CLAIMS OF GENERAL DYESTUFFS CORP. STOCKHOLDERS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1451

TO AMEND SECTION 41(a) OF THE TRADING WITH THE ENEMY ACT

FEBRUARY 25 AND 26, 1964

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CLAIMS OF GENERAL DYESTUFFS CORP. STOCKHOLDERS

TUESDAY, FEBRUARY 25, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the full committee) presiding.

Mr. HARRIS. The committee will come to order.

Today the committee has met for the purpose of public hearings on S. 1451.

(S. 1451 and departmental reports follow:)

[S. 1451, 88th Cong., 1st sess.]

AN ACT To amend section 41(a) of the Trading With the Enemy Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 41(a) of the Trading With the Enemy Act (50 U.S.C. App. 42(a)), as added thereto by section 206 of the Act of October 22, 1962 (76 Stat. 1115), is amended by—

(1) striking out in the first sentence thereof the words "report to the Congress concerning", and inserting in lieu thereof the words "render judgment upon";

(2) striking out in the second sentence thereof the words "one year after the date of the enactment of this Act", and inserting in lieu thereof the words "two years after the date of enactment of this section".

Passed the Senate October 30 (legislative day, October 22), 1963.

Attest: FELTON M. JOHNSTON, *Secretary.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 24, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, Longworth House Office Building, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter of November 5, 1963, requesting the comments of this Office with respect to S. 1451, a bill to amend section 41(a) of the Trading With the Enemy Act.

For the reasons set out in the statement on this bill to be presented to your committee by representatives of the Department of Justice, the Bureau of the Budget is unable to recommend the enactment of S. 1451.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF STATE,
Washington, February 24, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: I refer again to your letter of November 5, 1963, requesting a report on S. 1451, an act to amend section 41(a) of the Trading With the Enemy Act.

Section 41(a) of the Trading With the Enemy Act conferred jurisdiction on the U.S. Court of Claims to hear, determine, and report to the Congress certain claims against the United States for the proceeds received by the United States from the sale of property vested under the provisions of the Trading With the Enemy Act by vesting order No. 33. Proceedings with respect to such claims had to be instituted within 1 year after the date of enactment of Public Law 87–846, approved October 22, 1962.

S. 1451 would amend section 41(a) of the Trading With the Enemy Act by conferring jurisdiction on the U.S. Court of Claims to render judgment on the claims involved. S. 1451 would also extend the time limitation for instituting proceedings with respect to such claims to 2 years after the date of its enactment.

The Department of State does not have independent knowledge of the subject matter of S. 1451, but understands that the Department of Justice has been handling the claims in question since 1942. The Department of State, therefore, defers to the views of the Department of Justice on S. 1451.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES,
Washington, D.C., February 19, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reference to your request of November 5, 1963, concerning the views of the Foreign Claims Settlement Commission on S. 1451, 88th Congress, entitled, "An Act To Amend Section 41(a) of the Trading With the Enemy Act."

It would appear that the primary purpose of this bill is to amend section 41(a) of the Trading With the Enemy Act, as added thereto by section 206 of the act of October 22, 1962 (76 Stat. 1115), to permit the U.S. Court of Claims to render judgment upon claims against the United States from the sale of General Dyestuff Corp. as authorized under section 41(a), and to extend the period of time from 1 to 2 years in which proceedings with respect to such claims may be instituted.

In effect, the bill would provide two technical changes to the existing statute to conform with the original intent of the Congress regarding these claims and to conform with the opinion of the U.S. Supreme Court (*Glidden Co.* v. *Zdanok*, 370 U.S. 530) relating to the general jurisdiction of the Court of Claims.

Since the Foreign Claims Settlement Commission is not directly affected by the amendments as proposed under the act, it would prefer to make no recommendation on this measure.

Advice has been received from the Bureau of the Budget that there would be no objection to the presentation of this report to your committee.

Sincerely yours,

EDWARD D. RE, *Chairman.*

MR. HARRIS. The Subcommittee on Commerce and Finance has had this matter referred to it for some time. The proposal would amend section 41(a) of the Trading With the Enemy Act. It would serve little purpose to describe the proposed changes insofar as I am concerned because I feel sure the testimony to be presented will bring out

the problems involved. This proposal is directed at a specific situation which involves a settlement of a claim for the return of vested property.

It is alleged, I understand, that a proceeding was brought some time ago and a settlement for less than the value of the property was entered into. A question about duress being exercised was raised and consequently the matter got into such condition that legislation seemed to be necessary to clear it up.

This legislation was passed during the last Congress, the 87th Congress, in the course of the conference between the House and the Senate on the omnibus war claims bill. I did not have the privilege of being present at the conference. Unfortunately, I think that was the time, wasn't it, Mr. Clerk, when I was in the hospital?

Mr. WILLIAMSON. Yes.

Mr. HARRIS. I was advised about what happened and to me there seems to be some merit in our efforts to clarify the problem. It was again brought to my attention in the latter part of the first session of this Congress.

Realizing it is a technical problem, I asked the committee, if my colleagues will recall, to consider it in executive session without hearings, and it may be recalled that two or three members of the committee thought that that was unusual procedure and that hearings should be conducted.

I remember that our colleague, Mr. O'Brien, who was on the conference and who is familiar with the problem, made a rather strong pitch for the matter being reported without hearings, but in view of the questions raised by some members and the way the matter was brought up, I thought that it should be probably considered in this manner in order that the problem would not be prejudiced.

So that gives a brief description of this matter that we have.

We are honored this morning by the presence of our former distinguished, and amiable, and very able colleague, who is serving so ably in the other body. I would not comment about a Member leaving the House and going to the other body at any time under the circumstances, but anyone who can be trained over here to the extent that he can go to the other body and take over the leadership of his own party of that operation I think deserves commendation. Senator Dirksen, we in all seriousness are very glad to have you come back to the House and come back with us in this committee. We welcome you, and we know of your interest in this legislation and we feel that your appearance will be helpful to get it straightened out.

STATEMENT OF HON. EVERETT McKINLEY DIRKSEN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DIRKSEN. Mr. Chairman, it is a pleasure to be here and coming to the House Office Building obviously invokes a lot of pleasant memories of the 16 years I spent in the House. I used to say that if the country was ever to be saved it was going to be saved by the House of Representatives. I presume on occasions I must vary that just a little bit, but frankly this is a great body and I was delighted with all the associations I had and with what few feeble, I hope, durable things I could do as a consideration to the well-being of the country.

Mr. HARRIS. I might say, if the Senator would permit, that I look back and point to with pride and satisfaction and have cherished memories of the days we served together on the same committee.

Senator DIRKSEN. Right.

Mr. HARRIS. Part of the time the Democrats were in the majority. We got along fine. And part of the time the distinguished Senator was chairman of that committee, whom I had the honor of serving under, and I might say, as I will probably explain to our grandchildren, that I look back to the days when Senator Dirksen used to visit my office. If he had time I am sure he would do it again.

Senator DIRKSEN. Mr. Chairman, you are very kind. I thought perhaps the best purpose I could serve here this morning would be somewhat narrative in character because there will be others to testify. It occurs to me that it is 12 or 13 years that I dealt off and on with this question of alien property, the work of the custodian's office, and all the complications that were involved in that undertaking. I finally landed as chairman of the subcommittee of the Senate Judiciary Committee having jurisdiction of the Trading With the Enemy Act and everything that had to do with alien property and property rights.

I served as chairman of that committee for several years and sought to address myself to it with vigor in the hope, at long last after so many years after the war was over, that finally we could liquidate that whole matter and get it out of our hair. I had a considerable education while I was the chairman and I sought to probe into every aspect of the matter.

At that time we still had on hand a great many vested properties. There was then about $150 million in funds and in addition we had the War Claims Settlement Commission. I worked with them rather closely, so you become identified with the personalities, the problems, that inured in this whole matter. I became particularly interested in one facet of the matter because I thought a real injustice had been done.

I discovered that one of the few satisfactions in life is that you carry a cross and get an injustice undone, because that is the richest satisfaction that can come to anyone in public service. I may say, by way of qualification, I never had a nickel's worth of interest in any piece of alien property. I never had a share of stock or a part of a share of stock. None of my family, none of my kinsfolk, none of my friends, insofar as I know, had any interest in it whatsoever. My interest was a compassionate one because in the course of the many hearings we held, and the testimony we took, I did discover an injustice and with particular reference to one individual. I can speak about him best because I got to know him. I not only got to know him, but I got to know the story from the Alien Property Custodian himself, namely, the Honorable Leo T. Crowley, of Chicago, who, as you will recall, was a troubleshooter to whom President Roosevelt assigned many tasks, including chairmanship of the Federal Deposit Insurance Corporation and likewise the job as Alien Property Custodian, when that Office was still in the Treasury and had not been transferred to the Justice Department.

However, in the course of the hearings there came to my particular attention one individual named Ernest Halbach. I learned to know some of the others, but I think their cases were all the same.

However, I can use him as a symbol for what I will say this morning. I had him before the committee just like I had Mr. Crowley. I had the officials and investigators of the Alien Property Office before the committee and we compiled a long and very substantial report, and here is the thing that appealed to me.

Mr. Halbach was the operating head of what was known as the General Dyestuff Corp. That corporation was made up entirely of American citizens. It was under contract and handled the products of General Aniline & Film Corp., which later became quite controversial, until we finally passed the bill making it possible for the Department of Justice to ultimately dispose of the property. I presume in due time it will, but General Dyestuff was only a sales agency operating not only in the United States, but in this entire hemisphere, and so, among others, I had Mr. Halbach on the stand along with everybody else.

I tried to get at the roots of the problem and ascertain the truth as best I could, and generally speaking this is what I discovered. The Alien Property Custodian had investigated General Dyestuff and ultimately stated it was really a shameful act on the part of the Government, because that statement by him is in the record of the hearings when I was chairman.

He finally stated when I had him before the committee that he did it only as a matter of expediency. Subsequently, I asked Leo Crowley, the Custodian, to assign an investigator to investigate this whole matter, and particularly Mr. Halbach.

That investigator was a young accountant from North Dakota named Edward Shaffer. Mr. Shaffer under testimony related to our committee that he spent nearly 7½ months in a thoroughgoing investigation of the matter and concluded and reported to the Custodian that Dyestuff should never have been vested by this Government.

In addition, John J. Burns, a onetime judge who was counsel to the Alien Property Custodian, was also assigned to make an investigation and Judge Burns came up with the same conclusion.

However, the property was vested and there you were and thereafter the Department of Justice did what was probably the normal thing to do, and that was to procure the stock of General Dyestuff so that it could have sole ownership and dispose of it in a way that it saw fit. It then began to bargain with the various stockholders. In the case of Mr. Halbach, may I say for the record, that he was not only the operating head, but in fact General Dyestuff depended on his talent. He was in fact such a talented person that in the war itself the Government summoned him to Washington as a consultant to the War Production Board.

It was at a time when our dye supplies were so low that it looked as if the Navy could not even use the proverbial blue uniform and it was Mr. Halbach, the operating head of Dyestuff, who came here as a $1-a-year man and patriotically and loyally served his Government.

He was born in Pennsylvania. His wife was native born. He was an American citizen, and yet here this property was vested by this Government. I thought that in itself was a shameful proceeding, but it was done and after that you couldn't quarrel very much. The question then was what were they going to do about paying appropriate

compensation to the holders of the stock. The Custodian, and perhaps the Department of Justice, began to bargain with these stockholders. Some had more stock. Some had less. There was one stockholder by the name of Dr. St. George. They paid him $365 a share for his stock. This stock had belonged to this doctor in New York, by the name of St. George, and he and his wife were paid $365 a share. That is exactly what they paid for it.

Well, Mr. Halbach, of course, felt that he was entitled to far more for his stock than that. He hired an attorney. He hired one of the best firms in the country, Sullivan & Cromwell, in New York, and I remember the particular attorney in that firm who represented him, but to me it was one of the most astounding things, the type of advice that his attorney gave him. To this very good day, I can't for the life of me understand how one representing, as a lawyer and as an advocate, the interest of an individual, would give Mr. Halbach the kind of advice that he did, but at long last the offer was made and Mr. Halbach accepted it.

The question then arose as to just why he accepted not $365 a share for his stock, but $118 a share, and when I had him on the stand here was his testimony. This is Mr. Halbach speaking. He says:

> The settlement? Why, we sold the stock for the settlement. First, my wife, as you know, was desperately ill and the newspaper notoriety and the beating she got and she knew that I was getting, weighed terribly heavy on her and on my daughter, and myself, and her brother, who is one of the trustees. They were very anxious to relieve her of that stigma and the effect it had on her because she was an intensely and rabidly loyal American.

Mr. HARRIS. May I interrupt, Senator, and ask what year that was?

Senator DIRKSEN. I will have to be refreshed on the exact year; January 1945. That is a long time ago. Incidentally, Mrs. Halbach was a cancer victim and finally died of cancer and this had a contributing effect because of the harassment that she was under, but now Halbach continues in his testimony.

He said:

> The second compelling reason was the fact that due to our agreement as to our option which we had set up for our own protection it was used and turned around against us because when the Government took the company we were harassed with the fear that I might be discharged and my stock would trip the option and automatically be offered back to the company, and my attorney, who was a member of Cromwell & Sullivan, recited that to me so many times because he said, "You have to be careful. You will lose your job if you don't look out."

That was the second reason. You see, he had a stock option in the company. Had he been discharged his stock option wouldn't have been worth anything if in fact at some subsequent time the company might have been recovered. So here is a lawyer saying to him:

> Be very careful about what you do. They may discharge you from your job as the head of the company and your stock option goes along with it.

Obviously that would inspire fear in any man and was a kind of duress. Then he said:

> My funds were pretty well dissipated in all of this and I couldn't afford to lose my position. Despite the reduced salary, it was still something that we had to have. Those were the two things I remember very distinctly him saying to me when this thing was finally settled—

And this is his lawyer talking—

> Ernest, you are a very sensitive man and if you go on with this trial you are going to kill your wife.

Well, great God, that's fine testimony or fine advice to be received from a lawyer from one of the most prominent law firms in the country. If that isn't a species of duress, then as a lawyer I simply don't know the meaning of the term, and meanwhile this man was getting older, but there were other things. His bank account was frozen in New York. He couldn't even pay his wife's doctor bills unless he got a lifting order from the Treasury Department so he could pay his bills and have a little money with which to go on. He says:

"There was nothing else to do."

Now, Senator Kefauver said:

"Mr. Halbach, when was the settlement made?"

He said: "In 1945."

And then I said: "As a matter of fact, your wife had cancer and those Federal men kept bothering her."

Well, here is what he said:

> Federal agents came out. I came home one night and I could hardly believe it. I saw that her face was scarlet and I said, "What on earth is the matter with you?" She told me then that two agents from the Treasury had been there and questioned her about me and my connection and trying to intimate that I was German or something to that effect. I never could get it out of her. She was so upset and so bewildered with it all that I never could find out, except I know that those two men had been there. She died shortly after.

This is the kind of harassment that this old man was under and meanwhile his attorney was saying, "Don't do this. Don't do that. You might lose your job as president of the company. You will lose your salary. You will lose your stock options."

And at the same time this Government was bringing him down here and accepting his advice as a patriot and as one of the ablest people in the dyestuff field that could be found anywhere in the country, a native-born American citizen who was born in the State of Pennsylvania.

Now, that is the way this thing carried on, so at long last this thing went into court. Well, the Justice Department set up all the technical defenses. I can understand that, but I still believe that it was a frightful injustice. Bob Taft was then leader in the Senate. I went to Bob. We discussed this matter many times at great length and at long last Bob Taft wrote the Attorney General a letter. This was in January of 1953. Our old friend Jim McGranery, with whom we served here in the House together, was then the Attorney General. I read only one sentence out of Bob Taft's letter. He said to the Attorney General:

> I am fully cognizant of the successful technical position of the Government behind it, its "purchase release" of the Halbach stock, but let me point out, however, that a trial on the merits of that technical defense is not a trial on the merits of the *Halbach* case. Whether Halbach can technically prove duress—always an almost impossible burden to sustain—the very opposition of a wartime government and the relative helplessness of a citizen in a negotiated wartime sale does create presumption of overreaching by the Government even though there might not be technical duress which is provable in court.

Any lawyer knows how difficult it is to establish duress, but look at this advice he got. Look at the Treasury agents going to a wife afflicted with cancer, and if I had to write a book about it I could give you details that would make your hair curl because I became familiar with it in the various details, and so here this fellow finally

sold his stock under duress, not for the $365 that was offered to the St. Georges, but for less than one-third: $118. To me that was such a palpable injustice that I almost took an oath at the time that I would see it undone if it was the last thing I did in public life, and this is the 13th year that I have had this thing before me off and on and I do not propose to quit until this injustice is undone.

Now, all that is asked is why not let this case go to the Court of Claims on the merits, not on a technicality, not on a technical defense. Great conscience, what kind of a free government is this if a free, native-born citizen can't on the merits go into a court that the Congress specially provided for his citizenry in order to get justice. Why, when that day comes then our courts aren't open on the basis of the merits of the case; that is about the time when you can throw away the key and say freedom and justice is in jeopardy in our own country. So that is all we tried to do. When this bill passed the Senate this was a floor amendment that I offered. It was accepted. We had the conference on the last day of the last session of the 87th Congress. It was in the afternoon. We held it over on the Senate side. I was a member of the conference; and then we began to hassle back and forth and finally garbled language crept into it before we could reach an agreement, and so the bill went back to both Houses for approval with language that was not only garbled, but that didn't take account of the dictum that appeared in the so-called *Glidden* case. It was a case in which Tom Clark, former Attorney General, indicated that the Court of Claims could not be held to render advisory opinions, and finally 35 cases were stuck down there which had either gone there from one House or the other on the basis of securing some kind of an advisory opinion.

The way I wrote the amendment was to have the court render judgment on the merits of the case, but the garbled language provided that the court would consider it and then send it back to the Congress, and that certainly didn't take account of what happened in the *Glidden* case.

I was quite disturbed about it. Frankly, I went to see our old friend and colleague, Marvin Jones, onetime chairman of the Committee on Agriculture of the House, with whom I served for many, many years, and so did the distinguished chairman of this committee. We had a long talk about it. He said, "I think there ought to be a substantive modification and I want to come up and talk to you and the members of the Judiciary Committee, but in the welter of things we haven't quite gotten around to it yet and meanwhile the thing is stuck," so they had a hearing in which to file their case under these circumstances and counsel for the American citizens and stockholders of General Dyestuff had no choice except to file their case.

It is pending, but it is in a state of suspension in the hope that we can get some kind of a clarification of this matter, so, frankly, the only reason I am here this morning is to see an injustice undone, to see justice done to the memory and to the estate of a man, and his wife, who died of cancer, who rendered yeoman patriotic service to this country, both native-born citizens of the United States.

That is all that was involved and it is pathetic that in the welter of things this language in the bill that finally was approved in the 87th Congress should have been garbled, but it was the last day. We knew

it was the last day. We knew we were going to adjourn. Everybody was rushing helter-skelter to get the last-minute things out of the way. You know what happens in the conference committee under those circumstances. You give and you take.

I was so reluctant to do it, and at long last I did do it, but I was outvoted in the conference committee and I had to abide by the result because when the adjournment fever is in the air it becomes a contagion, as you know, and a matter in which there was little interest, or as one of you said, an obscure matter, that isn't enough to keep the two Houses of Congress in session very long, but the injustice is still there. The duress is still there. The injustice to the estate and to the memory of a great American is still there. I so earnestly hope that you will undertake to right it by modifying that language as I have done in the Senate bill that is presently pending before you.

That is my narrative story, I could be here all morning and give you highlights. There is no point in it. Mr. Coleman Burke of New York, who will be one of your witnesses, knows this thing backward and forward. I don't profess, country lawyer that I am, to be so skilled in the art that after 12 or 13 years I can keep all these things in mind, but in my heart is the feeling that this injustice must be righted. I hope this committee will do it and send the bill to the floor and pass it and let this estate and these American citizens have their day in court on the merits of the case.

If the court finds against them, well and good. That puts a period to it so far as I am concerned. But to let the Government find refuge in all the technical defenses that were used in court heretofore still doesn't resolve the merits of the case, so that is it. Now, with your permission, the Finance Committee is considering coffee legislation this morning and they think I ought to be there, Mr. Chairman. Thank you.

Mr. HARRIS. Senator, you have given us a very interesting narrative of this problem. I can readily understand why members of this committee who served on the conference have expressed the feeling that they have. Mr. O'Brien is not here, but he has told this committee how he felt about it. Mr. Glenn is here. He served on that conference and I think he probably would like to comment before you leave.

Mr. GLENN. Yes, Mr. Chairman. Senator, you have indeed performed a service to this committee and to me by this very fine recitation of the facts which I had to some extent forgotten as they pertain to this conference which we had on that bill.

Now that you have helped me I do recall that this was a very poorly conducted conference. We had to wait for the attendance of the various Senators because of the fact there was action on the floor, and it runs in my mind that you were not feeling too well. In fact, I think I sat next to you at the conference and you told me that you had been under a doctor's care.

Senator DIRKSEN. I had been out of Navy hospital where they had me for 5 or 6 days.

Mr. GLENN. Yes. While you weren't at all pleased with what we finally came up with, for the purpose of getting this bill out you did agree under the circumstances, it being the last day, that we would report it out, and, as I say, this was a very poor way of doing it, but

for the purpose of getting the things disposed of we did report it out. I have been sorry since for that because I realized after reading this opinion by the Supreme Court that this could not be done the way we wanted to do it, that it would have to be remedied by future legislation, and I am wholly in accord with what you do in your bill, and it is a simple thing and will certainly rectify the situation, which should have been done long before this.

Senator DIRKSEN. Mr. Glenn, you may remember the Senators had to leave that conference five times to go to the Senate floor and vote on first one thing and another, because the old urge was on to clean the calendars, get everything out of the way, so there would be no impediment to adjournment.

Mr. GLENN. Yes; I recall that we House Members had to take recesses and then wait for the Senators to come down and that it was a very unfortunate circumstance to have to have a conference committee meeting in this way, but it was the only way that could be done under the circumstances.

Senator DIRKSEN. That is right, Mr. Chairman. I thank you.

Mr. HARRIS. Senator, thank you very much. I might say that I was in Bethesda Hospital during that time, too. I hope you and I both have that out of our systems.

Senator DIRKSEN. Thank you.

Mr. HARRIS. I am going to put in the record at the appropriate place a letter from the Foreign Claims Settlement Commission, but I noted this one comment:

> In effect, the bill would provide two technical changes to the existing statute to conform with the original intent of the Congress regarding these claims.

Senator DIRKSEN. Right.

Mr. HARRIS. I know you are a very busy man. We will not detain you longer. I am sure we can get answers to what questions we might have from the other witnesses who will be here. Thank you very much.

Senator DIRKSEN. Thank you, Mr. Chairman, and what a pleasure it is to come back and revisit old scenes.

Mr. HARRIS. We wish time would permit you to stay longer.

Senator DIRKSEN. Thank you very much.

Mr. HARRIS. I am pleased to observe the presence of our colleague from New York, Mr. Barry. Did you want to make any comment on this?

STATEMENT OF HON. ROBERT R. BARRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BARRY. Mr. Chairman, I am very pleased to have this opportunity to stand before you and to say that I have been acquainted with this situation for over a decade and know that there are people who have felt a grave injustice was done on this issue, and I am very thankful and happy that you are reconsidering this measure and attempting to do what can be done to make certain that the will of the Congress as we expressed it formerly is and will be carried out in legislation that is now before you.

I thank you for the privilege of just making this short statement.

Mr. HARRIS. Thank you. We are very pleased to have you and your expression of interest in this problem.

We have the Honorable Irving Jaffe, Chief of the Court of Claims Section of the Department of Justice. Mr. Jaffe, we will be glad to have your statement.

STATEMENT OF IRVING JAFFE, ESQ., CHIEF, COURT OF CLAIMS SECTION, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. JAFFE. Thank you, Mr. Chairman and members of the subcommittee. My name is Irving Jaffe. I am Chief of the Court of Claims Section of the Civil Division of the Department of Justice. I am pleased to have this opportunity to testify on S. 1451.

S. 1451 proposes to amend section 41(a) of the Trading With the Enemy Act, 50 U.S.C. App. section 42, by striking the words "report to the Congress concerning" in the first sentence of that section, and substituting therefor the words "render judgment upon." It would also extend the time within which suits may be instituted on the claims authorized to be brought by that section.

I think that I can be of some assistance to the committee if I were to review for the committee the background of this bill.

Section 41(a) was added to the Trading With the Enemy Act by section 206 of title II of the act of October 22, 1962 (76 Stat. 1115). That act amends the War Claims Act of 1948, and was originally introduced into this House as H.R. 7283, 87th Congress, 2d session.

As passed by the House, the bill did not provide for the addition of section 41(a) to the Trading With the Enemy Act. This provision was added by the Senate as an amendment from the floor. As passed by the Senate, section 41(a) did provide for the investiture of the Court of Claims with jurisdiction to render judgment. However, when the final bill emerged from conference of House and Senate conferees, the language had been changed to provide only that the Court of Claims report to the Congress. The Department had had no opportunity to express any views on the provisions of section 41(a) until it was invited to do so before the joint conferees at which time the Department of Justice opposed the provision.

The section is intended to give to all but one of the stockholders of General Dyestuff Corp. the right to sue in the U.S. Court of Claims for the proceeds received by the United States from the sale of stock of the General Dyestuff Corp. which had been seized under the Trading With the Enemy Act, not withstanding any statute of limitations, lapse of time, any prior decision by any court of the United States or any compromise, release, or assignment to the Alien Property Custodian. The relief which this Public Law would give to 10 of the 11 stockholders of General Dyestuff Corp. had been the subject of proposed private legislation as far back as 1952. None of the private bills ever passed.

The former stockholders or their successors filed a petition in the Court of Claims on October 17, 1963, purportedly pursuant to the act of October 22, 1962, and the Constitution of the United States. The Government has moved to dismiss the petition on jurisdictional grounds. The court has suspended further proceedings in the matter for 6 months.

All the stock of General Dyestuff Corp. was seized by the Alien Property Custodian in 1942 by Vesting Order No. 33 upon the finding and determination that all the stock was beneficially owned by I. G. Farbenindustrie, A.G. All the nominal stockholders of General Dyestuff Corp. were American citizens. General Dyestuff Corp., formed in 1925, has been the selling agent for dyestuffs produced by I. G. Farben since 1926.

From 1927 until 1953, when it was absorbed into General Aniline & Film Corp.—GAF—it has also been the exclusive sales agent for dyestuffs manufactured by GAF.

GAF was organized in 1929 by I. G. Farben under the name of American I. G. Chemical Co. From the time of its incorporation until 1939 its president was Hermann Schmitz, who, during that same time, was also chairman of the board of I. G. Farben. The controlling stockholder of General Dyestuff Corp. was, between 1928 and 1931, Herman Metz whose company, H. A. Metz & Co., had been the sole American sales representative of one of the large German manufacturers which had merged into I. G. Farben.

The majority stockholder between 1931 and July 1939 was D. A. Schmitz, a naturalized American citizen and brother of Hermann Schmitz of I. G. Farben; and from 1939 until the seizure in 1942 the majority stockholder was Ernest K. Halbach. Mr. Halbach's entire business career had been with Kuttroff, Pickhardt & Co., a company which merged into General Dyestuff Corp. and which had, since before World War I days, also represented one of the large firms which later became part of the I. G. Farben combine.

The interesting aspect of the stockholdings in General Dyestuff Corp. was that at all times since the formation of the company, every stockholder "owned" his stock subject to an option which originally ran to I. G. Farben itself, then to successive corporations controlled by I. G. Farben, and finally, in 1939, to General Dyestuff Corp. itself.

The option, briefly described, required each holder of the stock to sell the stock to the optionholder at $100 per share, regardless of its actual value, plus a 6-percent dividend from the date of the last dividend. No stockholder ever paid more than $100 per share for his stock, notwithstanding the actual value of the stock at time of purchase. No stockholder ever received more than $100 per share regardless of the actual value at the time of sale.

The stock options in General Dyestuff Corp. were held as follows: From 1926 to 1933 the option was held by I. G. Farben itself. All stock was endorsed in blank and was held by Farben's attorneys in the United States as escrow agents. In 1933, 2 years after D. A. Schmitz purchased Mr. Metz' stock interest—for, incidentally, $100 per share, notwithstanding a book value of $200 per share—the stockholders, at the request of Schmitz, executed new options in favor of the Marion Co., an Illinois corporation whose three stockholders were D. A. Schmitz, Walter Duisberg—a son of Carl Duisberg, one of the founders of I. G. Farben—and William vom Rath—the son of a director of I. G. Farben. The stock of the Marion Co. was, in turn, under option to E. Greutert et Cie., of Switzerland, a private banking firm owned and controlled by I. G. Farben.

All the stock of General Dyestuff Corp., after the signing of this agreement, was again endorsed in blank and deposited with I. G. Farben's American attorneys. In 1938 the options were changed from Marion Co. to Chemnyco, Inc., a technical service agency in the United States for I. G. Farben, of which D. A. Schmitz was the major stockholder.

In 1939, at about the same time that I. G. Farben was "Americanizing" its holdings in the United States, the stock options were transferred from Chemnyco to General Dyestuff Corp. itself. D. A. Schmitz sold his stock valued at $460 per share for the option price of $100 and resigned as chairman of the board. It was at this time, too, that American I. G. Chemical Co. changed its name to General Aniline & Film Corp. and Hermann Schmitz and Walter Duisberg resigned as officers and directors of GAF.

Ernest Halbach in 1939 purchased 2,100 shares of General Dyestuff Corp. stock at $100 a share at a time when the stock had a book value of $460 per share. I want to digress just briefly here rather than be misleading. Mr. Halbach had owned 900 shares and had purchased 1,200 in 1939 from those shares that were given up by Hermann Schmitz. He did have, in 1939, 2,100 shares for each of which he had paid $100 per share.

Thus, Mr. Halbach allegedly purchased assets worth almost a million dollars for $210,000. In 1940–41, 2 successive 50-percent stock dividends were declared so that Mr. Halbach's shares increased from 2,100 to 4,725. Even at the option price of $100 per share, Mr. Halbach's $210,000 investment was now worth $472,500. The other stockholders fared similarly. It is interesting to note that in 1941, when Mr. Halbach had occasion to evaluate his stock interest in General Dyestuff Corp. for tax purposes, he declared its value at $100 per share.

After all the stock of General Dyestuff Corp. was vested by the Alien Property Custodian on June 30, 1942, each of the 11 stockholders filed a claim for the return of the seized stock and most of them instituted lawsuits under section 9(a) of the Trading With the Enemy Act.

All but two of the stockholders, Walter Duisberg and Armin V. St. George, were represented by the New York law firm of Sullivan & Cromwell. Settlement negotiations between the claimants, who were represented by eminent counsel, and attorneys in the Department of Justice, culminated in 1945 by the payment to Mr. Halbach and eight other shareholders of the option price of $100 per share, plus 6-percent dividends for each of the 3 years since the last payment of dividends, or $118 per share, in full settlement of their claims.

The suits were dismissed with prejudice and the claims withdrawn as part of the settlement. Mr. Halbach, for example, by reason of the settlement, received $557,550 for the stock interest for which he had paid $210,000.

Walter Duisberg, the second largest stockholder of General Dyestuff Corp., had instituted suit under section 9(a) of the Trading With the Enemy Act in the U.S. District Court for the District of New Jersey. That suit was dismissed with prejudice in 1944 for lack of prosecution, and the dismissal was upheld by the appellate courts. Mr. Duisberg vainly attempted to reopen the district court judgment or to have his claim to the seized stock otherwise adjudicated.

Finally, in 1959, the House of Representatives, by House Resolution 128, 86th Congress, 1st session, referred to the Court of Claims H.R. 2692, a bill for the relief of Walter H. Duisberg, for that court to report to the House of Representatives such facts and conclusions as would be sufficient to inform the Congress of the nature and character of Mr. Duisberg's demand as a claim, legal or equitable, against the United States and the amount which might be legally or equitably due.

Up to that point, Mr. Duisberg was the only stockholder of General Dyestuff Corp. who had received no payment whatever, by settlement or otherwise, for the seized shares that had stood in his name. In June 1961, the attorneys for Mr. Duisberg and for the Government, by stipulation, recommended to the Court of Claims that it find that Mr. Duisberg has an equitable claim against the United States in the sum of $327,850. That sum, as is set forth in the stipulation itself, was calculated at the option price of $100 per share plus dividends at 6 percent from 1942, the date of the last declaration of dividends, to 1953 when General Dyestuff Corp. terminated its independent existence.

Mr. Duisberg was paid on the same basis, namely, the option price, as was Mr. Halbach and every other stockholder, except Dr. St. George. Mr. Duisberg is the only stockholder who is not included within the provisions of section 41(a) which is now sought to be amended by S. 1451.

Dr. St. George purchased, subject to the outstanding option agreement, 500 shares of stock in 1940 at $100 per share, although the actual value of the stock was almost five times that amount. In 1941, he received an additional 250 shares as a stock dividend. Dr. St. George died in 1943. In 1949, some 4 years after the interests of nine other stockholders had been settled and paid and some 5 years after Mr. Duisberg's suit had been dismissed with prejudice, the executrix of Dr. St. George's estate instituted a suit under section 9(a) of the Trading With the Enemy Act. Because this suit presented issues not present in the other lawsuits and because it sought recovery of the only outstanding stock interest which had not by then fully and finally vested in the Alien Property Custodian free from the injunctive restraints of the Trading With the Enemy Act, settlement was made with the St. George estate in 1951 at a price of $365 per share. This settlement eliminated the last barrier to the absorption of General Dyestuff Corp. by GAF.

I would like to disgress again for a moment, if I may. Senator Dirksen, I believe, had his chronology a little bit in error. He seemed to imply that, when the settlement was made with Mr. Halbach in 1945, a settlement had already been made at a considerably higher figure with Dr. St. George. This was not so. The settlement with Mr. Halbach and eight other stockholders occurred in early 1945. The settlement with Dr. St. George occurred more than 6 years later.

Between the time of seizure of the stock of General Dyestuff Corp. and 1950, Mr. Halbach remained on the payroll of General Dyestuff Corp. During that period of 8 years he received as salary, bonuses, and salary adjustments, the total of $558,600. Mr. Halbach retired in August 1950 at which time he was entitled to receive $257 per month under the company's employee retirement plan, and an additional $45 a month under social security.

The board of General Dyestuff Corp., however, by resolution, undertook to make a voluntary payment to him sufficient to bring his total retirement pay to $1,500 per month. Between the time of settlement and the time of his retirement, Mr. Halbach never questioned either the propriety or the fairness of the settlement he had consummated in early 1945.

But in 1951, the year after his retirement, Mr. Halbach instituted suit in the U.S. District Court for the District of New Jersey to vacate the 1945 judgment of the dismissal of his lawsuit and to reopen his claim, contending that the settlement had been forced upon him by coercion and duress exerted by Government officials.

After full and complete hearings in the U.S. District Court for the District of New Jersey, his motion to vacate the judgment was denied on the ground that there had been a complete failure to prove duress. The Court of Appeals for the Third Circuit upheld the judgment of the lower court, and the Supreme Court of the United States denied certiorari. Mr. Halbach's simultaneous efforts to obtain private legislation to permit him to reopen the settlement were also unsuccessful until the enactment of section 41(a) as part of the act of October 22, 1962, amending the War Claims Act of 1948.

The stock of General Dyestuff Corp. was seized because it was believed that the beneficial ownership of the stock reposed in I. G. Farben of Germany, notwithstanding the nominal ownership of that stock by citizens of the United States. This belief was induced by the option agreement, the close association of the officers and directors of General Dyestuff Corp. with the personnel of I. G. Farben in Germany, by blood relationship, or economic dependence, and the sole business concern of the corporation itself with Farben products and interests.

After Germany found itself at war in 1939, Mr. Halbach and General Dyestuff Corp. cooperated with I. G. Farben to distribute Farben products to South American companies in evasion of the British blockade. In 1940, when I. G. Farben was no longer able to pay pensions to its retired employees in the United States, Mr. Halbach arranged to have General Dyestuff Corp. make these payments, and those payments continued until 1941 when U.S. Treasury blocking regulations no longer permitted it. These and similar activities were the subject of testimony during hearings before the Kilgore committee in December 1945. See "Elimination of German Resources for War," hearings before a subcommittee of the Senate Committee on Military Affairs, June 1945–March 1946, at page 1079; see also pages 972–977.

The stockholders of General Dyestuff Corp. have received, through settlement, the option price placed on their shares by their own agreement. It was the price at which they themselves, prior to the war, bought and sold those shares of stock.

The suggestion that coercion or duress was exerted by officials of the United States to force that settlement has been fully litigated in the courts of the United States and has been found to be wholly baseless. Sixteen years after the settlement was made at the option price with Mr. Halbach and eight other stockholders Mr. Walter Duisberg, the second largest stockholder of General Dyestuff Corp., settled his claim against the United States on precisely the same terms as the settlement effected in 1945; namely, the option price of $100 per share plus

6-percent dividends. Mr. Duisberg also agreed to waive any rights that might be extended to him under private legislation which was then pending before the Congress and which ultimately was added as section 41(a) of the Trading With the Enemy Act by the act of October 22, 1962. It is perhaps for this reason that Mr. Duisberg alone of all the stockholders, although he fared no differently from the others, is excluded from the provisions of section 41(a).

The settlements with all the stockholders of General Dyestuff Corp. were entered into fairly, at arm's length, free of duress or coercion. Each stockholder received at least the maximum price for which he had agreed to sell his stock under the option agreement. Such settlements should not be disturbed. As a practical matter, almost 20 years have elapsed since 9 of the 11 settlements were consummated. Knowledgeable witnesses, both here and abroad, have died.

For the foregoing reasons, the Department of Justice cannot support the enactment of S. 1451.

Mr. HARRIS. Thank you, Mr. Jaffe. Any questions, Mr. Van Deerlin?

Mr. VAN DEERLIN. Is Mr. Halbach still alive?

Mr. JAFFE. No, Mr. Halbach is dead.

Mr. VAN DEERLIN. How is the estate held?

Mr. JAFFE. I can't answer that. Perhaps the attorney who represents the Halbach interests can say. The stock, however, had been transferred by Mr. Halbach in, I believe, 1941 to a trust which he had established for the benefit of members of his family and I believe that those who petition for those shares pursuant to this bill are his daughters as the beneficiaries or as the trustees of that trust, so that I believe his estate as such, apart from the trust which he had created, is not interested in this matter any more.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. HARRIS. Mr. Glenn?

Mr. GLENN. What are the grounds which the Government has alleged in its move to dismiss the suit of the former stockholders in the court of claims?

Mr. JAFFE. The jurisdictional ground which we have alleged so far is the one that was suggested by the *Glidden* case and which of course has been, as I see it, the law of the country since its inception, that a constitutional court created under article III may not be called upon by the Congress to render an advisory opinion either to the Congress or to the executive branch of Government. That is the basis of the motion.

Mr. GLENN. When you say constitutional court, you are referring in this instance to the Court of Claims.

Mr. JAFFE. To the Court of Claims.

Mr. GLENN. And that, of course, would be dispositive and there would be nothing as to the merits?

Mr. JAFFE. That motion does not involve the merits of this controversy, that is quite right.

Mr. GLENN. And the recital which you have given in your statement, of course, does refer to the past history of these claims and to the merits.

Mr. JAFFE. Yes.

Mr. GLENN. That is all. Thank you, Mr. Chairman.

Mr. HARRIS. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman. Mr. Jaffe, you say that settlement was made with Dr. St. George on the basis of $365 a share and all the other settlements were on the basis of $100 a share and this larger settlement was made "for issues not present in the other lawsuits." What were those issues?

Mr. JAFFE. I would be happy under normal circumstances to tell you them, but they will become involved in the litigation that is pending in the Court of Claims, if, for example, the court should either deny our motion to dismiss or if this bill should be enacted and the court be authorized to render judgment. I would for that reason prefer not to discuss those issues, because they will still be involved in that litigation—these other factors which existed for Dr. St. George but which did not exist with respect to other stockholders. There were some very serious differences.

Mr. CURTIN. I yield to the chairman.

Mr. HARRIS. You are representing one of the parties, the United States, to that suit.

Mr. JAFFE. Yes.

Mr. HARRIS. You do not have to render a judgment or decision, do you, in this case?

Mr. JAFFE. No. You mean in discussing the litigation?

Mr. HARRIS. What is it that would prohibit you from then answering the question?

Mr. JAFFE. Well, the reason I don't answer the question is because these factors have not been raised, that is, the considerations, that prompted us to settle for what seems to be a very high sum of money were not raised at any time. They were known to the Government attorneys. If I were to discuss them now I think I might be injecting something into the lawsuit that would be prejudicial to its defense, that is, the considerations that went into the settlement. The Government's willingness to pay to Dr. St. George more than $100 a share was primarily motivated by its desire to get rid of this last barrier to the complete ownership of General Dyestuff Corp., but, secondly, it was justified on the basis that Dr. St. George was not, and his estate was not, in the same position as was each of the other stockholders, both legally and from personal points of view.

Mr. HARRIS. Repeat your question.

Mr. CURTIN. My question originally was, What were the "other issues" that made it seem just to give Dr. St. George $365 a share for his stock in settlement where all the other persons only got $100 per share in their settlements? Mr. Jaffe indicated on page 8 of his statement that there were these issues not present in the other lawsuit, which were the factors that caused that increase in the settlement made with Dr. St. George, and I am curious as to what those issues were.

Mr. HARRIS. And you say even your discussing them would prejudice the defense that you have before the Court of Claims?

Mr. JAFFE. Yes; in my opinion.

Mr. GLENN. Will the gentleman yield?

Mr. CURTIN. I have yielded to our chairman, and will yield to you when he has concluded.

Mr. HARRIS. That puts us in a rather unusual position, Mr. Jaffe. We are called upon to extend jurisdiction to a constitutional court for a particular purpose and that is to decide what is alleged to be a matter of equity. You tell us that there are matters involved here and information which you have which you do not want to discuss because it might prejudice your defense before the court. One of the members has asked for this information to help base his judgment on whether or not this bill should be passed.

I think we are getting right down to the crux of this thing, as to, from the standpoint of equity, what should be done and what decision should be made. We should have information to support your position that the matter has already been adjudicated and that there is no injustice, but you are indicating to us there are issues which had not been raised.

Now, if you were a member of the court and you were going to make a decision on the thing I would not even permit discussion of this this far, but since you are representing one of the parties and the allegation is made here I do think that the committee is entitled to the information. You insist it might prejudice the Government's case. I don't want to do that and I think perhaps if that is the way this is going to end up we might have to have an executive session at which we will have to go into this matter further with you.

Mr. JAFFE. May I merely say this, Mr. Chairman? First, the question is addressed only to the settlement with respect to 1 of the stockholders out of 11.

Mr. HARRIS. That is the basis of the whole case before us to make a decision, that the Justice Department settled with one of them at what was considered to be the fair value of it and there was duress prior to that time which caused another one and others to settle at a greatly reduced price.

Mr. JAFFE. That is why I insisted on the chronology. The settlement with the one at $365 a share occurred 6 years after the first group and 10 years before the last.

In other words, there was one stockholder who owned the second largest number of shares of stock who only 2 years ago settled for the same price as had Mr. Halbach in the beginning, knowing full well of the amount we had paid to Dr. St. George's estate, and this last settlement was in 1961. I did not understand that the discrepancy between those two prices was the basis for the duress, because that certainly didn't figure nor did it enter into the trial on the duress.

There was no pitting of one price against the other. But coming back to the question, I believe it has been customary for the Department of Justice to ask not to be compelled to answer a question that might affect or that had a bearing on pending litigation. In this particular case the issues have not been framed. The petition has been filed. No answer has been interposed, but a motion has been made to dismiss.

For me to discuss issues or to discuss contentions that might be made before they have been asserted in court would, in my opinion, prejudice the interests of the Government.

However, I don't want to try to give the impression that there is anything mysterious about what these other considerations were, and I do believe that if you consider them important I would perhaps be permitted to tell you what they are in executive session.

Mr. HARRIS. I think that is a reasonable suggestion, as I have already indicated, but it seems to me a rather serious question. There are two things involved here. There is the question of whether or not this party, and I assume the estate now since he is dead, received for the stock a price that was far below what should have been received. Then there is the more serious allegation, and I certainly do not blame the Department for taking its position, as to whether or not there was duress that brought about the settlement.

Mr. JAFFE. That, of course, was fully litigated, Mr. Chairman. There was no technicality that barred that suit or that did not permit them to bring in all the witnesses they wanted and to bring in the Government witnesses against whom the duress was alleged and for testimony to be taken and to be heard.

The issue of duress was fully litigated without barrier of any technicality.

Mr. HARRIS. I think that is the real issue here for us to consider in arriving at a decision.

Mr. JAFFE. It wouldn't be an issue in the Court of Claims, you know. There is nothing in the petition nor would there be anything in the answer which would even suggest a relitigation in the Court of Claims of the question of duress.

The bill eliminates almost every defense and the duress would not need to be placed in issue in the Court of Claims, as I see it.

Mr. HARRIS. As I understand from the contention, that is the only issue.

Mr. JAFFE. On the contrary, they claim that they were the full owners of the stock and that they were entitled to its book value, not the option price, as I understand it. I can't see the issue of duress in the Court of Claims at all.

Mr. HARRIS. Perhaps I misunderstood Senator Dirksen.

Mr. JAFFE. I understood that Senator Dirksen was referring to this.

Mr. HARRIS. I think we have a problem and we will have to have another session and go into executive session on this.

Mr. CURTIN. I yield to you now, Mr. Glenn.

Mr. GLENN. I thank you. I believe the chairman has brought up what I wanted to bring out, as to why there was such a difference between the settlement of $365 a share with Dr. St. George and $100 a share with the others, and you say the reasons you cannot disclose at this time. I think you said originally that no answer had been filed in this litigation, but did I hear you just now say that an answer has been filed?

Mr. JAFFE. No. We have not answered the petition in the Court of Claims. We have moved to dismiss it.

Mr. GLENN. How do you know what their defense is going to be then?

Mr. JAFFE. They filed a petition. We are the defendants. They have filed a petition and set forth the basis of their claim.

Mr. GLENN. Suppose the petition is not allowed and then you join issues. Wouldn't they be entitled to have a bill of particulars which will disclose to them what these reasons are which you claim entered into the settlement with Dr. St. George?

Mr. JAFFE. I think not. The settlements aren't in issue, because they get credit for those settlements; that is, the Government gets credit.

They are hoping to prove in the Court of Claims, as they say they have been attempting to prove ever since 1952 or 1951—they had the opportunity to prove it, of course, in 1945, but they settled the case; they were in court then, and they could have had their day in court—but what they claim now and what appears in their petition is that they were the full and beneficial owners of this stock and that when the Government seized it they should have been paid—or they would have been successful in establishing, had they ever tried this case on the merits, that, the stock interest being theirs entirely, they would have received—what its true value was, not the option price. That, as I understand, is what they will attempt to establish, and if they do establish it, the only manner in which the settlement figures come into play is that the Government will receive a credit.

Let us assume for the sake of argument that the court finds that the true value of the stock was $500 a share, and they have only received $100, 9 of the 10. Then instead of the Government paying them $500 a share, it would only pay them an additional $400, receiving a credit for the $100 that was paid. Dr. St. George's estate is also a plaintiff in this. Dr. St. George's estate, too, is claiming that it was not fairly dealt with, even though it received more than three times the amount that the other stockholders did. Dr. St. George can't claim duress on the basis of having received more than the other stockholders.

The gravamen of this petition is that they are the true and beneficial owners and that they are entitled to whatever the full value was. I assume there is something in the bill that is a little bit uncertain and that is that they are supposed to get the proceeds of the sale of the stock, and the proceeds of the sale, of course, didn't occur or we didn't get any proceeds until some 8 or 9 years after the first settlement.

I am not certain what the judgment, if any, they get is directed against. I am not certain, for example, whether this money will be paid out of the Treasury, which would be an unusual thing, if not a unique thing, in alien property matters because heretofore any suit against property seized under the Trading With the Enemy Act has been satisfied either by the return of the specific property or, if it has been sold, its proceeds of sale.

They are not entitled to claim just compensation, for example, because the Supreme Court has long ago held that the provisions in the Trading With the Enemy Act is a perfectly valid, constitutional basis for sustaining the act, so long as it gives them either the specific property or, if it has been sold, the proceeds of sale, and any suit that has heretofore been brought which suggested that the proceeds of sale were not adequate has been dismissed as not presenting a justiciable question.

I am not even certain what they are going to get here. Perhaps if they get a judgment against the United States the Treasury will pay it out of taxpayers' funds. That would be the first alien property matter to which that would occur. Or, if this is going to be satisfied out of whatever we determine to be the sale price or the sale proceeds, because there wasn't actually a cash transaction in this matter, then I presume that would deplete the war claims fund by that amount. This, however, is not unusual. Any time there is recovery under the Trading With the Enemy Act that would be the net result, so I don't suggest that as a consideration.

Mr. GLENN. Thank you. Thank you, Mr. Curtin.

Mr. CURTIN. So far as this member of the subcommittee is concerned, I think before I can arrive at a decision as to the merits of this proposed legislation, I would like to know why the Government saw fit to make settlement with a number of these stockholders at a certain figure which was much lower than the amount in a settlement with the one additional stockholder some years later. Whether that is done in executive session or not. I would like to have that information and I am sure that the other members of the committee would, too. I don't think it is quite a complete answer to say that the fact that the St. George settlement was made some years later, could be a very large contributing factor, particularly if there were other suits pending or threatened at the time of that settlement.

Mr. JAFFE. There were none, Mr. Congressman.

Mr. CURTIN. There were not?

Mr. JAFFE. There were none. They were all concluded.

Mr. CURTIN. There are suits pending now, I understand.

Mr. JAFFE. Only because of the enactment of section 41(a). The only suit pending is presumably under the authority of that statute, the one before us now.

Mr. CURTIN. And you say you do not want to answer further at this point.

Mr. JAFFE. I say that I can't answer further, without in my opinion prejudicing the Government, in a public session.

Mr. CURTIN. Under those circumstances, Mr. Chairman, I would make a motion that we take that testimony in executive session of the subcommittee at some time to be fixed by the chairman.

Mr. HARRIS. We will try to arrange an appropriate meeting for that purpose. I observe this amendment to section 41(a) would extend jurisdiction or confer jurisdiction in the court of claims to hear, determine, and render judgment upon the claims against the United States for the proceeds received by the United States from the sale of property vested under the provisions of the Trading With the Enemy Act. I would assume that would mean the difference between what this party received—$118 I believe, wasn't it?

Mr. JAFFE. Yes; well, most of them.

Mr. HARRIS. $118 a share, and what the United States received from the sale of it.

Mr. JAFFE. It lends itself to that interpretation. It would certainly be the one that I would urge if it ever came to that.

Mr. HARRIS. Is there any reason why I shouldn't ask you what the United States did receive per share?

Mr. JAFFE. It was an exchange of stock. No, there is no reason. There was an exchange of stock. There wasn't any cash sale. The Alien Property Custodian, who at that time was the Attorney General of the United States, as advised by his advisers, I presume, felt that it would be most advantageous for General Dyestuff, whose sole occupation for years immediately prior to that time was as sales agent for General Aniline & Film Corp., to become absorbed into General Aniline & Film Corp. as one of its divisions. That was accomplished in 1953 and what occurred at that time was that the Attorney General received, in exchange for the General Dyestuff stock, shares of General Aniline & Film Corp. I am sure that when-

ever one is dealing with property there will be some means or manner by which a value can be placed on it. It presents a difficult problem because General Aniline & Film stock was not freely traded because at that time the Attorney General owned or controlled approximately 97 percent of the stock of General Aniline & Film Corp. and of course 100 percent of General Dyestuff stock after the settlement.

Mr. HARRIS. Does the Government own 97 percent of the stock?

Mr. JAFFE. Of General Aniline & Film Corp. There was only 3 percent owned by the public in the United States or nonenemy public.

Mr. HARRIS. What was the date of that now?

Mr. JAFFE. That was true since 1942.

Mr. HARRIS. The Government seized it.

Mr. JAFFE. The Government seized the stock.

Mr. HARRIS. It was just holding it actually. It didn't own it at that time?

Mr. JAFFE. The law says that the ownership transfers to the Government at that point when they seize it. They become the owners of that stock and they treat with it as owners, so that they did own the stock.

Mr. HARRIS. The Government then through this procedure owned 97 percent of General Aniline & Film Corp.

Mr. JAFFE. Yes.

Mr. HARRIS. And 100 percent of General Dyestuff?

Mr. JAFFE. General Dyestuff.

Mr. HARRIS. So there is no way that you can give the committee an accurate figure as to what the United States did receive at any time.

Mr. JAFFE. No. I would hesitate to try to give you a figure, which would have to be a matter of personal opinion or speculation. I am sure, however, that if ever the need arises a monetary value can be placed on it as of that time.

Mr. HARRIS. At the time the Government took this over in 1942 what was the value of the stock?

Mr. JAFFE. Of General Dyestuff Corp.?

Mr. HARRIS. Yes; and also General Aniline.

Mr. JAFFE. We seized the stock at that time of General Aniline & Film too; that is, General Aniline & Films was one of the first seizure orders that was executed by the United States.

Mr. HARRIS. What was the value of the stock at the time the Government took over General Aniline?

Mr. JAFFE. I can't recall, but I could find out for the committee. My recollection is that it was somewhat in the area of $200 a share, a little bit less.

Mr. HARRIS. Will you submit that for the record?

Mr. JAFFE. Yes, I shall.

Mr. HARRIS. What was the value of General Dyestuff stock?

Mr. JAFFE. I can give you the value of General Dyestuff stock on the basis of book value, that is, our records I think will show a book value, the Alien Property Custodian records, rather than an actual value, that is, rather than an actual value in any other sense. Just a moment. I think I may have that figure. I am sorry. I thought I might have it here. I don't have the book value of General Dyestuff, but I can get that for you too.

(The information referred to appears on p. 26.)

Mr. HARRIS. Would you get that for us too. As a matter of fact, will it be convenient for you to come back in the morning?

Mr. JAFFE. Yes; I could come back tomorrow morning.

Mr. HARRIS. Would you try to get that for us and bring it back with you in the morning?

Mr. JAFFE. Yes.

Mr. HARRIS. What was the basis of the exchange of the General Dyestuff stock for the General Aniline stock? Was it 1 for 1, or 2 for 2, or 2 for 1, 3 for 1, or what?

Mr. JAFFE. No; it wasn't 1 for 1. I would have to get that figure. I think that there was an exchange for the outstanding 8,678 General Dyestuff. I think, but I would certainly want to verify it, that there were approximately 65,000 shares of GAF, exchanged for it. The book value of the General Dyestuff Corp. stock was much greater than the value of the GAF stock.

Mr. HARRIS. It must have been if it was 8,000 plus to 65,000 plus. It would be about 8 to 1, a little less.

Mr. JAFFE. It might very well have been.

Mr. HARRIS. Would you see if you could obtain that information for us?

Mr. JAFFE. Yes.

Mr. LONG. Mr. Chairman, may I ask one question?

Mr. CURTIN. May I ask one other question before I conclude? I hadn't concluded.

Mr. HARRIS. I thought you had. Go right ahead.

Mr. CURTIN. Just one other question. Mr. Jaffe, when the Government made its settlement in 1949 with Dr. St. George's estate it must have felt that the stock of General Dyestuff was worth at least $365 a share or else it wouldn't have made a settlement at that figure.

Mr. JAFFE. Yes; that is correct. The stock was at all times that we have mentioned—that is, at any time except when the company first began—worth more than the option price, that is; when any of these stockholders bought the stock it was worth considerably more. When we settled with Dr. St. George it was worth more than $365 a share. When Dr. St. George bought the stock at $100 a share it was worth $540 a share.

Mr. CURTIN. Could you tell us in 1949 what the value of the stock was?

Mr. JAFFE. Yes. It was 1951 that I can give you because that is when we settled with Dr. St. George.

Mr. CURTIN. I thought it was in 1949.

Mr. JAFFE. No; it was in 1945 for the other eight, 1951 for Dr. St. George, and 1961 for Mr. Duisburg. Our figures would indicate that the stock was worth $846 a share when we settled with Dr. St. George.

Mr. CURTIN. In 1951?

Mr. HARRIS. Which stock?

Mr. JAFFE. The General Dyestuff Corp. stock.

Mr. CURTIN. Thank you. That is all Mr. Chairman.

Mr. HARRIS. Mr. Long?

Mr. LONG. Mr. Jaffe, what law firm in the United States represented General Dyestuff?

Mr. JAFFE. I am sorry, I can't answer that. I really don't know.

Mr. LONG. Do you think it would be possible to find that out when you come back?

Mr. JAFFE. I think so. What period of time, Congressman Long, do you have in mind?

Mr. LONG. At the time the options were granted. It would be interesting to me if it were Sullivan & Cromwell.

Mr. JAFFE. No; the options existed at all times from the time the corporation was organized. They had those stock options at all times. I am firm in my conviction that Sullivan & Cromwell did not represent General Dyestuff at any time, but I could check that.

Mr. LONG. From your experience with the holdings of I. G. Farben, does this option with a right to repurchase represent a pattern?

Mr. JAFFE. Yes, it does; in almost every foreign investment they have.

Mr. LONG. In all of the others or most of the others your department found this to be the pattern followed by I. G. Farben?

Mr. JAFFE. Yes; that is correct.

Mr. LONG. Thank you.

Mr. JAFFE. I want to say one other thing that may have been lost sight of by the question as to who represented them. You realize that, from 1942 on, the dominant force in the operation of General Dyestuff Corp. was either the Alien Property Custodian or the Attorney General.

Mr. LONG. Yes.

Mr. JAFFE. When I said, for example, that the board of directors of General Dyestuff voted to increase the allowance, or the amount that would be paid to Mr. Halbach, to give him $1,500 a month, that was a Government board of directors; that is, one that was appointed by the Attorney General. While they were businessmen and designated to operate the company and their judgment was respected, they were all appointed, or at least approved, by the Attorney General of the United States, because he was the 100-percent stockholder.

Mr. VAN DEERLIN. If the gentleman will yield, we didn't have an opportunity to question the Senator and I think that the Senator made a great point of the advice that Mr. Halbach had received from Sullivan & Cromwell. This left an unanswered question, in at least a couple of committee minds, and I think that Mr. Long is interested in finding what the Senator is implying in regard to the advice that the client received from Sullivan & Cromwell.

Mr. JAFFE. I can ascertain for you who the attorneys were for General Dyestuff if they had private counsel, and they may have, on and after the seizure; that is, from 1942 on, and this settlement didn't occur until 1945.

Mr. HARRIS. Senator Dirksen was quoting the advice that was given from Sullivan & Cromwell as attorney for Halbach.

Mr. JAFFE. That is right.

Mr. HARRIS. As attorney for Halbach. I don't know that this witness would have any information on that, other than what he heard.

Mr. JAFFE. Oh, no: I have no knowledge of what advice Mr. Stevens, as it happens, had given to Mr. Halbach.

Mr. HARRIS. I assume that there would be no question about it. If an attorney advised him to take it he had good reason to do it.

Mr. LONG. That is all I have, Mr. Chairman.

Mr. HARRIS. You stated that between the time of the seizure of the stock—which was 1942, I believe, wasn't it?

Mr. JAFFE. Yes.

Mr. HARRIS (continuing). Of General Dyestuff Corp. and 1950 Mr. Halbach remained on the payroll of General Dyestuff Corp. Did he remain on the payroll as an employee?

Mr. JAFFE. Oh, yes; as an important employee.

Mr. HARRIS (reading):

> During that period of 8 years he received as salary, bonuses, and salary adjustments, the total sum of $558,600.

The question is with reference to this statement. In the first place I don't know the purpose of the statement except that it is a matter of gratuitous information.

Mr. JAFFE. I can tell you why that statement is included in the statement. I know that permeating the concern that has been shown for the alleged injustice that was sustained by these stockholders is the allegation, the charge, the suggestion, that duress was practiced by the Government of the United States against these stockholders and that an unconscionable settlement was forced upon them. I indicated that this settlement occurred in 1945. The sole stockholder of the General Dyestuff Corp. was, from 1946 on at least, the Attorney General of the United States and prior to that time the Alien Property Custodian.

If there was any desire to practice duress against Mr. Halbach or to treat him unfairly or unkindly in any way it would seem to me the Government would not have retained him as, perhaps, their highest paid employee.

Mr. HARRIS. The point is the salary of Mr. Halbach was approved by the Attorney General.

Mr. JAFFE. That is correct, or the Alien Property Custodian.

Mr. HARRIS. Well, yes. I used the Attorney General's name as the head of an agency.

Mr. JAFFE. Yes, sir.

Mr. HARRIS. Any bonuses that were paid and any salary adjustments were made by the appropriate agency of the Government.

Mr. JAFFE. The General Dyestuff Corp. under the influence of the Attorney General; that is, he certainly controlled that.

Mr. HARRIS. That is what I say. It had to be with the acquiescence of the Government official who was in charge of it.

Mr. JAFFE. Yes.

Mr. HARRIS. I mention that merely for clarification of the record to show that for whatever reason the salary was set, or the bonuses were paid, or salary adjustments were made thereto, it was not just an arbitrary situation to give someone a break, I suppose.

Mr. JAFFE. No.

Mr. HARRIS. But it was made by a responsible party involved in the business and with the approval of the U.S. Government; that is, the agency of the U.S. Government which had such responsibility.

Mr. JAFFE. Yes. I don't suggest that to indicate that he was overpaid, or that he didn't deserve this, or that there was any other significance other than to indicate that this is not the conduct of a person who is practicing duress against a man.

Mr. HARRIS. Yes. I wanted to be sure to have that understood. I think in order that we might go into this a little more, in view of the question raised by a member of the committee, that we will ask you to come back in the morning at 10:30 for an executive session. Thank you very much.

Mr. JAFFE. Thank you very much.

(The following letter was later received from the Department of Justice:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., March 6, 1964.

Hon. HARLEY O. STAGGERS,
Chairman, Subcommittee on Commerce and Finance, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: During the course of the testimony given by Mr. Irving Jaffe of the Civil Division on Senate bill 1451, before the House Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, Mr. Jaffe was asked to submit for the record certain additional information. We are now pleased to furnish this information.

The following are the questions asked Mr. Jaffe and their answers:

(1) What was the value of General Aniline & Film and General Dyestuff Corp. at the time of vesting?

(*a*) The book value of General Aniline & Film on March 31, 1942 (24 days before vesting) was $40,191,732. There were then outstanding 527,657 A shares and 2,050,000 B shares of stock.

(*b*) The book value of General Dyestuff Corp. on June 30, 1942, was $3,645,727. There were then outstanding 8,678 shares of stock.

(2) How many shares of General Dyestuff stock were exchanged for the General Aniline & Film stock?

(*a*) Each share of General Dyestuff stock was exchanged for 7½ shares of General Aniline & Film stock. The Alien Property Custodian exchanged all of the General Dyestuff stock (8,678 shares) for 65,085 shares of General Aniline & Film common A shares.

(3) What law firms represented General Aniline & Film, General Dyestuff Corp., the Marion Corp., and Chemnyco?

(*a*) Our records do not indicate which of several law firms was principal counsel to these firms. Our records do indicate, however, that for the stated years, the following law firms received payments for services rendered:

General Aniline & Film—1941, 1942: Breed, Abbott & Morgan; 1942: Hutz & Joslyn; 1943, 1944, 1945, 1946: Wicks, Riddell, Bloomer, Jacoby & McGuire.

General Dyestuff Corp.—1942: Garey, Desvernine & Garey Sullivan & Cromwell; 1942, 1943, 1944, 1946: Burns, Curry, Walker & Rich; 1945: Whitman, Coulsen, Goetz & Ronsom.

Marion Corp.—Breed, Abbott & Morgan.

Chemnyco—Hutz & Joslin; Breed, Abbott & Morgan; Briesen & Schrenk.

We also have been asked by Mr. Coleman Burke, counsel for the former shareholders of General Dyestuff Corp., who testified on February 26, to request on his behalf that the record remain open should Mr. Jaffe introduce into the record the court decisions rejecting contentions of duress. During the executive sessions held on February 27, Mr. Jaffe asked that these decisions be inserted into the record and, accordingly, we convey Mr. Burke's request.

Should you or any members of your subcommittee desire additional information, we shall be pleased to assist in any way we can.

With best regards.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Mr. HARRIS. Mr. Burke, do you want to make any statement?

STATEMENT OF COLEMAN BURKE, ESQ., BURKE & BURKE, NEW YORK, N.Y.

Mr. BURKE. Indeed I do, Your Honor.

Mr. HARRIS. You compliment me, but the way you have responded would indicate that you want substantial time, and I must say that under the circumstances we do not have substantial time now. That's the call of the House.

Mr. BURKE. I quite appreciate that, Mr. Chairman. I didn't mean to burden you with a long story, but I am very much surprised at the nature of the presentation of the Department of Justice and, with the greatest respect for the questions that have been asked, with the lack of information that has been supplied on those questions while this group has heard this discussion, I would like an opportunity quickly to touch some of these points.

Mr. HARRIS. We are going to have to ask you to come back in the morning then because I see right now we get right in the middle of this discussion and we would have to conclude this session, so I think perhaps it will be better if you come back at 10 o'clock in the morning.

Mr. BURKE. Thank you very much, sir.

Mr. HARRIS. The committee will adjourn until the morning at 10 o'clock.

(Whereupon, at 11:47 a.m., the committee adjourned until 10 a.m., February 26, 1964.)

CLAIMS OF GENERAL DYESTUFFS CORP. STOCKHOLDERS

WEDNESDAY, FEBRUARY 26, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Harley O. Staggers (chairman of the subcommittee) presiding.

Mr. STAGGERS. The committee will come to order.

We will continue our hearings on S. 1451. This is a continuation of our hearings from yesterday and our first witness will be Mr. Coleman Burke. Is Mr. Burke present? Would you take your chair and give your name and address and identify yourself for the record, Mr. Burke, and you may proceed?

Mr. HARRIS. Mr. Chairman, before Mr. Burke begins, let me explain about the status of this situation. Yesterday in your absence hearings were held, at which time Senator Dirksen, from Illinois, the minority leader of the Senate and the sponsor of this bill, opened the hearings with his testimony and gave a narrative on what he thought the situation to be and from his viewpoint. Following his presentation we had a representative of the Department of Justice, Mr. Jaffe, and I do not believe we identified for the record, Mr. Jaffe, your associates.

STATEMENT OF IRVING JAFFE, CHIEF, COURT OF CLAIMS SECTION; ACCOMPANIED BY STANLEY D. ROSE, LEGISLATIVE OFFICER; AND MANFRED SCHMIDT, ATTORNEY, CIVIL DIVISION, DEPARTMENT OF JUSTICE—Resumed

Mr. JAFFE. We did not.

Mr. HARRIS. I think even at this late date we probably should do that and let the record show whom you had with you.

Mr. JAFFE. Mr. Herbert Hoffman was here yesterday, who is Chief of the Legislative Section in the Deputy Attorney General's Office, Mr. Stanley Rose on my left, who is the Legislative Officer of the Civil Division, and Mr. Manfred Schmidt, who is an attorney on my staff and working on the case in the Court of Claims.

Mr. HARRIS. I am sorry I didn't include that yesterday, but I thought it should be a part of the record. During the course of Mr. Jaffe's testimony he was asked a question by our colleague on the committee, Mr. Curtin. Mr. Jaffe did not feel that he should respond to the question in a public hearing, since it might prejudice their

defense in pending litigation. It appeared to me, as chairman, that there was merit in the question and if we were going to be called to judge this matter and decide it we should have all the information in order to make up our minds. It was about a quarter to 12 when we had reached this point. I suggested to Mr. Jaffe that we probably should hold an executive session in which we would undertake to get the questions and answers and then decide as to whether or not it should remain executive, but that we should get all the information so we could make a decision, to which he agreed.

In the meantime, Mr. Burke showed some reaction to the presentation of Mr. Jaffe and it was obvious that he was going to require some time. In view of the situation I suggested that the committee recess and that Mr. Burke be brought back this morning and given time to present his statement to the committee, following which we would go into executive session and hear Mr. Jaffe further, at least on the question that was asked by Mr. Curtin which Mr. Jaffe felt he should not give public response to. That is the situation we have now.

Mr. STAGGERS. Fine. We will follow that procedure then, Mr. Chairman. Mr. Burke, will you proceed with your statement?

STATEMENT OF COLEMAN BURKE, ESQ., BURKE & BURKE, NEW YORK

Mr. BURKE. My name is Coleman Burke, Burke & Burke, 1 Wall Street, New York City.

Mr. HARRIS. If you will pardon me, I did not include the fact that our colleague from New York, Mr. Barry, appeared briefly yesterday and expressed an interest in this, too. I thought you should have the entire picture.

Mr. BURKE. Thank you, Chairman Harris.

Mr. Chairman, Chairman Harris, and members of the subcommittee, I usually prefer to talk without notes, without a statement, but in view of what transpired yesterday and to save the time of this committee if you will permit me I will speak from a statement which I had prepared for yesterday and from some notes.

While I very much appreciate the opportunity to appear before you, I came away from the hearing yesterday surprised and shocked. I thought this hearing was scheduled to consider a slight amendment to Public Law 87–846, passed by the Congress and signed by President Kennedy on October 22, 1962, which granted certain Americans the right to a trial on the merits of their claims against the Government with respect to their stockholdings in General Dyestuff Corp., which had been confiscated during World War II, to wit, June 30, 1942.

A dictum by the Supreme Court in the so-called *Glidden* case, decided 4 months before, in June 1962—that is 4 months before this bill was passed—and presumably well known to the Justice Department, has raised a question about the jurisdiction of the Court of Claims in the light of the language in this law.

Mr. STAGGERS. Would you mind an interruption just 1 minute? Do we have a copy of your prepared statement?

Mr. BURKE. Yes, Chairman Staggers.

Mr. STAGGERS. Are you reading from this?

Mr. BURKE. I am not reading from that, no; but I am going to in just a minute. These are some preliminary remarks and then I will come into the prepared statement which I had here yesterday.

Mr. STAGGERS. All right. You may proceed. I just wanted to know where you were.

Mr. BURKE. S. 1451, passed by the Senate last October 30, sought to restore two words to eliminate any question, and this bill is before you today. I have it here and its main provision reads:

> Striking out in the first sentence thereof the words "Report to the Congress concerning," and inserting in lieu thereof the words, "Render judgment upon."

The original bill not only provided for a report; it provided for a hearing and a determination, but what might be deemed the vital words, "render judgment," were eliminated in the conference committee.

An orderly hearing yesterday was turned into a trial on the merits of the case by Mr. Jaffe, representing the Justice Department, in his remarks and answers to questions yesterday. Moreover, innuendoes, guilt by association, and inferences which the Department of Justice has used for years to try to hammer a group of Americans into submission, were once again used in what appeared to me to be another attempt and this time to confuse the committee members and to thwart the will of Congress as expressed in Public Law 87–468.

Mr. HARRIS. Now, Mr. Chairman, I am not sure that this witness is in order by coming to this committee and making such a public charge here against the Department of Justice. I was chairman of that hearing yesterday. I conducted the hearing I think in the regular and usual order. The witnesses of the Department of Justice appeared and they gave the benefit of their information, a chronology, and they presented that to the committee just like Senator Dirksen did. I can't let this record stand with that kind of a charge against the Department of Justice without commenting on it. I trust the witness will proceed with giving the benefit of the information he has on this and not make it a personal slugging match between him and the Department of Justice.

Mr. STAGGERS. The witness will proceed in giving his views on the matter without any indictment.

Mr. BURKE. Mr. Chairman, may I say that I am very much distressed. My comment was not meant out of disrespect for Mr. Jaffe, but was a sincere comment, and my interpretation of the prepared statement which is before you was not intended to bring controversy. I am personally very much distressed, with the responsibility that is on my shoulders, that my statement has had this reaction on Chairman Harris. I apologize to you all collectively.

Mr. HARRIS. I think you better modify the record. As I told you in the presence of Mr. Barry the day before yesterday, we do waive the requirements of the rules. You indicated that you would have a statement, but at that time you didn't have it ready and I told you it would be all right. To that extent we do waive the requirements of presenting a statement 5 days in advance which the rules provide. You have provided a statement. You submitted it not in advance, but you had it here with you yesterday.

However, you did not have in the statement anything like the accusations which you have cast at the Department of Justice. I am not

fighting the battle for the Department of Justice, I will have you know. What we are here for is to try to get the facts, but I do not believe that this committee should be used as a forum for the kind of attack that you have just made against the Department of Justice. We want to get all the facts. We have no sentimental feeling about this thing, Mr. Burke, I will assure you, but if there is an inequity that the facts develop and it requires our action, we want to give it the attention that it should have. I do believe that if you are going to stick to the rules, all right.

If we are going to waive the rules I think we have to proceed within reason.

Mr. BURKE. Chairman Harris, I appreciate your allowing me to waive the rules. I received notice of this meeting on Monday when I was away from my office. I did have a prepared statement yesterday. My difficulty at a quarter of 12 was that I could not have a prepared statement to answer the position in the written statement of the Department.

I have spent considerable time since the hearing in anticipation of appearing before you and trying to present this in an orderly and fair manner. I am prepared to have the committee strike my remarks or do anything which you prefer as far as this record is concerned. I meant to make no unfriendly comment. Characterization is a dangerous thing, but I would request this committee, and I am sure it will, to understand my feelings toward some of the statements made in the Justice Department's presentation yesterday.

Mr. GLENN. Mr. Chairman, may I comment at this point?

Mr. STAGGERS. Mr. Glenn.

Mr. GLENN. I think it is pertinent to point out that what we try to do in our committee system in the Congress is to develop a record. We are not sitting as a court. We have no rules of evidence as such. Sometimes we wonder whether we should have this and perhaps save some time. A lot of things are repetitious, but, as I said, the main purpose is to develop a record which we can use in considering whether or not legislation should be reported out on the basis of the record. What we do receive are statements and testimony from the witnesses, but we don't permit any controversy to be brought in whereby a court would determine the propriety of such arguments as would be properly submitted to it as a legal forum, and for that reason I think that which the chairman has pointed out to you is in order.

We are prepared to receive your statement of what you think is proper for us in considering this bill, and from the standpoint of what evidence may be submitted later as to the position of the Department of Justice there will be something for the committee to consider Thank you, Mr. Chairman.

Mr. BURKE. I intended, gentlemen, to make perhaps no statement yesterday, or at most the statement I had prepared of 10 minutes, but it seemed to me that the position of the Department got into the trial on the merits, which it did not seem to me was appropriate for this committee. I felt that the chairman was offering me and really requesting me, to make a reply to those comments, and I would like the privilege, if I may, and I will be guided by the guidelines that you all suggested just now in answering Mr. Jaffe's statement, but I could not sit silently by, having lived with this case for 10 years, and not make some reply to that statement.

Mr. HARRIS. Mr. Burke, I didn't indicate that we would cut you off from making any statement about the case and citing the facts in the development of the record, but I do think that you were completely out of line when you started off with your abuse of the Justice Department.

This committee, as Mr. Glenn indicated a moment ago, is interested in developing information that would be helpful to us in making our decision. We have no interest in any fued or emotional feeling that might exist between you and the Justice Department. That is not our business at all. But we don't want you to use this as your forum.

Mr. BURKE. I have no unfriendly emotions, Chairman Harris, to the Justice Department. I have had a feeling that their feelings were rather unfriendly to my cause and I am down here to do what I can about it.

Mr. HARRIS. This is no place to develop that. What we want to know are what the facts are to let us act on this case. We want to develop a record on this bill, and we want to get the information that you may be able to give us about it—about the bill, not about the Justice Department.

Mr. BURKE. Right. In order to get the matter back in perspective, I wish to make this statement that I had left here yeserday on behalf of these American claimants, who have never had their day in court, and, reluctant as I am to take the valuable time of the committee in considering the merits of the case, I find it necessary to reply to Mr. Jaffe's statement, and I shall be glad to answer any questions of the chairman or the committee members after I read this prepared statement.

Each of my clients is a former stockholder of General Dyestuff Corp. Following the seizure of their stock each of them filed a claim in the appropriate district court for the return of his property. At the height of World War II, and in one case soon thereafter, the claims were released under circumstances which the Judiciary Committee of the Senate of the United States found to be inequitable. The parties whom I represent have always felt that the settlements were made under duress, which included, among other things, the threat to terminate their jobs. But they have never succeeded in providing legal duress, which the late Senator Taft, in a letter to Attorney General McGranery, relating to this situation, which Senator Dirksen quoted yesterday, once described as an almost impossible burden against a wartime government.

I would like, if I may, to read again a sentence or two more from the letter of Senator Taft to Mr. McGranery in January 1953 to which reference was made by Senator Dirksen yesterday. In this letter Senator Taft wrote as follows:

> I am fully cognizant of the successful technical position of the Government behind its "purchase release" of the Halbach stock. Let me point out, however, that a trial on the merits of that technical defense is not a trial on the merits of the *Halbach* case. Whether Halbach can technically prove duress—always an almost impossible burden to sustain—the very opposition of a wartime government and the relative helplessness of a citizen in a negotiated wartime sale does create a presumption of overreaching by government, even though there might not be technical duress which is provable in a court. A trial on the merits in my judgment is a trial of the fundamental issue; namely, whether the Halbachs were enemy nationals or cloaks for enemy nationals so that Government was entitled to seize their property prior to its "purchase" after seizure. Such a seizure does carry an implication of disloyalty in time of war. It is important

that a government dedicated to doing justice, that it look beyond the merits of technical devices and examine the fundamental issues of justification for the confiscation of property in the first instance and the implication of disloyalty that so easily goes with it. If the Government acted properly and legally in this matter, it has nothing to fear or to lose, since the court would confirm such seizure. If this is not a proper action by Government, it should not hide behind a technical curtain and prevent a citizen from asserting his rights on the basic merits involved. I am convinced in the interest of justice that the Department of Justice, under which this confiscation was effected, should lend every effort to clarify the matter before it goes out of office.

I respectfully suggest, therefore, that you reexamine the whole matter in the light of my second letter and also the letter of Senator Langer.

Gentlemen, needless to say, this letter from not only a distinguished legislator, but from a distinguished and able lawyer, has been my bible through these dreary 10 years when I have been trying to set right what I regard as one of the grave injustices of all times in this country.

Accordingly, in recent years when the prejudices of the wartime began to subside we have sought to help these people get an opportunity through legislation to have their cases tried on the merits.

I have been representing these people since 1954. As you heard from Senator Dirksen yesterday, beginning about 1953 a subcommittee of the Judiciary Committee of the Senate conducted exhaustive hearings covering the treatment of my clients. They concluded that the settlements "cannot be held equitable," and further reported:

The subcommittee feels that its examination of this case has revealed a reasonable doubt as to whether the various American stockholders of General Dyestuff Corp. were treated in an equitable manner. In view of the doubt which exists as to the merits of the original vesting and subsequent methods used in obtaining settlement, the committee further finds the decision of the Office of Alien Property to resist, on a technicality, a trial of the true issues in this case by a court of the United States to be a substantial departure from the accepted doctrine that a citizen is entitled to his day in court. (Final report of the Subcommittee To Examine and Review the Administration of the Trading With the Enemy Act, 1954, p. 38.)

The views of the Senate subcommittee were subsequently adopted by the full committee in Report No. 2358, Calendar No. 2411, 85th Congress, 2d session (1958). The full committee, at page 14, remarked after discussing the findings of the subcommittee:

In the light of these findings by the subcommittee the committee believes it advisable to permit these claimants to proceed to a trial on the merits before the U.S. Court of Claims.

Thereafter Senator Dirksen requested the legislative counsel of the Senate to draft an amendment to accomplish the recommendation of the committee. This amendment was introduced as an amendment to the War Claims Act of 1962.

It would have permitted my clients to take their cases to the Court of Claims for hearing on the merits and would have permitted the Court of Claims to render a definitive judgment as to the validity of their claims. Senator Dirksen's amendment was referred to a conference committee of the House and Senate where the language was changed in the following manner: Language directing the Court of Claims to "hear, determine, and render judgment," was changed to read "hear, determine, and report to the Congress."

On its face this seemed adequate, probably because none of the conferees was fully cognizant of the dictum which had appeared in the

case of *Glidden* v. *Zdanok* which was decided on June 25, 1962, approximately 4 months before the conference report came out, undoubtedly known to the Justice Department and to which I have already made reference. That dictum cast some doubt as to the authority of the Court of Claims to decide the matter unless there was a specific direction to render judgment in the statutory language.

The bill as amended in conference, with the Justice Department expressing its views, was passed by the House and Senate and signed into law, Public Law 87–846, on October 22, 1962.

When we arranged to file our suit in December 1962 the clerk of the Court of Claims requested us to defer filing our petition until the situation had clarified with reference to the effect of the Glidden dictum on our case and 35 additional cases of the conventional congressional reference type. Ours was the only bill passed by both Houses of Congress and signed by the President, whereas the other cases were referred solely by either the House of Representatives or the Senate.

We deferred to the wishes of the court, and in the ensuing months we were gratified to learn that Members of Congress who were familiar with the situation were desirous of eliminating any question about the jurisdiction of the Court of Claims in our case.

Nevertheless, as the 1-year period for filing our claims as provided in Public Law 87–846 neared its end, we found it necessary and prudent to file our suit in the Court of Claims on October 17, 1963, before the end of the 1-year deadline.

The court accepted our case for filing at that time and shortly thereafter, on October 30, 1963, the Senate, by unanimous action, pursuant to recommendation of the Judiciary Committee of the Senate, adopted S. 1451. The matter was then referred to the House Committee on Interstate and Foreign Commerce for consideration.

Thereafter the Department of Justice moved to dismiss our case on behalf of the 12 claimants and we opposed the motion to dismiss on the ground that corrective legislation had already passed the Senate and had been referred to the House of Representatives.

The Court of Claims then stayed all proceedings presumably on the basis of our argument that if the corrective legislation were also passed by the House and S. 1451 became law the motion to dismiss by the Department of Justice would be moot and we would be able to proceed with our case on the merits. This is where the matter now stands.

As I appear before you this morning, I feel a great sense of responsibility not only to the people I represent, but to the cause of justice in this country. I don't need this case any more than Senator Dirksen needs another cause, but I wish to associate myself with his moving remarks and, like him, I shall not cease until the frightening injustice of the Dyestuff case is undone.

I do not intend to take your time with the long and incredible story of injustice to this group of Americans. These matters were thoroughly investigated in great depth by the Alien Property Custodian, Mr. Leo T. Crowley, who vested the properties; by the Honorable John J. Burns, a distinguished lawyer who was counsel for Mr. Crowley as Alien Property Custodian of General Dyestuff Corp., and made an investigation following the vesting; by Edward M. Shaffer who was retained by the Department to make an investigation in depth; and by extended hearings in the Senate in 1953 and in later years.

I have already referred to the reports and conclusion of the Senate Judiciary Committee. In these and other references Mr. Crowley described the vesting of the Halbach property as "one of the shameful injustices of the war." Mr. Shaffer said he believed the U.S. Government made a mistake in vesting the stock. Mr. Burns reported to Mr. Crowley, after his investigation, that "I could not find the slightest basis which would justify the action of vesting the stock of General Dyestuff."

And here, gentlemen, I would like to read to you a letter from the same Mr. Crowley who was Alien Property Custodian at the time of the vesting in 1942, a former Chief of Federal Deposit Insurance Corporation and Alien Property Custodian from 1942 to March 1944. He was in charge when the vesting took place on June 30, 1942, and from a letter to a Senate committee which is reported at pages 591 and 593 of the hearings before the subcommittee of the Committee on the Judiciary, U.S. Senate, 85th Congress, I read to you sentences in the two last paragraphs of Mr. Crowley's letter:

> This was a case in which the stock of the General Dyestuff Corp., 100 percent owned by Americans, and the majority of which was owned by an American trustee holding for the benefit of the native-born daughters, was seized and administered. On the assumption that at the end of the war all properties would be returned in accordance with our traditional policy, the stock of General Dyestuff was taken into a kind of agreed protective custody because otherwise it would have been very difficult to have managed the assets of General Aniline & Film, of which General Dyestuff had an exclusive sales contract. Halbach, himself, an American citizen, was in the agreement permitted, in effect, to remain in command of the vested assets and to hold high place in the War Production Board throughout the war. In other words, the stock was seized for reasons of economic necessity in the full expectation that it would be returned at the end of the war.
>
> I respectfully refer you to my testimony cited above and to the supporting testimony of Joseph B. Keenan, the Honorable John J. Burns, Edward M. Shaffer, and Ernest K. Halbach himself. I believe that testimony has within it the story of one of the most grevious mistakes ever made and never corrected by the Office of Alien Property; i.e., the retention of the stock after the war. All efforts to obtain its return have been resisted by the Government by every technical device available to it, with the result that there has never been a hearing on the merits by a court of competent jurisdiction to test the Government's theory of seizure and confiscation. Whatever disposition is made of enemy assets as a whole, I respectfully submit to this committee that the General Dyestuff case is one of first priority, that before taking care of Japanese, Germans, and others the committee owes a duty to right the wrongs it has inflicted upon Americans.

It seems to me that in a day when the passions of wartime have subsided and when our courts and legislatures have a high duty to preserve justice and law for a free society and when the rights of the strong and the weak, the honest and the dishonest, the loyal and the disloyal, are treated with great consideration and concern, the least that can be done for these good Americans is to assure them their right to a trial on the merits as was intended for them by the Congress when it passed Public Law 87–846.

This case, when one understands its full ramifications, is so incredible that I sometimes awake in the night and wonder when and how a grave injustice will be undone, to use Senator Dirksen's phrase, but if some of the most despicable criminals and international crooks are given the maximum of protection and benefit of every doubt, as they should be under a government conceived in liberty and dedicated to fairplay, I find it vitally important that the Congress give equal

treatment to a group of able, law-abiding American citizens whose only sin was the absolute ownership of a New York company which the U.S. Government needed, and wanted, and used to its great advantage in wartime.

And now, if I may, I would like to make some comments on Mr. Jaffe's statement. I am concerned about the notes that I have prepared, lest I overstep along the lines that I already have. I shall try my best, Chairman Harris, Chairman Staggers, and other members of the committee, not to err again on the point. I bear no malice toward the Department of Justice. They have done their job as they conceived it to be done.

It is my duty as a lawyer and American citizen, feeling this thing as I do, and with the Arthur Vanderbilts, and the Irving Ives, and the late John Burns, and the late Robert Taft, and others looking over my shoulder, to do justice for these people.

I expected that a trial lawyer of Mr. Jaffe's competence, with the full facilities of the Department of Justice behind him, would have confined himself to what seemed to me to be material and relevant to the inquiry before this committee. I am sorry. I hope I didn't offend by my remarks. I apologize, if I did.

Mr. HARRIS No. In order to relieve you, I just merely asked who was John Burns.

Mr. BURKE. Mr. Chairman, John Burns was a distinguished lawyer, a judge in Massachusetts, who was brought in by Mr. Crowley to be his counsel in General Dyestuff immediately following this vesting. John Burns at one time I believe was counsel for the Securities and Exchange Commission. He was a brilliant lawyer. He died in 1956 or 1957 I think. John Burns was the one to whom I referred earlier as having made this investigation and reported to Mr. Crowley that there was no basis for this vesting.

Mr. HARRIS. Someone raised the question as to whether he was a former Member of Congress and I was merely trying to clear that up in my own mind. It had nothing to do with what you said.

Mr. BURKE. I don't quite recall whether he represented the great State of Massachusetts at one time. I wish I could remember. My mind is faulty on that.

Pages 1 and 2 and the first two lines of page 3 I accept as material and relevant to our discussion. I am referring now to the pages of the prepared statement of Mr. Jaffe which I would hope that you all may have before you because I intend to advert to some of the statements made by him. The remainder of pages 3, 4, and 5 bother me very much. I won't describe why I think they were put in. I won't characterize them, but I will note that in those scant 3 pages there are 14 separate references to I. G. Farben Co., and later on in the statement there are 6 or 7 more.

It seems to me that here again we have a presentation where, by constant reference to the fact that these men knew of the I. G. Farben Co., had had relationships during the way, this was a basis for their dishonor, for the confiscation, and for their conviction. I am concerned about it. The material included in these three pages is the very warp and woof of a trial on the merits which your legislation in October 1962 was intended to provide.

We do not accept these allegations at face value. We deny the truth of many of them. But the truth can only be determined in a court trial and, while from the judicial manner in which this proceeding was conducted yesterday I fell into the lawyer's sin of calling the chairman "Your Honor," I think you men have already indicated to me that this is not the place to try our case. It also seems to me that in his presentation Mr. Jaffe is guilty, and again I say this not in an unfriendly sense, of some sin of omission because, with all of these references to Farben, and Metz, and all the rest, he has not pointed out to you that the H. R. Metz Co., to which reference is made—I would like you to listen to this carefully—was controlled by H. R. Metz, an American-born citizen. Metz was a former member of Congress from Brooklyn—I did my homework on this, Mr. Harris—a former comptroller of New York City, and a general in the New York Militia.

In the First World War the Alien Property Custodian vested the assets of H. A. Metz & Co., but was forced to return them by court order when it was found there were no grounds for vesting and that Metz, an American citizen, was not under the domination and control of the enemy.

Again when reference was made to Kuttroff, a company with foreign connections which became a part of General Dyestuff Corp., I wondered why Mr. Jaffe did not point out that, with respect to Kuttroff, Pickhardt & Co., the Government attempted to seize its assets in World War I and again was defeated in a trial on the merits.

When Mr. Jaffe talks about the options going to the Chemnyco Co. on page 5 of his remarks, why does he not reveal to you that the Chemnyco options were canceled by Mr. Hochschwender, its president, on the insistence of Mr. Halbach that he would not buy the General Dyestuff stock with the options attached.

And why were we not told that the minutes of the directors meeting of Chemnyco, dated August 15, 1939, just after Mr. Halbach's purchase of the control of General Dyestuff, revealed the ratification of the cancellation of these options.

Instead of placing these rhetorical questions which may be offensive, because I do not want to criticize Mr. Jaffe in a way that would offend this committee, perhaps I should recast this to say I would like to point out the reference in the middle of page 4 where Mr. Jaffe has said:

> * * * every stockholder "owned" his stock subject to an option which originally ran to I. G. Farben itself, then to successive corporations controlled by I. G. Farben, and finally in 1939 to General Dyestuff Corp. itself.

And then on page 5 just below the middle where he said:

> * * * the stock options were transferred from Chemnyco to General Dyestuff Corp. itself.

I would point out that these options were not transferable. What happened with respect to these corporations which had been subject to options to Germans or German-connected people in the past, was that these options were terminated as a condition of Halbach's purchase and there was substituted in their place a conventional option solely among Americans, among Halbach, his own doctor, and his men who had been on his staff for many years.

I would like to point out to you other things that were missing in this statement. Mr. Halbach never even owned this stock at the time

of the vesting. In 1940, after the war had started and after the stock had been acquired, and 1½ years, approximately, before the stock was vested, Mr. Halbach executed an irrevocable trust agreement for the benefit of his wife and two daughters drawn by the eminent firm of Breed, Abbott & Morean, with an independent trustee. After the transfer to his family Mr. Halbach never had either a beneficial or even a nominee or trustee title to any stock. Both his sons-in-law were in service, one a prisoner of war for a long time. The case has in a sense been miscalled the *Halbach* case, but his stock which he acquired he passed on to his family.

I have my own ideas as to the reasons. I talked with him about it. Estate planning was involved, but with the war coming on it is very clear that if Mr. Halbach had wanted to play ball with some German friends he would not have transferred this beyond his control, so that it couldn't possibly be taken, and put it into the hands of his daughters. These daughters, on the death of their mother from cancer, as described by Mr. Dirksen yesterday, have owned the rights to this stock down through the years.

Yesterday, in the course of his testimony, Senator Dirksen mentioned that he could cite many incidents which would make your hair curl, which led him to his firm conclusion that the stockholders of General Dyestuff Corp. had not been treated equitably, notwithstanding their inability to establish technical duress in a court of law.

Mr. Jaffe on page 6 adverted to the settlements in 1945. I understood why Mr. Curtin asked his question about the $365 settlement to Mrs. St. George several years after that. Neither Dr. St. George nor Mrs. St. George had been employees of General Dyestuff Corp. and, unlike the settlement with Halbach at the time of the Battle of the Bulge, they weren't threatened with being fired from the company if they didn't settle at $100 a share.

The Government reported that it could create conditions where they would have to offer the stock for $100. That was the condition—that if you were separated from the company or wanted to offer your stock on the outside you had to offer to sell first to the company for $100, and it was on that basis that the capitulation finally came.

Also, I don't think this committee, with the reference to value yesterady, may have understood how these settlements were made by the declaration of a dividend by the Government on stock confiscated in wartime from my people, so that they took a dividend of $702,000 out of the cash of this company, a company worth a few million dollars, and used this money to make a settlement for this stock with my people. The Government never had to pay one red cent out of separate Government moneys.

This came from the lefthand pocket of my clients to the right or from the right to the left, as you will.

There was no reference in the testimony yesterday that Mr. Halbach was indicted in 1941 on criminal charges which were similar to the issues in this case. This indictment was held against him for 10 years. He stood trial in this case and was acquitted in 1951.

The relevancy of these payments to our people was raised by the members of the committee yesterday, particularly Mr. Curtin, and, of course, that is relevant, but the question, it seems to me, relevant before this committee is, Are you going to proceed with the conclusions

reached in 1962 and give these people a trial on the merits as was intended by that legislation? Are you going to again affirm the conclusions of the distinguished Judiciary Committee of the Senate which has held long hearings and gone through all the angles of this thing and concluded that this was inequitable and that there was a somewhat higher law which entitled these people to have their day in court and to end once and for all the claim of over-reaching by an all-powerful Government?

It seems to me, also, that what is material here today is to show the effect of the *Glidden* case, known to the Department of Justice before the conference hearings in 1962, has in thwarting the intent of Congress to give these people their day in court.

We have started our suit, as we were given a right to do under this statute. These two words that are deleted we think should be reinserted. I submit the language should be amended to the original form, as adopted by the Senate and as incorporated in S. 1451, so that we may eliminate a doubt which, if not cleared up, could take this case to the Supreme Court, and so that we may be allowed to try this case on the merits and settle these issues once and for all and end the opprobrium involved for these good Americans.

We ask very little. We seek the right to go forward as we conceive you gave it to us on the merits and as we think you intended 1 year and 4 months ago. I submit this will save time for all concerned. If we lose on the merits, that ends it. If we win, a towering injustice will have been undone. I am at a loss to understand why the Justice Department continues to resist a trial on the merits so hard and so long. I can scarcely believe that they have used the dictum of the Supreme Court in this hearing to endeavor to reverse the will of this Congress as expressed in Public Law 87–846, which was intended to permit these Americans to have their day in court, and I respectfully request that by this amendment you confirm your desire to have this matter concluded in the U.S. Court of Claims.

Gentlemen, a closing word. I am more distressed than I can possibly tell you that I gave offense to you this morning in my opening remarks. None was intended. I bear a very heavy burden. I have no contingency. I have no fee arrangements. I have stuck loyally at this thing because I believe in this cause and I don't think any man, woman, or child should be afraid of entrusting this case to a validly and properly constituted constitutional court of this country.

I will not cease if you should reverse your position. It is not for me to state our moral rights. I can't be sure about these things. But I am unafraid of the arbitrament of a U.S. court and I think there is evidence enough here to allow you to be convinced that what you did in 1962 was right and to go on this small step further in entrusting this to a U.S. court for its jurisdiction. I assure you, as I assured the gentleman of the Justice Department this morning, that we mean no trouble as far as the sale of the *General Aniline & Film* case. If there is concern in this committee or in the Department that we are wangling for a position to make things difficult, you may forget it.

These questions will be faced when they can be faced. I have not thought of values. Values are immaterial. This is a valuable property, but I say to you if your family had its leader, then a small

stockholder, work for a lifetime to get the opportunity to acquire control, and saw the image of the greatest dyestuff company for the United States of America, what is the crime in getting a profit? What is the crime in getting a high salary which even our Government paid him because he was the most vital man in the dyestuff industry through the war? And there is not a word in this record anywhere, past or present, and I think in the future, of the disloyalty of this man. I have a sheaf of recommendations from highly placed Government people concerning his loyalty to our Government.

The reason that I took issue with the Department of Justice's statement before was not to be critical of a distinguished lawyer trying to do a competent job for his Government, but rather was out of a concern of the effect of stories about I. G. Farben and other matters upon men like yourselves who are exposed to these matters for only short periods of time and do not have the opportunity to consider such matters in their relation to the whole picture.

I hope you will not be too concerned with such stories and references which go to the very merits of the cases. I hope you will leave those matters to the court and give us our day in court.

Mr. STAGGERS. Just a moment, Mr. Burke. If you will remain there just a moment, I am sure that some members of the committee want to ask you a few questions.

Mr. BURKE. I will be very happy to answer them. I have taken more time than I anticipated and again I apologize for my errors of commission early in the day.

Mr. HARRIS. I think I would defer to Mr. Glenn who was on the conference committee for questions he might have.

Mr. GLENN. Thank you, Mr. Chairman. It has been somewhat difficult for me to remember all the occurrences in the conference committee which resulted in the present law, as I indicated yesterday, but I do remember that we had hoped that we would be finished with all these claims by the enactment of that bill.

However, there was some reservation in my mind at the time because of the fact that it was as a compromise we wrote into the bill the phrase, "report to the Congress concerning." This indicated to me that when this would happen and the Court of Claims would go into the facts and report back to the Congress, we would again have to go through what we have been through for so many years, so that it would not be finished. I was fearful that something would occur which would continue the claims and the process of judicial reviews conference which, as we know, do take considerable time.

I think that was the opinion of a number of the members of the conference, but we felt that to dispose of it on the last day of the session we would do the best that we could under the circumstances and as a result we reported it out. What we are now considering is something which we should have done then and delete that "report to the Congress" and divorced Congress from any more factual consideration of the matter and leave the factual consideration and judgment to the U.S. Court of Claims.

Now, by the statements which have been submitted, we are getting back again into the history and the facts, which are controversial, to say the least, and heaven knows whether the complete story of the *General Aniline & Film* case will ever be brought out in our lifetime.

I hesitate to have to go into all that again when actually what we are trying to do is to rectify something which should have been done in the reporting out of the bill in 1962.

However, now that we are into it I suppose we should hear from you, Mr. Burke, as to what you have to say on the U.S. District Court decision which Mr. Jaffe referred to yesterday when he said that full and complete hearings were had in the U.S. District Court for the District of New Jersey in the attempt to reopen the judgment of 1945.

Can you enlighten us as to what took place in that hearing which was appealed to the Supreme Court of the United States?

Mr. BURKE. Thank you, Mr. Glenn, for this opportunity. When I came into this picture in 1954 the horse was about, all except his tail, out of the barn. There had been a settlement; there had then been the duress case, so that it had two good strikes against the situation. One cannot deny the fact that these people tried the case on the subject of duress. The district court, the court of appeals, held against them, and the Supreme Court denied certiorari. That is an elemental fact of this case. I read to you the paragraphs from Senator Taft's letter because, as I said, this is the bible I have clutched to myself in these dreary years when I have been fighting for justice for these people, because I thought what was good enough for Bob Taft in his attitude toward a technical decision to put another strike against this was good enough for me, and here was a distinguished man, a great friend of his country, an exceedingly knowledgeable lawyer, saying there is a somewhat higher law: the burden of proving duress is an almost impossible burden for a citizen in wartime.

I happen to know that this case had such an effect on Mr. Halbach, with whom I spent hours and hours before his death, that his health deteriorated. It affected his mind. A question was raised as to why he didn't bring up this duress subject earlier than 1951, but here you had a man who if he spoke up too much would be fired from his job. He was worried about it. He was a very sensitive man. He carried on in his position until 1950 and he was finally released.

Much point has been made of the fact that he was paid high salary by the Government, but he was the biggest man in the industry. Coming back to the duress case, if the Judiciary Committee of the Senate after hearings that go on several inches worth can conclude unanimously that there was enough question about overreaching that this thing should be given its trial on the merits, I fully subscribe to that conclusion.

I don't like to deal in personalities, but I perhaps should say to this body that in 1955 after I had examined this carefully, after I had asked John J. Burns who made the investigation, "John, is there any skeleton in this closet?" And I looked him right in the eye and he said, "Coleman, there isn't a one." He had lived with this case since 1942. Death took him away from our team. I presented this to Mr. Brownell. He knew enough about me. We were fellow members of the same church in New York. He knew I wasn't throwing any curve balls at the Justice Department.

I got a standard letter back about the technical release and so forth. Three or four years later one of the distinguished Senators to whom I had talked about this case is seeking this kind of relief of a trial on the merits, or for the Justice Department to release its

technical defenses and say, "There is enough here; we will allow it to be tried and we will not raise these defenses," called the Attorney General in my presence and said, "You must see this lawyer." After that conference the Attorney General then changed his mind and said that the Department of Justice would not oppose a proper bill. That was when things somewhat turned in 1958. Then there were elections. Then there were changes. Then other things happened. Time went under the bridge, and I had a livelihood to earn in New York and trips to Washington and beseiging people on Capitol Hill is a business I do not enjoy, greatly as I respect the men. I respect their business and the multitude of their problems, but you can't sit down with this case in the lobby of the Halls of Congress and tell a man, "This is it. Now carry my suitcase for me in this just cause."

So much has been written and said that there is extreme confusion. But, in view of the action taken by the Senate Judiciary Committee, in view of the position of Mr. Taft, in view of the exhortations I have had from men of the stature of Senator Alexander Smith of my own State and Chief Justice Vanderbilt of my own State who told me only a few days before his death "never give up," how can I leave the case?

And I simply cannot get into my mind this great fear of a case in the courts. If all these things are true about these people a Federal court is going to throw us out on our ears, and if they are not true and if what I described is innuendo, without meaning any personal reference, and again I deeply apologize, because I hope it will not prejudice my presentation today on behalf of my people, if this is the case I say eliminate the problems in the Houses of Congress and let this go to the U.S. Court of Claims. Let them do the factual business which we do not have time for here.

Let them save costs for all of us, including the Department of Justice. It will be cheaper for the Department of Justice in my judgment to try this than to let it go on as is, because I am not through. Therefore I think it is in the interest of us all as fellow Americans to lay this at rest once and for all. I will be a good soldier and accept the judgment of that court and I want it to be the judgment as you indicated, Congressman Glenn. I think it is unfortunate that this one little slip happened, and I was concerned yesterday that all these things had to be reopened and all your time taken.

I wasn't prepared to stay up till all hours of the night last night digging back through these things trying to get some sort of sequential presentation for you today. We are not here asking for an appropriation from Congress. We are not asking for that kind of thing.

I told the members of the Department of Justice here today I wasn't even thinking through to those questions. I haven't even bothered to make arrangements with my clients, but I want this opportunity. And in view of all that has happened, if a man like Senator Dirksen, be he Democrat or Republican—and there have been men on both sides of the aisle on this matter—would come over here and make the presentation he did yesterday, and he knows more about this case than almost anybody else; I join him.

I was so moved by his remarks, so surprised, that my voice breaks. This is my commitment to this case and I seek the opportunity to try it. Thank you.

Mr. GLENN. Mr. Burke, if we enact this bill into law you will then proceed with your case in the Court of Claims. The Court of Claims will render its judgment and as far as you are concerned that will then be the end. Is that so?

Mr. BURKE. That is correct, Mr. Glenn. And I have assured the men in the Department of Justice this morning if there was any concern that because the General Dyestuff shares were merged at the end of 1953 or 1954 into General Aniline & Film we are not going to make trouble for the Government on that. If we should get the relief then one has to determine how it is handled.

Mr. GLENN. Thank you, Mr. Burke. May I also say that you are a very able advocate and you have certainly pleaded a very good case for your clients. I am sure you have added something to the record which will help us in our discussions and considerations when we get around to an executive session.

Mr. BURKE. After my concern earlier I appreciate those comments, Mr. Glenn.

Mr. GLENN. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman. Mr. Burke, how many suits would be affected if this legislation should be enacted? Just the *Halbach* case, or are there other suits also?

Mr. BURKE. No; there are no other suits. We have combined all the plaintiffs in one petition. I might say that I have not sought to represent these other people, but these were the friends that worked together in General Dyestuff Corp.; and when the suit was brought Mrs. St. George's son, who is a lawyer, Mr. Armin St. George, and I discussed then whether they shouldn't want to go along with it.

The facts are somewhat different in the St. George situation and I could have my own ideas as to the $365 against the $100. I don't think that that is of overpowering significance, however. The point is that the St. George stock was a part of the bundle that was taken by the Government in 1942 and the essential fact that I want to get at is was there something that I have never learned in 10 years of investigation? Was there a cloaking here? Because by the great God Almighty if there was a cloaking this property should have been taken. But I have never found it, and so we welcome Mrs. St. George and her son who appear on the brief. We have combined these in one proceeding. We will handle it as simply as we can and that will dispose of it.

Mr. CURTIN. Then this one proceeding is the only matter that would be affected by this legislation?

Mr. BURKE. Seventy-seven percent of the stock of General Dyestuff is involved. The proceeding involves everyone except Mr. Duisberg, who was referred to in the Department of Justice's presentation, where they made a settlement a while back. Mr. Duisberg, as I understand it, is in very ill health. His case was handled from the beginning in a different way from the rest of these. I wouldn't want to tell you Mr. Halbach's reactions to him. This was something that we just didn't touch and he has never been a part of our group, but Mr. Swensen, Mr. Martin, Mr. Wingender, all these men—Mr. Martin lived in the town of Summit and he was delighted to find—he was a friend of my father's—that I was handling this—all these people have signed and joined in the suit and have asked us to handle it.

I have no arrangement with any of them.

Mr. CURTIN. Thank you, Mr. Burke. That is all, Mr. Chairman.

Mr. STAGGERS. Mr. Harris.

Mr. HARRIS. Mr. Burke, you have made a very persuasive plea. I am sure it is appealing to all of us who have heard it. This problem of vested property has been a tremendous problem for this committee ever since the war. This isn't the first time we have had people, I may say, perhaps with some apology to you, show their emotional reactions. We have been faced with a tremendous problem ever since we were called upon to deal with the first war claims legislation, I believe about 1945.

We have had people from all over the country in here pleading, begging, and crying, in some instances rather pitifully. We have seen prisoners of war parade in front of this committee still showing the effects of their tragic experience. We have had people come from as far away as California and I have seen this room filled with them, claiming that they are entitled to a part of the proceeds of vested properties. The late Carl Hinshaw from California gave the matter a lot of thought and study. It worried him. I am not sure but what this and some other things probably affected his health. The late Percy Priest gave a lot of study, and thought, and attention to it. Jim Dolliver from Iowa was a member of the committee, I recall. He gave it a great deal of thought and conscientious treatment, as did all of these members.

I recall it was Mr. Hinshaw and Mr. Beckworth from Texas, who was on this committee at the time, who somewhat locked horns on the various approaches to it. It isn't strange at all that I. G. Farben was right at the head of that controversy, and I would suspect that we will hear from Mr. Beckworth if this matter goes to the floor of the Congress. He probably will take up the fight where he left off. I am merely reciting this to let you know that this is not the first time that we have had this brought to our attention in a most conscientious and serious fashion.

I remember when we had prisoners of war from both the Far East and European countries who claimed entitlement because of what had been done to them. I was a member of the committee when we provided that certain of these funds vested by the Government would be used to pay prisoner of war claims, so we have had this issue of who is going to get the proceeds from this property ever since its inception.

I have seen some very grave injustices. You feel very deeply about it. I have listened to the plea of the children, the heirs, the family of a former U.S. Senator from Nevada for property right around Washington that he had himself developed during his lifetime. His daughter married a German national. The property that the former U.S. Senator developed, and that was his own in this country, went to his heirs and then was vested by the United States.

I have heard their story many times. It did seem to me a terrible injustice. German nationals had nothing to do with the development of the property. We did try to do something about it under the 1962 act, and an amendment, section 205, was added, but we didn't correct the injustice completely. Sometimes matters develop to a point where you cannot correct one injustice in a matter of this kind without perhaps doing a greater injustice.

We had that same question for the greater part of 2 weeks on the floor of the House of this great country on the civil rights bill, but this same question is, Are you doing a greater injustice by correcting an injustice? Some think injustice exists and maybe their cause is meritorious. So what we did in that instance of the U.S. Senator, after the matter had been considered before this committee for years and years and years, was finally provide that the returns from the property following the amendment in 1962, and retroactive 10 months or so, and all future receipts from that property, would go to the heirs of the former U.S. Senator.

If I am remembering correctly there were a good many millions of dollars that had been vested by the Government, but those amounts have remained vested in the Government, and the Senator's heirs never did get any portion of this, and never will.

I am merely reciting this history of this whole problem in order that you may know, Mr. Burke, that this committee has given serious thought and consideration to this problem for almost 20 years. When we try to correct an inequity in one case, then we find ourselves going in another direction and finally wind up, with the human element working here, with who can get the biggest slice, and justify themselves in doing it, of this property that has been vested by the Government under law as a result of a terrible war. I don't suppose a war can do anything but bring inequities and sadness. There are going to be a lot of questions raised here. I myself have lived with the demands from many people for the last several years trying to get into this tremendous industry of General Aniline.

During that time that Mr. Halbach was operating General Dyestuff, running it, and others, there were all kinds of groups and organizations trying to get control of it, trying to buy it, trying to get the proceeds from it. I don't object to that in our country. We live in a country where as long as the people proceed legally toward a business enterprise we encourage it. Sometimes we are called upon to make a decision when the general public becomes affected. The general public becomes affected here. I don't know whether it was the right thing to do to use these funds to pay the millions upon millions of dollars for prisoner-of-war claims instead of appropriating amounts to pay their claims directly out of the Treasury of the United States, but there were those who felt deeply, and I have some feeling, that our enemies, the Germans among them, were responsible for the terrible tragedies that brought these things that we suffer. There are two sides to it.

That money has been used for purposes which the Congress authorized. We set up a War Claims Commission, now called the Foreign Claims Settlement Commission. We have been called upon from time to time by the Department of Justice to authorize funds to be used for this purpose or that purpose. If I remember correctly, when it was first brought to our attention there were over $800 million, I believe, in assets.

I am not arguing whether the matters have been litigated in 1945 or whether the matter of duress has been settled by the courts under our jurisprudence. You said 77 percent of the stock was involved and I would assume if an undertaking would be successful it would be a good many millions of dollars, wouldn't it?

Mr. BURKE. Yes, sir.

Mr. HARRIS. Where would that money come from if a judgment was obtained through a constitutional court and had to be paid to the people you represent?

Mr. BURKE. Were you asking me to answer that?

Mr. HARRIS. Yes.

Mr. BURKE. I am not sure. I am not expert enough to know. I do know the simple fact that the shares——

Mr. HARRIS. You are still going back and trying to talk about the merits.

Mr. BURKE. No, I am not going to talk about the merits. The shares of my clients were transferred——

Mr. HARRIS. I know that. We have heard that. But suppose a judgment is obtained in the regular way, which you are asking that we give you the chance to go into court and seek. Suppose a judgment is obtained and the court of claims says that your people, regardless of the equities involved, are entitled to x number of dollars. You would expect that to be paid. General Aniline & Film Corp. has not yet been disposed of by the Government, but the proceeds to the United States from that sale are to go eventually into the war claims fund. Suppose there isn't enough in that fund to pay such a judgment and to take care of other claims which the Foreign Claims Settlement Commission is processing now. The judgment will have to be paid Where would the money come from to pay it?

Mr. BURKE. I am not enough of an expert on Government financial affairs to be very sure footed in my answer. I do happen to know that the General Aniline & Film stock has not yet been sold. The program to get General Aniline & Film sold was handled in the very bill which I believe came out of your committee and was a rider on the bill as was this bill itself.

I was in real sympathy with all those items as they came through. The settlement has been made with the Swiss after years and years of argument so that the Swiss are going to have a really large part of General Aniline & Film once the underwriting is made in this country and it is distributed.

I would hope that our case might be settled and disposed of before General Aniline & Film is ever sold.

Mr. HARRIS. Mr. Burke, the Department of Justice called me many months ago—if I remember correctly it was one Saturday morning—and advised me that an agreement had been reached and they were announcing a contract had already been completed of the sale of the General Aniline. I have not had them up here and gone into the sale or the detail of it. We gave that responsibility to the Department of Justice in the bill that you mentioned and it was their responsibility, but Mr. Katzenbach called me one Saturday morning last year sometime—I don't remember the date, since it has been a good while ago—and advised me that they had concluded arrangements as to the division and the disposition of the business and how it was to be divided.

Mr. BURKE. If and when that goes through and the proceeds of that were to come to the Government, it would seem to me that the proceeds allocable to these shares, which were in turn allocable to the General Dyestuff's position, would be a source of funds to deal with whatever judgment the Court of Claims may give in this case, but again I say

I am not enough of an expert to know how the fiscal officers of the Government would handle it.

Mr. HARRIS. You are a good lawyer. I can tell that from your presentation here today. You are a good lawyer, but what I am trying to do is to get from you, is—and you ought to know in the 10 years you have been dealing with this problem—are we being called upon here to pass something on to a constitutional court to make a judgment, and should it be a sizable amount then are we going to be called upon a little later to appropriate funds out of the Treasury of the United States to pay it?

Mr. BURKE. I would think it would come out of these very funds. It cost the Government nothing to get this property and so anything that the Government——

Mr. HARRIS. Mr. Burke, let's not go into that any more.

Mr. BURKE. I am sorry.

Mr. HARRIS. We know that we fought a war and we lost thousands upon thousands of our boys who fought in that war and we know that the reason this property was vested was because of a tragic war. We ran our indebtedness in this country into the billions of dollars from about $30-odd billion to upward of over $200 billion. It cost the Government something in my judgment.

Mr. BURKE. It cost it dearly, but I see no reason why my clients should be any more responsible for that than I should be.

Mr. HARRIS. You probably have a meritorious comment and there are those in this Congress who feel that even so today all of the property that the Government seized that belonged to other people, even though they were nationals or belonged to our enemies during the war, ought to be returned. We have had that fight. We have had that problem before us and it is a real tough controversial one. We have to realistically deal with these things.

Mr. BURKE. I am deeply conscious, Chairman Harris, of these problems. I felt it would be impertinent for me to speak to them. I feel that my answers are at best rather inadequate.

Mr. HARRIS. Let me answer for you then and if you disagree you say so. If the funds are not available and the court gives a judgment, whatever amount it might be, x number of dollars, and under the present law and the contract from the sale and the status of the property involved, the proceeds of sale are not available to be utilized for this purpose, then there is only one way to get the funds and that is appropriated out of the Treasury of the United States.

Mr. BURKE. That is correct.

Mr. HARRIS. Let's not forget that when we are dealing with this because I think it would help all of us to know just where we are now and what we are going to be called upon to do. We get right back into the same fuss, and I use the word "fuss" because it is a messy name that we have had during the years of this thing. That is, whether or not we are going to appropriate funds out of the Treasury of the United States to replenish this fund, or use the fund solely to take care of the obligations which this fund was set aside to take care of.

Up until this time the Congress has never agreed to the principle of appropriating to this fund out of the Treasury. I am not saying that is right. You talk about inequities. I am not saying it is right

at all. Maybe this should be one of the responsibilities after a tragedy or tragic war was brought on us. I don't know. But nevertheless the Congress never agreed to it, and so I think that you raise problems which we have had a long, long time that I must say in all frankness I have serious and mixed feelings about.

Unfortunately, I fully realize you can't divorce the political reactions from this and looking from this side, which I am suggesting that you try to do on your own, understanding your personal feeling about what you think has been done to certain people who are citizens of this country, you can imagine Congressman Staggers, or Congressman Harris, or Congressman Glenn, or Congressman Long, or any other Congressman going back home and saying to his constituency, "I voted to pay funds out of the Treasury of the United States, taxpayer's funds, to take care of further obligations that belonged to German-connected people as a result of the war 20 years ago."

Mr. BURKE. Mr. Chairman, if we got a favorable decision in the court, Chairman Harris, and Chairman Staggers, no one would have to say, "We had to appropriate money out of the Treasury to pay to German-connected people," because the inevitable decision of the court if that were the conclusion would be that these were simon-pure Americans, and not cloaks, and so held, and if justice prevails it seems to me the politics follows pretty easily, and——

Mr. HARRIS. This would be a very difficult point to get across to people who don't know as much about this as we do.

Mr. BURKE. I ought to know that I can't win making a statement with you, with the greatest respect, when you are talking about considerations of this kind, and it is intrepid of me to even try, sir.

Mr. HARRIS. I point out to you you have made a very strong and serious plea, and I point out to you the problem we have had throughout the days. It isn't a simple one. I don't think there is any member of this committee who would not like to do equity to anybody, to any human being, but there is not a member of this committee who is going to overlook the fact that we have had some situations brought on us in this country that we are still paying dearly for.

Mr. BURKE. I again say I see no reason why I shouldn't have the same obligation to contribute as another proved American. This is the problem that we are facing, and this is the question that you gentlemen said might be tried in the courts, and again getting back to our issue, I am not saying what our moral rights are at all in this, but it seems to me that, having made this conclusion to let it go to a trial on the merits, this is the way to solve that aspect of the problem.

Financially, I can only look at it in one way. If the court concludes that this is an improper taking, the Government has received a windfall, and whatever this amount may be, and I am not an expert enough on value to tell you what that amount is, and if it has a windfall there, the Government isn't losing any money.

As I pointed out to you here today, the point that is sometimes lost sight of is the paper blared forth this settlement of $118 in 1945 against the then book value of $540 as justification for it. This was simply a payment out of the cash of this very company that was taken from these people, so the Government hasn't lost anything.

Mr. HARRIS. Back to what you are trying to do, you do recognize, and, of course, it is admitted that there was a settlement in 1945.

Mr. BURKE. No question about that.

Mr. HARRIS. Of $118 approximately?

Mr. BURKE. No question about that. And that would be dealt with in any legal proceeding and faced up to.

Mr. HARRIS. What are you trying to recover then? The difference between $118 per share and what?

Mr. BURKE. We are trying to recover for property or the proceeds thereof.

Mr. HARRIS. You know you can't recover the property because the property is already intermingled with General Aniline.

Mr. BURKE. So it becomes the proceeds, and whether or not the settlements are credited and how they are credited in different amounts in the St. George case and in our case, these are matters for the court to determine.

Mr. HARRIS. Yes; they are matters for the court to determine, but you have to allege what you are entitled to in your petition.

Mr. BURKE. That is correct.

Mr. HARRIS. What do you claim you are entitled to?

Mr. BURKE. We allege that we are entitled to our property back.

Mr. HARRIS. You can't get the property back. You know that.

Mr. BURKE. I mean the equivalent of our property. I have the document here if you would like me to file it, or the petition if you would like me to file it, as a part of the record.

Mr. HARRIS. I don't think it is necessary, but you ought to be familiar with it enough to tell us what you are asking for.

Mr. BURKE. That is correct. We have asked for that.

Mr. HARRIS. Asked for what?

Mr. BURKE. We have asked for the proceeds of the property which was improperly taken by the Government in 1942.

Mr. HARRIS. You are asking for all of the proceeds of that property?

Mr. BURKE. We are asking for all the proceeds. This isn't a gray area. This is either black or white. We get it all or we get nothing at all.

Mr. HARRIS. I am not arguing with you. I am just trying to get information from you.

Mr. BURKE. That is correct. It is as simple as that.

Mr. HARRIS. In other words, you are asking us to extend jurisdiction to the Court of Claims to render a judgment as to whether or not the people that you represent should get 77 percent of the proceeds of the sale of General Aniline & Film Corp.?

Mr. BURKE. That is correct as to General Dyestuff and not General Aniline & Film.

Mr. HARRIS. That is all, Mr. Chairman. Thank you very much for your appearance.

As far as I am concerned if there is no objection, you may correct that record any way you wish to.

Mr. BURKE. I would like to, Chairman Harris, and I hope I have said enough to indicate that there is surely nothing personal intended. It has been called to my attention in my last answer to you, Chairman Harris, that I referred to General Aniline & Film, and that should not be confused with the relief requested in our case.

It only might be material as a matter of value, as you yourself have traced the General Dyestuff situation, as you did yesterday and today,

into shares of General Aniline & Film. We have nothing to do with General Aniline & Film.

Mr. LONG. It is 77 percent of the proceeds of General Dyestuff and not General Aniline & Film?

Mr. BURKE. That is correct. I misspoke on the record here. It has been called to my attention and I would like the privilege of correcting the record with respect to that and say that it arises from the fact of the merger of the companies, Mr. Long.

Mr. HARRIS. The General Dyestuff Corp. was merged into General Aniline & Film Corp. in 1953?

Mr. BURKE. End of 1953. One measure of value could be what the property went into.

Mr. HARRIS. In order that the record may express the true fact, you are seeking 77 percent of the stock of General Dyestuff at the time it was merged with General Aniline, whatever that value might prove to be.

Mr. BURKE. I wouldn't be prepared to put the timing on it. This was a taking in 1942 and the question whether the timing is 1942 or 1953 or currently are questions which I think are appropriately in a judicial forum, and I don't think that I should issue off-the-cuff legal opinions as to what the court may determine on that.

Mr. HARRIS. I am not asking you to issue any opinions as to what the court may say; I am merely asking what did you allege in your petition that you wanted to recover.

Mr. BURKE. I think perhaps I should read this to you, Mr. Harris, to prevent confusion.

Mr. HARRIS. I don't think we better take time to read the petition now. If you don't know in a brief message of what you are speaking we will let the record stand at that. It is almost 2 minutes of 12. We don't have time to read the petition. Thank you, Mr. Chairman.

Mr. BURKE. I didn't mean to read the petition, Mr. Chairman. I just meant the final clause.

Mr. STAGGERS. Mr. Burke, if that is the conclusion of your statement, I have no questions. I had several here that I think have been asked. I would say to you that you certainly have made an able presentation of your case and the people whom you represent can be assured that you have done your very best to represent them in your case.

Mr. HARRIS. I join you, Mr. Chairman, in saying that they have very able representation and counsel in Mr. Burke.

Mr. STAGGERS. If that completes your presentation that will be all. Do you have something to say?

Mr. BURKE. I just wondered if I may have the privilege to correct any statements in this record that would be confusing or improper.

Mr. STAGGERS. That was understood by Mr. Harris when he said you would have that privilege.

Mr. BURKE. Thank you, Mr. Chairman, and thank you, members of the committee.

Mr. STAGGERS. I might say too I notice in the group here our colleague from New York, Mr. Barry. I assume that his is connected with you and I might say that he is a very able Representative in the Congress.

Mr. BURKE. Thank you, sir. Some of these people are in his jurisdiction and I have known Congressman Barry for a long time.

(Mr. Burke later submitted the following supplemental statement:)

SUPPLEMENT TO COLEMAN BURKE'S TESTIMONY

Because of the unique situation that the General Dyestuff property (now merged into General Aniline) has not yet been sold, satisfaction of claims to ownership of this specific Dyestuff property after sale will not be like satisfaction of a general war claim out of a general fund.

General Aniline has not yet been sold although Congress has authorized its sale and a compromise has been reached between Swiss claimants and the Department of Justice to divide the proceeds of sale on a percentage basis when, as, and if there a sale and cash proceeds are received from the purchaser. Before sale, the Department of Justice still must complete registration of the securities with the SEC, issue a prospectus and put General Aniline up for public bidding. The General Dyestuff claimants have agreed not to interfere with this process.

If the General Dyestuff stockholders obtain a judgment from the Court of Claims prior to sale, the judgment, which will establish their ownership to this specific property, can be satisfied out of the assets of General Aniline into which General Dyestuff was merged by the Department of Justice. If a judgment is secured after sale, the judgment, like the Swiss claim, can be satisfied from the proceeds of the General Aniline sale.

A satisfaction of such a judgment will cost the United States nothing, since the judgment will be only a determination that the property adjudged to belong to the General Dyestuff stockholders never belonged to the United States in the first place because it was improperly vested.

The analogy is to a bank deposit which a bank refuses to pay to a depositor on some pretext that the depositor has lost his right to it. If a court determines in favor of a depositor and he is permitted to withdraw his money the bank has not suffered. So likewise the U.S. Treasury will not suffer when it pays back the proceeds of the sale of property which never belonged to the United States in the first place. This is not like a general war claim where the claimant's right is created by Government legislation. In this case the U.S. claimants', like the Swiss claimants', right originates outside of Government legislation in the ownership of private property seized by the Government.

Mr. STAGGERS. Thank you. The hour is 12 o'clock. How long would your presentation take?

STATEMENT OF IRVING JAFFE, CHIEF, COURT OF CLAIMS SECTION; ACCOMPANIED BY STANLEY D. ROSE, LEGISLATIVE OFFICER; AND MANFRED SCHMIDT, ATTORNEY, CIVIL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. JAFFE. My presentation would not take long, but I would remind the committee that I was asked questions just at the conclusion of yesterday's hearing which I can't answer publicly; that is, the only question that I reserved or was hesitant to answer publicly was that which concerned the matters and issues which were presented in the St. George litigation that were different from those presented in the other, but you did ask some questions with respect to the comparative value of stocks, if you will recall.

Mr. HARRIS. Mr. Jaffe, since I had the understanding with you yesterday, I had not expected to take all morning with Mr. Burke. I think this has been very helpful to the record, however, but the purpose is to develop all the facts, and that is what we try to do, because they are sensitive and delicate problems.

We have a bill out of this committee that is scheduled for consideration on the floor of the House this afternoon and it is 12 o'clock now. With apologies to you, it appears that we are going to have to ask you to come back.

Mr. JAFFE. No objection to that at all, Congressman Harris.

Mr. HARRIS. I would suggest, Mr. Chairman, that we come back at 10:30 tomorrow for an executive session in order that Mr. Curtin might get answers to the question or at least have an opportunity to get answers to the question that he propounded yesterday under the circumstances that were agreed to at that time.

Mr. JAFFE. I would be happy to come back.

Mr. STAGGERS. Is that satisfactory; 10:30 tomorrow?

Mr. JAFFE. Yes, and I will answer the other questions that were asked at that time too if you like.

Mr. STAGGERS. All right. The committee will stand adjourned until 10:30 tomorrow.

(Whereupon, at 12 noon; the hearing adjourned to reconvene in executive session at 10:30 a.m., February 27, 1964.)

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