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The Hermeneutic of Acceptance and the Discourse of the Grotesque, with a Classroom Exercise on Vichy Law

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THE HERMENEUTIC OF ACCEPTANCE AND THE DISCOURSE OF THE GROTESQUE, WITH A CLASSROOM EXERCISE ON VICHY LAW

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INTRODUCTION

As a nonspecialist on the laws of slavery, I can best contribute to this discourse by suggesting some reflection on the comparative nature of racial discrimination in constitutionally based and seemingly enlightened legal systems. To the American system under close scrutiny in this Symposium, my recently completed work on Vichy law[1] may lend some degree of further understanding. For the legalized persecution of Jews in France during the period 1940-44 stands as a classic twentieth century example of what I believe to have been at work in antebellum America: the elaboration through traditional patterns of legal reasoning of a discourse of exclusion that rationalized the vicious persecution of some while still maintaining ostensible norms of constitutional decency towards most others. I call this reasoning process the "hermeneutic of acceptance," and its result—in pre-Civil War America and in post-armistice France—was the creation by lawyers and judges trained to believe in certain essential legal decencies, of analogous discourses of the grotesque,[2] of patterns of words politely and pragmatically designed to preserve the dignity of the law at the same time as they inflicted or abided the law's selective violence upon racial minorities.

Not all of my examples come from the pens of virulent racists and the few who wholeheartedly supported the discriminations. These blatant few are much less interesting to me, not so much because simple responses should be unexamined or demeaned by

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I would like to thank the hundreds of students across the years—seventeen of whom are present here—who have contributed their skills and sensitivities to an understanding of how lawyers write in periods of crisis.

1 RICHARD WEISBERG, VICHY LAW AND THE HOLOCAUST IN FRANCE (1996).

2 For the classic approach to the grotesque, see WOLFGANG KAYSER, THE GROTESQUE IN ART AND LITERATURE (Ulrich Weisstein trans., 1966); *see also* MIKHAEL BAKHTIN, RABELAIS AND HIS WORLD (Hélène Iswolsky trans., 1968); *infra* note 4 and accompanying text.

law professors,[3] as because racists are usually dismissed by the analytic mainstream after the crisis has passed and the descent into evil too easily blamed on them. What counts far more for future behavior is to analyze the utterances of "good" or at least unexceptionable lawyers, statements made in the heat of the legal crisis, utterances that have a certain appeal to the common humanity and basic professional instincts of other mainstream lawyers. Careful scrutiny of this more "humane" discourse divulges its grotesque nature. For the grotesque marks a disjunction between the expectations engendered by the speaker in the audience and what finally emerges in the utterance, a disjunction that unsettles the audience and creates a response of horror and disequilibration.

In Geoffrey Galt Hapham's definition, the grotesque is "a species of confusion—that is, it is defined and recognized in common usage by a certain set of obstacles to structured thought. The grotesque is that sort of thing in the presence of which we experience certain methodological problems."[4] Without some common substantive ground between speaker and audience, the grotesque (like the sublime, but unlike, say, the obscene) is impossible. For my purposes today, the interesting utterances in the law are those that everywhere make us expect justice while simultaneously rendering or rationalizing racist results. I am therefore interested in lawyers and judges, surely in the majority in Vichy France and perhaps also well represented in antebellum America, who had mixed feelings or who were in fact repelled by the singling out of minorities for special treatment within legal systems otherwise theoretically bounded by notions of liberal equality and Christian fellow-feeling. In mid-twentieth century France, as in mid-nineteenth century America, people who had legal or judicial careers tended (as did people of the far less religious period of the late eighteenth century

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[3] In his response to this paper, which he found "interesting" (a word indicating that he did *not* intend to open a meaningful dialogue with my remarks), Professor Sanford Levinson counseled more charity than he believes I extended to the *complex* judges and lawyers discussed in this piece. For Levinson, as for most law professors—unfortunately—complexity is always to be respected, if not in fact applauded. The thesis of this Article is that if lawyer-like complexity in itself is always seen as a good, then legalized bondage, racism, and slavery are more likely to reoccur. The "simple" response of forthright racists that I am not discussing here is the converse of the simple response of antipathy to racism that I claim is always possible to lawyers in our tradition—but *not* lawyers trained by their professors to value complexity in and of itself. Sanford Levinson, *Allocating Honor and Acting Honorably: Some Reflections Provoked by the Cardozo Conference on Slavery*, 17 CARDOZO L. REV. 1969 (1996).

[4] GEOFFREY GALT HAPHAM, ON THE GROTESQUE xii (1982).

that generated both[5] systems) to see "life, liberty and the pursuit of happiness" as a benevolent Creator's gift to each citizen lucky enough to walk on their soil and be subject to their laws. How, then, were such gross violations of the prevalent combination of legalistic liberalism and Christian humaneness repeatedly engrafted on the discourse of the law?[6]

I hope to suggest here a certain commonality in the rhetoric of lawyers trained to foundational reverence for tolerance and even equality, but pulled by legal and political influences in the opposite direction. For this is what the French and American examples mutually convey: lawyers in these systems tended to adopt a twinned hermeneutic of racism into their otherwise liberal perspectives. Their way of reading the laws of exclusion added a considerate *flexibility* when dealing with the race-neutral constitutive stories of their training to a rigorousness of low-level legal logic when dealing with the statutory materials directly bearing on the race problem in their midst. This twinned hermeneutic of flexibility and narrowness, to my mind, persists to the present day in lawyers practicing in egalitarian democracies, and risks emerging in any condition of stress to produce similarly grotesque discourses of the previously understood, benevolent story.

Far from idiosyncratic, the work of lawyers in these two tragic epochs is analytically aligned to the more benign output of other legal communities.[7] Many North American lawyers are content to

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[5] I am mindful, of course, that France and America have not shared identical influences upon (and surely not identical outgrowths of) late eighteenth century constitutional commonalities. *See, e.g.*, Louis Henkin, *Revolutions and Constitutions*, 49 LA. L. REV. 1023 (1989) (explicitly comparing and contrasting the French and American systems). Even Professor Henkin, who makes a strong case that the French have always been less interested in *rights* than the Americans, perceives a good deal of foundational unity in the two systems' roots in Locke, Rousseau, and Montesquieu and in their mutual interest in *equality*, an interest that the French immediately propounded as constitutional in nature and that the Americans took longer to formalize. *See id.* at 1033-34.

[6] One set of explanations absolves the law from responsibility, in the antebellum case by blaming the economic system in the South and in the French case by blaming the Nazis. But my sense is that law in both cases worked within its *own* (autopoietic) functions, and we need to focus on developments internal to law and especially legal rhetoric, rather than place too much blame on external forces, however true in both cases. *See generally* Niklas Luhmann, *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, 13 CARDOZO L. REV. 1419 (1992). As to Vichy law, the explanation from German *Diktat* has been effectively debunked since Marrus and Paxton, and the data I have worked with signals virtually total French autonomy (in both wartime zones) in developing legalized racism on a basically "Franco-French" model. MICHAEL R. MARRUS & ROBERT D. PAXTON, VICHY FRANCE AND THE JEWS (1981); *see also* Richard Weisberg, *Autopoiesis and Positivism*, 13 CARDOZO L. REV. 1721 (1992).

[7] *See generally* JAMES B. WHITE, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION (1973).

engage legal problems on low levels of generalization and to resist not only moral but also legal questions that might challenge their behavior if articulated. Communities tend to build on the latest related use of discourse by authoritative speakers[8] particularly if—on contentious matters—language is used "considerately."[9]

By the "hermeneutic of acceptance," then, I mean the strategy of interpreting the community's most influential existing text in such a way as to unbalance prior understandings of it and to rationalize new and often destabilizing possibilities of meaning. The most familiar nonlegal example is the early Christian exegesis of the Old Testament; ironically, "postmodern" reading strategies also adopt deconstructive Christian techniques of reading.[10] Complexity becomes an end in itself, even if the text in question (embedded in the crisis-laden context of certain hermeneutic periods) is susceptible of and has historically enjoyed relatively straightforward understandings that would radically deny the plausibility of the newly rendered perspective.

My specific sources are a series of statutes and cases amassed by James Boyd White[11] on antebellum racial law and my recent empirical research on Vichy's private practitioners attempting to deal with the French regime's new laws of 1940 and 1941[12]; these laws defined what it was to be a black or a Jew and then punished people who fell into the benighted category. I will close with an extended pedagogical section, in which I set forth an assignment I have given to law students asking them to role-play as lawyers during the Vichy period who must deal with statutes defining racial categories.

I. THE ANTEBELLUM SOUTH

Whereas the legalized persecution of Jews violated a century and a half of French legal tradition, laws against black people in America antedated the founding of our Republic. Yet, just as French lawyers could still appeal to a basic story of nondiscrimination embedded in their legal training, so antebellum American

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8 *See* STANLEY FISH, IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES 338-55 (1980).

9 *See* RICHARD H. WEISBERG, THE FAILURE OF THE WORD 160 (1984).

10 *See generally* Richard Weisberg, *On the Use and Abuse of Nietzsche for Modern Constitutional Theory*, *in* INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER 181 (Sanford Levinson & Steven Mailloux eds., 1988).

11 WHITE, *supra* note 7, at 430-61. Most of these cases are familiar to scholars of the period.

12 *See* WEISBERG, *supra* note 1, at ch. 8.

judges and lawyers could appeal to a constitutional story of due process, civility, and individual rights. Both groups could, and in fact did, appeal as part of their legal rhetoric to Christian values of humanity and charity. White poses this conundrum proactively, by asking us to "imagine how a court could decide questions arising under the laws of slavery in ways that were consistent both with that institution and with the fundamental values implicit in our legal system."[13] Occasionally, contemporary lawyers such as Judge Clarke of the Mississippi Supreme Court in 1820 imagined out loud; in an opinion affirming the capital conviction of a white man for the murder of a slave, Clarke wrote:

> In some respects, slaves may be considered as chattels, but in others, they are regarded as men. . . . It has been determined in Virginia, that slaves are persons. In the Constitution of the United States, slaves are expressly designated as "persons." In this state, the Legislature has considered slaves as reasonable and accountable beings and it would be a stigma upon the character of the state, and a reproach to the administration of justice, if the life of a slave could be taken with impunity, or if he could be murdered in cold blood, without subjecting the offender to the highest penalty known to the criminal jurisprudence of the country. Has the slave no rights, because he is deprived of his freedom? He is still a human being, and possesses all those rights, of which he is not deprived by the positive provisions of the law, but in vain shall we look for any law passed by the enlightened and philanthropic legislature of this state, giving even to the master, much less to a stranger, power over the life of a slave.[14]

The appeal to the goodness of the reader creates a grotesque "species of confusion"—a rhetoric that sets "obstacles to structured thought."[15] Conjuring the constitutive story of the new Republic, Judge Clarke reads it to insist that slaves are "persons." By marking off a boundary outside of which such "persons" may not be violated, the judge tantalizes the reader, establishing a sense of the foundational tale that might lead to a challenge to the slave laws generally. But he immediately shifts the ground from under the reader, submitting the "positive laws" of Mississippi as the arbiter—indeed a benevolent one—of those very boundaries.

Does the word "even" placed before "to the master" as a rhetorical limitation on murder provide a hint of the full sense of Mis-

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13 WHITE, *supra* note 7, at 456.

14 State v. Jones, 2 Miss. (2 Walker) 83 (1820), *reprinted in* WHITE, *supra* note 7, at 447.

15 HAPHAM, *supra* note 4, at xii.

sissippi's "philanthropy" to these persons? Or need we seek almost contemporaneous statutory formulations from that state's legislature, such as the following, in order to apprehend the judge's reasoning?:

> Sec. 54. When any negro or mulatto slave shall be convicted of any felony, not punishable with death, such negro or mulatto slave, shall be burnt in the hand by the sheriff, in open court, and suffer such other corporal punishment as the court shall think fit to inflict, except where he or shall be convicted of a second offence of the same nature, in which case such negro or mulatto slave shall suffer death.
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> Sec. 59. If any negro or mulatto shall be found, upon due proof made to any county or corporation court of this state, to have given false testimony, every such offender shall, without further trial, be ordered by the said court, to have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour, and moreover to receive thirty-nine lashes on his or her bare back, well laid on, at the public whipping post, or such other punishment as the court shall think proper, not extending to life or limb.[16]

Judge Clarke concludes by asking if a modern court, influenced by the Constitution and by the passage from pagan to Christian culture, can "establish a principle, too sanguinary for the code even of the Goths and the Vandals, and extend to the whole community, the right to murder slaves with impunity?"[17] Why "to the whole community"? Will the law of the case be limited to its application here, that is to a stranger to the slave? Consider the language of section 44 of the Mississippi Laws of 1822:

> Sec. 44. No cruel or unusual punishment shall be inflicted on any slave within this state. And any master, or other person, entitled to the service of any slave, who shall inflict such cruel or unusual punishment, or shall authorize or permit the same to be inflicted, shall, on conviction thereof, before any court having cognizance, be fined according to the magnitude of the offence, at the discretion of the court, in any sum not exceeding five hundred dollars, to be paid into the treasury of the state, for the use and benefit of the literary fund.[18]

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16 1822 Miss. Laws ch. 92, §§ 54, 59, *reprinted in* WHITE, *supra* note 7, at 437.

17 *Jones*, 2 Miss. (2 Walker) at 83, *reprinted in* WHITE, *supra* note 7, at 448.

18 1822 Miss. Laws ch. 92, § 44, *reprinted in* WHITE, *supra* note 7, at 437.

One wonders what stories the "literary fund" was supporting in antebellum Mississippi.

In a more famous North Carolina case eight years later, the appellate court decided whether to uphold the conviction of a white man for intentionally wounding his[19] female slave, who was attempting to flee his chastisement.[20] Here the foundational instincts of the opinion writer (some of them, again, legal in nature) struggle unsuccessfully with his narrow, positivist tendencies. The structure of the argument is grotesque, a disequilibrating flow of words designed to appeal to the finest within us while seeking our understanding that the finest is definitionally foreign to the practice and interpretation of law:

> A Judge cannot but lament when such cases as the present are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own exist and are thoroughly understood. The struggle, too, in the Judge's own breast between the feelings of the man and the duty of the magistrate is a severe one, presenting strong temptation to put aside such questions, if it be possible. It is useless, however, to complain of things inherent in our political state. And it is criminal in a Court to avoid any responsibility which the laws impose. With whatever reluctance, therefore, it is done, the Court is compelled to express an opinion upon the extent of the dominion of the master over the slave in North Carolina.
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> . . . With the liabilities of the hirer to the general owner for an injury permanently impairing the value of the slave no rule now laid down is intended to interfere. That is left upon the general doctrine of bailment. The inquiry here is whether a cruel and unreasonable battery on a slave by the hirer is indictable. The Judge below instructed the jury that it is.
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> . . . But upon the general question whether the owner is answerable criminaliter for a battery upon his own slave, or other exercise of authority or force not forbidden by statute, the Court entertains but little doubt. That he is so liable has never yet been decided; nor, as far as is known, been hitherto contended. There have been no prosecutions of the sort. The established habits and uniform practice of the country in this

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19 In fact, the assault was committed by one who hired the slave for a year, but the court immediately decided that his rights were coterminous with those of the actual owner. *See* State v. Mann, 13 N.C. 263 (1828), *reprinted in* WHITE, *supra* note 7, at 451.

20 *See* WHITE, *supra* note 7, at 451.

respect is the best evidence of the portion of power deemed by the whole community requisite to the preservation of the master's dominion. If we thought differently we could not set our notions in array against the judgment of everybody else, and say that this or that authority may be safely lopped off. . . . The end is the profit of the master, his security and the public safety; the subject, one doomed in his own person and his posterity, to live without knowledge and without the capacity to make anything his own, and to toil that another may reap the fruits. What moral considerations shall be addressed to such a being to convince him what it is impossible but that the most stupid must feel and know can never be true—that he is thus to labor upon a principle of natural duty, or for the sake of his own personal happiness, such services can only be expected from one who has no will of his own; who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect. The power of the master must be absolute to render the submission of the slave perfect. I most freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and as a principle of moral right every person in his retirement must repudiate it. But in the actual condition of things it must be so. There is no remedy. This discipline belongs to the state of slavery. They cannot be disunited without abrogating at once the rights of the master and absolving the slave from his subjection. It constitutes the curse of slavery to both the bond and free portion of our population. But it is inherent in the relation of master and slave.

That there may be particular instances of cruelty and deliberate barbarity where, in conscience, the law might properly interfere, is most probable. The difficulty is to determine where a Court may properly begin. . . .

. . . .

I repeat that I would gladly have avoided this ungrateful question. But being brought to it the Court is compelled to declare that while slavery exists amongst us in its present state, or until it shall seem fit to the legislature to interpose express enactments to the contrary, it will be the imperative duty of the Judges to recognize the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute. And this we do upon the ground that this dominion is essential to the value of slaves as property, to the security of the master, and the public tranquility, greatly dependent upon their subordi-

> nation; and, in fine, as most effectually securing the general protection and comfort of the slaves themselves.[21]

Judge Ruffin stands at the front, perhaps, of a long line of judges, before and since, who effusively lament the use of power they are about to exercise. Captain Vere, in Melville's *Billy Budd, Sailor*, hardly exceeds him in rhetorical force as he proclaims (disingenuously) the legal necessity of performing a moral atrocity.[22] Too quickly yielding, perhaps, to such a language of self-abnegating misery, the reader may forget that the judge is in the business of freeing a vicious man whose sole authority to maim or kill rests in the positive law. The reader, in the face of such rhetoric, may also forgive the judge's failure to find the interstitial opportunities for justice always available in the positive law.

The reasoning of the opinion's last paragraph, as is true in many such cases of avowed judicial distaste for the result produced by the very discourse of avowal (think of Justice Blackmun's tortured apology for the constitutionality of capital punishment in the dissent to *Furman v Georgia*[23]), cannot bear a strictly logical scrutiny. If the judge must address this issue that he "would gladly have avoided," *must* he hold that all acts not specifically banned by the legislature are permitted when inflicted by a master upon a slave? In the inevitable interstices left by the legislature, is there not room for a judicial act in the service of the (alleged) beliefs of the humane jurist? Was this not the result below, here overturned? Beware of discourse contradicting the outcome, or better, look for the rhetorical clue (here, perhaps, "the value of slaves as property"[24]) that reveals the true, usually nonlegal source of the case's

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21 *Id.* at 451-54. The court reversed the lower court's judgment and held for the owner. *See id.* at 454.

22 *See* HERMAN MELVILLE, BILLY BUDD, SAILOR (Harrison Hayford & Merton M. Sealts, Jr. eds., Univ. of Chicago Press 1962). For the seminal application of this story to the dilemma of antebellum judges, see the preface on Antigone and Captain Vere in ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS prelude (1975); *see also* WEISBERG, *supra* note 9, at 133.

23 408 U.S. 238, 405 (1972) (Blackmun, J., dissenting); *see also* WHITE, *supra* note 7, at 137.

24 *See, e.g.*, BARRIE STAVIS, HARPER'S FERRY: A PLAY ABOUT JOHN BROWN 10-11 (1967):

> By 1859, in fact long before that, John Brown was convinced that the slaveholder would fight to the death to maintain the institution of slavery, because the whole fabric of his society rested on his ownership of property in the shape of human beings. In the 1850's, there were four million slaves in the United States having an average worth of one thousand dollars each; thus, the slave system had an investment of four billion dollars in human property. This investment generated a profit of between 500 million and 750 million dollars a year. (When Lincoln signed the Emancipation Proclamation on January 1,

sorry outcome. The flexible hermeneutic first adopts an anguished stance of foundational belief, trumped by legalistic "duty." Close analysis reveals, however, that legalistic duty is usually a mask for the judges' neverstated nonlegalistic belief system. In this way, the foundational story changes its meaning, as appealing rhetoric flexibly interprets it to accommodate what the judges have decided is necessary under the circumstances. With seeming impersonality, the judge ascribes to the positive law an outcome that both contradicts the spirit of the foundational story and also fulfills the judges' basically subjective need.

II. Two Vichy Examples

A. *Professor Jacques Maury*

In the part of France left autonomous by the conquering Germans in 1940, a regime was established by the French that quickly proceeded to enact, independently from German influence, a scheme of racial definition that in many ways surpassed the Nuremburg models.[25] Hundreds of lawyers were then faced with the task of implementing, interpreting, and rationalizing the new laws. They saw before them texts that singled out groups—particularly Jews—for special persecution. A mere few weeks before, these same lawyers would have dismissed such texts as violative of every principle of French constitutional law to which their training had exposed them. Now they perused with an eye to enforcement the weird texts of racial exclusion, random imprisonment, career curtailment, loss of property, and, by imaginative extension, expungement of life itself.

Yet the constitutional premises of equal protection still existed in Vichy. Some lawyers in certain contexts utilized the old verities and even protested against nonracial violations by the government. As we shall see, there were even isolated objections at the beginning to the anti-Semitic legislation, but *there was no enduring or organized protest by any lawyer or legal group against those racial laws*. For four long years, the French legal community—again

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1863, he effectively stripped the South of four billion dollars in capital, and of one-half to three-quarters of a billion dollars in annual income.) Long before 1859, John Brown had come to realize that education for the slave was not the key; the only way to destroy the system was by the sword.

Id.

25 *See* Richard Weisberg, Poethics and Other Strategies of Law and Literature 127-87 & app. 14.1 (1992); *see also* Les Juifs Sous l'Occupation: Recueil des Textes Officiels Français et Allemands 1940/1944, at 50-52 [hereinafter Recueil].

largely without German pressure—built its own system of increasingly complex racial definition and restriction.[26]

One of the only notable legal protests lodged on a high level of generalization against the new laws was that by Professor Jacques Maury of the Toulouse Law School.

Although Maury did not specifically attack the newly promulgated Vichy racial law of October 3, 1940, he did author a lengthy series of articles in the *Journal Officiel*, one of the profession's most prominent publications, condemning the new trend towards "abandonment of our long-held rule guaranteeing equality in their rights as well as in their responsibilities to all French people."[27] Neither Maury nor any other lawyer was ever sanctioned professionally, much less imprisoned or worse, for publishing such direct, legal attacks upon Vichy and its laws and policies. Yet, Maury's protest stands alone. No other individual or legal association ever again directly protested the anti-Semitic laws on this high level of generalization.

Indeed, Maury himself gradually accommodated to the laws he had so vigorously opposed in 1940. He adopted what I am calling the hermeneutic of acceptance. In his later writings, Maury situates the legal problem not at the foundational level of his 1940 articles, but instead to answer the lower-level question: Does an individual with two Jewish and two non-Jewish grandparents count, statutorily, as a Jew? I have recently tracked[28] in Professor Maury's own discourse this progression towards an interpretive "mainstream" that abided and utilized the racial laws rather than fought to make them a nullity.[29] Indeed, the degradation in Professor Maury's discourse over the wartime years indicates that internal professional pressures led even a right-minded analyst such as

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26 As François Dominique-Gros recently reported, the number of outright protests (he has studied the writings of law professors in particular) did not increase substantially even as the War wound to a close and Allied victory appeared inevitable. Of thirty-nine legal manuals studied, Professor Dominique-Gros cites only two that fall into his category of expressing "clear hostility" to the racial laws. Another handful contains "*commentaire assorti de réserves* [assorted comments of reservation]." François Dominique-Gros, Le 'statut des juifs' et les manuels en usage dans les facultés de droit, 1940-44, at 8 (unpublished manuscript, on file with author).

27 JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE doc. 169 (Oct. 18, 1940) (author's translation).

28 *See* Richard H. Weisberg, *Three Lessons From Law and Literature*, 27 LOY. L.A. L. REV. 285, 294 (1993) [hereinafter Weisberg, *Three Lessons*] (footnote omitted); *see also* Richard H. Weisberg, *Legal Rhetoric Under Stress: The Example of Vichy*, 12 CARDOZO L. REV. 1371 (1991) [hereinafter Weisberg, *Example of Vichy*].

29 *See* Weisberg, *Three Lessons*, *supra* note 28, at 293-300.

himself to adapt to an apologetic way of speaking about racial definition.[30]

The softening of Professor Maury's protest[31] is emblematic of the way in which a scheme of racial classification that law and ethics should have made impossible became accepted as part of a legal system based for the prior one hundred and fifty years on equality. And, although Jacques Maury's subsequent memoranda of law dealing with race always take a "liberal" position, his lilting language of basic acceptance nonetheless degrades his original protest and seems, in our sense, grotesque.

B. *Maurice Garçon*

Prominent voices in humane and liberal legal systems influence each other—such is the benefit (and occasionally the cost) of comity and respect among colleagues participating in what all at one time thought to be an admirable discourse of law. Professor Jacques Maury's shift to accommodation, even as Allied victory was guaranteed, surely affected others. Reciprocally, his own shifting discourse may have developed *because* so many other fine and liberal French lawyers did not manage to protest against the bizarre racism of the Vichy positive statutes. One of the best known of these colleagues was the practitioner Maurice Garçon, a pillar of the French bar for a half century, a man whose reputation would

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30 *See id.* at 294 (footnote omitted). I have also looked at this rhetorical phenomenon regarding Joseph Haennig's analysis, *What Means of Proof Can the Jew of Mixed Blood Offer to Establish his Nonaffiliation with the Jewish Race?*, a learned article published by a lawyer in the 1943 authoritative French reporter, the *Gazette du Palais*. Haennig's article is also reprinted *infra*, in the Pedagogical Appendix B. *See, e.g.*, Richard H. Weisberg, *Cartesian Lawyers and the Unspeakable: The Case of Vichy France*, TIKKUN, Sept.-Oct. 1992, at 46; Weisberg, *Example of Vichy*, *supra* note 28, at 1371-76 & apps. 1-10; *see also* David Margolick, *At the Bar: The Action of a Lawyer in Occupied France Raises the Question: Is Nit-Picking Collaboration?*, N.Y. TIMES, May 17, 1991, at B18.

31 See Weisberg, *Three Lessons*, *supra* note 28, at 296-98, for an in-depth analysis of Professor Maury's retreat from his original hard-line stance. For a lucid analysis of how professional discourse develops and changes, see FISH, *supra* note 8, at 338-55. For Fish, a professional discourse is never subject to overriding "rules" because only the way people talk and behave in a given community can establish what the "rules" of the group are at any given time. *See also* Danièle Lochak, *La Doctrine Sous Vichy, ou les Mésaventures du Positivisme*, *in* LE STATUT DES JUIFS DE VICHY 121-50 (Serge Klarsfeld ed., 1990). Lochak speaks of the "banalisation" of the racial laws partly in terms of the academic lawyers' "measured, neutral, and detached tone." *Id.* at 124. Lochak, to the best of my knowledge, does not cite Professor Maury's writings and concludes that no law professor raised a voice in protest, but this is an overstatement. *See id.* at 125. For my own measured agreement with Owen Fiss that professional groups need at least a *theoretical* underpinning in "the disciplining rules" to avoid Vichy-like behavior, see WEISBERG, *supra* note 25, at 172-5.

rival, say, a George Ball or a Floyd Abrams in late twentieth century America.

In mid-1940, Garçon, like thousands of other Parisian lawyers and their lay compatriots, were suffering the twin humiliation of their country's defeat and a mass flight towards the Southern "free" zone known as Vichy. But, as the summer of 1940 progressed, the majority of lawyers were (like Garçon) back at their offices or in the Palais de Justice, and this was true of the bulk of other law related professionals. In Vichy itself, there was even less discombobulation. Like Maurice Chevalier, whose *Paris sera toujours Paris* could be heard in the nightclubs of the capital, many ordinary practitioners could say "the law will always be the law." Only with a difference, as we shall see.

The collective picture from 1940-44 is that of a pragmatic professional, by no means anti-Semitic or racist but nonetheless opportunistic in his use of the new Vichy environment. There is little evidence in the files of outright collaboration with the Germans. But unlike some colleagues whose practice never touched on Jewish issues, many lawyers in both zones did voluntarily undertake matters that grew out of the legalities of racial and religious exclusion. In general, such lawyers would evenhandedly accept a Jewish client along with an Aryan; they might be capable of courageous advocacy of outcasts while at the same time "aryanizing" Jewish property by serving as an *administrateur provisoire* (an "a.p.") or at least representing an a.p. against Jewish interests. They were, in the main, "hired guns." They were lawyers.

If at all possible, Maurice Garçon was not about to abandon his clients and his practice unless absolutely forced to by circumstances of war. As 1940 yielded to 1941 and its ever stronger foundation of Vichy laws, Garçon's colleagues, friends, and also new clients began to approach him on the most "delicate" questions of religious status itself. The first prominent case in the files is apparently that of a Paul Haguenauer, a mixed heritage Jew married to his first cousin, a relatively rare situation creating the kinds of genealogical dilemmas French lawyers loved to attack. The case is referred to Garçon by a mutual friend, Dussaud. The time is just after promulgation of the June 2, 1941 Vichy statute defining "the Jew," but leaving ambiguous the status of those with mixed grandparental heritage.[32] Haguenauer, a teacher of Japanese, visits Gar-

[32] I was among the first researchers to gain access to the files donated to the French national archives in Fontainbleau by Maurice Garçon, files that comprise some 11,000 separate *dossiers* spanning a career begun in the year 1911. There are some 1000 dossiers

çon's offices in the *rue de l'Éperon* and outlines the facts of the case. Is there some hope?

Garçon focuses on this new area of law. As he does so, we again see developing a potentially grotesque legal outcome. Nothing in law school has prepared him for the substance of the religious laws—quite the contrary—but like the majority of his colleagues, legal training and experience *do* permit him to grasp the issues raised by the legislation and to make arguments where they will be helpful to his client. On June 23, 1941 he writes for Haguenauer what might have been the first memorandum of law by a seasoned practitioner about the June 2 statute:

> M. Haguenauer, who practices no religion and who is part of no Jewish circle, is from an Alsatian Jewish paternal line and a Norman Catholic maternal line. He therefore has two Jewish grandparents on the paternal side. In addition, he is married to a first cousin who is also the issue of Jewish grandparents. He must therefore, under Article 1, paragraph 1 of the law, be considered Jewish, because anyone descended of two or more Jewish grandparents and married to one who is descended from two Jewish grandparents—whatever his religion—is statutorily Jewish.[33]

Garçon concludes that, "under these circumstances, there is no doubt that M. Haguenauer is burdened by the incapacities that now cover Jews."[34] Even within the confines of his own internal office memorandum, he does not pursue a higher-level legal inquiry into the peculiarities of the statute as a creature of French traditional reasoning. Garçon does not try to argue that the first cousin marriage is an anomaly, nor does his memorandum in any way challenge the broader questions raised by such a statute. In this he is again typical of his colleagues—surely no adherent of such a law, but also available to make it the best it can be for whatever interests he is representing. Garçon, like most of the student respondents in this Article's addendum, cabins the statutory material within a narrow space of technically manageable issues. On the other hand, he turns with considerable thoroughness and skill to the *exceptions* under the June 2 statute. Since Haguenauer is a teacher, he can benefit from the article 3[35] exception for hold-

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from the Vichy years and those used below, on file with the author, bear the citation, AN [*Archives nationales*] 304 AP.

33 AN 304 AP no. 8523 (memorandum of June 23, 1941 to M. Dussaud about Haguenauer) (on file with author).

34 *Id.*

35 RECUEIL, *supra* note 25, at 50.

ers of the *croix de guerre*. Furthermore, Garçon finds in the *dossier* potential article 8[36] exceptional status in Haguenauer's career strongly buttressed because "he is the only person in France now capable of teaching Japanese."[37] And, Haguenauer's family is *vieille souche*.[38]

So there is some hope for the client, at least in the preservation of his function as a teacher. And then again, even this is to reckon without Garçon's contacts; these shall be conjured in Haguenauer's poignant letter of thanks to his counsel:

> Maître. I will let no time go by to express my appreciation for your cordial welcome; such signs of sympathy are especially comforting for a provisional "pariah," separated from his family. I also thank you for what you have told M. Dussaud in enlisting him to find the person on whom the decision depends. Thank you too for all you can do personally to draw the attention of that latter personage to what can only be thought of as an atrocious injustice.[39]

Haguenauer promises to come by and pick up the documents that have formed much of the file.

The episode does not seem to end happily, despite Garçon's best efforts. Dussaud writes his learned friend, thanking him warmly of course, but expressing the view that Garçon's opinion on Haguenauer's Jewishness closes the books on his remaining at his job, at least in France. "The occupying authorities," he suggests, "are not recognizing the exceptions delineated by Vichy."[40] Dussaud, whose judgment is not really borne out over the course of the four-year period, during which Vichy very much seemed the master of its own fate on questions of exceptional status under the religious laws, may well have been recounting his limited experience in this matter. Perhaps he has already spoken to the "personage" recommended by Garçon. In any event, Dussaud will now approach his own contacts and endeavor to "use H., for example, in Indochina or Japan. What a silly impulse, this marriage! [*Quelle mauvaise inspiration, que ce mariage*!]"[41]

The early Vichy years also brought other persecuted people across Garçon's threshold. While away from Paris during the sum-

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36 *Id.* at 52.

37 AN 304 AP no. 8523 (on file with author).

38 Meaning that his family had lived in France for generations.

39 AN 304 AP no. 8523 (letter from Dussaud to Garçon on June 24, 1941) (on file with author).

40 *Id.*

41 *Id.* (author's translation).

mer of 1941, the lawyer receives a letter from Dr. Paul Chevallier, whose membership in the secret society of freemasons had just cost him his jobs on the Faculty of Medicine and as resident physician in a hospital. Chevallier describes the law of August 11, 1941 dealing with freemasons as though it "conflates me with a Jew" [*Cette loi m'assimile à un juif*].[42]

With his typical technical flair, but also with the blinders we have labelled grotesque, Garçon peers into that comparison upon his return to the capital, a Paris that has now seen several round ups of Jewish people, including dozens of prominent lawyers. Garçon's internal memorandum indicates that Chevallier is both prejudiced and benefitted by the *difference*—not the conflation!—of the two statutes. First, the exceptions permitted under the June 2, 1941 statute for certain categories of Jews do not seem to apply to freemasons, since there is no cross-reference to them in the August 11 law. So the doctor will not be able to argue, for example, exceptional professional merit under article 8 of the Jewish law. He will therefore lose his job on the medical faculty, considered (like a law professor's) to be a government function.

But Garçon does not give up his client's whole position. If the freemason law excludes exceptional status, it also stops short of covering all the activities banned by the Jewish law. The cross-reference is only to *article 2*, and not article 3, of the June 2 statute. Since article 3 bars "General residencies" to Jews, there is no indication that these were off limits to freemasons. So Garçon can conclude, "Dr. C. apparently cannot be relieved of his post as a hospital doctor."[43] Half a loaf, but something to chew on. So it went in Vichy law offices.

We have every reason to believe that Garçon thought the racial laws vile. Yet he fails to raise (even in these internal memoranda) high-level legal arguments questioning the appropriateness of the new legislation under French foundational understandings, nor the illegality of ex post facto criminal laws, nor even the incorrectness of placing the burden of proof on the challenged client to disprove his religious status. The result, hardly unique but important because of the distinction of the man, is that Garçon generates a tasteful discourse of acceptance. By locating the issues on the technical level of mixed grandparental heritage, he early on loaned

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42 AN G no. 8907 (letter from Chevallier to Garçon on August 25, 1941) (on file with author).

43 *Id.*

his prestige to the new laws, while hardly benefitting his client in the failure to raise larger legal arguments.

III. A Pedagogical Approach to the Grotesque Practice of Law: Occupied Guernsey

If French and American lawyers have shown a capacity to validate racism through their legal practice, something about their professional training is probably implicated and worth exploring. For the French professoriat, only now beginning the soul-searching examination of Vichy law,[44] a challenge has been mounted to the noble tradition of *positivism*. For Americans, and for all those trained in the creative inductionism of the common law,[45] the question is in part one of appropriate language: can the lawyer find the words within the legal lexicon to express her sense that to indulge legal racism through low-level analysis is simply wrong? And, if that sense is missing, what can we do as teachers to instill it?

Because I think it is within the lawyer's ability—even in times of acute political crisis or violence—to achieve a sense of revulsion in the face of legalistic persecution and then to match that inner sense of justice with the outer flow of professional language, I have been teaching a "Vichy Unit" in every Law and Literature class I have offered since 1983. The Unit presents the student with a series of English language documents I found early in my research of the Vichy years. Gathered from the Occupied Channel Islands, these documents position the student to role-play as an English-trained lawyer in 1944 who is asked by a senior official to write a memorandum dealing with the then prevalent anti-Semitic legislation. The actual case involves the island of Guernsey, where the laws against the Jews were largely English translations of Vichy legislation. So the exercise in effect places the inquiry where hundreds of French lawyers found it from 1940-44: what to do with legislation running counter to most or all of the lawyer's fundamental beliefs in egalitarianism, in due process, and in not punishing people for beliefs or inherited traits.

By the time we reach the "Vichy Unit," we have already read or seen a number of stories sensitizing the student to the plight of the "Outsider to the Law": these usually include one or all of *The Merchant of Venice*, *Billy Budd*, *Sailor*, *The Stranger*, *To Kill A Mockingbird*, and *Native Son*, and films such as *The Accused*, *A*

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44 *See, e.g.*, Lochak, *supra* note 31; Dominique-Gros, *supra* note 26.

45 *See generally* Weisberg, *supra* note 25.

Story of Women, and *Mr. Klein* (the latter two explicitly dealing with Vichy). The student, in the role-playing guise, is permitted (as in real life) but not required to integrate a response to these stories into the assignment. (Most, as we shall see, do not explicitly refer to any fictional works. It is as though in actual practice, what one reads privately is deemed inappropriate for citation in "legal" documents, even when the student is role-playing in a Law and Literature setting. But some sensitivity to the outsider implicitly informs many responses.)

Nothing beyond the confines of the Unit's materials has been given the student in the way of historical information about Vichy law—this comes *after* the assignment has been handed in. Only then, for example, does the student learn that some lawyers loudly protested against various Vichy laws and that *none* of them were ever punished either by the French government or by the Nazis, even when the very legitimacy of certain forms of legalized violence was being directly challenged. Aside from the actual Guernsey documentation, the materials do include, however, a prominent article written for a leading legal journal by an eminent wartime French lawyer, Joseph Haennig.[46] Most students, as we shall see, are influenced by Haennig's prose, which reflects the rather low-level field of legal issues that French lawyers had become comfortable with by 1943 on the question, "What means of proof can the Jew of mixed blood offer to establish his nonaffiliation with the Jewish race?"[47]

In addition to the statute and Haennig's analysis, the materials also provide the student with a full factual picture of a real person, Mrs. Violet Woolnaugh. Her dilemma, embedded in the actual documents, must be gleaned from her own statements and those of a half-dozen supporting players, particularly those of her fellow businessman, Gill.[48] (Students do not always enjoy dealing with "primary documents," accustomed as they are to the clean crisp look of the casebooks.) An innkeeper on Guernsey, Mrs. Woolnaugh comes under suspicion of being a Jew, and hence her career in the hotel business—and perhaps her continuing residence on Guernsey—are seriously at risk. Mrs. Woolnaugh appears to have had two Jewish and two non-Jewish grandparents; a "mixed heritage individual," she joins hundreds of other Vichy victims as grist for the low-level legalistic analyst such as Joseph Haennig, or (in an

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46 *See generally* WEISBERG, *supra* note 9.

47 *See* Assignment, *infra* app. A; *see also supra* note 30.

48 The real Gill made no statement about Mrs. Woolnaugh's alleged marriage to a Jew.

example not yet presented to the student) Maurice Garçon.[49] The student—as a hypothetical Guernsey lawyer who is trained in many of the fundamental Anglo-American beliefs law schools inculcate—is asked to opine on Mrs. Woolnaugh's racial and religious status. What will the role-playing student do when asked, in turn, to "respond to the situation in four pages or less?"

I have now offered the Vichy Unit—without any variation from what follows—a total of twenty times at six different institutions to a total of 489 students.[50] With that data base, some conclusions can be drawn about the response to what I have called the grotesque in the law. There follow shortly seventeen representative responses culled from five different Law and Literature classes. Statistically, they are true to the full universe of responding students. I break down their responses generically, into several categories, and append a single-page graphic representing the spectrum of student responses:

A. Technical legal memoranda stressing low-level legal inquiries in a rhetorically "neutral" tone, particularly Mrs. Woolnaugh's Jewishness or non-Jewishness as a function of her mixed grandparental heritage—six of seventeen or 35.3%.[51] These overwhelmingly straightforward memoranda of law find for Mrs. Woolnaugh's non-Jewishness in a ratio of 5:6. Several of them refer to Auguste Spitz's having been deported as though it were a secondary or tertiary detail. One memorandum in six, or one in seventeen overall, find Mrs. Woolnaugh to be legally Jewish and hence subject to the sanctions of the law.

B. "Mixed" low-level and higher-level discourse—still in the form of technical legal memoranda, but where there is an embedded but somewhat more cogent appeal to a higher and more challenging level of *factual* or *legal* reasoning on the part of the hypothetical Guernsey reader—six of seventeen, or 35.3%.[52]

C. Responses still recognizable as responding to low-level technical questions but *overtly* embracing higher-level legal ques-

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49 *See supra* part II.B.

50 Aside from my course at Cardozo, Law and Literature students at UCLA, the Hebrew University in Jerusalem, the University of British Columbia at Vancouver, the University of Wollongong (New South Wales, Australia), and Brandeis University have completed the assignment. All were upperclass law students except at the latter two places, where the Vichy Unit was (at Wollongong) part of a first year law course and (at Brandeis) part of a Law and Literature senior seminar for English majors, many of whom were on their way to law school and minoring in "Legal Studies."

51 *See infra* Responses 1-6.

52 *See infra* Responses 7-12.

tions (with occasional moral or intensely practical modes of appeal often included)—two of seventeen, or 11.8%.[53]

D. Responses asking the reader to open his or her legalistic assessment of the situation to the highest levels of lawyerlike possibility, up to and including an authoritative rejection of *any* application of racial statutes in the Guernsey tradition of Anglo-American law—two of seventeen, or 11.8%.[54]

E. A response refusing to participate at all, and hence resigning from the practice of law—one of seventeen, or 5.8%.[55]

The percentage of students acting like "good little lawyers," as a few go on to depict themselves during subsequent classroom discussion, is at least 70.5%. Students exemplifying category "B" often fail to rise beyond the majority of their colleagues in "A," because—as we shall see—the hypothetical Guernsey reader may often be assumed to stress only the low-level analysis offered centrally in the document. In other words, "B" draws a response almost identical to "A" in the "real life" situation, and "B" students are forced to perceive that their expressed attempts to look a little better than the technocrats of "A" yield the identical results. ("Feeling better" about yourself because you have at least flagged some higher-level issues is something many Vichy lawyers did in the corridors or in private conversation. It had no effect on the persecutory legal discourse, which went with the flow of the majoritarian hermeneutic of acceptance.) Thus, my judgment is that twelve of seventeen in fact further the discourse of the grotesque by producing rhetoric that will be *received* as embracing the inquiry on a low-level of analytical generalization.

Perceived this way—and the reader need not agree with my conflation of "A" and "B"—although most "B" students do finally agree and even needlessly chastise themselves once we have dis-

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[53] *See infra* Responses 13 & 14.

[54] *See infra* Responses 15 & 16. It may be appropriate to add here what I hope the reader may be able to glean anyway—the reasons why I count Response 16 to be "Sublime" in the sense used by Owen Fiss in his response to this Article. *See* Owen M. Fiss, *Can A Lawyer Ever Do Right?*, 17 CARDOZO L. REV. 1859 (1996). The response of student 16 merges legal analysis and practice with a high sense of ethics and imaginative understanding of the victimized other. Its mix of inward personal struggle and highly pragmatic outward behavior—particularly in its strategy vis-à-vis the "villain" of the piece, Mr. Gill—is in my view optimal. We are training *lawyers*, not philosophers or moralists; but we want and need lawyers whose *legalistic* intuitions encompass the ability to reflect, to reach a conclusion harmonious with the lawyer's sense of fairness, and then to *act and to speak* in the direction of that conclusion so that fairness becomes the practice instead of the ideal.

[55] *See infra* Response 17.

cussed their reponses—category "C" (11.8%), and especially category "D" (11.8%), perceive the range of their potential responses as including such wider inquiries as what it means to be a lawyer in this constitutional tradition faced with such aberrational legislation, the antipathy to ex post facto laws, natural law arguments against entering into any technical hairsplitting on such an issue, unwillingness to shift the burden to the individual, and so forth.[56]

It needs to be emphasized that category "C" and "D" reponses are still overwhelmingly "legal," and that this is precisely what the assignment intended them to be. Only a tiny percentage of respondents (5.9%) opt out of their legal personna altogether to write as moralists rather than lawyers. Some of these, as here, express an interest in resigning from the law because of uneasiness with the situation. (Such expressions cross the statistical lines, i.e., one may do this while at the same time providing a technical answer to the issue raised.)[57]

Finally, students are discouraged in the class evaluating their responses from excess self-criticism as the discussion reveals how many take the path of legalistic line drawing that *might* help Mrs. Woolnaugh, but that simultaneously justifies the legislation as a whole and places at risk others who cannot factually raise the pro-Woolnaugh arguments. No one knows how they actually would have behaved in such a crisis-laden environment. On the other hand, it becomes clear that it is the *group's sense of "being forced to do something"*—rather than any tangible threat—that precisely brings about a norm of discourse rationalizing the existence itself of such strange laws. Each student, when learning that each Vichy lawyer at every moment had the power without real risk to challenge the laws at their very foundation, must then question the urge of legal professionals to respond the way we do.

When pressing issues arise in each respondent's subsequent practice, even if they may not match the moral acuity of the Vichy dilemma, this assignment aspires to make that practitioner step

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56 Some of these issues, particularly the last (burden shifting) are addressed by some "A" respondents. And natural law and ex post facto arguments are also raised by some "B" respondents. Again, however, absent the rhetorical and practical strategies foregrounded by the "C" and "D" respondents, such attempts are unlikely to do more than make the respondent "feel better" about a bad situation. The Law and Literature course fully explores and distinguishes these rhetorical strategies.

57 See Response 10, where the writer adds that he or she will take no further assignments from such a bureaucratic structure—tantamount to at least a provisional resignation. This responses' two-page *coda* is especially creative but must be tested against its likely effect—another well meaning effort that serves to animate the racial laws and that also removes from practice an individual whose inclinations would be to resist racism.

back, take individual responsibility, and recognize that a simple declaration of legalistic resistance to the bad belongs in our system of law, stands a real chance of inspiring other lawyers to a similar stance, and can often be articulated without risk of punishment or even ostracism.

APPENDIX A

LAW AND LITERATURE

Writing Assignment

You are a lawyer on the occupied (British) channel island of Guernsey in early 1944. You have a prewar law degree from the University of Kent (Canterbury) and have had a thriving practice on Guernsey since 1936. You have been asked by the Bailiff of Guernsey (who has been delegated full administrative power by the occupying powers for this matter) to commence proceedings against a Mrs. V.B. Woolnaugh of Vauvert Manor, Vauvert Road to prohibit her from owning and operating a small inn on Vauvert Road. She has been the proprietress of that inn for some twenty-five years.

"Distasteful business," mumbled the Bailiff as he handed you the attached file. "But she lied to us on Dec. 2, 1940. Apparently she was secretly married to this fellow Auguste Spitz the month before, you know, the one who got deported last year. And the ceremony, we're told by this fellow Gill, took place in a Jewish temple!"

"Sorry about the print quality of this file," the Bailiff continues, "but it's all in there."

As a preliminary measure, the Bailiff asks you to draft a memo stating the issues arising under the law of April 26, 1941 that might apply to this situation. He attaches the recent law review article by a certain Joseph Haennig, a French lawyer.[58] "My good friend, the Gauleiter of Paris, tells me that lawyers discuss this stuff a lot over there. It's basically the same regime, and the law's not too different."

Respond to the situation in four pages or less.

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[58] *See* Appendix B attached to this file; *see also supra* note 30.

LA GAZETTE OFFICIELLE

Verordnung

Massnahmen gegen Juden

THIRD ORDER

Relating to Measures against Jews.

DATED APRIL 28th 1941.

By virtue of the powers conferred upon me by the Fuehrer and Supreme Chief of the Army, I order as follows:

§ 1.

JEWS.

(1) Any person having at least three grand-parents of pure Jewish blood shall be deemed to be a Jew. A grand-parent having belonged to the Jewish religious community shall be deemed to be of pure Jewish blood.

Any person having two grand-parents of pure Jewish blood who

(a) at the time of the publication of this Order, belongs to the Jewish religious community or who subsequently joins it; or

(b) at the time of the publication of this Order is married to a Jew or who subsequently marries a Jew,

shall be deemed a Jew.

In doubtful cases, any person who belongs or has belonged to the Jewish religious community shall be deemed to be a Jew.

(2) § 1 of the Order of September 27th, 1940, relating to measures against Jews (VOBIF p. 92) is hereby revoked.

§ 2.

...

(2) Jewish employees who are dismissed as from May 1st, 1941, or any later date, despite the fact that their employment is not prohibited, shall not be entitled to claim compensation for dismissal without due notice.

§ 7.

STRAFVORSCHRIFT.

§ 7.

PENALTIES.

Infringements of this Order shall be punishable by imprisonment and a fine, or either of these penalties, unless a more severe penalty is otherwise prescribed.

Confiscation of goods may also be ordered.

§ 8.

INKRAFTTRETEN.

Diese Verordnung tritt mit ihrer Verkündung in Kraft.

DER MILITARBEFEHLSHABER IN FRANKREICH.

§ 8.

COMMENCEMENT.

This Order shall come into force as from its publication.

THE MILITARBEFEHLSHABER IN FRANCE.

The Controlling Committee of the States of Guernsey

ORDER

THE German Authorities have ordered the collection of all unlicensed cycles, ladies or gents.

A receipt will be issued for every cycle delivered and payment on valuation will be made in due course.

DATED this 10th day of June, 1941.

STAMFORD RAFFLES,
For and on behalf of the Controlling Committee of the States of Guernsey.

Genehmigt [Approved]
Fürst OETTINGEN
Rittmeister
Nebenstelle Guernsey
der
Feldkommandantur 515.

RATIONING OF CIGARETTES, CIGARS CIGARILLOS AND TOBACCO

RBE- UND BESCHAFTIGUNGS-VERBOT.

against Jews (VOBIF p.92) is hereby revoked.

§ 2.

SUBSEQUENT DECLARATION.

(1) Any person, not having previously been deemed to be a Jew, who comes within the terms of § 1 of this Order shall, in accordance with § 3 of the Order of September 27th, 1940, relating to measures against Jews (VOBIF p.92) and with §§ 2 and 3 of the Second Order of October 18th, 1940, relating to measures against Jews (VOBIF p.112), make the required declaration before May 20th, 1941.

(2) Measures against persons, having previously been deemed to be Jews, who do not come within the terms of § 1 of this Order, shall be withdrawn on request.

§ 3.

PROHIBITION ON THE CARRYING-ON OF CERTAIN ECONOMIC ACTIVITIES AND ON THE EMPLOYMENT OF JEWS.

(1) On and after May 20th, 1941, Jews and Jewish undertakings for whom or for which a managing administrator has not been appointed shall be prohibited from carrying on the following economic activities:

(a) wholesale and retail trade;
(b) hotel and catering industry;
(c) insurance;
(d) navigation;
(e) dispatch and storage;
(f) travel agencies, organisation of tours;
(g) guides;
(h) transport undertakings of all descriptions, including the hire of motor and other vehicles;
(i) banking and money-exchange;
(j) pawnbroking;
(k) information and money-collect-

DER MILITÄRBEFEHLSHABER IN FRANKREICH.

ZWEITE VERORDNUNG

Ueber Massnahmen gegen Juden

VOM 18. OKTOBER 1940.

Auf Grund der mir vom Führer und Obersten Befehlshaber der Wehrmacht erteilten Ermächtigung verordne ich, was folgt.

Juedische wirtschaftliche Unternehmen oder solche wirtschaftlichen Unternehmen, die nach dem 23. Mai 1940 noch juedisch gewesen sind, sind bis zum 31. Oktober 1940 bei dem zustaendigen Unterpraefekten, in Paris beim Polizeipraefekten anzumelden. Zustaendig ist die Behoerde, in deren Bezirk natuerliche Personen ihren Wohnsitz, juristische Personen ihren Sitz haben. Dies gilt auch fuer juedische wirtschaftliche Unternehmen mit dem Sitz ausserhalb des besetzten Gebietes fuer den im besetzten Gebiet betriebenen Teil des Unternehmens. Fuer die nach Par. 1 Abs 3 juedischen Unternehmen besteht keine Meldepflicht.

Die Anmeldung hat zu enthalten:

(a) Namen, Sitz und Eigentümer oder Paechter des Unternehmens unter Hervorhebung der Umstaende, auf Grund deren das Unternehmen juedisch ist oder nach dem 23. Mai 1940 noch juedisch gewesen ist;
(b) bei Unternehmen, die nicht mehr juedisch sind, ... Vorgaenge, durch welche die Voraussetzungen weggefallen sind;
(c) die Art der Geschaeftstätigkeit nach den gehandelten oder hergestell-

THE MILITARBEFEHLSHABER IN FRANCE.

SECOND ORDER

Relating to Measures against Jews.

DATED OCTOBER 18th, 1940.

By virtue of the powers conferred upon me by the Fuehrer and Supreme Chief of the Army, I order as follows:

2.

All Jewish economic enterprises, or any economic enterprises which have been Jewish after May 23rd 1940, are to be declared by October 31st 1940 to the competent local authorities and in Paris to the "Prefet de Police". The competent authorities are those of the Arrondissement where the persons concerned have their residence, and bodies their registered office. This also applies to Jewish economic enterprises having their registered office outside occupied territory for the part of the enterprise worked in occupied territory. For Jewish enterprises referred to in Para. 1, 3, no declaration is to be made.

The declaration must include:

(a) Name, registered office, owner or licensee of the enterprise, pointing out the circumstances according to which the enterprise is, or has been Jewish after May 23rd 1940.
(b) In the case of enterprises which are no longer Jewish, the facts which have led to the disappearance of this presumption;
(c) The nature of the enterprise according to the goods handled, manufactured or administered,

TOBACCO

Supplementary Order

THE Controlling Committee of the States of Guernsey, in exercise of the powers conferred ... Ordinance of the Royal Court, hereby makes the following Order:

1. To section ... of the Order relating to the Rationing of Cigarettes, Cigars, Cigarillos and Tobacco, issued by the Committee on the 4th November, 1940, shall be added the following:—

"The Ration Cards issued under this Order shall not be transferable, and any transfer or any ... transfer (including any ... advertisement or other notice inviting negotiations for such a transfer) or any attempt to obtain any of these rationed commodities under colour of such a transfer, shall be deemed to be a contravention of the provisions of this Order."

2. Any contravention of the provisions of this Supplementary Order, or of the original Tobacco etc. Rationing Order of the 4th November, 1940, shall be punishable under Section 02 of the Defence Regulations (Guernsey), 1939.

A. J. LAINE,
For and on behalf of the Controlling Committee of the States of Guernsey.

Ladies' College,
Guernsey.
11th June, 1941.

Genehmigt (Approved)
Nebenstelle Guernsey
der Feldkommandantur 515

[illegible]gewerbe unterliegt;
Gross- und Einzelhandels;
Gaststätten- und Beherbergungsgewerbes;
Versicherungsgewerbes;
Schiffahrt;
Spedition und Lagerei;
Veranstaltung und Vermittlung von Reisen;
Fremdenführergewerbes;
Geschäfte von Verkehrs-[illegible] Fuhrunternehmen jeder Art [illegible] der Vermietung von [illegible]wagen und Fuhrwerken;
Banken- und Geldwechsel[illegible]gewerbes;
Pfandleihgewerbes;
[illegible] gewerbsmässigen [illegible] und des Inkassogewerbes;
Bewachungsgewerbes;
Geschäfte von Automatenaufstellern;
[illegible] gewerbsmässigen Anzeigenvermittlung;
[illegible] gewerbsmässigen Wohnungs-, Grundstücks- und [Hy]pothekenvermittlung;
[illegible] gewerbsmässigen Stellenvermittlung;
[illegible] gewerbsmässigen Ehevermittlung;
[illegible] gewerbsmässigen Vermittlung von Geschäften über Waren [od]er gewerbliche Leistungen [(A]genten, Makler, Vertreter, [Re]isende u.s.w.).

[illegible] keinem Gewerbe dürfen nach [illegible] Mai 1941 Juden als leitende [illegible] oder als Angestellte, die in [illegible] mit der Kundschaft treten, [illegible] werden. Leitende Ange[stellte s]ind diejenigen, die allein oder [illegible] mit anderen Personen [illegible] haben, die am Ge[winn de]s Unternehmens beteiligt sind [oder] im Einzelfall vom Militärbe[fehlshab]er oder von den zuständigen [französis]chen Stellen als leitend be[zeichnet] werden.

[illegible] auf Verlangen des Militärbe[fehlshab]ers oder der zuständigen fran[zösische]n Stellen sind statt der aus[zuscheid]enden jüdischen Angestellten [nicht-jü]dische zu beschäftigen.

[illegible] or for which a managing administrator has not been appointed shall be prohibited from carrying on the following economic activities:

(a) wholesale and retail trade;
(b) hotel and catering industry;
(c) insurance;
(d) navigation;
(e) dispatch and storage;
(f) travel agencies, organisation of tours;
(g) guides;
(h) transport undertakings of all descriptions, including the hire of motor and other vehicles;
(i) banking and money exchange;
(j) pawnbroking;
(k) information and money-collecting offices;
(l) supervision undertakings;
(m) dealings in automatic machines;
(n) publicity agencies;
(o) businesses concerned with dealings in apartments, lands and mortgages;
(p) employment agencies;
(q) matrimonial agencies;
(r) intermediaries for dealings in goods and industrial loans (agents, brokers, representatives, travellers, etc.).

(2) In no undertaking shall a Jew be engaged as a higher official or as an employee who comes into contact with customers. Persons who alone or jointly with others have right of signature, or who have an interest in the profits of the undertaking or who individually are designated as such by the Militärbefehlshaber or the competent French authorities shall be deemed to be higher officials.

(3) On the Order of the Militärbefehlshaber or the competent French authorities, Jewish employees shall be dismissed and replaced by non-Jewish employees.

haben. Dies gilt auch fuer juedische wirtschaftliche Unternehmen mit dem Sitz ausserhalb des besetzten Gebietes fuer den im besetzten Gebiet betriebenen [illegible] des Unternehmens. Fuer die nach Par. 1, Abs. 2 juedischen Unternehmen [illegible].

Die A[nmeldung muss] enthalten:
(a) [illegible]
(b) bei Unternehmen, die nicht [illegible]
(c) die Art des Unternehmens nach den gehandelten oder hergestellten oder verwalteten Guetern unter Hervorhebung des Hauptgegenstandes;
(d) Zweigniederlassungen, Werkstätten und Nebenbetrieben;
(e) den Umsatz nach der letzten Umsatzsteuererklaerung;
(f) den Wert des Warenlagers, der vorhandenen Rohstoffvorraete, der verwalteten Grundstuecke und Gelder.

3.

Alle juedischen wirtschaftlichen Unternehmen, darueber hinaus alle Juden und Ehegatten von Juden, sowie alle juristischen Personen, die nicht wirtschaftliche Unternehmen [sind] und mehr als ein Drittel Juden unter den Mitgliedern oder in der Leitung haben, haben bis [zum] 31. Oktober 1940 bei den Unterpraefekten, in Paris beim Polizeipraefekten, anzumelden [illegible]:

die ihnen gehoerigen oder verpfaendeten [illegible]
Aktien [illegible]
Gesellschaftsanteile [illegible]
stillen Beteiligungen an wirtschaftlichen Unternehmen und Darlehen an wirtschaftliche Unternehmen;
ferner ihre Grundstuecke und Rechte an Grundstuecken.

[illegible] having their registered office outside occupied territory, for the part of the enterprise worked in occupied territory. For Jewish enterprises referred to in Para. 1, 2, no declaration is to be made.

The declaration must include:
(a) Name, registered office, owner or licensee of the enterprise, pointing out the circumstances according to which the enterprise is, or has been Jewish after May 23rd [illegible];
(b) In the case of enterprises which are no longer Jewish, the facts which have led to the disappearance of this presumption;
(c) The nature of the enterprise according to the goods handled, manufactured or administered, pointing out the main object of the enterprise;
(d) Branches, factories and secondary enterprises;
(e) Turnover according to the last turnover tax declaration.
(f) Value of goods stocks, available raw materials, real properties and moneys administered.

3.

All Jewish economic enterprises, as well as all Jews and spouses of Jews and all bodies corporate which are not economic enterprises and include more than one third of Jews amongst their members or managing staff shall by October 31st 1940 furnish the Sous-Prefet, in Paris the "Prefet de Police", with the following particulars:

Shares either belonging to them or held by them as security;
Partnerships;
Sleeping partnerships in economic enterprises and loans to economic enterprises, also their real property and rights therein;

[illegible] Order."

2. Any contravention of the provisions of this Supplementary Order, or of the original Tobacco, etc. Rationing Order of the 4th November, 1940, shall be punishable under Section 102 of the Defence Regulations (Guernsey), 1939.

A. J. LAINE,
For and on behalf of the Controlling Committee of the States of Guernsey.

Ladies' College,
Guernsey.
11th June, 1941.

Genehmigt (Approved)
Nebenstelle Guernsey
der Feldkommandantur 515
(Verw.)
DR. REFFLER
Kriegsverwaltungsrat.
18. Juni 1941.

(2567

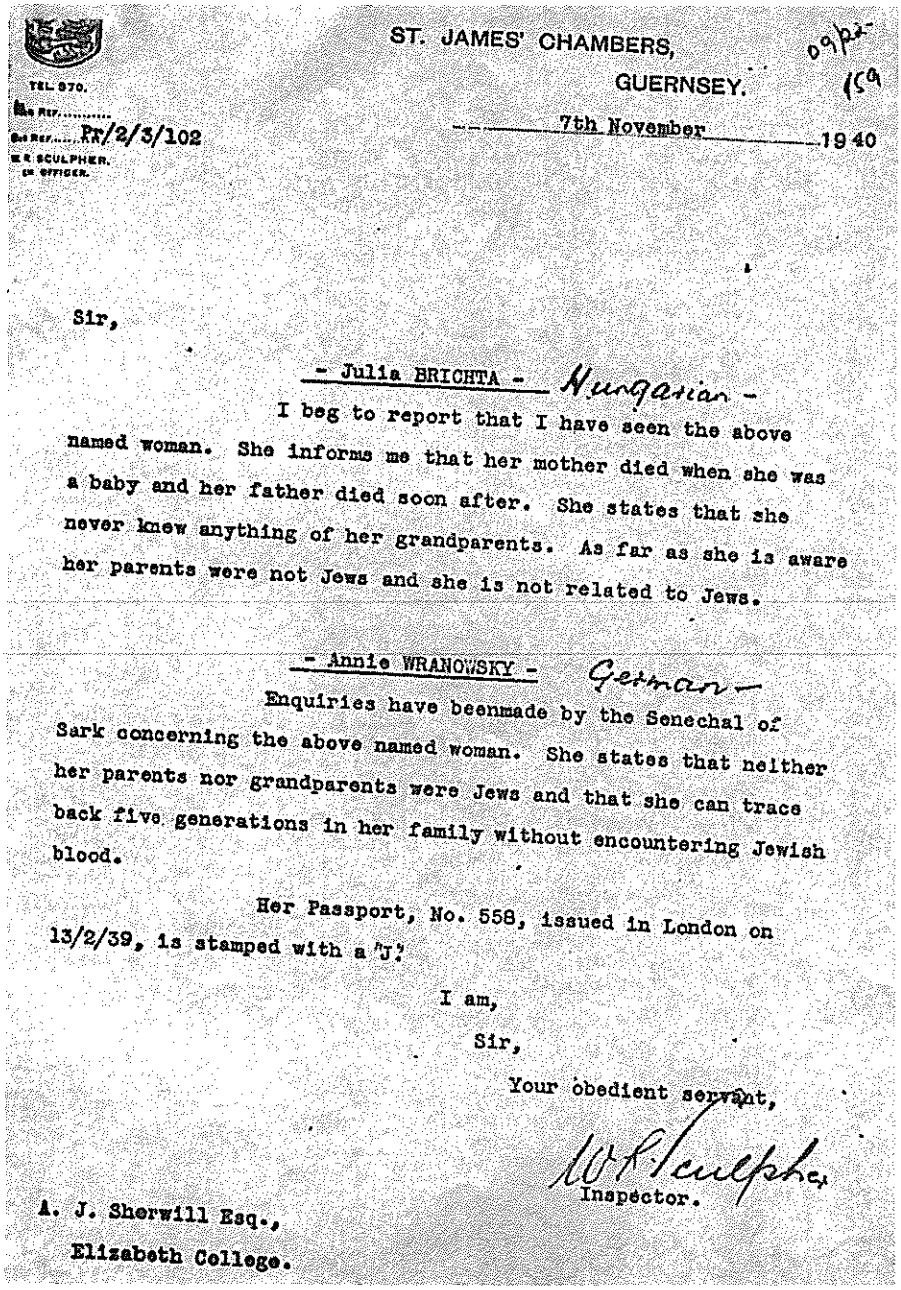
The Controlling Committee of the States of Guernsey

ORDER RESPECTING BULBS, (of May 12th 1941).

MR. H. J. DUCHEMIN, Ruette Villa, Castel, is hereby appointed to exercise the same duty of referee with right of final decision in matters referred to him in regard to the valuation of Bulbs as were assigned to Mr. R. O. Falla by the above-mentioned Order.

DATED this 18th day of June, 1941.

JOHN LEALE,
For and on behalf of the Controlling Committee of the States of Guernsey.



ST. JAMES' CHAMBERS,
GUERNSEY.

TEL. 870.
Our Ref. PR/2/3/102
H. R. SCULPHER,
Chief Officer.

7th November 1940

Sir,

- Julia BRICHTA - Hungarian -

I beg to report that I have seen the above named woman. She informs me that her mother died when she was a baby and her father died soon after. She states that she never knew anything of her grandparents. As far as she is aware her parents were not Jews and she is not related to Jews.

- Annie WRANOWSKY - German -

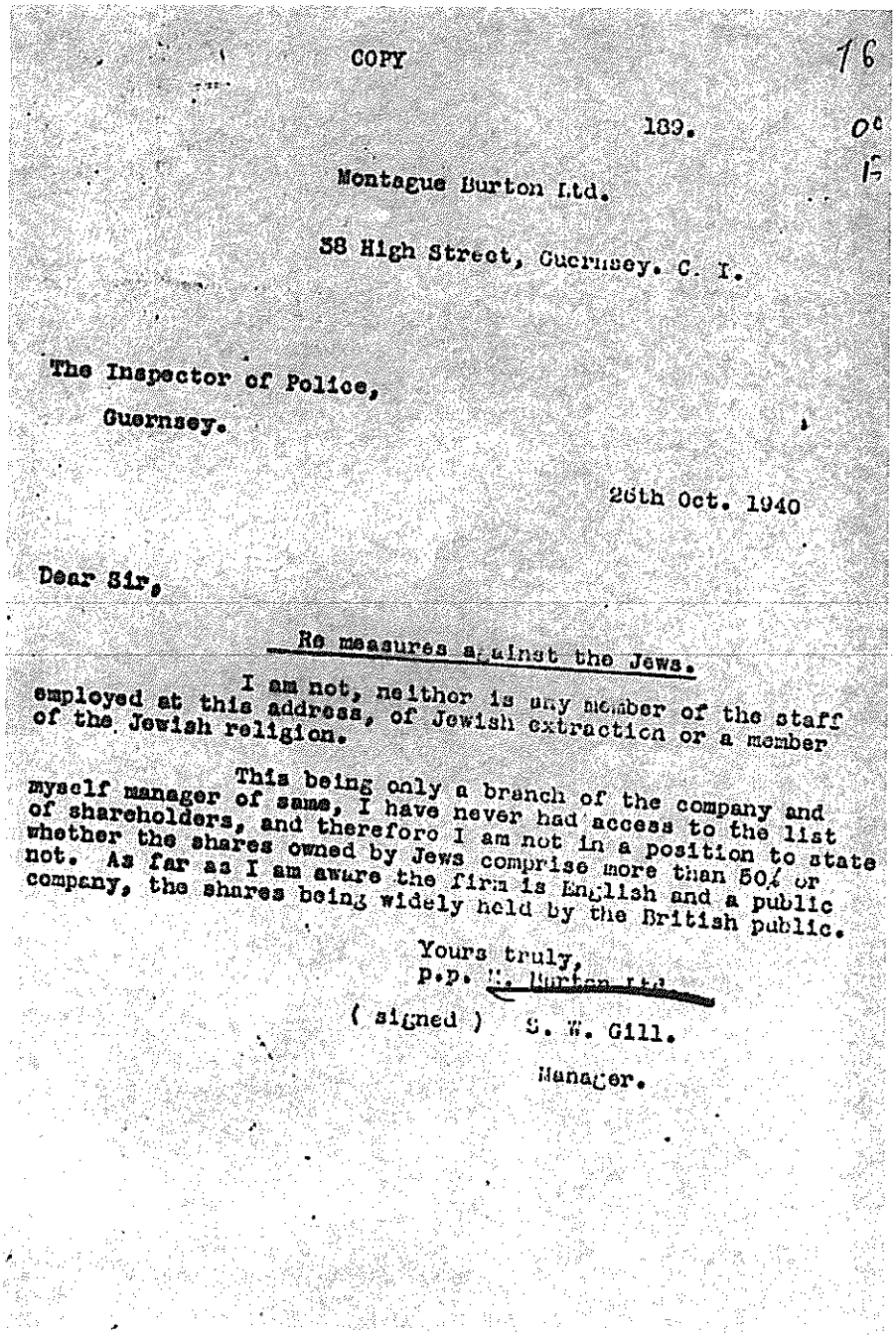
Enquiries have beenmade by the Senechal of Sark concerning the above named woman. She states that neither her parents nor grandparents were Jews and that she can trace back five generations in her family without encountering Jewish blood.

Her Passport, No. 558, issued in London on 13/2/39, is stamped with a 'J'.

I am,
Sir,
Your obedient servant,

H. R. Sculpher
Inspector.

A. J. Sherwill Esq.,
Elizabeth College.



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Montague Burton Ltd.

38 High Street, Guernsey. C. I.

The Inspector of Police,

Guernsey.

26th Oct. 1940

Dear Sir,

Re measures against the Jews.

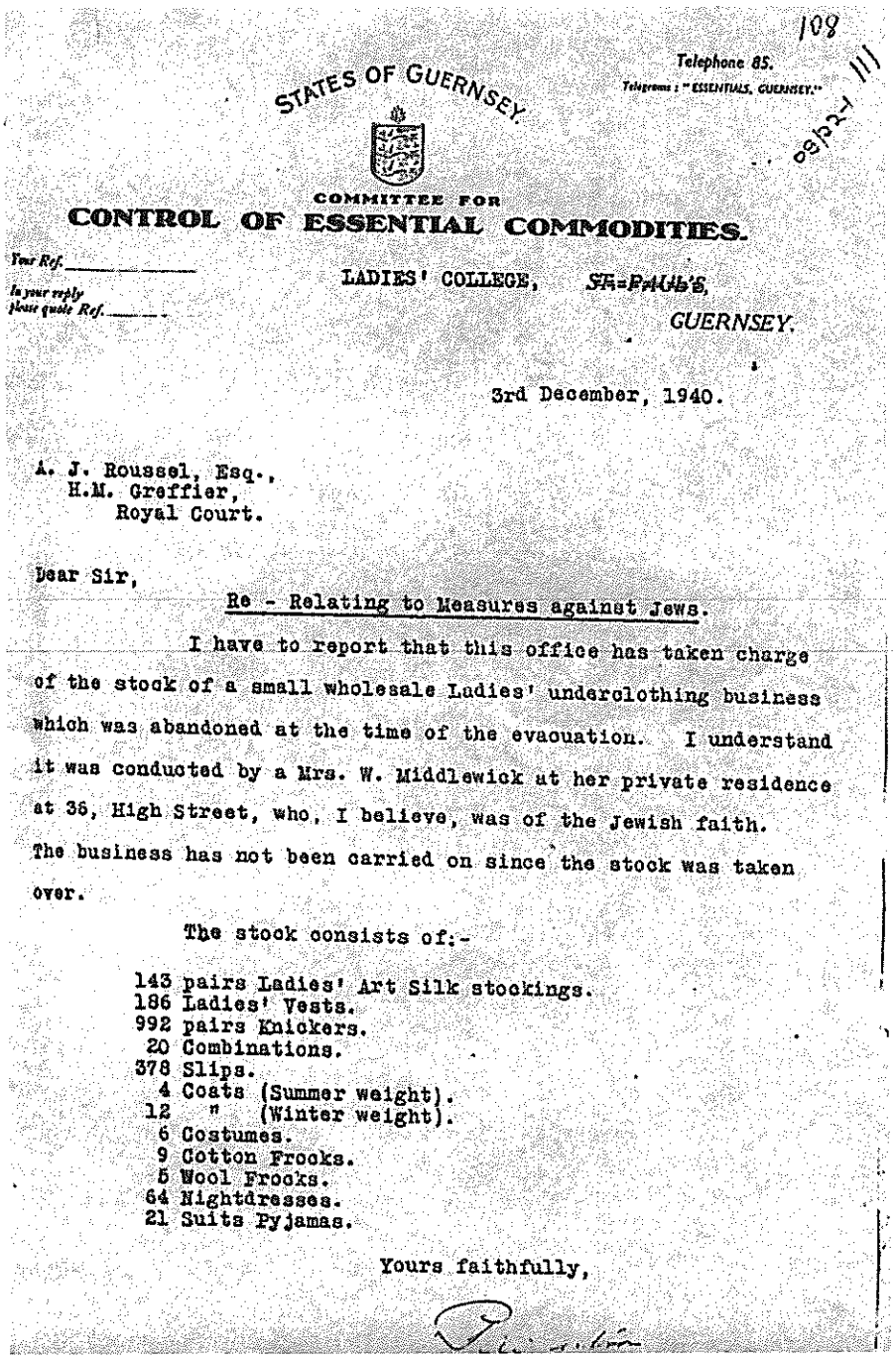
I am not, neither is any member of the staff employed at this address, of Jewish extraction or a member of the Jewish religion.

This being only a branch of the company and myself manager of same, I have never had access to the list of shareholders, and therefore I am not in a position to state whether the shares owned by Jews comprise more than 50% or not. As far as I am aware the firm is English and a public company, the shares being widely held by the British public.

Yours truly,
p.p. M. Burton Ltd.

(signed) S. W. Gill.

Manager.



109

STATES OF GUERNSEY.

Telephone 85.
Telegrams: "ESSENTIALS, GUERNSEY."

COMMITTEE FOR
CONTROL OF ESSENTIAL COMMODITIES.

Your Ref. _____

In your reply please quote Ref. _____.

LADIES' COLLEGE, ~~ST. PAUL'S,~~
GUERNSEY.

3rd December, 1940.

A. J. Roussel, Esq.,
H.M. Greffier,
Royal Court.

Dear Sir,

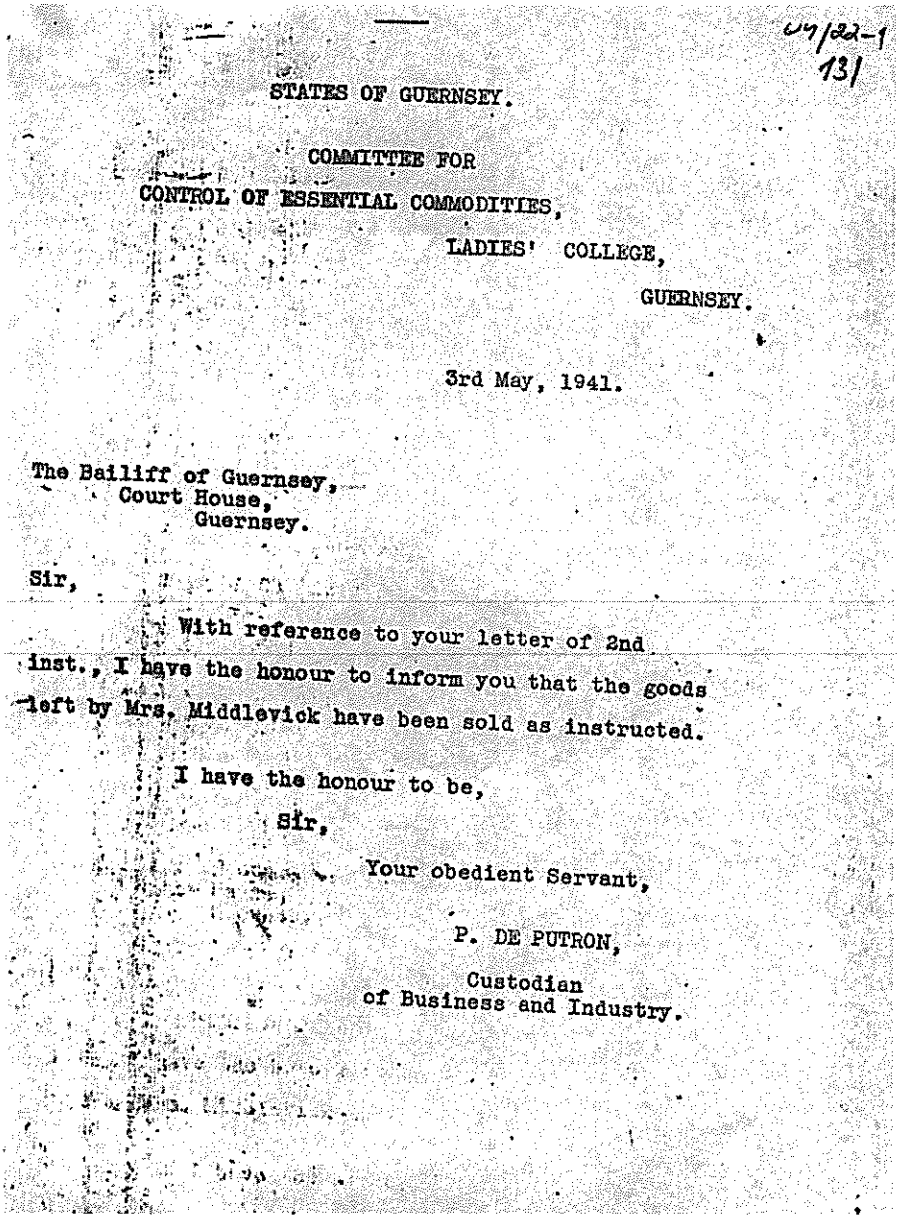
Re - Relating to Measures against Jews.

I have to report that this office has taken charge of the stock of a small wholesale Ladies' underclothing business which was abandoned at the time of the evacuation. I understand it was conducted by a Mrs. W. Middlewick at her private residence at 36, High Street, who, I believe, was of the Jewish faith. The business has not been carried on since the stock was taken over.

The stock consists of:-

143 pairs Ladies' Art Silk stockings.
186 Ladies' Vests.
992 pairs Knickers.
20 Combinations.
378 Slips.
4 Coats (Summer weight).
12 " (Winter weight).
6 Costumes.
9 Cotton Frocks.
5 Wool Frocks.
64 Nightdresses.
21 Suits Pyjamas.

Yours faithfully,



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STATES OF GUERNSEY.

COMMITTEE FOR
CONTROL OF ESSENTIAL COMMODITIES,
LADIES' COLLEGE,
GUERNSEY.

3rd May, 1941.

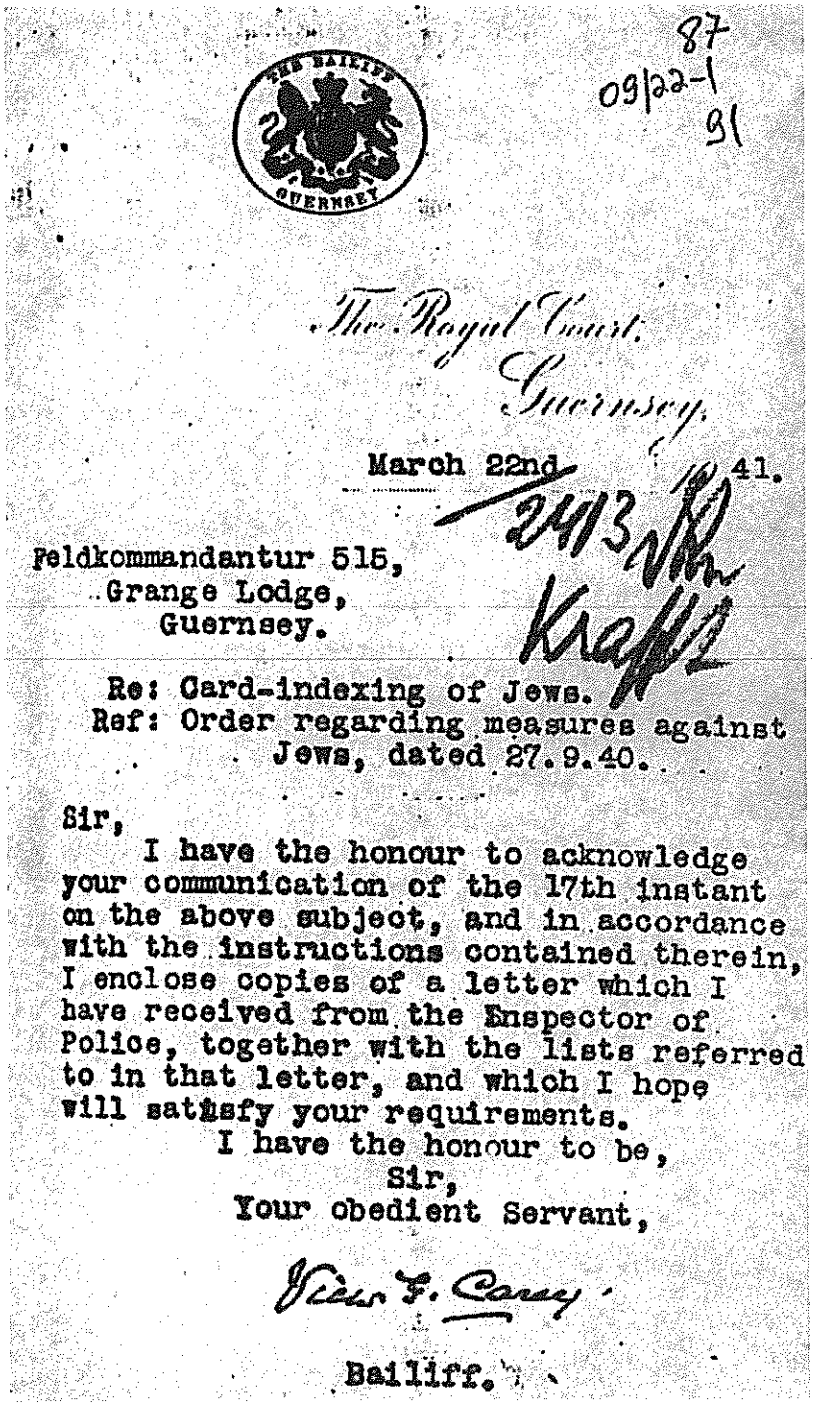
The Bailiff of Guernsey,
Court House,
Guernsey.

Sir,

With reference to your letter of 2nd inst., I have the honour to inform you that the goods left by Mrs. Middlevick have been sold as instructed.

I have the honour to be,
Sir,
Your obedient Servant,

P. DE PUTRON,
Custodian
of Business and Industry.



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The Royal Court,
Guernsey.

March 22nd 41.

2413 Kdo
Kraft

Feldkommandantur 515,
Grange Lodge,
Guernsey.

Re: Card-indexing of Jews.
Ref: Order regarding measures against Jews, dated 27.9.40.

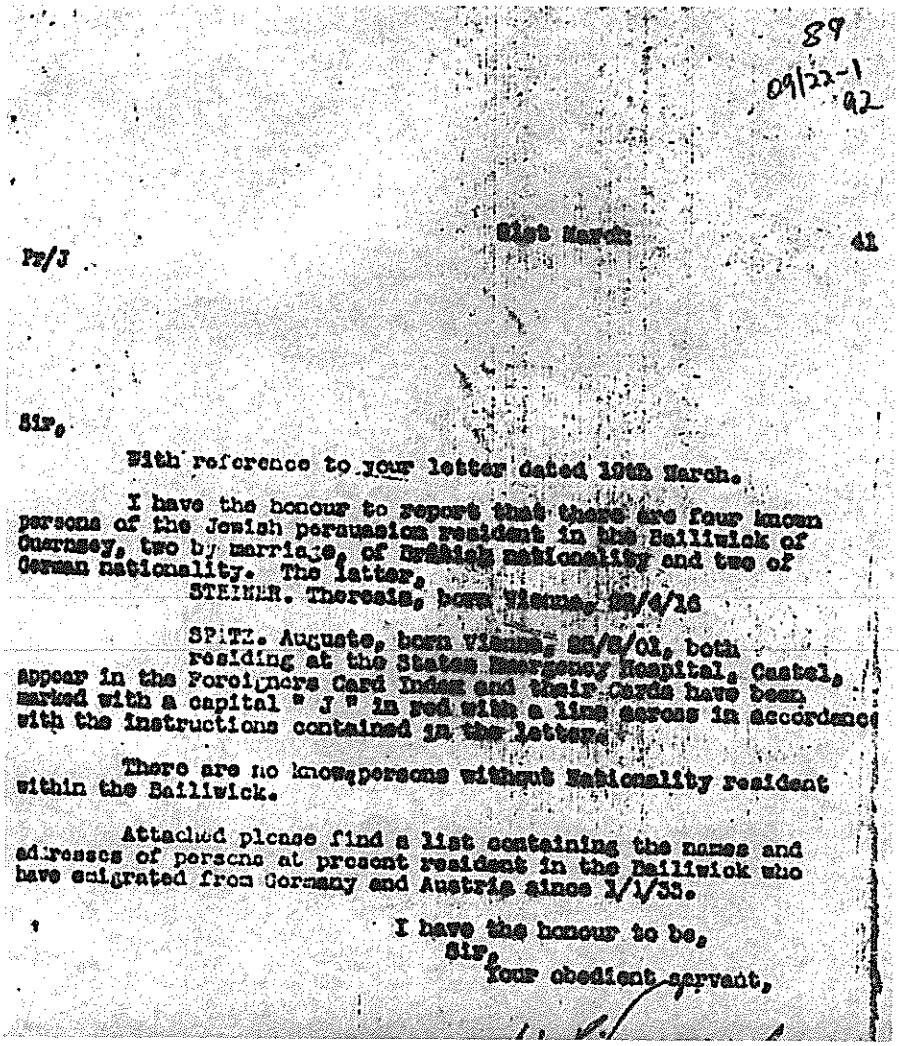
Sir,

I have the honour to acknowledge your communication of the 17th instant on the above subject, and in accordance with the instructions contained therein, I enclose copies of a letter which I have received from the Inspector of Police, together with the lists referred to in that letter, and which I hope will satisfy your requirements.

I have the honour to be,
Sir,
Your obedient Servant,

Wm F. Carey

Bailiff.



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21st March 41

PE/J

Sir,

With reference to your letter dated 19th March.

I have the honour to report that there are four known persons of the Jewish persuasion resident in the Bailiwick of Guernsey, two by marriage, of British nationality and two of German nationality. The latter,

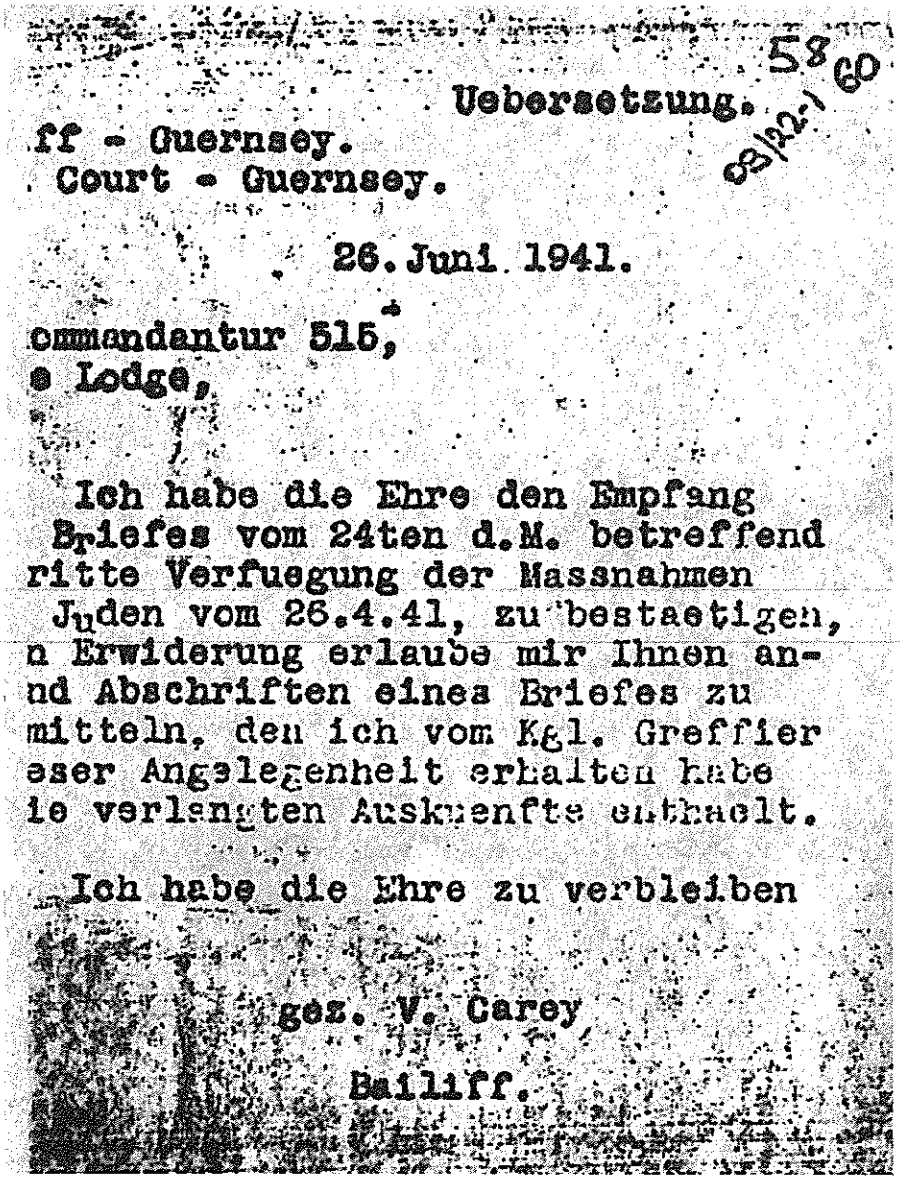
STEINER. Theresia, born Vienna, 22/4/16

SPITZ. Auguste, born Vienna, 22/8/01, both residing at the Staten Emergency Hospital, Castel, appear in the Foreigners Card Index and their cards have been marked with a capital " J " in red with a line across in accordance with the instructions contained in the letter.

There are no known persons without Nationality resident within the Bailiwick.

Attached please find a list containing the names and addresses of persons at present resident in the Bailiwick who have emigrated from Germany and Austria since 1/1/33.

I have the honour to be,
Sir,
Your obedient servant,



58 60
Uebersetzung.
83/42-1
ff - Guernsey.
Court - Guernsey.

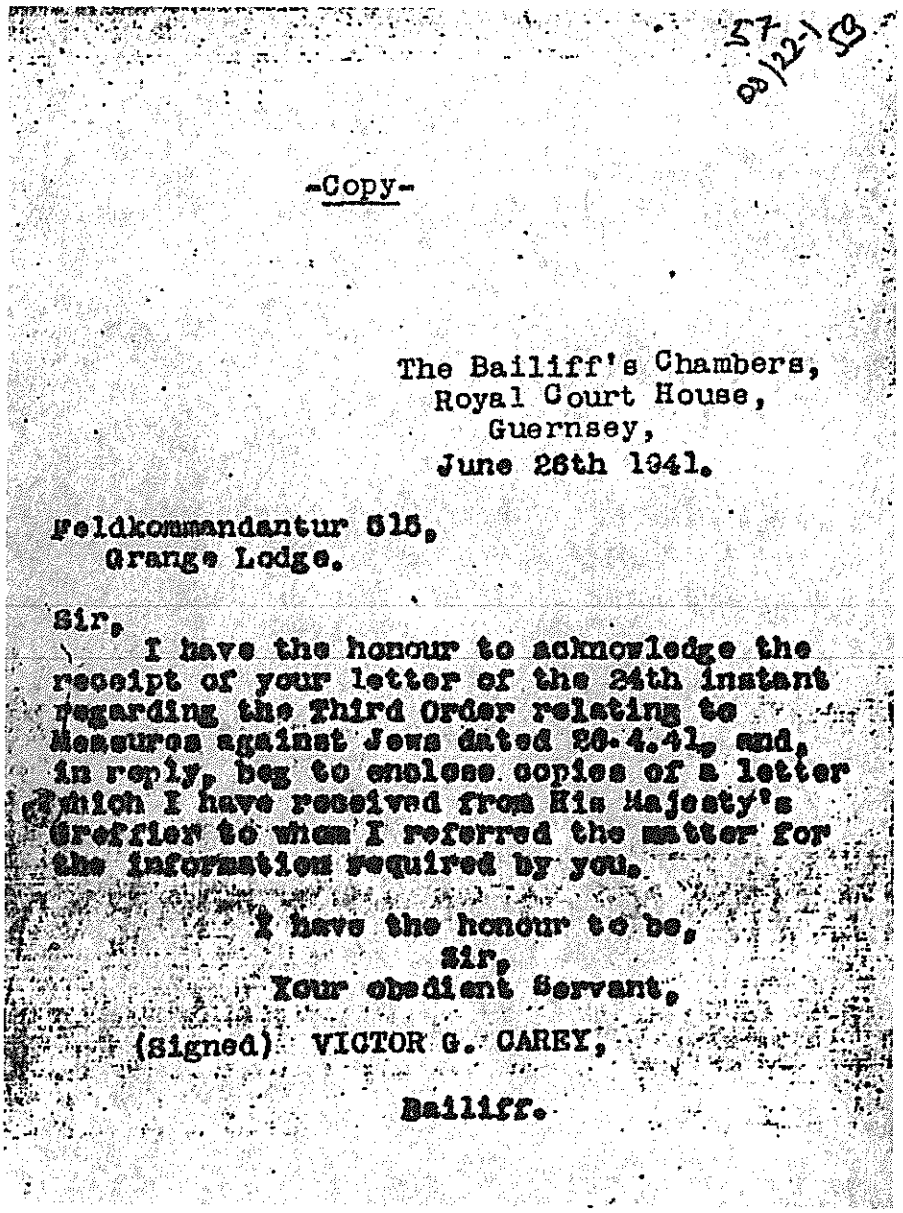
26. Juni 1941.

ommandantur 515,
e Lodge,

Ich habe die Ehre den Empfang
Briefes vom 24ten d.M. betreffend
ritte Verfuegung der Massnahmen
Juden vom 26.4.41, zu bestaetigen,
n Erwiderung erlaube mir Ihnen an-
nd Abschriften eines Briefes zu
mitteln, den ich vom Kgl. Greffier
eser Angelegenheit erhalten habe
ie verlangten Auskuenfte enthaelt.

Ich habe die Ehre zu verbleiben

gez. V. Carey
Bailiff.



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The Bailiff's Chambers,
Royal Court House,
Guernsey,
June 26th 1941.

Feldkommandantur 515,
Grange Lodge.

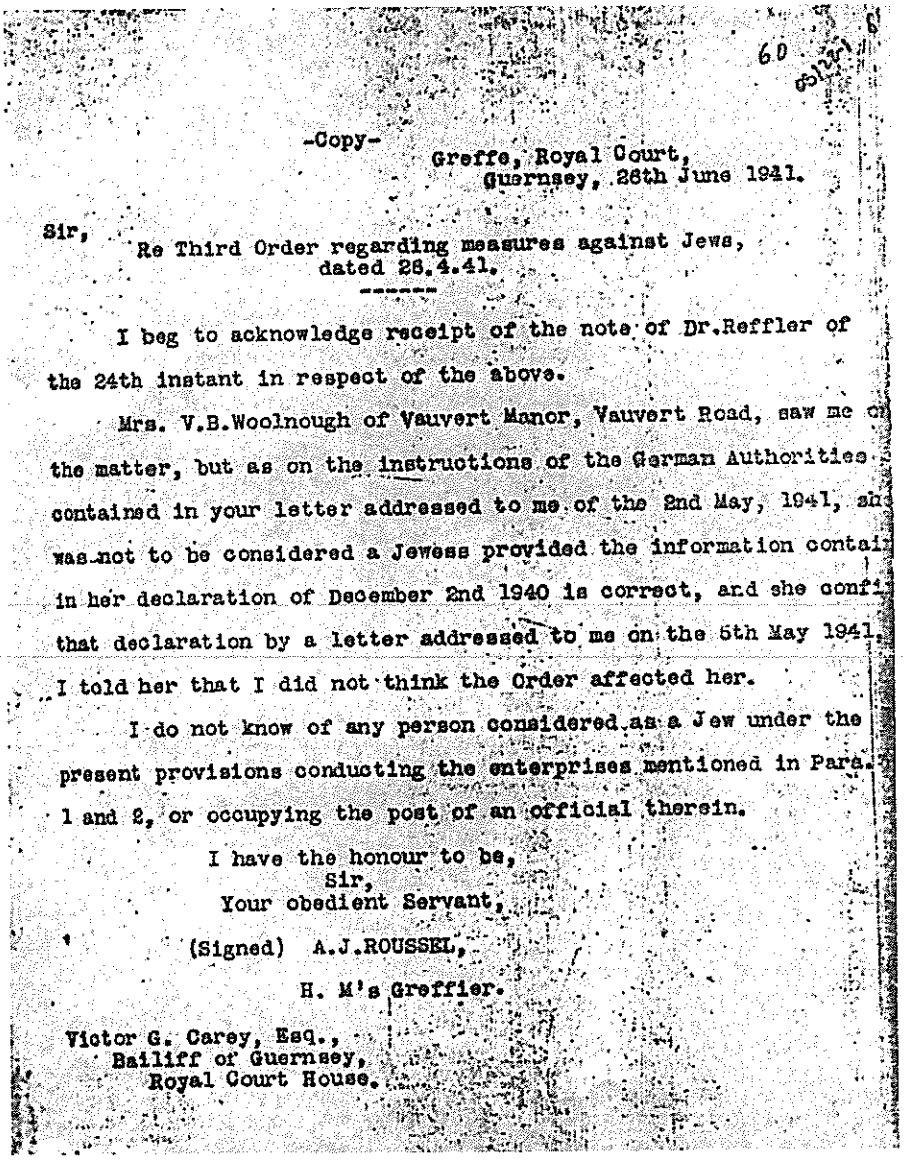
Sir,

I have the honour to acknowledge the receipt of your letter of the 24th instant regarding the Third Order relating to Measures against Jews dated 28.4.41, and, in reply, beg to enclose copies of a letter which I have received from His Majesty's Greffier to whom I referred the matter for the information required by you.

I have the honour to be,
Sir,
Your obedient Servant,

(Signed) VICTOR G. CAREY,

Bailiff.



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Greffe, Royal Court,
Guernsey, 28th June 1941.

Sir,

Re Third Order regarding measures against Jews, dated 26.4.41.

I beg to acknowledge receipt of the note of Dr.Reffler of the 24th instant in respect of the above.

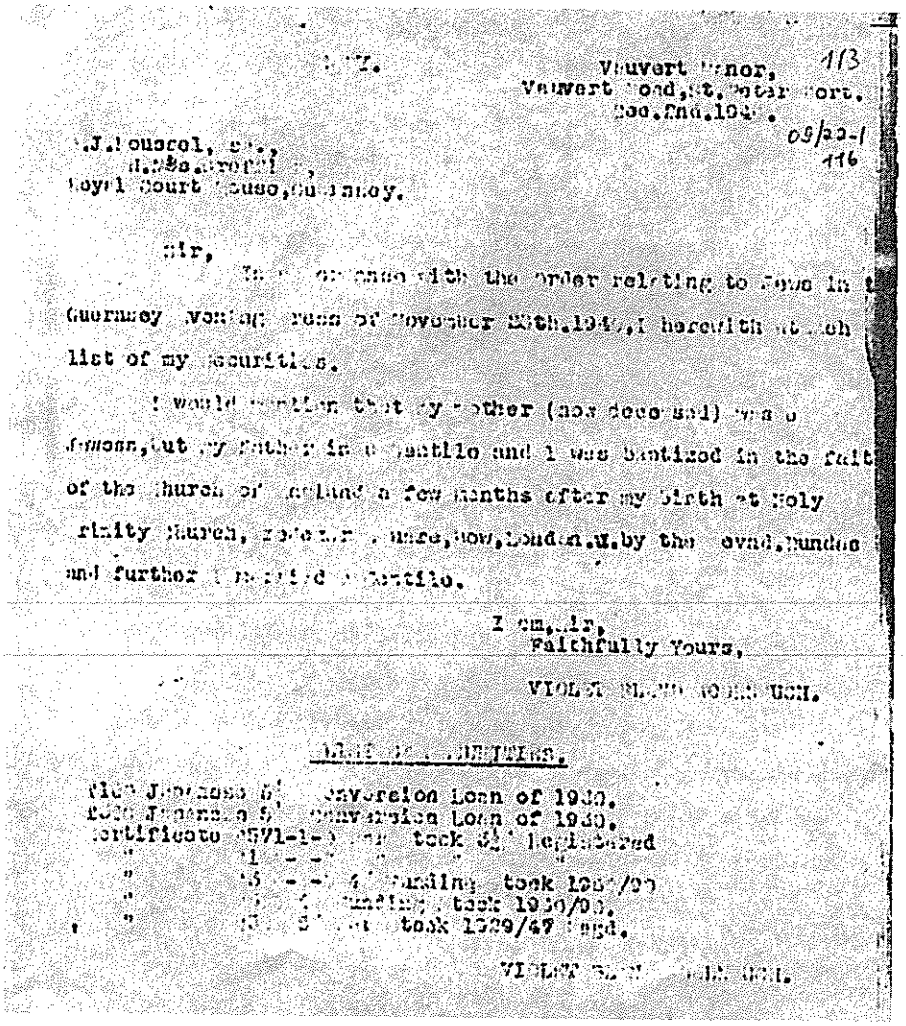
Mrs. V.B.Woolnough of Vauvert Manor, Vauvert Road, saw me on the matter, but as on the instructions of the German Authorities contained in your letter addressed to me of the 2nd May, 1941, she was not to be considered a Jewess provided the information contained in her declaration of December 2nd 1940 is correct, and she confirmed that declaration by a letter addressed to me on the 5th May 1941. I told her that I did not think the Order affected her.

I do not know of any person considered as a Jew under the present provisions conducting the enterprises mentioned in Para. 1 and 2, or occupying the post of an official therein.

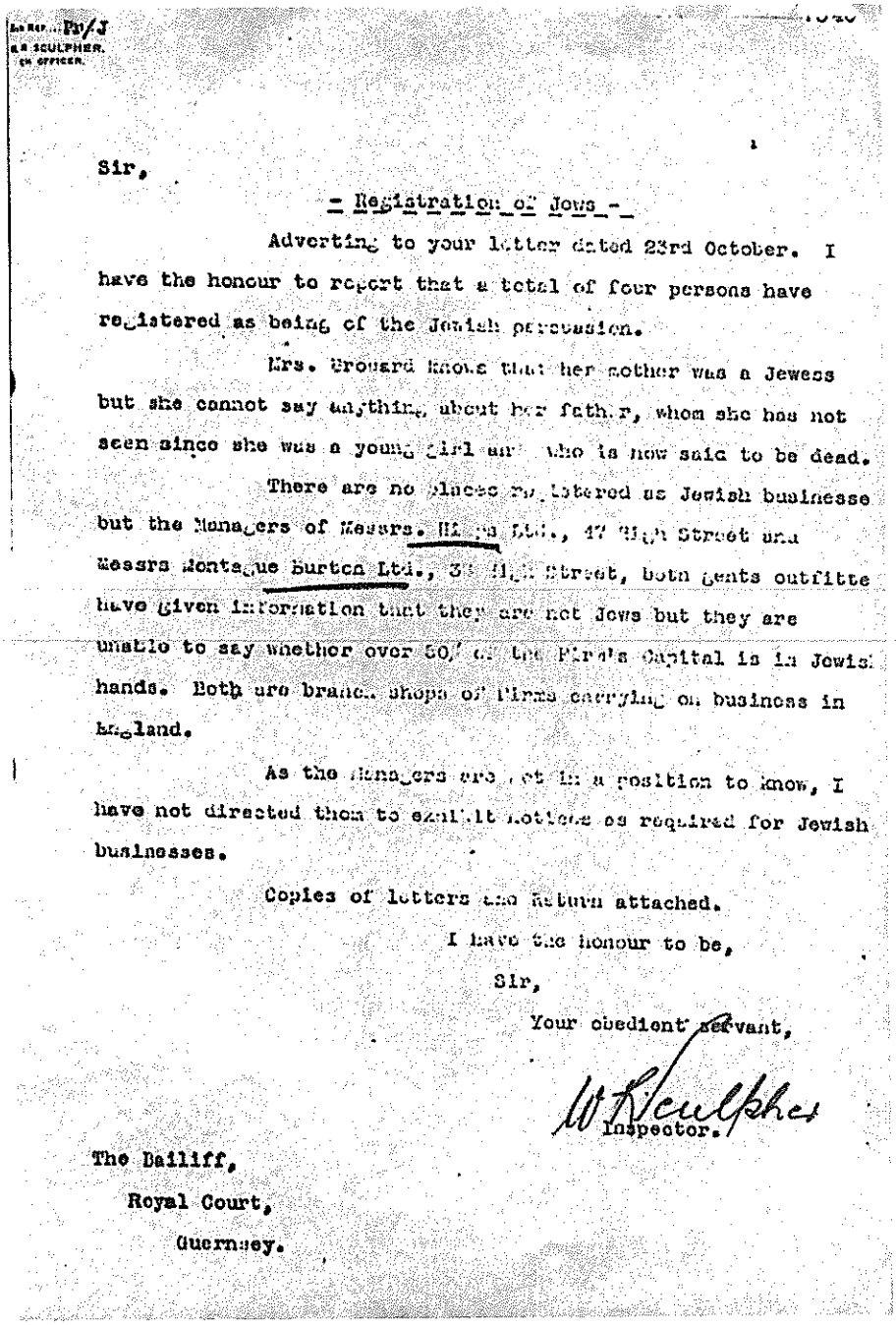
I have the honour to be,
Sir,
Your obedient Servant,

(Signed) A.J.ROUSSEL,
H. M's Greffier.

Victor G. Carey, Esq.,
Bailiff of Guernsey,
Royal Court House.



The text of this letter reads as follows: "Sir, In accordance with the order relating to Jews in [the] Guernsey Evening Press of November 28th, 1940, I herewith attach [a] list of my securities. I would mention that my mother (now deceased) was a Jewess, but my father is a Gentile and I was baptized in the faith of the Church of England a few months after my birth at Holy Trinity Church [rest of line illegible] and further I married a Gentile. I am, Sir, Faithfully Yours, Violet [Blanche?] Woolnaugh." --Eds.



Your Ref. Py/J
W.R. SCULPHER.
CH. OFFICER.

Sir,

= Registration of Jews =

Adverting to your letter dated 23rd October. I have the honour to report that a total of four persons have registered as being of the Jewish persuasion.

Mrs. Brouard knows that her mother was a Jewess but she cannot say anything about her father, whom she has not seen since she was a young girl and who is now said to be dead.

There are no places registered as Jewish businesse but the Managers of Messrs. Hi[illegible] Ltd., 17 High Street and Messrs Montague Burton Ltd., 3[illegible] High Street, both Gents outfitte have given information that they are not Jews but they are unable to say whether over 50% of the Firm's Capital is in Jewish hands. Both are branch shops of Firms carrying on business in England.

As the Managers are not in a position to know, I have not directed them to exhibit notices as required for Jewish businesses.

Copies of letters and return attached.

I have the honour to be,

Sir,

Your obedient servant,

W. R. Sculpher
Inspector.

The Bailiff,
Royal Court,
Guernsey.

APPENDIX "What Means of Proof Can the Jew of Mixed Blood Offer to Establish His Nonaffiliation with the Jewish Race?"

The Commission on the Jewish Laws has been established by the head of State to give its view on the interpretation of Article 1 of the Law of 2 June 1941 concerning the subject of nonaffiliation with the Jewish race.

The Commission believes that the statute writers allowed more proof than merely that of belonging to another religion recognized by the State prior to the law of 9 December 1905. It has noted that "in each case, the adjudicator may ascertain that the claimant either has never belonged, or has ceased to belong in fact, to the Jewish community" (*Gazette du Palais* 1943, 1st sem., Doctrine, p. 14). . . .

We believe that neither good sense nor the law could lead to the view that the statute writers required of an individual having only two Jewish grandparents proof of his belonging to the Catholic or Protestant denominations in order to avoid being included on the lists of Jews. . . .

Since the courts must now decide each case on its own merits, we would do well to cite as an example German law, and thus to see how it overcomes any difficulty relating to proof of nonaffiliation with the Jewish race. This exercise reveals a largeness and objectivity of spirit. . . .

A recent case of particular note dealt with the female descendant of two Jewish grandparents, baptised as a Protestant, who, under the Article stipulating the definition of a citizen of the Reich, only would become Jewish if she adhered to the Jewish religion, the same solution incidentally as is reached under the law of 2 June 1941.

This woman of mixed Protestant and Jewish heritage had, for a period of

The material in this appendix originally appeared as an article by Joseph Haennig, a Parisian lawyer, in the edition of the *Gazette du Palais* (the traditional reporter of French statutes and cases) covering the first semester of 1943, p. 31. The translation is my own.

six months, at the express request of her Jewish father and against the wishes of her Protestant mother, attended classes at religious school to learn about the Jewish faith. Once each year until her father's death in 1931, she accompanied him to synagogue on the New Year.

On the other hand, she never contributed to the synagogue, while still retaining her name on the list kept there.

Under these circumstances and facts, the Supreme Court of Leipzig was called on to consider her case. It first noted that, as soon as she learned of the presence of her name on the Jewish lists, she requested its removal, in the spring of 1938.

The Court affirmed the lower court judge's view that she had only attended New Year's services in order to preserve family peace. The view that there was no sufficient tie to the Jewish community in this case was thus deemed correct.

[However, the defendant had called herself a Jew in order to obtain employment from a Jewish agency.] Theoretically, the Court of Leipzig refused to consider the motives leading an individual to certain specific acts apparently linking him to the Jewish community. However, where these links have been merely for pretense, the court instructed lower courts not to take them into account if it has been established, as in the instant case, that the defendant was merely using the Jewish religion as a means to acquire an advantage by that intermediary.

This analysis of the German law furnishes an interesting contribution to the study of a subject still little understood by the French courts. The analysis indicates a possible route, without risk of distorting the statute writers' intention, and in conformity with the principles which underlie the racial statutes and cases.

JOSEPH HAENNIG,
Member of the Appellate Bar
Paris

APPENDIX C[59]

CATEGORY A
RESPONSE 1

MEMORANDUM OF LAW

To: Bailiff of Guernsey
From: Attorney for the Fuhrer
Re: Religious status of Mrs. V.B. Woolnaugh (alias Mrs. Spitz)

Questions Presented:

1. According to the legal definition, is Mrs. Woolnaugh a Jew?
2. Under current law, should Mrs. Woolnaugh's business be allowed to continue to operate?

Discussion of the Issues:

1. The law in this matter could not be clearer. As published in the *Gazette Officielle*, the Third Order, Relating to Measures against Jews, the criteria for determining whether a person is in fact a Jew, clearly includes Mrs. Woolnaugh in the category of "Jew." Section 1 of the Order states:

> Any person having two grandparents of pure Jewish blood who . . . is married to a Jew or who subsequently marries a *Jew; shall be deemed a Jew*.

There can be no doubt that Mrs. Woolnaugh falls squarely into this category. She has admitted to having two Jewish grandparents, as evidenced by her letter of December 2, 1940 where she admits (unequivocally) that her mother was a Jew. Knowing the law, Mrs. Woolnaugh did not stress any ambiguity surrounding the religion of her mother, it is logical to assume that if her mother were half Jew, she would have so stated. She did not. The logical conclusion being that her mother was "pure" Jew. Consequently, there is no doubt that Woolnaugh had two Jewish grandparents.

The second criteria that has been met, in order to be fully confident in our conclusion that Woolnaugh is fact a Jew, is that she married a Jew a month before she wrote the letter. The fact that she stated in the letter that she married a gentile is, although not untrue, clearly intentionally misleading. Woolnaugh did not dis-

[59] These student responses are being published essentially as delivered and have not been edited in any way except to correct minor typographical and grammatical errors.

close that she has not limited her appetite for men to only one husband. Nor has she limited that appetite to non-Jews.

Mrs. Woolnaugh, as learned by the Bailiff's office (see page 1 of the record), took a second husband in November of 1940, his name was Auguste Spitz, a Jew. To make matters even clearer for our purposes, they were married in a Jewish Temple.

An additional criteria for half-Jews to be considered Jews, for purposes of the Third Order, is that they belong to the Jewish community. Woolnaugh, in marrying a Jew, in a Jewish Temple, clearly embraced the Jewish community. So even if the marriage itself were not enough, the embracing of the Jewish community would certainly satisfy the criteria.

Not only is Mrs. Woolnaugh a Jew (it is obvious that she did not assume her husband's name in an effort to conceal her true affiliation), but it could be asserted that she is doubly deserving of that label because she took affirmative steps to be affiliated with Jews. She wanted to be a Jew, and she became a Jew. Now that it is inconvenient for her to admit what she is, she seeks to deceive and mislead. I suggest she is the worst kind of Jew, that is a Jew by birth and then given the opportunity, a Jew by choice.

2. The second issue is even more clear cut. Section 3 of the Third Order prohibits Jews from carrying on certain economic activities. Included in those activities is the "hotel and catering industry." There is no room for debate that indeed an Inn, such as the one owned and operated by Mrs. Woolnaugh, is within this classification.

In accordance with the law, the Jewish establishment of Vauvert Manor must be closed and its assets seized in compliance with the orders of the Fuhrer.

CATEGORY A
RESPONSE 2

MEMORANDUM

To: Victor G. Carey, Esp., Bailiff of Guernsey, Royal Court House
From: [deleted]
Re: Mrs. V.B. Woolnaugh of Vauvert Manor

I have thoroughly reviewed the file as you have requested and there are several issues that arise with respect to the Third Order, Relating to Measures against Jews, dated April 26, 1941, as it pertains to Mrs. V.B. Woolnaugh of Vauvert Manor.

Since the Third Order is the highest law of the land presumably surpassing any other law or Constitution of this country, I am compelled to apply it and analyze it as it relates to Mrs. Woolnaugh, despite the many interpretative problems the statute has in terms of its meaning, intent and application. The statute is very unclear and difficult to apply, but it can be done. We are to determine whether Mrs. Woolnaugh is a Jew within Section 1. There are three ways one may be deemed a Jew. Any person having three Jewish grandparents may be Jewish. It is possible, although unlikely, that Mrs. Woolnaugh is Jewish under this provisions. Her mother was Jewish and her father was a Gentile, but there is no information on Mrs. Woolnaugh's grandparents, so the only way to apply the statute is if we try various hypothetical combinations of the possible religious backgrounds of her grandparents. Her Jewish mother could have had, at most, two Jewish parents and her Gentile father could have had one Jewish parent. Thus, conceivably, Mrs. Woolnaugh could have had, at most, three Jewish grandparents. However, I am not able to conclusively determine how many Jewish grandparents Mrs. Woolnaugh has in her family tree.

A person with two Jewish grandparents may also be deemed Jewish if she meets either one of two criteria: she must belong to the Jewish religious community or is married to a Jew. Only the latter applies to the instant case. It is more probable when hypothetically working out Mrs. Woolnaugh's family tree that she had two Jewish grandparents rather than three. A fellow, S.W. Gill, however, has alleged that Mrs. Woolnaugh was secretly married to the now deported, Auguste Spitz, at a Jewish temple. I had a very difficult time believing this allegation because there is no evidence in our file to substantiate the accusation. Moreover, how could

there be a Jewish temple on our island if there are only four known Jews here (according to the card-indexing, which I am sure is accurate). I do not believe that four people could constitute a temple. Perhaps the couple could have travelled somewhere, off the island, where there was a Jewish temple that would perform a marriage ceremony; but then, I do not believe they would have returned to Guernsey with its current state of affairs.

This fellow Gill is very interesting to me. I am not sure why he was motivated to accuse Mrs. Woolnaugh of being married to Auguste Spitz. Perhaps he has some information about Jews (I do not know how he would have any more information than this government or anyone else) or perhaps he is nervous about something—I am always suspicious of snitches. In Guernsey, there are two known Jews, Steiner and Spitz, of German nationality, and there are two by marriage, of British nationality, whose names are unknown. One of them may be Ann Wranowsky whose English passport was stamped with a "J." It is not clear from the files who the other Jew by marriage is. I did not have enough information but it seemed that Mrs. W. Middlewick may have been the fourth married English person to be Jewish. The copy qualities are very poor so I could not read the number of Mrs. Middlewick's residence, but it appears to be 38 High Street. If that is the address, then it is the same address where this fellow Gill has his branch office. I think we should investigate this fellow Gill further.

So far, I am sure, Sir, that you are not very impressed with my legal analysis. All of the above facts are pure speculation which would never hold up in a court of law. There is however one controlling German case on point. The Supreme Court of Leipzig has determined that a woman with a Jewish father and Protestant mother, baptized as a Protestant did not have sufficient ties to the Jewish community to be deemed Jewish. (See, Haennig article). Mrs. Woolnaugh's family and religious background are precisely the same except her mother, not her father, was Jewish. In fact, Mrs. Woolnaugh's case is even stronger [quaere!] because she has no ties to the Jewish community, whereas in the German case, the woman regularly attended synagogue and she had her name on a list kept there.

Thus, Mrs. Woolnaugh, as she stated in her December 2, 1940 declaration, is not Jewish for purposes of the Third Order. According to His Majesty's Greffier's letter dated June 26, 1941, the German Authorities have stated that Mrs. Woolnaugh "was not considered a Jewess provided the information contained in her dec-

laration of December 2nd 1940 is correct." There is no evidence I gathered from the files to believe that her declaration is incorrect.

If Mrs. Woolnaugh is not deemed Jewish by Section 1 of the Third Order, then Section 3 is a nonissue. However, alternatively, even if Mrs. Woolnaugh was found to be Jewish, Section 3 prohibits Jews from carrying on only certain economic activities. Most of the businesses involve trade and exchanges, from marriage to insurance and navigation. The enumerated businesses tend to be very large, for example "hotel and catering industry." Mrs. Woolnaugh basically runs a b&b out of the home where she lives. It is unlikely that the statute's drafters intended to prohibit Jews from running such small cottage shops. Due to the specificity of the list, with no language to indicate that it is not exclusive, I do not believe a small inn fits into the list of rather large businesses. Therefore, I agree with the Greffier that the Third Order does not apply to Mrs. Woolnaugh. I have the honour to be,

Sir,
Your obedient Servant,
[name deleted]

CATEGORY A
RESPONSE 3

MEMORANDUM

Mrs. Woolnaugh has run her inn on Vauvert Road for the past 25 years. She has not committed any crime or transgressed any law. However, there is a law which would take her inn away from her. It is an unconscionable law. It is a product of the dark times in which we live. The law is triggered by no legal wrong but by the irrational and immoral basis of affiliation to race and religion. I would not comply with such laws if I were not forced to. Thankfully, in Mrs. Woolnaugh's case, the law does not apply.

The law of April 26, 1941 states that no Jew may operate a business on the island of Guernsey. In order for the statute to apply one must, obviously, qualify as a Jew. As indicated by her statement of December 2, 1941, Mrs. Woolnaugh's mother was Jewish and her father was a gentile. Thus, the statute's first definition of Jewishness, the presence of three Jewish grandparents, clearly does not apply to Mrs. Woolnaugh. To comply with the second definition, one must be a descendent of two Jewish grandparents and either be of the Jewish faith or married to a Jew. Mrs. Woolnaugh was baptized in the Church of England. The matter of whether she is married to a Jew or a gentile, however, is unresolved.

Mrs. Woolnaugh has stated that she is married to a gentile. A gentlemen, a S.W. Gill, has stated that she was married in 1941 in a secret ceremony to a now deported Jew, Auguste Spitz. The marriage apparently took place in a Jewish temple.

The bailiff is under the impression that Mrs. Woolnaugh lied in her December 2 statement. The credibility of Mr. Gill is unclear except that he does from time to time report on the presence of Jews in businesses on the island and does so with thoroughness and diligence. This would either indicate that he is a dependable witness or that he is an unreliable troublemaker zealous in the removal of Jews from businesses on the island. And one must wonder, if the ceremony was secret, how did Mr. Gill happen to stumble upon it and witness it? Certainly there is every reason to believe in the truthfulness of Mrs. Woolnaugh, a respectable businesswoman and a solid citizen of Guernsey. She may, of course, be lying to protect herself. However, the shaky credibility of Mr. Gill and the solid reputation of Mrs. Woolnaugh, Mr. Gill has not succeeded in proving his allegation but has at best cast some doubt

over Mrs. Woolnaugh's statement. But how does one apply the law to a doubt?

First, consider the effects of the statute. Businesses are taken away from hardworking citizens and often sold. Lives are disrupted, years of invested work are thrown away and livelihoods are ruined. A statute with such devastating consequences should be applied with restraint.

Second, we have already mentioned the distasteful nature of the statute. Penalizing citizens for their extraction or faith is immoral and unjust. Such laws should not be upheld, but if they must be, they should at least be applied with restraint.

Third, consider the manner in which similar laws are applied in other occupied countries. In France, for example, as evidenced by Joseph Haennig's law review article, similar laws are applied with a measure of restraint. Even when a young woman had engaged in religious activities and held herself out as a Jewess, she was not considered of the Jewish faith. The mitigating circumstances in her situation were considered and the law applied with restraint.

Thus, where the case is not clear, as in this instance, and there is strong doubt, the law should not be applied strictly and adamantly. Without clear and substantial proof of Mrs. Woolnaugh's marriage to Auguste Spitz, she should not be conferred the status of a Jewess for purposes of the statute and her business should not be confiscated.

As alternative theory is that in doubtful cases we should revert to the language of the statute. The statute states that "in doubtful cases" only those belonging to the Jewish faith will be considered Jews. This case must be considered a doubtful one. As noted earlier, Mrs. Woolnaugh is of the Protestant faith. The statute does not apply to Mrs. Woolnaugh. She should be left in peace to manage her inn.

CATEGORY A
RESPONSE 4

MEMORANDUM

Before the isle of Guernsey may assume or prohibit ownership of the Vauvert Manor, it must first contend with the threshold issue: is the proprietor, Mrs. V.B. Woolnaugh, a member of the Jewish community? Only if this is answered in the affirmative may she be prohibited from maintaining her interest in the hotel. If Mrs. Woolnaugh is deemed to be "Jewish" for the purposes of the Third Order (dated April 26, 1941), the government may take action to prohibit her further administration of the manor as granted in Section 3(1)(b). If she is not classified as "Jewish," she will be permitted to retain control of the inn.

The standards applied in determining the Jewishness of a party in question have not been clearly defined. The question has been resolved by the French Commission on the Jewish Laws only to the extent that "each case must be decided on its own merits" (See Haennig, Gazette du Palais, 1943). Therefore, our evaluation of Mrs. Woolnaugh must be based on the facts particular to her case.

First, Mrs. Woolnaugh's letter of December 2, 1940 contains an admission that her mother (previously deceased) was indeed Jewish, but does not describe the religious nature of her maternal grandparents. Since her father was Gentile, we may not even safely assume that Woolnaugh had in fact two Jewish grandparents, and we can certainly be comfortable in the belief that she had no more than two. This being the case, the language of Section 1 of the Third Order leaves the prosecution on unsure ground. Even if one was to assume that Woolnaugh had two Jewish grandparents, one of two things would need to be established, according to Section 1; either Woolnaugh must be revealed to be a member of the "Jewish religious community," or she is revealed to be wed to a Jew "at the time of the publication of the order."

If is clear from the record that Woolnaugh is not a practicing member of the Jewish community. She has been baptized, her only living parent is Gentile, and there is no proof offered in any form that Woolnaugh maintains any ties to the religion of her mother, or its practicing community. (We find support on German law itself, as cited by the Haennig article. In a like situation, a woman who was descended from two Jewish grandparents kept must closer ties with the Jewish faith. She attended services on New Year's to appease certain relatives, attended classes at a religious school, and

used her Jewish ties to obtain employment. Still, a Leipzig court ruled that, even though such ties were used to acquire an advantage, they were not sufficient to constitute adherence to the Jewish religion.) The Woolnaugh case provides not even the slightest connections between the suspect and the Jewish faith, and therefore that requirement of the Third Order is not met.

Otherwise, one with two Jewish grandparents may be deemed a Jew if [s]he was wed to a Jew at the time of the statute's publication or thereafter. Now, Mrs. Woolnaugh was supposedly married to an Auguste Spitz "one month before" her letter of December 1940, and thus on April 26, 1941. However, his subsequent deportation leaves Mrs. Woolnaugh constructively without a husband. Further, the location of the ceremony seems irrelevant, analogous to appeasements of the woman in the German case who also appeared in synagogue on certain occasions. In view of both of these factors, we can view the Spitz situation as one already resolved, and at the most, information which makes the Woolnaugh matter a "doubtful case."

Returning to Section 1, a "doubtful case" turns the prosecution backward, again to determine the membership of the suspect in the Jewish religious community. This matter having been discussed previously, I can only restate that the utter lack of evidence of activity by Woolnaugh within the community should stray our administration away from prosecution. The entirety of this Section 1 discussion is based on the assumption that Woolnaugh indeed had two Jewish grandparents. Absent any proof of such lineage, the matter of Mrs. Woolnaugh must again fall into the realm of the "doubtful cases," and therefore one not worthy of prosecution.

I therefore respectfully submit that, aside from even the ethical dilemmas so clearly involved in cases such as this, administrative action against a suspect such as this would serve only to dirty our hands. Prosecution of this case would seem to be at odds even with German law, never mind our own traditions of fair play and equality.

CATEGORY A
RESPONSE 5

October 12, 1944

The Bailiff of Guernsey,
Court House,
Guernsey.

Sir,

With respect to the case against Mrs. V.B. Woolnaugh of Vauvert Manor, I recommend that we do not proceed under the law of April 26, 1940 (the "Statute") to prohibit her from owning and operating a small inn on Vauvert Road. I make this recommendation, with all due respect, in response to your request for a memorandum summarizing the issues in Mrs. Woolnaugh's case.

Under Section 1 of the Statute, a person with at least three grandparents of pure Jewish blood is considered Jewish. Mrs. Woolnaugh clearly cannot be considered Jewish under this provision as she had only two Jewish grandparents. However, the Statute continues with an alternative categorization of people with two Jewish grandparents. People with two Jewish grandparents are statutory Jews if they either (a) belong to or subsequently join the Jewish community or (b) are married to or marry a Jewish person.

On December 2, 1941, in a letter to A.J. Roussel, the Royal Greffier, Mrs. Woolnaugh declared that she had two Jewish grandparents and that she was married to a gentile. Subsequently, S.W. Gill, the manager of Montague Burton Ltd., alleged that Mrs. Woolnaugh has married Auguste Spitz, the month before making her declaration. On March 21, 1941, it was determined that Mr. Spitz is Jewish.

The Statute does not specify whether the state or the alleged Jew has the burden of proof. It is on this issue, in my opinion, that this case turns. If Mrs. Woolnaugh has the burden to prove affirmatively that she is not Jewish, she would lose if she cannot show that she is not Jewish, but even if the state cannot prove that she married Mr. Spitz. Please note that the state recently deported Mr. Spitz, who therefore would not be available for us to examine. On the other hand, if the state has the burden of proof, we would have to affirmatively prove that Mrs. Woolnaugh had married Mr. Spitz to win the case.

The burden of proof issue arises in this case because the Gill allegations are the sole basis of proceeding against Mrs. Woolnaugh. The file contains no proof of Gill's allegations. As I stated

earlier, Mr. Spitz is unavailable for our examination. And, as you might expect, Mrs. Woolnaugh has denied being married to Mr. Spitz. Given the current state of the file, we would not be able to overcome our burden of proof, should it be placed on us.

I have strong reason to believe that we should and do have the burden of proof. Joseph Haennig, a member of the appellate bar in Paris, where they have a very similar legal scene, has stated:

> We believe that neither good sense nor the law could lead to the view that the statute writers required of an individual having only two Jewish grandparents proof of his belonging to the Catholic or Protestant denominations or order to avoid being included on the lists of Jews . . . .

Mr. Haennig offered a method of understanding far more condemning behaviors, which he argues should not lead to ultimate condemnation, in a way that does not distort the drafters' intentions. Haennig cited a German case in which the court held that the defendant's affiliation with the Jewish community was merely a pretense to maintain family harmony and therefore the defendant should not be persecuted for such behavior.

The case Haennig cites, while not necessarily analogous to our case, suggests that the state should have the burden of proof. I further note that the state of Guernsey has given other residents the benefit of a doubt. For example, S.W. Gill himself declared as manager of Montague Burton Ltd. that no Jewish people worked there, but that he was unaware of the percentage of ownership who are Jewish. Mr. Sculpher, the Inspector, reasoning that the manager of a business is not in a position to know the nature of the ownership of a public corporation, considered Montague Burton Ltd. a gentile business

In the case at hand, we only have one man's allegation that Mrs. Woolnaugh married a Jewish man. We have no affirmative proof that she married a Jewish person or that she observes the Jewish religion. Given the facts available to us and my belief that the state should bear the burden of proof, I recommend that we do not proceed against Mrs. Woolnaugh. We should not follow the law like a blind dog.

Yours,
[name deleted]

CATEGORY A
RESPONSE 6

MEMORANDUM

In Roussel's letter to the Bailiff of Guernsey, dated June 26, 1941, he states that based on the instructions of the German Authorities, Mrs. V.B. Woolnaugh is not to be considered a Jewess under the Third Order, provided that the information given in her December 2nd letter is correct. To determine the appropriate course of action to be taken against Mrs. V.B. Woolnaugh, one fundamental question must be resolved: Who has the burden of proof? Must the state prove that Mrs. Woolnaugh is a Jewess and that the information contained in her letter is incorrect, or must Mrs. Woolnaugh prove that the information in her letter is indeed correct, and that she is, in fact, not Jewish?

The Third Order Relating to Measures against Jews states in part:

> Section 1.
>
> Any person having two grandparents of pure Jewish blood who
>
> (a) at the time of the publication of this order, belongs to the Jewish religious community or who subsequently joins it; or
>
> (b) at the time of the publication of this Order is married to a Jew or who subsequently marries a Jew;
>
> shall be deemed a Jew.
>
> In doubtful cases, any person who belongs or has belonged to the Jewish religious community shall be deemed to be a Jew.
>
> Section 3.
>
> (1) On and after May 20th, 1941, Jews and Jewish undertakings for whom or for which a managing administrator has not been appointed shall be prohibited from carrying on the following economic activities:
>
> (b) hotel and catering industry.

In her May 5, 1941 letter, Mrs. Woolnaugh asserts that the information in her December 2, 1940 letter is correct. She writes that her mother was a Jewess, that her father was a gentile and that she was baptized in the faith of the Church of England a few months after her birth at the Holy Trinity Church. She further states that she is married to a gentile.

Contradicting these assertions, Mr. Gill, a company manager, contends that Mrs. Woolnaugh is, in fact, married to an Auguste Spitz, a Jew, and that the wedding took place in a Jewish Temple. Mr. Spitz, who has since been deported, was residing at the States

Emergency Hospital in Castal, and has been declared a Jew. His card has been marked with a capital "J" in red.

The evidence of Mrs. Woolnaugh's membership in the Jewish race appears equally in amount with that indicating just the opposite. Moreover, this evidence is sharply contradictory, and relates only to just one set of specific facts. The issue of whether Mrs. Woolnaugh should be considered a Jewess basically hinges on the singular question of whether or not she is married to a Jew, Auguste Spitz. Under Section One of the Third Order, a person who has two grandparents of Jewish blood, and at the time of the publication of the statute is married to a Jew, is to be considered a Jew.

If the state has the burden of proving that Mrs. Woolnaugh is a member of the Jewish race, it will most likely lose. Conversely, if Mrs. Woolnaugh is required to prove that she is not a Jewess, she will lose. Since the evidence is so equally divided and contradictory, the outcome is thus contingent on who has the burden of proof.

How then, do we decide on whom the burden of proof should be placed? The answer depends on how we interpret the statute and on what seems most sensible and just. In his law review article, Joseph Haennig addresses the question of statutory interpretation of Section (1)(a) of the Third Order. He espouses the viewpoint that an individual who has two Jewish grandparents should not have to affirmatively prove that she is either Catholic or Protestant and does not belong to the Jewish community. He further believes that it is both good sense and the statute writer's intention to not require one to prove one's "non-Jewishness."

> We believe that neither good sense nor the law could lead to the view that the statute writers required of an individual having only two Jewish grandparents proof of his belonging to the Catholic or Protestant denominations in order to avoid being included on the lists of Jews . . . .[60]

Similarly, under Section (1)(a) of the Third Order, a person who is thought to be a Jew should not have to prove her nonaffiliation by showing that she is, in fact, married to someone who is not Jewish. If one applies Haennig's viewpoint, it is the state that should have to affirmatively prove that the person in question is married to a Jew.

Haennig's position is one that should be supported. Firstly, by requiring the state to carry the burden of proof, we will ensure that

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60 Joseph Haennig, *What Means of Proof can the Jew of Mixed Blood Offer to Establish his Nonaffiliation with the Jewish Race?*, GAZETTE DU PALAIS, pg. 31.

those who are not truly Jewish under the statute are protected. Although questionable cases will arise, and it is conceivable that some Jews will not be listed, it is most just that the benefit of the doubt be extended in order to prevent non-Jews from being listed. Secondly, by requiring that the state have the burden of proof, we will be upholding the fundamental principle of a fair trial, which is based on the concept of the state having to prove a "defendant" guilty, rather than a defendant having to prove her innocence. Thirdly, the meaning of the phrase "doubtful cases" in Section One of the statute will be given limited scope, and will not be used as a catch-all to arbitrarily deem a person Jewish in close cases. Fourthly, it will protect the accused from the capriciousness of others. If it is acceptable for a witness, such as Mr. Gill, to allege that a person is married to a Jew, or is a member of the Jewish community, it is conceivable that allegations may be made with ulterior motives.

It is because of these concerns that we should not attempt to bring proceedings against Mrs. Woolnaugh. Unless the state gains affirmative, noncircumstantial proof that she is married to Mr. Spitz, the testimony of one individual is not sufficient. Finally, it is most appropriate that the burden of proof be placed on the state. In this instance, there is not enough affirmative proof to attempt to deem Mrs. Woolnaugh Jewish, and to then prohibit her from owning and operating her inn on Vauvert Road.

CATEGORY B
RESPONSE 7

MEMORANDUM OF THE THIRD ORDER AS APPLIED TO MRS. V.B. WOOLNAUGH

I. Mrs. V.B. Woolnaugh Should be Allowed to Continue to Own and Operate her Inn for the Twenty-sixth Year

The Third Order (enacted April 26th 1941) permits the non-Jewish community to pursue wholesale and retail trade (Third Order § 3(i)(a)). The prohibitions in Section 3 apply *only* to those persons who fall under the definition of a Jew under Section 1. Section 2(2) of the Third Order states that *even* if a person was considered to be a "Jew" before April 26th, 1941, if that person does not fit under the definition of Section 1, then they will not be subjected to the provisions of Section 3. Through analysis of the facts on and after April 26th, 1941, Mrs. Woolnaugh is a non-Jew under Section 1. The prohibited activities in Section 3 do not apply to her, for she retains full rights to own and operate her small inn.

To deny Mrs. V.B. Woolnaugh the right to continue to own and operate her inn is a serious violation of the equal protection rights under law. The Section 3 prohibitions *only* apply to Jews. Mrs. Woolnaugh, as a citizen, had owned and operated her establishment for twenty-five years. The Third Order discriminates against Jews. The statute allows non-Jews to continue to economically prosper; to enjoy full rights in ownership and operation of their businesses. At the same time, the Order punishes those persons who are Jews and treats them unequally, banning them from achieving economic equality with the non-Jews. The reason why laws similar to Section 1 in the Third Order are enacted is to protect innocent non-Jews [!] such as Mrs. Woolnaugh from being wrongly discriminated against. The Order must be applied precisely and accurately. The law must not be improperly used to persecute Mrs. Woolnaugh by holding her to the prohibitions in Section 3.

II. Under Section 1 Mrs. V.B. Woolnaugh is not Considered a Jew for she has been Baptized into the Church of England and has Ceased to Belong to the Jewish Faith

Mrs. Woolnaugh's father was a Gentile; she had two non-Jewish grandparents. As a baby she was baptized into the Church of England. Mrs. Woolnaugh confessed in a signed letter that she

married a Gentile. There is no credible evidence that she has belonged to the Jewish community during her lifetime.

The Commission on the Jewish Law was established in France to study the laws on the nonaffiliation of the French with the Jewish race. (*What Means of Proof Can the Jew of Mixed Blood Offer to Establish his Non-Affiliation with the Jewish Race?*, 1943 GAZETTE DU PALAIS, 1) This Commission set out to determine the Jewishness of Frenchmen who are doubtful cases. The doubtful cases are found to be either French, or because of the person's Jewish affiliations, are found to be part of the Jewish race. The Commission allows numerous loopholes for innocent non-Jews, similar to Mrs. Woolnaugh to prove that they are *not* Jewish, and that therefore should not be *wrongly* discriminated in the same way that the Jews are.

The Third Order states how to approach "doubtful" cases similar to Mrs. Woolnaugh. (Section 1(1): "In doubtful cases any person who belongs or has belonged to the Jewish religious community shall be deemed to be a Jew.") This paragraph modifies Sections 1(a)-(b), for the paragraph directly follows the two subsections. A doubtful case is one in which the State is unsure if the claimant is Jewish (subsection a), *or* where the State is unsure if the claimant married a Jew (subsection b). Under Section 1 if the facts under *either* (a) *or* (b) are doubtful, the claimant proves their innocence, then the claimant is correctly labeled as a non-Jew. If Mrs. Woolnaugh proves that she never was nor currently is part of the Jewish community then she will be exempted from the prohibitions in Section 1 *even* if her husband is found to be *Jewish*. If Mrs. Woolnaugh meets her burden to prove that she is not a Jewess, then Section 3 prohibitions do *not* apply to her.

The Commission found that the original writers of the Third Order intended to allow numerous types of proof to ensure that the State did not wrongly accuse innocent Frenchmen of being Jewish. The main proof a claimant can offer is that the claimant in question belongs to another religion recognized by the State prior to December 9, 1905. (*What Proof?*, 1) Mrs. Woolnaugh was a member of the Church of England, and therefore meets this burden of proof. Additionally the writers of the Order allowed other types of proof such that the claimant also can prove that they have ceased to belong to the Jewish community.

The statute writers left numerous loopholes to prove an innocent's nonaffiliation with Jews. "We believe that neither good sense nor the law could lead to the view that the statute writers

required of a individual having only two Jewish grandparents proof of his belonging to the Catholic or Protestant denominations in order to avoid being included on the lists of Jews." (*What Proof?*, 1) The law is meant to discriminate against those persons who are clearly *Jewish*, e.g., those person who continue to have ties with either the Jewish community or religion. Citizens, who through no fault of their own, have two Jewish grandparents, should not be discriminated against when they have made obvious attempts to be nonaffiliated with the Jewish religion or community. The courts must determine what steps were taken by the individual towards the goal of nonaffiliation. (*What Proof?*, 2)

A German case, which was based on racial laws very similar to the Third Order, set up the standard of proof of a claimant in doubtful cases. This case was similar to Mrs. Woolnaugh's; there was a woman involved who had two non-Jewish grandparents, and she was baptized as a Protestant. Under German law, the woman would *only* qualify under the Jewish discrimination laws if she still adhered to the Jewish religion. The Supreme Court of Leipzig was very strict in analyzing what the level of actual adherence to the Jewish religion was to define a person as a Jew.

There was a great deal of evidence that the woman had identified herself with the Jewish religion and community, yet the court held that she was not Jewish for she had used the connections only for pretense to gain an advantage through those connections. Therefore the court did not find she was affiliated with the Jewish faith *even though* she had attended a Jewish religious school in which she learned about the Jewish faith for an entire sixth month period, *and* had attended religious services on a yearly basis with her father, *and* had kept her name on the Jewish synagogue list as a congregation member, *and* had identified herself as a Jew in order to obtain employment from a Jewish agency.

The court's actions look to the intent of the individual. (*What Proof?*, 3) If links to the Jewish community are established, and they are merely found as a pretense to use the religion, the links will not be considered as damaging if they are merely "a means to acquir[ing] an advantage by that intermediary." (*What Proof?*, 3) The facts show that Mrs. Woolnaugh has ceased to belong to the Jewish community. If any facts are found that she did belong to the Jewish community, she would be able to rebut the evidence by showing that such relations were only for a pretense, and therefore not a Jew under Section 1.

CONCLUSION

Mrs. Woolnaugh, because she has two grandparents that are non-Jewish and two grandparents that are Jewish, is a doubtful case under Section 1 of the Third Order. German law allows the claimant to offer proof to show that they no longer belong to the Jewish religion or Jewish community. Mrs. Woolnaugh has met this burden of proof, and therefore is exempted from the prohibitions defined in Section 3.

CATEGORY B
RESPONSE 8

Victor G. Carey, Esq
Bailiff of Guernsey
Royal Court House
Guernsey

Re: Measures against Jews: The Case of Mrs. V.B. Woolnaugh

Your Honor:

I am writing to you in response to your request that I review the material concerning Mrs. V.B. Woolnaugh.

First of all, I find this whole issue of rating one's Jewishness rather disturbing—regardless of the "truth" of Mrs. Woolnaugh's situation. The Orders regarding the Jews do not seem to me to be based in any substantial law, except a sort of perverted law based on ignorance and hatred. I find it difficult as an Englishwoman to even align myself with the Germans on this point—it is disgraceful to the word "justice." Perhaps justice is a relative term, defined by those who are in power. Perhaps I am naive in believing that justice and ethics should go hand in hand. It seems to me that neither one is present in this situation.

Unfortunately, I have been called upon to respond to this unpleasant case. According to the Third Order Relating to Measures against Jews, Order dated April 26th 1941, published in *The Star Guernsey* on June 18, 1941, Section 1(1) states:

> Any person having at least three grand-parents of pure Jewish blood shall be deemed to be a Jew. A grand-parent having belonged to the Jewish religious community shall be deemed to be of pure Jewish blood.
>
> Any person having two grand-parents of pure Jewish blood who
>
> (a) at the time of the publication of this Order, belongs to the Jewish religious community or who subsequently joins it or
>
> (b) at the time of the publication of this Order is married to a Jew or who subsequently marries a Jew;
>
> shall be deemed to be a Jew.
>
> In doubtful cases, any person who belongs or has belonged to the Jewish religious community shall be deemed a Jew.

According to Mrs. Woolnaugh's letter dated December 2, 1940, her father was a gentile. Presumably, this means that her paternal grandparents are gentile as well. Thus, Mrs. Woolnaugh does not

qualify as a Jew under the first clause of the above Order because she does not have three Jewish Grand-parents. Perhaps a further investigation into the religious background of all of her grand-parents is needed in order to clarify this point.

Mrs. Woolnaugh admits that her mother was a Jew. However, she claims that she was baptized in a Christian church in England and that she married a gentile. If this is the truth of the matter, than Mrs. Woolnaugh would not be a Jew under Section 1(a) or (b) of the Order.

One of the issues in this case becomes, to what extent does Mrs. Woolnaugh participate in the Jewish religious community. The law review article written by Joseph Haennig described the case of a woman who was baptized as a Christian, but who had attended Jewish ceremonies once a year to "preserve family peace." The court in that case found that there was no sufficient tie to the Jewish community. Similarly, Mrs. Woolnaugh was baptized as a Christian. In being baptized, Mrs. Woolnaugh has become a Christian in the eyes of God. The issue now becomes whether Mrs. Woolnaugh has repudiated her affirmation of Christian faith by either marrying a Jew or joining a Jewish religious community.

Mrs. Woolnaugh claims that she has married a gentile (although she does not give his name). Mr. Gill, an apparent competitor with Mrs. Woolnaugh in the hotel business, has made allegations that one month before she wrote her letter, Mrs. Woolnaugh secretly married the Jew, Auguste Spitz who was deported last year. The record as it stands contains no evidence that Mrs. Woolnaugh has married Mr. Spitz. Indeed, I am suspicious of Mr. Gill, the person who brings these allegations. Mr. Gill appears to be in business competition with Mrs. Woolnaugh. As shown by the case of Mrs. W. Middlewick, who was deemed to be a Jew and who had her business taken away from her, Mr. Gill could benefit financially from destroying Mrs. Woolnaugh's business (by buying her supplies and/or eliminating her as competition). Additionally, according to the Inspector's memorandum, the Messrs. Montague Burton Ltd., the business that Mr. Gill is a manager of, could be in danger because he is not sure if 50% of the company's shares are in Jew's hands. Perhaps he has discovered that Mrs. Woolnaugh has shares in the business and in an effort to clear his company, he has made these allegations against Mrs. Woolnaugh. If this is the case, Mr. Gill, once Mrs. Woolnaugh is out of the picture, could sell Mrs. Woolnaugh's shares to a gentile(s). A full investigation must be

made into Mr. Gill's allegations before we can proceed further on this matter.

Even if Mrs. Woolnaugh was married to a Jew in a Temple, it is doubtful that this one-time (if it is found to be a unique experience) is enough proof to say that she has joined a religious community. This notion is supported by the case of French claimant in the Joseph Haennig article because the court found that the claimant's attendance of a Jewish ceremony once a year did not prove that she was sufficiently tied to the Jewish religious community.

In conclusion, I suggest that based upon the record that Mrs. Woolnaugh is not a "Jew." I am not willing to allow her freedom and property to be taken away simply because of the unsubstantiated and suspicious allegation of Mr. Gill. If you feel that Mr. Gill's story is credible, I suggest a hearing for Mrs. Woolnaugh in which she can establish her religious identity. In addition, I suggest a full investigation into Mr. Gill's allegation, an exploration of his motives, including an investigation into the nature of his own business, and an investigation into the heritage and religious background of Mrs. Woolnaugh's grand-parents and of her spouse.

Again I express my displeasure in having to deal with this situation. However, I am hopeful that we will be able to treat this case in a just and ethical manner, regardless of the motivation behind the law or the lawmakers.

Very truly yours,
[name deleted]

CATEGORY B
RESPONSE 9

To: Bailiff
From: [deleted]
Re: Mrs. Violet B. Woolnaugh

FACTS: Mrs. Violet Woolnaugh is the owner and the proprietor of the small inn on Vauvert Road. Throughout the past twenty-five years Mrs. Woolnaugh has personally greeted and taken in many of Guernsey's road weary travelers. Violet, as she prefers to be called, is well-known throughout all of Guernsey for the special care that she lavishes on every one of her guests. Visitors to the Inn know that Violet will get up in the middle of a bone chilling night to bring a pot of tea or an extra blanket to one of her guests, and then be up again before the crack of dawn baking a batch of fresh scones for breakfast.

For the first morning in twenty-five years there were no scones placed on Violet's table. Last night it was Violet who needed the soothing comfort of a pot of tea when fear of losing her Inn prevented her from falling to sleep.

The reason Violet might lost her Inn is because of a rumor spread by S.W. Gill ("Gill"). Gill is the manager of Montague Burton Ltd., a local men's clothing store. According to Gill, Mrs. Woolnaugh is secretly married to Auguste Spitz. Mr. Spitz is a German Jew who was deported last year. There is absolutely no support for this statement.

QUESTIONS PRESENTED: Is Mrs. Woolnaugh secretly married to Auguste Spitz? If the rumor is true, is Mrs. Woolnaugh Jewish within the meaning of the Third Order regarding measures against Jews (the "Third Order")?

SUMMARY: The Third Order does not apply to Mrs. Violet Woolnaugh.

DISCUSSION: The Nazi party currently occupies Guernsey. Because of this, Guernsey's citizens are subject to the rules and regulations of the Nazi party. On April 26, 1941, the Nazi party issued the Third Order. The Third Order created a broader definition of who is a Jewish person. Under the Third Order Jewish people are forbidden from owning and operating businesses. If Mrs. Woolnaugh were found to be Jewish according to the terms of the Third Order she would no longer be permitted to own and operate her

Inn on Vauvert Road. Mrs. Woolnaugh's Inn would be taken away from her by the Nazis.

In a letter dated December 2, 1940, to his Majesty's Greffier Mr. A.J. Roussel ("Roussel"), Mrs. Woolnaugh attested to the fact that she is not Jewish. Despite the fact that her mother had a Jewish background, Mrs. Woolnaugh's father was a Gentile, and, in fact, Mrs. Woolnaugh was "baptized in the faith of the Church of England a few months after [her] birth at Holy Trinity Church." According to the Rule 1, paragraph 1 of the Third Order a person must have three Jewish grandparents in order to be considered a Jewish person. At the very most Mrs. Woolnaugh had two Jewish grandparents and is therefore not Jewish according to the terms of that part of the Order. Rule 1, paragraph 2 provides however that if someone with two Jewish grandparents is married to a Jewish person, that person shall be considered Jewish. The rumor of Mrs. Woolnaugh's "secret marriage," a rumor derived most likely from a dime store paperback as opposed to reality, could possibly create a problem for Mrs. Woolnaugh. This point, however, is not worth elaborating on for the mere fact that unfounded, unsupported town gossip is not, or should not, be the basis by which we make our decisions.

There is no evidence of any kind to support the rumor that Mrs. Woolnaugh is secretly married to Mr. Spitz. One can begin this analysis by simply looking at her surname. It is certain that where there is a Mrs. Woolnaugh there is a Mr. Woolnaugh. In the 1940 letter to Mr. Roussel, Mrs. Woolnaugh, referring to her husband, concludes with the statement that she is "married to a Gentile." Mrs. Woolnaugh has been investigated twice by this department: the first time was in 1940, the second time in 1941 right after the institution of the Third Order. Upon each of these investigations Mrs. Woolnaugh was found not to be Jewish. Certainly if there were no Mr. Woolnaugh, a department as efficient as our own would have picked up on this fact. Actually it would be incredibly embarrassing to think that an innkeeper can fool our department not once, but twice.

In a letter from an unknown Guernsey official (one can speculate, however, that it is most likely the Inspector due to the curved line which crosses the "s" in servant) dated March 21 (most likely 1940), the author states that there were four "known persons of the jewish persuasion": two British citizens who were Jewish by marriage and two who were German, one of which was Mr. Spitz and the second was a Mr. Steiner. It seems that based on this letter the

department was aware of whom Mr. Spitz may have been married to. In the same year the same department found that Mrs. Woolnaugh was not Jewish and was married to a Gentile. How is it then that Mrs. Woolnaugh could possibly have been married to Mr. Spitz?

The immediacy of the effect of the Third Order on businesses opens the door to many opportunists. One need only spread a rumor concerning the ethnicity of a competitor to put them out of business and with the government's help! Perhaps Gill was seeking to create a business opportunity for himself or for a colleague. We cannot permit this kind of abuse of the system. Imagine the chaos that would ensue if we relied on the unfounded allegations of an opportunistic competitor.

It should be noted that in France and Germany courts faced with the dilemma of having to determine whether or not someone is Jewish will look to substance over form. Courts have frequently found that citizens, whose family history may be enough under the statute to make them Jewish, are not Jewish because they do not practice Judaism. Mrs. Woolnaugh has never practiced Judaism. She is a baptized member of the Anglican Church. How then can we call her Jewish?

CONCLUSION: The evidence does not support that Mrs. Woolnaugh was ever married to Mr. Spitz and is therefore not Jewish according to the terms of the Third Order.

CATEGORY B
RESPONSE 10

MEMORANDUM

To: Bailiff
From: [deleted]
Re: Application of Measures Against Jews to Mrs. V.B. Woolnaugh
Date: 9th March 1944

SUMMARY

While there are a number of legal issues raised in commencing proceedings to prohibit Mrs. Woolnaugh from owning and operating an inn, none of these need be analyzed if the threshold issue of Mrs. Woolnaugh's status as a Jew is resolved in the negative.

Thus far there is insufficient evidence to determine that Mrs. Woolnaugh is a Jewess under the Third Order, even assuming that all the evidence produced by the state is true.

Therefore, pending any changes in the known facts of this case, proceedings against Mrs. Woolnaugh may not be instituted.

FACTS

Mrs. V.B. Woolnaugh has been the proprietress of Vauvert Manor, a small inn in St. Peter's Fort, for some 25 years.

Mrs. Woolnaugh, in a letter dated December 2nd, 1940, asserts that her "mother . . . was a Jewess" and her father was a Gentile. She further stated in her letter that she was baptized an Anglican a few months after her birth, and that she had married a Gentile.

The Bailiff informs that Mrs. Woolnaugh is not currently married to a Gentile, but was secretly married to Auguste Spitz in November 1940. Mr. Spitz was deported as a Jew approximately one year ago.

A man named S.W. Gill has told the Bailiff that the marriage ceremony of Mr. Spitz and Mrs. Woolnaugh took place in a Jewish temple. Mr. Gill himself has been under investigation by the Guernsey Police as managing a gentleman's furnisher that cannot disprove that it is primarily Jewish-owned. (Letter of S.W. Gill to Inspector of Police Guernsey, 26th Oct. 1940; Letter of Inspector to Bailiff, undated)

LEGAL ANALYSIS

The Measures against Jews contain numerous provisions relating to the particulars of proceeding against Jews and their property. None of these provisions is applicable to persons who are not Jews under Section 1 of the Third Order Relating to Measures against Jews, dated April 26th 1941 (hereinafter "Third Order"). Therefore, it must first be considered whether Section 1 applies to Mrs. Woolnaugh.

The Third Order provides three ways for a person to be deemed a Jew. First, a person who has three grandparents of "pure Jewish blood" shall be deemed a Jew. Second, a person who has two grandparents of "pure Jewish blood" who "(a) at the time of the publication of this Order, belongs to the Jewish religious community or who subsequently joins it; or (b) at the time of the publication of this Order is married to a Jew or who subsequently marries a Jew; shall be deemed a Jew." A grandparent who belonged to the Jewish religious community shall be deemed for the purposes of Section 1 to be of pure Jewish blood. Third, "[i]n doubtful cases, any person who belongs or has belonged to the Jewish religious community shall be deemed to be a Jew."

In this and the two following paragraphs, it is assumed that the facts stated in the section above are all the information that the State of Guernsey will ever adduce against Mrs. Woolnaugh. Under these facts, the three- and two-grandparent tests fail, because the only evidence provided is about Mrs. Woolnaugh's parents, not her grandparents. I am told that under Jewish law, a person may be considered a Jew if his or her mother was a Jew. Therefore, the most that Mrs. Woolnaugh's information proves is that her maternal grandmother was Jewish. The religious persuasion of her other grandparents is logically indeterminate under the facts known.

Thus, either Mrs. Woolnaugh is not a Jew, or she is a "doubtful case" under Section 1. For a "doubtful case" to be a Jew, it must be shown that the person "belongs or has belonged to the Jewish religious community." Evidence tending to prove this proposition is that 1) Mrs. Woolnaugh's mother was a Jewess; 2) she married a Jew; and 3) she was married in a Jewish temple. These facts are insufficient to prove that Mrs. Woolnaugh is or was a member of the Jewish religious community. Mrs. Woolnaugh's undisputed averment that she was baptized an Anglican and the lack of any evidence that she subsequently converted to Judaism requires a

finding that, at least until her marriage to Mr. Spitz, she did not belong to the Jewish community.

The question remains whether she was a member of the Jewish religious community subsequent to her marriage to Mr. Spitz. While there exist Jewish temples that will not marry a Jewish man to a Christian woman, there are also temples that will. Thus, assuming the truthfulness of Mr. Gill's assertion that Mrs. Woolnaugh was married in a Jewish temple, this by itself is not sufficient evidence that Mrs. Woolnaugh ever embraced the Jewish religious community. It may, in fact, have been the only time she ever set foot in a Jewish temple.

Since Mrs. Woolnaugh may not be found to be a Jew with the existing evidence, it is not necessary to consider whether or how to proceed against her property.

CONCLUSION

Absent any direct evidence of the religious persuasion of Mrs. Woolnaugh's grandparents and absent any direct evidence of conversion to the Jewish faith, it cannot be found that Mrs. Woolnaugh is a Jew under Section 1 of the Third Order.

The proceedings against Mrs. Woolnaugh must therefore be dismissed or suspended pending further investigation.

[response continued over]

Attorney at Law
595 Queen Victoria Place
Guernsey

10th March 1944

The Hon. Victor G. Carey, Esq.
Bailiff of Guernsey
Royal Court House
Guernsey

Dear Sir:

While it has been my great privilege and honour to accept commissions from our government from time to time to perform legal work, it is with great regret that I must inform you that due to recent changes in my practice I can no longer accept such commissions.

I remain,
Sir,
Very truly yours,

[signature deleted]

SB/lsg

[response continued over]

From the Diary of [deleted]
10th March 1944

It is intolerable to continue to work for the Vichy government, which assists in killing people who have done absolutely no wrong.

I travelled to Vauvert Manor today and spoke with Mrs. Woolnaugh. I told her about the attempt to classify her as a Jew; about which she already was aware, but I convinced her that she could not just sit there and hope that the problem would go away. I told her that it was likely that this time she would not be classified Jewish because of the technical insufficiency of the government's evidence. I showed her my memorandum. I managed to convince her, after some great doing given my association with the Bailiff's Office, of my sincere concern for her well-being and my outrage at the Nazi and Vichy collaborators, and how I would not participate in the "nasty business" that had been going on since last year. I asked her about her grandparents. She did not answer me, but the look on her face was the only answer I needed. It will not be difficult for the prosecutors to get the information they need to send her away.

This afternoon, I arranged that title to Mrs. Woolnaugh's property be transferred to me. We also executed a confidential agreement that the title would be transferred back to her at her request. I arranged through the Free French underground that Captain Richart would transport her and her family to Plymouth. Her Inn will be closing for the duration of the current insanity, but at least she will not be sent to the death camp. I will move to her inn after she leaves so that no one will think to look too closely at the transaction, and rent out my current flat.

I don't know what the reaction will be to Mrs. Woolnaugh's sudden disappearance. Maybe everyone will be relieved and nothing will come of it. But maybe the Vichy puppets will be angered and come after me. Perhaps I will soon be seeing Captain Richart myself. It may be that London would be a better place to be right now. The shelling is nasty, surely, but at least it will be obvious who the enemy is.

CATEGORY B
RESPONSE 11

MEMORANDUM

To: Bailiff of Guernsey
From: [deleted]
Re: Mrs. V.B. Woolnaugh

QUESTION PRESENTED

Under the Second and Third Orders relating to measures against the Jews, may a citizen of Guernsey be deprived of her livelihood for the sole reason that she is Jewish?

DISCUSSION

My dear friend, the fact that this question is one that needs an answer under *our* laws is a stark illustration of just how far our beloved homeland has fallen. However, like all questions in our line of work, I must endeavor to answer the one presented here with the knowledge that if I were to refuse to ply my trade under this type of duress, another, possibly less scrupulous, attorney would eagerly fill the vacuum created by my departure.

The simple answer to the question presented is . . . No; Mrs. Woolnaugh may not be deprived of her livelihood, her dignity—nor anything else for that matter—under the Second and Third Orders. Of course my mere statement of this conclusion does not make it so; it is our system of laws and not my will that must provide the answer. For without reason and reasons we are no better than . . . than . . ., of course the normal comparison would be to the savage beast but of late a more fitting one comes to mind. This is where I encounter some difficulty; for in buttressing my conclusion, which reasons should I choose? If I couch my arguments within this diabolical law's framework am not I implicitly validating its authority? If I were to argue in terms of grandparents, marriage and economic activities, in an attempt to exclude Mrs. Woolnaugh from the affected class, would I not be admitting that the class exists and that its members, unable to evade inclusion, could suffer the same sanctions that the Order now asks us to impose upon Mrs. Woolnaugh?

Were this a law directed against child molesters I could advance several arguments towards its text and method, each of which provide ample reason to exclude Mrs. Woolnaugh from the

law's scope. I could argue that Mrs. Woolnaugh does not fall within the Order's definition of an affected individual. The Order specifically states that to be a member of the class an individual must have at least two grandparents who were also members of the class. There is no evidence of any kind relating to Mrs. Woolnaugh's grandparents and although we do have some knowledge in regard to her parents that is clearly not what the Order requires.

Assuming, *arguendo*, that Mrs. Woolnaugh could be included in the affected class, the economic activity that we are seeking to enjoin, innkeeping, is not prohibited by the Order. The only provision that is even conceivably close to the mark is Section 3(1)(b) of the Third Order which prohibits members of this class from engaging in the "hotel and catering industries." Presumably, by linking hotels with catering the drafters were primarily concerned with the food service aspect of hotels and not the lodging aspect. By failing to provide us with clearer draftsmanship, we are left to guess at their intended meaning.

Another reason Mrs. Woolnaugh cannot be prosecuted is that the Orders are invalid because they run contrary to the bedrock principle that there shall be no *ex post facto* laws. The argument runs as follows, if Mrs. Woolnaugh is a member of the affected class, her membership can only be based upon her marriage to Auguste Spitz; thus her inclusion would be based upon a singular event. This event took place prior to the April 26, 1941 Order. Thus the Order treats a deed—the marriage to Auguste Spitz—that was perfectly lawful *ab initio* and retrospectively alters its legal consequences. *Our* legal system requires that individuals be given an opportunity to tailor their conduct to be in compliance with the law. Any law that attempts to circumvent this principle cannot be countenanced.

But none of these arguments suffice in doing the type of justice that *we* have become accustomed to in Guernsey; because while reliance on any one of them would render the just outcome in this case, such reliance could also be seen as an admission that a more carefully drafted enactment would be passable. For as I alluded to earlier, all of the above stated arguments assumed that this was a proper subject of legislation, and the arguments advanced merely dealt with the type of issue that is prevalent in all statutory litigation. But this is no ordinary statute and these are not ordinary times. My dear Bailiff, Guernsey has fallen on trying times, but being occupied by the Third Reich does not make us part of the Third Reich. We, the citizens of Guernsey, must not

forget that a war rages on throughout the world and we must not shut our eyes to it and fall victim to the trap that our French neighbors now find themselves in. We must not become model prisoners of war, the occupier's dream, creating our own version of Nazi-like laws and dutifully—perhaps even zealously—enforcing them against our own countrymen. Perhaps it is true that occupation was inevitable, but assimilating into this moral collapse is not a necessary consequence. One day this war, like all wars, will come to an end and we will go on with our lives. In the world of possible futures we will not be disgraced by virtue of the fact that we were unable to turn back the powerful German armies. If, however, it comes to pass that we continue on our current course, and dutifully participate in our enemy's savagery, *our* disgrace and collapse will be legendary.

CATEGORY B
RESPONSE 12

To: Bailiff of Guernsey
From: [deleted]
Re: Mrs. V.B. Woolnaugh

Complex and varied questions arise from the instant case. In reaching a determination on the racial status of Mrs. Woolnaugh, the situation, if to be evaluated fairly, must be examined under not only the recently enacted racial statutes, but under Natural law considerations as well. It is my firm belief that in proceeding along either of these avenues, the only viable conclusion which may be reached must state that any proceedings against Mrs. Woolnaugh, either at present or in the future, desist. As my reasoning for these admittedly different spheres of discourse is quite varied, I will discuss them in turn.

PROCEEDINGS AGAINST MRS. WOOLNAUGH SHOULD PROPERLY BE HALTED DUE TO THE FACT THAT MRS. WOOLNAUGH SHOULD NOT BE PROPERLY CLASSIFIED A JEW UNDER THE CURRENT RACIAL PURITY LAW

As is clearly stated in the Third Order relating to Measures against Jews, dated April 26, 1941:

> (1) Any person having at least three grand-parents of pure Jewish blood shall be deemed a Jew. A grand-parent having belonged to the Jewish religious community shall be deemed to be of pure Jewish blood.
>
> Any person having two grandparents of pure Jewish blood who
>
> (a) at the time of the publication of the Order, belongs to the Jewish religious community or who subsequently joins it: or
>
> (b) at the time of the publication of this Order is married to a Jew or who subsequently marries a Jew;
>
> shall be deemed a Jew.

Upon examination of the varying documents submitted to aid me in the evaluation of this matter, I am unable to state with any certainty that Mrs. Woolnaugh should be classified as a Jew, and, quite to the contrary, feel that just the opposite conclusion should be reached.

While the print quality in the available documentation is negligible, it seems apparent that Mrs. Woolnaugh had, at most, two,

and not three, Jewish grandparents. Hence, assuming that the subject, by her own assertion, possessed two Jewish grandparents, she could only be properly classified a Jew if she met the criteria for parts (a) or (b) listed above.

While on the surface, this may look like a clear cut and obvious case, I submit it is not. In order to arrive at the true intentions of the law listed above, the law should not be interpreted with unyielding specificity, and room for objectivity and statutory interpretation, such as is suggested by our esteemed colleague from France, Mr. Joseph Haennig, should and must exist.

If in fact Mrs. Woolnaugh had married Auguste Spitz, and said ceremony was performed in a Jewish temple (and I must state that aside from the assertions of Mr. Gill, no independent confirmation of the marriage or the location of the ceremony has been submitted or produced), this alone would be unable to satisfy the aforementioned Section (1)(a). It is made obvious from her file that despite being born half-Jewish, Mrs. Woolnaugh was baptized, and lived her life and conducted her affairs at all times as a Gentile, up to and even after her marriage. There is no proof and nary a submission, that outside her marriage ceremony Mrs. Woolnaugh belonged to the Jewish community in any capacity, or exhibited any other "Jewish behavior."

As for the aforementioned Section (1)(b), this would seem to be Mrs. Woolnaugh's undoing as it appears strict in its wording. However, I would urge that the statute would be best and most fairly construed if it were not so strictly interpreted. While Mr. Spitz may indeed have been Jewish, and the ceremony performed in a Jewish temple, I submit it is the larger picture which must be examined (as suggested by Mr. Haennig). Aside from the location of the marriage ceremony, which in all likelihood was a concession by Mrs. Woolnaugh, there are no other ties to the Jewish community at any point exhibited in Mrs. Woolnaugh's life, either before or after her marriage, and all indications are that during her marriage and up until her husband's deportation, Mrs. Woolnaugh continued to consider herself, and conduct her affairs, as a Gentile.

THE EXISTENCE OF THE RACIAL LAWS AGAINST THE JEWS VIOLATES NATURAL LAW CONSIDERATIONS AND SHOULD BE DISREGARDED

While volumes could be written under this heading, I will do my best to achieve my point with a measure of brevity. I am aided

in that I feel that this point is so obvious and uncomplicated as to be inarguable.

Admittedly, if society is to function properly, there must be various man-made laws, and these laws must be adhered to and enforced by the populous. If this were not so, chaos and anarchy would rule the day and civilization would be impossible. However, irrespective of personal religious beliefs, it must be acknowledged that there is a *higher* law which guarantees *all* men certain inalienable rights, which must in turn be respected by other men, despite any contradictions with man-made law. At times, the disobedience of a man-made law is the only way to preserve the fabric of civilization. Such is the situation within which we are placed in this case. I am not so egotistical nor narcissistic to believe that I alone should be the final arbiter of legal issues in our land, nor should the common man be allowed to freely supersede the laws of his nation. However, I cannot in good faith act to enforce a law which is so morally reprehensible as to itself be illegal. A law constructed by man cannot, and must not, be adhered to if it is violative of "Natural law," for these universal law considerations cannot be superseded by *any* man. Indeed, it would be the act of adherence to such a law which would be illegal, not is disregard.

Despite protestations to the contrary, it is my firm personal belief that Jews are in fact human beings, and not members of a "lower species," and are thus entitled to the same universal respect and inalienable rights as all other men. The only law which Mrs. Woolnaugh is accused of breaking is that of being Jewish. The only rationale given for the commencement of proceedings to confiscate her business is that she is guilty of being Jewish. The only authority for this law comes from mere man and while this may be enough to satisfy our current legal system, it cannot, nor will it ever, satisfy the *higher* law which we are all bound to adhere to as members of the human race.

Thus, I respectfully submit that it would not only be improper under the statute as written to commence proceedings against Mrs. Woolnaugh, it would be illegal as well.

CATEGORY C
RESPONSE 13

To: Bailiff of Guernsey
From: [deleted]
Re: April 26, 1941 Order Regarding Measures Against Jews; Mrs. V.B. Woolnaugh, Vauvert Manor, Vauvert Road
Date: January 23, 1944

QUESTIONS PRESENTED

1) Whether a woman who was not deemed to be a Jew under the Third Order regarding measures against Jews, dated April 26, 1941, but who may have subsequently married a Jewish man, is now subject to these restrictions?
2) Whether laws based upon racial orientation are void as a matter of public policy?

FACTS

Mrs. V.B. Woolnaugh of Vauvert Manor, Vauvert Road, owns and operates a small inn at the same location. She has done so for approximately twenty-five years. The administrative arm of the occupying powers, the Bailiff of Guernsey, is interested in commencing legal proceedings against Mrs. Woolnaugh in order to prohibit her from owning and operating her inn. Although the Bailiff of Guernsey initially declared that she was not to be considered a Jew for purposes which could preclude her from her occupation, he now believes that such information exists that could alter that classification.

The Bailiff believes that Mrs. Woolnaugh, in her letter complying with an order demanding an accounting of her business's assets, lied when she declared that she was married to a Gentile. He asserts that she secretly married Auguste Spitz, a Jewish man, in November 1940.

DISCUSSION: ISSUE I

A woman who was not deemed to be a Jew under the Third Order regarding measures against Jews, dated April 26, 1941, but who may have subsequently married a Jewish man, is probably not subject to these restrictions.

The Third Order, dated April 26, 1941, indicated that one way for an individual to be classified as a Jew is by having two Jewish

grandparents of "pure Jewish blood" and subsequently marrying a Jew. Infringement of this Order is punishable by imprisonment and/or a fine, and, in some cases, a more severe penalty.

The Order's objective is apparently to bar Jews from diverse areas of employment. It lists eighteen areas which Jews are to be precluded from achieving management positions. For example, as of May 26th, 1941, Jews were barred from the hotel and catering industry, unless a Gentile managing administrator had been appointed to assume all tasks concerning the profits of the business or contact with customers. This appointment, a result of the Second Order of October 18, 1940, was to be directed to the local authorities as part of a declaration that, in part, described the specific nature of the business, its value, and whether the enterprise was currently licensed to a Jew.

Another provision of the earlier Second Order is that all businesses whose workforce was over one-third Jewish, or was owned by a Jew or by the spouse of a Jew, must furnish the local authorities with similar financial information.

In compliance with the Second Order, Woolnaugh provided the Bailiff with a list of the relevant securities involved in her business. It need not be assumed that because she filed the declaration dated December 21, 1940, she must have been a Jew herself or was married to a Jewish man. Mrs. Woolnaugh explained in the declaration that her mother was a Jew, but her father was Gentile, and that she was baptized in the faith of the Church of England at the Holy Trinity Church. Without any evidence to the contrary, it appears that she does not now, nor has ever, belonged to the Jewish religious community. Nor is there any evidence that her maternal grandparents were of "pure Jewish blood," in that they do not appear to have been affiliated with the religious community. She also indicated that she was currently married to a Gentile. His name is illegible on the document, if it appears there at all.

Although the Bailiff was provided with a letter indicating that one Auguste Spitz is Jewish, there is no proof that it is to him that Woolnaugh is married. Absent a Jewish husband, is Woolnaugh considered a Jew? It is unclear whether these laws, in the form of the Second and Third Orders, are binding on the citizens of Guernsey. However, if a Guernsey court of law rules that they are applicable, then it may benefit us to look at the experience of the French.

A recent French Law Review article examined the "Jewishness" of a woman similarly situated to Mrs. Woolnaugh. Using a

German case as precedent, the author asserted that, in each case, a judge must decide that the claimant either has never belonged, or has ceased to belong, to the Jewish community. The German court held that a female descendant of two Jewish grandparents, who had been baptized a Protestant, under the Article stipulating the definition of a citizen of the Reich, would only become Jewish if she adhered to the Jewish religion. Even cursory involvement in organized religion was not sufficient to consider her as belonging to the Jewish community.

In applying this analysis to the facts of the present case, Mrs. Woolnaugh would not be considered a Jew for the purpose of the implementation of the law of April 26, 1941. However, this form of analysis is flawed in two ways. First, it leaves too much up to the whim of counsel or the court on each individual case. Second, it places the burden of proof on the individual to prove that he or she is not a Jew, rather than on the state to prove that the person in question is Jewish.

At first glance, it appears that each individual case will fit neatly into the categories set out by the provisions regarding who is a Jew. However, the facts of Mrs. Woolnaugh's case highlight the flaws in such laws as she is not easily classified under the restrictions set forth by the Orders. Furthermore, the excessive detail of these laws obfuscate the true nature of the type of law. That is, in utilizing religious affiliation to classify British citizens, an arbitrary system is applied that simply precludes these individuals from any meaningful societal involvement. The effect is exactly the same as if these individuals were found to have lengthy, violent criminal records. The difference is that contributing members of society are prevented from so doing.

DISCUSSION: ISSUE II

Laws based solely upon racial affiliation are void as a matter of public policy and are a menace to the state. Additionally, it is unclear whether these laws even need to be applied in Guernsey courts.

Although the French have adopted German law as their own, there is no apparent compulsion for Guernsey to do so. The text of the laws themselves does not indicate that such laws are binding upon the occupied countries. Although the French have seemingly exceeded their occupiers' hopes in implementing the Fuhrer's laws, Guernsey must decry the racial laws on their face. The negative economic impact on this small island will be swift if experienced

business owners and skilled employees are replaced in a rush to comply with the Second and Third Orders. The immediate case involves an individual who has successfully managed a business for a quarter of a century. It is difficult to understand what economic ends are met by replacing her with a less experienced individual. As such, we have a duty to protect our citizens by subjecting them to the law of the land.

If the best way to assist Mrs. Woolnaugh, and the many similarly situated citizens, is to present her situation in legal terms, then that is my task. But, in no way do I seek to add credibility to these laws. The methodology employed by the author of the French Law Review article is itself objectionable because it seeks to analyze the applicability of a law within a legal framework that should have repelled it. Principles such as personal liberty and egalitarianism, long championed by the French, should have provided a legal infrastructure strong enough to withstand the encroachment of these laws. Critical observations of the French system, combined with long-held British ideals of the value of equal protection, safeguarding property, and the avoidance of ex post facto prosecution, should enable Guernsian courts to forestall the application of the Third Order here.

CATEGORY C
RESPONSE 14

June 6, 1944
Victor G. Carey, Esq.
Bailiff of Guernsey
Royal Court House
Guernsey

WITHOUT PREJUDICE

Dear Mr. Carey,

I apologize for my delay in responding to your request. As you are aware I have a very busy practice and so have only now had time to turn my attention to the matter you presented. As Englishmen living under German control, you and I both know that the laws of England do not correspond to the Orders of the German occupying power. This fact makes my examination of the issues all the more delicate. To begin, I do not believe this to be a legal matter but rather a moral dilemma spawned by military decree and prejudice.

The German Third Order contains a prohibition against economic activities conducted by Jews. The business of Mrs. Woolnaugh no doubt falls within this prohibition and therefore the only question that remains to be answered within the narrow focus of the Third Order is whether or not Mrs. Woolnaugh is a Jew. Our answer to this apparently simple question should not be given without an awareness of the underlying questions that spring from the Order itself. These questions are: what is the purpose of the prohibition and what authority is there for us to pursue the enforcement of such a prohibition.

I find the article by Mr. Haennig unhelpful in elucidating these issues as its theme is how a Jew can show he is not a Jew. This inherent contradiction is apparent from the title of the article and is not resolved by the specious reasoning contained within the article as a whole. The "largeness and objectivity of spirit" that he finds in the German Court's application of a similar Order to a specific case is obscure to me. An inquisition into a person's heritage does not, in my mind, equate to the morality of a reasonable person or to a magnanimous social spirit. All that is evident to me from the case summary is that the attempt to prove or disprove

that a person is part of a "pure" racial heritage begs the real question of what is the purpose of establishing a person's heritage.

The purpose of the German Orders is to oppress Jews. To combat this purpose through the use of legal reasoning and rhetoric is to cloak it with a legal aura which tends, instead of questioning the existence of such arbitrary Orders, to legitimatize the existence of the Orders. Law is in theory an art that should be used to promote justice. It should not in practice be a tool used for the realization and rationalization of racial prejudices. There is no authority in English law or in any "natural law" to suggest that we should enforce the imposition of this Order. The only authority for this proposition is born of fear.

If to ignore the Order would result in military retaliation against the people of Guernsey, then perhaps it will be necessary to use legal argument to negative or delay the sanctions of the Order and accept the risk of legitimatizing an obviously unjust Order. This, I suspect, is the outcome you would also like to see, Mr. Carey. The question then becomes: is Mrs. Woolnaugh a "pure" Jew as per the definition contained in the Third Order? A side issue is did she in fact lie in her declaration of Dec. 2, 1940?

The burden to prove that Mrs. Woolnaugh is a Jew should fall to you, Mr. Carey, as the prosecuting authority in this matter. It should not rest upon her to prove that she is not a Jew as this is not the procedure in England and neither the Second or Third Order alters the system of English law on this point. This I believe will be a difficult burden for you to sustain because you have very little solid evidence on which to base your case.

The evidence that might deem Mrs. Woolnaugh to be a Jew is found in her declaration of Dec. 2, 1940 and in the rumours that have been spread by Mr. Gill as to her alleged marriage to Mr. Spitz. The registrar and notary, Mr. Roussel, acknowledges both that he knows the present provisions to be used in establishing if a person is a Jew and that he does not know of any person who is considered a Jew. He does not have any reason to believe that the declaration of Mrs. Woolnaugh is incorrect. This would lead me to believe that he is familiar with Mrs. Woolnaugh and that he, in his capacity as registrar, knows that she married a gentile. I assume this husband to be Mr. Woolnaugh from whom Mrs. Woolnaugh received her surname.

Mr. Roussel is unaware of any subsequent marriage of Mrs. Woolnaugh to Mr. Spitz but for the purpose of deciding whether Mrs.

Woolnaugh lied in her declaration this point is irrelevant. She stated that she "married a gentile." Mr. Roussel is in a position to know if this is true and accepted it to be true so I would take her statement to in fact be true. Any subsequent marriage does not alter this fact. On the issue of whether she did subsequently marry Mr. Spitz, described by Inspector Sculpher as a "known person of the Jewish persuasion," we have only the rumours of Mr. Gill. Without verification of these rumours, the rules of evidence would not allow them to be adduced at trial and given the small size of the Jewish community of Guernsey, the possibility of verification seems unlikely.

Ultimately, I believe, Mr. Carey, that you will have to accept the declaration of Mrs. Woolnaugh. She states that her mother was a Jew and that her father was not. She does not make any statement about the community to which her grandparents belonged. Presumably, her mother's parents were Jews and her father's were not. This presumption by itself would not deem her to be a Jew by the definition of the Third Order unless she also belongs to the Jewish religious community or marries a Jew. In the declaration, Mrs. Woolnaugh specifically mentions an affiliation to the Church of England and makes no mention of the Jewish faith. She also specifically states that she married a gentile. Mrs. Woolnaugh's declaration should be accepted in the same light as were the declarations of Julia Brichta, Annie Wranowsky and Mrs. Broward. None of these three women are listed among the known or registered Jews in Mr. Sculpher's letters which suggests they have not been designated as such. Perhaps this is akin to the largeness of spirit that Mr. Haennig suggests the German courts reveal. If so, then it is only fair and equitable for us to apply the same standards.

As you stated, Mr. Carey, this is a "distasteful business." I understand you to believe that you may have to pursue this matter because of the authority that the Germans have vested in you and your accountability to them. I submit, however, that Mrs. Woolnaugh did not lie to you and that the rumours you heard are just that—rumours. Without verification, rumours are nothing more than hearsay and cannot, as evidentiary precedent, be used in court. English law has, over centuries, found this to be the proper course of action and I would suggest that this is also your proper

course of action. I hope that this letter will assist you and that this file can be closed before any actions are commenced.

I have the honour to be,
Sir,
Your obedient servant,
[signature deleted]

CATEGORY D
RESPONSE 15

TO: Bailiff of Guernsey
FROM: [deleted]
Re: Proceedings Against Mrs. Woolnaugh

You have asked me to commence proceedings against a Mrs. V.B. Woolnaugh due to her alleged violation of the Second and Third Orders of April 26th, 1941, Relating to Measures against Jews. As a preliminary measure, you request that I draft a memo stating the issues arising under said laws that might apply to this situation. Before I proceed to undertake any form of legal analysis, it is my intention to let you know precisely how I feel about this situation.

I obtained my law degree from the University of Kent and thus was educated in accordance with the liberalness of the British Common Law system. I was taught that the freedom to contract was sacred and that all people should be protected by the law. These principles have guided my practice since 1936 and I do not intend to forsake them now. The Second and Third Orders seek to repeal the Common Law and replace it with a positivist regime that blithely violates the rights of individuals in the name of Law. This cannot be condoned. The follies inherent in strictly adhering to the letter of the law have been well documented by writers throughout the ages. When this course of action is followed, injustice quickly becomes the norm and people soon lose faith in the supposedly neutral systems that govern them.

These Orders seek to base what rights an individual is entitled to upon what religion was practised by that person's grandparents. How can we seriously believe that this is a rational and just cause of action. These laws are forcing people to hide their heritage in order to retain the right to own and control their own businesses. If the distinctions contained in the above Orders are followed blindly without someone taking a stand, who knows what absurdities will come next. Perhaps the government will decide to prohibit the manufacturing of coffins or it will decree that only men with mustaches can practice medicine. Your response may be that I am being ridiculous and that these situations cannot possibly be compared. However, it is my position that one irrelevant distinction will soon lead to others.

You may claim that I am being unnecessarily alarmist, as the Orders do not entirely abolish the concept of mercy. This position

is articulated in the article by Joseph Haennig which you have sent to me. M. Haennig claims that each case must be decided on its own merits and he cites the "largeness and objectivity of spirit" of German law on this topic. He writes how the Court of Leipzig instructed lower courts not to take links to the Jewish community into account "if it was established . . . that the defendant was merely using the Jewish religion as a means to acquire an advantage by that intermediary." In response to this article I can only say that if this is mercy, I want nothing to do with it. This is the mercy of the Christian Antonio who "mercifully" stripped the Jew Shylock of all his present and future possessions.

Upon examining these laws one begins to wonder if the drafters had not recently read the *Merchant of Venice*, as the conditions for retaining property seem to be quite similar to those in Shakespeare's play. Under these Orders, in order to be able to carry on the designated economic activities, those with two grandparents of "Jewish blood" must prove that they personally belong to another faith and that their spouse is not Jewish. This seems quite similar to Antonio's requirement that Shylock denounce his Jewish faith and become a Christian. In the play this condition appears unreasonable yet we are not unduly concerned as this is not real life. However, these Orders are real and therefore frightening.

According to the law of April 26, 1941 Mrs. Woolnaugh will lose the inn that she has run for 25 years simply because her mother was Jewish and she secretly married a Jewish man in a synagogue. She could state that she agreed to be married in the synagogue as a way to maintain harmony with her new spouse or acquire some other type of advantage. In this way she could ask the court to exercise the "largeness of spirit" of the Court of Leipzig. Because she was baptized in the faith of the Church of England it is possible that this type of argument would work. Following this course of action could save her business; however, it would force her to denounce the faith of her alleged husband and supply proof that she herself was never a practicing Jew.

The fact that the burden of proving that one should not be classified as a Jew is placed upon the individual and not the State is yet another example of how these laws go against the Common Law tradition. Under the British legal system the burden of proof has always been upon the party alleging harm, normally the State. However, these Orders implicitly contain a reverse onus. This is merely an illustration of how much the law has regressed and does not represent my primary concern with the Orders. Even if the

burden of proof were to be placed upon the State, I would not support these laws.

In conclusion I would like to stress the fact that the dictates of one's conscience and emotion should also be part of the law. If we once aid in the enforcement of laws that we feel are morally reprehensible and inhuman, we will commit a great wrong against all others that may look to us for guidance. I will not become a party to such a crime.

CATEGORY D
RESPONSE 16

EXCERPT FROM THE JOURNAL OF [DELETED],
14TH JANUARY, 1944

I write this at three o'clock in the morning. Margaret and the boys are asleep—I just checked on them, and they look so peaceful. I cannot sleep. I received today a file from Victor, the Bailiff, asking me to commence proceedings against a certain Mrs. W.—it is a small island, so I know of her, although I do not know her personally. It seems that she lied about having married a Jew, so that her business now may be subject to confiscation under the racial laws of occupation. These laws are abhorrent—immoral. I cannot in good conscience prosecute this woman under them. But what can I do? I keep asking myself, over and over again—what can I do? I wish I could do away with the laws altogether but that is not within my power. What is?

I thought at first that I should contact Victor—after all, we have known each other a number of years—and try to persuade him against pursuing this action. What harm, after all, could it do to allow this one harmless old woman to continue to run her inn? But what if I cannot persuade him? Would I not do more harm than good? He would suspect me of sympathizing—which not only would not help Mrs. W. but would also possibly put me and my family in danger. I can make such a decision for myself—but for Margaret? For the boys? The Germans are not notorious for their tolerant consideration of those persons within the occupied territories who ignore their laws.

My second thought was to resign as prosecutor—to refuse to proceed. I have a little money set aside; we could manage. I am afraid though. This course too could put my family at risk. Even that aside—would resignation be the best choice? Would it help Mrs. W. at all? I think not. There will always be someone else to prosecute her case. And what if that other did not have any objection to the law? Would they not then prosecute her to the full extent of the law?

As I look over the laws and the other materials in the file, I can see legal arguments—I can see twists and turns that I could use to suggest to the Bailiff that the case is not worth pursuing. The lawyer in me itches to do this—to take this unnatural law and use its own flaws to save Mrs. W. her inn. But were I to do this, would I not be

validating the very law I despise? In arguing that Mrs. W. falls outside the law, would I not somehow be validating the law—saying that it is just, and that on different facts, it would apply? Would I not be giving the laws legitimacy by recognizing them? What about the next person to be persecuted under the laws? What will I—they—do then? Daily, we hear reports that the German war machine is weakening. If only the war would end!

I think of Shakespeare's *Merchant of Venice*, which I have been reading of late; not only am I reminded now of Shylock's poignant speech, "hath not a Jew eyes?" but also of his plaintive, "Is that the law?" when Portia uses the terms of his own bond against him. A clever twist: she makes use of a technical omission in his own bond to undo him. Brilliant irony.

If I *were* to look at the legal issues of the case in a memorandum to the Bailiff, could I convince him that it is not worthy of pursuit? I believe that I could, on the law and on these facts. I would have to convince him that we do not have enough evidence to make a case, and that Mrs. W does have room to make a defence.

Under the Third Order, a person will be considered a Jew if he or she has three Jewish grandparents *or* two Jewish grandparents *and* a marriage to a Jew or membership in the Jewish community. Mrs. W could argue, on the facts, that she does not fall within this definition. Jewish religious law is such, from what I understand, that the religion is passed from mother to child—could she not put forward that only her maternal grandmother was a Jewess, and that therefore even if she had married a Jew, she still did not fall within the definition? I think she could. She might also argue that although her mother was a Jewess, she herself was a Protestant—following the kinds of arguments put forth in Haennig's article. This type of argument seems to have been successful in Paris.

Could she not also argue that she did not lie in her original declaration? That is, could she not say that she did marry a Gentile—Mr. Woolnaugh? If she could prove that she had been married at some point to a Gentile, the only evidence remaining against her would be that of Mr. Gill.

I would point out that the only evidence we seem to have of this Jewish marriage is the word of Mr. Gill. With no other proof, and with Mr. Spitz decidedly unable to testify, it would simply be a case of Mr. Gill's word against that of Mrs. W. I could argue that this is an inadequate foundation upon which to pursue such a serious charge.

Could I, like Portia, use the law to further my own aims, while still appearing to zealously perform my duties as a Prosecutor? Can I use their unjust laws to achieve a just resolution?

[reponse continued over]

Memo To: Victor G. Carey, Esq. (The Bailiff, Island of Guernsey)
From: [deleted]
Re: Proceedings against V.B. Woolnaugh
Date: January 15, 1944

Dear Victor:

I spoke this morning with Mr. Gill regarding the matter of his allegation of secret marriage between Mrs. V.B. Woolnaugh of Vauvert Manor, Vauvert Road, and Mr. Auguste Spitz, a Jew.

In the course of our discussion, Mr. Gill withdrew his allegation and apologized for any inconvenience he may have caused by his error. I explained to him the gravity of the situation, but he was quite adamant that he had been mistaken, and that he wished to withdraw his evidence.

Without the testimony of Mr. Gill, I do not see how we can proceed on this matter. As pointed out by Mr. A.J. Roussel in his letter of 26th June, 1941, Mrs. Woolnaugh would not be considered a Jewess provided the information in her declaration of 2nd December 1940 was correct. The only evidence we had that her declaration was untrue was Mr. Gill's allegation. Mrs. Woolnaugh, it may be assumed, will adhere to her original declaration. The alleged husband, Mr. Spitz is, as you noted, currently beyond our jurisdiction and unable to assist us in our investigation.

I recommend we go no further with this matter.

Your servant,
[signature deleted]

[response continued over]

POSTSCRIPT: Upon Mr. [deleted]'s death in August, 1984, his journal, along with this copy of a letter (dated 14th January, 1944) was found among his papers.

Dear Mr. Gill:

I have been informed by the Bailiff that you have come forward with information regarding the secret marriage of one Mrs. V.B. Woolnaugh to Mr. Auguste Spitz, a recently deported Jew.

I would appreciate the opportunity of meeting with you, at your earliest convenience, to discuss the particulars of this allegation. May I suggest that you attend at my office tomorrow, 15th January 1944, at eleven o'clock in the morning? I would like to proceed with this matter as soon as possible.

It is clear that you understand the duty we are under, pursuant to the current statutory regime, to investigate all such connections to the Jewish faith. Because of the personal nature of the information required to commence proceedings under the Racial Laws, the regime appreciates information from persons, such as yourself, who have intimate knowledge of the Jewish community. The regime is interested not only in the information itself, but also in the sources of that information. To that end, I feel compelled to raise one other matter, which I am sure you will understand. I ask that you provide me with an explanation of your knowledge of this matter, along with particulars of your own racial and religious heritage, in order that the record be complete. I would greatly appreciate it if you would come to our meeting prepared to discuss these matters.

I would like to take this opportunity to thank you again for your forthrightness in bringing this matter to our attention

Thanking you for your anticipated cooperation, I am,

[signature deleted]

CATEGORY E
RESPONSE 17

Dear Mr. Bailiff,

I hereby respectfully resign my position as attorney for the occupied powers, to take effect immediately.

As a woman and as a person of the Jewish faith I feel that I cannot pursue the prosecution of Jews for some alleged defect of their ancestry. As a lawyer I have devoted my career to the quest for justice; this path has lead me to analyze issues I had accepted previously as true. It is in this spirit that I put the question to you now: What is a Jew?

To illustrate the gossamer quality of a definition which may seem concrete, I will show you that defining a Jew is as difficult as defining a woman (a label that I imagine you would have called a simple one). My reasons for resigning my position are not solely due to the difficulties presented by these definitions. Even if defining the qualities that contribute to the identity of a Jew (or a woman) were uncomplicated, the further matter of punishing individuals for attributes that your regime deems significant has persuaded me to seek other employment.

But first I feel I must demonstrate what I have described so that perhaps you will learn that individuals cannot be sacrificed because they fall into some arbitrary category of currently disfavored persons.

What is a woman? Is the definition biological or sociological? Is it based on physical or spiritual features? Is a woman the same as a lady or a girl? If a woman is a biological definition, then what of a transsexual? A man who changes his physical makeup can be called a woman. Yet, if another biological man desires to be a woman, identifies himself as a woman, has the same mentality as the transsexual, only he does not go through an operation of castration, is he any less a woman?

If a biological woman lacks the same "feminine" mentality as these two "men" is she not a woman? Often society can only define such an illusory classification by means of visible characteristics. Women are defined often by their clothing, their actions and their relationships. People in dresses are women. A man in a dress is called a "sissy" (a female) or a "fag" (not a "real" man). People who care for children or go shopping are assumed to be women. Wives are women. Is a lesbian in pants with no children a woman?

Does a person become a woman at certain times? For instance, what is the transsexual five minutes before his operation. Apparently it is unclear when a female becomes a woman. How old is a woman? Is a female a woman after she begins to menstruate, after she leaves home, when she marries? Often others define her "womanness." Many people call women "girls" no matter what their age. Some people use the term "lady" instead of "woman." Yet a "girl" is a child, and a "lady" is some polite, well-dressed person, possibly with an official title (ie. Lady Dedlock).

Very often people take their definitions from physical characteristics. Expressions like "what a woman!" are used usually to describe a woman with exaggerated female features, like large breasts or long legs, as if one is more or less of a woman based on those attributes. Similarly, clothing can identify a person as a woman. But this leads to the question of men "in drag." The entire point of the movie *The Crying Game* is that, by the end, the audience is able to see Dil only as a woman. And if Dil can be a woman, then a biological woman in an evening dress is no less "in drag" than her [Dil's] character.

It seems to me, as an attorney, that if the seemingly simple issue of what a woman is cannot be defined easily, then the amorphous category of "Jewish" certainly cannot.

Depriving a person of his or her livelihood based on religious affiliation establishes guilt without any crime or even fault. And though I do not believe that even a Jewish person with two Jewish parents and four Jewish grandparents is guilty of any transgression or deserves persecution of any kind, you expect me to pursue and prosecute citizens who may not qualify as Jews.

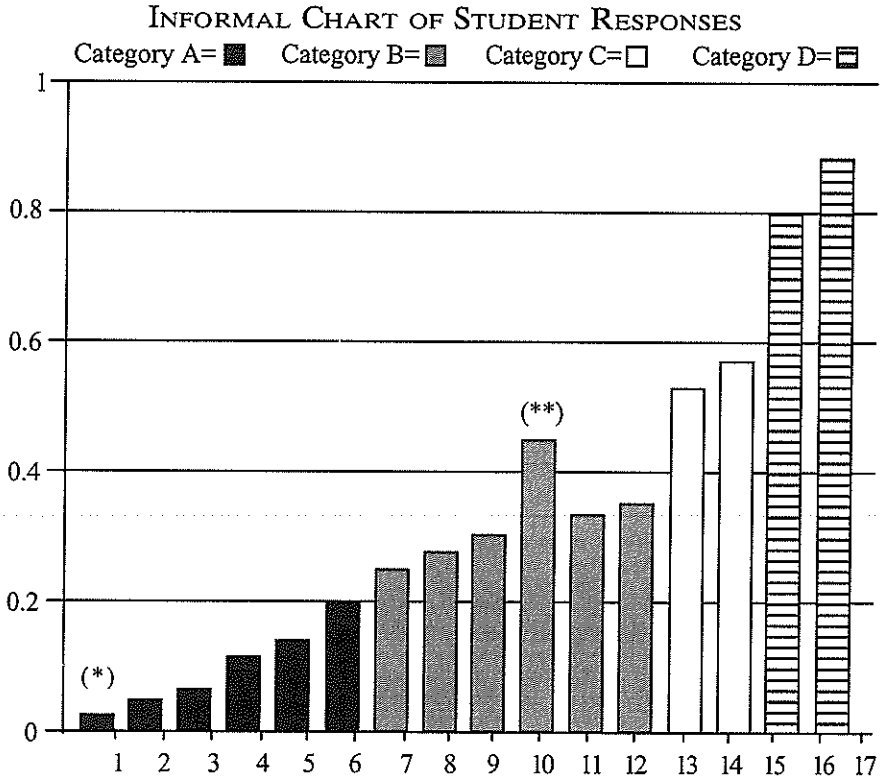
Individuals do not take on new characteristics based on who they marry, where they are married or where they work. According to Jewish law, a child is Jewish if she is born of a Jewish mother. But if as an adult that person chooses not to identify herself as a Jew, is she any more Jewish than the woman-identified transvestite is a man? Is a person Jewish who converts to Judaism? Is one's Judaism based on observance? How observant must one be or how nonobservant to *not* qualify as Jewish?

We are presently engaged in criminalizing a classification which we have created ourselves. It is not the responsibility of this

regime to determine for others the quality of their faith or condemn them for it. I refuse to take part in this persecution of innocents any longer.

Your obedient servant,
[signature deleted]

APPENDIX D



Sublime = highest level of legal generalization.
Grotesque = lowest level of legal generalization.
(*) = pro-Nazi conclusion
(**) = see especially last 2 pages
(17 = category E off the chart)