AVC on the merger between socialists and communists with Eidenreich, Kathrine MacLaughlin (Times) and Russell Hill (Herald Tribune) as speakers, little new but it is interesting to see the communist technique of force and fraud, infiltration, persuasion and compulsion (by ration cards) at close distance. This again is hopeless the communists are going to make an Einheitspartei and a year from now there will be no other political parties in the zone of the Soviets.

Wednesday, April 10, 1946.

office 8. 15.

conference with Roger Wells on Carl Schmitt, error in identity, a man of this name happens to be the constitution maker in Stuttgart. a rectification has to be published in the Tagesspiegel.

conference with Dickamn on administrative courts.

I am down to the nadir of spirits since I came to Berlin and all I want is to get out. I am well aware that this is due to my overwork and overworry and to no acute causes since the conditions as they existed all the time have neither improved nor deteriorated. But it is the general feeling of helplessness, that what I discover or devise whatever advice I am giving, is wholly irrelevant. The men in control here, from Fahy down to the blokes in my branch just do not see the problems and if they see them they are unable to cope with them. Perhaps it is too much asked of American country lawyers, but if this is the case we should not have undertake it. And the refugee lawyers, on my stay, obviously.

Illustration: my work on denunciation was smashed to pieces by them. Naturally. It would have been the first constructive contribution of MG to German law, to date we only removed timidly and hesitantly some pungent Nazi favors. But we have done nothing positive. This law which would permit to get at the scoundrels who made denunciation a profitable profession, is urgently demanded by the German people, it is perhaps the only widespread act of revenge against the Nazis (only the 10,000 pgs of whom Pfeiffer spoke, of course, not the fine boys). It is retroactive in a sense although one could easily operate through mittelbare Töterschaft. A person who denounced another person knowing that he would be arrested and killed out of maimed for life in a concentration camp should be subjected to retribution even if it is retroactive. What happened: The refugee lawyers (Menke, Rosenwald, Rhesintein) all are against it, not to speak of Lt. Col. Brown and Fratcher, who after all, overlook that law no. 10 and the Nurnberg trials are retroactive. Murder always was a crime, it need not be retroactive. Rheinstein with whom I talked, leans backwards to protect the poor German people. He thinks there should not be anymore recrimination, neither here nor in Yugoslavia or elsewhere, people should come to know that all is over and no new turbulence should be carried into the masses. It sounds fine, but it is the Jewish objectivity and the unrequited love of the Jews for their Germany. I am fully aware of the complicated trends in Rheinstein's mind, but it is disastrous. Thus we have two classes in MG, the ignorant American lawyers, and the knowing former German lawyers, both equally unwilling to be hard or constructive. I am no longer prepared to share in this situation. Although it is obviously foolish to say I have to lose a name, after the flop of my book in the States, I am unwilling to continue under these circumstances. I know that government is team work and that the team speed is that of the least fast entity in it, but the team here consists mainly of incompetent people.

I am still stymied by the lack of a proper secretary. I took one of the American girls who was very good but I have such a stack of material to get off my desk that I am at a loss how to deal with it. I am submitting all the information I found to Fahy whether he will undertake something on it is his business, I have spent enough strength in trying to get things moving.

I had a long conference with Howard Jones, Civil service branch of IA & C, who is in charge of the new Beamtenengesetze of the Känder. I went only over the Bavarian draft which is a curious blend of old Bavarian caste system and civil service rules grafted upon it, but on the whole not bad though more democratic on paper than in reality. It will be quite impossible to break the hold of the old Beamtenklassen in Bavaria as evidenced by my experience with the university of Erlangen.

the ivory tower situation in Berlin is the worst defect. Frankfurt is now dissolved and we are the operational agency as well as the policy making, but we know as little of the field as it was the case when we complained about being shut off by Frankfurt.

I had a telephone call from Munich, Freeman this morning asking whether they should make posters of all Control Council laws, I said I have no authority but to my mind, no, because these merely technical laws are published in the press and the radio and take too much space and paper to be posted. Only political laws should be posted. I told him to withhold approval of the law on the religious groups until we had time to act. In the meantime it was published, we have the reprint of the law in the library files. Evidently the Bavarians do what they damn please.

I dictated a memo to be written on the transmittal of legislation which is still as bad as it was before. We have been working on that since last October, it just does not work, in Bavaria not a single copy of the marriage act is available.

Dickamn came to ask about Freifrau von Erffa, a lawyer admitted here who wrote an enthusiastic commentary on the Nazi marriage law of 1938. Should she stay in office? I said, no she should be kicked out. As long as we are in a position to influence the personnel policies we should be intransigent.

Schubert brought the translation of the Bavarian law on the legal status of the religious groups, incidentally poorly translated, I wrote a short and carefully phrased memo to Fahy that approval should be withheld because a government without political power should not be permitted to freeze conditions at this time. I know I am treading on dangerous ground, here and in the law school business. But this is too important to warrant hesitancy about jurisdiction. Högnér made himself a tool of the Bavarian Peoplespartys aims. The law is a ~~care~~ carefully camouflaged transfer of unrestricted powers in religious matters to the Catholic church. For example the school teachers of the elementary schools are not to be compelled but neither prevented from giving religious instruction. Looks fine on paper but if he refuses to give it he will not be promoted. The property of the church is declared inviolate, this is against our agricultural settlement policy. In short, it is loaded with dynamite and should not be enacted. A young man like Freeman who knows nothing of Bavaria cannot pass with authority on such a piece of legislation. I went over to the education people (Tayler and Olson), none of them had ever seen that law, I left a copy there. Fahy probably will be furious again and tell me that I am too independent, but I cannot help it, this is too important.

Law schools: discussion with Hartshorne, who feels that the Spruchkammer may reinstate a man ousted because of his Nazi character, I feel that the chair is vacated, he may fill another chair if he is exonerated by the Spruchkammer, we cannot hold the chairs in suspension for years.

I also asked Tayler whether he had criticized M in my talk on education, he said no, I had only explained my own ideas. Well, that is the end of General Clays objections, I have to follow my own instinct.

Madden put me in the new committee on political parties in Berlin. Chairman is Henry Parkman, a Boston lawyer who succeeded the gay General Bailey who is one of the best hated men in the entire group. I liked him because he was such a typical specimen of MG personnel action.

I had a long talk with Madden on the Bavrian situation which seemed to him irreducible. So it is.

Dr. Glum came to see me about civilservice and the bibliography for the constitutional commissions. Wellenke had given him a list of books they desired. The last was of 1932. What has happened between 1933 and now they just do not know. But they have to write constitutions in a jiffy, without being given an opportunity to find the Anschluss to the world developments in public law and political organization.

I dictated the remainder of my notes from South Germany. So many things happen that I forget what I knew yesterday.

left office 6.00

evening at home: Suhrkamps, Glums, Frau Virchow, Frau von Schubert. So tired that I was hardly conscious when I crept into my bed. This life is too hard for me, and I am driving myself too hard.

Saturday, April 13, 1946:

office . 45.

owing to the difficulties of my secretary I can not get any work done. Well, if this is how they want it I can't help it. But I made up my mind to take it easy from now on. No reason to govern Germany singlehanded and to lose the sleep of the night for things which are beyond my control. Found out that Rheinstein had recommended Mezger for reinstatement at Munich university. Madden called him in, he answered that M had written in 1942 an article which could have been written by any good scholar not revealing Nazi tendencies, that his Feldpostbriefe were wholly innocuous.

Naturally, they were intended to maintain interest in the Munich juristische Fakultät and the students were anti-Nazi anyway, so they decided they would write objectively on legal subjects. But Mezger had identified himself most prominently with the regime from its inception. Not even Müller-Erbach asked for his return, considering him for the time "untragbar". But Mezger had suavely talked to Rheinstein when the latter was in Munich, the result being his recommendation which of course was made without my knowledge or concurrence. I objected strongly but it is of no use. Rheinstein is a wholly dogmatic and obstinate person and in many ways not even well educated. Now this is the best of the refugee crop, together with Oppenheimer who likewise is leaning backwards to conciliate the German people.

Madden called me in to complete my report on South Germany. I could not finish because he took me in to Bahy when I mentioned that the officials in Bavaria contended that any Nazi who was dismissed from office retain a claim to reinstatement into this very office, to the effect that no new appointments can be made until the Spruchkammern had decided. Since there are more priorities before the Spruchkammer

than cases the matter can be protracted for a year and more. Or the Spr
kamer would decide that an official as sanction has to abstain from exer
singing his office for some years, has, then the position to be held fo
him during that period? Fahy knew no answer and had not thought
it through, none of them had. Have the Germans or did they
leave this problem deliberately undecided to deceive the gullible
Americans? It cannot be that this crucial problem has escaped their
attention.

The Patron Saint of AMG is Santa Amaeurishness or Sanct Diabantis

left office 1. 10

afternoon at home

evening party with German consulates at Mr. Tom Stauffe

Monday. April 15, 1946.

office 8. 35.

my good intention namely to take things easy are again gone with
with wind. I am just worked to the raw and cannot take it.

Fahy, for the last few weeks had staff meetings Monday morning in which
some plan speaking is done, they are useful as information of what
is going on in other divisions, I am shut out by Shepard from my branch
and no papers are routed over my desk, but I do not care now, it
would be unavailing anyway. But this meeting was interesting, showing
the cross purposes. The information I brought from South Germany concern
ing the law bulletins the governments there are about to publish
could not be imparted before because Rockwell had not invited me to the
meeting on the gazette. At long last the problem of the approval of
legislation of the Länder by AMG came up which I had been urging since
last October. Now already so much harm has been done that the drawing to
gether of the strings will help little. The Länder are interfering
left and right with Reichslaw although they are reluctant to do so.
Ellenbogen, one of these inimitable Austrians who are let loose on
Germany, was working lately in Wiesbaden. Why should each land have the
same code of criminal procedure he asked me. Well, if we have twenty two
different codes of criminal procedure we cannot have uniform training, no
uniform teaching, and all other federal entities are trying to keep
such basic things uniform. But one cannot convince a stupid man.
It is rather hopeless anyway and I am not fighting any longer.

I told McLendon and the inimitable Urman, another one of these Austrian
heroes, about the plan of the Ministers of Justice to check on their own
courts, Urman drew up an instruction which is so stiff that it cannot
be executed. After all, we are not dictating to the Germans but cooperat
ing with them. The instructions consist mainly of generalities.
I dictated my information and they can do now with it what they damn
please.

At long last the Berlin situation has reached the interest of MG. Berlin
is divided into four sectors, the US sector is about as independent
as Siam, nobody cares what they are doing. Dorn drew the attention to

lack of power of the Kommandantura which is only a figurative control while the Russians are treating their sector as a part of their zone. He also insisted that OMGUS take a hand in the US element in the Kommandantura which is more or less independent. The jurisdiction is doubtful, General Barker, the head of the US element is not to know of our step to intervene in Berlin Politics, all this is again Snafu because military susceptibilities have to be spared. Dorn's letter to Adc was intelligent, but rather late, if we are to do something it must be done now before the issue is forced by the Russians who anyway may come over any morning and arrest the entire OMGUS.

We had a meeting with Muccio. Parkman, former Brig General the new head of IA & C, the gay General Gailey has been relieved. Much to Roger Well's relief, Parkman makes not a bad impression, and Lajor Gresh. We decided that a committee be formed to which a representative of the Berlin district be called in, a decision which could have been made by phone before the meeting. I steered it to the point where Parkman who is green in this business realized that something is rotten in the state of Berlin.

I dictated a memo on the supervision of courts to the new Mrs Fertig who seems to be quite willing, and arranged with Jones that I would study the civil service law of Bavaria before Thursday. The weekend will see a meeting with the chief legal officers of the zone a good idea but some nine months too late. Fahy is now a somewhat better organizer.

left office 6. 40.

evening at home, extremely tired.

Tuesday, April 16, 1946.

Drovely morning could not sleep. office 8. 10.

I am actually approaching the point of mental collapse. I went tonight to the meeting of the AVC on propaganda methods, and in the middle of it had to leave because of that "acute" poisoning" which occurs to me sometimes in USA and makes me incapable of staying in a closed room. I have to take a rest but I do not know when and how. It is utterly stupid to overwork myself because nobody will care about what I do.

In the morning I went over Stauffer's draft on ministerial personnel, which at long last centers responsibility for the personnel of the future central German agencies on one central agency in OMGUS. But the issue is so carefully hedged in by military rigmarole that not even a lay mind could devise a simple and clear solution. I drew up some observations for the meeting tomorrow.

A captain from Frankfurt threw on my desk instructions to the army concerning the marriage requirements in Germany if non-Germans wish to marry. The thing was copied and rather intelligently from a previous pattern, I had to get it in line with the new marriage law. Took me several hours. Why should I do it?

worked with Henry Urman on the plan of the supervision of German court decisions, about the most important thing we have to do at this time. I had two exhaustive talks with Beyerle and Ehard on the subject

and they with my prodding suggested a number of good technical devices of control. The problem is a moral and a sociological one inaccessible to any rational solution in case the courts become recalcitrant as they certainly will. Urman's draft was a hodgepodge of MG language copied from previous obsolete documents, mainly geared to the control of criminal courts which in the long run are unimportant because they are always under the observation of public opinion. What Urman had added was childish and nonsensical things about what we have to do in case we rescind a decision. This would mean that idiots or former German refugees who were ~~refederendare~~ at the time when they left would have to decide complicated matters of German law. It is ridiculous. I confined myself to getting my ideas into his draft and washed my hands of the rest. If they believe that a former österreichischer Konzipient is suited for mapping out such intricate policies they should not complain if it goes wrong.

Revised at Parkman new IA&C chief, request, the minutes of the meeting on Berlin politics. Major Gresh who drew them up disapproves of the idea of having a committee and therefore drafted the minutes to General Adcock in such a way as to make the thing look doubtful. I would have done the same in his place but it is not quite honest after all army is army.

left office 6. 45.
dinner with Edith Lowenstein
evening at AVC meeting on radio control

Wednesday, April 17, 1946.

office 8. 20.

bad day, have sciatica, can hardly sit or move.

had in the morning a very good German secretary to dictate a long and highly critical and (as I think) constructive memo on the planned civil service law in Bavaria which, under US proddings is an unworkable blend of civil service regulations - bad in themselves because the system of competitive examinations presupposes that the examinations are intelligent - and the old German Beamten - system which in itself was not bad though caste ridden. What the Bavarians did was to retain the authoritarian structure of their old system and graft into it some of the civil service features. It will never work. I had to dictate it in German because I have no competent American secretary. It is scandalous.

attended meeting of interdivisional committee on ministerial personnel in which at long last the problem of accommodating the German consultants and guests seems to be solved, at least on paper, one man with some authority could have accomplished it within one week. The more important section on the selection of the top-ranking people for the central departments was hardly touched in spite of an elaborate staff study as they call it.

left office 8. 30. to lie down half an hour.

evening at Mr. Umbach (Manpower) house, with a number of quite interesting other people. among them a British sound scientist that is a man working in ultra or supersonics.

Thursday, April 18, 1946.

office 8. 40.

I am under considerable pressure because Fahy wants the study on the approval of legislation by OMGUS (instead of by the Regional Mil. Gov) tomorrow when he will speak on this subject to the Chief Legal officers whom we invited up here. He would not let me speak about it because I am too radical. OK with me, I have urged this change which is important for seven months, at long last he sees the problem, it is not true that things up here are getting better by doing nothing. In the meantime the legal chaos made such progress that it is almost irremediable.

We were compelled to listen to an address of the president of the American Bar association who went to Nürnberg and regaled us with the enlightened impressions the trial and Europe in general makes on a country lawyer from Raleigh, North Carolina. He gave us the speech he will give innumerable times before the various county bar associations in the States, twentyfive men lost valuable working hours for this drab and stupid affair. But evidently it is necessary to have such men see Europe in order to break down the provincialism of the people back home. He told us that the people in Prague lined the streets in order to greet Jackson the St George who slew the Nazi dragon, But the limit was the episode with the cigarette which a boy handed to Jackson as token of recognition of the Czech people.

we had in the afternoon a meeting of several hours with Lt. Col Howard Jones who is the head of the civil service section of IA&C. This is fun, they wish to introduce in Germany the "merit" system- as if the former system were a spoils system!! The merit system consists in the holding of examinations and interviews for every job and they expect to weed out by it favoritism etc. OK by me. But it will be fun to see how this experiment will fail. The German civil service was good enough, the only defect was that the officials were not forced to defend democracy and the constitutional democratic state. I got these things into the instructions, that every official is to uphold democracy and cannot participate in non-democratic parties. This is just in line with what I did in South America and I am satisfied. Jones is a civil service commissioner from New York and well meaning to the point of idiocy, but a good sport and he allows Dockman and me to run the show. We will have a conference with the South German officials in about a week.

Cl McLendon asked me officially whether I would stay. I said no. duty officer from 6- 7.00
left office 7. 05

evening: Erbe at the house, Boring repetition of anti- Russian and old fashioned liberal arguments. He is going to Tübingen. The flight from Berlin continues. The people do not see that the "western sections of Germany" sting of reaction.

~~Saturday~~, April 19 and Saturday, April 20, 1946.

Friday: in office at 8. 10. worked hard to get the memo ready for Mr. Fahy concerning the approval of legislation submitted by the Länder ~~VfV/VfV/VfV/VfV/VfV~~ to MG by OMGua instead of by the regional military commander on his own responsibility alone. I have been pressing this point incessantly for seven months since the inauguration of the plan to transfer legislative powers to the Länder. At first nobody understood the problem that such legislative independence will destroy legal unity more safely than anything else we can do. When they began to understand the mechanics it was found out that Frankfurt the little or the big Empire builder there wished to have this power for themselves, particularly Oppenheimer. When finally Frankfurt was superseded Fahy objected that he did not wish to curb the independence of the military soldiers in the capitals. The result is complete chaos. For example in Württemberg they issued an ordinance concerning the use of allied witnesses in courts while we are doctoring a "staff study" on the same subject here. We of course would learn of the South Germans how to draft such legislation because here is nobody except Shopler myself and Rheinstein who could do it. But since we are not informed there is this duplication and ultimate complete diversity of regulations in the various states. Fahy wanted to discuss the matter with the chief legal officers of the Länder who are here today and tomorrow for the first joint conference of this kind, he did not trust me because I would have been more radical.

we had this conference from 10.30 - 12.30 and from 3.00 - 6.00 on Friday and from 9.30 - 1.00 on Saturday. On Friday it was a formal and somewhat stodgy affair in the big conference room with its bad acoustics, on Saturday, in Madden's office though crowded much better and at times even interesting discussion. An administrative novelty was that Schubert, the Austrian ass, is acting chief of the Ministry of Justice section, though he does not know a thing about it, and that Gerhardt, the charming fool from New Mexico who is a gentleman and a fine person though wholly ignorant of things German, the active chief of the German court section, it is almost unbelievable. On the first day we met Jackson from Munich I may be mistaken, but he seems to me a forceful and slow moving man, one I dislike him thoroughly and Ernest, our little Irish columnist, dislikes him proves that he is soundly anti-Nazi. From Württemberg we had Major Brown who is pinch hitting for Sedillo and from Wiesbaden Robinson and Ellenbogen, another one of these charming Österreicher though a sound and well informed man. The first day was taken up with the discussion of the ~~conf~~ military courts business. It is amazing how little occurs in these courts. Fragebogen falsification is about the only thing of interest. In other countries under occupation the military courts are the threaded instruments of repression and revenge, here they are routine courts, manned by small town lawyers who accidentally are here. No harm is done because the Germans are extremely law-abiding, there is little restlessness which assumes the forms of subversive organizations, the Germans are not even capable of creating an efficient underground, but they just obey as they obeyed the Nazis. All this makes the military courts relatively unimportant, Nonetheless Fahy stressed in his thoughtful opening address that military government by necessity and nature is

is arbitrary and that the legal division has the function and duty to mitigate arbitrariness by the processes of law. Hence the need for reviewing decisions of the military courts, and for a system of pardons and paroles. I found that the men doing this job are

reasonably good, the moment things would become hotter and imply political movements and dangerous trends they would be wholly incapable of handling it. The personnel is sufficient for the time being because the functions are transferred more and more to German courts. On the whole the system works well because it is exposed to no strain. The moment a crisis would come it would break.

Friday I had dinner with Mr. Murray a young lawyer of the division, later I went to van Aagoners house for listening to good Friday music over the radio, then a drunken party broke in and I escaped home.

Saturday office 8.30.

This morning I had my say, first when the military courts were discussed. I told them what I had got of information from the Munich lawyers, and it seemed that they were aware of it.

Another problem was the validity of Control Council legislation.

The German courts do not apply it because they do not know that it exists, owing to lack of information on publications, a thing which I had urged since last October and which now is being remedied slowly by the plan of issuing a current gazette, like a Gesetzblatt. Some of the CC laws so not say who is to prosecute, MG courts or German courts, they provide only that the violations are punishable. Implementation by Zone commanders is lacking in our zone. Oppenheimer filed to see the problem. Other laws are German laws copying the CC or zonal laws, in others in turn the authorization for the prosecution in individual cases or for certain types of cases must be given by MG, but never a German Staatsanwalt asks MG for the authorization. All this is muddled and could be remedied in a few hours if a person would sit down and just go over the few laws and determine who

is to prosecute and judge the validity of the various types of enactments. I tried to explain it. Thereafter I had a long speech (relatively long in this informal meeting) on the need for the supervision of the German courts. The problem was new to most of the legal division who have no political interest or understanding, but was fully shared and strongly endorsed by Jackson of Munich and Brown of Stuttgart. Madden objected because he would not saty on the bench for five minutes if he were subjected to such curbs or supervision. I told him and the group that Germany is not USA and that this is a period of transition, that the non-Nazi judges cannot be trusted and that within a year or so most of the Nazi judges would be in power again since the Spruchkammer would lean backwards to be lenient. I made it as strong as I could to impress them with the necessity of supervising, better by German techniques than by American officers. The idea that American officers should go round and check personally is childish beyond discussion. There are no suitable officers, only a few German Jewish refugee referendare who would be deceived and spat at right and left by these shrewd people. And the idea that the lawyers would bare their hearts to the officers going on circuit whenever they find an injustice of the courts is idiotic, they would become outlaws in their communities and der Fehme verfallen. If it is to be done at all it can be done only through the Ministers

of Justice as long as these are loyal and not members of the Resistance. The final point where I intervened came when we approached the issue of the ~~g/e~~ approval of German legislation. I discussed this above. It was against my wish one of my days But I cannot help it. I did not come over to keep silent in this mess. If they do not like it they can send me back.

We had a banquet in the evening for the chief legal officers and at the same time the farewell party for Fahy who is going in about ten days to become Hackworth's successor in the Department of State. Some of the people later on, particularly Brown from Stuttgart, Jackson from Munich and the Lt Col. from the Berlin district told me that I had impressed them greatly and that they regretted that Madden had curtailed my time because of the hour. They felt that these political problems are never discussed and that what I said was very important. I even convinced Brown that the Stuttgart legislation should be set up for review and coordination.

If I succeed in getting these two things across, namely supervision of German courts and coordination of legislation I have not come over in vain.

It was late, I was home only at 1.00 clock, the latest hour for nine months.

Sunday, April 21, 1946, Easter Sunday,

duty officer from ~~8~~ 9.00- 1.30.

office 8.25.

dictated, with great difficulties because the person is not trained in English, a memo to Fahy on the Munich law schools and my findings there. Nothing will come out of it because the Germans are to be masters in their own house and do things by themselves.

very tired, this was not a very enjoyable Easter. afternoon: visit to Spandau, Peppings.

Tuesday, April 23, 1946.

completed dictating the memo for Fahy on law schools. afternoon: attended meeting of intervisional committee on federalism. Both working parties met together to consider the draft for the Secretary of State at the forthcoming meeting of the foreign ministers. The draft which is mainly Litchfield's work, is good, though verbose and still disjointed. I succeeded in getting in a definition of decentralization that is useful expression which crept into the Potsdam agreement and has done more harm than any other word to the Germans and the world. I always had urged a study on decentralization to distinguish it from de-concentration, that is transfer of functions instead of transfer of powers as decentralization is. Nothing was done although they write memos days and nights alike.

I also discovered the conflict between decentralization and the

required central German agencies. Actually there is no such conflict. Central agencies are not only compatible with decentralization but its basic condition, the two go together. We strengthened it out, the entire group was very accessible to advice and working well together, Litchfield expects that this committee will have to deal with the review and approval of the German constitutions to be written (incidentally, the French constitution is just the opposite of what I had prophesied in my book, it is the type of the national convention, dictatorship of an assembly which always failed to work in French history. Human beings are just outright foolish and unwilling to learn anything).

The document we drafted is important because it will serve as guidance for Byrnes when the Potsdam agreement has to be revised. It is somewhat cumbersome and overlaid with details which would belong to the appendices, but it is a good work. Members of the group are Litchfield, Kenneth Layton, Perry (Department of State), Mattusch (whom I do not like but who has sound ideas), Perry, Major Gresh, our Mr. Berhardt who knows a hell of a lot of these things, a colonel of the transportation division who is sound it is not a bad group.

I left at 4.30 to make Hoffmanns Erzählungen in der Staatsoper. I got Rudy with the car and came just at the end of the introduction. This is the first time that I went to the opera since December.

Rheinstein brought a nice problem: MG had instructed the Military Detachments to give orders to the civil registrars in the case of marriages of US soldiers etc to deviate from the marriage law. Query: Can, under the new CC law on marriage which is binding all four powers, such deviations still be ordered? I said no because the CC law is the supreme authority which cannot be perforated by the Military Commanders.

The secretary problem is a serious one, the woman is not good enough for this job though she is willing and patient.

Wednesday, April 24, 1946.

office 8.20.

rather lost day, tired. We had a picture taken in the morning, glorious weather.

conference with Fahy on the South German law on redress of wrongs. Nobody knew where it stands after Oppenheimer had gone to Stuttgart to arrange with the ministers of justice the acceptance of the revised draft. Fahy told me that it now in General Clay's hands who objected against the reopening of cases in which persons had been acquitted because this is against the principles of American democracy. How could otherwise the Nazis be punished? It is the core of the entire law. Well, democracy is OK in normal times but this is a revolution.

Fahy asked me I should stay on as long as I could. I told him that I wanted my wife over here, that I wanted proper responsibilities for example the checking and coordinating of German legislation and that somebody high up would have to induce my president to consent. I would perhaps be inclined to stay on until the constitution

and accepted by Herr G. Linder in another talk. He was in a
had been accepted some time in November. He was on the whole friendly
though noncommittal as usual. He told me he would call me in for another
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to have his and Niebuhr books published by none Frotte. The information
was also interesting to me on account of the translation of my own
book.

Telephone call from Sr. Burnett, a mathematician about the approval
of the law faculty in Munich. They have a former professor of this
very faculty in OMGUS but another unknown man does the job.
I warned him against Mezger and others and told him that
Nazis dismissed have no claim to their office even though they
are cleared by the Spruchkammer.

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conditions in ~~the~~ administration of criminal justice
My draft is better than the one from South Germany.

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dinner at Gerahdt's house
evening at home with Dr. Redslob who dropped in and the Suhkemps.
good talk until 11.30.

Thursday, April 25, 1946.

office 10.45. stayed at home for the inventory of the billeting
office.

I checked for Rockwell on the authority of German agencies to
levy administrative fines against violators of CC law no 19
rationing of gas and electricity. This is again characteristic of the CC
laws usually contain only provisions that punishment is meted out
without saying which court (MG or German). The German courts
however cannot apply CC laws unless the Staatsanwälte are instructed
to follow up complaints or investigations of their own.
On the other hand, sometimes the CC laws provide that MG courts should
handle the cases. The whole situation is inconsistent.
But the drafting techniques are so different from those used in Germany
that there is a lot of confusion. Nothing can be done about it, I have
given up hope to make the CC the overall legislative agency of the Reich.
All it does is to denazify to demilitarize and to do other purely
negative chores. It would be all the more important to make OMGUS
the center of coordination for legislation of the Länder but
even this is done so haphazardly that nothing comes out of it.
German laws come to Legal Advice and the people there of course do
not know how a law ties ~~with~~ in with existing other laws. Example:
Treuhandgesetz which I brought up from Stuttgart: I sent a memo about
it to Fahy, obviously it belongs to the property disposition program
now under way here. Result: Fahy knew nothing about it. I am instructed
to inform if I learn something about Länder action on it. but how
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I lost a lot of time running round for a new housekeeper, the little whore who pretended to keep house for me is leaving. Mr. Wise, my housemate, son of a barbarer Heiliger to say the least is a most disagreeable New York Jew, egotistical and wholly devoid of manners. I wonder why I always have such blokes living with me when there are so many nice and interesting people around. I looked one woman over, she seems OK, I do not care much the only thing I want is that the housekeeper does not sleep with the people in the house to the detriment of those who do not sleep with her.

Talk with Thiestien about the plan for the supervision of German courts. He is a true Fifth Columnist and does not wish to touch the pure and nice Germans, let bygones be bygones, forget and forgive, they will be alright after what they have suffered, look at their wantonly destroyed cities etc. He does not remember how after 1919 the courts sabotaged deliberately the young republic, to the delight of the entire bourgeoisie. See the Ebert cases etc. I try to hold him back so that at least the internal controls which the Germans themselves wish to institute get into our final draft. But people like Urman and Schubert are used for checking on courts which of course the Bavarians slightly resent. No wonder they do. They hate the Prussians but despise the Austrians. These people have no job in the States and therefore are glad to stay here at salaries which they never would get in the States. This is MG.

left office at 6.00

evening at Mommsens house Teutonenstrasse 1, Nikolassee.

with Kuschynski and Dr. Brandt, quite interesting evening. I learned that the Aryanisation, by pretending that the person is not the son of a Jewish father, was also used to protect the Jews from gassing. These people are rather depressed, but Kuschynski returned from England as a German and wants to rebuild Germany, This is the first case I encountered of a repatriated refugee. It must be something to think that way as they do.

I am badly overtaxing my strength and I shall be very glad to get some respite, - But there is no chance for it.

Friday, April 26, 1946,

office 8. 10.

I am reporting very briefly. Theobald Dergler, a sensible man of the Department of Religious affairs came over to discuss the Bavarian law on religious communities, which he had never seen before. I had just checked it in Munich when it was about to be published. The old skeleton in the closet. But the responsible people in Berlin never saw the draft because a young refugee lawyer from providence Cöthen had approved it. We discussed it for a while and decided to go next week paragraph by paragraph over the German text. I finished the German and English text of the law on the restoration of decency in criminal law which is a South German draft which I rewrote. It will be kicked about in the Legal Division for weeks and nothing will come out of it.

I also worked on the criticism of Urman's plan for the supervision of German courts which wishes to make MG the policeman (composed of *Antikristen* //

in Munich, told the meeting that about 600 persons had been selected in Munich for the Spruchkammern by the Bavarians. They are being vetted at this time and it was found that about 50 were in the mandatory arrest category and about 150 in the unconditional non-employment category. About one third of those designated to sit in judgment over the Nazis are arch Nazis themselves, and this in Munich which allegedly is anti-Nazi from the start because Nazism is a Prussian invention. I am delighted about this first result it is exactly what I had predicted namely that within one or two years all the Nazis with the exception of a few socially not acceptable gangsters will all be in office again. Nice going, Mr. Oppenheimer. But I am a theoretician and he is the practical man who seeks and finds practical solutions,

I completed the German and English texts of the law on the restoration of normal processes in administration of criminal law. It will be kicked round for several weeks in the legal division among incompetent people and nothing will come out of it.

I telephoned to Munich to prohibit publication of the Högnér law on the justices of peace which if enacted would completely stymie civil law cases. I wrote an opinion on it and used it as a peg to get TDy leave of absence to Switzerland. Why will he turn it down and lustily so because he wishes to show his displeasure about his enfant terrible. I do not care others get TDy also for such places and I am always the sucker.

conference over lunch with Howard Jones, Lt. Col. Burns Freeman Dickson on the conference with the South German civil service tomorrow. This will be fine, Jones has commonsense and is a gentleman and the merger between Mr. Kansas ideas and Bavarian spirit will be amusing. I dictated a memo on it.

Dr. Helmuth Ruge came in order to get material for a publication of all German and MG government laws of all four zones. An excellent idea which has my full support. We should have done it months ago, but Witten proved incapable of getting the Russian and British zonal legislation. We had a conference in which I straightened things out and advised on the arrangement of the subject matter. The Germans are all still engrossed in their pre-collapse legal thinking. I had a talk with Ruge when he came to my house in the evening to get some American texts of international agreements for his publication. He is a sensible man (with a Jewish mother.) On the whole I like those people who start to work undaunted as if the state were still in working order. If we would leave the Germans alone they would rebuild their states within an amazingly short time. Left office 6. 20. very busy and hectic day. dead tired, went to bed at 8. 30.

Tuesday, April 30, 1946.

office 8. 15.

Tuesday, April 30, 1946.

office 8. 15.

I had a long talk this morning with Lt Col. Maclean, one of the more influential men here, the man who passes on all material which goes to General Clay. A New York lawyer (Yale), friend of Thurman Arnold, Amherst alumnus, quiet, incisive, intelligent, a good diplomat. I talked with him first about Tom Stauffer's request to have the vetting of the German personnel vested in a separate agency of course with him as head, I did not know much about it but it developed that a new Division has been created the Internal Affairs division under Henry Parkman to handle all the matters concerned with the central agencies. From this developed a general division which I conducted with considerable circumspection because Caly will be informed about all of it, McLean took notes. I emphasized the need for further supervision of all activities of the South German governments which we may trust now because they are composed of decent men styled by now (collaborationists - all of them will be ostracized once we turn our back - but that any following government will slide out of our hands. I emphasized particularly the need for constant supervision of the constitution framing in South Germany and I said that I would stay on for another three months if I would be sent down to Bavaria with proper credentials to do the supervising job. He seemed to agree fully. I was in general critical of the democratization effort and warned that preparations for the central agencies should be made at once. Who in the Legal Division will do this job once we are gone I do not know, probably some Austrian former emigre Referendare, like Urban or Schubert or Ellenbogen who is the best of the three. McLean wants me to get together with Parkman next week for an evening's discussion, since I have nothing to lose now I am going to stick my neck out as far as it goes.

we had a meeting with the South German officials on Civil Service. Lt. Col. Howard Jones, a decent, well meaning and in his job very well informed man ran it, after good preparation with consummate skill Dickman was the ideal interpreter, I did my share in placing it on a higher level and in doing the work of technical discussion, from Bavaria there attended Ministerialrat Leuser, a young Staatsanwalt, not bad, Dr. Metz, a Finanzbeamter, old Bavarian people's party, a relic, from Württemberg and Baden two undistinguished but quite funny officials and for Greater Hesse a former Oberpräsident from Breslau who Geiler had found and properly used, by far the best of the lot. It went well, we are trying to convince them of the advantages of the American merit system by examinations, they are willing to make the experiment and I said that the crossfertilization of cultures (from the Mississippi to the Neckar the Isar and the Main) might be something new in legal contacts between the nations. The whole thing is fun, I think it is a worthwhile experiment, particularly since I am getting into a number of my pet ideas such as the oath for the democratic constitutional state, the exclusion of non democratic parties etc.

in the evening the whole crowd about 15 came to my house, I fed them because our feeding system for the Germans ignominiously had broken down and they had to do without lunch and dinner. It is scandalous.

Office 8. 15.

read the new Bavrain constitution. I am probably the first foreigner to see it.

Högner had drafted himself a Staatsschutzgesetz which is the most preposterous statute of this kind I have seen and I saw probably all which were written in our time. Rockwell gave it to Adams and Adams had the good idea to bring it to me. Well, I am going to tear it to pieces.

we sat from 9. 30 - 12. 30 and from 2. to 5.00 with the South German officials on the civil service. Most of the time was spent to explain to them the working of the American civil service system by examination and the civil service commission. ~~Although the~~ If the Germans could cut out the provisions and appointments through "Verziehungen" which is another form of personal corruption their system was good enough, particularly if the performance during the office was combined with the acting in the examinations. I did most of the speaking. The Germans told me they were surprised to have an American who knew so much about civil service. I thought while sitting in General Leides room that political science which I loath most of the time, is occasionally a useful occupation. I am now at the height of my intellectual powers (though my memory suffered considerably, I lost all sense of figures) and I have the experience of three civilizations, German, South American, USA. No wonder that I could offer original contributions even to these specialists in civil service. The best man was Dr Berger from Hessen, a former Prussian (Silesian) official whom Geiler had hired. The two men from Bavaria, Leuser and Mathias Metz, were not outstanding, the two others from Stuttgart and Karlsruhe even weak. We succeeded in getting across: that the official must be loyal to the constitution and the democratic state inside and outside the office, that he must not belong to subversive parties. The American idea to eliminate all participation in politics - this is actually the "British system" - I could not follow this would deprive the constitutional parties of some of their best men and only party politicians instead of decent people would get into the party offices. We finally found a compromise. I also got into the Dienstzeit the obligation to serve loyally the democratic constitutional state. Howard Jones did a very good job, less by learning than by impressing them with his intellectual integrity. Dickmann assisted me effectively and did a great job in interpreting, the best I have seen to date. -- The Germans once again were not properly fed. It is outright scandalous.

I began to study the Bavarian constitution, which is patterned on the Swiss model with which Högner and Nawiasky are familiar. Left office 6. 40.

When I came home, Frau Virchow brought the pages of the translation of the book which she had copied.

conference with Mr. Freeman and Witten on organization of legislative exchange.

~~Monday~~ Thursday, May 2, 1946.

office 8. 15.

all the little chores which Fahy gave me on the basis of my recent memo reporting on the South German trip afford a lot of time. If I had an assistant or a decent secretary all could be done within an hour.

wrote a withering opinion on the Bavarian law for the protection of the state, the worst drafted and most dictatorial of all laws of this kind I have seen (and I saw all which are in existence). Högnr drew it up himself, it is not to his credit as a lawyer and defender of the Rechtsstaat. I am in favor of holding down the Nazis, but a social democrat who makes the general strike a crime punishable by death. They do not know what was going on in other countries. If I had time I would draft one on the basis of the South American comparative law study copy of which I have here. But this is beyond my time.

I wrote another rejoinder against Rheinsteins draft on the supervision of the German courts. I toned down my proposals to meet his possible objections, he still believes in the independence of the judiciary which has never existed in Germany anyway because they were representatives of the class and class interests. But I think it is now in better shape. We founded an association (Verein) gegen die Zulassung weiterer Österreicher in OMGus Legal Division. It is a scandal that Austrian lawyers, per se nice people, are to advise on German affairs of which they know less than nothing.

I went to see Lichsten Finance Division on the South German worries about the draining off of funds to the Russian zone. This is a matter loaded with dynamite because any legislation would be directed against the Russians. It is a very difficult political financial and legal problem. He was very condescending, I did not like him at first sight, but he promised to look into it. We should discuss it with the South Germans, they would know how to handle it.

I saw Col. Wilson, Public Safety Special Branch on the situation that a judge vetted in Munich and transferred by the Ministry of Justice to a position let us say in Bamberg, is vetted again by local branch and thrown out. He said that nothing could be done because there are no central files, 100 Germans are working on the central file in Berlin and it will take them another four months to finish it. Since the German Spruckammern are taking over anyway in the near future we should wait and do nothing, he was outspoken against the denazification law and agreed with me that it will be a failure, as Pfeifer said: "wir werden 10,000 Schweine schlachten und nothing will happen to the rest". He said I should spread the gospel in the Legal Division but what can I do?

Schubert brought me a Russian proposal concerning a quadripartite regulation of the bar examination. I have been working on this since October, it came to us on April 8, nobody gave it to me, but to Schubert who knows nothing about it. It is typical how things are handled in this Division. I am sick and tired of this lack of responsibility and attention.

Left office # 3. 45. went with MissBrazee to Martha an had dinner at her house.

Friday, May 3, 1946.

office 8. 25.

every morning I promise myself not to get up but to stay in bed and get some rest. result: i am in my office earlier and earlier.

I dictated a lengthy and not very well organized memo to "adden on the Russian proposal to have a quadripartite regulation of the "ssesso examination. I welcome this step as such as a sign that the Russians do not wish to lower the standards of te amdrmission to the bar and judicial office. I had thought that they would introduce the lay judge But the Russians are realists, evidently they realized that this innovation which may be useful in a revolutionars environment with no vested property rights, but it would not work in Germany. Perhaps also Schiffer and his group have convinced them. At any rate it indicates that the law will remain even in the Soviet zone a matter for professionals. But the imposition of the Prussian system on all Germany which was so much resented by the remainder, would not work. I felt that here is a sound point for decenzralization that most abused word in the Potsdam vocabulary.

A Rechtsanwalt von Gidon, Bavarian at one time in the Wilhelmsgymnasium came to see me, he writes a commentary of the marriage law for de Gruyter. I gave him some information. Heaven knows how this law written by a rank amateur (KL) will work in practice when it comes to deciding which of the carrying out provisions are still in force and which incompatible with the law. He is an interesting fellow, Bavarian nobility with a Jewish mother (von Eichthal, Herr von Andechs, das lässt er bleiben, Herr von Podex mag er sich schreiben). He is genuinely anti-Nazi, one believes it, for a change.

Konsul "espondek arranged an interview (called Audienz) with the Kardinal von Preysing next week. Will be quite interesting.

Shopley consulted me on a proposal of General Clay to introduce into German law the writ of habeas corpus. Nice idea only the Germans have already all remedies which constitute the basiss/corpus/// habeas corpus

Talked to Aadmas about the Högnér law for the protection of the state.
I hope it will be disallowed.

General Clay accepted without change the paper of the committee on central agencies it will be published next week. In this I have the merit to have pointed out that central agencies do not conflict with decentralization whatever that means.

I applied for a leave in Switzerland, first on DTy which was of course turned down although everybody takes his leave in this manner, now regularly on compassionate leave. I expect it will be turned down too.

Left office 6. 45.

evening at Lt Stauffers house.

Saturday, May 4, 1946.

office 9. 00.

I finished the memo on the inadvisability of centralizing legal education about which I reported yesterday. I have a willing but not competent secretary I could turn out much more and better stuff with better help.

I went to Fahy just to see how he would react to the various points he had raised in the memo of last week, the first such memo he wrote me in nine months. As I expected he did not remember much of it, these are minor points anyway, and what he said was of little help. I admit that it is a terrific job he has on his hands. But any lawyer with a big practice has the same problems of shifting interests on cases he does not remember. He has to force himself to be friendly with me, he does not like me at all and since he is a diplomatic person he makes an effort not to show it. He is always afraid that I am trying to force his hand to do something he is not conversant with. I am not very interested in these minor actions, I should have an assistant to take care of them, why should I go round and take information on things of operational importance? He became quite angry this is one of his peculiarities, this sudden outburst of hardly controlled irritation about the sensible advice of Col. Gilson Public Safety, Special Branch, do nothing now concerning certification of clearance of vetted persons because the Germans will take care of it anyway. But he was angry because he knows that the transfer of denazification to the Germans - next to the compulsory democratization of the zone, the gravest mistake of MG - is resented by Special Branch. I care very little there is a complaint of a German farmer near Fulda about an alleged Nazi injustice he has suffered in an Arierbenprozess. It was sent to General Eisenhower or successor. I advised that such complaints which will multiply in the future, should be passed on to the Minister of Justice and not handled by us because we would be swamped by such complaints. Fahy agreed but added significantly that this should be changed once we have a system of supervising German courts. Evidently he has not read any of my memos because I emphasized that such cases should not be handled by MG, we do not have the personnel. Well I have two more months to go and my value which is a nuisance value anyway only has come to an end.

I am in good spirits because Lauterpacht wrote me that my book is responsible for a new section in Oppenheim Lauterpacht on the limitations of the prohibition of ~~non~~/intervention. That is about the best success the book could have had and more important than the actual sales. What do I care about Germany and MG muddle?

left office 1. 00 PM

Monday, May 6, 1946

office 8. 20.

conference with Dr. Ruge, to my mind the most progressive and all round informed German lawyer. I am sorry I see so little of him. Conference with Cpt. Myers of General Clays staff. He brought a characteristic situation: "We employ as a minor clerk a young German law student, Schwarz he does the clipping service which we call grandiloquently legal intelligence. His father was a foreign office official his mother is Jewish a Libermann, the people are evidently very rich or at least were rich, they paid an atonement fine in 1938 of 125,000 Mark. Father Schwarz was dismissed from the foreign Office around 1937. He applied to us for a job. as consultant in the Agriculture Division, Wickens had interest for him. The Strauffer outfit, Tom himself who knows a good deal about Germany but less than he thinks, and his two Jewish GIs former refugees, wholly uneducated, handled the case and came to an adverse discretionary qualification because he had occupied in the Foreign Office after 1933 a position higher than attaché. Against this mechanical classification much can be said. Schwarz senior came to see me some weeks ago because his case did not make progress. I went after it and he was finally rejected. When Schwarz came to see me he was very excited and although I had before that a quite favorable impression of him as a correct official I found him at that time, when he lost somewhat control, highly disagreeable and was glad that he would be rejected.

The son Schwarz now wrote a letter to General Clay complaining about his father's rejection and raising the claim if not in so many words, that his father because of his sufferings under the Nazis must be employed. The letter is politely written in excellent English though somewhat stilted (the boy is quite a linguist) and made a formal claim to be employed. Capt Myers who talked to me about it made little of this fact because the boy had acted by filial obligation. But I feel that these Germans in our midst are taking advantage of what we are doing for them. I have nothing to do with the father but the son works for us. It seems to me improper that a tolerated young German employee complain to the General about a branch of MG. Myers felt that the case should be brought before the Review Board which would save face in case he would be accepted. But incident is an interesting contribution to the German mentality after the defeat.

conference with Lt. Col. Taylor and Mr. Zucker of Education branch on the Munich university. I kept most of the time silent. The New York Times had the same information I had submitted, Taylor protects his MG officer in Munich and says 90% of the information in the Times is wrong. If this is the attitude nothing will be done. They will have a conference next week and ask my assistance.

I am no longer getting excited about things I am unable to change.

I dictated a letter written by Fahy to the Minister of Justice of Hessen concerning an individual complaint of a German about Nazi injustice. This is a matter for the German courts to decide. We as MG have nothing to do with it, it does not come under the supervision of the German courts.

I dictated an opinion rejecting Högners absurd proposal

This is about the worst law I have seen. Högnér is about the worst lawyer let loose at this time. Unless there is a constant check on his activities more harm will be done than good.

left office 6. 10.

evening at home as guests: Dickmanns (both), Urman, Edith Lowenstein, Miss Brazee, Dr. Lee Franklin. It was a fiasco, the people did not properly mix. I forgot Dr. van de Wall, quite a character.

Tuesday May 7, 1947.

office 8. 30.

I reached now the point of general Wurschtigkeit. I discovered just by the shouting of Rheinstein over the 'phone in the next room that the Kaiser Wilhelm Institute for foreign public law is again on the agenda. Levinski, the old sla rascal who hides behind senility his own designs, had not told me a word that the library had been recovered, that he had transferred to somewhere else. Of course he need not. The Germans are fully aware of the lack of responsibility and the confusion prevailing among us, he just ignored me. Rheinstein took charge of it without having seen the stacks of memos I had wasted government time to write on the issue since 1st August. And this little matter had at that time definitely embroiled me with a big and changed the entire outlook for me here. Well, kleine Ursachen, grosse Wirkungen, aber but I am sick and tired of the whole business and want to go back. The little sla Oppenheimer came to see me and since he is very vain and always wants to be patted on the back he received - deservedly the legion of merit, - he told me that I have constructive ideas, that I am a very talented man, but that I am an individualist who does not fit into the military pattern or into any pattern for that matter. I left it that way. No use discussing things with him or anybody else.

My leave for Switzerland has been approved, but the application was lost in transmittal, had to make it again and much running after it. Very unlikely that I can leave on Friday. I am looking forward to it like a child for Christmas, but it will be disappointing when I get there. I know it.

Fahy has "worked" on the approval of legislation. My proposals are accepted, nobody told me about it, he did not even call me in though I had been the promotor of the idea since last fall. It will be a staff study signed by the Deputy Military Governor to the effect that all legislation of general relevance be submitted to Omgus to a central agency with the Staff which in turn will call on the division interested for handling it. I managed to have a capital diminution of the Legal Division because all political laws which at least by chance I could lay my hands on to date, now will go to Political Affairs of Internal Administration. Not even the Legal Division will handle it in a centralized way, McLendon who does not wish to assume responsibility will have it in Legal Advice, I would like to have a full time man for this job. Until it will be developed I will be home, so I do not care.

I began to draft the amendments to the Bar organization law, this should have been undertaken six weeks ago.

No contact with Legal Committee of Länderrat. This week's meeting of Länderrat coincides with it probably, but Pollock who is going to stay on, has not informed us. The Legal Division is about the worst placed in the whole organization, owing to the lack of initiative of its leaders.

I am very tired of my fifth wheel position and I want to go back as soon as possible.

left office 5. 45.

evening at Rheinsteins house, I kept silent when he ranted about the poor German people who have learned their lesson etc. In the meantime the Nazis are well organizing themselves for the moment when we withdraw. The new Byrnes proposal of a 25 years guarantee by the four powers is generally interpreted as the first signal of our withdrawal. Since we were incapable of doing the job it is better to admit it and to go back. This will mean that Germany is lost to the West, she will go communist at least in policies, or nationalistic what is about the same.

Wednesday. May 8, 1946.

V-E day anniversary, no office except two hours in the morning working on the approval of legislation.

afternoon at Glum, Am Kirchweg 28, Nikolassee. he is also a sort of camouflaged Nazi. I do not know how he kept out of it. I am sick and tired of these tricky Germans. Or am I so tired that I lost the capacity of independent judgement?

Thursday, May 9, 1946.

office 8. 20.

my orders for Switzerland have not yet come through. It always takes more patience than it is worth. Dickmann came to see me and complained bitterly, he is a reticent and self-contained man, he did no more useful work than anyone else in the Division and is badly neglected. He applied for being raised to P 6 months ago, it was granted, but no action was taken. He feels that nobody recognizes his usefulness and wants to go home. It is always the same story, it is not deliberate callousness because individually and personally all people are very nice and obliging, this is the American character or better the climate of democracy - but the machinery as a whole is cumbersome and has no direction or animation. I comforted him and told him to stay on. I worked on the classification of legislation to be sent up for approval to OMGus from the Regional MG, this matter at long last is coming to a decision. It will take months before it is in operation and later it will if properly handled take the time of several full time people in case a real and effective coordination is desired. But I am afraid it will be the same muddling through again. But at any rate I stopped the decision on the most important political matters by Jewish refugee referendums in the Länder who to date handled these matters.

I established, together with Rheinstein, the categories of the men in the judicial and ministerial personnel who, after being denazified by German Sürichkammern, still should come under MG supervision quite an important subject. I found the categories (not very difficult Rheinstein somewhat refined them and we handed it in together. Now Urman passes on it, with the result that an Austrian Konzipient of 1938 who has no idea of Tuten and Blasen, is asked about what the two experts had drawn up. I grew rather angry. Why are they wasting my time and that of others if they do not have the minimum degree of confidence in me?

I wrote a (shabby) opinion or report on the Bayerische Notarkasse.

Rockwell has stopped the Bavarian law on the protection of the state.

In the afternoon we had a sudden meeting of the Interdivisional Committee on Federalism, working party II. Working party one had completed its report, Clay had accepted it (I had little to do with it although I helped as a political scientist to clarify some of the terms) but Clay wrote on the margin (MG is government by mile-long staff studies and marginal note from above) that he wished a paper on the central agencies at once. Good idea. It is now a year since the collapse. Germany is not an inch closer to economic recovery or even establishment of the prerequisites of a sound economic life. In Paris the four foreign ministers haggle about Italian frontier problems, which are eternal unless a strict transfer of populations will take place. It is a fine printed piece, my name is at the beginning, but credit goes of course to Litchfield and Kenneth Layton who are first rate people without fail. The way how Litchfield handled this group and its work are admirable, he is one of the best people we have here.

Now we had to discuss the second paper, drawn up by the same group on central agencies. I objected to the freezing of the notion of federalism and succeeded in mitigating the statement that all residual powers are with the Länder which would make a genuine federalisation of Germany wholly impossible. I also got into it the limitation of internal sovereignty for Germany along the lines of my book. It was a good and interesting meeting, (Litchfield, Major Grish, Mattusch, Kenneth Layton, and others, Muccio who never says much but is quite intelligent).

Left office 5.45.

Evening at home. Things are being packed to be sent home.

Friday, May 11, 1946.

Office 8.05 (earlier and earlier, but I cannot sleep).

I took up many loose ends as it is always before a trip. Nobody will miss me anyway. The most important thing I have to do, namely the bar reorganization statute, is not finished. I had so much to do that I did not get round to it. and night work I am no longer performing.

My travel orders came through, at long last. How it will work nobody knows

The only thing of importance today was a conference with Cpt. Punt of the Munich Education branch and Taylor. It was characteristic of M which is very sensitive to criticism as everybody probably is. I am suspected of having given the information to Jania Long of the NY Times whom I never saw in my life, the only coincidence being that she tapped the same sources as I did, namely Graf. When Taylor started to recominate that I had not gone through channels I grew angry and told them that what matters here is only whether the information was true or not. Actually they denied that the information was true, but they had not investigated Thierfelder for example, because his record was cleared by Speicap Branch. Punt impressed me as a minor of minor importance, wholly incapable of looking through the complicated Bavarian situation, and not able to deal with these slick men some of them are pretty big for a small town American even though he pretends to be a socialist of conviction. He does not trust Graf because the latter feels like the Lord and wants to be a Ministerialrat. ! This is just the limit. But it is in Punt's credit that they removed Humke although he was not a Nazi, because he felt that something is wrong with him. I promised to write to Eugen Kahn. They had tried for weeks to find something concrete about him or against him. Prinz Ysenburg does not receive a salary. In this respect Graf must have been wrong but I do not believe it. Graf knows the situation much better and told me that the chair of race theory has not been abandoned. Thierfelder was an anti-Nazi, about his writings he knew nothing. Nor had he checked on Adolf Weber, allegedly the best of all anti-Nazis. They do not understand that one may well be an anti-Nazi and yet as dangerous and more so than the official party members who were small fry anyway. In Bavaria it was not necessary to be a Nazi because the clique in control was the reactionary and authoritarian anyway.

Taylor was angry because they had to do a lot of explaining over the teletype on the article of the Times. After all there is something like public opinion and a free press in USA and this is the only check or M or any government, for that matter.

I promised them to give them all help I could. Müller Erzbach will be removed from his deanship. I proposed to appoint a full time university officer as the only solution. Thus they had agreed on to do but they had nobody, the same old story all over again.

To have guest professors invited from the States is impossible because the army will not feed them. The same old story again. I am going home and if they offer me General Chays job (which they won't).

Incidentally, Demoll, Meinzolt have been fired by Högner. made various other reports.

About the non-invitation of Naikasky: It should have been Högner's duty to invite him!! I told them that the autonomy of the universities should be maintained and that Högner could not do it. Well, the army does not appreciate criticism and I am in bad graces again.

left office 5.15.

Friday, May 10 to Sunday, May 26, 1946.
trip to Switzerland.

Left Berlin Friday, May 10, 6. PM
Frankfurt, Heidelberg, Strassburg, Mulhouse.
arrived Mulhouse Sunday, May 12, 9. AM
left Mulhouse 3. PM
arrived Zürich 8. PM

Monday, May 13 to Thursday, May 17, Zürich.

Friday, May 18, 1946:

Bern, Lötschberg, Sierre, Crans.

Saturday, May 19 to Tuesday, May 22, Crans, Valais.
Tuesday

Left Crans Tuesday, May 22. 1. PM

Luassane, Bern.

Wednesday, May 23, 1946. Bern Zürich.

Thursday, May 23, 1946. ~~Friday, May 24~~, 1946 Zürich Basel.

Friday, May 24, 1946. left Basel 1. PM
arrived Strassburg 5. PM
arrived Frankfurt, Saturday, 4 AM
left Frankfurt Saturday, May 25, 6. PM

Sunday, May 26, 1946. arrived Berlin 8. AM.

Monday, May 27, 1946.

office 8. 10.

I had some 40 letters and stacks of papers waiting for me.
Fahy wrote a nice and hypocritical letter thanking me for my services. Madden took over and handled the staff meeting well enough though with less a sure hand than Fahy.
There were some interesting developments. It turned out that the education people had begun to deal with legal education without informing the legal division. Rhesinstein took a hand in it. This is another example of the cross purposes function of MG.

I found out that the plan for the supervision of German courts had been watered down to such an extent that it became almost meaningless. My emphasis in "indirect controls" has been deleted, in particular the practical proposal of suspending any lawsuit in which the applicability of a provision in a democratic environment is in doubt and asking the Minister of Justice for advice was deleted. This was Beyrwieser's proposal who acts on this line in his state, and also an ordinance in Mecklenburg to the same effect had been issued. Nor is any control of the Staatsanwaltschaft contained in it. The reliance is on spot checks of migrant supervisors,

most of them former refugee refectendare whose prestige is in the inverse proportion to their sense of importance. The Bavarians will make short shrift of them once the governments have become less pliable and subservient. Responsible for this dilution are shining lights in Germany law, history and psychology like Mr. Shepard and MacLendon. It is the only important thing which the legal division could do now at this late stage of the game. As it stands now it is meaningless and has lost all its teeth.

I looked over my proposal for the approval of legislation of Land origin. Shepard worked on the staff study, misunderstood the essential points and made a complete mess of it. Since it is the habit of the Legal Division that the man who originates a plan is never informed about what becomes of it it is sheer accident or luck that I got hold of it. Well, this is the second thing of importance and I will go to bat for it. But I am beyond the fighting stage at this late hour of my German day.

Another nice little thing I wrote an opinion against Högners justices of the peace draft law. Madden seemed convinced and wrote McCauley, the legal officer in Bavaria that it be disapproved. McCauley wrote that he did so. The next day another expert, quotations marks, Mr. Gerhardt wrote that the law is not against military government policies and should not be disapproved. He has not the slightest idea of German law, but he writes just to show that he is against me. This system of cross purposes is at least systematical. I showed the affair to Madden, who shrugged the shoulders. He said under no conditions will I stay longer than to the expiration of my term.

They are writing an amendment to MG law no 2, giving the German courts jurisdiction over United Nations nationals. This has never happened before that a defeated people with whom no peace treaty has been concluded is given jurisdiction over the nationals of the victors. But it happens here because those ~~poor~~ poor Poles, Greeks etc otherwise could not obtain an advocate. It is just the limit of absurdity. I am against it, but nobody asks my advice.

Another problem! How can now enact carrying out ordinances to the marriage act? The Länder, the Control Council? I believe that no Reichsrecht should be touched by any legislation, but the chaos is such that it is beyond remedy.

The Legal Committee of the Länderrat convened on May 7. Pollock had not informed us. They made an important discussion of the legal training program, while we are working at it here in Berlin. But Pollock does not want me in Stuttgart, I could see too much. What a mess. Madden tries to counter the Russian proposal of regulation in the Assessor examinations by a new proposal of a Rahmengesetz for the entire legal education. This is my proposal which I dictated today (I have no secretary, Mrs. Fertig is away, those German girls come only for the sake of the meal they get).

I had an extremely busy day, but the comfort is that it will be over in a few weeks.

left office 6.50.

evening at home.

Tuesday, May 28, 1946.

office 8. 25.

conference with Madden, convinced him of the necessity of the plan concerning a comprehensive regulation of the legal career.

read the memo of the Interdivisional committee concerning the extension of the committee to cover checking on the German constitutions. Very useful, this is to date the only set-up which would permit control of the constitutions in statu nascendi.

two meetings of the Interdivisional Committee on "federalism. present! Kenneth Dayton, Litchfield, Mattusch, Comstock Glaser (who transferred to Governmental structure branch and seems quite able) Major Clay, Rodney Mott, Muccio, Brodnitz, Arkman. We were given a paper drawn up evidently by Litchfield and his group in which the problem is driven one step further. The Russians and the French were resisting and still are resisting the establishment of economic unity as promised by Potsdam. This is the last effort to get them into line. If it fails Clay and War Department will draw together the Western zone or at least the US British zones in order to make them self-supporting. I foresaw this development since last fall, it is still top secret although it is openly discussed in the Swiss papers. It is the inevitable result of the fact that in the Eastern zone a genuine social revolution has been accomplished or is under way while in the Western zone only a paper revolution takes place which leaves behind itself at best the status quo. The paper we discussed evolves the plan of democratic federalism and climaxes in the creation of a joint council of Minister Presidents of all German Länder or provinces (9 - 15) which should operate similar to the Länderrat and become the provisional government of Germany until a constitution has been written by a national assembly and a legitimate government been popularly installed.

I saw the draft for the first time, all this is done in a hurry and under the inspiration of General Clay who even changes the cables his staff is preparing for him. I jumped into it. The paper though excellently formulated, with force and persuasion, suffered from a confusion of terms. On the one hand the Länder are given original rights which they may transfer to the federal government in enumerated and clearly defined cases, on the other hand the constitution is to be written by a nationally elected assembly. Never under this scheme can it be prevented that the German will tell themselves as one nation to which the Länder are merely subordinated. Always the Länder will be an artificial creation, particularly if the plan is executed of cutting across traditional lines and making the Länder boundaries conform to sound economic principles) which at this time is impossible in view of the displaced persons influx and the dislocation of industry. In short, German federalism is still born at this date and will not

live. The other defect was that the future council of German Minister presidents was to follow the Länderrat in the US zone. Clay is enamoured by his creation and Pollock vastly overrates its importance. It is misunderstood federalism because the entities are too small and too artificial. The Länderrat has no jurisdiction over the entire territory but has to act through the courtesy of the three component units. If this is the case with the German council of all Länder it will break down at once. It is merely a congress of ambassadors, like the Bundestag, and not a genuine institution of federalism where the member states merge their powers and a new unit appears which embraces all.

I did a lot of talking (and I had a good day) to persuade them to get away from the misleading Länderrat parallel to come to grips with the essentials of federalism which is different from the state compacts of the American history or the Deutsche Bundestag. There was still a lot of confusion at the end of the meeting (7 PM) but at least some points were cleared. Mot, Ken Dayton and I formed a subcommittee to adopt a new draft of the essentials of the Council. We had lunch together and sat afterwards in the lounge for half an hour. My draft was accepted with some modifications. I felt it was a sort of historical meeting when the three of us drew up what may become the blueprint of the future German federalism. But of course one is apt to overestimate the importance of such moments.

We worked as always, under terrific time pressure, but at least I succeeded in getting into it the construction of the Joint Council of Minister Presidents by majority decision, binding the individual Länder and I also subordinated to it the so-called provisional government which actually is merely the executive agency for the Council. We subjected the Council to the control of ACA. It will not work, but it does not matter, because anyway the Western zone will form a separate state within less than six months.

The discussion was excellent, one of the best I had here. Kenneth Dayton drove the party to the limit, we sat until 7 PM. It is flown to Stuttgart and will go to Washington on Saturday. This is MG: Things which should be thought out in peace and with maturity are rushed through and even the top people are not in agreement on the essentials.

in the time between the meetings (10.30 - 2.00, and 5. to 7.00) I drew up a strong memo concerning the watered down plan for the ~~supervision~~ supervision of German courts. This is the last fling I will have on this. I did what I could, I did it mainly for the record, because these provincial lawyers here do not understand the problems.

left office 7.10. long and hard day.

Wednesday, May 29, 1946:

office 8.20.

I had a talk with Rheinwein, I do not cherish these talks because he has become a genuine Fifth Columnist for the Germans and obstructs everything which in his distorted imagination is apt to hurt their feelings, he has not the slightest sense of security requirements and it is a grave mistake to have him placed in this legislative reform

committee of the CC. Yet he is a kind and kindhearted man. This refers to posthumous marriages. Some Aryans were prevented to marry Jews through the racial legislation, some of the died, now he wants to give them the status of married person ex post facto, in order to do justice to them. The idea is not bad, it had occurred to me before, but I doubt whether the aim could be accomplished by legalizing such a posthumous institution as a marriage post mortem. The same aim can be reached by appropriate instructions to the Standesamt and the Nachlassgericht. Another point is that his committee now has the Vorprüfung of all CC laws which as such is not a bad thing because it relieves the cumbersome Legal Directorate from mulling over technical details. But it will become such a power in deciding what should go to the CC that sooner or later the thing will call for a showdown. This affects my plan on the reform of minor provisions of the private law. After all I worked on that for months, now the British and the French have answered, it should pass as soon as possible.

There is still the Rechtsanwaltsordnung which is unfinished. But I made up my mind no longer to work at night.

Madden came this morning and asked me to do until Monday a comprehensive law on the legal career and education, as an answer to the Russian proposal of regulating the "assessor examination alone. I wonder how I could do this.

Litchfield flew to Stuttgart to discuss our plan with Pollock. We had another ump meeting in the afternoon, Pollock, very wisely decided against inclusion of Major Clay's undigested material on the relationship of the future council of German minister presidents with the six agencies (Reich ministries) and the Control Council. This must be left to later developments. Clay very readily agreed to omit it, we had expected a long and bitter fight. Consequently, my formulation was accepted and will go into the report to Clay and the Foreign Ministers. At least I had a hand in some important detail of the future form of government of Germany. Of course nothing is thought through, everything is superficial and amateurish. But this is how the world is governed.

I wrote a memo on the approval of legislation in which I made it very strong that this is the last opportunity to avoid disaster of legal chaos in our zone. Shepard cut out the best parts of my memo, he just did not understand it, he is plain foolish, fortunately he is going home, I went for about 20 minutes to his farewell cocktail party.

Thursday, May 30, 1946.

Memorial day.

no office, had breakfast with the people in the house opposite (Mott etc), afterwards sat for the sculpture of Irene von Schubert, afternoon went to "watch for cocktails" Ms Katherine McLaughlin of the New York Times) evening music at Baldners. I should have worked, but I just will not do it.

Friday, May 31, 1946.

office 8.30.

This was a fighting day of the first order although I am beyond the fighting stage.

First I sent to Madden a memo on the supervision of German courts. Shepard who works my proposals in draft form for the front office is not only stupid but vicious and deleted from my work whatever seems to his Smithfield, NC mentality not suitable for Germany. Since he had thrown out the most important controls I succeeded in having a conference with the Ministers of justice on this all important subject. Urman had the good idea also to have the presidents of the Oberlandesgerichte participate in the conference. Otherwise the young man who never has practices in Germany made the most amazing statements. Here we have an administration of justice branch run by a army colonel who goes after antiques, a country lawyer who knows no German law and nothing of Germany, and two or three Austrians who know little of Germany but are cocksure that they know everything. The experts are overruled because they fail to ingratiate themselves with the front office.

The second battle was about the approval of legislation. Here I had merely a classifying criterion referred to article 6 and 7 of the Weimar constitution. Shepard did not understand it and because the Länder had on the fields of art 7 concurrent legislation wanted to reserve for the Land Military Government the right to pass on these subjects (of article 7) in exclusive Land jurisdiction instead of sending them up for approval to Berlin. Shepard became vicious when he was told of it. In short, the things were entirely snarled up but the Judge who is weary and tired (after one week in control of the Legal Division) did not seem to consider the issue as very important. Unless all legislation of importance comes up for approval to Berlin we will have irretrievable legal chaos. We have it already.

Mr. Davison whom I knew from McKnight's group in Washington came over with the draft of a German press law. I told him that this should not be enacted now as long as MG is in control because there can be no freedom of the press at this time under military government operations. But General Gray wants to have a press law for the Germans. Davison who is a nice boy goes down to Stuttgart for Information control to discuss the law with the Germans. That is what we are doing in governing Germany. He has no idea of the issues and the comparative material.

I wrote in haste a draft for the CC on legal education, merely a skeleton frame of reference into which the Länder have to fit their proposals. This is in order not to antagonize the Russians who proposed a regulation of the Assessor examination by four power agreement,

Conference with Mr. Parkman of International Affairs Division, the new head. A Boston lawyer, new England gentleman, former Brigadier General, knows little, but listens attentively. I want to bat about checking on but listens attentively. I went to bat for checking on the German constitutions under preparation because otherwise we will have provisions or institutions with which we are not satisfied and after the conventions have completed their work we have to veto them which would make the constitutions loose face. I proposed to send an observer down to each and to report on the con

constitutions while in progress. It would be easier to persuade the Germans not to include an institution or provision than to veto it afterwards in full publicity.

I submitted this plan because it would be the only thing which could induce me to stay on until fall. Nothing will come out of it. General Clay strongly forbade any constitutional discussions with the Germans. They are to shift for themselves, Pollock wants it this way. Pollock vastly overrates the importance of the Länderrat which to my mind would have come anyway but is the wrong way to keep the zone together. Already Maier in Stuttgart said in an address that the Reich is not destroyed or dissolved and the Länder have no original powers. The Reich is legally ("juristisch") still existing (I think this is correct) the old issue is up again. Since the general does not want any even moral interference with the Germans nothing can be done about it. They are all worried about proportional representation, but the state president and emergency powers etc are similar danger areas. In short, the Germans ignorant and not aware of world trends will be permitted to write constitutions the same mixture as before, with disastrous results. We are missing another opportunity.

I made a strong case and Parkman seemed to be impressed. But nothing will come out of it.

left office 6. 30

cocktails at Lt. Col. Fratchers.

dinner at Drury's house.

evening extremely tired, which a plug came to see me, and threw him out at 10. 30 and could not sleep because of overtiredness.

Saturday, June 1, 1946.

office 8. 30.

I actually wrote what I never believed I could do, the draft law on legal education which we are throwing to the Russians in the place of their proposal to regulate isolatedly the bar examination. And it is not a bad law at all. I wrote it first in German dictated it Mrs Fertig because she takes too long for taking English dictation, then while she wrote it page by page I translated it into English and page by page gave it to her, after having typed it myself. It was quite a stunt, but I know I work best under pressure.

Not much time for anything else, except that Major Gresh wanted to know under whose jurisdiction the islands go which are located in the Rhine near Mannheim.

left office at 2. 30, had a haircut and went home, dog tired.

Sunday, June 2, 1946.

evening with Dr. and Mrs. Ruge at their house Tannenbergallee 8, Heerstrasse

Monday, June 3, 1946.

office 8. 15.

I had a long and very hard working day. I have a barometer which indicates when my strength reaching the point where it breaks, that is when I have a sort of fever or shiver crawling over my back. It was so all afternoon and I was glad to get out late enough.

Meeting of the interdivisional committee on governmental structure.

on governmental structure. The jurisdiction of it has been extended to cover also the supervision of the German constitution under preparation. This is a momentous extension which I had favored all along. This is a momentous development which I had favored all along.

The point is now whether we act ourselves as observers as I had proposed, or whether we leave the reporting to the Land MG, which I strongly opposed. I do not wish to have Majors Puntz, Ansbach or Freeman to be in charge of this work, the quality of the officers down there is appalling, even worse than here. We agreed that we would constitute roving teams for this work once the constitution making has actually started. I will not be in them because by that time I am back. I was assigned to draft a paper on the danger areas on which the Germans should be forewarned. Next meeting in two days. This is about the best group I have worked with. Litchfield is running it to perfection.

I dictated a report on the work of this committee for Madden. I supported in a long and sharp memo Dickman contention that we should attend the meetings of the Legal Committee. For the last two we had not even been invited, out of sheer viciousness of Pollock who does not want to have me down in Stuttgart. (he wants to write the book on the German reconstruction himself) Fahy was afraid of me and therefore did not send me down. All things come true here, only too little and too late. This should have been done last fall and we would be better off now.

I disallowed a Bavarian law on the simplification of the criminal justice in which Högnér had proposed to do away with the Urkundsbeuten. I wrote the invitations to the Ministers of Justice for the discussion of the supervision of the German courts. Madden decided that we should not include anything in our directives to the Land Legal officers about what the Germans are supposed to do on this score. This action is probably correct, but I succeeded in getting an invitation to the Ministers of Justice with the Oberlandesgerichtspräsidenten to have the matter discussed.

left 6. 20.

all this took a lot of work. I was tired out when I left but sang quite well with Rothernsteiner, an excellent musician, this comes only when I am about to leave.

evening music with Rothernsteiner
Tuesday, June 4, 1946.

office 9. 20.

most of the day was spent on writing the paper on constitution making and Military Government which Litchfield had assigned to me. I do not know what he wanted me to do, at any rate I put something on paper which reflects my thinking on the idea, based on the assumption that MG will supervise the constitutions.

I do a lot of minor things, clerical situation desperate, I have only Mrs Fertig who is willing but knows no English. The clerical situation is all over the place the same. wrote a short memo for Staufer who is after the scalp of one Walter Bazer who in my office some months ago behaved as if he runs MG.

It is somewhat childish on Ataufer's part, but overzealous anti-Nazis are preferable to the Fifth Columnists around us and within the organization.
Lunch with Edith Lowenstein
left office 6.10
evening with Gröpplers at my house, music.

Wednesday, June 5, 1946.

office 8.45.

completed the memo on German constitutions and MG.

had the greatest trouble to find somebody who would type it, I had written it out myself and it only had to be copied. After long negotiations somebody was gracious enough to type it, with many errors so that it went uncorrected to the meeting in the afternoon.
to the meeting of the indivisual committee in the afternoon
As always when I am working under pressure it is an exceedingly good work, much better than anything long and carefully prepared.
It shows some of the pitfalls constitution making may fall into. The meeting did some plain speaking. One could describe it as an essay on the education of General Clay. Clay is overoptimistic shown also by his statement that the morale and the discipline of the Berlin soldiers is good while McNarney said the opposite, MacNarney is right and Clay is wrong. - Clay pats his boys on the back, as Litchfield said and praises them for the good work they are doing while he fails to see that in Bavaria the same old crowd is in control again. Incidentally Raymond Mariell repeated in the Times that the chair for race theory is still held by Prinz Ysenburg and that courses are conducted, Major Punt denied it emphatically and even said that Ysenburg receives no salary. Who is right?

We had one paper by Clay (Major) or Brodnitz on things to be avoided in the field of economics, and one paper by Rodney Mott on the procedure of constitution supervising, I raised at once the question as to whether we should veto or disallow or dissuade only such things in the coming constitutions which are in conflict with MG policies, or also things which we think would lead to an unworkable constitution. This of course is the crucial issue. I held that we are the custodians of the constitution making, some of the others said we have to guard only against violation of the Potsdam principles. Muccio was on my side, so was Litchfield. I think my paper was well received.

Other things done: Talk with Wadden! he wants me to put the approval of legislation into shape, This is better than to have it spoiled by someone else. He also wants me to check whether I would change the control Council draft on legal education before it is translated. I said, I look it over, but I do not know what to change.

wrote a memo on the pension claims of IG Farben employees. The letter came from Dr. Curschmann, Vorstandsmitglied. I was amazed that he could ask for the salary claims of the prominent employees, *weil er Zahlungen*. Those Germans simply have not understood what is going on, for the lesser employees also paid the contributions by who paid the contributions by deductions from the wages or salaries the situation is somewhat different.

wrote a memo on the library of the academy of German law in Altötting.

lunch with Edith Lowenstein (problem child)

left office 6. 15.

evening at home with sculpture making.

Thursday, June 6, 1946.

welcome holiday (Invasion of Normandy)

breakfast with the people opposite.

worked from 10. 30 to 1. 15 and from 4. to 7 on draft on the reconstruction of the German bar, had postponed it all the time, but am glad to have found Diess draft which followed my original draft and put everything in his place. Finished the draft which otherwise would have taken me days.
left office 7.00

evening at home with Mrs. Virchow.

Friday, June 7, 1946.

office 8. 20.

I dictated the whole morning the German draft of the reconstruction of the German draft of the reconstruction of the Bar law.

In the afternoon I began setting up the staff study as they call it here for the approval of German legislation. I have to do everything myself because the secretarial help is simply inadequate.

went to the dentist Dr. Jehr at 5. 15.

evening at Tom Ataufer's house for dinner.

Saturday, June 8, 1946

office 8. 50.

I brought the German text of the new Rechtsanwaltsordnung into shape, it will take some time but I hope to have it ready by next Tuesday when I am going (for unknown purposes) to Marburg for the meeting of the German university professors. I do not know how the law should enter into force, if the individual Land does it they may change it at their will,, if it is done from above General Clay would not support it.

I brought my law for the German legal education to the translator Terry for the Russians. Perhaps it will succeed.

I worked on the staff study for the examination (no longer approval) of German legislation, brought it into shape. This should not be my business but be done by somebody else under my instructions.

went to Dr. Jehr again, returned to the office,
left 2. 10

Monday, June 10, 1946

office 8.20.

Monday, June 10, 1946.

office 8. 15.

completed, with sharp work, German draft of law on the reconstruction of the Bar (Rechtsanwaltsordnung) it is to my mind a good and workable arrangement. In the last article I inserted the clause that amendments of this law are permissible only if agreed on in all other Länder simultaneously and identically. This is a nice point of constitutional and semi-international law, in that a state compact or the promise of one is to be in the legislative sovereignty of the Land. But since the amateurish handling of the German constitutional problems lets all the wires dangling in the air instead of fixing them some place I had no other choice. Spass muss sein.

staff meeting: General Clay wishes to have each division act on its own on the South German laws submitted to it for "examination" (we say no longer approval because this would imply that we endorse what the Germans legislate, but we merely do not object). Much of my staff study has become obsolete and have to rewrite it.

The restitution of property laws will apply only to South Germany. The Russians will not participate because they divided up the loot already among their followers. This will raise an outcry among the victims of anti-Semitic persecution who thus do not even get returned what is identifiable. But this is how it is. It is very unpleasant. Col. Deutsch, chief legal officer in Vienna attends, he seems to be a very good man with the requisite amount of cynicism to deal with the Austrians. But the Austrians are treated as a liberated nation and receive preferential treatment, those bastards. They are doing legislatively a much better job than we are doing here. Anyway the Austrians always were better lawyers than the Germans. He is very pessimistic about the Russians, there is no cooperation at all and the Russians prevent the enactment of a constitution because they know through a constitution they would be prevented from gaining control.

attended the meeting of the Interdivisional Committee on Federalism which was also attended by Col. Deutsch and Cpt. Keeler. I almost hit the ceiling when I learned that Clay entertains the idea of exchanging some parts of Hesse against all of Baden, thus playing into the hands of the French one of the oldest cultural sections of Germany. We decided to write a counter opinion. The remainder of the discussion was unessential. We are to present the bi- or tri-zonal structure, but again on the basis of Potsdam which I think is wrong.

wrote memo on the case of Otto Fenz who allegedly took a file with him in a de-aryanization trial in Straubing. This is one of the cases where MG is informed about something wrong in the administration of justice, but we have no machinery for dealing with it.

I wrote to Otto Graf, Bavarian Ministry of education that I could not accept the invitation to be a guest professor in Munich this summer.

left office 6. 20. evening at home, went to bed at 9, utterly exhausted.

Tuesday, June 11, 1946

office 8.20.

very busy day. wrote opinion for McCurdy on press law (duty of press to publish official notices.) made an opinion on the International Meteorological union which CC will join. drafted study and directive on examination of legislation with letter for Madden. Important job. wrote memo for Dickmann on admission of foreign lawyers. had conference with McLendon on the report of the Interdivisional committee of federal structure of administration of justice, he has not the slightest idea, I wish I could do it myself. Had lunch with Biel whose self importance reached a humorous limit. secretarial situation desperate. left for Marburg at 6.00

Wednesday, June 12 to Saturday June 15, 1946.

meeting of the German University professors in Marburg, Marburger Hochschulgesamtschaft.

Sunday, June 16, 1946

returned from Marburg in the morning.

Monday, June 17, 1946

office 8.30.

call of Dr. Würzburg, Berlin lawyer who wished information about a Dr. Walter Spieker whom the Dutch wish to have extradited, I referred him to Capt. Smith of the War Criminals branch who was much more accommodating than I would have been. I still have to learn a lot about fairness in handling people.

staff meeting with Madden, these meetings are much more informal and therefore more revealing than the same institutions handled by Rahy.

Interesting times: overcrowding of prisons, due to the lack of manpower in handling cases, also to Military Government courts, also to deficient space. Why not take over some of the displaced persons camps as internment depots?

Dickmann brings up the low salaries of the judges which result in the flight of the judges into private employment. This matter should have been taken care of long before, but nobody acts. It also has to do with the crippling taxation rates introduced by the Control Council under the contention that the tax structure in England and USA is even more stiff. As if this were an argument in a broken down impoverished country. Ruge told me that he does no longer accept cases except what interest him, he makes 500 marks a month which covers his expenses he does not work overtime for the taxation authorities. I explained that this system is knocking off private initiative, but the tax people are doctrinaires.

Property control: The Germans are afraid of taking it over.

at any rate the law for the restitution of property under duress is applicable only to the US zone, the Russians have taken over such property already and are holding a plebiscite in Saxony in the near future on confiscation which is a fait accompli. Abuses of plebiscites, I told you so.

General Clay has ordered that the maximum fine for people qualified as followers is only 2000 marks. This means that if the Germans themselves wish to be more severe we interfere. It seems to me this is the Southern reconstruction policy in reverse. In order to avoid that lasting differences be created the Germans have to be backwards to be nice to the Nazis. But the difference is that in 1960 if the South was rebelling against the North and the Union while now the entire German people were permeated by Nazism. There is no antagonism if there is understanding about the essentials of purification.

Discussion about the American "etsapo", the CIC which is overriding the individual guarantees. I explained that this is the only USA institution which commands the respect and the fear of the Germans, and military occupation has security purposes no less than democratic final goals. The "Menschengrund Guthrie" was particularly emphatic concerning curbing the CIC, on the basis of his Bremen experience (see my memo on him in the early days of my stay here).

dictated numerous letters to Germans, University of Munich invites for one lecture which differs from Graß's proposal.

worked on law for the reconstruction of the German bar.

in my absence last week the interdivisional committee on governmental structure worked on the taking over of the German government by UN, an important development, Madden was in the committee, I am sorry I missed this, it is an historical opportunity. Perhaps Warburg was worth the candle.

I thought this over some more, it seems impossible. If the four powers cannot at once agree on Germany how could an international motley of experts, an Egyptian, Ecuadorian, Chinese for that matter? It is merely an emergency solution, an evasion of responsibilities, a thin veil for screening US desire to pull out at the earliest opportunity, a face saving gesture, and nothing constructive. The plan itself is rather clumsily and childishly written up although it reads well as reading well goes in this climate of MG plus Department of State. No, I studied it now, it will not work and I am against it. The Germans would not abide by it and play havoc with the organization.

I completed the draft on the reconstruction of the bar law.

wrote a number of minor opinions which came over my desk.

left office 5. 25.

Tuesday, June 18, 1946.

I am very angry about Schubert and Rheinsteins being sent to the Legal Committee in Stuttgart although I had worked on it for months. I was not even informed of it, nor was Dickmann who had attended the last meeting.

But I am beyond the fighting stage and all I want to do is to pull out. Wrote an opinion on the Bavarian law to rescind the titles and decorations given by the Nazis, This is nothing for an individual Land, should go to the Control Council.

wrote an opinion on interpretation of Law no 2 (do German courts have jurisdiction over public corporations?).

had a long talk with Judge Madden on the reconstruction of the bar draft. He is clever and found the constitutionally weak spots at once although he had no English translation. It is true that Bavaria or Greater Hesse cannot make provisions concerning the other Länder. But since the law is ~~not~~ not enacted by any central authority or by Control Council I had to insert a clause which binds the Länder not to change the law except by mutual agreement. This is an innovation or a makeshift, but after all there must be something to maintain legal unity.

went to the dentist Mr. Mehr, 134 Am Schlachtensee, this is the fourth visit.

began writing of the opinion on the Bavarian constitution.

wrote an opinion on the Bavarian law on the revocation of titles given under the Nazis, I think this is a Control Council subject. I am pushing now as much as I can the CC action because when the system really breaks up as it seems likely we may contend that CC has done so much useful work what it should continue. And CC action is the only form of uniform legislative action existing now. There arose here the item as to whether a CC law (for example no. 16) may be amended by the Länder if carrying out ordinances are involved. I feel: no because the law itself is CC law and it cannot be amended by any lower authority than CC. None of these problem is thought through nobody is interested, any constitutional lawyer who knows German history and legal technique and the Reichsrecht geht vor Landesrecht concept would have investigated this once and for all. Not even the question whether zonal laws of US are valid in Berlin District has been properly clarified.

wrote an opinion at Dickmann's request on whether a corporation which is owned by the state (that is whose shares belonged to the Reich) is "existing under public law" (as under law no. 2 of Zone) and therefore exempted from German jurisdiction, the Kammergericht very sensibly had raised this question. I said no, because otherwise the public would have no remedies also because existing under public law is not identical with operating for the benefit of the state. I think I am right.

dictated a number of semi-private letters. I have a terrific mail on many subjects. Very amusing is that a Nazi lawyer Dr. ~~Walter Gernert~~ sent me a wire through Bodmer Zürich to take care of his house here on Hüttenweg, the impudence of it, just because I am here he expects me to do something for him.

left office 6.10.

evening Mr. Rahtman, friend of Heimann and director of a feststoff corporation (Holzkohle) was at the house, quite interesting information on the situation in the Russian zone. This is a less pessimistic report because it is based on personal experience. At this time the Berliners are rumouring that we and the British would withdraw soon.

Wednesday June 19, 1946.

office 9.00

I am very tired and have great difficulty in getting up to work in the morning.

Madden called me in twice, at any rate he reads what I am writing which Fahy did not. We finally got off the "rechtsanwaltsordnung" to Stuttgart and to Diess, I wonder what will come out of it.

Madden found it a good idea to have a CC law on the revocation of Nazi titles, I have to go into it and find out how it would work.

I told him that the CC has to be boosted at all costs in order to obviate the UN solution for Germany which I think is worse because it will be wholly unworkable and the Germans will sabotage any UN administration much more than a quadripartite administration in which at least the Russians and the French do not understand any nationalistic jokes. I also complained about the treatment I had in the South German meeting affair where I had been completely eliminated. He shrugged his shoulders and tried to talk it off.

Dickmann told me about an incredible mess in the translating business. We had to disavow our own work. Madden had signed it without knowing what it is about.

I wrote (myself, because Mrs. Fertig is incapable of doing it) the report on the Marburg meeting, rather superficial work, I am not clear in my own mind what it was. Probably it was just another demonstration of German conceit.

I began the study of the Bavarian constitution, I need not study much it is a rotten document of Högners misunderstanding of democracy and his own position in German history. But evidently everybody has to make the mistakes which are assigned to him in the book of fate.

Rather disorganized day, only four more weeks to go, it seems unbelievable that this adventure has come to an end.
left office 5. 30

evening sitting with Frau von Schubert.

Thursday, June 20, 1946.

office 8. 30.

I am no longer in good working condition. I had a long talk, from heart to heart with Miss Brazee who wanted me to comment on Fahy report on the activities of the Legal Division. Although a lot had been done by us the picture he draws up is too rosy so much so that negative points and omissions are completely omitted. I am the hardest worker of the Legal Division and I believe that I am still - or again? a good lawyer, but I am in opposition because we have no political plan and let things slide.

I dictated the memo on the Bavarian constitution, rather devastating as can be expected. Had no time for looking up things, hence it is only a superficial comment, but who dares anyway?

The report for the Interdivisional committee was dumped again into my lap. Well, they will get it.

Lunch with Dav Wickens who is intelligent and serious, one of the few

who are over here for doing a job and not for having fun, buying prints, sleeping with German girls and the other military activities.

left office 6. 45.

evening : Suhrkamp and Kurt Riess journalist at my house. we all were very tired.

Friday, June 21, 1946.

this is solstice, the year is almost over, not only this German year but the summer. I am sad and depressed.

office 9. 05.

I began my last major project today. The Interdivisional Committee on government structure which has proposed to hand over Germany to UN in the place of the former power administration, wants a report from each functional division as to the powers and functions to be assigned to a central agency and the decentralized levels. Deadline 20 June. Before I left for Marburg I talked about it with McLendon who by chance had informed me of the project (he needed a document from me). I marked some of the points which should be done by others, and those which I would do and left. When I came back and inquired what had been done it was found out that he had the document still in his drawer "I have so many papers" Ja ich habe soviele Schriften, Figur 2. Akt. He had not even started carrying out the work. Since Litchfield jokingly told me over the phone that the Legal Division should not fall down I started work these days I have to build from scratch since the Interdivisional Committee has no clear concept of what kind of federalism it will recommend, and since in the legal division nobody knows what the Reich Ministry of Justice has been doing formerly. The "chart" on which we are working and which is a ahead product has been wrong from the beginning.

I spent most of the day on it and on dictating the critical analysis of the Bavarian constitution. No stenographer, Fertig is just impossible

left office 6.30.

evening with Dr. Korte and Mrs. Aschert at my house, interesting information on Nazi populationist practices. Korte manufactures the drug "Antia-ton" which is allegedly a means for alleviating birth actually an abortion method and a very effective one. I got into this at the request of Gordon who wishes to sell it in the States, but I told him and the Korte party that the Trading with the enemy act prohibits any agreements at this time. Korte and other doctors used the recipe for abortions during the Nazi regime, allegedly because they disapproved the populationist policies of the regime. This may be taken with more than a grain of salt, in the case of Korte it is evidently correct because he was convicted for twelve or so cases of abortion all undertaken on pregnant Jewish women who wanted to emigrate and could not because the immigration laws excluded pregnant women. He did not take any money for it, was sentenced to seven years in prison. Others were sentenced to hard labor and Helldorf, then Police president of Berlin made an ordinance according to which no doctor who had been convicted for hard labor could again practice.

over of a new line of merchandise depeden on government licensing. Penalties: up to three ears in prison and fine of unlimited amount. This is about the limit. Rechtsmittel to be fixed in the executive ordinance. I went to Sickmann and Rheinstein who for a change agreed and dictated about the strongest memo I ever wrote, against recommending the repeal of the law. I will see what Rockwell who is taking over to morrow will do. But it demonstrates again the necessity for having the Land Military Government deprived of the right to approve legislation. It is just organized chaos what we are producing here.

Gerhardt brought to me the Chief of German courts of the French Military Government in Baden - Baden, Mr. Ch. Bouroumieux, one of the solid and excellently equipped Frenchmen of whom we know so little. We established contact at once, he speaks very well German (has learned it in school in Caen), I gave him the new Rechtsmittelordnung and the CC proposal on legal education, and he promised to have an exchange of views. He will invite me or us to the next meeting with the Ministers of Justice in the French zone. He will invite us or me to the next meeting of the French with their ministers of justice. This mutual cooperation I have advocated for months and months on end. Nothing came out of it because Fahy was unwilling to do anything, I brought him to Madden who by now speaks very well German (comparatively).

In the evening we had the farewell party for Judge Madden at the Lakeside club, the house of a former chemical magnate (in horrible taste) on Schwanenwerder near Wannsee. Clay and Mrs. Clay, Murphy, Teathe, other V.I.P.s attended. Clay made a very good speech in which one passage struck me as particularly fortunate: To military man democracy is very strange and his mind can hardly conceive of democratic procedures in practice. The Judge answered very well also, saying that this MG enterprise is so big and complicated that no single person can overlook it, another tribute to his modesty. He does not know what we accomplished, but he feels that it is something to our credit which may be the case or not. I am too close to it to know.

Tuesday, June 25, 1946.

office 8. 50.

went to the ACA legal Directorate meeting. Madden last days, Very touching tributes from all others, he deserves them because his moderation, patient understanding and sense of humor was a great asset. We took him down to the waiting car and suddenly, as the Russian came down also and spoke to him, he was deeply moved and stoked his sleeve and gripped his hands with both of his. It was really moving. The Judge found the right words and said to him: Let us have as much peace and friendship between our two peoples as possible which Terry translated. It seems that these personal contacts are better than any treaties and better than all commentators taken together. The Judge thanked me, in his reticent way: You were of great help to me and your ideas and learning and energy has done much good. I too it as a genuine compliment and twisted it by saying that my value was

After the liberation of Berlin these doctors took up their practice, now the police, unearthing the old ordinance of Helldorf, again prohibited them to practice. This seems an injustice and I am trying to remedy it by proposing at the law for the redress of National Socialist wrongs in the administration of criminal justice which we adopted for the US zone be extended, by the Kommandantura, to Berlin.

Saturday, June 23, 1946.

office 8.45.

worked all morning on the report on the central agencies very tired and dispirited. evening with Irene von Schubert at Schoplers house for dinner. Monday

Monday, June 24, 1946.

office 8.15.

wrote memo on the visit of Thorer, Peipzig. I am sorry for the old man who loses his life's work to the Soviet principle. These are hard times of which one may well approve but one does not wish to see the victims.

staff meeting - plain speaking about the Legal Committee of the Länderrat. Conflicting opinions: the great man Schubert wishes to be a mere observer, McLendon wishes the same otherwise the Germans would not work at all. Simple and plain nonsense, we cannot "interfere" because we do not know enough, but we cannot sit as observers, because the Germans are craving for our information and assistance. complaints about the lawless behavior of American troops towards the Germans, these are justified in substance, but an occupation is no kindergarten and the Germans should know how it feels to be conquered and occupied.

Gerhardt has been sent out to study the German courts. Good idea, how would he study.

MacLendon has not told me the truth, the agenda of the Länderrat came up in time and I was not informed.

My last doubts as to whether I should stay on are dispelled. I am not.

The Judge is going away tomorrow. Party tonight.

talk with the new man Kramer. He is the same type of nuisance value I am.

talk with Rheinstein about Marburg I have an invitation to lecture there in September. I cannot make it.

telephone with Freeman Munich: I offer four or five lectures sometime in July on the subject: Völkergemeinschaft und Demokratie.

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in the afternoon a Bavarian law on the establishment of economic enterprises passed over my desk, by sheer accident because there is no sense in the distribution of the laws coming up from the zone. I went over it and literally paled with rage. Högnér has gone wild again and abolished the Gewerbeordnung and made any and every establishment of business whatever its kind, even the making

was mostly a nuisance value which he smilingly declined. He told me I wish you could stay longer than you plan now. He was a good man, a provincial but one with open eyes and ears and eager to learn.

Since the proposal on legal education was not discussed I left after lunch, was very tired and had this spine chill which is always an indication that my limit is reached. Went home at 4.00 and slept for an hour.

evening at my house - Professor and Mrs. Heinrich Mitteis, Dr. Kunze, Irene von Schubert.

Wednesday, June 26, 1946.

office 8.30.

I tried to get hold of Col. Taylor saw only Dr. Alexander. Clay is very much in favor of lectures given by US people to the Germans and encourages the undertaking. I am planning to give those lectures between July 29 and August 5, then stay for a few more days in Munich and leave for the States around August 15. I dictated a translation of my Control Council proposal concerning legal education. Dickman received from Brown a request of the Länder-rat to provide them with six laws, deadline June 28, just five days. The texts of the German drafts were not attached. This is how MG works. I made this translation in compliance with my promise to let them have a common draft for legal education.

Attended meeting of Interdivisional Committee on governmental structure which had been dormant for some time. The Legal Division is the only one which has not complied with the request of handing in the plan for the operation of the functions of which it is in charge under a federal set-up. I cannot do all. MacLendon has fouled the thing again.

The British created a committee similar to ours. The entire set-up is geared now towards a bi-partite arrangement, since Potsdam is broken down of which nobody has any doubt. All plans are futile because we cannot split Germany into 9 or ten roughly equated parts if we have to deal only with the British and US zone.

Discussion of South German constitution has to wait until we agreed on the procedure. Very silly. This is the most important thing since the drafts - Württemberg has even printed their draft of the constitution - will determine the final product, there is no time for new proposals. "We should make out a list of Dos and Don'ts before it is too late. Long discussion about Ken Layton's outline which pleased nobody, it confuses horizontal and vertical distribution of functions.

I did a lot of speaking. Pa

In the afternoon I sat four hours on the report which is overdue. I cannot do everything.

Left office 6.10

dinner with Mott, Norman Himes, couple of Gottlieb. Hoover.

evening so tired that I hardly could get home.

Thursday, June 27, 1946.

office 8. 10.

I did not go to the ACA since the legal education law did not come up. I worked most of the day and rather hard at that on the report on the Reich ministry of justice to be established in connection with the revision of the Potsdam plan or under it, for the Interdivisional Committee. The report is not good, it has ideas but they are undigested and uncorrected. But there is nobody with whom I could discuss it. Schubert, "Acting Chief of Ministry of Justice" section has as much idea of it as I have of radar. The business with the Bavarian law on licensing of business enterprises was taken up with Rockwell and Brodnitz, the latter felt that the law is necessary, I objected, but did not insist, but wanted to have the legal guarantees included. They telephoned to Stuttgart to get the final version. It is characteristic that Munich sent us the draft as if it had been approved by them, without any comment. I have been working on that now for months and I am tired to do it all over again. Unless we as OMGUS approve all legislation we cannot hold control over Germany.

various minor matters of little importance.

Norman Hines came to see me, I think he is even more unpalatable as before although he is an able and energetic man.

lunch with Rosenwald.

finished the translation of the legal education law. We do no longer speak a German or English but as Dickmann says "Emigranto".

left office 5. 40.

evening sitting for bust.

Friday, June 28, 1946.

office 8. 25.

work starts usually at the breakfast table when people are asking me about things. Today it started in the bus with Col. Mott: are the occupation troops subject to German taxation, in this case income tax, motor vehicles tax (this for the civilians) and wine tax. There was nothing in the books, I had to answer it on the basis of international law usage.

Thereafter came Dengler and the religious communities law of Bavaria. The education branch had instructed Freeman of the Munich office that they have no objection, he phoned whether the law may now be approved (letter of Faulhaber supporting it). Result: each division has its own technique of approval and examination. Some do it in the field, some in OMGUS, there is no coordination if various divisions are interested in a project. SNAFU- I advised them in Munich to withhold approval.

I did a lot of talking today. one with McLendon about the importance of the Länderrat legal Committee McLendon advised that

Marcuse(!!!) should participate, I put my foot down and

him find out right away about the agenda which "ahder, Pollocks assistant had not given over the phone, The entire machinery is haphazard, we are the only division which is not represented on Pollocks staff and we are completely in the air about everything going on there. I think I succeeded in convincing McLendon but he will not do much because his is the technique of avoidance. I had long talk with Rockwell, about an hour. He is still accessible in two months he will be as overawed and snowed under as his predecessors. I told him bluntly that the administration of justice branch is not in working order and never has been in working order. it is shot to pieces and never was whole. The Legal Division has two important functions aside from giving advice to other divisions namely (a) supervision of German courts of which there is nothing done, the meeting with the Ministers of Justice we initiated has not taken place (b) examination, approval and coordination of German legislation. This will become a full time job for two men, I advised to assign one man each from each branch to this job, to centralize incoming laws, to have contact established on a rational basis with the Känderra, to have only people attending these meetings who have worked on the laws under consideration etc, The coordination of German legislation with the Landerrat and with the Control Council will become the most important function of the Legal Division. I painted a dark picture of the entire situation but not as dark as it actually is. Rockwell has a good mind and is working but just not the caliber for the job which is not his fault.

He raised the point of my continuation over here. I said that I had given thought to it in the negative sense that under no condition would I continue as subordinate of McLendon and without proper responsibilities commensurate to my knowledge of German affairs and working capacity. He said that I occupied already a unique position in the Legal Division that he is in favor of assigning responsibility to an individual man. I said that I would stay over for another term until the end of the year provided that (a) my College would agree (b) that my wife would come over (c) that I would be given proper responsibilities such as the approval of legislation and the Landerrat coordinating function. He will think it over. To my lectures in Munich he agreed after I had told him that no policy considerations are involved about that General Clay strongly recommended that such contacts would be established.

Nothing will come out of it. I am going home around August 10 that seems to be now the proper course to take.

Left office 6.30 (this is always a ten hour day)
evening first party at Kat Vredow, later Laurie Brazee got home before midnight,

Saturday, June 29, 1946 (Peter and Paul)

office 9.00 tired out already in the morning.

went over the report on the establishment of the Department of Justice for the Interdivisional Committee. This is among the most difficult things I have done here, I do not like it at all, but it does not matter, they will not use it anyway.

Meeting of Interdivisional Committee with usual cast.

we discussed LeeGreshs plan for a bi- zonal administration in case the Potsdam agreement would fail. It developed that actually we would need two different papers, one based on the assumption of complete elimination of Potsdam which I believe will not happen because all powers are anxious to save face), one on a parallel organization for the two zones while Potsdam may still continue to go through the motions of existence. I took a hand only at a later stage of the discussion and objected strongly to the establishment of a miniature ACA 7 existing of British and US people, on the pattern of the ACA. I told them that if Potsdam fails the move must get underway as if it came from the Germans and therefore the Council of Minister Presidents would have to establish a sort of bi- zonal central government which we and the British would supervise or guide in the manner we are directing now the Lämerrat. This plan found approval, they had drawn up a much too mechanical plan of purely MG government arrangements. Personally I do not believe that a council of Minister Presidents will ever work if established all over Germany because of the divergent political approaches of the East and the West. In the bi- zonal arrangement it might work because of the greater political homogeneity of the Western zone. They discussed the differences between a joint staff and a consolidated staff, consolidated staff being a two power set up, a joint staff being the complete merger of the two powers in the staff. I do not think it makes much difference since the ultimate decisions will always have to be made by agreement and not by vote. The difficulty is that we are advanced politically farther than the British who only now are aiming at communal elections while higher level elections will not take place before next year. Clay and Murphy are flying tomorrow to Byrnes with our plan, much good will it do them. We sat from 10. 30 - 1. 15.

left office 24.2. 45.

Monday, July 1, 1946.

office 8. 25.

Quite interesting staff meeting which Rockwell handled well. The old problem of approval or examination of legislation turned up again. Now Guthrie is handling it in terms of a revision of MG regulations. Nive little joke, he did not have any of the memos I had prepared on this subject. I tried to indoctrinate him in the afternoon but I gave up and let him read first the memos. It is just hopeless, first I am sitting for weeks and weeks on end on this subject and then it is turned over to somebody who does not have the slightest inclination about it. Status of Bremen enclave: We do not know who governs the enclave, the British or we. The directives of December 10, 1945 were drawn up without concurrence of the Legal Division. The courts were altogether omitted. Does Bremen enclave live under US or British laws? We do not even know whether we have MG courts in places outside Bremen and Bremerhaven. It is about the limit persons. They are overcrowded, Why? too many people waiting for MG trial or trial by German courts, I believe the former.

How to remedy the situation? Nice illustration: when we moved in a prison was opened by the troops because they believed that it was concentration camp. At that time those who were willing to listen were in church and listened to the preacher. When the doors were opened all criminal who did not wish to go to church escaped, the others were locked up again when the error was discovered. Penalty for attending church services.

We do not even have a statistical breakdown of MG ~~offenses~~ offenses. We know it only in general terms. This is what we know. case of the Kiwanis club in Kissengen. MG officer Merle Potter, radio journalist from Minneapolis, neighbor of Prince Louis Ferdinand, opens a Kiwanis club with Germans, among them the prince a air force colonel who was director of German intelligence. Quray: Is this permissible - WD has acted promptly and relieved the officer. He has acted as advisor to Prince LF. Goo joke. What can one do with those gullible ignorant detachment officers, but the crowd around here is hardly better.

long discussion with Guthrie on administration of justice
worked on routine correspondence.

went to required movie on battle of Russia.
an American film using Russian and German material. Should be seen by all US soldiers and also by the Russians to show them how we think about their achievements.
No news on the atomic bomb test. This is an island.

left office 6.10
evening at home
Tuesday July 2, 1946.

office 8.30.

it seems that this is one of my "lucky" rays so that at long last the Legal division "discovers" me. McLendon was full of praise about the paper on the integration of the Reich Ministry of Justice, he did not understand much and dug out a chart which they had drawn up in London some two years ago, he wanted to check whether all agencies mentioned that stupid and incorrect chart were referred to in my paper. This is the way how it works. He is a charming Southern gentleman but his responsibility for the reconstruction of German judicial life is much bigger than his person. He is a Fehlleistung of MG of the first magnitude, a victim of the system without his own fault.

In the Legal Directorate they lost much time in clearing the minutes because each one wished to ascertain what he said. Karasev's memory is astonishing, he is by far the strongest member of the group. Thereafter we started the discussion of the legal training plan which I had submitted. This is a minor law but one of some importance if projected against the entire background of a democratized administration of justice, without democratic professors, no democratic students, referendum, assessors, judges, administrative officials and up the ladder. They asked me to explain the law which I did within less than ten minutes, always thinking up the next sentence when

when the one just spoken is being translated. The trouble with me is that while they translate into French and even Russian I try to follow and check on the accuracy of the translation instead of thinking up my next sentence, particularly difficult when you split a sentence into two parts. I stressed that this is a great opportunity for the CC to go on record with a democratization of legal education. I think I made it quite persuasive. The British under the Dickensian Macaschie answered that they had enacted a law in their own zone in March (of which we knew nothing because our information service is so excellent, that is why we maintain a library) which would not fit into this plan. He had not carefully studied it, his objections were petty and unessential. But Lebeque, the arch clever Frenchman came to my rescue. He said that as a matter of principle they resist any uniform rules for Germany, but in this case if it is not to be a law but a directive they would make an exception and accept my paper which they think is excellent. Karasev wished a discussion of the Soviet paper on the assessor examinations, I resisted because one does not build the third floor before the first. We had lunch and I worked on Lebeque. He was very reasonable. He proposed a working party which should study all three projects, finally they agreed that I would be charged to do it, the speech Lebeque made was so flattering that we all thought Karasev would be the man whom he wants to charge with it. I accepted, it was a considerable success. Rockwell wrote me a little note: An excellent presentation. I rushed to the first meeting of the Joint British US Group on governmental structure which Litchfield had convened in the Harmack house.

Participants: the entire bunch of our group, the British (the names are misspelled) Albiew, Simpson (Australian) Ingrams, a number of gribadier generals, etc. It was illuminating to listen to them. They had the same trouble with the problem of federalism we had only they bored into it while we dodged it. To my mind no solution is possible unless one realized that a federal state has some minimum requirements of central power. The amount may vary but without such independent and original rights of the federal entity no federal state is possible.

The British treat Germany as a colonial people like the Fijians. Interesting but rather exasperating. But I was pleased when one of them said in his clipped way: "The Boche fouled a form of government but it does not mean that by fouling it it became a bad form of government." This seems to work out quite well.

We agreed also that we should know more about what each power is doing within its own zone, we are all living in watertight compartments. I was in favor of undermining the four zones through the Germans that is let the Germans agree on uniform rules and common institutions and OK it afterwards.

lasted from 2.30 - 5.00
left office 5.45.

evening. Sinner with the same British US group at the Lakeside club (formerly Eisenhowers house).
came home at about midnight. Very tired, Hot day.

Wednesday, July 3, 1946.

opinion rendered for Roger Wells on nationality of Volks deutsche

in Slovakia and Hungary. Had the minutes to make up my mind.

attended meeting of Interdivisional Committee on federal structure. we discussed firsts the plan to describe German government as it is now. They intend to send Glaser round to investigate. I Luckhoff and others strongly protested and held that this work is not to be undertaken by this committee. I felt that either it will be highly amateurish or a handbook of 500 pages which could be written by a highly qualified staff in six months. I felt that this plan is vicious, serves no good purpose and will disturb the Germans who once again are confronted with an American with poor knowledge of the country and of the language. Mattusch concurred.

then we discussed Gresh's revised plan for the bi-zonal organization which is a straightforward substitute in case Potsdam has actually broken down. It is still a bad paper but better than before. How the Council of Minister Presidents will work once they represent different party shades I do not know. The difficulties of the federal structure can be overcome only by a council of the Bundesrat type of 1871 ff. But even these people do not know enough about German political past to handle this problem adequately. the meeting lasted from 10.30 - 1.00

afternoon: I made up the material for the Länderrat structure. It took six days to get copies from the files which do not have any worthwhile indexing system. Not even these basic documents are available in a condensed and organized form.

I wrote five opinions on the Länderrat proposal, to find out that others (Dickmann, Schopler) worked on some of them. The same SNAFU principle again: two different people are assigned the same work without any effort of organizing it centrally. There must be one man responsible for the Länderrat business who would farm out the work to others

had a bad working day. Left office 5.15

evening: sitting with I. v. Sch.

Thursday, July 4, 1946.

went to see the parade and firing of 48 guns. afternoon: attended session of Berlin Akademie of Wissenschaften celebrating the 300 anniversary of Leibniz. Addresses by Professor Stroum and Professor Litt. left by car at 3.00. returned by car with van der Wall and Middleton at 7.30. Very arduous business, because very hot and speeches very long. But it was an impressive and dignified ceremony.

Friday, July 5, 1946.

office 8.30.

Rather warm day but easy in comparison with Washington.
Revised again for Education branch the silly provisions concerning the confiscation of Nazi literature. This is no book burning, but it is book pulping, about as bad and much more disingenuous than book burning. As if the Hitler teachings would be read by any person. I found so little of race consciousness here (except antisemitism) and so much of the old dear egomania that the Lord created the world only to suit the Germans, that I do not believe that any such literature would do any harm. Nobody would read it anyway.

I had a man here, with a letter of Judge Madden, advising him on his marriage or divorce case. Interesting how my article 77 is applied: the petition (Klage) says that the divorce decision, enforced by wrong admissions under threat, is void, that therefore the marriage is still existing, that the action of the wife was *ohne Willen* and that therefore, the marriage has to be dissolved as of now. It is silly layman words, but evidently that is what German lawyers think about it.

I began the draft of my most fulminating memo against the lack of organization concerning the Länderrat business in the Legal Division. I wrote 10 pages, it is my farewell message. It will help nothing at all.

Much excitement about General Clay's cable to the effect that social contacts with Germans have to be conducted with aloofness and neutrality. Rheinsteins is quite beside himself because he believes that we should not behave like the *Heimvolk*. This is a specious argument one hears all the time: That our measures are only Nazi measures and that we imitate the Nazis. This country like any other country we witness compulsion, there is no such thing as unadulterated freedom, that happened after 1919 with known results.

Whatever compulsion is necessary need not be Nazi imitation. It depends on the legal guarantees and the aims and purposes and the officials elected or otherwise trustworthy who are in charge of performance. The argument is one of the most frequent ones.

I left office late 6.30. lunch time is now only enough to get fed and to get back, there is no resting place in this damned Trumann hall, it is just a mass feeding place with no soul at all.

evening at home. Trouble with Mott because of the B mess. I would have handled it differently. I sent back all stuff I had, What do I care?

Saturday, July 6, 1946.

office 8.40.

worked on memo for the reorganization of Länderrat business in Legal Division, the paper is less striking than I want it.

attended meeting of Interdivisional Committee on governmental structure. 10. 30 - 12. 15.

present: Litchfield, Mattusch(later), Brodnitz, Glaser, MottLouchhoff.

we decided that the survey of government planned by the committee would be more modest, starting from the Länder and working down to the lower echelons, and that field trips be instituted only for filling gaps. The plan worked out by Glaser is incompetent and childish, a sort of text book affair, typically civilservant who has not the slightest idea about realities of a foreign country. It contained nothing about political parties, displaced persons, church state relations, but fire protection and building requirements.

sharp discussion on the organization of the Federal top in connection with the bi-zonal plan. I objected to anything which would look like a parliament, it is unworkable, and the federal representation should be confined to the future legislative function, this federal directory must be a combined action of the Chiefs of the Länder representing their Länder and not their individual governments. Mott does not know the difference between the Bundesrat of 1871 and the Reichsrat of 1919.

We did not reach an agreement, but perhaps it is not so important because our terrible dilettantism will be modified and tempered anyway by the British who have thought about these matters and a lot of federal experience.

we drew up a cable, to be signed by Clay, requesting better coordination on the German planning between war Department, State and OMGUS, three crews in the three departments are working on plans without any effort of coordination. The people here do not even know who is working on these topics in State. We have never seen any plans of War or State, and what we write we are sure will not even be read by them. Litchfield proposed a conference of the officials of the three agencies in Paris around August 15. State, that is Political Affairs were unable to sign.

we discussed what MacNarney should say at the press conference Monday on the outcome of the elections for the constituent assembly. It was found that we could devise only weak words. Evidently briefing a general on politics is a difficult task.

left office 12. 50.

Monday, July 8, 1946.

Office 9. 00.

staff meetings had been a rather stodgy affairs under Fahy but became more interesting under Madden and now are quite interesting. The Russians claimed our locomotives and complained that they had markings of US wehn running on the Helmstaedt run. We agreed to delete the markings and to retain the locomotives.

Wiedergutmachungsgesetz Nr. 2

Richterliche Herabsetzung ungerechter Strafen statt Begnadigung

NZ STUTTGART, 7. Juli

Der Länderrat hat, wie berichtet, auf seiner zehnten Tagung das vom Rechtsausschuß ausgearbeitete und vom Direktorium empfohlene „Zweite Gesetz zur Wiedergutmachung nationalsozialistischen Unrechts in der Strafrechtspflege“ angenommen. Es soll die Möglichkeit schaffen, Strafen, die in der Zeit vom 1. Januar 1933 bis zum 8. Mai 1945 verhängt und auf Grund der nationalsozialistischen Ideologie übermäßig hoch bemessen worden sind, auf ein angemessenes Maß herabzusetzen.

Es widerspricht den Grundsätzen der Militärregierung, übermäßige und grausame Strafen zu verhängen. Derartige Strafen wurden jedoch unter der nationalsozialistischen Gewaltherrschaft häufig ausgesprochen, und ein Teil der Verurteilten befindet sich noch heute in Haft. Bei anderen ist die Strafverbüßung nur ausgesetzt. Eine Anwendung des Gnadenrechts erscheint in diesen Fällen aber weder theoretisch richtig noch praktisch zweckmäßig; dem Verurteilten ist ja durch das Übermaß der Strafe Unrecht geschehen. Schon wegen der Eintragung in das Strafregister ist die Unterscheidung zwischen Begnadigung und der richterlichen Herabsetzung einer ungerechten Strafe bedeutsam.

Das „Zweite Gesetz zur Wiedergutmachung nationalsozialistischen Unrechts in der Strafrechtspflege“ hat folgenden Wortlaut:

Artikel 1: Eine durch Entscheidung eines Sondergerichts in der Zeit vom 31. Januar 1933 bis zum 8. Mai 1945 verhängte Strafe, die unter Berücksichtigung der im Urteil festgestellten Tat und der Zeitumstände übermäßig hart und deshalb als nationalsozialistisch erscheint und noch nicht oder nicht in vollem Umfang vollstreckt wurde, ist auf das angemessene Maß herabzusetzen. — Die Herabsetzung kann auch, falls sie im öffentlichen Interesse liegt, erfolgen, wenn eine Strafverbüßung nicht mehr in Betracht kommt. — Bei der Herabsetzung kann die Tat, wegen der die Strafe ausgesprochen wurde, rechtlich anders gewürdigt werden.

Artikel 2: Die Herabsetzung erfolgt auf Antrag. Antragsberechtigt sind die Staatsanwälte und der Verurteilte oder seine Hinterbliebenen (§ 361 StPO).

Artikel 3: Die Herabsetzung erfolgt durch Gerichtsbeschluß. Der Beschluß ergeht nach Aktenlage, ohne daß eine mündliche Verhandlung erforderlich ist. Das Gericht kann einzelne Beweiserhebungen oder eine mündliche Verhandlung anordnen. Auf diese finden die Vorschriften der Strafprozeßordnung sinngemäß Anwendung. — Das Gericht kann eine Aussetzung der Strafvollstreckung anordnen.

Artikel 4 und 5 behandeln Zuständigkeit, die Einzelheiten des Wiederaufnahmeverfahrens und Beschwerdemöglichkeiten.

Die neue Zeitung

vom 8. Juli 1946

rentin für Schmieröl, äußert sich nicht, weil „ihr Arbeitsgebiet geheimbleiben soll“; Frau Dr. Kläb in der Zentralverwaltung für die russische Besetzungszone (Brennstoff) wünscht, „in keiner Form erwähnt zu werden“; Frau Dr. Wohlfahrt in der Zentralverwaltung für die russische Besetzungszone (Brennstoff) hat „leider gar keine Zeit für die Presse“; Frau Dr. Schiemann im Kaiser-Wilhelm-Institut äußert sich nicht, weil sie „den Titel der ‚sie‘ scheußlich findet und nicht an einer geschmacklosen Zeitung mitarbeitet“; Frau Dr. Albrecht, Leiterin der Katalogabteilung in der Universitätsbibliothek, gibt „keine Angaben für die Presse“; Frau Dr. Benjamin in der Zentralverwaltung für die russische Besetzungszone (Justiz): „Keine Zeile für eine Zeitung, die sich so offen gegen die Einheit stellt.“

Der vor einiger Zeit von der „Neuen Zeitung“ aus der „Heilbronner Stimme“ nachgedruckte Aufsatz „Die Faust des Siegers“ hat den Unwillen des Ministerpräsidenten Maier von Baden-Württemberg erregt. Er hat sich, von seinem guten Recht der öffentlichen Polemik Gebrauch machend, gegen den Verfasser Paul Distelbarth gewandt. Dagegen ist an sich nichts zu sagen; ja, man könnte eine solche Reaktion aufs wärmste begrüßen, nämlich als ein Zeichen dafür, daß die Ämter die Presse ernst zu nehmen beginnen. Formulierungen freilich wie „Gift und Galle spuckender Intrigant“ erinnern mehr an die Gasse als an die Würde, ohne die die zukünftigen Parlamente nicht werden auskommen können. Darüber hinaus soll der Ministerpräsident jedoch, wie uns zugegangene, noch nicht überprüfte und deshalb mit allem Vorbehalt wiedergegebene Nachrichten besagen, angedeutet haben, daß die Lizenzierung der deutschen Presse nun bald aus den Händen der amerikanischen in die der deutschen Behörden

heit genießt, der unter dem nationalsozialistischen Regime völlig undenkbar gewesen wäre. Jeder, der guten Willens ist, kann sich durch einen einfachen Vergleich der neuen deutschen Presse mit der ehemaligen deutschen Presse von der Richtigkeit dieser Behauptung überzeugen. Der Mangel an freier journalistischer Tradition bringt jedoch die Gefahr mit sich, daß die Freiheit, wenn sie im gegenwärtigen labilen Zustand unbegrenzt gewährt wird, gerade von denen ausgenutzt wird, deren unabänderliches Ziel die Zerstörung jeglicher Meinungsfreiheit ist. Es ist charakteristisch, daß heute diejenigen am lautesten nach Freiheit rufen, die sie jahrelang am rigorosesten unterdrückt haben, und die sie folglich zu allerletzt verdienen. Es ist in der Tat der Wunsch der amerikanischen Militärbehörden, solchen Mißbrauch der Freiheit, wie er das demokratische Experiment von 1918 so erfolgreich zerstört hat, nicht noch einmal gedeihen zu lassen. Der von der amerikanischen Nachrichtenkontrolle inkriminierte Artikel — *geschrieben von einem Journalisten, an dessen untadeliger Gesinnung niemand Zweifel hegt* — ist als eine journalistische Verlautbarung empfunden worden, die nicht der freiheitlichen Entwicklung der deutschen Presse dient, sondern den Wünschen derjenigen, die die Niederlage der Demokratie in Deutschland von neuem betreiben. Wie richtig die amerikanische Nachrichtenkontrolle die Wirkung beurteilt hat, geht aus einer Äußerung hervor, die der Autor des Artikels vor den amerikanischen Journalisten gemacht hat: er erhalte Anerkennungsschreiben, so erklärte er, „für seine mutige Haltung“ von lauter Leuten, deren Beifall ihm höchst peinlich sei; mit anderen Worten, von lauter Leuten, die nur darauf lauern, das erwachende demokratische Lebensgefühl in Deutschland im Keime zu ersticken.

complete snafu concerning Claystelegramm not to entertain socially and to keep aloof from the Germans, Rheinstein has scored a point in that Internal Administration believes that democratization demands some social contacts. The problem is of little interest but demonstrates the lack of policy. Whenever the wind blows from the States MG gives in which is a healthy sign of public opinion power but at the same time shows lack of direction of MG. Rockwell appointed a committee for study and report of Länderrat business and examination of legislation, with Brown, McClendon, Rheinstein and Shopler as members and myself as chairman. As I said before three weeks before I am going back I am being discovered. Or is it that I have become more adaptable and cooperative? No, it is that I did not hit it off with Fahy. The committee will report within two weeks or so, I expect it will be my swan song since I made up my mind today and yesterday not to stay on. Piri could not get over it at all before the end of the year, Rheinstein applied for having his wife here for a few months and offered to pay all expenses, it was emphatically denied by USFET which still exists, it is the Frankfurt outfit of McNarney which decides on such matters. If the people wish to have high-powered specialists over here they should make it comfortable for them to be here and not more difficult.

I worked on the memo on the Länderrat which I would not have started had I known about the committee. I wrote an opinion on UNRRAs proposal to have displaced persons lawyers of their own nationality before German courts. I fully sympathize with these displaced persons many of whom were forced against their will into Germany, Others were just Nazi-sympathizers and collaborators who cannot go back now. If they get into conflict with German law because of common crimes they are subject to German law. This is once again a conflict of opinions, I would like to have the Polish Jews protected against harshness of German (and US courts, see Landsberg case) but I do not care about the other Poles, for example.

conference with Lt. Col. Rosengren, on the establishment of schools for training in administrative service in our zone. Not a bad idea.

Lots of work, but did not do much work.

left office 6.45

was two hours at home, the first time during the day for a year to assist in the last sitting of the bust.

Tuesday, July 9, 1946.

office 8.30.

Tom Stauffer who passed the State examination and became a captain these days, one of the most refreshing (from fresh) apparitions around here who investigates the German personnel told me that he is brought home in the car of the suspect German whom he has investigated. We are waiting for the bus every morning about 15 to 20 minutes.

I completed the memo on the Länderrat organization. In the approval of legislation it was decided now that only such laws as are relevant to the Legal Division should come up for approval. Every division is to indicate which laws it wishes to come up. Instead of simplifying the matter and drawing it together it is spread out. Order of General Clay.

Meeting of interdivisional Committee on Governmental structure. This time we came to brass tacks. The paper which Gresh had prepared very excellent as such, dealt with the situation in which we would find ourselves if the Potsdam agreement is abandoned. But it continued the Potsdam agreement ~~on the five fields~~ with the exception of the five fields which are to be centralized. The result is untenable. If Potsdam is ~~given up~~ given up the set up on a bi-zonal basis would be entirely different. We have to write two papers, one for the situation without Potsdam, one for the situation ~~be entirely different~~. We have to write two papers one considering Potsdam as in continued existence only the five enumerated agencies to be established on a bi-zonal basis, one without Potsdam and this contingency would require an entirely different set up. This time Louckhoff found the issue, and we all followed suit and revised the whole plan. time 10-30 - 12.45.

went to Walter Dorn and asked him to give judges and other legal personnel priority in the Spruchkammer. He promised it. Not important. I have little interest in running German courts with denazified personnel. I told him about my scheme of the mutual state compact that a law valid only for a single land could not be ~~amended~~ amended except if simultaneously and identically amended in the other two lands. He found it an excellent solution. Those people just do not know the ABC of German or European public law or theory. Without it you cannot rule a country with an integrated system of law.

had lunch with Muccio and Wiesner.

afternoon was spent in getting the bust to the Giesser Noack with Irene von Schubert. I am glad this is over it was lately a heavy strain on my and her nervous reserves.

attended to some routine business which is usually very silly. left office 6.10

evening at home. Pollock came to see me for a quarter of an hour.

Wednesday, July 10, 1946.

office 8.35.

very busy day, it seems that I am unable to take it easy. wrote memos on Bavarian law on religious affairs. Paulhaber had written a letter to Högnér which to my mind is rather insolent and wholly ignores the military occupation situation. The church is demanding, not requesting. If I were a socialist Prime Minister I would hardly stand for it. The matter does not concern LD but since I got hold of it I will do my best to prevent mischief.

commented on the two points which Rosenwald had found in Bavaria. This should not be done by me but by someone else. I am losing too much time on such trifles.

wrote the agenda for the committee on Länderrat business. This is a very important thing, I wonder how it will come out.

Helped with Dickmann Dr. Riemer to be admitted in the Berlin sector as lawyer.

Had Helmuth Ruge in who wants a recommendation for a zonal pass. He is doing the work of collecting all zonal laws which we or CC should have done, all this is beyond our range of work because we do not have the proper people. I told Rockwell that he should recommend it and I drafted a letter to the Travel Facilities Board of ACA.

wrote a memo for Rockwell on the progress of the Interdivisional Committee on governmental structure.

Had some big elges about the work on the Central agencies and the memo on examination of legislation which some members of the LD consider the best thing they had seen in OMGZus. Slightly exaggerated but nonetheless a gratifying thing that at long last I am being "discovered".

left office 5.50

very tired in the evening which was clear and cold. Mirl Suhrkamp "dropped in" for bringing raspberries and getting drunk on my brandy. If only people would let me alone, these are the last days and I have not the strength for social things in addition to this nerve wrecking work with incompetent people. Now Dickmann is going sour too.

Thursday, July 11, 1946.

office 8.35.

very busy, little accomplished because of the completed disorganization of work in this Division.

Schopler is very worried about our position because Heinstein is contemplating to become a German again and is acting more like a German than an American. I told him that I would not like to provoke a scandal which would reflect on us as well as on Heinstein but that we should discuss it and then come to a decision. He comes to me every day with this request.

We had the first meeting of the Divisional Committee on reorganization of the Legal Division. The terms of reference were published at the bulletin board only after we had the meeting and showed that it went much farther than Rockwell had told us. This is typical, the meeting is held on erroneous terms of reference because Mautz did not get round to writing them up in time.

Not much was accomplished, we all agree on the existence of the general Saustall, but Heinstein wishes to cut out a niche for himself and to tie it up with the committee on

German law reform of the CC of which he is the American member, he wishes to keep it all in his hands, MacLendon, lazy and ignorant wishes to shift it somewhere else so that he can go shopping. Brown is objective and intelligent, but disinterested. Schopler is shrewd and does not wish to interfere. To date nothing was agreed on, there is also the manpower shortage and we have nobody to take care of this work.

Erman took leave, he goes back on leave to the States, he told me that MacLendon systematically refuses any application of a refugee lawyers (judges and attorneys) to return to Germany. MacLendon says there is not enough food, the real cause is anti-Semitism.

I wrote a memo to get the South German law on the address of National Socialist wrongs in the administration of criminal justice to the Control Council as proposal of the US element

Long discussion with Guthrie about the drafting of the MG Regulations concerning land legislation examination.
left office 6.10

evening at Redslob's house. met Albert of the North German Lloyd and former Reich minister of Finance

Friday, July 11, 1946

office 8.40.

hectic day. for unknown reason in good spirits.

ran over the drafts, coming from information control, on licensing of publishers, editors etc and theatrical producers. Would not do very much, procedure of professional and control of such activities seems well advised.

read Litchfield's two studies on Paper I and Paper II first on the assumption that Potsdam is dead, second on the assumption that it continues on various fields while others are organized as central agencies on a British US basis. Both papers are amateurish, not thought through, but fortunately they are only waste paper and nothing else.

I got out the CC proposal to adopt the South German law on the address of National Socialist wrongs in my version. I did what I could, to enliven CC activities. but nothing will come out of it.

Received the British plan on legal education, not very interesting.

Most of the day was spent in arguing with Guthrie who needed no arguing because he is not interested, and MacLendon who is plain stupid on the need to include the general field of law in the MG Regulations which provide for the examination of Land legislation by Legal Division. They had just forgotten about law and MacLendon conceded that this belongs to Civil Administration. My plan was too wide because it would have brought all matters up here which General Clay denied. Now it is drafted somewhat more carefully and yet accomplishes the same aim.

The phrasing of this thing, in Mr. language which is a peculiar lingo, was very difficult.

Denazification: Major Wilosn Public Safety told me that they acquitted the "restaurateur of the Brown House" because he pretended that with food from the Brown house he had fed some Jews. I can visualize the man running over the Briennersstrasse with his tray full of appetizing food and telling his friends this is for my very dear Jewish friends. What a comedy, these are the results of Oppenheimer Jewish objectivity. The Bavarians are settling their claims against the Nazis with a fine of 50 marks.

Another contribution! there came a Mr. Kraus, son of the tenor Ernst Kraus (Wirt in der Knöbelstrasse), husband of Petra Lie Zäpfel, friend of Dr. Ernst. He wanted my help in denazifying himself. "Wir können Sie nicht anstellen, lassen Sie sich doch schnell ganzifizieren". This after 16 million people have died. He was General musikdirektor in Halle and in 1944 Conductor in Berlin, party member since 1933. He read to me his defense for the Spruchkammer, it was nauseating, "Meine inneren Abkehr vom Regime kam 1934 mit dem Röjmmord." Roosevelt'sesbtsgate 1934: give Hitler a chance". Ich hatte einen jüdischen Freund, der mir bestätigte, dass ich immer gegen das Regime war. Ofter Nazis testify that he was against the regime and never was an active man. I was very angry but restrained myself and told him that there must be some expiation for his sharing the benefits of the party membership. He had no understanding for this and said it was enough that at my age of 40 I cannot conduct.

left office 5. 50. went with Mlle Schöllkopf to the Cabaret: "Die Hinfürblichen" rather heavy and sad German Humor, public rather stodgy, applause only where allusion to the occupations were made. "Biete Nazi, suche Ami" (Tauschgeschäfte) It was a heavy footed and heavy handed affair, but the first sign of opposition against the regime I have seen.

Saturday, July 13, 1946

office 8. 25.

meeting of Divisional Committee on reorganization of LD.

I have a report on this committee among my papers and will forego further comments here except to say that Rheinstein is playing a lousy game of trying to get cut out a niche for himself in case he would come back. I do not like his ways nor seem the other to do.

the committee is, on the whole going well, we will have something to present before two weeks.

meeting from 9. 30 - 11. 10

I wrote comments on the papers II and I of Interdivisional Committee on governmental structure. One cannot allow a young inexperienced and conceited ass like Glaser write such a paper. I rejected it outright, it does not face the issue of the

breakdown of Potsdam squarely enough, In this case the entire Anglo US zones have to be organized as one unit, MG and the rest, How will the brass hats on both sides ever consent to this?

let office 1. 20.

evening party at Dickmanns house.

Sunday, July 14, 1946.

another meeting of the committee on reorganization, we are making progress. 9.30 - 11. 00
thereafter I began to clean out my desk which is a tremendous operation, after having shoved into it everything over more than one year.

long talk with Rockwell. I am applying now for my family under the assumption that I will go on leave without pay. This would mean that I would return in case I could make arrangements at the College and Piri in January or February. But of course this is talk only, I expect once I am back in the States it will be over, and something new will start. If I would devote more time to government work and not to teaching I might as well go into UN or something more international. Nothing can be accomplished here, we are all deceiving us. Some of us do not even deceive themselves.

Rockwell is friendly and seemingly respectful. He knows what Fahy did not know and Madden knew but took very lightly that the good refugees are actually carrying the ball here. After Schopler, Rheinstein and I have gone back it will be difficult to carry on the extended responsibilities of the IG with people like Schubert, Urman, Mencke (who is about the best of the lot) and the like. Really good replacements have not come and will not come because the treatment of civilians is still not what it should be.

Well, all this is merely *graue Theorie*, I am going back around August 15 and I shall not come back.

evening at opera "Wildschütz".

Monday, July 15, 1946.

office 8. 50.

staff meeting less lively than other times, usual things, such as overcrowding of prisons (whereby they do not know whether prisoners held over 30 days are those of MG courts or German courts) General Müller last spring had asked for 40 lawyers, all P 6, they are coming in now, we are prevented from having a look at them, they are used only in the zone, we are to have the responsibility for ruining legal affairs, but we cannot control the personnel. Brown tells us that their professional equipment is very very light and they are getting 9,000 \$ a year. I raised the question of the light sentences of the *Sruckammern*, which becomes an outright scandal. Rheinstein, our little Fifth Columnist, said it is necessary to remove the causes of unrest, economic reconstruction requires the admission of all people,

in short he argues as any good German would. The people in the LD slowly catch on and wonder. But he is coming back and trying to make himself a nice little niche. I am not coming back and I do no longer care.

attended to lots of routine business, suddenly I am getting almost everything in the Division. Have no time to look things over carefully and do not want to be the dunghheap on which everything is dumped.

Konrad Mommsen came to see me, was in the zone, intelligent and very well informed man, he is the best I met here, he and Ruge. People do not yet realize that is going on, that German will not be restored to its previous power. I am not so sure, Molotov's speech in Paris makes me think that the Russians have their zone now do well organized that they can think of establishing central agencies.

another meeting of Divisional committee 5. - 6 20.

Mautz attended, he is a light weight, but a nice one though rather hinterfotzig, we are almost through with our discussions.

left office 6. 25.

evening party at Rheinsteins house, went home early tired.

Tuesday, July 16, 1946.

office 7. 50 (no error, seven 50).

undoubtedly the sands of my year in Berlin are running out. As always the fear of the new is greater than the inertia of the habitual, I am sorry in many ways to leave and I am glad to get away to some sort of privacy.

I am driving hard to get this report on the reorganization of the Legal Division completed, we had another meeting, this time on the mechanics, I could organize it if I were here and perhaps I am silly not to accept it because this would be one of the most influential positions in all OMGUS. But I am not choosing government as a career and the small irritants of the M situation are constantly telling on my nerves.

We are in the Administration of Justice Branch no more than 4 people. even MacLachlan who is lazy like Oscar has to do some sort of work. I am carrying the full load and I do not care.

I wrote the report (first draft) of the Committee within about 3 hours, with many ~~interruptions~~ interruptions, it is not bad, I learned a lot here about cooperation with others but still I am trying to do all myself. The secretarial situation is worse than ever.

I have no time to go into any details of any subject I am handling I cannot think of any more amateurish way of ruling a country. left office 5. 45. very tired.

evening at home.

Wednesday, July 17, 1946

Wednesday, July 17, 1946

office 8. 10. (came in with General Clay and his dog, he is almost as hardworking as I am).

I was still drowsy because I had taken a sleeping drug last night. But since time is becoming of essence - this is my last week in Berlin - I forced myself to work and wrote in longhand within three hours the report of the committee which is my parting shot. It is brief, to the point and carried unanimously. I dictated it and corrected the draft, with a US stenographer I could accomplish twice as much work.

I studied and made marginal notes on the Bavarian code of civil servants which now is much better, better drafted and a curious blend of US civil service regulations and German Beamtenrecht.

In between I am handling legislation and other matters coming to my desk, at the present time we are only five in Administration of Justice, Gurthrie who does not overwork himself, MacLendon whose main occupation is riding in the car, Rosnewlad who is a Statist, Schubert who bustles around but does no constructive work. And KL who does the work of the Branch. It is funny, in the last three weeks I am discovered.

Meeting of the Interdivisional Committee on Governmental structure. The papers I (case of complete breakdown of Potsdam) and II (continuation of Potsdam while the two zones are drawn together into one) were discussed, we know so little of the Paris conference that on which after all our work plans are dependent, that we had to look eagerly in Tata's and Stripes what news come from there. This is a meeting of ten responsible and knowledgeable men who wait for a vague or mysterious or at times definite order from Clay who knows nothing but who says he will have staff plans for all contingencies even though they are remote. Thus we are discussing top secret plans, the papers being collected after the meeting, and are completely in the air. The plan now is better than before because it faces squarely the situation that Military Government also will have to be merged. How this marriage between us and the British will function nobody knows. The British are slower and have different policies. I left at 5. 15.

left office 6. 15.

evening: rōpplers at my house later Suhrkamp and Frau Tischert. So tired that I almost could not sleep.

Looked over the transition for several hours. The book reads well about much of its material is obsolete.

Thursday, July 18, 1946.

office 8. 25.

We had the last meeting of the Committee on the new Branch. My report was changed only in unessential but Rheinsein and MacLendon cut out everything which would have been a curb on their future empires. Their little niches are nicely prepared and well guarded. I really must say that Rheinstien is a

a rather unpalatable type of human being, and very Jewish.

we had a meeting (Hoard Jones, Rosen green who acts like a clown but has a good mind) and Bill Dickmann at Roesangrens house on the Bavrain civilservants code. The Bavarians have now the US system of a central personnel commission and competitive examinations in their draft but otherwise it is as authoritarian as it could be. The only solution is that I discuss it with them in Bavaria and I arranged with Jones that I would do it on Monday, August 5, 1946. This means that my departure will again be delayed. we had lunch at the house of R.

I began work on the württemberg constitution which is better than the Bavarian, but still too cumbersome and pretentious.

Much other routine work, since I am the only working man in the Branch I am getting much in which I am not interested. I realize now how lazy the rest of the people is.

left office 6. 20

evening party at Mr. Ingrams (British I.A. C Division) house
Nachsberg 16, Runewald. lasted until 11.00

Friday, July 19, 1946.

office 8. 45.

I got the report signed and out, it is good work, it could have been done eight months ago. we had two meetings of the Interdivisional Committee on Governmental Structure, one from 10. 30 - 1.00 the other from 2- 4. 20. Friedrich is here and attended, I do not know why I always like him when I meet him much as I am repelled by him otherwise. We also had lunch together, he brings some fresh air with him, but fell as much under the spell of General Clay as everybody else. The meeting was also attended by the Civil Administration officers of MG Land governments among whom only Major Schweizer of Munich made some impression, the others are only silent observers and not of much use. Since the control of constitutions. the topic of the meeting is to be left primarily in the hands of the Land MG teams it is evident that the personnel will be of essence.

Clay wishes that we do not supervise the constitutions as to whether they are good or bad or workable, but only that they conform to the eight points of McFarney which we had elaborated. He found however, that there are eleven points and demilitarization and denazification are among them which is a grave error of omission on Clays part. If we are to supervise the constitutions only negatively little will come out of it because they are so innocently framed and phrased that they reveal nothing. And after all the men who wrote them are of good will and at this time anti-Nazi. As in the Napoleonic constitutions revealed anything from outside we are to scrutinize the constitutions article by article, a job in which I cannot assist because I am leaving Sunday for Stuttgart. An observer should be appointed to the three

capitals to serve as contact and informational point. This observer should be a sort of Superman, the only person who would meet some of the specifications is this writer.

"We got into a lot of discussion, Friedrich was less conceited and more to the point than I had expected and there were no fireworks. The calendar is of course ridiculously stringent, how could they devise a constitution within two months unless they follow the blueprint of the preliminary constitutions? Thus, the government drafts will be accepted more or less unchanged. This is what Clay calls the free choice of the form of government by the people in that a few non-representative people appointed by the non-representative Minister President, determine the course of events. There is no free press discussion because the press is not free and there is not enough paper to discuss. The whole thing is a bad farce. What happens if the assembly does not accept our modifications? Are we to force them on them? What happens if the people in the plebiscite reject it? Are the elections to be held with the plebiscite void if the constitution is rejected? How will a new assembly be elected? The entire situation is not thought through clearly. Clay has no idea and his advisors do not advise him properly otherwise the too much and too early of these democratic moves would have been avoided.

I sat down with Lee Gresh after the meeting for an hour and we assigned within less than an hour the entire checking work to the various divisions, if people work fast they work fast.

Left office 6.10

evening at home, Dr. Korte, Mrs. Wschert, Dr. Wernstan, wasted evening.

Saturday, July 20, 1946.

slept badly up at 6.00 office at 8.00

Sunday, July 22, 1946

left by plane for Stuttgart 8. 15.
arrived Stuttgart 1. 15

slept most of the afternoon

Monday July 22 to Wednesday, July 24, 1946

Legal Committee of the Länderrat meeting in Stuttgart.
see special report.

Tuesday night conference with Colonel (General) Hester and Major Wickes
on the new land reform law. 8. 30- 11 PM see special report to
Mr. Rockwell.

Wednesday afternoon: drive to Kloster Maulbronn with Wickens, "ellenbigen
and Lt. Kobre.

evening drive to Munich with Ministerialrat Römer in Högners car.

Thursday, July 25 - Wednesday August 7, 1946

in Munich.

worked in MG, dictated report on Stuttgart meeting, report on
clashes with Col. Hester, to Rockwell

attended to various conferences: with Anspach and Freeman on legal
matters, with Barnett on University, with Bergmann ditto.
with Major Vacca G 2 on Akademie für die Rechte der Völker or one Keller
it as decided to dissolve the outfit.
looked into the files Graf Almeida and Wolfgang Wuth

met the Anwaltsausschuss in Marons house for a full evening discussion.
met the Anwalts club in Wiedenmayerstrasse where I have a little talk
on MG work and listened to complaints of the practicing lawyers.
attended court session of Landgericht München I.

had one evening each with Minister President Högnér, Minister for Sonder-
aufgaben (denazification) Anton Pfeiffer, Hermann Aumer senior,
Lt. Coll Phillips London and his wife. with Muchall Viebrook and his
guests in Gräfelfing.
gave five lectures at the University Aula, on International organization
and democracy (Völkergemeinschaft und Demokratie), attended by
400 600, 800 and more students successively
on discussion hour.

lectures on July 29, 30, 31, August 1, and 2nd.
discussion hour Thursday, August 1, 6. 10 - 1. 50. attended by
about 500 students.

gave interview for the Neue Zeitung, had talk with Major Wallenberg of
Neue Zeitung, wrote a summary of my lectures for Neue Zeitung.

Sunday, July 28, 1946 excursion by car to Berchtesgaden.

Saturday, August 3, 1946.

attended opening of export exhibition of Bavarian government in Haus der Kunst as official delegate of the Legal Division.

afternoon drove out to Tegernsee spent night with Rieppels, Robognerhof, Wiessee, went on Sunday, August 4 to Valepp, to Alm of Rieppels, with the drove in the afternoon to Mittenwald called on Dr. Ernst.

Monday, ~~July~~ August 5, 1946.

all day negotiations in Staatskanzlei withwith Ministerialrat Leusser and Oberregierungsrat Metz on Dematengesetz

Tuesday, August 6, 1946

same discussions in the morning. after visit in MG

afternoon, continuation with Lt. Col Howard Jones Omgus, Lt Col Burns Civil affairs Munich and Mr. Eiermann.

South Germans will complete draft and submit it to Bavarian government for acceptance. Need not come up to OMGUS for review or approval.

Wednesday, August 6, 1946

spent morning on various things for myself.

left Munich 1. 45, arrive Berlin (by plane) 5. 20.

evening at home.

Thursday, August 7, 1946

office 8. 20.

jumped into work, at least went through the motions.

but it is merely a winding up procedure. I have so many loose ends that I just cannot start tying them up, it is useless and I shall go out with much unfinished business. But it does not matter.

Typical: nothing has been done on the examination of legislation to which I had devoted so much work in the last year. No instructions have gone out, I never see any project or law from Württemberg or Hesse, because Stuttgart and Wiesbaden act on their own responsibility. Tedillo in Stuttgart even forbade Dr. Ruth Kempken to send me the proposals of the Stuttgart government. We know nothing of the zone and the zone does not care about us. This is as it is and nothing can be done about it.

I dictated a brief report on my lectures and the other things of Munich. The lectures have been announced over the radio and people are making quite a fuss about the fact. some routine work, passing on legislation which for months has been enacted. It is just not worth the trouble because M does nothing to improve matters.

left office 6. 20. dinner with Major Wickens evening at home.

Friday, August 9, 1946.

office 8. 20.

I spent a lot of time yesterday to get my departure arranged. My travel orders are set for the 17th that is next Saturday, but I expect to stay over Sunday, and then try my luck. I expect it will take about three weeks to get back, with the bottleneck in Bremerhaven.

I wrote a memo on the abuse of Dienstweisungen which are not to be submitted to MG for examination, for evading just that examination. The Bavarians had done it for favoring some of their officials. It is a racket left and right, MG and German government. I wrote a memo for Rheinwein concerning the unfinished draft on minor provisions of the private law. Heaven knows what this Fifth Columnist will do with it to favor his good Germans (motto: Forgive and forget).

Had a long talk with Rockwell, who begins already to show signs of strain and his customary affability begins to wear thin. He wants me to come back very seriously (everybody talks to me how he regrets my withdrawal) and I would take on the Liaison and review section of the new legislative branch. Raymond is coming back to be associate director. McCurdy likewise is coming back. I told Rockwell he should make Col. Brown branch chief of administration of justice after the incompetent McLendon had withdrawn in October. I told him I would look over the situation in the States and perhaps come back for the time after January. But I do not think this will happen. I am through with MG! They sent calls to Munich for observing the constitution and Ken Dayton who does not know a word of German to Wiesbaden. This is just ridiculous they do not want good men in responsible places.

worked rather hard, in this incredible racket and noise system OMGUS.

left office 6.30

evening at home.

Saturday, August 10, 1946.

office 8.15.

did no work at all but began to sort out the papers which I want to send home. I have been here for more than a year and much stuff has accumulated. There is no chance of sending home any complete or important material, there is so much of it and so much disorganization that nobody except the official historians with a great amount of work could get any facts and figures, not even the report officers have complete sets. But I am sending home some stuff to have some clues in case I would be writing about MG (which I probably will not).

left office 11.45 to go to the food store (the first time just before I leave even this problem is settled).

Sunday, August 11, 1946-

afternoon party at Rockwells house.
evening at Drury's house for dinner with some others.

Monday, August 12, 1946

office 8.20

for unknown reasons I am more nervous now than at any time since I came over. Everything seems difficult, in particular the shipping of my stuff. I am making innumerable parcels and sending them home, each transaction requiring some logistics in order to get the stuff from home to the office, upstairs to the mail from there to the post office or vice-versa. I have nobody to help me and my secretary is just the limit of indifference and ignorance though a good girl.

At a staff meeting they opened a barter shop in which Germans may barter their things against cigarettes etc, this is about the same as selling one's cigarettes to the blackmarket, I see no legal difference. On the whole the black market is given too much importance and publicity, it exists wherever goods are scarce and it is of course socially seen a legitimate method of regulating trade.

There were a number of other interesting things, but I forgot them. Rockwell is doing very well, better than Fahy (which is not difficult) and better than Madden.

Trouble with everything, for example the trip home. Elman is still waiting in Bremerhaven, now for eleven days, they cannot ship civilians on victory boats (whatever this is) but have to wait for transports, because otherwise they have to pay port charges. They should have known all along that it is more expensive to keep a man in transit for 11 days than to fly him home. Mautz is not after it as it should be, but this is the army.

Had lunch with Lasswell, Rheinsteins and another man, violent discussion with the Fifth Columnist, it is a shame to have this man around, he is a fake, and nothing else, if he wants to be a German again, let him be it, but throw him out of MG.

wrote a number of memos, on passing on the file on revocation of titles on the old problem whether public corporations should be sued (which is forbidden under law no. 2, very silly provision in so far as causes of action after May 8, 1946 are concerned).

left office 6.50. dinner with Wickens who is suffering from this impossible general Hester and has gone sour as I have some months ago.

Tuesday, August 13, 1946.

office 8.20.

lots of routine work, I have to pass on information to Dickmann who probably will take over most of my "responsibilities" (ironic euphemism, since I had none and all I did came on my own initiative). Started working on the revision of the legal education project. The British simply adopted the old *Jus ausbildungsverordnung*, my draft is very much better and more original.

had a photographer from the Observer, I am getting famous at 11. 55.
It is rather ironmical.
had a car in the afternoon, took the packages from home to the office
went down town for somered glasses, went to a conference with
Ruge and Mrs. Kücher at Rugeshouse Lannedgerale 8, on the Teitzkomplex.
I have not much interest in it though it is a money making proposition
or may become one.
evening at home.

Wednesday, August 14, 1946.

office 9. 16.

I revised the project on legal education for CC. The British simply
took the 1938 Justizausbildungsordnung and made some slight changes
It is the Prussian system all over again. I redrafted my project in a
general way and left most of the substance. I have no longer any
interest because I am tired of the incompetence of the people dealing
with German law. We should allow the Germans to do it themselves and
guide their legislative reform, they know it much better. If this
Godesberg enterprise succeeds (the Ministers of Justice of our
zone met the British Oberlandesgerichtspräsidenten for Rechtsangleichung
the evolution will have slipped out of our hands anyway. At this time
the administration of justice branch consist of myself. Guthrie,
Rosenwald, Tencke. Damit ist kein Staat zu machen.

I got my typhoid shots and feel very miserable.

attended meeting of Interdivisional Committee on Governmental structure.
Important development which I see only from the margin of things:
The French proposed to have the five central agencies established,
with Interallied personnel instead of German personnel (they are
afraid even of the name minister for a German) but the four powers
in each agencies are to decide by majority vote. This is the brak of the
log jam, a momentous development. If, for example, the four powers
in Food and Agriculture make a majority decision and the overruled
minority appeals to the CC the latter cannot change the decision except
by unanimity which implies that the situation is reversed and
that the unanimity rule even for the CC can be circumvented. I wonder
whether the French who are clever people, did it deliberately.
Of the people present (only Heath and Litchfield saw the point. A man
by the name of governor Sumner Sewall, who is to be the Bavarian
governor later and impressed me as a particularly stupid and ignorant
man, made some observations which showed him devoid of insight. This
is the way how MG works
The thing had to be done in a hurry. Litchfield who instructs and
advised General Clay has more power and influence than anybody else.
But he is a judicious and good man. Ken Layton was sent to Stuttgart
and Wiesbaden as constitutional observer, he does not know a word of
German See remark above.

left office 5. 45.

evening farewell party at home: Suhrkamp, Gröppler, 3 Redlobbs,
Ruges, Schopler à deux with Mrs. Davidson, Dickmanns, Frau von Schubert
Baldners, Kate Virchow, Tom Stauffer, Mommsens, Col. Marye,

Mr. Kramer. Invited, but not present, Major Wickens, Miss Brazee. It lasted from 7. 45 - 10. 45, I was very sick and glad it was over.

Thursday, August 15, 1946.

office 9. 00.

was all day under the influence of the shots for typhoid etc. Completed English text of CC proposal on legal education (this time I wrote it in German first) it is only a Rahmengesetz, but it serves the purpose of maintaining German legal unity.

did some reading on position of Allied powers under unconditional surrender.

went home after 2.00 because too feverish to do work. Slept and was better at night. Stayed at home.

Friday, August 16, 1946.

office 8. 10

I found out that I should have received the maximum of 10,000 already in December since my job (consulate of the Administration of Justice Branch) had been created. They did not give me the 14 % salary raise after July 1, because my job was not classified. One of the many sloppy omissions of Mautz who is a nice person and very accommodating but quite incapable. Now Miss Lewis saw to it that I get the salary raise at least after July 1. It is some 60 \$ per pay period.

I am trying to find out about my departure from Bremen and my travel orders, our front office which is supposed to do such things is callous in a very polite way and inefficient, neither Mautz nor Clark are really interested. When you want a car I am a P 8 and there are not more than about 50 in the entire OMGUS) I have to beg a former corporal who makes inquiries for what purpose while he and his friends have the cars all the time and in the evenings. In short I am sick and tired of it and I am glad to get out. There is a boat from Bremen Monday or Tuesday, perhaps Wednesday which I could make if I would leave tomorrow but nobody knows anything about reservations and priorities and not even when the boat is coming or leaving. It took me an hour to get through to the proper people to Bremen.

I wrote an opinion on the definition of ordinary labor under the denazification provisions which took me some time. I worked on the draft on legal education, with a callous, indifferent and lazy secretary who goes after her own affairs and works here only because of the meal she gets. I got the box packed at Noack's (Giesserei) and sent it to the States. In the afternoon I went to Amandau, in Kramer's car, to visit Mrs. Pepping, Mr. Pepping and her sister. Back in office 5. 30

evening: dinner at Rockwells house, with Schopler. We had a discussion afterwards in which I said something very untought through and silly about the legal basis and the legal consequences of the occupation. A lengthy and futile discussion ensued in which nobody knew anything about the subject. The Legal Division now is a very poor organization.

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It was my last fling at OMGUS life. I hope to be through within a few days.

Saturday, August 17, 1946.

office 8. 30.

did no work but attended to cleaning out files and similar chores.

Monday, August 19, 1946.

got up at 5. 30 and packed, was all ready to go but could not make it. They would not put me on the boat leaving this week because they are filled up. Moreover it is a three weeks boat to New York. Advised me to get down this week end and take the next boat (if possible) Tried to get my clearances, was impossible, most of the time the man who has to sign is not in, only through Kramers courtesy could I make five. They had to take another inventory in my billets. This took an hour. I had lost the mosquito net. Only through Cpt. Hess who gave me his could I return the government property. Well it took almost all day.

attended the staff meeting. Of my tasks nothing has been accomplished. The staff study on the classification of legislation on which the new branch of Legal Division depends is still unapproved. They are making some objections the nature of which I do not know. Naturally so because I promoted the study and therefore I need not be informed about its outcome. Neither is there any news from Wiesbaden about the Godesberg meeting. Nothing about supervision of courts, - No, this business is over and I am glad to get out.

Tuesday, August 20, 1946.

office 9. 20.

I had to put in a full working day, the last one so far as I am concerned. Wrote a memo on the lack of zeal in the prosecution of minor war criminals to which I added some remarks about our self-isolation in that we are allowing the Land legal ~~to do~~ officers to do as they damn please without having any chance of checking on them. But it will help nothing.

Another memo on an amendment to the criminal code to punish escapee from prison. I am against it.

another new development is the invitation tendered by the German Finance Ministers to those of the other zones to attend a meeting in October on the law concerning the claims against the government. The Germans thus are circumventing CC legislation which is good in my opinion but should be carefully considered. lunch with Lee Franklin and Dr. Carsen, of Education, Discussion turned as always with Franklin in Russia. left office 5. 20.

Wednesday, August 21, 1946.

office 9.00

not much work. did some minor chores, winding up.
attended meeting of Interdivisional Committee on governmental structure (Litchfield, Mattusch, Louckhoff, Chatters.)
First: position of Länderrat after the amalgamation of the two zones. The Germans are afraid that the Länderrat will be scrapped
Decision: to let the Länderrat ride until we see how the British-ZS plan will work.

two: Litchfield submitted the draft of a paper concerning the function of MG after the constitutions went into force. I made a lengthy statement that we have to distinguish between the interim period until the peace treaties have been concluded and the time thereafter. All controls which we desire should be written into the peace treaties. For the interim period there must be a shift of emphasis: the governments in control are democratically elected and have responsibility, MG must cease its operational activities and hold the government responsible. Democracy means that you cannot have the cake and eat it. The problem has not been properly thought through by the Powers that be. Even the withdrawal of the tactical troops should be reconsidered. At this time the governments are amenable to reason, nobody knows what will happen a year from now.

10. 30 - 12. 15

left office 2. 15.

evening at home.

Thursday, August 21, 1946.

office 9. 00

no water priority on my travel orders. I had to go after them.
The callousness of our front office is appalling.

Took leave from Rockwell.

conference with Cpt Oppenheim from Wiesbaden, telling me something of the misrule of Major Potter who is legal officer in Wiesbaden. Conference with von Elbe who just came in and Schopler. Worked on minor matters, what to go out and have it done with.