

7 January 1953

To the
Federal Minister of Justice,
Dr. Dehler, or his official deputy,
in Bonn

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Subject: Investigation Procedure against the businessman Otto R i e t d o r f , and others, for offenses in the interpretation of Articles 128, 129, 49 b of the Penal Code

Reference: Previous reports dated 9, 18, and 21 October 1952

In view of the fact that the investigations have now reached a final stage, I summarize as follows:

I. History of the procedure

It may be taken for granted by now that it is common knowledge, and indisputable, that the basis of the procedure is that military agencies of the American occupation power called into existence in the first months of 1951 -- probably impressed by the events in Korea -- an organization consisting of German volunteers whose task, in case Soviet-Russian troops should enter West Germany, would have been to set up armed guerilla troops in the territory occupied by the enemy. This organization was kept secret, and it was established without the knowledge of German government agencies.

In reviewing the entire investigation procedure which ensued from the disclosure of this organization, it appears that it is divided in two distinct parts:

During the first part, which covers the period from the discovery of the organization until the release of the arrested accused on 30 September 1952, my investigations concentrated on the clarification of the question whether or not the organization was built up, and led, by American military agencies.

The second part of the investigations begins with the speech of Minister President Zinn before the Hesse Landtag on 8 October 1952. From then on the investigations centered principally around the nature ~~XXXX~~ of the organization's activities. There was, in the first place, a suspicion that the organization planned to remove political opponents, its preparations consisting of making up a list of proscribed persons.

Public criticism experienced in regard to some of the measures taken in the course of the procedure, is doubtlessly based on the fact that no attention was paid to the circumstance that investigations had to follow up several different lines in both periods of the procedure.

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The investigation procedure started from the point that the businessman Hans Otto, a former member of the BDJ Land Management, and himself a member of the staff of the "guerilla organization", made confidential statements concerning a secret organization founded in 1951 by Erhard Peters, former 2nd Chairman of the FDJ; he made those statements on 9 September 1952 before the Polizeipraesidium Frankfurt/M., while involved in the case of a denunciation for bribery made against an official of the Criminal Police in Frankfurt. This organization (he said) was called "Technischer Dienst des BDJ" (Technical Service of the BDJ), and occupied itself with the military training of its members so as to be ready for guerilla warfare and sabotage in case Soviet-Russians should occupy West Germany. On 13 September, the Polizeipraesidium Frankfurt/M., by order of the Hesse Minister President, began large-scale measures against the leaders and members of the "Technischer Dienst" living in Hesse; this ended up in the apprehension of the treasurer and adjutant, the businessman Otto Rietdorf from Frankfurt/M.; of the Land Chairman of Hesse, the commercial employee Rudolf Rademacher from Neu-Isenburg near Frankfurt/M.; and of the training chief of the organization, the businessman Friedrich Karl Kleff from Hamburg. The accused were brought before the Amtsgericht (Municipal Court) in Frankfurt/M., which issued a warrant of arrest on the grounds

"that they had participated in an organization whose existence, statutes, or purpose were to be kept a secret from the Government of the State, and that they had participated as ring-leaders in an organization whose purpose and activities were bent on committing punishable acts, offenses in the interpretation of Articles 128, 129 of the Penal Code".

At this stage, I received on 17 September the dossiers including the report of the Director of Public Prosecution in Frankfurt, in order to examine whether the procedure should be taken over by me pursuant to Art 74 a par 2 of the Law on Judicature. This report, which was handed over personally on 18 September, with the dossiers, by the Director of Public Prosecution Buchthal and by the First Prosecuting Attorney Donath, presents the main points of the summary of evidence as follows:

"In March 1951, the Second Chairman of the Bund Deutscher Jugend (BDJ) Erhard Peters, whose whereabouts are unknown at this time, began establishing the so-called Technischer Dienst des BDJ, which is said to have been completely separated from the BDJ at a later date. This organization Peters termed a political and armed resistance movement. It aimed at armed resistance, in case of Russian occupation, by blowing up bridges and by sabotage acts. In regard to domestic policies, the objectives of the organization were to embrace also the struggle against the SPD, and certain SPD measures in connection with the problem of remilitarization.

Reconnaissance and resistance nets were built up in the East zone. For the purpose of camouflage, the firm of Johann Saxer, Sales Organization Ltd., Lorsch/Hesse, was estab-

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lished, the manager of which is the father of Peters, the businessman Emil Peters in Lorsch/Hesse. The firm of Saxer was financed by Peters junior, who received large amounts for his organization. It has not yet been found out just who the real financiers and wirepullers of Technischer Dienst are. The considerable funds, amounting to more than 123,000 DM, are said to have been furnished by an American civilian, the landscape-painter Sterling G a r w o o d , whose present whereabouts are unknown."

Then follow details on the commercial camouflage of the organization, and on the training in Waldmichelbach. The report does not say what the organization's other punishable acts were. The vague hint that in regard to domestic policies "the missions of this organization also embraced the struggle against the KPD, and certain SPD measures in connection with the problem of remilitarization" did not disclose a suspicion of punishable acts of this kind; according to the findings at the time, this hint was based on nothing but one sentence in the statements made by O t t o on 9 September: "In regard to domestic policies, the aims were directed against KPD and SPD". The warrants of arrest were made out on the basis of the investigations at the point they had then reached; in defining the suspicion (on which the warrant of arrest is based), the report of the Director of Public Prosecution in Frankfurt/M. is also restricted to the Articles 128, 129 of the Penal Code.

As the statements of the accused at the time allowed the presumption that the organization was backed by American quarters, while on the other hand the Director of Public Prosecution in Frankfurt/M., on handling over the material, reported that the American Military Government in Hesse denied that its agencies had promoted "Technischer Dienst des BDJ", it could not but be of decisive import for the future procedure whether or not the organization stood by order of the occupation power. In order to clarify this question, my assistant was sent to Cologne and Bonn on 19 September. On 23 September he wrote a memorandum concerning the result of the visits he paid to the Federal Agency for the Protection of the Constitution, and to the Ministry for All-German Affairs:

"On 19 September I then reported the matter to Dr. John, President of the Federal Agency for the Protection of the Constitution, who declared that the Federal Agency for the Protection of the Constitution, including Vice-President Kadtko -- who is mentioned in the dossier, but who was not present on the day I made my report -- had nothing to do with the matter. However, as far as he was informed, American agencies had occupied themselves with training some of the BDJ members with arms. He recommended that to this end I contact the Federal Ministry for All-German Affairs in Bonn. There I again reported the facts to State Secretary Thedick, and his assistant, Oberregierungsrat Dr. von Dellings-
I was assured that the Ministry had only made one meeting, but that they had nothing at all to do with the occurrences which are the subject of the procedure. The Ministry,

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like the Federal Agency for the Protection of the Constitution, had even repeatedly warned the members of the BDJ Executive Committee against setting up military organizations, or against occupying themselves with military affairs. However (they continued) the Ministry was aware that American agencies were of a different opinion, and had given the BDJ, until May 1952, some kind of assistance, presumably also of a financial nature. Upon my request the Ministry undertook to ask the American agencies to state their opinion, and to return the dossiers (which I had given Dr. v. Dellingshausen for his information) together with their opinion during the first part of this week. The Federal Agency for the Protection of the Constitution was to have a part in this (note: e.g. the request to be made to the American agencies). I have called attention to the urgency of the matter, and to its being a matter which involves arrests."

After some intermediate provisional declarations, the details of which I related in my report of 21 October, the Federal Agency for the Protection of the Constitution reported on 30 September on the result of its approach to the pertinent American agency.

The contents of that telephonic conversation was laid down by my assistant in the following document:

"Upon telephonic request, Dr. Nollau of the Federal Agency for the Protection of the Constitution in Cologne stated this afternoon that the opinion of the agencies of the American Occupation Power would be handed over tomorrow morning. It was believed to say that the accused had acted by order of the American agency. It was not possible to make this statement sooner because of General Trescott's absence. Dr. Nollau is of the opinion that the basis for the continuation of the procedure is no longer existent because the constituent facts are not verifiable. He had no objections to release the accused from custody."

This statement constitutes, as was expressly confirmed at a latter occasion, an official declaration on the part of General Trescott's agency which, according to the desire of that agency, was addressed to me with an eye on the present investigation procedure.

By this official declaration of the Americans it was established that the organization was based on initiative and directives of a military agency of the American Occupation Power, and that, therefore, it was not a secret organization established by the private initiative of the German individuals concerned.

Regardless of how the objective legal situation might have been evaluated in view of these facts, there was no doubt that the accused could not be charged with the elements of Articles 128, 129 of the Penal Code, as they, correctly, stated to have been under military occupation power. As no accusation of other punishable offenses could be raised, and was not discernible at this point, the accused had to be released from custody. They were released on 30 September by teletype message addressed to the prison in Frankfurt/M.

Only on the following day did President Dr. John of the Federal Agency for the Protection of the Constitution call again; he stated what has

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been laid down by my assistant in a memorandum as follows:

"that, on the basis of the latest declarations of the American agency, it has become a matter of doubt, whether the accused could feel authorized to do what they did. President Dr. John hinted that the accused might possibly have been double-dealing?"

At the moment when this telephone conversation took place, the accused had already been released from custody. My assistant had asked Dr. John during the afore-mentioned telephonic conversation to send over any new material which might lead to different evaluation, in order to render possible an investigation into the question of re-arrest. However, no further statements in this regard have been made. The unsubstantiated allusion made during the telephone conversation on 1 October was no sufficient basis for a new arrest.

During the investigations made up to that point, the material confiscated during the police investigation in Hesse had, on the whole, remained in the hands of the Public Prosecutor in Frankfurt/M. The Director of Public Prosecution, Frankfurt/M. had merely attached to the report of 17 September a folder concerning the military courses held in the Odenwald; this was what a remark in this report was referring to which spoke of the confiscated material. If my substitute, Bundesanwalt Schruebbers -- who in the meantime left my agency because of his appointment to Attorney-General in Duesseldorf -- left the rest of the confiscated material in the hands of the Public Prosecutor in Frankfurt/M., he probably believed that the material had been made subject to a first check by the Director of Public Prosecution in Frankfurt, and that it did not contain anything of material importance for the procedure with the exception of the folder which had been handed over. Actually, the confiscated material had apparently not been sorted out at the time when the dossier was handed over to me, not even by the Attorney-General in Frankfurt/M., as otherwise it would be incomprehensible that there is no indication at all in the report of 17 September. The result of a later examination, which must have taken place between 17 September and 8 October, was not communicated to me by the Director of Public Prosecution in Frankfurt/M., whom I had informed of my taking over the procedure on 2 October; I learned of it only through the declaration which the Minister President Zinn made in the Hesse Landtag on 8 October. Part of the material was given me on 17 October after I had asked the Director of Public Prosecution in Frankfurt for it on 10 October; the rest I received on 24 October.

The declaration made by Minister President Zinn presented a quite new object for examination by the future investigation procedure, an object which may be outlined by the catchword "list of proscribed persons".

After a meeting on 14 October between the Federal Minister of Justice, the Hesse Minister President, and representatives of Hesse authorities, I considered the re-arrest of the accused Rietdorf, and a proposal to issue a warrant of arrest against Peters on the basis of that meeting as well as on the basis of the suspicion of "Fememord" (note/murder following a sentence pronounced by a Vehmich Court); which suspicion

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arose because of the article published in No.42 of the "Spiegel". Before the police could carry out the order to arrest Peters and Rietdorf, both accused came here on their own accord, and were thoroughly questioned by my assistants during the night of 15/16 October. After the first questioning they had been provisionally arrested. However, after the interrogations which included Otto who had made the first report, and Hans Breitkopf who had been collected in Bremen, the accused were again released as there was no suspicion which would have justified the arrest.

On 20 October I informed all Directors of Public Prosecution that I had taken over the prosecution in the investigation procedure against members of the "guerilla organization" which procedure the Attorney-General Frankfurt/M. had initiated simultaneously under the auspices of Art.129 of the Penal Code; I requested them to inform me as soon as possible, if necessary with the material they may have obtained, of any findings arrived at in the areas of jurisdiction of the Directors of Public Prosecution^{and} which might have bearing on this procedure.

In Hamburg and Bremen, the local Directors of Public Prosecution had instituted proceedings against members of the organization; in Hamburg, nine warrants of arrest had been issued for offenses covered by Article 128, and in Bremen two warrants of arrest for offenses covered by Articles 129, 49 b of the Penal Code. After having discussed with the pertinent Directors of Public Prosecution, on 21 Oct, the stage of those procedures then arrived at, I took over those two procedures in accordance with Art. 74a of the Law on Judicature. On At this time, only the warrants of arrest against the accused Breitkopf, Sawat and Popp were still pending. I had these three accused brought to this town. After their interrogation through my assistant, I presented to the Second Criminal Senate of the Federal Court for their decision the writ of habeas corpus submitted by these three accused. By decision of 12 November, the Senate cancelled the warrants of arrest, stating:

"The consequent results of the investigation procedure did not produce sufficient substance to the charge of offense in the interpretation of Articles 128, 129, 49 b of the Penal Code. This pertains, in particular, to the suspicion that the organization, to which the accused belonged, purported crimes against the life of persons whose names are contained in the so-called "list of proscribed persons" and in other lists and card indices."

This reasoning corresponded to my own opinion of the facts.

The Attorney-General in Munich presented voluminous investigation material on 5 November, accompanied by a report of the Director of Public Prosecution in Munich II which investigations had been conducted by the Bavarian Land Police in the entire Land Bavaria. The Praesidium of the Bavarian Land Police computed the results of the investigations of 30 October as follows:

"In Bavaria, everything has been done, in accordance with Art.163 of the Code of Criminal Procedure, to throw light upon this obscure affair. However, no proof could be produced so far for the existence of a punishable act in the interpretation

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of Articles 49a, 49b, 127, 128, 129, and 211 of the Penal Code."

The Attorney-General in Munich also stated that he did not believe that there was sufficient evidence for a punishable act in the interpretation of Articles 49a, 49b, 211 ff of the Penal Code.

On 6 November, the Attorney-General in Stuttgart submitted the findings of the Main Criminal Police Agency of the Land Police in Wuerttemberg, with a report of the Public Prosecution in Stuttgart, which says in regard to the "list of proscribed persons":

"There were no lists from Baden-Wuerttemberg in the folder which contained the lists of persons submitted by the Land leaders. The big green card index containing names (see Annex III of the Police Report) was checked for names from Baden-Wuerttemberg. The index is made up for office purposes and contains names which have come up in "Technischer Dienst" in some connection or other. The cards usually contained a remark about where the names had been found in the files of "Technischer Dienst", for instance a collection of evaluations of important persons, for instance Kalbfell - see Annex I of Police Report, page 41 -- and Schoettle -- same page 43. These two evaluations alone prove that the collections are no lists of political opponents (see p.43 Schoettle, whose opposition to the KPD is pointed out), but merely constituted a collection of material for evaluation".

On 23 December, the Attorney-General in Braunschweig submitted to me, for my information, a procedure pending before the Public Prosecutor in Braunschweig; here a Braunschweig journalist by the name of Dortants accuses an alleged former SS officer by the name of Anders of having occupied himself with making out

"black lists"

and of having said that in "Case X" the persons so listed would be "done away with" (umgelegt werden). In the course of these investigations which, in their present stage, do not present a clear picture, the name of the accused Peters appears once; however, for the time being, there is no direct connection with the "guerilla organization".

I have not received information from other Attorneys-General concerning proceedings which may have bearing on this case.

The principal accused and other persons involved -- Peters, Rietdorf, Breitkopf, Otto, Klotz, Lueth, Topp, Sewat, Wagner, and Hofmann -- were questioned by my assistants in thorough interrogations, some of which were repeated. Simultaneously, by my orders, officials of the Federal Criminal Agency interrogated Land Chairman and other members of the organization, to wit, the accused, and witnesses, Kaufeld, Kirchhof, Wolf, Schmidt, Zietlos, Buxell, Pintscher, Waibel, Depré, Schroeder, Hausing, Fischer, and Radermacher.

Combining what is said above, with the investigations conducted by the Wuerttemberg and Bavarian Land Police, it can be stated that by now all leading persons in the organization, all members of the staff, and all other persons in a position to give information have been heard, as far as they could be questioned by German authorities. This restriction refers to the Americans involved who could not be questioned. I have tried, by informal contact -- in part through the Federal Agency for

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the Protection of the Constitution, and in part in talking to an American representative of the Staff of the High Commissioner who had been sent to me -- to obtain access to the statements of those Americans who had been concerned with leading and supervising the guerilla organization. However, this attempt was of no avail.

At the moment, only supplementary investigations are being made concerning some detached points; this, however, would merely mean completion of the over-all picture. For instance, the Federal Agency for the Protection of the Constitution has been asked to try to find the as yet unknown agents who produced the raw material for the lists of personnel (see II 5) which Hofmann and Dr. Wagner furnished the BDJ. No change of importance is expected in the over-all picture by these and other supplementary investigations. The investigations have reached a certain final stage; I am unable to discern any sources to be tapped for new evidence.

II. Result of the investigations

I wish to compile the result of previous investigations under several headings which, in part, follow from the natural structure of the material, or, in part, played a special role in the public discussion of the affair.

1. The American commission

As has been said at the beginning, there is no longer doubt, after the various public statements made by American agencies, that the organization was established upon the initiative of American military agencies. All persons concerned stated that the organization was set up, financed, and continuously supervised by an American officer who was called "Garwood". In Garwood's former residence in Steinbach/Odenwald searches produced an English organization plan which, to judge from its contents, originated in the American Army. There is hardly any doubt as to the genuineness of this document. Although American agencies have made no official statements concerning this matter, the American representative to whom this document was submitted, did not doubt that it is genuine, although my assistant called his attention to the objections raised by others. Incidentally, several Germans concerned with this matter, who know Garwood's handwriting, declared unanimously that the handwritten amendments in the document were made by Garwood.

The "missions of the organization" are being described in this organizational plan as follows:

- "A. to set up, to train, and to maintain, a secret resistance movement in the East and West zones of Germany, which is in a position to conduct guerilla and sabotage activities against the entering and occupying Soviet forces,
- B. to collaborate as much as possible with the western forces during the period before the war, on D-Day, and during the period of occupation of Germany by enemy forces."

Concerning the intended "activity of the organization", this American organizational plan states:

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"A. During the period before the war:

The peacetime mission of the organization is the perfecting of tactics, of the intelligence connections, of the knowledge of the terrain, and of sabotage methods. Its second mission is to serve as an information service system in cooperation with other organizations, and to collect material concerning the requirements on higher level.

B. On "D-Day":

The principal effort of the organization during this period should be to destroy the strategical potential, which is the organization's present destination.

C. After D-Day, and during the ensuing occupation:

The remaining leaders will begin to reorganize, and to start on surprise attacks and active sabotage. This means the beginning of resistance."

The following text speaks of "the Allied commander who employs and lends support to the resistance fighters" assigning a liaison officer to the Chief of the resistance movement".

From all that it follows plainly that it was the intention of official American agencies to make the organization a link in the chain of an extensive military planning; that in case of war it would have to carry out certain military missions under American or Allied command; and that in the meantime it was to prepare itself for these military missions to be carried out in case of war. Therefore, it was not Garwood's private undertaking, but, according to the official American version, a military formation which was kept secret because it was intended to be used as a guerilla group at a later date.

On the whole, the Germans involved agreed that they resisted the idea of guerilla warfare which they believed to have no sense, and that their plans were to shepherd able-bodied men to "safe areas" in the West and the South in case of an occupation by Russians. However, their thoughts exclusively centered around the war they feared. Except for unsubstantiated utterances made by Otto, there has been no indication that the organization had pegged out goals in regard to domestic policies.

Whoever should try to find the ideas of the organization in the philosophical regions of the "Freikorps" and the "Kampfverbaende" after the First World War, overlooks one important psychological element. The basis from where the so-called guerilla organization started was panic and fear; this was the over-all impression gained from the numerous interrogations. Many members of the organization were former officers who were afraid of death or deportation in case of occupation by the Russians. Their desire was directed more upon salvation from personal danger than upon political power.

Certainly the desire to work in this organization was also, in part, due to the richly flowing funds. According to the cautious statements made by the accused Peters on this point, the American payments to the organization between -say- March 1951 and September 1952 must have

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amounted to at least 500,000 DM. It was not possible to get full information on the strength of the organization; the statements of the persons concerned vary between 1000 and 4000. However, the statements made by the Land Chairmen indicate that the figures are actually lower than those they may have given to the American agencies, perhaps for financial reasons. Hardly more than 100 members of the organization were trained in Waldmichelbach.

2. Connections with BDJ

Some of the leading persons in the guerilla organization, especially the accused Peters, came from the BDJ; recruiting, especially during the first period, was mainly done among BDJ members. Beyond that, an organizational connection between BDJ and guerilla organization was not discernible. The fact that the organization, during its initial period, appeared as "Technical Special Service of the BDJ" has been explained as a camouflage measure, and this seems to be credible because under that name recruiting would be much less conspicuous. Actually the organization, although it was at first set up in offices close to the BDJ, was never a sub-organization of the BDJ, but was independent from it because it received American guidance and funds. However, all persons concerned who were aware of internal developments -- for instance Otto -- stated unanimously that in summer of 1951 the BDJ was separated, as far as offices and personnel was concerned, from the BDJ by express order of the American liaison officer, and that they were kept separate for security reasons. Although Peters had been elected 2nd Chairman of the BDJ in May 1951, he had, according to his own statement, resigned from this position already in June of 1951; at any rate, it could not be proved that he had actively worked in the BDJ after that time.

Nor did the questioning of Paul Lueth, former 1st Chairman of the BDJ, reveal in any way that Lueth himself, or the BDJ as an organization, had had any influence upon the "guerilla organization".

3. The "Civil War Document"

Public discussion has pointed out that the memorandum on "Measures to Combat Internal Disturbances", confiscated among the property of the accused Rietdorf, is proof of the organization's tendency to exert influence over home policies. The accused Topp admitted having written that memorandum, attenuating the admission by asserting that he had copied large parts of the document from an old periodical which contained an order issued by a Reichswehr commander at a time of internal unrest. I have in vain tried to find that periodical in one of the German libraries. However, a private source explained to me in the meantime that Topp's memorandum apparently reproduces parts of an order from General Maerker, issued during the times of internal disturbances after the First World War.

In March 1951, Topp gave the accused Peters this memorandum which according to his own statement he had made for the BDJ; Peters was then still the Second Chairman of the BDJ. Peters states to have passed in on, for examination, to an officer he knew, allegedly a certain Colonel Doerk in Berlin, and then to have put it away as being insignificant because that officer rated it rather low. Rietdorf asserts to have seen the document for the first time when the written

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material of the organization was being destroyed, and to have taken it because he found it interesting. Investigations are being made as to the whereabouts of Colonel Doerk.

Topp's memorandum indeed shows critical, and mostly ironical, remarks written in the margin; their tenor seems to indicate that they were made by a military man. The date of the memorandum (March 1951) does not seem to indicate that its ideas resulted from the guerilla organization because in March of 1951 that organization was only in its initial stage. Nor are the contents compatible with the aims set for it by the Americans, or with the ideas which have been found to occupy the minds of the other members of the organization; in any case, the organization was guided by the thought that a war might break out, and was not at all concerned with internal disturbances. Therefore, one cannot draw conclusions from the Topp memorandum as to the nature of the ideas other members of the guerilla organization may have fostered; at least, it cannot be disproved that this is an essay of purely theoretical character, without inner connection with the organization, and which was not actually used in any way, nor was even seriously worked on inside the organization.

4. The suspicion of a "Fememord", aroused by the "Spiegel" article, was found to have no basis. All investigations made in this regard have produced no proof for a "Fememord". In the meantime, the "Spiegel" disclaimed its own information.

5. The "List of Proscribed Persons"

The declaration made by the Hesse Minister President Zinn before the Landtag on 8 October 1952 may serve as a basis to start from, as that declaration was largely responsible for the idea which the public conceived of the suspicions. According to the Landtag's Printed Matter III No.32, the Hesse Minister President stated in this respect:

"At the same time, the organization outlined for itself a mission in regard to home politics. The Section I f, the so-called 'Abwehr' (counterintelligence) was supposed to find in the Federal Republic persons who, in the opinion of the Technischer Dienst des BDJ, might be considered politically unreliable in case of a military clash with the Soviet Union; or who, according to the presumption of the Technischer Dienst des BDJ, might be considered for employment in German administration under the Russian occupation; or who, in the opinion of the Technischer Dienst of the BDJ, are opposed to a German contribution in the defense, or to the Contractual Agreement and to the EDC Contract.

According to the confession made by the chief of the counterintelligence, these persons were to be "kaltgestellt" (note: this word may mean anything between ostracized, eliminated, put on ice, done away with) in Case X. According to his own confession, he and the other leading persons of the organization understood that term to mean "eliminate", "if necessary by the use of weapons".

A striking feature is it, that there were only 15 index cards on communists among the confiscated material of the counterintelligence, but approximately 80 cards on leading social-democrats."

After mentioning a few names of social-democratic politicians, he continued:

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"The index cards contain a description of the person, and a detailed personal history of that person. It is remarkable that many of the SPD members found in the card index are being suspected (by them) of having connections with the communists, for instance, the Hesse Minister of Interior Heinrich Zinnkann. All of you know the Hesse Ministers Zinnkann and Metzger, and all of you know how senseless and untrue such statements are. That there are only a few communists in the card index, may perhaps be explained by the fact that one of the prominent members of the organization is suspected of having connections with Karlshorst and Pankow.

In addition to the card index, a list was found of approximately 120 prominent SPD members, including the First Chairman Erich Ollenhauer. The cards belonging to that list are not there. There was also a series of lists of SPD members, which we confiscated."

The investigations revealed what follows:

The Organization, which had been given the additional task of "information service" in the American organization plan of which extracts have been reproduced, maintained in its staff a section "Security" whose mission was to be that of "Abwehr" (counterintelligence) in the meaning applied to it by military formations.

That section was led until fall of 1951 by Hans Otto, who was then relieved in the management of that section by the accused Rietdorf. The declaration of the Hesse Minister President mentioned Otto as the leading man of that counterintelligence agency, but this is true only to a very limited degree. The interrogation of Otto by my assistant proved that he did not know the most important card indices and lists of that section because they were prepared only after he gave up the position of chief of that section. Therefore, Otto, when questioned by my assistant, was forced to make considerable corrections in several points of the statements he made before the police and before the German-American Investigation Committee in regard to the contents of lists and card indices; he tried to vindicate himself by saying that he had accepted as true, and had corroborated, statements made by persons who had been interrogated before him on behalf of the contents of lists and card indices, without having actual knowledge of the facts. For instance, he told my assistant, concerning his assertion which was repeated by the Hesse Minister President in his declaration, that the card index contains only a few names of communists, and for the rest mostly names of social-democrats:

"I was told during the interrogation that the card system contained a few communists, and for the rest only social-democrats. I accepted as true what the interrogator told me about the contents of the card index..... I see now that I should have said correctly that I did not know what was in the card index of opponents nor in the list of proscribed persons. I allowed myself to be misled by the assertion that the card index contained the names of some communists and of many social-democrats....."

This man Otto was a former SS officer who after the war had worked for a British Information Service, and who was in touch with professional

intelligence agents, for instance with Wehlen who was arrested during a treason trial; therefore, his personal history makes a somewhat dubious impression. He had already, some time before, been the chief of a Section I f in the Federal Executive Committee of the BDJ in which position he had performed similar work which is something between the collecting of material and counterintelligence work. When in summer of 1951 he and the accused Peters went across to the latter's organization, Otto transferred considerable amounts of the information material which the BDJ had collected. However, that material was rearranged to suit the purposes of the new organization only after Rietdorf had become the chief of "Security" in fall of 1951, and after Breitkopf had been set to work on the rearranging. It was only during these activities that Breitkopf set up the card indices which have now been confiscated. The following indices have bearing on this procedure:

a. a green card index:

This is merely a compilation of the names which appear anywhere in the other folders, mentioning the exact place where the name can be found. Therefore, it is purely a list of names without special importance.

b. a red card index:

This one, consisting of 70 cards and called "Warnkartei" (warning card index) or "Abwehrkartei" (counterintelligence card index), contains personal data on persons who, from the viewpoint of the organization, were considered hostile, dangerous, or were suspected of something, including those who had left the organization again. The index also mentions the reason for which these persons appear in the card index.

c. a folder with the title "List of Proscribed Persons":

consisting of 12 pages with names, most of them without details, and without mentioning the nature of the suspicion that is being nourished against that person;

d. a folder entitled "Data on Individuals":

This folder contains, in addition to other political information, principally those cards on politicians and trade union members, most of them social-democrats, which the Minister President had mentioned in his declaration before the Landtag. These cards which are completed on standard forms, contain personal data, descriptions of the persons, a more or less elaborate personal history, and political characterization.

The declaration made by the Hesse Minister President, and the ensuing discussion in the press, disquieted the public especially because of the thought that this collection of names of prominent social-democratic politicians may have some connection with the "list of proscribed persons". Minister President Zinn was probably tempted to make that association of ideas because of the statement Otto had made on 1 October before the Polizeipraesidium Frankfurt/M.:

"The card index on about 100 persons includes names of persons of whom it is known that they are clearly opposed to the rearmament of Germany. The index which was by no means complete, also con-

tained the names of some communists, and principally social-democrats, who were suspected of belonging to an extreme socialist wing which we assumed to be existing, and who, despite the present oppositional attitude of the social-democrats, might be employed in prominent positions after the occupation of Germany by Russian troops."

Actually Otto knew that these cards were nothing but informative material which the BDJ had collected and which he himself had taken along with him. To my assistant he stated in this respect:

"The folder "Data on Individuals" is a compilation of all the information received on individuals. It was supposed to be a basis for the evaluation, followed by entering the items either in the card index for opponents or the list of proscribed persons. The folder "Data on Individuals" contains material which may be of interest in some way or other, without discrimination between friend or foe. In other words, one cannot draw the conclusion that somebody is believed to be an opponent or eligible for the list of proscribed persons simply because his name appears in this folder which bears the title "Data on Individuals". That would be dependent upon the nature of the information received on him.

The cards "von Knoeringen" or, for instance, "Kaisen", had been obtained from a certain Dr. Wagner in Munich, against payment. They were not compiled by us, but were received from Dr. Wagner exactly as they are now filed in the folder "Data on Individuals". When I went through the cards a while ago I saw that one, No. 53, had a remark on it in Lueth's handwriting. However, on the whole the cards are probably exactly as they were at the time they were received from Dr. Wagner. Almost all cards dealing with the person as well as with the personal history of SPD politicians, and contained in the folder "Data on Individuals", came from Dr. Wagner. Therefore, most of these cards must have been received already by the BDJ, and must have been transferred when the two groups separated."

The origin of these cards has been found out by investigation. The witness Dr. Wagner, an employee of Evangelisches Hilfswerk in Munich, and Acting Manager of the BHE (Bund der Heimatvertriebenen und Entrechteten = Union of Expellees and Persons Dispossessed of Their Rights) in Land Bavaria, had sent them to Lueth, former 1st Chairman of the BDJ, on a continuous basis. Lueth had discussed with Dr. Wagner the hostile attitude of the SPD in regard to the BDJ, and had stated that he would try to get in touch with the "white" social-democrats, meaning the right wing of the SPD. In this connection he said he would like to have information on leading SPD politicians. Dr. Wagner accepted the job after having found the witness Hofmann, a Bavarian Gerichtsreferendar (assistant judge), willing to provide the material. Hofmann, who after the war had worked some time for an American Information Service, recruited, with the assistance of that Service, two agents who provided him with the material. These two agents, of whom Hofmann knows only the cover names, could not yet be found. Hofmann, of whom my assistant gained the impression of reliability, stated that one of those agents lived in Hannover, hinting that this man had access

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to material belonging to the SPD Party Executive Committee. The second agent lived in Frankfurt/M. and worked in communist cover organizations by order of an intelligence agency. Those of the cards where nothing indicates whether they came from either Hannover or Frankfurt/M., were written by Hofmann himself. Most of these persons are Bavarians whom he knew, for instance the Bavarian Minister of Interior Hoegner, or his own Attorney-General.

According to Hofmann, he arranged the outward form of these cards, which contain a complete description of the person; he also instructed his agents to use that form because he was used to it from the time of his activities in the afore-mentioned intelligence agency.

Hofmann and Dr. Wagner, who merely passed the material on to Lueth without working on it themselves, admitted to have performed this work merely for money's sake. Lueth paid approximately 13-15.000 DM for the cards he received between summer of 1950 and spring 1951. There is no personal political interest discernible: as far as a political trend can be traced in the material, it may be explained by the purpose as mentioned by Lueth.

Therefore, these personal cards have not been made out by the organization itself, nor even for its benefit; they were prepared by Hofmann and Dr. Wagner who were unaware of the existence of the "guerilla organization" and who sent it to the BDJ as political information. Most of the cards which were found in the possession of the organization, had been prepared at a time when the organization had not yet been established. It is certain that Otto himself brought these cards in to the organization; probably he also got hold in the BDJ of those few cards which were made out in summer of 1951. That there is no connection between the organization and the persons who furnished these cards, is corroborated by the fact that the organization did not receive any more cards between summer 1951 and spring 1952, after the organization had been separated from the BDJ. The organization merely did some re-arranging, while no definite purpose or use is discernible. Neither the Red Card Index nor the List of Proscribed Persons contain names mentioned in these cards.

Therefore, starting from the suspicion that lists of persons may have been prepared with the intention of liquidating them at a later time, the names of the Green Card Index as well as those of the folder "Data on Individuals" must be eliminated because in view of the results of investigations it is improbable, and can at any rate not be proved, that these two collections of names were made with such intention.

The persons involved have unanimously called the Red Card Index a card index for warning and counterintelligence purposes. It was compiled on the basis of reports which the Land leaders received concerning individuals living within their area of jurisdiction and who, from the viewpoint of the organization, were believed to be hostile or dangerous; as the general trend of thought and activities was focused upon the possibility of an occupation on the part of the Russians, most of the names -- except those of former members of the organizations -- were those of persons who seemed to be in a category suspected of maintaining relations with the East. These reports, received from Land leaders, were sent on to the American liaison officer; simultaneously they were entered in the Red Card Index. There are no names of well-known persons in the card index. If one goes out from the fact that the organization

was a covert organization purporting to engage in guerilla warfare in case of occupation, then this card index -- as amateurish as it may be -- serves the purpose of warning against certain persons for the sake of protection against them, as well as for the sake of taking security measures for missions to be carried on at a later time. The structure and the contents of the card index itself does not show an intention to eliminate these persons now or at a later date.

The contents of the folder entitled "List of Proscribed Persons" would not in itself permit such conclusion, were it not for the sensational title. It was not possible to find out exactly why the names contained in this folder were collected under this title. Much can be said in favor of the opinion that the filing in this folder was merely due to lack of something better, because the list contains merely names, no personal data or facts, so that it could not have been used for the Red Card Index. At any rate, the contents of that folder with names of quite unknown persons, most of the cards not mentioning actual suspicions, do not tally with the idea one has of a list of proscribed persons; concerning the first two persons on the Hamburg list which is marked "Helge Stark" the accused Topp, who provided this list, contends in a credible manner that the reasons indicated in that place are merely meant as a warning not to contact those persons for intelligence purposes.

However, there is still the suspicious use of the expression "List of Proscribed Persons". It was Rietdorf who first used this expression; he read it, according to a memorandum he prepared, in a brochure written by an Ukrainian emigrant on the structure of a Russian Security and Counterintelligence Service. That the word was consciously adopted from Russian language and practice, seems to indicate that it must be interpreted to mean a liquidation list. Nor did the accused Rietdorf and Peters deny in the final questionings that their minds have actually been occupied with this thought. Rietdorf declared:

"I have stated in a previous interrogation that it was I who first used the word 'List of Proscribed Persons', and that I found it in a brochure written by a Russian emigrant. When I first used this expression, I visualized a problem which would result from the mobilization plans. With the mission assigned to our organization in our mindes, we were of course anticipating the occupation of German territory by the Russians. According to experiences previously made, it may be safe to assume that the Russians will try to organize civilian life by means of persons who are their friends as far as organization or philosophy is concerned. In many cases it is known now already who will be appointed mayor or Landrat in certain territories, if and when the Russians should occupy them. I contemplated the question, whether a military power evacuating the territory should leave persons behind who would be sure to collaborate with the enemy. I myself was of the opinion that the answer to this question should certainly be "no". If you ask me, I admit that I, too, believed it improbable that troops, forced to retreat while fighting, would assume the burden of taking such persons back with them. I also admit that I did not consider it wrong to settle this problem by a radical solution, namely by killing. Those collaborators are traitors, if I understand the

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situation correctly. I may be under the influence of what I experienced in the East zone in this respect. Nor do I wish to conceal that in the meantime I learned to view such matters more calmly and prudently. But I do not deny that, when I first used the word "List of Proscribed Persons", I was indeed thinking of the possibility of preventing such future collaborators from cooperating with the enemy by killing them, if necessary. It is true that, in the state of mind as it was at the time, I had doubts whether the Americans would be hard enough to draw such consequences. However, I believed it to be out of question that our own German formations as our organization previewed them, would assume the burden of such tasks in case of war."

Peters made similar statements at his last interrogation.

In view of these declarations there is no doubt that the leading persons of the organization, whose thoughts were exclusively focused upon war and occupation, did indeed think that in case of war the killing of certain persons suspected of being willing to collaborate with the enemy might become necessary.

The accused, however, pointed out in all interrogations that they would never have taken the initiative for such measures, but that, as they conceived it, the initiative would have been left to the responsible military high command; also, that the compilation of names in the various lists and card indices was not made in preparation of such measures. Peters stated:

"The expression 'List of Proscribed Persons' may, I admit that, give rise to misinterpretation. Actually, we did not plan to kill certain persons, neither now or at a later date. The lists we made for other purposes. If the organization had had a longer life, we might have prepared lists which might have suited our idea of lists of proscribed persons, namely lists of persons who could have been expected to serve the enemy in prominent positions in occupied territory. However, what was to happen to those persons, would not have been our responsibility, but that of the troop commanders. Our task would merely have been to compile such lists; however, they had not yet been made."

Rietdorf made a similar statement:

"Although I admit that I myself, when I thought of preparing a list of proscribed persons, also considered the possibility that the persons so listed might have to be killed in case of war, I must stress that a real list of proscribed persons as I conceived it had not been prepared at all. As has been said before, this problem only came up in connection with the mobilization plans. These mobilization plans were not my responsibility, and what they contained in this respect, I do not know exactly.

Actually, the folder entitled "Data on Individuals" does not at all contain a list of persons who were to be killed in case of war. A list of proscribed persons, as I conceive it, has never been prepared. The existence of the folder "List of Proscribed Persons" does not at all contain a list of persons who were to be killed in case of war. --A-- is merely due to Breitkopf's collecting spleen; he filed away lists in that folder which he knew not where else to file.

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The Red Card Index was not prepared under the catchword "List of Proscribed Persons", as is evident by its contents, but it contains principally names of persons who might infiltrate the organization and against whom the organization was to protect itself."

Indeed, it cannot be denied that neither the Red Card Index nor the folder "List of Proscribed Persons" in themselves reveal the intention to make a list of persons who after the occupation might cooperate with the enemy in prominent positions.

I take the liberty of recapitulating as follows:

The leaders of the organization never actually thought of eliminating persons who are their opponents in regard to home policies; however, their concept of the imminent catastrophe, which they had by necessity been taught when they received the orders for guerilla warfare, made them play with the dangerous idea that it might be necessary in case of war to eliminate real or supposed collaborators. However, there is no proof that they were already harboring practical ideas concerning certain persons. In the first place, there is no proof that the lists of names in the Red Card Index and in the folder "List of Proscribed Persons" were meant to be used for the realization of such plans. On the contrary, it cannot be disproved that the Red Card Index was prepared only as a warning and counterintelligence card index, as required for the military commission upon which it is based. When the accused Rietdorf coined the expression "List of Proscribed Persons", and had it written on the folder, he may have been thinking of a real list of proscribed persons in the meaning of a liquidation list; however, it cannot be proved that what was actually filed in this folder had any connection with a list of proscribed persons in the usual meaning. It cannot be refuted that the accused, who knew that all their activities were being guided and supervised by an American officer, and who were allowed to consider themselves, now as well as in case of war, as members of a large military organization, did not consider action by their own initiative even when they thought of the possibility of liquidations by means of violence, but in case of war would leave decisions to the future Allied Supreme Commander.

III. Juridical Evaluation of the facts as outlined above.

- a. The accused kept their organization secret in accordance with the instructions they had received from their American employers. They have asserted that in this matter they had believed in a highest-level agreement between the Federal government and the Americans. This statement is not unbelievable, as indeed the accused Peters at a later date -- not later than May 1952 -- of his own accord called on the Vice-President of the Federal Agency for the Protection of the Constitution, and told him of work being performed by order of the Allies which was concerned with the future missions of defensive nature.

In view of these facts, it appears that the constituent facts of Art.128 of the Penal Code are not established. It would be a prerequisite that existence, statutes, or purpose of the organization were meant to be kept secret from the "state government". Under the auspices of the Occupation Statutes it must be accepted that the occupation powers, having reserved the rights of jurisdiction in regard to "protection, prestige, and security of the Allied Forces, ~~cut down~~ ^{reduced} the sovereignty of the Federal

Republic in matters of military security, and therefore, and insofar, must be considered to be the competent authority in the interpretation of Art. 129 of the Penal Code.

However, at any rate, howsoever the objective legal situation may be evaluated, it cannot be disproved that the accused believed to be justified by the military commission assigned them by the American occupation power, so that they were not aware of illegality.

- b. The result of the investigations made in regard to the List of Proscribed Persons is insufficient to apply Articles 129, 49 b of the Penal Code. The punishment laid down in the last-named stipulation is meant for participation in an organization "which aims at crimes against life, or considers (crimes against life) as a means to other ends." The first of these two elements is obviously out of question, because the purpose of the organization was not at all that of committing crimes against life. However, the facts are equally insufficient ~~xx~~ to establish that the organization considered killing others as a means to other ends. "Considering" in the interpretation of this article does not mean thinking of killing, but requires a certain amount of clear determination. The two parts of the now valid text of Art. 49 b of the Penal Code have grown from the concept "conspiracy" (see the history of RGST 69, 164 ff.), so that the established principles of the former text will have to be taken into consideration. The prerequisites of "conspiracy" are thus explained: that "on the basis of the discussions a common will must have been born which is seriously directed upon carrying out the murder, regardless of whether or not the manner of carrying it out has already been fixed in detail" (RGST 58, 392, 393). An "act seriously considered as an aim" (RGST 68, 360, 363) is the essential prerequisite of both alternatives of required facts even in the text which is valid at present.

Whatever the investigations have produced in the case on hand, could not be proved to exceed deliberations about what, in case of war, the Allied High Command may order to be done in regard to persons who are presumed to collaborate in prominent positions with the enemy in the occupied territory. In such deliberations the accused thought it possible that such High Command in the extreme case might order the killing of the collaborators, if it should be impossible otherwise to prevent them from their intended collaboration with the enemy. From this circle of thoughts indeed emerged the expression "list of proscribed persons", although, as explained under II above, it cannot be proved, and is not even probable, that the compilation of names in the folder entitled "List of Proscribed Persons" and in the Red Card Index was already intended as a means to realize such idea.

The danger of a mental attitude capable of such reflections is evident, the more so if combined with plans for guerilla warfare. However, as dangerous as such mental attitude may be, it is not punishable in itself, but only if it has assumed, by conspiracy in the interpretation of Art. 49 b of the Penal Code, that intensified dangerousness which meets the factual requirements of Art. 49 b of the Penal Code. It is just such actual conspiracy, in an at least general interpretation, for killing acts as serious aims, that cannot be proved in this case. The thoughts of the accused are focused upon a future war; they visualized themselves as being under the command of an Allied High Command to whose

decision they left the ultimate realization of their ideas. This attitude, which leaves to others the decision on the Whether, and How, and By Whom, to be made in a nebulous future, is not what the law thinks of when speaking of "considering".

- c. Prosecution from the viewpoint of Art.90a of the Penal Code is equally unpromising. Here, too, one cannot ignore the decisive fact that the organization, including its informative lists of presumed opponents, was planned and guided by Allied military agencies, and was to begin activities only in case of war. As out of place and undesirable such planning may be from the standpoint of German interests, still, there is no struggle "against constitutional order" discernible; it was even to be used under the presupposition that the constitutional order might be suppressed by Soviet occupation, and was to be used -- although with questionable means -- in the struggle against such suppression/

This planning is so obviously governed by the viewpoint of resistance against a dreaded attack, that one cannot say that it is directed "against the idea of international understanding". Whether or not the activities planned by the Americans for this organization in case of war would have violated international law or martial law, would have been dependent upon the manner of its employment; what little is discernible from the general planning, is insufficient for any evaluation. In view of the juridical development during the two World Wars, which overran the Hague Convention, and which was laid down in the Geneva Agreement on the Treatment of Prisoners-of-War of 12 August 1949, it is no longer possible to say that any guerilla activity as such constitutes a violation of international law; pursuant to Art.4 par.2 of the afore-mentioned Agreement, the members of guerilla groups even enjoy full international protection, if the requirements of that Article are fulfilled.

- d. Howsoever the facts may be evaluated according to German law: as there is no proof that the accused have exceeded their American orders in their organizational activities, German Penal Laws are not applicable anyway because of Law No.62 (ACC Law 51, 1108) by which intelligence work for occupational forces as well as, in general, the relations with occupational forces is removed from the jurisdiction of German Penal Laws.

IV. On the basis of this factual and juridical evaluation, I intend, if I should not receive other directives, to stop proceedings as soon as the supplementary investigations which are still pending, are concluded.

/s/ Dr. Wiechmann

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