(2) Visiting Consultants

It is intended to bring one consultant from the U.S. during 1950 who is an expert on election systems. He will consult with the Voters' Leagues, Bundestag and Landtag members and party leaders, and with citizens' associations.

No plan has yet been made for a consultant in 1951 because of the feeling that other items in the program must be further developed before substantial additional work in this field can be undertaken.

(3) German Visits to the United States and European Countries

Arrangements have been made for two groups of German political leaders, totaling 13 persons, to go to the U.S. during 1950 for a period of three months. These individuals will be selected as having an interest in the improvement of political practices in Germany, although not committed to any specific reforms. They will observe the working relationship between the voter, the parties, legislators and officials in the U.S. This includes political groups, non-partisan voters' organizations, pressure groups, letters from constituent to representative, newspaper discussion of candidates' voting records, party organization, the direct primary system, and a number of other details which distinguish practice in the United States and Germany.

A similar program for five leaders is proposed for 1951, subject to modification after experience with the 1950 group.

(4) Pamphlets

"Election Systems". This will be a simple presentation of comparative election systems showing the benefits and defects of each and the arguments pro and con.

"How Political Parties Work". This will describe the actual operation of the political party system in Germany, with comment and illustrations of alternative practices in the other Western democracies, and emphasis on the advantages of better relations between the parties and the public and more control of the public over legislative representatives.

(5) Land Offices

Newspaper editorials indicate that there is already considerable understanding among those familiar with public affairs that the present political party system is unsatisfactory and unrepresentative, that there is too strong a party discipline, and that the interests of the public as a whole and of constituencies in particular are subordinated to party policy and interests. With this as a starting point it seems probable that some impression may be made on the political party system in the various Laender by discussion with individuals interested in public affairs, whether they are now active in party politics or not. The recent rise of the refugee parties and the abstention of youth are indications of the public dissatisfaction with the present system. Common experience indicates that many who still vote the regular party tickets do so because no other choice is offered them. An opportunity is open to that party which first convinces the people by action that it is responsive to the public will and public need.

Leaders and legislators may be convinced of the advantage of closer contacts with their constituencies, and that this should extend to the voters as a whole and not merely to party supporters. They would also find it useful to discuss matters and elicit voters' opinions rather than devote themselves primarily to speeches presenting party doctrine.

(6) Kreis Offices

The considerations outlined under (5) above are even more applicable to the Kreis Officers because they have the best opportunity for contact with the local leaders and legislators. If reforms are ever realized it will result from grass roots pressure and application at the local level.

(7) Newspapers and Radio

General material will be made available from IPG. HICOG representatives at all levels may encourage newspaper and radio comment upon developments, or concerning the action of local representatives in the local councils, the Landtag, and Bundestag. It would be particularly desirable if the newspapers would report the vote of the local representative on particular bills which affect the locality, noting whether he voted in the interest of the locality or, under party discipline, against it. It is hoped that some newspapers and radio commentators may be persuaded consistently to contrast party ideologies with the realities of urgent problems and pending programs.

(8) Films

No film program has been developed.

7. LEGISLATIVE ORGANIZATION AND PRACTICE

A. PROBLEM

At both Federal and Land level the Executive branch of the government tends to dominate the Legislative branch. The Executive branch is headed by a cabinet which commonly includes the party leaders of the legislative majority, and it exercises, not merely leadership, but a tight discipline over the party groups. The Executive branch is staffed by professional civil servants who for generations have nourished the tradition that only they through their training and experience are expert in government. Many legislators seem to accede to this view, and many civil servants appear to have a contempt for the untrained legislator and hence for the legislative process and legislative authority.

Legislative organization and procedure are ill-adapted to the assertion of the constitutional supremacy of the legislature, especially since final decisions are made in committees and party caucuses and through agreements between party leaders before debate and the public vote. The legislatures lack staff and reference bureaus and depend largely on the ministries to draft their legislation for them. Most bills which are passed are cabinet drafts. Legislative investigations of government administration and public affairs are unduly limited because of executive influence over the legislature.

The public has little real representation and little opportunity to make its views known or effective. As noted in Program 6, election systems and party discipline combine to make the legislator represent the party, not his constituents. Public hearings on pending legislation are almost unknown, and public discussion of legislation before adoption is almost non-existent and is vigorously opposed by most governments.

The legislatures consistently adopt laws which contain an undue delegation of authority, and even of legislative power, to the executive, and give inadequate protection to the citizen from executive authority.

Civil Servants serve also as legislators, thereby further confusing the distinction between executive and legislature.

B. OBJECTIVES

To aid those Germans who seek to:

(1) Strengthen the independence and efficiency of the Legislative Branch. This includes the establishment of adequate professional and technical asistance so that the legislature shall not be dependent upon the Executive branch in the preparation of legislation.

(2) Develop the relationship of legislators individually and as a body to their constituents and the public, and the right of the public to be informed and to be heard on pending legislation.

(3) Application of the principle of the separation of powers between the three branches of government. This includes reform in the present practice of undue delegation of legislative power to the executive and of assigning judicial power to, or interference with the judicial power by, the executive and legislative branches.

(4) A system of adequate judicial review of the constitutionality and legality of legislative and executive acts.

(5) Elimination of secrecy in legislative procedure where it is designed to conceal proper information from, or to avoid the responsibility of the legislator to, the public.

C. PROGRESS TO MAY 1950

Considerable formal progress has been made since 1945. The Basic Law and the Land Constitutions in the U.S. Zone declare the responsibility of the legislatures to the people, the right of the individual legislator to vote according to his conscience, the supremacy of the legislature in the law making field, the separation of powers between the three branches of government, the individual rights of the citizen (civil liberties), and the duty of the Judicial branch to protect them. They also prohibit the undue delegation of legislative power to, or its exercise by, the executive. They authorize legislative investigation of government administration and public affairs.

Unfortunately the spirit of these constitutional provisions is little found in German practice.

It must be added, however, that there is a growing consciousness in the legislatures of many of the weaknesses noted. The legislators recognize and resent executive domination and appear slowly to be making an attempt to throw it off. Some specific action has been taken where ministries failed to carry out legislative decisions which they did not like, or where the Executive branch refused proper information to the legislatures. The very fact that these isolated incidents are noted as evidence of progress, however, shows how unsatisfactory the situation is.

Perhaps the most encouraging step forward results from a recent visit of a Bundestag group to the U.S. Fifteen members visited Congress, the Supreme Court, TVA, Detroit and other places over a period of 30 days. Special emphasis was put on congressional organization and procedure, committee work, public hearings, relations between Congress and the public, and the legislative reference service of the Library of Congress. Recognizing, however, that a competent legislator's interest lies in the life and spirit of the people whom he serves, and that organization and procedure is merely a technique toward a successful accomplishment of his work, they were given the opportunity to see courts, newspapers, labor unions, industry, education and city and state governments in operation. They appear to have returned with a new conception of the role of the legislature and of possibilities for improvement in Germany. The first concrete result has been the visit of a representative of the Library of Congress at their invitation, to advise the Bundestag on the establishment of a legislative reference service. Another consultant made a survey of this situation in the Landtage in 1949, and if the federal experiment is successful it may be hoped that progress will be made at the state level also.

The Bundestag visit to the U.S. may also produce changes in terms of legislative organization and procedure.

Six members from the Landtage in the U.S. Zone have gone to the U.S. for a three months period to observe State legislative procedure and organization. They have not yet returned.

D. PLANNED ACTION TO JULY 1951

(1) General

It is believed that the most immediate progress can be made in this field by the initiation of legislative reference services and by improvements in legislative organization and procedure. Some committees may decide to hold public hearings. Discussions will be held with individual legislators concerning specific legislation, to point out the practical importance and application of the doctrines of the separation of powers and non-delegation of legislative power to the executive.

For the reason stated in Program Item 6 it is improbable that any great advance will be made in the next year toward establishing the right of legislators to represent their constituents. Program item 6, however, suggests means to further a closer relationship between legislators and constituents.

(2) Visiting Consultants

Two U.S. consultants will visit Germany in 1950 and three U.S. and two European in 1951, in addition to the Library of Congress expert who is already here on invitation of the Bundestag group. The consultants arriving in 1950 will follow up the work with the Bundestag, will give any assistance desired by the Landtage to establish legislative reference services, and will discuss with them changes in organization and procedure which will further legislative independence and enable it to play its constitutional role.

(3) German Visits to the U.S. and European Countries

Another group of 15 Bundestag members will be invited to visit the U.S. early in 1951 and three groups of Landtag members of 12 each will visit State legislatures. The Bundestag group will follow substantially the same program as that described

in "C" above, and the groups of Landtage members will follow a comparable program vis-a-vis selected State legislatures and State activities.

(4) Pamphlets

In anticipation of the time when other progress makes it possible to attack the main problems in this field — relations between legislators and constituents, and executive and party domination — it is proposed in the coming year to issue four pamphlets for circulation which will lay the groundwork for an understanding of desirable changes in practice.

"Your Representative". This will discuss the desirable relationship between the individual legislator and his constituents. It will state the present situation, and then consider what the constituent may properly expect of the legislator, and how he may make his views known. From the other side it will discuss the legislator's relationship, not only to his party supporters but to the public at large, how he can keep in contact with them and with public opinion, and what services he can and should perform.

"The Citizen and the Legislature." This will deal, again from two points of view, with the right of the citizen to participate in the legislative process. It will consider the obligation of the legislature as a body to the public, means of carrying it out and means by which the citizen can make his views felt. It will consider the role of radio and press. On the other hand it will treat of the advantage to the legislature of public support and understanding and of practical means of developing this.

"Public Hearings." This will develop the benefits both to the public and legislature of public hearings, and examine the techniques and the limitations.

"Public Information." This will discuss the right of the public to full information on what its government is doing. This is not limited to information about legislation, although that is an important aspect. The role of the press and radio will be considered, and techniques of government reporting will be set forth.

(5) Land Offices

The suggestions made in Program Item 6 for Land Offices are equally applicable here.

In addition Land Offices should encourage the initiation of legislative reference services and should discuss with individual legislators the problems suggested in (1) above.

(6) Kreis Offices

See (1) and (5) preceding.

(7) Newspapers and Radio

An attempt will be made to interest the newspapers in a more complete coverage of legislation while it is pending and before it is passed. Even those newspapers which are most devoted to the public interest seem to fail in this respect. Undoubtedly the reticence of governments and legislatures concerning pending legislation is a cause. Newspaper support for public hearings on important bills will also be sought. After the preliminary discussions with German newspaper editors, it is planned, if possible, to hold a series of conferences dealing with these problems. The same aid will be sought from radio commentators.

(8) Films

One motion picture short presenting the proper relationship between the constituent and legislator is planned for the coming year.

U.S. movie shorts will also be examined to see whether with editing they may be adapted to German audiences.

8. FEDERAL-STATE RELATIONS

A. PROBLEM

The Federal constitution (Basic Law) establishes a federal system with adequate definition of the fields of jurisdiction of the Federal and Land governments. Already, however, there is an observable tendency towards the extension of Federal legislation into fields reserved to the Laender. Centralization of power in the national government is a basic policy of several of the political parties. The present generation of Germans is accustomed to centralized power and has little understanding of federalism as a defense for democracy, or of its philosophy.

Many Germans appear tacitly to reject the principle that sovereignty rests with the people, and may be delegated by them to different levels of government.

B. OBJECTIVES

(1) To further an understanding among the German leaders and people of the principles and importance of a federal system, including the principle that sovereignty rests with the German people and is exercised by the Federal and state governments through delegation from them.

(2) To encourage them to protect the line of division of powers drawn by the Federal constitution.

C. PROGRESS TO MAY, 1950

Considerable efforts were made prior to the adoption of the Basic Law to persuade German leaders and jurists of the importance of establishing a federal system. A majority of the CDU-CSU representatives appeared to accept it as a sound foundation for the new state. Generally the other parties rejected it in principle, but they had to make concessions because authority to draft a Basic Law had been given only on condition that it should establish a federal state.

The Basic Law itself is reasonably satisfactory in this respect. Article 73 lists the fields in which the Federation has exclusive legislative authority, and Article 75, those where it has the right to establish general provisions binding on the states. Article 74 sets forth the fields of concurrent legislation, and Article 72 defines and limits the federal right to act in these concurrent fields. Under Article 70 all legislative power not given to the Federation remains with the Laender.

Article 125, however, provides that pre-existing laws in the fields of concurrent legislation become federal law if they are uniformly valid within one or more zones of occupation. This article appears to reinstate the old centralized Reich law in cases where the Federation would have now no right to initiate new legislation.