

Meeting

Date of Meeting: April 17-18, 1959
Date of Memo: April 16, 1959

Memorandum No. 6

Subject: Study #25 - Alien Heirs

I had a telephone call today from Professor Harold Berman of the Harvard Law School in response to my letter to him of April 13, 1959 with respect to S.B. 160. Professor Berman made the following statements:

1. There are no United States government restrictions on transfers of money to Russia except the Secretary of the Treasury's list. There is not currently, any difficulty in sending packages to Russia and the experience is that there are virtually no losses in sending such packages; the fact is that the insurance rate has recently been reduced because of the fact.

2. Professor Berman has talked to people in Russia who have inherited money from the United States and have actually received and been able to use the money. He has seen their bank accounts and the things which they have purchased with such funds. On the basis of these discussions he is convinced that in fact a Russian heir will ordinarily receive and have the substantial use, control and benefit of an American inheritance. He has some doubt about two possible exceptions to this: (a) Whether a Russian who was persona non grata with the government would receive an inheritance, and (b) whether one who had received a very large inheritance -- say a million dollars -- would be able actually to receive and keep and use it. He suggested that one receiving such an inheritance would probably "voluntarily" give seven hundred thousand to nine hundred thousand dollars of it to the govern-

ment just to avoid problems and that some pressure might be put on him to do so.

3. That the Russian law on the matter is clear and that it is to the effect that there are no restrictions on an heir's receiving and having the use, benefit and control of an inheritance from outside the country. He, for example, could readily enough give a deposition on this aspect of the matter.

4. On the other hand, proving what the actual practice is, i.e., whether a particular heir actually would receive and have the use of a particular inheritance, is a very difficult matter and, indeed, almost impossible to prove since the fact that other heirs have received other inheritances (itself difficult enough to prove) while relevant, is hardly conclusive on the question. He suggests, therefore, that the incidence of burden of proof on this issue is of the greatest importance. He believes that insofar as Russia is concerned, since he is personally convinced that heirs there would receive and be able to use inheritances, the burden should be put on one who takes the position that this is not so.

5. In the ordinary case at least, there is no tax on an inheritance from a foreign country. The cost to the heir is the cost of his attorney's fees, which run about 10%.

6. The Russian government desires to have dollar exchange. It, therefore, is in that government's interest to permit its citizens inherit from foreign countries, thus bringing dollars into the country which the government keeps giving the citizen rubles at the exchange rate for non-commercial transactions which is currently at the rate of 10 to 1.

7. That an American probate court should probably have discretion

to withhold or impound an inheritance and that it should be satisfied before permitting one to be transmitted to Russia, that the heir is in fact alive and that he desires to have the inheritance. (He might not if he was in an unhappy position with the government.) He also suggests that it might be desirable to give the court discretion to send a large inheritance in installments to avoid the problem that an heir might otherwise have. He suggests, however, that this would not be necessary in the case of inheritances up to \$20,000.00. He also suggests that the court might be empowered to insist upon proof with regard to the current exchange rate, but he notes that this might be quite difficult because there is no clear-cut Russian law on the matter, the exchange rate being set from time to time by the official bank.

8. That in his opinion reference to the Treasury's List is undesirable. He states that he has talked to people in the lower echelons of the Treasury Department about the list and that they are quite embarrassed about it since it is not, in fact, what it purports to be. The situation is that a number of Iron Curtain countries were placed on the list some years ago and that now the Treasury is unwilling to take them off because of the difficulties it might get into with Congress politically if it were to do so. He states that Poland was recently taken off the list and that this, itself, shows that the list is not maintained on the basis upon which it is purported to be maintained. He states that the conditions in Poland are no different than they are in any other eastern European country and that the only reason for taking Poland off the list is that our official policy toward that country has recently become more friendly.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary