

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**Lehigh Valley Railroad Company, Agency of Canadian Car and Foundry  
Company, Limited, and Various Underwriters (United States) v. Germany  
(Sabotage Cases)**

15 June 1939

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awards in accordance with the Agreement reached at Munich in July, 1936. The American Agent likewise filed with the Commission the several protests received on behalf of American nationals and on behalf of German nationals.

The questions involved in these Motions and protests were discussed in briefs filed with the Commission, and were the subject of oral arguments before the Commission at the meeting held July, 7 1937, at which meeting the following rulings thereon by the Commission were announced by the Umpire:]

“The Commission has considered the motion with care and has also considered all of the points made in the briefs and oral argument. Without reiterating its reasons, it is of the opinion that the motion must be dismissed, unanimously of that opinion.

“With regard to the protests by certain German nationals, those protests the Commission feels, in large part, fall as a result of its decision. The same thing is true of the protests by certain awardholders.

“With regard to the applications filed by certain claimants, either German nationals or holders of claims under certain arbitral awards, and with regard to the applications of certain American awardholders to permit them to intervene in the proceedings, the Commission unanimously denies those applications.” (Minutes of meeting, July 7, 1937, p. 1658.)

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LEHIGH VALLEY RAILROAD COMPANY, AGENCY OF CANADIAN CAR AND FOUNDRY COMPANY, LIMITED, AND VARIOUS UNDERWRITERS (UNITED STATES) *v.* GERMANY

(*Sabotage Cases, June 15, 1939, pp. 310-312; a Certificate of Disagreement and Opinion of the American Commissioner, June 15, 1939, pp. 1-310.*)

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JURISDICTION: EFFECT ON — OF WITHDRAWAL OF MEMBER FROM COMMISSION AND FAILURE TO FILL VACANCY. — PROCEDURE: UNANIMITY, DELIBERATIONS, ROLE OF UMPIRE. — INTERPRETATION OF TREATIES: PRACTICE, PURPOSE, BENEFITS RECEIVED, MUNICIPAL DECISIONS, TEXT WRITERS. Withdrawal of German Commissioner from Commission on March 1, 1939, after submission of cases to Commission on January 27, 1939, followed by conferences of Umpire and Commissioners with a view to the decision of the issues presented until February 28, 1939. Failure of German Government to fill vacancy (see Agreement of August 10, 1922, art. II). *Held* that Commission not *functus officio* and, acting through Umpire and American Commissioner, has power to proceed with cases and decide whether fraud proved sufficient to set aside decision of October 16, 1930 (see p. 84 *supra*), and whether claimants proved their cases: (1) under Agreement *supra*, art. II and VI, and its Rules of Procedure, unanimity not required, and concurrence of only two members necessary for decision (practice ever since Commission's creation), (2) both before and after special rules of procedure for sabotage cases were adopted, Umpire participated in deliberations and opinions of Commission (reference made to decision of March 30, 1931, p. 101 *supra*), (3) after submission of case to Commission, retirement of one National Commissioner cannot prevent decision by remaining members of

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<sup>a</sup> Henceforth, references to page numbers are to *Opinions and Decisions on the Sabotage Claims Handed Down June 15, 1939, and October 30, 1939, and Appendix.* (Washington, Government Printing Office, *s.d.*). Comp. Vol. VII, p. 3.

Commission: (a) this would defeat purpose of Governments in establishing Commission, (b) Germany received benefits after Commission's creation, i.e., under Settlement of War Claims Act of 1928, 80 per cent of German property returned to former owners, (c) reference made to municipal decisions, *inter alia*, *Republic of Colombia v. Cauca* (1903), 190 U.S. 524, and to text writers on international law.

SABOTAGE DURING PERIOD OF AMERICAN NEUTRALITY. — PROCEDURE: SETTING ASIDE OF PREVIOUS DECISION; REINSTATEMENT OF CASE INTO PREVIOUS POSITION, REOPENING; REHEARING: OLD AND NEW EVIDENCE, FRAUD, EXAMINATION OF MERITS. — EVIDENCE: FRAUD IN — ; WITNESSES, AFFIDAVITS, DOCUMENTS, AUTHENTICITY OF DOCUMENT. Setting aside of Commission's decision of October 16, 1930, on merits (see p. 84 *supra*), reinstatement of case into position before 1930 decision, reopening, rehearing granted on the whole record: *held* that material fraud in evidence presented by Germany seriously misled Commission and affected its decision in favour of Germany. Though unnecessary in circumstances, Commission also examined proofs tendered by United States to determine whether claims had been made good: German Commissioner insisted, that misleading of Commission immaterial if United States failed to sustain burden of proof incumbent upon it; *held* that, on the record as it now stands, claimants' cases are made out. Analysis of new evidence: see *supra* and Analytical Table *infra*.

*Cross-reference*: A.J.I.L., Vol. 33 (1939), pp. 770-772; Witenberg, Vol. III, pp. 70-721 (French text).

*Bibliography*: Witenberg, Vol. III, pp. 33-72; Woolsey, A.J.I.L., Vol. 33 (1939), pp. 737-740, and Vol. 35 (1941), pp. 289-298.

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*Certificate of Disagreement and Opinion of the American Commissioner*

These cases originated out of two disasters, — the first, the destruction at Black Tom, N. J., on July 29-30, 1916; the second, the fire at Kingsland, N. J., on January 11, 1917.

In these disasters millions of dollars worth of property was destroyed, and in the case of Black Tom, at least two lives were lost.

The Memorials of the United States were filed in March, 1927, and therefore the cases have been pending before the Commission more than twelve years.

The present status of these claims is as follows: The American Agent on the 4th day of May, 1933, filed a petition for rehearing and reconsideration of the decision at Hamburg, dated the 16th day of October, 1930, on the ground that it was induced by fraud and collusion on the part of witnesses and suppression of evidence on the part of some of them. The purpose of the petition is fully set out in the following language in the decision of the Umpire at Washington, December 15, 1933 (Report of American Commissioner dated December 30, 1933, pp. 75, 76):

" Its allegations are that certain witnesses proffered by Germany furnished the Commission fraudulent, incomplete, collusive, and false evidence which misled the Commission and unfairly prejudiced the claimant's cases; that certain witnesses,

including some who previously testified, who are now within the United States, have knowledge and can give evidence which will convince the Commission that its decision was erroneous; that evidence has come to light showing collusion between certain German and American witnesses to defeat the claims. These are serious allegations, and I express no opinion of the adequacy of the evidence tendered by the American Agent to sustain them. I have refrained from examining the evidence because I thought it the proper course at this stage to decide the question of power on the assumption that the allegations of the petition may be supported by proof, postponing for the consideration of the Commission the probative value of the evidence tendered.

"The petition, in short, avers the Commission has been misled by fraud and collusion on the part of witnesses and suppression of evidence on the part of some of them. The Commission is not *functus officio*. It still sits as a court. To it in that capacity are brought charges that it has been defrauded and misled by perjury, collusion, and suppression. No tribunal worthy its name or of any respect may allow its decision to stand if such allegations are wellfounded. Every tribunal has inherent power to reopen and to revise a decision induced by fraud. If it may correct its own errors and mistakes, *a fortiori* it may, while it still has jurisdiction of a cause, correct errors into which it has been led by fraud and collusion.

"I am of opinion, therefore, that the Commission has power to reopen these cases, and should do so, in order that it may consider the further evidence tendered by the American Agent and, dependent upon its findings from that evidence and any that may be offered in reply on behalf of Germany, either confirm the decisions heretofore made or alter them as justice and right may demand."

On the 2nd day of May, 1935, the American Agent filed a Motion, asking that an Order be entered

"to the effect that the Commission does not desire to take submission of these claims until all evidence that either Government desires to have considered in support of or in opposition to the pending petition for rehearing has been filed in order that the Commission may, when it takes submission, enter an Order finally disposing of these claims on their merits and that the Order further advise the Agents of the two Governments accordingly."

The German Agent opposed the making of such an Order, and, in the decision of July 29, 1935, denying the Motion, the Commission, by the Umpire, said (p. 2):

"By the petition and answer an issue was framed. This issue may be stated thus: 'Was the Commission misled by fraud practiced upon it?' If that issue be decided in favor of the claimants, the Commission should reopen the case upon the merits and reexamine the conclusions reached in the light of the whole record, including the proofs offered to impeach evidence forming part of the record when its decision on the merits was rendered. Obviously the case is not reopened by the presentation of a petition praying for such action. Especially is this true where the allegations of the petition are categorically denied. This the American Agent concedes. The decision of November 4, 1934<sup>1</sup>, so recognizes. It is there said: 'The issue which will come before the Commission is made up by the allegations of the petition and the categorical denials of the answer.'"

In the course of his opinion the Umpire also said (p. 3):

"\* \* \* If the claimants prevail upon that preliminary question [the right to reopen], the former decisions will be laid aside and the merits reexamined in the light of all the evidence, including that tendered on the issue of fraud and collusion. \* \* \*

"It is, of course, conceivable that the Commission should hear argument on both the propriety of reopening the case and the merits at one and the same time. Much may be said pro and con such a procedure. Nevertheless, I suppose that if the

<sup>1</sup> Announced November 9, 1934.

parties were in agreement that this course should be followed, the Commission would acquiesce. There is no such agreement. Germany insists that the preliminary question be determined separately. I am of opinion this is her right. She now has a judgment. Before that judgment may be set aside and a new hearing held upon the merits, it is incumbent upon the claimants to sustain the affirmative of the issues made by their petition. The next hearing, therefore, will be upon the question of reopening *vel non*, and not upon the merits."

Following this decision, additional evidence and exhaustive briefs were filed on behalf of each Government. Oral arguments were then had on May 12 to 29, 1936. The Commission on June 3, 1936, handed down a unanimous decision, setting aside the decision of December 3, 1932, and restoring the claims to the position they were in before that decision was rendered. In the course of its decision the Commission said:

"Before the Hague Decision may be set aside the Commission must act upon the claimant's petition for rehearing. Whether upon the showing made, the Commission should grant a rehearing, *unless Germany shall agree to a different course*, must, under the Commission's decision of July 29, 1935, be determined by a hearing separate from and distinct from any argument on the merits." (Emphasis supplied.)

That Germany, following the decision of June 3, 1936, did elect to follow "a different course", is evidenced by the fact that the German Agent exercised the right given him in the Order of the Commission of December 1, 1937, reading as follows:

"that the German Agent may not only file the documents called for under Rule 4 [of the Special Rules, under Order of March 20, 1929],<sup>b</sup> but may submit, if he desires, further evidence."

The same Order provided that:

"The German Agent shall file with the Commission any other evidence [in addition to that called for under Rule 4] he desires to file on or before March 1, 1938, and not thereafter."

Pursuant to this Order, the German Agent did file a considerable amount of evidence other than that called for under Rule 4 of the Special Rules, his last evidence being filed on January 14, 1939.

During the past twelve years, thousands of pages of evidence, consisting of official documents from the files of various Government Departments, affidavits, examinations of witnesses under the Act of July 3, 1930 (46 Stat. 1005), and under the act of June 7, 1933 (48 Stat. 117), and other instruments have been filed and during that period, voluminous briefs were filed by each side and lengthy oral arguments heard, covering the various features of the cases.

The cases were closed on January 14, 1939, and each Agent has filed exhaustive briefs covering a full discussion, not only of the questions raised by the petition of May 4, 1933, but likewise arguing the cases on the merits. The American Agent filed his briefs on September 13, and December 5, 1938. The German Agent filed his briefs on November 16, 1938, and January 12, and 14, 1939. After exhaustive oral arguments by distinguished counsel extending through twelve days, the cases were finally submitted to the Commission on the 27th day of January, 1939.

After about two weeks had elapsed, the Umpire and the Commissioners began their conferences. These conferences continued, but not on consecutive days, until Tuesday, February 28, 1939, when the last conference was held.

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<sup>b</sup> Note by the Secretariat, this volume, p. 244 *infra*.

Another conference was scheduled to be held on Thursday, March 2, 1939, at the office of the Umpire. Shortly before the time for the conference, a letter from the German Commissioner, announcing his retirement, was delivered to the Umpire and a similar letter was delivered to the American Commissioner. These letters and the replies thereto have been made matters of record.<sup>1</sup>

The subject of these conferences, in their early stages, was whether the evidence which had been adduced had proven fraud sufficient in character to set aside the decision at Hamburg.

In the course of these conferences, the American Commissioner expressed to the Umpire and to the German Commissioner his opinion that the decision at Hamburg had been reached on false and fraudulent evidence and that the proof of fraud was sufficient to set aside the Hamburg decision and reopen the cases.

After the conferences had continued for a considerable time, the Umpire expressed himself in entire agreement with the American Commissioner on the question of fraud. Thereupon the German Commissioner argued that, if, upon an examination of the whole record, both before and subsequent to the Hamburg decision, the Commission were to come to the conclusion that the United States had not proven its case, even though there had been fraud in the evidence before The Hague argument, it would be necessary to dismiss the petition, and he urged upon the Umpire and the American Commissioner the necessity of considering the whole evidence for that purpose.

It was thereupon agreed that the whole record should be examined to determine whether the American case had been proven or not, and it was while the Commission was engaged in examining this question that the letters aforesaid of the German Commissioner were received.

As was indicated clearly in the Umpire's reply, the letter to the Umpire presented a wholly false picture of the deliberations of the Commission. The effort of the German Commissioner to justify his retirement, by attributing bias to the Umpire, will receive, as it deserves, the disapprobation of every right-thinking person.

#### CERTIFICATE OF DISAGREEMENT

Under these circumstances, I deem it my duty as American Commissioner to certify, and I do hereby certify, to the Umpire that, in both of the cases now under consideration by the Commission, there was a disagreement between the American Commissioner and the German Commissioner on all material points before the Commission, and particularly on the point as to whether the evidence which has been adduced had established fraud sufficient in character to justify the Commission in setting aside the decision at Hamburg.

I further certify that at the time when the German Commissioner retired, the Commission was, at his instance, considering the question whether the American Agent had proven his case, and, more particularly, whether the Herrmann message was an authentic instrument; and with this, my certificate, I am submitting my opinion with respect to said cases and the points of difference certified, and I respectfully ask that this opinion be filed as a part of the record in this case.

#### I. JURISDICTION

There have been spread upon the minutes of the Commission the letter of the German Commissioner, addressed to the Umpire, announcing his retirement

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<sup>1</sup> For letters, see appendix. (*Note by the Secretariat*, this volume, Appendix V, p. 493.)

from the post of German Member of the Mixed Claims Commission; the Umpire's reply thereto; the letter of the German Commissioner to the American Commissioner apprising him of his retirement; the American Commissioner's reply thereto, and the letter of the American Commissioner to the Secretary of State, notifying the Secretary of State of the German Commissioner's retirement and the status of this case at the time of the retirement of the German Commissioner.

Although the German Commissioner announced his retirement on March 1, 1939, and more than three months has expired, the German Government has failed to follow the procedure prescribed by the Agreement of August 10, 1922, for filling the vacancy.

Under the circumstances set out above and in the letters spread upon the minutes, the question which is now before the Commission for its decision is, whether the Commission, acting through the Umpire and the American Commissioner, has the power to proceed with the cases and to decide whether the evidence which has been adduced has proven fraud sufficient in character to set aside the decision at Hamburg; and, second, whether upon an examination of the whole record, the American Agent has failed to prove his case.

Or, to put the question in a different form, did the retirement of the German Commissioner on March, 1 1939, render the Commission *functus officio* and deprive the Commission of the power to decide the questions at issue?

In order to examine and decide this question, it is necessary to refer to the pertinent provisions of the Treaty of Berlin; the Agreement of August 10, 1922, between the two Governments, under which this Commission was organized, and the Rules of Procedure adopted by the Commission.

Under the Treaty of Berlin it was provided, in section 5, of the Joint Resolution of Congress, approved by the President July 2, 1921,<sup>1</sup> and incorporated in said Treaty, as follows:

"All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, \* \* \* shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government \* \* \* shall have \* \* \* made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, \* \* \* since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, \* \* \* or in consequence of hostilities or of any operations of war, or otherwise."

Under the Agreement of August 10, 1922, between the United States and Germany, the preamble states that the two Governments,

"being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the Treaty concluded by the two Governments on August 25, 1921, \* \* \* have resolved to submit the questions for decision to a mixed commission."

Article II of said Agreement reads as follows:

"The Government of the United States and the Government of Germany shall each appoint one commissioner. The two Governments shall by agreement select

<sup>1</sup> 42 Stat. 105.

an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings. Should the umpire or any of the commissioners die or retire, or be unable for any reason to discharge his functions, the same procedure shall be followed for filling the vacancy as was followed in appointing him."

Under this Agreement, the Mixed Claims Commission, United States and Germany, was constituted and was authorized to pass upon three categories of claims set out in said Agreement, and has decided many cases involving millions of dollars.

The purpose for which the Commission was created is to determine the amount to be paid by Germany in satisfaction of Germany's obligations under the Treaty of Berlin to satisfy all claims against Germany of all persons who owe permanent allegiance to the United States and who have suffered through the acts of the Imperial German Government, or its agents, loss, damage, or injury to their persons or property, directly or indirectly.

As indicated above, the German Commissioner retired on March 1, 1939, and although more than three months have expired, Germany has not followed the procedure provided by the Agreement of August 10, 1922, for filling the vacancy.

Article VI of the Agreement of August 10, 1922, contains the following:

"The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments."

Article VI (d) of the Rules of Procedure reads as follows:

"(d) When a case is submitted in pursuance of the foregoing provisions, the proceedings before the Commission in that case shall be deemed closed, unless opened by order of the Commission."

Article VIII, of the Rules of Procedure adopted by the Commission, reads as follows:

#### "DECISIONS

"(a) The two National Commissioners will certify in writing to the Umpire for decision (1) any case or cases concerning which the Commissioners may disagree, or (2) any point or points of difference that may arise in the course of their proceedings, accompanied or supplemented by any statement in writing which either of them may desire to make of his opinion with respect to the decision of the case or cases or point or points of difference certified.

"(b) The Umpire shall at all times have the right to the complete record in any and all cases and to hear oral argument in his discretion.

"(c) The Umpire may join with the two National Commissioners in announcing — or in the event of their disagreement certified to him shall announce — principles and rules of decision applicable to a group or groups of cases for the guidance as far as applicable of the American Agent, the German Agent, and their respective counsel, in the preparation and presentation of all claims.

"(d) All decisions shall be in writing and signed by (1) the Umpire and the two National Commissioners, or (2) by the two National Commissioners where they are in agreement, or (3) by the Umpire alone when the two National Commissioners have certified their disagreement to him. Such decisions need not state the grounds upon which they are based."

On March 20, 1929, the Commission entered an Order providing additional rules governing the sabotage cases, reading as follows (Report of the American Agent, 1934, p. 177):

"IT IS ORDERED BY THE COMMISSION that special additional rules applicable to this group of 'sabotage cases' are adopted as follows:

" (1) The Umpire will sit with the National Commissioners throughout the argument.

" (2) Each member of the Commission will carefully consider the entire record and the points and arguments put forward in the briefs whether the Agents and counsel refer thereto in their oral arguments or not. This will enable counsel for both sides to confine their arguments to those points which they believe to be most essential without incurring the risk of waiving a point not mentioned on the oral argument but considered relevant by any member of the Commission.

" (3) If any member of the Commission considers a point not orally argued one which should be taken into account in the Commission's decision, counsel's attention will be called thereto during the progress of the argument or subsequent thereto, and counsel for both parties will be given an opportunity to discuss same on the oral argument or to file written or printed briefs within a time to be fixed by the Commission covering such particular point or points.

" (4) Where either party has for lack of time or other reason (other than a lack of diligence by such party) failed to produce evidence in rebuttal of that filed by the other party, and in the opinion of any member of the Commission such evidence in rebuttal is material; or where in the opinion of any member of the Commission further evidence on any point should be presented to aid the Commission in reaching a sound decision, the Commission will, within the time to be fixed by it, give the party or parties an opportunity to prepare and file such additional evidence. Where such additional evidence is not strictly in rebuttal the adverse party will be given a reasonable opportunity, within a time to be fixed by the Commission, to file evidence in rebuttal thereof.

" (5) Where, under orders of the Commission, evidence is filed during the progress of the oral argument or subsequent thereto, both parties will be given an opportunity, within a time to be fixed by the Commission, for the filing of written or printed supplementary briefs dealing with the evidence so filed."

Ever since these additional rules were adopted, the Commission has functioned in the sabotage cases as an arbitration body with three members, and the Umpire has sat with the two National Commissioners at each hearing, both during the examination of witnesses and the argument of counsel and has participated in the opinions.

By the very terms of the Agreement of August 10, 1922, and by the express terms of Article VIII of the Rules of Procedure, "any cases concerning which the Commissioners may disagree" and "any points of difference" may be decided by the concurrence of the two Commissioners, or by the concurrence of the Umpire and one National Commissioner.

Thus it appears that, under the organic law by which the Commission was created, and under its own Rules of Procedure, unanimity is not required, and the concurrence of only two is necessary for a decision, and this has been the practice ever since the Commission started functioning.

After the Hamburg decision was announced, that decision was attacked by the American Agent on the ground that it was irregularly rendered, because the Umpire participated in the deliberations of the National Commissioners and in the opinion of the Commission.

On March 30, 1931, the Commission, in a unanimous opinion, answered this ground of attack as follows:

"This question is raised by the American Agent's claim that the decision was irregularly rendered because the Umpire participated in the deliberations of the National Commissioners and in the opinion of the Commission. The Umpire participated in the deliberations of the Commissioners and in the opinion in accordance with the usual practice of the Commission in cases of importance since its foundation in 1922, a practice never before questioned and not in our judgment of doubtful validity even if it had not so long been accepted by all concerned."

Thus, both before the special additional rules were adopted and after they were adopted, the Umpire has participated in the deliberations of the Commissioners and in the opinions of the Commission.

Under the organic law governing the procedure of the Commission, that is to say, the Treaty of Berlin, the Agreement of August 10, 1922, and the Rules of Procedure adopted by the Commission, and under the practice which has obtained, since the Commission was established, is it possible, after a case has been submitted to the Commission and the two National Commissioners are in disagreement as to the direct issue before the Commission, for one National Commissioner to retire and prevent a decision by the remaining members of the Commission?

If it be possible for one National Commissioner, whether under the express order or with the tacit consent of his Government, thus to bring to naught and render worthless the work resulting from the expenditure of thousands of dollars and years of careful research, and thus to defeat the very purpose for which the Commission was constituted under the Treaty of Berlin, such a result would make a mockery of international arbitration.

A somewhat similar case is the case of *Republic of Colombia v. Cauca* (1903), 190 U.S. 524 (modifying and affirming s.c., 113 Fed. 1020; s. c. 106 Fed. 337).

In that case the Republic of Colombia brought a suit in equity in the Circuit Court for the District of West Virginia against the Cauca Company and the Colombian Construction and Improvement Company, two corporations organized under the laws of the State of West Virginia. The purpose of the bill was to obtain a decree canceling an award made by two of three arbitrators, acting under an agreement of arbitration between the Republic of Colombia and the Cauca Company in connection with a contract for the construction of the Cauca Railway. The award was signed by two of the three arbitrators and was in favor of the Cauca Company for a large sum of money. One of the grounds for claiming that the award was invalid was because it was signed by only two of the three arbitrators.

It was alleged in the bill of complaint (U.S.S.C. Transcripts of Record, p. 28165) as follows:

“That in and by such Agreement [of Arbitration] it was provided in Article 6, that should any of the members of the commission decline to act or resign from the commission or for any reason cease to act, the proceedings of the commission should not thereby be invalidated, but the commission should be *restored* by a new appointment which was to be made, by the party who appointed the member who failed to act, within thirty days, counting from the date on which said failure to act should occur. If such party should not comply with such obligation, the Secretary of State of the United States of America and the Minister of Colombia at Washington should proceed by agreement to appoint a person to fill the vacancy.”

It was further alleged that, after the Commissioners were duly appointed, they held thirty-four sessions, and at the 35th session “the Commission was notified by Manuel H. Pena, the Commissioner named by the Minister of the Treasury of complainant, that he had resigned to the said Minister of the Treasury who had appointed him, the office of Commissioner, and he transmitted to the other commissioners, through its secretary, a copy of his letter of resignation addressed to the said minister; that the said resignation was the independent act of the said commissioner — not done by the order of, or with the knowledge of the complainant, the Republic of Colombia, which only had knowledge of it after the resignation, which was to take effect from its date, was actually transmitted to the Minister of the Treasury of this complainant.”

It was further alleged that no request had been made by the defendant or either member of the commission or the complainant, or any member of its government, or its representative in the United States, to restore the commission by filling the vacancy; that notwithstanding the voluntary retirement and resignation of Pena, the remaining members, without any notice to the complainant or anyone representing it, and without request or opportunity for restoring the commission by the appointment of a third member, but immediately, on the same day that said Pena resigned, assembled together and assumed to continue the functions of said commission in the absence of Pena, and finally formulated a pretended decision or award; that the commission, after the retirement and resignation of Pena, was wholly incompetent in law to proceed further or to make any decision or award, or to do any other matter until the commission had been restored in accordance with Article six of the agreement under which the commission existed, that is to say, by the appointment by the complainant of another person in his place and stead.

It was further alleged that the two remaining members of the commission, in disregard of their duty of fairness and impartiality, misconducted themselves in the last two sessions; that one of the arbitrators was guilty of misconduct as an arbitrator; that the two commissioners received wholly incompetent evidence.

One of the prayers was, that the pretended award promulgated by the two commissioners might be decreed to be utterly null and void and of no effect.

Honorable Nathan B. Goff, Judge of the United States Circuit Court of the District of West Virginia, heard the case and wrote the opinion. After stating the facts upon which the suit was founded, he described the terms of the agreement by which the arbitration was effected (106 Fed. 337, 342). He then described the organization of the commission and stated (106 Fed. 343):

“ The Commission decided at its second meeting \* \* \* that all of its decisions should be by majority vote of the members, and at its third session it was resolved that, in case of disagreement between the members of the Commission, the chairman should decide the question at issue.”

In summarizing the action taken by the sessions of the commission, Judge Goff says (106 Fed. 344):

“ At its thirtieth session, \* \* \* the Commission commenced the consideration of the testimony — oral arguments and briefs of counsel having been made and filed — for the purpose of formulating its award.”

Then follows a description of the awards in certain sums for different purposes.

And then Judge Goff states (106 Fed. 344):

“ At the meeting of the Commission held on October 19, 1897, it was moved to award the company as interest on the cost of physical construction to January 26, 1897, the sum of \$48,668.18, and the questions relating thereto were discussed, but the vote thereon was postponed. \* \* \* The meeting was the thirty-fourth of the Commission, and all the members of the same were present, as they had been at all previous meetings; all the members had heard the testimony and the arguments, and all had taken part in the discussion and deliberations relating thereto, \* \* \* ”

At the thirty-fifth session, Pena did not appear, but he caused to be presented his letter of resignation. In his letter to the Minister of the Republic of Colombia he based his determination to resign upon the declared intention of the other two members of the Commission to allow the Cauca Company large amounts for the alleged expenditures having no relation to either construction

expenses or the purchase of material, and, therefore, Pena claimed that the Commission had no jurisdiction to pass upon or allow such expenditures; and, further, that the Commissioners had departed from the terms of the convention and proposed to act wholly beyond their official powers. Therefore he expressed his intention to refuse to act further as a commissioner and to decline to remain a member of the Commission until the illegal intentions of the Commission should have been carried out (106 Fed. 345).

The two remaining Commissioners met and passed a resolution setting out a short history of the resignation of Pena and the failure of the Republic of Columbia to appoint a successor, then it was resolved that the Commission should proceed forthwith to make its award and formulate its decision as to the matters involved in the convention.

After setting out the above facts, Judge Goff formulated the question involved in the following language (106 Fed. 347):

“ Is the award defective because only signed by two of the three arbitrators? ”

In discussing this question it was held that a unanimous decision was not required in express words, and that in a case of this character it should not be implied, and that, if Pena had not tendered his resignation and had he been present at the session when the award was made and had he then entered his dissent, still the award would have been binding on the parties unless some other good cause could have been shown to render it void.

Then Judge Goff said (p. 348):

“ In addition to this, I think that the submission was in the nature of a public contention; that the compromise and adjustment of the same through the medium of the commissioners was based on a public law, — an act of the congress of the republic of Colombia; and that, therefore, under the well-established rule applicable to such controversies, the decision of the majority will conclude the minority, and their act will be the judgment of the whole number appointed. The dispute was, at least, brought to an issue by an act of the congress of the republic of Colombia, by which the franchise of the railway claimed by the Cauca Company was in effect forfeited. The submission was evidently the result of the friendly suggestions emanating from the secretary of state of the United States, and conveyed to the government of the republic of Colombia through the minister of the United States residing at Bogota. The third member of the commission was chosen, not by the parties nor by the commissioners appointed by them, but by the representatives of the governments of the republic of Colombia and of the United States. The original concession to Cherry recognized the enterprise he was authorized to carry out to be of public utility, and conceded to him all the rights usual under such circumstances. In such cases, unless there is a special provision to the contrary, unanimity in reaching a decision is not required of the commissioners. Co. Litt. 181a; *Grindley v. Barker*, 1 Bos. & P. 236; *Ex parte Rogers*, 7 Cow. 526.”

In later discussing the question as to whether there really was a vacancy or not, Judge Goff said (p. 348):

“ Clearly, it was not the intention of the parties to the convention that the existence of the commission should be destroyed by a resignation of the character of that presented by Commissioner Pena. It would be an impeachment of the common honesty of the parties to the agreement, and a travesty on their evidently honorable intentions, to hold that they designed it should thus be in the power of one man — actuated by, to say the least, not commendable motives — to render worthless the work resulting from the expenditure of thousands of dollars and months of careful research, in an effort to amicably adjust an unfortunate controversy, that was rapidly reaching the point of embarrassment because of its national and diplomatic character. The testimony forces me to the conclusion that Commissioner Pena’s only motive in withdrawing from the Commission was to prevent, if possible, a conclusion from being reached, or to render the award invalid should one be

made. This conduct — keeping in view all the circumstances surrounding him and the commission of which he was still a member — was not only reprehensible in character, but was fraudulent in its tendencies.”

As in the *Cauca Case*, so in the *sabotage cases*, one is impelled to the conclusion that the German Commissioner's only motive for retiring from the Commission was to prevent, if possible, a conclusion from being reached, or to render the award invalid should one be made.

This case was carried to the Circuit Court of Appeals for the Fourth Circuit and in a *per curiam* decision, that Court said (113 Fed. 1020):

“We have carefully considered the opinion of the Circuit Court, the subject matter of appeal in these two cases. We can add nothing to the clear statement of the facts of the case made by the learned judge who delivered the opinion of the court (106 Fed. 337), and we can add nothing to the reasons which led him to his conclusion, in which conclusion we entirely concur. The decree of the Circuit Court is affirmed.”

When the case came before the Supreme Court of the United States (190 U.S. 524), that Court reversed the case as to the amount of the award that had been granted but affirmed it in other respects. The decision of the Court on the question as to the necessity of a unanimous vote is set out in the second syllabus, as follows:

“Where the parties to a controversy have submitted the matter to a commission of three who have the power to, and do resolve that all decisions shall be by majority vote, an award by a majority is sufficient and effective.”

The decision on the question of the power of one party to an arbitration or dispute to defeat the operation of the submission after receiving benefits thereunder by withdrawing, or by adopting the withdrawal of its nominee, is thus stated in the third syllabus of the case:

“In an arbitration between a sovereign State and a railroad company and affecting public concerns, whatever might be the technical rules for arbitrators dealing with a private dispute, neither party can defeat the operation of the submission after receiving benefits thereunder, by withdrawing, or by adopting the withdrawal of its nominee, after the discussions have been closed.”

Mr. Justice Holmes, after stating the facts leading up to the arbitration agreement, related the terms of the arbitration agreement and discussed the effect of the resignation of one of the arbitrators as follows:

“The essential features of the agreement were that the company by the second article surrendered the railroad, and that Colombia agreed to pay a just indemnity, the scope of which will be considered later, and which was to be determined by the commission. The commission consisted of three — one appointed on behalf of Colombia, one on behalf of the company and the third by agreement between the Secretary of State of this country and the Colombian Minister at Washington. The Commission, spoken of in the agreement in the singular, was to ‘determine the procedure to be followed in the exercise of the power conferred upon it, both as to its own acts and as to the proceedings of the parties’. In pursuance of this power it resolved that all decisions should be by majority vote. Thereafter the case was tried, and several items were allowed to the company which it was contended by the representatives of Colombia were not within the scope of the submission. At the end of the trial, when hardly anything remained to be done except to sign the award, the questions remaining open concerning only matters of interest which have been disallowed, the Colombian commissioner announced his resignation to the commission.

“The agreement gave Colombia thirty days to appoint a new member, and on its failure the Secretary of State for the United States and the Colombian Minister were to appoint him. But the Commission was allowed only one hundred and fifty

days 'from its installation,' which might be extended sixty days more for justifiable grounds. It had sat two hundred and three days when the resignation was announced. Manifestly it was possible, if not certain, that its only way of saving the proceedings from coming to naught was to ignore the communication and to proceed to the award. This it did. Colombia by its bill and argument now lays hold of the resignation of its commissioner as a ground for declaring the award void.

"Colombia thus is put in the position of seeking to defeat the award after it has received the railroad in controversy and while it is undisputed that an appreciable part of the consideration awarded ought to be paid to the company under the terms of the submission. It is fair to add that the bill offers to pay the undisputed sum, but not to rescind the submission and return the railroad. We shall spend little argument upon this part of the case. Of course, it was not expected that a commission made up as this was would be unanimous. The commission was dealt with as a unit, as a kind of court, in the submission. It was constituted after, if not as the result of, diplomatic discussion in pursuance of a public statute of Colombia. It was to decide between a sovereign State and a railroad, declared by a law of Colombia to be a work of public utility. In short, it was dealing with matters of public concern. It had itself resolved, under the powers given to it in the agreement, that a majority vote should govern. Obviously that was the only possible way, as each party appointed a representative of its side. We are satisfied that an award by a majority was sufficient and effective. We are satisfied, further, that whatever might be the technical rule for three arbitrators dealing with a private dispute, neither party could defeat the operation of the submission, after receiving a large amount of property under it, by withdrawing or adopting the withdrawal of its nominee when the discussions were closed. See *Cooley v. O'Connor*, 12 Wall. 391, 398; *Kingston v. Kincaid*, 1 Wash. C. C. 448; *Ex parte Rogers*, 7 Cowen, 526; *Carpenter v. Wood*, 1 Met. 409; *Maynard v. Frederick*, 7 Cush. 247; *Kunckle v. Kunckle*, 1 Dall. 364; *Cumberland v. North Yarmouth*, 4 Greenl. 459, 468; *Grindley v. Barker*, 1 Bos. & P. 229, 236; *Dalling v. Matchett*, Willes, 215, 217. In private matters the courts are open if arbitration fails, but in this case the alternative was a resort to diplomatic demand."

As has already been shown in this opinion, it was not contemplated by the organic law under which this Commission has operated that the decisions should be unanimous. On the contrary, it is perfectly apparent that in no case has it been necessary to have the concurrence of more than two members of the Commission. It is also perfectly clear that the United States was under no obligation whatever to return the property which had been seized, but in a spirit of generosity it provided in the Treaty of Berlin that this property should be held as collateral security to pay the claims of American nationals who had suffered loss in persons or property at the hands of the German Government or its agents. *Cummings v. Deutsche Bank*, 300 U.S. 115, 122-125; *United States v. White Dental Co.*, 274 U.S. 398.

Under the Settlement of War Claims Act of 1928 (45 Stat. 254-279), 80% of the German enemy property at that time remaining was immediately returned to its former owners. The German Government, therefore, is in no position to contend that the act of its Commissioner in resigning can have the effect of preventing the remaining members of the Commission from passing upon the questions at issue when he retired.

The case of *Colombia v. Cauca Co.* again came before the Supreme Court of the United States in 195 U.S. 604, where it was held that nothing in the former decree prohibited the Circuit Court from allowing interest on the amount of the items allowed. In the last case (195 U.S. 604), the Court again affirmed its action in modifying the action of the Circuit Court only in respect to the amount allowed.

In *Atchison, T. & S. F. Ry. Co. v. Brotherhood of L. F. and E.*, 26 Fed. (2d), 413, there was an arbitration under the Railway Labor Act (45 U.S.C.A., secs. 151-163). It was held by the Circuit Court of Appeals, Second Circuit,

that an award by a majority of the members of an arbitration board appointed pursuant to provisions of the act, before expiration of time provided in agreement for entering an award, was valid, notwithstanding the refusal of certain members to participate therein, on the ground that the board had previously filed a report showing an inability to reach an agreement.

In reaching its decision, Evans, Circuit Judge, laid down the following proposition (p. 417):

“Equally well settled is the rule that one arbitrator or a minority of arbitrators cannot, after the dispute has been fully submitted to the Board, defeat an award by resigning, withdrawing, or otherwise refusing to participate in the hearings. *Colombia v. Cauca Co.*, supra. Such a resignation or withdrawal shortly before the time fixed for the expiration of the arbitration, constitutes a fraud and, as such, defeats its purpose.”

Text writers on international law seem to approve the principle of the *Cauca Case*, which was followed in the case last cited, namely, that one arbitrator, or a minority of arbitrators, cannot, after the dispute has been fully submitted, defeat an award by withdrawal or by adopting the withdrawal of its nominee, or by otherwise refusing to participate in the hearings after the discussions have been closed.

Witenberg, *L'Organisation Judiciaire, la Procédure et la Sentence Internationales*, 1937, states the rule thus:

“24. In the calculation of majority all members of the tribunal must be counted, including those who might refuse to take part in the voting. These latter must be considered as having voted against the decision of the majority of the judges present and a report of their refusal shall be drawn up.” (p. 281) (Translation from the French.)

Mérignhac has the following to say in his *Traité Théorique et Pratique de L'Arbitrage International* (pp. 276-77):

“If one or more of the arbitrators refuse to take part in the deliberations, M. Calvo feels that they should be replaced: and in case this is impossible the tribunal should be dissolved. The Institute of International Law has decided with sound reason in Article 21<sup>1</sup> of its rules that the majority suffices for judgment in the hypothesis we have spoken of. It is, in effect, impossible to admit that one arbiter by bad faith, perversity, or simple negligence can paralyze the action of the tribunal.”

Calvo, to whom Mérignhac refers, has said:

“When the arbitral tribunal is composed of several members certain publicists are of the opinion that the absence of one of them prevents all valuable deliberation and decision even though the other arbitrators would form the majority and would agree, for the reason that the missing member might modify the decision of the others by the exposition of his own opinion.

“However Sir Robert Phillimore takes the view that if the absence of one of them is intentional or the result of intrigue the other members have the power to continue the procedure. As far as we are concerned we think that in such a case the proof being made of the unwillingness of the missing member it would be necessary to replace him or otherwise dissolve the arbitral tribunal as would be done in the case of the death of one the members unless special provisions are prescribed in the original compromis for such eventuality.” (Sec. 768, *Le Droit International Théorique et Pratique*, Vol. III, 5th edition, Charles Calvo, Argentine).

<sup>1</sup> Article 21 is as follows:

“Every final or provisional decision shall be made by a majority of all the arbitrators named, even when one or more of the arbitrators refuse to take part therein.”

Whether Calvo would apply this rule in a case like the instant case, where the presentation of testimony had been closed, briefs filed and arguments completed, may be doubtful; but in any event his views appear not to have the support of the other text writers.

Sir Robert Phillimore, to whom Calvo refers, says:

“ If there be an uneven number of arbitrators the opinion of the majority would, according to the reason of the thing and the *Jus communa* of nations be conclusive. If one of the arbitrators were maliciously to absent himself it might be competent for the others to proceed; but if one were dead, the arbitration would be dissolved, unless provision had been made for the contingency in the original covenant.” (*Commentaries upon International Law*, London, Vol. III, p. 4).

In commercial arbitration cases the trend of authorities seems to be in accord with the rule laid down in the *Republic of Colombia v. Cauca*, 190 U.S. 524, and followed in the case of *Atchison, T. & S. F. Ry. Co. v. Brotherhood of L. F. and E.*, 26 Fed. (2d) 413. See *Burtlet v. Smith*, 94 Eng. Rep. 587 (King's Bench); *Dalling v. Matchett*, 125 Eng. Rep. 1138; *Widder v. Buffalo & Lake Huron Ry. Co.*, 24 U.C.R. 222 (Canada 1865); *Carpenter v. Wood*, 42 Mass. (1 Metc.) 409 (1840); *American Eagle Fire Ins. Co. v. N. J. Ins. Co.*, 240 N. Y. 398, 148 N.E. 562; *State v. Tucker*, 166 N.W. 820 (N.D. 1918); *Toledo S.S. Co. v. Zenith Transp. Co.*, 184 Fed. 391 (CCA 6th, 1911).

5 Corpus Juris, p. 100, sec. 218, treating the subject “ Refusal of Some of the Arbitrators to Participate after Disagreement ” lays down the rule as follows:

“ The refusal of one or a minority of a number of arbitrators, having authority to render a majority award, to proceed further with the hearing or discussion of the case, after a disagreement has arisen, does not divest the majority of power to proceed, in the absence of the minority, with the hearing and to render an award in accordance with their authority,”

citing, among others: *Kingston v. Kincaid*, 14 F. Cas. No. 7,821, 1 Wash. C.C. 448; *Witz v. Tregallas*, 82 Md. 351, 33 A. 718; *Sperry v. Ricker*, 4 Allen 17; *Maynard v. Frederick*, 7 Cush. 247; *Carpenter v. Wood*, 1 Metc. 409; *Dodge v. Brennan*, 59 N.H. 138; *Atterbury v. Columbia College Trustees*, 66 Misc. 273, 123 N.Y.S. 25; *Zorkowski v. Astor*, 13 Misc. 507, 34 N.Y.S. 948 (aff. 156 N.Y. 393, 50 N.E. 983); *Batley v. Button*, 13 Johns. 187; *Matter of Young*, 13 C.B. 623, 76 E.C.L. 623, 138 Reprint 1344; *White v. Sharp*, 1 C. & K. 346, 47 E.C.L. 348; *Goodman v. Sayers*, 2 Jac. & W. 249, 37 Reprint 622. See also 6 Corpus Juris Secundum, p. 206.

As we have already seen, these cases have been pending for more than twelve years. Thousands of pages of evidence, consisting of original documents from the files of the various government departments, affidavits, examinations of witnesses, and other instruments have been filed during that period; large sums of money have been spent in procuring this evidence and producing it before the Commission. It has been an enormous work, involving labor of many persons — experts, technicians and lawyers. The cases have been argued before the Commission on six different occasions by eminent counsel. Learned and exhaustive briefs have been filed, entailing great labor on the part of those who composed them; and every phase of the case has been fully discussed, both in written briefs and orally. The oral arguments have consumed a period of about sixty days.

On the pending petition, the cases were closed for filing of evidence and briefs on January 14, 1939.

After exhaustive oral arguments by distinguished counsel, extending through twelve days, the cases were finally submitted to the Commission on the 27th day of January, 1939. After about two weeks had elapsed, the Um-

pire and the Commissioners began their conferences. These conferences continued, but not on consecutive days, until Tuesday, February 28, 1939, when the last conference with the German Commissioner was held. Another conference was scheduled to be held on Thursday, March 2, 1939, at the office of the Umpire. Shortly before the time for the conference, the letters of the German Commissioner announcing his retirement were delivered to the Umpire and the American Commissioner, respectively.<sup>1</sup>

As is clearly indicated by the letter which was written by the American Commissioner to the Secretary of State, the American Commissioner and the German Commissioner were in direct disagreement as to the issues before the Commission, that is to say, as to whether the record established fraud of a sufficient character to set aside the decision at Hamburg, and, at the instance of the German Commissioner, the Commission was examining the record to determine whether the American Agent had proven his case, and specifically whether the Herrmann message was genuine, when the German Commissioner announced his retirement.

Under the circumstances set out above, to hold that one National Commissioner could, by his voluntary retirement, whether authorized by his Government or not, prevent the Commission from further proceeding with the cases, and especially from deciding the questions at issue when the German Commissioner announced his retirement, would defeat the purpose of the two Governments in establishing this Commission, would deprive the American Nationals in these cases of the remedy provided by the Treaty of Berlin and the Agreement of August 10, 1922, for American Nationals with claims against the German Government recognized by that treaty, and would raise many questions difficult of solution, as to the disposition of the funds now remaining in the Treasury of the United States, pursuant to the Settlement of War Claims Act.

Accordingly, I am of the opinion that the retirement of the German Commissioner on March 1, 1939, did not render the Commission *functus officio* and did not deprive the Commission of the power to decide the questions at issue at the time of his retirement.

Since the above opinion on jurisdiction was prepared, the American Commissioner has been furnished with a copy of a translation of a note from the German Embassy to the Secretary of State dated June 10, 1939,<sup>2</sup> in which the German Embassy notifies the Secretary of State that, since the withdrawal of the German Commissioner, the Commission has been incompetent to make decisions, and there is no legal basis for a meeting of the Commission at this stage, and that the German Government "will ignore the decision to call the meeting of the Commission on June 15th, as well as any other act of the Commission that might take place in violation of the International Agreement of August 10, 1922 and the generally established rules of procedure".

The possibility that the German Government would take this position was taken into consideration in writing this opinion, and this action on the part of the German Government strengthens the decision already reached, to-wit, that the retirement of the German Commissioner on March 1, 1939, did not render the Commission *functus officio* and did not deprive the Commission of the power to decide the questions at issue at the time of his retirement.

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<sup>1</sup> For letters, see Appendix. (*Note by the Secretariat*, this volume, Appendix V, p. 493.)

<sup>2</sup> For note, see Appendix. (*Note by the Secretariat*, this volume, Appendix V, p. 493.)

## II. FRAUD

The questions involved under the issue of fraud may be examined under three heads.

First, were the pleadings filed by Germany, in answer to the Memorial filed by the United States, false and fraudulent; and, if so, who participated in such fraud and what was its effect in the decision at Hamburg, October 16, 1930?

Second, was the evidence adduced to substantiate the pleadings false and fraudulent; and if so, who participated in such fraud and what was its effect in the decision at Hamburg, October 16, 1930?

Third, have the counsel who represented Germany made fraudulent misrepresentations to the Commission or suppressed evidence unfavorable to Germany; and if so, how far has this conduct affected the decision in this case?

While it is perfectly patent that the decision at Hamburg cannot be set aside on account of fraud in the pleadings *alone*, the question of fraud permeates both the pleadings and the evidence and the conduct of counsel, and it is logically, and chronologically, proper to examine the question of fraud in the pleadings first.

## A. Fraud in The Pleadings

The Memorials filed by the United States charged in substance that, immediately after the outbreak of the European war, Germany ordered and conducted throughout the world a general campaign for the destruction of war supplies in neutral countries, and that this campaign of sabotage in neutral countries for the destruction of war supplies, particularly munitions, was extended to the United States while the United States was at peace with Germany. The Memorials further charged that the destructions at Black Tom and Kingsland were the result of sabotage by German agents.

In the Answers of Germany, filed December 14, 1927, in the Black Tom case, and January 17, 1928, in the Kingsland case, it was denied that, immediately after the outbreak of the European war, Germany ordered and conducted throughout the world a general campaign for the destruction of war supplies in neutral countries; and it was specifically denied that the campaign of sabotage in neutral countries was ever extended to the United States. (See Section III, p. 2 and Section IV, p. 9 of each Answer of Germany.)

In her Answers, Germany admitted that she conducted expeditions against Canada, and these expeditions were initiated from the United States, but alleged that such acts had no relation to the charge made against Germany in this case; that the acts were directed exclusively against enemy property and were not intended to do harm to American property. (See Section IV, par 12 of each Answer.)

Germany denounced as a fabrication an alleged circular, authorizing sabotage in neutral countries, and, as a further fabrication, an alleged order, expressly extending the operation of the circular to the United States; and, in making this denial, the Answers use the following language:

"In this connection the German Agent declares again that he is authorized to state on behalf of his Government that no such order was ever issued by any department or agency of his Government." (Section IV, par. 13)

The United States had cited an intercepted cablegram or message from the General Staff dated January 26, 1915, addressed to the Military Attaché in Washington (Ex. 320, Rec. p. 802). This message as sent from Berlin on January 25, 1915, to Washington via Stockholm, reads, in the translation furnished by the German Agent, as follows:

“ Translation.

“ Received January 24, 1915.

Berlin, N. W. 40, January 24, 1915  
Moltkestrasse No. 8

A. S. 307.

ACTING GENERAL STAFF  
OF THE ARMY

Division III<sup>b</sup>  
No. Pol. 205.

To the  
Foreign Office

Secret:

Berlin.

— With reference to A. S. 56 of the 23rd inst.

It is respectfully requested to have dispatched the following telegram in cipher to the Imperial Embassy at Washington:

[For Military Attaché: People fit for sabotage in United States and Canada can be ascertained from following persons:

1) Joseph Mac Garrity, 5412 Springfield Philadelphia, Pa., 2) John P. Keating, Maryland Avenue Chicago, 3) Jeremia O’Leary, Park Row, New York. No. 1 and 2 absolutely reliable and discreet, No. 3 reliable not always discreet. Persons have been named by Sir Roger Casement. In United States sabotage can reach to all kinds of factories for war deliveries; railroads, dams, bridges must not be touched there. Under no circumstances compromise Embassy, and equally Irish-German propaganda.

Acting General Staff”]

(In the name of the Under secretary of State In mundo).”

(Ger. Ex. XXXIV, a and b)

In its Answers, Germany admitted that this message was genuine, that it had been sent by the Intelligence Division of the General Staff, and had been received by the Military Attaché at Washington, Captain von Papen. The Answers refer to exhibits filed therewith by Messrs. Nadolny, von Papen. von Igel and Count Bernstorff, and then allege as follows:

“ These statements show that the sending of the message was the act of a *subordinate division of the General Staff*; that the suggestions made therein were entirely disregarded by von Papen; that the Message remained in the files of the latter and that *no action whatsoever was ever taken upon it*; that no other suggestions of this kind were even given by the General Staff, *that the whole event is but the blunder of a subordinate and that the incident had no consequences whatsoever.*” [Emphasis supplied.] (Sec. IV, par. 14 of each Answer.)

Exhibit G filed with the Answers, is an affidavit of von Papen, who was Military Attaché to the Embassy in Washington and to the German Legation in Mexico at the outbreak of the World War, and who continued as Military Attaché in Washington until he was recalled at the instance of the United States Government. In this instrument he denied that he had ever in any way given any suggestions, instructions, orders or authorizations for destroying factories and stores of munitions within the United States, and that he had lent his support to or furthered any projects aiming at such destruction. He further stated (p. 5):

“ I also never received orders or instructions to commit acts of force against American munitions factories or stores of munitions, from central military authorities or other superiors. I did, however, receive one authorization for undertaking such acts, which I shall treat separately.”

He denied having received the alleged circular of the General Staff authorizing sabotage or the letter in regard to said circular giving effect to such circular on American territory.

With reference to the message of January 26, 1915, he stated as follows (p. 6):

"I persisted in my opposition to sabotage acts, even when I received the telegram dated Jan. 26, 1915 (Exhibit 18 and Exhibit 320, page 35), in which the Department III-B of the Home General Staff declared sabotage on the territory of the United States to be permitted, at the same time giving addresses where information for this purpose might be obtained. From the very first I was of the opinion that it would be an indefensible decision to make use of this telegram. I did not impute to it any great significance because I was convinced that it did not spring from the initiative of a German military authority but was due to the urging of Sir Roger Casement who had, in the United States given vent to similar projects. To this was added the fact that it was not an utterance of a leading military authority, who alone could have dispatched such important questions and instruction binding for me, but instead was a communication of a subordinate department of the Home General Staff. Therefore, I did not, even in passing, consider acting on the telegram but for the reasons stated above simply considered it as requiring no further action. I expressed myself to the same effect to Mr. von Igel. Furthermore, it is my distinct recollection that I did not talk to the Ambassador. There was no necessity for that because I did not receive definite instructions for undertaking sabotage, it being left entirely to my discretion whether to initiate such acts."

In his affidavit, von Papen specifically disapproved of von Rintelen's activities and those of Dr. Scheele in the manufacture of bombs.

Exhibit B, filed with the Answers, is a statement of Nadolny. In this statement, Nadolny, the Chief of "Sektion Politik" of the General Staff, alleged that reports were coming to his office "that America was not taking a neutral attitude but was opposing Germany especially by way of effectively supporting our opponents with war materials"; that persons were coming from America who advised *taking steps against American factories engaged in supplying enemies with war materials* and who named to the Political Section people "who could in many possible ways frustrate such production by acts of sabotage."

Then the Chief of the "Sektion Politik" stated as follows:

"Following this advice, we in fact once sent such instruction to Washington at the beginning of 1915, if I remember it correctly. It was, however, especially pointed out therein that *acts of sabotage were only to be directed against the delivery of war materials and not against any other objects.*

"However, the Foreign Office took the position that even sabotage of that kind was not permissible as America, in spite of its war support which was contrary to the spirit of neutrality, was officially a neutral country. For that reason — as far as I know — no further instructions were sent out. As I learned later on, the first order was not carried out either, because the Authorities in Washington also opposed the execution and did not take any steps." (Emphasis supplied.)

Germany filed as German Exhibit XXXV, an affidavit of the same man, Rudolph Nadolny. In this exhibit, Nadolny claimed that the telegram of January 26, 1915, originated out of the activities of Sir Roger Casement, the Irish agitator, who had been in the United States and paid a visit to Germany, and the claim was made that it was sent at his instigation, as he was a man "easily aggravated". Nadolny explained that he could no longer remember whether the telegram was formulated in the Political Section, or had been brought in by Casement, but he definitely recalled that the Military Attaché would be advised

"that other objects than factories must by no means be attacked and that no act whatever must be done whereby any danger could arise of compromising our representation in the United States or the German-Irish movement." (p. 3.)

It is contended by Nadolny that the telegram did not "contain an order", and, therefore, he did not communicate with the Mobile General Staff or with the Ministry of War, and the telegram was sent "on my own responsibility". Nadolny further avers:

"From the fact that the telegram did not *contain an order, it follows as a matter of course* that Mr. von Papen, if he did not agree with it, had the *right to disregard it altogether.*" (Emphasis supplied.) (p. 4.)

He repeated a conversation with the Foreign Office where "I had to go very frequently", to the effect that the Foreign Office told him "that sabotage in the United States must by no means be undertaken".

In the light of the subsequent history of sabotage in America while the United States was neutral, the distinction between an "order" for sabotage and "authority" for sabotage would appear to be a form of specious pleading.

To substantiate its pleadings, Germany later filed, as German Exhibit CXXIII, an affidavit of Hans Marguerre, a major in the regular army and attached to the "Sektion Politik" of the General Staff, of which Nadolny was the head. In his affidavit, Marguerre related that "Sektion Politik" had sent agents to neutral countries in order to locate establishments producing war material or selling raw material for such production; and to collect information with regard to the production of ammunition, ammunition stores, the shipping of ammunition, and in regard to transports, with the requirement that they should report thereon to undercover addresses or in coded telegrams. The purpose of collecting this information was to enable "Sektion Politik" to collect data as complete as possible about the resources of various neutral countries. He denied that these agents had orders to destroy such establishments while the countries were neutral, and then he states (p. 7, Testimony of July 30, 1930):

"It is true that *as soon as the neutral country entered the war, they [the agents] were immediately to start actions against the establishments* found by them to be essential for carrying on the war, so that the resources of the now enemy country would be *depleted* as much as possible. The agents were, therefore, when the neutral country entered the war, to remain in that country and were then *to begin actions against ammunition plants and other plants* important for carrying on the war. As long as the country was neutral, however, they were only to collect the data \* \* \* and report thereon." (Emphasis supplied.)

In denying that their agents had been sent into America to commit sabotage against the American ammunition industry or against American ammunitions, Marguerre said (p. 8):

"It is true, *I sent agents to America* and provided them *with instructions and material to stop American establishments, essential for war, from working, if possible.* These instructions, however, were to be followed out *only in the event of America entering the war* and they were to take effect only from that date on." (Emphasis supplied.)

Marguerre related how, in February, 1916, he had a conference in Berlin with Hilken and Herrmann, in which he gave Herrmann similar instructions and furnished him with incendiary devices designed to cause fires and explosions. In justifying this act he said (p. 15):

"As I said before, in our organization we took into account all possibilities, also that of America entering the war. *On account of the great distance and the supervision of means of transport becoming closer all the time it would have been impossible to send agents and sabotage materials to America after the outbreak of the war. For this reason we had, as I said, to make our preparations in America during neutrality so that in case of America's entering the war we would have agents and material on the other side.*" (Emphasis supplied.)

Marguerre admitted that Hilken was the financial agent of "Sektion Politik" in America for the purpose of furnishing "funds to our agents". The affidavit clearly discloses that Marguerre, in his conference with Herrmann and Hilken, arranged that Herrmann should draw necessary funds from Hilken, and Hilken was instructed to pay the funds required by Herrmann up to a certain limit without requesting an accounting. Marguerre said he could not confirm Carl Dilger's claim that later he (Dilger) received from Marguerre and Nadolny a trunk with a false bottom containing incendiary devices. He did, however, testify as follows (Testimony of August 1, 1930, p. 2):

"Did you send further incendiary pencils to America after Herrmann's departure?"

"A. I remember that some time after Herrmann's visit we had a trunk made with a double bottom, in order to pack *glass tubes* therein in a secret partition. I do not know who was entrusted with this trunk." (Emphasis supplied.)

He also testified that he could not deny that Carl Dilger was right in claiming that the trunk was delivered to him.

The record further shows that devices of this character were also furnished Wochst by Marguerre and brought to this country in the fall of 1916.

The record clearly discloses that the incendiary devices which were furnished to Herrmann, to Carl Dilger and to Wochst were used for sabotage in the United States, while the United States was neutral, that these incendiary devices were taken by Herrmann to Mexico for the purpose of setting fire to the Tampico Oil Fields, and that such incendiary devices were also used in the Argentine, which never entered the war. In the light of this record the explanation of Marguerre would seem to pass the bounds of human credulity, and brands his affidavit as false.

In Exhibit E, filed with the Answers, Count von Bernstorff, the Ambassador to the United States, denied that he had ever had anything to do, directly or indirectly, with acts of sabotage against munitions plants in the United States or that he had ever lent any support by word or deed or in any other way to such acts.

As to the telegram of January 26, 1915, to the Military Attaché, he denied it was submitted to him or that he ever saw it while he was Ambassador. He justified the do-nothing attitude of von Papen, since such action was in accordance with the usual procedure between him and von Papen, and he denied that the recall of the Military and Naval Attachés in 1915 had anything to do with sabotage against American property.

While Germany denied in its Answers, and specifically through the statement of the Ambassador, Count von Bernstorff, that it was responsible for the activities of Rintelen in this country, the record in this case proves conclusively that Rintelen's activities in this country were connected with inoculating horses and cattle, the destruction of piers and elevators and munitions factories; that he was furnished with incendiary devices by a German chemist, Dr. Scheele, who manufactured bombs and other incendiary material, not only for Rintelen, but for other saboteurs.

Hinsch, who was Germany's main lay witness to destroy the authenticity of the Herrmann message, admitted starting his sabotage activities after he met Rintelen in May, 1915, practically two years before America entered the war. In April, 1915, Rintelen met Hilken, the admitted sabotage paymaster in this country; and Rintelen, in his book, *The Dark Invader*, gives a clear picture of his activities showing that they were not only known to, and approved by, the Military Attaché, but also Count von Bernstorff himself.

When Rintelen arrived in this country, two telegrams were sent from the German Government in Berlin to the Embassy in Washington, the first, dated April 4, 1915, reading as follows:

"Inform RINTELEN who arrives today that (?) RICKET arrived April 21st. Inform him about PAPAN'S proposals." (Ex. 320, rec., p. 818)

The second, dated April 5, 1915:

"Inform BOY-ED as to PAPAN'S proposals for transmission to RINTELEN." (id. p. 819)

Although Count von Bernstorff in his book, *My Three Years*, and in his affidavit, disclaims responsibility for, and knowledge of, the activities of Rintelen, this disclaimer is contradicted, not only by Rintelen himself, but by a telegram dated May 12, 1915, sent by the Ambassador to Berlin, which reads as follows (Ex. 320, Rec. p. 821):

"RINTELEN has asked me to give him a letter of introduction to a firm of lawyers who are ready to take legal proceedings against the (?LOCK) Company for supplying munitions, but who are unwilling to proceed with the matter unless RINTELEN is provided with an official introduction. In the circumstances I do not feel justified in compromising the Embassy to any further extent, as any such action on my part might be the last straw which broke the camel's back. I have accordingly the honor to request that RINTELEN may be furnished with a letter of introduction by the Ministry of War at the earliest convenience of that Department." (Emphasis supplied.)

A careful analysis of the three telegrams quoted above will show that the Government in Berlin was anxious for Papen's proposals to reach Rintelen immediately upon his arrival in the United States; that the Embassy was apprised by cable of the date of Rintelen's arrival in America; that the Ambassador *did know* Rintelen, and that Rintelen knew the Ambassador well enough to request, five weeks after Rintelen's arrival, a letter of introduction to some lawyers who were ready to take proceedings against a company supplying munitions, but who were unwilling to proceed unless Rintelen should be provided "with an official introduction". The Ambassador informs Berlin that he does not feel justified in compromising the Embassy to any further extent, as such action on his part might be the *last straw to break the camel's back*, but he does have the honor to request his Government to furnish Rintelen with a letter of introduction by the War Department at the earliest convenience of that Department.

The fact that the Ambassador did know Rintelen and his mission in America is further proven by the following telegram sent to Berlin on December 10, 1915 (Ex. 320, Rec. p. 824, repetition on p. 825), reading as follows:

"Convinced that RINTELEN was principal reason for demanding recall of Attaché. His immediate removal is therefore absolutely necessary. [An immediate categorical disavowal absolutely necessary]. *Only connection which can possibly be traced with us is the 500,000 dollars received from Naval Attaché and required for the goods exported.*" (Emphasis supplied.)

Rintelen, in his book, *The Dark Invader*, relates how, a few hours before his departure from Berlin, he provided himself with the necessary "working capital", which he only succeeded in collecting when the train was getting up steam, and he states that in the short time at his disposal he succeeded in arranging for a cable transfer of half a million dollars as a "starter". (*The Dark Invader*, p. 75.)

As admitted by Marguerre, Herrmann received from "Sektion Politik" definite instructions in regard to sabotage in Amerika and incendiary devices for that purpose; and Hilken was furnished with funds upon which Herrmann could draw for sabotage purposes without accounting therefor; and in the early spring of 1916, they went back to America and carried out these instruc-

tions while the United States was neutral using for the purpose various sabotage agents, chief among whom was Hinsch. Hinsch admits that, following conferences with Rintelen in May, 1915, he had been for a year engaged in sabotage against property in America. The record discloses the fact that Hinsch met Rintelen through Hilken. These agents were engaged in sabotage activities in America against horses and cattle, ships and munitions factories, wharves and warehouses and other forms of property in America.

Count von Bernstorff was examined before a subcommittee of the National Constituent Assembly of Germany which was appointed to inquire into the responsibility for the war (Ex. 511, Rec. p. 1802). In the course of this examination Count von Bernstorff, in endeavoring to show why public opinion in the United States veered away from Germany, made the following statement (id. p. 1803):

"It was stated by those who were issuing the enemy propaganda, and, I am forced to admit, is looked upon as proven as the result of the investigation by the American Senate, that conspiracies were instigated by Germany in the United States which were in conflict with American laws."

He stated that in his opinion there was no conspiracy but:

"There were only individual transactions, which, as a matter of fact, were in violation of the laws of the United States but with which we over there, or at least I personally, never had anything to do."

Again, referring to Rintelen's activities in the United States (id. p. 1806):

"I do not know even today who it was that sent Rintelen to the United States and what his mission was.

\* \* \* \* \*

"It is true that it was alleged in the United States that bombs had been laid on the merchant ships of all nations, and that ammunition factories had been blown up, etc. But I can state here under oath that I do not know whether such cases actually occurred or whether they have been proved."

When pressed by the Chairman to say whether the German Government stood behind these acts of sabotage, he answered as follows (id. p. 1807):

"Witness Count v. Bernstorff: I should have to have this question very carefully put. Who was the German Government?"

"The Chairman: Let us say the Foreign Office."

"Witness Count v. Bernstorff: Certainly not the Foreign Office."

"Delegate Dr. Sinzheimer: Did you know of these agents, particularly Mr. Rintelen, having been provided with money and provided, indeed, with generous amounts of money?"

"Witness Count v. Bernstorff: With regard to the recall of naval attaché Captain Boy-Ed, I was officially and subsequently informed by the American Government that the reason, which it had hitherto refused to give, why Captain Boy-Ed's recall had been demanded was that proofs had been submitted to the effect that Rintelen had received a half million dollars from him."

The insincerity of von Bernstorff, the German Ambassador, is not only shown by his misrepresentation of his relations with Rintelen and of his knowledge of Rintelen's activities, but it is clearly shown by two other telegrams passing between Zimmerman and von Bernstorff, intercepted by British Naval Intelligence, the first, ordering the destruction of the Canadian Pacific Railroad, and the second, relating to Canada's demand that the officer guilty thereof should be extradited from the United States.

These telegrams are as follows (U.S. Ex. 320, Rec. p. 795):

“ B. 386,  
“ Transmitted 3rd Jan. (should be  
Dec.) 1915  
(5950)

“ From BERLIN

To WASHINGTON

“ With reference to my telegram No. 357. Secret. The General Staff is anxious that vigorous measures should be taken to destroy the Canadian Pacific in several places for the purpose of causing a lengthy interruption of traffic. Captain BOEHM who is well known in America and who will shortly return to that country is furnished with expert informations on that subject. Acquaint the Military Attaché with the above and furnish the sums required for the enterprise.

“ ZIMMERMAN.”

The authority given by the above telegram was evidently executed by von Bernstorff; for under date of 11th of February, 1915, we find a telegram directly related to the above and reading as follows (Ex. 320, Rec. p. 805):

“ MOST SECRET

“ From WASHINGTON

To BERLIN

No. 251

11th February 1915.  
(0064)

“ The carrying out of your telegram No. 386 for Military Attaché, was intrusted to a former officer, who has been arrested after (causing) an explosion on the Canadian Pacific Railway.

“ Canada demands his extradition.

“ I request authority to protect him; according to the laws of war, the decision ought presumably to be: Non-extradition, provided that an act of war is proved.

“ I intend to argue that *although the German Government has given no orders*, the Government regarded the causing of explosions on an enemy railway as being, since it furthered military interests, an act of war.

“ (Signed) BERNSTORFF.”

(Emphasis supplied.)

Here is proof positive that von Bernstorff had full knowledge of the organization on neutral American soil of an expedition of sabotage against the Canadian Pacific Railroad.

In addition, these messages convict von Bernstorff of a willingness to deceive. By the first, he was given instructions to take vigorous measures in order to destroy the Canadian Pacific Railroad in several places. By the second, he expressed his intention to say to the State Department of the United States that “the German Government had given no orders”. If, in order to save from extradition the agent employed by him for the destruction, he was willing to inform his own Government of his intention to deceive the State Department, it is not surprising that, in these sabotage cases, he was willing to swear to a falsehood, in order to justify the false pleading filed by his Government.

Referring again to the telegram of January 26, 1915, it will be recalled that Germany, in her Answers and by the exhibits filed therewith, claimed that the transmission of this telegram was the act of a *mere subordinate*, and that it was not authorized by any responsible official or department of the Government of Germany. Upon motion of the American Agent, Germany was called on

to produce the records relating to this telegram. From these records it appeared that the telegram originated in the Foreign Office, and that the Foreign Office originally drafted the telegram and transmitted the same to Nadolny, of the General Staff, with the request that it be sent to the Military Attaché at Washington. It also appeared that, upon the original, as transmitted by the Foreign Office to Nadolny, as well as upon the original, sent by Nadolny to Stockholm for transmittal to the United States, there were imposed names and initials which proved conclusively that it not only had the approval of the "subordinate", Nadolny, but that in his capacity as "subordinate", he was acting for the Foreign Office and that the sending of the telegram was approved by many other responsible German officials.

In German Exhibit XXXV filed to substantiate Germany's plea, Nadolny claimed as follows:

The cable of January 26, 1915, was the result of the insistence of Sir Roger Casement. Whether the message was formulated in Section III-B or whether the text was brought or sent to him by Casement he could no longer say with certainty, but the text was formulated after his conference with Casement. The telegram contained no order and therefore left the initiative to the Military Attaché. He did not communicate in regard to it with the Mobile General Staff which alone could give orders to the Military Attaché. He did not submit Casement's propositions to the Mobile General Staff and as regards the transmission of the telegram, the "Foreign Office acted merely as a technical intermediary" and the "signature of under-secretary Zimmermann could not by any means give to the document the character of a message or instruction by the Foreign Office to Mr. von Papen".

The American Agent asked Germany to produce the document A. S. 56 to which the telegram referred on its face; and finally the Commission requested the production of this instrument.

As illustrative of the good faith of Germany in its defense, it is interesting to read the dissent of the German Commissioner from the Order of the Commission of May 1, 1929. He said:

"The cable of January 26, 1915, was instigated by the Acting General Staff and approved of by the Foreign Office. Both authorities, and thereby Germany, are responsible for the issuance of the message and its consequences. The records referred to by the American Motion cannot add anything to this fact which is established and admitted. They would only be material if it appeared from them that von Papen's sworn statement was untrue. Then the German Government, though knowing from its files that Papen had committed perjury, would have used an illicit defence in presenting Papen's testimony.

"This most serious insinuation by the claimants is not supported by the slightest evidence. It means a reflection not only upon Papen but much more upon the attitude of the German Government itself which I am unable to agree to."

After A. S. 56 had been produced the defence which Germany had made in her Answer, her arguments and her proof that this message was the unauthorized act of a subordinate officer in Section III-B was shown to be false and known to be false.

The brief filed by Germany on the 14th day of September, 1929, contains this information about the origin of the telegram (pp. 57, 58):

"It appears from said document that the communication was drafted by one Meyer (then on temporary duty at the Foreign Office and attached to Sir Roger Casement as interpreter), initialed by two members of the Foreign Office (Count Montgelas and Count Wedel), and signed by the Acting Division Chief (signature illegible).

\* \* \* \* \*

"As it appears now, the message was the result of mutual discussions between Sir Roger Casement, Meyer and Nadolny; it was formulated by Meyer, who had been attached to Casement as interpreter and kind of 'aide de camp', and it received the sanction of the Foreign Office, not after Nadolny had made his formal request of January 24th, but before. Consequently, Nadolny was mistaken when he stated that 'the Foreign Office acted merely as a technical intermediary' (Ger. Ex. XXXV, p. 5). As a matter of fact, it took an active part in bringing about the dispatch of the proposition suggested by Sir Roger Casement.

"Under the circumstances the German Agent is not in a position to maintain his argument that the message of January 25, 1915, was the blunder of a 'subordinate'.

"Apart from that, however, the arguments proffered by him in connection with this subject-matter stand." (Emphasis supplied.)

It was subsequently contended as follows:

"Since he [von Papen] did *not* act upon it, the incident is eliminated as a possible factor in the case and it does not matter, therefore, whether the cable originated with members of one or another department of the German Government." (id. p. 59)

Thus counsel for Germany were compelled to acknowledge the falsity of the German Answer, and of the exhibits filed therewith, and, in their extremity, they resorted to another equally false statement, namely, that although the authority to commit sabotage was actually given by the Foreign Office and sanctioned by many officials of the German Government, it was not acted upon, and, therefore, was eliminated as a possible factor in the sabotage cases.

But the falsity of the German pleading to the effect that sabotage against property in America and against property in other neutral countries was never authorized during the period of neutrality is conclusively shown by two telegrams that passed between the German Minister of Mexico, von Eckardt, and Marguerre and Nadolny, in charge of "Sektion Politik", just after America entered the war. Ex. 520, Rec. p. 1847, contains the first telegram, which reads in translation furnished by the German Agent, as follows:

"A.S. 1488 pr April 17, 1917, a. m.

communic. 4/18  
'Sektion Pol. Gen. Staff Berlin  
Extract to II E.

Telegram

"Stockholm, April 16, 1917 1 : 40 p. m.

Received: 5 : 10 p. m.

From the I. (mper.) Minister  
to the Foreign Office.

*Deciphered Text.*

No. 632

In cipher from Mexico: 17 April 12

Marguerre

[For Captain **Magea** or Nadolny, General Staff:

'Mexico, April 12. Where is Lieutenant Whost? Has he remitted about \$25,000 to Paul Hilken? Either he or somebody else should send me money Fritz Quarts en Hermann.'

Referring to preceding paragraph. Hermann (slender fair, German with ----- American accent) claims to have received a year ago order from General Staff and again last January from Hilken to set fire to Tampico oil fields and wants to put plan into execution now. He asks me if he should do it; am I not to answer that I have no contact with Berlin? Mr. von Verdy suspects him and his com-

panion Raoul Gerds to be American-English spies. I request telegraphic answer, rush.]

\* \* \* \* \*

von Eckardt.  
Lucius.”

(Ger. Ann. 21, accompanying Report of German Agent of August 1, 1929.)

The above is one of the famous telegrams which were intercepted and decoded by British Naval Intelligence. An examination thereof, in the light of the record in this case, shows that von Eckhardt, the German Minister in Mexico, is forwarding a message from Herrmann, making inquiry as to the whereabouts of Lieutenant Wohst and about \$25,000 that he expected would be sent to Hilken, for his (Herrmann's) benefit.

The reply to the above telegram is found in U. S. Exhibit 320, Rec. p. 874, and reads as follows:

“ FROM: S	B-2
To Mexico	B-2
	To Mexico
	No. 38
	13.5.17

“ Reply to Tel. No. 17

“ Herrmann's statements are correct. Nothing is known of Gerds. Wohst has been retired.

“ The firing of Tampico would be valuable from a military point of view, but the General Staff leaves it to you to decide.

“ Please do not sanction anything which would endanger our relations with Mexico or if the question arises, give Herrmann any open support.

\* \* \* \* \*

(Ex. 320, Rec. p. 874.)

A careful analysis of the two telegrams or messages above set out shows clearly that on the 12th day of April, 1917, six days after America entered the war, Herrmann, promptly after his arrival in Mexico City, called on the German Minister in Mexico, Eckardt, asking for money, and that he also informed the Minister that he had received from the General Staff *a year ago* a commission, which had been renewed in January by Hilken, to set fire to the Tampico oil fields, and that he now proposes to carry it out, and he wants the Minister to sanction such a plan. The Minister is not certain whether Herrmann and Gerds, his companion, were German agents and could be trusted, and recites to Marguerre and Nadolny, of the General Staff, that Verdy believed them to be American spies, but he suggests to the General Staff that it might be well for him to deny that he was in touch with Berlin!

The answer sent by the General Staff on the 13th of May is that Herrmann's statements were correct, namely, that Herrmann, *a year before that*, had received a commission from the General Staff, which was renewed by Hilken in *January*, to set fire to the Tampico oil fields; but while the General Staff recognizes that the firing of Tampico would be valuable from a military point of view, the matter is left with German Minister von Eckardt to decide; but the Minister is warned not *openly* to support Herrmann.

These telegrams show beyond the peradventure of a doubt the falsity of Germany's Answer, and this falsity is further shown by the specious explanation given of these telegrams in Vol. II of the “ BRIEF ON BEHALF OF GERMANY ”,

filed November 19, 1928, where these telegrams are discussed in the following language:

"In the second case, which occurred in April, 1917, after the United States had entered the war, *authorization* was given to cripple the source of supply of the Allied Powers for one of the most important war materials (oil) by setting fire to the Tampico oil field in Mexico. At the time the execution of this authorization was under contemplation (April, 1917), the Tampico oil field was controlled by the Standard Oil Company of New Jersey and other enemy corporations.

"In spite of this fact the German Minister to Mexico objected to the plan and, after the German General Staff had left the decision to him, abandoned the scheme because to attack even enemy property in neutral territory was contrary to the German general policy. The matter of the Tampico oil field presents a certain similarity to the greatly-discussed cable of January 26, 1915, in that the former ultimately became the subject of a discretionary permission. In both instances action, if taken, would have been in violation of neutrality. In both instances discretion was granted to the local German authorities and in both instances these local authorities exercised their discretion by refraining from any action and thereby conformed with the general policy which respected the neutrality of the countries involved." (p. 294)

It is a fact, as stated in the quotation from the brief above, that the United States did enter the war in April, 1917, that is to say, on the 6th day of April, just *six* days before von Eckardt's telegram to Marguerre and Nadolny. It is also true that some of the companies operating in the Tampico Oil Field were American oil companies; but it is likewise true that Mexico was at that time and remained, during the war, a neutral country. While the brief tries to justify the authority for sabotage given in the telegram upon the ground that, when the telegram was sent, the United States was at war with Germany, it fails to notice the fact that the authority for sabotage had been given by "Sektion Politik" more than a year before the United States entered the war, and that this authority had been renewed in January, 1917, more than two months before the United States entered the war, and the brief completely ignores the fact that the acts of sabotage were to be committed on the soil of neutral Mexico.

As stated in the quotation from the brief set out above, there is a certain similarity between the cable of January 26, 1915, and the commission, given by the General Staff to Herrmann the year before the United States entered the war and renewed by Hilken two months before the United States entered the war, to destroy the Tampico oil fields; and there is a great similarity also between the plea in Germany's answer and the argument in Germany's brief.

We shall hereafter have occasion to examine with care what the record discloses about Gerdts. For our present purpose, it is sufficient to refer to the fact that on August 1, 1917, S. Le Roy Layton who had been vice consul to Colombia but had recently been transferred, as American vice consul to Canada, made a report to the Secretary of State on the subject "Plot to blow up the oil wells at Tampico, Mexico, by a German-American". An examination of this report and of a report of Layton's successor, Claude E. Guyant, American Consul at Barranquilla, Colombia, discloses the fact that Gerdts reported to each of these gentlemen an effort on the part of Herrmann to induce Gerdts to cooperate with him in blowing up the oil fields at Tampico. Herrmann showed Gerdts for the purpose some incendiary tubes which he, in company with Gerdts, had brought from the United States through Havana to Mexico. (Ann. G to Ex. 583, Rec. pp. 2345-2348; Ann. H. to Ex. 583, Rec. pp. 2349-2354.)

This testimony, given only a few months after the United States had entered the war, absolutely corroborates the confessions of Herrmann and Hilken and disproves the false pleading of Germany and the false statements of Marguerre.

With the fraud in the pleadings as a preamble, it now becomes necessary to discuss the further question as to whether there was fraud in the evidence brought before the Commission at The Hague; and whether the conduct of the Counsel for Germany was of such a character as to mislead the Commission and to require the setting aside of the decision at Hamburg.

### B. Fraud in the Evidence

In making an examination of the evidence which was before the Commission at The Hague it is pertinent and proper, so far as the Kingsland disaster is concerned, to begin with Wozniak.

#### (1) *Wozniak*

According to Wozniak's own testimony, the fire started at his bench, and all of the eye witnesses of the fire agree in one statement, namely, that the fire originated at the bench where Wozniak was working. Wozniak, himself, has made many statements with regard to the origin of the fire; but in all of these statements, whatever else may be the variation between them, he has always insisted that when he was cleaning and swabbing out the shell and pulled out the rag which was on the end of a stick, the rag was afire.

In other words, Wozniak was the *real actor* in producing the results that followed, and the main question which was before the Commission at The Hague, so far as the Kingsland disaster was concerned, was whether the fire was caused by the intentional activity of Wozniak.

In the opinion at Hamburg the Commission devoted about eight and a half pages to the Kingsland disaster, and, of these, three are devoted almost entirely to Wozniak alone. In another portion of the opinion, the Commission compared Herrmann's story with Wozniak's *statements* and *acts*, and this comparison led it to doubt Herrmann's story and to give credence to Wozniak in the following language (p. 975):<sup>c</sup>

"The discrepancies and improbabilities of Herrmann's story tend to strengthen our very strong impression from Wozniak's *acts* and *statements* at the time of the fire and shortly thereafter and from the circumstances of the fire that Wozniak was not guilty. In the same way our impression of Wozniak, derived from careful study of these *acts* and *statements* and circumstances, tends to increase our doubt of Herrmann's sincerity in his latest evidence." (Emphasis supplied.)

After making this comparison, the Commission devoted over three pages to the study of Wozniak and his relation to the case, and was inclined to believe that Wozniak, being a crank and smart, but naive, if he had planned to set the fire, would not have started it at his own bench.

The Commission examined the letters which were written by Wozniak to the Russian officials before the fire, and came to the conclusion that these letters were not a blind, but such letters as Wozniak, who was at heart a Russian and who intended to go to Russia, would have written, and that he was shocked at the carelessness and the corruption of the inspectors of the plant. The Commission concluded that without relying "at all on his [Wozniak's] honesty of statement he nevertheless seems to us [the Commission] to act and talk like a man who is really innocent in respect to this fire". (Decs. and Ops., p. 978.)<sup>d</sup>

We shall now examine the record with a view to determine whether, if the Commission had had before it the statements made by Wozniak after The Hague;

<sup>c</sup> Note by the Secretariat this volume, p. 89.

<sup>d</sup> Note by the Secretariat, this volume, p. 91.

which directly contradicted, in essential points, his evidence given before that time, and if the Commission had known that the affidavits of Wozniak, filed by Germany, had been filed only after Germany's counsel yielded to blackmail demands and paid Wozniak money for his testimony, it is probable that the Commission would have reached the same conclusion, namely, that Wozniak acted and talked like a man who was really innocent in respect to the fire.

It is pertinent, also, to note that, of the oral argument of the German Agent at The Hague, nearly fifty pages of the transcript are taken up with Wozniak, his statements and activities.

How Wozniak became a witness for Germany is recited in the affidavit of Dr. Tannenberg, dated 12th day of September, 1929, and filed on that same date (Ger. Ex. LXXXIX (a)). In this affidavit, an explanation is made as to how Wozniak's two affidavits (Ger. Ex. LXXXIX (c) and LXXXIX (d)) executed on April 24, 1929) were prepared and executed. In the course of Dr. Tannenberg's affidavit, he recites the employment of Wozniak to assist the German Agent in making an investigation for the purpose of verifying Wozniak's statements (p. 16), and the agreement that Wozniak should be paid \$10 a day and expenses, upon the assurance by the German Agent, in answer to Wozniak's inquiry, that such compensation would not affect Wozniak's standing as a witness, because the compensation was not for *testifying* but for *assisting the German Agent in his investigations* (p. 17); and the statement is made that he was paid \$10 per day for each of 42 days during which he assisted the German Agent in his investigations (see p. 17).

Referring to the question of compensation which was paid by Germany to Wozniak, the German Agent, in the oral argument at Washington, November, 1932, stated to the Commission as follows (p. 147):

"Wozniak, during his entire examination in 1929, never asked for money. If I remember correctly, I stated in my affidavit [Sept. 12, 1929] (Exhibit LXXXIX (a)) that when he was in Washington and I informed him that of course we would have to compensate him for his out-of-pocket expenses and loss of time he stated that that could not be done; that is, *he declined to take even this compensation, to which, as a witness, he was entitled.* When our investigation continued, and we, indeed, needed the assistance of Wozniak in order to have him confronted with various witnesses and to verify his story, we paid him his out-of-pocket expenses, and a certain amount for loss of time. As I remember, the investigation required several months, a little more than two months, during which time the witness was at any time at our disposal, *no compensation was asked by him, and no compensation was paid to him for his testimony*, except his out-of-pocket expenses and his compensation for loss of time, which at that time, as I remember, was \$10 a day." (Emphasis supplied.)

Wozniak's affidavits of April 24, 1929, were filed on August 20, 1929, and Dr. Tannenberg's explanatory affidavit was filed on September 12, 1929. Dr. Tannenberg, on July 15, 1929, more than a month before Wozniak's affidavits were filed, wrote in his own handwriting a letter to Wozniak in which he inclosed three certificates and in which Dr. Tannenberg explained his delay in forwarding the certificates. The last three paragraphs of this letter read:

"Just before my departure Dr. von Lewinski informed me by telephone that you had come to the German Consulate General to see him and that you discussed *our matter* with him. I hope that Dr. von Lewinski convinced you that *our relations are those of friends and gentlemen*, that you can have full confidence in himself and myself and that we shall do everything that is possible to protect and assist you. I may assure you again that I am convinced that nobody will bother you,

since your innocence in the Kingsland matter is completely established. Should somebody from the Company approach you in this matter, I would appreciate it greatly if you would inform me by letter immediately of what was said to you, or, if you prefer to do that, to go to the German Consulate General and discuss the matter there with Dr. von Lewinski.

"As regards our last conversation in New York I hope I have convinced you that we have worked and shall work together in full harmony, that I fully understand the position taken by you, and that everything will be done by me and Dr. von Lewinski. *Mr. Healy's remarks were absolutely his personal ones. I do not share them and disapprove them entirely. He was not authorized to discuss such matters with you.*

"In order to show you that your confidence in me and Dr. von Lewinski is entirely justified in every respect, I may repeat that Dr. von Lewinski and I are at any time at your disposal. If you want to discuss something with us, just send me or Dr. von Lewinski a note, or ask for Dr. von Lewinski at the German Consulate General in New York. I shall always be glad to see you, and so will Dr. von Lewinski. Any question you have in regard to our matter will always be frankly discussed between us.

"Let us always remain friends." (Ex. 977, Anns. A-B, Ex. G.) (Emphasis supplied.)

Wozniak was paid, in connection with his two affidavits of April 24, 1929, the sum of \$450. On July 1, 1930, he was paid \$500; and in the latter part of August, just before the departure of the German Agent in September, 1930, for The Hague argument, he was paid \$350. After The Hague argument he was paid the following sums: after the return of the German Agent from The Hague — \$200; April 16, 1931 — \$35; and on April 21, 1931 — \$500. In 1930 or 1931, Germany also paid about \$1,000.00 in securing his release from a criminal charge. Remembering these payments, it is pertinent to inquire what was meant by the assurances given by the German Agent in his letter of July 15, 1929, when he states as follows:

"As regards our last conversation in New York I hope I have convinced you that we have worked and shall work together in full harmony, that I fully understand the position taken by you, and that everything will be done by me and Dr. von Lewinski. *Mr. Healy's remarks were absolutely his personal ones. I do not share them and disapprove them entirely. He was not authorized to discuss such matters with you.*"

After the decision at Hamburg and after Wozniak found that his source of supply had ceased, he was examined under subpoena before a United States Court under the Act of June 7, 1933 (48 Stat. 117), and testified in August and September, 1933, as follows (Ex. 977, Anns. A-B, p. 42):

"A. In 1929 when I asked Mr. Healy in the Astor Hotel the first time I make affidavit if I going to get extra money for that, he said, 'No, you are going to get just for your time and expenses.' I tell this to Dr. Tannenberg. I was mad about that. He said, 'Mr. Healy has no right to discuss this with you.'"

This testimony took place before Dr. Tannenberg's letter of July 15, 1929, was filed in evidence. After that letter was introduced and filed as Exhibit G, he (Wozniak) was then examined as to the contents thereof and testified as follows (Ex. 977, Anns. A-B, p. 122):

"Q. Referring to this letter, Dr. Tannenberg says, 'Mr. Healy's remarks were absolutely his personal ones.' What did he refer to? What remarks of Mr. Healy's did he refer to?"

A. Something two or three weeks after I started to work with them I asked Mr. Healy what I get for that, my job. He said, 'You are as witness just supposed to get for your time, the time and expenses.' After I told Dr. Tannenberg. He said, 'What for you fool me?' He say 'That is not true; Mr. Healy got no right to tell you and know nothing about this.'"

After Dr. Tannenberg's letter to Wozniak of July 15, 1929, the next in sequence was the letter dated September 27, 1929, which was sent by registered mail from Wozniak to Dr. Tannenberg, the body of which reads as follows: (Ex. 977, Anns. A-B, Ex. D, filed September 15, 1933):

"For the last few Months I have not heard from you and don't know how the matter stands.

"On my trip West I stopped in Chicago, and decided to write few words to you.

"Will you kindly let me hear from you and tell me when this matter will be finished, and what will I benefit if I help you to save the honor of Germany.

"You know what I have done for you in this matter and what I can do as yet???"

"Kindly give me your immediate answer and tell me what I am really worth to you in this matter.

"Expect to hear from you soon."

In spite of the threatening nature of this letter and its ugly tone, Dr. Tannenberg, on October 3, 1929, wrote Wozniak a friendly letter (id. Ex. E), expressing his regret at not having had a chance to see Wozniak and to explain his absences from New York, and promising to send Wozniak a complete set of documents, and then the German Agent stated as follows:

"You may be sure that in view of the fact that you volunteered your testimony in this matter when nobody could compel you to do so, and that due to your voluntary assistance we succeeded in locating numerous old records concerning you, your future welfare will always be a matter of deep interest to us."

To this letter, Wozniak replied, on October 26, 1929, as follows (id., Ex. F.):

"I received your letter. *But I am far from being satisfied. Not one word about reward in this matter.* When I see this matter in the News, I thought therefore, to offer my services to the Company hunting for its own profit, or to the German Government is not hunting for money, but fighting for his honor. I have come to this point that it is to Germany I am supposed to offer my services, and I went to the German Consulate under this impression that the German Government is going to be interested in, prize my services and my condition, and do his best for me without asking for it. But it looks to me as if I am forgotten already. Every one who knows something about this matter laughs at me now. They tell me I offered my services to the German Government for nothing. I was working so hard with my nerves that I became sick again. Before this investigation I weighed 150 pounds, now I weigh only 140, and all my friends dislike me under the circumstances.

\* \* \* \* \*

"When I came to Chicago, before I realized in what kind of position and condition I am, this story was in Chicago newspaper, and now I can get no good job nor reference from anyone. I know one lawyer said to my friend (I met him in Chicago and he knew me from Scranton, Pa.) 'This man is not supposed to play open, it is a big and serious case.' They arrested him, put him in jail, deported, or bump him off, out of the way.

"Now you can understand the condition and position I am in. The last time I saw you you said, 'Germany don't care for money, but for honor.' *I care not only for honor, but for my liberty, existence and life.* I do not know now what will happen next to me. That I got for my services. But I am going to stay with you in this matter, and I advise you, don't give up. Remember this, *the final word I got in this matter, not Charles P. Anderson, and I have full right to take this matter to the United States Court, and sue your Company for using my name without my knowledge, for collecting money under false pretenses, something like blackmailing.*

"*These records, which you permitted me, sent to same address to Chicago, and not only my records, but also all company records, every piece of paper which contains something about me, connected with this matter.*

"*I am going to use the same as evidence against the Company, when there comes a time to start something.*

"I wish to win this case as soon as possible, and be satisfied and *don't forget about me.*" (Emphasis supplied.)

The underscored [emphasized] portions of this letter can be interpreted in no other light than that of a threat of blackmail.

In the oral argument at Washington, in 1932, the German Agent stated that after Wozniak's evidence was submitted, Wozniak left New York and went west and that they did not know where he was, and it was not possible to get into communication with him, but that Wozniak had come back again in 1930 and had been cross-examined by the American Agent.

The letters which have been quoted above show conclusively that the German Agent did know where Wozniak was and that he was able to, and in fact did, communicate with him.

In a letter dated February 10, 1932, written to the American Agent, which the German Agent read into the record in the course of his argument (Oral Argument 1932, p. 128), he used the following language:

"When I returned to this country at the end of March, 1931, I had several conversations with Wozniak. In these conversations he indicated very strongly that he *expected payment of a large sum of money by us.* I advised Wozniak that no such payment could be made. Wozniak repeated his request at every conversation I had with him and, finally, advised me that if his request was not complied with, *he would accept an offer which had been made to him and which would cause me great regret.* I, thereupon, broke off my relations with Wozniak and have not seen him since." (Emphasis supplied.)

In view of this statement, it is remarkable that the German Agent should have, on April 25, 1931, written Wozniak a letter, which reads as follows (Ex. 977, Anns. A-B, Ex. H):

"I received yesterday your registered letter. As I told you last week, I shall go to New York as soon as I have finished the brief which the Commission requested to be filed. This brief has to be filed by Monday next week, that is the 27th of April, so that it is impossible for me to be in New York on Monday morning, since I have to work here until Monday night. I shall go to New York, as originally planned, on Tuesday morning, that is the 28th, and will be at the German Consulate General around 2 o'clock in the afternoon. From that time on I will be at any time at your disposal. I hope I can stay there until Wednesday or Thursday. I have to be back in Washington soon because I have to prepare a further brief in the same matter during the first part of May.

"Your information that the case will be decided on or before May 1st is erroneous. As I said before the Agents still have to prepare further briefs during the first part of May and nobody can say at the present when the Commission will render its decision in this matter, particularly in view of the fact that the German Commissioner is at present in Germany. The Commission merely fixed May 1st as the time limit within which the American Agent should file the further evidence which he announced he would file in support of his petition for the reopening of the case.

"I hope that I can see you on Tuesday. We can then discuss everything and decide how to proceed."

This letter was written immediately after Wozniak had cashed the German Agent's order on the Consulate for \$500.

The registered letter written by Wozniak and referred to in the above letter has never been introduced in evidence. As we know, Wozniak's demands did not begin in March, 1931, but had begun at least eighteen months earlier, to-wit, before July 15, 1929, and had been the subject of correspondence and conversations between the German Agent and Wozniak. The tone of the German Agent's reply to Wozniak's registered letter would seem to indicate that

Wozniak was anticipating the early decision of the case, and accordingly was again demanding a "show-down" as to his reward, for the German Agent is careful to correct Wozniak as to his information that the case would be decided by May 1st, and closes with this statement:

"I hope that I can see you on Tuesday. *We can then discuss everything and decide how to proceed.*" (Emphasis supplied.)

Evidently the demands in Wozniak's registered letter were of the same character as in his letters written in the summer and fall of 1929.

It will be recalled that Wozniak made a trip to Washington on April 16th, 1931, and disclosed to Tannenberg the fact that he had received an offer in regard to the sale of his story to a magazine. In regard to this offer, Wozniak testified as follows (Ex. 977, Anns. A-B, p. 128):

"I told him about this offer in Washington April 16th [1931].

"Q. That was on April 16th? A. Yes.

"Q. That you told him you had an offer from somebody else? A. Yes, and he told me, 'Don't do that,' and tell me wait; and between April 16th and April 30th I received from him \$500 to make me happy.

"Q. Between April 16th and April 30th you received \$500 from Mr. Carl Loerky at the Consul General's office? A. Yes.

"Q. And that \$500 was paid to you so that you would not accept the other offer that had been made to you by Mr. Bishop? A. That was paid to me to believe them, they good to me.

"Q. That was paid to you for what? A. To believe in them, they good to me.

"Q. In order to make you believe that they were good to you and would keep their promises; is that what you mean? A. Yes."

And, again, on p. 120, he was asked:

"Did Dr. Tannenberg advise you what you should do about the offer? A. He said, 'Forget it.'

"Q. He said 'forget it'? A. Yes, 'Don't do that.'"

At the conference between Wozniak and Tannenberg in Washington on April 16th, he got an order for \$500 which was paid him in cash at the German Consulate's office in New York; and subsequent to the receipt of this money, the German Agent wrote the letter of April 25th, 1931, in which, as we have seen above, he expresses the hope that he would see Wozniak in New York on Tuesday and that "We can then discuss everything and decide how to proceed".

In his 1932 argument in Washington, the German Agent stated that up to the beginning of 1931 he had not been in contact with Wozniak after the summer of 1930; that in the beginning of 1931 Wozniak was arrested on a flimsy charge; that they assisted in getting him out on bail, but by that time the witness had lost every bit of his courage. He had been shadowed by detectives. He had been arrested and placed in an awful situation; his rooms had been searched, and then the German Agent said:

"*He began, as I said in my letter to the American Agent, then to make demands. \* \* \* Of course, we could not compensate the witness even for those troubles \* \* \*; but finally he made a demand for money, which I of course had to decline, and he disappeared, and, as I said before, I have never seen him again.*" (pp. 147, 148.) (Emphasis supplied.)

A careful study of the above and of the letters passing between Dr. Tannenberg and Wozniak up to and including April 25, 1931, discloses that, whatever demands had been made, either early in 1931 or in the registered letter from Wozniak, received by Dr. Tannenberg on April 24th, but never produced in the record, these demands could not have differed in character from the demands that began in July, 1929.

A perusal of the letter written by Wozniak to Dr. Tannenberg on August 13, 1931, and Dr. Tannenberg's reply of August 19, 1931, fails to disclose that, even as late as August 19, 1931, Dr. Tannenberg had renounced Wozniak or broken off his relations with him (See Ex. 977, Anns. A-B, Exs. I & I-1).

On the question of the amount of his compensation, Wozniak testified as follows (Ex. 977, Anns. A-B, p. 35):

"Q. How much has the German Government paid you in all for your services in connection with this case? A. Altogether I got two thousand and twenty dollars.

"Q. Two thousand and how much? A. Two thousand and twenty dollars.

"Q. Did they ever promise you any more than that? A. They promised me — they promised me a whole lot, but after they say they don't care, 'We got you where we want you, and what you going to do? You open your mouth and you are going to be arrested.' And Mr. Healy promised me Atlanta and deportation.

"Q. Healy told you they would send you to Atlanta? A. Yes.

"Q. Which you understood to be a Federal prison? A. Yes.

"Q. And that after you served your term they would have you deported? A. Yes.

"Q. Did you ever make any demands on Germany for more money than they paid you, the two thousand dollars? A. He promised me. I tell him I want him to give me in writing.

"Q. You wanted him to give you in writing what they were going to pay you? A. Yes, I said I did not believe in promises.

"Q. That you did not believe in promises? A. Yes, because they fool me. They said German Government never going to give me agreement, because Dr. Von Lewinski promised me, he said, 'When I go to Hague and I come back we going to make some kind of agreement.'

"Q. That when he came back he would make some kind of agreement? A. Then he pay me \$200, when he come back. He went to Germany and don't say a word about agreement. After Dr. Tannenberg, I told him, 'You promise me this agreement; I want this agreement.' He said, 'German Government never going to give you no agreement.' He said, when he wins his case, 'Maybe I help you something, to open some kind of speakeasy.'

"Q. Was that Dr. Tannenberg or Mr. Healy? A. Dr. Tannenberg. He told me he going to help me to open a store, something to give me a start, like speakeasy.

"Q. When was it Mr. Healy told you that he would make an agreement with you after he came back from The Hague? When was that? A. Dr. Von Lewinski, when he go to Hague, he told me in Washington that time."

In the light of this record, a careful study of the letters passing between the German Agent and Wozniak beginning July 15, 1929, and closing with Wozniak's letter of October 26, 1929, establishes the following propositions:

First, before the letter of July 15, 1929, was written, Wozniak's compensation had been the subject of a conversation between Wozniak on the one side and Dr. von Lewinski on the other, and Dr. von Lewinski had tried to convince Wozniak that their relations were those of "friends and gentlemen". After the conversation with Dr. von Lewinski, Wozniak had another conversation with Dr. Tannenberg, and Dr. Tannenberg again assured Wozniak that "we have worked and shall work together in full harmony"; and he further assured Wozniak that Healy's statement, to the effect that Wozniak would only receive his witness' fees, were Healy's personal remarks and that he, Dr. Tannenberg, did not share them;

Second, Wozniak in an ugly mood on September 27, 1929, wrote a hold-up letter, asking when the matter would be finished, what benefit he would get out of saving the honor of Germany and demanding to know immediately "what am I really worth to you in this matter";

Third, in spite of this hold-up letter Dr. Tannenberg replied in a very conciliatory letter, assuring Wozniak that on account of his voluntary assistance "your future welfare will always be a matter of deep interest to us";

Fourth, upon the receipt of the letter of October 3rd, 1929, Wozniak wrote to Dr. Tannenberg his blackmail letter of October 26, 1929, which must be interpreted as containing a threat. In spite of the passage of these letters between the two, from which Wozniak's true character is shown in every page, the German Agent continued to secure and file in behalf of Germany affidavits made by Wozniak.

The first two affidavits of Wozniak, filed on behalf of Germany, were filed after Tannenberg's letter of July 15, 1929. After these letters had passed, Wozniak was finally located by the American Agent at Tupper Lake in company with Counsel for Germany; and he was finally produced by the German Agent for examination at Washington on July 22, 23, 1930, and at New York on July 28-30, 1930. (Ger. Ex. CXXII, consisting of 368 pages). After the series of letters set out above were completed, and after Wozniak's examination by the two Agents, the German Agent, on August 26, 1930, filed German Exhibit CXXXI, which consists of an affidavit with annexes from A to W, the whole comprising 133 pages.

If, as Dr. Tannenberg contended in the Washington argument, in 1932, Wozniak's degradation followed the refusal of the German Agent to continue him on the payroll, why did the German Agent bring him to Washington on April 16, 1931, give him \$35 for the round trip expenses and give him an order on the German Consul for \$500 which was paid on April 21, 1931?

If there was any decline in Wozniak's character which made him unfit as a witness, that decline began before Dr. Tannenberg's letter of July 15, 1929, and it continued on a fast-sliding scale following the subsequent payments to Wozniak, all of which were known to the German Agent and not only concealed from the Commission but were the subject of misrepresentation at the 1932 Washington argument. This conduct of the German Agent, relating to the suppression of the letters and of the payments to Wozniak and the misrepresentation of his relations to Wozniak, is aggravated by the innuendoes in the German Agent's argument at Washington by which he endeavored to turn Wozniak's threat to sell his information to a magazine into a representation that he was being bribed by the claimants.

As an index of Wozniak's character as a witness, it is necessary and proper to examine a letter written in July, 1932, by Wozniak to Franz von Papen, Chancellor of Germany, at Berlin (Ex. C) with Ex. 977, Anns. A-B), which was returned in the same envelope. In that letter Wozniak makes the claim that the company could not win the case without his help. He knows how important and valuable it was for Germany to win the case and

"because Company not ask for my #secrets#, ignored, I decided to offer my help to the German Government, whit belive and hope in good reward. I give up my partnership with American Foreign Claims Bureau and start work for Germany."

Then the letter goes on to state:

"At that time Dr. Tannenberg promise-good percentage, big money, good position and etc. Dr. K. von Lewinski, also promise reward, split money and to make some a agriment with me, but went to the Germany, with out nothing, Mr. T. Healy a Lawyer to thr German Government, also told me a fairy story about reward from Germany and asked if, I give him 10%, from this amount, which a get from Germany, and etc."

Later he says:

“ And what sort of rewards I received or was promised from German Government, for helping to clear the Honor of Germany, and won 22,000,000.? “ NOTHING! And beside, was warned-not to tell true and change story, \* \* \* ”

And later he says:

“ When I see Dr. Tannenberg last time, on March 30-1931 he talk to me in different manner, in high tone, not a like in 1929. He told me # witness not entitled to no rewards, it is against rule and honor, witness should be paid-only-for his expenses and lose of time. But if Germany again won this case, maybe I could help you with something #.”

This letter not only illustrates Wozniak's character as a witness, but also illustrates the fact that a bought witness does not want to stay bought and that his hungry craw must be filled in order to “ keep him in line ”.

*Wozniak's Letters and Postcard to the Russians*

The Kingsland disaster started on the afternoon of January 11, 1917. Wozniak, in the early summer of 1916, had secured employment at the Kingsland plant through the production of an identification from the Russian Vice Consul Florinsky.

Under date of December 15, 1916, he addressed a letter from Kingsland to the Russian Supply Committee, complaining that “ only here something is wrong ”, apprising him of his determination to write, but he did not know the address of the Russian Military Committee. This letter was forwarded to Major General Khrabroff, Chairman of the Artillery Commission, by Baron Korff, Secretary of the Russian Technical Bureau, with request that the personnel of the inspection be urgently increased at the plant and that a night watch be instituted (Ex. 725, Ann. 4, pp. 4554-4556).

Under date of December 26, 1916, Wozniak addressed another letter in the same tone, saying that something is wrong in the Kingsland factory — “ It smacks of the Miasoyedov spirit ” — and also saying that he knows that his letter will bring no desired benefit; that he is writing this letter in order to avoid the reproach of someone who might say “ You knew, why did you not report to those in charge.” (Ex. 725, Ann. 5, Rec. p. 4556.)

When he was cross-examined by the American Agent on the above letters, he was asked whether in 1929 he told Dr. Tannenberg about having written letters to the Russian Supply Committee. His answer was no and his reason was

“ I thought this letter was destroyed — nobody know I wrote this letter.” (Ger. Ex. CXXII, Wash. Tr. p. 56)<sup>1</sup>

And again he said (id. p. 57):

“ If I know this letter still exist, I tell him; but I think this letter was not still in existence. I not want to make fool for myself.”

After he had been shown the letters and he corrected the translation of the second, he admitted again that he did not tell Dr. Tannenberg about these two letters, “ because I thought those letters was thrown in the basket”. (id. p. 180.)

General Khrabroff in Exhibit 698 (Rec. pp. 4425, 4427), after testifying with reference to the receipt of the two letters, testified that on the day before

<sup>1</sup> An original executed copy of this examination has never been filed with the Commission. See Motion of German Agent filed August 13, 1930, submitting copy of Ex. CXXII.

the fire, that is on January 10, 1917, he received a further communication from Theodore Wozniak in the form of a post card which was delivered to General Kasloff and was sent, according to his recollection, to Russia with General Kasloff's reports. An English translation of the post card reads about as follows:

"Things are getting worse and worse with us. There will be a catastrophe." (id. p. 4428.)

After the fire, Wozniak visited General Khrabroff at the Flat Iron Building in New York City and admitted that he had written the second letter referred to above and the post card, and his explanation of the circumstances was not satisfactory and led Generals Khrabroff and Kasloff to believe that Wozniak had caused the fire.

In German Exhibit CXXII, Wash. Tr. p. 185, Wozniak denied sending a postal card to General Khrabroff, and in German Exhibit CXXXI, Annex E, he repeated his denial as follows:

"I never wrote a postcard to General Khrabroff or anyone else concerning conditions at Kingsland. He must suffer from hallucinations as a result of the dirty work at Kingsland."

When he was examined under subpoena in 1933 (Ex. 977, Anns. A-B), he testified that a few days before the fire he sent two letters but got no answer, then "I sent post cards." The "s" seems to be a typographical error because of the next question which was asked him by the American Agent as follows:

"Before you sent *that* post card or *these* letters had you heard these German spies talking about blowing up the factory? A. I hear before." (id. p. 28) (Emphasis supplied.)

He also testified to meetings with German agents both before and after the fire, and to having received from such agents small sums of money from time to time (id. pp. 20-24, 145-148, 170-171).

In his examination before the Department of Justice (Ex. 998, Ann. J (a), p. 8) he testified in regard to meeting with some German agents and discussing the question of the best method of causing a fire. One recommended an incendiary pencil. Hirsch advised nitrate, and someone else recommended phosphorus, and this was adopted. He then described how to operate a rag dipped in phosphorus in order to cause a fire, and was positive that the rags which were used at Kingsland were "prepared at Nick's house in Rutherford". Then he testified as follows:

"When they started to talk seriously how to set a fire, I remembered my promise to the Russians (only to get information what the Germans were doing) and because of my personal feelings and *that I was scared to be suspected*, I was against them, and did not want to lose the day from work, I did not go to the Russian Consulate in New York. (I missed only one day when I signed a petition to become a Russian citizen, and when I sent money to Russia). Instead I wrote a letter to my friend at the Russian Consulate, but there was no reply. Later I found out he was sick, and someone else read his letters. Then I wrote to the Russian Embassy at Washington. The letter was sent with an ordinary stamp and my return address, but again no reply. After two weeks I mailed another letter, registered, to the Russian Embassy at Washington in which I stated that at the Kingsland factory it smelled of the spirit of Myassoyedoff, but again no reply. *Then I sent a last warning on a postal card.* Two days later the fire (at the Kingsland plant) broke out. While I was preparing my statement for Germany (August, 1930) I do not remember whether I stated anything about the postal card or not. But Mr. Healy said, 'Scratch out this part, it looks bad before the Commission. You must remember everything.' Lately I have found out that those letters were sent by the Russian ambassador, B. Bakhmstieff, to the Russian Supply Committee,

which was in charge of General Charabroff and his aid, B. Brosol, but they failed to investigate and *I charge those two men responsible for a fire in Kingsland factory.* \* \* \*” (id. p. 9) (Emphasis supplied.)

Before the argument at The Hague, Wozniak had twice denied sending a postal card. In the above quoted testimony, he now admits that he “sent a last warning on a postal card”, and “Two day later the fire (at the Kingsland plant) broke out”, and he claims that this statement was given to Mr. Healy who advised him to scratch out the part about the postal card. His reason for sending the letters was “*I was scared to be suspected*”.

In Exhibit 977, Annex B-B, being the examination in 1937 by the Immigration and Naturalization Service, Wozniak, in answering a question that had no relevance whatever to the answer given said (Exam. of April 26, 1937, pp. 8, 9):

“I sent one letter to the Russian Consulate in New York, but I didn't get an answer. \* \* \* then I sent a post card, but no answer, and at that time the factory was destroyed; when I sent a registered letter to Washington they should send somebody to investigate what I know — if somebody come to me, they catch everything, but they ignored it.

“Q. Did these men talk to you about the explosion that was to take place?

A. Yes, many times about the explosion — they make experiments.”

In the testimony given after the decision at Hamburg, Wozniak not only contradicted his previous statement with reference to the post card, but also showed conclusively that he was in touch with a gang of spies who were operating within and without the plant. He became thoroughly conscious of the fact that an effort was going to be made to burn up the plant; and, so far from being patriotic in making his reports to the Russians in regard to the conditions in the plant, he “was scared to be suspected” and, therefore, he wrote the letters. Certainly if he had no intention to become involved in the plot to blow up Kingsland, it was not necessary for him, nearly one month before the fire, to be “scared that he was going to be suspected” when the fire did take place. His careful description of the meeting of the plotters, their discussion of the best method to start the fire, his references to the chief spy, and his early denial of the post card which was sent two days before the explosion warning that “there will be a catastrophe”, not only convict him of falsehood in his early testimony but bring the fire close to his doorstep.

In his argument at The Hague, the German Agent laid great stress upon Wozniak's testimony (Oral Arguments, 1930, pp. 349 *et seq.*). He related how Wozniak presented himself to the German Consulate, and the long time it took to check Wozniak's story; and said that the story was not produced before the Commission until they were sure he was corroborated and had told the truth, and all facts had been investigated and found true. He further said:

“There was no postal card written by Wozniak to the Russian Embassy at all.” (id. p. 363.)

He denied that the letters sent to the Russians were a blind, and he argued that Wozniak gave the impression of a *patriot* and *an honest man* fulfilling his duty to his country (id. p. 365). The conclusion set forth by the German Agent is as follows:

“The Russian material has shown to the Commission, among other things, that Wozniak's actions at the time of the fire, and subsequently, were those of an innocent man.” (id. p. 373.)<sup>1</sup>

<sup>1</sup> This estimate of Wozniak was repeated by the German Agent as late as the Oral Argument at Washington in 1932 (p. 143).

The Commission, in its decision, agreed with the contentions of the German Agent, and concluded that the letters to the Russian Embassy were not a blind, but exactly such letters as Wozniak would compose; and the Commission seemed to ascribe to him a form of patriotism, for it indicated that he really was at heart a Russian and intended to go to Russia, and was shocked by the carelessness and corruption at the Kingsland plant, and the Commission concluded "that he acted and talked like a man who was really innocent in respect to the fire."

An honest workman, with nothing to conceal, learning of a conspiracy to destroy the plant and to imperil hundreds of lives, would not have resorted to "a letter to the Russians" but would have gone to some responsible superior in the plant or to the police; and Wozniak's failure to bring to the proper local authorities the information and fears disclosed in his letters and postal card to the Russian Embassy at Washington, coupled with his conduct at and since the fire, convict him of complicity in the design and result.

#### *Wozniak's Contradictory Statements*

In German Exhibit LXXXIX (d), Wozniak, speaking of the Kingsland fire, said:

"I did not start the fire purposely. It is not true that I wanted to set fire at the Kingsland factory and that I did so. I never had such an idea and nobody told me to do such a thing." (id. p. 5)

He also denied knowing any German spies and denied knowing Fred Herrmann or Fred March (id. p. 6).

In the examination of Wozniak before the two Agents in July, 1930, he made the same denials and denied that he was ever connected with any German agent (Ger. Ex. CXXII, Wash. Trans. p. 14). He also denied that anybody ever gave him any incendiary pencils (id. New York Trans. pp. 38-40; 44-46).

He denied that he knew Hinsch (id. New York Trans. p. 128). When confronted with Herrmann, he denied knowing him (id. p. 138).

In his testimony given after the Hamburg decision, Wozniak reversed himself on all of the foregoing points. In his examination under subpoena, he admitted that there were German spies inside the Kingsland plant, and said:

"I heard them. I meet them." (Ex. 977, Ann. A-B, p. 21.)

He said their headquarters were in Rutherford, they were well organized and he met in Rutherford the head spy named Mike, and his wife. This head spy was employed in the plant working at the next table to him; he met him a few times in December, 1916, or January, 1917 (id. pp. 20-23). He also admitted getting some money from these spies in Hoboken and Rutherford (id. pp. 170, 171).

In his examination before the Department of Justice (Ex. 998, J (a) ) Wozniak admits knowing "Nick, Hinsch and the boy", and discussing a plan how to set a fire (See *supra*, p. 50).

In his examination before the Immigration and Naturalization authorities, Wozniak swore that he met Herrmann while working at Kingsland and knew him a month before the explosion (Ex. 977, Ann. B-B, Exam. April 26, 1937, p. 6).

It will be recalled that in all of his affidavits filed before Hamburg, Wozniak always denied any responsibility for the fire and any knowledge that it had been other than an accident. After Hamburg, in Exhibit 977, Annexes A-B, he was asked to describe the plans that he had heard German agents making

for blowing up or setting fire to the Kingsland factory and the following colloquy ensued (p. 145):

“Q. What plan did you ever hear them discuss? A. I heard about this pencil and about the rag with phosphorus.

“Q. You heard the two plans, one to use the pencil? A. Yes.

“Q. And the other to use a rag saturated in phosphorus? A. Yes, one plan was used — I forget just now.

“Q. Would a rag saturated in phosphorus create a flame inside of a shell?

A. I think it was, because I was not there when this job was done, where they got the rag I do not see, but I hear it.

“Q. But you know, do you, that someone set fire to the Kingsland plant?

A. Yes.

“Q. You know that, don't you? A. Yes.

“Q. Do you know who it was set fire to the Kingsland plant? A. That is supposed to be I did.

“Q. Yes, but do you know who it was? Was it you? — A. I used this rag, but at that day this man, not himself but tell another man — another man give big bunch of rags to me. He said, ‘Here is some more clean rags.’

“Q. A man brought you a bunch of rags? A. Yes.

“Q. You did not select the rags yourself? A. No, that was his job. It would take some time to take clean rags from me, too.

“Q. You mean it would take some time for you to leave your bench and go and get the clean rags? A. Yes.”

It will be noted that when he was asked the question: “Do you know who it was set fire to the Kingsland plant?” — his answer was — “That is supposed to be I did” (id. p. 146).

In Wozniak's examination of May 13, 1931, at the Roosevelt Hotel (Ex. 977, Ann. C), we find the following (p. 6):

“Q. But supposing Commissioner Anderson asked you, would you tell him that you did set the fire on behalf of Germany?

“A. I would tell him.

“Q. You admit it? A. Yes, I admit it. That was set so easily.

“Q. No witnesses? A. No witnesses. I was scared.

“Q. You were scared? A. I was scared for myself. I had no agents helping me at that time; just a bunch of rags.

“Q. What? A. A bunch of rags.”

While this testimony is vague, it is in great contrast to his testimony before The Hague where he always denied that he knew anything about anybody being responsible for the destruction at Kingsland and contended that it was an accident, although the fire started at his bench.

*Wozniak's Conduct Immediately Preceding, During, and After the Fire*

Exhibit 348, Rec. p. 1307, is the affidavit of Maurice Chester Musson, verified and filed March 12, 1927. Musson stated that he had been employed in the Kingsland Plant in the early summer of 1916 and remained there until the fire on January 11, 1917, as foreman of a gang of men whose duties were to remove from the spaces between the tables racks filled with cleaned shells and replace them with empty racks; that the men at the tables were supplied with pans of alcohol and rags used in polishing the shells, and that there were pails of waste alcohol under the tables; that the fire originated at the table of “Fiodor Woznayk”, whose photograph he recognized. He then testified as follows (Rec. p. 1308):

“6. I noticed that this man Woznayk had quite a large collection of rags and that the blaze started in these rags. I also noticed that he had spilled his pan of

alcohol all over the table just preceding that time. The fire immediately spread very rapidly in the alcohol saturated table. I also noticed that someone threw a pail of liquid on the rags or the table almost immediately in the confusion. I am not able to state whether this was water or one of the pails of refuse alcohol under the tables. My recollection however, is that there were no pails of water in the building, the fire buckets being filled with sand. Whatever the liquid was it caused the fire to spread very rapidly and the flames dropped down on the floor and in a few moments the entire place was in a blaze.

"7. It was my firm conviction from what I saw and I so stated at the time, that the place was set on fire purposely, and that has always been and is my firm belief."

In his contemporaneous statement on January 17, 1917 (Ex. 611, p. 2683), Musson testified that as soon as he saw the small blaze it jumped into a large blaze and

"Some of the other fellows threw rags on the flame."

He also said:

"Between you and I, think it was set on fire."

In Wozniak's statement, dated January 15, 1917, Exhibit 2 to Exhibit 726, Rec. pp. 4680, 4681, after describing how he dipped his brush in the solution contained in a small pan sunk in the table and with it cleaned out the inside of the revolving shell, he then said:

"I then swabbed out the inside of the shell with some cleaning rags which were not very clean. I next placed a clean swab of cloth inside of the revolving shell. I noticed it was quite stiff and upon placing this cleaning swab in the shell, a flame burst from the interior of the shell which ignited the fumes, from the pan immediately in front of it. I tried to put the flame out by throwing a cloth over it, but it spread so rapidly I could do nothing and in a moment the flames shot up along the electric light cord above the table to the ceiling and the interior of the ceiling blazed up. At the same time the flames spread along the table to the next pan and continued to run southerly along the table. There was a receptacle standing on the floor beneath the pan set in the table which had a small quantity of the cleaning solution in it, which had dripped through. This likewise took fire."

This statement, when read in connection with the statements of other eyewitnesses, particularly the references to the use of rags, is, to say the least, suspicious of an intentional effort on the part of Wozniak not only to start a fire but also to spread it when once started.

Thomas Steele, on January 12, 1917, testified (Ex. 611, pp. 2679, 2680), that he saw fire burning in the pan of the Austrian and when the Austrian was leaving, he saw a fire in his pan, and then the fire appeared in the next pan nearest to the Italian; that he took down a bucket of water and put out the fire in the Italian's pan and some workman took a piece of board from the bench and struck the Austrian's burning pan and the liquid poured out and ran along the bench, burning and setting fire along the whole bench.

In a statement by LaScola dated January 11, 1917, describing the fire (Ger. Ex. CXIX), he said:

"A Russian was cleaning a shell with a brush a spark from the shell fell on the Table where there was gas and oil, which caused a flame. The Russian tried to put the fire out with a rag which caused the rag to burn."

In his statement dated January 13, 1917 (Ex. 886, Ann. B-6), LaScola said:

"As soon as the fire started on the table the man at the machine tried to smother the fire with rags, and that set the rags afire and he dropped them and ran for a pail of water, \* \* \*."

In his statement of January 16, 1917 (Ex. 898, Ann. C), LaScola said:

"While I was watching this man [at whose table the fire started] cleaning the shell I saw a small spark come from the shell and almost instantly I saw fire start on the table. I saw the blaze on the table and it was about three feet square. I saw one man run for water and heard men calling for water. I did not wait to see anything more \* \* \*. I saw the spark fly from the shell and almost instantly I saw the fire on the table. \* \* \* I am positive the fire started inside of building #30 as I saw the spark fly from the shell and saw the fire on the table and at this time I was only ten feet away from where the fire started."

In his affidavit of August 2, 1930 (Ger. Ex. CXV, p. 7), LaScola said:

"some of the men took rags and tried to smother the fire and the rags were soaked with benzine."

He also said, p. 10, that the man at whose machine the fire started "took rags right from the table and tried to smother the fire with them."

And, again:

"When they started to beat them with rags they got larger."

In his affidavit of April 26, 1933, LaScola (Ex. 980, Ann. E), describing the fire said:

"At the time of the fire I was about ten feet away and out of the corner of my eye I saw a small flame and saw the man with a rag saturated in benzine try to put out fire with it but instead caused the flame to spread and increase, and another man threw a pail of water on the flames spreading them more and then everybody ran."

In the statement of Anthony Adamo, dated January 17, 1917 (Ex. 886, Ann. B-1), he said:

"The first I saw of the fire was burning rags on the floor, and the man at the machine #1, a Russian, trying to stamp them out with his feet."

Here is evidence that the burning rags were put on the floor by Wozniak.

In the statement of John Sulemnoh (Ex. 886, Ann. B-14), he said:

"It commenced in a rag and the man who was working at the machine, the first one, took the rag, threw it on the floor and stamped on it: trying to put the fire out. Before doing that he tried to put the blaze out with his hands on the table. I do not know whether this rag had been inside the shell or not."

If Wozniak intended to set fire to the gasoline in the pan under the table, it was easy enough to give an impression that he was trying to stamp on the burning rag.

In the contemporaneous, undated, statement of Rudolph Alexander Walker (Ex. 886, Ann. B-16) he said:

"I noticed a flame coming from the pan sunk in the table at the first machine. \* \* \* As soon as the first pan blazed up the flame spread down along the table."

George Robbins, in his statement of January 13, 1917 (Ger. Ex. CXIX), said:

"I noticed he stalled the shell and the brush was afire when he pulled it out. He tried to extinguish the fire with rags."

In his affidavit of August 6, 1930, but only filed on September 14, 1937 (Ger. Ann. 128), Victor Frangipane, in describing the fire, said that it was due to a sparking motor on which there was a rag saturated with alcohol or benzine, which caught fire from the sparks.

In his affidavit of the 22nd day of January, 1917 (Ex. 898, Ann. B), Victor Frangipane had testified exactly the contrary, namely, that he did not see any spark or other means of communicating the fire to the place where he first saw it, but that the fire appeared to be coming from the gasoline pan on the top of the table.

In his affidavit of the 26th day of April, 1933 (Ex. 980, Ann. F), Frangipane again denied that he saw any sparks coming from the machines or motor; but in his affidavit of the 6th day of August, 1930, and also of the 26th day of April, 1933, he referred to the fact that Wozniak threw some gasoline-soaked rags on the fire.

In Exhibit 980, Ann. F, he said:

“ I noticed a flame at Wozniak’s bench. I saw Wozniak throw some gasoline soaked rags onto the flame and then he ran away.”

And in German Annex 128, he said:

“ As this rag was blazing the man, whose name I cannot remember, who was working on #1 machine, ran and grabbed the blazing rag and stamped on it. He could not put out the flame and picked up this blazing rag and ran around his work bench with it. On this bench there was a pan with alcohol or benzine in it, and while this man was running around the work table with this blazing rag in his hand this pan caught fire and began to blaze.”

When the above evidence is considered in connection with Wozniak’s confession that he was in touch with German saboteurs, that they planned to start a fire with phosphorus, and that he was furnished rags soaked with phosphorus, the inference seems to be clear that, in spreading the gasoline over his table and in using rags soaked with an inflammable liquid (whether gasoline, benzine or phosphorus), ostensibly for the purpose of putting the fire out, Wozniak was intentionally spreading the fire and that he purposely used the burning rags to set fire to the gasoline pan which was on his table, as well as to the pan which was under the table.

#### *Wozniak’s Character as a Witness*

The Commission at Hamburg, while stating that its impression of Wozniak’s innocence was not due to his protestations of innocence, compared Wozniak’s character as a witness, and his statements and acts, with the character of Herrmann as a witness, and his statements and acts, in a manner that was unfavorable to Herrmann (Decs. and Ops., p. 975).<sup>e</sup> The Commission stated that Wozniak was a crank, in a way smart, although naïve, and so smart that it was hard to believe, if he desired to start the fire, that he would have started it at his own bench and would have behaved as he did after the fire.

The Commission expressed the belief that Wozniak was never in Mexico, that the letters he wrote the Russian Embassy before the fire were not a blind, but were exactly such letters as Wozniak would compose, and that he really was at heart a Russian and intended to go to Russia; and that he was shocked at the carelessness and corruption at the Kingsland plant; and the Commission concluded that, without relying on the honesty of his statement, he seemed to act and talk like a man who was really innocent in respect to the fire; and, therefore, in spite of Herrmann’s confession, it was stated that the evidence in the Kingsland case had convinced the Commission that Wozniak did not set the Kingsland fire. The Commission did say, however, that “ Wozniak’s description of the starting of the fire bears some resemblance to what might

<sup>e</sup> Note by the Secretariat, this volume, p. 89.

have happened if a pencil had been used", but that, "the resemblance is not close enough to make us suspect that a pencil was actually used". (Decs. and Ops., p. 977.) †

A thorough examination of the whole record, both that which was made before the decision at Hamburg and that which has been adduced since that decision, will establish the fact that Wozniak is crafty, cunning, treacherous, and rapacious. One cannot read and digest the record without coming to the conclusion that, in his greed for money, he would go to any length, and that the sentiments of loyalty and patriotism have no lodgment in his breast. In their stead, he has the instincts of the blackmailer and the heart of the typical gangster and double-crosser, and is accustomed to laugh at those whose distress he has caused. He has shown himself to be a man who is feared and suspected by his associates and whose only fear is of the penitentiary and the gallows. Herrmann, in the celebrated message, disclosed that he knew Wozniak's psychology when he wrote:

"Has Hinsch seen Wozniak. Tell him to fix that up."

On the same day that the affidavit of Wozniak was filed (Ger. Ex. CXXXI), the German Agent filed a motion praying that that Exhibit might be made a part of the record, and representing to the Commission that, in preparing the same,

"Wozniak was not only prompted by the earnest wish to clear his name and to defend himself, on his own accord and as an individual, of the charges brought against him — charges which he resents as unfounded and as based on false testimony, — but also by the wish to be helpful to the Commission in finding the truth."

The German Agent represents to the Commission that the whole of this Exhibit was written down by Wozniak, without any collaboration or assistance from anybody, but that his imperfect English had been corrected as to orthography and spelling by the German Agent's counsel.

The German Agent represents further that, in presenting this affidavit, the German Agent was prompted by a two-fold motive: First, that he is of opinion that Wozniak's statements

"are of great evidential value in the present case;"

Second, that, as Wozniak had no other opportunity of defending his name, he should be given this opportunity. The German Agent also points out that while he was *thoroughly convinced of the truth of Wozniak's presentation of the facts*, he does not identify himself with the *arguments* set forth and the *opinions* voiced by him in his statements.

Therefore, in spite of his knowledge of Wozniak's character as disclosed by the blackmail and hold-up letters, the German Agent stands behind this blackmailer and guarantees the "truth of Wozniak's presentation of the facts". It is interesting to note that Wozniak later denominated, as a "very well polished lie", the affidavit of the German Agent's counsel describing the circumstances under which Wozniak's original affidavits were obtained (Ger. Ex. LXXXIX a, c & d). He also said that he was ashamed of himself for having signed his original affidavit.

In his examination before the Immigration and Naturalization Service, Wozniak stated that the affidavits which he originally made in 1929 were not true, and he admitted that he was willing to make a false affidavit to assist Germany in defeating the claim because he thought it was a private claim

† Note by the Secretariat, this volume, p. 90.

and not a case of the United States Government (Ex. 977. Ann. BB Exam. of May 3, 1937. pp. 3. 4).

In view of this history, we may safely conclude that Wozniak's affidavit has not "cleared his name" nor been "helpful to the Commission in finding the truth".

In the course of his oral argument at Washington, 1932, the German Agent read into the record the copy of his letter to the American Agent dated February 10, 1932, replying to a letter of the American Agent dated February, 2, 1932, relating to a Motion filed by the latter for the oral examination of several witnesses, including Wozniak. One of the grounds asserted for examining Wozniak was that there was serious danger that Wozniak might leave the country in the near future. In the German Agent's letter (Oral Argument, 1932, p. 128) the following language is used:

"With respect to this matter I wish to advise you that I have no information whatsoever as to the present whereabouts of Theodore J. Wozniak or as to any intention on his part, to leave the United States. The last conference I had with Theodore J. Wozniak was at the end of April 1931. Since that time I have received from Wozniak only one letter, dated August 13, 1931, in which he asked me to return to him certain original documents all of which were filed by me with the Commission, with the exception of some private letters.

"When I returned to this country at the end of March, 1931, I had several conversations with Wozniak. In these conversations he indicated very strongly that *he expected payment of a large sum of money by us*. I advised Wozniak that no such payment could be made. Wozniak repeated his request at every conversation I had with him and, finally, advised me that if his request was not complied with, *he would accept an offer which had been made to him and which would cause me great regret*. I, thereupon, broke off my relations with Wozniak and have not seen him since." (Emphasis supplied.)

By reading this letter, the German Agent brought before the Commission the fact that Wozniak was making demands for money and had been repudiated by Germany as a witness. Of course, this part of the letter was not argument, but pure testimony. It was, in the last analysis, a self-serving declaration, not under oath, coming from an attorney representing one of the parties.

Later, in the oral argument, in describing his examination of Wozniak in 1929, the German Agent represented (again testifying) that, while Wozniak was in Washington, he informed Wozniak that of course he would be compensated for his out-of-pocket expenses and loss of time, but Wozniak stated this could not be done and declined to take even this compensation, to which as a witness he was entitled (Oral Argument at Washington, 1932, p. 147).

The introduction of the letter above quoted, coupled with the representation that Wozniak refused to take the compensation to which as a witness he was entitled, and the refusal of the German Agent to allow Wozniak to be examined, enabled the German Agent to argue that, as Wozniak's testimony given in 1929 was not purchased, therefore it was reliable, and to insinuate that any future testimony favorable to the United States, would be unreliable, since it would come as a result of the acceptance of an offer made to him (Oral Argument at Washington, 1932, pp. 147, 148).

Immediately after quoting his letter to the American Agent, the German Agent, in his oral argument, used the following language (p. 129):

"In view of some of the statements made by the American Agent in his argument, I desire to say that I have not seen Wozniak since April, 1931. I have not been in contact with this witness at all. The last conversation took place toward the end of April, 1931, when I refused to pay that witness what he expected, and *when he threatened me that he would accept an offer*.

"We know now, from the recent evidence filed by the American Agent, that on May 27, 1931, a month after my last conversation with Wozniak, the so-called Wozniak letters were produced and were submitted by Baran to Mr. Peto of the Canadian Car and Foundry Company.

"In view of these facts, it is clear that the *German Government could not consent to the oral examination of this witness before the Commission.*" (Emphasis supplied.)

We know that on the 25th of April, 1931, just after Wozniak had cashed an order from the German Agent on the German Consulate General for \$500. Tannenberg replied to Wozniak's registered letter, which had not been introduced in evidence, asking for an appointment on the 28th; but it is certain, as has already been indicated in this opinion, that, whatever demand Wozniak made at that time, it was not of a different character from that which started before July 15, 1929, and was pressed with considerable vigor both orally and in letters to Wozniak.

We also know that the German Agent's refusal to pay additional money did not take place until after April 25, 1931, when Wozniak got his last \$500; and it is certain that the occasion of this payment was brought about by the fact that Wozniak informed the German Agent that he had an offer to sell his information to an American magazine. Wozniak testified that it was given him by the German Agent as evidence that Germany was "going to be good to him."

The German Agent, by innuendo, would lead the Commission to believe that the offer which Wozniak had it in his mind to accept had a direct relation to the co-called Wozniak letters, whereas the actual offer was the offer received by Wozniak from Bishop to sell his story to an American magazine.

It has been established in the course of this opinion that the Commission, in rendering the Hamburg decision, was ignorant of the following facts relating to Wozniak:

First, that the matter of his compensation had been the subject of conversations and letters between himself and representatives of Germany before his testimony was filed;

Second, that in the course of these letters he had made threats amounting to blackmail;

Third, that he had been assured by the German Agent that Healy was mistaken in informing Wozniak that his compensation would be limited to witness' fees and expenses;

Fourth, that Wozniak's total compensation paid by Germany exceeded \$2,000.00;

Fifth, that none of the above circumstances were brought to the attention of the Commission or were known by the Commission.

After the decision at Hamburg and after the German Agent had broken with Wozniak, Wozniak was examined under subpoena issued under the Act of June 7, 1933, 48 Stat. 117 (Ex. 977, Anns. A-B); also by agents of the Department of Justice (Ex. 998, Ann. J (a)); and before the Immigration and Naturalization Service of the United States Department of Labor upon his application for naturalization (Ex. 977, Ann. BB). Upon these examinations he made statements directly contradicting his testimony produced at The Hague:

- (a) As to the letters to the Russians;
- (b) As to the post card to the Russians;
- (c) As to his relations with German saboteurs;
- (d) As to his acquaintanceship and relations with Hinsch and Herrmann, acknowledged saboteurs; and
- (e) As to his knowledge beforehand that the explosion at Kingsland would occur.

If the Commission at Hamburg had been cognizant of the facts set out in the above summary, is it conceivable that the Commission would have put more faith in Wozniak's evidence than it did in Herrmann's, and would have found that, as to the fire at Kingsland, Wozniak's words and acts were those of an innocent man?

(2) *Lyndhurst Testimony*

In discussing the cause of the Kingsland fire and after giving a short description of the circumstances connected with the origin of that fire, the Commission at Hamburg said (Decs. and Ops., p. 976): §

"If we were called upon to guess what caused the fire from the evidence of the circumstances, we should without hesitation turn to the machine which held the shell which Wozniak was cleaning. There is strongly persuasive evidence that these machines required constant watching, that when out of order they squeaked and threw out sparks, and that fires, quickly extinguished, had previously occurred from this source, and there is some evidence from a workman close by of squeaking and of sparks from Wozniak's machine just at the time of the starting of the fire. Wozniak himself does not mention this in his contemporaneous statements, though he later mentioned it merely as a possible explanation. In fact he says that his machine was running well that day, though it had sometimes run very hot. To Wozniak the fire seemed to originate in the rapidly revolving shellcase itself and to follow the rag wound around a stick with which he was drying the shellcase when he withdrew the rag. It is interesting to find that his own statement is the only one which bears any resemblance to what would have happened if he had used one of the inflammatory pencils with which Herrmann says he supplied him."

All of the circumstances related in regard to the machines, to-wit, that they required constant watching, that when out of order they squeaked and threw out sparks, and that fires had previously occurred from this source and been quickly extinguished and that there was some evidence from a workman close by of squeaking and of sparks from Wozniak's machine just at the time of the starting of the fire, came from testimony which was taken at Lyndhurst and filed immediately before the argument at The Hague.

Since the Hamburg decision, many affidavits have been filed which throw great doubt upon the accuracy of this testimony. It is the purpose of this portion of the opinion to examine the contention of the American Agent that these affidavits were false and fraudulent, and induced by a promise of a pecuniary reward.

On August 9, 1930, Germany filed as German Exhibit CXV the affidavit of Domenico LaScola, taken before John R. Ruggiero, notary public, in the presence of T. J. Healy, counsel for the German Agent, and John W. Guidetti, Commissioner of Streets, who acted as interpreter, the deposition being given by LaScola in the Italian language and interpreted by Guidetti; also as German Exhibit CXVI the affidavit of John R. Ruggiero sworn to before R. M. Marrone, notary public, and, as German Exhibit CXVII, the affidavit of Eugene Whichel Urciuoli, sworn to before R. M. Marrone, notary public.

LaScola testified that he was working in the building about ten feet away from where the fire started, taking the shells from the truck and putting them on a table which was not a cleaning table; that the fire broke out at the last cleaning table from the main entrance, and then he states as follows (Ger. Ex. CXV, p. 7):

"I was working at the table, putting shells on it. The first thing I noticed was a kind of creaking noise coming from the last machine on that row of tables. The

§ Note by the Secretariat, this volume, p. 90.

last machine was making some kind of a noise. I looked up and I saw spots of fire on the table, at the last machine on that row of tables.

"Q. Would you call them sparks?"

"A. It was sparks of fire I saw on the table. From a small fire it increased to a large fire; each of these little sparks increased to large sparks on the table and some of the men took rags and tried to smother the fire and the rags were soaked with benzine.

"Q. Then what happened?"

"A. The boss 'Tom' was in the toilet and when he heard there was a fire, he came out and 'Tom' told a man to get a pail of water and when I heard 'Tom' ask for a pail of water, I 'made feet' and ran because I thought something was going to happen.

"Q. At the beginning of the fire did you see the sparks coming from a cleaning machine?"

"A. I heard the squeaking of the machine and that is what attracted my attention. Then I looked and saw the sparks on the table."

He was also asked if he had ever heard any of the cleaning machines squeaking before the day of the fire. He answered:

"Yes, sir, and this man Eugene used to stop them immediately and used to oil them." (id. p. 8)

He also said that when the fire started the man at the table

"got rags so that he could smother it, to stop the fire." (id. p. 9)

LaScola in this same deposition is represented as testifying as follows:

"Q. What is your opinion as to how the fire started?"

"A. I don't know. I saw those sparks and that is all I saw.

"Q. Do you think that the sparks came from the cleaning machine?"

"A. Yes, it came from that machine.

"Q. That is what you thought at that time?"

"A. As I saw those sparks on the table I didn't think of anything. I started to run.

"Q. How big were the sparks when you first saw them?"

"A. First they were small sparks and then they started spreading. When they started to beat them with rags they got larger.

"Q. Did the man at whose machine the fire started try to put out the fire?"

"A. Yes, he took rags right from the table and tried to smother the fire with them. There were others who threw rags on the fire, too.

"Q. When you first saw the sparks, were they on the table?"

"A. They were on the table.

"Q. Did the machine keep on squeaking when you saw the sparks?"

"A. No, they stopped all the machines and shut off the motors at the same time the fire started." (id. pp. 10, 11)

Under date of April 26, 1933, an affidavit in the Italian language was obtained from LaScola throwing considerable light on the circumstances under which Mr. Healy, whom he describes an "as American", obtained the deposition (Ger. Ex. CXV). The pertinent parts of this affidavit read in translation as follows:

"In the summer of 1930 there came to my house a man, \* \* \* and asked me if I was Domenico La Scola, and replying that I was, and that I did not understand English, told me if he could bring Mr. John Guidetti as an interpreter, and returned at the hour of 5 p.m. with Mr. G. Guidetti and Ruggiero, and this man, an American, asked me all the questions through the Mr. Guidetti, and the American wrote with a pencil, and I told him everything regarding the fire, and after all had left, the American said he would return that night. At about 11 p.m. the American returned alone, knocked on my door, and I got of bed and went to see who it was, he extended his hand, and after turning around to leave, I found in my hand \$50.

"The next day, at night, came the Mr. Ruggiero with a statement typewritten, with a few pages, and asked me to sign, but I did not read it because I could not read English.

"After six or seven months G. Ruggiero came and brought me another \$50, and after another three or four months Mr. Carella sent me another \$50 through my son, Salvatore.

"This is all the money I received, but the American promised me that he was going to pay all expenses regarding my operation, but I did not see him again, after he had promised to pay me good.

"At the time of the fire I was about ten feet away and out of the corner of my eye I saw a small flame ["una piccola fiamma"] and saw the man with a rag saturated in benzine try to put out fire with it but instead caused the flame to spread and increase, and another man threw a pail of water on the flames spreading them more and then everybody ran, and this is all, and I told others the same thing, and everybody who asked me." (Ex. 980, Anns. D and E.)

In the same affidavit LaScola makes the following explanation as to the use of the word "sparks" described as coming from the machine as set out in German Exhibit CXV, pp. 9 and 10:

"I was working in Building No. 30 about six months and never saw any fires. "I was told that the statement I signed three years ago for the American who came with Guidetti and Ruggiero, that the machine threw sparks ["la scintilla"], but I did not make this statement and it is not true that this machine threw sparks ["la scintilla"]." (Ex. 980, Anns. D and E.)

That the machines did not throw out sparks is likewise testified to by Wozniak both before and after the Hamburg decision. See Wozniak's affidavit of August 11, 1930 (Ger. Ex. CXXXI, Ann. F, p. 2); statement of March 3, 1931, at Hotel Roosevelt (Ex. 977, Ann. C, p. 7); and affidavit of January 12, 1934, to Department of Justice (Ex. 998, Ann. J (a), pp. 11, 12).

Ruggiero, in German Exhibit CXVI, testified that he was employed at the Kingsland plant a few months after the plant was put into operation (p. 1) and that he quit work in December, 1916, because he considered that the work was not being conducted with the proper regard for the safety of the men and the plant (p. 5); that the immediate occasion of his quitting was a defective electric motor which ran hot and on occasion emitted sparks which would have caused a fire had it not been for the fact that a piece of metal had been placed between the motor and the floor; that he called attention of the proper persons to this and he finally quit because he felt he could not be responsible for the safety of the plant and the lives of the men. He also testified (p. 3) that during the course of his employment in Building No. 30 he frequently saw machines throw sparks as a result of friction developing from defects in the machines. He was asked a long hypothetical question which assumed that the machine was squeaking at the time the fire started and that sparks were seen blowing or burning upon the table at the inception of the fire.

That Ruggiero was not telling the truth when he said in his affidavit of August 4, 1930, that:

"I quit work in December, 1916, because I considered that the work was not being conducted with the proper regard for the safety of the men and of the plant." (Ger. Ex. CXVI, p. 5)

is conclusively established by Ruggiero's own statement found in his report to the German Agent in which he says that he left "the employ of the Canadian Car & Foundry Company some three or four months before the fire" (Ex. 980, Ann. B, Ex. A attached).

The above-quoted statement from Ruggiero's report to the German Agent (rather than his contrary statement found in his affidavit of August 4, 1930)

is confirmed by the payrolls of the company that show the only Ruggiero employed in the second half of 1916 was employed under the name F. Ruggiero who appears on the payroll for July 31 - August 6, 1916, as No. 2276 (Ex. 770, Ann. 2). He subsequently appears under No. 1652 on the payrolls for the weeks beginning August 7, 14, and 21, the last day with which he was credited as working being August 26, 1916 (id. Anns. 2a, 2b, and 2c). His name was also carried on the payrolls for the weeks beginning August 28, and September 4, 1916, during which time he was not credited with working (id. Anns. 2d and 2e). A careful examination of the payrolls of the company fails to disclose the name of Ruggiero as appearing after September 4, 1916.

Urciuoli in Exhibit CXVII testified (p. 1) that he was employed at the Kingsland plant and began work there when the Company started construction of the plant and continued work until the fire, and after the fire he was carried on the payroll of the Company for two weeks. He testified that it was his duty to take care of the machines, to see that they were properly oiled, etc., and that he always kept the pulleys well oiled (p. 3):

“because otherwise the machine would get hot and begin to squeak as a result of friction. If this friction continued, the pulley would begin to throw sparks. During the time that I was employed in Building No. 30, hardly a day went by without some of the cleaning machines sparking from this cause. \* \* \* it was impossible to prevent these machines from sparking. \* \* \* I urged Master Mechanic Hopper and the building foreman, Tomlinson, to have these cast iron pulleys replaced with fibre pulleys, but no attention was ever paid to this request.”

He reiterates several times that a hot spark would be thrown from the machines and could be seen from the center of the building and that when these sparks occurred he would hurry to the machine and throw the belt off, and that during the time he was employed in Building No. 30 one of the tables caught fire from this cause, namely, the sparking of the cleaning machine, and he put it out with an overcoat. He was asked the same hypothetical question as was asked Ruggiero and gave the same answer (p. 4).

Urciuoli's affidavit shows that he was not present in Building No. 30 at all during the week of the fire; that his father's funeral, which he was attending, was stopped by the fire.

Marrone, the notary public, before whom were executed the affidavits of Urciuoli and Ruggiero, stated that after the affidavits were executed, he heard that much money was paid to the witnesses for their statements, and that three of the people who had made affidavits for the German Government told him that they had received various sums for their affidavits (Ex. 980, Ann. A).

There is set out below correspondence between Nicholas A. Carella, a lawyer in Lyndhurst, and Dr. Wilhelm Tannenberg:

“April 10, 1931.

“Wilhelm Tannenberg, Esq.,  
1010 Investment Building,  
15th and K Sts. N. W.  
Washington, D. C.

“Dear Sir:

“Confirming our conversation of March 30th, 1931, I have informed our witnesses as to your decision in the matter. *I have been expecting that of which we spoke of and these people are continually calling upon me for some action.*

“It is absolutely urgent that this matter be taken care of immediately because the opposition is making strenuous efforts to obtain adverse information.

" Reports will be forwarded to you within the next few days.  
 " Awaiting an early reply, I beg to remain  
 " Yours very truly,  
 " NAC:RMT " (Ex. 980, Ann. B, Ex. L, attached.) (Emphasis supplied.)

" April 17, 1931.

" Nicholas A. Carella, Esq.  
 298 Ridge Road  
 Lyndhurst, N. J.

" Dear Sir:

" I beg to acknowledge receipt of your letter of the 10th instant and your telegram of today. I have to apologize for not answering your letter promptly; however, I postponed my reply for the reason that *the instructions from Germany* for which I had asked had not yet arrived and I was anxious to advise you that our conversation had been confirmed.

" The unexpected delay was due to the fact that I was requested to supply our Berlin office with detailed information which was required in order to enable them to proceed as suggested by me. That does not mean that there are any obstacles. *I have no doubt that the instructions will be here by Monday of next week* (April 20th) at the very latest, and I shall not fail to inform you immediately as to when you can go to New York.

" I sincerely hope that you will understand the situation and that the unforeseen delay will not have caused you any inconveniences. I also hope that I shall have an opportunity to see you again in the near future so that I can explain to you the circumstances in more detail.

" You may rest assured that I greatly appreciate your services and that I am awaiting your reports with great interest.

" Your very truly,  
 " Wilhelm Tannenberg."

(id., Ex. M) (Emphasis supplied.)

On April 20, 1931, Dr. Tannenberg wrote to Carella a letter, the body of which reads as follows:

" Referring to my letter of the 17th inst. and to my telegram of the following day, I wish to advise you that I have *received authority to proceed in the matter as suggested*. If you will be kind enough to call at the German Consulate General in New York, Mr. Loerky, the gentleman whom you met there on a previous occasion, *will give you the necessary information.*" (id. Ex. N.) (Emphasis supplied.)

The " authority to proceed " and " the necessary information " was, of course, funds which Mr. Loerky was going to pay to Carella when he called at the German Consulate General in New York.

Carella had been retained by Tannenberg or Healy to obtain the Lyndhurst affidavits. From the investigation and report which is attached to Exhibit 980, Annex B, Ex. (b) it is represented to Dr. Tannenberg as follows:

" I am pleased to report through our efforts the witnesses openly and unqualifiedly refused to sign any statements but they approached me and informed me that they are holding me to the *promise* that I had made to them namely, *that they will receive some pecuniary advantage after the case has been finally adjudicated.*" (p. 2) (Emphasis supplied.)

And in the same paper referring to Whichel (Urciuoli) we find the following statement:

" Dur to the *promise* that Mr. Healy made to him to wit: *that he will receive a pecuniary advantage after the case has been finally adjudicated.* Mr. Whichell refused to make any adverse statements against the German Government pertaining to the matter in dispute." (p. 2) (Emphasis supplied.)

German Annex 103 is the affidavit of Thomas J. Healy, dated the 13th day of April, 1935, and filed the 16th day of April, 1935. He was an attorney associated with the German Agent making investigations as to the origin of the fires at Kingsland and Black Tom. He explains the circumstances under which he met LaScola and secured from him through his grandson as interpreter a promise to give an affidavit in regard to the Kingsland fire. He secured the services of Guidetti as interpreter and through him the services of Ruggiero as notary, and he relates the circumstances under which LaScola's affidavit was procured as follows: After securing LaScola's affidavit he then took the testimony of Ruggiero and Whichel (Urciuoli). He paid Ruggiero \$20 for his services in taking the testimony of LaScola, and \$75 for investigations, and \$20 on another occasion. He paid Whichel \$15 for his services as an expert witness and Marrone \$30 for his services as notary. He also took \$50 to LaScola's house. He made no further payments, nor did he make any promises of further payments in event that Germany was successful, nor did he give any promises nor hold out any hopes of any further payments or rewards to these witnesses. He then continues:

"Carella informed me that although all possible pressure was being brought to bear upon these witnesses they had steadfastly declined to modify in any way their previous testimony as given to me. From Carella's statements it appeared particularly that the Claimants were trying to induce these witnesses to testify that they had seen or knew of the use of incendiary pencils in connection with the fire at Kingsland. Mr. Carella urged that in view of the necessitous circumstances of these witnesses and the *temptation to which they were being exposed by the offers of the Claimants' representatives to deviate from their prior testimony*, some payment should be made to them. I paid Mr. Carella the sum of three hundred and fifty dollars at that time for his previous professional services with the understanding that out of this sum he was to pay Ruggiero, Whichel and Lascola a small amount each. My recollection is that I was later informed that he had paid each of them fifty dollars. My recollection is that this payment to Carella was made in the latter part of December, 1930." (Ger. Ann. 103) (Emphasis supplied.)

Victor Frangipane, another Lyndhurst witness, whose August, 1930, statement was not filed until 1937, and then only on request, testifies that he was paid \$50 at the time his statement was taken down, another \$50 at the time he signed the statement and that Carella promised him that if Germany won the case he would get not less than \$500 (Ex. 980, Ann. F).

In response to a request by the American Commissioner on the 28th day of June, 1937, the German Agent on January 7, 1938, filed German Annex 142 with ten exhibits. In his sworn statement of January 7, 1938, submitting parts of documents requested, the German Agent states as follows:

"Mr. Nicholas Carella, an attorney at law of New Jersey who had been retained by Mr. Healy in connection with the procuring of evidence at Lyndhurst late in July and in August 1930 asked for the payment of fees for his own services and also for some moneys for *payments to witnesses at Lyndhurst in order to prevent them from giving false testimony to representatives of the claimants*. \* \* \* \* Mr. Loerky also transmitted to Mr. Carella the two payments of \$1000.— and \$1500.—; the Consulate General [New York] as such sent to Berlin directly Mr. Carella's receipt for the *first* payment made on or about April 21, 1931. \* \* \* ." (Emphasis supplied.)

Exhibit A is a telegram dated April 18, 1931, from Washington to the Foreign Office, Berlin, for authorization for payment of \$1,500 indicating a written report would follow.

Exhibit B is a draft of a proposed telegram from Tannenberg to the Foreign Office, for Director Dieckhoff, dated April 17, 1931, which recites among other things:

"Carella<sup>1</sup> who is continuing to counteract energetically in order to prevent the witnesses from giving false testimony, will make a circumstantial report concerning the<sup>2</sup> methods of our opponents' agents, however, he has a difficult position \* \* \*. In order to be in a position to go on meeting effectively the intrigues which are allegedly also supported by Federal Judge Fake, Carella requests most urgently \$1000.—, the more so, since various witnesses are apparently prepared to accept the offers of our opponents. After conference with C. I consider it as indispensable and as harmless that he continues his activities and that the requested moneys be paid." (Emphasis supplied.) (This telegram seems not to have been sent.)

Exhibit C is a telegram, dated April 20, 1931, from Dieckhoff for the Ambassador in Washington, personally, reading as follows:

"The Embassy is hereby given authorization to make available 1500 Dollars."

Exhibit D is a deleted telegram, dated May 1, 1931, from Tannenberg to the Foreign Office, attention of Dieckhoff, indicating that he has paid \$1,000 to Carella as fee for his past and future services for the German Agency and as reimbursement of his disbursements.

The exhibit has the following deletions which evidently relate to the payment of money in the sabotage claims, referring to the "authorization to pay an amount of \$1,500 for the purposes of the sabotage cases":

"Thereupon I have made the following payments out of this amount:

" . . . [sic]

" . . . [sic]

" . . . [sic]

"(2) \$1,000 to Carella, \* \* \*.

"I beg to give the following reasons for these payments:

" . . . [sic]

" . . . [sic]

" . . . [sic]

"(2) Carella."

The exhibit refers to the alleged attempt on the part of the claimants

"to induce our witnesses as well as other former workmen of the Kingsland plant by promises of compensations to represent the former depositions of our witnesses as inaccurate and to discredit Mr. Healy's work at Lyndhurst. \* \* \* Carella emphasized that his further efforts of frustrating the obtaining of false depositions discrediting us would only be successful if funds were made available to him, from which he could pay his agents for their work. Furthermore, it would be necessary for him to be in a position occasionally to pay smaller amounts to other people. \* \* \*

"To cover these and future obligations and as fee for his work done so far and to be done in the future and for the work of his agents Carella asked for an amount of at least \$1,000. \* \* \* In view of the extraordinary importance which the statements of our witnesses at Lyndhurst had in connection with the decision in the Kingsland case and in view of the great danger that would arise should the agents of claimants succeed in procuring the testimony desired by them I consider the continuation of Carella's services at Lyndhurst as indispensable." (Emphasis supplied.)

Exhibit E is a deleted telegram, dated December 14, 1931, from Prittwitz to the Foreign Office in which he makes a request for \$1,500 for a final fee for Carella and \$400 for reimbursement for expenditures for Carella. He states as reasons for his request that

<sup>1</sup> The wording of this telegram would indicate that Carella was well known to the Foreign Office.

<sup>2</sup> Report here referred to may be the one at Ex. 980, Ex. B.

"Healy had promised to him [Carella] a special fee, if his services would be successful.<sup>1</sup> From my conference with Carella I have reached the conviction that the payment of the moneys requested is indispensable to keep C. and his people in line. I therefore request authorization by cable to pay \$1900.— from funds above referred to." (Emphasis supplied.)

Exhibit F is a deleted telegram, dated December 18, 1931, signed Dieckhoff reading as follows:

"For Agent  
"You are authorized to pay to Carella . . . [sic] up to nineteen hundred (1900) Dollars."

These telegrams show that in addition to the payments referred to by Healy as made these witnesses in 1930 (Ger. Ann. 103), further payments to the extent of \$3,400 were authorized in April and December, 1931.

The principal purpose for which the affidavits of LaScola, Ruggiero and Urciuoli were filed was to convince the Commission that the cause of the Kingsland disaster was a defective condition of the machines which threw out sparks and caused the gasoline to ignite. It has been established that these affidavits were purchased and paid for, and that, after the affidavits were filed, Germany authorized further payments to the extent of at least \$3,400, to keep these witnesses bought and *in line*. This in itself is sufficient to show that the Commission at Hamburg was misled by purchased and perjured testimony; but the evidence which has been adduced since Hamburg establishes beyond doubt that the machine before which Wozniak was working had never sparked, that none of the machines in the room had ever emitted a spark or had ever been in the faulty condition described by the three bought affidavits. The essential falsity of these affidavits was established before the Commission at Washington in May, 1936, by the exhibiting and operating of a replica of one of the machines.

It would seem clear that, if the Commission at Hamburg had had before it the evidence "autoptically proffered" at Washington, and had been conscious of the fact that the Lyndhurst testimony had been bought and paid for, and that the witnesses producing it would still remain on Germany's payroll after the decision at Hamburg, the Commission could not have stated, as it did at Hamburg, that there was strongly persuasive evidence that these machines required constant watching, that when out of order they squeaked and threw out sparks and that fires quickly extinguished had previously occurred from this source. It will be recalled in this connection that Wozniak himself has always denied that his machine was in bad order or that it squeaked or threw out sparks (Ex. 726, Ex. 4, p. 4885; Ger. Ex. CXXXI, Ann. G, p. 2; Ex. 977, Ann. C, p. 7; Ex. 998 J (a), pp. 11, 12).

This being true, it seems clear that the decision at Hamburg, without any reference to Wozniak's testimony, must be reexamined on the question of the cause of the Kingsland disaster.

### (3) Purpose of affidavits of Ahrendt, Hinsch and Woehst

There are three German witnesses whose affidavits were introduced for similar purposes, Ahrendt, Hinsch and Woehst. An examination of the various affidavits filed by these witnesses will show that the first purpose for which their affidavits were filed was to bolster up the affidavits of Marguerre, Nadolny, von Papen, and Bernstoff, and thus to give additional strength to the German

<sup>1</sup> Healy in his affidavit of April 13, 1935, denied making any payments to witnesses in addition to those made by him in August, 1930 (Ger. Ann. 103).

pleadings that sabotage was never authorized in the United States during neutrality.

The second purpose for which these affidavits were introduced was to disprove the confessions by Hilken and Herrmann: the confession of Hilken to the effect that he was the banker for various German saboteurs in this country; supplied them with funds; helped to equip them; and paid out money as compensation for the destruction of Black Tom and Kingsland; the confession of Herrmann, that he together with Hinsch, was responsible for the organization of a band of saboteurs operating from Baltimore, New York and other cities; that he supplied these saboteurs with incendiary devices; and that they were both responsible in this way for the destruction of Kingsland and Black Tom.

The affidavits of Ahrendt, Hinsch and Woehst all show this thread of design permeating their whole structure. In order to appreciate this design and purpose, it is necessary, briefly, to summarize the confessions of Hilken and Herrmann.

It is now thoroughly agreed, both by the witnesses for Germany and the witnesses for the United States, that authority for sabotage was directly given to Hilken and Herrmann in a meeting with "Sektion Politik" of the German General Staff by Captains Nadolny and Marguerre in Berlin in February, 1916.

*Hilken's description* of this meeting is found in Exhibit 771, Rec. p. 5782, and reads in part as follows:

"As I previously testified I was present with Fred Herrmann and I think Anton Dilger also with Captains Nadolny and Marguerre in Berlin in February, 1916, at which time sabotage against munitions and supplies in the United States was fully discussed by us all. The incendiary tubes which were described by Fred Herrmann were handled and discussed by us at the time and our instructions were to get busy on this work immediately on our return to the United States. Fred Hinsch was discussed by us and his activities were known to Nadolny and Marguerre at that time. Herrmann was not under the authority of any one of us and I distinctly remember the high recommendation with which Herrmann had been sent to the general staff of the army by the admiralty department.<sup>1</sup>

"In addition to the general sabotage activities in the United States, Nadolny and Marguerre urged the destruction of the Power House at Niagara Falls and also the Tampico Oil fields. \* \* \*

"The Tampico Oil Fields was quite a sore spot to Germany as Britain was obtaining large supplies from Mexico. It was urged upon me that an effort should also be made to set fire to these wells. We did nothing about it until Fred Herrmann left the United States for Mexico in February, 1917, when I reminded him of the talk of the General Staff and suggested that he report the details to Ambassador von Eckhardt.

"The statement now made by Marguerre that the instructions which he gave us to destroy munitions and supplies in the United States were not to take effect until or unless the United States got into the war is wholly contrary to what actually took place. There was no suggestion whatever at that time of not commencing our activities unless the United States entered the war against Germany. On the contrary the prevailing opinion at that time, in January, 1916, in Berlin certainly was that the United States in all probability would not enter the war."

In addition, in the same affidavit (Rec. p. 5781), Hilken tells of Rintelen's sabotage activities and of his meeting with Rintelen on a number of occasions in Baltimore and the fact that Hinsch was instructed by Rintelen in regard to incendiary devices and he further tells of the activities of Anton Dilger.

<sup>1</sup> Hilken's letter of Jan. 11, 1917, to Arnold also refers to the fact that Woehst was sent over in the fall of 1916 by "our principals abroad" with a new supply of these incendiary devices (Ex. 976, Ann. E, pp. 50, 51).

The description given above by Hilken of the meeting with "Sektion Politik" does not differ essentially from his description given in Claimants' Exhibit 583. Rec. p. 2180, Hilken's examination by Peaslee, in December, 1928. In this latter examination Hilken was able, from his contemporaneous memorandum, to fix the exact date of this meeting as February 18, 1916. In Exhibit 583 he testified that the funds which he paid to Herrmann came out of the funds made available to him by the General Staff and that the funds which he paid to Herrmann and Hinsch probably exceeded \$50,000 (Rec. p. 2187). The funds sent by him to Mexico through Hinsch, Herrmann and Dilger amounted to probably more than \$100,000. The amount taken by Hinsch to Mexico was \$23,361.75 (Rec. pp. 2189, 2190).

He denied the statements which were attributed to Marguerre and Nadolny that the instructions to commit sabotage were to apply only if and when the United States should enter the war. He stated that at the time these instructions were given there was no thought of war, nor real expectancy of war between the United States and Germany (Rec. p. 2237; also p. 5783).

*Herrmann's description* of the meeting in Germany attended by Marguerre, Nadolny, Dilger, Hilken, and himself, does not differ in essential points from the description given by Hilken (Rec. p. 5431 *et seq.*). In relating the history of that meeting Herrmann gave a very accurate description of the incendiary pencils and drew a sketch showing the outer shell and the inner incendiary pencil and the two compartments; and this sketch may be found opposite Rec. p. 5444 and opposite Rec. p. 5520. He confirmed Hilken's statement that Hilken was to be the paymaster of saboteurs (Rec. p. 5446), and at this meeting Hinsch's name was brought into the conversation. Herrmann was informed in the conversation that it was safe to use these devices "because they had been doing it before" but not with these pencils (Rec. p. 5447).

He met Carl Dilger and stayed with him three or four days in Washington. He fixed up the tubes and gave them to Hinsch and explained their use and Hinsch had fifteen or twenty men, including "a coon by the name of Eddie", who used to report to him regularly. In December, 1916, he and Hinsch made up a list of plants manufacturing munitions, including the Kingsland plant (Rec. pp. 5451, 5452).

As to Marguerre's affidavit claiming that sabotage in the United States was not allowed during neutrality. Herrmann said (Rec. p. 5460):

"Q. \* \* \* 'These instructions did not refer to acts of sabotage on American territory, as long as that country was not at war with us.' Is that true? A. That is not true; absolutely not. *It is logical isn't it, that they would not spend the money to have me waiting there for years, when there was no war, and paying my expenses.*' (Rec. p. 5460.) (Emphasis supplied.)

As to his authority to fire the Tampico Oil Fields, Herrmann testified as follows (Rec. p. 5477):

"Q. Did you suggest to Minister von Eckhardt to try to blow up the Tampico oil fields? Did you have a conversation with the Minister in regard to setting fire to the Tampico oil fields? A. To blow them up? The conversation was with the minister as to setting fire to them, and I told him that would be a hell of a hard job.

"Q. You did not suggest that to him? A. I might have suggested it." (*Supra.* this opinion, p. 34; also Ex. 320, Rec. p. 874, and Ex. 520, Rec. p. 1847.)

*Herrmann's description* of the meeting with "Sektion Politik" is found in his examination by the two Agents on April 3, 1931 (Rec. p. 5431 *et seq.*). In this examination, after relating his history and his work in England for Germany at the beginning of the war, he tells of his trip abroad via Bergen to Germany and meeting Anton Dilger on the ship (*id.* p. 5440). Later he was introduced

to Paul Hilken by Dilger in Berlin. He and Hilken and Dilger visited the General Staff and met Marguerre and Nadolny (id. p. 5443), and entered into a discussion with Marguerre and Nadolny "about the destruction of munitions plants in the States", and they were told about the glass tubes, how they were arranged, and how to use them. Hilken was to be paymaster (id. p. 5446-7). Herrmann was instructed to go back to the United States and to report to Hilken in Baltimore, and left about a week or two after the conversation (id. p. 5448). He was given \$1,000 or \$1,200, went to Baltimore to see Hilken, who introduced him to Hinsch and told him that Hinsch had been on different jobs and was using "dumplings", but that they were not reliable (Rec. pp. 5449-50). These "dumplings" were being made by a doctor from the "Neckar" at Hinsch's house. He went from Baltimore to Washington and stayed with Carl Dilger, Anton Dilger's brother, three or four days. He showed Hinsch how to use the tubes and gave him the instructions that Herrmann had received from Germany.

Herrmann first met Wochst the end of November or the first of December. Wochst had come from the General Staff to report to Hilken (Rec. p. 5451). Hinsch brought Wozniak to Herrmann at the McAlpin Hotel. Herrmann made an engagement with Wozniak to meet him at the Barclay Street ferry house and three or four days later he asked Wozniak if he could get a job for another fellow. Wozniak was a funny looking fellow, nervous and excitable, and Herrmann got hold of Hinsch and said, "I do not like to trust this fellow with anything", and he told Wozniak to come back afterwards. He met him again and spoke to Hinsch about him again and said, "I do not like the looks of this fellow." So Hinsch got him Rodriguez, and he introduced Rodriguez to Wozniak, and Wozniak said he thought he could get Rodriguez a job because he knew somebody who was doing the hiring at Kingsland. He gave Wozniak and Rodriguez incendiary pencils and paid them three or four times, \$40 a week. After the fire he met Rodriguez and gave him \$500, two days after the fire (id. pp. 5454, 5455).

Thus it is seen that, from the testimony of Hilken and Herrmann, the authority given by Nadolny and Marguerre to commit sabotage was confirmed; and the testimony of Nadolny and Marguerre and the other witnesses for Germany, that this authority and activity were both limited to the time when the United States should enter the war, was directly contradicted by both Hilken and Herrmann.

The issue, therefore, is clearly drawn as to whether Hilken and Herrmann were telling the truth, first, when they claimed that the authority gotten in Berlin was not limited to the time when America should go to war but was intended to apply to the period of America's neutrality, and, second, whether Hilken and Herrmann, operating through Hinsch and his subordinates and other saboteurs, did, in fact, commit sabotage against American property during the neutrality of the United States.

An examination of the record will now be made for the purpose of ascertaining whether Ahrendt's affidavits may be relied on to contradict and destroy the confessions of Hilken and Herrmann.

#### (4) *Affidavits of Ahrendt*

Carl O. Ahrendt has testified seven times for Germany (Ger. Exs. LXVII (a); CII; Ger. Anns. 73, 74, 75, 115, and 160). As indicated above, one of the main purposes of these affidavits was to disprove the confessions of Hilken and Herrmann.

Ahrendt is of German parentage but was born in America in April, 1888 (Ger. Ex. CII, p. 2). From 1905 to 1916 he was an employee of Schumacher

and Company in Baltimore (*id.* p. 32), in which firm Paul Hilken and his father were partners. This firm were the agents of the North German Lloyd Steamship Company and had been such agents since 1868 (Ex. 583, Rec. p. 2155).

In 1916 Hilken, Sr., and Paul Hilken formed the Eastern Forwarding Company, of which Hilken, Sr., became President and Paul Hilken the Vice President. The purpose of the formation of this Company was to operate the line of U-boats which Germany projected sending to America, first to Baltimore and later to New London (Ger. Ex. CII, pp. 31, 32, 33). In the years 1916 and 1917, Ahrendt was assistant to Captain Hinsch and Paul Hilken (*id.* p. 33).

When Hilken returned from Europe in March, 1916, after his conference with Marguerre and Nadolny, he introduced Herrmann to Ahrendt in the office of Schumacher and Company. Although Herrmann informed Ahrendt of his activities in England at the beginning of the war, Herrmann, according to Ahrendt, did not say anything about his activities in America or the purpose of his coming back to the United States, and Ahrendt claims not to know that he had any connection with the German Government at all (Ger. Ex. CII, pp. 63, 64, 65).

Ahrendt met Captain Hinsch for the first time in the office of Schumacher and Company shortly after Hinsch brought the "Neckar", a North German Lloyd boat, into Baltimore, in the summer of 1914 (*id.* pp. 36, 37). Hinsch rented a house in Baltimore and lived there with his housekeeper, who later became his wife. Hinsch remained in Baltimore from about September, 1914, to about August, 1916, when he went to New London in connection with the U-boat work, and during all of the time, Ahrendt never heard of any activities of Captain Hinsch outside of the commercial submarine activities and his duties as Master of the "Neckar". He never heard that he had been engaged in infecting horses and mules or in sabotage against vessels or employing men to destroy munitions going to England and France (*id.* pp. 38, 39, 40). During that time Ahrendt saw Hinsch nearly every day, as Hinsch would come to the office of Schumacher and Company very frequently and occupied a double desk with Ahrendt. Ahrendt spent a great deal of time at Hinsch's house. Their relations were very friendly (*id.* pp. 40, 41).

In January, 1916, Hinsch in New York phoned to Ahrendt in Baltimore requesting him to bring with him \$2,000; and Ahrendt secured two one thousand dollar bills from Dederer, the Treasurer of Schumacher and Company, and took them to Hinsch in New York, although Hinsch had no account with that Company and no deposit (Ger. Ex. LXVII(a); Ex. 975, Ann. C.,<sup>1</sup> pp. 26, 27, 30-40; Ex. 976, Ann. A, pp. 56, 57, 68, 74).

After the United States entered the war, Hinsch fled to Mexico to evade a Presidential warrant for his arrest as an alien enemy (Ord. Ex. 343, Rec. p. 4258); and Ahrendt accompanied Hinsch to El Paso and helped him cross the border into Mexico (Ex. 975, Ann. C, pp. 98-104). Later in the year 1917 Ahrendt accompanied Hinsch's housekeeper to Laredo, Texas, and assisted her in crossing the border to join Hinsch in Mexico (Ex. 975, Ann. C, pp. 235 *et seq.*). After the war, in 1922-1923 Ahrendt lived in Hilken's apartment on West 71st Street, New York, and Herrmann visited them there (Ex. 975, Ann. C. pp. 165, 167); and in 1922, through the aid of Paul Hilken, Ahrendt entered the employ of the North German Lloyd. He had previously been employed since 1919 by Hilken in the automobile tire sales business and in the motortruck business. (Ger. Ex. LXVII (a)).

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<sup>1</sup> Examination of Ahrendt under subpoena by the American Agent.

The short history of Ahrendt's relations with Paul Hilken, Hinsch and Herrmann bears out Ahrendt's claim that he was an intimate associate of theirs in 1916 and 1917, so intimate that if they were connected with sabotage activities in this country during this period, Ahrendt's acquaintanceship with them should have made him fully aware of such activities.

In order to support Hinsch's claim that he did not engage in sabotage in the United States subsequent to the beginning of the commercial submarine activity, Ahrendt testified that Hinsch was in Baltimore, actively engaged in preparation for the reception of the "U-Deutschland"; was in fact during this period only away for a day or so at a time between the return of Hilken in the latter part of March, 1916, and the arrival of the "Deutschland" early in July, 1916 (Ger. Ex. CII, pp. 40,41,46); that while the "Deutschland" was in Baltimore Hinsch was not away at all (id. pp. 47-49); and that Hinsch was in New London practically all of the time from August, 1916, when the commercial submarine business was transferred from Baltimore to New London, until shortly after the United States entered the war (id. pp. 53-55). During this latter period Ahrendt claims to have seen Hinsch "every day excepting when he would go and take a short run to Baltimore or to New York" on which trips he "would never be" away "over two or three days" (id. p. 56). During December, 1916, following the departure of the "Deutschland" from New London, and January, 1917, Hinsch, according to Ahrendt, "was busy getting ready for the next submarine" (id. p. 58). While Ahrendt is not at all certain that Hinsch was away from New London some time before Christmas in December, 1916 (id. p. 60), Metzler, a fellow employee at New London with Ahrendt, is certain that Hinsch was away from New London for a few days "either in the middle of December or towards the end of December [1916], around the 20th or so." This absence of Hinsch from New London was before Christmas, 1916 (Ger. Ex. XCVIII, pp. 79, 80).

Under examination by the American Agent (Ex. 875, Ann. C) Ahrendt contradicted his previous testimony when he stated that in November, 1916, after going to Baltimore he came back to New London about a week after Thanksgiving and remained in New London until February, 1917; that they had nothing to do in New London at that time; that Hinsch was there; he saw him practically every day; that Hinsch did not go away very often but he did go either to Baltimore or New York (id. pp. 156-158, 183).

In a letter written October 2, 1916, while they were awaiting the arrival of the "Deutschland" in New London, Hilken informs Salzer, Chief Clerk in the office of A. Schumacher and Company, as follows:

"\* \* \* during the last two weeks I might have helped you and been happy to have had something to do. This 'watchful waiting' game is getting more than monotonous." (Ex. 976, Ann. A-D, p. 253, Ex. 51 attached.)

And in a letter dated October 18, 1916, Salzer wrote to Ahrendt, c/o Eastern Forwarding Company at New London, as follows:

"I presume that you will have plenty of time to get up a scrap book for Captain Hinsch, as there is a long time between sailings of the U-boats." (id. p. 254, Ex. 49 attached.)

The "Deutschland" actually arrived on November 1, 1916; and these two letters prove conclusively that, during the time of "watchful waiting", there was no necessity for Hinsch to remain continuously on the job at New London.

When Hinsch fled from the United States to Mexico in order to evade a Presidential warrant for his arrest, Ahrendt accompanied him to El Paso and assisted him in getting across the border (Ger. Ann. 74; Ger. Ex. CII, pp. 84-91; Ex. 975, Ann. C. pp. 98-108); and subsequently Ahrendt accompanied Hinsch's

housekeeper (later to become his wife) to Laredo (Ex. 975, Ann. C, pp. 235-238). Ahrendt claimed that after Hinsch arrived in Mexico he had one letter telling about his arrival and that that was the only letter he had from him; that Hinsch did not tell him what he was doing in Mexico nor did anyone else inform him about Hinsch's activities in Mexico. He understood Hinsch was simply living there because it was a country which was neutral (Ger. Ex. CII, p. 92).

After the Herrmann Message was produced, Ahrendt was examined with regard to letters written with secret inks (Ger. Ann. 75, filed August 15, 1932). He then testified that he received from Dr. Dilger, who had returned to the United States on July 4, 1917 (Ex. 943), instructions as to how to write with the new fluid and how to develop the secret writing. Some time after this incident a letter was received from Hinsch, intended for Paul Hilken and Hilken turned it over to Ahrendt to develop. After he developed the letter, he found that it was a secret message concerning certain supplies which Hinsch needed for a wireless station which he wanted to build in Mexico. Thus we have Ahrendt contradicting himself when he stated in his first affidavit that he never heard from anybody what Hinsch was doing in Mexico.

It is pertinent to note that Ahrendt assisted Hilken in writing a secret message to Hinsch answering the prior secret message (Ger. Ann. 75, p. 4).

This incident is confirmed by Hilken's examination in September, 1933 (Ex. 976, Ann. E, pp. 8 to 10). See also examination of Ahrendt, Exhibit 975, Ann. C, pp. 210, *et seq.*, where Ahrendt denies that his development of the secret message from Hinsch in Mexico to Hilken, requesting material for the wireless, was the act of a spy; but he excused himself on the ground that he was a misguided youth (of over 29 years (Ger. Ex. CII, p. 2)), and should have had better sense. He also admitted that there was a second letter received (Ex. 975, Ann. C, p. 214), a short time after the first one (*id.* p. 213), and that he developed the same and gave it to Mr. Hilken (*id.* p. 216). At the time that he developed the second letter he was not working for Hilken but for the Old Bay Line (*id.* p. 217).

When we take into consideration the close association between Ahrendt and Hinsch, Ahrendt's denial of any knowledge of Hinsch's activities is, to say the least, remarkable. Ahrendt knew Hinsch while Ahrendt was an employee of A. Schumacher and Company, and he testified that he was a deskmate and close companion of Hinsch throughout Hinsch's connection with the Hilken in Baltimore, and he saw Hinsch almost every day from 1914 to 1917 (Ger. Ex. CII, p. 40).

One of the main purposes for which German Exhibit CII was introduced was to prove that Ahrendt had never heard or known of sabotage being conducted by Herrmann or Hinsch with disease germs, bombs or incendiary devices and especially that he had never heard of pencils containing glass tubes and that Hinsch had never shown him any explosive tubes or glass tubes. In that exhibit the following occurs on page 60 *et seq.*:

" Q. During the time you were together with Hinsch in New London, you were in close contact with him?

A. Oh, yes.

Q. Did you get the impression from what he was doing that he attended, also to other matters?

A. No.

Q. Did Captain Hinsch show you at any time during the years 1915, 1916, and 1917, any *explosive tubes, little glass tubes?*

A. No.

Q. Did he show you at any time *pencils that contained little glass tubes?*

A. No.

Q. There is some testimony in the record that certain men had *glass tubes* containing sulphuric acid and other material which could be put into pencils. These *glass tubes or pencils*, it is claimed, were to be used in order to start fires. It is said that by cutting off the upper end of the *pencil* and cutting off the closed end of the *tube*, a rather strong flame would be produced; that after the sulphuric acid had run down and had ignited some material in this *pencil*, then there would be a flame about one foot or two feet long, and that these *pencils* were to be used in order to start fires: Did you ever hear anything about such devices?

A. No.

Q. Did you ever see such devices —

A. (interposing) I didn't know —

Q. (continuing) — in Captain Hinsch's possession?

A. Not at all.

Q. Did he ever tell you about such devices?

A. No.

Q. Have you any reason to believe that he had such devices?

A. No, I have not.

Q. You stated that you met Friedrich Hermann in Baltimore while the Deutschland was there in July and the beginning of August, 1916?

A. Yes.

Q. Did Hermann tell you at any time about these *explosive tubes or pencils*?

A. No.

Q. Did you ever see in his possession any of such *pencils or tubes*?

A. No, not at all.

Q. Did he ever tell you that he had such devices?

A. No, he didn't." (Emphasis supplied.)

When an effort was made by the American Agent to examine Ahrendt under subpoena, under the Act of June 7, 1933 (48 Stat. 117), Ahrendt resisted the effort to compel him to give testimony; and there was employed for that purpose counsel who was also counsel for certain German ship owners holding awards of the War Claims Arbitrator. Ahrendt finally submitted himself for examination (Ex. 975, Ann. C).

During this examination Ahrendt repeated his previous denials of knowing anything about German sabotage activities in the United States during neutrality and especially the sabotage activities of Herrmann, Hilken and Hinsch.

After he had made these specific denials the following questions and answers ensued:

"Now, in the face of this record, do you still insist on your oath that you knew nothing of Hinsch's and Herrmann's admitted sabotage activities and that they were never discussed either by Hinsch or other parties with you or in your presence?

A. I do.

Q. In the face of this record, are you willing to submit your testimony to the Commission on your denial that you know anything about the activities of Herrmann and Hinsch, and that they were not discussed or revealed to you at any time, and are you willing to ask the Commission to believe your denial in the face of this record?

A. Yes." (Ex. 975, Ann. C, p. 260)

The American Agent filed with his brief of September 13, 1938, an original letter written by Ahrendt to Paul Hilken dated January 19, 1917. This letter was located among the files of the Eastern Forwarding Company. The body of the letter seems to be confined entirely to business matters, apparently connected with the business of the Eastern Forwarding Company. Appended to the letter is a postscript entirely in the handwriting of Ahrendt which reads as follows:

"Yours of the 18th just received and am delighted to learn that the von Hindenburg of Roland Park won another victory. Had a note from March who is still at McAlpin. Asks me to advise his brother that he is in urgent need of another set of glasses [sic]. He would like to see his brother as soon as possible on this account."

It will be recalled that the Kingsland plant was destroyed by a fire that raged January 11th and 12th, 1917.

In spite of the ingenious attempt on the part of the German Agent to break the force of the disclosure in the postscript quoted above, this postscript convicts Ahrendt of knowing that Herrmann (March) was in fact engaged in sabotage activities and that he desired another set of incendiary glasses or tubes. It also discloses the fact that Ahrendt was congratulating Hilken, the "von Hindenburg of Roland Park" and the paymaster of the saboteurs in America, upon "another victory".

This record abounds in references to the incendiary tubes and to the fact that they are constantly called "glasses" (see Rec. p. 5586, Herrmann's Washington Examination, Rec. pp. 5443 *et seq.*, pp. 5516 *et seq.*, Rec. p. 5651; also Ger. Ex. CXXIII, pp. 14, 16; Ex. 764, Rec. p. 5649 *et seq.*).

In the light of this record, the claims of Ahrendt, (1) that Hinsch had never shown him any explosive tubes or little glass tubes, (2) that he had never seen any such devices, (3) that Herrmann had never told him anything about explosive tubes or pencils and (4) that he knew nothing of the sabotage activities of Hinsch and Herrmann are clearly disproven by the postscript to his letter to Hilken written January 19, 1917.

When we come to examine Hinsch's affidavit as to his absences from Baltimore and New London after the U-boat enterprise had been undertaken by him, Hinsch's claim that he never left the submarine bases just before and after the arrival and departure of the U-boat will be shown to be false, and Ahrendt's affidavit given for the purpose of corroborating Hinsch will also be proven to be false.

It has been shown above that Ahrendt's testimony was false when he stated in his first affidavit that he never heard from anybody what Hinsch was doing in Mexico. Thus it clearly appears that Ahrendt's efforts to corroborate Hinsch have failed and that Ahrendt's affidavits cannot be used to destroy the confessions of Hilken and Herrmann.

In Exhibit 986, Ann. A, p. 167 *et seq.*, Herrmann while testifying under subpoena, under the Act of June 7, 1933 (48 Stat. 117), stated that upon his arrival in the United States from Berlin he met Paul Hilken and Captain Hinsch at the Hansa Haus in Baltimore in 1916; that Ahrendt was an employee of Hinsch or the North German Lloyd, working (in the Hansa Haus) as a member of the office force of Schumacher and Company. He states further that Ahrendt was Hinsch's "go-between" in sabotage work (p. 167); that when he (Herrmann) went to Washington to help Carl Dilger with the germ cultures and preparing the incendiary pencils (p. 168), he would usually bring them up to Baltimore and deliver them to Carl Ahrendt, if Hinsch or Hilken was not there. Ahrendt also at times went to Laurel, which was halfway between Baltimore and Washington, where Carl Dilger and Herrmann would meet him with a car and deliver the tubes and germs to him at the red railroad station in Laurel. At times when Herrmann delivered the germs and tubes to Hinsch, Ahrendt was used to distribute them to the different colored agents whom Hinsch had working for him, one of whom was Eddie Felton (*id.* p. 168). Herrmann met Ahrendt in New London, New York, Philadelphia, and in Norfolk or Newport News, always in reference to the germ work and the incendiary tubes (*id.* pp. 169-171).

In the light of the fact that Ahrendt's affidavits drafted and introduced for the purpose of refuting Herrmann's testimony have been proven to be false, this testimony of Herrmann's with reference to his relations with Ahrendt has unusual significance.

In the decision rendered at Hamburg on October 16, 1930, the opinion of the Commission has this to say about Hinsch (Decs. and Ops., p. 993):<sup>h</sup>

"One is rather inclined to regard Hinsch's story that he gave up sabotage when he took over the *Deutschland* work as quite likely to be true. He may not have done this at once, but it seems more than likely that he would not while the *Deutschland* was at Baltimore have been active in sabotage. We do not regard the question whether Hinsch was absent from Baltimore during the two days before Black Tom as important in itself. He did not need to be absent, if they had been planning Black Tom for some time. Its importance relates only to Hinsch's credibility, and it does not have much importance from this point of view. It has some bearing on the credibility of other witnesses also. Our impression is that Hinsch was not absent from Baltimore at this time.

"The fact that Hinsch let Herrmann stay around Baltimore, and that Herrmann probably did some things or talked of some things in connection with sabotage at this time, and the talk about the pencils which Herrmann seems to have had with him at this time, tends against Hinsch's claim that he cut loose from sabotage. We would guess that Herrmann was not really doing much but talk and plan, and that Herrmann himself, particularly when the *Deutschland* was there, was doing nothing but work about her. And it is of course conceivable that we are wrong in disbelieving Marguerre's evidence that Herrmann was to take no action against munition plants or American property unless the United States entered the war. We do not believe that Hinsch would have mixed up sabotage so closely with the *Deutschland*, either by taking part in it himself or by letting Herrmann work on the *Deutschland* if Herrmann was then active in sabotage."

In another part of the opinion, in comparing contradictory statements made by Hinsch with statements made by Hilken and Herrmann with reference to Wozniak which were contradicted by Hinsch, the Commission said, page 971:<sup>i</sup>

"Hinsch, the man whom Herrmann connects with himself in the story, has denied it. His denial contains plausible details, but we could not rely on it if we felt that Herrmann was now telling the truth, for though we have no evidence that Hinsch is a liar, there is a strong presumption that he might be under circumstances which pointed to his guilt."

Thus the Commission seems to have credited Hinsch's story that he gave up sabotage when he took over the "Deutschland" work and was under the impression that Hinsch was not absent from Baltimore while the "Deutschland" work was going on. The Commission also seems to have been under the impression that Herrmann, during this time, was doing nothing but work upon the "Deutschland", and the Commission expressed the opinion that Hinsch would not have mixed up sabotage so closely with the "Deutschland", either by taking part in sabotage work himself or by letting Herrmann work on the "Deutschland" if Herrmann had been active in sabotage. It becomes necessary, therefore, to make a thorough study of the record in order to show clearly what was the relation of Hinsch to Herrmann and Hilken, and also, to ascertain whether Hinsch's affidavits, in which he denied engaging in sabotage after the U-boat enterprise started, were truthful.

Hinsch made nine affidavits in behalf of Germany; and, as we have seen before, the object of his affidavits was, first, to strengthen the plea filed by

<sup>h</sup> Note by the Secretariat, this volume, p. 100.

<sup>i</sup> Note by the Secretariat, this volume, p. 86.

Germany that no sabotage was authorized in the United States during the neutrality of that country, and second, to show that, although men and material for sabotage were sent to the United States in 1916, the definite instruction was given that no active work of sabotage should be committed unless and until America entered the war.

In order to establish these propositions, Hinsch's affidavits were drafted to deny a great many statements which were contained in the confessions of Hilken and Herrmann. Therefore, after a study of the record to determine what were the relations among Hinsch and Herrmann and Hilken, it will be necessary to make a minute examination in order to ascertain whether the affidavits of Hinsch, contradicting the confessions of Hilken and Herrmann, are worthy of belief.

### B. Fraud in the Evidence

#### *Hinsch's Relations with von Rintelen*

We have seen in another connection that Captain Hinsch brought the German steamer "Neckar" into Baltimore harbor and we shall develop thoroughly Hinsch's connections with Hilken, Herrmann and Woehst.

Rintelen in his book, *The Dark Invader* (Ex. 990, Ann. E), after telling of the founding of the fictitious firm called "E. V. Gibbons Inc." (p. 94), then tells of his contacts with Dr. Scheele, the German chemist who came to him with a letter of recommendation from von Papen and brought with him one of his "cigars", made out of a lead pipe with two compartments separated by a circular disc of copper, one compartment being filled with picric acid, and the other with sulphuric acid. The thickness of the disc determined how long it would take the two acids to eat their way through and cause an explosion (pp. 95-96).

Rintelen met Karl von Kleist and received from him the suggestion that they make use of interned German sailors, and that they should get hold of Paul Hilken and Captain Hinsch of the Lloyd steamer "Neckar" (pp. 103-104). Likewise, through the suggestion of von Kleist, the headquarters were established on the German ship "Friedrich der Grosse", which was tied up in New York harbor (p. 106); and the activities on that ship are thus described by von Rintelen (p. 107):

"During the following nights the great dark ship was the scene of ghostly activity. I had purchased large quantities of lead tubing through my firm, and my assistants carried it at night to the steamer, where it was cut up into suitable lengths. I had likewise obtained the necessary machinery through the firm, and after the lead had been cut up, and the copper discs prepared in various thicknesses, the little tubes were taken away again, under cover, in darkness, to Dr. Scheele's laboratory, where they were filled with acid. We had got to this stage when one morning one of my sailors appeared in the office, carrying a case of medium size under his arm. I was sitting at my desk, and he said to me: 'Excuse me, Captain, just move your legs a bit!' I removed my legs, and he stowed the case in one of the drawers of my desk. It was a disturbing neighbour to have!

"The detonators were all fixed to go off in fifteen days, so they had to be disposed of as soon as possible. I took the man into the other room where Weiser was sitting and asked him to summon the captains, the sailors, and the Irish, whom I had meanwhile initiated into my scheme, for the same evening, so that we might start our dangerous work immediately.

"'All right,' said Weiser, 'I'll round them all up.'"

On page 109 the following occurs:

"One night, as I was leaning over the rail of the *Friedrich der Grosse*, gazing at the peaceful scene bathed in brilliant moonlight, all of a sudden the thought

struck me: Why not go to the root of things? Why not go after the piers themselves, the piers at which the munition carriers were tied up? Gradually, this thought became a desire, the desire a resolution, and the resolution an instruction!"

Von Rintelen then describes his trips to the various piers and shows how measurements were taken, distances paced out and possibilities were studied as to where motor launches could be comfortably fastened (p. 114). He then tells of a trip to the New Jersey piers and describes his visit to Black Tom as follows (p. 115):

"One of our visits took us to 'Black Tom,' a rather curious name for a terminal station. It remains clearly in my recollection because of its quaint conformation, jutting out as it did like a monster's neck and head. I suppose that it was for this reason that it had derived the name of 'Black Tom.' To judge from the numerous railway tracks converging here, it appeared to be one of the chief points for the Allies' export of munitions.

"I could not help urging upon myself the advisability of giving Black Tom a sound knock on the head — its mere name sounded so good to me: We could run little risk from paying Black Tom a compliment of this kind. Some peaceful summer evening — all arrangements properly made — a powerful speedboat at hand for us to disappear into the vastness of the Hudson River — it was all so remote from observation, from possible harm that might be done to human life!

"About a year later, when I was a prisoner of war in Donington Hall, one hot summer morning my eyes fell upon a large headline in *The Times*:

EXPLOSION OF CHIEF PIER  
OF ALLIED SHIPPING  
'BLACK TOM' BLOWN UP  
BY ENEMY AGENTS

"I had my own opinion as to how it had come about, and who were the men behind the scenes!"

The relations between von Rintelen, Hilken and Scheele are clearly set out in a report of William R. Benham, Special Agent, made to the Department of Justice, dated September 13, 1916, made the 11th,<sup>1</sup> in connection with the case of U. S. v. Franz von Rintelen, et al., in which Rintelen was indicted with others for violation of antitrust laws, in placing bombs on ships engaged in foreign commerce (Ord. Ex. 140, Rec. p. 3794, *et seq.*).

Benham made a report of a conversation that he had with Hilken in regard to his connection with Rintelen. In this report Hilken stated that sometime during the early part of May, 1915, he was in New York on business stopping at the Hotel Astor; that Rintelen called at the hotel and presented a letter of introduction from Captain W. Bartling,<sup>2</sup> an official of the North German Lloyd S. S. Co., Bremen, Germany. During this first meeting Rintelen spoke at length on the un-neutrality of America in the matter of financing the manufacture of munitions.

The next time Hilken met Rintelen was the latter part of May or early part of June, 1915, at Baltimore where Rintelen was Hilken's guest for two nights. Hilken took him to the Baltimore Country Club and to lunch at the Lawyers' Club in New York shortly after his visit in Baltimore. Again in June, 1915, Hilken came to New York where he met Rintelen and they went to the theatre together and he saw Rintelen again the same month in New York. The last

<sup>1</sup> Hilken's 1916 Diary for September 11, 1916, has an entry reading "Benham from Washington interview."

<sup>2</sup> For Hilken's correspondence with Bartling see Ex. 906 - A, D, E, and P.

time he saw Rintelen was in Baltimore the latter part of June or early July.<sup>1</sup>

In a statement dated November 17, 1915, of Mr. Henjez (Ord. Ex. 133, Rec. p. 3758), given in re: Hamburg-American Line cases, Henjez reported to Assistant United States Attorney, John C. Knox, that a man named Stein or Steinberg came to his office and wanted him to meet a man by the name of Hansen (Rintelen), who had been sent over by Captain Bartling of the North German Lloyd. (Hansen was an alias used by Rintelen.) Hansen came over to see him, said that he had been sent by Captain Bartling and that he wanted to have some men who were to blow up factories and, he believed, steamers. He said there were lots of ruffians and cut-throats in New York to be had. Henjez said:

“I told Mr. Hansen I would have nothing to do with it.”

Henjez said that he visited Hansen twice in the building where the Transatlantic Trust Company was located and he was there in an office which had the name E. V. Gibbons & Company and that Hansen introduced him to a tall, dark haired man by the name of Plockman (id. p. 3763). Henjez introduced Hansen (Rintelen) to Paul C. Helken (id. p. 3766).

In the trial of von Rintelen and his associates, evidence was given that Dr. Scheele and his associates purchased lead pipe, that this lead pipe was taken to Dr. Scheele's office in his laboratory where there were different kinds of chemicals, that the factory was known as a fertilizer factory and it was shown that some of the lead pipe was delivered on the steamship “Friedrich der Grosse”. The lead pipe was gotten from J. D. Johnson's on Cliff Street and taken to the “Friedrich der Grosse” in April, 1915 (Ord. Ex. 158 (1), pp. 3847, 3848).

In the same case Frederick Henjez, Jr., the same man who had made the report to Assistant District Attorney Knox, testified, that early in 1915 before the sinking of the “Lusitania,” von Rintelen was introduced to him by a party named Stein or Steinberg (id. p. 3861), that von Rintelen asked him if he would put him, von Rintelen, in touch with anyone who could supply people to blow up bridges and factories and his answer was he could not do it (id. p. 3862), that von Rintelen stated that his purpose was to hamper the delivery of supplies to the Allied governments and that he was a representative of the German Government (id. p. 3863).

In the same case George D. Barnitz, a member of the police force of the city of New York, testified as to a statement which the defendant, von Kleist, made with reference to the case. That statement is as follows (Ord. Ex. 158 (2), p. 3881):

“And he dictated a statement which I wrote down in longhand and this statement covered a period of making bombs and placing them on board ships. The substance of it was that along about 1915, the beginning of 1915 ———

“Mr. Wemple: Wait a minute. I object to this. It is all evident that is written, and I don't think it is proper for the witness to testify to the contents of a paper that is in writing.

“The Court: Objection overruled.

“Mr. Wemple: Exception.

“The Witness. (Continuing): And the defendant von Kleist said that along about, the early part of January, 1915, about that time, that a man by the name

<sup>1</sup> Hilken's 1915 diary shows he was in contact with Rintelen (under the name of Hansen) and Hinsch in Baltimore during the period May 29-31, 1915; in New York with Rintelen (under the name of Gates) on June 23, 1915; and again in New York with Rintelen (under the name of Gates) and Hinsch on June 27, 1915 (Ex. 583, Ann. C).

of Dr. Walter Scheele had come to him and said that he wished him to assist him in helping the Fatherland, and Scheele explained to him that what he wanted to do was to place bombs on board ships to the Allies, leaving this country for the purpose of preventing munitions and supplies reaching the allied governments. Von Kleist said that he was greatly affected himself over the fact that he, an old man, sixty-six years of age, could still be of some help to his dear old Fatherland, and they immediately went into partnership in making these bombs, and he said that Scheele said that he had received ten thousand dollars from von Rintelen, and this was to assist in making and manufacturing these bombs; that Scheele had a place in Garden Street, Hoboken, where the bombs were to be manufactured, and von Kleist said that Scheele asked him to get a good mechanic to assist him, and that he, von Kleist, mentioned the name of a plumber whose name I do not recall now, but who said he was a good man, but afterwards when Scheele met him, he said that he, Scheele, had the right man, and von Kleist said that he referred to Carl Schmidt and Becker on board the Frederick der Grosse, and it was here that the shells were to be used, where they were prepared, and it was here that the shells were to be used, where they were prepared, and after they were made they were taken to Scheele's laboratory, where they put chloride of potash on one side and sulphur on the other, and the object was that the partition between the two, the chloride of potash and the sulphur, would get on fire and it would melt the lead and it would set fire to whatever was near it. And those bombs, the defendant von Kleist stated, were placed in the holds of ships; and he said that part of it was left to Captain Wolpert and Bode. I asked him how many bombs were placed on various ships, and he said he was not positive, but, in his opinion, in the neighborhood of ten were used in the holds of each ship. That was the substance of the conversation that I had with the defendant von Kleist. I, later on, later on I went on the following day —

“Q. Before you leave that, let me ask you: Is this the statement that you wrote at that time?”

“A. This is the statement as he dictated it, and as I wrote it in longhand.

“Q. Was that signed by him? A. That was signed, each page was signed by the defendant von Kleist.

“Q. And after that statement was written by you, was it read over to him?”

“A. My recollection is that it was; and I questioned him on certain points.”

The defendant von Kleist was shown by Captain Tunney a bomb that came back from France and von Kleist looked at it and said, “Yes, this is one that did not go off. and this is what caused the fight between Wolpert, Dr. Scheele and Steinberg” (id. p. 3884).

Hinsch's description of his sabotage activities is contained in German Exhibit CXXVII, at p. 109, where he says:

“\* \* \* I attempted at first to instigate strikes among the stevedores in ports, and furnished for that purpose negroes hired by me at the time with circulars which I caused to be distributed in Norfolk, Newport News and Baltimore. After that, we attempted to infect horses and mules transports with anthrax germs. I used the negroes also for that purpose. Finally, we manufactured so-called dumplings in order to cause fires on munitions ships and ships with contraband. I used Ed Felton and his negroes also for this purpose.

“Q. When did you start these activities?”

“A. In May, 1915, after I had talked with Rintelen personally.”

Paul Hilken in his deposition of December, 1928, first told about his contacts in 1915 with Rintelen and Hinsch (Ex. 583, pp. 2163-2171). The details of these contacts are given in his deposition of August 26, 1930 (Ex. 829, pp. 6094 *et seq.*), where he testifies as follows: He may have met Captain Hinsch when Hinsch was an officer of the North German Lloyd Steamship Company, but he certainly met him in the fall of 1914 when the “Neckar” arrived at Locust Point, Baltimore, of which steamer Hinsch was acting captain (id. pp. 6096, 6097). Rintelen, in the spring of 1915, called him from New York

and they met in Philadelphia and shortly thereafter Rintelen came to Baltimore and got in touch with Hinsch and Hinsch acted in the interest of Rintelen. Rintelen told him that he came to America

“ To investigate strikes among the stevedores at various ports. In fact, that was the first thing that he talked over with me. Also, to destroy ammunition aboard ships. \* \* \* he told me he was placing these ‘ cigars ’ aboard ships loaded with ammunition.” (id. p. 6098.)

At that time Rintelen did not mention the destruction of plants, but that came later (id. p. 6099). Hilken brought Hinsch and Rintelen together in Baltimore. Hilken received considerable money from Rintelen to pay Hinsch, probably in the neighborhood of \$10,000 (id. p. 6101). The last payment which he made to Hinsch was when he (Hinsch) left for Mexico and it was in the neighborhood of \$29,000 (id. p. 6101). All of these payments to Hinsch were for sabotage purposes, except the \$29,000 which was to fit out a Commerce Raider in Mexico (id. p. 6101). The authority to pay money to Hinsch prior to Hilken's trip to Europe in 1916 came from Rintelen, but the authority after the trip to Europe came from Marguerre and Nadolny in “ *Sektion Politik* ” (id. p. 6101).

*Was Hinsch Telling the Truth in Claiming that He Ceased Sabotage Activities after the U-boat Enterprise Started?*

In German Exhibit CXXVIII, p. 107, Hinsch admitted that, when he first made Herrmann's acquaintance through Paul Hilken shortly after Paul Hilken returned from Germany in 1916, he got four or five empty small glass tubes from Herrmann, but he claimed never to have used them at all; and he further denies that Carl Dilger, in the course of the year 1916, turned over to him a trunk with secret compartments in which small incendiary tubes were hidden <sup>1</sup>. In making this denial he confirmed a story told by Hilken that he sent Carl Dilger to Germany with a message in invisible ink, requesting the General Staff to keep Dilger over there.

As we have seen in another place, Hinsch admitted instigating strikes among stevedores and injecting horses and mules transports with anthrax germs and manufacturing “ dumplings ” in order to cause fires on munitions ships and ships with contraband; and he further admitted that these activities began in May, 1915, after he had talked with Rintelen (Ger. Ex. CXXVIII, p. 109), but he claimed that after the return of Paul Hilken from Europe in April, 1916, he occupied himself exclusively with matters of submarine service and discontinued all other matters at the time of his first conference with Paul Hilken after his return from Germany.

That Hinsch did not desist from sabotage activities after the arrival of the U-boat, is shown by his relations with Carl Dilger.

Carl Dilger was the brother of Anton Dilger, who became the leader of sabotage in North and South America with respect to infecting animals by injecting them with disease germs. They were of German parentage, and Anton Dilger, a graduate of Johns Hopkins, had served in the German Army as a surgeon until disabled, when he came to this country with a supply of cultures, anthrax and glanders germs (Ex. 771, Rec. p. 5781). Anton Dilger was also present at the famous meeting in Berlin, when Nadolny and Marguerre

<sup>1</sup> It will be recalled that Marguerre admitted the manufacture of such a trunk and he would not deny that it was entrusted to Carl Dilger. Ger. Ex. CXXIII, Testimony of August 1, 1930, p. 2. See *supra*, this opinion, p. 27. (Note by the Secretariat, this volume, p. 257.)

gave their instructions to Hilken and Herrmann in regard to sabotage and supplied Herrmann with incendiary pencils.

In German Exhibit CXXVIII, filed August 21, 1930, Hinsch classifies Carl Dilger as among those who had been employed by him for sabotage before he came in contact with U-boat service (p. 90).

In denying that Carl Dilger had, in the course of the year 1916, turned over to him a trunk with secret compartments containing small incendiary tubes, Hinsch gives this description of his employment of Carl Dilger (p. 108):

"I had used Carl Dilger in 1915 and also in 1916 in connection with our enterprises against horses and mules transports. When I completely discontinued those matters in the beginning of 1916, Paul Hilken and I decided to send Dilger to Germany. He used to drink a great deal and wanted money continually. Paul Hilken wrote a report to the General Staff in invisible ink wherein the General Staff was requested to keep Carl Dilger by all means over there. Hilken then induced Dilger to leave for Germany and gave him that report to take along with him. Hilken told me later that Carl Dilger had returned from Germany and that he had a serious altercation with him. He told me also that he had learned from Dilger that he had thrown that report overboard. I, myself, never saw Carl Dilger again after his return.

"Q. Did the report which you mentioned and which Paul Hilken gave Carl Dilger contain any other communications?

"A. No, as far as I know. I had agreed with Paul Hilken that he should write a report in invisible ink to the effect that Carl Dilger should be retained in Germany."

It is important to examine the record to ascertain whether Hinsch was telling the truth when he stated in the above deposition that he and Hilken had decided to send Dilger to Germany, *after he had completely discontinued sabotage* in the beginning of 1916.

The time of Carl Dilger's departure for Europe is definitely fixed as Friday, June 2, 1916, by the following quotation from Hilken's 1916 diary:

"Lots of trouble with getting C. D. off lunch 'Astor' — Lewis calls me on phone etc. C. P. H. K. xx" (Ex. 911, located December, 1931, and filed May 27, 1932).

From the above entry in the diary it appears that Herrmann was in touch with Hilken on the same date that they succeeded, after lots of trouble, in "getting C.[arl] D.[ilger] off".

Under date of June 1, 1916, Hilken wrote Captain W. Bartling, German Commercial Attaché at Copenhagen, with reference to Carl Dilger and his trip to Germany:

"Herewith I send you \* \* \* copy of a letter in the Danish language, which I am today giving to a man who is leaving here on Saturday [June 3, 1916] via steamer 'Kristianiafjord', and who will look you up as soon as possible. You will be sure to make the arrangements necessary for the abovementioned gentleman to reach his destination as soon as possible and there find employment. *He has become unnecessary to us.*

"Will you be so kind as to inform me, by postcard, if this letter reaches you, also whether Mr. D. has called on you and has traveled on." (Ex. 906, Ann. A; filed July 1, 1931.) (Emphasis supplied.)

A second letter in relation to Carl Dilger's trip to Germany was written by Hilken on June 2, 1916, to one Hagedsted in Copenhagen (Ex. 906, Ann. O), and with this letter there was enclosed a letter in the Danish language addressed to Bartling and introducing Carl Dilger. The letter of introduction is as follows:

"The bearer of these lines, Mr. C. Dilger, brother of the Mr. A. Dilger with whom you are acquainted, and who shared a room with me in Königshof, travels

in the belief that he had to deliver important letters for me to Germany. A few of them are important, without containing government secrets.

"We are principally anxious that he may get in touch with his brother and, if possible, *be kept busy for a long time*. We have for the time being no suitable occupation for him. *I am convinced* that you will make the necessary arrangements." (Ex. 906, Ann. P) (Emphasis supplied.)

To insure so far as possible the receipt by Bartling of the information relating to Carl Dilger, Hilken on June 7, 1916, wrote Bartling in part as follows:

"I confirm my letter of the 1st inst. in accordance with the enclosed copy, and I hope that Mr. C. D. has already visited you, prior to the arrival of this letter. In any event I would wish to write you (as today there is presented an especially good opportunity to transmit a letter to you) that the person mentioned *has been made privy to certain secrets* only through his brother, Dr. Dilger, against the judgment of Capt. H. and myself. To speak plainly, *Capt. H. and I consider him to be a bluff, who would not accomplish much*. Dr. D., on the contrary, was of the opinion that he can be very useful for good and entrusted him with different missions. After Dr. D. departed we limited as much as possible the activities of his brother. Lately, however, *he has appeared to us to have become somewhat dangerous because of various statements*, and we therefore decided, as already implied, *to send him over there, in the expectation that he could be employed innocuously in Germany*. This can best be done now, I believe, and *without raising any suspicion*, while he is being, first of all, put into communication with his brother. *It goes without saying that we must, nevertheless, leave it to the gentlemen over there to do the needful.*" (Ex. 906, Ann. D) (Emphasis supplied.)

In Exhibit 764, Rec. p. 5649, Carl Dilger, on April 18, 1930, tells how he came to Washington in 1915 and lived in Chevy Chase, D. C., until March or April, 1917. He and his brother, Anton, had a house at the corner of Livingston and 33rd Streets. He states that his brother, during part of that time, maintained a laboratory in Chevy Chase for making disease cultures, and that he worked in this business with his brother for several months after he reached Washington (id. p. 5650). He was introduced by his brother to Hinsch, and Hinsch had charge of a lot of destruction work and work with cultures. In May, 1916, he was sent to Germany by Captain Hinsch and he *thought that Paul Hilken helped to arrange for his going to Germany*. He then testified as follows (Rec. p. 5650):

"When I was sent to Germany in May 1916 I was given a package containing some papers which I was told to deliver over there. I never delivered the package that I had been given, because I thought the package contained reports of fires and other things that Hinsch and his men had been doing, and I was afraid that I would be caught with them on me, so I destroyed the papers."

He went on to Germany and joined his brother, Anton, who had preceded him to Germany (id. p. 5651). He met Anton at Karlsruhe and they went together to Berlin and saw some German officials, among others, Giesler, Nadolny and Marguerre. These German officials

"fixed up a trunk for me to take back to Captain Hinsch in Baltimore with some false sides in which they placed a number of incendiary tubes for use by Captain Hinsch in his work of destroying factories and munition supplies. *Nothing was said to me in Berlin about not using them unless the United States got into the war*. I never heard any such idea expressed anywhere either in Berlin or in the United States. It was my understanding that they were to be used right away and I gave them to Hinsch for that purpose.

"I was in Germany altogether about six weeks or perhaps two months, and then I returned to the United States where I delivered the incendiary tubes to Captain Hinsch in Baltimore. *I personally saw the incendiary tubes that were in the trunk and I knew that they were delivered in Baltimore.*" (id. p. 5651) (Emphasis supplied.)

He knew Fred Herrmann in the United States both before and after he went to Europe (id. p. 5652).

He had a row with Hilken about some money that his brother, Anton, had given him, and which Hilken demanded and got from him,—about three or four thousand dollars (id. p. 5652). This was in the fall of 1916. He had several conversations with Hinsch and told him that he was going to quit and did quit before the United States entered the war (id. p. 5652).

The exact date of Dilger's return to this country is not clear. His passport, however, indicates that he left Berlin on his return shortly after July 12, 1916, and that he was at the German Baltic port of Warnemünde July 13, 1916 (Ex. 1001, Ann. A. (1) (2)).

In Hilken's 1916 diary the item for October 21, 1916, is as follows:

“ Washington  
Lewis, C. D.  
Ret to Balto.  
3 p. m. meet Lewis  
at Union Station ” (Ex. 911).

Therefore, it is clear that Hilken was with Carl Dilger and Herrmann in Washington on October 21st, 1916, and later met Herrmann at the Union Station at Baltimore.

Herrmann's statement showing the relation of Carl Dilger to Hinsch, Hilken and himself was made on April 3, 1930 (Rec. pp. 5431, 5489).

Carl Dilger's statement, showing Dilger's relations to Hilken, Hinsch and Herrmann and giving an account of his trip to Germany and his bringing the trunk with the false bottom or sides, was made on April 18, 1930 (Ex. 764, Rec. p. 5649).

Hinsch's statement, which was designed to contradict Herrmann and Hilken, was made in Berlin August 4-8, 1930, and filed August 21, 1930 (Ger. Ex. CXXVIII).

When Herrmann made his confession (Rec. p. 5431, *et seq.*) there was nothing in the record relating to Carl Dilger's trip to Europe, which was forced upon him by Hinsch and Hilken, or his return to America bringing the trunk with the false bottom containing the incendiary tubes, and Herrmann's testimony on these points was the first reference relating thereto found in the record.

When he was examined by the two agents April 3rd *et seq.*, 1930, Herrmann first told about the fact that Woehst had come from the General Staff, with instructions to report to Hilken, but he was not sure at that time that Woehst had brought any tubes along. He was sure, however, that they got more tubes.

“ through another fellow who brought over several hundred in a trunk. They were hidden away in the slats. They bored the slats out and filled them in.” (Rec. p. 5489.)

At this point the transcript shows as follows (Rec. p. 5489):

“ Q. Who was the other fellow? A. Anton Dilger's brother, Carl Dilger. He brought those tubes that time. Carl Dilger was working with Anton on this horse affair, these germs, and he and Captain Hintsch had a scrap, and Hintsch says ‘ We have to get rid of this fellow ’, and they fixed up a letter for him to report to Marguerre or Nadolny, and they were to keep him over there until after the war. They were afraid he might say something over here. He got the letter from Paul Hilken and he went to Germany, and in about six weeks he came back again. We were surprised to see him and asked him what the hell the idea was, and he said he brought over a lot more of these tubes and different things. We asked him ‘ How about the letter? Didn't you deliver the letter? ’ He said ‘ No, I got a scare at Kirkwall and threw it overboard.’

- "Q. Do you know of anybody else who brought tubes over from Germany?  
A. I brought some over. I am not sure if Woehst brought some over or not.  
"Q. When did Carl Dilger come back with those tubes? A. I don't. Meantime, I think we liquidated the house. We lived out here near the Chevy Chase country club, with Dilger's sister, and Dilger and myself.  
"Q. You said he brought those tubes in a trunk? A. Yes.  
"Q. Will you repeat that? A. He brought those tubes in a trunk. The trunk was fixed up. There were slats in the walls, and he separated the panels and bored holes to fit these tubes in, and glued the trunk together again.  
"Q. What became of Carl Dilger? A. I don't know what became of him.  
"Q. Was he living in Washington? A. He was living together with me, here, out here in Chevy Chase." (Rec. pp. 5489-5491.)

It was after the above testimony was given on April 3, 1930, that Carl Dilger was located and his affidavit of April 18, 1930 (Ex. 764), found in the record at page 5649, was secured.

Thus Herrmann's statements with reference to Carl Dilger were corroborated by Hinsch in German Exhibit CXXVIII, p. 108, in the following particulars: First, that Hinsch had used Carl Dilger in 1915 and 1916 in his enterprises against horse and mule transports; second, that Hilken and Hinsch had decided to send Dilger to Germany; third, that Hilken had given him a secret message to the General Staff with the request that Dilger be kept over there by all means; fourth, that Dilger had an altercation with Hilken and; fifth, that Dilger had thrown the secret message overboard. (*Supra*, this opinion, p. 95.)<sup>j</sup>

Herrmann is further confirmed by Dilger not only on all these points but upon the fact that Dilger returned with the trunk with false sides or bottom containing incendiary tubes and that these tubes were delivered to Hinsch.

In this connection it will be recalled that Marguerre admitted that "Sektion Politik" had manufactured incendiary pencils which contained little glass tubes; that the construction of these tubes and the method of using them were explained to Herrmann; and the incendiary pencils were turned over to Herrmann packed in cartons, thirty to a carton (Ger. Ex. CXXIII, examination of July 30, 1931, pp. 15-19).

Marguerre also recalled that sometime after Herrmann's visit "we had a trunk made with a double bottom in order to pack glass tubes therein in a secret partition". He stated that he did not know who was entrusted with this trunk and he also stated "whether this trunk was handed over to one Carl Dilger I do no longer remember"; but "I cannot say that it was not done" (Ger. Ex. CXXVIII, examination of August 1, 1930, pp. 1-3).

The reasons given by Hinsch and Hilken for sending Carl Dilger abroad, apparently against his will, are:

- (1) according to Hinsch, "he used to drink a great deal and wanted money continually" (Ger. Ex. CXXVIII, p. 108);
- (2) according to Hilken "he has become unnecessary to us" (Ex. 906, Ann. A);
- (3) "We have for the time being no suitable occupation for him" (Ex. 906, Ann. P);
- (4) he "has been made privy to certain secrets only through his brother, Dr. Dilger, against the judgment of Capt. H. and myself" (Ex. 906, Ann. D);
- (5) "Capt. H. and I consider him to be a bluff, who would not accomplish much" (Ex. 906, Ann. D);
- (6) "He had appeared to us to have become somewhat dangerous because of various statements" (Ex. 906, Ann. D).

<sup>j</sup> Note by the Secretariat, this volume, p. 306.

The purposes of Hinsch and Hilken in sending him abroad are stated as follows:

- (1) that he be kept busy for a long time (Ex. 906, Ann. D);
- (2) that he "could be employed innocuously in Germany" (Ex. 906, Ann. D);
- (3) "it goes without saying that we must, nevertheless, leave it to the gentlemen over there to do the needful" (Ex. 906, Ann. D).

This correspondence, together with the confession of Dilger himself, corroborate minutely the prior statement of Herrmann and show the falsity of the claim made by Hinsch, that after the return of Paul Hilken from Germany in March, 1916, he occupied himself exclusively with matters of the submarine service and had discontinued all other matters such as instigating strikes, infecting horse and mule transports and incendiary sabotage against munitions (Ger. Ex. CXXVIII, pp. 109, 110).

In the same Exhibit (Ger. Ex. CXXVIII), Hinsch had already described (p. 16) the conversation which he had with Hilken in regard to U-boats coming to America and Hilken's plan to put Hinsch in charge of the loading and unloading of the U-boats. Hinsch became enthusiastic about the service and he told Hilken (p. 17):

"that I would undertake it only if all other matters which had been undertaken by us prior thereto would be stopped completely."

And he told Hilken distinctly:

"Paul, under all circumstances, we must drop everything else, for this matter is so important that we must not blur it, \* \* \*" (p. 17).

Hilken's reply was (p. 18):

"During these days somebody is coming from the General Staff — an alert young fellow who, during the war, was three times in England. *He also brings new things along.* We cannot help seeing him first. *I am to support him with money.*" (Emphasis supplied.)

This alert young fellow was Herrmann, who was to be supported by Hilken with money, and he did continue the same kind of sabotage work that Hinsch had been engaged in. The pretense of Hinsch that he and Hilken were to have nothing more to do with sabotage work was an effort to support the false pleadings filed by Germany to the effect that she never authorized sabotage in America while the United States was neutral. Hinsch, by relating this conversation with Hilken, betrays the fact that he was aware that Herrmann, under Hilken as paymaster, would continue, with "new things", the same sabotage activities which he, Hinsch, had been engaged in since May, 1915, after he had talked with Rintelen personally (Ger. Ex. CXXVIII, p. 109).

The claim of Hinsch that he discontinued sabotage activities after the return of Paul Hilken from Europe in 1916 is further disproven by the affidavit of J. Edward Felton (Ex. 761, Rec. p. 5631).

Felton had been engaged in stevedore work for the North German Lloyd from 1908 up to the time of the war. He met Captain Hinsch when the latter brought the steamer "Neckar", the North German Lloyd ship, into Baltimore. He was employed by Hinsch to distribute circulars among the stevedores at Norfolk, urging them to go out on strike (id. p. 5632). He was next employed by Hinsch to set fire to supplies that were designed for Europe, consisting of grain, cotton, horses, and other supplies. This was early in 1915. For the purpose of causing these fires, Hinsch furnished him with "some things", about the size of a small egg, and showed Felton how to fill them with acid and

instructed him how to cause a flame and start the fires. Felton gave them to his men to put around among the wheat and cotton and other supplies on the docks and in warehouses and on the ships, and this was according to instructions of Captain Hinsch. The first work "with these fire things" for Hinsch commenced some time early in 1915 and regularly for a year or two he was receiving and using "these things" for starting fires (id. p. 5633). These fire things started different fires that occurred later. He says we credited our men with the following fires — No. 9 Pier in Baltimore, elevators at Canton, one fire in Norfolk and several fires in ship cargoes (id. p. 5634). A few months after he was employed to start fires, Hinsch started him working with disease germs among the horses that were being collected for shipment at Norfolk, Newport News and New York City. This was the late summer or early fall of 1915 and continued for the period of nearly a year (id. p. 5634).

The fire which destroyed the Canton elevators occurred on the 13th day of June, 1916 (Ex. 842, Rec. p. 6253), more than two months after Hilken came back from Germany in March, 1916. The Eastern Forwarding Company was chartered in May, 1916 (Ex. 976, Ann. A-D, pp. 18, 227), and its officers were engaged from that time forward in preparing for the first trip of the "U-Deutschland".

Among the letters filed with the brief of the American Agent of September 13, 1938, was the original carbon copy of a letter dated June 14, 1916, addressed to Hilken, taken from the files of the Eastern Forwarding Company, in the course of which the following occurs:

"Unfortunately I must bring you bad news, the Canton elevator burned up here. Two steamers (1 Engl. and 1 Holl) were also lost. The Englishman had munitions on board and I'm not sorry for him. But the elevator will do much damage to Baltimore and it is to be regretted because several lives were lost."

In the brief filed September 13, 1938, this letter was attributed to Hinsch (p. 36); and in the oral argument of January 16, 1939, Mr. Mitchell also again attributed to Hinsch the letter (Trans. of Argument, p. 73) and no denial has been made by the German Agent of this fact. Whether Hinsch wrote the letter or not, whoever did write it registered his sorrow at the loss of the elevator in a method which would cause one to doubt his sincerity, and this incident would seem to prove that Felton was correct in ascribing the fire to one of his men and that Hinsch was not telling the truth when he claimed that he had ceased all sabotage after Hilken's return from Europe in March, 1916.

Felton's affidavit is confirmed by George Turner (Ex. 772, Rec. p. 5784). Turner was hired by Felton to start fires among the cargoes of ships and was given devices for starting these fires. He distributed these devices at Baltimore, Norfolk and Newport News. He also inoculated horses which had arrived at a port awaiting shipment to the allies. For this work he was paid by Felton, who told him he had received the money from Hinsch.

Felton was further confirmed by the affidavit of John Grant (Ex. 773, Rec. p. 5791), who made oath that he worked for Felton in Newport News and Norfolk in 1915 in "starting fires and sticking needles into horses to make the horses sick". He began this work in the latter part of 1914 or the early part of 1915 and continued it for over a year. He did a good bit of the work himself and occasionally found two or three men whom he could trust and got them to help him; and this was in accordance with what Felton told him that he and Captain Hinsch wanted done.

The affidavit of Felton is further confirmed by the affidavit of Arthur Young (Ex. 774, Rec. p. 5793), who in addition to the same kind of work that was done by the other employees of Felton, was sent to Hopewell to get a job in the DuPont

factory in order to try to start a fire there (*id.* p. 5795). After getting to Hopewell, however, he was not willing to try it because the guards were very strict in searching the men and there were many rules against carrying anything into the factory and he was afraid of getting caught. The fire that took place in the Hopewell factory was some time after he left (*id.* p. 5796).

Further and conclusive evidence that the Hilken-Hinsch-Herrmann group of saboteurs did not discontinue their sabotage activities following the establishment of the commercial submarine service is found in the contemporaneous correspondence of the various saboteurs.

Hilken on August 7, 1916, cabled Arnold, the German saboteur then in Havana en route to the Argentine, as follows:

"Have been trying arrange meeting with you Regret impossible leaving before September if you consider advisable will send trustworthy representative to meet you Panama 21st Cable your decision" (Ex. 906, Ann. Y).

That the "trustworthy representative" here referred to was Herrmann and that Hinsch was aware of the activities of both Herrmann and Arnold is established by Hilken's letter of August 7, 1916 (through error letter dated 1917 (Ex. 976, Anns. A-D. p. 87)), to his father in which he says, reading in translation:

"Hinsch and I had already thought over in reference to Cuba that it is at present impossible for me to get away, and that we must therefore send Lewis [Herrmann] there." (Ex. 42 attached to Ex. 976, Anns. A-D)

Hilken in his letter of August 21, 1916, to Arnold describes the "trustworthy representative" as being "a young man who has been in the employ of our friends abroad" (Ex. 906, Ann. BB-1).

In a subsequent letter of January 11, 1917, Hilken wrote Arnold expressing satisfaction that his superiors in Germany had recently sent Woehst over to this country manifestly to assist in sabotage work. In his letter, Hilken approves a proposed visit to this country of Arnold and describes the purpose of such a visit as:

"\* \* \* a good one, especially as our principals abroad, realizing that my other interests require too much of my time and make it impossible for me to devote my energies to their interests, have sent a young man, who arrived here a month ago and whom I have since initiated into our American trade. He brought with him several new samples which may also find a market in Argentine." (Ex. 906. Ann. HH)

Hilken in his examination under subpoena in September, 1933, testified as follows in relation to the cryptic references in this letter:

"First of all, who are the 'principals abroad' to whom you refer?

A. Nadolny and Marguerre.

Q. Who is the young man you mentioned?

A. What date is that letter?

Q. January 11, 1917.

A. That is Willie Woehst.

Q. What is the subtle allusion to your initiating him 'into our American trade'?

A. That is undoubtedly sabotage. It can refer to nothing else.

Q. What are the 'new samples' which he is supposed to have brought with him?

A. Probably pencils, incendiary devices of some sort — I don't remember; no doubt that is what I was referring to.

Q. You say, 'These samples may also find a market in Argentine.'

A. Yes, Arnold was carrying on sabotage in the Argentine.

"Q. Am I correct, then, in the inference that Woehst was sent here to speed up the sabotage activities in the latter part of 1916?"

"A. As I have stated right there in that letter, I was busy, Hinsch was busy to a certain extent and was taking care of Fred Herrmann, too. I was only one man. How much could one man do? They naturally wanted me to have some more men. Probably if the War continued, or if the United States had not gotten into the War, I might have had other men sent over here, too. Naturally, with all the munition plants which were at that time manufacturing munitions — powder, guns, and everything — for the Allies, Hinsch and Herrmann could only take care of a very small part, and it was natural for them to send another man over here to help out. Of course, Hinsch and Herrmann had their underlings, but we felt the need for an additional key-man to do directing, as Herrmann and Hinsch were doing directing." (Ex. 976, Ann. E, pp. 50-52.)

In the same deposition, Hilken testified as follows in relation to Hinsch's testimony that he discontinued sabotage activities shortly after Hilken's return from Berlin in the latter part of March, 1916:

"There was never any thought of Hinsch or Herrmann, and their men, quitting sabotage activities. In fact, Herrmann had brought with him the new incendiary devices, the tubes, and it was from that time onward that sabotage could be practised with greater effect. After my return from Germany, instead of quitting, the work was carried on with greater intensity.

"I remember distinctly the meeting that we had up in the attic of the Hansa Haus, all three of us together, Hinsch, Herrmann and myself. Although we all realized and agreed that we must be discreet in our activities, so as not to jeopardize the submarine work, we had no idea of suspending sabotage." (Ex. 976, Ann. E, pp. 53, 54.)

*The Absence of Hinsch and Herrmann From Baltimore Before and After the Destruction of Black Tom*

One of the purposes for which German Exhibit LXXXIV, the affidavit of Hinsch, was filed was to substantiate Hinsch's claim that neither he nor Herrmann could have participated in the destruction of Black Tom, which occurred early on the morning of Sunday, July 30, 1916. In this affidavit, Hinsch alleges that he was entrusted with making preparations for the arrival, unloading and loading of the "Deutschland" in Baltimore; that she arrived "in the middle of July" and started on her return voyage on August 2, 1916, that is, three days after the explosion of Black Tom. He then alleges as follows:

"At this period I stayed permanently in Baltimore. My energy, attention and care were up to the last degree devoted to the idea to let the submarine for which six war vessels were waiting outside the territorial waters safely reach the open sea." (Emphasis supplied.) (p. 6.)

In German Exhibit CXXXIII, Hinsch states that, from the end of April or beginning of May, 1916, until the sailing of the "U-Deutschland" from Baltimore, he was away from Baltimore *only twice*, the first time when he went to Norfolk and Newport News with Paul Hilken in order to ascertain whether they could find a suitable place there for the submarines, the second time, sometime during the last week of June, when he went out on the tug "Timmins" for the purpose of waiting for the "U-Deutschland" there.

We have already shown that Ahrendt (in Ger. Ex. CII, pp. 37-41) claimed to be very intimate with Hinsch and that it was impossible for Hinsch to have any activities outside of caring for the "Neckar" and his U-boat enterprise. A careful examination of the record contradicts both Hinsch and Ahrendt in these claims.

On Saturday, July 22nd, Hinsch was in New York, as is shown by a letter from Dederer, Treasurer, dated July 22nd, addressed to Captain Hinsch in New York (Ex. 976, Anns. A-D, pp. 235-238, "Dederer, Ex. 55").

For the week beginning the 25th of July and ending the 1st of August, Hinsch was away from Baltimore for two days during the latter part of that week. In Exhibit 811. Rec. p. 6019, 6023, Fesmire testified as follows:

"The Deutschland was scheduled to leave Baltimore on July 26th or 27, 1916. For some reason which was never explained to me, the departure was deferred and the boat did not leave Baltimore until August 1st, 1916. Hinsch was away from Baltimore for two days during the latter part of the preceding week about three or four days before the Deutschland sailed. His absence must have commenced, as near as I can fix it, about the 28th or 29th of July. He was away over at least one night, and I think for two nights. I do not know where he was. He did not tell me and I never ascertained. I remember the circumstances very distinctly, however, because I know that we were looking for Captain Hinsch to ask him about some matters and no one seemed to know where he was. He was missing from Baltimore for about two days."

And again on p. 6028 Fesmire said:

"Hinsch did not confide in me regarding the various activities which occupied his time during the spring, summer and fall of 1916, except the work with which I had strictly to do, namely, in connection with the two arrivals of the Deutschland. I should estimate that this work of the Deutschland did not take more than about one-third of Hinsch's time during my acquaintance with him, which commenced around the end of March or the first of April 1916. I knew that Hinsch was engaged in other activities. I associated him in my mind with the destruction of one of the grain elevators in Baltimore and the fire on Pier 9 in Baltimore."

On Thursday, August 3rd, Hinsch was at Norfolk and left the tug boat "Timmins" for Hoboken (Ex. 811, Rec. p. 6025, original telegram at Norfolk dated August 3, 1916, sent by Hinsch to Eastern Forwarding Company filed with brief of September 13, 1938).

On Friday, August 4th, Hinsch attended a party on the roof of the Hotel Astor given by Hilken in celebration of the Black Tom explosion. (Hilken's diary for 1916, Ex. 911, Ann. A; Ex. 976, Ann. E, p. 58; Ex. 986, Ann. A, p. 76).

On Saturday, August the 5th, the North German Lloyd Steamship Co. granted Captain Hinsch a leave of absence while he was present at Hoboken, New Jersey (Ger. Ann. 161. Ex. A (1)).

On Sunday, August 6th, Hilken, Hinsch and Herrmann (Lewis) were registered at the Mohican Hotel in New London, and on the following day, Tuesday, Hinsch was again registered at the same hotel (Ex. 831, Anns. 1 and 2).

On Tuesday, the 8th of August, he was in New York at the Hotel Astor and remained until Wednesday, when he went to Baltimore (Ex. 911, Ann. A; Ex. 976, Ann. E, pp. 61, 73; Ex. 976, Ann. A; Ex. 41).

Thus it is seen that both before and after the departure of the "Deutschland" Hinsch was frequently away from Baltimore and the U-boat enterprise did not take up all of his time; and Hinsch's affidavits on this subject have been proven to be false.

#### *Absence of Hinsch from New London Before and After the Kingsland Fire*

As in the case of the Black Tom explosion Hinsch claimed to have been so thoroughly taken up with U-boat activities that he could not leave Baltimore, so, also in the case of the Kingsland fire, which occurred on the 11th day of January, 1917, Hinsch again claims that he was so closely confined to the U-boat base at New London that it was impossible for him to have participated in any

sabotage activities (Ger. Ex. CXXVIII, pp. 79-82; Ger. Ex. CXXXIII, pp. 16, 17). It was also claimed for him by Ahrendt that he (Hinsch) was in New London so regularly that it was impossible for him to have been in Kingsland or concerned with any of the sabotage work at Kingsland (Ger. Ex. CII, pp. 55 - 60).

These claims neglect the fact that New London and New York were only a few hours apart, and one could have been present carrying on his business activities in both cities on the same day. An examination will be made of the record, however, to ascertain whether Hinsch's and Ahrendt's affidavits are true when they claim that Hinsch was constantly in New London both before and after the Kingsland fire.

On Wednesday, January 3, 1917, Hinsch arrived in Baltimore. Hilken's diary for January 3, 1917, has the following entry:

"Wednesday 3 X  
Lv. N. H. noon arrive N. L. 4. p m. Capt. H. lvs. for Balto. Lyceum [illegible]"  
(Ex. 583, Ann. D, Rec. p. 2326).

Under date of December 30, 1916, Hinsch wrote a letter from New London, Connecticut, to H. G. Hilken in which he stated as follows:

"I shall arrive in Baltimore on Wednesday evening, January 3rd, so we will be able to talk this matter over during my stay there." (Ger. Ann. 156, Ex. T.)

On Friday, January 5th, 1917, and probably on the preceding day Hinsch was away from New London; for on January 5th Paul G. L. Hilken wrote a letter to A. Schumacher and Company from New London in which he stated as follows:

"The writer will remain at New London until the return of Capt. Hinsch next Monday [January 8th] \* \* \*". (See letter from the Eastern Forwarding Company files, filed with brief of September 13, 1938.)

On Saturday, January 6, 1917, Hinsch was away from New London as was indicated by the last letter quoted above. See also, however, letter of Hoppenberg dated February 3rd to the Eastern Forwarding Company where he sends a voucher dated New York, Jan. 6, 1917, to "expenses entertaining Mr. Böhme & Capt. Hinsch — \$11.30". (Eastern Forwarding Company's files, filed with brief of September 13, 1938.)

On Sunday, January 7th, Hinsch was away from New London as was indicated by the item for Friday, January 5th, *supra*.

On Monday, January 8th, Hinsch was in New London. See letter of Hilken to his father of January 7, 1917, from the Eastern Forwarding Company files; also telegram, New London, January 8, 1917, Hinsch to Hilken, Sr., German Annex 156-U; also letter of Hinsch to Henry G. Hilken dated January 8, 1917, German Annex 156-V.

The record is silent as to Hinsch's whereabouts on January 9th, 10th and 11th, but on Friday, January 12th, he was in New London (see Ger. Ann. 163. L. telegram of Hinsch to Hilken, Sr., dated at New London).

The claim of Hinsch and Ahrendt that Hinsch was not away from New London preceding the fire at Kingsland is contradicted by Carl Metzler in Ger. Ex. XCVIII. Metzler was paymaster at the North German Lloyd Steamship Company and had been in their employ since May 1, 1898.

When asked whether Hinsch was away from New London at any time, he said (p. 28):

"A. Capt. Hinsch was away from New London as far as I can remember now, either in the middle of December or the end of December — I cannot remember

distinctly — but I remember that Capt. Hinsch told me, ‘Metzler, I am going away for a few days to Baltimore in my car. Take good care of our work.’ That is all he said.

“Q. And he left New London by car — by automobile?”

“A. I did not see him myself, sir, but he told me that he would make the trip to Baltimore and back to New London with his own machine. \* \* \* it was winter and very cold — plenty of snow in New London.”

He stated that Hinsch was not away from New London more than three or four days. And again at page 79 he said that his office was in the same building with Hinsch and

“I saw him every day with the exception of a few days in December, but I could not remember what date in December. If my memory does not fail me, it was either in the middle of December or at the end of December. Then Capt. Hinsch told me that he would be absent for a few days because he wanted to go to Baltimore in his machine. Whether he did so or not I do not know. I just state what Capt. Hinsch told me.”

Jeremiah Dillon, a Deputy Collector of the United States at New London, who had been in the service for many years, was at New London in the years 1916 and 1917 in his capacity as Deputy Collector. He knew Hinsch, who had a house in Neptune Park, from the latter part of August, 1916, until nearly the time when war was declared on April 6, 1917, and he testified that Captain Hinsch “was in New London off and on during that time”, and that Captain Hinsch was “away from New London for two or three weeks during the early part of January, 1917 and/or the latter part of December, 1916”. He was able to fix the date on account of the death of his brother-in-law on the 20th of January, 1917 (Ex. 813, Rec. p. 6034).

*Hinsch — His Sabotage Activities in Mexico after the United States Entered the War*

We have already seen in another connection that before the United States entered the war Herrmann went to Mexico and got in touch with the Minister to Mexico, von Eckardt, and that on April the 12th, 1917, six days after America entered the war, von Eckardt forwarded to Berlin a message from Herrmann making inquiry as to the whereabouts of Woehst and as to \$25,000 which had been promised him. The Minister doubted his authority and represented that Herrmann claimed to have a commission to fire the Tampico Oil Fields. “Sektion Politik” confirmed Herrmann’s claim and stated that the destruction of the Tampico Oil Fields would be of great military advantage but left the decision to von Eckardt as to whether this should be done (*supra*, pp. 34, 35, this opinion).<sup>k</sup> These telegrams confirmed Herrmann’s confession that his sabotage activities in the United States did not await the entry of the United States into war, but that the sole purpose for which he was employed and sent to the United States was to carry on sabotage in the United States irrespective of her entry into the war.

That Herrmann continued his sabotage activities in neutral Mexico is thoroughly established by two contemporaneous reports made to the State Department.

On August 1, 1917, four months after the United States entered the war, and therefore years before any claims for sabotage were ever formulated or presented, S. LeRoy Layton, American Vice Consul then in Canada, made a report to the Secretary of State, of a “plot to blow up the oil wells at Tampico”. In that report he related a story told him by Gerds, at Barranquilla, Columbia, prior to Layton’s departure from his post as Vice Consul in Colombia to his new post

<sup>k</sup> Note by the Secretariat, this volume, pp. 262-263.

in Canada. From that story, it appears that, when Herrmann fled from the United States to Mexico, he took with him the incendiary tubes which he had been using against munition factories in America. He showed them to Gerdts, and offered Gerdts a weekly salary and a large bonus if Gerdts would accompany him to Tampico and assist in blowing up the oil wells (Ex. 583, Ann. G, Rec. pp. 2345-2348).

This story is confirmed by a report to the Secretary of State made on August 24, 1917, by Claude E. Guyant, American Consul at Barranquilla, and who gave a careful account of his interview with Gerdts. (Ex. 583, Ann. H, Rec. pp. 2350-2354.) Both reports are confirmed on this point by the affidavit of Gerdts (Ex. 626 (a), Rec. pp. 2765, 2774.)

In May, 1917, Hinsch went to Mexico (Ger. Ann. 71, p. 2) and the record shows clearly that he continued in Mexico the same kind of sabotage activities which he had been carrying on in the United States.

An examination of the intercepted messages passing between Mexico and Berlin, usually through Madrid, and between Buenos Aires and Berlin, usually through Madrid (Ex. 320, Rec. pp. 880 *et seq.*), will show that not only Herrmann but Hinsch and Jahnke and Arnold were continuously engaged in sabotage matters after the entry of the United States in the war. Quotations will be made from some of these intercepted telegrams, but no attempt will be made to quote from, or to digest, all in this series.

On December 8, 1917, the Military Attaché (in Mexico) sent a telegram in which he stated as follows:

"In the interval I have started sabotage in the States with the assistance of \* \* \* HINSCH who is representing me for the time being. \* \* \*"  
(Ex. 320, Rec. p. 881).

On December 27, 1917, a message was forwarded to Berlin from which the following is taken (Rec. p. 883):

"From a conversation DELMAR [A. Dilger] has received the impression that not alone JAHNKE is not self-reliant but that he is not entirely reliable. Therefore and because I have up to the present received no reply to Telegram 365 I have handed the contents of No. 196 to the messenger for Captain HINSCH especially as he is a German and also because he enjoys the confidence of the Minister. \* \* \*"

On January 4, 1918, in a message from Berlin to Madrid for Delmar, the following occurs (Rec. p. 884):

"The Admiralty has withdrawn the commission to JAHNKE for sabotage undertakings, and contemplates appointing HINSCH instead. As the latter is already in service with you, the Admiralty agree that HINSCH shall remain under your orders and shall be occupied in naval business in January. \* \* \*"

The next telegram in the series contains a message from Berlin to Madrid from which the following sentence is taken:

"Agree to the employment of Hinsch." (Rec. p. 885.)

Another intercepted telegram bearing on the same subject is found in Exhibit 320, Rec. p. 903, reading as follows:

"From: Madrid  
To Berlin  
28.3.18

No. 178 of March 26th.

"Our Minister in MEXICO has sent the following telegram for the Foreign Office to the Military Attache under No. 1073, to be passed on the General Staff Political:—

“Co-operation between ?JAHNKE and HINSCH is, in consequence of their mutual distrust impossible.

“?JAHNKE'S work must not be interrupted and he is therefore receiving financial support through me.

“In consequence of very grave discoveries I request permission to (dismiss) DELMAR, HINSCH and — from my (Intelligence) Service, (approval to be indicated by telegraphing the word ‘(dismiss)’

von ECHARDT 21st February, 1918.’ ”

Exhibit 320, Rec. pp. 905-912, contains messages from Madrid to Berlin and from Berlin to Madrid bearing on the contest between Jahnke and Hinsch, and refers to their “S. service” and “S. undertakings” and contains a message from Jahnke to the Chief of the Admiralty Staff at Antwerp (No. 368) objecting to his being placed under Hinsch's orders. No. 369 of that series reads as follows (p. 907):

“DELMAR [A. Dilger] similarly fears that JAHNKE will none the less despatch a letter finding fault with HINSCH and DELMAR. Finally he asks definitely to be allowed to work independently, as he expects great independence, and has himself collected the sum of 100,000 pesos for the Legation in Mexico. JAHNKE further reports — *The destruction of war factories and provisions in the U.S.A. is working satisfactorily.* Since May, 1917 my people report as destroyed, the English S.S. CLARK, Japanese S. S. ITFH (?SHINNO)” (Emphasis supplied).

On p. 912 is the following:

“From: — Berlin

To: — Madrid

D-3

“No. 25122 of April 16th [1918]

“With reference to Telegram 1172 of April 1st

“ARNOLD'S return to Germany is not advisable because of the risk of seizure. Communication with Ireland and America is important. *Arnold is to try to win over people for the U.S.A., if possible organizers, on the one hand for sabotage and on the other hand for increasing the inclination for peace.*

(Emphasis supplied.)

GENERAL STAFF.”

Exhibit 320, Rec. p. 913, contains a copy of a message from the Admiralty Staff in Berlin to the Naval Attaché at Madrid which reads in part as follows:

“*undertakings against the PANAMA Canal are highly desirable.*” (Emphasis supplied.)

The rest of the message authorizes monthly expenses not to exceed 100,000 marks and certain rewards for undertakings proved to be successful:

“For warships and trading ships one-fifth per cent of the value of the ship and cargo; for all other objectives, a lump sum not exceeding 50,000 mks and varying according to the importance and extent of the damage \* \* \*

“The reward is to be paid at the discretion and after the investigation of the Minister.”

An examination of the above telegrams discloses the fact that, in Mexico, Delmar (Anton Dilger) and Hinsch, had come from the United States, just as Herrmann had done, and they probably found antagonism among saboteurs already present in Mexico. Therefore, they incurred the doubt and enmity of von Eckardt, who wished to dismiss them from his service. These saboteurs, however, did not cease their activity after America entered the war, but simply transferred their base to Mexico, and were authorized by the Admiralty Staff to spend not exceeding 100,000 marks per month; and they were to receive as reward for their undertaking, if their undertaking should prove successful, one-fifth per cent of the value of the ship and cargo, and for other objectives a lump sum not exceeding 50,000 marks, varying according to the importance and extent of the damage.

*Hinsch's Denial of the Veracity of Thorne*

In order to destroy the affidavit of Thorne (Curt Thummel), Exhibit 977, Annex K, Hinsch attacks this affidavit at what he considers to be an essentially weak point. To get the complete picture it is necessary to give a brief resumé of Thorne's affidavit and his connection with this record.

Thorne was the son of a German by name of Thummel, who had been a Lieutenant in one of the crack regiments in the German Army, and Thorne had a great many relatives in the German Army, his uncle and his uncle's sons. He came to this country in 1902 or 1903 and joined the Coast Guard in 1913 under the name of Thorne (Ex. 977, Ann. K. p. 4). At the beginning of the World War, his sympathies were with Germany, and he reported to the German Consul at Baltimore where he met the German officers of the ships which were interned at Baltimore, among whom was Hinsch (id. pp. 5, 6). Hinsch told Thorne that he, Hinsch, was working in the interests of Germany and was endeavoring to prevent the shipment of ammunition from this country to the Allies, and was trying to destroy munitions factories in this country, boats that were going out loaded with ammunition, and doing such other things as might be beneficial to Germany's cause (id. pp. 8, 9).

At the Hotel Emerson bar Thorne was introduced by Hinsch to Herrmann under the name of Lewis. He visited Hinsch in Walbrook, a suburb of Baltimore, and Hinsch offered him a job, which he declined; but he resigned from the Coast Guard in May, 1916, and went to see Hinsch either on the interned steamer "Neckar", or at the Emerson bar. A few days later he accepted from Hinsch a position as courier, taking messages from place to place, and for that purpose Hinsch secured for him a job as pantryman on the "St. Paul", under the name of Chester Williams (id. pp. 9-14). After he had gotten this job, a man of Swedish appearance named Peterson or Anderson, whom he met through Hinsch, furnished him with a bundle of letters to be taken to England, and he was informed that there would be a return package. When he returned, the return package was brought to this Swedish man in sealed packages with no address. He made four trips on the "St. Paul", the last leaving New York on August 26, 1916, and returning on September 17, 1916. He gave up the job as courier after the Swedish man told him there was nothing more to carry (id. p. 20).

This Swedish man, named Peterson or Anderson, gave him a job in the Agency of Canadian Car & Foundry Company plant at Kingsland, where he was employed as assistant employment manager through the recommendation of Anderson or Peterson. When he came back on his last trip Anderson told him that Hinsch was in New London so he went to New London on a Sunday and met Hinsch and several others in the Griswold Hotel. The testimony on that point is as follows (id. p. 21):

"Yes, when I came back from the trip Anderson told me Hinsch was up in New London, and I immediately went up to New London, I think it was a Sunday if I remember right when I got in. I do not want to be held to the date, it is so long ago I cannot remember it, but it was a Sunday I think. I immediately went up to New London on the next train and met Hinsch and several others there at the Griswold. *They were expecting the 'Bremen' in, the submarine Bremen, and there was great excitement and giving parties, and everybody seemed to be very happy and expectant.* I went up to see Hinsch and could not talk much to Hinsch because he was very busy with preparations for receiving the 'Bremen', and he sent me back to New York that night to see Anderson, and that is how I came — and Anderson then told me to get employment in the munition plant — Anderson or Peterson, or whatever it is." (Emphasis supplied.)

As we will see later, this portion of Thorne's statement is directly attacked by Hinsch's affidavit (Ger. Ann. 104, p. 4).

Besides Hinsch, Thorne met Paul Hilken at the Griswold Hotel; but, as he had not been paid off for his work on the "St. Paul", being in New London on leave, he had to return and get his pay (Ex. 977, Ann. K, p. 22).

His job at Kingsland was hiring men and assigning them to the different departments. He sometimes hired two hundred men a day, and Hinsch sent him at various times, men to be hired (id. p. 23). In December, 1916, or January, 1917, Hinsch sent him a man with a German name to be hired and he put him to work in the plant. He understood that the purpose for which Hinsch was putting these men in the plant was sabotage (id. pp. 23 and 24). This man, hired at Hinsch's request, asked for and received a transfer from one department to another. Before that time Hinsch had discussed at various times with Thorne the destruction of the Kingsland plant, the discussion taking place at Meyer's Hotel in Hoboken (id. p. 25).

Hinsch mentioned Wozniak's name to Thorne but he never met Wozniak (id. p. 26). Thorne was in the plant when the fire occurred (id. p. 27).

Three or four days after the fire he met Hinsch at the Hotel Astor and Hinsch said it was a good job that was done at Kingsland (id. pp. 28, 29).

After the fire Thorne became associated with the German-American Employment Agency in Newark, New Jersey, and this was done at the suggestion of Hinsch. They changed the name of the business and sent out hundreds of people to various munitions plants (id. pp. 29, 30).

German Annex 104, executed by Hinsch on April 14, 1934, and filed April 16, 1935, was introduced for the specific purpose of contradicting Thorne's affidavit. In this affidavit Hinsch summarized the important points of Thorne's affidavit and denounced it as "a lie from beginning to end". He denied that he had ever known Charles Thorne or Thummel, or that he had ever known any person employed in the Kingsland plant, or a man who was in a position to employ a worker there. He denied ever knowing a Swedish man called Peterson or Anderson; denied sending Thorne to Anderson or Peterson to be employed as a courier. The last statement in Hinsch's affidavit is as follows:

"The allegation that in New London where Thorne claims to have arrived about September 17, 1916, he found my people in a happy and joyful mood is manifestly a lie too. At that time the 'Bremen' had already been due for about 10 or 14 days, all of us were highly concerned as to what might have happened to her; nothing was more remote to our minds than to be in a happy mood and to arrange parties."

The fact that Thorne correctly described conditions in New London on Sunday, September 17th, is abundantly proven by Exhibit 977, Annex U. That exhibit contains three pages from "The Day", a daily newspaper published in New London, Connecticut.

The first page is from the publication of Saturday afternoon, September 16, 1916, and contains an article, the headline for which is this: "THOUGHT U-BOAT WAS IN HARBOUR". The article relates how the people were excited on State Street by the cry, "The Bremen is coming, the Bremen is coming!", and relates that there was a grand rush in the direction of the water front. The object which caused the mistake was a floating fence, about 125 feet in length. Then the article goes on to state as follows:

"The arrival of the undersea craft is now considered only a question of hours. Paul Hilken and other officials of the Eastern Forwarding Co. are here and all is ready for the big show. Collector of Customs James L. McGovern and numerous

newspapermen and photographers came in on the early afternoon trains. No information is available at the terminal, but the impression was strong late this afternoon that the merchantman is near at hand."

The second sheet is for Monday afternoon, September 18th, and contains an article, the headlines for which are as follows: "BREMEN RUMORS STIR UP THE CITY". The article is in part as follows:

"A wildly expectant throng lined the waterfront Sunday evening at 9 o'clock and positively identified every light shimmering in the outer harbor as the bow watch of the long anticipated German submersible. \* \* \*

"The brain storm was started by an apparently well authenticated report that the famous merchantman had been sighted off Ocean Beach. No sooner had the message reached the centre of the city than telephone wires began to buzz in every direction. Custom officials, moving picture operators, photographers, newspapermen and the general public hastened to the water's edge. \* \* \*

"Color was lent to the rumor by the fact that the Scott tug T. A. Scott, Jr., put out hastily with representatives of the Eastern Forwarding Co. on board. Evidently they were also of the impression that the submarine was close at hand. Right on the heels of the tug went Julius Fleischmann's yacht Whirlwind, carrying a heavy cargo of camera men and reporters."

The third sheet is for Wednesday afternoon, September 20, 1916, and has the headlines: "WATCHFULLY WAIT FOR THE BREMEN". It relates how the out-of-town and local newspapermen and photographers were getting weary, and recites the fact for three days the tugs of the T. A. Scott Co. had patrolled the waters from Fishers Island to Montauk Point in a vain search.

An examination of Exhibit 977, Annex S, affidavit of Paul G. L. Hilken, executed January 8, 1936, verifies beyond a doubt that the "Bremen" was not expected in New London before September 17th but that on that date she was expected. The "Bremen" did not leave the Weser estuary earlier than August 24th and probably not until the 25th or 26th of August. The "Deutschland" had taken 25 days for the crossing, and, on the same basis, it was calculated that the "Bremen" would be in New London on September 17th, and Hilken made his preparation for her arrival on September 17th, going to New London on September 16th. This is confirmed by the register of the Mohican Hotel which shows that on September 16th Hilken, Hoppenberg and Hammar registered at that hotel, and this is further confirmed by Hilken's diary, which shows that on Friday the 15th Hilken lunched at the Astor in New York and left New York at 4 p.m., arriving at New Haven at 8:30 p.m.; and on Saturday the 16th he left New Haven at 9:30 a.m. and arrived in New London at 11:05; had lunch in the "Willehad", dinner at the "Mohican" and saw a bum show. It is further confirmed by entry in his diary for Sunday, the 17th, which shows that Wheeler, Reuter Dahl, Schmidt, Hammar, Hoppenberg, and Hilken were at the Griswold Hotel and that he was at Hinsch's house for supper and he made this entry on his diary —

"False alarm Bremen arrival".

The diary for Monday, September 18th, has the following entry,

"Lunch Willehad  
Schmidt and I go out on tug".

In addition, in Exhibit 977, Annex S., Hilken annexes thereto a letter from his father, dated the 13th day of September, 1916, at Baltimore, written in German, a translation of which contains the following:

"All cargo and stevedore tackel, etc. is now enroute excepting the contents of the barge 'George May' which goes forward this afternoon as one carload.

" Prusse leaves to-morrow on Pennsylvania Railroad at 11.06 and is due at 3.13 in Pennsylvania station. If you have time you could take him to Grand Central Station, where he will take the 5 o'clock train. I have written Hinsch to meet him. However, I gave him detailed instructions regarding the transfer from one station to the other so that your help is not really necessary. Prusse has recovered and is happy to go to New London."

The cargo and stevedore tackle, referred to in the letter, were for unloading the " Bremen". Mr. Prüsse had come over on the " Deutschland " to supervise the operation of discharging and unloading the U-boats and did not leave Baltimore for New London until September 14, 1916, on which date he registered at the Mohican Hotel, as is shown by the first sheet, Ann. A, to Exhibit 977, Ann. T.

Hilken's affidavit also calls attention to the fact that Wheeler, of the Wheeler Syndicate, Inc., and Reuterdaahl, an artist, came to New London on September 17, 1916, in order for Reuterdaahl to make sketches of the " Bremen " as soon as she arrived, which sketches were to be distributed and published through the Wheeler Syndicate. Wheeler had already syndicated some sketches which Reuterdaahl had made of the " Deutschland".

Hilken's affidavit is further verified by the newspaper articles, which related that on Sunday, September 17th, around 9 p.m. a rumor came that the " Bremen " was approaching the harbour and the tugboat " T. A. Scott, Jr." put out to meet the " Bremen ", following by a yacht containing reporters and cameramen. The tug remained out until early morning, and this was the first time anyone went out in expectation of meeting the " Bremen".

These incidents and records show conclusively that Hinsch's deposition, German Annex 104, taken at Bremen April 14, 1934, was false, when he made the following closing statement:

" The allegation that in New London where Thorne claims to have arrived about September 17, 1916, he found my people in a happy and joyful mood is manifestly a lie too. At that time the ' Bremen ' had already been due for about 10 or 14 days, all of us were highly concerned as to what might have happened to her; nothing was more remote to our minds than to be in a happy mood and to arrange parties."

It will be recalled that in making an affidavit designed to show that Hilken did not know Gerdt until he brought the Herrmann Message, Hinsch changed the affidavit as drafted by the German Agent so as to make it appear that theretofore Gerdt was unknown to " us " (Hilken and Hinsch) instead of unknown to " me " (Hinsch).

In this affidavit designed to show that Thorne was a liar, we have another example of Hinsch's changing the facts in his affidavit to meet the needed proof.

*Hinsch's False Claims That Gerdt Was Unknown to Hilken and Himself Before He Brought the Herrmann Message From Mexico*

After the Herrmann message had been introduced in evidence, an affidavit was secured from Hinsch (Ger. Ann. 71), the object and purpose of which was to destroy the authenticity thereof by showing: (1) that Gerdt was *unknown to both Hilken and Hinsch* before the message was delivered, and (2) that the *sole purpose* of the message delivered by Gerdt was to introduce and identify Gerdt, and, therefore, the lengthy message (Ex. 904) was forged.

In this affidavit (Ger. Ann. 71), Hinsch for the first time admits that Herrmann did in fact send a message in secret writing, through a messenger, to Hilken, and that this secret message was developed by Hilken (p. 1). He states that, in the spring of 1917, he was asked to go to Baltimore, and on a Sunday he visited

Hilken at his residence in Roland Park. Hilken showed him a book from which the unprinted white front or back flyleaf had been torn or cut out, a book printed in the English language. Hilken told him that the book had been brought to him by a man named Gerdts, "who had been unknown to us up until then". Hilken showed him the page containing the developed writing, on which something like the following English text could be read:

"The bearer of this message is Raoul Gerdts who carries a personal message to you. You can trust him in full."

In German Annex 132 there is a statement of the German Agent, and filed therewith is Exhibit C, containing a draft of the same deposition, which the German Agent, after a prior conference with Hinsch in Germany, had prepared in America and had returned to Germany for Hinsch's execution. The corresponding portion of the draft, as prepared by the German Agent, is as follows:

"Hilken told me that this book had been brought to him by a man named Gerdts, who had been unknown to me up until then."

The only change in the sentence as drawn and as executed was in the change of the word "me" underscored [emphasized] above, to "us", by which Hinsch tried to persuade the Commission that Gerdts was *unknown* both to *himself* and to *Hilken*.

In order further to prove that Gerdts was unknown both to himself and to Hilken before he brought the Herrmann message from Mexico to Baltimore, Hinsch changed the original form of the affidavit as prepared by the German Agent and added thereto the following:

"Hilken reported that Gerdts had stated to him certain particulars with regard to the submarine enterprise, which only Herrmann could have known. I was then of the opinion that Gerdts had really come from Herrmann and was not, by any chance, an agent of the American Intelligence Service who had taken this book away from a messenger of Herrmann at the border." (Ger. Ann. 71, p. 4.) (Emphasis supplied.)

All of these statements were afterthoughts and not in accordance with the facts.

In Hinsch's affidavit of July 22, 1932 (Ger. Ann. 72, p. 3), he reiterates the statement:

"Hilken and I saw Raoul Gerdts for the first time at the end of April, 1917, when he brought the message from Herrmann."

An examination of the Hilken-Hoppenberg-Lowenstein correspondence, taken from the files of the Eastern Forwarding Company and filed September 13, 1938, with the brief of the American Agent, disproves Hinsch's claim.

On January 13, 1917, Hilken had lunch with his friends, Hammar and Lowenstein, and, following that lunch, he on January 18, 1917, wrote Hoppenberg, his clerk in New York, a letter, mentioning the fact that Gerdts had called on him and Hoppenberg in New York on Saturday, January 13, 1917; and he requests Hoppenberg, if Gerdts should return to the office, to send him to Lowenstein "with the enclosed letter of introduction". In the enclosed letter of introduction Hilken, on January 18, 1917, recalls to Lowenstein that he had spoken to him at lunch on Saturday, January 13th, "about a young Spanish-American German, who speaks German and Spanish fluently and some English". He goes on to state that the "letter will serve to introduce the young man, Mr. Raoul Gerdts; should you have an opening in your works, I shall appreciate your considering his application". The reply of Lowenstein on January 30, 1917, acknowledged Hilken's letter and shows that Gerdts had called on Lowenstein. Lowenstein writes Hilken:

" I have asked this young man to write me a letter explaining what he can do and I shall try my best to place him with one of my interests."

Thus it will be seen that in January, 1917, before America entered the war, before Herrmann and Gerdts had left America for Mexico, and less than five months before Gerdts came back to Baltimore with the Herrmann message, Gerdts was so well known to Hilken that he was recommending him to his intimate friend, Lowenstein, for a job, and that he gave Gerdts a letter of introduction to Lowenstein.

When Gerdts came to Baltimore with the Herrmann message, he was a guest in Hilken's home in Roland Park (unwelcome to Mrs. Hilken) for two or three days, and he amused himself with the piano player (Ex. 972). Hinsch confirms this statement as follows:

" As I entered Hilken's home, a man not known to me was sitting at the piano in an adjoining room, who afterwards was introduced to me by Hilken as Gerdts." (Ger. Ann. 71, pp. 3, 4)

Hilken's check stub books on his Corn Exchange Account show the following payments to Gerdts under the name of Raoul Sala:

" No. 206 Date Apr 27 1917  
Pay to A S & Co  
For a/c Raoul Sala 175 "

" No. 207 Date Apr 30 1917  
Pay to A Schumacher & Co  
For do 1000 " (Ex. 909, filed May 27, 1932).

Hilken testified that the foregoing entries referred to checks drawn by him to the order of the firm A. Schumacher & Co. for cash payments which he made to Raoul Gerdts shortly after the time Gerdts brought the Herrmann message to him in Baltimore (Ex. 909).

The following entries in Hilken's 1917 diary fix the date that Hilken and Hinsch left New London as Saturday, April 28, 1917, and the date that Hinsch and Hilken had dinner with Gerdts in Roland Park as Sunday, April 29, 1917:

Entry for Saturday, April, 28th, reads:

" 4 a. m. with Capt.  
H. leave 11 a. m. train  
and Congressional  
for Baltimore "

Entry for Sunday, April 29th, reads:

" Capt. H &  
Cousin Raoul dine  
with us Roland  
Park " (Ex. 583, Ann. D. Rec. pp. 2330, 2331).

Hilken in his testimony under subpoena of September, 1933, identifies the entry " Cousin Raoul " in his diary as follows:

" In my diary for Sunday, April 29, 1917, there is a notation which bears out my recollection of a dinner at my house in Roland Park, which says, ' Captain H. and Cousin Raoul dined with us at Roland Park.' I remember that we called Raoul Gerdts ' Cousin Raoul ', because we have distant cousins in Venezuela. And so that the children, which were then of an age beginning to take notice, would not be suspicious, we introduced him to them as ' Cousin Raoul ', and they all called him ' Cousin Raoul.' " (Ex. 976, Ann. E, p. 121)

Hinsch in his affidavit of June 28, 1932 (Ger. Ann. 71, p. 5), confirms the payment at this time of \$1,000 to Gerdts in the following language:

" Hilken and I then decided that Gerdts should receive \$1,000, which Hilken first had to withdraw from his bank. Gerdts was to inform Herrmann that I would go to Mexico in a short time and would bring money with me."

In Hinsch's affidavit of July 22, 1932 (Ger. Ann. 72, p. 3). he reiterates the statement that:

" Hilken and I saw Raoul Gerdts for the first time at the end of April, 1917, when he brought the message from Herrmann."

The foregoing record discloses the following facts showing the relations between Hilken and Gerdts:

On January 13, 1917, Hilken knew Gerdts well enough to speak about him to his friend, Lowenstein, at lunch; and on January 18th, Hilken gave Gerdts a letter of introduction to Lowenstein and a recommendation for a position.

On Friday, April 27th, Hilken gave Gerdts \$175.00, and on that same date he became a guest in Hilken's home while Hilken went to New London to see Hinsch. When Hilken and Hinsch returned on Sunday, they found Gerdts still a guest in the home and unwelcome to Mrs. Hilken on account of his cigarette smoking and piano playing.

On that date, Sunday, April 29th, Hinsch and Gerdts dined with Hilken in his home in Roland Park, and Hilken and Hinsch decided to give Gerdts \$1,000 and send him back to Mexico. On the following day, Monday, April 30th, Hilken gave to Gerdts the sum of \$1,000 for Herrmann, and Hinsch sent him to Mexico with a message that he would soon follow with the balance of the money requested by Herrmann.

Surely, in the light of this record, neither Hinsch nor Hilken needed any statements in the message or disclosures by Gerdts, revealing a knowledge of particulars about the submarine enterprise, to convince them that Gerdts was not " an agent of the American Intelligence Service, who had taken this book away from a messenger of Herrmann at the border ".

The change made by Hinsch in the affidavit as originally drawn by the German Agent shows that Hinsch was willing to fabricate statements in order to make the affidavit conform with the needed proof.

#### (6) *Testimony of Willie Woehst*

In the history of sabotage by German agents, Woehst is not an important figure, in comparison with Hilken, Hinsch or Herrmann. Most of his affidavits were introduced for the specific purpose of substantiating Hinsch's affidavits, prepared for the purpose of destroying the confessions of Herrmann and Hilken and refuting other statements in the record connecting Hilken, Herrmann and Hinsch with sabotage. In order, therefore, to test the accuracy and truthfulness of Woehst's affidavits, it is necessary first to examine the record and ascertain therefrom what were Herrmann's statements towards which Woehst's affidavits were directed.

In Exhibit 729, Rec. p. 4865 *et seq.*, Edwin Herrmann, the brother of Fritz Herrmann, told of Fritz Herrmann's several trips to Germany and of his meeting with Nadolny and Marguerre and William Kottkamp. He stated that Fritz came back to this country and made arrangements with Kottkamp for opening in New York an office under the name of " European Textile Company ", which was a blind for importing incendiary devices into the United States for use against ships and for operations against munition factories (id. p. 4869).

He also stated that Willie Woehst (who was known as " Rupp " and " Hauten "). Clucas, Thorne, Raoul Gerdts, Kurt Jahnke, Lothar Witzke, Paul

Hilken, Hinsch, Wozniak, and Siegel were all known to him personally (*id.* pp. 4869-4870); that Fritz, Woehst and some of the others had an apartment located on the west side of New York City in the Luxor Apartment house and had another apartment in Newark, New Jersey (*id.* p. 4870); that Woehst spent considerable time at the Prince George Hotel in New York as well as at the Hotel McAlpin.

He identified the letter, Annex I-1 to Hilken's affidavit (Ex. 583), as having been signed by his brother, Fritz Herrmann.

Frederick or Fritz Herrmann in his examination by the two agents, April 3, 1930, Rec. p. 5431 *et seq.*, testified as follows about Woehst:

Woehst arrived in this country on November 27, 1916 (Ex. 995, Anns. B & C); and met Herrmann shortly thereafter (Rec. p. 5451). He told Herrmann that he came from the General Staff with instructions to report to Hilken and through Hilken to get in touch with Hinsch and Herrmann "about blowing up these things" (*id.* p. 5489). Herrmann was not sure whether Woehst brought tubes with him, but he was sure that Carl Dilger brought several hundred in a trunk with a false side or bottom (*id.* p. 5489). Woehst told Herrmann that he had left a package of tubes with Hinsch, and Woehst also brought over some new germs at the same time (*id.* p. 5582). Woehst reported that his instructions were the same as Herrmann had gotten, namely, to get in touch with Hinsch and Herrmann for the purpose of destroying munition plants.

Woehst, Herrmann and Gerdtts were all under suspicion as alleged German secret agents early in 1917 (See report of A. G. Adams to Department of Justice, dated February 21, 1917, Ex. 583, Ann. K, Rec. p. 2359; also report of John Kaba to the Department of Justice dated May 19, 1917, Ann. X to Ex. 583, Rec. p. 2406 *et seq.*; also report dated May, 33, 1917, Ann. Y to Ex. 583, Rec., p. 2410 *et seq.*).

When the World War started, Woehst was employed by the shipping concern, D. Fuhrmann, in Hamburg as manager of the department, Hamburg-Boston and Hamburg-New Orleans, having been employed by the firm about ten years.

In German Exhibit CXXIV, Woehst gave his personal history, stated he had visited the United States in 1902 and 1903<sup>1</sup> and told of his experience in the war until he was taken ill (pp. 4, 5). He then reported to Berlin and was sent to the Great General Staff, "Sektion Politik" (p. 5), and on account of his knowledge of English, was selected for the purpose of going to Italy via America, to appear as a German-American. After being specially trained for propaganda activities in Italy and being instructed in the Intelligence Service, deciphering secret codes, writing with invisible ink and developing letters written with invisible ink, he was called to Berlin and received an order to go by the quickest route via Norway to New York (*id.* p. 7).

He reported to Captain Marguerre who instructed him to call on Paul Hilken in Baltimore in order to get assistance in obtaining a visa for Italy on a false passport (*id.* p. 8). He left Germany on his trip on October 1st or 2nd, 1916, booked passage by a Danish steamer, "Frederick VIII", appeared on the passenger list under the name of Hermann Rupp with a false Swiss passport and arrived in America in the beginning of November,<sup>2</sup> 1916. He then went to Baltimore, met Paul Hilken and asked him to assist in obtaining a visa for Italy, but found that that was not possible, because a law had been promulgated which provided for a sharp control of passport visas to belligerent countries (*id.* pp. 11, 16, 17).

<sup>1</sup> At the time of this visit, he enlisted in the U. S. Navy but deserted after eight months' service (Ex. 583, Ann. Y, p. 2411).

<sup>2</sup> He arrived Nov. 27, 1916 (Ex. 995, Anns. B & C).

As he could not get a passport to Italy, he stayed in America, was introduced by Hilken to Herrmann and became a close friend of Herrmann and lived with him a considerable time and he also became well acquainted with Hilken. He did not know and was not informed that Hilken worked for the Great General Staff (id. p. 12). Hilken placed Hoppenberg's office in New York at Woehst's disposal (id. p. 20).

Hilken's reason for introducing Herrmann to Woehst was that the second U-boat trip had come to an end, and, therefore, Hilken had nothing for Herrmann to do; so Hilken thought it would be best for Woehst to "take him" and try to find something to do together (id. p. 31). He tried to get some employment from Hilken in connection with the "U-Deutschland" work and went to New London between November 20th and 25th and met Hilken in the Mohican Hotel. He was introduced at this time by Hilken to Captain Hinsch at New London (id. pp. 23-25).

In order to meet the affidavits of Herrmann, Hilken and Edwin Herrmann, Woehst made the following denials:

(1) that he ever received instructions in Berlin to be carried out in event he had to remain in America (id. p. 42);

(2) that he had ever planned to destroy munitions supplies or have them destroyed by others (id. pp. 52, 53);

(3) that he had ever employed people to blow up munitions factories or munitions supplies or to bring about fires (id. p. 53);

(4) that Herrmann ever told him that he, Herrmann, had carried on sabotage against munitions factories or munitions supplies, or that he had blown up anything, or that he and Hinsch had carried on sabotage in America (id. p. 53);

(5) that he ever possessed devices for bringing about fires, or small glass tubes, or that he had seen or heard of small glass tubes, or that he had ever seen them in Herrmann's possession (id. pp. 54, 55);

(6) that Herrmann had ever shown him such devices or ever talked to him about such incendiary devices (id. p. 55);

(7) or that he had ever seen such devices as were sketched by Herrmann as Exhibits 1 & 2 with his testimony (id. p. 56).

Woehst further denied:

(1) that Hinsch was ever mentioned in connection with the Black Tom explosion (id. p. 57);

(2) that he had ever discussed the Black Tom explosion with Herrmann (id. p. 57);

(3) that he ever became acquainted with Witzke, Jahnke or Kristoff (id. p. 57);

(4) or that he had ever met Theodore J. Wozniak (id. p. 59), or Rodriguez (id. p. 60).

He further denied:

(1) that Herrmann ever told him anything about the Kingsland plant; that he knew anything about the place, or that he ever discussed with anybody setting fire to that factory, or that he discussed the same with Herrmann, or that he ever proposed to Herrmann to undertake sabotage against munitions factories, or that he ever came in contact with laborers who were employed in munitions factories in order to cause sabotage acts through them (id. pp. 60, 61);

(2) he further denied that he ever introduced Wozniak to Herrmann (id. 61);

(3) or that he ever heard that Herrmann cooperated with a man named Wozniak or with a man named Rodriguez (id. p. 61);

(4) or that either Herrmann or Hinsch had anything to do with the Kingsland fire (id. pp. 61, 62, 63);

(5) that he ever met a man by the name of Edwin Herrmann or ever knew that Herrmann had any brothers (id. pp. 65, 66);

(6) or that the meetings of German agents ever took place in his hotel or at any place (id. p. 66);

(7) he denied meeting Thorne, Chester Williams or Carroll Clucas (id. p. 66);

(8) he admitted meeting a man named Gerdts in the month of December, 1916, in the house of the pianist, Louise MacPherson (id. p. 67);

(9) and that he introduced Gerdts to Herrmann in their apartment in Luxor House, and that Gerdts drove their automobile as a chauffeur (id. p. 68);

(10) Woehst denied that he ever had anything to do with enterprises to infect horses or mules with anthrax germs or that he ever heard of plans to infect them, or that he ever saw such tubes in Herrmann's possession (id. p. 70);

(11) he further denied that he was ever told anything at the General Staff about such enterprises against horse and mule transports, or that he was ever in possession of such glass tubes containing anthrax or other germs (id. pp. 70, 71);

(12) Woehst also denied that he stayed at the Prince George hotel, New York (Ger. Ex. XCI).

Woehst claimed that the only subject he took up with Hilken was in regard to obtaining a passport with an Italian visa (Ger. Ex. CXXIV, p. 16); and Marguerre testified that:

"Woehst was quite exclusively intended for Italy and only in transit in America where he should get the necessary documents." (Ger. Ex. CXXIII, Exam. Aug. 1, 1930, p. 13.)

Woehst further claimed that his activities, after he found out he could not get to Italy, were, in connection with Herrmann, to ascertain the movement of munitions over the various piers for transfer to transatlantic steamers (Ger. Ex. CXXIV, p. 41). These activities began about the first days of December, but he (Woehst) took his instructions from nobody and specifically did not receive instructions in Berlin to be carried out in the event he had to remain in America (id. p. 42).

Marguerre testified that he gave Woehst no instructions for agents in America; and that he gave him no instructions for America, in case he would not be successful in getting to Italy, and that when Woehst returned and reported that he could not get to Italy, he was dismissed immediately "because he was a failure in our eyes" (Ger. Ex. CXXIII, Exam. of Aug. 1, 1930, p. 14).

Woehst's "unauthorized" activities, he says, were carried on at night, principally in the freight yards of the Lehigh Valley, New York Central and the Hoboken switching yards, and reports were sent by telegram to the Admiralty Staff (Ger. Ex. CXXIV, pp. 42, 43).

He saw Herrmann daily and Herrmann was not engaged in any other matters of secret service nor did Herrmann receive any moneys whatsoever from Hilken or carry on any sabotage work in America of any kind (id. pp. 47, 51-53).

Woehst's affidavits show a meticulous study of the record and were designed to deny every fact which would connect Hilken and Herrmann with sabotage.

As we have seen above, Hilken stated that when he met Woehst in Baltimore he recommended to him the Prince George Hotel in New York and that Woehst stayed there a while and moved to the McAlpin (Ex. 976, Ann. E. pp. 90, 91). As we also have seen, Edwin Herrmann, the brother of Frederick Herrmann, also testified that Woehst spent considerable time at the Prince George Hotel in New York as well as at the Hotel McAlpin (Ex. 729, Rec. p. 4871).

The question as to whether Woehst ever stopped at the Prince George Hotel would not seem to be important enough to dignify it with a denial; but the record was searched for an opportunity to contradict Hilken and Herrmann, and,

therefore, Woehst was particular specifically to deny this statement. See German Exhibit XCI where he says:

“ Entirely untrue is the statement concerning my stay at the Prince George Hotel in New York. I never entered the said hotel.”

In Exhibit 733-B, Rec. p. 4894, there is a letter dated December 19, 1916, written by Edwin W. Hauten (Woehst) to March (Herrmann) in which the following sentence occurs:

“ I am staying at Hotel McAlpin not at Prince George, which was impossible on some reason.”

Thus the record seems to verify the statements of Hilken and Edwin Herrmann and to contradict the statements of Woehst on this point.

Woehst testified that he was with Herrmann so frequently and constantly, that, outside of making investigations of the movements of munitions across the piers to transatlantic steamers, Herrmann did not attend to any other matter of the secret service, and that he could not have done so (Ger. Ex. CXXIV, pp. 46, 47).

Before the United States entered the World War, Woehst was under the suspicion of Federal agents, and on February 24, 1917, they found in his room a letter from Herrmann addressed to Whoest containing the following:

“ Dear Hauten [Woehst's alias] —

“ If letters come for me from Perth Amboy, open them & heat them. If there is any news, you can forward it to the right party. \* \* \* If you think it best that he discontinue the work there just write a short letter to Mr. E. Adams, Hotel Madison, Perth Amboy, New Jersey. \* \* \*.” (Ex. 583, Ann. I. Rec. p. 2356.)

As indicated by the report of Department of Justice agent Stone dated October 19, 1918, the date of the “ Dear Hauten ” letter is undoubtedly around February 2, 1917. Stone reports that an inspection by him of the Hotel Madison, Perth Amboy, New Jersey, disclosed the fact that “ E. Adams, Newark, N. J.” was registered on February 2, 1917 (Ex. 593, Rec. p. 2489).

On the sheet containing this letter, there were the names of ammunition plants, as to which Hilken testified later that they had them “ on the spot ” (Ex. 976, Ann. E, pp. 95, 99).

The reference to “ heating ” the letters refers to the fact that Herrmann was expecting letters to be written in lemon juice. Such letters Woehst is directed to develop by heat (id. p. 98).

When this letter was shown to Woehst, he pretended not to know whether the letter was genuine; but he claimed that the letter could not have had

“ any connection with acts of destruction of an ammunition plant, since Herrmann, as long as I knew him, did not engage in such activities.” (Ger. Ann. 22 (a), p. 6.)

This letter substantiates Herrmann's testimony as to Woehst's participation in sabotage, and also shows that Woehst was testifying falsely when he claimed that Herrmann never operated apart from him. This claim is also disproved by a letter written by Woehst to Herrmann on December 19, 1916, containing the following:

“ I tried to get you to-day but failed \* \* \*. I am staying at Hotel McAlpin not at Prince George, which was impossible on some reason.” (Ex. 733-B, Rec. p. 4894.)

As Woehst registered at the McAlpin for the first time on December 11, 1916 (See Ex. 938), and Woehst notified Herrmann on December 19, 1916, that he

was staying at that hotel, it would seem clear that for eight days, at least, Woehst was not in contact with Herrmann. Woehst claimed that on December 11, 1916, he again took "lodging at the Hotel McAlpin on coming from Rochester" (Ger. Ann. 76, p. 2). He had been in Rochester four days; therefore we must conclude that on the 19th of December, 1916, Woehst and Herrmann had not been associating with each other for a period of at least twelve days. It was during this period that Herrmann was having his meetings with Wozniak and Wozniak was writing his letters to the Russian authorities (Rec. pp. 5452-5455, 5499-5503, 5589, 5623; Ex. 725, (4) and (5), Rec. pp. 4554, 4556).

*How often did Woehst see Hinsch?* In March, 1930, before the Herrmann confession, Woehst testified that he saw and spoke to Hinsch in Baltimore and New York three or four times, and that he did not know whether Hinsch had anything to do with the affairs of secret service (Ger. Ex. XCI, p. 3).

In attempting to destroy Herrmann's confession, Hinsch denied that he had been in New York at all during the time that Woehst and Herrmann were associated with each other, to wit, from early in December, 1916, to February 14, 1917 (Ger. Ex. CXXVIII, pp. 79 *et seq.*).

In July, 1930, Woehst made an affidavit for the purpose of bolstering up Hinsch's affidavits and of contradicting Herrmann's confession. In that affidavit he stated that, after thinking the matter over, he had concluded that his prior affidavit was erroneous and that he had become certain that he had met Hinsch only once, and that it was in New London, not New York, and it was in the Mohican Hotel "between November 20 and 25", where he claimed that he stayed under the name of Edw. W. Hauten. He also claimed that Hilken had reserved a room at the Mohican and he met Hilken there (Ger. Ex. CXXIV, pp. 24-28). An examination of the register of the Mohican Hotel for the period fails to disclose that Woehst registered there under his own name or under his aliases, Hauten or Rupp (Ex. 976, Ann. Q). Hilken was not in New London between November 19 and the evening of November 24, 1916 (Ex. 911; Ex. 976, Ann. E, p. 93). Woehst did not arrive in the United States until November 27, 1916; and between November 20 and November 25, 1916, he was on the high seas on board S. S. "Frederick VIII", with a false passport in the name of Hermann Rupp (Ex. 995, Anns. B and C).

Woehst testified that he disembarked at Hoboken in the beginning of November, 1916 (Ger. Ex. CXXIV, pp. 10, 11). As to the date of his arrival he was, as we have seen above, mistaken since he did not get to the United States until November 27, 1916.

After disembarking at Hoboken he testified that he stayed for two days in New York arranging some personal matters in connection with the shipping concern, D. Fuhrmann (*id.* pp. 13, 14). He then went to Baltimore where he stayed four or five days and claims to have seen Paul Hilken on or about the 5th or 6th of November (*id.* pp. 15-17). During the month of November, 1916, Hilken was only in Baltimore from the evening of 21st to the morning of the 23rd and again on the 30th — Thanksgiving (1916 diary, Ex. 911).

How Woehst became mixed upon his dates is not clear from the record, but it is clear that he was not in New London between November 20th and 25th and that he did not meet Hinsch in New London between those dates.

#### *Woehst's Movements after the Kingsland Fire*

In April, 1930, Herrmann testified that Woehst went to Rochester with incendiary devices (Rec. p. 5581). Later in his examination of October, 1933, Herrmann spoke of Woehst's nervousness after the Kingsland fire, as a result of which he left town (Ex. 986, Ann A, pp. 93 - 94). Woehst's testimony is directly

to the contrary. In July, 1930, and in August, 1932, Woehst testified that when he came from Rochester on December 11, 1916, he stayed continuously at the Hotel McAlpin up to the time when he moved to the apartment house on January 20, 1917 (Ger. Ex. CXXIV, p. 33; Ger. Ann. 76, p. 2). On the day following Herrmann's flight from the United States to Mexico, an agent of the Department of Justice searched Herrmann's room and found therein a telegram, sent by Woehst from Rochester to Herrmann at the McAlpin Hotel, dated January 16, 1917 (Ex. 583, Ann. N, Rec. p. 2368), thus proving the falsity of Woehst's claim, and corroborating Herrmann.

It is thoroughly established, also, by Woehst's own cousin, Hildegarde Canfield (née Jacobsen) that immediately after the Kingsland fire, Woehst was nervous and persuaded her to spend the week end with him at Montclair Hotel, in Montclair, N. J., after which they spent several days in Rochester, N. Y. At that time Woehst practically admitted some complicity in, and responsibility for, the fire (Ex. 995, Ann. A, p. 3). Subsequently in Germany, Woehst referred to his false testimony and regretted that he had not been in a position to tell the truth (*id.* pp. 4, 5).

His conduct as to the spots appearing on Hildegarde's face showed that he feared he had infected her with some of the disease germs he had been handling (*id.* p. 4).

As indicated elsewhere, Woehst, Herrmann and Gerdts were under suspicion by the Department of Justice shortly before and after the United States entered the war, and were the subject of several reports by A. G. Adams, Special Agent (Rec. pp. 2359 *et seq.*), and by John Kaba, Special Agent (Rec. p. 2406 *et seq.*).

In the course of his investigation, Kaba met Mary Hildegarde Jacobsen of Rochester, New York, and on May 23rd, 1917, made a report of an interview which was held by Special Agent Adams in Kaba's presence, Rec. p. 2410.

Mary Hildegarde, who later married one Canfield, in 1930 made a visit to Germany. Under date of May 31, 1935, she made an affidavit which was filed as Exhibit 995, Annex A.

The contemporaneous Kaba report and the 1935 affidavit of Jacobsen-Canfield disclose a set of facts which entirely contradict Woehst in his denials of the statement of Herrmann and Hilken.

In the Kaba report it appears that Miss Jacobsen was introduced to Woehst, her first cousin, by her father at the Pennsylvania station in New York just after Woehst arrived from Baltimore early in December, 1916. The details of this report connected Woehst with Herrmann and Gerdts as German agents who had fled from America and gone to Mexico and disclose the fact that Raoul Gerdts had recently come from Mexico and looked Miss Jacobsen up at her apartment, 106 West 13th Street, and asked if she had had some money from Willie Woehst. The statement further disclosed the fact that, on the day Woehst returned to Germany, Herrmann told her she would receive a large sum of money from Willie Woehst which she should deposit in bank until called for by him or Raoul, and she was to explain the receipt of this money by stating it had been left to her by a deceased relative in Germany. She told of seeing Woehst using invisible ink on a letter written in a regular way and he explained to her the process of making the same legible. Woehst spoke of March (Herrmann) as stupid looking, but very shrewd and able, and one who had done good work in Europe. Woehst rented a furnished apartment in New Jersey and sent March to live in it. The night before Woehst left he, Herrmann, Miss Jacobsen and a Miss McPherson had a party together in Woehst's apartment.

In the affidavit given by Mary Hildegarde Canfield in 1935 (Ex. 995, Ann. A), she explained that when she made the Kaba statement she was concerned about the investigations

“because *I knew that my cousin had been acting secretly for the German Government in preventing shipment of munitions, and that he had been connected in some way with the blowing up of a munitions factory.* I was very much afraid not only that what I might say would result in harm to him but also to myself because of my knowledge of what had been done. On that account, the information which I gave in May 1917 was limited insofar as it was possible for me to do so under the pressure and threats to which I was subjected by Department of Justice officials.” (Emphasis supplied.) (p. 1.)

She told of her trip to Germany in April, 1930, with her two children, where she stayed until May, 1931. While in Germany she met her cousin, Willie Woehst, a number of times. She stated that she learned Willie Woehst was in the United States in November, 1916, and met him about Thanksgiving, and that shortly thereafter Woehst visited her father and mother in Rochester. She then stated as follows:

“My cousin first told me that he had come here in connection with the paying off of various German seamen whose vessels were interned in the United States, but after a short time it *rapidly became apparent that this was only a subterfuge for his real purpose.* He had plenty of money to spend, and *finally himself admitted that he had come to this country on orders from the German Government, to try to stop the shipment of all kinds of war materials* which were being sent from the United States to the English and French. He maintained that his activities were directed against Germany's enemies and not against the United States.

“As he became more frank, Wilhelm Woehst told me that he was associated with Paul Hilken and Fritz March, the latter of whom he stated was a very successful German spy and had worked with great distinction in England during 1915. Woehst also stated that March, whose real name was *Herrmann, was one of the most active of those engaged in destructive work in the United States* and in fact painted such a glowing picture of Herrmann's fearlessness and daring that it was at my request that I was introduced to Herrmann, on an occasion which I distinctly remember, on the mezzanine floor of the McAlpin Hotel. I cannot remember the exact date, and have no records to fix it, but I do know that I met Herrmann before Christmas 1916.” (Emphasis supplied.) (pp. 2, 3.)

She met Herrmann on several occasions and he spent considerable time in Perth Amboy and made a trip to Savannah and telegrams were sent by Herrmann to Woehst from Savannah. After Woehst returned from Rochester in December, she saw him practically every day until immediately after the fire and explosions of munitions which took place in Kingsland, New Jersey, in January, 1916. Then she states:

“On the morning following that fire, Woehst called at the Three Arts Club at about 9 a. m., and told me that it was important for him to leave town at least for a few days and he wanted me to go with him. He was very insistent on going somewhere where there were few people, and where it was quiet. I inquired the reason for this and Woehst referred to the article in the newspaper about the fire. I asked him if he had anything to do with it, and he avoided a direct reply shrugging his shoulders and laughing. [1]

“Although Woehst did not at that time tell me whether he had been implicated in the fire, yet his actions and manner convinced me that he knew who had been responsible for it, and that it was desirable for him to get away for a few days. I went with him to Montclair and stayed at the Hotel Montclair for three days, over a week-end from Friday morning until Sunday night. The hotel had a large open fireplace and a skating rink on the pond at the foot of the hill.

“On the Sunday night we rushed off to Rochester, N. Y., because spots had appeared on my face and *my cousin was afraid that I had contracted an infection from him,*

<sup>1</sup> This confirms the statements previously made by Herrmann as to Woehst's nervous condition and visit to Rochester immediately after the Kingsland explosion (Ex. 986, Ann. A, pp. 93, 94).

as he said that he had been handling some materials which might give me an infection, and which might have serious consequences. On this account my cousin refused to permit me to go to a doctor in New York but took me immediately to Rochester where I was examined by our family doctor. My cousin was tremendously relieved when the doctor diagnosed my complaint as German measles." (Emphasis supplied.) (pp. 3, 4.)

She further states that soon after arrival in Germany in the spring of 1930 she spent a few days at Altona and visited her cousin, Willie Woehst, and his family. She stayed at a hotel and not at their home. Then she states as follows:

"I found that my cousin was greatly worried over the fact that *Hilken had accused him of sending blackmailing letters after the war*, and he said that in view of those statements by Hilken, he, Woehst, might suffer severe punishment in Germany. Before leaving Germany in 1931 I saw Woehst again and he told me that *he had been able to 'square himself' with his Government, in respect to Hilken's statements.* [1] Woehst said that he was thoroughly disgusted with the whole business and gave me to understand that if he could have secured employment outside of Germany *he would have been glad to have told the full truth about his activities in America.*

"Woehst told me that under the circumstances he had no alternative but to deny any knowledge of the Kingsland fire and of any other unlawful activities of Herrmann and Hilken in the United States." (Emphasis supplied.) (pp. 4, 5.)

Thus it appears from the Kaba report and Mrs. Canfield's affidavit that nearly all of the statements made by Hilken and Herrmann and denied by Woehst were admitted by him to Mrs. Canfield (née Jacobsen).

With claimants' Exhibit 583, examination of Paul G. L. Hilken, December 7th-19th, 1928, there were filed as Annexes AA-1 and BB, a letter from Woehst to Hilken, Sr., dated December 4, 1920, translated at Rec. p. 2287, and another letter dated May 9, 1921, to Paul Hilken, translated at Rec. p. 2290. The first letter reads in part as follows:

"I hope that you have in the meantime come into the possession of my letter of eight days ago. I have made an effort in Berlin to find out from the former gentlemen of the Great General Staff, whether there is any possibility of having refunded to me by the German Government my personal property which I lost abroad. I regret to say that these gentlemen can give me little hope, as this Department was dissolved immediately after the outbreak of the revolution, and all papers were burned at once. *Now, as at that time your son gave an order on Berlin to send for us \$15,000, and as this remittance arrived too late (after the outbreak of the diplomatic relations), this money could not be used and must therefore still lie to the credit of Mr. Paul Hilken's account.* Of course the money cannot be returned to the former Department as the former existence of this department naturally is not now to be spoken of. I would be extremely grateful to you if you could persuade your son to pay me, out of this account, the amount of my account which was seized abroad. If you consider that it is not a large sum, probably about \$1,000, as I find myself in grave necessity on account of my family of four. I see no other means and ask you to help me in this matter at once. The gentlemen of the former staff have helped me with the best will, and from a charity fund have paid me a small sum, which, of course, will last only a short while. I have received from Capt. P. Koenig who has become nautical director in Bremen, a letter in which he expresses the wish that I may be successful in recovering my property which was seized abroad. It is probably out of the question for me to expect the American Government to pay this to me as I lived under a different name while there." (Emphasis supplied.)

The second letter to Paul Hilken reads as follows:

"As I unfortunately have received no answer from you to my last letter, I was forced to hand in my claim for damages to the proper authorities for foreign claims, and I have been asked by them to submit a confirmation, that I was active in New York and

<sup>1</sup> This was probably effected by his affidavit confirming Hinsch (Ger. Ex. CXXIV).

*Baltimore from October 1916 until February 1917.* I request you, therefore, to confirm this so that I will be able to use your statement with the Department in question.

"I would not like to bring the gentlemen, Marguerre, Capt. von Hülsen and Mr. Nadolny into difficulties, and, therefore, must ask you for your assistance.

" Respectfully

" Willy Wohst

Altona

Molkestrasse 22.

" P. S. In case I do not receive this confirmation from you I am unfortunately forced to make my demands for payment from the funds (G. G. St.) of that period." (Emphasis supplied.)

In the light of this record, it is clear that Woehst was making false statements when he claimed that he was not authorized by the gentlemen of the Great General Staff to carry on any activities in America and did not carry on such activities. His plea that he was ignorant of sabotage activities is likewise disproven. His ignorance of the activities of Herrmann and Hinsch can no longer be maintained, and his claim that he was ignorant of enterprises to infect horses or mules with anthrax germs must likewise be classified as false.

Although he claimed that the maximum amount of money received by him from Hilken was \$1,000, he makes the claim in his letter to Hilken, Sr., that Paul Hilken had given an order

" on Berlin to send for us \$15,000, and as this remittance arrived too late (after the outbreak of the diplomatic relations), this money could not be used and must therefore still lie to the credit of Mr. Paul Hilken's account."

And in the same letter he argues that as Paul Hilken has in his account \$15,000 " which cannot be returned to the former Department, as the former existence of this Department is not now to be spoken of"

therefore Paul Hilken has the money with which to reimburse him for the loss of his personal possessions.

He claims to have been sent to America simply for the purpose of getting a visa on a false passport to Italy, but he endeavors in 1921 to secure from Hilken a confirmation " that I was active in New York and Baltimore from October 1916 until February 1917 ", and he gives as his reasons for asking Hilken's assistance on this point that " I would not like to bring the gentlemen, Marguerre, Capt. von Hülsen and Mr. Nadolny into difficulties "

Although, as we have seen above, Marguerre testified that he gave Woehst no instructions as to activities in America and he dismissed Woehst upon his return " because he was a failure in our eyes," we now have Woehst endeavoring to secure a portion of \$15,000 of money coming from " Sektion Politik ", in payment of his activities " in New York and Baltimore from October, 1916 until February, 1917 "

It will also be noted that when Woehst presented to the German Government his claim for damages, he had been asked to submit a confirmation that he was " active in New York and Baltimore from October, 1916, until February, 1917 ", and he requested Paul Hilken to confirm this activity, so that he might be able to use Hilken's statement with the Department in question, and significantly he adds:

" I would not like to bring the gentlemen Marguerre, Capt. von Hülsen and Mr. Nadolny into difficulties "

and in the postscript he says:

" In case I do not receive this confirmation from you I am unfortunately forced to make my demands for payment from the funds (G. G. St.) of that period." (Rec. pp. 2290-2291).

Another letter written by Woehst to Hilken was lost, but according to Hilken it was very sharp in its demands (Ex. 583, Rec. p. 2291).

Those letters, denominated by Hilken as "blackmailing",<sup>1</sup> were introduced into the record on December 19, 1928 (Ex. 583, Rec. pp. 2287, 2290), but were not made the subject of any comment by Woehst in any of his four examinations — affidavit of August 24, 1929 (Ger. Ann. 22 (a)); affidavit of March 11, 1930 (Ger. Ex. XCI); deposition of July 24, 25, 1930 (Ger. Ex. CXXIV); or affidavit of July 8, 1932 (Ger. Ann. 76), or by Marguerre in either his affidavit of July 17, 1929 (Ger. Ann. 22), or his deposition of July 30, Aug. 1, 1930 (Ger. Ex. CXXIII), each filed after February 9, 1929, the date of filing of Ex. 583; and they not only convict Woehst of "blackmailing", but they also convict Woehst and Marguerre of falsifying the record when they claimed that Woehst had no authority for his activities in America.

#### *How Woehst's Expenses in This Country Were Paid*

In German Exhibit CXXIV, p. 14, Woehst testified that when he came to this country he exchanged in New York his Swiss money which the General Staff had given him, about four or five thousand francs, into American money and it netted him only about \$650. This was the amount given him by the General Staff to cover his expenses of travelling from Germany to Italy via the United States; and he received no other money for this purpose. He had, however, about \$250 "and about eight hundred to one thousand German Reichmarks" of his own money. He was asked whether he received money from anybody else, and he stated that he was

"an employee of the shipping concern Fuhrmann and could have raised money from the Gans Line",

but he was "not entirely sure" that he raised money there. He believed he did let the Gans line pay only his expenses in connection with his private business of the S. S. "Hohenfelde".

At page 49 he was asked:

"How did you pay your living expenses during your stay in America?"

"A. During the first time with the moneys I brought along. Since, however, I had to pay also for Hermanns' living expenses, Mr. Hilken placed further funds at my disposal."

When asked how long he lived with the money the General Staff gave him, he said it was difficult to be exact as to the date, he thought

"that Mr. Hilken gave me the moneys which we needed for our maintenance and expenses since the end of December or the beginning of January." (id. p. 49.)

These moneys he received from Hoppenberg in New York with whom Hilken had arranged a credit for Woehst (id. p. 49). He was asked whether he could say how much money he received from Hilken through Hoppenberg and stated that it was a very difficult thing to give exact figures:

"All I can say with certainty is that I got small amounts from time to time which, all in all, did by no means exceed the sum of \$1,000". (id. p. 50.)

<sup>1</sup> It will be recalled that, according to Woehst's cousin, Hildegarde Jacobsen, Hilken had accused Woehst of sending "blackmailing" letters, and Woehst felt that he "might suffer severe punishment in Germany", but that "he had been able to square himself with his Government." (*Supra*, this opinion p. 134.) (*Note by the Secretariat*, this volume, p. 333.)

He used this money to pay for rent, food, wearing apparel, small tips which had to be given to the freight yard watchmen as well as pocket money for Herrmann. The amounts of money he paid the freight watchmen were small, a dollar or two at a time (id. p. 50). He also stated that Herrmann did not receive any money from Hilken while he was with him, as Hilken told Woehst expressly to pay also for Herrmann's subsistence and to give him the necessary pocket money. He claimed to have given Herrmann only \$15 per week for pocket money (id. p. 51), and he recalled that at a celebration in New York and when they were together in New York at Rector's and the mezzanine restaurant in the McAlpin — probably three or four times — Herrmann had very little money and Woehst had to pay for him (id. p. 51). Beyond the money given to Herrmann for pocket money, he gave him nothing except \$300 or \$400 with "which I sent him to Savannah for Captain Huelst". Herrmann never had large sums of money at his disposal and he always came to see Woehst if he needed money. He met Herrmann's father once and got the impression that the finances of the family were not in good shape (id. pp. 51, 52).<sup>1</sup>

An examination of the record shows that Woehst was guilty of deliberate falsehood in making the above claims. Hilken's check stubs (Ex. 909, Ann. B) have the following items:

Date	Amount	Check Stub Number	Notation
December 1, 1916	\$300.00	146	"Cash Lewis"
December 5, 1916	100.00	149	"Lewis"
December 13, 1916	500.00	152	"Cash Hauton"
December 21, 1916	500.00	157	"Cash Fred. & Edw. J"
December 28, 1916	500.00	159	"Lewis & Haut."
January 13, 1917	1,000.00	166	"W & L"
January 23, 1917	1,000.00	169	"a/c W & L"

There is no dispute that the above items totalling \$3,900, were paid for sabotage activities with which Herrmann and Woehst were connected. Woehst claims to have paid all of the living expenses of himself and Herrmann and to have allowed Herrmann \$15 a week for spending money. The balance, if Woehst be telling the truth, went to Woehst's own account.

In his brief filed on the 16th day of November, 1938 (p. 32 *et seq.*), the German Agent contended that the words "set of glasses" contained in the Ahrendt postscript meant either "\$1,000" or "sum of money". In order to sustain this contention, the German Agent was forced perhaps unconsciously, to repudiate Woehst's claim that he never received from Hilken more than \$1,000 and also the claim that he furnished Herrmann all of his money.

The Ahrendt postscript was appended to a letter written by Ahrendt to Hilken dated January 19, 1917, and read as follows (see original letter filed September 13, 1938, with brief of United States):

"Yours of the 18th just received and am delighted to learn that the von Hindenburg of Roland Park won another victory.

"Had a note from March who is still at McAlpin.

Asks me to advise his brother that he is in urgent need of another set of glasses. He would like to see his brother as soon as possible on this account."

In the brief of the German Agent filed November 16, 1938, we find the following (p.35):

<sup>1</sup> Hilken testified that from the time he got back from Germany in April, 1916, until the United States entered the war in April, 1917, he paid Herrmann and Hinsch more than \$50,000 (Ex. 583, Rec. pp. 2186-2187).

"The second paragraph of the postscript, when translated into plain language therefore has this meaning:

"Had a note from Herrmann who is still at McAlpin. Asks me to advise you that he is in urgent need of another \$1000.— (or another sum of money) he would like to see you as soon as possible on this account.'"

In order to sustain this contention, the German Agent refers to Exhibit 909, stubs 166 and 169. As found in Hilken's check book, these stubs are as follows:

" No. 166	Date Jan. 13, 1917
Pay to C. Hoppenberg	
For W & L	1,000.00 "
" No. 169	Date Jan. 23, 1917
Pay to C. Hoppenberg	
For a/c W & L	1,000.00"

The German Agent calls attention to the fact that Herrmann and Woehst obtained from Hilken the sum of \$1,000 on January 13, 1917, and a like sum of \$1,000 on January 23, 1917, and argues that the language "another set of glasses", used in the postscript on the 19th, had reference to the prior payment on January 13th of \$1,000. In making this argument the German Agent said (p. 35):

"In the light of the foregoing facts, the conclusion is inescapable that Herrmann's note to Ahrendt emphasizing his urgent need and his desire to see Hilken at the earliest convenience was an appeal for funds. The fact that Herrmann in his note to Ahrendt used veiled language is in noways surprising and only in line with the procedure observed by Salzer at Hilken's request on the above mentioned occasion, when Herrmann wanted to meet Hilken on December 11, 1916. Manifestly Hilken was anxious to preclude from written communications any references that might link him to Herrmann and to payments made to Herrmann. [1] The expression 'another set of glasses' is easily explained in the light of the foregoing set of facts. A very short time prior to that date (on January 13, 1917), Herrmann and Woehst obtained from Hilken the sum of \$1,000.— (U. S. Ex. 909, stub No. 166), and apparently asked for and received on January 23, 1917 another \$1,000."

Here we have the German Agent admitting that Woehst had been the recipient of at least \$2,000 of Hilken's money within ten days time, although the German Agent had filed on August 18, 1930, German Exhibit CXXIV in which Woehst claimed that he never received from Hilken more than \$1,000 out of which he paid to Herrmann \$15 a week and no more. (As to how German saboteurs were financed, see *infra*, this opinion, p. 151.)<sup>1</sup>

*Herrmann's Testimony as to Woehst's Sabotage Activities Is  
Confirmed by the Hilken-Arnold Correspondence*

From Herrmann's confession of April, 1930, before the two Agents, we learn that he met Woehst about the beginning of December or the end of November, 1916, when he came from the General Staff to report to Hilken (Rec. p. 5451); and Woehst stated that his instructions from the General Staff were to report to Hilken and

"Through Hilken get in touch with Captain Hinstch and I about blowing up these things"

and he was

"to go over there and help Hintsch and to use those tubes." (Rec. p. 5489.)

<sup>1</sup> If Herrmann was not engaged in sabotage, why should Hilken have been anxious not to be linked with payments made to Herrmann?

<sup>2</sup> Note by the Secretariat, this volume, p. 345.

An examination of the Hilken-Arnold correspondence confirms in detail Herrmann's testimony regarding Woehst.

On December the 12th, 1916, J. A. Arnold, who was prominent among the German saboteurs in South America and who was financed by Hilken, wrote Hilken a letter from Buenos Aires which contained the following:

" I have noted that you will sign your cables by a name commencing with H. [1] and I will sign mine by a name commencing with A. I thought it was safer to sign my last cable by S's F. than by my name, because I did not want the cable office to know my being in connection with you. At the same time I wanted to be absolutely sure that you knew the cable came from me. I did not believe that the name S. was known to anybody here or there, and I am thankful to you for your warning. In the meantime you will have received my letters of Oct. 14, 18, and Nov. 16, & 24.

" I am sure you have been very busy all the time, as I have read so much about your work in the papers, and I congratulate you on account of your success! My business has been pretty good here and the prospects are far from being bad. With regard to our meeting I have come to the conclusion, that it will be better for us that I go to see you. I shall have to speak to men of different branches and got my informations from specialists." (Ex. 906, Ann. GG).

Under date of January 11, 1917, Hilken replied acknowledging receipt of the letter quoted above and other letters written by Arnold, and then he says:

" Of course, I was greatly interested in all you wrote me regarding the progress of your business, the difficulties you have met with, etc. etc. I think your idea to come here a good one, especially as our principals abroad, realizing that my other interests require too much of my time and make it impossible for me to devote my energies to their interests, have sent a young man, who arrived here a month ago and whom I have since initiated into our American trade. He brought with him several new samples which may also find a market in Argentine.

\* \* \* \* \*

" Only a few days ago I wrote my friend H. Arnold of the North German Lloyd at Buenos Aires to pay you on demand up to \$1,000.— gold equal about 2000 pesos, but referring to your letter of November 24th, I have decided to remit an additional \$1000.— gold for account of Mr. F. O. H. Thomae. I shall probably send this through the Guarantee Trust Co. direct to the Banco Aleman Transatlantico for credit to account of Mr. Thomae. This is all the money I can spare at present; but I have written to our principals abroad requesting them for additional funds, also asking for order from them to remit additional amounts to you." (Ex. 906, Ann. HH).

In his examination under subpoena, Exhibit 976, Annex E, Hilken testified that when he came back from Germany, after his meeting with Nadolny and Marguerre:

" there were two men sent over, I might say three, although one arrived here a little before I did — that was Fred Herrmann; the other two were Arnold, who was to go to South America, and whom I financed, and Willie Woehst, who arrived here in November, 1916." (id. p. 49).

He further testified that Woehst came from Nadolny and Marguerre for sabotage work and was added to the sabotage forces which were working under him and reported to Hilken in Baltimore (id. p. 49). He then was shown the carbon copy of the letter of January 11, 1917, addressed to J. A. Arnold which is quoted above and testified as follows:

" First of all, who are the ' principals abroad ' to whom you refer?

" A. Nadolny and Marguerre.

<sup>1</sup> For evidence of this practice by Hilken see his 1915 diary, Ex. 585, Ann. C; also Ex. 976, Ann. E, pp. 87, 88.

" Q. Who is the young man you mentioned?

" A. What date is that letter?

" Q. January 11, 1917.

" A. That is Willie Woehst.

" Q. What is the subtle allusion to your initiating him 'into our American trade'?

" A. That is undoubtedly sabotage. It can refer to nothing else.

" Q. What are the 'new samples' which he is supposed to have brought with him?

" A. Probably pencils, incendiary devices of some sort — I don't remember; no doubt that is what I was referring to.

" Q. You say, 'These samples may also find a market in Argentine.'

" A. Yes. Arnold was carrying on sabotage in the Argentine." (id. pp. 50-51.)

He was asked whether Woehst was sent to speed up the sabotage activities in the latter part of 1916 and he explained the necessity for an additional key man due to the activities of Hinsch and Herrmann in connection with sabotage against all the plants which at that time were manufacturing munitions (id. p. 52). He was asked whether Hinsch was correct in his claim (Ger. Ex. CXXVIII, p. 110) that, after he, Paul Hilken, had returned from Germany, Hinsch had discontinued his sabotage activities and destroyed the balance of his supplies and in reply to this he stated as follows:

" There was never any thought of Hinsch or Herrmann, and their men, quitting sabotage activities. In fact, Herrmann had brought with him the new incendiary devices, the tubes, and it was from that time onward that sabotage could be practised with greater effect. After my return from Germany, instead of quitting, the work was carried on with greater intensity." (id. pp. 53-54.)

From the foregoing quotations it is perfectly clear that Hilken, Herrmann, Hinsch, and Woehst in America, and Arnold in South America, continued their sabotage activities after the U-boat enterprise started, and in this connection it is to be noted that Woehst arrived in this country on November 27, 1916 (Ex. 995, Anns. B & C). He was sent here by Nadolny and Marguerre and he first appeared on Hilken's payroll as receiving \$500 on December 13, 1916, almost exactly one month prior to Hilken's letter to Arnold (Ex. 909, Ann. B).

(7) *The Arnold Correspondence Proves Sabotage by German Agents in Neutral Countries Including United States*

In the Answers of Germany, it was specifically denied that there was a campaign for the destruction of war supplies in neutral countries (Section III); and it was further denied that the campaign of sabotage in neutral countries was extended to the United States while the United States was at peace with Germany (Section IV).

In said Answers, the German Agent, on behalf of his government specifically denied that any order was issued by any department or agency authorizing sabotage in the United States (Par. 13 of Germany's Answers).

The Answers admitted that the message of January 26, 1915, authorizing sabotage against munition factories was genuine, but claimed that it was the "blunder" of a subordinate; that at any rate it remained in the files and no action was ever taken on it (Par. 14).

In German Exhibit CXXIII, affidavit of Hans Marguerre of "Sektion Politik", it was admitted that, while the United States was neutral, men and material for sabotage were sent to the United States, and that Hilken and Herrmann were specifically supplied, the former with money, and the latter with incendiary devices, to be used for sabotage in the United States, but it was

claimed that, so long as the United States was neutral, they were only to get information as to establishments producing war material, but that they did not have orders to destroy such establishments so long as the country was neutral; but it was necessary "to make our preparations in America during neutrality so that in case of America's entering the war we would have agents and material on the other side". (Testimony July 30, 1930, p. 15.)

A somewhat similar claim was made by Hinsch, namely, although he had been engaged in sabotage ever since he saw Rintelen personally, after Hilken returned from Berlin, where he met Nadolny and Marguerre in the spring of 1916, he (Hinsch) ceased his former activities, and did not further engage in sabotage (Ger. Ex. CXXXVIII, pp. 88-93, 109).

The confessions of Hilken and Herrmann specifically contradicted Germany's Answers and Marguerre's affidavit.

Hilken's comment in his examination under subpoena with regard to Marguerre's statement that sabotage was not to begin until the United States entered the war is pertinent and deserves to be quoted. He said:

"Well, for obvious reasons, Mr. Sobeloff, [1] none of those instructions were in writing, but it is all bunk when he says that sabotage was not to take place until after America went into the War. And the very fact that all the men connected with sabotage left the minute America was in the war proves that.

"The whole sabotage work was against munition plants while they were manufacturing munitions for the Allies, and that was understood. It was understood between Marguerre, Nadolny, Herrmann, Dilger and myself, we all knew. Of course, it is their word against my word.

\* \* \* \* \*

"Another thing that wholly disproves the contention is the fact that the entire inoculation of horses with anthrax germs was done long before I even met Nadolny and Marguerre. It was done immediately after Rintelen came over here, and Hinsch and Dilger were active in that long before I was taken ill, they were active in it and had their whole organization complete for the inoculation of horses, down at Norfolk and Newport News. Then the fact that when Rintelen came over here he established the 'cigar' factory for making bombs at that time. It is so ridiculous on the face of it — the whole record proves that sabotage was going on during that whole period, before, not merely by us, but take the cases out on the Pacific Coast. Then there was Bode and Wolpert, the bunch that was working in Hoboken. They were all working at it. And the Consul at San Francisco, he had a gang working at that time. In fact, Fay, Rintelen & von der Goltz not only planned but executed their sabotage operations and were convicted and sentenced to Atlanta on that account long in advance of the entry of the United States into the War. Fay was actually convicted before we entered the war, and, as I recall, Rintelen's conviction may have been delayed, but it was on account of activities that long antedated our entry into the War.

\* \* \* \* \*

"After I came back from Germany there were two men sent over, I might say three, although one arrived here a little before I did — that was Fred Herrmann: the other two were Arnold, who was to go to South America, and whom I financed, and Willie Woehst, who arrived here in November, 1916. Now Willie Woehst came directly from Nadolny and Marguerre in 1916, in November.

\* \* \* \* \*

"He [Woehst] was to be added to the sabotage forces which were working under me." (Ex. 976. Ann. E, pp. 46-49.)

The correspondence between Arnold and Hilken (Ex. 906, Anns. T. *et seq.*) and the intercepted cables passing between Berlin and Buenos Aires specifically show the falsity of Germany's pleading, first, that Germany never authorized

<sup>1</sup> Mr. Sobeloff, the United States Attorney at Baltimore, Maryland.

sabotage in neutral countries, and, second, that the instructions to Hilken and Herrmann were not to commit acts of sabotage in America until and unless America entered the war.

This correspondence and the intercepted cables show that Arnold was a German agent equipped with disease germs and incendiary devices to be used principally in the Argentine, which never declared war against Germany; that these sabotage instruments were so used by him; that he was paid by Hilken many thousands of dollars for his sabotage work in the Argentine. But these letters and cables also conclusively show that, while Arnold was carrying on sabotage work in the Argentine, Hilken through Hinsch, Herrmann and Woehst, was conducting a program of incendiary sabotage and of inoculating animals in America; and that this program was not interrupted by the U-boat enterprise, but was coincident with that scheme, and lasted until it was interrupted by the entry of the United States in the war, at which time all the German saboteurs, except Hilken, scurried away from America, like rats deserting a sinking ship.

It is clearly established that Arnold was an Agent of the Admiralty Staff, operating in the Argentine and other Latin-America countries in 1916, 1917 and 1918, and that he had been loaned to the General Staff (Ex. 320, Rec. pp. 866, 869, 900); and Arnold was most probably the Admiralty agent who came to the United States in 1915 with a Swiss passport under the name of Victor Thomsen (id. Rec. pp. 822, 874, 875).

Arnold, like Hilken, was working for "Sektion Politik" of the General Staff, and the expressions "our friends abroad" and "our principals" found in their correspondence can only refer to the "Sektion Politik" of the General Staff.

Attached to Exhibit 906, there are annexed communications passing between Hilken in Baltimore and Arnold in Havana and later in Buenos Aires, in which thinly veiled references are made to the sabotage activities of both of them. These communications began on August 3, 1916, just four days after the destruction of Black Tom and two days after the "U-Deutschland" sailed from Baltimore, and continued through February 24, 1917, and prove conclusively that Hilken and his agents, including Herrmann, were actively engaged in sabotage operations in the United States, the Argentine and other countries, coincident with Hilken's submarine activities; and thus discredit both Ahrendt and Hinsch, who testified that, after the submarine enterprise started, Hinsch was so busy, and was confined so closely to the submarine base, first, at Baltimore and later at New London, that it was impossible for him to engage in any other form of activity.

By this correspondence it is established that Arnold had, during a part of the time, two cover addresses, to-wit, Mr. John Herbert Schmidt, Casilla de correo 487 (Ex. 906, ann. CC), an admitted agent of the General Staff (Ex. 320, Rec. p. 869) and Senor F. O. H. Thomae, Casilla de correo 692, Buenos Aires (Ex. 906, Ann. EE), and that Hilken had three cover addresses, two in Baltimore and one in Ashtabula, Ohio (Ex. 906, Ann. BB 1). When Arnold needed money and could not get it through another German agent in the Argentine, John Herbert Schmidt, he would apply to Hilken asking him to remit the money to "Mr. Thomae, who keeps my money", and he "has an account in the Banco Aleman Transatlantico, here" (Ex. 906, Ann. FF). Arnold warned Hilken that:

"It would perhaps be better not to send letters in envelopes of your Navigation Co., as certain people are very sharp in this country." (Ex. 906, Ann. GG.)

A few quotations from the correspondence between Arnold and Hilken and from the intercepted cables will show clearly that Arnold was the agent of the General Staff for sabotage in the Argentine just as Hilken was in the United

States, and that both of these agents continued their activity until the United States entered the war.

Under date of August 3, 1916, Arnold in Havana wrote Hilken suggesting that Hilken meet him in Colon and that they go together to South America, saying:

“ \* \* \* it is a shorter trip along the West Coast \* \* \*. I have a few medicines with me.” (Ex. 906, Ann. T.)

On August 7, 1916, Hilken cabled Arnold at Havana as follows:

“ Have been trying arrange meeting with you Regret impossible leaving before September if you consider advisable will send *trustworthy representative* to meet you \* \* \* ”. (id. Ann. Y) (Emphasis supplied.)

This “ trustworthy representative ” was Herrmann. See Paul Hilken’s letter of August 6, 1916 (typographical error 1917 to) his father:

“ Hinsch and I had already thought over in reference to Cuba that it is at present impossible for me to get away, and we must therefore send Lewis [Herrmann] there.” (Ex. 42 attached to Ex. 976, Anns. A-D.)

On August 21, 1916, Hilken wrote Arnold apologizing for not being able to meet him at Havana or Panama, as had been suggested by Arnold, and saying:

“ Nothing would please me more, especially as I realize that you may need me there. Unfortunately, I am at present unable to say whether it will be possible for me to go to South America, especially, *because our friends abroad have been urging me to see them at the earliest possible moment.*” (Ex. 906, Ann. B B 1.) (Emphasis supplied.)

On October 14, 1916, Arnold in Buenos Aires wrote Hilken in reply to the letter of August 21, 1916, stating it was necessary for him to get out of the tropics and he has reached “ this cool country after a short time (with my samples)”, and then states:

“ \* \* \* I have also a great interest of seeing you, as I would want to speak to you *about some new articles for which there will be a good market here.*”

“ \* \* \* I have so far *executed my first order*, but before you get this letter, I shall have executed many more orders, as I have booked several. There is a big market for my article — shaving brush — in this country; but with the same expenses for office, travelling, salaries and so on I may carry some more articles and make a great success. The Argentine is getting very important, indeed.” (Ex. 906, Ann. CC.) (Emphasis supplied.)

In Exhibit 320, Rec. p. 869, there is an intercepted message of January 24, 1917, identifying John Herbert Schmidt as “ agent for the General Staff ”, and instructing him “ to work in cooperation with reliable agent of the Navy ”.

Under date of November 24, 1916, Arnold wrote Hilken indicating that things were not progressing smoothly and requesting funds, as follows:

“ \* \* \* then I shall need about five thousand dollars gold ”. (Ex. 906, Ann. FF.)

Under date of December 12, 1916, Arnold wrote Hilken a letter, suggesting the desirability of Arnold’s going north to meet Hilken, saying:

“ I am sure you have been very busy all the time, as I have read so much about your work in the papers, and I congratulate you on account of your success! My business has been pretty good here and the prospects are far from being bad.” (Ex. 906, Ann. GG.)

Under date of January 11, 1917, Hilken replied to Arnold’s letter of December 12, as well as his earlier letters of October 14 and 18, and Nov. 16 and 24, saying:

" \* \* \* I think your idea to come here a good one, especially as *our principals abroad*, realizing that my other interests require too much of my time and make it impossible for me to devote my energies to their interests, *have sent a young man*, who arrived here a month ago and whom I have since initiated into our American trade. He brought with him several *new samples* which may also find a market in Argentine.

\* \* \* \* \*

" Only a few days ago I wrote my friend H. Arnold of the North German Lloyd at Buenos Aires to pay you on demand up to \$1,000.— gold equal about 2000 pesos, but referring to your letter of November 24th, I have decided to remit an additional \$1,000.— gold for account of Mr. F. O. H. Thomae. \* \* \* This is all the money I can spare at present; but I have written to our principals abroad requesting them for additional funds, also asking for order from them to remit additional amounts to you." (Ex. 906, Ann. HH.) (Emphasis supplied.)

The " young man, who arrived here a month ago " and who was initiated by Hilken " into our American trade " is identified by Hilken as being Willie Woehst, who brought with him some new tubes (Ex. 976, Ann. E, pp. 49-51). Woehst arrived on the " Frederick VIII " on November 27, 1916 (Ex. 995, Ann. C).

In addition to the payments to J. A. Arnold, mentioned in Hilken's letter of January 11, 1917, the record discloses that, under date of April 6, 1917, Hilken wrote Crossman & Sielken asking that they remit \$5,000 to Arnold in Buenos Aires (Ex. 906, Ann. QQ), and on August 17, 1917, Hilken sent \$4,000 to Arnold, as evidenced by his check No. 238 (Ex. 909).

Under date of February 13, 1917, Arnold wrote Hilken acknowledging Hilken's letter of January 11th, 1917, expressing his intention to leave about the 23rd instant for New York and then he says:

" Many thanks for advising your friend to pay me the sum, you mention in your letter. I will call upon him one of these days, and as difficulties have arisen again, as I anticipated, I shall need the money, to keep my firm here supplied with money for about four months hence. But for the future I cannot be left without funds, and it was very good of you, to write to our friends, requesting them for additional funds." (Ex. 906, Ann. 00)

Under date of January 20, 1917, Arnold, in Buenos Aires, wrote Hilken complaining about the non-cooperation he was receiving in the Argentine and expressing his opinion that:

" \* \* \* it will be most necessary to go to the States and talk over many things. I have wired for permission and I hope to get soon a telegram from you telling me that I shall leave. Business is alright, and my men are good fellows so that I may be away for some time." (Ex. 906, Ann. LL.)

Under the same date, January 20, 1917, Moller, in Buenos Aires, sent a message to Berlin:

" For Admiralty Staff of Navy in Berlin Arnold to General Staff Political.

" Request permission by telegram to make a journey to North America for the purpose of consulting a friend there.

" Affairs here will be carried on as usual during my absence." (Ex. 320, Rec. p. 869.)

That Arnold made his trip north and saw Hilken is evidenced by information contained in a letter dated July 6, 1917, from Arnold under the name of Thompson quoted in a message dated July (?), 1917 from Madrid to Berlin, reading as follows:

" I have received a letter from B'aires dated July 6.

" The following is to be forwarded to the General Staff:

"With reference to my journey north, I have had a discussion with Paul concerning practical experiments with the dynamo report immediately how far other machines are \* \* \* It was impossible to meet experts as the declaration of war had been dispatched and a sudden departure became necessary.

"I have received \* \* \* for Department 'E' and 'B' from here in September and January each 10,000 paper pesos, from Paul in February 1,000 and in May 5,000 gold dollars; Funds will last until October 5th. Please remit before that date 2,000 pesos. The results from this department appear to be very satisfactory.

"Dynamo Department has drawn the Neiling credit of 100,000 marks. Thompson." (Ex. 320, Rec. pp. 874-875.)

The above message is confirmed by another message of the same tenor sent July 23, 1917, reading as follows:

"From: B. A.  
To: Berlin  
"For General Staff No. 3  
"Have spoken with Paul and learn that meeting of Dynamometer and other machine experts was impossible. Declaration of war made hurried return necessary.  
"Have received at B'aies 20,000 pesos. Paul 5,000 dols. Funds will be exhausted by October. Request further 20,000 pesos.  
"Dynamo section has drawn out the Neiling credit of 10,000 marks.  
(signed) Thompson." (Ex. 320, Rec. p. 875.)

The fact that Arnold met Hilken in New York is evidenced by an entry in Hilken's diary for 1917 for Wednesday, March 28th, reading as follows:

"X to N. Y. 11 a. m. breakfast diner  
See Arnold dine Biltmore Rice Fr. and Arnold —  
Reisenweber's X" (Ex. 583, Ann. D, Rec. p. 2329.)

It is clearly established by contemporaneous intercepted messages that Arnold's sabotage activities in the Argentine continued throughout the year 1917. Some of these messages are set out below:

Under date of July 9, 1917, Luxburg, German Minister to the Argentine, radioed Germany as follows:

"Without showing any tendency to make concessions, postpone reply to Argentine \* \* \* note until receipt of further reports. A change of Ministry is probable.

"As regards Argentine steamers, I recommend either compelling them to turn back, *sinking them without leaving any traces* or letting them through. They are all quite small." (Ex. 868, Ann. N.) (Emphasis supplied.)

Under date of December 14, 1917, Madrid cabled Berlin as follows:

"Arnold desires express instructions as to whether he should stop using dynamite against outgoing ships. He reports the departure of a new mule transport on November 30th for Mesopotamia." (Ex. 320, Rec. p. 882.)

Under date of December 18, 1917, Berlin sent the following in reply to the Arnold inquiry reported in the cable of December 14, 1917 (Ex. 320, Rec. p. 882), from Madrid to Berlin. This message reads as follows:

"Military No. 21656  
For the Military Attaché  
With ref. to Tel. 4592 Dec. 11th.  
Please communicate the following to 'A': —

"Irritation in the political world must be avoided. The use of *dynamite* in vessels engaged in the coasting trade is forbidden but it is *permitted* \* \* \* *in the case of long voyages if its effect is delayed for a considerable period, so that it may be impossible to recognize its origin.* Spare neutral and Russian vessels.

"General Staff" (Ex. 320, Rec. p. 883.)

Luxburg's recommendation that Argentine steamers might be sunk "without a trace", and the instructions from Berlin to the Military Attaché to be communicated to Arnold, namely, "Dynamite in vessels is permitted in case of long voyages, if its effect is delayed for a considerable period, so that it may be impossible to recognize its origin" would seem to indicate that the only immoral thing connected with sabotage in neutral countries is the sin of getting caught. Compare the instruction given to von Eckardt, the German Minister to Mexico, in connection with the proposed destruction of the Tampico Oil Fields by Herrmann:

Herrmann is correct. He has a commission to set fire to the Tampico oil fields but don't openly support him.

(8) *Financing the Saboteurs*

In German Exhibit CXXIII, filed August 15, 1930, Marguerre described his task in "Sektion Politik", first, in belligerent countries and, second, in neutral countries (id. Testimony July 30, 1930, pp. 4-7). He next described the activities of his agents in America and states that he provided them with instructions and material to stop the working of American establishments essential for war, but that "these instructions were to be followed out only in the event that America should enter the war and were to take effect only from that date on" (id. p. 8).

He related the incident when Captain Nadolny came to his office with Hilken, Jr., and Herrmann and a third gentleman. In a prior conference Nadolny had informed Marguerre that some gentlemen from America were in Berlin; among them was a German-American who had been selected as the head of the submarine boat service and he also spoke of Hilken as one who

"could assist us in the agents-service and that we could use his services in transmitting money and news." (Id. pp. 9, 10.)

At the interview which was held in the afternoon (of Tuesday, February 18, 1916) Nadolny made the introductions but "very soon left my room" and Marguerre stated that:

"I still have a picture in my mind of that discussion. Mr. Nadolny left the room very soon and was not present when I spoke to Herrmann about the work assigned to him. I still picture Mr. Nadolny taking leave from us with a short bow before I proceeded to converse with Herrmann." (Id. pp. 10, 11.)

He then testified as follows:

"Yes. As I said before, said discussion is still in my mind. I first spoke to Mr. Hilken about the question of transmitting money to our agents in America, since Captain Nadolny had told me at our conference in the forenoon that Mr. Hilken could assist us in paying out money to the agents. As far as I remember, I told him that it was to be his task to pay out money placed at his disposal by us to agents named to him by us. This was the only question we talked about since Mr. Hilken was to be employed only as intermediary for paying over money to our agents." (Id. p. 11.) (Emphasis supplied.)

He claimed, however, that, outside of the payment of money to the agents, he did "not recall having discussed with him matters of our intelligence service" (id. pp. 11,12). He also claimed that he was careful to take Herrmann aside and that he kept his back to Hilken and the other gentlemen, while he was giving Herrmann his instructions and describing to him the incendiary pencils (id. p. 12 et seq.); and he claimed that Hilken did not take part in the explanation of the incendiary pencils which he was careful to give to Herrmann; and

that, while he was doing this, he turned his back on Hilken, but it was easily possible that Hilken saw the pencils or that Herrmann showed them to him towards the end of the conference (id. p. 17).

Hilken, in describing the same meeting, said that Nadolny and Marguerre told him that he was to pay money to Herrmann whenever Herrmann needed it in America; and he said that the money which he paid to Herrmann was from funds made available to him by the General Staff (Ex. 583, Rec. pp. 2180, 2183, 2185). He further testified that he had credits in the Continental Bank, the Corn Exchange Bank, the Baltimore Trust Company, and the Guaranty Trust Company on which he drew for the purpose of these payments (id. p. 2185); and that from the time he got back from Germany in about April, 1916, until the time the United States entered the war in 1917, he paid Herrmann and Hinsch more than \$50,000 (id. p. 2186).

The funds were made available to him probably within two or three months after he got back and were either kept in a special bank account, or he cashed them immediately, and kept them in a safe deposit box, where he always kept a lot of money, some in \$1,000 bills, some \$500's and some \$100's (id. Rec. pp. 2187-2188). The moneys he sent to Mexico after April, 1917, for Hinsch, Dilger and Herrmann may have been over \$100,000, and he gave Hinsch the sum of \$23,361.75 which Hinsch took with him to Mexico in the latter part of May, 1917 (id. pp. 2189, 2209, 2252). On May 24th, 1917, Hilken paid Hinsch \$1,500 (Ex. 976, Ann. E, p. 128; also check No. 218, dated May 24, 1917, for \$1,500, Ex. 909, Ann. C).

In his deposition of August 26, 1930, Hilken testified that according to his recollection he paid Hinsch and Herrmann \$60,000 not including the funds he had previously received from Rintelen, and that, in addition, he had remitted \$50,000 "to an agent in Japan" (Ex. 829, Rec. pp. 6110, 6111). He had previously testified that he had received in the neighborhood of \$10,000 from Rintelen and expended the same for sabotage purposes which he paid to Hinsch, mostly in \$1,000 bills, and that Hinsch did not account to him for what use he made of these moneys (id. pp. 6099, 6100).

In his testimony under subpoena in September, 1933, Hilken explained the "A. C. D." account on the books of the Eastern Forwarding Company, aggregating \$95,000, as representing the amounts credited on his books on which Anton Dilger drew after he got to Mexico (Ex. 976, Ann. E, pp. 44-46). He further testified that he did not remember the exact amounts he sent to Mexico.

"but it was probably in the neighborhood of two or three hundred thousand [dollars] that eventually went to Mexico \* \* \* to get them [the saboteurs] out of this country, and also to finance Herrmann, Dilger and Hinsch who had then gone to Mexico." (Id. pp. 45, 46.)

Some of this money went before and some after the United States had entered the war (id. p. 46).

We have already seen that after Herrmann left the United States and went to Mexico, von Eckardt, the German Minister, on the 13th day of April, 1917, forwarded a telegram of Herrmann's "to Marguerre or Nadolny" of the General Staff reading as follows:

"Where is Lieut. Wohst stationed? Has he sent about 25,000 dollars to Paul Hilken. He or somebody else it so [is to?] send me money." (Ex. 520, Rec. p. 1847.)

This is a clear indication that Hilken was expecting to receive an additional sum of \$25,000 for sabotage purposes in Mexico.

That large sums of money were being made available by the General Staff to Hilken for sabotage purposes is conclusively established by the following cables from the General Staff, Berlin:

(1) Dated December 6, 1917, from Berlin to Madrid reading as follows:

“Financial assistance through the Argentine is impossible in view of the present political situation and the lack of communication. When \$300,000 have been transmitted to the Minister by HILKEN, fresh funds for espionage are unnecessary.

(Signed) General Staff” (Ex. 868, Ann. O)

(2) Dated December 18, 1917, from Berlin to Madrid:

“Please ask Delmar [Dilger] whether the remittance of 300,000 by Hilken to the Minister at Mexico has taken place.” (Ex. 868, Ann. P.)

In February, 1932, Hilken located his check stubs on his sabotage account in the Corn Exchange Bank in New York. From this account alone, he paid, during the period August, 1916, to August, 1917, to the German saboteurs — Herrmann, Hinsch, Wochst, Arnold, and Gerdtts — the sum of \$26,209.65 (Ex. 909). This was in addition to the sums of \$23,361.75 and \$1,500, given to Hinsch at the time Hinsch left for Mexico in the latter part of May, 1917. Therefore, during the twelve month period aforesaid, Hilken paid from his account in the Corn Exchange Bank the sum of \$51,071.40. All of these payments are evidenced by undisputed, contemporaneous, documentary evidence, and prove conclusively that the German Government during that period expended, from one account, nearly \$1,000 a week in financing the sabotage operations of Hilken and his group.

(9) *Summary and Conclusion on the Question of Fraud*

We have examined the pleadings and ascertained from the evidence, adduced to sustain the pleadings, that the pleadings filed by Germany were false in making the following allegations:

- (1) Germany had never authorized sabotage in neutral countries;
- (2) Sabotage in the United States had never been authorized during the period of its neutrality;
- (3) Though men and material for sabotage were sent to the United States in 1916, definite instructions were given limiting and prohibiting the sabotage activity until the time when the United States should enter the war.

We have examined the evidence and shown that Germany authorized, and German agents committed, acts of sabotage in neutral countries, some of which remained neutral throughout the war; that Germany authorized, and German agents committed, acts of sabotage in the United States while the United States was neutral; and that Germany authorized, and German agents committed, acts of sabotage in Mexico and Argentine, both of which countries remained neutral during the war.

We have examined the evidence adduced by Germany and have ascertained that Wozniak, at whose bench the Kingsland fire started, was guilty of perjury and fraud permeating and destroying the whole of his testimony. We have shown that his testimony, in essential features, was false, and that it was purchased and paid for before his affidavits were filed; that, before his affidavits were filed, he demanded and received large sums of money, and that his demands for compensation began before his affidavits were filed and that they had not ceased when Germany repudiated him as a witness. We have shown that he wrote two letters to the Russians warning them of what he claimed to be deplorable conditions in the Kingsland factory, and that, two days before the fire, he wrote a postal card warning that a catastrophe was impending, but that he made

no disclosures of his information or fears, either to the authorities at the plant or to the police. We have further shown that, after he was repudiated as a witness by Germany, he contradicted all the important points of his former testimony.

We have shown that the Lyndhurst testimony, upon which the Commission based its decision at Hamburg with regard to the Kingsland fire, was false and purchased and known to have been false before the affidavits were filed by Germany, and that the three witnesses producing the same were promised additional compensation when the case should be closed.

It has been clearly established that Ahrendt, Woehst, and Hinsch, the three witnesses introduced by Germany to disprove the confessions of Herrmann and Hilken, were guilty of the grossest kind of fraud; and, although they claimed to be innocent and ignorant of any sabotage in the United States during neutrality, they were part and parcel of the band of saboteurs whose activities were responsible for the loss of millions of dollars worth of property and many lives.

After the record had clearly established the fact that Hinsch, under employment by Rintelen and Hilken, had been engaged in acts of incendiary sabotage and inoculating animals with disease, it was claimed by Germany that this form of sabotage ceased, after the return of Hilken and Herrmann from the conference with Nadolny and Marguerre in Berlin in February, 1916.

On the contrary, it has been clearly established that, as a result of that conference, Herrmann was sent to America, "with new devices", and that Herrmann and Hinsch both continued the same forms of sabotage; that Hilken continued as sabotage paymaster, and that Ahrendt and Woehst aided and abetted them in their destructive mission.

We have shown that Hinsch, upon whose testimony Germany mainly relied to break down the confessions of Herrmann and of Hilken, as well as to destroy the Herrmann message, began his sabotage activities with Rintelen and continued them in the United States until he was forced to flee from this country to escape a Presidential warrant of arrest, and that, after he got to Mexico, his sabotage activities did not cease. In order to substantiate Germany's false pleadings, he made many false statements upon which the Commission relied in its several opinions.

In the course of the examination of the testimony given by Germany's witnesses, it has become more and more evident that their affidavits, which were carefully prepared to destroy the confessions of Hilken and Herrmann, have been built upon a mass of false pleadings and false premises. The destruction of these false pleadings and false premises has left the confessions of Hilken and Herrmann without the stigma produced by these false attacks, and these confessions must be reexamined in the light of the destruction of the perjured evidence directed against them.

The conclusion from an exhaustive examination of the record, is accordingly irresistible that the decision of October 16, 1930, reached at Hamburg, must be set aside, revoked and annulled; and the cases reinstated in the position they were before that decision was rendered.

Wozniak, the man at whose bench the Kingsland fire started, has admitted, since the Hamburg decision, that he consorted with German agents; that they instructed him in the methods of starting a fire; and that he received money from them.

We have concluded that Wozniak's failure to bring to the proper local authorities the information and fear disclosed in his letters and his postal card to the Russian authorities, coupled with his conduct at and since the fire, convict him of the complicity in the design and result.

Having found from an examination of the record, both before and after the Hamburg decision, that the Kingsland fire and explosion was the work of Ger-

man agents, it now becomes necessary to examine the question as to whether German agents were responsible for the destruction of Black Tom. This question, as in the case of the Kingsland destruction, must be reexamined in the light of all of the evidence including that tendered on the issue of fraud and collusion.

### III. HERRMANN MESSAGE

#### What It Proves, If Genuine

In the decision at Washington, December 3, 1932, the Umpire, after examining the evidence relating to the Kingsland fire, expressed his conclusion as follows:

“ I am of opinion the matters above discussed are insufficient, when taken with the proofs offered before the final hearing, to alter the finding that there is no credible evidence that Wozniak was a German agent, was connected and consorted with German agents, or that he was in Mexico in 1917.” (Decs. and Ops., p. 1013) <sup>m</sup>

After expressing the above opinion, the Umpire then concluded his discussion of the Kingsland case as follows:

“ If the so-called Herrmann message is authentic, that document alone would compel a finding contrary to that I have just stated so far as concerns Wozniak's being a German Agent.” (Id. pp. 1013, 1014.) <sup>n</sup>

Later, in the same opinion in opening his discussion of the Herrmann message, the Umpire said:

“ On July 1, 1931, there was filed with the Commission a Blue Book magazine of the January, 1917, issue, containing upon four printed pages lines of writing running crosswise of the print. This, we are told, is a code message forwarded by Fred Herrmann in Mexico to Paul Hilken in Baltimore in April, 1917; names being referred to by numbers in the script, the numbers referring to other pages of the magazine where the names were indicated by pin pricks through printed letters in the text. The writing fluid is said to be lemon-juice made visible by the application of heat.” (Id. pp. 1015, 1016.) <sup>o</sup>

The coded and decoded form of the message follows:

“ Have seen 1755 [Eckhardt] he is suspicious of me Can't convince him I come from 1915 [Marguerre] and 1794 [Nadolny] Have told him all reference 2584 [Hinsch] and I 2384 [Deutschland], 7595 [Jersey City Terminal], 3106 [Kingsland], 4526 [Savannah], and 8545 [Tonys Lab] he doubts me on account of my bum 7346 [German] Confirm to him thru your channels all OK and my mission here I have no funds 1755 [Eckhardt] claims he is short of money send by bearer U S 25000. — Have you heard from Willie Have wired 2336 [Hildegard] but no answer Be careful of her and connections Where are 2584 [Hinsch] and 9107 [Carl Ahrendt] Tell 2584 [Hinsch] to come here I expect to go north but he can locate me thru 1755 [Eckhardt] I dont trust 9107 [Carl Ahrendt], 3994 [Kristoff], 1585 [Wolfgang] and that 4776 [Hoboken] bunch If cornered they might get us in Dutch with authorities See that 2584 [Hinsch] brings with him all who might implicate us. tell him 7386 [Siegel] is with me. Where is 6394 [Carl D] he worries me remember past experience Has 2584 [Hinsch] seen 1315 [Wozniak] Tell him to fix that up. If you have any difficulties see 8165 [Phil Wirth Nat Arts Club] Tell 2584 [Hinsch] his plan O.K. Am in close touch with major and influential Mexicans Can obtain old 3175 [cruiser] for 50000 West Coast What

<sup>m</sup> Note by the Secretariat, this volume, p. 113.

<sup>n</sup> Note by the Secretariat, this volume, pp. 113.

<sup>o</sup> Note by the Secretariat, this volume, pp. 114.

will you do now with America in the War Are you coming here or going to South America Advise you drop everything and leave the States regards to 2784 [Hoppenburg] Sei nicht dum mach doch wieder bumm bumm bumm. Most important send funds Bearer will relate experiences and details Greetings" (Ex. 904).

In his further discussion of the message, the Umpire after quoting the decoded form, said:

"A glance through this translation will indicate that, without reference to any other evidence, it is conclusive proof to any reasonable man that (a) Herrmann and Hilken knew the Kingsland fire and the Black Tom explosion were the work of German agents and (b) that Hinsch, Hilken, and Herrmann, undoubted agents, were privy thereto, and (in the light of the record before the Commission) (c) that Kristoff and Wozniak were active participants in these events. As the American Agent has well said, I may utterly disregard all the new evidence produced and still, if I deem this message genuine, hold Germany responsible in both of the cases." (Decs. and Ops., p. 1016.)<sup>p</sup>

The German Commissioner concurred in the whole opinion of the Umpire and therefore approved the above deductions.

In a note appended to his separate opinion, the Honorable Chandler P. Anderson, the American Commissioner, used the following language (Decs. and Ops., p. 1035):<sup>q</sup>

"The so-called Herrmann secret message, embodied in the Blue Book Magazine for January, 1917 (Exhibit No. 904), if accepted as authentic, would conclusively prove the liability of Germany in both the Kingsland and the Black Tom cases."

In this opinion we have already concluded that so far as the Kingsland disaster is concerned:

"Wozniak's failure to bring to the proper local authorities the information and fears disclosed in his letters and postal card to the Russian Embassy at Washington, coupled with his conduct at and since the fire, convict him of complicity in the design and result." (*Supra.* this Opinion, p. 53.)<sup>r</sup>

This conclusion has been reached independently of the Herrmann message.

It becomes necessary, therefore, to determine whether the explosion at Black Tom was the result of the activities of German agents. If the Herrmann message be a genuine document, then, under the Umpire's decision of December 3, 1932, concurred in by the German Commissioner, and under the note of the American Commissioner appended to his separate opinion, that document is conclusive proof that German agents were privy to, and active participants in, both the Kingsland and the Black Tom explosions.

In the study of the question as to whether the Herrmann message is a genuine instrument, this question must, in accordance with the decision of July 29, 1935, be "reexamined in the light of all of the evidence, including that tendered on the issue of fraud and collusion".

Before examining the record with reference to the evidence bearing on the question as to whether the Herrmann message is a genuine instrument or not, it is necessary to study the circumstances connected with the drafting, transmission, receipt, and production of the message.

There are four persons whose testimony must be studied in order to get a clear picture of these circumstances, namely:

Herrmann, who composed the message:

<sup>p</sup> Note by the Secretariat, this volume, p. 115.

<sup>q</sup> Note by the Secretariat, this volume, p. 126.

<sup>r</sup> Note by the Secretariat, this volume, p. 276.

Siegel, who after Herrmann had composed it, dictated the message to Herrmann for transcription in invisible ink;

Gerdt, the messenger who transported the message from Herrmann in Mexico City to Hilken in Baltimore; and

Hilken, who received and developed the message in Baltimore and later produced the Blue Book message now in evidence.

### 1. Herrmann

Frederick L. Herrmann was born in Brooklyn, N. Y., September 10, 1895. His father was a German, born in Bederkesa, Germany, and came to this country when he was fourteen or fifteen years of age. The father was naturalized some time between 1885 and 1890 (Rec. pp. 4337, 5432). The mother was a natural born American of German descent (Rec. p. 5474). Herrmann was the second of four sons (Rec. p. 5433).

When the war broke out in 1914, Herrmann was working for W. R. Grace & Co., importers and exporters, but at the beginning of the war he was laid off with a number of other employees (Rec. p. 5432).

On or about January 14, 1915, a passport was issued to Herrmann in the name of Fred L. Herrmann to travel in Holland and Germany for the purpose of visiting his grandmother at Bederkesa, Germany (Rec. p. 2304).

On or about February 2, 1915, Herrmann sailed from New York on the Dutch steamer "Ryndam". Going over on this ship he met William Kottkamp, a member of the German Secret Service and Kottkamp interested him in his activities (Rec. pp. 5425, 5433 et seq., 5475).

After Herrmann had arrived at his grandmother's home in Bederkesa, he received a wire from Kottkamp calling him to Berlin where Kottkamp introduced him to Captain Prieger of the German Admiralty Staff (Rec. pp. 5434, 5435). Herrmann accepted service with the German Admiralty Staff and was sent to England to watch the British fleet and report its movements for Military and Naval Intelligence (Rec. p. 5435).

In order to enter England, he obtained on or about March 4, 1915, an emergency passport from the American Legation at The Hague for the purpose of "visiting England for commercial business, and not to use Department passport which has been used in visiting Germany" (Rec. p. 5666).

In a letter to the Department of State, dated June 16, 1915, relating to his application of June 10, 1915, for another passport, he claimed to have been previously employed by "The European Textile Company" which had discontinued business (Rec. p. 5670.) (Fred Herrmann's brother Edwin Herrmann, afterwards claimed that the name "European Textile Company" was a blind for importing incendiary devices into the United States (Ex. 729, Rec. p. 4869)).

On his first trip to England, Herrmann remained for two or three months doing espionage work and returned to Berlin via Holland, reporting to Captain Prieger of the Admiralty Staff. He then came back to this country and on or about July 1, 1915, received a new passport for the purpose of visiting Holland on "commercial business" (Rec. pp. 2309, 5437). This passport was issued upon an application dated June 10, 1915 (Ex. 583, Ann. B., p. 2308).

With this passport Herrmann again entered England and matriculated at Edinburgh University in August or September, 1915, taking a course in forestry. While at Edinburgh he reported the movements of ships in the Firth of Forth where he was near the naval base. He remained at Edinburgh University until December, 1915, but his activities came under the suspicion of Scotland Yard and they put him aboard the "New Amsterdam" of the Holland Line for New York (Rec. pp. 5439, 5440).

In New York he stayed "a week or two" and then went back to Bergen in Norway, on the S. S. "Kristianafjord". On this vessel he met Dr. Anton Dilger, alias, Delmar. After arriving in Bergen, Herrmann and Dilger went to Copenhagen where they met members of the German Admiralty Staff. They then went to Berlin, arriving in January, 1916, where Herrmann reported his arrival to Captain Prieger (Rec. pp. 5440-5442).

In Berlin Herrmann met Paul Hilken, of Baltimore, who had already been paymaster under Rintelen for German saboteurs in America and who was to become Herrmann's paymaster for the time of his employment in America.

When we were discussing the subject "Financing the Saboteurs" (*Supra*, this Opinion, pp. 151, et seq.),<sup>s</sup> we ascertained that Nadolny and Marguerre arranged for a conference in "Sektion Politik" which was attended by Hilken, Herrmann and a third gentleman who turned out to be Anton Dilger (Ger. Ex. CXXIII, pp. 9 et seq. Trans. of July 30, 1930). At this conference instructions were given relating to sabotage in America, and Herrmann was furnished with sabotage devices for that purpose, though it was claimed by Marguerre that "these instructions" to Herrmann "were to be followed out only in the event of America entering the war and they were to take effect only from that date on" (id. p. 8).

At this conference Marguerre instructed Hilken that "it was to be his task to pay out money at his disposal by us to agents named to him by us" (id. p. 11). Although Marguerre claimed that his instructions and the incendiary pencils to Herrmann were given while the others were not looking or within hearing, these facts were denied both by Hilken and Herrmann, who also denied that their instructions limited the sabotage activities until and unless America entered the war.

In describing the same meeting, Hilken said that Nadolny and Marguerre told him he was to pay money to Herrmann whenever Herrmann needed it in America, and he said that the money which he paid to Herrmann was from funds made available to him by the General Staff (Ex. 583, pp. 2180-2183, 2185); and that he had credits in the Continental Bank, the Corn Exchange Bank, Baltimore Trust Company, and the Guaranty Trust Company on which he drew for the purpose of these sabotage payments.

At this celebrated conference, as admitted by Marguerre, arrangements were made "that Herrmann should draw necessary funds from Hilken. Hilken was instructed to pay the funds demanded by Herrmann up to certain limit (I don't remember the amount) without requesting an accounting" (Ger. Ex. CXXIII, p. 13, Trans. 7/30-30, p. 10, Trans. 8/1-30; also Ex. 583, Rec. p. 2183).

Shortly after this conference, Herrmann and Hilken returned to America on different steamers. Anton Dilger remained in Germany and did not return to the United States until July 4, 1917. On his arrival in New York, Herrmann went to Baltimore where he got in touch with Hilken early in April, 1916. Hilken introduced him to Hinsch and the sabotage activities of Herrmann in this country began at that time.

How active Herrmann became in sabotage work may be realized by ascertaining Herrmann's aliases:

Anderson (p. 4340)	Marstrom (p. 5522)
Herman Hasrstrom (p. 2421)	Lewis (p. 2244)
Fred Herrmann (p. 2228)	F. Lewis (p. 6122)
Fritz Herman (p. 2225)	Herman Lewis (p. 2184)
Fritz Larssen Herman (p. 2225)	March (p. 2413)
Lewis Herman (p. 2228)	Frank Marsh (p. 2421)

<sup>s</sup> Note by the Secretariat, this volume, pp. 345 et seq.

Fred Leassen or Larssen (p. 2348)	Fred March (p. 6211)
Fred Harrson (p. 2222)	Rasmussen (Ex. 900)
Larenson (p. 2225)	Rodriguez (p. 2241)
Fred Harstrom (Ex. 950, Ann. A)	March (p. 4340)
	Fritz Laissen Hermann (p. 2421)

The Eastern Forwarding Company was organized by Paul Hilken in Baltimore in the spring of 1916. It had the same officers as the partners in Schumacher and Company, which was the company representing the North German Lloyd in Baltimore. It was formed for the purpose of taking care of the American end of the shipping business in connection with the operation of commercial submarines between Germany and this country. While it has always been claimed by Hinsch that the operations of this company were distinct from sabotage, it is also true that with Paul Hilken, the Vice-President, and Hinsch, the General Manager, it was impossible to disassociate their activities as sabotage agents from their activities in connection with the company.

The submarine "Deutschland" arrived in Baltimore early in July, 1916. She was unloaded and loaded for her return voyage the latter part of July, 1916. Hinsch and Herrmann assisted in the work of the preparation for the reception and departure of the "Deutschland" on her voyage from Germany, but Hinsch, as we have seen, was away from Baltimore on several occasions during this period.

On the morning of July 30, 1916, the Black Tom explosion occurred. Shortly after that time, as has been clearly established, Hinsch received \$2,000 from Hilken which Hilken claims was remuneration for the Black Tom explosion and Hilken says that:

"Hinsch told me at that time that he had hired the men that set fire to Black Tom." (Rec. p. 6112; also pp. 2198, 2199; Ex. 976, Ann. E, pp. 66-71.)

Six days after the explosion, to-wit, on August 5th, Hinsch, Herrmann, Hoppenberg, and Hilken were in the office of the Eastern Forwarding Company in the Whitehall Building with windows looking out over the Hudson River. Two or three windows were cracked by the Black Tom explosion, and, at this meeting, Hoppenberg facetiously pointed to the broken windows and said:

"Why, you fellows have broken my windows".

Herrmann retorted to Hoppenberg by singing a little song of the war of 1870:

"Lieber Moltke, sei nicht dumm  
Mach mal wieder bumm bumm bumm."

which being freely translated means:

"Dear Moltke, Don't be so dumb,  
But go out rather and make bumm, bumm, bumm  
[explosions]." (Ex. 976, Ann. E. p. 59.)

It has also been clearly shown in this opinion that Ahrendt, — though he claimed to have been innocent and ignorant of all sabotage by German agents,— one week after the fire at Kingsland, to-wit, January 19, 1917, wrote a postscript to a business letter addressed to Hilken in which he congratulated the "von Hindenberg of Roland Park" on "another victory" and informed him that Herrmann, "who is still at McAlpin", asked Ahrendt "to advise his brother" that he was "in urgent need of another set of glasses" (incendiary tubes) (underscoring in original).

We have also seen that Herrmann was active in assisting Carl Dilger in operating germ laboratories, started by Anton Dilger, for the culture of germs to be used in inoculating animals intended for the Allies and that one of these

laboratories was located in Chevy Chase, D. C. During this time Herrmann lived for a while in Chevy Chase with Carl Dilger and his sister, and he, with Ahrendt, used to distribute to Hinsch and his crowd devices for inoculating animals.

The Kingsland fire and explosion occurred on January 11, 1917.

Herrmann in his confession made in 1930 admitted that he, in cooperation with Hinsch, engineered this explosion, that he furnished two men, Wozniak and Rodriguez, who were immediately responsible therefor, with incendiary devices with which to start the fire, that he made them small weekly payments and promised to pay each man \$500 in the event they were successful and that he did pay Rodriguez \$500 two or three days following the explosion. He did not pay Wozniak for the reason that Wozniak failed to show up at the appointed rendezvous.

We have also studied Herrmann's connection with Willie Woehst, another sabotage agent, who left this country on February 14, 1917, sailing on the same boat with Germany's diplomatic and consular representatives on their return to Germany.

Herrmann on February 24, 1917, under the name of Fred Larssen, together with a Colombian national named Raoul Gerdts Pochet, sailed from New York for Havana, Cuba, on the S. S. "Pastores" en route to Mexico City. They spent about a month in Havana, where they were under the surveillance of the Department of Justice Agents.

Late in March or early in April Herrmann and Gerdts sailed from Havana to Vera Cruz. On the steamer they met Siegel (Ex. 908). From Vera Cruz they went to Mexico City where they met Major Schwierz of the Mexican Army at whose advice they went to Hotel Juarez belonging to Otto Paglasch (Ex. 908).

The next day after their arrival, Herrmann and Gerdts went to see von Eckardt, the German Minister, and Herrmann apprised the Minister of his connections with Nadolny and Marguerre, his activities in the United States, and of the fact that he had been authorized by "Sektion Politik" to destroy the Tampico oil fields.

We have had occasion to discuss this matter before, and it will be recalled that the Minister was suspicious of Herrmann, but forwarded a wire, sent by Herrmann to the General Staff, inquiring about the whereabouts of Willie Woehst and informing the General Staff that Woehst was to send him \$25,000. The General Staff confirmed Herrmann's claim that he had been authorized a year before that to set fire to the Tampico oil fields, a commission which had been renewed by Hilken in January. The Minister indicated that a member of his Staff believed that Herrmann and Gerdts were English or American spies and requested an immediate answer (Rec. pp. 1847-1848).

It will be recalled that the "Sektion Politik" confirmed Herrmann's statements as correct, stated that they knew nothing about Gerdts, but that Woehst had been retired. "Sektion Politik" left to the Minister the decision as to whether the Tampico oil fields should be destroyed and cautioned the Minister to do nothing which would endanger Germany's relations with Mexico "or if the question arises, give Herrmann any open support" (Ex. 320, Rec. p. 874). As Herrmann received no answer to his telegram and could not get the \$25,000 as a result of his cables to Hildegard Jacobsen, Herrmann and Siegel "decided to send Raoul Pochet [Gerdts] to Baltimore to obtain funds" (Ex. 908, Ann. C).

In Ex. 904(4), Herrmann identified the original Blue Book Magazine for January, 1917, in which the message was written, as being the magazine which he sent to Hilken by Raoul Gerdts in April, 1917, shortly after America came into the war. He recognized the message as being in his handwriting and stated that he told Gerdts to call upon Hoppenberg in New York to find out from him

the whereabouts of Hilken. He also said that, as he remembered the circumstances, Gerdts returned to Mexico with only about \$800.00 and told Herrmann that Hinsch was bringing down the balance of \$25,000 which he requested.

Herrmann is confirmed by Siegel's first statement, as follows:

"Raoul Pochet [Gerdts] returned from the U.S.A. about the middle of May, but brought with him much less money than Herrmann expected, or had asked for. He reported that Captain Hinsch would shortly thereafter come himself and bring along the needed funds." (Ex. 908, Ann. C.)

In Siegel's second statement, designed to raise some question as to the first statement, he still recalled that Gerdts was sent to the United States to procure money, and

"Furthermore, I still know that Gerdts stayed away a long time and, to Herrmann's disappointment, then brought with him only a comparatively small amount" (Ger. Ann. 69).

In Herrmann's examination of April 3, 1930, after telling of taking Gerdts with him to Havana and from there to Mexico City, he said:

"Yes; he went with me to Mexico City, and he was there I imagine about a month or five weeks or something like that. I sent him up to Paul Hilken with a couple of letters.

"Q. What were these letters about? A. Asking about Captain Hinsch, asking if any new instructions had come, and so forth." (Rec. p. 5461.)

In Exhibit 986, Ann. A, p. 139, being examination under subpoena in October, 1933, Herrmann, referring to his telegram forwarded by Eckardt to Berlin, said:

"I didn't believe that Von Eckhardt had cabled Berlin. So I sent Raoul Gerdts up to the States. I conferred with Siegel and we thought we better send Raoul Gerdts up to Paul.

"Q. Why?

"A. To get money, to see that Hinsch and different ones got out of there.

"Q. Why did you want Hinsch and the others to get out?

"A. Because I was afraid he would get caught up there. We needed funds."

In the same examination Herrmann's testimony of April 3rd, 1930, quoted above was read to him and he was asked whether it was true or not. He replied:

"A. I knew at that time that I had sent Raoul up with a message. Exactly what it was I did not remember until I saw the Blue Book Magazine when it was produced by Paul Hilken.

"Q. In your April, 1930 testimony, you spoke of a couple of letters being sent to Hilken.

"A. That is all I remembered of it.

"Q. In January, 1929, more than a year before you testified, Gerdts testified you had sent him up with a couple of messages written in a book, and in lemon juice. Were you not aware of that when you testified in 1930?

"A. I never saw any testimony of Gerdts.

"Q. So that you did not have Gerdts' testimony to refresh your recollection in 1930?

"A. No, sir. I did not see the testimony of Gerdts until — after the hearing I returned to Chile, brought my wife and children up and got settled — it must have been at least the month of July, 1930, the first time I ever saw or heard anything about Gerdts' testimony, or later even, for that matter. That is the first time I knew of it.

"Q. Didn't you remember what you had written in the message?

"A. No, sir, I did not, \* \* \* " (Ex. 986, Ann. A, pp. 140, 141).

He was shown the original Exhibit 904 and he stated as follows:

"That is the book and the message which I sent with Raoul Gerdt to Paul Hilken, from Mexico.

"Q. Does that contain one message or two messages?

"A. Well, I notice the back page is missing; the last page of the last story, page 719, that is missing. Perhaps I wrote something on that. What I wrote on it I don't know.

"Q. Might it have been some code to the other message which begins on page 700?

"A. It might have been. I don't exactly remember. \* \* \*

"Q. This does contain a code, does it not?

"A. Yes. The message is partly in code. The numbers in there refer to pin-pricks on the pages.

"Q. You mean the numbers refer to other pages in the magazine?

"A. Yes, containing pin-pricks.

"Q. Containing pin-pricks which prick out the letters of the names referred to in the message?

"A. Yes.

"Q. Referred to in the code number?

"A. Yes, sir.

"Q. This message, on page 700, says, 'Have seen 1755. He is suspicious of me.'

How would Hilken know, first of all, on what page of the magazine the message was, and then, having discovered on what page it was, and having heated that page, how would he find out where to look for the pin-pricks that spelled out the name of the person intended by 1755?

"A. I don't remember how he was to find the pages containing the message, nor how I indicated to him the code which I had used. Possibly the missing last page is the missing link.

"Q. Had you arranged such a code with Hilken before your departure from the United States?

"A. That I don't remember.

"Q. Did you ever use a code like this in which a number was interpreted by referring to the pin-pricks on another page of the book?

"A. It is quite possible.

"Q. Do you recall sending the message in the magazine?

"A. I certainly do.

"Q. Do you recall where you got the magazine?

"A. No, I don't recall where I got the magazine; I might have bought it in Havana, perhaps I bought it in Mexico City, at one of the book stores there. I don't remember where I bought it." (id. pp. 141, 142, 143, 144)

In Exhibit 583, Annexes P, Q and R, Special Agent Berliner made to the Department of Justice reports, dated respectively March 1st, 2nd and 11th, 1917, on Raul Pichot (Pochet, Gerdt) and Ferd Larssen (Herrmann) dated at Havana, Cuba (Rec. pp. 2373 - 2392). The Agent traced the activities of Gerdt and Herrmann in Havana and on page 2391, made the following report of what happened at and after dinner at the Hotel Florida on March 10, 1917:

"While eating in came both Larssen [Herrmann] and Pichot [Gerdt], they looked about as if hunting for some one, then went out. Agent then picked em up again at the Plaza, bought em a cigar smoked and talked with them for a while, then Larssen [Herrmann] bought two of the latest American Magazines and said he was going to his room." (Emphasis supplied.)

Here we have a report on March 10, 1917, that Herrmann, about a month before leaving Havana for Mexico, purchased two late American magazines.

In reply to the question whether he recalled the actual circumstances surrounding the preparation of the message, Herrmann said (Ex. 986, Ann. A, p. 145):

"I only remembered that it was written while we stopped at Paglasch's Hotel, which was called the Juarez, and that Siegel and Raoul were with me, but as to the

exact details of the circumstances my memory had through the years become rather vague until it was refreshed at the time of the talk I had with Siegel in Tallinn in 1932; then all the circumstances were brought back to my mind.

“Q. What were the circumstances under which the message was prepared?”

“A. We sat in our room on the balcony in the back of Paglasch’s Hotel. We pulled the table or the wash stand out in front of the window. Siegel and I first prepared the message on paper with a lead pencil, figuring out the code numbers and everything. I then took the magazine and Siegel dictated the message to me and I wrote it in the magazine in lemon juice. Raoul was standing around the room. The message, I recall, was written in the afternoon. The following morning early Raoul left for the States by train.”

He testified that Raoul was away about three weeks and they were worried, as they expected him back at the most in ten days or two weeks, so he sent a second wire to Hildegarde, the substance of which was

“Just asking if he had arrived, if she had seen him, or something similar.”  
(id. p. 146)

He then identified the telegram from Ex. 587, Rec. p. 2478, dated May 6, 1917, reading:

“Have you seen Raoul? Answer immediately  
Hotel Juarez Greetings”

signed “F. March”, as the telegram which was sent by him.

In his affidavit of November 15, 1932 (Ex. 950, filed November 15, 1932), Herrmann again testified in regard to the circumstances connected with the Blue Book message which had been already filed as Ex. 904. In explaining the circumstances connected with the identification of the message he said:

“When I identified the message in May, 1931, I did not have an opportunity to closely examine the magazine, which I had not seen from the time I handed it to Gerdts in April, 1917, until Hilken showed it to the claimants.

“Hinsch’s testimony confirmed the recollection which I had when testifying in Washington in April, 1930, that there were two messages. I spoke of them as ‘a couple of letters’, and my best recollection was that there were two messages though I could not remember exactly what I had written. In fact, I recalled the details of the one which is in evidence only because I recognized the magazine and my writing therein.

“The last page of the last story in the magazine, I observe, is now missing. It is my recollection that this page contained a short note in lemon juice, including an explanation of the code.

“In so far as Hinsch now states that the message was written in a book on a plain page and not in this Blue Book Magazine, his statement is entirely false, as is also his description of the contents of the message. Hilken was already acquainted with Gerdts when I first met the latter through Woehst.”

## 2. Siegel

Adam Siegel, who after the message had been composed and written by Herrmann, dictated it to Herrmann for transcription in secret form, traveled with Herrmann and Gerdts in March or April, 1917, on the steamer en route from Havana to Vera Cruz.

Siegel was an electrical engineer who served the German Government in Russia. The first mention of him in the record is found in a voluntary statement given by Lothar Witzke on September 18, 1919, to Captain Thomas J. Tunney, Special Investigator, United States Military Intelligence Division (Ex. 24, Rec. pp. 55, 92-95). In this statement Witzke described two secret agents of the German Government, one named Siegel and the other named Rodriguez (Herr-

mann). The description of Siegel is in some particulars incorrect, and the description of Rodriguez (Herrmann) is evidently the description of Herrmann. Witzke reported that both of these men operated in New York in the early part of the year 1916 under the supervision of the captain of the North German Lloyd Steamship Company (Hinsch), who "was in charge of the tug-boat that took in the submarine Deutschland in Baltimore on the first trip." The statement then has the following information:

"After the declaration of war by the United States against Germany, both of these men worked under the same captain in Mexico City. Siegel was sent as a Russian to the Panama Canal around June 1917. Rodriguez worked during the early part of the European war in England. Both of these men may be connected with or have some information regarding who was responsible for the Black Tom Explosion. Both of them left the United States to Cuba and thence to Mexico about April 4, 1917. I met both of these men in Mexico City." (id. p. 93)

Later Witzke supplied the name of the captain who was in charge of Siegel and Rodriguez as "Captain Frederick Hintsh or Hintch." He related as follows:

"Siegel's first name is Adam; he lived at the Hotel Juarez in Mexico City; was an electrical engineer by profession; spoke Russian fluently; was a Reserve German Cavalry Officer; of South German birth; interned in Russia where he was at the outbreak of the war; escaped from Siberia and landed in San Francisco. Siegel was in New York in 1916 at the time of the Black Tom Explosion. He was very intelligent and a real patriotic German." (id. pp. 94, 95)

Gerdtts met Siegel on a steamer in the port of Havana while he and Herrmann were en route to Vera Cruz (Ex. 626-a, Rec. pp. 2768-2774).

While in Mexico, Siegel was associated with Herrmann, Gerdtts and Major R. Schwierz, a major in the Mexican Army, who was reported to have come from the German garrison at Tsingtau (Ex. 626-a, Rec. p. 2768, Ex. 583, Rec. p. 2422).

In a report dated September 16, 1917, Frederick Simpich, American Consul at Guaymas, Mexico, informed the Secretary of State that Siegel and Fred March (Herrmann) had been cooperating with Rademacher, German Consular Agent at Guaymas, and with Major Schwierz of the Mexican Army, and they had been very active in Sonora and lower California, within the preceding two weeks. March's false passport had been obtained from the Mexican Consul General in Cuba, was dated March 5, 1917, bore March's photograph and had on it this legend:

"Gesehen, v. Eckardt, 21 Mai. 17". (id. Rec. p. 2422)

In Cuba Siegel was reported to have participated in a negro uprising and he represented himself to the Russian mission in Cuba as a Russian revolutionary, studying labor conditions in Mexico and the United States; and he was also represented to have been in communication with an I. W. W. leader at Bisbee, Arizona (id. Rec. p. 2422).

After arriving in Guaymas, Siegel and March (Herrmann) made an extensive trip into lower California and worked their way north and emerged at Los Angeles Bay (Mexico), where a small wireless had been in commission in June last. They returned to Santa Ana, Sonora, and from that place they went to Guaymas. While at Santa Ana, March received telegrams from Rademacher and Schwierz. On July 16th Major Schwierz telegraphed in German to Siegel ordering him to proceed to Mexico City (id. Rec. p. 2423).

In an affidavit of A. E. W. Mason dated February 15, 1929 (Ex. 625, Rec. p. 2756 *et seq.*), Mason, a British subject, and a captain in the British Army, and formerly a member of the British Parliament, who was transferred to the

British Naval Intelligence Service under Sir Reginald Hall, says that: In November, 1917, he was sent on duty to Mexico, and there became familiar with the activities of German agents in Mexico, both before and after his arrival. From information gained by him, Mason was convinced that von Eckardt, the German Minister, was personally familiar with the operations of the German agents in Mexico, amongst whom were Jahnke, Witzke, Bode, Siegel, Hinsch, and Paglasch, the proprietor of the Juarez Hotel, which was a rendezvous for German agents. Mason was the employer of the negro, William Gleaves (Rec. pp. 2756-2759).

During the time he was in Mexico, Witzke crossed the border several times, but was finally arrested by the American police with the aid of Gleaves, and they discovered a letter in the lining of his jacket which was from Eckardt, recommending Witzke as a man who could be relied upon for any dangerous work (Ex. 625, Rec. p. 2761).

In the report to the State Department of Guyant, American Consul at Barranquilla, Colombia, dated August 24, 1917, Gerdts had stated that, following his arrival in Mexico City, he met two Germans, Siegel and Schwierz, a major in the Mexican Army, en route from Havana to Mexico (Ex. 583, Ann. H, Rec. p. 2351).

When Hilken was first examined the description of Siegel as given by Witzke was read to him but he said:

“ I don't remember him at all.” (Ex. 583, Rec. pp. 2239, 2242)

Siegel has made two principal statements showing his connection with the drafting of the Herrmann message, the one found in Exhibit 908, filed May 27, 1932, which was written entirely in Siegel's own handwriting; the other, found in German Annex 69, verified on the 15th day of July, 1932, and filed August 27, 1932.

*In his first statement*, Siegel relates that he met Herrmann and Gerdts in March or April, 1917, on a steamer en route from Havana to Vera Cruz. From Vera Cruz they went to Mexico City by rail and stopped at Hotel Cosmos. They met Major Schwierz of the Mexican Army, at whose advice they moved to the Hotel Juarez, belonging to a certain Otto Paglasch. He related to Herrmann (1) his escape from Russian internment; (2) his lack of money; and (3) his desire to do something in the interests of Germany. On the day after their arrival Herrmann and Gerdts (Pochet) went to see the German Minister, von Eckardt, and a few days later Siegel accepted employment by Herrmann, and Herrmann enlightened Siegel “ about his activities, and it was decided to send Raoul Pochet to Baltimore to obtain funds.”

An analysis of the description of the message by Siegel is as follows:

- (1) It was written in an American magazine;
- (2) Crosswise to the print;
- (3) In lemon juice;
- (4) On several pages of the magazine;
- (5) Partly in normal writing, partly in code;
- (6) The code words in cipher were to be deciphered in a certain way by means of perforations with a needle;
- (7) The report was first drawn up on a sheet of paper;
- (8) It was dictated by Siegel to Herrmann;
- (9) Herrmann wrote it in the already-mentioned magazine.

Siegel related the events following Gerdts' departure as follows:

Raoul Pochet (Gerdts) “ returned from the U.S.A. about the middle of May ” with much less money than Herrmann expected or had asked for. He reported that Hinsch would shortly come and bring along the needed funds.

Siegel identified a magazine shown to him by Herrmann as similar to the one used to send to Baltimore; and he likewise identified "the photographs of the printed pages on which the report to Baltimore was written in lemon juice at that time." These photographs were each signed by Siegel.

*Siegel's second statement* (Ger. Ann. 69), may be analyzed as follows:

On March 14, 1932, Herrmann, to his surprise, came to Siegel's office. Herrmann did not mention his purpose until next day.

*Herrmann represented:*

(1) The Governments were engaged in clearing the sabotage matter and it was necessary to learn something concerning a secret message once sent to the United States.

(2) Herrmann had undertaken the trip from Chile upon the advice and at the expense of the German Government;

(3) He came from Berlin under order of the German Government and had been instructed to deliver his material in Berlin.

*Siegel assumed:*

(1) That Herrmann's material "would form the subject of diplomatic negotiations"; and

(2) "That Herrmann wanted to place his own activities in the right light before the German authorities."

His first statement was given in order to assist Herrmann and the German Government.

He went to Herrmann's hotel and they discussed for about an hour the text of the statement.

He decided to write the statement holographically.

He decided to have the signature attested at the German Consulate, because he "considered it unwise to state in a protocol before an Estonian notary matters of the wartime."

The next day Siegel took the necessary steps at the German Consulate and Herrmann departed that evening, leaving his address in Berlin.

To that address Siegel was to send three photographs brought by Herrmann to Siegel, of which Siegel had copies made.

Later the photographs were sent but came back as undeliverable.

*Herrmann failed to tell Siegel:*

(1) That he was traveling with an American attorney;

(2) That he had called at the American Consulate;

(3) Anything of the German-American Mixed Claims Commission, or of its composition;

(4) That Siegel's statement was to be submitted to that Commission (Siegel's assumption being that his statement was to be used by Germany as "the subject of diplomatic negotiations");

(5) That Herrmann had testified before the Commission;

(6) That Siegel's statement was to be used to support Herrmann's statement.

*Comparisons:*

"Had I had any idea that my statement was to be used in a litigation before an international tribunal, I would have *acted* differently." (Emphasis supplied.)

(He probably means that he would have refused to testify.)

As regards his first statement of March 16, 1932, he states as follows: Being *under oath to-day* he can now state only what he can actually answer for according to his recollection of matters dating so far back, whereas in *the statement of March*

16th he relied on what Herrmann told him. Most of the items Herrmann called to his memory and they *jointly reconstructed* the things. The statements on page 1 are, on the whole, correct.

*He still remembers with certainty:*

- (1) That Herrmann needed money;
- (2) That Gerdt was sent to the United States to procure money;
- (3) That Gerdt was given a secret message;
- (4) That its substance was to give money to the bearer to take back with him;
- (5) The urgent request for money was what he had in mind when he used the words "necessary communications".

*He remembers and confirms:*

- (1) That Gerdt stayed a long time;
- (2) That Gerdt brought with him only a comparatively small amount of money;
- (3) That Herrmann was disappointed;
- (4) Herrmann's drafting the message without Siegel's participation;
- (5) Herrmann asked Siegel to dictate it;
- (6) The message was written in a printed volume;
- (7) That the message was "longer than one sentence otherwise I would not have had to dictate it."

*He is not certain:*

- (1) Whether a magazine or a book was used.
- (2) Whether the printed volume was smaller than the sheets shown by Herrmann.

From a comparison of these statements certain clear deductions may be made. Siegel was not in a position to deny, and did not deny, the truth of his first statement, but endeavored to throw doubt upon some of the statements therein by arguments rather than by denials. If it be admitted that Herrmann's representations to Siegel were false, were those representations and Siegel's assumptions of such a character as to cast doubt upon the first statement or to induce Siegel to make false statements with regard to the message? Were the matters alleged to have been suppressed by Herrmann the cause of any error or misstatement by Siegel?

The object of Siegel's second statement was not directly to contradict the first statement, but to cast some doubt upon the verity of his first statement, first, because Herrmann allegedly made false representations; second, because of the assumptions made by Siegel and, third, because Herrmann suppressed certain information which he ought to have disclosed.

Herrmann's allegedly false representations were based upon the idea that the German Government was anxious to clear up the sabotage cases and, therefore, had secured Herrmann's services for that purpose. These allegedly false representations and Siegel's assumptions that the material furnished Herrmann would form the subject of diplomatic negotiations and that Herrmann wanted to place his own activities in the right light before the German authorities, offered Siegel no excuse for making a false record or deviating from the truth.

It is self-evident that the matters which Herrmann failed to bring to Siegel's attention could not have affected the verity of his statement, however much these matters might have affected his action in making the statement. The fact that Herrmann was traveling with an American attorney; had called at the American Consulate and that there was such a tribunal as the German-American Mixed Claims Commission before whom Siegel's statement would be submitted; that Herrmann's testimony had been presented to the Commission and

that Siegel's statement would be used to support Herrmann's testimony, might have been used by Siegel as a reason for refusing to make any statement, but even if all these facts had been brought to him and, after a knowledge of them, he had made his statement, they would have been additional reasons for a careful and truthful statement but not for a statement which departed from the truth.

In Exhibit 950, verified and filed November 15, 1932, referring to Siegel's second statement, Herrmann testified as follows:

"In regard to Siegel's testimony I told him that the question of the responsibility for destruction work that had been done in the United States before it got into the war, was now before an international commission composed of Americans and Germans, and that the German officials had said that they wanted to get at the truth. I did not tell Siegel as to whether I wanted his statement for one side rather than the other, but did say that the Commission was supposed to be neutral. I am sure that Siegel understood this completely and fully when he wrote out in his own handwriting the statement which he gave me. He certainly examined carefully the language of the message and there was never a shadow of doubt exhibited by him in our entire interview indicating that he did not fully remember the circumstances and the document as the one which he helped me to prepare in Mexico. Siegel asked me about the names represented by numbers, and I told him all that I could remember, which was practically all of them."

This statement is in accord with a letter written by Herrmann to Mr. H. H. Martin on April 4, 1932, the original of which was filed as Exhibit 1005, Ann. K, on April 26, 1938. See also Herrmann's testimony under subpoena in October, 1933 (Ex. 986, Ann. A, pp. 146, 193, 194).

Whether we accept Siegel's account in his second statement or Herrmann's testimony as to what took place between them before Siegel wrote out his first statement, the differences are not of a sufficient character to destroy the verity of Siegel's first statement.

Siegel's attempt to distinguish between his obligation in making a statement under oath, and his obligation in making a statement where his signature was witnessed before the German Consulate, is a mere quibble. Therefore, all the reasons which Siegel in his second statement adduced in order to becloud the efficacy of his first statement seem to indicate that, while Siegel was not willing to depose that his first statement contained falsehoods, he was perfectly willing for the Commission to make this inference. Under the circumstances, his first statement must be accepted as more in accord with the actual truth than his labored effort to becloud the same.

In Hinsch's attack on the Herrmann message (Ger. Ann. 71) (to be thoroughly studied hereafter), Hinsch claimed that the secret message which Gerdts brought to Baltimore contained only three elements: first, an identification of Gerdts with an assurance that he could be trusted; second, a request for \$20,000 or \$25,000 to be transmitted by Gerdts; and, third, advice that Gerdts would report verbally about all other matters. It was also claimed that the message was on only one page.

If Siegel's first statement be true, then Hinsch's claim is false.

In his second statement in describing how the message was drafted, Siegel used the following language (Ger. Ann. 69, p. 3):

"The secret message came about in the following way: Herrmann had drafted it without my having anything to do with it and asked me—since it is difficult to write with invisible ink—to dictate it to him. This I did. \* \* \* Nor do I longer recall today, whether the message took up one or more pages \* \* \* It must certainly have been longer than one sentence otherwise I would not have had to dictate it."

In his first statement, Siegel stated that the message was written partly in normal writing, partly in code, and that the code words consisted of a cipher and were to be deciphered in a certain way by means of perforations with a needle (Ex. 908, Ann. C, p. 2). In his second statement Siegel uses the following language (Ger. Ann. 69, p. 5):

“ Finally, as regards my statements about a ‘ code ’ and decoding ‘ mittels Durchstechung mit einer Nadel ’ (by means of pricking with a needle), these are based on the following:

“ I recall that Herrmann had a code which consisted of a sheet on which there were, in squares, letters or names and figures, which could be folded so that two or more sheets were laid on top of each other and could be adjusted in a certain order. If a message with words coded in figures had arrived the recipient, who had the same code, on his part had to adjust this code according to a certain order agreed upon and then found the clear text by pushing or pricking through the figures on the sheet of his code lying on top, with a pointed object, as a pencil or needle, and then assembling on the sheet lying underneath the corresponding words. I cannot say whether this procedure was used in the instant case since I did not personally frame the message and also was not present when it was received. I was, however, present when the writing was done and the printed volume was handed to Gerdts and know positively that during that time single sheets of the printed volume were not pricked with a needle under certain letters. I hear for the first time of such a system as can not very well be called decoding in the proper sense, but simply a reading from pricked letters. Nor do I recall that Herrmann told me anything about this.” (Emphasis supplied.)

An examination of the explanation in the second statement will show that, whatever else Siegel had in mind, he did not deny, but he actually affirmed, that Herrmann in preparing the secret message used a code.

An examination of the coded and decoded message (Ex. 904 (3) ) will show that the coded words are in all cases proper names with one exception, namely, the word “ cruiser ”. An examination of the message as described by Hinsch will show that such a message would not require to be coded, and, as Siegel says in his second statement, would not require to be dictated.

Therefore, a careful analysis of Siegel's second statement absolutely disproves the claims made by Hinsch with reference to the message, and, in the last analysis throws no doubt upon Siegel's first statement, but rather tends to show that Siegel's second statement was a labored effort on the part of Germany's representatives by many words to raise a cloud of doubt rather than directly to attack Siegel's first statement on the ground that Siegel lied when he made his first statement.

### 3. Gerdts

#### *Gerdts' History Before He Brought the Herrmann Message*

As we have already seen, Gerdts was the messenger who brought the message from Herrmann to New York on April 21, 1917, the day after Hoppenberg's death. He then took the message to Hilken at Baltimore.

Gerdts' father was a German and his mother was a Colombian and, according to his own statement, he came to the United States in March, 1916, and remained until February, 1917.

He was mentioned in Kaba's report to the Department of Justice dated May 19, 1917, Annex X to Ex. 583 (Rec. pp. 2406 *et seq.*). The information in that report came from a Miss McPherson, who was a friend of Gerdts' mother and also of Hildegard Jacobsen, Woehst's cousin. Through her Miss McPherson met Woehst, under the name of Hauten; Herrmann, under the name of March, and Gerdts. When Woehst left on the steamship “ Frederick VIII ”,

on which Count Bernstorff departed, Miss McPherson, Gerdt, Herrmann, and Miss Jacobsen saw him off (Rec. p. 2408).

In a statement to the Department of Justice made by A. G. Adams on February 21, 1917, relating to William Woeh(r)st (Ex. 583, Ann. K, Rec. pp. 2359 *et seq.*) it is related that a Spaniard, whose first name was Raoul, used to call frequently at the apartment at 600 West 115th Street, New York City, used by March (Herrmann) and Hauten (Woehst), and that after Woehst's departure Gerdt lived at the apartment. The succeeding reports (Anns. L, M, N, O, P, Q, R, X, and Y, Rec. pp. 2363-2410), trace the activities of Herrmann, Woehst and Gerdt until Woehst sailed for Germany and Gerdt and Herrmann arrived in Mexico and, when taken into consideration with other portions of the record, show clearly that Gerdt, Herrmann and Woehst were all engaged in sabotage in this country while the United States was neutral.

Herrmann testified that he met Gerdt in an apartment on 116th Street; that he was introduced to him by Willie Woehst, and that Woehst secured a job for Gerdt through Hilken, who sent him to some brewery to work, but he got fired the next day (Rec. p. 5461).

Herrmann further testified that when he left the United States he took Gerdt with him to Havana because Gerdt could speak Spanish and Herrmann could not (Rec. p. 5461). This testimony of Herrmann is fully confirmed by the reports to the Department of Justice referred to above.

*Gerdt Brings the Herrmann Message to Hilken in Baltimore*

As we have seen above, Ahrendt's affidavit, German Annex 73, was introduced for the specific purpose of showing that Gerdt never brought a written message from Herrmann to Hilken.

In the examination of Herrmann at Washington, April 3, 1930 (Rec. pp. 5431 *et seq.*), Herrmann told of his introduction to Gerdt by Woehst. Gerdt lived in his apartment and got his meals there, and when Herrmann left the country and went to Havana he took Gerdt with him. Herrmann states:

"Yes; he went with me to Mexico City, and he was there I imagine about a month or five weeks or something like that. I sent him up to Paul Hilken with a couple of letters.

"Q. What were those letters about? A. Asking about Captain Hinsch, asking if any new instructions had come, and so forth." (Rec. p. 5461).

The first time that Gerdt ever made a record or report on the subject matter of his trip from Mexico to Baltimore was on July 29, 1917, when he made a report to S. LeRoy Layton, American Vice Consul at Barranquilla, Colombia (Ann. G to Ex. 583, Rec. p. 2346). Mr. Layton was transferred from Colombia to Hamilton, Canada, as the American Vice Consul; and under date of August 1, 1917, he made a report to the Secretary of State on the subject "Plot to blow up the oil wells at Tampico, Mexico by a German-American."

In his report to Layton, Gerdt claimed to be anxious to give his information to the United States and willing to go to Washington and explain everything more fully, if the Government would provide transportation and a position for him (Rec. p. 2348).

Layton's report to the Secretary of State relates the

"sensational story as told to the writer by Mr. Raul W. Gerdt Pochet of Barranquilla, Colombia, on July 29, 1917, prior to my departure for my new post at Hamilton, Canada."

According to this report, Gerdt met a German-American (Herrmann) in February, 1917, in New York City, who offered him a position as traveling

secretary. Gerdtz accepted and sailed on the S.S. "Factories" in February for Havana. Gerdtz and the German-American left Havana in March for Vera Cruz and they went thence to Mexico City. His employer sent him to New York by train with *some letters which he delivered*, and, upon his return to Mexico City, his employer offered him a weekly salary of \$200.00, expenses and a bonus of \$5000.00, if Gerdtz would accompany him to Tampico and assist in blowing up the oil wells, which Gerdtz refused to do. His employer showed him several small tubes about the size of a cigarette and about five inches long and told him that the tubes contained chemicals, and, when placed in a certain position, the chemicals ran down the tubes and at a given time caused combustion with dynamite by a time fuse, and he was told that these tubes were used to destroy munitions plants in the United States. Gerdtz refused and asked his employer to pay his transportation to New York, which the employer refused, and a fight followed. He was given enough money to pay for his passage to Havana and by telegraphing to his relatives got funds with which to return home. His employer resided in a little town near Elizabeth, N. J., but he was afraid to give the name of his employer.

Layton reported that he had ascertained that R. G. Pochet sailed on the S. S. "Pastories" (not "Factories") on February 24, 1917, to Havana, occupying stateroom 48 with Fred Larssen (Herrmann).

Layton's report was, on August 14, 1917, referred by the Department of State to Claude E. Guyant, American Consul at Barranquilla, Colombia, and under date of August 24, 1917, he made a report to the Secretary of State on the subject "Raoul Pochet, employee of German Agent Herrmann" (Ann. H to Ex. 583, Rec. pp. 2349 *et seq.*). Consul Guyant reported as follows:

Gerdtz, while in New York, sought work unsuccessfully and finally obtained a position as chauffeur for Herrmann. Gerdtz drove his car and acted as personal servant to Herrmann. Herrmann made one short trip to Savannah, for what purpose Gerdtz was not aware.

In February or March Herrmann sailed for Cuba, taking Gerdtz with him. In packing up Herrmann's effects, Gerdtz noticed a number of small tubes, and when asked what they were for, Herrmann told him "It was none of his business". Upon arriving at Havana, Herrmann placed these tubes in Gerdtz's baggage, but Gerdtz took them out and replaced them in Herrmann's effects.

Gerdtz remained with Herrmann in Havana about a month, during which time Herrmann told him that the tubes contained two acids, which, when mixed, would start a fierce combustion, and that he intended to use them for setting fire to munitions factories. From Havana they went to Vera Cruz, and thence to Mexico City, where they met two other Germans, Adam Siegel and Major Schwierz of the Mexican Army. After being in Mexico City about two weeks, doing nothing

"He was ordered by Herrmann to proceed to New York by rail *with a verbal order for \$25,000.00* to be received from one Hoppenberg having offices in the Whitehall Building, New York City. Gerdtz states that he proceeded to New York on these orders and went to the offices of this Hoppenberg who, he states, was agent for the German submarine 'Deutschland'. Hoppenberg he reports, died suddenly the day previous to his arrival in New York City and he was not able to obtain the \$25,000.00. He returned to Mexico City overland and states that Herrmann and his associates offered to pay him \$25,000.00 if he would proceed to Tampico and blow up some of the oil tanks or wells at that place. He states that he refused to do this and that shortly afterward the Germans \* \* \* \* finally told him they had no further use for him."

Vice Consul Layton, a week before his departure from Barranquilla, after he had learned from Raoul and his brother, Hans, the clerk in the American

Consulate of Barranquilla, details of Gerdts' transactions with Herrmann, urged Gerdts not to say anything to Mr. Guyant about the matter, and promised that he, Layton, would do all possible to confirm the report upon reaching New York, and would take the matter up in Washington with a view to getting a large reward for obtaining the information, which reward was to be divided between him and Gerdts. Guyant reported that on account of Layton's promise of a large reward, Gerdts' mind was poisoned, and he refused to give a written statement.

According to the report of Layton, Gerdts was sent by Herrmann to New York by train *with some letters* which he delivered. According to the report of Guyant, Gerdts was ordered by Herrmann to proceed to New York by rail with a *verbal order* for \$25,000 to be received from one Hoppenberg.

#### *How Gerdts' Affidavit was Secured, Payment Therefor*

Before any controversy arose as to the character of the message brought by Gerdts to Hilken and before Hilken ever produced the Blue Book message, the American Agent was anxious to, and did finally, secure the testimony of Gerdts. How this testimony was secured is related in a letter from L. A. Peto and Amos J. Peaslee to the American Agent transmitting Gerdts' affidavit, dated January 18, 1929 (See Ex. 626 (b), Rec. pp. 2794 *et seq.*).

From this letter it appears that Mr. Peto and Mr. Peaslee went to Barranquilla for the purpose of endeavoring to examine Gerdts, but he refused until he was compensated for his information and demanded \$100,000 before he would make any statement. The only thing which Gerdts was willing to tell these gentlemen orally was

"that he had information, obtained while he was associated with Fred Hermann, which he believed had quite a direct bearing upon both the destruction of the Black Tom Terminal and the Kingsland Plant. Mr. Gerdts finally stated that the minimum reward which he was prepared to consider was \$10,000. He declined either to discuss what the nature of his information was or to discuss the cases further unless it was agreed that such a reward would be paid."

Mr. Peto finally informed Gerdts that his company was prepared to pay the reward unless there was objection from the American Agent's office. The gentlemen had prepared a series of interrogatories to be submitted to Gerdts and left these interrogatories with him, together with the attached exhibits, and advised Gerdts that, if he would go through the papers during their absence and prepare his answers and deliver the questions and answers to them upon their return, the reward would be paid, unless the American Agent indicated any objection to that procedure. They received word from the office of the American Agent to proceed in whatever way seemed best under the circumstances, so Gerdts delivered to them his statement (Ex. 626 (a), Rec. p. 2765) and the reward was paid.

#### *Gerdts' First Affidavit*

In his affidavit Gerdts was shown, and confirmed, the reports of Vice Consul Layton and of Consul Guyant, as "absolutely correct", and he also expressed his willingness to declare everything he knew about the matter pending before the Mined Claims Commission. He confirms the report of the trip of Herrmann and himself from the United States via Havana, to Vera Cruz, and Vera Cruz to Mexico City, where he stayed twelve days.

In answer to the question where he first met Captain Hinsch and the nature of his acquaintance with him, he replied as follows (Rec. p. 2772):

" I was ordered by Herrmann to go from Mexico to New York with an order to collect \$25,000 from Hoppenberg and to bring the money back personally to him (Herrmann) in Mexico City. I remember that the *order and instructions* given to me by Herrmann *were written in lemon juice on a page in a book of poetry*. The lemon juice made the writing invisible and for that reason I did not know the exact contents of the order. The address of Hoppenberg which Herrmann gave me was ' Pearl Street, New York '. When I arrived there I was told that Hoppenberg had died the previous day. *In the same book of poetry there was another order, also written in lemon juice*, to the effect that in the event that I should not find Hoppenberg in New York I was to deliver the order to Paul Hilken, in Baltimore, where I went that day. I remember that when I arrived at Mr. Hilken's home and asked for him, a woman, probably thinking that I had some business of interest to Mr. Hilken, told me to leave the house immediately and come back in about a half hour because at that time special investigators were inspecting the house. I returned some time later and found Mr. Hilken to whom *I gave the page from the book of poetry*. He went to the cellar of the house to decipher the order and then told me that he did not have that amount of money, but that I should stay at his home while he went to New York to procure the money. Three days later he returned and told me that he was going to send the money, but that another friend of his who he expected in a few months was going to take the money to Mexico. Shortly afterwards a man was introduced to me as Captain Hinsch. He told me that he was a Captain of the North German Lloyd that towed the steamer ' Deutschland ' to the harbor at Baltimore. He told me to go back to Mexico, and gave me a \$1,000. The balance of \$24,000 he told me he was going to take himself. He asked me to tell Herrmann that he (Hinsch) was busily engaged in getting guns of 7.05 millimeters across the border into Mexico which were to be used to equip a destroyer in Mazatlan, intercepting ships carrying cargoes from San Francisco. He told me to tell Herrmann to enlist the two hundred men that were required to man the destroyer, which Hinsch himself was to command. This was how I met Captain Hinsch and this was the nature of my relationship with him. I have not seen him since." (Emphasis supplied.)

He met Siegel on the S.S. " Monterrey " (" Monserrat "), of the Ward Line, in the harbor of Havana, when Siegel came aboard and sailed with Herrmann and Gerdts to Mexico, and he learned that Siegel was an engineer who had been a prisoner of war in Siberia and escaped from prison, going first to China and then to the United States by way of San Francisco (Rec. p. 2774).

He confirmed the report of Consul Layton that Herrmann in Mexico had offered him a " bonus of \$5,000.00 " if Gerdts " would accompany him to Tampico to assist him to blow up the oil wells." He also confirmed the report of Consul Layton that Herrmann and his associates offered to pay him \$25,000 if he would proceed to Tampico and blow up some of the oil tanks or wells at that place, and when he refused, Herrmann discharged him (Rec. p. 2774). His relations with Herrmann at the end were very disagreeable (Rec. p. 2775). Herrmann's associates were Siegel, Schwierz and Paglach (Rec. p. 2776).

#### *Gerdts' Second Affidavit*

In Exhibit 979, Ann. A, verified July 17, 1933, Gerdts testified again about some of the circumstances connected with the Herrmann message. He testified first, that he had met Paul Hilken four or five times in New York and also in Baltimore with Hinsch; second, he knew that lemon juice was used by Herrmann

" Because I bought the lemon myself and brought the lemon to Herrmann to the Hotel Paglach, Avenida Juarez, Mexico City, where we were living and I saw him writing the message myself";

third, that he was with Herrmann when he was writing the message; fourth, that he told Hilken how to make the writing appear with a hot iron, and Hilken

went down to the cellar, and, after half an hour, he came up again to the room and said that everything was all right. He didn't see the message after it was deciphered. However,

"I saw the message before it was brought out by the use of a hot iron because it was possible to read it by holding the pages on which it was written up to the light."

He was shown photostatic pages from the original Blue Book containing the developed message, and said:

"I recognize it is a copy of the message I carried to Baltimore."

and he signed each page.

There are some differences in the various statements in the record made by Gerdts with reference to the Herrmann message. In the report of Vice Consul Layton, made on August 1, 1917 (Ex. 583, Ann. G, p. 2347), Gerdts stated:

"He [Herrmann] sent me to New York by train *with some letters, which I delivered.*" (Emphasis supplied.)

In the report of Guyant, American Consul at Barranquilla (Ex. 583, Ann. H, Rec. p. 2350), made twenty-three days later on August 24, 1917, Guyant reported to the State Department as follows:

"He \* \* \* was ordered by Hermann to proceed to New York by rail *with a verbal order* for \$25,000.00 to be received from one Hoppenberg having offices in the Whitehall Building, New York City." (Emphasis supplied.)

In Exhibit 626 (a), verified January 11, 1929, Gerdts confirmed as correct the reports of Vice Consul Layton and Consul Guyant (Rec. p. 2767), but he recalled that the order and instructions were written in lemon juice on a page in a book of poetry, and he states that in the same book of poetry there was *another order, also written in lemon juice* in event he did not find Hoppenberg in New York he was to deliver the order to Paul Hilken in Baltimore (Rec. p. 2772). He went to Baltimore and finding that Hilken was not at home he returned later

"And found Mr. Hilken to whom I gave the page from the book of poetry." (Rec. p. 2773)

On page 2789 the following queries and answers occur:

"Q57. The report of Consul Guyant (annex D) states that after you reached Mexico City in 1917, Hermann ordered you to proceed to New York by rail 'with a verbal order for \$25,000.00 to be received from one Hoppenberg, having offices in the Whitehall Building, New York City'. Is this statement correct?

A. This statement is correct, as I have already stated.

"Q58. Consul Layton's report (annex C) also states that you went to New York pursuant to that order of Hermann's and found that Hoppenberg had died. Is this statement correct?

A. Absolutely correct."

His affidavit on January 11, 1929, was given nearly two years before Hilken claims to have found the Blue Book in his attic in Baltimore, and of course the reports of Layton and Guyant, being made in 1917, could not have had any relation or reference to the subsequent controversy as to the message being contained in the Blue Book.

It would seem that, on this point, Gerdts' apparent contradictions are due to the defects of an inaccurate memory and not to an intention to deceive. When he was making his statements to Layton and Guyant his main idea was to be rewarded by securing a "position" from the Government of the United States;

and if his testimony was hurtful to Herrmann, he was no longer under obligations to his former employer.

When he made his affidavit of January 11, 1929, he was not in any way trying to verify any controversial point as to the character of the message transported by him, for at that time the Herrmann message had not been produced and it was not until June 28, 1932, almost 3 1/2 years later, that the controversy was finally raised by Hinsch (Ger. Ann. 71).<sup>1</sup> Gerdts was endeavoring to connect Herrmann and Hinsch with sabotage activities, particularly with the Kingsland and Black Tom disasters. His description of the message which he brought from Mexico to New York was only an incident in that effort. Instead of speaking of a *verbal order* he now tells of two orders *written in a book of poetry*, and he claims to have given a page from the book of poetry to Hilken, but he still verifies his report to Guyant that it was only a verbal order for \$25,000, and his report to Layton that he carried some letters and delivered them.

There was one other difference in his statements which should be mentioned. In his affidavit of January 11, 1929, he says

"The lemon juice made the writing invisible and for that reason I did not know the exact contents of the order." (Ex. 626 (a), Rec. p. 2772.)

In his affidavit of July 17, 1933, he said:

"I didn't see the message after it was deciphered. However I saw the message before it was brought out by the use of a hot iron because it was possible to read it by holding the pages on which it was written up to the light." (Ex. 979, Ann. A.)

That this may have been possible seems to be confirmed by the testimony of Hilken in Exhibit 976, Ann. E, p. 116, taken September 7th to 16th, 1933. In that deposition, Hilken testified that he took the magazine down into the cellar and used a hot iron to bring out the lemon juice. He remembered saying to Gerdts, "Why, that is almost yellow enough to read without ironing."

Although each of Gerdts' reports varies from the others, taken as a whole they confirm Herrmann's and Hilken's testimony in regard to the Blue Book message in three essential particulars;

First, it contained a request for money;

Second, the message indicated that the bearer would relate verbally the particulars; and

Third, the message was written in lemon juice.

It is significant that in attacking the Blue Book message Hinsch stated that the text of the message contained:

"an identification of Gerdts, the request for \$20,000 or \$25,000 to be transmitted by Gerdts, and the advice that Gerdts would report verbally about all other matters. That was all." (Ger. Ann. 71, p. 3.)

It will be recalled in this connection that the Blue Book message concludes as follows:

"Most important send funds. Bearer will relate experiences and details. Greetings."

#### 4. Hilken

##### (1) *Hilken's receipt and development of the message*

Hilken in Exhibit 904 (3) in describing the rediscovery of the message, uses the following language:

<sup>1</sup> Following Gerdts' affidavit of January 11, 1929, Hinsch had testified four times prior to his testimony in Ger. Ann. 71, and never questioned Gerdts' statements.

" I am submitting herewith a photograph of four (4) pages of a document which I found in a box of books and papers in the attic of my old house in Baltimore, during the recent search, and which document is an issue of the Blue Book Magazine for the month of January 1917 and which was sent to me in April 1917 by Fred Herrmann. This original magazine has been delivered by me to the Claimants, in support of my previous testimony."

In describing the original reception of the message, Hilken uses the following language:

" Raoul Gerdts brought this magazine from Mexico to me in Baltimore. My 1917 diary shows the date of his arrival as April 29, 1917. Gerdts told me that this magazine contained a message in invisible writing and also told me the page on which the message commenced. The attached photograph shows that the page number on which the message commences is page 700 and the message continues consecutively on pages 698, 696, and 694 on which page the message concludes. Gerdts remained with me while I raised the message by means of a hot iron. The message was written by Fred Herrmann whose handwriting I recognized."

A careful examination of the record discloses that Hilken was mistaken in saying that his diary showed that Gerdts' arrival was April 29, 1917. As a matter of fact, his diary shows that on April 27th he paid Gerdts \$175 and on April 29th Gerdts and Hinsch dined with him in his home at Roland Park.

In Exhibit 976, Annex E, p. 115, Hilken testified that in April, 1917, Raoul Gerdts Pochet, brought him the Blue Book of January, 1917, containing the secret message. Hilken took the magazine down into the cellar and ironed it out, that is to say, he used a hot iron to bring out the lemon juice. He remembered saying to Gerdts:

" Why, that is almost yellow enough to read without ironing."

He does not remember whether Gerdts was present when he heated the pages of the magazine, but Gerdts was certainly in the house. Gerdts did not know what was in the message, otherwise it would not have been necessary for Herrmann to write out a message in lemon juice. All Gerdts knew was that he was to bring back \$25,000 (id. p. 116). Gerdts did not speak English fluently, but did speak German and Spanish, and had great difficulty in making himself understood by Mrs. Hilken (id. p. 117).

(2) *Hilken already knew Gerdts and no introduction was necessary*

If the procuring of \$25,000 was the sole purpose of sending Gerdts, there would have been no necessity for a secret message (id. p. 117).

Hilken knew Gerdts in New York before Gerdts and Herrmann left for Cuba. Hilken related that Gerdts had frequently carried money from Hoppenberg to Herrmann, and stated that, if Gerdts had come to him and said Herrmann needed \$25,000, Hilken would have accepted that as a fact. He might not have given him the whole \$25,000, but he would have accepted it as a fact, and an introduction to Gerdts was not necessary as he had frequently met him in New York (id. p. 117).<sup>1</sup>

Hilken related an incident about Gerdts and Hoppenberg occurring in December, 1916. Herrmann told him that Hinsch was being hounded for money; that

<sup>1</sup> The claim of Hilken that he knew Gerdts before he left New York and that no introduction was necessary, was confirmed by the Hilken-Hoppenberg-Lowenstein correspondence (see this opinion, p. 120); and also by Gerdts (Ex. 979 Ann. A, *supra*, this opinion, p. 183). (*Note by the Secretariat*, this volume, p. 323, and also p. 367.)

Hinsch had asked him, Herrmann, to pay off Kristoff. Herrmann sent Gerdts down to Hoppenberg for money, and Hilken wrote out a check, and Hoppenberg pinned the money in an inside pocket of Gerdts' coat. The thing that impressed him at the time was this huge Hoppenberg, who weighed about three hundred pounds, with "hands as big as bears' paws, trying with a small safety pin to pin the money into Gerdts' coat pocket." Gerdts weighed about a hundred and ten pounds. This incident occurred sometime in December of 1916 (*id.* p. 118).

On account of his recollection of this incident which was quite fresh in his mind, there was no necessity whatever for Herrmann to give Gerdts a message introducing Gerdts to him and Herrmann knew that Hilken knew Gerdts (*id.* p. 120).

Hoppenberg died Friday, April the 20th, 1917. He fixed this date by referring to his diary (*id.* p. 118). Hoppenberg died before Gerdts' arrival with the message in the magazine (*id.* p. 119).

(3) *Hilken goes to New London and brings Hinsch back to Baltimore*

After receiving the message and developing it, he made a transcript, and took the copy to New London for the purpose of discussing the message with Hinsch (*id.* pp. 116, 120). Gerdts did not accompany him. Hinsch and Hilken returned to Baltimore in order to consider the message with Gerdts, personally, and to talk about his crossing the border into Mexico (*id.* p. 120). He, however, did not remember this trip until he saw it stated in his diary for April 27th and 28th (*id.* p. 121).

(4) *Hilken and Hinsch's interview with Gerdts, Sunday April 29, 1917*

Hinsch and Hilken saw Gerdts in Baltimore on Sunday, April 29th, at Hilken's house in Roland Park as shown by his diary.<sup>1</sup> The reason why Gerdts was spoken of in the diary as "cousin Raoul" was because they had distant cousins in Venezuela, and in order that the children, who were of an age to begin to take notice, would not be suspicious, they introduced him to them as "cousin Raoul" and the children called him "cousin Raoul" (*id.* p. 121).

(5) *Hinsch criticizes Herrmann's code in the message*

Hilken showed the message to Hinsch after they got to Baltimore, and Hinsch criticized Herrmann for using simply one number before the main number instead of adding a superfluous number at the end (*id.* pp. 121, 122).

He identified the Blue Book, Exhibit 904, as "the Blue Book with the famous message which Raoul Gerdts brought to me in Baltimore in April, 1917" and as the magazine which he showed Hinsch (*id.* p. 122).

(6) *Hilken's sabotage payments to Hinsch, May 1917*

In Hilken's diary for May 1917, above the item for Thursday the 24th of May, occurs the figure "\$1,500" and below the item for Saturday the 26th, occurs the figure "23,361.75" (Ex. 583, Ann. D). In the check stub book (Ex. 909, Ann. C) the item for May 24, 1917, is as follows: "No. 218 Pay to KNK for H \$1500".

There is no corresponding item, however, for the sum of \$23,361.75. Hilken explained that both of these items were for money given to Hinsch, the \$1,500

<sup>1</sup> This is confirmed by Hinsch (Ger. Ann. 71; *supra*, this opinion, p. 119). (*Note by the Secretariat*, this volume, p. 322.)

payment being on the 24th and the payment of \$23,361.75 was on the 24th, 25th or 26th. He thinks that it was on the 24th (Ex. 976, Ann. E, pp. 126-129).

The payment to Hinsch of the sum of \$23,361.75 was not related in any way to the affairs of the Eastern Forwarding Company<sup>1</sup> (id. pp. 129, 130). The cash book shows that the sum of \$23,361.75 was drawn on the German-American Bank (id. p. 130).

(7) *Hilken and Hinsch send Gerdts back to Mexico with \$1,000*

Hinsch and Hilken sent Gerdts down to Mexico with \$1,000.<sup>2</sup> Hilken confirms Gerdts' statement as to the message which Hinsch sent by him to Herrmann in Mexico with reference to getting guns across the border to be used in equipping a destroyer and enlisting two hundred men (id. p. 137).

(8) *Hilken knew Siegel*

He testified that he knew Siegel and knew what the reference in the message meant in saying "Tell him Siegel is with me" (id. p. 138).<sup>3</sup>

(9) *Hilken stores the message in the attic of his home in Baltimore*

When he had talked over the message with Hinsch, he probably put it with other papers in his desk. Later on he stored it with a number of papers relating to his wartime activities in the attic of his house in Baltimore (Ex. 904 (3); Ex. 949, p. 3; Ex. 976, Ann. E, pp. 139-141).

(10) *Hilken's house was not being watched, when Gerdts came nor was it ever searched*

When Gerdts came with the message, his house was not being watched, as had been testified to by Gerdts; but Gerdts may have had in mind an incident, when some hoodlums in Roland Park had painted a sign, "To Hell with the Kaiser", on the concrete walk leading from the street to his house and Mrs. Hilken had complained to the police, and it was possible that when Gerdts arrived, a policeman may have been there (Ex. 976, Ann. E, p. 139).

Hilken's house was never searched, but in August, 1918, Parr, an investigator of the Department of Justice, went to Baltimore with Hilken to search for some papers desired by the Alien Property Custodian (id. p. 140).

(11) *Hilken discovers other papers with the message*

At the time he discovered the Herrmann message, he discovered also the Arnold letters and other correspondence which he had packed in a small box after he had taken them out from the eaves of his attic (Ex. 906). Additional correspondence was later found in the eaves of the attic. This was given to Mr. Martin, counsel for the American Agent (Ex. 976, Ann. E, p. 141).

<sup>1</sup> This is confirmed by the testimony of Hilken, Sr. (Ex. 976, Anns. A-D, pp. 115-120).

<sup>2</sup> This is confirmed by Hinsch (Ger. Ann. 71); Gerdts (Ex. 629, p. 2773); Herrmann (Ex. 904 (4), also Ex. 986, Ann. A, p. 152); and Siegel (Ex. 908).

<sup>3</sup> In his examination of December 8, 1928, Hilken denied that he knew Siegel (Ex. 583, Rec. pp. 2239, 2242).

(12) *Hilken and Herrmann and the Liberty articles*

In October, 1930, Herrmann found that Sidney Sutherland was working on his magazine articles in Peaslee's office and Herrmann "raised particular hell about it." Herrmann telegraphed Hilken to meet him in town and told Hilken all about the articles which were to appear in *Liberty*. He does not know exactly how the matter came to Herrmann's attention, but at any rate Herrmann immediately got in touch with Hilken. Hilken and Herrmann sought Mr. Peto and charged him with bad faith because, when Peto and Peaslee solicited Hilken's testimony in 1928, they promised Hilken the utmost protection against publicity, and Hilken never would have testified, if he had not had a definite promise of no publicity. This was on account of his family (*id.* pp. 142, 143). Hilken and Herrmann therefore cabled Peaslee in Paris, demanding that permission granted to Sutherland be withdrawn. They assumed that Sutherland had been authorized by the office of Peaslee and thought that he was paying the firm for the privilege (*id.* p. 143).

Hilken met the American Agent at the pier on his return from The Hague and explained the whole matter to him, and Bonyngé said he knew nothing about it, and agreed with Hilken that it was a breach of good faith, and promised him to call a meeting to see what could be done about stopping the *Liberty* articles. He is not now charging Peaslee with breaking faith, but he was certainly under the impression at the time (*id.* pp. 143, 144).

Bonyngé knew that Hilken's testimony had been given under a promise of protection from publicity and not for the purpose of having it exploited for the benefit of magazine writers (*id.* p. 144).

After Peaslee returned from Europe, Hilken learned how access to the records had been obtained by Coudert Brothers while Peaslee was abroad. Hilken called Doing, of Coudert Brothers, who was a friend of Sutherland, and endeavored to have him arrange an appointment for Hilken to see Sutherland. Everybody promised to use their influence to repress the magazine publication (*id.* p. 144).

Sutherland refused to meet Hilken and stated he would only take orders from Patterson, President of the *Liberty Magazine*. Hilken made several efforts to see Patterson and had two or three conferences with his secretary but was unsuccessful; finally he caught Sutherland in his reception room and had a stormy interview in which he called Sutherland a "grave digger" (*id.* p. 145).

When asked "What has all this to do with the discovery of the message in the magazine?" Hilken replied (p. 145):

"A. It has a great deal to do with my not producing it. After some of the articles had been published, but before my name had been mentioned, I again went to *Liberty*, and was waiting in the reception room for Mr. Patterson's secretary, when the receptionist at the desk said to a man who had entered, 'Oh, Mr. Sutherland, I have a letter for you', and handed him a letter. I immediately confronted him, said, 'Are you Mr. Sutherland?' He said, 'Yes'. I introduced myself as Mr. Hilken and I told him everything I could think of. I said to him, 'You think you are an author, but your friends and colleagues consider you nothing more than a grave digger.' He was furious, almost livid, and took out his spite on the poor receptionist who had mentioned his name, and disappeared in an inner office. That is all the satisfaction I ever got out of it."

These conferences for the purpose of suppressing the magazine articles took place between the end of October, 1930, and February or March, 1931 (*id.* p. 146). He saw Mr. Bonyngé during that period, but Mr. Bonyngé did practically nothing to help him.

Hilken got his sister interested and she was a friend of Mrs. Patterson. He introduced as evidence his sister's letter, *id.* Paul Hilken Exhibit No. 4, p. 147, and a second letter from his sister as *id.* Paul Hilken Exhibit No. 5, p. 148.

*(13) Hilken's family and publicity*

These letters, the first undated, and the second dated March 20, 1931, show the anxiety of Hilken's family over the publicity resulting from the Sutherland articles.

In the first, his sister, Nina, after expressing her opinion that the attempt to reopen the case would fail, said:

"Anyway don't you *ever again* let them persuade or frighten you into talking. They promised you no publicity — then took no steps to prevent the Germans and Belgians from letting in the mob \* \* \*. That [conduct of the firm of lawyers] is contrary to the ethics of the profession. You can and must defy any attempt to make you a witness. \* \* \* you lay low and say nothing." (Ex. 976, Ann. E, Paul Hilken Ex. No. 4.) (Emphasis in original.)

In the second letter she uses this language:

"Thanks for your last letter — with 'Liberty' enclosure. I have bought every issue since — and notice with grief that your name appeared in the last number — and I'm afraid the next numbers will have more. It's too bad. The only course to take now is to act as though you and we never read Liberty — and had no connection with that particular Paul H.! — Or, with those people who know too much, that you were acting according to instructions from the North G. Lloyd — and did not know what you were contracting for. \* \* \* It's too bad for Henry and the girls — because they will worry. If worst comes to worst, they'll just have to move away from Baltimore. In a strange city no one would remember the name." (Ex. 976, Ann. E, Paul Hilken Ex. No. 5.)

*(14) Hilken rediscovers the message Christmas, 1930, and delivers same to Mr. Peto April 27, 1931*

Hilken claimed to have rediscovered the Blue Book message in his attic Christmas, 1930, and he brought the message to Mr. Peto on April 27, 1931 (Ex. 976, Ann. E, p. 151; Ex. 904(3), executed May 8th, 1931).

*(15) Hilken's claim of rediscovery substantiated by his wife and daughter*

Hilken's claim that he rediscovered the Blue Book in his attic Christmas, 1930, is substantiated by the affidavits of his estranged wife and of his daughter.

In her affidavit of November 15, 1932 (Ex. 972), Mrs. Hilken referred to the visit paid to her home by Mr. Harold H. Martin, counsel of the American Agent, on December 15, 1931, said visit having been described by Mr. Martin in Exhibit 911, dated May 26, 1932, filed May 27, 1932. The object of this visit was to secure Hilken's 1916 diary. In Exhibit 911 Mr. Martin recited a visit paid by himself and Mr. Hilken to the home of Hilken's estranged wife on December 9, 1931, for the purpose of locating the diary. Following this visit, Mrs. Hilken made a search in the attic and finally on Saturday, December 12th, found the diary in a doll's trunk; and, on the succeeding visit of Mr. Martin on December 15th, she turned the diary over to him.

In Exhibit 972 Mrs. Hilken relates the details of Mr. Martin's visit. She states that Exhibit 911 conformed to her recollection of what passed between them and then she states:

"I remember the lad Raoul, who was an unwelcome guest at my home for two or three days. He spoke practically no English; smoked cigarettes incessantly, and amused himself with our pianoplayer.

"I am aware of the fact that my husband, Paul G. L. Hilken, has delivered to representatives of the United States, the Blue Book Magazine which this lad Raoul brought from Mexico in 1917. I know that my husband discovered this

magazine and other papers in the attic of my home at Christmas, 1930. Although my husband did not tell me personally what this magazine contained, he did tell my daughter, Theodora, that it contained a message written in lemon juice, and that names were pin-pricked out in the printed matter on various pages in the magazine.

"This statement is made at the request of the Agent of the United States, in confirmation of similar statements made verbally to Mr. Leonard A. Peto by my daughter Theodora and by me, a year or so ago."

Appended to Mrs. Hilken's affidavit is the affidavit of her daughter, Theodora St. Vincent Hilken, which reads as follows:

"I have read the above statement by my mother, and hereby confirm that my father, Paul G. L. Hilken, found a magazine containing a message, written partly in lemon juice and partly by pin pricks, at our home in Baltimore on Christmas Day, 1930."

*(16) Hilken substantiated by Carr and Cooney*

In Exhibit 976, Ann. L, dated April 22, 1933, filed September 15, 1933, Frank Carr, an employee of the Thiel Service Company, testified that on Monday, April 20, 1931, he was assigned by T. J. Cooney to locate a certain man named Maubach, living at 40 West 89th Street, New York City, and was accompanied by Fred Herrmann. After abandoning the work for the day, he went with Herrmann to 135 West 183rd Street where Hilken resided, and they talked with Hilken about Herrmann's visit to Mexico. Hilken produced a demi-john of home-made wine and before they left the apartment it had been practically all consumed. During the evening Hilken and Herrmann discussed the sabotage cases and various people concerned therewith, and Herrmann boasted that they could have proven the case for the Lehigh Valley railroad, but they would not do anything for Arnold and Peaslee. Then the affidavit goes on as follows:

"Herrmann said to Hilken, 'You can produce your 1916 diary, and Hilken said, 'Yes, I can.' He also said, 'I have go[t] something better than that, which would clear up both the Canadian Car & Foundry case and Black Tom.' Herrmann said, 'What's that?' and Hilken replied, 'I still have that book you sent me, in which there were messages written.' Herrmann became excited and they conversed in German, which I do not understand."

He stated that both Hilken and Herrmann were incensed with Mr. Peaslee over the Liberty articles and with Mr. Arnold about some remark he had made about putting pressure on Herrmann to make him reveal more about Black Tom.

In Exhibit 976, Annex M, Cooney, after reading the statement of Carr, testified as follows:

"The next day after Carr and Herrmann's visit to Hilken's apartment, Herrmann called at my office at 50 Church Street and I asked him what the book was he and Hilken had been discussing in the presence of Carr the previous evening as Mr. Carr had reported it to me. Herrmann stated this book was a magazine he had sent back by messenger from Mexico to Hilken; that there was a message written in invisible ink in this magazine, in which he asked Hilken to send him some money and also to advise some German officials in Mexico that he was one of their agents. He stated he also mentioned Wozniak in the message and that the messages in this magazine would undoubtedly show the connection of the German agents with both Black Tom and Kingsland. Herrmann stated that Hilken had said that the magazine had remained hidden away some place in Baltimore and he had found it on his last visit to Baltimore.

"I reported this to Mr. Peto immediately and took occasion to urge Herrmann personally to endeavor to persuade Hilken to deliver this document to the Claimants. Herrmann said that he would do so, but that Hilken was scared about Black Tom."

(17) *Hilken substantiated by Mrs. Elizabeth Braun*

In Exhibit 974, Elizabeth Braun, a resident of New York City, testified under date of November 12, 1932, that she had known Mr. Hilken and the members of his family for a number of years; that on the first Sunday following Christmas, 1930, Hilken was a guest at her home for dinner, and, while discussing the visit of Hilken to Baltimore on Christmas Day:

" Mr. Hilken told me about having located in the attic of his old home in Roland Park a number of old papers concerning his activities during the period of the late war, and mentioned one particular document, which he said was of great importance, consisting of a magazine which Fred Herrmann had sent to him from Mexico in 1917, and which contained a secret message written therein by Mr. Herrmann in lemon juice, and which writing had been made visible by Mr. Hilken through the application to it of a hot iron.

" Mr. Hilken explained that the names in the message were pin-pricked on various pages in the magazine.

" In making this statement as to the time when Mr. Hilken told me as to this document, I am repeating exactly what I told to Mr. Leonard A. Peto and others about a year and a half ago shortly after Mr. Hilken turned over that particular document as evidence to be submitted to the Mixed Claims Commission."

(18) *Hilken's efforts to show the message to the Umpire*

Hilken's explanation of the delay in the production of the magazine from Christmas, 1930, until April 27, 1931, was the publicity given by the Liberty Magazine articles, his interviews with Rintelen, and the attitude of his family. It was also explained by him, however, that in the latter part of February, 1931, he took the Blue Book to Umpire Boyden's office. He was afraid that Mr. Bonyng, the American Agent, would get in touch with the claimants and the attorneys and there would be more publicity and, therefore, he made a personal effort to see Mr. Boyden and present the magazine to him in Boston (Ex. 976, Ann. E, p. 152). Before doing this, he telephoned to a friend of his, a Miss Phillips, and asked her to communicate with Boyden's office and find out when he would be in town. He received a telegram from Miss Phillips that Boyden would be in New Hampshire the early part of the week and would be in his office on Friday, February the 27th. He therefore went to Boston by boat the night of the 26th and called at Mr. Boyden's office on the 27th, where his secretary, Miss Smyth, informed Hilken that Boyden had unexpectedly been called to New York and gave Hilken his address as 44 Broad Street, *c/o* Mr. Searle. He explained to Miss Smyth exactly what he had with him and told her to explain to Boyden the reason for his visit. Hilken then called on his friend, Charles Curry, who knew the President of the First National Bank of which Umpire Boyden was a director, and Curry offered to arrange a meeting with Boyden if Hilken was unsuccessful in seeing him in New York (*id.* p. 154).

(19) *Hilken's efforts to see Boyden confirmed*

The fact that Hilken did endeavor to see Boyden is further confirmed by the affidavit of J. Henry Phillips (Ex. 976, Ann. K). From this affidavit it appears that Hilken was a friend of the Phillips family while he was a student at the Massachusetts Institute of Technology where he had the nickname of "Bismarck". Phillips was the brother of Adelaide Phillips, who wrote the letter filed with Ex. 976, Ann. E, as Ex. 6, and who died on April 27, 1932. By a reference to his sister's diary, he found that Paul Hilken was in Boston on February 27, 1931, and he testified that his sister, Adelaide, had received a letter

from Hilken asking her to inquire from the office of the Umpire when he would be in his office, and his sister told him that Mr. Boyden was expected on February 27, 1931, and she either telegraphed or telephoned that information to Hilken in New York.

(20) *Hilken's effort to see Boyden confirmed by Miss Phillips*

Hilken's effort to see the Umpire is also confirmed by letter from Miss Adelaide Phillips, dated February 28, 1931 (Paul Hilken Ex. 6, to Ex. 976, Ann. E). In this letter Miss Phillips uses the following language:

"I have been thinking of you all the morning and wondering if you were with Mr. Boyden. I *do* hope that you saw him and accomplished all that you hoped to. If he sees you I feel you will be successful. \* \* \* Please let me know how the Boyden incident ended. I hope you saw him and had a successful interview." (Emphasis in original.)

(21) *Hilken's effort to see Boyden by Curry*

Hilken's attempt to get in touch with Boyden is further corroborated by the affidavit of Charles H. Curry, the co-partner of Curry Brothers Oil Company, who had known Hilken intimately for about twelve years. He testified that Hilken called on him at his Boston office in the early part of the year 1931 to seek his assistance in obtaining an interview with the late Roland Boyden. Hilken related to him in a general way his testimony before the Mixed Claims Commission, and was incensed that he should have been disbelieved and ignored and classified as a liar, and also on account of the distress caused to his family by the undesirable publicity. Hilken asked Curry to arrange a meeting with Mr. Boyden in order that he might prove with letters and documents which he had with him that his testimony was true and Curry consented to do this as he had confidence in Hilken's integrity (Ex. 976, Ann. J).

(22) *Hilken's visit to the Umpire's office is confirmed by the Umpire's Secretary*

Hilken's visit to Boyden's office is further confirmed by the affidavit of Grace K. Smyth, Boyden's secretary, who testified that "during the early part of 1931, the exact date I am now unable to recall, Mr. Paul G. L. Hilken called and inquired for Mr. Boyden". Hilken explained to her that he had been called as a witness before the Mixed Claims Commission and was incensed at having been called a liar in the decision rendered by the Commission, and he was seeking an opportunity "to prove to Mr. Boyden by exhibiting corroborative documents, that his testimony was true". She gave Hilken Boyden's address in New York where she thought Boyden could be reached (Ex. 976, Ann. I).

## 5. The Internal Evidence

A careful analysis of the Herrmann message discloses that it had at least seven purposes:

- (1) To enlist Hilken's aid in convincing von Eckardt, the German Minister to Mexico, of Herrmann's *bona fides*, and his mission in Mexico.
- (2) To persuade Hilken to send Herrmann \$25,000.
- (3) To persuade Hinsch and Hilken to leave the States and come to Mexico, or, in the case of Hilken, to go to South America.
- (4) In connection with Hinsch to promote the destruction of enemy commerce on the West Coast.

(5) To warn Hilken where he might expect trouble from co-saboteurs and their friends.

(6) To awaken memories of past sabotage acts.

(7) "Bearer will relate experiences and details."

An effort will be made to study the record to ascertain, if possible, whether the purposes above set out were the normal reaction of Herrmann at the time when he sent the message by Gerdts to Hilken, or whether these purposes, clearly disclosed in the Blue Book message, were a part of a clever scheme to use the facts already in the record to convince the Commission by a forged instrument that the confessions of Herrmann and Hilken were genuine. We will now take up each of the aforesaid purposes in their order.

(1) *To enlist Hilken's aid in convincing von Eckardt, the German Minister to Mexico, of Herrmann's bona fides, and his mission in Mexico*

The sentences in the message used for this purpose are as follows:

"Have seen Eckardt  
he is suspicious of me  
Can't convince him I come from Marguerre  
and Nadolny  
Have told him all reference Hinsch and I  
Deutschland, Jersey City Terminal, Kings-  
land, Savannah, and Tonys Lab  
he doubts me on account of my bum German  
Confirm to him thru your channels all OK  
and my mission here".

The prevailing thought and purpose in the sentences quoted above is to remove from Eckardt's mind the suspicions which he entertained in regard to Herrmann.

Several times in this opinion we have had occasion to refer to two telegrams that passed between von Eckardt in Mexico and Marguerre and Nadolny, in charge of "Sektion Politik", just after America entered the war (Ex. 520, Rec. p. 1847; Ex. 320, Rec. p. 874 — See *supra*, this Opinion, p. 34).<sup>†</sup>

The first telegram is dated April 13, 1917, and contains a message, dated April 12, 1917, which was sent by Herrmann to Captain Marguerre or Nadolny, General Staff. The first telegram, containing Herrmann's telegram, reads as follows in the translation furnished by the German Agent (Ann. 21 to Report. of Ger. Agent of 8/1/29):

Marguerre

"17 April 12 [For Captain ~~Magea~~ or Nadolny, General Staff:  
'Mexico, April 12. Where is Lieutenant Whost? Has he remitted about \$25,000 to Paul Hilken? Either he or somebody else should send me money Fritz Quarts en Hermann.'

"Referring to preceding paragraph. Hermann (slender, fair, German with American accent) claims to have received a year ago order from General Staff and again last January from Hilken to set fire to Tampico oil fields and wants to put plan into execution now. He asks me if he should do it; am I not to answer that I have no contact with Berlin? Mr. von Verdy suspects him and his companion Raoul Gerds to be America-English spies. I request telegraphic answer, rush.]

\* \* \* \* \*

von Eckardt.  
LUCIUS"

<sup>†</sup> Note by the Secretariat, this volume, pp. 262-263.

The reply to von Eckardt's telegram was sent on May 13, 1917, and reads as follows:

"Herrmann's statements are correct. Nothing is known of Gerds. Wohst has been retired.

"The firing of Tampico would be valuable from a military point of view, but the General Staff leaves it to you to decide.

"Please do not sanction anything which would endanger our relations with Mexico or if the question arises, give Herrmann any open support.

\* \* \* \* \*

(Ex. 320, Rec. p. 874).

A careful analysis of these two telegrams shows clearly that on April 12, 1917, six days after America entered the war, Herrmann, the next day after his arrival in Mexico City, called on the German Minister in Mexico, von Eckardt, asking for money, and that he also informed the Minister that he had received from the General Staff a year ago an order, which had been renewed in January by Hilken, to set fire to the Tampico oil fields and now proposed to carry it out and wanted the Minister to sanction his plan.

The minister was not certain whether Herrmann and Gerds, his companion, were German agents and could be trusted, and recited to Marguerre and Nadolny of the General Staff that Verdy believed them to be American or English spies; and he suggested to the General Staff that it might be well for him (Eckardt) to deny that he was in touch with Berlin.

The General Staff's answer of the 13th of May confirmed in every respect Herrmann's statement, particularly as to his commission to set fire to the Tampico oil fields, but the matter of firing the Tampico oil fields was left to the German Minister to decide; but the Minister was warned not *openly* to support Herrmann.

The first telegram which had been sent by von Eckardt a few days before Gerds left Mexico for Baltimore, confirms in every respect the recitals in the message set out above. As no reply was forwarded from Berlin to von Eckardt's query until the 13th day of May, it is clear that von Eckardt's suspicions had not been removed when the Herrmann message was written and forwarded to Baltimore.

We know from the intercepted messages that, when Hinsch finally arrived in Mexico, a contest immediately started between Jahnke on the one side and Hinsch on the other, and later participated in by Dilger, as to whether Hinsch or Jahnke should be the recognized leader of saboteurs in Mexico. We also know that von Eckardt was inclined to continue the commission<sup>1</sup> in Jahnke's hands and at one time asked leave of Berlin to dismiss Dilger and Hinsch. Therefore, the difficulties which Herrmann encountered in his first interview with von Eckardt were reflected in the difficulties encountered by Hinsch upon his arrival in Mexico (See, *supra*, this Opinion, pp. 111 *et seq.*).<sup>u</sup>

The importance to Herrmann of securing the confidence of von Eckardt and of removing from von Eckardt's mind the suspicions which he entertained towards Herrmann cannot be overestimated: for, if Herrmann was to continue his sabotage activities in Mexico, it was necessary for him to secure von Eckardt's approval, as is shown by the telegram which the General Staff forwarded to von Eckardt, giving him the power of veto over Herrmann's activities in Mexico, including the firing of the Tampico oil fields.

<sup>1</sup> This commission had been given by Wunnenberg, the dynamiter, and the "son Charles" of the cables of November 12, 1917 (Ex. 320, p. 879) and of April 3, 1918 (*id.* p. 906). Wunnenberg in turn received his commission from Wilhelm of the German Admiralty Staff of Antwerp (Ger. Ex. IV, pp. 7 *et seq.*, and Ger. Ex. XXIX, pp. 3 *et seq.*).

<sup>u</sup> Note by the Secretariat, this volume, pp. 317 *et seq.*

Von Eckardt seems to have occupied a more important position with reference to sabotage in Mexico than Hilken occupied in the United States. Von Eckardt was both paymaster and director of the saboteurs, with power to veto their activities. It was not only necessary for Herrmann to secure von Eckardt's approval, but it would probably be impossible for Herrmann to finance his schemes unless he could secure, through von Eckardt, the necessary funds.

Herrmann realized that, with the United States at war, it would be difficult for him to continue to receive funds from Hilken in the United States, and, therefore, his first aim, naturally, was to establish cordial relations between himself and the German Minister, and his appeal to Hilken for aid was the natural and normal thing to do.

"Have told him all reference Hinsch and I Deutschland, Jersey City Terminal, Kingsland, Savannah and Tonys Lab [and yet] He doubts me on account of my bum German".

From Herrmann's point of view, here are enumerated sufficient references to Herrmann's connections with sabotage to have given von Eckardt confidence in him. Herrmann and Hinsch were the acknowledged leaders of sabotage in the United States. Of all the numerous plants destroyed, the devastating catastrophes at Jersey City Terminal (Black Tom) and Kingsland had received most notoriety; Savannah was fresh in Herrmann's mind and it was natural for him to link it with the others. Tony's Lab referred, of course, to the fact that Anton Dilger had established in Chevy Chase, D.C., a laboratory for culture of disease germs to be used in inoculating with disease animals in the United States. Herrmann and Carl Dilger and Ahrendt had been used by Hinsch to distribute these germs to his force of men, who frequented, for this ignoble form of sabotage, the grounds used for assembling the animals — in Norfolk, Newport News, Baltimore, New York, and St. Louis.

The fact that Herrmann used the term "Jersey City Terminal", which was not in the record in 1931, instead of "Black Tom", which was scattered all through the record, is certainly an argument in favor of the proposition that the Blue Book message was composed in 1917, rather than in 1931; for if the purpose of the composer of the message had been to make the message conform to the record as it was in 1931, he would certainly have selected "Black Tom" rather than "Jersey City Terminal".

So, also, instead of referring to "Tony's Lab", he would have selected "Dilger's laboratory", or "Delmar's Germs", to make his message conform to the record as it stood in 1931.

"he doubts me on account of my bum German".

In von Eckardt's telegram he described Herrmann as "slender fair, German with American accent"; and he also recites that "Mr. von Verdy suspects him and his companion, Raoul Gerdt to be America-English spies."

(2) *To persuade Hilken to send Herrmann \$25,000*

The sentences in the message used for this purpose are as follows:

"I have no funds  
Eckhardt claims he is short of money  
Send by bearer U. S. 25000.—  
Have you heard from Willie  
Have wired Hildegard but no answer

\* \* \* \* \*

Most important send funds."

These sentences indicate, first, that Herrmann had no funds; second, that he had applied to von Eckardt for money, but that von Eckardt had refused and claimed that he was short of money; third, that Herrmann's expectation of receiving \$25,000 from Willie Woehst had not been realized and that his wire from Havana to Willie Woehst's cousin, Hildegard Jacobsen, had not been productive of results and he had received no answer from her.

Von Eckardt evidently did not convince Herrmann that he was dealing frankly; for in the message, Herrman tells Hilken: "Eckhardt claims he is short of money"; so that their suspicions were mutual. That Herrmann had good ground to be distrustful of von Eckardt is borne out by the latter's suggestion in his telegram to the General Staff:

" \* \* \* am I not to answer [Herrmann] that I have no contact with Berlin? "

From Kaba's contemporaneous report (Ann. Y to Ex. 583, Rec. p. 2410 *et seq.*), it appears that Wilhelm Woehst in May, 1917, a little over a month after America entered the war, had been the subject of investigation by the Department of Justice. During this investigation, his cousin, Mary Hildegard Jacobsen, was examined. It was ascertained from her that Herrmann was at the time of the investigation in Mexico, that she received a cable from Herrmann about a month ago (end of March or early in April, 1917) from Cuba reading

" Have you heard from Willie? ";

and about two weeks prior to the report that she had a telegram from Herrmann sent, according to the report of her statement, from *Havana* reading

" Have you seen Raoul? "

As to this latter telegram, we know that either Miss Jacobsen or the examiner made a mistake; for the actual telegram was sent from *Mexico* dated May 6, 1917, and read as follows:

" Have you seen Raoul. Answer immediately  
Hotel Juarez greetings

F. March "

(Ex. 587, Rec. p. 2478).

In Kaba's report (Rec. p. 2414) Raoul (Gerdt) is represented as having been told by Herrmann that Miss Jacobsen was to receive \$250,000, and that, in answer to the telegram of May 6, 1917, she had replied as follows:

" I have seen Raoul. He left. No money."

Evidently the sum \$250,000, contained in Kaba's report was a mistake and should have read \$25,000. This reply telegram instead of being sent to Hotel Juarez, Mexico City, was sent to the town of Juarez in Mexico and, therefore, was probably never received by Herrmann (Ex. 583, Ann. Y, Rec. p. 2414; Ex. 587, Rec. p. 2478).

In the Kaba report referred to above (Ann. Y to Ex. 583, Rec. p. 2410 *et seq.*) Hildegard Jacobsen reported that, on the day that Woehst returned to Germany, Herrmann told her she would receive a large sum of money from Willie Woehst, which she should deposit in bank until called for by him or Gerdt, and she was to explain the receipt of this money by stating that it had been left to her by a deceased relative in Germany (Rec. p. 2413). This report, made within two months after the United States entered the war, confirms the telegram sent by von Eckardt for Herrmann and also the message, in showing that Herrmann was expecting to receive money from Woehst.

We have already seen that in his testimony under subpoena in September, 1933, Hilken explained the "A.C.D." account on the books of the Eastern

Forwarding Company, aggregating \$95,000, as representing amounts transferred to Anton Dilger after he got to Mexico (Ex. 976, Ann. E, pp. 44-46). Hilken further testified that he did not remember the exact amounts he sent to Mexico,

“but it was probably in the neighborhood of two or three hundred thousand that eventually went to Mexico \* \* \* to get them [the saboteurs] out of this country, and also to finance Herrmann, Dilger and Hinsch, who had then gone to Mexico”. (id. pp. 45, 46)

Some of this money was sent before and some after the United States had entered the war (id. p. 46) (See *supra*, this Opinion, p. 153). <sup>v</sup>

Thus, a careful study of the record in regard to the money which Herrmann expected to receive reveals the fact that the message was a product of what he knew in 1917, and had a right to expect at that time.

(3) *To persuade Hinsch and Hilken to leave the States and come to Mexico, or, in the case of Hilken, to go to South America*

The sentences in the message used for this purpose are as follows:

“Where are Hinsch and Carl Ahrendt  
Tell Hinsch to come here  
I expect to go north but he can  
locate me thru Eckhardt  
What will you do now with America  
in the war  
Are you coming here or going to South  
America  
Advise you drop everything and leave  
the States”

Hinsch and Herrmann had been so closely associated in their sabotage work that it was natural for Herrmann to desire the continuance of their relations. The desire to have Hinsch come to Mexico was also coupled with his scheme to promote the destruction of enemy commerce on the West Coast by the use of an old cruiser. As Hinsch had acted as Captain of the “Neckar” and had been likewise connected with the “U-Deutschland” activities, it was natural and normal for Herrmann to think that Mexico would offer a good field for Hinsch’s experience.

Herrmann’s advice to Hilken to “drop everything and leave the States” showed Herrmann’s natural anxiety to have his associates in sabotage cooperate with him in Mexico. At the time the message was despatched none of these associates had come to Mexico. Hinsch had not yet arrived. Anton Dilger was in Europe and did not reach Mexico until late July or early in August, 1917. After his return from Europe in 1916, Carl Dilger never left the United States but ceased sabotage work before America entered the war. <sup>1</sup>

Witzke in September, 1919, is reported by Tunney of Military Intelligence as saying that “in the early part of 1917 (Feb.) \* \* \*, I left the United States for Mexico \* \* \*” and was in Tampico “the latter part of May 1917” investigating “a case that was reported to us of American and English Secret Service men trying to blow up an oil property or conspiring to blow up oil property in Tampico for the purpose of blaming the matter on German

<sup>v</sup> *Note by the Secretariat*, this volume, p. 346.

<sup>1</sup> Herrmann was also anxious to get his co-saboteurs out of the United States, because he was not sure of their discretion or their loyalty, as indicated by this sentence: “See that Hinsch brings with him all who might implicate us.”

agents" (Ex. 24, Rec. pp. 68, 69). In his affidavit of July 19, 1927, Witzke, however, claims that "on March 23, 1917, \* \* \* I signed on in San Francisco as a sailor on the steamer 'San Pedro', on which I reached Manzanillo in April 1917". He then claims to have gone to Mexico City, where he "received a few commissions for observing movements of ships and the export of oil from Tampico and Vera Cruz" (Ger. Ex. Q, p. 4). Jahnke claims to have gone to Mexico "in May 1917" (Ger. Ex. P, p. 4). Schulenburg did not get to Mexico until the middle of August (Ex. 986, Ann. A, pp. 185, 186).

We have already had occasion to examine the Arnold correspondence (*supra*, this Opinion, pp. 143 *et seq.*).<sup>w</sup> In the course of that correspondence Arnold, in Havana, wrote Hilken suggesting that they go together to South America. Hilken on August 7, 1916, cabled Arnold expressing his regret at not being able to meet him and stating that he would send a trustworthy representative (Herrmann) if Arnold thought it advisable (Ex. 906, Anns. V, W, X, Y, Z, AA, BB, 1; Ex. 42 attached to Ex. 976, Anns. A-D).

Doubtless Herrmann was thoroughly familiar with these plans and, therefore, in urging Hilken and Hinsch to leave the States, he must have known that, in case Hilken did leave, he would consider going either to Mexico or to South America to join Arnold.

(4) *In connection with Hinsch to promote the destruction of enemy commerce on the West Coast*

The sentences in the message used for this purpose are as follows:

"tell him [Hinsch] Siegel is with me  
Tell Hinsch his plan OK  
Am in close touch with Major [Schwierz?]  
and influential Mexicans  
Can obtain old cruiser for 50000 West  
Coast."

Although Siegel denied that he ever met Hilken or Hinsch in the United States (Ger. Ann. 134, Ger. Ann. 169), it is a remarkable fact that on September 18, 1919, more than two years before the Treaty of Berlin was ratified and nearly three years before the Mixed Claims Commission was brought into existence by the Agreement of August 10, 1922, Captain Thomas J. Tunney, Special Investigator, United States Military Intelligence Division, reported that Witzke, a secret German agent in Mexico (who had been convicted of espionage), had voluntarily made a statement to him, from which it appeared that Siegel operated in the early part of the year 1916 in the City of New York under the supervision of a Captain of the North German-Lloyd Steamship Company, who "was in charge of the tug-boat that took in the Submarine Deutschland in Baltimore on the first trip" (Ex. 24, Rec. p. 93). He afterwards stated that the Captain referred to was Hinsch (*id.* p. 94). If Witzke's report to Tunney be correct, namely, that Siegel was operating under Hinsch in New York in 1916, it was natural for Herrmann, in Mexico, to inform Hilken that Siegel was with him.

When Hilken was under examination by Mr. Sobeloff, the United States District Attorney at Baltimore, taken in accordance with Act of June 7, 1933 (48 Stat. 117), the following questions and answers occurred (Ex. 976, Ann. E, p. 138):

<sup>w</sup> *Note by the Secretariat*, this volume, pp. 339 *et seq.*

"Q. Mr. Hilken, the message says, 'Tell him (that is Hinsch) Siegel is with me.' And yet both Siegel and Hinsch testified in this case that they did not know each other at that time.

"A. There is nothing inconsistent in that because I had met Siegel at the McAlpin, and Fritz was simply letting me know that Siegel was down there, so as to indicate to Hinsch that he could count on additional help.

"Q. Do you know whether Hinsch had ever met Siegel?

"A. No, I do not. But I knew Siegel. I knew he had come from China or Russia, and had appeared to me as a most efficient and capable man."

The fact that Siegel stayed at Hotel McAlpin is confirmed by his affidavit of November 12, 1937 (Ger. Ann. 134), where he said that, when he arrived at New York on his trip from China, he stayed for a few days at the Hotel McAlpin.

The insertion of Siegel's name in the message was probably due to the fact that Siegel was present when the message was being composed, and Herrmann wanted to incorporate his name for that reason. Certainly from the standpoint of a person who was fabricating the message in 1931, the insertion of Siegel's name would not have added any strength to his fabrication, for it is clear that Hilken himself had forgotten that he ever met Siegel (Ex. 583, Rec. pp. 2239-2242).

The mention of Siegel's name in the message added no verity to the message, and, like the mention of Wolfgang and Phil Wirth, is one of the circumstances tending to show that the message was not concocted as a clever scheme to deceive the Commission by conforming with the record.

In Gerdts' first affidavit (Ex. 626 (a) Rec. p. 2773) he told of going to Hilken's home in Roland Park and finding Hilken, to whom he gave the page from the book of poetry. Hilken then went to the cellar to decipher the order and told Gerdts he did not have that amount of money (\$25,000)

"but I should stay at his home while he went to New York to procure the money."

Gerdts remained in his home three days, during which time Hilken went to New London and brought Hinsch back with him, and Hilken told Gerdts that he was going to send the money by another friend. Shortly after that Captain Hinsch was introduced to Gerdts, and Hinsch told him to go back to Mexico and gave him \$1,000, and also told him that he was going to bring the balance of \$24,000 himself. Thereupon Gerdts said:

"He asked me to tell Hermann that he (Hinsch) was busily engaged in getting guns of 7.05 millimeters across the border into Mexico which were to be used to equip a destroyer in Mazatlan, intercepting ships carrying cargoes from San Francisco. He told me to tell Hermann to enlist the two hundred men that were required to man the destroyer, which Hinsch himself was to command."

In Hinsch's affidavit of June 28, 1932, relating the same incidents (Ger. Ann. 71), Hinsch first tells the circumstances under which he went on Sunday to dinner at Hilken's home in Roland Park, describes the message as a very short one consisting of an identification of Gerdts, a request for money and advice that Gerdts would report verbally about all other matters; and, in his affidavit as finally executed, he also stated that to up that time Gerdts was unknown to both him and Hilken; and he states the circumstances under which he formed the conclusion

"that Gerdts had really come from Herrmann and was not, by any chance, an agent of the American Intelligence Service who had taken this book away from a messenger of Herrmann at the border." (p. 4)

He then repeated Gerdts' oral statement as follows (p.5):

" He mentioned first that Herrmann, down in Mexico, was very short of money and that he (Herrmann) had given him (Gerdts) half of his remaining funds so that he could make the trip to Baltimore. He then told us that Herrmann could not obtain any funds from Mr. von Eckardt, the German Minister in Mexico, since Mr. von Eckardt distrusted Herrmann. Herrmann, he said, had told Mr. von Eckardt of the U-DEUTSCHLAND expeditions and had mentioned Hilken's and my names to identify himself to Mr. von Eckardt. Mr. von Eckardt, however, he said, did not want to have anything to do with him. Gerdt's told us, furthermore, that Herrmann was in Sonora and that he had become friends with one Major Schwieritz. Herrmann had found out, he said, that some German sailing vessels were lying in the harbor of Sonora and that he could hire a large enough crew to man an auxiliary cruiser; guns and ammunition could also be procured. I should, therefore, come down to Mexico to take command of the auxiliary cruiser. We could then, with the aid of this auxiliary cruiser, capture enemy merchant vessels. Furthermore, Gerdt's told us that Herrmann had instructed him to tell us that he had found out that there was a possibility of setting fire to oil wells near Tampico. Herrmann, he said, had made a suggestion to that effect to the German Minister. The latter, however, had forbidden Herrmann to undertake any such thing; consequently, Mr. von Eckardt did not want to have anything at all to do with Herrmann. At the end of his report Gerdt's mentioned that Herrmann could be reached through the German Legation in Mexico and the German Consul in Sonora, Rademacher, whom he would inform of his whereabouts."

It is remarkable how many of the statements attributed by Hinsch to Gerdt's as oral information are found in the Blue Book message. Some of these will be examined below (*infra*, this Opinion, pp. 220, 221). <sup>x</sup>

If the Herrmann message had been produced after Hinsch's affidavit, there would have been good grounds for suspecting that the draughtsman of the message had copied many statements *verbatim* therefrom.

On January 11, 1929, when Gerdt's made his statement in Ex. 626 (a) Rec. p. 2773, there was, of course, no Blue Book message in the record and Gerdt's was relating from memory incidents that had occurred twelve years before that time.

An analysis and comparison of Gerdt's original affidavit (Ex. 626 (a), Rec. p. 2773), Hinsch's report on the oral message delivered by Gerdt's (Ger. Ann., 71, p. 5) and the contents of the message as found in the Blue Book of January 1917, disclose the fact that there are many points of similarity but also some striking differences. An examination of the record will disclose clearly that where Hinsch in his report of the oral message from Herrmann varied or changed the terms of the message as contained in the Blue Book or departed from Gerdt's original statement of January 11, 1929, it was Hinsch who was guilty of fabrication and not Gerdt's or Herrmann.

Hinsch represents Gerdt's as saying that Herrmann was in Sonora and had found out that some German sailing vessels were lying in the harbor of Sonora and that he could hire a large enough crew to man an auxiliary cruiser. Gerdt's says in his statement of January 11, 1929, that he was directed by Hinsch to return to Mexico and tell Herrmann that Hinsch was busy making preparations for equipping a destroyer and that Herrmann should enlist two hundred men for that enterprise.

We now know that Herrmann was not in Sonora and that he did not reach Sonora until some time in June (see report of Frederick Simpich, American Consul at Guaymas, Mexico, dated September 16, 1917, Ex. 583, Ann. AA, Rec. p. 2421 *et seq.*). From this paper it appears that Herrmann, with a false

<sup>x</sup> Note by the Secretariat, this volume, pp. 394, 395.

passport dated March 5, 1917, arrived in Sonora some time in June, 1917, that this passport was marked

“ Geschen v. Eckart 21 Mai 17 ”

and with him were Siegel and Schwierz, a German who had become a major in the Mexican Army.

In Ex. 986, Ann. A, p. 151, Herrmann was shown this passport and testified that the endorsement was placed thereon at the Embassy in Mexico City and from this he states that he could not have been in Sonora even on the 21st of May. He further testified that he went to Sonora about the beginning of June, after Gerdtz got back to Mexico with about \$700, and he gave him enough money for his return to his home in Colombia (id. pp. 152, 153), so that before Herrmann went to Sonora Gerdtz was on his way to Colombia.

In Ex. 904 (4), affidavit of Herrmann, dated the 9th day of May, 1931, in speaking of Gerdtz' return to Mexico he said:

“ As I remember the circumstances Gerdtz returned to Mexico with only about \$800 and told me that Hinsch was coming down and would bring the balance of the \$25,000 which I requested. Hinsch finally arrived in Mexico City while I was on the North West Coast, and Rademacher told me that a wire had arrived from von Eckardt for me to return to Mexico City immediately.”

In Ex. 986, Ann. A, p. 153 *et seq.*, Herrmann testified that it was improbable for Gerdtz to have told Hinsch in Baltimore that he, Herrmann, was in Sonora. He said:

“ It would have been impossible for me to have been in Sonora, as the records all prove that I was in Mexico City the whole time, and did not leave Mexico City until after I had sent Gerdtz back to Colombia.”

When Hinsch's testimony, quoting Gerdtz as saying that Herrmann was in Sonora at the time when Gerdtz was with Hinsch and Hilken in Baltimore, was read to him, Herrmann said (id. p. 154):

“ It must be clear to you from the records that you yourself have that Hinsch is deliberately trying to put me in Sonora at a time when I was actually in Mexico City so as to discredit my testimony about sending the message — either that or he is trying to discredit Gerdtz.”

Then he asks the examiner this question:

“ Mr. Sobeloff, what does Gerdtz say about that?

“ Q. He testified in January, 1929, that you were in Mexico City in April, 1917, and that Hinsch sent him back to you to tell you to go to Sonora to recruit the men for the cruiser.

“ A. That is exactly true and what actually happened.

“ Q. When Gerdtz returned what information did he bring to you from Hinsch?

“ A. That Hinsch was coming down with some money and for me to go to Sonora, that he would get in touch with me there through Von Eckardt.

“ Q. Did not you say that Gerdtz brought you some money?

“ A. Only a little, somewhere around seven hundred dollars.

“ Q. How much were you awaiting?

“ A. I was expecting about \$25,000. Gerdtz only brought about \$700. Hinsch told him he would bring the balance of the money with him.

“ Q. Did you go to the West Coast with the money which Gerdtz brought you?

“ A. That was not quite sufficient, after giving Raoul money to go back to Colombia, so I secured more money, I think two or three thousand pesos, from Von Eckardt.

“ Q. Did Von Eckardt receive an answer from Berlin to his cable before giving you the money?

" A. He told me he had and that everything was O. K., for me to report to Rademacher and keep in touch with him so he would always know where to get in touch with me.

" Q. The record shows that Von Eckhardt did not receive the cable from Berlin, in answer to his inquiry about you, until about the middle of May.

" A. It was after that that he gave me the money and that I left for Sonora.

\* \* \* \* \*

" Q. About when did you get this notification that Hinsch was in Mexico City?

" A. Somewhere towards the end of July, and I arrived in Mexico City early in August."

And again on p. 157:

" Q. Was it after this date, July 17th, that you returned to Mexico City?

" A. I returned shortly after that date. I have already stated that I arrived in Mexico City about the beginning of August."

On p. 158, he was asked this question:

" Q. What was the result of your trip to Sonora in connection with the cruiser?

" A. When I returned to Mexico City and reported to Hinsch, Hinsch got cold feet and we dropped the entire matter."

Therefore, when Hinsch represented in his affidavit (Ger. Ann. 71) that Gerdts said " that Herrmann was in Sonora " and that Herrmann " could hire a large enough crew to man an auxiliary cruiser ", it is not reasonable to believe that Gerdts made such a statement on April 30, 1917, because Gerdts had been with Herrmann ever since Herrmann arrived in Mexico and he knew that Herrmann had not been in Sonora. Herrmann did not reach Sonora for about two months thereafter; and when Hinsch claims to have directed Gerdts " to tell Herrmann to remain in Sonora until he should hear from me and that until then he should not undertake anything in these matters ", Hinsch was guilty of pure invention and fabrication, by taking the data in Gerdts' affidavit and varying the same for the purpose of contradicting the message.

The object of Herrmann's trip to Sonora and of his activities there, as reported by Simpich, was clearly to carry out the instructions Gerdts said he brought from Hinsch in regard to manning the destroyer.

Likewise, Hinsch's grounds for vetoing the scheme of the auxiliary cruiser as impracticable, because they would need the requisition by a battleship commander, was just as fanciful. It was probably the fear of the navies of the United States and Great Britain, and not the lack of requisition of a battleship commander, that put the veto on this scheme. This is confirmed by Herrmann who in giving the results of his trip to Sonora in connection with the cruiser, said that when he returned to Mexico City and reported to Hinsch, " Hinsch got cold feet " and the entire matter was dropped (Ex. 986, Ann. A, p. 158).

Hilken testified that the reference in the message to engaging a cruiser referred to a discussion between Hinsch, Herrmann and himself before Herrmann left the United States and he stated:

" Hinsch had the idea that he would start out from Mexico soon after his arrival there as a commerce raider. His thought was he would be a second Count Luchner." (Ex. 976, Ann. E, p. 137.)

(5) *To warn Hilken where he might expect trouble from co-saboteurs and their friends*

The sentences in the message used for this purpose are as follows:

" Be careful of her [Hildegard Jacobsen]  
and connections

I dont trust Carl Ahrendt, Kristoff,  
 Wolfgang, and that Hoboken bunch  
 If cornered they might get us in Dutch  
 with authorities  
 See that Hinsch brings with him all  
 who might implicate us  
 Where is Carl D[ilger]  
 he worries me  
 remember past experience  
 Has Hinsch seen Wozniak  
 Tell him to fix that up  
 If you have any difficulties see Phil  
 Wirth Nat Arts Club.”

The reason for Herrmann’s distrust of Hildegarde Jacobsen, Willie Woehst’s first cousin, is not disclosed in the record; but as a matter of fact we know that in May, 1917, she did disclose to the Department of Justice many facts which raised suspicions as to the activities of Woehst, Herrmann and Hilken. The haste with which Woehst and Herrmann left their apartment in New York, with compromising papers therein, was probably because they became aware that the Department of Justice was on their trail, and it may be that Herrmann had reason to suspect Hildegarde Jacobsen of being responsible.

Just why Herrmann distrusted “ Carl Ahrendt, Kristoff, Wolfgang, and that Hoboken bunch ” is not clear from the record. It is clear from the record, however, that Ahrendt did not hesitate to fabricate evidence. Wolfgang is unknown, and “ that Hoboken bunch ” evidently refers to the German interned sailors who were used by Rintelen and Hinsch in their worst forms of incendiary sabotage and inoculating animals.

“ Where is Carl D[ilger]  
 he worries me  
 remember past experience ”

The anxiety which Herrmann here expresses as to Carl Dilger is thoroughly reflected in the record and has been carefully studied and analyzed in this Opinion (*supra*, pp. 95 *et seq.*).<sup>5</sup> The story was first told by Herrmann on April 3rd, 1930 (Rec. pp. 5431, 5489), and was subsequently confirmed by Hinsch in German Exhibit CXXVIII, p. 108, and was also confirmed by the production of Hilken’s contemporary correspondence with Captain W. Bartling, German Commercial Attaché at Copenhagen (Ex. 906, Anns. A and D) and with Mr. Hagedsted (Ex. 906, Anns. O and P). It was also confirmed by Carl Dilger (Ex. 764, Rec. p. 5649) who gave his affidavit on April 18, 1930, about eight months before the message was rediscovered by Hilken in his attic and one year before it was produced.

“ Has Hinsch seen Wozniak  
 Tell him to fix that up ”

In Herrmann’s confession of April 3, 1930 (Rec. p. 5431 *et seq.*), Herrmann told about his employment of Wozniak and Rodriguez and of giving them incendiary pencils in December, 1916, or January, 1917 (*id.* pp. 5433 – 5455, 5503 – 5505). He showed them how to work the pencils, and, two days after the fire, he met Rodriguez and gave him \$500 and two or three days afterwards he saw Hinsch at New London (*id.* pp. 5455, 5503 – 5505). But he never saw Wozniak after that (p. 5456). In the same deposition, on re-examination by the American Agent, he again tells of giving the tubes to Wozniak and Rodriguez several days before the Kingsland fire and paying them \$40 a week for

<sup>5</sup> Note by the Secretariat, this volume, pp. 306 *et seq.*

three or four weeks and after the fire he paid Rodriguez \$500 but he never saw Wozniak again (id. p. 5588).

That Herrmann had almost an instinctive dislike and distrust of Wozniak is clearly established by the record. Thus, before the production of the message, Herrmann, under an examination by the German Agent, repeated a conversation he had with Hinsch about Wozniak, as follows:

" I don't like the looks of this fellow [Wozniak]. He looks as if he is half crazy. I don't know whether to believe him, \* \* \* or if he can do anything or not." (Rec. p. 5502.)

And then, again, when he was informed that Wozniak was in Mexico, he said:

" Of course I did not want to see him, because he was half cuckoo. I thought perhaps he was sore because he did not get his money, and I thought maybe he would take a shot out of me." (Id. p. 5460.)

And, again, under examination by the German Agent, Herrmann testified as follows (id. p. 5528):

" You were not inclined to give him anything? A. Who, Wozniak?

" Q. Yes. A. No.

" Q. Why not? A. I was sort of scared of that guy.

" Q. Were you willing to pay him? A. If I had met him shortly after the fire I would have paid him.

" Q. But afterward you did not think it necessary? A. Afterwards I didn't want to. He did the job, and that was enough for me.

" Q. He did what? A. After he did the job that was enough for me. I didn't want to see him again. Why? If I was to have got going with him I would have had him hanging on my neck for the next couple of years, and if I didn't take care of him more and more he would threaten to squeal on me."

" If you have any difficulties see Phil Wirth Nat Arts Club "

The name of Phil Wirth had not appeared in the record before the message was produced. After the message was produced Hilken was asked the question as to the significance of the above sentence and replied:

" I don't know. I had never known Mr. Wirth. I believe he was a friend of Herrmann and that Herrmann wanted to give me his name and address so that I would have some one who could be of assistance to me in case of necessity. But that is only a surmise on my part." (Ex. 976, Ann. E, p. 138.)

Herrmann, when asked the question: " Why did you make the reference in the message to Phil Wirth of the National Arts Club? " stated that he had met Wirth on board the steamer " New Amsterdam " after he had been put out of England in January, 1916; that he became better acquainted with him in New York and Wirth offered to help him in any way he possibly could, especially if Herrmann was to get into trouble, and told Herrmann to communicate with him and he would be only too glad to help him. When asked why he mentioned his name in the message, he said:

" Because I thought most likely Paul would be in trouble at that time and that he did not know for sure whom he could trust. Wirth had also arranged cover addresses for me in Holland and Denmark, and I knew that Hilken could trust him." (Ex. 986, Ann. A, p. 184.)

(6) *To awaken memories of sabotage acts*

The sentences in the message used for this purpose are as follows:

" Regards to Hoppenburg  
Sei nicht dum  
mach doch wieder  
bumm bumm bumm."

The explosion at Black Tom was in the early morning of July 30th, 1916. Six days after that explosion, to-wit, on August 5th, Hinsch, Herrmann, Hoppenberg, and Hilken were in the office of the Eastern Forwarding Company in the Whitehall Building with windows looking out over the Hudson River. Two or three windows had been cracked by the force of the explosion at Black Tom and at this meeting Hoppenberg facetiously pointed to the broken windows and said:

“ Why, you fellows have broken my windows.”

Herrmann retorted to Hoppenberg by singing a song of the war of 1870:

“ Lieber Moltke sei nicht dumm. Mach mal wieder, bumm, bumm, bumm ”

which being freely translated means:

“ Dear Moltke, don't be so dumb  
Go out rather and make bumm, bumm, bumm ” (Ex. 976, Ann. E, p. 59.).

(7) “ *Bearer will relate experiences and details. Greetings.*”

The statement that “ bearer will relate experiences and details ” was a natural closing sentence for the message, having no specific relation to any other portion of the message or the record; but this sentence was evidently the portion of the message which suggested to Hinsch that his description should include an oral message, much longer and much more in detail than the written message described by him.

As to the last word “ greetings ”, this was the same salutation which was used by Herrmann in his telegram to Hildegard Jacobsen dated May 6, 1917 (Ex. 587, Rec. p. 2478).

It has been clearly established that Hinsch's attack on the Herrmann message failed (1) in claiming that, since Gerdt's was unknown to Hilken (and Hinsch), its purpose was to identify Gerdt's; (2) in claiming that, since lemon juice was an outmoded form of secret writing in 1916 and 1917, Herrmann would not have used lemon juice in a message to Hilken in early 1917; (3) in claiming that the border when Gerdt's crossed it was being closely watched.

It has been clearly established on the contrary (1) that Gerdt's was well known to Hilken before he brought the Herrmann message; (2) that secret messages written in lemon juice were still being employed by German agents at the time the Herrmann message was drafted and Herrmann was expecting such messages when he left hurriedly for Cuba, en route to Mexico; (3) that Hinsch, himself, knew from personal experience that the border in April, 1917, was not being closely watched.

In the examination of the internal evidence we have found other examples of an effort by Hinsch to fabricate evidence in order to detract from the verity of the message. If the message as produced by Hilken had been concocted for the purpose of convincing the Commission by fabricated evidence that German agents were responsible for the destruction of Black Tom and Kingsland, is it not strange that no anachronisms have been discovered and that no departures from facts established in the record have been brought forward?

### **Attacks on the Herrmann Message**

#### *1. By Ahrendt*

The first attack on the Herrmann message came from Ahrendt.

We have already examined some of Ahrendt's affidavits, filed for the purpose of confirming Hinsch and destroying the confessions of Herrmann and Hilken, and we have found that Ahrendt's affidavits were false:

(a) In his attempt to confirm Hinsch's alibis, that is to say, Hinsch was so closely confined at Baltimore and New London, respectively, while engaged in the U-boat activity, that it was impossible for him to have been engaged in sabotage;

(b) In claiming that, after Hinsch arrived in Mexico, he did not hear from Hinsch and did not know in what form of activity he was engaged;

(c) In asserting that he never heard of any explosive tubes, incendiary pencils or glass tubes used by Hinsch or anybody else, or of the existence of any such devices, and that he was ignorant of any sabotage activities of Herrmann, Hilken or Hinsch.

After filing of the Herrmann message on July 1, 1931, and its identification by Hilken (Ex. 904(3) ), and its identification by Herrmann (Ex. 904 (4) ), filed on the same date, the German Agent, Dr. Tannenberg, secured from Ahrendt an affidavit made February 10th, 1932, and filed as German Annex 73 on August 15, 1932, the object and purpose of which was to show that no message written by Herrmann had been received by Hilken in April, 1917, and, therefore, that the message contained in the Blue Book Magazine for the month of January, 1917, which Hilken swore he received the latter part of April, 1917, was a forgery. This was the first attack.

In this affidavit (Ger. Ann. 73), Ahrendt relates that he met the German Agent, Dr Tannenberg, at the offices of the North German Lloyd in New York. The German Agent explained to him the supplemental petition for rehearing and showed him the affidavit of Paul G. L. Hilken filing the Blue Book message (Ex. 904(3) ) and the affidavit of Fred L. Herrmann verifying the Blue Book message (Ex. 904 (4) ).

According to his statement under oath, Ahrendt carefully examined these affidavits and also the photostatic copies of the message, and carefully noted what Hilken and Herrmann had said in their respective affidavits in regard to the January, 1917, Blue Book message. Ahrendt made comprehensive denials, under oath, of ever having seen a message in the Blue Book of January, 1917, or any other magazine; that he had ever heard of any such message or that he had ever received any message from Herrmann during his stay in Mexico; or that he had ever heard of any such message. He denied that he ever heard from Hilken that he had ever received this message. He also denied that he had any knowledge of statements made by Hilken and Herrmann with reference to raising the message by means of a hot iron.

He made oath that he stayed continuously in New London with Captain Hinsch from April 6, 1917, until May 25, 1917, when he left New London with Captain Hinsch en route to New Orleans, and that he arrived in Baltimore May 26th and left Baltimore May 27th.

Taken in connection with his other affidavits, which we have already examined, the object and purpose of Ahrendt's affidavit, as drafted by Dr. Tannenberg, was to show that, on account of the close relationship between himself, on the one side, and Hinsch and Hilken, on the other (which had been shown in other affidavits), Ahrendt would have been in a position to know whether there had been any written message from Herrmann to Hilken, and, though the statement is not directly made, the inference to be drawn from the affidavit (and its only purpose) was that, since he had never heard of such a written message, therefore, no such written message was ever received by Hilken. The mention of the fact that Ahrendt was continuously in New London on or about the time when Hilken alleged that the message was brought to him in Baltimore and that he did not see Hilken in New London during that time, was part of the circumstances upon which he and the German Agent relied to show that no written message had come from Mexico to Hilken.

It has been already shown, in another connection, that, when Hilken received the Herrmann message from Gerdts, he left Gerdts in his home in Roland Park, and on April 27, 1917, went to New London to have an interview with Hinsch in regard to the message. On April 28th Hinsch and Hilken left New London and went back through New York and thence to Baltimore. This is borne out by the entry in Hilken's diary for Saturday, April 28th, which reads as follows:

“ Saturday 28  
4 a m with Capt. H. Leave 11 a m  
train and Congressional for Baltimore.” (Ex. 583, Ann. D.)

As we have seen before, Captain Hinsch and Gerdts dined with Hilken in his Roland Park home on Sunday the 29th, and on Monday Gerdts says that Hinsch gave him \$1,000 and told him to go back to Mexico (Ex. 626 (a), Rec. p. 2773); but Hinsch and Hilken both went back to New York on that date, as shown by the diary entries for the 29th and 30th of April. Therefore, the statement in Ahrendt's affidavit (Ger. Ann. 73) that he had not seen Hilken in New London between April 6, 1917, and May 25, 1917, while evidently made for the purpose of proving that no written message was received by Hilken, failed dismally, and, taken in connection with Siegel's statements showing that there was a written message carried by Gerdts to Hilken, this affidavit convicts Ahrendt of fabrication, just as his famous postscript in his letter to Hilken did.

In Siegel's first statement, witnessed by the German Consul on the 16th of March, 1932, and filed on the 27th of May, 1932, Siegel stated that it was decided by himself and Herrmann to send Gerdts to Baltimore to obtain funds; that Gerdts was given an American magazine to take along; that the necessary communications were written cross-wise to the print in lemon juice on several pages of the magazine; that the information was written down partly in normal writing and partly in code; that, after the report had first been drawn up on a sheet of paper he dictated the same to Herrmann who wrote it in the American magazine; and that Gerdts had returned after about the middle of May and brought with him much less money than Herrmann expected (Ex. 908, Ann C).

After this statement was filed, it was no longer possible for the representatives of Germany to carry out their first line of attack and the efficiency of Ahrendt's affidavit was completely destroyed. It was no longer possible to claim that no written message had been sent by Herrmann to Hilken and, therefore, the tactics were changed.

It was then admitted that Herrmann had sent a written message to Hilken, but it was claimed that the Blue Book message was a forgery, and for this purpose there were filed on August 27, 1932, Hinsch's affidavit (Ger. Ann. 71, verified on June 28, 1932), and Siegel's second statement (Ger. Ann. 69, verified July 15, 1932).

## 2. *By Hinsch*

Siegel's first statement (Ex. 908) showing that a written message to Hilken had been put into Gerdts' hands and that he had been sent by Herrmann to Hoppenberg and Hilken, destroyed Ahrendt's attack on the message, and it then became necessary to change the line of attack. Therefore, Siegel's second statement (Ger. Ann. 69) and the affidavit of Hinsch (Ger. Ann. 71) were brought forward for that purpose. It was no longer possible to claim that there was no written message, and, therefore, in Hinsch's affidavit, it was admitted that a written message had been brought by Gerdts to Hilken but it was claimed that the Blue Book message was a forgery. To establish this proposition, it was claimed by Hinsch, first, that the message which Gerdts brought to Hilken consisted of one page, not four; second, that it contained an identification of

Gerdts, with an assurance that he could be trusted and a request for \$20,000 or \$25,000; and, third, that it contained a statement that Gerdts would report verbally about all other matters.

It was further claimed that Gerdts was unknown to both Hilken and to Hinsch and, therefore, needed identification. To substantiate the assertion that he was unknown to Hilken and to Hinsch, it was alleged that Hinsch and Hilken discussed whether they could trust Gerdts or not, but that since Gerdts stated to Hilken certain particulars in regard to the submarine enterprise known only to Herrmann, Hinsch was of opinion that Gerdts had come from Herrmann and was not, by any chance, an agent of the American Intelligence Service who had taken "the book" away from Herrmann's messenger at the border.

There are some minor allegations necessary to be examined:

(1) Gerdts reported being closely watched at the border and that he came a roundabout journey to Hilken's home.

(2) Hilken was disturbed about the possibility that Herrmann's message might be found in his possession and, therefore, Hilken and Hinsch determined to destroy it without delay.

(3) The message brought by Gerdts was written in invisible ink (which did not require heat for development) and not in lemon juice (which did require heat for development); and to substantiate this claim it was asserted that lemon juice was a primitive medium for writing secret messages, outmoded at the time the Herrmann message was composed, and not used at all in 1916 and 1917 for invisible writing, and that the unprinted sheet of paper which Hilken had removed from the book contained the secret message and had purple discolorations.

It was further claimed that the message was contained not in a magazine but was contained in a book with a stiff cover, and that it was written on one white page not on four printed pages.

Some of the attacks made by Hinsch depend merely upon the veracity of witnesses affirming or denying; for example, that it was written on a single white page, not on four printed pages.

As to these contentions, we do not make any progress by simply saying that we believe Hinsch, or by saying that Hinsch is a liar; neither does Hinsch's statement gain any weight by a mere recital of facts contradicting the message in the Blue Book.

Before proceeding to analyze the attacks made by Hinsch on the message, it is proper to study the message as described by Hinsch.

The message described by Hinsch conforms with the Blue Book message in two particulars, first, it was a request for money, and, second, it represented that the bearer would make a verbal report.

It differed from the Blue Book message in two particulars, first, it was short and written on one white page, whereas the Blue Book message was lengthy and written on four printed pages; and, second, the message as described by Hinsch called the name of the bearer, Raoul Gerdts, and assured Hilken the bearer could be trusted, whereas the Blue Book message did not call the name of the bearer and made no such assurance.

Surely, if Gerdts had been unknown to Hilken when he brought the Herrmann message to Baltimore, the insertion of his name and the assurance that he could be trusted with \$25,000 would not have been any inducement to Hilken to entrust him with so large a sum, and, as is admitted, Hilken only gave him \$1,000 and sent the balance by Hinsch.

It is interesting to note that Hinsch's account of Gerdts' verbal report conforms in almost every respect to the Herrmann message as contained in the Blue Book, to-wit,

- (1) Herrmann was short of money;
- (2) Herrmann could not obtain money from von Eckardt, the German Minister;
- (3) Von Eckardt distrusted Herrmann;
- (4) Herrmann had told von Eckardt of the "U-Deutschland" expedition and mentioned Hilken's and Hinsch's names to no effect;
- (5) Herrmann was in Sonora; (The message says "I expect to go north but he (Hinsch) can locate me thru Eckhardt".)
- (6) Hinsch refers to the fact that Herrmann wanted him to come down to Mexico to take command of an auxiliary cruiser. The message says:

"Am in close touch with major [Schwierz?] and influential Mexicans Can obtain old cruiser for 50000 West Coast."

- (7) Hinsch refers to Herrmann's request that he come down to Mexico. The message says:

"Tell Hinsch to come here."

Thus, nearly every statement which Hinsch claims to have gotten orally from Gerdt is actually contained in the Blue Book message.

In addition, Hinsch's statement confirms the record as to the authority which Herrmann had received more than a year before to set fire to the Tampico Oil Fields and the doubt which the German Minister had expressed to him when this story was repeated to him.

In order to analyze and study the attack made by Hinsch, it is necessary to make a careful study of the record to determine whether Hinsch's various attacks may be substantiated. We will endeavor to make this study under the following heads:

- (1) Was the border being closely watched when Gerdt came to Baltimore?
- (2) Was the Herrmann message destroyed?
- (3) Was the Herrmann message written in lemon juice or invisible ink?
- (4) Was Gerdt unknown to both Hilken and Hinsch when he brought the Herrmann message to Baltimore?
- (5) Was the message written in a magazine or a book with a stiff cover?

#### *Hinsch's Attack*

- (1) Was the Border Being Closely Watched When Gerdt came to Baltimore?

In his affidavit of June 28, 1932 (Ger. Ann. 71, filed Aug. 15, 1932), Hinsch stated as follows (p. 6):

"Gerdt also told us, in the course of the conversation, that he had been closely watched at the border and that Herrmann had told him that he should go out to Roland Park only when he felt sure he was not watched. As a matter of fact, he had come to Hilken's home only after a long, roundabout journey."

This language is practically repeated by the Umpire in the decision of December 3, 1932, where the Umpire said:

"\* \* \* the border was being watched for secret correspondence; the situation was so tense that Hilken was under actual surveillance and his home was being searched." (Decs. and Ops., p. 1022.) z

In making this statement the Umpire was justified, not only by the testimony of Hinsch but also by the argument of the German Agent (Washington Argument, November 23, 1932, p. 197), in which he represents that Gerdt was sent

z Note by the Secretariat, this volume, p. 118.

“across the border at a time when the border was most carefully watched”, almost the exact language attributed to Gerdts in Hinsch’s affidavit.

When Hinsch left Baltimore for Mexico on May 27, 1917, after the United States had entered the war, Ahrendt accompanied him to El Paso, Texas (Ger. Ex. CII, pp. 84, 85, filed July 2, 1930). Their movements after they got to El Paso are described by Ahrendt in his examination by Dr. Tannenberg as follows (id. p. 85):

“We left the train at El Paso, Texas, and I went across the border to see whether it was difficult or not to go across the border, and discovered that it was quite an easy feat to cross the border and came back, and Hinsch and I got into an automobile for a sight-seeing trip around El Paso. The guide asked whether we would like to see Mexico and we said, ‘Why, surely, if we could,’ and he drove us across the border, and I left Hinsch in Juarez.”

In the course of his examination the following ensued (id. p. 89):

“Q. How was it possible for you to cross the border?”

“A. Why, that is what Captain Hinsch commented on; that in the case of war that a country was so lax at its border. They had sight-seeing cars that were transporting people around El Paso, and anyone that expressed the desire could stay in this car and ride across the border and see Juarez. When you reached the international border there were some American officials there who looked in the car to see whether you had any munitions, or guns, or revolvers. They simply asked us; they didn’t lift a seat and look; a man said, ‘Have you any ammunition or firearms?’ And we said, ‘No’ He said, ‘Go ahead.’

“Q. Was it necessary to have a passport?”

“A. Not at all.

“Q. Did these officials examine any papers you had?”

“A. Not a thing.

“Q. Is it right that anybody who crossed the border in a sight-seeing bus could do that without any difficulty?”

“A. No difficulty at all at that time.”

Again (id. p. 91):

“Q. And when you crossed the international border, what kind of an examination was there by the American officials?”

“A. None at all; simply that they asked whether we had any ammunition or firearms in the car. We were asked for no papers, and it was a very easy affair.

“Q. Did the American officials ask you about your nationality?”

“A. No.”

On August 11, 1932 (Ger. Ann. 74, filed August 15, 1932), Ahrendt made another affidavit in behalf of Germany in which he introduced his Pullman stubs for his trip with Hinsch from New York to New Orleans en route to the border, from which it appears that Hinsch and Ahrendt left New London on Friday, May 25, 1917, and went from New Orleans to El Paso on May 29th. The affidavit proceeds (p. 3):

“There we got off the train. At El Paso, Hinsch and I crossed the border after we had found out that this could be accomplished without difficulty, as I have previously testified in my affidavit of April 11th, 1930.”

It will be recalled that, before Hinsch left the country, a presidential warrant for his arrest had been issued (Ord. Ex. 343, Rec. p. 4258).

On August 15, 1932 (translation filed August 27, 1932), the German Agent filed Hinsch’s affidavit of June 28, 1932 (Ger. Ann. 71). This affidavit as originally drafted by Dr. Tannenberg (Ger. Ann. 132) and as finally executed by Hinsch, contained the following language:

"Gerdts also told us, in the course of the conversation, *that he had been closely watched at the border* and that Herrmann had told him that he should go out to Roland Park only when he felt sure he was not watched." (Emphasis supplied.)

On the same day, August 15, 1932, that he filed Hinsch's affidavit, the German Agent filed Ahrendt's affidavit of August 11, 1932 (Ger. Ann. 74). In this latter affidavit, Ahrendt, after filing his Pullman receipts and showing that he and Hinsch had arrived at El Paso on May 29, 1917, repeated his statement in his former affidavit (Ger. Ex. CII) as follows:

"At El Paso, Hinsch and I crossed the border after we had found out that *this could be accomplished without difficulty, as I have previously testified* in my affidavit of April 11th, 1930." (Emphasis supplied.)

It thus appeared that Hinsch crossed the border going to Mexico about one month after Gerdts had already crossed the border carrying the message to Hilken in Baltimore and only a very short time after Gerdts had recrossed the border on his return to Mexico, and Hinsch had commented to Ahrendt on how lax the United States, a country at war, was in watching its border (Ger. Ex. CII, p. 89). Therefore, at the time when Hinsch made his affidavit of June 28, 1932, he could not have been unmindful of the ease with which he and Ahrendt had crossed the border on May 29, 1917, just about a month after Gerdts had gone to Baltimore.

Thus, on the same day that he filed Ahrendt's affidavit, the German Agent filed Hinsch's affidavit directly contradicting Ahrendt; and in the Washington argument in November, 1932, the German Agent used Hinsch's affidavit on this point without referring to the fact that he had already filed two affidavits of Ahrendt which directly contradicted Gerdts' statement as reported by Hinsch.

On October 17, 1933, Ahrendt testified again about his trip with Hinsch to El Paso (Ex. 975, Ann. C, pp. 103-105). He said that they had no difficulty at the border, and it was all right for you to carry anything in your pockets without interference from any guards; that there was no search made; that the only question asked was whether you had firearms, guns or ammunition; that he did not agree with the opinion of the Commission that the border was carefully watched.

Ahrendt in the same examination testified that not long after Hinsch left, he accompanied, in the early part of August, 1917, the lady who subsequently became Hinsch's wife to Laredo, Texas, and that she had no difficulty in getting across the border in a cab with her baggage (*id.* pp. 236-240). Ahrendt went across first and bought her a ticket and had no difficulty going or coming across the border (*id.* p. 239).

We know that Anton Dilger arrived in this country from Berlin on July 4, 1917 (Ex. 943), that he followed Hinsch to Mexico carrying secret ink which he had received from the German General Staff (Ger. Ann. 75).

Witzke crossed and recrossed the border at least twice in the summer of 1917 on missions for Jahnke (Ger. Ex. Q, p. 5).

Jahnke apparently had no difficulty in crossing the border into Mexico in May, 1917 (Ger. Ex. P, p. 4; Ger. Ex. Q, p. 4).

James J. Larkin, the well-known Irish labor agitator, in his affidavit of January 2, 1934, tells about a trip he made from New York to Mexico City in the latter part of August, 1917, to confer with Eckardt (Ex. 990, Ann. A. p. 17). That Larkin came from the United States to see von Eckardt in Mexico City in the summer of 1917 is confirmed by von Eckardt in his affidavit of April 16, 1934 (Ger. Ann. 95).

It would seem clear that the sole foundation for Hinsch's claim that the border

was being watched is found in Gerdt's affidavit (Ex. 626), where he said (Rec. p. 2772):

"I remember that when I arrived at Mr. Hilken's home and asked for him, a woman, probably thinking that I had some business of interest to Mr. Hilken, told me to leave the house immediately and come back in about a half hour because at that time special investigators were inspecting the house."

As we have already seen, Hilken denied that when Gerdt came to his houses, it was being watched; but, according to Hilken, Gerdt may have had in mind an incident, when some hoodlums in Roland Park had painted a sign, "To Hell with the Kaiser", on the concrete walk leading from the street to his house and Mrs. Hilken had complained to the police, and it was possible that when Gerdt arrived, a policeman may have been there (Ex. 976, Ann. E, p. 139).

In Ex. 921-M-3, filed June 1, 1932, there is a photostatic copy of a report dated November 1, 1917, written by R. M. Campbell, Captain, U. S. A., Military Attaché, from the city of Mexico to the Chief, Military Intelligence Section, War College Division, Washington, D.C. The report deals with the activities of a certain female messenger carrying secret messages in the soles of an extra pair of shoes carried by her, having a little compartment in the sole for the reception of the letters. In the course of the report he uses the following language (paragraph 6):

"The woman who was to have carried these letters has made frequent trips from here north, and there is strong evidence to believe that all these trips have been made for the purpose of carrying letters for the propaganda committee, or the German Legation. I am informed, and believe the information is trustworthy, that on none of these trips has she entered the United States, but that she has gone sometimes to Nuevo Laredo, sometimes to Piedras Negras, and sometimes to Matamoros. *This reveals the fact that German agents in the three Mexican towns have means of getting documents across the frontier without the knowledge of our authorities.*" (Emphasis supplied.)

Thus as late as November 1, 1917, the Military Attaché reports to the War Department that German agents in the three Mexican border towns had the means of getting their documents across the frontier without the knowledge of the authorities of the United States.

(2) Was the Herrmann Message Destroyed?

It is claimed by Hinsch that Hilken was disturbed about the possibility that the Herrmann message might be found in his possession and, therefore, that he and Hilken determined to destroy the message without delay. If the message simply consisted of an identification of Gerdt's, with a request for funds and no more, such a message was not dangerous and would not have disturbed Hilken, and there would have been no necessity for its destruction. Indeed, such a message need not have been secret or written in invisible ink.

(3) Was the Herrmann Message Written in Lemon Juice or Invisible Ink?

In order to prove that the message contained in the Blue Book was not a genuine instrument, Hinsch claimed that the message which Gerdt brought to Hilken in Baltimore

"had been written with a secret ink which could not be developed by heat and, consequently, not by means of a hot iron" (Ger. Ann. 71, p. 6.);

and he further claimed that

"Invisible writing fluids which could be made visible by heat would not have been used at all in the years 1916/1917, for such important communications, since it would have been too easy to make messages produced with such fluids visible" (id. p. 6).

It was claimed that since letters written in lemon juice could be developed by heat, this method was primitive, and offered no guaranty of secrecy; that Hilken and Herrmann, upon returning from Germany had brought secret inks in powdered form; and therefore Herrmann could never have counted on Hilken, of all people, to accept such a message (*id.* pp. 6, 7).

He claimed that the unprinted paper upon which Hilken developed the message showed that the secret writing had been made visible in the way typical of developing invisible inks, and that the whole sheet had slightly purple discolorations typical of the secret ink (*id.* p. 7).

In his affidavit of January 11, 1929, Gerdtz recited that he was ordered by Herrmann to go from Mexico to New York to collect \$25,000, and that the order and instructions given by Herrmann were written in lemon juice on a page in a book of poetry, and stated that in the same book of poetry there was written another order, also written in lemon juice (Ex. 626(A), Rec. pp. 2772, 2773).

This affidavit was executed nearly two years before Hilken claims to have rediscovered the Blue Book in his attic (Christmas 1930).

At the time Gerdtz executed the affidavit (January 11, 1929), the only references in the record to his carrying a message from Herrmann are found in Layton's despatch of August 1, 1917, where Gerdtz is reported as saying that Herrmann "sent me to New York by train with some letters, which I delivered" (Ex. 583, Ann. G, Rec. p. 2347); and in Guyant's report of August 24, 1917, where Gerdtz is reported as saying that "he was ordered by Herrmann to proceed to New York by rail with a verbal order for \$25,000.00 to be received from one Hoppenberg" (*id.* Ann. H, Rec. p. 2351), and there was no controversy as to invisible messages, whether in lemon juice or not. Gerdtz had no reason or inducement to tell a falsehood as to the medium used by Herrmann for transcribing his message. There is, therefore, not the slightest reason to doubt the truth of Gerdtz' statement, made before any controversy arose, that lemon juice was the medium used by Herrmann for transcribing his message.

In his second affidavit of July 17, 1933 (Ex. 979, Ann. A), Gerdtz was asked how he knew that the Herrmann message was written in lemon juice and he stated:

"Because I bought the lemon myself and brought the lemon to Herrmann to the Hotel Paglach, Avenida Juarez, Mexico City, where we were living and I saw him writing the message myself."

He also testified that he was with Herrmann when he was writing the message.

The fact that the message which was written by Herrmann and transported by Gerdtz to Hilken in Baltimore was written in lemon juice and not in the so-called invisible ink, is substantiated by the affidavit of Mrs. Hattie Shannon. Mrs. Shannon wrote to the Umpire on April 9, 1934, offering to testify. Her letter was referred to each Agent, and as a result her affidavit was secured (See motion of American Agent, August 16, 1935, p. 5). In her affidavit she testified as follows:

She was a passenger on a steamship sailing from Buenos Aires July 14, 1932. The steamer was boarded at Rio de Janeiro by Gerdtz on July 30, 1932, and they were fellow passengers for three weeks and in each other's company a great deal (Ex. 999-A, p. 1).

During their conversations Gerdtz informed her of his association with a number of German spies in the United States, one of whom was Fred Herrmann. He told Mrs. Shannon about a Blue Book Magazine of 1917 which concerned the Black Tom blast, and which book he said involved both Herrmann and himself. The affidavit continues:

"He said the magazine contained a message written in lemon juice and then explained to me that to develop lemon juice writing, a medium hot iron must be used in order to prevent the paper from scorching. He went into a great deal of detail about this magazine but as I was not interested, I paid little attention to what he said. He also told me that he did not know the contents of the messages he carried, that he simply followed the orders of those higher up" (id. p. 2).

Gerdtz told Mrs. Shannon an incident about the inoculation of horses being loaded for shipment to Europe, and that a short time after they left port they all died (id. p. 2).

In Exhibit 999, Ann. B, Mrs. Shannon relates that shortly prior to Gerdtz's leaving the ship at Puerto Colombia, he promised to write her a letter in the manner similar to the one written in the Blue Book and gave her instructions how to develop it. He sent such a letter, which was written in the ordinary form, but by application of heat another letter written with lemon juice was made visible, and she filed with her affidavit a letter, dated September 8, 1932, containing both the visible and invisible letter.

At the time when Mrs. Shannon met Gerdtz, to-wit, July 30, 1932, Hinsch's affidavit attacking the Herrmann message and claiming that the original message was written in invisible ink had not been filed. Indeed, when Gerdtz wrote his letter to Mrs. Shannon September 8, 1932, and superimposed on it a letter in lemon juice, he could not have known anything about Hinsch's affidavit, which was filed on August 15, 1932.

As we have already seen, Siegel, in his first statement (Ex. 908, Ann. C), written in his own handwriting, unequivocally testified, on March 16, 1932, that the Herrmann message was written in lemon juice.

As we know, Siegel's second statement, verified July 15, 1932, was filed on August 15, 1932, the same date that Hinsch's affidavit attacking the message was filed.

In his second statement (Ger. Ann. 69, p. 4) Siegel testified as follows:

"That the message is supposed to have been written by Herrmann with lemon juice, he himself told me. This also seemed to me believable since I recalled a fluid which was not ink. It is, however, quite possible that Herrmann used a secret ink. I myself received, later on, from Hinsch whose acquaintance I made in Mexico, a powder for making secret ink for my own communications, and the developer belonging thereto, which made the secret writing appear in a blue color while the paper itself became slightly discolored. I still recall, for instance, that I could hardly make out one message which I myself received, because the writing, in developing it in the fluid, had run so badly. Furthermore, when Herrmann and Hinsch jointly sent secret messages from Mexico they used secret ink of like appearance."

In this instance, as in other details of the message, referred to in his second statement, Siegel was unwilling to denominate his first statement as false, but related matters outside of the message and not relevant to the point at issue for the apparent purpose of convincing the Commission that the message might not have been written in lemon juice.

In order to confirm Hinsch's claim that the Herrmann message was not written in lemon juice but in invisible ink, the German Agent again brought forward Woehst as one of Hinsch's principal backers.

In Woehst's affidavit of July 8, 1932 (Ger. Ann. 76, filed August 15, 1932), Woehst described the method of developing secret inks and the appearance of the paper after the secret message had been developed. He then related that when he, Woehst, left the United States, in the middle of February, 1917, Herrmann took him to the boat and he gave Herrmann his entire supply of powder for making secret ink. Then he states (p. 7):

“As I mentioned in my deposition of July 24, 1930, Herrmann did not understand very well, in the time during which we were together, how to write with invisible ink. Since the writing becomes invisible as soon as the ink dries, a certain skill is required for writing the lines evenly and leaving proper space between the lines. I cannot say from personal knowledge whether and when Herrmann acquired sufficient skill in that respect.”

In his affidavit of July 24, 1930 (Ger. Ex. CXXIV, filed August 18, 1930), referred to by Woehst in the quotation above, Woehst recited his and Herrmann's joint activities after, as he claimed, he could not get a visa for a passport to Italy. He stated that he and Herrmann, always working together, were engaged in investigating the movement of munitions over railroads and terminals to transatlantic steamers (id. p. 41). As he had been specially trained in the Intelligence Service, he made the reports to the Admiralty Staff, written with invisible ink, and, since Herrmann did not then know how to use the ink, the reports were written by him (Woehst) *alone* (id. p. 46). Here again, was an evident attempt on the part of Woehst to bolster one of Hinsch's false affidavits.

The fact that German secret service agents in the United States were using lemon juice for secret writing is clearly established by the report of A. G. Adams of the Department of Justice, under date of February 26, 1917 (Ex. 583, Ann. N, Rec. pp. 2367 *et seq.*). This report shows that the agent, on February 24, 1917, went to 600 West 115th Street, the apartment which had been occupied by Hauten (Woehst) and March (Herrmann). The agent found there a letter reading in part as follows:

“Dear Hauten:

“If letters come for me from Perth Amboy, open them and heat them. If there is any news, you can forward it to the right party.

\* \* \* \* \*

“(Signed) FM”

It is clearly established from the record that this letter was written by Herrmann to Hauten (Ex. 976, Ann. E, pp. 96-98; Ex. 986, Ann. A, pp. 95 *et seq.*).

The letter also shows that Herrmann was expecting from Perth Amboy letters written in an invisible fluid that required heat to develop, as he directs Woehst to “open them and *heat* them.” The only purpose of heating these letters, of course, would be to develop the invisible writing, and this letter has the effect of discrediting Woehst, not only in his attempt to confirm Hinsch's statement with regard to invisible ink, but also shows clearly that Woehst was thoroughly acquainted with the sabotage activities of Herrmann.

(4) Was Gerdts Unknown to Both Hilken and Hinsch When he Brought the Herrmann Message to Baltimore?

The main theme towards which Hinsch's affidavit was directed, namely, that Gerdts was not known to Hilken or to Hinsch, and, therefore the sole purpose of the message was to identify Gerdts to Hilken has already, in another connection, been proven to be false. (See, *supra* this Opinion, p. 118).<sup>aa</sup> It will be recalled that the German Agent, in German Annex 132, set out the original draft of Hinsch's affidavit; and in that original draft, it was asserted that, up until the meeting in Hilken's home on Sunday, April 29, 1917, Gerdts was “unknown to me [Hinsch]”. It will likewise be recalled that this affidavit was prepared by the German Agent in America from notes which he made in Berlin, and the German Agent's draft was forwarded to Berlin, for execution. Before the affidavit was executed, the word “me” was changed to “us”, so that the executed form of the affidavit (Ger. Ann. 71) contained the statement that

<sup>aa</sup> Note by the Secretariat, this volume, p. 322.

Gerdts was "unknown to us", that is, to both Hilken and Hinsch, up until Sunday, April 29, 1917. To the original draft of the affidavit, as found in German Annex 132, was added also the statement that, since "Hilken reported that Gerdts had stated to him certain particulars with regard to the submarine enterprise, which only Herrmann could have known, I [Hinsch] was then of the opinion that Gerdts had really come from Herrmann and was not, by any chance, an agent of the American Intelligence Service who had taken this book away from a messenger of Herrmann at the border" (Ger. Ann. 71, p. 4).

This false statement that Hilken did not know Gerdts until the meeting in Hilken's home on Sunday, April 29, 1917, was repeated by Hinsch in German Annex 72, p. 3, where Hinsch says:

"Hilken and I saw Raoul Gerdts for the first time at the end of April, 1917, when he brought the message from Herrmann."

As a matter of fact, Hilken, two days before the meeting in his home, had invited Gerdts to stay at his home, had given him \$175, and left him there as a guest while Hilken went to New London to consult Hinsch, thus indicating clearly that this was not the first time that Hilken had seen Gerdts. Surely Hilken, on Friday, would not have been paying money to Gerdts and leaving him as a guest in his home, and, on Sunday, been discussing with Hinsch whether Gerdts, by any chance, was an agent of the American Intelligence Service who had taken the "book" away from a messenger of Herrmann at the border.

An examination of the Hilken-Lowenstein-Hoppenberg correspondence discloses the fact that about four months preceding the meeting in Hilken's home Hilken sent Lowenstein a letter, introducing Gerdts and recommending him for a position. In addition, Gerdts was so well known to Hilken that, in his diary for April 29, 1917, Hilken makes an entry that was "dining with 'cousin Raoul' and Hinsch". (See, *supra*, this Opinion, p. 121.) <sup>bb</sup>

Hinsch claimed that on account of the fact that he and Hilken did not know Gerdts before the meeting in Hilken's home, they had a discussion as to whether Gerdts could be trusted with a large sum of money such as \$25,000. If this discussion took place, it was not because Hilken did *not* know Gerdts, but probably because he *did* know him, for, as we have seen in another connection, Hilken did not have a high opinion of Gerdts (Ex. 976, Ann. E, pp. 103, 104).

Hinsch's added touch, explaining why he became convinced that Gerdts was not an agent of the American Intelligence Service who had taken the "book" from a messenger of Herrmann at the border, was as false as his claim that Hilken did not know Gerdts.

Thus, we have another example, showing that Hinsch was only too willing to accommodate his statement to the needed proof, and his spurious affidavit can no longer be used to attack the Herrmann message.

(5) Was the message written in a magazine or a book with a stiff cover?

It was claimed by Hinsch that on the Sunday when he went to visit Hilken in his home in Roland Park, about three weeks before he started on his trip to Mexico, Hilken showed him a book from which the unprinted white front or back fly leaf had been torn or cut out and that "it was a book with a stiff cover" which was of the ordinary size of a novel (Ger. Ann. 71, p. 2).

The source of this claim is probably in Gerdts' first affidavit where he stated that Herrmann gave him an order and instructions which were "written in lemon juice on a page in a book of poetry" and that "in the same book of poetry there was another order also written in lemon juice" (Ex. 626 (a), verified January 11, 1929, Rec. p. 2772).

<sup>bb</sup> Note by the Secretariat, this volume, p. 324.

It will be observed that Gerdts did not say that "the book of poetry" had a stiff cover.

In his second affidavit of October 28, 1931 (Ex. 979, Ann. D-1), Gerdts was shown four photographic copies from the Blue Book magazine and identified the same as the actual message which he carried.

In his third affidavit of July 17, 1933, he was shown photostats of four pages of the Blue Book magazine of 1917 containing the Herrmann message and he again recognized these four pages as a copy of the message which he carried to Baltimore and he stated that the book in which the message was written was similar to a January 1917 Blue Book attached to his affidavit (Ex. 979, Ann. A).

The fact that when Gerdts arrived in New York he was carrying a magazine containing a message for Hoppenberg, is clearly established in the affidavit of Johan A. van Emmerik, dated October 28, 1932 (Ex. 948).

Van Emmerik was a naturalized American citizen, born in Holland, and came to the United States in May, 1916. Before coming to the United States he had spent a number of years in the Far East obtaining experience in all branches of the rubber industry. On arriving in New York he became intimate with Ed Weber, manager in New York for Weber, Schaer & Co. and he rented desk room in Weber's office in a building on Water Street, which had an entrance on Pearl Street.

Together with Weber, van Emmerik enjoyed considerable patronage from the Eastern Forwarding Company in supplying rubber for the cargoes of the submarine merchantmen, and became friendly with Hoppenberg, the manager in New York for the Eastern Forwarding Company. He also became friendly not only with Hoppenberg but with some of his friends among whom were Herrmann and Raoul (Gerdts).

In February, 1917, Hoppenberg abandoned his office on Battery Place and shared Weber's office in the aforesaid building.

The day after Hoppenberg's death Raoul (Gerdts) arrived in the office and Gerdts and van Emmerik had a meal together at Reisenwebers, a famous German restaurant. Gerdts was wearing a raincoat and carried a magazine which he said contained a message to Hoppenberg and also stated that he had to find Hilken. At the restaurant Gerdts kept the magazine beside him at the table and a waiter when placing the food on the table picked up the magazine by the cover and tore it. At this Weber flew into a rage and insisted on checking the magazine but Gerdts protested against it.

This experience was indelibly impressed on van Emmerik's memory. Gerdts left immediately for Baltimore.

In the oral argument of 1932 the German Agent seems to ridicule the idea that Gerdts was so careless "as to be carrying this message so that everybody might see it" and he says:

"Certainly if this message were authentic Herrmann would have cautioned Gerdts very much indeed. He would have instructed him to be as careful as possible so that nobody would see that he was carrying a secret message." (Oral Argument, 1932, p. 199.)

It was not unnatural, in the first place, for Gerdts to take the magazine to Hoppenberg for it was to Hoppenberg that he was to deliver the magazine.

By his argument the German Agent seems to think that the magazine was transparent and would advertise the fact that it contained a secret message which was supposed to be invisible!

### 3. *Attack by Osborn and Tannenberg Acting as Investigators or Sleuths*

The third attack on the Herrmann message was by Osborn and Tannenberg cooperating as investigators or sleuths. Reduced to its last analysis, they charge that the Blue Book magazine of January, 1917, in which Herrmann wrote the message, had been purchased in New York City in February, March or April, 1931, from Abraham's Book Store, and, therefore, the message written therein was not the actual message written by Herrmann in 1917 and carried by Gerdt to Baltimore in April, 1917, but that the message produced by Hilken had been forged by Herrmann in 1931.

According to Osborn, a short time previous to October 28, 1931, he was engaged by Dr. Tannenberg "to examine the Herrmann message in the claim against Germany" (Ex. R with Osborn's Exam. July 9, 1937).

On October 28, 1931, he made a "pilgrimage" to Abraham's Book Store "to see if he could obtain a copy of the Blue Book Magazine of January, 1917" (Ex. R with Osborn's Exam. July 9, 1937).

On the same date, to-wit, October 28, 1931, Osborn wrote Dr. Tannenberg two letters, the first evidently before his visit to the book store. In this first letter, he related the receipt of bound copies of the Blue Book Magazine including the January, 1917, number, secured by Dr. Tannenberg from the Library of Congress. He expressed surprise at their good condition, and he stated some of the problems before him as an expert. He expressed his intention on that date:

"to visit the old magazine places [1] here and will try to find a series of magazines covering perhaps four months time on paper similar to that used by the Blue Book Magazine Company."

He stated that it would be desirable to get a number of magazines printed on paper of the same kind and perhaps to file a page from each showing the gradual change in the magazine covering a period of six months. Nowhere in this letter does he indicate any opinion on the problems before him as an expert (Ex. P with Osborn's Exam. July 9, 1937).

After his visit to Abraham's Book Store, Osborn on the same date, to-wit, October 28, 1931, wrote a second letter to Dr. Tannenberg. In that letter, after relating his visit to the book store, and "an interesting and exciting pilgrimage" which he had had, he said:

"I am putting the matter into the form of a deposition, thinking that perhaps you will want to present it but I am doing this partly while the matter is fresh in my mind and not suggesting that this is the final form. The proposed deposition which I enclose will give the information regarding my morning experience.

"You will see from the proposed deposition enclosed herewith that in the first instance *no particular magazine was sought for, but merely 'an old magazine'* but the second inquiry asked for an additional copy or specifically for a copy of the January, 1917, Blue Book Magazine.

"My recollection is that your conference regarding the demand for \$750,000 was either in March or April, or about that time, [2] and *I have no doubt that the January, 1917, Blue Book in evidence in this case was bought at this store last Spring.*

<sup>1</sup> Instead of visiting "old magazine places", on October 28, 1931, Osborn in fact only made a "pilgrimage" to Abraham's Book Store and satisfied himself that the Blue Book containing the message was purchased there in the spring of 1931. His visit to Abraham's was undoubtedly due to the fact that Osborn on October 28, 1931, had been advised by Stein that the claimants had purchased a copy of the January, 1917, Blue Book at Abraham's on April 29, 1931.

<sup>2</sup> As to the "conference regarding the demand for \$750,000", when this letter was read by Dr. Paulig in his examination of Osborn, p. 299, the figure was reduced from \$750,000 to \$7,500, and in his question based upon this letter, Dr. Paulig

"The fact that a second copy was asked for would indicate either that those who purchased the evidence of this claim were seeking a copy of the magazine, or that another attempt to manufacture the document was necessary or thought advisable, and then the best of the two could be used.

"Of course, it would be impossible I suppose to say who might have gone to this store to secure this copy of the magazine, but you may be able to guess who it was, but I suppose *it would be difficult to arrange* so that Mr. Meyers could see whether or not he could recognize the man.

\* \* \* \* \*

"I obtained the December, 1916 copy of this magazine and also the February, 1917, copy." (Ex. Q with Osborn's Exam. July 9, 1937.) (Emphasis supplied.)

From the above letter it will clearly appear that Osborn, since the dictation of his first letter and after his visit to Abraham's Book Store, had already come to a definite conclusion on the question as to which he was employed as an expert. That this is so is further confirmed by the entry in his diary (Ex. U with Osborn's Exam. July 9, 1937) for October 28, 1931, which reads as follows:

"In the morning went to old book dealers for copy of January, 1917 Blue Book in Explosion case. Learned that copy used in this case was probably procured at Abraham's. Wrote Dr. Tannenberg & prepared affidavit for Mr. Meyers, employed at Abraham's."

The proposed affidavit which was prepared by Osborn on October 28, 1931, for Meyers to execute reads as follows (Ex. S with Osborn's Exam. July 9, 1937):

"H. MEYERS, being duly sworn, deposes and says:

"My name is H. Meyers, and I am connected with Abraham's Book Store at 141 Fourth Avenue, New York City.

"About six or seven months ago, approximately March or April of this year, a man called at this store and I waited upon him, and *he asked for 'old magazines' of eleven or twelve years of age, without specifying any particular magazine or exact date.* I got out some of the old magazines, including a bundle of copies of the Blue Book, and he said, 'I will take this number', which was that of the January, 1917, Blue Book, and paid for it and took it away with him.

"About a week afterwards a telephone inquiry came to the store, asking whether we had another copy of the January, 1917, Blue Book Magazine, and I informed the inquirer that we had. We keep a list of the magazines we have on hand on separate cards, and our card originally indicated that we had one magazine of December, two of January, and some of the following months. In response to this telephone inquiry someone came and obtained the second copy of the January, 1917, Blue Book Magazine, which was delivered in response to this telephone inquiry.

"Mr. Meyers further deposes and says that this Abraham's Book Store advertises that they have on hand copies of old magazines, and this fact is advertised on the windows in the front of the store.

"*Mr. Meyers further deposes and says that he does not know the purpose of this deposition or what its bearing may be.*

"Mr. Meyers further deposes and says that he does not think that he could recognize the man who first came for the magazine but that he might do so, his recollection being that the man wore a topcoat and this recollection had some connection with the date at which time the first magazine was obtained." (Emphasis supplied.)

At the time of his examination, Osborn also produced a paper prepared by himself entitled "Statement of Mr. Albert S. Osborn". In this paper Osborn

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again uses the language "\$7,500" instead of "\$750,000" and he asked Mr. Osborn: "Have you any recollection of that? \* \* \* A. I do not know what that refers to at all. I do not recollect anything about it." See Osborn Exam., July 9, 1937, pp. 292, 299, 300.

gives his version of his trip to Abraham's Book Store in the following language (Ex. R with Exam. of Osborn July 9, 1937):

" STATEMENT OF MR. ALBERT S. OSBORN

"On October 28th, 1931, shortly after I had been engaged to examine the Herrmann message in the claim against Germany, I went to Abraham's Book Store at 141 Fourth Avenue, New York City, to see if I could obtain a copy of the Blue Book Magazine of January, 1917. I met there Mr. H. Meyers, a clerk, and, according to my best recollection, he said:

" ' About six or seven months ago, approximately March or April of this year, a man called at this store and I waited upon him, and he asked for " old magazines " of eleven or twelve years of age, without specifying any particular magazine or exact date. I got out some of the old magazines, including a bundle of copies of the Blue Book Magazine, and he said, " I will take this number ", which was that of January, 1917, Blue Book Magazine. He paid for it and took it away with him.

" ' About a week afterwards', Mr. Meyers continued, ' a telephone inquiry came to the store, asking whether we had another copy of the January, 1917, Blue Book Magazine, and I informed the inquirer that we had. We keep a list of the magazines we have on hand on separate cards, and our card originally indicated that we had one magazine of December, two of January, and some of the following months. In response to this telephone inquiry someone came and obtained the second copy of the January, 1917, Blue Book Magazine, which was delivered in response to this telephone inquiry.'

" Mr. Meyers informed me that he thought it would be impossible for him to recognize the man who first came for the magazine, but that he might be able to do so. " *On the same day of this interview I made a written memorandum regarding this interview, and it is from that memorandum that I am now making this statement.*"<sup>1</sup> (Emphasis supplied.)

A comparison of these papers (Osborn's second letter of October 28, 1931, his draft of Meyers' affidavit, and the " Statement of Mr. Albert S. Osborn ") discloses the fact that H. Meyers, the " clerk " interviewed by Osborn and from whom he bought two magazines, made a statement to Osborn of the circumstances of selling two copies of the Blue Book Magazine of January, 1917.

In the " Statement of Mr. Albert S. Osborn " (Ex. R), Meyers is quoted as follows:

" About six or seven months ago, approximately March or April of this year, a man called at this store and I waited upon him, and he asked for ' old magazines ' of eleven or twelve years of age, without specifying any particular magazine or exact date."

This language is copied verbatim in the proposed deposition, and, in Osborn's second letter of October 28th, this same point is emphasized by the following language:

" You will see from the proposed deposition enclosed herewith that in the first instance no particular magazine was sought for, but merely an ' old magazine ' \* \* \* ." (Ex. Q with Osborn's Exam. July 9, 1937.)

There can, therefore, be no mistake as to what Meyers told Osborn about the sale of the first Blue Book magazine, namely, that the prospective purchaser " asked for ' old magazines ' of eleven or twelve years of age, without specifying any particular magazine or exact date ".

There is no controversy that the Herrmann message was delivered to Hilken late in April, 1917. Would a prospective purchaser in 1931 have in mind forging a 1917 message in requesting a magazine of eleven or twelve years ago? If

<sup>1</sup> This contemporaneous memorandum was never produced by Osborn.

he had purchased a magazine of "eleven years of age", he would have gotten a magazine published in 1920; and if he had purchased a magazine of "twelve years of age", he would have gotten a magazine published in 1919. Obviously no magazine of this character would have fitted his purpose.

On October 29, 1931, Osborn wrote another letter to Dr. Tannenberg in which he used the following language:

"If you think it is advisable to get an affidavit from Mr. Meyers of Abraham's Book Store, this perhaps could be done on Saturday. *I have an idea that Mr. Meyers will not hesitate to sign an affidavit, with perhaps a small compensation, \$10 or possibly \$25.* Nothing was said about this in any way the other day, but of course he must have inferred that the magazine had been obtained for some purpose that was being investigated.

"It seemed to me that the affidavit might be obtained *without his knowing what it was for*, not that the matter is concealed from him, but that this would show that he was entirely non-partisan in the matter.

"*I think it is absolutely certain that this is where the magazine was obtained that was used in this case \* \* \**" (Correspondence filed by Osborn Sept. 16, 1937.) (Emphasis supplied.)

Under date of November 6, 1931, H. Meyers executed an affidavit, prepared by Dr. Tannenberg, purporting to give Meyers' account of the interview with the prospective purchaser. In the affidavit as prepared by Tannenberg and as executed by Meyers, the corresponding paragraph reads as follows:

"Several months ago, according to my best recollection, approximately in *February, March or April* of this year, a man called at this store and Mr. Abraham, Jr. the owner's son, waited upon him. I was present when this man came in. The man asked for a *Blue Book Magazine of the year 1917 without specifying any particular monthly issue of that year.* We keep our old magazines dating back many years in the back room of our store. So Mr. Abraham, Jr. asked me to get a copy of the Blue Book Magazine from the year 1917 from the back room." (Ger. Ann. 55, Ex. (a.)) (Emphasis supplied.)

It will be observed that there are several differences between the affidavit as prepared by Osborn and the affidavit as prepared by Dr. Tannenberg.

In the Osborn draft, Meyers is represented as saying: "I waited upon him". In Tannenberg's draft, he is represented as saying: "Mr. Abraham, Jr. the owner's son, waited upon him".

In Osborn's draft, the statement was that the purchaser *asked for old magazines of eleven or twelve years of age without specifying any particular magazine or date.* In Dr. Tannenberg's draft, the statement is that he "asked for a Blue Book Magazine of the year 1917 without specifying any particular monthly issue of that year".

In the second letter of October 28, 1931, and in the "Statement of Mr. Albert S. Osborn" and in the affidavit prepared by Osborn for Meyers to execute, the time of the visit of the purchaser was "about *six or seven months ago*, approximately March or April of this year". In the affidavit as prepared by Dr. Tannenberg, the time of his visit is stated to be "*several months ago*, according to my best, recollection, approximately in *February, March or April* of this year".

Here we have another example of changing an affidavit to meet the needed proof. It will be recalled that when Hinsch's affidavit, attacking the Herrmann message, was first prepared, it was stated therein that Gerdts was unknown to "me" (Ger. Ann. 132); but, when it was finally executed, it was changed to meet the needed proof so as to read unknown to "us" (Ger. Ann. 71).

Manifestly the affidavit of Meyers, as originally prepared by Osborn, would not have met the needed proof, but would have been disproof of the very fact which the German Agent was trying to establish.

It is also a remarkable fact that the "Statement of Mr. Albert S. Osborn" (Ex. R July 9, 1937) has on its face changes and notations in the handwriting of Dr. Tannenbergl.<sup>1</sup> One of the additions written by Dr. Tannenbergl is that immediately before the word "March", the word "February" is inserted in pencil so as to make the same read "approximately *February*, March or April of this year".

If Osborn was telling the truth in his "Statement", in his draft of Meyers' affidavit, and in his second letter of October 28, 1931, Meyers' statement of the facts relating to the sale and purchase of the Blue Book magazine in February, March or April, 1931, would be of no use in this case to show that the purchaser intended to forge in the magazine requested a message purporting to have been written about the middle of April, 1917.

On the 22nd of August, 1932, the German Agent executed an affidavit entitled "Statement of the Agent of Germany", giving an account of the activities of himself and Osborn in securing the Blue Book magazines and the information from Abraham's Book Store through the "clerk", Mr. Meyers (Ger. Ann. 55). In this statement he related an unsuccessful attempt to get a copy of the Blue Book magazine and other magazine copies requested by Osborn for purposes of test and comparison; he endeavored to get such magazines while in New York but was not successful.

After his return to Washington, Osborn advised the German Agent that he, himself, would try to obtain a January, 1917, copy of the Blue Book magazine which he thought might be obtained more easily in New York than in Washington. The German Agent's statement then proceeds as follows:

"On the occasion of my next stay in New York, at the beginning of November, 1931, Mr. Osborn *told* me that he had inquired of the news dealer in the building where one could obtain old numbers of magazines; that the news dealer had given him the name of Abraham's Book Store; that he had looked up the address of this store which he had found was Abraham's Book Store at 141 Fourth Avenue, New York City, and had gone to that store, on October 28, 1931, to see if he could obtain there a copy of the BLUE BOOK MAGAZINE of January, 1917. Mr. Osborn further *told* me that in that store he had met a clerk whom he had asked whether they had a January, 1917, copy of the BLUE BOOK MAGAZINE; that the clerk had gone to look and on his return had told him that they did not have a January, 1917, copy but did have a December, 1916, and a February, 1917, copy of the BLUE BOOK MAGAZINE and that he recalled that several months ago they had sold the only two copies of the January, 1917, issue of the BLUE BOOK MAGAZINE they had had at their store at that time; and that in the course of the ensuing conversation the clerk, whose name he later learned was Meyers, had told him, in substance:

"That several months ago, approximately February, March or April of last year, a man had called at their store and asked for *an old magazine or a BLUE BOOK MAGAZINE of 1917*, (Mr. Osborn was not quite certain whether he had understood the clerk correctly), without specifying any exact date; that he had gotten out a bundle of copies of the BLUE BOOK MAGAZINE of 1917; that he had sold to the man, upon his request, a copy of the January, 1917, BLUE BOOK MAGAZINE and that the man had paid for it and taken it away with him." (Ger. Ann. 55, pp. 1, 2.) (Emphasis supplied.)

A comparison of this statement with the record as we now have it will show certain remarkable discrepancies from the facts.

First, according to the German Agent's statement, Osborn made to the German Agent a *verbal* report of Meyers' dealings with the prospective purchaser. The German Agent failed to mention the fact that Osborn in October had made

<sup>1</sup> See Dr. Paulig's question to Osborn, Exam. July 9, 1937, pp. 295, 296.

three written records, identical in language, of Meyers' statement and sent them to him in a letter confirming and emphasizing these statements.

Second, the German Agent represents that Meyers' statement as given by Osborn was as follows:

"That *several months* ago, approximately *February*, March or April of last year, a man had called at their store and asked for *an old magazine or a BLUE BOOK MAGAZINE of 1917*, (*Mr. Osborn was not quite certain whether he had understood the clerk correctly*), without specifying any exact date; \* \* \*." (Emphasis supplied.)

whereas, as will clearly appear from Osborn's second letter of October 28th, and from Osborn's statement and Osborn's proposed draft of the affidavit for Meyers to sign, Meyers' statement was as follows:

"About *six or seven months* ago, approximately March or April of this year, a man called at this store and I waited upon him, and *he asked for 'old magazines' of eleven or twelve years of age, without specifying any particular magazine or exact date.*" (Emphasis supplied.)

Third, in the letters and draft of the proposed affidavit and in the statement of Osborn, there was no intimation or suggestion that the writer was uncertain as to whether he understood Meyers, but the statement of Meyers, repeated three times and emphasized in the letter sending the draft of the proposed affidavit, was definite and certain; whereas in German Annex 55 the statement is made that "Mr. Osborn was not quite certain whether he had understood the clerk correctly".

When the letters of October 28, 1931, and the "Statement of Mr. Albert S. Osborn" were introduced by the present German Agent on July 9, 1937, with Osborn on the stand (Osborn's Exam. July 9, 1937, pp. 292-300), no explanations were offered by Osborn of these discrepancies and no questions were asked in regard thereto.

There are other statements in German Annex 55 which are worthy of notice. On page 2 we find the following:

"On November 5, 1931, I went to Abraham's Book Store \* \* \* and asked for Mr. Meyers. I met Mr. Meyers and *referred briefly to Mr. Osborn's visit at his store about a week ago*. I asked Mr. Meyers about the sale of the two January, 1917, BLUE BOOK MAGAZINE copies which he had mentioned to Mr. Osborn \* \* \*." (Emphasis supplied.)

The implication here is that Osborn was *not* present.

In the affidavit of Herman Meyers, executed October 29, 1932 (Ex. 954), referring to the sale of magazines which he made to Osborn, Dr. Tannenberg and Dr. Grossman, he gave an account of a telephone call from a man who gave his name as Osborn, and inquiry for the Blue Book magazine for January, 1917, and of Osborn's first visit (October 28, 1931) to the store, and then his affidavit proceeds as follows:

"Afterwards, early in November 1931, Mr. Osborn returned to my store with another gentleman whom he introduced as Dr. Tannenberg. Dr. Tannenberg told me that he represented the German government in the Black Tom matter. *Both he and Mr. Osborn questioned me a lot about the number of January 1917 Blue Books which I had sold, and as to the times when I might have sold them.*

"*Mr. Osborn then asked me if I would sign an affidavit of what I had said. As a matter of fact, I hesitated to sign an affidavit. I had never made an affidavit in a law suit before in my life. Moreover, my recollection of the times was too vague for any positive fixing of dates, and I did not want to sign so indefinite a statement. Mr. Osborn and Dr. Tannenberg, however, were apparently satisfied with the indefiniteness of my statement, and Mr. Osborn took me aside and asked me*

if I would make the affidavit for Dr. Tannenberg as a favor, saying that Dr. Tannenberg wanted it for his record, and was buying a number of magazines from me.

"The next day Dr. Tannenberg returned with a written statement, and asked me to sign it. This is my affidavit of November 6, 1931, which, as I have seen in Washington, is now marked German Annex 55 (a)." (p. 7) (Emphasis supplied.)

In view of the letters written by Osborn to Dr. Tannenberg set out above, the paper entitled "Statement of Mr. Albert S. Osborn", the proposed affidavit drafted by Osborn, the "Statement of the Agent of Germany", and the testimony given above by Meyers, it is interesting to read the oral argument of the German Agent, Dr. Tannenberg, at Washington in 1932, bearing on the same subject, where the German Agent (Oral Argument, 1932, p. 225) said:

"I stated in my affidavit that Meyers at that time volunteered further information and that Osborn informed me about this matter. When I went to New York I of course interviewed Meyers alone. There is in Meyers' affidavit which has recently been presented by the American Agent (Exhibit 954) a statement to the effect that Osborn and I went to Abraham's Book Store where Osborn introduced me. In my statement, Annex 55, I said that I, after having received this information from Osborn, went to Abraham's Book Store and examined Meyers there. *Mr. Osborn has not taken any part in this investigation.* The fact that he informed me about what he had learned for what it was worth does not speak against him.

"There are further statements in Meyers' recent affidavit to the effect that Osborn asked him to give me an affidavit because the German Agent would then buy a number of magazines. I can assure the Commission that the witness is mistaken.

I examined the witness personally on November 5 and 6, 1931. Mr. Osborn was at Abraham's Book Store on November 5 in connection with the purchase of magazines. The American Agent has used this affidavit by Meyers in his attempt to discredit Osborn. I think the short reference to my examination of Herman Meyers is sufficient to dispose of that criticism. Obviously Meyers did not realize what these statements meant, and obviously he was mistaken." (Emphasis supplied.)

Osborn filed with the Commission transcripts from his diary, relating to the sabotage cases, but the transcript (Ex. H) did not include entries for October 28th or for November 5th, 1931.

In Osborn's diary for October 28, 1931, there is the following entry:

"In the morning went to old book dealers for copy of January, 1917 Blue Book in Explosion case. Learned that copy used in this case was probably procured at Abraham's. Wrote Dr. Tannenberg & prepared affidavit for Mr. Meyers, employed at Abraham's."

Under examination of Osborn by the Umpire, July 8, 1937, the following occurred (p. 160):

"I find in your diary, but not in the transcript of the diary, a record of your going there. How did you omit that from the transcript you furnished me?"

"A. This transcript was made by my secretary.

"Q. When you produce it I think you vouch to us for its accuracy, Mr. Osborn.

"A. It says that I went to old book dealers for a copy of January, 1917, Blue Book. That is October 28th.

"Q. Go on, read the rest of it.

"A. 'For copy of January, 1917, Blue Book in explosion case. Learned that copy used in this case was probably procured at Abraham's.'

"Q. From whom did you learn that?"

"A. That was an inference.

"Q. You do not say you inferred it; you say you learned it. Now, Mr. Osborn, you use the English language accurately. From whom did you learn it?"

"A. The copy in this case was probably —"

"Q. From whom did you learn it?"

"A. The manager there told me that someone had bought the January book a few months before and this was merely an inference; I did not know and he did not know at all anything about it excepting that there was that particular magazine bought a few months before, and also there were some other circumstances connected with the interview. Shall I tell you what they were?"

"Q. I do not want them. I want answers to my questions and not speeches."

It may be a mere coincidence, but it is also a fact, that on October 28, 1931, Mr. Stein inquired of the claimants where they had purchased a January, 1917, Blue Book, and he got the information on that date that it had been purchased at Abraham's Book Store (Ex. 982, Ann. B, pp. 13, 14; and id. Ann. D, pp. 2 and 3; also Trans. Stein Exam. Oct. 26, 1937, pp. 404, 410).

In the course of the examination of Osborn by the Umpire on July 8, 1937, the following colloquy occurred (p. 165):

"Q. Do you confine yourself to the examination of disputed documents, or do you do investigative work?"

"A. I DO NO INVESTIGATIVE WORK. [Emphasis supplied.]

"Q. How did you come to take an affidavit from Mr. Meyers? Is that part of the examination —

"A. I did not take any affidavit from him.

"Q. Were you present when one was taken?"

"A. No.

"Q. I find an entry in your book, 'Wrote Dr. Tannenberg and prepared affidavit for Mr. Meyers, employed at Abrahams'. What does the word 'prepared' mean?"

"A. I included in my letter to Dr. Tannenberg the statement that I thought that information that I had obtained should be put in the form of an affidavit.

"Q. And you prepared one?"

"A. Yes, I think so, a suggested one. What I prepared was not used.

"Q. Well, now, I would like to know again whether the English language is accurately used in your diary? Does 'prepared' mean 'prepared' or 'suggested'?"

"A. That was put in the form of a suggestion. That was sent to Dr. Tannenberg. My affidavit was not used.

"Q. Mr. Osborn, you have been on the witness stand many, many times?"

"A. Many times.

"Q. And it will do you no good to fence with this Commission.

"A. I am not going to try to do it.

"Q. You are trying to do it, in my opinion.

"A. I am sorry.

"Q. I am sorry, too.

"A. I did not mean to do that.

"Q. I think you are competent enough to give me categorical answers and you are certainly competent enough to understand my questions.

"A. I will try to do it exactly.

"THE UMPIRE. I think I have no further questions."

In this connection it is interesting to note the entry in Mr. Osborn's diary for November 5, 1931, reading as follows:

"Dr. Tannenberg here. Spent the day with him on explosion case. *Went with him to Abraham's Book Store & arranged about affidavit of H. Meyers.*" (Emphasis supplied.)

Thus it appears from Osborn's diary that on October 28, 1931, he "*prepared an affidavit for Mr. Meyers, employed at Abraham's*"; and on November 5, 1931, he went to Abraham's Book Store *with Dr. Tannenberg* and "*arranged about affidavit of H. Meyers*". In spite of this, in his 1932 argument, the German Agent assured the Commission that when he went to New York:

"I of course interviewed Meyers *alone*".

And he further said:

“ Mr. Osborn has not taken any part in this investigation.”

He also denied that Osborn asked Meyers to give him an affidavit.

Under examination by the American Agent, Osborn quibbles again in the use of words when he claims that the only purpose for which he went to Abraham's Book Store was:

“ to see if I could get a copy of the magazine, and this information was volunteered to me and I merely made a copy of it in this form, partly to fix my immediate recollection of what had occurred.” (p. 238)

He further claimed that the main purpose in preparing the affidavit was to put in definite form the information which he had been given. He did not make any reference to the assurance in his letter, not yet produced, that Meyers would be willing to make an affidavit with a “ small compensation ” — \$10 or \$25. When the German Agent's argument, stating that “ Mr. Osborn has not taken any part in this investigation ”, was read to him, he said: “ That is true ”; and he afterwards added:

“ excepting giving him the information that came to me. \* \* \* but the information was volunteered; I did not go there for the information ” (p. 239).

The American Agent then read him the entry in his diary for November 5th showing that *he went with Tannenber*g to Abraham's Book Store and “ arranged about affidavit of H. Meyers ”, and asked him: “ so you and he went there to arrange for an affidavit by Meyers? ”

“ A. I went with him *to show him the way*, more than anything.

“ Q. He did not know the way?

“ A. I suppose he could have found it, but I went with him.

“ Q. It was necessary for you to go with him to show him where the book store was, Abraham's Book Store?

“ A. No, I do not think it was necessary but I found the man that had given me the information before and introduced Dr. Tannenbaum to him and Dr. Tannenbaum prepared — ” (p. 239).

Again he was asked (p. 240):

“ When you went with Dr. Tannenberg to Abraham's Book Store, you went there to get the affidavit, did you not?

“ A. Dr. Tannenberg did.

“ Q. But you went with him to help him get the affidavit, did you not?

“ A. I think that he and Mr. Meyers had to go somewhere, I do not remember where, but the ending of it, my recollection is I had no part in it at all.”

And again:

“ Q. Dr. Tannenberg in the same argument said, ‘ When I went to New York I, of course, interviewed Meyers alone ’; is that correct?

“ A. Well, I introduced him to Mr. Meyers.

“ Q. Then he did not go alone; you went with him to show him the way?

“ A. *I did not say I went to show him the way*. I went to introduce him to the man who had given me the information; \* \* \* But as far as his interviewing Mr. Meyers was concerned, that was his own matter; I did not take any part in that. \* \* \* ” (p. 240) (Emphasis supplied.)

As we have seen above, Osborn, in response to a question by the Umpire, specifically stated: “ I do no investigative work ” — and tried to wriggle out of the position he was placed in when he had to admit he had prepared an affidavit for Meyers' signature. Neither he nor the German Agent referred to the fact that he had written a letter to the German Agent making the sly suggestion that “ Mr. Meyers will not hesitate to sign an affidavit, with perhaps a small compen-

sation, \$10 or possibly \$25" and that "the affidavit might be obtained without his knowing what it was for".

Under these circumstances, any further work which Mr. Osborn did *as an expert* was necessarily colored by his opinion, already formed, and by the character of the work which he had done as an investigator.

Another example of the activities of Osborn and the German Agent as investigators or sleuths is found in the Qualters' story. The object of the development of this story was to further the preconceived conclusion of Osborn that Exhibit 904 is not the magazine used by Herrmann in Mexico in 1917 to transmit a message to Hilken but that it is a magazine which Herrmann obtained in 1931 from Abraham's Book Store in New York City and therefore that the message written and found in Exhibit 904 is a forgery.

The Umpire, in the Washinton Decision of December 3, 1932, reviews the evidence then in the file with reference to the Qualters' story, as follows (Decs. and Ops., pp. 1024-1026):<sup>cc</sup>

"Another matter of note is that the January, 1917, Blue Book, when filed with the Commission, concededly bore certain marks in lead pencil opposite some of the titles of the stories on the index pages. These apparently went unnoticed by Hilken or Herrmann or the American Agent. Some time after the submission of the magazine the German Agent observed them. He subsequently bought a number of other issues of the Blue Book for other months of the year 1917 to be used for comparison and for the use of his expert. These he procured from Abraham's Book Store in New York. They contained similar marks. In several of them were found bills which indicated that the magazines had been delivered by a newsdealer in Brooklyn to a house at 756 Madison Street in Brooklyn. Further investigation developed that one Qualters lived in that house and had in 1930 sold a large number of Blue Book, Red Book, and Adventure magazines to Abraham's Book Store and had received a check for \$12 in payment therefor.

"The evidence, in my judgment, is entirely conclusive that Qualters did make such a sale, but it is not clear that he sold complete sets of all three magazines covering the years from 1911 to 1929 as he states. Subsequently both Agents purchased at Abraham's Book Store numerous magazines of the kinds mentioned. Sixteen of all those purchased contained horizontal marks and cross-marks on the index pages; some 53 of them contained only horizontal marks. The German Agent seeks to prove by the Qualters' testimony that these marks were made by Horace Qualters and John Qualters, his brother, when and as they read the articles marked. He seeks also to account for the absence of marks during a certain period by the fact that Horace was absent during the war and was not reading the magazines currently. Qualters identifies the horizontal marks in the January issue as so like his that he believes he made them.

"It appears that sometime prior to April 30, 1931, two persons purchased January, 1917, Blue Books at Abraham's Book Store. One of them is now identified as Mr. Traynor, who bought a copy on April 29, 1931, for the claimants, in order to obtain a magazine to compare with the one produced by Hilken. This copy contains no marks whatever on the index pages. The other was bought by someone who cannot be identified, whose description is most vague, the time of whose appearance at the store cannot be definitely fixed, but who, according to the testimony, did not ask for the issue of any particular month but merely for a Blue Book of 1917 and was handed a January number only because the store had two copies of that issue and could better afford to sell one of the copies for that month than to break the set by taking one of another month. Meyers and Abraham, of the bookstore, who had to do with the sales in question, do not identify Hilken or Herrmann as the purchaser of the January, 1917, Blue Book. There is no specific evidence that Herrmann, Hilken, or any agent employed by them or either of them purchased the January, 1917, number of the magazine at the Abraham Book Store.

<sup>cc</sup> *Note by the Secretariat*, this volume, pp. 120-121.

“Expert evidence which is not effectively challenged is to the effect that the marks as exhibited in the 1917 Blue Books and in that containing the message were not made in the order and in the manner described by the two Qualters brothers. The German Agent, however, insists that the markings found on the table of contents of the magazine containing the Herrmann message are so similar to the markings in the other magazines, some of which indubitably and concededly come from the lot purchased by the bookstore from Horace Qualters, that I may draw the conclusion that the January, 1917, magazine containing the message came from Qualters. He further animadverts upon the tardy explanations of Hilken that German agents were in the habit of using marks as keys to their codes, and of Herrmann that he believes he made the marks in the table of contents in the magazine in connection with the message to Hilken but cannot at this time determine their significance.

“If I were to draw the conclusion the German Agent desires, this would end the controversy with respect to the authenticity of the message. While the evidence arouses suspicion, I cannot find in it alone enough to reach a certain conclusion. It does, however, add to the doubts which all the other facts and circumstances recited have raised concerning the document.”

Since the decision of December 3, 1932, the American Agent used the powers given him by the Act of June 7, 1933 (48 Stat. 117), to compel the Qualters to submit themselves to an examination before the Court. In endeavoring to secure their testimony the American Agent, as in other cases, met with the direct opposition from German sources. The witnesses were furnished with an attorney to resist the taking of their depositions, the same attorney who represented a German steamship company and had also resisted the efforts of the American Agent to secure the testimony of Ahrendt, Hilken, Sr., Dederer, Volz, and Hohme.

The testimony of Horace Qualters and John Qualters, taken on August 16th and 28th, and September 13th and September 20, 1933, was filed as Exhibit 978, Annexes A, B and C, on September 15, 1933, and November 1, 1933.

The original story of the method of marking the titles in the magazines as told by Horace Qualters is found in German Annex 57, and reads in part as follows:

“I am in the habit of marking on the table of contents of a magazine the story which I have read and always make a horizontal dash to the left of the title of the story which I have read. \* \* \* My brother, after he had read a story would make a vertical mark crossing the horizontal dash which I had made before, provided he read the same story I had marked.

“I have inspected the pages containing the table of contents in the four Blue Books above referred to [of February and May, 1917, and March and April, 1918], and I am convinced as fully as I can be that the horizontal check marks which appear on the said table of contents, are the ones made by me and the vertical marks made by my brother.”

This was in the form of a letter written to Dr. Grossmann, July 13, 1932, and subsequently verified.

John Qualters in a letter dated July 16, 1932, and verified the same day, writes Dr. Grossmann as follows (Ger. Ann. 58):

“I am convinced that the marking appearing on the table of contents thereof [in the four Blue Book Magazines mentioned in Horace's letter] was made by my brother and myself in the manner indicated.”

In a subsequent affidavit, dated July 20, 1932 (Ger. Ann. 59), Horace Qualters repeated the same assertion with reference to the four Blue Book Magazines spoken of in his letter, and further says that he had examined the table of contents of the Blue Book magazine of January, 1917, containing the message (Ex. 904), and in particular the horizontal and vertical pencil marks appearing on the left-hand margin of the pages opposite the titles of the stories listed therein, and that

the horizontal pencil marks were exactly like the ones he used, and he had no doubt that these marks were made by him.

When Horace Qualters was examined by the American Agent under subpoena (Ex. 978, Anns. A, B and C) he was shown the table of contents of the original Blue Book containing the message (Ex. 904), and he failed to identify a single one of the cross-marks in that table of contents as having been made by himself or his brother, and he testified that as to the four stories there marked with cross-marks, he never read three of them. He only identified one of these stories "The White Wolf" as having been read by him, and as to "The White Wolf", he was positive that the mark opposite that title was not made by himself or his brother (pp. 25-30). Therefore, the conclusion is inevitable, even from his testimony, that the cross-marks in said magazine were not the work of himself and John Qualters.

He was informed by the American Agent that the expert evidence which was not contradicted by Germany established the fact that the vertical lines in the cross-marks opposite the titles in the Blue Book magazine (Ex. 904), were made prior to the horizontal lines, and then he was asked:

"If that is so, would that change your opinion as to whether or not those marks had been made by you, any of those marks had been made by you?"

"A. Well, the fact it is contrary to the practice that my brother and I followed it would indicate that, yes, sir.

"Q. It would indicate that the vertical marks were not made by your brother at least, would it not?"

"A. Yes, it would." (Ex. 978, Anns. A, B and C, p. 42.)

In the examination of John Qualters (Ex. 978, Anns. A, B, & C, p. 74, *et seq.*), he was shown the Blue Book magazine of January, 1917 (Ex. 904), and was asked to look at the cross-marks appearing in that book and state whether they looked like the cross-marks which he had made. He looked at it and answered:

"Well, the marks do not look like my brothers, that is the crossmarks are not mine because I never made a mark like that. These marks are too small.

"Q. You never made such a small mark as that?"

"A. No, I never did."

And, again, on p. 76, the following occurred:

"Q. Now look at the original magazine, Exhibit 904 and state again whether those marks, the vertical marks in the cross marks were marks made by you?"  
A. They were not made by me."

As to the four stories indicated by the cross-marks, two of them he had certainly never read, one "The White Wolf", sounded familiar to him, and one, "Yukon Trail", he had read, but the mark opposite he indicated had not been made by him (*id.* p. 76). He also indicated that the Blue Book magazine (Ex. 904), was in a very different condition from any magazine which his brother had had (p. 77).

The expert evidence establishes beyond the peradventure of a doubt, the fact that the cross-marks opposite the titles of the four stories in the Blue Book magazine were made in exactly the opposite sequence to that testified to by both Horace and John Qualters.

It will be recalled that Horace Qualters testified that he first made the horizontal or minus sign and his brother came along afterwards and made the perpendicular or cross sign.

Gurrin (Ex. 967), and Heinrich (Ex. 968), as experts, testified that the sequence was first the vertical sign and then the horizontal sign, and an examination of

the signs by a microscope enables the ordinary individual to appreciate the truth of the expert evidence.

On this point, the Umpire in his opinion of December 3, 1932, said (Decs. and Ops. p. 1026): dd

“Expert evidence which is not effectively challenged is to the effect that the marks as exhibited in the 1917 Blue Books and in that containing the message were not made in the order and in the manner described by the two Qualters brothers.”

In his book *Questioned Documents, Second Edition*, Mr. Albert S. Osborn at page 512, dealing with the subject of sequence of pencil marks, one over the other, uses the following language:

“The sequence of two pencilstrokes can be determined if the strokes are made with considerable pressure so as to indent or plow into the paper slightly. Indentations of this character, even if very slight, can be clearly seen with the stereoscopic microscope. The upper or last line will show a continuous indentation or furrow across the lower, similar to two crossed strokes on a piece of wax. This physical fact can, however, only be clearly seen with the stereoscopic microscope or a stereoscopic enlarged photograph.

“Pencils are made hard by including in the graphite a finely powdered clay. When a pencil mark is made with considerable pressure the path of the pencil point as worn off is a smooth glistening black line. When this line is carefully examined under proper magnification and under the suitable angle of light it will be seen on many papers that the surface of the stroke shows continuous, parallel indentations, scratches, or striae. Under just the proper lighting and magnification these scratches often show unmistakably which of two crossed pencil lines was made last; the striae will be continuous on the last line at the crossing.”

The foregoing statement unquestionably represents the conclusions of Osborn when acting as a scientist. His attitude of mind on this same question when acting as an investigator or sleuth is well illustrated by the following excerpt as from his report of August 13, 1932:

“I am informed that the affidavit of the writer [Horace Qualters], who says that in his opinion he made these various horizontal strokes in the January as well as the February to July Blue Book Magazine [of the 1917 issue], gives the information that his brother [John] read some of these articles and that he, the brother, had the habit of making a vertical stroke mostly over the horizontal stroke which had previously been made [by brother Horace]. *Without this information it would probably have been impossible to have said anything about this particular point* but it is a fact that many of these notations, which now appear as crosses, do show that a different pencil was used in making the vertical, or nearly vertical, stroke than was used to make the horizontal stroke. I call attention to the three crosses in the first column in the February magazine, which all show a blacker, heavier vertical stroke, and in my opinion there are numerous others which show this same characteristic. Some of the crosses do not show that two pencils were used, although two pencils may have been used of a similar character. Some of the cross-marks do not contain all of the characteristics already described, but there are a sufficient number, in my opinion, on which to base the opinion that many of the notations in the magazines from February to July were made by the same hand that made those in the January magazine.” (Emphasis supplied.) (Ger. Ann. 68, pp. 6, 7)

Applying the tests well known to Osborn, the American experts, Gurrin and Heinrich, were able to determine that the cross-marks in Exhibit 904 were made in exactly the opposite sequence from what Horace and John Qualters had testified was their custom in marking titles of stories read by them.

Herman Meyers, the man who sold the two Blue Book magazines about which there is so much testimony in this case, was shown Exhibit 904, and in Exhibit

dd *Note by the Secretariat*, this volume, p. 120.

954, dated October 29, 1932, and filed November 15, 1932 (Ex. 954), he made the following statement:

"Thus I may as well say at the beginning that I called on Mr. H. H. Martin, at his office in the Investment Building, in Washington, on October 7, 1932; that Mr. Martin showed me the January 1917 Blue Book which is marked 'Ex. 904'; and that, in my opinion, it is impossible that this is a magazine which was sold from our store. Both of the January 1917 copies of the Blue Book sold from our store were in good condition, and both had front covers on them.

"From my experience as a dealer in old magazines for the past sixteen years, it seems to me impossible that either of the two January 1917 Blue Books which we sold, even assuming rough and unusual treatment of them since the sale, could now present the appearance and show the deterioration of this Ex. 904."

He also testified, p. 2:

"I am told that Dr. Tannenberg has used my affidavit of November 6, 1931, to argue that one of the purchases of the January 1917 issues of the Blue Book from our store was made by or on behalf of one Fred Herrmann. On October 4, 1932, the man whose photograph is annexed as Annex No. 2 was introduced to me as Fred Herrmann, and I was asked whether or not I recognized him. I did not recognize him. \* \* \* on seeing this Mr. Herrmann I was immediately struck by his strong resemblance to Colonel Lindbergh, or at least it seems so to me. I am sure that if I had ever seen this man before I should remember it, and I am sure that I have never seen him before in my life.

"There has also been introduced to me a Mr. Hilken, whose photograph is annexed as Annex No. 3. This likewise is most certainly not the man whom I have in mind as having made the purchase. He is not nearly so tall, and is much older."

By referring to his stock book records, Meyers was able to fix the time of the sale of the two magazines in the following language (p. 5):

"It was not until after the new stock record was made up, doubtless early in April 1931, that the Qualters and Lincoln magazines were, for the first time, together placed on our upstairs shelves for sale. I am therefore convinced that neither of the sales of the January 1917 Blue Books, mentioned in my affidavit of November 6, 1931, was made prior to April 1931."

When, therefore, the testimony given by Horace Qualters and John Qualters under subpoena is supplemented by the affidavit of Meyers, the man who sold the two January 1917 Blue Books about which so much testimony has been given, it becomes perfectly clear that it was impossible for Herrmann or Hilken, either directly or indirectly, to have purchased such a magazine and used it in this case, and the attempt on the part of someone connected with the German case to manufacture evidence has again failed.

#### *4. The Charge by Osborn and Stein that a Report by Stein had been Suppressed*

The genesis of this charge is found in a letter of Mr. Osborn to Dr. Tannenberg, dated April 21, 1932 (Osborn Exam. July 8, 1937, pp. 169, 170, Ex. G). This letter written by Osborn to the German Agent, referring to the brief of the American Agent, filed February 29, 1932, contained the following:

"On page 15 there is a veiled reference, 'an eminent handwriting expert', to Mr. Stein, but there is no explanation of why he was not asked to make a report on the case outside of the handwriting, or, *if he did make a report, no reference is made to what became of the reports he made.*" (Emphasis in original.)

This letter of Mr. Osborn to Dr. Tannenberg was sent to the Umpire by the German Commissioner in a letter dated at Hamburg on May 18, 1932. There

was a blue pencil underlining in Osborn's letter, corresponding to the underlined [italicized] portion set out above.

In Dr. Kiesselbach's letter to the Umpire (Ex. G, Osborn Exam., July 8, 1937, p. 168), he used the following language:

"The letter deals with the criticism raised by Mr. Bonyng in his Motion [Brief?] of February 29, 1932, with regard to Mr. Osborn's opinion. In Page 2 thereof I marked a *passus* which refers to Mr. Stein's report and corroborates rather strongly the information I had and communicated to you, according to which Mr. Stein made a further report outside of the handwriting but not produced by claimants.

"The remark might be valuable for our endeavours to come in this point to the truth." (Emphasis supplied.)

According to the German Commissioner's letter, he had already, before May 18th, communicated to the Umpire a charge to the effect that a report which Mr. Stein had made outside of handwriting had not been produced by the claimants. No information is given by the German Commissioner as to the source of his original report to the Umpire; but it is perfectly clear that the German Agent had forwarded to the German Commissioner, and not to the Commission, the paper from Osborn which contains the veiled charge, namely, that Stein had made a report which had not been filed by the American Agent.

The Umpire, in his letter of May 28, 1932 (Ex. G, Osborn Exam., July 8, 1937, p. 172), replied to the German Commissioner's letter and agreed with his conclusion in the following language:

"I agree that this paragraph seems to indicate that Mr. Stein's opinion was had on matters extraneous to the mere handwriting."

Under date of November 4, 1932, Stein wrote a letter to Henry N. Arnold, one of the attorneys representing the claimants, containing the following language (Ex. 982, Ann. B, Ex. A):

"The printed report of the argument at Boston in the Black Tom case leaves no doubt but that the use of my supplementary report on the handwriting in the Wozniak letters only is a distinct detriment to my reputation as a document examiner of ability and integrity. This report gives the impression that I believed the magazine message and letters to be genuine, while you know that I never gave any such impression, but on the contrary reported both in writing and verbally that they were not genuine and were not written in 1917. The interview regarding the writing on the edges of the magazine will vividly recall one of these reports.

"If my complete report had been used as evidence, no one could misunderstand what my opinion was regarding the documents.

"The argument states that I examined the handwriting only. This is not true as everyone knows who came in contact with me and I feel this misrepresentation keenly.

"You will recall that after my first report on June 10, 1931 against the genuineness of the magazine message and the Wozniak letters, I suggested that an examination of handwriting of the alleged writers written in 1917 and near to 1930 would likely show, in addition to the other things on which I had reported, that none of these documents had been written in 1917. This examination was made and the report <sup>[1]</sup> which you used was the result. Standing alone, this report seems to indicate that I was supporting the documents; but when read in conjunction with my earlier report and the knowledge of why the handwriting examination was made, it is clear that it is merely a negative result.

"Manifestly it is unfair to me to use only this part of my report which does not represent my conclusion regarding the documents. If permitted to stand as

<sup>1</sup> Stein apparently refers to his two reports, each dated June 26, 1931, on the handwriting of the Herrmann message and the Wozniak letters, respectively, Ex. 904 (2) and Ex. 905 (5).

it now is, I am allowing myself to be used to support the genuineness of the documents which I believe to be fraudulent. This, I can never allow. Such conduct would be especially repulsive to me since now this case comes before Mr. Justice Roberts for whom during his active practice I gave service on many varied and important matters and whose confidence I prize highly.

"In justice to me my report should be used as a complete unit and not a part which misleads a reader into the belief that this was the only report I made.

"I have sent a copy of this letter to Mr. Bonyng so that some voluntary action may be taken immediately to correct this unfairness."

After this letter was forwarded to Mr. Arnold and a copy sent to the American agent, an immediate attempt was made by Mr. Arnold to see Mr. Stein, but Stein refused and made an appointment for the next day at eleven o'clock. At that time Mr. Bonyng, the American Agent, Mr. Peaslee, Mr. McCloy, and Mr. Arnold visited Mr. Stein at his office and Mr. Stein produced what purported to be a copy of his alleged suppressed report. All four of the parties interviewing Mr. Stein denied any knowledge of any such report. As a result of that interview Mr. Stein wrote Mr. Arnold a letter dated November 5th (Ex. 982, Ann. B, Ex. B) which reads as follows:

"After the conference today with Mr. Bonyng, Mr. McCloy, Mr. Peaslee and yourself, I have the following statement to make:

"You have assured me, and I believe it that you never saw my report or heard of my report to Mr. Peto in the Canadian Car and Foundry Case on June 10, 1931. In view of this statement, I wish to withdraw all of my statements that I have made to you in my letter of November 4.

"Further my attention is called to the report of the oral argument and I am satisfied that no use of my report was made before the Commission except the proof of the handwriting in the Wozniak letters and the Herman message. With this in view, I wish to withdraw any statement in my letter that might in any way reflect upon Mr. Bonyng as having misrepresented me before the commission.

"I desire to withdraw my letter of November 4, in its entirety."

The gentlemen present were assured by Mr. Stein that he had not communicated the charge made in his first letter to anyone.

The Commission had its hearing on November 21-25, 1932. This was followed by the decision of December 3, 1932 (Decs. and Ops. pp. 1004-1036)<sup>ee</sup>. The Petition for Rehearing was then filed on May 4, 1933.

During the examination of Albert S. Osborn, July 8, 1937, the copy of the letter of A. S. Osborn, dated April 21, 1932, the letter of Dr. Kiesselbach dated May 18, 1932, and the copy of the letter of the Umpire dated May 28, 1932, from which quotations have been made above, were introduced in evidence as "Ex. G" with the Examination of Osborn (pp. 169-172).

In the decision of the Commission on the 3rd of June, 1936, the Umpire, referring to the allegations of the Petition for Rehearing said:

"Its allegations are, inter alia, that before the case was pleaded at Washington the then German Commissioner brought it to the knowledge of the Commission that according to information received by him Claimants had obtained a report from one of their experts the contents of which were adverse to the genuineness of the main documents on which they relied but were withholding such report from the Commission."

After this reference, the Umpire made a statement showing that he had, when practicing law, retained Mr. Albert S. Osborn several times and had also consulted Mr. Elbridge W. Stein on one or more occasions. He then stated as follows:

<sup>ee</sup> *Note by the Secretariat*, this volume, pp. 107-127.

"Just before the date set for hearing in the sabotage cases (probably some time in November 1932), Mr. Stein attempted to get into communication with me by telephone. He wished an interview with me concerning the sabotage cases in which I knew he was a witness for the claimants. I refused to allow him to communicate with me.

"During the meetings of the Commission preliminary to the hearing, Dr. Kiesselbach advised Mr. Anderson and me that the claimants had suppressed an expert report adverse to the authenticity of the Wozniak letters and the Herrmann message. I cannot say that Dr. Kiesselbach specifically stated the source of his information.

"The communication naturally disturbed me but I knew of no action that the Commission or I, as Umpire, could take in the premises and so stated.

"My impression that there had been some such suppression was strengthened by Mr. Osborn's statement, in one of his affidavits, that it was remarkable that no opinion by Mr. Stein, a competent expert in such matters, had been submitted as to the age of the documents but only an opinion as to handwriting, a matter that was uncontested."

The Umpire, in his opinion, further said:

"The Umpire and the American Commissioner hold, that Claimants have shown, that there was no sufficient ground for suspicion, and that for this reason Claimants are entitled to a reconsideration. The German Commissioner, whilst doubting that the Claimants were actually wronged (especially as in his view mere suspicions never can be a basic element of juridical findings) takes the stand, that in international arbitration it is of equal importance that justice *be done* and that *appearances show clearly* to everybody's conviction that justice *was done*. He does not think that the second requirement was satisfactorily complied with in the present case, and for this reason, he accedes to the conclusion of the other members of this Commission." (Emphasis in original.)

The affidavit of Mr. Osborn to which the Umpire referred was made on August 13, 1932, and so far as the question now being considered is concerned, reads as follows (Ger. Ann. 78, pp. 1, 2):

"The second surprising reports are from Mr. Elbridge W. Stein, of New York, which merely express the opinions that the Herrmann message was written by Herrmann and the Wozniak letters were written by Wozniak, regarding which there is no controversy. Mr. Stein is not merely a handwriting expert but an expert of national reputation on all classes of problems relating to questioned and disputed documents including paper and ink problems relating to age of documents. His report says briefly: 'I am an examiner of questioned documents including questions regarding disputed handwriting inks, paper, pens, pencils and those things which enter into the physical makeup of a document. I have provided myself with the most modern scientific apparatus — photographic, optical and chemical — for the thorough investigation of all document questions.' No reports are filed from Mr. Stein covering the controverted questions in the investigation, and it is difficult to understand why these unnecessary reports of his should have been included while no other reports are presented."

The part of Mr. Stein's report which is quoted above, giving his qualifications, were additions to his first report, made at the request of Mr. H. H. Martin, Counsel for the American Agent.

An examination of the quotations set out above will show that in his letter to the German Agent, Osborn, on April 21, 1932, made a veiled reference to a suppressed report. After that time and before May 18, 1932, Dr. Kiesselbach, the German Commissioner, had received information which he communicated to the Umpire, according to which Mr. Stein made a further report outside the handwriting, but not produced by claimants.

On May 18, 1932, the German Commissioner in his letter to the Umpire

reiterated the charge of a suppressed report and for that purpose enclosed the letter written by Osborn to Dr. Tannenberg.

After the above decision of the 3rd of June, 1936, Elbridge W. Stein and his stenographer, Albert S. Osborn, Albert D. Osborn, M. A. Loughman, and L. A. Peto were examined before the Commission and various exhibits were filed with their testimony. Many other exhibits have been filed since the decision of June 3, 1936, and the Commission has had the benefit of lengthy and voluminous briefs, both of the American Agent and of the German Agent.

Nothing has transpired since the decision of 1936 to change the conclusion which was reached by the Commission in its decision of June 3, 1936, that there was no sufficient ground for the suspicion of a suppressed report.

On the contrary, the evidence adduced since that decision strengthens the conclusion there reached and leads to the definite conclusion that the report, alleged by Stein to have been delivered on June 10, 1932, was never delivered to the claimants' attorneys nor delivered to nor received by any of the claimants, nor was any notice thereof given to the American Agent, his attorney, or to any attorney for the claimants, prior to Stein's letter of November 4, 1932, to Mr. Arnold, which letter was withdrawn by Stein on November 5, 1932.

On page 109, Examination of July, 8 1937, Stein said he had discussed his alleged suppressed report only in his office with his secretary, and he denied that he ever discussed the report or spoke of its existence to anyone connected with the German Embassy, the German Agent, or experts who were employed by Germany and he especially denied having discussed the report with Osborn, Sr., or Osborn, Jr.

In spite of this denial by Stein, we find that the charge of a suppressed report reached Osborn, was by Osborn brought to the German Agent, was by the German Agent brought to the German Commissioner, and by the German Commissioner brought to the attention of the Umpire.

A study of the examination of Stein by the Umpire, the German Commissioner, the American Commissioner, the American Agent, and the German Agent shows clearly that he was evasive, given to subterfuge and self-contradiction. It is clear from the record that his alleged report of June 10, 1932, was never brought to the knowledge of any attorney representing the claimants or to the American Agent or his counsel. Although he claims to have sent a copy of this report, without a covering letter, to the office of one of the claimant companies, the occupants of the office and Mr. Peto deny that they have ever seen a copy of this report.

The fact that Stein never delivered his alleged report of June 10th and never notified any of the claimants, or their counsel, the American Agent, or his counsel, that it had been delivered is clearly established by the record.

*First: Stein's claim that he advised his clients both in writing and by the delivery of his alleged report of June 10th that the instruments were not genuine and were not written in 1917. is disproved by his letter of November 4th read in connection with his handwriting reports.*

Stein claimed in his letter of November 4, 1932, that he had advised his clients both in writing (i.e. by his alleged report of June 10) and verbally that the Herrmann message and the Wozniak letters were not genuine and were not written in 1917; and that after his report of June 10, 1931, against the genuineness of those instruments, he "suggested that an examination of the handwriting of the alleged writers written in 1917 and near to 1930 would likely show, \* \* \* that none of these documents had been written in 1917"; and he claimed that the report (of June 26, 1931) which was filed with the Commission was the result; in other words, he claimed that the reports used and filed on June 26,

1931, showed that none of the documents had been written in 1917. Let us examine his reports to test the verity of his claim.

In his "Report of an Examination of Handwriting in a Magazine" (Blue Book magazine of January, 1917) Stein summarizes his report as follows (Ex. 904 (2); Ex. A with Exam. of Stein, July 8, 1937, p. 216):

"(1). I am of the opinion that the writing in the magazine was written by the same writer who wrote the diary in 1915 and the statement in 1930.

"(2). I have no opinion whatever regarding the time when the writing in the magazine was written from an examination of the writing alone in comparison with the writings of 1915 and 1930."

In his "Report of an Examination of Three [Wozniak] Letters" Stein summarized his report as follows (Ex. 905 (5); Ex. A with Exam. of Stein, July 8, 1937, p. 221):

"(1). That the three letters of 1917 were written by the same writer who wrote the 1916, 1926 and 1927 letters and the matter on the photograph.

"(2). That there is not sufficient difference between the writing of 1916 and that of 1926 and 1927 to identify the three letters of 1917 as having been written either in 1917 or later. It should be understood that I cannot say that these three letters were not written in 1917, neither can I say that it would have been impossible for them to have been written in 1927 or later. The positive part of my opinion is that the 1917 letters were written by the writer of the other matter."

Both of these reports were dated June 26, 1931, and Stein's diary (Ex. T, Stein Exam., July 8, 1937) for that date has the following entry:

"Report on letters and secret message sent to Mr. Arnold."

It is remarkable that, although in his testimony he denominated these reports as "supplementary", and his alleged report of June 10th, as his *main* report, the only entry in his diary for June 10th is as follows: "Examined Book for Mr. Peto 10:30 to 1 P. M.", and no entry is made for his so-called main report.

In both of these cases a careful examination of the body of the reports and of the conclusions therein stated and quoted above absolutely proves the falsity of the claim made in Stein's letter of November 4th, to-wit, that an examination of the handwriting of the alleged writers written in 1917 and near to 1930 would likely show that none of these documents had been written in 1917, for in his report on the Herrmann message he says:

"I have no opinion whatever regarding the time when the writing in the magazine was written from an examination of the writing alone in comparison with the writings of 1915 and 1930."

In the report on the Wozniak letters he says that there is not sufficient difference between the writing of 1916 and that of 1926 and 1927 to identify the three letters of 1917 as having been written either in 1917 or later.

Thus the falsity of Stein's contention in his letter of November 4th is clearly established by an analysis of that letter and of the reports made by him, without any necessity to resort to his testimony or to his diary.

*Second: Stein's claim transcends the bounds of reason.*

The problem before the claimants in 1931, after the Herrmann message was produced by Hilken and when Baran offered to sell them the Wozniak letters, was, first, to determine whether the instruments were actually in the handwriting of the writers, Herrmann and Wozniak, respectively; and, second, when that question should have been settled affirmatively, to determine whether they were otherwise genuine.

If the instruments, though admitted to have been in the handwriting of the writers, were written *after* 1917, then, so far as the claimants were concerned, they were of no value to them and any examination and report on the handwriting would have been absolutely unnecessary. Conversely, if a negative report on the handwriting had been obtained, there would have been no further necessity for an examination and report on their genuineness. This question would have been settled by the report on the handwriting.

If on June 10, 1931, Stein had verbally and in writing advised that the instruments were not genuine and that they were not written in 1917 when they purported to have been written, is it reasonable to suppose that his clients would have employed him to pass on the question of handwriting?

*Third: Stein's claim is contradicted by the facts in the record.*

(a) Stein never sent a covering letter with his report;

(b) The report bore no date except in pencil;

(c) Although he charged \$350 for his handwriting reports, which was a very reasonable charge, considering the work done and the importance of the case, he never put in a bill or received any money for his alleged report of June 10, 1931, whereas the record shows that Osborn, for his reports and services in connection with the same documents, received \$12,500;

(d) Although his diary has six references in the month of June, 1931, to his work and interviews regarding the Herrmann message and the Wozniak letters, the first reference is found on June 10th. All six references are set out below:

" Wednesday, June 10, 1931

" Examined Book for Mr. Peto 10:30 to P. M. [<sup>1</sup>]

" Tuesday, June 16, 1931

" Conference with Mr. Peto and counsel on *1917 writing* 2:30 to 4:30 [<sup>2</sup>]

" Wednesday, June 24, 1931

" Mr. Loughman telephoned for an appointment tomorrow — 9 A. M.

" Thursday, June 25, 1931

" Mr. Arnold and Mr. Loughman here in Peto's matter

" Friday, June 26, 1931

" Report on letters and secret message sent to Mr. Arnold

" Monday, June 29, 1931

" Revised reports sent to Mr. Martin in Peto's matter." (Emphasis supplied.)

(Ex. T. Stein Exam., July 8, 1937.)

(e) Although in his letter of November 4, 1932, he designates his reports on the handwriting of the instruments "supplementary reports", these reports nowhere indicate that they are supplementary reports, and they do not in any manner refer to any prior or contemporaneous reports.

(f) A careful study of the record, including the examination of Stein and Osborn, will show that Stein was not employed by the claimants until after June 10, 1931, the alleged date of the report; that he never saw the Wozniak letters till June 16th; that he never had sufficient opportunity to examine the instruments in order to make a comprehensive study and report on the genuineness of the instruments other than the question of the handwriting.

Even if Stein had made a report on the Herrmann message on June 10, after an examination lasting from "10:30 to 1 P. M.", as stated in his diary, such an examination and report would have been worse than useless, and his report, in the light of the time devoted by the other experts, both those employed by Germany and those employed by the claimants, would indeed have been to

<sup>1</sup> "Book" evidently refers to the Herrmann message. No mention is made of the Wozniak letters.

<sup>2</sup> "1917 writing" evidently refers to the Wozniak letters.

paraphrase his own letter, a distinct detriment to his reputation as a document examiner.

Stein's threat in this case to bring his clients into disrepute before the tribunal where their claims were pending, a copy of which was sent to the American Agent for the same purpose, shows that he was endeavoring to bolster up Osborn's attack on the Herrmann message and was willing to go to any length to accomplish that purpose, even to the extent of being disloyal to his clients.

While Osborn has denied that he was the source of the information which came to the German Agent and by the German Agent was brought to the German Commissioner with reference to the charge of the suppressed report, a careful study of his evasive answers on this question and of the evidence given by Stein, convict Stein and Osborn of being the source of the information brought finally to the Umpire. The events in this record relating to this charge of the suppressed report are sorry ones in juridical history, and a part of this unhappy history is the manner in which the question of Osborn's fee was presented to the Commission by the then German Agent. (See *infra*, p. 270.) <sup>ff</sup>

#### 5. *The Attack by the Experts*

It has been clearly established that Hinsch was guilty of perjury in claiming that he ceased sabotage activities after the U-boat enterprise started. On the contrary, after Herrmann came back to America with new devices, sabotage was carried on by him (Hinsch) and by Herrmann, under Hilken, as paymaster, with redoubled energy and with new devices.

We also know that, in order to bolster up his claim that he had ceased sabotage activities after Hilken returned from Europe in 1916, Hinsch was guilty of making false statements as to his absences from Baltimore and from New London during the time of the U-boat activities at those places, respectively, as American ports. We also know that in order to prove that Gerdt's was unknown to Hilken, Hinsch resorted to the worst forms of fabrication.

As we have already seen, Germany brought forward Ahrendt for the purpose of discrediting the Herrmann message, and Ahrendt in his affidavit tried to persuade the Commission that no written message was delivered at all.

After Siegel's first statement had destroyed the efficacy of Ahrendt's attack on the message, Hinsch, while admitting that a written message had been delivered, resorted to another fabrication, namely, the written message was very short with a request for money and an identification of Gerdt's, but he claimed that Gerdt's brought an oral message, which, as we have seen, conformed with the message in the Blue Book magazine of January, 1917, in many particulars but differed therefrom in some particulars.

As we have already seen, where the oral message, as reported by Hinsch, did depart from the message in the Blue Book magazine, and from Gerdt's original affidavit, the oral message departed from the truth.

Under these circumstances, when we begin to study the expert evidence we have this situation:

(1) It is admitted that Herrmann sent a written message by Gerdt's to Baltimore.

(2) The Blue Book magazine of 1917, produced by Hilken, contains a message admittedly written in the handwriting of Herrmann.

(3) Herrmann, who wrote the message, has identified the same.

(4) Siegel, who dictated it, identified the message in a statement written in his own handwriting.

<sup>ff</sup> *Note by the Secretariat*, this volume, p. 429.

(5) Gerdts, the bearer of the message, has identified the message in the Blue Book as genuine.

(6) Hilken, to whom the message was sent, has produced and identified the message.

(7) Herrmann and Hilken, after first being unwilling to admit their responsibility for the Black Tom and Kingsland disasters, have either directly admitted their responsibility or have made admissions whence their responsibility must follow.

(8) Ahrendt, Woehst and Hinsch, whose affidavits have been brought forward by Germany for the purpose of discrediting Hilken and Herrmann, have themselves been discredited and have been proven to have been guilty of perjuries of the worst character.

Under these circumstances, the Herrmann message, as contained in the Blue Book magazine of January, 1917, stands without the stigma which rested upon that instrument when the matter came before the Commission at Washington in 1932. The direct attacks upon the message, made by Hinsch and Ahrendt, have been shown to be false and their testimony introduced for the purpose has been shown to be perjured.

The attempts by Hinsch to discredit the message by his representations as to the oral message have also miserably failed. Since the instrument has withstood the direct attacks, and the internal evidence shows no anachronisms and no statements which are contradicted by the record, a resort to the expert evidence seems unnecessary, especially as the Umpire in 1932 said that, as the expert evidence then stood, it was evenly balanced.

When we come to examine the expert evidence introduced by Germany for the purpose of attacking the message, we find that the spearhead of the attack is Albert S. Osborn.

Before Osborn began to make his study, he had assumed the role of an investigator and sleuth, and we have seen that, in this character, he became a zealous partisan determined to destroy the message before he had ever subjected the same to any expert tests.

We have also seen that in this role, in conjunction with the German Agent, the evidence, gathered by Osborn as an investigator and sleuth, was twisted and warped from its original form so as to meet the needed proof. We have also seen that, in conjunction with Stein, he was responsible for the false charge of a suppressed report, designed not only to substantiate the German attack on the instrument, but also to bring Stein's clients into disrepute and to smear the American Agent.

It is needless to say that any expert evidence brought forward under such circumstances must be taken *cum grano salis*, if not altogether rejected as unworthy of consideration in a juridical proceeding.

In one of his so-called expert reports (Ger. Ann. 78) Osborn, referring to the handwriting report of Stein, used the following language:

"No reports are filed from Mr. Stein covering the controverted questions in the investigation, and it is difficult to understand why these unnecessary reports of his should have been included while no other reports are presented." (p. 2.)

In his examination of July 8, 1937, pp. 175,176, Osborn was asked to define the terms "unnecessary reports" and "other reports", contained in the above quotation, and his replies were evasive and unsatisfactory.

It was brought out on the examination of Osborn that he did not know anything about the terms of employment of Stein by his clients, whether it embraced any other subject than a report on handwriting or not (Exam. July 9, 1937, p. 218). Osborn also claimed that Stein had not discussed with him the

matter of the suppressed report (Exam. July 8, p. 188) and that his "statements in regard to that matter were all based on the fact that Mr. Stein was qualified to make this examination" (Exam. July 9, p. 223). Here, then, is an example where the zeal of the sleuth overcame the scientific spirit of the expert, and led Osborn, in a so-called expert report, to make a thinly veiled charge, repeated in his letter to the German Agent, of a suppressed report when no ground existed therefor.

In the decision at Washington of December 3, 1932, the Umpire, in treating the subject of expert evidence, analyzed the same as follows (Decs. and Ops., p. 1026): ¶¶

"This consists of about one thousand pages. The questions submitted to the experts are in my belief novel. They involve at the foundation certain known qualities of ink and paper. But as one reads the testimony on both sides one is impressed with the fact that the experts themselves had to resort to experiments with lemon-juice writing on new and old paper in order to reach their conclusions. Many of the opinions of the experts on the one side are countered by diametrically opposite results stated by those on the other. I agree with the arguments of both Agents that certain of the experiments and tests which they criticize are not beyond fair criticism and fail to carry conviction. I entertain no doubt that all the experts retained by both litigants were inspired by a desire to do their honest best with a very difficult problem. Both sets of experts evidently believe in the soundness of their conclusions, for they challenge the Commission to make certain experiments and examinations for itself, and it is hardly conceivable that they would do so unless they felt that the results of such experimentation by laymen would justify their confidence. My experience in this behalf has, however, been most unsatisfactory and *has only tended to confirm the feeling that on the expert evidence alone my judgment would be left in balance as to the authenticity of the document.* Expert evidence is often an aid in determining questions of the sort here presented; but it is far from an infallible guide, as witness the fact that several of the experts for the claimants convinced themselves of the authenticity of the Wozniak letters. This comment does not by any means apply to all of the experts who testify about the Herrmann message, and it is not to be taken as indicating that I have the slightest doubt that all of the expert's opinions are honestly entertained. It is mentioned merely as an illustration of the fact above stated, that, *at best, expert evidence can usually be only an aid to judgment, and not always in and of itself so conclusive as to carry conviction.*

"I need only add in summary that the most careful study and consideration of the expert evidence with respect to the Blue Book message convinces me that upon that evidence alone I should not be justified in affirming the authenticity of the document. I am therefore compelled to revert to the other evidence." (Emphasis supplied.)

The Umpire, after a careful analysis of the expert evidence as it stood in 1932, felt that, on the expert evidence alone, his judgment would be left in balance as to the authenticity of the instrument. This conclusion was reached while he labored under the impression conveyed to him by the German Commissioner that a report by Stein unfavorable to the genuineness of the Herrmann message had been suppressed, and when he was without any knowledge of Osborn's actions as an investigator and his complicity in changing the facts ascertained by him so as to make Meyers' affidavit conform with the needed proof.

It follows of necessity that the introduction of those facts into the record has overthrown the balance, and, as all of the other experts employed by Germany followed Osborn's lead, such evidence must now be reexamined in the light of Osborn's bias and unusual activities.

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¶¶ *Note by the Secretariat, this volume, p. 121.*

*Osborn's Employment as an Expert*

(a) *By the Claimants.* — It is perfectly clear from the record that after the Herrmann message was produced, the American Agent made every reasonable effort to have that instrument examined by an impartial expert, and to avoid what afterwards developed, a battle of the experts in regard thereto.

It is also clear that the claimants were anxious to employ Osborn, but they were met by the proposition that he might have been employed by Germany. An effort was made to ascertain whether his previous work for the German Agent prevented his employment by the claimants.

Osborn's diary for June 4, 1931, contains the following entry (Ex. U, filed July 9, 1937):

"Mr. Leonard Peto, Hotel Roosevelt, came in regarding new documents in case involving Canadian Car & Foundry Co. U. S. v. German Govt. Told him it would be necessary for to be 'released' before I could examine matter for him."

The entry for June 11, 1931, is as follows:

"Mr. Loughman, of the Canadian Car & Foundry Co. called with letter from Mr. Peto regarding German Commission case."

Under date of June 10th, L. A. Peto wrote a letter to Osborn referring to a "recent talk" and to a letter enclosed from Mr. Martin, Counsel for the American Agent before the Mixed Claims Commission. In that letter Peto states as follows (Ex. E, filed July 8, 1937):

"I would like to point out that the Mixed Claims Commission is a Court or [of?] Arbitration, and during its existence has had about thirty thousand cases on which to pass. Unless the matter on which you were consulted by Dr. Grossman specifically referred to matters in the Black Tom or Kingsland cases, there is no reason that we can see why you should not give us your opinion on the document which we wished you to examine.

"You will see from the enclosed letter that the only expert opinion submitted by Germany in any of the cases before this Court was from a Mr. J. V. Haring.

"We cannot overlook the possibility that our opponents might have consulted you without any intention of presenting your opinion. We will appreciate it, however, if you will give us a little fuller information as to whether you feel free to express an opinion on matters in these cases."

It is clear from the terms of the above letter that on June 10, 1931, the date on which Stein claims to have made his report, the question as to whether Osborn would be employed as an expert by the claimants had not been decided. It is also clear that whether Osborn should be employed as an impartial expert had not yet been decided. The fact that it had not been decided as late as June 12, 1931, whether Osborn would be employed by the claimants is evidenced by the following entry in Osborn's diary for that date:

"Mr. Loughman telephoned for Mr. Peto. Told him that I could not examine the matter for him because of ethics."

Thus not until June 12, 1931, did the claimants learn that it was impossible for them to employ Osborn as an expert. (As we have already seen, this fact negatives the claim of Stein that he had been employed as an expert to pass upon the genuineness of the instruments, and that he did deliver his main report on June 10, 1931.)

In his oral argument at Washington, 1932, in a statement justifying a fee of \$5,000 to Osborn, the German Agent said (p. 136):

"Mr. Osborn was consulted by me from the beginning of July, 1931 to February 10, 1932, \* \* \*

"Mr. Osborn, as I said, worked from July to February on this matter."

(b) *By the Commission.* — The matter of Osborn's employment by the Commission as an impartial expert was still open on September 15, 1931, because on that date the American Agent wrote to the Umpire a letter from which the following is quoted:

"If, after consideration of the observations I hereinafter make, the Commission shall decide that it is desirable to have the documents examined by any other expert, the American Agent would prefer to have the examination made by Mr. A. S. Osborn for the Commission, notwithstanding the fact that the German Agent has heretofore consulted Mr. Osborn in these cases."

The above paragraph is quoted by Dr. Tannenberg in his letter to the Umpire, dated September 19, 1931 (Ex. 940), hereinafter quoted.

Under date of September 15, 1931, Osborn wrote to the German Agent a letter which contained the following:

"It of course will have to be arranged as to whether I am engaged by the parties jointly or whether I am engaged by the Commission, and of course some understanding will necessarily have to be reached regarding my compensation." (Correspondence filed by Albert S. Osborn, Sept. 16, 1937.)

On the next day, September 16th, Osborn again wrote the German Agent a letter containing the following:

"The more I think about it, the more I am inclined to think that my examination in the claims case perhaps ought to be for you rather than for the Commission.

\* \* \* \* \*

"This claim represents, I think, a larger amount than any case in which I have ever appeared, and of course if my services should be valuable the charge for the services naturally should be consistent with the case and the work done. \* \* \*

"Of course it would be perfectly proper, I think, for you, if you see fit to do so, to say to the Commission that you had already interviewed me on more than one occasion and that under the circumstances it perhaps would be better for me to appear for the German Government." (Id.)

This letter is summarized by Osborn's diary entry for September 16, 1931, as follows:

"Mr. Stein came over. Examined typewriting specimens with him.

"Wrote Mr. Tannenberg, Washington, that perhaps it would be better, under the circumstances, that I make examination for German Govt." (Ex. W., Osborn Exam., July 9, 1937.)

Under date of September 19, 1931, the German Agent wrote Osborn a letter, acknowledging receipt of Osborn's letters of the 15th and 16th, respectively, in which he recited as follows:

On the 15th of September Osborn's son advised the German Agent over long distance telephone that a Mr. Loughman had come to Osborn's office on that day and informed Osborn that the claimants or the American Agent had suggested to the Commission that the Commission retain Osborn as their expert for the purpose of examining in regard to their authenticity the documents proffered by the American Agent.

Osborn's son then advised the German Agent that Osborn had taken the matter under consideration and reached the conclusion that he would not only be willing to act as a non-partisan expert for the Commission, if the Commission should decide to select Osborn for such purpose and the German Agent would acquiesce, but that Osborn felt confident that he would be in a position to render to the Commission an impartial report, notwithstanding the fact that he had

been previously employed by the German Agent in a matter pertaining to the same cases and that Osborn had been consulted by the German Agent in the course of the last two months in regard to the same documents.

After reciting his contact with the Umpire and his law clerk and indicating that he had postponed his trip to Boston and further consultations with Osborn in regard to the documents, the German Agent then says (p. 2):

" I have today written a letter to the Umpire of the Commission, a copy of which I enclose for your information. I have informed the Umpire in said letter that *I would be willing to release you from your employment by the German government and to consent to your engagement by the Commission as a non-partisan expert to examine the documents in question on their behalf, in case the Commission should decide to retain you as their expert.* You will note from my letter to the Umpire that *I have made this consent dependent upon certain conditions, viz., that you should not be required to disclose to the Commission or any one else the contents of the discussions I had with you and your son and that there should be no further consultations or interviews with you whatsoever either on the part of the German Agent or on the part of the American Agent or the private parties concerned or any one representing, or acting for or on behalf of, said parties.* These conditions are prompted solely by the desire to enable you to completely disregard any and all of the arguments I have discussed with you or any opinion that may have been expressed, in the course of your consultation by me, and to make the examination of the documents in question solely as a non-partisan expert on behalf of the Commission." (Emphasis supplied.)

The explanation given by Osborn in his examination of July 9, 1937 (pp. 195 *et seq.*), as to why he should not be required to disclose the contents of the discussions he and his son had with the German Agent was, to say the least, very vague and unsatisfactory.

In the letter written by the German Agent to the Umpire, dated September 19, 1931, a copy of which was enclosed by the German Agent to Osborn, in the last preceding letter, the relations between the German Agent and Osborn are set out as follows (Ex. 940; also correspondence filed by Osborn Sept. 16, 1937):

" In this connection I may be permitted to state briefly the connections between Mr. Osborn and the German Agent.

" In or about August of last year Mr. Osborn was consulted by my predecessor in office, Dr. von Lewinski, in a matter pertaining to the Black Tom and Kingsland cases, which matter, however, has no relation to any of the evidence proffered by the American Agent in support of his supplemental petition for a rehearing in these cases. This employment, as far I am informed, terminated at the end of August 1930.

" After the American Agent had presented to the Commission the evidence proffered in support of his aforesaid supplemental petition, on July 1st, and prior to the oral argument in the said cases at Boston, at the end of July of this year, I consulted Mr. Osborn in regard to the purported original documents proffered by the American Agent. Mr. Osborn was then engaged by me for the purpose of advising me in this matter and making an impartial examination of the documents in question for my own guidance and information. Mr. Osborn is at present still engaged by me for that purpose, although, as I have stated above, immediately after having been informed of the contents of your letter to Mr. Bowyer of the 14th instant, I arranged with Mr. Osborn to discontinue my consultations with him until the question of his employment as a non-partisan expert to examine the documents in question on behalf of the Commission had been decided.

" I informed the Commission of Mr. Osborn's previous and present engagement by the German Agent at the time the Commission consulted the two Agents regarding the possible service of Mr. Osborn as expert to examine the documents in question impartially for the Commission and inquired of the two Agents if either Agent knew of any objection to Mr. Osborn serving as such expert and whether either Agent had previously consulted Mr. Osborn on any point."

After setting out these relations, the German Agent then made the offer to release Osborn, upon the conditions enumerated in his letter to Osborn of the same date.

On October 14, 1931, the Umpire, with the concurrence of the two Commissioners, forwarded a joint letter to the two Agents stating as follows (Decision of Dec. 15, 1933, p. 65 of Rept. of Amer. Com. of Dec. 30, 1933):

“ It has proved impossible to carry out the American Agent's suggestion that Mr. Osborn be employed by the Commission. Mr. Osborn himself is unwilling; the American Agent now objects; the German Agent's consent is subject to restrictions, and the Commission could not accept restrictions. The Commission has now decided not to make further search for a satisfactory expert. In view of Mr. Osborn's standing in his profession, we would welcome the presentation of his testimony if the German Agent himself desires to offer it. The Commission still reserves its right to admit new evidence in these cases.”

Thus, so far as the Commission was concerned, the employment of Osborn was under consideration until October 14, 1931.

A careful analysis of the facts recited above, mostly in the form of letters and diary entries of Osborn, establishes clearly the following propositions:

(1) Although the claimants had been anxious to employ Osborn as an expert to examine the instruments, he refused to consider this employment on account of “ ethics ” and this refusal was first communicated to the claimants on June 12, 1931.

(2) After that time the Commission itself was anxious to employ Osborn as an impartial expert and the American agent was perfectly willing for this to be done, if Osborn's engagements with, and obligations to, Germany were not of such a character as to unfit him as an impartial expert.

(3) Osborn had been engaged by the German Agent for definite work before June 4th and his commitments in this regard were of such a character as to make him believe it unethical to accept employment from the claimants unless he secured a “ release ” from the German Agent.

(4) In spite of the desire of the Commission to employ Osborn as an impartial expert, Osborn preferred the employment of the German Agent and one of the salient reasons was his hopes of a larger fee than he thought he could have secured from the Commission.

(5) The German Agent was willing to release Osborn from the obligations of his employment by Germany but only upon condition that Osborn should not be required to disclose to the Commission or anyone else the contents of the discussions which the German agent had had with Osborn and his son.

Under these circumstances, when Osborn's connection with the Qualters story is recalled, it is not surprising to learn, as we will see hereafter, that Osborn's attitude towards the questions at issue before the experts was far from scientific and that his attitude towards the members of his profession who differed with him in the discussion of these questions was intemperate and overbearing.

The question of what was Osborn's fee is not an important one, except for the effect it had upon the Commission in its decision of 1932 and on the good faith of the German defense. In the oral argument on November 22, 1932, the German Agent in discussing the question of Osborn's fee said (p. 136):

“ Will the American Agent contend that a man of Mr. Osborn's standing and experience *would sell his reputation for a moderate amount of money?* ”

“ Mr. Osborn was consulted by me from the beginning of July, 1931, to February 10, 1932, and during this period had worked on his opinions for more than six months. I had had various consultations with him in July, 1931, further consultations after the Boston argument, after the Commission in its memorandum of October 14, 1931, suggested that the German Agent present Mr. Osborn's testimony.

Mr. Osborn was occupied with this investigation and examination of these documents from the middle of October to the end of December. He was consulted by me in February in regard to the watermarks. He has made numerous examinations and tests. He prepared an elaborate set of exhibits. And *when his work was completed and I asked for his bill he presented to me a bill for \$5,000.*

"I wish to make this statement because the American Agent has attempted to show that Osborn has been unduly influenced by the matter of his fees.

"Mr. Osborn, as I said, worked from July to February on this matter. The months of October, November, and December were taken up entirely by this work. And I submit to the Commission that in view of this enormous amount of work performed by Mr. Osborn the fee is, indeed, a very moderate amount, and in my opinion the best illustration that the whole attack on Mr. Osborn is wholly unjustified. *Certainly a man of his standing would not sell his reputation for that amount of money.*" (Emphasis supplied.)

The inference and the direct statement of the German Agent is perfectly clear that, *when Osborn's work was completed and the German Agent asked him for his bill, he presented a bill for \$5,000, and that was not a sufficient amount of money to justify him in selling his reputation!!* No intimation was made by the German Agent that on August 22, 1932, exactly three months before he made the statements in the argument above, Osborn had presented a second bill for \$7,500, which had been approved; and on November 18, 1932, four days before his argument, Germany had made a partial payment of \$1,500 on the bill for \$7,500 (Osborn's Exam. of July 9, 1937, pp. 201-203, 263-265; Memorandum by the German Agent dated June 1st, 1936, and filed June 1st, 1936).

In Osborn's examination by the American Agent on July 9, 1937, the American Agent quoted from the 1932 argument of the German Agent at Washington (p. 136) and then asked (Exam. July 9, 1937, p. 265):

"Now, as a matter of fact, on November 22, 1932, you had actually received in cash from the German Government the sum of \$6,500 and you had arranged with Dr. Tannenberg in August of that year that you were to get altogether \$7,500 for your last payment, so that there was still due \$6,000 on that? Is that correct?"

To which Osborn replied:

"A. That is correct excepting the matter of dates. I don't know about the dates."

#### *The Problem for Experts Stated*

When Exhibit 904 was filed, the American Agent filed with it as Exhibit 904 (1) the affidavit of Aloysius J. McGrail and also the handwriting report of E. W. Stein, Exhibit 904 (2) dated June 26, 1931, filed July 1, 1931.

The handwriting report of Stein was never attacked, but the German attack was based upon the proposition that, although the instrument was in the handwriting of Herrmann, it was written by Herrmann in 1931 and not in 1917.

The problem presented was a simple one:

Was the message, which was contained in Exhibit 904, written before Gerdts, the messenger, left Mexico for Baltimore in April, 1917, or was the message written in a magazine which was purchased from Abraham's Book Store in April, 1931? Or, to state the problem in more general terms, was the message written when the paper was comparatively new and not deteriorated or was it written when the paper was about fourteen years of age?

In order to solve this question, it is possible for the layman, as well as the expert, to examine Exhibit 904 and determine certain definite facts from this examination.

(1) The message was written cross-wise to the print on four pages of the Blue Book magazine beginning at page 700 then in sequence backwards on 698, 696, and 694. The message consists of 34 lines, 9 of which are written on page 700, 10 on page 698, 11 on page 696, and 4 on page 694.

(2) The message shows evidence of having been developed by heat and the first page (700) shows much more evidence of scorching or heat than the other pages.

(3) An examination of the reverse pages, that is to say, 699, 697, 695, and 693, on which there is no writing, discloses the fact that the lemon juice or liquid has seeped through distinctly on each of these reverse pages both from blots on the other side and from the writing where there are not blots.

(4) The writing on the first page (700) is much heavier and there are more blots on that page than on any other.

(5) The lemon juice or liquid has struck through, or penetrated, all of the written pages and in many places it is possible by using a mirror on the reverse page to read the words from the back, and this is true on all of the four pages.

(6) The deterioration of the paper by coloring and embrittlement is much more noticeable around the edges than in the other portions of the page, but all the pages containing the message have become very brown and show a deteriorated condition.

(7) The coded part of the message is contained in numbers. For instance, 1755 and 1915 are the first two numbers mentioned in the message. By neglecting the lefthand digit in each number and reading the other three digits backwards, we get from the first number the code number 557 and, from the second, the code number 519. These numbers now indicate the pages in the magazine on which the names corresponding to these numbers are indicated by pin pricks. There are about one hundred and seventy pin pricks scattered throughout the magazine. The question before the experts was whether there were physical signs from which it was possible to deduce whether the writing or the pin pricks, or both, were incorporated in the magazine when it was comparatively new or when it was about fourteen years of age. On this question more than a thousand pages of expert evidence in the form of reports and exhibits were produced before the Commission. As the Commissioners are not experts, the question before the Commission now, as formerly, is whether, from this logomachy, any definite and tangible results may be deduced which will assist the Commission in deciding the question as stated above.

The danger here, as in all questions where experts line themselves upon each side, is whether it is possible to detect these cases in which the experts are endeavoring to make the worse appear the better reason.

Before considering the specific questions at issue between the two groups of experts, it is well to state some facts which may be gathered from their testimony and seem to be well established.

The paper on which the message is written is known as mechanical wood pulp paper, that is to say, it is manufactured from ground wood, or wood fiber. This is a mechanically prepared fiber made by the simple abrasion of a log of wood and the fiber is not subjected to any chemical purification (Heinrich, Ex. 925, p. 5; Hibbert and Minor, Ex. 923, p. 10). The Blue Book magazine of January, 1917, was printed on paper made up of three parts mechanical wood pulp fiber and one part chemical wood pulp fiber, all derived from coniferous wood (Heinrich, Ex. 925, p. 5). In all mechanical wood pulp fiber paper, resins are present and according to the test made by Dr. Little, resin is present in the paper of Exhibit 904 forming .72% (Little, Ger. Ann. 30, p. 5; Heinrich, Ex. 925, p. 6).

On account of the presence of resin, mechanical pulp wood paper is subject to chemical change which may be brought about by exposure to light and air,

moisture and heat (Hibbert and Minor, Ex. 923, p. 10; Heinrich, Ex. 925, p. 6).

The changes which occur in mechanical pulp wood paper after it has been put in magazine form have been classified variously by various experts. Heinrich classifies them as follows:

- (1) Stretching and softening;
- (2) Yellowing; and
- (3) Embrittlement.

Brittleness is the increased tendency of a paper to crack on bending and is an important property in considering the question as to the age of the paper (Hibbert and Minor, Ex. 923, p. 20; Heinrich, Ex. 925, pp. 6, 13-15). Neither the stretching and softening of the paper nor the yellowing of the paper indicates deterioration or necessarily age. Pulp wood paper will yellow at an early age if exposed to sunlight and yet the paper, until it does reach the stage of brittleness, has not yet come into a deteriorated form (id.).

Brittleness is usually the result of the fact that the resins in the wood fibers undergo a hardening such as is observable in ordinary pine trees when the turpentine flowing therefrom becomes hard by exposure to the air and heat.

The present condition of Exhibit 904 shows that all the edges have become embrittled and break merely from handling or opening the magazine and the final stage of this brittleness is that the paper will crumble into dust or powder when rubbed between the fingers. A characteristic quality of brittleness in pulp paper is that when it begins to break it will break in straight lines (Heinrich, Ex. 925, p. 14; Hibbert and Minor, Ex. 923, p. 25).

The changes in wood pulp paper by deterioration are usually gradual unless subjected to unusual conditions.

A copy of the Blue Book Magazine of December, 1916, was filed as Annex 3 to Osborn's first affidavit and copies of the Blue Book Magazine for February, March, April, May, June, and July, 1917, were filed as Annex 4a.

A comparison of these magazines with Exhibit 904 shows that while there may be some differences of deterioration among themselves, they are all in much better condition than Exhibit 904. The margins do not break and chip by bending and the corners when bent do not break. It is impossible, however, to say this of Exhibit 904; for the embrittlement has reached such a stage that most of the margins have already broken off, and it will be recalled that Meyers, when he saw Exhibit 904, said that it was impossible that that book could have been sold from his store in 1931, because of its deteriorated condition.

In endeavoring to solve the question before the Commission, the contest between the experts has focused around four points:

(1) Whether it is possible from the condition of the one hundred and seventy odd pin pricks to determine the age of the paper when the pin pricks were put through the paper.

(2) Whether it is possible, from the perforations and abrasions by the pin, to determine the age of the paper when the message was written thereon.

(3) Whether it is possible, from the extent to which the lemon juice has penetrated or struck through the paper, to determine the age of the paper at the time when the writing was imposed thereon.

(4) Whether it is possible, from a comparison of the handwriting of Herrmann at or about the time when the message was alleged to have been written in 1917 with his handwriting or at about the time when it was claimed by Germany that he wrote it in 1931, to determine at which time he actually wrote the message.

There are some other subordinate inquiries, but, if these are settled, it may be unnecessary to consider the lesser ones.

We shall now take up the four questions enumerated above in their order.

(1) *Is it possible from the condition of the one hundred and seventy odd pin*

*pricks to determine the age of the paper when the pin pricks were put through the paper?*

The first expert report introduced by the American Agent was the affidavit of Aloysius J. McGrail (Ex. 904 (1) ), who sustained the authenticity of the instrument largely upon the condition of the pin pricks.

Osborn, in his original affidavit of December 19, 1931, filed without exhibit number January 9, 1932, designated the attempt of McGrail to settle this question by pin pricks as a presumptuous undertaking. Subsequently the American Agent introduced the report of the Bureau of Standards (Ex. 912 (1) ) made by R. E. Lofton, a technician of the Bureau of Standards, the report of Gustavus J. Esselen (Ex. 922), and the report of E. O. Heinrich (Ex. 925), all of which confirmed the report of McGrail; and the war of the experts had begun.

We will endeavor to trace briefly the course of this controversy, but first it is pertinent to give the qualifications of Captain McGrail.

At the time of his affidavit Mc Grail was a chemist employed by the Ludlow Manufacturing Associates, Ludlow, Massachusetts. He graduated from Harvard University in chemistry in June, 1913. For three years thereafter he was assistant in chemistry at the Catholic University of America, at Washington, D. C., and received in 1916 the degree of Doctor of Philosophy for original work in chemistry.

In the spring of 1918 he was recommended by Professor Theodore William Richards of Harvard University, and commissioned as a First Lieutenant in the United States Army for Military Intelligence duty, and, at the time of making his first affidavit, he was a Captain in the Reserve Corps of the Military Intelligence Division of the General Staff.

His record during the war is as follows: In 1918 he was assigned to duty at the New York Laboratory of The Postal Censorship Committee where he served until the middle of July, 1918. He was then sent to Washington in charge of the laboratory for secret writing of the Military Intelligence Division of the General Staff and at the time of the Armistice was transferred to Paris for similar duty in connection with secret writing and was there assigned to the American Commission to Negotiate Peace. He continued in Paris until the middle of March, 1919, when he was appointed assistant to the Military Attaché of the American Embassy in Paris where he was placed in charge of the Code Office. He also had supervision over the laboratory for secret writing at the Postal Censorship Bureau in Paris as well as of the laboratory at Advanced General Headquarters at Trier. This assignment continued until October 1, 1919, when he was ordered back to the United States for demobilization.

In McGrail's first affidavit of June 28, 1931 (Ex. 904 (1) ), in discussing the subject of pin pricks, his report is as follows (p. 5):

"The secret writing refers to perforations of other pages of the magazine which, for convenience, I shall call pin pricks, though the nature of the instrument used to make the perforations is not determinable.

"Inasmuch as the writing refers to pin pricks, which are made a part of the message, the writing must be as old as the pin pricks. I have therefore made a microscopic study of some of the pin pricks, to determine, if possible, whether they are new or old. In my opinion the pin pricks are substantially as old as the magazine itself."

After examining a great many perforations or pin pricks in the Blue Book magazine of January, 1917 (Ex. 904), and giving their characteristics, he concludes his examination as follows (p. 8):

"It is not possible by a microscopic examination to reach a definite conclusion with respect to every pin prick. It is possible that the fibers in the sides of the aperture of an old pin prick may not have deteriorated sufficient, or show other positive indications of age, for a positive statement concerning it. On the other hand

certain of the pin pricks which I have examined do in my opinion afford positive evidences of age. As will be noted from the foregoing analysis, the sides of the apertures of some of these pin pricks, those made through the inked areas of letters, are black. This black is caused by the bending into the aperture of the inked surface fibers. The ink film on these bent surface fibers has not broken, indicating that the ink was comparatively fresh at the time when the punctures were made. In new pin pricks, on old paper, the ink film on surface fibers is usually broken. In the case of new punctures, of course, the ink has become thoroughly dry before the puncture was made, the ink film is brittle, and breaks when the puncture is made. Though this is not a positive test it is one which affords strong evidence.

"Others of the pin pricks noted in the foregoing analysis show that the fibers in the sides of the apertures are oxidized to the same extent as the surface of the paper through which the punctures were made. In new pin pricks on old paper the fibers in the sides of the apertures show lighter in color than the surface of the paper through which the punctures are made.

"Inasmuch as I was instructed not in any way to mar the document submitted to me for examination, I did not make new pin pricks in this document. I did, however, make punctures in a magazine of the same age and paper. My examination of these newly made punctures invariably showed the fibers in the sides of the apertures to be of a lighter color than the surface of the paper; and invariably showed, even where the punctures were made directly through a printed letter, that the film, being now very dry, fractured."

In answer to McGrail's affidavit, Osborn, in his original affidavit of December 19, 1931, filed January 9, 1932, treating of the subject of perforations or pin pricks, uses the following language (p. 16):

"To attempt to answer a question of this kind, as to whether punctures through printed letters were made five months after the printing or several years after the printing, is in my opinion a *presumptuous* undertaking. Printing ink is one of the most permanent of substances and does not go through a change within a comparatively few years which would furnish the basis for any scientific opinion of this kind. I do not undertake to say that these punctures were made long after the date of the printing, but I do undertake to say that it is impossible to determine the date or approximate date of the puncturing of a letter, printed with ordinary printing ink, if the problem is whether the puncture was made five months after the printing or several years after the printing." (Emphasis supplied.)

After a discussion of this matter he says, on p. 17:

"I therefore do not undertake to say that these pin-pricks were made either in 1917 or in 1931, and I think that it would be highly dangerous in an important investigation of this kind to depend in the slightest degree upon evidence based upon physical characteristics of this kind."

In his second affidavit of May 29, 1932, McGrail, treating of the same subject, used the following language (Ex. 921, p. 21):

"I now wish to refer to what I consider to be further strong affirmative evidence of the authenticity of the message. Mr. Osborn and Mr. Clark have been quite free in stating that nothing can be observed from the condition of the pin pricks, although Mr. Osborn has not hesitated to base a 'definite and positive conclusion' on the authenticity of the magazine upon three very small and doubtful physical phenomena. He has termed my investigation of all the pin pricks in the message (approximately 175 in number) 'presumptuous and highly dangerous in an investigation of this kind'. In my original affidavit I enumerated the observations which I had made and specified in some detail the reasons for my conclusions. Both Mr. Osborn and Mr. Clark, supplemented by Mr. Skinner, have denied that any difference can be observed between the condition of a pin prick made at the present time in paper which is fifteen years old and a pin prick made in paper which is of similar quality but approximately five months old. They make other objections to my observations and conclusions which I shall deal with hereafter. Mr. Osborn

states that in the case of needle or pin pricks in old and new paper 'the physical results of the various perforations are practically the same'. Off-hand, it might appear that an examination of pin pricks is too fine a test to be persuasive — but it is not so. Mr. Osborn, I think, has spoken after a too hasty examination of his own experiments. A careful examination and training in the use of a microscope should enable one to observe the decided differences between pin pricks through old paper and pin pricks through new paper, under proper magnification. Anyone experienced in the use of a microscope knows the difficulties of translating to one who is not used to such an instrument what he sees during an examination of this kind but, with the use of photographs, I hope that this difficulty will be overcome.

"In the case of pin pricks made in new paper in the normal manner employed by one pricking out a secret message, the apertures are never sharp. The edge of the aperture is an irregular line. The fibre of new paper is so resilient that within a few hours after the piercing instrument has perforated the paper, fibres or bundles of fibre resembling a flap, spring back into what was approximately their original position and partially close the hole so that the outline of the hole from the reverse is lenticular or in simpler terms is shaped somewhat like a half-moon. The phenomenon is noticeable both from the obverse and reverse of the aperture. It is rarely seen in pin pricks made today in paper which is of an age corresponding to that of the paper in the Blue Book Magazine of January 1917."

After discussing many examples of perforations in the Blue Book magazine of 1917, and some in other magazines, he concludes the discussion as follows (p. 28):

"I have felt it advisable to go into some detail in discussing the condition of the pin pricks and their bearing upon the question at issue, not only because Mr. Osborn and others have referred to my investigation of this phase of the evidence as presumptuous, but also because of my very firm conviction that, given an impartial and thorough investigation of the pin pricks, the significant characteristics which they, as a whole, possess will become quite apparent. It is true that one pin prick is a very tiny thing, but the question at issue is the age of this document, when certain forces were brought to play upon it; namely, the pressure of a pen and the perforation by a needle, pin or similar instrument. There are approximately 175 places where the paper was perforated by such an instrument. Is it not natural to suppose that with so many physical phenomena to judge from, there would be some reliable evidence of the reaction of the paper to the forces which were applied to the paper to create these phenomena? With a microscope to enlarge the object and with an ability to interpret what one sees in a microscope, it would certainly appear reasonable to suppose that with so many instances to judge from, quite as much could be learned as from a few small indentations made by a pen.

"In page 36 of the joint affidavit of Messrs. Skinner and Clark it is stated that, in their opinion,

'No conclusion can be drawn from the color of the fibres (of paper) when observed under the microscope.'

"My opinion is quite otherwise.

"From the foregoing, I believe the reasons for my opinion as to the authenticity of the document in question are clear, as are also my reasons for believing that many of the conclusions of the experts on behalf of the German Government are absolutely unsound."

Under date of June 4, 1932, the Bureau of Standards submitted to the Commission Exhibit 921 (1), the report of R. E. Lofton, a technician in the Bureau Standards, on "Pin Pricks in Herrmann message in Blue Book Magazine for January, 1917". Lofton had before him McGrail's affidavit of May 29, 1932, and the photomicrographs by McGrail, and reported to the Commission that he had made some additional photomicrographs of the pin pricks in the Blue Book magazine and a microscopic examination of the fiber; that he had read the reports of Hibbert, Minor, Esselen, and McGrail, and then he states:

"I agree with the above named experts that there is in general a great difference in the microscopic appearance of pin pricks made in very old, cheap paper and in

new paper of the same approximate fiber composition, such as that on which the Blue Book Magazine for January 1917, and for June 1932, are printed. This statement is based upon a microscopic examination of the appearances and characteristics of pin pricks made by me within the past week in paper from the Blue Book Magazine for January 1917, and from the Blue Book Magazine for June, 1932.

"I have found when pin pricks were made in the paper of the Blue Book Magazine for January 1917, that the paper usually breaks abruptly, splits or tears in rather straight lines to form well-shaped angles about the entering pin point or needle point, similar to the manner in which hard, brittle and lifeless rubber, glass or ice usually breaks. On the other hand, pin pricks made in the paper from the current issue of the same magazine showed that the paper or fibers yield gradually before, or are pushed to one side by, the entering point to form holes which are more rounded and are more or less masked by fibers and fiber-bundles which have sprung back into the holes after the point has been removed. This latter condition is one which would logically be expected because of the natural resilience and elasticity of new fibers."

He attached to his report two photographs, one showing the appearance of the pin pricks made in the paper from the Blue Book magazine for January, 1917 (furnished him by Mr. Martin), and the second, showing the characteristic appearance of pin pricks made in the Blue Book magazine for June, 1932. He also stated that he had made a thorough examination under the microscope at a magnification of 100 diameters of the pin pricks to be found in the Blue Book magazine for January, 1917 (Ex. 904).

He then states his conclusions as follows:

"In my opinion, based upon twenty year's experience in the microscopic study of the fiber composition and properties of papers, and upon my observations of pin pricks made in the paper of the two numbers of the Blue Book Magazine referred to above, and of a study of the pin pricks forming a part of the Herrmann message in the Blue Book Magazine for January, 1917, marked 'Exhibit 904', one can, with proper microscopic equipment and training, and a sufficient number of examples, distinguish between pin pricks made in new wood pulp paper and pin pricks made in very old wood pulp paper, such as those in paper as old as that on which the Blue Book Magazine for January, 1917, was printed.

"It is also my opinion, based upon my examination of the above mentioned Exhibit 904, and upon my examination of pin pricks in the Blue Book Magazines referred to above, that the pin pricks in such exhibit are characteristic of those which have been made in paper of the wood pulp type when such paper was relatively new."

After the filing of Exhibit 921 (1), Osborn filed his affidavit of August 13, 1932 (Ger. Ann. 77, filed August 15, 1932). In this affidavit Osborn refused to distinguish between pin pricks in a new and an old magazine in the following language (p. 35):

"If an opinion is to be based upon this pin-prick evidence alone it would be just as reasonable to say that these pin-pricks in the Blue Book Magazine of January, 1917, were made in March or April, 1931, as in April, 1917."

After making this assertion Osborn made a very severe attack upon Lofton's affidavit and accused him of a gross error showing carelessness, or lack of accuracy in observation, that casts serious doubt upon the report of the witness. In this attack he uses the following language (p. 35):

"Because of its source, the Lofton pin-prick report perhaps deserves special attention. It is in a number of ways a surprising document. In the first place, in illustration of this extraordinary and very doubtful testimony about determining the age of paper by sticking pins through it, this witness presents two photographs of a most peculiar character, about which he says:

" I have made photo-micrographs by transmitted light at a magnification of 100 diameters to show the characteristic appearance of pin-pricks made in old and in new paper."

" That they are made by transmitted light for such a purpose is the first surprising fact, if one really desired to show the physical evidence, but still more surprising is the alleged enlargement of 100 diameters. The photographs filed measure 3.5 inches in width, between the objects farthest apart. If this length is divided by 100, the information is obtained that the original of this exhibit, if it was enlarged 100 diameters, was less than the size of the interior of the small ' o ' in this typewriting, or .035 of an inch in width. The illustration contains nineteen pin-pricks, which could hardly have been grouped in this small field without interfering with each other. A gross error of this kind shows a carelessness, or lack of accuracy in observation, that casts serious doubt upon any report of this witness. It is of course charitable to say that the inaccurate statement is a blunder, but it is difficult to understand how an error of this kind could be made by an experienced examiner. By mere observation and inspection it should appear that an enlargement of the 100 diameters of a pin-prick would make a large aperture.

" Measurements show that the originals of the pin-pricks that I have photographed stereoscopically, 0-29, 0-30 and others, range in size of aperture from about  $\frac{1}{60}$  of an inch to  $\frac{1}{120}$  of an inch. It is obvious that a pin-prick of  $\frac{1}{120}$  of an inch, enlarged 100 diameters, would show an aperture of one inch. In order to answer the practical purposes for which they are made, pin-pricks would necessarily be made large enough so that they would be visible, and it is not probable that a pin-prick of this kind would be made smaller than from  $\frac{1}{60}$  to  $\frac{1}{120}$  of an inch."

German Annex 80, dated August 13, 1932, filed August 15, 1932, is the affidavit of Skinner, Clark, Griffin, and Billings. These experts, referring to the photographs made by Lofton, make the same charge as Osborn made, in the following language (p. 27):

" These photographs are misleading, not only because the magnification is wrongly stated, but because they are taken with transmitted light and give no opportunity to see whether the photographs were taken on the printed body of the page or on the unprinted margin."

In answer to these criticisms of Lofton's report, the Acting Director of the Bureau of Standards filed Lofton's " Reply to the criticisms of the German experts relating to my report of a study of pin pricks in the Blue Book Magazine for January, 1917 and of the same magazine for June, 1932 " (Ex. 963 (6) ).

In this report Lofton, after quoting the criticisms copied above, stated as follows (p. 3).

" The magnification used in making the photomicrographs was 100 diameters, as stated in my report."

He then states that after receiving the criticisms he had checked up in order to be doubly sure, on the magnification used, and found it to be as stated in his report.

He then describes in detail the methods used by him in making the pin pricks and the photomicrographs, and shows clearly that the criticisms made by Osborn and also by Skinner, Clark, Griffin, and Billings had no basis whatever, and closes his report as follows (p. 10):

" I should perhaps state, in conclusion, that all the work in connection with the report I made to the Commission and with these comments and photographs was done by me personally. I again state that these results are accurate and that no blunders were made. I, therefore, have no desire to withdraw or modify any statement made in the original report, and this supplementary report is purely explanatory of the original."

Thus we have another example of Osborn's zeal as an investigator, coloring his work as an expert, and leading him to make a baseless and false charge against a scientist in the employment of the Government, devoting his life to the ascertainment of truth, who, in this case, had no interest except to ascertain the facts and report them to the Commission.

The report of Gustavus J. Esselen, filed June 1, 1932, fully sustains the report of Captain McGrail on the subject of pin pricks and disposes of the criticisms made by Osborn in this respect. In his report (Ex. 922, p. 33), Esselen says:

"In spite of the remarks of Mr. Osborn and Mr. Clark on the question of pin pricks, my study of this matter has clearly shown that there is a very distinct difference between pin pricks made recently in 1917 issues of the Blue Book, as compared with pin pricks made in 1929 or 1931 issues of the Blue Book, particularly if these pin pricks are examined on the reverse side under proper optical conditions. In fact, the exhibits which Mr. Osborn himself has prepared and submitted as Exhibits O-P-1 to accompany his Expert Opinion, clearly show these characteristic differences. These differences will be shown hereafter by means of suitable stereo-photographs. In view of my own investigation of this subject, it is my opinion that the pin pricks to be found at several places in the January 1917 issue of the Blue Book which contains the Herrmann message, are characteristic of pin pricks which are made in relatively new paper and are quite distinct in their characteristics from pin pricks which are made in similar paper after it is thirteen or fourteen years old.

"In this connection, I would like to invite particular attention to two stereo-photomicrographs which I have taken of Exhibit O-P-1 filed by Mr. Osborn with this Expert Opinion. One of these stereo-photomicrographs, Exhibit E-25, shows the reverse side of pin pricks which Mr. Osborn made recently in issues of the Blue Book Magazine for February 1917; the other stereo-photomicrograph, Exhibit E-26, shows the reverse side of pin pricks made by Mr. Osborn at the same time in issues of the Blue Book Magazine for October 1931. While I shall discuss the characteristic differences between these two sets of pin pricks in more detail later on in this report, I will merely invite attention at this time to the fact that the reverse side of the pin pricks made by Mr. Osborn in the recent issues of the Blue Book Magazine show all of the characteristics of the reverse side of the pin pricks in the original message; and furthermore, these characteristics are entirely distinct from those shown by the pin pricks which Mr. Osborn made recently in the old magazines. As illustrative of the reverse side of the pin pricks in the original message, there are filed with this report three stereo-photomicrographs, showing the reverse side of typical pin pricks on various pages of the original message. (Exhibits E-27, E-28, and E-29.) A glance at these will show that they are of the same general character as the pin pricks made by Mr. Osborn recently in fresh paper, indicating that the paper on which the Herrmann message appears was relatively fresh at the time the pin pricks were made in it. This matter is considered in more detail later in this report."

Again, after carefully considering the subject and examining a number of pin pricks in Exhibit 904, Esselen concludes his discussion as follows (p. 57):

"I have examined a large number of pin pricks in the original message and the three which are illustrated in Exhibits E-27, E-28 and E-29 are typical of those which I have found in the message itself. In other words, the pin pricks in the magazine containing the Herrmann message are typical of pin pricks made at the time the paper was fresh rather than of pin pricks made after the paper was old. This is an added indication that the magazine was relatively new at the time that the Herrmann message was written in it."

Dr. Esselen's qualifications as an expert are as follows:

He graduated at Harvard College with the degree of Bachelor of Science, Magna cum Laude in Chemistry, in 1909. He taught chemistry at Harvard and continued his study in the Graduate School, receiving the degree of Master of

Arts in 1911, and of Doctor of Philosophy in 1912. At the time of making his affidavit he had, for fourteen years, practised as a consulting chemist in many fields of research and specialized in the practical application of chemistry of cellulose, which is the chemical name for fibrous material of which paper is composed. He acted in an advisory capacity for manufacturers of paper, and on two separate occasions made special investigations in Europe in connection with the problems of the Pulp and Paper Industry. He helped translate from German into English Heuser's "Textbook of Cellulose Chemistry"; prepared the chapter on "Cellulose and its Derivatives" in the book entitled "Colloidal Behavior", edited by Bogue, and was the author of the chapter on "Cellulose Industries" in "The Manual of Industrial Chemistry", edited by Rogers. He was a member of the Technical Association of the Pulp and Paper Industry, a Councillor-at-Large of the American Chemical Society, a Director of the American Institute of Chemical Engineers, and a Fellow of the American Association for the Advancement of Science. Surely, with Esselen's support of Lofton, there is no ground for charge that Lofton's opinion was presumptuous and dangerous.

Edward O. Heinrich filed Exhibit 925 and eight Annexes, all dealing with Exhibit 904. At the time of filing his Exhibit 925, Heinrich had been for twenty-four years engaged in scientific investigation and microscopy, particularly as applied to police science and the detection of crime. The greater part of his practice had consisted in the examination of disputed documents and handwritings offered as legal evidence.

He has qualified in the courts of a great many states as an expert in chemistry and microscopy, and on all subjects concerning disputed documents and handwriting.

In 1908 he graduated from the University of California with the degree of Bachelor of Science in chemistry. At that institution his work was a study of chemical engineering, with special attention to legal chemistry. He has made himself familiar with all available English, German and French works on the subject of questioned documents and handwriting. He has also made an extensive study of the composition of and method of manufacturing paper.

He maintains in Berkeley, California, a fully equipped scientific laboratory for special research in the field of questioned documents, and in the field of microchemical analysis.

He has been City Chemist of the City of Tacoma, Washington; Engineer of Tests of the City Tacoma, Washington; Chief of Police of the City of Alameda, California; Director of Public Safety of the City of Boulder, Colorado, and a Lecturer at the University of California on Criminal Investigation and Disputed Handwritings.

Heinrich made an extensive study of the subject of pin pricks in Exhibit 904. He made a number of experiments with new paper of the grade used in Exhibit 904, and with other papers of that grade in various stages of deterioration. He made binocular magnification of the various pin pricks and he used such magnification for his study of each one of the 170 pin pricks which he observed in Exhibit 904, and he compared these with the exhibits submitted by Osborn. The result of his study is thus stated (Ex. 925, p. 41):

"I find that the pin pricks in Ex. 904 show the characteristics of pin pricks made in fresh paper. Out of the 170 pin pricks examined, I found less than 2% in which the characteristic phenomena of pin pricks in new paper were not clearly shown. I am, therefore, of the opinion that the pin pricks in Ex. 904 were undoubtedly made at a time when the paper of the magazine was in a comparatively fresh and pliable condition.

"My microscopic study of Mr. Osborn's exhibit (his Annex 2, OP-1) disclosed that the pin pricks which he has submitted display the same identifying characteristics of youth and age which I have described above."

And, again, on p. 44. he states as follows:

"If I had had but a small number of pin pricks for examination, it would probably have been difficult, if not impossible, for me to reach a positive conclusion. Ex. 904, however, presents so many examples of pin pricks for examination that no one could find it difficult to determine from them a question as to whether the paper was new, or considerably embrittled, at the time when they were made. With so much material available, I have been able to form a positive conclusion that it is impossible that the pin pricks could have been made at any time the paper was in anything like its present condition of embrittlement, or at any time other than when the paper was comparatively fresh."

Hibbert and Minor did not make an extended report on the subject of pin pricks but their conclusion is thus indicated (Ex. 923, p. 50):

"As this affidavit is already much longer than we would wish to have it, we will not enter into any detailed discussion of the question of the condition of the pin pricks in the original message or Mr. Osborn's comments thereon. Lest our silence on this point be construed, however, as agreement with the statements of the German experts in this regard, we wish to record our view that in our judgment the condition of the pin pricks in the original message bears strong evidence that the paper was fresh when the message was written in the magazine. In this connection, we also wish to state that the color of freshly exposed interior fibres in a perforation of paper can, with the proper use of the microscope and in some cases even with the naked eye, be readily observed and distinguished from the color of old, long exposed fibres. The difference of color is particularly noticeable in the case of fresh tears in old surface-yellowed paper and here the naked eye frequently can observe it."

In the oral argument at Washington, 1932, page 216, the German Agent simply based his whole argument on pin pricks upon Osborn's experiments and tests and stated that:

"he has demonstrated, in our opinion, conclusively that there is no difference. We find the same appearance in paper of 1917 as in paper of 1931."

But the German Agent contended that:

"whatever physical evidence there might have been in these pin-pricks that evidence was destroyed, whether the pin-pricks were made in 1917 or in 1931 or at any time in between."

On the contrary a careful examination of the stereophotographs which have been prepared and filed by Esselen and those which were prepared and filed by Osborn, himself, will convince even the lay observer that the evidence has not been destroyed and that the distinction which has been observed by McGrail, Lofton, Esselen, and Heinrich is too distinct to be neglected.

(2) *Is it possible from the perforations and abrasions by the pen to determine the age of the paper when the message was written thereon?*

In his original affidavit of December 19, 1931, it was contended by Osborn that the Blue Book magazine of January, 1917, had reached a condition of pronounced deterioration at the edge of the sheets at the time the writing was done, that the paper had softened and weakened at the edge of the sheets to such an extent, and that the deterioration of the paper at the edges had progressed so far, that when the writer came to the edge of the sheet "as shown in two places at the edges on page 698 and page 694, the two nibs of the pen actually stuck through the paper" (p. 5).

The first instance given by Osborn of the nibs sticking through the paper was on page 698 in connection with the word "bunch" and he claimed that the ink actually went through the hole and discolored even the last page of the message which was 694 and was the second sheet under 698.

The second instance of perforation, noted by Osborn, was in the figure 6 on the second line of the writing on page 698.

The third instance is in the letter "s" in the word "greetings" in the last line on page 694.

Then Osborn goes on as follows, page 6:

"On both of these pages other writing near at hand, not on the edge of the sheet, shows that the paper was not softened and weakened in the middle of the sheet but only near the edge. *On these portions of the sheets not a single instance is found where the pen either cut, or stuck through, the paper.*" (Emphasis supplied.)

In the joint affidavit of Skinner and Clark, dated January 26, 1932, German Annex 25, we find the following at page 37:

"Upon our examination of the original January 1917 copy of the Blue Book Magazine, we find that the writing on the bottom margin of the pages shows at five different places punctures of the sheet or ruptures of the surface fibers by the pen point; whereas *no similar puncturing of the surface fibers is shown in the body of the page*, proving that the paper must have been written on when the margin of the pages had already become deteriorated by natural ageing." (Emphasis supplied.)

Thus we have Osborn charging that "on these pages not a single instance is found where the pen either cut or stuck through the paper", when the writing is "not on the edge of the sheet"; and Skinner and Clark echoing this charge when they say that "no similar puncturing of the sheet or rupturing of the surface fibers is shown in the body of the page, proving that the paper must have been written on when the margin of the pages had already become deteriorated by natural ageing."

In response to these charges, that there were no punctures or pen cuts in the body of the sheets or through the pages, Heinrich, examining the same instrument, reports in his affidavit of May 31, 1932 (Ex. 925, p. 29), that he found five pen punctures (complete perforations and fifteen pen-digs (almost complete perforations), in the central areas of the pages, that is, elsewhere than in the margins. The location of the punctures as set out by Heinrich as follows (p. 29):

" Page	Line	Word	Letter	
700	4	and	n	Punctured at foot.
698	1	bearer	a	Punctured on upper left side.
698	3	of	f	Punctured on up stroke of lower loop.
698	5	go	g	Punctured on up stroke of lower loop.
694	1	Sei	S	Punctured on up stroke opposite turning movement closing base of letter".

In German Annex 77, Osborn's affidavit of August 13, 1932, referring evidently to the claim as set out above by Heinrich, he says, p. 13:

"This Heinrich report also admits that the pen of the writer of the message actually perforated the paper at the margin *in three places*, and then contends that the same quality and character of perforations are found in the middle of the pages. This is not the fact. A careful microscopic examination discloses that at least most of the alleged defects in the center of the sheet were *not caused by the pen* but were in the paper itself, as they are in other sheets. There is such a defect on page 694 between the first and second lines, under the word 'to'." (Emphasis in original.)

As reported by Esselen in his affidavit dated May 28, 1932, Exhibit 922, page 42, there are two pronounced punctures made by the pen in writing in the following places:

On page 698 there is an obvious cut in the letter "g" in the word "go" in the fifth line of the message. This cut can be viewed by the naked eye and is

clearly shown in the stereophotograph made by Esselen and filed with his report as Ex. E-8. The reverse or underside of the hole is also shown in separate stereophotograph Ex. E-8a.

On page 700 the pen made an actual hole in writing the letter "n" in the word "and" in the fourth line of the message. Esselen's stereophotograph E-11 brings out the hole clearly and the stereophotograph E-11a exhibits the hole on the reverse side of page 699 of the message. Both of these holes, however, can be seen plainly with the naked eye.

The other stereophotographs filed by Esselen with his report give a number of examples where the pen either pierced the paper or made deep indentations as follows:

1. On page 694 the final "s" in the word "funds" shows that the pen made a deep dig into the paper followed by a skip before the writing started again.

2. On page 696 the pen dug deeply into the paper in making the dot over the "i" in the word "with" in the first line of the message.

3. On page 698 the pen stuck into the paper in making the letter "r" in the word "here" in the fifth line of the message. In this case the pen stuck into the paper, then interrupted, and then started again.

In all three of these last cases the stereophotographs show clearly the deep indentations.

(3) *Is it possible from the extent to which the lemon juice has penetrated or struck through the paper to determine the age of the paper at the time when the writing was imposed thereon?*

On this question the experts are in direct opposition.

In Osborn's first affidavit of December 19, 1931, filed January 9, 1932, he reports as follows (p. 2):

"The writing on the four pages of the Blue Book Magazine of January, 1917, appearing on pages 700, 698, 696 and 694, was in my opinion written a number of years after its alleged date of April, 1917. My opinion is based on the fact that the paper was old when the writing was done. These pages show in the writing itself unmistakable physical evidence that there was a pronounced difference, when the writing was done, in the condition of the paper at the edge of the sheet as compared with the middle of the sheets. This changed condition in wood pulp paper is positive evidence of age."

And again on page 5 he says:

"The Blue Book Magazine of January, 1917, in which the disputed writing appears on the four pages, in my opinion, had undoubtedly reached a condition of pronounced deterioration at the edges of the sheets at the time the writing was done. This paper in this January, 1917, magazine, when the writing was done, had softened and weakened at the edges of the sheets to such an extent, that is, the deterioration of the paper at the edges of the sheets had already so far progressed, that when the writer came to the edge of the sheet, as shown in two places at the edges on page 698 and page 694, the two ribs of the pen actually stuck through the paper. On page 698 where the word 'bunch' appears the pen actually cut the paper and the ink ran through to the page underneath which, as the magazine was lying, was page 696. and there is some indication on the earliest photostatic photographs (See Ex. 904, 2c, and 904, 3a) that the ink actually went through and discolored even the last page of the message, which was 694 and was the *second sheet* under 698 where the word 'bunch' appears."

In his affidavit of December 21, 1931, filed on the same day as Osborn's first affidavit, January 9, 1932, Frederic C. Clark, one of the German experts, after giving the composition of the paper used in Exhibit 904 and stating that "decomposition is the result of the action of sunlight, air and certain gases", then

states that this deterioration is first recognized as a slight discoloration of a brownish color, then this brownish color deepens and finally it results in the fiber crumbling into a dustlike material. He then states as follows (Ann. 10 to Osborn's Opinion, p. 6):

"A paper composed largely of ground-wood pulp may show good writing qualities with pen and ink while the paper is relatively new. As deterioration sets in, however, and the paper becomes actually brittle, it then shows very poor writing qualities with pen and ink, as the pen points may actually tear the paper even with slight pressure, and the ink tends to go through the paper more readily where deterioration has taken place. If badly deteriorated, a ground-wood paper may be so absorbent to ink as to carry the ink all the way through the paper, staining the opposite side, very much as in the case in writing on a piece of thin blotting paper. The rapid absorption of ink where the paper is badly deteriorated is due to the fact that in the deterioration set up, the ground wood fibers lose their fibrous form and are reduced to a dustlike material, and this dustlike material more rapidly absorbs ink from a pen than occurs where the fibers show no or very light evidence of deterioration."

Again at page 13 he said:

"Based upon the evidence presented above and my knowledge of ground-wood papers, it is my opinion that the paper used in the above mentioned copies of the Blue Book Magazine of an age of two years could be written on with pen and ink at the unprinted margin without tearing or roughening up of the surface and without penetration of the ink through the paper, such as occurs when discoloration and embrittlement have reached an appreciable degree. It is my further opinion that with the paper used in the Blue Book Magazine, the tendency to deteriorate will progressively increase so that with paper as old as that used in the 1917 Blue Book Magazine, it would be difficult if not impossible to write on it with ink and particularly with a heavy pen stroke at the margin of the paper without a marked roughening up of the surface and penetration of ink through the paper."

A comparison of Osborn's first affidavit and Clark's affidavit will show clearly that the latter was filed to substantiate the former in the statements made and quoted above. It is pertinent to note that at the time when Clark made his affidavit he had not even seen Exhibit 904 about which he was testifying.

In opposition to the view expressed by Osborn and Clark, is the affidavit of Charles J. J. Fox (Ex. 919).

Charles James John Fox at the time of making his affidavit was a doctor of Philosophy and a Fellow of the Institute of Chemistry of Great Britain and Ireland. From 1897 to 1901 he studied at University College, London, under Sir William Ramsay and Professor F. G. Donnan. During 1901 he studied at the University of Paris. From 1902 to 1904 he studied at the Universities of Leipzig, Breslau and Berlin. From 1904 to 1907 he was a member of the staff of the Chemistry Department of University College, London, and cooperated with Professor Fridtjof Nansen in Oceanographical research. From 1907 to 1914 he was Professor of Chemistry at the College of Engineering, Poona, India. During the World War he was Major, Royal Artillery, engaged in munition work and for a time a member of the General Staff of the Army Department. From 1919 to 1925 he was Principal and Professor of Chemistry at the Royal Institute of Science, Bombay. Since 1925 he had been a partner in the firm of Cross and Bevan, consulting and analytical chemists, London, specializing in the Cellulose Industries. He is the author of various scientific and technical memoirs and monographs, including articles in the Encyclopedia Britannica on Cellulose, Rayon and Paper, and also in Thorpe's Dictionary of Applied Chemistry, new edition.

Fox in his affidavit (Ex. 919, dated May 20, 1932, filed June 1, 1932) examined the contention of Osborn (p. 6) and of Skinner and Clark (p. 7) and of

Little (p. 7), all of whom came to the conclusion expressed by Osborn that the paper of the sheets containing the Herrmann message " had undoubtedly reached a condition of pronounced deterioration at the edges of the sheets at the time the writing was done ". He also examined the contentions made by Clark in Annex 10 to Osborn's Expert Opinion, p. 8, and summarized the conclusions of the affidavits filed on behalf of Germany as follows (p. 9):

" 6. Broadly summarized, the conclusions of these affidavits filed on behalf of the Germans as I understand them are as follows:

" (1) That wood pulp paper of the kind used in the Blue Book Magazine deteriorates with age, the deterioration manifesting itself in a progressive browning and embrittlement beginning at the edges of the pages and spreading inwards towards the middle of the pages.

" (2) That this deterioration is slow in ' normal ' conditions of handling and storage, such as in a library, with the consequence that a number of years elapse before there is any serious deterioration sufficient to affect writing quality.

" (3) That the writing quality of the paper when new and undeteriorated is better than when old and deteriorated and particularly is it better at the edges of the paper.

" (4) That since the inscription in the Blue Book Magazine of January, 1917, displays signs of difficulty in writing especially at the edges of the paper, such difficulty being indicated by roughening, penetration and such like effects on the paper, visible mainly at the edges of the paper but not in the middle, therefore the paper was some years old at the time the inscription was written and consequently older than the twenty-one weeks between the date of the Magazine's being printed and April, 1917."

After discussing the subject of deterioration of paper showing the different conditions and factors which make for deterioration, Fox then discusses the subject of " Evidence of absorption and penetration " (p. 16) and shows clearly that wood pulp paper is more absorbent when comparatively young than it is when it grows old; that on account of progressive hardening of the resin ingredient of ground wood in wood pulp paper, its writing quality improves with age and its absorbent quality decreases.

In this connection he made some experiments with the time of penetration of lemon juice into magazine papers at different ages and reports his results as follows (p. 21):

" Time of Penetration of Lemon Juice into magazine papers of different ages.  
(See Exhibits XXXIII to XXXVIII hereto inclusive)

<u>Magazines Tested</u>	<u>Thickness 1/1000 Inch</u>	<u>Times measured on different pages</u>	
Blue Book, March 1917	5.85	{ 90 minutes	116 minutes
		{	20 seconds
Adventure, January 1917	6.6	{ 98 minutes	88 minutes
		{ 20 seconds	20 seconds
Adventure, 15 April, 1932	5.15	{ 6 minutes	10 minutes
		{ 48 seconds	19 seconds "

After making this table Fox says:

" Any observer of these exhibits will be able to notice that the lemon juice has spread to a much larger area on the new paper of the 1932 issue than it has on the old paper of the two 1917 issues."

An examination of Exhibits XXXIII to XLb, filed with Fox' affidavit, verifies his conclusions.

After a careful and scientific treatment of the subject, a part of his conclusion is stated as follows (p. 25):

“ It follows from this, by easy deduction, that blurring, feathering and penetration of the writing fluid are, in my opinion, more likely to happen with new paper than with old. Therefore, it is my belief, also, that the inscription with lemon juice in the Blue Book Magazine of January, 1917, was written when the paper was new and easily wetted, and easily penetrated because easily wetted. The blurring and feathering of the writing and the penetration of the paper at some places at the edges and towards the middle of the page alike, are much more likely evidence of the difficulty of writing on new paper than evidence that, at such places, the paper may have been weak, because old, at the time of its being written upon. It follows also, and it is my opinion, that the giving way of the paper at the edges is merely the effect of age, and such giving away must sometimes happen to occur where there happens also to be some writing near by. It is my opinion that this fact, in itself, cannot be accepted as evidence that the paper was old when the inscription was written. However that may be, the inscribing of the word ‘ bunch ’ on Page 698 was very evidently completed quite satisfactorily at the time it was written, and the final ‘ h ’ shows signs of blurring or feathering, which, in my opinion, is evidence that the page was relatively new and undeteriorated at that edge at the time it was written. This opinion is strengthened by the circumstance that there appears to have been penetration of the writing fluid into the two pages below, which I believe was the more likely to have occurred if the paper was relatively new at the time of writing than if it was old, though penetration, even then, is no doubt also always dependent, to some extent, upon the stiffness and sharpness of the pen and the skill of the writer, including the speed at which he writes. If and when deterioration at the edge of the pages does ultimately set in so that the paper there gives way in consequence of increase of brittleness, it is to be expected that it will give way more easily where the pen has indented it and deposited upon it an acid substance (citric acid) which has a markedly deteriorating action.”

After Fox' affidavit (Ex. 919) had been filed the joint affidavit of Skinner, Clark, Griffin, and Billings, consisting of 144 pages, dated August 13, 1932, was filed on August 15, 1932. One of the chief purposes this affidavit was to discredit Fox' affidavit; and for this purpose they say (p. 71):

“ All of the data furnished by Fox on rate of penetration in old and in new paper contributes nothing that is not well known. He goes to great length to prove that new paper has a higher rate of penetrability than old paper. In the disputed message there is no appreciable strike-through of the writing except on the first page, and even there the strike-through occurs only where it is clearly evident that an abnormal and excessive amount of writing fluid was applied to the paper. If Fox had actually seen the reverse side of the pages on which the message was written, instead of reproductions of the written side only, and had applied the results of his tests to the question at issue, his only logical conclusion would have been that the paper was old when the message was written.” (Ger. Ann. 80.)

In making these statements these four experts were jointly guilty of several egregious errors.

First, they assert that there is no appreciable strike-through of the writing except on the first page, and even there the strike-through occurs only where it is clearly evident that an abnormal and excessive amount of writing fluid was applied to the paper.

An examination of the pages in Exhibit 904 on which the message was written and of the reverse pages, shows that there is an appreciable strike-through on every page.

These four experts also say that, if Fox had actually seen the reverse side of the pages on which the message was written, instead of copies of the written

side only, and had applied the results of his tests to the question at issue. his only logical conclusion would have been that the paper was old when the message was written.

Fox filed, with his Exhibit 919, Annex A which contained photographic Exhibits I to XLb. I and II are photographs of page 700 and page 699 of the Herrmann message, page 700 being the page on which the first page of the message occurs and page 699 being the reverse page. Even in this photograph it is easy to see that the strikes-through occur not only where there is an abnormal amount of the fluid but also where there is a normal amount of fluid.

Exhibit III is a photograph of page 698 and Exhibit IV is a photograph of page 697. Page 698 contains the second page of the message and 697 is the reverse side of page 698. An examination of the photograph of 697 as well as of the original, shows also many examples of strikes-through which are observed even in the photograph.

Exhibit V is a photograph of page 696 and Exhibit VI is a photograph of page 695.

In these pages the same phenomena appear as in the prior ones.

Exhibit VII is a photograph of page 694 and Exhibit VIII is a photograph of page 693. The strikes-through here are evident and numerous. Page 694 is the last page of the Herrmann message and page 693 is the reverse page, and, on this reverse page, there are evident many cases of strikes-through where the use of the liquid is normal. In fact, there is no abnormal use of the liquid on page 694 and only one on page 696 and no abnormal liquid on page 698, and yet, every one of these cases, there are strikes-through evident on the photographs as well as on the original Exhibit 904.

William J. Hurst, a graduate of Pratt Institute in the Department of Chemistry, post-graduate in Organic Chemistry at the Polytechnic Institute of Brooklyn, N. Y., where he obtained the degree of Bachelor of Arts in Chemistry, and who also took a post-graduate course in Coal Tar Dye Chemistry at Columbia University, was at the time of his affidavit chief chemist for S. S. Stafford, Inc., manufacturers of writing inks, typewriter ribbons and carbon papers. He had qualified as an expert examiner of questioned documents in Federal and State courts in New York, Massachusetts, New Jersey, Connecticut, Pennsylvania, and Maryland. He made an expert report on Exhibit 904, which was filed on June 1, 1932, as Exhibit 924.

After an examination of Exhibit 904 his report on the instrument contained the following (p. 2):

"The writings on the pages of the imposed message show spreadings similar to known effects of writing on fresh paper of the wood pulp magazine type. On the reverse side of these pages, i. e., on pages 699, 697, 695 and 693 evidences of the penetration is markedly shown and the absorption of ink by new paper and the penetration of ink in the fibers of new paper and the seeping through the fibers to the back or the reverse of new paper is clearly shown. The extent of the penetration can be readily observed by anyone who examines the original document or photographs of the reverse of the pages on which the message has been written.

"In the original message the nature of the blurs on page 700 is particularly significant. The blurs are approximately the same size on the reverse as on the obverse of the page and both the obverse and the reverse show that the paper was fresh at the time of the writing and that the writing was done before the pronounced natural resistance to penetration due to substantial ageing had set in. Furthermore, the blurring, feathering and absorption of the writing, when any substantial amount of lemon juice was on the pen, is a most significant indication of the freshness of the page at the time the writing was done. The extent to which the writing itself penetrated the paper which, when compared with the decided

resistance of old paper to the penetration of writing gives further evidence of the freshness of the page at the time of writing. I made a microscopic examination of the original message and found the book to be of a yellowish brown appearance, which is characteristic of aged paper, particularly of the wood pulp magazine quality. On the outer edges of the pages there is a darker coloration, more brownish in hue, and this prevails throughout the entire magazine, particularly at the bottom edges. This brownish edging is also characteristic of aged paper and is produced by atmospheric contact, which has an action similar to that of the mid-summer's sun or ultra-violet rays. This action is more rapid on wood pulp papers which are the types generally used for cheap magazines and newspapers.

"On pages 700, 698, 696 and 694 I particularly noticed that on the bottom of the pages (the page-numbered end) the pages appear brittle, and in these cases the edge was cracked and pieced out. It is my opinion that the pages were affected by the application of the hot iron which dried the paper and the ageing, due to contact with the atmosphere, has caused the hardening and brittleness of the edges.

"Conclusion: From an application of well known principles respecting the relative penetration of ink through fresh and aged paper to the condition of the original message, it is, in my judgment, conclusively shown that the message was drafted in the magazine when the magazine paper was comparatively new and fresh. The points which prove this are the spreading of the writing on the paper, the penetration and absorption of the lemon juice through the fiber of the paper, and the extent of the penetration as shown on the reverse sides of the written pages. If the writing had been done on old paper, with no heavier stroke than employed by the writer of the original message, there would not have been such a tendency of the lemon juice to spread or to penetrate through the fiber of the paper to the reverse side. This tendency of writing fluid to penetrate new paper is clearly observable in any examination of writing on fresh paper of this type and it harmonizes completely with the action of the writings in the original message. On the other hand, writing on old paper of this type has a tendency to be compact, non-spreading and strongly resistant to the penetration to the reverse side. Another corroborating point, in my judgment, is the brittleness of the paper at the edges. Whereas the whole written pages had the application of a heated iron to develop the invisible ink, the brittleness does not extend to the entire message, but is restricted to the edges. It is my opinion that the hot iron was used many years ago and that the action of the atmosphere upon the edges of the paper created this pronounced brittleness. In other words, the early drying up of the moisture on the paper prepared the way for a pronounced brittleness of the edges through atmospheric contact with the lapse of time."

In order to establish whether the message was written in April, 1917, or around about April, 1931, the affidavit of Gerald Francis Gurrin was introduced. The same affidavit contained the data from which it was clearly established that the plus signs in the table of contents of the Blue Book Magazine of January, 1917 (Ex. 904), were made in exactly the opposite sequence which the Qualters brothers were accustomed to use in marking the titles to articles read by them.

At the time of making his affidavit (Ex. 918), Gerald Francis Gurrin was practicing his profession as "a Handwriting Specialist and Examiner of Questioned Documents". Gurrin had made a special study of the subject of handwriting and everything appertaining to disputed and forged documents for the past 28 years. In his professional work he had been consulted by His Britannic Majesty's Treasury (Director of Public Prosecutions), Admiralty, War Office and most of the Government Departments, as well as by the Criminal Investigation Department, Scotland Yard, City of London Police, County Police Forces of England and Wales, the Bank of England, and the principal Joint Stock Banks. He had been accepted and recognized as an expert witness on matters concerning disputed handwriting and documents in the Supreme Courts of the British Isles, in civil and criminal cases, as well as in Naval and Military Courts Martial.

After reading the various expert affidavits already on file he came to the conclusion that the matter was not one which a handwriting specialist was best qualified to decide, since it involved questions which only a trained analytical chemist could pass upon, and, therefore, he referred the matter to Dr. C. J. J. Fox, and Dr. Fox's affidavit was produced as the result of this reference.

In Exhibit 967, Gurrin filed an affidavit which dealt with certain questions affecting the Herrmann message. The question which he endeavored to answer was as follows (p. 9):

"Whether there is evidence in this message sufficient to establish either that it was written in April 1917 or at a much later date; namely, sometime in 1930 or 1931."

In discussing this question he said (p. 10):

"From my own experience, confirmed by experiments made for the purpose of this case, I know that on the application of a non-viscous fluid to new wood pulp paper absorption is very speedy, commencing to spread around the spot to which it is applied immediately on application. If the liquid is applied with a pen, the spreading takes place beyond the area defined by the tracks of the pen. Absorption, of course, also takes place downwards into the fibres of the paper and becomes visible on the back of the sheet if the paper is turned over after the short space of time required to write two short words. This fact can be tested in an elementary way by the dipping of a feather into lemon juice and the application of a tiny spot to a piece of new paper of the type in question. Immediately the spot is on the paper an area of dampness in the form of a halo appears around the spot. If the paper is turned over, it will be seen that the dampness appears on the reverse side practically at once.

"I further know that as wood pulp paper ages it becomes harder and less absorptive. In this condition the writing fluid is not absorbed quickly. It does not flow out laterally from the pen, but is confined roughly to the area marked by the writing instrument, much in the same way as though the writing were being effected upon a sized paper. If the elementary test of the drop of liquid is applied, absorption does not give the immediate effect of a halo around the spot, but the liquid is confined to its original area for a considerable time, sometimes even for the whole period of the drying process. Further, the liquid is not visible at once upon the back of the paper."

Gurrin's findings were as follows (p. 11):

"With these conditions in mind, I have examined the message commencing on page 700 of Exhibit 904. I find

"(a) That the writing fluid has run out laterally from the pen, sometimes to a considerable extent, normally beyond the pen tracks and only being confined to the pen tracks when the amount of liquid on the pen was failing.

"(b) *That absorption has taken place to the extent of making the writing visible on the reverse sides of the pages.*

"(c) The lateral spreading of the fluid occurs to its greatest extent at the beginning of the message. This does not, I think, result from increased absorbency at that point. It is a condition frequently found in invisible writing and is often due to the fact that it is difficult to appreciate when writing with a colorless or almost colorless liquid whether or not too much of the fluid is contained in the pen." (Emphasis supplied.)

After discussing the subject of visibility of the writing upon the back of the paper and the pen punctures in the margin, Gurrin then states as follows (p. 13):

"Reviewing the facts, bearing upon the age of this message, we have

"(a) Spreading of the writing fluid laterally beyond the pen stroke;

"(b) Absorption into and through the paper to the extent of visibility and, in parts, legibility on the reverse sides of the pages; and

"(c) Absence of increased spreading or puncturing towards the edge of the paper."

And then he states as follows:

“ In my judgment, (a) and (b) constitute affirmative evidence of the fact that the message was written when the paper was relatively new, whereas (c) is negative evidence in the sense that it shows that there was no appreciable disparity between the condition of the margins of the pages and the centers of the pages when the message was written.

“ On considering the value of these facts, taken together, I feel that all are inconsistent with writing an old paper. Furthermore, I can find no facts which are consistent with writing upon old paper. In these circumstances I think it is a reasonable and sound deduction that the paper was in comparatively new condition when the writing fluid was applied and, certainly, far younger than 14 years old.”

Esselen, treating the subject of deterioration of wood pulp paper and the comparative writing surfaces presented by old paper and by new paper, files as Exhibit E-31 with his exhibit, six pages, one from a March, 1916, Blue Book; one from a January, 1917; another from a September, 1917, and a fourth from an April, 1918, Blue Book. He also filed a page each from a May, 1930, issue of the Blue Book magazine, and a February, 1932, issue of Ranch Romances. The writing on all of these pages was done in as nearly the same manner as was possible for him to perform the experiment. He describes the result of his experiments as follows (Ex. 922, p. 19):

“ I wish, however, to invite particular attention to two things in connection with the resulting writing. The first is that there is practically no tendency for the lemon juice marks to spread or feather on the old paper, whereas on the more recent paper, there is a very distinct tendency for the lines to blur. In the second place it will be noticed that in no case has the lemon juice penetrated the paper of the 1916, 1917 or 1918 Blue Books, whereas there is considerable penetration shown on the paper from the more recent issues.”

Again, referring to the same subject matter, Esselen says (p. 32):

“ The manner in which the lemon juice writing penetrated through the paper in a large number of places on all four pages of the message as is indicated by the photographs of both the obverse and reverse sides of these pages (Exhibit E-38a-h-Photographs taken March 8, 1932), as well as the manner of penetration, is further indication that the paper was not old at the time that the message was written on it.”

And, again, on p. 52, he states as follows:

“ While I am aware of rare cases where lemon juice writing has penetrated old paper contrary to the general tendency, nevertheless in such cases, the feathering and blurring which is characteristic of the penetration on fresh paper was not noticeable. A glance at the Herrmann message, for example, page 700, and the reverse side, page 699, immediately shows that the writing not merely penetrated, but that it blurred in a manner characteristic of fresh paper on which writing is imposed. The tendency for lemon juice writing to penetrate fresh paper and not to penetrate old paper is also well illustrated in Exhibits S. & S. # 1, # 2, # 3, # 4, # 5, # 6, # 6, # 7, and # 8 which were filed with the joint affidavit of Messrs Skinner and Clark (Annex 25 to Mr. Osborn's Expert Opinion). Photographs of the obverse and reverse of each of these exhibits are filed with this report as Exhibits E-39a-39n inclusive. These photographs were taken on March 28, 1932. Exhibits S. & S. # 1, # 3, # 4, and # 8 are pages taken from the Blue Book Magazine for July and August 1931; while Exhibits S. & S. # 2, # 5, # 6, and # 7 are taken from issues of the Blue Book Magazine for February 1917 and December 1917. Inasmuch as these exhibits were prepared with an entirely different purpose in mind, they illustrate without any bias, the fact that the lemon juice writing penetrates fresh paper and does not penetrate old paper. An examination of the reverse side of these eight exhibits shows this point very clearly. None of the four

pages from the February 1917 or December 1917 issues of the Blue Book Magazine show any signs of penetration of the writing, whereas all four of the pages from the July and August 1931 issues of the Blue Book Magazine show that the lemon juice writing has penetrated through the paper. In my opinion, these facts are further indication that the January 1917 Blue Book used for the Herrmann message was not old at the time that the message was written in it."

Hibbert and Minor made a most careful and scientific analysis of the physical characteristics of Exhibit 904 and an examination of the affidavits of McGrail, Osborn, Herrmann, Hilken, Stein, Skinner and Clark, and Little, and present their conclusion as follows (Ex. 923, filed June 1, 1932, p. 3):

"The conclusion we have reached after a careful study of each of these affidavits and of the document, and after an extensive investigation extending over three months, into the physical and chemical properties of cheap magazine papers such as have been used in the Blue Book and similar magazines covering the period 1916-1932, is that the secret message in question, found in the January, 1917 copy of the Blue Book could not have been written within the last two or three years.

"The experimental evidence obtained by us indicates clearly that the message was written while the paper was relatively new, that is, within a period of less than two to three years after the issue of the magazine."

In the course of their report, they made a careful study of the causes bringing about changes and deterioration of paper, applied their studies to issues of the Blue Book magazine for the period 1916-1932, reviewed the testimony of the experts for Germany, and in the course of their report discussed the evidence submitted by Osborn in part as follows (p. 47):

"V. DISCUSSION OF EVIDENCE SUBMITTED PREVIOUSLY BY  
MR. ALBERT S. OSBORN

"A careful examination of the evidence submitted by Mr. Albert S. Osborn as to the actual date of the writing of the message in the January, 1917, Blue Book shows his conclusions are based almost entirely on a certain assumption relating to the properties of paper, and the changes which paper undergoes with age. "He states (page 2):

"The writing on the four pages of the Blue Book Magazine of January, 1917, appearing on pages 700, 698, 696 and 694, was in my opinion written a number of years after its alleged date of April, 1917. My opinion is based on the fact that the paper was old when the writing was done. These pages show in the writing itself unmistakable physical evidence that there was a pronounced difference, when the writing was done, in the condition of the paper at the edge of the sheets as compared with the middle of the sheets. This changed condition in wood pulp paper is positive evidence of age.' "

And then they say: "On what does he base 'this unmistakable physical evidence'?"

They assert that Osborn's evidence for this is the existence of certain paper perforations discovered in the Herrmann message, and they quote Osborn's conclusion as to these perforations (pp. 5 and 6) heretofore quoted in this opinion. Hibbert and Minor then resume (p. 49):

"Mr. Osborn had before him, in the Blue Book in question, an obviously very badly deteriorated magazine, and one characterized by a very pronounced brittleness of the outer margins of its pages.

"This paper had certain distinguishing characteristics which made it highly susceptible to atmospheric conditions such as light, air, heat and moisture.

"It had been stored for many years under unidentifiable conditions; had been inscribed with an acid writing fluid known to bring about deterioration of paper with age; had been subjected to the action of an abnormally high temperature at

the time the message was developed, and thereafter again exposed to sundry influences. Each of these factors could have exerted a profound influence on the paper, as demonstrated in the extensive series of tests carried out by us, and a realization of this fact alone should have called for the greatest caution on the part of Mr. Osborn in drawing conclusions based exclusively on a visual and microscopic inspection of the edges of the magazine.

"In view of our results, it is most reasonable to suppose that at least some of the perforations noticed by Mr. Osborn did not exist at the time the message was written. It is highly probable that during the writing of the message, certain spots of high lemon juice concentration, together with a thin compact fiber surface were developed, and that under the influence of an abnormally high temperature (occurring during the development of the message) and after a considerable period of time, very friable spots were formed. Due to repeated handling of the pages of the magazine, fracture then took place at these places. Cf. our Table IV, the word 'with' in page 698 of the message and the numeral 5 on page 696. (See page 31 of this affidavit.)

"This tendency, together with the existence of clear evidence of punctures in the middle of the pages which with much greater basis than is present in the case of Mr. Osborn's examples, can be called actual pen punctures, leaves Mr. Osborn with no real foundation for his opinion.

"As to the word 'bunch' appearing on page 698 of the message, we believe our experiments as shown in Section V of our series of exhibits, when examined with our Table IV, show exactly what took place. The fact that the lemon juice penetrated through not only to the reverse page but also to the next lower page, is in our judgment one of the most convincing indications, among a number, that the paper was fresh when the writing occurred. With the decided resistance of old paper to any penetration, even to the reverse page, the penetration to the next lower page of the 'h' in this word, as shown by the early photographs of the message is most eloquent of the newness of the page at the time of writing." (Emphasis in original.)

Dr. Hibbert, at the time of filing the Exhibit 923, occupied the E. B. Eddy Chair of Industrial and Cellulose Chemistry in the Pulp and Paper Research Institute attached to McGill University, Montreal, and had occupied that position since 1919. He is a Fellow of the American Association for the Advancement of Science; the Textile Institute, England; the Society of Chemical Industry, England; the German Chemical Society; and the Technical Section of the Canadian Pulp and Paper Association. He is a graduate of Victoria University, Manchester, England, with the degrees of B. Sc., M. Sc., and D. Sc., and obtained the degree of Doctor of Philosophy in chemistry at the University of Leipzig. He has been on the research staff of the du Pont Company and has done work for the Mellon Institute, and has been a Consulting Chemist for New York City. For ten years preceding the making of his affidavit he carried out numerous investigations dealing with the chemistry of cellulose, lignin and other constituents of pulp and paper.

Dr. Minor, at the time of making her affidavit, was actively engaged as research chemist with the Association of Rag Paper Manufacturers, having been engaged in that Association since 1928. She graduated with the degree of Bachelor of Science at Drury College, Springfield, Missouri, and obtained her degree of Doctor of Philosophy in Chemistry at Bryn Mawr College in 1917. She was Professor of Chemistry at Huguenot College, South Africa, from 1911 to 1914, and from 1917 to 1918 was Professor of Chemistry at Goucher College, Baltimore. From 1918 to 1920 she was the Chief Chemist at Hammersley Manufacturing Company, makers of newspaper, wax paper and other grades of wood paper. She had been consultant for the pulp and paper industry at the Emerson Laboratories, and Chief Chemist of the Collins Manufacturing Company, manufacturer of rag paper. She is the author of numerous articles on

general paper problems, and is a member of the Technical Association of the Pulp and Paper Industry.

The Herrmann message, Exhibit 904, was submitted to Admiral Sir William Reginald Hall, who was Director of Naval Intelligence of Great Britain from October, 1914, until February, 1919. In that position he had occasion to handle a great number of messages written by German agents which were intercepted by the British authorities during the World War and also employed similar systems of communication. During that time his organization intercepted and deciphered and decoded upwards of 15,000 German secret communications in the form of cablegrams, radiograms, invisible writings and other code, cipher or other secret communications, and this number does not include the work of the British Censor's office.

Among other messages intercepted by him was the famous Eckardt to General Staff telegram so often quoted in this record, verifying Herrmann's authority to destroy the Tampico oil fields. The intercepted telegrams which are in this record were the product of Admiral Hall's organization.

In a letter to President Wilson dated March 17, 1918, Walter Hines Page, Ambassador to Great Britain, thus describes Admiral Hall (Hendrick, *Life and Letters of Walter H. Page* Vol. 3, p. 361):

"Hall is one genius that the war has developed. Neither in fiction nor in fact can you find any such man to match him. Of the wonderful things that I know he has done, there are several that it would take an exciting volume to tell. The man is a genius — a clear case of genius. All other secret service men are amateurs by comparison."

After an examination of the Blue Book message, Hall reported his conclusion as follows (Ex. 920):

"I am unreservedly satisfied that the message contained in the Blue Book Magazine for January, 1917, is genuine and that it was written when it purports to have been written, to-wit, early in the year 1917 in an invisible fluid, and developed by heat shortly after. There can be, in my opinion, no reasonable doubt on this subject.

"In reaching this conclusion the experiments of the experts who testified for Germany regarding the characteristics of the paper have confirmed in no small measure my opinion that the message was written in 1917, for their experiments of writing with lemon juice on paper of different ages illustrate a simple fact which I think is reasonably well known. I am quite sure that the original writing in the original message filed with the Commission was placed upon the magazine when the paper was in a green or fresh condition and not after the paper had become seasoned and less subject to the penetrating action of liquids. An examination of the pages of the original message through a microscope shows that the marks on the reverse of each page of writing come from the fluid soaking through the paper. A similar seepage of liquid shows in the experiments of the experts upon similar paper of recent manufacture, but it does not show to the same extent, if at all when writing is now placed on paper that has already become crisp with age."

While Admiral Hall does not attempt to qualify as an expert on paper or ink, his opinion deserves attention since it is confirmed by the greatest experts in the world on the point which Hall discussed and the experience which he had had in intercepting, deciphering and decoding secret communications enabled him to take the expert opinions and come to a definite conclusion thereon.

An examination has been made of the claim of the experts for Germany that the heel marks left by the iron indicate that the yellowing of the margins had occurred before the iron was applied, and therefore that the paper was old before the writing was imposed upon the paper (Ger. Ann. 25; Ger. Ann. 80). The fallacy of this argument has been clearly exposed by Fox (Ex. 919, pp. 27, 28).

as well as by the experiments of Esselen (Ex. 922, pp. 48-52); of Hibbert and Minor (Ex. 923, pp. 45-47); and by Heinrich (Ex. 923, pp. 20 *et seq.*).

Indeed, an examination of Exhibit 904 would seem to indicate that no clear deduction may be made as to whether the present condition of the magazine would indicate that heat had been applied to an old instrument or age had affected an instrument which had been heated when comparatively new.

(4) *Is it possible from a comparison of the handwriting of Herrmann at or about the time the message was alleged to have been written in 1917, with his handwriting at or about the time when it was claimed by Germany that he wrote it in 1931, to determine at which age he actually wrote the message?*

In Exhibit 925, Heinrich had before him the following exemplars of Herrmann's handwriting:

- (a) Photostatic copy of application for passport, dated January 12, 1915;
- (b) Photostatic copy of application for passport, dated June 10, 1915;
- (c) Photostatic copy of emergency passport application, dated March 4, 1915;
- (d) Photostatic copy of letter dated June 16, 1915, from Fred L. Herrmann to State Department. All in handwriting of Herrmann;
- (e) Photostatic copy of letter dated June 24, 1916;
- (f) Original small notebook containing 13 pages of handwriting of Herrmann, written some time between 1915 and 1920;
- (g) A writing in invisible ink in the January 1932 issue of LOVE STORY MAGAZINE;
- (h) Original letter to Mr. H. H. Martin, dated March 13, 1931.

Heinrich reports that he has examined all the above exemplars of Herrmann's handwriting and compared them with the writing of the message. This examination was undertaken to determine whether or not there were any characteristics in these writings having a date significance.

He further reports as follows (Ex. 925, p. 44):

"The only manner in which the writing of the Herrmann message differs from any of the exemplars is in the matter of speed and size of writing. \* \* \* the passport application dated January 12, 1915, affords an example of relatively slow writing which is strikingly similar to the slow writing of the Herrmann message."

Heinrich further reports, therefore, that he is of opinion that the Herrmann message was written by the writer of the Herrmann exemplars.

He found one change in the Herrmann writings which has a date significance as follows:

"This change appears in the writer's treatment of the letter 't', when that letter occurs at the end of a word. In the older examples of the Herrmann writing the final 't' is crossed with a short bar, in the standard form. In the later Herrmann writing the final 't' is crossed with a swinging stroke which rises from the foot of the stem, passes through it to the left, and then, turning to the right, crosses it again at a suitable height. The resulting form is something like that of an 8." (Id. p. 45.)

Heinrich found that the later form was in use by Herrmann as early as 1915, but it was used only occasionally. The exemplars of recent date show a practically 100% use of the later form, i. e., the rapidly written form shaped like an "8". The writing of the period 1915-1916 just prior to the date of Exhibit 904 shows a use of the standard form almost as consistent.

The Herrmann message shows the letter "t" used at the end of a word in twenty instances. In every one of these instances the "t" is crossed in the old style, or standard form. As this old style, or standard form, is used 100% in the Herrmann message and is habitually used by the writer in his earlier exemplars,

it has a strong date significance. If Herrmann's present habit of writing the final "t" had become fixed at the time of writing the Herrmann message, Heinrich is of opinion he could not have avoided using this later style in a writing as long as the Herrmann message.

Heinrich is of opinion that the use of the "8" or later form in the Herrmann message was not due to the fact that he was writing with invisible ink, because the example of writing in invisible ink in the January, 1932 LOVE STORY MAGAZINE which was developed by Heinrich in Berkeley, California, contained five instances of a "t" at the end of a word, and in every word Herrmann made the "t" in the "8" or later form. Heinrich concludes his opinion on this point as follows (id. p. 46):

"In my opinion, therefore, the evidence afforded by the handwriting of the message, though not many-sided, and so indicative rather than conclusive, furnishes evidence that fits in, and may be considered in connection with, the physical facts above considered, which establish, beyond any justifiable doubt, in my opinion, that the message was written at the time at which the writer declares that it was written."

A careful examination of the reports filed by the German experts fails to disclose any notice of, or answer to, this argument made by Heinrich, and while it is not necessarily conclusive, it has at least persuasive effect that the Herrmann message is an exemplar of Herrmann's writing in a very much earlier form than his present method of writing.

From a careful study of the expert evidence offered by Germany attacking the message, and a comparison of the same with the expert evidence offered by the American Agent, the following propositions seem clear:

(1) The condition of the pin pricks, which has been subjected to microscopic analysis and reports, indicates that the pin pricks were put in the paper when the magazine was relatively new.

(2) The perforations and abrasions by the pen are just as noticeable in the center of the pages as in the margins and do not differ in character, thus indicating that the paper had not become embrittled when the message was written.

(3) The extent to which the lemon juice was penetrated or struck through the paper proves conclusively that the message was written on the paper when the paper was comparatively new and could not have been written in 1931.

(4) A comparison of the handwriting of Herrmann in 1915 and 1916 with his handwriting in 1930 to 1932 strengthens the conclusion already reached that the message was written at a time when the writer had the writing habits of 1915 and 1916, and not when he had the writing habits of 1930 and 1932.

The general conclusion, therefore, from the expert evidence is, that the expert evidence sustains the authenticity of the Herrmann message.

#### IV. CONCLUSIONS

Before reaching definite conclusions on the whole case, it is proper to examine the charges of fraud made by the German Agent.

Since the hearing of 1936, the German Agent filed his brief of November 16, 1938, and two reply briefs, one of January 12, 1939, relating to points of law, and one of January 14, 1939, replying to the American Agent's brief of December 5, 1938.

In his brief filed November 16, 1938, as well as in his brief filed January 14, 1939, the German Agent has failed to meet, in many particulars, the charges of fraud which are specifically set out and enumerated in the American Agent's brief of 1936 and repeated in his brief of September 13, 1938, and he has failed to examine or to answer the evidence adduced to sustain those charges.

Some of the subjects which have been neglected by the German Agent are: Marguerre's false testimony; Woehst's perjuries and Hinsch's perjuries, especially on the charge that Gerdt's was unknown to Hilken. No answer has been attempted to the evidence adduced to show that the Lyndhurst testimony was purchased and known to Wozniak's demands for recompense, his affidavits were filed, and that payments to Wozniak did not cease even after the German Agent claims to have broken off all relations with him. No defense has been false. No reply has been made to the charge that the correspondence between the German Agent and Wozniak showed that, after made of the conduct of the German Agent in filing Wozniak's testimony after he had received demands for recompense which were in the nature of blackmail threats.

No defense has been made of the German Agent's approval of payment by Carella, an attorney employed by Germany, of large sums of money to the Lyndhurst witnesses, both before and after their affidavits were filed, nor of his approval of the agreement which Carella made with the Lyndhurst witness that, after the termination of the cases, they should have additional remuneration "to keep C.[arella] and his people in line".

Osborn's conduct as an investigator has neither been explained, repudiated nor upheld by the German Agent, nor has his cooperation with Stein in connection with the charge of a suppressed report been defended or repudiated.

The former German Agent's conduct in misrepresenting to the Commission the amount of fee charged by, and paid to, Osborn has been passed in silence.

On the other hand, the German Agent has interspersed in his briefs numerous charges of suppression and fraudulent conduct on the part of the American Agent, his counsel, the claimants, their attorneys, and their witnesses.

In coming to the conclusions reached in this case, an attempt has been made to exclude all of the evidence against which the charge of fraud by the German Agent has been directed, and the conclusions have been reached independently of such evidence, not because it was believed that the German Agent's accusations were substantiated, but simply in order that the conclusions reached might not be based upon evidence which had been questioned.

In consequence of this position, it has not been necessary to consider whether the Palmer reports were genuine or not, nor has the decision been affected by the Wozniak letters (Ex. 905, 1, 2 and 3) or the charge made in regard thereto. Whether the marriage certificate of Elizabeth Rushnak could have been obtained by the claimants or not has nothing to do with the decision in this case. So, also, the testimony of Larkin has not figured in the conclusions which have been reached.

In reaching the conclusion in this case, it has not been necessary to determine whether Wozniak was in Mexico or in Tupper Lake in the summer of 1917, because these questions were collateral to the issues and the decision reached thereon.

So, also, this opinion has been reached without considering the information coming from the Austrian archives, alleged to have had their origin in the German archives.

Although the German Agent has made charges of a serious character against the American Agent and his counsel, a thorough examination of the record discloses that there is no ground therefor. On the contrary, their entire good faith and earnest efforts to aid the Commission to reach a just decision are attested by a long and tedious record.

At an informal meeting of the Commission, of which no minutes were kept, and with no recorder present, the German Agent made a savage attack upon the American Agent's counsel, and indirectly upon the American Agent, charging that a report of the Bureau of Standards adverse to the genuineness of the

Herrmann message had been suppressed. This charge is repeated and amplified in the German Agent's brief of January 14, 1939.

The entire dealings of the American Agent and his counsel with the Bureau of Standards are set out in Exhibit 1006, Annex E, filed December 19, 1938.

In his report to the Commission, dated December 16, 1938, E. C. Crittenden, Acting Director of the Bureau of Standards, filed all the papers relating to this subject, except the reports of R. E. Lofton on pin pricks (Ex. 921-1 and Ex. 963), which had been previously filed. In the course of his letter the Acting Director says:

"The Commission is advised that no report was requested and none was given by the Bureau in 1931 involving an examination of the Herrmann Message contained in the Blue Book Magazine, January 1917 issue, that I am advised was filed June [July] 1, 1931, with the Mixed Claims Commission, United States and Germany, as exhibit 904. Such examination as was made in the Bureau of the document in 1931 did not disclose anything that tended, in the opinion of the members of our staff who examined the document, to cast any doubt on its genuineness."

In spite of this assurance, the German Agent has again renewed his charge of a suppressed report and has endeavored again to put the Counsel for the American Agent in the position of having consciously suppressed a report unfavorable to the message.

An examination of the papers filed with Exhibit 1006, Annex E, will show that the Bureau of Standards did make some experiments with invisible fluid writing on a copy of a Blue Book magazine of January, 1917, furnished by the Counsel for the American Agent (Ex. 977). The results of these experiments were transmitted to the American Agency on July 14, 1931, by George K. Burgess, Director of the Bureau of Standards, in which the Director reported as follows:

"You will note from the inclosed report that we were unable to find any means of estimating the age the writing in question. We found that the paper in the magazine involved, another copy of the magazine of the same date, and the magazine dated August, 1931, all have practically the same composition.

"We regret that we are unable to be of assistance in this matter."

This report, which was purely negative, has no significance, and the failure of the Counsel of the American Agent to recall that such a report had been made and to file the same with the Commission as an Exhibit in this case does not in the least subject him to criticism or to the attack of the German Agent charging a suppressed report.

The German Agent, however, has not been content to accept the explanation given by Mr. Martin and the Acting Director of the Bureau of Standards as a frank and full statement as to the relations between the American Agent and his counsel, on the one side, and the Bureau of Standards on the other. He now charges that there must have been a report made in 1932, in addition to the reports made by Lofton on the pin pricks, and that the studious silence of Counsel for the American Agent and his failure to reiterate that no report was made in 1932 except the reports of Lofton is significant that there must have been another report made in 1932 unfavorable to the authenticity of the message. In our view the report which has been made by the Counsel for the American Agent in Exhibit 1006, Annex E, is a frank explanation of what has occurred, and no ground exists for the charge that either he or the Bureau of Standards has withheld from the Commission any report made by it in this case.

*The Conclusion on the Question of Fraud Restated*

By reference to the Summary and Conclusions on the Question of Fraud (*supra*, this Opinion p. 154),<sup>hh</sup> it will be ascertained that the pleadings filed on behalf of Germany were false, and were known to be false, in claiming that Germany had never authorized sabotage in neutral countries nor in the United States during its neutrality, and in claiming that, though men and material for sabotage were sent to the United States in 1916, definite instructions had been given limiting and prohibiting activity until the time when the United States should enter the war.

It has been clearly established that Wozniak, at whose bench the Kingsland fire started, and upon whose testimony the Commission relied in its decision at Hamburg, was guilty of perjury and fraud, and in addition, that, before his affidavits were filed, he demanded and received payments therefor. His demands, both oral and by letters, for compensation began before his affidavits were filed; and, although he was paid over \$2,000, these demands had not ceased when Germany repudiated him as a witness. After his repudiation by Germany, he contradicted all of the important points of his former testimony.

The Lyndhurst testimony, upon which the Commission in fact based its decision at Hamburg with regard to the Kingsland fire, was false and purchased, and known to have been false before the affidavits were filed by Germany, and the witnesses producing the testimony were promised additional compensation when the case should be closed.

Ahrendt, Woehst and Hinsch, German witnesses produced to disprove the confessions of Herrmann and Hilken, are shown to have been perjurers and guilty of the grossest forms of prevarication.

Hinsch, upon whose testimony Germany mainly relied to break down the confessions of Herrmann and Hilken and to destroy the Herrmann message, began his sabotage activities under Rintelen and continued them, under Hilken as paymaster, until he was forced to flee from this country to escape a Presidential warrant of arrest. In order to substantiate Germany's false pleadings Hinsch made many false statements upon which the Commission relied in its opinions. In order to attack the Herrmann message, he was guilty of the basest forms of prevarication, and upon these the Commission relied in its decisions at Hamburg and at Washington in 1932.

We have, therefore, concluded that the decision of October 16, 1930, reached at Hamburg, must be set aside, revoked and annulled, and the cases reinstated in the position where they were before that decision was reached.

The opinion which was rendered at Washington, December 3, 1932, has already been examined and quoted (*supra*, p. 156).<sup>ii</sup> In that opinion, the Umpire after setting out the decoded form of the message said (Decs. and Ops., p. 1016):<sup>jj</sup>

“ A glance through this translation will indicate that, without reference to any other evidence, it is conclusive proof to any reasonable man that (a) Herrmann and Hilken knew the Kingsland fire and the Black Tom explosion were the work of German agents and (b) that Hinsch, Hilken, and Herrmann, undoubted agents, were privy thereto, and (in the light of the record before the Commission) (c) that Kristoff and Wozniak were active participants in these events. As the American Agent has well said, I may utterly disregard all the new evidence produced and still, if I deem this message genuine, hold Germany responsible in both of the cases.”

The German Commissioner concurred in the opinion and therefore approved the above deductions.

<sup>hh</sup> *Note by the Secretariat*, this volume, p. 347.

<sup>ii</sup> *Note by the Secretariat*, this volume, p. 349.

<sup>jj</sup> *Note by the Secretariat*, this volume, p. 115.

In a note appended to his separate opinion, the Honorable Chandler P. Andersen, the American Commissioner, used the following language (Decs. and Ops., p. 1035): <sup>kk</sup>

“The so-called Herrmann secret message, embodied in the Blue Book Magazine for January, 1917 (Exhibit No. 904), if accepted as authentic, would conclusively prove the liability of Germany in both the Kingsland and the Black Tom cases.”

Therefore, in the decision at Washington, the Commission was unanimously of opinion that, if the authenticity of the Herrmann message be accepted, this would conclusively prove the liability of Germany in both the Kingsland and Black Tom cases.

The final conclusions in these cases, therefore, may be stated as follows:

(1) The decision of October 16, 1930, reached at Hamburg, must be set aside, revoked and annulled; and, the cases reinstated in the position they were before that decision was rendered.

(2) Since the authenticity of the Herrmann message has been established, the liability of Germany in both the Black Tom case and in the Kingsland case has now been clearly established by the record, and the cases are in position for awards.

CHRISTOPHER B. GARNETT,  
*American Commissioner*

Done at Washington, D. C., June 15, 1939.

#### DECISION OF THE COMMISSION RENDERED BY THE UMPIRE

1. Within the meaning and intent of the agreement by which the Commission was constituted and its powers defined, there exists a disagreement between the two national commissioners. As I participated with them in the conferences after submission of the cases, I am cognizant of the disagreement, which makes it my duty to act in the decision of the cases. If more were needed, I have before me the certificate and opinion of the American Commissioner. Accordingly I record my opinion as Umpire.

2. I concur in the views expressed by the American Commissioner to the effect that the withdrawal of the German Commissioner, after submission by the parties, and after the tribunal, having taken the cases under advisement, pursuant to its rules, was engaged in the task of deciding the issues presented, did not oust the jurisdiction of the Commission. The full discussion of this matter by the American Commissioner renders it unnecessary for me to do more than to express my agreement with his reasoning and his conclusions. I hold that the Commission as now constituted has jurisdiction to decide the pending motions.

3. The decision filed at Washington in 1932 having been set aside, the cases are now before the Commission on the motion of the American Agent to set aside the decision on the merits rendered as the result of the submission at The Hague in 1930 and to grant a rehearing on the whole record, comprising the proofs offered before and after The Hague decision. The grounds of this motion sufficiently appear from prior decisions of the Commission.

4. As set forth in the American Commissioner's opinion, he and the Umpire agreed in the conclusion that the motion should be granted because the United States had proved its allegation that fraud in the evidence presented by Germany misled the Commission and affected its decision in favor of Germany. The German Commissioner was apprised of this conclusion before he withdrew from

<sup>kk</sup> *Note by the Secretariat*, this volume, p. 126.

the deliberations of the Commission. He insisted, nevertheless, that before the motion should be granted, the Commission should examine the proofs tendered by the United States to determine whether the claims had been made good. This was on the ground that, though the Commission had been misled by false and fraudulent testimony, that fact would be immaterial if, as an independent consideration, the United States had in its own cases failed to sustain the burden of proof incumbent upon it. The American Commissioner and the Umpire thereupon agreed to go beyond what they thought the necessary function of the Commission in the circumstances and proceed to canvass with the German Commissioner the cases as made by the United States. During the course of this investigation the German Commissioner withdrew.

5. Much evidence has been submitted since the decision of 1932 which corroborates the testimony of Herrmann and Hilken and weakens the attacks on their credibility. This is examined, analyzed and compared with the record as it stood when the case was submitted at The Hague, in the opinion of the American Commissioner, and no purpose would be served by restatement of the same matters in this opinion. In my view the statements of Wozniak to Department of Justice agents and to the Bureau of Naturalization; the testimony of Herrmann, Hilken, Wozniak, Ahrendt, Thorne, and Hilken, Sr., taken in open court, under the statute; and the material drawn from the files of the Eastern Forwarding Company, and the evidence as to the so-called Lyndhurst testimony, is persuasive that the Commission was seriously misled to the conclusion it reached upon the submission at The Hague.

6. All of the above tends to strengthen the cases of the United States. As is admitted, the Herrmann message, if genuine, establishes Germany's responsibility in both cases. In the decision of 1932 the Commission was unable to make an affirmative finding of the authenticity of the message. A large body of evidence has since been introduced addressed to the considerations which caused the Commission to withhold such a finding. This is examined and discussed at length in the opinion of the American Commissioner, and there is no need to add to what he has said. The circumstances of the production of the document to the claimants and the incidents of its transmission and delivery to Hilken have been cleared up. The Qualters story has been completely discredited, and its demolition involves serious implications concerning Germany's defense. The views formerly held respecting the expert evidence must be revised in the light of the evidence of Osborn and the letters and documents exhibiting his activities and attitude. Further argument and extended study of the contents of the message, and of Hinsch's and Siegel's testimony and comparison with the record as it stood prior to The Hague argument, tends to negative the adverse conclusions heretofore drawn from the references to current and past events and to persons and places contained in the message. I agree with the American Commissioner that on the evidence now before the Commission the decision must be in favor of the authenticity of the message.

7. I find that, for the reason alleged by the United States in its petitions for rehearing, — material fraud in the proofs presented by Germany, and for the further reason that on the record as it now stands the claimants' cases are made out, the pending motions should be and they are granted.

O. J. ROBERTS,  
*Umpire*

Done at Washington, June 15, 1939.

ORDER OF JUNE 15, 1939

After the announcement of the foregoing opinion of the American Commissioner and the decision of the Commission, the following action was taken (Minutes of meeting, June 15, 1939, pp. 1717, 1718):

"The American Agent then moved that upon the record as it now stands, that awards be entered in accordance with the opinions which have been rendered today.

"The Umpire replied that in view of what appeared in the record, and based upon the American Agent's motion, the Commission was prepared to sign awards, to be submitted by the American Agent, if approved by the Commission as to form. He further said that they might be submitted and if approved would be made at a further meeting to be called on notice.

"At this point the Joint Secretaries were directed to spread the following Order upon the Minutes of the Commission:

"1. The decision of October 16, 1930, reached at Hamburg be, and the same is hereby, set aside, revoked and annulled.

"2. The Commission finds, on the record as it now stands, that the liability of Germany in both the Black Tom and Kingsland cases has been established.

"3. It appearing from the communications, each dated June 10, 1939, one from the German Agent to the Commission, and the other from the German Embassy to the Secretary of State, that Germany does not intend to exercise her right to take further part in the proceedings of the Commission, and that on the findings made and opinions handed down this day by the Commission, and from what appears in the record, awards should now be rendered to the United States on behalf of claimants; the American Agent is directed to prepare and submit to the Commission for its approval awards in each of the pending sabotage claims. These awards will be considered at a further meeting of the Commission to be called on notice, and appropriate action thereon will then be taken.

"At this point the Commission adjourned, subject to call.

"OWEN J. ROBERTS,  
"Umpire

"CHRISTOPHER B. GARNETT,  
"American Commissioner"

AGENCY OF CANADIAN CAR AND FOUNDRY COMPANY, LTD.  
(UNITED STATES) *v.* GERMANY

(*Sabotage Cases, October 30, 1939, p. 324; Certificate of Disagreement and Supplemental Opinion of American Commissioner, October 30, 1939, pp. 314-324.*)

PROCEDURE: MOTION TO DISMISS, WITHDRAWAL AND RENEWAL. — JURISDICTION: NATIONALITY OF CLAIM. — AMERICAN NATIONAL: DETERMINATION BY MUNICIPAL LAW; NATIONALITY OF CORPORATIONS, CONTROL TEST, EFFECTIVE DOMICILE. Motion of German Agent filed December 7, 1936, to dismiss for lack of jurisdiction request for rehearing of American Agent filed May 4, 1933 (see p. 160 *supra*), in so far as related to claim of Agency of Canadian Car and Foundry Company, Ltd., organized under laws of State of New York, but entirely owned by Canadian corporation. Withdrawal of motion on March 18, 1937, but renewal on April 27, 1937. *Held* that motion should be dismissed: (1) under Treaty of Berlin (preamble and art. I) and Agreement of August 10, 1922, Commission has jurisdiction to hear and determine certain claims of American nationals or American citizens, (2) meaning of "American national" is to be determined under United States