

TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY
TRIBUNALS



VOLUME IV

"THE EINSATZGRUPPEN CASE"

"THE RuSHA CASE"

*Germany (Central, under Allied occupation),
" 1945- U.S. Zone.) Military Tribunals*

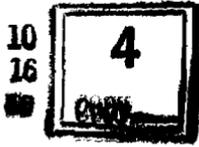
TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY TRIBUNALS
UNDER
CONTROL COUNCIL LAW No. 10



VOLUME IV

NUERNBERG
OCTOBER 1946-APRIL 1949

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PREFACE

In April 1949, judgment was rendered in the last of the series of 12 Nuernberg war crimes trials which had begun in October 1946 and were held pursuant to Allied Control Council Law No. 10. Far from being of concern solely to lawyers, these trials are of especial interest to soldiers, historians, students of international affairs, and others. The defendants in these proceedings, charged with war crimes and other offenses against international penal law, were prominent figures in Hitler's Germany and included such outstanding diplomats and politicians as the State Secretary of the Foreign Office, von Weizsaecker, and cabinet ministers von Krosigk and Lammers; military leaders such as Field Marshals von Leeb, List, and von Kuechler; SS leaders such as Ohlendorf, Pohl, and Hildebrandt; industrialists such as Flick, Alfried Krupp, and the directors of I. G. Farben; and leading professional men such as the famous physician Gerhard Rose, and the jurist and Acting Minister of Justice, Schlegelberger.

In view of the weight of the accusations and the far-flung activities of the defendants, and the extraordinary amount of official contemporaneous German documents introduced in evidence, the records of these trials constitute a major source of historical material covering many events of the fateful years 1933 (and even earlier) to 1945, in Germany and elsewhere in Europe.

The Nuernberg trials under Law No. 10 were carried out under the direct authority of the Allied Control Council, as manifested in that law, which authorized the establishment of the Tribunals. The judicial machinery for the trials, including the Military Tribunals and the Office, Chief of Counsel for War Crimes, was prescribed by Military Government Ordinance No. 7 and was part of the occupation administration for the American zone, the Office of Military Government (OMGUS). Law No. 10, Ordinance No. 7, and other basic jurisdictional or administrative documents are printed in full hereinafter.

The proceedings in these trials were conducted throughout in the German and English languages, and were recorded in full by stenographic notes, and by electrical sound recording of all oral proceedings. The 12 cases required over 1,200 days of court proceedings and the transcript of these proceedings exceeds 330,000 pages, exclusive of hundreds of document books, briefs, etc. Publication of all of this material, accordingly, was quite unfeasible. This series, however, contains the indictments, judgments, and other important portions of the record of the 12 cases, and it is believed that these materials give a fair picture of the trials, and as full and illuminating a picture as is possible within the space available. Copies of the entire record of the trials are available in the Library of Congress, the National Archives, and elsewhere.

In some cases, due to time limitations, errors of one sort or another have crept into the translations which were available to the Tribunal. In other cases the same document appears in different trials, or even at different parts of the same trial, with variations in translation. For the most part these inconsistencies have been allowed to remain and only such errors as might cause misunderstanding have been corrected.

Volumes IV and V are devoted to three trials which were concerned principally with activities of the SS. The first part of Volume IV is dedicated to the so-called "Einsatzgruppen Case" (*United States of America vs. Otto*

Ohlendorf et al, Case No. 9), widely discussed as the biggest murder trial in history. Ohlendorf and the other 23 defendants were commanders or subordinate officers of special SS units which accompanied the German Army in its invasion of the Soviet Union, to perform certain special "political" and "security" missions. These SS units were alleged to have caused the death of approximately one million civilians and prisoners of war in the German occupied area of Russia.

The second part of Volume IV and the first part of Volume V deals with the "RuSHA Case" (*United States of America vs. Ulrich Greifelt et al, Case No. 8*), which takes its name from the "Race and Resettlement Office" (Rasse- und Siedlungshauptamt) of the SS. The fourteen defendants were officials of this and other SS branches concerned with various aspects of the Nazi "racial" program.

The remainder of Volume V contains material from the "Pohl Case" (*United States of America vs. Oswald Pohl et al, Case No. 4*). Pohl was the Chief of the Economic and Administrative Main Office (WVHA) of the SS, and the other 17 defendants were officials in this same SS agency.

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 - B. Selections from the Arguments and Evidence of the Defense.
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 - 3. Status of Occupied Poland under International Law.
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- Table of Comparative Ranks.
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TRIALS OF WAR CRIMINALS BEFORE NUERNBERG MILITARY TRIBUNALS

<i>Case No.</i>	<i>United States of America against</i>	<i>Popular Name</i>	<i>Volume No.</i>
1	Karl Brandt, et al.	Medical Case	I and II
2	Erhard Milch	Milch Case	II
3	Josef Altstoetter, et al.	Justice Case	III
4	Oswald Pohl, et al.	Pohl Case	V
5	Friedrich Flick, et al.	Flick Case	VI
6	Carl Krauch, et al.	I. G. Farben Case	VII and VIII
7	Wilhelm List, et al.	Hostage Case	XI
8	Ulrich Greifelt, et al.	RuSHA Case	IV and V
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11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV
12	Wilhelm von Leeb, et al.	High Command Case Procedure	X and XI XV

ARRANGEMENT BY SUBJECT UNITS FOR PUBLICATION*

<i>Case No.</i>	<i>United States of America against</i>	<i>Popular Name</i>	<i>Volume No.</i>
<i>MEDICAL</i>			
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2	Erhard Milch	Milch Case	II
<i>LEGAL</i>			
3	Josef Altstoetter, et al.	Justice Case Procedure	III XV
<i>ETHNOLOGICAL (Nazi racial policy)</i>			
9	Otto Ohlendorf, et al.	Einsatzgruppen Case	IV
8	Ulrich Greifelt, et al.	RuSHA Case	IV and V
4	Oswald Pohl, et al.	Pohl Case	V
<i>ECONOMIC</i>			
5	Friedrich Flick, et al.	Flick Case	VI
6	Carl Krauch, et al.	I. G. Farben Case	VII and VIII
10	Alfried Krupp, et al.	Krupp Case	IX
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7	Wilhelm List, et al.	Hostage Case	XI
12	Wilhelm von Leeb, et al.	High Command Case	X and XI
<i>POLITICAL and GOVERNMENT</i>			
11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV

* Although the subject material in many of the cases overlap, it was believed that this arrangement of the cases by volumes would be most helpful to the reader and the most feasible for publication purposes.

DECLARATION ON GERMAN ATROCITIES

[Moscow Declaration]

Released November 1, 1943

THE UNITED KINGDOM, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in the many countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all the peoples or territories in their grip have suffered from the worst form of government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites, and on French and Italian territory.

Accordingly, the aforesaid three allied Powers, speaking in the interests of the thirty-two [thirty-three] United Nations, hereby solemnly declare and give full warning of their declaration as follows:

At the time of the granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres, and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein. Lists will be compiled in all possible detail from all these countries having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxemburg, France and Italy.

Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian, or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.

The above declaration is without prejudice to the case of the major criminals, whose offences have no particular geographical localisation and who will be punished by the joint decision of the Governments of the Allies.

[Signed]

Roosevelt
Churchill
Stalin

EXECUTIVE ORDER 9547

PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST THE LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL AGENTS AND ACCESSORIES

By virtue of the authority vested in me as President and as Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, it is ordered as follows:

1. Associate Justice Robert H. Jackson is hereby designated to act as the Representative of the United States and as its Chief of Counsel in preparing and prosecuting charges of atrocities and war crimes against such of the leaders of the European Axis powers and their principal agents and accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal. He shall serve without additional compensation but shall receive such allowance for expenses as may be authorized by the President.

2. The Representative named herein is authorized to select and recommend to the President or to the head of any executive department, independent establishment, or other federal agency necessary personnel to assist in the performance of his duties hereunder. The head of each executive department, independent establishment, and other federal agency is hereby authorized to assist the Representative named herein in the performance of his duties hereunder and to employ such personnel and make such expenditures, within the limits of appropriations now or hereafter available for the purpose, as the Representative named herein may deem necessary to accomplish the purposes of this order, and may make available, assign, or detail for duty with the Representative named herein such members of the armed forces and other personnel as may be requested for such purposes.

3. The Representative named herein is authorized to cooperate with, and receive the assistance of, any foreign Government to the extent deemed necessary by him to accomplish the purposes of this order.

HARRY S. TRUMAN

THE WHITE HOUSE,
May 2, 1945.

(F. R. Doc. 45-7256; Filed, May 3, 1945; 10:57 a. m.)

LONDON AGREEMENT OF 8 AUGUST 1945

AGREEMENT by the Government of the UNITED STATES OF AMERICA, the Provisional Government of the FRENCH REPUBLIC, the Government of the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND and the Government of the UNION OF SOVIET SOCIALIST REPUBLICS for the Prosecution and Punishment of the MAJOR WAR CRIMINALS of the EUROPEAN AXIS

WHEREAS the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

AND WHEREAS the Moscow Declaration of the 30th October 1943 on German atrocities in Occupied Europe stated that those German Officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

AND WHEREAS this Declaration was stated to be without prejudice to the

case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

NOW THEREFORE the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1. There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2. The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Article 3. Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavors to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Article 4. Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5. Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Article 6. Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals.

Article 7. This agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

IN WITNESS WHEREOF the Undersigned have signed the present Agreement.

DONE in quadruplicate in London this 8th day of August 1945 each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United States of America

ROBERT H. JACKSON

For the Provisional Government of the French Republic

ROBERT FALCO

For the Government of the United Kingdom of Great
Britain and Northern Ireland

JOWITT, C.

For the Government of the Union of Soviet Socialist
Republics

I. NIKITCHENKO

A. TRAININ

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1. In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Article 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

Article 3. Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

Article 4.

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5. In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) **CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

- (b) **WAR CRIMES:** namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.¹

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10. In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11. Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12. The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Article 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

¹ See protocol p. XVII for correction of this paragraph.

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Article 14. Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

- (a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,
- (b) to settle the final designation of major war criminals to be tried by the Tribunal,
- (c) to improve the Indictment and the documents to be submitted therewith,
- (d) to lodge the Indictment and the accompanying documents with the Tribunal,
- (e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Article 15. The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

- (a) investigation, collection, and production before or at the Trial of all necessary evidence,
- (b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,
- (c) the preliminary examination of all necessary witnesses and of the Defendants,
- (d) to act as prosecutor at the Trial,
- (e) to appoint representatives to carry out such duties as may be assigned to them,
- (f) to undertake such other matters as may appear necessary to them for the purposes of the preparations for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16. In order to ensure fair trial for the Defendants, the following procedure shall be followed:

- (a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.
- (b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.
- (c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

- (d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.
- (e) A defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Article 17. The Tribunal shall have the power

- (a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,
- (b) to interrogate any Defendant,
- (c) to require the production of documents and other evidentiary material,
- (d) to administer oaths to witnesses,
- (e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18. The Tribunal shall

- (a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,
- (b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,
- (c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Article 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Article 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Article 22. The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23. One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him.

The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Article 24. The proceedings at the Trial shall take the following course:

- (a) The Indictment shall be read in court.
- (b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".

- (e) The Prosecution shall make an opening statement.
- (d) The Tribunal shall ask the Prosecution and the Defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
- (e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.
- (f) The Tribunal may put any question to any witness and to any Defendant, at any time.
- (g) The Prosecution and the Defense shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.
- (h) The Defense shall address the court.
- (i) The Prosecution shall address the court.
- (j) Each Defendant may make a statement to the Tribunal.
- (k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25. All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI. JUDGMENT AND SENTENCE

Article 26. The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27. The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28. In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Article 30. The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

PROTOCOL

Whereas an Agreement and Charter regarding the Prosecution of War Criminals was signed in London on the 8th August 1945, in the English, French, and Russian languages,

And whereas a discrepancy has been found to exist between the originals of Article 6, paragraph (c), of the Charter in the Russian language, on the one hand, and the originals in the English and French languages, on the

other, to wit, the semi-colon in Article 6, paragraph (c), of the Charter between the words "war" and "or", as carried in the English and French texts, is a comma in the Russian text,

And whereas it is desired to rectify this discrepancy:

Now, THEREFORE, the undersigned, signatories of the said Agreement on behalf of their respective Governments, duly authorized thereto, have agreed that Article 6, paragraph (c), of the Charter in the Russian text is correct, and that the meaning and intention of the Agreement and Charter require that the said semi-colon in the English text should be changed to a comma, and that the French text should be amended to read as follows:

(c) **LES CRIMES CONTRE L'HUMANITE**: c'est à dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux, ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime.

IN WITNESS WHEREOF the Undersigned have signed the present Protocol.

DONE in quadruplicate in Berlin this 6th day of October, 1945, each in English, French, and Russian, and each text to have equal authenticity.

For the Government of the United States of America

ROBERT H. JACKSON

For the Provisional Government of the French Republic

FRANÇOIS DE MENTHON

For the Government of the United Kingdom of Great Britain and Northern Ireland

HARTLEY SHAWCROSS

For the Government of the Union of Soviet Socialist Republics

R. RUDENKO

CONTROL COUNCIL LAW NO. 10

PUNISHMENT OF PERSONS GUILTY OF WAR CRIMES, CRIMES AGAINST PEACE AND AGAINST HUMANITY

In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:

Article I

The Moscow Declaration of 30 October 1943 "Concerning Responsibility of Hitlerites for Committed Atrocities" and the London Agreement of 8 August 1945 "Concerning Prosecution and Punishment of Major War Criminals of the European Axis" are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II

1. Each of the following acts is recognized as a crime:

(a) *Crimes against Peace.* Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) *War Crimes.* Atrocities or offences against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

(c) *Crimes against Humanity.* Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.

3. Any person found guilty of any of the Crimes above mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.

(b) Imprisonment for life or a term of years, with or without hard labour.

(c) Fine, and imprisonment with or without hard labour, in lieu thereof.

(d) Forfeiture of property.

(e) Restitution of property wrongfully acquired.

(f) Deprivation of some or all civil rights.

Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.

(b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.

5. In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.

Article III

1. Each occupying authority, within its Zone of occupation,

(a) shall have the right to cause persons within such Zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested and shall take under control the property, real and personal, owned or controlled by the said persons, pending decisions as to its eventual disposition.

(b) shall report to the Legal Directorate the names of all suspected criminals, the reasons for and the places of their detention, if they are detained, and the names and location of witnesses.

(c) shall take appropriate measures to see that witnesses and evidence will be available when required.

(d) shall have the right to cause all persons so arrested and charged, and not delivered to another authority as herein provided, or released, to be brought to trial before an appropriate tribunal. Such tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons, be a German Court, if authorized by the occupying authorities.

2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August 1945.

3. Persons wanted for trial by an International Military Tribunal will not be tried without the consent of the Committee of Chief Prosecutors. Each Zone Commander will deliver such persons who are within his Zone to that committee upon request and will make witnesses and evidence available to it.

4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section 1 (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned.

5. The execution of death sentences may be deferred by not to exceed one month after the sentence has become final when the Zone Commander concerned has reason to believe that the testimony of those under sentence would be of value in the investigation and trial of crimes within or without his Zone.

6. Each Zone Commander will cause such effect to be given to the judgments of courts of competent jurisdiction, with respect to the property taken under his control pursuant hereto, as he may deem proper in the interest of justice.

Article IV

1. When any person in a Zone in Germany is alleged to have committed a crime, as defined in Article II, in a country other than Germany or in another Zone, the government of that nation or the Commander of the latter Zone, as the case may be, may request the Commander of the Zone in which the person

is located for his arrest and delivery for trial to the country or Zone in which the crime was committed. Such request for delivery shall be granted by the Commander receiving it unless he believes such person is wanted for trial or as a witness by an International Military Tribunal, or in Germany, or in a nation other than the one making the request, or the Commander is not satisfied that delivery should be made, in any of which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority. A similar procedure shall apply to witnesses, material exhibits and other forms of evidence.

2. The Legal Directorate shall consider all requests referred to it, and shall determine the same in accordance with the following principles, its determination to be communicated to the Zone Commander.

(a) A person wanted for trial or as a witness by an International Military Tribunal shall not be delivered for trial or required to give evidence outside Germany, as the case may be, except upon approval of the Committee of Chief Prosecutors acting under the London Agreement of 8 August 1945.

(b) A person wanted for trial by several authorities (other than an International Military Tribunal) shall be disposed of in accordance with the following priorities:

(1) If wanted for trial in the Zone in which he is, he should not be delivered unless arrangements are made for his return after trial elsewhere;

(2) If wanted for trial in a Zone other than that in which he is, he should be delivered to that Zone in preference to delivery outside Germany unless arrangements are made for his return to that Zone after trial elsewhere;

(3) If wanted for trial outside Germany by two or more of the United Nations, of one of which he is a citizen, that one should have priority;

(4) If wanted for trial outside Germany by several countries, not all of which are United Nations, United Nations should have priority;

(5) If wanted for trial outside Germany by two or more of the United Nations, then, subject to Article IV 2 (b) (3) above, that which has the most serious charges against him, which are moreover supported by evidence, should have priority.

Article V

The delivery, under Article IV of this Law, of persons for trial shall be made on demands of the Governments or Zone Commanders in such a manner that the delivery of criminals to one jurisdiction will not become the means of defeating or unnecessarily delaying the carrying out of justice in another place. If within six months the delivered person has not been convicted by the Court of the zone or country to which he has been delivered, then such person shall be returned upon demand of the Commander of the Zone where the person was located prior to delivery.

Done at Berlin, 20 December 1945.

JOSEPH T. McNARNEY
General

B. L. MONTGOMERY
Field Marshal

L. KOELTZ
General de Corps d'Armée
for P. KOENIG

General d'Armee
G. ZHUKOV
Marshal of the Soviet Union

EXECUTIVE ORDER 9679

AMENDMENT OF EXECUTIVE ORDER No. 9547 OF MAY 2, 1945, ENTITLED "PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST THE LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL AGENTS AND ACCESSORIES"

By virtue of the authority vested in me as President and Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, it is ordered as follows:

1. In addition to the authority vested in the Representative of the United States and its Chief of Counsel by Paragraph 1 of Executive Order No. 9547 of May 2, 1945, to prepare and prosecute charges of atrocities and war crimes against such of the leaders of the European Axis powers and their accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal, such Representative and Chief of Counsel shall have the authority to proceed before United States military or occupation tribunals, in proper cases, against other Axis adherents, including but not limited to cases against members of groups and organizations declared criminal by the said international military tribunal.

2. The present Representative and Chief of Counsel is authorized to designate a Deputy Chief of Counsel, to whom he may assign responsibility for organizing and planning the prosecution of charges of atrocities and war crimes, other than those now being prosecuted as Case No. 1 in the international military tribunal, and, as he may be directed by the Chief of Counsel, for conducting the prosecution of such charges of atrocities and war crimes.

3. Upon vacation of office by the present Representative and Chief of Counsel, the functions, duties, and powers of the Representative of the United States and its Chief of Counsel, as specified in the said Executive Order No. 9547 of May 2, 1945, as amended by this order, shall be vested in a Chief of Counsel for War Crimes to be appointed by the United States Military Governor for Germany or by his successor.

4. The said Executive Order No. 9547 of May 2, 1945, is amended accordingly.

HARRY S. TRUMAN

THE WHITE HOUSE,
January 16, 1946.

(F. R. Doc. 46-893; Filed, Jan. 17, 1946; 11:08 a. m.)

HEADQUARTERS

US FORCES, EUROPEAN THEATER

GENERAL ORDERS } 24 OCTOBER 1946
No. 301 }

Office of Chief of Counsel for War Crimes.....	I
Chief Prosecutor	II
Announcement of Assignments.....	III

I. . . OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES. Effective this date, the Office of Chief of Counsel for War Crimes is transferred to the Office of Military Government for Germany (US). The Chief of Counsel for

War Crimes will report directly to the Deputy Military Governor and will work in close liaison with the Legal Adviser of the Office of Military Government for Germany and with the Theater Judge Advocate.

II...CHIEF PROSECUTOR. Effective this date, the Chief of Counsel for War Crimes will also serve as Chief Prosecutor under the Charter of the International Military Tribunal, established by the Agreement of 8 August 1945.

III...ANNOUNCEMENT OF ASSIGNMENTS. Effective this date, Brigadier General Telford Taylor, USA, is announced as Chief of Counsel for War Crimes, in which capacity he will also serve as Chief Prosecutor for the United States under the Charter of the International Military Tribunal, established by the Agreement of 8 August 1945.

BY COMMAND OF GENERAL McNARNEY:

C. R. HUEBNER,
Major General, GSC,
Chief of Staff

OFFICIAL:

GEORGE F. HERBERT
Colonel, AGD
Adjutant General

DISTRIBUTION: D

MILITARY GOVERNMENT — GERMANY
UNITED STATES ZONE
ORDINANCE NO. 7

ORGANIZATION AND POWERS OF CERTAIN MILITARY TRIBUNALS

Article I

The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, including conspiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offenses.

Article II

(a) Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 certain tribunals to be known as "Military Tribunals" shall be established hereunder.

(b) Each such tribunal shall consist of three or more members to be designated by the Military Governor. One alternate member may be designated to any tribunal if deemed advisable by the Military Governor. Except as provided in subsection (c) of this article, all members and alternates shall be lawyers who have been admitted to practice, for at least five years, in the highest courts of one of the United States or its territories or of the District of Columbia, or who have been admitted to practice in the United States Supreme Court.

(c) The Military Governor may in his discretion enter into an agreement with one or more other zone commanders of the member nations of the Allied Control Authority providing for the joint trial of any case or cases. In such cases the tribunals shall consist of three or more members as may be provided in the agreement. In such cases the tribunals may include properly qualified lawyers designated by the other member nations.

(d) The Military Governor shall designate one of the members of the tribunal to serve as the presiding judge.

(e) Neither the tribunals nor the members of the tribunals or the alternates may be challenged by the prosecution or by the defendants or their counsel.

(f) In case of illness of any member of a tribunal or his incapacity for some other reason, the alternate, if one has been designated, shall take his place as a member in the pending trial. Members may be replaced for reasons of health or for other good reasons, except that no replacement of a member may take place, during a trial, other than by the alternate. If no alternate has been designated, the trial shall be continued to conclusion by the remaining members.

(g) The presence of three members of the tribunal or of two members when authorized pursuant to subsection (f) *supra* shall be necessary to constitute a quorum. In the case of tribunals designated under (c) above the agreement shall determine the requirements for a quorum.

(h) Decisions and judgments, including convictions and sentences, shall be by majority vote of the members. If the votes of the members are equally divided, the presiding member shall declare a mistrial.

Article III

(a) Charges against persons to be tried in the tribunals established hereunder shall originate in the Office of the Chief of Counsel for War Crimes, appointed by the Military Governor pursuant to paragraph 3 of the Executive Order Numbered 9679 of the President of the United States dated 16 January 1946. The Chief of Counsel for War Crimes shall determine the persons to be tried by the tribunals and he or his designated representative shall file the indictments with the Secretary General of the tribunals (see Article XIV, *infra*) and shall conduct the prosecution.

(b) The Chief of Counsel for War Crimes, when in his judgment it is advisable, may invite one or more United Nations to designate representatives to participate in the prosecution of any case.

Article IV

In order to ensure fair trial for the defendants, the following procedure shall be followed:

(a) A defendant shall be furnished, at a reasonable time before his trial, a copy of the indictment and of all documents lodged with the indictment, translated into a language which he understands. The indictment shall state the charges plainly, concisely and with sufficient particulars to inform defendant of the offenses charged.

(b) The trial shall be conducted in, or translated into, a language which the defendant understands.

(c) A defendant shall have the right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of the defendant's country, or any other person who may be specially authorized

by the tribunal. The tribunal shall appoint qualified counsel to represent a defendant who is not represented by counsel of his own selection.

(d) Every defendant shall be entitled to be present at his trial except that a defendant may be proceeded against during temporary absences if in the opinion of the tribunal defendant's interests will not thereby be impaired, and except further as provided in Article VI (c). The tribunal may also proceed in the absence of any defendant who has applied for and has been granted permission to be absent.

(e) A defendant shall have the right through his counsel to present evidence at the trial in support of his defense, and to cross examine any witness called by the prosecution.

(f) A defendant may apply in writing to the tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located and shall also state the facts to be proved by the witness or the document and the relevancy of such facts to the defense. If the tribunal grants the application, the defendant shall be given such aid in obtaining production of evidence as the tribunal may order.

Article V

The tribunals shall have the power

(a) to summon witnesses to the trial, to require their attendance and testimony and to put questions to them;

(b) to interrogate any defendant who takes the stand to testify in his own behalf, or who is called to testify regarding another defendant;

(c) to require the production of documents and other evidentiary material;

(d) to administer oaths;

(e) to appoint officers for the carrying out of any task designated by the tribunals including the taking of evidence on commission;

(f) to adopt rules of procedure not inconsistent with this Ordinance. Such rules shall be adopted, and from time to time as necessary, revised by the members of the tribunal or by the committee of presiding judges as provided in Article XIII.

Article VI

The tribunals shall

(a) confine the trial strictly to an expeditious hearing of the issues raised by the charges;

(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever;

(c) deal summarily with any contumacy, imposing appropriate punishment, including the exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article VII

The tribunals shall not be bound by technical rules of evidence. They shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure, and shall admit any evidence which they deem to have probative value. Without limiting the foregoing general rules, the following shall be deemed admissible if they appear to the tribunal to contain information of probative value relating to the charges: affidavits, depositions, interrogations, and other statements, diaries, letters, the records, findings, statements and

judgments of the military tribunals and the reviewing and confirming authorities of any of the United Nations, and copies of any document or other secondary evidence of the contents of any document, if the original is not readily available or cannot be produced without delay. The tribunal shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the tribunal the ends of justice require.

Article VIII

The tribunals may require that they be informed of the nature of any evidence before it is offered so that they may rule upon the relevance thereof.

Article IX

The tribunals shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

Article X

The determinations of the International Military Tribunal in the judgment in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary.

Article XI

The proceedings at the trial shall take the following course:

- (a) the tribunal shall inquire of each defendant whether he has received and had an opportunity to read the indictment against him and whether he pleads "guilty" or "not guilty."
- (b) The prosecution may make an opening statement.
- (c) The prosecution shall produce its evidence subject to the cross examination of its witnesses.
- (d) The defense may make an opening statement.
- (e) The defense shall produce its evidence subject to the cross examination of its witnesses.
- (f) Such rebutting evidence as may be held by the tribunal to be material may be produced by either the prosecution or the defense.
- (g) The defense shall address the court.
- (h) The prosecution shall address the court.
- (i) Each defendant may make a statement to the tribunal.
- (j) The tribunal shall deliver judgment and pronounce sentence.

Article XII

A Central Secretariat to assist the tribunals to be appointed hereunder shall be established as soon as practicable. The main office of the Secretariat shall be located in Nurnberg. The Secretariat shall consist of a Secretary General and such assistant secretaries, military officers, clerks, interpreters and other personnel as may be necessary.

Article XIII

The Secretary General shall be appointed by the Military Governor and shall organize and direct the work of the Secretariat. He shall be subject to the supervision of the members of the tribunals, except that when at least three tribunals shall be functioning, the presiding judges of the several tribunals may form the supervisory committee.

Article XIV

The Secretariat shall:

(a) Be responsible for the administrative and supply needs of the Secretariat and of the several tribunals.

(b) Receive all documents addressed to tribunals.

(c) Prepare and recommend uniform rules of procedure, not inconsistent with the provisions of this Ordinance.

(d) Secure such information for the tribunals as may be needed for the approval or appointment of defense counsel.

(e) Serve as liaison between the prosecution and defense counsel.

(f) Arrange for aid to be given defendants and the prosecution in obtaining production of witnesses or evidence as authorized by the tribunals.

(g) Be responsible for the preparation of the records of the proceedings before the tribunals.

(h) Provide the necessary clerical, reporting and interpretative services to the tribunals and its members, and perform such other duties as may be required for the efficient conduct of the proceedings before the tribunals, or as may be requested by any of the tribunals.

Article XV

The judgments of the tribunals as to the guilt or the innocence of any defendant shall give the reasons on which they are based and shall be final and not subject to review. The sentences imposed may be subject to review as provided in Article XVII, *infra*.

Article XVI

The tribunal shall have the right to impose upon the defendant, upon conviction, such punishment as shall be determined by the tribunal to be just, which may consist of one or more of the penalties provided in Article II, Section 3 of Control Council Law No. 10.

Article XVII

(a) Except as provided in (b) *infra*, the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof.

(b) In cases tried before tribunals authorized by Article II (c), the sentence shall be reviewed jointly by the zone commanders of the nations involved, who mitigate, reduce or otherwise alter the sentence by majority vote, but may not increase the severity thereof. If only two nations are represented, the sentence may be altered only by the consent of both zone commanders.

Article XVIII

No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor. In accordance with Article III, Section 5 of Law No. 10, execution of the death sentence may be deferred

by not to exceed one month after such confirmation if there is reason to believe that the testimony of the convicted person may be of value in the investigation and trial of other crimes.

Article XIX

Upon the pronouncement of a death sentence by a tribunal established thereunder and pending confirmation thereof, the condemned will be remanded to the prison or place where he was confined and there be segregated from the other inmates, or be transferred to a more appropriate place of confinement.

Article XX

Upon the confirmation of a sentence of death the Military Governor will issue the necessary orders for carrying out the execution.

Article XXI

Where sentence of confinement for a term of years has been imposed the condemned shall be confined in the manner directed by the tribunal imposing sentence. The place of confinement may be changed from time to time by the Military Governor.

Article XXII

Any property declared to be forfeited or the restitution of which is ordered by a tribunal shall be delivered to the Military Governor, for disposal in accordance with Control Council Law No. 10, Article II (3).

Article XXIII

Any of the duties and functions of the Military Governor provided for herein may be delegated to the Deputy Military Governor. Any of the duties and functions of the Zone Commander provided for herein may be exercised by and in the name of the Military Governor and may be delegated to the Deputy Military Governor.

This Ordinance becomes effective 18 October 1946.

BY ORDER OF MILITARY GOVERNMENT:

MILITARY GOVERNMENT — GERMANY ORDINANCE NO. 11

*AMENDING MILITARY GOVERNMENT ORDINANCE NO. 7 OF
18 OCTOBER 1946, ENTITLED "ORGANIZATION AND POWERS
OF CERTAIN MILITARY TRIBUNALS"*

Article I

Article V of Ordinance No. 7 is amended by adding thereto a new subdivision to be designated "(g)", reading as follows:

"(g) The presiding judges, and, when established, the supervisory committee of presiding judges provided in Article XIII shall assign the cases brought by the Chief of Counsel for War Crimes to the various Military Tribunals for trial."

Article II

Ordinance No. 7 is amended by adding thereto a new article following Article V to be designated Article V-B, reading as follows:

"(a) A joint session of the Military Tribunals may be called by any

of the presiding judges thereof or upon motion, addressed to each of the Tribunals, of the Chief of Counsel for War Crimes or of counsel for any defendant whose interests are affected, to hear argument upon and to review any interlocutory ruling by any of the Military Tribunals on a fundamental or important legal question either substantive or procedural, which ruling is in conflict with or is inconsistent with a prior ruling of another of the Military Tribunals.

“(b) A joint session of the Military Tribunals may be called in the same manner as provided in subsection (a) of this Article to hear argument upon and to review conflicting or inconsistent final rulings contained in the decisions or judgments of any of the Military Tribunals on a fundamental or important legal question, either substantive or procedural. Any motion with respect to such final ruling shall be filed within ten (10) days following the issuance of decision or judgment.

“(c) Decisions by joint sessions of the Military Tribunals, unless thereafter altered in another joint session, shall be binding upon all the Military Tribunals. In the case of the review of final rulings by joint sessions, the judgments reviewed may be confirmed or remanded for action consistent with the joint decision.

“(d) The presence of a majority of the members of each Military Tribunal then constituted is required to constitute a quorum.

“(e) The members of the Military Tribunals shall, before any joint session begins, agree among themselves upon the selection from their number of a member to preside over the joint session.

“(f) Decisions shall be by majority vote of the members. If the votes of the members are equally divided, the vote of the member presiding over the session shall be decisive.”

Article III

Subdivisions (g) and (h) of Article XI of Ordinance No. 7 are deleted; subdivision (i) is relettered “(h)”; subdivision (j) is relettered “(i)”; and a new subdivision to be designated “(g)”, is added, reading as follows:

“(g) The prosecution and defense shall address the court in such order as the Tribunal may determine.”

This Ordinance becomes effective 17 February 1947.

BY ORDER OF THE MILITARY GOVERNMENT:

OFFICIALS OF THE OFFICE OF THE SECRETARY GENERAL

Secretaries General

- MR. CHARLES E. SANDS..... From 25 October 1946 to 17 November 1946.
- MR. GEORGE M. READ..... From 18 November 1946 to 19 January 1947.
- MR. CHARLES E. SANDS..... From 20 January 1947 to 18 April 1947.
- COLONEL JOHN E. RAY..... From 19 April 1947 to 9 May 1948.
- DR. HOWARD H. RUSSELL..... From 10 May 1948 to 2 October 1949.

Deputy and Executive Secretaries General

- MR. CHARLES E. SANDS..... Deputy from 18 November 1946 to 19 January 1947.
- JUDGE RICHARD D. DIXON..... Acting Deputy from 25 November 1946 to 5 March 1947.
- MR. HENRY A. HENDRY..... Deputy from 6 March 1947 to 9 May 1947.
- MR. HOMER B. MILLARD..... Executive Secretary General from 3 March 1947 to 5 October 1947.
- LIEUTENANT COLONEL
HERBERT N. HOLSTEN..... Executive Secretary General from 6 October 1947 to 30 April 1949.

Assistant Secretaries General

[Since many trials were being held simultaneously, an Assistant Secretary General was designated by the Secretary General for each case. Assistant Secretaries General are listed with the members of each tribunal.]

Marshals of Military Tribunals

- COLONEL CHARLES W. MAYS..... From 4 November 1946 to 5 September 1947.
- COLONEL SAMUEL L. METCALFE..... From 7 September 1947 to 29 August 1948.
- CAPTAIN KENYON S. JENCKES..... From 30 August 1948 to 30 April 1949.

Court Archives

- MRS. BARBARA S. MANDELLAUB..... Chief from 21 February 1947 to 15 November 1949.

Defense Information Center

- MR. LAMBERTUS WARTENA..... Defense Administrator from 3 March 1947 to 16 September 1947.
- LIEUTENANT COLONEL
HERBERT N. HOLSTEN..... Defense Administrator from 17 September 1947 to 19 October 1947.
- MAJOR ROBERT G. SCHAEFFER..... Defense Administrator from 20 October 1947 to 30 April 1949.

“THE EINSATZGRUPPEN CASE”

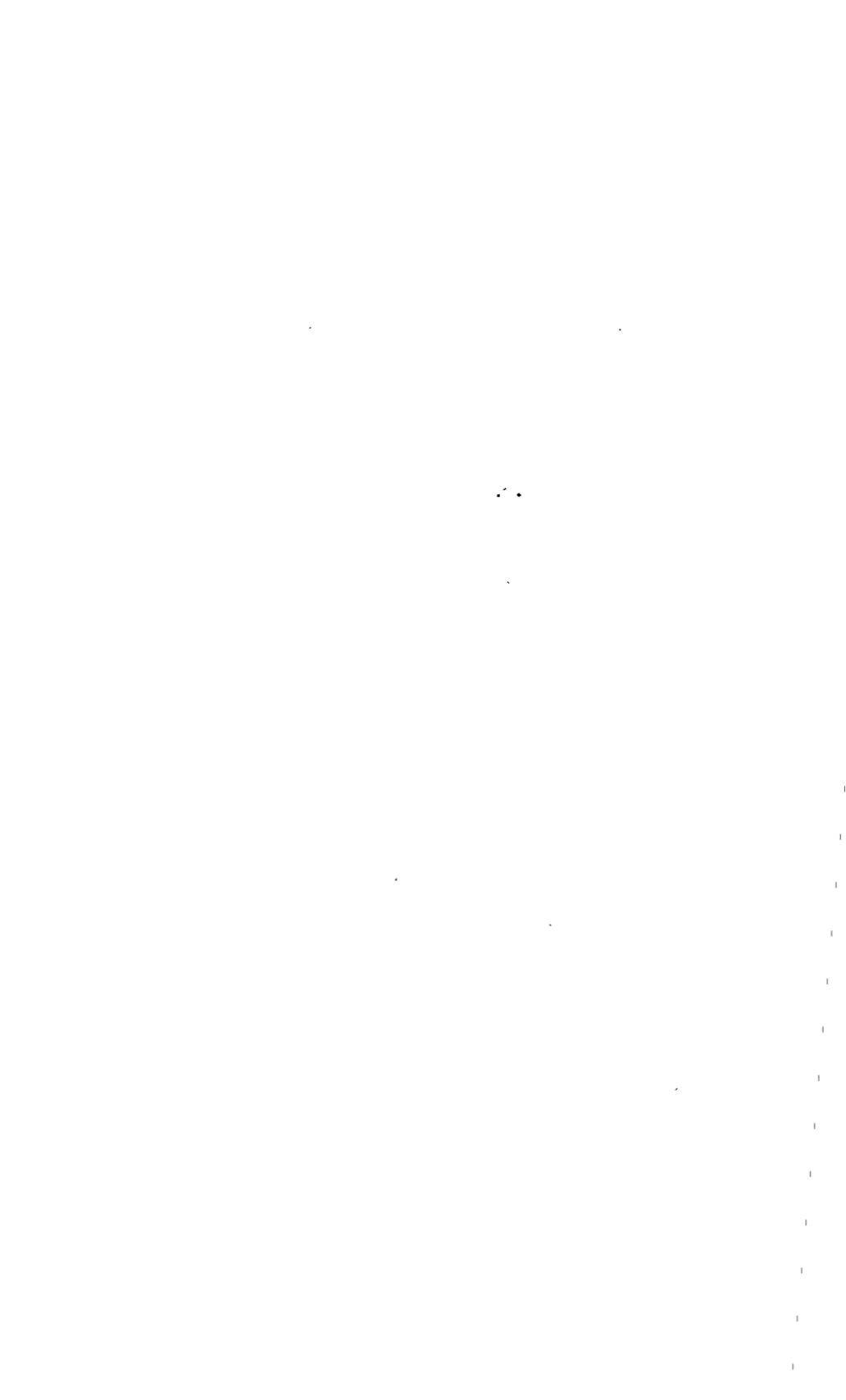
Military Tribunal II

Case No. 9

THE UNITED STATES OF AMERICA

—against—

OTTO OHLENDORF, HEINZ JOST, ERICH NAUMANN, OTTO RASCH,
ERWIN SCHULZ, FRANZ SIX, PAUL BLOBEL, WALTER BLUME,
MARTIN SANDBERGER, WILLY SEIBERT, EUGEN STEIMLE, ERNST
BIBERSTEIN, WERNER BRAUNE, WALTER HAENSCH, GUSTAV
NOSSKE, ADOLF OTT, EDUARD STRAUCH, EMIL HAUSSMANN,
WALDEMAR KLINGELHOEFER, LOTHAR FENDLER, WALDEMAR VON
RADEZKY, FELIX RUEHL, HEINZ SCHUBERT, and MATHIAS GRAF,
Defendants



INTRODUCTION

The "Einsatzgruppen Case" was officially designated *United States of America vs. Otto Ohlendorf, et al.* (Case No. 9). This trial has become known as the "Einsatzgruppen Case" because all of the defendants were charged with criminal conduct arising out of their functions as members of the Einsatzgruppen. The German term "Einsatzgruppen" may be roughly translated "Special Task Forces". Four such special units were formed in May 1941 just before the German attack on Russia, at the direction of Hitler and Heinrich Himmler, the Reich Leader SS, and Chief of the German Police.

The units were organized by Reinhardt Heydrich, Chief of the Security Police and SD (Sicherheitsdienst or Security Service) and operated under the direct control of the Reich Security Main Office (RSHA). The personnel of the Einsatzgruppen came from the SS, the SD, the Gestapo (Secret State Police), and other police units. The prosecution alleged that the primary purpose of the Einsatzgruppen was to accompany the German Army into the occupied East and to exterminate Jews, gypsies, Soviet officials, and other elements of the civilian population regarded as "racially" inferior or "politically undesirable". It was charged that approximately one million human beings were victims of this program.

The Einsatzgruppen Case was tried at the Palace of Justice in Nuernberg before Military Tribunal II-A. The Tribunal convened 78 times, and the trial lasted approximately eight months, as shown by the following schedule:

Indictment filed	3 July 1947
Amended indictment filed	29 July 1947
Arraignment	15-22 September 1947
Prosecution opening statement	29 September 1947
Defense opening statement	6 October 1947
Prosecution closing statement	13 February 1948
Defense closing statement	4-12 February 1948
Judgment	8, 9 April 1948
Sentence	10 April 1948
Affirmation of sentences by Military Governor of the United States Zone of Occupation	4 and 25 March 1949

The English transcript of the Court proceedings runs to 6,895 mimeographed pages. The prosecution introduced into evidence 253 written exhibits (some of which contained several documents), and the defense 731 written exhibits. The Tribunal heard oral testimony of one prosecution witness (Francois Bayle, Commander, Medical Corps of the French Navy) who was called as a handwriting expert during the prosecution's rebuttal case. The Tribunal heard oral testimony of 18 witnesses, not including the

defendants, called by the defense. However, some of the witnesses called by the defense had given affidavits which were introduced as a part of the prosecution's case in chief, and in some cases, these witnesses were examined about these affidavits by the defense. Each of the 23 defendants who stood trial testified in his own behalf, except the defendant Rasch who was unable to complete his testimony for reasons of health and whose case was severed from that of the other defendants. Rasch died in prison on 1 November 1948. Each of the defendants who testified was subject to examination on behalf of other defendants. The exhibits offered by both prosecution and defense contained documents, photographs, affidavits, letters, maps, charts, and other written evidence. The prosecution introduced 48 affidavits, 34 of which were affidavits given by the defendants prior to their indictment. The defense introduced 549 affidavits. The prosecution called 3 of the defense affiants for cross-examination. In addition to examining the defendants who gave affidavits prior to their indictment, the defense called one affiant for cross-examination. The case-in-chief of the prosecution took 2 court days and the case for the 23 defendants took 136 court days. The Tribunal was in recess between 30 September and 6 October 1947 to give the defense additional time to prepare its case.

The members of the Tribunal and prosecution and defense counsel are listed on the ensuing pages. Prosecution counsel were assisted in preparing the case by Walter H. Rapp (Chief of the Evidence Division), Rolf Wartenberg and Alfred Schwarz, interrogators, and Nancy Fenstermacher and Charles E. Ippen, research and documentary analysts.

Selection and arrangement of the "Einsatzgruppen Case" material published herein was accomplished principally by Arnost Horlik-Hochwald, working under the general supervision of Drexel A. Sprecher, Deputy Chief Counsel and Director of Publications, Office U. S. Chief of Counsel for War Crimes. Henry Buxbaum, Gertrude Ferencz, Paul H. Gantt, Wolfgang Hildesheimer, Erhard Heinke, Helga Lund, Gwendoline Niebergall, Johanna K. Reischer, and Enid M. Standing assisted in selecting, compiling, editing, and indexing the numerous papers.

John H. E. Fried, Special Legal Consultant to the Tribunals, reviewed and approved the selection and arrangement of the material as the designated representative of the Nuernberg Military Tribunals.

Final compilation and editing of the manuscript for printing was administered by the War Crimes Division, Office of the Judge Advocate General, under the direct supervision of Richard A. Olbeter, Chief, Special Projects Branch, with Alma Soller as editor, Amelia Rivers as assistant editor, and John W. Mosenthal as research analyst.

ORDER CONSTITUTING TRIBUNAL II-A

HEADQUARTERS, EUROPEAN COMMAND

GENERAL ORDERS }
No. 100

12 SEPTEMBER 1947

Pursuant to Military Government Ordinance No. 7

1. Effective as of 10 September 1947, pursuant to Military Government Ordinance No. 7, 24 October 1946, entitled "Organization and Powers of Certain Military Tribunals," there is hereby constituted Military Tribunal II-A.

2. The following are designated as members of Military Tribunal II-A:

MICHAEL A. MUSMANNO	Presiding Judge
JOHN J. SPEIGHT	Judge
RICHARD D. DIXON	Judge

3. The Tribunal shall convene at Nuernberg, Germany, to hear such cases as may be filed by the Chief of Counsel for War Crimes or by his duly designated representative.

4. Upon completion of the case presently pending before Military Tribunal II, and upon dissolution of that Tribunal, Military Tribunal II-A shall be known as Military Tribunal II.

BY COMMAND OF GENERAL CLAY:

C. R. HUEBNER
Lieutenant General, GSC
Chief of Staff

OFFICIAL:

s/ G. H. GARDE
t/ G. H. GARDE
Lieutenant Colonel, AGD
Asst Adjutant General

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War Department
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AG AO — I
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800 — Hq EUCOM

MEMBERS OF THE TRIBUNAL

MICHAEL A. MUSMANNO, Presiding

United States Naval Reserve on military leave from Court of Common Pleas, County of Allegheny, Pennsylvania.

JOHN J. SPEIGHT, Member

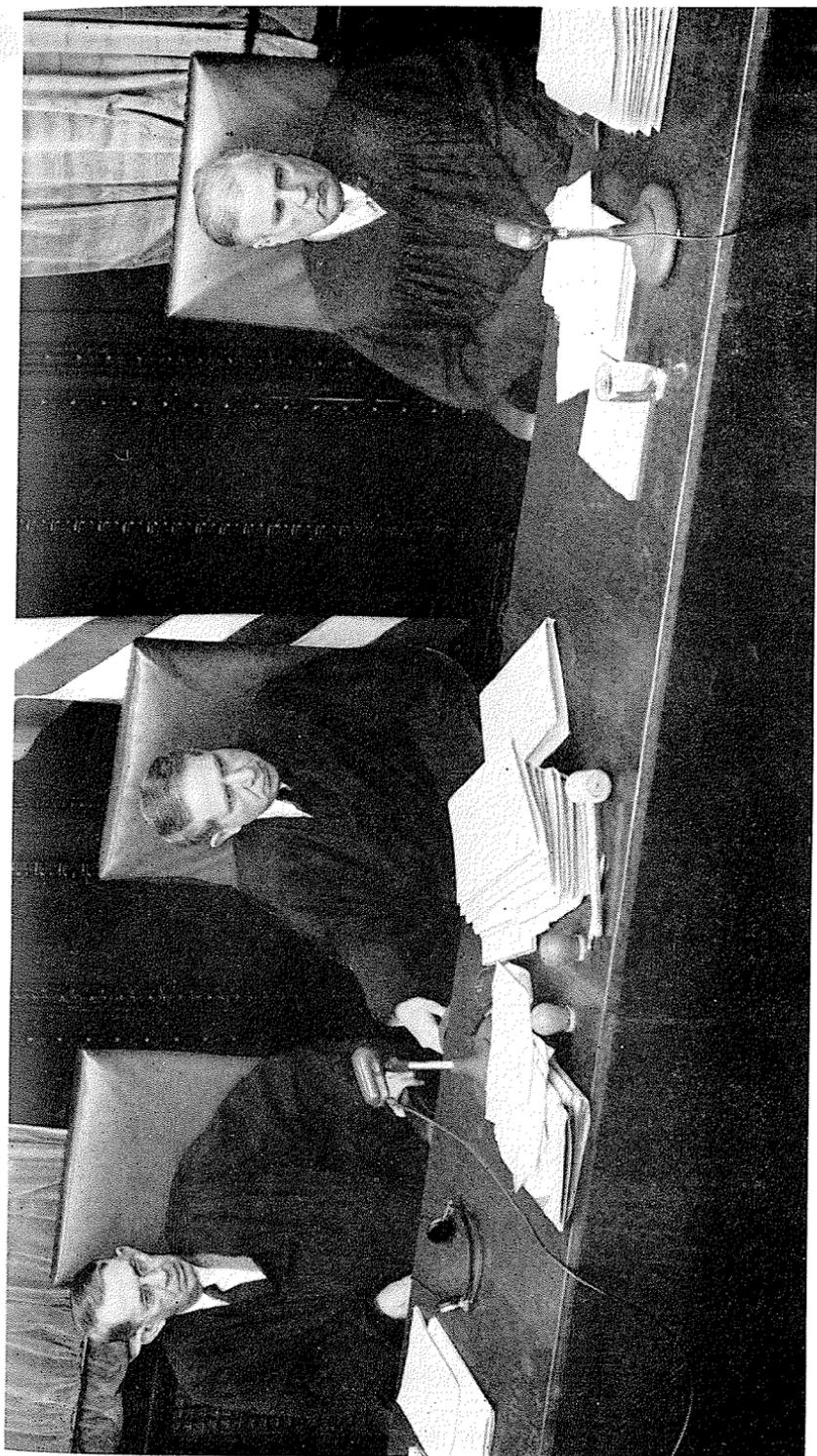
Prominent Member of Alabama Bar.

RICHARD D. DIXON, Member

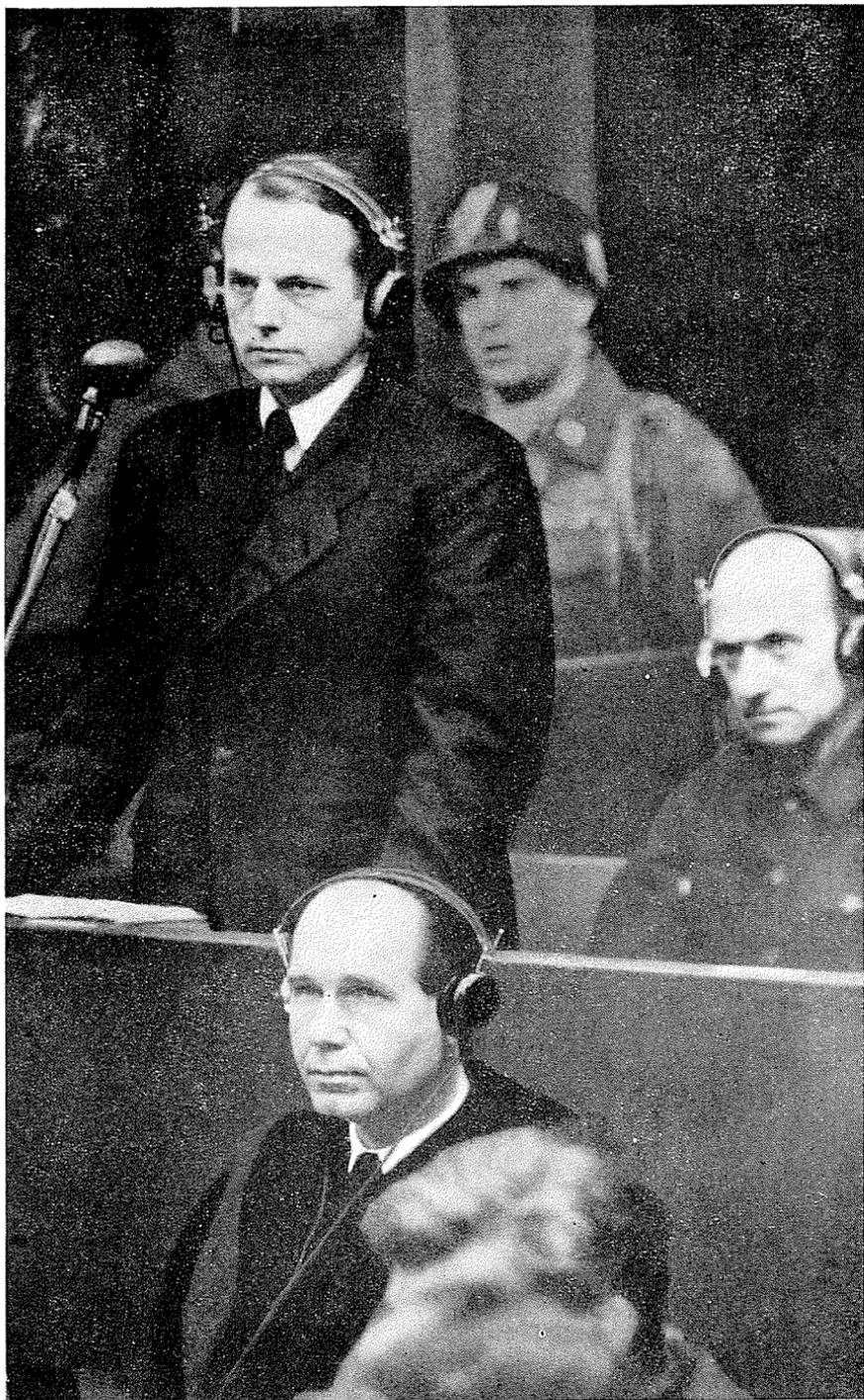
Judge of Superior Court of the State of North Carolina.

ASSISTANT SECRETARIES GENERAL

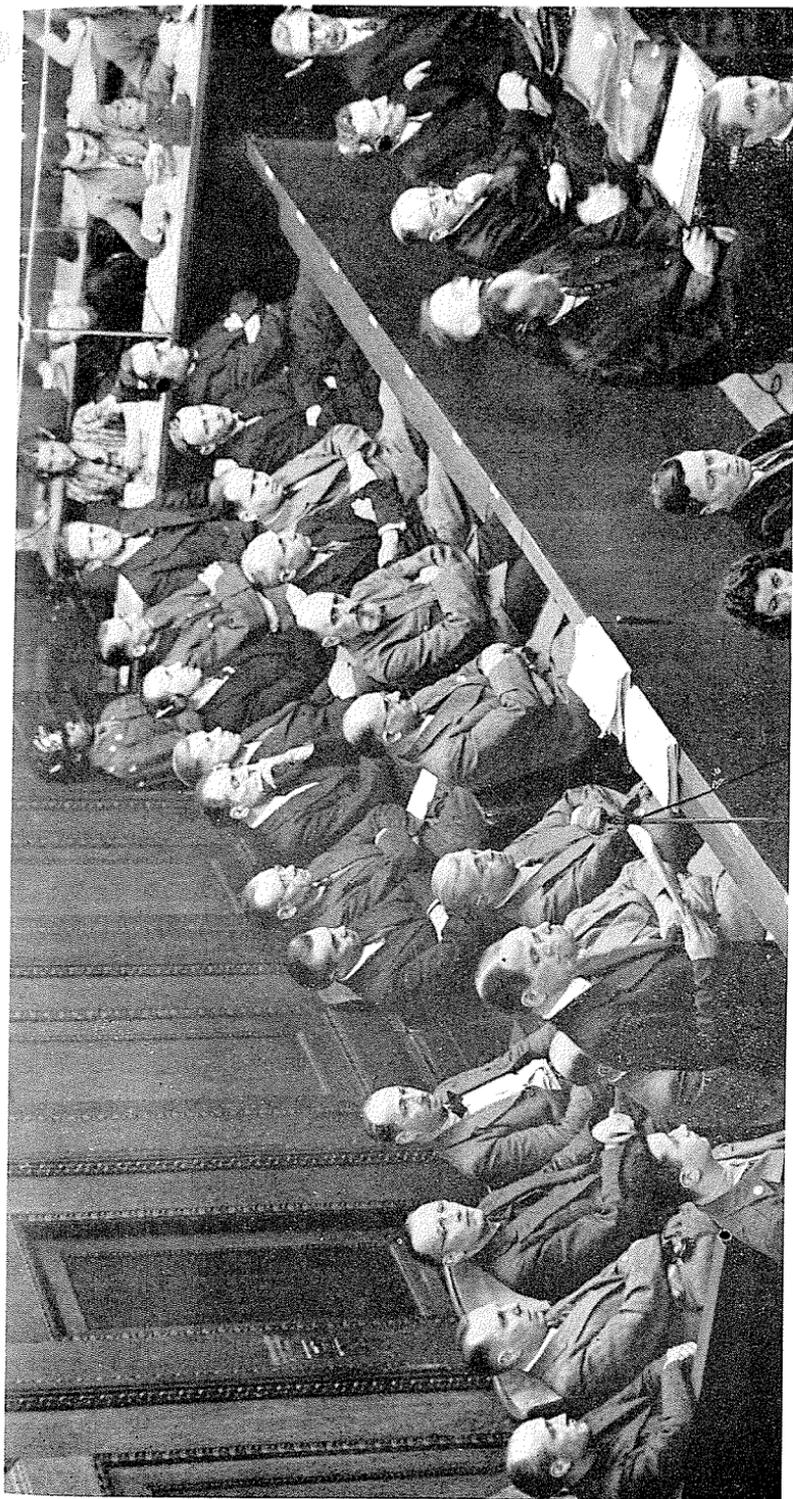
JOHN C. KNAPP.....	15 September 1947 to 6 February 1948
	13 February 1948 to 10 April 1948
MAURICE DE VINNA.....	9 February 1948 to 12 February 1948



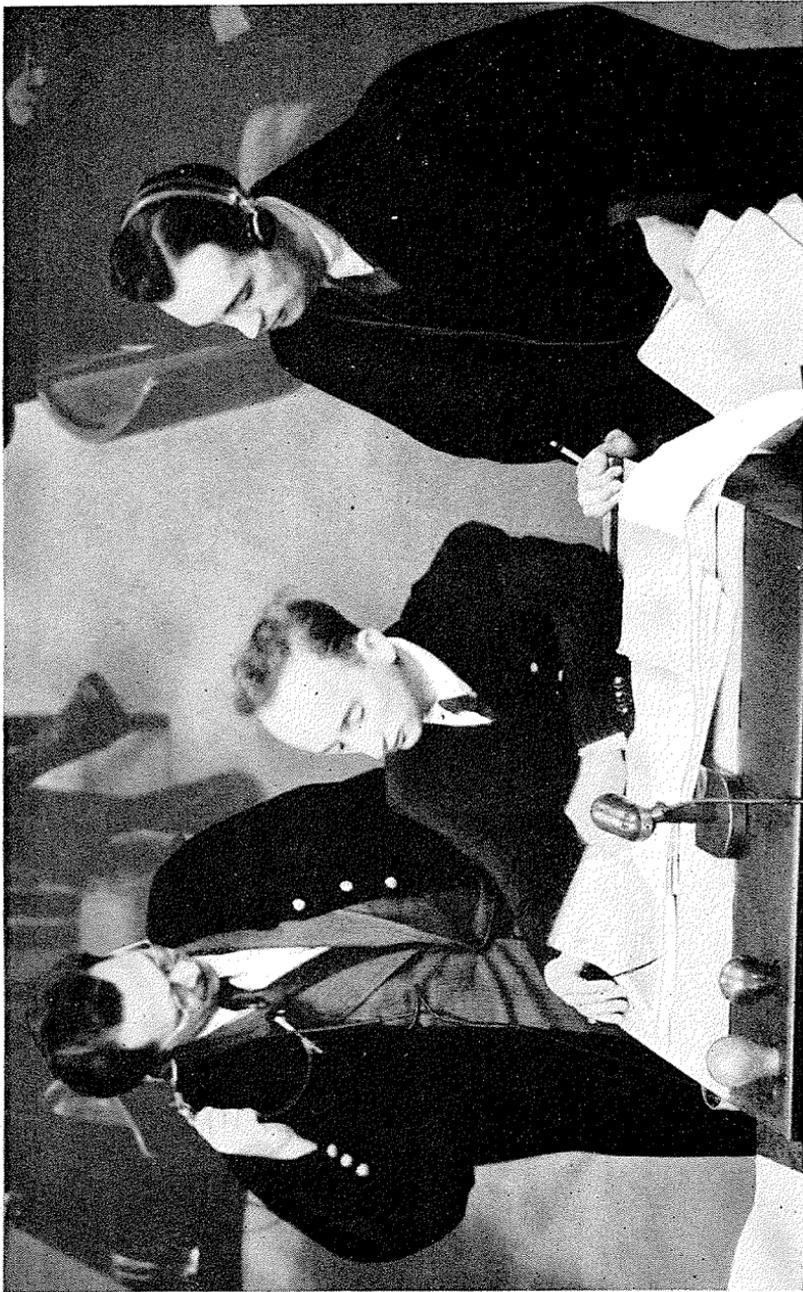
TRIBUNAL II—CASE NINE
John J. Speight; Michael A. Musmanno, Presiding; Richard D. Dixon



Defendant Otto Ohlendorf pleading not guilty. At his left is defendant Heinz Jost. Defense attorneys in foreground.



Defendants in the dock. Back row, left to right: Biberstein, Braune, Haensch, Nosske, Ott, Klingelhofer, Feudler, von Radetzky, Ruehl, Schubert, Graf. Front row: Ohlendorf, Jost, Naumann, Schutz, Siv, Blobel, Blume, Sandberger, Seibert, Steinle.



Chief Prosecutor Benjamin B. Ferencz, flanked by defense attorneys Dr. Beygold (at his right) and Dr. Aschenauer.

PROSECUTION COUNSEL

Chief of Counsel:

BRIGADIER GENERAL TELFORD TAYLOR

Deputy Chief Counsel:

MR. JAMES M. MCHANEY

Chief Prosecutor:

MR. BENJAMIN B. FERENCZ

Consultant:

MR. JAMES E. HEATH

Associate Counsel:

MR. JOHN E. GLANCY

MR. ARNOST HORLIK-HOCHWALD

MR. PETER W. WALTON

DEFENDANTS AND DEFENSE COUNSEL

<i>Defendants</i>	<i>Defense Counsel</i>	<i>Assistant Defense Counsel</i>
OHLENDORF, OTTO	ASCHEAUER, DR. RUDOLF	OEHLRICH, DR. KONRAD
JOST, HEINZ	SCHWARZ, ALFRED	WIESSMATH, PAUL
NAUMANN, ERICH	GAWLIK, DR. HANS	KLINNERT, DR. GERHARD
RASCH, OTTO	SURHOLT, DR. HANS	
SCHULZ, ERWIN	DURCHHOLZ, ERNST	MUELLER, DR. HERMANN
SIX, FRANZ	ULMER, HERMANN	VOELKEL, DR. KONRAD
BLOBEL, PAUL	HEIM, DR. WILLI	KOHR, LUDWIG
BLUME, WALTER	LUMMERT, DR. GUENTHER	BLUME, RUDOLF
SANDBERGER, MARTIN	VON STEIN, DR. BOLKO	MANDRY, DR. KURT
SEIBERT, WILLY	KLINNERT, DR. GERHARD	KLUG, HEINRICH
STEIMLE, EUGEN	MAYER, DR. ERICH	LEIS, DR. FERDINAND
BIBERSTEIN, ERNST	BERGOLD, DR. FRIEDRICH	FICHT, OSKAR
BRAUNE, WERNER	MAYER, DR. ERICH	STUEBINGER, OSKAR
HAENSCH, WALTER	RIEDIGER, DR. FRITZ	KRAUSE, MAX
NOSSKE, GUSTAV	HOFFMANN, DR. KARL	
OTT, ADOLF	KOESSL, JOSEF	MEYER, DR. RUDOLF
STRAUCH, EDUARD	GICK, DR. KARL	JAEGER, DR. KARL
KLINGELHOEFER, WALDEMAR	MAYER, DR. ERICH	LEIS, DR. FERDINAND
FENDLER, LOTHAR	FRITZ, DR. HANS	LEHMANN, DR. GABRIELE
VON RADETSKY, WALDEMAR	RATZ, DR. PAUL	RENTSCH, HEINRICH
RUEHL, FELIX	LINK, HEINRICH	HELM, DR. KURT
SCHUBERT, HEINZ	KOESSL, JOSEF	MEYER, RUDOLF
GRAF, MATHIAS	BELZER, DR. EDUARD	MAYER, JOSEPH

I. AMENDED INDICTMENT*

The United States of America, by the undersigned, Telford Taylor, Chief of Counsel for War Crimes, duly appointed to represent said Government in the prosecution of war criminals, charges that the defendants herein committed crimes against humanity and war crimes, as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945. These crimes included the murder of more than one million persons, tortures, atrocities, and other inhumane acts, as set forth in counts one and two of this indictment. All of the defendants are further charged with membership in criminal organizations, as set forth in count three of this indictment.

The persons accused as guilty of these crimes and accordingly named as defendants in this case are—

OTTO OHLENDORF—Gruppenfuehrer (major general) in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS"); member of the Reichssicherheitsdienst des Reichsfuehrer SS (commonly known as the "SD"); Commanding Officer of Einsatzgruppe D.

HEINZ JOST—Brigadefuehrer (brigadier general) in the SS; member of the SD; Commanding Officer of Einsatzgruppe A.

ERICH NAUMANN—Brigadefuehrer (brigadier general) in the SS; member of the SD; Commanding Officer of Einsatzgruppe B.

OTTO RASCH—Brigadefuehrer (brigadier general) in the SS; member of the SD; member of the Geheime Staatspolizei (commonly known as the "Gestapo"); Commanding Officer of Einsatzgruppe C.

ERWIN SCHULZ—Brigadefuehrer (brigadier general) in the SS; member of the Gestapo; Commanding Officer of Einsatzkommando 5 of Einsatzgruppe C.

FRANZ SIX—Brigadefuehrer (brigadier general) in the SS; member of the SD; Commanding Officer of Vorkommando Moscow of Einsatzgruppe B.

PAUL BLOBEL—Standartenfuehrer (colonel) in the SS; member of the SD; Commanding Officer of Sonderkommando 4a of Einsatzgruppe C.

WALTER BLUME—Standartenfuehrer (colonel) in the SS; member of the SD; member of the Gestapo; Commanding Officer of Sonderkommando 7a of Einsatzgruppe B.

* The amended indictment was filed on 29 July 1947. The indictment filed originally on 8 July 1947 did not include the defendants Steimle, Braune, Haensch, Strauch, Klingelhofer, and Radetzky.

MARTIN SANDBERGER—Standartenfuehrer (colonel) in the SS; member of the SD; Commanding Officer of Einsatzkommando 1a of Einsatzgruppe A.

WILLY SEIBERT—Standartenfuehrer (colonel) in the SS; member of the SD; Deputy Chief of Einsatzgruppe D.

EUGEN STEIMLE—Standartenfuehrer (colonel) in the SS; member of the SD; Commanding Officer of Sonderkommando 7a of Einsatzgruppe B; Commanding Officer of Sonderkommando 4a of Einsatzgruppe C.

ERNST BIBERSTEIN—Obersturmbannfuehrer (lt. colonel) in the SS; member of the SD; Commanding Officer of Einsatzkommando 6 of Einsatzgruppe C.

WERNER BRAUNE—Obersturmbannfuehrer (lt. colonel) in the SS; member of the SD; member of the Gestapo; Commanding Officer of Sonderkommando 11b of Einsatzgruppe D.

WALTER HAENSCH—Obersturmbannfuehrer (lt. colonel) in the SS; member of the SD; Commanding Officer of Sonderkommando 4b of Einsatzgruppe C.

GUSTAV NOSSKE—Obersturmbannfuehrer (lt. colonel) in the SS; member of the Gestapo; Commanding Officer of Einsatzkommando 12 of Einsatzgruppe D.

ADOLF OTT—Obersturmbannfuehrer (lt. colonel) in the SS; member of the SD; Commanding Officer of Sonderkommando 7b of Einsatzgruppe B.

EDUARD STRAUCH—Obersturmbannfuehrer (lt. colonel) in the SS; member of the SD; Commanding Officer of Einsatzkommando 2 of Einsatzgruppe A.

EMIL HAUSSMANN—Sturmbannfuehrer (major) in the SS; member of the SD; officer of Einsatzkommando 12 of Einsatzgruppe D.

WALDEMAR KLINGELHOEFER—Sturmbannfuehrer (major) in the SS; member of the SD; member of Sonderkommando 7b of Einsatzgruppe B; Commanding Officer of Vorkommando Moscow.

LOTHAR FENDLER—Sturmbannfuehrer (major) in the SS; member of the SD; Deputy Chief of Sonderkommando 4b of Einsatzgruppe C.

WALDEMAR VON RADEZKY—Sturmbannfuehrer (major) in the SS; member of the SD; Deputy Chief of Sonderkommando 4a of Einsatzgruppe C.

FELIX RUEHL—Hauptsturmfuehrer (captain) in the SS; member of the Gestapo; officer of Sonderkommando 10b of Einsatzgruppe D.

HEINZ SCHUBERT—Obersturmfuehrer (1st lieutenant) in the SS; member of the SD; officer of Einsatzgruppe D.

MATHIAS GRAF—Untersturmfuehrer (2nd lieutenant) in the SS; member of the SS; officer of Einsatzkommando 6 of Einsatzgruppe C.

COUNT ONE — CRIMES AGAINST HUMANITY

1. Between May 1941 and July 1943 all of the defendants herein committed crimes against humanity, as defined in Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with, atrocities and offenses, including but not limited to, persecutions on political, racial, and religious grounds, murder, extermination, imprisonment, and other inhumane acts committed against civilian populations, including German nationals and nationals of other countries.

2. The acts, conduct, plans, and enterprises charged in paragraph 1 of this count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups by murderous extermination.

3. Beginning in May 1941, on the orders of Himmler, special task forces called "Einsatzgruppen" were formed from the personnel of the SS, the SD, the Gestapo, and other police units. The primary purpose of these groups was to accompany the German Army into the eastern territories, and exterminate Jews, gypsies, Soviet officials, and other elements of the civilian population regarded as racially "inferior" or "politically undesirable."

4. Initially four Einsatzgruppen were formed, each of which supervised the operation of a number of subordinate units called "Einsatzkommandos" or "Sonderkommandos." Some Einsatzgruppen had, in addition, other units for special purposes. Each Einsatzgruppe, together with its subordinate units consisted of about 500 to 800 persons. Einsatzgruppe A, operating mainly in the Baltic region, included Sonderkommandos 1a and 1b and Einsatzkommandos 2 and 3. Einsatzgruppe B, operating mainly in the area towards Moscow, included Sonderkommandos 7a and 7b, Einsatzkommandos 8 and 9, and special units named Vorkommando Moscow (also known as Sonderkommando 7c) and Trupp Smolensk. Einsatzgruppe C, operating mainly in the area towards Kiev, included Sonderkommandos 4a and 4b and Einsatzkommandos 5 and 6. Einsatzgruppe D, operating mainly in the area of southern Russia, included Sonderkommandos 10a and 10b and Einsatzkommandos 11a, 11b, and 12.

5. All of the defendants herein, as officers or staff members of

one or more Einsatzgruppen or their subordinate units, committed murders, atrocities, and other inhumane acts as more specifically set forth in paragraphs 6 to 9, inclusive, of this count.

6. Einsatzgruppe A and the units under its command committed murders and other crimes which included, but were not limited to, the following:

(A) During the period 22 June 1941 to 15 October 1941 in Lithuania, Latvia, Esthonia, and White Ruthenia, Einsatzgruppe A murdered 118,430 Jews and 3,398 Communists.

(B) On or about 4 July 1941 in the city of Riga, Sonderkommando 1a and Einsatzkommando 2, together with auxiliary police under their command, carried out pogroms in which all synagogues were destroyed and 400 Jews were murdered.

(C) During October 1941 in Esthonia, Einsatzkommando 1a, together with Esthonian units under their command, committed murders pursuant to a program for the extermination of all Jewish males over sixteen except doctors and Jewish elders.

(D) During the period 7 November 1941 to 11 November 1941 in Minsk, Sonderkommando 1b murdered 6,624 Jews.

(E) During the period 22 June 1941 to 16 January 1942 in its operational areas, Einsatzkommando 2 murdered 33,970 persons.

(F) On 30 November 1941 in Riga, 20 men of Einsatzkommando 2 participated in the murder of 10,600 Jews.

(G) During the period 22 June 1941 to 19 September 1941 in Lithuania, Einsatzkommando 3 murdered 46,692 persons.

(H) During the period 22 June 1941 to 10 August 1941 in the area of Kovno [Kaunas] and Riga, Einsatzgruppe A murdered 29,000 persons.

(I) During the period 2 October 1941 to 10 October 1941 in the vicinity of Krasnogvardeisk, Einsatzgruppe A murdered 260 persons.

(J) During the period 15 October 1941 to 23 October 1941 in the vicinity of Krasnogvardeisk, Einsatzgruppe A murdered 156 persons.

(K) During the period 24 October 1941 to 5 November 1941 in the vicinity of Krasnogvardeisk, Einsatzgruppe A murdered 118 persons.

(L) On 20 November 1941 in the vicinity of Krasnogvardeisk, Einsatzgruppe A murdered 855 persons.

(M) In about December 1941 in the ghetto in Vitebsk, units of Einsatzgruppe A murdered 4,090 Jews.

(N) On 22 December 1941 in Vilnyus [Vilna], units of Einsatzgruppe A murdered 402 persons including 385 Jews.

(O) On 1 February 1942 in Loknya, units of Einsatzgruppe A murdered the 38 gypsies and Jews remaining there.

(P) On 2 and 3 March 1942 in Minsk, units of Einsatzgruppe A murdered 3,412 Jews.

(Q) On 2 and 3 March 1942 in Baranovichi, units of Einsatzgruppe A murdered 2,007 Jews.

(R) On 17 March 1942 in Ilya, east of Vileika, units of Einsatzgruppe A murdered 520 Jews.

(S) On or about 7 April 1942 in Kovno and Olita, Lithuania, units of Einsatzgruppe A murdered 44 persons.

(T) During the period 10 April 1942 to 24 April 1942 in Latvia, units of Einsatzgruppe A murdered 1,272 persons, including 983 Jews, 204 Communists and 71 gypsies.

7. Einsatzgruppe B and the units under its command committed murders and other crimes which included, but were not limited to, the following:

(A) In about July 1941 in the city of Minsk, units of Einsatzgruppe B murdered 1,050 Jews and liquidated political officials, "Asiatics" and others.

(B) During the period 22 June 1941 to 14 November 1941 in the vicinity of Minsk and Smolensk, Einsatzgruppe B murdered more than 45,467 persons.

(C) On 15 October 1941 in Mogilev, units of Einsatzgruppe B murdered 83 "Asiatics."

(D) On 19 October 1941 in Mogilev, units of Einsatzgruppe B participated in the murder of 3,726 Jews.

(E) On 23 October 1941 in the vicinity of Mogilev, units of Einsatzgruppe B murdered 279 Jews.

(F) During the period 22 June 1941 to 14 November 1941 in its operational areas, Sonderkommando 7a murdered 1,517 persons.

(G) In September or October 1941 in Sadrudubs, Sonderkommando 7a murdered 272 Jews.

(H) During the period 6 March 1942 to 30 March 1942 in the vicinity of Klinty, Sonderkommando 7a murdered 1,585 Jews and 45 gypsies.

(I) During the period 22 June 1941 to 14 November 1941 in its operational areas, Sonderkommando 7b murdered 1,822 persons.

(J) During the period from September to October 1941 in Rechitsa, White Ruthenia, Sonderkommando 7b murdered 216 Jews.

(K) During the period 6 March 1942 to 30 March 1942 in the vicinity of Bryansk, Sonderkommando 7b murdered 82 persons, including 27 Jews.

(L) During the period 22 June 1941 to 14 November 1941 in its operational areas, Einsatzkommando 8 murdered 28,219 persons.

(M) In September or October 1941 in the area of Shklov, Einsatzkommando 8 murdered 627 Jews and 812 other persons.

(N) In September or October 1941 in Mogilev, Einsatzkommando 8 participated in the murder of 113 Jews.

(O) In September or October 1941 in Krupka, Einsatzkommando 8 murdered 912 Jews.

(P) In September or October 1941 in Sholopaniche, Einsatzkommando 8 murdered 822 Jews.

(Q) During the period 6 March 1942 to 30 March 1942 in the vicinity of Mogilev, Einsatzkommando 8 murdered 1,609 persons, including 1,551 Jews and 33 gypsies.

(R) On 8 October 1941 in the ghetto of Vitebsk, Einsatzkommando 9 began murdering Jews and by 25 October 1941, 3,000 Jews had been executed.

(S) During the period 6 March 1942 to 30 March 1942 in the vicinity of Vitebsk, Einsatzkommando 9 murdered 273 persons, including 170 Jews.

(T) During the period 22 June 1941 to 14 November 1941 in its operational areas, the group staff of Einsatzgruppe B and the Vorkommando Moscow murdered 2,457 persons.

(U) During the period 22 June 1941 to 20 August 1941 in the vicinity of Smolensk, the group staff of Einsatzgruppe B and the Vorkommando Moscow murdered 144 persons.

(V) In September or October 1941 in Tatarsk, the group staff of Einsatzgruppe B and the Vorkommando Moscow murdered all male Jews.

(W) During the period 6 March to 30 March 1942 in the vicinity of Roslavl, Vorkommando Moscow murdered 52 persons.

(X) During the period 6 March 1942 to 30 March 1942 in the vicinity of Smolensk, Trupp Smolensk murdered 60 persons, including 18 Jews.

8. Einsatzgruppe C and the units under its command committed murders and other crimes which included, but were not limited to, the following:

(A) During the period 22 June 1941 to 3 November 1941 in the vicinity of Zhitomir, Novo Ukrainka and Kiev, Einsatzgruppe C murdered more than 75,000 Jews.

(B) On 19 September 1941 in Zhitomir, Einsatzgruppe C murdered 3,145 Jews and confiscated their clothing and valuables.

(C) During the period 22 June 1941 to 29 July 1941 in the vicinity of Zhitomir, Sonderkommando 4a murdered 2,531 persons.

(D) During the period 22 June 1941 to 12 October 1941 in its operational areas, Sonderkommando 4a murdered more than 51,000 persons.

(E) During the period from 27 June to 29 June 1941 in the

vicinity of Sokal and Lutsk, Sonderkommando 4a murdered 300 Jews and 317 Communists.

(F) In July or August 1941 in Fastov, Sonderkommando 4a murdered all the Jews between the ages of 12 and 60.

(G) In September or October 1941 in the vicinity of Vyrna and Dederev, Sonderkommando 4a murdered 32 gypsies.

(H) On 29 and 30 September 1941 in Kiev, Einsatzkommando 4a, together with the group staff and police units, murdered 33,771 Jews and confiscated their clothing and valuables.

(I) On 8 October 1941 in Jagotin, Sonderkommando 4a murdered 125 Jews.

(J) On 23 November 1941 in Poltava, Sonderkommando 4a murdered 1,538 Jews.

(K) In about July 1941 in Tarnopol, Sonderkommando 4b murdered 180 Jews.

(L) During the period from 13 September to 26 September 1941 in the vicinity of Kremenchug, Sonderkommando 4b murdered 125 Jews and 103 political officials.

(M) During the period 4 October 1941 to 10 October 1941 in Poltava, Sonderkommando 4b murdered 186 persons.

(N) From about 11 October 1941 to 30 October 1941 in the vicinity of Poltava, Sonderkommando 4b murdered 595 persons.

(O) During the period 14 January 1942 to 12 February 1942 in the vicinity of Kiev, Sonderkommando 4b murdered 861 persons, including 139 Jews and 649 political officials.

(P) During the period from February 1942 to March 1942 in the vicinity of Artemovsk, Sonderkommando 4b murdered 1,317 persons, including 1,224 Jews and 63 "political activists."

(Q) During the period from 22 June 1941 to 10 November 1941 in its operational areas, Einsatzkommando 5 murdered 29,644 persons.

(R) During July or August 1941 in Berdichev, Einsatzkommando 5 murdered 74 Jews.

(S) During the period 7 September 1941 to 5 October 1941 in the vicinity of Berdichev, Einsatzkommando 5 murdered 8,800 Jews and 207 political officials.

(T) On 22 and 23 September 1941 in Uman, Einsatzkommando 5 murdered 1,412 Jews.

(U) During the period 20 October 1941 to 26 October 1941 in the vicinity of Kiev, Einsatzkommando 5 murdered 4,372 Jews and 36 political officials.

(V) During the period from 23 November 1941 to 30 November 1941 in the vicinity of Rovno, Einsatzkommando 5 murdered 2,615 Jews and 64 political officials.

(W) During the period from 12 January 1942 to 24 January

1942 in the vicinity of Kiev, Einsatzkommando 5 murdered about 8,000 Jews and 104 political officials.

(X) During the period from 24 November 1941 to 30 November 1941 in the vicinity of Dnepropetrovsk, Einsatzkommando 6 murdered 226 Jews and 19 political officials.

(Y) From about 10 January 1942 to 6 February 1942 in the vicinity of Stalino, Einsatzkommando 6 murdered about 149 Jews and 173 political officials.

(Z) In about February 1942 in the vicinity of Stalino, Einsatzkommando 6 murdered 493 persons, including 80 "political activists" and 369 Jews.

9. Einsatzgruppe D and the units under its command committed murders and other crimes which included, but were not limited to, the following:

(A) During the period from 22 June 1941 to July 1943, Einsatzgruppe D, in the area of southern Russia, murdered more than 90,000 persons.

(B) On 15 July 1941 in the vicinity of Beltsy, Sonderkommando 10a murdered 45 persons, including the Counsel of Jewish Elders.

(C) In July 1941 in the vicinity of Chernovitsy, Sonderkommando 10b murdered 16 Communists and 682 Jews.

(D) During the period 22 June 1941 to 7 August 1941 in the vicinity of Kichinev, Einsatzkommando 11a murdered 551 Jews.

(E) In about July 1941 in Tighina, Einsatzkommando 11b murdered 151 Jews.

(F) In about December 1941 in the vicinity of Simferopol, Einsatzkommando 11b murdered over 700 persons.

(G) During the period from 22 June 1941 to 23 August 1941 in Babchinzy, Einsatzkommando 12 murdered 94 Jews.

(H) During the period 15 July 1941 to 30 July 1941 in the vicinity of Khotin, Einsatzgruppe D murdered 150 Jews and Communists.

(I) During the period 19 August 1941 to 15 September 1941 in the vicinity of Nikolaev, Einsatzgruppe D murdered 8,890 Jews and Communists.

(J) During the period 16 September 1941 to 30 September 1941 in the vicinity of Nikolaev and Kherson, Einsatzgruppe D murdered 22,467 Jews.

(K) During the period 1 October 1941 to 15 October 1941 in the area east of the Dnepr, Einsatzgruppe D murdered 4,891 Jews and 46 Communists.

(L) During the period 15 January 1942 to 31 January 1942 within its operational areas, Einsatzgruppe D murdered 3,601 persons, including 3,286 Jews and 152 Communists.

(M) During the period 1 February 1942 to 15 February 1942

within its operational areas, Einsatzgruppe D murdered 1,451 persons, including 920 Jews and 468 Communists.

(N) During the period 16 February 1942 to 28 February 1942 within its operational areas, Einsatzgruppe D murdered 1,515 persons, including 729 Jews, 271 Communists and 421 gypsies and other persons.

(O) During the period 1 March 1942 to 15 March 1942 within its operational areas, Einsatzgruppe D murdered 2,010 persons, including 678 Jews, 359 Communists, and 810 gypsies and other persons.

(P) During the period 15 March 1942 to 30 March 1942 within its operational areas, Einsatzgruppe D murdered 1,501 persons, including 588 Jews, 405 Communists, and 261 gypsies and other persons.

10. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly and constitute violations of the law of nations, international conventions, general principles of criminal law as derived from the criminal law of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article II of Control Council Law No. 10.

COUNT TWO — WAR CRIMES

11. Between 22 June 1941 and July 1943 all of the defendants herein committed war crimes as defined in Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with, atrocities and offenses against persons and property constituting violations of the laws or customs of war, including, but not limited to, murder and ill-treatment of prisoners of war and civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by Germany, and wanton destruction and devastation not justified by military necessity. The particulars concerning these crimes are set forth in paragraphs 6 to 9, inclusive, of count one of this indictment and are incorporated herein by reference.

12. The acts and conduct of the defendants set forth in this count were committed unlawfully, wilfully, and knowingly and constitute violations of international conventions, particularly of Articles 43 and 46 of the Regulations of the Hague Convention No. IV, 1907, the Prisoner-of-War Convention (Geneva, 1929), the laws and customs of war, the general principles of criminal

law as derived from the criminal laws of all civilized nations, the internal penal laws of the countries in which such crimes were committed, and Article II of Control Council Law No. 10.

COUNT THREE — MEMBERSHIP IN CRIMINAL ORGANIZATIONS

13. All the defendants herein are charged with membership, subsequent to 1 September 1939, in organizations declared to be criminal by the International Military Tribunal and paragraph 1 (d) of Article II of Control Council Law No. 10.

(A) All the defendants were members of the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS").

(B) The defendants Ohlendorf, Jost, Naumann, Rasch, Six, Blobel, Blume, Sandberger, Seibert, Steimle, Biberstein, Braune, Haensch, Ott, Strauch, Haussmann, Klingelhoefner, Fendler, von Radetzky, Schubert, and Graf were members of offices (Aemter) III, VI, and VII of the Reich Security Main Office (Reichssicherheitshauptamt—RSHA) constituting the Reich Security Service of the Reich Leader SS (Reichssicherheitsdienst des Reichsfuehrer SS), commonly known as the "SD".

(C) The defendants Rasch, Schulz, Blume, Braune, Biberstein, Nosske, and Ruehl were members of Amt IV of the Reichssicherheitshauptamt—RSHA constituting the Secret State Police (Geheime Staatspolizei), commonly known as the "Gestapo".

Wherefore, this indictment is filed with the Secretary General of the Military Tribunals and the charges herein made against the above-named defendants are hereby presented to the Military Tribunals.

[Signed] TELFORD TAYLOR
Brigadier General, U.S. Army,
Chief of Counsel for War
Crimes,
Acting on behalf of the United
States of America.

Nuernberg, 25 July 1947

II. ARRAIGNMENT*

THE MARSHAL: Persons in the courtroom will please find their seats.

The Honorable, the Judges of Military Tribunal II-A. Military Tribunal II-A is now in session. God save the United States of America and this honorable Tribunal.

There will be order in the Court.

PRESIDING JUDGE MUSMANN: Military Tribunal II-A will come to order and proceed with the arraignment of the defendants in Case No. 9. The Secretary General will call the roll of the defendants.

THE SECRETARY GENERAL: Each defendant will stand and answer "present" when his name is called, except in the case of Otto Rasch, who may remain seated. Otto Ohlendorf. Answer present.

OTTO OHLENDORF: Yes.

THE SECRETARY GENERAL: Be seated. Heinz Jost.

HEINZ JOST: Yes.

THE SECRETARY GENERAL: Erich Naumann.

ERICH NAUMANN: Yes.

THE SECRETARY GENERAL: Otto Rasch. Remain seated.

OTTO RASCH: Yes.

THE SECRETARY GENERAL: Erwin Schulz.

ERWIN SCHULZ: Yes.

THE SECRETARY GENERAL: Franz Six.

FRANZ SIX: Yes.

THE SECRETARY GENERAL: Paul Blobel.

PAUL BLOBEL: Yes.

THE SECRETARY GENERAL: Walter Blume.

WALTER BLUME: Yes.

THE SECRETARY GENERAL: Martin Sandberger.

MARTIN SANDBERGER: Yes.

THE SECRETARY GENERAL: Willy Seibert.

WILLY SEIBERT: Yes.

THE SECRETARY GENERAL: Eugen Steimle.

EUGEN STEIMLE: Yes.

THE SECRETARY GENERAL: Ernst Biberstein.

ERNST BIBERSTEIN: Yes.

THE SECRETARY GENERAL: Werner Braune.

WERNER BRAUNE: Yes.

THE SECRETARY GENERAL: Walter Haensch.

* 15 and 22 September 1947. Tr. pp. 1-29.

WALTER HAENSCH: Yes.

THE SECRETARY GENERAL: Gustav Nosske.

GUSTAV NOSSKE: Yes.

THE SECRETARY GENERAL: Adolf Ott.

ADOLF OTT: Yes.

THE SECRETARY GENERAL: Eduard Strauch.

EDUARD STRAUCH: Yes.

THE SECRETARY GENERAL: Emil Haussmann.

MR. FERENCZ: May it please your Honor, the prosecution has been informed that Emil Haussmann, named as a defendant, died subsequent to the filing of the indictment.¹

PRESIDING JUDGE MUSMANN: The record will show that the defendant Emil Haussmann died subsequent to the filing of the indictment and prior to this date of arraignment, so that all proceedings arising out of this indictment will cease as of the date of his death.

THE SECRETARY GENERAL: Waldemar Klingelhofer.

WALDEMAR KLINGELHOEFER: Yes.

THE SECRETARY GENERAL: Lothar Fendler.

LOTHAR FENDLER: Yes.

THE SECRETARY GENERAL: Waldemar von Radetzky.

WALDEMAR VON RADEZKY: Yes.

THE SECRETARY GENERAL: Felix Ruehl.

FELIX RUEHL: Yes.

THE SECRETARY GENERAL: Heinz Schubert.

HEINZ SCHUBERT: Yes.

THE SECRETARY GENERAL: Mathias Graf.

MATHIAS GRAF: Yes.

THE SECRETARY GENERAL: May it please this honorable Tribunal, all defendants except Emil Haussmann are present and in the dock.

PRESIDING JUDGE MUSMANN: Very well. The prosecution will now proceed with the reading of the indictment and the defendants will attend to the reading of the charges lodged against them.

[At this point Mr. Ferencz began to read the indictment.²]

DR. SURHOLT: May I please have a word for reasons concerning procedure? The defense counsel of the defendant Dr. Rasch calls the attention of the Court to the fact that the defendant is not in a position to attend the Court. The defense already made an application on 8 September that the proceedings against Dr. Rasch be severed and that his trial be suspended for the time being. The defendant was brought in this morning, and the pres-

¹ The defendant Haussman committed suicide on 31 July 1947.

² For text of indictment, see pp. 13 to 22.

ent condition of the defendant gives the defense reason to point out that he cannot attend the proceedings.

PRESIDING JUDGE MUSMANN: Are you satisfied that he is not in physical condition to attend the balance of the proceedings this morning which may not endure longer than an hour?

DR. SURHOLT: The defendant has just told me that owing to his condition he is not in a position even to understand the words of the prosecutor. He cannot hear.

PRESIDING JUDGE MUSMANN: Then do you make the representation that he is not in physical condition to be arraigned this morning?

DR. SURHOLT: I don't think so, but I am prepared to represent him and the defendant has consented to that.

PRESIDING JUDGE MUSMANN: Then you ask that he be excused from the courtroom for the rest of the proceedings this morning?

DR. SURHOLT: Yes. I ask that.

PRESIDING JUDGE MUSMANN: Very well. The defendant Otto Rasch, because of his physical condition, will be excused from attendance this morning and he will be arraigned at a later date individually. Will attendants escort the defendant Otto Rasch from the courtroom? (The defendant Otto Rasch was escorted from the courtroom.) You may continue, Mr. Ferencz.

[Mr. Ferencz continued reading the indictment.]

PRESIDING JUDGE MUSMANN: The defendants have now heard the reading of the indictment, but notwithstanding each one will be asked whether he is familiar with the indictment because of having read it himself.

As each name is called, the defendant will stand and speak clearly into the microphone. There will be no speeches, discussions, or arguments of any kind at this time. The defendant will answer the very simple questions put to him, and then plead "guilty" or "not guilty" to the charges lodged against him in the indictment.

Otto Ohlendorf, are you represented by counsel before this Tribunal?

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANN: Was the indictment in the German language served upon you at least 30 days ago?

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANN: Have you read the indictment?

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANN: How do you plead to this indictment, guilty or not guilty?

DEFENDANT OHLENDORF: Not guilty, in the sense of the indictment.

PRESIDING JUDGE MUSMANNO: You plead not guilty?

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANNO: Very well.

Heinz Jost, are you represented by counsel before this Tribunal?

DEFENDANT JOST: Yes.

PRESIDING JUDGE MUSMANNO: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT JOST: Yes.

PRESIDING JUDGE MUSMANNO: Have you read the indictment?

DEFENDANT JOST: Yes.

PRESIDING JUDGE MUSMANNO: How do you plead to this indictment, guilty or not guilty?

DEFENDANT JOST: Not guilty, in the sense of the indictment.

[At this point the defendants Naumann, Schulz, Six, Blobel, Blume, Sandberger, Seibert, Steimle, Biberstein, Braune, Haensch, Nosske and Ott were arraigned. All pleaded not guilty to the charges contained in the indictment.]

JUDGE DIXON: Eduard Strauch, are you represented by counsel before this Tribunal? (Defendant suffered an epileptic attack and was removed from the dock.)

DR. GICK: Dr. Karl Gick, your Honor, for the defendant Strauch. May I make a statement? As defense counsel for the defendant Strauch, I would like to inform the Tribunal that the Defendant Strauch suffers from epileptic attacks. Strauch earlier asked me to make an application to the Tribunal to have him medically examined, in order to clarify the question as to whether he is fit to participate in the proceedings. Within the next few days I shall submit this application. I ask that the defendant Strauch be removed from the proceedings for the time being and that you listen to his plea of guilty or not guilty later.

PRESIDING JUDGE MUSMANNO: In view of the very obvious condition of the defendant Eduard Strauch, the arraignment insofar as it pertains to him will be postponed to a later date. Defense counsel will be requested to submit a motion in writing along the lines indicated by him, which will be replied to by the prosecution in due time, and then the Tribunal will pass upon whatever is contained in the motion. Since we are considering this subject at the present time, I might like to call counsel for Otto Rasch to the podium.

You [Dr. Surholt] indicated in your preceding remarks that you intend to file an application—or had—for severance. I am not aware whether that application has been reduced to writing or not.

DR. SURHOLT: This application was handed in on 8 September in writing. I believe there was a delay in its further processing

because the translation of the medical opinion was difficult for the translation department.

PRESIDING JUDGE MUSMANN: Very well, then. If the motion has been filed I presume the prosecution will reply to it in due time. Are you familiar with this motion, Mr. Ferencz?

MR. FERENCZ: Yes, your Honor, I am familiar with the motion. I have not as yet received an English translation of it. As soon as we do receive the motion we will reply to it, and the Tribunal may consider it at their convenience. I would, at this time, however, like to have it part of the record that the defendant Rasch, who was excused, was excused at his own request and the prosecution has no objection to it; however, before he was brought here this morning I was assured by a physician that he was physically able to attend the arraignment. He was excused on his own statement and not on the advice or request of any physician.

PRESIDING JUDGE MUSMANN: Very well. The record will so indicate. We will continue with the arraignment.

[At this point the balance of the defendants were arraigned. All pleaded not guilty to the charges contained in the indictment.]

PRESIDING JUDGE MUSMANN: Very well. Does counsel for the prosecution or any counsel for the defense have any motions to make?

MR. FERENCZ: The prosecution has no motions to make, your Honor.

DR. SURHOLT: I have no application to make, but in respect to the words of the prosecution in the case of Rasch, I would like to point out that only for today was I willing to accede to the request of the defendant to let him go. This does not apply to the rest of the proceedings.

PRESIDING JUDGE MUSMANN: Very well. In order that defense counsel may be prepared to proceed without delay with their respective cases, they are now informed that there will be no recess of the Tribunal between the completion of the prosecution's case and the beginning of the defense. Opportunity has already been afforded defense counsel, I am informed, to peruse and study the documents which the prosecution intends to present. Further opportunity will be given defense counsel to further peruse and study these documents prior to the opening of the actual trial date. Consistent with the safeguarding of every right of the defendants, as guaranteed by the Charter, the ordinances, and the laws controlling the procedure of this Tribunal, this case will proceed with dispatch. Any defense counsel who desires to call a witness or to obtain a document must not wait until he is about to call his client to the witness stand to testify. He should make his

request immediately, as soon as he is aware that he will need such evidence, so that whatever time is consumed in obtaining the evidence, whether it be oral or documentary, may be running while other defendants are testifying. The Tribunal does not want to be placed in the situation of idling a day or even an hour while awaiting evidence which, with a little bit of foresight and energy, could have been obtained in ample time. The trial, the taking of testimony, will begin on Monday, 29 September 1947, in courtroom No. 2. This Court will be in recess until that time. The Tribunal will now rise.

THE MARSHAL: The Tribunal will be in recess until 9:30 o'clock Monday, 29 September.

(The Tribunal adjourned at 1045, to resume session at 0930, Monday, 29 September 1947.)

(Arraignment of defendant Otto Rasch at Municipal Hospital Nuernberg, Germany, at 1445 hours, 22 September 1947. The following were present; Judge John J. Speight, presiding; A. Horlik-Hochwald, representing the prosecution; Dr. Surholt, counsel for defendant Rasch; Capt. Jenckes, representing the Marshal, and the Secretary General's office; and Julian R. Schwab, reporter; and Mr. Lamm, court interpreter.)

JUDGE SPEIGHT: Otto Rasch.

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: You know that you have been indicted, and that an indictment has been filed against you for the commission of war crimes and crimes against humanity to the Secretary General of the Military Tribunal No. II-A?

DEFENDANT RASCH: Yes. I know that.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: Do you know that the first day of trial is set for Monday, 29 September 1947?

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: Was a copy of the indictment in the German language served upon you at least thirty days ago?

DEFENDANT RASCH: Yes. I got it.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT RASCH: I have read it.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT RASCH: Not guilty.

(Arraignment of Defendant Eduard Strauch in the chambers of Judge John J. Speight, Palace of Justice, Nuernberg, Germany, 1540 hours, 22 September 1947.)

The following were present: Judge John J. Speight, presiding; A. Horlik-Hochwald, representing the prosecution; defendant; Capt. Jenckes, the Marshal, also representing the Secretary General's office; Julian R. Schwab, court reporter; and Mr. Lamm, court interpreter.)

JUDGE SPEIGHT: Eduard Strauch.

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Do you know that you have been indicted, and that an indictment has been filed against you for the commission of war crimes and crimes against humanity to the Secretary General now pending before Tribunal No. II-A?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Do you know that the first day for the trial is set for Monday, 29 September 1947?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Was a copy of the indictment in the German language served upon you at least thirty days ago?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT STRAUCH: Not guilty.

III. OPENING STATEMENT OF THE PROSECUTION*

MR. FERENCZ: May it please your Honors: It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women, and children. This was the tragic fulfillment of a program of intolerance and arrogance. Vengeance is not our goal, nor do we seek merely a just retribution. We ask this Court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law.

We shall establish beyond the realm of doubt facts which, before the dark decade of the Third Reich, would have seemed incredible. The defendants were commanders and officers of special SS groups known as Einsatzgruppen—established for the specific purpose of massacring human beings because they were Jews, or because they were for some other reason regarded as inferior peoples. Each of the defendants in the dock held a position of responsibility or command in an extermination unit. Each assumed the right to decide the fate of men, and death was the intended result of his power and contempt. Their own reports will show that the slaughter committed by these defendants was dictated, not by military necessity, but by that supreme perversion of thought, the Nazi theory of the master race. We shall show that these deeds of men in uniform were the methodical execution of long-range plans to destroy ethnic, national, political, and religious groups which stood condemned in the Nazi mind. Genocide, the extermination of whole categories of human beings, was a foremost instrument of the Nazi doctrine. Even before the war the concentration camps within the Third Reich had witnessed many killings inspired by these ideas. During the early months of the war the Nazi regime expanded its plans for genocide and enlarged the means to execute them. Following the German invasion of Poland there arose extermination camps such as Auschwitz and Maidanek. In spring 1941, in contemplation of the coming assault upon the Soviet Union, the Einsatzgruppen were created as military units, but not to fight as soldiers. They were organized for murder. In advance of the attack on Russia, the Einsatzgruppen were ordered to destroy life behind the lines of combat. Not all life to be sure. They were to destroy all those

* Tr. pp. 30-50, 29 Sept. 1947.

denominated Jew, political official, gypsy, and those other thousands called "asocial" by the self-styled Nazi superman. This was the new German "Kultur".

Einsatz units entering a town or city ordered all Jews to be registered. They were forced to wear the Star of David under threat of death. All were then assembled with their families to be "re-settled" under Nazi supervision. At the outskirts of each town was a ditch, where a squad of Einsatz men waited for their victims. Whole families were arrayed, kneeling or standing near the pit to face a deadly hail of fire.

Into the prisoner-of-war camps went the Einsatz units, selecting men for extermination, denying them the right to live.

Helpless civilians were conveniently labeled "Partisans" or "Partisan-sympathizers" and then executed.

In the hospitals and asylums the Einsatzgruppen destroyed the ill and insane, for "useless eaters" could never serve the Third Reich.

Then came the gas vans, vehicles which could receive living human beings and discharge corpses. Every Einsatzgruppe had its allotment of these carriages of death.

These in short were the activities of the Einsatzgruppen.

The United States, in 1942, joined 11 nations in condemnation of these Nazi slaughters and vowed that justice would be done. Here we act to fulfill that pledge, but not alone because of it.

Germany is a land of ruins occupied by foreign troops, its economy crippled and its people hungry. Most Germans are still unaware of the detailed events we shall account. They must realize that these things did occur in order to understand somewhat the causes of their present plight. They put their faith in Hitler and their hope in his regime. The Nazi ideology, devoid of humanism and founded on a ruthless materialism, was proclaimed throughout Germany and was known to all Germans. Hitler and other Nazi leaders made no secret of their purpose to destroy the Jews. As we here record the massacre of thousands of helpless children, the German people may reflect on it to assess the merits of the system they so enthusiastically acclaimed. If they shame at the folly of their choice they may yet find a true ideal in place of a foul fetish.

Proof of a million murders will not be the most significant aspect of this case. We charge more than murder, for we cannot shut our eyes to a fact ominous and full of foreboding for all of mankind. Not since men abandoned tribal loyalties has any state challenged the right of whole peoples to exist. And not since medieval times have governments marked men for death because of race or faith. Now comes this recrudescence—this Nazi

doctrine of a master race—an arrogance blended from tribal conceit and a boundless contempt for man himself. It is an idea whose toleration endangers all men. It is, as we have charged, a crime against humanity.

The conscience of humanity is the foundation of all law. We seek here a judgment expressing that conscience and reaffirming under law the basic rights of man.

NAZI DOCTRINE OF SUPERIOR AND INFERIOR RACES

As this trial deals with the crime of genocide, it is essential to investigate the basic tenets and the development of the Nazi doctrine which inspired the crimes we shall prove. It is conceded that the Nazis neither invented nor monopolized this idea of superior peoples, but the consequences they wrought gave it a new and terrible meaning. The Nazi conception has little in common with that arrogance and pretention which has frequently accompanied the mingling of different peoples. The master race dogma as the Nazis understood and practiced it was nothing less than the most all-encompassing and terrible racial persecution of all time. It was one of the most important points of the “unalterable program of the Nazi party” and the only one which was consistently advanced from the very beginning of Nazi rule in Germany to the bitter end. It was, as Gottfried Feder, the official commentator of the Nazi program, called it “the emotion foundation of the Nazi movement”. The Jews were only one of the peoples marked for extermination in the Nazi program. The motivation of the crime of genocide, as it was carried out by Hitler and his legions in all of the occupied and dominated countries, stemmed from the Nazi ideology of “blood and race”. In this theory of the predominance of the alleged Nordic race over all others and in the mystic belief that Nordic blood was the only creative power in the world, the Einsatzgruppen had their ideological basis. In this primitive theory, derived in part from Nietzsche’s teaching of the Germanic superman, the Nazis found the justification for Germany’s domination of the world. As Rosenberg put it in mystic fog:

“A new faith is arising today; the myth of the blood, the faith, to defend with the blood the divine essence of man. The faith, embodied in clearest knowledge that the Nordic blood represents that mysterium which has replaced and overcome the old sacraments.”

In his speech, concluding the Reichsparteitag in Nuernberg, on 3 September 1933, Hitler professed a similar creed, but gave it a more practical expression:

“But long ago man has proceeded in the same way with his fellowman. The higher race—at first higher in the sense of possessing a greater gift for organization—subjects to itself a lower race and thus constitutes a relationship which now embraces races of unequal value. Thus there results the subjection of a number of people under the will often of only a few persons, a subjection based simply on the right of the stronger, a right as we see it in nature can be regarded as the sole conceivable right because founded on reason.”

This theory led the Nazis to consider many of the other nations and races, particularly the Slavs of Eastern Europe, as inferior, and Jews and gypsies as sub-human. From this thesis to the conclusion that inferior people should be decimated, and sub-humans exterminated like vermin, is but an easy step. The International Military Tribunal found in its judgment—

“The evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonization by Germans. Hitler had written in ‘Mein Kampf’ on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote: ‘It is not our task to Germanize the East in the old sense, that is to teach the people there the German language and the German law, but to see to it that only people of purely Germanic blood live in the East.’” *

In August 1942 the policy for the eastern territories as laid down by Bormann was summarized by a subordinate of Rosenberg as follows:

“The Slavs are to work for us. Insofar as we do not need them, they may die. Therefore, compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable.”

and

“In Poland the intelligentsia had been marked down for extermination as early as September 1939, and in May 1940 the defendant Frank wrote in his diary of ‘taking advantage of the focussing of world interest on the Western Front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia.’”

This aim was openly admitted by the highest SS dignitaries.

* Trial of the Major War Criminals, vol. I, p. 237, Nuremberg, 1947.

Himmler gave vivid expression to this viewpoint in a meeting of SS major generals at Poznan, in October 1943.

“What happens to a Russian, to a Czech does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take, if necessary by kidnaping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only so far as as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an antitank ditch interests me only insofar as the antitank ditch for Germany is finished. We shall never be rough and heartless when it is not necessary, that is clear. We Germans who are the only people in the world who have a decent attitude towards animals will also assume a decent attitude towards these human animals. But it is a crime against our own blood to worry about them and give them ideals, thus causing our sons and grandsons to have a more difficult time with them. When somebody comes to me and says, ‘I cannot dig the antitank ditch with women and children, it is inhuman, for it would kill them’, then I have to say, ‘You are a murderer of your own blood because, if the antitank ditch is not dug, German soldiers will die, and they are the sons of German mothers. They are our own blood. That is what I want to instill into this SS and what I believe have instilled into them as one of the most sacred laws of the future. Our concern, our duty is our people and our blood. It is for them that we must provide and plan, work and fight, nothing else. We can be indifferent to everything else. I wish the SS to adopt this attitude to the problem of all foreign non-Germanic peoples, especially Russians. All else is vain, fraud against our own nation and an obstacle to the early winning of the war.’ (1919-PS *)

Hans Frank, the Governor General of occupied Poland, addressed a cabinet session in the government building at Krakow on 16 December 1941 and advocated the following solution of the Jewish problem:

“Gentlemen, I must ask you to rid yourself of all feeling of pity. We must annihilate the Jews, wherever we find them and wherever it is possible, in order to maintain there the structure of the Reich as a whole.”

The same Hans Frank summarized in his diary of 1944 the Nazi policy as follows: “The Jews are a race which has to be eliminated. Wherever we catch one it is his end.” And earlier, speak-

* Nazi Conspiracy and Aggression, vol. IV, p. 559, U. S. Government Printing Office, Washington, 1946.

ing of his function as Governor General of Poland, he confided to his diary this sentiment: "Of course, I cannot eliminate all lice and Jews in only a year's time."

When von dem Bach-Zelewski, who testified before the International Military Tribunal,¹ was asked how the defendant Ohlen-dorf could admit the murder of 90,000 people, he replied—

"I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

No one could have defined better the ideology which prompted Nazi Germany to embark on the program of extermination. The prophecy of Hitler, made in his speech to the German Reichstag on 30 January 1939, that the result of war would be the annihilation of the Jewish race in Europe, came very near fulfillment. It is estimated that, of the 9,600,000 Jews who lived in Nazi-dominated countries, 6,000,000 have perished in the gas chambers of the concentration camps or were murdered by the Einsatzgruppen. As the International Military Tribunal found in its judgment—

"Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6 million Jews, of which 4 million were killed in the extermination institutions."²

The unholy trinity, the SS, the Gestapo, and the SD, accomplished this work with hideous and ruthless efficiency. It was Himmler who boasted proudly in his speech to the highest SS leaders, in 1943,

"Only the SS was equal to the task of exterminating the Jewish people. Others talked about it but had too many reservations * * *. To have completed such a mission is an unwritten page of honor in the history of the SS."

At least one of the chief advocates of the master race theory, Hans Frank, has publicly regretted his advocacy—

"We have fought against Jewry, we have fought against it for years, and we have allowed ourselves to make utterances—and my own diary has become a witness against me in this connection—utterances which are terrible* * *. A thousand years will pass, and this guilt of Germany will still not be erased."

THE ORGANIZATION OF THE EINSATZGRUPPEN

During the last years the world has learned much about this "state within the state" which was formed by the SS. Much about

¹ Trial of the Major War Criminals, vol. IV, p. 494, Nuremberg, 1947.

² Trial of the Major War Criminals, vol. I, pp. 252-253, Nuremberg, 1947.

this new aristocracy of "blood and elite" need not be repeated here. The Einsatzgruppen were part of the SS. They were created at the direction of Hitler and Himmler by Heydrich the Chief of the Security Police and SD, who was Himmler's right hand man, and operated under the direct control of the RSHA, the Reich Security Main Office, one of the most important of the twelve main offices of the SS.

The Einsatzgruppen were formed in the spring of 1941. The sequence of events was as follows:

In anticipation of the assault on Russia, Hitler issued an order directing that the Security Police and the Security Service be called in to assist the army in breaking every means of resistance behind the fighting front. Thereafter, the Quartermaster General of the Army, General Wagner, representing Keitel, the Chief of the Supreme Command of the Wehrmacht, met Heydrich, Chief of the Security Police and Security Service. These two men reached an agreement concerning the activation, commitment, command, and jurisdiction of units of the Security Police and SD within the framework of the army. The Einsatzgruppen were to function in the rear operational areas in administrative subordination to the field armies, in order to carry out these tasks as directed by Heydrich and Himmler.

The reason why decisions of the highest military and administrative level were necessary for the creation of such small units is shown by the character of their assignment. These "security measures" were defined according to the principles of the Security Police and the SD, the principles of Heydrich, the principles of unmitigated terror and murder. The actions of the Einsatzgruppen in the conquered territories will demonstrate the purpose for which they were organized.

In the beginning four such Einsatzgruppen were formed, each of which was attached to an army group. Einsatzgruppe A was attached to Army Group North, Einsatzgruppe B was attached to Army Group Center, Einsatzgruppe C was attached to Army Group South and Einsatzgruppe D was assigned to the 11th German Army which was to be nucleus for the formation of a fourth army group after it reached the Caucasus. The function of the Einsatzgruppen was here to insure the political security of the conquered territories both in the operational areas of the Wehrmacht and the rear areas which were not directly under civil administration. These two missions were made known at a mass meeting of the Einsatzgruppen personnel before the attack on Russia. At this meeting Heydrich, Chief of the SIPO and SD, and Streckenbach, chief of the personnel office of the Reich Security Main Office (RSHA) flatly stated that the task of the

Einsatzgruppen would be accomplished by exterminating the opposition to National Socialism.

Nor were the commanders of the armed forces ignorant of the task of the Einsatzgruppen. Hitler himself instructed them that it was the mission of these special task forces to exterminate all Jews and political commissars in their assigned territories. The Einsatzgruppen were dependent upon the army commander for their billets, food, and transport; relations between armed forces and the Security Police and SD were close and almost cordial, and the commanders of the Einsatzgruppen reported again and again that the understanding of the army commanders for the task of the Einsatzgruppen made their operations considerably easier.

The normal strength of the Einsatzgruppen was from 500 to 800 men. The officer strength of the Einsatzgruppen was drawn from the SD, SS, Criminal Police (Kripo) and Gestapo. The enlisted forces were composed of the Waffen SS, the regular police, the Gestapo, and locally-recruited police. When occasion demanded, the Wehrmacht commanders would bolster the strength of the Einsatzgruppen with contingents of their own. The Einsatzgruppen were divided into Einsatzkommandos and Sonderkommandos. These subunits differed only in name. When a mission called for a very small task force, the Einsatz or Sonderkommandos was capable of further subdivision, called Teilkommando or splinter group.

The activity of the Einsatzgruppen was not limited to the civilian population alone, but reached into prisoner-of-war camps in total disregard of the rules of warfare. Soldiers were screened by Einsatzkommandos personnel in order to find and kill Jews and political commissars.

Shortly before the campaign against Russia, Hitler gave an explanation of the ideological background of this fight to the commanders in chief and the highest officers of the three branches of the armed forces. This war, he said, would not be an ordinary war, but a clash of conflicting ideologies. Special measures would have to be taken against political functionaries and commissars of the Soviet Army. Political activities and commissars were not to be treated as prisoners of war, but were to be segregated and turned over to special detachments of the SD which were to accompany the German troops. The carrying-out of this Hitler directive was described by the International Military Tribunal in its judgment that—

“* * * There existed in the prisoner-of-war camps on the eastern front small screening teams (Einsatzkommandos), headed by lower ranking members of the Secret Police (Ge-

stapo). These teams were assigned to the camp commanders and had the job of segregating the prisoners of war who were candidates for execution according to the orders that had been given, and to report them to the office of the Secret Police." *

When a general expressed concern that the morale of the average German soldier might suffer from the sight of these executions, the Chief of the Office IV of the RSHA assured him cynically that, in the future, this "special treatment"—the euphemistic expression for killing—would take place outside the camps so that the troops would not see them.

Detailed instructions were put into force that no political functionary, commissar, higher-ranking civil servant, leading personality of the economical field, member of the intelligentsia, or Jew, might escape extermination. These purposes were realized in actions we shall now describe.

ACTIVITIES OF THE EINSATZGRUPPEN

MR. WALTON: In May and June 1941, the assembling of Einsatzgruppen personnel began, in conformity with the agreements between the Army High Command and the Reich Security Main Office. At first the Border Police School Barracks at Pretzsch in Saxony was designated as an assembly point, but because of the inadequacy of facilities, the neighboring villages of Dueben and Schmiedeberg were also designated as assembly points.

Since the majority of the personnel for the Einsatzgruppen came from military or police organizations, they already understood normal military duties. The course of training given them at the assembly points consisted of lectures and speeches on their new and special functions. After this orientation the Gruppen received their equipment, and were to be committed to action. Events were not long delayed which brought these organizations to their assigned tasks, and their missions were thoroughly understood from the highest-ranking leader of a Gruppe down to the lowest SS man.

On 22 June 1941, with no previous warning, Germany invaded Soviet Russia. The Einsatzgruppen, already alerted, fell in behind the marching columns of the Wehrmacht as an integral part of the machine constructed for swift and total war. Within a space of three days the training grounds in Saxony were empty and all Einsatzgruppen had entered upon the performance of their various missions.

The Tribunal will recall how rapidly the Wehrmacht overran

* Trial of the Major War Criminals, vol. I, p. 280, Nuremberg, 1947.

vast territory in the early months of this aggression. By December 1941, the eastern front extended from Leningrad on the north to the Crimean Peninsula in the south. The Baltic States, White Ruthenia, and most of the Ukraine were in German hands. In this wide land the Einsatzgruppen moved behind the lines of combat. They were deployed from north to south in alphabetical order across the east of Europe.

The precise areas in which they did their work will become apparent as the proof is adduced. And it will be seen that they followed like methods in executing their common mission.

Identity of purpose and of top command were reflected in a common pattern of performance. Some victims were disposed of casually. Political functionaries were shot where found. Prisoners of war who fell in the category of opponents of National Socialism were handed by the Wehrmacht to the Einsatzgruppen and killed.

These swift methods were also applied in disposing of Jews, gypsies, and persons falling under that vague denomination "undesirables." But these latter classes of humans marked for slaughter were large—too large to be disposed of by casual assassination. Their very numbers demanded that they be killed en masse. Accordingly, we find plans and methods adapted to this necessity.

We must remember that the Einsatzgruppen were small forces of 500 to 800 men. Four of these small forces totaling not more than 3,000 men killed at least 1,000,000 human beings in approximately two years' time. These figures enable us to make estimates which help considerably in understanding this case. They show that the four Einsatzgruppen averaged some 1,350 murders per day during a 2-year period; 1,350 human beings slaughtered on the average day, 7 days a week for more than 100 weeks. That is 337 murders per average day by each group of 500 to 800 men during the 2-year period. All these thousands of men, women, and children killed had first to be selected, brought together, held in restraint, and transported to a place of death. They had to be counted, stripped of possessions, shot, and buried. And burial did not end the job, for all of the pitiful possessions taken from the dead had to be salvaged, crated, and shipped to the Reich. Finally, books were kept to cover these transactions. Details of all these things had to be recorded and reported.

Upon entry into a given area and after establishing itself for an extermination operation, an Einsatz unit rounded up those elements of the population marked for slaughter. This was accomplished by special orders to report and by manhunts. It was followed by concentration of the victims under guard to be trans-

ported to a place for execution or at the abattoir itself. In accomplishing roundups, a common deceit was widely practiced; those who were to die were told to report for "resettlement"—hope was held out to those who had none in fact, and who awaited certain death. The methods of extermination varied little. Mass shooting, the commonest means of slaughter, was described with classic simplicity by Herman Graebe, a German civilian, before the International Military Tribunal. Graebe was in charge of a building firm in the Ukraine. May I read from his statement—

"I walked around the mound, and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already $\frac{2}{3}$ full. I estimated that it contained about 1,000 people. I looked for the man who did the shooting. He was an SS man, who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS man directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching or the heads lying already motionless on top of the bodies that lay before them. Blood was running from their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back around the mound, I noticed another truckload of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with Moennikes and drove in my car back to Dubno.

"On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit—about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness of the morning nor the workers

of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes, and help her escape. At that moment we heard a fast car approach and I noticed that it was an SS detail. I moved away to my site. Ten minutes later we heard shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit; then they had themselves to lie down in this to be shot in the neck.” (2992-PS, *Pros. Ex. 33.*)

Another form of extermination employed was asphyxiation by lethal gasses in enclosed trucks or vans. Here again the victims were induced to enter these death machines by the promise that they would be transported to other areas for resettlement. As the van left the leading area it was filled with deadly fumes. A few minutes later, when the van reached the disposal point, the corpses were unloaded into prepared excavations which became unmarked mass graves. These, then, were the usual methods used by the Einsatzgruppen. May I now briefly detail some of their activities.

Einsatzgruppe A made a comprehensive report in October 1941 describing what it had been doing. The report gave the total of 121,817 persons killed. The commanding officer stated—

“To our surprise it was not easy at first to set in motion an extensive pogrom against the Jews. Klimatis, the leader of the partisan unit mentioned above, who was used for this purpose primarily, succeeded in starting pogroms on the basis of advice given to him by a small Vorkommando operating in Kovno and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June, the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means, and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights, approximately 2,300 Jews were rendered harmless in a similar way.” (*L-180, Pros. Ex. 34.*)

Sonderkommando 1a, which was under the command of the defendant Sandberger, arrested all male Jews over 16 in its area and with the exception of doctors and the Counsel of Elders, they were all executed. The defendant Strauch commanded Einsatzkommando 2. Six months after they began operations, they reported a total of 33,970 executions. The Commissioner General of White Ruthenia had the following to say:

“During detailed consultations with the SS Brigadier General [SS Brigadefuehrer] Zenner and the extremely capable Chief of the SD, SS Lieutenant Colonel [SS Obersturmbannfuehrer] Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last

10 weeks. In the Minsk-land area the Jewry was completely exterminated, without endangering the allocation of labor in any way."

The defendant Jost was in command of Einsatzgruppe A on 27 March 1942 when they reported that 15,000 Jews were shot in Cherven. The report pointed out that these acts created a feeling of insecurity and even anxiety in the population of White Ruthenia and that it was impossible to estimate the consequences of such measures. At another time while this Einsatzgruppe was under Jost's command, it reported that it had executed 1,272 persons, including those too aged and infirm to work, and political leaders. The report adds that 14 of this number of more than 1,000 persons slaughtered were either guilty of misdeeds or were criminals. The proof will show, we believe, that this proportion of only 2 percent of the victims shot for crime is not unusual.

EINSATZGRUPPE B

The defendant Naumann commanded Einsatzgruppe B. In Minsk this Einsatzgruppe had rounded up all male inhabitants and put them in a civilian prison camp. By careful screening, with the help of the Secret Field Police, it was able to liquidate over 1,000 Jews. In Lithuania, a local Kommando of this Gruppe reported that 500 Jews were being liquidated daily. The report also stated that nearly half a million roubles in cash "which belonged to Jews who were subject to special treatment were appropriated as belonging to the enemies of the Reich and confiscated." By the middle of November 1941, Einsatzgruppe B could report a total of 45,467 [sic] executions. These executions were broken down as follows:

Staff and Vorkommando Moscow.....	2,457
Sonderkommando 7a.....	1,517
Sonderkommando 7b.....	1,822
Einsatzkommando 8.....	28,290
Einsatzkommando 9.....	11,452

In reporting further executions in the civilian prisoners camps in Minsk, Einsatzgruppe B stated that another 733 civilian prisoners were liquidated. The comment made concerning these executions is—

"All the persons executed were absolutely inferior elements with a predominant mixture of Asiatic blood. No responsibility could be assumed if they were left in the occupied zone."

The defendant Blume was chief of Sonderkommando 7a in Einsatzgruppe B. In one of his affidavits he says—

"I carried out one execution in the course of my duty. I

remember one occasion on which between 70 and 80 people were executed in Vitebsk and on another occasion on which a similar number were executed in Minsk * * * on both occasions a kind of trench was dug, the persons destined to die were placed in front of it and shot with carbines. About 10 people were shot simultaneously by an execution force of 30 to 40 men. There was no doctor present at the execution, but the leader of the execution force who was responsible made sure that the people were dead. Coups de grace were not necessary." (NO-4145, Pros. Ex. 10.)

Eugen Steimle, the defendant, commanded Sonderkommando 7a. In one of his affidavits he tells us that he had been reprimanded for not shooting women and children in his mass executions. His reports will indicate that the reprimand was not without effect.

The defendant Adolf Ott commanded another unit in Einsatzgruppe B and he tells us—

"During the time I was Kommando Leader of the Kommando 7b, about 80 to 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of Bryansk. The people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried in the snow and later buried by the Army. The valuables which were collected from these people were sent to Einsatzgruppe B." (NO-2993, Pros. Ex. 67.)

Other units of Einsatzgruppe B headed by the defendants Klingelhoefler and Six did not vary from this standard pattern.

EINSATZGRUPPE C

Einsatzgruppe C did not fail to report the success of its work. Under the significant heading, "Executive Activities", this group reported in the first days of November—

"As to purely executive matters, approximately 80,000 persons were liquidated until now by the Kommandos of the Einsatzgruppe * * *

"Several retaliatory measures were carried out as large-scale actions. The largest of these actions took place immediately after the occupation of Kiev; it was carried out exclusively against Jews with their entire families.

"The difficulties resulting from such a large-scale action—in particular concerning the seizure—were overcome in Kiev by requesting the Jewish population through wall-posters to move. Although only a participation of approximately 5-6,000 Jews had been expected at first, more than 30,000 Jews arrived who, until the very moment of their execution, still believed

in their resettlement, thanks to an extremely clever organization.

“Even though approximately 75,000 Jews have been liquidated in this manner, it is already at this time evident that this cannot be a possible solution of the Jewish problem. Although we succeeded, in particular in smaller towns and also in villages, in accomplishing a complete liquidation of the Jewish problem, again and again, it is however observed in larger cities that after such an execution all Jews have indeed disappeared. But when after a certain period of time a Kommando returns again, the number of Jews still found in the city always considerably surpasses the number of the executed Jews.”

The killing of 33,000 Jewish inhabitants of Kiev in only 2 days stands out even among the ghastly records of the Einsatzgruppen. It was the defendant Blobel, who with his unit under the command of the defendant Rasch, accomplished this massacre which nearly defies human imagination. Einsatzgruppe C received high praise for its activities from the Commanding General of the 6th Army, Field Marshal von Reichenau. This ruthless, mass killing shamed some of the German witnesses, and the Einsatzgruppe had to report that “Unfortunately it often occurred that the Einsatzkommandos had to suffer more or less hidden reproaches for their consequent stand on the Jewish problem.”

But the Jews were by no means the only part of the population which was marked for extermination. They were only the most helpless victims. Therefore, Einsatzgruppe C stressed the point of the political sources of danger by reporting—

“Even if an immediate hundred percent exclusion of Jewry were possible, this would not remove the political source of danger. The Bolshevistic work depends on Jews, Russians, Georgians, Armenians, Poles, Latvians, Ukrainians; the Bolshevistic machine is by no means identical with the Jewish population. In this situation, the goal of a political police security would be missed, if the main task of the destruction of the communistic machine were put back into second or third place in favor of the practically easier task of the exclusion of the Jews.”

Einsatzkommando 5 was commanded by the defendant Schulz. Only half a year after this Einsatzkommando had begun its activities, it was able to report a total of 15,000 executions. It was reported that the liquidation of insane Jews represented a particularly heavy mental burden for the members of Schulz' Einsatzkommando, who were in charge of this operation. Nor were the non-Jewish inmates of insane asylums spared. Einsatz-

kommando 6 killed 800 of them in one asylum alone. The commander of this unit, at a later time, was the defendant Biberstein. Before he became leader of Einsatzkommando 6, he was a Protestant minister, and under his aegis two to three thousand helpless people were murdered, and he himself supervised executions which were carried out by his unit by means of a gas van.

EINSATZGRUPPE D

The headquarters staff of Einsatzgruppe D is in the dock. The commander was the defendant Ohlendorf and his deputy was the defendant Schubert. A subunit of Ohlendorf's command, Einsatzkommando 12, was commanded by the defendant Nosske. A third unit of Einsatzgruppe D, Sonderkommando 10b, was led by one Persterer who is now deceased. Persterer's deputy was the defendant Ruehl.

During the first nine months of Ohlendorf's year in command of Einsatzgruppe D, this force destroyed more than 90,000 human beings. These thousands, killed at an average rate of 340 per day, were variously denominated Jews, gypsies, Asiatics, and "undesirables". Between 16 November and 15 December 1941, this Einsatzgruppe killed an average of 700 human beings per day for the whole 30-day period. The intensity of the labors of Einsatzgruppe D is suggested by an April 1942 report upon its work in the Crimea, which states—

"The Crimea is freed of Jews. Only occasionally some small groups are turning up, especially in the northern areas. In cases where single Jews could camouflage themselves by means of forged papers, etc., they will, nevertheless, be recognized sooner or later, as experience has taught."

In ordering these massacres Ohlendorf and his men were not without scruples:

"It was," he said, "my wish that these executions be carried out in a manner and fashion which was military and suitably humane under the circumstances. For this reason I personally inspected a number of executions, for example, executions which were carried out by Kommando 11b under the direction of Dr. Werner Braune, executions by Kommando 11a under Sturmbannfuhrer Zapp in Nikolaev, and a smaller execution by Kommando 10b under the leadership of Alois Persterer in Ananev. For technical reasons (for example, because of road conditions) it was not possible to inspect all mass executions. Insofar as I was prevented from inspections for personal reasons, I ordered members of my staff to represent me at these. I remember that Schubert inspected an execution which was

carried out by Kommando 11b under Braune's direction in December 1941 in Simferopol. The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel."

The execution at Simferopol which Ohlendorf mentions was reported to Berlin as, "very difficult" because "reports about actions against Jews gradually filtered through from fleeing Jews, Russians, and also from unguarded talks of German soldiers." But these difficulties apparently increased the determination of Einsatzgruppe D. On 18 February it reported to Berlin—

"By the end of February the combing-through of the occupied Crimea will have been finished. Certain important areas in towns in particular are being regularly rechecked. The search for isolated Jews who have up to now avoided being shot by hiding themselves or by giving false personnel data was continued. From 9 January to 15 February more than 300 Jews were apprehended in Simferopol and executed. By this the number of persons executed in Simferopol increased to almost 10,000 Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100-200 Jews were still disposed of in each instance."

The International Military Tribunal reached the conclusion from the evidence then before it that *—

"Einsatzgruppen of the Security Police and SD operating behind the lines of the eastern front engaged in the wholesale massacre of Jews * * *. Commissars, Jews, members of the intelligentsia, 'fanatical Communists' and even those who were considered incurably sick were classified as 'intolerable', and exterminated * * *. These units were also involved in the widespread murder and ill-treatment of the civilian population of occupied territories. Under the guise of combatting partisan units, units of the SS exterminated Jews and people deemed politically undesirable by the SS, and their reports record the execution of enormous numbers of persons."

The brief details I have recounted indicate the character of the proof to come. It is for such crimes as these that we invoke the jurisdiction of this Court.

JURISDICTION OF THE COURT

MR. FERENCZ: International agreements adopted by twenty-three nations and Control Council Law No. 10, a quadripartite enactment made pursuant to these agreements, authorize the crea-

* Trial of the Major War Criminals, vol. I, pp. 266, 267, 270, Nuremberg, 1947.

tion of this Court. These Military Tribunals, established by the United States as agencies to administer Law No. 10, are in essence and in fact International Courts.

The murders in this case were committed in particular cities and towns, but the rights the defendants violated belong to all men everywhere. These rights may be vindicated by any nation, alone or in concert with others. The nationality of the victim and the time and place of crime do not impugn this jurisdiction. We find this law both in opinions of the Permanent Court of International Justice and the practice of states in military offenses.¹ The Permanent Court has held that states have legal power to determine any criminal matter as long as such legal action is not prohibited by international law.² Where conduct menaces the universal social order, there can be and has been no prohibition on the right of courts to act. No law has ever prohibited the trial by any court of crimes such as we shall here disclose.

Piracy and brigandage were the forerunners of modern international crimes. International jurisprudence soon gave states the right to punish these violators regardless of the victim's nationality or the location of the crime. This applied in time of war or peace. It has long been accepted that a belligerent may punish members of enemy forces in its custody who have violated the laws and customs of war.³ The jurisdiction exercised by military courts trying offenses against the laws of war has never been territorial. Sir Hartley Shawcross, the British prosecutor at the International Trial, pointed out that—

“The rights, of humanitarian intervention on behalf of the rights of man, trampled upon by a state in a manner shocking the sense of mankind, have long been considered to form part of the law of nations”.⁴

German law professors too declared this in their writings.⁵ The jurisdictional power of every state extends to the punishment of offenses against the law of nations “by whomsoever and where-soever committed”.⁶

It is, therefore, wholly fitting for this Court to hear these charges of international crimes and to adjudge them in the name of civilization.

¹ Cowles, *Universality of Jurisdiction of War Crimes*, California Law Revue June, 1945.

² SS Letus (France vs. Turkey) Judgment No. 9, Series A, No. 10, cited in Cowles, *op. cit.* pp. 178-180.

³ *Ibid.*, p. 206.

⁴ *Trial of the Major War Criminals*, vol. III, p. 92, Nuremberg, 1947.

⁵ Bluntzchi, “Das Moderne Voelkerrecht der Zivilisierten Staaten”.

⁶ Wheaton, cited in Cowles, *op. cit. supra*, p. 191.

THE NATURE OF THE CHARGES COUNT ONE

The charges we have brought accuse the defendants of having committed crimes against humanity. The same acts we have declared under count one as crimes against humanity are alleged under count two as war crimes. The same acts are, therefore, charged as separate and distinct offenses. In this there is no novelty. An assault punishable in itself may be part of the graver offense of robbery, and it is proper pleading to charge both of the crime. So here the killing of defenseless civilians during a war may be a war crime, but the same killings are part of another crime, a graver one if you will, genocide—or a crime against humanity. This is the distinction we make in our pleading. It is real and most significant. To avoid at the outset any possible misconception, let us point out the differences between the two offenses.

War crimes are acts and omissions in violation of the laws and customs of war. By their very nature they can affect only nationals of a belligerent and cannot be committed in time of peace. The crime against humanity is not so delimited. It is fundamentally different from the mere war crime in that it embraces systematic violations of fundamental human rights committed at any time against the nationals of any nation. They may occur during peace or in war. The animus or criminal intent is directed against the rights of all men, not merely the right of persons within a war zone. At a recent conference for the unification of penal law, the definition of crimes against humanity was a leading topic. There it was the Counselor of the Vatican who said—

“The essential and inalienable rights of man cannot vary in time and space. They cannot be interpreted and limited by the social conscience of a people or a particular epoch for they are essentially immutable and eternal. Any injury * * * done with the intention of extermination, mutilation, or enslavement, against the life, freedom of opinion * * * the moral or physical integrity of the family * * * or the dignity of the human being, by reason of his opinion, his race, caste, family, or profession, is a crime against humanity. * * *”

One series of events, if they happen to occur during the time of hostilities, may violate basic rights of man and simultaneously transgress the rules of warfare. That is the intrinsic nature of

* Report of the VIII Conference for the Unification of Penal Law, 11 July 1947.

the offenses here charged. To call them war crimes only is to ignore their inspiration and their true character.

Control Council Law No. 10 clearly lists war crimes as offenses constituting violations of the laws or customs of war, and crimes against humanity as a distinct offense unrelated to war.¹ The London Charter restricted the jurisdiction of the International Military Tribunal to crimes against humanity connected with crimes against peace or war crimes.² This restriction does not appear in the Control Council enactment, which recognizes that crimes against humanity are, in international law, completely independent of either crimes against peace or war crimes. To deny this independence would make the change devoid of meaning.³

In this case the crimes occurred while Germany was at war. This is a coincidence of time. The plans for persecution and annihilation were rooted deep in Nazi ideology and would have been effected even had their aggressions failed to erupt in open conflict. This was shown by their actions in Germany itself, in Austria, and in Czechoslovakia.

Count one of our indictment enumerates the crimes against humanity which we have charged. It accuses these defendants of atrocities and offenses, including persecutions on political, racial and religious grounds, murder, extermination, imprisonment, and other inhumane acts. Each of these is recognized as a crime by Law No. 10. That murder and extermination violated the criminal laws of all civilized nations even the defendants will not be heard to deny.

Can it be said that international conventions and the law of nations gave no warning to these accused that their attacks against ethnic, national, religious, and political groups infringed the rights of mankind? We do not refer to localized outbursts of hatred nor petty discriminations which unfortunately occur in the most civilized of states. When persecutions reach the scale of nationwide campaigns designed to make life intolerable for, or to exterminate large groups of people, law dare not remain silent. We must condemn the motive if we would affect the crime. To condemn an evil and ignore its cause is to invite its repetition. The Control Council simply reasserted existing law when naming persecutions as an international offense.

In dealings between nations these principles were well-known,

¹ Article II, 1(b) and (c). See p. XIX.

² Charter of the IMT, Article 6(c). See p. XIV.

³ Opening statement by the prosecution in Case No. 5, U. S. vs. Friedrich Flick, et al., contains a detailed exposition of the distinction between war crimes and crimes against humanity. See vol. VI.

That they knew, no doubt, as well as all men know it. They will not here deny their knowledge of the Lord's Commandment.

As military commanders, these men were bound by laws well known to all who wear the soldier's uniform. Laws which impose on him who takes command the duty to prevent, within his power, crimes by these in his control. These laws, declaratory of common morality, rest lightly on the honorable soldier. He feels no restraint in the rule that old men, women, and children shall be protected as far as military necessity permits. It is this duty, legal and moral, to prevent, to mitigate, and to disavow the slaughter of innocents, that all the defendants flagrantly violated. The purpose of the laws of war to protect civilian populations and prisoners would largely be defeated if a commander could with impunity neglect to take reasonable measures for their protection. This was declared by the Supreme Court of the United States¹ and relied upon by Military Tribunal I in the case against German doctors.²

We shall show in this case that the rank and position of these defendants carried with it the power and duty to control their subordinates. This power, coupled with the knowledge of intended crime and the subsequent commission of crime during their time of command imposes clear criminal responsibility.

It is not infrequent in the legend of these crimes that some word of explanation edges in as if to salve the conscience of the executioner. "So and so many persons were shot," the report will read "because they were too old and infirm to work," "this or that ghetto was liquidated, to prevent an epidemic," "so many children were shot, because they were mentally ill."

Such lean tokens cannot exculpate these wrongs. The Euthanasia Doctrine based on a Hitler order scorning pre-existing law spurred the annihilation program. Military Tribunal I, in discussing euthanasia laws, stated—

"* * * The Family of Nations is not obligated to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings of other nations."³

Murder cannot be disguised as mercy.

Law No. 10 specifically declares that certain acts are crimes against humanity "whether or not in violation of the internal law of the country where perpetrated." The defendants here can seek no refuge in the law.

¹ Application of Yamashita, 66 Supreme Court, pp. 340-347.

² Judgment of Military Tribunal in Case No. 1, United States vs. Karl Brandt et al. See vol. II, pp. 171 to 300.

³ United States vs. Karl Brandt, et al. See vol. II, p. 198.

The fact that any person acted on the order of his government or of a superior does not free him from responsibility for crime.

It may be considered in mitigation. This is the law we follow here, and is no innovation to the men we charge. Even the German Military Code¹ provides that—

“If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefore. However, the obeying subordinates will share the punishment of the participant—

(1) If he has exceeded the order given to him, or

(2) It was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression.”

Was it not within the knowledge of the accused that the mass murder of helpless people constituted crime? Moral teachings have not so decayed that reasonable men could think these wrongs were right.

The judgment of the International Military Tribunal declares that 2 million Jews were murdered by the Einsatzgruppen and other units of the Security Police.² The defendants in the dock were the cruel executioners, whose terror wrote the blackest page in human history. Death was their tool and life their toy. If these men be immune, then law has lost its meaning and man must live in fear.

¹ Article 47, German Military Code, Reichsgesetzblatt (Reich Law Gazette) 1926, No. 37, p. 278.

² Trial of the Major War Criminals, vol. I, p. 292, Nuremberg, 1947.

IV. OPENING STATEMENTS FOR THE DEFENSE

A. Opening Statement for the Defendant Ohlendorf*

DR. ASCHENAUER: Mr. President! High Tribunal!

After submission of the documents on the part of the prosecution in the Case of the United States versus Ohlendorf et al, it will be the task of the defense to make their comments concerning the documents themselves. The defense will be able to point out errors, to make clear to the Tribunal points which are contradictions in themselves, thus destroying in some cases the value the documents possess as evidence, as well as reducing the value of the entire evidence brought forth by the prosecution. However, all this does not alter the fact that executions took place. It is therefore the duty of the defense to discuss how this gruesome drama in the East came to pass.

The men accused here before this Tribunal admit in the majority that they committed the acts with which they are charged—

a. In presumed self-defense on behalf of a third party (so-called act for the presumed protection of third parties—*Putativnothilfe* is the established technical term of the German legal language).

b. Under conditions of presumed emergency to act for the rescue of a third party from immediate, otherwise unavoidable danger (so-called "*Putativnotstand*" according to the German manner of speaking).

This defense is legally of importance as there exist no national legal code and no national penal system in which the exonerating reasons advanced by the defendants do not carry some weight. How these reasons are designated in the *terminology* of the penal system of various nations is irrelevant; irrelevant is also, for the time being, to what extent these reasons constitute exemption from punishment or extenuating circumstances, whether they can be regarded as eliminating the prerequisite of unlawfulness, as eliminating the prerequisite of guilt, or as extenuating circumstances; essential at the moment is only the very general assertion that these reasons may influence "whether" and "how" to punish and must therefore be examined.

An examination of the relevance of these reasons, however, is only possible when the legal principles have been clearly established according to which the conditions and consequences of the reasons for exoneration from guilt or instigation of punishment are to be judged. This point must be cleared up first.

* Tr. pp. 257-297, 6 Oct. 1947.

The so-called General Regulations of Law No. 10

There is no criminal code which would restrict itself merely to laying down the *constituent elements of a crime*. On the contrary, every national penal code contains a great number of regulations which determine the general conditions which make an act a punishable offense, conditions which are fundamentally common to all crimes, be this in the form of a definite decree, be it in the form of common law brought into a system by decision of trial courts or by publications of members of the legal profession. Into this group fall, among others, the regulations pertaining to causality, intent, and negligence, attempt and preparatory acts, perpetration itself, and mere participation, soundness of mind and age limit, periods of limitation, further, which is of importance for the following, the regulations concerning self-defense, including presumed self-defense [Putativnotwehr] and the regulations concerning acts committed for the protection of other persons in danger, including the cases where this danger is only presumed.

None of this applies to Law No. 10. Apart from instituting by implication the principle "nulla poena sine lege poenali praevia" to the negative, it merely contains regulations stipulating the non-limitation of certain acts, the legal irrelevance of the fact that the acts were committed by responsible officials and the instigating fact that the acts were committed upon orders. Other regulations which normally form part of the "General Regulations" of every penal code are not contained in the law.

There can be no doubt (and on the occasion of actual cases the Military Tribunals themselves made statements to this effect) that the silence of Law No. 10 is not to be interpreted in such a way as if the reasons, circumstances, and conditions which make an act a punishable offense or exclude punishment should have no bearing. There is no question of that. Circumstances such as the regulations concerning soundness of mind, age limit as far as guilt is concerned, self-defense, and acts committed under the pressure of emergency, etc., regardless of whether they are ruled by written law or by common law, are simply indispensable. *The question is merely which sources are to be drawn upon for the problems not settled by Law No. 10.*

If Law No. 10 were so-called special national law, it would be very simple to answer this question. One would only have to fall back on the general regulations of the Penal Code of that country which enacted this law, just as the so-called penal bylaws of the German law forego "General Regulations" of their own and refer to the corresponding general regulations of the German Penal Code. However, Law No. 10 is barred from the use of this pos-

sibility. The reason is that this law, owing to its origin, is an international agreement made by the four signatory powers for the detailed implementation of the Moscow Declaration of 30 October 1943 [See page X.] and the London Declaration of 8 August 1945. [See page XI.] However, this agreement was made by four sovereign powers of equal rights, each of which had its own penal system. Thus, it is impossible simply to use the pertinent regulations of the Penal Code, the Soviet Penal Code 1926, the English or American Penal Law, as "General Regulations" of Law No. 10.

Which legal system is to form the basis of the "General Regulations" of Law No. 10?

Here the following fundamental possibilities exist:

Applicable is the law of that state which administers justice in the actual case. In the case at hand the Tribunal would therefore have to draw upon the general regulations of the penal law of the United States of America to fill the gaps of Law No. 10.

This solution would have one undeniable advantage, namely, an exact knowledge of the applicable laws on the part of the Tribunal which will make the decision. On the other hand, these advantages are outweighed by considerable disadvantages. There is, first of all, the question whether *Federal Penal Law* or the penal law of one *single* state would be applicable. As the latter possibility is excluded, the gaps of Law No. 10 would have to be filled by the Federal Penal Law of the U.S.A. To judge acts carried out under the pressure of emergency and in self-defense in accordance with the Federal Penal Law of the U.S.A., however, calls forth the same doubts as those which speak against the supplementary use of the Anglo-American legal system when judging European continental legal conditions.

The doctrine of these legal systems on the law governing acts of self-defense and acts committed in a state of emergency, based on case law, is so alien to European legal thought, that it is bound to produce misleading results if applied to the conduct of the defendants. According to American law, the scope of the law governing acts of self-defense is extremely narrow, if compared with the European concept; the principles of the law governing acts committed in assumed self-defense are not even elucidated. Similar to English law, self-defense forms part of the constituent elements of a crime and, therefore, does not carry the same comprehensive and fundamental importance as it has in European law. Therefore, the closing of gaps left in Law No. 10 with American statutory or common law, would no doubt violate the

predominant principle that an act can only be completely judged if presented in its social and legal context; it would not be in conformity with the principle of material justice, as postulated in Law No. 10, if principles alien to the German and European concept of law were applied in considering legally relevant varieties of conduct, such as acting in emergency or in presumed emergency, acting in self-defense or in presumed self-defense.

Finally, there is another very important reason which speaks against the supplementary application of the legal code of the nation by which the court is formed in the case. The evaluation of the defendant's actions would differ—and this would have effects contrary to just punishment—if each court were to fall back on its own national law to supplement questions on which Law No. 10 is silent. For in that case it would be unavoidable that the interpretation of the concept of mental sanity, by a French court for example, should differ from the one, say, of an English court. The result would be that, given identical cases—the difference in age limits would also have to be considered—one defendant would have to be acquitted, while the other would have to be sentenced, because he happened to be handed over to a court of a different Allied nation. The supplementary application of the *lex fori* does not therefore lead to a satisfactory solution.

The national law of the defendant should be applied. In order to close the gaps left in Law No. 10 in the field of general regulations, the general part of the German Criminal Code would therefore have to be applied in case this doctrine is followed.

In common with the rest, this solution has the disadvantage that the court is *a priori* not familiar with that law. This, however, is outweighed by considerable advantages. The general part of the German Penal Code is (as are the Austrian, Swiss, and Russian laws) a characteristic representative of the European legal system with its tendency to lay down firm, and at the same time general rules, especially in respect to acts committed in a state of emergency and in self-defense. Furthermore, that law could in fact, and not only in hypothesis, be considered the guiding principle for the conduct of the defendant. The defendants are also psychologically forced to admit the validity of these law statutes against themselves to their full extent; they do not have the defense that they are being judged according to "foreign penal law". Finally also, international law speaks in favor of applying German criminal law in a supplementary fashion; for, as the defendants committed their acts in occupied enemy territory, these acts have to be considered according to a theory popular on the Continent of Europe, as committed within the borders of Germany within the meaning of the criminal code.

The law of the place of the crime should be applied. As the actions of the defendants are "geographically defined" within the meaning of the Moscow Declaration of 30 October 1943, that law can easily be ascertained; it is the Penal Code of the Soviet Union (Penal Codes of the Russian Soviet Federal Socialist Republic of 1926, of the Ukrainian Republic of 1927, and any special laws which might have been promulgated by the Federation).

The following considerations speak in favor of the supplementary application of that law. Firstly, according to the Moscow Declaration of 30 October 1943 (which according to Article I forms an integral part of Law No. 10) the law of the place of the crime rules the adjudication of crimes which can be geographically defined; the perpetrators "will be sent back to the countries in which their abominable deeds were done in order that they may be punished *according to the laws of these liberated countries*". Furthermore, the applicability of the *lex loci* is explicitly stressed in the indictment itself; this must, naturally, be true not only for the arguments of the prosecution, but also for any exonerating or justifying circumstances. Finally, the application of the *lex loci* also conforms to the idea of justice.

Finally, the law of the victim state should be applied—in this case again, the penal code of the Soviet Union.

The facts which favor the principle stated above also apply here. This principle is further supported from the point of view of legal systems by its recognition as a "Real or Schutzprinzip*" in international penal law; it is supported, from the point of view of territorial applicability, by the fact that above all other solutions, it stills the justifiable desire for retribution on the part of the primarily injured state.

The following will show that, *in the first place*, the application of *Soviet penal law and, failing that, German penal law*, to supplement "general regulations" in order to close the gaps in Law No. 10 is preferable by far to any other possibility. This choice brings with it another very important advantage. For the problems under discussion in the present case, namely evaluation of acts of self-defense and acts of emergency, *the two legal systems show striking similarities, as both are exponents of the characteristic European concept of penal law, with its tendency to systematic generalization and adversity towards case law*. This can be easily explained on historical grounds. For the Penal Code of the Russian Soviet Federal Socialist Republic of 1926 is largely based on the old Russian Penal Code of 1903; the latter's origin,

* Penal jurisdiction for acts committed outside the territory of a state which violate either interests of that state or of a citizen of it. ("*Lehrbuch des Deutschen Strafrechts*")—Handbook of German Penal Law—by Professor Franz von Liszt, Berlin, 1911, p. 106).

however, was decisively influenced by the German doctrine prevalent in about 1900. *When we compare the German and Soviet rules governing acts of self-defense and acts committed in an emergency, we can arrive at that "cross-section," that "average rule", a result unobtainable by comparing the Continental European and the Anglo-Saxon penal laws, owing to the difference between these two legal systems.*

A court called on to decide a specified case is only then able fully to evaluate the arguments of a defendant, if their evaluation is based on the so-called European "cross-section" of the law governing acts of self-defense and acts committed in an emergency. These rules have to be discussed in the following, and the arguments brought forward for the defendant have to be judged according to these rules.

The legal prerequisites of an act committed in a presumed emergency and in presumed self-defense, according to European legal conception

The prerequisites of these two legal concepts first have to be examined *separately*, according to German and according to Soviet law; subsequently, it has to be ascertained which prerequisites are *common* to both legal systems; the result will form the above-mentioned "cross-section", on which the actual evaluation of the defendant's actions has to be based.

I. Self-Defense

According to German Law

Self-defense is considered (Article 53 of the Penal Code) a so-called justification; where self-defense is established there can be no question of an act being unlawful; the act is not only excused but even approved by the law. The prerequisite for self-defense is an unlawful attack, i. e., an attack which the attacked person does not have to tolerate. The attack need not yet have started. Self-defense is also admissible in the face of an *imminently threatening attack*.

Acts in defense of all protected interests come under self-defense, which is not limited to acts in protection of life and limb. Therefore, *also the state, as such, the existence of a nation, the endangered vital interests of a nation* can be defended in self-defense. The protected interests are thus much more numerous than in Anglo-Saxon law.

Self-defense, especially state self-defense, not only the person

attacked, but any third person, is allowed to act in self-defense. This is important, particularly with respect to the so-called self-defense on behalf of the state. For self-defense in favor of the state always constitutes an act for the protection of a third party, and can therefore only be carried out by a third person.

No *comparison* in the value of the protected interests is being drawn in the case of self-defense, neither does it exist, therefore, in the case of defense of the state. The only measure for the defensive action is always the intensity of the attack.

Presumed self-defense and acts for the presumed protection of a third party. Although these concepts are not formulated in the law, they are generally recognized in theory and jurisdiction. They exist where the perpetrator erroneously presumed an "unlawful attack". If the error was *unavoidable*, the presumed state of self-defense serves as justification; if, however, the error *could have been avoided*, the legal importance of such self-defense is contested; according to one opinion, the defendant cannot be sentenced *for having acted with intent*; while according to another less widespread opinion it constituted *a factor mitigating the guilt, while accountability for intent remains*. According to both opinions, it is, however, impossible to hold the defendant responsible to the full extent for this criminal guilt, if, owing to a factual error, he believed his act to be justified.

According to Soviet Law

According to Soviet law (Article 13, paragraph 1 of the Penal Code of the Russian Soviet Federal Socialist Republic and the other Republics of the Union of the year 1926) the concept of self-defense conforms essentially to the German concept. Self-defense can apply to the state too, and particularly to the Soviet organization as such. In contrast to German law, the Soviet law even states *verbis expressis* that self-defense may be also exercised in favor of the state (for further details compare Maurach, Systematic Treatise on the Russian Penal Law of 1928, page 101). As in the German law, there is no provision for fixed proportions between the clashing interests. It is not clarified in professional publications whether an act committed in aid of a third person constitutes justification or only an excuse.

Presumed self-defense and acts for the presumed protection of a third person. As in the German law, this is not laid down by law, but is recognized in court practice and literature (See Maurach, op. cit., p. 102). It is treated in the same manner as a factual error. It excludes intent, the guilt is at least considered as mitigated; it is immaterial whether or not the error was avoidable.

II. State of Emergency

According to German Law

The regulations concerning the state of emergency (Notstand) found in the existing laws are insufficient, not codified and given for individual cases and situations. The fundamental decision of the Reich Supreme Court, Volume 61, page 242 *et seq.* clarified the position. According to this the following applies:

Generally a distinction is made between a state of emergency as justification for an act and a state of emergency merely precluding guilt. A fact common to both is that an interest protected by law must be in imminent danger, which danger can only be averted by the violation of another interest protected by the law having no connection with the first one. If the threatened interest is found to be of greater value, then the state of emergency *constitutes grounds for justification*; if the interests cannot be weighed, and if there is a threat of danger of life or limb of the perpetrator or a relative (Penal Code, Section 54) then the state of emergency constitutes a *reason precluding guilt*.

National emergency is in principle recognized within the same limits as assistance to the state in case of emergency (Staatsnothilfe). According to the decision of the Reich Supreme Court of 3 April 1922 File II, 791 122, a situation of acute danger is constituted particularly by "underground activities of resisting elements of the population of an area and the increasing insecurity of that area resulting therefrom". Furthermore, the Reich Supreme Court has, in Volume 60, page 318, recognized the so-called permanent state of emergency and has stated that the permanent danger which a particular person presents to the community could, in certain circumstances, justify his elimination by killing as an act of emergency. The question of whether national emergency allows the killing of a man was, on the other hand, left open by the Reich Supreme Court. The question has been widely discussed, especially in the period following the first war, but was never definitely decided.

Presumed state of emergency. The law gives no definite ruling on this, but it is recognized according to common law in doctrine and jurisprudence. In principle it is treated in the same way as presumed self-defense (see above).

According to Soviet law

More modern than German law, Soviet Penal Law gives, in Section 13, paragraph 2 of the Criminal Code, a ruling on the state of emergency. It has thus achieved the aim for which the German reform legislation has been striving for a long time.

Of course the ruling is very summary. Acts of emergency are unrestrictedly admissible if they are necessary for the protection of higher interests insofar as the danger could not be averted by any other means (*Maurach, op. cit., p. 103*). Whether this constitutes a justification or merely a legal excuse is not clear. There is no legal ruling on a *presumed state of emergency* but it is treated as an error and thus comes in the same category as presumed self-defense.

Results of comparison of both legal systems. If the elements common to both legal systems are examined, a wide similarity will be found in the conceptions of these legal terms.

Self-defense. All protected interests may be the subject of self-defense, particularly the survival of the state and the vital interests of the nation represented by the state. If the existence of the state or of the nation is directly threatened, any citizen—and not only those appointed for this purpose by the state—may act for their protection. The extent of the self-defense or of the act for the protection of the third party (Nothilfe) varies according to the severity of the attack and does not exclude killing. An error concerning the prerequisites of self-defense or of an act for the protection of a third party is to be treated as an error about facts and constitutes, according to the avoidability and also the degree of gravity of the individual error, a legal excuse or, at the very least, a mitigating circumstance.

State of emergency. In accordance with both legal systems, a state of emergency is always of a subsidiary character—that is, a so-called last resort. All legal interests can be in a state of emergency, especially also the state and its institutions as well as the welfare of the nation. A state of emergency is recognized where the threatened legal interest is of considerably greater value than the interest attacked by the perpetrator. A *presumed state of emergency* is, on principle, treated as a grave error—that is, it is treated in the same manner as presumed self-defense.

Subsumption of a concrete case under established prerequisites of a legal clause. On the basis of the examination of the European “cross-section” of the legal position assumed by the defendant *Ohlendorf*, it must be established to what extent the *actual circumstances* under which the defendant acted correspond to the *prerequisites of a criminal case as described above*. Before, however, reference must be made to the method to be applied.

The defendants, and in particular *Ohlendorf*, do not claim that that the real conditions were given for a case of action in defense of the endangered nation (Staatsnothilfe) or participation in the self-defense of the state (Staatsnotwehr). But they do submit that, in view of the special situation in which they found them-

selves, and in which they were called upon to act, they assumed *subjectively* that the conditions were given for the above-mentioned legal concepts. *There is no need to examine the question* whether there actually existed a situation calling for an act of self-defense or of emergency—that is, whether (to use the German terminology) a justification existed. Nevertheless, we must not overlook the examination which follows and which discusses the objective conditions for an act of self-defense and in a state of emergency. *Such an examination is necessary in order to find out where, precisely, the defendant Ohlendorf committed the error concerning the permissibility of his action; because the greater the extent to which the objective situation corresponded to the defendant's conception, the weightier his defense that, by mistake, he considered his action justified or necessary.*

After this introduction, and on the basis of the defendant's statement, the examination may be arranged according to the following points of view:

1. *Objective conditions*, that is conditions which existed not merely in the defendant's mind but were actual facts—the *nature of the war against the Soviet Union.*

2. *Subjective conditions*, that is, conditions which were not actual facts, the subjective assumption of which could, however, have brought about the defendant's error about what would constitute the conditions for action in defense of the endangered nation or in a state of national emergency—the *East European Jewish problem as part of the problem of bolshevism*; origin and import of the defendants' obsession that a solution of the problem "bolshevism versus Europe" could only be brought about by a "solution" of the Jewish problem, and, in their particular sphere, only by unreserved execution of the Fuehrer Order.

For the classification of these objective and subjective conditions, that is, the question of the cause for the above-mentioned obsession, I call upon the expert witness Professor Dr. Reinhard Maurach.

In addition, it need not be stressed that a state of war as such does not justify extraordinary actions prohibited by written and common international law from the point of view of self-defense, and a state of emergency. If this were the case, international law would be a mere illusion, for at least one of the belligerents would be able to claim to have acted in self-defense—whereas both parties would be at liberty to plead the existence of a state of emergency.

War in itself does not provide the legal excuses of self-defense or state of emergency. But a preliminary condition is that there

is really war in the strict sense of international law, an armed clash between two states; but if the armed clash has from the outset an aspect considerably exceeding the measure of war and its limits, if, in other words, the war aims and war methods to be definitely expected from one of the opponents are so "total" that, in relation to them, the traditional conceptions and limits of international law cannot be applied, it will not be possible to refuse resort to self-defense and to a state of emergency—even within the war—to the opponent of such a state.

It must, therefore, be examined whether the Soviet Union can be given the qualification of such an enemy—proper enemy in the sense of international law. The character of the Soviet Union as a state, and, consequently, as a potential belligerent can, it is true, not be denied. But the question is whether the Soviet Union, according to her own ideology and to the ideas which are its basis, has not to be considered as such a belligerent who, considering the war aims and methods of the Soviet Union, puts the presumptive adversary ipso facto into the position of war self-defense admissible in international law.

In addition, the defendants refer to the orders given and the state of emergency caused by these orders. As to this question, Dr. Gawlik is going to give detailed explanations. Concerning this problem of superior orders contested by the statute here and by Law No. 10 of the Control Council, I only want to give some quotations of passages from English—not German, works—

Professor Oppenheim has stated in his book, "The Law of Nations":

"Violations of the rules of warfare are war crimes only if they are committed without order of the belligerent government in question. If members of the armed forces commit such violations by order of their governments, such violations are no war crimes and cannot be punished by the opponent; the latter can, however, take reprisals. If members of armed forces are ordered by their military commanders to commit violations, the members cannot be punished, for the commanders alone are responsible and the latter can, therefore, be punished as war criminals after being captured by the enemy."

The American specialist in international law, George Manner, writes in the article, "The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War":

"The principle that members of the armed forces of a country are not personally responsible and can, therefore, not be punished for acts contrary to the rules of warfare and committed by them by order, or with approval, of their govern-

mental or military superiors, is not part of the codified law on warfare. Nevertheless, this seems to be a recognized principle of this law, at least, this principle has been drawn up in the war manuals of the powers as a rule of the common law on warfare since 1914."

Article 347 of the American Rules of Land Warfare, drawn up under the supervision of The Judge Advocate General, and published by the U. S. War Department in 1940, and today still in force, states—after enumerating the possible war crimes—

"* * * Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they fall."

The same point of view was maintained until 1944 by the competent British authorities in the British Manual of Military Law. Its Article 443 went on, after enumerating possible war crimes:

"It is important, however, to note that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress which are dealt with in this chapter."

Professor Lauterpacht writes, in this respect, in his essay published in the English Year Book for International Law 1944—

"Although Chapter XIV of the Military Manual was not given statutory force, it is, in general, an exposition of the conventional and customary rules of international law as understood by Great Britain."

To show the high Tribunal how difficult the position of each man was to disobey the order of the Fuehrer, it is necessary to illustrate the situation in its historical development by a written expert opinion.

When Field Marshal Keitel defended himself and the OKW at the trial before the IMT,* he tried to convey a picture of the distribution of power in the National Socialist regime, according to which the SS represented the will which governed the state—whereas the Wehrmacht and its leaders were in a state of unqualified subjection to this "fact".

* Trial of the Major War Criminals, vols. I-XLII, Nuremberg, 1947.

In reality, however, if we want to evaluate the relations of the Wehrmacht and any leading institutions and supreme representatives of the state and party, we must always remain conscious of the fact that the Wehrmacht enjoyed at all times a privileged position which was unique. Only this can explain that the state police, which as such claimed a central position in a comprehensive sphere of activities, was at the beginning of the war excluded from the Wehrmacht and from the occupied territories under the command of the Wehrmacht. (Example: The first groups of the Chief of the Security Police and of the SD (security service) marched into France camouflaged and under a false designation.) It was only before the Russian campaign that an agreement was concluded, after difficult negotiations, which regulated the tasks of the state police and of the SD *outside the sphere of the troops*.

At the end of May 1941, the negotiations took place between the High Command of the Army, and the Chief of the Security Police and of the SD which led to a written agreement which was signed by Quartermaster General, General Wagner, and by the then Chief of the Security Police and of the SD, Heydrich. Schellenberg kept the minutes. The agreement contained the basic order of the Fuehrer, that the security of the fighting troops must be guaranteed by all means and that units of the security police and of the SD must be employed in support of the army units. The Chief of the Security Police and of the SD was given immediate authority to issue pertinent instructions to these units and an independent channel for receiving and transmitting reports which was outside the jurisdiction of the Wehrmacht. These units by no means formed a special "political theater of operations" but they were attached to the army units—this was laid down in the second part of the agreement—and generally had to carry out tasks for the army units within their areas, which had hitherto been handled by the army units themselves. The second part contained an exact regulation of commands and subordinations. "In the front or combat areas the Einsatzkommandos of the Sipo and of the SD were in all tactical and service questions—that is, completely—put under the command of the army." In the operational areas they were under the command of the army as far as service matters were concerned; orders resulting from tactical considerations and precedence over all other orders. If it was required by the military situation, the Einsatzgruppen and Einsatzkommandos could be used for military tasks regardless of other orders. The third part of the agreement explained the concepts "tactical" and "service".

In accordance with this agreement and the "Barbarossa Order"

to the army units which was based on it, mobile units designated "Einsatzgruppen" and "Einsatzkommandos" were attached to the army groups and armies in the east. Army Group North got Einsatzgruppe A. Army Group Center got Einsatzgruppe B, and Army Group South got Einsatzgruppen C and D. (Einsatzgruppe D was originally intended to serve with an army group which was to operate in the Caucasus.) In spite of the intended official designation of the leaders of these units as "Representative of the Chief of the Security Police and of the SD with the commander of the rear area of army group * * *, Einsatzgruppe * * *", what happened in practice was that at once, at the beginning of the eastern campaign, whole Einsatzgruppen or the larger part of such groups were attached to armies by order of the army group in question. Einsatzgruppe D was, from the first day and for the entire period which is of importance for this trial, attached only to the 11th Army, and had no connection with the commander of the rear area of the army.

While Einsatzgruppen A and B had to allocate two detachments (Kommandos) each to the commanders of the rear area of the army and to three individual armies, the detachments (Kommandos) of Einsatzgruppe C were at the disposal of the armies only. That the commanding generals of armies themselves attached great value to having the detachments in their operational area is proved by the subsequent alteration of the order for Sonderkommando 4a. This Kommando was assigned to the commander of the rear area of the army, but was attached to the 6th Army on the personal order of Field Marshal von Reichenau.

For "Marches" and "Rations" the Einsatzgruppe was subordinate to the command headquarters, which means that the army units were competent for—

1. Determining the location of the staff of the Einsatzgruppen and of the Kommandos, which included fixing the strength of the staffs and Kommandos as well as the length of time to be spent in one location.

2. Billeting.
3. Rations including canteen goods.
4. Gasoline.
5. Repair of motor vehicles and spare parts.
6. Ammunition.
7. Maps.
8. Field post.
9. Telecommunications.

From the contents of the agreement and from the way it was carried out in practice in the East we may form the following

picture of the actual and legal situation, which is typical for the manner in which orders were given:

1. The Einsatzgruppen and their subordinate units were fully motorized mobile units which were militarily equipped and organized. Members of the state police, of the criminal police, of the SD and units of the Ordnungspolizei and of the Waffen SS were assigned to the Einsatzgruppen.

In this composition the Einsatzgruppen were unique phenomena. They were thus a unit composed of a minority of specialists of the security police and of the SD, and of units of the regular police and of the Waffen SS. This unit was at the disposal of the representative of the chief of the Sipo and of the SD for his tasks in the operational area of the command headquarters to which he was attached. The special position of the Einsatzgruppen and Einsatzkommandos manifested itself also in the fact that they were not called Einsatzgruppen and Einsatzkommandos of the Sipo and of the SD, but simply Einsatzgruppe A to D, or Kommandos 1 to 12. Their primary task being of the kind normally handled by the security police and by the SD, the Einsatzgruppen and Einsatzkommandos were led by leaders of the Sipo or of the SD who were specially assigned this task.

2. The representatives of the chief of the Sipo and of the SD with the army groups and with the armies were attached to the commanding generals and subordinate to them in the functions which were most important for their work.

3. As regards technical instructions, the powers of command of the commanding generals and of the chiefs of the security police and of the SD were not clearly separated. The question had been deliberately left open and left to practice. But it was certain—and expressly mentioned in the Barbarossa Order—that every order of the army group or of the army, “for reasons of operational necessity” had precedence over the orders of the chief of the Sipo and of the SD. Whenever it was necessary in the military situation, the army units could, on their own responsibility and at their own discretion, make the Einsatzgruppen and the sub-units subordinate to themselves for military tasks.

Incidentally, the actual legal situation can be seen from the Reich Defense Law of 4 September 1938. In Article 2 we read, “Once an operational area has been determined, the declaration of the state of defense confers on the Commander in Chief of the Army and the commanding generals of armies without special order the right to exercise executive power in this operational area * * * This right to give orders has precedence over instructions given by other superior agencies * * *.”

Concerning "competencies to issue orders in the operational area of the army" the OKW moreover issued an order on 11 April 1940, which states under No. 3 with reference to the Reich Defense Law, " * * * in their exercise of executive powers, the Commanders in Chief of the Army and the commanding generals of the armies are entitled to issue directives, to set up special courts, and to issue instructions to the authorities and agencies in charge of the operational area, with the exception of the highest authorities of the Reich, the highest authorities of the Prussian State and the Reich leadership [Reichsleitung] of the NSDAP. This right to issue instructions has precedence over instructions of other superior agencies."

The later development of this general situation as created by law and by an order of the High Command of German Armed Forces [OKW] shows that the right of issuing instructions to the Higher SS and Police Leader and the SS and police units under his command is gradually more firmly established. Thus on 7 September 1943 the OKW issued a "service instruction for the Higher SS and Police Leader in Greece", in which it is laid down among other things, "The Higher SS and Police Leader is an agency of the Reich Leader SS and Chief of the German Police, which for the duration of its service in Greece is under the command of the Military Commander Greece * * *. The Higher SS and Police Leader receives directives and instructions for the field of activity assigned to him from the Reich Leader SS and Chief of the German Police and carries them out independently while making current and punctual reports to the Military Commander Greece, as far as he gets no restricting orders from the latter. The military commander must be informed in time of the reports submitted by the Higher SS and Police Leader to the Reich Leader SS and Chief of the German Police".

Furthermore, the Military Commander Serbia also classes Jews and gypsies *prima facie* as elements of insecurity in accordance with the order of the Fuehrer at the beginning of the Russian campaign.

Concerning the entire activity of the Einsatzgruppen, it is to be noted that it was carried on under the jurisdiction of the commanding generals to whom these groups were attached. Therefore, in all tasks, including these which belonged in a stricter sense to the Security police and the SD, this jurisdiction had to be respected, which means that these tasks could be carried out only with the express will or with the tacit consent of the commanding generals. This applies especially to the commanding general's capacity as supreme judicial authority for the popula-

tion in his area of jurisdiction. It is true that the use made by the commanding generals of this capacity varied considerably in their dealings with the Einsatzgruppen and Einsatzkommandos; in certain areas the organs of the army invariably gave their consent to all executive acts affecting the population. In other operational areas the fact that the command authorities occasionally interfered in pending proceedings or gave orders for special measures concerning the population showed that the commanding generals were not only conscious of their superior jurisdiction and position, but also made use of it.

It is with deep regret that we clarify these points. For the defense, however, they are of great importance with respect to the possibility of disobeying given orders. The leaders of the Einsatzgruppen and Kommandos were executive officers with instructions. Their authority as to decisions started only with the actual execution of their orders. For them there was no real possibility at all to prohibit the execution of orders themselves. Actually, there was merely the theoretical possibility for the army commanders to examine at their discretion—an account of their authority and their task concerning the security of their operational area, on account of their responsibility for safeguarding the front-line operations—the question of whether the actual killing of the people selected endangered their tasks. If they had come to this conclusion they would have been authorized to give instructions to prohibit liquidations. Likewise it is clear that, again theoretically, only intervention of the commanders in chief with the Fuehrer was possible.

From this relation of the Einsatzgruppen to the army groups, the defense is going to prove the continuous close cooperation of the army groups with the Einsatzgruppen and Kommandos. Orders of the army commanders to secure objectives, to carry out inspections, etc., and also other military tasks, e.g. investigations concerning anti-partisan measures, recruitment of Tartars for front-line service, will show the close connection between the commanding general and Einsatzgruppe or Kommando.

Finally, evidence will be submitted for the following:

The commanding generals held executive power and were, consequently, also supreme military judiciary authorities [Oberste Gerichtsherren] for their areas, i.e., they made decisions affecting liberty, life, and death. That they were conscious of this fact in relation to the civilian population is clearly shown by individual facts already mentioned or still to be mentioned.

The orders leading to executive actions and to the executions charged by the prosecution were known to the responsible commanding generals.

Written or oral reports were given in many cases about such executions by Einsatzgruppen and Kommandos to the commanding generals.

Commanding generals and officers of the army supported such executions, or took part in them, or gave special orders in individual cases.

Army units themselves carried out such executions.

The prosecution has charged the defendants not only with crimes against humanity and with war crimes but also with membership in an organization that has been declared criminal.

Under Count 3, Mr. Ferencz stated, "The judgment of the International Military Tribunal established the fact that the SS, the Gestapo, and the SD are criminal organizations." In reaching its decision, the Tribunal made frequent reference to the acts of the Einsatzgruppen. In the face of this, the defense will demonstrate the following:

As a result of the completely false and misleading use of the term "SD", even by official authorities of the NSDAP and of the state, by all military authorities up to Adolf Hitler himself, a completely false conception as to the actual meaning of "SD" arose among wide circles of the German people, especially during this war, above all, however, abroad, and especially among the occupation authorities.

[Presiding Judge Musmanno interrupted Dr. Aschenauer and the following discussion took place]:

PRESIDING JUDGE MUSMANNO: I understood you to say that Hitler himself misused the term "SD"?

DR. ASCHENAUER: Yes. That is so.

PRESIDING JUDGE MUSMANNO: If that is so, won't we then run into many complications as to the meaning of this term, because the Tribunal has been led to believe, and, with the Tribunal the rest of the world, that Hitler's word was law in Germany. Therefore, if he used the term "SD" in any particular way, wouldn't that of itself then make his meaning official?

DR. ASCHENAUER: No, your Honor. This is not a matter of general misuse, it just occurs in one particular decree in a sentence which was used here.

PRESIDING JUDGE MUSMANNO: It would appear to me that from what we understand of Hitler's power, that if he called the SD a "PQ" that then it became "PQ" from that moment on.

DR. ASCHENAUER: I don't think I have understood what your Honor meant.

PRESIDING JUDGE MUSMANNO: Whatever Hitler said was law, and if he used the term "SD" in any way opposed to your definition of "SD", Hitler's definition would be the law, would it not?

DR. ASCHENAUER: No, your Honor. What I quoted here is one certain decree, which is erroneous, a mistake which has been made once, and it is obvious from all the other decrees which are being offered to the Tribunal, and submitted to them, that what is said in this one sentence is a mistake.

PRESIDING JUDGE MUSMANNO: Very well, it was for the purpose of clarification that I had asked it.

The error is based on the fact that the term "SD" had the following meanings:

a. It is the term for a special news service organization which collected, evaluated, and submitted reports to the appropriate authorities of the state and of the Party. This news organization which did not have any executive police powers either before or during the war, exercised its functions within the SS, that is, within the Party; its members were employees of the Party, and were paid by the latter, just as in general, the entire budget was met not by the state but by the Party, that is, the Reich Treasurer. If, therefore, the SD is referred to as an organization with a special assignment, that is an organization with certain tasks, only the above-mentioned news organization, with its clearly delineated duties, its installations and its personnel carrying out this task can and should be meant. Any other duty, or the assumption of a function is a false implication.

b. All wearers of the SS uniform with the SD marking on their left jacket sleeve were also characterized as "SD". From the beginning of the war, the SS uniform with the SD marking was worn by almost all of the members of the Secret State Police (Gestapo) including the border police, criminal investigation police, and especially all members of the state police and criminal police on combat assignment wore SS uniforms with the SD insignia.

It is, therefore, easily understandable that everybody considered all men wearing this uniform to be "SD". Another result was that this term was not only applied to all those wearing those uniforms with the SD insignia but also to the organizations to which these men belonged. These were the SD offices in the actual sense of the word and the offices of the state police and criminal police. For the sake of convenience and the desire for simplification and abbreviation, all of them were now called "SD". Thus the Wehrmacht, when dealing in an enemy country with "commanders of the security police and of the SD" and with "commanding officers of the Security Police and of the SD"—that is what these agencies were officially called—referred to them briefly merely as the "SD" only, for all members of these organizations wore the SD insignia. Thus the French or the Norwegians referred briefly to these organizations and their personnel, all of whom wore the SD insignia, as SD only, and usually they meant the state or criminal police. Actually, how could they know that the "Commander of the security police and of the SD" was an organizational term that could be traced back to the "chief of the security police and SD," that even in these organizations there did not always exist an SD news service

set-up, or that in such organizations there were actually three completely independent and separate organizations included—

1. A news organization of the Party or of the SS, that is the SD in the real meaning of the word, as the organization with a special news service function.

2. Two authorities of the state executive, that is, of the police (state police and criminal police) which in their special duties and activities, stood on an equal footing completely independent one of the other, and were merely held together by purely organizational ties and by the fact that the same individual held a leading position in both.

This mistake in the designation of the organizations and of the mutually shared uniform (SD) finally went so far that even the Fuehrer in his "Commando Order" of 18 October 1942, ordered that the arrested commando troops be handed over to the "SD" even though, in this instance, beyond all doubt, he meant the police executive, the state police. It would not have occurred to any office in the Wehrmacht or the German police to deliver members of an enemy commando, if they were arrested in the Reich, to an SD sector, for everyone knew that this was exclusively the concern of the state police.

Now what brought it about that all members of the state police and the criminal police wore this uniform and this SD insignia, even though they had nothing to do with the actual SD news service itself, as far as their duties were concerned? The answer to this requires a brief description of the development.

The "SD" as a news service originated in 1932, when Himmler commissioned Heydrich, a former naval officer, with the establishment of a news service, in order to combine uniformly the local "political information service" (P.I.) which had here and there arisen due to political necessity. This P. I. had the task of gathering information about the other political parties, their plans, and aims, in order to be able to utilize it in the struggle against the other parties.

After the assumption of power in 1933, this task was extended to include the gathering of information about all opponents of National Socialism, their organizations and their activities. The actual hour of birth of the SD, however, was in 1934 when a few old National Socialists who came from all circles of the movement and were thus clearly not recruited from the ranks of the SS alone, recognized the following to be true:

The old parties of all shades of opinion, were altogether banned by the state. Any additional activity by these organizations is illegal and is therefore to be dealt with by the police, and the

police is therefore authorized to fight, together with the Information Service, against such illegal opponents. This in itself proves that from the very beginning the SD was not at any time given such executive powers which rested exclusively with the police organs of the state. (Even at that time the SD was mainly engaged in the research and study of ideological contrasts and their effects on National Socialism.)

Furthermore, they realized that gradually, ever since 1933, all public criticism in parliaments, press and radio had been abolished; there was a growing tendency to misuse the Fuehrer principle and to push through orders, permitting no criticism; and there existed the common tendency always to stress to higher authorities only the positive aspect of one's own field of activities, but to conceal in a shamefaced manner all unfavorable developments, mistaken measures, danger points, etc.

Thus, in the course of time the Reich administrators could gain only a completely distorted picture of the development and situation in the individual spheres of life (Lebensgebiete) (law, administration, education, economy, etc.) They could no longer have a clear perception of the resulting reaction among the public and professional circles concerned. From this they concluded that an authoritarian state, by its very nature, needed an organization which would be willing and capable of presenting to responsible central agencies an objective and undisguised picture of the general position and developments without having any administrative responsibility itself. In 1934-1935, this task was assumed by the SD without explicit orders to that effect from any Party or government authority, therefore, illegally. (For the authorization and legitimation of the SD as only authorized news service of the NSDAP covered only the collection and transmission of news relating to counter-reforms, their efforts and aims.) This explains why in 1934-1935 this part of the SD at the SD Main Office in Berlin consisted of a mere handful of men. Easter, 1935, for example, it consisted of a man who also worked as legal and administrative expert, 4 or 5 younger jurists, who had not finished their professional training and only worked parttime at the SD in addition to their other work, and 3 or 4 assistants.

In addition to this completely inadequate staff, there was a complete lack of agencies in the country and the necessity to build up this news service for vital spheres in a more or less illegal manner, because every reference to it caused sharp protests by the Party and above all by government authorities against this type of work. It was regarded by all these people as an inadmissible encroachment upon their own jurisdiction. Thus,

for example, until 1936, the time when Ohlendorf entered the SD, the entire field of economy had hardly been dealt with. Only after that were systematic efforts made to win suitable specialists who were able to handle the individual spheres of life in an expert manner. At this juncture, it may already be said that from this work in purely vital spheres done by the Zentralabteilung II/2, office III was subsequently developed under Ohlendorf, and this is today considered the SD in the proper sense.

The year 1936 was of particular importance, because Himmler became "Chief of the German Police" with the official designation "Reich Leader SS and Chief of the German Police at the Reich Ministry of the Interior" in the process of another governmental reform and the centralization of the police which had hitherto been under the direction of the Laender.* Under him were Daluge as "Chief of Police" and Heydrich as "Chief of the Security Police". Thereby, Heydrich simultaneously held a post in the administration of the SD as news service of the Party and of the entire German Security Police. This twofold function explains the subsequent title of "Chief of the Security Police and SD" from which derives the designation "Commanders (or Commanding Officers) of the Security Police and the SD" in the occupied territories.

Whereas until 1936 probably only a few members of the police, mainly the state police, belonged to the SS, partly to the SD and partly to the General SS Himmler, from 1936 on, endeavored to have the SS take over the whole police organization. Thus from 1936 to 1939, many members of the police force who were eligible for the SS were taken over into the SS, starting with the state police and criminal police. Heydrich brought it about that the transferred members of the state police and criminal police began to wear SS uniforms. They wore the SD insignia on the left sleeve, although they were never in any way connected with the SD as news service and as an organization for a special task, but remained, as hitherto, members of the state executive. Neither common service nor esprit de corps tied them to the SD. The uniform clothing of the state police and the SD, the distribution of which was started at that time, gave the uninitiated the first cause to designate en bloc as SD, members of two organizations of totally different fields of activity—work of a news service for different spheres of life and executive work of the security police—merely because of their uniform outer appearance, that is to say, the SD uniform with the SD insignia. This misleading collective name led to the habit of calling SD men not only the

* Individual states composing the Reich.

members of both organizations but of designating the offices and field of activity of both institutions simply as "SD". In fact, 90 percent of the people wearing SD uniforms had nothing to do with the actual work of the SD news organization. On the other hand, the SD of the Reich Leader SS purely as news service, was not connected with the state executive (state police and criminal police), either by subject matter or by its duties.

In spite of this fact, it was also called SD in common usage and especially also during the war in official announcements, decrees and, orders (see Hitler's commando order). Besides, in the NS-State there were numerous such "personal unions" as for instance in the person of Goering, the Minister President of Prussia, Reich Minister for Air, Supreme Commander of the Luftwaffe, Plenipotentiary for the Four Year Plan, Reich Chief for Hunting, etc. Nobody would dream of calling all this one organization on account of the "personal union".

Thus from 1936 onwards there resulted the organization as reproduced. There we see two completely different organizational and actual spheres of office—one of them the Party, the other the state. But the men working in these two completely independent and different set-ups were wearing the same uniform, the SS uniform with SD. These were the first decisive causes for the above-mentioned complete confusion.

It is almost to be called a marvel that these two organizations, the Party news service and the state police were, on account of wearing the same uniform, mistakenly looked upon as one entity, whereas from the very beginning they were actually very different from each other. These differences were the reason why, already in 1937-38, some spheres of work were completely taken away from the SD (II/1) and were handed over to the Secret State Police Office, namely Communism and Marxism. The 1938 decree concerning the division of functions [Funktions-trennungserlass] already made it quite clear that the SD had nothing whatsoever to do with the comprehensive intelligence service in enemy territory. These differences were ultimately settled when, urged by the state police in 1938, another reorganization was effected, the result of which was the establishment of the Reich Security Main Office [Reichssicherheitshauptamt]. Thus it was ultimately made clear that dealing with the enemy in its entirety, as far as intelligence service and actions resulting from it were concerned, belonged to the competence of the Secret State Police, that is to say, Office IV of the RSHA. This reorganization terminated the former Main Department II/1 (enemy research) in the framework of the SD as a news service organization, and from that time onwards the SD's exclusive

sphere of work was that of a mere news service organization, exclusively occupying itself with matters concerning different spheres of life. The former Main Department II/2 became Office III of the Reich Security Main Office, and its employees were branded as members of a criminal organization in the IMT verdict.¹ The SD, however, which organization was declared to be a criminal one, was, according to its development, the leading Main Department II/2, which at no time had any contacts whatsoever with the tasks and the activities of the state police (Stapo).

As from September 1939 the following set-up was given:

The Reich Security Main Office (RSHA) consisted of seven offices:

Office I: Organization and Personnel.

Office II: Administration and Economy.

Office III: SD Home Front (spheres of German life).

Office IV: Secret State Police.

Office V: Criminal.

Office VI: SD Ausland (Foreign News Service).

Office VII: Scientific Research.

From now on office I comprised the organizational and personnel problems of the security police (state police and criminal police) and of the SD in one organization. As far as their objectives were concerned, they remained separated in the office, as for instance all the personnel problems of the SD (offices II, VI, and VII) were handled in Referat² I A 4 by men of the SD, of the former SD main office, that means employees of the Party. They were exclusively concerned with SD, that is Party personal data, which has nothing to do with the problems concerning civil servants (state police and criminal police).

It was the same in office II. The administration of the budget funds was handled completely separately in office II. And this by necessity, for the administration had to concern itself with the budget funds of the state (state police and criminal police); and the budget funds of the Party (SD). Here completely different directives were followed, for not only the salaries and wages were entirely different, but so were also the whole of the accounting system of the Party and of the state.

As concerns the personnel and the organization and the scope of its tasks, office III was a hundred percent identical with the former Main Dept. II/2 (spheres of German life) or the SD Main Office. Therefore, it was exclusively a Party office, its men were

¹ Trial of the Major War Criminals, vol. I, pp. 267-8, Nuremberg, 1947.

² Subsection of an office (Amt).

employees of the Party, they received Party wages, had no civil service rights and duties, were exclusively subordinate to Party orders, and for this reason only they could not have any state executive powers. If individual men, as will be commented on later, were detached for executive tasks, then they were used as individual persons. They worked by order of the state (state police and criminal police) and not as SD and in pursuance of its tasks, to be the Party news service without any executive functions.

Office IV took over the tasks of the Secret State Police. Therefore, its special tasks were exclusively those of the state police as an executive agency of the state. One might say that office IV was identical with the Secret State Police office.

Office V takes over the tasks of the criminal police, that is of the Reich criminal office, which is also a purely state executive organism.

Office VI (foreign news service) takes over the tasks of the former Main Department III/2 (foreign news service) therefore it is also a mere SD (Party) office, its members are Party employees and do not possess any executive powers.

Office VII (scientific research) was also a mere SD (Party) office without any executive powers and without any regional agencies. It did not have any real predecessor in the SD main office. Its task was historical—scientific research in the sphere of ideology which was laid down in a series of publications. This task too, no longer existed during the war, so that it really only constituted a library and archives office.

It results from this survey that the effect of this reorganization was a clear and unequivocal separation of mere news service tasks (offices II, VI, and VII) on the one hand, and of the state executive (offices IV and V), so that at the beginning of the war there was no longer any overlapping of competencies.

So much more incomprehensible is the decision of the Nuernberg Verdict that the SD after 1939 was an auxiliary organization of the government's executive branch. The only factors which these different offices had in common with each other were three: the same uniform, the same chiefs (Himmler and Heydrich), and the merely technical junction effected by the organizational structure of the Reich Security Main Office, which, however, only existed in the main office, because regionally, the state police offices remained entirely self-contained and independent from each other on the one hand, while on the other hand the SD sections continued to exist. The security police inspectorates and the SD inspectorates were offices with no executive duties but only with supervising and organizational tasks without any

departmental competence and power of command. The state police office received its directives for this work exclusively from office IV of the RSHA, the SD sector exclusively from offices III and VI of the RSHA.

In the occupied territories, however, the merely technical junction was created in a manner corresponding to the RSHA. Consequently there existed at the headquarters of the regional commander of the chief of the Security Police and the SD, the offices I-VI corresponding to those of the RSHA, and that is one of the reasons which led to misconceptions concerning the SD. But here too nothing changed in regard to the departmental duties of the various offices. It has to be added that office VII had branch offices neither in occupied territories nor within the Reich. And not in all occupied territories did office III have branch offices in operation.

The Einsatzgruppen and Einsatzkommandos in the East were entirely differently organized. The usual organization structure of the Security Police and SD cannot be compared with them. They were not government offices which constituted branch agencies for offices III, IV, V, and VI, but militant units whose organizational structure evolved out of their special task, which they were to execute within the executive powers of the commander in chief of army groups and armies. Their members were ordered into these militant units, their men were on operational duties and subject to military law. They were composed of men from the Waffen SS, the regular police, the state police, the criminal police, the SD, of emergency inductees and volunteers from conquered territories. They were organized for the commissioner of the chief of the Security Police and the SD at the headquarters of the officer commanding the organizations behind the lines. Their activities changed with the requirements of the situation in the zone of operations and were as a rule, therefore, not those of offices I, II, III, IV, V, or VI.

All these problems will be clarified by hearing Dr. Spengler as witness. These problems form the basis for the question: What was Ohlendorf's position to Himmler and Heydrich, the leaders of the SS? During the presentation of evidence, it will be revealed that Ohlendorf's work was in direct contrast to that of Himmler, Bormann, and Ley.*

Ohlendorf caused the following:

In the *legal field* reports were drawn up from a multitude of evidence pointing out, for example, that "the small fry gets

* Bormann and Ley were defendants before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII, Nuremberg, 1947.

caught, but the big fish get away," and, incidentally, attention was called to the interference of the Party into judicial matters. A further report criticized the overlapping of the system of fines which the economic associations (Wirtschaftsverbaende) could impose and the procedure before the regular criminal courts, which had caused an intolerable discrepancy in the severity of penalties inflicted.

Reports concerning the *educational field* brought the result that further attacks on schools and school teachers were prohibited by Goebbels, that the importance of scientists was officially acknowledged, that interference with school life by the Hitler Youth was discontinued, the Hitler Youth activities reduced, the school children excused from collections of all kinds, etc.

The SD reports submitted again and again evidence for the importance of motion pictures and succeeded in supporting the role of the motion pictures against the will of Goebbels. The seventh Chamber of Culture [Kulturkammer], which already had been proclaimed by Ley, was stopped by appropriate SD reports. In contradiction to the political policy of coordination (Gleichschaltung), private associations were sponsored. In long reports, Amann's ¹ publishing and press policies were criticized, and thus a number of publishing firms and newspapers were saved from closing down or from being transferred to the Eher ² publishing firm. In the same way, the SD reports achieved a nearly complete reduction of political publications. On the other hand, the publication of good classical novels and worthwhile new novels was aided.

It was only thanks to the SD reports that the closing of universities was excluded from the measures for waging total war, although a decision to that effect had already been reached. The evidence presented was so convincing that the Party chancellery changed their opinion and, satisfied by the material produced by the SD, exerted its influence for the continuation of work at the universities.

The SD fought against all tendencies of the DAF [German Labor Front] towards *collectivization* with reports supported by evidence.

Critical conditions within the Party were reported for at least five Gaue.

These facts correspond with the description of the "SD" in the "C. I. Handbook Germany," published by the "Supreme Headquarters, Allied Expeditionary Forces, Office of Assistant

¹ Reich Press Leader. Head of the Eher Publishing firm.

² Official publishers of the National Socialist Party.

Chief of Staff, G-2, Counter Intelligence Subdivision." It reads here under IV, "The German Intelligence Service," as follows:

"Office III, with its regional offices, is the Party Intelligence Service inside Germany. To this end, it maintains networks of agents in all walks of German life * * * who are drawn from all classes and professions. The information supplied by these agents is made up into situation reports [Lageberichte] which are sent to the RSHA by the regional offices. These reports are extremely frank, and contain a complete and unbiased picture of German opinion and morale * * *."

These are only brief indications for the presentation of evidence of Ohlendorf. The picture of a man will arise who, in purpose, intent, and actual work stood in opposition to the terrible events in the east.

Ohlendorf, who had been a compulsory member of the security service since 1938, got into the terrible situation, the effects of which are visible today, through the announcement of the mobilization. Before his assignment in Russia, he had a war assignment of the Reich Group Commerce. After he had refused twice, this war assignment was cancelled upon order from Heydrich. Ohlendorf was drafted for the Reich Leader SS. This fact is also proved by Document NO-3196, page 5 of the original. Ohlendorf now clearly belonged to a military, hierarchic organization.

Ohlendorf did not agree with the execution order. The assembled leaders of the Einsatzgruppen protested unanimously against Streckenbach, who announced the Fuehrer order in the name of Himmler and Heydrich. Streckenbach agreed with the opinion expressed through that protest, but he declared that in similar cases in Poland he had already tried everything in order to have the order not executed.

Himmler supposedly refused flatly. At the beginning of October 1941, Ohlendorf approached Himmler at Nikolaev, with regard to the execution order, although the latter in a speech before an assembly of leaders and men of the Einsatzgruppen and of the Einsatzkommandos, had again repeated the strict order of the Fuehrer. Ohlendorf in speaking to the Reich Leader SS emphasized the inhuman burden. He did not even receive an answer. He could not make Himmler revoke the order. There was no possibility for him to prevent the practical execution of the order, which was his endeavor. There was no possibility for him to evade the order. He was in an unheard-of conflict of duties. Ohlendorf had no possibility to make any appeal, since any attempt to get to Hitler personally always had to be made via Heydrich and Himmler. Since it was Bormann who was behind the order, any attempt to surpass Himmler and Heydrich

would have failed at the latest when it got to Bormann. Bormann's actual role in that unequalled European tragedy, the story of who he was, will be recorded by some future historian.

If one assumed any other possibility for Ohlendorf to gain influence, one would forget, that he was only an SS colonel at that time, without any political powers, i.e., without any position in the Party based on political powers. He knew neither Hitler nor Bormann. No Reichsleiter or Gauleiter or any other politically influential personalities were his acquaintances, let alone on his side. All he could do was to interpret the order in as limited a way as he could possibly do and to try to execute it as humanely as possible under the given circumstances, contrary to the interpretation of the indictment not only in the interest of his men but first of all in the interest of the victims, since the protection of the men against brutalization is a protection of the victims against brutalized men.

Ohlendorf's entire life shows that in spite of all setbacks and threats his fight was not only directed against the tyranny of Nazi leaders within the Reich, but that immediately after his return from the Einsatz he started fighting against the exponents of extermination and colonial power politics in the East, especially against Koch, Globocnik, and Einsatzgruppenfuehrer SS Major General (SS Gruppenfuehrer) Thomas. Ohlendorf continued in this fight, even though Himmler threatened him not only with liquidation of his office in case he should continue with this kind of reporting, but also threatened to arrest him. At that moment it became evident that, as soon as there is no purely military relationship where no resistance is possible, Ohlendorf made use of the slightest opportunity in order actively to intervene against the policies of power and extermination.

This is the picture that will result from the evidence as presented by the defense. The tragedy of Ohlendorf's life will become clear to every man.

B. Opening Statement for the Defendant Blobel*

DR. HEIM: May it please your Honor, before I occupy myself with the facts as presented by the prosecution as far as it concerns the defendant Blobel, may I ask permission to present a few ideas of a general character, for which there is reason in this trial, paradoxical as this may sound at first. I shall mainly limit myself to reproducing such ideas as originate from the pen of non-German authors and which *sine ira et studio* endeavor to solve the difficult task of prying into the depths and abysses

* Tr. pp. 332-341, 6 October 1947.

of the psychic characteristics of the German people. This survey may be a small contribution to the effort to explain the situation which shows that the defendants, and among them also Blobel, were not "the cruel henchmen whose terror will be engraved in the darkest pages of the history of humanity" according to the prosecution's assertion. The intention of my statements is to bring out a part of the "underlying total connections of our time." (Mitscherlich and Mielke, *The Dictate of the Contempt of Humanity* [Das Diktat der Menschenverachtung].)

In this respect I may also state that it is far from me to dispute or to whitewash any crimes which were ordered or executed under the National Socialist regime, but at the same time I would like to point out that, during the war, crimes were not only perpetrated by the members of the Axis but also by those of their military opponents.

In my statements I would like to introduce you into the delicate sphere where there are opposed on one side loyalty and absolute obedience—in the National Socialist state an equivalent to life and freedom—and personal guilt and atonement on the other side.

War with its far-reaching, rapid, and destructive weapons has not become any more humane. It is to be regretted that the Second World War has shown a retrogressive development in respect to the protection of the civilian population. This we were made to feel to a not too small extent in our own country too. The apocalyptic horsemen have for many years haunted Germany too, and they left behind their ineradicable traces. Many German towns with a culture of almost a thousand years have perished under a hail of bombs and it will not be possible to restore them, and in them innocent women, children, and old people lost their lives. It is unfortunate that especially when for years it had been systematically fostered by utilizing all possible means of propaganda, hatred has resulted in wild orgies of cruelty. "War has always promoted such outbreaks * * *." (Schenk, Letter from a Swiss to a German Student in "Europa vor der deutschen Frage" (Europe faces the German Problem)). It is further said in this volume that it is deemed the highest ethics in Germany "completely to renounce one's own individuality and to recognize solely the state as one's conscience above which there is no higher binding authority". And Schenk states also the causes which exist for it according to his idea, by declaring,

"It results from the specifically Prussian military education, from a conception of duty and from the ability to subordinate oneself, which for a century have been developed theoretically and practically in Germany * * *."

“The Frenchman” as he goes on to state—and I want to add to it—the American and the British—“will never understand that there are people who acknowledge an authority over them which may prescribe to them how to behave”. This in itself, a regrettable and frightening character trait, to give one’s individuality up completely and only to be a small wheel in the set-up of a clockwork, has become the theme of a critical essay by Robert d’Harcourt “The mental perspectives of the Germans (Die geistigen Perspektiven des Deutschen)” There it says,

“Resistance—this word means something disreputable to the Germans * * *. They have superstitious veneration for legal forms, which also reaches into the ranks of the opposition * * *. In the presence of power, in the presence of an order issued by the authorities, the power of judgment in the Germans becomes befogged. The ability to evaluate properly is suspended in the actual sense of the word. The only reaction to a given order is its acceptance and its execution * * *.”

A further important contribution to the comprehension of the problem, how it was possible that decent and blameless people, according to the statements of the prosecution, could so diligently and punctually serve the National Socialist annihilation machinery, is given in the statement contained in the above-mentioned essay by d’Harcourt,

“There is no other nation that in its whole make-up is more removed from any public affairs than the Germans. That the German is a family father in the first instance and in the second instance a citizen * * *.”

His desire for secure living conditions for himself and for his family predestinate him exactly to function in the prescribed sense in the authoritative state. And this state utilized the endlessly docile, yielding disposition of a nation to which the security of the family meant more than the duty of the citizen who is conscious of his responsibility, to form it at will and to its own purposes.

On such a soil only the actions could grow which have brought Blobel as well as the other defendants into the dock. Under 8 (C) to (J) the indictment charges the defendant Blobel with the murder of nearly 60,000 people.

Up to the present presentation of evidence by the prosecution, the latter seems to consider the case as a simple case of murder, in which on the one hand there is the perpetrator and on the other hand there is the known number of people executed. But it is not quite as simple as the prosecution seems to think, even if the actual facts are apparently sufficiently proved by documents.

My task as defense counsel commands me here to point to

another essential factor. The submitted documentary material to which the prosecution had access is definitely incriminating. However, it is so much easier for the Court to fulfill its difficult and responsible task of finding the objective truth, the more fully the material will be at its disposal—the exonerating material as well as that which implicates the defendants. The documentary material which was found amounts to the immeasurable, and that which was made available to the defense is only an infinitesimal part of it and besides exclusively the material which indicts the defendants. The war in the East was specially characterized by atrocities and cruelties on both sides, but the material which would show the other side also in its true light and would thus give a full picture of the situation in the East is not accessible to the defense. But that this material was collected by German agencies to give testimony in future times, most of these defendants will be able to confirm * * *.

Evidence for the defendant Blobel will show that the reports of the Reich Main Security Office submitted by the prosecution are incomplete and unreliable and that they can only be fragmentary documents of questionable value in view of the insufficiency of the organization used and of their manifest tendency towards exaggeration. I shall prove in detail that the alleged figures do not correspond to the facts, as is shown by comparing the individual reports. Especially, I shall prove that Blobel cannot be rendered responsible for the reported, “large-scale actions” and “reprisals”, because these were partly measures ordered by other agencies—Higher SS and Police Chief, chief of the Einsatzgruppe, town commander—and carried out by other units, and partly such executions, as were ordered by the Commanding General of the 6th Army, Field Marshal von Reichenau, as collective measures sanctioned by international law—reprisals—on the occasion of crimes, attacks in disregard of the customs of war, acts of sabotage against the fighting or occupying troops, and were carried out by police units and Ukrainian militia.

Evidence will further show that Blobel is not responsible for carrying out a considerable number of executions, since he was in the hospital for a considerable time and also for other reasons was not fit for duty during the time in question—end of June 1941 till January 1942—because he had fallen ill of Volhynian fever and because of a head injury; for these reasons a deputy took over his command.

The splitting up of Sonderkommando 4a into several sub-detachments, which dealt independently with the security tasks assigned to them in the areas of the front-line divisions, resulted

in Blobel having no influence on the reported events and he was informed of them only subsequently or perhaps not at all, because the subdetachments reported immediately to the Einsatzgruppe through 6th Army.

Besides, nobody will want to assert in earnest that a detachment of altogether 52 men, from which number we have to deduct office personnel, mess personnel, interrogation staff and drivers, can attain the number of executions alleged by the prosecution. This is simply impossible. Evidence will show that the chief of an Einsatzkommando or Sonderkommando had no power of command over units of the regular police [Ordnungspolizei], the Waffen SS, the Wehrmacht and the Ukrainian militia. Furthermore I shall prove, that, as far as parts of Sonderkommando 4a took part in executions, they were used by Blobel in consequence of orders received by him as chief of the Sonderkommando from the Einsatzgruppe or from 6th Army. Blobel had no occasion to consider the carrying out of the executions criminal and to examine whether these orders were in conformity with international law, because the Russian enemy hardly knew the concept of international law, had not signed international conventions concerning warfare, and did not in the least intend to comply with the customs of war. In this conception Blobel was of necessity strengthened by what he had experienced and seen, especially of atrocities committed on German soldiers. I shall prove what may perhaps appear incredible, namely, that the executions of women and children as carried out by Sonderkommando 4a were by no means contrary to international law, since the Russians in their carefully organized and all-embracing partisan warfare, which was contrary to international law, ruthlessly employed also women and children for these purposes. Apart from all that, it has already been mentioned that in Germany, too, the war did not spare women and children, and in this respect the prevailing rules of warfare have destroyed the doctrine of reprisals. I may point out in this connection that the Anglo-American conception of warfare—in contrast to the one prevailing on the European continent—sticks to the traditional concept of war, which regards every person resident in enemy territory as an enemy alien.

Though the principles involved in the subject "order" have already been discussed by somebody else, I want to refer in this connection to Himmler's speech at Poznan in October 1943 in order to underline what has already been said at the beginning. His statements as to loyalty and obedience left no doubt as to

what an SS leader had to expect in the event of noncompliance with orders. Himmler stated, among other things—

“I want to lay down one directive. Should you ever know of a man who is disloyal to the Fuehrer or to the Reich, be it only in his thoughts, you have to see to it that this man is excluded from the order and we shall see to it that he loses his life * * *. I want to make a clear and unambiguous statement. It goes without saying that the little man has to obey * * *. Even more it goes without saying that all high SS chiefs are a model of unconditional obedience * * *. But orders must be sacred. If generals obey, the armies obey automatically * * *. The only commissar we have must be our own conscience, devotion to duty, loyalty, and obedience * * *.”

Under Frederick the Second of Prussia, Colonel von der Marwitz could refuse obedience in spite of his oath of allegiance, because the carrying out of an order of the king would have meant for him a conflict with morality and conscience. Marwitz' tomb bears the characteristic inscription, “He saw Frederick's heroic epoch and fought with him in all his wars. He chose disgrace, where obedience brought no honor.” In Adolf Hitler's Germany, men who refused obedience were either put in a concentration camp or shot dead, regardless of person and rank, as is proved above all by the measures against the participants in the events of the 20 July 1944.*

In reality there was no chance to make a choice in accordance with the moral law; this applies also to the defendant Blobel. For either he had to carry out the order or if he refused to do so, he would lose his liberty, or he would even have been shot dead by a summary court martial. In addition the National Socialist regime during the war introduced the truly devilish device of family liability, in order to eliminate the last remnant of a will to disturb the machinery of its system. The fear to endanger even the closest relatives made the internally reluctant man abandon every better motion of his conscience. But the legal conclusion to be drawn from this situation must be that the defendant was in a genuine emergency, at least in a presumptive emergency. But this is a justifying reason according to the general principles of penal law. Even if the defendant Blobel, like so many other Germans, who have remained decent at heart, should be reproached with cowardice and egoistic self-preservation, the short statement may be sufficient, that this may not establish any punishable form of participation.

At the end of the opening speech of the prosecution, reference

* Abortive attempt to assassinate Hitler and overthrow his government.

“is made to the provision of the German Military Code, that the participant in the execution of an illegal order renders himself liable to punishment; to this we may object that the authoritarian state would have declared that every kind of resistance against the crime is in itself a crime. In addition terrorist and tendentious sentences did the rest to spread the conviction that any sort of resistance was condemned to failure and therefore meant only a useless and consequently senseless sacrifice.

As to the order given by the Reich Security Main Office to Blobel in 1943 to open the mass graves in the East and to destroy the corpses completely, no argument for the defendant is needed in this respect. It cannot be understood why the burning or the destruction of corpses is supposed to be a criminal act, no matter why and by whom the executions were carried out.

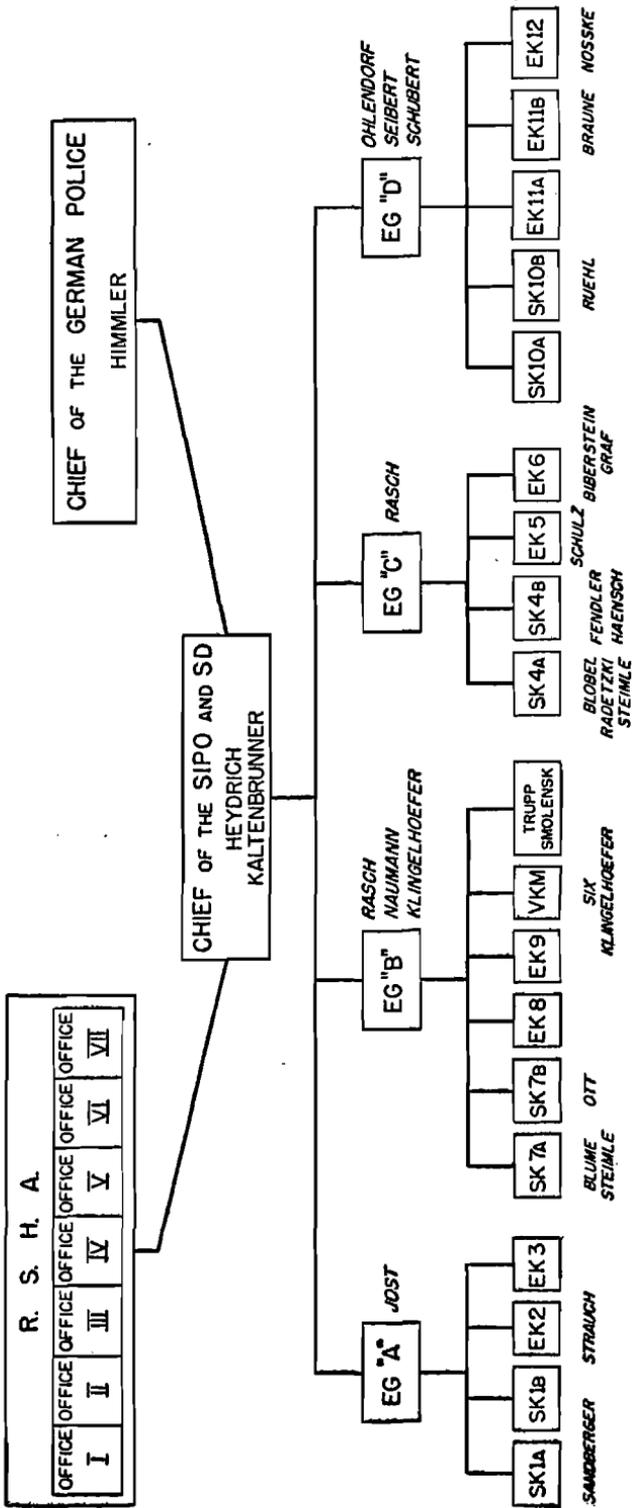
V. ORGANIZATION OF THE EINSATZGRUPPEN

a. Introduction

Before the invasion of Russia in June 1941, four Einsatzgruppen were formed, designated with the letters A, B, C, and D. Each Einsatzgruppe was subdivided into a group staff and several "Einsatz-" and "Sonderkommandos". Each was attached to an army group, a group of several German armies, except Einsatzgruppe D. Einsatzgruppe D was assigned to the 11th Army which later became a part of a 4th army group after the Germans reached the Caucasus.

The following is reprinted here from the evidence on the organization of the Einsatzgruppen: a photocopy of a large chart which was exhibited in the courtroom throughout the trial, an Einsatzgruppen report dated 11 July 1941, and an affidavit of defendant Ohlendorf.

**ORGANIZATIONAL CHART
OF THE
REICH SECURITY MAIN OFFICE
AND THE
EINSATZGRUPPEN**



b. Evidence

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
NO-2934	78	Extract from Operational Situation Report U.S.S.R. No. 19, 11 July 1941.	91
NO-2890	5	Affidavit of Otto Ohlendorf, 24 April 1947, concerning the organization of the Einsatzgruppen.	92

PARTIAL TRANSLATION OF DOCUMENT NO-2934 PROSECUTION EXHIBIT 78

EXTRACT FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 19, 11 JULY 1941

[Stamp] War Room

The Chief of the Security Police and of the SD

Berlin, 11 July 1941

-IV A 1-B. No. 1 B/41 top secret-

32 copies
19th copy

[Stamp] *Top Secret*

Operational Situation Report U.S.S.R. No. 19

I. Political survey.

In the Reich and in the occupied territories.

There are no special reports.

II. Reports of Einsatzgruppen and Einsatzkommandos.

For organizational reasons, the designations of the Einsatzgruppen are changed, effective immediately, as follows:

Einsatzgruppe Dr. Stahlecker	=	Einsatzgruppe A
Einsatzgruppe Nebe	=	Einsatzgruppe B, up to now C
Einsatzgruppe Dr. Rasch	=	Einsatzgruppe C, up to now B
Einsatzgruppe Ohlendorf	=	Einsatzgruppe D.

The designations of the Einsatzkommandos remain unchanged for technical reasons.

* * * * *

TRANSLATION OF DOCUMENT NO-2890
PROSECUTION EXHIBIT 5

AFFIDAVIT OF OTTO OHLENDORF, 24 APRIL 1947, CONCERNING THE
ORGANIZATION OF THE EINSATZGRUPPEN

AFFIDAVIT

I, Otto Ohlendorf, swear, depose, and state—

1. The Einsatzgruppen for the Eastern Campaign (Russia 1941) began as a result of an agreement between the Chief of the Security Police and Security Service on the one hand, and the Chiefs of the Supreme Command of the Armed Forces and the High Command of the Army on the other. As I remember it, this agreement was signed by Heydrich and a representative of the High Command of the Army. On the basis of this agreement between the Chief of the Security Police and Security Service, the Supreme Command of the Armed Forces and the High Command of the Army, the Einsatzgruppen were to take over the political security of the front areas, which, up to the time of the Russian campaign had been the charge of the army units themselves. The secret field police were to occupy themselves only with security within the troops to which they were assigned.

2. As far as I remember, this agreement took effect about three weeks before the start of the Russian campaign and was as follows:

a. The Chief of the Security Police and SD formed his own motorized military units in the form of Einsatzgruppen, which were divided into Einsatzkommandos and Sonderkommandos and were to be assigned in their entirety to the army groups or armies.

The chief of the Einsatzgruppen was the deputy of the Chief of the Security Police and SD, who was assigned to the commanders in chief of the army groups or armies.

b. The armies or army groups had to supply the Einsatzgruppen with quarters, food, repairs, gasoline, and the like. Each army group and the 11th Army, the latter as nucleus of another army group for the Caucasus, was assigned an Einsatzgruppe, which in turn was divided into Einsatzkommandos and Sonderkommandos.

3. During the Russian campaign there were four Einsatzgruppen, which bore the identifying letters A, B, C, and D. The

area of operation of each Einsatzgruppe was determined by the fact that the Einsatzgruppe was assigned to a certain army group or army, and marched with it. The Einsatzkommandos or the Sonderkommandos formed from them were assigned from time to time to areas designated by the army group or army. The Einsatzkommandos were divided into Sonderkommandos in order to have more small units available for the size of the area of operation.

The areas of operation of the Einsatzgruppen were as follows:

Einsatzgruppe A operated from its central points: Latvia, Lithuania, and Estonia, towards the east.

Einsatzgruppe B operated in the direction of Moscow in the area adjoining Einsatzgruppe A, to the south.

Einsatzgruppe C had the Ukraine, except for the part occupied by Einsatzgruppe D. At a later time, when Einsatzgruppe D advanced towards the Caucasus, Einsatzgruppe C was in charge of the entire Ukraine, insofar as it was not under civil administration.

Einsatzgruppe D had the Ukraine south of the line Chernovitsy, Mogilev-Podolski, Yampol, Ananav, Nikolaev, Melitopol, Mariupol, Taganrog, and Rostov. This area also included the Crimean Peninsula. At a later time, Einsatzgruppe D was in charge of the Caucasus area.

4. All of the Einsatzgruppen were made up of a number of Einsatzkommandos and Sonderkommandos. For example, Einsatzgruppe D, of which I was chief, had the Sonderkommandos 10a, 10b, 11a, 11b, and Einsatzkommando 12.

5. The personnel strength of the Einsatzgruppe varied. It usually consisted of a total of 500 to 800 men. Einsatzgruppe D belonged to the smaller of the Einsatzgruppen. The officers and noncommissioned officers of the Kommandos were composed of men on detached service from the state police, criminal police, and in limited numbers from the security service. Aside from these, the troops were largely made up of emergency service draftees [Notdienstverpflichtete] and of companies of the Waffen SS and order police.

6. The Einsatzgruppen had the following assignments: They were responsible for all political security tasks within the operational area of the army units and of the rear areas insofar as the latter did not fall under the civil administration. In addition they had the task of clearing the area of Jews, Communist officials, and agents. The last named task was to be accomplished by killing all racially and politically undesirable elements seized who were considered dangerous to the security. I know that the

Einsatzgruppen were assigned partly to the reconnaissance of guerrilla bands, fighting guerrilla bands, and to military tasks and, after completion of their basic assignments, were partly converted into combat units. All orders which pertained to the tactical and strategic situation or sphere of interest of the army groups or armies came from the commanding general, the chief of staff or counterintelligence officer of the army or army group to which the Einsatzgruppe was assigned. Orders concerning clearing out undesirable elements went directly to the Einsatzkommandos and came from the Reich Leader SS himself or by transmission through Heydrich. The commanders in chief were ordered by Hitler to support the execution of these orders. Through the so-called Commissar Order, the army units had to sort out political commissars and other similar undesirable elements themselves and hand them over to the Einsatzkommandos to be killed. The order pertaining to the sorting out of these elements from the prisoner-of-war camps was supplemented accordingly by executive orders from the High Command of the Army to the army units. The activity of the Einsatzgruppen and their Einsatzkommandos was carried out entirely within the field of jurisdiction of the commanders in chief of the army groups or armies under their responsibility.

7. The reports of the Einsatzgruppen went to the armies or army groups and to the Chief of the Security Police and SD. Normally weekly or biweekly reports were sent to the Chief of the Security Police and SD by radio and written reports were sent to Berlin approximately every month. The army groups or armies were kept currently informed about the security in their area and other current problems. The reports to Berlin went to the Chief of the Security Police and SD in the Reich Security Main Office. After the creation of the command [headquarters] staff of the Chief of the Security Police and SD in about May 1942, this [staff] prepared the subsequent reports. The command staff consisted basically of Gruppenfuehrer [SS Major General] Mueller, chief of office IV, and Obersturmbannfuehrer [SS Lieutenant Colonel] Nosske, group chief in office IV, to whom specialists of offices III, IV, and VI were available for coordinating the composition of the reports. Questions which had to do with the personnel of the group and with garrisons went to office I. Administrative questions and matters concerning equipment were taken care of by office II. Information concerning the spheres of life (SD) went to office III. The chief of office IV received reports on the general security situation, including Jews and Communists. Information about the unoccupied Russian areas went to office VI.

I have read the above statement, consisting of six (6) pages

in the German language and declare that this is the full truth to the best of my knowledge and belief.

I have had opportunity to make alterations and corrections in the above statement. I have made this statement freely and voluntarily, without any promise of reward and was subjected to no threat or duress.

Nuernberg, 24 April 1947. [Signature] OTTO OHLENDORF.

VI. AUTHENTICITY OF THE EINSATZGRUPPEN REPORTS

a. Introduction

The case-in-chief of the prosecution consisted entirely of contemporaneous documents with the exception of 48 affidavits, 34 of which were affidavits sworn to by the defendants before the indictment was filed. The principal proof offered by the prosecution in support of counts one and two of the indictment were more than ninety Einsatzgruppen reports. These reports were consolidated reports prepared by a special office of the RSHA in Berlin from the reports of the individual Einsatzgruppen. These top secret reports were distributed to a number of state and Party offices in Germany. Between July 1941 and April 1942 approximately 195 consolidated Einsatzgruppen reports were prepared in Berlin and distributed.

The defense alleged that the consolidated reports contained many inaccuracies and even willful exaggeration concerning the number of exterminated people. The defense also claimed that the author of the reports had no first-hand knowledge of the observations contained therein, that his identity was unknown, and therefore the documents constituted inadmissible hearsay evidence.

Selections from the evidence of the prosecution concerning the authenticity of the reports in describing the form in which they were compiled are set forth in pp. 97 to 102. Objections of the defense against the introduction of Einsatzgruppen reports as documentary evidence and extracts from the closing brief on behalf of the defendant Blobel, the closing statement on behalf of defendant Naumann, and from the testimony of the defendant Nosske follow in pp. 102 to 117.

b. Evidence

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
NO-2716	4	Affidavit of Heinz Hermann Schubert, 4 February 1947.	97
NO-4327	6	Affidavit of Kurt Lindow, 21 July 1947.	99
NO-4134	7	Extracts, 21 and 27 October 1941, from Operational Situation Report U.S.S.R. No. 126.	100

Testimony

Extracts from the testimony of defendant Nosske.....	113
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TRANSLATION OF DOCUMENT NO-2716
PROSECUTION EXHIBIT 4

AFFIDAVIT OF HEINZ HERMANN SCHUBERT, 4 FEBRUARY 1947*

I, Heinz Hermann Schubert, swear, depose and declare—

1. I was born in Berlin on 27 August 1914. I went to school at Eisenberg (Thuringia) and at Berlin-Lichterfelde, including a trade school. In March 1931 I left school having obtained my school certificate [Obersekundareife].

2. From April 1931 to August 1933 I worked for a lawyer. Later on I became a civilian employee in the Bremen office of the Reich Chancellery.

3. On 10 October 1934 I became a civilian employee with the SD and remained there until the end of the war. On 1 May 1934 I was taken over from the Hitler Youth into the Party and held membership card No. 3,474,350. On 10 October 1934 I became a member of the SS with the membership No. 107,326.

4. In October 1941 I was assigned to the Einsatzgruppe D. I did not take part in the courses and set-up of the Einsatzgruppe in Dueben which took place previously, neither did I take part in the beginning of the Russian campaign.

5. When arriving at Nikolaev in October 1941 I was ordered to a conference with gruppenfuehrer Otto Ohlendorf, who at that time was the chief of Einsatzgruppe D. Ten more men who had arrived in a transport together with me attended this conference. The purpose of this conference was that Ohlendorf wanted to find out for which post a man was suited and could be used. None of us was meant to be leader of an Einsatzkommando. We were delegated to different units, most of them went to an Einsatzkommando, while I stayed with the staff. We only got acquainted with the work of the Einsatzgruppen, Einsatz- and Sonderkommandos after having joined these units. When leaving Berlin we were not told about the activities of these units. I became Ohlendorf's adjutant.

6. During this period I learned that two new leaders came to Ohlendorf who later on received an Einsatzkommando each. After their arrival they had a lengthy conversation with Ohlendorf; I was not present. Based on my own experiences, I can say for certain that these two leaders during their conversation with Ohlendorf received instructions regarding their services. The reports of these leaders arriving at our headquarters were written in the manner prescribed by Ohlendorf and also contained information as to the number of Russians and Jews executed.

* Defendant Schubert testified on 5-6 January 1948 (Tr. pp. 4560-4738).

7. The Einsatzgruppe reported in two ways to the Reich Security Main Office, once through radio, then in writing. The radio reports were kept strictly secret and, apart from Ohlendorf, his deputy Standartenfuehrer Willy Seibert and the head telegraphist Fritsch, nobody, with the exception of the radio personnel, was allowed to enter the radio station. This is the reason why only the above-mentioned persons had knowledge of the exact contents of these radio reports. The reports were dictated directly to Fritsch by Ohlendorf or Seibert. After the report had been sent off by Fritsch, I received it for filing. In cases in which numbers of executions were reported a space was left open, so that I never knew the total amount of persons killed. The written reports were sent to Berlin by courier. These reports contained exact details and descriptions of the places in which the actions had taken place, the course of the operations, losses, number of places destroyed and persons killed, arrest of agents, reports on interrogations, reports on the civilian sector, etc.

8. When Ohlendorf was absent from the staff of the Einsatzgruppe, no reports were sent to Berlin. As a rule his deputy Seibert accompanied him on his journeys of inspection and I was ordered "to look after the house", without, however, being allowed to solve any problems which might occur. I was never initiated into secret orders and when Ohlendorf and Seibert were absent from the staff, no decisions could be made. I do not know whether Ohlendorf had any secret files or whether he had statements as to the total number of executions.

9. I do not know whether the Einsatzgruppen or the Einsatzkommandos received orders concerning the execution of Russian prisoners of war. If these orders had come in through the normal channels, I would have seen them. This, however, does not exclude that Ohlendorf had them as secret files in his office.

10. From summer 1942 until the end of 1944 I was Ohlendorf's adjutant in office III of the Reich Security Main Office and later on I worked under Dr. Hans Ehlich in office III B of the Reich Security Main Office. It is known to me that both of them received the compiled reports of the Einsatzgruppen which were issued as reports on the situation from the occupied eastern territories.

I have read the foregoing deposition consisting of 4 pages in the German language, and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatsoever.
Nuernberg, Germany, 4 February 1947.

[Signed] HEINZ HERMANN SCHUBERT

TRANSLATION OF DOCUMENT NO-4327
PROSECUTION EXHIBIT 6

AFFIDAVIT OF KURT LINDOW, 21 JULY 1947*

I, Kurt Lindow, swear, state, and depose—

1. I was born on 16 February 1908 in Berlin and attended the Lessing-Gymnasium and the Kirchner Oberreal-School. I studied commercial science and law, without, however, passing the government examination, and was a business apprentice from 1922 to 1928. In April 1928 I joined the criminal police, Berlin, as a candidate and was transferred to Altona as assistant inspector later on where I remained until 1932. I was subsequently transferred to Elbing and later on to Hannover where I remained till 1938. In Hannover I was chief of the counter intelligence service, holding this office from 1935 to 1937. In 1938 I was retransferred to the political police later renamed state police, where I worked with the protective custody subdepartment from 1938 to 1940. Until 1941 I was attached to the counter-intelligence subdepartment and was transferred later on to the subdepartment dealing with Communists where I remained until the middle of 1944. At that time I received the order to report to the Reich Security Main Office, office I, and was attached to this office as instructor for the training of inspectors.

2. In 1935 I joined the SS; my membership number is 272,350. On 1 May 1937 I joined the Party, my membership number is 4,609,289.

3. In October 1941, till about middle of 1942, I first was deputy chief and later on chief of subdepartment IV A 1. This subdepartment dealt with communism, war crimes, and enemy propaganda; moreover, it handled the reports of the various Einsatzgruppen until the command staff was set up in 1942. The Einsatzgruppen in the East regularly sent their reports to Berlin by wireless or by letter. The reports indicated the various locations of the Gruppen and the most important events during the period under survey. I read most of these reports and passed them on to inspector Dr. Knobloch of the criminal police who made them up into a compilation which at first was published daily under the title "Operational Situation Reports U.S.S.R.". These reports were stencilled and I corrected them; afterwards they were mimeographed and distributed. The originals of the reports which were sent to the Reich Security Main Office were mostly signed by the commander of the Einsatzgruppe or his deputy.

4. The reports "Operational Situation Reports U.S.S.R.", Nos.

* Affiant did not testify.

114, 115, 118, 121, 122, 128, 138, 141, 142, 144, 159, as shown to me, are photostats of the original reports drawn up by Dr. Knobloch in subdepartment IV A 1 of which I was the chief. I recognize them as such by the red bordering, discernible on the photostat, by their size, the types, and partial bordering. I identify the handwritten initials appearing on the various reports as those of persons employed with the Reich Security Main Office, but considering that 6 years have elapsed since, I cannot remember the full names of these persons whose handwritten initials appear on the documents. From the contents of the handwritten notes I conclude that these were made by Dr. Knobloch, and moreover I notice that various parts of the above-mentioned reports are extracted from the original reports of the Einsatzgruppen to the Reich Security Main Office.

5. On the strength of my position as deputy chief and, later on, chief of subdepartment IV A 1, I consider myself a competent witness, able to confirm that the "Operational Situation Reports U.S.S.R." which were published by the chief of the security police and the security service under file mark IV A 1 were compiled entirely from the original reports of the Einsatzgruppen reaching my subdepartment by wireless or by letter.

I have read the above statement consisting of 3 (three) pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity of making alterations and corrections in the above statement. I made this statement voluntarily without any promise of reward and I was subjected to no duress or threat whatever.

Nuernberg, 21 July 1947

[Signed] KURT LINDOW

PARTIAL TRANSLATION OF DOCUMENT NO-4134
PROSECUTION EXHIBIT 7

EXTRACTS, 21 AND 27 OCTOBER 1941, FROM OPERATIONAL
SITUATION REPORT U.S.S.R. NO. 126

* * * * *

Chief of the Security Police
and the SD

-B. No. IV A 1-1 B/41-Top Secret
Berlin, 27 October 1941

[Stamp] Top Secret

50 copies
38th copy

Operational Situation Report No. 126

[Handwritten Note]: Was not dispatched [Initial]

I. Locations and signal communications.

The locations and signal communications as given in Daily Report No. 110 dated 22 October 1941 remained unchanged.

II. Reports of the Einsatzgruppen and Einsatzkommandos.

No reports of the Einsatzgruppen.

Reich Security Main Office
-II D 31/41-Secret

Berlin, 21 October 1941

[Stamp] SECRET

To the Office Chiefs and Group Chiefs,
Adjutant's Office of the Chief of the Security Police and
Security Service,
The Main Office
The Departments I, II, III, IV, V, VI, VII
The subdepartments I A 1, II A 1, II D 1, II D 2, II B 5,
IV A 1, IV B 4, IV D 3, IV E 5, VI C 1.

For information:

To the Adjutant's Office of the Reich Leader SS and Chief of the
German Police.

Subject: Operation Barbarossa—Incorporation of the Office of the
Operational Signal Officer [Einsatznachrichtenfuhrer] into the
Command Staff [Kommandostab].

1. The Decree II Hb No. 11 II/41, top secret, dated 3 July 1941, is amended to the effect that the office of the operational signal officer of the Reich Security Main Office attached to group II D (operations room) is discontinued effective 26 October 1941.

2. Beginning that day, the tasks hitherto performed by the operational signal officer of the Reich Security Main Office will additionally be attended to by the Command Staff existing at office IV in the Main Office Building, 3 Prinz-Albrecht Street, room 320, telephone number: Postal 54, extension 318. Thus the command staff will be responsible both for the technical and material evaluation of the reports of the Einsatzgruppen and Einsatzkommandos employed in the Operation Barbarossa.

3. Beginning that day, all reports and communications received from the Einsatzgruppen A to D, after having been registered and marked according to subject, are to be transmitted by the main office (special mail center) without delay to the command

staff via office chief IV; reports coming in during the night to be submitted the next day at the beginning of office work.

BY ORDER:

[Signed] MUELLER
SS Brigadier General

[Seal of the Gestapo]

Certified true copy:

[Signature illegible]

SS Captain

c. Selections from Arguments and Evidence of the Defense

*OBJECTIONS OF THE DEFENSE AGAINST THE INTRODUCTION OF EINSATZGRUPPEN REPORTS AS DOCUMENTARY EVIDENCE ON 29 SEPTEMBER 1947 **

DR. ASCHENAUER (defense counsel for defendant Ohlendorf): I object against the submission of the Document NO-4134. This document contains obvious errors. On page 31 of the German document book it says, "Situation Report U.S.S.R. No. 126, dated 29 October 1941." On page 36 of this copy, German document book, I find the following: "Situation report, U.S.S.R. No. 126, 27th October 1941." On the same page, the following text is to be found: "The positions and news communications of daily report No. 110, 22 October 1941, remain unchanged." "Daily" report is evidently confused with "situation" report. Then the numbers 110 and 126 are not correct. It is also completely out of the question that from 22 October to 27 October, 16 situation reports or daily reports should be made out and passed on. Here there are obvious mistakes and I therefore ask that this document be refused.

MR. FERENCZ: As I understand the objection, your Honor, it is either a poor translation whereby something was translated as "daily report" instead of "operational report" or there is a number on the report which confuses the defense counsel. In the absence of a showing here of exactly what the defense counsel is talking about, I don't feel competent to comment on the particular objection. However, as a general matter, if there is such an error, I will certainly be glad to correct it. I am certain that there must be several errors in the presentation as we will give it. If there is anything more than purely formal objection, I wish the defense counsel would make that clear.

* Tr. pp. 78-81.

PRESIDING JUDGE MUSMANNO: Dr. Aschenauer, is the document, as you read it, at least clear as to intent, and you find objection only to some detail which perhaps later can be straightened out?

DR. ASCHENAUER: No, your Honor, I have the original in front of me now and here there are no typographical errors and this is not a matter of typographical errors nor of details. My objection refers to the probative value of the document. First of all, in the operational report 126, there are two different dates given. One date, 29 October 1941, on the first page of the document. In one of the further pages, the date 27 October 1941.

PRESIDING JUDGE MUSMANNO: Are you reading now from the original? That is, the photostat?

DR. ASCHENAUER: No, this is the original document which the prosecution is offering.

PRESIDING JUDGE MUSMANNO: Well, that's what I say. You are reading now from the original?

DR. ASCHENAUER: Yes.

PRESIDING JUDGE MUSMANNO: And the objections, I take it, are to the original document and not to the translation?

DR. ASCHENAUER: Yes, that's right. And if I say "operational report" is confused with "daily report" or "situation report", then it's completely out of the question that the number 110 is correct.

PRESIDING JUDGE MUSMANNO: Well, if you have no objection to the translation itself, then we don't see how your objection to the original can have any value, because the prosecution submits it as it is and if it is defective in any way then, of course, it's to your advantage that it's defective and, at the proper time, you will point that out in argument to the Tribunal when the issue must be decided. So, therefore, it does not go to the authenticity nor to the relevancy of the document. It's up to the prosecution to determine whether they wish to present in evidence a document which may be defective.

DR. BERGOLD (defense counsel for defendant Biberstein): I believe my colleague would have to object to something else. It isn't really the actual original, but the photostat of the original and, namely, that copy which the prosecution is submitting as evidence to the Tribunal. The objection of my colleague could, if I understand him correctly, mean that this is something which is not authentic and which perhaps, at the first look, might look like a forgery. Therefore, it seems necessary that the prosecution in this case does not submit the photostat, but the originals, so that it can be objected to or not.

PRESIDING JUDGE MUSMANNO: Well, the photostat is always taken at its face value unless it can be shown that there was some

mechanical difficulty in the actual photographing of the document. Do I understand you to say, Dr. Bergold, that you insist on the presentation of the original report itself, and how would that help you any more than the photograph would?

DR. BERGOLD: No, the photostat isn't always the same. Sometimes one can see, by looking at an original, that, for example, different kinds of paper were used so that the original might be composed of different reports. Or that various typewriter ribbons were used. But you can only see that by looking at the original. The photostat does not show these color differences nor does it show the differences in the quality of paper.

PRESIDING JUDGE MUSMANNO: Well, Mr. Ferencz, what have you to say to this?

MR. FERENCZ: Your Honor, there are two different objections to this document. The first objection made is that document which we have offered as a photostat of the original has, on the first page, the date 29 October 1941, whereas, on one of the pages next to the end, it has the date 27 October 1941. It seems quite immaterial to me whether the date was 29 October or 27 October. We have offered the document for a completely different purpose.

The second objection, if that is what there is on the document, as you pointed out, is a matter which will be seen by the Court and which will be given weight in judging the probative value of this particular exhibit. The second objection made, however, is that this photostat copy may not be a true copy of the original. Either because—

Pardon me, I'd understood it as being an objection that there may have been some error in copying the original. However, I see that defense counsel does not agree with me.

PRESIDING JUDGE MUSMANNO: Well, Dr. Bergold, just what is your objection? The Tribunal had also understood it that way.

DR. BERGOLD: No, I merely say that the photostat is surely correct, but sometimes one can only judge a doubtful document if one looks at the original and sees if the original in itself is a closed document or doesn't consist of several reports. The photostat is, of course, always correct. The photostat is unimpeachable. My request is merely to submit the original. Then we can decide whether we can maintain the objection or not.

MR. FERENCZ: I would like to point out that the certificate which goes with every exhibit certifies that it is a true photostatic copy of the original. In most other cases it has not been necessary to present the original. However, in order that these defendants are convinced that they have been given every opportunity, I have had the originals brought here from Berlin. They are available in my office and defense counsel are welcome, at any

time, to compare the photostatic copy with the original and I will be very glad to correct any errors.

PRESIDING JUDGE MUSMANN: Very well. That answers it very completely.

DR. BERGOLD: I thank the prosecution for their cooperation.

* * * * *

*EXTRACT FROM THE CLOSING BRIEF FOR
DEFENDANT BLOBEL*

I

Documentary evidence in general

Case 9 has a special feature; it is the fact that this trial, at least as far as the submitting of evidence by the prosecution is concerned, is conducted with purely documentary evidence. Documentary evidence is frequently used in the Anglo-American way of conducting trials, but it is also used in German law and it is applied there in civil as well as in criminal law.

When considering the documents submitted by the prosecution as evidence, we have first of all a reason to discuss these documents in general and especially to raise considerable scruples which could be brought up against the unrestricted admitting of these documents as evidence.

Without doubt, every written article is a document which can be used as evidence, that is to say every article on which a human being expressed in writing, handwritten, typed or printed, an idea. Thus the documentary evidence consists of the setting-up of ideological contents. In its function as evidence, a document has either the character of an ordinary report document or that of a constitutive document. There is an additional viewpoint which is important in the classification of documents. A document may either designate somebody as the person from which the statement originates as his own, especially if the signature appears on it—the so-called signatory or signed documents—or it is submitted anonymously if the writer of the document cannot be identified—so-called anonymous documents. In the first case the document is “genuine” if it really originates from the person who is, in the document, said to be the writer; if it is not so, the document is “false”. In the second case it cannot be inquired whether it is “genuine” or “false” as long as the identity of the person who has drafted the document has not been established.

Most of the documents which were submitted as evidence and

which are to prove the guilt of the individual defendants concerning the punishable acts set forth in the indictment are the so-called situation reports U.S.S.R. and the so-called situation reports of the Chief of the Security Police and the SD (Reich Security Main Office).

According to the explanation given at the beginning, we are here concerned with report documents of the Reich Security Main Office; these documents attempt to furnish a survey of the activity of the units operating in the East—especially of the Einsatzgruppen, Einsatzkommandos, and Sonderkommandos—after 22 June 1941. Which units in this connection are concerned in detail will be discussed more thoroughly later on.

It will not and cannot be denied that the documents submitted are “genuine” evidence, that is to say, that the documents in question were actually drafted by the Reich Security Main Office. However, this does not exclude the established fact that the reported incidents may not be the pure truth, and actually all the defendants who up to now have testified under oath on the witness stand stated that these situation reports and operational situation reports of the Reich Security Main Office are highly unreliable, inaccurate and faulty, and that not only with regard to figures, but also with regard to the contents and the actual wording. (*Tr. pp. 434 ff., 537 ff., 624 ff., 1104-05, 2684, 3102 ff., 3490-91, 3495-96.*)

It is comprehensible, if, at least on the part of the prosecution, it is tried to invalidate the objection of the incorrectness of the documents by saying that if the defendants make statements to that effect, these statements cannot be true, because the documents speak for themselves and their value as evidence is established beyond any reasonable doubt. In view of the fact that the documents submitted constitute, with the exception of the affidavits made by the defendants themselves, nearly the entire evidence, such a defense which is directed against the trustworthiness and correctness of documents could be understood and perhaps could be considered as the only defense which would be of any purpose. However, the general objection is not based on technical reasons of expediency in connection with the procedure, but it is justified and was made in order to be able to master at all the highly responsible task of finding the objective truth.

In order to be able to judge the documents submitted in an objective manner, the following question must be raised and answered: How were the “Situation Reports U.S.S.R.” and the “Operational situation reports” of the Reich Security Main Office drafted? And the additional question: What sources of mistakes were thus provided and what effect did they have?

*Drafting of the Operational Situation Reports in the
Reich Security Main Office*

a. Construing of the Reports in the Reich Security Main Office

According to the result of the evidence taken up to now, especially the definitely trustworthy statements of the defendant Nosske as witness in his own case (*Tr. pp. 3490-91, 3495-96*), the following picture is given. The reports submitted as prosecution exhibits were drafted by the suboffice IV A 1—communism, war crimes, enemy propaganda—of office IV of the Reich Security Main Office in Berlin. Until about the end of April 1942 suboffice IV A 1 was the collection and evaluation center of all information and reports submitted by the Einsatzgruppen operating in Russia. In nearly daily reports—nearly 200 reports from July 1941 to April 1942—the original reports submitted to the Reich Security Main Office were summarized into the so-called operational situation reports U.S.S.R. The persons who were employed with the handling of the east reports were the suboffice chief Lindow and as collaborators Dr. Knobloch and Fumy. Only the Einsatzgruppen reported to Berlin and they sent either telegrams or written reports. (NO-4327, Pros. Ex. 6.) The reports which were sent by the Einsatzgruppen to suboffice IV A 1 for evaluation covered field III (living space [Lebensgebiete]) as well as IV (executive). This fact alone, namely that the suboffice specialized on executive matters in the Reich Security Main Office (IV) was thus forced to handle also fields which were completely unknown to it and also, in addition, were covering an extensive sphere, had to lead to insufficiencies and mistakes. To this the fact is added that suboffice IV A 1, having only a small staff of personnel, was not in a position to handle such an extensive additional task and besides that the technical facilities which in doubtful cases would have permitted to consult a map or to inquire at the unit concerned did not exist. As additional source of deficiencies the insufficiency of the communication installations should not remain unmentioned. Frequently the stations and Einsatz-areas were more than 1,000 kilometers distant from Berlin and therefore the transmission was rendered more difficult. It is true that a report transmitted by telegram or courier does not change its contents because it is being transmitted over a few additional hundreds of kilometers or is perhaps 2 weeks longer on its way. But in this connection the decisive fact is that according to experience, sources of mistakes cannot be eliminated completely where teletypes are concerned and that the transmission of

written reports is to a great extent subject to the contingencies of more or less rapidly functioning transport communications. The irregular arrival of the report which was a consequence thereof had to lead to considerable distortions and misrepresentations. In this connection the possibility that reports arrived by teletype and the same reports arrived a second time later on by courier also existed. The taking of evidence showed several examples of the fact that reports with a later date were registered earlier than reports which on account of their being longer on the way were received at a later time by the evaluation center. In cases of doubt it was considered better to use a figure twice, in any case always the higher one. On no account were the Einsatzgruppen and their detachments to represent a bad picture, because the reports in the Reich Security Main Office were compiled by order of Heydrich. It should be obvious that such insufficiency impairs the evidence value of documents drafted under such conditions to a considerable degree. But neither should a psychological element be overlooked. These insufficient conditions, which finally, in April 1942, brought about an essential change in the evaluation of the reports (Tr. pp. 3495-96) were known to all the persons handling these matters. In this way is it a surprise if they, on account of the hopelessness of being able to do away with these insufficiencies, being completely aware that only half of the material was to be shown anyway, simply did not care? They entered no risk—at least from the viewpoint of the conditions at that time—that any undesirable and unpleasant consequences should arise. Russia was far way. Furthermore, who was to check the reports and who was to complain? Third persons had no insight and the chief of the Einsatzgruppen with his detachment chiefs had other troubles and perhaps only a favor was done to him, because nobody was to be left out in case of promotions and awarding of orders. But it is irrelevant whatever the reasons for an untrue reporting may have been; it is a fact that during the course of the war this untrue reporting increased more and more. Himmler's statements in his Posen speech on 4 October 1943 are an important proof for that and nobody will be able to say that this warning was given without reason and and was not to be taken seriously. I quote:

“I now come to a fourth virtue which is very scarce in Germany—truthfulness. One of the major evils, which developed during the war, is untruthfulness in reports, statements, and informations, which subordinate offices send to their superior offices in civilian life, in the state, Party, and armed forces. Reports or statements are the base for every decision. The

truth is that in many branches one can assume in the course of this war that 95 out of 100 reports are plain lies or only half true or half correct." (*Blobel 11, Blobel Ex. 10.*)

b. Procedure of inclusion of the report in the situation report drafted by the Reich Security Main Office

The statements made hitherto were concerned only with the working conditions which existed in suboffice IV A 1. If the unsatisfactory conditions which prevailed there were already enough to cause this office to turn out piece work and incomplete results only, the sources of deficiency were further extended by the so-called report or information channel from subordinate to superior offices. We established—suboffice IV A 1 received the reports directly from the Einsatzgruppen. However, these reports were again only a summary of that which the individual detachments reported in writing, orally, or by teletype; added to this were other sources which, in case of measures to be taken by other, independently working units, or in case of cooperation of several units, were supplied. There is no doubt that the evaluation of the reports collected by the Einsatzgruppen was handled differently and was subject, to a great extent, to the attitude of the group chief and his departmental assistants. But this had taken place once already in a similar manner in most of the Einsatz- or Sonderkommandos, because it was not expedient to have the reports sent directly from the Teilkommando to the Einsatzgruppe, which might have resulted from a particularly difficult task or from special conditions of the area of operations. It was a rule to send the reports of the Teilkommandos first to the Kommando chiefs. He based his activity report to the Einsatzgruppen on the reports received by him, or he had them drafted by his assistant [*Sachbearbeiter*], according to the distribution of task which was in force in his detachment. If the exhibits submitted by the prosecution were identical with the above mentioned original reports and if they perhaps even bore the signature of the Kommando chief concerned, then objection against their correctness would have little hope to be successful; then the fact that the author of the document would have lied either when drafting the document or now in the trial because he is not brave enough to state the truth would be established.

The defense too—its interest in the establishing of the unrestricted truth is just as great as that of any other party in the trial—regrets that it is not possible to submit the original reports of the Einsatzgruppen and Einsatz or Sonderkommandos as documentary evidence.

*EXTRACTS FROM CLOSING STATEMENT OF THE DEFENSE ON BEHALF OF DEFENDANT NAUMANN*¹

* * * * *

III

Accordingly, only the Operational Situation Report of 21 April 1942 (*NO-3276, Pros. Ex. 66*), which contains the references to the executions from 6 to 30 March, falls within the time that Naumann was commander of the Einsatzgruppe.

To be sure, this document has been admitted as evidence. This admission as evidence, however, does not relieve the Court of the obligation of examining the value of this Operational Situation Report as evidence. It is true that according to Ordinance No. 7 the Military Tribunals are not bound to any rules governing the taking of evidence. By this, however, it was obviously not meant that the Military Tribunal can set itself above well established rules of taking evidence, well established rules which alone are a guaranty for an investigation of the truth, and with it for a just decision. This was also expressed by Military Tribunal IV in the recent verdict against Flick, et al., on page 7 of this verdict.²

1. This single document, which comes into consideration as evidence against Naumann insofar as executions within the territory of Einsatzgruppe B are mentioned therein, contains the following violations of the basic rules for the taking of evidence, which must be considered as well established and therefore must be observed if the truth is to be arrived at.

The contents of the document are not derived from the actual observations of the author of the document. The author of this document belonged neither to the staff of Einsatzgruppe B nor to a Sonderkommando or Einsatzkommando. He was not even in Russia, but compiled the document in the office in Berlin, for, as I have already mentioned the operational situation reports were prepared, in the form in which they are presented here, by members of office IV of the Reich Security Main Office in Berlin. It is not known from what records this document has been compiled. Furthermore, the identity of the author is not known, so that there is no knowledge about whether it was a reliable person who had compiled the operational situation reports with the requisite care.

It is also not known if the document was compiled from reports which were made by persons who were reporting on things they

¹ Complete closing statement is recorded in mimeographed transcript, 5 February 1948, pp. 5812-5862.

² *United States vs. Friedrich Flick, et al.* See Vol. VI.

had themselves observed. According to the evidence taken, this is even improbable. Therefore it is a matter of hearsay evidence, which is inadmissible according to the rules for taking evidence in all civilized countries, because hearsay evidence contains so many false sources that a just decision cannot be founded on it. Hearsay evidence itself is inadmissible according to all the recognized rules for the taking of evidence. But as we must assume, in this document it is a matter of hearsay evidence of the third, fourth, or even a higher degree. Furthermore, the document is not signed.

The authenticity of a document has to be proved furthermore according to the recognized rules of court procedure, and this by a witness who will be faced by the defendant and who then also states specifically under oath, where the document was found. This condition has also not been fulfilled. It is therefore more than doubtful whether the facts reported in the operational situation reports actually occurred.

Every defendant is favored by the legal assumption of innocence and a claim to a procedure in which all rules of the law of procedure are adhered to. It is in no way intended to disclaim the assertion that executions were carried out by the Einsatz- and Sonderkommandos subordinate to the Einsatzgruppe while Naumann was chief of Einsatzgruppe B. The defendant Naumann did not disclaim this assertion during his interrogation as a witness. But on account of the explained violations against recognized rules of procedure the offered document does not give proof of the fact that executions were carried out to the extent stated in the operational situation report, especially under the circumstances stated there. It can rather be merely considered as proved that executions took place in which the number of executed persons and the detailed circumstances have not been ascertained. Especially the numbers of executions appear much too high. This is shown by the fact that during the period covered by the report in the sphere of influence of Einsatzgruppe B, the Fuehrer order had been carried out for quite some time already under Nebe, the predecessor of Naumann as testified to by the defendants Blume and Steimle. It appears therefore as absolutely believable if Ott for instance, who in March 1941 was commander of Sonderkommando 7b with Einsatzgruppe B, declares that at the time he took over Sonderkommando 7b there was no further action to register any Jews.

Ott, just like Naumann, doubted the numbers mentioned in the Operational Situation Report dated 21 April 1943 while in the witness stand. The soundness of the reasoning given in this respect is not to be rejected offhand. Ohlendorf and Nosske also

doubted the reporting. Worth mentioning in this respect is that Ohlendorf too declared while in the witness stand that the execution of Jews and Communists happened in the first part of the campaign more often than in the year 1942. As evidence of the fact that the numbers mentioned in the operational situation reports do not have an absolute value as evidence, reference may finally be made yet to the affidavit of Fumy who is very well acquainted with the matter as he collaborated in the compilation of the operational situation report, and who due to his own observations is best able to judge whether these reports are reliable. If Naumann states therefore on the witness stand that according to its form the compilation of the Operational Situation Report dated 21 April 1942 is not at all familiar, then this appears credible; for this form obviously does not originate from the report of the Einsatzgruppe B. In its rebuttal the prosecution offered as proof for the numbers mentioned in the Operational Situation Report dated 21 April 1942 regarding executions carried out, the Documents U.S.S.R., 48 and 56, Prosecution Exhibits 234 and 235.

These documents have no value as evidence as I stated when the documents were offered. First of all I point out that the text of both documents corresponds in part word for word. The numbers mentioned also correspond exactly. Both documents are obviously parts of the same record. The contents of the documents have no connection at all with the acts of Naumann. There reference is rather made to how many dead were found in the mass graves, and that in a small percentage of cases, death was due to gunshot wounds. The cause of death is unknown otherwise. One should not overlook the fact that the less immediate vicinity of Smolensk in which the graves were found was twice within two years the theater of stubborn fighting. If one assumes that, insofar as gunshot wounds were the cause of death, these were due to executions, which is also not an established fact, then the further question arises, by whom and on whose orders these executions took place. I would also briefly like to mention in this respect that the victims of Katyn, for instance, were also mentioned in these reports, those, who according to German reports have always been designated as victims of executions carried out by Russian agencies. It has not been ascertained to this day who actually carried out these executions. Before the International Military Tribunal this question has also not been cleared despite the fact that three witnesses of the Russian prosecution and three witnesses of the German defense have been interrogated in this respect.

Aside from these arguments, which in themselves already show that the mentioned documents are absolutely without value as proof of the act incriminating Naumann, I would like to mention in addition that Naumann was active in Smolensk only during part of the period into which, according to the reports, the death of the bodies found would fall. Besides, any connection between the crimes mentioned in the reports and Naumann's activity is missing. None of the persons mentioned in the reports with the exception of Naumann was a member of the Einsatzgruppe. What Naumann is supposed to have done is also not mentioned in the reports.

The contents of the reports contain nothing but what was shown by the film offered by the prosecution as evidence. That is why I objected at the time against the acceptance of the film¹ as evidence and the Tribunal sustained this objection, too. Documents U.S.S.R., 48 and 56, and Prosecution Exhibits 234 and 235, have therefore no value at all as evidence in the proceedings against Naumann and are thus eliminated as evidence.

Only Prosecution Exhibit 76 remains as evidence, but due to the reasons already mentioned by me, it has only insignificant value as evidence.

*EXTRACTS FROM THE TESTIMONY OF DEFENDANT NOSSKE*²

DIRECT EXAMINATION

* * * * *

[Tr. pp. 3493-6]

DR. HOFFMANN (counsel for defendant Nosske): I now return to your activity. You were then in charge of a department in this office, and what was the size of this department?

DEFENDANT NOSSKE: The department consisted of four people besides myself, one co-worker, one registrar, and two stenographers.

Q. And what was your task in detail?

A. My task was to deal with reports which had been sent us

¹ The prosecution offered a film into evidence as Document No. U.S.S.R.-81, Prosecution Exhibit 173. Counsel for the defendants Naumann and Seibert objected to the showing of the film, and pointed out that it was without probative value. After seeing the film, the Tribunal sustained defense counsel's objection. (*Tr. p. 257.*)

² Complete testimony is recorded in mimeographed transcript, 4, 8, 9 December 47, pp. 3424-3687.

by the main office about partisan reconnaissance, activity and counter-measures, and to evaluate these reports, and to compile them clearly and concisely. Particular care had to be taken that the organizational form of the partisan groups was recognized, their tactics had to be established, the means with which they worked, and so forth, in order to inform the field agencies dealing with partisan reconnaissance how partisan activity was developing in the whole eastern territory.

Q. Did you have to combine any executive power with this activity?

A. No. Executive power could not arise out of this purely receptive activity. Furthermore, no directives were even prepared in this particular department. Directives could only be issued through the ordinary channel of command in existence, that was only through the office chief, the Chief of the Security Police, or Himmler himself.

PRESIDING JUDGE MUSMANN: Dr. Hoffmann, was it his office which prepared the operational reports, his office?

DR. HOFFMANN: Yes, as the witness says, but only those concerning partisan activity, whereas reports concerning shootings, based on the Hitler order we know of, went to Eichmann who was in charge of Jewish affairs.

PRESIDING JUDGE MUSMANN: But the operational reports covered all activities. Activities against partisans, activities against Jews, activity against saboteurs, everything?

DR. HOFFMANN: Yes, and perhaps the witness can comment on this again.

DEFENDANT NOSSKE: Your Honor, these activity reports which were issued in the Reich Security Main Office are to be distinguished from those which bear the title "Reports from Soviet Russia". These reports, about two hundred, which also are the subject of the indictment here were issued between June [1941] and about the end of April 1942. These reports contained everything, partisan warfare as well as Jewish actions and all the activities taking place in the occupied eastern territories reported by the Einsatzgruppen. These reports only appeared as top secret matters. In the spring, the basic change occurred; from this time on reports were not issued concerning Soviet Russia, but the new reports were called "Reports from the Occupied Eastern Territories". Already the name shows that there was a basic difference in these reports, and these new reports, which are also available here in the Document Center but which have not been introduced in evidence, contain these reports from the occupied eastern territories.

PRESIDING JUDGE MUSMANN: But who actually made up the

reports in that office, the reports that have been introduced here in the document books?

DEFENDANT NOSSKE: The reports which have been submitted in evidence here by the prosecution were issued by department IV A1. That is a subdepartment of office IV in the Reich Security Main Office. The people concerned are known, the man in charge was Lindow, and his collaborators were Dr. Knobloch and Fumy.

Q. And who?

A. Fumy and Dr. Knobloch.

Q. Then these three men are the ones who actually prepared the reports which we have here as evidence, Lindow, Knobloch, and Fumy?

A. That is correct.

DR. HOFFMANN: But until when, Witness?

A. These reports of events from U.S.S.R. came to a stop at the end of April 1942. The last copies bear number about 194 or 196. The reports from the occupied eastern territories which were issued after that, and only weekly, bear new numbers which begin with one.

PRESIDING JUDGE MUSMANN: Then, do I understand that the *modus operandi* was for these three men, either acting separately or collectively, to receive the reports from the field and then to combine them and issue them as reports from Berlin?

A. Yes, that is correct.

DR. HOFFMANN: But, Herr Nosske, that was not your activity, was it?

A. I had nothing to do with reports that have been submitted here as evidence by the prosecution. They had been concluded at a time before I joined the office.

Q. Do you know what the reason was for this new kind of reporting?

A. As my predecessor had told me, it was for the reason that the manner of reporting until then had been most unreliable, incorrect, and inaccurate. I myself personally learned from Fumy at a later date that these two people, Dr. Knobloch and Fumy, were so much overworked and had to work under such bad conditions that it can easily be explained why these reports were so inaccurate. Therefore, the evaluation of the reports later on was not only transferred to this one particular office but was distributed to a number of individual departments.

* * * * *

CROSS EXAMINATION

* * * * *

[Tr. pp. 3615-3618]

MR. WALTON: In your direct examination you said you first

went to a school in the suburbs of Berlin, and then you were called for duty in the Reich Security Main Office. What were you first told that you would have to do when you reported to the Reich Security Main Office? That is all I want to know.

DEFENDANT NOSSKE: I reported to office I, of the Reich Security Main Office and they told me there that no decision had been arrived at as to what use I was to be put to.

Q. Then you went ahead, and you said that you were ordered to be an inspector of some kind for a few months, or a few weeks, and after that, after you were relieved of this duty as an auditor or inspector. Then what were you assigned to do?

A. The expressions which you used are such that I must correct them, Mr. Prosecutor. Please do not mind if I do so. I was not an inspector. I was an examiner in examinations; that was a temporary job because they had nothing to do for me, and it was customary that they take practical experienced people to take part as examiners; they had to put questions in examinations.

Q. And after you had finished this task, you were relieved from it. What did you next do?

A. Then they told me in office I; "Now you go over to office chief IV, and report to him." I did so.

Q. What did you do? What duties were you assigned to in office IV?

A. They put me in charge of department IV-D-5.

Q. What did the department IV-D-5 concern itself with?

A. This was a small department which dealt with the evaluation of the reports about partisans in the eastern area.

Q. All right, then one of your duties in IV-D-5 was a review, a consolidation, and distribution of operational situation reports from U.S.S.R., wasn't it?

A. No. That is another question which I cannot answer in this form. They had nothing to do with distribution. I merely got the reports which were competent for my department. They were distributed by the main office.

Q. How often would these reports reach the Reich Security Main Office from each of the four Einsatzgruppen?

A. Very irregularly, but currently.

Q. Well, give us some approximate date? Every two weeks, every three weeks, every two months?

A. Such reports? Every day.

Q. All right. How often would your committee of your command staff meet for discussions and consolidation of these reports?

A. The conference took place once a week, but then not the reports from the East were discussed, but we read through those

excerpts which had been written by various departments about the messages from the East, and to which these departments made contributions. Every one came in there with the sheets, which had already been prepared, as a contribution.

Q. Do you know Dr. Knobloch, K-n-o-b-l-o-c-h?

A. Yes.

Q. Did you know Friedrich Rang, R-a-n-g?

A. Oh, yes.

Q. Did you know Kurt Lindow, L-i-n-d-o-w?

A. Yes.

Q. Did you collaborate with him in these reports?

A. Not with Lindow. During my time Lindow didn't have any idea about this. He sent reports, but how it was handled at my time Lindow didn't know. Rang was chief of a different group which had nothing to do with Russia. That was Rang, but he didn't know anything about these matters. I stayed with him in Mondorf, and I stayed with him in the same cell when I was interrogated by the British, and he always said he knew nothing about these matters. After I was relieved from my office he may have participated in these editorial meetings, I don't know, but about what happened during my time Rang didn't know anything, and he didn't work with me.

MR. WALTON: All right. At this time the prosecution in refutation of this statement which has been made by the witness, that one Friedrich Rang knew nothing about his activity and didn't attend any meetings of his command staff, should like to offer into evidence Document NO-5153, which will become Prosecution Exhibit 189, and which is an affidavit of the witness Friedrich Rang, and respectfully submit that a basis has been laid for the introduction of this affidavit.

PRESIDING JUDGE MUSMANNO: Is the affiant alive?

MR. WALTON: Yes. Well, I'll say, I think, yes, he was the last time I heard from him which was some time after he signed the affidavit.

* * * * *

VII. EVIDENCE AND ARGUMENTS ON IMPORTANT ASPECTS OF THE CASE

A. Selections from Evidence and Arguments of the Prosecution

I. INTRODUCTION

For the purpose of publication, the prosecution's case has been divided into four parts—

1. *The task of the Einsatzgruppen.* The prosecution alleged that it was the primary task of the Einsatzgruppen to carry out the Hitler order calling for the extermination of Jews, Communists, gypsies, and other racial or national groups considered by the Nazis as "racially inferior" or "politically undesirable". It was further alleged that another task of these Einsatzgruppen consisted in dispatching small detachments into prisoner-of-war camps in the East for the segregation and extermination of those inmates who were politically or racially undesirable.

Selections from the evidence of the prosecution on this point, consisting of contemporaneous documents and affidavits of the defendants, are set forth in pp. 119 to 140.

2. *The magnitude of the enterprise.* Of the contemporaneous documents on this point appearing in pp. 141 to 197, one document reports the killing of more than 220,000 people, another of more than 130,000, still others more than 91,000 persons, 80,000 persons, and 60,000 persons, respectively, and some report the killing of smaller numbers but the document reproduced here reports upon the killing of fewer than 10,000 persons.

3. *Methods of execution.* It was alleged by the prosecution that mass exterminations of Jews and other undesirables were carried out mainly by shooting, and that gas vans were also used for this purpose. Selections from the prosecution's evidence on this point set forth in pp. 198 to 216 include a contemporaneous document, an affidavit of an eyewitness, the German businessman Friedrich Graebe, and affidavits of several defendants.

4. *Membership in criminal organizations.* In count three of the indictment, all defendants were charged with membership in organizations declared to be criminal by the International Military Tribunal, namely, of the SS, the SD, and the Gestapo, respectively. The prosecution introduced in evidence extracts from the original SS personnel files. These files showed the duration of membership,

promotions, decorations, recommendations for promotion, etc., of the individual defendants.

An extract from the prosecution's brief on the scope of the declaration of criminality by the International Military Tribunal, of the Gestapo, the SS and SD, appears in pp. 216 to 221; and extracts from the testimony of the defendant Braune appear in pp. 323 to 328.

2. THE TASK OF THE EINSATZGRUPPEN

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
EC-307-1	11	Letter from Heydrich to the Chiefs of all Einsatzgruppen concerning "The Jewish Question in the Occupied Territories", 21 September 1939.	
NO-3414	14	Extract from operational order No. 8, 17 July 1941.	
710-PS	194	Letter from Goering to Heydrich concerning solution of Jewish question, 31 July 1941.	
NO-2856	148	Affidavit of Otto Ohlendorf, 2 April 1947.	
NO-3644	26	Affidavit of Erwin Schultz, 26 May 1947.	
NO-4145	10	Affidavit of Walter Blume, 29 June 1947.	

TRANSLATION OF DOCUMENT EC-307-1 PROSECUTION EXHIBIT 11

LETTER FROM HEYDRICH TO THE CHIEFS OF ALL EINSATZGRUPPEN
CONCERNING "THE JEWISH QUESTION IN THE OCCUPIED TERRI-
TORIES", 21 SEPTEMBER 1939

Pencil note:

Vol 232 f

Enclosure 4

Copy

The Chief of the Security Police

PP (II)-288/39 Secret.

Berlin, 21 September 1939.

Express Letter

To the Chiefs of all Einsatzgruppen of the Security Police

Re: The Jewish question in the occupied territory.

With reference to the conference which took place today in

Berlin, I would like to point out once more that the *total measures planned* (i. e., the final aim) are to be kept *strictly secret*.

A distinction is to be made between,

1. The final aim (which will take some time), and
2. Sections of the carrying out of this aim (which can be carried out within a short space of time).

The measures planned require the most thorough preparation both from the technical and the economic point of view.

It goes without saying that the tasks in this connection cannot be laid down in detail. The following instructions and directives simultaneously serve the purpose of urging the chiefs of the Einsatzgruppen to practical consideration.

I

The first necessity for the attaining of the final aim is the concentrating of the country Jews in the big towns. This is to be carried out immediately.

A distinction is to be made (1) between the territories of Danzig and West Prussia, Posen, Eastern Upper Silesia, and (2) the remaining occupied territories. As far as possible the territories enumerated under (1) are to be cleared of Jews, but the very least to be aimed at is the formation of very few "concentration" towns.

In the territories mentioned under (2) as few "concentration" points as possible are to be established in order to facilitate later measures. Care must be taken that only such towns be chosen as concentration points as are either railroad junctions or at least lie on a railway.

It is laid down on principle that Jewish communities of *less than 500 persons* are to be dissolved and to be sent to the nearest "concentration" town.

This decree does not concern the territory of Einsatzgruppe I which, lying east of Krakow, is bordered by Polanico, Jaroslav, the new demarcation line and the former Slovak-Polish frontier. Within this territory only a temporary census of Jews need be taken. The rest is to be done by the Jewish Council of Elders dealt with below.

II

Jewish Council of Elders

1. In every Jewish community a Jewish Council of Elders is to be set up which, as far as possible, is to be formed from persons in authority and rabbis who have remained behind. Up to 24 male Jews (according to the size of the Jewish community) are to form the Council of Elders. It is to be made fully responsible, within the meaning of the word, for the exact and punctual

carrying out of all instructions issued or to be issued.

2. In the event of the sabotaging of such instructions, the strictest measures are to be announced to the council.

3. The Jewish councils are to undertake a temporary census of the Jews—if possible arranged according to sex (ages (a) up to 16 years, (b) from 16 to 20 years, and (c) over) and according to the principal professions—in their localities, and to report thereon within the shortest possible period.

4. The Councils of Elders are to be advised of the days fixed and the appointed times of the evacuation, the possibilities of evacuation, and finally the evacuation routes. They are then to be made personally responsible for evacuation of the Jews from the country. The reason for the concentrating of Jews in the towns is to be that Jews have to a very great extent participated in franc-tireur attacks and pillage.

5. The Councils of Elders in the "concentration" towns are to be made responsible for the suitable accommodation of the Jews from the country. The concentration of the Jews in the towns will probably, in the interests of general security, call for certain regulations in these towns, e.g., that certain quarters of the town be altogether forbidden to the Jews; that in the interests of economic necessity, they be forbidden to leave the Ghetto, forbidden to go out after a certain hour in the evening, etc.

6. The Council of Elders is to be made responsible for the suitable feeding of the Jews during their transportation to the towns.

No objections are to be made if the departing Jews take their movable possessions with them, as far as this is technically possible.

7. Jews who do not comply with the order to move to the towns are, in certain cases, to be given a short respite. They are to be advised of the most strict punishment if they do not comply with this time limit.

III

All necessary measures are, on principle, always to be taken in the closest agreement and cooperation with the German civil administration and the competent local military authorities

When carrying out this action care is to be taken that the economic security of the occupied territories suffers no damage.

1. The needs of the army are to be the first consideration, e.g., it will hardly be possible, to begin with, to avoid leaving behind Jewish traders here and there who, for lack of other possibilities, must definitely remain behind for the provisioning of the troops. In such cases, however, the speedy Aryanization of these industries is to be aimed at, in agreement with the

competent local German administrative authorities, and the migration of the Jews completed.

2. It goes without saying that Jewish branches of industry and trade which are vital to the life of the community, the war effort, or the Four Year Plan must be maintained in order to safeguard economic interest in the occupied territories. In such cases, also, the quickest possible Aryanization is to be aimed at and the migration of the Jews completed.

3. Finally, the food question in the occupied territories is to be taken into consideration. For example, if possible, land belonging to Jewish settlers is to be farmed with their own by the neighboring German or Polish peasants, in an official capacity, so that the gathering in of the harvest still in the fields or the continued cultivation can be safeguarded. With regard to this important question, contact is to be made with agricultural expert consultants of the chief of civil administration.

4. In all cases where the interests of the security police on one hand and the German civil administration on the other are not in agreement, the individual measures in question are to be reported to me as quickly as possible before their execution and my decision awaited.

IV

The chiefs of the Einsatzgruppen will report to me continually regarding the following circumstances:

1. Census of Jews in their districts (if possible in the above-mentioned groups). The numbers are to be divided into Jews who will be migrating from the country and those who are already in the towns.

2. Names of towns selected as "concentration" points.

3. The time limits set for the migration of the Jews to the towns.

4. Summary of all Jewish branches of industry and trade which are vital to the life of the community, the war effort, or the Four Year Plan.

If possible the following facts are to be established:

a. The type of undertaking (together with estimate of the possibility of the adaptation of the undertaking to one vital to the life of the community, the war effort, or the Four Year Plan).

b. Which of these undertakings it is most urgent to Aryanize (to avoid damage of any kind)? How is it proposed to effect the Aryanization? Germans or Poles (this decision is dependent on the importance of the industry).

c. What is the number of the Jews employed in these industries (among those in the influential positions)? Can the industry be maintained without any more ado after the evacuation of the

Jews, or does this require the allocation of German or Polish workers? To what extent? Insofar as it is necessary to bring in Polish workers, care must be taken to obtain them principally from the former German Provinces, so that the Polish element there is consequently broken up. This question can only be dealt with through the intervention and cooperation of the organized German labor offices.

V

In order to attain the aims which have been set, I expect the fullest cooperation from all forces of the security police and the security service.

The neighboring chiefs of the Einsatzgruppen must immediately get into touch with one another, in order that the territories in question may be dealt with in their entirety.

VI

The OKH [Army High Command], the Plenipotentiary for the Four Year Plan (for the attention of State Secretary Neumann), the Reich Ministries of the Interior (for the attention of State Secretary Stuckart), for Food and Economy (for the attention of State Secretary Landfried), as well as the chiefs of the civil administration of the occupied territories have received a draft copy of this decree.

[Signed] HEYDRICH

Certified:

[Signed] SCHMIDT

Chancery Employee

True copy:

[Signed]

Major of the General Staff

TRANSLATION OF DOCUMENT NO-3414
PROSECUTION EXHIBIT 14

EXTRACT FROM OPERATIONAL ORDER NO. 8, 17 JULY 1941

The Chief of the Security Police and the SD

2 1 B/4 1-top secret IV A 1 C

[stamp] top secret

Berlin, 17 July 1941

[crossed out by hand]

530 copies

276th copy

Operational Order No. 8

Subject: Directives for the Kommandos of the Chief of the Security Police and the SD which are to be detailed to the

permanent prisoner-of-war camps [Stalags] and transit camps [Dulags].

Appendices: 2 stitched enclosures, 1 and 2, 1 loose enclosure.

I am enclosing directives for the purging of the prisoner camps which contain Soviet Russians. These directives have been formulated in agreement with the Supreme Command of the Armed Forces—Prisoners of war department—(see enclosure 1). The commanders of the prisoner-of-war and transit camps (Stalags and Dulags) have been informed by the Supreme Command of the Armed Forces.

I request that a Kommando consisting of one SS Leader and 4–6 men be detailed for the prisoner-of-war camps in that area. If additional forces are needed to carry out the required tasks, I am to be informed at once. I draw attention, however, to the fact that the state police offices in the Reich, which are not concerned, are so understaffed that further forces cannot be taken from them.

In order to facilitate the execution of the purge, a liaison officer is to be sent to Generalmajor [Brigadier General] von Hindenburg, Commander in Chief of the prisoner-of-war camps in the Military District I, East Prussia, in Koenigsberg, Prussia, and to Generallieutnant [Major General] Herrgott, Commander in Chief of the prisoner-of-war camps in the General Government in Kielce.

The following are to be detained at once as liaison officers: criminal Councilor Schiffer, regional Gestapo headquarters Stettin, to Brigadier General von Hindenburg* in Koenigsberg, Prussia, and criminal Commissar Raschwitz, with the commander of the Security Police and of the SD in Krakow, to Major General Herrgott in Kielce.

The duty of those liaison officers is to coordinate from time to time, and especially in the initial stages of the action, the operations of the Kommandos uniformly and in accordance with those directives, and to see that there are smooth communications with the offices of the armed forces.

For the execution of the tasks assigned to the Kommandos in the prisoner-of-war camps, I attach—as enclosure 2—directives for the Kommandos of the chief of the Security Police and of the SD to be detailed to the permanent [prisoner-of-war] camps (Stalags), of which the Supreme Command of the Armed Forces and, therefore, also the regional commanders and camp commanders have been informed.

Before carrying out the executions, the leaders of the Einsatz-

* Oskar von Hindenburg, son of the former Reich president.

kommandos are to contact, in each case, the heads of the regional Gestapo headquarters which has jurisdiction or the commanders of the area competent for their camp, with regard to carrying them out. The executions must not be carried out in the camp itself or in its immediate neighborhood. They are not public and are to be carried out as inconspicuously as possible.

With regard to the screening of the transit camps in the newly occupied territories, separate instructions are being issued to the chiefs of the Einsatzgruppen of the Security Police and the SD. The transit camps which lie in the areas of the additional Einsatzkommandos detailed by the commanders of the Security Police and the SD and of the state police offices are to be screened by those.

A list of the permanent prisoner-of-war camps existing as of now is attached as enclosure 3.

Supplement—I request that the chiefs of the Einsatzgruppen try to execute the purge of the transit camps with their own forces as far as possible.

Supplement—for the state police office *Stettin*.

The attached directives are to be handed over to Criminal Councilor Schiffer, who is to report immediately to Brigadier General von Hindenburg in Koenigsberg, Prussia.

Supplement—for the commander of the Security Police and of the SD in *Krakow*.

The attached directives are to be given to the criminal police Commissioner Raschwitz, who is to report immediately to Major General Herrgott.

Distribution:

To—

- a. The Commander of the Security Police and of the SD, *Krakow*
- b. The Commander of the Security Police and of the SD, *Radom*
- c. The Commander of the Security Police and of the SD, *Warsaw*
- d. The Commander of the Security Police and of the SD, *Lublin*
- e. The Regional Gestapo Headquarters, *Koenigsberg, Prussia*
- f. The Regional Gestapo Headquarters, *Tilsit*
- g. The Regional Gestapo Headquarters, *Zichenau-Schroetttersburg*
- h. The Regional Gestapo Headquarters, *Allenstein*
- i. The Regional Gestapo Headquarters, *Stettin*

For information:

To the Reich Leader SS and Chief of the German Police

To the Chief of the Security Police and of the SD
To office Chiefs I, II, III [?], IV, and VI
To the Subdepartments IV D 2 and IV D 3

To—

The Higher SS and Police Leader North—East *Koenigsberg-Prussia*

The Higher SS and Police Leader *Krakow*

The Inspector of the Security Police and of the SD *Koenigsberg-Prussia*

The Commander of the Security Police and of the SD in the General Government, *Krakow*

To the—

Einsatzgruppe A

Sonderkommando 1 a

Sonderkommando 1 b

Einsatzkommando II

Einsatzkommando III

Einsatzgruppe B

Sonderkommando 7 a

Sonderkommando 7 b

Einsatzkommando VIII

Einsatzkommando IX

Einsatzgruppe C

Sonderkommando 4 a

Sonderkommando 4 b

Einsatzkommando V

Einsatzkommando VI

Einsatzgruppe D

Sonderkommando 10 a

Sonderkommando 10 b

Einsatzkommando XI

Einsatzkommando XII

[Signed] HEYDRICH
certified:

[Signed] WOLFERT
Office clerk

[Stamp] Secret State Police

Copy

Top Secret
Enclosure 1

Directives for the segregation of civilians and suspicious prisoners of war from the Eastern campaign, in the prisoner-of-war camps lo-

cated in the occupied territories, in the zone operations, in the General Government, and in the camps of the Reich territory.

I. Purpose

The Wehrmacht must immediately free itself of all those elements among the prisoners of war who must be regarded as bolshevist influences. The special situation of the campaign in the East therefore demands *special measures* [Italics original] which have to be carried out in a spirit free from bureaucratic and administrative influences and with an eagerness to assume responsibility.

While the regulations and orders of the prisoners of war system were hitherto based exclusively on considerations of a *military* nature, now the *political* goal must be attained, namely, to protect the German people from Bolshevist agitators and to gain a firm grip on the occupied territory at the earliest possible moment.

II. Means to attain the objective

A. The inmates of the camps containing Russians, therefore, have first to be segregated within the camps according to the following point of view:

1. Civilians;
2. Soldiers (inclusive those who doubtlessly have dressed in civilian clothes);
3. Politically intolerable elements from 1 and 2;
4. Persons from 1 and 2 who seem to be particularly trustworthy and who are, therefore, suitable for employment for the reconstruction of the occupied territory;
5. Ethnic groups among the civilians and soldiers.

B. While the rough separation pursuant to A 1 to 5 is made by the camp authorities themselves, the Reich Leader SS will make available for the segregation of the persons pursuant to A 3 and 4.

"Einsatzkommandos of the security police and security service."

They are directly subordinated to the chief of the security police and security service [SD], especially trained for their special assignment, and take their measures and make their investigations within the framework of the camp regulations according to directives which they have received from the chief of the security police and the security service.

The commanders, particularly their counterintelligence officers, are duty bound to cooperate closely with the Einsatzkommandos.

III. Further treatment of the segregated groups

A. Civilians, if unsuspected, remain segregated in the camp until their repatriation to the occupied territory appears possible.

The date for it is fixed by the competent armed forces commander (respectively the commander of the army [group] rear area) after approval by the competent agencies of the chief of the security police and security service. The main condition for repatriation is that the person in question can with certainty be utilized for labor at his or her native place, or in labor units to be set up specifically.

The armed forces commander (respectively the commander of the army [group] rear area) is responsible for supplying guards during the transport. As far as possible the camp will provide an escort detachment.

As for "suspects" see II A 3.

B. *Military personnel*

Because of a possible employment within the Reich territory, Asiatics have to be separated from soldiers of European appearance. Officers in many cases will have to be segregated as "suspects". On the other hand officers, in order to prevent them from influencing the enlisted personnel, are to be separated from them at an early stage.

A special order will be issued regarding the final assignment of military personnel. Already here it must be stressed that *no* Asiatics and persons speaking the German language are to be considered for employment in Germany.

C. As for the persons segregated as "suspects" (see II A 3) the Einsatzkommando of the security police and the security service will make further decisions.

Should some persons who were regarded as suspects later on turn out to be nonsuspects, they are to be sent back to the other civilians or soldiers in the camp.

The request of the Einsatzkommandos for the surrender of any other persons must be complied with.

D. *Trustworthy persons* are first to be employed for segregating suspects (II A 3) and for other tasks of the camp administration. (Special reference is made to "Volga-Germans".)

If they are particularly fit for reconstruction work in the occupied territory, a request for release made by the Einsatzkommando of the security police and security service may be denied only if there is any special interest in an individual person from a counterintelligence viewpoint.

E. *Ethnic groups*, e. g. Ukrainians, White Russians, Lithuanians, Latvians, Estonians, Finns, Georgians, and Volga-Germans. Separation of both soldiers *and* civilians, unless these are sent to the occupied territory in the near future, anyway.

As to the employment of the individual ethnic groups, a special order will be issued.

Berlin, 17 July 1941.

Office IV

Directives for the Kommandos of the Chief of the Security Police and the Security Service to be detailed to the permanent prisoner-of-war camps [Stalags].

The Kommandos will be detailed in accordance with the agreement between the chief of the security police and the security service and the Supreme Command of the Armed Forces, of 16 July 1941 (see encl. 1).

Within the framework of the camp regulations the Kommandos are operating independently by virtue of special authorization and in accordance with the general directives issued to them. It goes without saying that the Kommandos will keep closest contact with the camp commander and the counterintelligence officer attached to him.

The task of the Kommandos is the political screening of all inmates of the camp and the segregation and further treatment of—

a. elements which are undesirable for political, criminal, or other reasons,

b. those persons who can be used in the reconstruction of the occupied territories.

No aids can be made available for the Kommandos in the performance of their task. The "German Register of Wanted Persons", the "list compiled by the Office for the Investigation of Domiciles", and the "Special Register of Wanted Persons, U.S.S.R." will be of very little use in most cases; the "Special Register of Wanted Persons, U.S.S.R." is not sufficient because only a small proportion of the Soviet Russians classified as dangerous are listed therein.

The Kommandos, therefore, will have to rely on their own specialized knowledge and ability, on their own clues and self-acquired experiences. For this reason they will not be able to start on their task until they have accumulated sufficient material.

For the time being and also later on, the Kommandos in performing their tasks will utilize to the fullest possible extent the experience which the camp commanders have accumulated from observation of the prisoners and from interrogation of camp inmates.

Furthermore, the Kommandos must endeavor right at the start to single out those elements among the prisoners which appear to be reliable, regardless of whether or not they are Communists,

so as to utilize them for their information service inside the camp and later on, if advisable, also in the occupied territories.

It must be possible through the employment of these confidential agents and by making use of any other means available to single out, as a first step, all those elements among the prisoners which are to be segregated. By a short interrogation of the singled-out persons and, possibly, by questioning other prisoners, the Kommandos will be in a position to take the final decision in each individual case.

The statement of *one* confidential agent is as such not sufficient proof to class a camp inmate as suspicious. Somehow or other, a confirmation should be obtained if possible.

Above all, it is necessary to find out all important officials of the state and the Party, in particular—

Professional revolutionaries.

The official of the Comintern.

All influential party officials of the Communist Party.

Of the Soviet Union and its subdivisions in the central committees, the regional and district committees.

All People's Commissars and their deputies.

All former Political Commissars in the Red Army.

The leading personalities on the central and intermediate level of the state administration.

The leading personalities of the economy, the Soviet-Russian intellectuals.

All Jews.

All persons found to be agitators or fanatical Communists.

As already mentioned, it is no less important to sort out those persons who may be used for the reconstruction, the administration, and economic management of the conquered Russian territories.

Finally, it will be necessary to sort out those persons who will yet be wanted for the conclusion of further investigations, no matter whether of a political nature or otherwise, and for the clarification of questions of general interest. This category includes in particular all higher state and Party officials who are able to give information regarding the measures and working methods of the Soviet-Russian state, the Communist Party or the Comintern, owing to their position and their knowledge.

Finally when making any decisions the racial origin has to be taken into consideration.

The leader of the Einsatzkommando will transmit a weekly brief report to the Reich Security Main Office by teletype or express [special delivery] letter. This report will contain—

1. A *short* account of the operations of the past week.

2. Number of persons definitely regarded dangerous (statement of numbers sufficient)
3. List of names of persons classed as—
Officials of the Comintern,
important party officials,
People's Commissars,
Political Commissars,
leading personalities,
giving a concise description of their positions.
4. Number of persons to be classed as unsuspected.
 - a. Prisoners of war.
 - b. Civilians.

On the strength of these operational reports the Reich Security Main Office will communicate further measures to be taken at the earliest possible moment.

In order to carry out successively the measures indicated in these instructions, the Kommandos will request the camp authorities to surrender the prisoners in question.

Camp authorities have been instructed by the Supreme Command of the Armed Forces to comply with such requests (see encl. 1).

Executions must not be carried out in or near the camp. If the camps are in the General Government close to the frontier, prisoners are to be moved to former Soviet territory, if possible, for special treatment.

In the event of executions being necessary for reasons of camp discipline, the leader of the Einsatzkommando has to get in touch with the camp commander for this purpose.

The Kommandos are required to keep records of the completed special treatments. These records must contain serial numbers, surnames and first names, date and place of birth, military rank, trade or profession, last place of residence, reason for the special treatment, and date and place of the special treatment (sheaves of files).

As regards the carrying out of the executions, the removal of reliable civilians and the eventual drafting of confidential agents into the occupied territories to be employed by the Einsatzgruppen, the leader of the Einsatzkommando will get in touch with the leader of the nearest local Gestapo headquarters or with the commander of the security police and the security service and, via the latter, with the chief of the Einsatzgruppe in question in the occupied territories.

As a matter of principle, such communications must be transmitted to the Reich Security Main Office IV A 1 for information.

Exemplary conduct on and off duty, smoothest possible co-

operation with the camp commandant, careful scrutiny is enjoined on the leaders of the Einsatzkommandos and all members.

The members of the Einsatzkommandos have at all times to bear in mind the special importance of the tasks set them.

[stamp] Top Secret

Enclosure 3

Amt IV

Berlin, 21 August 1941

List of the prisoner-of-war camps in the area of Military District I and the General Government

Military District I

1. Officer's [PW] camp [Oflag] 63. .in Proekuls
2. Officer's [PW] camp [Oflag] 53. .in Heydekrug
3. Officer's [PW] camp [Oflag] 60. .in Schirwindt
4. Officer's [PW] camp [Oflag] 52. .in Schuetzenort (Ebenrode)
5. Officer's [PW] camp [Oflag] 56. .in Prostken
6. Officer's [PW] camp [Oflag] 68. .in Suwalki
7. Permanent PW
 camp [Stalag] 331. .in Fischborn-Turosel
8. Officer's camp 57. .in Ostrolenka

General Government

1. Permanent PW camp 324. .in Ostrov-Mazowiecka
2. Permanent PW camp 316. .in Siedlce
3. Permanent PW camp 307. .in Biala-Podlaska
4. Permanent PW camp 319. .in Chelm
5. Permanent PW camp 325. .in Zamosc
6. Permanent PW camp 327. .in Jaroslaw

The officer's camps are at present used as Stalags.

The transit camps are, according to the communication by the Supreme Command of the Armed Forces, in the zone of operations and are from time to time moved nearer to the front as locally required. Their present location may be found by inquiry at the Quartermaster General, Department Prisoners of War—telephone: Anna 757 (military line)—Captain Sohn.

TRANSLATION OF DOCUMENT 710-PS
PROSECUTION EXHIBIT 194

LETTER FROM GOERING TO HEYDRICH CONCERNING SOLUTION OF
JEWISH QUESTION, 31 JULY 1941

The Reich Marshal of the Greater German Reich
Plenipotentiary for the Four Year Plan
Chairman of the Ministerial Council for National Defense

Berlin, 31 July 1941

To The Chief of the Security Police and the Security Service,
SS Gruppenfuehrer Heydrich

Complementing the task that was assigned to you on 24 January 1939, which dealt with arriving at—through furtherance of emigration and evacuation—a solution of the Jewish problem, as advantageously as possible, I hereby charge you with making all necessary preparations in regard to organizational and financial matters for bringing about a complete solution of the Jewish question in the German sphere of influence in Europe.

Whenever other governmental agencies are involved, these are to cooperate with you.

I charge you furthermore to send me, before long, an over-all plan concerning the organizational, factual, and material measures necessary for the accomplishment of the desired solution of the Jewish question.

[Signed] GOERING

TRANSLATION OF DOCUMENT NO-2856
PROSECUTION EXHIBIT 148

AFFIDAVIT OF OTTO OHLENDORF, 2 APRIL 1947*

I, Otto Ohlendorf, swear, depose, and state—

1. I was Chief of Einsatzgruppe D from the time of its formation in June 1941 until June 1942. The areas detailed to me for the purpose of special tasks included parts of Bessarabia and also the region to the south, and including the following cities: Chernovitsy, Mogilev-Podolski, Yampol, Ananev, Berezovka, Nikolaev, Melitopol, Mariupol, Rostov on the Don, and also the peninsula of the Crimea. Some of the places within the area detailed to me were Odessa, Kherson, Simferopol, and also the racial German regions in the Landau and Speyer area. I can no longer remember other names which outline more sharply the area detailed to me.

2. The staff of Einsatzgruppe D consisted of only a few persons. The former Standartenfuehrer Willy Seibert was my Chief III [Leiter III]. Since he was the senior officer from point of service after me, he was entrusted by me with the duties of a deputy

* Defendant Ohlendorf testified in Court with respect to his affidavit on 9 October 1947 (Tr. p. 573).

during my absence. One of his tasks was the composition of all reports which went to the higher headquarters, to the Reich Security Main Office, Berlin, and to the 11th Army. In rare cases only, if very important reports had to be written, I dictated them myself, and later informed Seibert of the contents as a routine matter. Seibert had full access to all the secret files, including these which were designated as top secret. In cases where reports bear my signature these can just as well have been written by Seibert as by me. Reports which are signed by Seibert were as a rule written by him during my absence from the Einsatzgruppe. Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe D. Only two people could have had complete knowledge of the number of executions which took place, namely Seibert and myself. I tried to keep the number secret in order to prevent the Kommandofuehrer from making a contest of it and reporting larger numbers than had actually been executed. The former Obersturmfuehrer Heinz-Hermann Schubert was my adjutant and assigned to managing the business room. The registry, the dispatching and registering of mail, and the daily business routine were under him. My staff consisted further of a physician, Dr. Otto Schnopfhagen, an economist [Wirtschaftsfuehrer] a technical advisor, a radio officer who at the same time took dictation for radio messages, and several clerical workers and orderlies.

3. On the basis of orders which were given by former Brigadefuehrer Streckenbach, Chief of Amt I of the RSHA, by order of the head of the RSHA, to the chiefs of the Einsatzgruppen and the Kommandofuehrer at the time of the formation of the Einsatzgruppen in Pretzsch (in Saxony) and which were given by the Reich Leader SS to the leaders and men of the Einsatzgruppen and Einsatzkommandos who were assembled in Nikolaev in September 1941, a number of undesirable elements composed of Russians, gypsies, and Jews and others were executed in the area detailed to me. All Jews who were arrested as such were to be executed within my area. It was my wish that these executions be carried out in a manner and fashion which was military and suitably humane under the circumstances. For this reason I personally inspected a number of executions, for example, executions which were carried out by Kommando 11b under the direction of Dr. Werner Braune, executions by Kommando 11a under Sturmbannfuehrer Zapp in Nikolaev, and a smaller execution by Kommando 10b under the leadership of Alois Persterer in Ananew. For technical reasons (e.g., because of road conditions) it was not possible to inspect all mass executions. Insofar as I was prevented from inspections for personal reasons, I ordered members

of my staff to represent me at these. I remember that Schubert inspected an execution which was carried out by Kommando 11b under Braune's direction in December 1941 in Simferopol. The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel. The latter was captain of the protective police [Schutzpolizei] and commander of the protective police company attached to me. Details, such as whether and to which executions I sent the two last named, I can no longer remember.

I have read the above statement in the German language consisting of 4 pages and declare that it is true and correct to the best of my knowledge and belief. I have had opportunity to make alterations and corrections in the above statement. I have made this statement voluntarily and freely, without any promise of reward, and I was subjected to no compulsion or duress of any kind.

Nuernberg, 2 April 1947 [Signed] OTTO OHLENDORF

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TRANSLATION OF DOCUMENT NO-3644
PROSECUTION EXHIBIT 26

AFFIDAVIT OF ERWIN SCHULZ, 26 MAY 1947*

I, Erwin Schulz, swear, declare, and depose—

1. I was born on 27 November 1900, in Berlin. I attended the "Koelnisches Gymnasium" [senior high school] from 1906 until 1918, and then went into the army. After returning from my military duties which lasted from 11 April 1918 to 26 February 1919, I resumed my studies at the Koelnisches Gymnasium and matriculated there. I then studied law at the University of Berlin for two semesters; was forced, however, to leave the university owing to financial difficulties. I joined the staff of the Dresdner Bank in Berlin, and went to Hamburg approximately in July 1923. On 5 November 1923, I joined the security police, Bremen, and remained with this organization until 1938. I was then transferred to the state police in Bremen. I became a Regierungsrat [governmental counsellor] in 1938. I remained with the State Police, Bremen, until 1939. After that time, I transferred to the state police in Reichenberg, Sudetengau, and in 1940 was transferred to Hamburg, where on 12 April 1940 I became commissar-inspector of the security police and the SD. Effective from 1 March 1941, I

* Defendant Schulz testified on 17, 18, 20, and 21 October 1947 (*Tr. pp. 908-1188*).

was transferred to Berlin to the RSHA Geheimes Staatspolizeiamt [Gestapo Headquarters] and became group chief for education and training at office I. At the same time, I was commissioned to take care of official matters pertaining to, and on behalf of, the Commandant of the Fuehrer school of the Security Police in Berlin-Charlottenburg. In February 1943 I was appointed chief of office I, when my predecessor Streckenbach was called to the Waffen SS. With effect from 1 May 1944 I became Commander of the Security Police in Salzburg, and kept this position until the end of the war. Approximately three weeks before the end of the war I was appointed SS and Police Leader for the Gau Salzburg, by Kaltenbrunner.

2. I became a member of the NSDAP on 1 May 1933. My Party membership number is 2902238. I became a member of the SS on 20 April 1935. My SS membership number is 170484.

3. When I was Commander of the Fuehrer school of the Security Police in Berlin-Charlottenburg and chief of group I B at the RSHA, I received, in May 1941, an order by either Streckenbach or Heydrich to keep the current class under training available for mobilization. Approximately at the same time, I was instructed to take over the leadership of the Einsatzkommando 5, which at that period was activated in Pretzsch. The Einsatzkommando 5 was a part of Einsatzgruppe C. The current class, trained at the Fuehrer school, was ordered to Pretzsch in order to be later divided up and assigned to the individual Einsatzkommandos. I myself was in Pretzsch only temporarily, as, at this time, I was engaged with my personal move from Hamburg to Berlin and also with official matters pertaining to the RSHA. It was approximately during the first ten days in June 1941 that the chiefs of the Einsatzgruppen and leaders of the Kommandos were called to the RSHA, Prinz Albrecht Palace, in order to hear a speech by Heydrich, in which he outlined the policy to be adopted and gave us some outlines concerning the carrying out of the tasks imposed upon the Einsatzgruppen.

4. On or about 23 June 1941, the Einsatzgruppe C, consisting of Sonderkommandos 4a and 4b, and the Einsatzkommandos 5 and 6 started to march in the direction of Gleiwitz. In the beginning of July, I cannot remember the exact date, we marched into Lvov. It became known there that a number of persons from Lvov had been killed before the retreat of the Russian troops. Shortly after our arrival in Lvov, Dr. Rasch, Chief of the Einsatzgruppe C, informed us that Jewish officials and inhabitants of Lvov had participated in these killings. A military command post within the city had already created a local militia. Dr. Rasch who was working in closest cooperation with the militia, had in-

structed Kommando 4b and after their departure, Kommando 6, to support the militia. Participants and suspected persons were arrested on the same or following day. In addition, the Kommando Schoengarth (BdS Krakow) was put into action.

5. After the completion of these arrests approximately 2,500 to 3,000 people had been collected in the stadium which was situated right next to the quarters of the Einsatzgruppe C. Among those arrested, there were, so I was told, also non-Jews who had been suspected of having participated in the murders. On the following day we were informed by Dr. Rasch, that a Fuehrer order had come into force according to which guilty persons or even strongly suspected persons were to be shot as reprisals for these murders. As far as I remember, the OKW order that all political officials and Soviet-Russian commissars, if one could lay hands on them, were to be shot, was also published at that time. Approximately 4 days after our arrival, the executions of the persons arrested were started. Dr. Rasch was supervising these executions which were carried out by Einsatzkommando 6, under Standartenfuehrer Kroeger (Dr.). I myself saw Dr. Rasch on the field where the executions were being carried out, and Sturmbannfuehrer Dr. Hoffmann, chief of staff of Dr. Rasch, also confirmed the fact that Dr. Rasch was present at the executions.

6. When I returned to my unit, Einsatzkommando 5, at midday of the same day, I was told by one of my leaders that Dr. Rasch had given orders that Kommando 5 was to take over the carrying out of the executions for that afternoon. I immediately tried to get in touch with Dr. Rasch, but only succeeded in speaking to his chief of staff, Dr. Hoffmann, who confirmed the order. I was going to try and rescind the order as far as my Kommando was concerned, I did not, however, succeed. I repeated the order in front of my leaders and the troops and gave instructions that the executions were to be carried out in a serious and dignified manner. Useless tortures were to be avoided. I personally ascertained that the physician of the Einsatzgruppe C, Dr. Kroeger (a brother of the leader of the Einsatzkommando 6), was present during the executions. I was convinced that I had done all in my power to carry out the executions in a military and humane way. My Kommando shot approximately 90 to 110 people.

I had subdivided my Kommando into three platoons; each platoon consisted of about 50 men. The persons to be executed were transported by trucks to the place of execution. At each time there were about 18 to 22 persons. I no longer remember the exact number in the trucks. The first platoon was placed face to face with the persons about to be executed, and about three men each aimed at each person to be shot. I myself was present at the

first volley of the execution, with my face turned away. When the first volley had been fired, I turned around and saw that all persons were lying on the ground. I then left the place of execution and approached the place where the second and third platoons were gathered. The first platoon which had carried out the shootings was recalled, I inspected the men, and then returned to my quarters. I noticed there that the detainees who were in the stadium next to the quarters, some of whom were still to be executed, were driven across the stadium by members of the armed forces and tortured. I did not succeed in apprehending those responsible for the tortures.

In order to terminate this spectacle, I had the rear door of the stadium opened and the detainees could march out through it. The members of the armed forces who had participated in this affair disappeared as well. As the remainder of the persons to be executed had also escaped, I informed my Kommando by means of a driver that the executions were terminated.

7. About 6 or 7 days after the executions we started to march towards Dubno. On or about 14 July we marched further towards Zhitomir, which we could not reach, however. On or about 25 July we arrived in Berdichev. In the beginning of August, I, together with the other leaders of the Kommandos, was ordered to Zhitomir, where the staff of Dr. Rasch was quartered. Rasch informed us that Obergruppenfuehrer Jeckeln had been to see him and had transmitted an order by the Reich Leader SS, implying that all Jews were to be shot. Only in cases where Jews were required for purposes of labor, consideration as to their executions should be given. Jewish women and children were, if necessary, to be shot as well, in order to prevent acts of revenge.

8. As I did not favor this kind of warfare, I tried, evading official channels, to get in touch with Streckenbach and Heydrich directly, which I succeeded in doing at the end of August. I managed to be recalled as leader of the Einsatzkommando 5. On or about 26 September my successor, Obersturmbannfuehrer Meier, arrived at the headquarters of the Kommando in Skvira; I handed over the leadership of the Kommando to him and returned to Berlin.

I have read the above statement consisting of seven (7) pages written in the German language and declare that it is true, according to the best of my belief and knowledge. I had the opportunity to make amendments and corrections in the above statement. I made this declaration voluntarily without promises of reward and was neither threatened nor coerced to do so.

Nuernberg, 26 May 1947

[Signed] ERWIN SCHULZ

TRANSLATION OF DOCUMENT NO-4145
PROSECUTION EXHIBIT 10

AFFIDAVIT OF WALTER BLUME, 29 JUNE 1947*

AFFIDAVIT

I, Walter Blume, swear, depose, and state—

1. I was born on 23 July 1906 in Dortmund. I attended the elementary school and the Real gymnasium and graduated in Dortmund in 1919. I then studied law for three years at the Universities of Bonn, Jena, and Muenster and passed my first law examination. Then followed a further three years' training in Hamm and Dortmund and, in 1932, I passed the bar examination in Berlin. In April 1933 I obtained my doctor's degree at Erlangen. I was thereupon engaged by the commissioner of police in Dortmund for information purposes and remained there until about May 1934. Shortly before the Roehm revolt I was appointed as a government administration officer to act as chief of the State Police Office at Dortmund. After the Roehm revolt I was transferred to the then Prussian Secret State Police Office. I remained there until spring 1935. Until autumn 1937 I was in charge of the State Police Office at Halle/Saale and until the beginning of 1939 I was in charge of the State Police Office at Hannover. I was in charge of the State Police Office in Berlin until immediately before the beginning of the Russian campaign. In June 1941 I was assigned to Dueben and until approximately the middle of August I was chief of the Sonderkommando 7a in Einsatzgruppe "B". In August 1941 I was recalled to the Reich Security Main Office as personnel referent and remained there until June or July 1942. After an assignment which occupied me for 1½ months in Feldes, I became inspector of the security police in Duesseldorf. I carried on this employment until August 1943. I then went to Athens as commander in chief of the security police and remained there for about one year. After that I was for a time without employment and was later ordered to take over the frontier police in office I of the Reich Security Main Office. At the beginning of 1945 I was sent by office IV to Bad Blankenburg, in order to take over the direction of the censorship department there and extend it. I could not complete this assignment, as I withdrew in the direction of Salzburg to the Waffen SS and was taken prisoner along with them. After spending a year as a prisoner in American hands, I was released from prison, having remained silent on the subject

* Defendant Blume testified in Court on 31 October, 4 and 5 November 1947 (*Tr. pp. 1754-1927*).

of my activity in the security police, and until my arrest in the summer of 1947 I lived under my own name as a servant to a farmer.

2. I have been a member of the NSDAP since 1 May 1933. My party number is 3,282,505. I have been a member of the SS since the summer of 1934 or 1935. My SS number is 267,224.

3. During the setting up of the Einsatzgruppen and Einsatzkommandos during the months of May-June 1941 I was at Dueben. During June, Heydrich, Chief of the Security Police and SD, and Streckenbach, head of office I of the Reich Security Main Office, held lectures on the duties of the Einsatzgruppen and Einsatzkommandos. At this time we were already being instructed about the tasks of exterminating the Jews. It was stated that eastern Jewry was the intellectual reservoir of bolshevism and, therefore, in the Fuehrer's opinion, must be exterminated. This speech was made to a small, selected audience. Although I cannot remember the individuals present, I assume that many of the Einsatzgruppen chiefs and Einsatz- and Sonderkommandos chiefs were present. I heard another speech by Heydrich in the Prinz Albrecht Palace in Berlin, in the course of which he again emphasized these points.

4. As chief of Sonderkommando 7a I carried out one execution in the course of my duty. I remember one occasion on which between 70 and 80 people were executed in Vitebsk and another occasion on which a similar number were executed in Minsk. On the latter occasion I only received a direct order from Nebe, chief of Einsatzgruppe B, to find out whether this execution had taken place. I was not present during the whole execution, but convinced myself that it was carried out. In both cases a kind of trench was dug; the persons destined to die were placed in front of it and shot with carbines. About 10 people were shot simultaneously by an execution force of 30 to 40 men. There was no doctor present at the execution, but the leader of the execution force who was responsible made sure that the people were dead. Coups de grace were not necessary. Neither was there in my unit any specialist in the art of shooting in the neck. I did not take part in any further mass execution.

5. I received all orders regarding executions, direction, and duties of Sonderkommando 7a, which was subordinate to me in Dueben or in the Prinz Albrecht Palace in Berlin. During the campaign I never received any further orders.

6. I do not know by whom the reports of the Einsatzgruppen were compiled in Berlin.

Nuernberg, 29 June 1947

[Signed] WALTER BLUME

3. THE MAGNITUDE OF THE ENTERPRISE

Prosecution Documents

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L-180	34	Extracts from report of Einsatzgruppe A covering the period from 23 June 1941 to 15 October 1941.	154
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NO-2662	13	Letter from Heydrich to Ribbentrop, Reich Minister of Foreign Affairs, 23 April 1942; extracts from attached operational situation report U.S.S.R. No. 11.	188

Doc. No.	Pros. Ex. No.	Description of Document	Page
3428-PS	111	Secret memorandum from Kube, General Commissioner of White Ruthenia, to Gauleiter Lohse, Reich Commissioner of Ostland, 31 July 1942, concerning actions against partisans and liquidation of Jews in White Ruthenia.	191
NO-3339	93	Extracts from operational situation report U.S.S.R. No. 170, 18 February 1942.	194
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2273-PS	36	Extract from draft of memorandum by Einsatzgruppe A, concerning liquidation of Jews.	197

**PARTIAL TRANSLATION OF DOCUMENT NO-3154
PROSECUTION EXHIBIT 23**

**EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 80,
11 SEPTEMBER 1941**

The Chief of the Security Police and of the Security Service
IV A 1 - B. No. 1 B/41 top secret

Berlin, 11 September 1941

Top Secret

48 copies
36th copy

Operational Situation Report U.S.S.R. No. 80

I. Political Survey

* * * * *

II. Reports of Einsatzgruppen and Einsatzkommandos

* * * * *

Observations Made and Measures Taken by the Security Police

Besides the thorough liquidation of the Party organization and the operations to clear the country of Jews who constitute the most evil disintegration factor, the executive operations by Einsatzgruppe C at present also include, above all, the fight against the partisan nuisance, from the well-organized band and the individual sniper down to the systematic rumor monger.

* * * * *

Since, however, primarily in the large towns, the ever increasing security tasks cannot be solved by the Einsatzkommandos alone, since they are too weak for this purpose, mounting importance is being attached to the creation and organization of a regular police service. Well screened, particularly reliable Ukrainians are employed for this purpose; moreover, a network of confidential agents, predominantly composed of ethnic Germans, has been created with great success. In the Kolchoses these tasks have mostly been conferred upon the Kolchos managers, the Starostes.

At Kirovo the development has reached a stage where the men enlisted for this purpose are already receiving their pay from the municipality from funds seized from Jews and are obtaining their rations from a small farm that has been especially allocated to them.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NO-3155
PROSECUTION EXHIBIT 38

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 111,
12 OCTOBER 1941

The Chief of the Security Police and the Security Service (SD)
B. No. IV A 1 — 1 B/41 — top secret

Berlin, 12 October 1941

Top Secret

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Operational Situation Report U.S.S.R. No. 111

* * * * *

II. *Reports from the Einsatzgruppen and Einsatzkommandos*
Einsatzgruppe A. Sonderkommando 1a
Location Tallin, reports:

Jews in Esthonia

At the beginning of 1940 about 4,500 Jews were living in Esthonia. About 1,900 to 2,000 of them were living in Tallin, larger Jewish communities were at Tartu, Narva, and Parnu, while only few Jews were living out in the flat country.

The deportations carried out by the Russians, as far as they concerned Jews, cannot be established in numbers. According to inquiries made so far, Jewry had hardly been affected by them.

With the advance of the German troops on Esthonian territory, about half of the Jews made preparations for flight and, as these Jews had collaborated with the Soviet authorities, they left

the country with them going east. Only few of them were seized in Tallin because their escape route had been cut off. After the occupation of the country, there were probably still about 2,000 Jews left in the country.

The Esthonian self-defense units, which had been formed when the Wehrmacht marched in, started immediately to arrest Jews. Spontaneous demonstrations against Jewry did not take place because there was no substantial enlightenment of the population.

The following orders were therefore issued by us:

1. The arrest of all male Jews over 16.
2. The arrest of all Jewesses fit for work between the ages of 16 and 60, who were utilized to work in the peat bogs.
3. Collective billeting of female Jewish residents of Tartu and vicinity in the synagogue and a tenement house in Tartu.
4. Arrest of all male and female Jews fit for work in Parnu and vicinity.
5. Registration of all Jews according to age, sex, and fitness for work for the purpose of billeting them in a camp which is in the stage of preparation.

All male Jews over 16, with the exception of physicians and the appointed Jewish elders, were executed by the Esthonian self-defense units under supervision of the Sonderkommando. As for the town and country district of Tallin, the action is still under way as the search for the Jewish hideouts has not yet been completed. The total number of Jews shot in Esthonia is so far 440.

When these measures are completed, about 500 to 600 Jewesses and children will still be alive.

The village communities are already now free from Jews.

For the Jews residing at Tallin and vicinity a camp is at present being prepared at Harku (District Tallin), which after receiving the Jews from Tallin is to be expanded to contain all Jews from Esthonia. All Jewesses fit for work are employed with farm work and cutting of peat on the property of the nearby prison so that the questions of feeding and financing are solved.

As an immediate measure the following order was issued:

1. Marking of all Jews over six with a yellow star, at least 10 cm. large to be attached on the left side of the breast and on the back;
2. Prohibition to exercise a public trade;
3. Prohibition to use sidewalks, public communications, and to frequent theaters, cinemas, and restaurants;
4. Seizure of all Jewish property;
5. Prohibition to attend schools.

* * * * *

Einsatzgruppe C

Location Kiev, reports:

Security Police Measures

Sonderkommando 4a now has reached the total number of more than 51,000 executions. Apart from the special action in Kiev of 28 and 29 September, for which 2 Kommandos of the Police Regiment South were detached, all executions carried out so far were made by that special Kommando without any assistance from outside. The executed persons were mainly Jews, a minor part was political officials as well as saboteurs and looters.

In the period between 7 September and 5 October, 207 political officials, 112 saboteurs and looters as well as 8,800 Jews were liquidated by Einsatzkommando 5.

Special Kommando 4 b, in the period between 13 and 26 September, executed 103 political officials, 9 saboteurs and looters, and 125 Jews.

Einsatzkommando 6, in the period between 14 and 27 September, executed 13 political officials, 32 looters and saboteurs, as well as 26 Jews.

These were the motives for the executions carried out by the Kommandos: Political officials, looters and saboteurs, active Communists and political representatives, Jews who gained their release from prison camps by false statements, agents and informers of the NKVD [National Commissariat for Internal Affairs], persons who, by false depositions and influencing witnesses, were instrumental in the deportation of ethnic Germans, Jewish sadism and revengefulness, undesirable elements, partisans, Politruks, dangers of plague and epidemics, members of Russian bands, armed insurgents—provisioning of Russian bands, rebels and agitators, drifting juveniles, Jews in general.

On 26 September, the security police took up its activities in Kiev. That day 7 interrogation Kommandos of Einsatzkommando 4a started their work in the civilian prisoner camp, in the prisoner-of-war camp, in the Jewish camp, and in the city itself. Thus, among other things, in the camp for civilian prisoners and prisoners of war, 10 political commissars were found and interrogated in detail. Conforming to the old Communist tactics, these guys denied all political activity. Only when confronted with trustworthy witnesses, five commissars yielded and confessed, i.e., they admitted the position they had held, but did not make any statements beyond this. They were shot on 27 September. In one case a Jewish Politruk [political leader] tried to ransom himself by offering gold. The man was taken to his apartment, loosened a few tiles of the floor, dug about 50 cm. deep and produced a counter

weight of a clock. That weight contained 21 gold coins. The Jew was shot.

Furthermore, 14 partisans were found, among them leading persons. They, too, adhered to their tactics of silence during the interrogation. Again, their status was proved by testimony. In some cases a confession was obtained. A partisan leader who had made propaganda for the defense of Kiev also made the attempt to ransom himself by offering gold. In this case gold watches and ruble notes were hidden behind a stove. All accused were shot.

Three Jewish party officials who also tried to ransom themselves by offering gold were liquidated. The gold was seized.

PARTIAL TRANSLATION OF DOCUMENT NO-3140
PROSECUTION EXHIBIT 30

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 106,
7 OCTOBER 1941

The Chief of the Security Police and the SD
R No. IV A 1—1 B/41—top secret

Berlin, 7 October 1941

48 copies
36th copy

[rubber stamp] Top Secret

Operational Situation Report U.S.S.R. No. 106

I. Political Survey

* * * * *

II. Report of the Einsatzgruppen and Kommandos

No reports were received from the *Einsatzgruppe A.*
Einsatzgruppe B.
Station Smolensk.

I

March and Assignment

* * * * *

II

Administration

* * * * *

III

Public Feeling and General Attitude of the Population

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Einsatzgruppe C

Station Kiev

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Einsatzgruppe C

Station Kiev

I

Kiev

A Vorkommando of the Sonderkommando 4a led by SS 1st Lieutenants [Obersturmfuehrer] Haefner and Janssen, 50 men strong, arrived on 19 September 1941 with the fighting troop in Kiev. The Haupt [Main] Kommando of the Sonderkommando 4a reached Kiev on 25 September 1941 after SS Colonel [Standartenfuehrer] Blobel had already been in Kiev on 21 and 22 September. The Vorkommando of the group staff, Captain of the Police Krumme, SS 1st Lieutenants [Obersturmfuehrer] Dr. Krieger and Breun and SS Sergeant [Oberscharfuehrer] Braun arrived in Kiev on 21 September 1941. The group staff followed on 25 September 1941.

* * * * *

The Wehrmacht first of all systematically secured public buildings, factories, and stocks of the scarcest goods, so that no large scale plunder occurred either by members of the Wehrmacht or by the population. Reports on mines and other explosive material in public buildings and apartment houses were made by the population in great numbers from the very first day of the occupation of Kiev. On 20 September 1941 a delayed action mine exploded in the citadel where an artillery staff was quartered. Among others, General of the Artillery von Seydlitz was killed by this.* On 24 September 1941 an explosion occurred in the offices of the German Rear Area Military Headquarters which developed during the day into a large fire, particularly through the lack of water. A large part of the city center and several large buildings in the suburbs were destroyed by further explosions and resulting fires. In order to control the fire, the Wehrmacht was forced to blow up more buildings to prevent the fire from spreading to other districts respectively buildings. As a result of these necessary explosions, the offices of the group staff and of the Sonderkommando 4a had to be evacuated among others. The office building of the group staff (formerly a castle, later a boarding school for girls and for several years, office building of the NKVD [Political National Commissariat for Internal Affairs]) suffered considerably by the necessary explosions. The clearing away of the rubble and repair work will require some time.

In the office building of the group staff, the Vorkommando found in an intensive search of the office rooms approximately 75

* Apparently a case of mistaken identity. General von Seydlitz-Kurzbach was captured by the Russians at Stalingrad, February 1943. He subsequently became vice chairman of the "Free German" National Committee and chairman of the Union of German officers.

so-called "Molotov cocktails" (explosives) and rendered them harmless. In another case, the search group of the armed forces found about 70 centner [7,716 pounds] of explosives in the Lenin Museum which were to be detonated by a short wave transmitter. Meanwhile the responsible authorities succeeded in limiting the large fire to the district where it had occurred, and also in controlling it. According to testimony from parts of the population, there exists in Kiev a Red sabotage battalion as well as numerous members of the NKVD and of the Communist Party, which have orders to commit continuous acts of sabotage. In the last days there occurred no more acts of sabotage, like explosions or fires. Extensive counter-measures for this purpose were successfully taken.

* * * * *

As a result of the destruction of buildings in particular and of the evacuation of the endangered districts ordered by the authorities, approximately 25,000 persons were deprived of shelter and had to spend the first few days of the occupation outdoors. The inconveniences resulting from this were accepted by the population with calm. No serious incidents or panic occurred. Meanwhile the evacuated apartments, as far as they were not destroyed by fires or explosions, have again been put at the disposal of the population. Besides an adequate number of apartments has been evacuated through the liquidation of approximately 35,000 Jews on 29 and 30 September 1941, so that now shelter for the homeless is secured and has meanwhile also been allocated.

* * * * *

II

Executions and Other Measures

Partly because of the better economic situation of the Jews under the Bolshevist regime and their activities as informers and agents of the NKVD, partly because of the explosions and the resulting fires, the public feeling against the Jews was very strong. As an added factor it was proved that the Jews participated in the arson. The population expected adequate retaliatory measures by the German authorities. Consequently all Jews of Kiev were requested, in agreement with the city commander, to appear on Monday, 29 September by 8 o'clock at a designated place. These announcements were posted by members of the Ukrainian militia in the entire city. Simultaneously it was announced orally that all Jews were to be moved. In collaboration with the group [Gruppen] staff and 2 Kommandos of the police regiment South, the Sonderkommando 4a executed on 29 and 30 September, 33,771 Jews. Money, valuables, underwear and clothing were secured and placed

partly at the disposal of the NSV [Nazi Party Public Welfare Organization] for use of the racial Germans, partly given to the city administration authorities for use of the needy population. The transaction was carried out without friction. No incidents occurred. The "Resettlement measure" against the Jews was approved throughout by the population. The fact that in reality the Jews were liquidated was hardly known until now, according to up-to-date experiences it would, however, hardly have been objected to. The measures were also approved by the Wehrmacht. The Jews who were not yet apprehended as well as those who gradually returned from their flight to the city were in each case treated accordingly.

Simultaneously a number of NKVD officials, political commissars, and partisan leaders was arrested and liquidated.

The Bandera* men had lost their impact through the arrests before Kiev effected by the Kommandos and their activity was reduced to the mere distribution of leaflets and the posting of placards. Three arrests were effected, further arrests are planned.

Communications with the local authorities were immediately established by the group staff as well as the Sonderkommando 4a and the Einsatzkommando 5 also stationed in Kiev. A constant cooperation with these authorities was accomplished and the actual problems were discussed in daily consultations.

On the activity of the Einsatzkommando must be reported in detail in separate action reports, because of the great extent of the material.

III

Zhitomir, actions against Jews

After the confinement of the Jews to a restricted area which had been carried out by the rear area military headquarters [Feldkommandantur] following a suggestion of the Sonderkommando 4a, a considerable calm was noticed at the markets and so forth. Simultaneously a number of until now persistent rumors died down and it seemed as if also Communist propaganda had lost much ground through the confinement of the Jews. It appeared however already after a few days that a mere spacial confinement of the Jews without construction of a ghetto was not sufficient and that the old troubles started again. Complaints were received in many offices about the insolent attitude of Jews on their working places. It was established that the Jewish district was the origin of an active propaganda among Ukrainians, saying that the Red Army would soon reconquer the territories taken from it. The local militia was

* Ukrainian independence movement, named after its leader.

shot at from ambush at night and also at day. It was further found out that Jews exchanged their belongings for money and left the town in order to settle in the Western Ukraine—that is, in territories already under a civil administration.

All these facts were observed, the Jews in question, however, could only be arrested in very few cases, as they had sufficient means to escape apprehension. Therefore a conference on this matter took place on 18 September 1941 with the Feldkommandantur [(rear area) military headquarters], in which it was decided to liquidate the Jews of Zhitomir completely and radically, as all warnings and special measures had been unsuccessful up to date.

On 19 September 1941 the Jewish district was evacuated starting at 4 o'clock in the morning, after having been surrounded and closed the evening before by 60 men of the Ukrainian militia. The transportation was carried out by 12 trucks which had been placed at the disposal partly by the Feldkommandantur, partly by the city administration of Zhitomir. After the transport had been carried out and the necessary preparations had been made with the help of 150 prisoners, a total of 3,145 Jews were registered and executed. 50,000-60,000 pounds of underwear, clothing, footwear, cooking utensils and so forth could be transferred for use to the deputy of the NSV in Zhitomir, Boss. Confiscated valuables and money were transferred to the Sonderkommando 4a.

Einsatzgruppe D.

Station Nikolaev.

PARTIAL TRANSLATION OF DOCUMENT NO-3157
PROSECUTION EXHIBIT 68

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 128,
3 NOVEMBER 1941

Berlin, 3 Nov. 1941

The Chief of the Security Police and the SD

B. No. IV A 1-1 B/41-Top Secret

[rubber stamp] Top Secret

55 copies

51st copy

Operational Situation Report U.S.S.R. No. 128

I. Locations and signal communications

The locations and signal communications stated in the report No. 126 of 29 October 1941 remain unchanged.

II. Reports of the *Einsatzgruppen* and *Kommandos*

Reports of the *Einsatzgruppen A* and *B* were not received.

Einsatzgruppe C

Station Kiev

A. Agriculture

* * * * *

B. Executive Activities

As to purely executive matters, approximately 80,000 persons were liquidated until now by the *Kommandos* of the *Einsatzgruppe*.

Among these are approximately 8,000 persons who through investigations, were convicted of anti-German or Bolshevistic activities.

The remainder was liquidated as a retaliatory measure.

Several retaliatory measures were carried out as large scale actions. The largest of these actions took place immediately after the occupation of Kiev, it was carried out exclusively against Jews with their entire families.

The difficulties resulting from such a large scale action—in particular concerning the seizure—were overcome in Kiev by requesting the Jewish population through wall posters to move. Although only a participation of approximately 5—6,000 Jews had been expected at first, more than 30,000 Jews arrived who until the very moment of their execution still believed in their resettlement, thanks to an extremely clever organization.

Even though approximately 75,000 Jews have been liquidated in this manner, it is already at this time evident, that this can not be a possible solution of the Jewish problem. Although we succeeded, in particular in smaller towns and also in villages in accomplishing a complete liquidation of the Jewish problem, again and again it is however observed in larger cities that after such an execution all Jews have indeed disappeared. But when after a certain period of time a *Kommando* returns again, the number of Jews still found in the city always considerably surpasses the number of the executed Jews.

Besides, the *Kommandos* have also carried out in numerous cases military actions. Separate platoons of the *Kommandos* have repeatedly combed the woods searching for partisans, on request of the army, and have there accomplished quite successful work.

Besides, prisoners of war moving on the highways were systematically overtaken and all these elements liquidated who did not possess identification papers and who were suspected of committing, when liberated, acts of sabotage against the German Army, the German authorities, or the population. In numerous cases

there were also carried out systematic searches of parachutists with the result that approximately a total of 20 parachutists was captured, among them one Russian who at his interrogations also gave information extremely important to the army.

Finally is to be mentioned the taking charge of prisoners of war from the prisoner collecting point and the prisoner of war transit camps although on these occasions considerable disagreements with the camp commander occurred at times.

C. Churches

* * * * *

D. Collaboration with the Wehrmacht and the GFP

[Secret Field Police]

Concerning the relation of the Einsatzgruppe and its Kommandos to other offices and authorities, its relation to the Wehrmacht is especially noteworthy. The Einsatzgruppe succeeded in establishing, from the very beginning, excellent terms to all army headquarters. This made it also possible that the Einsatzgruppe never operated in the rear of the military zone, but that even on the contrary the request was frequently uttered by the army to operate as far in the front as possible. It even occurred in a great number of cases that the support of the Einsatzkommandos was requested by fighting troops. Advance detachments of the Einsatzgruppe participated also at every large military action. They entered the newly captured locality with the fighting troops. In all cases the utmost support hereby has been given. It is worth mentioning in this connection the participation in the capture of Zhitomir, where the first tanks on entering the city were immediately followed by 3 cars of Einsatzkommando 4a.

As a result of the successful work of the Einsatzgruppe, the security police is also highly regarded, in particular by the army staff. The liaison officers stationed at the AOK [army headquarters] are loyally instructed on all military operations, and apart from this, they receive the utmost assistance. The commander of the AOK 6, Field Marshal von Reichenau has also repeatedly praised the work of the Einsatzkommandos highly, and accordingly supported the interests of the SD at his staff. The extraordinary success of the Kommandos was a contributing factor to this, e.g., the capture of Major General Sokolov, then also the information concerning a plan to blast a bridge through action of parachutists, and the transmission of other important military information.

Only concerning the Jewish problem a complete understanding with the subordinated Wehrmacht offices could not be reached until a quite recent time. This appeared most clearly at the taking over of the prisoners camps. As a particularly clear example the conduct

of a camp commander in Vinnitsa is to be mentioned who strongly objected to the transfer of 362 Jewish prisoners of war carried out by his deputy and even started court martial proceedings against the deputy and 2 other officers. Unfortunately it often occurred that the Einsatzkommandos had to suffer more or less hidden reproaches for their steadfast attitude on the Jewish problem. Another difficulty was added by the order from the OKH [Army High Command] prohibiting the SD altogether to enter the Dulag [PW transit camp]. These difficulties probably have been overcome now by a new order from the OKW [Supreme Command of the Armed Forces], because now it is stated clearly in this order that the Wehrmacht has also to cooperate in the solution of this problem, and in particular, that the necessary authorizations must be granted the SD to the fullest extent. However it became evident just in these last days, that this policy-making order still did not reach the subordinated offices. In future a further cooperation and assistance by the Wehrmacht offices can be expected, as far as the sector of the AOK 6 is concerned. Field Marshal von Reichenau on 10 October 1941 issued an order which states clearly that the Russian soldier has to be considered on principle a representative of bolshevism and has also to be treated accordingly by the Wehrmacht.

No difficulties whatsoever resulted from the cooperation with the GFP [Secret Field Police]. To be sure it was observed that the GFP preferably handled matters concerning the security police only—evidently because of a lack of other tasks, however, these defects were always eliminated following a consultation. Besides the latest order of the chief of the field police has probably eliminated any remaining doubts. The exchange of information material between the SD and the GFP took place without any friction, and the original doubts whether the GFP would not retain some of the cases were not justified. Besides it has already been ordered at the AOK's and the staffs that matters concerning the security police have to be immediately transferred to the Kommandos.

As far as counterintelligence bureaus are in existence in the rear, the work there is running smoothly. The counterintelligence officers visit the Gruppe and Kommandos regularly in order to transfer files, as well as to receive advice.

As the work of the security police has been carried out without friction and has won high recognition, it can be assumed that this pleasant relationship will also be maintained in future.

Reports of the *Einsatzgruppe D* were not received.

Distribution List:

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Chief of Office VII	(8th copy)
Group II D	(9th copy)
Group II A	(10th copy)
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PARTIAL TRANSLATION OF DOCUMENT L-180
PROSECUTION EXHIBIT 34

EXTRACTS FROM REPORT OF EINSATZGRUPPE A COVERING THE
PERIOD FROM 23 JUNE 1941 TO 15 OCTOBER 1941

[Pencilled] Personal property of SS Lieutenant General [Obergruppenfuehrer] Wv. 31 January 1942

[Rubber stamp] Top Secret

40 copies
23d copy

EINSATZGRUPPE A

Comprehensive Report up to 15 October 1941

- I. *Table of Contents*
- II. *Activities in police matters*
 - A. Organizational measures
 - B. Clearing and securing the operational area
 - C. Counterespionage
 - D. Control over persons and indexing
 - E. Criminal police work
- III. *Situation Report*
 - A. Situation before the invasion by German forces
 - B. General conditions in the spheres of life up to 15 October 1941
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- IV. *Grievances and proposals for their remedy*

Einsatzgruppe A, after preparing their vehicles for action, proceeded to their area of concentration as ordered on 23 June 1941, the second day of the campaign in the East. Army Group North consisting of the 16th and 18th armies and Panzer [armored] Group 4 had begun their advance the day before. Our task was

to hurriedly establish personal contact with the commanders of the armies and with the commander of the army of the rear area. It must be stressed from the beginning that cooperation with the armed forces was generally good, in some cases, for instance with Panzer Group 4 under General Hoepner, it was very close, almost cordial. Misunderstandings which cropped up with some authorities in the first days were cleared up mainly through personal discussions.

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At the start of the eastern campaign it became obvious for the security police that its special work had to be done not only in the rear areas, as was provided for in the original agreements with the high command of the army, but also in the combat areas, and this for two reasons—on the one hand, the development of the rear area of the armies was delayed because of the quick advance and on the other hand, the undermining Communist activities and the fight against partisans took place mainly within the areas of actual warfare—especially when the Luga sector was reached.

To carry out security police tasks, it was desirable to enter into the larger towns together with the armed forces. We had our first experiences in this direction when a small advance Kommando under my leadership entered Kovno together with the advance units of the armed forces on 25 June 1941. When the other larger towns, especially Lepaya, Yelgava, Riga, Tartu, Tallin, and the larger suburbs of Leningrad were captured, a Kommando of the security police was always with the first army units. Above all, Communist functionaries and Communist documentary material had to be seized, and the armed forces themselves had to be safeguarded against surprise attacks inside the towns; the troops themselves were usually not able to take care of that because of their small numbers. For this purpose the security police, immediately after capture, formed volunteer detachments of reliable inhabitants of all three Baltic provinces who carried out their duties successfully under our command. As an example it may be mentioned that the armed forces suffered considerable losses through guerrillas in Riga, on the left of the Dvina [Daugava] river; on the right bank of the Dvina river, however, after these volunteer detachments had been organized in Riga, not a single soldier was injured, although members of these Latvian detachments were killed and wounded in fighting against dispersed Russians.

Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following out orders, the security police was determined to solve the Jewish question with all possible means and determination most decisively. But

it was desirable that the security police should not put in an immediate appearance, at least in the beginning, since the extraordinarily harsh measures were apt to still even German circles. It had to be shown to the world that the native population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period.

After reaching the Dvina River and therewith Riga, the Einsatzgruppe detached itself at first from the further advance of the Army Group North, and concentrated its forces on the pacification of the Lithuanian and Latvian area, and later of the old Russian area which was reached at Opochka. The work carried out here took on many shapes.

In view of the constant changes in German troops and the fluctuation within the German authorities, which was caused by the transfer of the rear area of the armed forces to the rear area of the army, and later to the civil administration, i.e., to the commander of the armed forces, the personnel and thus the views of the German authorities changed far too often and far too quickly. In the security police this had to be avoided as far as possible which led us to adopt the policy of keeping, if at all possible, the same commanders in the same localities. Thereby the security police gained a considerable advantage over all other agencies, because it knew the facts and the people. As a matter of fact, they alone among all authorities on the German side may claim to have achieved a certain steadiness. The Lithuanians, Latvians, and the Esthonians, who have a fine feeling for such matters, soon came to acknowledge this fact and acted accordingly.

Under these circumstances the security police tried to guide political, economic, and cultural matters according to definite policies, and to advise the other German authorities on these subjects. It was just in the political sphere particularly, that several competent authorities pursued different aims. It was regrettable that the Ministry for Eastern Affairs had not given clear directives from the beginning. As it is, in spite of our efforts, the situation in the Baltic provinces is not clear up to date. The example of Esthonia is typical of this fluctuation. In agreement with the Reich Security Main Office, the Einsatzgruppe brought with them the Esthonian Dr. Mae as presumptive political adviser for the Esthonians. In order to avoid a pernicious muddle, as happened in Lithuania and Latvia, and in order to obtain the appointment of Dr. Mae or to avoid his removal negotiations had to be carried out with one after the other, the division moving into Tallin, the army corps competent for Tallin, the local administrative headquarters Tallin, the administrative area headquarters Tallin, the

18th Army, the Army Group North, the Commander of the Army Group Rear Area with the Army Group North, the Commissioner General respectively his deputy, and with the representative of the Ministry for Eastern Affairs.

After the conquest of Lithuania and Latvia, the Einsatzkommandos 2 and 3 were separated from the Commander of the Army Group Rear Area and were left in Lithuania and Latvia for essential assignments respectively. The commanders of Einsatzkommandos 2 and 3 have remained permanently in Kovno [Kaunas] and Riga since the beginning of July.

Contact was also established with the Reich Commissioner as soon as he was appointed and likewise with the commissioners general by the Einsatzgruppe and by the Einsatzkommando. Cooperation with the Reich Commissioner depended on (a) a delay in the inquiry addressed to the Reich Security Main Office as to how the interpolation at the Reich Commissioner's [Office] should be effected, and (b) the negotiations of the Higher SS and Police Leader who on his own account had initiated negotiations with the Reich Commissioner with regard to the interpolation of the police. No initiative of our own was admissible therefore until the questions to (a) and (b) had been settled. It was intended to get in touch with the Reich Commissioner with regard to this question at a convenient moment. Occasions for this will doubtlessly occur.

When the advance of the Army Group North was halted in Estonia and at Luga and when heavy fighting and severe Russian attacks against the center and the right wing ensued, the Einsatzgruppe again teamed up with the armies, in particular the 4th Panzer group, because the struggle against the partisans who now began to appear in great numbers was and still is a special task for the security police. The area to the north of Pskov and between Lake Peipus and Lake Ilmen with far extending forest and swamps was really an ideal area for Russian partisan warfare. The difficulties of the territory further impeded activities even for the smaller units. After the failure of purely military activities such as the placing of sentries and combing through the newly occupied territories with whole divisions, even the armed forces had to look out for new methods. The Einsatzgruppe made it its special task to search for new methods. Soon, therefore, the armed forces adopted the experiences of the security police and their methods of combating the partisans. For details I refer to the numerous reports concerning the struggle against the partisans.

The activities of the security police were rendered more difficult during the further course of the struggle against the partisans because the vehicles either could not be used or were to be pre-

served for the advance on Leningrad, which was always expected at that time.

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A. *The Baltic Area*

I. *Organizational measures*

1. *Formation of auxiliary police and native police guards*

In view of the extension of the area of operations and the great number of security police assignments to be carried out, it was intended from the very beginning to obtain the cooperation of the reliable sector of the population for the fight against vermin—that is mainly the Jews and Communists. Beyond our directing of the first spontaneous actions of self-clearing, which will be reported about elsewhere, care had to be taken that reliable people should be put to the clearing job and that they were appointed auxiliary members of the security police. The difference of the situation in each part of the area of operations also had to be taken into account.

In Lithuania activist and nationalist people have formed themselves into so-called partisan units at the beginning of the eastern campaign, in order to take active part in the fight against bolshevism. According to their own report they suffered 4,000 killed.

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2. *Reconstruction of prisons*

The prisons in the Baltic countries were found to be either empty or occupied by Jews or Communists who had been apprehended by home guard units.

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Whenever the prisons were too small because of the large number of people who were to be arrested, provisional concentration camps were established. The construction of larger concentration camps is in preparation.

The schedules attached as enclosure 5 show the present occupancy of the prisons.

II. *Clearing and safeguarding of the area of operations*

1. *Instigation of self-clearing operations*

Considering that the population of the Baltic countries had suffered very heavily under the government of bolshevism and Jewry while they were incorporated in the U.S.S.R., it was to be expected that after the liberation from that foreign government, they (i.e., the population themselves) would render harmless most of the enemies left behind after the retreat of the Red Army. It was the duty of the security police to set in motion these self-

clearing movements and to direct them into the correct channels in order to accomplish the purpose of the clearing operations as quickly as possible. It was no less important in view of the future to establish the unshakable and provable fact that the liberated population themselves took the most severe measures against the Bolshevik and Jewish enemy quite on their own, so that the directive by German authorities could not be found out.

In Lithuania this was achieved for the first time by partisan activities in Kovno. To our surprise it was not easy at first to set in motion an extensive pogrom against Jews. Klimatis, the leader of the partisan unit mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment [Vorkommando] operating in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June, the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists who had been left behind.

These self-clearing operations went smoothly because the army authorities, who had been informed, showed understanding for this procedure. From the beginning it was obvious that only the first days after the occupation would offer the opportunity for carrying out pogroms. After the disarmament of the partisans the self-clearing operations automatically ceased.

It proved much more difficult to set in motion similar clearing operations in Latvia. The essential reason was that the entire stratum of national leaders had been assassinated or deported by the Soviets, especially in Riga. It was possible though, through similar influences, for the Latvian auxiliary police to set in motion a pogrom against Jews also in Riga. During this pogrom all synagogues were destroyed and about 400 Jews were killed. As the population of Riga quieted down quickly, further pogroms were not feasible.

So far as possible, both in Kovno and in Riga evidence by film and photography was established that the first spontaneous executions of Jews and Communists were carried out by Lithuanians and Latvians.

In Esthonia, by reason of the relatively small number of Jews, no opportunity presented itself for the instigation of pogroms. The Esthonian home guard rendered harmless only some individual

Communists whom they especially hated, but generally they limited themselves to carrying out arrests.

2. *Combating communism*

Everywhere in the area of operation counteractions against communism and Jewry took first place in the work of the security police.

Soviet officials and functionaries of the Communist Party had fled with the Soviet Army. In view of the experiences made during the bolshevist oppression which lasted more than one year, the population of the Baltic countries realized that all remainders of communism left behind after the retreat of the Red Army had to be eliminated. This basic attitude facilitated the work of the security police with regard to clearing operations in this sphere, especially since actively nationalist people cooperated in these operations, viz., in Lithuania the partisans, in Latvia and Esthonia the home guards.

* * * * *

b. Search for and arrest of Communists

Aside from these combing operations a systematic search was made for Communist functionaries, Red Army soldiers, and persons more seriously suspected because of their activities for communism and who had been left behind. In some places, the home guards had spontaneously rendered harmless the most infamous Communists.

Using all available units of the detachments and home guard formations, and with the help of the German regular police, large scale operations were carried out in the larger towns resulting in many arrests and combing operations.

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The extent of this clearing operation, in line with the counteractions against communism, may be seen in the survey on enclosure 8 which gives the number of people executed.

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3. *Action against Jewry*

From the beginning, it was to be expected that the Jewish problem in the East could not be solved by pogroms alone. In accordance with the basic orders received, however, the clearing activities of the security police had to aim at a complete annihilation of the Jews. Sonderkommandos reinforced by selected units—in Lithuania partisan detachments, in Latvia units of the Latvian auxiliary police—therefore performed extensive executions both in the towns and in rural areas. The operations of the execution detach-

ments were performed smoothly. When attaching Lithuanian and Latvian detachments to the execution squads, men were chosen whose relatives had been murdered or deported by the Russians.

Especially severe and extensive measures became necessary in Lithuania. In some places—especially in Kovno—the Jews had armed themselves and participated actively in guerrilla warfare and committed arson. Besides these activities, the Jews in Lithuania had collaborated most actively hand in glove with the Soviets.

The sum total of the Jews liquidated in Lithuania amounts to 71,105.

During the pogroms in Kovno, 3,800 Jews were eliminated, in the smaller towns about 1,200 Jews.

In Latvia as well the Jews participated in acts of sabotage and arson after the invasion of the German Armed Forces. In Daugavpils [Dvinsk] so many fires were started by the Jews that a large part of the town was lost. The electric power station burned down to a mere shell. The streets which were mainly inhabited by Jews remained unscathed.

In Latvia up to now 30,000 Jews were executed in all. Five hundred were rendered harmless by pogroms in Riga.

Most of the 4,500 Jews living in Esthonia at the beginning of the eastern campaign fled with the retreating Red Army. About 200 stayed behind. In Tallin alone there lived about 1,000 Jews.

The arrest of all male Jews of over 16 years of age has been nearly concluded. With the exception of the doctors and the elders of the Jews who were appointed by the special [Sonder] Kommandos, they were executed by the self-protection units [home guard] under the supervision of special [Sonder] detachment 1a. Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.

At present a camp is being constructed in Harku, in which all Esthonian Jews are to be assembled, so that Esthonia will be free of Jews in a short while.

After the carrying out of the first larger executions in Lithuania and Latvia it soon became apparent that an annihilation of the Jews without leaving any traces could not be carried out, at least not at the present moment. Since a large part of the trades in Lithuania and Latvia are in Jewish hands and others carried on nearly exclusively by Jews (especially those of glaziers, plumbers, stove-builders, cobblers) many Jewish craftsmen are indispensable at present for repairing installations of vital importance, for the reconstruction of towns destroyed, and for work of military importance. Although the employers aim at replacing Jewish labor with Lithuanian or Latvian labor, it is not yet possible to replace

all employed Jews especially not in the larger towns. In cooperation with the labor offices, however, all Jews who are no longer fit for work are being arrested and shall be executed in small batches.

In this connection it should be mentioned that some authorities of the civil administration offered resistance, at times even a strong one, against the carrying out of larger executions. This resistance was answered by calling attention to the fact that it was a matter of carrying out basic orders.

Apart from organizing and carrying out measures of execution, the creation of *ghettos* was begun in the larger towns at once during the first days of operations. This was especially urgent in Kovno because there were 30,000 Jews in a total population of 152,400. Therefore, at the end of the first pogrom a Jewish committee was summoned who was informed that the German authorities so far had not seen any reason to interfere in the quarrels between Lithuanians and Jews. The sole basis for creating a normal situation would be to construct a Jewish ghetto. Against remonstrations made by the Jewish committee, it was declared that there was no other possibility to prevent further pogroms. On this the Jews at once declared themselves ready to do everything in their power to transfer their co-racials to the town district of Viliampol which was intended as a Jewish ghetto and with the greatest possible speed. This town district lies in the triangle between the Memel river and a tributary; it is connected with Kovno by a bridge only and can, therefore, easily be locked off.

In Riga the so-called "Moscow suburb," ["Moskauer Vorstadt"] was destined as a ghetto. This is the worst dwelling district of Riga, already now mostly inhabited by Jews. The transfer of the Jews into the ghetto district proved rather difficult because the Latvians dwelling in that district had to be evacuated and residential space in Riga is very crowded. 24,000 of the 28,000 Jews living in Riga have been transferred into the ghetto so far. In creating the ghetto, the security police restricted themselves to mere police duties, while the establishment and administration of the ghetto as well as the regulation of the food supply for the inmates of the ghetto were left to civil administration; the labor offices were left in charge of Jewish labor.

In the other towns with a larger Jewish population ghettos shall be established likewise.

Marking of the Jews by a yellow star, to be worn on the breast and the back which was ordered in the first instance by provisional orders of the security police, was carried out within a short time on the basis of regulations issued by the commander of the rear army area and later by the civil administration.

The number of Jews executed up to the present may be seen in the schedule on enclosure 8.

[Marginal note: *Encl. 8.*]

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[Marginal note: *Encl. 9.*]

* * * Copies of the latest experience reports are attached as enclosure 9. [This enclosure reveals (signature) the name of the commander of the Einsatzgruppe, Dr. Stahlecker, SS Brigade-fuehrer and Brigadier General of the Police.]

5. *Other jobs of the Security Police*

1. Occasionally the conditions prevailing in the mental hospital necessitated operations of the security police. Many institutions had been robbed of their whole food supplies by the retreating Russians. Often the guards and nursing personnel had fled. The inmates of several institutions broke out and became a danger to the general security; therefore,

in Aglona (Lithuania)	544	mental patients
in Mariyampole (Lithuania)	109	mental patients
in Magutovo (near Luga)	95	mental patients

a total of 748 mental patients

was liquidated.

Sometimes the armed forces agencies asked us to clean out in a similar way other institutions which were wanted as billets. However, as interests of the security police did not require any intervention, it was left to the armed forces to take the necessary action with their own forces.

2. The Einsatzkommandos dealt to a large extent with the search for deportees and with the exhumation of people who had been murdered by the Russians. For reasons of propaganda, the propaganda squadrons of the armed forces and sometimes of the foreign press were made to participate.

In Esthonia the exhumation of Esthonians murdered by the Russians was organized more extensively. In view of the extent of the work which had been done here, a central office was established in Tallin, in order to organize searches for the whereabouts of deported and murdered persons under the systematic guidance of the security police.

The extent of this work is shown by the fact that from Tallin alone 30,000 men had been reported missing.

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* * * In order to eliminate the most heavy cases of crime until

preventive measures can be introduced, professional criminals are being taken into the care of the Einsatzkommandos and executed whenever the case warrants such measures.

* * * Einsatzgruppe B liquidated so far 7,620 Jews in Borisov.
* * * * *

The Situation in Lithuania

As the population did not receive any information with regard to its future fate, the national-minded part is still thinking of a future Lithuanian state of its own. An effort to assimilate the Lithuanian people to the Germanic peoples does not, so far, make itself felt.

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The active anti-Semitism which flared up quickly after the German occupation did not falter. Lithuanians are voluntarily and untiringly at our disposal for all measures against Jews, sometimes they even execute such measures on their own.

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The faculties of arts and sciences should be closed altogether. There is some need though for the medical faculty and some of the technical branches. More than 60 percent* of the dentists were Jews; more than 50 percent of the other doctors as well. The disappearance of these brings about an extreme shortage of doctors, which cannot be overcome even by bringing in doctors from the Reich.

* * * * *

In Kurland the ordinance of the naval commander in Lepaya, Captain Dr. Kavelmacher of the German Navy, had caused some unrest. This ordinance announced measures of reprisal against the population of Lepaya in case of attacks against German soldiers. It read as follows:

“For each and every case of a known or unknown culprit firing on German soldiers, certain people of Lepaya shall be arrested and shot at once under martial law. Similarly for each and every attempt of sabotage whether effective or not, part of the Latvian population living near the place of the act of sabotage shall be arrested and shot under martial law.”

This ordinance was published in the Lepaya paper “Das Kurlaendische Wort.” The population of Lepaya is, therefore, most upset, as may be understood. The fear is abroad that further actions may be provoked by hostile people (Communist or Jewish).

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* Original German document read 80 percent but, due to clerical error, translation of document which was submitted in court read 60 percent.

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Enclosure 1a: Total strength of Einsatzgruppe A

TOTAL	990	<i>Percent</i>
Armed SS (Waffen SS).....	340	34.4
Motorized personnel.....	172	17.4
Administration	18	1.8
Security service (SD).....	35	3.5
Criminal police (Kripo).....	41	4.1
Secret state police (Gestapo).....	89	9.0
Auxiliary police.....	87	8.8
Regular police.....	133	13.4
Female employees.....	13	1.3
Interpreters	51	5.1
Teletype operators.....	3	0.3
Radio operators.....	8	0.8

Enclosure 1b: Composition of the Einsatzkommandos

Einsatzkommando	1a		1b		2		3	
		Percent		Percent		Percent		Percent
Interpreters		13.7	6	5.4	18	10.8	8	5.6
Wireless operators ..	2	1.9	1	.9	2	1.2	1	.7
Teletype operators						1.8		
Reservists	25	24	26	23.7	41	23.6	32	22.9
Motorized personnel .	23	22.1	34	30.9	50	29.4	34	24.3
Administration	3	2.9	2	1.8	4	2.4	1	.7
Security service	8	7.8	3	2.7	8	4.8	10	7
Criminal police	11	10.5	6	5.4	13	7.8	10	7
Secret state police ...	18	16.2	12	11	26	15.6	29	20.6
Auxiliary police			20	18.2			15	10.5
Female employees ...	1	.9			4	2.4	1	.7
Total	* 105	110	* 170	141

* The addition in the original report is incorrect.

* * * * *

Enclosure 5: Occupation of Prisons

Prisons in Lithuania

Einsatzkommando 3 at present engaged in ascertaining the number of occupants of prisons in Lithuania.

In Kovno under arrest are—

In the central prison..... 520 persons, including 50 Jews

In the police prison 69 persons, including 3 Jews

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Enclosure 8: Survey of the number of executed persons

	Area	Jews	Communists	Total
Lithuania	Kovno town and surroundings.	31,914	80	31,994
	Shaulyai	41,382	763	42,145
	Vilnyus	7,015	17	7,032
Total	80,311	860	81,171
Latvia	Riga town and surroundings..			6,378
	Yelgava			3,576
	Lepaya			11,860
	Valmera			209
	Daugavpils	9,256	589	9,845
Total	30,025	1,843	31,868
Esthonia		474	684	1,158
White Ruthenia		7,620		7,620
Lithuania		80,311	860	81,171
Latvia		30,025	1,845	31,868
Esthonia		474	684	1,158
White Ruthenia		7,620		7,620
Total	118,430	3,387	121,817

To be added to these figures:

In Lithuania and Latvia Jews annihilated by pogroms.....	5,500
Jews, Communists and partisans executed in old Russian area	2,000
Lunatics executed	748
	<hr/>
[Correct total—130,065]	* 122,455
Communists and Jews liquidated by State Police and Security Service Tilsit during search actions.....	5,502
	<hr/>
	135,567

[Map showing "Number of persons liquidated in the Baltic countries as per 25.10.1941" is also included in Enclosure 8.]

Enclosure 9:

Reports on Activities and Experiences in Counteractions against Partisans. [*First Report*]

17.8.1941

Einsatzgruppe A of the Security Police and the Security Service Staff

Report on Activities and Experiences in Counteractions against Partisans

When it was decided to extend the German operations to Leningrad and also to extend the activities of Einsatzgruppe A to this town, I gave orders on 18 July 1941 to parts of Einsatzkommandos 2 and 3 and to the group staff to advance to Novoselye, in order to prepare these activities and to be able to advance as early as possible into the area around Leningrad and into the city itself. The advance of the forces of Einsatzgruppe A which were intended to be used for Leningrad was effected in agreement with and on the express wish of Panzer Group 4.

The Kommando which was formed for action towards Leningrad was trained for operations in Leningrad during the first days after the advance to Novoselye. However, as an advance to Leningrad is not to be expected at the time planned previously, the parts of Einsatzkommandos 2 and 3 which were concentrated in Novoselye were used for extensive operations of clearing and pacifying in the area of Panzer Group 4, in agreement with this group. This is done mainly in the area limited by the connection line between Pog—Gora—Novoselye—Osyeryevo—Snossyednov.

In their operations it was intended to arrest in the first instance any remaining Communist functionaries, and other active Communists and Jews. As nearly all Jews and Communist function-

* Total in the original report is incorrect.

aries had fled with the retreating Soviet forces, only 6 Jews and 10 Communists were arrested and executed.

* * * * *

At the start the following procedure was followed:

In villages, in the area where partisans had not been ascertained before, one behaved friendly towards the population. In view of the generally known shortage of bread one usually succeeded very quickly in finding one or several villagers who could be used as confidence men. They were promised bread provided they would give information concerning partisans or if they would inform the nearest units of the German Army or police of any partisans appearing in the future. The network of information, thus built up yielded much information for the Einsatzgruppe A, thus enabling them to surround more narrowly the quarters of the partisans.

In particular, information was obtained concerning villagers who had given food or provisional shelter to partisans. On the basis of these reports a great many villages were combed out. After a village had been surrounded, all the inhabitants were forcibly shepherded into one square. The persons suspected on account of confidential information and other villagers were interrogated, and thus it was possible in most cases to find the people who helped the partisans. These were either shot off hand or if further interrogations promised useful information, taken to headquarters. After the interrogation they were shot.

In order to obtain a deterring effect, the houses of those who helped the partisans were burned down on several occasions. The population which had congregated was told of the reasons for the punitive measures. At the same time they were threatened that the whole village would be burned down if partisans were helped once more and if partisans appearing in the village were not reported as quickly as possible.

The tactics, to put terror against terror, succeeded marvelously. From fear of reprisals, the peasants came a distance of 20 kilometers and more to the headquarters of the Teilkommando of Einsatzgruppe A on foot or on horseback in order to bring news about partisans, news which was accurate in most of the cases. During the clearing operations which were made on account of these reports, 48 helpers of partisans, including 6 women, were shot so far.

In this connection a single case may be mentioned, which proves the correctness of the principle "terror against terror." In the village of Yachnova it was ascertained on the basis of a report made by the peasant Yemelyanov and after further interrogations and other searches that partisans had been fed in the house of

Anna Prokovieva. The house was burned down on 8 August 1941 at about 21 hours, and its inhabitants arrested. Shortly after midnight partisans set light to the house of the informer Yemelyanov. A detachment sent to Jachnowa on the following day ascertained that the peasant woman Ossipova had told the partisans that Yemelyanov had made the report which had caused our action.

Ossipova was shot and her house burned down. Further, two 16-year-old youths from the village were shot because, according to their own confession, they had rendered information and courier service to the partisans. Obviously, it was on account of these punitive measures that the partisans left the forest camp near the village. The camp was found in the course of our operation.

* * * * *

[Signed] DR. STAHLCKER
SS Brigadefuehrer and Brigadier General of Police.

Riga, 29 September 1941

The Commander of the Security Police and the Security Service
Einsatzgruppe A

Report on Experiences in Counteractions Against Partisans

* * * * *

The Einsatzkommandos of Einsatzgruppe A of the security police participated from the beginning in the fight against the partisans. Close collaboration with the armed forces and the exchange of experiences which were collected in the fight against partisans, brought about a thorough knowledge of the origin, organization, strength, equipment, and system used by the Red partisans as time went on.***

* * * * *

The main results of this work were the following:

I. *Origin and organization of the partisans.*

* * * * *

IV. *Counteractions against the partisans.*

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As it was vitally necessary to obtain hints and information concerning abode and direction of the partisans from the population, the latter had to be forced by the use of the most severe measures, to supply useful information and reports. In the knowledge that the Russian has been accustomed from old to ruthless measures on the part of the authorities, the most severe measures were applied. He who helped the partisans to obtain food and shelter, rendered them information services, or who knowingly gave false information was shot or hanged. Houses where partisans obtained food or shelter were burned down. Where a larger number of vil-

lagers helped the partisans in such a way, the whole village was burned down as punishment and in order to create terror.

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Escaped Red Army soldiers who have found their way through the German lines procure civilian clothes as quickly as possible and get in touch with partisans. It has been ascertained that these Red Army soldiers form the fighting backbone of the partisan units. It does not seem, therefore, expedient to treat Red Army members found in civilian clothing as prisoners of war and to collect them in prisoner-of-war camps. But an interrogation and survey has to be carried out as thoroughly as possible. It has further to be considered in each and every case, whether Red Army members found in civilian clothes should be separated from regular prisoners of war, and should be brought into the assembly camps for civilian internees. Furthermore, it seems expedient to advise escaped Red Army soldiers through posters to give themselves up at the nearest army unit within a short time after the posting of such posters, say within 3 days. Should they not comply with this order they should be dealt with as partisans; that means they should be shot without making such exception dependent on proof that they actually knew of the order.

To conclude, attention should be drawn to the necessity of interrogating captured partisans thoroughly before they are liquidated so that we increase our knowledge on organization, abode, strength, armament, and plans of the partisans. Sometimes it may become necessary to take advantage of the opportunity to use third degree interrogation methods.

* * * * *

[Signed] DR. STAHLCKER
SS Brigadier General

PARTIAL TRANSLATION OF DOCUMENT NO-2825
PROSECUTION EXHIBIT 59

EXTRACTS FROM SITUATION REPORT U.S.S.R. NO. 133,
14 NOVEMBER 1941

The Chief of Security Police and the Security Service
Berlin, 14 November 1941

Journal No. IV A 1-1 B/41-Top Secret
[stamp] Top Secret!

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Situation Report U.S.S.R. No. 133

I. *Locations and information channels*

The locations and information channels reported in Situation

Report No. 132 dated 12 November 1941 remain unchanged.

* * * * *

II. *Extract from resolution passed by the Central Committee of the Communist Party of the Soviet Union on the anniversary of the October revolution*

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III. *Reports made by the Einsatzgruppen and Einsatzkommandos Einsatzgruppe A.*

Location: Krasnog vardeisk.

Organization of Partisans in Riga

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Einsatzgruppe B.

Location: Smolensk

Information Services

1. *Situation in newly occupied area*

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2. *Morale and general conduct of the population*

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The public execution of a partisan leader and 3 Bolshevik terrorists had a quieting effect on the civilian population of Mogilev. Numerous civilian inhabitants were present at the execution by hanging and it appeared to make a deep impression on them that from the German side measures will now be taken against partisans and Bolshevik functionaries, which they can also witness themselves. At any rate this action is proved to have made far more of an impression on the civilian population than some executions published by means of posters have done. On the other hand the population exhibited much more indifference to the total liquidation of Jews, for example the Vitebsk Ghetto. They soon became used to the disappearance of the Jews without being influenced in either a positive or negative way.

* * * * *

Activities

1. *General situation*

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3. *Operations against party functionaries, agents, saboteurs, and Jews*

In Mogilev, the female worker Nina Lissunova was arrested. She has an elementary school education (up to fourth grade) and worked in a silk factory in Mogilev. She was a deputy to the Soviet Supreme Council and had participated in 8 meetings of the Soviet Council in Moscow.

On 11 October 1941 the Russian, Feodor Karjago from Shklov, and three more Russians were shot for Communist agitation.

On the same day the Russians, Wassilio Bertjew, Wladimir Berendovski, and Andrey Sinjakov were shot, who had attempted to build up an organization for the purpose of Communist activities and had already acquired revolvers.

On 14 October 1941 the Russians Michael Sokischevski, Vassily Terisov, Maxim Rudakov, Georgi Charsevu, and Markar Amsalovich were shot, who under the Soviet regime had been active as Party functionaries and had handled large numbers of people over to the NKVD, as well as assisting in deportations.

On 16 October 1941 the Russian girl Anna Garbuson was shot for particularly violent expressions of hostility against Germany while a member of the NKVD.

On the same day the Jews Stanislaus Bonski and Tolya Ahonin were liquidated for being former NKVD agents; the Jews Simon Alexandrovich, Schuster Peiser, and Michael Sakei were shot for being in possession of explosive ammunition.

On the same day the Jewess Cadine Orlov was executed for being found without a Jewish badge and refusing to move into the ghetto.

On 18 October 1941 the Jews Lova Wasmann, Ferna Birkmann, Jakob Saravo, Abraham Linden, Abraham Baraniche, Salomon Katzmann, and Behr Katzmann, as well as the Jewess Fenia Leikina, were liquidated for refusing to wear the Jewish badge and spreading inflammatory propaganda against Germany.

On 20 October 1941 the Jew Stanilow Naum and the Jewish couple Alter were liquidated. They had hidden themselves in Mogilev outside the ghetto.

On 14 October 1941 the Jew Isaak Pjaskin was shot by the Vorkommando of the Einsatzkommando 9. He had been a political collaborator with the Red Army and was found on the road to Vyazma in suspicious circumstances.

On 17 October 1941 the woman Maria Spirina was shot for sniping activities.

On 21 October 1941 the Jew Joel Ljubavin was shot after he had been found not far from Vyazma in a Russian bunker and in possession of fire arms.

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5. "Special Operations".

Eighty-three of the several hundreds of inmates of the forced labor camp in Mogilev were liquidated on 15 October 1941 as being racially inferior elements with an Asiatic strain. The responsibility for their retention in the rearward army area could no longer be taken.

According to a report of the 691st Infantry Regiment, the Jews

in Asmoni supported in every manner possible the *partisans* still holding out in the immediate neighborhood. During a mopping-up operation in that neighborhood on 9 October 1941, 81 Jews were shot who had offended against the regulations made by the German occupying forces. Russian uniforms were found in several Jewish dwellings.

As a result of numerous complaints about their provocative behavior, a total number of 2,200 Jews of all ages were liquidated in Gorki (northeast of Mogilev) and surroundings during a mopping-up operation in 8 localities. They were for the most part Jews who had immigrated from the district of Minsk, and, like the rest, had committed offenses against the regulations made by the German forces. The operation was carried out in close cooperation with the military police.

In Mstislavl, about 80 km. east of Mogilev, 900 Jews were liquidated who had offended against the regulations of the German forces, had harbored passing *partisans*, and had provided them with food and clothing.

On 19 October 1941 a large scale operation against the Jews was carried out in Mogilev with the aid of the police regiment "Mitte". Through this 3,726 Jews of both sexes and all ages were liquidated. These measures were necessary because, since the town of Mogilev was occupied by German troops, the Jews [verb missing] the authority of the occupying forces and in spite of the measures already taken against them, they not only failed to desist in this action but continued their anti-German activities (sabotage, support of *partisans*, refusal to work, etc.) to such an extent and with such persistence that in the interests of establishing order in the rearward areas it could no longer be tolerated.

On 23 October 1941, to prevent further acts of sabotage and to combat the *partisans*, a further number of Jews, 279 of both sexes, from Mogilev and surroundings were liquidated.

The Sonderkommando 7a carried out 173 liquidations during the period covered by this report.

6. *Confiscation of material*

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7. *Confiscation of money and other things*

During the period covered by this report, the Einsatzkommando 8 confiscated a further 491,705 rubles as well as 15 gold rubles. They were entered in the ledgers and passed to the administration of Einsatzkommando 8. The total amount of the rubles so far secured by the Einsatzkommando 8 now amounts to 2,511,226 rubles.

8. Organization measures

The ghetto built in Mogilev by Einsatzkommando 8 could for the main part be returned to the city administration, since Mogilev can be considered practically free from Jews after the last operations. The few remaining Jews are accommodated in a forced labor camp and are there ready to be used as skilled artisans. The Sonderkommando 7a has set up a police service [Ordnungsdienst] and a Jewish council in Rzhev.

9. Liquidations

According to the reports at hand—the reports of Sonderkommando 7b and Einsatzkommando 9 and Vorkommando Moscow have yet to follow—the liquidations during the report period reached the following figures:

a. Staff and Vorkommando Moscow.....	2,457
b. Sonderkommando 7a	1,517
c. Sonderkommando 7b	1,822
d. Einsatzkommando 8	28,219
e. Einsatzkommando 9	11,452

Sum total of persons liquidated by Einsatzgruppe B up to now.. 45,467
* * * * *

PARTIAL TRANSLATION OF DOCUMENT NO-2832 PROSECUTION EXHIBIT 79

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 135, 19 NOVEMBER 1941

The Chief of the Security Police and Security Service
B.No. IV A 1 - 1 B/41 — top secret

Berlin, 19 November 1941

[stamped] Top Secret

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Operational Situation Report U.S.S.R. No. 135

I. Locations and Communications

Date: 19 November 1941

Higher SS and Police Commander North 101

(Pruetzmann)

Location: Riga.

Einsatzgruppe A (Dr. Stahlecker)

Location: Krasnogvardeisk.

Communications: Radio communications, teletype communications Riga.

Sonderkommando 1a
(Sandberger)

Location: Tallin, Narva, Tartu, Parnu and
Ahrensburg (Oesel) [Sarema].
Communications: Radio communications Narva, teletype
communications Tallin,
Army Post Office No. 15 119

Sonderkommando 1b
(Ehrlinger)

Location: Tossno, Medved, Nestonya, Staraya-
Russa.
Communications: Radio communications Tossno,
Army Post Office No. 15 119

Einsatzkommando 2
(Strauch)

Location: Parts in Riga, Shaulyai and Lepaya.
Communications: Radio communications Riga, teletype
communications Riga and Lepaya,
Army Post Office No. 15 447

Einsatzgruppe 3
(Jaeger)

Location: Daugavpils, Kovno, Vilnyus, Barano-
vichi, Minsk.
Communications: Radio and teletype communications
Vilnyus and Kovno,
Army Post Office No. 15 641

Higher SS and Police Commander Center (102)
(von dem Bach)

Location: Mogilev.

Einsatzgruppe B (Naumann)

Location: Smolensk, Vorkommando at Moshaisk.
Radio communications, courier service
via Warsaw and telephone service
via communication service Smolensk.
Communications: Radio communications Smolensk,
Army Post Office No. 37 857

Sonderkommando 7a
(Steimle)

Location: Rzhhev and Kalinin.
Communications: Radio communications Rzhhev,
Army Post Office No. 05 607

Sonderkommando 7b
(Rausch)

Location: Nachkommando at Bryansk, Vorkommando at Tula.

Communications: Radio communications Orel,
Army Post Office No. 18 555

Einsatzkommando 8
(Bradfish)

Location: Mogilev with Squads at Vitebsk,
Gomel, Arsha and Krichev,
Army Post Office No. 37 857

Einsatzkommando 9
(Schaefer)

Location: Vyazma with squads at Gzhatsk and
Smolensk.

Communications: Radio communications Vyazma,
Army Post Office No. 37 857

Sonderkommando "Moscow"

Location: Maloyaroslavets

Communications: Radio communications Maloyaroslavets.

Higher SS and Police Commander South (103)
(Jeckeln)

Location: Krivoi-Rog.

Communications: Teletype communications Lvov.

Einsatzgruppe C (Dr. Rasch)

Location: Kiev.

Communications: Teletype communications via Lvov,
from there courier service, radio
communications Kiev,
Army Post Office No. 32 704

Sonderkommando 4a
(Blobel)

Location: Kiev, Vorkommando Kharkov.

Communications: Radio communications Dnepropetrovsk,
Army Post Office No. 22 789

Sonderkommando 4b
(Braune)

Location: Poltava, squads en route for Slaviyansk
and/or Kramatorskaya.

Communications: Radio communications Poltava,
Army Post Office No. 34 310

Einsatzkommando 5
(Meyer)

Location: Kiev, squads in Zhitomir, Rovno and
Vinnitsa.

Communications: Radio communications Kiev,
Army Post Office No. 35 102

Einsatzkommando 6
(Kroeger)

Location: Dnepropetrovsk.

Communications: Radio communication Dnepropetrovsk,
Army Post Office No. 35 979

Higher SS and Police Commander for special purposes
(Korsemann)

Location: Rovno.

Einsatzgruppe D (Ohlendorf)

Location: Simferopol.

Communications: Radio communications,
Army Post Office No. 47 540

Sonderkommando 10a
(Seetzen)

Location: Taganrog, Nachkommando at Mariu-
pol, Melitopol and Berdyansk.

Communications: Radio communications Taganrog,
Army Post Office No. 47 540

Sonderkommando 10b
(Persterer)

Location: Feodosiya, Vorkommando at Kerch,
Teilkommando at Alushta and Su-
dak.

Communications: Radio communications whilst en route,
Army Post Office No. 47 540

Einsatzkommando 11a
(Zapp)

Location: Yalta, Teilkommando outside Sevasto-
pol and Bakhchisarai and Yevpa-
toriya,
Army Post Office No. 47 540

Einsatzkommando 11b

Location: En route to Simferopol,
Army Post Office No. 47 540

Einsatzkommando 12

(Nosske)

Location: Stalino, Teilkommando in Novoche-
kassk.

Communications: Radio communications Michailovka,
Army Post Office No. 47 540

Reports of the Einsatzgruppen and Kommandos.

Einsatzgruppe A

Location Krasnogvardeisk.

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Reports from *Einsatzgruppe B* have not been received.

Einsatzgruppe C

Location Kiev.

"Atmosphere" and Situation in Kiev

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Executory Activities

In the course of the systematic mopping-up operations and the complete rounding-up of all Jews and Communists in the neighborhood of Kiev, the Sonderkommando 4a dispatched a number of Teilkommandos who were able to complete their tasks without any difficulties and in cooperation with the competent local commanders of the German Wehrmacht. Thus, on 22 October 1941 at Koselets apart from 11 Communists and partisans which had been handed over by the Wehrmacht, 125 Jews were executed, who were the rest of a population which, before the war, had numbered over 2,000. On this occasion the Ukrainian militia, recruited at Koselets, made itself useful in the rounding-up and by procuring the necessary manpower for making the pits.

On 23 October 1941 a Teilkommando of Sonderkommando 4a visited the town Chernigov which, before the war, had a population of 70,000, of which only 40,000 remain today. Of more than 10,000 Jews not more than 260 have stayed behind. The town itself was a sight of almost complete destruction, and it is said that the inner part was set on fire by the Jews before the German troops entered the town. Apart from 8 Communists and partisans who again were handed over by the local commander of the Wehrmacht, the Kommando shot 116 Jews on 23 October 1941 and 144 on the following day. When the same Kommando again passed Chernigov on 23 October 1941, 49 Jews could be arrested

who, after the executions on 24 October 1941, had believed the danger had passed and had returned from their flight. On the same day, too, request of the director of the mental asylum at Chernigov to liquidate 270 incurables was complied with.

In Oster, on 29 October 1941, 215 Jews, partisans as well as a few functionaries of the Communist Party, were arrested and executed.

The attempt of Sonderkommando 4a to take action against Nezhin, where approximately 325 Jews are living, failed three times since it was impossible to reach this place on roads which were covered with mud after the rain and thus impassable for motor vehicles.

For the same reason the plan of Sonderkommando 4a, to have a stronger unit follow the Vorkommando already sent to Kharkov, had to be deferred for the time being.

In the course of the investigations made in Kiev in connection with the winding-up of the illegal party machinery of the Communist Party, further arrests could be made by Sonderkommando 4a. The arrest of the Ukrainian Michael Tschernisch, a member of the secret Kyrov-Rayon-Party-Committee, led to the finding and seizing of approximately 50 kilos of leaflets and propaganda pamphlets, which were intended for the illegal activities of the Communist Party in the Ukraine.

From 11 until 24 October 1941 Sonderkommando 4b carried out 205 executions. These were 11 political functionaries, 13 saboteurs and looters, and 181 Jews.

During the time from 25 October till 30 October 1941 Sonderkommando 4b executed 7 political functionaries, 2 saboteurs and looters, and 381 Jews.

According to a report of Sonderkommando 4b there is a mental asylum at Poltava with 865 inmates; attached to it is a farm of 1,200 morgen, the produce of which is used to feed the insane and the staff living there. In view of the extremely critical food situation in Poltava—for instance there is no full-cream milk to be had for the three large military hospitals—the commander of Sonderkommando 4b, in agreement with the 6th Army and the local commander of the Wehrmacht, contacted the woman doctor in charge of the asylum with the object of reaching an agreement on the execution of at least part of the insane.

The woman doctor in charge quite understood that the problem should be solved in this manner, but objected that the measure would cause unrest among the population which ought not to be disregarded, especially since the Soviets—naturally for propaganda reason—had given all conceivable assistance to this asylum. A way out of this difficulty was found by deciding that the execu-

tion of 565 incurables should be carried out in the course of the next few days under the pretext that these patients were being removed to a better asylum in Kharkov. It can be taken for granted that the remaining 300 patients [light cases] will be released shortly from the asylum. A commissioner appointed by the local commander will take care of the vacant parts of the building, the furniture, linen, and clothing, while a Kreislandwirtschaftsfuehrer [Kreis Agriculturalist] will take care of the farm.

The work of Sonderkommando 4b at Poltava was handicapped severely by extremely unfavorable weather and road conditions since a number of neighboring villages, from where the appearance of partisans and Communist elements had been reported, could not be reached with any of the motor vehicles available. Activities had therefore to be confined to the area of Poltava itself. Cooperation with the Wehrmacht and the Ukrainian police ran smoothly. As to the activities of the Bandera group, no observations of importance could be made in the area of Sonderkommando 4b. On the other hand the Melnik group is beginning to become rather active. Obviously attempts are being made to exclude German influence and to establish a free and independent Ukraine. For the time being, however, factual reports cannot be made. On 2 November 1941 the total number of executions carried out by Einsatzkommando 5 was 21,258. Included in this number are 36 political functionaries, 32 saboteurs and looters, and 4,372 Jews who were shot between 20 October and 26 October inclusive. In the week from 26 October to 1 November 1941 inclusive, Einsatzkommando 5 executed 40 political functionaries, 16 saboteurs and looters, and 2,658 Jews. Included in this number are (1) 414 hostages, shot as a reprisal for various incendiary crimes, (2) 1,391 executions carried out by a Teilkommando of Einsatzkommando 5, which had returned from the area of Skvira-Pogrebishche-Plyskiv.

Since 5 October 1941, Einsatzkommando 6 is busy in the district of the Dnepr bend. Apart from extensive rural districts the following towns, all of a definitely industrial character and densely populated, were dealt with: Dnepropetrovsk, Dneprodzerzhinsk (150,000 inhabitants), Verchedneprovsk (30,000 inhabitants), Novo Moskovsk (30,000 inhabitants), Zaporozhe (350,000 inhabitants) and Nikopol (60,000 inhabitants). In the area of Einsatzkommando 6 the total number of town dwellers is around 1.2 million, not including those of smaller places. Naturally the amount of work to be accomplished is proportionately high and can hardly be accomplished with the forces available. Apart from the cases which are really of interest to the security police there is the work, unfortunately unavoidable, to be done in connection

with the immense number of denunciations with which the Einsatzkommando is simply swamped. Here the low level of the moral character of the population becomes apparent; almost everyone of the inhabitants considers it necessary and of merit if, for selfish interests, he denounces his relatives, friends, etc., as having been Communists, to the German police.

During the time covered by the report, Einsatzkommando 6 was able to find out about a number of functionaries, however, again and again it appeared that here too the most active people had escaped in time. After a long search an NKVD murderer of the worst kind could be arrested on 26 October. Lately, partisans and saboteurs have caused the Einsatzkommando 6 more trouble than formerly. Five different depots of arms, including two of some extent, could be discovered and destroyed. On a large-scale operation, which took place on 22 October 1941, against partisans in a forest district on the other side of the Dnepr ended with the arrest of 9 partisans, some of whom were armed and others had buried their weapons. The execution by shooting of these partisans contributed considerably to pacify this district.

On 24 October 1941 a similar action was carried through by the Einsatzkommando 6 in cooperation with the military police, in a large forest district, the result of this was only the discovery of some arms and other supplies of the partisans.

Of approximately 100,000 Jews originally living in Dnepropetrovsk about 70,000 escaped before the German troops entered the town. Of the remaining 30,000 approximately 10,000 were shot on 13 October 1941 by a detachment of the higher SS and police leader.

Up to the day of report a further 1,000 Jews were shot by Einsatzkommando 6; in view of the lack of skilled workers, it was in this connection impossible to avoid sparing, for the time being, the lives of Jewish partisans, who were urgently needed for repair work, etc. Steps are being taken for the extermination of 1,500 inmates of the provincial lunatic asylum.

Finally it is desired to pass on a report of the commander of Einsatzkommando 6, according to which the behavior of Italian and Hungarian troops has often caused annoyance to the German authorities. It was noticed for instance that Italians and Hungarians had abundant supplies of German cigarettes which they sold at exorbitant prices to our soldiers. For instance Italians selling them in the street are demanding 2 RM for 6 cigarettes.

Einsatzgruppe D

Location: Simferopol

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TRANSLATION OF DOCUMENT 3257-PS*
PROSECUTION EXHIBIT 43

EXTRACTS FROM UNSIGNED MEMORANDUM ADDRESSED TO GENERAL THOMAS, CHIEF OF THE INDUSTRIAL ARMAMENT DEPARTMENT, 2 DECEMBER 1941

Vol. 226-3

Armament in the Ukraine Inspector

- In the field, 2 December 1941

Secret

To General of the Infantry, Thomas,
Chief of the Industrial Armament Department [Wi Rue Amt]
in the OKW

Berlin W

Kurfuerstenstr 63-67.

1 enclosure.

* * * * *

The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks, sometimes months later, specially detached formations of the police executed a planned shooting of Jews. This action as a rule proceeded from east to west. It was done entirely in public with the use of the Ukrainian militia and unfortunately in many instances also with members of the armed forces taking part voluntarily. The way these actions which included men and old men, women, and children of all ages were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to 200,000 Jews may have been executed in the part of the Ukraine belonging to the Reich Commissariat (RK); no consideration was given to the interests of economy.

Summarizing, it can be said that the kind of solution of the Jewish problem applied in the Ukraine which obviously was based on the ideological theories as a matter of principle had the following results:

a. Elimination of a part of partly superfluous eaters in the cities.

b. Elimination of a part of the population which hated us undoubtedly.

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, Vol. V, pp. 994-997, U. S. Government Printing Office, Washington, 1946.

c. Elimination of badly needed tradesmen who were in many instances indispensable even in the interests of the armed forces.

d. Consequences as to foreign policy—propaganda which is obvious.

e. Bad effects on the troops which in any case get indirect contact with the executions.

f. Brutalizing effect on the formations which carry out the executions—regular police.

Scooping off the agricultural surplus in the Ukraine for the purpose of feeding the Reich is, therefore, only feasible if traffic in the interior of the Ukraine is diminished to a minimum. The attempt will be made to achieve this—

1. by annihilation of superfluous eaters (Jews, population of the Ukrainian big cities, which like Kiev do not receive any supplies at all);

2. by extreme reduction of the rations allocated to the Ukrainians in the remaining cities;

3. by decrease of the food of the farming population.

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PARTIAL TRANSLATION OF DOCUMENT NO-2827
PROSECUTION EXHIBIT 74

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 143,
8 DECEMBER 1941

The Chief of the Security Police and of the SD
B. No. IV A 1 — 1B/41 — Top Secret

Berlin, 8 December 1941

[Stamp] Top Secret

65 copies
51st copy

Operational Situation Report U.S.S.R. No. 143

I. Locations and Lines of Communication.

The locations and lines of communication reported in Operational Situation Report No. 141 of 3 December 1941 have remained unaltered.

*II. Reports from the Einsatzgruppen and Kommandos.
Einsatzgruppe A*

Location: Riga.

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Einsatzgruppe B

Location: Smolensk.

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Einsatzgruppe C

Location: Kiev.

Activity of the Bandera movement in the district of Zhitomir

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Bandera movement in Zaporozhe.

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General Situation in Zaporozhe.

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Security Police Measures of the Einsatzkommando

The number of executions carried out by Sonderkommando 4 amounted on 9 November 1941 to 57,243.

On 7 November 1941, a Teilkommando of the SK 4 shot 385 Jews in Gornostaiopol, according to martial law. These Jews had, for the greater part, been driven together into G. from the surrounding villages. On its way back to Kiev, the same Kommando shot 120 Jews in Dymmer and 30 Jews in Ostor in the same day. This action was carried out in cooperation with the Wehrmacht offices without any mishap.

Between 31 October 1941 and 5 November 1941 the SK 4b shot a total of 740 persons, according to martial law. Among these were 3 political officials, 1 saboteur, 137 Jews, and 599 mental deficients. This action also was carried out quite smoothly according to the preparations made. The farm which was set free by the shooting of the greater part of the inmates of the insane asylum in Poltava is available, primarily, for the military hospitals there. The underwear, clothing, and other wearing apparel collected on this occasion have also been handed over mainly to the hospitals. The remaining 200 curable inmates are going to be employed on the farm.

A Teilkommando of the SK 4b has started clearing out the prison camp at Losovoya.

The total figure of persons shot by the Einsatzkommando 5 under martial law was 29,644 as of 10 November 1941.

During the period 2 November to 8 November 1941, inclusive, 15 political officials, 21 saboteurs and looters, 10,650 Jews, and 414 hostages were shot by EK 5.

The shooting of hostages was carried out in agreement with the town commandant of Kiev as a retribution for increasing cases of arson and sabotage. The town commandant made known to the population the shooting of those hostages by proclamation and, among other things, pointed out that a multiple number of

persons would be shot for each new case of arson or sabotage. Furthermore, he drew the attention of all inhabitants to their duty to report to the police without delay any suspicious observation.

During the period 9 to 15 November 1941, inclusive, the EK 5 carried out 1,509 shootings according to martial law. In this figure are included 57 political officials, 30 saboteurs, and 1,422 Jews.

On 6 and 7 November 1941, the *Jew action* was carried out in Rovno which had been planned long beforehand. It was possible to shoot approximately 15,000 Jews on this occasion. The organization of this action was in the hands of the constabulary according to orders of the higher SS and police leader. The Aussenkommando Rovno of the Einsatzkommando 5 played an integral part in carrying out this operation.

In the period between 26 October to 2 November 1941, the EK 6 shot 26 political officials, 10 saboteurs and looters, and 43 Jews according to martial law.

In the period 26 October to 2 November 1941 the EK 6 shot 26 political officials, 10 saboteurs and looters, and 43 Jews according to martial law.

[last 2 paragraphs are identical]

In the period 3 to 9 November 1941, 20 political officials, 3 saboteurs, and 113 Jews, and in the period 10 to 16 November 1941, 4 political officials, 10 saboteurs and looters, and 47 Jews were shot. The number executed by the EK 6 in the period 17 to 25 November 1941 amounts to a total of 105. Among these were 24 political officials, 20 saboteurs and looters, and 61 Jews.

Einsatzgruppe D

Location: Simferopol

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PARTIAL TRANSLATION OF DOCUMENT NO-2834
PROSECUTION EXHIBIT 87

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 150,
2 JANUARY 1942

Chief of Security Police and Security Service
B. No. IV A 1 — 1 B/41 — Top Secret

Berlin, 2 January 1942

[stamped] Top Secret!

65 copies

51st copy

Operational Situation Report U.S.S.R. No. 150

* * * * *

Einsatzgruppe D

Reports:

* * * * *

4. *Jews*

Simferopol, Yevpatoriya, Alushta, Karasubazar, Kerch and Feodosiya and other districts of the western Crimea have been cleared of Jews. From 16 November through 15 December 1941, 17,645 Jews, 2,504 Krimtschaks, 824 gypsies, and 212 Communists and partisans have been shot. Altogether 75,881 persons have been executed. Rumors about executions in other areas rendered action at Simferopol very difficult. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers.

PARTIAL TRANSLATION OF DOCUMENT NO-3279
PROSECUTION EXHIBIT 21

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 155,
14 JANUARY 1942

The Chief of the Security Police and the Security Service
IV A 1 - B/No. 1 B/41 Top Secret

Berlin, 14 January 1942
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51st copy

Operational Situation Report U.S.S.R. No. 155

I. *Locations and Signals Communications*

Date: 4 January 1942.

* * * * *

II. *Reports of the Einsatzgruppen and Einsatzkommandos*

Einsatzgruppe A

Location: Krasnogvardeisk

* * * * *

Jews. Efforts are being made to purge the eastern territory of Jews as completely as possible.

Shootings were carried out in such a way as to attract as little public attention as possible. Up to the present, this method was successful almost everywhere. Even in towns where large scale shootings had been carried out, time and place of the killings of the Jews never transpired. In the population and even among the remaining Jews the impression prevailed that the Jews had been resettled in other parts of the eastern territory.

Esthonia has already been cleansed of Jews.

In *Latvia*, Jews remained only in Riga and Dvinsk [Daugavpils]. The number of Jews left in Riga—29,500—was reduced to 2,600 by an action carried out by the Higher SS and Police Leader "Ostland". In Dvinsk there are still 962 Jews left who are urgently needed for the labor supply.

In *Lithuania*, an effort had to be made to purge the rural districts and the small towns thoroughly of Jews. Apart from basic considerations, this was an urgent necessity also because Communist elements—in particular terror groups and parts of the Polish Resistance Movement—established contact with the Jews, instigating them to sabotage work and to offer resistance. The Jews in turn repeatedly attempted to work up anti-German feeling in the originally loyal and willing Lithuanian circles. Several times sentries were fired at from the Kovno Ghetto.

The Jews were particularly active in Zagare. There, on 2 October 1941, 50 Jews escaped from the ghetto which was already cordoned off. Most of them could be recaptured and shot in the course of a large scale search which was carried out immediately. In course of the subsequent preparations for the wholesale execution of the Zagare Jews, at a prearranged signal they attacked the guards and the men of security police Einsatzkommando while on the transport to the place of execution. Several Jews who had not been searched thoroughly enough by the Lithuanian guards drew knives and pistols and uttering cries like "Long live Stalin!" and "Down with Hitler!" they rushed upon the police force of whom 7 were wounded. Resistance was broken at once. After 150 Jews had been shot on the spot, the transport of the remaining Jews to the place of execution was carried through without further incident.

In several Lithuanian places, the Jewish quarters had become sources of epidemics owing to bad living and nutritional conditions. The spread of the diseases which had broken out in the ghettos was prevented by the thorough extermination of the Jews.

In Lithuania, there are at present only 15,000 Jews left in Kovno who are urgently needed for the manpower supply, 15,000 in Vilnyus, and 4,500 in Shaulyai.

*In *White Ruthenia*, the purge is in progress. The number of the Jews in the area handed over to the civil administration is at present approximately 139,000. 33,210 Jews were shot by Einsatzgruppe A since it had taken over the official duties in White Ruthenia.

* * * * *

Retaliatory actions

In the village of Audrini near Rezekne 6 Russians had been

in hiding for months according to a preconceived plan; some time ago they had shot 3 Latvian auxiliary policemen on duty. On 2 January, at the order of Einsatzgruppe A of the security police and the security service, the village was completely burned down after removal of all foodstuffs, etc., and all the villagers shot. Three hundred one men were publicly shot in the market square of the neighboring town, Rezekne. All these actions were carried out without incident.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NO-2662
PROSECUTION EXHIBIT 13

LETTER FROM HEYDRICH TO RIBBENTROP, REICH MINISTER OF FOREIGN AFFAIRS, 23 APRIL 1942; EXTRACTS FROM ATTACHED OPERATIONAL SITUATION REPORT U.S.S.R. NO. 11

The Chief of the Security Police and the Security Service
IV A 1 - B No. 24 B/41 Top Secret

Berlin, SW 11, Prinz-Albrecht-Strasse 8, 23 April 1942

Telephone: Local 120040

Long Distance calls: 126471

[Stamp]

Foreign Office
D II 100, Top Secret
Received: 27 April 1942
1 Enclosure

[Stamp]
Top Secret

To the Reich Minister of Foreign Affairs
Herr von Ribbentrop
Berlin W 8

My dear Reich Minister,

I am forwarding to you, herewith, as enclosure the Operational Situation Report No. 11 of the Einsatzgruppen of the Security Police and the Security Service [SD] in the U.S.S.R. for your information.

Heil Hitler!

[Signature] HEYDRICH

[Handwritten note] Special File Russia

[Handwritten] re D II 100
Top Secret

Office: Reich Ministry of Foreign Affairs

[Stamp] Top Secret

Subject: Letter of the Chief of the Security Police and the Security Service dated 23 April 1942—File No. IV A 1 — B No. 24 B/41 top secret—with Operational Situation Report No. 11 of the Einsatzgruppen of the Security Police and the Security Service in the U.S.S.R.

Subdepartment D II

Submitted for jurisdictional reasons.

The letter has not yet been submitted to the Reich Minister of Foreign Affairs.

Berlin, 25 April 1942

[Signed] BRUNS

[Stamp] Top Secret

Pages 2 and 3 of the report contain a brief summary of its essential contents.

Through Herr State Under Secretary Luther to—

Office of State Secretary *

Herr State Under Secretary, Political Department

Herr Deputy Ministerial Director, Political Department

Herr Envoy von Tippelskirch

Pol I M

Pol V

Pol VI (page 19)

D IX

D VIII

D III

Chief Inf.

Department Ru (pages 18 and 19)

[A number of illegible
handwritten notes,
initials, dates, etc.]

For information.

Berlin, 28 April 1942

2. To be filed.

[Stamp] Top Secret

100 copies
4th copy

[Handwritten] D II 100 42 top secret

* Ernst von Weizsaecker, defendant in Case 11. See vols. XII, XIII and XIV.

Operational Situation Report No. 11 of the Einsatzgruppen of the Security Police and the Security Service (SD) in U.S.S.R.

Period covered—1 March till 31 March 1942

Index

- I. Locations
- II. Executive operations
 - A. Partisans
 - B. Communists
 - C. Jews
- III. Attitude and behavior of the population
- IV. Movements for national independence

(Survey of the most important events next page)

* * * * *

I. *Locations*

The locations of the Einsatzgruppen of the Security Police and the SD remained unchanged. The locations are—

Einsatzgruppe A: Krasnogvardeisk

Einsatzgruppe B: Smolensk

Einsatzgruppe C: Kiev

Einsatzgruppe D: Simferopol

II. *Executive operations*

* * * * *

C. Jews

The way of handling the Jewish question was entirely different in the various sections of the front.

Since the greater part of the Ostland is free of Jews, and the few Jews who are left because they are urgently needed for labor units are housed in ghettos, the task of the Security Police and the SD consisted in tracing Jews who were hiding out in the country. Repeatedly Jews were seized, who had left the ghetto without permission or did not wear the yellow star.

In Riga, among others, three Jews who had been transferred from the Reich to the ghetto and who had escaped, were recaptured and publicly hanged in the ghetto.

In the course of the greater action against Jews, 3,412 Jews were shot in Minsk, 302 in Vileika, and 2,007 in Baranovichi.

The population welcomed these actions, when they found out, while inspecting the apartments, that the Jews still had great stocks of food at their disposal, whereas their own supplies were extremely low.

Jews appear again and again, especially in the sphere of the black market. In the Minsk canteen which serves the population with food and is operated by the city administration, 2 Jews had committed large-scale embezzlements and briberies. The food which was obtained in this way was sold on the black market.

Furthermore, one Jew was arrested because of strong suspicion of espionage. This man is a well-known painter and sculptor, who—because he painted portraits of a great number of German officers—was admitted to almost all German troop units in Minsk.

Besides the measures taken against individual Jews operating in a criminal or political manner, the tasks of the Security Police and the SD in the other areas of the eastern front consisted in a general purging of larger localities. Alone in *Rakov, e. g., 15000 Jews were shot, and 1224 in Artenovsk*, so that these places are now free of Jews.

In the Crimea 1,000 Jews and gypsies were executed.

III. *Public Opinion and Attitude of the Population*

* * * * *

TRANSLATION OF DOCUMENT 3428-PS
PROSECUTION EXHIBIT 111

SECRET MEMORANDUM FROM KUBE, GENERAL COMMISSIONER OF WHITE RUTHENIA, TO GAULEITER LOHSE, REICH COMMISSIONER OF OSTLAND, 31 JULY 1942, CONCERNING ACTIONS AGAINST PARTISANS AND LIQUIDATION OF JEWS IN WHITE RUTHENIA

[Stamp] Secret

[Stamp] Department IIa No. 2407/428

The General Commissioner for White Ruthenia

Department Gauleiter/G.-507/42 Secret

(To be quoted in the reply)

To the Reich Commissioner for the Eastland

Gauleiter Heinrich Lohse

Riga

[Handwritten] HS 10 August 1942

[Stamp]

The Reich Commissioner for the Eastland

Journal Nr. 1122/42 Secret

Secret

[Stamp]

Reich Commissioner

Ostland, 7 August 1942

Main Department II Pol.

[Handwritten] II Administration

[Handwritten]

To be referred to me with previous correspondence

Jr. 12 August

correspondence furnished

Sr. 19 August

Subject: Actions Against Partisans and Anti-Jewish Action in
the District General White Ruthenia

In every encounter with partisans in White Ruthenia, it has been established that in the former Soviet part of the district general as well as in the former Polish part the Jews together with the Polish Resistance Movement in the East and the Red Army men of Moscow are the mainstay of the partisan movement. As a result of this, and in view of the danger to the whole economy, the treatment of the Jews in White Ruthenia is a predominantly political matter which, therefore, should not be solved according to economic but political angles. During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area, the Jewry was completely exterminated, without endangering the allocation of labor in any way. In the prevailing Polish Lida area, 16,000 Jews, in Slonim 8,000 Jews, etc., were liquidated. The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by the arbitrary action by the rear army area, which has already been reported to your office. In the rear army area—I was not contacted—10,000 Jews were liquidated who were scheduled for extermination by us anyway. In the city of Minsk about 10,000 Jews were liquidated on 28 and 29 July, 6,500 of whom were Russian Jews—mainly old people, women, and children—the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Brno, Bremen, and Berlin in November of the previous year at the Fuehrer's orders.

The Slutsk area was also ridded of several thousand Jews. The same applies to Novogrudok and Vileika. Radical measures still remain to be taken for Baranovichi and Hanzevichi. In Baranovichi, about 10,000 Jews are still living in the town alone, 9,000 of whom will be liquidated next month. In the town of Minsk, 2,600 Jews from Germany have been left over. Besides, all the 6,000 Jews and Jewesses are still alive who have been working, during the action, with the units who had employed them previously. Even in the future the largest Jewish labor force will be in Minsk, since the centralization of armament industries and the burden on the railways makes this necessary for the time being. In all other areas the number of Jews utilized for labor by the SD and myself will be fixed at 800 at the outside but at 500 if possible so that after the completion of the action 8,600 Jews will remain in Minsk and approximately 7,000 in the

10 remaining territories, including the territory Minsk-Land, which is already free from Jews. The danger that the partisans will, in future, derive any important support from the Jews will then have ceased to exist. I myself and the SD would certainly much prefer that the Jewish population in the district general of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements of the Wehrmacht who is the main employer of the Jewish population are still being considered. The clear anti-Jewish attitude of the SD and the difficult task of the units in White Ruthenia to deliver again and again new Jewish transports from the Reich to their destination, both put an undue strain on the physical and spiritual strength of men of the SD and diverts them from their real purpose, which lies in the White Ruthenian region itself.

I should therefore be grateful if the Reich Commissioner could see his way to stop further Jewish transports until the partisan threat has finally been overcome. I must make 100 per cent use of the SD against partisans and against the Polish Resistance Movement, both of which demand the use of the full strength of the SD units, which are none too strong as it is.

After the conclusion of the anti-Jewish action in Minsk, Dr. Strauch, SS Lieutenant Colonel, reported to me tonight, with justifiable wrath, that without any order from the Reich Leader SS and without notification of the commissioner, a transport of 1,000 Jews has suddenly arrived from Warsaw for use in this air fleet area.

I should like to ask the Reich Commissioner (who has already been advised by teletype), in his capacity as the highest authority in the Ostland, to stop such transports. The Polish Jew is, exactly like the Russian Jew, an enemy of all that is German. He represents a politically dangerous factor, the political danger of which exceeds by far his value as a specialized worker. Under no conditions must Wehrmacht agencies of the army or the Luftwaffe, be allowed to import, without the approval of the Reich Commissioner, into an area under civil administration, Jews from the General Government who might endanger the entire political work and security of the district general. I am in full agreement with the commander of the SD in White Ruthenia, that we are to liquidate every Jewish transport which has not been ordered or announced by our superior officers, so as to avoid further unrest in White Ruthenia.

The Commissioner General for White Ruthenia

[Signed] KUBE

PARTIAL TRANSLATION OF DOCUMENT NO-3339
PROSECUTION EXHIBIT 93

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 170,
18 FEBRUARY 1942

Chief of the Security Police and SD
IV A 1 - B. No. 1 B/41 Top Secret

Berlin, 18 February 1942.

[Stamp] Top Secret

65 copies
1st copy

Operational Situation Report U.S.S.R. No. 170

I. Locations and signal communications

The locations and signal communications given in Operational Situation Report No. 168 of 13 February 1942 are unchanged.

II. Reports of Einsatzgruppen and Einsatzkommandos

Einsatzgruppe A reports—

* * * * *

Einsatzgruppe D reports—

1. General situation

* * * * *

2. Work of the security police

The northern parts of the Crimea in particular were the scene of security police work. Four Teilkommandos are engaged in combing the area village by village. These are for the most part villages with 150-300 inhabitants, mainly Russians and Ukrainians. Apart from carrying out executive duties, the Teilkommandos set up *advance message centers* in the villages. From time to time the confidential agents [V-men] were questioned, who had to report on all persons who had moved into this territory, and similar events. On the whole, it can be said that comparatively few unreliable elements exist in the rural territories of the northern sector. Important officials, etc., have not been apprehended as yet, but mainly Jews who were in hiding and, in isolated cases, partisans. By the end of February, one combing-through of the occupied Crimea will have been finished; certain important areas and the towns in particular are being regularly rechecked.

The search for isolated Jews who have up to now avoided being shot by hiding themselves or by giving false personal data were continued. From 9 January to 15 February, more than 300 Jews were apprehended in Simferopol and executed. By this, the number of persons executed in Simferopol increased to almost 10,000

Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100–200 Jews were still disposed of in each instance.

Besides the work rendering harmless *Communist Officials and NKVD agents*—of whom over 100 were apprehended in each of the separate sectors of activity—the search for partisans in the Bakhchisarai, Yalta, and Karasubazar sectors is of primary importance. While the ambushes and attacks on the highways of west Crimea decreased somewhat as a result of the convoy system and stronger security measures, several attacks on villages occurred. Keush was attacked during the night 7–8 February by 300 partisans, and 8 houses were set on fire. The partisans were repelled with the help of a Tartar self-defense company and of an army unit. On 9 February, 150 partisans, who were provided with arm bands of the kind the Tartar Company uses, attacked the village of Stzlia, which was plundered. Reports to the army stressed repeatedly that stronger action against the partisans was absolutely necessary before the beginning of the warmer season. Several large-scale operations are being prepared now on the basis of the reconnaissance in this region. In the eastern sector, in particular in the Karasubazar area, four surprise attacks were made on German trucks. One of these was made by 200 partisans who wore snow jackets at the time.

On 1 February, the village of Kasanli was occupied. The Tartar Company liberated the village and shot 6 partisans and 2 commissioners. An attempt to occupy Ortalan was repulsed by the Tartar Company. An attack on Chokrak planned for 9 February with the purpose of freeing 40 prisoners of war held there was prevented by investigations made by the Kommando. On 3 February, 6 parachutists were dropped near Karasubazar. Kommando action together with the Tartar Company prevented the parachutists, who were able to fight their way through to the partisans, from taking jettisoned batteries and explosives with them. “Molotov cocktail” and other booty were taken.

Several actions are also planned for the eastern sector on the basis of data made available by the Wehrmacht.

In the northern sector of the Crimea, a partisan group consisting of seven men was taken. These were trying to break through to the Ukraine, allegedly to receive special orders in Nikolaev.

Between 1 and 15 February, 1,451 persons were executed, of which 920 were Jews, 468 Communists, 45 partisans, and 12 looters, saboteurs, and asocials. Total up to now is 86,632.

Reports by Einsatzgruppen B and C have not been submitted.

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PARTIAL TRANSLATION OF DOCUMENT NO-3359
PROSECUTION EXHIBIT 84

EXTRACTS FROM OPERATIONAL SITUATION REPORT U.S.S.R. NO. 190,
8 APRIL 1942

The Chief of the Security Police and of the SD
IV A 1 - 1 B/41 top secret

Berlin, 8 April 1942

[rubber stamp] Top Secret

I. *Locations and lines of communications*

date: 8 April 1942

* * * * *

II. *Reports from Einsatzgruppen and Einsatzkommandos*

Einsatzgruppe A

Location: Krasnogvardeisk.

* * * * *

There are no reports from Einsatzgruppe B.

Einsatzgruppe C

Location: Kiev.

Within the territory of the Commander of the Security Police and of the SD for the Ukraine 1,315 people were given "special treatment" during the period from 1 March 1942 until 3 April 1942. 185 of them were political officials, 121 were saboteurs, and 1,009 were plunderers.

Einsatzgruppe D

Location: Simferopol

General situation

* * * * *

Security Police measures. The intensive security police measures taken in the Einsatzgebiet effected that all villages, especially those on the Crimea, have now been combed through at least once. The extensive work, supported by village militia which has been cleaned up and reorganized, was quite successful. The completed system of special agents and lines of communication, as well as the active cooperation of the population, which has reached large proportions, did their share in achieving this result.

After the cleaning up of the Einsatzgebiet, especially after the Crimea has been cleaned up of pockets of resistance and enemy troops, Bolshevik officials, who have hidden and camouflaged themselves, are being rendered harmless in increasing numbers.

Except for small units, which occasionally show up in the

north of Crimea, there are no more Jews, Krimchaks, and gypsies in this territory. Wherever they have been able to camouflage themselves as individuals by means of false passes etc., they will be recognized anyway, sooner or later, as experiences of the past weeks have proved.

* * * * *

Inhabitants of the village of Laki near Bakhchisarai were in constant contact with partisan groups; they gave them billets at night and supplied them with food. On 23 March a penal action against this village produced such huge quantities of food that the partisans would have been able to live on this until the next harvest. The 15 main participants, among them the mayor, were shot, all inhabitants were evacuated and the village was burned down.

In the second half of March a total of 1,501 people were executed. Among these were 588 Jews, 405 Communists, 247 partisans, and 261 asocial people including gypsies. Total number shot up to date, 91,678.

* * * * *

TRANSLATION OF DOCUMENT 2273-PS*
PROSECUTION EXHIBIT 36

EXTRACT FROM DRAFT OF MEMORANDUM BY EINSATZGRUPPE A,
CONCERNING LIQUIDATION OF JEWS

Draft
Top Secret
Einsatzgruppe A

[page 56]

III

Jews

The systematic mopping up of the eastern territories embraced, in accordance with the basic orders, the complete removal, if possible, of Jewry. This goal has been substantially attained—with the exception of White Russia—as a result of the execution up to the present time of 229,052 Jews. The remainder still left in the Baltic Provinces is urgently required as labor and housed in ghettos.

* * * * *

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, vol. IV, pp. 944-949, U. S. Government Printing Office, Washington, 1946.

4. METHODS OF EXECUTION

Prosecution Documents

Doc. No.	Pros. Ex. No.	Description of Document	Page
501-PS	32	Extracts from correspondence, 16 May 1942, concerning execution vans used by the Einsatzgruppen in the east.	198
2992-PS	33	Affidavits of Hermann Friedrich Graebe, 10 November 1945, concerning the execution of Jews in Russia.	199
NO-2993	67	Affidavit of Adolf Ott, 24 April 1947.	203
2620-PS	9	Affidavit of Otto Ohlendorf, 5 November 1945, concerning the extermination program of the Einsatzgruppen.	205
NO-3055	28	Affidavit of Heinz Hermann Schubert, 24 February 1947, concerning the extermination of Jews in Russia.	207
NO-4314	29	Affidavit of Ernst Biberstein, 2 July 1947.	209
NO-3824	31	Affidavit of Paul Blobel, 6 June 1947, concerning extermination in Russia.	211
NO-4234	163	Affidavit of Karl Rudolf Werner Braune, 8 July 1947, concerning execution of Jews in Russia.	214

TRANSLATION OF DOCUMENT 501-PS* PROSECUTION EXHIBIT 32

EXTRACTS FROM CORRESPONDENCE, 16 MAY 1942, CONCERNING EXECUTION VANS USED BY THE EINSATZGRUPPEN IN THE EAST

Field Post Office No. 32704
B No. 40/42

Kiev, 16 May 1942

* For more complete translation of document, see *Nazi Conspiracy and Aggression*, Vol. III, pp. 418-422, U. S. Government Printing Office, Washington, 1946.

Top Secret

To: SS Lieutenant Colonel Rauff
Berlin, Prinz-Albrecht-Str. 8

[Handwritten]

pers.

R/29/5 Pradel n.R.

b/R

[Handwritten] Sinkkel [?] b.R.

p 16/6

The overhauling of vans by groups D and C is finished.

* * * * *

I ordered the vans of group D to be camouflaged as house trailers by putting one set of window shutters on each side of the small van and two on each side of the larger vans, such as one often sees on farm houses in the country. The vans became so well known, that not only the authorities, but also the civilian population called the van "death van," as soon as one of these vehicles appeared. It is my opinion that the van cannot be kept secret for any length of time, not even camouflaged.

The Saurer van which I transported from Simferopol to Taganrog suffered damage to the brakes on the way. The Sonderkommando in Mariupol found the collar of the combined oil-air brake broken at several points. By persuading and bribing the home motor pool we managed to have a form machined, on which the collars were cast. When I came to Stalino and Gorlovka a few days later, the drivers of the vans complained about the same faults. After having talked to the commandants of those commands I went once more to Mariupol to have some more collars made for those cars too. As agreed two collars will be made for each car, six collars will stay in Mariupol as replacements for group D and six collars will be sent to SS 2d Lieutenant Ernst in Kiev for the cars of group C. The collars for the groups B and A could be made available from Berlin, because transport from Mariupol to the north would be too complicated and would take too long. Smaller damage to the cars will be repaired by experts of the commands, that is of the groups in their own shops.

* * * * *

PARTIAL TRANSLATION OF DOCUMENT 2992-PS*
PROSECUTION EXHIBIT 33

AFFIDAVITS OF HERMANN FRIEDRICH GRAEBE, 10 NOVEMBER 1945,
CONCERNING THE EXECUTION OF JEWS IN RUSSIA

I, Hermann Friedrich Graebe, declare under oath—

* For more complete translation of document, see Nazi Conspiracy and Aggression, Vol. V, pp. 696-703, U. S. Government Printing Office, Washington, 1946.

At Wiesbaden, on 10 November 1945, I made two statements describing as an eye-witness the execution of Jews on the former airport near Dubno, Ukraine, and the herding together, ill-treatment and killing of men, women, and children of the former ghetto at Rovno, Ukraine.

By way of corollary to these statements I depose as follows:

(1) The SS-man acting as the executioner on the edge of the pit during the shooting of Jewish men, women, and children on the airport near Dubno wore an SS uniform with a grey armband about 3 cm. wide on the lower part of his sleeve with the letters "SD" in black on it, woven in or embroidered.

(2) SS Major Dr. Puetz was in charge of the carrying out of the operation at Rovno during the night of 13 July 1942. I knew Dr. Puetz personally as the "Kommandeur der SP u. SD" (Commander of the Security Police and Security Service) of Rovno, for I had had several discussions with him with a view to preventing a pogrom against the Jews at Sdolbunov, Mysoch, and Ostrog. Dr. Puetz was introduced to me by the Area Commissioner Georg Marschall. In addition I definitely remember that a nameplate was fixed on the outside of the door to his office bearing his name and rank.

On the morning of 14 July I recognized three or four SS-men in the ghetto, whom I knew personally and who were all members of the security service in Rovno. These persons also wore the armband mentioned above. I cannot recall their names, but in my opinion, the foreman Fritz Einsporn must know their names as, to my knowledge, he corresponded with them.

I made the foregoing statement in Wiesbaden, Germany, on 13 November 1945. I swear before God, that this is the absolute truth.

[Signed] Fr. Graebe

HERMANN FRIEDRICH GRAEBE

I, Hermann Friedrich Graebe, declare under oath—

From September 1941 until January 1944 I was manager and engineer-in-charge of a branch office in Sdolbunov, Ukraine, of the Solingen building firm of Josef Jung. In this capacity it was my job to visit the building sites of the firm. The firm had, among others, a site in Rovno, Ukraine.

During the night of 13 July 1942, all inhabitants of the Rovno Ghetto, where there were still about 5,000 Jews, were liquidated.

I would describe the circumstances of my being a witness of the dissolution of the ghetto, and the carrying out of the pogrom [Aktion] during the night and the morning, as follows:

I employed for the firm, in Rovno, in addition to Poles, Germans, and Ukrainians about 100 Jews from Sdolbunov, Ostrog, and My-

soch. The men were quartered in one house, 5 Bahnhofstrasse, inside the ghetto, and the women in another at the corner of Deutsche Strasse, No. 98.

On Saturday, 11 July 1942, my foreman, Fritz Einsporn, told me of a rumor that on Monday all Jews in Rovno were to be liquidated. Although the vast majority of the Jews employed by my firm in Rovno were not natives of this town, I still feared that they might be included in this pogrom which had been reported. I therefore ordered Einsporn at noon of the same day to march all the Jews employed by us—men as well as women—in the direction of Sdolbunov, about 12 km. from Rovno. This was done.

The Jewish Council of Elders had learned of the departure of the Jewish workers of my firm. The Council went to see the commanding officer of the Rovno Security Police and SD, SS Major [SS Sturmbannfuehrer] Dr. Puetz as early as the Saturday afternoon to find out whether the rumor of a forthcoming Jewish pogrom—which had gained further credence by reason of the departure of Jews of my firm—was true. Dr. Puetz dismissed the rumor as a clumsy lie, and for the rest had the Polish personnel of my firm in Rovno arrested. Einsporn avoided arrest by escaping from Sdolbunov. When I learned of this incident I gave orders that all Jews who had left Rovno were to report back to work in Rovno on Monday, 13 July 1942. On Monday morning I myself went to see the commanding officer, Dr. Puetz, in order to learn, for one thing, the truth about the rumored Jewish pogrom and secondly to obtain information on the arrest of the Polish office personnel. SS Major Puetz stated to me that no pogrom whatever was planned. Moreover such a pogrom would be stupid because the firms and the Reichbahn [Reich (state) Railroad] would lose valuable workers.

An hour later I received a summons to appear before the area commissioner of Rovno. His deputy, Stabsleiter and Cadet Officer [Ordensjunker] Beck, subjected me to the same questioning as I had undergone at the SD. My explanation that I had sent the Jews home for urgent delousing appeared plausible to him. He then told me—making me promise to keep it a secret that a pogrom would in fact take place on the evening of Monday, 13 July 1942. After lengthy negotiation I managed to persuade him to give me permission to take my Jewish workers to Sdolbunov—but only after the pogrom had been carried out. During the night it would be up to me to protect the house in the ghetto against the entry of Ukrainian militia and SS. As confirmation of the discussion he gave me a document, which stated that the Jewish employees of the Jung firm were not affected by the pogrom.

On the evening of this day I drove to Rovno and posted myself with Fritz Einsporn in front of the houses in the Bahnhofstrasse

in which the Jewish workers of my firm slept. Shortly after 2200 hours the ghetto was encircled by a large SS detachment and about three times as many members of the Ukrainian militia. Then the electric arc lights which had been erected in and around the ghetto were switched on. SS and militia squads of 4 to 6 men entered or at least tried to enter the houses. Where the doors and windows were closed and the inhabitants did not open at the knocking, the SS-men and militia broke the windows, forced the doors with beams and crowbars and entered the houses. The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks, and blows with rifle butts in clearing the houses. The people were driven out of their houses in such haste that small children in bed had been left behind in several instances. In the street women cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road, at running pace, and hitting them, until they reached a waiting freight train. Car after car was filled, and the screaming of women and children and the cracking of whips and rifle shots resounded unceasingly. Since several families or groups had barricaded themselves in especially strong buildings, and the doors could not be forced with crowbars or beams, these houses were now blown open with hand grenades. Since the ghetto was near the railroad tracks in Rovno, the younger people tried to get across the tracks and over a small river to get away from the ghetto area. As this stretch of country was beyond the range of the electric lights, it was illuminated by signal rockets. All through the night these beaten, hounded, and wounded people moved along the lighted streets. Women carried their dead children in their arms, children pulled and dragged their dead parents by their arms and legs down the road toward the train. Again and again the cries "Open the door! Open the door!" echoed through the ghetto.

About 6 o'clock in the morning I went away for a moment, leaving behind Einsporn and several other German workers who had returned in the meantime. I thought the greatest danger was past and that I could risk it. Shortly after I left, Ukrainian militia men forced their way into 5 Bahnhofstrasse and brought 7 Jews out and took them to a collecting point inside the ghetto. On my return I was able to prevent further Jews from being taken out. I went to the collecting point to save these 7 men. I saw dozens of corpses of all ages and both sexes in the streets I had to walk along. The doors of the houses stood open, windows were smashed. Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc., were lying in

the street. At the corner of a house lay a baby, less than a year old with his skull crushed. Blood and brains were spattered over the house wall and covered the area immediately around the child. The child was dressed only in a little skirt. The commander, SS Major Puetz, was walking up and down a row of about 80-100 male Jews who were crouching on the ground. He had a heavy dog whip in his hand. I walked up to him, showed him the written permit of Stabsleiter Beck and demanded the seven men whom I recognized among these who were crouching on the ground. Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men. He made a motion with his hand encircling the square and said that anyone who was once here would not get out. Although he was very angry with Beck, he ordered me to take the people from 5 Bahnhofstrasse out of Rovno by 8 o'clock at the latest. When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses. Dead people with stiff limbs were lying on the cart. Legs and arms projected over the side boards. The cart was making for the freight train. I took the remaining 74 Jews who had been locked in the house to Sdolbunov.

Several days after 13 July 1942, the area commissioner of Sdolbunov, Georg Marschall, called a meeting of all firm managers, railroad superintendents, and leaders of the Organization Todt and informed them that the firms, etc., should prepare themselves for the "resettlement" of the Jews which was to take place almost immediately. He referred to the pogrom in Rovno where all the Jews had been liquidated, i. e., had been shot near Kostopol.

I make the above statement in Wiesbaden, Germany, on 10 November 1945. I swear by God that this is the absolute truth.

[Signed] HERMANN FRIEDRICH GRAEBE

* * * * *

TRANSLATION OF DOCUMENT NO-2993
PROSECUTION EXHIBIT 67

AFFIDAVIT OF ADOLF OTT, 24 APRIL 1947*

I, Adolf Ott, swear, depose and state—

1. I was born on 29 December 1904 in Waidhaus, Oberpfalz. I attended school in Lindau, Bodensee, from 1910 to 1922. From 1922 until October 1934 I worked for various firms in Lindau and was also employed by the German Labor Front [Deutsche Arbeitsfront] administrative office in Lindau. In October 1935 I left this last position and became a member of the security service. From 1935 to 1945 I held various positions within the security service.

* Defendant Ott testified in Court on 9, 10 and 11 December 1947 (Tr. pp. 3688-3798).

At the end I was administrative subdistrict officer with the Neustadt office on Weinstrasse, later Saarbruecken.

2. I became a member of the NSDAP in the year 1922 or 1923. My Party number is 2433. I became a member of the SS in the summer of the year 1931. My SS number is 13294.

3. On 15 February 1942 I was ordered to Sonderkommando 7b of Einsatzgruppe B. I became leader of this Kommando and successor to Lt. Colonel [Obersturmbannfuehrer] Rausch. My deputy was Dr. Auinger. When I left the Kommando in January 1943, I was relieved by Obersturmbannfuehrer Georg Raabe. Among other things I took part in the action "Eisbaer" [Ice bear], which was under the direction of Colonel (Army), Ruebsam. This action had the task of combating [guerrilla] bands in the Bryansk region.

4. During the time I was Kommando leader of the Kommando 7b, about 80 to 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of Bryansk. The people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried in the snow and later buried by the army. The valuables which were collected from these people were sent to Einsatzgruppe B. This was ordered by command of Naumann, the head of Einsatzgruppe B, and the same was true for other executions.

[No paragraph 5 in original document.]

6. The distribution of personnel within Sonderkommando 7b was approximately as follows:

It consisted of about 10 members of the SD about 40-45 members of the Gestapo, about 10 members of the criminal police, 20 to 30 men of the Waffen SS and auxiliary personnel, so that the total strength can be estimated at about 100 men.

7. In June 1942, without having received an order to do so, I opened an internment camp in Orel. In my opinion people ought not to be shot right away for comparatively small misdeeds. For this reason I put them in this internment camp, in which the people had to work. I determined the length of time that these people had to work. I determined the length of time that these people should remain in the camp on the basis of examination and investigations of the individual cases which were made by Kommando. It happened too that people were released. The highest number of inmates that I had in this camp was 120 persons.

8. It is known to me that, aside from my unit, other units carried out executions in the vicinity of Orel and Bryansk. For example, the Secret Field Police under the leadership of Criminal Commissar Kukafka and the Counterintelligence Group Widder carried out frequent executions.

I have read the above statement, consisting of three (3) pages in the German language, and declare that this is the full truth to the best of my knowledge and belief. I have had opportunity to make changes and corrections in this statement. I have made this statement voluntarily, without any promise of reward, and was subjected to no threat or duress.

Nuernberg, 24 April 1947

[Signed] ADOLF OTT

TRANSLATION OF DOCUMENT 2620-PS
PROSECUTION EXHIBIT 9

AFFIDAVIT OF OTTO OHLENDORF, 5 NOVEMBER 1945,* CONCERNING
THE EXTERMINATION PROGRAM OF THE EINSATZGRUPPEN

I, Otto Ohlendorf, being first duly sworn, declare—

I was Chief of the Security Service (SD), Office III of the main office of the Chief of the Security Police and the SD (RSHA), from 1939 to 1945. In June 1941 I was designated by Himmler to lead one of the Einsatzgruppen, which was then being formed, to accompany the German armies in the Russian campaign. I was the Chief of the Einsatzgruppe D. Chief of the Einsatzgruppe A was *Stahlecker*, department chief in the Foreign Office. Chief of Einsatzgruppe B was *Nebe*, chief of office V (criminal police) of the main office of the Chief of the Security Police and the SD. (RSHA) Chief of Einsatzgruppe C was first *Rasch* (or *Rasche*) and then *Thomas*. Himmler stated that an important part of our task consisted of the extermination of Jews—women, men, and children—and of Communist functionaries. I was informed of the attack on Russia about four weeks in advance.

According to an agreement with the Armed Forces Supreme Command and Army High Command, the Einsatzkommandos within the army group or the army were assigned to certain army corps and divisions. The army designated the areas in which the Einsatzkommandos had to operate. All operational directives and orders for the carrying out of executions were given through the Chief of the Security Police and the SD (RSHA) in Berlin. Regular courier service and radio communications existed between the Einsatzgruppen and the Chief of the Security Police and the SD.

The Einsatzgruppen and Einsatzkommandos were led by personnel of the Gestapo, the SD or the criminal police. Additional men were detailed from the regular police and the Waffen SS. Einsatzgruppe D consisted of approximately 400 to 500 men and had about 170 vehicles at its disposal. When the German army in-

* Defendant Ohlendorf testified in Court on 8, 9, 14, and 15 October 1947 (*Tr. pp. 475-756*).

vaded Russia, I was leader of the Einsatzgruppe D in the southern sector, and in the course of the year, during which I was leader of the Einsatzgruppe D, it liquidated approximately 90,000 men, women, and children. The majority of those liquidated were Jews, but there were among them some Communist functionaries too.

In the implementation of this extermination program, the Einsatzgruppen were subdivided into Einsatzkommandos, and the Einsatzkommandos into still smaller units, the so-called Sonderkommandos and Teilkommandos. Usually, the smaller units were led by a member of the SD, the Gestapo or the criminal police. The unit selected for this task would enter a village or city and order the prominent Jewish citizens to call together all Jews for the purpose of resettlement. They were requested to hand over their valuables to the leaders of the unit and shortly before the execution to surrender their outer clothing. The men, women, and children were led to a place of execution which in most cases was located next to a more deeply excavated antitank ditch. Then they were shot, kneeling or standing, and the corpses thrown into the ditch. I never permitted the shooting by individuals in group D, but ordered that several of the men should shoot at the same time in order to avoid direct personal responsibility. The leaders of the unit or especially designated persons, however, had to fire the last bullet against those victims which were not dead immediately. I learned from conversations with other group leaders that some of them demanded that the victims lie down flat on the ground to be shot through the nape of the neck. I did not approve of these methods.

In the spring of 1942, we received gas vehicles from the Chief of the Security Police and the SD in Berlin. These vehicles were made available by office II of the RSHA. The man who was responsible for the cars of my Einsatzgruppe was Becker. We had received orders to use the cars for the killing of women and children. Whenever a unit had collected a sufficient number of victims, a car was sent for their liquidation. We also had these gas vehicles stationed in the neighborhood of the transient camps into which the victims were brought. The victims were told that they would be resettled and had to climb into the vehicle for that purpose. When the doors were closed and the gas streamed in through the starting of the vehicle, the victims died within 10 to 15 minutes. The cars were then driven to the burial place where the corpses were taken out and buried.

I have seen the report of Stahlecker (L-180), concerning Einsatzgruppe A, in which Stahlecker asserts that his group killed 135,000 Jews and Communists in the first four months of the program. I know Stahlecker personally, and I am of the opinion that

the document is authentic. I was shown the letter which Becker wrote to Rauff, the head of the Technical Department of office II, in regard to the use of these gas vehicles. I know both these men personally and am of the opinion that this letter is an authentic document.

[Signed] OHLENDORF

Subscribed and sworn to before me this fifth day of November 1945 at Nuernberg, Germany.

[Signed] Smith W. Brookhart
Lt. Col. I.G.D.

TRANSLATION OF DOCUMENT NO-3055
PROSECUTION EXHIBIT 28

AFFIDAVIT OF HEINZ HERMANN SCHUBERT, 24 FEBRUARY 1947,
CONCERNING THE EXTERMINATION OF JEWS IN RUSSIA*

I, Heinz Hermann Schubert, swear, declare, and depose—

1. I was born on 27 August 1914 in Berlin. I attended schools in Eisenberg-Thuringia and Berlin-Lichterfelde, including the vocational school. I left school in March 1931, having received the Obersekundareife [certificate after attending equivalent to 10th year of secondary school]. From April 1931 until August 1933 I worked in a lawyer's office. From 1933 on I was civil servant at the delegation of the Free Hanseatic City of Bremen to the Reich. On 10 October 1934 I became civil servant of the security service. On 1 May 1934 I was transferred by the Hitler Youth to the Party, and my membership number is 3,474,350. On 10 October 1934 I joined the SS, membership number 107,326.

2. In October 1941 I was assigned to the Einsatzgruppe D. Otto Ohlendorf was the chief of the Einsatzgruppe and Willy Seibert his deputy. I was assigned as adjutant to Ohlendorf and stayed in this position from the time of my arrival until the end of June 1942. At this time Ohlendorf as well as I was recalled to the Reich Main Security Office in Berlin.

3. In December 1941—I do not remember the exact date—I was assigned by Ohlendorf or Seibert to supervise and inspect the shooting of about 700 to 800 people, which was to take place in the close vicinity of Simferopol. The shooting was undertaken by the special Kommando 11b, one of the formations of the Einsatzgruppe D. My task in connection with the shooting consisted of three parts—

a. to see that the location of the shooting be remote enough, so that there could be no witnesses to the shooting;

* Defendant Schubert testified on 5 and 6 January 1948 (*Tr. pp. 4560-4738*).

- b. to supervise that the collection of money, jewels, and other valuables of the persons who were to be shot be completed without the use of force; and that the persons, designated for this by the special Kommando 11b, hand over the collected items to the administration leaders and their deputies in order to have them passed on to Einsatzgruppe D;
- c. to supervise, that the execution be completed in the most human and military manner possible, exactly according to Ohlendorf's orders.

After the execution I had to report personally to Ohlendorf that the execution had been carried out exactly according to his orders.

4. As commissioner of Ohlendorf I followed his orders. I went to the gypsy quarter of Simferopol and supervised the loading of the persons who were to be shot into a truck; I took care that the loading was completed as quickly as possible, and that there were no disturbances and unrest by the native population. Furthermore, I took care that the condemned persons were not beaten while the loading was going on. Since it was my task to supervise the whole execution, I could only stay a short time at each phase of it.

5. The place which was designated for the shooting of these Russians and Jews was several kilometers outside of Simferopol and about 500 meters off the road in an antitank ditch. Among other things I ascertained that the traffic in that region was stopped by persons designated for this and was detoured on side roads. When the condemned persons arrived at the place of execution, they were ordered to leave their money, their valuables, and papers at a place designated for this. I watched that none of the deposited items were kept by the SS and regular police who were designated for the collection. The depositing of this property by the condemned persons was finished without the use of force. I supervised this phase carefully, in order that all the valuables could be handed over to the Einsatzgruppe D for subsequent remittance to Berlin.

6. For a short time, when the people who were to be shot were already standing in their positions in the tank ditch, I supervised the actual shooting, which was carried out in strictest conformity with Ohlendorf's order—in a military and human manner as far as possible. The people were shot with submachine guns and rifles. I know that it was of the greatest importance to Ohlendorf to have the persons who were to be shot killed in the most human and military manner possible, because otherwise—in other methods of killing—the moral strain would have been too great for the execution squad.

I have read this statement, consisting of three pages in the

German language and declare that it is the whole truth to the best of my knowledge and belief. I had the opportunity to make changes and corrections in the above statement. I made this statement of my own free will without any promise of reward, and I was not subjected to any threat or duress whatsoever.

Nuernberg, Germany, the 24 February 1947.

[Signed] HEINZ HERMANN SCHUBERT

TRANSLATION OF DOCUMENT NO-4314
PROSECUTION EXHIBIT 29

AFFIDAVIT OF ERNST BIBERSTEIN,* 2 JULY 1947

I, Ernst Emil Heinrich Biberstein, swear, state, and declare—

1. I was born on 15 February 1899 in Hilchenbach in the district of Siegen-Westphalia. Originally my surname was Szymanowski. I attended the elementary school in Muehlheim on the Ruhr and in Neumuenster-Holstein, and afterwards a classical high school where I passed my final examination in 1917. From 1917 until March 1919 I served with the army as a private in the infantry. From March 1919 to 1921 I studied protestant theology. I passed my first theological examination in April 1921 and then went for 6 months to a preachers' seminary; after that I was a curate for 12 months. My first post as a pastor I got on 28 December 1924 in Kating Schleswig-Holstein, which I held until November 1927. From then on until November 1933 I was a pastor in Kaltenkirchen Schleswig-Holstein, in the district of Begeberg. From November 1933 until August 1935, I was "Kirchenprobst" or "Superintendent" [presiding minister of the Provincial Protestant Church] in Bad Segeberg, Holstein. In August 1935 I was called to the Reich Ministry of Church Affairs in Berlin as a theological expert where I functioned until I was drafted in the army on 10 March 1940. In the army I took part in the Holland and France campaigns as a corporal. On 22 October 1940 I was draft deferred by the Reich Plenipotentiary of Internal Administration and was assigned to the Chief of the Security Police and of the SD. Taking effect 1 June 1941 and up to June 1942, I was head of the state police station of Oppeln. In June 1942 I was sent to Russia as leader of the Einsatzkommando 6 under Einsatzgruppe C in Kiev. However, my departure for Russia was delayed until September 1942. Between June 1943 and early 1944 I was unattached. From

* Biberstein testified in Court on 20, 21 November 1947 (*Tr. pp. 2687-2866*), 24, 25 November 1947 (*Tr. pp. 2938-3004*).

February 1944 until April 1945, I was working in the Economic Department of the Supreme Commissioner in Trieste. From there I returned to Neumuenster where I was arrested on 1 July 1945.

2. I have been a member of the NSDAP since 1926, my Party number being 40,718. I have been a member of the SS since 13 September 1936 with an SS member's number 272, 692. From 1934 until 1935 I was "Kreisschulungsleiter" [Party indoctrination director] in Bad Segeberg.

3. During my time of office as commander of Einsatzkommando 6, between September 1942 and June 1943 about 2,000 to 3,000 executions were performed in the area of my Einsatzkommando. I personally superintended an execution in Rostov which was performed by means of a gas truck. The persons destined for death—after their money and valuables, sometimes the clothes also, had been taken from them—were loaded into the gas truck which held between 50 and 60 people. The truck was then driven to a place outside the town where members of the Kommando had already dug a mass grave. I myself saw the unloading of the dead bodies, their faces were in no way distorted, death came to these people without any outward signs of spasms. There was no physician present at unloading to certify that the people were really dead. The gas truck was driven by the driver Sackenreuter of Nuernberg who had been most carefully instructed about the handling of the gas truck, having been through special training courses.

4. During my time of office as chief of Einsatzkommando 6, I had two officers for the administration, first, 1st Lieutenant Niegbur and afterwards 2d Lieutenant Homann. The latter told me one day that the Einsatzkommando had a surplus of 100,000 marks derived from people to be executed who had to hand over their money and valuables.

5. Since my Einsatzkommando was operating in various towns where there were sometimes only few persons up for execution at a time, the gas truck was not used always. I also witnessed an execution carried out with firearms. The persons to be executed had to kneel down on the edge of a grave and members of my Kommando shot them in the back of the neck with an automatic pistol. The persons thus killed mostly dropped straight into the pit. I had no special expert for these shots in the neck. No physician was present either at this form of execution.

6. From my time of office as chief of the state police station in Oppeln I know that "top secret" orders had been issued to the effect that we had to detach men for searching for Bolshevist agitators in prisoner-of-war camps. These men selected by these Kommandos were sent to the Auschwitz concentration camp. I do not know what happened to them in Auschwitz.

I have made the foregoing deposition consisting of three (3) pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement, and I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatever.

Nuernberg, 2 July 1947

[Signed] ERNST BIBERSTEIN

TRANSLATION OF DOCUMENT NO-3824
PROSECUTION EXHIBIT 31

AFFIDAVIT OF PAUL BLOBEL,* 6 JUNE 1947, CONCERNING
EXTERMINATION IN RUSSIA

I, Paul Blobel, declare, swear, and depose—

I was born in Potsdam on 13 August 1894. I attended the grammar school and vocational school in Remscheid until 1912. Thereafter, I served as an apprentice with a mason and carpenter and during the years 1912 and 1913 I attended the school of architecture in Wuppertal. Until the outbreak of the First World War, I worked as a carpenter. From 1914 to 1918, I served as an engineer at the front and was discharged in 1918 with the rank of a Vizefeldwebel [staff sergeant]. Until 1919 I was unemployed and lived in Remscheid. During the years 1919-1920, I attended again the school of architecture in Barmen. From 1921 to 1924, I worked for different firms and in 1924 I established myself as an independent architect in Solingen. During the bad times in Germany, during the years 1928-1929 I did not get any orders, and from 1930 to 1933 I was on unemployment relief in Solingen. After that time I was employed for office work with the city administration and stayed there until spring 1935. In June 1935 I came to the SD main sector Duesseldorf, where I remained until May 1941. Finally, I was section leader for Duesseldorf. I was then assigned to the Reich Security Main Office in Berlin.

2. I became a member of the NSDAP on 1 December 1931. My membership number is 844,662. Since January 1932 I have been a member of the SS, my membership number being 29,100. I was further a member of the Reich Colonial League [Reichskolonialbund], Air Protection League [Luftschutzbund], National Socialist Welfare Association [NSV], and for a time I was a member of the Reich Association for creative arts [Reichsbund der bilden-

* Defendant Blobel testified on 28, 29, and 30 October 1947 (*Tr.* pp. 1495-1753).

den Kuenste]. My rank in the General SS is sergeant, in the SD it has been, since 1940, colonel.

3. In June 1941 I became chief of the Sonderkommando 4a. This Sonderkommando was assigned to the Einsatzgruppe C, the latter was under the command of Dr. Rasch. The Einsatz area assigned to me was within the sphere of the 6th Army, which was under the command of Field Marshal von Reichenau. In January 1942, I was removed from the post of chief of the Sonderkommando 4a and was transferred to Berlin for disciplinary reasons. There I had no assignment for a time. I was under the supervision of office IV, under the former [SS] Major General Mueller. In the fall of 1942, I was assigned to go to the occupied eastern territories as Mueller's deputy and to wipe out the traces of the mass graves of people executed by the Einsatzgruppen. This was my task until summer of 1944.

4. After that, I was transferred to the commander in Styria, and it was planned that I should work there as liaison officer between the Reich Security Main Office and [SS] Major General Roesener in the combat against the partisans. This task was, however, not assigned to me.

In December 1944, I got sick and from February until April I was in a hospital in Marburg [Maribor] on the Drava. There I received the order to report in Berlin on 11 April 1945. In April 1945 I reported to Kaltenbrunner and went to the area of Salzburg. Thus I escaped further orders. At the beginning of May 1945 I was captured, together with the unit, in Rastadt.

5. During the period of my service as chief of the Sonderkommando 4a, from the time of its organization in June 1941 until January 1942, I was assigned on various occasions to the execution of Communists, saboteurs, Jews, and other undesirable persons. I can no longer remember the exact number of the executed persons. According to a superficial estimate—the correctness of which I cannot guarantee—I presume that the number of executions in which the Sonderkommando 4a took part lies somewhere between 10,000 and 15,000.

6. I witnessed several mass executions, and in two cases I was ordered to direct the execution. In August or September 1941 an execution took place near Korosten. 700 to 1,000 men were shot, and Dr. Rasch was present at the execution. I had divided my unit into a number of execution squads of 30 men each. First, the subordinated police of the Ukrainian militia, the population, and the members of the Sonderkommando seized the people, and mass graves were prepared. Out of the total number of the persons designated for the execution, 15 men were led in each case to the brink of the mass grave, where they had to kneel down, their faces

turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed. The execution squads were composed of men of the Sonderkommando 4a, the militia, and the police. When the men were ready for the execution, one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave, the victims fell, as a rule, at once into the mass grave. I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck. Each squad shot for about one hour and was then replaced. The persons who still had to be shot were assembled near the place of the execution and were guarded by members of those squads which at that moment did not take part in the executions. I supervised personally the execution which I have described here, and I saw to it that no excesses took place.

7. The Sonderkommando 4a killed women and children, too. In September or October 1941, the Einsatzgruppe C under Dr. Rasch placed a gas van at my disposal, and one execution was carried out by means of that gas van. This was a 3-ton truck which could be sealed hermetically and held about 30 to 40 people. After about 7 or 8 minutes all persons in this truck who were exposed to the poisonous gases were dead. I personally saw the corpses when they were unloaded from the gas van.

8. During the last days of September 1941 the Sonderkommando 4a in cooperation with the group staff of the Einsatzgruppe C and two units of the police regiments stationed in Kiev carried out the mass execution of Jews in Kiev. I think that the figure of 33,771, mentioned to me as the number of persons executed in Kiev, is too high. In my opinion not more than half of the mentioned figure were shot.

9. Since, during the period from June 1941 until January 1942, I was several times seriously ill and confined to various hospitals, I cannot be charged with responsibility for all the executions of the Sonderkommando 4a. During the period of my absence the Kommando was taken over by Dr. Rasch, Waldemar von Radezky, and SS Captain Dr. Beyer; under their direction a number of mass executions took place, too.

I have read the foregoing deposition consisting of five pages, in the German language, and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subject to any duress or threat whatsoever.

Nuernberg, 6 June 1947.

[Signed] PAUL BLOBEL

TRANSLATION OF DOCUMENT NO-4234
PROSECUTION EXHIBIT 163

AFFIDAVIT OF KARL RUDOLF WERNER BRAUNE,* 8 JULY 1947,
CONCERNING EXECUTION OF JEWS IN RUSSIA

I, Karl Rudolf Werner Braune, make the following statements and confirm them with my word of honor.

1. I was born on 11 April 1909 in Mehrstaedt. There I went to school from 1915 to 1920, and in Sonderhausen from 1920 to 1928, and there passed the baccalaureate examination [Abiturium] in the year 1928. Until 1933 I studied law in Bonn, during the summer semester 1930 in Munich, and from the winter 1930 until 1932 in Jena. In July 1932 in Jena I passed the examination in law school. There I passed, in January 1933, the examination for the doctor's degree. I completed my further law training in Sonderhausen, Meiningen, Sonneberg, and finally in Berlin, where I passed, in May 1936, the final ("Assessor") examination. Since I had to earn part of the expenses of my training, I had worked since November 1934 also with the security service. In accordance with promises given to me I became an official in the Ministry of the Interior and kept on working for the SD, whereas officially I was listed at the state police. In June 1938 I became Regierungs-assessor, and in September 1938 I started to work as deputy of the chief at the state police Muenster and at the same time as section leader [Abschnittsfuehrer] in the security service, section Muenster. At that time I worked primarily on matters of the security service and, therefore, the state police made a complaint against me, since I neglected my duties at the state police intentionally. In April 1939 I was transferred as deputy of the chief of the state police to Koblenz and stayed there for about one year. In April 1940 I became chief of the office of the state police in Wesermuende. Also in this position I remained for about one year. In April or May 1941 I became chief of the state police in Halle on the Saale [Saale River] until I was transferred to the Einsatzgruppe D in October 1941. I went to Odessa and became then chief of the Kommando 11b. In November I led this Kommando into the Crimean Peninsula. In August or September I was detached from this Kommando, and in October 1942 I returned to my post in the homeland, to the state police in Halle. In January 1943 I was appointed to an honorary office in the Reich student leadership [Reichsstudentenfuehrung]. I became chief of the German academic exchange service [Deutscher Akademischer Austausch-

* Defendant Braune testified on 25, 26 November 1947 and 1, 2 December 1947 (*Tr. pp. 3004-3223*).

dienst], incorporated association in Berlin. I kept this position until January 1945. At the end of the year 1944 I was transferred to Norway, and at the beginning of 1945 I took up the office of commander of the security police and of the security service in Oslo. I remained in this position until the end of the war.

2. I have been a member of the NSDAP since July 1931, my Party number being 581,277. I have been a member of the SS since 18 November 1934, my SS number being 107,364. I was a member of the SA from November 1931 until November 1934.

3. During the time I was chief of the Einsatzkommando 11b, a number of Jews were executed. I can still remember exactly an execution which took place in Simferopol, a few days before Christmas. The 11th Army had ordered that the execution in Simferopol should be finished before Christmas. For this reason the army placed trucks, gasoline, and personnel at our disposal. I personally drove with the chief of the Einsatzgruppe D, Otto Ohlen-dorf, to the place of the execution which was situated outside of the city. The place of the execution was isolated in order to avoid that the civilian population would unnecessarily become witness of a spectacle. Already previously—I don't know anymore whether immediately before the execution or already in the internment camp—money and valuables were taken away from the persons to be executed. Immediately before the execution the outer garments, that is, heavy winter overcoats and similar things, were taken away from the persons to be executed. They kept their other clothes. The persons to be executed were then assembled near the place of the execution and were posted in small groups before an antitank ditch, their faces turned away from the ditch. The execution commando [squad], which in the individual case was composed of 8 or 10 men of the police company attached to us, was posted on the other side of the antitank ditch and the persons who were designated to be executed were shot dead from behind as quickly as possible.

4. In the spring of 1942 a gas truck was placed at the disposal of my unit, but I did not use it for executions. In my opinion an execution by shooting is more honorable for both parties than killing by means of a gas truck. This is the reason why I refused to use the gas truck.

I have read the foregoing deposition consisting of 2 pages in the German language and declare that it is the full truth to the best of my knowledge and belief. I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward and I was not subjected to any duress or threat whatsoever. Since I did not make this deposition under oath, but confirmed it only with my

word of honor, I declare that I am ready to repeat this statement before a court under oath.

Nuernberg, Germany, 8 July 1947.

[Signed] DR. WERNER BRAUNE

5. MEMBERSHIP IN CRIMINAL ORGANIZATIONS

EXTRACTS FROM THE TRIAL BRIEF OF THE PROSECUTION ON THE SCOPE OF THE DECLARATION OF CRIMINALITY AGAINST THE GESTAPO, SD, AND SS

Introduction

In count three of the indictment all of the defendants, in the case before the Tribunal, are charged with having been members of two or more organizations declared criminal by the International Military Tribunal.

The individual defendants are charged with membership in the following organizations*:

Ohlendorf	SD and SS
Jost	SD and SS
Naumann	SD and SS
Rasch	Gestapo, SD, and SS
Schulz	Gestapo and SS
Six	SD and SS
Blobel	SD and SS
Blume	Gestapo, SD, and SS
Sandberger	SD and SS
Seibert	SD and SS
Steimle	SD and SS
Biberstein	Gestapo, SD, and SS
Braune	Gestapo, SD, and SS
Haensch	SD and SS
Nosske	Gestapo and SS
Ott	SD and SS
Strauch	SD and SS
Klingelhoefler	SD and SS
Fendler	SD and SS
Radetzky	SD and SS
Ruehl	Gestapo and SS
Schubert	SD and SS
Graf	SD and SS

* In order to prove the membership of the defendants in the SS, SD, and Gestapo respectively, the prosecution introduced extracts from the SS personnel files of all defendants. These personnel files established the date of membership, SS number in the organization, promotions, decorations, etc.

Consequently, count three of the indictment encompasses an important part of the charges against the defendants. It, therefore, might be appropriate to analyze the criteria which establish the guilt of an individual for having been a member of a criminal organization.

I. LIABILITY FOR MEMBERSHIP IN CRIMINAL ORGANIZATIONS

A. General

* * * * *

B. The SS

When declaring the SS a criminal organization, the International Military Tribunal ruled—

“In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS [General SS], members of the Waffen SS [Armed SS], members of the SS Totenkopf Verbände [“Death Head” Units], and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called SS riding units. *Der Sicherheitsdienst des Reichsfuehrer SS (commonly known as the SD) is dealt with in the Tribunal’s judgment on the Gestapo and SD.*

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who *had been officially accepted as members of the SS* as enumerated in the preceding paragraph who became or remained members of the organization with *knowledge* that it was *being used for the commission of acts declared criminal by Article 6* of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way *as to give them no choice in the matter*, and who had committed no such crimes.”¹ [Emphasis supplied.]

When enumerating the criminal activities of the SS, the Tribunal expressly stated “The Einsatzgruppen engaged in wholesale massacres of the Jews.” and—

“It is impossible to single out any one portion of the SS which was not involved in these criminal activities. The Allgemeine SS was an active participant in the persecution of the Jews * * *.”² Thus it is established that only voluntary members of the SS—and it should be noted that SS members who were in the SD and those who were members of the Allgemeine SS are specifically men-

¹ Trial of the Major War Criminals, vol. I, p. 273, Nuremberg, 1947.

² Ibid., p. 271.

* * * All members of the Security Police and SD joined the organization voluntarily under no other sanction than the desire to retain their positions as officials.”¹

Thus, it is established that *all* members of the Gestapo and the SD were voluntary members of these organizations. As Control Council Law No. 10 (*d*) is based on the declaration of criminality of organizations by the International Military Tribunal, these findings cannot be challenged by the defendants.

The International Military Tribunal, in its conclusion about the criminality of the Gestapo and the SD, found—

“The Gestapo and SD were used for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, * * *. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt [Office] IV of the RSHA [Reich Security Main Office] or concerned with Gestapo administration in other departments of the RSHA and *all local Gestapo officials serving both inside and outside of Germany*, * * *. In dealing with the SD the Tribunal includes *Aemter III, VI, and VII of the RSHA* and all other members of the SD, including all local *representatives and agents, honorary or otherwise*, whether they were technically members of the SS or not, but not including honorary informers who were not members of the SS, and members of the Abwehr [Counterintelligence Corps] who were transferred to the SD.

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes.”² [Emphasis supplied.]

Knowledge of, or personal implication in the commission of acts declared criminal by Article 6 of the Charter is, besides membership in the SD or Gestapo, the only prerequisite for criminal liability.

As to the proof of membership, it should be noted that the International Military Tribunal found that all members of the Security Police and the SD were full-fledged members of the SD.³ Thus it is established that every member of an Einsatzgruppe, all of which were units of the Security Police and SD, automatically is to be considered a member of the SD within the meaning of the judg-

¹ Ibid., p. 264.

² Ibid., pp. 267-268.

³ Trial of the Major War Criminals, vol. I, Nuremberg, 1947; compare pp. 264, 266, 267.

ment of the International Military Tribunal and consequently within the meaning of Control Council Law No. 10.

II. CONNECTION BETWEEN GESTAPO AND SD

The International Military Tribunal has left no doubt about the close collaboration which existed between these two criminal organizations. After having permitted the SD to present its case separately because of a claim of conflicting interests, the Tribunal decided, after having examined the evidence, to consider the case of the Gestapo and the SD together.¹ The International Military Tribunal found that these two organizations were first linked together in 1936 when both were placed under the command of Heydrich.² The creation of the RSHA (27 Sept 1939) represented the formalization, at the top level, of the relationship under which the SD served as the intelligence agency for the Security Police. A similar coordination existed in the local offices—one of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories, the formal relationship between local units of the Gestapo and SD was slightly closer. Members of the Gestapo, Kripo (criminal police), and SD were joined together into military type organizations—the Einsatzgruppen.³ The International Military Tribunal concluded from the evidence before it that “from a functional point of view both the Gestapo and the SD were important and closely related groups within the organization and the SD.”⁴

Thus it is patently clear that the contention of several of the defendants—that they having been SD experts of the different Einsatzgruppe and their subunits had no connection whatsoever with Department IV (Gestapo) of these units—is entirely without foundation.

III. THE RSHA (Reich Security Main Office).

Most of the defendants were at different times and in different positions officials of the RSHA. The International Military Tribunal found—

“The SS Central Organization had 12 main offices. The most important of these were the RSHA * * *.”⁵

And—

“The RSHA was divided into seven offices (Aemter), two of which (Amt I and Amt II) dealt with administrative matters. The security police were represented by Amt IV, the head office of the Gestapo, and by Amt V, the head office of the criminal

¹ Ibid., p. 262.

² Ibid.

³ Ibid., pp. 262-3.

⁴ Ibid., p. 264.

⁵ Ibid., p. 269.

police. The SD were represented by Amt III, the head office for SD activities inside Germany, by Amt VI, the head office for SD activities outside of Germany and by Amt VII, the office for ideological research. Shortly after the creation of the RSHA, in November 1939, the security police was 'coordinated' with the SS by taking all officials of the Gestapo and criminal police into the SS at ranks equivalent to their positions."*

* * * * *

B. Selections from Evidence and Argument of the Defense

I. INTRODUCTION

This section contains defense materials which are mainly of a general nature. They have been arranged under two headings—Extracts from the testimony of the defendants Ohlendorf, Haensch, and Braune (pp. 223 to 328)—General defenses and special issues (pp. — to —).

Ohlendorf's testimony represents the general view of the defendants who admitted knowledge and execution of the Hitler order. Haensch's testimony exemplifies the line of those who denied execution or even knowledge of the order. Braune's testimony illustrates the position of a number of defendants to the effect that many of the executions were carried out on direct orders of the army of occupation.

Superior orders. All defendants argued that they acted under superior orders and had no means of opposing or refusing to execute them. An extract from the closing statement on behalf of the defendant Naumann, dealing with this defense, appears in pp. 329 to 339.

Justification of the Hitler order. Several defendants further declared that they considered the order itself justified. The theory was that the Jews were bearers of bolshevism and enemies of National Socialism, and that it was, therefore, necessary to exterminate the Jews in Russia. An expert opinion by Dr. Reinhard Maurach, Professor of Criminal Law at Munich University, dealing primarily with these points, was submitted by the defense. Extracts from it are reprinted pp. 339 to 355.

Justification because of killing of noncombatants by Allied bombing. It was further argued that in World War II, the Allies killed large numbers of the noncombatant German population by bombing, and that, therefore, the defendants could hardly be criminally charged with the killings, pursuant to superior orders, of noncombatants. An extract from the testimony of the defendant

* Ibid., p. 268.

Ohlendorf on this argument is set forth in pp. 355 to 358.

Justified action against partisans and reprisal measures. Some defendants alleged that as far as the actions of Einsatz units under their respective command were concerned, most of the killings constituted death penalties for illegal partisan activities, or reprisal measures which were justified according to international law. This line of defense was particularly emphasized by those defendants who denied knowledge and execution of the Hitler order. The following selections on this plea appear in pp. 358 to 366; an extract from the radio speech of Marshal Stalin of 3 July 1941, and extracts from the closing statements on behalf of the defendants Sandberger and Ott.

The defense of self-defense and necessity was treated in detail by defense counsel for the defendant Ohlendorf in his opening statement. This opening statement appears earlier in this volume, pp. 54 to 82.

The prosecution dealt with these various defenses in its closing statement, which is set forth below, pp. 369 to 383.

2. EXTRACTS FROM THE TESTIMONY OF THE DEFENDANTS OHLENDORF, HAENSCH, AND BRAUNE

EXTRACTS FROM THE TESTIMONY OF DEFENDANT OHLENDORF*

DIRECT EXAMINATION

DR. ASCHENAUER (Counsel for defendant Ohlendorf) : What is your name?

DEFENDANT OHLENDORF: Otto Ohlendorf.

Q. When and where were you born?

A. On 4 February 1907, in Hoheneggelsen, District of Hannover.

Q. What was the profession of your father?

A. My father was an owner of a farm.

Q. Do you have any brothers or sisters?

A. I am the youngest of four.

Q. What is the profession of your brothers and sisters?

A. My oldest brother is a scientist; my second brother owns a farm; my sister has a business.

Q. What was the political opinion in your parents' house?

A. My father was an old National Liberal, and later he was at times a liaison official of the German People's Party.

Q. What was the religious attitude in your parents' home?

* Complete testimony is recorded in mimeographed transcript, 8, 9, 14, 15 October 1947, pp. 475-756.

A. My parents were both practicing protestants.

Q. Where did you spend your childhood and adolescence?

A. Up to the last school year, I lived in my home town and worked on the farm in my leisure hours.

Q. You emphasize the fact that you worked on your father's farm. Does that have any special significance in your development?

A. Unconsciously, I got to know the conditions and ways of handling a farm and got to know the human conditions in a farm district, that is, the cooperation and living together of farmers, industrial workers, peasants, merchants, tradesmen, and people of other trades. The rest of the time my professional development proceeded along with my political development. These conditions of administration, culture, religion, and education, as I got to know them in that village, always remained with me, and they became the leading motives for my own philosophy.

Q. What kind of education did you have?

A. After a few years of public school and high school, I graduated from the Gymnasium.

Q. Where and what did you study?

A. I studied in Leipzig, in Goettingen, and my fields were law and economics. Later, after my graduation, I spent one year in Italy studying the Fascist system and the Fascist philosophy of international law.

Q. Are you married?

A. Yes.

Q. Since when?

Q. Since 1934.

Q. Do you have any children?

A. Yes. I have 5 children from 2 to 11 years of age.

Q. When did you become a member of the Nazi Party?

A. In 1925.

Q. How did you come to enter the Nazi Party?

A. I have been interested in politics from my earliest days on. When I was 16 years old, I was director of a youth group of the German National People's Party; but I was not sufficiently bourgeois and involved in the class system not to turn my back very quickly on this bourgeois party, since its special interests and political methods could not appeal to me. However, on the other hand, I was too closely connected with the moral, religious, and social philosophy of the traditional bourgeoisie to become a Marxist for instance. But at that time I recognized that the social demands were a truly national problem, a problem, that is to say, concerning the whole people, and I recognized that the national demands were also a truly social problem. These two points of view seemed likely to find the best solution in National Socialism

in my opinion. In addition, I was attracted very much by the principle of achievement and the fact that active people were taken as criterion for building up the social organism, which was symbolically expressed in the term "Worker's Party". The doctrine of the national idea was also attractive to me, that is, the doctrine that peoples are independent organisms which by themselves and in themselves have to solve their own problems.

Q. What activity did you engage in in the Nazi Party?

A. In 1925 and 1926 I did everything which had to be done by every member in the relatively small organization at that time. I was head of a district group. I sold papers. I posted posters. I participated in discussions and spoke in gatherings. I went from house to house and from man to man.

Q. Were you at that time a member of the SS too?

A. From what I have just said, it can be gathered that at that time the various functions were not separated as yet. There were not yet any suborganizations of the Party. Thus, the question of participating in the functions of the SS was not a question of becoming a member. Rather, I, together with four other members of the Party, was detailed for service in the new SS functions, but since I left my home town shortly afterwards, I did not get to perform that service. I was merely crossed off the list and, therefore, never found out under what number I was registered.

Q. What was your activity in the Party after 1926?

A. In 1926 there were the first differences between myself and my superiors in the Party. I did not agree with my superiors' personal and factual views. Therefore, from 1926 to 1933 I did not work within the official party. On the other hand, on my own, especially in the years 1927 to 1931 as a student in Goettingen, I was very actively engaged in spreading national socialism by arranging gatherings by myself, by arranging discussions, and especially I conducted training courses. These courses were probably the first which were systematically started in the Party.

* * * * *

DR. ASCHENAUER: What was your activity in the Party after 1933?

DEFENDANT OHLENDORF: After the assumption of power in 1933, I was Referendar at the district court in Hildesheim, and as such I lived in my home town once more. I led my own district group in my own town again temporarily. I directed the professional group for law at the district court at Hildesheim. Furthermore, again I conducted training courses among the officials in the clear consciousness that the influx of a lot of non-National Socialists into the Party could no longer be prevented, which made a clarification of the Fascist and Nazi doctrines all

the more necessary. During this time this theme was the subject of my speeches, and despite the efforts, I could not prevent this influx of many non-National Socialists into the Party. This activity lasted until October 1933.

Q. When did you join the Institute for World Economics in Kiel?

A. October 1933.

Q. How did that come about?

A. My inclinations were always divided between politics and learning. Since I knew on how little National Socialism was actually based, I was very pleased to accept an offer from Professor Jessen which enabled me to combine learning and economics. He offered me a position at the Institute for World Economics in Kiel as his personal assistant, and at the same time gave me the opportunity of building up a department of National Socialism and Fascism. Thus it was our common goal to examine Fascism scientifically, and at the same time to enrich the substance of National Socialism. Personally, it was my intention to study philosophy and sociology and prepare for an academic post in economics.

Q. How long were you active as a research assistant?

A. I was with Professor Jessen from October 1933 to March 1934, and I remained at Kiel without him until the fall of 1934.

Q. How was it that your activity terminated so shortly?

A. About New Year of 1934 Professor Jessen and I had objected very strenuously against National Bolshevistic tendencies of the Party at Kiel, especially, because these National Bolshevik circles had built up an organization in almost all Reich Ministries. As the result of this fight on our part I was, in February 1934, arrested at the request of the Party with several other students. Professor Jessen evaded this arrest because he was sick. He had to leave Kiel since his opponents and my opponents, especially in the Ministry of Culture actually held the power. After Professor Jessen left, the Ministry of Culture demanded in the fall of 1934 that I be dismissed from Kiel, because I was a factor of political unrest there.

Q. What did this event mean for your scientific plans, for your scholastic plans?

A. Since the departments of the Ministry of Culture were against me, my scholastic career was at an end.

Q. What activity did you decide to engage in now?

A. Jessen and I took up the fight against these people with other groups in the Party and formulated the plan to build the commercial high school in Berlin into an economics institute in order to fight these National Bolshevik forces which were espe-

cially active in economics, in order to oppose them with real representatives of National Socialism. Jessen was to be provost of this school, and I was to aid him in building up the school. For this purpose I went to Berlin in December 1934, but these plans fell through also because of the Party, in this case on the part of Rosenberg. In the paper, the "Voelkischer Beobachter," an article appeared against Jessen which called a book by Jessen antinational. Rosenberg objected to Jessen. The Culture Minister, Rust, did not dare to make him director of the school. Thus my scholastic plans were definitely at an end, but simultaneously my political activity was also at an end, insofar as the director of the Reich School of National Socialist Economics, Dr. Wagner, warned me, at the request of an organization in Munich, against attacking National Socialist politics in my speeches, such speeches which were especially directed against the policies of the Reich Food Office would no longer be tolerated.

Q. How long did you remain in the Institute for Applied Economic Sciences?

A. Now I was without any professional goal, directed a library in the Institute for Applied Economic Sciences and furthermore held meetings with students. I had already described them briefly, but those forces also destroyed my student meetings so that I was definitely at an end in Berlin.

Q. Are you speaking of the time 1935-1936?

A. Yes.

Q. In May 1936, you entered into the service of the SD. How did that come about?

A. This same Professor Jessen who had called me to Kiel and Berlin now offered me a post in the SD, namely, specialist on economics, a position which had been offered to him too. Until that time I was not familiar with the SD. Professor Jessen arranged a meeting with the leader of the SD, at that time Professor Hoehn, and in this discussion I told him what my political opinions were, and to my surprise he answered that these very political critical opinions concerning practical National Socialism were just what the SD was looking for. Since there was no more public criticism, this would be an organization which would have as its mission to inform the leading organizations of the Party and the state about National Socialist developments, and especially as regards wrong tendencies, abuses, etc.

Q. What was the concrete mission assigned to the SD?

A. I was told to build up an economic news service, to create an organization which would be in a position to give all the information in the field of economics which was essential for National Socialist leaders to know concerning mistaken developments. This

was the motive which induced me to enter the SD and thus the SS in 1936.

Q. Now, before going into any more important questions concerning the charges of the prosecution, I would like to finish the story of your professional career. How did your position in the SD develop further?

A. The position in the SD was somewhat different from what I had expected. The chief of the SD had exaggerated to me insofar as he described an SD, which in reality did not yet exist. The whole central organization which I found consisted of about twenty young people without any typists, without any registry, without any aids at all, and with no Reich-wide organization. No one even knew what they wanted in detail. Such individual cases were dealt with, which happened to come along in such an embryonic organization. The natural interests of the chief were practically the entire content of the SD. He was a political scientist and university teacher, and thus the SD was first concerned with universities and political science. Here I began to work in the field of economics, laid the basis for an information service in which information was gathered about economic factors in Germany, and I tried to find specialists who would be in a position to analyze the economic tendencies, to evaluate them and sum them up. This work found approval, and around the turn of the years 1936-37, I became Chief of Staff of the SD Inland, that is, representative of the chief, with the special mission of transferring the system I had developed to the other fields. The basis for comprehensive information service was worked out and organized. In 1936 we already find a small scale picture of the later office III of the Reich Security Main Office. The SD Central Department II-2 had three groups which encompassed all the spheres of national life—group I, culture, learning, education, and folkdom; group II, law and administration, questions of Party and State, universities and student organizations; group III, all departments of economics.

Q. Did you have any difficulty in your work?

A. The difficulties developed very rapidly when Himmler noticed what was being developed here. The difficulties came from the cultural sphere and from the economic sphere. In the years 1936 and 1937, the development of the Four Year Plan and the success of the ideologies of the Reich Food Estate as the allegedly only National Socialist policies had gained strong influence within the middle class. Hundreds of thousands of plants were closed. I intervened in this development with my young SD. We not only tried to understand these developments and to point out the catastrophic consequences, but we also took a hand personally

by personal conferences which we backed up with our information material so that many difficulties arose in the closing down of these plants. At the same time we tried to point out to Himmler the damaging effects of these measures. And now the first sharp difference of opinion arose, because the Reich Food Estate under Darre¹ was the actual basis and support of Himmler's ideologies, and therefore, he objected to my reports as being against Darre. He was not familiar with the factual problems. Since we also took a hand in the cultural problems and objected to the retirement of the old professors by the Party and called attention to the fact that the opportunistic young careerists were certainly not fit to replace the wisdom of the old professors, Himmler called me on the carpet for the first time. He called me a pessimist and this clung to me all the time. Besides, Himmler stated that the SD had no business in these questions, but that they were to be left to the Party. In the year 1937 the chief of the SD, Professor Hoehn, was dismissed through the intervention of Streicher.²

After the director was gone, the mission of the SD was to be changed, and therefore those persons were put on the shelf who had so far determined the line of new development. Since I was not prepared to give up my ideas on the subject as I saw it, I was myself put on the shelf and again restricted to the economic department. Since I no longer saw any chance for the development of the SD in this position and did not want to work on other tasks, I asked for my release. Heydrich refused this, but after long negotiations I succeeded, in the spring of 1938, in getting permission to leave the SD as a full-time occupation and to become an official in the economic administration.

In June 1938, I became business manager of the Reichsgruppe Handel³ and in November 1939, I became the chief business manager of this group. During this time I only worked in the SD sporadically, for after giving up my full-time work, my fellow-defendant Seibert became my deputy in the economic group and now actually directed the work.

Q. Why did you accept a position in the Reich Group Commerce?

A. I have already mentioned that the most decisive factor in

¹ Richard Walther Darre, Reich Minister for Food and Agriculture, 1933-1945; Head of the Reich Food Estate, 1934-1945. Defendant in case of Ernst von Weizsaecker, et al. See vols. XII, XIII, and XIV.

² Gauleiter of Franconia, editor in chief of the antisemitic newspaper "Der Stuermer". Defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII Nuremberg, 1947.

³ The German Economy, under National Socialist rule, was organized into seven Reich groups (Reichsgruppen) one of which was the "Reichsgruppe Handel"—Reich Group Commerce. See case of Ernst von Weizsaecker, et al., vols. XII, XIII and XIV.

those years, 1936, 1937, and 1938, was that unemployment was not only overcome but that, as a result of the accumulation of tasks through the Four Year Plan, about one million businesses of the middle class were actually threatened. We had taken up this question since in our opinion it was the mission of National Socialism to fight collectivization but not by proletarianizing the independent middle classes and, by dissolving independent plants, to increase this collectivization. In attempting to prevent this I found that only the professional representatives of commerce shared my views, and so I went to this Reich Group Commerce in order to pursue in practical policy the aims which could no longer be pursued in the SD.

DR. ASCHENAUER: Your Honor, before I proceed with questioning my witness, I would like to clarify a few mistakes which were made in the translation. A list of incorrect points becomes evident from the comparison between the English and German.

I would like to point out that Ohlendorf was the staff leader of Professor Hoehn and not staff leader in the SD.

Two—it was said—alleged National Socialist policies in the Reich Food Estate * * * “alleged” was not translated.

Furthermore, leaving the SD Main Office was mentioned, not leaving the SD itself. The words “main office” were left out. These three things were incorrect.

PRESIDING JUDGE MUSMANN: Dr. Aschenauer, your remarks, of course, will be incorporated into the record and we can assure you that the correct version will appear in the final transcript, because everything which is stated here in Court is automatically recorded on a film and from that the transcript is eventually prepared.

DR. ASCHENAUER: Yes. Thank you very much, your Honor.

Herr Ohlendorf, how did it come about that in spite of your very responsible task in the Reich Group Commerce in September 1939 you became the Chief of the Office SD Inland in the Reich Security Main Office?

DEFENDANT OHLENDORF: The SD Main Office had collapsed in 1938 because in the meantime the Gestapo, because of the complete centralization of the political police forces by the Reich Leader SS and Chief of the German Police, had by then been extended so far that apart from the immediate fighting of opponents in the executive, they also kept the information service exclusively in their own hands.

The intelligence service about opponents which had been legitimized by the Party as the SD had, in the years 1936 and 1937, been more and more restricted, and in 1938, through the decree concerning the separation of functions, which defined the com-

petencies of the State Police and SD, it was finally dissolved.

The second reason was that the Reich Leader SS, Himmler, tried now to take up his old plans and form a State Security Corps by one decisive measure. Having delimited the functions of the Gestapo and the SD, he now wanted to include them in one new organization, the Reich Security Main Office. This was to be the first step in the founding of the State Security Corps. This idea he later extended to such an extent that even the inner administration was to be taken over into the State Security Corps. The SS, the police, the SD and the internal administration were supposed to be taken over into the State Security Corps and the SS was supposed to be responsible for all this. That was the beginning.

Now the difficulty for him was that he dared not tell the Party about his plans because the Party had legitimized the SD as an information service, because the SD was a Party affiliation through the SS but it was never prepared to grant the state the right of such an assignment and even perhaps legitimize it through the Party.

Now, of course, the information service concerning opponents had been dropped, and with it the information service which the Party had legitimized as the SD. Now there existed a double difficulty with regard to the Party. One did not want to give up the SD as an information service because the Party was already developing its own information service and would now have had the possibility of claiming this information service officially too, because the Reich Leader SS no longer had an intelligence service to offer them.

On the other hand, Himmler wanted to take over the intelligence service from the Party in order to amalgamate it with the Gestapo in the State Security Corps, but this never succeeded. Up to the collapse, the Reich Security Main Office, as an institution, was never an official agency, but the official one remained the Security Police, that is, the Gestapo and the criminal police. The Main Security Police Office was not dissolved, although in the Reich Security Main Office, the state police formed office IV and the criminal police formed office V. The SD Main Office also continued to exist as an official party institution, although internally the administration was handled in Office I and Office II of the State organization. This Reich Security Main Office, therefore, was only an internal administrative set-up of the Reich Leader SS to prepare his State Protection Corps, but it never became an official agency within the State or Party. Thus, through a decree, it was expressly forbidden to use the letterhead of "Reich Security Main Office" for any external correspondence.

Now Himmler was confronted with the difficulty of preventing the Party from extending its own information service and on the other hand, therefore, of keeping the SD in this form as a façade towards the Party. As the information service concerning opponents was dissolved, and as Central Department II-1 of the SD, which had carried on research concerning opponents, no longer existed, all that remained in the SD were the embryonic beginnings of the sphere information service, namely Central Department II-2. As the Reich Leader SS did not really intend to extend the sphere information service which had already caused so much difficulty, and as Heydrich did not intend to develop the SD with regard to organization and personnel to the necessary extent, the solution of an external facade was sufficient for him. This was an emergency solution, insofar as the former strength of the SD had become exhausted in the long fight during the years 1936, 1937, and 1938, especially against Best, the deputy of Heydrich for the Main Security Police Office. Therefore, there was no person who on this new basis could establish anything like tolerable relations with the state police. As the SD was not taken really seriously by Himmler and by Heydrich, I remained full-time business manager of the Reich Group Commerce; in November 1939 I was even authorized to become the main business manager officially, i.e., to represent the complete organization of about 900,000 members officially with respect to all agencies of the Reich. I remained honorary leader in the SD and I only worked in the SD sporadically for a few hours now and then and I saw no possibility for the time being to create a different situation from the one I left in 1938.

Q. Making you chief of office III was, therefore, not proof of any special confidence in you on the part of Himmler and Heydrich, was it?

A. No, as I said already, it was only an emergency solution since there was no serious intention of expanding this office.

Q. How did the practical examples you have given affect your position and work in the SD Inland?

A. The work in the SD Inland formed the basis for all the difficulties and all the set-backs and defeats which came later. The SD Inland, the only branch as from September 1939 of the SD within the Reich, remained illegal. The Party had not approved this formation of the SD and it was not prepared to approve it. Himmler himself did not legitimize this SD either. He was not prepared to cover this SD, and he let it and its men down whenever they were attacked from any side. It was not possible for the contents of the business distribution plan of Central Department II-2 which I showed just now—it was not

possible to expand Office III, which covered all the spheres of life of the German people, sufficiently for it to be able to fulfill its wide and extensive tasks. This became evident very soon, especially first of all on my own person. Although I became the chief of office III, only in September 1939, we already had the first big crisis at the beginning of November. Heydrich sent me on an official trip with Himmler, and during its course disputes arose, the consequence of which was that in Warsaw he had me informed, through his chief adjutant Karl Wolff, that I must leave his services, that agreement between us about the work was not possible.

Q. What was the reason for this disagreement with Himmler?

A. He reproached me that the members of the SD in Poland had not been able to carry out the treatment of the Jews in the form he wanted and that, he said, was the product of my training. Heydrich was very pleased by this crisis with the Reich Leader (SS) because any possibility of an overshadowing of his position had been prevented. He refused to let me leave the organization and put matters right with the Reich Leader SS. During the year 1940 there were more disagreements, because the nature of the information service he instituted aroused protests from all sides. Ley * complained to Himmler about me and asked for my dismissal because of criticism in the SD reports of his development of the DAF [German Labor Front] especially of its economic enterprises. Himmler himself criticized a number of reports because he said they were defeatist and pessimistic. They came back torn up. In the negotiations with me, Heydrich now realized that I was chief business manager of the Reich Group Commerce and was as such exempted from the draft—that means I was obligated to serve in the Reich Group Commerce during the war and that he had thus almost completely lost his power over me. And so, in 1940, the crisis with Heydrich took on a very acute form. He demanded on various occasions that I join the army. This was prevented because, meanwhile, the chief of the Reich Group Commerce had been drafted, and apart from the business management, I also took over the position of chief of the Reich Group Commerce. Therefore, he went over to demanding that I should leave the Reich Group Commerce.

PRESIDING JUDGE MUSMANN: May I interrupt, please. Witness, would you please indicate specifically just what were these differences between you and Himmler—briefly, but specifically.

DEFENDANT OHLENDORF: The differences of opinion between Himmler and myself were differences of temperament and of

* Leader of the German Labor Front. Indicted by the IMT but committed suicide shortly after the serving of the indictment.

politics. I am now using his expressions: I was the unbearable, humorless Prussian, an unsoldierly type, a defeatist, and damned intellectual.

PRESIDING JUDGE MUSMANN: Are we to understand that you mean by that, that you anticipated the defeat of Germany?

DEFENDANT OHLENDORF: The SD in its reports pointed out the many difficulties which might make the success of the war questionable, that is why he called me a defeatist.

PRESIDING JUDGE MUSMANN: I see.

DEFENDANT OHLENDORF: What was most disagreeable to him was that in our administrative reports we wanted to bring about constitutional conditions under all circumstances. We made it quite clear to him that if the order of the state was destroyed, the demands of a major war could not possibly be met.

Now I would like to describe Himmler. I called Himmler a Bavarian because he called me a Prussian. He did not want orderly conditions. He was the representative of dualism. He tried to imitate Hitler on a small scale. Hitler himself followed the type of policy so fatal to us, of assigning tasks not to organizations but to individual persons, and wherever possible he assigned one and the same task to several individuals. This was imitated by Himmler. Although for him there was no reason whatsoever to fear that one of his functionaries would become too powerful, he believed he could prevent his individual functionaries from becoming more powerful than himself in this way. A practical example, which will also occupy the Tribunal in Case No. 8* is the handling of ethnic [Volkstum] questions. These questions were handled by five different offices without the competency for the individual tasks being made clear. When I suggested to Himmler that these questions should be dealt with as an entity, this was a further reason for his utterances in Warsaw asking for my replacement. Thus was his basic structure. He was a practical man, an opportunist of the day, who was in no way prepared to deal with matters in an organized manner—rather, he liked to employ individual people from day to day, to raise them up and to drop them again. In my opinion this was bound to destroy the whole order of a nation even in peacetime, and of course, especially in as serious a war as Germany had to wage. What separated me most from him was the wilfulness of the individual decisions not in regard to the actual tasks he assigned, but in the legitimization of people who were in part not qualified, corrupt, or so fixed in their views that they could feel no impulse of leadership—it may even be that he appointed them

* United States vs. Ulrich Greffelt, et al. See Vols. IV and V.

perhaps for this reason so that on the other hand, he could intervene in the decisions of an agency and thus many very important matters were never brought to a satisfactory solution. The difference between us was that I regarded politics objectively, and I wanted to make men the subject of politics while he regarded politics merely from the point of view of his own person and his tactical position, and he subordinated affairs to this tactical position. If we judge the matter from the German point of view, Himmler became a parasite of our own people, not so much because of what he did, but because of what he did not do. He had a power which has led to the terrible judgment of him and the SS, and in reality he did not exercise this power in Germany but he and his power were an empty shell, and in this we have the important element of his crime against humanity too, that through the police, through a unit like the SS, and later through his direction of the Ministry of the Interior, he had the power which would have enabled him to see the damage and would have given him the possibility to remove this damage and to create orderly conditions.

DR. ASCHENAUER: Witness, you have pointed out the difference between Himmler and yourself. How is it that in spite of this you returned to Berlin in June 1942 and took over office III?

DEFENDANT OHLENDORF: In June 1942, Heydrich died as a result of an attempt on his life. Himmler himself took over the leadership of the Reich Security Main Office with the clear intention of weakening it, because Heydrich was the only SS leader who had grown above his, Himmler's, head. Purely externally, Heydrich as the Reich Protector already ranked above Himmler on the official list of Reich agencies. When Himmler was in charge of the Reich Security Main Office, he weakened it in two important points. He took the economic authority away from the Reich Security Main Office and transferred it to Pohl,* the head of the Economic Administrative Main Office (WVHA), and he also took away the personnel authority of the Reich Security Main Office and transferred it to the SS Main Personnel Office. Everyone who knows about agencies knows what this weakening means. Himmler was not present at that time in Berlin, that is, the Reich Security Main Office had no management and no leadership. Thus he was forced to let the different offices work independently. As office III had not been given a deputy while I was in Russia, I was the only one who, during his absence from Berlin, could direct office III. Furthermore, it was a tactical measure which, in my opinion, was intended to avoid documenting his weakening measures of the Reich Security Main Office by taking away the office chief

* Chief of the SS Economic and Administrative Main Office (WVHA). Defendant in case of Oswald Pohl, et al. See Vol. V.

from the office and then appointing a person who had no authority, either internally or externally.

Q. What was the development of your relations with Himmler after this?

A. When I returned from Russia in July, I was ordered to report to Himmler. In August he received me in his headquarters in a very friendly manner.

PRESIDING JUDGE MUSMANN: May we suspend just for a moment? There seems to be something wrong with the transmission here. We don't quite get all of it. I would like to speak to the interpreters here * * *.

Very well, thank you.

DR. ASCHENAUER: We were just dealing with the question of the development of your relations with Himmler.

DEFENDANT OHLENDORF: After my return from Russia, I reported at the headquarters to report to Himmler about the situation in office III. I was received in a very friendly manner. He promoted me to brigadier general of the SS [Brigadefuehrer], and he told me that he planned to make me a brigadier general of the police. This friendly manner, of course, had its ulterior motives, because he continued Heydrich's demands that I should leave the Reich Group Commerce and become an official in the Reich Security Main Office. I explained to him that I had to ask him not to make me an official of the Reich Security Main Office and not to make me a brigadier general of the police, and why the SD, office III, had to remain independent under all circumstances, that is, it had to remain a free organization, and its members had to be Party employees. I made it quite clear to him that the Party would never stand for a state organization taking over an information service in which the work of the Party would also be dealt with in any way. I also made it clear to him that the SD could only carry out the task which it had tackled if it remained quite free of any appearance of being a police organization, because this organization was collecting the most able experts of all departments. They, however, were not prepared even to give the impression that they were connected with the police in any way at all. Apart from that, through this connection with the Gestapo, the most important principle of the SD would be abandoned, namely, to be independent of any department, but to work without any individual responsibility and in no connection with other departments, completely independently. This alone would justify the SD in approaching other departments with its criticism, which, otherwise could no longer be considered objective criticism but would be regarded as the opinion of one department as against that of another. This, of course, led to a completely new disagree-

ment. Himmler reproached me with very harsh words and asked me to not try and teach him anything. He knew exactly what best served the interests of the SS, and what meaning the State Security Corps had for him. I was dismissed in disgrace, and this was the second time in my activity of nine years in the SD that I had the chance to speak to Himmler alone. When Kaltenbrunner¹ took over the office and became Himmler's successor in January 1943, Himmler spoke of the office III and its chief with ironical words, and said they were the "guardians of the Holy Grail of National Socialism and of the SS who stood whining over the broken ideas" and thought that now everything was lost. Thus, we were again publicly denounced as nuisances, pessimists, and defeatists. But it was only now that the actual crisis of the SD started, because after Stalingrad² conditions in Germany became more and more difficult. The more difficult these conditions in Germany became, the more critical, of course, became the reports of the SD. And now, Himmler was no longer prepared to cover this activity on the part of the SD but, on the contrary, he used the complaints of his colleagues in the Reich offices and pushed them on to the SD.

I'll give you a few examples. In the spring of 1943, Goebbels had tried through an act of force—or you can call it a coup de theater—to gain the internal power in Germany. It was the famous Sports Palace rally, the famous declaration of total war. Goebbels himself asked the next morning for a report from the SD on the effects of this rally; and he got this report. In this report it was said that among the population of all Germany, in all districts, this declaration in the Sports Palace was disapproved of and disagreed with and that it was called a Punch and Judy show. This led to Goebbels' achieving a ban on "reports from the Reich". These reports from the Reich were the summaries of reports of all spheres of the SD, which were sent by us to all Reich agencies, and in the administrative practice of the Reich were the only source of information of the departments about difficulties of the other departments. With this, the most important organ and most important functions of the SD were abolished and destroyed.

The reasons he gave were that these reports were so defeatist that not even Reich Minister Lammers³ and Goering, who,

¹ Ernst Kaltenbrunner, Lt. General of the SS, Head of the Reich Security Main Office, Chief of the Security Police and SD. Defendant before the IMT. See *The Trial of the Major War Criminals*, vols. I–XLII, Nuremberg, 1947.

² The retreat of the German armies from Stalingrad in March 1943, the turning point of the Russian campaign.

³ Hans Heinrich Lammers, Chief of the Reich Chancellery, defendant in case of Ernst von Weizaecker, et al. See Vols. XII, XIII, XIV.

because of his pressure, were the only ones to receive these reports, and all other information received, were not able to overcome this defeatism. Gauleiter Koch, the Reich Minister in the eastern territories, had through his own information service in the Party Chancellery learned of the reports which I had issued against his policy of force in Russia. He complained to the Reich Leader SS, and the Reich Leader SS wrote a letter to Kaltenbrunner in which he instructed him to decimate office III and its subsidiary offices in the Reich to reprimand its chief and to threaten him that if these unnecessary reports did not stop, the SD would be dissolved completely and the chief arrested. Bormann * and Ley were the next people to take this direction. Ley, without informing us, forbade the holders of office and shop stewards of the German Labor Front any collaboration with the SD. Because of the unjustified work of the SD, Bormann threatened to speak to the Fuehrer, which was to have the effect that the Fuehrer would take the chief of office III where he belonged, and his people would be put to more productive work.

When, in spite of this, I continued to send out my reports, Bormann in 1944 also forbade all Party officials, Party affiliations, and Party employees, down to the charwomen to have any activity within the SD. This fight which Bormann put up continued until April 1945; and it was such a heavy fight that even Kaltenbrunner, who on the whole approved of my work, asked me urgently to stop the Reich reports, or at least to camouflage them as reports on opponents or sabotage. The reports of this time regarding the leadership situation within the Reich, which fell into the hands of the English, showed the Allies that this manner of reporting was not given up in spite of all and in spite of the threats it was still possible to submit the strongest reports about the leadership situation of the Reich, about the complete internal dissolution of leadership, and about the collapse of the air force to the Fuehrer through roundabout channels.

According to my knowledge—that is the tragedy of the SD—these were the only reports which only in the midst of the catastrophe were submitted to Hitler. I myself did not know Hitler personally nor did I ever have the possibility of submitting a report to him or even of speaking to him.

Q. How did it come about that you were appointed into the Reich Economics Ministry?

A. My professional development was conditioned by my work in the Reich Group Commerce. This work gained more importance and significance than was usual for a group in the professional

* Chief of the Party Chancellery, defendant *in absentia* before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

organization because the neighboring groups of industry, the crafts, banking, insurance companies, and transport did not have any political people in them. They were not prepared to work politically on the policy of the economic ministries, especially the Armaments Ministry, which was restricting and in part destructive for them. As I entered this policy with political arguments, my own significance in economic policy was a much bigger one than can be understood from the point of view of commerce. This was increased by the fact that even in the Economics Ministry there were no political personalities who were prepared to discuss the differences with the Party, or the political person Speer¹, who was the Fuehrer's trusted representative in defense matters. Thus in the years 1939 and 1940, from the Reich Group Commerce, we were the main consultants in the field of economic policy against all collectivistic and socialistic tendencies which were connected with the names of Speer and Bormann.

Funk² was in agreement with my activity. He especially approved of my work against the so-called self-responsibility of economy, that is, against the condition that the state authority as a state vanished, and instead of the state, economic leaders entered who took over the authority of the state, but at the same time were competitors in competition with each other. This not only opened the gates wide for corruption but created for me a basic condition for the economic loss of the war, because the competitors were no longer prepared to reveal their actual output to the competitor. Large masses of the people felt themselves confronted no longer by an objective state but individual economic hyenas and monopolists. Therefore, the differences between economy and the state were bound to become larger and larger. Funk approved of these reports of mine and, therefore, asked for my entry into the Reich Ministry of Economics.

In the spring of 1943, I was to become Second State Secretary in the Ministry of Economics. Himmler categorically refused my transfer into the Reich Ministry of Economics and for the very reason that caused Funk to ask for my transfer into the Reich Ministry of Economics. Himmler also recognized the significance of the economic development as a monopolistic capitalism such as we had never known. But in a letter to me he refused my transfer to the Ministry of Economics, giving the reason that he did not want an SS leader to be exposed in this fight against

¹ Reich Minister for Armaments and Munition. Defendant before the International Military Tribunal. See *Trial of the Major War Criminals*, Vols. I-XLII.

² Reich Minister of Economics. Defendant before the International Military Tribunal. See *Trial of the Major War Criminals*, Vols. I-XLII.

capitalism because this fight could no longer be waged within this war. After the Ministry of Economics collapsed in the summer of 1943 Funk again tried and through a tactical maneuver succeeded in anticipating a decision by Himmler; and Himmler now agreed.

Q. How was your last discussion with Himmler?

A. My relationship with Himmler was bound to deteriorate even more, because my new work in the Reich Ministry of Economics was added to the old crisis, because what our predecessors had not been able to do we now took upon us. We tried to force Pohl and the Economic and Administrative Main Office to put the cards of the SS concern on the table. We told him that we would not stand for any further expansion of this SS structure either in Germany or in foreign countries. During the course of these differences Himmler, in the summer of 1944, sent for me and Heider, State Secretary in the Ministry of Economics to come to Berchtesgaden. He explained to us why this policy must not be pursued by us in opposition to his economic activity. We refused any agreement; but he had already created an accomplished fact in Hungary by a deal with the Weiss combine,¹ securing the Weiss enterprise for the SS. As for us, the right was on our side in this case; and as normally he had nothing on us, he used the next occasion to begin a new correspondence of a very serious and slanderous character. The reason was the economic reform plan which I had drafted in the autumn of 1944. It was intended in the economic field at least to establish an orderly and constitutional administration. Himmler agreed at first, until Bormann objected, because he was preventing any consolidation of the state and furthermore he did not want a curtailment of the power and authority of the Gaue [districts] which he regarded as an anti-Party measure.

Himmler now changed his opinion and agreed with Bormann. He disavowed my reform suggestions, which he said were academical reports representing a waste of intelligence. But at the end, our relations were of a different nature. In the last fortnight before the collapse, I turned over my quarters in Flensburg and Ploen to Himmler. Only now did really serious discussions begin, and now he was more approachable. One can say that these were good discussions between us—only the end was more or less like the beginning because at the end I tried to cause him not only to dissolve the Werwolf² activities which he did, but also to dissolve the SS and turn himself over to the Allies. In trying to

¹ Leading industrialist of Jewish origin.

² National Socialist underground organization formed shortly before the surrender of Germany for the purpose of combating the occupation by the Allies.

cause him to do so, I put it to him that he alone could in a responsible manner explain to the Allies the tasks which he had given to the SS, and he would have to take this responsibility. He refused and escaped without saying good-by.

EXAMINATION

PRESIDING JUDGE MUSMANN: What was the date of this discussion with Himmler when the witness recommended the dissolution of the SS and the going over to the Allies?

DEFENDANT OHLENDORF: That was 9 May, your Honor, 1945.

PRESIDING JUDGE MUSMANN: Well, it was all over then, wasn't it?

DEFENDANT OHLENDORF: No; it was not all over in a manner of speaking because the Flensburg government¹ was in power, and the Allies had agreed to this so-called Flensburg government. This government was actually officially in power until 23 May 1945, although only in an area the size of the territory of a Landrat (district council). Between 9 and 23 May, there were still government reshuffles. Only on that date did Himmler leave the government as Reich Minister and as the commander of the reserve army. He had been of the belief that via his officer, Schellenberg² the Allies wanted to negotiate with him and needed him as a factor for order in Europe. On these conversations of Schellenberg via Bernadotte, the Chief of the Red Cross in Sweden, with Churchill and the British Government, Himmler really relied until the day of his escape, in fact, even until the day before his death. Even after he escaped he sent me one or two orderlies every day to inquire whether Schellenberg had returned from Sweden, or whether Field Marshal Montgomery had answered the letter which he had written him on 9 May.

PRESIDING JUDGE MUSMANN: But when you say that on 9 May you were discussing whether you should go over to the Allies, it's like the mouse discussing whether it should go over to the cat. You had already surrendered.

DEFENDANT OHLENDORF: Yes, but as I just stated, this small district of the Flensburg government, with the locality Muerwik and Gluecksburg, had not surrendered because at that place there were official negotiations between the control commission of the Allies with the government and the Chief of Government of the German Reich. I may draw your attention to the fact, your

¹ The government set up under Admiral of the Fleet Doenitz after the announcement of the death of Hitler.

² Brigadier General of the SS, Chief of the Foreign Intelligence Division of the Reich Security Main Office, Office Chief in the SD. Defendant in case of United States *vs.* Ernst von Weizsaecker, et al. See Vols. XII, XIII, XIV.

Honor, that at the surrender negotiations the Allies asked Jodl,¹ Keitel,² and Friedeburg³ to certify the official position of Doenitz as head of state, and he with his government actually remained in power until 23 May 1945.

PRESIDING JUDGE MUSMANN: But you didn't seriously believe that you could successfully hold out against the combined Allied Power after 8 May, did you?

DEFENDANT OHLENDORF: No. I think we must have misunderstood each other, your Honor, because I had only two intentions. One was to prevent SS units from being formed into underground movements. Therefore, I tried to cause Himmler to dissolve the SS officially, to order them to submit to their fate, and as far as possible to work with the Allies in a positive sense. I also tried to cause Himmler to go over to the Allies and put himself at the disposal of the Allies, so that he could tell them what the tasks of the SS were, why he had given them these tasks, and to answer for them.

Q. Were you in daily contact with Himmler following 8 May?

A. Yes.

Q. Until when?

A. At least until 19 May, I believe even until the 21st through the orderlies. He had camouflaged himself and was living in a disguise under which he then was delivered into a prisoner-of-war camp.

Q. How did you submit yourself to the Allies?

A. When Himmler told me that I was afraid for myself and afraid for my own life, I told him that I had already made up my mind to put myself at the disposal of the Allies and to take my own responsibility for what I had made of the SD. I could not leave it to anybody else to take responsibility for the activities of the SD; and although I was not arrested on the afternoon when the rest of the government was arrested, after asking for it three times, I achieved the status of being arrested.

Q. When was that? What date?

A. That was on the 23d of May.

Q. Then they favored you by arresting you?

A. Yes, on the 23d of May.

DR. ASCHENAUER: Witness, did you report voluntarily for the campaign in Russia?

DEFENDANT OHLENDORF: No, on the contrary. Twice I was

¹ Chief of Staff of the OKW; defendant before the IMT. See *Trial of the Major War Criminals*, Vols. I-XXII.

² Chief of the Supreme Command of the German Armed Forces, Defendant before the IMT. (Ibid.)

³ Admiral Friedeburg committed suicide.

directed to go to Russia and twice I refused. Then I got the third order which I could no longer evade.

Q. Why didn't Heydrich from the beginning simply give orders? It was certainly not customary to negotiate with any of his subordinates?

A. He was forced to insofar as I was on call for the Reich Group Commerce—I had a note in my military passport which obligated me in case of war to be at the disposal of the Reich Group Commerce, therefore, it was necessary that this war order be superseded by Heydrich's order. This happened for the third time by order, so that the Reich Group Trade revoked the deferment. Now I was conscripted for the Reich Leader SS; the army district command received notice that I had gone to a foreign country on a secret mission for the Reich Leader SS. After that I was made available for the Reich Security Main Office. Now I was given a note in my military passport for the Chief of the Security Police and SD.

Q. Please explain the legal situation of your membership in the SD, when you were conscripted in 1941?

A. In 1936, I joined the SD when I was given the job of building up a critical military information service. When this job was taken away from me I asked for my dismissal. This was refused to me in 1938. I was merely able to give it up as a full-time occupation which it had been. The situation with the Chief of Security Police and SD was as difficult as in the other SS organizations, because one did not enter into a contract. It was merely a unilateral loyalty agreement, and in addition to a simultaneous joining of the SS, a condition of military subordination existed. One was at the same time a military subordinate. My renewed application for dismissal in November 1939 was again refused. By now the position of the Chief of Security Police and SD had become even stronger. In the meantime through a decree the Security Police and SD were listed as being on a war emergency status, and in the renewed decree it was added that even an application to leave this organization would be forbidden. This application was even punishable. In this manner it was no longer possible after 1939 even to file an application to leave. This last remark applied to a general condition, since through the wish of the Reich Leader SS, I had the possibility in November 1939 to make a renewed application. Therefore, when I was conscripted for the Russian campaign in 1941, I was not a voluntary member of the SD, or of the SS. I was conscripted for the campaign.

Q. How did the formation of the Einsatzgruppen and the Einsatzkommandos come about? Were they part of the agencies of the offices of the Secret Police and the SD?

A. The Einsatzgruppen and the Einsatzkommandos were neither agencies nor parts of the organization of the Reich Security Main Office. They were mobile units set up for one single purpose which were set up ad hoc for certain assignments. The members of the Einsatzgruppen and the Einsatzkommandos were either conscripted or were taken from the members of the security police and SD. Or they were drafted to a large extent, for example, as drivers or interpreters, whereas a large membership of the Einsatzgruppen, by order of Himmler, was made available by companies of the Waffen SS or the regular police. These Einsatzgruppen and Einsatzkommandos were no agencies or authorities, but they were military units.

Q. Were the purposes and the orders of the Einsatzgruppen made known to the men and the leaders when they were drafted?

A. No. This was not done. The leaders and men were given an order to report to Dueben or Pretzsch in Saxony. They did not get any information where they were to be committed, or what tasks they were supposed to do. Even after the units had been activated, the commanders and men did not know about it.

Q. When was the area of operation made public?

A. It was made known shortly before the units left for Russia, about three days before.

Q. When was the order given for the liquidation of certain elements of the population in the U.S.S.R. and by whom was it handed over?

A. As far as I recollect, this order was given at the same time when the area of operations was made known. In Pretzsch, the chiefs of offices I and IV, the then Lieutenant Colonels [Obersturmbannfuehrer] Streckenbach and Mueller gave the order which had been issued by Himmler and Heydrich.

Q. What was the wording of this order?

A. This special order, for such it is, read as follows: That in addition to our general task the Security Police and SD, the Einsatzgruppen and the Einsatzkommandos had the mission to protect the rear of the troops by killing the Jews, gypsies, Communist functionaries, active Communists, and all persons who would endanger the security.

Q. What were your thoughts when you received this order of killings?

A. The immediate feeling with me and with the other men was one of general protest. Lieutenant Colonel Streckenbach listened to this protest, and, even gave us a few different points which we could not know, but at the same time he told us that even he himself had protested most strenuously against a similar order in the Polish campaign, but that Himmler had rebuked him just

as severely by stating that this was a Fuehrer order, which must be carried out, in order to achieve the war aim of destroying communism for all times, therefore, this order was to be accepted without hesitation.

Q. Did you consider this order as justified?

A. No; I did not. I did not consider it justified because quite independently from the necessity of taking such measures, these measures would have moral and ethical consequences which would deteriorate the mind.

Q. Did you know about plans or directives which had as their goal the extermination on racial and religious grounds?

A. I expressly assure you that I neither knew of such plans nor was I called on to cooperate in any such plans. Lieutenant General [Obergruppenfuehrer] Bach-Zelewski testified during the big trial [before the International Military Tribunal] that the Reich Leader SS in a secret conference of all lieutenant generals made known that the goal was to exterminate thirty million Slavs. I repeat that I was neither given such an order nor was there even the slightest hint given to me that such plans or goals existed for the Russian campaign. This is not only true for the Slavs but this is also true for the Jews. I know that in the years of 1938, 1939 and 1940, no extermination plans existed, but on the contrary, with the aid of Heydrich and by cooperation with Jewish organizations, emigration programs from Germany and Austria were arranged; financial funds even were raised in order to help aid the poorer Jews to make this emigration possible. In 1941, I personally helped in individual cases, where, for example, a representative of I. G. Farben called on me in order to overcome difficulties with the state police, when it was their intention also to let so-called bearers of secrets emigrate. Up to the very end I succeeded in giving such aid. Thus, at the beginning of the Russian campaign, I had no cause to assume that the execution order which we were given meant that any such extermination was planned or was to be carried out. During my time in Russia, I sent a great number of reports to the Chief of Security Police and SD in which I reported about the fine cooperation with the Russian population. They were never objected to. When Himmler was in Nikolaev in 1941, he neither made any reproaches about this, nor did he give me any other directives. I am rather convinced that where such an extermination policy was later carried out, it was not carried out by the order of the central agencies, but it was the work of individual people.

Q. Did you give any thought to the legality of such a Fuehrer order?

A. Of course I did. I knew the history of communism. From

the theory of Lenin and Stalin and from the strategy and tactics of the Bolshevik world revolution, I knew that bolshevism was to let no rules prevail other than those which would further and promote its aim. The practice of bolshevism in the Russian Civil War, in the war with Finland, in the war with Poland, in the occupation of the Baltic countries and Bessarabia, gave us the assurance and certainty that this was not only theory, but that this was carried out in practice, and in the same manner it therefore was to be expected that in this war no other laws would have any validity. This was true for the international conventions which Russia officially denounced to the German Government, as well as the international customs and usages of war, and it was true because according to this same communist ideology the customs and usages could only develop between partners who were on the same ideological basis. Just as the other class is the opponent internally who must be destroyed at all costs, according to the same ideology the other state which does not represent a Bolshevik system is the external opponent who is to be destroyed, just as the class is to be destroyed internally. The rules in this are adjusted according to the state of emergency of the moment. In this respect it was clear to me that in this war against bolshevism the German Reich found itself in a state of war emergency and of self-defense. What measures are to be taken in such a war in order to fight such an opponent on his own ground—to determine this could be only a matter to be decided by the supreme leadership which waged this war for the life or death of its people; and which, in my opinion, they certainly believed they waged also for Europe and even more for there was no doubt for us that the Four Year Plan, as well as the events of 1938 and 1939, were nothing else for Hitler but the securing of the point of departure for this war against bolshevism which was considered by him to be inevitable.

PRESIDING JUDGE MUSMANNO: Witness, when you refer to the Russian practice in the war against Poland, were you referring to the war of 1939 when Russia was your ally?

DEFENDANT OHLENDORF: Yes. This has nothing to do with it, or does not change the subject, the fact that Russia was our ally at the time.

Q. No. I am just asking if that is the war you are referring to?

A. Yes, this is the war.

Q. Yes. Well, did Germany at that time also have the same practices?

A. I do not know that this happened to the same extent. That violations took place cannot be doubted.

Q. You believe that it was not as widespread as it later developed in your war against Russia? Is that what I am led to believe?

A. Yes.

DR. ASCHENAUER: Is, in your opinion, the man who receives these orders obliged to examine them when they are given to him?

DEFENDANT OHLENDORF: This is not possible, legally or actually. According to the general legal interpretation in Germany, not even a judge had the possibility of examining the legality of a law or an order, as little as an administrative official could examine the administrative edict of a supreme authority. But even actually it would have been presumptuous because in the position in which every one of the defendants found themselves, we did not have the possibility of actually judging the situation. It also corresponds to the moral concept which I have learned as a European tradition, that no subordinate can take it upon himself to examine the authority of the supreme commander and chief of state. He only faces his God and history.

Q. Didn't Article 47 of the Military Penal Code give you an occasion to interpret this execution order differently?

A. It is impossible for me to imagine that an article which was created to prevent excesses by individual officers or men leaves open the possibility to consider the supreme order of the supreme commander a crime. Apart from this, again according to continental concept, the chief of state cannot commit a crime.

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DR. ASCHENAUER: What is your conviction about the actual background of the Fuehrer order which was given to you?

DEFENDANT OHLENDORF: I have had no cause, and I still have no cause today to think that any other goal was aimed at than the goal of any war, namely, an immediate and permanent security of our own realm against that realm with which the belligerent conflict is taking place.

Q. The prosecution states that the contents of the order and its execution was part of a systematic program of genocide which had as its aim the destruction of foreign peoples and ethnic groups. Will you please comment on this?

A. I did not have any occasion to assume any such plan. I assure you that I neither participated in plans, nor did I see any preparation for such plans which would have let me assume that such a plan existed. What was told to us was our security and those persons who were assumed to be endangering the security were designated as such.

Q. What observations did you yourself make in Russia about

the objective prerequisite that the executions of populations, according to the Fuehrer order, were necessary?

A. The experiences in Russia showed me once and for all that here the propaganda of Goebbels had not stated the truth clearly enough. I was convinced that this state, which in order to gain its ends internally, had torn many millions from their families; in the process of separating the Kulaks [well-to-do farmers] they took the adult population away three times from rural districts. This state would have even less consideration for a foreign population.

It was obvious that the number of Jews in the general population in Russia, in relation to their number in the higher administration, was very, very small. The prosecution has submitted a report from my Einsatzgruppe to the army. In this report in enclosure No. 2 it explained the situation of Jewry in the Crimea. Unfortunately, this enclosure was not available. It would have shown that in the Crimea, for example, up to 90 percent of the administrative and leading authoritative positions were occupied by Jews. The information service in the same field, conversations with innumerable Ukrainians and Russians and Tartars, and the documents which the prosecution submitted show that this was not only the case in the Crimea. For us it was obvious that Jewry in Bolshevik Russia actually played a disproportionately important role.

Three times I was present during executions. Every time I found the same facts which I considered with great respect, that the Jews who were executed went to their death singing the "International" and hailing Stalin. That the Communist functionaries and the active leaders of the Communists in the occupied area of Russia posed an actual continuous danger for the German occupation the documents of the prosecution have shown.

It was absolutely certain that by these persons the call of Stalin for ruthless partisan warfare would be followed without any reservation. Orally and in written form, the Bolsheviks have attested enthusiastically to the fact that this partisan warfare was not only waged by the Communist Party and not only by the Communist functionaries; but as Stalin requested, it was waged by the population, by peasants, by workers, men, women, and children. This same literature is proud of the fact that it was waged with great treachery and cunning which the call of Stalin evoked in order to wage this war successfully. Thus our experiences in Russia were a definite confirmation of the Bolshevik theory and of the practice as we had learned about it before.

Q. What orders did you give to the Einsatzgruppen and Ein-

satzkommandos for the security of the rear area concerning the killing certain elements of the civilian population?

A. Before I testify to the various facts, I would like to say the following: The men of my group who are under indictment here were under my military command. If they had not executed the orders which they were given, they would have been ordered by me to execute them. If they had refused to execute the orders they would have had to be called to account for it by me. There could be no doubt about it. Whoever refused anything in the front lines would have met immediate death. If the refusal would have come about in any other way, a court martial of the Higher SS and Police Leader would have brought about the same consequences. The jurisdiction of courts martial was great, but the sentences of the SS were gruesome. The orders for the execution in the past given in Pretzsch went to all Einsatzgruppen commanders or Einsatzkommando leaders who went along during the beginning of the Russian campaign. They were never revoked. Thus they were valid for the entire Russian campaign as long as there were Einsatzgruppen. Thus it was, therefore, unnecessary at any time to give another order of initiative and I did not give any individual order to kill people. I emphasize this, even though I was told in England two and a half years ago that the Russians had found a written order. My mission was to see to it that this general order for executions would be carried out as humanly as conditions would permit. Therefore, I merely gave orders for the manner of carrying out these executions.

Q. What were these orders?

A. These orders had as their purpose to make it as easy as possible for the unfortunate victim and to prevent the brutality of the men from leading to inevitable excesses. Thus I first ordered that only so many victims should be brought to the place of execution as the execution commandos could handle. Any individual action by any individual man was forbidden. The Einsatzkommandos shot in a military manner only upon orders. It was strictly ordered to avoid any maltreatment, undressing was not permitted. The taking of any personal possessions was not permitted. Publicity was not permitted, and at the very moment when it was noted that a man had experienced joy in carrying out these executions, it was ordered that this man should never participate in any more executions. The men could not report voluntarily, they were ordered.

Q. What did you do to prevent a wide interpretation of these execution orders?

A. It was forbidden that the commandos undertake any executions outside of the territory occupied by the German army.

This became necessary in Chernovitsy. This was especially necessary after 10,000 Rumanians had been driven into the German area of occupation, and it became acute for Odessa, when the Rumanians tried to carry out executions beyond our orders. The commandos had the order during the execution of Communists to execute only those persons who by their proved deeds and conduct definitely represented a danger to security. Families were never seized, neither those of high functionaries nor of commissars nor of any other person. If, on the other hand, it was said that children were executed at Kerch, this was done without any connection with the Einsatzkommando there.

Q. Why did you not prevent the liquidations?

A. Even if I use the most severe standard in judging this, I had as little possibility as any of the co-defendants here to prevent this order. There was only one thing, a senseless martyrdom through suicide, senseless because this would not have changed anything in the execution of this order, for this order was not an order of the SS, it was an order of the Supreme Commander in Chief and the Chief of State; it was not only carried out by Himmler or Heydrich. The army had to carry it out too, the High Command of the Army as well as the commanders in the east and southeast who were the superior commanders for the Einsatzgruppen and Einsatzkommandos. If I could imagine a theoretical possibility, then there was only the refusal on the part of those persons who were in the uppermost hierarchy and could appeal to the Supreme Commander and Chief of State, because they had the only possibility of getting access to him. They were, after all, the highest bearers of responsibility in the theater of operations.

PRESIDING JUDGE MUSMANNO: May I ask a question, Dr. Aschenauer?

Do I understand you to say, Witness, that the Supreme Commander in the East, that is of the Wehrmacht, also had orders to carry out this program of execution?

DEFENDANT OHLENDORF: I know that the Supreme Command gave the commanders for the eastern campaign who had assembled on 30 March, not only information about the measures planned, but also directives to support the execution of these measures. The fact that SS and police units were used for these executions had only one reason; namely, that there was no guarantee for a systematic execution of these orders by the army troops but that one expected demoralization if army troops would be used. As the war progressed in the Southeast this principle was abandoned.

PRESIDING JUDGE MUSMANNO: Would you say that the army

commander not only countenanced this program of executions but lent their active support to it?

DEFENDANT OHLENDORF: Yes. That is what I want to say. If I may give you two examples for that, the executions in Simferopol by the Einsatzkommando 11b were carried out on the order of the army, and the army supplied the trucks and the gasoline and the drivers in order to bring the Jews to the places of execution. The arrests of hostages were expressly carried out by order of the supreme commander of my army. He did not agree with the executions of these hostages, because the number of executions did not seem high enough to him and afterwards he told Seibert, the defendant here, to tell me that he himself would henceforth carry out the appropriate number of executions.

Q. Did you not try in Nikolaev to dissuade the Reich Leader SS from this order?

A. The situation in Nikolaev was especially depressing in a moral sense, because in agreement with the army, we had excluded a large number of Jews, the farmers, from the executions. When the Reich Leader SS was in Nikolaev on 4 or 5 October, I was reproached for this measure and he ordered that henceforth, even against the will of the army, the executions should take place as planned.

When the Reich Leader SS arrived at my headquarters, I had assembled all available commanders of my Einsatzgruppe. The Reich Leader addressed these men and repeated the strict order to kill all those groups which I have designated. He added that he alone would carry the responsibility, as far as accounting to the Fuehrer was concerned. None of the men would bear any responsibility, but he demanded the execution of this order, even though he knew how harsh these measures were.

Nevertheless, after supper, I spoke to the Reich Leader and I pointed out the inhuman burden which was being imposed on the men in killing all these civilians. I didn't even get an answer.

Q. Could you not have refused to support the execution of this order?

A. For that I would have had to have the feeling of the illegality and the possibility of appealing to a higher authority, but I had neither of them.

Q. Could you not have, after a certain period of time, tried to evade this order by sickness?

A. As long as I thought in political terms, I no longer considered myself as an individual person who only could think and act responsibly for himself. After I had once become Chief of the Einsatzgruppe, I felt responsible for the 500 men of this group. By simulating illness, I could have evaded the mission,

but I would have betrayed my men if I had left this command. I could not leave this task and I would not have been convinced that my successor would care for his men in the same manner as I did. Despite everything, I considered this my duty and I shall consider it today as much more valuable than the cheap applause which I could have won if I had at that time betrayed my men by simulating illness.

Q. Did you issue orders of execution?

A. No.

Q. Wherein lies your participation in the carrying out of these executions?

A. It is in three points. As far as the transportation conditions permitted, I convinced myself before the large executions whether measures had been taken at the place of execution, which would make possible the conditions I set down for these executions.

The second, in order to take some burden from the Kommandos, I ordered that other distant Kommandos be detailed to support that Kommando which had to carry out an execution, and third, that, as far as possible, I tried either personally or through my men to carry out unexpected inspections during these executions. I wanted to make sure in that way that my orders about the manner of execution were being carried out.

DR. ASCHENAUER: In the indictment it says that the task of the Einsatzgruppen was, first, to follow the German army into the eastern territories, and to eliminate Soviet functionaries, gypsies, Jews, and other elements of the civilian population which were considered racially inferior, or politically unwanted. Would you say something about that, Witness?

DEFENDANT OHLENDORF: First, the Einsatzgruppen and Einsatzkommandos never had the task to eliminate groups of the population because they were racially inferior, and even so that was not the main task. It was an additional assignment which, in itself, was foreign to the actual task of the Einsatzgruppen and Einsatzkommandos, because never was such a task of the security police or of the SD for that matter—and never by any means, as it is mentioned in another place in the indictment—were they trained for such exterminations and executions. Rather, the general task of the Einsatzgruppen and the Einsatzkommandos was that the security of the army territory in the operational theaters should be guaranteed by them, and within the framework of this security task the execution order was, of course, one of the basic orders. But, in reality, the Einsatzgruppen's task was a positive one, if I leave out this basic order for exterminations and executions. It must be realized, of course, that a group of about 500 people who, on the average,

had charge of an area of 300 to 400 square kilometers, could not terrorize such an area, even if they had wanted to do so. Therefore, if we regard it intelligently these tasks could only be called positive ones, and as such they were developed by myself. The first experiences I collected was when the task was transferred to us by the army to harvest the overdue crop in the Transistria. The larger number of Kommandos for weeks dealt only with this one task of harvesting in Transistria; I had given orders for this measure which was the basis of my policy altogether. First, the institution of a self-administration, as it were, in the communities and the communal settlements, and also in the municipalities; secondly, a recognition of private property; thirdly, the payment of wages: the population received for each fifth sheaf of the entire harvest. I guaranteed this wage, even to the Rumanian authorities. Fourth, cultural places were restored—that is, the population was supported in restoring the cultural centers and they were inspired to take up a new cultural life. It is not for me now to describe or discuss the success which this had with the populations of such places. I can only state that because of these measures the population was on our side, and they themselves reported any disturbances which might happen in these territories. Therefore, by this positive winning over of the population, the security of the territory internally could be guaranteed, and actually, in our territory a partisan resistance movement did not come into existence, but it was formed by external elements and was artificially extended.

Concerning the security tasks, there were also tasks of reporting to the army about the atmosphere within the population, the reaction of the population to German measures, and what disturbances and damages happened in the area on the part of the Germans. In this manner plebiscites could be arranged which were useful to the population and which saved us police measures. The situation in the Crimea was much more difficult, although I was there a longer time than anywhere else at a stretch, and I had the possibility to prepare political measures. Even here the institution of friendly measures succeeded in establishing a sort of confidence relationship between the population and the SD agencies. When, in January 1942, the danger arose that we would lose the Crimea, the Tartars, also the Ukrainians, voluntarily put themselves at our disposal for military service. The army left it up to me to deal with the political situation in the Crimea. At that time I could not accept the Ukrainians into the army, but the Tartars put 10 percent of their male population at my disposal within three weeks, absolutely voluntarily. Here, self-government and self-administration was granted to all parts

of the population that is, those units, those communities with a Ukrainian majority had a Ukrainian mayor; the Tartars got a Tartar for their mayor; the Greeks got a Greek; and the Russians got a Russian. These measures were extended in winter as a support when the danger of famine arose in the south. Thus, the actual security task was a positive one and was to be achieved by positive measures.

Q. Did the combat against armed bands belong to your sphere?

A. No. That was not within my sphere. But, in the Crimea—especially after repeated landings of the Russians in Feodosiya, Kerch and Yevpatoriya from the north, east, and the west, with the ultimate aim of the Yaila Mountains—the whole Crimea was systematically filled with enemy agents and spies and those strongly executive tasks, as, for instance, band intelligence, became an essential task which was assigned to us by the army. To my great regret the forces of the army in the Crimea were so small that for months the Kommando 10b and parts of the Kommando 11b had to be assigned to fight armed bands. This assignment, as well as the combating of armed bands, was under the army command, that is, the command of the various army units which held the front sectors. We ourselves were only subordinates and were outside our actual field of activities.

Q. What tasks were given to you as chief of the Einsatzgruppe within this activity of the Einsatzkommandos?

A. It was in keeping with my own method that I kept the staff of the Einsatzgruppe very small. I had merely one, or possibly two, departmental experts, and one adjutant, the defendant Schubert, who was also the manager of the business office. That was my whole staff who had to deal with the matters. I had to be in the headquarters of the army, the local headquarters, that is, in order to establish and guarantee the permanent contact between the Einsatzgruppe and the army; I was actually the point of contact between the army and the Einsatzkommandos. My main task was to carry out the orders of the chief of the SD, the security police and the too frequent orders of the army, and to adjust them, and to take care that the Einsatzkommandos, on the basis of the general situation in an area, were committed in the right tactical manner. Thus, for instance, we had to hunt down saboteurs, enemy agents, or make out intelligence reports, or gather intelligence about partisans, or whatever the situation required.

Q. I now turn to the documents. * * *

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Q. My first question on this subject—Introducing the evidence against the members of the Einsatzgruppe D, the prosecution

under Exhibit 149 produced Document NO-2661, Volume III D, and they have remarked that the operation and situation report No. 10 concerned activities of the Einsatzgruppe D from 1 until 28 February 1942, in which it is shown that all Jewish areas in the eastern territories are to be cleared, by transporting the Jews to ghettos and those who resisted the German regulation would be shot. Jews would also be shot in order to prevent the spreading of epidemics. Would you comment on this, Witness?

A. In this document the prosecution starts from the wrong assumption insofar as it is not a report from the Einsatzgruppe D, because in this document, independently from individual reports of the group, summaries were made independently of the original reports. Only from the location signs can one conclude which territory is meant for the individual Einsatzgruppen. Of Einsatzgruppe D there is only one small remark three or four times in this lengthy document, the content of which has nothing to do with the charge of the prosecution. This paragraph is mentioned twice. The error seems to me based on the fact that the prosecution confuses the term "Eastern Territory"—"Ostland." Evidently it takes the term "Ostland" to mean the whole of Russia, while in reality "Eastern territory" in German usage is an administrative term by which the three Baltic countries are meant—Lithuania, Latvia and Esthonia, and the charge of the prosecution against Einsatzgruppe D, is the content of what is being reported from this eastern territory.

Q. I show you Exhibit 9, Document 2620-PS, in Volume 1, page 40. It is your own affidavit of 5 November 1945, and there it says—

"In the course of the year, while I was leader of the Einsatzgruppe D, they liquidated" (the Einsatzgruppe, that is), approximately "90,000 men, women, and children." What do you mean by "approximately"?

A. I have been interrogated about my activities in the Einsatzgruppen for two and a half years now, and during all that time I have always tried to avoid naming figures because the numbers of executions I do not actually know.

I don't know today under what conditions these sentences were signed by me. This is an affidavit which was chosen from a number of ten or twelve. Even then, that "approximately" meant that I did not actually know. I can assure the Tribunal that in any oral remarks I might have made during these interrogations, I avoided as long as I could naming any figures whatsoever. If, of course, the figure 90,000 was named by me, I always added that of this, fifteen to twenty percent are double countings. That is on the basis of my own experiences. I do

not know any longer how I could have remembered the number of just 90,000, because I did not keep a register of these figures. The "approximately" must have meant that I was not certain.

From the documents of the prosecution it becomes evident—and my own men reproached me for it—that I was wrong in naming the figure 90,000. It is evident that I mentioned this number 90,000 by adding a number of other figures. I do not mention this in order to excuse myself, as I am perfectly convinced that it does not matter for the actual facts whether it was 40,000 or 90,000. But I mention this for the reason that, in the situation in which we are today, politically speaking, figures are being dealt with in an irresponsible manner. The material and the value of man seems to become so unimportant that the play with millions does not seem to be of any particular importance either.

Herr Auerbach* mentions the figure of 11,000,000 in relation to Germany. Not the minutest part of these millions have ever as much as seen a concentration camp. The International Military Tribunal named the number 2,000,000 for elimination in the Eastern territories. The prosecution in this trial is slightly more modest and only mentions the number of 1,000,000. It is not for nothing that the prosecution deals with only a small portion of time concerning the activities in the Eastern territories because after this period, there were no activities on the part of the Einstazgruppen.

But even if I add the figures mentioned by the prosecution in these documents, figures occur up to 460,000. I must now state solemnly that in the Reich Security Main Office, Heydrich, Mueller, and Streckenbach, and all the others who knew about these matters, intentionally exaggerated and invented the numbers of Einsatzgruppen A, B, and C. In the case of B, I mean the period of Nebe especially. I am convinced that these figures, which, if I add the numbers in the documents, are not even half of what the prosecution charges me with, are exaggerated by about twice as much. I believe that it is quite evident that these figures should be compared with others and looked upon as the Soviet, the Bolshevik figures. Compare these figures, as I say, with the number of civilian population figures which for the same reasons,—if from other motives perhaps, but in an inhumane manner—were murdered because this is what happened while I was in command of the Einsatzgruppe.

Q. Witness, you speak of exaggeration and double counting. Do you refer, when you maintain that, to Document NO-3148,

* State Commissioner for racial, political, and religious persecutees in Bavaria; later Attorney General of the Bavarian State Office for Restitution.

Prosecution Exhibit 95, and Document NO-3147, Prosecution Exhibit 96?

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Q. Furthermore, to Document NO-3137, Prosecution Exhibit 76; also Document NO-3159, Prosecution Exhibit 85? In these documents there are numbers which I would like you to comment on.

DEFENDANT OHLENDORF: I should like to contest this figure, the figure mentioned in Volume II-C. There it says that from 16 September until 30 September, 22,467 Jews and Communists were executed and that the total figure is 35,782. In Document Book II-D, it says under "Einsatzgruppe D, Location Kikerino, this area freed of Jews by the Kommandos. From 19 August to 25 September 8,890 Jews and Communists were executed. Total number, 17,315." There's a question mark here. In the next sentence it says, "At the moment the Jewish question is being solved in Nikolaev and Kherson. In each case approximately 5,000 Jews were apprehended." This operational situation report is from 20 September. On the next page, Document NO-3147, Prosecution Exhibit 96, there is the operational situation report from 26 September 1941. There under "Einsatzgruppe A" the location of Kikerino is stated. I do not know whether that was an actual garrison of the Einsatzgruppe A, but at any rate I know that this location was never a location of the Einsatzgruppe D. In this operational situation report, almost literally—under Einsatzgruppe D with the location of Nikolaev—the same subjects are mentioned as in the operational situation report of 20 September.

In their indictment the prosecution said that they were submitting as documentary evidence the reports of activities of Einsatzgruppen A and D; but actually up to this moment, apart from the reports of the Einsatzgruppen to the army, they have submitted no original reports. These two subsequent operational situation reports, which could be controlled and checked up on very easily in Berlin, show very clearly how far the original reports are removed from the contents of these operational situation reports. It is my opinion that from the operational situation reports, not a single sentence can be identified with a sentence of an original report from the Einsatzgruppen and the Einsatzkommandos, but on the contrary, as becomes evident from these two reports, the operational situation reports are made up from the original reports, and they are full of mistakes and are not compiled with the viewpoint of passing on accurate figure reports.

If this had been the idea, one could have attached these reports

to one another in copy. But as a matter of fact, they have been edited. According to my memory, these reports concerning the 5,000 Jews in the Nikolaev zone are correct, but, of course, only once, not twice. If now on page 49, II C, under 2 October, (NO-3137, Pros. Ex. 76) it says that between 16 September and 30 September, 22,000 Jews and Communists had been executed, this is an amount which during the occupation of the Einsatzgruppen in this territory did not exist in that area. During this time the Einsatzgruppe was in charge of operations in the Nikolaev-Kherson territory and the territory east of the Dnepr River, so far as it was already within our own territory of command. In the operational situation report of 18 October, in document book 2-D, on page 60, (NO-3147, Pros. Ex. 96) it says, "During the time of report, the solution of the Jewish question was dealt with especially in the territory east of the Dnepr River; the territories newly occupied by the Kommandos here freed of Jews." Then it says, "including those territories east of the Dnepr River, 4,091 Jews and 46 Communists were executed." This figure, is first of all outside the report of the time of 26 September and, secondly, it states the actual figure which existed in this territory at the time. It becomes evident, therefore, that the report of 22 October cannot be correct, under any circumstances. It can here only be an addition, or the using of the reports from other Einsatzgruppen. There must be another exhibit, the number of which I don't remember, from which this becomes quite evident, namely, the operational situation report of the beginning of November. May I have a look at this? That must be the Operational Report No. 129 of 5 November 1941 (NO-3159, Pros. Ex. 85). Here approximately 4 weeks later this report of Einsatzgruppe D in that period reports that 11,000 Jews were executed. It must be noted that in situation report of 5 November although in October the total number had been mentioned as 40,000; the situation report of November states there are 31,000. Here is a contradiction which cannot be clarified from the documents which proves the questionability of the evidence of these documents, not only regarding these figures but these individual reports in these documents.

Q. I further offer Document NO-2837, Prosecution Exhibit 58. It is an operational situation report from 29 August 1941. Furthermore, Document NO-2948, Prosecution Exhibit 89; also Document NO-2840, Prosecution Exhibit 154, would you comment on the statements in these documents concerning the statements, whether they contradict each other?

* * * * *

DR. ASCHENAUER: I now take Document NO-4538, Prosecution

Exhibit 153. The prosecution charges that the Einsatzgruppe D from their own initiative founded a ghetto and used the Jews for executive works.

DEFENDANT OHLENDORF: From the document itself the contrary becomes evident. I quote literally. "On the initiative of the Einsatzkommando the Rumanian town commander in the old city erected a Jewish ghetto." The subsequent report that from this ghetto Jews were assigned to working groups is a logical measure, which was taken by the town commander of the Rumanians who was in charge of the administration of the ghetto.

Q. In the same volume there is Document NOKW-641, Prosecution Exhibit 155, which I submit to you. The prosecution wants to prove from this document that the subunits of Einsatzgruppe D carried out the execution orders conscientiously.

A. This document is one of the very few which are true copies of the original report. However, it does not become evident from this what the prosecution wants to prove.

On page 43 it says literally "also otherwise, all executions which were ordered by me and carried out by me,"—that is the man who wrote the report,—“were carried out in the manner as ordered by Einsatzgruppe D,” which is exactly the contrary of what the prosecution claims. But this document is very interesting otherwise on the following page and that in a twofold way. First the army here gives an instruction to the Einsatzgruppe D which is signed by the Ic AO (counterintelligence officer). His name was Riesen who was a major on the general staff. This is countersigned by "Ru". That must have been a mistake. It probably should read "Ra". That is Ranck, the superior of the major. The document also says that the Einsatzkommando of the security police with the Twenty-Second Infantry Division is within the combat front of the division. That was a condition in which all Kommandos or Teilkommandos of the Einsatzgruppe found themselves. It says literally, "It is to be expected that all measures, especially public executions in the town of Genichesk, the setting up and determining, etc., of a Ukrainian protection unit, etc., will be taken after agreement with the intelligence officer has been reached." This document speaks for itself and I do not have to comment on it, but as the document is now being dealt with I should like to deal with another point of the document which is not being under debate yet. Although at that time I held the highest authority which an SS colonel [Standartenfuehrer] can hold, and as it is not customary in the army, in particular in the case of public executions, that an order to another unit should be signed by a man who is inferior or at least not as high as the receiver in his rank, the major here

writes to the Chief of the Einsatzgruppe who is an SS colonel [Standartenfuehrer], which incidently at that time was an even higher rank than that of an Oberfuehrer [senior colonel].

* * * * *

DR. ASCHENAUER: I now take Document Book II-C and I show you Document NO-2934, Prosecution Exhibit 78. It is on the German page 55, page 4 of the document itself, page 6 of the original, there is the following sentence: "Paleski considerably devastated. Rumanians content themselves with looting everything. Pogroms could not be achieved so far." I should like you to comment on this quotation.

DEFENDANT OHLENDORF: The sentence, "Pogroms could not be achieved so far," means a tactical term for the sake of the Berlin office, because contrary to the orders of Berlin I had forbidden my Kommando to instigate pogroms. I refused to take such measures because I did not agree with the method and the effect.

Q. I have here Document Book II-D. I shall refer to Document NO-3359, Prosecution Exhibit 84. It is on German page 7. This is an Operational Situation Report of 8 April 1942. From this document I quote as follows: "Inhabitants of the village of Laki near Bakhchisarai were in constant contact with partisan groups; they gave them billets at night and supplied them with food. On 23 March a penal action against this village produced such huge quantities of food that the partisans would have been able to live on this until the next harvest. The 15 main participants, among them the mayor, were shot, all inhabitants were evacuated and the village was burned down." I should like you to comment on this document.

A. This document is an example for many. I should like to repeat and state again that combating the armed bands and the retaliation measures which were carried out for such villages which assisted the bands, all came under the order of the staff for antipartisan warfare; usually these actions were carried out by the local army units, that is by the field divisions of the territory concerned.

In this situation report, as in many other situation reports, a general activity and a general situation report is given. That means naturally in reporting, the situation in the territory is discussed, and not only our own activities but also all the other happenings and events of the locality itself, quite independently of who created these situations.

PRESIDING JUDGE MUSMANN: Witness, just as a matter of information, looking at this page about which you have been

testifying and directing attention, particularly to the phrase, "and the village was burned down," would you please explain just what military objective was being aimed at in destroying the village? Let's assume for the purposes of the question that there was a reason for liquidating those who were opposing your forces, that is to say the partisans. Just what was attained in the actual physical destruction of the buildings?

DEFENDANT OHLENDORF: These villages which I talk about were at the foot of the Yaila Mountains fill the southern part of the Crimea near the coast. In the Yaila Mountains there were about 10,000 partisans at my time. Naturally, these partisans were not sufficiently supplied with food because in the mountains and on the south coast there had already been famines, even during peace. Therefore, the villages, that is the north part, were natural reservoirs for food supplies for the southern part. That means these villages were the only places where partisans could go, especially in winter. The reason for burning and destroying these villages were twofold; one, at first the village that is talked about here was a hiding place for partisans, and thus a base was to be destroyed for partisan activities; and secondly, after the army had repeatedly threatened to burn down villages if the villages supported the partisans actively, in such a case when a village actually supported the partisans it was then to be a deterrent for the inhabitants of other villages.

PRESIDING JUDGE MUSMANNO: Very well.

DR. ASCHENAUER: I have Document Book II-A in front of me. It is Document NO-3235, Prosecution Exhibit 54. It is an operational Situation Report of 23 March 1942. It is reported about shooting of mentally insane people although it is not evident from the document how many mentally insane people were actually shot. Could you comment on this?

DEFENDANT OHLENDORF: The reporting of this situation report was made at a time when I myself was not present in the Crimea, but I can assure the Tribunal that my Kommandos did not carry out shootings of mentally insane. I had forbidden this explicitly, and I repeated this again and again because the army asked us on various occasions to carry out shootings of mentally insane people. It is for this reason that it is impossible that this report deals with actions carried out by one of my own Kommandos. Furthermore, I think this is a false report because the territory at the south of Karasubazar consisted mainly of woodlands and clay huts. There were no major villages and there was certainly no asylum for insane people.

Q. Witness, I must remonstrate you here and that is from Document Book III-D, I want to put to you Document NOKW-604,

Prosecution Exhibit 150. I shall show you this document and I should like you to comment on it.

A. This Document NOKW-604 is a report of the Sonderkommando 11a to the army. In the last paragraph it says, that "Romanenko, on the 9 September 1941, for hereditary biological reasons, was executed." I do not remember this case in detail, but the reason probably was that—or at least this becomes evident from the document—that the Sonderkommando 11a received a direct order from the Commander in Chief of the Army that Romanenko should be punished as deterrent and, if possible, should be executed in public by hanging. The Kommando investigated this case, as becomes evident from the document, and did not find the reasons confirmed for this request by the Commander in Chief. It does not become evident from the report why the Kommando, in spite of this, executed the order, especially as it gives the reason as: "hereditary biological." I do not know whether I ever saw this report, but if I had seen it I would not have agreed with it, but I assume that it went to the Commander in Chief immediately after the Commander in Chief had been put in charge of this Kommando.

Q. Witness, from the same document book I now turn to another document. Would you look on page 15? It is Document NOKW-631, Prosecution Exhibit 151. I ask you in connection with this document, why did you try to justify yourself against the army concerning the confiscations of watches and other valuables taken during the anti-Jewish actions?

A. I remember the incident very well which led to my writing this report to the army. Some officers had complained to the Chief of Staff that I refused to turn over money to the town of Simferopol without a receipt. Furthermore, complaints had been received that I had failed to turn over as many watches as I should have done after the confiscations had taken place. The army sent a remonstrance to me and asked me where the valuables were. As the army, by their own position, had the authority to ask me for such an explanation of the facts, this is the answer to the complaints of the army.

Q. I should like you to keep the same document book that is III-D, and to look at Document NO-4489, Prosecution Exhibit 152, which is on page 21 of the German. The Einsatzgruppen are charged that they had looted Jewish apartments and had taken away property which they put at the disposal of Ethnic Germans.

A. What is called looting here was the carrying out of the confiscation and utilization decrees which I simultaneously had received from the Reich Security Main Office and the army. The apartments as well as the furniture were put at the disposal

of people who had lost all their property and who could prove that or the material and the apartments were administered by the local commandants in their respective localities of command and were put at the disposal of those people who were looking for apartments. Furthermore, apart from these two lines, this report, which contains about twenty pages, is an excellent explanation of the terror under which the German areas lived for twenty years, and which only proves what I said yesterday, that as a rule three male grown-up members of each family in the course of this time were taken from the family and their fate could not be established.

Q. Those who looked for accommodations were, therefore, Tartars, Ukrainians, and Ethnic Germans, etc. Witness, during what period in the war were you chief of Einsatzgruppe D?

A. I was chief of the Einsatzgruppe D from June 1941 until June 1942, inclusive; however, from March 1942 to June 1942 there were considerable interruptions.

Q. What was the nature of these interruptions?

A. From the beginning of March until 26 April I was on leave in Berlin. At the end of April I had to go back to Berlin until the beginning of May. After the death of Heydrich on June 1942, I was called to Berlin, and I only returned in order to give over my office to my successor.

Q. Did you, as the Chief of the Einsatzgruppe, operate with the Einsatzgruppe and its units in Russia independently?

A. No. My official position was Representative Plenipotentiary of the Chief of the Security Police and the SD in the 11th Army. As such, for the tasks which I had to carry out within the army, Einsatzkommandos had been subordinated to me as units with whom these tasks were to be carried out.

Q. Will you explain to us the significance of this position in the army and the activity of the Einsatzgruppen and Einsatzkommandos?

A. I was given this assignment on the basis of an agreement between the High Command of the Army and the Supreme Command of the Armed Forces on the one hand and the Security Police and the SD on the other. This decree was known as the so-called Barbarossa Decree. On the basis of this decree the institution of these mobile units had a twofold significance within the framework of the army units. On the one hand, special units were subordinated to the army for tasks which they had so far carried out on their own authority and with their own units. On the other hand, Heydrich, Chief of the Police and the SD, was sole authority to give direct instructions to these Einsatzkommandos, and, also to receive the new reports direct with the reason and

purpose of preventing an expected collaboration of the adversaries in the Reich itself and in the occupied territories at the front. The essential thing was that these activities were to be carried out by me and the Einsatzkommandos in the assigned territories and that was within the territory of the army; this means that the task and activities of the Einsatzkommandos were under supreme authority of the Commander in Chief of the Army. He held the executive power within his territory, and his authoritative power had been laid down in the Reich defense law, as well as in a decree of the Supreme Command of the Armed Forces regarding the position of a Commander in Chief in the operational theater. According to this, the decrees issued by the Commander in Chief of the Army were of primary importance and had to be complied with first. Therefore, it was necessary for the units to carry out all activities and tasks in a form which was in agreement with the intentions of the army. That means the army had either to approve the action or agree with the plans and activities of the units within the framework of their own tasks. By this I mean that the activities of the Einsatzkommandos, these special task forces, were formed to comply with tasks given by the army itself. They had to attempt to fulfill the assignments which were meant for these special units. It was their duty to accept special assignments which, according to the authority of the Barbarossa Decree,* could be asked for by the army.

Q. This is the general program. Was this factual and legal relationship between the army hierarchy and the Einsatzgruppe and Einsatzkommandos also put down in individual decrees?

A. Yes, this relationship had been regulated by me in the agreement I mentioned. It was left to the discretion of the army to determine the operational theater of the individual Kommandos, the strength of the Kommandos, and the period of activity of the Kommandos. Furthermore, it also had been determined that for operative necessities the regulations and decrees of the army had priority. What had not been determined, however, was the current competition of orders which might occur within the decrees of the chief of SD and the security police and the chief of the army. It was often the case, that it was more or less left to the skill of the officers in charge of the respective agencies to find an objective solution in case of such competitive orders. For

* The order abolished court martial proceedings in the eastern territories and authorized any German officer to order executions without trial of civilians who allegedly committed crimes or were merely suspected of having committed crimes against the occupying power. The order further stated that members of the German Armed Forces who had committed crimes against the civilian population need not be prosecuted.

operative reasons, however, it was in the end always the highest authority which had the right to make the final decision.

Q. Could you tell us of the effect of the Barbarossa Decree on your own position and your activities and the activities and the position of the Einsatzkommando?

A. In explaining one document I have already explained how the army tried from the very first day not to take notice of me at all as the Chief of the Einsatzgruppen and to treat the Einsatzkommandos as their own army units. We were auxiliary units of the counterintelligence officer. This becomes apparent also from another document. It is Document NOKW-584. It is in Document Book III-D, in which the counterintelligence officer gives us a picture of how in his own tasks of espionage of armed band activities and the setting up of plans for the combat against such bands, apart from the field constabulary and his own units, also the SD delivered news reports which he himself used for his own purposes.

Q. What was your relationship with the Chief of Staff of the Army?

A. As I have already pointed out, neither the Commander in Chief nor the Chief of Staff really took notice of me at all when I first reported to them. When, therefore, on the strength of the position as described by me just now the army made use of the Kommandos without my knowledge, I had a serious dispute with the intelligence officer. The consequence of this was that I was called to the Chief of Staff, Colonel Woehler,* and he received me by saying that if the collaboration between the army and myself would not improve, he would ask for my dismissal in Berlin. I believe that this fact gives a good picture of my relationship with the Chief of Staff. For although the Chief of Staff was a colonel, and I, as a Standartenfuehrer also held the rank of a colonel, the actual position held in the army becomes abundantly clear. By the army I was considered a unit leader of just about 500 men. That equals a commander of a battalion and I was treated accordingly. I was not only ordered to see Colonel Woehler but even a major who was the intelligence officer ordered me to come and see him and he avoided expressly to address me with my rank—a custom usually adhered to in the army—in order to show that he, even as a major, was above a Standartenfuehrer.

PRESIDING JUDGE MUSMANNO: I understand you to say he was a colonel.

DEFENDANT OHLENDORF: Who?

* Woehler became Brigadier General in 1941. Defendant in case of Wilhelm von Leeb, et al. See Vols. X, XI.

PRESIDING JUDGE MUSMANN: This officer with whom you were speaking.

A. The last one I mentioned was a major. The intelligence officer with whom I had to deal immediately, and from whom the Einsatzgruppe received most of the orders, was a major.

Q. Yes. Were you so under the control of the army that a recommendation from him for your dismissal would have had weight and effect in Berlin?

A. I didn't hear the question.

Q. I see. I am sorry. Were you so under the command of the army that a recommendation from this officer to Berlin could have worked the dismissal which he threatened?

A. Immediately, yes. There is no doubt, because it was in Himmler's interest as to this assignment to extend this first footing he had won for the territory of the army by means of a close collaboration with the army, and it is generally known that, as a rule, not one officer of Himmler was ever covered by him when in the case of complaints the complainant was a person who was of importance to Himmler himself, and this was certainly the case of Keitel, the Chief of the Supreme Command of the Armed Forces.

DR. ASCHENAUER: Would you tell the Tribunal the content value of your position? What were you in command of? What was your power of decision and your authority? What was the territory of your authority?

DEFENDANT OHLENDORF: I have already explained, that the units of the Einsatzgruppen were essentially auxiliary organs of the intelligence officer. The field of tasks which had been definitely established was to bring about secure collaboration with the army. That was the general framework of the order, and within the framework of this order there was the one frequently discussed here, namely, the liquidation of certain groups of people in order to achieve the aim of guaranteeing the security within this territory. My authority consisted in safeguarding the communication lines of the army as well as the police security and in deciding whether or not the Einsatzgruppen should carry out such executions. It was outside my authority to stop the Einsatzkommandos from carrying out such executions, because this was the basic order which came from the Commander in Chief of the Armed Forces and which was not within the power of authority of the unit chiefs. My authority only started in carrying out these orders, that is, when deciding in what manner these orders were to be carried out, which were determined as the main task of security. The orders which were issued by the High Command currently in this connection show that the

authority for measures to guarantee the security in these areas was never exploited by me. Furthermore, the fact that in winter 1941-1942 currently Kommandos were taken away from my own units by the army and became subordinated to the fighting troops proves perhaps best that I, with my own Kommandos, was only a little wheel at the lower end of the machinery, which the army units kept in the Russian territory.

Q. Could you give us a few examples of your own position which might be of interest here, for instance, in the assigning of Kommandos?

A. I think I have given an example for this just now. There is only to be added that, as I have already basically explained before, special tasks were transferred to me by the army in which it was merely my task to determine the way in which they should be carried out, for instance, in espionage of armed band activities or recruiting of Tartars, or, for instance, the harvesting or establishment of district administration, or whatever might have come up. My power of authority again merely extended to executive measures and only insofar as the army did not deal with them itself.

Q. The concluding question concerning the set of questions concerning Russia—What was your power of decision concerning execution orders?

A. I do not think I have to repeat this. As to the orders for execution, even if applying the harshest standard, I had no possibility whatever to circumvent them.

Q. I now come to the final questions—membership in the SS and SD.

Witness, we heard yesterday that in 1926 for a few months, lists were made of the members of the SS. What was the position after 1926 until 1936?

A. From the time 1926 to 1936 I had no immediate contact nor any immediate connection with the SS. I was not a member of the SS, either.

Q. By joining the SD, did you become a member of the General SS—the Allgemeine SS?

A. No. I did not become a member of the Allgemeine SS.

* * * * *

Q. Witness, whom did you fight against in particular through the SD?

A. In particular the Reich Leaders Ley, Goebbels, and Bormann.

Q. Why these three in particular?

A. Because these three endangered the moral value of the human being like nobody else. Ley, because he interfered with the independent development of social existence and tried to

eliminate the private sphere of the human being. Goebbels, because he denied the independent mental development, the development of consciousness, and in that way, the inner freedom of the human being, and in questioning all absolute values he became one of the earliest exponents of modern existentialism and embodied actual nihilism; Bormann, because he eliminated the natural tension between individual and community to the disadvantage of the individual by trying to subordinate these individuals to a certain master clique within the Party. These three together then attacked the value of the human being as created by modern times.

Q. How did SD Inland (domestic affairs) fight this power machinery?

A. In two ways. One was—the SD supported all positive powers which opposed these tendencies—and secondly, it disavowed in its reports the measures of these persons, so far as they expressed their inner views in their measures. That way, in a great number of cases, the realization of these tendencies in their development, as I have noted, was hindered or eliminated altogether.

Q. How could the SD Inland develop to become an organization of opposition as you described it to us?

A. From the very beginning, it retained its independence; it refused any executive power and was prepared to show its power only by making reports, whose form and contents were beyond reproach.

Q. What was the aim of the SD?

A. The aim was the following: To measure our entire reporting activity by applying the same criterion—how do the authorities react to the individual and how does the individual react to the authorities—we attempted to waken hopes in the individual by giving them a chance for development into what we saw in them, namely, human beings who in their aim to gain consciousness and inner freedom found a way of living and results in all spheres of life and who were suitable to support these human developments.

Q. You used the words “inner freedom.” What do you understand by the word “freedom”?

A. By “freedom” I mean the voluntary ties of the individual, the motives of his will and actions, the obvious will of God, in nature and history.

Q. You know that in public a different picture of the SD always existed and still exists, in particular, the SD was considered a great power which was omnipotent in a way. Will you please state your opinion on this?

A. In 1936 when I took over the economic section of the SD

this activity had to be camouflaged. My department was not called Economic Department but ST-4; meaning Staff Department No. 4. In 1937 I was not in a position to make any report at all without getting permission from Mr. Kranefuss* first who was the economic expert in the personal staff of the Reich Leader SS. In 1938 we made the first great report, the contents of which dealt with sabotage of the Railway Administration and further extension of the German communication network. This report was read by Heydrich and put in the files, that is, it disappeared in the safe because this mighty SD was not in a position even to inform a third person that they were dealing with such questions. In 1939, after the war had started, we had the courage to reveal obvious damages in the beginning of the war by making reports on them and here chance assisted us because Goering saw these reports and took them and used them in the sessions of the Reich Defense Council meeting as questions to the departmental representatives. He now desired to be informed in this way. Without knowledge of the connection, for the first and only time in the history of the SD, he permitted these reports to be distributed. In 1940 he confirmed them again, when a number of district leaders [Gauleiter] objected strongly to these reports. But this legalization did not last either and in spite of the importance of these reports the SD was only an illegitimate child which one did not like to see and wanted to hide as quickly as possible. As the development in 1942 and 1943 shows we were allowed to make official reports to the outside world no longer; Goebbels prohibited it. The power we had until the end was the result of the personal influence of my individual experts using their knowledge of their subjects to inform those who were interested in this knowledge. The SD never constituted an active power. My personal relations I need not repeat in this connection. I explained it in detail yesterday.

Q. I have finished my direct examination.

* * * * *

CROSS-EXAMINATION

MR. HEATH: Mr. Ohlendorf, to speed this examination I'd like to attempt to agree with you upon one or two points. First, we shall not quarrel about numbers. You have indicated that Einsatzgruppe D under your command slaughtered something less than 90,000 human beings. I understood you to suggest to the Court that this figure is exaggerated although it appears in an affidavit which you have given. I ask you now to give the Court the best estimate you possibly can of the minimum number of human

* Business manager of the "Circle of Friends" or "Hitler Circle". See Friedrich Flick, et al., Case No. 5, vol. VI and Ernst von Weizsaecker, et al., Case No. 11, vols. XII, XIII and XIV.

beings who were killed under your command by Einsatzgruppe D.

DEFENDANT OHLENDORF: In my direct examination I have already said that I cannot give any definite figure, and that even the testimony in my affidavit shows that in reality I could not name any figure. Therefore, I have named a figure which has been reported "approximately". The knowledge which I have gained by this day through the documents and which I have gained through conversations with my men, make me reserve the right to name any figure and strengthen this reservation. Therefore, I am not in a position to give you a minimum figure, either. In my direct examination I have said that the numbers which appear in the documents are at least exaggerated by one-half, but I must repeat that I never knew any definite figure and, therefore, cannot give you any such figure.

Q. You cannot give us a minimum figure?

A. If the prosecution wishes I am, of course, prepared to give my reasons why I cannot give any figure.

Q. Well, let me ask you—perhaps I can help you * * *. In any event, I can indicate to the Court one reason why you might have doubts about the numbers. In 1943 the Reich Leader SS, Himmler addressed the SS major generals at Poznan. You are aware of that speech, are you not?

A. Yes. I have heard it myself.

Q. Perhaps you recall his complaint; I will read it to you—

"I come now to a fourth virtue, which is very rare in Germany—truthfulness. One of the greatest evils which has spread during the war is the lack of truthfulness in messages, reports, and statements, which subordinate departments in civil life, in the State, the Party and the services sent in to the departments over them."

Of course, that was in 1943. Did you exaggerate the reports which you sent to the Reich Security Main Office?

A. I certainly did not on my own initiative, but I had to rely on those things which were reported to me, and I know that double countings could not be avoided, and I also know that wrong numbers were reported to me. I have tried to avoid passing on such double countings or wrong statements, because the individual Kommandos did not know the figures of the neighbor units; nevertheless the reporting of wrong figures was not prevented—and especially the reporting of strange figures as for instance, the report from Chernovitsy. Here those figures are named for which the Rumanians in Chernovitsy were responsible.

Q. Will you tell the Court what bookkeeping and record-making system was maintained in Einsatzgruppe D to keep track of the people slaughtered?

A. In Einsatzgruppe D the various reports were received which were sent from the Kommandos to the Einsatzgruppe, and these reports were gone over and the figures contained in them were sent to the Reich Security Main Office.

Q. Well, it is quite obvious that that is what happened. But tell us now who reported for Einsatzkommando 12, say, during the first six months of its operations, the killings by Einsatzkommando 12, to you?

A. Einsatzkommando 12 itself.

Q. And who was the man who reported to you?

A. They were usually signed by the Einsatzkommando chief himself, in this case by the then SS Major [Sturmbannfuhrer] Nosske.

Q. Very well, you relied on Nosske for truthful reporting of the numbers killed by his unit?

A. I had no possibility to examine these executions because Nosske, was sometimes 200 or 250 kilometers away from me.

Q. Witness, I don't mean to cut you off, but I think if I ask you now to attempt to make your answers as responsive as possible, I shall attempt to make my questions as explicit as possible—and I believe we both shall benefit. So, I ask you again—not why you did not check up on Nosske, but simply the question—Did you rely on Nosske for truthful reports of the slaughters committed by Einsatzkommando 12?

A. I didn't understand the last part of the question.

Q. Did you rely on Nosske for truthful reports of the numbers of persons slaughtered by Einsatzkommando 12 while it was under his command?

A. I was of the opinion that these reports were truthful. In the case of Nosske, however, in one case it was brought to my attention that the report was not truthful. But that was at a relatively early stage of Nikolaev.

We found out that in this case Nosske reported figures which were not killed by his Kommando but by a strange unit.

Q. Then in one instance at least, you did find your subordinate exaggerating the number killed by his unit?

A. Yes.

Q. Do you recall any other exaggerations by any other men in the unit under you?

A. Yes, for example, in the case of 10a.

Q. Yes. Do you recall an exaggeration in the case of 10a?

A. Yes. In the case of 10a.

Q. Any other Einsatzkommando do you recall exaggerating figures?

A. Not from my part, no.

Q. So within the limits of memory and the situation you find yourself in today, it should be possible for you to give us a minimum figure based on the reports of the men who were under you, should it not?

A. I can only repeat what I already have been saying for two and one-half years that to the best of my knowledge, about ninety thousand people were reported by my Einsatzkommandos. How many of those were actually killed I do not know and I cannot really say.

Q. Very well, we will leave this after one more question. This figure ninety thousand is the best estimate you can give at this moment. I take it we must continue to read that with the qualification that you gave in direct testimony, that you think there is a great deal of exaggeration in it?

PRESIDING JUDGE MUSMANNO: Mr. Heath, I do not understand the witness to say that he regarded the figure ninety thousand to be an exaggeration. He states, and he stated not only here but before the International Military Tribunal, that his estimate of the number killed by the Einsatzgruppe D during the time he was in charge was ninety thousand, and he comes to that conclusion from the reports and that is what I understand he says today.

MR. HEATH: I agree with your Honor. I had understood him to say that in the transcript his testimony was—go ahead.

DEFENDANT OHLENDORF: I am not quite in agreement with this answer, your Honor, insofar as I said that the number ninety thousand was reported as having been killed. But I cannot really say whether that number had been actually killed and certainly not that they were killed by the Einsatzgruppen, because, apart from exaggerations, I also knew definitely that the Einsatzkommando reported the killings which were carried out by other units. Therefore, I could only repeat that ninety thousand were reported.

PRESIDING JUDGE MUSMANNO: Witness, you may perhaps not agree to what I have stated, but you will have to agree to what you stated yourself on 3 January 1946; you were asked: "Do you know how many persons were liquidated by the Einsatzgruppe D under your direction?" And you answered: "In the year between June 1941 and June 1942 the Einsatzkommandos reported ninety thousand people liquidated."

DEFENDANT OHLENDORF: Yes.

PRESIDING JUDGE MUSMANNO: Question: "That included men, women, and children?" Answer: "Yes." Question: "On what do you base these figures?" Answer: "On reports sent by the Einsatzkommandos to the Einsatzgruppen." Question: "Were those reports submitted to you?" Answer: "Yes."

MR. HEATH: Your Honor, please, if I may interrupt? I think I can clear up the difficulty. I have the advantage of having the transcript of his testimony before me.

PRESIDING JUDGE MUSMANN: Yes.

MR. HEATH: I don't know that your Honor has had the opportunity to see it.

PRESIDING JUDGE MUSMANN: No. I have not.

MR. HEATH: He did make this statement with respect to the affidavit which you just read.

PRESIDING JUDGE MUSMANN: It is not the affidavit. This is testimony put to him in Court.

MR. HEATH: We can follow this up in the witness' testimony in direct examination. Witness, this is from your testimony of last week. You said: "If, of course, the figure of ninety thousand was named by me, I always added that in this fifteen to twenty percent are double countings, that is, on the basis of my own experience. I do not know any longer how I could have remembered the number of just ninety thousand, because I did not keep a register of these figures. The 'approximately' must have meant that I was not certain. It is evident that I mentioned this number of ninety thousand by adding a number of other figures. I do not mention this in order to excuse myself, as I am perfectly convinced that it does not matter from the actual fact whether it was forty thousand or ninety thousand. I mention this for the reason that in the situation in which we are today, politically speaking, figures are being dealt with in an irresponsible manner." That is the qualification that I had referred to.

PRESIDING JUDGE MUSMANN: But that still does not in any way take away from what he said on 3 January 1946.

MR. HEATH: I agree, sir, with you.

PRESIDING JUDGE MUSMANN: That is the testimony of that day, and it still stands now as he gives this explanation and the Tribunal sees no difference between what he said then and what he said today, namely, that this estimate of ninety thousand is based upon the report which he personally saw.

MR. HEATH: Alright, sir.

DEFENDANT OHLENDORF: With what was just read by the presiding judge of my affidavit of 3 January 1946 I agree completely.

PRESIDING JUDGE MUSMANN: Yes.

DEFENDANT OHLENDORF: Anything else which I have said on direct examination is merely a commentary to the testimony of 3 January 1946.

PRESIDING JUDGE MUSMANN: Very well.

MR. HEATH: Very well, sir. Mr. Ohlendorf, I had begun to ask

you about the Karaims [Karaites]¹ and the Krimchaks,² I think you called them. I understood that you were confronted in the south of Russia with the question further to slaughter Krimchaks. Krimchaks I understood were human beings who had come by way of Italy to Russia, and they had Jewish blood. The directive which you got from Berlin was to kill the Krimchaks, is that correct?

DEFENDANT OHLENDORF: Yes.

Q. Now, I cannot pronounce it correctly, the Karaims were another sect whom you encountered in the south of Russia, and this sect had no Jewish blood, but it did share the religious confessions of the Jews. Is that right?

A. Yes.

Q. You submitted to Berlin the question whether the Karaims should be killed, and I understood you to say that the order you got from Berlin was you shall not kill them for they have nothing in common with the Jews except the confession?

A. Yes.

Q. Now during your direct examination you told this Court that you had no idea, and that you have no cause today to think that there was any plan to exterminate the Jewish race in existence, nor that you had any information of putting it into effect. Is that right?

A. Yes.

Q. Will you explain to the Court, please, what difference there was between the Karaims and the Krimchaks, except Jewish blood?

A. I understand your question completely in reference to the eastern Jews, in the case of the Jews who were found in the eastern campaign. These Jews were to be killed—according to the order—for the reason that they were considered carriers of bolshevism, and, therefore, considered as endangering the security of the German Reich. This concerned the Jews who were found in Russia, and it was not known to me that the Jews in all of Europe were being killed, but on the contrary I knew that down to my dismissal these Jews were not killed, but it was attempted at all costs to get them to emigrate. The fact that the Karaims were not killed showed that the charge of the prosecution that persons were persecuted for their religion is not correct, for the Karaims had that Jewish religion, but they could not be killed because they did not belong to the Jewish race.

Q. I think, Witness, you answered exactly what I had antici-

¹ Sect which refused the Talmud and adopted the Old Testament as sole source of faith.

² Turkish Jews of mixed Semitic and Tartaric blood.

pated in the last sentence, "They did not belong to the Jewish Race," is that right?

A. Yes, That is right.

Q. They were found in Russia?

A. Yes.

Q. But they participated in the Jewish confession in Russia?

A. The Karaims had the Jewish faith, yes.

Q. But your race authorities in Berlin could find no trace of Jewish blood in them?

A. Yes.

Q. So they came absolutely under the Fuehrer Decree or the Streckenbach Order to kill all Jews?

A. Yes.

Q. Because of blood?

A. Because they were of Jewish origin. For you must understand the Nazi ideology, as you call it. It was the opinion of the Fuehrer that in Russia and in bolshevism, the representatives of this blood showed themselves especially suitable for this idea, therefore, the carriers of this blood became especially suitable representatives of the bolshevism. That is not on account of their faith, or their religion, but because of their human make-up and character.

Q. And because of their blood, right?

A. I cannot express it any more definitely than I stated, from their nature and their characteristics. Their blood, of course, has something to do with it, according to National Socialist ideology.

Q. Let's see, if I can understand it; we've got a lot of time, I hope. What was the distinction except blood?

A. Between whom?

Q. Between the Karaims and the Krimchaks?

A. The difference of the blood, yes.

Q. Only the difference in blood, is that so?

A. Yes.

Q. So the criterion and the test which you applied in your slaughter was blood?

A. The criteria which I used were the orders which I got, and it has not been doubted during the entire trial, that in this Fuehrer Order the Jews were designated as the ones who belonged to that circle in Russia and who were to be killed.

Q. Very well, Witness, let's not quibble. Let's come back again. What you followed was the Fuehrer Order. Now, I leave you out of it for a moment, your own idea of what should be killed and what should not be killed.

PRESIDING JUDGE MUSMANN: I disagree with you, Mr. Heath, that the witness has quibbled. I think he has stated very clearly

that his orders were to kill all Jews, that was the criterion which he followed. If he was a Jew he was killed, if he was not a Jew then they might figure some other reason to kill him but he wouldn't be killed because he was a Jew.

MR. HEATH: Yes, your Honor, I am attempting to get him to say the word blood and not the word Jews. That is the reason I was saying he is quibbling, but I am perfectly happy to leave it where it is.

PRESIDING JUDGE MUSMANNO: I think he has been rather forthright.

MR. HEATH: Very well. Let's see, Mr. Ohlendorf, let's go for a moment to this order which you got at Pretzsch in the spring of 1941. Did you have any knowledge whatever of the purposes of the Einsatzgruppen before you went to Pretzsch?

A. We merely knew that the Einsatzgruppen were to be set up.

Q. But you did not know what they were to do?

A. No. Apart from the fact that one has a definite idea about missions in which people of the Security Police and the SD were assigned. That is, of course, true.

Q. Did you, at that time, have any idea that the mission of the security police would be to slaughter Jews and gypsies?

A. I could no longer say today that I had such an idea, but I don't believe so. In my opinion the order about the killing of the Jews was made known to me for the first time in Pretzsch, that is, for the Russian campaign.

Q. If you had known that that was going to be the purpose of the Einsatzgruppen to kill all Jews and gypsies and certain other categories, you would remember it today—would you not, Mr. Ohlendorf?

A. I can no longer say.

Q. You were ordered three times to join the Einsatzgruppen, were you not?

A. Yes.

Q. And twice you refused?

A. Yes.

Q. The order in the first instance came from Heydrich?

A. Yes.

Q. The second order for you to become a member of the Einsatzgruppe came from Heydrich?

A. Yes.

Q. You refused both the first and the second order?

A. Yes.

Q. Why?

A. For two reasons. For one thing, because I had not been a soldier and did not have any interest in the military; secondly,

because I was not a policeman, and had no interest for police work, and police work was against my nature; and third, because I had a genuine job to do in Berlin which I knew would not be replaced once I left it, and I wanted to do a job to which I had the best ability.

Q. How did you refuse the first time? Will you tell us the circumstances? Heydrich was your military superior, was he not?

A. Yes.

Q. You were fully convinced that every order, every military order must be obeyed without a question?

A. That is expressing it very generally.

Q. It is quite general, but to be specific, you killed all these people you have told us because you were ordered to do it, not because you wished to do it?

A. I said often enough that I personally did not kill any people. I would like you to remember that or to question me about this matter.

Q. I'll come to that in due time. I shall ask you now again how you refused the first Heydrich order to join the Einsatzgruppe?

A. Because I wanted to explain why it was not expedient for me to leave Berlin, and I said in my direct examination I was indispensable to the Reich Trade Group, that is, I had a note in my military passport which obligated me to work for the Reich Trade Group, and, therefore, Heydrich first had to consult me and remove this note. Therefore I had the chance to discuss these matters with him.

Q. And in your direct testimony you said: "Twice, I was directed to go to Russia, and twice I refused."

A. Yes.

Q. Did you go to Heydrich and say: "I refuse to go to Russia"?

A. Not in that form, of course, but we spoke about these matters, and I used the tact which is necessary when discussing such matters with a superior that is usually customary.

Q. On the second occasion what happened?

A. The same thing.

Q. Heydrich had selected you to go with the Einsatzgruppen, and twice you were able to persuade him to relieve you of that assignment?

A. When the last order came I could not evade it. How strenuously he insisted on this could be seen from the fact that Mueller and Streckenbach, Chief of the Gestapo and Chief of personnel, were of the opinion that it would not be expedient to give me an Einsatzgruppe, and they also protested to Heydrich about giving me the command of an Einsatzgruppe, but since

he wanted it, the third order came down, and there was no chance to evade it this time.

Q. I didn't follow you there. Who was it that insisted, Streckenbach?

A. Heydrich insisted on it against the vote of Streckenbach and Mueller.

Q. Heydrich, of course, knew at that time what the Einsatzgruppen were to do in Russia?

A. I don't know.

Q. I beg your pardon?

A. I don't know whether he did.

Q. Is it your idea that he organized these units without having any idea of what they were to do?

A. He had an idea, all right, for he wanted to take every security job away from the army, whereas, up to that time he had detailed personnel to the army, and the army worked without letting him in on this work; therefore, he expanded his domination to include the operational areas.

Q. This was a very secret preparation, was it not, of the Einsatzgruppen?

A. Yes, of course, these were negotiations between Heydrich and the Supreme Command of the Armed Forces and the High Command of the Army, and representatives of Heydrich and of these two agencies.

Q. Well, then, it is a fair assumption that when Heydrich selected you to go to Russia in command, he knew what work you were going to perform in Russia, did he not?

A. Whether he already had the Fuehrer Order I don't know. I only knew the fact that the Einsatzgruppen were being set up.

Q. Now at Pretzsch, Streckenbach told you, for the first time, you say, what the Einsatzgruppen were to do?

A. Yes.

Q. Now he had a special order?

A. Yes.

Q. In your direct examination you stated that the order read "as follows". Did you see the order yourself?

A. No, I did not say, it read "as follows". I merely gave the contents, for I always said there was no written order.

Q. I misunderstood you; the transcript said, "Read as follows." So your understanding of the purposes of the Einsatzgruppen came from Streckenbach orally at Pretzsch?

A. Yes. That is correct.

Q. And you protested?

A. Not only myself, but as I said in direct examination, there was a general protest.

Q. What form did your protest to Streckenbach take?

A. I pointed out that these were missions which could not possibly be accomplished. It is impossible to ask people to carry out such executions.

Q. Why?

A. Well, I believe there is no doubt that there is nothing worse for people spiritually than to have to shoot defenseless populations.

Q. If I may be a little facetious in a grim matter, there is nothing worse than to be shot either, when you are defenseless?

A. Since this is meant ironically by you, I can imagine worse things, for example, to starve.

Q. It is not meant entirely ironically. I have read the whole of your testimony, and I am impressed by the fact that not once did you express any sympathy or regret.

PRESIDING JUDGE MUSMANN: Mr. Heath, I don't think that that observation is in place.

MR. HEATH: I withdraw it, your Honor.

PRESIDING JUDGE MUSMANN: You are not to comment on the witness. Ask him questions, and he is to answer them. What you think about him is of no consequence.

MR. HEATH: I know that, your Honor, and I ask the Court's forgiveness for having put the question.

* * * * *

MR. HEATH: Now I want to say this—you have told the Court repeatedly that to your knowledge there was absolutely no purpose to exterminate races. You are charged here, of course, with war crimes which is one kind of killing, and crimes against humanity which is another kind of killing. You have told the Court that you have no reason today to believe that these killings were part of an extermination program. I want to ask you further, you are aware of this speech which Hitler made in 1933 at the Party rally in Nuernberg, and I would like to ask you, when I have read you this quotation, to comment on it. "But long ago man has proceeded in the same way with his fellowmen. A higher race, at first higher in the sense of possessing a greater gift for organization, subjects to itself a lower race, and thus constitutes a relationship which now embraces races of unequal value. There thus results the subjection of a number of people under the will often of only a few persons, a subjection based simply on the right of the stronger, a right which, as we see it in nature, can be regarded as the sole conceivable right because founded on reason." Do you recall that or any of the similar outgivings of Adolf Hitler during the period from 1933 on?

DEFENDANT OHLENDORF: I have read this remark repeatedly

here because it seems to please the prosecution especially. Despite repeated readings I have still not understood it to this date. Perhaps the last two sentences are reasonable, but the first two-thirds I cannot make any sense out of.

Q. You were in the same state of uncertainty with respect to a great deal of Hitler's statements, were you not?

A. It is very difficult to judge statesmen on their ideas about politics from various scattered quotations. If one were to do this it would be hard to find any statesman of whom one could say that he had ever any definite idea, for statesmen are in the difficult position of being in politics which is something changing and developing, and statesmen always adapt themselves to this changing characteristic of politics. This has not been only a quality of Hitler's but of all statesmen, until this very day.

Q. Let us leave the statesmen and the politicians then and go to the lawyer of the Third Reich, Carl Schmitt, whom you quote in your direct examination as the author of what you call the theory of "friend and foe". You pointed out to the Court that this theoretician of the Nazi movement, the top legal theoretician, had, in your opinion, an impossible doctrine. Schmitt was the top juridical commentator on the Nazi State, was he not?

A. In 1933 and 1934, yes, but then it was at an end after that.

Q. Now, in Schmitt's conception, man had the very power, which Hitler described here, to coerce his weaker brother, did he not, the moral right to do it?

A. That is why the SD for instance saw to it that Schmitt disappeared as the top jurist of the Third Reich because he credited such mistaken theories to National Socialism.

Q. Will you tell us the name of another man whom the SD destroyed because he opposed your view of National Socialism?

A. That is very difficult. You ask very much. National Socialism, unfortunately, had not time to work out its theory thoroughly and thus I looked in vain for even one book of principle on which National Socialism really was based.

Q. Let us go to Gottfried Feder.* When was his influence ended in Germany?

A. Already before Hitler assumed power, because when he became under secretary in the Ministry of Agriculture in 1933, this was the last honor which one gave him. Actually he didn't have anything to say in the Agricultural Ministry after 1933, nor did he have any political significance at all.

Q. Very well. He was free of political pressure, and it was he who said that the master race dogma was the emotional founda-

* Early member of the National Socialist Party, author of the official party program.

tion of the Nazi movement. Do you care to comment on that, do you care to comment on the Herrenvolk, the importance of it to the Nazi movement?

A. If you were to know Gottfried Feder you would assume that he arrived at the idea of the master race from his own vanity. Outside of him and Ley and two other people, there was certainly no logic in the leadership for raising this nonsense of the master race. The office for racial politics dealing with such racial problems never represented this theory.

Q. Let us move then to some other representatives and at later dates. In August 1942, we find Rosenberg,¹ spokesman, saying "The Slavs are to work for us. Insofar as we do not need them they may die. Therefore compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable." Now, Rosenberg, would you classify him as the spokesman for the National Socialist State?

A. Certainly, but I don't believe that he expressed this in this form for I knew him personally. He was anything but a man who would even say such a thing; certainly not act accordingly. I never could consider him an enemy of the Slavs.

Q. Very well. He himself, I believe, came from Russia, did he not?

A. Yes, he was a Balt.

Q. Well, let's see about Hans Frank.² How do you place him in the Nazi hierarchy in 1941 at the time you were in Russia?

A. Frank is a pathological case and no one who knew the conditions in the Reich considered him anything else, not even Hitler.

Q. Well, for what it is worth * * *. I beg your pardon, proceed.

A. The same thing would go for Frank as what I said before. You might quote from him about the "Rechtsstaat" [legal state] as it could not have been formulated any better by the best Democrat, and you could list him as the greatest enemy of the SS and of the police, but he was taken seriously neither as the one nor as the other, and the fact that he came to the General Government was the result of the fact that Hitler did not want to make him Minister of Justice, even though the Minister of Justice was deceased and no one had been found to replace him. The General Government was not considered to be a permanent organization and therefore the Governor General, the title of the Governor

¹ Defendant before International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

² Governor General of Poland, defendant before the International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII.

General was considered to be honorary, and even a Frank was not considered to be able to mess it up because he had no spiritual strength.

Q. That is one of your protests against the course of National Socialism, is it not, that psychopaths and irresponsibles were given power in this personal staff?

A. I don't think that it is a single case, but this has happened time and again in politics.

Q. I understood you to say to the Court that most of your difficulties in the Party came from your opposition to those men who advocated total destruction of the objective or institutional state, is that right?

A. Yes, that is correct.

Q. You had been convinced by a year's study of Mussolini's personal autocracy that Italian fascism was a bad thing?

A. Yes.

Q. And it was bad because Mussolini had completely destroyed institutional restraints on men who wielded power?

A. I would rather express it positively, because this was an unrestricted dictatorship in the form of a totalitarian state.

Q. Very well. I think we say the same thing in different words, do we not?

A. Yes, from the positive side.

Q. In 1933, when Hitler, after he was made chancellor, had legal power to legislate by himself without the restraint of any constitution, was he not in precisely the same situation and did he not have the same power to act that Mussolini had acquired, from the legal standpoint?

A. Yes, I understand you completely. The difference is that the one was National Socialist and the other was Fascist. Hitler for himself did not make up a constitution for an absolute state, but because he had a different opinion of the state he had himself given power for a definite period of time. And this was nothing else but a constitutional means, which during the parliamentary period of the Weimar Constitution was also used then, especially in the years 1931 and 1932, when paragraph 48 of the Weimar Constitution was the basic support of the government. This law giving a government the power must not let one conclude that Hitler wanted to establish a dictatorship, but he took a constitutional means, and I know that during the entire time of the Hitler government, even during the war, it was the idea to build a senate, a kind of parliamentary system; and I know that several times Hitler complained to acquaintances that he still had not found any man who could rebuild the state for him and who could give

the state the appropriate legal form. I don't believe that Hitler wanted a dictatorship.

* * * * *

Q. Well, you went to Poland with Himmler in 1940?

A. 1939.

Q. 1939. All right. And Heydrich sent you along with Himmler, you say? Disputes arose between you and Himmler in 1939?

A. They really were monologues because Himmler—

Q. That's all right, whether it was monologue or not. He reproached you that members of the SD in Poland had not been able to treat the Jews in a manner in which he had wanted, and that, you say "was a product of my education". What was it he wanted done to the Jews in Poland which he said you had failed to do?

A. That is connected with the actions about which I have answered to the prosecutor on his previous questions. It was in the same city where differences between Streckenbach and Himmler occurred. It concerned the same actions.

Q. You mean the actions under a Fuehrer Order, an order similar to the order which controlled you in Russia?

A. Yes. During the direct examination I already answered the questions by the presiding judge, and today I answered your questions, that the contents were not the same, but a directive which was only given once concerning certain definite single actions.

Q. Tell us how orders that you operated under in 1941 in Russia differed from the order which controlled killing of Jews in Poland in 1939?

A. In Poland individual actions had been ordered, while in Russia, during the entire time of the commitment, the killing of all Jews had been ordered. Special actions in Poland had been ordered, whose contents I do not know in detail.

* * * * *

Q. You have told the Court that the army was perfectly aware of this decree, or this order to kill, and that it had the obligation also to execute the order within its ability? Is that right?

A. Yes, but I do not know that in this order insane persons were mentioned; but I would have considered the insane persons just like anybody else because they would have come under the order if they, owing to their condition, would have endangered security—but not only because they were insane—for that reason I rejected this request.

Q. You don't mean to say that the persons you killed had to endanger security in order to be killed, do you?

A. In the sense of the Fuehrer Order, yes.

Q. Well, let's not say about the sense of the Fuehrer Order.

Let's talk about reality. Did the people you killed in fact endanger security in any conceivable way?

A. Even if you don't want to discuss the Fuehrer Order it cannot be explained in any other way. There were two different categories; one, where those people who, through the Fuehrer Order, were considered to endanger the security were concerned and, therefore, had to be killed. The others, namely, the active Communists or other people were people whose endangering of security was established by us and they were only killed if they actually seemed to endanger the security.

Q. Very well. I repeat my question. Apart from the Fuehrer Order, and not because the Fuehrer Order assumed that every man of Jewish blood endangered the security of the Wehrmacht, but from your own experience in Russia, from your own objective witnessing of the situation in Russia, did every Jew in Russia that you killed in fact endanger security, in your judgment?

A. I cannot talk about this without mentioning the Fuehrer Order because this Fuehrer Order did not only try to fight temporary danger, but also danger which might arise in the future.

Q. Well, let us get back to it immediately, and let us see if we can't talk about it without the Fuehrer Order. I ask you the simple question * * *. From your own objective view of the situation in Russia, did the Jews whom you killed, and the gypsies, endanger the security of the German army in any way?

A. I did not examine that in detail. I only know that many of the Jews who were killed actually endangered the security by their conduct, because they were members of the partisan groups for example, or supported the partisans in some way, or sheltered agents, etc.

Q. Let's put the partisans or those who were aiding the partisans completely aside.

A. I will assist you, Mr. Prosecutor. Of course, at a certain time there were persons of whom one could not have said at that moment that they were an immediate danger, but that does not change the fact that for us it meant a danger insofar as they were determined to be a danger, and none of us examined whether these persons at the moment, or in the future, would actually constitute danger, because this was outside our knowledge, and not part of our task.

Q. Very well. You did not do it then because it was outside of your task. I want you to do it today for this Tribunal. Will you tell us then whether in your objective judgment, apart from the Fuehrer's Decree, all of the Jews that you killed constituted any conceivable threat to the German Wehrmacht [armed forces].

A. For me, during my time in Russia there is no condition

which is not connected with the Fuehrer Order. Therefore, I cannot give you this answer which you would like to have.

Q. You refuse to make the distinction, which any person can easily make—you need not answer that. Let me make it clear then, in the Crimea—no, I believe near Nikolaev, Himmler came to see you in the spring of 1942, did he not, or fall of 1941?

A. Beginning of October 1941.

Q. You had then been working in that area a considerable number of Jewish farmers, is that right, and you had determined not to put them to death?

A. Yes.

Q. You made a determination then that those men did not then constitute any security threat whatever to the German armed forces?

A. No; I did not make such a determination but, in the interest of the general situation, and of the army, I considered it more correct not to kill these Jews because the contrary would be achieved by this, namely, in the economic system of this country everything would be upset, which would have its effect on the operation of the Wehrmacht as well.

Q. Then, I ask you the question again. Because these people were farmers, you concluded that it was wiser to get the grain they produced, than to put them to death?

A. Also because of the danger that they might shelter partisans, yes; I was conscious of this danger.

Q. What danger, that they might shelter partisans in their houses?

A. That these Jews might have contact with the partisans.

Q. So the only threat you saw to security was the possibility that the Jews would conceal partisans in their houses?

A. No; I only named this as an example. There might have been agents against us who could endanger us in every way. I only mentioned this as an example.

Q. The same situation would exist in the case of the Krimchaks, wouldn't it, or what do you call them, Karaims.

A. Karaims.

PRESIDING JUDGE MUSMANN: Mr. Heath, I must confess a confusion here. I understand the witness to say, or perhaps you said it, that the reason the Jewish farmers were not executed is that they were used to bring in the harvest. Then a discussion ensued as to the possible threat that these Jews could bring to the security because they could house partisans. There must be a contradiction there; in one instance, they were a threat and, therefore, were subject to executions. Were they saved, or were they not saved? If they were saved, why, and if they were killed, why?

MR. HEATH: As I understood the witness, your Honor, he said he was balancing the desirability of getting in the harvest as against a potential threat.

PRESIDING JUDGE MUSMANN: I see.

MR. HEATH: He exercised discretion.

PRESIDING JUDGE MUSMANN: And came to the conclusion that there was more to be gained by not liquidating.

MR. HEATH: Precisely, so I understand it.

PRESIDING JUDGE MUSMANN: Is that correct?

DEFENDANT OHLENDORF: I think it is even simpler. They were not farmers, they were craftsmen, who when there would be no longer work for them to do would endanger considerably the interests of the Wehrmacht. I never considered this problem in discussion but now Himmler came to me and ordered that these Jews were to be treated according to the Fuehrer Order, without any further discussion, and without any further consideration of circumstances.

MR. HEATH: What about the gypsies. I believe you have no idea whatever as to how many gypsies your Kommando killed, have you?

A. No. I don't know.

Q. On what basis did you kill gypsies, just because they were gypsies? Why were they a threat to the security of the Wehrmacht?

A. It is the same as for the Jews.

Q. Blood?

A. I think I can add up from my own knowledge of European history that the Jews actually during wars regularly carried on espionage service on both sides.

PRESIDING JUDGE MUSMANN: You were asked about gypsies.

MR. HEATH: I was asking you about gypsies, as the Court points out, and not Jews. * * *. I would like to ask you now on what basis you determined that every gypsy found in Russia should be executed, because of the danger to the German Wehrmacht?

A. There was no difference between gypsies and Jews. At the time the same order existed for the Jews. I added the explanation that it is known from European history that the Jews actually during all wars carried out espionage service on both sides.

PRESIDING JUDGE MUSMANN: Well, now, what we are trying to do is to find out what you are going to say about the gypsies, but you still insist on going back to the Jews, and Mr. Heath is questioning about gypsies. Is it also in European history that gypsies always participated in political strategy and campaigns?

DEFENDANT OHLENDORF: Espionage organizations during campaigns.

PRESIDING JUDGE MUSMANN: The gypsies did?

A. The gypsies in particular. I want to draw your recollection to extensive descriptions of the Thirty Year War by Ricarda Huch and Schiller—

Q. That is going back pretty far in order to justify the killing of gypsies in 1941, isn't it?

A. I added that as an explanation, as such motive might have played a part in this, to get at this decision.

Q. Could you give us an illustration of any activity of a band of gypsies on behalf of Russia against Germany during this late war?

A. Only the same claim that can be maintained as with regard to Jews, that they actually played a part in the partisan war.

Q. You, yourself cannot give us any illustration of any gypsies being engaged in espionage or in any way sabotaging the German war effort?

A. That is what I tried to say just now. I don't know whether it came out correctly in the translation. For example, in the Yaila Mountains, such activity of gypsies has also been found.

Q. Do you know that of your own personal knowledge?

A. From my personal knowledge, of course, that is to say always from the reports which came up from the Yaila Mountains.

Q. In an instance in which gypsies were included among those who were liquidated, could you find an objective reason for their liquidation?

A. From Russia I only knew of the gypsy problem from Simferopol. I do not know any other actions against gypsies, except from the one in Simferopol.

PRESIDING JUDGE MUSMANN: Very well.

MR. HEATH: May I proceed, your Honor?

PRESIDING JUDGE MUSMANN: Yes, please.

MR. HEATH: Mr. Ohlendorf, you say the gypsies are notorious bearers of intelligence? Isn't it a fact that the nationals of any invaded state are notorious bearers of intelligence. Didn't the Americans bear intelligence, and the Germans bear intelligence, and the Russians bear intelligence for their countries when they were at war?

A. But the difference is here that these populations, for example, the German population, or the American population have permanent homes, whereas gypsies being unsettled as people without permanent homes are more prepared to change their residence for a more favorable economic situation, which another place might promise them. I believe that a German, for example, is very unsuited for espionage.

* * * * *

Q. Mr. Ohlendorf, on the question of the order which you say you felt you had to honor and fulfill, the Fuehrer Order. It is a fact, is it not, that you could have failed in your duty as a soldier and escaped this without any penalty, in short, you could have played sick.

A. I have already had this question addressed to me in the direct examination because I expected it.

Q. Let's see if you expect the next one—I suppose you do. At one juncture you were told by the Chief of Staff of the army above you, down there, in the south of Russia, that unless your collaboration with the army improved, he, Colonel Woehler—I forget his name—he would recommend your immediate dismissal in Berlin, so there was a way, was there not, where you could have avoided service merely by refusing to be agreeable with other military gentlemen. Is that right?

A. This discussion with Woehler did not concern our debate but factual reproaches which were unfounded. And I did not do anything else than rectify untrue reproaches.

Q. I am sorry, I didn't understand that. Is it true that you were threatened with a recommendation for dismissal unless your collaboration with the army improved?

A. No. It was the first word of the Chief of Staff, "If your cooperation with us does not improve, we will request that you be dismissed," and then a number of factual reproaches which were untrue, and I was merely given the chance by the Chief of Staff to reject these untrue charges. Nothing else was being discussed. I do not think that you expect that, in order to be relieved, I should have let myself and my men be wrongly accused.

Q. No, no, I had no idea that you would do any such thing. I simply wanted to find out whether it was possible for you to win a dismissal from this job or task that you had by disagreeing with the military and you have said that it was.

PRESIDING JUDGE MUSMANN: Witness, I understand that there was a conference at Pretzsch when you first learned of this mission. How many of the defendants were present at that conference?

DEFENDENT OHLENDORF: I cannot say that for certain.

Q. At the conference in—I am sure I will mispronounce this word—Nikolaev—how many of the defendants were present if you recall?

A. Merely Seibert was present then.

Q. Who?

A. Only the defendant Seibert was present.

* * * * *

MR. WALTON: General, did you ever have the feeling that the

Fuehrer Order, about which so much has been said here, was an illegal order?

DEFENDENT OHLENDORF: No.

Q. Have you ever heard, during your career, of the recognized laws and customs of war?

A. Of course.

Q. Have you ever heard of the Geneva Convention?

A. Of course.

Q. And have you ever heard of the Hague Convention?

A. Naturally.

Q. From your study of law, and your high rank in an organization subject to military law, did you not know that the killing of civilians in occupied areas, without any trial, is considered by both international law and the laws and customs of war to be plain murder, and nothing else?

A. Yes.

Q. Who was it, in one of your Kommandos, who had the power and the authority to decide whether a person was a Jew, or gypsy, or a Communist, and to order his execution?

A. That was up to the Kommandos.

Q. By that am I to presume that it was the Kommando leader, the commanding officer of that unit?

A. He was responsible for what happened in his field.

Q. Was there any one else in a Kommando, the second in command, or the leading noncommissioned officer—could he decide whether a man was a Jew or a gypsy and order his execution?

A. Before answering this question concretely I wish to point out that in considering the question of discretion as to how to carry out the order—the entire situation should be considered. For example, concerning the Jews, it was usual that the Kommandos called the Jewish elders to determine who was Jewish and who was not. The possibility to go beyond this decision was not given to the Kommandos. Therefore, they had to accept the statements of the Jews themselves as a basis of their orders. The Kommando chief could not go beyond this and carry out the executions independently but he had to rely on his officers who were, for instance, chiefs of Teilkommandos for these assignments. As the Tribunal knows, this question had already been decided before the war by order of the Fuehrer, through Keitel, insofar as individual officers had the opportunity to arrive at a decision whether or not a person was suspicious, and whether he might endanger the security. In my direct examination I have already explained that this statement went too far, in my opinion, and therefore, I gave the order that the suspicion must be confirmed. But to ask for more, for example, concerning the Jews,

than, to believe the statements of the Jewish elders could not have been expected of the Kommandos because there was no possibility of doing more. Doing more would have meant questioning the task.

Q. Then the registration list of the Jewish population handed to the Kommando leader by the Jewish Council of Elders was sufficient to denominate those named as Jews?

A. In order to complete it, the Jewish elders themselves took the Jews to the registration place or the collection place.

Q. Now, was the denouncement of a gypsy by a civilian sufficient identification that could cause his execution by Einsatzgruppe D?

A. No. I remember cases in Simferopol where to identify gypsies the certification of two witnesses, at least, was required by the Kommando there.

Q. These witnesses came, of course, from the civilian population of the area in which this man was arrested?

A. Yes.

Q. And these witnesses claimed to have known it?

A. Yes. That was the difficulty, because some of the gypsies—if not all of them—were Moslems, and for that reason we attached a great amount of importance to not getting into difficulties with the Tartars and, therefore, people were employed in this task who knew the places and the people.

Q. Then there was more investigation in the case of gypsies than there was in the case of a Jew, is that right?

A. There were fewer gypsies than there were Jews and, as I said yesterday already, I only remember one great action in Simferopol.

Q. You stated in your testimony last Wednesday, did you not, that you personally never issued execution orders. Am I correct?

A. Yes.

Q. Who issued orders for these executions?

A. The procedure cannot be explained in one sentence because the order for execution as such had been given from the start in Pretzsch, and also later by the Reich Leader SS. But the Kommandos took it for granted that when they came to a larger city the solution of the Jewish question would be the first problem to be solved, and therefore, the executions developed, not from an order, but as a consequence of a number of occurrences—such as the consultation of a Council of Elders, registration, etc., until the final operation resulted. The same happened in the case of the executions themselves, where a number of organizational occurrences took place one after the other; a definite order was only given, really, at the moment when an officer stood before a

military unit and gave the order to shoot. Everything else develops, one occurrence following another.

Q. In your direct testimony, and yesterday in some of your cross-examination, reference was made quite frequently to "the army". To what army, or army group, were you referring?

A. In my case, to group 11, 11th Army.

Q. Now, who commanded the 11th Army when you were in command of Einsatzgruppe D?

A. First, General Ritter von Schobert. He was killed. After that, there was a temporary assignment; and then later, Field Marshal von Manstein.

Q. Did you ever have any contact—that is, official contact—with Army Group South during your career as commander of Einsatzgruppe D?

A. With the army Group South itself? No. Only with the army. The reason was that the 11th Army was independent, relatively. It had been intended as a nucleus for a new army group which was to operate in the Caucasus Mountains. The army units, at that time, were still in the Baltics in readiness.

Q. How often were you in contact with General von Schobert, and later Field Marshal von Manstein?

A. I reported to General von Schobert, as shown in the documents, on 12 June. Then I saw him again in the army casino once or twice. And von Manstein, I mostly saw in the Crimea on duty, as well as privately; for example, he put me in charge of recruiting Tartars. I also had personal discussions with him about the question of military commitments of my unit. Contact with the army became closer in time because the difficulties of the first months proved some officers so wrong that they had to apologize to me and now the other officers tried to eliminate these former differences. It took longest with Manstein. Not before the spring 1942 was I invited by him personally, for the first time, to his castle on the south coast, which he had set up for recuperation. There I was, together with my successor von Alvensleben, and three or four officers of the army, invited to his place one evening and I stayed there the night. The next morning I had breakfast with him, and then I travelled on. The second time I was privately invited was for the celebration when Sevastopol had fallen. Apart from that, there was constant contact with the army, owing to the fact that there was a liaison officer with the army who shared his billet with the counterintelligence officer; and beyond that, Herr Seibert, at least once a week, visited the Chief of Staff, the intelligence officers, or the chief of partisan warfare with whom arrangements were made. Naturally, I had more to do with the Chief of Staff than with the commander in chief. And for that

reason I visited him officially, repeatedly. Finally, after the winter of 1941, a very lively personal relation with the staff officer of the army took place in my casino. For example, during the Christmas celebration the staff of the army was completely represented, and also during my farewell party.

Q. General, I think the translation came through incorrectly. The way I heard it when you were mentioning the commanders of the 11th Army, the name von Alvensleben came through as your successor.

A. I want to complete this. Einsatzgruppe D was given to Colonel [Oberfuehrer] Bierkamp, but he was with Einsatzgruppe D only for a short time in the Crimea. The Crimea was given over to the civil administration and Alvensleben became SS and Police Leader for the Crimea, and in this he became my successor for that area and not in my position as chief of the Einsatzgruppe.

Q. Then, from what you have just said in answer to the question, your personal and official contacts with the army under Field Marshal von Manstein were more frequent and more friendly than with his predecessor, General von Schobert?

A. Yes. I believe he was only with the army for four weeks before he died in battle.

Q. Can you remember now when Field Marshal von Manstein succeeded General von Schobert, that is, the approximate date?

A. I cannot remember the exact date, but I think that von Manstein became successor of von Schobert in September 1941 at the latest.

Q. Did General von Schobert or Field Marshal Manstein ever issue orders to your Gruppe concerning executions?

A. That question is too definite, Mr. Prosecutor. Such orders existed in various forms. For example, he told the defendant Seibert, who is present here, that retaliation measures which he had ordered were not sufficient, and for that reason he would have to take a hand himself, or, as I described concerning Simferopol, where the army requested that the liquidation of Jews be carried out immediately. Apart from that, there was the idea of killing certain persons like, for example, the insane people but I cannot always say, of course, that this was of the army itself. But the Einsatzkommandos were assigned to units or divisions, so that contact with the Kommandos, and, therefore, the issuing of individual orders were settled in the individual areas to smaller units rather than in the central offices.

Q. Then Field Marshal von Manstein did personally issue instructions or orders concerning the executions in Simferopol about which we have spoken?

A. No, I cannot say that, but an instruction came—so far as I

remember after discussing it with Braune—from the Quartermaster General, then Colonel Hanck, but in the organization of the army, it is natural that the Quartermaster General on his own authority cannot do such things without the approval of his commander in chief. I, therefore, cannot say that von Manstein knew about it, or that he ordered it. I am merely considering it to be so owing to the military situations.

Q. It is highly probable that Field Marshal von Manstein did know and did instruct his staff officer to issue orders, is that correct?

A. In any case, I cannot imagine that a staff officer can make such demands on his own authority.

Q. General, who were the army officers with whom you usually had conferences about the activity of the Einsatzgruppen D?

A. That was the intelligence officer.

Q. Can you give me his name?

A. First, Major Ranck, later his successor, Major Eisler, or Lieutenant Colonel Eisler; the counterintelligence officer, Major Riesen, and the chief of partisan warfare was Major Stephanus. The other staff officers I think are not of such great interest in this connection, that is, the operations officers, Colonel Busse, and another one, von Werner. They are the most important names I know of.

Q. You say all of these were on the staff of General von Schobert, or Field Marshal Manstein.

A. Yes.

Q. Did these same officers whom you have named hand down to you orders for the execution of Jews?

A. No. I cannot say that.

Q. For the execution of gypsies?

A. No. I cannot say that, either.

Q. For the execution of the insane?

A. As I said before, I do not definitely know whether this order was given by the central office, or from the medical offices, or from the regional offices.

Q. Who issued the orders for the killing of active Communists and Soviet officials?

A. For these groups the order was contained in the general Fuehrer Order.

Q. I believe you testified a few moments ago that the liaison officer of Einsatzgruppe D with the 11th Army was the present defendant Seibert?

A. No, the liaison officer was another man. Seibert belonged to my staff, and was in my billets, while the liaison officer was another

officer, who was in the staff of the army, and also shared his billets with the army.

Q. Now, General, you have admitted here that during the time you commanded Einsatzgruppe D, an unidentified number of persons were executed by the units under your command, and I believe you testified further that the responsibility for the actual executions generally was with the Kommando leader, am I correct?

A. Responsibility is a word which can be interpreted in different ways—those who gave the order were responsible. They were responsible for the carrying out.

Q. Just as a matter of information, will you state in detail what normal channel the order went through from the authority issuing it to the man who actually pulled the trigger?

A. I believe my entire examinations show that this order was given once, namely, in Pretzsch; there the initiative was given, and, therefore, no new initial order was given in my time. I never received an initial order unless one would consider the order to segregate prisoners of war such an additional order. The original order, as I have said, was sent to the chiefs of the Einsatzgruppen, and to the Kommando leaders who were assembled.

Q. This in effect is true. Because of the difficulty of communications in the area in which you found yourself, your Kommando leaders were largely, because of poor communications, independent units, were they not?

A. The Kommando leaders were independent, there is no doubt about that. They had to be able to act independently for reasons as you gave just now.

Q. And they made a great many decisions without having to consult either you or higher authorities, did they not?

A. These decisions, Mr. Prosecutor, have to be stated more definitely. In this general form I cannot answer, yes or no.

Q. I apologize. They created tactical situations without consulting higher headquarters, did they not?

A. Of course.

Q. Now to select these commanders, great care had to be exercised as to their ability. Their initiative and their general ability to do the job?

A. Of course.

Q. And they were entrusted with the command of a subunit of yours?

A. It is rather difficult to answer this.

Q. I will repeat, General. I shall rephrase the question. Because of their careful selection, you relied on their judgment in given situations, did you not?

A. The Kommando leaders had certain tasks. These tasks they

had to carry out. I did not choose the Kommando leaders, or else they would have been quite different ones, but they were appointed by the Reich Security Main Office and they had to carry out the tasks which they had been assigned to do; I had to rely on it, that according to their best ability they would fulfill these tasks. But since I did not rely on it completely, I tried, by inspections, to find out whether the Kommandos were in order, and whether the tasks were carried out. Unfortunately, it was not possible to inspect them all; some I could not visit even once within six months, because it was very difficult to get there. Unfortunately, I had no influence on the choice of Kommando leaders.

Q. In your direct examination you have explained your position and relationship with the chief of the 11th Army. My question in connection with this topic may be, therefore, in a sense a little repetitious, but nevertheless, I would like you to answer this for the information of the Tribunal. Which were the special tasks which were assigned to you by the army on the basis of the so-called Barbarossa Decree?

A. The basic task surely was to supply information and to look after the police tasks and the security of the army. Beyond that, the army gave definite detailed tasks, and these changed according to the situation. For example, in July and August, the harvest had to be brought in, and the rear had to be guarded; in November and December and January, to make inquiries about the partisans, and to fight them; immediate military commitments, and then again the information service. These changed according to the situation.

MR. WALTON: At this time, may it please the Tribunal, I should like to submit to the witness for his examination the Document NOKW-256, Prosecution Exhibit 174. There are copies in the German language ready for distribution just as there are in the English now.

* * * * *

MR. WALTON: Have you ever received this or a similar document containing this decree?

DEFENDANT OHLENDORF: I should think that this is one of the drafts for the so-called Barbarossa Decree. I do not think that this draft actually constitutes the Barbarossa Decree, but considerable parts are contained in it. I believe that there are not a great number of differences in the contents.

Q. Was there anything said in the Barbarossa Decree outlining the collaboration of the Sonderkommandos, and the army in the rear areas?

A. I just forgot one thing. This text shows in this draft the Einsatzgruppen in the operational areas and also Einsatzgruppen

in the rear areas. There were no such double assignments. Only one Einsatzgruppe was assigned to the army, to each group, and the army group decided how they were to be used.

Q. Whether they were to be used in the rear areas, or in the forward areas, the army decided that?

A. Yes.

Q. Now, isn't it true, that this Barbarossa Decree, that Himmler's orders based on it made it plain that the Sonderkommandos should carry out their missions under their own responsibility?

A. That is not clear here, either, because the expression "own responsibility" I presume, means that the chief of the Security Police and the SD could give instructions to these Kommandos, which then were carried out on their responsibility; but it never meant that this happened beyond the authority of the army, or rather of the army group; and this limitation is shown in this draft. Because every time it says that the instructions are to be passed to the army and the army can make restrictions. The army can exclude areas; it can make restrictions if the operational situation requires it. Later in the Barbarossa Decree, it says that operational necessity can cause the army to give instructions or to change them. This sense is revealed clearly in this draft, "own responsibility" never means beyond the actual authority of the Commander in Chief of the army, as contained in his task. This is shown in the assignment of the Einsatzgruppen and in the instructions of the Supreme Command of the Armed Forces for the competence of the Commander in Chief.

Q. Then, General, in short, within the broad framework of the order, the Fuehrer Order, subject to the tactical situation at any time, which was the responsibility of the army, it was entirely up to the decision of the Einsatzgruppe as to how to carry out these missions, was it not?

A. Yes.

Q. Now then, did the responsibility mentioned in this draft of the Barbarossa Decree include executions?

A. The Einsatzkommandos had the order, and the tasks to carry out certain executions, of course.

Q. By the Barbarossa Decree?

A. No. I did not say that. At least, I did not intend to say that. I do not know that in the Barbarossa Decree this order for extermination is contained. To repeat it: I do not know that in the Barbarossa—Fuehrer Order—anything was contained about the killing of certain groups of the population.

Q. General, I won't quarrel with you, but the testimony is very clear on your orders for execution. I leave that point at this time. Now, General, did it ever happen that the order of the commander

of the 11th Army, or his staff, was given directly to the Kommandos—these units which were subordinate to you?

A. Which orders?

Q. Any orders?

A. Yes, of course.

Q. How did you obtain knowledge of such orders, since they did not pass through your headquarters?

A. For example, in a written order I was mentioned on distribution lists, therefore a written order to a Kommando was passed on to me. This of course, was only the case if they were orders by the army. Orders by a corps, or by the division I did not see, of course.

Q. But you were informed of it through other distribution lists, after the order was actually given?

A. Yes, so far as it was given by the army.

Q. Were you ever informed if an army group, or an army corps gave an order to a subunit of yours?

A. Whether I was informed?

Q. For instance, if the chief of Einsatzkommando 11b was detached from your headquarters, and attached to the army corps? Do you follow me?

A. Yes.

Q. And the tactical situation was such that the Einsatzkommando 11b should be committed for a certain specific task, the army group commander issued an order directly to the commander of the Einsatzkommando 11b?

A. Yes.

Q. Now, were you later, through official correspondence or through reports of your Kommando, informed that that actual order was given?

A. Of course, in writing or orally if the Kommando leader considered it necessary that I should know about this event.

Q. Then your information did not come from a copy of that order sent to you through official channels, but through the report of your Kommando leader?

A. In that case, if the army had not given a written order, only that way, of course. If they had given a written order, on the whole, they would have given me a copy.

Q. Then you obtained your knowledge of this type of orders from a report submitted to you by your Kommando leader?

A. Yes.

Q. General, was it the task of the liaison officer of the different units of the Einsatzgruppen to transmit such orders?

A. I believe I must ask a preliminary question. By liaison officer you mean the officer who was in the staff of the army?

Q. Yes.

A. In the document book such an occurrence is mentioned, the case of Romanenko. There, the document shows that the liaison officer got an order from the commander in chief and gave it to the Kommando itself immediately. This shows that the Kommando was in the place where the commander in chief was, while I was with the staff of the Einsatzgruppe about two hundred kilometers to the west. Therefore, if the commander in chief wanted to hand something to a Kommando, he could easily give such instructions to the liaison officer.

MR. WALTON: Now I shall have to avail myself of the privilege of forgetting one or two questions. Your Honor, I should like to draw the witness' attention back to some moments ago when I was asking him about who had the authority to make selections for executions. It is entirely out of the context now, but my attention has been called to it. I ask permission to go back and ask him.

PRESIDING JUDGE MUSMANNO: I recall that you did go over that subject, but there is no reason why you can't go back to it.

MR. WALTON: There is one class which I forgot to ask who made the selection. General, who made the selection of Communist and Soviet officials for execution?

DEFENDANT OHLENDORF: The procedure was that certain persons were arrested and these persons were taken to be examined, as is usual, by the police. The interrogating officer, mostly together with the Kommando leader, determined the result of the examination, and with that they determined whether the man endangered the security, or whether he did not, and they passed a judgment on this person.

Q. It usually turned out, did it not, that a member of the Communist Party and a Soviet official of the Communist Party or of the civil administration were considered a definite threat to the security of the German Armed Forces?

A. Yes.

PRESIDING JUDGE MUSMANNO: Witness, in carrying out the procedure which you have just indicated, I assume that in many, if not all of the towns, that you would find yourself liquidating the governing authorities, the mayors, the councils, etc., because naturally they would be members of the Communist Party, is that true?

DEFENDANT OHLENDORF: So far as I know the conditions in the cities or districts where the Einsatzkommandos entered, there was no administration any more, but the leading personalities had escaped or were hidden.

MR. WALTON: General, how were the condemned people assembled for an execution?

DEFENDANT OHLENDORF: In detail I cannot describe that.

Q. I believe you stated in the matter of the Jews that the registration through the Council of Elders stated who was a Jew. Now, if it was determined that so many would be executed, were the Council of Elders instructed to assemble so many people?

A. To assemble the people, yes.

Q. Now, was there any pretext given, either by the Kommando leader or by the Jewish Council of Elders, to get these people to assemble?

A. Yes. For example, on the resettlement question.

Q. They were told that they had to move or they would be moved to a place for resettlement, is that correct?

A. Yes.

Q. Now then, what disposition was made of these people after they had assembled in the market square or at the place designated?

A. It was tried, for example, to compare whether registration lists were the same as the persons present. The persons were then assembled and then were taken to be executed.

Q. Were they sometimes marched to the place of execution?

A. No. They were taken there by trucks. I just described how in Simferopol the army gave trucks for this purpose.

PRESIDING JUDGE MUSMANN: Did the council of Jewish elders know what was the real purpose of the demanding of this list of the Jews?

DEFENDANT OHLENDORF: Certainly not in my Einsatzgruppe.

Q. Well, after the first contingent had been marched away or transported away, was it not then very obvious what the purpose of the obtaining of this list was?

A. In a city the Jews were then assembled all at once, at one time, for example in barracks or in a large school or in a factory site.

Q. Do I understand then that no executions took place until the council of Jewish elders had completed their work of making up the lists?

A. Yes.

MR. WALTON: Now, did you have any army directives or any orders stating the minimum distances from army headquarters where these people could be executed?

DEFENDANT OHLENDORF: In the case of Simferopol the army decreed that shootings should take place at a certain distance from the city. The same occurred at Nikolaev.

Q. By certain distance do you mean a certain distance from the headquarters, or from the army installation, or from the city itself?

A. In Simferopol, from the city; in Nikolaev, from the headquarters.

Q. Now, what was the general method used in execution?

A. Only one method was used by me. That was the military manner.

Q. Am I to infer from that: execution by shooting?

A. Yes.

Q. In what position were these victims shot?

A. Standing up or kneeling.

Q. What disposition was made of the corpses of the executed victims?

A. They were buried in that same place. The Kommando who carried out the executions had to prepare the burying so that no signs of the executions could be seen afterwards.

Q. What was done with the personal property of the persons executed, General?

A. The personal property was confiscated. The valuables, according to orders, were given to the Reich Ministry of Finance or rather to the Reich Bank. The personal property was at the disposal of the local Kommando and the city, except for exceptions in Simferopol where a group of the National Socialist Peoples' Welfare Organization was assigned to the army who took care of the textile items.

Q. Were all the victims, including the men, the women, and the children, executed in the same way?

A. Until the spring of 1942, when by Himmler's order it was determined that women and children be killed by gassing in gas vans. Your Honor, I ask to make a remark about a question in yesterday's examination. I think a mistake arose to the effect that your Honor asked me whether from the reports from the Kommandos the fact that children were shot could be seen. If I have answered to the effect that this opinion was confirmed, that would be wrong. My confirmation in the IMT that men, women, and children are contained in the figures is merely a conclusion from the fact that Jewish men, women, and children were to be shot. In the reports which came from the Kommandos no such difference was made. Actually I do not remember any report where children—or figures of children—are mentioned. I repeat, the statement which I confirm: It was a conclusion I came to, based on the order.

PRESIDING JUDGE MUSMANNO: I understand then that a report indicating that 5,000 Jews had been killed would not specify so many children, so many women, but just 5,000 persons?

DEFENDANT OHLENDORF: Yes, yes.

MR. WALTON: Let me refresh your memory, General, please. I believe you stated in answer to the last question that executions

were entirely in the form of shootings until the spring of 1942 when you received an order to have women and children executed by gas van. I am sorry I missed your statement as to where this order originated, or from whence this order came.

DEFENDANT OHLENDORF: The order of the gas vans came from Himmler immediately and was given to special units who had these gas vans.

Q. These units who had charge of the operation and the maintenance of the gas vans stayed with the vans all the time?

A. Yes. I only saw it myself for a short time because it occurred shortly before I resigned, but the drivers remained there while the officer who had come along originally left later on; but the reason for this was mainly that the vans were refused by the Kommando leaders, and I was not prepared to force the Kommando leaders to use these vans. The vans were practically not used.

Q. General, have you yourself ever seen a gas van?

A. Yes.

Q. Will you give a short description of the physical appearance of a gas van to the Tribunal?

A. It is an ordinary truck just like a box car. It looks like that, like a closed truck.

Q. No windows in the gas van?

A. I beg your pardon?

Q. There were no windows?

A. That is possible.

Q. The back of the gas van, did it have a thick door which led into the interior of the gas van?

A. Of course.

Q. And this door was narrow where only one person could enter at a time?

A. No. I believe it was an ordinary door as any other truck has.

Q. Now were the people selected for execution induced to enter these vans?

A. One could not see from the van what purpose it had, and the people were told that they were being moved, and, therefore, they entered without hesitation.

Q. The same information was given them that they would be moved for purposes of resettlement?

A. Yes.

Q. General, could you estimate how many persons could be accommodated at one time in these vans?

A. There were large vans and small vans. The small one might have taken 15 persons and the large one 30.

Q. Did you even learn how long it would take to execute persons by the use of these lethal gas vans after they were subjected to gas?

A. As far as I remember about 10 minutes.

Q. Did all of your Kommandos use these vans?

A. No, because there were more Kommandos than vans. Apart from that one van was no good. They had come from Berlin. One van was sent to Taganrog immediately without my seeing it and never came back, and the other two vans remained in Simferopol.

Q. Did Sonderkommando 10a ever use one of these vans?

A. I already said that one van was sent to Kommando 10a immediately.

Q. I apologize, I missed it. Did 10b ever use one of these vans?

A. No. I am not sure whether they did use it. I cannot swear to it, but I don't think so.

Q. I accept your answers as the best of your recollection and belief. Did Sonderkommando 11a use one?

A. No. As I said, the two vans were in Simferopol.

Q. 11b, did it ever use one?

A. 11b would have used it I think.

Q. And Einsatzkommando 12, do you recollect that it ever had one?

A. No. They certainly did not have one.

Q. How many people do you estimate—I am sure that you do not remember the exact number, but how many people do you estimate were executed by these vans by Einsatzgruppe D?

A. Please save my mentioning these figures because I don't know anything about 10a and concerning 11b the van may have been used two or three times, I am not sure. I myself hardly saw the van, but only the first time, together with the physician, I had a look that the people went to sleep without any difficulties, and then I must have left. I don't know whether it was used again.

Q. Then some people were executed by means of the gas vans by your subunits?

A. Yes.

* * * * *

MR. HEATH: Mr. Ohlendorf, you have just said that you felt that you must respect this order unto your own death.

A. Yes.

Q. You have asked the Court to accept that coercion. Will you now tell the Court what your present judgment is of the order? Do you think it was a moral order or do you think it was a wrong order which you received from the head of the German State?

DR. ASCHENAUER: I object to this question, your Honor. Only facts can be asked about and not opinions.

MR. HEATH: May I answer, if your Honor please. A man who claims mitigation because of superior orders is putting himself in the position of saying, morally, I had no choice. If, in fact, he

morally approved of a superior order and, therefore, would have acted without the coercion of it, if, in fact, he did not object to the coercion but merely lent himself to the course of action which he would have to follow without coercion, then a plea of mitigation fails entirely, and so here, if the defendant did these killings because of the coercive effect of an order, with which he disagreed, that is one thing, but if Ohlendorf was himself in full agreement or in partial agreement with the purpose which Hitler had, then the mitigating effect of the coercion order is fully or almost fully lost.

PRESIDING JUDGE MUSMANN: Dr. Aschenauer, do you follow that argument?

MR. HEATH: The plea is bad, if it is done willingly.

DR. ASCHENAUER: I wish to point out that these are merely argumentations which have nothing to do with the testimony by the witness.

PRESIDING JUDGE MUSMANN: The Tribunal has indicated that this is not the time for argument, but it would appear that the purpose behind the question is not in the nature of argumentation, but for the purpose of determining whether there can be any mitigation in the offense as charged by the prosecution in the indictment and for that purpose the question will be permitted. The objection is overruled.

DEFENDANT OHLENDORF: Mr. Prosecutor, I have already replied to that question during my direct examination by stating that I considered the order wrong, but I was under military coercion and carried it out under military coercion knowing that it was given in a state of emergency and the measures were ordered as emergency measures in self-defense. The order, as such, even now, I consider to have been wrong, but there is no question for me whether it was moral or immoral, because a leader who has to deal with such serious questions decides from his own responsibility and this is his responsibility and I cannot examine and not judge. I am not entitled to do so.

MR. HEATH: If your Honor please, that is exactly the state of the record and I respectfully submit that we yet have no answer. For this reason the witness has said he thought it was an unjustified order, because it was difficult or impossible of execution, when he was told—

DEFENDANT OHLENDORF: I didn't say that.

MR. HEATH: When he was told about it at Pretzsch, he thought it was impossible of execution. I think the very issue which he seeks to avoid is the crux of this question, namely, not whether it was a difficult order, or a wise order, from the standpoint of his, but whether it was right or wrong. The issue is a moral one. The

coercion of superior orders goes to the moral coercion and not to the wisdom of the order.

PRESIDING JUDGE MUSMANN: But, Mr. Heath, hasn't he answered your question?

MR. HEATH: He has said—he said it was a wrong order.

PRESIDING JUDGE MUSMANN: Now, what more do you want? Put another specific question and we will see if he hasn't answered. It appeared to the Tribunal that he has answered, but put the question to him.

MR. HEATH: You have said it was a wrong order. I want you only to tell me whether it was morally wrong or morally right.

DEFENDANT OHLENDORF: May I correct beforehand that in my reply I never said whether it was a difficult or not a difficult order. That is an assumption which I don't want to have in the record.

PRESIDING JUDGE MUSMANN: Then it must have been an error in transmission, because the Tribunal is under the impression that yesterday you stated in your original protest against the order that it was impossible of fulfillment or very difficult of fulfillment. Are we in error in that impression?

DEFENDANT OHLENDORF: I said "inhuman", your Honor.

PRESIDING JUDGE MUSMANN: I see, very well. The record indicates just what was said. Now, do you want to put another question?

MR. HEATH: I put the same question—Was the order a moral one; was it morally right, or was it morally wrong?

DEFENDANT OHLENDORF: I have just said that I do not think that I am in a position to decide on the moral issue, but I considered it to be wrong because such factors are able to bring such results which may have and, in my opinion, are bound to have immoral effects. But I do not think I am in a position to judge the responsibility of a statesman who, as is shown in history, rightly saw his people before the question of existence or nonexistence, or to judge whether a measure in such a fight against fate, for which this leader is responsible, is moral or immoral.

PRESIDING JUDGE MUSMANN: Do we extract from all that you have said, this thought that you are not prepared to pass upon whether the order was morally right or morally wrong, but you do say that the order could only lead to very bad circumstances which would be injurious to Germany itself.

DEFENDANT OHLENDORF: Not only to Germany itself, your Honor. I consider this to be much more serious even. I see the order which Hitler gave, not as a first cause for this order, but I already consider it as a result of logical developments which may have started—or at least became very obvious—when in 1935, in our opinion, Germany was encircled. Such measures must further

such developments, for example, to the effect that instead of an understanding, hatred, revenge, and an exaggerated effort to gain security will become very strong and, therefore, the general insecurity of the world will be increased. For example, causing effects, as can be described with the name "Morgenthau Plan" or requests, such as that Germany is being weakened in its greatness and strength so that this people will no longer endanger the security of anyone. That is what I meant by "effect" which might result from such factors, because they are intended for this, while I believe that throughout historical development at some time a chain of hatred or mistrust has to be broken in order to start anew somewhere, and that, for example, I hoped would be achieved through National Socialism which owing to its national basis, must be respected by each individual people, but here the chain is continued, a sequence is continued, which instead of reconciliation breeds more hatred, and increases the craving for security. That is my opinion on this.

MR. HEATH: May I put the question once more, if your Honor please?

PRESIDING JUDGE MUSMANN: Yes, you may put the question and then the witness may answer it directly, or, if he feels he has already answered it, he may so indicate, or he may refuse to answer it. We will see what happens.

MR. HEATH: I do not ask you for a judgment of Hitler's morals; I ask you for an expression of your own moral conception. The question is not whether Hitler was moral; but what, in your moral judgment, was the character of this order—was it a moral order, or an immoral order?

DEFENDANT OHLENDORF: The question concludes itself, because you are not asking abstractly for a moral estimate of nothing—but a moral estimate and judgment about a deed of Hitler. And for that reason the judgment which I may make is a judgment on the deed of Hitler.

Q. Then I may ask one more question, and this is the last one, your Honor. You surrendered your moral conscience to Adolf Hitler, did you not?

A. No. But I surrendered my moral conscience to the fact that I was a soldier, and, therefore, a wheel in a low position, relatively, of a great machinery; and what I did there is the same as is done in any other army, and I am convinced that in spite of facts and comparisons which I do not want to mention again, the persons receiving the orders—and all armies are in the same position—until today, until this very day.

Q. It was not the coercion of the Hitler Order which overcame

your moral scruple. It was the fact that you had surrendered to Hitler the power to decide moral questions for you—is that right?

A. That is an argumentation on your part which I never said. No, it is not correct. But as a soldier I got an order, and I obeyed this order as a soldier.

Q. Well, as a soldier you still had a moral conscience—I suppose you did—which required, if you had a moral conscience, you had to judge the orders that came to you. You got an order from Adolf Hitler, and you tell us you accepted his moral judgment absolutely, whether right or wrong—is that right?

A. That I accepted a moral judgment I certainly did not say. I think my answer will not be changed by the fact that you want me to make a certain reply.

Q. Let us put it in the negative, then. You refused to make any moral judgment then, and you refuse now to make any moral judgment?

A. The reason is—

Q. I am not asking you the reason. I am asking whether you refuse to express a moral judgment as to that time, or as of today.

A. Yes.

EXAMINATION

PRESIDING JUDGE MUSMANN: Yesterday Mr. Heath put a question to you which perhaps we did not allow to be answered—but in view of what has now been stated perhaps we might go back just a moment. He asked you whether, when you received this order, any question arose in your mind as to its authenticity, namely, was the order of such a nature that it caused you to hesitate as to whether there could have been an error in it and would cause you to go higher than the officer who had given you this mission, in order to determine, positively, whether it was authentic or not. You remember that discussion?

A. Yes.

Q. Now, when you received this order—it did not come from Hitler, that is, it was Hitler's, but he did not give it to you, it came from Streckenbach.

A. It was handed on, yes.

Q. Yes, very well. And his rank was not so high that an incredible statement by him could be questioned?

A. Yes.

Q. When this order was first presented to you, did it shock you to such extent that you wanted to inquire whether it truly was an order given by Hitler or not; or were you so satisfied that Hitler

knew what to do, and the circumstances were such that even that order could be a logical one, that you accepted it without misgivings, without questioning, without doubts, and without investigations?

A. It was a shock and was dispersed, as I explained yesterday, through reaction towards Streckenbach, and Streckenbach argued on all those questions which your Honor just mentioned. So that during this discussion all the questions have been worked on already, and finally. No other solution was left to us than to accept Streckenbach's experience who knew through his discussion with Hitler that it was quite obvious that there was a Fuehrer Order here which under no circumstances could be cancelled.

Q. You indicated a lack of desire to answer Mr. Heath's question on the moral issue. You indicated that it wasn't for you to decide the moral question at all. But with every order, with every demand, or request, there instinctively goes a moral appraisalment—you may agree with it or not—so when this order was given to you to go out to kill, you had to appraise it, instinctively. The soldier who goes into battle knows that he must kill. But he understands that it is a question of a battle with an equally armed enemy. But you were going out to shoot down defenseless people. Now, didn't the question of the morality of that enter your mind? Let us suppose that the order had been—and I don't mean any offense in this question—suppose the order had been that you should kill your sister. Would you not have instinctively morally appraised that order as to whether it was right or wrong—morally, not politically, or militarily, but as a matter of humanity, conscience, and justice between man and man?

A. I am not in a position, your Honor, to isolate this occurrence from the others. I believe during my direct examination plenty of questions of this kind have been dealt with. Probably with the occurrences of 1943, 1944, and 1945 where with my own hands I took children and women out of the burning asphalt myself, with my own hands, and with my own hands I took big blocks of stone from the stomachs of pregnant women; and with my own eyes I saw 60,000 people die within 24 hours—that I am not prepared, or in a position to give today a moral judgment about that order, because in the course of this connection these factors seem to me to be above a moral standard. These years are for me a unit separate from the rest. Full of ruthlessness to destroy and to be inhuman—until today, your Honor, and I am not in a position to take one occurrence or rather a small event of what I experienced and to isolate it, and to value it morally in this connection. I ask you to understand that from a human point of view.

Q. Your answer gave a certain date. You mention the years

1943, 1944, 1945. Naturally, these were years following 1941, when you were confronted with that issue.

* * * * *

MR. HEATH: The Court made inquiry on which it got no response from the witness, which was, I think, the ultimate question which your Honor was putting to him, namely, if you get an order from Hitler to kill your sister, would you have acted on the order, or would you have had any conflicting moral judgment about the nature of the order? There was no response, and I don't know whether the Court thinks we have gone far enough with the questioning, or, whether we may ask for a response to that question?

PRESIDING JUDGE MUSMANN: The Court would not insist on the question being answered because of its very nature, but it seems to me that it is a relevant question, but the witness may or may not answer, as he sees fit.

MR. HEATH: May we then put the question to him, if your Honor please? Witness, if you received an order from Adolf Hitler to kill your own flesh and blood, would you have executed that order, or not?

DEFENDANT OHLENDORF: I consider this question frivolous. The question is being put to me here by the prosecution, it deals with people—with life and death of people, and of millions of people who are near starvation even today, therefore, I can only state that the question is frivolous.

Q. Then I understand you to say that if one person be involved in a killing order, a moral question arises, but if thousands of human beings are involved in it, you can see no moral questions; it is a matter of numbers?

A. Mr. Prosecutor, I think you are the only one to understand my answer in this way, that it is not a matter of one single person, but from the point of departure events have happened in history which among other things have led to deeds committed in Russia, and such an historical process you want me to analyze in a moral way. I do, however, refuse moral evaluation with good reasons as outlined so far as my own conscience is concerned. I am not refusing to answer this last question because it is just one person, in order to bring morality on the basis of numbers, but because the prosecutor now addresses me personally—

Q. I shall not address you personally. Suppose you found your sister in Soviet Russia, and your sister were included in that category of gypsies, and she was brought before you for slaughter because of her presence in the gypsy band; what would have been your action? She is there in the process of history, which you have described?

DR. ASCHENAUER: I object to this question and I ask that this

question not be admitted. I think the subject has been dealt with sufficiently so that no other questions are necessary. This is no question for cross-examination.

MR. HEATH: Your Honor, I believe we have met tests which we applied by putting one of his own flesh and blood in exactly the alleged historical stream in which he can form no judgment. I asked him now whether if he found his own flesh and blood within the Hitler Order in Russia, what would have been his judgment, would it have been moral to kill his own flesh and blood, or immoral.

DR. ASCHENAUER: I ask for a ruling of the Tribunal upon my objection.

PRESIDING JUDGE MUSMANNO: The question indubitably is an extraordinary one, and ordinarily would not be tolerated in any trial, outside of a trial like this, which is certainly an extraordinary and a phenomenal one. We are dealing here with a charge, which to the knowledge of this Tribunal has never been presented in the history of the human race of a man who is here charged with the responsibility for the snuffing out of lives by the hundreds of thousands—not hundreds of thousands, but ninety thousand. If he were not charged with anything so monstrous as that, it would not seem to me necessary for him to answer the question on a moral issue, but if he is presented with an order by Hitler to dispose of his own flesh and blood, whether he would regard that as a moral issue, or not, I believe that is a question that is entirely relevant and is not frivolous, and the witness will be called upon to answer it.

DEFENDANT OHLENDORF: May I please answer this question in the way it was put by the prosecutor, and the way it was originally put. I had not finished my statement why I considered this question frivolous, when the prosecutor interrupted me.

MR. HEATH: The Court has ruled that the question is not frivolous, and it calls for an answer. I urge the Court or respectfully request the Court to ask the witness to answer the question.

PRESIDING JUDGE MUSMANNO: The ruling disposes of this, and the witness will answer the question, so that you do not need to urge or demand.

MR. HEATH: I should have added your Honor, "or refuse to answer it, one way or the other."

PRESIDING JUDGE MUSMANNO: I am disposed to believe that he will answer it. Let's see whether he will answer it, or not.

DEFENDANT OHLENDORF: I consider this question frivolous, because it brings a completely private matter into a military one; that is, it deals with two events which have nothing to do with each other.

PRESIDING JUDGE MUSMANNO: Witness—

MR. HEATH: Your Honor—

PRESIDING JUDGE MUSMANNO: Let's just keep in mind this situation. You are a defendant in a trial, and very serious charges have been brought against you. Your whole life and career are before this Court for scrutiny and examination. A question arises regarding an order which you received, and that order calls for the execution of defenseless people. You will admit that in normal times such a proposition would be incredible, and intolerable, but you claim that the circumstances were not normal, and, therefore, what might be accepted only with terrified judgment was accepted at that time as a normal discharge of duties. It is the contention of the prosecution, that regardless of the circumstances, the killing of defenseless people involved a moral issue, and that under all the circumstances you were to refrain from doing what was done. Now by way of illustration he advances, suppose that you had in the discharge of this duty been confronted with the necessity of deciding whether to kill, among hundreds of unknown people, one whom you knew very well. It seems to me that that is a relevant comparison. Now, let's direct our attention to that very question, if you will, please.

DEFENDANT OHLENDORF: If this demand would have been made to me under the same prerequisites that is within the framework of an order, which is absolutely necessary militarily, then I would have executed that order.

MR. HEATH: That is all, sir.

PRESIDING JUDGE MUSMANNO: Witness, I would like to ask one question. Were the men in your command entitled to any increase in pay because of the nature of the operation, or were they paid the regular salary which went to all soldiers?

DEFENDANT OHLENDORF: At no time was there any advantage connected with that operation. Not at any time.

PRESIDING JUDGE MUSMANNO: Now you were travelling in a territory which must have been very strange to you, and you had indicated that you had interpreters, but you must have been confronted with many language difficulties, because of dialects, and so on. Do you suppose that because of these language barriers that any errors might have occurred, so that even individuals under the broadest interpretation of that order were killed who should not have been killed?

A. I don't think so. The interpreter whom I had, for instance, my own interpreter was from Russia himself, and he knew the language and the conditions.

Q. Very well. You stated yesterday the only reason why you did not wish your command was that of a fear your successor might

not be so considerate of your men as you were. In what way did you regard that considerate; in what respect?

A. Because I had experience from other Einsatzgruppen.

Q. Well, you were considerate of them, but the Tribunal does not understand in what respect. Was it with regard to accommodations, with regard to food, with regard to the manner in which they had discharged this unpleasant duty?

A. It was part of the complaints which I personally presented to Himmler in Nikolaev; that, for example, the Higher SS and Police Leader Jeckeln had organized special detachments which had to carry out nothing but executions, and it is understandable that this would ruin these people spiritually, or make them completely brutal. This is an example of what I meant.

Q. Very well. How much time did you spend, generally, in each community. I presume you were travelling all the time?

A. I personally, or with my staff?

Q. With your staff. With your unit, the Einsatzgruppe?

A. I changed my headquarters when the headquarters of the army moved. I always joined the headquarters command of the army.

Q. Now you said that you tried to avoid excesses. Just what do you mean by that?

A. That, for example, an individual would carry out an execution on his own.

Q. You mentioned this morning apropos something else, that there was a Christmas celebration in your organization. Did you have a Christmas celebration regularly every year?

A. Yes.

Q. Yesterday, you stated that you had attended three executions, and in each one of these executions the subjects were singing the International and that they were shouting their allegiance to Stalin, and you took from that their solidarity to the Bolshevist cause, and, as I understood your answer, you drew from that a justification for the order, namely, that these individuals had in effect declared their hostility to Germany, and, that, therefore, as a matter of security and self-defense, or as a war measure in itself, it was justifiable to dispose of them in the way they were disposed of?

A. No, your Honor, I did not mean it that way.

Q. I see.

A. I was asked whether I saw any signs that the Fuehrer Order really was based on objective facts, and I meant these facts as one example to show that in these cases the victims actually expressed this attitude. This was not a basis for my action, only an example of what I saw myself.

Q. Did you take from their singing and from their shouts at that moment, that this reflected an attitude on the part of all that race, which called for aggressive measures on the part of the Reich?

A. No. I was merely impressed by the fact that my three incidental visits always were attended by the same demonstrations on the part of the victims. It was not a cause for me to act in any way. It was merely an illustration of the actual situation.

Q. Now just one more question on this incident. When you observed this demonstration, did you feel any sense of relief that here indeed were enemies of your country, and, therefore, the order which you were executing did have some justification in fact?

A. I have already expressed it a little more carefully yesterday, your Honor, because in any situation it is difficult to comment on this. I said that I watched this demonstration with respect, for I respected even this attitude, and I never hated an opponent, or an enemy, and I still do not do so today.

PRESIDING JUDGE MUSMANNO: Any further questions, Dr. Aschenauer?

REDIRECT EXAMINATION

DR. ASCHENAUER: Your Honor, I only have two more questions. They concern the document which was submitted by the prosecution. I believe it is Document NOKW-256, Prosecution Exhibit 174. There are two sentences "we received your directives from the Chief of the Security Police and the SD, and we are informed that we are under your command as far as restricting our mission on the part of the army is concerned." I want to ask one question. Did you ever have any responsibility of your own about these missions, including the executions, which went higher in responsibility than that of the Supreme Army Commander, as the executor of supreme command and which would have excluded the responsibility of the army commander in chief over life and death?

A. No. This activity was carried out under the responsibility of the Supreme Commander. He alone had the executive power of command, and therefore he disposed over life and death. This responsibility was never limited.

Q. Then do I understand you correctly if you say that your responsibility refers to the manner and type of the execution of the order?

A. Yes, that is right.

DR. ASCHENAUER: I have no further questions.

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*EXTRACTS FROM THE TESTIMONY OF
DEFENDANT HAENSCH**

DIRECT EXAMINATION

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DR. RIEDIGER (counsel for defendant Haensch) : Did you, in the course of the war, try to get a position of a leader of an Einsatzkommando?

DEFENDANT HAENSCH: I never tried to get the position of a leader of an Einsatzkommando.

Q. When did you come to know that you were intended to be leader of the Sonderkommando 4b, and how did you hear it?

A. As far as I remember it was the end of January or the middle of January 1942, that I heard of it. I remember that exactly because in November or December my mother was dangerously ill. At that time, and in the first days of January, I went to see her and I stayed with her for about a fortnight in Hirschfelde. When I came back from my visit to her, the chief of office I—it was Streckenbach at that time—told me over the telephone that I had been appointed leader of a Sonderkommando in the East.

Q. Was that in accordance with your own wish?

A. No. It was not, and, above all, it was not in accordance with my wish at that particular moment. At that time I had again been making special efforts to leave my work.

PRESIDING JUDGE MUSMANNO: Did you ever get a job which pleased you. Every job you mentioned so far made you very unhappy. Now, you joined the NSDAP, quite willingly, enthusiastically—you wanted to serve this ideology—yet every job you got made you unhappy. Now, can you tell us one job you got because of your association with the NSDAP which left you tranquil, and at peace with your mind, and with the world?

DEFENDANT HAENSCH: Mr. President, I never obtained any position in connection with my membership in the NSDAP.

Q. Well, did you ever have any job in your life—let us make it broad—did you ever have any job which you liked? Now, tell us that!

A. Yes.

Q. Now, what job was that? That will be very interesting.

A. Well, first, I was greatly stimulated and satisfied with the administrative work I did in Doebeln; and I was particularly satisfied and, in spite of the serious situation, I was happy in the position which later on I obtained in the administration with the Reich

* Complete testimony is recorded in mimeographed transcript, 2, 3, 4 Dec. 1947, pp. 3225-3323, 3365-3423.

delegation in Denmark. And that, too, was a purely administrative—

Q. Give us the year. Now, in Doebeln, when were you there?

A. I was in Doebeln in 1935.

Q. For how long?

A. I was there from February to July.

Q. From February to July 1935, in Doebeln.

A. Yes. In 1935, your Honor.

Q. All right. And then when were you in Denmark?

A. That was in 1943.

Q. How long?

A. Until the end of the war.

Q. 1943 to 1945?

A. Yes.

Q. Well, then, those were two periods in your life—five months in 1935, and two years, from 1943 to 1945, that you were happy with your work?

A. Yes.

PRESIDING JUDGE MUSMANN: All right. Proceed, Dr. Riediger.

DR. RIEDIGER: When you were informed about your appointment, what steps did you take, and what did you know at the time about the functions of the Einsatzkommandos?

DEFENDANT HAENSCH: Until that time I knew nothing beyond the fact that formations of the Security Police and of the SD were with the troops in the East and—as I saw it—they were used as military units. As for details about their functions and their task, I knew nothing of those.

Q. Did you know the reports of the Reich Security Main Office or the Einsatzkommandos during the time that you were working for the RSHA?

A. No, I didn't. Those reports on the vents and those reports from the East I didn't know; as I gather from the documents here the various sections of Office I didn't receive those reports.

Q. Did anybody in Berlin inform you about the purpose of the Einsatzgruppen and, if so, who?

A. After I had been informed over the telephone by Streckenbach that I was to be sent to a Kommando in the East, I immediately asked him for an interview. Once again I must mention briefly that at that time the order to go to the East was in no way opportune, for in the meantime I had tried to be requested by another unit to go to the front, as I had come to realize that that was an opportunity for getting out of the Reich Security Main Office. The only possibility, in fact, was if another agency asked for me which was strong enough to support such a request. At that time, in December 1941, among other things, I called on

my co-defendant Six, and asked him to let me know as soon as he heard of anything to the effect that some other agency needed an administrative official. In the same way friends of mine were making attempts, through other means, to help me find a way of getting out of the RSHA.

To clarify this point as to why I was not feeling happy, and as to why I think I could not have felt happy in my work, perhaps I may make the following statement: I believe every law graduate who works as a district attorney had more freedom of action and more scope for initiative than I had; for the work of an expert on disciplinary matters of the RSHA was that of an investigator without any authority to make decisions.

Q. You have testified that you had discussed the matter with Streckenbach, and I am now asking you what he told you about the work that you would have to do with the Sonderkommando 4b. Now what was it that Streckenbach told you?

A. During our short discussion when I called on him, Streckenbach told me that the task of a Kommando involved authority at the front and it was to protect fighting troops in the front area. It was then mentioned and it was repeated later by Heydrich that the Kommando was part of the army, and that I myself would always have to have my headquarters at the place where the army had its headquarters. The work of a Kommando as such, so he told me, was based on decrees and orders received from the army to the Einsatzgruppe and that those orders had to be obeyed, and that I was to see to it that that was done. As such orders were new to me, I asked Streckenbach in the course of our talk for further information. Above all, I asked him whether he wanted me to take this position as a permanent position. I had a vague reason for that question, because I suspected that perhaps they wanted to send me to the East for good to get rid of me. Streckenbach told me about the dangerous elements which threatened the German troops in the East from the partisans. He said it was the task of the Kommando to deal with such saboteurs, and obstructionists, and partisans jointly with the army. Streckenbach pointed out to me that the executive work of the Kommando was in the hands of experts, that is to say, experts trained of the men of the Secret State Police [Gestapo] and of the Criminal Police. At the express instructions of Heydrich he drew attention to the fact that I was to stay in the East for a short time, at the utmost three months; that, therefore, I was to leave things as they had been, and that I was to handle them as they had been handled up to then. Streckenbach also drew my attention to the fact that, in particular, in cases of executive decisions I was to rely on the investigations of the experts who had the necessary

experience in the East. In connection with my work as to disciplinary matters, Streckenbach also pointed out to me that in the East, in the fight against illegal elements and the fight against saboteurs and obstructionists, formal court proceedings such as we were accustomed to carrying out in the homeland, in the police courts, or other courts, didn't exist, but that through a decree by the highest military authority, that is, by the OKW [Supreme Command of the Armed Forces], matters in the East were settled in a different way; that the chief of the executive department of the Kommandos and the army commander proceeded in accordance with these decrees and the decrees by the highest military authorities. So far as I recall that is what Streckenbach told me when I had my first talk with him, and during that talk I asked him for information, and he particularly impressed on me that close contact had to be maintained with the army authorities in question.

Q. Did you not discuss with Streckenbach the question of going somewhere else at the front, and why?

A. That was at a later time. I talked to Streckenbach again, and the second time I went to see him it was very different. After our first talk, I heard the next day that the Chief of Einsatzgruppe C was Thomas. There had been a considerable amount of tension between Thomas and myself before. He used to be senior section chief [Oberabschnittsfuehrer]—I think it was in Wiesbaden, anyhow, it was somewhere in the West—and he often interfered in disciplinary matters, which had arisen in my office—anyway there had been a certain unpleasantness. I approached Streckenbach openly when I heard that Thomas was the chief, saying that I didn't like it and if it would not be possible to use me in some other Einsatzgruppe. Streckenbach said no, that it could not be done, and it was then that he told me that Sonderkommando 4b had been destined for me by Heydrich. There had been special reasons. On the one hand the assignment in the East was only to last for a short time, and it was to serve the purposes of acquainting myself with conditions in the East; Streckenbach said that as I had so far only dealt with disciplinary matters, and as I was to stay there only a short time things should be left as they were. In the case of Sonderkommando 4b it was easy to regulate because in this Kommando a higher official had already been chief of the executive department.

Q. When was it that you left for the East to join the Sonderkommando 4b?

A. So far as I remember I left for the East during the last days of February 1942. It was either on the last day of February, or the day before the last day.

Q. Prior to your departure, did you talk only with Streckenbach, or also with Heydrich, or any of the other gentlemen, and if so, what were you told about your job?

A. Well, it was Streckenbach alone who at the end of January told me I was to go to the East, and he added that my written marching orders would be sent to me later. For the moment I was to continue in my old job. My predecessor was on leave, and during this time at Heydrich's request, he was to return to the Kommando. I only got an opportunity to talk to Heydrich when I reported my departure to him, and that was when I received my marching orders and, so far as I remember, it was only a week or ten days before I left that I received my marching orders.

Q. Now, I was interested in hearing what Heydrich told you about your work in Sonderkommando 4b?

A. In essence, Heydrich told me the same that Streckenbach had already told me. He emphasized the fact that I was to deal with the job of front security; that it was the army which was in command, and that orders and decrees from the army to the Einsatzgruppe had to be obeyed; that those orders and decrees had to be carried out exactly, and at that point, Heydrich made particular reference to the activities of bands of organized resistance, and he mentioned the dangers which threatened the German troops. In his usual brief manner he told me very explicitly that the life of every German soldier needed special protection, and that I was always to remain conscious of the fact that in such a situation the lives of fathers of German families and the lives of the German men were at stake. He also told me—I cannot at the moment fully recall how—but he drew my attention to the wartime laws, he told me about the laws which I would get from the army, and that the orders would have to be obeyed. He told me he did not want to receive any complaint. "If you do not obey orders," he said, "I need not tell you that as you are an expert on disciplinary matters, you, just like every soldier at the front, are subject to the laws of war, and that any delay or any dereliction of duty is subject to heavy penalty." That is substantially what Heydrich told me.

Q. And did you go anywhere to report your departure?

A. Yes. I just remember it. Heydrich said that in the executive institution of the Kommandos I was not to make any change; I was to rely, in that connection, on the opinions of experienced officials. "Anyway," he said, "Go and see Mueller about that." I had never had anything to do with Mueller before and ordinarily there would have been no reasons to report my departure to him. I did go to see Mueller who received me just by the door which led from the anteroom to his office. He just spoke a few brief words to

me. He was rather rude. I thought that he didn't like the idea that an expert in disciplinary matters was sent up there for he made a remark to the effect that it was his officials, men who had been trained by him, who worked out there, and they were all men who had the necessary expert knowledge.

* * * * *

EXAMINATION

PRESIDING JUDGE MUSMANNO: Now, Witness, as I recollect what you stated, you were instructed by Stahlecker and later by Heydrich that you were to go into Russia and that you were to fight saboteurs, partisans, and obstructionists, and that you were also to offer protection to the German army. Did that constitute—briefly put, of course—your mission in Russia?

DEFENDANT HAENSCH: Your Honor, the mission which was given to me by Streckenbach and by Heydrich was an assignment at the front for the security of the front. That is to say, to guard the rear of the German troops immediately in the front area from elements which endangered the security of the individual German soldier and the front area.

Q. What was said to you about Jews, gypsies, and Communist functionaries?

A. Your Honor, Jews and gypsies Streckenbach and Heydrich never mentioned to me. These words never came up on this occasion. The details of the assignment were not given.

Q. What was said to you by Streckenbach and Heydrich regarding Jews, Communist functionaries, and gypsies?

A. If I may repeat this, your Honor, Jews and gypsies were never mentioned. The word was never mentioned even.

Q. In this whole conversation with these two men the word "Jews" was never mentioned?

A. No. It was not mentioned.

Q. Did they not say that Jews were active Communists and in offering security to the army it was necessary to be on guard against the Jews?

A. No, your Honor, this was never mentioned. If I may repeat, the individual persons or elements who might endanger the security of the troops were never mentioned at all by Streckenbach in any way, nor did Heydrich do so, but I was told that corresponding orders existed with the army, and that the mission of the Kommando was already fixed. That was during the second discussion with Streckenbach.

Q. Did you know that Jews were active Communists; did you know that from other sources?

A. No, your Honor. If I am to answer this question now, at the time it was never mentioned, there was no discussion—

Q. I asked you if you knew from other sources that the Jews in eastern Russia, or in western Russia, and eastern Europe, were very active Communists, did you know that from other sources?

A. No. I cannot say that in this form. At the time, as I said, it was never mentioned, and I would like to say this, every Russian citizen who was a Bolshevik was inclined and suitable to be specially radical in the action against—

Q. Was anything said to you about the Fuehrer Order which called for a liquidation—

A. No.

Q. Well, I didn't finish the sentence, but you apparently know what I am referring to. What was the Fuehrer Order? You answered before I finished the question, so, therefore, you are familiar with it. Now, what was the Fuehrer Order? Tell me.

A. Well, your Honor, I want to say the following.

Q. Tell me what the Fuehrer Order was.

A. Well, the Fuehrer Order, as I heard of it here and got to know it here, says that Jews—I don't remember the exact wording now but it was mentioned here—that Jews, and gypsies, and dangerous elements were to be killed.

Q. And when did you first learn of the Fuehrer Order?

A. I heard about the Fuehrer Order—about the existence of the Fuehrer Order—for the first time here from Mr. Wartenberg.* The question was never put to me whether I knew the Fuehrer Order, but Mr. Wartenberg told me the fact that the Fuehrer Order existed.

Q. And when was that?

A. That was during an interrogation. It must have been the last interrogation, I believe on 23 July.

Q. 1947?

A. 1947, yes.

Q. So that although the order was issued in June 1941 or perhaps even in May, but at any rate in that period, 6 years went by before you learned of it, is that right?

A. Yes, your Honor. That is right.

Q. In your conversation with Thomas, was nothing said about the order to liquidate Jews?

A. No. Nothing was mentioned.

Q. How long were you in Russia?

A. I was in Russia actually 7 to 8 weeks altogether. From the middle of March until about the middle of July I was in Russia, but there were interruptions.

* Member of prosecution staff who conducted interrogations in this case.

Q. And, during all this time, did you have conversations with your sub-Kommando leaders?

A. Your Honor, I can only say that not even once was I told anything about the existence of such a Fuehrer Order.

Q. Did you have conversations with your sub-Kommando leaders? That was the question.

A. Yes.

Q. And did you discuss with them what had to be done?

A. Well, your Honor, the tasks were currently discussed. Perhaps I may—

Q. Now, please answer the question. Did you discuss with your sub-Kommando leaders what you had to do?

A. Well, I for my part—

Q. Yes or no?

A. Of course, we talked—

Q. Very well.

A. About—

Q. That is all. Now you have answered the question. When you arrived in Russia were you told about the orders which were pending, and which had been executed by your predecessor in the course of his duties?

A. No. Nothing was mentioned. As orders I merely got to know those which the army had issued concerning the civilian population.

Q. You told us that in Berlin you were instructed that you would go to Russia and there would find detailed orders. Did you say that?

A. Yes. I said that decrees and orders by the army existed, yes.

Q. Well, now, your Kommando had been in existence prior to your arrival there?

A. Yes.

Q. And who was the previous Kommando leader?

A. My predecessor was Major [Sturmbannfuehrer] Braune.

Q. Braune? Did you talk with him when you arrived?

A. Yes. I talked to him.

Q. And did he tell you about the orders which he had received and which he was putting into effect?

A. No. He merely pointed out to me, in the general conversation, the general orders and decrees from the army high command—

Q. Well then, he did talk to you about the orders which he was called upon to execute?

A. Your Honor, I misunderstood you then. We did not talk about the detailed orders, about each individual decree by the army high command, but we merely discussed the general affairs. He told me in broad outline that certain decrees and orders from the army

existed for the civilian population which had been publicly announced, and these orders were in the hands of the chief of the executive department.

Q. Well, he told you about the orders which he was called upon to put into effect, didn't he?

A. I would like to say, your Honor, what was the mission of the Kommando from the time when I took over the Kommando.

Q. Now, you please answer the question? It is not a difficult question, and I don't see why you won't answer it. I merely ask you, did you talk with your predecessor Braune, and did you discuss with him the orders which he, Braune, had been executing prior to your arrival?

A. No.

Q. Did he tell you about the orders which he was going to turn over to you to put into effect?

A. Braune did not have to turn over orders or decrees to me, and he did not do it in fact. He merely told me and showed me how the front area was and the present situation in the front area, and apart from that he introduced me immediately to the army high command and to the liaison officer who was appointed for this. The situation I saw was this, that—

Q. Just a moment now, did he not say to you, "Now, Haensch, I am turning over the Kommando to you, I have been here so long and this is what we have done. I have here certain orders and I turn them over to you to put into effect." Did he say anything like that?

A. No, your Honor, not in that form.

Q. Now, tell me—but very briefly, briefly please, just what he told you to do? Keep in mind, here is a man who is in charge of an organization and he turns it over to his successor who has just arrived. Now, what did he tell you, briefly?

A. Braune told me that the front area had to be guarded and the Kommando had to look after this task, in particular to guard it against partisans and newly infiltrating elements who constantly increased in the front area and were becoming very active there and—

Q. All right. Now, that's one item, to cover the front line area and to guard against elements infiltrating through; one, all right. Two, what's the next thing he told you to do?

A. This was the mission of the Kommando. He emphasized particularly that it was the work in the Kommando, was running smoothly and according to schedule; in this I could rely on the executive officials and beyond that, I should and could turn to the liaison officers of the army who had been in good relationship with him and his predecessor, and to whom—

Q. He did not mention Jews at all?

A. No.

Q. Did the word "Jew" ever fall from his lips in his conversations with you?

A. Your Honor, I don't know now but I can't imagine—the idea of measures against Jews—

Q. Now, just a moment please, Witness. Witness, now you must answer questions, not make a speech each time something is directed to you. Did the word "Jew" ever fall from the lips of Werner Braune when he discussed with you what were your duties as his successor?

A. I don't know, your Honor. I cannot remember, that—

Q. Did it or did it not?

A. No. I can't remember.

Q. No. All right. Did the word "Jew" issue from the lips of Streckenbach when he instructed you as to what you were to do in Russia?

A. No.

Q. Did Heydrich ever mention the word "Jew" to you in his conversation with you?

A. No. With no word.

Q. From February to July, when you were in Russia, did anyone ever mention the word "Jew" to you?

A. Yes.

Q. Who?

A. Well, I am just thinking that it was mentioned during discussions which I had, for example—

Q. Not for example. I want to know who mentioned the word "Jew" to you.

A. I could name Thomas himself. When Thomas came on an inspection visit.

Q. All right.

A. When Thomas came on an inspection.

Q. Yes, and what did Thomas say about Jews?

A. When Thomas came on an inspection visit he asked whether in the territory any Jewish artisans existed as there was a great lack of craftsmen in the Ukraine altogether, and in the Ukrainian territory the Jews mostly did the skilled labor.

Q. And what did Thomas ask about the Jews? Did he ask you to get some Jewish workers for him?

A. This was not necessary, your Honor, because he did not know that in our territory, that in the territory under the Kommando such Jewish craftsmen did not exist.

Q. Well, he mentioned Jewish skilled labor. Did he ask you to get some for him, or did he tell you that there was a great lack

of them? In what connection did he talk about this Jewish skilled labor?

A. That is what I wanted to mention before. In this connection he said craftsmen were urgently required for work essential for the war and in Dnepropetrovsk large workshops were being set up for which craftsmen were particularly required who were to be used there to do work essential for the war, in particular tailors—

Q. But now please restrict it to the Jews. Please don't ramble all over the place. What did he say that he wanted about the Jews?

A. He mentioned this in connection with these workshops and said if Jewish craftsmen existed in this territory they were to be assigned to these jobs.

Q. Yes. Then he asked you to gather whatever Jewish craftsmen you could and send them to these plants; is that what he told you?

A. Yes, your Honor, but this not only concerned Jewish craftsmen but it was like this—

Q. Now, just a moment. Did he tell you, "I want you to get some Jewish craftsmen or as many craftsmen as you can, but where they are Jews you are not to liquidate them, in spite of the fact that there is a Fuehrer order out to the effect that the Jews are to be liquidated." Did he tell you that?

A. Your Honor, liquidation of Jews was never mentioned at all, and I cannot say anything else. I already said this to Mr. Wartenberg, that for the first time I heard about this fact was here and may I add one thing now? The following happened during my time in the territory of Sonderkommando 4b. I know that quite a number of Jews, and as far as I remember there must have been more than a hundred, were used as horsecart drivers for the army. From the rear they brought up new vehicles to the front; that must have been in April or May—

Q. All right. That's enough. You told us that you know that a hundred Jews were used as drivers for the army. It isn't necessary to go into so much detail.

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EXTRACTS FROM THE TESTIMONY OF DEFENDANT BRAUNE*

DIRECT EXAMINATION

* * * * *

DR. MAYER (Counsel for defendant Braune): When were the Jews, gypsies, and Krimchaks executed in Simferopol, with which you are charged?

DEFENDANT BRAUNE: In the first half of December 1941.

* Complete testimony is recorded in mimeographed transcript, 25, 26 November and 1, 2 December 1947, pp. 8004-8054; 8060-8228.

Q. How did these executions come about?

A. On one of the first days of December in the evening, the liaison officer of the 11th Army came to see Mr. Ohlendorf and told him that the army demanded the carrying out of the executions before Christmas.

Q. Were you present yourself when the liaison officer of the 11th Army told this to Mr. Ohlendorf?

A. Yes. I was personally a witness and a few more officers were present too.

Q. How did you conduct yourself in the face of this army order?

A. I immediately told Mr. Ohlendorf that for my weak forces it would be impossible to carry out these executions before Christmas.

Q. Witness, at this point, please tell the Tribunal about the strength of your unit.

A. When I left Odessa my Kommando had a strength of about 100 men, but all told, including drivers, interpreters, auxiliary forces, etc. In Simferopol, outside of an administrative officer and two aides on my staff I had no other people, except an officer who took care of the SD reports temporarily for 2 months and at times I had a noncommissioned officer who helped me in the handling of partisan questions which had become so extensive that I could not handle them myself. Everything else was assigned to the Teilkommandos, that is, the Teilkommando Simferopol, including the guard personnel and drivers who were necessary. Certainly it was not more than 25 to 30 men strong and the other Teilkommandos also were about the same strength. Yevpatoriya was a little stronger than Karasubazar and Alushta. I know that in the Teilkommando in Simferopol there were about three or four trained police and interrogation officials. With these forces it was practically impossible for me to carry out the required executions in Simferopol.

Q. What did Mr. Ohlendorf do when you told him that your forces were too weak to carry out the execution which was demanded by the army?

A. Mr. Ohlendorf recognized my objections as justified and with his agreement I went to see the G-2 of the army, Colonel Hanck, and described the situation to him.

Q. What was the result?

A. The result was that he managed to put at our disposal a large number of trucks with drivers, to furnish the gasoline, and a certain number, I don't remember how many, of field police, all of whom were placed at the disposal to help in this execution.

Q. Another question, Witness. Isn't it a mistake on your part when you say that Colonel Hanck was the G-2 of the army?

A. I beg your pardon. I made a mistake. Colonel Hanck was the Chief Quartermaster of the army.

Q. Therefore, he was the I1a?

A. No. In the German army his name was OQu [Oberquartiermeister], Chief Quartermaster. Whether he was the I1a, I do not know.

Q. Did you tell your superior, Mr. Ohlendorf, about the result of your conference with the G-2?

A. Yes. I reported about the conference.

Q. As for the forces furnished by the army as a result of this conference, did they also take part in the executions?

A. I cannot say specifically.

Q. Who then carried out the executions?

A. My Teilkommando chief, Sturmbannfuehrer [Major] Schulz, was responsible for carrying out the details. He had at his disposal the people furnished by the army, the newly arrived police company who was to relieve the company so far in operation and who had not yet been distributed among the Teilkommandos. Furthermore, I think I recall that Kommando 11a or 10b, or even both, furnished forces by order of Ohlendorf. Finally there were the forces of the Teilkommando and my guard personnel.

Q. Who carried out the execution itself?

A. The execution Kommandos were, as far as I recall, furnished mostly by the police company, but here I cannot give any specific details as to who was used for the transport, who was used to block off the area, and who was used to do the shooting. I believe that people rotated.

Q. Witness, did you supervise the execution?

A. Yes, I did. It took place under my responsibility. Once I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment. I personally was there several times more, and I supervised. As I heard, the adjutant of Ohlendorf was there once, and saw that everything was carried out according to the instructions. Furthermore, my Teilkommando chief, Sturmbannfuehrer [Major] Schulz, was always present, the company commander of the police company, and, I think, another captain.

PRESIDING JUDGE MUSMANNO: Who was the adjutant, please?

DEFENDANT BRAUNE: That is the co-defendant Schubert, your Honor.

DR. MAYER: Witness, did your supervision extend to blocking off the area and the transporting of the victims?

DEFENDANT BRAUNE: I think I have already said that I super-

vised the entire process, that is the blocking off and the transport too.

Q. In these executions were Krimchaks shot also?

A. Yes. On this occasion the Krimchaks living in Simferopol were also shot.

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CROSS-EXAMINATION

MR. WALTON: Dr. Braune, it is true, is it not, that you joined the SD voluntarily?

DEFENDANT BRAUNE: Yes. I joined the SD voluntarily.

Q. And that was in 1934, was it not?

A. It was exactly on 18 November 1934.

Q. Is it not further true that as a result of this voluntary entry into the SD you became a member of the SS?

A. I already said this in my direct examination. By joining the SD I became a member of the SS special formation called SD.

Q. Now as an old National Socialist and an SA-man you, of course, knew that when you entered the SD you, as a matter of course, became at the same time a member of the SS, did you not?

A. Yes, I can only repeat what I said before: I became part of the special formation of the SS which was called SD.

Q. You knew that would happen before you even went into the SD, didn't you?

A. Of course I knew that.

Q. Now, the defendant Biberstein testified here that the SS was known in 1936 as the most ideal and most unselfish representative of National Socialism and was highly regarded by the population. May we assume that you also were of this opinion?

A. Yes. I had the same opinion, Mr. Prosecutor.

Q. Have you, between 1934 and 1945, changed your opinion about the SS?

A. I can only talk about the field where I was active myself, and from my own knowledge. I have no reason to change this opinion basically at all. I believe that in the last years before the end of the war many people would have liked to join the SS and become SS leaders who don't want to have anything to do with it now.

* * * * *

MR. WALTON: Doctor, let us pass to some of your specific activities. In your statement, Document NO-4234, Prosecution Exhibit 163, in paragraph 3 thereof, you relate one instance of the execution of a number of Jews. Who rounded up these Jews?

DEFENDANT BRAUNE: Under direct examination I said that prior to my term of office, identification and registration were carried out, that is to say, before I assumed office, and it was the

commander of 10a that dealt with it; when orders had been received from the army for the commander to concentrate the Jews, they were rounded up.

Q. Did I understand you to say that the commander of 10a—what is this designation? Will you go a little further into details?

A. Under direct examination I said that at Simferopol a Teilkommando, which was part of Kommando 10a, a few days after arrival was subordinated to me. The way I remember it is that originally it was Kommando 10a.

Q. Thank you. The translation came over in better shape that time. Well, approximately how many Jews were there in this number which were executed?

A. I have already said here that I cannot give you a definite figure. As far as I remember, I gave you the exact number of Jews present in peacetime in Simferopol. I also told you that at least half of them had escaped, but I cannot give you the exact figures.

Q. Can you give me an approximate figure?

A. No. I cannot do that either, unless I can just work it out this way. There were approximately 10,000 before, half of whom had escaped and from that I can deduce that in all circumstances there must have been fewer than 4,000 to 5,000, but I cannot give you an exact figure.

Q. Then there were more than 1,000 executed during this one instance, is that what I am to gather?

A. I think I am certain that there were more than 1,000.

Q. Were women and children included in this number in this incident?

A. Yes, but I have to add that on account of the rumors and on account of people escaping I think there were only a very few children. Anyway, I myself never saw children being shot, but there were women among them for certain.

Q. Do you remember approximately how large the execution squad was that performed this execution?

A. They were detachments, I believe, of 10 men. In each case there was a military commander. The exact number of these squads I cannot give you.

Q. Were they composed of regular police or state police, army, and Gestapo?

A. I have already told you that the majority of them were companies from the regular police, but I cannot give you any details as to their composition, all the more so because I believe that I remember that they were being relieved at the time.

Q. Am I to assume that these executions were ordered by the army?

A. Mr. Prosecutor, it happened the way I described it to you.

The liaison officer came and told Mr. Ohlendorf the army demanded the execution to be carried out before Christmas. Naturally, above all, there was the Fuehrer Order, unchanged and valid as before.

Q. Well, why didn't you include this fact, since it was so important, in your affidavit, or, I am sorry, in your statement?

A. Mr. Prosecutor, I believe I can remember perfectly well that I told Mr. Wartenberg at the time that the things which he had put into the affidavit only constituted a small fraction, but I believe, I am certain I told him that it was the army which gave that order. In fact, I believe that I can remember just now that that is contained in my statement. Perhaps I can just have a look. Yes, I have found it. May I quote—

“The 11th Army had ordered that the execution at Simferopol was to be finished before Christmas.”

That is in my own statement which I deposed at the time. It is on page 2, Mr. Prosecutor, and it is the last paragraph.

Q. By that you meant that the army ordered all executions of Jews in Simferopol to be finished by Christmas, is that correct? Was it this one that you specifically state, or all others?

A. Mr. Prosecutor, the Fuehrer Order was there and now the army said “We want it finished before Christmas.” I wasn't able at the time to find out all the reasons. Maybe the reasons were strategic reasons, military reasons, which caused the army to issue that order. Maybe they were territorial questions. Maybe they were questions of food. The army at that time was afraid that hundreds of thousands of people might have to starve to death during that winter, because of the food situation, but all those are suppositions on my part and I cannot tell you what was the ultimate reason for that order given by the army.

Q. Are you trying to tell us now that the execution of all undesirables was ordered because there might not be enough food for them?

A. No, Mr. Prosecutor, all I wanted to say was that might have been the reason for the army to issue that order at that particular time. The over-all principles of the matter were not affected by that.

Q. Were there any executions carried out in Simferopol after Christmas 1941?

A. Certainly, executions were carried out after Christmas, 1941, Mr. Prosecutor.

* * * * *

3. GENERAL DEFENSES AND SPECIAL ISSUES

a. Superior Orders

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT NAUMANN*¹

* * * * *

I have set forth that Naumann did not participate in the carrying through of the Fuehrer Order and that he himself did not give orders for executions.

Even if such a participation could, however, be considered as proved, a punishment because of this would be impossible since Naumann's behavior would be due to an order issued by Hitler. That this order did exist, and that it existed during the whole period in which Naumann was chief of the Einsatzgruppe B, cannot be doubted according to the results of the evidence presented. As regards this, I particularly refer to the testimony of Ohlendorf (*Tr. pp. 523-524*), (*Tr. pp. 1812-15*), Nosske (*pp. 350-05*), who gave a detailed description of the way in which the Fuehrer Order was given to the commanders of the Einsatzgruppen and Einsatzkommandos in Pretzsch.

For the examination of the question as to whether, and to what degree, the plea of acting on higher orders precludes punishment, it is first of all of decisive importance according to which law this objection is to be judged.

During the proceedings against Flick² and others, Military Tribunal IV declared that it was not a tribunal of the U.S.A. and, therefore, did not have to apply American principles, but that it was an international tribunal and that, therefore, the facts were to be judged according to international law. (*Page 3 of the judgment of 22 December 1947.*) I must suppose that this principle applies generally to the military tribunals here and that, therefore, in this trial the plea of acting on superior orders is to be judged according to the international law in force at the time of the action.

As I shall set forth, the plea of acting on superior orders was thus far admissible in international law. This result cannot be altered either by the London Charter or the Control Council Law No. 10. The Charter and Control Council Law No. 10, therefore, can only be applied inasmuch as they coincide with the hitherto recognized rules of international law. No new international law could, however, be created by the Charter and the Control Council

¹ Complete closing statement is recorded in mimeographed transcript, February 1948, pp. 5812-5862.

² United States vs. Friedrich Flick, et. al. See Vol. VI

It has generally been recognized that it is unjust to punish a person who acted in compliance with an order. For, if he had refused to comply with the order, the subordinate would probably have been shot. In such cases, therefore, justice requires the punishment of the person who is responsible for the order and not that of the one who executed the order. If the commission nevertheless declined to use the principle, which could have arisen from this, it was feared that then every subordinate who committed a punishable action would plead to have acted on superior orders, and, since according to the general rules of the code of criminal procedure the state has to bear the *onus probandi*, it would then be impossible to punish subordinates for the perpetration of punishable actions. It was only for that reason that the plea of superior orders was not generally considered as admissible, but it was left to the court to decide whether the plea of superior orders is to be considered as admissible. From these results, the plea of superior orders is to be declared as admissible if the existence of such an order is incontestably to be considered as proved.

In the case on trial before this Tribunal the plea of superior orders would be admissible according to this report of the commission, since it is without doubt established that the defendants acted in compliance with an order issued by Hitler.

As for (b).—The British military code, issued as early as 1715, already provided that every soldier had to obey every order given by his superiors regardless of whether the order was in accordance with the law or in violation of the law. In this respect, I refer to the statements of Professor Lauterpacht in the essay in the "British Year Book for International Law" issued in 1944.¹ In the following period, this conception became a principle in the armies of all nations. Moreover, since 1914 the field regulations of the armies of most nations have accepted this principle that the plea of acting on higher orders was admissible to be true, for the reason that the admission of the plea of acting on higher orders had already become common law.²

In the same way, the British Manual of Military Penal Law and also the Rules of Land Warfare have explicitly declared the plea of acting on higher orders as admissible. Up till April 1944,

¹ Lauterpacht, *The Law of Nations in the Punishment of War Crimes—in the British Year Book of International Law, 1944*, p. 71: "The Military Code of 1715 provided that any officer or soldier who should refuse to obey the military orders of his superior officer shall be liable to capital punishment. *The code contains no qualifications as to the lawfulness of the command.*"

² George Manner, Instructor in Political Science, University of Illinois, in the "American Journal of International Law," No. 3, July 1943, p. 417: "Since 1914, at least, the maxim has been incorporated in the war manuals of the powers as a rule of the customary laws of war."

the provision was contained in paragraph 443, chapter XIV of the British manual that soldiers cannot be considered war criminals if, by acts they were ordered to carry out by their governments or their superiors, they had violated recognized laws of war. This provision explicitly precluded a punishment by the enemy. To this effect I refer to the statements in Law Reports of Trials of War Criminals, Volume I, page 18, 1947, where, with reference to the fundamental statements made by Oppenheim in his book International Law (Vol. II, p. 454, 5th Edition), it is furthermore established that in such a case the enemy can only call to account the officials or commanders for the issue of such orders.¹

In regard to the contents, the Article 347 of the American Rules of Land Warfare correspond to the provision of paragraph 443² of the British manual. According to this provision, members of the American Armed Forces must not be punished if they had committed a punishable act on orders or even with the approval of their government or commanders. The commanders themselves rather could only be called to account.

In both provisions, the fact is significant that no distinction was made between a lawful and an unlawful order and that the subordinate person did not even have the right, and much less so the obligation, to examine the lawfulness and legality of an order.

The provision contained in paragraph 483 of the British manual (British Manual of Military Law) was rescinded on 15 April 1944. Since that time the plea of acting on higher orders is no longer admissible.

A similar amendment of the American field regulations was published on 15 November 1944 through Amendment No. 1 of the Rules of Land Warfare.

In this respect one cannot help thinking that the amendment was evidently made in view of the impending end of the war and the contemplated trials of war criminals.

. DR. GAWLIK: Your Honors, after I wrote these lines and after I handed in my final plea I received the book by Sheldon Glueck,

¹ Law Reports of Trials of War Criminals, Vol. I, 1947, p. 18: "Until April, 1944, Chapter XIV of the British Manual of Military Law contained the much discussed statement (par. 443) that 'members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to other means of obtaining redress * * * "This statement was based on the 5th edition of Oppenheim's International Law, Vol. II, page 454."

² "Individuals of the armed forces will not be punished for these offenses in case they are committed under the order or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

“War Criminals, their Prosecution and Punishment”, 1944, and I found this opinion confirmed in the book. My colleague, Aschenauer, has already commented in detail on this book. Therefore, I shall not go into any detail but I call the attention of the Tribunal to several sentences from this book which I shall ask the interpreter to read.

INTERPRETER: From page 141 of Sheldon Glueck’s book. “The provisions in the American rules quoted above seemingly protect them against punishment not only in the case of orders of their Government (and perhaps acts of state) but also as in doing the prohibited act, they obeyed the order of a military superior, even though they know their acts to be contrary to the laws and customs of legitimate warfare.”

DR. GAWLIK: Even Glueck who, as the book shows, is not at all pro-German and who attempts to establish a procedure for the trial of war criminals, cannot get over the exclusion of the plea of superior orders. If Naumann in 1943 or 1944 had been tried before an American military tribunal for the charges raised against him now he could not, on the basis of this Article 347, in the Rules of Land Warfare, have been punished according to this rule. I emphasize expressly that this regulation also applies to enemy nationals. Through the change in this regulation, this plea of acting on superior orders could only be amended to refer to those actions committed after 15 November 1944 but not to those committed before that.

The retroactive application of this regulation would have the same significance as one of the laws promulgated by the Nazis on the occasion of the burning of the Reichstag, namely the retroactive admissibility of the death penalty for arson. At that time the world raised a hullaballoo, they spoke of a violation of the law, they spoke of the beginning of the dissolution of the legal state, and one could say that those people were right. I have too great a confidence in this Tribunal and, therefore, I do not believe that they will build up their judgment on such an insecure position.

I shall continue in the final plea—

Moreover, Winthrop, the well known professor of the American Military Penal Code and author of the book *Military Law and Precedents*, admits the plea of acting on higher orders and expresses the opinion that an order precludes punishment.* As a reason for this opinion held by him, he asserts that obedience was the fundament of every army and that the subordinated person was, therefore, not under the obligation to decide by himself about the question whether an order given him was lawful or

* Winthrop, p. 296: “That the act charged as an offense was done in obedience to the order—verbal or written—of a military superior, is, in general, a good defense at military law.”

unlawful. Such a conduct by the subordinated persons would, according to Winthrop's point of view, mean insubordination and would lead to undermining military discipline.¹ In this connection, Winthrop also refers to a decision by the Supreme Court which likewise comes to the same result. It is said in this decision that it would mean the end of all discipline if, for instance, sailors aboard a warship on the high seas would, on the basis of their personal sense of justice, have the possibility to shake off the power of command of their commander by reasoning that they considered the execution of the order an unlawful act.²

Therefore, it can be established as a principle of international law that the obligation for obedience on the part of the soldier, and such was Naumann during his time of duty in Russia, is not preceded by the obligation to examine whether the order is in violation of any law, especially the laws of war.

The Tribunal in examining this legal question will not disregard the existing conditions in Germany.

I can understand that repeatedly it may have appeared inconceivable to the Tribunal if defendants in this trial, interrogated as witnesses in their own defense, have again and again referred to the fact that it was their duty to carry out the order and that they had no authority to decide about the legality of the order.

Germany is a state in which for centuries obedience has been preached as the supreme duty of the citizen. The army and the civil servants were the pillars of the German state. It was the supreme duty of both to obey, and unconditionally comply with, the orders given by superior authorities. This is a fact which is based on the historical conditions of Germany, especially on the historical development of the past 150 years, a development which is completely different from that of the United States.

The principle that obedience was the supreme duty of every citizen was emphatically advocated especially in the National Socialist Fuehrer state. The individual citizen was not entitled to voice his own opinion. Neither was he permitted to express any criticism on measures taken by the state administration.

Conditions in Germany, therefore, were completely different from those in a free democracy. To be true, it is correct that the

¹ Winthrop, p. 296: "But for the inferior to assume to determine the question of the lawfulness of an order given him by a superior, would in itself, as a general rule, amount to insubordination, and such an assumption carried into practice would subvert military discipline."

² Supreme Court in leading case in the navy, *Dinsman v. Wilkes*, 7 Howard, 408, quoted by Winthrop, p. 296: "There would be an end of all discipline if the seaman and marines on board a ship of war on a distant service were permitted to act upon their own opinion of their rights, and to throw off the authority of the commander whenever they supposed it to be unlawfully exercised."

provisions of the British Manual and the similar provision in the Rules of Land Warfare of the United States, with respect to the plea of acting on higher orders, have undergone a change insofar as the plea of acting on higher orders was no longer admitted to the extent that this was the case in the past. However, during the period in which Naumann was chief of the Einsatzgruppe B, namely from the end of November 1941 till March 1943, the old provisions of the aforementioned field regulations were still fully valid.

The opinion held by me, concerning the admissibility of the plea of acting on higher orders, is not refuted either by Article 47 of the German Military Penal Code which in this connection has been repeatedly mentioned in this courtroom.

The provision of Article 47 * of the Military Penal Code cannot be applied if only for the reason that it is not applicable to orders given by the chief executive of the state. This interpretation results in particular from the meaning of this provision.

The provision of Article 47 of the Military Penal Code always presupposes that the possibility to refuse obedience must be based on the possibility to complain to the superior officer of the person who had given the order so that he might find justice there. Only in this case can he make use of the provision of Article 47 of the Military Penal Code. If the soldier does not have this possibility, then his refusal to obey an order entails a severe punishment without examining the lawfulness of the order, and the unlawful act, as ordered, cannot be prevented.

The provision of Article 47 of the Military Penal Code, therefore, applies, for instance, to the common soldier who refuses to carry out an unlawful order given to him by his lieutenant, because he then has the possibility to complain to the superior officer of the lieutenant. Moreover, an unlawful order given by a general can be rejected since in this case the possibility is given that he who received the order can turn to the general's superior. This possibility, however, does not exist if any orders, which henceforth are found to be unlawful, have been decreed by the chief executive of the state. And this possibility by no means exists if the orders are issued by a dictator who combines in his hand all instruments of power of the state, as this was the case with Hitler, a dictator who, by use of all means at his disposal, would have actually executed the orders he decreed.

What action should the defendants take against the orders given to them by Hitler? How could they have prevented the execution of these orders? Whom could they approach in order to find

* Text of Article 47 is quoted on page 58.

justice in respect to the unlawful orders given by Hitler? Under the present circumstances, it is simple to assert that the defendants ought not to have carried out the order. No answer, however, can be given to the question what action they ought to have taken, in the situation in which they were at that time, to prevent the execution of the order. Even according to the prevailing German law itself, unlawful orders are effective.¹

According to the French penal code too, the soldier is obligated to obey an order of the legitimate authorities, regardless of whether the order is lawful or not. The soldier solely has a right to complain after the execution of the order. In this connection, I refer to the statement by Cobbett.² Moreover Garner, who in his statements refers, among others, to the view of Professor Nast of Nancy University and to the example mentioned by the latter, has come to the same conclusion.³ Professor Nast has added further explanations to this question. In this he comes to the conclusion that the *sedes materiae* of French law is article 64 of the Penal Code, according to which an act committed under duress does not constitute a crime. Among these acts Professor Nast also includes cases in which a soldier has to carry out orders. In this connection, Nast also mentions the Belgian and Dutch Criminal Codes, which contain the same provisions. In this connection, he refers particularly to Article 43 of the Dutch Criminal Code, according to which a defendant is expressly exonerated by orders from superior authorities.⁴

As for Authors' Hypotheses—The hypotheses adopted in legal literature are not sources of international law. This is generally recognized in international law. I particularly call attention to the

¹ So binding, Manual of the Penal Code (1885), p. 804, furthermore Girginoff, p. 18, Battenberg, p. 3, 73, Frank, p. 148 and Eberh. Schmidt, p. 58. Very clearly in this meaning RMG. 1, 63: evidently also Rittau, decree 2, (p. 98 *ibid.*)

² Cobbett, vol. II, p. 176/77: "By the French penal code the civilian is immune if the order is lawful and commanded by the legitimate authority. But it has been held that the soldier is bound to obey the order of the legitimate authority, whether lawful or not. He may also protest afterwards."

³ Garner, vol. II, p. 486: "Article 64 of the French criminal code lays down the rule that an act committed by a person who has been constrained by force is neither a crime or a misdemeanor (Délit.). Professor Nast of the University of Nancy has expressed the opinion that the immunity would cover the case of a soldier who is compelled to commit an act in violation of the laws of war and that therefore German soldiers who were compelled by their commanders to participate in the spoliation of French industrial establishments and the removal of their machinery to Germany, although the acts were contrary to the Hague Convention, were not liable to arrest and trial by the French courts."

⁴ Prof. Nast, *Revue Générale de Droit International Public*, 26 (1919), p. 123: "The crucial *sedes materiae* in French law appears to be Article 64 of the Criminal Code according to which an act committed under duress (which apparently includes the case of a soldier bound to obey orders) is neither a crime nor a misdemeanor. Art. 327 excludes liability in case of acts 'ordonnés par la loi et commandés par l'autorité'. So does Article 190, Articles 70 and 71 of the Belgian Penal Code reproduce substantially Articles 64 and 327 of the French Penal Code. Article 43 of the Dutch Criminal Code recognizes generally the defense of superior orders, while Art. 40 lays down the general exception of duress."

explanations of Wharton, who refers to statements by Chief Justice Cockburn. There it is said that authors in the field of international law, no matter how valuable their efforts may always be with respect to the interpretation and definition of fundamental legal provisions, cannot make any laws, because laws, in order to be binding, require the agreement of the nations, which can take place by treaty or through suitable statements by the respective governments, or even through established tradition.¹ A conviction, therefore, cannot be based on the fact that individual scholars of international law adopt the viewpoint that the appeal to a superior order is inadmissible.

Moreover, the question of the admissibility of the appeal to the superior order is very much contested in legal literature. It is in no case rejected by the majority of authors.

The appeal to a superior order is first declared admissible, as already mentioned by Winthrop, who recognizes as a defense the fact that the incriminating act was committed in pursuance to an order by a superior.² Likewise Garner, the well-known Professor of International Law at the University of Illinois, declares that it would be unjust to deny the right of a person under military orders to appeal to a superior order. Garner particularly emphasizes that it is not the task of a military subordinate to examine the lawfulness and legality of a military command.³

He is of the opinion that justice requires that that person be punished, first of all, who bears the responsibility for the order and not that person who acts under duress.⁴ Professor George Manner of the University of Illinois is also of the same opinion.⁵ Likewise Oppenheim, the well-known British Professor of International Law, has adopted the view of his work "International Law" that the appeal to the superior order is admissible. In this

¹ Wharton, *Elements of International Law*, p. 23: "Writers on international law", says Lord Chief Justice Cockburn, "however valuable their labors may be in elucidating and ascertaining the principles and rules of law, cannot make the law. To be binding, the law must have received the assent of the nations who are to be bound by it. This assent may be expressed as by treaty or the acknowledged concurrence of government, or may be implied from established usage."

² Winthrop, *Military Law and Precedents*, p. 296: "That the act charged as an offense was done in obedience to the order—verbal or written—of a military superior is, in general, a good defense at military law."

³ Garner, Vol. II, p. 484: "He cannot discuss or question the commands that are given him; he is not the judge of their legality or illegality; and if he were, his ignorance of the laws of war would in many cases make him an incompetent judge."

⁴ Garner, Vol. I, p. 484: "In such cases therefore justice, it is said, requires the punishment of the officer who is responsible for the order rather than the simple soldier who acts by constraint and who has a power of judgment or discretion."

⁵ Manner, *The Legal Nature and Punishment of War Crimes*, p. 433: "Secondly, it appears to be equally admitted that the defenses act of State and superior orders and the maxim nullum crimen, nulla poena sine lege condition any prosecution for war crimes. The very fact that the writer suggests a reappraisal of these orthodox principles is only further proof of their general acceptance in positive law. 102".—102 Glueck, 10 *ibid.*, p. 145.

work he declares that violations of the laws of war are only crimes *if they have been committed without the order of the belligerent government*. He is of the opinion that members of the armed forces who commit violations of law at the command of their government are not war criminals and, therefore, cannot be punished by the enemy. In such cases, he grants the enemy only the right to resort to reprisals.¹

Lauterpacht, who brought out Oppenheim's work in 1940, after the latter's death, was the first to abandon this opinion. This view of Professor Lauterpacht, however, has found no concurrence elsewhere in legal literature. It has been particularly attacked by Professor Kelson in his work "Peace through Law", page 98, and described as more than questionable.

From these statements, it appears that accepted international law is solely and alone decisive in deciding the question whether the appeal to a superior order is admissible in this trial and that according to international law the appeal to the superior order is a reason for justification and exoneration from guilt.

b. Justification of the Hitler Order

PARTIAL TRANSLATION OF OHLENDORF DOCUMENT 38 OHLENDORF DEFENSE EXHIBIT I

EXTRACTS FROM EXPERT LEGAL OPINION PRESENTED ON BEHALF OF THE DEFENSE BY DR. REINHARD MAURACH

EXPERT LEGAL OPINION PRESENTED ON BEHALF OF THE DEFENSE

BY

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PROFESSOR OF CRIMINAL LAW AND
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² Originally called as witness by the defense; by agreement of prosecution and defense this legal opinion was submitted in lieu of oral testimony.

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INTRODUCTION

Subject and Outline of this Expert Opinion

The present expert opinion has to deal with only a part of the questions which will be discussed during the trial. It does not propose to investigate whether the acts of the defendants represent the characteristic elements of a given crime, i.e., whether they can

be classified as the types of offenses as outlined in the basically applicable Control Council Law No. 10. In that respect the individual counts of the indictment are assumed as proved, without any prejudice to the result of the evidence to be taken. Nor is the expert opinion aimed at investigating the *unlawfulness* of the conduct the defendants are charged with (use of possible objective arguments in defense). What remains to examine is the question of *guilt*.

This question, on the other hand, had to be propounded as a question of principle, because the defendants claim for themselves an exception and are pleading to have acted under necessity, which cannot but influence the degree of responsibility.

This justifies the structure of this expert opinion, the details of which can be seen from the table of contents.

I. SELF-DEFENSE

1. *According to German law*

a. In general. Self-defense (Art. 53 of the Criminal Code) is admitted as a legal defense plea; if it is given, unlawfulness of the act is excluded, the deed not only is excused by the law, but even approved of. The prerequisite for self-defense is an unlawful attack, that is, such an attack as the attacked need not tolerate. The attack need not have started; self-defense is also admissible against an *immediately imminent* attack.

Self-defense is applicable on behalf of all values; a limitation to body or life in particular is not provided. Entitled to self-defense, therefore, is also *the state as such, the existence of the people, the menaced vital interest of the nation* (Decision Reich Court in Criminal Matters, vol. 63, p. 220). The circle of values entitled to self-defense, therefore, is drawn much wider than according to Anglo-Saxon law.

b. Aid in self-defense, in particular aid in self-defense of the state. The person attacked is not the only one who can practice self-defense, but also any third party. This is particularly the case in so-called self-defense of the state. For self-defense on behalf of the state is always assistance in case of distress, and can, consequently, always be given by a third party only. The relation between offended and defended values is of no account, either in the case of self-defense or in the case of assistance to the state in distress. The intensity of the attack alone is decisive for the defensive action.

c. Putative self-defense and putative assistance in distress. This legal concept is not developed by law, but generally recognized in science and jurisdiction. It is given if the perpetrator was errone-

ously of the opinion that the prerequisite of an "unlawful attack" existed.

If the error was *unavoidable*, then putative self-defense counts as a defense *plea*; if, on the contrary, it was *avoidable*, then its legal value is disputed; according to one opinion, it excludes the responsibility of the perpetrator *on account of intent*, while according to a less widely held opinion only *extenuating circumstances can be pleaded while responsibility on account of intent is still operative*. According to both opinions, however, it is impossible to hold the perpetrator who believed in the justification of his deed as the result of factual error fully responsible within the meaning of the penal code.

2. According to Soviet Law

a. In general. The definition of self-defense according to Soviet Law, Article 13, paragraph 1 of the Penal Code of the RSFSR, and of the other Soviet Republics, dated 1926, corresponds in general to the German point of view. Here too, the state and especially the Soviet [Raeteorganisation] as such are entitled to self-defense; in contrast to German law the Russian law states even "verbis expressis" that self-defense (*neobhodymaya oborona*) may also be exercised in favor of that state (*sovietskaya vlast*). (Compare for more explicit information *Maurach*, The System of the Russian Penal Code, 1928, page 101.) A balance between the colliding values is no more required than by German law. In literature it is not clarified whether assistance in distress constitutes an exculpating defense or only an excuse.

b. Putative self-defense and putative assistance in distress are, just as in German law, not taken care of by law, but recognized by jurisdiction and literature. (Reference: *Maurach*, see above reference, page 102) and is indeed placed on the same level as the error in fact (*fakticheskaya oshibka*), intent is excluded, and at worst, guilt is treated as committed under extenuating circumstances. It is unimportant whether the error could have been avoided or not.

II. NECESSITY

1. According to German law

Necessity is, according to valid law, regulated in an insufficient, fragmentary, and casuistic manner. This situation was cleared up by the fundamental decision rendered by the German Supreme Court, Volume 61, page 242 and following pages. According to this the following applies:

a. In general. A difference is made between justifiable and merely exculpating necessity. Common to both is the existence of an urgent condition of danger to a recognized interest which can only

be removed by the infringement upon another unconcerned legal interest. If the threatened interest is preponderant, then necessity constitutes *reason for justification*; if no comparison between interests is possible and if life and limb of the party acting under necessity or that of a relative are threatened (Article 54 of the German Penal Code) then the necessity remains still an exculpating reason.

b. *State necessity* is recognized on principle in the same measure as assistance to the state in case of distress. According to a decision rendered by the German Supreme Court dated 3 April 1922, II 791-22, in particular also "the subversive actions of rebellious parts of the population in an area and the resulting increased insecurity of this area" have been recognized as an acute state of danger to the state. The German Supreme Court in Volume 60, page 318, has furthermore recognized the so-called continuous necessity and voiced the opinion that the continued endangering of the common weal by a certain person could under certain conditions justify the killing of that person as an act of necessity. The question whether a *state necessity* warrants the killing of a person has in contrast been left open by the German Supreme Court; this question has been discussed very often, especially during the period after the First World War, but has never been clearly decided.

c. *Putative necessity* has not been expressly regulated by law, but is recognized in theory and jurisdiction as a concept of common law. It is treated on principle just as putative self-defense (see above).

2. According to Soviet Law

Soviet Criminal Law, more modern than German law, has in Article 13, paragraph 2 of the Penal Code, a general definition of necessity. Thereby it has accomplished that for which German reform legislation has long been striving.

However, this definition is rather a summary one. Any actions taken through necessity are admissible without restrictions, if they are necessary to save higher values, in as far as the danger could not be averted in any other way (Maurach, also mentioned p. 103). It has not been clarified whether this constitutes justification or exculpation. The law does not deal expressly with the putative state of necessity; however, it will be treated as an error in the same way as a putative action of self-defense (see above).

III. CONCLUSIONS DRAWN FROM A COMPARISON OF THE TWO SYSTEMS OF LAW

If the principles common to both legal systems are examined, it will be found that a far-reaching concord of concepts exists.

a. *Self-defense.* Self-defense is admissible on behalf of all legal values, in particular the continued existence of the state, and the vital interests of the nation as represented by the state. If the state or the nation are directly threatened in their existence, any person—not only the man who has been appointed by the state for this purpose—can exercise aid in distress. Self-defense, respectively aid in distress, is determined by the violence of the attack, and does not exclude killing. An error concerning the prerequisites for self-defense, respectively aid in distress, must be treated as an error in fact [Tatsachenirrtum], and constitutes according to the motive, the avoidability, and also according to the extent of the error, an excuse, or at least an extenuating circumstance.

b. *Necessity.* According to both legal systems necessity is always permissible as a so-called last resort only. Necessity is applicable on behalf of all legal values in particular on behalf of the state and its institutions, as well as the welfare of the nation. Necessity exists when the imperiled legal values are considerably weightier than the interests violated by the perpetrator. A putative state of necessity should be treated in principle as a grave error, i.e., in the same way as putative self-defense.

C. INCLUSION OF THE CONCRETE CASE UNDER THE ESTABLISHED LEGAL PREREQUISITES

Having established a continental “Cross-Section” [Querschnitt] of the legal position as claimed by the defendant *Ohlendorf*, it can now be stated to what extent the *actual* circumstances, which determined the defendant’s actions correspond to the *criminology* relevant prerequisites as indicated above. Before that, however, reference as to the method must be made.

The defendants, and in particular *Ohlendorf*, do not claim that objectively conditions of assistance to the state in distress or state self-defense necessitating an emergency prevailed. But they do claim that because of the special situation in which they had been put and in which they were called upon to act, *subjectively* the condition existed for resorting to the previously mentioned legal concepts. The question whether objectively aid in self-defense and necessity prevailed whether (according to German terminology) a reason for justification [Rechtfertigungsgrund] was given is *not even to be examined*. Nevertheless, the following examination cannot omit a discussion of the objective prerequisites concerning self-defense and state of necessity.

Such an examination is necessary, in order to discover where the defendant Ohlendorf erred concerning the justification of his actions; for, the more the objective situation coincided with the picture the defendant had in his mind, the more relevant becomes

his defense that, because of an error, he considered his actions permissible and necessary. Having mentioned this, the discussion will have to be classified in accordance with the following viewpoints: (1) *Objective* prerequisites, i. e., prerequisites which did not only exist in the mind of the defendant, but which were actual facts *the nature of the war against* the Soviet Union. (2) prerequisites, i. e., prerequisites that did not prevail, whose subjective assumption, however, brought about the error in fact of the defendants regarding the prerequisites of self-defense by the state and state necessity, e. g., the *East European Jewish problem as part of the problem of bolshevism*: origin and effect of the defendant's delusions that a solution of the problem "bolshevism versus Europe" could only be brought about by solving the Jewish problem, and thus in their own sphere, only by executing the Fuehrer Order.

1. *The objective prerequisites: The war against the Soviet Union as exceptional war.* There is no need to point out that the state of war *as such* does not vindicate extraordinary actions, prohibited by international treaties and common law practices, either on the premise of self-defense or a state of necessity. If this were the case, international law would be rendered illusory, since at least one of the warring states could invoke self-defense as an excuse, while necessity could be claimed by all parties concerned. *Therefore, a state of war as such does not in itself justify self-defense or necessity.* This presupposes, however, war in the strict sense of international law, i. e., armed conflict between two states. *If however the armed conflict stands from the outset under an aspect by far surpassing the extent of war and its limits, in other words, if the war aims and methods of one of the opponents can with certainty be expected to be "total" to such a degree that in the face of them the traditional conceptions and limitations of international law would fail, during hostilities, the opponent of such a state cannot be denied the right to claim self-defense or necessity.*

It must be examined, therefore, whether the Soviet Union possessed the qualifications of a belligerent opponent within the limits of international law. It cannot be denied that the Soviet Union possesses the status of a state, and thus is a potential belligerent. It can be questioned, however, whether the Soviet Union, according to her own governmental teleology and ideas, should be considered, in the face of her war aims and methods, a belligerent, thus forcing a presumptive opponent *ipso facto* into a position of self-defense a status in war, deserving recognition by international law. In 1941 the German war leaders took this viewpoint. The justification of this position will be examined as follows, in the following three sections:

- a. The U.S.S.R. until 1941.
- b. The U.S.S.R. during the war.
- c. The U.S.S.R. after the war.

* * * * * * *

(bb) *Conduct of the so-called partisan warfare*

* * * * * * *

This is the place to say with special emphasis that the killing of entire national groups is not justified by "collective suspicion", of any group, no matter how grave this might be. This opinion is merely concerned (just as in the analysis of the partisan movement above) with advancing proof that the Soviet conduct of war created *an atmosphere suggestive of the absolute predominance of "raisons d' état"*, a psychological delusion to the effect that the well-being or ruination of individual national groups or nations should not play a restraining role in this war, and that under certain circumstances even considerations of ethics and morals were to give way to military success. Any hesitations and scruples which the defendants had upon receiving and carrying out the extermination orders necessarily had to lose some of their weight in the face of reports of the unimaginable way in which the Soviet High Command treated its own peoples which were constantly leaking through the front lines.

2. *The subjective prerequisites: bolshevism and Judaism*

The arguments to 1 intended to show the presence of an actually existent, objective and exceptional situation in Germany's war against the Soviet Union. The enemy was not a state securely linked to the community of nations consisting of one nation or a self-sufficient union of nations, but rather an ideology that considered the state it had created only as one of the vehicles of its power, that basically denied the forms of existence of other nations and states, and which had unmistakably shown in all of its assertions of power up to the outbreak of the war that it would not consider the coming conflict merely as a "war", i. e., as an armed conflict that would be waged according to certain minimum international rules, but that over and beyond this it was determined to fight it out without regard to basic agreements and with every means at its disposal. All persons in authority in both the German and the Soviet Russian camps were well aware, even before it began, that the war in the East could not be considered a "normal war".

It has already been emphasized that the issuing and executing of orders for mass executions cannot find any justification in international law, even within the scope of a total war of this kind, and in particular cannot allow of any appeal to the objective premises of self-defense and necessity. The question, however,

whether the objective premises for an emergency removing general rules of conduct were present is not alone decisive in judging the above matter. That would be the point in question if, for example, we had to examine whether the German Reich, as subject of international law, was guilty of a so-called offense against international law. *In this case, however, the issue is not the responsibility of a state according to international law, but rather of the criminal responsibility of individuals acting for the state.*

Here not only the objective circumstances are decisive (the presence of an "attack" implying self-defense, or the presence of an imminent danger which cannot be removed by other means, indicating a necessity), but the important point is how the persons involved (the defendants) looked upon and had to look upon this emergency or danger subjectively. A *justification* according to criminal law, indeed, should be limited to an examination of the objective criteria (and, as has been said, such objective criteria would be found not to have existed) but since we wish to examine here whether the facts exclude criminal guilt, we cannot bypass the subjective positions because, strictly speaking, they are always the basis for the (always subjective) compulsion or emergency which leads to the commission of the conduct alleged to be criminal, "in truth the defense is not necessity but rather the *assumption* of necessity" (Radbruch in his festive publication for Frank, 1930 Vol. I, p. 166). The thing that must be examined now is the compulsion as it developed, and had to develop in the imagination of the defendants. We have already presented this premise under 1. We had seen that the war which had broken out against the Soviet Union, as a vehicle of bolshevism, was bound to lead, from the beginning and on both sides, to means of combat and measures of protection which had never been used to the same extent in other wars.

General extermination measures cannot be justified by any war situation, no matter how exceptional; therefore we must examine to what extent they could have seemed necessary subjectively. And this leads us to the question of the relationship of bolshevism and Judaism (*a*) in reference to National Socialist ideology and (*b*) in reference to the conceptions of the defendants themselves.

a. The merger of the "Jewish problem with the Bolshevist problem" according to the official Nazi theory

The ideological merger of the two centers of power, "Jewry" on the one hand and "bolshevism" on the other, which were both equally displeasing to National Socialism, goes back to the beginning of National Socialism. In the Party program, to be sure, this connection had not yet found any direct expression. However,

it was already advocated in Hitler's "Mein Kampf", in its most general and apodictic form, and was later set forth in more detail in Rosenberg's "Mythos". Since these writings, both of which are fundamental and obligatory for National Socialism, this "combination theory" belongs to the permanent body of Nazi doctrine. To a larger extent its journalistic and pseudo-scientific foundation begins in 1934. After September 1936, that is after the Reich Party rally, where bolshevism was ideologically made the object of the severest attacks and "Juda-marxism" was again set up as an official dogma, an especially feverish journalistic and pseudo-scientific activity of "enlightenment" began. To this belongs the foundation of the "Anti-comintern", under State and Party sponsorship ("General League of German Anti-Communist Associations") and the formation of a special department for Jewry and bolshevism in the Ministry of Propaganda, the direction of which was under a certain *Dr. Taubert*, who was as unscrupulous as he was incorrectly informed about the facts. The publishing houses (such as "Eckart-Kampf-Verlag", "Nibelungen-Verlag") which were charged with the publication of journalistic and pseudo-scientific writings on "Juda-marxism", bolshevism and the role of Jewry in Russia, were not only State foundations, but were also directly under the management of the above-named *Taubert*. The tactical unity of the theoretical line was thereby substantially preserved. Scientific literature which was to be taken seriously was able to prevail against the camouflaged official Party publications only in exceptional cases and at the cost of severest discrimination. "Specialists" on the Jewish problem with official Party backing, such as *Fehst*, *Poehl-Agthe*, *Boekhoff* and *Ehrt*, whose names had a bad sound in the camp of science, dominated the field without exception. Their theories were the sole foundation for the treatment of the "unified Jewish-Bolshevist problem" in educational letters, in camps, in the press and in the official or semi-official utterances of major or minor Party leaders.

That the primitiveness of this theory can only be explained by the complete ignorance of the actual facts is quite obvious in this connection. This official view in detail concerning the alleged physical necessity of communion of fate between bolshevism and Judaism can be brought to the following common denominator: Marx had been a Jew. Therefore the Marxist theory contained nothing but Jewish logic. This theory was an attempt to conceal an aspired Jewish world domination. It was the task of the consciously super-national or international concept of bolshevism to prevent discovery that Jewry as such was the moving power of bolshevism. Bolshevism was the practical realization of this concealed Jewish "dream for world domination". This is proved by the disproport-

tionately high number of Jewish leaders in the Bolshevist administration.

This statement is not concerned with attacking the argumentation of this pseudo-scientific literature which is both poor and limited to formalities, which neither knew nor wanted to recognize the conditions of the eastern-European Jewry and which has not become familiar or was unconcerned with the changing fate of the Jewish people in the Soviet Union. An opinion about this official doctrine in the framework of the statement is not necessary because the statement *does not stress the doctrine itself but its psychological results, just as in legal aspects the objective facts of legitimate self-defense or necessity are not to be considered but the strictly subjective facts of the putative self-defense or the putative necessity.* Therefore it is only essential for us to state that the following concepts, inspired by the Party, found a wide propagation in pseudo-scientific literature and began to influence the imaginations even of those strata who used to be reserved towards ordinary propaganda: Bolshevism was a Jewish invention; bolshevism was to serve the realization of Jewish plans for world domination; Jewry in its great majority was an active exponent of militant bolshevism; the defense against Bolshevist expansion depended on rendering Soviet Jewry harmless.

Several examples may indicate how far the identification of bolshevism and Jewry has progressed in literature. It is unnecessary to quote the relative passages from the books "Kampf" or "Mythos" as well as from Hitler's speeches since these statements are generally known. Better clues are given by the inferences of literature which ostensibly pretends to be of scientific nature. Thus *Boekhoff* writes ("International Law against Bolshevism", Nibelungenverlag 1937) the following:

"The removal of the Jewish dictatorship in the Soviet Union can only be accomplished through a revolution, that is through an anti-Bolshevist coup d'état. The Jewish dictatorship, from the legal as well as the political point of view, is linked to the existence of the Soviet Union." (P. 193.)

Moreover, at a different passage it is expressed in a still more unmistakable manner—

"Here we see the face of the Jewish world front in a thousand masks. The problem of bolshevism as a political and legal factor would be solved at the moment all nations declared the Jews enemies of people and state and shook off their domination. Then, the identity of Jewish world domination and Bolshevist world revolution would become evident. The nations refused to be annihilated." (P. 143.)

In his book (Bolshevism and Jewry, Eckart-Kampf Verlag Berlin, 1934), *Fehst* states in a similar way—

“The pale constructions and propagandistic allegations of Marxism which through an alleged class-struggle pretended to achieve a ‘dictatorship of the proletariat’ and eventually a classless society were replaced by the bare political truth that, after a war of nationally conscious peoples, the dictatorship of a new race had been established in Russia”. (P. 6.)

and furthermore on page 157—

“Thus, the Russian people today are facing the historical task of freeing their country from the alien domination which Jewish Marxism exercises over the Russian people. The national struggle for the liberation of the Russian people is at the same time a struggle against the deadly enemy of all nations—the Communist International in the shape of which nation-destroying Marxism and International Jewry have concluded a league against peace and liberty of the world.”

Continuation of similar quotations would be unnecessarily repetitious. Decisive are solely the psychological results of such a double-barreled publicity as well as scientifically camouflaged propaganda (or a propaganda which considered itself scientific). And in this respect it cannot be doubted that National Socialism had succeeded to the fullest extent in convincing public opinion and furthermore the overwhelming majority of the German people of the identity of bolshevism and Jewry. Even those among the leadership corps of the NSDAP who considered themselves enlightened and can be considered to a certain extent to be capable of discriminating judgment are not exempted.

For the aim of governmental propaganda in a totalitarian state has not only then reached its goal if all published statements are actually believed to be true but already when it has created an atmosphere in which criticism or rejection would be unthinkable. And this very fact is significant for the problem “Juda-Marxism”. It does not matter whether the individual, who later in the framework of “Special Duty” in the Soviet Union had to make fateful decisions or received fateful orders, was himself 100 percent convinced of the correctness of the official thesis or whether he gave any consideration to it at all.

On the contrary, it was decisive that the thesis “Jewry is identical with bolshevism—every Jew is a Bolshevik”—was backed up by the state authority in such a way that a mere independent critical examination of its correctness appeared practically unthinkable. One must evaluate the psychological effect of the liquidation order by those who received it in the light of these concepts.

b. Link between Jewry and bolshevism according to the personal experiences and conceptions of the defendants

Here, an introductory remark is first necessary. As a result of the historical sociological study of Russia during the past decades it has been established beyond doubt that the percentage of the Jewish population in political, cultural, and economic key positions within the Soviet Union is in fact an extremely high one. These findings were not only the result of inquiries by Germans and Russian emigrants but also, at least until about 1934, by Soviet Russian inquiries. Since in the Soviet Union the Jewish population is considered to be a national minority and is treated in accordance with national minority laws, the investigations referred to this recognized national minority. It is to be stressed that the Soviet statistics which on principle are based on the subjective criterion (self-adherence of the concerned to a specific nationality) must have led to a somewhat different result than the investigations conducted on the basis of the (objective) race theory which were exclusively based on the fact of *extraction*. But even according to the Soviet statistical system which is reducing the Jewish percentage, it is established that the percentage of the Jewish population in the aforementioned key positions exceeded their numerical strength (about 4-5 percent of the total population) by a considerable margin on the average. Individually the Jewish participation fluctuated and fluctuates in various offices, economic enterprises, and organizations, according to rank and positions. However, on the basis of Soviet statistics it is possible to establish in general that the share of the Jews was the greater, the more influential the office was, politically or economically, and the more influence was attributed to the bearer of the office (*de facto* if not *de jure*).

The infiltration of Jews into official positions amounted to about 20 percent on the average at the time the statistics were made; the percentage was considerably higher in Party positions, the average of which fluctuated considerably. Thus, the Ministry of Foreign Trade with its representations abroad can be called a Jewish domain to an especially high degree. This can be applied in a similar way to the Ministry of the Interior, the Ministry for National Security, and to the majority of the Economic Ministries; the Jewish percentage within the armed forces is especially large in the so-called political administration. Here the Jewish infiltration into the higher key positions comes up to 65 percent.

We have seen (see *a* above) that the National Socialist ideology was rashly prepared to regard this circumstance as a conclusive, if not decisive, proof for the fact that bolshevism was a Jewish invention and was only serving the interests of Jewry.

In this connection, as seen from an objective point of view, they failed to consider two facts. First, the fact that the Jewish population, as a predominantly intellectual class, was from the beginning better fitted to fill these positions. Above all, however, and that too should have been proved by the serious scientific research conducted by the *Germans*, this allegation has confused both cause and effect. It has been established that, aside from the denationalized professional revolutionary, the Jewish population, that is the ghetto, was on principle opposed to the Soviet system during the first years of the Bolshevist regime; the predominant domain of Jewry, aside from Zionist groups (also opposed to the Soviets) was the Jewish "Bund" which had a menshevist platform. If in the course of time Jewry has given more and more functionaries to bolshevism and has increasingly infiltrated into the Bolshevist state machine, it is a result of the fact that the Jewish population, who on principle were opposed to the planned economy, threw themselves into the arms of bolshevism. Under the prevailing circumstances they had come to the conclusion in an opportunistic attitude that, in view of the fact that bolshevism had assumed great power, which one has to take into consideration, it would be the best thing not only to swim with the current but also to attempt to gain dominating and influential positions within this organization. This opportunism, and not an ideological and fateful link between Judaism and bolshevism, explains the great Jewish influence within state and party. These facts, however, are the result of scientific research and, above all, of serious study better fitted to the attainment of scientific results than were calculations with the help of primitive populations statistics, a method no means desirable to the National Socialist ideology. National Socialism, as we have experienced, has greatly simplified the entire intricate problem. What at the most could be regarded as an accidental communion of interests, namely the link between Jewry and bolshevism, had become a logically conditioned necessity, a slogan that bolshevism was a mere "Jewish invention" and that the struggle against bolshevism was necessary and in the first place a struggle against Jewry.

As seen from the tactical and realistic point of view this last conclusion was not even incorrect. For after Jewry had found admission into the Soviet state to the above described extent and following the outbreak of the war in 1941 *it only had to expect a worsening of its situation by the German invasion as a result of the prevailing German policy towards the Jews*, it was obvious that it would support the fight of bolshevism against the German Wehrmacht with the greatest intensity. The experiences and findings, made by the advancing German Wehrmacht in Russia

in regard to the Jewish problem, were at first glance of such a nature as to confirm the correctness of the National Socialist ideology in the eyes of the soldiers fighting in Russia. He who came to Russia in 1941, whether officer or enlisted man, had to get an idea of the problem from personal experience. He had the opportunity to find out that the percentage of Jews in the administration was very high and that especially those offices, which were particularly unpopular among the masses of the people as the economic authorities and the political police, were permeated with Jews to an especially large extent; moreover, the German soldier, in his conversations with the native population, noticed an unmistakable antisemitism (which on the other hand varied considerably according to the region); eventually one could notice very soon that the Jews played a special role in the resistance movements and particularly in the underground organizations of the partisan movement.

Under these circumstances it is a necessary consequence that, among those circles of the German Wehrmacht in the East who so far had not been inclined to an anti-Semitic conception a priori a clearly defined resentment against Jewry could very soon be noticed. One regarded the Jew as the spiritual leader of resistance and sabotage and this fact on its part again created the psychological conditions mentioned, the psychological atmosphere for the fact that the liquidation order was accepted as a "raison de guerre" about which the individual might think as he wanted, which, however, in the framework of the general developments, were to be taken notice of and were to be carried out without discussion.

3. *Conclusions in regard to criminal law*

In the aforementioned statements a summary has been made of—under 1, the objective (actually given), under 2, the subjective (psychologically effective) prerequisites of putative assistance in distress respectively putative necessity. It is now to be examined whether these prerequisites can justify the assumption of *putative assistance in distress* or of *putative necessity* in the sense of the continental conception.

a. Putative assistance in case of distress

In 1941, the German Reich was facing acts of war of an opponent who, filled with the concept of class struggle, denied the obligations of positive international law and, even under his own doctrine of international law, in as far as he referred to the rules of international law, only utilized these rules in the interest of his theory of class struggle.

The coming conflict [die kommende Auseinandersetzung] took place, from the outset, outside the boundaries drawn by inter-

national law. There threatened from the Soviet Union a total attack waged in a manner contrary to international law, not only against the German Reich, but in its implications [Fortwirken] against the entire European system of states and societies, an attack which exceeded the frame of normal war danger and justified extensive security measures on the part of the menaced state. Therefore, this was a case of an unlawful attack, in the meaning of international law and continental criminal law which can here be coordinated.

We must reject any *objective justification* of the liquidation order and its execution. For, as seen from the objective point of view, the attack came neither from that side against which the liquidation measures were directed nor did these measures remain within the frame of the preamble of the Hague Convention concerning War on Land which are regarded as compulsory, minimum rules of common law, even in the absence of the validity of this convention.

On the other hand it will have to be examined to what extent the defendants can plead putative assistance in distress (on behalf of the Reich and the German nation). The defendants, according to the National Socialist theory as well as due to their own conception and experience, were obsessed with a psychological delusion based on a fallacious idea concerning the identity of the aims of bolshevism and the political role of Jewry in eastern Europe. This conception was apt not only to exclude the possibility of a discussion regarding the moral defensibility of the liquidation order but to bring the defendants to the conviction that the attack against the future existence of the German Reich and people was to be expected mainly from the Jewish population in the occupied Russian territories. If this association of ideas can be considered in favor of the defendants the Tribunal will also have to consider the effect of a factual error on the degree of guilt.

b. Putative necessity

The position is here essentially the same. In place of the threatening attack there appears here the imminent state of emergency of a legal value the existence of which is endangered (existence of state and nation) which the acting party is called upon to protect. *Even here the objective prerequisites for a justification of the act are missing.* For the liquidations carried out by the defendant were (apart from their objectionable nature according to moral law) not the proper actions required for the removal of the danger. *But even here* one cannot get by the question of putative necessity. The prerequisites here are the same as in the case of (a). The further prerequisite of putative necessity, namely, the conviction of the perpetrator that he is sacrificing an object of

lesser value in order to preserve one of higher value is, in view of the struggle for existence in 1941, not to be rejected. *Here, too, therefore, the effect of an error in fact derived from the uniqueness of the concrete situation will have to be taken into consideration.*

c. Justification Because Allied Bombings Killed Non-Combatants

EXTRACTS FROM THE TESTIMONY OF DEFENDANT OHLENDORF*

DIRECT EXAMINATION

* * * * *

DR. ASCHENAUER (Counsel for defendant Ohlendorf): How do you explain the disgust with which the whole world regarded these exterminations in the East?

DEFENDANT OHLENDORF: This seems to have several reasons. For one thing, the deeds in the East were published as being isolated excesses done by the SS. One took them out of their context and made the SS alone responsible. In reality these executions in the East were a consequence of total war which was inevitable if an ideology of one power was to prevail which had as its goal the destruction of every resistance against their conquering the world with their idea. This war was never finished. The preparations for a possible conflict seem to express that whatever happened in the East was only a prelude.

Another point. It has been customary so far to judge executions during a war by various standards. The element regarded as heroic, which made killing seem honorable was the fight of man against man. This has long been overcome. The individual war opponents try to exterminate as many enemies as possible by preserving their own strength. The fact that individual men killed civilians face to face is looked upon as terrible and is pictured as specially gruesome because the order was clearly given to kill these people; but I cannot morally evaluate a deed any better, a deed which makes it possible, by pushing of a button, to kill a much larger number of civilians, men, women, and children, even to hurt them for generations, than those deeds of individual people who for the same purpose, namely, to achieve the goal of the war, must shoot individual persons. I believe that the time will come which will remove these moral differences in executions for the purposes of war. I cannot see that political factors and political

* Complete testimony is recorded in mimeographed transcript, 8, 9, 14, 15 October 1947, pp. 475-756.

and economic conventions, which in their consequences cause the execution of acts of violence against and misery for millions of people, have done anything better morally only because the conscious consequences were not expressly made known to the population. I believe, therefore, that when history has come to an end, that this conflict will not have started in 1941, but with the victory of bolshevism in Russia, that then only can the judgment of history be made which will inform about various phases of this conflict.

CROSS-EXAMINATION

* * * * *

MR. HEATH: Mr. Ohlendorf, what happened to the Jewish children, the gypsy children?

DEFENDANT OHLENDORF: According to orders they were to be killed just like their parents.

Q. Did you kill them just like their parents?

A. I did not get any other reports.

Q. I don't understand your answer. Did your reports show the killing of children or did they show that children had been spared?

A. They also revealed the executions of children.

Q. Will you explain to the Tribunal what conceivable threat to the security of the Wehrmacht a child constituted in your judgment?

A. I believe I cannot add anything to your previous question. I did not have to determine the danger but the order contained that all Jews including the children were considered to constitute a danger for the security of this area.

Q. Will you agree that there was absolutely no rational basis for killing children except genocide and the killing of races?

A. I believe that it is very simple to explain if one starts from the fact that this order did not only try to achieve security, but also permanent security because the children would grow up and surely, being the children of parents who had been killed, they would constitute a danger no smaller than that of the parents.

Q. That is the master race exactly, is it not, the decimation of whole races in order to remove a real or fancied threat to the German people?

A. Mr. Prosecutor, I did not see the execution of children myself although I attended three mass executions.

Q. Are you saying they didn't kill children now?

A. I did not say that. May I finish? I attended three mass executions and did not see any children and no command ever searched for children, but I have seen very many children killed in this war through air attacks, for the security of other nations,

and orders were carried out to bomb, no matter whether many children were killed or not.

Q. Now, I think we are getting somewhere, Mr. Ohlendorf. You saw German children killed by Allied bombers and that is what you are referring to?

A. Yes, I have seen it.

Q. Do you attempt to draw a moral comparison between the bomber who drops bombs hoping that it will not kill children and yourself who shot children deliberately? Is that a fair moral comparison?

A. I cannot imagine that those planes which systematically covered a city that was a fortified city, square meter for square meter, with incendiaries and explosive bombs and again with phosphorus bombs, and this done from block to block, and then as I have seen it in Dresden likewise the squares where the civilian population had fled to—that these men could possibly hope not to kill any civilian population, and no children. And when you then read the announcements of the Allied leaders on this—and we are quite willing to submit them as document—you will read that these killings were accepted quite knowingly because one believed that only through this terror, as it was described, the people could be demoralized and under such blows the military power of the Germans would then also break down.

Q. Very well, let's concede—I think there is truth in what you say, though I never saw it. Does it occur to you that when the German Wehrmacht drove into Poland without provocation, and when you drove into Norway, and when you drove into the Low Countries, and when you crushed France, and when you destroyed Belgrade, Yugoslavia, Greece, when you put Rumania, Bulgaria under your heel, and then attempted to destroy the Russian State, does it occur to you that people resisting your tyranny stand on a higher moral level when they resort to the same horrible cruelties which you initiated in order to destroy your tyranny? Answer that, please.

A. You will understand that I look at the events of the war which you referred to in a different way than you do.

Q. And that is also my opinion; on that we have a difference.

A. That is quite so on my side, and I believe that just the events of the last weeks in particular show that even if the price of peace calls for force because there is a danger which, if it is not broken by force, will cause a battle of bloodshed, that we then as the ones who were closer to bolshevism than you in the States, much sooner came to realize than you; and with this view I agree principally with your statesmen in America at the moment, and I believe that among these statesmen hardly anyone

does not hold the view that Roosevelt made a mistake when in 1942 he presumed that we were not in an emergency state concerning Russia, not in a German only, but also in a European state of emergency.

PRESIDING JUDGE MUSMANNO: Just a moment, please. This is a very interesting debate and if the Tribunal didn't have a very serious and solemn responsibility in passing upon the issue of guilt or innocence in the charges very solemnly drawn in the indictment, the Tribunal would be glad to listen to this debate which could go on for a very long time, but since the issue is a very narrow one, Mr. Heath, let us try to adhere to the problem which is before the Tribunal, namely, is this defendant guilty of having perpetrated illegal killings.

MR. HEATH: Thank you for the admonition.

PRESIDING JUDGE MUSMANNO: I don't mean by that that occasionally it is not illuminating to get into these side issues but I am afraid this last exchange went beyond all bounds of normal discussion on a question of murder.

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d. Justified Action Against Partisans and Reprisal Measures

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT SANDBERGER BY DR. VON STEIN.**

Your Honor, members of the Court:

* * * * *

Essentially two questions are relevant for the decision of this case:

1. How are Sandberger's measures against Communist activists, and
2. How are Sandberger's measures against the Esthonian Jews to be judged?

Sandberger's measures against Communist activists

1. *The reasons for the Fuehrer Order*

The measures which Sandberger took against Communist activists were based on the Fuehrer Order. In as far as the order deals with Communist activists it is essentially based on the following considerations:

For Hitler, the close connection between the Russian Bolshevik system of government and the political movement of communism was a fact. For him the Bolshevik state apparatus was the most

* Complete closing statement is recorded in mimeographed transcript, 9 February 1948, pp. 6077-6105.

important representative of the Communist movement and carrier of an active imperialism, which was a mixture of panslavism and the aim of Communistic world revolution.

Wherever communism came to power, the existing political and social leadership were rooted out. All experiences since 1917 showed this clearly, at least in the Baltic countries, which in 1940 were incorporated into the Bolshevist Federation of States. The witness Mae has also confirmed this specifically for Esthonia. A clear example, true for all Baltic States, is given in the liquidation list of the NKVD, published by the Canadian University Professor Kirkconnell and which I inserted in the Document Book Sandberger II.

Bolshevism also developed new types of warfare, the partisan war, the nature of which is depicted by the Bolshevists themselves in the brochure of the Press Department of the Soviet Embassy in London "We are Guerrillas" contained in Ohlendorf Document Book II; from this very description the illegality and criminality of this form of struggle in view of international law becomes evident. (Compare also the opinion of University Professor Maurach submitted for Ohlendorf.) This form of struggle consisted in preparation and execution of an illegal levee en masse on territory effectively occupied by enemy troops.

PRESIDING JUDGE MUSMANNO: Dr. von Stein, you don't contend that partisan warfare was originated by the Bolshevists, do you? You know that in the Napoleonic invasion of Russia partisan warfare was quite common. You know that historically, don't you?

DR. VON STEIN: Yes, your Honor, I only want to contend that this partisan war developed in a particularly crass manner in the eastern campaign.

PRESIDING JUDGE MUSMANNO: But you say here, "Bolshevism also developed new types of warfare, the partisan war." Well, it certainly was not new.

DR. VON STEIN: No, your Honor, I am not trying to say it was new. I am merely trying to say that the manner of fighting which had been developed by the Bolshevists was new, that is to say, fighting became more cruel all the time. It cannot be compared with the beginnings of the partisan war which you have just described.

PRESIDING JUDGE MUSMANNO: Very well. Proceed.

DR. VON STEIN: It was a war to the knife, which was conducted by the partisans in the bitterest and cruelest manner. It threatened the reinforcements, replacements, and supply communications in the rear of the troops. Particularly dangerous was this warfare in so vast an area as Russia. In regard to the Esthonian area there was a very special danger in the fact that most

important communication lines of the German Army Group North ran through Esthonia, namely from the naval port of Tallin over Narva and Pskov to the front end, from the Reich border over Tartu in the direction of Leningrad. To nip such movements in the bud, or to keep them to as small a size as possible, severe measures were necessary for the sake of preservation of the whole fighting front. Added to this, there was the particular type of enemy. The eastern man is capable of a fanatical toughness, almost unlimited endurance, and simply limitless faith. For him the fight against the "fascist German troops" was a crusade. The idea of the Bolshevik state of the future was an idol for him, which he worshipped as he did the Icons in former times.

Hitler as Supreme War Lord had to decide what measures necessitated by the war he regarded as essential.

Hitler expected a total war in the East, which did indeed develop. That such a war would to a greater part upset the existing principles of international law was clear to him, faced with an enemy like bolshevism. For he knew its attitude toward international law, which meant nothing else but to keep its hands essentially free in case of a collision with a "capitalist state". (Compare also the opinion of University professor Maurach, Document Books Ohlendorf II and Sandberger II-A.)

The well-known British authority on international law, Lauterpacht, by the way, expressed a similar opinion for the case of total war (British Yearbook of International Law 1944, p. 72):

"But original proceeding before the municipal courts of the victors may seem to many a questionable method of removing outstanding doubts and laying down authoritatively the existing law on subjects of controversy."

Total war has altered the complexion of many rules. At a time when the "scorched earth" policy with regard to the belligerents' own territory has become part of a widespread practice, general destruction of property ordered as an incident of broad military strategy will not properly form the subject matter of a criminal indictment.

Furthermore, in 1941 Hitler may have been convinced that in such a war strong shock effects may be obtained by certain draconic measures, which as a final result may cause the weakening or disintegration of the enemy's will to resistance. Measures of such effect were regarded as admissible in the war against Japan.

Henry L. Stimson, Secretary of War from 1940-1945, reports in his article: The decision to Use the Atomic Bomb (excerpts):

"To extract a genuine surrender from the emperor of Japan and his military advisers, a tremendous shock must be adminis-

tered which should carry convincing proof of our power to destroy the Empire. Such an effective shock would save more lives, both American and Japanese, than it would cost."

Transferring these conditions to the war in the East, Hitler was of the conviction that by such measures he would nip the partisan war in the bud or suppress it effectively. The welfare of the whole front was menaced by the unrestricted partisan war. Hitler may have expected a shock effect from the measure he ordered, which in the end would save the lives of an infinitely greater number of German soldiers. I have proved that just in the Esthonian territory the Soviet leadership attached great importance to partisan movements in the widest sense of the word. It even left the most important officials back in Esthonia in order to organize as extensive and effective an underground movement against the Germans as possible.

2. *Was the Fuehrer Order to that extent admissible according to international law?*

The Fuehrer Order had as its first objective the safeguarding of the territory occupied effectively by the German Wehrmacht. Inasmuch as Communist functionaries actually disturbed or threatened the security, as active directors of sabotage or espionage organizations, or by sabotage, incitements, and other hostile acts, murder, espionage, possession and use of weapons, they could be shot according to the law of war (war rebels). Here the same principles would apply as have been developed for the illegal levee en masse in the occupied rear of the troops.

So says, i. e., Oppenheim Volume II, paragraph 116, pages 278, 279:

"What kinds of violent means may be applied for these purposes is in the discretion of the military authorities. But there is no doubt that, if necessary, capital punishment and imprisonment are lawful means for those purposes."

Inasmuch as Communist functionaries actually committed acts of insurrection and resistance or other serious crimes and inasmuch as such acts were proved against them, they could be shot in accordance with international law.

Obviously the same principles are applied in the struggle on the Greek northern border.

These principles correspond also to the American practices of war.

The Basic Field Manual [FM 27-10], Rules of Land Warfare states in Article 12—

"Uprising in occupied territory.—If the people of a country, or any portion thereof, already occupied by an army, rise

against it, they are violators of the laws of war, and are not entitled to their protection.”

It states further in Article 349—

“*War rebels.*—War rebels are persons within territory under hostile military occupation who rise in arms against the occupying forces or against the authorities established by the same. If captured they may be punished by death, whether they rise singly or in small or large bands, whether or not they have been called upon to do so by their own expelled government, and, in event of conspiracy to rebel, whether or not such conspiracy shall have matured by overt act of hostility.”

And in Article 350—

“*War treason.*—Examples of acts which, when committed by inhabitants of territory under hostile military occupation, are punishable by the occupying belligerent as treasonable under laws of war, are as follows: Espionage; supplying information to the enemy; damage to railways, war material, telegraphs or other means of communications; aiding prisoners of war to escape; conspiracy against the occupying forces or members thereof; * * * and circulating propaganda in the interests of the enemy.”

3. *What has Sandberger done?*

The defendant Sandberger was active only to this extent. Insofar as Communist functionaries were shot in his area and under his command or on his responsibility, this did not take place in the form of mass executions, but only when serious guilt had been established in regular proceedings and after the person arrested had been able to defend himself in these proceedings. Special courts had been excluded for the Russian campaign and in view of his subordinate position he was not able to establish such. Nor was it necessary. According to Article 356 of the Rules of Land Warfare, too, regular legal proceedings suffice to establish offense and subsequent guilt of “war rebels”. The detailed arrangements for these proceedings must naturally be made in accordance with circumstances and possibilities at the time.

The defendant proved authentically that regular and lawful proceedings were carried through. Over and beyond that, however, it has been proved by numerous depositions that Sandberger always behaved correctly, decently, and fairly.

From the series of affidavits which I have submitted for judging the behavior as a whole of Dr. Sandberger in Esthonia, I quote as especially typical one part from the deposition of the Swedish Major Mothander who was in Esthonia for a long time as a representative of the Swedish government. The latter says, among other things about Sandberger, “He was generally regarded as a decent

fellow. A natural tendency to human kindness and justice was often evident in his nature. Therefore he was always open to what is called '*Argumentum ad hominem*'. He showed himself to be a gentleman through and through both as an official and as a man." 4. *Sandberger acted in full consciousness of legality.*

Sandberger was fully convinced, too, that he was acting legally in this. For every state it is an elementary precept of self-preservation to suppress resistance in the actually occupied area in all circumstances. The supreme commander decides what measures are to be taken in the individual case. He alone can decide what military necessities command him to do. This is the conception too of the expert on international law, Hyde. (*International law Chiefly as Interpreted and Applied by the United States, 1945, Volume III, section 655, "War Department Rules of Land Warfare 1940".*)

"If the term military necessity implies great latitude and is invoked by way of excuse in justification of severe measures, it is because the law of nations itself permits in case of great emergency and allows a belligerent commander to be the judge of the existence and sufficiency of the need."

The measures against Communist activists were severe. But in view of the general war situation and the special position in Esthonia, they were, the defendant was convinced, justified. The resistance which naturally became manifest on receiving the Hitler Order was connected in the first place with the extensive measures aimed simply at the Jews, that is, regardless of whether they had become active as partisans, war rebels, or war traitors, or belonged merely to the civilian population; it was connected also, however, with all collective measures against other people who had no individual guilt as far as acts endangering security were concerned. Now when he came to Esthonia and had convinced himself on the spot of the horrors which the Communist activists had perpetrated there, he was also convinced that such measures were in the end unavoidable against war rebels and war traitors of the kind. This was an elementary precept of self-preservation, the self-preservation which in particular is fully recognized in Anglo-Saxon international law. For the conviction of having acted in defense against a state of emergency which actually existed—a conviction to be claimed for Dr. Sandberger as for all defendants—reference is made to the detailed statements of Professor Dr. Maurach in his counsel's opinion in Ohlendorf Document Book II and in Sandberger Document Book II-A. The prosecution has not proved that Sandberger, in the measures against Communist activists, behaved contrary to the principles of international law. Instead, it has the *onus probandi*

the more so because I have proved that Sandberger was judged to be correct, fair, and upright in general and even in Esthonia.

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*EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT OTT **

* * * * *

In the case of Ott, it has been proved beyond a doubt that all executions were dictated by military necessity alone.

A tremendous number of documents, including some of the prosecution, show how great the partisan danger was, by describing the strength, armament, organization, and fighting methods of the partisan bands. (*NO-3276, Pros. Ex. 66; NO-3159, Pros. Ex. 85; NO-2834, Pros. Ex. 87; NO-3339, Pros. Ex. 93, etc.; Ohlendorf 38, Ohlendorf Ex. 1; Ohlendorf 42, Ohlendorf Ex. 4; Ohlendorf 43, Ohlendorf Ex. 5.*)

Here the German troops were opposed by a force as powerful as nature, so weird that it can only be comprehended if you consider how immense the space, how impenetrable the forests and swamps, and how difficult to comprehend the ideas and mental processes of the Asiatic peoples and the peculiarities of the Bolshevik ideology and methods were for the European; and, add to this, the picture of a relentless ideological battle which used every means of warfare, from the methods and tricks of primitive tribes to the most modern weapons of technological war. These are the conditions under which one must consider the Russian campaign, and especially the partisan war, if one is to establish the boundaries of "military necessity".

That which was opposed to the combat divisions and the security forces at the battle front in Russia was more than "enemy" and "enemy territory". All conceptions of the Occident concerning man and state, space and time, technology and war, and might and right were exploded in this unfathomable land of released demons. In such a situation the Fuehrer Order also had a different aspect than it now has in retrospective contemplation from the viewpoint of a world that is at least formally at peace. In this case, every retrospective verdict can use knowledge which is denied to the man acting in the present. And so the defendant Ott also did not have an extermination program in mind when he came to Russia, but rather he saw first of all the destruction of two German engineer companies in a treacherous partisan attack using unlawful measures of war.

* Complete closing statement is recorded in mimeographed transcript, 9 February 1948, pp. 6105-6119.

When he was told of his duties, on the spot his predecessor told him, in Bryansk, of the Fuehrer Order which had been issued "for security", as he was told. Ott did not understand that defenseless women and children and the aged were to be shot "for security", but his chief also acknowledged to him that the Supreme War Commander had ordered this.

With the sound instinct of a plain man, Ott led his Kommando like a military police unit to secure the rear and the lines of communication of the most advanced troops. Because Ott saw the duties of his Kommando exclusively from the viewpoint of military necessity, he was brought back to Russia by General Schmidt, the commander in chief of the 2d Panzer Army, after he had already been transferred back to his job at home. (*Tr. p. 3714.*) Sonderkommando 7b only killed proved partisans under his leadership. And approximately 20 Jews were also members of partisan groups. Their execution was permitted by the rules of warfare and did not have to be based on the Fuehrer Order. The limits of the security of his own combat troops necessitated by the war were not overstepped.

Naturally, he could not deny the fact towards the leaders of this subkommando that the Fuehrer Order remained formally in effect (*Tr. pp. 3752-53*), but in practice the Fuehrer Order no longer had any meaning in his territory while Ott was in command of the Kommando. (*Tr. p. 3782.*) The territory of the army could be considered as free of Jews since long before (*Steimle 21, Steimle Ex. 20; Steimle 34, Steimle Ex. 33; Steimle 39, Steimle Ex. 38*), and the security tasks had to be carried out where the danger threatened, that is, in the territory of the partisans and against them. The security police functions of Ott and his Kommando were exhausted in the defense against the partisans and their sabotage activities.

* * * * *

TRANSLATION OF OHLENDORF DOCUMENT 39
OHLENDORF DEFENSE EXHIBIT 2

EXTRACT FROM J. STALIN, "ON THE GREAT NATIONAL WAR OF THE
SOVIET UNION", RADIO SPEECH ON 3 JULY 1941

* * * * *

In the areas occupied by the enemy, cavalry and infantry partisan detachments must be formed and diversion groups created for fighting the units of the enemy army, for kindling partisan warfare everywhere and every place, for blowing up bridges and highways, for destroying telephone and telegraph

connections, for burning down forests, supply camps, and trains. Unbearable conditions must be created for the enemy and all of his accomplices in the occupied areas; they must be pursued and destroyed at every step, and all their measures must be frustrated.

One cannot regard the war against Fascist Germany as an ordinary war. It is not only a war between two armies. It is at the same time the great war of the entire Soviet people against the Fascist German troops.

* * * * *

(Source: Library of the Institute for World Economics, Kiel, I 25827.)

VIII. ORDER OF THE TRIBUNAL SEVERING THE CASE AGAINST THE DEFENDANT RASCH

MILITARY TRIBUNAL II

THE UNITED STATES OF AMERICA

—*against*—

OHLENDORF, et al.

CASE NO. 9

ORDER

Subject: OTTO RASCH *

On 5 September 1947, Dr. Hans Surholt, counsel for the defendant Otto Rasch, filed a motion requesting—

1. The severance of the trial of Rasch from that of the other defendants;
2. A stay of the proceedings against Rasch;
3. The release of Rasch.

On 11 December 1947, a board composed of three physicians conducted a mental and physical examination of the defendant and reported—

“It is the opinion of the board that if he appears in court he is not capable of full use of his mental and physical abilities in the understanding and answering of questions.”

On 12 January 1948, the defendant, Otto Rasch, through his counsel, indicated his willingness to appear in Court and testify in his own behalf. He made several attempts to testify, but attending physicians stated to the Court that the defendant was incapable of continuing his efforts and recommended he be excused. Captain George T. Carpenter and Dr. Herbert Graumann then took the witness stand and testified that in their professional opinion the defendant was physically unable to continue and that any further attempts in this direction could have serious consequences.

From the various medical reports and the physical appearance of the defendant himself as demonstrated in Court, it is apparent that the defendant is not able to stand trial at present. Paragraphs 1 and 2 in the counsel's motion of 5 September 1947 are approved. Paragraph 3 is refused.

In consideration of the above it is ORDERED that the charges against the defendant, Otto Rasch, be, and the same are, hereby

* Otto Rasch died on 1 November 1948.

severed, for the purpose of trial, from the charges against the other defendants now on trial before this Tribunal;

IT IS FURTHER ORDERED that the charges contained in the indictment against the defendant Otto Rasch shall be retained upon the docket of the Military Tribunals, as a separate cause, for the trial hereafter, if the physical and mental condition of the said defendant shall permit.

[Signed] M. A. MUSMANNO
Michael A. Musmanno
Presiding Judge, Military Tribunal II

Dated: 5 February 1948

IX. CLOSING STATEMENT OF THE PROSECUTION, 13 FEBRUARY 1948, BY BRIGADIER GENERAL TELFORD TAYLOR*

On 29 September, 137 days ago, the prosecution outlined the evidence in support of the indictment which has been brought against these defendants. On 30 September, 136 days ago, the prosecution rested its case. In view of the nature of the crimes charged here, and the conclusive documentary proof in support thereof, the desperate nonsense which has been chattered during the twenty-one intervening weeks may jar the ear but it can hardly surprise the mind.

In summing up this case after four and a half months—nearly a week for each defendant—the prosecution sees not the slightest necessity for or benefit from a tedious rehearsal of the details of the record. We are filing briefs summarizing the evidence against each individual defendant. In this oral statement, we will confine ourselves to the very few general matters raised by the defense which warrant a few words.

At the risk of wearying the Tribunal, I will first summarize very briefly what the prosecution's evidence showed with respect to the organized program of murder of which these men are the chief surviving executors. It is only too well known that anti-Semitism was a cardinal point of Nazi ideology. Throughout the early years of the Third Reich, the Jews of Germany were subjected to ever more severe restrictions, persecutions, and barbarities, and by 1939 life in Germany was all but intolerable for them. The war presented Himmler and Heydrich with what, to them, was a golden opportunity to carry these doctrines to their logical and terrible conclusion—the extermination of all Jews in Germany and in the countries overrun by the Wehrmacht. But practical problems soon cropped up. No one, at least for centuries, had ever tried to eradicate an entire national and racial group, and it rapidly became apparent that such a project was an ambitious undertaking which required time and money and manpower and planning. With the invasion of the Soviet Union, the project was put on a really systematic footing.

The trigger men in this gigantic program of slaughter were, for the most part, the approximately 3,000 members of the four so-called "Einsatzgruppen" of the SS, whose leading members are

* *Tr.* pp. 6577-6595.

indicted here. The members of these units were carefully instructed as to their mission by Heydrich himself. Their general task was to insure the "political security" of the conquered territories in Russia, and as part of this function they were directed to exterminate all Jews, gypsies, government officials, Communist party leaders, and other so-called "undesirable elements" in their assigned territories. With the support of the army leaders, this program was faithfully carried out, and resulted in the murder of at least a million Jews and other human beings during the first two years of the Russian campaign. The defendants have not seriously endeavored to controvert these facts, which conclusively prove the crimes of genocide and the other war crimes and crimes against humanity charged in the indictment. Nor, with a few exceptions as to precise dates—for the most part insignificant—have the defendants attempted to contradict the clear proof that they commanded or were otherwise connected with the Einsatzgruppen as charged in the indictment. All of the foregoing is clearly established by the documents introduced by the prosecution, consisting chiefly of the defendants' own reports of their activities.

What, then, have the defendants endeavored to contrive in order to escape the damning effect of the conclusive proof afforded by their own records? Only a few of them have been so utterly foolish as to deny that they knew that the Einsatzgruppen had been directed to kill Jews and government officials as described above, or that such executions indeed took place, and in the face of the proof, such a defense is preposterous. These defendants who were in charge of these units at the outset of the Russian campaign received instructions which were terribly clear. Those who came in later learned about it from their superiors and predecessors. Mass executions of Jews by the Einsatzgruppen took place in all sectors of the Russian front. We may well believe that the members of the Einsatzgruppen were brutalized by what they did and what they saw being done around them, but they did not become so blasé as to carry out these mass executions without even talking about it among themselves. The subject matter of this proceeding is horrible, but it is hardly boring. And furthermore, quite apart from the inherent incredibility of this defense, it is easy to see why very few of the defendants have ventured to put it forth. Most of the defendants have relied upon the so-called defense of "superior orders", and if no order was given to kill Jews and others, or if such an order was not perfectly well known to all the members of the Einsatzgruppen, then of course the defense that these executions were committed under the compulsion of such an order cannot be made. In any event, the very idea that

the defendants did not know of both the order and of the executions is so ridiculous that we have already dignified it overmuch.

But there are, however, four points made by the defendants at various times during the trial which deserve some comment. Some of the defendants have sought refuge in the contention that they as individuals did not take an active or direct part in the actual executions, but were primarily concerned with administrative matters or other phases of the operations of the Einsatzgruppen. Other defendants claim that the units under their command did not carry out the order for the killing of Jews and gypsies and government officials, and other undesirables. With respect to reports showing that their units did in fact execute large numbers of people, the excuse is given that the victims were either proven criminals or were all executed by way of reprisal in the course of the anti-partisan warfare being waged behind the front in Russia. And the third point—made by numerous defendants—is that they acted under the compulsion of “superior orders”. We will, shortly, make a few observations on what effect, if any, a few of the defendants—most notably the defendant Ohlendorf—have advanced as a defense the very motives which led them to commit these murders; they have bluntly taken the position that under the circumstances which confronted them, the killing of all Jews—even Jewish children—was a necessary and proper part of warfare. This sinister doctrine we will deal with in conclusion.

Now while these few matters deserve answers, the answers are readily available, conclusive, and susceptible of very brief statement. We do not propose now to examine the evidence, or the application of these arguments, with respect to each of the individual defendants; that has been done in the written briefs which we have filed or are filing with the Tribunal; we have no desire to protract the trial on this, its last day, by laboring the obvious or burdening the transcript with a detailed refutation of flimsy and desperate contentions.

I will deal first with the question of participation.

What we may call the defense of “lack of direct participation” has been made by two distinct groups of defendants. Some of them—for example, Jost, Naumann, and Blobel—were the commanders or deputy commanders of the Einsatzgruppen or their subordinate units the Einsatzkommandos and Sonderkommandos, with slightly greater plausibility. Thus the argument has also been put forth by the lower ranking defendants—such as Ruehl, Schubert, and Graf—who were officers and staff members, but not in command of these units.

Now with respect to this contention that the defendants did

not participate directly, the elementary principle must be borne in mind that neither under Control Council Law No. 10 nor under any known system of criminal law is guilt for murder confined to the man who pulls the trigger or buries the corpse. In line with recognized principles common to all civilized legal systems, paragraph 2 of Article II of Control Council Law No. 10 specifies a number of types of connection with crime which are sufficient to establish guilt. Thus, not only are principals guilty but also accessories, those who take a consenting part in the commission of crime or are connected with plans or enterprises involved in its commission, those who order or abet crime, and those who belong to an organization or group engaged in the commission of crime. These provisions embody no harsh or novel principles of criminal responsibility, and a moment's reflection on their meaning will indicate how inadequate is the defense which we are now considering.

With respect to the defendants such as Jost and Naumann, the very matters which they affirm establish that their responsibility is, in fact, deeper than that of some of the other defendants. It is, of course, highly probable that these defendants did not, at least very often, participate personally in executions. And it would indeed be strange had they done so. Not even a regimental or battalion commander in battle spends much of his time personally shooting a gun—it is his task to organize and direct the shooting by the men who serve under him. And when these defendants tell us that they were chiefly engaged in “administrative work” this means only that they were engaged in the general management and direction of the work of the Einsatz units which they commanded. The “administrative work” which these top leaders and their immediate staffs performed at times—as in the case of Jost—included such interesting tasks as the ordering of additional gas vans to be utilized for mass exterminations. But such items like that one are colorful rather than necessary to establish guilt. We are not aware that General Yamashita,¹ with his own hand, took the life of anyone in the Philippines, and surely General Anton Dostler² did not serve as a member of the firing squad which shot down the fifteen American commandos who had been taken prisoner in Italy.

No doubt, too, these defendants did not devote every minute

¹ Opinion of the Supreme Court of the United States rejecting the petition and application in re Yamashita, delivered on 4 February 1946 (327 U. S. 16).

² Case of United States of America vs. General Anton Dostler, Commander of the LXXV German Army Corps, tried before U. S. Military Commission, Rome (Italy), 8-12 October 1945. For a short summary of this case, see Law Reports of Trials of War Criminals, selected and prepared by the United Nations War Crimes Commission, English edition, Vol. I, London 1947, pp. 22-34.

of their waking hours to the extermination of Jews. The Einsatzgruppen had a general mission of which these executions were a very important part, but they did have some other things to do. We are quite prepared to believe that the defendants spent some of their time writing general reports to the Reich Security Main Office and to the military intelligence officers, and that they at times scrutinized captured documents, in pursuit of what the defendant Six was pleased to call "cultural objectives". Often, as the defendant Klingelhofer conceded, the purpose of the documentary research was to identify intended victims of Einsatz executions. But, in any event, these circumstances are no more important than the conceded fact that the defendants had to take time out to eat and sleep in order to carry on. So far from being a defense or even a circumstance in mitigation, the fact that defendants like Naumann did not personally shoot a great many people, but rather devoted themselves to directing the over-all operations of the Einsatzgruppen, only serves to establish their deeper responsibility for the crimes of the men under their command.

Now, the situation is a little different with respect to defendants such as Radetzky and Ruehl, and Schubert and Graf. It is a little different, but not much. Even though these men were not in command, they cannot escape the fact that they were members of Einsatz units whose express mission, well known to all the members, was to carry out a large scale program of murder. Any member who assisted in enabling these units to function, knowing what was afoot, is guilty of the crimes committed by the unit. The cook in the galley of a pirate ship does not escape the yardarm merely because he himself does not brandish a cutlass. The man who stands at the door of a bank and scans the environs may appear to be the most peaceable of citizens, but if his purpose is to warn his robber confederates inside the bank of the approach of the police, his guilt is clear enough. And if we assume, for the purposes of argument, that the defendants such as Schubert and Graf have succeeded in establishing that their role was an auxiliary one, they are still in no better position than the cook or the robbers' watchman.

I come now to the second argument which has been advanced by another group of defendants—including Schulz, Blobel, Sandberger, Steimle, Haensch, and Nosske—have claimed that they did not carry out the order. And they say that executions reported by units under their command are justified on the basis that the victims were in all cases partisans, or that they were executed in reprisal for attacks by partisans, or were proven criminals.

Now, with respect to most of these defendants I have just named, their contention is palpably false even at first glance. Blobel, for example, was in command of Sonderkommando 4a of Einsatzgruppe C when his unit entered the Russian city of Kiev. This ancient city had not seen such carnage since its destruction by the Mongols centuries before. As the records show, Blobel's unit killed 35,000 people in Kiev in two days, and 60,000 over the course of six months. Schulz' Einsatzkommando 5 killed 12,000 people during the six weeks of his command. Sandberger's Einsatzkommando 1a of Einsatzgruppe A killed 14,500 people, including according to one report, 1,158 "Jews and Communists" at one fell swoop. And even as to the other defendants whose recorded murders do not run to five figures, nevertheless the number of executions reported is still more than ample—particularly in view of the established pattern and purpose of Einsatzgruppen activities—to compel the inference that these executions were certainly not all undertaken solely against partisans or by way of reprisal.

But, once again, even if we assume the truth of this contention, the situation of the defendants is not much the better for our charity. In thus exculpating themselves under count one of the indictment, they have simultaneously inculpated themselves under count two, which charges atrocities and offenses against the laws of war, including the murder and ill-treatment of the civilian population of occupied countries. As a most eminent authority on international law has pointed out, "a war crime does not cease to be such for the reason that it is committed under the guise of reprisals."

The laws of war place strict curbs on the use of a measure so extreme as reprisals, which can be taken only when an unlawful act of warfare has first been committed by the other side. Counteraction can only be taken as a last resort, and the sole purpose of reprisals is to discourage the continuance of unlawful acts of warfare by the enemy. Reprisals may never exceed the degree of violence of the acts which they seek to stop, or the degree reasonably necessary to accomplish this purpose.

It is quite clear from the record, of course, that the executions by the Einsatz units never conformed with the requirements laid down by the laws of war. So far from being measures of retaliation for unlawful acts of warfare by the Russians, they were carefully planned in advance long before Germany launched the attack which began the war. Furthermore, nothing is more clearly established by the laws of war than that no surrendered combatant—whether he is a partisan, spy, or guerrilla—and no civilian may be executed without the benefit of a court martial or military

court trial to determine his guilt. This was well known to each defendant and is written in the pay book of every German soldier. The defendants have not even pretended that this requirement was fulfilled. If we had applied to these defendants the kind of law which they administered prior to the executions they carried out, this trial would have ended the day before it began.

In arguing that the victims of the Einsatz executions were "partisans" the defendants become enmeshed in a hopeless maze of contradictions and confusions. If their own records show that the victims were Jews, they reply that all Jews were partisans. If the records show the executions of partisans, then they are asked how they knew that the victims were partisans, they reply that they must have been partisans because they had been ascertained to be Jews. This, of course, is flatly contradictory to the argument advanced by Jodl, the defendant before the IMT, who assured us that "there were next to no Jews among the partisans. In the main, these partisans were fanatic, steel-hard Russian fighters, mostly white Russians."*

Some of the defendants claim that they spent most of their time on "cultural research", but the judicial process, however summary, was not part of the activity of the Einsatzgruppen. As the defendant Klingelhoefler finally admitted on cross-examination, "whether or not the Jews had violated any order, whether they left or stayed in the ghetto, and whether or not they contacted the partisans, they were all killed." (*Tr. p. 3939.*) And the defendant Blume admitted that interrogations were not held in order to determine guilt or innocence, but to obtain information, and that the interrogation was always followed by the death of the subject. (*Tr. p. 3756.*) Having noted these admissions which, revealing as they are, serve merely to confirm what is abundantly clear from the documentary proof, we may turn to the third general proposition which a number of the defendants have urged on the Tribunal. That is the defense of superior orders.

A third group of defendants admit that Einsatz units under their command did carry out mass executions of Jews, gypsies, and political officials, but seek to escape the burden of guilt by pleading that they carried out these executions under the compulsion of superior orders. To this group belong Ohlendorf, Nauemann, Blume, Braune, and Ott. It should be noted at the very outset that the putting forward of this plea of superior orders cuts the ground from under the defenses which we have just been

* Trial of the Major War Criminals, Vol. XV, p. 408, Nuremberg, 1948. See also the admission to the same effect by the witness Bach-Zelewski, under cross-examination by Jodl's counsel. *Ibid.*, Vol. IV, p. 487.

considering. If, as Ohlendorf and these other defendants tell us, Hitler did order the Einsatz units to execute all Jews and political officials, and if, in obedience to Hitler's order, such executions were carried, then there is less than nothing left of defenses such as lack of knowledge, or that the victims of the executions were all partisans. And in fact, the documents make it clear beyond the slightest doubt where the truth lies—the order for the mass executions of Jews and political officials was given, and it was carried out, and there remains for consideration only the question whether the fact that these defendants acted pursuant to an order shall be held to better their position before this Tribunal in any way.

Now the general principles of international penal law with respect to the effect of superior orders on criminal responsibility are by now well established. Normally, a subordinate is entitled to assume that orders issued to him by his superiors are lawful and do not require him to commit crimes in execution thereof; and we cannot hold the subordinates responsible to make careful inquiry or elaborate research into the background of the order to make sure that it is in fact lawful. But this general presumption for the benefit of subordinates has no application where, on its face, the order is palpably criminal. These principles have been concisely set forth in the decision of the German Supreme Court at Leipzig in the so-called *Llandovery Castle Case* (1921): I will quote from that opinion—

“* * * It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them. For in the present instance, it was perfectly clear to the accused that killing defenseless people in the lifeboats could be nothing else but a breach of law. As naval officers by profession, they were well aware, as the naval expert has strikingly stated, that one is not legally authorized to kill defenseless people. They well know that this was the case here.”

The language of this decision is precisely applicable to the present case; here also we are dealing with even more obviously criminal orders to kill “defenseless people” on the sole ground that they were Jews, gypsies, or government or party officials. And, in any event, the scope and effect to be allowed the plea of “superior

orders" are expressly set forth in Control Council Law No. 10, which is governing on this Tribunal and which states *—

"The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

So we are left, with this question of mitigation. In dealing with this matter, the prosecution believes that there are at least three matters which deserve primary consideration. The first is, what was the attitude of the defendants towards the criminal order and the criminal acts which it required? Obviously, if the defendants were in sympathy with or merely indifferent to the criminal character of the order, its existence can be allowed no mitigating effect. If, and only if, the Tribunal is satisfied as to any defendant that he was opposed to and revolted by the character of the criminal order, then two other matters warrant consideration. First, how well equipped, by rank and education, was the accused to resist the compulsory impact of the order? And secondly, how deep was the criminal nature of the order? For by this we can, to some extent, measure the gravity of the obligation to resist it.

The prosecution submits that on none of these footings have the defendants made any showing whatever which would establish a claim to mitigation. These defendants are not German peasants or artisans drafted into the Wehrmacht. They are not uneducated juveniles. They are lawyers, teachers, artists, and a former clergyman. They are, in short, men of education, who were in full possession of their faculties and who fully understood the grave and sinister significance of the program they embarked upon. They were part of the hard core of the SS. They did not give mere lip service to Himmler's atrocious racial doctrines; they were chosen for this terrible assignment because they were thought to be men of sufficient ruthlessness to carry them out. They are handpicked fanatics; every one of them was an officer of the SS, and among those indicted here are six SS generals, five colonels, six lieutenant colonels, four majors, and only three junior officers. They are not unhappy victims, unwillingly pushed into crime by the tyranny of the Third Reich; these men, above all others, themselves, spread the Nazi doctrine with fire and sword.

The answer to our problem is even clearer if we consider the nature of the crime which is charged here. We are not concerned with the conduct of soldiers in the heat and excitement of battle. These crimes were not committed as a result of snap judgments in

* Control Council Law No. 10, Article II, paragraph 4(b). This provision is substantially identical with Article 8 of the Charter of the IMT.

serious emergencies. These crimes were committed in execution of deliberate plans laid months earlier. And the crime itself is of staggering enormity—the annihilation of entire racial and national groups—such as Jews and gypsies—and all leading government and party officials. Questions of guilt or innocence of the victims played absolutely no part; this was massacre for its own sake and the intended victims numbered in the millions. This case, therefore, falls well within the conclusion reached by the IMT in passing judgment on Keitel and Jodl. Keitel and Jodl too, had advanced the same argument; in disposing of it, the IMT said, in the case of Keitel ¹—

“There is nothing in mitigation. Superior orders, even to a soldier, cannot be considered in mitigation where crimes as shocking and extensive have been committed consciously, ruthlessly, and without military excuse or justification.”
and, in the case of Jodl, the IMT said ²—

“His defense, in brief, is the doctrine of ‘superior orders’, prohibited by Article 8 of the Charter as a defense. There is nothing in mitigation. Participation in such crimes as these has never been required of any soldier and he cannot now shield himself behind a mythical requirement of soldierly obedience at all costs as his excuse for commission of these crimes.”

Before leaving this question of superior orders, we may note, for the sake of formal completeness, that this defense has no application under count three of the indictment, which charges all the defendants with membership in organizations (the SS, the SD, and the Gestapo) declared criminal by the IMT. Under well-established principles, the defendants must be convicted under count three on the basis of a showing that they were in fact members of any of these organizations after September 1939, and that they knew that the organizations were being utilized for the commission of acts declared criminal by the London Agreement and Charter. The defendants were all officers in the SS—most of them high ranking—and all of them joined the SS years before the time, during the latter part of the war, when compulsory recruiting for the Waffen SS [Armed SS] began. The close association of all of the defendants with one of the most horrible crimes of the SS upon which great stress was laid by the IMT in rendering the declaration of criminality, needs no further emphasis here.

The Laws of War in Modern Times

There remains to be considered the point of view expressed by

¹ Trial of the Major War Criminals, Vol. I, p. 291, Nuremberg, 1947.

² *Ibid.*, p. 325.

a few of the defendants, and most notably by the defendant Ohlendorf, that the massacres of the Einsatzgruppen were, under the circumstances, defensible and necessary. I have used the expression "point of view" advisedly, for this argument is not, properly speaking, a defense against the charges stated in the indictment; rather it is an attack upon the binding character of the laws of war and international law. Its logical conclusion is that the laws of war are not laws at all, and are not judicially enforceable. The argument runs about as follows:

a. It was not unlawful for the Third Reich to attack Russia in order to destroy the Russian Army and wipe out the Soviet Government;

b. The Germans expected that, in repelling the attack, the Russians would not comply with the laws of war;

c. Therefore, it was lawful for the Germans to plan to violate the laws of war in the course of their attack to whatever extent might be necessary in order to achieve victory;

d. Among the Russians, those groups who could be expected to oppose the Germans especially included the Jews, the gypsies, and political and party officials;

e. Therefore, it was lawful for the Germans to plan to exterminate all members of those groups in order to safeguard their own military and political security;

f. Furthermore, in modern total warfare the laws of war are not and cannot be observed;

g. The heavy bombing raids carried out by the Allies during the war—notably the raids on Dresden and the dropping of the atomic bomb at Hiroshima—are indistinguishable in principle from the massacres carried out by the Einsatzgruppen, and

h. Finally, therefore, the defendants cannot be held criminally liable for these massacres, and in any event are no more guilty than the Allied leaders who ordered the bombing raids just mentioned.

This, I believe, is an accurate statement of the arguments which the defendant Ohlendorf put forth during his testimony. And, after all the incredible gabbling we have heard about cultural pursuits and scientific research, it is a relief to be given a direct and stark rejoinder of this kind. This is exactly what a fanatical pseudo-intellectual SS-man might well believe. Thus, when Ohlendorf was asked on the witness stand to explain why the civilized world regarded the Einsatzgruppen massacres with abhorrence, he replied,

"The fact that individual men killed civilians face to face is looked upon as terrible and is pictured as specially gruesome because the order was clearly given to kill these people; but

I cannot morally evaluate a deed any better, a deed which makes it possible, by pushing a button, to kill a much larger number of civilians, men, women, and children, even to hurt them for generations than those deeds of individual people who for the same purpose, namely, to achieve the goal of the war, must shoot individual persons. I believe that the time will come which will remove these moral differences in executions for the purposes of war." (*Tr. p. 520.*)

Ohlendorf's thesis is, of course, equally relevant to the other cases which are being or have been tried at Nuernberg and, indeed to all war crimes trials everywhere. And Ohlendorf is not the sole exponent of the thesis that Allied bombing constitutes a complete and satisfactory defense to all the crimes charged in these indictments. Thus, counsel for the defendant Burkart in the Flick case, by way of defending his client against the charge of participation in the slave labor program, asked in his closing argument¹—

"Should they"—that is, the defendants in the Flick case—"have considered it a crime to force foreign workers to work while the enemy considered it his right to kill German workers, and their wives, and children, through air attacks?"

And counsel for the defendant List in Case No. 7, dealing with the charge that his client had executed thousands of hostages in violation of the laws of war, observed²—

"Reasons of fairness and justice demand that Field Marshal List be treated in this respect exactly as were those Allied commanders who gave the orders to attack Dresden and Hiroshima."

And General Rendulic, testifying in his own behalf in that same case,³ drew exactly the same parallel between the killing of hostages, and "air attacks" and the atomic bomb on the other.

The common denominator of all these expressions is the same. It is the doctrine that total war means total lawlessness. The doctrine is logically indefensible and is based upon wanton indifference to facts and the order in which certain events took place.

As to the atom bomb, it is unfortunately all too true that war always tends to produce bigger guns and faster airplanes and more lethal explosives. Ultimately, the responsibility for these developments lies not with those who finish a war but with those

¹ Final plea for defendant Burkart, in case of United States *vs.* Friedrich Flick, et al. See Vol. VI.

² Final plea for defendant List, in case of United States *vs.* Wilhelm List, et al. See Vol. XI.

³ Mimeographed transcript, p. 5291-92 in Case No. 7.

who start it. But the question is, in any event, quite irrelevant in terms of the traditional laws of war, the *laws of war* have never attempted to prohibit such developments. Neither in the Hague Conventions nor in the general principles and usages of warfare have any limits ever been laid down in terms of size, speed, or destructive capacity.

The atomic bomb, therefore, is neither more nor less legal than ordinary bombs; under the laws of war, the question is not as to the character or explosive capacity of the bomb, but how it is used. It is sad but true that the destruction of an enemy's power of resistance by air attacks against urban industrial centers has become an accepted part of modern warfare. We are constrained again to note that the responsibility for this development does not lie with any of the powers under whose authority this proceeding is conducted. The first cities to undergo the terror of modern air raids suffered under German bombs, Warsaw, Rotterdam, and London were badly mauled while there was still hardly a scratch on any city in Germany. Nor can there be any suggestion that the major criminal ventures of the Third Reich—the slave labor program, the extermination of the Jews, or any other crime of similar magnitude—were planned or committed in retaliation for Allied bombing. All of these programs were well under way and on the high road to consummation long before Allied bombing had had any appreciable effect on life in Germany.

But there are still more fundamental considerations. We may overlook for purposes of argument the question of who started all this bombing, because it is clear that in this field there is by now no question of unilateral repudiation of the laws of war. But, just as the laws of war develop by common observance, so they are not changed merely because one country breaches them, no matter how savagely and consistently. No parallel exists in modern warfare to the Einsatzgruppen and their activities. The defendant Ohlendorf justifies them on the ground that it could be expected that the Jews and party and government officials would oppose the German attack with special vigor. Even the dullest mind can imagine what would have happened in Germany had similar principles been applied during the Allied advance and occupation.

In fact, the attempt to justify the Einsatz massacres on the basis that Jews were especially hostile to the Wehrmacht involves a perversion of fact and a reversal of logic so extraordinary that it would be amusing were it not so seriously advanced. After the Nazis had reviled and degraded and threatened the Jews for twenty years, it certainly might have been expected that the Russian Jews would have feared the coming of the Germans.

And so now this very circumstance is put forth as justification for slaughtering them to the last man, woman, and child. We could ask for no more exact a parallel to the burglar who shoots the house-owner in self-defense.

On this whole question we wish to make one final observation. The Einsatz massacres of Jews have been defended here as if it were sincerely believed that the killing of Jews was a military necessity in order to achieve military victory over the Russian Army. But in point of fact this argument is not sincerely made. Whatever anyone may think about atom bombs or ordinary bombs, they have not been dropping here in Germany since the capitulation. But will any defendant dare to suggest to us that the execution of the Jews in Russia would have stopped if Russian military resistance had collapsed? On the contrary, the evidence is compelling that a German victory would have enormously widened the scope of operations of the Einsatzgruppen and the holocaust would have been even more staggering. Ohlendorf's own testimony makes this clear beyond a doubt. When questioned as to the necessity for the killing of Jewish children by the Einsatzgruppen he replied—

“I believe that it is very simple to explain if one starts from the fact that this order did not only try to achieve security but also permanent security because the children would grow up and surely, being the children of parents who had been killed, they would constitute a danger no smaller than that of the parents.” (*Tr. p. 662.*)

In short, the crimes of the Einsatzgruppen were not, fundamentally, military crimes at all. They were not committed in order to make military victory possible. On the contrary, military victory was sought in order to put the victors in a position where these crimes could be committed. These crimes were a war objective, not a military means.

Conclusion

Now, may it please the Tribunal, I have made these observations not only because they deal with questions which are fundamental to the integrity of this proceeding, but also because they are fundamental to the very existence of the laws of war and international penal law. Not only is this Tribunal dedicated to the enforcement of international law; it owes its very existence to international law and agreements. Though constituted by the United States, its jurisdiction is established and defined by international agreements and declarations. One of the things for which we fought was to put an end to international anarchy, and

the need for establishing international law on a practical and enforceable footing has never been clearer than it is today.

But the defendants are not charged here with the crime of disagreeing with us on questions of international law, and what they did was not only a crime against humanity under international penal law; it was a heinous crime under all civilized legal systems. It is for this Tribunal, not for the prosecution, to determine what punishment the deep guilt of these defendants merits. But it is within the legitimate prerogatives of the prosecution to state the nature of the crime. The crime involved in this case is murder—deliberate, premeditated murder; murder on a gigantic scale; murder committed for the worst of all possible motives. Some of these defendants still believe that what they did was not murder because the victims were Jews. No system of domestic or international penal law could possibly survive under which the determination of guilt for murder is governed by the political or religious creed or racial origin of the victim. It is vitally important to the peace of the world that no such doctrine gain currency among nations. We earnestly suggest to the court that true judicial wisdom in this case counsels firmness rather than leniency to those adjudged guilty of this terrible crime against humanity.

X. FINAL STATEMENTS OF THE DEFENDANTS*

OHLENDORF

May it please the Tribunal, all literature published in the last two years dealing with the problems of National Socialism seriously and, particularly, religious literature, agrees that National Socialism is not the cause, but the effect of a spiritual crisis. That crisis which unfolded itself in the last centuries, and particularly, in the last decades, is twofold: it is a religious and a spiritual one, and it is a political and social one. Catholic and Protestant literature both agree that at least since the application of Gallican freedoms, Christian religion as the final aim of humanity was increasingly eliminated from the spheres of the state which form the core of historical development. The end of the Christian idea as a binding goal for humanity in its social systems and of the individual turning to the beyond, to life in God, had a double effect.

1. Man lacked absolute and uniform values in his life. In his mind and impulses he no longer found a uniform and firm guiding point which could have supplied him with the motives for his actions. Religious values and laws took an ever smaller space in his emotions, thinking, and acting. The Christian values, if they remained at all important, actually could not prevent man from being split into a "Sunday" and "week-day" individual. Week-day supplied him with different motives than an even temporary meditation on God's will. Life this side of the grave had not only acquired a significance of its own, but indeed ruled him independently with its concepts of autonomy, wealth, social position, and so forth.

2. Society, organized into separate states, found in this development no uniform values which might have been the constant objective of society or the state. As individuals and majority groups were in a position to make their separate aims the objects of society and politics, the inviolate metaphysical relatedness of politics was lost, and in consequence such social and political order as existed at a given time had to be disputed by the differing concepts of other individuals and other groups. The endeavors to preserve the status quo within the state and the nations was replaced by the will to eliminate the status quo by means of war or revolution.

My generation, when it became aware of social conditions

* Final statements are recorded in mimeographed transcript, 13 February 1948, pp. 6605-6645.

around it, found this spiritual, religious, political, and social decay having a deep effect. There were no values for them which were not immediately attacked and opposed by different groups. Thirty or more parties fought for power in the state. They represented a number of opposing interests. This generation was not offered any idea for learning to live as human beings which was not contested. Their social future was without hope. It is understandable that under those conditions this generation did not regard wealth as their aim, for material wealth had become a questionable asset after inflation, financial crisis, and years of economic stress, during which century-old properties dissolved into nothing. They were longing for spiritual support, for a goal behind the social order into which they were born, a goal which promised them true human dignity, firm human objectives, and a spiritual and religious center for their development into human beings. This generation had become too realistic in their suffering to believe that by fixing their eyes at the beyond they would find the moral and social basis for their existence as human beings at this period in history. Confronted with daily life and social existence they found both these elements to be too clear cut not to be the touchstone of human existence. Indeed the split into a "Sunday" and "week-day" man appeared as one of the deeper causes for spiritual and material suffering. Thus, it becomes understandable that this generation searched for new religious values.

Also, the dependence of every individual on the constitution and condition of the society, the nation, and the state in which he lived was far too obvious for this generation not to look for ways and means to replace the changing rule of group interests by an order which was based on the conception of totality in relation to every single individual irrespective of his social status. In National Socialism we saw this idea and we expected it to furnish the basis of a new order. It was not in the spirit of frivolity that we spoke of The Thousand Years Reich because we knew that great developments of humanity take centuries, nay, thousands of years, until they mature and give rise to yet newer developments. Therefore, our minds were not impatient, but we looked at the history of mankind, including their religious history, and that of the ups and downs of states and nations in order to find the guiding ideas in the growth and decline of the peoples in order to find the indications which would make it possible for us to fulfill justly the requirements of our time for the experiences and sufferings of history. From our search in history, we acquired the certainty that the great religious aims, the great moral and ethical issues always flank the actual historical events.

Both prosecution and defense have at the beginning of this

trial repeatedly pointed to the great religious and moral law contained in the Ten Commandments of Moses. Nobody will deny their binding character and no one can escape the sacred earnestness of the Commandments. But it would amount to misjudging reality if one would, in the Books of Moses, ignore the descriptions of real history which in all its frightfulness is said to have been ordered by the same God who transmitted the Ten Commandments through Moses. It is not an empty religious phrase to say that to God a thousand years are but a moment. Anyone familiar with history will note that it is the outward customs and means that change in the course of the centuries, but that in 1948 no ideas are conceived or discussed which were not the living contents of Indian religious and philosophical systems, the Persian and Egyptian mysteries, Greek philosophy, the political systems and battles of the Greek city-states, of neo-platonic philosophy, of the large emotions of early Christians, the Roman concepts of law and the state, of the great impulses of the Catholic Church and of Protestantism.

It would also mean misjudging reality if one spoke of the dark Middle Ages in the belief that in its wars the so-called modern age had become more humane than the Middle Ages, or than the even more distant times, the time of so-called barbarism.

Every age has its moral aims, its ethical urge, and the stamina to create martyrs for its ideals. But, independent of these aims and forces, every age has been a piece of human history in which individuals and nations engaged in contest for their existence, for great or small aims, for individual or collective objectives, the outward shape of which in its degree of frightfulness essentially depended on inner and outer suffering, and the degree of sincerity in these contests. As subject and object of history man stands in the middle of the development formed by sincere or insincere impulses. Man will take one or the other side or will be driven on by one or the other side. If we meditate on the character of man we come to the conclusion that he who is animated by religious ethics and moral impulses and who tries to understand them in himself in order then to apply them to living history, perhaps comes closest to the concept of man. But as this aim and its practical fulfillment will never coincide, there always will be a tragic tension in the individual life between the religious and moral impulses and their application to real life, not only because individual man is limited in his power, but also because he lives in a world of powerful groups and social conditions which can wholly ignore his intentions and dispose over him. That tension extends and becomes cruder in the history of the nations, both in the living body of the nations themselves, as well as in the relations between

the nations. And yet all religions, especially the Christian religion, teach that God becomes manifest in history. Experiences in the last years have often shaken that conception, and yet no one with a spark of religion in himself can escape that knowledge.

The tension between the conception of history as a road to God and in God and historic reality as the outward manifestation of human ability and inability, human wisdom and human error, has grown into a general crisis in the human existence as such, since the elements of creations have shown themselves to man, and since human beings were not bound together by common ideals, bolshevism appeared as the idol, equipped not only with power and force, but even with martyrs.

At the end of the Second World War and with the defeat of National Socialism, the spiritual, religious, political, and social crisis still persists. A link between East and West has been eliminated and this perhaps has made the crisis yet more apparent. In analyzing our present time we will always find that ultimate values as criteria for the feeling, thinking, and acting of human beings and nations are still lacking. The metaphysical standards are missing. We must never forget that the basic laws of Christianity in its relatedness to God and individualism with man as its center and its outward expression in the constitutions of states are diametrically and irreconcilably opposed to one another. To Christianity this will always be true of any social order or political constitution which has made man the sole measure for its motives, the objects of its policies. If the ideas and concepts of democracy, the ideas of human dignity and liberty are to be made the sole yardstick for the measuring of the recent period in history, it must not be forgotten that the idea of democracy is no substitute for the metaphysical obligation of the Christian or any other religious idea. The democratic idea is a formal one. It lacks all certitude which would comprehend the totality of human life; it assigns duties and privileges to people and social organizations; it grants individual liberties, but it does not give the reason why. Nor is this intended because this would contradict the objectives of democracy. To equip that idea with judicial authority by bestowing on its representatives a legitimacy from a binding religious and moral principle amounts to an entirely unjustified assumption that an idea or a law, which does not exist, is generally binding. As all metaphysical motivation is lacking, this usurpation will always be regarded as an effort by one group to maintain the status quo which will not serve to lessen the tension between the nations. Nothing can grow from this which would substitute force by an idea which is binding for all and from which there could

come comprehensive motives for a human conception of law and for the shaping of a common history of the nations.

The most recent period in history is not different from any other period simply because a fight has taken place for moral and ethical principles and, through certain historic conditions, for the survival of nations, even if appearances seem different at a superficial glance. I regard myself as one of those who have become aware of the contrast of those two forces in history. I have myself sensed that tension and endeavored to find a solution. I have said time and again that I was tortured by the fear of the punishment which those in Germany who were responsible for the historic development seemed to invite by their words and deeds. Their frank ignoring of human lives, and of the basic ideas of their own religious and moral conceptions of the people made this fear grow in me, but today my fear of future punishment invited by present day events is greater still.

I have been now in the Palace of Justice in Nuernberg for 21½ years. What I have seen here of life as a spiritual force, in these 21½ years in Nuernberg, has increased my fear. Human beings who under normal conditions were decent citizens of their country were deprived of their basic conception of law, custom, and morals by the power of the victors. The fact that they were deprived of their conceptions which in the place of the lost religious values had given to the majority of human beings moral and ethical support, and the fact that the life which they led justified by those conceptions was now called criminal, made them give up their human dignity, which they should never have done. While they waited for the verdict which was really announced beforehand, when the victorious powers had condemned their basic conception of life, the march of history did not stop, which in its consequences for the peoples concerned put the powers on the judges' bench in the wrong before their own verdicts.

I am animated by the desire that the Tribunal may look beyond the over-simplified and over-generalized formulas of the post-war period and contemplate the events of this period from the point of view of the two basic forces which have always decided the flow of events. Not one nation alone is guilty, but ideas and the weight of concrete conditions among the nations fighting for their survival and future find human representatives who are capable of unloosening the pent-up tension. The concrete situation facing the nations after this war shows that the tension which still persists and grows daily goes deep back into the past and far beyond the German people and its intentions.

Thus I ask that in their deliberations for the verdict the Court will take into consideration that these defendants here were

thrown into a historic development which they did not cause and which went on independent of their will. None of them has himself selected his place in that development as a result of which he now sits in this dock. They were the target of impulses which made them act as they did independently of their own aim in life. They entered on their task convinced that they were backed by a genuine and justified moral force. They felt that their work was necessary even if it opposed their own inner tendencies and interest, because the existence of their people was in deadly peril. They were the same good average citizens as you find them by the millions in all countries. They never thought of criminal activities or criminal aims. They felt that they had been put into an inevitable, awful, and gigantic war which was to decide not only on the survival of their nation, their families and themselves, but they saw in themselves the protective shield guarding also other nations against one common enemy. They were in no position to judge the necessity and methods of this war. They were not responsible and could not be responsible for it. Any other attitude would have been in contradiction to the state administration which had been in force for centuries, and in contradiction to the existing responsibility of the highest leaders of the nations. They had to accept the methods and the orders in this war as did all soldiers in all countries. And those who looked at history and who from the developments which history taught them concluded that the future would be the result of inexorable moral laws were as much as ever faced by the tension between the two basic forces in history; in their longing for the realization of ethic and moral ideas, and the power of actual history with its overwhelming strength. They also felt the natural human urge for peace and a normal life with their fellow beings. But the passion of their moral existence included the metaphysical stipulation that the existence of their people must be preserved.

I never lost faith in God being manifest in history; even though we may not understand His ways, no situation will deprive me of my faith that life and death in this world has a reason and must be regarded affirmatively. Never in one moment of my life have I failed to offset the overwhelming forces of practical history with religious, moral, and ethical impulses, whenever life demanded something of me. I always regarded history as the realization of ideas in which human beings were both the subjects and the objects and which yet seemed to point to something beyond them. I am of the opinion that this Tribunal will use the historic facts which have become known in the last two years on the background of the past period, facts which not only threaten the existence of the German people, but are a menace to the whole

world, in order truly to understand the realities of history in their broad ideological and material implications. The fact that the victorious powers declared the German people guilty and the statement that its legal, moral, and ethical basis of the past had been illegal, immoral, and unethical have confused and uprooted the German people as well as the individuals who were heard here in Nuernberg as the representatives of that people. Thus, this legal, moral, and ethical suffering of the German people became greater than the material one which threatens its physical existence. May the verdict of this Court take into account the reality of historic conditions and developments and give the Germans, individually and collectively, the opportunity of true self-realization, lest they be kept in the grip of despair because their existence is held to take place outside historic reality and their future fate is based, not on the firmness of law, but on power and force.

If the Tribunal please, I do not wish to end my final statement without expressing my gratitude for the very generous way in which you have dealt with the problems which we have regarded as important to these proceedings.

JOST

Your Honor, having grown up in the years of need of the German people, I decided in 1928 to enter the NSDAP [National Socialist German Workers Party] because I believed that I found in this party the movement which alone would be able to prevent the decline of Germany, and would be in the position to offer resistance to the ever increasing pressure of bolshevism within Germany, and also abroad. I believed that I would best be able to fulfill my duty toward my people and my Fatherland by taking this path. This point of view also caused me to enter the SD in 1934, an organization which I considered a justified and necessary institution, an instrument capable of doing, particularly in an authoritarian state, constructive work and of offering necessary criticism.

In the late summer of 1941 I left the SD for tangible and personal considerations which I have spoken about at length.

Against my will and without my agreement I was elected Chief of Einsatzgruppe A, and Chief of the Security Police and SD Ostland in late March of 1942. With this assignment, and in connection with known orders then at hand, and other orders which were given to me later by my superior, I was charged with a singular responsibility, a responsibility which fortunately only few men have had to bear in the long course of history. The execution of the orders given me meant the death of 10,000 people. The knowledge and acquaintance with the fate of these victims, and,

in addition, about the inevitable fateful result of this order for the German people brought me to a state of conflict regarding my duties which cannot be described today with mere words. I decided in the course of this conflict to undertake everything in my power to render a further execution of these orders impossible, and to commit myself to the revocation of the orders. I myself gave no order, and I did not pass on the order which I received from Heydrich, and I did not carry out the instruction from the Reich Commissioner to rid the Ostland of Jews. I took this position because I had to take it. I did not act in this way in order to derive thanks from some person; neither did any opportunist considerations influence me. And, moreover, I certainly did not act in this way in order to have an alibi for a prosecutor one day, because in the summer of 1942 such thoughts would have been absurd. It was possible for me to prevent a further execution of this order for five months so that all Jews who lived in this area at the beginning of my activity there were still living at the end of my activity there. The prosecution has managed to prove three-hundred deaths in an area larger than Germany, and in a span of five months, and these deaths exclusively concern partisans, or such people who had forfeited their lives because of offenses against the laws of war. If, on a roll call I expressed that Jews, too, stood under the protection of the laws with their life and property, that was the expression of my conviction, namely, that even the Jewish people have their right as a part of God's creation in exactly the way that the German people, too, have their right to live.

The prosecution submitted among its rebuttal documents the examination of a certain Roman Loos, and this statement is supposed to be a standard for the activity of a commander when confronted with orders like the Fuehrer Order. I can only say that in my position I fulfilled all these conditions. I expressed to all my superiors my opinion and my point of view. I did not leave my subordinates in any doubt about my ideas. If the prosecution introduced documents of this nature, then they would have to be permitted to work favorably for the defendants who acted in accordance with the conditions therein contained. I personally was completely aware of the results which could follow from my actions. It was in the hands of my superiors to act in accordance with them, and finally they did so. Mr. Wartenberg stated in the course of a heated interrogation in May 1947, "We know that you acted very decently in Riga. We know, too, that you have done everything humanly possible in opposition." This statement admits the compelling conclusion that they were in possession of material which was mitigating for me. But they did not submit it.

During the five months I acted as my conscience prescribed, and

I believe that as a German and as a man, I acted justly. I can justify my actions before myself and before any Tribunal in the world with a pure conscience.

NAUMANN

Ill conditions within the German people, patriotism, and conscientiousness were the reasons which, in 1929, caused me to join the NSDAP. Inspired by the very same patriotism, and the same conscientiousness, I chose the opportunity, from 1928 on, to take part in the brief courses which were held in those days by the then Reichswehr, the predecessor of the later German Army, and, apart from exercising my profession, to train myself as a soldier in order to be able to defend my country, should the necessity arise. Thus I received my basic training and visited the noncommissioned officers' courses.

When in 1939 war broke out I frequently asked my chief, Heydrich, to let me join the army until I achieved my aim, and was able to join the army in April 1940. However, this condition did not last for long. As early as December of the same year, I was to return to my former office. Owing to my personal acquaintance with General Juettner of the Waffen SS, who held then the corresponding rank of Chief of General Staff in the Waffen SS, I managed to remain with the army. But through a decree of Himmler I was recalled to my office in March 1941. At the end of November 1941 I took over Einsatzgruppe B by personal order of Heydrich, and thus became acquainted with the Fuehrer Order, which is being dealt with in this trial. Apart from instinctive objection against this order, there was the fact that this order had been given by the Supreme Commander, and the Chief of State during the war. Apart from the wish not to have to comply with this order, there were the considerations that the oath rendered to the Chief of State left no possibility to evade it, and the realization that it was a legal order, as it was given by the Chief of State. In this inner conflict of emotions, in this enormous collision between duty and conscience, I conducted myself as has been described by my counsel in his plea.

I want to use this opportunity to thank my defense counsel and his assistants for the labors they underwent in my behalf. Psychologically, I rejected this order. On the witness stand I have attempted to give as true a picture as possible of this inner conflict. The testimony of my comrades Steimle and Ott equally show how strong and how serious our objections were against this order. Steimle's and Ott's testimony supported my inner attitude, but we clearly recognized that we had neither the possibility nor

the power to take any steps against the order. The Fuehrer Order was also the subject of discussions with my military superiors in Russia, the Commander in Chief of Army Group Center, Field Marshal von Kluge, and the Commander of the Army Group Rear Territory, General von Schenckendorff. Also Field Marshal von Kluge, who exercised the entire executive power in central Russia, and who was the only man in this area who had immediate access to the Fuehrer, stated that there was no possibility to evade the Fuehrer Order. On many occasions I discussed this with General von Schenckendorff and the result was the same. I would like to say here that friendly relationship developed between von Schenckendorff and myself in spite of the high position and high rank, and his age; von Schenckendorff was then 68 years old.

To illustrate this I would like to say that in the course of time he became my fatherly friend.

I did not regard the war in the East as a German war of aggression. According to information that I had access to I believed that Germany had anticipated the immediate impending attack on the part of the Soviet Union. I was furthermore convinced that bolshevism was a great danger for Germany and Europe, and that all forces must be mobilized to avert this danger. How right this attitude was has been proved by the subsequent period. The causes which led to the cooling off of the inter-Allied relationship between the U.S.A. and the U.S.S.R. prove, I believe, the accuracy of my original point of view.

There I was, a soldier and officer in the East. It was in accordance with my inclination as a soldier, that I should regard my assignment as a purely military one and that I complied with it accordingly. The situation in the army sector, and the very imminent partisan danger provided the opportunity for this. Therefore, I mobilized the forces of Einsatzgruppe B to a large degree for partisan reconnaissance and combat, which my superiors, later on, took as a reason to reprimand me.

It was also in accordance with my military inclinations that I should combine a battalion of Russians who voluntarily fought on the German side, and had put themselves at our disposal with the police company of the Einsatzgruppe B, a unit of members of the Waffen SS who were part of Einsatzgruppe B, and a number of voluntary Ukrainians into one combat unit, and reported voluntarily for combat against partisans as commander of this newly formed unit. This was approved by my superiors. In the course of this combat, I was decorated with the Iron Cross First Class for bravery before the enemy. I merely mention this fact because the prosecution in their trial brief have mentioned this decoration as a reproach. I would like to tell the prosecution here that I am still

proud of this decoration which I have earned for bravery before the enemy.

After about three months an end was put to my secret wish to remain a unit commander during the whole period of war, because, first, the battalion of Russians and, later, the mixed battalion were withdrawn from the territory of the army unit, and thus I had to dedicate myself entirely to the leadership of Einsatzgruppe B. I was a German soldier and officer in the truest sense of the word. Whenever I had to order, or to act anywhere, and anyhow on my own initiative, I have always acted in a humane manner. If I was confronted with an order by the Supreme Commander, or the Chief of State, I saw, just because I was an obedient soldier, no possibility to disobey this order, even though my inner attitude resisted it. When I was in Russia, it so happened that I took over Einsatzgruppe B only five months after the beginning of the war, and, therefore, I did not have to comply with the Fuehrer Order, because the Fuehrer Order had been given to the Chiefs of the Einsatzgruppen and of the Einsatzkommandos at the very beginning. To reject the order I had neither the power nor the possibility. The fact that obedience is the supreme duty of a soldier is shown in the well known speech of the British Field Marshal Montgomery of 1946, in which he says—

“No matter how intelligent the soldier is, the army would leave the nation in a lurch if it were not used to obey orders immediately. It is the duty of a soldier to obey all orders without questioning which the army, i. e., the nation, gives him.”

The war has shown that not only the Germans but also the Allied soldier receives and executes severe and severest orders. How could it be possible otherwise that my home town of Dresden, which housed no factories nor any installations of war importance within her boundaries, should be destroyed within 36 hours, and, thus more than 200,000 defenseless human beings, mostly old people, women and children were killed, buried, or cruelly wounded? How would it otherwise have been possible that the old city of my last garrison, old Nuernberg, had been turned into a rubble heap? How would it have been possible that the first atom bombs were thrown on Japan, and thousands and thousands of defenseless people were killed and that through the very consequences of the atom bomb even the unborn generation will have to suffer?

On both sides soldiers executed their orders, orders of their highest superiors, even if it was not in accordance with their conscience, when they had received the orders, with the reason that they were necessary in order to reach the war aim.

My position as chief of Einsatzgruppe B, my conduct in Russia,

and my inner attitude have given me the confidence so that I was able to answer the question of the president of this Tribunal which he put to me on 15 September 1947, with a clear conscience and deep conviction by "Not Guilty."

SCHULZ

May it please the Tribunal: On the charges made against me in this trial I have commented on the witness stand. That which could be summarized was put forth by my defense attorney Dr. Durchholz in his final plea. I have nothing to add to these statements because they corresponded with the truth. Thus, and in no other way, the events unfolded before me.

Therefore, my honor tells me that I must defend myself once more against the charges put forth by the prosecution to the effect that my statements are impeachable. On the day of capitulation I made myself unconditionally available for my own person and for the thing which I have to represent not in order to lie but to serve the truth. Considering the unlimited means of investigation, which are more than ever available to the investigating authorities it must also have been an easy matter for the prosecution staff to test the truthfulness of my statements. If all these many men were interrogated, whose names Mr. Wartenberg read to me from a long list, then the result of the questioning cannot have been different from that which I stated myself, excluding the events, naturally, which took place within me [sic].

I must also expressly reject the monstrous charge of the prosecution according to which 12,000 people have been shot under my responsible leadership of Einsatzkommando 5. Each member of Einsatzkommando 5 who was there during my time can truthfully say nothing other than that such a charge is devoid of any basis.

Wherever I have been, in almost twenty-five years of police service, human beings have always been holy for me. Just as I am concerned to maintain the purity of my own honor, I consider also the honor of my fellowmen, no matter who they are. And it was also not different in Russia. At no time did I hold irresponsible or unfeeling views on the subject of the fate of human beings.

My honor forces me also to emphasize once again—under my oath as a witness—that never in my life at any place or at any time have I maltreated or tortured a human being. Neither have I ever participated in an order to this end, nor have I tolerated such an act silently. Had I discovered such an inhumane act within my area, I should have committed myself against it with all means at my disposal. That this is the case is proved also by the affidavits which have been submitted, which for the most part were made available most voluntarily by former political opponents.

If the prosecution believes in spite of all this, that it must draw a conclusion which is not in harmony with my conception, I wish to try to attain understanding here, too. But that cannot alter the fact that I can answer to my conscience for that which I have done and not done. This accounting to my conscience is the satisfaction which I am able to give to myself.

In my sacred duty to serve my Fatherland I never forgot my duty towards humanity, because I carried within me personally the conviction that the respect of my Fatherland is dependent upon that respect which it deserved from its environment. I acted in my position on this premise.

In the certainty that I acted in accordance with this premise, I confidently await the decision of the Tribunal.

SIX

Your Honor, I was always a scientist but never a policeman. My political work, whether at the desk of the university, or at the desk of an office, was devoted to understanding and not to hatred. The four weeks of my assignment in the East did not constitute an exception to this. And I do not have to reproach myself in anything as a man and as a soldier, than as today. Thus my first word in this trial can remain my last word: Not Guilty.

BLOBEL

May it please the Tribunal. Contrary to the assertion of the prosecution that I did not serve at the front and that my activity did not take place in the confusion of the front line, I would like to say once more in conclusion, my assignment was exclusively in the combat area and not in the rear area. In addition, this assignment was the result of an order by the Reich Security Main Office which legally is to be considered equivalent to a war draft. Like every soldier I was subject to the harsh war laws. I too became enmeshed, by the assignment in the East, in conflict between law and morality, obedience and refusal to obey orders, harsh necessity of war, and personal feelings, a conflict which can hardly be retold today, and which can hardly be explained to the outsider.

I did not leave Pretzsch with the thought that I would have to order mass executions of Jews, Communists, and other enemies, since I personally lacked every prerequisite to bear the responsibility for such a decision.

At that time I could not interpret the speech by Major General [Gruppenfuehrer] Streckenbach as a final order. I expected certain executive orders. These were issued to me when I was subordinated to Sixth Army Headquarters.

Executions were not ordered by me personally. The executions which were carried out, at which I was present, were decided upon and ordered by the Commanding General of the Sixth Army, Field Marshal von Reichenau, according to documentary statements.

The number of 10,000 to 15,000 persons which I mentioned included, to my knowledge, all events with which any man belonging to Sonderkommando 4a had to deal. The documents concerning the often mentioned operation in Kiev show that by far the largest part of this number are due to this operation to which only a small group of men belonging to Sonderkommando 4a had been detailed. Whether any of these men took part in this execution is something about which I do not know anything personally, since I did not actively participate in this operation.

During the assignment in the East I was frequently in bad health due to infectious diseases. Only relatively late did this condition lead to my being relieved, after the superior authorities finally had received knowledge of the medical opinion about my reduced military fitness.

I am still afflicted with the after-effects of this illness, and the operations connected with it, as can be seen from the hospital papers which have been submitted.

I did my duty as a soldier towards my Fatherland according to the orders given to me by von Reichenau. I did not commit war crimes and crimes against humanity, as the prosecution asserts. I can face my wife and my children with a clear conscience, and I can look into their eyes. I am not guilty before God and my conscience.

BLUME

May it please the Tribunal, my defense counsel in his final plea and myself when in the witness stand commented already on the actual questions of this trial and its legal problems. Therefore I only want to add a few words with regard to my personality.

My education and training at home when I was in school and at the university acquainted me with the values of Western culture. At the same time Germany was a sacred concept for me. After the conclusion of my studies and at the beginning of my professional career in 1933 it was the aim of my life to become an official in the internal state administration. But fate sent me to the branch of the political police. In all those years from 1933 until 1945 I saw nothing else in all the developments in Germany than the great effort to eliminate the moral threat of bolshevism against our Western cultural values. According to my conviction of that time,

this purpose was served by Adolf Hitler's policies, even when he, in the middle of 1941, led Germany into war against the Soviet Union.

My attitude towards the world and life is based on the belief in the inner values of man, and on the belief in ideals. I always tried to realize these ideals in my personal conduct of life as well as in my profession. This required in particular a correct and clean attitude as an official and the endeavor to serve justice and law in my professional activity. In those cases where my character could not agree with certain orders received in my activity, I tried, up to the last limit, to dominate with my own humane attitude. I therefore believe that during my entire professional activity, I helped incomparably more people without their knowing it, than I interfered in human destinies and made them suffer in the execution of the authority of the state.

All in all I feel myself free from any legal guilt. I therefore expect your judgment, your Honors, with perfect calm and confidence.

SANDBERGER

I do not want to make any statement.

SEIBERT

May it please the Tribunal, I do not wish to add to the statements of my defense counsel about the actions indicted here in this trial in Russia, because I am of the opinion that that which had to be said about it has already been said. I had requested my defense counsel not to make any lengthy statements about my character and my life otherwise. Above all the reason was that the Tribunal already knew my life—if only in brief outline—because of my testimony on the witness stand, and that my activity in the SD, especially outside of Russia, always took place in the economic department. The documents of the prosecution prove this.

In my work which I did after I was transferred from the army to the SD I feel myself so free of every guilt, according to the best of my knowledge, that I dare claim that it is no coincidence that the prosecution did not succeed during the time of my detention, which is more than thirty-three months, to mention even one human being who has been harmed through my activity.

I add that in May 1945 I surrendered voluntarily to the British and that not only here but already in 1945 and 1946 I was interrogated about my activity longer than seven months in the headquarters of the British Secret Service in Nenndorf. After the completion of these interrogations in February 1946 I was

charged with nothing but I was committed then to an internment camp for automatic arrest.

I feel free of every guilt.

STEIMLE

May it please the Tribunal, before I say my final words may I tell the story of an event which I experienced at the end of September or beginning of October 1941 in Velizh, the headquarters of my Kommando, and which I related to Mr. Wartenberg during the interrogation?

In the area of Velizh a number of German soldiers had been murdered in a partisan attack. The competent military field commander handed over to me a number of farmers from collective farms from a village which was located near the site of the attack. He asked me to have these Russians shot as hostages by my Kommando. For this purpose I ordered an interrogation of the prisoners concerned. The investigation showed that these men could not have been connected with the partisan attack. I therefore ordered their immediate release.

Your Honors, I remembered this event especially distinctly when I received the indictment for participation in systematic genocide. As far as my situation is concerned, it seems to me to be especially symptomatic in this trial too, insofar as the interrogator at the time greeted my truthful story with sarcastic laughter and did not believe me. Whatever the prosecution may bring up, the inner certainty of having the truth on my side induces me once more to present the following concerning the charges made against me:

1. At no time during my command, either in Kommando 7a or in Kommando 4a, did I give orders to carry out the Fuehrer Order, just as little as this Fuehrer Order was carried out in my two Kommandos, to the best of my knowledge.

2. Numerous crimes against the security of the German troops which were punishable according to announcements, especially the appearance of partisans, gave my Kommandos cause, by order of the competent army, to take action against the bearers of this resistance movement and also to carry out death sentences in the process.

3. These convictions resulted on the basis of detailed interrogations which proved the individual guilt of the individual defendants.

4. At no time did my Kommandos carry out any collective measures during my command.

5. The Communist functionaries who are reported as having

been shot were convicted as active leaders of the resistance movement.

Your Honors, I look forward to your judgment with a calm conscience. The documents submitted by the prosecution cannot brand me a criminal nor a war criminal. No witness who experienced my activity has supported this claim of the prosecution, even though the prosecution interrogated officers and men of my command in detail.

Inspired by youthful idealism and a fervent love for my country I came into contact with the National Socialist movement once upon a time. I wanted to serve Germany, to help the German people. The end of the war finds my generation facing an immense abyss. Where we dreamed of future well-being and peace, we found ruins and distress in their stead. No history-conscious man will claim that such an event is thinkable without human weakness and guilt. Likewise, every historically-minded man knows that it is impossible, after such an event, to distribute the guilt individually or even to charge all to one people alone. As a former SS officer and National Socialist I am prepared to take my guilt upon myself. It does not lie in a punishable act which I might have perhaps committed in Russia. If I am to express this sense of guilt only in an approximate manner I will say this; hundreds of thousands have, together with me, placed their faith and idealism into the hands of a few people with too great a confidence and have thereby laid the foundation of one of the causes of our unfortunate time. Thus alone did I and many others become enmeshed in the guilt of our time. Surely their guilt is not a criminal one, but a political one. As an upright man I will answer for it.

BIBERSTEIN

Your Honors, I have nothing to add to the deliberation of my defense counsel. As to all charges of the prosecution I do not feel guilty before God and my conscience.

BRAUNE

Mr. President, your Honors. I have nothing to add to the final plea of my defense counsel.

HAENSCH

Your Honors, when this trial started I pleaded not guilty. With this idea I begin my final words. At no time did I have any connections with war crimes or crimes against humanity, and equally am I unable to see anything criminal in my membership in the SD and, therefore, also in the SS.

I owe it to a chain of circumstances, for which I am not responsible, that I am here today. Documents have been found, which appear to speak against me. However, a benevolent fate made it possible to prove to your Honors that I actually had nothing to do with the events reported in the documents. I underline here to its full extent what my defense counsel has said about this.

I went to Russia with a clean conscience and with a clean conscience I returned from there. I myself never did commit anything criminal, nor did I see others do so, nor did I ever hear of it. Also, nobody ever suspected me of committing a criminal act. What actually happened during this war in this respect—especially the treatment of the Jews on account of their race—I have learned—and of this I assure you again—only after the collapse of Germany, and the full details I heard only in this trial. I did not know the so-called Fuehrer Order. One could, therefore, not ask me now to feel guilty about this which is something which does not correspond to the fact. I, therefore, do not want to deal with it at this point, but only want to say one thing—had such an order been given I myself would have left nothing undone in order to fight against it, just in the same way as otherwise I always interfered against injustice and corruption without consideration of my person.

Again and again, I asked my defense counsel, and all those whom I met during this trial, to check on my assertions and ask whomever they wanted to, about my person and activities because I did and have nothing to hide and, therefore, have nothing to fear. It was clear to me that only truth could wash the suspicion off me, which the false statements in the documents had cast on me. Therefore, I avoided everything which could have shaken the proof put forward in my defense in the remotest way, and I know that all those who have helped me in providing for my evidence or who testified for me, did the same. For this reason I even restricted to a minimum my personal correspondence with my family. This was in no way easy for me, worried as I was about my wife and my aged mother, both of them being almost without means of subsistence at the present time.

Concerning my membership in the NSDAP I may be permitted again to point out that I only joined this organization in the belief to serve my people best in this way. This was my conviction when I swore fidelity to the Head of the State. This oath was no obligation to blind obedience as far as I was concerned, but left sufficient amplitude to my own responsibility. I related which events induced me to join the National Socialist Movement. It was the situation created in Germany by bolshevism at that time. Everything I saw with my own eyes showed the development

which could only end in chaotic destruction. To stem this danger I considered my duty, not only as a German, but also as a member of the entire civilized world. I do not think that I made a mistake in the recognition of this danger. It is still my conviction to this very day.

My defense counsel told everything about the circumstances which made me join the SD and the SS. I have nothing to add to this point.

Your Honors, all guilt that can be placed on man is the guilt of intention. My intention, however, was and is clean. Nobody can disturb the peace of my conscience. However, there is another thing, which ought to be defended. This is honor. It is exposed to outside attacks. Please do understand that I suffered a great deal and still suffer under the accusations of the prosecution, because they charged me with a guilt, of which I feel myself free. As a man who at one time was privileged to serve justice I trust that you, your Honors, will dispense justice to me, and will find me not guilty as my defense counsel has applied.

NOSSKE

Your Honors, I have declared since the very beginning that I was determined not to obey the Fuehrer Order. And indeed I did not carry it out.

My activity in Russia consisted in police and security tasks, just as during war time it is imperative in enemy country. On the other hand, the knowledge of this order prompted me to try with all means to sever my connection with the Gestapo [Secret State Police]. I have made many attempts in this direction, however, I failed. Only as late as 1944 I succeeded in leaving the Gestapo. I refused to obey an order, which I could not evade, but should have carried out. The consequences of my leaving the Gestapo was that I was sent to the front as a soldier, and this could be considered as extreme leniency towards me. Just as well I could have been court-martialed and executed for disobedience. I did not have an easy time as a soldier but was assigned to those places where fighting was hottest, which is proved by my combat wound. I ask you, your Honors, to consider all these circumstances, and I put my life in your hands.

OTT

Mr. President, your Honors. Since 1945 singular and most secret conferences and decrees have come to our knowledge which we never had access to before. I must confess that under the influence of these documents numerous conclusions seem at hand

which, however, were never drawn by me as I have never had knowledge of the internal connections. Thus, the Fuehrer Order looks quite different if we look at it today as it did then in Russia where I did not have any idea of the happenings in the concentration camps and similar matters. In Russia I, as a soldier, was confronted with the task of doing my utmost towards securing the army territory for the fighting units. I carried out this task as well and as conscientiously as I was able to do. I saw no unjust war, I had no ideas of liquidations, but the decisive matter for me was my duty as a German and a soldier within the struggle for life of my own people. I only came in contact with the Jewish population of the sector of our assignment so far as individual Jews were members of the partisan groups which we fought against. I never searched for Jews in order to have them shot. In accordance with this, I used Sonderkommando 7b only as a unit for fighting partisans and for the prevention of acts of sabotage but never for liquidation operations. Even partisan counter-intelligence tasks I have tried to comply with using as lenient means as possible. Therefore, from my own initiative and under great difficulties I set up an internment camp in the vicinity of Orel to which I had people brought whose offenses would have sufficed to have them shot according to the general laws of warfare then in force. But I thought I would be able to secure their lives and merely punished them with 6, 9, or 12 months' confinement. By doing this I saved the lives of about 200 people.

I have never hunted for external honors. All my actions have been guided by reason and humane compassion. My assignment in Russia did not result in promotion; I received no decorations, no priority in subsequent employment. I did not apply for my assignment in Russia as part of the security police machinery, and I was finally re-appointed to the same post I had held before.

My conduct in other occupied territories before and after my Russian assignment, especially my activity in Lorraine was not regarded as one enforcing and supporting a terror rule by the population. It is most clearly shown in the letter of the French mayor, who, on his own initiative, says that I would be welcomed by the population of this particular French area at any time. My conduct in Russia was not different. Whenever and wherever I saw injustice done or unnecessary severity exercised, I openly applied to the responsible agencies as Gauleitung (district administration), Regierungspraesidium (government office), and Labor office, or State Police in order not only to bring about exceptional treatment by deviating the normal channels but also to cause the suspension of any and all unjust measures; concerning this, evi-

dence has been brought. Apart from this, any agency of my former domiciles can be asked concerning my behavior and conduct, be it my hometown Lindau, be it Norway, Saarbruecken, or Lorraine. Therefore I faced interrogators and judges with the same unburdened openness.

The charges against me are only of a general nature and as such contained in the common indictment. Yesterday the chief prosecutor, Mr. Ferencz, has stated that he will not submit a closing brief against me. I have only one special request to make to the honorable judges that they may arrive at their decisions only according to the defendant's own personal conduct and their motives, and not according to points of collective guilt. It is just because I was an old member of the Party that I know that we never as much thought of elimination as a solution of the racial question. This kind of solution was invented in the heads of a few leaders under the impression of war. And it was only carried out by few of them, based on orders which have nothing to do with the Fuehrer Order which is the subject of this trial. Even at the time when I was inspired by the idea of a new European Order under German leadership I never for a moment thought of violent methods, which would be considered a terror regime against other nations.

The war has caused many hardships. It also treated me with severity by taking my wife from me. She was shot down, in the street of a locality which was not defended when the enemy marched in, by an anti-tank gun through a well aimed shot, as she was just coming out of a shelter. In spite of this sorrow no bitter feeling has remained with me but only the wish that peoples may, in future, be saved from the horrors of war.

The following discussion took place regarding the statement of the defendant:

PRESIDING JUDGE MUSMANNO: The defendant Ott has made a statement with regard to trial brief. Does the prosecution intend to file a trial brief in his case?

MR. HOCHWALD: If the Tribunal please, the Tribunal is aware of the fact that Einsatzgruppe B was handled entirely by Mr. Ferencz, however, I think that this is a mistake on the part of the defendant. As far as I know, trial briefs in all cases of all individual defendants are being filed and will be filed by the prosecution.

PRESIDING JUDGE MUSMANNO: We wouldn't want any defendant or defense counsel to be of the impression that a trial brief is not being filed if one is to be filed. We will repeat what we said before. The trial briefs will be accepted up to and including next Friday, 20 February, but will not be accepted after that, and we recommend that both defense counsel and prosecution counsel get together, where briefs have not yet been filed, to see to it that with all expeditiousness possible they now be submitted to the Tribunal.

MR. HOCHWALD: Very well, your Honor.

STRAUCH

The following discussion took place regarding the final statement of defendant Strauch:

PRESIDING JUDGE MUSMANNO: In their order, the next defendant would be Eduard Strauch. He is not here, we presume, for physical reasons. We would like to inform his counsel, Dr. Gick, that Eduard Strauch has the right to make his final statement in court and we do not know whether you purposely, Dr. Gick, did not have him brought in or whether it was just assumed that he would not be brought in, and perhaps he is actually in good physical condition to make his statement or it may be that Strauch doesn't care to make a final statement. We would appreciate it, Dr. Gick, if you would inform him that he is entitled to make this final statement unless he has already indicated to you that he waives that right. If he wishes to make the statement in open Court and you inform the Tribunal, the Tribunal will sit to hear his statement. It may be that he will be satisfied to make merely a written statement in the nature of a final statement and that will be accepted by the Tribunal. We will leave it entirely in your hands, Dr. Gick.

DR. GICK: Your Honor, I saw the defendant Strauch yesterday in the hospital and I found him in a state of health which was worse than ever before. He gave completely confused answers and spoke nonsense. I was not in a position to make it clear to him that he, if necessary, could say a few final words; I was not in a position to make it clear to him what that meant. I believe that Strauch in his present state is not responsible for his actions. If the Tribunal will permit me to do so, I shall submit another medical certificate concerning the present condition of the defendant Strauch at a date to be fixed by the Tribunal.

MR. GLANCY: If it please the Tribunal, it is the prosecution's opinion that the defense counsel for the defendant Strauch is precluded from testifying as an expert in mental diseases. The Tribunal is well aware of his present condition and has been so advised by experts.

PRESIDING JUDGE MUSMANNO: Defense counsel has on previous occasions made comments similar to those which he has just now made and the facts established the contrary. The defendant was brought into court and did testify in a normal manner after two or three attempts and after examination had been made by competent physicians. So that the present statement of the defense counsel may not be accepted as evidence of the defendant's condition.

DR. GICK: May I say a few brief words, your Honor? It is not my intention to give an expert opinion here. I am not in a position to do so, but it was merely my intention to tell the Tribunal how I found the defendant, and what impression I gained.

PRESIDING JUDGE MUSMANNO: Yes. Well, the Tribunal will ask you, Dr. Gick, to inform the defendant Strauch that he is entitled to make a final statement just like every other defendant is making. He may make it in writing.

KLINGELHOEFER

Mr. President, Your Honors. The basis of my conception of life was influenced from my very early youth through the fact that I was born outside Germany. Besides my love for the German people and the inner obligation to dedicate my energy and my efforts to the good of the people, there always was the respect and the understanding for other peoples and nations.

The realization of the ever increasing Bolshevist danger in the East made me join the NSDAP at a time when the political, social, and economic conditions in Germany threatened to develop towards a chaos, which was bound to open the doors of Germany to bolshevism. I also realized the fact that for bolshevism Germany represented the key for the political conquest of Europe. From this point of view I considered the war in the East and therefore hoped for Germany's victory, being convinced that this victory in the East would also mean the final exclusion of the Bolshevist danger in the East.

At the beginning of the war with Soviet Russia, I was assigned to the Einsatz as an interpreter, because of my knowledge of languages. This assignment was based on a military order, which could not be objected to. My task in this assignment was restricted to intelligence duties and those duties resulting from my knowledge of the language and the country. In consideration of my subordinate position within the SD in Germany I never could be given the independent job of being the leader of a Kommando. My activity was therefore limited to the execution of orders and directives given to me, without ever being able to issue orders on my own initiative.

With regard to my attitude towards the Fuehrer Order I already declared that I personally objected to this radical order and tried to evade it. I also succeeded in doing so. I again declare expressly that at no time whatsoever was I in a position to have to carry out or pass on the Fuehrer Order in its radical and absolute form. I therefore never sent any persons to their death on the basis of this Fuehrer Order.

With the exception of the one case in Tatarsk, which, because of particular circumstances and under particular pressure I had to carry out on direct orders, and where my knowledge of the language played a decisive part, I never had anything to do with the executive tasks. This was entirely beyond the scope of my duties.

During my interrogation at Nuernberg I indicated from the start all the cases, where I had seen shootings or participated in them. At no time did I ever have the intention to deviate from the truth or to withhold something; in the witness stand as well as in all the interrogations and affidavits I always tried to speak the truth. I did not do anything which for any reasons—be it for fear of punishment or because of the knowledge of having done wrong—I had to withhold. Everything I did and however I may have reacted to the tasks assigned to me and orders I received was directed by the awareness of my duty as a soldier as well as by the intention to do only those things which according to my own and

full conviction had to be done to maintain and guarantee order and security in the rear of the fighting army.

Therefore, it was with my full conviction when in answer to the question of the Tribunal at the beginning of the trial, I pleaded "not guilty," and with a clear conscience I can repeat this declaration at the end of the trial.

FENDLER

Your Honors. On his final plea, my defense counsel Dr. Fritz stated our opinion on all points which might be of importance for the Tribunal in judging my case; he has arrived at the conclusion that the case in chief has undoubtedly turned out favorably for me. Therefore, I shall not go into details here again.

On the other hand, I would like to use this last opportunity to tell your Honors about my personal opinion concerning the indictment filed against me.

The opinion of the prosecution, that I was the deputy commando chief of Einsatzkommando 4b is just as incorrect as all conclusions drawn from that assertion. It is also unjustified for other reasons to make me responsible for the happenings in Einsatzkommando 4b which were discussed in the course of this trial. The truth is, and I solemnly confirm this, that my entire activity in the SD, both before, during, and after my assignment in the East, consisted exclusively of intelligence work. At all times, including during my assignment in the East, I only did what any state demands of its officials and officers entrusted with such jobs. I never had cause to fear that I was doing anything not permissible or even morally doubtful. Therefore I cannot hold a different opinion of my work during those years.

After severest self-examination, I have to refuse to assume responsibility for actions which I neither ordered nor carried out, in which I did not participate in any way whatsoever, and which I was even unable to prevent.

I can only repeat what I said at the beginning of this trial—I am *not* guilty!

VON RADEZKY

Mr. President, your Honors. When I was given the indictment on 13 July 1947, to answer for myself before this Tribunal, I accepted it, being confident that the truth would be established in the course of the trial and that I would have an opportunity to justify myself for a period of my life which without my assistance took a course during which I was not able to decide freely for even one hour. I have now answered for myself before this Tribunal. I did not commit any crime. I need not ask for pardon for my

actions. I only ask for unprejudiced understanding and I am confident that the Tribunal will arrive at a just verdict.

RUEHL

Your Honors. My career, my position, and tasks, my activity, and my attitude from 1933 to 1945 have been discussed at such length during the case in chief that it does not seem necessary to me to go into details about this again at this point. I would only like to say the following:

I was twenty years of age when I joined the NSDAP and the SA and two years later I joined the SS with youthful faith in the truth and purity of the ideals and aims which were made known at the time. In this good faith I finally complied with the draft to the then completely unknown State Police in 1933 and worked there until 1940 on counter-espionage, having nothing to do with everyday political differences.

When, after concluding my studies, doubts and disappointment began to undermine this faith, apart from the outer duress, I felt myself obligated to stay at that post to which I had been ordered in the decisive battles of my people of my native country.

That I did my duty on this post as I thought I could answer for before my conscience is proved most clearly by my behavior in Augsburg. In opposition to binding orders from the highest authorities, I stood up for those people whom the prosecution believes it was my aim to persecute.

Therefore, it does not concern me either if the prosecution wants to ascribe motives to me in my action concerning the retransfer of those Jews in Mogilev-Podolski, which did not even occur to me, in view of my basic attitude, which has now been proven. The important part which I played there as an intermediary of an order, was only based on the idea to avoid terrible misery and to enable those people to return to their native land.

The charge of the prosecution that I had assumed authority to give orders in this case, to which I was not entitled, I do not consider incriminating. On the contrary I hold the opinion that I would justly be in the defendant's dock now, if I had refused to assist at the time and had let those people perish in misery by referring to my incompetency.

I am firmly convinced that the Tribunal will confirm my opinion that my conscience has not deceived me.

SCHUBERT

Your Honors, being one of those tens of thousands of officers holding the same rank as I and holding the same position as adjutant, fate has placed me among those 220 German men who have

to answer for themselves to the highest American Military Tribunals as the ones who held the most responsibility. As long as I live I shall never understand that decision. Yet, I shall never complain about my fate. I need have no fear for myself as to the verdict of this Tribunal.

Even if fate placed me in a prominent position in this manner, I feel eager to state my opinion at this point concerning the charge of the prosecution that every defendant was filled with boundless contempt for human life, because of the National Socialist ideology in which he believed.

I joined the SD when I was a young man twenty years of age, a member of a generation born during the First World War and the majority of them probably witnessed the second one in the front lines. Everywhere we were in the center of events without having ourselves held any responsibility worth mentioning.

And now once again, I am brought into the center of an event in the judgment of persons who were responsible for past happenings. I became a National Socialist and even more so an SD member, not because of contempt for human life, but because I always strongly approved of life in a community of human beings. The severe stroke of fate in my young life did not change this either, when, before my eastern assignment I lost my wife and child as a result of Allied operations during the war. The love for my people always made my duty towards my Fatherland a perfectly natural sentiment. While searching for a real life in a genuine community of people, we found our way to National Socialism. From 1934 to 1945, in the SD, I considered it my noblest duty to serve my people.

When we set out on the Russian Campaign we stood on the crossroads of events of decisive importance to the world, not only as far as time is concerned, but also because of the place, in a territory between two worlds. We did not set out to kill, but we set out to defend Western civilization.

Being an adjutant of an Einsatzgruppe, I was outside the sphere of the events contained in the indictment, but I was all the closer to the men in those units, who, the prosecution asserts, were filled with boundless contempt for human life.

I was with these men for months in the area of the assignment. I know the mentality of these men, their surroundings, their troubles, and worries. I saw them when carrying out the hard task they had been given and I saw their struggle between duty and conscience when they were concerned with having to carry out the Fuehrer Order discussed here. I know that there was no one in those units that could have carried out the tasks assigned to him only because he did not respect the sacredness of human

life. I know that these men decided to do their duty to a great extent because they realized that the defense against bolshevism was the question—"to be or not to be" for their people, their wives, and their children. I do not believe that anyone has the right to charge these men with contempt for human life without having been in the same position himself at some time, since these men, as soldiers could only choose between obedience and the dishonorable death of a mutineer.

There is neither time nor space here to discuss all the tasks which were given to us in the Einsatz, but I wish that the ones who accuse us today would have once had the opportunity to witness the joy of liberation of the ethnic groups oppressed until that time by bolshevism and to see the Einsatzgruppen looking after the cultural interests of such ethnic groups and other peaceful tasks.

The prosecution has presented against me as sole incriminating material my own statements in the preliminary proceedings in the form of affidavits. I did not at any time keep anything secret about my activity from the first day of my captivity, since I was and still am of the opinion that I can be justly judged only if I give a clear picture of myself to the persons who are to pass judgment on me. I did not give any cause to the prosecution to make any further charges against me beyond my truthful and exhaustive statements.

I especially request the Tribunal not to judge the happenings of that time from the perspective of the present time, with the knowledge of connections gained in the meantime, but to imagine themselves in the area and in the situation into which we were placed at that time. Then it will become clear to the Tribunal that we did our duty not in contempt of human life, but in constant struggle between duty and personal feelings. Then I have the hope that the Tribunal will arrive at a just verdict.

GRAF

Mr. President, Your Honors, it was not my wish that led me to join the SD in 1940. It was fate that I was ordered to the East. In exactly the same way it was fate that I am the only one of approximately 5,000 noncommissioned officers and men in the Einsatzgruppen who came to this defendant's dock.

Surely, however, it was a benevolent destiny which did not involve me in the things which have been the object of the indictment here. I have confidence that a similarly benevolent destiny will restore my honor and my freedom to me, thanks to the objective and righteous judges.

XI. OPINION AND JUDGMENT

The indictment filed in this case on 29 July 1947 charged the 24 defendants enumerated therein with crimes against humanity, war crimes, and membership in criminal organizations. The 24 defendants were made up of 6 SS generals, 5 SS colonels, 6 SS lieutenant colonels, 4 SS majors, and 3 SS junior officers. Since the filing of the indictment the number of the defendants has been reduced to 22. Defendant SS Major Emil Haussmann committed suicide on 31 July 1947, and defendant SS Brigadier General Otto Rasch was severed from the case on 5 February 1948 because of his inability to testify. Although it is assumed that Rasch's disease (paralysis agitans or Parkinsonism) will become progressively worse, his severance from these proceedings is not to be regarded as any adjudication on the question of guilt or innocence.

The acts charged in counts one and two of the indictment are identical in character, but the indictment draws the distinction between acts constituting offenses against civilian populations, including German nationals and nationals of other countries, and the same acts committed as violations of the laws and customs of war involving murder and ill-treatment of prisoners of war and civilian populations of countries under the occupation of Germany. Count three charges the defendants with membership in the SS, SD, and Gestapo, organizations declared criminal by the International Military Tribunal and paragraph I(d) of article II of Control Council Law No. 10.

Although the indictment accuses the defendants of the commission of atrocities, persecutions, exterminations, imprisonment, and other inhumane acts, the principle charge in this case is murder. However, as unequivocal as this charge is, questions have arisen which must be definitely resolved so that this decision may add its voice in the present solemn re-affirmation and sound development of international precepts binding upon nations and individuals alike, to the end that never again will humanity witness the sad and miserable spectacle it has beheld and suffered during these last years.

At the outset it must be acknowledged that the facts with which the Tribunal must deal in this opinion are so beyond the experience of normal man and the range of man-made phenomena that only the most complete judicial inquiry, and the most exhaustive trial, could verify and confirm them. Although the principle accusation is murder and, unhappily, man has been killing man ever since

the days of Cain, the charge of purposeful homicide in this case reaches such fantastic proportions and surpasses such credible limits that believability must be bolstered with assurance a hundred times repeated.

The books have shown through the ages why man has slaughtered his brother. He has always had an excuse, criminal and ungodly though it may have been. He has killed to take his brother's property, his wife, his throne, his position; he has slain out of jealousy, revenge, passion, lust, and cannibalism. He has murdered as a monarch, a slave owner, a madman, a robber. But it was left to the twentieth century to produce so extraordinary a killing that even a new word had to be created to define it.

One of counsel has characterized this trial as the biggest murder trial in history. Certainly never before have twenty-three men been brought into court to answer to the charge of destroying over one million of their fellow human beings. There have been other trials imputing to administrators and officials responsibility for mass murder, but in this case the defendants are not simply accused of planning or directing wholesale killings through channels. They are not charged with sitting in an office hundreds and thousands of miles away from the slaughter. It is asserted with particularity that these men were in the field actively superintending, controlling, directing, and taking an active part in the bloody harvest.

If what the prosecution maintains is true, we have here participation in a crime of such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray. The crime did not exclude the immolation of women and children, heretofore regarded the special object of solicitude even on the part of an implacable and primitive foe.

The International Military Tribunal in its decision of 1 October 1946 declared that the Einsatzgruppen and the Security Police, to which the defendants belonged, were responsible for the murder of two million defenseless human beings, and the evidence presented in this case has in no way shaken this finding. No human mind can grasp the enormity of two million deaths because life, the supreme essence of consciousness and being, does not lend itself to material or even spiritual appraisalment. It is so beyond finite comprehension that only its destruction offers an infinitesimal suggestion of its worth. The loss of any one person can only begin to be measured in the realization of his survivors that he is gone forever. The extermination, therefore, of two million human beings cannot be felt. Two million is but a figure.

The number of deaths resulting from the activities with which these defendants have been connected and which the prosecution has set at one million is but an abstract number. One cannot grasp the full cumulative terror of murder one million times repeated.

It is only when this grotesque total is broken down into units capable of mental assimilation that one can understand the monstrousness of the things we are in this trial contemplating. One must visualize not one million people but only ten persons—men, women, and children, perhaps all of one family—falling before the executioner's guns. If one million is divided by ten, this scene must happen one hundred thousand times, and as one visualizes the repetitious horror, one begins to understand the meaning of the prosecution's words, "It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women, and children."

All mankind can share that sorrow in the painful realization that such things could happen in an age supposedly civilized and mankind may also well cherish the hope that civilization will actually redeem itself, so that, by reflection, cleansing, and a real sanctification of the holiness of life, that nothing even faintly resembling such a thing may happen again.

Judicial opinions are often primarily prepared for the information and guidance of the legal profession, but the Nuernberg judgments are of interest to a much larger segment of the earth's population. It would not be too much to say that the entire world itself is concerned with the adjudications being handed down in Nuernberg. Thus it is not enough in these pronouncements to cite specific laws, sections, and paragraphs. The decisions must be understood in the light of the circumstances which brought them about. What is the exact nature of the facts on which the judgments are based? A tribunal may not avert its head from the ghastly deeds whose legal import it is called upon to adjudicate. What type of reasoning or lack of reasoning was it that brought about the events which are to be here related? What type of morality or lack of it was it that for years bathed the world in blood and tears? Why is it that Germany, whose rulers thought to make it the wealthiest and the most powerful nation of all time, an empire which would overshadow the Rome of Caesar—why is it that this Germany is now a shattered shell? Why is it that Europe, the cradle of modern civilization, is devastated and the whole world is out of joint?

These Nuernberg trials answer the question, and the Einsatzgruppen trial in particular makes no little contribution to that enlightenment.

EINSATZGRUPPEN

When the German armies, without any declaration of war, crossed the Polish frontier and smashed into Russia, there moved with and behind them a unique organization known as the Einsatzgruppen. As an instrument of terror in the museum of horror, it would be difficult to find an entry to surpass the Einsatzgruppen in its blood-freezing potentialities. No writer of murder fiction, no dramatist steeped in macabre lore, can ever expect to conjure up from his imagination a plot which will shock sensibilities as much as will the stark drama of these sinister bands.

They came into being through an agreement between the RSHA (Reich Security Main Office), the OKW (Armed Forces High Command), and the OKH (Army High Command). The agreement specified that a representative of the chief of the security police and security service would be assigned to the respective army groups or armies, and that this official would have at his disposal mobile units in the form of an Einsatzgruppe, sub-divided into Einsatzkommandos and Sonderkommandos. The Kommandos in turn were divided into smaller groups known as Teilkommandos. Only for the purpose of comparison as to size and organization, an Einsatzgruppe could roughly be compared to an infantry battalion, an Einsatz or Sonderkommando to an infantry company, and a Teilkommando to a platoon.

These Einsatzgruppen, of which there were four (lettered A to D), were formed, equipped, and fully ready to march before the attack on Russia began. Einsatzgruppe A was led by Stahl-ecker and later the defendant Jost, operated from central Latvia, Lithuania, and Esthonia towards the East. Einsatzgruppe B, whose chief was Nebe, succeeded by the defendant Naumann, operated in the direction of Moscow in the area adjoining Einsatzgruppe A to the South. Einsatzgruppe C, led by Rasch and later Thomas, operated in the Ukraine, except for the part occupied by Einsatzgruppe D, which last organization, first under the defendant Ohlendorf and then Bierkamp, controlled the Ukraine south of a certain line, which area also included the Crimean peninsula. Later Einsatzgruppe D took over the Caucasus area.

These Einsatzgruppen, each comprising roughly from 800 to 1,200 men, were formed under the leadership of Reinhard Heydrich, Chief of the Security Police and SD. The officers were generally drawn from the Gestapo, SD, SS, and the criminal police. The men were recruited from the Waffen SS, the Gestapo, the Order Police, and locally recruited police. In the field, the Einsatzgruppen were authorized to ask for personnel assistance

from the Wehrmacht which, upon request, invariably supplied the needed men.

At top secret meetings held in Pretzsch and Dueben, Saxony, in May 1941, the Einsatzgruppen and Einsatzkommando leaders were instructed by Heydrich, Chief of Security Police and SD, and Streckenbach, Chief of Personnel of RSHA, as to their mission, and they were introduced to the notorious Fuehrer Order around which this extraordinary case has risen. Under the guise of insuring the political security of the conquered territories, both in the occupational and rear areas of the Wehrmacht, the Einsatzgruppen were to liquidate ruthlessly all opposition to National Socialism—not only the opposition of the present, but that of the past and future as well. Whole categories of people were to be killed without truce, without investigation, without pity, tears, or remorse. Women were to be slain with the men, and the children also were to be executed because, otherwise, they would grow up to oppose National Socialism and might even nurture a desire to avenge themselves on the slayers of their parents. Later, in Berlin, Heydrich re-emphasized this point to some of the Einsatz leaders.

One of the principal categories was "Jews". No precise definition was furnished the Einsatz leaders as to those who fell within this fatal designation. Thus, when one of the Einsatzgruppen reached the Crimea, its leaders did not know what standards to apply in determining whether the Krimchaks they found there should be killed or not. Very little was known of these people, except that they had migrated into the Crimea from a southern Mediterranean country, and it was noted they spoke the Turkish language. It was rumored, however, that somewhere along the arterial line which ran back into the dim past some Jewish blood had entered the strain of these strange Krimchaks. If this were so, should they be regarded as Jews and should they be shot? An inquiry went off to Berlin. In due time the reply came back that the Krimchaks were Jews and should be shot. They were shot.

The Einsatzgruppen were, in addition, instructed to shoot gypsies. No explanation was offered as to why these unoffending people, who through the centuries have contributed their share of music and song, were to be hunted down like wild game. Colorful in garb and habit, they have amused, diverted, and baffled society with their wanderings, and occasionally annoyed with their indolence, but no one has condemned them as a mortal menace to organized society. That is, no one but National Socialism which, through Hitler, Himmler, and Heydrich ordered their liquidation. Accordingly, these simple, innocuous people were taken in trucks,

perhaps in their own wagons, to the antitank ditches and there slaughtered with the Jews and the Krimchaks.

The insane also were to be killed. Not because they were a threat to the Reich, nor because someone may have believed they were formidable rivals of the Nazi chieftains. No more excuse was offered for sentencing the insane than was advanced for condemning the gypsies and the Krimchaks. However, there was a historical basis for the decrees against the insane. That is, a history going back two years. On 1 September 1939, Hitler had issued his euthanasia decree which ordered the killing of all insane and incurably ill people. It was demonstrated in other trials that this decree was made a convenient excuse for killing off those who were racially undesirable to the Nazis, and who were unable to work. These victims were grouped together under the title of "useless eaters". Since all invaded territories were expected to become Reich territory, the same policies which controlled in Germany itself were apparently introduced and put into effect in the occupied lands. But a very extensive interpretation was given to even this heartless decree. Insane asylums were often emptied and the inmates liquidated because the invaders desired to use the asylum buildings.

"Asiatic inferiors" was another category destined for liquidation. This kind of designation allowed a wide discretion in homicide. Einsatzgruppen and Einsatzkommando leaders were authorized to take executive measures on their own responsibility. There was no one to dispute with them as to the people they branded "Asiatic inferiors". And even less was there a curb on homicidal operations when they were authorized to shoot "Asocial people, politically tainted persons, and racially and mentally inferior elements."

And then, all Communist functionaries were to be shot. Again it was never made quite clear how broad was this classification. Thus, in recapitulation, the Fuehrer Order, and throughout this opinion it will be so referred to, called for the summary killing of Jews, gypsies, insane people, Asiatic inferiors, Communist functionaries, and asocials.

AUTHENTICITY OF REPORTS

The story of the Einsatzgruppen and the Einsatzkommandos is not something pieced together years after their crimson deeds were accomplished. The story was written as the events it narates occurred, and it was authored by the doers of the deeds. It was written in the terse, exact language which military discipline requires, and which precision of reporting dictates.

The maintenance of an army in invaded territory and the planning of future operations demands cold factuality in reports, which requirement was rudimentary knowledge to all members of the German Armed Forces. Thus, every sub-kommando leader was instructed to inform his Kommando leader of developments and activities in his field of operations, every Kommando leader in turn accounted to the Einsatzgruppe leader, and the Einsatzgruppe leader by wireless and by mail reported to the RSHA in Berlin. These accounts were veiled in secrecy but they were not so covert that they did not come to the attention of the top-ranking military and political officials of the regime. In fact, at the capital, they were compiled, classified, mimeographed, and distributed to a selected list. These are the reports which have been submitted in evidence.

The case of the prosecution is founded entirely on these official accounts prepared by the Einsatzgruppen and Einsatzkommando leaders. The Tribunal will quote rather copiously from these reports because only by the very language of the actual performers can a shocked world believe that these things could come to pass in the twentieth century. A few brief excerpts at the outset will reveal graphically the business of the Einsatzgruppen. A report on Einsatzgruppe B, dated 19 December 1941, speaks of an action in Mogilev and points out—

“During the controls of the roads radiating from Mogilev, carried out with the aid of the constabulary, 135 persons, mostly Jews, were apprehended * * *. 127 persons were shot.”
(NO-2824.)

The report also declares—

“In agreement with the commander, the transient camp in Mogilev was searched for Jews and officials. 126 persons were found and shot.”

The same report advises that in Parichi near Bobruisk,

“A special action was executed, during which 1,013 Jews and Jewesses were shot.”

In Rudnja—

“835 Jews of both sexes were shot.” (NO-2824.)

Sonderkommando 4a, operating in the town of Chernigov, reported that on 23 October 1941, 116 Jews were shot; on the following day, 144 were shot. (NO-2832.)

A Teilkommando of Sonderkommando 4a, operating in Poltava, reported as of 23 November 1941—

“Altogether 1,538 Jews were shot.” (NO-3405.)

Einsatzgruppe D operating near Simferopol communicated—

“During the period covered by the report 2,010 people were shot.” (NO-3235.)

An Einsatz unit, operating in the Ukraine, communicated that in Rakov—

“1,500 Jews were shot.” (3876-PS.)

A report on activities in Minsk in March 1942 reads—

“In the course of the greater action against Jews, 3,412 Jews were shot.” (NO-2662.)

Einsatzkommando 6, operating in Dnepropetrovsk, reported that on 13 October 1941—

“Of the remaining 30,000 approximately 10,000 were shot.” (NO-2832.)

A report dated 16 January 1942, accounting for the activities of Einsatzkommando 2, stated that in Riga on 30 November 1941—

“10,600 Jews were shot.” (NO-3405.)

In time the authors of the reports apparently tired of the word “shot” so, within the narrow compass of expression allowed in a military report, some variety was added. A report originating in Latvia read—

“The Higher SS and Police leader in Riga, SS Obergruppenführer Jeckeln, has meanwhile embarked on a shooting action [Erschiessungsaktion] and on Sunday, the 30 November 1941, about 4,000 Jews from the Riga ghetto and an evacuation transport from the Reich were disposed of.” (NO-3257.)

And so that no one could be in doubt as to what was meant by “Disposed of”, the word “killed” was added in parentheses.

A report originating from the Crimea stated laconically—

“In the Crimea 1,000 Jews and gypsies were executed.” (NO-2662.)

A report of Einsatzgruppe B, in July 1941, relates that the Jews in Lithuania were placed in concentration camps for special treatment, and then the report explains—

“This work was now begun and thus about 500 Jews, saboteurs among them, are liquidated daily.” (NO-2937.)

A Kommando, operating in Lachoisik, reported—

“A large-scale anti-Jewish action was carried out in the village of Lachoisik. In the course of this action 920 Jews were executed with the support of a Kommando of the SS Division ‘Reich’. The village may now be described as ‘free of Jews’.” (NO-3143.)

Einsatzgruppe B, operating out of headquarters Smolensk, reported on one of its operations in October—

“In Mogilev the Jews tried also to sabotage their removal into the ghetto by migrating in masses. The Einsatzkommando No. 8, with the help of the ordinary police, blocked the roads

leading out of the town and liquidated 113 Jews." (NO-3160.) This same organization also reported—

"Two large-scale actions were carried out by the platoon in Krupka and Sholopaniche, 912 Jews being liquidated in the former and 822 in the latter place." (NO-3160.)

The advance Kommando of Sonderkommando 4a, chronicling its activities of 4 October 1941 reported—

"Altogether, 537 Jews (men, women, and adolescents) were apprehended and liquidated." (NO-3404.)

Eventually even the expressions "liquidate" and "execute" became monotonous, so the report-writers broke another bond of literary restraint and began describing the murder of Jews with varying verbiage. One particularly favored phrase announced that so many Jews were "rendered harmless". Still another declared that so many Jews had been "got rid of." One more pronounced that a given number of Jews had been "done away with". However, it really mattered little what phraseology was employed. Once the word "Jew" appeared in a report, it was known that this invariably meant that he had been killed. Thus, when one particularly original report-writer wrote, "At present, the Jewish problem is being solved at Nikolaev and Kherson. About 5,000 Jews were processed at either place." It required no lucubration on the part of the RSHA officials in Berlin to comprehend that 5,000 Jews had been killed at Nikolaev and 5,000 had been killed at Kherson. (NO-3148.)

Death was simple routine with these earthy organizations. In the Reich Security Main Office, Einsatzgruppen could well be synonymous with homicide. One report, after stating that certain towns were freed of Jews, ends up with the abundantly clear remark that "the remaining officials were *appropriately treated*." (NO-3137.)

Kommando leaders also frequently informed headquarters that certain groups had been "taken care of". (NO-3151.) When an Einsatzkommando "took care" of anybody only one person could be of service to the person taken care of, and that was the grave digger. "Special treatment" was still one more contemptuous characterization of the solemn act of death when, of course, it applied to others.

Then some report-writers airily recorded that certain areas "had been purged of Jews."

Finally, there was one term which was gentle and polite, discreet and definitive. It in no way called up the grim things connected with shooting defenseless human beings in the back of the neck, and then burying them, sometimes partially alive, into shallow graves. This piece of rhetoric proclaimed that in certain areas

“the Jewish question was solved.” And when that wording was used one knew finally and completely that the Jews in that particular territory had been removed from the land of the living.

Einsatzgruppe C, reporting on more than 51,000 executions, declared—

“These were the motives for the executions carried out by the Kommandos—

Political officials, looters and saboteurs, active Communists and political representatives, Jews who gained their release from prison camps by false statements, agents and informers of the NKVD, persons who, by false depositions and influencing witnesses, were instrumental in the deportation of ethnic Germans, Jewish sadism and revengefulness, undesirable elements, partisans, politruks, dangers of plague and epidemics, members of Russian bands, armed insurgents—provisioning of Russian bands, rebels and agitators, drifting juveniles—”

and then came the all-inclusive phrase, “Jews in general.” (NO-3155.)

The summary cutting down of such groups as “drifting juveniles” and such vague generalizations as “undesirable elements” shows that there was no limit whatsoever to the sweep of the executioner’s scythe. And the reference to individual categories of Jews is only macabre window dressing because under the phrase “Jews in general”, *all* Jews were killed regardless of antecedents.

There were some Kommando leaders, however, who were a little more conscientious than the others. They refused to kill a Jew simply because he was a Jew. They demanded a reason before ordering out the firing squad. Thus, in White Ruthenia, a Kommando leader reported—“There has been frequent evidence of Jewish women displaying a particularly disobedient attitude.” The Kommando leader’s conscience now having been satisfied, he went on in his report—

“For this reason, 28 Jewesses had to be shot at Krugloye and 337 in Mogilev.” (NO-2656.)

At Tatarsk the Jews left the ghetto in which they had been collected and returned to their homes. The scrupulous Kommando leader here reported the serious offense committed by the Jews in taking up living in their own domiciles. He accordingly executed all the male Jews in the town as well as three Jewesses. (NO-2656.)

Further,

“At Mogilev, too, the Jews tried to prevent their removal to a ghetto, 113 Jews were liquidated.” (NO-2656.)

Operation Report No. 88, dated 19 September 1941, states that, on 1 and 2 September, leaflets and pamphlets were distributed by

Jews, but that "the perpetrators could not be found." With this declaration that the guilty ones could not be located, the leader of the execution unit involved tranquilized his moral scruples and, accordingly, as his report factually declares, he executed 1,303 Jews, among them 875 Jewesses over 12 years of age. (NO-3149.)

Always very sensitive, the occupation forces found that the Jews in Monastyrshchina and Khislavichi displayed an "impudent and provocative attitude". The Kommando accordingly shot the existing Jewish Council and 20 other Jews. (NO-3143.)

In the vicinity of Ostrovo, the resident Jews, according to Report No. 124, dated 25 October 1941, had repeatedly shown hostile conduct and disobedience to "the German authorities". Thus, the current Kommando went into Ostrovo and shot 169 Jews. (NO-3160.)

In Marina-Gorka, the labor assigned to Jews was done, according to Report No. 124, dated 25 October 1941, "very reluctantly". Thus, 996 Jews and Jewesses were given "special treatment." (NO-3160.)

Report No. 108, dated 9 October 1941, advises that for the death of 21 German soldiers near Topola, 2,100 Jews and gypsies were to be executed, thus a ratio of 100 to one. There is no pretense in the report that any of the 2,100 slain were in the slightest way connected with the shooting of Germans. (NO-3156.)

An item in Operation Report No. 108, 9 October 1941, points out that "19 Jews who were under *suspicion* of having either been Communists or of having committed arson" were executed. (NO-3156.)

In Mogilev, the Jewish women were "extremely resistive" and not wearing the prescribed badge, so 28 of them were liquidated. (NO-3156.)

Report No. 73, dated 4 September 1941, acquaints the world with the fact that 733 civilians were exterminated in Minsk, the reason being that they "were absolutely inferior elements with a predominant mixture of Asiatic blood." The method of determining the inferiority of character and the predominance of Asiatic blood is not indicated. (NO-2844.)

The executioners were, however, not always without thought for the Jews. Sometimes apparently the liquidation took place for the benefit of the Jews themselves. Thus, Einsatzgruppe B reported in December 1941—

"In Gorodok, the ghetto had to be evacuated because of the danger of an epidemic. 394 Jews were shot." (NO-2833.)

Einsatzgruppe C, reporting on conditions in Radomyshl, declared—

"A supply of food for the Jews as well as for the children

was impracticable. In consequence, there was an ever increasing danger of epidemics." (NO-3149.)

The situation was met bravely and chivalrously—

"To put an end to these conditions 1,107 Jewish adults were shot by the Kommando and 561 juveniles by the Ukrainian militia. Thereby, the Sonderkommando has taken care of a total of 11,328 Jews till 6 September 1941." (NO-3149.)

Operational Report No. 92, dated 23 September 1941, related how scabies had broken out in the ghetto of Nevel. "In order to prevent further contagion, 640 Jews were liquidated and the houses burnt down." This treatment undoubtedly overcame the scabies. (NO-3143.)

The same report proclaims further that, in the town of Janowitschi, a contagious disease, accompanied by fever, broke out. It was feared that the disease might spread to the city and the rural population. To prevent this from happening, 1,025 Jews were shot. The report closes proudly with the statement "This operation was carried out solely by a commander and 12 men." (NO-3143.)

As the Kommandos became more and more familiar with the therapeutic capabilities of their rifles, they turned to the field of preventive medicine. In October of 1941, the Kommando leader in Vitebsk came to the conclusion that there was an "imminent danger of epidemics" in the town, and to forestall that this should come to pass, he shot 3,000 Jews. (NO-3160.)

Mention had been made of the execution of the insane. The reports are dotted with references to the liquidation of inmates of mental institutions. It seems that the Kommandos, in addition to the executions carried out under their own orders, were ready to perform other killings on request. Einsatzgruppe C reports that a Teilkommando of Sonderkommando 4a, passing through Chernigov, was asked by the director of the mental asylum to liquidate 270 incurables. The Teilkommando obliged. (NO-2832.)

In Poltava, Sonderkommando 4b found that the insane asylum located there maintained a farm for the inmates. Since there was not enough full cream milk in the town to supply the three large German military hospitals there, the milk shortage was met by executing a part of the insane. The report on the subject explains—

"A way out of this difficulty was found by deciding that the execution of 565 incurables should be carried out in the course of the next few days under the pretext that these patients were being removed to a better asylum in Kharkov." (NO-2832.)

It was also stated—

"The underwear, clothing, and other wearing apparel col-

lected on this occasion have also been handed over mainly to the hospitals." (NO-2827.)

The grim casualness with which these executions were conducted comes to light in an item taken from a report made by the Russian Government (U.S.S.R.-41 *) which reads—

"On 22 August 1941, mental patients from the psychiatric hospital in Daugavpils—approximately 700 adults and 60 children—were shot in the small town of Aglona. Among them were 20 healthy children who had been temporarily transferred to the building of the hospital from a children's home."

Report No. 47, dated 9 August 1941, after generally discussing conditions in the Ukraine, stated of the operations of Einsatzgruppe C, "Last but not least, systematic reprisals against marauders and Jews were carried out." Under their meticulous taskmasters, the Jews were bound to be wrong no matter what they did. If they wore their badges they could expect maltreatment, since they were recognized as Jews; if they left them off, they were punished for not wearing them. If they remained in the wretched and overcrowded ghettos they suffered from hunger, if they left in order to obtain food they were "marauding".

Operation Report No. 132, describing the activities of Einsatzkommando 5, declared that, between 13 and 19 October 1941, it had among others executed 21 people guilty of sabotage and looting, and 1,847 Jews. It also reported the shooting of 300 insane Jews, which achievement, according to the report, "represented a particularly heavy burden for the members of Einsatzkommando 5 who were in charge of this operation". (NO-2830.)

Operation Report No. 194, detailing the activities of Einsatzkommando 8, states that, from 6 to 30 March 1942, this Kommando executed,

"20 Russians for subversive Communist activities, sabotage, and membership of the NKVD, 5 Russians because of theft, burglary and embezzlements, 33 gypsies, 1,551 Jews." (NO-3276.)

Einsatzkommando 5, for the period between 2 and 8 November 1941, killed, as Report No. 143 succinctly states,

"15 political officials, 21 saboteurs and looters, 414 hostages, 10,650 Jews." (NO-2827.)

Report No. 150, dated 2 January 1942, speaking of actions in the western Crimea, stated—

"From 16 November thru 15 December 1941, 17,645 Jews, 2,504 Krimchaks, 824 gypsies, and 212 Communists and partisans have been shot." (NO-2834.)

* Trial of Major War Criminals, vol. VII, p. 510, Nuremberg, 1947.

The report also states, as if talking of cleaning out swamps—

“Simferopol, Yevpatoriya, Alushta, Karasubazar, Kerch, and Feodosiya, and other districts of the Western Crimea have been cleaned of Jews.”

One report complains that the Wehrmacht had failed to plan the executions and, consequently, many Jews escaped. This irritated the report-writer considerably. He stated—

“Naturally, the systematic action of Einsatzkommando 5 suffered extremely by these planless excesses against the Jews in Uman. In particular, a large number of the Jews were now forewarned and escaped from the city. Besides the numerous Jews, many of the Ukrainian officials and activists still living in Uman were warned by the excesses, and only two co-workers of the NKVD were found and liquidated. The results of these excesses were cleaned up immediately by Einsatzkommando 5, after its arrival.” (NO-3404.)

It will be noted that the word “excesses” is here used in its *opposite* sense, that is deficiency. Not as many persons were killed as should have been.

It also objected that people talked about these executions.

“Rumors about executions in other areas rendered action at Simferopol very difficult. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers.” (NO-2834.)

In spite of these difficulties the operations were not entirely unsuccessful because this particular report sums up with, “Altogether, 75,881 persons have been executed.”

A report from the northern Crimea reads—

“Between 1 and 15 February, 1,451 persons were executed, of which 920 were Jews, 468 Communists, 45 partisans, and 12 looters, saboteurs, asocials. Total up to now is 86,632.” (NO-3339.)

Einsatzgruppe D, giving an account of its activities from 1 to 15 October 1941, stated in Report No. 117,

“The districts occupied by the Kommandos were cleaned out of Jews. 4,091 Jews and 46 Communists were executed in the time the report covers, bringing the total up to 40,699.” (NO-3406.)

Coming back to Simferopol, in Report No. 153, dated 9 January 1942, we find—

“The operational areas of the Teilkommandos, particularly in smaller villages, were purged of Jews. During the period covered by the report, 3,176 Jews, 85 partisans, 12 looters, and 122 Communist officials were shot. Sum total: 79,276. In Simferopol,

apart from Jews also the Krimchak and gypsy question was solved." (NO-3258.)

An entry from Operational Situation Report No. 3, on the period 15 to 31 August 1941, states—

"During a scrutiny of the civilian prison camp in Minsk, 615 persons were liquidated. All those executed were racially inferior elements." (NO-2653.)

Many more examples could be given from the reports but the above will suffice to indicate their tenor and scope and the attitude of those who participated in the events described therein. How did the action groups operate? As Kommando leaders entered a town, they immediately assembled what they called a Jewish Council of Elders made up of from 10 to 25 Jews, according to the size of the town. These Jews, usually the more prominent ones, and always including a rabbi, were instructed to register the Jewish population of the community for the purpose of resettlement. The registration completed, the Jews were ordered to appear at a given place, or vehicles went to their homes to collect them. Then they were transported into the woods and shot. The last step of the Kommando in closing the books in the whole transaction was to call on the Council of Elders, express appreciation for their cooperation, invite them to mount the truck standing outside, drive them out to the same spot in the woods, and shoot them, too. One report illustrates the procedure described.

"The Jews of the city were ordered to present themselves at a certain place and time for the purpose of numerical registration and housing in a camp. About 34,000 reported, including women and children. After they had been made to give up their clothing and valuables, all were killed; this took several days." (NOKW-2129.)

Another report lauded the leader of Einsatzkommando 4b for his resourcefulness and skill in rounding up the intelligentsia of Vinnitsa.

"He called for the most prominent rabbi of the town ordering him to collect within 24 hours the whole of the Jewish intelligentsia and told him they would be required for certain registration work. When this first collection was insufficient in numbers, the intellectual Jews assembled were sent away again with the order to collect themselves more of the intellectual Jews and to appear with these the following day." (NO-2947.)

And then the report ends triumphantly on the note—

"This method was repeated for a third time so that in this manner nearly the entire intelligentsia was got hold of and liquidated."

In Kiev a clever stratagem was employed to ensnare the Jews.

The word "clever" is taken from the report covering the action.

"The difficulties resulting from such a large scale action—in particular concerning the seizure—were overcome in Kiev by requesting the Jewish population through wall posters to move. Although only a participation of approximately 5,000 to 6,000 Jews had been expected at first, more than 30,000 Jews arrived who, until the very moment of their execution, still believed in their resettlement, thanks to an extremely clever organization." (NO-3157.)

Practically every page of these reports runs with blood and is edged with a black border of misery and desolation. In every paragraph one feels the steel and flinty pen with which the report-writer cuts through the carnage described therein. Report No. 94 tells of Jews who, driven from their homes, were compelled to seek primitive existence in caves and abandoned huts. The rigors of the elements, lack of food, and adequate clothing inevitably produced serious illness. The report-writer chronicles—

"The danger of epidemics has thus increased considerably, so that, for that reason alone, a thorough clean-up of the respective places became necessary." (NO-3146.)

and then, he adds—

"The insolence of the Jews has not yet diminished even now."

Thus, after evicting, starving, and shooting their victims the evictors still complained. The Jews were not even courteous to their executioners!

One of the defendants denied that there were any Jews in his territory. In this connection the prosecution introduced an interesting letter from one Jacob, master of field police to his commanding general. The letter, dated 21 June 1942, is very chatty and companionable, the writer sends birthday greetings to the addressee, talks about his horses, his girl-friend, and then casually about Jews.

"I don't know if you, General, have also seen in Poland such horrible figures of Jews. I thank the fate I saw this mongrel race like the man in the youngest days * * *."

Now, of the 24,000 Jews living here in Kamenets Podolsk we have only a disappearing percentage left. The little Jews [Juedlein] living in the districts [Rayons] also belong to our customers. We surge ahead without pings of conscience, and then * * * the waves close and the world is at peace." (NO-5655.)

And then he becomes serious and determines to be hard with himself for the sake of his country.

"I thank you for your reprimand. You are right. We men of the new Germany have to be hard with ourselves. Even if it means a longer separation from our family. Now is the time

to clean up with the war criminals, once and forever, to create for our descendants a more beautiful and eternal Germany. We don't sleep here. Every week 3-4 actions, one time gypsies, the other time Jews, partisans, and other rabble. It is very nice that we have now an SD unit [SD Aussenkommando] with which I can work excellently." (NO-5655.)

In another letter this officer becomes very sentimental and is sorry for himself that he is far away from home and thinks of his children, "One could weep sometimes. It is not good to be such a friend of children as I was." However, this does not prevent him from taking up lodging in a former children's asylum.

"I have a cozy apartment in a former children's asylum. One bedroom and a living room with all the accessories." (NO-2653.)

THE MAGNITUDE OF THE ENTERPRISE

One million human corpses is a concept too bizarre and too fantastical for normal mental comprehension. As suggested before, the mention of one million deaths produces no shock at all commensurate with its enormity because to the average brain one million is more a symbol than a quantitative measure. However, if one reads through the reports of the Einsatzgruppen and observes the small numbers getting larger, climbing into ten thousand, tens of thousands, a hundred thousand and beyond, then one can at last believe that this actually happened—the cold-blooded, premeditated killing of one million human beings.

Operation Report 88, reporting on the activities of only one Kommando, states that up to 6 September 1941, this Kommando 4a "has taken care of a total of 11,328 Jews."

Einsatzgruppe A, reporting its activities up to 15 October 1941, very casually declares, "In Latvia, up to now, 30,000 Jews were executed in all." (L-180.)

Einsatzgruppe D, reporting on an operation near Kikerino, announces that the operational area has been "cleared of Jews. From 19 August to 25 September 1941, 8,890 Jews and Communists were executed. Total number 13,315." (NO-3148.)

This same Einsatzgruppe communicated from Nikolaev as of 5 November 1941, that total executions had reached the figure of 31,767. (NO-3159.)

Reporting on one month's activities (October 1941), Einsatzgruppe B advised that "during the period of the report, the liquidations of 37,180 people took place." (NO-2656.)

Einsatzgruppe C, reporting on its operations in Kiev as of 12 October 1941, declared that Sonderkommando 4a had now reached the total number of more than 51,000 executions. (NO-3155.)

The Commissioner General for White Ruthenia reported with self-approbation on 10 August 1942—

"During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks." (3428-PS.)

Speaking of another place, the commissioner general proclaimed—"In the Minsk-Land area the Jewry was completely exterminated." Then he complained that the army had been encroaching on the Einsatz prerogatives.

"The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by an arbitrary action by the Rear Army Area, which has already been reported to your office. In the Rear Army Area—I was not contacted, 10,000 Jews were liquidated who were scheduled for extermination by us anyway." (3428-PS.)

However, the commissioner general quickly got over his resentment and went on with his narrative.

"In the city of Minsk, about 10,000 Jews were liquidated on 28 and 29 July, 6,500 of whom were Russian Jews—mainly old people, women, and children—the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Brno, Bremen, and Berlin in November of the previous year, at the Fuehrer's orders. The Slutsk area was also ridded of several thousand Jews. The same applies to Novogrudok and Vileika."

In Baranovichi and Hancevichi he found that the killings had not been going as well as he desired. "Radical measures still remain to be taken." He explained, "In Baranovichi, about 10,000 Jews are still living in the town alone." However, he would attend to that situation at once. He promised that 9,000 of them would be "liquidated next month." (3428-PS.)

As of 15 October 1941, Einsatzgruppe A declared that the sum total of Jews executed in Lithuania was 71,105. (L-180.)

As an appendix to the report, Einsatzgruppe A submitted the inventory of the people killed as a business house might submit a list of stock on hand.

"Total	Jews	Communists	Total
Lithuania	80,311	860	81,171
Latvia	30,025	1,843	31,868
Estonia	474	684	1,158
White Ruthenia	7,620	7,620
Total	118,430	3,387	121,817

To be added to these figures (*L-180*)—

“In Lithuania and Latvia Jews annihilated by pogroms	5,500
Jews, Communists, and partisans executed in old-Russian area	2,000
Lunatics executed	748
	<hr/>
(Correct total—130,065).....	122,455
Communists and Jews liquidated by State Police, and Security Service Tilsit during search actions	5,502
	<hr/>
	135,567”

It would not take, and it did not take, many reapings of this character to reach the figure of one million.

Operational Report No. 190, speaking of the activities of Einsatzkommando D, announces quite matter-of-factly that, in the second half of March 1942, a total of 1,501 people were executed, and then adds, perhaps boredly, “Total number shot up to date, 91,678.” (*NO-3359*.)

Descanting on the activities of Einsatzgruppe A, around Leningrad, Operation Report No. 150 declares: “There is no longer any Jewish civil population.” (*NO-2834*.)

Activity and Situation Report No. 9, covering the period of January 1942, apprised Berlin—

“In White Ruthenia the purge of Jews is in full swing. The number of Jews in the Territory handed over to the civil authorities up to now, amount to 139,000. 33,210 Jews were shot meanwhile by the Einsatzgruppen of the Security Police and the SD.” (*3876-PS*.)

A special report prepared by Einsatzgruppe A, committed to the eastern territories, left nothing to conjecture as to the purpose of their organization.

“The systematic mopping up of the eastern territories embraced, in accordance with the basic orders, the complete removal, if possible, of Jewry. This goal has been substantially attained—with the exception of White Russia—as a result of the execution up to the present time, of 229,052 Jews.” (*2273-PS*.)

Referring specifically to Lithuania, the report carried the observation that many of the Jews used force against the officials and Lithuanian auxiliaries who performed these executions and that, before they were shot, they even abused Germany! (*2273-PS*.)

Describing operations in White Ruthenia, Einsatzgruppe A com-

plained that it did not take over this area until a heavy frost had set in. The report points out this "made mass executions much more difficult." And then another difficulty, the report-writer emphasizes, is that the Jews "live widely scattered over the whole country. In view of the enormous distances, the bad condition of the roads, the shortage of vehicles and petrol, and the small forces of Security Police and SD, it needs the utmost effort in order to be able to carry out shootings."

The report-writer almost wistfully complains that the Jews were unreasonable in not coming themselves over these long distances to present themselves for shooting. In spite of all the difficulties, however, the report ends up with, "Nevertheless, 41,000 Jews have been shot up to now."

So inured had the executioners become to the business of death that in one report, where the question of setting up a ghetto was concerned, the report-writer communicated that in getting things started there would be "executions of a minor nature of 40 to 100 persons only."

Report No. 155, dated 14 January 1942, disclosed that in Audrini—

"On 2 January, at the order of Einsatzgruppe A of the Security Police and the Security Service, the village was completely burnt down after removal of all foodstuffs, etc., and all the villagers shot. 301 men were publicly shot in the market square of the neighboring town, Rezekne."

The report ends on the very casual note,

"All these actions were carried out without incident." (NO-3279.)

A town had been pillaged and destroyed and all its inhabitants massacred. In another village 301 people were herded into the public square and shot down mercilessly. But for the report-writer this mass violence did not even constitute an *incident!*

On two days alone (29 and 30 September 1941), Sonderkommando 4a, with the help of the group staff and two police units, slaughtered in Kiev, 33,771 Jews. The money, valuables, underwear, and clothing of the murdered victims were turned over to the racial Germans and to the Nazi administration of the city. The report-writer who narrates the harrowing details of this appalling massacre ends up with the phrase, "The transaction was carried out without friction—" and then adds, as he was about to put away the typewriter, "No incidents occurred." (NO-3140.)

The shooting of Jews eventually became a routine job and at times Kommandos sought to avoid executions, not out of charity or sympathy, but because it meant just that much more work. The defendant Nosske testified to a caravan of from 6,000 to 7,000

Jews who had been driven across the Dnester River by the Rumanians into territory occupied by the German forces, and whom he guided back across the river. When asked why these Jews had been expelled from Rumania, Nosske replied—

“I have no idea. I assume that the Rumanians wanted to get rid of them and sent them into the German territory so that we would have to shoot them, and we would have the trouble of shooting them. We didn't want to do that. We didn't want to do the work for the Rumanians, and we never did, nor at all other places where something similar happened. We refused it and, therefore, we sent them back.”

One or two defense counsel have asserted that the number of deaths resulting from acts of the organizations to which the defendants belonged did not reach the total of 1,000,000. As a matter of fact, it went far beyond 1,000,000. As already indicated, the International Military Tribunal, after a trial lasting 10 months, studying and analyzing figures and reports, declared—

“The RSHA played a leading part in the ‘final solution’ of the Jewish question by the extermination of the Jews. A special section, under the Amt IV of the RSHA was established to supervise this program. Under its direction, approximately six million Jews were murdered of which two million were killed by *Einsatzgruppen and other units of the security police.*”

Ohlendorf, in testifying before the International Military Tribunal declared that, according to the reports, his Einsatzgruppe killed 90,000 people. He also told of the methods he employed to prevent the exaggeration of figures. He did say that other Einsatzgruppen were not as careful as he was in presenting totals, but he presented no evidence to attack numbers presented by other Einsatzgruppen. Reference must also be made to the statement of the defendant Heinz Schubert who not only served as adjutant to Ohlendorf in the field from October 1941 to June 1942, but who continued in the same capacity of adjutant in the RSHA, office [Amt] III B, for both Ohlendorf and Dr. Hans Emlich, until the end of 1944. If there was any question about the correctness of the figures, this is where the question would have been raised, but Schubert expressed no doubt nor did he say that these individuals who were momentarily informed in the statistics entertained the slightest doubt about them in any way.

Schubert showed very specifically the care which was taken to prepare the reports and to avoid error.

“The Einsatzgruppe reported in two ways to the Reich Security Head Office. Once through radio, then in writing. The radio reports were kept strictly secret and, apart from Ohlendorf, his deputy Standartenfuehrer Willy Seibert and the head

telegraphist Fritsch, nobody, with the exception of the radio personnel, was allowed to enter the radio station. This is the reason why only the above-mentioned persons had knowledge of the exact contents of these radio reports. The reports were dictated directly to Fritsch by Ohlendorf or Seibert. After the report had been sent off by Fritsch I received it for filing. In cases in which numbers of executions were reported a space was left open, so that I never knew the total amount of persons killed. The written reports were sent to Berlin by courier. These reports contained exact details and descriptions of the places in which the actions had taken place, the course of the operations, losses, number of places destroyed and persons killed, arrest of agents, reports on interrogations, reports on the civilian sector, etc." (NO-2716.)

The defendant Blume testified that he completely dismissed the thought of ever filing a false report because he regarded that as unworthy of himself.

Then, the actual figures mentioned in the reports, staggering though they are, do by no means tell the entire story. Since the objective of the Einsatzgruppen was to exterminate all people falling in the categories announced in the Fuehrer Order, the completion of the job in any given geographical area was often simply announced with the phrase, "There is no longer any Jewish population." Cities, towns, and villages were combed by the Kommandos and when all Jews in that particular community were killed, the report-writer laconically telegraphed or wrote to Berlin that the section in question was "freed of Jews." Sometimes the extermination area covered a whole country like Esthonia or a large territory like the Crimea. In determining the numbers killed in a designation of this character one needs merely to study the atlas and the census of the period in question. Sometimes the area set aside for an execution operation was arbitrarily set according to Kommandos. Thus one finds in the reports such entries as "The fields of activity of the Kommandos is freed of all Jews."

And then there were the uncounted thousands who died a death premeditated by the Einsatz units without their having to do the killing. When Jews were herded into a few miserable houses which were fenced off and called a "ghetto", this was incarceration—but incarceration without a prison warden to bring them food. The reports make it abundantly clear that in these ghettos death was rampant, even before the Einsatz units began the killing off of the survivors. When, in a given instance, all male Jews and Jewesses over the age of 12 were executed, there remained, of course, all the children under 12. They were doomed to perish. Then there were those who were worked to death. All these fatalities are un-

mistakably chronicled in the Einsatz reports, but do not show up in their statistics.

In addition, it must be noted that there were other vast numbers of victims of the Einsatzgruppen who did not fall under the executing rifles. In many cities, towns, and provinces hundreds and thousands of fellow-citizens of those slain fled in order to avoid a similar fate. Through malnutrition, exposure, lack of medical attention, and particularly, if one thinks of the aged and the very young, of exhaustion, most if not all of those refugees perished. These figures, of course, do not appear in the Einsatzgruppen reports, but the criminal responsibility for their deaths falls upon the Fuehrer Order program as much as the actual shooting deaths.

EMPLOYMENT AS LABOR BEFORE EXECUTION

At times, part of the Jewish population in a given community was temporarily spared, not for humanitarian reasons, but for economic purposes. Thus, a report from Esthonia specifies—

“The arrest of all male Jews of over 16 years of age has been nearly finished. With the exception of the doctors and the Elders of the Jews who were appointed by the special [Sonder] Kommandos, they were executed by the self-protection units [home guard] under the control of the special detachment [Kommandos] 1a. Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.” (L-180.)

In Lithuania, however, the executions went so fast that there was a great shortage of doctors for the non-Jewish population.

“More than 60 percent * of the dentists were Jews; more than 50 percent of the other doctors as well. The disappearance of these brings about an extreme shortage of doctors which cannot be overcome even by bringing in doctors from the Reich.” (L-180.)

A report from the Ukraine in September 1941 recommends that the Jews be killed by working and not by shooting.

“There is only one possibility which the German administration in the Generalgouvernement has neglected for a long time: *Solution of the Jewish problem by extensive labor utilization of the Jews.* This will result in a gradual liquidation of the Jewry—a development, which corresponds to the economic conditions of the country.” (NO-3151.)

In the cities of Latvia, German agencies used Jews as forced unpaid manpower, but there was always the danger that, despite

* Original German document read 80 percent but, due to clerical error, translation of document which was submitted in Court read 60 percent.

these economic advantages to the Germans, the security police would shoot the working Jews. (NO-3146.)

Einsatzgruppe C reports in September 1941—

“Difficulties have arisen, insofar as Jews are often the only skilled workers in certain trades. Thus, the only harnessmakers and the only good tailors at Novo-Ukrainka are Jews. At other places also only Jews can be employed for carpentry and locksmith work.

“In order not to endanger reconstruction and the repair work also for the benefit of transient troop units, it has become necessary to exclude provisionally especially the older Jewish skilled workers from the executions.” (NO-3146.)

In a certain part of the Ukraine, described as between Krivoi Rog and Dnepropetrovsk, collective farms, known as Kolkhoses, were found to be operated by Jews. They were described in the report as being of low intelligence but since they were good workers the Einsatz commander did not liquidate them. However, the report goes on to say that the Einsatz commander was satisfied with merely shooting the Jewish managers. (NO-3153.)

The Nazi Commissioner-General for White Ruthenia, reporting in July 1942, expressed quite frankly his desire to strike down all Jews in one murderous stroke. However, he was willing to stay his arm temporarily until the requirements of the Wehrmacht should be satisfied.

“I myself and the SD would certainly much prefer that the Jewish population in the District General of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements of the Wehrmacht who is the main employer of the Jewish population are still being considered.” (3428-PS.)

Operation Report No. 11, dated 3 July 1941, also explains that in the Baltic region the Wehrmacht is not “for the time being” in a position to dispense with the manpower of the Jews still available and fit for work. (NO-4537.)

It must not be assumed, however, that once being assigned to work the Jews were free from molestation. Einsatzgruppe B, reporting on affairs in Vitebsk, declared—

“By appointed Jewish council, so far about 3,000 Jews registered. Badges for Jews introduced. At present they are being employed with clearing rubble. For deterrent, 27 Jews, who had not come to work, were publicly shot in the streets.” (NO-2954.)

One report-writer, describing conditions in Esthonia, complained that as the Germans advanced, the Esthonians arrested

Jews but did not kill them. He shows the superior methods of the Einsatzgruppe.

"Only by the Security Police and the SD were the Jews gradually executed as they became no longer required for work." (2273-PS.)

He then adds as an obvious deduction—

"Today there are no longer any Jews in Esthonia."

Just as a heartless tradesman may work a superannuated horse until he has drained from its body the last ounce of utility, so did the action unit in Minsk dispose of the Jews.

"In Minsk itself—exclusive of Reich Germans—there are about 1,800 Jews living, whose shooting must be postponed in consideration of their being used as labor." (2273-PS.)

In White Ruthenia the Kommando leaders were instructed on orders of Heydrich to suspend the killing of Jews until after they had brought in the harvest.

INSTIGATION TO POGROMS

Certain Einsatzkommandos committed a crime which, from a moral point of view, was perhaps even worse than their own directly committed murders, that is, their inciting of the population to abuse, maltreat, and slay their fellow citizens. To invade a foreign country, seize innocent inhabitants, and shoot them is a crime, the mere statement of which is its own condemnation. But to stir up passion, hate, violence, and destruction among the people themselves, aims at breaking the moral backbone, even of those the invader chooses to spare. It sows seeds of crime which the invader intends to bear continuous fruit, even after he is driven out.

On the question of criminal knowledge it is significant that some of those responsible for these shameless crimes endeavored to keep them secret. SS Brigadier General Stahlecker, head of Einsatzgruppe A, reporting on activities of Einsatzgruppe A, stated in October 1941 that it was the duty of his security police to set in motion the passion of the population against the Jews. "It was not less important," the report continued,

"In view of the future to establish the unshakable and provable fact that the liberated population themselves took the most severe measures against the Bolshevik and Jewish enemy quite on their own, so that the directions by German authorities could not be found out." (L-180.)

In Riga this same Stahlecker reported:

"Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following

out orders, the security police was determined to solve the Jewish question with all possible means and most decisively. But it was desirable that the security police should not put in an immediate appearance, at least in the beginning, *since the extraordinarily harsh measures were apt to stir even German circles.* [Emphasis added.] It had to be shown to the world that the native population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period." (L-180.)

Stahlecker was surprised and disappointed that in Lithuania it was not so easy to start pogroms against the Jews. However, after certain prodding and assistance, results were attained. He reports—

"Klimatis, the leader of the partisan unit, mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment [Vorkommando] acting in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following night about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists who had been left behind." (L-180.)

In working up special squads to initiate and carry through pogroms in Lithuania and Latvia, Stahlecker made it a point to select men who for personal reasons had a grudge against the Russians. Somehow these squads were then made to believe that by killing Jews they were avenging themselves on the Russians for their own griefs.

Activity and Situation Report No. 6, prepared in October 1941, complained that Einsatz units operating in Esthonia could not provoke "spontaneous, anti-Jewish demonstration with ensuing pogroms" because "adequate enlightenment was lacking." However, as stated before, not everything was lost because under the direction of the Einsatzgruppe of the security police and security service, all male Jews over the age of 16, with the exception of doctors and Jewish elders, were arrested and killed. The report then states, "At the conclusion of the operation there will be only 500 Jewesses and children left in the Ostland." (NO-2656.)

Hermann Friedrich Graebe, manager and engineer in charge

of a German building firm in Sdolbunov, Ukraine, has described in graphic language just how a pogrom operates. When he heard that a pogrom was being incubated he called on the commanding officer of the town, SS Sturmbannfuehrer Puetz, to ascertain if the story had any basis in fact since he, Graebe, employed some Jewish workers whom he wished to protect. Sturmbannfuehrer Puetz denied the rumors. Later, however, Graebe learned from the area commissioner's deputy, Stabsleiter Beck, that a pogrom was actually in the making but he exacted from Graebe the promise not to disclose the secret. He even gave Graebe a certificate to protect his workers from the pogrom. This amazing document reads—

“Messrs. Jung
Rovno

“The Jewish workers employed by your firm are not affected by the pogrom. You must transfer them to their new place of work by Wednesday, 15 July 1942, at the latest.

“From the Area Commissioner Beck.”

That evening the pogrom broke. At 10 o'clock SS men and Ukrainian militia surged into the ghetto, forcing doors with beams and crossbars. Let Graebe tell the story in his own words.

“The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks and blows, with rifle butts in clearing the houses. The people were driven out of their houses in such haste that small children in bed had been left behind in several instances. In the street women cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road, at running pace, and hitting them, until they reached a waiting freight train. Car after car was filled, and the screaming of women and children, and the cracking of whips and rifle shots resounded unceasingly. Since several families or groups had barricaded themselves in especially strong buildings, and the doors could not be forced with crowbars or beams, these houses were now blown open with hand grenades. Since the ghetto was near the railroad tracks in Rovno, the younger people tried to get across the tracks and over a small river to get away from the ghetto area. As this stretch of country was beyond the range of the electric lights, it was illuminated by signal rockets. All through the night these beaten, hounded, and wounded people moved along the lighted streets. Women carried their dead children in their arms, children pulled and dragged their dead parents by their

arms and legs down the road toward the train. Again and again the cries 'Open the door! Open the door!' echoed through the ghetto." (2992-PS.)

Despite the immunity guaranteed his Jewish workers by Commissioner Beck, seven of them were seized and taken to the collecting point. Graebe's narrative continues—

"I went to the collecting point to save these seven men. I saw dozens of corpses of all ages and both sexes in the streets I had to walk along. The doors of the houses stood open, windows were smashed. Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc., were lying in the street. At the corner of the house lay a baby, less than a year old with his skull crushed. Blood and brains were spattered over the house wall and covered the area immediately around the child. The child was dressed only in a little skirt. The commander, SS Major Puetz, was walking up and down a row of about 80-100 male Jews who were crouching on the ground. He had a heavy dog whip in his hand. I walked up to him, showed him the written permit of Stabsleiter Beck and demanded the seven men whom I recognized among those who were crouching on the ground. Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men. He made a motion with his hand encircling the square and said that anyone who was once here would not get away. Although he was very angry with Beck, he ordered me to take the people from 5 Bahnhofstrasse out of Rovno by 8 o'clock at the latest. When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses. Dead people with stiff limbs were lying on the cart, legs and arms projected over the side boards. The cart was making for the freight train. I took the remaining 74 Jews who had been locked in the house to Sdolbunov." (2992-PS.)

5,000 Jews were massacred in this pogrom.

Special Kommando 7 which, as heretofore indicated, had shot the 27 Jews on the streets of Vitebsk, announced in its report—

"The Ruthenian part of the population has approved of this.

Large-scale execution of Jews will follow immediately." (NO-2954.)

The active cooperation of the action units with the accomplishment of pogroms is evidenced by one report where the Sipo and SD want some of the credit for the murders committed.

"As a result of the pogroms carried out by the Lithuanians, who were nevertheless substantially assisted by Sipo and SD, 3,800 Jews in Kovno and 1,200 in the smaller town were eliminated." (2273-PS.)

In some areas special groups were set up.

"In addition to this auxiliary police force, 2 more independent groups have been set up for the purpose of carrying out pogroms. All synagogues have been destroyed; 400 Jews have already been liquidated." (NO-2935.)

APPROPRIATION OF PERSONAL EFFECTS AND VALUABLES

While no explanation was ever given as to why the Nazis condemned the Jews to extermination, the public record shows that they counted on substantial material advantage. The levying of enormous indemnities against persons considered by the Nazis as Jews or half-Jews and the expropriation of their property in Germany as well as in the countries occupied by it, brought huge returns to the coffers of the Reich. And even in the dread and grim business of mass slaughter, a definite profit was rung up on the Nazi cash register. For example, Situation Report No. 73, dated 4 September 1941, reporting on the executions carried out by a single unit, Einsatzkommando 8, makes the cold commercial announcement—

"On the occasion of a purge at Cherven 125,880 rubles were found on 139 liquidated Jews and were confiscated. This brings the total of the money confiscated by Einsatzkommando 8 to 1,510,399 rubles up to the present day." (NO-2844.)

Situation Report No. 133, dated 14 November 1941, shows the progress made by this unit in a little over two months.

"During the period covered by this report, Einsatzkommando 8 confiscated a further 491,705 rubles as well as 15 gold rubles. They were entered into the ledgers and passed to the administration of Einsatzkommando 8. The total amount of rubles so far secured by Einsatzkommando 8 now amounts to 2,511,226 rubles." (NO-2825.)

On 26 October 1941, Situation Report No. 125 gave Einsatzkommando 7b credit for 46,700 rubles taken from liquidated Jews, Einsatzkommando 9 credit for 43,825 rubles and "various valuables in gold and silver", and recorded that Einsatzkommando 8 had increased the amount of its loot to the sum of 2,019,521 rubles. (NO-3403.)

Operation and Situation Report No. 31, dated July 1941, rendering an account of operations in Lithuania, recorded the taking of "460,000 rubles in cash as well as a large number of valuables" from liquidated Jews. The report stated further:

"The former Trade Union Building in Vilna was secured for the German Labor Front [DAF] at their request, likewise the money in the trade union accounts in banks, totalling 1.5 million rubles." (NO-2937.)

Although engaged in an ideological enterprise, supposedly undertaken on the highest ethnic and cultural level, executants of the program were not above the most petty and loathsome thievery. In the liquidation of Jews in Zhitomir and Kiev the reporting Einsatzkommando collected 137 trucks full of clothing. The report does not say whether the clothing was torn from the victims while they were still alive or after they had been killed. This stolen raiment was turned over to the National Socialist People's Welfare Organization.

One of the defendants related how during the winter of 1941 he was ordered to obtain fur coats for his men, and that since the Jews had so much winter clothing, it would not matter much to them if they gave up a few fur coats. In describing an execution which he attended, the defendant was asked whether the victims were undressed before the execution. He replied, "No, the clothing wasn't taken—this was a fur coat procurement operation."

A document issuing from Einsatzgruppe D headquarters (February 1942) speaks of the confiscation of watches in the course of anti-Jewish activities. The term "confiscate" does not change the legal or moral character of the operation. It was plain banditry and highway robbery. The gold and silver watches were sent to Berlin, others were handed over to the Wehrmacht (rank and file) and to members of the Einsatzgruppe itself "for a nominal price" or even gratuitously if the circumstances warranted that kind of liberality with these blood-stained articles. This report also states that money seized was transmitted to the Reich Bank, except "for a small amount required for routine purposes (wages, etc.)". In other words the executioners paid themselves with money taken from their victims. (NOKW-631.)

The same Einsatzgruppe, reporting on the hard conditions under which some ethnic German families were living in southern Russia, showed that it helped by placing Jewish homes, furniture, children's beds, and other equipment at the disposition of the ethnic Germans. These houses and equipment were taken from liquidated Jews.

Einsatzgruppe C, proudly reporting on its accomplishments in Korovo (September 1941), stated that it organized a regular police force to clear the country of Jews as well as for other purposes. The men enlisted for this purpose, the report goes on to say, received "their pay from the municipality from funds seized from Jews." (NO-3154.)

Whole villages were condemned, the cattle and supplies seized (that is stolen), the population shot, and then the villages themselves destroyed.

Villages were razed to the ground because of the fact, or under

the shallow pretense, that some of the inhabitants had been aiding or lodging partisans.

The reports abound with itemization of underwear, clothing, footwear, cooking utensils, etc., taken from the murdered Jews.

In Poltava, 1,538 Jews were shot and their clothing was handed over to the mayor who, according to the report covering this action, "gave special priority to the ethnic Germans when distributing it." (NO-3405.)

Even those who were destined for death through the gas vans had to give up their money and valuables and sometimes their clothes before breathing in the carbon monoxide.

Money and valuables taken from victims were sent to Berlin to the Reich Ministry of Finance. When a Jewish council of elders was appointed to register the Jews for the ostensible purpose of resettlement, the council was also requested to submit the financial situation of the Jews. This facilitated the despoliation of their possessions which went hand in hand with their execution.

PRISONERS OF WAR

The extermination program on racial and political grounds also extended to prisoners of war. Even in the first weeks of Germany's war against Russia, large numbers of civilians from the invaded areas were indiscriminately thrown into prisoner-of-war camps, run by the PW department of the High Command of the Wehrmacht. On 17 July 1941, Heydrich issued Operational Order No. 8, which contained "directives" for the Einsatz units "detailed to permanent PW camps (Stalags) and transit camps (Dulags)". These directives not only grossly violated the provisions of the Hague Regulations on prisoners of war and civilians in belligerently occupied territories and of century-old rules and customs of warfare, but outraged every principle of humanity. They provided for nothing less than the cold-blooded mass-murder of prisoners of war and of civilians held in PW camps. The directives state as their "purpose"—

"The Wehrmacht must immediately free itself of all those elements among the prisoners of war who must be regarded as Bolshevist influence. The special situation of the campaign in the East, therefore, demands *special measures* [Italics original] which have to be carried out in a spirit free from bureaucratic and administrative influences, and with an eagerness to assume responsibility." (NO-3414.)

The directives instruct the Einsatz units as to which categories of persons to seek out "above all". This list mentions in detail all categories and types of Russian government officials, all influential Communist Party officials, "the leading personalities of the econ-

omy", "the Soviet Russian intellectuals", and as a separate category—the category which was again to yield the largest number of victims of this "action"—"all Jews".

It, in fact, emphasized that in—"taking any decisions, the racial origin has to be taken into consideration." (NO-3414.)

Concerning executions, the directives specified—

"The executions must not be carried out in the camp itself or in its immediate neighborhood. They are not public and are to be carried out as inconspicuously as possible." (NO-3414.)

Further—

"In order to facilitate the execution of the purge, a liaison officer is to be sent to Generalmajor von Hindenburg, commander in chief of the PW camps in Military District I, East Prussia, in Koenigsberg, Prussia, and to Generalleutnant Herrgott, commander in chief of the PW camps in the general government in Kielce."

Under this program doctors, if found in the PW camps, were doomed either because they were "Russian intellectuals" or because they were Jews. However, by 29 October 1941, Heydrich found it necessary to rule—

"Because of the existing shortage of physicians and medical corps personnel in the camps, such persons, even if Jews, are to be excluded from the segregation and to be left in the PW camps, except in particularly well-founded cases." (NO-3422.)

Another passage in this order of Heydrich vividly demonstrates to what extent the Reich went officially in flouting the most basic rules of international law and the principles of humanity—

"The chiefs of the Einsatzgruppen decide on the suggestions for execution on their own responsibility and give the Sonderkommandos the corresponding orders."

It is apparent that all those involved in this program were aware of its illegality.

"This order must not be passed on in writing—not even in the form of an excerpt. District commanders for prisoners of war and commanders of transit camps must be notified verbally." (NO-3422.)

It is to the credit of an occasional army officer that he objected to this shameful and degrading repudiation of the rules of war. In one report we find—

"As a particularly clear example the conduct of a camp commander in Vinnitsa is to be mentioned who strongly objected to the transfer of 362 Jewish prisoners of war carried out by his deputy and even started court martial proceedings against the deputy and two other officers." (NO-3157.)

Field Marshal von Reichenau, commanding the Sixth Army,

however, was not so chivalrous as the officer indicated. The report states further—

“Generalfeldmarschall von Reichenau has, on 10 October 1941, issued an order which states clearly that the Russian soldier has to be considered on principle a representative of bolshevism and has also to be treated accordingly by the Wehrmacht.”

Perhaps the nadir in heartlessness and cowardice was reached by these murder groups when one of the Kommandos brutally killed helpless, wounded prisoners of war. Einsatzgruppe C, reporting (November 1941) on an execution performed by Sonderkommando 4a, stated—

“* * * the larger part were again Jews, and a considerable part of these were again Jewish prisoners of war who had been handed over by the Wehrmacht. At Borispol, at the request of the commander of the Borispol PW camp, a platoon of Sonderkommando 4a shot 752 Jewish prisoners of war on 14 October 1941, and 357 Jewish prisoners of war on 10 October 1941, among them some commissioners and 78 wounded Jews, handed over by the camp physician.” (NO-2830.)

METHODS OF EXECUTION

How were the executions conducted? What was the *modus operandi*? On this subject history need not remain in the dark. Several of the executioners have themselves cleared away all mystery as to just how they accomplished their extraordinary deeds. Defendant Paul Blobel, who stated that his Sonderkommando killed between 10,000 and 15,000 people, described in some detail one performance he personally directed. Specifying that from 700 to 1,000 persons were involved in this execution, he related how he divided his unit into shooting squads of 30 men each. Then, the mass graves were prepared—

“Out of the total number of the persons designated for the execution, 15 men were led in each case to the brink of the mass grave where they had to kneel down, their faces turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed. * * * When the men were ready for the execution, one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave, the victims fell, as a rule, at once into the mass grave. I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck [Genickschusspezialisten]. Each squad shot for about one hour and was then replaced. The persons who still had to be shot were assembled near the place of the execution and were guarded by mem-

bers of those squads, which at that moment did not take part in the executions." (NO-3824.)

In some instances, the slain persons did not fall into the graves, and the executioners were then compelled to exert themselves to complete the job of interment. A method, however, was found to avoid this additional exertion by simply having the victims enter the ditch or grave while still alive. An SS eyewitness explained this procedure.

"The people were executed by a shot in the neck. The corpses were buried in a large tank ditch. The candidates for execution were already standing or kneeling in the ditch. One group had scarcely been shot before the next came and laid themselves on the corpses there."

The defendant Biberstein also verified this with his statement—

"The shootings took place in a sand pit, in which the bodies afterwards were buried."

The defendant Ott, who stated his Kommando conducted 80 to 100 executions, told of one winter execution where the corpses were temporarily buried in the snow.

The business of executions was apparently a very efficient business-like procedure, illustrated by Report No. 24, dated 16 July 1941, which succinctly stated—

"The arrested Jewish men are shot without ceremony and interred in already prepared graves, the EK 1b having shot 1,150 Jews at Daugavpils up to now." (NO-2938.)

Some of the Kommando leaders, however, were a little more ceremonious. These executioners called off the names of the victims before they were loaded on to the truck which was to take them to their death. This was their whole judicial trial—the indictment, the evidence, and the sentence—a roll call of death.

There were different techniques in execution. There were Einsatz commanders who lined up their victims kneeling or standing on the edge of the grave, facing the grave, others who had the executees stand with their backs to the grave, and still others, as indicated, who had their victims stand in the grave itself. One defendant described how the victims lined up at the edge of the ditch and, as they fell, another row stepped into position so that, file after file, the bodies dropped into the pit on to the bleeding corpses beneath.

Hardly ever was a doctor present at the executions. The responsibility of the squad leader to make certain the victims were dead before burying them was simply discharged by a glance to determine whether the bullet-ridden bodies moved or not. Since in most cases the huddled and contorted bodies were strewn and piled in a trench at least six feet deep, only one more horror is added in con-

templating the inadequacy of an inspection made from the rim of a ditch as to whether life in the dark ground below was extinct or not.

In fact, one defendant did not exclude the possibility that an executee could only seem to be dead because of shock or temporary unconsciousness. In such cases it was inevitable he would be buried alive.

The defendant Blobel testified that his firing squad always aimed at the heads of the victims. If, he explains, the victim was not hit, then one member of the firing squad approached with his rifle to a distance of three paces and shot again. The scene of the victim watching the head hunter approaching with his rifle and shooting at him at three paces represents a horror for which there is no language.

Some Kommando leaders, as we have seen, made their victims lie down on the ground, and they were shot in the back of the neck. But, whatever the method, it was always considered honorable, it was always done in a humane and military manner. Defendant after defendant emphasized before the Tribunal that the requirements of militariness and humaneness were meticulously met in all executions. Of course, occasionally, as one defendant described it, "the manner in which the executions were carried out caused excitement and disobedience among the victims, so that the Kommandos were forced to restore order by means of violence," that is to say, the victims were beaten. Undoubtedly always, of course, in a humane and military manner.

Only rarely, however, did the victims react to their fate. Commenting on this phase of the executions, one defendant related how some victims, destined to be shot in the back, turned around and bravely faced their executioners but said nothing. Almost invariably they went to their end silently, and some of the defendants commented on this. The silence of the doomed was mysterious; it was frightening. What did the executioners expect the victims to say? Who could find the words to speak to this unspeakable assault on humanity, this monstrous violence upon the dignity of life and being? They were silent. There was nothing to say.

It was apparently a standing order that executions should not be performed publicly, but should always take place far removed from the centers of population. A wooded area was usually selected for this grim business. Sometimes these rules were not observed. Document NOKW-641 relates an execution which took place near houses whose occupants became unwilling witnesses to the macabre scene. The narrative states—

"A heavy supply traffic for the soldiers was also going on in the main street, as well as traffic of evacuated civilians. All

events could be followed from the window of the battalion's office, the moaning of the people to be shot could be heard, too. The following morning, a lot of clothing was lying about the place concerned and surrounded by inquisitive civilians and soldiers. An order to destroy the clothing was given immediately."

The business man, Friedrich Graebe, already quoted before, has left a moving account of a mass execution witnessed by him in October 1942 near Dubno, an account which because of its authoritative description deserves recording in its entirety in this opinion.

"Moennikes and I went direct to the pits. Nobody bothered us. Now I heard rifle shots in quick succession, from behind one of the earth mounds. The people who had got off the trucks—men, women, and children of all ages—had to undress upon the orders of an SS-man, who carried a riding or dog whip.

"They had to put down their clothes in fixed places, sorted according to shoes, top clothing, and underclothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of underlinen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells and waited for a sign from another SS-man, who stood near the pit, also with a whip in his hand.

"During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy. I watched a family of about 8 persons, a man and woman, both about 50 with their children of about 1, 8, and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year-old child in her arms and singing to it, and tickling it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed toward the sky, stroked his head, and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned. I well remember a girl, slim, and with black hair, who, as she passed close to me, pointed to herself and said '23'. I walked around the mound and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already 2/3 full. I estimated that it already contained about 1,000 people. I looked for the man

who did the shooting. He was an SS man who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS men directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching on the heads lying already motionless on top of the bodies that lay before them. Blood was running down their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back, round the mound, I noticed another truckload of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with Moennikes and drove in my car back to Dubno.

“On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit—about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness of the morning nor the workers of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes and help her escape. At that moment we heard a fast car approach, and I noticed that it was an SS detail. I moved away to my site. Ten minutes later we heard shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit; then they had themselves to lie down in this to be shot in the neck.” (2992-PS.)

The tragedy of this scene is lost entirely on the executioner. He does his job as a job. So many persons are to be killed, just as a carpenter contemplates the construction of a shed. He must consider the material he has on hand, the possibilities of rain, etc. Only by psychologically adjusting oneself to such a state of affairs can one avoid a shock when one comes to a statement in a report very casually written, namely, “Until now, it was very difficult to carry out executions because of weather conditions.” (NO-2828.)

A report from Einsatzgruppe A, discussing events which occurred in the winter of 1941-42, remarks—

“The Commander in White Russia is instructed to liquidate the Jewish question as soon as possible, despite the difficult situation. However, a period of about 2 months is still required—according to the weather.” (2273-PS.)

It is all this same type of studied indifference that causes another report-writer to chronicle simply, “Hostages are taken in each new place, and they are executed on the slightest reason.” (NO-2948.)

One of the Einsatzgruppen leaders complains that only 96 Jews were executed at Grodno and Lida during the first days. He manifests his displeasure and declares, “I gave orders that considerable intensification was to take place there.” (NO-2937.)

Adolf Ruebe, a former SS Hauptsturmfuehrer, declared in an affidavit that now and then there were executioners who devised original methods for killing their victims.

“On the occasion of an exhumation in Minsk, in November 1943, Obersturmfuehrer Heuser arrived with a Kommando of Latvians. They brought eight Jews, men and women, with them. The Latvians guarded the Jews, while Harter and Heuser erected a funeral pyre with their own hands. The Jews were bound, put on the pile alive, drenched with gasoline and burned.” (NO-5498.)

It was stated in the early part of this opinion that women and children were to be executed with the men so that Jews, gypsies, and so-called asocials would be exterminated for all time. In this respect, the Einsatzgruppen leaders encountered a difficulty they had not anticipated. Many of the enlisted men were husbands and fathers, and they winced as they pulled their triggers on these helpless creatures who reminded them of their own wives and offspring at home. In this emotional disturbance they often aimed badly and it was necessary for the Kommando leaders to go about with a revolver or carbine, firing into the moaning and writhing forms. This was hard on the executioners, personnel experts reported to the RSHA in Berlin, and to relieve their emotional sensitivity, gas vans were sent to the rescue.

These strange vehicles carried spurious windows and curtains and otherwise externally resembled family trailers. Women and children were lured into them with the announcement that they were to be resettled and that they would meet their husbands and fathers in the new place. Once inside the truck, the doors automatically and hermetically closed, the driver stepped on the accelerator, and monoxide gas from the engine streamed in. By the time the van reached its destination, which was an antitank

ditch outside the town, the occupants were dead. And here they joined their husbands and fathers who had been killed by rifles and carbines in the hands of the Einsatzkommandos.

As distressing as may be to the average person, the mere thought image of these murder wagons, they were simply articles of equipment so far as the Einsatzgruppen were concerned. Communications went back and forth, correspondence was written about these vans with the casualness which might accompany a discussion on coal trucks. For instance, on 16 May 1942 SS Untersturmfuehrer Dr. Becker, wrote SS Obersturmbannfuehrer Rauff, pointing out that vans could not be driven in rainy weather because of the danger of skidding. He, therefore, posed the question as to whether executions could not be accomplished with the vans in a stationary position. However, this suggestion offered a problem all its own. If the van was not actually set for mobility, the victims would realize what was about to happen to them, and this, Becker said, must be avoided so far as possible. He thus recommended "There is only one way left. To load them at the collecting point and to drive them to the spot." Becker then complained that members of the Kommando should not be required to unload the corpses.

"I brought to the attention of the commanders of those S.K. concerned, the immense psychological injuries and damages to their health which that work can have for those men, even if not immediately, at least later on. The men complained to me about headaches which appeared after each unloading."

Then with regard to the operation of the lethal device itself, Becker says—

"The application of gas usually is not undertaken correctly. In order to come to an end as fast as possible, the driver presses the accelerator to the fullest extent. By doing that the persons to be executed suffer death from suffocation and not death by dozing off as was planned. My directions have now proved that by correct adjustment of the levers death comes faster and the prisoners fall asleep peacefully." (501-PS.)

On 15 June 1942, the commandant of the Security Police and Security Service Ostland wrote the RSHA in Berlin as follows: "Subject: S-vans.

A transport of Jews, which has to be treated in a special way, arrives weekly at the office of the commandant of the security police and the security service of White Ruthenia.

"The three S-vans which are there are not sufficient for that purpose. I request assignment of another S-van (5 tons). At the same time I request the shipment of 20 gas hoses for the

three S-vans on hand (2 Diamond, 1 Saurer), since the ones on hand are leady already." (501-PS.)

Ever efficient in discharging their homicidal duties, it appears that the Einsatz authorities now even set up a school in this new development of the fine art of genocide. The defendant Biberstein, describing one of these ultra-modern executions, spoke of the driver Sackenreuter of Nuernberg "who had been most carefully instructed about the handling of the gas truck, having been through special training courses." (NO-4314.) Biberstein was satisfied that this method of killing was very efficient because the faces of the dead people were "in no way distorted"; death having come "without any outward signs of spasms". He added that no physician was present to certify that the people were dead because "this type of gas execution guaranteed certain death." Who it was that guaranteed this was not vouchsafed to history.

The murder-vans were constructed in Berlin and then, under their own power, driven to the field of action. The reports tell of two vans which traveled from Berlin to the Crimea. It would be interesting to know the thoughts of the drivers of these murder-cars as they rolled over half of Europe, through city and country, climbing mountains and penetrating plains, traveling 2,000 kilometers with their gaseous guillotines to kill helpless women and children. One of the drivers was none other than the chauffeur of the arch-murderer Reinhard Heydrich.

One reads and reads these accounts of which here we can give only a few excerpts and yet there remains the instinct to disbelieve, to question, to doubt. There is less of a mental barrier in accepting the weirdest stories of supernatural phenomena, as, for instance, water running up hill and trees with roots reaching toward the sky, than in taking at face value these narratives which go beyond the frontiers of human cruelty and savagery. Only the fact that the reports from which we have quoted came from the pens of men within the accused organizations can the human mind be assured that all this actually happened. The reports and the statements of the defendants themselves verify what otherwise would be dismissed as the product of a disordered imagination. The record reveals that investigators and evidence analysts have checked and rechecked. Being human they sometimes doubted the correctness of the startling figures appearing in the reports. Thus, when one of them came across the statement of Stahlecker that Einsatzgruppe A, of which he was chief, had killed 135,000 human beings in four months, the investigator questioned Otto Ohlendorf if this were possible. Ohlendorf read the statement in question and announced—

"I have seen the report of Stahlecker (*Document L-180*) concerning Einsatzgruppe A, in which Stahlecker asserts that his group killed 135,000 Jews and Communists in the first four months of the program. I know Stahlecker personally, and I am of the opinion that the document is authentic." (2620-PS.)

How can all this be explained? Even when Germany was re-treating on all fronts, many troops sorely needed on the battlefield were diverted on this insane mission of extermination. In defiance of military and economic logic, incalculable manpower was killed off, property of every description was destroyed—all remained unconsidered as against this insanity to genocide.

Here and there a protest was raised. The SS Commissioner General for White Ruthenia objected to the executions in his district—not on the grounds of humanity, but because he believed the unbridled murder program was lowering the prestige of Germany.

"Above all, any act lowering the prestige of the German Reich and its organizations in the eyes of the White Ruthenian population should be avoided. * * * I am submitting this report in duplicate so that one copy may be forwarded to the Reich Minister. Peace and order cannot be maintained in White Ruthenia with methods of that sort. To bury seriously wounded people alive, who worked their way out of their graves again, is such a base and filthy act that this incident as such should be reported to the Fuehrer and Reich Marshal. The civil administration of White Ruthenia makes very strenuous efforts to win the population over to Germany in accordance with the instructions of the Fuehrer. These efforts cannot be brought in harmony with the methods described herein." (1104-PS.)

The report referred to gave a graphic description of the extermination action. It told of the arrival of a police battalion with instructions to liquidate all Jews in the town of Slutsk within two days. The commissioner for the territory of Slutsk protested that the liquidation of all Jews, which naturally included the tradesmen, would shut down the economic life of that area. He asked, at least, for postponement of the executions. The lieutenant in charge of the battalion refused to wait. The report continues—

"For the rest, as regards the executions of the action, I must point out to my deepest regret that the latter bordered already on sadism. The town itself offered a picture of horror during the action. With indescribable brutality on the part of both the German police officers and particularly the Lithuanian partisans, the Jewish people, but also among them White Ruthenians, were taken out of their dwellings and herded to-

gether. Everywhere in the town shots were heard, and in different streets the corpses of shot Jews accumulated. * * * In conclusion I find myself obliged to point out that the police battalion has looted in an unheard of manner during the action, and that not only in Jewish houses but just the same in those of the White Ruthenians. Anything of use such as boots, leather, cloth, gold, and other valuables, has been taken away. On the basis of statements of the members of the armed forces, watches were torn off the arms of Jews in public, on the street, and rings were pulled off the fingers in the most brutal manner.

“A major of the finance department reported that a Jewish girl was asked by the police to obtain immediately 5,000 rubles to have her father released. This girl is said to have actually gone everywhere to obtain the money.” (1104-PS.)

For a nation at war nothing can be more important than that ammunition reach the soldiers holding the fighting frontiers. Yet, many vehicles loaded with ammunition for the armed forces were left standing in the streets of Slutsk because the Jewish drivers, already illegally forced into this service, had been liquidated by the execution battalion. Although the very life of the nation depended on the continued operation of every type of food-producing establishment, 15 of the 26 specialists at a cannery were shot.

The blood bath of Slutsk brought about some interesting correspondence. The commissioner general inquired of the Reich Minister of Occupied Eastern Territories if the liquidation of Jews in the East was to take place without regard to the economic interests of the Wehrmacht and specialists in the armament industry. The Reich Minister replied—

“Clarification of the Jewish question has most likely been achieved by now through verbal discussions. Economic considerations should fundamentally remain unconsidered in the settlement of the problem.” (3666-PS.)

A German inspector of armament in the Ukraine, after a thorough investigation into the Jewish liquidation program, reported to General of the Infantry, Thomas, Chief of the Industrial Armament Department, that the project was a big mistake from the German point of view. In the Ukraine he found that the Jews represented almost the entire trade and even a substantial part of the manpower.

“The elimination, therefore, necessarily had far-reaching economic consequences and even direct consequences for the armament industry (Production for supplying the troops).”

The report goes on—

“The attitude of the Jewish population was anxious-obliging

from the beginning. They tried to avoid everything that might displease the German administration. That they hated the German administration and army inwardly goes without saying and cannot be surprising. However, there is no proof that Jewry as a whole or even to a greater part was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them just as among the Ukrainians. But it cannot be said that the Jews as such represented a danger to the German Armed Forces. The output produced by Jews who, of course, were prompted by nothing but the feeling of fear, was satisfactory to the troops and the German administration." (3257-PS.)

What made the program of extermination particularly satanic was that the executions invariably took place not during the stress and turmoil of fighting or defense action, but after the fighting had ceased.

"The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks sometimes months later, specially detached formations of the police executed a planned shooting of Jews. * * * The way these actions, which included men and old men, women, and children of all ages, were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to 200,000 Jews may have been executed in the part of the Ukraine belonging to the Reich Kommissariat (RK); no consideration was given to the interests of economy."

In a final appeal to reason this German inspector cries out—

"If we shoot the Jews, let the prisoners of war perish, condemn considerable parts of the urban population to death by starvation and also lose a part of the farming population by hunger during the next year, the question remains unanswered: who in all the world is then supposed to produce economic values here?" (3257-PS.)

No one answered the question of the German inspector. Nor did any one answer the question of humanity as to why those oceans of blood and this burning of a continent. Reason, with its partner conscience, had been lost long ago in the jungle of Nazi greed and arrogance, and so madness ruled, hate marched, the sky reddened with the flames of destruction and the world wept—and still weeps.

THE LAW

Jurisdiction

On 27 August 1928, Germany signed and later ratified the

general treaty for the Renunciation of War, more generally known as the Kellogg-Briand Pact, wherein sixty-three nations agreed—

“Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another.

“Article II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts or whatever nature or whatever origin they may be, which may arise among them, shall never be sought, except by pacific means.”

In spite of this unequivocal universal condemnation of war, the fifth decade of the twentieth century witnessed a conflict at arms of global proportions which wrought such devastation on land and sea and so convulsed organized society that, for many decades yet to come, men, women, and children in every land will feel and suffer its consequences.

On 8 August 1945, representatives of Great Britain, France, Russia, and the United States met in London and entered into an agreement for the trial of war criminals ascertained to be such. Nineteen other nations expressed their adherence to this agreement.

On 30 September 1946, the International Military Tribunal, created by the London Agreement, after a trial which lasted ten months, rendered a decision which proclaimed that Germany had precipitated World War II and, by violating international commitments and obligations, had waged aggressive war. The International Military Tribunal, in addition to rendering judgment against specific individuals, declared certain organizations, which were outstanding instruments of nazism, to be criminal.

On 20 December 1945, the Allied Control Council, composed of representatives of the same four above-mentioned nations and constituting the highest legislative authority for Germany, enacted Law No. 10, concerning “Punishment of Persons Guilty of War Crimes, Crimes Against Peace, and Crimes Against Humanity”. This Tribunal came into being under the provisions of that law, but while the Tribunal derives its existence from the authority indicated, its jurisdiction over the subject matter results from international law valid long prior to World War II.

Defense counsel has advanced various arguments on the law applicable to this case. In view of their representations and the gravity of the case itself, the various phases of the law will be discussed with more detail than perhaps ordinarily the situation might require.

Under international law the defendants are entitled to a fair

and impartial trial, which the Tribunal has endeavored throughout the long proceedings to guarantee to them in every way. The precept that every man is presumed innocent until proved guilty has held and holds true as to each and every defendant. The other equally sanctified rule that the prosecution has the burden of proof and must prove the guilt of the accused beyond a reasonable doubt has been, and is, assured.

This trial opened on 15 September 1947, and the taking of evidence began on 29 September. The prosecution required but two days to present its case in chief because its evidence was entirely documentary. It introduced in all 253 documents. 136 days transpired in the presentation of evidence in behalf of the defendants, and they introduced, in addition to oral testimony, 731 documents. The trial itself was conducted in both English and German and was recorded stenographically and in both languages. The transcript of the oral testimony consists of more than 6,500 pages. An electric recording of all proceedings was also made. Copies of documents introduced by the prosecution in evidence were served on the defendants in the German language.

The judgment in this case will treat the several defendants separately in the latter part of the opinion, but since many items of defense, especially in argumentation, are common to more than one of the defendants they will be discussed collectively to avoid repetition during the individual treatments. It is to be emphasized that the general discussion and collective description of acts or defenses of defendants need not apply to each and every defendant in the box. Any general reference will necessarily apply to a majority of them but that majority need not always consist of the same persons. As already stated, the individual treatments will appear at the end.

The arguments put forth by the defense may be grouped under four different headings and will be discussed in that order by the Tribunal, jurisdiction, self-defense and necessity, superior orders and noninvolvement.

The substantive provisions of Control Council Law No. 10, which are pertinent in this case, read as follows:

Article II

"1. (b) *War Crimes.* Atrocities or offences against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of

cities, towns or villages, or devastation not justified by military necessity.

“(c) *Crimes against Humanity*. Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial, or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

“(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

“2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principle or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.”

Control Council Law No. 10 was attacked by defense counsel at the beginning of the trial, at the end of the trial, and even after all evidence and documentation had been received and arguments closed. In a motion filed 20 February 1948, counsel renewed their representations that this law was inapplicable to the instant case because of the fact that Russia, on 23 August 1939, signed a secret treaty with Germany agreeing to a division of Poland. In the argument supporting their motion, counsel does not dwell on the fact that in signing the agreement with Russia, Germany naturally became a party to the very transaction involved. However, in spite of this very definite concurrence by Germany in Russia's acts, insofar as they arose out of the so-called secret agreement, defense counsel submitted that Russia disqualified herself from membership in the Allied Control Council and that, therefore, any agreement reached with her as one of the signatory powers must necessarily be void. The argument is wholly lacking in merit.

The matter of responsibility for breach of the international peace was fully considered and decided by the International Military Tribunal in its decision of 30 September 1946.

“The Tribunal is fully satisfied by the evidence that the war

initiated by Germany against Poland on the 1 September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity."

It was this monstrously selfish and evil aggression which precipitated, as the International Military Tribunal pointed out, a global war whose effects are visible today throughout the world. The legal consequences drawn from the International Military Tribunal adjudication, which is now *res judicata*, may not be altered by the assertion that someone else may also have been at fault.

At the final arguments in the case various defense counsel spoke of international events which followed the ending of the war. It is intended as no offense to defense counsel to say that it would seem they are seeking to fish in troubled waters, or what they assume to be an agitated sea. Nonetheless, the Tribunal must refuse representations and arguments upon that subject. The defendants in this case stand accused of crimes which occurred during the war. History's footsteps since the termination of World War II cannot obliterate the blood marks of that colossal and tragic conflict.

While the Tribunal placed no limitations on the scope of defense counsel's representations, as in justice it should not, it does not follow that everything was relevant to the issue in the case. It is only by hearing an argument that one can conclusively determine its materiality or lack of materiality. However, the Tribunal now decides, after hearing and analyzing all the evidence, that discussions in this case on the antewar relationship between Germany and Russia are immaterial. It further decides that representations on the postwar relationship, Russia and the rest of the world are equally irrelevant.

Although advancing the proposition that Russia signed a secret treaty with Germany prior to the Polish war, the defense said or presented nothing in the way of evidence to overcome the well considered conclusion of the International Military Tribunal that Germany started an aggressive war against Russia. On the basis of this finding alone, Russia's participation in the Allied Council which formulated Law No. 10 was legal and correct and in entire accordance with international law.

Furthermore, defense counsel's representations in this respect have no bearing on the charges in this indictment. They are not defending Germany as a nation in this trial. They are representing individuals accused of specific crimes under Law No. 10, which, like the Charter of the International Military Tribunal, was not

an arbitrary exercise of power of the victorious nations but the expression of international law existing at the time of its creation. Control Council Law No. 10 is but the codification and systemization of already existing legal principles, rules, and customs. Under the title of crimes against humanity, these rules and customs are the common heritage of civilized peoples, and, insofar as war crimes are concerned, they have been recognized in various international conventions, to which Germany was a party, and they have been international law for decades if not centuries. As far back as 1631, Grotius, in his *De Jure Belli ac Pacis*, wrote—

“But * * * far must we be from admitting the conceit of some, that the Obligation of all Right ceases in war; nor when undertaken ought it to be carried on beyond the Bounds of Justice and Fidelity.”

The German author Schaetzel, in his book “*Bestrafungen nach Kriegsgebrauch*”, published in 1920, stated—

“* * * The Laws and Customs of Warfare are law not because they are reproduced in the field manual but because they are international law. The Imperial Decree (of 1899) speaks of punishment ‘in accordance with the laws, the customs of war and special decrees of competent military authorities’ (Art. 2). This shows clearly that the customs of war are recognized as a source of law. They are binding on individuals by virtue of the Imperial Decree which orders the authorities administering justice to follow these rules.

“The customs of war are substantive penal law as good as the state’s penal legislation.”

Defense counsel have particularly thrust at Control Council Law No. 10 with Latin maxim *nullum crimen sine lege, nulla poena sine lege*. It is indeed fundamental in every system of civilized jurisprudence that no one may be punished for an act which was not prohibited at the time of its commission. But it must be understood that the “lex” referred to is not restricted to statutory law. Law does, in fact, come into being as the result of formal written enactment and thus we have codes, treaties, conventions, and the like, but it may also develop effectively through custom and usage and through the application of common law. The latter methods are no less binding than the former. The International Military Tribunal, in its decision of 30 September 1946, declared—

“International Law is not the product of an international legislature * * *. This law is not static, but by continual adaptation follows the needs of a changing world.”

Of course some fields of international law have been codified to a substantial degree and one such subject is the law of land warfare which includes the law of belligerent occupation because

belligerent occupation is incidental to warfare. The Hague Regulations, for instance, represent such a codification. Article 46 of those regulations provides with regard to invading and occupying armies that—

“Family honor and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected.”

This provision imposed obligations on Germany not only because Germany signed the Hague Convention on Land Warfare, but because it had become international law binding on all nations.

But the jurisdiction of this Tribunal over the subject matter before it does not depend alone on this specific pronouncement of international law. As already indicated, all nations have held themselves bound to the rules or laws of war which came into being through common recognition and acknowledgment. Without exception these rules universally condemn the wanton killing of noncombatants. In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of *ex post factoism* in the law of murder.

Whether any individual defendant is guilty of unlawful killing is a question which will be determined later, but it cannot be said that prior to Control Council Law No. 10, there existed no law against murder. The killing of a human being has always been a potential crime which called for explanation. The person standing with drawn dagger over a fresh corpse must, by the very nature of justice, exonerate himself. This he may well do, advancing self-defense or legal authorization for the deed, or he may establish that the perpetrator of the homicide was one other than himself.

It is not questioned that the defendants were close enough to mass killings to be called upon for an explanation—and to whom are they to render explanations so that their innocence or guilt may be determined? Is the matter of some one million nonmilitary deaths to be denied judicial inquiry because a Tribunal was not standing by, waiting for the apprehension of the suspects?

The specific enactments for the trial of war criminals, which have governed the Nuernberg trials, have only provided a machinery for the actual application of international law theretofore existing. In the comparatively recent Saboteurs case (*Ex parte Quirin* 317 U. S., 1, 1942) the Supreme Court of the United States affirmed that individual offenders against the rules and customs of war are amenable to punishment under the common law of nations without any prior designation of tribunal or procedure. In this connection reference may also be made to trials

for piracy where, going back centuries, the offenders, regardless of nationality, were always tried in the arresting state without any previous designation of tribunal.

Military tribunals for years have tried and punished violators of the Rules of Land Warfare outlined in the Hague Convention, even though the Convention is silent on the subject of courts. The International Military Tribunal speaking to this subject said—

“The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts.”

All civilized nations have at times used military courts. Who questions that Prussia during the Franco-Prussian war and Germany during World War I and World War II utilized military courts to try subjects of other nations charged with violating the rules and laws of war?

There is no authority which denies any belligerent nation jurisdiction over individuals in its actual custody charged with violation of international law. And if a single nation may legally take jurisdiction in such instances, with what more reason may a number of nations agree, in the interest of justice, to try alleged violations of the international code of war?

In spite of all that has been said in this and other cases, no one would be so bold as to suggest that what occurred between Germany and Russia from June 1941 to May 1945 was anything but war, and, being war, that Russia would not have the right to try the alleged violators of the rules of war on her territory and against her people. And if Russia may do this alone, certainly she may concur with other nations who affirm that right.

Thus, Russia's participation in the formulation of Control Council Law No. 10 is in accordance with every recognized principle of international law, and any attack on that participation is without legal support. The Tribunal also finds and concludes that Control Council Law No. 10 is not only in conformity with international law but is in itself a highly significant contribution to written international law.

International Law Applied to Individual Wrong-Doers

Defense counsel have urged that the responsibilities resulting from international law do not apply to individuals. It is a fallacy of no small proportion that international obligations can apply only to the abstract legal entities called states. Nations can act only through human beings, and when Germany signed, ratified, and promulgated the Hague and Geneva Conventions, she bound each one of her subjects to their observance. Many German publi-

cations made frequent reference to these international pledges. The 1942 edition of the military manual [Recht der Landkriegsfuehrung] edited by a military judge of the Luftwaffe, Dr. Waltzog, carried the following preface:

“Officers and noncoms have, before taking military measures, to examine whether their project agrees with international law. Every troop leader has been confronted, at one time or another, with questions such as the following: Am I entitled to take hostages; how do I have to behave if bearing a flag of truce; what do I have to do with a spy, what with a franc-tireur; what may I do as a permitted ruse of war; what may I requisition; what is, in turn, already looting and, therefore, forbidden; what do I do with an enemy soldier who lays down his arms; how should enemy paratroopers be treated in the air and after they have landed?”

An authoritative collection of German Military Law (“Das gesamte Deutsche Wehrrecht”), published since 1936 by two high government officials, with an introduction by Field Marshal von Blomberg, then Reich War Minister and Supreme Commander of the Armed Forces, carried in a 1940 supplement this important statement—

“The present war has shown, even more than wars of the past, the importance of disputes on international law * * * In this connection, the enemy propaganda especially publicizes questions concerning the right to make war and concerning the war guilt, and thereby tries to cause confusion; this is another reason why it appears necessary fully to clarify and to make widely known the principles of international law which are binding on the German conduct of war.”

Every German soldier had his attention called to restrictions imposed by international law in his very paybook which carried on the first page what was known as “The Ten Commandments for Warfare of the German Soldier”. Article 7 of these rules provided specifically:

“The civilian populations should not be injured.

“The soldier is not allowed to loot or to destroy.”

Further arguing the proposition of individual nonresponsibility for their clients, several defense counsel have submitted that this trial in effect represents a trial of the victors over the vanquished. This objection dissolves so quickly under a serious glance that one wonders if it was presented reflectively. In the first place, the defendants are not being tried in any sense as “vanquished individuals” any more than it is to be assumed that a person taken into custody by police authorities is to be regarded as a “vanquished person”. Wars are fought between nations as such and

not between individuals as such. In war there is no legal entity such as a "defeated individual" just as there is no judicial concept of a "victorious individual". The defendants are in court not as members of a defeated nation but because they are charged with crime. They are being tried because they are accused of having offended against society itself, and society, as represented by international law, has summoned them for explanation. The doctrine that no member of a wronged community may try an accused would for all practical purposes spell the end of justice in every country. It is the essence of criminal justice that the offended community inquires into the offense involved.

In the fullest appreciation of the responsibilities devolving upon the Tribunal in this particular phase of the case, as in all phases, reference is made to the speech by Mr. Justice Jackson in the International Military Tribunal trial in which he said—

"We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice."

What Mr. Justice Jackson said at the beginning of that trial, this Tribunal says at the termination of the current trial.

Self-Defense and Necessity

Dr. Aschenauer, speaking for the defendant Ohlendorf and such others whose cases fall within the general pattern of the Ohlendorf defense, declared that the majority of the defendants committed the acts with which they are charged—

"(a) In presumed self-defense on behalf of a third party. ('Putativnothilfe' is the technical term in the German legal language.)

"(b) Under conditions of presumed necessity to act for the rescue of a third party from immediate, otherwise unavoidable danger (so-called 'Putativnotstand')."

In other words, it is claimed that the defendants in committing the acts charged to them, acted in self-defense for the benefit of a third party, the third party being Germany. In developing this theme of defense for Germany, Dr. Aschenauer insisted that this Tribunal apply his interpretation of Soviet law. One cannot avoid noting the paradox of the defendant's invoking the law of a country whose jurisprudence, ideologies, government and social system were all declared antagonistic to Germany, and which very laws, ideologies, government, and social system the defendants, with the rest of the German Armed Forces, had set out to destroy. However, it is the prerogative of defense counsel to advance any argument which he deems appropriate in behalf of his

client and the fact that Dr. Aschenauer considers Soviet law more modern than German law cannot fail to be interesting.

"It has thus achieved the aim which the German reform legislation has been striving at for a long time. Acts of necessity are unrestrictedly admissible if they are necessary for the protection of higher interests insofar as the danger could not be averted by any other means."

Under this theory of law any belligerent who is hard-pressed would be allowed unilaterally to abrogate the laws and customs of war. And it takes no great amount of foresight to see that with such facile disregarding of restrictions, the rules of war would quickly disappear. Every belligerent could find a reason to assume that it had higher interests to protect. As untenable as is such a proposition, Dr. Aschenauer goes even further—

"If the existence of the state or of the nation is directly threatened, then any citizen—and not only those appointed for this purpose by the state—may act for their protection."

Under this state of law a citizen of Abyssinia could proceed to Norway and there kill a Norwegian on the basis that he, the Abyssinian, was motivated only by the desire to protect his country from an assumed aggression by the Norwegian.

And that is not all—

"An error concerning the prerequisites of self-defense or of an act for the protection of a third party is to be treated as an error about facts and constitutes, according to the reason for, the avoidability and also the degree of gravity of the individual error, a legal excuse or—at the very least—a mitigating circumstance."

Thus, if the Abyssinian mentioned above, invaded Norway out of assumed necessity to protect his nation's interest, but it developed later that he killed the wrong person, he would be absolved because he had simply made a mistake. The fact that this astounding proposition is advanced in all seriousness demonstrates how desperate is the need for a further reevaluation of the sacredness of life and for emphasizing the difference between patriotism and murder.

Dr. Aschenauer does not claim that the actual circumstances supported *Staatsnothilfe* (defense of endangered state), but he submits that this state of affairs does not render the deeds of the defendants any less legal provided the defendants *assumed* that conditions existed for the application of the above-mentioned legal concepts. In support of this argument he points out what he regards the objective conditions and the subjective conditions of the German-Russian war—

"The east European Jewish problem as part of the problem

of bolshevism; origin and import of the defendants' obsession that a solution of the problem 'bolshevism versus Europe' could only be brought about by a 'solution' of the Jewish problem and in their particular sphere only be unreserved execution of the Fuehrer Order."

Thus, even an obsession becomes a valid defense, according to this theory.

Dr. Aschenauer's legal position on assumed self-defense has been discussed not because it corresponds with any accepted tenets of international law but only for the purpose of demonstrating that under any law the acts of his client and others falling in that category cannot by the widest stretch of the imagination be justified as an act of self-defense in behalf of Germany.

Even combatants may only be killed or otherwise harmed in accordance with well-established rules. And there is nothing in the most elementary rules of warfare to permit the killing of enemy civilians simply because they are deemed "dangerous". But in killing, e. g., Jews, the defendants did not succor Germany from any real danger, or assumed danger. Although they declared that the Jews were bearers of bolshevism, it was not explained how they carried that flag. Nor did any one attempt to show how, assuming the Jews to be disposed towards bolshevism, this *per se* translated itself into an attack on Germany. The mere adherence to the political doctrine of bolshevism did not of itself constitute an aggression or potential aggression against Germany. It was claimed that the killing of the Jews was predicated on the circumstances of the German-Russian War, but in point of fact Jews were oppressed in Germany and German-occupied territory long prior to that war. The treatment of Jews by Germany and those representing the Third Reich did not depend on the German-Russian at all. The circumstance that Jews were living in Russia when the German forces invaded Russia was simply a coincidence which did not call for their annihilation. If merely being an inhabitant of Russia made that inhabitant a threat to Germany then the Einsatzgruppen would have had to kill every Russian, regardless of race.

If, however, it is argued by the defense that the German forces considered as mortal enemies and subject to execution only those Russians who were members of the Communist Party, then even according to this theory those Jews who were not members of the Communist Party should have been spared, as were those Russians who were not members of the Communist Party. The record shows, however, that when it came to a Jew, it did not matter whether he was a member of the Communist Party or not. He was killed simply because he was a Jew.

Mass Killings for Ideological Reasons

Dr. Reinhard Maurach, Professor Criminal Law and Eastern European Law, was called by the defendant Ohlendorf to expound the international law underlying the position of the various defendants maintaining Ohlendorf's view. Some sections of his treatise, submitted as Ohlendorf Document 38, supported the prosecution rather than the defense. On three occasions he condemned mass killings for ideological reasons.

"This is the place to say with special emphasis that the shooting of entire groups of a population is not justified by any 'collective suspicion', of any group, no matter how great.

"It has already been emphasized that the issuing and execution of mass liquidation orders cannot find any justification in international law, even within the scope of a total war of this kind, and in particular cannot allow of any appeal to the objective premises of self-defense and emergency.

"General extermination measures cannot be justified by any war situations, no matter how exceptional."

However, in the end the expert arrived at an opposite conclusion. First, he stated that a state of war *as such* does not vindicate extraordinary actions, but then in a superb demonstration of legal acrobatics he declared that if the war aims of one of the opponents are total, then the opponent is vindicated in claiming self-defense and state of necessity, and, therefore, may introduce the mass killings he had previously condemned.

For the purpose of considering this argument we will ignore the fact that Germany waged an undeclared war against Russia, that Germany was the invader and Russia the invaded, and look only to the evidence adduced to support the theme that, after being invaded, Russia's actions were such as to call for the executions of which the prosecution complains.

In behalf of the defendants many so-called Russian exhibits were introduced. Among them were documents on the Soviet foreign policy, statements emanating from the Kremlin, articles from the Russian encyclopedia, and speeches made by Stalin. All these exhibits are strictly irrelevant and might well be regarded as a red herring drawn across the trail. But the Tribunal's policy throughout the trial has been to admit everything which might conceivably elucidate the reasoning of the defense. Thus, the excerpt from Stalin's speech of 3 July 1941, quoted in Ohlendorf's document book, will be cited here.

"In the areas occupied by the enemy, cavalry and infantry partisan detachments must be formed and diversion groups created for fighting the units of the enemy army, for kindling

partisan warfare everywhere and every place, for blowing up bridges and highways, for destroying telephone and telegraph connections, for burning down forests, supply camps and trains. Unbearable conditions must be created for the enemy and all of his accomplices in the occupied areas, they must be pursued and destroyed at every step and all their measures must be frustrated. One cannot regard the war against Fascist Germany as an ordinary war. It is not only a war between two armies. It is at the same time the great war of the entire Soviet people against the Fascist German Troops."

Scrutiny of this speech fails to reveal anything which orders the execution of German prisoners of war or the shooting of wounded persons, or the mass killing of Germans in German territory occupied by Russia, or anything which would justify the allegedly retaliatory killing of noncombatant Jews.

One of the most amazing phenomena of this case which does not lack in startling features is the manner in which the aggressive war conducted by Germany against Russia has been treated by the defense as if it were the other way around. Thus, one of the counsel in his summation speech said—

"However, as was the case in the campaign against Russia, when a large number of the inhabitants of this land, whether young, old, men, women or child, contrary to all acts of humanity and against every provision of international law, cowardly carries on a war from ambush against the occupying army, then certainly one cannot expect that the provisions of international law would be observed to the letter by this army."

No comment is here needed on the statement which characterizes the defense of one's country as "cowardly", and the other equally astounding remark that the invader has the right to ignore international law.

Death of Noncombatants by Bombing

Then it was submitted that the defendants must be exonerated from the charge of killing civilian populations since every Allied nation brought about the death of noncombatants through the instrumentality of bombing. Any person, who, without cause, strikes another may not later complain if the other in repelling the attack uses sufficient force to overcome the original adversary. That is fundamental law between nations as well.

It has already been adjudicated by a competent tribunal that Germany under its Nazi rulers started an aggressive war. The bombing of Berlin, Dresden, Hamburg, Cologne, and other German cities followed the bombing of London, Coventry, Rotterdam, Warsaw, and other Allied cities; the bombing of German cities

succeeded, in point of time, the acts discussed here. But even if it were assumed for the purpose of illustration that the Allies bombed German cities without Germans having bombed Allied cities, there still is no parallelism between an act of legitimate warfare, namely the bombing of a city, with a concomitant loss of civilian life, and the premeditated killing of all members of certain categories of the civilian population in occupied territory.

A city is bombed for tactical purposes; communications are to be destroyed, railroads wrecked, ammunition plants demolished, factories razed, all for the purpose of impeding the military. In these operations it inevitably happens that nonmilitary persons are killed. This is an incident, a grave incident to be sure, but an unavoidable corollary of battle action. The civilians are not individualized. The bomb falls, it is aimed at the railroad yards, houses along the tracks are hit and many of their occupants killed. But that is entirely different, both in fact and in law, from an armed force marching up to these same railroad tracks, entering those houses abutting thereon, dragging out the men, women, and children and shooting them.

It was argued in behalf of the defendants that there was no normal distinction between shooting civilians with rifles and killing them by means of atomic bombs. There is no doubt that the invention of the atomic bomb, when used, was not aimed at non-combatants. Like any other aerial bomb employed during the war, it was dropped to overcome military resistance.

Thus, as grave a military action as is an air bombardment, whether with the usual bombs or by atomic bomb, the one and only purpose of the bombing is to effect the surrender of the bombed nation. The people of that nation, through their representatives, may surrender and, with the surrender, the bombing ceases, the killing is ended. Furthermore, a city is assured of not being bombed by the law-abiding belligerent if it is declared an open city. With the Jews it was entirely different. Even if the nation surrendered they still were killed as individuals.

It has not been shown through this entire trial that the killing of the Jews as Jews in any way subdued or abated the military force of the enemy, it was not demonstrated how mass killings and indiscriminate slaughter helped or was designed to help in shortening or winning the war for Germany. The annihilation of defenseless persons considered as "inferior" in Russia would have had no effect on the military issue of the war. In fact, so mad were those who inaugurated this policy that they could not see that the massacre of the Jews in many instances actually hindered their own efforts. We have seen in the record that occasionally German officials tried to save Jews from extinction so that they

could be forced to work for the German war effort. This would have been another war crime, but at least it would not have been so immediately disastrous for the victims.

The Einsatzgruppen were out to kill "inferiors" and, first of all, the Jews. But in the documentation of the war crimes trials since the end of the war, no explanation appears as to why, from the viewpoint of the Nazis, the Jew had to die. In fact, most of the defendants in all these proceedings have expressed a great regard for the Jew. They assert they have admired him, befriended him, and to have deplored the atrocities committed against him. It would seem they were ready to help him in every way except to save him from being killed.

The Einsatzgruppen were told at Pretzsch that "the Jews" supported bolshevism, but there is no evidence that every Jew had espoused bolshevism, although, even if this were true, killing him for his political belief would still be murder. As the Einsatzkommandos entered new cities and towns and villages they did not even know where to look for the Jews. They could not even be sure who were Jews. Each Einsatzkommando was equipped with several interpreters, but it became evident throughout the trial that these invading forces did not carry sufficient linguistic talent to cope with the different languages of the States, provinces, and localities through which they moved. There can be no doubt that because of the celerity with which the order was executed countless non-Jews were killed on the supposition that they were Jews. Frequently, the only test applied to determine judaism was that of physiognomy.

One either justifies the Fuehrer Order or one does not. One supports the killing of the Jews or denounces it. If the massacres are admitted to be unsupportable and if the defendants assert that their participation was the result of physical and moral duress, the issue is clear and it becomes only a question of determining how effective and oppressive was the force exerted to compel the reluctant killer. If, however, the defendants claim that the killing of the Jews was justified, but this claim does not commend itself to human reason and does not meet the requirements of law, then it is inevitable that the defendants committed a crime.

It is the privilege of a defendant to put forth mutually exclusive defenses, and it is the duty of the court to consider them all. But it is evident that the insistence on the part of the defendants that the massacres were justified because the Jews constituted an immediate danger to Germany inevitably weakens the argument that they acted only under duress exerted on them personally; and in turn, the "personal duress" argument enfeebles the

“danger to Germany” argument. In two or three instances an attempt was made to show that the Jews in Russia held a high percentage of official positions, a percentage disproportionate to the size of the Jewish population. This was the most common theory utilized in Germany for the oppression and persecution of the Jews. By adducing the same excuse here the defendants involved acknowledged they were putting into physical effect in Russia an antipathy and prejudice already entertained in Germany against the Jewish race. There was no duty and certainly no right on the part of the defendants to go into Russia to equalize the official positions according to the proportion between Jews and non-Jews.

Defense counsel Dr. Mayer admitted that the Fuehrer Order violated the recognized laws and customs of war, but urged that Russia was not entitled to protection under international law. Apart from the fact that Russia was a party to the Hague Convention of Land Warfare—in fact, the Hague Conference of 1899 was initiated by Russia—the International Military Tribunal pointed out that the rules of the Hague Regulations have become declaratory of the common law of war. It further disposed of the objection by quoting approvingly from the memorandum issued by the German Admiral Canaris on 15 September 1941, in which he declared that it is contrary to military tradition, regardless of treaty or lack of treaty—

“To kill or injure helpless people.”

Dr. Mayer also said, taking the same line as Dr. Maurach—

“If this war was not an unjustified war of aggression, but a justified preventive war, then, on the basis of my explanations in the trial brief on the subject of the ideology, aims and practice of the U.S.S.R., to which I refer, the question arises, in how far the German Reich found itself, in this war against the U.S.S.R., in a genuine state of national emergency, and whether this justified the orders given by Hitler.”

If Dr. Mayer means this, he collides head-on with a *res judicata*. The International Military Tribunal, after studying countless documents and hearing numerous direct witnesses of and participants in the event itself, declared—

“The plans for the economic exploitation of the U.S.S.R., for the removal of masses of population, for the murder of Commissars and political leaders, were all part of the carefully prepared scheme launched on the 22d June without warning of any kind, and without the shadow of legal excuse. It was plain aggression.”

The annihilation of the Jews had nothing to do with the defense of Germany, the genocide program was in no way connected with

the protection of the Vaterland, it was entirely foreign to the military issue. Thus, taking into consideration all that has been said in this particular phase of the defense, the Tribunal concludes that the argument that the Jews in themselves constituted an aggressive menace to Germany, a menace which called for their liquidation in self-defense, is untenable as being opposed to all facts, all logic and all law.

Superior Orders

Those of the defendants who admit participation in the mass killings which are the subject of this trial, plead that they were under military orders and, therefore, had no will of their own. As intent is a basic prerequisite to responsibility for crime, they argue that they are innocent of criminality since they performed the admitted executions under duress, that is to say, superior orders. The defendants formed part of a military organization and were, therefore, subject to the rules which govern soldiers. It is axiomatic that a military man's first duty is to obey. If the defendants were soldiers and as soldiers responded to the command of their superiors to kill certain people, how can they be held guilty of crime? This is the question posed by the defendants. The answer is not a difficult one.

The obedience of a soldier is not the obedience of an automaton. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery. It is a fallacy of wide-spread consumption that a soldier is required to do everything his superior officer orders him to do. A very simple illustration will show to what absurd extreme such a theory could be carried. If every military person were required, regardless of the nature of the command, to obey unconditionally, a sergeant could order the corporal to shoot the lieutenant, the lieutenant could order the sergeant to shoot the captain, the captain could order the lieutenant to shoot the colonel, and in each instance the executioner would be absolved of blame. The mere statement of such a proposition is its own commentary. The fact that a soldier may not, without incurring unfavorable consequences, refuse to drill, salute, exercise, reconnoiter, and even go into battle, does not mean that he must fulfill every demand put to him. In the first place, an order to require obedience must relate to military duty. An officer may not demand of a soldier, for instance, that he steal for him. And what the superior officer may not militarily demand of his subordinate, the subordinate is not required to do. Even if the order refers to a military subject it must be one which the superior is authorized, under the circumstances, to give.

The subordinate is bound only to obey the lawful orders of his

superior and if he accepts a criminal order and executes it with a malice of his own, he may not plead superior orders in mitigation of his offense. If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance to the criminality of the order. If one claims duress in the execution of an illegal order it must be shown that the harm caused by obeying the illegal order is not disproportionately greater than the harm which would result from not obeying the illegal order. It would not be an adequate excuse, for example, if a subordinate, under orders, killed a person known to be innocent, because by not obeying it he himself would risk a few days of confinement. Nor if one acts under duress, may he, without culpability, commit the illegal act once the duress ceases.

The International Military Tribunal, in speaking of the principle to be applied in the interpretation of criminal superior orders, declared that—

“The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.”

The Prussian Military Code, as far back as 1845, recognized this principle of moral choice when it stated that a subordinate would be punished if, in the execution of an order, he went beyond its scope or if he executed an order knowing that it “related to an act which obviously aimed at a crime”.

This provision was copied into the Military Penal Code of the Kingdom of Saxony in 1867, and of Baden in 1870. Continuing and even extending the doctrine of conditional obedience, the Bavarian Military Penal Code of 1869 went so far as to establish the responsibility of the subordinate as the rule, and his irresponsibility as the exception.

The Military Penal Code of the Austro-Hungarian Monarchy of 1855 provided—

Article 158. “A subordinate who does not carry out an order is not guilty of a violation of his duty of subordination if (a) the order is obviously contrary to loyalty due to the Prince of the Land; (b) if the order pertains to an act or omission in which evidently a crime or an offense is to be recognized.”

In 1872 Bismarck attempted to delimit subordinate responsibility by legislation, but the Reichstag rejected his proposal and instead adopted the following as Article 47 of the German Military Penal Code:

Article 47. “If through the execution of an order pertaining to the service, a penal law is violated, then the superior giving the order is alone responsible. However, the obeying sub-

ordinate shall be punished as accomplice (1) if he went beyond the order given to him, or (2) if he knew that the order of the superior concerned an act which aimed at a civil or military crime or offense.”

This law was never changed, except to broaden its scope by changing the word “civil” to “general”, and as late as 1940 one of the leading commentators of the Nazi period, Professor Schwinge wrote—

“Hence, *in military life*, just as in other fields, *the principle of absolute*, i.e., *blind obedience*, does not exist.”

Yet, one of the most generally quoted statements on this subject is that a German soldier must obey orders though the heavens fall. The statement has become legendary. The facts prove that it is a myth.

When defendant Seibert was on the stand, his attorney asked him—

“Witness, do you remember a proverb said by a German Kaiser concerning the carrying out of orders by soldiers?”

And the defendant replied—

“I do not know whether it was William I or William II, but certainly one Kaiser emperor used the expression, ‘If the military situation or the entire situation makes it necessary a soldier has to carry out an order, even if he has to shoot his own parents’.”

The defendant was then asked whether, in the event he received such an order, he would execute it. To the surprise of everybody he replied that he did not know. He declined to answer until he should have time to consider the problem. The Tribunal allowed him until the next morning to deliberate, and then the following ensued:

“Q. Now, if in accordance with this declaration by the Chief of State of the German empire at the time, the military situation made it necessary for you—after receiving an order—to shoot your own parents, would you do so?”

“A. I would not do so.”

“Q. Then there are some orders which are issued by the Chief of State which may be disobeyed?”

“A. I did not regard this as an order by the Chief of State but as a symbolic example towards the whole soldiery how far obedience had to go, but never actually asking a son to shoot his own parents. I imagine it only as follows, your Honor: if I am an artillery officer in the war and I have to fire at a very important sector, which is decisive for the whole military situation and I received the order to fire at a certain village and I know that in this village my parents are living, then I would

have to shoot at this village. This is the only way in which I can imagine this order, but never—it is inhuman—to ask a son to shoot his parents.

“Q. So, therefore, if you received such an order coming down the line, you would disincline to obey it? You would not obey it?”

“A. I would not have obeyed such an order.

“Q. Suppose the order came down for you to shoot the parents of someone else, let us say, a Jew and his wife. And in your view you saw the children of these parents. Now it is established beyond any doubt that this Jewish father and Jewish mother have not committed any crime—absolutely guiltless, blemishless. The only thing that is established is that they are Jews. And you have this order coming down the line to shoot them. The children are standing by and they implore you not to shoot their parents. Would you shoot the parents?”

“A. I would not shoot these parents.”

Then, in summing up, the witness was asked—

“And, therefore, as a German officer, you now tell the Tribunal that if an order were submitted to you, coming down the line militarily to execute two innocent parents only because they were Jews, you would refuse to obey that order?”

And the answer was—

“I answered your example affirmatively, I said ‘Yes, I could not have obeyed.’”

Although defense counsel’s query intended to establish the utter helplessness of a German soldier in the face of a superior command, the inquiry finally resulted in the defendant’s declaring that he would not only ignore the order of the supreme war lord to shoot his own parents, but also to shoot anybody else’s parents. He thus demonstrated that under his own interpretation of German Military Law, he did have some choice in the matter of obeying superior orders. Why then did he participate in the execution of the parents of other people? Why did other defendants do the same if they had a choice, as the defendant Seibert indicated?

Superior Orders Defense Must Establish Ignorance of Illegality

To plead superior orders one must show an excusable ignorance of their illegality. The sailor who voluntarily ships on a pirate craft may not be heard to answer that he was ignorant of the probability he would be called upon to help in the robbing and sinking of other vessels. He who willingly joins an illegal enterprise is charged with the natural development of that unlawful undertaking. What SS man could say that he was unaware of the attitude of Hitler toward Jewry?

As early as 24 February 1920, the National Socialist Party announced in its 25-point program, which was never changed, its opposition to Jews and declared that a Jew could never be an equal citizen. "Mein Kampf" was dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races. When the Nazis seized power in 1933, persecution of the Jews became an official state policy. Then in September 1935 came the well-known Nuernberg Laws which among other things deprived the Jews of German citizenship.

"Mein Kampf" was not a private publication. Its brazen voice rang through Germany. One passage was proclaimed over and over—

"The soil on which we now live was not a gift bestowed by Heaven on our forefathers. They had to conquer it by risking their lives. So also in the future, our people will not obtain territory, and therewith the means of existence, as a favor from any people, but will have to win it by the power of a triumphant sword."

The Nazi Party dinned into the ears of the world its odium for the Jews. "Der Stuermer" and other publications spread the verbal poison of race hatred. Nazi leaders everywhere vilified the Jews, holding them up to public ridicule and contempt. In November 1938 an SS inspired and organized hoodlumism fell upon the Jews of Germany. Synagogues were destroyed, prominent Jews were arrested and imprisoned, a collective fine of one billion marks was imposed, ghettos were established, and now the Jews were compelled on orders of the security police to wear a yellow star on their breast and back.

Did the defendants not know of these things? Could they express surprise when, after this unbroken and mounting program of violence, plans were formulated for the "final solution of the Jewish problem"?

Some of the defendants may say they never knew of the Nazi Party extermination program or, if they did, they were not in accord with the sentiments therein expressed. But again, a man who sails under the flag of skull and cross-bones cannot say that he never expected to fire a cannon against a merchantman. When Bach-Zelewski, SS general and many years member of the Party, was asked to explain the phenomenon of the Einsatzgruppen killings, he replied—

"I am of the opinion that when, for years, decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

The argument has, however, been advanced that the Fuehrer Order was not criminal. Although this proposition is at first blush

opposed to all common sense, contrary to natural human reactions and out of harmony with the rudimentary law of cause and effect, yet it has been presented seriously by the defendants and in fact constitutes the major item of defense. Therefore, it cannot simply be dismissed as intolerable; reasons must be advanced as to why it is intolerable.

Let us suppose that the Fuehrer Order had proclaimed the killing of all grey-eyed people, regardless of age, sex, or position. So long as the iris of the eyes responded to those light rays in the spectrum which make up grey, the possessor of such eyes was destined for evil days. Character, occupation, and health could not influence nor could religion, politics, and nationality alter the predetermined doom. The farmer at his plow, the teacher at her desk, the doctor at the bedside, the preacher in his pulpit, the old woman at her knitting, the children playing in the yard, the cooing infant at the mother's breast—would all be condemned to death, if they saw the wondering world through the tell-tale grey eyes.

Let us glance at the unfoldment of such a program and look in on a family, whose members, because of that unfathomable selection of life's chemicals and inscrutable mixing in the mystic alembic of time, all have grey eyes. Suddenly comes a thunderous knocking and the door bursts open. Steel-helmeted troopers storm in and with automatic guns and drawn pistol order the dismayed occupants into the street.

We hear the screams of the children, we see the terror in the faces of mother and sister, the biting of lips of the helpless father and brother, the wild tramping of the invaders' boots through the house, the overturning of furniture, the smashing into cupboards, attics, wardrobes seeking out the hidden, horrified grey-eyed. The tearful farewell to home, the piling into the waiting truck of the pitiful family possessions, the bewildered mounting of the doomed grey-eyes. The truck rumbles forward, stops to pick up other grey-eyes and still more grey-eyes in the market square, at the corner store, in the parish church.

Then the wild careening ride into the woods where other villagers are waiting chalk-faced, mute, staring at each other. The unloading of the truck, the guttural command to line up with the others. Then the red-mouthed machine rifles speaking their leaden sentences from left to right and from right to left. The villagers falling, some cut in two, others with blood flowing from their mouths and eyes, those grey eyes, pleading for understanding, for an explanation as to why? Why? Others only wounded but piled into a ditch already dug behind them. The shooting party rides away, piteous hands uplift from the uncovered grave,

we hear a moaning which, at times, decreases to a murmur, then mounts to a wail, then ceases altogether.

Of course, it is all fantastic and incredible, but no more fantastic and incredible than what has happened innumerable times in this very case. If one substitutes the word Jew for grey-eyed, the analogy is unassailable.

It is to be presumed that, if the defendants had been suddenly ordered to kill the grey-eyed population, they would have balked and found no difficulty in branding such an act as a legal and moral crime. If, however, fifteen years before, the Nazi Party program had denounced all grey-eyed people and since then the defendants had listened to Hitler vituperating against the grey-eyes, if they had seen shops smashed and houses destroyed because grey-eyes had worked and lived there; if they had learned of Himmler's ordering all grey-eyes into concentration camps, and then had heard speeches in Pretzsch wherein the mighty chieftains of the SS had declared that all grey-eyes were a menace to Germany—if this had happened, can we be so certain that the defendants would not have carried out a Fuehrer Order against grey-eyed people? And in that event, would there not have been the same defense of superior orders?

If now, from the vantage point of observation of a thing which did not come to pass, the defendants can denounce, as we assume they would, this hypothetical massacre, how can they less denounce a slaughter which did occur and under circumstances no less harrowing than the one pictured only for the purpose of illustration?

But throughout the trial it has been answered, in effect, that it was entirely different with the Jews. They were bearers of bolshevism. If that were their guilt, then the fact that they were Jews was only incidental. They were being exterminated not because of Judaism but because of bolshevism. If by that argument they mean that a Jew was to be executed only because he was a Bolshevik, why was it to be assumed that a Russian Jew was any more bolshevistic than a Russian Russian? Why should Alfred Rosenberg, chief Nazi philosopher, be less inclined biologically to communism than his obscure Jewish namesake and neighbor? What saved Benjamin Disraeli, leader of the Conservative Party and several times Prime Minister of Great Britain, from being a Bolshevist? And had he lived in 1941, would Hitler have declared him a carrier of bolshevism?

According to the Nazi ideology, the Jew by his very nature was simply destined to be Bolshevistic, but it is a demonstrable truism that, if the Einsatzkommandos themselves had adopted Jewish babies, those babies would have grown up to be staunch SS men.

In point of fact, during the war, thousands of Czech, Polish, Russian, and Yugoslav children were taken into Germany to be reared as Germans. No one knows how many Jewish offspring were included in these carloads of kidnaped children because it was seriously assumed that so long as they were blonds they could not belong to the hated race.

During the trial there was introduced in evidence a letter written by one of the defendants in which he quoted from Heydrich—

“Many of the Jews listed in your register are already known for continually trying to deny that they belong to the Jewish race by all possible and impossible reasons. It is, on the whole, in the nature of the matter that half-breeds of the first degree in particular try at every opportunity to deny that they are Jews.

“You will agree that in the third year of the war, there are matters of more importance for the war effort, and for the security police and the security service as well, than worrying about the wailing of Jews, making tedious investigations and preventing so many of my co-workers from other and much more important tasks. If I started scrutinizing your list at all, I only did so in order to refute such attacks by documents once and for all.

“I feel sorry to have to write such a justification six and a half years after the Nuernberg laws were issued.”

The defendant noted in his letter his enthusiastic accord with the sentiments expressed by Heydrich and added on his own that consideration for the Jews was “softness and humanitarian day-dreaming”. He also declared that it was unthinkable that a German should listen to Mendelssohn’s music, and, to hearken to Offenbach’s “Tales of Hoffman”, simply revealed ignorance of National Socialistic ideals. Yet, he saw nothing unidealistic about invading the office of his superior, the Commissioner General of White Ruthenia, trained in the same school of Nazi idealism, entered a complaint against the defendant’s action, not because seventy innocent human beings had been killed but because a subordinate had dared to come into his office and shoot his Jews without telling him about it.

The defendant was also annoyed that anyone should have questioned the propriety and correctness of removing gold fillings from the teeth of the Jews designated for killing.

The Tribunal is devoting much time and space to expounding the obvious, but perhaps it is not so obvious. Otherwise, the arguments by and on behalf of the defendants might not have been presented with such insistence. Furthermore, this is the time

and place to settle definitively, insofar as it is part of the issue in this trial, the business of the so-called Jewish problem.

A problem presupposes a situation with advantages and disadvantages to be considered on either side. But what in Nazi Germany was so delicately called the "Jewish problem", was a program, that is, an anti-Jewish program of oppression leading finally to extermination. The so-called Jewish problem was not a problem but a fixation based upon the doctrine that a self-styled "master race" may exterminate a race which it considers inferior. Characterizing the same proposition as the "Jewish menace" is equally devoid of sense. In fact, if it were not so tragic, the National Socialistic attitude toward the Jews could only be considered nonsensical.

We will recall how the Einsatz units treated the Krimchaks in the Crimea. In the same area they came across a sect known as Karaims. The Karaims resembled the Krimchaks in that they shared the same Jewish religion. However, the ethnic experts in Berlin after some kind of study, concluded that the Karaims had no Jewish blood in their veins and were, therefore, exempt from the extermination order. Thus, although the Karaims had Jewish religion in their souls, they did not have that kind of corpuscles in which the seeds of bolshevism ride. Hence they had the right to live. If one can picture an Einsatz unit rounding up the worshippers in a synagogue and distinguishing the Karaims from the Krimchaks, releasing the former and killing the latter, one is privileged to decide whether the Nazi attitude toward Jewry was not something which could well fall into the category of nonsense, that is, tragic nonsense.

It was all a matter of blood and nothing could save the person with Hebrew arteries. Although any other person could change his religion, politics, allegiance, nationality, yet, according to the National Socialist ideology, there was nothing the Jew could do. It was a matter of blood, but no one has testified as to the omniscient wisdom which counted and evaluated the offending corpuscles.

One thing can be said about the Fuehrer Order. It was specific, it was unambiguous. All Jews were to be shot. And yet, despite the unambiguity of this order, in spite of the unappealable and infallible pronouncement that Jews were absolutely outside the pale, defendant after defendant related his great consideration for the Jew. Scores of affidavits were submitted, in behalf of nearly all the accused, demonstrating their generous conduct towards some individual Jews in Germany. One of the defendants related, in a pretrial interrogation, how he had even lived with a Jewish woman. He wished to prove by this that he was entirely devoid of prejudice.

But, if it were true that the defendants regarded the Jews as equals in Germany, why did they consider them subhuman in Russia? If they did not recognize them as a potential danger in Germany, why should they regard them as a threat in the Crimea 2,000 miles away? It is not too much to say that most of the Jews did not know of Hitler and his doctrines until the Einsatzgruppen arrived to kill them.

Although forming no part of the charges in the indictment, the systematic attempts to destroy the graves of the slain as described in official German documents are interesting in that they shed some light on the mental attitude of the executioners. Did they regard the executions as culpable acts, ocular evidence which should be destroyed? The defendant Blobel in his affidavit, signed 18 June 1947, stated that in June 1942, he was entrusted by Gruppenfuehrer Mueller with the task of removing the traces of the executions carried out by Einsatzgruppen in the East. He leaves nothing to the imagination.

"I myself witnessed the burning of corpses in a mass grave near Kiev, during my visit in August. This grave was about 55 m [meters] long, 3 m wide, and 2½ deep. When the cover had been lifted, the bodies were covered with fuel and set on fire. It took about two days for the grave to burn down. I myself saw that the grave became red-hot right down to the ground. Afterwards the grave was filled in, and thus all traces were as good as eliminated.

"Owing to the approach of the front, it was not possible to destroy the mass graves further to the south and the east, resulting from the executions of the Einsatzgruppen."

So intent was Blobel, evidently in obedience to orders, to wipe out the incriminating evidence of the killings, that he even tried to destroy the corpses by means of dynamite. Rudolf Hoess, Commandant of the Auschwitz concentration camp, who supervised these experimentations, stated that the dynamiting method was not successful.

"Blobel constructed several experimental ovens and used wood and gasoline as fuel. He tried to destroy the corpses by means of dynamiting them, too; this method was rather unsuccessful."

Hence other means were used.

"The ashes, ground to dust in a bone mill, were thrown in the vast forests around. Staf. Blobel had the order to locate all mass graves in the entire Eastern Territory and to eliminate them * * *. The work itself was carried out by Jewish work units, which, upon finishing their particular task, were shot.

Concentration camp Auschwitz had to furnish continuously Jews for this Kommando."

Duress Needed for Plea of Superior Orders

But it is stated that in military law even if the subordinate realizes that the act he is called upon to perform is a crime, he may not refuse its execution without incurring serious consequences, and that this, therefore, constitutes duress. Let it be said at once that there is no law which requires that an innocent man must forfeit his life or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real, and inevitable. No court will punish a man who, with a loaded pistol at his head, is compelled to pull a lethal lever. Nor need the peril be that imminent in order to escape punishment. But were any of the defendants coerced into killing Jews under the threat of being killed themselves if they failed in their homicidal mission? The test to be applied is whether the subordinate acted under coercion or whether he himself approved of the principle involved in the order. If the second proposition be true, the plea of superior orders fails. The doer may not plead innocence to a criminal act ordered by his superior if he is in accord with the principle and intent of the superior. When the will of the doer merges with the will of the superior in the execution of the illegal act, the doer may not plead duress under superior orders.

If the mental and moral capacities of the superior and subordinate are pooled in the planning and execution of an illegal act, the subordinate may not subsequently protest that he was forced into the performance of an illegal undertaking.

Superior means superior in capacity and power to force a certain act. It does not mean superiority only in rank. It could easily happen in an illegal enterprise that the captain guides the major, in which case the captain could not be heard to plead superior orders in defense of his crime.

If the cognizance of the doer has been such, prior to the receipt of the illegal order, that the order is obviously but one further logical step in the development of a program which he knew to be illegal in its very inception, he may not excuse himself from responsibility for an illegal act which could have been foreseen by the application of the simple law of cause and effect. From 1920, when the Nazi Party program with its anti-Semitic policy was published, until 1941 when the liquidation order went into effect, the ever-mounting severity of Jewish persecution was evident to all within the Party and especially to those charged with its execution. One who participated in that program which began with Jewish disenfranchisement and depatriation and led, step by step,

to deprivation of property and liberty, followed with beatings, whippings, and measures aimed at starvation, may not plead surprise when he learns that what has been done sporadically; namely, murder, now is officially declared policy. On 30 January 1939, Hitler publicly declared in a speech to the Reichstag that if war should come it would mean "the obliteration of the Jewish race in Europe".

One who embarks on a criminal enterprise of obvious magnitude is expected to anticipate what the enterprise will logically lead to.

In order successfully to plead the defense of superior orders the opposition of the doer must be constant. It is not enough that he mentally rebel at the time the order is received. If at any time after receiving the order he acquiesces in its illegal character, the defense of superior orders is closed to him.

Many of the defendants testified that they were shocked with the order when they first heard it. This assertion is, of course, contradicted by the other assertion made with equal insistence, and already disposed of, that the Fuehrer Order was legal because the ordered executions were needed for the defense of the Fatherland. But if they were shocked by the order, what did they do to oppose it? Many said categorically that there was nothing to do. It would be enough, in order to escape legal and moral stigmatization to show the order was parried every time there was a chance to do so. The evidence indicates that there was no will or desire to depreciate its fullest intent. When the defendant Braune testified that he inwardly opposed the Fuehrer Order, he was asked as to whether, only as a matter of salving his conscience in the multitudinous executions he conducted, he ever released one victim. The interrogation follows:

"Q. But you did not in compliance with that order attempt to salve your conscience by releasing one single individual human creature of the Jewish race, man, woman, or child?

"A. I have already said that I did not search for children. I can only say the truth. There were no exceptions, and I did not see any possibility."

One may accuse the Nazi military hierarchy of cruelty, even sadism of one will. But it may not be lightly charged with inefficiency. If any of these Kommando leaders had stated that they were constitutionally unable to perform this cold-blooded slaughter of human beings, it is not unreasonable to assume that they would have been assigned to other duties, not out of sympathy or for humanitarian reasons, but for efficiency's sake alone. In fact Ohlendorf himself declared on this very subject—

"In two and a half years I had sufficient occasion to see how many of my Gruppe [group] did not agree to this order in their

inner opinion. Thus, I forbade the participation in these executions on the part of some of these men, and I sent some back to Germany."

Ohlendorf himself could have got out of his execution assignment by refusing cooperation with the army. He testified that the Chief of Staff in the field said to him that if he, Ohlendorf, did not cooperate, he would ask for his dismissal in Berlin.

The witness Hartel testified that Thomas, Chief of Einsatzgruppe B, declared that all those who could not reconcile their conscience to the Fuehrer Order, that is, people who were too soft, as he said, would be sent back to Germany or assigned to other tasks, and that, in fact, he did send a number of people including commanders back to the Reich.

This might not have been true in all Einsatzgruppen, as the witness pointed out, but it is not enough for a defendant to say, as did Braune and Klingelhoefler, that it was pointless to ask to be released, and, therefore, did not even try. Exculpation is not so easy as that. No one can shrug off so appalling a moral responsibility with the statement that there was no point in trying. The failure to attempt disengagement from so catastrophic an assignment might well spell the conclusion that the defendant involved had no deep-seated desire to be released. He may have thought that the work was unpleasant but did it nonetheless. Even a professional murderer may not relish killing his victim, but he does it with no misgivings. A defendant's willingness may have been predicated on the premise that he personally opposed Jews or that he wished to stand well in the eyes of his comrades, or by doing the job well he might earn rapid promotion. The motive is unimportant if he killed willingly.

The witness Hartel also related how one day as he and Blobel were driving through the country, Blobel pointed out to him a long grave and said, "Here my Jews are buried." One can only conclude that Blobel was proud of what he had done. "Here my Jews are buried." Just as one might speak of the game he had bagged in a jungle.

Despite the sustained assertion on the part of the defendants that they were straight-jacketed in their obedience to superior orders, the majority of them have, with testimony and affidavits, demonstrated how on numerous occasions they opposed decrees and orders handed down by their superiors. In an effort to show that they were not really Nazis at heart, defendant after defendant related his dramatic clashes with his superiors. If one concentrated only on this latter phase of the defense, one would conclude that these defendants were all ardent rebels against National Socialism and valiantly fought against the inhuman proposals put to

them. Thus, one affiant says of the defendant Willy Seibert that he "was strongly opposed to the measures taken by the Party and the government".

Of Steimle an affiant said, "Many a time he opposed the Party agencies and so-called superior leaders." Another affidavit not only states that Steimle opposed violence but that in his zeal for justice he shrewdly joined the SD in order to be able "to criticize the short comings in the Party". Again it was stated that "repeatedly his sense of justice led him to oppose excesses, corruptions, and symptoms of depravity by Party officers."

Of Braune an affiant states, "over and over again Dr. Braune criticized severely our policy in the occupied territories (especially in the East, Ukraine, and Baltic States)".

During the time he served in Norway, Braune was a flaming sword of opposition to tyranny and injustice in his own camp. He bitterly opposed the Reich Commissioner Terboven, cancelled his orders, condemned large-scale operations, released hostages, and freed the Norwegian State Minister Gerhardsen. One affidavit said that in these actions "Braune nearly always went beyond his authority." And yet in spite of this open rebellion Braune was not shot or even disciplined. Why is it that in Norway he acted so differently from the manner in which he performed in Russia? Was he more the humanitarian in Norway? The answer is not difficult to find. One of the affiants very specifically states—

"Right from the beginning of our conferences, Braune opposed the large-scale operations which Terboven and Fehlis continually carried out. He did not expect the slightest success from such measures, and saw in them only the danger of antagonizing the Norwegian population more and more against German policy and the danger of increasing their spirit of resistance."

Thus, the defendants could and did oppose orders when they did not agree with them. But when they ideologically espoused an order such as the Fuehrer Order they had no interest in opposing it.

German Precedent on Superior Order Doctrine

The defense of superior orders has already been passed upon by a German court. In 1921 two officers of the German U-boat 68 were charged with violation of the laws of war in that they fired at and killed unarmed enemy citizens seeking to escape from the sinking Hospital Ship H.M.S. Llandoverly Castle. The defendants pleaded lack of guilt in that they had merely carried into effect the order given them by their commander, First Lieutenant Patzig. The German Supreme Court did find as a fact that Patzig

ordered his subordinates Dithmar and Boldt to fire at the lifeboats, but it adjudicated them guilty nonetheless, stating—

“It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But, no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But, this case was precisely one of them. For in the present instance, it was perfectly clear to the accused that killing defenseless people in the lifeboats could be nothing else but a breach of law. As naval officers by profession they were well aware, as the naval expert, Saalwaechter, has strikingly stated, that one is not legally authorized to kill defenseless people. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of law. They should, therefore, have refused to obey. As they did not do so they must be punished.” (*American Journal of International Law*, Vol. 16, 1922 p. 721-2.)

Despite this very telling precedent several of the attorneys for the defense asked in behalf of their clients, What could they have done? After all, the defendants were soldiers and were required to obey orders. Ordinarily, in war, the proposition of unquestioning obedience involves a set of circumstances which subjects the subordinate to the possibility of death, wounding, or capture. And it is traditional in such a situation that, in consonance with the honor of his calling, the soldier does not question or delay but sets out stoically to face the peril and even self-immolation. Lord Tennyson immortalized this type of glorious self-sacrifice when he commemorated the Cavalry Charge at Balaklava in the Crimea:

“Theirs not to make reply,
Theirs not to reason why,
Theirs but to do and die.”

The members of the Einsatzgruppen, which, by a twist of ironic fate, were operating in the same Crimea and surrounding territory about one hundred years later, were not, however, facing the same situation which confronted Tennyson's Light Brigade. The Einsatz battalions were not being called upon to face shot and shell. They were not ordered to charge into the mouths of cannon. They were called upon to shoot unarmed civilians standing over their graves.

No soldier would be disgraced in asking to be excused from so

one-sided a battle. No soldier could be accused of cowardice in seeking relief from a duty which was, after all, not a soldier's duty. No soldier or officer attempting escape from such a task would be pleading avoidance of a military obligation. He would simply be requesting not to be made an assassin. And if the leaders of the Einsatzgruppen had all indicated their unwillingness to play the assassin's part, this black page in German history would not have been written.

What could the defendants have done, if they could not have been relieved? They could have been less zealous in the execution of the inhuman order. Whole populations of cities, districts, and wide lands were within their power. No Roman emperor had greater absolutism of decision over life and death than they possessed in their areas of operation. They were not ordered within any given town to shoot a precise number of people and a fixed number of women and children. But men like Braune could see no reason for making exceptions.

Several of the defendants stated that it would have been useless to avoid the order by subterfuge, because had they done so, their successors would accomplish the task and thus nothing would be gained anyway. The defendants are accused here for their own individual guilt. No defendant knows what his successor would have done. He could possibly have also indicated his reluctance and with a succession of refusals properly submitted, the order itself might have lost its efficacy. But in any event no execution would have taken place that day. One defendant stated that to have disobeyed orders would have meant a betrayal of his people. Does he really mean that the German people, had they known, would have approved of this mass butchery?

The masses of the home-loving German people, more content to have a little garden in which to grow a plant or two than the promise of vast lands beyond the horizon, will here learn how they were betrayed by their supposed champions. Here they will also learn of the inhumanity and the oppression and the shedding of innocent blood committed by the regime founded on the Fuehrerprinzip [leadership principle].

In his attack on Control Council Law No. 10, Dr. Mayer declared that it invalidates two fundamental principles of the legal systems of all civilized nations:

“(1) The principle *nulla poena sine lege*.

“(2) Validity of the excuse of having acted under order.”

The Tribunal has already disposed of objection number 1. Objection number 2 is no more convincing than was objection number 1. Law No. 10 does not invalidate the excuse of superior orders. It states—

“(b) The fact that any person acted pursuant to the order of his Government or of his superior does not free him from responsibility for a crime, but may be considered in mitigation.”

Dr. Mayer, like others, misreads this provision and substitutes for the word “crime” some other word, possibly “act”. This makes the provision to read that anyone acting pursuant to the orders of his Government or superior does not free himself from responsibility for any “act”. But the provision specifically states “crime”. Unless it is established that the deed in question is a crime, then naturally there needs to be no explanation for its commission. If, however, the act is a crime then there can be no excuse for its commission. No superior can authorize a crime. No one can legalize what is demonstrated categorically and definitely to be a crime.

The main objective of the defense in this case has been to prove that the acts of the Einsatzgruppen were not crimes, that they were acts of self-defense committed in accordance with the rules of war. If, however, it is proved that they were crimes, then, naturally, the approval of another criminal would not make the acts any the less crimes. Once it is juridically established that a certain act is a crime, then all those who participated in it, both superior and subordinates, are accomplices.

How could the approval of Hitler possibly condone the offense, if offense it was? Hitler was not above international law. Let us suppose that in 1935 Hitler ordered one of his men to go to Siam and there assassinate its King. Would it be argued that the assassin in that situation would be immune because acting under superior orders? Any judicial inquiry would establish that the Siam assassin had committed a crime and the fact that he had acted in pursuance to the order of his government or a superior could not possibly free him from responsibility for the crime. This is exactly what Control Council Law No. 10 says, and this is what the law has always said, or ever since there was international law.

As a matter of fact, Article 47 of the German Military Penal Code goes much farther than Control Council Law No. 10. Under the German code the subordinate may be convicted even if no crime was actually committed. It is sufficient if the order aims at the commission of a crime or offense. The German code makes the obeying subordinate responsible even for any “civil” or “general offenses”, i.e., for comparatively insignificant breaches of law which are not contemplated in the Allied law. Nor does the German code, as contrasted to the Allied law, mention the defense of superior orders as a possible mitigating circumstance.

Several counsel have quoted article 347 of the American Rules of Land Warfare in support of their position on superior orders.

The section in question, after listing various offenses against the rules of warfare, declares—

“* * * Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.”

What has escaped some analysts of this provision is that the word “individuals” is intended to apply to individuals who make up a military unit, that is, ordinarily, soldiers of lower rank. It applies naturally also to officers, but only provided they are serving under another officer of a higher rank. Unless one accepts this meaning the word “commanders” appearing in his second sentence would be entirely elusive as to its significance. But it is to be noted that in square juxtaposition to the men (and perhaps officers) who make up the military unit, the Article puts the *commanders* of such units; and by “commanders” is obviously meant the officers or acting officers, in charge of any armed unit.

As the colonel is commander of a regiment, the major of a battalion, and the captain of a company, the sergeant or 2d lieutenant may be in charge of a platoon. If the unit commander were not responsible, and the responsibility climbed upward from grade to grade, the result would be that the only one who could ever be accountable for an illegal order would be the chief executive of the nation, that is, the President, King, or Prime Minister, depending on the country involved. That such singular responsibility was not intended is evidenced in the use of the plural “commanders” instead of the singular “commander”. Making this meaning absolutely clear, the provision specifically mentions *two* types of “commanders” who are to be held responsible—

(a) commanders who *order* their units to commit war crimes; and

(b) commanders if the troops *under their authority* commit such crimes.

Thus, the provision proclaims clearly that the commander is to be responsible—whether *he* gives the order to commit war crimes, or whether the troops under his authority commit them at the behest of somebody else, since he has the control over the troops and is responsible for their acts.

Since it has not been denied that the defendants were commanders of Einsatz units, they clearly would fall within the provisions of Article 347, American Rules of Land Warfare. This Article 347 was repealed in 1944, but it has here been discussed at length because defense counsel made much of it, and because

it was still law at the time the Einsatzgruppen were operating.

In further confirmation of the interpretation above given of Article 347, reference is made to Article 64 of the American Articles of War which announces punishment for the disobedience of any *lawful* command of a superior officer. Obviously if the order is *unlawful* he may not be punished for refusing to obey it.

The subject of superior orders is not so confusing and complicated as it had been made by some legal commentators. In considering the law in this matter, we must keep in mind that fundamentally there are some legal principles that stand out like oak trees. Much underbrush has grown up in the vicinity and they seem to confuse the view. But even the most casual observation will catch on the legal landscape these sturdy oaks which announce that—

1. Every man is presumed to intend the consequences of his act.

2. Every man is responsible for those acts unless it be shown that he did not act of his own free will.

3. Deciding the question of free will, all the circumstances of the case must be considered because it is impossible to read what is in a man's heart.

Dr. Aschenauer correctly referred to one of these trees in Lord Manfield's charge to the jury in Stratton's case (1780) Howell, State Trials, Volume 21, page 1062-1224—

“A state of emergency is a reason for justification, since nobody can be guilty of a crime without having intended it.

If there is irresistible, physical duress, then the acting person has no volition with regard to the deed.”

Was there irresistible, physical duress? Was there volition with regard to the deed? The answering of these two questions will serve as safe guides in applying the criteria herein announced in the discussion on the subject of superior orders.

Noninvolvement

Several of the defendants pleaded not guilty on the ground that they were in no way involved in the homicidal operations of the Einsatz units. These denials of participation took various forms. It was stated that the defendant, although traveling with the Kommando, never learned of executions and certainly did not participate in them, it was asserted that, although the defendant participated in executions, the executees were partisans, saboteurs, looters, and the like; and it was also claimed on behalf of some of the defendants that, although they actually ordered and supervised executions, these executions always followed an

investigation in the case involved. No one was shot unless he was proved guilty of a crime.

How thorough were these investigations if and when they took place? An order issuing from the Fuehrer's Headquarters on 6 June 1941—that is, 15 days before the beginning of the Russian war—spoke of the conduct of the German forces entering Russia. One paragraph discussed the disposition of political commissars who “for the time being” were not to be executed unless they committed or were suspected of hostile acts. Then came this very significant instruction—

“As a matter of principle in deciding the question whether guilty or not guilty, the personal impression which the commissar gives of his mentality and attitude will have precedence over facts which may be unprovable.”

Thus Kommando leaders were not only empowered but encouraged to execute a man more on his looks than on evidence. One of the defendants corroborated this practice. He was asked what he would do if he came upon a person speaking to four or five people in a room, advocating communism but in no way opposing the Germans. The defendant replied—

“I would have got a look at the man, and if I was under the impression that he would put his theoretical conviction into deed, in that case I would have had him shot. The actual speech or lecture could not be decided upon theoretically.”

He was asked further—

“So that you would listen to the speech and then you would look at him under a microscope, and after this big look, if you thought he might have done something, then you would have him shot. That is what we understood by your answer?”

And the reply was a categorical “Yes”.

Many of the so-called investigations, moreover, were merely inquiries for the purpose of obtaining from the victim information which would enable the executioners to locate and seize other victims. For instance, the defendant Ott testified from the witness stand, as will be noted later, how arrested persons were arrested, “investigated”, and shot.

Several of the defense counsel have argued that their clients were soldiers and that their only job was combat. But if the job with the Einsatzgruppen was strictly military, why did the high command not send military men to do it? Why did they choose Ohlendorf who had had no military training of any kind to head a military organization? Very few of the Kommando leaders had been soldiers, and the brief three or four weeks' training at Pretzsch, prior to marching into Russia, consisted only of drilling and target practice on the rifle range. It is obvious that

they were being sent into Russia not as combat soldiers, but as ideological exponents. In the field they were a travelling RSHA, they were a Gestapo on wheels.

Report No. 128 describes the executions by Einsatzgruppe C of 80,000 persons and explains that 8,000 of them were "convicted of anti-German or Bolshevistic activities".

The report goes on further to say—

"Even though *approximately 75,000 Jews* have been liquidated in this manner, it is already at this time evident that this cannot be a *possible solution of the Jewish problem.*"

The report-writer explains that, in small towns and villages, they had achieved a complete liquidation of the "Jewish problem, and that, in the larger cities, after executions, all Jews had disappeared". It is evident from this statement that the main objective of the Kommandos was to kill Jews, not partisans.

Counsel for Sandberger, in his final argument, quoted from the United States [War Department] Basic Field Manual, Rules of Land Warfare—

"If the people of a country, or any portion thereof, already occupied by an army rise against it, they are violators of the laws of war and are not entitled to their protection."

Dr. von Stein, however, failed to show that the people in the respective German-occupied areas took part in any uprising. On the contrary, it was the Einsatz leaders who attempted to stir up popular tumult by instigating pogroms.

The defendant Haensch declared that, during the entire time he served in Russia, he never saw a Jew, and that he never heard of the Fuehrer Order. Although his Kommando, prior to his arrival in Russia, had admittedly slaughtered thousands of Jews, no one ever told him of this nor did he ever hear of it. This is simply incredible. And, in support of this admittedly incredulous utterance, an even more extraordinary assertion was made by his attorney, namely, that Heydrich was anxious for Haensch not to know about these things since they had nothing to do with his work in Berlin.

In defense of Blobel, who admitted in a pretrial statement that his Kommando had killed 10,000 to 15,000 people, his attorney declared in a final summation that Blobel's duties were purely administrative—adding, to be sure that these administrative duties were to be interpreted in their "widest sense".

One of Blobel's administrative duties was to conduct executions. History will be his debtor for the authoritative account he rendered on mass executions from the standpoint of the spirit and philosophy of slayer and slain. He was asked at the trial whether the doomed, as they were being led to their waiting

graves, ever attempted to break away before the shots were fired. He replied that there was no resistance and this surprised him greatly. The following interrogation then occurred:

“Q. You mean that they resigned themselves easily to what was awaiting them?

“A. Yes, that was the case. That was the case with these people. Human life was not as valuable as it was with us. They did not care so much. They did not know their own human value.

“Q. In other words, they went to their death quite happily?

“A. I would not say that they were happy. They knew what was going to happen to them. Of course, they were told what was going to happen to them, and they were resigned to their fate, and that is the strange thing about these people in the East.

“Q. And did that make the job easier for you, the fact that they did not resist?

“A. In any case the guards never met any resistance, or, at least, not in Sokal. Everything went very quietly. It took time, of course, and I must say that our men who took part in these executions suffered more from nervous exhaustion than those who had to be shot.

“Q. In other words, your pity was more for the men who had to shoot than for the victims?

“A. Our men had to be cared for.

* * * * *

“Q. And you felt very sorry for them?

“A. Yes. These people experienced a lot, psychologically.”

Thus, to murder was added criminal impertinence. The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of his all—his very life—but it is the assassin who is the sufferer. To these people “human life was not as valuable as it was to us”. Thus we behold the moral supremacy of the murderer over the depravity of the massacred. “Our men who took part in the executions suffered more from nervous exhaustion than those who had to be shot.”

Here in cogent language is symbolized the whole story of the simple “administrative duties” of one of the leaders of the *Ein-satzgruppen* in land not his own.

Partisans

Many of the defendants admitting that they had conducted executions, explained that they had not killed any innocent persons but had merely shot partisans, to be sure, not in combat, but puni-

tively. This bald statement in itself does not suffice to exonerate one from a charge of unlawful killings. Article I of the Hague Regulations provides—

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

“1. To be commanded by a person responsible for his subordinates.

“2. To have a fixed distinctive emblem recognizable at a distance.

“3. To carry arms openly; and

“4. To conduct their operations in accordance with the laws and customs of war.”

It is unnecessary to point out that, under these provisions, an armed civilian found in a treetop sniping at uniformed soldiers is not such a lawful combatant and can be punished even with the death penalty if he is proved guilty of the offense.

But this is far different from saying that resistance fighters in the war against an invading army, if they fully comply with the conditions just mentioned, can be put outside the law by the adversary. As the Hague Regulations state expressly, if they fulfill the four conditions, “the laws, rights, and duties of war” apply to them in the same manner as they apply to regular armies.

Many of the defendants seem to assume that by merely characterizing a person a partisan, he may be shot out of hand. But it is not so simple as that. If the partisans are organized and are engaged in what international law regards as legitimate warfare for the defense of their own country, they are entitled to be protected as combatants.

The record shows that in many of the areas where the Einsatzgruppen operated, the so-called partisans had wrested considerable territory from the German occupant, and that military combat action of some dimensions was required to reoccupy those areas. In belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control. This can be seen from Article 42 of the Hague Regulations which grants certain well limited rights to a military occupant only in enemy territory which is “actually placed” under his control.

In reconquering enemy territory which the occupant has lost to the enemy, he is not carrying out a police performance but a regular act of war. The enemy combatants in this case are, of course, also carrying out a war performance. They must, on their part, obey the laws and customs of warfare, and if they do, and then

are captured, they are entitled to the status and rights of prisoners of war.

The language used in the official German reports, received in evidence in this case, show, however, that combatants were indiscriminately punished only for having fought against the enemy. This is contrary to the law of war.

Reprisals

From time to time the word "reprisals" has appeared in the *Ein-satzgruppen* reports. Reprisals in war are the commission of acts which, although illegal in themselves, may, under the specific circumstances of the given case, become justified because the guilty adversary has himself behaved illegally, and the action is taken in the last resort, in order to prevent the adversary from behaving illegally in the future. Thus, the first prerequisite to the introduction of this most extraordinary remedy is proof that the enemy has behaved illegally. While generally the persons who become victims of the reprisals are admittedly innocent of the acts against which the reprisal is to retaliate, there must at least be such close connection between these persons and these acts as to constitute a joint responsibility.

Article 50 of the Hague Regulations states unequivocally—

"No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as *jointly and severally* responsible."

Thus when, as one report says, 859 out of 2,100 Jews shot in alleged reprisal for the killing of 21 German soldiers near Topola were taken from concentration camps in Yugoslavia, hundreds of miles away, it is obvious that a flagrant violation of international law occurred and outright murder resulted. That 2,100 people were killed in retaliation for 21 deaths only further magnifies the criminality of this savage and inhuman so-called reprisal.

Hyde, *International Law*, Volume III, page 35, has this to say on reprisals—

"A belligerent which is contemptuous of conventional or customary prohibitions is *not* in a position to claim that its adversary when responding with like for like, lacks the requisite excuse."

If it is assumed that some of the resistance units in Russia or members of the population did commit acts which were in themselves unlawful under the rules of war, it would still have to be shown that these acts were not in legitimate defense against wrongs perpetrated upon them by the invader. Under international law, as in domestic law, there can be no reprisal against re-

praisal. The assassin who is being repulsed by his intended victim may not slay him and then, in turn, plead self-defense.

Reprisals, if allowed, may not be disproportionate to the wrong for which they are to retaliate. The British Manual of Warfare, after insisting that reprisals must be taken only in last resorts, states—

“459 * * * Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed by the enemy.”

Similarly, Article 358 of the American Manual states—

“(b) *When and how employed*—Reprisals are never adopted merely for revenge, but only as an unavoidable last resort to induce the enemy to desist from illegitimate practices. * * *

* * * * *

“(e) *Form of reprisal*—The acts resorted to by way of reprisal * * * should not be excessive or exceed the degree of violations committed by the enemy.”

Stowell, in the American Journal of International Law, quotes General Halleck on this subject—

“Retaliation is limited in extent by the same rule which limits punishment in all civilized governments and among all Christian people— it must never degenerate into savage or barbarous cruelty.” (*Stowell American Journal of International Law, Vol. 36, p. 671.*)

The Einsatzgruppen reports have spoken for themselves as to the extent to which they respected the limitations laid down by international law on reprisals in warfare.

Criminal Organizations

Article 9 of the London Charter provided, *inter alia*, as follows:

“At the trial of any individual member of any group or organization, the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.”

Article 10 provided that the criminality of such groups and organizations declared criminal by the International Military Tribunal was to be considered proved and not to be questioned in any succeeding proceedings. Control Council Law No. 10 defined membership in any organization declared criminal by the International Military Tribunal as a crime.

The trial briefs on both sides in this case have devoted a great deal of space to the discussion of count three in the indictment. To the extent that the discussion has to do with the facts, it is welcome and helpful. So far as the law on the subject is concerned,

it has been stated completely and definitively by the judgment of the International Military Tribunal and therefore needs no amplification here. The International Military Tribunal declared the SS, SD and the Gestapo to be criminal organizations within the purview of the London Charter. The pertinent provisions of that judgment declaring these organizations criminal and defining the categories of membership therein follow:

SS

"The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities, and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program and the mistreatment and murder of prisoners of war. * * * In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende, and the members of any of the different police forces who were members of the SS. * * *

"The Tribunal declares to be criminal within the meaning of of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the state in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organizations enumerated in the preceding paragraph prior to 1 September 1939."

Gestapo and SD

"The Gestapo and SD were used for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities, and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program, and the mistreatment and murder of prisoners of war. * * * In dealing with

the Gestapo, the Tribunal includes all executive and administrative officials of Amt IV of the RSHA or concerned with Gestapo administration in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the frontier police, but not including the members of the border and customs protection or the secret field police, except such members as have been specified above. * * * In dealing with the SD the Tribunal includes Aemter III, VI, and VII of the RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not, but not including honorary informers who were not members of the SS, and members of the Abwehr who were transferred to the SD.

“The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis for this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1 September 1939.”

In order to avoid unnecessary repetition in the individual judgments, the Tribunal here declares that where it finds a defendant guilty under count three it will be because it has found beyond a reasonable doubt from the entire record that he became or remained a member of the criminal organization involved subsequent to 1 September 1939 under the conditions declared criminal in the judgment of the International Military Tribunal.

Crimes Against Humanity

These defendants are charged with war crimes and crimes against humanity. The concept of war crimes is not a new one. From time immemorial there have existed rules, laws, and agreements which kept opposing forces within bounds in the matter of the conduct of warfare, the treatment of prisoners, wounded persons, civilian noncombatants, and the like. Those who violated these rules were subject to trial and prosecution by both the country whose subjects they were and by the country whose subjects they maltreated.

But an evaluation of international right and wrong, which heretofore existed only in the heart of mankind, has now been written into the books of men as the law of humanity. This law is not restricted to events of war. It envisages the protection of humanity at all times. The crimes against which this law is directed are not unique. They have unfortunately been occurring since the world began, but not until now were they listed as international offenses. The first count of the indictment in this case charges the defendants with crimes against humanity. Not crimes against any specified country, but against humanity.

Humanity is the sovereignty which has been offended and a tribunal is convoked to determine why. This is not a new concept in the realm of morals, but it is an innovation in the empire of the law. Thus a lamp has been lighted in the dark and tenebrous atmosphere of the fields of the innocent dead.

Murder, torture, enslavement, and similar crimes which heretofore were enjoined only by the respective nations now fall within the prescription of the family of nations. Thus murder becomes no less murder because directed against a whole race instead of a single person. A Fuehrer Order, announcing the death of classifications of human beings can have no more weight in the scales of international justice than the order of a highwayman or pirate.

Despite the gloomy aspect of history, with its wars, massacres, and barbarities, a bright light shines through it all if one recalls the efforts made in the past in behalf of distressed humanity. President Theodore Roosevelt in addressing the American Congress, said in 1903—

“There are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it.”

President William McKinley in April 1898, recommended to Congress that troops be sent to Cuba “in the cause of humanity—and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate.”

These two American Presidents were but expressing the yearning of all mankind for a medium by which crimes against humanity could be stopped and the instigators punished. One recommended diplomatic protest, the other armed intervention. Both methods have been used but they do not express the ideal. The former is often ineffectual and the latter achieves its benevolent objective only at further expenditure of blood. No recourse was had to law because there was no jurisprudence on the subject, nor

was there any legal procedure to punish the offenders. Humanity could only plead at the doors of the mighty for a crumb of sympathy and a drop of compassion.

But now it has been seen that humanity need not supplicate for a tribunal in which to proclaim its rights. Humanity need not plead for justice with sobs, tears, and piteous weeping. It has been demonstrated here that the inalienable and fundamental rights of common man need not lack for a court to proclaim them and for a marshal to execute the court's judgments. Humanity can assert itself by law. It has taken on the robe of authority.

Following the London Agreement of 8 August 1945 between the four Allied powers, 19 other nations expressed their adherence to that agreement. In giving effect to the London Agreement and the Charter pursuant thereto, as well as the Moscow Declaration of 30 October 1943, the Allied Control Council formulated its Law No. 10 which treated, among other things, of crimes against humanity. Those who are indicted under this provision, however, are not responding alone to the nations which have approved the principles expressed in the London and Moscow Agreements, they are answering to humanity itself, humanity which has no political boundaries and no geographical limitations. Humanity is man itself. Humanity is the race which will go on in spite of all the fuehrers and dictators that little brains and smaller souls can elevate to platforms of tinsel poised on bastions of straw.

Crimes against humanity are acts committed in the course of wholesale and systematic violation of life and liberty. It is to be observed that insofar as international jurisdiction is concerned, the concept of crimes against humanity does not apply to offenses for which the criminal code of any well-ordered state makes adequate provision. They can only come within the purview of this basic code of humanity because the state involved, owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminals.

At the 8th Conference for the Unification of Penal Law held on 11 July 1947, the Counselor of the Vatican defined crimes against humanity in the following language:

"The essential and inalienable rights of man cannot vary in time and space. They cannot be interpreted and limited by the social conscience of a people or a particular epoch for they are essentially immutable and eternal. Any injury * * * done with the intention of extermination, mutilation, or enslavement, against the life, freedom of opinion * * * the moral or physical integrity of the family * * * or the dignity of the human being, by reason of his opinion, his race, caste, family or profession, is a crime against humanity."

The International Military Tribunal, operating under the London Charter, declared that the Charter's provisions limited the Tribunal to consider only those crimes against humanity which were committed in the execution of or in connection with crimes against peace and war crimes. The Allied Control Council, in its Law No. 10, removed this limitation so that the present Tribunal has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law.

As this law is not limited to offenses committed during war, it is also not restricted as to nationality of the accused or of the victim, or to the place where committed. While the overwhelming majority of those killed in the present case were Soviet citizens, some were German nationals. A special report prepared by Einsatzgruppe A, and previously quoted in another connection, declared—

“Since December 1940 transports containing Jews had arrived at short intervals *from the Reich*. Of these 20,000 Jews were directed to Riga and 7,000 Jews to Minsk * * * all evacuated Jews who survive the winter can be put into this camp (apart of the Riga ghetto) in the spring. Only a small section of the Jews *from the Reich* is capable of working. About 70 to 80 percent are women and children or old people unfit for work. The death rate is rising continually also as a result of the extraordinary hard winter.” [Emphasis supplied.]

Another report, already referred to, spoke of the execution of 3,500 Jews “most of whom had been sent to Minsk from Vienna * * * Bremen and Berlin.”

These two instances fall clearly within count one of the indictment which covers, *inter alia*, crimes against German nationals.

Although the Nuernberg trials represent the first time that international tribunals have adjudicated crimes against humanity as an international offense, this does not, as already indicated, mean that a new offense has been added to the list of transgressions of man. Nuernberg has only demonstrated how humanity can be defended in court, and it is inconceivable that with this precedent extant, the law of humanity should ever lack for a tribunal.

Where law exists a court will rise. Thus, the court of humanity, if it may be so termed, will never adjourn. The scrapping of treaties, the incitement to rebellion, the fomenting of international discord, the systematic stirring up of hatred and violence between so-called ideologies, no matter to what excesses they may lead, will never close the court doors to the demands of equity and justice. It would be an admission of incapacity, in contradiction of every self-evident reality, that mankind, with intelligence and will, should be unable to maintain a tribunal holding inviolable the

law of humanity, and, by doing so, preserve the human race itself.

Through the centuries, man has been striving for a better understanding between himself and his neighbor. Each group of people through the ages has carried a stone for the building of a tower of justice, a tower to which the persecuted and the down-trodden of all lands, all races, and all creeds may repair. In the law of humanity we behold the tower.

Simferopol

Although the tone of this opinion is of necessity severe, it is without bitterness. It can only be deplored that all this could happen. The defendants are not untutored aborigines incapable of appreciation of the finer values of life and living. Each man at the bar has had the benefit of considerable schooling. Eight are lawyers, one a university professor, another a dental physician, still another an expert on art. One, as an opera singer, gave concerts throughout Germany before he began his tour of Russia with the Einsatzkommandos. This group of educated and well-bred men does not even lack a former minister, self-unfrocked though he was. Another of the defendants, bearing a name illustrious in the world of music, testified that a branch of his family reached back to the creator of the "Unfinished Symphony", but one must remark with sorrow that it is a far cry from the Unfinished Symphony of Vienna to the finished Christmas massacre of Simferopol, in which the hapless defendant took an important part.

It was indeed one of the many remarkable aspects of this trial that the discussions of enormous atrocities was constantly interspersed with the academic titles of the persons mentioned as their perpetrators. If these men have failed in life, it cannot be said that it was lack of education which led them astray, that is, lack of formal education.

Most of the defendants, according to their own statements, which there is no reason to disbelieve, came of devout parents. Some have told how they were born in the country and that, close to nature and at their mothers' knee, learned the virtues of goodness, charity, and mercy. It could be said that the one redeeming feature about this entire sordid affair is that those virtues are still recognized. One inexperienced in the phenomena of which the human soul is capable, reading the reports of the Einsatzgruppen, could well despair of the human race. Here are crimes that defy language in the depths and vastness of their brutality. Here pitilessness reaches its nadir and nothing in Dante's imagined Inferno can equal the horror of what we have discovered happened in 1941, 1942, and 1943 in White Ruthenia, the Ukraine, Lithuania, Esthonia, Latvia, and the Crimea.

In this trial, one was constantly confronted with acts of men which defied every concept of morality and conscience. One looked in on scenes of murder on so unparalleled a scale that one recoiled from the sight as if from a blast of scalding steam.

But herein is the paradox, and with it the moral encouragement of redemption. Some of the defendants called witnesses to testify to their good deeds, and practically all of them submitted numerous affidavits extolling their virtues. The pages of these testimonials fairly glitter with such phrases as "honest and truth-loving", "straight-thinking and friendly manner", "industrious, assiduous, and good-natured", "of a sensitive nature", "absolutely honest".

Through the acrid smoke of the executing rifles, through the fumes of the gas vans, through the unuttered last words of the one million slaughtered, the defendants have recalled the precepts gained at their mothers' knee. Though they seemed not to see the frightful contrast between their events of the day and those precepts of the past, yet they do recognize that the latter are still desirable. Thus, the virtues have not vanished. So long as they are appreciated as the better rules of life, one can be confident of the future.

Nor are the affidavits merely subjective in phrase. They point out objectively what the defendants did in attacking injustice and intolerance. In various parts of Europe (always with the exception of Russia) the Tribunal is told they occasionally interceded in behalf of oppressed populations and broke lances with the local Nazi despots. The affidavits state, for example, that Ott who enforced the Fuehrer Order from beginning to end in Russia was all kindness and gentleness to the villagers in Grosbliederstroff in the Lorraine, and that Haensch, whose conduct in the East leaves much to be desired, was the epitome of charity in Denmark where the population in paeons of thanksgiving showered him with adulatory messages and bouquets of flowers. During the period that Naumann was stationed in Holland, one affiant states, Naumann befriended the Jews, got them out of concentration camps, and released hostages. In fact, according to one affidavit, Naumann was known as a man "with softness toward Jews".

What is the explanation for the appalling difference between the virtues which others saw in these defendants and their deeds as described by themselves? Was it the intimate companionship with evil? The poet Pope sought to describe this phenomenon in his quatrain—

"Vice is a monster of so frightful a mien,
As to be hated needs but to be seen;

Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace."

One of the defense counsel, a highly respected member of the local bar apparently would seem, unwittingly, to have given an explanation. From the constant association with the case, he found himself arguing in his summation speech, "What did Schubert actually do which was criminal?" And then he outlined Schubert's actions—

"Schubert first goes to the gypsy quarter of Simferopol and sees them being loaded aboard and shipped off. Then he drives to the place of execution, sees the rerouting of traffic, the roads blocked off, persons being unloaded, valuables handed over, and the shooting. Finally he drives back once more along the way to the gypsy quarter and there again sees them being loaded aboard and carried off, and then returns to his office. That is what he did."

SS Obersturmfuehrer Schubert oversees an execution of human beings who happen to be gypsies, there is no assertion anywhere that these gypsies were guilty of anything but being gypsies. He sees that the roads are blocked off, that the victims are loaded on trucks and taken to the scene of execution, that their valuables are taken from them and then he watches the shooting. This is what Schubert did, and the question is asked: What is wrong about that? There is no indication of any realization here that Schubert was taking an active part in *mass murder*. Counsel even goes further and says that when Schubert reported to Ohlendorf what had happened, he stated that he saw "nothing unusual".

The reference to counsel, when it occurs, is not intended as any criticism of professional conduct. It is the function of a lawyer to represent to the best of his ability his client's cause and it must now be apparent what difficulties confronted the attorneys in this case. Nonetheless, with industry and skill, with patience and perseverance they made their presentations so that the Tribunal was not denied any fact or argument which could be submitted in behalf of the accused. Regardless of the results of the judgment, it cannot be said that the accused did not have the utmost and fullest defense.

Many of the affidavits introduced in behalf of defendants spoke of religion. One related how Seibert often accompanied his mother to church. While he was in the Crimea, did he recall these visits to the house of God with his mother, and if he did, could he reconcile his activities there with the teachings of religion and of his mother?

This is a court of law, and the presence or absence of religion on the part of any defendant is not an issue in this trial. The fact,

however, that Seibert advanced his early Christian training as an item of defense is indication that he at least recognizes there is a dissimilarity between what he learned and what he later did. This affidavit is additionally interesting because it impliedly repudiates the condemnations of religion by men like Goebbels, Rosenberg, Himmler, and above all, Hitler himself, who designated the church as the only remaining unconquered ideological opponent of National Socialism, continually insulting it in speeches and pronunciamentos.

Bormann said—

“National Socialist and Christian concepts are irreconcilable. * * * If therefore in the future, our youth knows nothing more of this Christianity whose doctrines are far below ours, Christianity will disappear by itself. * * * All influences which might impair or damage the leadership of the people exercised by the Fuehrer with the aid of the NSDAP must be eliminated. More and more the people must be separated from the churches, their organs, and the pastors.”

With this antireligious attitude dominating National Socialism, it is interesting to note that at least ten of the defendants, according to their own statements, formally left the church of their childhood.

And here one must tell of the Christmas of Simferopol in the year of 1941. In the early part of December the commander of the 11th Army, which was located in that area, notified the chief of Einsatzkommando 11b that the army expected them to kill some several thousand Jews and gypsies before Christmas.

This savage proposal, coming on the eve of one of the holiest days of the year, did not consternate the Kommando leader, as one might expect. On the mystic chords of memory, no echo sounded of the Christmas carols he had heard in childhood, nor did he recall the message of Peace on Earth and Good Will Toward Men. The only impediment this Kommando leader saw in the execution of the order was that he lacked enough men and equipment for so accelerated an assignment, but he would do his best. He called on the army quartermaster and obtained sufficient personnel, trucks, guns, and ammunition to do the bloody deed, and it was done! The Jews and gypsies—men, women, and children—were in their graves by Christmas.

On Christmas Day the executioners were depressed, the Tribunal was told, not because of the slaughter, but because they now feared for their own lives. Death, which had been so commonplace a day or two before, presently revealed itself as vivid and frightening. It might overtake the executioners themselves. Life became

sweet and precious. The Kommando leader testified that the danger existed they might fall into the hands of the Russians.

But at last they overcame their apprehensions and they found themselves in the mood to celebrate their own Christmas party. Their chief, Otto Ohlendorf, made a speech on that occasion. The defendant Braune was questioned on this speech.

“Q. And did he talk on religious matters?”

“A. I cannot give any details of the words any more. I don’t know whether he mentioned Christ, but I know Herr Ohlendorf’s attitude on all this.

“Q. What was his attitude as he delivered it in his speech? What did he say that was of religious significance?”

“A. I really cannot give any details any more.

“Q. Did anybody offer any prayers on Christmas Day of 1941?”

“A. Your Honor, I do not know. * * *

“Q. Were any prayers offered for the thousands of Jews that you had killed * * *?”

“A. Your Honor, I don’t know whether anyone prayed for these thousands of Jews.”

Did this Christmas massacre serve the best interests of Germany and her people? Did it harmonize with the theory of moral revulsion to the Fuehrer Order, as proclaimed by the defendants?

How far did the defendants get away from religion? It is to be repeated here that it is entirely irrelevant to the issue before the Tribunal as to whether the defendants are religious or not. They can be atheists of the first degree and yet be as innocent as the driven snow of any crime. Religion is mentioned because several of the defendants introduced the subject, and their references to religion are pertinent in the evaluation of the credibility of certain testimony.

Ernst Biberstein, the defendant who was a minister of the Gospel, left the church in 1938. At that time he repudiated organized religion and claims to have founded a religion of his own. This religion, he stated, was based on the love of his fellowmen. Despite his definite abandonment of the church, he states he was regarded as a clergyman by his fellow officers and emphasized this point as a reason why he could not have committed the murders with which he is charged. He did admit to attending various executions. Since, according to his testimony, he still worshipped at the invisible altar of his own religion, he was asked whether he attempted to offer comfort and solace to those who were about to die. His answer was that since the Bolshevist ideology advocated the movement of atheism, “one should not throw pearls before swine”. Then came the following:

“Q. Did you think that because they were Bolsheviks and had been fighting Germany that they did not have souls?

“A. No.

“Q. You did believe they had souls then, didn't you?

“A. Of course.

“Q. But because they were of the attitude which you have expressed, you did not think it was worth while to try to save those souls?

“A. I had to assume that these were atheists. There are people who do not believe in God, who have turned away from God; and if I tell such a man a word of God, I run the danger that the person will become ironic.

“Q. Well, suppose he did become ironic, that could not be any worse than the fact that he was going to be killed rather soon. Suppose he did become ironic, how did that harm anyone?

“A. These things are too sacred to me that I would risk them in such situations.”

He was further asked—

“Do you think that you demonstrated that ‘Love of fellow men’ by letting these people go to their deaths without a word of comfort along religious lines, considering that you were a pastor? Did you demonstrate there a ‘love of fellow men?’”

And his answer was—

“I didn't sin against the Commandments of Love.”

Did Biberstein tell the truth when he said that the core of his religion was “Love of his fellow men” and then ordered the shooting of innocent people whom he regarded as swine? Was he trustworthy when he declared that he never heard of the Fuehrer Order until he arrived in Nuernberg? Was he credible when he announced that during all the time he was in Russia, he never learned that Jews were shot because they were Jews?

Religion, which through the ages, has strengthened the weak, aided the poor, and comforted the lonely and oppressed, is man's own determination, but that a minister of the Gospel, via the road of Nazism, participated in mass executions is an observation that cannot go unnoticed. When the Swastika replaced the Cross and Mein Kampf dislodged the Bible, it was inevitable that the German people were headed for disaster. When the Fuehrerprinzip took the place of the Golden Rule, truth was crushed and the lie ruled with an absolutism no monarch has ever known. Under the despotic regime of the lie, prejudice supplanted justice, arrogance canceled understanding, hatred superseded benevolence—and the columns of the Einsatzgruppen marched. And in one of the front ranks strode the ex-minister Ernst Biberstein.

The Fuehrerprinzip

In every Nuernberg trial, an invisible figure appears in the defendant's dock. At each session in this Palace of Justice, he has entered the door and quietly moved to his place among the other defendants. For over two years he has been making his entrance and exits. He never takes the witness stand, he never speaks, but he dominates every piece of evidence, his shadow falls over every document.

Some of the accused are ready to charge this sinister shadow with responsibility for their every reverse and misfortune. But were he to cast off the cloak of invisibility and appear as he was, the animadversions of the other occupants of the defendants' box might not be so audible, because he knows them well. He was no sudden interloper in Germany's destiny. He did not appear in a flash and order his present companions into action. Had it happened that way, the story of physical and moral duress they recounted from the witness stand would not be so incongruous. But, of their own free will, they threw in their lot with that of the specter's, and in their own respective functions enthusiastically carried out the shadow's orders, who was then not a shadow but a fire-breathing reality.

In explanation of their willingness to follow him in those days, they explain they had no reason to doubt him. He had been so successful. But the very successes they cheered most were usually this man's greatest crimes. Each defendant has claimed that the propaganda of the day assured them that Germany was always fighting a defensive war, but these men were not outsiders, nor were they children. They were part of the government, they belonged to the regime. It is incredible that they should believe that Germany was being attacked by Denmark, Yugoslavia, Czechoslovakia, Greece, Belgium, and even little Luxembourg. Indubitably they revelled in these successes. One of the defense counsel declared that the defendants could well believe of Hitler that "here was a man whom no power could resist".

And indeed never did a man wield so much power and never was a living man so ignominiously and stupidly obeyed by other men. Never did living beings, made in the image of man, so pusillanimously grovel at feet of clay. But it is not true that no one could resist him. There were people who could resist him, or at least refused to be a party to his monstrous criminality. Some voluntarily left Germany rather than acknowledge him as their spiritual leader. Others opposed him and ended up in concentration camps. It is a mistake to say or assume that all the German people approved of nazism and the crimes it fostered and committed. Had that been true, there would have been no need of

Stormtroopers in the early days of the Party, and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German State.

But against those who looked with alarm and foreboding on the violences of nazism, there were those who could not resist the glory, pomp, and circumstance of war, nor the greed of unbridled domination. They accepted Hitler with fervor and passion because they believed Hitler could lead them to gratification of their bloated vanity and lust for power, position, and luxurious living.

Nor have all forsaken their "successful" leader. Several of the defendants in this case have expressed their continuing belief in the Fuehrer. One could not bring himself to blame Hitler for any of the illegal deaths under discussion. Another regarded him as a great leader, if not a great statesman. Still another, when asked if he would have been satisfied if Hitler had succeeded in his aims, replied with a categorical affirmative. The defendant Klingelhoefler stated that he would have been happy if Hitler had won the war, even at the expense of Germany in ruins, with two million Germans killed and the entirety of Europe devastated. One other defendant told of his adoration for Hitler which apparently had not changed since 1945. The expression of such adoration offers convincing testimony on the mental attitude of the defendant at the time he received and executed the Fuehrer Order.

That Hitler was a man of extraordinary capacities cannot be doubted, but his capabilities for harm would have been *nil* had he not had willing, enthusiastic collaborators like the defendants who accepted his mad out-pourings and hysterical maledictions against defenseless minorities, as if his pronouncements were the apostrophies of a semidivinity.

These defendants were among those who made it possible for a megalomaniac to achieve his ambition of putting the world beneath his heel or to bring it crashing in ruins about his head. Some of these defendants, in following Hitler, may have believed that, in executing his will, they were serving their country. Their sense of justice staggering from the intoxication of command, their normal reactions drugged by the opiate of their blind fealty, their human impulses twisted by the passion of their ambitions, they made themselves believe that they were advancing the cause of Germany. But Germany would have fared better without such patriotism. When Samuel Johnson uttered his cynical line that patriotism is the last refuge of a scoundrel, he could well have had in mind a Hitlerian patriotism.

Hitler struck the match, but the fire would have died a quick death had it not been for his fellow arsonists, big and little, who

continued to supply the fuel until they, themselves, were scorched by the flame they had been so enthusiastically tending. If history has taught anything, it has demonstrated with devastating finality that most of the evils of the world have been due to craven subservience by subchiefs upon a man who through boundless ambition unrestrained by conscience has formulated plans which, proposed by anyone else, would be rejected as mad.

Dictatorship in government can only lead to disaster because whatever benefits derive from centralized control are lost in the infinite damage which inevitably follows lack of responsibility. That unlimited authority and power are poisons which destroy judgment and reason is a demonstrable fact as conclusively established as any chemical formula tried and tested in a laboratory. The genius of true democratic government is that no one person is allowed to take the nation with its millions of people into the valley of decisive action without the advice, counsel, and approval of those who are to be subjected to the hazards, hardships, and potentially fatal consequences of that decision.

The defendants must have found themselves repeatedly at the crossroads where and when there was still the opportunity to turn in the direction of the ideals which they had once known, but the willful determination to follow the trail of blood prints of their voluntarily accepted leader could only take them to the goal they had never intended. It is possible that currently the defendants realize the mistake which they made. Though most of them have sought to rationalize their deeds, though they attempted to explain that every executioner's rifle was aimed at a national peril, it is possible they now grasp the disservice they have done not only to humanity but to their own Fatherland. It may even be that through this trial with its sobering revelations, they will have demonstrated what are the inevitable consequences of any plan which stems from hatred and intolerance; and here they may have proved what has never been disproved: There is only one Fuehrer, and that is truth.

Alfred Rosenberg, the acknowledged master philosopher of nazism wrote on "The Myth of Blood"—

"A new faith is arising today. The myth of the blood, the faith, to defend with the blood the divine essence of man. The faith, embodied in clearest knowledge that the Nordic blood represents that mysterium which has replaced and overcome the old sacraments."

What does this mean? No one has yet deciphered its cadenced incoherence, but as Rosenberg himself claimed in it conclusive proof of the master race, others were willing to assume in this torturing abstruseness the authority of a revealed writing. Be-

neath the meaningless phrases went the subtle theme of a race of men so different from, and superior to, other men that it required an occult language, whose alphabet was understood only by the elect, to carry the wisdom of this ineffable superiority. From it could be proved everything and nothing. From it the Nazi hierarchists drew their meretricious inspiration which led to their licentious and profligate deeds.

There have been Alfred Rosenbergs in other eras as well, and they also have confirmed the rulers of nations, states and tribes in their superiority over other nations, states and tribes, but the results have invariably been the same. The theme of might against right has, through the centuries, led to consequences which were catastrophic to the assumed stronger. Through the pauseless sweep of the centuries, despots and tyrants have ever and again appealed to the weakness of their followers, the weakness of supposed strength, and have utilized this primitive vanity and arrogance of the little man in the accomplishment of their monumental horrors. Over and over, this monotonous and savage drama has appeared on the stage of history, but never was it played with such totality, fury, and brutality as it was with the Nazis in the title role.

That so much man-made misery should have happened in the twentieth century, which could well have been the fruition of all the aspirations and hopes of the countries which went before, makes the spectacle almost unsupportable in its unutterable tragedy and sadness. Amid the wreckage of the six continents, amid the shattered hearts of the world, amid the sufferings of those who have borne the cross of disillusionment and despair, mankind pleads for an understanding which will prevent anything like this happening again. That understanding goes back to the words spoken 1900 years ago, words which had they been honored in the observance rather than in the breach would have made the events narrated in this trial impossible—

“Therefore, all things whatsoever ye would that men should do to you, do ye so to them.”

Individual Judgments

In the judgments on the individual defendants now to follow, no attempt will be made to cite from all the testimony and documents introduced on both sides. Such a treatment would give to the over-all judgment a length out of all proportion to the nature of a final adjudication. Nor is it necessary. Although the indictment has charged the several defendants with multiplicitous murders, the verdict of guilty, where arrived at, does not need to be predicated on the total number contended for by the prosecution.

It is also to be noted that while emphasis throughout the trial has been on the subject of murder, the defendants are charged also in counts one and two with crimes against humanity and violations of laws or customs of war which include but are not limited to atrocities, enslavement, deportation, imprisonment, torture, and other inhumane acts committed against civilian populations. Thus, if and where a conclusion of guilt is reached, such conclusion is not based alone on the charge of murder but on all committed acts coming within the purview of crimes against humanity and war crimes. In each adjudication, without its being stated, the verdict is based upon the entire record.

DEFENDANT OTTO OHLENDORF

The evidence in this case could reveal not one but two Otto Ohlendorfs. There is the Ohlendorf represented as the student, lecturer, administrator, sociologist, scientific analyst, and humanitarian. This Ohlendorf was born on a farm, studied law and political science at the universities of Leipzig and Goettingen, practiced as a barrister at the courts of Alfeld Leine and Hildesheim, became deputy section chief in the Institute for World Economics in Kiel, then section chief at the Institute for Applied Economic Science in Berlin, and in 1936 became economic consultant in the SD. On behalf of this Ohlendorf, defense counsel has submitted several hundred pages of affidavits which speak of Ohlendorf's efforts to make the SD purely a fact-gathering organization, of his opposition to totalitarian and dictatorial tendencies in the cultural life of Germany, of his defense of the middle classes, and of his many clashes with Himmler, the SS Chief, and Mueller, the Chief of the Gestapo. One of these affidavits declares—

“Ohlendorf did not see superior and inferior races in various peoples * * *. He considered race only as a symbolic notion. The individual nations to him were not superior or inferior, but different. The domination of one people with its principles of life over the other he considered, therefore, wrong and directed against the laws of life. For him, the goal to be desired was a system among peoples by which every nation could develop according to its own nature, potentialities, and abilities. Folk, in his view, also was not dependent on a state organization.”

On the other hand, we have the description of an SS General Ohlendorf who led Einsatzgruppe D into the Crimea on a race-extermination expedition. That Otto Ohlendorf is described by that same Ohlendorf. If the humanitarian and the Einsatz leader are merged into one person, it could be assumed that we are here dealing with a character such as that described by Robert Louis Stevenson in his “Dr. Jekyll and Mr. Hyde”. As interesting as it

would be to dwell on this possible dual nature, the Tribunal can only make its adjudication on the Ohlendorf who, by his own word, headed an organization which, according to its own reports, killed 90,000 people.

The Tribunal finds as a fact from the reports, records, documents, and testimony in this case that Einsatzgruppe D did kill 90,000 persons in violation of the laws and customs of war, of general international law, and of Control Council Law No. 10.

Whatever offense Ohlendorf may have to answer for, he will never need to plead guilty to evasiveness on the witness stand, which indeed cannot be said of all the defendants. With a forthrightness which one could well wish were in another field of activity, Otto Ohlendorf related how he received the Fuehrer Order and how he executed it. He never denied the facts of the killings and only seeks exculpation on the basis of the legal argument that he was acting under superior orders. Further, that, as he saw the situation, Germany was compelled to attack Russia as a defensive measure and that the security of the army, to which his group was attached, called for the operations which he unhesitatingly admits. All these defenses have been treated in the general opinion and need not be repeated here.

In addition to Ohlendorf's direct testimony in this present trial, he voluntarily appeared as a witness in the International Military Tribunal trial and there described under oath the entire Einsatz program of extermination. With but a minor exception, he confirmed in this trial the testimony presented before the IMT. Thus, that testimony, by reference, is incorporated into the record of the instant trial and forms further evidence in support of the findings reached in this judgment. Even outside the courtroom Ohlendorf admitted untrammelledly the activities of the Einsatzgruppe under his charge. In at least four affidavits he related how his command functioned. He told of the area covered by his Einsatzgruppe, the division of his group into smaller units, the manner and methods of execution, the collection of the valuables of the victims, and the writing and submitting of reports to Berlin.

The record of Otto Ohlendorf, the chief of department III of the RSHA and the Chief of the Einsatzgruppe D, is complete.

The record and analysis of the Otto Ohlendorf who was born in the country and showed great promise in the field of learning, purposeful living, and sociological advancement will need to be made elsewhere. Unfortunately, it cannot form part of this judgment which can only dispose of the charges of criminality presented in the indictment. Those charges against Otto Ohlendorf have been proved before this Tribunal beyond a reasonable doubt.

The Tribunal accordingly finds Otto Ohlendorf guilty under counts one and two of the indictment.

It has been argued by Dr. Aschenauer that Ohlendorf was not a member of a criminal organization as determined by the International Military Tribunal decision and Control Council Law No. 10. In support of this argument, it is asserted that Ohlendorf was ordered to Russia as an employee of the Reich Group Commerce. It is impossible that Ohlendorf, as the leader of Einsatzgruppe D, should have been functioning as a member of the Reich Group Commerce. He headed office III of RSHA before he went to Russia, and he headed it when he returned.

The Tribunal finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

HEINZ JOST

SS Brigadier General and Major General of Police Heinz Jost specialized in law and economics when he studied at the universities of Giessen and Munich. He later worked in the district court at Darmstadt. He joined the Nazi Party in February 1928 and subsequently became a member of the SA, the SS, and SD. He served as an SS officer in the Polish campaign. He headed Einsatzgruppe A in the Russian campaign. His attorney devoted many pages in his final plea to arguments on self-defense, necessity, and national emergency, confirming and emphasizing what was said at great length by Dr. Aschenauer on these subjects. In the latter part of the plea, defense counsel insisted that his client in no way participated in the execution of the Fuehrer Order. If, as a matter of fact, the defendant committed or approved of no act which could be interpreted either as a war crime or crime against humanity, the argument of self-defense and necessity is entirely superfluous.

The record clearly demonstrates, however, that as Chief of Einsatzgruppe A, the defendant was aware of the criminal purpose to which that organization was put, and, as its commander, cannot escape responsibility for its acts. Jost outlined his activities outside of Germany in the following language:

“During my activity as Chief of the Einsatzgruppe A, I was also Commander in Chief of the Security Police and SD in Eastland (BdS Ostland). Headquarters for the Einsatzgruppe A was located in Krasnogvardeisk, while headquarters for the Commander in Chief for the Security Police and SD Eastland was located in Riga. On the whole, the duties of a Commander in Chief of the Security Police and SD were the same as those of a Chief of an Einsatzgruppe, and the duties of a Commander of

the Security Police and SD (KdS) the same as those of a Chief of a Sonderkommando or Einsatzkommando, respectively."

During the time the territory under his jurisdiction was subject to army control, Jost as Chief of Einsatzgruppe A cooperated with the army command. When the territory came under civilian administration, he, as Commander in Chief of Security Police and SD received his orders from the Higher SS and Police Leader or SS and Police Leader. Under this double designation he was responsible for all operations conducted in his territory.

Report No. 195, dated 24 April 1942, reporting on activities within the area under the command of Einsatzgruppe A, states—

"Within the period of the report a total of 1,272 persons were executed, 983 of them Jews, who had infectious diseases or were so old and infirm that they could not be any more used for work, 71 gypsies, 204 Communists and 14 more Jews who had been guilty of different offenses and crimes."

The prosecution charges the defendant with responsibility for these murders. The item itself does not carry the exact date of its happening, but the latest date revealed in the entire document is 26 March. Thus the execution of the 1,272 persons mentioned therein could not have occurred on a date subsequent to 26 March. The defendant testified that he was in Smolensk when, on 24 or 25 March he received his orders to take over the command of Einsatzgruppe A and that he did not arrive in Riga, headquarters of the Einsatzgruppe, until 28 and 29 March.

The record shows that Einsatzgruppe A had accomplished some hundred thousand murders prior to 29 March and, as late as 26 March as indicated by the report above-mentioned, was still killing Jews. It would be extraordinary that it should suddenly cease this slaughter for no given reason and with the Fuehrer Order still in effect, three days before Jost arrived.

The prosecution argues that it would not take an officer of Jost's rank (major general of police) four days to travel the 400 miles between Smolensk and Riga. But whether Jost arrived the day before or the day after is not controlling in the matter of responsibility for the program involved. The Fuehrer Order was in effect prior to Jost's arrival at Riga, and he did not revoke it when he took over the Einsatzgruppe. The defendant does state that, when in May 1942 he received an order from Heydrich to surrender Jews under 16 and over 32 for liquidation, he placed the order in his safe and declined to transmit it.

Report No. 193, dated 17 April 1942, reports an execution in Kovno [Kaunas], as of 7 April 1942, of 22 persons "among them 14 Jews who had spread Communist propaganda". The defendant was asked on the witness stand—

"Do you regard it proper, militarily proper, to shoot fourteen people, or only one person for that matter, because he spreads Communist propaganda?"

and he replied—

"According to my orders these measures had to be carried out. In that far it was correct and justified."

Defense counsel in arguing this phase of the case said that the victims had indulged in Communist propaganda "up to the last moment". But there is nothing in international law which justifies or legalizes the sentence of death for political opinion or propaganda.

At the trial the defendant testified that he did not remember any reports about "mass executions" during his time. If there had been no such executions during his incumbency, it is reasonable to suppose that Jost would have emphatically so declared. It cannot be assumed that so grave and solemn an event as a mass execution could fall into the realm of the forgettable. Thus, the only possible conclusion is that here the defendant was equivocating.

On 15 June 1942, at a time when Jost was admittedly in charge of the area, one of his subordinates, SS Hauptsturmfuehrer Truebe, wrote to the RSHA, requesting shipment of a gas van and gas hoses for three gas vans on hand. Jost denied any knowledge of this letter but admitted that the subordinate in question had the authority to order equipment. It is not reasonable to suppose that the ordering of such extraordinary equipment would not come to the attention of the leader of the organization and the fact that the ordered gas van was to go to White Ruthenia (where he was also in command) does not absolve the defendant from responsibility.

The defendant, as all other defendants in this case, is not charged alone with the crime of murder. The indictment lists various offenses, including enslavement, imprisonment, and other inhumane acts against civilian populations. Thus, the defendant cannot escape responsibility for a consenting part at least in the slave-labor program instituted by Sauckel in his territory. Report No. 193, dated 17 April 1942, carried this item—

"On orders by the new Plenipotentiary for Mobilization of Labor, Gauleiter Sauckel, the commissioner general, 'White Ruthenia', has to muster about 100,000 workers. But until now only 17,000 have been shipped. In order to make available the manpower requested, the principle of voluntary recruiting is abandoned and compulsory measures will be adopted."

As already mentioned, Jost claims that he opposed the Heydrich order of 19 May 1942. He testified that he visited Heydrich and Himmler and urged his recall and even spoke to Rosenberg against

the extermination program in principle. He asserted that later he was recalled and subjected to disciplinary action. Although he retained his general officer rank in the police he was sent to the front, as a sergeant in the Waffen SS. The credibility of this story depends entirely on Jost, since all the other alleged conferees are dead, and there were apparently no surviving witnesses that he could call to confirm his conversations.

Although it is possible that his illness at the time had something to do with the reversal in his military fortunes, it can be believed that illness alone could not have brought about such a drastic change in his situation. Nonetheless the evidence is irrefutable that he was a principal in and an accessory to the extermination program in his territory. He may have, after participation in this enterprise, at last relented, and this is to his credit, but this cannot wipe out the criminality which preceded his withdrawal from the field.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

DEFENDANT ERICH NAUMANN

SS Brigadier General Erich Naumann left school at the age of sixteen and obtained employment in a commercial firm in his home town of Meissen, Saxony. In 1933 he joined the SA in a full-time capacity and then became official and officer of police. He joined the SD in 1935. He was Chief of Einsatzgruppe B from November 1941 until February or March 1943. The prosecution contends that he took over the command of this organization on 1 November 1941 and points to various pieces of evidence to confirm that contention.

(1) Naumann's personal SS record.

(2) Reports listing Naumann as being in Smolensk (Headquarters of Einsatzgruppe B) on 12 November 1941.

(3) Testimony of Steimle that he met Naumann in Russia about the middle of November.

(4) Naumann's note to the codefendant Klingelhoefler under circumstances which would suggest an attempt to influence Klingelhoefler's testimony that Naumann's duties began on 30 November.

Naumann's purpose in establishing the latter date of induction into the chiefship of Einsatzgruppe B is to refute the prosecution's

claim that he is responsible for executions committed by Einsatzgruppe B in the month of November. One report, dated 19 December 1941, described various actions which resulted in the liquidation of several thousands of people. Another report carrying the date of 22 December 1941 told of the execution of 324 Jewish prisoners of war and 680 civilian Jews.

Naumann contends that he cannot be held accountable for these executions, since the reports were published four to five weeks following the events described therein. This would date the indicated events as having occurred about the middle of November and, consequently, prior to the date he claims he took over the Einsatzgruppe command. It has not established as a fact that the operational and situation reports always appeared four to five weeks subsequent to the chronicled events. It was testified during the trial that this period of delay fluctuated and that sometimes the reports were published within two weeks after the happening of the events.

However, this discussion is more interesting than practical. Even if Naumann were to prove irrefutably and conclusively that the reports were delayed and that he did not arrive in Smolensk until 30 November this would still not exonerate him from the charges under counts one and two, for there is existing the Operational Report of 21 April 1942, covering operations from 6 March to 30 March, a period during which indubitably Naumann commanded the area under consideration. This report shows, *inter alia*, that the Einsatzkommando 9 killed 273 persons made up of 85 Russians "belonging to partisan groups", 18 "because of Communistic, seditious acts, and criminal offenses" and 170 Jews. Sonderkommando 7a executed 1,657 persons, 27 of whom were partisans and former Communists, 45 were gypsies, and 1,585 were Jews. The same report shows that Einsatzkommando 8 killed 1,609 persons made up of 20 Russian Communists, 5 criminals, 33 gypsies, and 1,551 Jews.

Defense counsel meets this report with the argument that the report was not "derived from the actual observation of the author of the document". This indeed is equivocation. The operational report was made up from accounts sent in by Einsatzgruppe B, accounts controlled by Naumann himself. In his affidavit of 27 June 1947, Naumann declared—

"The Einsatzgruppe B reported regularly on the events within its scope to the Reich Main Security Office. Written reports were sent to Berlin every three weeks and only small matters such as changes of location, transfers, and the like were transmitted by radio. The reports were prepared by my staff and submitted to me as a matter of routine."

After his attack on the reliability of the report defense counsel states—

“It is in no way intended to disclaim the assertion that executions were carried out by the Einsatz and Sonderkommandos subordinate to the Einsatzgruppe while Naumann was Chief of Einsatzgruppe ‘B.’”

But he states that perhaps the report erred because the number of executions appeared “much too high”. In other words, Dr. Gawlik claims that the numbers are incredible. To say that these figures are incredible is an entirely credible and sane observation. This whole case is incredible. This is a case where the incredible has become the norm. It is not necessary to look at the reports to be shocked with incredulity. Many of the defendants themselves made statements on the incredulous things which they did.

Naumann asserts that he did not transmit the Fuehrer Order but that it was in effect when he arrived. From this he seems to argue an absence of guilt. But Naumann had the power of command.

“The law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power and appropriate to the circumstances to control those under his command for the prevention of acts which are violations of the law of war.” (*Judgment, Military Tribunal I, Case No. I, the United States of America against Karl Brandt, et al., page 70.*) [See Vol. II.]

Naumann met from time to time with his Kommando leaders. He knew that they were giving full effect to the Fuehrer Order. He knew that executions were taking place and even stated that if any of his subordinates had refused to carry out the order, he would have taken disciplinary action against them.

Then it is to be noted from Naumann’s own testimony that he knew of the liquidation order even before he took command of the Einsatzgruppe. He testified—

“* * * I was ordered to Heydrich and I received clear orders from him for Russia. Now, first of all, I received the Fuehrer Order concerning the killing of Jews, gypsies, and Soviet officials * * *”

The Tribunal finds as a fact from all the evidence in the case that Naumann was aware of the Fuehrer Order and that he carried it into effect. The only defense left him is that of the so-called superior orders. Did he agree with the order or not? If he did not and thus was compelled by chain of command and fear of drastic consequences to kill innocent human beings, the avenue of mitigation is open for consideration. If, however, he agreed with the order, he may not, as already demonstrated in the general

opinion, plead superior orders. The answer to this question can be found in his own testimony.

On 17 October 1947, he was asked on the witness stand if he saw anything morally wrong about the Fuehrer Order, and he replied in the negative. He was asked again the same question, and he replied specifically—

“I considered the decree to be right because it was part of our aim of the war and, therefore, it was necessary.”

So that there should be no doubt about his position, the Tribunal inquired if Naumann intended by his answer to say that he “saw nothing wrong with the order, even though it did involve the killing of defenseless human beings”, and he replied “yes”.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal finds also that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

ERWIN SCHULZ

SS Brigadier General Erwin Schulz entered the army in 1918. After the First World War, he successively studied law at the University of Berlin, was employed on the staff of the Dresden Bank and joined the security police. In 1940 he became commissioner inspector of the security police and SD. He was serving as Commandant of the Fuehrerschule of the Security Police in Berlin-Charlottenburg when he was assigned to the command of Einsatzkommando 5 which formed part of Einsatzgruppe C. He left Pretzsch with his Kommando on 23 June 1941 and arrived in Lemberg [Lvov] in the early part of July. Here he was told that, prior to the evacuation of Lemberg [Lvov] by the Russians, 5,000 of the inhabitants had been murdered, and reprisals were in order, 2,500 to 3,000 people were arrested and within several days executions began. Schulz's Kommando was ordered to participate in the executions and, under his direction, shot from 90 to 100 people.

Schulz states that each executee who fell under the rifles of his Kommando had been thoroughly investigated and found guilty of participation in the massacre which preceded his arrival. He stated further that after the execution, he observed that Wehrmacht members were abusing the other 2,000 detainees being held in a stadium, and that he opened the gate and allowed these detainees to escape.

These Lemberg [Lvov] shootings, despite the defendant's explanation, still remain unexplained. Schulz states that 5,000 Ukrainians and Poles had been massacred by the Russians and

that then the invading forces, which had already executed hundreds of thousands of Poles, took reprisals against the Jews for the murder of Poles. If the operation was a "reprisal" one, as the report states, the Einsatz leaders would not have conducted investigations. If those executed were actually guilty of murder then the measure was not a reprisal but an orderly juridical procedure. Defense counsel argues that Einsatzkommando 5 really had nothing to do with this affair—

"* * * it was only to fire the shot, without having been consulted in any manner in the clarifying of the incidents which preceded the shootings."

That should have been all the more reason why Schulz should not have proceeded with the execution. Schulz testified that German soldiers had also been murdered in the Lemberg [Lvov] affair, but he could not state how many. Hitler had ordered a reprisal measure and that seemed to suffice. The defendant admitted that he conducted the execution of those allotted to him without any report of their guilt. He was not even furnished with a list of the executees.

Following the Lemberg [Lvov] affair Einsatzkommando 5 marched on to Dubno and was successively at Zhitomir and Berdichev. On 10 August while at Zhitomir, Schulz was instructed by the Einsatzgruppen leader that Jewish women and children, as well as men, were to be executed. Schultz states that, in moral rebellion against the order, he left for Berlin on 24 August, arriving there 27 August. He spoke with Streckenbach and asked to be relieved from his post, and he was assured that this would be done. He returned to the Kommando on 15 September and turned over the unit to his successor on 25 September.

Whether Schulz was actually relieved because of his protestations against the execution order cannot be conclusively known, since the other participants in that discussion, assuming that it took place, are not available. It is true that he did give up his Kommando in the latter part of September 1941. Whether this excluded him from responsibility for executions, however, remains to be seen.

Report No. 88 states that "between 24 August and 30 August, Einsatzkommando 5 carried through 157 executions by shooting comprising Jews, officials, and saboteurs." Schulz used his trip to Berlin which embraces the six days indicated in the report, as an alibi for this shooting. But if the operation was planned before he left, his absence would not exonerate him. The man who places a bomb, lights the fuse, and rapidly takes himself to other regions is certainly absent when the explosion occurs, but his responsibility is no less because of that prudent nonpresence.

The fact that Schulz still regarded himself as commander of Einsatzkommando 5, even though he knew he intended to be absent while on the trip to Berlin, is established by the fact that on the actual date of his departure, 24 August, he ordered the Kommando to move on from Berdichev to Skvira, 100 kilometers east of Berdichev, which removal actually took place on 26 August. Schulz' explanation for this removal is a laudable one, if true. He says that he wanted to avoid that his Kommando should come in contact with Higher SS and Police Leader Jeckeln who was set on execution of all Jews, including women and children. In any event, the fact remains that Schulz retained control of the Kommando until the actual arrival of his successor in the latter part of September.

Schulz has denied knowledge of the Fuehrer Order as such, but admitted that before leaving for Russia, he heard Heydrich's speech in which Heydrich said—

"That every one should be sure to understand that, in this fight, Jews would definitely take their part and that, in this fight, everything was set at stake, and the one side which gave in would be the one to be overcome. For that reason, all measures had to be taken against the Jews in particular. The experience in Poland had shown this."

The expression "all measures" certainly put Schulz on notice as to what was expected of the Einsatz units.

The prosecution has endeavored to charge Schulz with responsibility for the executions described in Report Nos. 132 and 135. The former is dated 12 November and the latter 19 November, so that if one allowed even the maximum of five weeks' delay in publication of the reports, these executions would still fall subsequent to the date Schultz admittedly left Russia.

However, Report No. 47, dated 9 August 1941 which describes the shooting of 400 Jews (mostly saboteurs and political functionaries) would be within the time Schultz was on duty in Russia. This report makes the further statement, "Einsatzkommando 5 shot an additional 74 Jews up to this date."

Report No. 94 definitely chronicling a period when Schulz was in command, even though absent on the Berlin trip, says, "Einsatzkommando 5 for the period between 31 August and 6 September 1941 reports the liquidation of 90 political officials, 72 saboteurs and looters, and 161 Jews."

It has been insisted on behalf of Schulz that such Jews as were executed by his Kommando were only those who had committed offenses entitling them to be shot and in this connection Dr. Durchholz said that the "perpetrators, who were Jews, were designated only as 'Jews' in the reports of the Einsatzgruppe, upon orders

from superior offices, that they were not to be listed as 'saboteurs, plunderers, etc.'”.

The only authority for this statement is the defendant Sandberger whose handling of the truth was as careless as his review of the evidence in capital cases in Esthonia. The Tribunal now declares that the record is absolutely bare of credible evidence that those listed in the column headed "Jews" fell into any category than those who were shot merely because they were Jews. The whole documentation in the case is directly to the contrary.

Dr. Durchholz claims of his client a liberal attitude towards the Jews, but he adds—

“It goes without saying that he wanted to reduce again the tremendous influence of Jewry in his Fatherland to normal proportions.”

It was just this spirit of reduction to what the Nazis called "normal proportions" which brought about the excesses in Germany leading to disfranchisement, appropriation of property, concentration camp confinement, and worse.

In his final plea, Dr. Durchholz devoted some 20 pages to Schulz' activities prior to his Russian venture. He says here that Schulz was a competent police officer, that he was considerate and polite and was regarded as an "exemplary, modest, plain person who looked after his officials like a father". That the defendant is a person of innate courtesy has been evidenced in the courtroom, but the issue in this case is whether he lived up to international law.

In this regard the Tribunal is forced to the conclusion that Schulz did not respond to the obligations imposed upon him not only by the international law but the concept of law itself, of which, as a long police official, he could not be ignorant. In spite of this, however, it can be said in his behalf that, confronted with an intolerable situation, he did attempt to do something about it.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and Gestapo under the conditions defined by the judgment of the International Military Tribunal, and is, therefore, guilty under count three of the indictment.

FRANZ SIX

Franz Six studied at the Realschule, graduated from the classical high school at Mannheim in 1930 and then matriculated at the University of Heidelberg where he specialized in sociology and political science, receiving the degree of doctor of philosophy in

1934. He then taught at the University of Königsberg (where he also took up the position of press director of the German Students' Association). In 1936 he received the high academic degree of Dr. phil. habil. from the University of Heidelberg, and became Dozent in the faculty of law and political science at Königsberg; later, he passed examinations for the *venia legendi* at the University of Leipzig. By 1938, he was Professor at the University of Königsberg, and by 1939, he had obtained the chair for Foreign Political Science at the University of Berlin and was its first dean of the faculty for foreign countries.

It is to be supposed that with this formidable array of scholastic achievements, duly enumerated by the defendant himself, the youth who came to him for guidance and instruction could expect in him a comparable degree of achievement in moral honesty. Unfortunately, this may not have been true, and therein is a tragedy of its own. A school teacher is bound in conscience to hold himself impeccable in deportment because of the example he constantly presents the future citizens of the state. The example afforded by Six left something to be desired. Reference will be made to the defendant's own words on the witness stand in support of this observation.

In the early part of his testimony, on 29 October 1947, Six related to the Tribunal the tale of his student days at the University of Heidelberg. He said—

"I carried on my studies at Heidelberg for four years on an average of twenty marks a month. I needed eleven marks to live in an attic, and that left me nine marks to live on. Nine marks; that meant thirty pfennigs a day, at ten pfennigs for four rolls in the evening, and ten pfennigs for cigarettes, and this I lived through—for four years in the midst of Heidelberg Student Romanticism, where the main problems were welfare and donation and then I asked myself whether society was still healthy, if it finds so much complacency, and how it can reconcile this complacency with so much distress."

Then on his own words he solved the enigma, "The answer which I gave myself was joining the Nazi Party."

The fact of the matter was, however, as his own personnel record showed, he had become a Nazi in 1930, that is, even before he matriculated at the University of Heidelberg, so that whatever advantages, benefits, and comforts derived from National Socialism were already due to him at Heidelberg. Thus, by failing to tap the munificent resources which Nazism offered, while already a full-fledged Nazi, Six suffered needlessly during those four sad years at Heidelberg.

There is another illustration. Six declared he had no animosity

toward Jews and advanced his respect for two certain Jewish university professors as proof of this assertion. He was then asked whether it disturbed him that these two Jews, because of their race, were persecuted. He replied that he regarded it as "highly unpleasant" that these people should have been "affected by the new laws and regulations". Whereupon the inquiry was made as to whether he was offended by the persecution of thousands and millions of the brothers and sisters of those two professors. He answered, "What do you mean by persecution? When did the persecution begin"? When this was explained to him he conceded that the burning down of the Jewish synagogues on 9 November 1938 was a "shame and a scandal". Counsel for the prosecution now inquired if he regarded the Fuehrer Order, which called for the physical extermination of all Jews, as a "shame and a scandal". Here he saw a difference. The synagogues had been burned down without an order and therefore the destruction was a "shame and a scandal". The Fuehrer Order, however, to destroy human beings, issued from the Chief of State and consequently could not be a shame and a scandal. He later conceded that the execution of women and children was deplorable, but the killing of male Jews was proper because they were potential bearers of arms.

A great German scholar, Wilhelm von Humboldt, who founded the University of Berlin at which Six was professor and dean, had, as far back as 1809, defined "the limits beyond which the activities of the state must not go." Obviously, Six did not agree with the doctrine that there could be a limit to the activities of the state. The name of Adolf Hitler apparently threw a shade over the light of his learning, and thus, for him there was nothing wrong, even mass killings, so long as the order therefor originated with the Fuehrer.

Six became a member of the SA in 1932 and of the SS and SD in 1935. In this last named organization he attained the grade of brigadier general. On 20 June 1941 he was appointed Chief of the Vorkommando Moscow. According to the defendant, the task of this Kommando was to secure the archives and files of Russian documents in Moscow when the German troops should arrive there. The defendant arrived in Smolensk on 25 July 1941 and remained there until the latter part of August when he returned to Berlin.

It is the contention of the prosecution that the defendant's duties were not as innocuous as made out by him. The prosecution submits that the Vorkommando Moscow was used in liquidating operations while under the command of Six. Further, that the seizing of documents in Russia was done not for economic and cultural purposes, but with the object of obtaining list of Com-

munist functionaries who had themselves become candidates for liquidation.

In support of its position, the prosecution introduced Report No. 73 dated 4 September 1941, which carries on its final page the heading "Statistics of the Liquidation", and then enumerates various units of Einsatzgruppe B with the executions performed by each.

"The total figures of persons liquidated by the Einsatzgruppe as per 20 August 1941 were—

1. Stab and Vorkommando 'Moskau'	144
2. Vorkommando 7a	996
3. Vorkommando 7b	886
4. Einsatzkommando 8	6,842
5. Einsatzkommando 9	8,096

Total16,964"

The same report carries the item—

"The Vorkommando 'Moskau' was forced to execute another 46 persons, among them 38 intellectual Jews who had tried to create unrest and discontent in the newly established Ghetto of Smolensk."

Defense counsel argues that the date of this report shows that Vorkommando Moscow could not have performed the executions mentioned therein. His argument is as follows: Assuming that the executions occurred 20 August, two days must have elapsed before the report left Smolensk. Allowing then two or three days more for evaluation of the events, the report, according to Dr. Ulmer, could only have left Smolensk on 25 or 26 August. A few days were added for the transmission to Berlin and there, on 4 September 1941, it appeared as Operation Report No. 73, Dr. Ulmer then says—

"The report can therefore—and that is essential—only have been drawn up on 25 August 1941 at the earliest, i. e., on the sixth day after the defendant had left Smolensk."

But his argument is in direct conflict with the logic of chronology. No one questioned the correctness of the date of 4 September when the report was published in Berlin. Therefore, the longer the time required for the submission of the report to Berlin, the further back must be the happening of the events narrated therein, and thus the further back into the period when Six was incontrovertibly in Smolensk. The usual argument presented in matters of this kind has been that the delay between the event and the eventual publishing of the report was a longer one rather than a shorter one. In this case the date in the document itself indicates a delay of only 14 days. If Dr. Ulmer argues that the lapse of time

was longer than 14 days, then the events in question occurred prior to 20 August when no one questions that Dr. Six was present in Smolensk.

The defendant denies having anything to do with Einsatzgruppe B, and specifically states that he never made any reports to Einsatzgruppe B. Report No. 34 declares, under the heading of Einsatzgruppe B—

“Smolensk, according to the report by Standartenfuehrer Dr. Six, is as thoroughly destroyed as Minsk * * *. It was therefore not possible to have the entire Vorkommando follow to Smolensk.”

Report No. 11, dated 23 July 1941 listed Vorkommando Moscow as one of the units of Einsatzgruppe B. Furthermore, Six admitted having supplied Einsatzgruppe B with some of his interpreters.

The defendant has described himself as a “pure” scientist. His duties were so scientific that in April 1944 he made a speech in Krummhuebel at a session of consultants on the Jewish question in which he was reported as follows:

“Ambassador Six speaks then about the political structures of world Jewry. The physical elimination of Eastern Jewry would deprive Jewry of its biological reserves * * *. The Jewish question must be solved not only in Germany but also internationally.”

At this same session—

“Embassy counsellor *v. Thadden* speaks about the Jewish political situation in Europe and about the state of the anti-Jewish executive measures * * *. (As the details of the state of the executive measures in the various countries, reputed by the consultant, are to be kept secret, it has been decided not to enter them in the protocol.)”

Six admitted having been present and having addressed the meeting but denied making the remarks attributed to him.

Six claimed that office VII of the RSHA, over which he was chief, had no special section devoted to the Jewish situation, but it developed that the organizational chart of the RSHA very clearly described section VII-B-1 as dealing with Free Masonry and Jewry.

Six declared that he opened and protected the churches of Smolensk so that the population could worship, and then later stated that he protected these churches mainly for the reason that “there were archives there and valuable treasures.”

When asked by prosecution counsel if he had been promoted because of exceptional service with the Einsatzgruppe, he denied that his promotion had anything to do with special merit, but the letter from Himmler specifically stated—

"I hereby promote you, effective 9 November 1941 to SS Oberfuehrer for *outstanding service in Einsatz*. [Emphasis supplied.]

[Signed] H. HIMMLER."

When asked about his succeeding promotion he said further that it was "quite unimaginable" that "special merits in the past should be mentioned" in the "promotion". Whereupon the prosecution introduced the following document:

"Memorandum: The Reich Security Main Office requests the promotion of SS Oberfuehrer Dr. Six to Brigadefuehrer, effective 31 January 1945 * * * SIPO Einsatz; 22 June 1941-28 August 1941, East Einsatz * * *. On 9 November 1941, Six was promoted by the RF-SS to SS Oberfuehrer for outstanding service in Security Police Einsatz in the East."

Six testified that he tried to be discharged from the SD and the SS prior to 1939, but it is incongruous to say the least that one who joins the Nazi Party voluntarily because he believes it to be the salvation of Germany, joins the SA voluntarily, becomes a brigadier general in the SS, and joins the SD voluntarily, should seek to leave it when Germany was riding the crest of the high wave running toward ever continuing and ever more glorious victories and triumphs.

Despite the finding that Vorkommando Moscow formed part of Einsatzgruppe B and despite the finding that Six was aware of the criminal purposes of Einsatzgruppe B, the Tribunal cannot conclude with scientific certitude that Six took an active part in the murder program of that organization. It is evident, however, that Six formed part of an organization engaged in atrocities, offenses, and inhumane acts against civilian populations. The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined in the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

PAUL BLOBEL

It was the contention of the prosecution that SS Colonel Paul Blobel commanded Sonderkommando 4a from June 1941 to January 1942, and in that capacity is responsible for the killing of 60,000 people. Defense counsel in his final plea, argued that the maximum number of persons executed by Sonderkommando 4a cannot have exceeded 10,000 to 15,000 which in itself, it must be admitted, would anywhere be regarded as a massacre of some

proportions, except in the annals of the Einsatzgruppen.

Defense counsel maintains that the reports which chronicled the 60,000 killings are subject to error. He points out first that the reports are not under oath. This overlooks the fundamental fact that the reports are strictly military documents and that every soldier who collects, transmits, and receives reports is under oath. He then states that the reports were compiled and issued by an office unfamiliar with the subject covered in the reports. But this is to say that a military headquarters is stranger to its own organization. But the crowning objection to the reliability of the reports is the conjecture that possibly headquarters did not have a map with which to check the locations!

Then, if the reports are assumed to be correct, it is argued that the defendant was under the jurisdiction of the army, coming directly under the orders of Field Marshal von Reichenau of AOK 6 [Sixth Army]. The Tribunal has already spoken on the defense of superior orders. But Blobel asserts that the persons executed by his Kommando were investigated and tried, and that Field Marshal von Reichenau had reviewed every case. There is nothing in Blobel's record which would suggest that his bare statement would be sufficient to authenticate a proposition which, on its face, is unbelievable. It is enough to refer to the massacre at Kiev where 33,771 Jews were executed in two days immediately after an alleged incendiary fire, to disprove Blobel's utterance in this regard. Incidentally Blobel, whose Kommando took an active part in this mass killing, said that the number reported was too high. "In my opinion", he states, "not more than half of the mentioned figure was shot."

The defendant stated further that all his shootings were done in accordance with international law. He testified—

"Executions of agents, partisans, saboteurs, *suspicious* people, indulging in espionage and sabotage, and those who were of a *detrimental* effect to the German army were, in my opinion, completely in accordance with the Hague Convention." [Emphasis supplied.]

It is to be noted that Blobel's ideas of international law are somewhat primitive if he is of the opinion that he may execute people merely because he thinks they are *suspicious*.

Sixteen separate reports directly implicate Blobel's Kommando in mass murder, many of them referring to him by name. Report No. 143 declares that, as of 9 November 1941, Sonderkommando 4a had executed 37,243 persons. Report No. 132, dated 12 November 1941, tells of the execution of Jews and prisoners of war by Blobel's Sonderkommando. That report closes on the note, "The number of executions carried out by Sonderkommando 4a mean-

while increased to 55,432." Report No. 156 declares that, as of 30 November 1941, Sonderkommando 4a had shot 59,018 persons.

In his final plea for the defendant, defense counsel offers the explanation why Blobel became involved in the business just related. He said that in 1924 Blobel began the practice of his profession, that of a free lance architect. By untiring efforts he became successful, and at last he realized his dream of owning his own home. Then came the economic crisis of 1928-29. "The solid existence for which he had fought and worked untiringly was smashed by the general economic collapse." He could get no new orders, his savings disappeared, he could not pay the mortgage on his house, which he had previously stated he owned. Paul Blobel was, as his counsel tells us, "down to his last shirt". The defendant was seized by the force of the quarrels between major political parties, and his counsel sums it up—

"This situation alone makes the subsequent behavior of the defendant Blobel comprehensible."

But this hardly explains to law and humanity why a general economic depression which affected the whole world justified the defendant's going into Russia to slay tens of thousands of human beings and then blowing up their bodies with dynamite.

The defendant joined the SA, SS, and NSDAP, not, he explains, because he believed in the ideology of National Socialism, but to improve his economic condition. In 1935 he received an order as architect to furnish the office of the SS in Duesseldorf. Despite the miraculous prosperity promised by National Socialism, the defendant in 1935 still found himself in distress and so he thus decided to take up Nazi work seriously and become clothed again. He would give his entire time to National Socialism.

He was now working for the SD collecting news from all spheres of life in ascertaining public opinion. Defense counsel states that Blobel tried to withdraw from the SD prior to the outbreak of World War II, but later contradicts this with the statement that "up to 1939 there was no reason for him to withdraw from his activities with the SD and to turn his back upon this organization."

In June 1941, Blobel was called from Duesseldorf to Berlin, took charge of Sonderkommando 4a and marched into Russia. In one operation his Kommando killed so many people that it could collect 137 trucks full of clothes. Blobel's attitude on murder in general was well exemplified by his reaction to the question as to whether he believed that the killing of 1,160 Jews in the retaliation for the killing of 10 German soldiers was justified. His words follow:

"116 Jews for one German? I don't know. I am not a militarist, you see. One can only judge it from a sort of public senti-

ment and from one's own human ideas. If they are enemies and if they are equal enemies the question would have to be discussed whether one to 116 is a justified ratio of retaliation."

The defendant Blobel, like every other defendant, has been given every opportunity to defend himself against the serious charges advanced by the prosecution.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALTER BLUME

SS Colonel Blume obtained his Doctor's Degree in Law at the University of Erlangen. He later served with the Prussian Secret State Police. In May 1941 he was called to Dueben where he was given command of Sonderkommando 7a and instructions on the task of exterminating Jews. This unit formed part of Einsatzgruppe B which in the execution of the Fuehrer Order killed Jews, Communists and alleged asocials in no inconsiderable numbers. Blume states that he left his Kommando on 15 or 17 August 1941. The defendant Steimle stated that Blume remained with the Kommando until September 1941.

Report No. 73, dated 4 September 1941, credited Vorkommando 7a with 996 killings as of 20 August. Even if Blume's assertion as to the date of his leaving the assignment were correct, that would only mean that he cannot be charged with that proportion of the 996 murders which occurred during the last 3 or 5 days of this period; and even this only under the additional assumption that prior to his departure he had not given orders which were executed within those 3 or 5 days.

Report No. 11, dated 3 July 1941, states that Blume's Kommando liquidated "officials of the Komsomol (Communist organization) and Jewish officials of the Communist Party."

Report No. 34, dated 26 July 1941, speaks of the incident already described in the general opinion—the killing of the 27 Jews who, not having reported for work, were shot down in the streets. This happened in the territory under Blume's jurisdiction.

Blume admits having witnessed and conducted executions. He states that he was opposed to the Fuehrer Order and that he made every effort to avoid putting it into effect. But the facts do not support this assertion. From time to time during this trial, various defendants have stated that certain reports were incorrect, that

the figures were exaggerated, even falsified. Yet, when Blume was asked why, since he was so morally opposed to the Fuehrer Order, he did not avoid compliance with the order by reporting that he had killed Jews, even though he had not, he replied that he did not consider it worthy of himself to lie.

Thus, his sense of honor as to statistical correctness surpassed his revulsion about cold bloodedly shooting down innocent people. In spite of this reasoning on the witness stand, he submitted an affidavit in which it appears he did not have scruples against lying when stationed in Athens, Greece. In this affidavit he states that the Kriminalkommissar [Criminal police commissioner] ordered him to shoot English commando troops engaged in Greek partisan activity. Since Blume was inwardly opposed to the Commissar Decree as he pointed out, he suggested to his superior that the order to kill these Englishmen could be circumvented by omitting from the report the fact that the Englishmen were carrying civilian clothes with them.

Although Blume insisted at the trial that the Fuehrer Order filled him with revulsion, yet he announced to the firing squad after each shooting of ten victims—

“As such, it is no job for German men and soldiers to shoot defenseless people, but the Fuehrer has ordered these shootings because he is convinced that these men otherwise would shoot at us as partisans or would shoot at our comrades, and our women and children were also to be protected if we undertake these executions. This we would have to remember when we carried out this order.”

It is to be noted here that Blume does not say that the victims had committed any crime or had shot at anybody, but that the Fuehrer had said that he, the Fuehrer, was convinced that these people “would shoot” at them, their women and children, 2,000 miles away. In other words, the victims were to be killed because of the possibility that they might at some time be of some danger to the Fuehrer and the executioners. Blume says that he made this speech to ease the feelings of the men, but in effect he was convincing them that it was entirely proper to kill innocent and defenseless human beings. If he was not in accord with the order, he at least could have refrained from propagandizing his men on its justness and reasonableness, and exhortation which could well have persuaded them into a zestful performance of other executions which might otherwise have been avoided or less completely fulfilled.

Blume's claims about revulsion to the Fuehrer Order are not borne out by his statement—

“I was also fully convinced and am so even now, that Jewry in

Soviet Russia played an important part, and still does play an important part, and it has the especial support of Bolshevistic dictatorship, and still is."

While tarrying in the town of Vilnyus with his Kommando, Blume instructed the local commander to arrest all Jews and confine them to a ghetto. Since the local commander of Vilnyus was not Blume's subordinate, Blume was not called upon to issue the order for the incarceration of the Jews which only brought them one step closer to execution under the Fuehrer Order. Blume's explanation that he hoped the Fuehrer Order might be recalled is scarcely adequate. He could have done nothing. Duty did not require him to incarcerate these Jews.

When the defendant stated that he had ordered the execution of three men charged with having asked the farmers not to bring in the harvest, he was asked whether such an execution was not contrary to the rules of war.

"Q. Are you familiar with the rules of war?

"A. In this case I acted by carrying out the Fuehrer Order which decreed that saboteurs and functionaries were to be shot.

"Q. Did you regard a person who told a farmer not to assist the Nazi invaders as a saboteur, because he refused to help the Nazis and that was worthy of the death sentence which you invoked?

"A. Yes.

"Q. Are you familiar with the rules of war?

"A. I already stated that for me the directive was the Fuehrer Order. That was my war law."

The defendant stated several times that he was aware of the fact that he was shooting innocent people and admitted the shooting of 200 people by his Kommando.

Blume is a man of education. He is a graduate lawyer. He joined the NSDAP voluntarily, swore allegiance to Hitler voluntarily, and became director of a section of the Gestapo voluntarily. He states that he admired, adored, and worshipped Hitler because Hitler was successful not only in the domestic rehabilitation of Germany, as Blume interpreted it, but successful in defeating Poland, France, Belgium, Holland, Norway, Yugoslavia, Greece, Luxembourg, and other countries. To Blume these successes were evidence of great virtue in Hitler. Blume is of the notion that Adolf Hitler "had a great mission for the German people."

In spite of his declared reluctance to approve the Fuehrer Order he would not go so far as to say that this order which brought about the indiscriminate killing of men, women, and children, constituted murder and the reason for the explanation was that Hitler had issued the order and Hitler, of course, could not commit a

crime. In fact Blume's great sense of guilt today is not that he brought about the death of innocent people, but that he could not execute the Fuehrer Order to its limit.

"Q. We understood you to say that you had a bad conscience for only executing part of the order. Does that mean that you regretted that you had not obeyed entirely the Fuehrer Order?"

"A. Yes. This feeling of guilt was within me. The feeling of guilt about the fact that I as an individual, was not able, and considered it impossible, to follow a Fuehrer Order."

Dr. Lummert, Blume's lawyer, made a very able study of the law involved in this case. His arguments on necessity and superior orders have been treated in the general opinion. Dr. Lummert, in addition, has collected a formidable list of affidavits on Blume's character. They tell of Blume's honesty, good nature, kindness, tolerance, and sense of justness, and the Tribunal does not doubt that he possessed all these excellent attributes at one time. One could regret that a person of such excellent moral qualities should have fallen under the influence of Adolf Hitler. But on the other hand one can regret even more that Hitler found such a resolute person to put into execution his murderous program. For let it be said once for all that Hitler with all his cunning and unmitigated evil would have remained as innocuous as a rambling crank if he did not have the Blumes, the Blobels, the Braunes, and the Bibersteins to do his bidding—to mention only the B's.

The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS, SD and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

MARTIN SANDBERGER

SS Colonel Martin Sandberger studied jurisprudence at the Universities of Munich, Freiburg, Cologne, and Tuebingen. He worked as an assistant judge in the Inner Administration of Wuerttemberg and became a government councillor in 1937. In October 1939 he was chief of the Immigration Center and in June 1941 was appointed chief of Sonderkommando 1a of Einsatzgruppe A. He left for Esthonia on the 23d day of that month. On 3 December 1941 he became commander of the Security Police and SD for Esthonia. He returned to Germany in September 1943. During this long period of 26 months he had ample opportunity to be involved in the execution of the Fuehrer Order which he originally heard in Pretzsch and which was fully discussed again in Berlin before he left for the East.

Despite the defendant's protestations from the witness stand, it is evident from the documentary evidence and his own testimony, that he went along willingly with the execution of the Fuehrer Order. Hardly had his Kommando reached its first stopping place, before it began its criminal work. Operational Report No. 15 reads—

“Group leader entered Riga with Einsatzkommando 1a and 2.”

It then describes the destruction of synagogues, the liquidation of 400 Jews, and the setting up of groups for the purpose of fomenting pogroms. Sandberger seeks to deny responsibility for the executions, although it has been demonstrated that not only he was in Riga at the time they occurred, but he actually had a conversation about them with the Einsatzgruppe Chief Stahlecker before he left Riga.

This same report shows that a Teilkommando of Sandberger's unit, Einsatzkommando 1a, was assigned to an operation in Tartu, and it is interesting to note that a subsequent report (No. 88, dated 19 September 1941) tells of an execution in Tartu of 405 persons of whom 50 were Jews. This report closes with the significant statement—

“There are no more Jews in prison.”

A report dated 15 October 1941 on executions in Ostland included one item under Esthonia of 474 Jews and 684 Communists. The defendant also denies responsibility for these killings, placing the credit or blame for them on the German field police and Esthonian home guard. It is a fact, however, that the Esthonian home guard was under Sandberger's jurisdiction and control for special operations, as evidenced by the same report.

“The arrest of all male Jews of over 16 years of age has been nearly finished. With the exception of the doctors and the elders of the Jews who were appointed by the special Kommandos, *they were executed by the self-protection units under the control of the special detachment 1a.* Jewesses in Parnu and Tallin of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor.

“At present a camp is being constructed in Harku in which all Esthonian Jews are to be assembled, so that Esthonia will be free of Jews in a short while.” [Emphasis supplied]
Report No. 17, dated 9 July 1941 carried the item—

“With the exception of one, all leading communist officials in Esthonia have now been seized and rendered harmless. The sum total of communists seized runs to about 14,500. Of these about 1,000 were shot and 5,377 put into concentration camps. 3,785 less guilty supporters were released.”

The defendant again admitted that his sub-Kommando leader participated but argued responsibility for only a fraction of the mentioned figure. He placed this "fraction" at 300 to 350 persons. In further attempted exculpation from responsibility for the numerous killings which admittedly occurred in the territory under his jurisdiction, Sandberger announced in court a system of investigation, appeal, review, and re-review which involved eleven different people, one of whom was himself. The real difficulty about Sandberger's explanation is that it lacks not only support, documentary or otherwise, but it lacks credibility in itself. Sandberger's story would argue that these involved and elaborate pains were taken under the Nazi aegis to protect the lives of the very people, the supreme order under which they were operating had doomed to summary extermination.

Sandberger leaves no doubt about the fact of his responsibility for at least 350 deaths in this instance—

"Q. The sum total of Communists seized runs to about 14,500; do you see that?

"A. Yes, 14,500, yes.

"Q. That means 1,000 were shot?

"A. Yes, I get that from the document.

"Q. You know it. Did you know of it? Do you remember it?

"A. The report must have been submitted to me.

"Q. Then at one time, at least, you knew of it?

"A. Yes.

"Q. Were you in Esthonia then?

"A. Yes, but they were not shot on my own responsibility. I am only responsible for 350.

"Q. You are responsible for 350?

"A. That is my estimate."

On 10 September 1941, Sandberger promulgated a general order for the internment of Jews which resulted in the internment of 450 Jews in a concentration camp at Pskov. He states he did this to protect the Jews, hoping that during the internment the Fuehrer Order might be revoked or its rigorous provisions modified. The Jews were later executed. Sandberger claims that the execution took place without his knowledge and during his absence, but his own testimony convicts him.

"Q. You collected these men in the camps?

"A. Yes. I gave the order.

"Q. You knew that at some future time they could expect nothing but death?

"A. I was hoping that Hitler would withdraw the order or change it.

"Q. You knew that the probability, bordering on certainty, was that they would be shot after being collected?

"A. I knew that there was this possibility, yes.

"Q. In fact, almost a certainty, isn't that right?

"A. It was probable."

Later on in his testimony his responsibility for these deaths which, of course, constituted murder, was even more definitely admitted.

"Q. You collected these Jews, according to the basic order, didn't you, the Hitler Order?

"A. Yes.

"Q. And then they were shot; they were shot; isn't that right?

"A. Yes.

"Q. By members of your command?

"A. From Esthonian men who were subordinated to my Sonderkommando leaders; *that is also myself then.*

"Q. Then, in fact, they were shot by members under your command?

"A. Yes.

* * * * *

"Q. Then, as a result of the Fuehrer Order, these Jews were shot?

"A. Yes." [Emphasis supplied]

Sandberger's temporary absence, on the date of the execution, of course, in no way affects his criminal responsibility for the deed.

Although Sandberger devoted a great deal of his time on the witness stand to denial, the one admission he did make was that executive measures in Esthonia were taken under his supervision. He stated that he objected to the Fuehrer Order—

"I objected to the decree so strongly that at first I did not think it was possible that such an order was at all thinkable * * *. I could not imagine that I myself would be able to do this and, on the other hand, I believed I could not ask my men to do something which I could not do myself."

Yet he testified that he regarded the order as legal, that Hitler was the highest legislative authority, and, although the Fuehrer Order offended his moral sense, it had to be obeyed. His moral sense apparently did not always prevail for the defendant betrayed himself into a note of justification of the Fuehrer Order when he testified—

"* * * when we saw in this Baltic area to what a large extent the forces then in power there had deviated in the preceding years from the basic principles of law, we were doubtlessly influenced in the sense that any possible misgivings about

the legality which one still might have had were removed by this."

That Sandberger willingly and enthusiastically went along with the Fuehrer Order and other Nazi dictates is evidenced by the eulogistic remarks which appeared in the recommendation for his promotion.

"* * * He is distinguished by his great industry and better than average intensity in his work. From the professional point of view, S. has proved himself in the Reich as well as in his assignment *in the East*. S. is a versatile SS Fuehrer, suitable for employment.

"S. belongs to the Officers of the Leadership Service and has fulfilled the requirements of the promotion regulations up to the minimum age set by the RF-SS (36 years). Because of his political service and his efforts, which far exceed the average, the Chief of the Sipo and SD already supports his *preferential* promotion to SS Standartenfuehrer." [Emphasis supplied]

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WILLY SEIBERT

SS Colonel Willy Seibert graduated from the University of Goettingen in 1932 as a graduate economist. He served in the army from 1932 until 1935 when he entered the SD as an expert in economics. In 1939 he became chief of group III D, economics, in the RSHA and, as such, deputy to defendant Ohlendorf. He continued in this capacity until transferred to service with Einsatzgruppe D in May 1941.

The defendant Ohlendorf, in his affidavit made on 2 April 1947, declared—

"The former Standartenfuehrer Willy Seibert was my chief III. Since he was the senior officer from point of service after me, he was entrusted by me with the duties of a deputy during my absence. One of his tasks was the composition of all reports which went to the higher headquarters, to the Reich Main Security Office, Berlin, and to the 11th Army. In rare cases only, if very important reports had to be written, I dictated them myself and later informed Seibert of the contents as a routine matter. Seibert had full access to all the secret files; including those which were designated as top secret. In cases

where reports bear my signature these can just as well have been written by Seibert as by me. Reports which are signed by Seibert were, as a rule, written by him during my absence from the Einsatzgruppe. Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe D. Only two people could have had complete knowledge of the number of executions which took place, namely, Seibert and myself."

In an affidavit dated 4 February 1947, which has already been cited and quoted from, the defendant Seibert stated that the radio reports on the activities of Einsatzgruppe D were known only to Ohlendorf, Seibert, and the telegraphist. Further, that Seibert accompanied Ohlendorf on journeys of inspection.

On the witness stand both Ohlendorf and Schubert modified their original statements as to Seibert's activities with the Einsatzgruppe and endeavored to delimit his functions to those of chief of office III. This modification could well have stemmed from a desire to help a codefendant, rather than because of a mistaken statement in the first instance. One could err in the general summing up of another's activities, but it is difficult to comprehend how one in the normal possession of faculties of memory and reflection could ascribe the accomplishment of a very specific act to another if, in fact, it had not occurred. Thus, in his affidavit of 2 April 1947, Ohlendorf stated, "The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel." Here we have a very definite type of work.

Schubert, in his affidavit of 24 February 1947, very specifically declared that Willy Seibert was Ohlendorf's deputy, and that Ohlendorf *or Seibert* had assigned him to supervise and inspect an execution which involved some 700 people. Schubert could scarcely have credited Seibert with this type of executive authority, unless he was aware he possessed it. One Karl Jonas declared by affidavit that Seibert was deputy to Ohlendorf.

In his own affidavit Seibert declared that, although he was not Ohlendorf's deputy generally for Einsatzgruppe D, he did represent his chief "in all matters which a Chief III had to work out." And then he explained that "as senior officer on the staff of the Einsatzgruppe" he "took over all tasks within the group whenever Ohlendorf was absent from the group."

Although the defendant attempted to testifying to confine his activities to those falling within the normal scope of office III, he did state that he made inspections of Tartar companies, that he engaged in combat actions against partisans and that he did make reports on executions. These assignments obviously do not fall within the duties of a chief of office III, as office III was described by Seibert.

Ohlendorf testified that Standartenfuehrer Setzen had been originally appointed by Heydrich as chief of the department IV in his Einsatzgruppe. Under the plan of organization, Setzen would thus become Ohlendorf's deputy in executive functions of the Einsatzgruppe. However, Ohlendorf did not use Setzen for this purpose. He assigned him to the leadership of a sub-Kommando, and the evidence is entirely convincing that he used Seibert for functions which would otherwise have been performed by Setzen. Seibert had been Ohlendorf's deputy in office III of the RSHA since 1939. It would be quite natural for Ohlendorf to want Seibert, who had been his deputy in Berlin, to continue in a similar capacity in the field. And it is significant that they both returned at about the same time to the RSHA in Berlin and Seibert once more took up his duties as deputy to Ohlendorf in office III.

The prosecution submitted two documents in the nature of reports signed by Seibert as acting commander for Ohlendorf during the latter's absence. These reports show conclusively that Seibert was reporting upon the general activities of the Einsatzgruppen, which included executions, planning for operations, and negotiations with army officials, and in one of the documents Seibert is revealed requesting a conference with the chief of staff of the army. A report (Register No. 1118-42) dated 16 April 1942, carried the phrase "The Crimea is freed of Jews." Seibert knew the full significance of that phrase. He was questioned about it on the witness stand.

"Q. When you signed the report which contained a reference to the settlement of the Jewish problem, you were aware that the settlement of the Jewish problem meant the execution of Jews?

"A. That did not have to be the case, your Honor, because in the country Jews were not executed, or at least during the first time; they were assigned to labor, and then they were collected for such purpose and, of course, Jews were also executed.

"Q. Eventually they were executed?

"A. Yes. That is probably the case * * *.

"Q. And when you signed the report which contained the phrase, 'The Crimea is freed of Jews', you knew what had happened to the Jews?

"A. Yes. I knew that."

Seibert admitted having witnessed two executions and stated that he did not exclude the possibility that Jews were among the executees. He also knew that Jews and Communist functionaries were shot without investigation.

"Q. So you know that of your own knowledge that people were sentenced to be shot without any investigation or trial?

"A. Yes. I had to assume that from the Fuehrer Order."

Seibert admits that he passed on to the commanders of Einsatzgruppe D any orders from army headquarters which should arrive during Ohlendorf's absence.

The Tribunal finds that Seibert was in fact, if not in name, Ohlendorf's deputy in the Einsatzgruppe D. It finds further that he was thoroughly aware of the activities of Einsatzgruppe D and participated as a principal as well as an accessory in its operations which violated international law, and falls within the provisions of Control Council Law No. 10.

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two in the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

EUGEN STEIMLE

SS Colonel Steimle studied history, Germanic languages, and French at the Universities of Tuebingen and Berlin. In May 1935 he qualified as instructor of secondary schools, and in March 1936 he passed the examination as Studienassessor. In April 1936 he entered the security service and on 1 September 1936 was appointed leader of the SD Regional Headquarters in Stuttgart.

From 7 September to 10 December 1941, Steimle was chief of Sonderkommando 7a of Einsatzgruppe B. During this time his unit executed 500 people. Report No. 92. (*NO-3143, II B-53*); Report No. 108. (*NO-3156, II B-18, 21*); Report No. 125. (*NO-3403, II B-12*); and Report No. 133. (*NO-2825, II B-14-15*).

From August 1942 to January 1943, the defendant was chief of Sonderkommando 4a of Einsatzgruppe C, which unit also participated in liquidating operations.

It is the contention of the defendant that all executions ordered by him were in the nature of punitive actions falling under established offenses against the laws of war, such as sabotage, looting, and partisan activity. It is evident that this defendant, like the defendant Blobel, has a distorted view of what constitutes established offenses when he states, as he does in his pre-trial affidavit, that under his leadership his Kommando executed even "persons *suspected* of being partisans." [Emphasis supplied.]

Defense counsel in his trial brief complains that the prosecution did not submit any evidence to contest the defendant's assertion

that every execution of partisans was preceded by a thorough examination on the basis of a regular procedure. The defendant himself gave one highly illuminative demonstration on his idea of regular procedure. He was asked what he would do to a man he came upon lecturing on communism, and he replied that, after taking a look at him—

“If I was under the impression he would put his theoretical conviction into deed in that case I would have him shot.”

Another example of his idea of justice arose out of his voluntary narrative of an episode involving the shooting of three girls who, according to the defendant, *were about to form a partisan group*. He explained that the case of these three girls was investigated for eight days. Whether such an investigation actually took place or not can only depend on the credibility of the defendant himself. In this respect it must be remarked that, if his concern for the girls' civil rights rose no higher than his regard for their spiritual comfort, the victims could not have had much of a chance to defend themselves. Steimle himself commanded the firing squad, and he was asked if the girls were afforded any religious assistance before the shots were fired. He replied that, since they were Communists, they could not have had a religious conviction. Then the question was put to him as to what he would have done in the event they were religious. His reply was—

“If the wish had been uttered I can imagine that this would have been done. *I, myself, wouldn't have bothered.*” [Emphasis supplied.]

The defendant undertook to deny responsibility for various executions performed by his two units by stating that the alleged investigations were conducted by his subordinates. His admission, however, that he reviewed investigations and ordered death sentences makes him coresponsible with the persons in charge of the examinations. A superior may not delegate authority to a subordinate and then plead noninvolvement for what the subordinate does. Especially, when the superior reserves the right of supervision, as Steimle testified he did.

The Tribunal is satisfied from the evidence in the case that the defendant understood his responsibility in this regard but failed to meet it.

The Tribunal further finds that the credible evidence in the case does not support any conclusion that all Jews admittedly executed under Steimle's orders were accorded a trial and judicial process guaranteed by the rules of war and international law.

The defendant then claims that no Jews were executed by either of his sub-Kommandos while he was chief. In his pretrial affidavit he stated—

"From talk by members of the Kommando, I know that SS Standartenfuehrer Dr. Blume, my predecessor in this Kommando in White Ruthenia, carried out shooting of Jews besides fighting against partisans."

And—

"I know that my predecessors, SS Standartenfuehrer Blobel and SS Standartenfuehrer Weinmann carried out shootings of Jews and other atrocities, mainly during the march through the Ukraine."

It is incredible that, although the two Kommandos involved were engaged in the execution of Jews prior to Steimle's arrival, they should suddenly cease performing their principal function while the Fuehrer Order was still in force.

The defendant's other statement that there were no more Jews in his territory is discredited by Report No. 108.

"The Sonderkommando 7a executed a local, leading Bolshevik official and 21 *Jewish* plunderers and terrorists in Gorodnya. In Klinty 83 *Jewish* terrorists and 3 leading party officials were likewise liquidated. At a further checking up 3 Communist officials, 1 Politruk [political commissar at the front] and 82 *Jewish* terrorists were dealt with, according to orders." [Emphasis supplied.]

The defendant stated that, when he took over the command of Sonderkommando 7a, Foltis, the subcommander, informed him of the Fuehrer Order. He added that he was opposed to it and, thus, by failing to shoot Jews, he exculpated himself from any responsibility under that order. But, neither the Fuehrer Order nor the indictment in this case is limited to the extermination of Jews. The ruthless killing of members of the civilian population other than Jews is also murder. Nonetheless the Tribunal is convinced that the Einsatz units under Steimle's leadership and authority killed Jews on racial grounds and also killed Jews on supposed offenses without affording them the trial called for under the rules of war and international law. It is also clear that Steimle did not attempt to prevent Foltis, his subordinate, from killing Jews under the Fuehrer Order. The Tribunal finds from all the evidence in the case that Steimle authorized and approved of killings in violation of law and is guilty of murder.

From all the evidence in the case, the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

ERNST BIBERSTEIN

Ernst Emil Heinrich Biberstein was originally named Szymanski. This striking change in name was no more extraordinary than the change in his profession. From clergyman in the Lutheran Protestant Church in Kating, Schleswig-Holstein, he went to a chiefship in the Gestapo in Oppeln, Germany, in the meantime having renounced the church and his ecclesiastical garb. In August 1935 he entered the Reich Ministry for Church Affairs and in May 1936 was promoted to Oberregierungsrat in the State service. He served in the Wehrmacht from 10 March 1940, until 20 October 1940, when he became chief of Gestapo at Oppeln. In the meantime, he had become SS Sturmbannfuehrer and as such went to Russia as chief of Sonderkommando 6 under Einsatzgruppe C. He served in this capacity from September 1942 until June 1943.

On 25 June 1947, at Edselheide, Germany, Biberstein declared in a sworn statement that his Kommando during the time he was its chief killed from 2,000 to 3,000 people. In Nuernberg he twice repeated these figures under oath. At the trial he sought to repudiate the total, saying that the interrogator, on the three different occasions, had insisted that he name a figure and that a discrepancy of one thousand more or less did not matter. It was then put to him that allowing for a margin of one thousand he had still admitted to from one to two thousand killings. He refused, however, at the trial to name any figure.

Although he repudiated the totals, he did not attempt to deny that he had witnessed two executions, the precise details of which he had described in his three pretrial declarations. In his affidavit of 2 July 1947, he related—

“I personally superintended an execution in Rostov which was performed by means of a gas truck. The persons destined for death—after their money and valuables (sometimes the clothes also) had been taken from them—were loaded into the gas truck which held between 50 and 60 people. The truck was then driven to a place outside the town where members of my Kommando had already dug a mass grave. I have seen myself the unloading of the dead bodies, their faces were in no way distorted, death came to these people without any outward signs of spasms. There was no physician present at unloading to certify that the people were really dead.”

* * * * *

“I have also witnessed an execution carried out with firearms. The persons to be executed had to kneel down on the edge of a grave and members of my Kommando shot them in the back of the neck with an automatic pistol. The persons thus killed mostly dropped

straight into the pit. I had no special expert for these shots in the neck. No physician was present either at this form of execution."

At the trial he explained that he witnessed these executions only because the chief of the Einsatzgruppe wished him to experience the sensation of watching an execution so that he might know how he would feel about a spectacle of that kind.

"Q. You didn't know that before you witnessed the execution that you would have a feeling of revulsion against the execution. You didn't feel that before you actually witnessed the execution?"

"A. Of course not, your Honor, for before, I had never seen an execution.

"Q. So you had to see an execution in order to know that it offended against your sentiments?"

"A. Yes. I had to see what kind of an effect this would have on me."

The defendant denied having executed any Jews and in substantiation of this assertion he advanced various explanations (1) that Thomas, the Einsatzgruppe chief, was aware of his religious background and therefore wished to spare him his feelings; (2) that there were no Jews in his territory anyway; (3) that he did not know of the Fuehrer Order.

The defendant carried this third incredible proposal to the point where he declared that although he had led an Einsatzkommando in Russia for 9 months, he did not learn of the Fuehrer Order until he reached Nuernberg. In fact he states that the very first time the order ever came to his attention was when it was talked about in the courtroom and its contents shocked him considerably.

Many of the defendants in seeking to justify killings have pronounced the word "investigation" with a certain self-assurance which proclaimed that so long as they "investigated" a man before shooting him, they had fulfilled every requirement of the law and could face the world with an untroubled conscience. But an investigation can, of course, be useless unless proof of innocence of crime releases the detainee. Investigating a man and concluding he is a Jew or Communist functionary or suspected franc-tireur gives no warrant in law or in morals to shoot him. Biberstein claims that all executees of his Kommando were given a proper investigation and killed only in accordance with law. Can this statement be believed? In testing Biberstein's credibility he was questioned regarding his work as a Gestapo chief. His answers to the questions put to him shed some light on the extent to which Biberstein can be believed in his wholesale denials.

"Q. Suppose that you learned that in the town of Oppeln there was, let us say, a Hans Smith, who made a declaration to

the effect that he hoped that Germany would lose the war because it was an unjust war that she was waging, what would you do?

“A. I would have asked the man to come to me and would have told him to hold on to his own views and keep them to himself and just would have warned him.”

* * * * *

“Q. You are on your way home one evening from the office and someone comes up to you and tells you that he overheard Hans Smith inveigh against the German Army, the German Government, Hitler and the whole National Socialist regime * * * What would you do?

“A. Nobody would have done this, I don't think.

“Q. Well, let us suppose someone did. Peculiar things happen.

“A. I would have told him, ‘Don't talk about it. Keep it to yourself, keep it quite.’”

* * * * *

“Q. Well, let's go a little further. This man who stops you on your way home, says ‘by the way, I just found out that there is a plot on here to kill Hitler. I heard the men talking about this; I know the house in which they gather; I saw some bombs being taken into the house and I want you to know about this, Herr Biberstein.’ What would you do?

“A. I would have told him, ‘Go to Official So-and-So and report it to him’.

“Q. And you would have done nothing?

“A. Why what could I have done? I didn't know what to do. I had no police directives.”

In a further denial that he ordered executions Biberstein said that a pastor has the task “to help souls but never to judge”. Biberstein was no longer a pastor, professionally, spiritually, or intellectually. He had already denounced his church and his religion and when asked why he did not offer religious comfort to those who were about to be killed under his orders and in his presence, he said that he could not cast “pearls before swine”.

But despite his never swerving determination to avoid an incriminating answer, truth in an unguarded moment emerged and Biberstein confessed to murder from the witness stand. He steadfastly had maintained that every execution had been preceded by an investigation. As chief of the Kommando which conducted the executions, his was the responsibility to be certain that these investigations revealed guilt. However, if conceivably he could—although in law and in fact he could not—but even if arguendo he could be excused from responsibility for the death of those who

were executed outside his presence, he could not escape responsibility for the death of those killed before his eyes.

With regard to the two executions which he witnessed (one by gas van and the other by shooting), he testified that the first involved some 50 people and the second about 15. He was questioned as to whether investigations had been made to determine guilt or innocence of these 65 executees. He replied—

“I did not see the files of these 65 cases. I only know that men of the Kommando had received orders ever since the time of my predecessor to investigate the cases.”

The interrogation continued—

“Q. You do not know of your own knowledge that these cases were investigated? These 65 deaths?”

“A. I did not see it.

“Q. No. So, therefore, you permitted 65 people to go to their deaths without knowing yourself whether they were guilty or not?”

“A. I said that I only made spot checks.

“Q. Did you make any spot checks in these 65?”

“A. Not among these 65.

“Q. Then we come back to the conclusion that you permitted 65 people to go to their death without even a spot check?”

“A. Without having made a spot check, yes.”

It is, therefore, evident that in this instance alone Biberstein is guilty of murder in ordering the death of 65 persons and supervising their very executions without evidence of guilt.

The Tribunal finds from all the evidence in the case that Sonderkommando 6, during the time that Biberstein was its chief accomplished mass murder. It finds further that as its chief, Biberstein was responsible for these murders.

The Tribunal finds from the entire record that the defendant is guilty under counts one and two of the indictment.

It finds further that he was a member of the criminal organizations SS, SD, and Gestapo under the conditions defined by the judgment of the International Military Tribunal and, therefore, is guilty under count three of the indictment.

WERNER BRAUNE

SS Colonel Werner Braune received his law degree at the University of Jena in July 1932 and in 1933 was awarded the degree of Doctor of Juridical Science. He joined the SS in November 1934. In 1940 he became chief of the Gestapo in Wesermuende. In October 1941 he was assigned to Einsatzkommando 11b. As chief of this unit Braune knew of the Fuehrer Order and executed it to

the hilt. His defense is the general one of superior orders which avails Braune no more than it does anyone else who executes a criminal order with the zeal that Braune brought to the Fuehrer Order. Various reports implicate Braune and his Kommando in the sordid business of illegal killings.

The Tribunal has already spoken of the Christmas massacre of Simferopol. Braune was the Kommando leader in charge of this operation. He has admitted responsibility for this murder in unequivocal language.

“It took place under my responsibility. Once I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment. I personally was there several times more and I supervised * * *. Furthermore, my sub-Kommando leader Sturmbannfuhrer Schulz was always present, the company commander of the police company and, I think, another captain.”

The Fuehrer Order did not offer reasons or ask for explanations. Like a guillotine blade in its descent it did not stop to inquire into cause and premise. Nonetheless, the question was put to Braune as to why the army, which apparently had immediately ordered this execution, was so anxious that the slaughter be accomplished before Christmas. Braune enlightened the Tribunal and simultaneously horrified humanity for all time as follows:

“The Fuehrer Order was there, and now the army said ‘We want it finished before Christmas’. I wasn’t able at the time to find out all the reasons. Maybe the reasons were strategic reasons, military reasons, which caused the army to issue that order. Maybe they were territorial questions. Maybe they were questions of food. The army, at that time, was afraid that hundreds of thousands of people might have to starve to death during that winter because of the food situation * * *”

There were also executions after Christmas. Einsatz Order, dated 12 January 1942, speaks of an operation destined—

“* * * to apprehend unreliable elements (partisans, saboteurs, possibly enemy troops, parachutists in civilian clothes, Jews, leading Communists, etc.).”

Braune admitted that he took an active part in this operation. He was asked what happened to the Jews who fell into the dragnet which he had spread, and Braune replied—

“If there were any Jews, Mr. Prosecutor, they were shot, just as the other Jews.”

The question was then put if the Jews were given a trial, and the defendant replied—

“Mr. Prosecutor, I believe that it has been made adequately

clear here that under the order which has been issued there was no scope to hold trials of Jews."

Document NOKW-584, describing the executions mentioned in that document carried this significant item—

"SS Sturmbannfuehrer Dr. Braune gave orders on the place of execution for the carrying out of the shooting."

Although Braune denies that he actually gave the order to fire he does admit that he marched with the condemned men to the place of execution.

Speaking of the Yevpatoriya action the defendant explained that he was convinced that "the whole lot of them had engaged in illegal activities", but he admitted that there was the possibility, theoretically, as he described, that among these 1,184 executees—

"There were some people who had not participated in murdering the German soldiers or who had not participated in sniping activities."

The Tribunal finds from all the evidence in the case that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS, SD and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALTER HAENSCH

SS Lieutenant Colonel Walter Haensch studied law at the Leipzig University, trained as Referendar in various cities and passed his final State law examination in December 1934. He took a position with the town administration of Doebeln in February 1935 and in the fall of that year entered the SD. In the early part of 1942 Haensch was assigned to Sonderkommando 4b as its leader. It is the contention of the prosecution that his authority over this unit began on 16 January 1942. The defendant asserts on the contrary that although it is true he was ordered to this post in January, he did not arrive at the site of the Kommando until 15 March 1942.

In support of this asserted delayed inauguration of his Einsatz service, the defendant presented evidence to show that he was in Berlin on 7 February 1942 for some dental work, that on 20 February 1942 he opened up a bank account, on 21 February 1942 he posed for some pictures, and on another date attended a birthday party, all in Berlin.

A great deal of time was devoted at the trial to the presentation of evidence both for and against the alibi contended for by the defendant. The question of alibi, however, remains moot, in view

of the fact that even if the Tribunal assumed that the defendant did not arrive in Russia until 15 March 1942, the date asserted by him as the beginning of his active service with the Sonderkommando, this assumption would not exculpate him. The record proves beyond a reasonable doubt that Sonderkommando 4b, under the leadership of the defendant Haensch, was active in war crimes and crimes against humanity, even subsequent to 15 March 1942.

On 3 April 1943, Sonderkommando 4b arrested 50 hostages and killed one-half of them. The identification of Haensch's unit in this mass execution is established by the following:

(1) Report No. 188, dated 1 April 1942 shows that Sonderkommando 4b had an active unit operating in Zhitomir.

(2) Report No. 189, dated 3 April 1942 states—

“Locations and communications as reported in Situation Report 188, dated 1 April 1942, remain unchanged.”

This proves that Sonderkommando 4b was still at Zhitomir so that it was bound to be the unit responsible for the incident described in the report as follows:

“Zhitomir—50 hostages from Gayssen and vicinity were arrested in the course of the investigation and half of them were shot.”

(3) Report No. 190, dated 8 April 1942 (*NO-3359*) confirms the responsibility of Sonderkommando 4b for the events of 3 April by declaring that units of Sonderkommando 4b were still stationed at Zhitomir.

Report No. 189 above indicated, carries also another item under “Einsatzgruppe C”.

“From 28 March up to and inclusive 31 March a total of 434 persons were subjected to ‘special measures’ (executed). The figures breaks down as follows:

- 33 political officials,
- 48 saboteurs and plunderers, and
- 352 Jews and 1 insane.”

This item is quoted not as conclusively proving that Sonderkommando 4b was responsible for the 434 executions, but for the purpose of demonstrating that Einsatzgruppe C (and, therefore, its integral units, including Sonderkommando 4b) was at the time actively engaged in the carrying out of the extermination program.

Haensch was involved in still further executions following 15 March. Report No. 6, dated 5 June 1942 (*NO-5187*) shows that Sonderkommando 4b, under the leadership of Haensch, was located at Gorlovka. The same report carries this item:

“Several large-scale actions against partisans and Communists were carried out in the district of the Gorlovka in late April—early May 1942. 727 out of 1,038 persons arrested were

given special treatment. Among them there were 461 partisans, members of destruction battalions, saboteurs, looters, and some Communist activists and NKVD agents."

The conclusion is inescapable that Haensch's organization is responsible for the various executions mentioned herein.

The defendant endeavored at the trial testifyingly to absent himself from Gorlovka at the time of the executions, but his evidence in this respect was vacillating and entirely inconclusive. He admitted that officials under his command participated in the action. Whether he personally was present in the actual physical arresting and shooting of the victims is of no consequence legally. A high ranking officer who plans an operation or participates in the planning and has control over officers taking part in the movement certainly cannot escape responsibility for the action by absenting himself the day of execution of the plan. Haensch was not only responsible for the Sonderkommando during the operation, but he admits having been informed on the results thereof.

It is urged by defense counsel in behalf of Haensch that—

"In addition, nothing happened during the course of these operations which could be regarded as a crime. The containing of partisans, members of the destruction battalions, saboteurs, and looters is an action permissible according to international law. I believe I do not have to touch upon this matter further. The report also shows that those persons apprehended were not killed indiscriminately but that only some 75 percent were actually affected by the so-called 'special treatment'. In other words, the cases were all investigated."

The report clearly states that the actions were taken against partisans and Communists. Membership in any political party is not a capital offense according to the rules of war and international law. And executions for membership in a general political party can only be murder. It is asserted that all the cases were investigated. The report says nothing about investigations and, in any event, there is no evidence in the record that the investigations, if held, conformed to the accepted trial requirements, recognized by the rules of war and international law insofar as they appertain to civilians. Whatever defense exists to the charges contained in this item depends on the defendant's word. Can he be believed?

He asserted that during the entire time he served in Russia he never heard of the execution of Jews as Jews. Only three or four weeks prior to his alleged assumption of command over Sonderkommando 4b, the Kommando killed 1,224 Jews. He professed to know nothing about this massacre. He was asked—

"You have now stated that you have no reason to doubt the

correctness of these reports. Therefore, if 1,224 Jews were shot by your organization before you took over, does it not seem strange to you that in all the time that you were with the very men who conducted these executions, that not a word was ever said about so extraordinary a phenomenon as the execution of 1,224 human beings because they were Jews?"

His only reply was that no one talked about these killings or any killings at all, and that he did not learn that Jews were executed for racial reasons until he arrived in Nuernberg five years later!

The witness stated that before he took over command of Sonderkommando 4b he was told by Mueller, Chief of the Gestapo, and Thomas, Chief of Einsatzgruppe C, that the executive activities of Sonderkommando 4b were to remain unchanged. He was asked whether he carried out these directives of Mueller and Thomas and he replied in the affirmative.

Report No. 24, dated 16 July 1941, discloses the killing of 180 Jews and the burning of Jewish homes by Sonderkommando 4b. Report No. 88, dated 19 September 1941, spoke of the execution of 435 Jews as well as 28 saboteurs and 56 officials and agents of the NKVD. Report No. 94, dated 25 September 1941, contained an item on the execution of 290 Jews. Report No. 111, dated 12 October 1941, declared that 125 Jews had been liquidated. Report No. 132, dated 12 November 1941, reported 161 Jews killed. Report No. 135, dated 19 November 1941, reported 562 Jews liquidated. Report No. 143, dated 8 December 1941, described the killing of not only 137 Jews but also 599 "mentally deficient". Report No. 173, dated 25 February 1942, revealed the killings of 649 political officials and 139 Jews. Report No. 177, dated 6 March 1942, chronicled the execution of 1,224 Jews.

If, as Haensch stated, he continued to carry out the executive policy of Sonderkommando 4b as it existed prior to his arrival in Russia, and the above enumeration indicates quite clearly what that policy was, this can only mean that he continued with the execution of the Fuehrer Order. The Tribunal rejects completely the defendant's statement that he did not know of the execution of Jews. In the face of what appears in the record, the Tribunal also refuses to accept as fact the statement of the defendant that he was only personally aware of four executions involving, in all, 60 deaths.

On 21 July 1947 he wrote out by hand a 25-page statement on his Einsatz service. Over eight pages (which is over one-third of the entire statement) were devoted to a discussion on executions and his, the defendant's, manner of conducting them. On page 22 he said—

"I was requested to make statements concerning the number

of executions which, in my estimation, were carried out by the Kommando according to orders during my time as leader of the Sonderkommando 4b. To this I must state the following: In the absence of records I am no longer able to give such information. An estimated number would lack any basis of fact. For this reason and those reasons stated above, I cannot give such an estimate."

This statement that he was unable even to *estimate* the number of executions performed by the Kommando during the time he was its chief is practically conclusive, if words have any meaning, that the number was a very large one. There is additional reason for this conclusion, in spite of his mentioning specifically three or four executions. His long eight-page description of executions is written in a manner and style which reveals irrefutably that mass killings formed a regular routine to him and were not unusual events. A few sentences taken from this volunteered statement are quite illuminating on this point—

"The executions were effected by shooting from the nearest sure-aim distance. That distance, as I recall it, was not more than 8-10 paces. The assumption that the shootings were effected 'by revolver' does not correspond with the facts. I have already explained that during my interrogation of the 14 July 1947.

"I must once again energetically repudiate the assumption that the shootings were carried out in a mean manner, e. g., in the form of mass shootings by machine gun bursts from a considerable distance or by shooting in the neck or in an otherwise lowdown manner.

"After quiet reflection I am bound to state that I cannot say exactly which of the two weapons was used in the individual cases. The Sonderkommando 4b was equipped partly with sub-machine guns—I believe predominately with these—and partly with rifles.

"Moral sufferings for the victims as well as for the members of the execution command were to be avoided as far as possible. Thus, great care was to be taken that a person waiting to be executed would not be eyewitness to a preceding shooting, and that the corpses of people shot would be removed before a further execution took place.

"I myself watched a few executions. Where possible this was done in a manner so as to surprise the execution command by my sudden appearance. During this I saw nothing which indicated that the considerations enumerated were being disregarded.

"Occasionally, officers or authorized persons also attended the

executions as representatives or deputies of their appropriate offices.

"I still remember that the absolutely necessary insuring of instantaneous death without previous mere wounding was brought up during those discussions, and that it was emphasized to aim at the head as a sure guarantee for instantaneous death.

"I recall that the executions were effected from one side of the hill or the access to the groove, and that the corpses, after the conclusion of each execution, were carried to a grave prepared on the other side.

"As far as I remember in the executions which I attended, one to three persons were led to the place of execution at intervals and shot together.

"In those executions which I attended, death was instantaneous. Immediately after the execution the leader and the medical orderly went to the dead and personally satisfied themselves that they were really dead. I do not recall either ever having heard a cry of pain.

"As to the composition of the execution command, the rule existed that under no circumstances were so-called 'shooting Kommandos' formed, that is to say, that for the different executions not always the same men were to be used. The leader of each execution command varied his choice of men according to these directives and assigned them on the day before the execution."

These harrowing details, announced with the insouciance of an expert with long experience, belies the defendant's assertion on the witness stand that his Kommando conducted only four executions with a maximum of sixty deaths.

As above indicated, the defendant claimed that every executee was given the benefit of a hearing, but no evidence was adduced to indicate the character of the charges brought against the arrestees, except the general statement that they were partisans, saboteurs, looters, or Communist activists. Nor was there any evidence that these persons received a trial. Furthermore, the large number of victims and the haste with which they were executed would demonstrate, considering the time element, the impossibility of trials for all of them. As a matter of fact, the defendant testified that Streckenbach pointed out to him that in the East there would be no "formal court proceedings such as we were accustomed to carrying out in the homeland, in the police courts, or another court." And on the contrary, he was instructed that the procedure was to follow the decree of the highest political authorities, and it is a matter of record that all Einsatz units had received the Fuehrer decree. The Fuehrer Order, of course, provided for no trial whatsoever.

ever. The Tribunal is convinced that the civilians shot by Sonderkommando 4b under Haensch's leadership did not receive the trial intended by the rules of war and international law. The credible evidence shows further that if there were any proceedings they were entirely of an ephemeral nature.

The defendant testified that he was thoroughly familiar with the cases of the sixty persons executed by his Kommando.

"Yes, I knew exactly about the individual cases, that is to say, the decision in both these executions in the Gorlovka district. I also knew about the other executions and I was able to convince myself that these were only cases which occurred in accordance with law and order, and where the people concerned were actually proven violators against the laws of war and against security of the people."

Later he said that sub-Kommando leaders could make independent decisions, but when he was asked—

"Would you have been able to reverse the decision of the sub-Kommando leader if you would have been of the opinion that the execution of a certain individual was not justified?"

He replied—

"Yes, without any trouble. If I had become convinced that something was not quite in order, I certainly would have been able to do that."

It developed then that the sixty who were executed by his Kommando were killed under his orders.

"Q. There were 60 people killed under your orders?"

"A. Yes."

He was now asked whether he investigated these 60 cases before he pronounced the death sentence.

"Q. Now, how many of these 60 cases did you investigate yourself, or reviewed the evidence on?"

"A. The evidence? I only looked through the evidence and made a final decision for about twenty-five cases, and seven that—

"Q. All right.

"A. (Continuing) came thereafter.

"Q. That is thirty-two that you investigated yourself?"

"A. Yes.

"Q. So that means that twenty-eight went to their deaths under your orders without your having reviewed the evidence?"

"A. No.

"Q. Sixty were killed under your orders?"

"A. Yes.

"Q. Thirty-two you investigated?"

"A. Yes."

In spite of this very definite pronouncement, the defendant later went on to say he investigated the sixty cases. The defendant's manner of testifying, his shifting and evasive attitude while discussing this subject, convince the Tribunal that he did not tell the entire truth about the sixty alleged investigations. The defendant stated that some of the killings had been ordered by the army, but that he reviewed those cases also. It developed, however, that no written report was made so that it is not clear, if he had no personal knowledge of the facts and received no written report, how he could review the cases. His explanation, which is obviously no explanation, follows :

“* * * these cases of executions which I was questioned on in Barvenkova became known to me when, by accident, I happened to the place, and the corresponding report about the respective orders of the army units were given to me for information. Today, I cannot state exactly from memory or with certainty that the subcommander received this order from the military officer, who had the right to give this order, and he was also told the crime itself which had been committed by the defendants. I considered this type of handling not correct, and I expressed my opinion to this effect at the AOK, namely, that in my opinion the army when it conducted the investigation and made the decision itself should carry out the executions by its own Kommandos.”

Much of the defendant's testimony, even if believable, does not exculpate him. Much is simply not worthy of belief. For instance, when he says that Streckenbach, who was the man responsible for the announcement of the Fuehrer Order in Pretzsch, said nothing to him about this momentous program as he was about to depart for the East, Haensch utters an obvious falsehood. When he says that in his conversation with Heydrich, Heydrich was silent about the Fuehrer Order, he declares what is incredible. And even more incredible is his statement that the very Chief of the Einsatzgruppe, under whom he was to operate, remained mute on the subject of the order of the head of the state, the very order which brought the Einsatzgruppen into being. And then one can only dismiss as fantastic the declaration of the defendant that his predecessor who had admittedly executed thousands of Jews under the Fuehrer Order, and whose program Haensch was to continue, said nothing to Haensch about that program. And when Haensch boldly uttered that the first time he ever had any inkling of the Fuehrer Order was when he arrived in Nuernberg six years later, he entered into a category of incredulousness which defies characterization.

The guilt of the defendant in the commission of war crimes and

crimes against humanity has been clearly and conclusively established. From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

GUSTAV NOSSKE

SS Lieutenant Colonel Nosske studied banking, economics, and law, passed his examinations as assessor in 1934, and entered the Administration of Justice at Halle. In June 1935 he became employed in the National Ministry of the Interior at Aachen and then transferred to the Gestapo. From 19 June 1941 until March 1942 he served as commander of Einsatzkommando 12.

He testified that he morally opposed the Fuehrer Order but did not put it into effect because it was his good fortune never to have been in a position where he had to execute the order. When he was asked if he had been called upon to shoot 500 Jews under the Fuehrer Order whether he would have done so, he replied—

“If I had been in a situation where the Einsatzgruppe chief would have been in a position to reprimand me for disobeying the Hitler Order, and had stressed it, then probably I would have done it.”

Later, he said that if he were confronted with such a situation he would take the matter up with his conscience.

“Q. * * * you are before 500 innocent people, men, women, and children—Jews—and you are presented with this order to kill them. Now, are you going to confer with your conscience and, if so, what is going to be your conclusion?”

“A. I would have taken it upon my conscience.

“Q. And you would have killed them?”

“A. I would have probably done it.”

But he did face situations which were not hypothetical.

Report No. 61, referring to Einsatzkommando 12, says—

“* * * only in Babchinzy resistance was partially shown toward an orderly harvesting caused at the instigation of Jewish inhabitants and such Jews who had only come to this territory a few months ago. By spying on the population, those Jews had already created a basis for numerous deportations to Siberia. As a countermeasure, 94 Jews were executed.”

The defendant on the witness stand admitted that this execution was carried out by one of his detachments, but declared that the execution was legal because the executees had sabotaged farm

machinery and crops. The defendant's explanation is in flat contradiction to the report which specifically states that the 94 Jews were killed as a countermeasure. The phrase "countermeasure" carries no implication of guilt on the part of the victims and killing such victims can only be a crime.

The defendant said he did not learn of the execution until after it had taken place, but admits that it was done by members of his Kommando. He admitted further the possibility that the Fuehrer Order figured in the decision of the sub-Kommando leader to perform the execution. He asserts that his sub-Kommando leader conducted investigations before shooting the Jews, but he made no independent inquiries to determine whether the executions were warranted. Taking him at his word, his acceptance without inquiry of the killing of 94 persons was a demonstration of criminal and wanton indifference which might well have induced his men to further illegal and unjustified executions.

The defendant spoke of a period when he was absent from the Kommando, but admitted that there were shootings under his authority even though he did not know the number.

"Then comes the period of time from the end of August until October where the command of the Kommando was taken over by somebody else, and I am not at all certain about the figure of those shot, and I am not sure how many were shot on my responsibility during that time."

The defendant explained that in January and February 1942 the severe weather prevented any activities on the part of his Kommando. It is a fact that Report No. 178 said—

"Kommando 12 had to limit its activities to the villages and closer vicinity of the branched-off sub-Kommando posts, because of extreme cold and snowstorms and unpassable streets." But it also said—

"From 16 to 28 February 1942, 1,515 persons were shot, 729 of these were Jews, 271 Communists, 74 partisans, 421 gypsies, as asocials and saboteurs."

While all these killings are not to be charged to Sonderkommando 12, it does refute the statement that Sonderkommando 12 was entirely immobilized during the period in question. Nor was it immobilized, according to Report No. 165, which, covering events in January 1942, said—

"Besides, 2 further Teilkommandos were established with the assistance of men of the Einsatzkommando 12 for the purpose of combing out the northern Crimea."

Then there was the episode of the Romanian Jews. The prosecution contended that the defendant was involved in a forced

migration of Jews from German-controlled territory into Romania, and that in the operation some of the Jews were shot. The defendant admitted that he had led some 6,000 to 7,000 Jews across the Dnestr River, but denied that in this movement any of the Jews were shot. In fact he endeavored to convey the impression that in this particular affair a great favor had been done the Jews in repatriating them. A witness, Harsch, called to testify on the subject stated that he witnessed the arrival of the Jews on the Romanian side of the river, and that once they had gained that point they evinced their gratitude to the German escort by crying "Heil Hitler". Although this contingent of Jews escaped the German firing squad by leaving German territory, it is not so certain what fate awaited them in Romania. The defendant Nosske, in this regard, testified, as stated before in the general opinion—

"I assume that the Romanians wanted to get rid of them and sent them into the German territory so that we would have to shoot them and we would have the trouble of shooting them. We didn't want to do the work for the Romanians."

The witness Harsch said that later he saw these same Jews within barbed wire enclosures on Romanian territory.

The defendant made frequent references in his testimony to shootings by his Kommando.

"From 21 June until 15 September certainly, because during the time from 10 to 25 or 23 (of August), the *shootings* in Babchinzy took place and then later on several *shootings* took place.

"This territory where the Kommando 12 moved was declared Romanian sovereign territory; certain *shootings* occurred but we didn't quite know. Our own and other people's reports mentioned this. I already said, after looking at the final records of the Kommando I read it. Of course, *shootings* were carried out, in particular in this whole territory, and *shootings* were reported about on the principle that not only our own *shootings* but also *shootings* by others were reported later on, including events which had been in other territories.

"In this connection many reports were made out by me about many *executions*, that is, our own *executions*, as well as foreign *executions*." [Emphasis supplied.]

In addition, he affirmed that Kommando 12 contributed to the total killings of the parent organizations, Einsatzgruppe D, but refused to name any figure or even an estimate of the number of persons his Kommando had executed. He said that in his entire period of service in Russia he had only seen two people killed and then, after vividly narrating the details of an incident which

resulted in numerous executions, he could not or would not state the number of people who had been killed. It is extraordinary that he should recall the alleged investigation of this incident but not recall what happened as a result of the investigation.

Despite his constant refusal to estimate the number of people executed by his Kommando, he did finally say that he knew it had killed at least 244. Taking his testimony as a whole, the Tribunal is convinced that the Kommando executed a number considerably larger than 244. Nor is it convinced that the rules of war and international law were observed in all these cases.

Report No. 95, dated 25 September 1941, covering the period from 19 August to 15 September 1941, speaks of various executions conducted by Einsatzgruppe D of which Sonderkommando 12 formed a part. In his summation, defense counsel says—

“Even if the report contains reports on shootings which were forwarded to the group by Einsatzkommando 12, nevertheless, this report does not provide any reason for believing that shootings reported in this way were carried out by virtue of the Fuehrer Order.”

But the report itself says—

“From 19 August until 15 September, 8,890 Jews and Communists were executed. Total number: 13,315. The Jewish question is at present being solved in Nikolaev and Kherson. About 5,000 Jews were rounded up in each town.”

While Nosske cannot be charged with any particular number of killings enumerated here, it is obvious that the shooting of the Jews, since no qualifying phrase limits the reference to the Jews, was done on the basis of the Fuehrer Order.

His statement heretofore quoted about refusing to kill Jews for the Romanians shows a familiarity with the Fuehrer Order which belies his general assertion that he was opposed to it. In that statement he practically asserted that he was against killing Jews for the Romanians, but that there was no objection to the same kind of a performance if it took place in the territory of his own organization.

In September 1944, the defendant having in the meantime returned to Germany, the Higher SS and Police Leader in the Duesseldorf area instructed him to round up all Jews and half-Jews in that area and shoot them. The defendant stated that he protested this order and that, eventually, it was revoked or at any rate not enforced. Nosske's protest against this order was undoubtedly due mostly to the fact that many of the intended victims, because of the conjugal relationship of the half-Jews, were considered Germans. Nonetheless, his action in refusing categorically to obey the order, demonstrated, contrary to the

argument advanced throughout the trial in behalf of the various defendants, that a member of the German Armed Forces could protest a superior order and not be shot in consequence. Though it is true the defendant suffered some inconveniences because of his unwillingness to shoot the people of Duesseldorf, he was not shot or even degraded.

From all the evidence in the case the Tribunal finds that the defendant is guilty under counts one and two of the indictment.

The Tribunal also finds the defendant was a member of the criminal organizations SS, SD, and Gestapo under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

ADOLF OTT

SS Lieutenant Adolf Ott began his career in an administrative office of the German workers front in Lindau. He joined the NSDAP in 1922 and became a member of the SS in 1931. In 1935 he entered the security service.

There are no complications about the case of Adolf Ott, except perhaps the meaning he intended to give to the word "execution". In his pre-trial affidavit he said that his Kommando carried out 80 to 100 executions. At the trial he stated that, by the word execution, he meant the death of but one person. The context of the affidavit would logically convey a contrary view because, immediately after speaking of the "80 to 100 executions", he says, "I remember *one* execution which took place in the vicinity of Bryansk", and he then proceeds to describe this execution which involved "*corpses*". The affidavit also says that the valuables collected from "*these* people" were sent to Einsatzgruppe B.

The whole purport and tenor of this affidavit are to the effect that the word "execution" is used in the sense of a multiple killing. However, for the purposes of the ascertainment of guilt or innocence it matters little whether, by "80 to 100 executions"; Ott meant the killing of only 80 to 100 people or a multiple of 80 to 100, which multiple, in view of the evidence in this case, would increase the number of the slain to many hundreds at the very least.

According to his affidavit, Ott was assigned to Sonderkommando 7b on 15 February 1942 and, according to his testimony in Court, he arrived at the headquarters of the Kommando in Bryansk on 19 February. He asserted, however, at the trial that he did not actually take over the leadership of the unit until about the middle of March. It is the contention of the prosecution that Ott testifyingly delayed his chiefship of the Kommando until

15 March in order to avoid responsibility for the executions enumerated in Report No. 194.

"In the area of the Einsatzgruppe, during the period from 6 until 30 March 1942, the following were *specially treated*:

* * * * *

through SK 7b: 82 persons, 19 among them for collaborating with partisans, 22 for engaging in Communist propaganda and for proved membership of the Communist Party, 14 for making incendiary remarks, 27 Jews."

In view of the fact that Ott arrived in Bryansk on 19 February for the specific purpose of taking over control of Sonderkommando 7b, it is not clear why he should have waited until 15 March to assume leadership of the unit. But even if this unexplained delay in the technical assumption of command were a fact, this would not of itself exculpate Ott from responsibility for the operation involved. Under Control Council Law No. 10 one may be convicted for taking a "consenting part in the perpetration of crimes" and it would be difficult to maintain that Ott, while actually with the Kommando, did not (even though technically not its commanding officer) consent to these executions.

In addition, it is to be observed that the report declared that the 82 persons enumerated therein were killed between 6 March and 30 March. Thus, if arguendo Ott's authority over the Kommando was delayed until 15 March, there is still the responsibility on his part for the executions which occurred between 15 March and 30 March.

However, so far as guilt is concerned, this speculation as to the number killed before 15 March and the number executed after 15 March is academic, because the evidence is conclusive that, during the at least ten-month period that Ott commanded Sonderkommando 7b, great numbers of people were killed in violation of international law.

The Tribunal has pointed out that it is not necessary, in the individual judgments, to enumerate and discuss all the executions charged against the defendants by the prosecution if it is once established that the defendant is guilty under counts one and two of the indictment. In this respect, Ott, himself, removed every possible scintilla of doubt when he said—

"I told my sub-Kommando leaders that Jews, after they are seized and do not belong to a partisan movement or sabotage organization, must be shot on the basis of the Fuehrer Order." After this statement in Court, he was asked—

"Did I understand you, witness, to say that you instructed your sub-Kommando leaders that, if they found Jews, they were to seize them and shoot them in accordance with the

Fuehrer Order? Is that what you said?"

And his answer was, "Yes. That is correct."

He was questioned again as to whether a Jew would be shot, even if he did not belong to a partisan or sabotage organization. And he replied—

"Yes. He would have been shot, even * * * if he had not been a member of one of these organizations."

Since the defendant by his answers was admitting incontrovertible guilt, more questions were put to him on this subject, so that there could be no possible misunderstanding.

The further interrogation follows:

"Q. If he had not belonged to an organization he would have been shot anyway?"

"A. He would have been shot if he had not been one of the perpetrators, but if, for some reason, he had merely been hiding with the group because he had to be seized, in accordance with the Fuehrer Order.

* * * * *

"Q. * * * so that whether he belonged to an illegal organization, that is, partisan or saboteurs, or not, he was bound to be shot because, if he wasn't shot as a saboteur or an active partisan, he would be shot under the Fuehrer Order? That's correct, isn't it?"

"A. He was shot in accordance with the Fuehrer Order—yes. I would like to add * * * that, of course, an interrogation was carried out in this particular case to see 'is he a member of an organization or is he not'.

"Q. And in each case you found out he was a member of an organization, an illegal organization?"

"A. One of these three groups.

"Q. Yes, now if you had found out that he was not a member of one of these illegal organizations, saboteur, partisan, or a resistance movement, you would have shot him anyway because he was a Jew and fell under the Fuehrer Order, that's right, isn't it?"

"A. Yes, that is correct.

"Q. What was the necessity of the investigation if the result was that he always would be shot? What was the reason for wasting all this time on a man you were going to shoot anyway?"

"A. Interrogations were carried out to find out whether he was a member of an organization. If such was the case he was carefully questioned concerning all liaison members, number of members of this particular organization, and their activities. That was the purpose of the interrogation."

The defendant explained that some of the interrogatees refused to speak.

“Q. Some of them refused to talk?

“A. That is so.

“Q. And they were shot just the same?

“A. They had to be shot if they were Jews.”

Still determined to exclude every single possibility of equivocation and error, the defendant was questioned further, and he answered as follows:

“Q. Well, then you did shoot some Jews because they were Jews?

“A. I have already said, * * * every Jew who was apprehended had to be shot. Never mind whether he was a perpetrator or not.

“Q. How many Jews did you shoot just because they were Jews?

“A. I estimate there must have been about 20, at least.”

This specific out-and-out admission by Ott in Court that he shot 20 Jews just because they were Jews conclusively establishes his guilt, and it is unnecessary to consider the other items of accusation advanced by the prosecution.

There is but one further observation to be made on this subject, and that is the undeviating fidelity of the defendant to the virtue of consistency. Consistency, which has always been regarded as a jewel, did not lose any of its sparkle or gleam in the hands of Adolf Ott. When asked why he did not release some of the Jews when he had the opportunity to do so, he replied—

“I believe in such matters there is only one thing, namely consistency. Either I must shoot them all whom I capture or I have to release them all.”

One more item in Ott's case is worthy of comment. In his pre-trial affidavit he said—

“In June 1942, without having received an order to do so, I opened an internment camp in Orel. In my opinion people ought not to be shot right away for comparatively small misdeeds. For this reason I put them in this internment camp, in which the people had to work. I determined the length of time that these people should remain in the camp on the basis of examination and investigation of the individual cases which were made by my Kommando. It happened too that people were released. The highest number of inmates that I had in this camp was 120 persons.”

The magnanimity of the affiant in this statement is not in the declaration that it was his opinion that “people ought not to be shot right away for comparatively small misdeeds”, but his

assertion that it "happened too" that is, it *even* happened, that people were released.

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

EDUARD STRAUCH

SS Lieutenant Colonel Eduard Strauch is a graduate lawyer. He joined the Allgemeine SS on 1 December 1931. In 1934 he joined the SD.

The prosecution contends that Eduard Strauch became commander of Einsatzkommando 2 on 4 November 1941. This is denied by the defendant who, in effect, claims he was never in charge of this Kommando. The defendant explains that when an area passed into the hands of the civilian administration from the military the Einsatz units ceased to exist and were replaced by (1) the chief commanders [Befehlshaber] of the Security Police and SD in the case of the Einsatzgruppen, and (2) the commandants [Kommandeure] of the Security Police and SD in the case of the Einsatzkommandos and the SD.

Defense counsel claims these offices had no connection with the military at all, yet in seeking to make this point he gave the illustration of the chief of offices [Befehlshaber] of the SIPO and SD, Ostland, with headquarters at Riga, the area of the civilian administration, maintaining his headquarters as chief of Einsatzgruppe A in Krasnowlisk, within the army area. By this very illustration, which was supposed to show the contrary, it is very clear how one could act in a civilian administrative capacity and be head of an Einsatz unit at the same time.

An analysis of the records shows that Eduard Strauch took over the command of Einsatzkommando 2, Latvia, on 4 November 1941, and that in February 1942 he became commander of the Security Police and SD in White Ruthenia, situated at Minsk. From some time in July 1943 until he left Russia, he served as intelligence officer in an antiguerrilla warfare unit.

Strauch's guilt has been established by numerous documents. Strauch seeks to deny that he cooperated with Jeckeln, Higher SS and Police Leader in the Jewish operation of 30 November 1941, because he only had 20 men under him. But it is an extraordinary coincidence indeed that one officer and exactly 20 men of Einsatzkommando 2 participated in that operation which resulted in the death of 10,600 Jews in Riga.

Report No. 186, dated 27 March 1946, shows Strauch was commander of the Security Police and the SS for White Ruthenia during this period. The report chronicled the death of 15,000 Jews in Cherven.

Report No. 183, dated 20 March 1942, states—

“In the period from 5 to 28 February the main field office Vileika shot 29 Jews, 4 Communists, 5 partisans, 5 public enemies, and 4 persons for sabotage. Another 16 persons were arrested.”

This operation was conducted by Hoffmann who was Strauch's deputy, and who kept Strauch informed of his operations, as Strauch admitted on the witness stand.

The commissioner general for White Ruthenia reported on 31 July 1942 to the Reich Commissioner in Riga as follows:

“During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. jur. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area, the Jewry was completely exterminated, without endangering the allocation of labor in any way.”

Strauch first attempted to deny the authenticity of this letter and then abandoned that position, claiming that Kube exaggerated the figures. The Tribunal is convinced that the letter is authentic, and that the statements contained therein represent the truth even if not accepting the absolute accuracy of the figures down to the last digit.

By his own words Strauch was an unrelenting and merciless oppressor of the Jews and displayed considerable indignation when anyone sought to defend them. In a letter dated 25 July 1943, he related a plan whereby 5,000 Jews of the Minsk Ghetto were to be “resettled”. The Jews, however, learned that the resettlement meant execution and Strauch bitterly attacked those responsible for this “treachery”. He said, “We had no choice but to herd the Jews together by force.”

On 20 July 1943 he wrote a letter narrating how he had subjected 70 Jews to special treatment and expressing his resentment because complaint had arisen from the fact that he had had the gold fillings removed from the mouths of these Jews before they were killed.

Adolf Ruebe, a master sergeant in the SS, submitted an affidavit on Strauch which further emphasizes Strauch's guilt which is complete.

“About the middle of February 1943 the Kommando of the KdS Minsk went to Slutsk, under the leadership of Obersturm-

bannfuehrer Eduard Strauch. At about 6 o'clock in the morning the Kommando was called together. A Hauptsturmfuehrer made a speech in which he told us that the Jewish ghetto in Slutsk would be liquidated this day and that he expected the highest discipline from every member of the Kommando. A certain number of the men were assigned to carry out the shootings. Another group got the order to guard those who were supposed to be shot. The older people, including me, were supposed to be available at the entrance of the ghetto. A man in the uniform of a political leader made a speech addressed to the Jews, informing them that they would be resettled. The Jews were then put on the trucks. As a rule the individual trucks were given different destinations, such as OT (Organization Todt), Reichsbahn, etc. But, as a matter of fact, all the trucks headed straight towards the execution place which was some kilometers outside of Slutsk. There the mass graves had already been prepared. In the same vicinity there were mass graves which originated from a shooting of Jews in summer 1942. The Jews were taken into the ditches where they were murdered by separate shots from behind. At approximately 3 o'clock in the afternoon the executions were completed. Obersturmbannfuehrer Strauch and Brigadefuehrer von Gottberg were present at the executions."

In response to a question regarding the Jewish problem in White Ruthenia, Strauch replied that the Fuehrer Order was valid in White Ruthenia, as everywhere else. He testified that he had a conference with Kube and that Kube told him Jews were needed and he could not do without these Jews, since they should be used in bringing in the harvest, working in an armament factory, and doing other jobs. The defendant thereupon talked to Heydrich and was directed to postpone the execution of the Fuehrer Order until the harvest was brought in.

The defendant testified that, in February-May 1942, 7,000 Jews had been killed. When Strauch arrived, Kube asked him not to continue this system, and the defendant said that he could not begin to shoot Jews on the first day of his arrival.

Responding to a question as to the number of Jews executed during the defendant's time of service he replied—

"You mean my time? Oh yes, well, if I count those Jews who were later killed by Gottberg, when I was G-2, when I count them along with the others, then I would say 17,000."

He admitted that, to his own knowledge, a Jew had to be killed just because he was a Jew.

The defendant admitted that he saw probably 60 to 90 executions. Regarding the affair of Slutsk, he testified that the number

executed there was about 1,200 and not 2,000 as mentioned in the Kube letter. He stated that he was present during part of the execution and witnessed about 200 being killed. He also saw about 200 women and children lining up to be shot.

From all the evidence in the case, the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

Physical and Mental Condition of Defendant

On the day of the arraignment, 15 September 1947, Eduard Strauch had an epileptic seizure which necessitated his being taken from the courtroom. He soon recovered from this seizure and apparently enjoyed normal health, although he remained in the prison hospital for observation and rest.

On 11 December 1947, a medical board made up of three physicians conducted an examination of the defendant and declared that it was their opinion that "the defendant's mental condition is such that he is aware of the charges brought against him in the indictment". It was their opinion, further, that "the defendant is, at most times, physically and mentally able to understand questions put to him and to reply thereto with the full use of his mental faculties".

There is every indication that, up until a short time prior to the time Eduard Strauch was scheduled to appear in Court, his mental behavior was normal. However, in the latter part of December 1947, it appears that he would give irrelevant answers to questions put to him by his attorney when he was consulted in the preparation of his case.

On 13 January 1948, he came into Court as a voluntary witness, but, once on the stand, proceeded to answer in a manner which, to the Tribunal, represented a conscious and deliberate intention to avoid direct and intelligent responses to the questions put to him.

On 17 January 1948, a medical board of two physicians examined him and concluded:

"That the defendant, Eduard Strauch, except for brief periods preceding, during, and succeeding epileptic seizures is capable of understanding the proceedings against him and of taking adequate part in the direction and presentation of his own defense."

The defendant then again came into Court and, on 19 and 20

January, testified in an intelligent fashion, giving conclusive evidence of a thorough awareness of the proceedings.

Lieutenant William Bedwill, medical officer and trained psychiatrist was present in Court and reported to the Tribunal as follows:

"It is my opinion that the defendant Herr Eduard Strauch, during the periods when I have observed him, including the Court sessions on the afternoon of 19 January 1948 and the morning of 20 January 1948, has been mentally competent and so free from mental defect, derangement or disease as to be able to participate adequately in his own defense."

On 2 February 1948, Lieutenant Bedwill was asked on the witness stand—

"Lieutenant, do you think that, at any time when his answers were obviously irrelevant, the answers could be consonant with a conscious desire on the part of the defendant to appear to be, or make himself appear mentally incompetent?"

And he answered—"I believe that they could be consonant with that desire."

After cross-examination by defense counsel, the following question was put to the psychiatrist:

"Do we understand from your statement, Doctor, that if the witness was not simulating, that then he was suffering from a disease that medical science up to this time has not yet discovered or recorded, so far as your cognizance of medical science is concerned?"

And his answer was—"That is true."

Another observation on Strauch's mental competency is the fact that counsel for Sandberger in his final plea to the Tribunal quoted from Strauch's testimony in confirmation of an objection supposed to have been made by Sandberger to the Fuehrer Order.

It is to be noted further that, on 9 February 1948, Dr. Gick made the announcement in Court that his client Strauch had no objection to his wife's being called for examination and cross-examination which fact would indicate that, even after he had testified in Court, Strauch was still in full possession of his mental faculties.

From the complete history of the defendant's case the Tribunal concludes that any odd behavior demonstrated by the defendant in or out of Court was consciously adopted.

The Tribunal further finds from the medical evidence and its own observation of the defendant in Court that he was mentally competent to answer to the charges in the indictment.

WALDEMAR KLINGELHOEFER

SS Major Waldemar Klingelhoefer attended school in Kassel, served in the army from June to December 1918 and after the war studied music and voice. He gave concerts throughout Germany and later received a State's Certificate as voice teacher. In 1935 he became an opera singer. In 1937 he took over Department Culture, SD III-C in Kassel. In 1941 he was assigned to Einsatzgruppe B as an interpreter. This Einsatzgruppe, already by November 1941, according to Report No. 133, had killed 45,467 persons. This score was considerably increased later.

It is not contended by the prosecution nor does the evidence at all indicate that Klingelhoefer could be charged with all these executions simply because he belonged to Einsatzgruppe B, which, of course, consisted of several Kommandos. The reference to the larger unit is made only because the defendant has told of various transfers within the Einsatzgruppe. He said that he was in Sonderkommando 7b from 22 June 1941 to 10 July 1941, and then entered Vorkommando Moscow. In October he took over an independent command of this unit and held it until he went on leave. On his return to Russia on 20 December 1941 he entered the group staff of Einsatzgruppe B where he remained until December 1943. There are scores of reports covering the activity of these various units and it is unnecessary to trace Klingelhoefer in and out of these individual units specifying the exact number of persons killed by the units during the time he was with that particular organization.

Report No. 92 shows that Vorkommando Moscow killed over 100 persons as of 13 September 1941 and Klingelhoefer admits he was in charge of that unit during August and September 1941.

Report No. 108 declares that by 28 September 1941 the Vorkommando Moscow and the group staff of Einsatzgruppe B had killed 2,029 persons. Between 20 August and 28 September 1941 the Vorkommando and the group staff executed 1,885 people. Klingelhoefer admitted that he was in charge of Vorkommando Moscow during that time.

By 26 October, Vorkommando Moscow and the group staff had executed 2,457 persons and, whereas Klingelhoefer cannot be charged with the entire number of 572 persons killed between 28 September and 26 October 1941, he cannot escape responsibility for some of these killings since in this period he commanded part of Vorkommando Moscow.

Klingelhoefer has not only described in detail executions he witnessed showing thereby the greatest familiarity with the macabre techniques involved but in his pre-trial affidavit he re-

lated how he shot 30 Jews because they had left the ghetto without permission. He did this, he said, under orders from the chief of the Einsatzgruppe, Nebe, who ordered him "to establish an example". At the trial he gave a different explanation of this episode which, however, establishes even a clearer case of guilt. He said that three women had contacted some partisans and, returning to the town, had talked to the thirty Jews in their homes. This, according to the defendant, made them guilty of partisan action and he had them shot. He, of course, also shot the three women. He did, however, accord them a special consideration. He had them blindfolded for the execution and then ordered that they be given a separate grave.

Klingelhoefler has stated that his function in the Einsatzgruppe operation was only that of interpreter. Even if this were true it would not exonerate him from guilt because in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found. In this function, therefore, he served as an accessory to the crime.

"Q. I asked you, Witness, didn't you know that when you were giving him these lists of Communist party functionaries that he was going to exterminate all those he could? You either knew it or you didn't know it.

"A. Of course, I did."

But the evidence is clear that Klingelhoefler was no mere interpreter in the grim business of the Einsatzgruppe. He was an active leader and commander. He knew what the Einsatz units were doing to the Jews.

"Q. You told us you knew that if he stayed in the ghetto he was killed. Now, if he left the ghetto, was he then set free?

"A. If he left the ghetto, he violated the directives which were given.

"Q. So that he was killed anyway?

"A. Then he had to be executed, yes."

In his own affidavit the defendant stated:

"While I was assigned by Nebe to the leadership of the Vorkommando Moscow, Nebe ordered me to go from Smolensk to Tatarsk and Mstislavl to get furs for the German troops and to liquidate part of the Jews there. The Jews had already been arrested by order of Hauptsturmfuehrer Egon Noack. The executions proper were carried out by Noack *under my supervision.*" [Emphasis supplied.]

Although the defendant stated several times during his interrogation on the witness stand that he was morally opposed

to the Fuehrer Order, it is evident from all the testimony in the case that he went along quite willingly with it.

Before leaving the witness stand he stated that he would have been happy for Hitler to win the war even at the expense of its present condition with two million Germans killed, the nation in utter ruins, and all of Europe devastated. This statement has no bearing, of course, on the question of his guilt under counts one and two, but it is helpful in determining the state of mind as to whether he obeyed the so-called superior orders with a full heart or not.

The Tribunal finds from all the evidence that the defendant accepted the Fuehrer Order without reservation and that he executed it without truce. The Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under conditions defined by the Judgment of the International Military Tribunal and is therefore guilty under count three of the indictment.

LOTHAR FENDLER

SS Major Fendler studied dentistry from 1932 to 1934 and served in the Wehrmacht from 1934 to 1936. He then joined the SD.

Fendler served in Sonderkommando 4b, Einsatzgruppe C, from May 1941 to 2 October 1941. During this time, the Sonderkommando was engaged, as all other Kommandos of the Einsatzgruppe, in the execution of the Fuehrer Order. The reports show that, during the time that Fendler was with the unit in question, many executions occurred, Report No. 24-IIA-81, NO-2938, Report No. 19-IIC-49, NO-2934, and Report No. 111-IIA-44, NO-3155.

Fendler denies participation in these executions, but he goes further and asserts complete ignorance of them. In fact, according to his story, he did not learn of the Fuehrer execution order until after he had severed all connections with the Sonderkommando.

Fendler submits that his work with the Kommando was restricted to department III and that he was concerned only with the gathering of information. Defendant after defendant has asserted that, in doing department III work, he was utterly ignorant of the functions performed by the other departments, but one cannot help but observe that department III did not operate within the confines of a high stone wall separating it from the rest of the Kommando. An Einsatzkommando in the

field usually consisted of from 80 to 100 men and 7 to 10 officers. Sonderkommando 4b had a staff of 7 officers. Fendler lived, ate, and associated with these officers. He was department III, some other officer was department IV, and still another officer was department V or VI, and so on. It is absurd to assume that Fendler could not know what these other officers were doing, especially in view of the fact that Fendler was the second senior officer in the Kommando.

It is not contended by the prosecution, nor does the evidence show that Fendler, himself, ever conducted an execution, but it is maintained that he was part of an organization committed to an extermination program. Fendler asserts that department IV alone conducted the executions and, therefore, within the water-tight compartment of his own department III, he did not know what was happening in department IV.

The International Military Tribunal, in considering the relationship between the SD (which is department III) and the Gestapo (which is department IV), said—

“One of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories, the formal relationship between local units of the Gestapo, Criminal Police and SD was slightly closer.”

Fendler asserted over and over that he only learned by accident of executions and that, generally, he did not know what was taking place. Fendler's assertion runs counter to normal every day experience because it is simply incredible that a high-ranking officer in a unit would not know of the principal occupation of that unit.

The defendant stated that he learned of the extermination order only after he had left the Kommando and was at Kiev on his way home. He was asked—

“So that you had to travel five hundred kilometers and two days' distance from the very heart of this execution district before you learned that executions were being performed upon Jews because they were Jews, is that right?”

And his answer was “yes”.

The defendant explained that one of his principal occupations in the Kommando was making out morale reports on the population. He was asked whether, when he learned of the program which had occurred in Tarnopol, where about 600 people were murdered, he included this fact in his report. He replied in the negative. He was asked why he would not include so momentous an event as the murdering of 600 people in the streets in a

report which he was compiling on the morale of the population, and he replied he did not have a chance.

“Q. Well, how much time would it take in an SD report which you were compelled to make and which it was your job to make, to say that there were excesses in Tarnopol to the extent that 600 Jews were murdered,—or if you didn’t want to say murdered—were killed by the population. How much time would it take to include that, with your fingers on the typewriter, into a report? How much time would it take to say that?”

“A. Two seconds.

“Q. Well, then, why didn’t you have the two seconds to write that?”

“A. Because I made no report.

“Q. Why didn’t you make a report?”

“A. Because I was given the order by the Kommando leader to evaluate this material.”

Fendler denies that he ever functioned as deputy to the Kommando leader and stated that, when he acted as an advance Kommando leader, he occupied himself only with the obtaining of intelligence files left behind by the Bolshevists. But, in evaluating these reports, it is inevitable that he would need to tell someone what he found. In fact, he did admit that this information usually was “utilized for individual reports”. The army was also informed “in a written form or orally”.

In order to prove that the work of every officer was specialized and thus one would not know what the others were doing, the defendant stated that his unit never divided its forces. Thus, one officer would not need to do the job of others. However, since this would establish that, by sheer proximity, the officers could not help but know each other’s business, the defendant later stated that the unit was not always together because of the distance it had to travel.

The defendant knew that executions were taking place. He admitted that the procedure which determined the so-called guilt of a person which resulted in his being condemned to death was “too summary”. But, there is no evidence that he ever did anything about it. As the second highest ranking officer in the Kommando, his views could have been heard in complaint or protest against what he now says was a too summary procedure, but he chose to let the injustice go uncorrected.

He was asked—

“Do I understand you correctly that you were of the opinion that there was an insufficient safeguard for the suspected person, as there was no trial, that his rights as a defendant were

not sufficiently safeguarded? Is that what you want to say, that that was your opinion; was that your opinion?"

And he replied, "That was my theoretical opinion, Mr. Prosecutor."

The defendant is presumed to be innocent until proved guilty, and the Tribunal is not prepared to say that the evidence in this case rises to that degree of certainty which could conclusively establish that the defendant was guilty of planning the killing of people or ordering their death. It does, however, show that the defendant took a consenting part in the criminal activities in the sense intended in Control Council Law No. 10, although there are some mitigating circumstances. From the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal finds the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALDEMAR VON RADEZKY

Von Radetzky was born in Moscow, attended school at Riga and joined the Latvian army in 1932. After discharge in 1933 he worked with an import firm until November 1939 and then moved to German-occupied Posen, being employed from November 1939 until January 1940 at the advisory office for immigrants and from January 1940 until May 1941 at the office of repatriation of ethnic Germans. In May 1941 he was assigned for emergency service with the RSHA and then transferred to Pretzsch as an interpreter to the newly formed Sonderkommando 4a. He traveled with the Sonderkommando to Hrubieszow and from there to Lutsk where he was assigned to a Teilkommando of the same organization. In December 1941 he took leave and reported back to Sonderkommando 4a in Kharkov in March 1942. He remained with this unit until December 1942 and, at the same time, acted as liaison officer between the Einsatzkommando and German and Hungarian army units. In January 1943, the area under the jurisdiction of the 2d Army was subordinated to the area of the Einsatzgruppe and the defendant's reports and activities were controlled by Einsatzgruppe B. In the winter of 1943, he returned to Berlin.

The defendant stated in his pretrial affidavit that, during the time he served with Sonderkommando 4a, he was officially informed that the Kommando participated in a number of executions in the areas assigned.

The documentation in this case amply substantiates the statement that such executions did occur. At the trial the defendant claimed that executions were entirely beyond his sphere of activities, and his job was simply to make reports. One could well believe, if one were to accept as fact the statements of the various defendants who functioned in the so-called department III that these Kommandos were engaged in a scientific expedition studying the flora and fauna of the land through which they traveled, obtaining data on agriculture and economy, but in some way or other avoiding all contact with the grim enterprise to which the units were committed. It is not known what blinders these defendants wore that they could be in the very midst of the carnage caused by their own associates and yet remain entirely unaffected thereby. Again we come to the question of credibility. The witness was asked whether, in making a report on the economy of the country he would indicate that the labor supply had been affected because of the execution of Jews. He replied in the negative and the following ensued:

“Q. Making a report on the economy you would naturally have to talk about labor and, if a great number of those constituting the labor element were executed, that would affect seriously the economy of the country on which you were reporting, and you would need to include that in your reports, would you not?

“A. The situation which we found was that the entire economy had been ruined and had to be built up. There was no shop in which you could buy anything.

“Q. The economy wasn't helped by shooting off further labor supply, was it?

“A. No.

“Q. Did you report this in your reports?

“A. I may say the following.

“Q. Did you make this statement in your reports, that, because Jews were being killed and thereby the labor market being affected adversely, that the economy was made worse? Did you report that?

“A. As far as I remember I reported about the fact that the Jews in the Ukraine constituted an essential part of trade.

“Q. And did you report that Jews were being decimated?

“A. No.

“Q. You didn't put in any report that Jews were being killed and this affected the economy of the Ukraine?

“A. No. In this shape I did not report about it. I only reported about the fact that the Jews were an important economic potential, but I did not report to the effect as you mention it.

"Q. * * * You say that you did include in your report the statement that the Jews constituted an important economic potential. Did you then add that this important economic potential was rapidly disappearing because of the executions?

"A. No. I did not report that.

"Q. And yet you want to tell the Tribunal seriously that you made a report on the economy of the Ukraine?

"A. Yes."

In his pretrial affidavit the defendant stated that he had been employed as an interpreter. He amplified later that he was drafted into the Einsatz organization because of his ability in languages. His witness Kraege confirmed this. Yet, at the trial, von Radetzky denied acting in the job for which apparently he was best adapted. It can only be assumed that he made this denial because, by admitting the translating functions, he would be admitting that he knew of executions which followed certain investigations. Asked how it was that he was able to side-step his job of interpreter he replied that his work day was filled up with his job of expert in the SD Department.

"Q. Well, how did you become an expert in department III? You had not had SD training?

"A. No. I did not have that, I said—

"Q. Well, then, how did you become an expert so quickly?

"A. I was appointed for this because of my training in economics and my knowledge of languages.

"Q. Well now, we come back to languages again. If you were appointed because of your linguistic accomplishments, and your commanding officer needed an interpreter why wouldn't he naturally turn to you who was already known to be a good translator and interpreter?

"A. There were other interpreters in the Kommando, and the commander used these interpreters.

"Q. Then you were not used as an interpreter?

"A. I was never used as an interpreter by the commander. I was never used in interrogations as interpreter, either."

Von Radetzky could have had also other reasons for denying he was an interpreter. Report No. 156, commenting on the activities of a Teilkommando of Sonderkommando 4a at Lubny, stated that—

"On 18 October 1941 the Teilkommando of SK 4a at Lubny took over the evaluation of the NKVD files."

and thus,

"* * * it was possible, with the aid of the files acquired to arrest a considerable number of NKVD agents and several leading Communists. 34 agents and Communists and 73 Jews were shot."

Report No. 37 states—

"In Zhitomir itself, Gruppenstab [group staff] and Vorauskommando (Advance Kommando) 4a in cooperation have, up to date, shot all in all, approximately 400 Jews, Communists and informants for the NKVD."

Since the proof that certain individuals had been informers of the NKVD could only be established through the medium of the interpreter the documents would point to von Radetzky as that interpreter since he admitted being with this advance Kommando. Hence the possible motive for denying the interpreter's position.

Other reports also show the need for an interpreter, Report No. 24-IIA-81, NO-2938, Report No. 187-IIIC-34, NO-3237, and Report No. 111-IIA-45, NO-3155.

Report No. III would indicate still another reason why von Radetzky would deny his interpreter's role.

"On 26 September, the security police took up its activities in Kiev. That day, 7 interrogation-Kommandos of Einsatzkommando 4a started their work in the civilian prisoner camp, *in the prisoner of war camp*, in the Jewish camp, and in the city itself. Thus, among other things in the *camp for civilian prisoners and prisoners of war*, 10 political commissars were found and interrogated in detail. Conforming to the old Communist tactics these guys denied all political activity. Only when confronted with trustworthy witnesses, five commissars yielded and confessed, i.e. they admitted the position they had held, but did not make any statements beyond this. They were shot on 27 September." [Emphasis supplied.]

The defendant testified that, in his capacity as liaison officer, he obtained supplies for the Kommando. When asked what supplies were involved he replied, "Food and fuel". He was then asked about ammunition. He replied that he did not remember. It was then put to him,

"Witness, you either remember or you don't remember. If you remember food and fuel, you can remember whether you ordered ammunition or not. Did you order ammunition?" and he now replied with a definite "No". He was then asked why it was that he at first said he could not remember if he had ever obtained ammunition for his Kommando.

"Q. Do you remember now very definitely that you did not order ammunition?"

"A. Yes.

"Q. Do you say now definitely that you did not order ammunition?"

"A. I am certain that I would remember if ever I had obtained ammunition for the Kommando."

The defendant Blobel, commander of Sonderkommando 4a, said

in his pretrial affidavit, that, during his absence, von Radetzky took over. Blobel repudiated this statement on the witness stand, but he also denied that von Radetzky could ever have been even a Teilkommando or Vorkommando leader. But the documentary evidence clearly establishes that von Radetzky was active as a sub-Kommando leader.

In fact, von Radetzky explained that all those who had officer rank in his Kommando could qualify as leaders and, to that extent, he also was "a leader of the Kommando."

On 10 September 1941, a plan was reached between the officers of Sonderkommando 4a and rear army Hq "to liquidate the Jews of Zhitomir completely and radically."

Questioned about this meeting, the defendant testified that he was not present at it but that he had been ordered to negotiate with the field command about the furnishing of vehicles. He stated that he was of the impression that the Jews were to be resettled in Rovno. It is difficult to believe that the defendant did not know what "resettlement" meant in Einsatzgruppen circles.

The prosecution contends that von Radetzky was in charge of Sonderkommando 4a during Blobel's absence. Although there is evidence that Blobel was often absent because of illness, the Tribunal cannot find beyond a reasonable doubt that, during those absences, von Radetzky took over the Kommando.

Report No. 14 tells of a reprisal operation carried out at Lutsk by a subunit of Sonderkommando 4a. Gustav Kraege stated in an affidavit that von Radetzky was one of the officers of this subunit. Von Radetzky stated he was present in Lutsk during the time of this execution but denied having been commander of this unit, although he stated he was the highest ranking officer in the sub-Kommando. When Kraege appeared in Court as a witness he sought to repudiate his statement about ascribing the chiefship of the sub-Kommando to von Radetzky but he did admit that, at the time he was actually in Lutsk, he believed that von Radetzky was commanding, since Radetzky gave him his direct orders.

Although von Radetzky endeavored throughout the trial to deny knowledge of the extermination of Jews he finally admitted this knowledge.

The Tribunal finds that it is established beyond a reasonable doubt that the defendant knew that Jews were executed by Sonderkommando 4a because they were Jews, and it finds further that von Radetzky took a consenting part in these executions.

The Tribunal further finds, in contradistinction to the defendant's statement, that he did at times command a sub-Kommando.

The defendant maintained that he entered the Einsatz service involuntarily and remained in it against his will, submitting that

on eleven different occasions he endeavored to be relieved from this service. It must be remarked, however, that whether he became a member of the Einsatz forces voluntarily or involuntarily, he did his work zestfully. It can be said in mitigation that, according to his testimony, he did on occasion endeavor to assist potential victims of the Fuehrer Order and in one particular instance issued passes which allowed some persons to escape from the camp in which they were being held. Nonetheless, the Tribunal is convinced that the evidence establishes beyond a reasonable doubt that von Radetzky took a consenting part in war crimes and crimes against humanity and, therefore, finds him guilty under counts one and two of the indictment.

Insofar as count three is concerned, much evidence was introduced on behalf of the defendant to show that he did not enter the SS or SD organizations voluntarily, but was drafted. It is not sufficient however, in order to absolve oneself from the charge of membership in a criminal organization to show that one entered its ranks involuntarily. Attention is directed to that part of the International Military Tribunal decision which says that it charges with criminal membership in the SS those persons who became or remained members of the organization with knowledge that it was being used for criminal purposes, "or who were personally implicated as members of the organization in the commission of such crimes." The decision excludes those who were drafted into membership by the State in such a way as to give them no choice in the matter but adds that this exception does not apply to those who committed the acts declared criminal by Article 6 of the Charter. Thus, the question whether von Radetzky entered the SS voluntarily or involuntarily becomes moot in view of the finding of the Tribunal that he is guilty under counts one and two of the indictment, thereby proving conclusively his personal implication in the acts established as criminal by the Charter. The same finding holds true with regard to the defendant's membership in the SD.

The Tribunal finds, from all the evidence in this case, that the defendant was a member of the criminal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

FELIX RUEHL

SS Captain Felix Ruehl worked as a commercial clerk at Luckenwalde from 1926 until 1929. He then went to England for one year. In February 1931 until September 1933 he worked in the Luckenwalde court and in September 1933 joined the Gestapo. In

May 1941 while attending the Leadership School in Berlin he was summoned to Pretzsch, assigned to Sonderkommando 10b of Einsatzgruppe D, left for the field on June 27 or 28 and arrived in Romanian territory about 30 July. On 1 October 1941, having been called back to Berlin to continue his studies, he left the Kommando.

The prosecution introduced in evidence the affidavit of one Robert Barth, supposedly a former enlisted man in the Kommando in which he stated that during the "temporary duty trips" of the Kommando leader which usually took two or three days, the unit was commanded by Ruehl. If it were established that Ruehl really served as commander of the unit even for brief periods during such times as the Kommando was engaged in liquidating operations, guilt under counts one and two would be conclusive. The prosecution maintains that it has proved that very thing. But if this proposition is to be upheld it must rest on the one pedestal of Barth's affidavit. Ruehl could not come into the leadership automatically as the result of rank or seniority because they were such as to place him only in the fourth position. Thus the proof of leadership must rest on the Barth column which, probatively speaking, is a rather shaky one. While the rules of procedure permit the introduction of affidavits and indeed this innovation in trial routine has accomplished much good in the saving of time, an affidavit can never take the place of a flesh and blood witness in court when the affiant is available and the issue raised by the affidavit is a vital one. Had Barth appeared in court, not only would defense counsel have had the opportunity to cross-examine him, but the Tribunal itself could have appraised with more discernment than it can now his otherwise unsupported statement of Ruehl's supposed leadership. The pedestal of Barth's assertion with regard to upholding the hypothesis of Ruehl's leadership must withstand the successive hammer blows of, first, the unexplained absence of the affiant, second, Ruehl's low rank in the hierarchy of the unit and, third, the fact that normally an administrative officer would not have executive functions. Under a multiple attack of that character the Tribunal cannot ascribe to this lone piece of evidence the strength needed to sustain so momentous a weight as the leadership of a Kommando with its concomitant responsibility for executions.

And then there is also the direct testimony of Schubert, given from the witness stand, that Ruehl never functioned as a deputy commander of Sonderkommando 10b.

The prosecution submits document NOKW-587 as evidence against Ruehl. Ruehl denies that the action reported therein took

place and then adds that he arrived after the date of the alleged executions. The communication in question, however, states—

“Kommando 10b reached Chernovitsy on Sunday, 6 July 1941, at 18:15 hours *after an advance division* had established the first communications with Romanian posts in town the day before *and had provided* quarters.” [Emphasis supplied.]

Since the defendant admits that he was responsible for the procurement of quarters it is not to be excluded that he led the “advance division” which established communications with the Romanians and provided quarters. This, however, in itself would not make him a participant in the executive actions which followed nor would his contact with the Romanians in itself establish that he was aware that executions were impending. A presumption cannot be built upon another presumption in an issue as serious as the one involved in this particular transaction.

The prosecution has also introduced Report No. 19, dated 11 July 1941 which plainly involves the Kommando, but again there is no indication that Ruehl was in charge of the Kommando or had any authority over it. Report No. 50, dated 1 August 1941, speaks of an operation in Khotin or Hotin. Ruehl denies all knowledge of the executions mentioned therein. That Ruehl may not have taken part in these executions is admissible but that he was ignorant of their happening is contrary to human observation. That he may not have done anything to prevent them is within the realm of believability but to assert that as a member of a unit made up of only seven officers and 85 men he could not know that killings were taking place is to enter into a fairyland which was quite the antithesis of the demon's land in which they were operating.

But there is no need to resort to the machinery of logic and deduction to produce the conclusion of cognizance. It is ready made in Ruehl's own pretrial sworn statement in which he tells of having received official notice of the killings by the Kommando of 12 to 15 people declared to have participated in a surprise attack against Romanian troops. He also tells of the Sonderkommando which killed 30 Jews declared to have participated in the murder of two German air pilots. At the trial he denied having actual knowledge of these events and stated that what he acquired in the way of information came to him only through hearsay.

Although it is evident that Ruehl had knowledge of some of the illegal operations of Sonderkommando 10b, it has not been established beyond a reasonable doubt that he was in a position to control, prevent, or modify the severity of its program.

The prosecution also charges that Ruehl was criminally involved in the matter of the migration of a large group of Jews from the German controlled territory into Romania. Although this episode

was dwelt on at length during the trial, no evidence was adduced to show that Ruehl acted in any capacity other than courier between the Chief of the Einsatzgruppe and the escorting Romanian officers of the so-called transport. There is no evidence that Ruehl in any way maltreated these Jews, and certainly he did not participate in the execution of any of them.

Ruehl remained with the Einsatz organization for no more than three months and during the entire period took part in no executive operation nor did his low rank place him automatically into a position where his lack of objection in any way contributed to the success of any executive operation.

The Tribunal concludes from the evidence that the defendant is not guilty under count one of the indictment and not guilty under count two of the indictment.

The Tribunal however finds that the defendant was a member of the criminal organizations SS and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

HEINZ HERMANN SCHUBERT

SS First Lieutenant Heinz Schubert joined the NSDAP on 1 May 1934, having previously served in the Hitler Youth Organization. In October 1934 he joined the SS. From October 1941 to June 1942 he served as adjutant to Ohlendorf, Chief of Einsatzgruppe D. At the trial he testified that his duties consisted mostly of attending to the personal affairs of his chief, the receiving and filing of correspondence, the making of appointments, receiving visitors, and so on. It would appear, however, that he was more than an office boy with shoulder straps.

Schubert's own affidavit answers the question as to whether he is guilty under counts one and two of the indictment. The pertinent parts of this affidavit read as follows:

"In December 1941—I do not remember the exact date—I was assigned by Ohlendorf or Seibert to supervise and inspect the shooting of about 700 to 800 people, which was to take place in the close vicinity of Simferopol. The shooting was undertaken by the special command 11b, one of the formations of the Einsatzgruppe D. My task in connection with the shooting consisted of three parts—

(a) to see that the location of the shooting be remote enough, so that there could be no witnesses to the shooting;

(b) to supervise that the collection of money, jewels, and other valuables of the persons who were to be shot, be completed without the use of force; and that the persons designated

for this by the Special Command 11b, hand over the collected items to the administration leaders and their deputies in order to have them passed on to Einsatzgruppe D;

(c) to supervise that the execution be completed in the most humane and military manner possible, exactly according to Ohlendorf's orders.

"After the execution I had to report personally to Ohlendorf that the execution had been carried out exactly according to his orders.

"As commissioner of Ohlendorf I followed his orders. I went to the gypsy quarter of Simferopol and supervised the loading of the persons who were to be shot, into a truck. I took care that the loading was completed as quickly as possible and that there were no disturbances and unrest by the native population. Furthermore, I took care that the condemned persons were not beaten while the loading was going on. Since it was my task to supervise the whole execution, I could only stay a short time at each phase of it.

"The place which was designated for the shooting of these Russians and Jews was several kilometers outside of Simferopol and about 500 meters off the road in an antitank ditch. Among other things I ascertained that the traffic in that region was stopped by persons designated for this and was detoured on side roads. When the condemned persons arrived at the place of execution, they were ordered to leave their money, their valuables and papers at a place designated for this. I watched that none of the deposited items were kept by the SS and Orpo men who were designated for the collection. The depositing of this property by the condemned persons was finished without the use of force. I supervised this phase carefully, in order that all the valuables could be handed over to the Einsatzgruppe D, for subsequent remittance to Berlin.

"For a short time, when the people who were to be shot were already standing in their positions in the tank ditch, I supervised the actual shooting which was carried out in strictest conformity with Ohlendorf's orders—in a military and humane manner, as far as possible. The people were shot with submachine guns and rifles. I know that it was of the greatest importance to Ohlendorf to have the persons who were to be shot killed in the most humane and military manner possible because otherwise—in other methods of killing—the moral strain [seelische Belastung] would have been too great for the execution squad.

"I have read this statement, consisting of three pages in the German language and declare that it is the whole truth to the best of my knowledge and belief. I had the opportunity to make

changes and corrections in the above statement. I made this statement of my own free will without any promise of reward, and I was not subjected to any threat or duress whatsoever.

“Nuernberg, Germany, 24 February 1947

[Signature] Heinz Hermann Schubert”

That the execution described by Schubert actually took place is established conclusively not only by reports but by the testimony of other witnesses as well. In fact, Schubert himself said—

“This was the execution which has been discussed here repeatedly. It was the execution for which the 11th Army had given orders to the Einsatzgruppe to carry it out before a certain time. This deadline, as far as I know, was Christmas or the end of the year 1941.”

At the trial the defendant endeavored to dilute the force of his affidavit by saying that the word “supervise”, which is frequently used in his narrative, does not correctly report the functions he performed at the execution; he did not supervise but merely inspected. The affidavit consisted of three pages, he made a correction on page one and initialed the correction, placed his abbreviated name at the bottom of the first two pages and signed his full name at the bottom of the last page.

However, even if the affidavit were to be disregarded, his account on the witness stand of the part he played in the execution of defenseless and innocent people would clearly take him within the purview of Control Council Law No. 10.

When asked why these 700 to 800 people were shot, he replied—

“I did not know why the individuals were being executed. It is possible that there were persons among them who, because of some special examination, were being executed. As for me, in general, however, I was certain of one thing, that this was an execution based on the Fuehrer Order.”

When asked what he had done in the early stages of this operation he emphasized that he did not select the place for the execution. It was then pointed out to him that his affidavit did not so indicate.

“This does not say that you selected it. It says that you went there to make certain that the place selected for the shooting was so located that it would fall within the regulations, namely, that there would not be any unnecessary witnesses to the shooting.”

He affirmed this version. With regard to the taking of the valuables he also confirmed in Court.

“I convinced myself that the collection of money and valuables of people to be shot was not done by force, etc.”

The defendant tried to convey the impression that he merely looked on, more or less, as a spectator, but he admitted that he would have interfered if the execution had been laid in the wrong place, if weapons not prescribed by the chief of the Einsatzgruppe were used, and in general he would have intervened if things were not going "well".

Schubert's criminal involvement in the Christmas massacre of Simferopol is complete and presents no mitigating circumstances.

His general participation in the venture of Einsatzgruppe D while he was its adjutant is not to be doubted. The defendant Ohlendorf declared in an affidavit—

"The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel."

Schubert sought to minimize the implications of this statement and denied that he had been "generally assigned to inspections". He did, however, state that he knew "definitely" that Gabel "carried out such inspections". It would be strange, indeed, that Ohlendorf should mention three names, and it developed that the only one who performed the duties he assigned to them should be *that one person* who did not appear in this trial as a defendant.

It is also clear that the defendant was thoroughly aware of the instructions generally given by the chief of the Einsatzgruppe with regard to the "manner of carrying out executions". It is furthermore evident that, as adjutant, Schubert was current on the assignments given to various members of the staff, and therefore, had full knowledge of the main purpose of the Einsatzgruppe.

From all the evidence in the case the Tribunal finds the defendant guilty under counts one and two of the indictment.

The Tribunal also finds that the defendant was a member of the criminal organizations SS and SD under the conditions defined in the Judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

MATHIAS GRAF

Mathias Graf was never a commander of an Einsatz unit nor during the whole time he served in Russia was he an officer. When first attached to Einsatzkommando 6 he held the rank of Unterscharfuehrer (corporal). After one year he was promoted to Scharfuehrer (sergeant) and when he left Russia in October 1942 he held the rank of Oberscharfuehrer (master sergeant) that is to say he remained in a noncommissioned officers' status throughout the entire period of his service with the Kommando.

At the very outset he was made assistant to one Grimminger who served as SD expert. Upon Grimminger's death in July 1941

Graf took over his position. Although Graf was statistically with Einsatzkommando 6 for thirteen months he served also for a short period with the commander of the Security Police and the SD in Stalino. For five weeks he was detailed to the liaison office of AOK 17; he was on furlough for five weeks and was ill and on sick leave for about three months. Thus about five months of thirteen months' incumbency with the Einsatzkommando were spent away from the unit. During the eight months he actually served with the organization, Graf never once acted as commander of it or any of its subdivisions.

In September 1942 Graf was assigned the command of a sub-Kommando, but he refused to accept the assignment. Because of this refusal he was arrested and placed in custody for disciplinary action. Eventually the disciplinary proceedings were dropped and he was sent back to Germany.

The defendant, like every other defendant in Court, is presumed to be innocent until proved guilty. The prosecution has introduced reports showing that Einsatzkommando 6 engaged in various executive operations. It is not questioned that the Kommando did participate in liquidating operations and, despite the defendant's denial, it is not to be doubted that he knew of at least some of these executions. However, more than mere knowledge of illegality or crime is required in order to establish guilt under counts one and two of the indictment. Furthermore, in view of his various absences from the Kommando it cannot be assumed that his membership in the organization of itself proves his presence at and knowledge of any particular executive operation, without there being proof of that fact.

In view of Graf's noncommissioned officer's status in an organization where rank was of vital importance, it is not to be assumed that the commander of the organization would take Graf into his confidence in planning an operation. As a noncommissioned officer he would not participate in officers' conferences. Since there is no evidence in the record that Graf was at any time in a position to protest against the illegal actions of others, he cannot be found guilty as an accessory under counts one and two of the indictment. Since there is no proof that he personally participated in any of the executions or their planning, he may not be held as a principal.

Insofar as counts one and two against the defendant are concerned the Tribunal concludes that the evidence does not rise to that degree of proof required by the principles of justice and the concomitant guarantees of correct procedure to warrant a finding of guilt beyond a reasonable doubt, and thus finds him not guilty.

The defendant joined the SS in 1933 and in 1936 was expelled because of lack of attendance and general indifference to the or-

ganization. It would appear that at no time was Graf a fanatical adherent of National Socialism. In 1932 he intended to go to South America but was prevented from doing so because of restriction on foreign currency. He tried to migrate in 1940 but could not do so because of the war. His primary interest was not politics but business. His Work Book, a document required under the Law of 26 February 1935 (published in Reich Law Gazette 311) lists him as an independent business man from the period of 1 October 1935, to 1 February 1940, and as a civil servant from 1 March 1940.

In January 1940, he was drafted under the Emergency Service Regulations for service with the Landrat in Kempten and then entered the SD Aussenstelle in Kempten on a war supplementary basis.

In that same year, 1940, he endeavored to be released from the SD so that he might join the army. He took an interpreter's examination in order to qualify for linguistic services in the army but he did not succeed in his attempt. On 18 April 1941 he wrote a letter, seeking to be released from the SD so that he might be enrolled in the army. A copy of this letter was introduced as a document.

In considering the subject of membership in a criminal organization, as defined by the International Military Tribunal decision, 1 September 1939 is accepted as a crucial date. On that date Graf was not a member of any criminal organization. When, in 1940, he was drafted by the Emergency Service Regulations he applied to rejoin the SS. He explained that this application was purely a perfunctory function because he would automatically have fallen into this organization on account of his then being a member of the SD.

"The personnel departmental chief could see from my documents that I used to be a member of the SS, so he said, 'Of course, in that case you have to rejoin the SS'. Therefore, I made out the application, but, if I had not been deferred to the SD, I would never have rejoined the SS. After all, I had left the SS and also I did not rejoin the General SS, but I was transferred to the special formation, the SD. After all, this was on the war emergency status. In my opinion then, it was merely a formal matter to regain my former SS number."

In substantiation of his claim that he rejoined the SS because of the insistency of his departmental chief the defendant pointed out, that although drafted into war service on 1 January 1940, he did not make his application for the SS until 28 July. Had he had a sincere desire to rejoin the SS, he would not have waited 7 months to make the application. He, therefore, submits that the filing of the application was a mere form.

The Tribunal finds that the defendant's leaving the SS in 1936 showed a clear intention to disassociate himself from that organization and accepts the defendant's explanation that he would not have rejoined the SS in July 1940 had he not been drafted by the Emergency Service Regulations and deferred to the SD. The Tribunal therefore finds him not guilty of membership in the SS under the conditions declared criminal by the International Military Tribunal.

With regard to membership in the SD, reference is made to the IMT decision which declares that the Security Police and SD was a voluntary organization and that membership therein was voluntary. The Tribunal therefore finds the defendant guilty of membership in the SD. It further finds as a mitigating circumstance, however, that his membership in the SD was not without compulsion and constraint. It therefore adjudges that the period of the defendant's imprisonment from the date of his arrest, following the termination of the war, to the present date, shall constitute the sentence of the Tribunal based upon such conviction. In view of the fact that the defendant has thus already served his term of imprisonment just imposed, it is now ordered that he be permanently discharged from custody under the indictment upon adjournment of the Tribunal this day.

Nuernberg, Germany, 8 and 9 April 1948

[Signed] MICHAEL A. MUSMANNO,
Presiding Judge
JOHN J. SPEIGHT,
Judge
RICHARD D. DIXON,
Judge

SENTENCES

PRESIDING JUDGE MUSMANNO: The Tribunal has the following order to promulgate with regard to sentences where the term of an imprisonment is indicated. The defendant involved will receive credit for the time already served by him in confinement from the first date of arrest following the termination of the war.

"Defendant OTTO OHLENDORF, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

"Defendant HEINZ JOST, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for life.

"Defendant ERICH NAUMANN, on the counts of the indictment

on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant ERWIN SCHULZ, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years’ imprisonment.

“Defendant FRANZ SIX, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years’ imprisonment.

“Defendant PAUL BLOBEL, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant WALTER BLUME, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

“Defendant MARTIN SANDBERGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WILLY SEIBERT, on the counts of the indictment upon which which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant EUGEN STEIMLE, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant ERNST BIBERSTEIN, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WERNER BRAUNE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WALTER HAENSCH, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant GUSTAV NOSSKE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for life.

“Defendant ADOLF OTT, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant WALDEMAR KLINGELHOEFER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

“Defendant LOTHAR FENDLER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to ten years’ imprisonment.

“Defendant WALDEMAR VON RADETZKY, on the counts of the

indictment on which you have been convicted, the Tribunal sentences you to twenty years' imprisonment.

"Defendant FELIX RUEHL, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to ten years' imprisonment.

"Defendant HEINZ SCHUBERT, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant EDUARD STRAUCH, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

XII. AFFIRMATION OF SENTENCES BY THE MILITARY GOVERNOR OF THE UNITED STATES ZONE OF OCCUPATION

A. INTRODUCTION

Under Article XV of Ordinance No. 7, the sentences imposed by the Tribunal are subject to review. Article XVII provides that "the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof." Article XVIII provides that "No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor."

The sentences of death by hanging in Case No. 9 were confirmed by the Military Governor on 4 March 1949 with respect to the defendants Biberstein, Blobel, Blume, Braune, Haensch, Klingelhoef, Naumann, Ohlendorf, Ott, Sandberger, Seibert, Steimle and Strauch, and on 25 March 1949 with respect to the defendant Schubert. On 4 March 1949, the Military Governor also confirmed the sentences of the defendants Fendler, Jost, von Radetzky, Ruehl, Schulz, and Six, who were sentenced either to imprisonment for life or for a term of years.

No petition for a review of sentence was made on behalf of the defendant Nosske, who was sentenced to life imprisonment. The sentence as to the defendant Graf states that his "imprisonment from the date of his arrest, following the termination of the war to the present date, shall constitute the sentence of the Tribunal." In the absence of a petition for review of sentence in the cases of the defendants Nosske and Graf, the Military Governor did not review their sentences.

In subsection 2, below, appear the orders of the Military Governor with respect to the sentence of the defendant Ohlendorf, sentenced to death by hanging, and the sentence of the defendant Jost, sentenced to life imprisonment.

All petitions to the Supreme Court of the United States were denied, 2 May 1949.

B. ORDERS OF THE MILITARY GOVERNOR WITH RESPECT
TO THE SENTENCES OF THE DEFENDANTS OHLENDORF
AND JOST

HEADQUARTERS, EUROPEAN COMMAND
Office of the Commander-in-Chief
APO 742

Berlin, Germany

4 March 1949

In the Case of The United States of America

vs

Otto Ohlendorf, et al.

Military Tribunal II
Case No. 9

Order with Respect to Sentence of Otto Ohlendorf

In the case of the United States of America against Otto Ohlendorf, et al., tried by United States Military Tribunal II, Case No. 9, Nuernberg, Germany, the defendant Otto Ohlendorf, on 10 April 1948, was sentenced by the Tribunal to death by hanging. A petition to modify the sentence, filed on behalf of the defendant by his defense counsel, has been referred to me pursuant to the provisions of Military Government Ordinance No. 7. I have duly considered the petition and the record of the trial and in accordance with Article XVII of said Ordinance it is hereby ordered:

a. that the sentence imposed by Military Tribunal II upon Otto Ohlendorf be, and hereby is, in all respects, confirmed;

b. that pending action on petitions filed by the defendant with authorities other than the Office of Military Government for Germany (U. S.), the execution of the death sentence be stayed until further order by me.*

c. that the defendant be confined until further order in War Criminal Prison No. 1, Landsberg, Bavaria, Germany.

LUCIUS D. CLAY,
General, U. S. Army
Military Governor
and
Commander-in-Chief, European Command

* A similar provision was contained in all of the orders confirming death sentences.

HEADQUARTERS, EUROPEAN COMMAND
Office of the Commander-in-Chief
APO 742

Berlin, Germany

4 March 1949

In the Case of The United States of America

vs

Otto Ohlendorf, et al.

Military Tribunal II
Case No. 9

Order with Respect to Sentence of Heinz Jost

In the case of the United States of America against Otto Ohlendorf, et al., tried by United States Military Tribunal II, Case No. 9, Nuernberg, Germany, the defendant Heinz Jost, on 10 April 1948, was sentenced by the Tribunal to life imprisonment. A petition to modify the sentence, filed on behalf of the defendant by his defense counsel, has been referred to me pursuant to the provisions of Military Government Ordinance No. 7. I have duly considered the petition and the record of the trial and in accordance with Article XVII of said Ordinance it is hereby ordered:

a. that the sentence imposed by Military Tribunal II on Heinz Jost be, and hereby is, in all respects confirmed;

b. that the defendant be confined in War Criminal Prison No. 1, Landsberg, Bavaria, Germany.

LUCIUS D. CLAY
General, U. S. Army
Military Governor
and

Commander-in-Chief, European Command.

APPENDIX

List of Witnesses in Case 9

[Note.—All witnesses in this case appeared before the Tribunal. Tribunal witnesses are designated by the letter "T", defense witnesses by the letter "D", and the only prosecution witness by the letter "P". The names not preceded by any designation represent defendants testifying in their own behalf. Extracts from testimony in this case are listed in the index of documents and testimony.]

	Names	Date of testimony	Pages (mimeographed transcript)
D	ALANDER, Ursula	22 Jan 48.....	5440-5456
P	BAYLE, Francois	11 Feb 48.....	6407-6419
T	BEDWILL, Lieut., William L.	2 Feb 48.....	5571-5588
	BIBERSTEIN, Ernst Emil Heinrich ...	20, 21, 24, 25 Nov 47....	2687-2866; 2938-3004
	BLOBEL, Paul	28, 29, 30 Oct 47.....	1495-1753
	BLUME, Walter	31 Oct; 4, 5 Nov 47.....	1754-1927
	BRAUNE, Werner	25, 26 Nov; 1, 2 Dec 47..	3004-3054; 3060-3223
D	BURKHOFF, Paul	20 Jan 48.....	5317-5345
T	CARPENTER, George Tysson.	12 Jan 48.....	4893-4898
	FENDLER, Lothar	13, 15 Dec 47; 14 Jan 48.	3986-4121; 5032-5047
	GRAF, Mathias	7, 8 Jan 48.....	4751-4839
T	GRAHMANN, Herbert	12 Jan 48.. .. .	4898-4902
	HAENSCH, Walter	2, 3, 4 Dec 47.....	3223-3323; 3365-3423
D	HARSCH, Erwin	20 Dec 47.....	4538-4557
D	HARTEL, Albert	24 Nov 47	2867-2938
D	JAUER, Herta	11, 12 Feb 48.....	6364-6405; 6421-6439
	JOST, Heinz	21, 22, 23 Oct 47.....	1128-1306
	KLINGELHOEFER, Waldemar.	11, 12 Dec 47.....	3798-3985
D	KRAEGE, Gustav	17 Dec 47.....	4314-4364
D	LAUE, Wolfgang	5 Nov 47.....	1928-1934
D	MAE, Hjalmar	7, 17 Nov 47.....	2100-2140; 2421-2447
D	MAENNEL, Hans Dietrich ..	2 Feb 48.....	5515-5540
D	MAURACH, Reinhard	15 Oct 47.....	756-769
	NAUMANN, Erich	16, 17 Oct 47.....	801-900
	NOSSKE, Gustav	4, 8, 9 Dec 47.....	3424-3687
	OHLENDORF, Otto	8, 9, 14, 15 Oct 47.....	475-756
	OTT, Adolf	9, 10, 11 Dec 47.....	3688-3798
	RADEZKY, Waldemar v. . .	15, 16, 17 Dec 47.....	4123-4314
	RASCH, Emil Otto.....	12 Jan 48.....	4878-4892
T	REICH, Friedel	19 Dec 47.....	4504-4536
D	REIMERS, Franziska	8 Jan 48.....	4844-4870
	RUEHL, Felix	18, 19 Dec 47.....	4365-4502
	SANDBERGER, Martin	7, 12, 13, 14, 17 Nov 47..	2141-2420
D	SCHALLER, Heinz	7 Jan 48.....	4747-4751

List of Witnesses in Case 9 Cont'd

	Names	Date of testimony	Pages (mimeographed transcript)
D	SCHREYER, Gertrud	3 Dec 47.....	3324-3364
	SCHUBERT, Heinz	5, 6 Jan 48.....	4560-4738
	SCHULZ, Erwin	17, 18, 20, 21, Oct 47....	903-1128
	SEIBERT, Willy	17, 18, 19, 20 Nov 47....	2460-2686
	SIX, Alfred Franz.....	24, 27 Oct 47.....	1308-1490
D	SPENGLER, Wilhelm	16 Oct 47.....	774-799
	STEIMLE, Eugen	5, 6, 7 Nov 47.....	1935-2099
	STRAUCH, Eduard	13, 19, 20 Jan 48.....	4907-4953; 5240-5297
D	VETTER, Veronika	16 Jan 48.....	5163-5208
T	WARTENBERG, Rolf	6, 7 Oct 47.....	347-406
D	WEINMANN, Elisabeth	26 Nov 47.....	3055-3059

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L-180	Pros. Ex. 34.....	Extracts from report of Einsatzgruppe A covering the period from 23 June 1941 to 15 October 1941.	154
NO-2662	Pros. Ex. 13.....	Letter from Heydrich to Ribbentrop, Reich Minister of Foreign Affairs, 23 April 1942; extracts from attached Operational Situation Report U.S.S.R. No. 11.	188
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NO-3154	Pros. Ex. 23	Extracts from Operational Situation Report U.S.S.R. No. 80, 11 September 1941.	142
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NO-3157	Pros. Ex. 68	Extracts from Operational Situation Report U.S.S.R. No. 128, 3 November 1941.	150
NO-3279	Pros. Ex. 21	Extracts from Operational Situation Report U.S.S.R. No. 155, 14 January 1942.	186
NO-3339	Pros. Ex. 93	Extracts from Operational Situation Report U.S.S.R. No. 170, 18 February 1942.	194
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NO-4134	Pros. Ex. 7	Extracts, 21 and 27 October 1941, from Operational Situation Report U.S.S.R. No. 126.	100
NO-4145	Pros. Ex. 10	Affidavit of Walter Blume, 29 June 1947.	139
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"The RuSHA Case"

MILITARY TRIBUNAL NO. 1

CASE 8

THE UNITED STATES OF AMERICA

—against—

ULRICH GREIFELT, RUDOLF CREUTZ, KONRAD MEYER-HETLING,
OTTO SCHWARZENBERGER, HERBERT HUEBNER, WERNER LORENZ,
HEINZ BRUECKNER, OTTO HOFMANN, RICHARD HILDEBRANDT,
FRITZ SCHWALM, MAX SOLLMANN, GREGOR EBNER, GUENTHER
TESCH, and INGE VIERMETZ, *Defendants*

INTRODUCTION

The "RuSHA Case" is officially designated *United States of America vs. Ulrich Greifelt, et al (Case 8)*. "RuSHA" is the German abbreviation of "Rasse- und Siedlungshauptamt Race and Settlement Main Office), an SS agency which played a very important role in the case.

The defendants were leading officials of "RuSHA" or of three other offices or agencies of the SS. These four agencies, all branches of the Supreme Command of the SS, were the "Staff Main Office of the Reich Commissioner for the Strengthening of Germanism" (Stabshauptamt des Reichskommissars fuer die Festigung des deuthscen Volkstums, abbreviated RKFDV); "Office for Repatriation of Ethnic Germans" (Volksdeutsche Mittelstelle, abbreviated VoMi), a subdivision of the RKFDV; the "Race and Settlement Main Office" (RuSHA); and the "Lebensborn", which was both a private association (Verein) and a department of the Personal Staff of Heinrich Himmler, the Supreme or Reich Leader SS. Lebensborn may be roughly translated "Well of Life". It was founded by the SS before the war to ensure the support of legitimate and illegitimate children of SS men. It was used during the war for the selection for Germanization of "racially valuable children" of foreign nationals.

The defendants were charged with criminal conduct allegedly arising out of their functions as officials of the four agencies mentioned. It was alleged that the crimes charged to the defendants were connected with a systematic program of genocide.* In its judgment the Tribunal hearing the case declared that these SS organizations existed "for one primary purpose in effecting the ideology and program of Hitler, which may be summed up in one phrase—The two-fold objective of weakening and eventually destroying other nations while at the same time strengthening Germany, territorially and biologically, at the expense of conquered nations".

The "RuSHA Case" was tried at the Palace of Justice in Nuernberg before Military Tribunal I. The Tribunal convened 121 times,

* Since World War II genocide has become the widely used term to describe the systematic persecution and elimination of ethnic or religious groups. After the completion of this trial the General Assembly of the United Nations, by resolution of 9 December 1948, adopted a convention entitled "Convention on the Prevention and Punishment of the Crime of Genocide".

and the trial lasted approximately eight months, as shown by the following schedule:

Indictment	1 July 1947
Indictment served	7 July 1947
Arraignment	10 October 1947
Prosecution opening statement	20 October 1947
Defense opening statement	20 November 1947
Prosecution closing statement	13 February 1948
Defense closing statements	16-17 February 1948
Judgment	10 March 1948
Sentences	10 March 1948
Affirmation of sentences by the Military Governor of the U. S. Zone of Occupation	12 February 1949

The English transcript of the Court proceedings runs to 5,408 mimeographed pages. The prosecution introduced into evidence 904 written exhibits (some of which contained several documents), and the defense 1,148 written exhibits. The Tribunal heard oral testimony of 27 witnesses called by the prosecution and of 70 witnesses, excluding the defendants, called by the defense. Each of the 14 defendants testified in his own behalf, and each was subject to examination on behalf of other defendants. The exhibits offered by both the prosecution and defense contained documents, photographs, affidavits, interrogatories, letters, maps, charts, and other written evidence. The prosecution introduced 93 affidavits; the defense introduced 522 affidavits. The prosecution called 33 defense affiants for cross-examination; the defense called 47 prosecution affiants for cross-examination. The Tribunal was in recess between 10 and 20 November 1947, to give the defense additional time to prepare its case. A further recess was taken from 2 to 13 February 1948, to allow both prosecution and defense time for the preparation of their closing arguments.

The members of the Tribunal and prosecution and defense counsel are listed on the ensuing pages. Prosecution counsel were assisted in preparing the case by Walter Rapp (Chief of the Evidence Division), Herbert Meyer, Fred Rodell, and Larry Wolff, interrogators, and Margit Braid, M. L. Dezborowska, Stanley Donath, George Grant, Olga Lang, Dorit Margen, Stephen Mayer, Eduard Rolling, Frank Young, and Hedy Wachenheimer, research and documentary analysts.

Selection and arrangement of the "RuSHA Case" material published herein was accomplished principally by Arnost Horlik-Hochwald and Olga Lang, working under the general supervision

of Drexel A. Sprecher, Deputy Chief Counsel and Director of Publications, Office U. S. Chief of Counsel for War Crimes. Catherine W. Bedford, Henry Buxbaum, Emilie Evand, Paul H. Gantt, Enid M. Standring, and Dr. Wolfgang Theobald assisted in selecting, compiling, editing, and indexing the numerous papers.

John H. E. Fried, Special Legal Consultant to the Tribunals, reviewed and approved the selection and arrangements of the materials as the designated representative of the Nuernberg Military Tribunals.

Final compilation and editing of the manuscript for printing was administered by the War Crimes Division, Office of the Judge Advocate General, under the direct supervision of Richard A. Olbeter, Chief, Special Projects Branch, with Alma Soller as editor, Amelia Rivers as assistant editor and John W. Mosenthal as research analyst.

ORDER CONSTITUTING TRIBUNAL I

HEADQUARTERS, EUROPEAN COMMAND

3 October 1947

GENERAL ORDERS }
No. 110 }

Pursuant to Military Government Ordinance No. 7

1. Effective as of 30 September 1947, pursuant to Military Government Ordinance No. 7, 24 October 1946, entitled "Organization and Powers of Certain Military Tribunals", Military Tribunal I is hereby reconstituted as follows:

LEE B. WYATT, Presiding Judge
DANIEL T. O'CONNELL, Judge
JOHNSON T. CRAWFORD, Judge

2. The Tribunal shall convene at Nuernberg, Germany, to hear such cases as may be filed by the Chief of Counsel for War Crimes or by his duly designated representative.

BY COMMAND OF GENERAL CLAY:

C. R. HUEBNER
Lieutenant General, GSC
Chief of Staff

OFFICIAL:

G. H. GARDE
G. H. GARDE
Lieutenant Colonel, AGD
Asst. Adjutant General

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War Department

Attn: Operations Branch

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1-OPO Reports Section

800-Hq EUCOM

MEMBERS OF THE TRIBUNAL

LEE B. WYATT, Presiding,
Associate Justice, Supreme Court of Georgia.

DANIEL T. O'CONNELL, Member,
Associate Justice, Superior Court of Massachusetts.

JOHNSON T. CRAWFORD, Member,
Judge, District Court of Oklahoma.

ASSISTANT SECRETARIES GENERAL

MISS M. A. ROYCE.....From 10 October 1947 to 7 January 1948

MR. MAURICE DEVINNA.....From 8 January 1948 to 10 March 1948

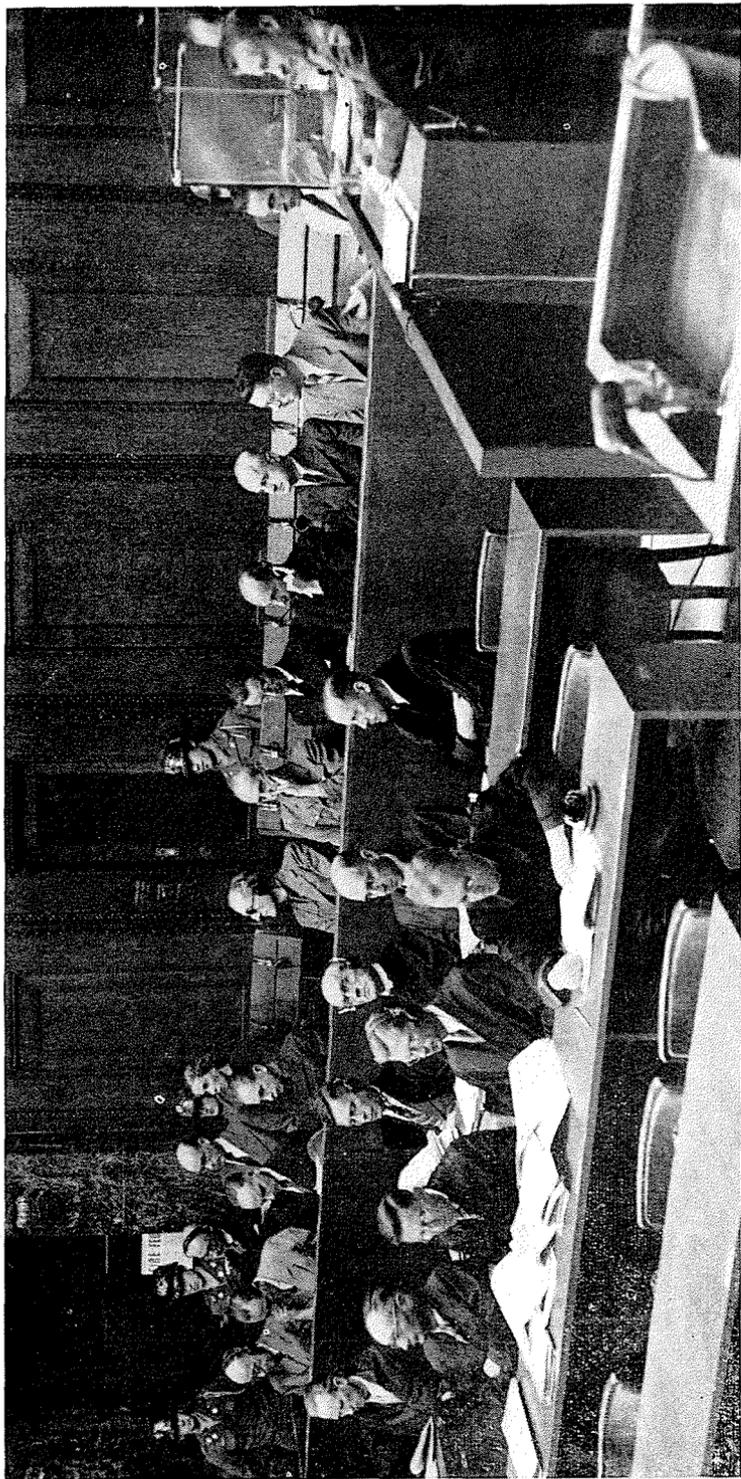


TRIBUNAL I—CASE EIGHT

Daniel T. O'Connell; Lee B. Wyatt, Presiding; Johnson Tal Crauford



Defendants examining indictment. In left foreground Capt. Lowell Rice checks papers for defendant Sollmann. Beyond Capt. Rice is Inge Viermetz, only woman defendant in the case, who was acquitted.



Defendants in the dock with some of defense attorneys in foreground. Defendants are, left to right: (front row) Greifelt, Creutz, Meyer-Hetting, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Sollmann, Schwalm, (back row) Ebner, Tesch, Inge Viernetz.



Marie Dolezalova, fifteen years old, taking the oath. She was one of two children, kidnapped when Lidice, Czechoslovakia was destroyed, who appeared as witnesses. At left is a marshal of the Court and at right an interpreter.

PROSECUTION COUNSEL

Chief of Counsel:

BRIGADIER GENERAL TELFORD TAYLOR

Deputy Chief of Counsel:

MR. JAMES M. MCHANEY

Trial Counsel:

MR. EDMUND H. SCHWENK

MR. DANIEL J. SHILLER

Associate Counsel:

MR. HANS FROEHLICH

MISS ESTHER J. JOHNSON

MR. KNOX LAMB

MR. HAROLD E. NEELY

DEFENSE COUNSEL

Defendants

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CREUTZ, RUDOLF

MEYER-HETLING,

KONRAD

SCHWARZENBERGER,

OTTO

HUEBNER, HERBERT

LORENZ, WERNER

BRUECKNER, HEINZ

HOFMANN, OTTO

HILDEBRANDT,

RICHARD

SCHWALM, FRITZ

SOLLMANN, MAX

EBNER, GREGOR

TESCH, GUENTHER

VIERMETZ, INGE

Defense Counsel

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DR. KURT BEHLING

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DR. ERNST DURCHHOLZ

DR. ERNST HESSE

DR. KARL DOETZER

DR. OTFRIED SCHWARZ

DR. GEORG FROESCHMANN

DR. WILLI HEIM

DR. PAUL RATZ

HERBERT THIELE-

FREDERSDORF

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DR. GERHARD KLINNERT

DR. HERMANN MUELLER

DR. WERNER SCHUBERT

GERDA DOETZER

DR. EWALD ZAPP

DR. KARL PRACHT

DR. WILHELM MAAS

HEINRICH RENTSCH

DR. ERNST BRAUNE

DR. LUDWIG ALTSTOETTER

I. INDICTMENT¹

The United States of America, by the undersigned Telford Taylor, Chief of Counsel for War Crimes, duly appointed to represent said Government in the prosecution of war criminals, charges that the defendants herein committed crimes against humanity and war crimes, as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945. These crimes included murders, brutalities, cruelties, tortures, atrocities, deportation, enslavement, plunder of property, persecutions, and other inhumane acts, as set forth in counts one and two of this indictment. All but one of the defendants herein are further charged with membership in a criminal organization, as set forth in count three of this indictment.

The persons accused as guilty of these crimes and accordingly named as defendants in this case are—

ULRICH GREIFELT—Obergruppenfuehrer (Lieutenant General) in the "Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei" (commonly known as the "SS") and General of Police; Chief of the Staff Main Office (Stabshauptamt) of the Reich Commissioner for the Strengthening of Germanism (Reichskommissar fuer die Festigung des deutschen Volkstums, commonly known as the "RKFDV"); and Chief of Amtsgruppe "B" of the Staff Main Office.

RUDOLF CREUTZ—Oberfuehrer (Senior Colonel) in the SS; Deputy to Greifelt; and Chief of Amtsgruppe "A" of the Staff Main Office of the RKFDV.

KONRAD MEYER-HETLING—Oberfuehrer (Senior Colonel) in the SS; Chief of Amtsgruppe "C" of the Staff Main Office of the RKFDV.

OTTO SCHWARZENBERGER—Oberfuehrer (Senior Colonel) in the SS; Chief of Amt [Office] V in Amtsgruppe "B" of the Staff Main Office of the RKFDV.

HERBERT HUEBNER—Standartenfuehrer (Colonel) in the SS; Chief of Branch Office Poznan of the Staff Main Office of the RKFDV and local representative of the SS Race and Settlement Main Office (Rasse- und Siedlungshauptamt, commonly known as "RuSHA") for the Warthegau.²

WERNER LORENZ—Obergruppenfuehrer (Lt. General) in the

¹ Tr. pp. 1-18, 1 July 1947.

² Part of western Poland incorporated into Germany proper after the occupation and made a province (Gau) of the Reich.

SS and General of the Waffen SS and Police; Chief of the Repatriation Office for Ethnic Germans (Volksdeutsche Mittelstelle, commonly known as "VoMi") of the SS.

HEINZ BRUECKNER—Sturmbannfuehrer (Major) in the SS; Chief of Amt VI of VoMi.

OTTO HOFMANN—Obergruppenfuehrer (Lt. General) in the SS; Chief of RuSHA, 9 July 1940–20 April 1943; later Higher SS and Police Leader (HSSPF) for Southwestern Germany.

RICHARD HILDEBRANDT—Obergruppenfuehrer (Lt. General) in the SS and General of Police; Chief of RuSHA, 20 April 1943–May 1945.

FRITZ SCHWALM—Obersturmbannfuehrer (Lt. Colonel) in the SS; Chief of Staff of RuSHA and principal RuSHA representative at the Immigration Center at Lodz (Einwandererzentrale Lodz, commonly known as "EWZ").

MAX SOLLMANN—Standartenfuehrer (Colonel) in the SS; Chief of Lebensborn, e.V.* (Well of Life Society) of the SS; Chief of Main Department A of Lebensborn.

GREGOR EBNER—Oberfuehrer (Senior Colonel) in the SS; Chief of the Main Health Department of Lebensborn.

GUENTHER TESCH—Sturmbannfuehrer (Major) in the SS; Chief of the Main Legal Department of Lebensborn.

INGE VIERMETZ—Deputy Chief of Main Department A of Lebensborn.

COUNT ONE — CRIMES AGAINST HUMANITY

1. Between September 1939 and April 1945, all the defendants herein committed crimes against humanity as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with—atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, persecutions on political, racial, and religious grounds, and other inhumane and criminal acts against civilian populations, including German civilians and nationals of other countries, and against prisoners of war.

2. The acts, conduct, plans and enterprises charged in paragraph 1 of this count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in

* For explanation of "Lebensborn" see Introduction, p. 599.

part by elimination and suppression of national characteristics. The object of this program was to strengthen the German nation and the so-called "Aryan" race at the expense of such other nations and groups by imposing Nazi and German characteristics upon individuals selected therefrom (such imposition being hereinafter called "Germanization"), and by the extermination of "undesirable" racial elements. This program was carried out in part by—

a. Kidnaping the children of foreign nationals in order to select for Germanization those who were considered of "racial value";

b. Encouraging and compelling abortions on Eastern workers for the purposes of preserving their working capacity as slave labor and of weakening Eastern nations;

c. Taking away, for the purpose of extermination or Germanization, infants born to Eastern workers in Germany;

d. Executing, imprisoning in concentration camps, or Germanizing Eastern workers and prisoners of war who had had sexual intercourse with Germans, and imprisoning the Germans involved;

e. Preventing marriages and hampering reproduction of enemy nationals;

f. Evacuating enemy populations from their native lands by force and resettling so-called "ethnic Germans" (Volksdeutsche) on such lands;

g. Compelling nationals of other countries to perform work in Germany, to become members of the German community, to accept German citizenship, and to join the German Armed Forces, the Waffen SS, the Reich labor service, and similar organizations;

h. Plundering public and private property in Germany and in the incorporated and occupied territories, e.g., taking church property, real estate, hospitals, apartments, goods of all kinds, and even personal effects of concentration camp inmates; and

i. Participating in the persecution and extermination of Jews.

3. Throughout the period covered by this indictment, all of the defendants herein were associated directly or indirectly with the Staff Main Office (Stabshauptamt) of the Reich Commissioner for the Strengthening of Germanism (Reichskommissar fuer die Festigung des deutschen Volkstums, commonly known as the "RKFDV"), with the Repatriation Office for Ethnic Germans (Volksdeutsche Mittelstelle, commonly known as "VoMi"), with the SS Race and Settlement Main Office (SS Rasse- und Siedlungshauptamt, commonly known as "RuSHA"), and with the Well of Life Society (Lebensborn, e.V., commonly known as Lebensborn).

4. Heinrich Himmler, Reich Leader of the SS and Chief of the German Police, was also the RKFDV. In his capacity as RKFDV he established the Staff Main Office (Stabshauptamt) with the defendant Ulrich Greifelt in charge. The Staff Main Office was responsible, among other things, for bringing "ethnic Germans" into Germany, for evacuating non-Germans from desirable areas in foreign lands, and for establishing new settlements of Germans and "ethnic Germans" in such areas. These activities involved transfer of populations, Germanization of citizens of other countries, deportation of Eastern workers, deportation to slave labor of members of other countries eligible for Germanization, kidnaping of so-called "racially valuable" children for Germanization, participation in the performance of abortions on Eastern workers, murder, and plunder of property. Ulrich Greifelt was chief of the Staff Main Office and in personal charge of Amtsgruppe B, which consisted of the offices for economy, agriculture, and finance; Rudolf Creutz was chief of Amtsgruppe A, which consisted of the Central Office and the offices for resettlement of folkdom, and labor, and was in personal charge of Amt Z (Central Office); Konrad Meyer-Hetling was chief of Amtsgruppe C, which consisted of the Central Land Office and the offices for planning and construction, and was in personal charge of Amt VI (planning); Otto Schwarzenberger was chief of Amt V (finance); and Herbert Huebner was chief of Branch Office Poznan.

5. The Office for Repatriation of Ethnic Germans (VoMi) was responsible, among other things, for the selection of "ethnic Germans", their evacuation from their native country, their transportation into "VoMi" camps, their care in these camps including temporary employment as well as ideological training, and their indoctrination after final employment or resettlement. It took large amounts of personal effects of concentration camp inmates and of real estate, for the use of resettlers. VoMi also played a leading part in the compulsory conscription of enemy nationals into the armed forces, Waffen SS, police, and similar organizations. In addition, it participated in the compulsory Germanization of "ethnic Germans" and people of German descent, in the forcing into slave labor of individuals considered eligible for Germanization, and in the kidnaping of foreign children. Werner Lorenz was the chief of VoMi; and Heinz Brueckner was chief of Amt VI (safeguarding of German Folkdom in the Reich—Sicherung deutschen Volkstums im Reich).

6. The SS Race and Settlement Main Office (RuSHA) was responsible, among other things, for racial examinations. These racial examinations were carried out by RuS leaders (Rasse- und Siedlungsfuehrer) or their staff members, called racial examiners

(Eignungspruefer), in connection with cases where sexual intercourse between workers and prisoners of war of the Eastern nations and Germans had occurred; pregnancy of Eastern workers; children born to Eastern workers; classification of people of German descent; selection of enemy nationals, particularly Poles and Slovenes, for slave labor and Germanization; kidnaping of children eligible for Germanization; transfers of populations; and persecution and extermination of Jews. Otto Hofmann was the chief of RuSHA from 1940 to 1943, Richard Hildebrandt was the chief of RuSHA from 1943 to 1945, Fritz Schwalm was Chief of Staff of RuSHA, and Herbert Huebner was the RuS leader for the Warthegau.

7. Lebensborn was responsible, among other things, for the kidnaping of foreign children for the purpose of Germanization. Max Sollmann was the chief of Lebensborn and in personal charge of Main Department A, which consisted of offices for reception into homes, guardianship, foster homes and adoption, statistics, and registration; Gregor Ebner was the chief of the Main Health Department; Guenther Tesch was the chief of the Main Legal Department; and Inge Viermetz was deputy chief of Main Department A.

8. The RKFDV Staff Main Office, VoMi, RuSHA, and Lebensborn were interrelated in their operations, purposes, and functions. The Staff Main Office was the driving force for carrying out the program set forth above in paragraph 2. VoMi, RuSHA, and Lebensborn participated in the execution of various portions of this program. RuSHA, in carrying out racial investigations and examinations, took a leading part in the accomplishment of the program. Since negative results of racial investigations and examinations led to the extermination or imprisonment in concentration camps of the individuals concerned, the Staff Main Office, as well as VoMi, RuSHA, and Lebensborn, acted in close cooperation with the SS Reich Security Main Office (SS Reichsicherheitshauptamt, commonly known as the "RSHA"). The RSHA imposed capital punishment and imprisonment in concentration camps upon individuals designated by RuSHA, after examination, and upon those persons who resisted measures which the Staff Main Office, VoMi, RuSHA, and Lebensborn sought to carry out.

9. The ties between the Staff Main Office, VoMi, RuSHA, and Lebensborn were not only organizational but also personal. Higher SS and police leaders, such as the defendant Otto Hofmann, after his resignation as chief of RuSHA, represented at the same time the RKFDV. In some instances, RuS leaders also represented Lebensborn.

10. The fundamental purpose of the four organizations described, as set forth above in paragraphs 4 to 9, inclusive, was to proclaim and safeguard the supposed superiority of "Nordic" blood, and to exterminate and suppress all sources which might "dilute" or "taint" it. The underlying objective was to assure Nazi dominance over Germany and German domination over Europe in perpetuity. In carrying out the plans and enterprises constituting a vast integrated scheme to commit genocide and thereby to strengthen Germany, the defendants herein participated in criminal activities, including but not limited to those set forth hereinafter in paragraphs 11 to 21, inclusive, of this indictment.

11. *Kidnaping of alien children.* An extensive plan of kidnaping "racially valuable" alien children was instituted. This plan had the two-fold purpose of weakening enemy nations and increasing the population of Germany. It was also used as a method of retaliation and intimidation in the occupied countries. During the war years, numerous Czech, Polish, Yugoslav, and Norwegian children were taken from their parents or guardians and classified according to their "racial value". Also included in this program were the illegitimate children of non-German mothers, fathered by members of the German Armed Forces in the occupied countries. Those children considered to be "racially valuable" were selected for Germanization and placed in foster homes or designated children's homes. In carrying out this program, numerous birth certificates were falsified and German names were given to those children selected for Germanization. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Hildebrandt, Hofmann, Schwalm, Sollmann, Ebner, Tesch, Viermetz, Lorenz, and Brueckner are charged with special responsibility for, and participation in, these crimes.

12. *Abortions.* All known cases of pregnancy among deported Eastern slave workers were submitted to RuSHA. Examinations were conducted of the racial characteristics of the expectant mother and father. In the majority of instances, where the racial examinations yielded negative results showing that the expected child was not of "racial value", the Eastern women workers were induced or forced to undergo abortions. When the expected child was found to be of "racial value" it was taken shortly after birth, as described below in paragraph 13. The desired results of this systematic program of abortions were immediately to keep the women available as labor, and ultimately to reduce the populations of the Eastern nations. Abortions on Polish women in the General Government were also encouraged by the withdrawal of abortion cases from the jurisdiction of the Polish courts. The defendants

Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, Schwalm, Huebner, Lorenz, and Brueckner are charged with special responsibility for and participation in these crimes.

13. *Taking away infants of Eastern workers.* Often cases of pregnancy among workers were not discovered until too late for an abortion to be performed or until the child was actually born. Racial examinations of the expectant mother and father were carried out. When the child was determined to be of "racial value", it was taken immediately after birth by the National Socialist Public Welfare Association (NSV) or by Lebensborn for the purpose of Germanization. Numerous children not selected for Germanization were taken from their mothers and placed in designated collection centers for the purpose of extermination. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Hildebrandt, Hofmann, Schwalm, Sollmann, Ebner, Tesch, and Viermetz are charged with special responsibility for and participation in these crimes.

14. *Punishment for sexual intercourse with Germans.* Czechs, Poles, and other Eastern workers or prisoners of war who had had sexual intercourse with Germans were examined by the racial examiners of RuSHA. Those who were found to be not "racially desirable" were imprisoned in concentration camps or executed. Those found "racially valuable" were Germanized. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, and Schwalm are charged with special responsibility for, and participation in, these crimes.

15. *Hampering reproduction of enemy nationals.* To further weaken enemy nations, both restrictive and prohibitive measures were taken to discourage marriages and reproduction of enemy nationals. The ultimate aim and natural result of these measures was to impede procreation among nationals of Eastern countries. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, Schwalm, Huebner, Lorenz, and Brueckner are charged with special responsibility for and participation in these crimes.

16. *Forced evacuation and resettlement of populations.* In occupied territories enemy populations were forcibly evacuated from their homes and transferred either to other occupied territories, particularly to the General Government, or to Germany for slave labor. They were replaced by Germans and "ethnic Germans". The latter were systematically collected in foreign countries, either occupied or under German domination, brought to camps, and then transferred to occupied areas from which the native population had been removed. Before resettlers were trans-

ferred to their final destination they were racially and politically examined by the staff of the Immigration Center at Lodz (Einwandererzentrale Lodz). "O" cases, that is, those who were found "racially valuable" and politically reliable were transferred to Eastern areas. "A" cases, that is, those who were found less reliable but "racially valuable" were brought to Germany proper. "S" cases, that is, those found not "racially valuable" were either sent to the General Government or returned to their native countries. In addition, special actions were undertaken in France and Belgium to transfer citizens allegedly of German descent from these countries either to Germany or to Alsace-Lorraine, depending on their political reliability. Those found "racially valuable" were given German citizenship and settled either in Germany or in the Eastern occupied territories; men of military age were inducted into the armed forces or Waffen SS; those found not "racially valuable" were brought to parts of France other than Alsace-Lorraine or placed in concentration camps. At the same time the populations of non-German descent in Alsace-Lorraine, Luxembourg, Eupen, Malmedy, and Moresnet were evacuated. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm are charged with special responsibility for and participation in these crimes.

17. *Forced Germanization of enemy nationals.* After the outbreak of the war, large numbers of nationals of other countries who were considered to be "ethnic Germans" or of German descent were classified and registered in the four DVL (German People's List) groups. These four DVL groups may be broadly characterized as follows: Group I—"ethnic Germans" actively pro-German before the occupation; Group II—"ethnic Germans" who had been known as such before the occupation; Group III—persons allegedly of German descent who could easily be Germanized, and members of minority Slavic groups which were considered to have Germanic affiliations; and Group IV—persons allegedly of some German descent who were actively anti-German. Persons in Groups I and II were given full German citizenship while persons in Groups III and IV received German citizenship subject to revocation. One of the main purposes of this procedure was to procure men for induction into the armed forces, the Waffen SS, the police, and similar organizations, and, thus, to force them to fight against the countries to which they owed allegiance. Members of these groups who deserted were executed. Persons classified in DVL Groups III and IV were subjected to extraordinary limitations of their economic and civil rights. Individuals who refused to file application for Germanization under

this procedure were placed in concentration camps, their children taken away, and their property confiscated. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm are charged with special responsibility for and participation in these crimes.

18. *Slave labor.* In addition to the DVL program, selected foreign nationals without any German ancestry were sent to Germany as slave labor and for possible future Germanization. Most of them were employed in agriculture, industry, and as domestic help. Those who refused to submit to slave labor or Germanization were placed in concentration camps. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm are charged with special responsibility for and participation in these crimes.

19. *Conscription of non-Germans.* Nationals of occupied or dominated countries who were not of German descent were compelled to join the armed forces, Waffen SS, police, and similar organizations. This conscription was done by VoMi in close cooperation with the SS Central Office (SS Hauptamt) and through associations such as the Association of Germans Abroad (Verein für Deutschland im Ausland, commonly known as the "VDA"). The defendants Lorenz and Brueckner are charged with special responsibility for and participation in these crimes.

20. *Plunder.* The plunder of private and public property, both in Germany and in the occupied territories, formed a large part of the activities carried on by the defendants named herein. Great amounts of private property were confiscated for use of resettlers or for other purposes. Church property and cultural goods were seized for the same purpose. The value of landed property confiscated from Poles and Jews in Poland alone was estimated by the defendant Greifelt at seven hundred million to eight hundred million marks. Personal effects confiscated from concentration camp inmates were distributed among resettlers. Lebensborn took over Jewish and Polish hospitals and Jewish apartments and goods. Concentration camp enterprises were founded by the WVHA (the SS Economic and Administrative Main Office) in agreement with the Staff Main Office and the proceeds placed in special accounts. The Staff Main Office was thus a partner in the exploitation of the slave labor of the Jews and other inmates of concentration camps and in the taking over of Jewish property in the General Government. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, Schwalm, Sollmann, Ebner, Tesch, and

Viermetz are charged with special responsibility for and participation in these crimes.

21. *Persecution and extermination of Jews.* The RKFVDV Staff Main Office was responsible for the evacuation of large numbers of Jews from the occupied and incorporated territories. RuSHA also participated extensively in the persecution and extermination of Jews. The Genealogy Office (Ahnentafelamt) of RuSHA prepared and retained in its files the names of all Jewish families in the Reich and persons having any Jewish ancestry. This office also participated in preparing similar files in the Netherlands, Belgium, Norway, Denmark, Danzig, and France where it worked together with the RSHA (Reich Security Main Office). These files were used for enforcing discriminatory measures against Jews and preparing transport lists of Jews to be taken from Germany and the occupied countries to the extermination camps in the East. The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, Schwalm, and Huebner are charged with special responsibility for and participation in these crimes.

22. The defendant Hildebrandt is charged with special responsibility for and participation in the extermination of thousands of German nationals pursuant to the so-called "Euthanasia Program" of the Third Reich, from September 1939 to February 1940.

23. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly and constitute violations of international conventions, particularly of Articles 4, 5, 6, 7, 23, 43, 45, 46, 47, 52, and 56 of the Hague Regulations, 1907, and of Articles 2, 3, 4, 9, and 31 of the Prisoner of War Convention (Geneva, 1929), of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

COUNT TWO — WAR CRIMES

24. Between September 1939 and April 1945, all the defendants herein committed war crimes, as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with atrocities and offenses against persons and property constituting violations of the laws or customs of

war, including but not limited to plunder of public and private property, murder, extermination, enslavement, deportation, imprisonment, torture, and ill-treatment of and other inhumane acts against thousands of persons. These crimes embraced, but were not limited to, the particulars set out in paragraphs 11 to 21, inclusive, of this indictment, which are incorporated herein by reference, and were committed against prisoners of war and civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by, Germany.

25. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly, and constitute violations of international conventions, including the Articles of the Hague Regulations, 1907, and of the Prisoner of War Convention (Geneva, 1929), enumerated in paragraph 23 of this indictment, of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

COUNT THREE — MEMBERSHIP IN CRIMINAL ORGANIZATION

26. All of the defendants herein, except defendant Viermetz, are charged with membership, subsequent to 1 September 1939, in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS"), declared to be criminal by the International Military Tribunal and paragraph 1(d) of Article II of Control Council Law No. 10.

Wherefore, this indictment is filed with the Secretary General of the Military Tribunals and the charges herein made against the above named defendants are hereby presented to the Military Tribunals.

TELFORD TAYLOR,

Brigadier General, U. S. Army, Chief of Counsel for War Crimes, Acting on Behalf of the United States of America.

Nuernberg, 1 July 1947

II. ARRAIGNMENT

Extract from the Official Transcript of the American Military Tribunal I, in the matter of the *United States of America against Ulrich Greifelt, et al.*, defendants, sitting at Nuernberg, Germany on 10 October 1947, Justice Wyatt, presiding

THE MARSHAL: The Honorable, the Judges of Military Tribunal I.

Military Tribunal I is now in session. God save the United States of America and this honorable Tribunal.

There will be order in the courtroom.

PRESIDING JUDGE WYATT: Military Tribunal I will come to order. The Tribunal will now proceed with the arraignment of the defendants in Case No. 8 pending before this Tribunal. The Secretary General will call the roll of the defendants.

THE SECRETARY GENERAL: Each defendant will stand and answer "present" when his name is called. Ulrich Greifelt.

ULRICH GREIFELT: Present.

THE SECRETARY GENERAL: Be seated. Rudolf Creutz.

RUDOLF CREUTZ: Present.

THE SECRETARY GENERAL: Be seated. Konrad Meyer-Hetling.

KONRAD MEYER-HETLING: Present.

THE SECRETARY GENERAL: Be seated. Otto Schwarzenberger.

OTTO SCHWARZENBERGER: Present.

THE SECRETARY GENERAL: Be seated. Herbert Huebner.

HERBERT HUEBNER: Present.

THE SECRETARY GENERAL: Be seated. Werner Lorenz.

WERNER LORENZ: Present.

THE SECRETARY GENERAL: Be seated. Heinz Brueckner.

HEINZ BRUECKNER: Present.

THE SECRETARY GENERAL: Be seated. Otto Hofmann.

OTTO HOFMANN: Present.

THE SECRETARY GENERAL: Be seated. Richard Hildebrandt.

RICHARD HILDEBRANDT: Present.

THE SECRETARY GENERAL: Be seated. Fritz Schwalm.

FRITZ SCHWALM: Present.

THE SECRETARY GENERAL: Be seated. Max Sollmann.

MAX SOLLMANN: Present.

THE SECRETARY GENERAL: Be seated. Gregor Ebner.

GREGOR EBNER: Present.

THE SECRETARY GENERAL: Be seated. Guenther Tesch.

GUENTHER TESCH: Present.

THE SECRETARY GENERAL: Be seated. Inge Viermetz.

INGE VIERMETZ: Present.

THE SECRETARY GENERAL: May this Honorable Tribunal please, all of the defendants are present and in the dock.

PRESIDING JUDGE WYATT: The record will so indicate. The prosecution will now proceed with the reading of the indictment.

[At this point, Mr. McHaney read the indictment. For text, see pp. 608 to 618.]

PRESIDING JUDGE WYATT: The defendants will now be called upon to plead guilty or not guilty to the charges against them. Each defendant, as his name is called, will stand and speak clearly into the microphone. At this time there will be no arguments, speeches, or discussions of any kind. Each defendant will simply answer the questions put to him and then plead guilty or not guilty of the offense with which he is charged in the indictment.

THE SECRETARY GENERAL: Ulrich Greifelt.

PRESIDING JUDGE WYATT: Are you represented by counsel before this Tribunal?

ULRICH GREIFELT: Yes.

PRESIDING JUDGE WYATT: Was the indictment in the German language served upon you at least 30 days ago?

ULRICH GREIFELT: Yes.

PRESIDING JUDGE WYATT: Have you read the indictment?

ULRICH GREIFELT: Yes.

PRESIDING JUDGE WYATT: How do you plead to this indictment, guilty or not guilty?

ULRICH GREIFELT: I am innocent.

PRESIDING JUDGE WYATT: Be seated.

SECRETARY GENERAL: Rudolph Creutz.

PRESIDING JUDGE WYATT: Are you represented by counsel before this Tribunal?

RUDOLF CREUTZ: Yes.

PRESIDING JUDGE WYATT: Was the indictment in the German language served upon you at least 30 days ago?

RUDOLF CREUTZ: Yes.

PRESIDING JUDGE WYATT: Have you read the indictment?

RUDOLF CREUTZ: Yes.

PRESIDING JUDGE WYATT: How do you plead to this indictment, guilty or not guilty?

RUDOLF CREUTZ: Not guilty.

PRESIDING JUDGE WYATT: Be seated.

SECRETARY GENERAL: Konrad Meyer-Hetling.

PRESIDING JUDGE WYATT: Judge Crawford will now propound the questions.

JUDGE CRAWFORD: Are you now represented by counsel before this Tribunal?

MEYER-HETLING: Yes.

JUDGE CRAWFORD: Was the indictment in the German language served upon you at least 30 days ago?

MEYER-HETLING: Yes.

JUDGE CRAWFORD: Have you read the indictment?

MEYER-HETLING: Yes.

JUDGE CRAWFORD: How do you plead to this indictment, guilty or not guilty?

MEYER-HETLING: I am innocent.

JUDGE CRAWFORD: Be seated.

[At this point the balance of the defendants were arraigned. All were represented by counsel. All pleaded not guilty to the indictment.]

PRESIDING JUDGE WYATT: For the benefit of counsel both for the prosecution and the defense, the Tribunal desires to make certain announcements.

On account of the time required for the translation of documents and final pleas, it appears to be necessary that they be filed at some date in advance of the conclusion of the trial of the case. For that reason, after the case begins, a date will be fixed, of which you will have due notice, after which no documents or final pleas will be received.

For that reason it becomes necessary that you get your documents and your final pleas in order and ready to be presented early in the trial of the case. After this deadline date has been fixed, of which you will be notified—that is, some time after the beginning of the trial,—after that date, no documents or final pleas will be received.

There will be no recess after the conclusion of the presentation of the evidence on the part of the prosecution. We will move immediately after the prosecution has finished, into the hearing of the evidence on behalf of the defendants.

The Tribunal is of the opinion that reading excerpts from documents introduced in evidence will not be helpful to the Court. You will simply identify your documents, both for the prosecution and defense, introduce them in evidence, and then in your briefs, call the attention of the Court to those portions of the documents you considered to be material.

The Trial will begin on the 20th of this month so that the Court will now be in recess until 10 o'clock on 20 October.

THE MARSHAL: The Tribunal will be in recess until Monday, 20 October 1947.

III. OPENING STATEMENTS

'A. Opening Statement of the Prosecution'¹

MR. MCHANEY: May it please the Tribunal, the crimes of these defendants, thirteen men and one woman for which they stand here accused, are the result of a vast and premeditated plan to destroy national groups in countries occupied by Germany. This program of genocide was part of the Nazi doctrine of total warfare, war waged against populations rather than against states and armed forces. Hitler once said that—

"The French complained after the war that there were twenty million Germans too many. We accept the criticism. We favor the planned control of population movements. But our friends will have to excuse us if we subtract the twenty million elsewhere. After all these centuries of whining about the protection of the poor and lowly, it is about time we decided to protect the strong against the inferior. It will be one of the chief tasks of German statesmanship for all time to prevent, by every means in our power, the further increase of the Slav races. Natural instincts bid all living beings not merely to conquer their enemies, but also destroy them."²

All of these defendants played an active and leading role in carrying out this broad program which had the two-fold objective of weakening and eventually destroying other nations while at the same time strengthening Germany at their expense, territorially and biologically, in order to secure German domination first of Europe and finally of the world.

This program was based primarily upon the two Nazi concepts of Race and Lebensraum. Belief in German racial supremacy is not new in German thought. At the end of the 19th century it became crystallized in the theory of Aryan supremacy. The "Aryan" had long been used to denote that family of languages to which ancient Norse, Greek, and Sanskrit belonged. Now the term Aryan was applied to a mythical race which was creator of all the culture existing in the world.

As Hitler himself said in "Mein Kampf"—³

"All the human culture, all the results of art, science, and technology that we see before us today, are almost exclusively the creative product of the Aryan."

This theory of race played a prominent role in the rise to power of the Nazis. It convinced the German masses of Aryan

¹ Tr. pp. 24-125, 20 October 1947.

² Rauschning, "The Voice of Destruction", New York, G. P. Putnam's Sons, 1940, p. 138.

³ "Mein Kampf", 1948 Edition, Houghton, Mifflin & Co., p. 290.

supremacy and taught them that the Germans were more entirely Aryan than any other race. They were the "Nordic Germanic race", the Master Race. Thus, the German people, by purifying themselves, casting out Jews, Slavs, and other non-Aryans, were to become the foremost race on earth. Himmler, in a speech to high-ranking army officers in 1935, said—

"I am a convinced supporter of the idea that what matters in the world ultimately is only good blood. * * * I have approached my task from this angle. It means that actually the only good blood, according to our reading of history, is the leading creative element in every state, and in particular, the blood engaged in military activity, and, above all, Nordic blood."

This reconstituted Aryan people was to be the strongest race in the world. Therefore, in accordance with nature's law of survival of the fittest, the Aryan race would conquer the world, enslave all other races, and everywhere spread Aryan culture (for Aryans only, of course) in a new Pax Germanica.

Inside Germany this racial theory coordinated everything in public and private life according to the tenets of nazism. In foreign affairs, it became the slogan for the unification of all Germans, holding out to them a glittering vision of world mastery as both a possibility and a right.

This theory of race matched with the theory behind Lebensraum. The Nazis made much of Germany's over-population with respect to its area. But they were not really concerned with over-population. In fact, the Nazis constantly proclaimed the duty of all good Germans to have as many children as possible. Lebensraum was not, as many think it, a cry of an under-privileged people for the possibility of existence. It was a demand for more and more land, in fact, for more land than the German people could use at the time. The Nazis felt that only by expansion into a great state, territorially, could Germany proceed to become mistress of the world. In short, Lebensraum was a slogan for an aggressive drive by the German people under the Nazi leadership to expand its borders regardless of economic need. This culminated in wars of aggression to gain territory and populations at the expense of neighboring countries.

In the course of the war, as the Nazis overran Poland and most of the rest of Europe, they gained the opportunity to put these theories of Race and Lebensraum, this crime of genocide, into practice. The main drive for expansion was in the East. Himmler, in 1942 explained it as follows:

"It is not our task to Germanize the East in the old sense, that is, to teach the people there the German language and

German law, but to see to it that only people of purely Germanic blood live in the East."

In November 1939, the Office for Racial Policy of the Nazi Party put forth a treatise with the weighty title of "The Problem of the Manner of Dealing with the Population of the Formerly Polish Territories on the Basis of Racial-Political Aspects". In this treatise, which formed in part the basis of actions taken by these defendants, it stated—

"The aim of the German policy in the new Reich territory in the East must be the creation of a racial and therefore intellectual-psychical as well as national-political uniform German population. This results in the ruthless elimination of all elements not suitable for Germanization.

"This aim consists of *three interwoven tasks*.

"*First*, the complete and final Germanization of the population which seems to be suitable for it.

"*Second*, deportation of all foreign groups which are not suitable for Germanization, and

"*Third*, the resettlement by Germans."

It must be realized that under the Nazi theory of race, non-Aryans simply did not matter. Hitler stated this clearly in "Mein Kampf" when he said,¹ "All who are not of good race in this world are chaff." This is again clearly brought out in the judgment of the International Military Tribunal, where it is stated—

"When the witness Bach-Zelewski was asked how Ohlendorf could admit the murder of 90,000 people, he replied, 'I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable'."²

It may seem somewhat inconsistent for the Nazis to prate of race and purity of blood on the one hand and on the other to take Poles, Czechs, and nationals of many other countries and decide, upon the basis of physical characteristics such as blue eyes and blond hair, that these people can be Germanized. This was a measure to which the Germans were forced because they found that their own population was not sufficient to fulfill the Nazi schemes of expansion. This taking of non-Germans and calling them Germans was also justified on the ground that Germany was thereby taking the best blood from the other nations and thus weakening them as well as strengthening itself.

The seemingly insurmountable theoretical barrier of race was avoided very neatly. It was obvious, they said, that for a thou-

¹ "Mein Kampf", 1943 Edition, Haughton, Mifflin & Co., p. 296.

² Trial of the Major War Criminals, vol. I, p. 248, Nuremberg, 1947.

sand years and more, Germanic peoples had gone forth over the map of Europe. Thus, when a Polish family showed no signs of any German ancestry for hundreds of years, if the physical characteristics were compatible with those of the mythical super race, it meant that sometime in the dim past Nordic blood had forgotten its heritage and become Polonized. Nevertheless, they said, this blood was still valuable blood and could be reclaimed and this Polish family could be Germanized. There was to be a gradual sifting of the peoples in the East until finally all the Aryan blood had been reclaimed. Himmler, in a report distributed to Hitler and the defendants Greifelt, Creutz, Meyer-Hetling, and Hildebrandt among others, and entitled "Reflections on the Treatment of Peoples of Alien Races in the East", was quite clear about the means and aims of this process. He said—

"* * * There must be no centralization towards the top, because only by dissolving this whole conglomeration of peoples of the General Government amounting to fifteen millions and of the eight millions of the Eastern provinces, will it be possible for us to carry out the racial sifting which must be the basis for our considerations; namely, selecting out of this conglomeration the racially valuable and bringing them to Germany and assimilating them there.

"Within a very few years—I should think about four to five years—the name of the Kashubes *, for instance, must be unknown, because at that time there won't be a Kashubian people any more (this also goes especially for the West Prussians) * * * What has been said for these fragments of peoples is also meant on a correspondingly larger scale for the Poles. * * *

"A basic issue in the solution of these problems is the question of schooling and thus the question of sifting and selecting the young. For the non-German population of the East there must be no higher school than the four-grade elementary school. The sole goal of this school is to be—

Simple arithmetic up to 500 at the most; writing of one's name; the doctrine that it is a divine law to obey the Germans and to be honest, industrious, and good. I don't think that reading should be required. Apart from this school there are to be no schools at all in the East. Parents, who from the beginning want to give their children better schooling in the elementary school as well as later on in a higher school must take an application to the Higher SS and Police Leaders. The first consideration in dealing with this application will be whether the child is racially perfect and conforming to our

* A Slavic language spoken in the region of Danzig.

conditions. If we acknowledge such a child to be as of our blood, the parents will be notified that the child will be sent to school in Germany and that it will permanently remain in Germany. Cruel and tragic as every individual case may be, this method is still the mildest and best one, if, out of inner conviction, one rejects as un-German and impossible the Bolshevik method of physical extermination of a people.

“The parents of such children of good blood will be given the choice to either give away their child—they will then probably produce no more children, so that the danger of this sub-human people of the East obtaining a class of leaders which, since it would be equal to us, would also be dangerous for us, will disappear—or else the parents will pledge themselves to go to Germany and to become loyal citizens there. The love towards their child, whose future and education depends upon the loyalty of the parents, will be a strong weapon in dealing with them.”

In 1942 the defendant Meyer-Hetling drew up a broad plan for the ethnic reconstruction of Eastern Europe which was entitled the “General Plan East”. According to this plan the regions around Leningrad, the Crimea and Kherson in Russia, and Memel in Lithuania, and Narew, were to become German colonies, and within 25 years to be resettled with a large German population. This plan was forwarded by the defendant Greifelt to Himmler who gave his wholehearted approval to it, and asked the defendant Meyer-Hetling to draft also a plan embracing the incorporated Polish territories, Bohemia and Moravia in Czechoslovakia, Alsace, and Lorraine in France, and Upper Carniola and South Styria in Yugoslavia. This was to be a 20-year plan, so Himmler said, and was to bring about a thorough Germanization of Esthonia and Latvia, as well as of the General Government in Poland.

This then was the program of genocide. It was a coordinated plan aimed at the destruction of the essential foundations of the life of national groups. This destruction can be and was accomplished with the help of these defendants by a number of different means, which may be broadly classified as physical, political, biological, and cultural. They sought the “disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.” *

* Lemkin, Raphael, *Axis Rule in Occupied Europe*, p. 79, Carnegie Endowment for International Peace, 1944.

In another courtroom of this same building, 23 leaders of the notorious Einsatzgruppen of the Security Police and SD are being tried* for the mass annihilation of Jews and Russians. While a number of the defendants in this dock also participated in those very same crimes and others of similar nature, their main efforts were devoted to the destruction of national groups by other methods. The technique of these defendants was the mass deportation of oppressed peoples, the deprivation of their means of livelihood by the wholesale confiscation of property, the forced Germanization of citizens of occupied countries, and the destruction of their national culture, folkways, and educational facilities, the creation of conditions which increased the mortality rate and prevented increase of the population, and the kidnaping of children.

These techniques of genocide, while neither so quick nor perhaps so simple as outright mass extermination, are by the very nature of things far more cruel and equally effective. If crimes such as these are allowed to go unpunished, the future of humanity is in far more danger than if an occasional murderer goes free. It is the enormity and far-reaching effects of these crimes that give this case its significance.

THE RISE TO POWER OF THE SS

These ruthless aims needed ruthless executioners. Hitler found them in Heinrich Himmler and his SS. In this dock are four lieutenant generals (Obergruppenfuehrer), three senior colonels (Oberfuehrer), two colonels (Standartenfuehrer), one lieutenant colonel (Obersturmbannfuehrer), and two majors (Sturmbannfuehrer) of the SS. They committed the crimes with which they are charged as leading members of three main offices (Hauptaemter) and a department of the SS. It is, therefore, necessary to understand something of the history and organization of the SS in general and in particular of the Staff Main Office (Stabshauptamt) of the Reich Commissioner for the Strengthening of Germanism (commonly known as the "RKFDV"), the Repatriation Office for Ethnic Germans (commonly known as "VoMi"), the SS Race and Settlement Main Office (commonly known as RuSHA), and the Well of Life Society (commonly known as "Lebensborn"). To assist the Tribunal in this regard the prosecution has prepared and delivered to the Tribunal a brief containing basic information on the SS and the aforementioned offices thereof. This has also been made available to defense counsel in both German and English. It includes a glossary of

* United States of America vs. Otto Ohlendorf, et al., Case 9, vol. IV, this series.

German words and expressions which will be used frequently in the course of the trial, a table of equivalent ranks between the American Army and the German Wehrmacht and the SS, a map of those parts of Europe of interest in this case, and two charts showing the organization of the SS and the interrelation of the Staff Main Office, VoMi, RuSHA, and Lebensborn.

The Schutzstaffeln or SS was the protective guard of the National Socialist Party (NSDAP). It was formed in 1925 to protect leaders and speakers at Party meetings and above all to protect the person of the Fuehrer. As the "Fuehrer" or leader of the Nazi Party, Hitler was the "Oberste Fuehrer" or Supreme Leader of the SS.

In January 1929, Heinrich Himmler was appointed Reich Leader SS. As such he was the commander of the SS and subordinated directly to Hitler as head of the Nazi Party. At that time, the SS numbered only about 280 men and was much less important than the Sturmabteilung or SA, which was a Nazi pari-military unit under the ambitious Captain Ernst Roehm. Patiently and unobtrusively, Himmler set about creating out of the SS an aristocracy within the Nazi Party. He called this aristocracy the German Order of Men (Deutsche Maennerorden). Selection for membership in the SS was based on the doctrine of "Race and Blood".

At the time of the seizure of power by the Nazi Party in January 1933, this self-proclaimed "racial elite" was 52,000 strong. Not, however, until the Roehm purge of 30 June 1934 did the SS become the ruling caste within the Party. On that bloody "Night of the Long Knives", it was the brutalized and ever obedient SS who murdered Roehm and his important collaborators in the SA who were said to be dissident elements in the Party. Thenceforth, the SS assumed the duty of ensuring the continued power of the Nazi regime, or, as it was officially stated, of "protecting the internal security of the Reich."

The subsequent development of the SS was based primarily upon the tremendous increase in power of Himmler. Wherever Himmler went, the SS went with him. In June 1936, he was appointed Chief of the German Police (Chef der Deutschen Polizei) in the Ministry of the Interior with authority over the regular uniformed police (Ordnungspolizei) as well as the Security Police, which was defined to include both the Criminal Police (Kripo) and the notorious Gestapo or Secret State Police. In this connection, mention should also be made of the Sicherheitsdienst des Reichsfuehrers SS [Security Service of the Reich Leader SS], or SD, which worked closely with the Gestapo. The SD was the espionage agency first of the SS, and, after June 1934, of the

whole Nazi Party. Reinhard, or as he was known abroad "Hangman", Heydrich was the Chief of the SD. Himmler, in his capacity as Reich Leader SS and the Chief of the German Police, appointed Heydrich as Chief of the Security Police on 26 June 1936. This amalgamated the Security Police, a State organization, with the SD, a Party organization.

By a decree of 27 September 1939, the various State and Party officers under Heydrich as Chief of the Security Police and SD were united into one administrative unit, the Reich Security Main Office or RSHA (Reichssicherheitshauptamt) which was at the same time both one of the main offices of the SS Supreme Command under Himmler as Reich Leader SS and an office in the Ministry of the Interior under Himmler as Chief of the German Police.

On a regional level, Himmler appointed Higher SS and Police Leaders (Hoehere SS und Polizeifuehrer) for each Wehrkreis [Military District], who coordinated the activities of the Security Police and SD, Order Police, and Allgemeine SS within their jurisdictions. In 1939, the SS and police systems were amalgamated by taking into the SS all police officials at equivalent ranks.

This unification of the SS and police enhanced the power of the SS. Its power and influence were further increased by the appointment of Himmler in August 1943 as Reich Minister of the Interior, a position which controlled the greater part of the vast German bureaucracy. Finally, in July 1944, he succeeded General Fromm as Commander in Chief of the Replacement Army (Befehlshaber des Ersatzheeres) and Chief of Military Armament (Chef der Heeresruestung). He then controlled all forces on the home front.

Parallel with this development of the SS, its influence was increased by the practice of appointing important State officials and other public figures to high rank in the SS. Industrialists, bankers, and business men were prevailed upon to contribute substantial sums of money to the SS in order to stand in well with the Party aristocracy. Through infiltration, the SS gained influence in every branch of German life.

By 1939, the Allgemeine SS, the original formation of the SS, numbered approximately 240,000 men. In addition, there were two other SS formations—the Special Service Troops (SS Verfuegungstruppen) and the Death's Head Formations (SS Totenkopfverbaende) which together had a strength of about 40,000 men. The Special Service Troops constituted a force of SS men who volunteered for four years' military service in lieu of compulsory service with the army. It was organized as an armed unit to be employed with the army in the event of mobilization. The Death's

Head Formations were selected from SS volunteers and were used to guard concentration camps.

After the outbreak of the war, units from both the Special Service Troops and the Death's Head Formations were used in the Polish campaign. These troops came to be known as the Waffen or Armed SS. By 1940 the Waffen SS contained 100,000 men, 56,000 coming from the Special Service Troops, and the rest from the Allgemeine SS and the Death's Head Troops. Concentration camp guard duties came to be performed primarily by members of the Allgemeine SS. The Waffen SS fought in every campaign with the exception of those in Norway and Africa. By the end of the war it is estimated to have comprised about 600,000 men. Thus, it was numerically by far the largest branch of the SS, the Allgemeine SS having declined in strength to around 200,000.

The Waffen SS, including the Death's Head Formation, was in effect a part of the Wehrmacht and its expenses were a charge on the State. The Allgemeine SS, on the other hand, was an independent branch of the Party and its finances were ultimately controlled by the Party Treasurer (Reichsschatzmeister der NSDAP).

Subject to the controlling authority of the Reich Leader SS, the work of directing, organizing, and administering the whole body of the SS was carried out by the Supreme Command of the SS (Reichsfuehrung SS). This Supreme Command consisted of twelve main offices (Hauptaemter). The more important of the main offices were the Reich Security Main Office or RSHA, the Operational Headquarters (Fuehrungshauptamt), the Economic and Administrative Main Office or WVHA, the Staff Main Office of the RKFDV, VoMi, and RuSHA.

I have already described briefly the amalgamation of the SD and the Gestapo and Criminal Police under Heydrich as Chief of the RSHA. After the assassination of Heydrich in 1942, Kaltenbrunner was made chief of the RSHA. For his criminal activities in that position, he was tried, convicted, and sentenced to death by the International Military Tribunal. The Gestapo, among other things, was responsible for the commitment of political prisoners to concentration camps. Our proof in this case will show the close cooperation between the Security Police and SD and these defendants.

The SS Operational Headquarters was the main office of the SS which was responsible for the training, organization, and, to a certain extent, the operational employment of the Waffen SS and the Allgemeine SS.

The SS Economic and Administrative Main Office, or WVHA, was in charge of the finance, supply, and administration of the whole of the SS. It also was engaged in large-scale building proj-

ects and the operation of various industries in connection with concentration camps. After March 1942, the WVHA controlled all concentration camps. The surviving leaders of this Main Office have been recently tried before Military Tribunal II.* The defendant Lorenz had especially close connections with the WVHA, as VoMi received from it large quantities of clothes of Jews murdered in the Auschwitz [Oswiecim] concentration camp.

Other important main offices were the SS Central Office (SS Hauptamt), which handled recruiting for the Waffen SS, propaganda, education, physical training, and so-called Germanic affairs; and the Personal Staff of the Reich Leader SS (Persoenlicher Stab RFSS) which was an advisory and coordinating body responsible for all matters not within the province of the other Main Offices and for liaison with Government and Party officials.

MAIN STAFF OFFICE, VoMi, RuSHA, AND LEBENSBORN

I turn now to a description of the Main Staff Office of the RKFDV, VoMi, RuSHA, and Lebensborn and the positions of these defendants in those organizations.

Perhaps the most important organization involved in this trial is the Staff Main Office of the Reich Commissioner for the Strengthening of Germanism. Heinrich Himmler, Reich Leader of the SS and Chief of the German Police, was appointed RKFDV by Hitler's decree of 7 October 1939. In this decree Hitler said—

“The consequences which Versailles had on Europe have been removed. As a result, the Greater German Reich is able to accept and settle within its space German people who up to the present had to live in foreign lands and to arrange the settlement of national groups within its spheres of interest in such a way that better dividing lines between them are attained. I commission the Reich Leader SS with the execution of this task in accordance with the following instructions:

I

“Pursuant to my directions the Reich Leader SS is called upon—

“1. To bring back those German citizens and racial Germans abroad who are eligible for permanent return into the Reich.

“2. To eliminate the harmful influence of such alien parts of the population as constitute a danger to the Reich and the German community.

“3. To create new German colonies by resettlement, and espe-

* United States of America vs. Oswald Pohl, et al., Case 4, vol. V, this series.

cially by the resettlement of German citizens and racial Germans coming back from abroad.

"The Reich Leader SS is authorized to give such general orders and to take such administrative measures as are necessary for the execution of these duties."

In order to establish an agency to perform these new duties, Himmler transformed an immigration office, which had been set up earlier in 1939 under the defendant Greifelt for the resettlement of Germans in Southern Tyrol, into the "Office of the Reich Commissioner for the Strengthening of Germanism" (Dienststelle RKFDV). In his order of 17 October 1939 establishing the Office of the RKFDV, Himmler said—

"I wish to mention particularly some of these tasks as well as the institutions and agencies which are charged with the solution and execution of these tasks.

"a. VoMi and Foreign Organization (Auslands-Organisation) bring in the Germans and ethnic Germans.

"b. Reich Health Leader and RuSHA examine all Germans from the Reich and abroad in the new areas in town and country.

"c. The Security Police, in cooperation with the Chief of the Civil Administration, establishes and takes care of foreign elements dangerous to the German Folkdom.

"d. The settlement of farmers will be carried out by the Reich Minister of Food and Agriculture.

"e. Municipal building of apartment houses and suburban settlements will be handled by the Reich Labor Minister and the German Labor Front * * *."

On 11 June 1941, Himmler in his capacity as RKFDV established the Office of the RKFDV as a Main Office of the Supreme Command of the SS, with the name Staff Main Office (Stabs-hauptamt) of the RKFDV. The Chief of the Staff Main Office was the defendant Greifelt and his deputy was the defendant Creutz. The Staff Main Office was divided into three Amtsgruppen or departments, A, B, and C, each of which was further subdivided into Aemter or offices. The defendant Greifelt was also head of Amtsgruppe B. The defendant Creutz was Chief of Amtsgruppe A and Amt Z thereof, which was concerned with such matters as personnel, statistics, legal advice, propaganda, and reparations, among others. The defendant Schwarzenberger was chief of Amt V in Amtsgruppe B and was in charge of financial matters for both the RKFDV and VoMi. The defendant Meyer-Hetling, alias Meyer, was the chief of Amtsgruppe C and Amt VI thereof. Meyer-Hetling prepared the plans for the settlement work of the Staff Main Office as well as the "General Plan East", to which

reference has already been made. Amt VIII, the Central Land Office of Amtsgruppe C under Meyer-Hetling, was concerned with the executive work in connection with the mass confiscation of land for resettlement. The defendant Huebner was Chief of the Branch Office Poznan of the Staff Main Office and a local representative of RuSHA in the Warthegau. He was in charge of the expulsion of Poles and resettlement of ethnic Germans in that area, among other things.

Himmler in his capacity as RKFDV had jurisdiction over all matters connected with the strengthening of Germanism, such as resettlements, racial screening, deportations, confiscations, and the like. In addition to the members of the Staff Main Office, VoMi, and the other offices of the SS, numerous government and Party officials were subject to Himmler's authority insofar as their activities related to the strengthening of Germanism. Thus, Himmler as RKFDV, and in practice the defendant Greifelt as his deputy, could give orders to the Gauleiters and Reich Governors. The Staff Main Office also had its own branch offices in the occupied territories and the General Government.

The Staff Main Office was in charge of planning and carrying out the resettlement of so-called ethnic Germans in the Reich and in territories occupied by Germany. This included also all cultural and administrative planning and propaganda concerning resettlement. The Staff Main Office dealt with all questions concerning the assignment of ethnic Germans for settlement in Germany and in the occupied territories, and with all questions of administrative and economic character connected with resettlement. Its activities included the transfer of populations, Germanization of foreign nationals, deportation to slave labor, kidnaping of children, abortions on Eastern workers, plunder, and murder. The resettlement of ethnic Germans was carried out by the Staff Main Office in cooperation with VoMi and RuSHA.

The Repatriation Office for Ethnic Germans (VoMi) existed long before the outbreak of the war. The defendant Lorenz was appointed the head of VoMi on 1 January 1937 by Rudolf Hess* and was subordinated to him and the Chief of the Foreign Office, Joachim von Ribbentrop.* Shortly after the appointment of Himmler as RKFDV in 1939, Lorenz was commissioned by Himmler with the task of carrying out the registration and evacuation of ethnic Germans from their former homes, and their transportation to collecting camps for Germanization. On 11 June 1941, the section of VoMi which was engaged in this activity was established as a Main Office of the SS, the Repatriation Office for Ethnic Germans,

* Defendants before International Military Tribunal. See Trial of the Major War Criminals, Vols. I-XLII, Nuremberg, 1947.

with Lorenz as its chief. The defendant Brueckner was the head of Amt VI of VoMi. He frequently acted as a liaison officer between VoMi and other offices and was connected with numerous resettlement and deportation actions.

VoMi was responsible for the registration of ethnic Germans, their evacuation from their homes, their transportation to VoMi camps, their care in the camps, and their indoctrination with Nazi ideology. Frequently resettlers were kept in these camps for months and even years awaiting the promised resettlement. In the middle of 1944, there were still one million ethnic Germans and Poles in the VoMi camps. In addition, it participated in the expulsion of citizens of Yugoslavia, Luxembourg, and France in Alsace-Lorraine. Its activities also included plunder of property, conscription of enemy nationals into the German Armed Forces, compulsory Germanization of foreign nationals, slave labor, and the kidnaping of alien children.

The Race and Settlement Main Office (RuSHA) was one of the oldest Main Offices of the Supreme Command of the SS. Before the war, the main function of RuSHA was the translation into practice of the racial theories of the SS. It concerned itself with checking the proof of Aryan descent of candidates for admission into the SS. An SS Officer was required to provide a family tree going back to 1750 to prove his "Nordic" or at least "Aryan" descent. RuSHA also processed marriage applications of SS men, as they were not allowed to marry until the bride-to-be was approved. Such approval was based upon "racial purity" and physical compatibility between the two partners likely to result in a fertile marriage. All this was part of Himmler's desire to make the SS a "racial elite".

RuSHA's concern with and experience in racial matters made it the logical agency to take over the racial problems inherent in Himmler's program of genocide and Germanism. It was apparent that someone had to screen the millions of people about to be uprooted from their homes and tossed about the map of Europe. The activities of RuSHA in connection with the selection and welfare of SS men and their dependants became of secondary importance to this new task. The Race Office of RuSHA under Professor Bruno Kurt Schultz and his deputy Walther Dongus, both of whom we shall hear of frequently during the course of this trial, was particularly important.

Guenther Pancke, now about to be tried in Denmark, was Chief of RuSHA in 1939 and 1940. The defendant Hofmann was Chief from July 1940 to 1 April 1943 when he was succeeded by the defendant Hildebrandt. Hofmann and Hildebrandt also served as Higher SS and Police Leaders at various times. The defendant

Schwalm became chief of the Litzmannstadt [Lodz] Field Office in 1941 which, among other things, carried out racial examinations in connection with Germanization and resettlement actions. Later, he became staff leader of RuSHA in which capacity he acted as deputy to the chief of RuSHA.

There were also RuS field leaders (Fuehrer in Rasse- und Siedlungswesen) who represented RuSHA on the staffs of the higher SS and police leaders in the various districts. The defendant Huebner served as the RuS field leader for the SS Administrative district "Southwest", with headquarters in Stuttgart and later was field leader in the Warthegau, with headquarters in Poznan. RuSHA, through these field leaders and their racial examiners, decided the fate of hundreds of thousands of people in part upon the basis of whether the subject had high cheek bones and blue eyes, a proper "political attitude", and perhaps a great-grandfather of German nationality. Such racial examinations were made in connection with the Germanization of citizens of Poland and other countries, transfers of populations, abortions, slave labor, persecution of Jews, punishment for sexual intercourse between Germans and non-Germans, and kidnaping of children. In some cases the RuS field leaders also represented Lebensborn.

Lebensborn was a registered society which was founded in December 1935. It was at first a department of RuSHA, but in 1936 it became part of the Personal Staff of Himmler.

The early aim of Lebensborn was the perpetuation of the blood of the members of the SS. The minimum family expected of an SS man was four. Himmler expressed the reason for this very clearly in his "Day of Metz" speech when he said—

"* * * We stand or die with this leading blood of Germany, and if the good blood is not reproduced we will not be able to rule the world. Please understand, we would not be able to hold the great Germanic Reich which is about to take shape. I am convinced that we can hold it, but we have to prepare for that. If we once had not enough sons those who would come after us would have to become cowards. A nation which has an average of 4 sons per family can venture a war; if 2 of them die, 2 transplant the name. The leadership of a nation having one son or two sons per family will have to be fainthearted at any decision on account of their own experience because they will have to tell themselves, we cannot afford it."

Those unable to have children of their own were expected to adopt suitable children and bring them up on National Socialist lines. Lebensborn was to assist in this process and insure the support of both legitimate and illegitimate children of SS men. Its tasks were to help large families "valuable from the racial and

hereditary and biological point of view" and to take care of pregnant women and their children. The prerequisite of this care was an assurance through racial and health examinations of these women and their mates that the parents were of good health and race and that the future children would possess the same qualities.

Lebensborn tried to make more attractive the idea that it was no disgrace for a German girl to bear an illegitimate child, provided she picked a healthy young Nazi to be the father. In a statement that attracted adverse comment even in Germany, Himmler once stated that it might be regarded as a noble duty for German women of good blood "in all moral seriousness" to become mothers of children by men about to leave for the front "outside the limits of perhaps otherwise necessary bourgeois laws and conventions".

The general program of Germanization called for a special effort to be made to get "racially valuable" children who could be bred as a contribution to the Greater German Reich. Moreover, children of foreign birth could be molded and shaped into Nazis much more easily than their parents. Thus, it came about that Lebensborn took over the kidnaping of so-called "racially valuable" foreign children.

The Chairman of the Board (Vorstand) of Lebensborn was Himmler. The Board itself included Dr. Grawitz, Reich Physician SS and Police; Gottlob Berger,¹ Chief of the SS Central Office; Oswald Pohl², Chief of the SS Economic and Administrative Main Office (WVHA); the defendant Ebner; and the Chief of RuSHA, that is, first the defendant Hofmann and then the defendant Hildebrandt. The defendant Sollmann became the managing director of Lebensborn on 15 May 1940. The defendant Ebner was the head of the Main Health Department and, for a short time, of Main Department "A". The defendant Tesch joined Lebensborn in 1941. He was Sollmann's personal legal adviser and acted as Sollmann's deputy. When the Main Legal Department was set up, Tesch became head of that department.

The defendant Viermetz joined Lebensborn in September 1938. Soon after the outbreak of the war she reorganized and was placed in charge of the employment office for Lebensborn mothers. Early in 1940 she reorganized the department dealing with Homes and Adoptions and was in charge of both this department and the Employment Department until the beginning of 1941. Subsequently, the defendant Viermetz was placed in charge of the Main Department A which was set up in September 1941. The Main De-

¹ Defendant in case of United States of America vs. Ernst von Weizsaecker, et al., Case 11, vols. XII, XIII, XIV, this series.

² Defendant in case of United States of America vs. Oswald Pohl, et al., Case 4, vol. V, this series.

partment A was concerned primarily with reception into homes, guardianship, foster homes and adoptions, and statistics. From the middle of 1942 until the middle of 1943, the defendant Viermetz carried out special tasks for Lebensborn including negotiations with respect to the transfer of children to Germany from various countries and the establishment of Lebensborn homes.

MR. SCHWENK: In order to comprehend the true significance of the crimes charged against these defendants in counts one and two of the indictment, it is necessary to understand what they were trying to accomplish. In their fight for the domination of Europe, the Nazis consistently pursued a policy which had a twofold objective. First, they wanted to strengthen the German people, both in numbers and in quality; second, to weaken, and eventually destroy national groups in the occupied countries. Thus, so the Nazis planned, no matter whether the war was won or lost, the German people in the post-war period would be in a position to deal with other European peoples from the vantage point of numerical, biological, and spiritual superiority. To this end, elaborate and detailed plans for the forced Germanization of their conquered territories were made. It was in the execution of these plans that the defendants in this case worked so eagerly.

This "Germanization" policy was applied to all countries overrun by Germany, but it was carried out with the greatest ruthlessness and consistency in the conquered Eastern territories. Poland, being the first nation to be conquered, became in a sense a testing ground for the practical application of these genocidal plans.

After the conquest, Poland was divided into two parts. The four western provinces of Poland were incorporated into Germany by Hitler's order of 8 October 1939 and became a part of the Greater Reich. In the correspondence and other documents which will be introduced in evidence in this case, this area of Poland is usually referred to as the "Incorporated Eastern Territories". The remainder of Poland, which was seized by the Nazi invaders was established as the Government General (of Poland) by an order of Hitler dated 12 October 1939. The 400,000 square kilometers of Polish territories, together with some parts of the Russian territories which were also captured, were to provide for the possibility of an enormous numerical increase of German people and thus establish a firm foundation for the supremacy of the German people in Europe.

The Government General was reduced to a vassal state; unlike the Eastern Territories, it did not at once become a part of the German Reich but was used as a dumping ground for so-called "undesirable" racial elements. Its people and material resources were exploited in order to strengthen Germany and the Nazi war

machine. According to Nazi plans, the Polish people in the General Government (of Poland) had to be mentally crippled, its intelligentsia and leadership completely annihilated. The Polish people had to become German slaves and "Fertilizer for the German culture." At the same time the country had to be impoverished, its living standard depressed, and conditions created which would inevitably result in the increase of mortality and the decrease of birthrate. At a later state, plans were formulated—and in part carried out—for creating islands of German settlements in the more fertile regions of the Government General in order to engulf the native Polish population and to speed up the process of Germanization.

In the Eastern territories the process of complete Germanization was started immediately after this part of Poland was incorporated into Germany. This was not a German country. According to the Nazis' own figures, the population of the four provinces incorporated into the German Reich in 1939 consisted of 86 percent Poles, 5 percent Jews, and only 7 percent Germans [sic].

This lack of "Germanic" population was handled in part by mass murder. In a memorandum received by the Main Staff Office under the defendant Greifelt, the plan was made clear. It said—

"The necessity arises for a ruthless decimation of the Polish population and, as a matter of course, the expulsion of all Jews and persons of Polish-Jewish mixed blood."

Himmler, in his "Day of Metz" speech, when he spoke as Reich Commissioner for the Strengthening of Germanism, stated that the mass murder of the Polish intelligentsia had been carried out. He said—

"At the beginning it was necessary—please consider this as only meant for this small circle—that we, especially in West Prussia, where the atrocities of the Poles were worst and where the loss of German blood was heaviest, take very harsh measures. I know that I for this reason was attacked and still am being attacked by very many people who tell me this was un-Germanic. It is my impression that for some people Germanic actually means to be duped as a good-natured Germanic over and over again and finally to fall down on one's back. That would be un-Germanic. I cannot help it, I think it right and I believe it is right. We had first of all to remove the leading men of the enemy, these were the people in the Westmarkverband, in the insurrectionary units, they were the Polish intelligentsia. They had to be done away with, there was no other way * * *."

"* * * Just as hideous as it is, just as necessary has it been and will it be in many more cases that we carry it out * * *."

"* * * The Poles got the shock they had to get. Now, at

present I think nobody will stir in West Prussia, Poznan and within the New provinces * * *.”

As to the remaining Polish population in the incorporated territories, it was determined to Germanize by force, where necessary, that portion of the population which was deemed “valuable”, deport the remainder, and resettle the vacated areas with Germans. These defendants participated in that criminal program.

The German cultural pattern and laws were imposed on the Polish country. Polish cultural life ceased to exist in the Eastern Territories. Polish schools, from the elementary schools to the universities, were closed. More than that, even German schools, theaters, libraries, lectures, and the like, were closed to the Poles. Religious services in the Polish language were discontinued. The official language of all authorities, including courts, became German. The Polish press was suppressed. Publication of Polish books was forbidden, as were radio programs, concerts, and other theatrical performances of any cultural value.

One of the most ingenious methods used in completing this process of forcible Germanization was the compulsory registration of Polish citizens in the so-called “German People’s List” (Deutsche Volksliste), commonly known as the “DVL” procedure, and in the list of persons considered suitable for so-called “Re-Germanization” (Wiedereindeutschung) or “WED” procedure. These procedures were designed to bring about a “selective Germanization” of the most healthy, able, and efficient elements of national groups of occupied countries, leaving only an amorphous group of people deprived of leadership, of real religion and spiritual life.

A. *THE “DVL” PROCEDURE*

The German People’s List was first introduced in the Polish territories incorporated into Germany. Its alleged aim was to register and classify the so-called German population, who were, in fact, Polish and Danzig citizens. In reality it not only registered those who, in the Polish republic, were known as Polish citizens belonging to German minority groups, but made provision for forcible Germanization of those who, as the Polish Government report on German Crimes against Poland puts it, “* * * had long severed their links with Germany and became loyal Polish citizens and parts of the Polish nation—others were never Germans at all.” One of the main reasons for hasty registration of a great number of Polish citizens in the DVL was the desire to swell the ranks of the German Armed Forces, as the defendant Greifelt stated in a letter of 15 April 1942 to the High Command of the Armed Forces.

The basic decrees concerning the DVL procedure originated in joint action between the Staff Main Office, the Ministry of the Interior, and the RSHA. The registration was coordinated by the Supreme Court for Ethnic Classifications of which Himmler was president and the defendant Greifelt his deputy.

One of the seven members of the court was successively the defendant Hofmann and Hildebrandt of the Race and Settlement Office. The court was located on the premises of the Staff Main Office which provided it with offices, personnel, and other facilities.

The persons who registered with the DVL were classified into four groups. Group I included those ethnic Germans who took active part in the struggle for Germanism in Poland before World War II. Group II comprised those ethnic Germans who had "preserved" their German character though they did not take active part in the national struggle. Group III included persons of allegedly "German stock" who had become Polonized (we use the defendant's word), but who presumably could become full-fledged Germans again; persons of non-German descent married to Germans; and those members of non-Polish Slav groups, such as Mazurs and Kashoubs, who were considered desirable by the German authorities so far as their political attitude and "racial characteristics" were concerned. Group IV comprised those persons allegedly of German stock who were not only Polonized but also were loyal and active Polish nationalists.

The persons listed in the two first groups were automatically made German citizens upon registration. The situation with the members of the last two groups was different. Soon after they were registered, they were subjected to a "racial examination" by members of the RuSHA staff. They had to undergo a long process of indoctrination and education under constant supervision of the defendant Greifelt's Staff Main Office, the police, and the Nazi Party. Persons listed in Group III of the DVL were imposed with German citizenship subject to revocation. Those of Group IV were considered merely as candidates for citizenship as in a naturalization proceeding.

As laid out in a decree signed by Himmler and prepared in the Staff Main Office under the supervision of the defendant Greifelt, the members of Group III were subjected to many severe restrictions as far as their freedom of movement, occupation, education, and marriage were concerned. Many of them were transferred to Germany, through the joint action of the Staff Main Office, VoMi, and other agencies, where their education for Germanism was to be completed. Those who were permitted to remain in Poland were constantly subject to eviction and deportation whenever their land was needed for ethnic German resettlers, or their labor was needed

in the Reich. They, along with members of DVL groups I and II, were conscripted into the German army by the tens of thousands and forced to fight against their allies.

The treatment of the members of Group IV was especially harsh. They were considered to be avowed enemies of the Third Reich and had to be broken or annihilated. Their property was confiscated and the amount realized put into a special account from which they were allowed to draw not more than 2,000 RM. a year. Those of them who were engaged in intellectual work were reduced to menial tasks. Yet, as they were not considered politically reliable, they were not drafted into the army and thus had an advantage over the members of the other groups.

The Germanization of these "Polonized" people, in Himmler's opinion, demanded their complete separation from their Polish environment. They had to be resettled in Germany proper and, like DVL III, many of them were resettled. This process was carried out jointly by the Staff Main Office, VoMi, and other agencies. Those of them who were "politically heavily incriminated" were put into concentration camps and their wives and children settled in Germany. If the wives had a political record they were also sent to concentration camps.

Those who were not put into concentration camps were constantly under police supervision. After resettlement they had to join the affiliated organizations of the NSDAP, and their children, the Hitler Youth. Higher SS and Police Leaders took punitive measures against recalcitrant persons, pursuant to instructions issued by the defendant Greifelt. If Germanization could not be attained even by means of coercion by the Gestapo, the obdurate Pole, whose only offense was loyalty to his native land, was put into a concentration camp. The most cruel method of coercion brought to bear against these people was a constant threat to take their children away. If the parents did not yield, their children were taken away from them and brought up in Nazi institutions or in Nazi families where they were to be taught to become "good Germans".

The rules for the treatment of persons in Group IV were established by Himmler and the defendant Greifelt.

The DVL procedure was first applied in the four Polish provinces incorporated into the Reich, but later this procedure was extended to the General Government of Poland and to France and Russia. In the General Government the concept of "German stock" had such a broad interpretation that it aroused protests from those SS leaders who thought it essential that persons put on the German People's List should have at least some relation to the German

people. The main aim, however, was to get hold of the children of the persons registered.

B. THE "WED" PROCEDURE

We now come to the other technique of forcible Germanization mentioned above, the re-Germanization or "WED" procedure. Himmler and his staff, including these defendants, knew that the registration of Polish citizens under the DVL procedure would not solve the problem of Germanization of the Eastern territories. The DVL procedure was, theoretically at least, limited to those persons with respect to whom there was some proof, however little, that they were of German descent. But, for all the liberal interpretation of the concept of "German stock" and "German descent", they realized that there were not enough inhabitants of Poland who could be listed in these categories.

Moreover, the convenient theory that Poles were an inferior people "completely uncreative in cultural as well as national political respects" just could not be maintained. There were too many talented and courageous people to be found there. Neither did the theory of the physical superiority of the German superman over the Slav "subhuman" continue to hold. For in the Incorporated Eastern Territories and in the General Government, the German soldiers and the young students of racial theories who invaded the country saw too many Polish men, women, and children whose physical attributes corresponded to the Germanic beauty ideal much more than did the faces and figures of their own Goebbels and Himmler.

In order to include those people in the process of forcible Germanization, a new theory was invented. They just said black was white. They had the colossal conceit to declare that even though a Polish family showed no trace of German ancestry, if its physical characteristics were compatible with the German racial ideal and the family was able and efficient, then they must be Germans. This led to the inauguration of what was later to become known as re-Germanization or the WED procedure. The term "re-Germanization" is misleading. It was deliberately introduced by Himmler and the defendants in order to camouflage the process of forcible transformation of aliens, that is, non-Germans into Germans. When the process started, this transformation was called "assimilation." The defendant Hofmann used that word in one of his first decrees, but the expression was soon dropped and replaced by the word "Germanization" (Eindeutschung). Still later the Nazis, in an attempt to lull themselves into the false belief that they were actually recovering "lost German blood", coined the

term "re-Germanization." To avoid misunderstanding and confusion, we will use this term, but we wish to call to the attention of the Tribunal that it is a misnomer, for in actual practice it was an assimilation of Poles and not a re-Germanization of "lost German blood."

In an introduction written by the defendant Greifelt to the decree of 9 May 1940 establishing the WED procedure, he made clear the aims of this new Germanization campaign and the "theory" reconciling it with the Nazi teaching of the purity of German blood as the basic foundation of the strength of the nation.

"One of the most important aims to be achieved in the German East is sweeping the incorporated German Eastern territories clean of persons of foreign race. This is the main problem from the point of view of population policy which the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, has to solve in the Incorporated Eastern Territories. Apart from the language, descent and allegiance, this task, which is linked so closely to the problem of nationalities (belonging to an ethnic group) in the Eastern territories must above all be influenced and determined by racial selection. However essential it is to the permanent purification of the German Eastern territories not to allow members of alien races residing there to establish themselves there, it is just as imperative that the persons of German blood in these territories should be regained for Germanism even if they have been Polonized—in their language and allegiance. It seems that from among those carriers of Germanic blood there rose these leaders for the former Polish state, who finally, be it by an ill union, became the most determined enemies of their own Germanic people * * *.

"Therefore, it is absolutely essential from the standpoint of population policy to comb the Incorporated Eastern Territories, and later the General Government, too, for such carriers of Germanic blood, for the purpose of bringing this Germanic blood back to its own Germanic nation.

"What retaliatory measures should be taken against renegades is of secondary importance: what must be decisive is that the children, at least, must not be absorbed into nationhood but be educated in the German environment. However, a re-Germanization cannot take place in the environment which so far has been Polish, but must take place in Germany proper and in Austria.

"The following are the two main reasons which make the regaining of this German blood, which had been lost, imperative:

"1. Prevention of a future increase of the Polish intelli-

gentsia through the influx of persons from families with Germanic characteristics, though they may be Polonized.

"2. Increase of population for the German nation, desirable from the racial point of view, and providing of racially suitable labor for German agriculture and industry."

This same explanation stressing sometimes one, sometimes another, of the following aspects of the question can be found in many other documents dealing with "re-Germanization": (1) to deprive the Polish people of its potential leadership; (2) to get hold of the Polish children of "good race" (the Nazis firmly believed that the children were the only ones who could be Germanized effectively); and (3) last but not least, to provide Germany with much needed slave labor.

The WED procedure was directed by the Staff Main Office. RuSHA also played an important role, for this office was in charge of "racial selection" of persons to be re-Germanized, their registration, and, together with the Staff Main Office, was responsible for their allocation to Germany where they were to live and to work. The defendant Hofmann was especially active. He organized the work of RuSHA in connection with the WED procedure, gave innumerable instructions as to how to handle "racial examinations" and always insisted on the great role his office had to play in this procedure. Major responsibility also rests with the defendants Schwalm and Huebner. In 1941, the defendant Schwalm was chief of the RuSHA branch office in Lodz, where "racial examinations" of persons to be Germanized took place and from whence they were sent to the Reich. From March 1943, he was staff leader of RuSHA and was informed of all orders issued in connection with the WED procedure and made drafts of many of them. The defendant Huebner was chief of the RKFVDV office and field leader of RuSHA in the Warthegau, one of the provinces in the Incorporated Eastern Territories where many of the candidates for "re-Germanization" came from and where their preliminary registration took place.

The families of candidates for "re-Germanization" had to submit to "racial examination". This examination was disguised as a medical examination. This deception was a general practice during racial examinations. As defendant Hofmann once put it, "The racial examiner should carry out his task with delicacy and tact and use camouflage at work—put on white overalls—whenever conditions permit it." Individuals and families who passed the test were sent by the Staff Main Office to the Reich proper or to Austria as laborers. Their allocation to work did not follow the normal channels via the labor offices but was handled by the appropriate Higher SS and Police Leaders who assigned them to

those farms and factories whose owners or managers were politically suitable to supervise the indoctrination of these people so that they would become Germanized as quickly as possible. The managers were briefed as to their tasks by special publications issued by the Staff Main Office.

The "re-Germanized" persons were not free to choose their place of work. Under no circumstances were they allowed to return to the East. They were not free to marry whom they wanted—they needed special permits for marriage from the Staff Main Office and were not allowed to marry Poles who were not included in the "re-Germanization" procedure. In addition they were subjected to police supervision. Local Gestapo offices made a special effort to watch over families who were considered politically unreliable.

The treatment accorded these persons may be seen from a memorandum issued by the Race Main Office of the Nazi Party.

"The basic idea of our policy towards the groups which seem to be suitable for Germanization * * * must be to keep those groups by all possible means on the lowest possible cultural standard. Then, the Nordic, mainly Teutonic, part will by its own performance, based on inherited qualities, work itself up to technical professions. Their children can then be admitted to German schools, their eventual final Germanization is to be expected after their social rise and transfer to Germany proper."

It was not only the citizens of Poland to whom "re-Germanization" was applied. Other nations also were in possession of some "lost German blood" which had to be recovered. The second largest group forcibly subjected to the WED procedure was found among the Slovenes—inhabitants of the districts of Lower-Styria, South Carinthia and Upper Carniola, parts of Yugoslavia which were incorporated into Germany. The story of their ruthless deportation will be told at a later point. The Slovenes evicted from their country were processed by the Staff Main Office; the defendant Greifelt personally issued directives as to their treatment. The transport was handled by VoMi. They were screened by the RuSHA offices of the defendants Hofmann, Hildebrandt, and Schwalm, and those who were considered as being of "good race" were sent to the Reich for work. A similar procedure was also applied to citizens of Luxembourg and France—inhabitants of Alsace and Lorraine.

C. FORCIBLE NATURE OF GERMANIZATION

Our proof will show that the Germanization procedures described above were forced upon unwilling peoples in the occupied countries. Every known method of coercion was used to force the

citizens of these conquered nations to renounce their citizenship, their national culture and ways of life, and their loyalty to their country. These defendants practiced economic compulsion, fraud, and deceit. They held out promises of reward and they used threats of punishment in order to gain their ends. They promised social and economic advantages which they knew would not be obtainable. They threatened to and did send those who refused to place their names upon the DVL or to undergo the WED procedure to concentration camps or deported them as slave laborers; they threatened to and did kidnap the children of those who refused to renounce their own countries and to embrace the ideology of nazism. The cases were not rare when persons were put on the DVL or WED lists without being informed of it. Once a person had been included in the "Germanization process" through these illegal measures, the same methods were used to force him to remain and to continue in the mill.

Economic compulsion and deportation were among the most effective means of coercing Poles to register on the German People's List. All Polish citizens in the Incorporated Eastern Territories knew that, if they did not get on the DVL, their property would be confiscated and they would be deported to the dumping ground of the General Government. These defendants painted a rosy picture of the advantages to be gained by being entered on the DVL and held out the bait of security of person and property. But they hid from the prospective entrants the fact that once they were classified as belonging to groups 3 and 4 their property would in any event be confiscated, if needed, and they would be treated as pawns to be moved about as their masters wished.

If the people refused to break under economic compulsion or be duped by these deceitful practices, sterner measures were used. As a matter of fact, Himmler and his assistants anticipated this resistance. The memorandum of the race office of the Nazi Party quoted above, when first outlining the program of Germanization stated—

"* * * the groups, which are the most valuable from a racial point of view in their majority of Teutonic or Germanic origin, will, on account of national-political reasons, fanatically oppose a Germanization * * *"

In Himmler's first order where the procedure of registration in the German People's List was laid down, it was decreed that measures by the security police were to be taken against persons who refused Germanization.

On 16 February 1942, Himmler in his capacity as RKFDV issued the following order:

"Subject: Persons of German race who do not apply for the entering of their name into the German People's List.

"I. I request to instruct the subordinate offices to report to the competent local State Police all persons of German descent who do not apply for the entering of their name into the German People's List. I request you to report all actions taken.

"II. The competent local State Police Central Offices and Offices should order the reported persons to prove, within a period of 8 days, that application for the entering into the German People's List was filed.

"If the person concerned is not able to prove that, he should be taken *into protective custody* and his *transfer to a concentration camp* should be arranged." [*Emphasis supplied.*]

This order was sent to the Staff Main Office and distributed by the Race Office of RuSHA among the RuS field leaders. Its merciless execution is illustrated by correspondence between Himmler, the Staff Main Office, RuSHA, and VoMi. It concerned four individuals and a family of German descent who refused to be Germanized. Here is how Himmler described them.

"Enclosed I transmit to you a record of 5 Poles, and Polish families, of German descent.

"1. With regard to Johanna Achidzanjanz, of Tomaszow: She is of 50 percent German blood, but is entirely of Polish allegiance. She will be transferred within the General Government from Zamosc, as it lies in the German settlement area.

"2. Maria Lambucki from Tomaszew-Lub is of 100 percent German blood and entirely of Polish allegiance. She has totally disowned her German blood. I decree immediate deportation to the concentration camp Ravensbrueck. The two sons, aged 8 and 13 years, who are of very good race, will be brought to Germany by the Chief of the SS Race and Settlement Main Office with the assistance of the police and will, separated from each other, be transferred to 2 specially well-managed boarding schools as pupils. I request a report on their conduct every 3 months. Correspondence with the mother will be prohibited until further notice, till the mother has become conscious of the treason committed. In the case of the 2 boys of good race, teachers and school-fellows should do their best to convince them that they are by no means deserting the Poles, but that they shall only profess the blood of their racial origin on account of their descent and racial worthiness. This must be the basis for all tasks and experiments of that kind, in order to recover precious racial values, which politically and nationally went astray.

"3. Stanislaus Koch of the estate of Sitno is of 75 percent German blood. He disowns any connection with Germanism. He

will be brought into a concentration camp to an armament plant, so will his wife and daughters. They will, if it is feasible, be transferred to different concentration camps.

"4. Brunhilde Muszynski nee von Wattmann will be transferred to the concentration camp. The descent of the father will be examined as to suspicion of Jewish blood. This will be done with the greatest possible speed. The two children, aged 4 and 7 years, will, provided that their geneological chart is all right, be brought to a German family, or the older one to a boarding school by the chief of the race and settlement Main Office.

"5. Ingeborg von Avenarius, nee Wattmann, will be brought to a concentration camp. Her children to be accommodated in a way similar to the other children."

It resulted that detention in a concentration camp was too much for Maria Lambucki, the mother of two sons. She was broken and took her DVL card. Stanislaus Koch was terrorized into silence and left on the farm. Yet a daughter was taken away from him and brought to a German boarding school to be educated in Nazi ideology. Johanna Achidzanjanz was sent to Germany proper. The fate of Brunhilde Muszynski and Ingeborg von Avenarius was especially tragic. With the help of RuSHA, their family tree was screened and some Jewish ancestors were discovered which aggravated their case. They were taken to concentration camps; their children were taken away from them, sterilized, and given to foster parents.

Once the Poles were put on the DVL it was practically impossible for them to get off. However, attempts to get off the list were frequently made. One of the most compelling reasons for this was the desire to avoid being drafted into the German army and compelled to fight against their allies. The Nazis conscripted those who were in Groups I, II, and III of DVL, but because those in Group IV were not trusted, they were not drafted into the army. In many instances, the people in the first three groups went so far as to admit membership in Polish organizations in order to be placed in Group 4 and thus avoid military service. A method used by those who had already been drafted into the army and desired to get out was to speak only Polish, sing Polish songs, and refuse to take the oath. Of course, when these people were taken off the list or were taken out of the army, they were transferred to concentration camps.

What has been said with respect to compulsion in the DVL procedure is equally applicable to the WED technique of "re-Germanization". Indeed, many of these people were selected for the WED procedure after they had already been evicted from their homes and deported from Poland, Yugoslavia, Luxembourg, Alsace,

and Lorraine. The agents of RuSHA, in white overalls over their black SS uniform and heavy boots, examined them and declared they were acceptable and should be deported to the Reich. An evicted, destitute family could not very well argue with the SS.

These people were moved to the Reich against their will and after being moved there continued to offer resistance to the Germanization which was being forced upon them. "Certainly the desire for Germanization is often lacking", said the defendant Creutz in one of his reports on "re-Germanization". Time and again decrees and reports issued by the main offices of the defendants, VoMi, RuSHA, and the Staff Main Office speak of the necessity for coercive measures against the "recalcitrants." The Gestapo and SD were very active in assisting the Staff Main Office to make "good Germans" out of these foreign citizens.

But many of those brought to Germany for forcible Germanization would not yield to threats and torture and would not renounce their allegiance to their people and their culture. The case of Kowalczyk is a good example both of the resistance offered to forcible Germanization and of the attitude of the office of defendant Greifelt towards this problem. The Higher SS and Police Leader in Wiesbaden forwarded a letter to the Staff Main Office under Greifelt concerning the resistance to Germanization offered by Boleslav Kowalczyk. The letter said that this 23-year-old person listed as of "Polish nationality suitable for Germanization * * *."

"* * * was accepted at the time for the Germanization procedure by your office (office of HSSPF), even though he declared to the department for foreigners of the police chief in Darmstadt, in writing, that he did not want to become a German but to remain a Pole. On 9 September 1944 the person in question was arrested because he did not fulfill his obligation to work on the West Wall. At the time of his assignment he even had the impertinence to call up the Kreisleiter of the NSDAP in Darmstadt and to declare to him that he would not go to the West Wall because he was a Pole. I am going to turn the Pole over to a concentration camp and request that his name be removed from the Germanization procedure."

The Higher SS and Police Leader suggested that the "re-Germanization procedure" be discontinued. The Staff Main Office replied that—

"The institution of criminal proceedings does not in itself justify removal from the re-Germanization procedure. In my opinion, the fact that a certain amount of resistance is offered to the re-Germanization program by sources which are otherwise above reproach regarding race and behavior is not to be regarded as inferiority in character, and is not to be ascribed to

the present political situation. If the transfer to the concentration camp should not bring a change about, then I request a new report."

Certainly very strong coercive measures were needed to break those people. They had to be hurt at the most sensitive spot. Here again our defendants used one of their chief weapons—children. Himmler, in his capacity as RKFDV, in close cooperation with defendant Greifelt and his staff, issued on 16 February 1942 a decree ordering the taking away of children of those Poles registered in Group IV of DVL who offered resistance to Germanization. A week before this decree was published, he ordered Greifelt to work out a similar decree against "Poles suitable for re-Germanization" who "present unusual difficulties". The decree provided that their children should be taken away from them and brought to special institutions. The defendant Hofmann, who was present when Greifelt received this order and who wrote a memorandum about it, added, "The Reich Leader expects that such measures would be of special educational value".

Among the Poles forcibly brought to Germany for slave labor and Germanization there was one group whose treatment constituted especially grave crimes. The particular group against whom these crimes were committed were young girls and children.

When, during the war, the shortage of domestic help in Germany became acute, the Staff Main Office of the RKFDV which was in charge of that section of the slave market which dealt in workers suitable for Germanization, decided to do something about it. They wanted to supply the need for domestic help entirely or predominantly from young Polish girls 16 to 20 years of age who were suitable for Germanization. Thus, as Himmler formulated it, German housewives would receive much-needed domestic help and at the same time, "young women of good blood will be taken from the Polish people and added to the German people". The defendants Greifelt and Creutz were especially energetic in the recruitment and selection of these girls and arranged for their transportation to Germany. Their families were usually left behind in Poland. In one of his reports to Himmler, the defendant Creutz gave a rather illuminating picture of the life of these young girls in Germany.

"When the girls were brought to Germany alone and their families remained in the Eastern Territories, the results were not favorable. It is hardly possible to prevent their correspondence with their families. Moreover, homesickness plays a big role. Many of the girls put to work have been obstinate and had to be punished. Several suicides took place * * *"

This then was the process of Germanization as practiced by these defendants, criminal in its conception and execution.

MR. SHILLER: One of the cruelest and most far-reaching crimes perpetrated by these defendants was the deportation and resettlement of hundreds of thousands of men, women, and children in the occupied territories.

It was always part of the Nazi program to "bring ethnic Germans back home to the Reich." After the occupation of Russia, Poland, Yugoslavia, France, Luxembourg, and other countries, Hitler and Himmler decided to carry out this part of the Nazi program by expelling large population groups of those countries from their soil and resettling ethnic Germans on it. The organization of the Staff Main Office under the defendants Greifelt and Creutz, together with VoMi under the defendant Lorenz, and RuSHA under the defendants Hofmann and Hildebrandt, were in charge of the execution of this program.

In his pamphlet entitled "The Strengthening of Germanism as Central East Task", the defendant Greifelt formulated his assignment as follows:

"The very condition for the resettlement of hundreds of thousands of people was the acquisition of new living space which we gained after our victory over Poland by re-occupying all former German national and cultural soil.

"Without these settlement areas our people, already crowded for living space, could not have continued to exist, because through the annexation of these areas we also obtained the necessary living space for settling hundreds of thousands of fellow-Germans formerly living in pre-war Germany. To secure these territories permanently for German people is not only an urgent national problem, but also a European necessity.

"The history of the areas between Warthe and Vistula has been teaching us Germans a hard lesson, i.e., that it is not sufficient to be the external ruler and the bearer of a country's culture; simultaneously, one must make a country into a bulwark of Germanism by taking measures which carry out racial policies without any compromise. Among many others, two main tasks consequently arose—

"(1) A clean segregation between people of German and of foreign blood must be carried out without any compromise.

"(2) It is indispensable to settle without exception these ancient Kultur territories, which once already belonged to the German people, to settle them with Germans again—and the best Germans at that. This has to be prepared in accordance with our racial-political principles. Their final goal can only be

a merger into an inseparable union of our inherited German soil with the best of the Germans.

“For the realization of the first task, the principle prevails that no foreign blood would be injected into German blood which would destroy or endanger its uniform consistency.

“On the other hand, a foreign race should not be permitted to make use of even a drop of precious German blood. This means a most strict selection according to racial-political principles—i.e., in the fields of racism, biology, hygiene, and character evaluation.

“We believe that this victory of the ethnic principle is of symbolic value for the new era, in which we have the happiness to live, and that the whole of Europe will once reap the benefits resulting from it. We are convinced that an organic order founded on the laws of blood and race will bring a new epoch of peace, and will at last free the world from those dark forces, which in mask of promoters of the world’s happiness pursue their Jewish capitalistic and internationalist plutocratic interests ruthlessly at the expense of the peoples forcibly pressed into their service, or which, as Bolshevik hordes, want to spread chaos, distress, and death over the continents”.

In the introduction to the collection of decrees and orders issued by RKFVDV under the title “Der Menscheneinsatz”, Dr. Faehndrich, chief of the department “Manpower Allocation” in the Staff Main Office of the defendant Greifelt, wrote as follows:

“The main weight of the work of the Reich Commissioner for Strengthening of Germanism in the field of ‘Manpower Allocation’ in the past month was without doubt in the field of resettlement. * * * Besides the work pertinent to resettlement of racial groups, this pamphlet contains other measures which in general concern strengthening of Germanism. It appears superfluous to discuss them here in detail. It should rather be sufficient to point out briefly their essential purpose. They concentrate upon questions of treatment of foreign nations and upon the problem of regaining lost German blood. Both questions are necessarily tied up with each other. If one takes off their partly complicated connections they can be phrased as follows: (1) In treating people of foreign blood, one must distinguish between those which, being of foreign race, will never merge into the German nation and those which became alienated to the German nation in regard to nationhood and language, but belong to it by blood; (2) Any attempt to gain people of foreign race for Germanization or even to make a man a German is necessarily in vain. A clear and uncompromised distinction is, therefore, inevitable. Every mixture is of evil. Those of foreign blood who

live on German soil must obey German leadership without any limitation (the treatment of foreign labor shall not be mentioned here). Minority rights or other liberal methods of reconsideration are not up to date within the German borders. Nevertheless, a person of foreign race will have a chance to make a living sufficient and in accordance with his standard of living in the event that he does the desired performance of work. Any exaggerated care and every soft-hearted sympathy, however, are absolutely wrong and will be interpreted only as weakness.

(3) In a completely different way, however, should be treated those who merged in their exterior attitude in a foreign nation but belong to the German nation by blood. They, or at least their children, should be taken away from possible foreign leadership and reclaimed for Germanization. The race-Germanization, however, can only take place in German environment. The supreme principle must be that no German blood should be of any use to any foreign nation and that no German blood should get lost."

The prosecution will show that the defendants carried out this program ruthlessly and without regard to the life, liberty, and property of the peoples of occupied countries.

After the occupation of Poland, the defendants started immediately to bring ethnic Germans into the incorporated Polish territories as resettlers and into Germany proper as slave labor.

In the above mentioned pamphlet, Greifelt boasted about the fact that shortly after the establishment of the office of the Reich Commissioner for Strengthening of Germanism in October 1939, the resettlement of approximately 60,000 Baltic Germans was begun and carried out within two months. Out of 62,000 Baltic resettlers, 56,000 were resettled in the incorporated territory of Wartheland and 6,000 in the incorporated territory of Danzig-West Prussia. Between December 1939 and February 1940, 130,000 ethnic Germans from Volhynia, Galicia, and Narew were resettled in former Polish territories. Immediately afterwards, 31,000 ethnic Germans from Chelm and Lublin were taken out of the General Government into the Wartheland and the Poles expelled from this territory were in turn forced into the General Government. Between 5 September 1940 and Christmas 1940, approximately 237,000 ethnic Germans from Bessarabia, North Bukovina, South Bukovina, and Dobruja in Romania were resettled in Polish territories.

According to a statistical survey of the defendant Greifelt's Staff Main Office, over 507,000 ethnic Germans were taken by 15 January 1942 from a number of countries in the East. Approximately 289,000 of these were brought to the incorporated territories of Poland as resettlers and 92,480 as slave laborers to Ger-

many. The remaining thousands were kept in VoMi camps which were scarcely better than concentration camps, vainly awaiting resettlement.

Again, according to the statistical survey of the Staff Main Office, by January 1944 the number of ethnic Germans involved in the so-called East resettlement action amounted to 770,585 and that involved in the so-called West resettlement action to 7,748. Out of the 770,585, 403,733 were taken into the incorporated territories as resettlers and 73,750 into Germany proper as slave labor. By the end of the war, about 1,200,000 ethnic Germans had been evacuated from their homes.

The prosecution maintains that a substantial number of these ethnic Germans had no choice but to go either to the incorporated territories as resettlers or into Germany as slave labor. In a letter dated 3 March 1943, the defendant Brueckner wrote to Einsatzgruppe D, one of the militant VoMi task forces for the registration of ethnic Germans in Russia, as follows:

“Resettlement is not carried out as a result of voluntary reporting but is ordered by RFSS. Therefore, those ethnic Germans who refused to be resettled shall be deprived of their identification cards, etc.”

In a report of the Immigration Center in Lodz (EWZ) dated 14 September 1944, compulsory registration of ethnic Germans is mentioned. It was explained that compulsion was carried out by such agencies as the post office department, railways, labor office, and the municipal government which brought pressure on their employees to make them apply for registration as ethnic Germans.

In another document dated 8 March 1944, an official of VoMi suggested that Catholic priests from Upper Silesia be utilized for the registration of ethnic Germans. He explained that the only possible way to regain thousands of ethnic Germans for German folkdom in the General Government would be by using Polish-speaking, but German-thinking, clergy. In a number of instances resettlers who wished to return to their native countries were prevented from doing so by orders issued from the Staff Main Office of the defendant Greifelt.

The militant character of the registration and resettlement of ethnic Germans is perhaps seen most clearly in the operation of VoMi Sonderkommando R and VoMi Einsatzkommandos in Russia in close cooperation with the extermination units of the security police. After registration of the ethnic Germans by VoMi, they were sent to VoMi camps. Afterwards, they were shoved through (“durchschleust”) the Immigration Center in Lodz, commonly called the EWZ, or its commissions. EWZ consisted of the representatives of the SS Race and Settlement Main Office, the RSHA,

the Ministry of the Interior, the Ministry of Labor, and other agencies. In this EWZ the resettlers were processed in order to determine whether they were "politically reliable" and "racially valuable". At the end of the processing, the ethnic Germans from the so-called East resettlement action were classified in one of five groups distinguished as O, K, Ost [East], A, and S cases.

The O, K, and Ost cases were those resettlers who were found to be politically reliable and racially valuable. They were accordingly resettled either in the incorporated Polish territories (O) or in Carinthia (K) or in Upper Styria (Ost). These individuals were supposed to obtain compensation in kind for the property which they had been forced to leave in their home countries.

The "A" cases were those who were found to be either not politically reliable or not racially valuable. They were brought to Germany proper as slave labor. As compensation for the property which they had to leave in their native country they received only bonds and other obligations of dubious value against the German Reich. The O, K, Ost, and A cases were all made German citizens. On the other hand the "S" cases were those who were found to be of foreign blood. They were brought to Germany as slave labor and received no compensation whatever for the loss of their property. In the so-called West resettlement action a similar procedure was followed, the resettlers being sent to Alsace, Lorraine, Luxembourg, the incorporated Polish territories, or Germany proper.

It is obvious that the large-scale resettlement of ethnic Germans in the occupied territories could not be carried out without the mass expulsion of peoples already residing in those areas. Thus, in order to provide the resettlers with land to till and homes to live in, citizens of Poland in particular were plundered of their property and deported by the hundreds of thousands. For these palpable crimes—including, indeed, the crime of murder—these defendants of the RKFVD, VoMi, and RuSHA bear the major responsibility.

Prior to these mass expulsions, conferences took place in which the representatives of the afore-mentioned agencies decided which ethnic Germans should be resettled and where. The discussion of the expulsion of native populations took up a considerable part of these conferences.

In a letter of 2 September 1941 the defendant Greifelt urged Reinhard Heydrich of the RSHA to resume the deportation of Poles from the incorporated Polish territories in order to resettle ethnic Germans from Bessarabia, Bukovina, Dobruja, and Lithuania. He explained that he realized the difficulties of deporting more Poles to the dumping ground of the General Government, but he felt that it would be much better to face this difficulty than to

keep the ethnic Germans cooped up in camps during another winter. In many instances the defendant Greifelt personally gave the expulsion order while in other instances it was the defendant Huebner as a local representative of the Staff Main Office for the Warthegau. Moreover, the expulsion itself was carried out under the guidance and supervision of agencies of the Staff Main Office. So-called resettlement staffs and working staffs attached to the local representative of the Staff Main Office, in close cooperation with the UWZ or expulsion center, determined the particular area of Polish territory into which the ethnic Germans would be moved and from which the native population would be expelled. These resettlement and working staffs received their orders either from the Reichsstatthalter or from the Higher SS and Police Leader in their capacity as representatives of the Reich Commissioner for the Strengthening of Germanism.

These expulsions were carried out with extreme brutality. In a report by a unit of the German Army in Poland, dated 6 February 1940, it was said—

“The resettlement scheme is causing particular and steadily increasing alarm in the country. It is quite obvious that the starving population, struggling for its very existence, can regard the wholly destitute masses of evacuees, who were torn from their homes overnight, naked and hungry and begging shelter, only with the greatest anxiety. It is only too understandable that these feelings are intensified to immense hatred by the numerous children starved to death on each transport and the train loads of people frozen to death.”

In a letter dated 20 February 1943, Zoerner, Governor of the District of Lublin commented on the evacuation from the District of Zamosc as follows:

“I. Course of the Resettlement.”

“The settlement of the district of Zamosc which had been planned for a long time by the Reich Commissioner for the Strengthening of Germanism (RKFDV) began on 26 December 1942. Up until now about 9,000 Germans from Bessarabia and other regions of the southeast have been settled in the rural areas of the northern half of the district of Zamosc. Through the settlement, about 40,000 hectares of territory, which the agencies of the Reich Commissioner for the Strengthening of Germanism had especially chosen, were seized.

“The Poles affected through the resettlement and, in as far as they could be apprehended, were in their great majority sent to an SS labor camp in Auschwitz (hydrogenation plant), while a relatively small number were put at the disposition of the

labor administration for other allocation in the Reich. Poles of the resettlement areas who were not sent to the Reich were put to work as farmers or farm laborers for settlers in so-called Z-villages which are situated between the German settlements. Those incapable of work were put up in other districts in so-called 'Renten' villages. The Ukrainians living mainly in the settlement areas of the northeastern and eastern regions of the Zamosc District were provisorily resettled in the immediately adjoining western part of the district of Hrubieszow. At present they are being settled in about 35 to 40 racially-mixed villages which through ejection of the Poles will become 100 Ukrainian. The expelled Poles, inasmuch as they are capable of working, will be sent to the Reich.

"The expelled Poles had very little time to get ready and were only allowed to take hastily-gathered baggage with them. They, therefore, lost almost all their property through this resettlement. On the other hand the Ukrainians were given several hours notice and were able to take along a part of their domestic equipment and belongings packed on their own carts.

"The settlement and expulsion measures were for the greater part carried out by the agencies of the Reich Commissioner for the Strengthening of Germanism.

"II. Flight of the rural population.

"Due to the reasons mentioned under II, the rural population shortly after the onset of the resettlement, undertook mass flights in order to escape the menace they consider directed towards their lives and their families and moreover to bring at least a good part of their belongings into safety. The farmers flee at night with the help of their horse-drawn carts taking along their families, parts of their equipment and belongings, and above all their livestock. Usually they go along side routes and try, nine times out of ten with success, to reach the nearest partisan bands or the neighboring districts, where they seek refuge with relatives or friends in the country. Since, as a matter of course, the flights were not planned beforehand, there are today a number of almost empty villages in the districts of Zamosc and Hrubieszow which will still be plundered to the last. Apart from damage done in the agricultural respect, which will be discussed later, these flights disturbed the settlement of these villages, as far as they were intended for Germans. Besides, the fact that only about 25,000 Poles were apprehended by the police speaks an eloquent language since there should have been about double this amount. Ten thousand, therefore, have fled. In the entire territory surrounding the resettlement

area ten thousand more farmers are packed and ready to flee in case the resettling should continue. The livestock has already been greatly reduced due to slaughtering and black market dealings.

“III. Agriculture.

“The feeling that sooner or later he would lose his homestead and fields has caused a sentiment of deep distrust and despair in the Polish farmer, who until now had well fulfilled the tasks and duties imposed upon him by the Administration, which of course cannot remain without negative results as to his efficiency. Already the delivery of milk, butter, and other agricultural products has considerably dropped, especially in the districts of Zamosc and Hrubieszow. The fact that the milk delivery went down greatly in Hrubieszow is very lucid; in November 1942, 2,500,000 liters, whereas in January of this year only 600,000 liters were delivered. This drop of 75 percent speaks a very eloquent language. The pig livestock in a large number of communities of this district has diminished 60 percent, that of fowl 90 percent, since the farmers try to get rid of and slaughter all they can in order not to lose it without compensation.

“IV. Political.

“Therewith Zamosc has become an inferno which throws its shadows far beyond the borders of the resettlement area and of the district. The result is that bolshevism has lost many of its terrors for the Polish population.”

In a speech to officers of the Leibstandarte Adolf Hitler on the “Day of Metz”, Himmler said—

“Very frequently the member of the Waffen SS thinks about the deportation of this people here. These thoughts came to me today when watching the very difficult work out there performed by the security police, supported by your men, who help them a great deal. Exactly the same thing happened in Poland in weather 40° below zero, where we had to haul away thousands, ten thousands, hundred thousands; where we had to have the toughness—you should hear this but also forget it again immediately—to shoot thousands of leading Poles, where we had to have the toughness, otherwise it would have taken revenge on us later. We also had to bring in, in this winter of 40° below zero, ten thousands of Germans, and had to take care of their needs—that the women were warm; that, when they bore children, these children did not experience want and destitution, where we had to take care of their horses; where

we had to take care of the baggage of these poor Germans from Volhynia; in many cases it is much easier to go into combat with a company than to suppress an obstructive population of low cultural level in some area with a company, or to carry out executions, or to haul away people, or to evict crying and hysterical women, or to return our German racial brethren across the border from Russia and to take care of them."

On 28 January 1943, Krueger, the Higher SS and Police Leader at Krakow, reported to Himmler that some Polish farmers tried to return to the village of Ciesyn located in the German resettlement area. He suggested that the resistance shown by Poles in the resettlement area be broken by a large-scale raid designed to exterminate the "criminal villages". Himmler agreed with Krueger's proposal and directed that the intended action should be carried out in such a way that this would have been the last attack on the German resettlement area. If necessary, entire villages were to be exterminated.

Another example of the brutality with which the agencies of the defendant Greifelt carried out the expulsion is given in a document dated 3 June 1943. It was decided that up to that time the Poles were notified much too early of the proposed evacuation and were able to hide much of their property. Therefore, the procedure was changed so that the Polish family would be expelled within 24 hours after the German resettler had arrived at the resettlers' camp. A representative of the local land office took over the inventory from the Poles and delivered it to the German resettlers. In a letter written by a member of the resettlement staff Kaunas [Kovno] dated 1 March 1943, the following method for the expulsion of Poles from the Kovno area was suggested:

"Poles designated for expulsion shall be instructed through the district chief to report with a vehicle and male laborer to the proper railroad station in order to provide transportation facilities for the arriving resettlers. When reporting to the station, the Poles shall be ordered to transport the resettlers to the proper farms. Upon arrival at the farm, the resettlers shall inform the family of the arrested Pole that they should keep quiet and should report on a certain day to the local government or some other official since, otherwise, the arrested head of the family would bear the consequences."

In addition to the mass expulsions in Poland, large-scale deportations from Yugoslavia were also carried out by RKFDV, VoMi and RuSHA. On 4 June 1941, Himmler issued a decree in which he ordered racial examination of all Slovenes from southern Carinthia and lower Styria by RuSHA. A few days later the

defendant Greifelt gave more detailed instructions for this action. On 14 July 1941, Greifelt decreed that, in order to create room for the ethnic Germans from Gottschee [Kocevje], the necessary evacuations from the resettlement area of Styria and Carinthia in Yugoslavia should be carried out by the chief of the security police in accordance with the directives given by Greifelt. Prior to this decree Greifelt had issued "Instructions for the expulsion of foreign elements from south Carinthia" in which he ordered that the Slovene intelligentsia be examined, the racially valuable Slovenes be deported to Germany for Germanization, while those not racially valuable be deported to Serbia.

By 22 June 1942, 34,000 Slovenes had been uprooted from their homes and sent to the Reich. It was only natural that the mass expulsion resulted in hatred and resistance. However, those who resisted were shot and their wives and children incarcerated in camps which VoMi made available for that purpose. In some instances, the children were separated from their mothers, and upon VoMi's suggestion, taken to Germany in order to be Germanized in Lebensborn homes. It happened from time to time that some of the Slovenes succeeded in escaping from the VoMi camps. By an order of Himmler, VoMi was instructed to report to the Gestapo the names of relatives, children, and accomplices, as well as the names of those who escaped, so that they could either be placed in concentration camps or hanged.

Mass deportation actions similar to those in Yugoslavia were carried out against citizens of Luxembourg. On 6 July 1943, Gustav Simon, head of the Luxembourg civil administration, wrote as follows:

"As a result of the incidents known to you of the previous autumn, it has been necessary for me to decree that the families who are not entirely dependable according to their political convictions are to be deported from Luxembourg to Germany proper for the security and strengthening of an unequivocal ethnic border population, and for their own education in the spirit of the thoughts of greater Germany. The deportation, which will be carried out by the offices of the Reich Commissioner for the Strengthening of Germanism, should not, even if it is accompanied by hardship, be a punishment, but it is a politically necessary and expedient measure for the security of the ethnic community on the border. After a temporary stay in a resettlement camp, jobs will be assigned the deportees from the point of view of labor utilization. As soon as they have found a new residence, they may make use of their movable property necessary for it; the other property will be adminis-

tered and converted into money by the German Resettlement Trustee Company.”

In the deportations of Luxembourgiens, the Staff Main Office, VoMi, and RuSHA played an important part. The defendants Lorenz and Brueckner of VoMi participated in the planning of the expulsion measures. The expelled Luxembourgiens were taken first to VoMi camps, where RuSHA carried out racial examinations in order to determine which of them would be Germanized. They were then taken by the Staff Main Office either to Germany or to the General Government.

In the General Government, Krueger, the Higher SS and Police Leader in Krakow, complained about some of the deported Luxembourg families in a letter to Himmler. He said that, out of 133 families, the heads of 36 had been committed to concentration camps as political prisoners, the heads of 11 families had been convicted and executed for political reasons, members of 8 families had served sentences for exhibiting a hostile attitude towards Germany and the remaining 78 families had carried out political activities against Germany. Yet these defendants will no doubt tell us that all these citizens of Luxembourg were really Germans at heart who were anxious to renounce their nation, lose their property, and go to Germany and occupied Poland to work for the greater glory of the Fuehrer and the Third Reich.

Those Luxembourgiens who escaped deportation and were permitted to remain in Luxembourg were divested of their citizenship and made German citizens by a decree of 23 August 1943. As a result, many of them were forcibly conscripted into the German army. Understandably enough, some of them deserted rather than fight against their Allies. Those who were caught were sentenced to death. The families of those who were not caught were deported to an internment camp in Trebnitz with the knowledge of the Staff Main Office and VoMi.

The French provinces of Alsace and Lorraine were incorporated into the German Reich following the fall of France. Steps were immediately taken to report all persons who refused to renounce their loyalty to France and to promote “Germanism”. Between July and December 1940, 105,000 Alsatians were the victims of a German expulsion action. On 27 May 1942, Kaul, the Higher SS and Police Leader in Luxembourg, suggested to Greifelt the deportation and re-Germanization of still more Alsatians. He proposed that those to be deported should be politically examined by the security police and racially examined by RuSHA, and that they should be resettled in Germany. On 4 August 1942, a conference took place between representatives of the Staff Main Office and Wagner, Chief of the Civil Administration, in which

the groups of persons to be expelled were determined. In a memorandum of 2 September 1942, Greifelt stated that the Staff Main Office had the responsibility of deporting all unreliable persons from Alsace-Lorraine.

In another memorandum of 6 October 1942, RuSHA reported that the deportation of politically unreliable Alsations was under way and that the Race and Settlement Office was determining which of them were racially valuable and hence to be resettled in the East, or racially acceptable for resettlement in Germany, or racially inferior for shipment to France.

On 23 March 1943, Wagner issued an order to the representatives of the Staff Main Office attached to the civil administration of Alsace to return from France for military service all Alsations born after 1900.

In Lorraine, similar measures were adopted. All men of military age were arrested and, together with their families, racially examined by RuSHA in order to determine whether they were a desirable, satisfactory, or unsatisfactory increase to the German population. On 3 October 1942, the defendant Greifelt issued a secret order in which he stated that, for political and racial reasons, families and individuals from Alsace-Lorraine and Luxembourg had been evacuated and settled in the old part of the Reich because they refused labor service in the armed forces, participated in strikes, or took part in activities against the Reich by establishing connections with neighboring states. Greifelt emphasized that although these individuals could not be placed on the same level as racial Germans, they should obtain German citizenship on a revocable basis and be treated like persons from the East who were Germanized. They were to be put to work and kept under surveillance by the police. In addition, he stated that the deportees who expressed a desire to be sent to France or rejected German nationality or resisted work would be reported to the proper Gestapo office and sent to a concentration camp.

On 28 November 1942 a conference took place between representatives of the Staff Main Office and VoMi in which it was decided that 9,337 persons were to be expelled from Lorraine on 15 January 1943 and shipped to VoMi camps in lower Silesia and the Sudetenland. Racial examinations were to be conducted in these VoMi camps, the racially valuable to be resettled in the General Government, the racially not valuable to be deported to France. In the same conference, it was decided to place those of "inferior race" in armament factories, foundries, and mines and to deport their dependants to VoMi camps. This latter action

was speeded up by the Staff Main Office in view of the need for slave labor in armament factories.

PLUNDER OF PUBLIC AND PRIVATE PROPERTY

MR. LAMB: In the course of their execution of the program of genocide and Germanization, all of the defendants participated in the plunder of public and private property. As time will not permit a detailed discussion of all of these crimes, we will limit ourselves to the most important points.

The Staff Main Office under the defendant Greifelt was particularly active in the mass confiscation of property from Poles and other persons evicted from their farms. This served the dual purpose of depriving those people of their means of livelihood and providing land and houses for resettlers.

As the result of a decree of 19 October 1939 issued by Goering as Plenipotentiary of the Four Year Plan, an organization known as the Main Trustee Office East, commonly known as the "HTO",* was established for the confiscation and administration of Jewish and Polish property in the incorporated Polish territories. However, by 10 November 1939 it had been agreed that the seizure and confiscation of landed property—as distinguished from industrial property—owned by Poles and Jews would be directed and carried out by the Reich Commissioner for the Strengthening of Germanism. Amt V of the Staff Main Office under the defendant Greifelt was the Central Land Office and it, together with subordinate local land offices, carried out the plunder of real property.

In a directive of 12 December 1940, the defendant Greifelt emphasized that the Central Land Office and the local land offices were charged with the seizure and confiscation of real estate and that such offices had to be consulted before a final decision as to confiscation could be made. It was required that the Central Land Office be kept informed about all decisions reached by the local land offices as the Central Land Office was charged with the execution of the proper administrative measures.

An idea of the extent of the plunder engineered by the Staff Main Office can be obtained from the following figures. On 3 August 1942, the defendant Greifelt reported to Himmler that by 1 July 1942 a total of 626,642 enterprises (95 percent rural, 5 percent urban) covering an area of 5,849,987 hectares (a hectare being 2.47 acres) had been taken away from Jews and Poles in Danzig, Wartheland, Eastern Prussia, and Silesia by the Central Land Office. In a pamphlet called "Folkdom and Soil" issued

* Haupt Treuhandstelle Ost.

by the Staff Main Office it was noted that by 31 December 1942 a total of 193,427 enterprises covering a territory of 804,880 hectares had been registered for seizure and confiscation in lower Styria and South Carinthia, that a total of 2,998 enterprises covering an area of 99,175 hectares had been seized, and a total of 1,094 enterprises of 28,042 hectares had been confiscated. Also, it was pointed out that in Lorraine an area of 214,445 hectares had been registered for seizure and confiscation and in Alsace a total of 10,561 hectares. In October 1943 the defendant Greifelt estimated that the total value of the confiscated land amounted to from 7 to 8 hundred million marks.

Greifelt was not content with confiscations carried out by his own agents and did everything in his power to have property confiscated by other agencies transferred to the Staff Main Office. Thus, when property of the Polish state was confiscated by the Reich Food Ministry, he urged that it should be transferred to the Staff Main Office and this request was finally granted. In another instance, Greifelt complained to Himmler that the civil administration should transfer to him five agricultural estates originally owned by Poles and Jews and evaluated at about five million Reich marks. In a third instance, he suggested that French property confiscated from "enemies of the Reich and the people" and administered by the Reich Finance Minister should be transferred to the chief of the civil administration in Lorraine as representative of the RKFDV so that it would be available for the strengthening of Germanism rather than for general purposes.

In his desire to confiscate as much Polish and Jewish property as possible, Greifelt did not hesitate to take church property. For example, on 18 November 1940 the Superior of a nunnery, Mother Salesia, complained to Cardinal Bertram in Breslau that the convent for sick and infirmed sisters had been seized by a Mr. Steffens, an agent of the RKFDV. When the Mother Superior protested on the ground that the seizure was against the law, Steffens replied, "For us no law exists. We yield only to force. I am using that force herewith and declare this building seized as of the 26th of this month. It is easier for sixty nuns to find shelter than it is for 500 racial Germans". This complaint of the Superior was submitted to the defendant Greifelt and by him forwarded to Himmler. Himmler agreed with Greifelt's suggestion that the convent should remain seized. Himmler protested, however, the payment of a rental, but Greifelt replied that a way was found even to avoid that.

Greifelt paid no more respect to cultural property than he did to church property. By a decree of 1 December 1939, Himmler as RKFDV ordered the seizure of all cultural property in Poland

including archives, museums, public collections, documents, books, paintings, and the like. This confiscation order, which was executed by the Staff Main Office, extended to all cultural property in the incorporated Polish territories as well as the General Government, unless it was owned in the amount of 75 percent or more by Germans or ethnic Germans.

In the Amt III, "Industrial Economy", of the Staff Main Office there was a division called "Procurement of Furniture and Household Goods", the primary function of which was the confiscation of personal effects of Jews for use by ethnic German resettlers. In an office memorandum of 18 September 1944 to Greifelt, it is pointed out that confiscated Jewish furniture supplied to the resettlers in Bohemia and Moravia alone was valued at 26 million kronen.

In addition to the confiscation of property in Poland, the Staff Main Office plundered on a large scale in the Southeast and in the West. In connection with the expulsion of Slovenes from Lower Styria and Upper Carinthia, the defendant Greifelt, the Staff Main Office, and VoMi deprived the expelled Slovenes of practically all their property. Instructions issued by Greifelt provided that the expelled Slovenes could take movable property and furniture only to a small extent and within the scope of possible transportation. Moreover, all real estate, inventory, and stocks of merchandise were confiscated. Similar measures were taken with respect to the property of persons deported from Luxembourg, Alsace, and Lorraine. Moreover, not only did the Staff Main Office plunder property directly, but it also cooperated closely in the confiscation and disposition of huge amounts of industrial property by the HTO, which was turned over to resettlers.

The participation of RuSHA, under the defendants Hofmann and Hildebrandt, in the spoliation of property was primarily in execution of its policy of planting out SS men, especially ex-servicemen, as colonists. RuSHA was given exclusive jurisdiction by Himmler over the resettlement of members of the SS in rural areas. As far back as 1940, plans were drawn up by Hofmann for the settlement of SS men in the East. By 1942, he was prompted to say that he was "sure that the East belongs to the SS". These resettlements were made possible by the confiscation of large amounts of property, particularly in Russia. For example, in a letter of 30 December 1942 Hofmann pointed out that SS men were managing 600,000 hectares of land in an area stretching from the Ukraine to the Baltic Sea.

The plunder of property by the VoMi and Lebensborn defendants will be dealt with in our discussion concerning the persecution of the Jews.

PERSECUTION OF THE JEWS AND PLUNDER OF JEWISH PROPERTY

We now come to the systematic and relentless annihilation of the Jewish peoples by the Nazis which constitutes one of the blackest pages in the history of the civilized world. This mad program of wholesale slaughter also included other groups considered racially inferior, such as the Poles, but the Jew was especially marked for destruction. This crime of genocide was part of the Nazi doctrine of total warfare, war waged against populations rather than against states and armed forces. One must search as far back as the massacres by Genghis Khan and by Tamerlane to find anything remotely comparable to the extermination of the Jews by the Nazis. Hans Frank, former Governor General of the occupied Polish territories, and a defendant before the International Military Tribunal, spoke the truth when he testified: "A thousand years will pass and this guilt of Germany will still not be erased".

An introduction to this crime of mass murder can perhaps best be given in the words of Reich Leader SS Himmler. On 4 October 1943, he said to a meeting of SS Gruppenfuehrer at Poznan—

"I also want to talk to you, quite frankly, on a very grave matter. Among ourselves it should be mentioned quite frankly, and yet we will never speak of it publicly. Just as we did not hesitate on 30 June 1934 to do the duty we were bidden, and stand comrades who had lapsed up against the wall and shoot them, so we have never spoken about it and will never speak of it. It was that tact which is a matter of course and which I am glad to say, is inherent in us, that made us never discuss it among ourselves, never speak of it. It appalled everyone, and yet everyone was certain that he would do it the next time if such orders were issued and if it were necessary.

"I mean the clearing out of the Jews, the extermination of the Jewish race. It's one of those things it is easy to talk about—"The Jewish race is being exterminated" says one Party member, 'that's quite clear, it's in our program—elimination of the Jews, and we're doing it, exterminating them.' And then they come, 80,000,000 worthy Germans, and each one has his decent Jew. Of course the others are vermin, but this one is an A-1 Jew. Not one of all those who talk this way has witnessed it, not one of them has been through it. Most of you must know what it means when 100 corpses are lying side by side, or 500 or 1,000. To have stuck it out and at the same time—apart from exceptions caused by human weakness—to have remained decent fellows, that is what has made us hard.

This is a page of glory in our history which has never been written and is never to be written, for we know how difficult we should have made it for ourselves, if—with the bombing raids, the burdens, and the deprivations of war—we still had Jews today in every town as secret saboteurs, agitators, and troublemongers. We would now probably have reached the 1916–17 stage when the Jews were still in the German national body.

“We have taken from them what wealth they had. I have issued a strict order, which SS Obergruppenfuehrer Pohl has carried out, that this wealth should, as a matter of course, be handed over to the Reich without reserve.”

And so the arm of destruction was the SS. The SS organizations in which these defendants were leaders, participated in and received loot from the persecution and extermination of the Jews. As early as January of 1939, Heydrich, Chief of the Security Police and SD, was appointed by Goering to bring about a “solution” of the Jewish problem through furtherance of emigration and evacuation. The initial steps for the “final solution” of the Jewish problem, that is, the extermination of the Jews, were taken shortly after the invasion of Poland. On 21 September 1939, Heydrich directed as follows:

“The first preliminary measure for the final aim is the concentration of the Jews from the countryside into larger towns. This has to be carried out with acceleration. A distinction has to be made (1) between the area of Danzig and West Prussia, Poznan, eastern Upper Silesia, and (2) the remaining occupied territories. The area as mentioned under number (1) has to be cleared of Jews as far as possible, at least it has to be aimed at establishing only a few concentration towns. In the areas as mentioned under number (2), as far as possible concentration points are to be established, so that the measures later to be taken will be facilitated. It has to be considered that only such towns will be established as concentration points which either are railway centers or at least are situated at railway lines.”

At the time the defendant Hildebrandt was Higher SS and Police Leader in Danzig-West Prussia and units under his command engaged in the evacuation of Jews from that area.

On 31 July 1941, Heydrich was ordered by Goering to bring about the “final solution” of the Jewish question in the German sphere of influence in Europe. Following the issuance of this directive, the wholesale slaughter of the Jews began. With the advance of the German armies in Russia, Einsatzgruppen of the Security Police and SD murdered Jews and communist intellectuals by the hundreds of thousands. Otto Ohlendorf, the leader of Einsatzgruppe D operating in southern Russia, presently a

defendant before a Military Tribunal, estimated that 90,000 men, women, and children were liquidated by his unit alone.

At the same time the Einsatzgruppen were being formed in July of 1941, Himmler issued an order to the defendant Lorenz, as Chief of VoMi, and Heydrich, directing Lorenz to take all measures necessary to register ethnic Germans in the occupied Russian territories and to lay the foundation for German domination by the assignment of reliable anti-Bolshevik agents. It stated that this work was to be done in close cooperation with the Einsatzkommandos of the security police. This order also affected Lebensborn under the defendant Sollmann. A subordinate in that organization was directed to take care of children of "good" blood in the occupied Russian territories. Pursuant to this order, agents of VoMi were assigned to work directly with the Einsatzgruppen. The Einsatzgruppen carried out deportations of so-called ethnic Germans for VoMi. For example, an operational situation report of Einsatzgruppe A, dated 16 February 1942, pointed out that people of German extraction were deported in the most considerate way possible, but that these people could not be permitted to take with them more than one piece of luggage. Property taken from Jews and Communists murdered by the Einsatzgruppen was turned over to VoMi for use in resettlement operations.

The Goering order of 31 July 1941 to Heydrich stated that, "Whenever other governmental agencies are involved, these are to cooperate with you". On 29 November 1941, Heydrich wrote to the defendant Hofmann, at that time Chief of the SS Race and Settlement Main Office, as follows:

"On 31 July 1941, the Reich Marshal of the Greater German Reich commissioned me to make all necessary preparations in organizational, factual, and material respect for the total solution of the Jewish problem in Europe, with the participation of all interested central agencies, and to present to him a master plan as soon as possible. A photostatic copy of this commission is included in this letter.

"Considering the extraordinary importance, which has to be conceded to these questions, and in the interest of the achievement of the same viewpoint by the central agencies concerned with the remaining work connected with this final solution, I suggest that these problems be made the subject of a combined conversation, especially since Jews are being evacuated in continuous transports from the Reich territory including the Protectorate of Bohemia and Moravia to the East ever since 15 October 1941".

The conference mentioned in Heydrich's letter to Hofmann took

place on 20 January 1942 and was attended by Hofmann; also present were officials from the Reich Ministry for the Occupied Eastern Territories, the Ministry of the Interior, the Ministry of Justice, the Office of the Governor General, and the Foreign Office, among others. Heydrich pointed out at the conference that "the Reich Marshal's request to have a draft submitted to him on the organizational, physical, and material requirements with respect to the final solution of the European Jewish problem necessitated this previous general consultation by all the central offices directly concerned, in order that there should be coordination in policy". After reviewing the steps which had been taken to force the emigration of Jews from Germany, Heydrich stated that—

"In the course of this final solution of the European Jewish problem, approximately 11,000,000 Jews are involved * * *. Under proper direction the Jews shall now in the course of the final solution be brought to the East in a suitable way for use as labor. In big labor gangs, under separation of the sexes, the Jews capable of work are brought to those areas and employed in road building in which task undoubtedly a great part will be eliminated through natural attrition. The remnant that finally is able to survive all this—since this is undoubtedly the part with the strongest powers of resistance—must be treated accordingly, since these people, representing the result of a natural selection, are to be regarded as the germ cell of a new Jewish development, should they be allowed to go free".

The problem of the extermination of the Jews living in such satellite countries as Rumania and Hungary was dealt with and the conference notes state that—

"SS Gruppenfuehrer Hofmann intends to ask to have an official of the Race and Settlement Office sent along to Hungary for general orientation, when the affair is started there by the chief of the Security Police and SD."

A considerable portion of the conference was devoted to discussing the extent to which the final solution should be extended to Jews of mixed blood and Jews married to Germans. As to marriages between Jews of mixed blood, the conference report states that, "SS Gruppenfuehrer Hofmann is of the opinion that extensive use must be made of sterilization; since the person of mixed race, when confronted with the choice as to whether he is to be evacuated or sterilized, would prefer to submit to sterilization".

The SS Race and Settlement Main Office assisted in the "final" solution of the Jewish problem by the compilation of elaborate files on full Jews and Jews of mixed blood in the Reich and German-occupied territories. These files were made available to

Adolf Eichmann of the RSHA who was personally in charge of the Jewish extermination program under Heydrich. Captured documents show that such card files were maintained in the Netherlands, Norway, France, and Belgium, among other countries. The close cooperation between the Race and Settlement Office and Eichmann is shown by a cable from an agent in the Paris office of RuSHA suggesting that Eichmann be contacted in order to assign a deputy to that office. Since there were 60,000 Jewish families in the occupied part of France, the agent stated that the work would be plentiful.

Another indication of the activities of RuSHA in the persecution of the Jews is found in a letter of 27 May 1944 from a RuSHA official in Belgium to the Berlin office. The letter dealt with the fate of a German citizen Margarete Gertrude Sydower and her Jewish husband. Both were German refugees, having fled to Belgium in 1939. The Genealogy Office of RuSHA was asked to check its Jewish files and advise whether the wife was of pure Aryan decent. This information was needed in order to determine whether the Jewish husband should wear the Star of David. The letter ends with the following remark: "Sydower does not reject the idea of voluntary sterilization".

This was one of those "voluntary" solutions proposed by Hoffmann to Heydrich where the Jew was offered the alternative of deportation and certain death, or sterilization.

The extermination of the Jews was not limited to the Einsatzgruppen. Indeed, the slaughter in the charnel houses of Auschwitz, Treblinka, Maidanek, Belzec, and Sobibor was on a vaster scale. These extermination camps were all located in Poland. After the invasion of Poland, all Jews were forced to register, live in ghettos, and wear the yellow star. The "final solution" of the Jewish problem could, therefore, be resolved with almost assembly line precision. Trainloads of Jews were evacuated from the ghettos to such camps as Auschwitz where the test of life or death was physical ability to work. Hoess, the commandant of Auschwitz, estimated that 2,500,000 Jews were exterminated and a further 500,000 died from disease and starvation between May 1940 and December 1943 in that camp alone. Hoess described the screening process in the following language:

"We have two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated, since by reason of their youth they were unable to work. Still

another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under their clothing, but of course when we found them we would send the children in to be exterminated”.

Extermination centers similar to Auschwitz existed at Treblinka, Maidanek, Belzec, and Sobibor in the vicinity of Lublin, and the procedure there was the same. The victims were stripped of their clothing, money, and valuables. The hair of the women was cut off, later to be manufactured into mattresses. Then, herded like so many cattle, the naked men, women, and children were driven to their deaths in the gas chambers. Gold teeth were pulled from the mouths of the corpses. An attempt was even made to manufacture soap from the fatty parts of the bodies, while the ashes remaining after cremation were used for fertilizer. This was indeed a gruesomely commercial exploitation of death on a mass basis.

As a result of this large-scale extermination action, huge quantities of clothing and other valuables became available. A substantial quantity of this bloody loot was transferred to VoMi under the defendant Lorenz for distribution to persons resettled by the Staff Main Office, VoMi, and RuSHA. The administrative task of collecting and distributing the property confiscated from murdered and enslaved Jews, which was known as Action Reinhardt, was handled by the WVHA, the Economic and Administrative Main Office of the SS. Prior to December 1943, the WVHA had accounted for personal property in excess of 180,000,000 Reich marks from Jews exterminated in the Lublin area alone. This included foreign currency from 48 different countries, not the least of which was \$1,300,000 in United States bank notes and gold coin. Also carefully listed and evaluated were 162,711 articles of considerable value, among them jewelry, watches, and gold spectacle frames. Nearly 2,000 freight carloads of clothes, linens, and rags were disposed of on orders of the WVHA.

On 26 September 1942, August Frank, deputy chief of the WVHA, issued basic instructions to the Auschwitz and Lublin concentration camps on what he termed the “utilization of property on the occasion of settlement and evacuation of Jews”. It was stated that in all future orders, property stolen from Jews would be considered as “goods originating from thefts, receipt of

stolen goods, and hoarded goods". Excerpts from this order read as follows:

"d. Men's underwear, men's clothing, including footwear, are to be sorted and valued. After covering of their own requirements for concentration camp inmates and in exceptional cases for the troops, the goods are to be delivered to the Volksdeutsche Mittelstelle. In any case, the proceeds will go to the Reich.

"e. Women's clothing, women's underwear, including footwear, children's clothing and children's underwear, including footwear, are to be delivered against payment to the Volksdeutsche Mittelstelle. Pure silk underwear is to be delivered to the Ministry of Economics, according to an order of the SS Economic and Administrative Main Office [WVHA]. The same goes for the underwear, mentioned under *d*.

"f. Feather beds, quilts, blankets, suiting material, scarves, umbrellas, walking-sticks, thermos flasks, car protectors, perambulators, combs, handbags, leather belts, shopping bags, tobacco pipes, sun spectacles, looking glasses, cutlery, knapsacks, suitcases made of leather and synthetic material are to be delivered to the Volksdeutsche Mittelstelle. The question of compensation will be settled later on. According to their own requirements, Lublin and Auschwitz may obtain quilts, blankets, thermos bottles, car protectors, combs, cutlery and knapsacks against payment from budget funds.

"g. Linen, such as sheets, quilt covers, pillowcases, towels, dishcloths, tablecloths, are to be delivered against payment to the Volksdeutsche Mittelstelle."

The order concluded as follows:

"It has to be strictly observed that the Jewish Star is removed from all garments and outer garments which are to be delivered. Furthermore, items which are to be delivered have to be searched for hidden and sewed-in valuables."

In October 1942, the defendant Lorenz and the WVHA were advised by Himmler that VoMi was to be furnished utensils and clothing from the warehouses in Lublin and Auschwitz concentration camps for over 100,000 ethnic Germans. Each of those ethnic Germans was to be equipped with one dress or suit as well as other wearing apparel. In a letter of 6 February 1943, Pohl, the Chief of the WVHA, reported that 211 freight carloads of clothing had been made available to VoMi from the extermination camps of Auschwitz and Lublin for distribution among ethnic Germans. This shipment comprised more than two million separate articles. In the same letter Pohl stated that further deliveries designed for ethnic Germans in the Ukraine could not

be carried out because of transportation difficulties, but that the whole delivery had been made to VoMi at Litzmannstadt [Lodz] from whence it would be distributed by VoMi as soon as the transportation situation was relieved.

The Staff Main Office under the defendant Greifelt also participated in the persecution of the Jews and the plunder of Jewish property. The destruction of the Litzmannstadt Ghetto in Poland is an example of this. As late as January 1944, over 80,000 Jews were confined there in an area of approximately 7.5 square kilometers. Sanitary conditions were catastrophic; there was no water supply, no gas, no sewage disposal. There were approximately 500 deaths per month.

The Jews in the Litzmannstadt Ghetto were apparently able to survive as late as 1944, because they were used to produce goods manufactured in plants within the ghetto. But in the summer of 1944 it was decided that the Litzmannstadt Jews were to be exterminated and the ghetto destroyed. Greifelt was advised of this decision by Greiser, the gauleiter of the Warthegau, and the Staff Main Office was assigned the task of demolishing the ghetto and confiscating the property of the Jews. Greifelt directed the defendants Schwarzenberger, Meyer-Hetling, and Huebner to work out the necessary details. In August 1944, 60,000 Jews were sent from Litzmannstadt to the concentration camps for execution. The destruction of the ghetto began in October under the direction of Sturmbannfuehrer Hirschboeck, who was put in charge of the operation by the defendant Huebner. In a report of 15 November 1944, it was stated that 18 buildings had been thus far destroyed and furniture, textiles, and other material had been removed from about 700 households. As a result of this ghetto action, property in the amount of approximately 1,000,000 Reich marks was confiscated from the Jews.

A number of the other defendants also showed considerable interest in the Jewish ghettos. At a meeting in May 1944 of all the race and settlement field leaders, the agenda included a discussion of the solution of the "Jewish Problems" in the Warthegau and a visit to the Litzmannstadt Ghetto. As the report on the meeting put it, "The participants in the meeting, in the course of the conducted tour which lasted several hours, had an opportunity to view not only the ghetto's organization and its production, which from the viewpoint of war economy are considerable, but to make spontaneous studies on racial diversities and common features of Judaism." The defendant Schwalm of RuSHA was one of the participants in this meeting.

On 10 February 1943, the defendant Ebner wrote to Sollmann suggesting that medical instruments and furniture for a new

Lebensborn institution in Otwock, Poland, be obtained from the Warsaw Ghetto. Exactly six days later, Himmler ordered the evacuation and destruction of that ghetto which was subsequently carried out with horrible savagery by Juergen Stroop, the Higher SS and Police Leader in Warsaw. Ebner's letter to Sollmann also contained an interesting proposal concerning the treatment of Poles suffering from tuberculosis. He pointed out that it was planned to use one of the houses in Otwock as a tuberculosis hospital for racial Germans. Ebner opposed this and proposed that Poles be evacuated from a hospital in Warsaw and quartered in barracks. He stated that the health authorities were probably not interested in curing Poles so long as Germans were not satisfactorily cared for.

Many of the Lebensborn homes were established and equipped with property taken from Jews. For example, the defendant Ebner and Tesch, together with Sollmann, engineered the acquisition of a Jewish sanatorium at Nordrach, Baden in September 1942. Other property which was known to have been confiscated from Jews was taken over in Germany, Austria, Czechoslovakia, Holland, and Poland.

KIDNAPING OF ALIEN CHILDREN

MR. NEELY: In this very same courtroom crimes have been revealed which were so revolting and marked with such bestiality that the civilized world has been shocked at the extent of "man's inhumanity to man". The outrages committed by the Nazis against the inhabitants of the occupied countries would be considered incredible except for captured orders and reports showing the fidelity with which these crimes were executed. All who cared to read have been informed of the mass killing of the Jews, the atrocities in concentration camps, the savage medical experiments, and many more ruthless forms of torture and extermination practised by the Nazi fanatics. But now we turn to a crime which in many respects transcends them all—a crime in which all fourteen of these defendants actively participated—the crime of kidnaping children.

This crime was not of an occasional or casual character, but was planned and disciplined. Himmler said in a speech at Bad Schachen in October 1943 that—

"Either we win over any good blood that we can use for ourselves and give it a place in our people or, gentlemen—you may call this cruel, but nature is cruel—we destroy the blood". In speaking of the conquered peoples in the East, he continued by saying—

"Obviously in such a mixture of peoples, there will always

be some racially good types. Therefore, I think that it is our duty to take their children with us, to remove them from their environment if necessary by robbing or stealing them”.

As early as 1939, a forewarning of the program about to be launched was given in a treatise prepared by the Office of Racial Policy in the NSDAP. It stated—

“A considerable part of the racially valuable groups of Polish people, who on account of racial reasons are not suitable for Germanization, will have to be deported to the rest of Poland. But here it has to be tried to exclude *racially valuable* children from the resettlement and to educate them in suitable educational institutions, preferably like the former military orphanages in Potsdam, or in a German family. The children suitable for this are not to be over 8 to 10 years of age because, as a rule, a genuine ethnic transformation, that is, a final Germanization, is possible only up to this age. *The first condition for this is a complete prevention of all connections with their Polish relatives. The children receive German names which are ethnologically of accentuated teutonic origin. Their descendant certificate will be kept by a special department. All racially valuable children whose parents died during the war or later, will be taken over in German orphanages without any special regulation.*

“For this reason a decree prohibiting the adoption of such children by Poles is to be issued. Any keeping of biologically healthy children in church institutions is prohibited.

“Children of such institutions if no older than approximately 10 years are to be transferred to German educational institutions.

“Poles with a neutral attitude who are willing to send their children to German educational institutions do not need to be deported to the rest of Poland”.

The abduction of “racially valuable” alien children was thus a part of the greater program of destroying or crippling national groups in the occupied territories. In turn, Germany itself would be strengthened by importing children selected in accordance with standards compatible with Nazi racial and biological theories. In addition, kidnaping of children was also used as a method of retaliation and intimidation against those who, for various reasons, invoked the Nazis’ displeasure.

Many times throughout this proceeding we shall hear the defendants say how well these children were treated and of the wonderful care afforded them. In comparison to the treatment of other children whom these defendants rejected for Germanization this may well be true. But it is no defense for a kidnapper to

say he treated his victim well. Even more important, we must ask ourselves why they were so treated. The answer is simple—these innocent children were abducted for the very purpose of being indoctrinated with Nazi ideology and brought up as “good” Germans. This serves to aggravate, not mitigate, the crime.

In general, Lebensborn preferred to handle children not over 6 years of age. This age limitation is easily understood. At these tender years, the children could be more easily molded into the Nazi way of life. Also, it was much easier to conceal the true identity of these children and to deceive the foster parents into thinking they were German children whose parents had been killed in an air raid or some other form of military operation.

It was only natural that Lebensborn was designated as the organization to handle kidnaped children and to make all necessary arrangements for their placement into “proper” German families. Here was an organization which had already been established to insure the support of legitimate and illegitimate children of SS men and had as its original purpose the creation of “a numerous and healthy progeny of the SS”. The facilities such as the hospitals and children’s homes could be easily utilized and enlarged for the handling of kidnaped alien children. But more important was the existing staff of personnel well trained in the care of infants and their placement with foster parents. Also, their training as to the secrecy with which this program was carried out in order to conceal the true identity of these children posed no problem—Lebensborn from its very beginning stressed secrecy in the treatment of its cases because many children born and cared for originally in Lebensborn homes were illegitimate.

The steps employed in the abduction of alien children, their care, education, and placement in foster homes is detailed in an order of 19 February 1942 by the defendant Greifelt. In outlining this program, Greifelt stated—

“In order to be able to regain for German Folkdom, those children whose racial appearance indicates Nordic parents, it is necessary that the children, who are in former Polish orphanages and with Polish foster parents, are subjected to a racial and psychological process of selection. These children, who are considered to be racially valuable to German Folkdom, shall be Germanized * * *.

“In agreement with the agencies concerned I am giving the following instructions for the execution of this regulation.

“I

* * * * *

“(2) The Reich Statthalter of the Reich Gau Wartheland (Gau self-administration) will report the registered children

to the Race and Settlement Main Office, Field Office Litzmannstadt.

“(3) In order to determine whether these children are suitable for Germanization, they will be racially examined by the Race and Settlement Main Office, Litzmannstadt.

“(4) Those children, who are racially examined by the Race and Settlement Main Office and described as suitable for Germanization, have to be examined thoroughly as to their state of health (a health record for each child, the Wassermann test, X-rays tuberculin test; thorough delousing of the children, etc.)

“II (1) My representative will report the children from 2 to 6 years, who have been considered suitable for Germanization, to Lebensborn. Lebensborn transfers the children at first to one of its own children’s homes. Subsequently Lebensborn will see to it that the children are placed in childless families of SS members, with the purpose of a later adoption. The guardianship for these children transferred to the children’s home of Lebensborn is taken over by Lebensborn.

“(2) My representative at Poznan will report all children from 6 to 12 years of age who have been considered suitable for Germanization to the inspector of the German folk schools.

The inspector of the German folk schools will accommodate those children in special folk schools, which answer the children’s needs. Those children, who leave the German folk schools with positive results, are to be lodged in rural homes in Germany proper [Altreich].

* * * * *

“(4) At first all these children, who were staying in former Polish orphanages, are processed and provided with homes. After this action is finished, those children are examined, who were living with Polish foster parents. In order to avoid any alarm on the part of the Polish foster parents, they have expressly to be told that the children will be given free places at school, or else they will be accommodated in convalescent homes * * *.

* * * * *

“III

“(3) Special attention is to be given that the expression ‘Polish children suitable for Germanization’ may not reach the public to the detriment of the children. The children are rather to be designated as German orphans from the regained Eastern Territories.”

While this order was limited by its terms to Polish children living in orphanages and with foster parents, our proof will show that

substantially the same procedure was followed with respect to children taken from their natural parents.

In addition to selecting the children suitable for Germanization, RuSHA in many instances gave them German-sounding names. Thus, in a letter of 17 September 1942 from RuSHA to its sub-offices with the Higher SS and Police Leaders, it was stated that—

“In agreement with the Staff Main Office of the Reich Commissioner for the Strengthening of Germanism and Lebensborn, the SS Race and Settlement Main Office is competent for the Germanization of names (first and second names) of orphans qualifying for Germanization.

“The SS Leader of the Office for Race and Settlement or the chiefs of the suboffices are commissioned to carry out the Germanization and are to take care of the racial selection at the same time. When Germanizing names, care must be taken that the new names are adapted as far as possible to the origin and sound of the previous name. In case where Germanization of the old names is not possible, new German names must be given. In this case commonly used German names must be chosen (of course not of a religious nature). The use of typical Nordic names must be avoided.”

The children were then sent to one of the numerous homes operated by Lebensborn. Here they were taught German and indoctrinated with Nazi ideologies while awaiting transfer into German families. All correspondence with their relatives and homeland was strictly forbidden.

It was the duty of the defendant Ebner as Chief of the Health Division of Lebensborn to carry out physical examinations of these kidnaped children and to determine whether they should be adopted. Also, he was frequently called upon to establish the ages of children under his care. This was necessary, because in the majority of cases no birth certificates were available due to the manner in which the children had been taken from their homes and parents. Ebner was often confronted by defendant Tesch with, as Tesch put it, “another case where an expert opinion is required to find out the age of a child which is to be adopted”. After this determination of age, then a fictitious place of birth was selected by Tesch, Chief of the Legal Department of Lebensborn. For example, he frequently selected Poznan as the place of birth of children from Polish areas. Then, after this data had been recorded, the children were given German-sounding names if for any reason this had not already been done by RuSHA. Thus, with this fictitious and falsified information everything was in order for adoption papers to be completed under the guidance of the defendant Tesch.

These then were the steps employed in the commission of the crime of kidnaping of children as alleged in the indictment. The defendants were entrusted with broad discretion and exercised considerable power in carrying out this program, which involved the abduction of hundreds of Czech, Polish, Yugoslav, and Norwegian children. But now we would like to turn from the procedures utilized in carrying out this program and briefly picture for the Tribunal a few instances showing where some of these children came from and the conditions under which they were obtained and selected for Germanization.

After the Nazis invaded the Republic of Czechoslovakia on 15 March 1939, the struggle which this small nation carried on against their oppressors, continued underground. By September 1941 the Nazis decided upon a policy of pacification through terror, and on the 27th of that month Reinhard Heydrich, in effect, replaced von Neurath* who was given "sick leave", as Reich protector of Bohemia and Moravia. Heydrich was a man who shunned neither blood nor brutal violence. After unlimited power was placed in his hands, the wave of terror grew. Heydrich quickly became a man hated by the entire Czech nation.

The opportunity for revenge came. In the morning of 21 May 1942, Heydrich was driving to Prague from his country mansion in Panenske Brezany. He never reached his destination. In a suburb of Prague an armed attack ended his destructive activities. Heydrich was mortally wounded and died a few days later. It has been said by the physician who attended Heydrich that Hitler regarded his death as the equivalent of a German military disaster.

That which followed the assassination surpassed any previous conceptions of German fury. Searches, arrests, and executions had no end. But the worst was yet to come.

On the evening of 10 June 1942 were heard these biting words of a Nazi radio announcer—

"From official sources comes the following communique: 'In the search for the assassins of SS Obergruppenfuehrer Heydrich, definite clues were found showing that the inhabitants of the village of Lidice, near Kladno, had given support and assistance to the culprits. This information was verified with no help from the inhabitants. Their attitude towards the assassination was emphasized by further acts unfriendly to the Reich, such as the finding of forbidden printed matter, stores of arms and ammunitions, illegal radio sets, an exceptionally large quantity of rationed foods, and the uncovering of circum-

* Defendant before International Military Tribunal. See *Trial of the Major War Criminals*,

stances showing that several individuals were abroad in active service against the Reich. Because the inhabitants of this village, by their support and assistance to the assassins of SS Obergruppenfuehrer Heydrich, broke the law so recklessly, the men have been shot, the women deported to concentration camps, and the children taken where they may have suitable upbringing. The buildings of the village have been razed to the ground and its name erased'."

Here was a mass murder, a crime which the Nazi Government claimed as its own before the entire world, an atrocity in contravention of every civilized conception of right and justice. The Nazi regime now appeared in its true light and proclaimed with a voice that shocked the world: we are bandits, plunderers, murderers, and kidnapers of innocent children; we have power and are not afraid to use it against any who antagonize us.

The same night, radio stations throughout the world announced the news of the annihilation of Lidice. None could conceive of a worse accusation against nazism than such a communique.

The Nazis wanted to erase the name of Lidice from the map forever; they desired that every member of its community be removed from the minds of mankind. They wanted to instill fear in the Czech people and bring them to their knees, but instead the name of Lidice became a symbol in the struggle of all democratic nations against Nazi Germany. This tragedy opened the eyes of all who doubted German criminality.

How this tragedy of Lidice came about is now shown by documents and the account of those few victims who are so fortunate to survive. From these we now form the complete picture.

The order for the annihilation of Lidice was transmitted by telephone from Karl Hermann Frank in Berlin, after a conversation with Hitler, to the commander of the security police and SD in Prague. This order, which was received at 1945 hours, 9 June 1942, directed—

"1. All adult men to be shot.

"2. All women to be sent to a concentration camp.

"3. All children are to be assembled and, as far as they are suited for Germanization, they are to be turned over to SS families in the Reich. The remainder is to be turned over for another education.

"4. The village is to be burned down and completely leveled.

On the same evening at the headquarters of the Kladno Gestapo, an order for a state of readiness was issued. Units of the German police arrived; trucks were loaded with drums of gasoline, and just before midnight the order was given to set out for Lidice. The entire village had previously been surrounded with SS men

and German police. After arriving, the leaders met over Lidice's square where SS Hauptsturmfuehrer Wiesmann, chief of the Kladno Gestapo, announced that the Fuehrer had ordered the complete destruction of the village.

Then began the execution of the order. First the mayor of Lidice was summoned so that he might deliver to the members of the Gestapo all cash in the public treasury, all deposit books, papers and other valuables. In the meantime, SS men entered each home awakening the sleeping families and giving them approximately ten minutes to gather their money and valuables and leave the house.

After collecting the inhabitants in the village square, all possessions were taken from them. Then the terrified families were separated. The women and children were taken to the school building and the men to the Horak farmhouse. There the Gestapo brought the registration files and checked to determine whether all men of the village were present. In turn, the men, 173 in number, were lined up before a firing squad and killed. The remaining 11 who were not present because of employment on the night shift at a nearby factory were later executed in Prague, in addition to the 8 members of the Horak and Stribrnys families who were at the time held by the Gestapo. In all 192 men fell—none were tried nor warned of their fate beforehand.

Before the execution of the men took place, the women and children who had been gathered in the Lidice school house were transported to the high school building in nearby Kladno. There, with German thoroughness, the women and children were registered separately. After two days of anxious waiting, the women were told that they were to be sent to a work camp where their husbands would join them. Also, they were deceived into thinking that their children would follow them when more comfortable means of travel had been provided. Slowly, as the name of each child on a prepared alphabetical list was called out, it was taken from its mother.

Numbed with pain, mothers were led into the school courtyard where they filed into trucks which took them to a train whose destination was the Concentration Camp Ravensbrueck. There they either died or remained until the liberation by the Allied armies.

In Kladno, three children were originally selected as suitable for Germanization by the branch office of RuSHA, but one was later excluded. Escorted by SS men and women, the remaining 88 children were taken from the Kladno school house, placed into trucks which took them to Libochovice and from there by rail to Litzmannstadt in Poland. Here they underwent tests imposed

by the head of the Race and Settlement Office of Litzmannstadt, Walter Dongus, who divided them into two groups. In the first group were 7 children bearing the desired characteristics of the Nordic type and labelled for Germanization. Into the other group were placed the remaining 81.

The children chosen for Germanization were placed in a Lebensborn home in Puschkau near Poznan where they met the other two Lidice children who were originally selected in Kladno as being of "good race". After proper reeducation they were taken with new names and false papers and placed in German families as children of German origin. Of these 9 so selected all have been traced and returned to Czechoslovakia. Of these, two will appear before this Tribunal to give the account of their abduction and placement into foster homes.

The 81 children in the second group who were rejected as racially unsuitable by RuSHA were taken on 30 July 1942 to unknown destinations. In addition, the child originally selected for Germanization in Kladno, but later classified as "unfit", was deported on 23 July with the children of the destroyed town of Lezaky. Here ends all traces of these 82 children of Lidice. To the horror of the Lidice tragedy is added this further, perhaps the most painful, chapter. Nazi bestiality struck even at the youngest children not a year old and some not yet born; the 7 less than one year were taken from their mothers and placed in the foundlings' home and later in the children's home in Prague, where 6 were found after liberation.

At the time of the tragedy of Lidice, the Nazis did not even forget the 6 children yet to be born. Women who were pregnant were transported to a secret home of the Gestapo and confined until approximately three weeks after the child was delivered. Then the mothers were sent to Pankrac prison, later to Ravensbrueck Concentration Camp. Their babies were given false names and handed to German families. Of these six children, five died and one was later found. A child was born to one of the Lidice women in the Ravensbrueck Concentration Camp, but was immediately taken by the SS after birth and never seen again.

And so the final balance gives us these terrible facts: 192 men and 7 women shot; 196 women taken into concentration camps, of whom 43 died from torture and maltreatment; 105 children kidnaped, of whom only the fate of 22 has been established, 16 having been returned to their relatives. The village was burned, buildings levelled, streets taken up and all other signs of habitation completely erased. Those fortunate enough to survive this terrible tragedy and return once more as free people found no

trace of their village, but only a silent plain over which now stands a cross with a wreath of thorns.

Soon after the destruction of Lidice, the defendant Sollmann visited Karl Hermann Frank in Prague to discuss the handling of Lidice children by Lebensborn. During the time these Czech children were in the Lebensborn home in Puschkau, correspondence concerning them was carried on between the defendant Viermetz and the chief of the home. Visits were paid to the Puschkau home by the defendants Viermetz, Tesch, and Sollmann, on which occasions they saw the children. Even as late as 1944, Lebensborn and RuSHA were making efforts to get hold of some of the children who had been originally rejected for Germanization. In a letter of 13 June 1944 from the office of Frank to Himmler, it is stated—

"Sixty-five children of Czechs, who were executed under martial law, were housed collectively—forty-six of them in the internment camp at Swatoborschitz and nineteen in a children's home at Prague-Reuth. These are mostly children whose parents were living in the former villages of Lidice and Lezaky, the inhabitants of which were shot or put in a concentration camp in connection with the measures taken after the attempt against SS Obergruppenfuehrer Heydrich."

Seven of these children, selected at an examination by the branch section office Bohemia and Moravia of the Race and Settlement Main Office SS as being suitable for Germanization, were housed in a children's home in the Warthegau.

"The commander of the security police and the SD has tried as early as the beginning of the past year, to obtain a decision through RSHA (Reich Security Main Office) on the further treatment of the children housed in Swatoborschitz and Prague-Reuth who were not found suitable for Germanization. In connection with this, a transfer to the East had been proposed. Today a transfer of these children from Bohemia and Moravia is no longer possible, because in the meantime some of the relatives found out the whereabouts of the children and illegally established a hardly to be controlled communication. This development was connected with the employment of Czech personnel which was necessary because of the lack of Germans. Some time ago a renewed examination of the children was carried out by the branch section Bohemia and Moravia of the Race and Settlement Main Office. On this occasion three more children, who could not be valued before on account of their youth, were designated as a bearable addition to our population and nineteen children as just bearable. It is true that the setting-up of the valuation scheme was done on a generous scale.

"It is intended to have the racially bearable elements of the collectively-housed children transferred through 'Lebensborn' to German families or to a children's home whereas the children over 16 years are to be sent to a concentration camp."

But this is only the account of the Czech village of Lidice. There was not one, but many "Lidices" through occupied Europe. The Nazis, by the razing of Lidice only repeated in Czechoslovakia the wrongs which they had committed and continued to commit in the Ukraine, Poland, Yugoslavia, and other countries. Even the village of Lezaky in Czechoslovakia met the same fate on 24 June 1942—only two weeks after the annihilation which has just been described. Of the 13 children taken from this village only two were selected for Germanization by the Race and Settlement Office and sent to the Lebensborn home at Puschkau where they were later adopted by German families. Both of these children have been returned to Czechoslovakia, but the fate of the other eleven so-called "undesirables" is and will probably forever remain unknown.

In an order classified "top secret" dated 25 June 1942, Himmler issued instructions for the execution of an action against so-called partisans in the area of upper Carniola and lower Styria in Yugoslavia. Paragraph 3 of this order reads as follows:

"The action has to prevent from doing further harm all elements having supported the bands of their own free will by men, provisions, arms, and shelter. The men of a guilty family, in many cases of the whole clan, are to be executed on principle, the women are to be arrested and taken to a concentration camp, the children are to be removed from their homes and concentrated in that part of the Gau that had originally belonged to the Reich. As to numbers and racial value of these children I am expecting separate reports * * *."

Lebensborn's participation in this criminal program is evidenced by a letter of 14 September 1942 from the deputy of the RKFDV in Yugoslavia to VoMi. This letter stated that—

"By order of the Reich Leader SS, dated 25 June 1942, the children of partisans and rebels who were classified according to the recognized groups by the SS Race and Settlement Main Office are to be transferred from Upper Carniola and Lower Styria into the Old Reich, there to be looked after by VoMi.

"The children of category 1 and 2 between 6 months and 12 years of age are to be handed over by VoMi to Lebensborn * * * which is responsible on its part for the care and/or adoption of those valuable children."

The letter also stated that the immediate transfer of the children through VoMi was agreed upon on 12 August 1942 in a

conference at which the defendant Viermetz acted as representative for Lebensborn. At the time this letter was written the children had already been transferred to a camp located in Styria and it was stated that VoMi was to arrange for the transfer of these children to Lebensborn.

After these Yugoslav children were placed into the VoMi camps, they were subjected to racial examinations by agents of the Race and Settlement Office. During this time, the defendant Viermetz paid a visit to the camp and selected those destined for Lebensborn homes. According to the statement of an employee of Lebensborn, there was a race between Lebensborn and its counterpart in the Nazi Party as to who should get these children but it was made possible through the initiative and efforts of the defendant Viermetz to secure these children for Lebensborn.

Romanian children were also among those kidnaped by Lebensborn, as is evidenced by a report from the defendant Ebner to Sollmann dated 25 August 1941. Herein Ebner stated that 25 children had been brought from the Banat to Schloss Langenzell by VoMi, but "In regard to race, only a few children can be designated as a gain to our folkdom." As the result of a racial examination personally conducted by Ebner, he concluded that only 2 of the children were suitable for adoption, 18 were unfit for adoption because of age and should be turned over to foster parents or put to work, and 5 of them should be completely rejected for racial biological reasons. Of these five, Ebner recommended that one young girl should be sterilized immediately since, as he said, "The young men in the camp become gradually interested in her". He also proposed immediate sterilization of two of the boys, one because of TB suspicion and the other because "his skull looks degenerated, his ears are standing out and his shoulders are hanging."

Poland was one of the chief sources of children abducted from their families and placed by Lebensborn. After Greifelt's order became effective, the numbers grew in such proportions that a special police report center was installed, unknown to the public, to prevent the relatives of these children from contacting and finding them. During the course of this proceeding, the prosecution will offer into evidence numerous documents containing lists of Polish children taken from their homes and placed with Lebensborn for adoption as well as correspondence between these defendants as to the change of names and other technical problems concerning their adoption by Germans. In addition, two Polish children will testify before this Tribunal as to their abduction and placement into German families.

MR. MCHANEY: The Nazi theories of race led logically to a

concern with pregnancies among Eastern women working in Germany and the incorporated Polish territories. As a means of biologically weakening the Eastern nations and of keeping the women available as labor, an abortion program was decided upon.

Abortions were forbidden in Germany under paragraph 218 of the German Criminal Code. Yet, as early as November 1939, a report was sent to the defendant Ebner that 33 Polish women and children of German descent had been taken into a Lebensborn home in Poland and abortions performed on three of them because they were pregnant by Polish soldiers. Later, this was systematized and German women were subjected to abortions when the putative fathers were non-German and the racial examiner decided that the expected child was not "racially valuable". This was supposed to prevent a "pollution" of the Nordic race.

However, the program was primarily directed against foreign citizens. In March 1943, a decree was issued which purported to open the door to abortions on non-German workers and on 11 March 1943 the Reich Leader for Public Health ordered that abortions could be performed on Eastern workers at their request. Almost immediately Himmler decided that such consent was not absolutely necessary insofar as an SS man was involved. In a letter from his office, it was stated—

"The Reich Leader SS requests that in these cases where pregnancy is caused by sexual intercourse between a member of the SS or the police and a non-German woman, residing in the occupied Eastern territories, an interruption of pregnancy is to be carried out positively by the competent physician of the SS or the police, unless that woman is of good stock which is to be ascertained in advance in every case."

The usual procedure was as follows: When a foreign woman worker became pregnant, it had to be reported to the camp leader in the camp where she lived or to someone in the factory where she worked. All illegitimate pregnancies of foreign workers were then reported by the employer to the labor office (Arbeitsamt) and by that office to the youth office (Jugendamt) and Gestapo.

An application was then made out for the abortion, frequently by the labor office, a doctor, or the employer, rather than the woman herself. After the putative father had been located, racial examinations of the mother and father were conducted by the local RuS leader and he determined whether the child would be "racially valuable" or not. If the decision was in the affirmative, then the abortion could not be performed. But if the RuS field leader decided that the child would not be "racially valuable" then he induced the woman to have an abortion performed. All abortions had to be approved by an agent of the RKFDV.

Hildebrandt, as Chief of RuSHA, in a circular of 13 August 1943 to all RuS field leaders, emphasized the necessity of a racial examination before abortions could be performed on Polish women. He also ordered that the files of cases in which the RuS field leaders denied abortions were to be submitted to the Race and Settlement Main Office for examination as to inclusion in the re-Germanization program.

In March 1944 the defendant Hofmann, acting as a representative of the RKFDV, issued a letter outlining the procedure to be followed in connection with applications for abortions in the area within his jurisdiction.

The Nazis paid lip service to the idea that all abortions were voluntary but this was obviously not the case. These unfortunate women working as slaves under terrible conditions in a hostile country found themselves subjected to all manner of pressure, both direct and indirect. They lived and labored under conditions which would not permit them to take care of their children. Moreover, every pregnancy had to be reported to the dreaded Gestapo. The suggestion of an abortion by that organization did not invite argument from Polish and Russian women. On 18 February 1944, a letter went out from the SD office in Koblenz to the branch offices stating that—

“As you know, racially substandard offspring of Eastern workers and Poles is to be avoided, if at all possible. Although pregnancy interruptions ought to be carried out on a voluntary basis only, pressure is to be applied in each of these cases. * * * A pregnancy interruption should go off without incidents and the Eastern worker or Pole is to be treated generously during this period in order that this may get to be known among them as a simple and pleasant affair.”

But even if it be assumed that all abortions were voluntary, they still constitute a crime. This was nothing more than another technique in furtherance of the basic crime of genocide and Germanization. It was even a crime under German law.

The responsibility for these abortions is quite clear. The consent of the representatives of the RKFDV was necessary in all cases. The racial examinations and real decisions were made by the RuS field leaders in accordance with directives issued by RuSHA under the defendant Hildebrandt.

TAKING AWAY INFANTS OF EASTERN WORKERS

In many instances, cases of pregnancy among Eastern workers were not discovered until it was too late for an abortion to be performed or until after the child was actually born. Since these women were being utilized in the slave labor program, the time

lost in caring for their children was regarded by the Nazis as an intolerable interference with the demands of labor. As in the case of the abortion procedure, racial examinations were conducted on the father and pregnant worker to determine whether "racially valuable" descendants could be expected. Thus, the decision as to the future treatment of the pregnant women, as well as the expected child, was the responsibility of the Race and Settlement Office. The defendant Hildebrandt, in outlining the duties of the race and settlement leaders in this connection stated—

"Though I have already done so in the regulations on the decisions of the interruption of pregnancies, I want to point out once more the grave responsibility which has been assigned to the SS leaders for racial and resettlement matters by this new order, i.e., to especially further all valuable racial strains for the strengthening of our people and to accomplish a complete elimination of everything racially inferior."

If the racial examination revealed that the pregnant woman was of especially valuable racial stock and met the high standards as set by Lebensborn, then the pregnant worker was sent to one of Lebensborn's maternity homes during the last stages of pregnancy. After childbirth, the mother was sent back immediately to work and the child was placed under the guardianship of Lebensborn to be brought up in one of its numerous children's homes or with "proper" German families. Racially valuable mothers were asked whether they were prepared to accept German citizenship. If so, proceedings for Germanization were then instituted and the mothers were promised that after marriage with a German in Germany proper the child would be returned to her.

If the results of the racial examination were positive, but were not to such a high degree as that just mentioned, then the birth took place in the sick quarters of the transient camps which housed the workers. Here the treatment afforded them was in many cases, if not all, inadequate. Their reception into a German hospital was only granted in exceptional cases or where it was necessary to further the training of students and midwives. Mothers in this category also were forced to return to work immediately after delivery of the children. The care of the child was then turned over to Lebensborn.

The taking of these racially valuable children was stated by Kaltenbrunner as being necessary to prevent the loss of German blood to foreign populations and to assure their being educated as German children.

If the racial examinations concerning the expectant child proved negative and an abortion was not performed, then the pregnant

mother was placed into the sick quarters of the barracks in which they were living. These mothers were forced to work until a matter of days and hours before childbirth took place. As soon as the child was delivered, the mother was forced to return to work and the child placed into an assembly center for foreign children. These centers were later referred to as "Foreigners' Children's Nursing Homes" because, as SS Obersturmbannfuehrer Meine stated, "The Reich Leader * * * considers it proper to introduce a pompous-sounding designation for the assembly centers for foreign children." But whatever name they were given, it did not in any way change these dirty, ill-kept and ill-equipped barracks provided for the care of these children. They were nothing more than subdivisions of billets provided for the housing of female workers; as Kaltenbrunner put it, they were "institutions of the simplest kind". These children could under no conditions be attended by German institutions, be taken into German homes, or be reared or educated together with German children. The only care given them was by chosen female members of their respective nationalities who were not only incompetent in most cases, but also too few in number to give adequate attention to the needs of these young children.

As to the fate of these so-called "undesirable children", there was a difference of opinion. Some of the Nazi officials were of the opinion that these babies of Eastern workers should be exterminated or subjected to such inadequate care that normal death would result from neglect, whereas others favored their being brought up for use as slave labor in the future. Himmler was asked to render an immediate decision on this matter. The urgency of this request was prompted by the fact that 62 infants of Eastern workers housed in a nursing home in Austria were living in overcrowded conditions and the babies were destined for certain death from undernourishment in a few months if the insufficient rations were not increased. It was suggested to Himmler that in the event he decided these babies should be brought up to be used for slave labor, then they should be fed properly; in the event that they should be put to death, then other measures were available rather than to expose them to a gradual starvation, thus wasting many liters of milk.

HAMPERING REPRODUCTION OF ENEMY NATIONALS

In accordance with the entire program of genocide, no means was overlooked whereby the ultimate aim of annihilation of the eastern nations could be accomplished. Marriages between protectees of the Reich and non-protectees were prohibited. Marriage of Poles to other Poles of Ukrainian descent were prevented

because RuSHA feared that the Poles would thus be able to camouflage their Polish nationality. The marriages of members of Group III of the DVL with members of Group IV and with other non-Germans was prohibited by order of the Staff Main Office under Greifelt. This order was distributed by RuSHA to all its field leaders whose task it was to screen such marriage applications.

On 10 January 1944, Himmler in his capacity as RKFDV, continuing previous restrictions, issued a decree forbidding marriages of male Polish protectees before the age of 28 and of female Polish protectees before the age of 25. This decree was enforced through the agency of RuSHA. But of course, this illegal limitation on marriages did not always prevent reproduction. Thus, a conference was held at the Reich Ministry of Justice to deal with the problem of claims of illegitimate Polish children against their Polish fathers. The defendant Brueckner attended for VoMi, and RuSHA was also represented. A memorandum on this conference made by RuSHA's representative stated, in part, the following:

"Because of the raising of the marriage age for Poles the number of legitimate children is reduced resulting in an increase in the number of illegitimate children. The information most recently obtained showed that the number of illegitimate children is increasing to an even greater extent than the number of legitimate children is decreasing. It must be the purpose of the intended regulation to reduce the number of illegitimate children as far as possible, but in no way to cause a further increase.

"The demand of the SS Race and Settlement Main Office and the Volksdeutsche Mittelstelle (Repatriation Office for Ethnic Germans) that German interests in an individual case must be determined by the competent Higher SS and Police Leader in each case, thereby resulting in a decisive intervention on the part of the Reich Commissioner for the Strengthening of Germanism, was approved. In deciding this matter, it must be determined whether this constitutes a desirable increase in population (Poles suitable for Germanization); this will then be determined by the SS Race and Settlement Main Office.

"With regard to the question of reducing the number of illegitimate children, it was the general consensus of opinion to allow the unwed Polish mothers a minimum subsistence for the care of the child, the subsistence to be paid for by the Polish fathers and to be paid out only if the care of the child is not assured by either the unwed mother or her family. This was to prevent any negligence. Here it must be the primary principle not to spend one German penny for Polish welfare. This

method of putting the illegitimate, racially undesirable Polish child at a definite disadvantage, even though it will not, in general reduce the number of illegitimate children, will at least not encourage a rise in the number of illegitimate children. The Race and Settlement Main Office suggested that the father of the illegitimate child be required to make especially large payments, but that the money become part of a general fund from which the necessary sums might then be paid out. In cases where the paternity cannot be established, all potential fathers will be equally liable to payment. This measure is not likely to increase the pleasure of having an illegitimate child."

PUNISHMENT FOR SEXUAL INTERCOURSE WITH GERMANS

During the course of the war, millions of foreign workers and prisoners of war, particularly from the East, were brought to Germany to labor in the fields and factories. Naturally, sexual contact between these people and the Germans could not be prevented. This caused great concern among the guardians of the purity of the Nordic race. In July 1940 Pancke, then Chief of RuSHA, wrote a letter on this subject to the Fuehrer's deputy. He said that RuSHA agreed with the Office for Racial Policy of the NSDAP that the purity of the German race was in danger. Pancke suggested that appropriate laws be issued and that propaganda be carried on among Germans.

Soon a regular procedure was set up. If an Eastern worker who had had sexual intercourse with a German woman was unfortunate enough to be apprehended by the Gestapo, he was given a racial examination by an agent of RuSHA. In case he was declared to be racially undesirable, frequently he was subject to "special treatment". This term "special treatment" is a particularly fine example of the euphemisms so much in vogue among the Nazis. To be blunt, it meant hanging. In the event the RuSHA field leader found the offender's racial characteristics to his liking, then his life was spared if he agreed to undergo the Germanization procedure. In a letter to the RSHA dated 27 August 1941, a subordinate of the defendant Greifelt stated that in cases where the Poles recommended for "special treatment" were recognized by RuSHA as suitable for Germanization, the competent SS and police leaders were to determine the addresses of the other members of their families and forward such addresses to RuSHA so that the whole family could be examined and included in the Germanization process.

Eastern women who had sexual intercourse with German men were not subjected to "special treatment" but shipped to concen-

tration camps, a rather dubious mercy. The "special treatment" of male offenders was extended to Czechs as well as Poles in September 1942, according to a letter by Schultz of the race office of RuSHA.

The racial examination was entirely the province of RuSHA. The Race Office decided the procedures and the RuS field leaders made frequent visits to the concentration camps in order to make these examinations. Theoretically, it was the RSHA which decided to hang the man, but the decision of the RuSHA was the really important one. In a report on re-Germanization which was sent to Hofmann in October 1942 by the race office of RuSHA, it was stated that the RSHA wanted a quicker decision as to eligibility for Germanization. This report went on to say that—

"A Reich Leader document is in preparation in conjunction with the Staff Main Office and Reich Security Main Office, according to which the consequences drawn from the establishment of the positive ancestry verdict will be carried out (inclusion in the re-Germanization procedure, obligation of marriage)."

The defendant Schwalm, in a letter of December 1943 asking for free railroad tickets for RuSHA, stated that members of RuSHA were being constantly charged with the examination of cases of "special treatment" ordered by the RSHA. This checking, he said, must be done immediately and in every case because the RSHA could make no decision without having had the judgment of RuSHA.

In February 1944, the RSHA issued a circular, in agreement with RuSHA, stating that ruthless measures must be taken against all severe offenses by foreign labor and that sexual intercourse with German women would be considered a severe offense. The RuS leader on the staff of the Higher SS and Police Leader for Danzig-West Prussia in September 1944 wrote to the race office of RuSHA that more severe regulations on this subject had to be issued in that district. He said—

"If, with regard to sexual intercourse, most severe rules are not laid down, any control of the blood policy is impossible."

The Higher SS and Police Leaders played an important role in "special treatment" cases. The defendants Hofmann and Hildebrandt as former Higher SS and Police Leaders bear responsibility for numerous murders of Eastern workers through "special treatment". The Staff Main Office under the defendant Greifelt also participated in these atrocities.

MEMBERSHIP IN A CRIMINAL ORGANIZATION

In count three of the indictment it is charged that all of the

defendants except Viermetz were members of the SS, an organization declared to be criminal by the International Military Tribunal, and that such membership is in violation of paragraph 1 (d) of Article II of Control Council Law No. 10. The declaration of criminality by the International Military Tribunal applies to all persons who were officially accepted as members of any branch of the SS, and who remained members after 1 September 1939, with knowledge that the SS was being used for the commission of criminal acts, or who were personally implicated in the commission of such crimes, "excluding, however, those who were drafted into membership by the state in such a way as to give them no choice in the matter, and who had committed no such crimes." *

This Tribunal will be presented with no refined questions concerning voluntary membership in the SS or knowledge of its use for the commission of crimes. The defendants in this dock were full time, professional SS men; the SS was their way of life. Of the thirteen defendants charged in count three, all but three of them joined the SS in 1934 or earlier.

That these defendants not only knew of, but personally participated in, the systematic commission of crimes by the SS will be abundantly proved by the evidence. All of the defendants charged in count three were in positions of power and responsibility, holding high rank in the SS; four were lieutenant generals (Obergruppenfuehrer) and none was less than a major (Sturmbannfuehrer).

CONCLUSION

Civilized usage and conventions to which Germany was a party had prescribed certain immunities for peoples unfortunate enough to dwell in lands overrun by hostile armies. Today, we have briefly outlined before this Tribunal the crimes committed by these fourteen defendants in which man's dearest and most sacred rights were denied to hundreds of thousands throughout Europe. These crimes represent but a partial fulfillment of their genocidal plans. One shudders to think how Europe would appear today if these defendants and their collaborators still remained in their positions of power.

From these defendants we shall soon hear variously formulated and developed apologies and excuses in justification or mitigation of their crimes. When they are heard, let this Tribunal not forget that these crimes were not of an occasional or casual character but were deliberate and integrated parts of the sinister program of genocide, a program to strengthen Germany at the expense of

* Trial of the Major War Criminals, vol. I, p. 273, Nuremberg, 1947.

other peoples and nations. To the successful fulfillment of this program, all of the defendants in the dock devoted their untiring efforts and abilities. Each held a position of responsibility which was endowed with the power to decide the fate of men and to destroy all which interfered with their conception of a Germanic world. For their crimes we seek from this Tribunal a just restriction and a reaffirmation of man's right to live in peace and dignity under the law.

B. Opening Statement for Defendant Greifelt*

DR. CARL HAENSEL: The defendant Greifelt is charged with having participated in genocide, having committed or instigated atrocities which include, but not exclusively, murder, extermination, slavery, deportation, and other inhuman actions. The events, which alone are the subject of this trial according to international law, took place during the war from 1939 to 1945.

We all experienced a terrible tragedy. The statistics tell us that during the time after 1 September 1939, nearly thirty million human beings have perished or suffered injury to their health. The statistics cannot register what immeasurable misery further millions of human beings, one can rightly say the whole of mankind, had to suffer. It was a time of war. "War is a rough and violent occupation", says the German poet Friedrich Schiller. Nevertheless, it is a recognized institution of international law. In all text books dealing with international law, the laws of war are treated. All the actions of mankind are divided and enigmatic. Mankind has acknowledged a condition which permits the killing of human beings, the taking away of their property, the depriving of their liberty. Therefore, there is not yet sufficient proof shown for a crime if an indictment describes the violation of life, liberty, and property of members of a state involved in war at this time and, on the other hand, states that a man, a member of another belligerent state, wore a uniform or issued orders which set in motion other wearers of uniforms, also not in the case of an aggressive war, which makes its instigators responsible according to the verdict of the IMT. Only these are personally responsible. For all others, soldiers as well as administrative officers, the fact of the outbreak of war is a protection against the charge of illegality, that is, for all violations of alien life or property caused by the exigencies of war.

In the much discussed verdict of the Kiel Appellate Court of 21 March 1947, which, however, has also been recognized in principle by the occupation authorities, it says, and I quote—

* Tr. pp. 1230-1255, 20 November 1947.

"The fact that a state commits crimes does not cause all its measures and laws to become invalid or void. The authoritative actions of a state are subordinated to the rules of the administrative law. Administrative actions can simply mean legality and validity and are also otherwise independent of faults in their construction, and are only disputable in cases of doubt, but are not void."

I refer to Jellinek, *Administrative Law*.

"The practice relative to constitutional law of Germany and foreign countries assumes, therefore, that in general the laws issued and the actions undertaken by the authorities in Germany from 1933 to 1945 are legally valid and binding."

The evidence submitted by the prosecution shows that the defendant Greifelt signed decrees and directives, dictated records, gave orders, and wrote letters, that is, in his capacity as chief of a part of an administrative authority of the Reich, the Staff Main Office of the Reich Commissar for the Strengthening of Germanism. Any kind of a direct personal interference in alien life, liberty, or property has not been proved. Whatever he did, he did in his capacity of an official. He did not do it for himself but for the state which he served. His personal integrity is without blemish. His personality and his human qualifications in this connection will be discussed during his interrogation.

The evidence submitted by the prosecution did not prove that the defendant Greifelt himself, or for selfish motives, hurt a human being's life or health. It has not been proved that he personally was present when such things happened. According to the statement of the witness von dem Bach-Zelewski (*German Tr. p. 412*), the witness was present together with the defendant Greifelt at the time when an evacuation action on a small scale took place in Saybusch. At that time a small number of Polish farmers were evacuated in Saybusch. This event took place in public; the local officials had carried it out. The persons in question had received their signed and sealed orders to leave their houses, in the form of orders by the state. It will be proved that Greifelt was not the drillmaster of this action.

In order to be successful, the prosecution must prove that the defendant Greifelt used the apparatus of the state in order to commit crimes. As personal enrichment can be excluded, these crimes could be committed only in Greifelt's capacity as a representative of a state which, by misusing its rights of sovereignty, committed crimes.

There arises at once the difficulty that a strict distinction has to be drawn between the line of activity of the state and its representative, and the behavior of the single individual. The single

individual has to obey the laws and orders; the life of the state lies in the creation of laws and the issuing of orders. The European attitude is laid down in the English postulate, "The King can do no wrong." The American attitude is a fundamentally different one. Mr. Justice Jackson summarized it in his statement on 7 June 1945, in the following way, and I quote—

"We adhere to the principle of the responsible government, as expressed already three hundred years ago by the Lord High Justice Coke, to King James, with the words that even a king is still subordinated to God and His law."

However, even if we claim the most direct responsibility of the head of the state for his authoritative actions, we have to enter into the discussions of two problems.

1. Who is the responsible carrier of the state authority—in our case, Greifelt?

2. Were the measures which had been undertaken in the scope of resettling measures in the form of state and people's guidance—and only on this high level can this subject be discussed—crimes? That is, did they violate a valid law? And which law?

The prosecution characterized Greifelt as the deputy of Himmler. I will be obliged to set forth that the defendant Greifelt was never anything more than an executive organ of Himmler, not more than an official who obeyed and forwarded orders, drew up drafts which were ordered, and later on approved or altered, and who, at the most, issued regulatory statutes to the principal orders of his superiors.

This is not only true for Greifelt, but also for that part of the state authority of which he was the chief, and his co-workers. I will show that in all individual counts of the indictment which are not proved by individual facts, the design and initiative did not originate with Greifelt, but that he was only a subordinated medium which had been set up later than other organizations. In that respect, a careful explanation of the manifold authorities and offices, with their overlapping and constantly clashing competency is necessary.

The defendant Greifelt, too, has become aware of many facts only now; he can understand clearly only now the connections which were formerly unknown to him due to the secrecy which was prescribed for all offices, the mistrust and personal rivalries. By drawing an anatomic simile, I submit this picture to the high Tribunal as a kind of skeleton which later on, by the interrogation of the defendant Greifelt, through the descriptions of the actual happenings, the events, and the persons participating in same, should be provided with flesh and blood, thus giving the impression of a whole, living body. Without such an optical im-

pressive condensation it is quite impossible to comprehend the individual documents, individually considered. With regard to correspondence, one has to investigate inquiries and replies; regarding measures, one has to find out how these measures had been carried out.

It is clear that it is impossible to submit everything, and that a selection has to be made. The prosecution submitted a large number of decrees, laws, directives, records, and letters. It proved, thereby, how extremely difficult it is to unravel the whole network of state authorities and offices. In the documents of the prosecution, however, this selection has been made one-sidedly according to the incriminating aspects. The prosecution submitted only a small fraction of the decrees issued by the various state authorities and offices since the beginning of the war, and did not investigate the basis for this code of legislature, as, for example, the Four Year Plan, the Ministerial Council for National Defense, and others; it principally submitted only such documents and correspondence which had been issued after the beginning of the war.

The documents of the Staff Main Office which were sent from Vilshofen on the Danube via Kassel to the Document Center in Berlin are reported to have filled six large railway vans. It is obvious that the documents submitted in the 15 document books can present quite a limited extract only. In addition, laws and ordinances, service directives, and regulations of every kind have been issued in the collections of the authorities concerned, spread among hundreds of volumes. Whole libraries have been written on the ideological questions of folkdom and nationality, settlement, race, taken up in these proceedings, few excerpts of which have passed over into the document material of the prosecution. It is the task of the defense to supplement this material in order that the text of what I mentioned may become refined and the understanding of the actual events may at least be established. The task of the defense is immensely difficult since it has no access to the documents which were confiscated by the Allied authorities. An index has been compiled of the documents of the Staff Main Office seized in the Schweikelberg monastery near Vilshofen. This list was submitted at the interrogation of the defendant Greifelt on 5 May 1947. In my application for documents of 21 July 1947 I applied for the procurement of this document for the purpose of the defense, in order to be able to designate additional material from this list that might serve for elucidation. My application was rejected on 28 July 1947 so that my efforts to procure further document material are limited to ordinances and decrees, published in print, as well as to affidavits

from the memory of those involved. I shall submit this evidence material to the Tribunal arranged in document books. It is not complete nor fully satisfactory.

But the wording of all laws, ordinances, and decrees does not give a true picture of what actually happened. Such regulations as are available in a printed or written form prove nothing else to begin with than that someone compiled, signed, and maybe also published such ordinances. It is, however, not essential for the proceedings what some people have devised who sometimes remain concealed and who cannot be trailed behind the anonymity of offices with more or less complicated names, but the essential point for the proceedings is to what extent the defendants themselves issued such regulations upon their own initiative, out of their personal free will, how these ordinances were then enforced, and how they themselves understood and carried out existing ordinances. It must be explained how the actual power relations were; whether the defendant Greifelt could assert himself or whether his efforts were limited to ordinances existing only on paper and which could not be carried out. In addition, it must be explained whether other powers interfered with the carrying-out of the ordinances and whether these interferences interrupted the inter-dependency of cause and effect between the ordinances and the carrying-out of the colonizations and have perverted the original aims.

Furthermore, we shall have to investigate to what extent the ordinances and correspondence which have been submitted under Greifelt's name or under the name of his office are connected with his personal work and how they came about. Even when reading the numerous documents for the first time in which the Reich Commissioner for the Strengthening of Germanism is mentioned, one is struck by the variety of subjects with which this office in its entirety or Greifelt for his part is alleged to have dealt with. Only a careful study of the letterheads, sometimes also of the file numbers, may shed light on who actually bears the responsibility and who was the author of the document. Always and everywhere the "Reich Commissioner for the Strengthening of Germanism" appears, but then that is perhaps not Greifelt and his office but the Reich Security Main Office, Office for the Repatriation of Ethnic Germans, Reich governors, Oberpraesidenten, chiefs of the civil administrations, and Higher SS and Police Leaders who compete with one another—and I am by no means sure that this catalog is complete. One believes oneself to have been transferred to an image out of the bushes of which from right and left one hears alluring calls that seem well-known, but if one reaches out after them one finds nothing. Only one thing seems

sure when one reads the documents for the first time, that is, that the defendant Greifelt did not lay out this diabolic image. One is rather inclined to picture him to oneself as a gardener, wandering about, applying his tools here and there, trimming and watering, without actually recognizing the mysterious object, much less being able to master it.

Who is this mysterious magician in the background of all this? This was already the great question of the IMT trial.

In his opening statement, the U. S. Chief Prosecutor, Robert H. Jackson, said on 21 November 1945, "Some twenty broken men are sitting in the dock. Taken as individuals their fate matters little. The proceedings are, however, of such importance because the defendants represent disastrous forces which will continue to prowl about in the world after they themselves have been reduced to ashes."

These disastrous forces must be unmasked not only for the purpose of preventing further disaster; this we may leave to the politicians or to the historians. The English philosopher, Macaulay, once said that world history was a trial in which the past was judged before the tribunal of the present. Only for such an historical trial in the sense of Macaulay, the fate of the individuals matters little. In our trial they form the focal point. The disastrous forces of which Mr. Jackson speaks are of importance for our proceedings in a different connection; to wit, for the question as to whether a personal guilt exists at all if a person has acted under the coercion of these forces. I do not intend to cite the theories which try to explain man by means of his environment alone and who regard his actions as being solely the reaction to the various situations. Just as if one holds a man fully responsible for his commissions and emissions the disastrous forces are significant that rule his time and the power and predominance to which he was subject.

The Control Council Law No. 10 stipulated in Article II 4 *b*, in conformity with Article VIII of the London Statutes, according to which the IMT had to pass its sentences, "The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation." In addition to this command, however, the existence or nonexistence of which is essential for meting out the punishment, the IMT acknowledged the genuine state of emergency by saying, "The actually decisive point which is to be found in the criminal code of most nations in different degrees is not the existence of such a command but the question whether a choice corresponding to the moral law actually was possible."

The command in itself can represent an extenuating circumstance; it is, however, never a justification of obviously criminal actions; the coercion, however, under which a person acted may exclude the responsibility in the case of a collision of duties. Thus one can never establish a guilt under criminal law of a defendant who is not being charged with an actual deed but only with the cooperation in a very complicated procedure, if not also his leading role or a role corresponding to one of the legal forms of participation has been proved. It may happen that such a man was no more than a small cog in a large machine, in the working of which he exerted no influence, into which he had been installed without a possibility to withdraw, and in which he had to continue to rotate long after he had ceased wishing to do so, since "a choice corresponding to the moral law" was actually no longer possible for him. Therefore the construction of the entire apparatus and his position in it must be investigated.

The conception of robbing and plundering implies that the robber, by violating the divine command, "Thou shall not steal" regards the right of his fellow man as of lesser importance than his selfish wishes and desires. If, however, a man has no direct connection with the appropriation of other people's property or with interferences into the living sphere of other people, but only has connections with them which for him only exist on paper, in written and printed ordinances, then it has to be proved beyond the sphere of the tasks legally assigned to him that he did not act within the limits of his duties and that he foresaw all consequences resulting from the practical performance. He was not personally interested in the personal fate of those affected by his ordinances. He did not know these people. In his conception that mankind would finally be advanced and peace would become more permanent and sure, he believed that he had to issue his ordinances. Every government official exercises coercion. It is the definition of the state that it also leads the resisting one to give up his selfish desires in the interest of super-individual aims—above all, during the war—and much more during a war which, by the disastrous forces to which the defendant Greifelt did not belong in spite of his position as chief of the Staff Main Office, had been extended into a total war mobilizing all human power of the state.

Total war is not the conception of one individual brain. From World War I on, the great strategists and politicians have in many countries discussed it and written about it. Even if they warned against it, they asserted its reality. An old proverb says, "Talk of the devil and his imps appear." Now it is not like that, that the devil finally appears because he is talked of, but he can

only be talked of because he is due to come, because the trend of fate—the supernatural power—urges these “disastrous forces,” because the time is ripe for an eruption and a breaking out from the depths.

This trial deals with resettlements that belong to the ethnological conflicts in Europe. The events handled by the prosecution cover a short period of five and one-half years. These five and one-half years represent only a very small part of the entire development of these conflicts, which may be traced back for centuries—even for a thousand years. It is not attempted in this connection to give a historical analysis of these thousand years. We are all fed up with the “thousand-year Reich.” It is, however, impossible to understand the idea of the colonization, resettlement, and repatriation, and thus all actions relating to it, if the development is not known which urged the resettlements which have not yet been completed today and are still going on from day to day. One cannot judge “Germanization” if one does not know anything about “Polonization.” One cannot fully understand the necessity, the state emergency, and the pertinent viewpoints if one does not have a rough idea at least of the ethnic-political struggle at the German frontiers and, in particular, in the areas around the Vistula with which in this case we are mainly concerned.

The prosecution accuses the defendant Greifelt of having participated in a “systematic program of genocide” that had as its goal the destruction of foreign peoples and ethnic groups. It is clear that the individual person cannot as an individual commit a crime against an entire people. The conception of the murder of peoples—“genocide”—came up, as far as I remember, for the first time at the Lisbon Congress in 1933, did not find proponents and was not recognized. For the first time thereafter, it was again discussed in the literature on international law in the forties; that is after the outbreak of the war. According to newspaper reports, the Secretariat of the United Nations had submitted, on 10 July 1947, a draft for an international convention for the punishment of government officials who tried to exterminate racial, religious, national or political groups. This draft for an international convention shows, in my estimation, in an unrefutable manner, that at any rate such an international convention was not in existence to date and does not exist. If, therefore, the prosecution charges the crime of genocide, it ought to have proved first of all that there is such an institution within international law. Lest I be misunderstood, murder is always murder, already from the time of the Tablet Law of Moses, and there is no doubt in that respect. But it is equally clear that a single

individual cannot murder an entire people or part of a people. On the level of the individual, only individual deeds are possible and punishable. One may recall the time before the beginning of the war, when a man had murdered somebody one read with horror about it in the newspaper. A double murder already exasperated the people, and in the case of a mass murder, psychiatrists of all countries gathered in order to view this pathological degeneration of mankind.

The conception of genocide cannot be regarded on the plane of conventional penal law. An individual cannot murder an entire people. If one wants to arrive at this legal construction, one has to start out from the premise that a people can only be murdered by a people. Since, however, any penal guilt is the guilt of an individual and thus the collective guilt cannot lead to punishment of an individual, the individual cannot become guilty of genocide by leading his people to genocide. A prerequisite is that he can exercise a decisive influence on the development of the criminal will of the people that is being led toward genocide. The existing international law holds responsible for offenses against international law only those in the administration of a state. Also the IMT judgment refers in its opinion on the responsibility of the then accused to the "Position which the defendants held in the Government of Germany" (par. 5).

In his plea of 17 January 1946, morning session, the French Chief Prosecutor, de Menthon, gave expression to the following legal conception: "It is clear that in a state organized on modern lines, the responsibility is confined to those who immediately act on behalf of the state since they alone are in a position to judge the legality of their orders. They alone can, and are to be, apprehended."

[At this point, defense counsel offered an exhibit. Prosecution objected to the admission of evidence during an opening statement. Tribunal ruled that defense counsel could offer a document as an exhibit only during the presentation of evidence.]

The above-mentioned draft which was submitted to the United Nations speaks of government officials as possibly guilty offenders. This formulation does not seem to offer the necessary preciseness. The prosecution only speaks of the "part of a systematic program." This formulation is even less precise. In this respect it is necessary, in my opinion, to first think out, formulate, and then recognize as international law, clear legal conceptions; for law is not the product of a clever brain, but law requires recognition, either by the individual state or by the entire civilized world, when international law is concerned.

Since, however, this indictment has been made and has thus

been reasoned, an investigation is necessary to ascertain to what degree the shifting of entire parts of a people, also against the will of individual personalities, is admissible under existing international law. It is to be pointed out that there exist numerous examples in the practice of international law according to which resettlements involving many millions of persons were carried out after 1945 and before 1939. I mention, only for the sake of giving examples, the Greek-Turk resettlement after the First World War, and the forced evacuation of Germans from the formerly German eastern territories, now claimed by Poland, and from Czechoslovakia. In international law, usage plays an important role. I refer to the discussion in the best commentaries. Later on, I shall have to conduct detailed legal discussions.

It is the object of this, my opening statement, to submit to the Court the line of my defense and to explain the basis of certain parts of the evidence which, I think, I have to present. With the permission of the high Court, I shall at first call the defendant Greifelt on the witness stand in order to question him as to his person and curriculum *vitae*. Thereupon, I shall ask him to explain in a uniform way how, in his point of view, the Staff Main Office under the Reich Commissioner for the Strengthening of Germanism came into being, how this office worked, and what role he played in this work. It will be important to see how the work of this office overlapped that of other offices, how it was limited, how it collided, and how it could be carried on at all. The defendant Greifelt had neither in this position nor personally any initiative in the ethnological policy. He was a civil servant who did what he was told; nothing more and nothing less. Finally, I shall question the defendant regarding the documents introduced by the prosecution and I shall ask him to state whether he knows them, how he came to know them, what he did on the basis of these documents, or to what extent he has any connection at all with them.

One can, however, understand this mass of chronologically closely-related, contradicting, and overlapping laws, decrees, orders, and ordinances only when one hears a number of vivacious people on the subject of how this paper war was conducted within the offices, to what extent Greifelt participated therein and is connected with acts which have been termed "crimes" by the prosecution. With the permission of the Court, I shall call in quite a number of witnesses. I request to reserve the right to file, before the end of the proceedings, a trial brief on one subject or another, and I request that they be kindly considered while it will not be necessary to include their full text in the minutes.

The prosecution has, at various places of its presentation of evidence, for instance, in document book 5-E, introduced statisti-

cal material which shows that in the Eastern territories which were occupied in September 1939 by the German armies and which up to that time had belonged to Poland but for the main part had been German territory prior to 1918, there was a great number of such people who spoke German, and who, according to their ethnic origin, felt as Germans despite their Polish citizenship. In these territories, Poles and Germans lived side by side. That had been that way for centuries. Governments changed. At some time the country was Polish, at other times German and the distribution of the population by percentage changed, as did the influence of the two groups. But the fact that human beings of different language and different ethnic origin lived side by side remained. Whoever in 1937 visited the World's Fair in Paris will remember that the statue of the great astronomer, Kopernikus, stood in the Polish Pavilion, and that at the same time his work was claimed for Germanism in the German Pavilion. There exists between Germanism and Polandom a fight through the centuries and which cannot come to an end because the object of the fight—that is, the country and the population—prevents it. The Germans claim that they colonized the country, that they imported the idea of Christianity and the higher ethnics. As striking evidence, they refer to the Cathedral at Gneseu, the Town Hall (the Rathaus) and the Marienkirche at Krakow, where the altar by the Nuernberg citizen Veit Stoss stands, to the Town Hall, and the Cathedral at Poznan with the memorials by the Nuernberg citizen, Peter Vischer, the old Johanniskirche in Warsaw and many more.

The fight between Germanism and Polandom was conducted up to the 19th century with the then customary means of state policy. This fight came to an end with the termination of the Polish state. The Polish territories were distributed in the 3d Partition of Poland, and then once more in the Peace Treaty of Vienna among Austria, Russia, and Germany. But the Polish song "Poland isn't lost as yet" characterises the perennial tenacity of Polandom which carried on the fight only as an ethnological fight. The Pole who had Prussian citizenship continued to consider himself a Pole and tried to settle with Poles as much agricultural property as possible and to push out German settlers. He also tried to Polonize and win for the Polish language and views, people who spoke German or were of German origin. According to a report by the Prussian Major General Beguslawski, 200,000 Germans were Polonized in the Province of Poznan in the second half of the 19th century. Such a fact is important for this trial, since it alone explains why among sensible people one could at all speak of re-Germanization and subject to it somebody who spoke Polish. The race

theoretician and the ethnological practitioner were actually confronted in this area with the descendants of people who were of German origin and who in their early youth or through their parents had discarded their Germanism externally. This settlement policy, the ethnological war by peaceful means, by way of advertising, buying, and change in the property register, was taken up by the German authorities as this situation was realized. It developed also into a battle for the schools. This fight was carried into the parliaments. In the Prussian Landtag, there existed a Polish party, the same as there was after 1920, a German union with a considerable number of votes in the Polish Seim. The well known History of Poland by E. Hanisch (Published by K. Schroeder, Leipzig 1923) ends with this sentence, "That the Pole can never be the brother of the German till the end of time, that is the very Polish proverb for which no German equivalent can be found."

The frontiers drawn by the Versailles Treaty you see listed in the conclusion of the basic information presented by the prosecution, on which, by the way, I reserve for myself the right to make some correcting remarks. As regards these frontier lines, the doubt very soon was voiced, especially in England, that the German-Polish antagonism had not been tempered through this solution; on the contrary, it had grown more intense. The purely German town of Danzig, towns like Thorn [Torun]—almost purely German—were politically subject to Polish domination. East Prussia was separated from the main territory of the Reich. The basic principle of the Versailles Treaty is the protection of minorities. Through treaties for the protection of minorities with a binding force similar to that of international law, citizens belonging within the respective successor states were supposed to have been secure.

The political success which Hitler achieved in Germany through his propaganda can, to a considerable extent, be attributed to the fact that through numerous experiences gained by everybody who had to do with the Polish territories, the opinion had established itself in the German people that the protection of minorities was an insufficient remedy. Expulsions of persons having voted for Germany took place; German landed property was broken up by means of a land reform legislation made up as a social measure; workers and employees were dismissed; artisans and businessmen were boycotted; acts of violence were committed. Subject to this coercion, approximately one million Germans emigrated from the territories restored to Poland during the years following 1920.

At the Peace Conference in 1919, the British Premier, Lloyd George, pointed out that through the cession of the German

Eastern territories to Poland about 2.2 million German-speaking people would come under Polish control. This figure did not include the strong German-speaking population groups in the Polish territories formerly belonging to Russia or Austria (the industrial center of Lodz, Volhynia, Galicia, etc.)

Already in 1921, the Polish census could establish a figure of now only 1,059,000 German-speaking inhabitants. By German authorities, the number at that time, based on private estimates, was given as about 1.2 million. From 1921 until 1939, the number decreased further, declining to less than a million due to suppressive measures taken by the Polish state. In the single province of Poznan, called Wartheland, during the occupation from 1939 to 1945, the German-speaking population was reduced by more than 600,000 people. During the period from 1939 till 1941, approximately 400,000 German-speaking inhabitants were supposed to be brought into these territories. This figure is not high as compared with the number of German-speaking persons displaced from the, at that time newly acquired, Polish Western territories in the years from 1919 till 1939.

Prior to the rise of National Socialism—already in 1917 the tendency is evidenced in literature through a book of Kranz—another political method was recommended to supersede the protection of minorities; the exchange of populations and separation of nationalities. The basic principle of the resettlement program was to eliminate the friction caused by the interspersion of nationalities by assigning certain territories to Germans and certain territories to Poles, Russians, Latvians, or other nationalities, and by removing the minorities from these territories. The German government at that time was faced with the necessity of receiving and placing ethnic Germans, for whom no more space could be found in the densely populated main Reich. A national emergency, or one could say an ethnic emergency, existed.

At this point we end in the large stream of migrations which started with the Balkan War in 1912, growing to a flood after the outbreak of the Russian revolution in 1918, and rising to an irresistible tidal wave through the events following 1939.

Since 1918 more than one million Russians were roving all over Europe and China without work and without means of existence. In 1921 the Council of the League of Nations, acting on an appeal from the great philanthropic organizations, decided to intervene and utilize its entire authority for organizing relief work. Dr. Fritjof Nansen was appointed high commissioner for the aid to Russian refugees and commissioned to bring about a final arrangement as to their future destiny.

The relief work for the benefit of the Russian refugees had

hardly been put into operation on a satisfactory basis when the Turkish-Greek war in 1922 forced the Greek population of Asia Minor to flee to Europe. The Treaty of Lausanne (1923) contained a clause stipulating that an emigration of Greeks living in Turkey to Greece and a repatriation of the Turks, who had so far been living in Greece, should take place. This is the precedent of a resettlement, without asking the persons concerned, sanctioned by international law. The consequences of the treaty were that close to 1.5 million Greeks had to emigrate from Turkey to Greece and approximately 53,000 Turks were transferred from Greece to Turkey.

The first resettlement agreements concluded by the German Reich were those with Esthonia and Latvia. They became necessary as a saving measure in order to make possible the emigration of the German Balts prior to the final incorporation of their native countries into the territory of the Soviet Union, which took place in the summer of 1940, preceded by a chain of events resembling a civil war and constituting a great danger to the Balts. These antecedents still need some detailed elucidation as they have never yet been explained in public, and yet the whole resettlement and the racial policy described as criminal cannot be understood without this explanation.

The negotiations in Moscow between Germany and the Soviet Union and between the latter and the Baltic States started already in August 1939. They resulted in a series of sensational state treaties and secret agreements creating a completely new situation for Europe and in particular for the Baltic countries, thus also forcing the German Balts to leave their home countries.

On 23 August 1939 the Soviet-German nonaggression pact, and at the same time a secret agreement, were signed. Only conjectures were made at that time as regards the existence and the text of this agreement. The contents became generally known only in the course of the IMT trial. In the secret agreement Germany acknowledged the territories of Esthonia, Latvia, and eastern Poland as a Soviet sphere of interest in the event of territorial changes in eastern Europe. Already at that time the evacuation of the German Balts and the liquidation of their entire property to be disposed of by the German government were agreed upon by Moscow and Berlin.

On 28 September 1939 the Soviet-German frontier and friendship treaty was concluded in Moscow. The secret agreement on the demarcation of the respective spheres of interest was, for the benefit of the Soviet Union, extended also to Lithuania. On the same day (28 September 1939) Esthonia signed a pact of mutual assistance with the Soviet Union, which a few days later (5 Oc-

tober 1939) concluded a similar pact with Latvia. In these treaties a military occupation of both countries by the troops of their big contracting partner was envisaged.

This was the political situation before the Reichstag speech of Hitler on the evening of 6 October 1939, in which he proclaimed the resettlement of the German ethnic groups in the Baltic countries.

On 10 October 1939 negotiations were already initiated in Riga and Reval [Tallin] with the respective governments by German special plenipotentiaries on the conclusion of resettlement agreements; and they were signed with Esthonia already on 15 October, and on 30 October with Latvia.

On 18 October 1939 the first steamer with resettlers left Esthonia. The dizzying speed of this introduction to the liquidation of a more than 700-year-old community representing an old culture, and in spite of everything a considerable degree of wealth, proves in itself that the evacuation was actually a kind of flight. It is the flight of Germanism on the move from the East towards the West, a movement which in the course of one generation abandoned the settlements of a thousand years. The impulse is not to be found in National Socialism, neither has the movement ended with its annihilation. In the progress of this development Germanism is the losing partner. The active victorious power is in the East. It is a terrible and amazing realization when it becomes clear that all settlement positions within the territory of eastern Europe were lost by the Germans, and that in a development incomprehensible in its singular structure they were lost already *before* Hitler let loose his crimes against the nations in his struggle for power, in which he was predestined to succumb.

Already that repatriation of the Germans in Italy was a regressive movement of Germanism. The exchange of populations which is the subject of this trial, the exchange between the "General Government" and the "Incorporated Eastern Territories," was actually, as we can now see, the last attempt of securing once more an area for the Germans, near Germany proper, at the same time abandoning the territories further towards the East—the ethnic enclaves. The attempt failed. This represents the last convulsions of the body of a doomed nation whose fate was actually sealed already before the last operation was initiated. Anybody who, in this turmoil in individual cases, has made himself liable to punishment according to existing criminal laws, who in criminal wantonness has trampled human rights underfoot, must be condemned rightly and justly. The defendant Greifelt does not belong to this group of criminals. The setting of the great aims appears to me, however, to reach

already the level of what constitutes historical necessity; it is not criminal in the sense of a penal code.

The prosecution has explained everything that happened in the East since 1939 as a deliberate crime involving murder of nations. It must be a duty of the defense to establish the reasons which induced well-intentioned men to offer their services to a policy even though it was unsuccessful in the end. It will be the task of the Tribunal to decide to what extent each individual defendant was altogether involved in the events to which the prosecution has drawn attention, and to what extent they are guilty according to existing law.

It would considerably facilitate the task of the defense if the Tribunal would indicate which legislation will be made the basis of its decision: American law, the law of the territory within which each crime was committed, the law of the native country of the defendant, or international law. Material for argumentation with reference to this point, which I have submitted to Military Tribunals II and III, I may be allowed to present also to this high Tribunal.

Further, I may be allowed to invite the attention of the high Tribunal to some of the petitions which in these days have been filed with the high Tribunal IV in Case No. 5 against Flick et al.,* which have been substantiated for the records. Insofar as these petitions cover the presentation of evidence, the extent of evidence, and the means of evidence, the decision passed upon them will affect also the present proceedings. I request that we, the defense counsel, be permitted to reserve for ourselves the right to present the grounds of detailed petitions and argumentations with reference to this point, which go far beyond the scope of this opening plea.

But already now, and without considering the last-mentioned arguments, I propose—

To declare that for purely legal reasons the indictment is based on insufficient grounds insofar as it is upheld by the contention of an "organized program of genocide", i.e., in count two.

As I have stated already, it has not been proved by the prosecution that this legal institution was established as such by existing international law. Law is not what is useful to the people. This presumptuous saying has come into discussion after it has been contradicted by itself. But law is not simply all that is useful to mankind. Who can believe himself to be omniscient

* United States of America vs. Friedrich Flick, et al., vol. VI, this series.

as to be able to decide which actions will ultimately serve the great aims of mankind?

Within the limited scope of the present trial we see how acts of a seemingly arbitrary design become parts of a greater chain of events as ruled by a necessity superior to individual desires and powers. International law is always only what is being realized and acknowledged as such by civilized nations. Two different kinds of international law do not exist as maintained by evil-minded skeptics: that of the victors and that of the conquered. Only one international law exists: a true law that has been realized and acknowledged. Even though we look upon the work of the United Nations commission to bring about the planned convention for prevention of power politics against whole nations with unqualified sympathy, and even though we are filled with deep gratitude towards the work of the "Committee against Mass Expulsion" in which noble minded men have united in New York, yet we cannot adopt the view that the future text of a convention which is to be agreed upon—or can we say which we hope will be agreed upon—and the aim of philanthropists be acknowledged as existing international law.

IV. ORDER OF THE TRIBUNAL CONCERNING TIME ALLOTTED FOR PRESENTATION OF DEFENSE EVIDENCE AND FOR CROSS-EXAMINATION BY THE PROSECUTION*

PRESIDING JUDGE WYATT: As a result of the written request received by the Tribunal this morning and as a result of a conference just completed with both defense counsel and counsel for the prosecution, an agreement has been reached with reference to the time to be allotted for the remainder of this trial. On behalf of the Tribunal, I will now read the agreement into the record, which is as follows:

At the request of defense counsel and upon their agreement, the taking of evidence in the trial of this case from this point will be limited as follows: For the remaining defendants of the Staff Main Office, Creutz, Meyer-Hetling, Schwarzenberger, and Huebner—ten trial days. For the defendants Lorenz, Brueckner, of VoMi—six trial days. For the defendants of RuSHA, Hofmann, Hildebrandt, and Schwalm—twelve and a half trial days. And for the defendants of the Lebensborn, Sollmann, Ebner, Tesch, and Viermetz—nine trial days.

The above limitation as to time includes the time consumed by the cross-examination with the provision that the prosecution will be limited to ten minutes cross-examination of each witness and to thirty minutes cross-examination of each defendant. The prosecution will be allowed six hours for rebuttal testimony at the conclusion of the above periods of time.

This concludes the reading of the agreement reached between counsel for defense and counsel for prosecution.

Now, on behalf of the Tribunal, may I state that very largely counsel will be permitted to use this time in as just a manner as they deem to be in the best interests of their clients. The Tribunal would, however, request counsel, so far as they are able to do so, to confine themselves to material matters. However, it will be largely your judgment as to whether you do that or not.

In fairness, we simply feel that we should state that only material evidence will be considered, regardless of what may be proven. In other words, again stated, the Tribunal will not consider conclusions, opinions, rank hearsay evidence, and evidence without probative value. Finally, may we say that while this

* Tr. pp. 2060-1, 8 December 1947.

amount of time has been allotted to these defendants and to the prosecution, it does not mean that you have to consume the full time.

We appreciate the cooperation of counsel thus far, and we believe that this agreement will expedite the trial; and we wish and request the fine cooperation of counsel for both sides from this point out. Under this ruling the time consumed in making objections would naturally be largely wasted.

V. EVIDENCE AND ARGUMENTS ON IMPORTANT ASPECTS OF THE CASE

A. Forced Germanization of Enemy Nationals

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm were charged with special responsibility for and participation in criminal conduct involving forced Germanization of enemy nationals and using them as slave laborers (*indictment, count one, pars. 18 and 19; count two, pars. 24 and 25*). On this charge the defendants Greifelt, Creutz, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm were convicted, and the defendants Meyer-Hetling, Schwarzenberger, and Huebner were acquitted.

The selection of arguments and evidence of prosecution and defense concerning forced Germanization is here presented under two headings: German People's List (DVL), and re-Germanization procedure (WED). Argument of the prosecution on these two subjects has been set forth in the opening statement in pp. 639 to 645. Concerning the German People's List, the prosecution alleged that if there was some proof of partial German ancestry, compulsion to register with this list was exerted on foreign nationals (especially on citizens of Poland and the former Free City of Danzig). A selection from the evidence of the prosecution on the German People's List appears in pp. 714 to 741. This is followed by a selection from the evidence of the defense as set forth in pp. 741 to 762.

Concerning the re-Germanization procedure, the prosecution alleged that such procedure was applied forcibly to foreign nationals whose physiological and psychological characteristics were considered as making them "eligible for Germanization", even where there was no proof of German ancestry. A selection from the evidence of the prosecution concerning the re-Germanization procedure appears in pp. 762 to 790. This is followed by the selection from the evidence of the defense on this subject as set forth in pp. 790 to 816.

2. GERMAN PEOPLE'S LIST (DVL)

a. Selections from the Evidence of the Prosecution

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS KUNO WIRSICH*

DIRECT EXAMINATION

MR. SCHWENK: Witness, will you please state your name.

WITNESS WIRSICH: My name is Kuno Wirsich.

* * * * *

MR. SCHWENK: Witness, when did you get in contact for the first time with the organization of the Staff Main Office?

WITNESS WIRSICH: That was on 16 January 1940. At that time, I began my work with the Reich Commissioner.

Q. In which capacity were you employed at that time?

A. First of all, I was a legal expert, and I was the deputy to the head of the legal department, in approximately the middle of February 1942.

Q. Who was your chief at that time—your immediate chief?

A. My direct superior was the head of the legal department, Attorney Goetz.

Q. Were you promoted afterwards, and when?

A. In the middle of February 1942, Attorney Goetz, within the agency, was given another assignment, and I occupied his position as the head of the legal department. This was sometimes called the Chief Legal Advice Department Staff Office.

* * * * *

Q. I am now turning to a new subject matter; the DVL procedure. Will you please explain, Witness, what the "Deutsche Volksliste", DVL, meant?

A. Those parts of Poland incorporated into the Reich in 1939, that is, particularly the old provinces of Poznan, West Prussia, and Upper Silesia contained a certain number of people of German racial descent. In addition, there were a number of people whose descent and ethnic origin were obscure. The aim of the German People's List was that those people who were of German descent and of German ethnic descent were to be ascertained and were to be Germanized.

Q. Which were the basic decrees for the "Deutsche Volksliste", the German People's List; how did it come into existence?

A. The "Deutsche Volksliste" existed already since the fall of 1939. The local agencies, regional subprefects [Landraete], and

* Complete testimony is recorded in mimeographed transcript, 22-24 October 1947, pp. 207-380.

similar organizations, at an early stage recognized the necessity for the people of German descent residing in those territories, the so-called ethnic Germans, to be furnished adequate identification papers. For the time being there was no uniform settlement for the entire territory, due to the lack of uncontrolled issue of such ethnic German identification papers on the part of the various agencies, there arose a certain confusion. For that reason a decree was enacted by Himmler in September 1940, which according to my knowledge was drafted in the Staff Main Office; certain basic principles were set up so that the examination and checking up of ethnic Germans in the western Polish territories would be brought into a uniform routine. This decree of September 1940, whether explicitly or by its meaning, I don't know, was addressed to the Reich Minister of the Interior and was the cause for the decree on the German People's List which was published in early March 1941, in the Reich Law Gazette. By this decree and a very extensive subsequent decree of the Minister of the Interior, dated 13 March 1941, the proceedings for the Germanization and selection of ethnic Germans were regulated in detail.

Q. Witness, can you give us a short description of the four classes of the DVL?

A. According to this decree on the German People's List, the applicants for German citizenship were to be subdivided into four classes. Class I was to comprise such Polish nationals who during the time of 1919 to 1939, that is, as was said at the time, had been under Polish government and yet had actively worked for Germany, that is, who had belonged to German societies or unions in Poland during that period. Class II of the German list comprised those people of German racial descent who could prove that they had maintained their German characteristics; for example, who had uninterruptedly, during the Polish regime, maintained their German tongue. In Class III of the German People's List, various groups of people were to be registered; first of all, such people of German racial descent who in cultural or other respects had certain contacts with Poland. Moreover, such Germans who were living in a so-called mixed marriage, with a Polish man or woman, finally, the children of such racial marriages. In Class III there were to be registered certain racially valuable parts of the large mixed population of Upper Silesia and Danzig and West Prussia, who having been a part of Prussia for 150 years, had strong German characteristics, but nevertheless had never yet entirely lost their original contact with Poland. Therefore, a group of people in connection with whom it was not possible to say clearly whether they belonged to this or that nation. Class IV of the German People's List was the registry of

those people who, despite their German descent under the Polish regime, had actively worked in a manner hostile to Germany, the so-called renegades. These were the four classes of the German People's List.

Q. Witness, could you tell us whether and to which extent, the Staff Main Office, RuSHA and VoMi participated in the establishment and issuance of the decrees concerning the German People's List?

A. The original initiative for the decree concerning the German People's List dated September 1940 was due to decree of Himmler which he signed in his capacity as Reich Commissioner for the Strengthening of Germanism. In the future course, the German People's List was dealt with in the Reich Ministry of the Interior and by the agencies of the interior administration; but in the course of negotiations concerning the enactment of the German People's List, there were a very large number of agencies and offices involved, among these I am sure the Staff Main Office and the Reich Security Main Office; perhaps also, but I can't say for sure, VoMi and RuSHA. Furthermore, in the Staff Main Office the agency, on the highest level within the scope of the agencies was set up; namely, the Supreme Court for the Examination of Ethnic Questions; whereas the first three levels in this procedure of examination were established with the agencies of the interior administration, the fourth level was with the Staff Main Office.

Q. Witness, were you particularly familiar with the DVL procedure; and, if so, why?

A. In the Staff Main Office, I was charged with the final examination of these ethnic questions.

Q. Do you know whether the original of the Decree 12/C, signed by Himmler, was in the hands of the Staff Main Office or in the hands of Himmler himself, or any other agency?

A. The original of the decree signed by Himmler himself, 12/C, I myself saw in the files of the Staff Main Office. The decree was duplicated and mailed by the Staff Main Office.

Q. Did the defendant Greifelt personally show the Decree 12/C as well as the subsequent decree concerning the treatment of DVL-IV people to the members of the Staff Main Office?

A. 12/C dealt only with Departments I to III; the decree concerning Department IV dealt with the remaining questions belonging to it.

Q. I asked you whether the defendant Greifelt showed the Decree 12/C and the subsequent decree concerning the treatment of DVL-IV to the members of the Staff Main Office shortly after it had been signed by Himmler.

A. Yes.

Q. Will you please explain how it happened?

A. The General Decree 12/C was sent to the Staff Main Office after consulting a great number of participating agencies, primarily a number of Reich ministers. It was compiled there in the Staff Main Office, and the defendant Greifelt submitted the draft to Himmler. In any case, early in February 1942 the defendant Greifelt came and, at a meeting of office chiefs, submitted the original which had just been signed; namely, the original of that decree which was later known as Decree 12/C. I think I can remember that this was pursuant to a personal visit of Greifelt to Himmler, but it is possible that the draft and the original had been submitted in writing by the Staff Main Office to Himmler and had been returned by him.

Q. Does the same apply to the decree concerning treatment of DVL-IV members?

A. As far as I recall, the decree on the subject of Department IV was signed by Himmler on the same day and returned, but I am not sure who drafted the decree. I can only assume from the exterior picture of it and the wording of it that it was handled by the Reich Security Main Office; there was a confusion as to files and archives, inasmuch as the decree concerning Groups I, II and III was published on 9 February by the Staff Main Office and the subsequent decree of the Reich Security Main Office concerning Group IV was dated 16 February.

Q. Was there a number of decrees concerning the DVL which were issued by the Staff Main Office subsequent to those basic decrees?

A. In addition to the General Decree 12/C of 9 February 1942, there were also passed a number of executory decrees; the majority of these executory decrees were signed by the respective experts of the respective agencies involved and handled by them, but individual questions pertaining to this sphere of work, as far as I know, were also handled later on by the Staff Main Office in detail.

Q. Do you remember any such decrees signed by the defendant Greifelt and concerning the DVL? And probably brought out in the legal department on the Staff Main Office of which you were the head?

A. I remember that negotiations were conducted with the Reich Ministry of the Interior, because, according to the General Decree 12/C, members of Group III were not permitted to become officials. An actual need showed, particularly in Upper Silesia—

PRESIDING JUDGE WYATT: He simply asked you if you remem-

bered seeing any decrees signed by this particular defendant; you can answer that without going into so much detail.

WITNESS WIRSICH: I don't remember any specific decree which was signed by the defendant Greifelt in execution of Decree 12/C.

MR. SCHWENK: Were there any lists, DVL lists, besides the list which applied to Poland?

WITNESS WIRSICH: There were other similar directives for naturalization almost in all territories over which the Reich Government or German military authorities exercised influence; the designation varied.

Q. Was there, for instance, a DVL Ukraine?

A. There was a so-called German People's List in the Ukraine, not approved by the Reich Minister of the Interior; as far as I remember it was unimportant, even from the German point of view.

Q. Witness, I asked you whether there was a DVL list for the Ukraine, and I expect the answer "yes" or "no"; if you then want to add something, then go ahead.

A. Yes. There was such a list.

Q. Was there another DVL?

A. There was a so-called branch office of the German People's List in Douai in Northern France.

Q. Do you remember any other DVL lists?

A. There was a further so-called subsidiary of the German People's List in Metz.

Q. Now, will you tell us what the effect of the DVL procedure was, briefly.

A. DVL, that is, German People's List procedure, was an examination of the population with the aim of bestowing German citizenship on them, or bestowing it subject to revocation.

Q. What did a person have to do in order to be accepted in the DVL List?

A. A person had to file an application and to add a questionnaire.

Q. Do you remember the questions asked in the questionnaire?

A. I remember some questions very well, but not all of them.

Q. For instance?

A. One of the most important questions was that pertaining to descent. The applicant had to state his name, and I believe also dates as to the birth and place of birth of his grandparents. Then there was also a question as to membership in German societies in Poland or in German parties.

Q. Did the Race and Settlement Office have anything to do with the DVL procedure?

A. The Race and Settlement Main Office was to cooperate, and

did so, in some areas of the Eastern territories in respect to the racial examination of Group III of the German People's List. Certain groups had to submit to this racial examination.

Q. Now, if I understand you correctly, the DVL procedure started with an application and ended with the citizenship of the Polish or Russian or French citizen?

A. My answer, if correct, would have to be as follows: the procedure concluded with the furnishing of a certain identification paper, and if the person acquired this paper, irrevocable citizenship was thereby automatically bestowed in certain cases.

Q. Would you please tell us what kind of citizenship those Poles, Russians, and French received who were accepted in the DVL?

A. That depended. Members of Groups I and II of the German People's List in the Incorporated Eastern Territories, for example, together with a blue identification paper, automatically received irrevocable citizenship.

Q. What about DVL-III?

A. Members of Group III, when they received the green identity paper, automatically became revocable German citizens.

Q. What about DVL-IV?

A. Members of the German People's List Group IV were furnished with a red identification paper which had no influence at all, as far as the nationality was concerned. It was intended that members of Group IV were to be subjected later to individual procedures for Germanization and to be bestowed revocable citizenship in due course.

Q. Was the effect of this obtaining of citizenship by DVL-I to III again the fact that those people were drafted into the German army, provided they were of military age?

A. Those persons who acquired German citizenship, either revocably or irrevocably, thereby became subject to military conscription.

Q. Does that mean that those persons who were originally Poles, Russians, and French, and so on, had now to fight against their own country?

PRESIDING JUDGE WYATT: I think that rather calls for a conclusion.

MR. SCHWENK: Yes, your Honor, I will withdraw the question. Can you now tell us, Witness, about the connection between DVL and seizure and confiscation of property owned by Poles and Jewish Poles, particularly? Was there any connection?

WITNESS WIRSICH: The property of members of Groups I and II of the German People's List was exempted from confiscation. Members of Group III of the German People's List, as far as I can remember, were not to lose their property in a formal respect,

namely, their property was to be blocked in the case of real estate. The seizure of property was not to take place; on the contrary, any loss of property sustained previously was to be compensated.

Q. Witness, for the benefit of all present, would you please tell us something about the basic decrees on seizure and confiscation of Polish property, because I am afraid we might not understand your explanation unless we know the background. I am referring to what you know and what everybody else knows as the so-called Polish Vermoegensverordnung.

A. The first basic principles, as far as seizure of Polish property was concerned, were passed already at the end of September or early October 1939 by the local agencies or the military commanders.

Q. Pardon me for interrupting. I just want a short explanation and not a detailed explanation. Was the property of Poles and Jews in Poland seized?

A. The property of Poles and Jews in the incorporated eastern territories was subject to seizure according to the Polish property decree.

Q. And now will you please go on with your explanation of DVL I, II, III and IV.

A. I mentioned settlement as far as Groups I, II, and III were concerned. In regard to Group IV, seizure of property was provided; but in this instance, too, compensation was taken into consideration. The property of the Poles who were not accepted for legislation in the German People's List was subject to the general decrees concerning seizure, according to the Polish property decree.

Q. Do I, therefore, understand correctly that the property of Poles who were accepted in the DVL was exempt from seizure and confiscation, except in DVL-IV?

A. That is correct.

* * * * *

Q. What happened to those Poles who did not apply for DVL or were not accepted in the DVL in regard to their personal life and property, and so on?

A. Their property, pursuant to the Poland decree, could be seized. They personally, if certain conditions were existent, were in danger of evacuation. They received the lower food rations of the Poles and they were exposed to other unpleasant things, which resulted from the general inferior conditions of the Polish people as compared to that of the Germans.

Q. Did I understand correctly that according to that in German "Unannehmlichkeiten"—which means unpleasant things—even if it meant for them to be expelled from their homes and placed

either into the General Government or into Germany proper as slave labor?

A. When I used the word "Unannehmlichkeiten"—unpleasant things—I did not wish to describe these hard facts but merely much rather I was thinking of these little special regulations; for example, in using street cars, and similar. In any case, in many spheres of life there were special regulations existing for Poles.

Q. Are you familiar with the decree providing that if a Pole does not apply for DVL, although he is of German descent, he will be placed in protective custody and in a concentration camp?

A. I know this decree.

Q. Did you know this decree in your capacity as chief of the legal department?

A. Yes.

Q. Will you now tell us briefly about the Supreme Court for Ethnic Questions in regard to DVL—Volkszugehoerigkeitsfragen?

A. The Supreme Court for Ethnic Questions was the fourth and highest level. It could determine, either on complaints of the people affected, which reached it, or it could also deal with individual cases of basic significance.

TRANSLATION OF DOCUMENT NO-4739
PROSECUTION EXHIBIT 99

GENERAL DIRECTIVE NO. 12/C, SIGNED BY HIMMLER, 9 FEBRUARY
1942, CONCERNING THE TREATMENT OF PERSONS REGISTERED
IN THE GERMAN PEOPLE'S LIST

The Reich Leader SS

Reich Commissioner for the Strengthening of Germanism

Fuehrer Headquarters, 9 February 1942

General Directive

No. 12/C

For the Treatment of Persons Registered in the German
People's List

In my decree concerning the survey and selection of the population in the Incorporated Eastern Territories, dated 12 September 1940, I/KO 3b/23.3.40, the selection of principles have been laid down for the population in the new Eastern territories and their registration in a proposed German People's List.

The German People's List, divided into four groups, was uniformly established for the Incorporated Eastern Territories by

the decree of 4 March 1941 (Reich Law Gazette I, p. 118) concerning the German People's List and German citizenship in the Incorporated Eastern Territories. Detailed provisions governing the registration in the individual groups of the German People's List have been embodied in the decree of 13 March 1941 (—I e 5125/41, 5000 Ost (East)) issued by the Reich Minister of the Interior in agreement with the Party Chancellery and myself. By the authority vested in me by the decree of the Fuehrer and Reich Chancellor of 7 October 1939, and in my capacity as Reich Commissioner for the Strengthening of Germanism, I issue the following directive for the treatment of persons registered in the German People's List:

A. Treatment of persons listed in Groups I and II of the German People's List

Groups I and II of the German People's List contain those ethnic Germans who took an active part in the struggle for Germanism before 1 September 1939, or who can prove that they have preserved their German character.

The persons listed in Groups I and II of the German People's List acquire German citizenship with all inherent rights and obligations, effective 1 September 1939 and 26 October 1939 respectively, regardless of the date of their registration.

The differentiation between ethnic Germans who, before 1 September 1939, took an active part in the struggle for Germanism and those who can prove that they have preserved their German character is made only for the internal use of the offices of the German People's List and for intra-Party purposes.

In accordance with the directive of the Party Chancellery, only persons listed in Group I of the German Racial Register may acquire Party membership at this time. The date of admission to Party membership for persons listed in Group II of the German People's List will be determined by the Chief of the Party Chancellery.

B. Treatment of persons listed in Group III of the German People's List

Group III of the German People's List contains the following persons:

a. Persons of German stock who, in the course of time, entered into close ties with Polish folkdom, but who, by reason of their conduct, possess the qualifications to become again worthy members of the German ethnic community.

b. Persons of other than German stock, living in racial intermarriage with an ethnic German, the German part being predominant.

c. Members of those population groups whose everyday language is Slav, yet whose racial classification is not clear, but who, by blood and culture are inclined toward Germanism, insofar as they had not already professed to the German folkdom prior to 1 September 1939, or were precluded from registration in the German People's List, for being racially unsuited, for having committed acts hostile to Germanism or for being individually regarded for other reasons as an undesirable addition to the population.

I. Legal Status

The persons listed in Group III of the German People's List acquire revocable German citizenship by immediate naturalization.

The Reich Minister of the Interior, in agreement with my staff headquarters or the agencies appointed by them, may revoke the German citizenship within 10 years. This revocation will be indicated especially in cases where the efforts towards re-Germanization or Germanization are to be considered a failure. In case of revocation, the German citizenship is considered annulled at the time of the delivery or public announcement of the decree of revocation. If revocation is not decreed, the German citizenship will be final the day following the end of the 10-year period. The revocation period may be shortened in an individual case by the agencies listed above.

II. Security Police Procedure

A. Restriction of free movement

The persons listed in Group III of the German People's List are subject to restrictions of residence as necessitated by the *goal of Germanization*. As a matter of principle, they should be utilized only in Germany proper. They can, in particular, be ordered by the competent state police (district) headquarters to leave the Eastern territories, whenever such a transfer is required on account of the labor allocation, the need to make their land holdings available for other purposes, or an opportunity for their resettlement in Germany proper. A return of expellees to the Eastern territories or their change of residence to a foreign country or to the colonies is not permissible unless, in individual cases, an exceptional permission is granted by my staff headquarters for special reasons. Within the territory of Germany proper, too, certain areas may be restricted.

B. Supervision of Germanization

The persons classified in Group III of the German People's

List require systematic indoctrination and consolidation as far as their attitude toward Germanism is concerned. Education toward Germanism is a function of the Party. For this purpose the Party is to maintain contact with my staff headquarters and the Reich Ministry of the Interior. The results of the care and investigations are to be reported to the staff headquarters or my deputy at any time upon demand. In each individual case the Party will decide in agreement with the staff headquarters after consultation with the district police authorities whether and when the goal of Germanization has been attained. In case Germanization is considered achieved prior to the expiration of the 10-year revocation period, the Gauleiter, in agreement with my deputy, will make application to the proper naturalization authority for cancellation of the revocability. Waiving of the revocability of citizenship for persons classified in Group III is in every case dependent upon a physical and hereditary health examination in accordance with my directive 50/ I of 30 September 1941.

III. Status in Public Life, General Legal Status

A. Until Cancellation of the Revocability

1. Persons classified in Group III of the German People's List will not be admitted to Party membership. There are no objections, however, to admitting them to affiliated organizations of the Party. No promotion to positions of leader or deputy leader should be considered. Membership in affiliated organizations, for example, DAF [German Labor Front] or NSV [National Socialist Public Welfare Association] is possible and desirable.

2. Persons classified in Group III of the German People's List must serve their year of labor service, and upon entry in the register become liable for service in the Reich labor service and military service.

3. Persons classified in Group III of the German People's List cannot be appointed as civil service officials [Beamte]. As civil service employees [Angestellte] they cannot, on principle, occupy executive positions or positions of trust.

4. Persons classified in Group III of the German People's List cannot, on principle, occupy honorary public offices. In making appointments to other positions of trust (guardian, curator, property custodian, tutors, etc.) especially strict requirements are to be met. Likewise, persons in Group III of the German People's List are not to be appointed as employee representatives or confidential plant councillors.

5. The Germanization of non-German names will take place in the Eastern territories within the period of revocability; in the

case of resettlement to Germany proper, at the moment of resettlement.

6. Persons classified in Group III of the German People's List are subject to the same general civil and public legal regulations as apply to German citizens.

7. Marriage and adoption between persons classified in Group III of the German People's List with each other or with German citizens is permissible. Restrictive regulations may be issued upon agreement with my staff headquarters. Other marriages (for example, with persons classified in Group IV, with persons of alien race, or with German citizens subject to revocation, who are not classified in Group III of the German People's List) are not permitted.

8. A special license is required for marriages between members of Group III of the German People's List with political leaders of the NSDAP, leaders of its affiliates, officers of the armed forces, members of the Reich labor service [Reichsarbeitsdienst], civil service officials [Beamte] in the middle, upper middle, and higher brackets, and civil service employees [Angestellte] in positions of responsibility. Applications for special marriage licenses are to be filed with my staff headquarters.

9. Members of Group III of the German People's List are permitted to attend vocational schools, trade schools, and high schools. Special permission by my staff headquarters is required to attend universities and higher trade schools. The Reich Minister of Education, in agreement with my staff headquarters or with an office appointed by him, will name the institutions of higher learning to which those persons are to be admitted. Members of Group III may likewise be barred from access to, and training in, certain vocations.

B. Status after Cancellation of Revocability

After the right to revoke [the provisionally granted citizenship] has been renounced, members of Group III of the German People's List will be equal in status to other German citizens as far as civil law and constitutional law is concerned, as well as in all other respects.

IV. Status in Property Matters

1. Custodial management based upon decree of 12 February 1940 (Reich Law Gazette I, p. 355) is to be abolished retroactive to the date of registration in the German People's List. The custodian general must arrange for sufficient inventory and stocks at the time of the abolishment of custodial management of a given property. The custodian general has, however, the right to

refrain from abolishment of custodial management in certain cases where he deems it necessary—

- a. for reasons affecting the general food economy,
- b. because of continued absence of the owner, and
- c. because the property has already been occupied or is about to be occupied by a resettler or an ethnic German settled there in accordance with General Decree 9-IV.

But even in these exceptional cases the custodial management is to be discontinued, if my deputy decides so after getting the views of the branch office of the general custodian. Farms occupied by resettlers are not to be returned to persons classified in Group III of the German People's List for private management.

In all cases, discontinuation of the custodial management can take place with the consent of my deputy under certain conditions and stipulations; in particular, the duty can be imposed on a tenant to submit to continuous control of his management.

2. Management by a trustee according to Sections 5-8 of the decree of 17 September 1940 (Reich Law Gazette I, p. 170) is to be discontinued on principle at the time of the entry in the German People's List. In the case of war plants and other essential factories, the competent trustee office can decree, in agreement with the office of my deputy, that management by trustee has to be maintained for the time being, in spite of the fact that the owner had been classified in the German People's List. Establishments occupied by resettlers are on principle not to be returned to persons classified in Group III of the German People's List.

They are to be dealt with in the same manner as used in cases of liquidated establishments according to point 6. The decision in every case is to be made by my deputy, after consulting the trustee office and the DUT [German Resettlement Trustee Company].

3. In the case of real estate and trade establishments with fixed location as a security measure confiscation, according to the decree of 17 September 1940, has to be maintained in each case until after the cancellation of the revocability. If confiscation has not yet taken place, it is to be carried out without delay. In cases of rural property, the confiscation is to include the accessories, in cases of fixed trade establishments all the articles in the inventory.

The management of the confiscated real estate, including accessories, and of the trade establishments with fixed location including the inventory, remains with the persons classified in Group III of the German People's List according to section 4, paragraph 2 of the Decree of 17 September 1940.

4. The remaining property of persons classified in Group III of the German People's List, however, are neither subject to the regulations of the Decree of 17 September 1940, nor to the Decree of 12 February 1940. On the contrary, in the interest of the Germanization of these people, they should be protected in their property rights, insofar as these properties can be put to use when starting upon a new career in Germany proper.

5. Rural property including accessories, real estate in general, and trade establishments with fixed location are to be given up by persons classified in Group III of the German People's List on principle at the latest at the time of their emigration to Germany proper, in order to exclude any future possibility for these people to maintain roots in the Eastern territories. Therefore, notwithstanding the confiscation, they ought always to be given opportunity to sell these properties with the consent of the confiscating office. Rural property is to be sold only to me or the office I designate; real estate in general and trade establishments in fixed location are to be sold exclusively to the HTO [Main Trustee Office East] or to the office designated by it.

My staff headquarters or the main trustee office East are in exceptional cases authorized to require the persons classified in Group III of the German People's List to sell, even before their emigration, their real estate holdings including accessories or trade establishments with fixed location, totally or partly, within a short time, to be decreed for every single case.

If a voluntary sale within the decreed time does not take place because of the attitude of the person classified in Group III of the German People's List, my staff headquarters or the Main Trust Office East are authorized to confiscate the possession in question in favor of the Reich in accordance with the Decree of 17 September 1940. In this case, a compensation in accordance with the purpose of re-Germanization may be granted; the amount will be determined by regulations to be issued by my staff headquarters, in agreement with the Main Trustee Office East. It can be decreed in these regulations, especially, that the actual payment of the compensation depends on the fulfillment of conditions and stipulations.

6. In cases where property has been liquidated finally before this decree has come into force or before the owner has been entered into the German People's List, the owner is entitled to the sum realized in the liquidation of the property. In cases of gross hardship, the competent authorities, in agreement with my deputy, may grant sums in excess of the amount realized as compensation for hardship.

Status of Members of Group IV of the German People's List

A separate decree will regulate the status of persons classified in Group IV of the German People's List.

Final regulation

I ask all supreme Reich authorities to issue, in agreement with me, the necessary decrees for their area of operations.

[Signed] H. HIMMLER

[Typewritten]

Correctness of copy certified by:

[Signed] WIRSICH

SS Obersturmfuehrer

TRANSLATION OF DOCUMENT NO-3091
PROSECUTION EXHIBIT 108

COPY OF ORDER, SIGNED BY HIMMLER, 16 FEBRUARY 1942,
CONCERNING GROUP IV OF THE GERMAN PEOPLE'S LIST

Copy of a copy

The Reich Leader SS and Chief of the German Police,
Reich Commissioner for the Strengthening of Germanism

Berlin, 16 February 1942

VII

II A2 No. 420 /41-176

To:

- a. The Supreme Reich Authorities, 10 copies
- b. The Land governments (except Prussia), 10 copies
- c. The Reich Governors [Reichsstatthalter], 10 copies
- d. The Gauleiter, 10 copies
- e. The Governors and Regierungspraesidenten in Prussia, 10 copies
- f. The Higher SS and Police Leaders, 10 copies
- g. The State Police (Main) Offices, 3 copies

For information:

- h. Department I of the Reich Ministry of the Interior, 10 copies
- i. Reich Commissioner for the Strengthening of Germanism—Staff Main Office, 10 copies
- j. Main Trustee Office East, 10 copies
- k. The Inspectors of the Security Police and the SD, 5 copies
- l. The Reich Security Main Office—Distribution List C

m. The SD (Main) Sectors

n. The Criminals Police (Main) Offices

Subject: Disposition of persons classified in Group IV of the German People's List.

By virtue of the authority granted by the Fuehrer and Reich Chancellor's Decree for the Strengthening of Germanism, dated 7 October 1939, and on the grounds of the powers vested in me as Reich Leader SS and Chief of the German Police and by virtue of Directive A 7/41 of the Fuehrer's Deputy, dated 26 February 1941, I decree, in concurrence with the Party Chancellery, the Reich Minister of Finance and the Main Trustee Office East:

I. In Group IV of the German People's List (Decree on the German People's List and German citizenship in the Incorporated Eastern Territories dated 4 March 1941—Reich Law Gazette I, p. 118) will be listed Polonized persons of German descent. Through naturalization they will receive revocable German citizenship. These Polonized people of Germanic descent and their children are to be won back for Germanism. Insofar as this aim is unattainable, they must at least be prevented from continuing to work in the interests of Polish nationalism. Numerous persons classified in Group IV are to be regarded as "renegades" in the strict sense of word.

However, as the designation "renegades" would render the winning back of these people of German blood considerably more difficult, the expression "renegade" is not to be used in official correspondence. The persons concerned are preferably to be designated as "Polonized Germans".

The "Polonization" of these persons occurred in various ways and had, in each case, the effect of inducing active anti-German activity. Principally, differentiation is to be made among the following groups:

a. Persons of Germanic descent who have contracted mixed marriages with foreigners;

b. Children from mixed marriages of people of Germanic descent with foreigners;

c. Persons influenced by the Catholic Church;

d. Persons influenced by the Augsburg Church of Bishop Bursche;

e. Persons who relinquished their Germanism in order to attain social advancement;

f. Persons who relinquished Germanism owing to their position (nobility, large estate owners, clergy);

g. Persons who gave up their Germanism as a result of isolation in purely Polish surroundings.

II. The re-Germanization of the Polonized Germans demands a

complete separation from Polish surroundings. The persons classified in Group IV of the German People's List are therefore to be dealt with as follows:

A. They are to be resettled in Germany proper

1. The transfer and resettlement to the territory of the Germany proper will be carried out by the Higher SS and Police Leaders in accordance with more detailed instructions.

2. Asocial persons and other biologically inferior persons are not to be included in the resettlement action. Their names are to be submitted immediately by the Higher SS and Police Leaders (Inspectors of the Security Police and of the SD) to the competent Gestapo regional headquarters. This office initiates their transfer to a concentration camp.

3. Politically heavily incriminated persons will not be included in the resettlement action. Their names are also to be submitted by the Higher SS and Police Leaders (Inspectors of the Security Police and of the SD) to the competent Gestapo regional headquarters for the purpose of transfer to a concentration camp. The wives and children of such persons are to be resettled in Germany proper and included in the procedures for Germanization. If the wife, too, cannot be included in the resettlement action because she is politically badly incriminated, she, too, is to be named to the competent Gestapo regional headquarters for the purpose of transfer to a concentration camp. In such cases the children are to be separated from their parents and treated in accordance with paragraph III, chapter 2 of this regulation. Persons to be considered politically heavily incriminated are those who committed the most serious offenses against Germanism (for example, participation in persecution of Germans, economic destruction of ethnic Germans among other things).

B. Disposition prior to transfer to Germany proper

1. Persons formerly engaged in positions of leadership (educators, clergy, plant managers, masters of a trade, etc.) will be re-educated for other occupations which do not involve leadership. The re-education will be initiated and controlled by the Higher SS and Police Leaders.

2. Upon application, admission to the German labor front may be granted. Admission to the Party, an affiliate, or connected organization of the Party will not be granted.

3. The children are to be admitted to the local German public schools and included in the Hitler Youth. Attendance at a local school of higher education is prohibited. If children are to attend a school of higher education, they are to be accommodated at a

boarding school in Germany proper with the approval of the local Higher SS and Police Leader in authority in the parent's residence. Attendance at a college is prohibited except for those children who have attended a German boarding school for at least 3 years and were there designated as suitable.

4. Property still remains confiscated. To defray living expenses and other important expenses, installment payments will be made, the amount of which will be determined by the local Higher SS and Police Leader in accordance with instructions, covered by Article 12 of the Decree of 17 September 1940 (Reich Law Gazette I, p. 1270) given. Seizure of apartments is not permitted, except when disproportionately large and the existing housing shortage necessitates a partitioning and requisitioning of parts thereof.

C. Procedure after settlement in Germany proper

1. The property remains confiscated and will be utilized according to existing regulations by the offices which are responsible in accordance with Article 12 of the Decree of 17 September 1940 (Reich Law Gazette I, p. 1270). The amount realized will be deposited in a special account. The administration of the special account will be turned over to the local Higher SS and Police Leaders after final liquidation of the property. After transfer of the administration of the special account to the local Higher SS and Police Leaders, amounts up to 2,000 Reichmarks per year may be paid out. Payment of larger amounts may be made only with the consent of the Higher SS and Police Leader. The final release of the special account remains subject to the decision of the Reich Commissioner for the Strengthening of Germanism—Staff Main Office. It [the release] is to be proposed by the Higher SS and Police Leader upon completed re-Germanization.

2. The local Gestapo regional headquarters is intrusted with the enforcement of the following:

a. to join immediately an affiliated association of the NSDAP and have the children join the State Youth;

b. to make changes in place of residence during the first 5 years only with the consent of the Higher SS and Police Leader;

c. to marry only with the consent of the Higher SS and Police Leader;

d. to undertake no guardianship;

e. to undertake college study only with the consent of the Higher SS and Police Leader;

f. to take a German name in place of a non-German name.

3. Upon application, membership in an affiliated association of the NSDAP will be granted, provided that there are no special

objections in individual cases. Membership in the Party or one of its affiliates will not be granted, except for the acceptance of juveniles into the State Youth.

4. For every resettled family and every independent individual the local Higher SS and Police Leader will appoint an "adviser"; his duty will be to assist the person to be re-Germanized on his return to his original folkdom, to report semi-annually to the local Higher SS and Police Leader and the local state police (main) office regarding the progress of the re-Germanization, and to be able to give an authoritative opinion on questions deemed necessary by the state police.

The position of "adviser", as approved by the Party, will be recognized as service for the Party.

5. Except for the special regulations listed in paragraphs 1-4, equality with other Germans is granted.

III. The Higher SS and Police Leaders are to further re-Germanization with every means and to check currently on the success of the re-Germanization action. Should they encounter resistance to re-Germanization, they will report their findings to the appropriate Gestapo regional headquarters for further action. If it happens that re-Germanization cannot be attained even by means of coercion by the state police, they are to initiate the revocation of the naturalization through the Reich Leader SS—Reich Commissioner for the Strengthening of Germanism and to inform the appropriate state police thereof.

The Higher SS and Police Leaders are to pay particular attention that the re-Germanization of the children does not suffer as the result of detrimental influence by the parents. Should such detrimental influence be determined to exist, and should it be impossible to eliminate them through coercive measures by the state police, accommodations are to be found for the children with families who are politically and ideologically above reproach and ready to take in the children as wards, without reservation and out of love for the good blood present in the children and to treat them as their own children who must be separated from their parents in accordance with paragraph II A 3 of this regulation.

IV. Within the framework of the regulations described above, the respective Gestapo regional headquarters are to take the following specific measures:

1. They are to take the persons described in paragraph II A 2 and 3 into custody and initiate their transfer to a concentration camp.

2. They are to open a file for every person classified in Group 4 of the German People's List. In the case of families, one file

will be sufficient. The files are to contain a photograph of the person concerned, as well as a record of everything which is of importance in judging the case. In case of a change in residence, the files are to be forwarded to the appropriate state police (main) office.

3. They are to publicize the provisions covered in paragraph II C 2 and to be responsible for compliance with them and assure their maintenance through measures taken by the state police.

4. They are to support the Higher SS and Police Leaders in their work of re-Germanization; in particular, they are to eliminate resistance to the re-Germanization wherever offered by means of such coercive measures by the state police as seem to be appropriate. Prior to ordering coercive measures to be taken by the state police, the adviser of the person concerned is to be given an opportunity to give his informed opinion.

5. They are to take into protective custody persons in whose cases the Higher SS and Police Leader has ordered the revocation of nationalization, and to transfer them to a concentration camp.

[Signed] H. HIMMLER

Certified:

[Signed] LIPPEK

Chancellery employee.

LS.

Li.

TRANSLATION OF DOCUMENT NO-3096
PROSECUTION EXHIBIT 117

MEMORANDUM SIGNED BY MILDNER, 21 APRIL 1942, CONCERNING
THE PUNISHMENT OF MEMBERS OF GROUP III OF THE GERMAN
PEOPLE'S LIST WHO REFUSE TO RENDER MILITARY SERVICE

Copy

[handwritten]

Weber has * * *.

13 May 1942

7/5/42

Secret State Police

[Leitstelle] Gestapo Regional Hq.

IV D 2 a-1263/42

Katowice

Katowice, 21 April 1942

St.0372/St I-610 (Se/Ke)

Subject: Persons subject to military duty refusing to render
military service.

1. In recent times an increase of cases was noted where persons who are subject to military duty and who, when the census

was taken in 1939, avowed affinity to Germandom, having also made application already for registration in the German People's List—thus having expressed their will to become Germans—suddenly claim Polish affiliation when they are to be recruited for military service or when they are to be examined incidental to being recruited for military service, thus to evade their duty to bear arms. These draft dodgers are to be arrested on the spot by police authorities and to be turned over to the nearest office of the German state police, for transfer to a concentration camp.

2. Cases have also been noted where persons subject to military duty who have already been classified in Groups I to III of the German People's List incriminate themselves in that they state that incidental to filing the questionnaire which serves to establish nationality affiliation they failed to admit some Polish affiliation and thereby try to obtain classification in Group IV of the German People's List and thus to evade military service. In this instance also police authorities are to proceed to immediate arrest and commitment to Secret State Police authorities.

Supplement for the commander of the recruiting area headquarters Katowice:

a. There are also draftees who already were established by means of the German People's List as Germans and who after their service record book has been handed to them, or after they have received induction orders, by presenting threadbare arguments at the competent recruiting offices attempt to raise doubts as to their German nationality affiliation, thereby to bring about delay of their draft.

b. It has also become known that draftees when reporting for duty and while en route to camps use the Polish language conspicuously, sing Polish songs and refuse the oath of allegiance on the grounds that they reject German nationality.

As a means for successfully discouraging such behavior and to avoid repetition of similar cases persons mentioned under a and b who, strictly speaking, are already subject to military jurisdiction, should not be released but should be committed to the nearest office of the Secret State Police, for transfer to a concentration camp.

You are asked to take notice of points 1 and 2 and to let me have your comments and possible suggestions relative to paragraphs a and b at your earliest convenience.

[Signed] DR. MILDNER

Certified:

[Signed] Signature

Chancellery employee.

Distribution:

All district police offices
All branch offices of the Katowice State Police

To be informed:

- a. The Inspector of the Security Police and the SD in Breslau
- b. Gauleiter and Oberpraesident of Katowice
- c. Regierungspraesident at Katowice
- d. District Leaders
- e. State Police at Oppeln
- f. Reich Commissioner for the Strengthening of Germanism—
SS Obersturmbannfuehrer Dr. Arlt—or his deputy
- g. Intelligence Service, Branch Office Katowice (2 copies)

By carbon copy (with distribution)

to RSHA-IV D 2-Berlin, with the request to take notice.

Certifying the correctness of the copy
initial [illegible]

TRANSLATION OF DOCUMENT NO-1393
PROSECUTION EXHIBIT 115

CIRCULAR LETTER FROM THE RACE OFFICE OF THE RuSHA, 28 SEPTEMBER 1944, SIGNED BY KLINGER, CONCERNING THE TREATMENT OF PERSONS OF GERMAN ORIGIN WHO FAIL TO APPLY FOR REGISTRATION IN THE GERMAN PEOPLE'S LIST

[in pencil] D.V.L.
Prague II, 28 September 1944
Post Directorate

The Chief of the SS Race and Settlement Main Office
EA-C 2-b 2-Ha/Ri, 108/44

Subject: German People's List

Treatment of people of German descent who do not
apply for registration in the German People's List

Reference: Decree of the Reich Leader SS and Chief of German
Police-S I A 2 No. 420 VII/41-176 of 16
February 1942

Distribution III

Below your attention is called to, that is, you are reminded of the decree of the Reich Leader SS and Chief of the German Police of 16 February 1942 on the treatment of people of German de-

scents who do not apply for registration in the German People's List.

"Subject: People of German descent who do not apply for registration in the German People's List.

1. I request that the subordinate offices be instructed to report the names of those people of German descent who do not apply for registration in the German People's List, to the local competent state police (head) office. A report is to be made on measures taken.

2. The local competent state police (main) offices are to enjoin on the persons named to them to furnish proof within a period of 8 days, that their application for registration in the German People's List has been submitted. If this proof should not be furnished, the persons concerned are to be taken into protective custody and their transfer to a concentration camp is to be ordered.

[Signed] HIMMLER

The Chief of the Race Office
in the SS Race and Settlement Main Office
P.P.

[Signed] KLINGER

SS Lieutenant Colonel

Certified:

[Signature illegible]

SS Hauptsturmfuehrer.

PARTIAL TRANSLATION OF DOCUMENT NO-5554
PROSECUTION EXHIBIT 859

COPY OF A LETTER FROM THE HIGHER SS AND POLICE LEADERS SOUTHEAST TO THE DEPUTY OF THE REICH COMMISSIONER FOR THE STRENGTHENING OF GERMANISM, 20 SEPTEMBER 1944, INCORPORATING LETTER FROM OFFICE OF CHIEF OF SECURITY POLICE AND SD, 11 SEPTEMBER 1944, CONCERNING THE EXECUTION OF INDIVIDUALS REFUSING TO ACCEPT GERMAN PEOPLE'S LIST IDENTIFICATION CARDS

Copy !

The Higher SS and Police Leaders Southeast
in the Gaue Lower and Upper Silesia and the
Military District VIII III 1063/44

Breslau, Ebereschentallee 14, 20 September 1944
C-308 Ba/Bd.

[handwritten]
Distribution Key
[initials illegible]

To the Deputy of the Delegate of the
Reich Commissioner for the Strengthening
of Germanism
—the Inspector—
Breslau, Ebereschentallee 14
with two carbon copies

Copy !

The Chief of the Security Police and the SD
IV B 2—2038/44—III

Berlin, 11 September 1944

Special Delivery Letter

To

pp.

Subject: Refusal of member of Group III of the German People's
List to accept the German People's List identification
card

Reference: None.

In the individual case of a member of Group 3 who refused acceptance of the German People's List identification card in order to avoid being drafted into the army, the Reich Leader has decided that in this and similar cases firm action will have to be taken, and has ordered the execution of the individual in question.

If, in spite of having been properly instructed, persons enrolled in the German People's List should refuse acceptance of their German People's List identification cards, a motion for special treatment will have to be submitted in future.

By order:

[Signed] THOMSEN

Copy for your information

By order

[Signed] Signature

Precinct Captain of the Security Police and Adjutant

* * * * *

TRANSLATION OF DOCUMENT NO-1669
PROSECUTION EXHIBIT 165

EXTRACTS FROM OFFICIAL CORRESPONDENCE, 28 MAY 1944 AND
10 FEBRUARY 1943, CONCERNING ACTIONS TAKEN AGAINST
POLISH NATIONALS WHO REFUSED TO REGISTER IN THE GERMAN
PEOPLE'S LIST

The Reich Leader SS

Personal Staff
Journal No. 40/12/44 g
Bg/Hm

[Stamp]

Personal Staff Reich Leader SS
Administration of Records
File No.: Geh. 1 307 [handwritten]
Field Command Post, 28 May 1944.

[Stamp] Secret!

Subject: Placing of families of German origin in protective
custody or German Folk Schools.

Reference: Your letter of 24 April 1944-IV A 6 b (IV C 2 old)
5631/4415/43g.

1. To the Reich Security Main Office, Berlin

In pursuance of the proposal of the Reich Security Main Office
dated 24 April 1944, the Reich Leader SS has made the following
decision:

(1) Maria Lambucki and Stanislaus Koch are not to continue
to remain in protective custody.

(2) Jachwiga Koch is to be assigned to a German Folk School.

(3) Brunhilde Muszynski is to be taken into protective custody.
Her two children, aged 4 and 7 years, are to be sterilized and
lodged somewhere with foster parents.

(4) Ingeborg von Avenarius is also to be taken into protective
custody. Her children too are to be lodged somewhere with foster
parents, after sterilization.

[Signed] BRANDT
SS Colonel

2. SS Race and Settlement Main Office

On copy, reference is to be made to letter of the above of 18
January 1944 with the request to note contents.

3. Reich Commissioner for the Strengthening of Germanism
Main Office for Repatriation of Racial Germans
4. Reich Commissioner for the Strengthening of Germanism,
Staff Main Office
5. Higher SS and Police Leader East
6. Main Office for Folkdom Matters

On copy, reference is to be made to our letter dated 16 February 1943 with the request to note contents.

[initial] B
SS Colonel

* * * * *

[Stamp illegible] 30

Chief of the Police and SD
Immigration Center
Commission XV
II (26/31) Ref. No. 58/43

Zamosc, 10 February 1943

To the SS and Police Leader in the Lublin district
SS Major General Globocnik
Lublin

In registering all persons of German blood, the following exceptional cases are especially worth mentioning:

1. *Johanna Achidzan Janz of Tomaszow*

The above-mentioned has been screened. She is 50 percent of German blood and was classified as racially worthy. She strictly refused to be Germanized. She also refuses to learn the German language, or to become a German. This is a case of a member of the intelligentsia—A. is a physician—a transfer to Germany proper seems appropriate, as she would be a bad example, even a danger, for other persons of German blood.

2. *Maria Lambucki, born on 27 April 1903, of Tomaszow-Lub*

The above-mentioned was registered with her two sons, Ignatz and Georg, on 23 Jan. L. is 100 percent of German blood. Her husband, who is POW in Russia, is a pure Pole. When screened L. refused to be considered as a German. She said that she had been married to a Pole, was awaiting his return, and did not want him to find her as a German. She gave her sons a Polish education, but both learn the German language now, though the elder one shows a decisively hostile attitude to Germanism, saying that he had been educated as a Pole and would feel like a deserter by committing himself to enter Germandom. In this case too a transplantation into Germany proper seems required.

3. Stanislaus Koch from the Sitno estate

The above-mentioned had been summoned for screening with his wife and his 2 daughters, Elisabeth and Christine. At first only the husband appeared. During the screening he behaved very obstinately and disowned any allegiance to Germanism, in spite of his 75 percent German blood. Only after repeated admonishments did he make the required statements. He caused considerable trouble to the registration clerk and the expert for nationality questions. The representative of the Kreishauptmann, Kreis-schulrat Gauer, who functioned at the same time as nationality expert, had known Koch for a long time and raised political objections against the Germanization of Koch. His wife and daughters had previously refused to appear. Only after having been summoned a second time did the daughters appear on 22 January 1943. They too refused to be Germanized. They were ordered to see to it that their mother, who allegedly is at present ill, appear before the commission within a fortnight or else present an official medical certificate. As the family is 62.5 percent of German blood, the decision with regard to the daughters was "suitable for Germanization B". In these circumstances it is unwarrantable that the Koch family remains in this settlement area.

4. Brunhilde Muszynski, nee von Wattmann

The above-mentioned showed when being screened an attitude which may be called thoroughly anti-German. At first she denied being of German descent. Only after having been reminded by her father, who is a Reich German according to a report by the police president of Vienna, she admitted to be of German blood. She wanted to give to her children a Polish education, as they should by no means be German because of their Polish father. Her husband had been killed in action as a Polish officer in the Polish campaign. She rejected any tie with Germanism and did not want to have anything to do with it. In my opinion she may be regarded as a renegade of the worst type. Though speaking German perfectly well and being of German descent, she ought not to stay in the General Government area. As she gives a very bad example to the population owing to her position and mental capacities, it is proposed to transfer her immediately to Germany proper.

5. Ingeborg von Avenarius, nee Wattmann

The above-mentioned was screened today in the presence of her father. On this occasion she showed such obduracy that it is not possible to recognize her as a German woman or as a person of German blood to let her stay in the Government General. Though

admitting after representations to be of German descent, she refused every connection with Germandom, adding that her husband was a Pole and of Polish allegiance. She herself had become a Pole, too, through her marriage and this not only by statute, but also by faith and feelings. On no account did she want to give her children a German education, but wanted to make Poles out of them. She pretended not to be able to make any statements about the whereabouts of her husband. As this is a case of a member of the intelligentsia completely converted to Polish nationality, a special re-examination and/or an immediate transfer to Germany proper seems necessary.

These proceedings have already been reported to the SS Settlement Staff SS Ostuf. Hareuther.

[Signature] illegible
SS Major

b. Selections from the Evidence of the Defense

EXTRACTS FROM THE TESTIMONY OF DEFENDANT ULRICH GREIFELT*

DIRECT EXAMINATION

* * * * *

DR. HAENSEL (Counsel for defendant Greifelt): Now, I want to refer to book 12, page 3. I believe we can conclude the subject of prevention of propagation, and we now come to a very important sector, which is the German People's List. Under point 17 of the indictment you are charged with participation in the compulsory Germanization of foreign enemy nationals, and the prosecution has expressly referred to the German People's List. The German People's List, then, is brought in in connection with the naturalization procedure. Which agency first touched upon the question of naturalization procedure?

DEFENDANT GREIFELT: The directive of 8 October 1939, (Greifelt 32, Greifelt Ex. 32) regarding the incorporation of the Eastern territories, already touches upon the question of the possibility of acquisition of German nationality by inhabitants of the Incorporated Eastern Territories. However, this basic decree does not yet give any details for the procedure.

Q. Is this directive contained in the documents submitted to us by the prosecution?

A. As far as I know, it is not contained therein; so far, I have not seen it. However, I am of the opinion that this directive is

* Complete testimony is recorded in mimeographed transcript, 24, 25, 26 November, 1, 2 December 1947, pp. 1404-1750.

significant in order to trace the further development in this field, that is to say the question of the German People's List, to understand it, and to be able to judge it.

Q. We shall submit it. What agency in Germany was competent for questions of naturalization?

A. The only agency competent to deal with all matters regarding citizenship was the Ministry of the Interior.

Q. Did the Reich Ministry of the Interior, in accordance with its competency, arrange for a satisfactory solution of this question?

A. In the course of the war a multitude of directives were issued which dealt with questions of citizenship. What is under discussion here are the Incorporated Eastern Territories, and as far as I know, a basic decree was issued on 25 or 26 November 1939 by the Ministry of the Interior, based on the Decree of 8 October 1939.

Q. Did you participate in the setting up of this decree; I mean as a consultant or in any way?

A. No. My agency did not take any part in this. It was not in a position to do this for reasons of time, because at the end of October my agency was not in a position to do any work; it was not yet known nor recognized.

Q. Did this decree create a clear picture in regard to this question?

A. The original purpose was to regulate everything quite clearly in a well-defined manner, but this was an attempt that failed at first, at least, because difficulties would arise in all border territories, especially with regard to the membership of national minorities and national groups; and this was, of course, to a very large extent, the case in the Incorporated Eastern Territories.

Q. Who tried, first of all, to solve these doubtful cases?

A. These attempts were undertaken by the Reich Governors or the Senior Presidents, but at first it did not go beyond attempts, because the chiefs of the local provincial administrations, who have been mentioned just now, wanted to solve these questions according to their own views, which of course differed from place to place. Therefore, first of all, even greater confusion was created in the field of the citizenship of the people concerned. Even I—who was active in the agency of the Reich Commissioner, but who, until that time, had not dealt with questions of ethnic relationships or ethnic struggles—even I had to witness a state of affairs, which could only be called grotesque. In the Gau Danzig-West Prussia, the Reich Governor followed a definite policy of Germanization. He was not guided by factual viewpoints,

but he believed that he had to shine before Hitler and thus to present his Gau as a German Reich Gau as quickly as possible.

Q. Do you remember the German People's List, the DVL?

A. These are the prerequisites for the German People's List. This policy was the last resort, the cause for the fact that, later on, as regards the German People's List, the Reich Security Main Office was forced to take compulsory measures against people who did not voluntarily put down their names for the German People's List. It is astonishing that in the Gau Danzig-West Prussia the Reich governor boasted of having contributed three divisions to the German Wehrmacht by his Germanization measures. This Germanization policy had to be opposed by all reasonable people. There was no lack of voices warning against these measures or of people who wanted to alter this procedure. However, Himmler failed in this respect, and he did not oppose this Germanization policy which was to be a part of the procedure under the German People's List.

In the Warthegau, on the other hand, a very clear line of policy was followed, based upon the view of the Reich Governor that the basis for the German People's List could only be the proof of German descent of the people concerned.

In Upper Silesia conditions were quite different, since the so-called Water-Polaks and other ethnic splinter groups like the Gorals represented a population regarding whose ethnic membership there are doubts even today, even among scientists.

The different ethnic policies in the different Gaue were the cause which had to lead to a uniform solution, and the attempt to create a uniform solution led to the concept, for the first time, of the German People's List in the Reich Gau Wartheland, where Greiser as the first one created this instrument. Whether he was influenced in this by other agencies, I do not know.

Q. In order to understand these very complicated matters, a simple question is now necessary. After a country had been incorporated under the Decree by Hitler, which was mentioned—that is, after it was annexed—did one say then that the inhabitants of that country were Germans?

A. No. Such total grant of German citizenship did not take place, as far as I know.

Q. Were principles established, from which the German People's List originated, according to which not all inhabitants of the territory were to be Germans?

A. Yes. The German People's List was based on the thoughts which Greiser had established for his Gau. In his Gau German and Polish people had lived together and side by side for centuries, and in the course of these centuries certain so-called floating

sectors of the population had developed. I mean, looking at it from the point of view of descent. It was the purpose of the German People's List to make a clear distinction between Germans and Poles, and Greiser established the principle that entry into the German People's List was to be permitted only to people who could prove German descent of at least 50 percent.

* * * * *

DR. HAENSEL: In his People's List, Greiser determined that only people could be entered in this list who were German by 50 percent, is that correct?

DEFENDANT GREIFELT: Yes. That is correct.

Q. Was it the tendency of this German People's List to keep foreign elements at a distance and to allow only those elements to be naturalized of whom one assumed that they had German blood, as they expressed it?

A. The purpose of the German People's List was to eliminate from the German population the floating sector of the population—this floating sector which always tended from mere opportunism to join the stronger party.

Q. The word "floating sector" is new to us. So, does this word refer to areas with very mixed populations and to people who do not know or who do not want to know or change their idea to which of the two sectors they belong?

A. We may understand it in this way: In all border territories—I am recalling Alsace-Lorraine—there are such parts of the population; and in German you call these people the floating sector.

Q. You said that, in principle, questions of naturalization were matters for the Ministry of the Interior, is that correct?

A. Yes. That is correct.

Q. The prosecution has submitted a Document NO-3531. I will hand it to you. It is Prosecution Exhibit 93, volume 4-A, page 1.

(Document is offered the witness)

This is a decree of Himmler's regarding the examination and selection of the population in the Incorporated Eastern Territories. That is a decree by Himmler which is by right a matter for the Reich Ministry of the Interior. How does this come about?

A. Himmler at that time was not yet Minister of the Interior. He believed that as Reich Commissioner for the Strengthening of Germanism he was in a position to decisively influence these matters.

Q. Was it a decree?

A. It was a decree—

MR. SCHWENK: It's impossible for the prosecution to see how the witness can testify about intentions on another person, which he has done in several instances, and which extend this examination to a great extent.

PRESIDING JUDGE WYATT: Yes. I call counsel's attention to the fact that one of the things the Tribunal tried to emphasize Monday morning in its statement was that we are not interested in conclusions, hearsay, or opinions, and that time devoted to that feature of the testimony is simply wasted, because the Court will not consider it.

DR. HAENSEL: Did you at that time receive this document or did you see it here for the first time?

DEFENDANT GREIFELT: No. I know this document. It was also sent to the Plenipotentiaries for their information, but it was also a help for the Reich Minister of the Interior for publishing his basic decree.

Q. Was it a decree of Himmler's directed for instance, to your agency or to any other agency which had to be acted upon?

A. The document had no practical results. It was not binding, as it was out-dated by the decree of the Reich Minister of the Interior regarding the establishment of the German People's List.

Q. Did at any time any difficulties arise due to the differences in carrying out naturalization in the Gaue and from the introduction of the German People's List?

A. Yes. Difficulties arose in nearly all spheres of life because the different handling of the naturalization regulations caused a strong fluctuation within the population.

Q. Would you kindly give us examples of the different ways of handling this matter? I just told you that Greiser demanded that people who were to be naturalized were to be at least 50 percent German in their descent.

A. In contrast to this, we have the Germanization policy in the Gau Danzig-West Prussia.

MR. SCHWENK: Your Honor, I believe that this historical background of the German People's List to that extent is immaterial. The extent to which the defendants are charged with the establishment of the DVL is clearly defined in the indictment and these documents.

PRESIDING JUDGE WYATT: The Tribunal is inclined to the view that the reason why it was established, or what the results were from its being established makes very little difference. The question is whether or not this defendant had anything to do with it, and that is the sole question.

DR. HAENSEL: Did it happen that those people fluctuated, as you say, that is to say they changed their place of residence

because they were to be entered on the German People's List; or, on the contrary, did they want to have their names entered on the German People's List?

DEFENDANT GREIFELT: The German People's List was established on a voluntary basis, and the fluctuation was caused by the fact that the people wished to have their names entered on this list.

Q. At this first stage, did your agency have anything to do with the German People's List?

A. No. The directive establishing the German People's List was issued by the Reich Ministry of the Interior, and their offices had to supervise the carrying out of these directives.

Q. Before the recess we were discussing the DVL, the German People's List. Will you please tell us what the Supreme Court for Ethnic Classification [Oberste Pruefungshof] actually was and whether your agency had anything to do with it?

A. The Supreme Court for Ethnic Classification was established by an order of Himmler after it had been provided for in the decree by the Reich Minister of the Interior. Its establishment took place in agreement with the Reich Minister of the Interior. The office of the Supreme Court for Ethnic Classification was annexed to my agency * * *.

Q. Did your agency, to which the Supreme Court for Ethnic Classification had been annexed also, have anything to do with the lower agencies of the German People's List?

A. The Supreme Court for Ethnic Classification actually was not included in the business procedure. The Supreme Court for Ethnic Classification was working as a supervisory agency where fundamental questions were to be decided on. The composition of the Supreme Court for Ethnic Classification consisted of various representatives of the different departments and the administration was with my agency.

Q. With what agencies were the lower levels of the Supreme Court for Ethnic Classification located?

A. The three levels of procedure of the German People's List were with the authorities of the internal administration, i.e. the regional sub-prefects [Landraete] had the branch office; the government president had the district agencies; and the Reich Governor or the Senior President had the central office.

Q. Is this subdivided into three parts, into the district, the government district and the province, necessary in order to understand the German system of administration?

A. It is the basis of the organization of the entire German administration. In the Incorporated Eastern Territories, the

higher agencies were called Reich Gau and in Germany proper that corresponds to the term "province".

Q. Can you give us any reason for the fact that in the Supreme Court for Ethnic Classification, after three levels had been with the internal administration, that the fourth and highest level had been established in your office, and why it did not belong to the internal administration?

A. It was one of Himmler's principles that he would not leave decisions in one special field to one individual department of the Reich and he did not want to have one administration have the sole right of decision in any fundamental question. Himmler himself at the time had not yet become Minister of the Interior. If he had held that position at the time, then probably the Supreme Court for Ethnic Classification would have been incorporated into the Reich Ministry of the Interior. The people who reported for the DVL, the German People's List, were to be considered as Germans, and the care of all Germans was to be carried out by my agency and this consideration also may have been a factor in placing the Supreme Court for Ethnic Classification in my agency.

Q. Did the Supreme Court for Ethnic Classification meet frequently?

A. No. Under Himmler's chairmanship I believe two different sessions took place, and in the second set-up, when I presided, there were perhaps six terms.

Q. Can you tell us just how many cases would be decided on in the course of such a session?

A. The number might have been between 12 and 20.

Q. Therefore, the entire number of cases should have amounted at the most from 100 to 200?

A. I believe that the lower figure is more correct. However, I am unable to tell you that precisely.

Q. I am now going to put to you Document NO-4622, Prosecution Exhibit 98. You told us that the carrying out of the DVL, the German People's List, was the task of the Reich Minister of the Interior, with the exception of the agency of the Supreme Court for Ethnic Classification. I am now going to put to you the tentative positions in the formal Document NO-4622, Prosecution Exhibit 98. Were these handled within the Reich Ministry of the Interior or in your office?

A. This Exhibit 98 cannot be considered an executive regulation for the decree concerning the DVL. This letter provides for the collaboration of the agency of the Plenipotentiaries.

MR. SCHWENK: Your Honor, I believe the document speaks for itself as so many other documents, and if the defendant goes into

a discussion of this document and the others I will have to do the same thing in the cross-examination.

PRESIDING JUDGE WYATT: No. Neither one of you are going to do it. The document shows it for itself.

DR. HAENSEL: I believe that I am asking questions which show that other things happened which are not mentioned in the document.

PRESIDING JUDGE WYATT: You are not asking that, but what appears in the documents.

DR. HAENSEL: You call these executive regulations. Will you please give us a description of what the legal nature was in this case which was expressed here? Was it a decree, were they executive regulations in contrast with what is directly shown in the document?

DEFENDANT GREIFELT: This was directive—

MR. SCHWENK: I am sorry to object again. This is a legal question of administrative law. Whether it can be considered as an executive decree or not is not for the witness to say.

PRESIDING JUDGE WYATT: Yes. I think you are arguing out with the witness what you should argue out with the Tribunal. The witness doesn't pretend to be a lawyer as I understand it, and if he did, that is not the way to prove the law.

DR. HAENSEL: Who was the expert who worked on this document?

DEFENDANT GREIFELT: The expert was a Dr. Kirchert who worked under the supervision of Wirsich who was here as a witness. Actually Wirsich was at the head of the administration of the Supreme Court for Ethnic Classification.

Q. Can you now give us a reason for the fact that an expert from your agency and not an expert from the Ministry of the Interior was used in order to draft this document?

A. The registration in the DVL and the thus ensuing naturalization, whether it was a definite one or whether it was only temporarily and could be revoked, certainly had economic effects, which frequently led to differences with the resettlers who had been settled in the Incorporated Eastern Territories. Since all economic questions of the resettlers had been placed into the hands of my agency, my agency also had to settle these matters and make provisions for them.

Q. Will you please tell us that your agency did not have anything to do with this matter on account of naturalization, the DVL, but because due to the naturalization differences arose with your resettlers?

A. Above all my agency was confronted with the task of economics.

Q. Will you please describe this conflict to us. How did it come about? From what you have told us so far it does not become evident. Did the inclusion in the German People's List, the DVL, have any influence on economic matters which then came into conflict with resettlers?

A. The case could occur that resettlers were temporarily assigned to those enterprises which originally had been owned by persons who first of all were considered as Polish Nationals but who later on by virtue of the DVL procedure were recognized as being Germans. There were, of course, conflicts of interest in these cases between the two parties in question and these differences, of course, had to be settled according to reasonable economic points of view, and that was a task of my agency.

Q. In Document Book 4-B which you still have before you at this time you will find Document NO-4025, Prosecution Exhibit 102, on page 54 of the German text. This is a decree of Himmler about the racial examination of persons who were to be included in Group III. This is document book 4-A and not 4-B. Was this decree drafted by you or in your agency?

A. I cannot tell you that for certain but I don't think so. Probably this decree in its present form originated directly with Himmler. The racial selection of human beings according to racial and hereditary biological principles fundamentally came under the competency of the Race and Settlement Main Office. This Exhibit 102 also shows and establishes the competency of that office.

Q. If you will take a look at the next exhibit in order to refresh your memory, this is Document NO-4041, Prosecution Exhibit 103. The question of marriages between Germans and Poles is dealt with here. Did your agency handle the discussion and settlements of these problems?

A. Only from time to time did my agency take part in the preliminary discussions. I can remember quite well that approval for marriages and mixed marriages and prohibited marriages was discussed and that negotiations took place about them between the individual agencies. A leading part in this respect as far as I can recall was played by the Party Chancellery. I personally did not occupy myself with these questions because I consider regulations of that kind as being contrary to the laws of nature and therefore impossible and wrong, and finally there were more important things for me to do in my field of work than just to consider the possibilities of matrimony which had to be observed in all the details, and to put them down in the form of regulations. This order itself only came to my knowledge here when I studied the files.

Q. The document has a final note, it is a note about a discussion. Did you personally participate in any other discussions about the problem of intermarriages?

A. I cannot recall having attended any. I don't think so. I don't believe that I personally was ever present at such a discussion.

Q. The German People's List, the details of which will become evident from the documents, and which I shall now assume that they are well known to everybody, also contains a Group IV. Did you have anything to do with Group IV of the DVL, the German People's List?

A. In the General Decree 12/C it has been mentioned that a special order—

Q. May I interrupt you at this time. You over-estimate our knowledge of the documents. The Decree 12/C is a certain defined prospect for you. However, it would be recommendable here if you could record the exhibit; it is Document NO-4739, Prosecution Exhibit No. 99, if I am not mistaken.

PRESIDING JUDGE WYATT: Never mind, wait a minute. Don't prove by the witness what appears in the document itself. We can read. We will find out. Let him testify to any facts you want him to, but not what appears in the document.

DR. HAENSEL: It will only facilitate the case here.

PRESIDING JUDGE WYATT: We will handle that.

DR. HAENSEL: We are just discussing 12/C, and Group IV in that connection.

DEFENDANT GREIFELT: The general section 12/C provided that a special order in connection with the work of Group IV of the German People's List be issued. This order was issued, but it was not issued by my agency but through Himmler in his capacity as Chief of the German Police. The measures which were provided for in this order were not turned over for execution to my agency but they fell under the competency of the RSHA, the Reich Security Main Office.

Q. In your last statement you referred to Document NO-3091, Prosecution Exhibit 108 of document book 4-A, on page 73, or did you think of something else?

A. No. I was referring to the decree which has become Exhibit 108 here, and it was issued again under the letterhead which is liable to lead to wrong conclusions, on the letterhead "The Reich Leader SS and Chief of the German Police, the Reich Commissioner for the Strengthening of Germanism", and this decree also was only sent to my agency for information.

Q. You told us that fundamentally these questions were to be handled by the Reich Minister of the Interior and the business

management of the Supreme Court for Ethnic Classification had its own agency. Now we also find the Reich Security Main Office involved and dealing with the DVL. Why was the Reich Security Main Office included here?

A. Himmler and Heydrich considered the people who were registered under Group IV to be politically unreliable and sometimes they even considered them to be dangerous elements and people who had a hostile attitude towards the state. They probably believed that these uncertain elements could only be supervised by the police authorities, and things of that sort.

Q. Therefore, this was a part of the ethnic policy. Is this a technical term which was used at the time in the work of Himmler and the agencies which were subordinated to him? Did this play an important part there, and how were you involved in that problem?

A. When we hear the term "Volkstumspolitik", racial policy, we must also specially consider the racial policy with regard to aliens. And when this Group IV of the DVL, the German People's List, included persons who were considered to be dangerous or politically unreliable, they changed this over into the field of the policy in regard to aliens. This policy in regard to aliens or alien races unfortunately came under the influence of both Himmler and Heydrich and there it was a policy which came under the police, and was carried out with the big stick.

MR. SCHWENK: Your Honor, the witness was asked how he, or his office was involved in DVL-IV. I have not heard his answer as yet. There are two possibilities to answer this question.

PRESIDING JUDGE WYATT: Well, never mind about the possibilities. That is the witness' job. I would suggest to the witness to come a little more directly to the answer to the question. These preliminaries and detailed facts about what other people did and why they did it really doesn't illustrate anything. Just get down to the answer as to what your connection with the agency was and the question directed to you. We are not concerned with other people now.

DR. HAENSEL: May I help you to some extent. Would you say what was your attitude with regard to this policy, or what did you do in practice? Were you for it or against it? What did you do against it or what did you say on behalf of it?

DEFENDANT GREIFELT: I personally opposed this kind of racial policy and I already expressed that towards Himmler early in 1940. In this case I supported myself on the experiences which I had gained during the First World War with the population of the areas which were under discussion here. At the time Himmler criticized my ideas very severely in a very sharp voice and he

told me literally, and I quote, "Just please don't worry about things which are none of your business."

Q. I am now going to put NO-3092, Prosecution Exhibit 114 * to you, document book 4-B on page 1. Will you please tell us just what sort of document this is or whether this document came to your knowledge at the time, and whether you were able to take any steps against compulsory measures against people who refused to have their names entered in the DVL?

A. Exhibit 114 is a decree by Himmler—

PRESIDING JUDGE WYATT: Mr. Witness, when you tell us the document number and exhibit number, that is sufficient. Do not describe the document further. You can say anything you want to about the document except what it contains.

DEFENDANT GREIFELT (Continuing): It probably wasn't sent to my agency. However, the distribution list is not contained in the copy which I have in my hand here. Compulsory measures by Himmler against the people who refused to have themselves registered in the German People's List did come to my knowledge, but I was not able to take any steps against the will of Himmler which had been clearly expressed in this case. After all, this was an order which fell outside of my field of competence. This order again came under the field of work of the RSHA, the Reich Security Main Office.

DR. HAENSEL: Were these compulsory measures against residents of the area which, according to the Hitler Decree of 8 October 1939, had been incorporated?

A. These were measures against people of German descent who refused to have their names entered in the German People's List and who lived in the areas which you have just mentioned.

Q. Will you please take a look at the next document NO-1393, that is, Prosecution Exhibit 115, and at the same time will you look at Document NO-3096, Prosecution Exhibit 117? Did you play any part in the drafting of these documents?

A. Exhibit 115 only came to my knowledge here. This is a decree—

PRESIDING JUDGE WYATT: Well, never mind, Witness. He simply asked you if you had anything to do with the drafting of it. That can be answered very simply.

A. (Continuing) I had nothing to do with the drafting of this decree. Exhibit 117 did not originate with my office either.

DR. HAENSEL: Did you in any way belong to the local Gestapo agencies at Katowice?

A. I have never been a member of the police in any way and

* The document concerns a Himmler Decree quoted verbatim in NO-1393, Pros. Ex. 115.

I never had anything to do with the police authorities at Katowice.

Q. May I remind you of the fact that the witness Goetz once spoke about a meeting at Katowice and he alleged that on the occasion of a visit in other matters you became involved in a discussion which took place at Katowice. Could this have had anything to do with these exhibits?

A. It is quite possible that on the occasion of a visit when I took an official trip to Katowice from the circle of collaborators of Senior President Brach, some questions were also discussed pertaining to the DVL, the German People's List. After all, the people who dealt with this matter always liked to take the opportunity, in line with a larger discussion, to also discuss questions which had arisen in other fields. Therefore, it is quite possible. However, I cannot recall anything of that sort having happened. I cannot recall that when I visited the senior president, who at the same time was the chairman of the Central Office of the DVL for Upper Silesia, I discussed these matters with him.

Q. The prosecution maintains the point of view that the German People's List had served the purpose and was to serve the purpose that the manpower of the Reich should be increased for military service. Is that correct?

A. This concept already becomes absurd by the fact that the German People's List towards the end of the year 1940 was laid down in its main points and that it was introduced in March 1941. At that time, Germany did not have any requirements of additional men for military service, on the contrary, at that time a large number of German divisions were deactivated. And I also know that at that period of time my industrial friends were worried about just how they would be able to reconvert their enterprises to peacetime production because armament orders had been withdrawn and rescinded. That is why I believe that the German People's List could not have been based on the idea that a new recruiting reservoir was to be established.

Q. Were the people who came under Group IV to be conscripted for military service at all?

A. All people who came under Group IV could not be conscripted for military service.

Q. And how was it with Group III?

A. The people who were included in Group III came under the general conscription in Germany.

Q. Could one gain the idea that the ethnic Germans who had been included in Group III would be made to fight against their old homelands?

A. I don't think so because, first of all, the war with Poland was over and no combat actions took place against Poland any

more and, after all, these people had been formerly Polish nationals. Furthermore, these people volunteered for the DVL and, therefore, nobody could be forced to fight against their former homeland.

Q. In document book 4-A please take a look at Document NO-4689, Prosecution Exhibit 104 on page 61. Can you tell me now, did you know this document or did you see it here for the first time?

A. Did you say Exhibit 104?

Q. Yes. Exhibit 104, on page 61 of document book 4-A of the German text.

A. I know the document and I signed it.

Q. Did you dictate it or was it perhaps submitted to you for your signature? Could you recall just what the situation was?

A. The questions pertaining to military service and conscription problems were handled by the legal department and by office 1. In this case it was a matter which was handled by the legal department.

TRANSLATION OF GREIFELT DOCUMENT 32 GREIFELT DEFENSE EXHIBIT 32

DECREE OF THE FUEHRER AND REICH CHANCELLOR CONCERNING THE ORGANIZATION AND ADMINISTRATION OF THE EASTERN TERRITORIES, 8 OCTOBER 1939, REICH LAW GAZETTE, PART I, 1939

Excerpt from: Reich Law Gazette, Part I, Year 1939. Published by the Reich Ministry of the Interior, Berlin 1939, Reich Publishing Office. Published in Berlin, 18 October 1939, No. 204.

Page 2042.

Decree of the Fuehrer and Reich Chancellor concerning the Organization and Administration of the Eastern territories, 8 October 1939.

Section 1

1. In the process of reorganization of the Eastern territories the Reich Districts (Gau) of West Prussia and Poznan shall be incorporated as parts of the German Reich.

2. The Reich district shall be administered by a Reich governor [Statthalter].

3. The Reich governor in West Prussia shall have his official residence in Danzig; the Reich governor in Poznan shall have his official residence in Poznan.

Section 2

1. The Reich district of West Prussia shall be subdivided into the government districts of Danzig, Marienwerder, and Bydgoszcz [Bromberg].

2. The Reich district Poznan shall be subdivided into the government districts of Hohensalza, Poznan, and Kalisz [Kalisch].

Section 3

1. For the organization of the administration in the Reich districts, the statute concerning the organization of the administration in the Reich district of the Sudetenland (short title "Sudeten Statute") of 14 April 1939 (*Reich Law Gazette I*, p. 780), shall apply unless modified by this decree.

2. All branches of the administration shall be subject to the jurisdiction of the Reich governor. The Reich Minister of the Interior shall decide, in agreement with the Reich Minister concerned, upon the transfer of special branches of the administration to the existing Reich administrative agencies. Special agencies for the districts shall be subject to the jurisdiction of the regional subprefects [Landraete] until further notice.

Section 4

In the Province of Silesia the government district of Katowice shall be established by including parts of the adjoining territory, and the government district of Zichenau shall be established in the Province of East Prussia.

Section 5

1. The Reich Minister of the Interior in agreement with the Minister President of Prussia shall determine the administrative boundaries between the returned territories and the adjoining provinces.

2. The Reich Minister of the Interior shall issue organizational regulations establishing city and county districts as far as this becomes necessary from the reorganization.

Section 6

1. Residents of German blood or of racially related blood shall become German nationals in accordance with further provisions to be issued.

2. Residents of German origin in these territories shall become German citizens in accordance with the Reich Nationality Code.

Section 7

The law heretofore in force shall continue in effect unless incompatible with the fact of incorporation in the German Reich.

Section 8

The Reich Minister of the Interior may, by means of general orders, and in agreement with the Reich minister concerned, introduce Reich law and Prussian law.

Section 9

As to the territory of the former Free City of Danzig, the regulations laid down in sections 3 and 4 concerning the reunion of the Free City of Danzig with the German Reich (*Reich Law Gazette I, p. 1547*) are not affected by the above.

Section 10

The Reich Finance Minister, in agreement with the Reich Minister of the Interior, shall settle questions arising from the reorganization of the fiscal adjustment provisions.

Section 11

1. The Reich Minister of the Interior and the Reich Finance Minister of the agencies designated by them will issue regulations concerning fiscal adjustments which become necessary from the new order and the measures to be taken in connection with it.

2. The regulations laid down in section 1 shall establish the rights and duties of the parties concerned and implement measures by which property rights are transferred, restricted, and abrogated.

Section 12

1. The Reich Minister of the Interior shall be the official chiefly responsible for the reorganization of the Eastern territories.

2. He shall issue the general rules and regulations required for the enforcement and execution of this decree.

Section 13

1. This decree shall take effect as of 1 November 1939.

2. The Reich Minister of the Interior may, for specified areas, declare the provisions of this decree to be in effect at an earlier date.

Berlin, 8 October 1939.

The Fuehrer and Reich Chancellor
ADOLF HITLER

The Chairman of the Ministerial Council
for the Defense of the Reich
Field Marshal GOERING¹

The Reich Minister of the Interior
FRICK¹

The Deputy of the Fuehrer
R. HESS¹

The Reich Minister and
Chief of the Reich Chancellery
DR. LAMMERS²

TRANSLATION OF GREIFELT DOCUMENT 33
GREIFELT DEFENSE EXHIBIT 33

DECREE OF THE FUEHRER AND REICH CHANCELLOR CONCERNING
THE ADMINISTRATION OF THE OCCUPIED POLISH TERRITORIES,
12 OCTOBER 1939, REICH LAW GAZETTE, PART I, 1939

Excerpt from: Reich Law Gazette, Part I, Year 1939.

Published by the Reich Ministry of the Interior, Berlin 1939,
Reich Publishing Office.

Published in Berlin, 24 October 1939, No. 210.

Page 2077: Decree of the Fuehrer and Reich Chancellor concern-
ing the Administration of the Occupied Polish Territories,
12 October 1939.

In order to restore and maintain public order and public life
in the occupied Polish territories, I decree:

Section 1

The territories occupied by German troops shall be subject to
the authority of the Governor General of the occupied Polish
territories, except insofar as they are incorporated within the
German Reich.

Section 2

1. I appoint Reich Minister Dr. Frank³ as Governor General
of the occupied Polish territories.

2. As Deputy Governor General I appoint Reich Minister Dr.
Seyss-Inquart.³

Section 3

1. The Governor General shall be directly responsible to me.

¹ Defendants before International Military Tribunal. See Trial of the Major War Criminals, vols. I-XLII, Nuremberg, 1947.

² Defendant in case of U. S. A. vs. Ernst von Weizsaecker, et al., Case 11, vols. XII, XIII, XIV, this series.

³ Defendants before International Military Tribunal. See Trial of the Major War Criminals, vols. I-XLII, Nuremberg 1947.

2. All branches of the administration shall be directed by the Governor General.

Section 4

The laws at present in force shall remain in force, except insofar as they are in conflict with the taking over of the administration by the German Reich.

Section 5

1. The Cabinet Council for Reich Defense, the Commissioner for the Four Year Plan, and the Governor General may legislate by decree.

2. The decrees shall be promulgated in the *Verordnungsblatt fuer die besetzten polnischen Gebiete*.

Section 6

The Chairman of the Cabinet Council for Reich Defense and Commissioner for the Four Year Plan, and also the supreme Reich authorities, may make the arrangements required for the planning of German life and the German economic sphere with respect to the territories subject to the authority of the Governor General.

Page 2078

Section 7

1. The cost of administration shall be borne by the occupied territory.

2. The Governor General shall draft a budget. The budget shall require the approval of the Reich Minister of Finance.

Section 8

1. The central authority for the occupied Polish territories shall be the Reich Minister of the Interior.

2. The administrative decrees required for the implementing and supplementing of the present decree shall be issued by the Reich Minister of the Interior.

Section 9

1. The present decree shall come into force as soon as and insofar as I withdraw the order given to the Commander in Chief of the Armed Forces for the exercise of military administration.

2. Authority for the exercise of executive power shall be the subject of special provisions.

Berlin, 12 October 1939.

The Fuehrer and Reich Chancellor
ADOLF HITLER

The Chairman of the Ministerial Council for the Defense of the Reich and Plenipotentiary General for the Four Year Plan

Field Marshal, GOERING ¹

The Reich Minister of the Interior

FRICK ¹

The Deputy of the Fuehrer

R. HESS ¹

The Chief of the High Command of the Wehrmacht

KEITEL ¹

The Commander in Chief of the Army

von BRAUCHITSCH ²

The Reich Minister of Foreign Affairs

von RIBBENTROP ¹

The Reich Finance Minister

GRAF SCHWERIN VON KROSIGK ³

The Reich Minister and Chief of the Reich Chancellery

DR. LAMMERS ³

TRANSLATION OF GREIFELT DOCUMENT 63
GREIFELT DEFENSE EXHIBIT 63

OFFICIAL INFORMATION FOR MATTERS OF REICH INSURANCE
PUBLISHED BY THE REICH MINISTRY OF LABOR, REICH LABOR
GAZETTE, 1940

Extract from Reich Labor Gazette, Official publication of the Reich Ministry of Labor, the Reich Insurance Office, and the Reich Insurance Institute for Employees, Year 1940

Part II

Official Information for Matters of Reich Insurance
Published by the Reich Ministry of Labor

Verlag Otto Stollberg, Berlin W 9, Koethener Str. 28/29

Source: Office of US Chief of Counsel, Document Division Library.

20th year (New Edition) 1940 No. 1 Berlin, 5 January 1940

*Acquisition of German citizenship in the Eastern territories
incorporated into the German Reich*

(Circular Decree by the Reich Minister of Justice Ie 5501-39—
5000 Ost, dated 25 November 1939—RMBliV, page 2385.)

¹ Defendants before International Military Tribunal. See Trial of the Major War Criminals, vols. I-XLII, Nuremberg, 1947.

² Died 18 October 1948, while in British custody.

³ Defendants in case of U. S. A. vs. Ernst von Weizsaecker, et al., Case 11, vols. XII, XIII, XIV, this series.

(1) In accordance with paragraph 2 of the law concerning the reunion of the Free City of Danzig with the German Reich which law came into force on the day of publication, i.e., 1 September 1939 (Reich Law Gazette I, page 1547), citizens of the former Free City of Danzig will become German citizens according to specific regulations. Furthermore, paragraph 6 of the Decree of the Fuehrer and Reich Chancellor, dated 8 October 1939, concerning the structure and administration of the Eastern territories, (Reich Law Gazette I, pages 2042, 2057) which decree came into force on 26 October 1939, provides that the inhabitants of incorporated territories who are of German or related blood are to become German citizens according to specific regulations. Final provisions regulating the acquisition of German citizenship as a result of the reunion of the Eastern territories with the German Reich cannot be issued at the present time. Therefore, I issue the following temporary regulations until final legal regulations will be issued:

(2) German citizens are all those persons of German origin who—

1. held Danzig citizenship until 1 September 1939, or
2. held Polish citizenship until 26 October 1939 and who, at that date, belonged to the inhabitants of Greater Germany including the Incorporated Eastern Territories, or
3. after loss of Polish citizenship, remained stateless until 26 October 1939 and, at that date, belonged to the inhabitants of the Greater German Reich including the Incorporated Eastern Territories.

No. 3 also includes all those persons of German origin who were regarded as Polish citizens on the part of Germany but whose Polish citizenship was not recognized by Polish authorities and who, therefore, had to be treated as stateless persons. The question of whether or not a person is a member of the German people is decided by Circular Decree dated 29 March 1939 (*RMBliV*, page 783). Acquisition of German citizenship by persons mentioned under No. 1 took place by 1 September 1939 and by persons mentioned under Nos. 2 and 3 by 26 October 1939.

(3) Acquisition of the German citizenship by persons designated in paragraph (2) includes their wives as well. If, on the key day (1 September 1939 or 26 October 1939), a marriage had been dissolved by the husband's death, by divorce and so forth, the wife will be considered independently with regard to the acquisition of German citizenship. A married woman who in her own right complies with the conditions set out in paragraph (2) nevertheless does not acquire German citizenship unless her husband does.

(4) Children below the age of 18 on the key date (1 September 1939 or 26 October 1939) take on their father's citizenship, and if he is deceased or the children in question are illegitimate children, that of their mother. Orphans under 18 years of age and children who have reached their eighteenth birthday will be considered independently.

(5) Women and children who assume the citizenship of their husband or father, acquire German citizenship irrespective of whether they are ethnic Germans or not. But they do not participate in this change of citizenship if they are Jews or of other alien blood.

(6) All persons, who in accordance with the above acquire German citizenship in connection with the incorporation of the Eastern territories into the German Reich are to be registered separately. For this purpose they are to be issued 2 copies of a questionnaire of which a specimen copy has been enclosed.

* * * * *

(12) If the German ethnic origin of the applicant has been clearly ascertained and if all other conditions for the acquisition of German citizenship have been met, the appropriate offices will issue him the citizenship papers free of charge. The wife and every child are to be issued separate citizenship papers. Persons living abroad are to be issued a certificate of origin instead of the citizenship papers. This certificate is to be sent by the courier service of the foreign office to the consular authorities for the applicant's place of residence. A record is to be kept of all citizenship papers or certificates of origin according to instructions under paragraph 8. Citizenship papers and certificates of origin are to have a special entry showing that the holder acquired German citizenship as a result of the incorporation of the Eastern territories into the Greater German Reich.

* * * * *

The above-mentioned circular decrees of 29 March 1939 and 22 June 1939 are copied below:

a. Members of the German Race

(Circular Decree of the Reich Minister of Justice Ie 5062 IV/39—5000e of 29 March 1939—RMBIIV, page 783).

(1) The term "deutscher Volkszugehoeriger" (member of the German race) used in paragraph 1 of the German-Czechoslovak treaty dated 20 November 1938 concerning citizenship and option (Reich Law Gazette II, page 895) and the term "Volksdeutscher" used in Article 2 of the Decree of the Fuehrer and Reich Chancellor, dated 16 March 1939, concerning the Protectorate of Bohemia and Moravia (Reich Law Gazette I, page 485) both refer

to members of the German race; they only differ insofar as the term "deutscher Volkszugehoeriger" comprises German as well as foreign citizens, whereas Volksdeutsche are only members of the German race of foreign citizenship.

(2) All who call themselves members of the German race are "deutsche Volkszugehoerige" as long as this claim is confirmed by certain facts such as language, education, culture, etc. Persons of alien races, especially Jews, can never be deutsche Volkszugehoerige, even though they may have hitherto described themselves as such.

* * * * *

The Reich Minister of Labor
Ia No. 14193/39

Berlin, 13 December 1939

Information copy

All offices of the Reich Ministry of Labor are to be informed of the above decree.

By order

BOERGER

[Chief of a department in Reich Ministry of Labor]

3. RE-GERMANIZATION PROCEDURE (WED) (SLAVE LABOR COUNT)

a. Selections from the Evidence of the Prosecution

PARTIAL TRANSLATION OF DOCUMENT NO-5148
PROSECUTION EXHIBIT 138

EXTRACT FROM "ALLOCATION OF MANPOWER":¹ HIMMLER DECREE
17/11, 9 MAY 1940, CONCERNING POLISH NATIONALS ELIGIBLE
FOR GERMANIZATION, AND INTRODUCTORY REMARKS

D. Re-Germanization of lost German Blood

1. Utilization of Poles eligible for Germanization.

The removal of persons of alien race from the annexed Eastern territories is one of the most important aims to be achieved in the German East.² This is the cardinal national-political task which

¹ Official publication of the Staff Main Office of the Reich Commissioner for the Strengthening of Germanism.

² No reference is to be made here to the problems of economy and utilization of labor in connection with it. [Footnote in original.]

the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, will have to master in the annexed Eastern territories. When solving this task, which is most closely connected with the problem of nationality in the Eastern territories,* the racial selection is of superior and utterly decisive importance besides the viewpoints of language, education, and religion. Necessary as it is for a permanent purgation of the German Eastern territories not to allow the elements of alien origin living there to remain or become settled down, it is just as indispensable to regain for Germanism the German blood existing in these districts even in cases where the person concerned is Polonized in language and religion. Especially from these persons of Teutonic blood there accrued for the former Polish state, those leaders who ultimately bitterly fought against their own German folkdom—either from delusion or by willful or unconscious misunderstanding of their blood connection.

It is, therefore, an absolute national-political necessity to screen the annexed Eastern territories and later also the General Government for such persons of Teutonic blood in order to make this lost German blood again available to our own people. It may be of secondary importance what measures are to be taken against renegades. It is decisive that at least their children no longer belong to Poland, but that they are educated in German environments. A re-Germanization, however, can in no case take place in the hitherto Polish surroundings, but only in Germany proper or the Ostmark.

Thus, there are mainly the following two reasons which make the regaining of this lost German blood an urgent necessity:

1. Preventing a further increase of the Polish intellectual class from tribes destined to be Germanic, though Polonized.
2. Increasing of the racially desirable growth of the population for the German people and procurement of nationally biologically unobjectionable forces for the German reconstruction in agriculture and industry.

This task of the re-Germanization of lost German blood has first been handled by evacuating those Poles in the Warthegau who had to make room for the purpose of settling Baltic and Volhynic Germans.

For carrying through the necessary measures the following basic directives and decrees were issued:

Directive 17/II of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, dated 9 May 1940,

* Compare herewith the paragraph "culture politics—question of nationality." [Footnote in original.]

Directive of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, to the Higher SS and Police Leaders as deputies of the Reich Commissioner, dated 3 July 1940,

Directive of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, to the Higher SS and Police Leaders as deputies of the Reich Commissioner, dated 31 July 1940,

Letter of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, to the Reich Minister of Economy, dated 2 October 1940,

Letter of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, to the Reich Minister of Labor, dated 9 November 1940.

The above directives, which represent an extract from the total quantity of the work to be done in this respect, have the following wording:

Berlin, 9 May 1940

The Reich Leader SS
Reich Commissioner for the Strengthening of Germanism

Directive 17/II

Selection of Poles eligible for Germanization

Among the people of alien (not German) nationality in the annexed Eastern territories as well as in the General Government, there are often such who are eligible for Germanization on the basis of their racial suitability. I, therefore, ordered that a selection of the racially most valuable families of Nordic nature be made, according to directives issued by me, and I intend to put them into plants in the Old Reich. Since this is not a question of utilization of labor in the ordinary sense, but an extremely important national-political task, the accommodation of this group of persons cannot be done in the usual way through the labor offices. For this reason I entrust the Higher SS and Police Leaders in their capacity as my deputies for the Strengthening of Germanism with this task of the distribution of people and at the same time with the utilization of this group of persons.

In particular I arrange for the following:

1. The selection of the factories where these families of alien nationality are to be accommodated is made by the Higher SS and Police Leader who, for this purpose, will secure the assistance of the regional peasantry and labor offices. Only such factories

will be chosen where managers politically and educationally offer full guarantee that, with the utilization of these people, the aim of an early Germanization, for which we are striving, will be achieved.

2. The Higher SS and Police Leaders have to start immediately with the selection of the factories and have to report the addresses of the selected managers with the indication—

a. of the amount of living space at their disposal and the possible land grant,

b. of the kind of occupation (for instance milker, driver, etc.),

c. of the other conditions of labor (wages, and salaries, etc.), at once to the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, Berlin-Halensee, Kurfuerstendamm 142-143.

At the same time it should be endeavored to accommodate able-bodied sons and daughters, who are not necessarily needed in the same plant, in other, more distant places. Of course, a contact with other labor of alien nationality (for instance Polish seasonal workmen) is to be prevented if possible. I do not want to prohibit as a matter of principle, accommodation in plants where other labor of alien nationality is already employed; it is to be left to the Higher SS and Police Leaders to find the correct possibilities of a separation.

3. The assignment of the racially suitable persons of alien nationality to the plants reported by the Higher SS and Police Leaders is done by the Office of the Reich Commissioner for the Strengthening of Germanism.

4. It is the task of the Higher SS and Police Leaders, with the assistance of the competent offices of the Party and the State, to take care of the racially suitable persons of alien nationality utilized in their district and to watch the development of these families. The Higher SS and Police Leaders entrust with this task in particular the Gau Commissioners of the Repatriation Office for Ethnic Germans with their subordinate associations.

5. The police regulations issued on the occasion of the assignment of Polish agricultural laborers in the Old Reich with respect to distinguishing marks, curfew, etc. do not apply to the circle of these families of alien nationality selected according to racial viewpoints.

Since, for the beginning, I want to limit the settlement of these families to a few districts, this directive, for the time being, is only valid for the Higher SS and Police Leaders West (settlement only in Westphalia), Northwest, Rhine, Fulda-Werra, Southwest, South, Alps-District [Alpine region], and Danube.

[Signed] H. HIMMLER

TRANSLATION OF DOCUMENT NO-3076
PROSECUTION EXHIBIT 144

LETTER OF THE PROVINCIAL PRESIDENT OF UPPER SILESIA,
9 JUNE 1942, CONCERNING THE GERMANIZATION OF POLISH
FAMILIES

Copy

The Oberpraesident¹ of the province of Upper Silesia
O.P. I b 4-13a

Katowice, 9 June 1942
St 021a-Str I-610

[Handwritten initial and 16/6/42]

To the Regierungspraesident² in Katowice in Oppeln
Re: Germanization of Poles.

Aside from bringing persons of Group III of the German People's List into the German ethnic community, a great number of biologically valuable families of Polish descent, who are suitable and worthy of Germanization can be found in Upper Silesia.

To examine the suitability for Germanization, a commission of the SS Race and Settlement Main Office has started activities. By order of the Higher SS and Police Leader, SS Standartenfuehrer Scholtz has been put in charge of the biological examinations. In order to get an idea of the number of the apparently suitable families and to facilitate the examination by the commission with certain preliminary work, I request that the official commissioners and mayors in the annexed Eastern territories, especially in the Eastern districts, make a rough survey of families possibly suitable for Germanization. The survey is to be based on the enclosed instructions of the SS Leader in Race and Settlement matters with the Higher SS and Police Southeast. Proposals, which are to contain the personal information of those concerned (first and last name, date of birth, place of residence, profession) are to be routed continually over the regional sub-prefect or the lord-mayor to the office of the deputy of the Reich Commissioner for the Strengthening of Germanism—Department Manpower Utilization Katowice, 50 Krakow Street. In cases of proposed persons being rejected by the branch offices of the German People's List on account of their Polish nationality, the branch offices are to attach the applicable documents.

The Germanization of these families is to take place in Ger-

¹ Oberpraesident—Administrative head of a Prussian province.

² Regierungspraesident—Civil service rank, head of an administrative district (Regierungsbezirk) of a Prussian province.

many proper. Until their transfer, forced measures (i.e., resettlement or evacuation, forced change of residence, withdrawal of place of work) against families, slated for Germanization are prohibited, as far as they were granted certain privileges because of the pending People's List procedure, these should continue to apply except if the examination commission of the SS Race and Settlement Office has refused Germanization.

The transfer into Germany proper will be effected at a suitable time by the office of the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism.

I request that the lower administrative offices be instructed accordingly.

Copy for your information, with the request to instruct your offices accordingly.

As deputy:
[Signed] DR. FAUST
seal

Witnessed:
[Signed] Signature
Government Secretary

C o p y

To the Representative of the Reich Leader SS Reich Commissioner for the Strengthening of Germanism in Katowice, 50 Krakow Street.

Restricted

The SS Leader in Race and Settlement Matters with the Higher SS and Police Leader Southeast

Directions for the Germanization of Polish families.

The Germanization of families of other nationalities is done less in order to increase the German people numerically by persons of chiefly Nordic-Dinaric blood, but more in order to lessen qualitatively the leading class of the foreign people. Experience has shown that especially the Polish leaders of insurgents or even resistance movements have a considerable proportion of Nordic blood, which enables them to be active in contrast to the fatalistic Slavonic elements.

It is especially for the latter reason that the racially more valuable families are to be withdrawn from the Polish people and brought back into the German ethnic community, as being of German blood, even if that process of education in Germany proper might bear fruits only in the next generation. This, however, necessitates a careful selection of the families to be Germanized.

Proposals for Germanization, containing name and address, should originate with the offices of the People's List, the Party, or the SD and be addressed to the representative of the Reich Com-

missioner for the Strengthening of Germanism Department Manpower Utilization, Katowice, 50 Krakow Street; the following should be kept in mind by the inexperienced:

1. Preferably propose only whole families, because a good-looking individual is no evidence for his biological value.

2. The family must stand out by bearing, industry, cleanliness, and health, also under conditions of poverty, from among the remaining Polish *and* ethnic German population.

3. The family must make a well-balanced impression, racially and mentally.

4. Since a family suitable for Germanization has to be, racially speaking, above the average of the population of the same social strata, the Nordic-Dinaric blood must predominate, i.e., from the layman's point of view, that the family by virtue of their tall growth tower above the mass of the people.

5. Lacking knowledge of the German language or a political past are no obstacles for being proposed for Germanization, because those persons will be put under police supervision in the Old Reich [Germany proper] and receive only revocable citizenship.

[Signed] Signature

SS Colonel [SS Standartenfuehrer]

For correctness of copy

[Signature illegible]

Distribution:

All departments and district offices.

PARTIAL TRANSLATION OF DOCUMENT NO-5391
PROSECUTION EXHIBIT 791

REPORT FROM GREIFELT TO HIGHER SS AND POLICE LEADERS,
12 DECEMBER 1942, CONCERNING THE GERMANIZATION OF
INHABITANTS OF THE EASTERN TERRITORIES

File number II-I- 3-4 -9-1 Foe-La

Berlin-Halensee, 12 December 1942

Kurfuerstendamm 140

Phone: 977891

Subject: Allocation of persons from the Eastern territories, suitable for Germanization; in this case: punitive measures and exclusion from the procedure of re-Germanization.

To the Higher SS and Police Leaders

Alpine Region, Danube, Elbe, Fulda-Werra, Central Section,

Northeast, South, North Sea, Baltic Sea, Rhine, Spree, Southeast, Southwest, Warthe, Vistula, West and Westmark.

For information to:

1. The Chief of the Security Police and the SD
Berlin SW 11
Prinz Albrechtstrasse 8
2. The Chief of the SS Race and Settlement Main Office
Berlin SW 68
Hedemannstr. 84
3. The Leader of the branch Office of the SS Race and Settlement Main Office
Lodz
Landsknechtstr. 73
4. The Reich Commissioner for the Strengthening of Germanism, Repatriation Office for ethnic Germans
Berlin W 35
Keithstr. 29

A. From the beginning of the re-Germanization measures up to 30 November 1942, approximately 26,000 persons suitable for re-Germanization were allocated within Germany proper. A considerable part of that number has been working there for more than a year under the general supervision of the Higher SS and Police Leaders. Although the greatest care is being taken in the selection of persons suitable for re-Germanization, and in spite of the fact that agencies concerned are attempting to eliminate from the beginning all persons with hereditary diseases or with a criminal record and all elements to be considered undesirable for special reasons, it has been found over a long period of time that there are still a number of families and individual persons whose exclusion from the re-Germanization procedure appears indicated. I hereby issue the following general rules for exclusion from the re-Germanization procedure, in agreement with the Reich Security Main Office, the SS Race and Settlement Main Office and the Repatriation Office for Ethnic Germans:

- I. *For reasons of sickness* the following persons are to be excluded from the re-Germanization procedure:
 1. Unattached individuals who are suffering from hereditary or other diseases which make them permanently unfit for work and from whom healthy descendants cannot be expected.
 2. Individual members of households, under the same conditions as under 1 if the family is satisfied with having these individuals sent back (for instance old people, invalids, or children, who can live with relatives in the Eastern territories).

3. Whole households where the fact of hereditary diseases or incurable diseases have been established (for instance, severe cases of tuberculosis). In all other cases, even where there are members of households permanently unfit for work, that fact *per se* does not necessitate the return deportation of such persons. If necessary, children who have nobody to look after them are to be processed according to Ordinance 67-I of 19 February 1942 (file number: I-2-4-7-5 March 1942).

II. For *other reasons* the following persons are to be excluded from the re-Germanization process:

1. Unattached individuals whose character or attitude is inferior or who have a very bad criminal record.

2. Families whose psychological value does not conform with their physiological racial value, for instance cases of lazy or asocial elements, or cases where the mental capacities of the children are far below par or where the household of the family is not clean.

The opinion of the manager of the plant alone is not decisive in such cases; it will, rather, be necessary to consult also the local Farm League [Kreibauernschaft], the German labor front, the headmaster of the school. The racial examination will have to be rechecked by the SS Race and Settlement Main Office.

Return transportation is to be arranged for by the branch office Lodz of the SS Race and Settlement Main Office, which will be informed accordingly by the Staff Main Office by way of a statement of the facts of the case.

All these measures mentioned under A-I-II may only be initiated following a special sanction by the Staff Main Office. The Staff Main Office, at the same time, will inform the Branch Office of the Main Race and Settlement Office in Lodz.

B. *Processing of persons suitable for re-Germanization by the Security Police.* Security measures against families, individual family members or individuals suitable for re-Germanization will be taken by the competent Gestapo Regional Hqs.; requests for such measures may be made to them if necessary. Educational or penal measures for reasons of insubordination or a politically stubborn attitude do not necessitate the exclusion of the person in question, or his or her family from the re-Germanization procedure. The Staff Main Office is not to be concerned with the execution of educational and penal measures.

C. In cases where the exclusion of persons from the re-Germanization procedure is being ordered, care will have to be taken to secure all the *items of furniture* which have been put at their disposal and/or bought with the help of an economic grant. Such persons will also be compelled to surrender all identity papers is-

sued in connection with the granting of eligibility for re-Germanization.

Payment for the return transport to Lodz will be borne by the Reich Commissioner for the Strengthening of Germanism. The return transportation order to Lodz, approved by me, and which I shall issue in duplicate, will be attached to the request for payment.

Regulations will be issued in due time about exclusion from the re-Germanization procedure of evacuated members of the frontier population of Lower Styria, of members of Groups III and IV of the German People's List and of refugees from the Baltic countries of Group III.

The Chief of the Staff Main Office
[Signature] GREIFELT
SS Major General and Major General of the Police.

PARTIAL TRANSLATION OF DOCUMENT NO-1600
PROSECUTION EXHIBIT 153

EXTRACT FROM REPORT FROM HARDERS TO HOFMANN, 6 OCTOBER
1942, CONCERNING RESULTS OF THE GERMANIZATION PROGRAM

Race Office
C 2 Ha-O

Berlin-Lichterfelde-W, 6 Oct 1942
Baseler Strasse 13

[handwritten notes]

Rautenfeld

1. Type properly with several copies
2. To Dinse together with Contribution of the Settlement Office and index in question

[initial] H

To the Chief of the SS Race and Settlement Main Office
SS Major General [SS Gruppenfuehrer] Hofmann
Berlin SW-68, Hedemannstr 24

For the report of SS 1st Lieutenant [SS Obersturmfuehrer] Dinse on re-Germanization, I am sending on the enclosed copy of a summarized report on the present status of the re-Germanization measures which were arranged at the Race and Settlement—Fuehrer meeting.

From this survey, SS 1st Lieutenant Dinse will be able to take the necessary material for his report, since he is certainly basically informed on the problem from his long service on the staff of the regional office at Lodz.

The report and survey are to be used merely for his personal information. It seems indicated to request their return.

The Chief of the Race Office in the
SS Race and Settlement Main Office

By order:

[Signature] Harders
SS 1st Lieutenant

Survey of the Field of Work of Department C 2 (Re-Germanization)
SS 1st Lieutenant Harders
Situation as of 25 Sept. 1942

Statistical Survey
(Situation as of 31 July 1942)

The following are undergoing Germanization:

Poles	13,137
Slovenes	4,982
Fugitives from the Baltic	2,264
Group III DVL [German People's List]	550
	<hr/>
	20,933

1. *Germanization of the Poles*

The branch office Lodz has prepared a report on the unification of the proposal for and registration of persons suitable for re-Germanization. It is intended to carry out a simplification of the procedure and above all to prevent double registrations. The simplification of the procedure according to this report is to be approved throughout. It is thereby pointed out that much work will be saved as well, in that, an applicant will be excluded from the outset on the basis of subsequent racial investigation, and thereby further burdening of the individual offices will be saved. The absolutely necessary intervention of the Reich Security Main Office is not provided for. For tactical reasons, it seems necessary to anticipate the intervention of the SD, so that the supervision of the Reich Security Main Office in this work can be minimized.

2. *Re-Germanization of Ukrainians and stateless persons*

The Staff of the Main Office asked that a stand be taken on the question of the re-Germanization of Ukrainians and stateless persons. Since the decision on suitability for re-Germanization must absolutely be made on the basis of family assessment, the race office has taken the attitude that, to begin with, Ukrainians and stateless persons should not be included on principle, thereby avoiding a large-scale extension of the Germanization procedure hitherto practiced, as it is impossible to carry out this examination of families in the Ukraine at present. No objections are raised to including in the re-Germanization process families of

Ukranian nationality or stateless persons who are resident in the Reich and hence available for examination. But altogether our aim must be to extend the re-Germanization procedure even to these cases.

3. *Protectorate of Bohemia and Moravia*

Enclosed reference FS-RF

a. *Report of the Director of the Branch Office.*

b. *Mixed marriages between Germans and Czechs.*

As was stated, the Reich Security Main Office has intervened with the Reich Ministry of the Interior in the permit procedure for mixed marriages between Germans and Czechs. The Reich Security Main Office makes its decisions on the basis of the racial verdict given by the official doctors. A move is on foot on the part of the race office to place these decisions in the hands of the Race and Settlement Main Office as the competent office of the Reich Commissioner for the Strengthening of Germanism. In a personal discussion, however, on this subject, the necessity for the intervention of the Race and Settlement Main Office was not conceded on the part of the Reich Security Main Office.

4. *Lower Styria and Carinthia*

The intervention of the Race and Settlement Main Office in the procedure for establishing the eligibility for Germanization was difficult from the start insofar as it was effected subsequently. Difficulties still arise today in subsequent deportations insofar as the Repatriation Office for Ethnic Germans [Volkdeutsche Mittelstelle] is unable to give any information on the grade of nationality and political assessment. Henceforth, it is laid down with the Repatriation Office for Ethnic Germans that before the Race and Settlement Main Office carries out a racial examination process, the grade of nationality has been established by the Repatriation Office for Ethnic Germans and made known to the delegate of the Race and Settlement Main Office before the inquiry. Those declared eligible for Germanization will be dealt with under the Germanization procedure. A subsequent withdrawal will not be ordered should individual families be declared ineligible for Germanization on the grounds of a later political assessment.

5. *Alsace, Lorraine and Luxembourg*

a. *Deportations.* Deportations or evacuations are at present being carried out in Alsace of people whose nationality is politically unacceptable within the boundaries of the Reich. The Race and Settlement Main Office is intervening in order to establish whether, in the case of persons of German race, these represent a racially desirable increase on the population or the reverse. The racially valuable families are intended for settlement in the East, the racially acceptable will be resettled in Germany proper,

while the racially inferior will be evacuated to France. In addition it is intended that colored people and Jews be evacuated to France, also people of foreign blood. The deportation of the indigenous population is, on principle, to be postponed until after the end of the war. On the whole, these cases of deportation are confined only to the section of the community whose deportation is now already necessary. The same measures for deportation are now in operation in Lorraine and Luxembourg.

b. Nationality. On the basis of the decree on nationality in Alsace-Lorraine and Luxembourg of 23 August 1942, the Race and Settlement Main Office as the competent office of the Reich Commissioner in these three countries is the prime agent in establishing the group of persons who are barred from receiving German nationality. Similarly for the enforcing of the withdrawal of nationality as well as a premature cancelation of the withdrawal.

6. Position of persons eligible for Germanization according to constitutional law.

a. Contracting of marriage. Before contracting marriage, persons eligible for re-Germanization require a permit from the competent Chief of the Higher SS and Police—see Order of Staff Main Office, 28 July 1942. Females acquire German nationality through marriage with a German national. They are released from the care of the Higher SS and Police Leader and transferred to the care of the competent District Hq. [Kreisleitung] of the NSDAP. Reich German women actually lose their German nationality through marriage with persons eligible for re-Germanization (also stateless persons and inhabitants of the Reich not belonging to the German race). In order to remove this impossible state of affairs, a suggestion is being submitted at present by the Staff Main Office at the instigation of the Race and Settlement Main Office, whereby German nationality may be conferred upon persons eligible for Germanization on the proposal of the Higher SS and Police Leader after they have furnished proof that they are unobjectionable, in order to raise them thus from the category of protected persons from the point of view of constitutional law. Use should only be made of this possibility of a proposal by the Higher SS and Police Chief, however, in cases where proof has been furnished and necessity (for example, marriage) exists. It would not be justifiable to place the racially selected in a worse position than, for example, those belonging to Group III of the German People's List, on whom German nationality will be conferred immediately subject to withdrawal. Furthermore, this measure entirely serves to further the Germanization process. The Race Office has voiced the claim with the Staff Main Office to have

a say in the sanctioning of marriage contracts by the Higher SS and Police Leader. By this means, the possible marriage of racially selected persons to persons of inferior racial value is to be avoided.

b. *Leave.* The Staff Main Office, in conjunction with the Reich Security Main Office has, against its own conviction, issued an order whereby young people who are alone may, on application, be allowed to spend their lawful sick leave with their parents or relatives in the East. The granting of leave is undesirable *per se*. On the proposal of the Reich Security Main Office, the families of these young people who are alone in the Reich are also to be subsequently examined as soon as possible.

In the future, all further Germanization of such individuals is to be suspended as much as possible. A few recent cases emphasize the urgency of this necessity. (Subsequent withdrawal of persons eligible for re-Germanization, Zaczeki case.)

* * * * *

PARTIAL TRANSLATION OF DOCUMENT NO-3996
PROSECUTION EXHIBIT 804

EXTRACTS FROM REPORT SIGNED BY CREUTZ, 25 MARCH 1943,
CONCERNING THE RE-GERMANIZATION OF RACIALLY VALUABLE
PERSONS

The Reich Commissioner for the Strengthening of Germanism
Staff Main Office

Berlin-Halensee, 25 March 1943

[Rubber Stamp]

Personal Staff Reich Leader SS File Administration
Secret File No. 304

II/I-3/4 Dr. B./St.-Ma

Report regarding the procedure of the re-Germanization
of racially valuable persons

I. For the allocation of persons capable of being re-Germanized in Germany proper, a specially outlined procedure has been established in order to make sure that the aim of the Germanization will be actually achieved.

1. The selection of the persons is made by the branch office of the SS Race and Settlement Main Office, Litzmannstadt [Lodz].

2. The persons found suitable for being Germanized will be turned over to the individual Higher SS and Police Leaders in Germany proper according to the plannings to be drawn up by the Staff Main Office.

3. The Higher SS and Police Leaders are competent for the selection of the work assignments. They are willing to consider

proposals of other offices also (District Directorates, National Food Agricultural Estate, labor offices); the definite decision, however, is theirs exclusively.

4. The families suitable for Germanization will, after their transfer to Germany proper, first be lodged for a short period in transit camps, which are subordinated to the Higher SS and Police Leaders. At these camps, a thorough examination takes place, in order to find out for what kind of the approved work assignments the individual families are best suited.

5. According to section 4 of the Decree 17/II of the Reich Leader SS of 9 May 1949, it is the duty of the Higher SS and Police Leaders, to pay careful attention to the families allocated to their territory and to watch the development of these families, in collaboration with the competent authorities of Party and State. The Higher SS and Police Leaders are to make special use of the services of the Gau deputies of the office for the repatriation of ethnic Germans and its subordinate units for the execution of this task. Until 31 January 1943, 14,592 persons from the former Polish territories have been selected by the branch office of the SS Race and Settlement Main Office and were transferred into Germany proper. According to professions they were distributed in the following manner:

Agriculture	10,678
Trades	2,937
Households	977

II. The Staff Main Office is not able to concur fully with the statements of the Reich Security Main Office regarding the willingness to be Germanized. According to experiences gained here, the willingness to be Germanized is lowest in such persons who came to the Reich as single individuals, and whose families were left behind in the Eastern territories. We may draw attention to the report made on 18 April 1942-I-3/4-3 (26 March 42) regarding the allocation of housemaids, capable of re-Germanization. A low degree of readiness to be re-Germanized also prevails in those who left behind larger properties. Although they cooperate, perform their work satisfactorily, and remain quiet, they still hope that they will be able to return some day to their own homestead and farm. By virtue of a property compensation as ordered by the letter of the Reich Leader SS of 14 January 1943-Diary No.: 47/29/43, these difficulties will be eliminated in the future.

According to the report of the Reich Security Main Office, there are among the persons suitable for re-Germanization a greater number who have lived already in their countries of origin under German cultural influence and who are, therefore, perfectly willing to be Germanized. Inasmuch as it can be established that such

persons are partly of German origin and, therefore, are eligible for the German People's List, the procedure of enrolling in the German People's List will be inaugurated by the Higher SS and Police Leaders.

III. The Higher SS and Police Leaders have been instructed again and again about the importance of careful selection of managers. Every manager is informed by printed instructions and by oral advice how to treat the persons suitable for Germanization. Before a family is placed, the responsible experts will check the living quarters available and see to it that the necessary furniture is being supplied. Unfortunately, it is impossible to solve now during the war the lodging and furniture problem to the fullest satisfaction. However, the experts of the Staff Main Office could convince themselves repeatedly that the Higher SS and Police Leaders did their utmost in order to secure fair living conditions for the families suitable for Germanization, and that partly, these conditions were even better than those for the ethnic German resettlers, so that the Staff Main Office decided to transfer the allocation of the A-Cases also to the competence of the Higher SS and Police Leaders. In the course of almost three years of activity, they had extensive experiences in the field of the allocation of persons suitable for re-Germanization. Despite the housing shortage throughout the entire Reich territory, they were again and again successful in obtaining living quarters for the families assigned to them. Especially the Higher SS and Police Leaders Southwest, Stuttgart and Fulda-Werra, Kassel gave a shining example regarding the allocation as well as the care of the persons suitable for re-Germanization. Otherwise, it is emphasized that the care of the persons suitable for re-Germanization shall not degenerate into an exaggerated kind of welfare. It was also often necessary to discipline some obstinate persons in the harshest manner and to keep them in line through the use of compulsory measures.

* * * * *

VI. It can be stated that the great mass of persons included in the re-Germanization procedure has proved itself worthy in every respect and that thereby a valuable increase, especially for the German agricultural workers, was gained. If there still exists, as is understandable, a lack of *willingness* for re-Germanization, it is nevertheless to be expected that the next generation, on account of its racial orientation, will have almost completely merged with Germanism. The care and education of juveniles is, therefore, considered the main task in the procedure of re-Germanization. The schooling of the children has been regulated already by the Decree of the Reich Ministry of Science, Education and Popular Instruction of 5 July 1941. Special agreements have been made

with the Reich Youth Leadership. The juveniles suitable for re-Germanization will be enrolled in the Hitler Youth and will be concentrated in camps for a special period of several weeks.

VII. According to the Decree 17/II of the Reich Leader SS of 9 May 1940, the persons suitable for re-Germanization should be detached from their previous environments and brought into purely German surroundings. The local offices in the Eastern territories, especially the Gauleiter and Reich Commissioners of the Warthegau and of Danzig-West Prussia, are opposed to this principle. As reasons for their objection they mention the lack of manpower in their respective provinces [Gau] which prohibits a further decrease of valuable workers. Furthermore, the Gauleiter and Reich Commissioner of the Warthegau asserts that it will not be possible for a considerable time to come to remove all Poles from the Warthegau, and that, therefore, the Polish elements suitable for Germanization would have to remain in his Gau, so that later on he may be able to deport, at least all racially inferior Poles.

The SS Race and Settlement Main Office and the Staff Main Office contrasted these requests with the unequivocal order of the Reich Leader SS according to which the persons capable of re-Germanization must be brought into purely German environments. Only for reasons of labor allocation—inasmuch as considerable interruption of production important for the war effort would arise—families suitable for re-Germanization have been temporarily left in the Eastern territories. However, they have been earmarked for a future transfer into Germany proper. The number of persons who have been transferred to Germany proper by the Branch Office Lodz of the SS Race and Settlement Main Office has recently considerably decreased, due to the lack of racial examiners and to other difficulties caused by the war conditions.

VIII. The opinion of the Reich Security Main Office that the allocation of Slovenes, suitable for re-Germanization has turned out to be much more difficult than that of Poles, cannot be agreed with. On the contrary, all Higher SS and Police Leaders report that they prove themselves to be good workers, are diligent and clean and, apart from a few exceptions, willingly fit into the prevailing conditions. It must be admitted, however, that the very long duration of their stay in camp, in some cases, does not influence in a favorable way the aptitude of the families.

On the basis of the Decree 34-1 of the Reich Leader SS of 4 June 1941, 10,121 persons have been transferred to Germany proper until 31 January 1943 to work and live there.

Approximately 6,500 Slovenes, who are still in camps, are at

present available for allocation in the district of Lublin. The question of how many of the already definitely allocated families are to be taken out again from their work assignments and transferred to the East is to be examined only when the Settlement Staff Lublin has already disposed of all persons still in the camps. Until now, no Slovenes have been allocated in the Lublin district, although approximately 800 persons have already been waiting in Lodz for their resettlement, since December of last year. At present, all Slovenes suitable for Germanization are processed and naturalized by a mobile commission of the immigration center. According to reports of the immigration center, the Slovenes have an aversion against settlement in the Lublin district. They try to influence the immigration center by all means, so that they will not be declared worthy of settling in the East. Among the Slovenes already settled in Germany proper, a strong uneasiness can be observed also.

By order

[Signature] CREUTZ
SS Colonel [SS Oberfuehrer].

TRANSLATION OF DOCUMENT NO-1404
PROSECUTION EXHIBIT 163

LETTER FROM HOFMANN TO SCHULTZ, CHIEF OF THE RACE OFFICE,
12 FEBRUARY 1942, CONCERNING THE SEPARATION OF POLISH
CHILDREN FROM PARENTS WHO RESIST GERMANIZATION

The Chief of the Race and Settlement Main Office SS.
H./Sp.

Berlin, 12 February 1942

Subject: Report to the Reich Leader SS on 9 and 10 February
1942.

To the Chief of the Race Office, SS Colonel [SS Standarten-
fuehrer] Professor Dr. B. K. Schultz, in the building.

The Reich Leader has mentioned that the members of Group IV
of the German People's List should be examined from a racial
point of view.

On another occasion SS Major General [SS Gruppenfuehrer]
Greifelt was ordered to submit a directive according to which
Poles fit for Germanization who make special difficulties, are to
have their children taken away from them. These children are to
be sent to special homes, etc. The Reich Leader expects an es-
pecially educating effect from this measure.

The Chief of the SS Race and Settlement Main Office

[Signed] HOFMANN, SS Major General
[Initials illegible] 12 February 1942

PARTIAL TRANSLATION OF DOCUMENT NO-5837
PROSECUTION EXHIBIT 846

DUTY TRIP REPORT 13/44 BY SS SERGEANT RATZEBURG,
23 OCTOBER 1944

Wiesbaden, 23 October 1944

Reinhold Ratzeburg, SS Sergeant
[SS Oberscharfuehrer]
and Racial Examiner 154

Duty Trip Report 13/44

Racial Examiner

Examined area

Examined Files

Duration of the trip

SS Sergeant R. Ratzeburg.
Mainz, Bingen, Alzey, Worms,
Speyer, Neustadt and Bruch-
muehlbach.

Interruption of pregnancy, special
treatment, marriages, marriages
of foreigners and re-Germaniza-
tions.

From 16 October 1944 to 21 Octo-
ber 1944.

I. Health Office—Mainz on 16 October 1944 at 0830 hours

1. Interruption of pregnancy—

- a. Polish woman Anna Gedzun W.n.o. 5 d B II – RuS IV, Begetter according to picture: N.f.ob. 5 c A III–RuS II. Of no interest!
- b. Eastern worker Natalij Michajlawa, O.w.n. (–?) 4 d B II–RuS IV Begetter Ob.o.d. 4 d B II RuS IV, no objection to interruption.
- c. Sadowska, Nasarenko, Krawtschuk, Ryleisziowa, and Musial did not appear!

II. GESTAPO branch office—Mainz on 16 October 1944 at 1400 hours

1. Special treatment—

- a. Tracewicz, Anton-Rasp, Maria, T. was N.ob.o (w?) 5 c/d B I–Rus III (See DRB 10/44 V3a)
- b. Nitka, Wladislaus, n.d.ob. (w?) 4 c A III–RuS II, wants to join the Waffen SS. [handwritten] Report

III. Health Office—Bingen on 17 October 1944 at 0800 hours

1. Interruption of pregnancy—

- a. Anna Orlowa, already sent to hospital-Alzey for delivery on 13 October 1944.

IV. Health Office—Alzey on 17 October 1944 at 1600 hours

1. Interruption of pregnancy—

- a. Eastern worker Anastasia Kulik, N.ob.w. 4 c/d B I–RuS III, Slavic type! No objection to interruption.

- b. Eastern worker Galina Gorew and Lithuanian Genofefa Kuljalyte did not appear. The letters of 9 October 1944 had not arrived yet after telephone conversation with mayors. In future information must be mailed at least two weeks in advance.

V. *Health Office—Worms on 18 October 1944 at 0800 hours*

1. Interruption of pregnancy—

- a. White-Ruthenian woman Maria Bartoschenitsch, W.o. (Va?) 4d B II—RuS IV(F?), Begetter: N.ob. 5 c/d B I — RuS III, no objection to interruption.

2. Marriages—

- a. Fleming van Poucke-Magdalena Brunner, P. was N.o.w. 5 c A III-RuS II; B. was N.f. 5 c A III-RuS II.
b. van der Mey-Colin, v.d.M. was N.d. 6 b A II-RuS I, according to pictures family is also RuS II.
c. Romanian German Franz Hans-Louise Schweizer, H. is N.ob. d.o 5 c/d B I — RuS III, Sch. N.d. 5 c A III-RuS II. According to picture of the family.

[handwritten] Consultation!

H. does not fit in at all. 2 brothers are with the Waffen SS. The brother Georg for instance is N.f.d. 5 c A III-II and the brother Josef N.? — 7? b A II-RuS I.

- d. Rysdyk. Spindler, the fiancé is sailor and always at sea, Sp. is F.ob. 5 c A III-RuS II.

3. Marriages of foreigners—

- a. Stateless former Greek Wladimir Karpi-Elisabeth Westerweiler, K. is F.ow. 5 c A III-RuS II, Father according to picture F ? — RuS II and mother N ? -RuS II; W.-N.d. RuS II.

4. Re-Germanization—

- a. White-Ruthenian Alexander Dolbilow with wife Nina and child Leo, D. is N.D.ob.f. 5 c A III-RuS II, gives a quiet balanced impression, bearing good. Honest. Wants to join the Waffen SS. (Report to Recruiting Office!) He worked with the German army all through the eastern campaign. Wife Nina nee Korenkowa, N.ob. 6 c A III-Rus II, very honest straightforward character, very clean, generally valuable, would very much like to be re-Germanized! Son Leo N.D.o.w.? 5 c A III-RuS II, alert, clever child, honest! Entire family good.

[Marginal note, handwritten] Recruiting Office

- b. Vera Marsurkewitsch has not appeared for a second time! Apparently is not interested in re-Germanization pro-

cedure, because according to statements made by the family Dolibow M. said that she would return to Russia at the end of the war. Decision to be reached by RuS Leader!

[Marginal note, handwritten] File.

- c. Alois Przybyl, did not appear! (Second time.)
- d. Josef Polak did not appear for a third time!
- e. Marta Gruenwald did not appear!
- 5. German People's List. Naturalizations—
 - a. Agnes Korab did not appear for a second time!
 - b. Sigmund Wawrzak did not appear for the 4th time! Air raid!

VI. Health Office—Speyer on 18 October 1944 at 1600 hours

Could not be visited because of constant air raids and communication disturbances. Telephone connections not possible.

VII. Health Office—Neustadt on 19 October 1944 at 1000 hours

- 1. Marriages of foreigners—
 - a. Stateless former American citizen and former Reich German Helena Jacque, D.n.w. (f?) 5 c A III—RuS II. Parents and grandparents are and/or were Reich Germans. Father took out American citizenship papers in order to keep his position in the States. Fiance killed in Italy with the rank of sergeant on 26 January 1944. According to picture: Father N.d. RuS I—II, mother: D.n.w. II. Mother's sister D.n.—II. Interruption of the examination because of constant air raid.

VIII. Gestapo branch office—Neustadt on 19 and 20 October 1944

- 1. Special treatment—
 - a. Stanislaus Adanczyk, N.o.ob, 4 c/d B I—RuS III, missing documents will be sent later.
 - b. Kasimir Twordo, N.o.ob. 4 c/d B I—RuS III. German partner Irene Enders, N.d.o. 5 c A III—RuS II.
 - c. Edward Wolkanin, F.ob.n? 5 c A III—RuS II, honest, alert, clean appearance.
- 2. Interruption of pregnancy—
 - a. Polish woman Katja Susak, Wo.o. 4 D B II—IV and begetter N.o.ob. 5 c A III—II, no objection to interruption.
- 3. Children of Eastern workers—
 - a. Ukrainian Maria Horodeczna, did not appear, already released from imprisonment, is to appear again before the Gestapo-Neustadt.
- 4. Marriage of foreigners—
 - a. French Loisel-Thiery, did not appear. To be asked again to appear!

IX. Mayor's Office—Bruchmuehlbach on 21 October 1944

1. Interruption of pregnancy—

a. Polish woman Blaszyak—Frenchman Meunier, B. is F.o.ob.n? 5 c A III—RuS II; M. is D.w.n. 5 c A III RuS II. For the time being I have opposed interruption of pregnancy. B. has a generally good honest character, clean. M. is married in France and has two children but wants to have a divorce from his wife, because he allegedly cannot live with her anymore. He is now a civilian worker. Otherwise, honest, straightforward character.

2. Children of Eastern workers—

a. Polish woman Maria Perembska—Frenchman Julien Dantu, P. is N.Ob. 4 c/d B I RuS III, D is D.Ob.n. 4 c/d B I - RuS III. Of no interest.

[Signed] RATZBURG
SS Sergeant

PARTIAL TRANSLATION OF DOCUMENT NO-3737
PROSECUTION EXHIBIT 164

LETTER TO THE HIGHER SS AND POLICE LEADER CENTER, 10 SEPTEMBER 1941, CONCERNING THE GERMANIZATION OF A POLISH FAMILY NAMED FORTUNA

* * * * *

Doe/H

10 September 1941

Subject: The Fortuna family suitable for re-Germanization with L. Voigt, farmer, Brockhoefer, District [of] Uelzen.

Reference: Your letter of 26 August 41.

To the Higher SS and Police Leader Center, Deputy of the Reich Commissioner for the Strengthening of Germanism Brunswick, Landtag [Diet] Building.

SS Captain [Hauptsturmfuehrer] Doerhoefer has visited the Fortuna family with a woman interpreter from the employment office of Uelzen. The impression was gained that the farmer Voigt is not to blame with regard to the conduct of the Fortuna family.

The Fortuna family refuses to sign the contract, presented by the farmer, of payment in kind for their work, giving as reason that they desire to return to their farm in Poland. When Captain Doerhoefer talked them out of this, they offered to sign the contract, but only after the war. It is beyond all doubt the family has no interest in becoming German, but always retained the desire to return to their farm in Poland once we lose the war.

They have not put in a complaint over the treatment they received at the hands of the farmer. They refuse the land which was allowed them in tenancy as part of the contract, and they likewise refuse to keep live stock. When asked whether they wished to be

transferred to a different farm with some other farmer, they declared that they would prefer to remain with Voigt. They kept insisting on going back to Poland. A transfer would thus have no satisfactory result in this case. The family has no ambition to get ahead. The farm proprietor had to use compulsion to get them to cultivate the small vegetable garden for their own use. They could improve their living quarters with regard to furniture, but they do not want to. They refuse to keep hogs on the grounds that slaughtering is not permitted. They likewise refuse to consider cultivating the land which they were to work as tenant farmers, giving as a reason the lack of fertilizer. These are all hair-splitting excuses; the family simply lacks the desire.

Frau Fortuna asked permission for the return to the family of her son who is still with the Franz Sirtek family, at Dabrowka, Kreis Loewenstedt. The son was born on 30 April 1933 and stayed back at the time because of sickness. She insists on fetching her son herself and firmly rejects our offer to send him to her by a transport. She wants to pay the travel expenses herself and to go there after the beet harvest. The only reason she gives for wanting to go in person is that she fears her son would be deported on our transport.

The 17th SS Standarte now advises that either the family be left with Voigt or be sent back to Poland; but that a transfer must not be made under any circumstances.

The impression made on the whole by the family is very good. The children and the woman look like Germans. The man, however, in contrast to the woman, is very sluggish and lazy, and gives an impression of deceitfulness.

It seems that the Fortuna family corresponds with the Franz Sietek family, who seem to egg them on in this attitude. Frau Sietek is the sister of Frau Fortuna!

By order

[initials] DOE
SS Captain [SS Hauptsturmfuehrer.]

* * * * *

TRANSLATION OF DOCUMENT NO-2481
PROSECUTION EXHIBIT 158

LETTER FROM GREIFELT TO HIMMLER, 2 AUGUST 1941, CONCERNING
POLISH FEMALE DOMESTIC SERVANTS SUITABLE FOR GERMANI-
ZATION

The Reich Commissioner for the Strengthening of Germanism
Staff Main Office

[Stamp]
Personal Staff Reich Leader SS
Document Administration 1653/IG [?]
Berlin-Halensee, 2 August 1941
Kurfuerstendamm 140
Telephone: Central Number 963991

I-3/4/3 (7,8.40) Dr. B/Er.

In reply, please refer to above file number and date.

Subject: Mobilization of (female) household personnel suitable for Germanization.

Reference: Your letter of 10 July 41, Journal No. 39-28-41

Enclosure: 1

To Reich Leader SS

Berlin, SW 68, Prinz-Albrecht Str. 8

After conferring with the Chief of the Reich Security Main Office and the Chief of the Race and Settlement Main Office of the SS, I take the following position with regard to the above letter:

It has always been the aim of the offices concerned to direct the girls, from among the persons suitable for Germanization, primarily into agriculture and household service. Greater success could not be attained because the investigations of families to determine their suitability for Germanization decreased strongly after the evacuation was stopped.

In order to alleviate, at least partially, the terrible lack of personnel in household service in which girls unsuitable for Germanization may not be employed for folkdom reasons, or for technical reasons involving supervision, the Race and Settlement Main Office of the SS suspended on my suggestion its objection to the investigation of individuals without investigation of the whole family. In this manner, about 300 girls suitable for Germanization could be supplied for household service in the last few months. Until now the girls have come almost exclusively from the Warthegau. Their names are furnished by the personnel offices to the Branch Office of the Race and Settlement Main Office of the SS in Lodz. They are brought to Lodz for investigation and from there they are directed only to such locations as are permitted by the competent Higher SS and Police Leaders.

In order to reduce as far as possible the danger of misjudgments, which undoubtedly exists in examinations of individuals without that of other members of their families, all the girls who appear for examination are requested to bring with them any available photographs of their parents and brothers and sisters. If the family resides in a near-by area, it is also examined at the same time.

Since the number of available girls in the Warthegau is limited—only 2–3 percent of the population can be recognized by past experience to be suitable for Germanization—the measure must be extended also to apply to the other reincorporated Eastern territories and to the Government General in order to attain a larger number of female domestic help suitable for Germanization, and so to carry out the order of the Reich Leader of 10 July 1941. Preparations have been made to this end. Upon agreement with the competent local offices, the branch offices of the Race and Settlement Main Office of the SS in Lodz will occasionally dispatch experts to previously designated points in order to carry out racial investigations. Since there appear to be large numbers of racially satisfactory girls in Estonia, Latvia, and Lithuania, I consider it advisable to open these areas, too, for thorough combing.

Household personnel suitable for Germanization have until now been deployed on the same basis as other persons to be Germanized. For reasons of unity of procedure and planning, I request that I may maintain this policy. For every family or individual to be Germanized, there is a special file available in the office of the Higher SS and Police Leader for the work district [Arbeitsort] in which all pertinent facts are gathered. These files also contain the reports of experts or other officials of the Higher SS and Police Leaders prepared in the course of the investigation. This record is supplemented by the labor certificates held by the person. From the Higher SS and Police Leader in whose hands the matter rests, it is thus possible to get a clear picture of the activity and the conduct of the persons suitable for Germanization at any time. On the basis of this situation, I would suggest the elimination of any plan to create an additional conduct and activity book for household personnel who are to be Germanized.

Also relative to naturalization, I suggest that the female domestic help suitable for Germanization be treated in like manner as other persons suitable for re-Germanization. Naturalization for all shall, in general, be made dependent upon the judgment of the local competent Higher SS and Police Leader, who by virtue of his investigation and supervisory work can obtain a clear picture of every family and individual. Previously, when girls have been brought into the Reich without their families, they have been promised that other members of their families, according to their qualifications, could similarly be considered under the measures for Germanization.

In order to expedite and accelerate the employment of female domestic help suitable for re-Germanization, I request the signature of the enclosed order, which was drafted in cooperation with

the Reich Security Main Office and the Chief of the Race and Settlement Main Office of the SS.

[Stamp]

Personal Staff Reich Leader SS

Received: 19 August 1941

Journal No. A39/38/41

To: Reich Leader

Enclosures 8

[Signature] GREIFELT
SS Major General

TRANSLATION OF DOCUMENT NO-2267
PROSECUTION EXHIBIT 161

LETTER FROM CREUTZ TO HIMMLER, 20 FEBRUARY 1942, CONCERNING THE SELECTION OF POLISH FEMALE DOMESTIC SERVANTS FOR GERMANIZATION AND THEIR ALLOCATION TO GERMANY

The Reich Commissioner for the Strengthening of Germanism,
Staff Main Office

Berlin-Halensee, 20.2.1942
Kurfuerstendamm 140
Telephone: 963991

I-3/4-3/20.2.42 Dr. B/Er.

Please give the above reference and date in answering correspondence

[Handwritten] W 15.11.

Subject: Allocation of female domestic help who are eligible for re-Germanization.

Reference: Telephone conversation with SS 1st Lieutenant Meine.
To the Reich Leader SS Personal Staff
Berlin - SW 11, Prinz-Albrecht-Str. 8

[Initial] M

[Handwritten shorthand notes]

Please find out whether there is anything in Greifelt's collective reports about this—otherwise request a complete outline for the Reich Leader.

Regarding the status of the allocation of female domestic help eligible for re-Germanization I wish to report as follows:

521 female domestics suitable for re-Germanization were allocated to nonfarming households up to 31 December 1941 (total number of allocated persons including children: 10,520).

The selection of the persons eligible for re-Germanization is made by the Field Office of the SS Race and Settlement Main Office in Litzmannstadt [Lodz]. The allocation in the Reich is carried out by the locally competent Higher SS and Police Leaders.

The Field Office of the SS Race and Settlement Main Office makes its selections primarily from among the evacuated Poles. In addition, pursuant to the personal order of the Reich Leader SS, it has the responsibility of removing qualified female domestics, eligible for re-Germanization, from the re-Incorporated Eastern Territories (especially from the Warthegau), and of transferring them to the Reich proper. It receives the names of girls in the Warthegau through my deputy. Furthermore, it contacted the local employment offices and welfare offices in the allocation of the girls.

Since, moreover, there has been a serious labor shortage for a long time in the re-Incorporated Eastern Territories, the defense industries and agriculture cannot be drawn on normally for labor forces. Objections are encountered on the part of the state employment offices in Danzig-West Prussia, and, also, emphatic objections on the part of the Gau administration.

However, the chief reason for the comparatively small number of female domestics procured up till now is the following:

1. In following the standard used in the racial classification in general only 3 to 5 percent of those examined can be declared eligible for re-Germanization.

2. As a rule the results have not been favorable in the case of individual allocation of young persons eligible for re-Germanization whose families remained in the Eastern territories. It is hardly possible to prevent correspondence with their families. Moreover, homesickness is a big factor. Many of the allocated girl servants have been obstinate and had to be punished. Several suicides occurred. I have, therefore, felt compelled to recommend the use of great care by the SS Race and Settlement Main Office in the selection of such girls.

3. For the most part the evacuation affects farmers or other members of the agricultural population, so that almost 90 percent of the persons eligible for re-Germanization come from farming sections. Naturally, the single girls of this class of personnel have again been placed in agriculture.

In addition to the persons from the Eastern territories who are eligible for re-Germanization, there now comes the allocation of these eligible for re-Germanization from the evacuated border districts of Lower Styria. For the time being, the commissions of the Race and Settlement Main Office SS are doing the racial classify-

ing in the camps of the Repatriation Office for Ethnic Germans [Volksdeutsche Mittelstelle]. In this case, the available population supply consists also of more than 80 percent agricultural or rural population. Although I have instructed the Higher SS and Police Leaders to allocate every girl to domestic service who does not come from a farming section, the number of female domestic servants will in this case, likewise, amount to only several hundred at the most.

By order:

[Signature] CREUTZ
SS Colonel

[Stamp]

Personal Staff of the Reich Leader SS

Encl.

Received: 21 Feb 1942

Journal No. A 47-14-42

RF

TRANSLATION OF DOCUMENT NO-2480
PROSECUTION EXHIBIT 162

STATISTICAL SURVEY OF FEMALE DOMESTIC SERVANTS AND AGRICULTURAL PERSONNEL SUITABLE FOR GERMANIZATION, WITH COVER LETTER FROM CREUTZ TO RUDOLF BRANDT*, 22 DECEMBER 1942

The Reich Commissioner for the Strengthening of Germanism,
Staff Main Office.

Berlin-Halensee, 22 December 1942
Kurfuerstendamm 140

II/1 - 3/4 - 3/26 March 1942 Dr. B/St.

Please quote above file note and numbers when replying

Previous Files: Allocation of housemaids suitable for re-Germanization.

Reference: Your letter of 28 November 1942—Journal No. 47/42/43Mt/G.

Enclosure: 1

[Handwritten note] 31 January 1943
[two illegible words]

To Reich Leader SS Personal Staff
care of SS Lieutenant Colonel Dr. Brandt
Berlin, SW 11, Prinz-Albrecht Str. 8

Enclosed please find a list of the female, domestic and agricultural personnel suitable for re-Germanization.

* Adjutant of Himmler. Defendant in case of United States vs. Karl Brandt, et al., Case 1, vols. I and II, this series.

With reference to this specification, please note the following points:

As previously reported, the great majority of the persons suitable for re-Germanization come from agriculture and had, therefore, to be reallocated to agricultural work in Germany proper in order to avoid an increase of the migration from rural to urban areas.

The figures quoted in column 3 (agriculture) of the enclosure show, in addition to the rural domestic personnel, female agricultural laborers and wives of agricultural laborers who for the most part work full or half time. A separate statistical classification of rural domestic personnel was not practicable, since most of the rural womanpower is employed partly in the homes, partly in the fields, as required.

By order:

[Signature] CREUTZ
SS Colonel

List of the female domestic and agricultural personnel over 14 years of age, suitable for re-Germanization. Census day 30 November 1942

1 SS Administrative District	2 Urban households	3 Agriculture	4 Total (column 2 plus 3)
Alpenland	14	157	171
Danube	38	247	285
Elbe	68	247	315
Fulda-Werra	94	922	1,016
Center	77	838	915
North Sea	123	502	625
Baltic Sea	21	395	416
Rhine	53	278	331
South	71	259	330
Southeast	11	281	292
Southwest	104	602	706
Spree	306	253	559
West	92	469	561
Westmark	55	241	296
Total	1,127	5,691	6,818

The figures in column 3 include the married women whose husbands work in agriculture.

b. Selections from the Evidence of the Defense

EXTRACTS FROM THE TESTIMONY OF DEFENDANT GREIFELT*

DIRECT EXAMINATION

* * * * *

* Complete testimony is recorded in mimeographed transcript, 24, 25, 26 November 1947, 1, 2 December 1947, pp. 1404-1750.

DR. HAENSEL (Counsel for defendant Greifelt): We now come to the end of our discussion of the DVL. And I am now coming to the so-called re-Germanization procedure. The prosecution has charged that even outside the scope of the German People's List, which we have just discussed, foreigners were also taken for labor to Germany so that they could later on be re-Germanized. Were people sent to Germany for the sole purpose of labor assignment by you? Were you concerned in this?

DEFENDANT GREIFELT: I can answer this question with a clear "no", although in this case I should also clarify the matter by making a few brief explanations.

Q. Can you tell us in this connection, did the deportation of people to Germany for purposes of labor allocation fall under your field of work? I am referring to foreigners here.

A. The deportation of foreign nationals into the Reich had unfavorable repercussions with regard to the field of work of my agency. It was our task to settle the resettlers, and also the "A" Cases in Germany proper. As a result of bringing a large number of foreign workers into Germany through the Plenipotentiary for Labor Allocation, our attempts were very severely hampered. I don't want to go into any further details here, in view of the short time which I have at my disposal.

Q. In order to make the matter more comprehensible to us, can you tell us the following: There was a competition between various agencies and which had different aims. Your agency in this respect, as I understood you to say, was thinking of those people who were at least fifty percent of German descent, and the other agencies were interested in people who were not ethnic Germans in that sense but still foreigners, is that correct?

A. The German People's List, that is to say, persons who were at least 50 percent of German descent can be left out of these considerations. From the purely economic point of view the situation was such—the German industry which needed workers preferred to employ pronounced foreign elements who had been brought into Germany through the organization of the Plenipotentiary for Labor Allocation to our resettlers, because accommodation and welfare corresponding to the German standard of living had to be guaranteed for our resettlers. The more foreign workers there were at their disposal, the less readiness there was on the part of the industry to accept workers from the ranks of our resettlers.

MR. SCHWENK: Your Honor, as I understood the question of defense counsel put to the witness sometime ago was concerning the Germanization of persons to be Germanized. The witness is now discussing resettlers.

PRESIDING JUDGE WYATT: I think the answer of the witness was directly in response to the question. Go ahead.

DR. HAENSEL: Please explain to us in one sentence just what people were affected by the re-Germanization procedure with regard to their descent.

DEFENDANT GREIFELT: The re-Germanization procedure included all these people who were of German descent up to fifty percent. In the case of people where this 50 percent racial origin could not be clearly proved, but where the German descent became evident from other factors which I cannot recall in all their details, that is to say, if they had shown German characteristics.

Q. And who had initial influence on their re-Germanization procedure?

A. The initiative for the execution of that measure was without any doubt with Himmler himself.

Q. You said that it was with Himmler himself. Are these racial ideologies not much older than Himmler or National Socialism?

PRESIDING JUDGE WYATT: I do not believe that history will help us very much in this trial.

DR. HAENSEL: The prosecution has presented NO-5148, Prosecution Exhibit 138 here in document book 4-C, on page 1. I am now going to hand you the document book, and I ask you to comment on this document. When did you see this document for the first time, and what is your comment on it?

DEFENDANT GREIFELT: I don't want to go into the contents of this document. I only want to say that on pages one to three, a preface has been reproduced which at the time was written by Dr. Faehndrich, the chief of my main department I. I cannot consider this preface to be an official statement from any official source. It originated in the document "Der Menscheneinsatz", "The Allocation of Manpower." I myself did not understand anything about these things, and I still do not understand anything about them, so that I had to let Dr. Faehndrich have his way in that field, especially since he published this book on his own responsibility.

Q. The document, I understood you to say, contains on the same paper and with the same letters two completely different things. First of all, here we have a private piece of literature and a preface of a book; and furthermore, we have a decree of Himmler, is that correct?

A. That is quite correct. The Himmler decree begins at the bottom of page 3, under the heading Decree No. 17/II.

Q. Can you tell us approximately at what time these Faehndrich ideas were laid down?

A. Faehndrich had these ideas probably when he issued the book "Der Menscheneinsatz", which must have been probably toward the end of the year 1940, that is the time when he compiled the material for this book.

Q. Was this Decree 17/II, which you have before you now and which you mentioned, the first step in this field of re-Germanization?

A. No. That was certainly not the case. I hesitate to quote a few words from the contents of this decree, but it is stated there, "I have therefore ordered", as proof of the fact that already previously similar measures must have been ordered before this Decree 17/II appeared.

Q. However, you probably can tell us for certain whether, prior to the issuing of this Decree 17/II, you have received any corresponding directives from Himmler in this respect, or your agency; or, is it possible that Himmler could have given these instructions to other agencies and, if so, to which agency?

A. Certainly, before this time no directives or instructions were given either to me or to my agency. I am of the opinion, however, that the first steps of Himmler were within the field of work of the Race and Settlement Main Office. That agency must have received corresponding directives already before that.

Q. We were talking about the Decree 17/II; do you have any clues for the fact that this did not represent the first steps in the matter of the Germanization?

A. I have looked at a few documents which show that already in the spring of 1940, preparatory work was being done.

Q. I now submit to you Documents NO-4324, Prosecution Exhibit 140 and NO-4325, Prosecution Exhibit 141, book 4-C, pages 9 to 11.

A. These are the documents which I was thinking of just now. These are directives for the racial examination of those people who were eligible for re-Germanization. The first measures in this field took place in March 1940.

Q. Who selected the people, the families, who were chosen for re-Germanization? Did you choose these people?

A. No. The selection was carried out by the Branch Office Lodz, of RuSHA, in cooperation with the Resettlement Center (UWZ).

Q. Do you know the details of the procedure?

A. No. I do not know the details; I never visited the branch office, and I only now got to know the forms which were used from the documents.

Q. At that time was there some kind of confusion among the offices entrusted with this work? Would you kindly look at page 19, book 4-C. Do you know the author of this document?

A. I do not know the author of this document, concerning the variety of the procedure adopted, some confusion must have arisen among the offices charged with its execution.

Q. Now, what did the agencies concerned confuse in this instance?

A. It happened quite easily that the procedure of the German People's List and the procedure adopted for the re-Germanization were confused.

Q. And what was the basis for these mistakes; what did the agencies fail to see?

A. The reason was that the groups of people concerned were two quite different groups.

Q. Did you have a perfect survey of the details of this re-Germanization procedure at that time, and did you know of the details?

A. No. My office did not deal with the re-Germanization measures, and I personally did not know of any of the details until the end.

Q. But your agency had also to deal with the re-Germanization measures?

A. The same is true with regard to the fact that the procedure itself took place without cooperation from my office, and that after the examination procedure had been concluded, my office was used for the taking care of these people.

* * * * *

Q. Do you still remember whether the re-Germanization measures were carried out on a voluntary basis?

A. I was always told that only such persons would be dealt with who had voluntarily submitted their names.

Q. Do you know how these people were treated when they came to Germany, regarding their pay, their ration coupons, etc.; perhaps you would like to refer to this exhibit on page 66, page 67, at the bottom especially.

A. It was like this. The people eligible for Germanization were treated in exactly the same manner as the Germans, the German laborers. They had additional care regarding accommodations. If they were working in agricultural enterprises they got a certain allotment, and especially we saw to it by making various presentations to the Ministry of Economics that these people were provided with the necessary clothing, furniture, etc. Their pay was the same as that of German workers.

Q. Do you know anything regarding their living accommodations?

A. Before a family eligible for re-Germanization was assigned

to any special work, we had to be sure of suitable living accommodations.

Q. Do you remember that six hundred marks were paid?

A. The six hundred marks was an arrangement which was valid for those persons in the Reich who had decided to move from a town, that is, from industrial work back to agricultural work. These people received the six hundred marks in order to adapt themselves to agricultural conditions. This arrangement was also valid for the people eligible for re-Germanization, and it could be applied to all of them, and for those as well who actually originated from the land.

Q. After what you saw regarding re-Germanization, did you have any occasion to make objections to this procedure for reasons of humanity?

A. I have never heard complaints from persons dealt with in this procedure. The measures taken represented the best possible solution for a person during the war as regards economic and social conditions.

Q. From your industrial experience in Germany before this time, before the war, do you know of any economic occurrences which were affected by the invasion of a bulk of Eastern workers into the area of Germany?

A. I know of the so-called invasion of laborers into the territories under discussion here from the time after the First World War when German labor was, so to speak, displaced. The industries in Berlin especially, in which I was active as a plant manager, experienced this pressure from the East. And from times even further back, I know that even before the First World War labor always moved from East to West.

Q. Would you like to look at Document NO-4127, Prosecution Exhibit 154, at page 92 of document book 4-C? Do you have any ideas regarding the figures which would be actually experienced during the re-Germanization measures? How many people do you think were re-Germanized?

A. I believe the number from the Eastern territories was about 20,000 people. It may also have been 22,000. The document you have mentioned originates from former times; this does not represent the final figures.

Q. Do you believe that the people mentioned on 31 July 1942, 20,000—that is, among whom there were only 13,000 Poles—do you believe that this figure was extensively surpassed?

A. I estimate the number of people from the Polish territories to be 20,000 to 22,000. This represents about five thousand families.

Q. According to your experience as to the figures of Poles seeking work in Germany in prewar times, were these figures smaller or larger if distributed over five to ten years?

A. I cannot have any clear idea, after so many years, but I believe that in times of boom—which, unhappily, we did not have in Germany before the war—there would have been even more people coming from the East.

Q. Do you think the biological force or strength of the Polish people was weakened by such a drive towards the West?

A. I don't believe—

PRESIDING JUDGE WYATT: Let's not conduct a case in biology. This is a courthouse, not a schoolroom.

Go ahead.

* * * * *

DR. HAENSEL: I submit to you Document NO-2792, Prosecution Exhibit 156, in volume 4-D, at page 1. Glancing through this document, could one arrive at the erroneous opinion that your agency took part in the planning and carrying out of an evacuation?

DEFENDANT GREIFELT: No. This is just a repetition or a restatement of a directive given by Himmler. Subsequent to the directive given by Himmler, the welfare measures were then ordered by my agency.

Q. Can you tell us whether the subject which is now being dealt with, that is, the domestic workers, was a special hobbyhorse of Himmler's?

A. From the very beginning, Himmler was interested in the procurement of domestic workers for German households with many children.

Q. Can you tell us whether this was an invention of Himmler's to bring domestic workers from the East into Germany, or do you have any personal recollection of similar occurrences even from the time of your childhood?

A. The former German territories which later were Polish, that is, the provinces of West Prussia and Poznan, were the reservoir for the bulk of domestic workers even before the First World War.

Q. Do you still recall what the figures were of domestic workers with which Himmler concerned himself? Will you kindly look at NO-3938, Prosecution Exhibit 159, at page 16?

A. The number of girls who came to Germany as domestic workers was within certain limits until the end of 1941. It was 550, and later statistics mention the figure of 1,700, if I am correct.

Q. If you now look at Himmler's directive on page 10 of the

document book, will you tell us whether this ceremonious directive refers to the domestic workers, to these 550 girls, or does this apply to quite a different complex which we cannot survey at this moment?

DEFENDANT GREIFELT: This is Himmler's decree regarding the question of domestic workers. Previous to that, individual operations took place regarding workers by way of formal assignment of labor. Here again we must remember that in the Incorporated Eastern Territories, the legal labor administration was active and tried to establish certain balances between the labor forces available.

Q. Would you refresh your memory by looking at document book 4-D, page 21?

A. These are the statistics which I recalled some time ago when I said that at a later date the figure of the domestic workers used in Germany had become larger, but I overestimated this number. This statistical table shows the figure of 1,127 domestic workers.

Q. Did you ever receive any complaints from these domestic workers concerning their treatment?

A. Dr. Haensel, I did not concern myself with the procurement of domestic workers. I had no personal contact with the domestic workers; officially, I did not receive any complaints.

Q. Would you kindly turn the page and you will find Document NO-1404, Prosecution Exhibit 163 on page 22 of document book 4-D. Did you ever receive directives from Himmler that Poles eligible for Germanization should be robbed of their children? Do you know this document?

A. When I saw this document in the document books for the first time, I was shocked that my name was brought in contact with such a measure. I must decisively reject it from my inner conviction that I ever received such a directive. It would conflict with all my views regarding human life. Any person who is respecting death as we learned to do during war has, as a Christian, a much higher respect for the young growing life.

MR. SCHWENK: Your Honor, I believe it is sufficient if the witness states that he denies the correctness of the document.

PRESIDING JUDGE WYATT: Yes. I think this is very argumentative in its nature. State the facts.

DEFENDANT GREIFELT: I did not know this letter. I never received such a directive and never gave such directives.

DR. HAENSEL: Did you submit a decree to Himmler according to which Poles eligible for Germanization and who complained were to be robbed of their children?

DEFENDANT GREIFELT: I never submitted such a decree.

Q. If you now look at Document NO-1669, Prosecution Exhibit 165 in the same volume—

A. May I ask you for the number of the page?

Q. Page 27. The incident on which I am now questioning you is an incident connected with people from Lublin who were to be Germanized. Do you know it? Do you know the person who signed it?

A. I have endeavored to put some chronological order into the whole incident. This is a measure of the Reich Security Main Office on the strength of a report of the SS and Police Leader in Lublin, Globocnik by name.

Q. Herr Greifelt, will you tell us this now? Are you referring to the first letter? You're talking now about putting something into order. What did you put into order?

A. The number of exhibits dealing with the same question— or rather different pages dealing with the same question.

Q. Of the same exhibit?

A. Yes. Of the same exhibit.

Q. Would you kindly separate the pages so that your statement gets quite clearly into the record?

A. Page 37 and page 38 represent the initial stage of the incident.

Q. Do you know who Globocnik is who is mentioned on page 37 as the addressee?

A. That is the SS and Police Leader in Lublin.

Q. Did you have official contacts with him?

A. No. No direct contacts. He was the subordinate of the deputy of the Reich Commissioner for the Strengthening of Germanism in the General Government by the name of Krueger.

Q. All right. That is the initial stage of the incident. The whole matter extended over a period of two years. My agency had nothing to do with it except for the fact that two letters or decisions from Himmler personally were also sent to my agency for purposes of information. I probably did not see any of this correspondence and there was no necessity for us to cause any action to be taken in this respect.

Q. You're talking of directives by Himmler. From a mail point of view, who sent these directives? Were they sent from his office in the Albrechtstrasse or where do you think they came from?

A. No. They were dispatched from field headquarters as is shown by the letterheads. Yes. That is right. Both of them came from the field headquarters.

Q. And why do you think they were received by your agency?

A. I draw my conclusion from the distribution list at the end of this letter, on page 28, and I also conclude this from the

distribution list on the other letter—at the top of that letter, on page 34.

Q. And now can you tell us under oath that these letters which were sent to your agency according to the distribution list were also received by your agency?

A. I cannot, of course, do that because I do not remember having seen these letters.

Q. Did you take any action in this matter or did you hear anything about it except for these letters?

A. This was outside of any competency of my person or of my agency.

Q. Do you know the procedure adopted for the racial examination of people eligible for re-Germanization?

A. No. The procedure is not known to me.

Q. Do you now know it?

A. Even today, I have no clear picture of what actually did take place. From the documents I only saw that index cards and registration forms were filled in with regard to the persons concerned, but I am not in a position to evaluate such a card index and to draw any conclusions from it.

EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS BERTHOLD WILLY BETHGE*

DIRECT EXAMINATION

DR. MERKEL (Counsel for defendant Creutz): Witness, please give the Court your full name.

WITNESS BETHGE: Berthold Willy Bethge.

Q. Witness, please allow an interval to lapse between my question and your answer so that the interpreters can follow. When and where were you born?

A. On 15 March 1902, in Erdmannsdorf.

Q. Please briefly describe your career.

A. I attended a secondary school and I studied economy and since 1927 I have worked in various labor offices. In 1939, I became a teacher at the administrative school of the Reich Ministry of Labor. When the war broke out, I went to the head office for emigration and resettlement. In Brandenburg, I was transferred to the Reich Commissioner for the Strengthening of Germanism.

Q. Since when were you working for the Reich Commissioner?

A. From the very beginning.

Q. How and through whom did you get there?

* Complete testimony is recorded in mimeographed transcript, 9 December 1947, pp. 2168-2200.

A. I was sent there as a result of a telephone conversation between the defendant Greifelt and the then senior government councillor in the Labor Ministry, Dr. Timm.

Q. Had you ever done anything voluntarily or worked voluntarily in the Staff Main Office?

A. No.

Q. What rank did you have in the Staff Main Office?

A. I didn't have any rank in the Staff Main Office.

Q. What rank did you have otherwise?

A. I was a government councillor in the Reich Labor Administration.

Q. You were a civil servant?

A. Yes.

Q. Were you a member of the SS?

A. No.

Q. What kind of work did you handle in the Staff Main Office or in Greifelt's office from October 1939 to the end of the war?

A. Labor assignment and the social work of the department connected with it.

Q. Will you describe quite briefly what you mean by labor assignment?

A. Quite generally speaking, labor assignment means changing jobs for dependent labor forces, finding them jobs. In this specific case, in the case of the Reich Commissioner, it was mainly a question in addition to obtaining the necessary living quarters for families.

* * * * *

DR. MERKEL: Do you know whether those fit for re-Germanization departed voluntarily for this procedure?

WITNESS BETHGE: Most of them who were involved in the re-Germanization procedure were people who had been evacuated mainly to the Warthegau and who were selected in the collecting camps, and I believe racially examined and considered eligible for re-Germanization. One cannot say that they departed on their own initiative, but at least they agreed to being taken into this re-Germanization procedure with very few exceptions, and most of these exceptions were allowed to stay out of it. Volunteers would turn up occasionally when people who had submitted papers of origin were not recognized as ethnic Germans, but who wanted in this way somehow to get themselves recognized as Germans.

Q. Witness, did you hear of any cases where people fit for re-Germanization who had already been assigned to work in Germany wanted to return to their country of origin?

A. Yes, but relatively few.

Q. What happened in such cases?

A. Such applications were granted only very rarely.

Q. Could the Staff Main Office on its own accord order that these people be exempted?

A. Formal orders for the exemption were issued by the Staff Main Office, but if the Staff Main Office wanted to take somebody out, this previously required an inquiry from the RuSHA Branch Office in Lodz.

Q. Do you know whether those fit for re-Germanization were ever sent to concentration camps for refusal to work?

A. In principle, certainly not. I know of very few cases where this was done on the initiative of the local police office or Gestapo office, I don't know who it was.

Q. Was that in any way within the sphere of competence of the Staff Main Office?

A. No.

Q. Did you hear of cases where the obtaining of accommodations of those fit for re-Germanization was very difficult?

A. Yes. There were many difficulties.

Q. What were they?

A. Mainly concerning housing, also sometimes if the breadwinner of the family was not there or sick.

Q. What happened then in the case of these families you have just mentioned?

A. In the case of the family fit for re-Germanization the regulations concerning public care applied in the same way as for all Reich Germans. Higher SS and Police Leaders then had to inform the responsible welfare offices of the welfare organizations or the agency whose job it was to see that these families could be supported in some way or another.

Q. Were children without parents ever included in this procedure?

A. Certainly not in the procedure that we ourselves dealt with.

Q. Were you informed in detail about what persons came to the Reich as fit for re-Germanization?

A. Yes. From every family selected we received a list, a card index of information from the field office of the RuSHA Branch Office in Lodz.

EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS
HERMANN GROTZ*

DIRECT EXAMINATION

DR. SCHWARZ (Counsel for defendant Hofmann): Witness, will

* Complete testimony is recorded in mimeographed transcript, 5, 6 January 1948, pp. 3118-3169.

you give the Tribunal your full name and the place and date of birth?

WITNESS GROTZ: My name is Hermann Grotz. I was born on 21 October 1897.

Q. Did you work under the defendant Hofmann in his area as Higher SS and Police Leader at Stuttgart?

A. Yes.

Q. Where did you work?

A. At the beginning, I worked in the welfare department and later on I worked in the so-called Department of the Reich Commissioner.

Q. Who were the representatives of the Reich Commissioner for the Strengthening of Germanism?

A. The representative of the Reich Commissioner for the Strengthening of Germanism in the Area Southwest was Hofmann as far as Wuerttemberg was concerned, and for Baden and Alsace, the chief of the civil administration was the former Gauleiter Wagner.

Q. What position did you occupy under the defendant Hofmann?

A. I was an expert for re-Germanization questions for people who were eligible for re-Germanization.

* * * * *

DR. SCHWARZ: Witness, we are now turning to a different field. Did you have anything to do with the re-Germanization procedure?

WITNESS GROTZ: Yes.

Q. In what capacity?

A. I was the expert.

Q. From whom did you get the regulations which were to be applied to this re-Germanization procedure?

A. From the Staff Main Office in Berlin.

Q. Is it correct that you also got instructions from the Reich Security Main Office directly? Did you also get direct instructions from the Reich Security Main Office concerning the treatment of those eligible for re-Germanization?

A. No. I did not get any direct instructions.

Q. Did you know whether, in selecting those eligible for re-Germanization, any pressure was being exerted?

A. In practice, I never heard about anyone using force. The competent directives and regulations always required volunteering for otherwise the purpose of re-Germanization would have had no sense.

Q. What do you understand by the purpose of re-Germanization?

A. One wanted to win over these people for Germany and, of course, one could not force them to become German.

Q. Who carried out the transports of those eligible for re-Germanization which you received?

A. These transports were carried out by the Labor Office of Lodz together with the Labor Office of Stuttgart.

Q. Can you tell me what period of time it was at which you started to deal with matters of re-Germanization?

A. As far as I remember, the first transport arrived in November 1940. It consisted of about 25 or 30 persons.

Q. And where did they come from?

A. From the Branch Office of Lodz.

Q. Could you establish at that time whether they were ethnic Poles or not?

A. At that time I found out that they were Polish subjects who, however, came from the Poznan area and spoke very good German.

Q. What was the impression you got from these people? Did you get the impression that they were former Germans?

A. Yes. I had that impression definitely.

Q. How did these people behave towards you when they arrived?

A. At first, they were quite reticent and shy, but when they saw afterwards that they were getting good accommodations and work and that they were being taken care of then, of course, they started being a bit more open.

Q. Did they not also give you some evidence to the effect to prove that they were former Germans?

A. Yes. In the case of the first transports, there were many people who had immigrated to West Prussia between 1919 and 1921 and had taken over the property of Germans who had been dispossessed. These people often had German military passes and German medals.

Q. Did you see them personally?

A. Yes. I did.

Q. Where were these people quartered?

A. These people came to the transit camp of Schelklingen, and from there they were transferred to their new residences.

Q. Were they treated in the same manner as the Alsatians? I mean in the Schelklingen camp?

A. Yes.

Q. Were they employed in the professions they formerly had?

A. Yes. As far as possible, but in most cases they were people from the agricultural professions who again could be very profit-

ably employed in the agricultural area of Wuerttemberg in the agricultural profession.

Q. Did you yourself exert any influence on the fact that these people would be employed in their professions or otherwise?

A. Yes. I myself inspected at least once every one of those places of work and had explained to me by the plant manager the quartering and salary conditions. I can, therefore, say with certainty that these people in many cases in relation to Reich Germans were accommodated and paid on exactly the same scale as Reich Germans. I must say that, of course, the same output of work was asked for as that of the Reich Germans.

Q. The Reich Germans had certain social privileges. Did those who were eligible for re-Germanization have the same privileges?

A. Yes.

Q. Can you name some?

A. Yes. Those eligible for re-Germanization had social security insurance, they were contributors to health insurance, and they had the very same privileges as any other Reich German.

Q. Were they quartered in barracks or in apartments?

A. In apartments. These people were accommodated in apartments.

Q. Did those eligible for re-Germanization also get economic allowances beyond that? Relief?

A. Yes. They were given an economic allowance to the extent of about 600 Reich marks. This was granted at the beginning only to those families who came from agricultural professions, and later on, also, to families from the artisan sector. It was a matter of course for us that we provided that sum, if possible, for every family.

Q. Did they also get furniture?

A. Yes. We had a large furniture depot in Schelklingen, and we allocated the necessary furniture to the families according to their members.

Q. Was that new furniture or used furniture?

A. This was only new furniture.

Q. Did your agency also work together with the Party?

A. The NSV was included in taking care of these families eligible for re-Germanization.

Q. Were these families eligible for re-Germanization under political supervision?

A. No. Otherwise, there was no sort of collaboration with the Party, and especially not for the purpose of political supervision. Later on, the Gau office for ethnic questions was also included in this welfare work.

Q. In these cases, did it also occur that these people were not

satisfied with their places of employment? What happened then?

A. Well, in special cases that happened. These matters were then, of course, examined. It very often happened that the manager was to blame for it, or the family. If it were the foreman or the manager who did not act according to regulations, the family was removed to another place of work. If the complaints of the family against the manager were justified, then they were simply taken away.

Q. Did these people, eligible for re-Germanization, come to you personally to the office?

A. Yes, very often. They all knew me personally.

Q. Also in these cases, did you use any pressure to make them do some other work?

A. Do you mean pressure to take up employment? No. No direct pressure was used. It was, of course, seen to that, if possible, the family would at an early date be assigned to work, of course it was wartime and we needed the manpower.

Q. Did the employers also complain in some cases?

A. Yes. In some cases employers raised complaints because those eligible for re-Germanization had more privileges than the Reich German laborers.

Q. Now during the war there were restrictions with regard to changing one's place of work—for Reich Germans, too, of course. Did you then accept applications if persons eligible for re-Germanization wanted to change their places of work?

A. Those eligible for re-Germanization were not subject to this prohibition concerning change of places of work. They were allowed to change their places of work provided, in case our agreement had been given, the conditions under which they worked were not agreeable.

Q. For these people, eligible for re-Germanization, was there the so-called emergency conscription which applied to Reich Germans?

A. The emergency conscription did not apply to those eligible for re-Germanization.

Q. Were those eligible for re-Germanization under obligation to serve in the army?

A. There was a basic order from the Staff Main Office in which it was provided that persons eligible for re-Germanization were not to be conscripted for military service, even though they might volunteer.

Q. Were there any regulations under which persons eligible for re-Germanization were hindered more in their movements than Reich Germans?

A. No. There were no such regulations. Those eligible for re-

Germanization could move around just like a Reich German within the Reich proper. He only needed permission to travel into the Eastern territories.

Q. Then, they could keep up contact with the Eastern territories, their former places of residence?

A. Yes. All those eligible for re-Germanization had considerable correspondence with the Eastern territories.

Q. What was the procedure with regard to application for leave?

A. As a matter of principle, leave was granted after one year of actual labor allocation, or also in case of happenings in the family, such as deaths, marriages, things like that.

Q. Did these people return from their leave?

A. I have never known that anyone stayed away.

Q. Is it correct that they were also able to save money out of their wages for their relatives in the East?

A. Yes. That is correct. There were youths and also girls who lived very cheaply, and who were able to support their relatives in the Eastern territories with this money that they earned here.

Q. Is it correct that those eligible for re-Germanization reported voluntarily in the East—that is, that they did not come via the Branch Office in Lodz in order to come into the area of the Higher SS and Police Leader Southwest?

A. Well, I know from the Office Chief Dongus that in Lodz several families repeatedly reported voluntarily for employment in the Southwest area.

Q. Did they also come there?

A. Yes. They came there.

Q. What were the reasons for their volunteering for this work?

A. As Dongus assured me, they knew that they could earn good money and that they were treated well in our area.

Q. Were there also cases in which Poles and Eastern workers voluntarily applied in your agency?

A. These cases were quite frequent. We had days in which up to 10 people came to my agency to apply for re-Germanization. These people were registered and were reported to the Branch Office Lodz. It generally took quite a long time until the papers came and until the people were actually designated as eligible of re-Germanization.

CROSS-EXAMINATION

* * * * *

MR. SHILLER: Witness, have you ever heard of slave labor in Germany?

WITNESS GROTZ: As far as the meaning of the expression is

concerned, the term slave labor never came to my knowledge.

Q. So you never heard of it during the war in Germany, is that correct?

A. Well, of course, I knew that people were working in the enterprises, but I knew that they were paid regularly. I don't understand that to mean slave labor.

Q. Witness, you mean that as long as a person gets paid something for his work you can't call it slave labor, is that correct?

A. Well, that is my personal opinion. As long as a man receives sufficient food and as long as he gets paid for his work, I don't consider him to be a slave.

Q. Thank you, Witness, that is quite clear.

* * * * *

REDIRECT EXAMINATION

DR. SCHWARZ: Herr Grotz, we spoke last of slave labor. During the war, was there in Germany a general compulsory labor service for all persons who lived in Germany?

WITNESS GROTZ: For all persons and especially for all Reich Germans, there was a compulsory labor service as far as they were in age groups who were able to work. Beyond that, there was a possibility that Reich Germans were being conscripted for emergency labor service for it. I myself was conscripted for my work as a police leader in the Southwest.

Q. And for all these Reich Germans, the labor offices were competent?

A. Yes.

Q. And for the Poles who came to Germany to work, the labor offices were competent, too?

A. As far as I know, the labor offices were competent for labor allocation of these Polish civilian workers.

Q. Now, if persons were taken out of the procedure for re-Germanization, did they thereby lose their privileges which they had obtained in this process?

A. The Poles would, of course, lose their privileges that they had obtained by being treated as Reich Germans, and I would like to mention that they lost their clothing rations; their wages went according to a scale for foreign workers, that is, much lower than before, and their food rations also were slightly more limited. I don't know that exactly. Furthermore, there was a prerequisite that they were then quartered in general camps.

Q. These few cases in which persons were taken out from the re-Germanization procedure, do you remember them, can you give us their names?

A. No. I cannot remember any names. Polish names as such are difficult to remember.

Q. You only know that several such cases occurred.

A. I can remember a very few cases, perhaps three or four, where a family—and I believe the remainder were just individual persons—were transferred to the labor office of their places of residence, with the request that the labor offices treat those persons again as civilian workers and put them to work again.

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS
ELLI WOLFGRAMM*

* * * * *

DIRECT EXAMINATION

DR. HEIM (Counsel for defendant Schwalm): Witness, will you please state your full name to the Tribunal and also state the date and place of birth?

WITNESS WOLFGRAMM: My name is Frau Elli Wolfgramm, nee Lolan, on 8 October 1918 at Dortmund.

Q. What is your present address?

A. Wetterburgerstrasse 11, Arolsen.

Q. Where is your place of birth?

A. Germany.

Q. For how long have your parents lived there, and how did your parents come to Germany?

A. When my mother was a schoolgirl, she came to Germany with my grandmother and went to Dortmund, and she married there before the First World War. My father was about 16 when he came to Germany.

Q. Where did your parents live before that?

A. Before that, my parents lived in Poland.

Q. Do your parents have German nationality?

A. Probably until 1919, my parents had German nationality because the birthplace of my parents at that time belonged to Germany.

Q. And what is the present nationality, that is, what was the nationality of your parents after 1919?

A. Polish nationality.

Q. Was your father a German soldier?

A. Yes. During the First World War.

Q. How and when did your parents get back to Poland?

A. In 1919 my parents returned to Krotoszyn in Poland and from there they went to Graetz.

* Complete testimony is recorded in mimeographed transcript, 18 January 1948, pp. 8568-8575.

Q. This place, Krotoszyn, had it been returned to Poland on the strength of the Versailles Treaty?

A. Yes.

Q. This place, Graetz, where your parents moved after that, was it also in the territory, formerly German?

A. Yes.

Q. What happened to you after 1939?

A. Well, first of all nothing changed.

Q. I mean your residence Graetz, did it become a part of the German Reich after 1939?

A. Yes, the Warthegau.

Q. Did you move then into the area of the so-called Altreich, that is, Germany proper?

A. Yes. In 1939 I went to Leipzig, that is Germany proper.

Q. Witness, you must make an interval between my question and your answer, and you must speak into the microphone. Why did you go to Leipzig in 1939?

A. The labor exchange in Graetz gave me a labor conscription, and then I went to Leipzig.

Q. Do you know that other people from your village too were conscripted for work in Germany?

A. Yes.

Q. For how long was that labor conscription?

A. For one year.

Q. How and when did you return to Graetz?

A. I returned to Graetz in 1940. This labor conscription was terminated and then I could make up my own mind whether I wanted to stay or leave. If I wanted to leave I could return to Poland, and I did return to Graetz.

Q. What did you do then?

A. Again, I was summoned by the labor exchange. They gave me some work with some ethnic Germans there, in a restaurant, as a buffet waitress.

Q. Now, Frau Wolfgramm, why did you go to Germany for the second time?

A. In the café where I worked with the ethnic Germans I very often talked to Germans. There I personally expressed the wish to return to Germany proper. After that the police came to see me and told me I should get ready and that I was just about to go to Germany. However, first of all I had to go to Lodz.

Q. Oh, you haven't finished, have you?

A. Well, so I went to Lodz.

Q. Did you like to go back to Germany?

A. Yes.

Q. Why did you want to go back to Germany?

A. I worked with ethnic Germans and I found out that in Germany I was treated much better than by the ethnic Germans in Poland where I had worked up to that point.

Q. You said that you went to Lodz.

A. Yes.

Q. Well, what happened to you down in Lodz?

A. There I reported to the RuSHA, and then I was submitted to an examination.

Q. Do you know when that happened?

A. Yes. That was in September 1941.

Q. Were you also in the camp down there in Lodz?

A. Yes.

Q. Well, how was the camp down there?

A. The camp was nice and clean.

Q. Frau Wolfgramm, now if you compare this camp at Lodz with the witness building here in Nuernberg, would you say it is the same as far as quality is concerned?

A. I have to say that the camp at Lodz was even better than the witness building here in Nuernberg.

Q. Was the camp surrounded by a barbed wire?

A. No.

Q. Could you move around freely in the camp, that is, could you leave the camp at any time you wanted to?

A. Yes, we could, except that we had to get a pass; I don't know how to express it, but a pass was necessary, and once we had that pass we could go to town and shop, but we got that pass without any difficulty; but we had to pass through the sentry line and we had to show that pass.

Q. Were there also persons in the camp who normally lived in Lodz? And, could these persons stay the whole day in their own homes?

A. Yes. There were people who lived in Lodz and in those cases these people just stayed at home the whole day.

Q. Now, what about the treatment in the camp?

A. Oh, the treatment was excellent.

Q. Well, how about the food?

A. Also excellent.

Q. Were you told in Lodz what were the plans concerning you?

A. Yes, Herr Schwalm told me personally, that is, he asked me first of all whether I would like to go to Germany, and I said yes.

Q. Well, more particularly, were you told that it was a procedure of re-Germanization?

A. Yes. Herr Schwalm told me that I was becoming German.

Q. In this connection, was any threat expressed against you?

A. No, no.

Q. How was the treatment there in the field agency of the RuSHA itself?

A. They were all very decent, very nice—nice.

Q. Could you remember perhaps the part of the examination, which was called final examination?

A. Yes, yes, of course. I can remember that.

Q. Well, what was discussed on that occasion?

A. Well, you see we spoke about my work in Germany, about my profession in general.

Q. Were suggestions made to you on that occasion where you were given a choice, or were you assigned to a well-defined job at a certain place?

A. Herr Schwalm asked me whether I had parents or acquaintances in Berlin, he told me that I was supposed to go to Berlin. I told Herr Schwalm that I had no relatives in Berlin, and thereupon Herr Schwalm told me that he had a good job for me, and that he knew the people personally, and I was supposed to go there as a maid with Erbprinz Waldeck.

Q. Did you agree with that suggestion of Herr Schwalm's?

A. Yes.

Q. Did you go to that job then?

A. Yes. I went to Arolsen and to the Waldeck's.

Q. Was that a good job down there?

A. Yes, a very good job.

Q. Now, your position in Arolsen, was it better than that at Leipzig?

A. Yes. I was much better off with the Waldecks and I was treated as a German proper, and we received clothing cards and food, exactly like the Germans who were at Arolsen-Waldeck.

Q. Now, Frau Wolfgramm, did you become a German—when?

A. In 1943 I married a German, and then I received German nationality.

Q. Frau Wolfgramm, if you had a free choice would you go back to Poland now?

A. No.

DR. HEIM: Thank you. No further questions.

TRANSLATION OF HOFMANN DOCUMENT 84
HOFMANN DEFENSE EXHIBIT 84

EXTRACT FROM "ALLOCATION OF MANPOWER": ORDINANCES
AND DIRECTIVES CONCERNING THE GERMANIZATION OF POLISH
FAMILIES

Published by the Main Department I of the Reich Commissariat
for the Strengthening of Germanism.

Pages 58-59:

In addition, a large number of other measures have been adopted for the purpose of facilitating the Germanization of these Polish families with all means possible. It is the principle with all these measures that these "Poles" shall not be treated and cared for as Poles but actually as German people, all the more, since we wish to appreciate German blood in every respect and to protect it.

In the practical enforcement of all measures adopted in this connection, closest cooperation is absolutely necessary with the SS Race and Settlement Main Office and its branch offices with regard to the selection and the current supervision of the Germanization procedure, with the Reich Security Main Office and the inspectors of the Security Police and the SD with regard to the political and police examination and supervision and, above all, with the carriers of sovereignty and the offices of the Party. Also with the offices of the inner administration closest cooperation is required.

In order to avoid terminological and other errors, it is emphasized also in this connection that it is here not the question of an assimilation nor of a Germanization but of *Regaining Lost German Blood*.

* * * * *

2. Other "Groups of Persons Suitable for Germanization"

In addition to the racial and political selection of the Poles to be evacuated in the Incorporated Eastern Territories, even now work is in process in the General Government in agreement with the government offices there, the purpose of which is also to register individual small groups of Polonized persons of Germanic blood and to examine them with regard to their suitability for Germanization. These are, above all, the inhabitants of the so-called "Swedy" villages in the Krakow district as well as of single villages in the Lublin district. In the case of the population groups of this kind in the Lublin district to begin with the

establishment of kindergartens and other care is to awaken and promote the psychological readiness for a later resettlement into Germany proper and thus also for a Germanization.

TRANSLATION OF HOFMANN DOCUMENT 87
HOFMANN DEFENSE EXHIBIT 87

EXTRACT FROM "ALLOCATION OF MANPOWER", SEPTEMBER 1941;
MEMORANDUM FOR PLANT LEADERS CONCERNING THE UTILIZATION OF PERSONS SUITABLE FOR RE-GERMANIZATION

Published by Main Department I of the Reich Commissariat for the Strengthening of Germanism.

Supplement I
September 1941

Pages 78-79:

Persons Suitable for re-Germanization

The Reich Leader SS, Reich Commissioner for the Strengthening of Germanism.

Memorandum for Plant Leaders concerning the Utilization of Persons Suitable for Re-Germanization.

The Reich Leader SS in his capacity as Reich Commissioner for the Strengthening of Germanism has decreed by order of 9 May 1940 that families and individuals of Polish and other nationalities are to be removed from their former areas of residence and to be transferred to certain parts of the territory of Germany proper for labor allocation in order to find a new home there.

The consideration that, for example, many Polish families have German ancestors was decisive for the taking of this step. The healthy, clean, and decent impression left by these families in distinction to the mass of other Poles allows of the conclusion that the German blood in them has not yet completely succumbed. Therefore, it must be our aim to restore these persons without fail to the German people.

Therefore, if these persons, especially selected from the remaining mass of alien blood behave in a proper and decent way, turn out to be good workers and do their best to become valuable members of the German people, they shall, upon expiration of a period of probation, obtain German citizenship including all rights and duties possessed by any other German.

You as plant leaders have been chosen to receive these people

as workers. Thereby, you have been charged with a task of great responsibility, namely, that of familiarizing these people with German life and culture and leading them step by step into the German racial community. You must be aware of this important task, that you are expected to carry out a work of greatest value to the German people.

Naturally, the task requires that your attitude towards possible unjustified demands from the families and individuals suitable for re-Germanization is firm but just. We see no occasion to grant them more than our own fellow-citizens; it is rather up to themselves to prove through action that they want to become useful members of the German people.

As to details, the treatment of families and individuals suitable for re-Germanization will be governed by the following directives:

1. Persons suitable for re-Germanization are to be treated as Germans and are not subject to the special regulations effective for Poles or for foreigners. They will stay in Germany forever.

2. The name of "Pole" or that of any other foreign people must not be brought into connection with these persons suitable for re-Germanization; all intercourse between the persons suitable for re-Germanization and individuals of their former people, for example, migrant workers, must likewise be stopped as completely as possible.

3. The persons suitable for re-Germanization are in the possession of foreigners' passes, certifying that the holder of the pass is recognized as an ethnic German and has been selected for re-Germanization.

4. Pay, working hours, overtime work, work on Sundays and holidays, leave, payment during periods of incapacitation for duty, etc., will be determined by wage scale regulations effective for Reich Germans and by local conditions.

5. Persons suitable for re-Germanization are subject to the rules concerning obligatory disablement, health insurance, and the keeping of the work book.

6. They are entitled to clothing, soap, and food ration cards, and procurement certificates to the same extent as Reich Germans. In addition, the welfare offices and the National Socialist Public Welfare Organization have been instructed to give further aid in special emergency cases.

7. Billets are to be procured in suitable, if possible adjoining living rooms, which can already outwardly demonstrate the orderly conditions prevailing in Germany. After the occupants have moved into the rooms, the plant leader has to control regularly whether order and cleanliness are maintained. Through setting

a good example and through admonition, the plant leader must educate these people to the German order and cleanliness.

8. The plant leader is required to make a reasonable effort to procure the necessary installations in the apartments. This will not be his least important means of securing satisfied workers through many years.

9. Great importance must be attached to the accomplishment of a normal work output. In this connection, it must be considered that the persons suitable for re-Germanization must first get used to the German working speed and working method.

10. All conversation must be carried on in the German language if possible. The plant leader is required to assist his workers as much as possible in their relations with authorities, since the persons suitable for Germanization in many cases are not sufficiently conversant with the German language.

11. The children of these families suitable for re-Germanization must learn to speak, to read, to write, and to reckon in German, and, through association with German children, learn to know the German way of living, thereby growing into the German people.

TRANSLATION OF SCHWALM DOCUMENT 143
SCHWALM DEFENSE EXHIBIT 143

EXTRACT FROM "ALLOCATION OF MANPOWER": ORDINANCES
AND DIRECTIVES CONCERNING THE ALLOCATION TO GERMANY
OF PERSONS ELIGIBLE FOR GERMANIZATION

Published by Main Department I of the Reich Commissariat for the
Strengthening of Germanism

The Reich Leader SS

Reich Commissioner for the Strengthening of Germanism.

Berlin, 31 July 1940

0/42a/23 May 1940 Dr B./Boe.

To the Higher SS and Police Leaders as Delegates of the Reich
Commissioner for the Strengthening of Germanism.

*Allocation in Germany proper, of Polish families suitable for
Germanization*

I. In order to create room for those Germans from Volhynia who follow the various trades, families not employed in agriculture will now also be evacuated from the Warthegau. These families will also be subject to racial screening and are to be resettled if found to be suitable for Germanization in Germany proper in the same way as agricultural laborers. I regret that, for the time being, no detailed information can be given as to which trades and professions will be concerned. But members of the

higher professions will be excluded from this action. I request that necessary preparations be made immediately regarding their allocation, to provide for suitable lodging in particular, and to inform me as soon as possible about the result of your efforts. Moreover, Polish housemaids suitable for Germanization will be listed in the near future. Because of the great shortage in this category, there should be no difficulty in allocating them to suitable jobs.

II. Because of various inquiries concerning Polish agricultural workers suitable for Germanization, the following instructions have been issued:

a. As far as agricultural labor is concerned, only independent farmers, who up till now owned their own, well-managed farms in the Warthegau and who are versed in all agricultural jobs, will be allocated. It is to be expected that they know how to milk and drive horses, etc., on the other hand, milkers only cannot be allocated.

b. The main office NSV has been informed by this office that Polish families suitable for Germanization have equal status with native Germans.

c. Employers are to be informed by the Higher SS and Police Leaders to the effect that the Germanization of allocated families be facilitated in every way and that they be accorded equal status with German citizens, in contrast to migrating Polish workers. For instance, there are no objections, where it is common usage, to the farmers' sharing the table with them.

d. A pamphlet for the instruction of employers, mayors, and local farmers' leaders on all problems in connection with Germanization is being drafted at this time. Before I have it printed, I want to wait for the results of experiences made with the first families. Please inform me of any suggestion you might have to make.

III. In order to avoid delay, the Higher SS and Police Leaders, as delegates for the Strengthening of Germanism, are to address their communications—Subject: Germanization of Polish families; to the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism, Berlin-Halensee, Kurfuerstendamm 142-143, and not, as has happened frequently, to the Race and Settlement Main Office.

For the time being, the above instructions concern only the Higher SS and Police Leaders, North Sea, Rhine, West, Fulda-Werra, Danube, South, Southwest, Alps, and Saar-Lorraine.

By order:

[Signed] GREIFELT
SS Major General [SS Brigadefuehrer]

B. Forced Evacuation and Resettlement

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm were charged with special responsibility for and participation in criminal conduct involving forced evacuation and resettlement of populations of occupied countries (*indictment, count one, par. 16; count two, pars. 24 and 25*). On this charge the defendants Greifelt, Creutz, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm were convicted, and the defendants Meyer-Hetling and Schwarzenberger were acquitted.

The evidence and the arguments of the prosecution and defense have been divided into the following subsections: resettlement of ethnic Germans (pp. 816 to 850); cooperation of the Office for Repatriation of Ethnic Germans (VoMi) with Einsatzgruppen (pp. 850 to 854); forced evacuation from Poland (pp. 854 to 891); deportation and forced Germanization of Slovenes (pp. 891 to 910); forced evacuation from Alsace-Lorraine and Luxembourg (pp. 910 to 936). These sections are followed by some general aspects of forced evacuation and the resettlement program (pp. 936 to 954).

2. RESETTLEMENT OF ETHNIC GERMANS

a. Introduction

The argument of the prosecution concerning the resettlement of ethnic Germans is to be found in the prosecution's opening statement in pp. 622 to 694. On 24 November 1947, the prosecution made a statement in open court that defendants were not charged with criminal conduct in connection with the resettlement of ethnic Germans resulting from valid international treaties or agreements. The prosecution further declared that the evidence it presented on the evacuation of ethnic Germans should be considered immaterial "provided that this evacuation of ethnic Germans from their native countries was carried out as a result of a valid treaty or agreement between the German Government and the foreign government" (*Tr. p. 1418*).

A selection from the arguments of the defense was taken from the final pleas for the defendants Lorenz and Schwalm, which appear on pp. 824 to 828. This is followed by a selection of the evidence of the prosecution on pp. 850 to 852, and evidence of the defense concerning various aspects of the resettlement program on pages 829 to 850.

b. Selections from the Evidence of the Prosecution

**TRANSLATION OF DOCUMENT NO-5332
PROSECUTION EXHIBIT 746**

**TELETYPE MESSAGE FROM BRUECKNER TO EINSATZGRUPPE B,
3 MARCH 1943, CONCERNING THE COMPULSORY NATURE OF
RESETTLEMENT IN RUSSIA**

Berlin, 3 March 1943

Br/KE

To the Einsatzgruppe B of the Security Police, for SS 2d Lieutenant Dr. Wallrabe, Smolensk

Your teletype of 2 March 1943 is answered as follows:

1. The basis for resettlement is not a voluntary application but an order of the Reich Leader SS. Therefore, identification papers have to be taken away from ethnic Germans who do not want to be resettled.

2. Those ethnic Germans who remain there on the specific request of the army group or another German official agency are not to be resettled for the time being. Those ethnic Germans are to keep their ethnic German identification card, etc. The German agencies are to be instructed that these ethnic Germans are to be sent to a selecting point designated by VoMi when they are resettled later on.

VoMi—Berlin

BRUECKNER SS Lieutenant Colonel [SS Ostubaf] (F)

Transmitted: 3 March 1943, 14-45-15.00 to VoMi—Keithstrasse taken down by SS Sergeant [SS Unterscharfuehrer] Mielke.

**TRANSLATION OF DOCUMENT NO-5432
PROSECUTION EXHIBIT 790**

**LETTER FROM THE GAULEITER OF UPPER SILESIA TO GREIFELT,
19 JANUARY 1943, CONCERNING THE RESETTLEMENT OF ETHNIC
GERMANS IN UPPER SILESIA**

19 January 1943

Initials I.q.m.

St. 0037 0 0050 Dr.A/Eb.

Subject: Windup of the settlement in Upper Silesia.

Reference:-

Enclosure:-

To the Chief of the Staff Main Office of the Reich Leader SS as Reich Commissioner for the Strengthening of Germanism SS Major General [SS Gruppenfuehrer] and Major General of the Police Ulrich Greifelt,
Berlin-Halensee, Kurfuerstendamm 140

Dear Party Comrade Greifelt:

The settlement opportunities in Upper Silesia for the occupational groups which form the main part of the various ethnic groups assigned to us are extremely limited or rather almost entirely exhausted. However, after the completion of the final procedure, a great number of ethnic-German repatriates are still available for resettlement, concerning them I would propose the following:

1. O-cases,* at present in camps in Upper Silesia and who are still to be resettled in Upper Silesia: 517 households with 1,809 persons.

2. Persons refusing to be resettled. There are 86 households concerned which are concentrated in camp Zater and which, despite repeated and intensive orientation, reject their settlement with the motive that they wish to return under all circumstances to Romania. According to previous correspondence with the Repatriation Office for Ethnic Germans and the Staff Main Office, Berlin, it has been agreed to send the ring leaders of this group to a concentration camp and to deny all settlers in camp Zater the eligibility for settlement in the East. The necessary steps were initiated at the Immigration Center Lodz. I request that you take care of the transfer to the concentration camp as well as of the early shipment to a camp in Germany proper.

3. On account of the change-over from A to O-Cases, my division settlement has on hand nearly 500 completed reclassifications for which settlement opportunities are to be made available in Upper Silesia. It is, however, entirely impossible to take over all these resettlers. Only those resettlers, whom I shall assign now to Upper Silesia, will get an opportunity for settlement. I request that the balance be assigned to the settlement project Lublin. The Chief of my division settlement has orders to turn over personally the list to your chief of office I, SS Major [SS Sturmbannfuehrer] Dr. Stier.

4. As we have learned from the Immigration Center [EWZ], we have to expect further changes, 600-800 households, reclassified from A to O-cases and which cannot be absorbed in Upper Silesia, either. I, therefore, request also to assign these latest

* For an explanation of the terms "O-Cases" and "A-Cases", see the opening statement of the prosecution, pp. 622 to 694.

reclassification cases as a matter of principle, for settlement in Lublin.

5. In the settlement files of my division settlement we have registered about 600 O-Cases which have not reported to us and of which we do not know the whereabouts. We have already submitted a list of these households to the Main Repatriation Office for Ethnic Germans in order to ascertain the whereabouts and the settlement status. If here again a large number should be eligible for Upper Silesia, I have to repeat that it is beyond our capacity to accept them.

I request your advice as to what instructions I can give to my division settlement regarding the above matter.

With cordial regards,

Heil Hitler!

Yours,

[No signature]

GAULEITER

PARTIAL TRANSLATION OF DOCUMENT NO-5328
PROSECUTION EXHIBIT 830

MEMORANDUM FROM BRUECKNER TO LORENZ, 18 MARCH 1944,
CONCERNING THE TREATMENT OF ETHNIC GERMANS FROM RUSSIA

Templin, 18 March, 1944

VI-Br/Y

Memorandum for SS Lieutenant General [SS Obergruppen-
fuehrer] Lorenz

from his consultation with SS Lt. General Berger

In the course of a conference which SS 1st Lieutenant [SS Obersturmfuehrer] Dr. Wolfrum had on 17 March 1944 with Ministerial Counsellor Duckart of the Reich Ministry of the Interior, Duckart stated the following:

During a conversation with SS Brigadier General [SS Brigadefuehrer] Dr. Kinkelin, the latter informed Duckart that General Berger intends to pay a visit to the Reich Leader SS during the next few days, in order to point out to him that the ethnic Germans from Russia, who are repatriated and cared for by the East Ministry, should not be traded like slaves by the Reich Governors. The ethnic Germans from Russia should be treated as refugees and, therefore, are only guests of the Greater German Reich, who still are under the care of the East Ministry * and who should be

* East Ministry [Ostministerium], or the Reich Ministry for the occupied Eastern territories [Reichsministerium fuer die Besetzten Ostgebiete] under Alfred Rosenberg.

sent back to their country of origin immediately after the re-occupation of the areas which have been evacuated now. It is said that Brigadier General Kinkelin assured Duckart that in this matter SS Lieutenant General Berger has the support of SS Lieutenant General Greifelt.

Our opinion is to the contrary, because—

1. A reassignment of these ethnic Germans from Russia is inappropriate for biological reasons (half of the males are missing).

2. Because of the fact that the ethnic Germans absorbed to a large extent Bolshevistic and Russian doctrines, they cannot be considered as being the suitable persons for guidance and leadership in Russia.

3. Since the farms and villages of ethnic Germans from the Black Sea have been destroyed to a large extent, a reconstruction of those villages would be possible only after years of reoccupation of this area. However, the fate of these ethnic Germans cannot remain undecided for such a long time. This opinion of ours is in conformity with that of the Reich Leader, who—(a) characterized in a note to SS Lieutenant General Berger the ethnic Germans from Russia as harrassed human beings, who have to find peace and quiet at last and who should not be pushed around any longer, (b) in his conversation on 17 February 1944 with SS Brigadier General Hoffmeyer stated unequivocally that the ethnic Germans from the Black Sea area should remain in the Warthegau, (c) according to the interpretation of Gauleiter Greiser, assured him that the ethnic Germans from the Black Sea area who were placed by him at present, should remain permanently in Greifelt's Gau.

The opinions of the East Ministry have become known to the ethnic Germans from Russia and have caused even now considerable unrest among them, so that they decline proposals for settlement with the argument that the East Ministry will ultimately bring them back into their old home country.

In case SS Lieutenant General Berger—as mentioned by SS Brigadier General Kinkelin—intends to appeal to the Reich Leader in this sense, then it will become necessary to inform the Reich Leader at the same time of our point of view.

[Initials] BR

SS Lieutenant Colonel [SS Obersturmbannfuehrer] F

TRANSLATION OF DOCUMENT NO-5057
PROSECUTION EXHIBIT 294

COMPLAINT SIGNED BY 35 GERMAN RESETTLERS FROM THE UKRAINE,
1 MAY 1944, ADDRESSED TO HIMMLER, WITH COVERING LETTER
FROM RUDOLF BRANDT TO LORENZ, 12 MAY 1944

The Reich Leader SS
Personal Staff
Journal Nr. 30/35/44 Bg/K.

Field Command Post, 12 May 1944
Stamp: 3 May 44

[Handwriting] SS Obersturmbannfuehrer Brueckner
To the Chief of the Repatriation Office for Ethnic Germans
SS Lt. General [SS Obergeruppenfuehrer] Lorenz,
Berlin
[handwritten] Address of the Firm Robot, Grosschoenau
General,

I send you in the enclosure a number of petitions which were
addressed to the Reich Leader SS by some resettlers with the re-
quest to examine the conditions described therein and to inform
me of the result of this in order that I may inform the Reich
Leader SS accordingly.

Heil Hitler

Yours

[Signature] R. Brandt
SS Colonel [SS Standartenfuehrer]

[Rubber stamp]
Received on 13 May 44
Case worker Ettermann

3 enclosures.

Grosschoenau, 1-5-1944
German Resettlers employed with the firm Robot Borning and
Co. in Grosschoenau, Saxony.

Dear Herr Himmler.

Subject: The living and housing conditions of the 230 ethnic
German workers of the Firm Robot.

We, the German resettlers from the Ukraine, who have been
put to work with the Firm Robot, are in difficulties and request
assistance and help.

I. Housing conditions

We are quartered in three barracks and in a large room in the factory building. *In each room in the barracks, there are 24 persons and 70 in the large room (in the factory building).* The barracks have more the appearance of warehouses than homes for human beings. There are no ceilings and the walls and roofs are full of holes.

They were previously inhabited by Eastern workers and many children died there. The rooms are overcrowded and, therefore, *the workers of both shifts have no facilities to rest and to collect their strength for work.* Not even the most elementary sanitary facilities exist in the camp (no hot water, no washrooms, no toilets). *Almost all our children are already sick.*

II. Wages

All adults, without regard to age, experience, or size of family, receive *the same wages*—*Women receive 41 pfennigs per hour, men 58 pfennigs per hour.*

For this reason those people who have 2 or 3 dependents cannot pay the firm for their food and, therefore, are always *indebted to the firm in spite of their working 12 hours a day.* We have no funds to pay for any other needs of human beings.

III. Working conditions

All our people are used as unskilled laborers in spite of the fact that there are people among us who have professions, many years practice, and experience. *They would be of much better use to the Reich if they were working in their profession.*

IV. Food

The question of food has not been solved as yet. We are being fed in the plant kitchen but we receive staple food for the whole week according to ration cards. In spite of our requests, the firm has not given us our Reich ration cards and has only promised to give us these cards in June in spite of the fact that the firm already received them for us in April. This can be seen from the following incident: on Saturday 29 April 44 the coupons from the meat ration card were given to us in place of sausages.

It is still worse as far as the children's food is concerned. The children do not receive any additional rations except milk and farina. For supper, the children as well as the adults usually receive the remains of the noon meal diluted with water.

V. Clothing ration cards

All of us are refugees from combat areas who have lost everything; our children have no shoes and are ill-clad; we ask for an

opportunity to live the lives of human beings; we turn to you in our distress because the firm has promised us so much and kept so little; we ask you to visit us after 1800 hours because we are working in the plant from 0600 to 1800 hours.

Heil Hitler
[35 Signatures]

c. Selections from the Arguments of the Defense

*EXTRACT FROM THE FINAL PLEA FOR DEFENDANT LORENZ **

* * * * *

The prosecution has stated that it does not want to object to resettlement based on treaties between states. (*Tr. p. 1418.*) In my opinion, the prosecution is carrying coals to Newcastle with this argument. It goes without saying that two states can conclude a treaty about giving their citizens the possibility to choose another state and to settle there. Since, however, the prosecution made its declaration with the reservation that it applies only to valid state treaties, and since—according to information received—it does not recognize treaties concerning the resettlement of parts of the population from the area occupied by the Soviet Union, arrived at between Germany and the Soviet Union, that is, agreements with a state allied to the United States during the war, consequently, this statement of the prosecution is worthless. It appears redundant to discuss in this place the question to what extent the prosecution considered treaties concluded between the German Reich and other states at that time valid or nonvalid. It is sufficient in this case to point out that, at any rate, the defendants could not be expected to doubt the validity of such treaties; that they did not have such knowledge of international law as to be able to differentiate, for instance, between the resettlement treaty with Latvia concerning ethnic Germans on Latvian territory, and a resettlement treaty with the Soviet Union concerning the future resettlement of ethnic Germans from the Latvian territory which had been occupied by the Soviet Union in the meantime. The defendants rightly presumed that these treaties between the authorized representatives of their own countries and the representatives of other states, especially of the later allies of the United States, that is, the Soviet Union, were valid and binding on both parties. Besides that, the National Socialist State would have answered any doubts as to the validity of its treaties with adequate countermeasures.

Such state treaties were concluded for all resettlement actions during the years from 1939 until 1941. All these treaties contain

* Final plea is recorded in mimeographed transcript, 17 February 1948, pp. 5012-5048.

the principle of voluntary option. The wording of these treaties is contained in the document books of the defense.

* * * * *

*EXTRACT FROM THE FINAL PLEA FOR DEFENDANT
SCHWALM **

* * * * *

As the prosecution has declared that resettlement resulting from interstate agreements cannot be described as criminal, and as at the time when Schwalm was Chief of the Race and Settlement Office with the immigration center, only those persons who had come as a result of interstate agreements were being naturalized, it only remains to deal with the question as to how far the naturalization of these resettlers who were entering the Reich as a result of state agreements can be considered as criminal, and against international law in the sense of the indictment; and in particular how these terms can apply to the part which the Race and Settlement Office played in this operation. The work of the immigration center must, however, be considered as part of the resettlement resulting from state agreements with which the indictment does not concern itself, as this work constituted the necessary conclusion of the settlement based on interstate agreements.

The work and the training of the examiners are not a subject of the indictment. The prosecution has not tried in any way to describe the work of the examiners as an offense against international law or humanity. Analogous to this examination, the immigration laws of the U.S.A. provide for a similar examining procedure. (*Schwalm 196, Schwalm Ex. 196.*) The introduction of such an examination for the resettlers was only due to the obscure folkdom conditions in the countries from which they came. (*Tr. p. 3362.*) In the majority of cases, the resettlers' groups could not clearly assert their folkdom nor was it possible for the immigration authorities to come to a definite decision regarding their folkdom as, during the last decades or centuries, they had intermingled with the people in whose midst they were living. Large sections of the formerly purely German population had not only become partly Polish, but had in other areas even succumbed to some extent to Russian or Romanian influence, while elsewhere German folk groups had been completely absorbed by their country of hospitality. In all these people the memory of their German origin was still alive, many of them were decidedly conscious of being German. Due to their heritage of German and European blood and culture, these ethnic Germans usually held

* Final plea is recorded in mimeographed transcript, 18 February 1948, pp. 5142-5175.

leading positions in the economy, and in the social and cultural life of their countries of hospitality, and wherever their country was taken over by the Bolshevik regime, these people had to fear particularly severe persecution and acts of violence at the hands of the Bolshevik. When in 1939 Bessarabia, Bukovina, Esthonia, Latvia, Lithuania, and the whole of eastern Poland became Russian, large numbers of Germans or people of German origin who had been living in these areas, fled to receive the protection of the German Reich, after they had been granted the right of option in accordance with interstate agreements. Thus, every resettler had opted for Germany. They were, therefore, received into the camps of VoMi as stateless persons, and there they were screened by the above-mentioned immigration center commissions and, in the course of this operation, they were also examined by one of the examiners of the Race and Settlement Main Office.

The racial examination of the resettlers which has been discussed here so frequently is only one section of the over-all opinion which the examiner had to give on each individual resettler, or each resettler's family unit. The examination covered, apart from the racial estimate, an estimate of character, intelligence, social achievement, power of resistance, and other ascertainable qualities (*Tr. p. 3610*); the examination was, therefore, a psychological estimate of the resettler's personality. The opinion expressed by the examiner was then used by the chief of the commission, together with the opinions expressed by the other agencies concerned with the naturalization process, in order to arrive at an over-all opinion (*Tr. p. 3614*). On this over-all opinion of the chief of the commission was then based the so-called settlement decision, that is, the assignment of the resettlers to one of the three groups of A, O, or S cases. The opinion of the first examiner had, therefore, no decisive influence on the final settlement decision regarding the resettler, nor was his the only opinion on which this decision was based but one among many. The opinions of the physician, the employment service, and the office concerned with naturalization, all carried the same weight. (*Tr. p. 3536.*)

"S" was the designation for all those resettlers who did not fulfill the conditions for naturalization and whose application for naturalization had to be re-examined. To this category belonged also those resettlers who had not applied for naturalization and who wished to return to the territory whence they had come. (*Tr. p. 3535.*)

It must always be left to the country of immigration—and in practical politics no objections have been raised to this so far—whether and where the person desiring to immigrate should settle.

Neither international law nor the recognized principles of

humanity demand that a state should permit large masses of re-settlers to move to one restricted area within its territory, because again and again the social, economic, and employment conditions must be considered. Every state tries to admit only those persons to its territory who, in its opinion, will become good citizens and who, in all probability, will adapt themselves to the life of the country. Exactly the same principles, which at the time governed the immigration center, could also be found in the immigration laws of all the civilized countries of the world and it was just the U.S.A. which created immigration laws which were determined in the last instance by racial and biological considerations. (*Compare Schwalm 116, Schwalm Ex. 116.*)

With regard to the problems of immigration and the laws connected with it in the U.S.A., I would refer particularly to Stoddard's "Reforging America" (*Schwalm 125, Schwalm Ex. 125*). I take the liberty of quoting some passages of this document which require no further comment.

"* * * One thing is certain—immigration is, in the most literal sense of the word, a supremely 'vital' problem. For immigration signifies not merely business or politics or dividends; in the last analysis immigration means men and women, and their children, and their children's children—in other words, the nation's blood and soul. For a 'nation', in the true sense of the word, must possess a national spirit and that spirit is inevitably determined by the blood of its people. For every phase of national activities is just as much the result of the racial structure of a nation as is human activity the result of the blood and temperament of an individual. *Laws, institutions, ideals, the whole fabric of national life—these are but the outward manifestations of the creative racial spirit within.* But if the nation's racial structure changes, the national fabric can no longer fit people of different temperament and outlook; consequently, the laws, the institutions, the ideals, and all the rest of it are either radically transformed or are done away with altogether. Unlike the individual, a nation is potentially immortal. Yet, there is one sure way of killing a nation—to destroy or fatally dilute the blood of its creators * * *."

"Every factor, therefore, which concerns the blood of the people is of vital importance * * *." (Pages 94-96 of the original.)

"* * * The question of the relative size of the racial groups is of great importance. Scientific evidence shows convincingly that races do not only exhibit considerable differences, but that they can also be classified qualitatively * * *." (Page 101 of the original.)

“* * * America welcomes diversity, but diversity within limits. America should not encourage differences so great that assimilation is difficult or impossible. In other words, we want people who can understand us, accept our way, and become wholehearted partners in the great task of perfecting our America * * *” (Pages 103–104 of the original.)

Further I would refer to Document Schwalm 166, Schwalm Exhibit 166.

Thus, the sole purpose of the change in the quota laws in the U.S.A. in 1921–24 was to restrict the immigration of certain races and peoples in favor of others, particularly, the so-called Nordic races. (*Compare Schwalm 124 and 125, Schwalm Exhibits 124 and 125, respectively.*) As far then as the legal estimation of classification of persons into group “S” is concerned, and consequently, the part which the opinion of the examiners played in the settlement decision, one thing is certain, that *no* resettler was *refused* citizenship due to the work of the examiner. (*Compare Schwalm 80, Schwalm Ex. 80.*) And the prosecution itself has not been able to adduce any evidence to the contrary.

With reference to Schwalm’s statement (*Tr. p. 3444*), it seems correct to me that I should clearly emphasize once more that, although Schwalm was no longer able to exert any direct personal influence, the actual work of the racial examiners within the entire official sphere of the Race and Settlement Main Office was, after all, based on the principles which he worked out in Lodz. However, the racial examiners were more or less trained by Schwalm and Dr. Ruebel and thus were experts who were free from shortsighted scientific dogmatics and who in the end based their opinion on their human perception. Until 1944, as can also be seen from the documents submitted by the prosecution, a few impracticable theoreticians were able to remain in the Race Office (I refer in this instance to all documents bearing the name “Harders”. Stoddard (*Schwalm 125, Schwalm Ex. 125*) writes on page 172 of the original English version “Reforging America” and I quote:

“To the trained eye, the physiognomy of certain groups unmistakably reveals the inferiority of the type. I have seen gatherings of foreign-born people among whom low and receding foreheads were the rule. The short and small shape of the skull was clearly noticeable. There were many unimpressive faces. Except for the transitory bloom of girlhood, the women lacked all beauty. In every face there was something objectionable, such as thick lips, coarse mouth, an upper lip which was too long.”

* * * * *

d. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT HILDEBRANDT*

DIRECT EXAMINATION

* * * * *

DR. FROESCHMANN (Counsel for defendant Hildebrandt) : Witness, now what brought about these so-called resettlements to which you have already referred previously?

DEFENDANT HILDEBRANDT: The National Socialist Party program demanded the bringing together of all Germans by virtue of their right of self-determination of relations into a greater Germany. This demand was realized by Hitler with regard to the ethnic Germans who were left in countries which were in the neighborhood of Germany and he carried on that task until 1935. He did this step by step until the revision was carried out of the dictates of St. Germain and Versailles and concerning the Saar territory. He did that by bringing the Saar territory back to Germany, through the annexation of Austria, through the annexation of the Sudetenland, through getting back the Mémel area, as well as by the liberation of Danzig and the German eastern provinces, Poznan, West Prussia and Upper Silesia.

However, in spite of this only part, a very small part of the ethnic German problem, had been solved. The German people were composed of 65,000,000 people who lived within Germany proper, but of additional millions of Germans who lived outside the frontiers of the Reich, and these ethnic groups, who were sometimes very far away from their motherland, did not only have a fertilizing effect on foreign nations as far as their culture was concerned, because they profited by the achievements, the economic and cultural achievements of these ethnic Germans, but in many places, these ethnic groups were severely endangered as far as their position was concerned. These ethnic groups lived throughout the east and the southeast of Europe, and in a certain way they were just very small groups. The wish to assemble all these small groups in the Reich could easily be understood.

Q. The conditions to which you have referred just now, were they in some connection with foreign political questions?

A. Yes. That is quite correct. This was especially a reason and a cause why disturbances and disputes took place between the nations at all times when the principle of nationalities was brought about. It was a Utopia to believe that the members of a nation of high standing could be assimilated very easily. There is only one country in this world which can assimilate people in the best

* Complete testimony is recorded in mimeographed transcript, 19, 20, 21 January 1948, 2 February 1948, pp. 3874-4120; 4771-4774.

sense of the word and that is the United States, which has become the melting pot of all nations. There, there is enough space and other possibilities for that. However, that is decreasing as time goes on, and perhaps this can only be done under the following prerequisites. The melting pot of the United States can only use desirable elements who can be assimilated and who want to become assimilated without incurring any damage so that the living standards and the level of the American people does not become reduced, and a civilization of that kind is not possible in Europe because it is overcrowded and overpopulated and because these nations for many centuries have lived in complete national separation and they have complete national sovereignty and they live like that next to each other. The emigrant who goes to the United States—I know that from my own experience—will have to become completely separated from the Old Country, that is to say, he has no further connections with the ethnic group to which he belonged previously. He is thousands of miles away from his home and he must look after himself completely, and that is why he must adapt himself to the American style and rhythm of life unless he wants to be destroyed. As an individual he has no other choice, and I experienced that personally from the years 1928 to 1930. Therefore, in view of the conditions which prevailed in Europe and which were different from those in the United States and in order to clarify European life, we had to carry out re-settlements here, because an assimilation unfortunately was not possible, so that in this way at least some of the European conflicts were to be removed.

Q. Hitler must have had similar considerations, and what realizations did he reach in the end?

A. The Eastern provinces which had been taken away from Germany after 1918, and that is to say West Prussia in which we are interested in this connection, after the incorporation into the Reich, offered the possibility to collect and assemble the ethnic German groups who lived outside of Germany, get them back into the Reich in order to settle them there as groups. In his Reichstag speech of 6 October 1939, which I as a deputy in the Reichstag heard personally, Hitler then, for the first time in public established this plan, and one of the tasks which arose was to effect the collapse of the Polish State and among the most important he mentioned, and I quote him literally, "to establish a new order of ethnographical conditions;" that is to say, to carry out a resettlement of nationalities, and in this way the German groups in the Eastern territories were to be strengthened, that is, they were to become consolidated.

Q. Witness, in the trials which have taken place so far before

the IMT, and in this trial also, the attempts to gain Lebensraum, new living space have been mentioned as one of the purposes of the war and this is to be the expression of an ideological thought.

A. This word of living space unfortunately became the phrase of an arbitrary and dangerous propaganda. The problem of living space was first of all nothing else than the struggle of a nation for the most simple rights to live. This has always been the case in history and from this fact probably the majority of all the wars resulted. In the history of Greece and Rome, beginning with the big movements of populations and big migrations and all the armed conflicts which have affected countries in Europe for many centuries, you have the same situation as today. The biological increase in the nations of Europe in the 19th century also put Germany into the position of being forced, as a result of the lack of living space, to intensify its exports in order to give sufficient food and other commodities, which were required by its population of 60,000,000. The competition which resulted from that, above all with British trade, was, at the time, one of the most important reasons which very capable and sometimes less capable statesmen used in order to bring about a war in 1914.

Q. Were these areas in the East, which had been taken away from Germany in 1918, especially important?

A. Yes. They were especially important because they represented the grain chambers of Germany and they were originally German territory. The peace Treaty of Versailles, which took away from us these territories, made it extremely difficult for Germany to obtain proper food and, of course, that's how the demand for the return of these territories arose. After the end of the campaign in Poland, the necessity arose that finally clear conditions were to be established in the East, where for more than a century there had been an extreme amount of tension between the Polish and the German population. The eastern borders of Germany today have taken away further provinces from Germany which had been German for thousands of years, and that is why Germany cannot feed herself from all resources today, and that is why the eastern provinces are of such vital importance for Germany.

Q. Was there any other reason why these provinces were so extremely important?

A. May I also add something to what I said before? Today, at a time when Europe can only feed herself by American allowances, it is also extremely important that to the east of this Oder-Neisse border, there are 35 people to one square kilometer, while in Germany towards the west of this border, there are 200 to 220 or 240 people to one square kilometer. I don't think that Europe

and the United States of America can afford in the future a situation of that kind for which the American taxpayer has to pay at present.

Q. Witness, I asked you before whether the ethnographic conditions did not also have a political danger. You did not answer this question as yet.

A. Yes. They did have a danger. This is a very important factor. So to speak, it is conditioned by the geo-political conditions of Germany. Besides the south, Germany does not have any natural borders. East and West Prussia are absolutely open to aggression from the people in the East. This is true in the military as well in the ideological sense. Without these provinces, Germany is completely open to any aggression of her eastern neighbors who could go into the middle of Germany as we have already seen. The border in the East, no matter where it is drawn, is always extremely extensive. Now, Hitler wanted to establish Germanism in the reincorporated territories of the east by resettlement of German people. The territories which economically were devastated in part, or not exploited completely, he wanted to transform again into flourishing provinces of the Reich. This was probably one of the main purposes why he created the position of Reich Commissioner and also a series of other authorities.

Q. And now, you were the representative of the Reich Commissioner?

A. Yes.

Q. And on the strength of what decree, please?

A. I was appointed representative by the Decree of the Reich Leader of 2 November 1939, which he issued in his capacity as Reich Commissioner. At the same time, I was Higher SS and Police Leader. Through this fact, these two activities were consolidated in one person, so that everything that happened in Danzig-West Prussia, and which I performed in my capacity as representative of the Reich Commissioner, influenced at the same time my activities as Higher SS and Police Leader, as this has already been described by various witnesses. Beyond that, further decrees, which touched upon the position of the Higher SS and Police Leader, were valid only for the Reich proper, and not for West Prussia; therefore, for me they had no validity.

Q. Witness, in our document book, (*Hildebrandt Document 3 b, Hildebrandt Exhibit 6*), I have included this decree mentioned by you, dated 2 November 1939, and submitted it to the Tribunal. I would like to show you this document, and would only like to have you confirm that this is the decree that you were just talking about.

A. Yes. It is correct; that is the decree I just mentioned.

Q. Witness, the prosecution in the session of 24 November 1947, German Transcript, page 1358, has made the statement that it did not wish to charge any of the defendants with the evacuation of ethnic Germans, as far as such an evacuation was performed on the strength of an international valid agreement. At the time did you know of any such treaties?

A. Yes.

Q. Is it correct that the German-Russian friendship treaty of 28 September 1939 was the originating point of all these?

A. Yes.

Q. What was the idea upon which that treaty was based?

A. These treaties were based on the political knowledge which was gained on the strength of experiences through the years, that by the resettlement of nationalities, better separation borders could be found than had existed up to that time. This German-Russian border and friendship treaty of September 1939, was succeeded on 15 October 1939 by the German-Esthonian agreement, and on 30 October 1939, it was followed by the German-Latvian resettlement treaty.

Q. Witness, in this connection I would like to show you again our document book, and I would like to ask you to say whether Hildebrandt 2 b, Hildebrandt Exhibit 4; Hildebrandt 79, Hildebrandt Exhibit 7; and Hildebrandt 80, Hildebrandt Exhibit 8, contain the three treaties about which you have just spoken.

A. Yes. That is correct.

Q. Were there now any political results from these treaties which made necessary the conclusion of other treaties with the Soviet Union?

A. Yes.

Q. And what were these?

A. In order to supplement this statement, these national treaties with Esthonia and Latvia were necessary, because the Soviet Union in June 1940 made an ultimatum to Romania concerning the handing over of the old Austrian territory of North Bukovina, and because the Soviet Union in August 1940 annexed the Baltic countries and a territory belonging to Lithuania, in which Germany was also interested.

Q. And what was the result of this?

A. The result obviously was a strain on German-Russian relations, and the 130 thousand people in Bukovina and about 19 thousand in the Baltic countries and Lithuania, all of whom were ethnic Germans, were in danger of being liquidated. Therefore, in January 1941, two further treaties between Germany and the Soviet Union were concluded which were concerned with the resettlement of Germans still living in these territories.

Q. Witness, so that the Tribunal may see the situation completely, clearly, I would like to show you again document book 3, and I would like to ask you whether our Exhibits 10 to 15, inclusive, (*Hildebrandt 82 through 87, Hildebrandt Ex. 10 through 15, respectively*), are the treaties and agreements about which you have just spoken.

A. Yes. That is correct.

Q. Thank you. Now, what was significant in the course of these resettlements?

A. The decisive fact in these resettlement treaties, as well as in all other subsequent resettlement treaties, was that the return of the ethnic Germans was performed on a completely voluntary basis.

Q. And how actually did that take place?

A. The resettlement of Baltic Germans, which I myself experienced, was carried out in a technical way with the aid of forty-eight German steamers by way of the German ports Gdynia and Stettin. The return of about 13 thousand Germans from Esthonia started on 18 October and was concluded by the middle of November. The first transport which included about 50 thousand resettlers from Latvia arrived in Gdynia on about 15 October, and it lasted about two months later. The resettlement of the ethnic Germans living in Bessarabia and those living in Bukovina was concluded on 15 November 1940.

Q. And how are special conditions now in Poland?

A. On 1 September 1939, Danzig became part of the German Reich. The regulation of questions and problems concerning the corridor took place after the end of the Polish campaign on the strength of a Hitler decree concerning the separation and administration of the eastern territories, dated 8 October 1939. After the capitulation of the Polish National Government, the Soviet Government, on 17 September 1939, had its troops march into the territories which were mainly inhabited by Poles and White Russians in order to protect the life and property of the people living there. The agreement with Germany in this connection was expressed in a common German-Russian declaration, dated 18 September 1939. According to the official publications, the significance and the meaning of this declaration was to provide for the people living in these territories a peaceful existence which was in accord with their national ways, as well as the creation of a Reich border which was in accord with the ethnographic and historical conditions of these people.

Q. I would now like to submit to you Hildebrandt Document 2a, Hildebrandt Exhibit 3 from my document book, and would like

you to identify whether this is the declaration that you have just spoken about.

A. Yes.

Q. Which territories were included in this agreement?

A. The final solution of the Polish problem, as far as territory was concerned, took place by a border-friendship treaty. By these agreements, the territory of the former Polish State was divided into a German and a Russian sphere of influence, the borders of which were the Pisa, the Narew, Ostroleka, the Bug River to the Krystynopol [?] and the San. The limitation of these two spheres of influence was expressly designated as final, and it was emphasized that it took place without the intermediary of any other third power.

Q. And what was the significance of this policy of resettlement; who was meant by the third party?

A. By this third party—I would like to supplement my statement—they probably meant Britain. This policy of resettlement had taken place for the first time in the history of the world, for the Government of the Reich at the time said that it was ready, by means of treaties, to take in more than one-half million of Germans whose properties remained in their original countries and to have them returned to the Reich. This was probably one of the most significant contributions to peace that has ever been made. I know—and I have studied a lot about history—of no other example of this sort of thing, and especially that a Reich would incorporate within its borders islands of ethnic groups that were existent in the Baltic countries, with a culture existing for seven hundred years. They did this only in order to reduce the friction between themselves and foreign powers.

Q. Did not this incident have a precedent in the treaty of 1921 or was there a difference?

A. Well, this may have been a precedent to this instance, but only externally, for the resettlement at the time did not take place on a voluntary basis, in contrast to the resettlement of the Baltic Germans and those Germans living in Bessarabia, etc.

Q. Were you yourself convinced of the validity of these treaties?

A. Yes, absolutely. I could not doubt the validity of these treaties which were published in the Reich Law Gazette. Germany, Esthonia, Latvia, and the Soviet Union were sovereign states. They could regulate their national relations; also, with respect to the various ethnic groups living within their borders, in as far as these were German, Esthonian, Lithuanian, or Russian origin.

There is no international treaty in existence which had at any time prohibited such treaties.

* * * * *

TRANSLATION OF HILDEBRANDT DOCUMENT 82
HILDEBRANDT DEFENSE EXHIBIT 10

COPY OF OFFICIAL GERMAN STATEMENT ON THE GERMAN-SOVIET
RUSSIAN RESETTLEMENT AGREEMENT OF 3 NOVEMBER 1939

Certified Copy of "Documents of German Policy" 1939 Part II,
Volume 7

Page 664.

*No. 126. Official German statement on the German-Soviet Russian
resettlement agreement of 3 November 1939*

Page 667.

An agreement was concluded on 3 November 1939 between the Government of the German Reich and the Government of the Union of the Soviet Socialist Republics. In accordance with that agreement, all Germans from the western parts of the Ukraine and White Russia, as well as all the Ukrainians, White Russians, Russians, and Ruthenians from the former Polish area which now is within the sphere of interest of the German Reich, must transfer to the area of the other state. The criterion is their desire to do so.

The resettlers have the right to take along their property to the extent to which it is required for the continuation of their economic and professional activities, as well as within certain limits, also the valuables of their personal properties. In addition, the agreement provides that the rights of the resettlers in regard to the property left behind at their former places of residence be guaranteed. The agreement provides for an agency to be established to register those persons desiring to be resettled and to carry out the resettlement. Both partners to this agreement have guaranteed the material and sanitary welfare of the resettlers on their journey. All the practical questions of the resettlement will be solved by the treaty partners in the spirit of friendship, which corresponds to the relations between the German Reich and the Union of the Soviet Socialist Republics.

TRANSLATION OF HILDEBRANDT DOCUMENT 83
HILDEBRANDT DEFENSE EXHIBIT 11

COPY OF GERMAN-SOVIET RUSSIAN AGREEMENT OF 5 SEPTEMBER
1940 ON RESETTLEMENT OF THE RACIAL GERMAN POPULATION
FROM THE TERRITORY OF BESSARABIA AND NORTHERN BUKOVINA
TO THE GERMAN REICH

Certified Copy of "Documents of German Policy" 1940, Part II,
Volume 8.

Page 624:

*No. 110. German-Soviet Russian agreement of 5 September 1940
on resettlement of the racial German Population from the Ter-
ritory of Bessarabia and Northern Bukovina to the German
Reich*

The Government of the German Reich and the Government of
the Union of the Soviet Socialist Republics of Russia, guided by
the desire to settle the questions connected with the resettlement
of the racial German population from the territories of Bessarabia
and Northern Bucovina, have appointed as their plenipotentiaries
for this purpose

* * * * *

who have agreed on the following provisions:

Section I—General Matters

Article 1

The contracting parties obligate themselves after the signing
of this agreement, to initiate in accordance with section III
thereof, the resettlement to the German Reich of the ethnic
Germans living in the area of Bessarabia and Northern Bukovina.

Only those persons listed in paragraph 1, who have expressed
their desire to be resettled are subject to repatriation. The desire
to be resettled can be put forward orally or in writing. Resettle-
ment is handled on a voluntary basis; thus, no direct or indirect
coercion can be exerted.

Article 2

The contracting parties agree to initiate resettlement on the
day the agreement under consideration is signed and to complete
it by 15 November 1940.

Article 3

Persons listed in Article 1 of this agreement have the right, in the course of their resettlement, to take along their belongings in accordance with the following rules:

1. Among other items carried as baggage, the following articles are permitted to be removed: worn outer garments (only one fur), shoes, and linen for personal use as well as food.

2. The resettlers are permitted to take along on the railroad hand baggage and personal baggage in accordance with existing railroad regulations. If resettlement is carried out by trek (horse or ox-drawn carts) or by trucks, removal of personal belongings to the extent of one load that can be drawn by two horses is permitted per family unit.

* * * * *

Section II—The Resettlement Commission

Article 6

The duties of supervising and rendering aid in the carrying out of the present agreement as well as of safeguarding the interests of the persons listed under Article 1 are assigned to the competent government delegation in the Mixed German-Soviet Russian Resettlement Commission as well as to the German Chief Plenipotentiary and the Soviet Chief Delegate. The Mixed German-Soviet Russian Resettlement Commission consists of two delegations which are appointed by the respective governments.

* * * * *

Section IV—Final Provisions

Article 20

* * * * *

Article 21

The present agreement will become effective on the day of signing.

In witness thereof, the plenipotentiaries of both contracting parties have affixed their signature by their own hand to this agreement.

DR. WILHELM NOEDELKE

Wasjukow

Moscow, 5 September 1940

TRANSLATION OF HILDEBRANDT DOCUMENT 86
HILDEBRANDT DEFENSE EXHIBIT 14

COPY OF AGREEMENT OF 10 JANUARY 1941 BETWEEN THE GOVERNMENT OF THE GERMAN REICH AND THE GOVERNMENT OF THE U.S.S.R., RELATIVE TO THE RESETTLEMENT OF GERMANS, LITHUANIANS, AND RUSSIANS

Certified Copy of "Documents of German Policy" Part II, 1941,
Volume 9

Page 703.

No. 128. Agreement of 10 January 1941 between the Government of the German Reich and the Government of the U.S.S.R. relative to the resettlement to the German Reich of the German citizens and ethnic Germans from the Lithuanian Soviet Socialist Republic and of persons of Lithuanian, Russian, and Belo-Russian ethnic origin from the German Reich (former Memel territory, and Suwalki territory) to the Lithuanian Soviet Socialist Republic

The Government of the German Reich and the Union of Soviet Socialist Republics, guided by the desire to solve the questions connected with the resettlement of German citizens and persons of ethnic German origin from the Lithuanian Soviet Socialist Republic to the German Reich and of persons of Lithuanian, Russian, and Belo-Russian ethnic origin from the German Reich (former Memel territory and Suwalki territory) to the Lithuanian Soviet Socialist Republic have found it necessary to conclude the following agreement.

Part I—General Provisions

Article 1

The contracting parties obligate themselves to carry out the resettlement of German citizens and of persons of ethnic German origin from the Lithuanian Soviet Socialist Republic to the German Reich and of Lithuanian citizens and persons of Lithuanian, Russian, and Belo-Russian ethnic origin from the German Reich (former Memel territory and Suwalki territory) to the Lithuanian Soviet Socialist Republic.

It is agreed that such persons, who prior to 21 July 1940, were members of the German Reich, are considered members of the German Reich having the right to be resettled. Only those persons listed in paragraph 1 of this article, who have expressed their desire to be resettled, are subject to resettlement. The desire to be resettled can be put forward either orally or in writing.

Resettlement is handled on a voluntary basis; thus, neither direct nor indirect coercion is permissible.

The resettlement of persons listed in paragraph 1 of this article is carried out only with the consent of the receiving party.

Resettlement of persons under detention is to be carried out in accordance with the provisions as agreed by diplomatic negotiations.

Article 2

Persons being resettled in accordance with this agreement have the right to take with them on their joint trip their families, and on the basis of the requests expressed by the family members, the following can be resettled as members of the family: the wife or husband, the children, the mother, the father, the grandchildren, foster and adopted children, and other members of the house who together with the resettler form a common household. Children over 14 years of age have the right to personally express a desire to remain behind or to be resettled.

Article 3

The contracting parties agree to initiate the resettlement forthwith on the day this agreement is signed and to complete it within 2½ months.

Part II—The Mixed Commission, the Plenipotentiaries and the Delegates for the Resettlement.

Article 4

The duties of supervising and aiding in the carrying out of this agreement, as well as of safeguarding the interests of the persons listed in Article 1 and of granting the aid due them, are being assigned to the government delegations in the Mixed German-Soviet Russian Resettlement Commission as well as to the Fuehrer's Deputy for Resettlement Matters, the Chief Soviet Plenipotentiary and the Chief Delegates of both sides.

* * * * *

Part V—Final Provisions

Article 25

The foregoing agreement becomes effective on the day of its signing. In witness thereof the plenipotentiaries of both parties have signed the present agreement and affixed their seals to it.
Kaunas [Kovno], 10 January 1941

WILHELM NOEDELKE

N. POSDNIAKOW

TRANSLATION OF HILDEBRANDT DOCUMENT 87
HILDEBRANDT DEFENSE EXHIBIT 15

COPY OF AGREEMENT OF 10 JANUARY 1941 BETWEEN THE GOVERNMENT OF THE GERMAN REICH AND THE GOVERNMENT OF THE U.S.S.R. RELATIVE TO THE RESETTLEMENT OF GERMANS, LATVIANS, AND ESTHONIANS

Certified Copy of "Documents of German Policy" 1941, Part II,
Volume 9

Page 718:

No. 129. Agreement of 10 January 1941 between the Government of the German Reich and the Government of the U.S.S.R. relative to the resettlement to the German Reich of Reich Germans and ethnic Germans from the territory of the Latvian and Esthonian Socialist Soviet Republics

The Government of the German Reich and the Government of the Union of Soviet Socialist Republics, guided by the desire to resolve the questions connected with the resettlement to the German Reich of Reich Germans and ethnic Germans from the territories of the Latvian and Esthonian Soviet Socialist Republics, have found it necessary to conclude the following agreement.

Section I—General Provisions

Article 1

The contracting parties obligate themselves, after the signing of this agreement, to initiate the resettlement of Reich Germans and ethnic Germans from the territory of the Latvian and Esthonian Soviet Socialist Republics to the German Reich.

Reich Germans considered eligible for resettlement are those who were Reich Germans up to 21 July 1940. Only those persons listed in paragraph 1 of this Article who have put forward their desire to be resettled will be resettled. The desire to be resettled must be expressed personally and either in a written or oral declaration. Resettlement is voluntary, and no direct or indirect coercion, therefore, may be exerted. Resettlement of persons listed in paragraph 1 of this article will be carried out only with the consent of the receiving party.

Article 2

Persons being resettled on the basis of this agreement are

granted the right to take with them their families on their joint trip, and as members of the family the following persons can be resettled if they have expressed their desire to that effect: wife or husband, children, mother, father, grandchildren, foster and adopted children insofar as they form part of the German family and live in a common household with the head of the family. Children over 14 years of age are granted the right to personally express a desire to remain behind or to be resettled.

* * * * *

Article 3

The contracting parties agree to initiate at once the resettlement on the day this agreement is signed and to complete it within 2½ months.

Section II—Mixed Commission, Resettlement Plenipotentiaries and Deputies

Article 4

The duties of supervising and aiding in the carrying out of this agreement as well as of safeguarding the interests of persons listed under Article 1 and granting them aid are assigned to the respective government delegation in the Mixed German-Russian Resettlement Commission, the chief German Plenipotentiary and the chief Russian delegate.

The Mixed German-Russian Resettlement Commission consists of 2 delegations, one appointed by the Government of the German Reich, the other by the Government of the Union of Soviet Socialist Republics. The delegations of both parties may include experts and auxiliary personnel in equal numbers.

* * * * *

Section V—Final Provisions

Article 24

This agreement becomes effective on the day it is signed.

In witness thereof the Plenipotentiaries of both parties have signed this agreement in their own hand and affixed their seal to it.

F. BENZLER

W. BOTSCHKAREW

Riga, 10 January 1941

EXTRACT FROM THE TESTIMONY OF DEFENDANT BRUECKNER*

DIRECT EXAMINATION

* * * * *

DR. DOETZER (Counsel for defendant Broeckner) : Now, I come to the first period of your work with VoMi. In what resettlements did you take part and what did you have to do in them?

DEFENDANT BRUECKNER: First of all, I took part in the resettlement of the ethnic Germans from Volhynia and Galicia. This was carried out on the basis of an international agreement of 16 November 1939. In this resettlement, I had especially to collect the property lists made out by the resettlers and to settle other auxiliary matters.

Q. According to your observations, were the resettlers forced to resettle?

A. No. This resettlement was absolutely voluntary as was necessarily the result of the agreement. The resettlement was, in addition, bilateral, that is, resettlement took place both from Russian and from German territory.

Q. In what further resettlements did you take part?

A. In July and August 1940, I was in Moscow, and I worked there as an assistant in the different negotiations with the Soviet Union.

Q. In this case, were the ethnic Germans forced to resettle or did they do it voluntarily?

A. I myself did not take part in this resettlement of Bessarabia and North Bukovina. But I know this resettlement agreement and I know the negotiations with the Soviet agencies, and so I know that the voluntary character was absolutely a prerequisite of the resettlement.

Q. What task did you have in resettling the ethnic Germans from Lithuania?

A. From September to December 1940, I was again working in connection with the negotiations for an agreement with the Soviet agencies in Kovno, Lithuania. This agreement was concluded on 10 January 1941. Here, too, it was a bilateral contract. From January to March 1941, I was then commissioned to carry out this resettlement.

Q. Was this voluntary too?

A. Yes, absolutely voluntary. The contract also showed that over and beyond voluntary reporting, the various resettlers were, one by one, released from their former nationality.

Q. Did you have an opportunity or did your colleagues have

* Complete testimony is recorded in mimeographed transcript, 19 December 1947, pp. 2824-2896.

an opportunity, to make propaganda in Lithuania for resettlement? Was the population stimulated, coached, in any way?

A. In Lithuania, I was with a detachment of VoMi amounting to easily 100 men. For every German member of the detachment there were at least 3 or 4 GPU people. It is fairly obvious that under these conditions in the Soviet Union, no propaganda could have been carried out or any pressure exerted on the ethnic Germans in this country.

Q. How many ethnic Germans were resettled?

A. In the first place, we had expected 30 to 35,000 ethnic Germans, but far more were resettled, a good 50,000.

Q. Had this resettlement been planned well in advance or was VoMi faced with it quite suddenly?

A. The order to VoMi came quite spontaneously. Lithuania had been occupied by Soviet troops in June 1940. As a result, the ethnic Germans wanted to resettle. At that time, that is about August 1940, I was commissioned to prepare this resettlement. At that time there were no facts available to VoMi, about how many ethnic Germans there were in Lithuania and where they were in Lithuania. At that time I only found out from literature and inquiries with research centers what these figures were likely to be.

Q. In Lithuania did many people report to you who were not ethnic Germans?

A. Yes, many did.

Q. Were you able to resettle these non-Germans too?

A. In a fairly large number of individual cases, we were. I did this whenever it was definite that these people were facing extinction in the Soviet Union, and if I could find a way to carry through this resettlement. I remember that at the time I resettled Swiss, Swedes, Lithuanians, Russians and people of Jewish descent too. This meant a definite danger for me at that time. I remember one individual case very well. A Lithuanian, Lieutenant Colonel Sukuss came to me; he was being persecuted by the GPU; he asked me to resettle him. There was no way of doing this under contract. What I did was to drive him across the country in the luggage compartment of my official car; en route my car was run into by a Red Army truck.

Q. But in spite of this accident, you escaped with your life?

A. Yes. Thanks to the presence of mind of my driver.

Q. In this resettlement, were you led by racial, political, and religious points of view? Or, were there anti-fascists among these persons?

A. Political, religious, racial, and other considerations played no part whatsoever. All that mattered was to help the people,

and this was done without any differentiation. For instance, I remember a Swiss professor, Ehret by name. He was a well-known opponent of National Socialist Germany. He told me that at the time; he even told me: "If you don't want to resettle me for this reason, then I can understand it." I told him: "Your political attitude doesn't matter." I resettled him, and he is now in Basel working as a professor. At the time I saw to it that he immediately got the exit permit to go to Switzerland.

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TRANSLATION OF LORENZ DOCUMENT 8
LORENZ DEFENSE EXHIBIT 13

AFFIDAVIT OF JOSEF WOLKERSTORFER, 5 NOVEMBER 1947

I, Josef Wolkerstorfer, born 1 September 1905 in Linz, at present in Nuernberg court prison, have first been made aware of the fact that I make myself liable to punishment by submitting a false affidavit. I declare in lieu of an oath, that my statement is true, and that it was made in order to be presented as evidence before the Military Tribunal No. I, Case 8, at the Palace of Justice in Nuernberg, Germany.

I am an Austrian citizen. I joined the Nationalist Socialist Party in the year 1934. In March of the year 1938 I became mayor of the city of Linz on the Danube. Due to this position, the honorary rank of an SS Major [SS Sturmbannfuehrer] was bestowed upon me. I was not a member of the Waffen SS.

In the year 1940, I received the order from the Gauleiter to organize the Gaueinsatzfuehrung* of VoMi [Volksdeutsche Mittelstelle-Repatriation Office for Ethnic Germans] for the Gau Upper-Danube. I held the honorary post of VoMi Gaueinsatzfuehrer from October 1940 to March 1942 and from December 1942 up to 15 December 1944. Professionally, I was mayor and from 1941 Prokurist in the National Enterprises [Reichswerke].

At the beginning, I received orders to set up camps for the billeting of 25,000 Germans from Bessarabia. But then only 18,000 repatriates came into our Gau. Approximately 40 camps were set up, mainly in hotels, castles, schools and, at the beginning, also in convents. But most of the convents were soon returned to the church in the course of the repatriates' resettlement.

The buildings were put at the disposal of the Gaueinsatzfuehrung by the regional sub-prefects [Landraete]. Aside from

* Administration of all questions concerning the temporary billeting of resettlers pending final settlement.

these camps, three camps were built by the VoMi itself, in Steyr, Urfahr and Asten near Enns. The camp at Steyr was later, after it was not needed for the purposes of repatriates any longer, sold to the Steyr Works. The establishment of this camp cost an enormous amount of money. It consisted of barracks built on solid stone foundations. Each barrack had approximately 18 living rooms as well as shower and washrooms and bathrooms besides. All rooms were heated by steam heat. All three camps were equipped with a sewer system for sanitary reasons. The camps were at the time equipped in an absolutely exemplary manner. Due to the fact that I as mayor had an insight into financial possibilities of other authorities, I was always surprised by the almost limitless means that the Repatriation Office of Ethnic Germans was able to supply for the construction of these camps. The camp at Asten has been used by the U.N.R.R.A. since the end of the war. A further camp was established in the former SS Barracks Ebelsberg in Linz by the Gaueinsatzfuehrung Linz, which reconstructed them for this purpose in an exemplary manner. Today, there are displaced persons billeted in this building, as I learned from a newspaper item.

There was so much space available for the repatriates that usually one room could be allotted to each family. Larger families received even two rooms. Each repatriate had his own bed. Linen and blankets were abundantly available. I still remember that I bought at the time approximately 80,000 blankets for my Gau. Food was allotted us for the feeding of the repatriates by the authorities in charge to such an extent that it surpassed the food rates of the civilian population.

At the beginning, the camps were occupied by resettlers from Bessarabia, later on by ethnic Germans from Bukovina. After most of the repatriates had been settled, approximately 20 camps were dissolved. We retained only the best camps. It would be best to designate them as "homesteads" [Wohnheime]. During the last months of the war, only a few thousand repatriates were still billeted.

Beginning October 1944, numerous refugees came from the Danube area. Orders were issued to me to care for the billeting of these refugees. Altogether approximately 60,000 persons and 18,000 horses were billeted by my office in private quarters. Billeting in the few VoMi camps was impossible any longer due to the large numbers of people and draught animals.

[Signed] JOSEF WOLKERSTORFER

Nuernberg, 5 November 1947

TRANSLATION OF LORENZ DOCUMENT 67
LORENZ DEFENSE EXHIBIT 63

EXTRACT FROM THE AFFIDAVIT OF ELSE WINGER, 2 JANUARY 1948

I, Else Winger, born on 3 January 1911 at Sarata, Bessarabia, residing at Alt Erfrade-Kreis Segeberg (Holstein), have been duly warned in the first instance that I render myself liable to punishment by giving a false affidavit. I declare under oath that my statement corresponds to the truth and was made in order to be submitted as evidence to the Military Tribunal Number I, Case 8, at the Court of Justice, Nuernberg, Germany.

I was not a member of the NSDAP.

I was formerly a Romanian citizen and lived at the German settlement in Bessarabia (Romania). My mother tongue is German. When Bessarabia was occupied by the Russians in the summer of 1940, we hoped that Germany would not forget us. We were, therefore, very glad when at last after a long period of waiting a Russian and a German Resettlement Commission arrived in Bessarabia in the autumn of 1940, in order to give us an opportunity for being resettled in Germany. Every one of us was allowed to declare whether he wished to remain in Bessarabia or to be resettled in Germany. Only those persons who declared themselves to be Germans and wished to be resettled were, indeed, resettled in accordance with the provisions contained in the State agreement concluded between Germany and Russia.

After we had been registered by the German-Russian Resettlement Commission, we were transported to Germany in closed transports. The journey had been prepared by the VoMi with much trouble and care. In Germany we were lodged in a camp of the VoMi until the time of our settlement. After a few weeks, which we spent in idleness, we went to the camp leader and asked him for work. After some time everyone was assigned a place of work under the same conditions as applied to every German. If anybody found a permanent place of work in Germany, and lodgings outside the camp before he was settled, he could leave the camp without further ado. During the stay in the camp, all could arrange their sojourn and their time of leisure as they wished. Before the resettlement was carried out, our property which we had left behind in Bessarabia had been assessed by a special commission.

When we were settled everyone was given a piece of property which corresponded to the assessed value.

[Signed] ELSE WINGER.

Elmshorn, 2 January 1948

TRANSLATION OF LORENZ DOCUMENT 63
LORENZ DEFENSE EXHIBIT 66

EXTRACT FROM THE AFFIDAVIT OF FRANZ RECH, 4 DECEMBER 1947

* * * * *

I was never a member of the NSDAP.

My parents emigrated in 1898 from Galicia to Bosnia. My ancestors were Austrians. My native tongue is German. In 1942 I lived in the Bosnian village Alibejowici in Bosnia. Numerous Germans lived in that region. The German settlers were, during the war, frequently raided by partisans. Some were plundered and murdered. Therefore we were glad when, in November 1942, we were resettled in Germany. At first we came to a camp in Litzmannstadt (Lodz). Today I do not know any more by which German office the resettlement was carried out. The transportation was carried out by the German police. I do not know any more to whom the camp in Lodz belonged. From Lodz we were resettled in Poland. As compensation for my farm, which I had left in Bosnia, I received another farm. At the advancing of the front lines we again left the place of our resettlement. After a short stay in Lodz, we arrived on our flight in Passau. Here I found quarters in the camp of the repatriation office for ethnic Germans in the Salvatorkolleg Klosterberg. I remained there with my family, even after the camp was closed. I am now working in the monastery. There was no forced labor in the camp during my stay there.

[Signed] FRANZ RECH.

Salvatorkolleg Klosterberg, 4 December 1947

TRANSLATION OF GREIFELT DOCUMENT 45
GREIFELT DEFENSE EXHIBIT 45

SECOND ORDINANCE FOR THE IMPLEMENTATION AND SUPPLEMENTING OF THE DECREE CONCERNING THE STATE CONTROL OF AGRICULTURE AND FORESTRY ENTERPRISES AND ESTATES IN THE INCORPORATED EASTERN TERRITORIES, 1 FEBRUARY 1941

Reich Law Gazette Part I, 1941,

Published by the Reich Ministry of the Interior

Berlin 1941—Reich Publishing Office

Issued in Berlin, 6 February 1941

No. 14

Page 68:

Second Ordinance for the Implementation and Supplementing of the Decree concerning the State Control of Agriculture and

Forestry Enterprises and Estates in the Incorporated Eastern Territories 1 February 1941

As defined in Article 13 of the decree concerning the state control of agriculture and forestry enterprises and real estates in the Incorporated Eastern Territories of 12 February 1940 (Reich Law Gazette I, page 355)—Ostland Ordinance, in agreement with the Reich Commissioner for the Strengthening of Germanism, the following is decreed:

Article 1

The Reich Minister for Food and Agriculture can, according to the Ostland Ordinance, put under state control agriculture and forestry enterprises and real estates which are given in exchange against other enterprises or real estates subject to state control by persons of German race.

Article 2

The General Administrator (Article 2 of the Ostland Ordinance) can transfer the state control of certain enterprises or real estates to a settlement company. The transfer may be carried out at any time. The Ostland Ordinance and its executory and supplementary provisions apply accordingly to this settlement company.

The Reich Minister for Food and Agriculture
H. BACKE

Berlin, 1 February 1941

TRANSLATION OF GREIFELT DOCUMENT 56
GREIFELT DEFENSE EXHIBIT 56

DECREE CONCERNING THE PROCUREMENT OF LAND FOR THE
PURPOSE OF RESETTLING GERMAN NATIONALS AND GERMANS
BROUGHT FROM ABROAD, 23 MARCH 1944

Reich Law Gazette Part I, 1944, Published in Berlin,
25 March 1944 No. 13

Page 64:

*Decree concerning the Procurement of Land for the Purpose of
Resettling German Nationals and Germans Brought from
Abroad*

23 March 1944

By virtue of legal authorization and in agreement with the Plenipotentiary General for the Four Year Plan and the High Command of the Wehrmacht, the following is decreed:

Article 1

Where land is needed for the purpose of resettling German Nationals and Germans brought from abroad, the Law of 29 March 1935 (Reich Law Gazette I, page 467) concerning the

procurement of land for the purposes of the Wehrmacht and the pertinent executory decrees shall apply accordingly for the procurement of the necessary land. The duties of the Reich office for land procurement shall be discharged by the Reich Leader SS, the Reich Commissioner for Strengthening of Germanism, or the agencies designated by him.

Article 2

(1) This decree shall become effective on 7 October 1939.

(2) It shall also be in force in the Incorporated Eastern Territories and in the Protectorate Bohemia and Moravia.

The Plenipotentiary General for the
Administration of the Reich
H. HIMMLER

Berlin, 23 March 1944

3. COOPERATION OF THE OFFICE FOR REPATRIATION OF ETHNIC GERMANS (VoMi) WITH EINSATZGRUPPEN

a. Introduction

The prosecution charged all defendants with having participated in the persecution and extermination of Jews (*indictment, count one, par. 2 i; count two, pars. 24 and 25*). The prosecution introduced evidence in an attempt to prove that the defendants who had been officials of VoMi had indulged in criminal conduct resulting from cooperation with the notorious Einsatzgruppen of the Security Police and SD*.

A selection from the documentary evidence of the prosecution is set forth on pp. 851 to 853. A selection from the evidence of the defense follows on pages 854 to 855.

b. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-5095
PROSECUTION EXHIBIT 741

LETTER FROM DR. BEHREND'S OF THE VoMi TO NAUMANN, CHIEF OF EINSATZGRUPPE B, 6 JULY 1942, CONCERNING COOPERATION WITH EINSATZKOMMANDOS

6 July 1942

To the Chief of Einsatzgruppe B
SS Colonel [SS Oberfuehrer] Naumann
Smolensk

The Commanding General of Army Group Area Center [Befehls-

* 23 leaders and high-ranking officers of the Einsatzgruppen were tried before Tribunal No. II in Case 9 on the charge of having participated in the extermination of groups of the local population of the occupied parts of the Soviet Union, especially Jews. U. S. A. vs. Otto Ohlendorf, et al., Case 9, vol. IV, this series.

haber Heeresgebiet Mitte], General von Schenkendorff, informs us that the planned use of a VoMi Special Task Unit cannot take place before 1 September 1942 in view of the danger of partisan action and in view of riots expected by the removal of ethnic Germans. Even use after that date will require his express permission. I consider this decision to be wrong. According to the order of the Reich Leader SS of 11 July 1941, the ethnic Germans are to be handed and cared for by the Einsatzkommandos of the VoMi in cooperation with the SD. In particular in view of the partisan danger threatening the ethnic Germans, I consider the Einsatzkommandos to be urgently needed and, at the same time, they will relieve your Einsatzgruppe in ethnic German affairs.

The Kommando will be here from 17 to 20 July, ready to march in a strength of 70 men, including drivers, 20 cars, 7 trucks. Kindly contact again the Commanding General of Army Group Area Center with reference to the clear order of the Reich Leader SS and set the deployment of the Einsatzkommando for the end of July. It is understood that the Kommando will cooperate closely with your Einsatzgruppe.

[Signed] DR. BEHREND
SS Brigadier General

Repatriation Office for Ethnic Germans—Berlin

TRANSLATION OF DOCUMENT NO-4274
PROSECUTION EXHIBIT 442

LETTER FROM HIMMLER TO LORENZ, 11 JULY 1941, CONCERNING
THE REGISTRATION OF ETHNIC GERMANS IN THE EUROPEAN
TERRITORIES OF THE U.S.S.R.

Copy

The Reich Leader SS
File/363 a/3

Fuehrer Headquarters, 11 July 1941

Re: Registration of Ethnic Germans in the territories of the
European U.S.S.R.

To the Chief of the Repatriation Office for Ethnic Germans
[Volksdeutsche Mittelstelle]
SS Major General [SS Gruppenfuehrer] Lorenz
Chief of the Security Police and the SD
SS Lieutenant General Heydrich,
Berlin

1. I authorize the Repatriation Office for Ethnic Germans to take all measures to register the ethnic Germans in the occupied Soviet Union and through the appointment of non-Bolshevist deputies lay the cornerstone for a German leadership.

2. The work is to be carried out in closest cooperation and agreement with the Einsatzkommandos of the security police.

3. The deputies of the Repatriation Office for Ethnic Germans are subordinate to the Higher SS and Police Leader, i.e., the commanders of the security police. The Higher SS and Police Leaders as well as the commanders of the security police are to promote this activity with all their power.

4. SS Colonel [SS Standartenfuehrer] Pflaum is assigned to the Higher SS and Police Leader, in whose area the German element in the Volga region belongs. It will be his task, contingent on the local conditions, to take care immediately of the ethnic German children who are still of good and unmixed blood.

[Signed] H. HIMMLER

Certified true copy:

Berlin SW 68, 25 August 1941/Bor.

[Signature] PFLAUM

SS Colonel

[handwritten] Personal File Pflaum

P.S. On 16 August 1941, on the occasion of my report to him at the Fuehrer Headquarters, the Reich Leader SS assigned the entire occupied territories of the European U.S.S.R. to my operational area.

Berlin, 25 August 1941

[Signature] PFLAUM

SS Colonel

TRANSLATION OF DOCUMENT NO-5071
PROSECUTION EXHIBIT 749

MEMORANDUM FROM WOLFRUM TO THE VoMi, ATTENTION OF
BARTHOLOMAEUS, 15 JULY 1943, CONCERNING REPLACEMENT
OF REPORTS SENT TO EINSATZGRUPPE D

Repatriation Office for Ethnic Germans

Attn: SS Captain Bartholomaeus,

15 July 1943

SS 2d Lieutenant Dr. Wolfrum

Kiev

Request immediate resubmission of the reports by SS office which were detached to Einsatzgruppe D of the SD in 1942. These reports were mailed to our office on 9 March but have been lost: They are *urgently* needed in order to make out the yearly report.

VoMi—Berlin

[Signature] DR. WOLFRUM

(Dr. Wolfrum) SS 2d Lieutenant

c. Selections from the Evidence of the Defense

TRANSLATION OF LORENZ DOCUMENT 51 LORENZ DEFENSE EXHIBIT 26

AFFIDAVIT OF OTTO OHLENDORF,* 9 DECEMBER 1947, CONCERNING THE TASKS OF THE EINSATZGRUPPEN WITH RESPECT TO ETHNIC GERMANS IN THE U.S.S.R.

I, Otto Ohlendorf, born on 4 February 1907 in Hoheneggelsen/Hannover, at present confined in the Nuernberg Court Prison, have first been warned that I will render myself liable to punishment if I give a false affidavit. I declare in lieu of oath that my statement is true and was made in order to be submitted as evidence to the Military Tribunal No. I, Case 8, at the Palace of Justice in Nuernberg, Germany.

From 1939 till 1945, I was in charge of Section III (internal security service) of the Reich Security Main Office. From June 1941 till June 1942, I was the delegate of the Chief of the Security Police and the Security Service with the 11th Army, and simultaneously Chief of the Einsatzgruppe D in the Russian campaign.

In August 1941, I was transferred with my Einsatzgruppe to Transnistria, an area which subsequently was put under Romanian administration. There, my Einsatzgruppe discovered the existence of ethnic German settlements. Since the Romanians would not recognize possible reservations of ethnic Germans I, together with my Einsatzgruppe, concerned myself with the ethnic Germans for about 8 weeks and took care of them. I also sent a report to this effect to Berlin. One day SS Oberfuehrer Hoffmeyer arrived from there. It is possible that he was sent on the basis of my report. I entrusted Hoffmeyer with the care for the ethnic Germans in the area mentioned above. Hoffmeyer's Einsatzkommandos went to the German villages where they represented the German authority during a period of transition and also protected the ethnic Germans from possible excesses by the Romanians.

I know that Hoffmeyer, subsequent to the establishment of his organization in the Ukraine, was subordinated to the Commander in Chief of the SS and Police, Pruetzmann.

I have to mention that the Repatriation Office for Ethnic Germans was in no way connected with the tasks of my Einsatzgruppen. It is obvious that, as far as I was enabled to do so, I gave assistance to the Repatriation Office for Ethnic Germans

* Defendant in case of U. S. A. vs. Otto Ohlendorf, et al., Case 9, vol. IV, this series.

and its Kommandos, for example, by putting my radio installations at its disposal. Moreover, the scattered Kommandos of the Repatriation Office for Ethnic Germans were partly dependent upon the protection of my Einsatzkommandos. If Himmler instructed the Repatriation Office for Ethnic Germans to work in closest unison and agreement with the Einsatzkommandos of the security police in the occupied areas of the Soviet Union, this can only be interpreted in such a sense that the Repatriation Office for Ethnic Germans was in its work partly dependent on the first findings of my Einsatzkommandos and had to take advantage of the results of the police work done by the security police (certificate of good political conduct). On the other hand, this instruction of Himmler does not mean that the Einsatzkommandos of the Repatriation Office for Ethnic Germans were involved in any tasks of the police or the Einsatzgruppen.

Later Hoffmeyer organized a self-protection unit of ethnic Germans; it can be assumed that the three cavalry companies from the area of Halberstadt which were mentioned in one of Himmler's orders were also included in this self-protection unit.

[Signed] OTTO OHLENDORF

Nuernberg, 9 December 1947

4. FORCED EVACUATION FROM POLAND

a. Introduction

The argument of the prosecution on this subject appears in the opening statement (pp. 622 to 694). Extracts from the closing statements for the defendants Greifelt and Huebner on this topic are set forth on pp. 874 to 881. Selections from the documentary evidence of the prosecution and defense are set forth on pp. 854 to 873 and pp. 881 to 891.

b. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-4613
PROSECUTION EXHIBIT 290

MEMORANDUM, SIGNED BY HIMMLER, 11 OCTOBER 1939,
CONCERNING THE DEPORTATION OF POLES

The Reich Commissioner for the Strengthening of Germanism
RF/Pt, Journal # Ak 1240/i

11 October 1939

I imagine that the population of Riga represents the right nucleus for the cities of Gdynia and Poznan. The urban population of Tartu and Tallin can be used for the same purpose.

The selection of the population will be carried out by the chief of the security police in collaboration with SS Lieutenant General [SS Obergruppenfuehrer] Lorenz. A preliminary condition for repopulating these cities is the deportation of Poles and the evacuation of their dwellings.

Members of the Polish intelligentsia are to be deported in the *first place*.

In distributing the population over the cities, I request that SS Colonel [SS Standartenfuehrer] Hayler be included in the commerce division.

[Signed] H. HIMMLER

Distribution:

SS Lieutenant General Lorenz
SS Major General Heydrich
SS Major General Pancke
SS Colonel Greifelt
Gauleiter SS Major General Forster
SS Brigadier General Greiser
Personal Staff Reich Leader SS

TRANSLATION OF DOCUMENT NO-5322
PROSECUTION EXHIBIT 805

MEMORANDUM OF A CONFERENCE ON 30 JANUARY 1940, CONCERNING THE EVACUATION OF POLES AND JEWS FROM THE WARTHEGAU

Copy

Berlin, 30 January 1940

-IV D 4-III ES-

Subject: Conference on 30 January 1940.

Memorandum

1. SS Major General [SS Gruppenfuehrer] Heydrich stated that today's meeting was called by order of the Reich Leader SS for the purpose of achieving uniformity in carrying out the resettlement tasks ordered by the Fuehrer. The evacuations carried out up to now included approximately 87,000 Poles and Jews; this was done to provide space for the Baltic Germans to be resettled there. In addition, an uncontrolled so-called illegal emigration took place.

On the basis of statements of Reich Minister SS Major General Seyss-Inquart and Lieutenant General [SS Obergruppenfuehrer] Krueger, SS Major General Heydrich stated that no objections in principle were voiced against the evacuations into the General Government by the competent authorities of the Governor

General. The complaints lodged up to now were only directed against the fact that in the evacuation accomplished up to now, the designated figures were not complied with but were exceeded. Since [Section] Referat IV D 4 has been organized for the central regulation of all evacuation measures, the objections voiced do not hold any more.

It is of the utmost importance that 40,000 Jews and Poles be deported from the Warthegau into the General Government in order to make space for Baltic Germans. The order of the Reich Leader SS, namely, that no people of German extraction are to be deported, regardless of their past behavior, will serve as a guiding principle for the selection.

After this operation is finished, an additional, improvised evacuation is to be carried out for the benefit of the Volhynia Germans who are to be settled in the eastern provinces [Ostgaue]. On the assumption that the Volhynia German families have 6 to 7 children on an average, we have a figure of about 20,000 families to be settled. The number of the Poles to be evacuated for this purpose is to be set for the time being at 120,000; a certain decrease in this figure can be expected, since some of the evacuated Polish landowners will be used as farm laborers either in the eastern Gaue themselves or in Germany proper. In this connection, congress Poles are to be used as far as possible. Using this number as a basis, the General Government should state before 15 February 1940, what distribution to the various unloading terminals is contemplated. The actual time when this operation is to start will be designated later and all agencies involved will be informed in time.

The Warthegau, West Prussia-Danzig, Zichenau and eastern Upper Silesia have to determine the number of the Volhynia Germans to be resettled and the number of Polish landowners whose evacuation is thereby necessitated and submit them to Referat IV D 4 by the same time (15 February 1940).

Referat IV D 4 has to collect this statistical material and to formulate the evacuation plans. Whereas the persons to be evacuated on account of the resettlement of the Volhynia Germans consist almost exclusively of rural population, those persons evacuated on account of the Baltic Germans are almost exclusively city dwellers.

SS Major General Koppe states that the evacuation to be carried out for the benefit of the Volhynia Germans must be accomplished in such a manner that the operation of the farms is not interrupted. The Volhynia Germans are to be brought by truck to the selected places of settlement and are to be exchanged against the previous Polish owners. The Poles are to be collected

in camps and then subjected to a selection. The part not usable in the eastern provinces or in Germany proper is contemplated for deportation into the General Government. Therefore, the exact number of persons to be sent to the government can only be determined after this selection.

Furthermore, there are already 4 to 5,000 Poles and Jews collected in camps in the Warthegau, who have already been evicted for the benefit of the Baltic Germans, but it has been impossible to deport them up till now.

SS Lieutenant General Krueger mentions that 60,000 refugees from Russia are to be expected in the General Government who also have to be accommodated there.

2. SS Major General Heydrich announces the following basic orders issued by the Reich Leader SS. No ethnic Germans nor people of German extraction are to be deported, also no Kashubes, Masurs, and similar races; the reason for the latter is that these groups have shown a pro-German attitude and have intermingled racially with the German people. But the Reich Leader SS does not desire a Kashube or Masur problem be created in this respect. In connection with the deportation, it is only to be stated that the German provinces are to be cleansed of the alien population. Thereby, a way is left open for the future to deport inferior Kashubes, etc., after a racial examination.

Concerning the general Polish question, it has been ordered that a racial examination is not to be carried out at present in connection with the allocation of the farm laborers. If any differentiations were to be made among good and bad Poles among the multitude coming into Germany proper, the German population might get some erroneous impression. In connection with the labor allocation of the Poles in Germany, it should be seen that men and women are assigned in the proper ratio. According to the last figures, 800,000 to 1 million Poles will be allocated in Germany in addition to the prisoners of war. The assignment will be carried out via the labor offices. To a certain extent Poles from the eastern provinces will also be taken into Germany. When preparations were made, it was found that the local agencies in the eastern provinces declared that these Poles could not be spared, since they would be needed there. For example, the Warthegau declared that only 20,000 could be spared and West Prussia-Danzig could only make 8,000 available. For these reasons, it is necessary to take without any compromise all the Poles from the eastern provinces who could possibly be used as farm laborers.

An exception among the general prohibition of a racial selection in the course of the allocation of agricultural laborers could

possibly be made in the case of the Polish agricultural families to be settled. Elements with higher racial qualifications could be retained in the Reich territory.

3. After the two large-scale operations, i.e., (a) the removal of approximately 40,000 Poles and Jews in the interest of the Baltic Germans, and (b) of approximately 120,000 Poles in the interest of the Volhynia Germans, the deportation of all Jews within the new eastern provinces, and of 30,000 gypsies from the Reich territory to the General Government shall be executed as a last large-scale operation. Since it has been found that the deportation of 120,000 Poles will start about the beginning of March, the deportation of Jews and gypsies must wait for the termination of the above operations. In any case, the distribution figures should be given by the General Government, so that the planning for those operations may be initiated.

SS Lieutenant General Krueger informs the participants that rather extensive troop training grounds for the Wehrmacht, Luftwaffe, and SS must be provided within the General Government, an operation which will necessitate the resettlement of approximately 100,000 to 120,000 persons within the General Government. It seems, therefore, desirable to take that fact into consideration when deporting people into the General Government, in order to avoid a repetition of resettlement operations. SS Major General Heydrich remarked in this connection that the construction of the East Wall and of other projects in the East would probably offer an opportunity to concentrate several hundred thousand in forced labor camps, in which case, the family of those Jews would be distributed to the other Jewish families already living in the General Government, a procedure which probably would solve the problem mentioned. SS Obergruppenfuehrer Krueger also mentioned that ethnic Germans (mainly rural elements) should be evacuated from the General Government and transferred to the Reich. SS Brigadefuehrer Greifelt answered that that question was considered by the Reich Leader SS as a long-range problem.

SS Major General Heydrich announced that, after the termination of the three large-scale operations which had been mentioned, a racial selection in the eastern provinces should be made by the resettlement offices. Some of the Poles and their families would be dispersed in Germany proper. In the middle of February 1940, 1,000 Stettin Jews whose apartments are urgently needed for war purposes are scheduled to be evacuated and also deported to the General Government. SS Major General Seyss-Inquart repeated the figures which the General Government would have to absorb in the near future, i.e.,

40,000 Jews and Poles

120,000 Poles as well as all the Jews from the new eastern provinces, and

30,000 gypsies from Germany proper and Austria.

He mentioned the transportation difficulties arising for the Reichsbahn by that task and, finally, the bad food situation in the General Government, which would not improve before the next harvest. That situation necessitated further subsidies from the Reich. Reich Minister Seyss-Inquart requested SS Major General Heydrich to support them in this matter if it should turn out imperative for the General Government to obtain further food subsidies. SS Brigadier General (SS Brigadefuehrer) Waechter requests that the deportees, coming from regions where the food situation is very much better than that of the General Government, be provided with adequate quantities of food.

SS Major General Heydrich remarks as regards the possibility of transportation difficulties mentioned by Reich Minister Seyss-Inquart, that that possibility would be taken into consideration, inasmuch as all transportation movements would be centrally coordinated in the Reich Ministry of Transportation, a procedure which should make it possible to avoid wasteful utilization of rolling stock.

Finally, SS Major General Heydrich draws the attention of the participants to the necessity of giving lists of the deportees, especially the urban residents, to the competent trustee agencies in time, so that securing of their assets can be affected.

After this conference, which lasted from 1130 to 1315 hours, the experts [Sachbearbeiter] of the inspectors of the new eastern provinces and of the commander of the security police and the SD in the General Government, convened with III ES and IV D 4 in order to discuss details.

Participants in the Conference of 30 January 1940

1100 hrs.

Wilhelmstrasse (Conference Room)

	SS Major General.....	Heydrich
	Reich Minister	
	SS Major General...	Seyss-Inquart
Higher SS and Police Leader—		
“Ost”	SS Lt. General.....	Krueger
“Warthe”	SS Major General.....	Koppe
“Nord-Ost”	SS Major General.....	Redies
“Weichsel”	SS Major General.....	Hildebrandt
Reich Commissioner for the Strengthening of German- ism	SS Brigadier General.. with SS Lieutenant Colonel..	Greifelt Creutz
Commander of the Security Police and SD in the Gen- eral Government Poland...	SS Brigadier General.. with SS Captain	Streckenbach Mohr
Inspectors of Security Police and SD	SS Senior Colonel..... SS Senior Colonel..... SS Colonel	Dr. Rasch (Koenigsberg) Wiegand (Breslau) Damzog (Poznan)
	with SS Major	Rapp
	SS Lieutenant Colonel..	Dr. Troeger (Danzig)
	with SS 1st Lieutenant.....	Abromeit
District Chiefs	SS Brigadier General..	Dr. Waechter Dr. Lasch
SS and Police Leader.....	SS Major General..... SS Major General.....	Moder (Warsaw) Zech (Krakow)
	SS Brigadier General..	Globocnik (Lublin)
	SS Senior Colonel.....	Katzmann (Radom)
Commanders	SS Colonel	Meisinger (Warsaw)
	SS Major	Liphardt (Radom)
	SS Major	Dr. Hahn (Krakow)
	SS Major	Huppenkothen

Gestapo Chiefs	SS Lieutenant Colonel..	Dr. Schaefer (Katowice)
	with	
	SS 1st Lieutenant.....	Dr. Knobloch
	and	
	SS 1st Lieutenant.....	Dreier
	SS Major	Dr. Tanzmann (Danzig)
	SS Major	Bischof (Poznan)
Repatriation Office for Ethnic Germans	SS 1st Lieutenant.....	Dr. Kubitz
Main Trustee Office East...	Burgomaster (retired)..	Dr. Winkler
SD Krakow	SS Lieutenant Colonel..	Galke
	Herr	Pfennig
	SS Colonel	Fuchs
	SS Brigadier General..	Dr. Best
	SS Senior Colonel.....	Mueller
	SS Colonel	Ohlendorf
	SS Major	Ehlich (III ES)
	SS Captain	Eichmann
	SS Captain	Guenther
	SS 1st Lieutenant.....	Deumling IV (II O)
SS 2d Lieutenant.....	Dannecker	
SS Candidate		
[SS Bewerber]	Dr. Rajakowitsch	

TRANSLATION OF DOCUMENT NO-5011
PROSECUTION EXHIBIT 672

LETTER FROM GREIFELT TO HEYDRICH, 2 SEPTEMBER 1941, CONCERNING THE EVACUATION OF POLES FROM THE INCORPORATED EASTERN TERRITORIES

Copy

2 September 1941

I-1/5-1/30.8.40/Dr.F/Klu.

SUBJECT: Evacuation of Poles from the Incorporated Eastern Territories

REFERENCE: None

To the Chief of the SIPO and the SD
Berlin, SW 11, Prinz Albrechtstrasse 8

Dear Comrade Heydrich!

As you know, the settlement of Germans from Bessarabia, Bucovina, and Lithuania in the Incorporated Eastern Territories has met with great difficulties, because Poles cannot be evacuated any more as of this spring, and it becomes more and more impossible to force the Poles to move closer together within the

Eastern border. The resettlement of the above-named ethnic Germans has, therefore, decreased steadily in the past months.

This fact naturally causes bad blood among those resettlers who are still living in Germany proper and have to go to their places of work every day from there, although it is always attempted to make it clear to those resettlers, by political indoctrination courses and other propaganda measures, that they must have patience on account of the circumstances caused by the war.

It is also to be hoped that the employment of all resettlers, capable of doing any work at all, has helped them to get over this waiting period. Just the same it is natural that this waiting and their stay in camps over a lengthy period of time has a demoralizing influence. In addition, the temporary employment of the ethnic Germans, which is in itself absolutely necessary, has been shown to have a number of detrimental effects.

For example it happens again and again, in spite of express precautions, that resettlers originating from the country are assigned to urban industrial plants or, for example, that Bessarabia German farm boys and girls are at first employed in an agricultural enterprise but transferred from there into the nearest factory, thereby circumventing all labor allocation decrees. It is only too clear that the ethnic German farmers, who have to be used as farm laborers during their waiting period in Germany proper for reasons of agricultural policy, are not too happy and await their call to the eastern territories most eagerly, since extensive welfare is often impossible on account of the well-known conditions of the rural social order.

I would like to request, therefore, that the possibilities of restarting the evacuation of Poles in the Incorporated Eastern Territories be re-examined and that the necessary steps be taken with the least delay. I am convinced that the reasons which led to a termination of the evacuations in the General Government during the spring of last year do not exist to the same extent any more. Even though the placing of additional Poles in the General Government may cause difficulties. I am still of the opinion that it would be better to accept these difficulties rather than to force German people to spend another winter in camps due to the discontinuing of the evacuations.

I would appreciate it very much if you would inform me of your opinion on this matter.

As Deputy
[Signed] GREIFELT
SS Major General

TRANSLATION OF DOCUMENT NO-2878
PROSECUTION EXHIBIT 213

LETTER FROM DR. BOECKMANN TO THE PROVINCIAL PRESIDENT OF
UPPER SILESIA CONCERNING THE DEPORTATION OF POLES AND
THE SUBSEQUENT RESETTLEMENT OF ETHNIC GERMANS

Copy

The Provincial President of the Province Upper Silesia
O.P. I 4-13a

Katowice, 12 August [1942]

Subject: Germanization of Poles
Ref: Decree of 9 June 1942—I b 4-13a

The extremely urgent settling of ethnic German resettlers and the transfer and deportation of Poles which is connected with it makes it necessary that the settlement staff of the Reich Commissioner for the Strengthening of Germanism has to deport more persons than originally intended. In opposition to an earlier expressly stated wish, the deputy of the Reich Commissioner for the Strengthening of Germanism is forced to use for resettlement estates of those Poles who, under certain circumstances, could be taken into consideration for Germanization. Therefore, as an amendment to my decree of 9 June 1942, the settlement staff of the Reich Commissioner for the Strengthening of Germanism is permitted to resettle or deport in the eastern district and the districts Teschen and Bielitz also families who were *suggested* for Germanization. However, the resettling and deporting of families declared to be suitable for Germanization by the race and settlement commission is still prohibited.

In order not to endanger the later Germanization more than absolutely necessary, additional coercive measures, such as forced change of residence and deprivation of place of work should not be taken. Whenever feasible, it would be recommendable to inform the deputy of the Reich Commissioner for the Strengthening of Germanism, at the time the suggestion for Germanization is submitted, from which camp the Poles deported in the meantime were brought.

As it is extremely important for the work of the examination commission of the SS Race and Settlement Office to have, prior to the onset of their work, the suggestions of the local commissioners and burgomasters in hand, I point out that no long lists are necessary, but that, on the contrary, a current informing of the office of the deputy of the Reich Commissioner for the Strengthen-

ing of Germanism—manpower utilization—is quite sufficient for the desired purpose.

By order:

[Signed] DR. BOECKMANN

To the Regierungspraesident in Katowice
For the correctness of the copy.

[Signed] Signature

Distribution:

All departments and district offices.

TRANSLATION OF DOCUMENT NO-5875
PROSECUTION EXHIBIT 880

EXTRACT FROM SITUATION REPORT FROM MUELLER TO HOFMANN,
15 OCTOBER 1941, CONCERNING RuSHA ACTIVITIES IN THE LUBLIN
AREA

Hellmut Mueller

Lublin, 15 October 1941

Box: SS and Police Leader

Apartment: Warschauerstrasse 23/21.

Subject: First situation report on the conditions in Lublin

Reference:

Enclosures:

[handwritten]

H 20/10

Ra — Sg & SS Lieutenant Colonel Thole for information
To the Chief of the Main Race and Settlement Office SS
SS Major General Hofmann

—Personal—

Berlin SW 68, Hedemannstrasse 23

Gruppenfuehrer,

Herewith I take the liberty of giving you the first situation report on the conditions in Lublin with special reference to the interests of the RuS.

The SS and Police Leader and recently appointed Brigadier General of the Police, Globocnik, regards the political situation in the General Government basically as a transit period. He is in grave disagreement with the governor of the district, Party member Zoerner. For example, he is of the opinion that the clearance of Jews and also of Poles from the entire General Government is necessary for the security of the Eastern territories, etc. In this connection, he is full of far-reaching and good plans, the carrying-out of which are prevented, in this respect, by the limited power of his present position. He needs the cooperation of the civil offices

and authorities of the General Government for all actions, but they, in turn, will only help according to present laws and orders. That means, therefore, that he cannot carry out his plans and ideas without the Governor General and his governors (district chiefs).

As a provisional measure for this aim—independence and putting into practice of the tasks which seem necessary to him—he is about to build up the “Planning and Research Office of the General Government”. Its purpose will be to furnish the Brif. [Brigadier General] with the scientific and technical basis and preparations for his plans and ideas.

The idea of the “Planning and Research” originates from SS 1st Lieutenant Hanelt who is carrying out the organizing at the moment. H. is a member of the SS men’s billets (Ellersiek). He received a house from the brigadier general and at present assigns members of the SS men’s billets from the Reich to Lublin. They are students of all required professions, before and after graduation. Up till now, an architect has been assigned for department planning of building, a timber specialist for the timber department, a student for the authorities and administration who has been working with the governor for some time and the undersigned for the department settlement and land planning. Others are on the way or will follow. Everybody should, at the same time, be given the opportunity to be able to use the material collected for these uses.

The idea of the brigadier general is to carry out the German settlement in the whole Lublin area, starting with one part. And furthermore (aim!) to establish a connection through the Lublin district with Transylvania, settled with Germans, in connection with the Baltic countries settled with a Nordic and German population. Thus, he wants to “imprison” the remaining Poles in the western areas in between by way of settlement and gradually crush them economically and biologically. The west to east expansion from the Warthegau is to be followed by the east, west, north, and south pressure from the Lublin area, a very far-reaching aim but excellent in its tendency. The passive attitude of the governing offices, benumbed by bureaucracy, will be opposed by active folkdom and settlement politics with far-reaching aims.

The Reich Leader SS has consented basically to this idea. For the first part, the brigadier general wants to fill the properties of farmers of German stock, who live especially round the district town Zamosc and have recently been “rediscovered”, with further ethnic Germans from the Radom district. Thus, he gradually wants to establish a belt of pure German villages. Zamosc, which has also a German foundation, is to be the center. The Reich Leader

SS has visited Zamosc as well as the ethnic German villages. He gave the order for the rebuilding of Zamosc as well as for the carrying out of the settlement action. The brigadier general has been sensible enough organizationally to start with the words "little little".

I have presented the papers of seven villages in the first part. You, Gruppenfuehrer, will get the copy of the work as soon as it is finished. The work is very difficult, as 90 percent of the papers have been destroyed and one has to start right from the beginning. Furthermore, one has to work not only *without* but also *against* the offices which have the material. Nevertheless, after three weeks of work, it is ready for the pressing of the button. With this first part, the necessary laws and orders should be carried out at the General Government.

In what respect is RuS interested in this? With reference to the fact that the resettlement is based on political ethnic reasons, it must not be carried out only according to agricultural technical points of view. First of all, it has to be carried out on a biological basis, that is, in practice all RuS principles of connection between race and settlement, of blood and land have to be put first. I have, therefore, examined roughly the residing old and new settlers (105 families from the Radom district) from racial and hereditary biological points of view besides the technical things. I have met with the major general's fullest understanding in this. On the same occasion, I pointed out the necessity to carry out in great numbers a selection of the Poles to be evacuated, when the work will be in progress later on, first of all, to achieve the transfer of all racially and biologically valuable persons (splitting up of forces!) and, secondly, to cover the requirements of the Reich (lack of workers, farmers, etc.). Here also, I could establish the full agreement of the major general.

I see the development in such a way, that with basic permissions, the work will gradually expand, and next to the office of the Reich Commissioner for the Strengthening of Germanism with the settlement staff, etc., a RuS branch office will also have to be established here. However, at the moment I do not think it is advisable for RuS to make obvious local preliminary examinations. However, an unofficial visit, for example, by SS Major Schwalm would be very welcome. It would serve as a general orientation of Schwalm on the local conditions as well as enlarge my own personal knowledge.

* * * * *

Heil Hitler!

[Signed] HELLMUT MUELLER .

SS Captain

TRANSLATION OF DOCUMENT NO-4877
PROSECUTION EXHIBIT 660

LETTER FROM CREUTZ TO HIMMLER, 3 JULY 1942, CONCERNING THE
DEPORTATION OF POLES AND THE RESETTLEMENT OF ETHNIC
GERMANS IN THE GENERAL GOVERNMENT

The Reich Commissioner for the Strengthening of Germanism
Staff Main Office

I-1/7 GG — 5/Dr. St./Ma

Please refer to above reference number and date in your reply
Berlin-Halensee, Kurfuerstendamm 140, 3 July 1942
Telephone: Collective nos. 991091 and 363991

[Stamp]

Personal Staff
Reich Leader SS Archives
File No. AR/2/18

Subject: Settlement in the General Government
To the Reich Leader SS
Berlin SW 11, Prinz Albrecht Strasse 8.
Reich Leader!

Poles in the General Government who, for lack of good will or abilities, have badly cultivated their fields or otherwise neglected their trade are to be deported [ausgesiedelt] during the fall of this year. After consultation with SS Obergruppenfuehrer State Secretary Krueger, it is suggested that the places thus vacated, as well as the enterprises of ethnic Germans which are still available from the resettlement drive in the Chelm and Lublin area, be given to resettlers.

There are still about 10,000 Germans from Bessarabia and Bukovina in camps; because of the policy in regard to the People's List in Danzig-West Prussia and Upper Silesia, they could not be settled there as had been anticipated first. Apart from that, there are remnants of other ethnic groups, people who could not be resettled either for lack of suitable places or because of a subsequent change of an A-decision into an O-decision. Furthermore, the resettlement from Croatia (Bosnia) is imminent and, here again, not enough settlement space can be found in the Incorporated Eastern Territories.

Of all the Incorporated Eastern Territories, the only area suitable for immigration is the district Zichenau. It is true that, as already reported, Gauleiter Koch originally declared with certain restrictions to be prepared to accept Germans from Bes-

arabia, but this declaration has, despite frequent reminders, not yielded a satisfactory result.

SS Lieutenant General State Secretary Krueger is willing and able to settle the remnants of the resettlers for the greatest part in such a manner that the settlers, in the vicinity of police strong points and in relatively closed areas, especially in the district of Lublin, can be cared for with a view to the ethnic German ideology and to their loyalty to Germanism. Even if the principle to advance the German settlements in as close formation as possible is violated by a settlement in the General Government, it is suggested, in view of the detrimental effects of a long camp existence, to release the General Government as a settlement area. Even if, in connection with some later planning, a subsequent transfer might be necessitated in some cases, the immediate accommodation on their own property in the General Government seems to be a better solution for the resettlers than to leave them any longer in camps. The decision is requested, therefore, whether the General Government can be released for resettlement.

By order :

[Signature] CREUTZ
SS Senior Colonel

TRANSLATION OF DOCUMENT NO-2444
PROSECUTION EXHIBIT 201

LETTER FROM HIMMLER TO GOVERNOR GENERAL FRANK, 3 JULY
1943, CONCERNING RESETTLEMENT PROBLEMS IN THE GENERAL
GOVERNMENT

[Stamp]

Personal Staff Reich Leader SS
Central Archives
File No. Secret /55/6

The Reich Leader SS
R / Bn 47/997/43 Secret

Secret

[Stamp]

[handwritten] 266

To the Governor General Dr. Frank:

According to our verbal agreement, I may take a point of view in this letter on the entire settlement problem in the General Government:

1. It must be our aim first of all to supply the eastern frontier territories of the General Government with a German population. For this purpose, the Lublin district and the former German villages of the district of Galicia come into the question.

2. We agree that this settlement during the war may only take place in a manner which in no way seriously infringes upon the peace of the country and the economic productive capacity of the General Government. Of course we must not be too timid, and with the greatest prudence possible and the greatest consideration, we have to put up with the short-term difficulty or the other.

3. In the district of Lublin, we plan the settlement of the district of Zamosc and the Germanization of the old Hansa city Lublin until the beginning of 1944.

4. Through the large-scale operation [Grossaktion] "Wehrwolf" a considerable number of farms south of the Bilgoraj woods were vacated. During the next weeks the farmers and peasants of the subdistrict of Zamosc will be allotted to these farms by enlarging their former estates (for instance from 3 to 4 hectares to 6 hectares) and resettled. The resettlement will be done by way of a friendly resettlement, in part even in the form of a reward for their good behavior hitherto. In this manner we also achieve that the hatred of the expelled persons, which no doubt exists, or the hatred of the neighboring villages is directed against the Polish and Ukrainian successors rather than against Germans.

Efforts are to be made that the villages which are to be resettled with Poles and Ukrainians from the Zamosc subdistrict, will be settled with a nationally mixed population, so that we get a proper balance between Ukrainians and Poles in this area and can thereby govern this area more easily.

5. From now on, Germans will be continuously settled on the farms which have become vacant by the departure of the Ukrainian and Polish population of the Zamosc subdistrict. Among these Germans there are ethnic Germans, some already being Germanic farmers, craftsmen or businessmen, furthermore Alsations and Lorrainers who, according to Fuehrer orders, are to be transferred to the East, and Slovene settlers from upper Carniola and lower Styria who are basically very good.

Simultaneously with the settlement of the countryside, the complete Germanization of the city of Zamosc is to be conducted. In this respect the way of gradually reducing the population and enriching the diminished city with Germans is to be accepted as the most suitable one.

6. The other task, the Germanization of the city of Lublin, I imagine as follows:

Lublin had in 1939 approximately 140,000 inhabitants and at present a civilian population of 89,000. The German civilian population was approximately 5,000. Besides, there was also a German garrison of about 4,000 to 5,000. Efforts must be made to decrease the Polish population of the city of Lublin continuously. As the

first aim to be reached, I should suggest the decrease of the population to approximately 60,000. This figure will be achieved best by a peaceful transfer of pensioners and other families to the Polish countryside or to small purely Polish cities and by procurement of work in other areas of the General Government or even in the Reich.

Already with this measure the number of Germans in Lublin, at the present time about 9,000 German persons, will increase from approximately 10 percent to 15 percent. Simultaneously, an influx of German population has to take place. I believe that by the beginning of the year 1944 we will be able to achieve a preliminary result of 20 percent to 25 percent German population in the city of Lublin. At the beginning of next year, it would have to be considered that upon completion of a further stage during which a German population percentage of 30 percent to 40 percent would have to be achieved, Lublin would have to be declared a German city with a German lord mayor [Oberbuergermeister] with the simultaneous establishment of an orderly police directorate [Polizeidirektion] in connection with which I suggest that we shall discuss the subject in the meantime. I believe that the urgent construction and establishment of sanitary installations of the city of Lublin is possible by making use of the material which is plentifully available in the Warsaw ghetto.

7. A prerequisite for all these measures is the complete cooperation which we discussed, between the administration on the one hand and SS and police on the other hand, and an absolutely unbureaucratic procedure in the execution of all our intentions which we have in common.

Heil Hitler!

Yours,

[Signed] H. HIMMLER

2. Chief of the Staff Main Office of the Reich Commissioner for the Strengthening of Germanism
3. Chief of the SS Economic and Administrative Main Office
4. Higher SS and Police Leader East
5. Governor of the district of Lublin, SS Major General Dr. Wendler
6. SS and Police Leader in the district of Lublin, SS Major General Globocnik
7. Chief of the Security Police and of the SD.

Carbon copies transmitted with the request that contents be noted.

By order:

[Signed] BRANDT
SS Lieutenant Colonel

TRANSLATION OF DOCUMENT NO-2780
PROSECUTION EXHIBIT 661

TELETYPE FROM KRUEGER TO HIMMLER, 28 JANUARY 1943, REPORT-
ING ON AN ATTACK BY POLISH FARMERS AND PUNITIVE
MEASURES

[Rubber Stamp]
Personal Staff,
Reich Leader SS
Central Archives

Higher SS and Police Leader East
krk nr. 1020 28/1. 1310
The Higher SS and Police Leader East
File No.: kr/fi.-13 45 - 126/43 Secret

[handwritten notes] RFSS-Adj.

Secret

106-43
[Rubber Stamp]
[initials] H H

To the Reich Leader SS and the Chief of the German Police Hein-
rich Himmler
Hochwald

Secret

Subject: Operational Situation Report.
Reich Leader:

It appears that Polish farmers who had apparently been de-
ported from the Zamosc district have attacked the village of
Cieszyn, county Hrubieszow, located in the southeastern corner
of the German resettlement territory, and plundered houses and
killed 30 ethnic Germans, among them women. 15 men of the
home guard [Landwacht] who had not been armed yet due to lack
of weapons were also shot and killed. The investigations ordered
by me are being carried out for two days by the SS and Police
Leader Lublin and by the commanders.

I intend to carry out a large scale rounding-up after the per-
petrators have been found, in order to exterminate the villages
of these criminals. Reenforced police forces have been assigned to
the whole territory. If necessary, the operation will be supported
effectively by aircraft and aerial bombardment. Luftwaffe forces
are available. The actual carrying-out depends on the outcome of

TRANSLATION OF DOCUMENT NO-4059
PROSECUTION EXHIBIT 198

MIMEOGRAPHED COPY OF REGULATION, UNDATED, ENTITLED "GENERAL ORDERS AND DIRECTIVES OF THE REICH COMMISSIONER FOR THE STRENGTHENING OF GERMANISM"

General Orders and Directives of the Reich Commissioner for the
Strengthening of Germanism

I. The first part of our activities will have to cover the following fields:

1. Expulsion of about 550,000 Jews, as well as of the leading anti-German Poles, of the Polish intelligentsia from Danzig and Poznan, over the German border into the Polish General Government. The Jews are to be transferred to the territory east of the Vistula, between the Vistula and the River Bug.

2. Confiscation of all landed property of the former Polish state, of the expelled intelligentsia and of all Poles, executed or expelled for anti-German activities. The confiscation is based on the Decree of the Fuehrer and Reich Chancellor for the purpose of the Strengthening of Germanism, dated 7 October 1939, paragraph 5, in cooperation with the Main Trustee Office "East" which had been established by Decree of Field Marshal Goering on 9 October 1939. The title of property is transferred to the German Reich at the disposition of the Reich Commissioner for the Strengthening of Germanism.

3. Census in the newly acquired territories in December on a date to be fixed.

4. Urban and rural settlement planning (to be finished) by spring.

5. Filing of compensation claims and their examination, of Germans expelled from Poznan and West Prussia.

6. Temporary sheltering of the ethnic Germans, to be expected within the next few weeks, from the Baltic and Volhynia.

II. In the ensuing time the settlement of city and land will take place; this process is expected to take several years, perhaps even decades.

Certified:

[Signature] CREUTZ

SS Lieutenant Colonel

c. Selections from the Arguments of the Defense

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT GREIFELT **

* * * * *

2. Evacuations in particular. The internal minutes of the conference in the Reich Security Main Office (RSHA) of 30 January 1940 have not been initialed by Greifelt nor were they brought to his knowledge. They contain notes which were made from the point of view of police procedure and not statements by Greifelt. However, with all these reservations, this report also shows quite clearly that up to 30 January 1940 evacuations were only carried out by the RSHA and that they were to be continued in the same manner; as a matter of fact, a special department is even established for this particular task. The police deals with this problem after the conclusion of the official conference behind locked doors. Nobody, and this includes Creutz and Greifelt, knows what plans were adopted there and what practical measures were decided upon. Consequently, as far as Greifelt is concerned, nothing else can be deduced from this report than that he heard for the first time of systematic evacuations on this occasion. To him and also to his collaborator Creutz, both of whom in January 1940, could not even be acquainted with the conditions that actually prevailed in the Incorporated Eastern Territories, these decisions of Himmler, announced to them by the uncouth instigator Heydrich, came as an utter surprise. And here we see that it is even Greifelt who raises his warning voice when another party plans the evacuation of ethnic Germans in order to make room in the General Government.

From the subsequent statement by Dr. Ehlich it further becomes evident that this was the only occasion that Greifelt was together with Heydrich—and here only in a large circle. Consequently, a common plan could not have been created by these two men nor could it have been pursued by them. But even from the rough and unpleasant terminology of the RSHA, which was undesirable in the Staff Main Office under Greifelt's direction, it becomes evident that the Poles who were to be evacuated had been brought into the General Government or were to be brought there. However, according to the Russo-German agreements which I have already quoted, the inhabitants who favored going to Russia were to be taken out of the General Government and

* This part of the closing statement was not read into the record but was submitted to the Tribunal in the form of a brief. Closing statement is recorded in mimeographed transcript, 16 February 1948, pp. 4872-4908.

moved to the country of their choice, and in this way, room was to be made just as had been done with the ethnic Germans who were resettled from the General Government to the Warthegau. That, however, the pure knowledge of the evacuations, that is, the allotment of living areas to alien ethnic groups could not keep Greifelt from collaborating in the total task of the resettlement which seemed beneficial to him and likely to bring about friendly relations between the nations, has already been explained.

Only in this connection can Greifelt's letter to Heydrich of 2 September 1941, (*NO-5011, Pros. Ex. 672*), be understood, in which he refers to the low morale of the resettlers if they remained in the camps too long and were not settled. Greifelt spoke (page 3) of "Evacuations into the General Government", the reinstatement of the resettlement procedure, which was to settle the ethnic Germans in the Incorporated Eastern Territories and the Poles in the General Government.

If in this connection the prosecution, in its opening statement, used the term "Trash Dumping Area General Government", then we must reply the following: This letter is written in a quite factual official language and it only speaks for Greifelt. It proves that the Staff Main Office was not even in the position of exerting any influence on the evacuations which were carried out there. The latter constitutes a suggestion—an inquiry to the Chief of the Security Police and the SD. The prosecution has introduced Document as Exhibit 565, which does not bear any signature and does not have any letterhead. The table of contents states that this is a report of the Staff Main Office. When the document was submitted, the prosecution stated that probably it had originated with the Staff Main Office. However, actually, it did not originate there. It is the report about the official trip of an unknown person to a district peasant leader and an agricultural consultant, who were not subordinated to the Staff Main Office. The certificate concerning the discovery of the document does not state the location where the document was found. It only speaks of the fact that it probably originated with the Staff Main Office. Since the document does not bear a precise statement as to the place where it was found, it cannot be considered to be a captured document. Under no circumstances can it be used in order to incriminate the Staff Main Office. The land agency, which has been mentioned in the document, was an institution of the Reich Ministry of the Interior.

In this connection, consideration must be given to the fact that at this time already the measures, which will still have to be discussed later on, had resulted in a marked increase in the number

of ethnic Germans and others who were on an equal basis with them.

Without any coercion at that time the unclassified elements, whose nationality had not as yet been established, wanted to belong to that group which, for the time being at least, was the victor. After all, in the opinion of these people the decision had fallen, at least, for a long time. In this connection, we can mention the letter of an unidentified Obersturmbannfuehrer to the chief of the race office, "that in the entire Gau of Danzig-West Prussia, there are only 600,000 Poles while on the other hand the number of persons belonging to the People's List amounts to approximately 735,000. (NO-1366, Pros. Ex. 500.)

The deportation drive was carried out by the local police authorities by order of the UWZ (NO-2555, Pros. Ex. 34.) According to the charts which have been introduced here and according to the testimony of Krumei (NO-5364, Pros. Ex. 714), it was subordinated to the chief of the security police and consequently also to the RSHA. The official contact with the UWZ took place exclusively on the level of the practical individual task; there never was any contact between the UWZ and the Staff Main Office.

In the course of the movement of such large numbers of people as were included in the resettlement and, above all, in the course of deportations, which were carried out because the state emergency which existed at the time made transfers to other areas mandatory, certain difficulties were unavoidable in its practical execution. There certainly were cases of hardship, as the witness Ruebel testified in the afternoon of 13 January, but efforts were made in order to alleviate these hardships as much as possible. It was not Greifelt's duty to carry out the necessary evacuations. Everybody, who is acquainted with him from his life, from the documents or from this trial, knows that he was not fit for such a task. His work was there in his office and not to deal with people outside. He tried as far as possible to formulate Himmler's orders in a just manner in accordance with the laws and circumstances and further to avoid or compensate the cases of hardship mentioned above. Police work was not his task. This can be seen from all the basic decrees. This is of great significance for this case also from the legal point of view. Greifelt cannot be charged with having personally caused any people to leave their domicile under pressure. This was ordered and executed by others, none of whom is in the dock. Also in his own field, settlement of ethnic Germans, Greifelt was only occupied with smoothing out the official channels, this was done on paper and not in crude reality. Because of his manner of personality and work, he cannot even

fall under the suspicion of having been the instigator of maltreatments and taking away personal freedom.

The only case that Greifelt was present as an accidental onlooker, witnessing the theatrically arranged deportation and resettlement has been described—totally distorted—by von dem Bach-Zelewski. I have already stated what is to be thought of this witness who has been brought up in many trials by the prosecution since January 1946. Bach himself, however, has stated that this evacuation of a few farms in the district Saybusch was specially arranged as a show for “all other participants and laymen”. The buildings to be evacuated and the farms to be amalgamated had been prepared and measured exactly. Bach greeted the ethnic German resettlers with a hearty welcome speech upon their arrival at the railway station Saybusch, and even a band had been procured. The entire thing was a show but it was not ordered by Greifelt.

The producer of this action was the agency in Katowice which was subordinated to Bach. Bach also was the man who took Greifelt who had visited him in Breslau over in his car to see this performance of Bach’s agency. To Greifelt such theatrical performances were repugnant. We have seen him as the organizer and white-collar worker in this agency. This performance in Saybusch was a matter according to the taste of Bach and his gang. Witness Golling who is familiar with the subject matter and the location on 4 December 1947 explained clearly, that not the central Berlin agency but provincial offices, and not least the “Silesian Landesgesellschaft”, a local settlement agency subordinated to the Reich Food Ministry had prepared this novel exemplary show. This applies not only to the practical execution but also to the planning which had been pushed into all details. The defendant Meyer-Hetling has testified that such preparations were not carried out by his planning office—where then should Greifelt have got such data? Golling’s testimony is confirmed by the rebuttal document. (NO-5640, *Pros. Ex. 854.*)

It has to be added that in this Saybusch action, no resistance was manifested on the part of the Polish farmers about to be evacuated. They were brought into the General Government, and they left their scanty homes without any resistance. *Volenti non fit injuria* applies to international law. Protests are necessary, at least something to show reluctance. Otherwise, agreement or silent assent has to be assumed. I emphasize that Bach testified the action was executed by the Security Police. His assertion that Greifelt had worked out orders for the Security Police shows the entire untruthfulness of the statement. Bach as the Higher SS and Police Leader would have spoken an entirely different lan-

guage if he had dared to give orders to the Security Police, not to speak of Heydrich.

Greifelt belongs neither to the circle of persons who practically executed deportations nor to those who bear the responsibility before international law. That he was opposed to them was admitted by Bach-Zelewski himself in his affidavit. (*Greifelt 100, Greifelt Ex. 100.*)

3. Processing. Does resettlement in itself, justifiable before international law, become a crime by examining the resettlers as regards their political and racial suitability by members of the Resettlement Center (UWZ) Lodz (*point 16 of the indictment, 4th sentence*).

This examination has no factual connection with other measures: I shall discuss them later on; they are the DVL and WED processes; but it has one thing in common with them: In their origin and aside from possible abuses which were not intended by the inventors of such instruments, they were not measures of Germanization but, on the contrary, designed to keep out elements whose own wish to become German citizens was regarded as suspicious criticism or where certain reservations were to be attached or where such a wish was disapproved. They were measures by which it was intended to maintain the outward appearance of the German people. The influx of people, who endangered the ideal type, was to be prevented. (*German Tr. p. 3923.*) If it had only been intended to increase the population and lengthen the list of military recruits, one would simply have given the German nationality to all inhabitants of the incorporated territories as was done by the Soviet Union in her territories. (*Greifelt 11, Greifelt Ex. 11.*) It is a rule of international law that inhabitants of annexed territories receive the nationality of the annexing power.

**EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT HUEBNER ***

* * * * *

The prosecution has tried to prove that the defendant Huebner participated in the *evacuation of Poles* (*count 16 of the indictment*). But it completely overlooks the time when most of the evacuations were carried out.

When specifically questioned, all witnesses confirmed that many farms, particularly in western Poland, had already been abandoned by their Polish owners in the face of the approaching German armies. This was to be expected. For it was particularly in western Poland, which formerly was populated to a large

* Closing statement is recorded in mimeographed transcript, 17 February 1948, pp. 4973-5011.

percentage by Germans, that the Polish Agrarian Reforms put many Poles on farms which originally were German. The present owners were afraid that the Germans would try to reverse this development and by fleeing they tried to escape these unpleasant experiences.

The first big wave of compulsory evacuations commences immediately after the beginning of German rule. It was the police who in this way wanted to free the still restless country of those elements who, in their opinion, were jeopardizing public security. If on the one hand we take into consideration the world-wide-known national pride of the Poles and, on the other hand, the thoroughness with which German police authorities used to discharge such tasks, then the statement of the witness to the effect that, in view of the 2 reasons cited already, most of the farms which subsequently served for resettlement had become free, becomes a certainty.

When finally the big resettlement operations began, and a total of several hundred thousand ethnic Germans were brought to the Reich, a further evacuation of minor proportions began. It would be useless to conceal that, as far as time is concerned, there was a connection with the resettlement actions. It is, therefore, all the more important for this trial to clarify who was responsible for these evacuations, who carried them out, and at what date they went on.

In these examinations, however, no consideration shall be given to the question in which supreme authorities were involved. In my case where I have to consider only the activity of the Gau level, I can confine the examination of the question of responsibility to this intermediate authority.

The prosecution itself has offered a very effective proof concerning the competencies in evacuation matters by its Document NO-5322, Prosecution Exhibit 805. It is expressly stated in paragraph 2 of these minutes of a conference, which took place on 30 January 1940, that the Referat IV D 4 of the RSHA had been established for the central direction of evacuation tasks. This document is followed by Huebner Document 62, Huebner Exhibit 68. This order bulletin of the Chief of the Security Police and the SD, published by the aforementioned RSHA in Berlin, contains regulations concerning the structure and administration of the immigration and resettlement centers of the security police. The sphere of duties of such a resettlement center is evident from its table of organization which is explained in Article 2 of the document—Department II of the resettlement center was concerned with evacuation matters, Department III with police assignments. The subordination status is clarified once more in

Article 28 which reads: "The activity of Department II—evacuation, and Department III—police assignments is subject to special instructions by the Chief of the Security Police and the SD." The Chief of the Security Police and the SD—this is an indisputable fact—were part of the RSHA.

We may thus briefly summarize: The RSHA was in charge of the central direction of evacuation matters, while local orders and operations were the task of the resettlement center which worked in accordance with instructions from the above-mentioned Reich authorities.

All the facts that are evident from these documents also form the subject of many testimonies by witnesses who were able to watch the work of the resettlement center from the operational staffs. All of them confirm—when the operational staffs began to operate, their duty consisted in participating in the land registration since in contrast to Germany, Poland lacked dependable records on existing real estate. They handled their job by opening a farm file card system for every agricultural property, regardless of whether it was owned by Germans or Poles.

The farm file cards then went to the resettlement center through the resettlement staff and there it was decided in line with security police directives—which were unknown to the operational staffs—which farms were to be evacuated. This represented the final decision. Whatever else was done by the resettlement center and the police was only in practical execution of their own decision.

Applied to the office to which the defendant Huebner belonged—even though, as I would like to point out once more, he was not connected with these technical duties—the result of the examination as to the competencies in evacuation matters can be summarized as follows: Evacuation measures in the Warthegau came under the Resettlement Center Lodz which, in accordance with its subordinate position, received its instructions from the superior offices of the Police sector. The deputy and his office, therefore, could not participate and accordingly did not maintain a department which would have been competent for such tasks. The activity of the operational staffs, however, was confined to merely land registration without making decisions and, therefore, they did not exercise any influence on the Resettlement Center (UWZ).

Also the date when these evacuations were carried out was clarified by witnesses: By the latest, these evacuations, which were small in number anyway, were terminated in March 1941; moreover, at that time another order prohibiting evacuation became effective. When more room was needed, there remained no

other solution but to limit the space accorded Poles as well as Germans in the same district. *Up to that time, however, Huebner had not at all been employed in the office of the deputy of the RKFDV (Reich Commissioner for Strengthening of Germanism) in Poznan.*

d. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT CREUTZ*

DIRECT EXAMINATION

* * * * *

DR. MERKEL: I am now coming to the main point in the indictment; that is Article 16, the compulsory evacuation and resettlement of population groups. What do you know about the evacuation in the Incorporated Eastern Territories?

DEFENDANT CREUTZ: I know that such deportation drives were carried out.

Q. When did these deportations begin, according to your knowledge?

A. As far as I know, they began in December 1939; this was in October, November, and December 1939 for the most part.

Q. Is there any exact information to show just how many people were deported at that time?

A. No. As far as I know, the RSHA had the figure, but only estimates.

Q. Who ordered these deportations to be carried out?

A. As far as I know, various local authorities: the Wehrmacht, the Navy, the chiefs of the civil administration, and the Gauleiter.

Q. Who carried out these measures?

A. This probably varied in each individual case; I don't know.

Q. The witness Ehlich, who has been examined here, spoke about a conference in the office of Heydrich with regard to deportation, and you also attended this conference. What was the subject under discussion there?

A. At that conference we discussed the fact, as far as I can recall, that Himmler had ordered further deportations to be carried out. The representatives of the General Government who participated in that conference said that it was impossible for them to accept any additional Poles, and the question whether any further deportations were to be carried out remained open for the time being.

* Complete testimony is recorded in mimeographed transcript, 8, 9 December 1947, pp. 2062-2161.

Q. But why were the deportations continued in spite of everything?

A. I don't know. I assume that Heydrich must have discussed the matter with Himmler, and Himmler must have issued further regulations.

Q. How many persons were then deported, afterwards?

A. I don't know that either. Including the "wildcat" evacuations which were carried out, the RSHA had issued the figure of 250,000. I don't know, however, to what period of time this figure applies and to what areas.

Q. What do you know about the deportation procedure which was followed?

A. I don't know; I am not acquainted with it.

Q. Did you yourself ever see such a deportation carried out?

A. No.

Q. Did you ever order such a deportation drive to be carried out?

A. Certainly not. After all, I maintained the point of view at the time—and I still maintain it today—that one cannot begin to establish peace by carrying out deportation drives.

Q. In the General Government, however, deportations were also carried out. For what purpose were they carried out?

A. This was done for security reasons.

Q. Who ordered these deportations to be carried out?

A. Himmler himself, without any doubt.

Q. Do you know how many Poles were deported?

A. No.

Q. When did these deportations take place?

A. This must have been in the summer of 1942.

Q. Who carried them out?

A. Globocnik, as SS and Police Leader, and probably police units were used at the time.

Q. Did the Staff Main Office play any part in these deportations?

A. No.

Q. Were these deportations to serve the purpose of making room for the accommodation of resettlers?

A. I don't know what purpose was pursued by Himmler and Globocnik with these deportations. The Staff Main Office at the time did not think of the accommodation of resettlers. It only had the intention of utilizing the possibilities in the General Government for resettlers.

Q. Why were resettlers sent into the General Government after all?

A. First of all because Himmler had ordered this; and secondly,

because it seemed better for the resettlers to accommodate them first of all in the General Government rather than to keep them waiting for a long time in the camps.

Q. Did these resettlers go into the General Government voluntarily?

A. Yes. Their representatives and spokesman were asked before about this matter and they declared themselves willing to go.

Q. How many resettlers were accommodated within the General Government?

A. Altogether, at the most, 7,000.

Q. Were deportees from Alsace, Lorraine, and Luxembourg also to be brought into the General Government?

A. Yes. I believe that Himmler discussed this matter with Globocnik on one occasion. However, Globocnik himself thought that this plan was not feasible, so we did not have to maintain any attitude on the matter.

Q. Do I understand you correctly? No resettlers were sent into the General Government?

A. Oh, yes; resettlers were sent, but they did not come from Alsace, Lorraine, and Luxembourg.

Q. You yourself, however, signed directives according to which resettlers from Serbia and Bulgaria, and so on, were to be settled in the district of Lublin. How did this come about?

A. These were not settlement orders because, after all, Himmler had issued the settlement orders previously. These were orders as they were issued in all cases, so that the collaborators and other agencies, for example, the camp administrators of VoMi, the EWZ, and the different agencies with card index files, and other interested agencies would be informed of the fact that this group of resettlers would arrive in the General Government or, in this case, in the district of Lublin in the near future. Then the resettlers were sent out from the camps according to the existing possibilities.

Q. Were these resettlers actually settled in Lublin?

A. For the most part, yes. As far as I can recall, approximately 7,000 until the settlement in Lublin was discontinued in the spring of 1943.

Q. In Document NO-2477, Prosecution Exhibit 200, the figure of approximately 50,000 resettlers is mentioned. You have just given us the figure of 7,000. These 50,000 resettlers were to be settled in Lublin. Can you explain the difference in these two figures?

A. Oh, yes, I know * * * even 90,000 are mentioned there. These 90,000 resettlers were the people who were in all the VoMi camps at that period of time in the fall of 1942, in Germany

proper. We never even thought of sending all these people to Lublin. It is a typical characteristic of Globocnik and his way of working that, in this report, he speaks of resettlement of these people. He never could have settled these people in that locality.

Q. Did you yourself ever go to Lublin?

A. No.

Q. Do you know Globocnik?

A. I saw him on one occasion when he visited the Staff Main Office, and in particular the defendant Greifelt.

Q. How is it then that you are so little informed about these incidents in the General Government?

A. Because the measures in the General Government, which did not belong to the Reich, were not the task of the Staff Main Office, but Himmler had his representative in the General Government, SS Lieutenant General Krueger, who received his instructions direct from Himmler; he disapproved of any close contact and negotiations with the Staff Main Office, pointing out that he was a representative of Himmler.

Q. You stated that Himmler went to Lublin frequently. How do you know that?

A. I heard that from different sides. I heard that in the year 1942 and early in 1943 Himmler had gone to Lublin at least once a month.

Q. Did you know that before April or May 1945?

A. Yes.

Q. Did you know that Globocnik had established concentration camps in Lublin?

A. No. I didn't know that. I only saw Globocnik on one occasion for, perhaps, 30 minutes.

Q. I am now going to put to you Document NO-4389, Prosecution Exhibit 37, in document book 2-B, Document NO-4392, Prosecution Exhibit 230, in document book 5-B; Document NO-4393, Prosecution Exhibit 253, in document book 5-C. These three letters are signed by you. Why did you sign these letters?

A. These are the orders to which I have just referred. I signed them because, in this case I believe, one or two days before we had received a very harsh letter from Himmler. He reproached the defendant Greifelt and the Staff Main Office severely for the fact that the settlement at Lublin was being sabotaged by the Staff Main Office. There was nothing further to do than to furnish additional groups of resettlers.

Q. What effect did your letters have, in practice?

A. First of all, they did not have any effect; the resettlers were assembled in the VoMi camps, I believe, in the area of Lodz, and here they waited to be called to Lublin.

Q. Before that time, were resettlers prepared to be settled in Lublin?

A. Yes. Some of them had been prepared for resettlement before. This was done on the basis of instructions which we had received from Himmler. This was done on account of a teletype which Himmler had sent to the Staff Main Office in Krakow.

Q. How do you know that Himmler was in Krakow at the time?

A. That became evident from the teletype; that came from Krakow and it was signed by him. This also becomes evident from the documents themselves.

Q. Were you authorized to sign orders for the Reich Commissioner?

A. No. I deputized for the chief of the Staff Main Office when I signed these letters.

Q. In the documents of the prosecution, "villages of criminals" are mentioned. What do you know about that?

A. That term means nothing to me. I never heard of it.

Q. Did these resettlers agree to being settled in the General Government?

A. Yes. We also asked the spokesmen of the resettlers' group first.

Q. I am now going to put to you Document NO-4876, Prosecution Exhibit 659 and Document NO-4877, Prosecution Exhibit 660, from document book 5-G. The documents contain a request which you sent to Himmler that the General Government should be cleared for resettlement by Germans. Why did you make that request?

A. This request was discussed on the occasion of a visit which SS Lieutenant General Krueger made to the defendant Greifelt. Dr. Stier and I also participated in the conference, and Krueger stated on that occasion that he would be able to place some resettlers in the General Government. He did not mention any figures as far as I can recall. Since this seemed to be a possibility at least to get the resettlers out of the camps, even if it were on a temporary basis and to place them in better living conditions there until the final settlement could be carried out, this request was made by me, signed after the defendant Greifelt had to go on a trip himself, several hours after the discussion took place.

Q. Did Himmler approve of this request?

A. As far as I can recall, Himmler never decided on this request or answered it. Later, the direct orders were issued by Himmler in this direction, that resettlers were to be prepared for the trip into the General Government for resettlement there. Apparently, Krueger himself had initiated those orders.

Q. At the time did you negotiate with Krueger?

A. I was present.

Q. Is that why you went to Krakow?

A. No. The conference took place in Berlin.

Q. In Lithuania were there any deportations carried out?

A. I can't tell you that exactly. If so, then only on a very small scale.

Q. Do you know who carried out these deportations?

A. No.

Q. In the occupied Russian territories, were further settlement measures put into effect?

A. In the vicinity of Zhitomir, ethnic Germans who had lived in this area individually were placed into villages as a group. This was also done upon the orders of Himmler, who had his headquarters at Zhitomir at the time, and he wanted to have these Germans in the vicinity of his headquarters.

Q. Who ordered these measures to be carried out?

A. Himmler himself did.

Q. To what extent did the Staff Main Office participate in these measures?

A. The Staff Main Office only had to furnish certain funds for this purpose, insofar as they were needed in the Reich for the purchases which the agency in the Reich had to make, as a result of salaries and current expenses. Actually, it did not have any influence.

Q. Did you yourself go to the Crimea and to Zhitomir?

A. No.

Q. How many people were deported in these drives?

A. None, as far as I know no people were deported.

Q. Were resettlers also settled in the Crimea and at Zhitomir?

A. No.

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS GOLLING*

DIRECT EXAMINATION

* * * * *

DR. VON DER TRENCK: The prosecution has charged that deportations were carried out in connection with settlement drives. Can you give me some information about that? First of all, for what reasons and to what extent were farmsteads already vacated before the beginning of all the settlements in the Incorporated Eastern Territories?

WITNESS GOLLING: At the outbreak of the war a large number

* Complete testimony is recorded in mimeographed transcript, 4 December 1947, pp. 1902-1961.

of Poles had fled. Furthermore, the regional subprefects [Landraete] in the various districts had asked the native ethnic German population there to look after farm estates which had been administered before by Poles. As a result of this, many Poles had left or had been forced to leave. Furthermore, already during the actual campaign, the security police had deported numerous persons. This drive then was continued in the winter of 1939 and throughout the year 1940.

Q. Are there any statistics which include these deportation drives?

A. Yes, the Staff Main Office compiled statistics in this connection.

Q. In this connection are you referring to the "Menscheneinsatz"?

A. Yes, that is what I am referring to.

DR. VON DER TRENCK: These statistics which deal with the state police deportations are Document NO-5150, Prosecution Exhibit 673 in document book 5-G.

In order to accommodate the resettlers from the Baltic countries, did any farm estates have to be vacated?

WITNESS GOLLING: That was not necessary because at the time there were sufficient farms available for the Baltic resettlers of which there were not many. Here they were appointed as custodians.

Q. Were deportations necessary in order to carry out the exchange resettlement at Lublin?

A. With regard to this exchange resettlement of the Lublin Germans, I don't want to use the term "deportations" at all, because the situation here was that a German and a Pole would exchange their farms. As far as I was concerned, I never considered this to be any deportation measure at all.

Q. Were deportations necessary in order to resettle Germans from Bessarabia?

A. The Germans from Bessarabia came in 1942 and 1943, and then they were taken to the Incorporated Eastern Territories. During this time, no deportation measures were carried out.

Q. Does the same thing apply to the resettlers from Bukovina?

A. The resettlers from Bukovina were settled in Upper Silesia for the most part. With the ownership conditions in that territory, there was sufficient space in order to accommodate all these people and take care of them there. Furthermore, most of these resettlers came from larger cities and moved into the neighborhood of the industrial area of Upper Silesia. There were sufficient facilities in order to find a place of work for them.

Q. Did sufficient accommodations exist for Germans from

Russia who came into the Reich in the middle and end of 1944 with the retreating German armies, or were any deportations carried out?

A. The Germans from Russia were only given shelter whenever it was possible for us to do so.

Q. Therefore, the only group for which any deportation drives were necessary, were the Germans from Volhynia?

A. When we assigned the Volhynia Germans, it is possible that the assignment and accommodations of the resettlers stood in some connection with a deportation drive.

Q. Did the Staff Main Office or any subordinate agencies carry out any deportations?

A. The Staff Main Office did not carry out any deportation drives, nor did it have the authority to do so.

Q. Who was competent for deportations?

A. The Reich Security Main Office, with the Resettlement Center (UWZ), one of its subordinate agencies.

Q. Did the operational Staffs have any influence on the selection of the people to be deported?

A. The operational Staffs did not select the persons to be deported.

Q. Did the Staff Main Office, in order to pacify the areas in which it had to work, avoid all movements of the population which were not necessary?

A. In several points we exerted our influence to the effect that no movements of the population should be carried out. I want to give you a special example for this. That is the general decree in order to improve the conditions for ethnic Germans in the districts. This was decree number 94. We had just issued this decree in order to stop the orders of the regional sub-prefects that these Germans were to take care of other properties as custodians.

Q. Was it intended that the people who were deported should be given some sort of indemnification?

A. Yes. I have already mentioned before that on the basis of the law about expropriation of real estate on behalf of the Wehrmacht, I had already drafted several suggestions. Later on, on another occasion I submitted these suggestions once more. I did this together with Attorney Wirsich.

MR. SHILLER: Your Honor, may it please the Tribunal, the prosecution wishes to object to the testimony of the witness as to what he would have liked to have done. We feel that the testimony here should be concerned with the facts as to what was done.

PRESIDING JUDGE WYATT: Yes. That sort of testimony will not

be helpful to the Tribunal in any respect, and the only reason that the Tribunal is not limiting it itself without objection is that counsel has been warned that the time for taking this sort of testimony is about over and we determined that you can use the remainder as you see fit.

PARTIAL TRANSLATION OF CREUTZ DOCUMENT 17
CREUTZ DEFENSE EXHIBIT 17

EXTRACTS FROM THE DIARY OF HANS FRANK OF THE MINUTES
OF THE SECOND CONFERENCE OF THE DEPARTMENT CHIEFS ON
8 DECEMBER 1939 IN KRAKOW

Extracts from: "Excerpts from the diary of Hans Frank"
2233-PS (U.S.S.R. 223)
(Photostat copy)

Pages 6-7.

Minutes of the second conference of the Department Chiefs on
8 December 1939 in Krakow.

Present were: Dr. Frank, Dr. Seyss-Inquart and others.

Page 1. The Governor General, Reich Minister Dr. Frank, reported on his conference with Field Marshal Goering. As a consequence of this appointment of the Governor General to be the deputy of the Plenipotentiary for the Four Year Plan, in the future nothing will be allowed to happen in the General Government in the field of economic policy without the Governor General being able actively to promote or block it. It would be the duty of the Governor General to extract all the best and the most useful for the Reich from out of the economy of the General Government.

Page 3. SS Lieutenant General Krueger: Since 1 December, several trains have been arriving every day in the area of the General Government loaded with Poles and Jews from areas newly incorporated into the Reich. These transports will continue until about the middle of December.

* * * * *

Meeting of 19 January 1940 of the Department Chiefs in Krakow.
Present were: Dr. Frank and others.

* * * * *

Page 14. Reich Minister Seyss-Inquart as my deputy has received his appointment from me. At first he will be my deputy in case of my absence or my being detained. He has already exercised that right of representation. Secondly, he has to carry out in my name special tasks, which I shall assign to him in every case. I shall assign to him certain groups of problems with the request to clarify the facts and to report to me on the results.

Beyond that, however, I request that you consider Amtschef, Ministerialdirektor Dr. Buehler as the chief of the over-all administration of the General Government, who is directly subordinated to me and to my deputy and who will cooperate directly with you.

I, therefore, must request that in the future you always discuss drafts and plans first with Amtschef Dr. Buehler before you submit them to me. The same procedure applies to matters pertaining to the police which will first be referred to the Higher SS and Police Leader, SS Lieutenant General Krueger. The authority of the Amt is represented by the Amtschef, who is appointed as such by the Fuehrer and who, therefore, has to represent the authority of the entire administration.

Minutes of the conference of the department chiefs of 15 February 1940 at Krakow.

Page 2. General Fuhrmann reports on the Governor General's conference with Field Marshal Goering on 12 February 1940 at Karinhall. The Field Marshal has issued the strict order that the negotiations of all Reich offices with offices within the General Government would be conducted exclusively via the Governor General. The authorities in the Reich are specifically prohibited from issuing directives directly to offices in the General Government.

Meeting of 8 March 1940 of the Department Chiefs in Krakow. Present were: Dr. Frank and others.

Page 5. One thing is certain. The authority of the Governor General as the representative of the Fuehrer and the will of the Reich is indeed strong in this area and I have never left any doubt about the fact that no one may toy with that authority. I have had that explained again to each and every office at Berlin, especially after Field Marshal Goering prohibited as of 12 February 1940 all offices of the Reich, including the police and including even the Wehrmacht, from interfering in any official business of the General Government in any way.

The same applies to the attempt, which the SS made on 15 or 16 December, in which the Reich Leader SS issued orders which also were to apply in the General Government, i.e., that all the *objects d'art* and other objects should be awarded to the SS. Upon my complaint, that order indeed was rescinded.

Page 8

Meeting of 12 September 1940 of the Department Chiefs
in Krakow.

Present were: Dr. Frank and others.

* * * * *

Page 5. There are no Reich offices which are permitted to exercise directly or indirectly any governmental powers in this area. Only the Governor General as the direct representative of the Fuehrer and no one else may issue any orders.

* * * * *

Meeting of 19 December 1940 of the Department Chiefs
at Krakow.

Present were: Dr. Frank and others.

Page 2. Dr. Frank: All of the rights of sovereignty of the Reich will be exercised in this area in the name of the Fuehrer by the Governor General and his administration.

* * * * *

5. DEPORTATION AND FORCED GERMANIZATION OF SLOVENES

a. Introduction

A short statement of the position of the prosecution on this aspect of the case has been set forth in the prosecution's opening statement on pp. 622 to 694. An extract from the testimony of the prosecution witness Hans Ehlich on the deportation and forced Germanization of Slovenes, and a selection of documentary evidence introduced by the prosecution appear on pp. 891 to 902. Extracts from the evidence of the defense are set forth on pp. 903 to 910.

b. Selections from the Evidence of the Prosecution

EXTRACT FROM THE TESTIMONY OF PROSECUTION WITNESS
EHLICH*

DIRECT EXAMINATION

* * * * *

MR. SCHWENK: * * * We are now turning to another subject matter. Deportation of Slovenes. Are you familiar with the deportation of citizens of Yugoslavia?

WITNESS EHLICH: Yes, in general broad outline.

Q. What was the purpose of the deportations?

A. There were many deportations which were based on many and varying reasons and they pursued a special particular pur-

* Complete testimony is recorded in mimeographed transcript, 28, 29, 30 October 1947, pp. 572-658; 734-771.

pose. The first deportations which were carried out from the so-called territory of Lower Styria in 1941 immediately after the campaign against Yugoslavia, were carried out for purely political reasons mainly, and almost exclusively. It applied to Slovenes who emigrated to Yugoslavia during the first years after the First World War. In other words, people who did not live there before. These people were resettled in Croatia or Serbia. Then there was a second resettlement in the same area, in Lower Styria, which was carried out within the framework of the resettlement of ethnic Germans from Gottschee; this resettlement took place in the most southern tip of lower Styria. Then in the territory of upper Carniola, two main resettlements were carried out, apart from the smaller measures. One of them was for political security reasons and took place in 1942. The Higher SS and Police Leader there directed this measure to be carried out in an area which extended to fifteen kilometers near Laibach, because he thought he would be able to stop the crossing of partisans from Italian territory to German territory. This resettlement was discontinued due to the intervention of several agencies. Then a resettlement of Slovenes took place, within the same area, which comprised the members and relatives of partisans who had either been killed in the struggle against the partisans or who had been killed in connection with partisan action or people who had been sent to concentration camps. Those for the most part were the resettlement measures which were carried out in those areas.

Q. Did the Staff Main Office participate in these acts against the Slovenes?

A. The Staff Main Office participated in the second procedure which was the deportation of Slovenes in connection with the resettlement of Gottschee Germans, and the local representatives of the Reich Commissioner for the Strengthening of Germanism participated in the resettlement measures in Upper Carniola, in connection with deporting the members of families of partisans mentioned before.

Q. Did they also participate in deportations concerning Carinthia, Austria.

A. In the so-called former territories of Upper Carniola, which were former German territories, a number of—

Q. Witness, my question was: Did the Staff Main Office participate? Yes or no is the answer.

A. Well, I can't tell you. I couldn't tell you that for certain.

Q. What happened to the Slovenes who were deported?

A. The Slovenes who had been deported to Germany were

placed into vacant VoMi camps because no other means of billeting them were available.

Q. Did the SS Race and Settlement Office participate in these actions against Slovenes?

A. I believe that a selection of people eligible for re-Germanization was in part carried out, but I don't believe it was done with everybody.

Q. Did VoMi participate in these acts?

A. Yes, insofar as they placed the camps at its disposal, as far as they were available.

Q. Are you familiar with the actions against the partisans, or as they were called at that time, bandits—in Yugoslavia?

A. Well, without your telling me the exact areas, I couldn't tell you what it was all about.

Q. At the time when a borderline of twenty or thirty kilometers was supposed to be occupied by ethnic Germans, partisans came into existence because they had resisted their deportation. Can you remember that?

A. Yes. I know that partisans came into existence in those areas of Lower Styria and Upper Carniola, to some extent in connection with the deportations.

Q. Do you know what happened to those partisans if they were caught?

A. According to my knowledge although I wasn't working in the executive office there, partisans were treated exactly the same way as partisans of all other territories.

TRANSLATION OF DOCUMENT NO-3531-T
PROSECUTION EXHIBIT 196

DECREE 34/1 OF THE REICH LEADER SS, 4 JUNE 1941, CONCERNING THE RE-GERMANIZING OF PERSONS OF FOREIGN NATIONALITY FROM SOUTHERN CARINTHIA AND LOWER STYRIA, AND SUPPLEMENT OF 9 JUNE 1941, SIGNED BY GREIFELT

Berlin, 4 June 1941

The Reich Leader SS, Reich Commissioner for the Strengthening of Germanism

Decree 34-I: Re-Germanizing of persons of foreign nationality from southern Carinthia and lower Styria.

In southern Carinthia and lower Styria, persons of foreign (non-German) nationality are to be racially examined by the deputies of the SS Race and Settlement Main Office assigned to

the two resettlement staffs, and if they show aptitude, provisions for their re-Germanization should be made.

In this connection I decree as follows:

1. Persons from southern Carinthia and lower Styria, who are suitable for re-Germanization by virtue of the racial examination, are to be included in the measures for assigning persons capable of re-Germanization from the eastern territories and from the General Government, and are to be settled in the territories of the Higher SS and Police Leaders Southwest, Rhine, Western Provinces, Fulda-Werra, West and South, including the SS Administrative Main District [SS Oberabschnitt].

2. The execution of this measure especially the choice of suitable employers and the care of the persons suitable for re-Germanization after their allocation is, as heretofore, in the hands of the competent Higher SS and Police Leaders. All directives issued by me concerning the execution of the procedure in the allocation of persons capable of being re-Germanized are also applicable to the persons suitable for re-Germanization who were selected from southern Carinthia and lower Styria.

3. Since no branch office of the SS Race and Settlement Main Office is set up in the Southeast, the families to be allocated are to be called into the office of the Reich Commissioner for the Strengthening of Germanism in Marburg and Veldes. These offices are responsible for starting the persons called up on their way. In this connection it is especially important that all families have the necessary clothing (particularly work clothes and shoes) as well as linen and bedclothes.

4. The Higher SS and Police Leaders having jurisdiction over the above-named territories must immediately provide for setting up a fairly large number of suitable places of labor allocation in agriculture, industry and business, corresponding to the procedure heretofore used.

5. The persons from southern Carinthia and lower Styria who are suitable for being re-Germanized likewise receive foreigners' passes with the entry "Citizenship undetermined (German?)" and the stamp, from which it may be seen that they have been examined by the SS Race and Settlement Main Office and have been found to be suitable for re-Germanization.

[Signed] H. HIMMLER

Berlin, 9 June 1941

Supplements to Decree 34-I

Enclosed I am sending Decree No. 34-I, dated 4 June 1941, concerning the measures for the re-Germanization of persons from southern Carinthia and lower Styria (Slovenes).

Since the Slovenes have lived for the most part in mountainous regions, settling them in an extremely flatland has not proved expedient. Therefore, those SS administrative districts were not considered for allocating these persons if their districts contrasted too strongly with the scenic character of the land of origin. Settling persons suitable for re-Germanization from southern Carinthia and lower Styria in the Austrian districts [Gau] is likewise undesirable because of the small Slovenian minority group there. The number of persons suitable for re-Germanization to be expected from southern Carinthia and lower Styria is not yet determined, but in the very near future if the transport difficulties can be overcome an extensive number may be expected.

Supplementing Decree No. 34-I, I therefore state:

1. I ask that the competent Laender labor offices be contacted as well as the other offices participating according to the hitherto customary procedure. I attach the greatest importance to closest cooperation with the Party offices.

2. All the labor locations which you have already selected and not yet filled will not be settled by persons from the former Polish territories suitable for re-Germanization, but by those from southern Carinthia and lower Styria.

3. The questionnaires with the job reports are to be temporarily handed in to these offices in duplicate. These will then be distributed by me to my deputies in Marburg and Veldes, correspondingly to the persons suitable for re-Germanization at our disposal in the offices. I have also called upon the branch office of the SS Race and Settlement Main Office in Litzmannstadt [Lodz] to send the job reports which are already there for the former Polish labor allocation to this office.

4. A rather large number of places in industry and business will be necessary for allocating these persons suitable for re-Germanization. Because of the existing housing shortage, I am in agreement with the arrangement that such workers provided for industry and business shall be accommodated in closed barracks. It is taken for granted, however, that accommodations should be arranged at the same time for their families, and that the billets meet the requirements which apply to Reich Germans. These accommodations are to be obtained from the employer.

5. No offices of the SS Race and Settlement Main Office will be set up in Marburg and Veldes. The offices of the Reich governor and Gauleiter as deputies of the Reich Commissioner for the Strengthening of Germanism in Marburg and Veldes are authorized to care for them until they are sent off and to see that they are sent off. These offices will also get in touch with you with regard to the calling (of these people).

6. Once again I call attention to the fact that according to Decree No. 34-I for the allocation of the persons from southern Carinthia and lower Styria who are suitable for re-Germanization, the procedure already used for the persons from the eastern territories capable of re-Germanization is to apply to the fullest extent. This additional group of people is to be treated in the same manner.

7. Slovenes and Poles are to be kept separate in the card-file registration.

As deputy

[Signed] GREIFELT
SS Brigadier General

TRANSLATION OF DOCUMENT NO-5040
PROSECUTION EXHIBIT 333

CIRCULAR LETTER SIGNED BY GREIFELT, 7 JULY 1941, CONCERNING
THE EVACUATION OF SLOVENES FROM SOUTH CARINTHIA

Copy

Berlin, 7 July 1941

The Reich Leader SS, Reich Commissioner for the Strengthening
of Germanism

P -Ko-3 b 2-28 May 1941-Dr.St.-Ha

Subject: Directives for the evacuation of elements of foreign national-
ity from south Carinthia.

Addresses according to the special distribution list. At the suggestion of the Gauleiter and Reich governor of Carinthia, the deputy of the Reich Commissioner for the Strengthening of Germanism, the Reich Leader SS has ordered the following by partly amending the directives concerning Carinthia, which have existed up to now:

1. The Slovenian intelligentsia is to be subjected to a racial examination. The racially valuable (Groups I and II) are not to be evacuated to Serbia but are to be transferred to Germany proper for Germanization.

2. Of those Slovenes who had immigrated after 1 January 1914, only those are to be evacuated, who had been politically active in an anti-German way (Groups I and V). The transfer to Germany proper or evacuation is carried out according to the principles of point 1.

3. Those Slovenes who immigrated after 1 January 1914, who were not politically active in an anti-German way, but who are a

burden for the Germanization measures are to be transferred to Germany proper if possible.

4. The order, that the population is to be evacuated from a border strip of about 20 km., is limited in such a way, that those parts of the population who are racially valuable and who are not a burden for Germanization, do not have to be evacuated.

The above changes do not change the order, that an exact selection is to be made from the resident population of south Carinthia and that the undesirable persons are to be evacuated according to existing directives.

As deputy:

[Signed] GREIFELT
SS Brigadier General

TRANSLATION OF DOCUMENT NO-5306
PROSECUTION EXHIBIT 674

MEMORANDUM TO ELLERMEIER (Vomj), 26 JUNE 1942, ON MEASURES
CONCERNING THE TRANSFER OF 34,000 SLOVENES TO THE REICH

[Stamp]

VI-123 Adjutant's Office
26 June 1942
-2188/4

Memorandum for SS Standartenfuhrer Ellermeier

Subject: Measures in connection with the transfer of Slovenes.

Of the 34,000 Slovenes transferred to the Reich, those suitable for Germanization are to be turned over to the Higher SS and Police Leaders of the following districts: Westmark, Rhine, Fulda-Werra, South, Southeast, Southwest, and West, in order to be resettled.

The utilization of the manpower of those Slovenes suitable for Germanization will be handled by the Higher SS and Police Leaders and their delegates.

Slovenes nonsuitable for Germanization will, for the time being, remain in the camps of the repatriation office for ethnic Germans and will be allocated for labor locally in collaboration with the labor offices. In the event that skilled workers are available for allocation, to whom no proper local assignment can be given, they will be assigned in small groups to firms in the vicinity, whereas their families will remain in camp. The deportees will then be granted Sunday passes every one or two weeks to visit their families in the camp.

Of the deportees still to be expected from lower Styria, numbering from 1,200 to 1,500 persons, 250 workers suitable for Germanization, together with their families, will be turned over to the Gauleiter of lower Silesia, Party Member Hanke, by order of SS Brigadier General Dr. Behrends.

Report on the total number of Slovenes suitable for Germanization and of those remaining in the camps as unsuitable for Germanization has been requested some time ago; these figures are still unavailable as repeated screenings are still being conducted.

[Signed] ALTENA
SS Major

Berlin, 26 June 1942
Tiergartenstrasse 18a
File No.: 10 200-AI/We.
To SS Brigadier General Dr. Behrends
For information.
26 June 1942.

[Signature illegible]

The copy is hereby certified:

[Signature] WEGNER

TRANSLATION OF DOCUMENT NO-5517
PROSECUTION EXHIBIT 679

LETTER FROM DR. STIER TO VoMi, 1 APRIL 1943, CONCERNING THE
TREATMENT OF SLOVENES

The Reich Commissioner for the Strengthening of Germanism,
Staff Main Office

Berlin Halensee, Kurfuerstendamm 140, 1 April 1943
tel. Collective No. 90 3991

I-1/7 Steier 8 Dr.St./Ha

Please state reference No. and date in your reply.

[stamp]

received: 2 April 1943

B. No. -

File No. XI/18 (crossed out and
replaced by) VI/19

to the attention of: Brueckner

Subject: Frontier population of Lower Styria

Reference: Your letter of 18 February 1943

File No. Br/Hdt XI/18 [crossed out]

To the Reich Commissioner for the Strengthening of Germanism,
Repatriation Office for Ethnic Germans

Berlin W 62 Keithstrasse 29

The Slovenes fit for Germanization are, by order of the Reich

Leader SS being treated well in every respect. The future line of treatment of those not fit for Germanization is, however, still extremely uncertain. I, therefore, consider it urgently necessary that contact between people fit for Germanization and those not fit for Germanization be made as difficult as possible. Even though, according to your letter, you are only willing to consider making exceptions in well-founded cases, I still believe that nonadherence to this principle of segregation of people fit for Germanization from those not fit for Germanization according to districts [gaumaessig] might easily be considered a case of precedence and might have much more far-reaching consequences than desired by you. I, therefore, consider it best not to make any exceptions to the principle of segregation according to districts.

By order

[Signed] DR. STIER

TRANSLATION OF DOCUMENT NO-3220
PROSECUTION EXHIBIT 319

HIMMLER'S ORDER, 22 SEPTEMBER 1942, CONCERNING PUNITIVE
MEASURES AGAINST SLOVENES AND THEIR FAMILIES ESCAPING
FROM CAMPS IN SILESIA

THE REICH LEADER SS
RF/No. AR/32/30/42

Field-Command Post 22 September 1942

[Stamp]

Personal Staff Reich Leader SS
Central Archives
File No. Secret. 41. 18
Secret

[Stamp] Secret

To the

1. *Leader of the Repatriation Office for Ethnic Germans [Volksdeutsche Mittelstelle] Berlin*
2. *Higher SS and Police Leader Southeast*
3. *Higher SS and Police Leader Alpenland*

[Handwritten]
filed [initial]

I gather from a report, dated 1 September 1942, received from the Higher SS and Police Leader Alpenland, Major General Roesener, that some Slovenes have escaped from the Slovenian

camps in Silesia and have joined gangs near the Croat-German border.

Concerning this I order the following:

1. The escape of a Slovene is to be reported immediately by the camp commander of the repatriation office for ethnic Germans to the Gestapo. The Gestapo, in turn, will immediately notify the Higher SS and Police Leader Alpenland.

2. The family of the escapee as well as his relatives will be removed immediately from the camp and be taken to a concentration camp. Their children will be taken away from them and sent to a home.

3. At once investigation has to be made in the camp in order to determine who knew of the proposed escape and aided it. All men who knew about the escape and lent a helping hand will be hanged in the camp.

4. The Higher SS and Police Leader will immediately report to the Gestapo the names of the Slovenes from German camps who have been apprehended in this district. The families and relatives have to be dealt with according to paragraph 2. Accomplices must be located and punished.

[Handwritten] Major General Knoblauch
received 1 copy

Copy sent for information

[initial] BR

To Reich Security Main Office

[Handwritten] filed 28 September

By order

[Signature] R. BRANDT
SS Lieutenant Colonel
[SS Obersturmbannfuehrer]
[Stamp] 28 September 1942
[initial] M
[Stamp] 25 September 1942

TRANSLATION OF DOCUMENT NO-5544
PROSECUTION EXHIBIT 856

CIRCULAR FROM THE HIGHER SS AND POLICE LEADERS IN THE
MILITARY DISTRICTS VII AND XIII TO THE REGIONAL SUBPREFECTS
[LANDRAETE], 27 JUNE 1942, CONCERNING THE PUNISHMENT OF
A SLOVENE FUGITIVE

Munich, 27 June 1942

The Higher SS and Police Leader for the Military Districts,
VII and XIII,

Deputy of the Reich Commissioner for the Strengthening of
Germanism,

Munich 27, Maria Theresiastrasse 17

File No.: 20 e

[Stamp]

Repatriation Office for Ethnic Germans

Allocation Gau_____

Received: 29 June 1942

Journal_____ File No._____

Action_____

Subject: Care of persons suitable for re-Germanization.

To the Regional sub-Prefects in the Territory of Military Districts
VII and XIII

By order of the Reich Leader SS, the following is to be made
known to all inmates of all camps for Slovenes in the territory
of the Higher SS and Police Leader for the military districts
VII and XIII.

"The Slovene, Johann Sockler, born on 15 May 1922, escaped
from his place of employment at Fridolfing/Upper Bavaria.

"Sockler was apprehended and was brought by order of the
Reich Leader SS for the duration of 5 years to a *concentration
camp.*"

Public announcement by the camp leaders has already been
made. This [is] for your information.

By order

[Signature illegible]

SS Colonel

TRANSLATION OF DOCUMENT NO-4292
PROSECUTION EXHIBIT 328

EXTRACT FROM A LIST OF VOMI CONCERNING FAMILY MEMBERS OF EXECUTED AND FUGITIVE BANDITS FROM LOWER STYRIA, CAMP FROHNLEITEN, WHO ARRIVED IN CAMP MARIANUM, BAMBERG, 23 APRIL 1943, AND WHO WERE ACCOMMODATED THERE

Reich Commissioner for the Strengthening of Germanism
Repatriation Office for Ethnic Germans
Resettlement Camp Marianum, Bamberg, Am Knoecklein 1

List * of family members of executed and fugitive bandits from lower Styria, Camp Frohleitlen, who arrived in Camp Marianum, Bamberg, 23 April 1943 and who are accommodated there

Current Number	Name	First name	Date of birth	Place of birth	Place of evacuation	Racial evaluation	Special remarks
1	LaKota	Josef	31-12-79	Laengelfeld	Tessen b-Marburg	II	Daughter and
2	LaKota	Johanna	26- 1-87	Gronau	Tessen b-Marburg	III	son-in-law shot
3	LaKota	Emma	12- 2-13	Karner-Vell	Tessen b-Marburg	III	
4	LaKota	Emilie	27- 1-26	Laengelfeld	Tessen b-Marburg	II	
5	LaKota	Amalie	27- 1-24	Assling	Tessen b-Marburg	II	
6	LaKota	Emil	5- 8-28	Laengelfeld	Tessen b-Marburg	II	

* The list contains the names of 50 persons.

* * * * *

Bamberg, 27 April 1943

Reich Commissioner for the Strengthening of Germanism
Repatriation Office for Ethnic Germans
Camp Marianum, Bamberg, am Knoecklein 1

[Signature] FISCHER

Administrative Clerk [female]

c. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT CREUTZ*

DIRECT EXAMINATION

* * * * *

DR. MERKEL: I now come to the deportation in Styria. Herr Creutz, what do you know about the deportations which were carried out in Styria?

DEFENDANT CREUTZ: I heard later on that immediately after the occupation of the northern parts of Yugoslavia, a deportation drive was carried out there of all the Slovenes who had settled in that area after 1918, in these areas which were formerly part of Austria.

Q. And who carried out this first deportation drive?

A. The inspector of the security police in that area. These deportees were sent to Yugoslavia and to Croatia, to the south.

Q. To what extent did the Staff Main Office and you yourself deal with this drive?

A. We had nothing to do with it.

Q. Do you know what brought about the second deportation drive?

A. Yes. I know that the first notification of this deportation drive came from the chief of the civil administration, Uebereiter, who informed us of the fact that, in a conference between Himmler and Hitler, it had been agreed that this area was to be cleared. Himmler himself then ordered him to carry out this drive. I don't know why he was ordered to carry out this task—and not the RSHA, as was customary.

Q. According to the distribution of tasks, was the Staff Main Office competent to bring deportees into the Reich area?

A. I did not have the impression that the Staff Main Office was active in that field. As far as I know, this order was given personally to Hintze.

Q. Beyond that I wanted to know whether it came at all within the field of work of the Staff Main Office.

A. No. It was not a part of the field of work of the Staff Main Office, because deportations in every case were the task of the RSHA, the Reich Security Main Office, and transfers from foreign countries into Germany proper were in general the task of VoMi.

Q. When did Hintze receive the order from Himmler?

A. I cannot give you the exact time.

* Complete testimony is recorded in mimeographed transcript, 8, 9 December 1947, pp. 2062-2162.

Q. Do you know how many Slovenes were resettled at the time?

A. Approximately twenty to twenty-five thousand.

Q. Just where were these people taken?

A. They were placed in VoMi camps, in Germany proper, for the most part in the vicinity of Wuerttemberg.

Q. What happened to these people there?

A. They were given places to work and they went to work during the daytime.

Q. Do you know anything about ill-treatment of these resettlers?

A. I never heard anything about that.

Q. Did this drive have anything to do with the subsequent drive against former members of partisans?

A. No. That was something quite different. The drive against partisans, as also becomes evident from the documents, was ordered by Himmler in his capacity as Reich Leader SS and Chief of the German Police. It was strictly a police measure which had nothing to do with resettlement.

Q. Did you know anything about this drive against the partisans?

A. No. I cannot recall ever having heard anything about it.

Q. Did the Staff Main Office not have an agency in Marburg and didn't this agency have to report about that?

A. The Staff Main Office did not have an agency in Marburg, but Gauleiter Uebereiter, as the representative, had this agency. This agency would only have had to report if the Staff Main Office had anything to do with this task.

Q. I am now coming back to the second drive once more. Do you know what happened to the property which was left behind by the deportees?

A. Yes. The real estate property was administered by the German Settlement Company (DAG) on a temporary basis.

Q. Was the Staff Main Office included in dealing with these questions?

A. It was connected directly, that is, as far as the German Resettlement Trustee Company (DUT) was responsible for the resettler, as long as he had not been resettled on a permanent basis—they had to administer the property which had been left behind and to utilize this property. Consequently, also the property of these Slovenes was administered and, on that account, if possible, it was utilized.

Q. Were the Slovene deportees later on placed on the same basis as the resettlers?

A. That was intended already from the very beginning and

approximately one year later this was officially recaptured by Himmler.

Q. Were they also to receive an indemnification?

A. Yes. They had been assured of that by Himmler unconditionally.

EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS
KLINGSPORN*

DIRECT EXAMINATION

* * * * *

DR. SCHUBERT: Were you a member of the NSDAP?

WITNESS KLINGSPORN: I was since 1937.

Q. Were you a member of the SS?

A. Since 1944, I was Rangfuehrer of the General SS, and since 1941 a member of the Waffen SS.

Q. When and in what capacity did you come to VoMi?

A. In 1940 I was conscripted there and, first of all, I became Einsatzfuehrer of Upper Silesia.

Q. And later on, were you sent to Berlin?

A. On 25 January 1940, I was ordered to leave Upper Silesia and to go to Berlin.

Q. Pardon me, I didn't get the date. What year did you say?

A. 25 January 1940.

Q. 1940, yes. And in what office did you work there with VoMi?

A. In what was later called Amt II, main department camp administration.

Q. Who was in charge of this Office II?

A. Herr Ellermeier.

Q. And what was the task, what was the field of duties of this office?

A. To take care of the camp inmates while they resided in the camps.

Q. How many camps did VoMi maintain at the most?

A. Approximately 1,500.

Q. And were these camps all located within the Reich area, or also outside of the Reich?

A. The camps were located exclusively within the Reich area, with the exception of three camps namely—camps Semlin, Barova, and Galatz. These were transit camps for the purpose of carrying out the resettlement procedure. When the operation was

* Complete testimony is recorded in mimeographed transcript, 22 December 1947, pp. 2945-2988.

concluded these camps were again turned over to the Romanian and Yugoslav Governments for purposes of their own.

* * * * *

Q. Do you know whether VoMi at first refused to accept Slovenes into VoMi camps?

A. Yes. When it became acutely necessary to take over Slovenes in the camps, Dr. Behrends refused to accept these people because they were not ethnic Germans, and our camps were only destined to accommodate ethnic Germans.

Q. And did this refusal have any success?

A. There was no result. We had to take these people in.

Q. Do you know where Lorenz was when Himmler's order came to take in these Slovene groups?

A. As far as I remember, he must have been in Graz where he was recovering from an accident he sustained.

Q. Was that an automobile accident?

A. Yes.

Q. Do you know whether VoMi had any part in the evacuation of the Slovenes?

A. No, I don't. No. It took no part.

Q. Do you know whether VoMi maintained camps in St. Veit and Frohnleiten for taking in Slovenes?

A. I don't know these two names that you just mentioned. There were a thousand and five hundred camps, and I just can't remember each individual name.

Q. Where did VoMi take the evacuated Slovene groups into its camps?

A. In the camps or at such railroad junctions in the respective allocation area from where the individual trains were conducted to such places where camps were maintained.

Q. That was in the Reich?

A. Yes.

Q. Witness, do you know of any order of Himmler issued to VoMi, according to which the escape of Slovenes from a camp was to be reported to the Gestapo, and all men who knew of such an escape and had abetted it had to be hanged in the camp?

A. Yes.

Q. What details do you know in this respect?

A. On the occasion of an official conference, Dr. Behrends showed me this order and he retained the order telling me that this order would not be issued because—and this is the way he spoke—"These are Gestapo manners with which VoMi will have nothing in common." As far as I remember, on the occasion of one of his next visits to the Reich Leader, he was going to comment on that order.

Q. Therefore, you do know that the VoMi central office did not pass on this order?

A. No. It did not.

Q. The prosecution, under Document NO-3220, Prosecution Exhibit 319, has introduced a document according to which the Gau allocation agency in Bayreuth apparently had such an order. Can you offer any explanation of this fact?

A. Then this order must have been received from some other agency.

Q. Are you sure that VoMi Berlin did not pass on such an order?

A. I am sure of that.

Q. Witness, do you know of any case in which a Slovene or his accomplices escaped from a VoMi camp—that a Slovene or any accomplices of his had been hanged in camp. Did you know such an incident of escape?

A. No. Nobody was hanged in a camp.

Q. Witness, we discussed the Slovene order and you told me that you did not know of any case that a Slovene or anybody else had been hanged in a VoMi camp. Do you know of any case where the family and relatives of a Slovene were sent to a concentration camp?

A. No.

Q. Do you know of any case where a Slovene escaped?

A. The word "escape" is a poor choice. Our camps were quite open. The people could enter the camps and they could leave whenever they wanted to, so that the word "escape" is not quite appropriate here. After all, a person can only escape from an area which is surrounded and enclosed like an internment camp. It is true that people, and especially Slovenes, in very few cases left the camp and failed to return.

Q. Witness, I am now going to put to you Document NO-3019, Prosecution Exhibit 394. This is a letter from the Higher SS and Police Leader Alpenland, to VoMi in Berlin of 14 September 1942. Do you know this letter?

A. Yes.

Q. In this letter a man by the name of Zyriack is mentioned. He is mentioned by VoMi, in connection with Klagenfurt. Who was this man, Zyriack, was he a Party member?

A. Zyriack was an employee of the Einsatzfuehrung in Klagenfurt on the one hand, and on the other hand, he was a representative of Mayer-Keiwitsch.

Q. Who was Mayer-Keiwitsch?

A. Mayer-Keiwitsch worked for the Gau administration in

Klagenfurt. What special tasks he had to take care of, I don't know.

Q. Therefore, he occupied a dual position?

A. Yes.

Q. Do you know whether Zyriack acted upon orders from VoMi or independently in this matter?

A. In this matter he could not have acted by orders of VoMi because the instructions and directives which Zyriack received, as far as VoMi was concerned, only dealt with the treatment and care of the camp inmates.

Q. In this letter, Witness, Slovene children are mentioned. In this letter from this Higher SS and Police Leader, a certain conference with VoMi is also mentioned. Did this conference, which was supposed to have taken place at Wilnes, ever happen?

A. No.

Q. Do you know that positively?

A. Yes. After all, either Altena or I myself would have had to attend this conference. If neither Altena nor I went there, this conference cannot have taken place.

Q. What was done with these Slovene children in the VoMi camps?

A. They were treated just like the children of the resettlers. No difference was made with regard to their treatment in the camps, since these children had been accommodated in a children's camp. Special care was taken so that the needs of these children would be met.

Q. Did VoMi carry out any Germanization measures on these children?

A. No.

Q. Were these children prohibited from speaking their mother tongue?

A. No.

Q. Were they taught in their mother tongue?

A. They were taught by teachers of their own group, and consequently they spoke their mother tongue in school. However, it is true that as far as this was necessary, they also received lectures in the German language.

Q. Did VoMi take any steps in order to find out the whereabouts of the families of these children in order to bring these children back to their families?

A. Yes.

Q. And in what way was this done?

A. In the camps we made inquiries as to the children's relatives. In the central card index file, which was located in my agency, we also looked for families and relatives of these children and

we also advertised in our camp newspapers. In several cases our inquiries were successful. I believe that I can recall that from the district of Bayreuth a transport of several children was sent to the Camp Rote-Klippe, where they joined their relatives. This camp was located in the labor allocation area.

Q. What was finally done with these children?

A. Which children are you referring to, those in the camps or those children who had joined their families?

Q. I am referring to the children who remained in the camps.

A. These children were to be placed at the disposal of Lebensborn.

Q. Was this done?

A. No. Only to a very small extent did Lebensborn relieve us of some children.

Q. Witness, you know that in the VoMi camps there were not only resettlers but also deportees. In what manner could these resettlers who were in VoMi camps represent their own interests?

A. There was an order in effect stating that the people who were in the camps could elect a spokesman, a male spokesman and a female spokesman, in a democratic manner and the camp administration did not have any influence on this election of a spokesman. This was not only done with regard to the resettlers, but applied to all people who were in VoMi camps.

* * * * *

PRESIDING JUDGE WYATT: Witness, I understood you to state that on some occasions Slovenes who were not eligible for Germanization would get into VoMi camps, and that a further racial examination was conducted so that you could get them out of the VoMi camps. What did you do with them?

WITNESS KLINGSPOHN: We handed in lists of all people whom we knew were not eligible for Germanization, and these lists were forwarded to the competent offices.

Q. What offices?

A. The Race and Settlement Main Office.

Q. The Race and Settlement Main Office. How many people, approximately, would you have in these VoMi camps—on an average?

A. There were approximately one million people who passed through the VoMi camps.

Q. Approximately how many would you have in a camp at any one time?

A. About six hundred thousand.

Q. I mean each individual camp. What would be the size of each camp—approximately in number?

A. The capacity of the camps differed. There were camps which

could take fifty persons and some which could accommodate two thousand five hundred.

Q. And did I understand you to say that you had no disciplinary problems or troubles in the camps?

A. Now and then there were cases of resettlers violating camp regulations.

Q. What was done in those cases?

A. The person concerned was punished with special labor inside the camp, such as cleaning the yards, scrubbing and cleaning the latrines.

6. FORCED EVACUATION FROM ALSACE, LORRAINE, AND LUXEMBOURG

a. Introduction

A short argument concerning this problem was made by the prosecution in the opening statement on pp. 622 to 694. A selection of the documentary evidence of the prosecution concerning evacuations from Alsace, Lorraine, and Luxembourg is set forth on pp. 910 to 924. This is followed by a selection from the evidence of the defense concerning these subjects on pp. 924 to 936.

b. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-2552
PROSECUTION EXHIBIT 281

HIMMLER ORDINANCE, 18 JUNE 1942, REGARDING RESETTLEMENT
FROM FRANCE OF THE POPULATION OF GERMAN STOCK

[Stamp]

Personal Staff Reich Leader SS
Central Archives
File No. AR / 17

18 June 1942

Fuehrer Headquarters

Subject: Ordinance regarding resettlement from France of the
population of German stock.

Execution of the measures for the repatriation from France of the refugees and expellees of German stock, and for the resettlement from France of persons of German stock, I issue the following ordinance:

1. The organization of the resettlement and refugee operation will be coordinated. The leading position is held by the Repatriation Office for Ethnic Germans, in close cooperation with the other main offices concerned and the chief of the administration staff with the military commander in France.

2. Preference in the resettlement is to be given to persons lacking a sufficient livelihood, as well as refugees in whose case the danger of yielding to French influence appears to be existent. If settlement in Alsace or in Lorraine cannot be realized, settlement in the remainder of the Reich territory (including the East) may be effected.

3. On principle, all persons of German stock and living in France, including the northern part of the country, shall be registered by the Repatriation Office for Ethnic Germans for the purpose of their resettlement, and processed by the Repatriation Office for Ethnic Germans for the purpose of their resettlement, and processed by the Immigration Center.

4. Simultaneously with the registration and processing, the property of those persons shall be registered. If refugees or expellees of German stock from Alsace or Lorraine, who do not wish to return there, are being allocated to employment in the remainder of the Reich territory, their property remaining in Alsace or Lorraine will be registered for the purpose of property compensation.

5. Negative rulings on application for admission to these regions of refugees and expellees, issued by the chiefs of the civil administrations in Alsace and in Lorraine, are not valid for the remainder of the Reich territory.

6. The persons of Alsatian or Lorrainese origin who are to be transferred to the Reich, are, in the course of their resettlement, subject to the security-police screening procedure in their home districts.

7. The Repatriation Office for Ethnic Germans is charged to arrive at an agreement with the French Government regarding the property settlement for the resettlers via the channels of the foreign office in the armistic commission. For the unoccupied part of France this agreement shall extend also to the resettlement itself. The northern part of France is to be included in this agreement.

8. The persons affected by the resettlement of the population of German stock living in France, including the northern part of the country, should be registered and processed even now as a preparatory measure to that settlement.

9. The Repatriation Office for Ethnic Germans proposes to the military commander in France and the military commander in

Belgium, i.e., the Headquarters command post LILLE, that the population of German stock should be treated in the same manner as the Reich-German population in France, as far as food allocation is concerned.

[handwritten initials] H. H.
[Heinrich Himmler]

TRANSLATION OF DOCUMENT 1470-PS
PROSECUTION EXHIBIT 275

MEMORANDUM ON THE CONFERENCE ON 4 AUGUST 1942, CONCERNING GUIDING PRINCIPLES REGARDING THE TREATMENT OF EXPELLED ALSATIANS

I-1/7 Els. 4 Dr. St/Ha

Berlin, 7 August 1942

Memorandum concerning the conference on 4 August 1942

Subject: Guiding principles concerning the treatment of expelled Alsatians.

Present:

SS Captain Dr. Stier...	}	Staff Main Office
SS Captain Petri.....		
RR Hoffmann		
Dr. Scherler		
SS 1st Lieutenant Dr. Hinrichs		Chief of the Land Office and Settlement Staff
SS Major Brueckner....		VoMi
SS Captain Hummitsch..		Reich Security Main Office
SS 2d Lieutenant Dr. Sieder		Race and Settlement Main Office
Dr. Labes		German Resettlement Trustee Office

A

Status of expulsions in Alsace

A report concerning the expulsions carried out up to now and additional resettlement plans in Alsace was the starting point for this conference.

1. The first expulsion action was carried out in Alsace in the period of July until December 1940, whereby 105,000 persons were expelled or kept from returning. These were mostly Jews, gypsies, and other foreign races, criminals and asocial elements, and incurable mental cases; also Frenchmen and Francophiles. The patois population was screened during this action in the same manner as the other Alsatians.

On the basis of the permission given to him by the Fuehrer to clean Alsace of all foreigners, sick people, and unreliable types, Gauleiter Wagner a short time ago called attention to the necessity for a second expulsion action which is to be prepared in the near future.

The following circle of persons shall be covered by this measure:

a. colored persons and their offspring, Negroes and colored half-breeds, gypsies and their offspring, Jews from half-Jews on, mixed Jewish marriages;

b. foreigners and their offspring;

c. the patois population;

d. the anti-social;

e. the incurable mental cases.

2. By order of the Reich Governor, the following persons shall be expelled immediately:

a. Families whose children escaped labor service and prospective army service by escaping to France. So far 8 families have been found where this is the case.

b. Resettlement of special cases for the purpose of Germanization in the interior of the Reich. For example, families or individuals who celebrated the French national holiday on 14 July 1942, in an openly hateful manner against Germany and the state. Those are approximately 20 people.

c. In special cases as a punitive measure, for example, individuals who have been designated as "unbearable" and ready for expulsion by the Security Police. Those are people who are racially valuable but who have already been in a concentration camp due to their grave crimes against Germanism. The number of these people is approximately 50.

d. Designated for expulsion are also members of the patois group. The Gauleiter wants to retain in the patois area only those persons who have declared themselves to be German by their behavior, language, and attitude.

Concerning the cases mentioned under *a-d*, it should be mentioned that the race question is the one of importance, namely, in this manner that the racially valuable persons will be resettled in Germany proper, whereas the racially inferior will be expelled to France.

B

The representatives of the SS main offices present agreed on the following decision: In order to assure a uniform terminology, the following terms will be used in future:

a. Removal [Absiedlung]: Removing persons from their previous domicile but leaving them in Reich territory.

b. Evacuation, deportation [Evakuierung]: Deportation from Reich territory.

c. Resettlement [Umsiedlung]: Taking ethnic Germans from foreign territories and bringing them into Reich territory.

1. The deportation plans of the Gauleiter should be approved on principle, since they limit themselves to a circle of persons which is actually unbearable for the Reich for racial and political reasons.

2. The removal of the patois population should, in principle, be postponed till after the end of the war, as long as no persons are concerned who cannot be tolerated in Alsace on account of their political attitude.

3. The removal of the persons named under 1 and 2 *a-c* is to be approved on principle. Care should be taken that the circle of persons is limited in those cases which have to be removed at present already under all circumstances. The agreement exists that the incidence of escape into France will increase after the draft is inaugurated. The families of these persons will have to be resettled the same way as the families of those who shirked labor service, if the family was actually not guilty of making the flight possible. If the escapee is not with his family any more, his legal guardian is to be removed instead of the family.

A distinction is always to be made with families of labor service or draft shirkers depending on how great the guilt of the family is. In order to differentiate between Germanization measures and punitive measures, a "camp treatment" by the security police is to be applied first. Length and severity of this "camp treatment" are to be determined according to the attitude of the family. After termination of the stay in a penal camp, the family is to be released and to be transferred to the Germanization procedure. It is possible that, in special cases, an immediate transfer into the Germanization procedure takes place.

Those who are politically incriminated to a lesser extent are to be settled in western or central Germany, but always east of the Rhine. The stronger the political incrimination and Francophile attitude of the individual, the farther away from his old domicile must he be settled. It must be made clear to the persons removed that their removal is the effect and consequence of the escape of their relative, but that their future treatment only depends on the attitude of the removed family itself.

4. When deciding whether a person should be removed [Absiedlung] or deported [Evakuierung], a general evaluation concerning attitude and productivity is to be made in addition to the political and racial evaluation; this will also serve as a basis for

subsequent settlement and treatment. An especially suited person is to be employed for supplying this evaluation.

5. The handling of the property of the removed persons will principally be the same as for Group IV of the German People's List. Personal goods are to remain with the persons to be removed. According to the present legal conditions, all other property is to be seized for the benefit of the Chief of the Civil Administration. The endeavor must be made to transfer these property values to the Reich Leader SS as Reich Commissioner for the Strengthening of Germanism.

Property compensation is to be promised in the case of good behavior. This compensation will take place depending on the attitude and on the re-Germanization after a trial period.

The expenses of moving and travel are to be deducted from the property of the persons removed. In the case of people without means, the expenses must be paid—as is the case in other removal and evacuation measures—by the Reich Commissioner.

Secret

Copy

File memo

Subject: Removal of Alsations into the Reich.

On Monday, 17 August 1942, SS Major General Kaul held a conference concerning the above-mentioned subject at the office of the Reich Governor in Karlsruhe; the undersigned was present.

The Gauleiter remarked the following concerning the question of removal of Alsations into the Reich:

A verbal report to the Fuehrer took place at the Fuehrer's Headquarters, in the presence of the Reich Leader SS. The Fuehrer explains at length his attitude concerning the political reforming and the political development in the west, especially in Alsace. The Fuehrer declared in so many words that the "anti-social elements and criminals" are to be deported to France (the Gauleiter figures on approximately 20,000 persons). Furthermore, the possibility exists of removing to France all "inferior types" and all those who are not of our blood. All those who have German blood in their veins and who cannot be sent to France should be resettled in the Reich if they can't be tolerated in Alsace—regardless of their political and other attitude. Actually there is no space for any large-scale resettlement. But removals can be carried out in individual and special cases. The persons to be resettled, or families, are to be furnished to the Reich Commissioner by the "CdZ" (most likely he means the security police). The Reich Commissioner takes care of the removal and allocation of the resettlers. The Reich Leader SS is said to have prom-

ised the Gauleiter that he would send SS Major General Greifelt there for this purpose. (The Gauleiter expects that a large conference concerning the whole procedure will take place soon in Strasbourg). The resettlement will be carried out under the code word "Reich". According to the interpretation of the Reich Leader SS, the resettlement shall not have the character of a punitive measure. The resettlers are to be treated decently. They should be informed that they would find much better conditions in the Reich than in their previous environments.

The patois population shall also be resettled as before, although at present a large-scale resettlement is not possible.

When questioned by the undersigned, the Gauleiter declared that the removal action of 290 persons which has already commenced shall be carried through. He also desires that additional notices about this be published in the papers. Unauthorized border crossings are to be stopped by all means.

The Gauleiter then spoke about the foreigners in Alsace. They were all to be removed from Alsace, including the Polish citizens suitable for Germanization. This action too would also have to be postponed as a whole. But individual cases of resettlement would be possible the same way as with the patois people and other population groups. Concerning the Italians, no exceptions would be made for them, as far as foreigners were concerned.

The Gauleiter spoke to the Italian consul. The Gauleiter would not refrain from removing the Alsatian part also, in the case of mixed marriages.

The Gauleiter wants to compensate the deficit in population with people from Baden, in order to achieve a uniform racial mixture. The Fuehrer has already consented to the transfer of people from Baden to Alsace.

The Chief of the Land Office and the Settlement Staff

[Signed] Signature

SS 1st Lieutenant

29 August 1942

TRANSLATION OF DOCUMENT NO-5211
PROSECUTION EXHIBIT 691

FILE MEMORANDUM FOR SS COLONEL ELLERMEIER, 5 DECEMBER
1942, CONCERNING THE DEPORTATION OF LORRAINERS

File Memorandum

VI-317 No. 3959/42

Secret

[Handwritten] 1. Brueckner z.D. [Initials]

For SS Colonel Ellermeier

[Handwritten] 2. [Initials] XI

Subject: Deportation of Lorrainers.

Reference: Conference of 28 November 1942 at the Main Staff Office.

In charge of the conference was SS Captain [Hauptsturmfuehrer] Dr. Petri, substituting for Brigadier General Hintze, who was sick. The following persons participated:

Dr. Becker, as representative of Gauleiter Buerkel and Chief of the Civil Administration in Lorraine;

SS Lieutenant Colonel Brehm, for the office of the Higher SS and Police Leader Westmark, Metz, Pankstr. 7;

Regierungsrat Lorenz from the State Employment Office Metz; Oberregierungsrat Bethge, Staff Main Office.

SS Major Dr. Stier, Staff Main Office.

Dr. Scherler, Staff Main Office.

SS 1st Lieutenant Klingsporn, Repatriation Office for Ethnic Germans.

Date for the deportation: 15 January 1942.

Number of persons to be deported: 9,337 persons—2,872 families, to be sent to the camps of the labor allocation offices [Einsatzfuehrungen], lower Silesia and Sudetenland.

Racial examination to be conducted in the camps. Racially unobjectionable persons will be resettled in the General Government and will receive the citizenship "German Reich", subject to revocation. Racially unsuited families will retain the citizenship "France" and will be deported at a date to be announced.

Armament workers of this classification group will be resettled at the Reichswerke Hermann Goering, Linz.

The exchange manpower from mines and steelworks will be accommodated for 2 days in Thuringia in order to be transported under convoy by the Repatriation Office for Ethnic Germans to the main locations of the companies. The families will be sent to the camps of the Labor Allocation Office, lower Silesia and Sudetengau.

You are requested to acknowledge.

Berlin, 5 December 1942

KL/UJe-

[Signature illegible]

SS Major

TRANSLATION OF DOCUMENT NO-2472
PROSECUTION EXHIBIT 272

LETTER FROM THE REICH MINISTRY FOR ENLIGHTENMENT AND
PROPAGANDA TO THE RKFDV, ATTENTION OF WOLFF, 20 MAY
1942, CONCERNING THE FATE OF ALSATIANS AND LORRAINERS

[Stamp] Personal Staff Reich Leader SS

Central Archives
File No. 1712

SS Oberfuehrer Alfred-Ingemar Berndt
Ministerialdirektor in the Reich Ministry for Enlightenment and
Propaganda

Berlin W 8, Mauerstrasse 45, 20 May 1942

Reich Leader SS Heinrich Himmler
as Reich Commissioner for the Strengthening of Germanism

Attn: SS Lt. General Wolff
Fuehrer Headquarters

Dear Comrade Wolff:

After a talk with Reich Minister Dr. Goebbels, I wrote a letter to the Reich Leader on 16 March and am enclosing a copy of it. On 23 March I was notified by SS Major Brandt that my letter was submitted to the Reich Leader after his return from a trip.

I heard from SS Brigadier General Klopfer that the same matter had been called to the Fuehrer's attention several times and that the latter was of the opinion that the intelligentsia in Lorraine and Alsace which had always been unreliable might as well be eliminated. Klopfer thinks that the Reich Leader supports the point of view represented by Dr. Best.

The important thing is how this matter was presented to the Fuehrer. It is not so much that the Alsatians and Lorrainers in France must by all means remain in Alsace and Lorraine, but rather that they be prevented from providing the French with a new class of leaders, by virtue of their racial fitness. They could be used to especially good advantage in the East where they are more easily assimilated than at the Western frontier. Do you know whether the matter was presented to the Fuehrer with this alternative? It is very clear that Germans from Wuerttemberg or Baden make a better frontier wall than an unreliable group of people. But if all people from Polish and Czech territories are today being carefully examined for any Germanic blood in order to incorporate them into the third and fourth People's List, we cannot at the same time give away hundreds of thousands to a strange people without at least making them harmless.

I would like to ask you to get the opinion of the Reich Leader on this subject, or to let me have it for the information of the Minister. Since this concerns the competency of the Reich Leader, any further action would have to come from there.

Heil Hitler!
and best regards,
Yours,
[Illegible signature]

TRANSLATION OF DOCUMENT NO-2775
PROSECUTION EXHIBIT 266

LETTER FROM SIMON, GAULEITER OF THE MOSELLE DISTRICT, TO
HIMMLER, 8 FEBRUARY 1944, CONCERNING THE TREATMENT OF
LUXEMBOURG DESERTERS

The Gauleiter of the Gau Moselland

Koblenz, 8 February 1944

Telephone 2281, Journal No. A 2/44 top secret

[Stamp] Top Secret

Herr Reich Leader SS Heinrich Himmler
Berlin SW 11, Prinz Albrecht Strasse 8

Subject: Treatment of Luxembourg deserters.

Dear Reich Leader SS:

Enclosed I am sending you a copy of a letter to the commander of the Replacement Army, General Fromm. In this letter I have again and clearly demanded that deserters from Luxembourg be sentenced to death as a matter of principle. Insofar as only prison sentences have been pronounced up to now, I think the situation demands that the criminals against National Defense in question, be sent to a concentration camp (Grade III). I would welcome it if you would agree to this suggestion and would contact General Fromm, so that he too would agree to such measures.

I will shortly inform you of the measures I am at present considering with respect to the Luxembourg population, insofar as it is guilty of undermining the morale of the Wehrmacht.

Heil Hitler.

Your,

[Signature] GUSTAV SIMON
Enclosure to No. II 72/44 secret

Enclosure

[Stamp]

Bra. /M

1878/44 top secret

Field Command Post

22 February 1944

Subject: Your letter of 8 February 1944 Journal No. A 2/44

Top Secret

Dear party member Simon:

I have received your letter of 8 February 1944. I very much agree with your suggestion. SS Lieutenant General Juettner will speak with General Fromm following the suggestion of your letter.

Heil Hitler!

Your,

[Signed] H. HIMMLER

TRANSLATION OF DOCUMENT NO-2776
PROSECUTION EXHIBIT 267

LETTER FROM HIMMLER TO JUETTNER, 22 FEBRUARY 1944, APPROVING GAULEITER SIMON'S SUGGESTIONS (NO-2775, PROS. EX. 266)

Reich Leader SS

1873/44 top secret.

Field Command Post

22 February 1944

[Stamp] Top Secret

Top Secret

2 copies—first copy

Dear Juettner:

Enclosed find a letter of Gau Leader Simon addressed to me, and copy of his letter dated 8 February 1944 to General Fromm. Copy of my letter to Gau Leader Simon is enclosed.

Please contact General Fromm and transmit to him my desire to have the question of the Luxembourg deserters treated in the sense of the suggestion of Gau Leader Simon.

Request to return to me above material.

[Stamp]

H. R.

9 May 1944

- 3 -

Heil Hitler!

Yours,

[Signature] H. HIMMLER

[Stamp]

Chief of Army Equipment and
Commander of Replacement Army.
rec. 1241/44
top secret

Chief HR

3 enclosures:

[Handwritten] The Commander requests
earliest report about mat-
ter in question.

[Initial] Ru.
17 March

TRANSLATION OF DOCUMENT NO-2400
PROSECUTION EXHIBIT 263

TELETYPE FROM GENERAL OF THE POLICE KRUEGER TO HIMMLER,
9 NOVEMBER 1942, CONCERNING THE SETTLEMENT OF LUXEM-
BOURG CITIZENS IN THE LUBLIN DISTRICT

Reich Leadership SS Munich
Teletype branch office of the Gestapo

[Stamp] Personal Staff Reich Leader SS
Central Archives

File No. Secret/266
[Initials]

[Stamp] Secret

Teletype

Higher SS and Police Leader East Krakow No. 267
The Higher SS and Police Leader East.
File No. KR/FI - RK / 42.

9-11-42
2100 -

To the Reich Leader SS and Chief of the German Police
Heinrich Himmler,
HEGEWALD

Subject: Settlement Luxembourgers.

Reich Leader:

SS Major General Globocnik informs me, that when screening
the index card material of three hundred Luxembourg families
to be settled in the Lublin District, one hundred and thirty-three
families have the remark "Due to Anti-German attitude, objec-

tionable in frontier district." Globocnik reports in detail—Seventy-four families are politically actively opposing German folkdom, 36 families whose head of the family is in the concentration camp on account of political violations, 11 families whose head of the family has been sentenced to death for political reasons and was shot, 8 families in which the head of the family or the wife have been previously sentenced to imprisonment on account of anti-German attitude, 2 families are anti-social and anti-German, 2 families arrested because of espionage suspicion. I request principle decision prior to settlement since strongest objections to settlement of these families on account of German racial-political consideration.

Heil Hitler

[Signed] KRUEGER

Lieutenant General and General of the Police

Transmitted through Luftwaffe teletype station Krakow.

10/11 0300 No. 267

ERHWM Reich Leader SS
Munich VAQUE

TRANSLATION OF DOCUMENT NO-1381
PROSECUTION EXHIBIT 276

MEMORANDUM SIGNED BY HILDEBRANDT, 15 JULY 1943,
CONCERNING EMIGRATION APPLICATIONS TO FRANCE

The Chief of the Race and Settlement Main Office SS

RA C/2 Ha/Be

Berlin SW 68 Hedemann Str. 24, 15-7-43

Secret No. 459/43 [Handwritten] Secret

[Stamp] Secret

Subject: Applications Concerning Emigration to France. Here:
The attitude of the SS Leader in the Race and Settlement Offices, after having examined these questions from a racial point of view.

Ref.: - [Handwritten] Received: 19.8.43

To the Higher SS and Police Leaders

SS Leader in the Race and Settlement Offices.

1. "Rhein-Westmark", Luxembourg, Kaiser-Josef Str. 23

2. "Southwest", Stuttgart-O., Gaensheide Str. 26

For information distributor III

When deciding, whether or not to grant applications of families or persons who are still permanent residents of Alsace-Lorraine

or Luxembourg, and are desirous of emigrating to France, the racial point of view is also of decisive influence when judging these applications. The attitude, or the decision resp., therefore, of any competent Higher SS and Police Leader in his capacity as Commissioner of the Reich Commissioner for the Strengthening of Germanism is decisive as far as the racial desirability of the family or persons go.

The carrying out of these racial examinations is the responsibility of the SS Leader in the Race and Settlement Office.

The attitude of the SS Leader in the Race and Settlement Office should fundamentally be based on the following aspects:

1. It is to be avoided at all costs, to deprive the German Nation of racially valuable, ethnic material which would benefit the foreign ethnic entity.

2. By transferring some people who from a racial point of view are damaging elements, in order to strive for the strengthening of our own national ethnic entity.

Therefore, on the basis of an examination of the ancestry of the applicants concerned, if they are considered racially valuable (RuS I and RuS II), *objections* are to be raised against their emigration in principle. With regard to families or persons who are partly of German origin (50 percent), objections are to be raised as well if, from a racial point of view, they are considered still passable (RuS III).

In all other cases where families or persons by virtue of a racial examination have been considered undesirable, that is to say, have not been declared passable, (Non-Germans: RuS III and RuS IV, IVf; and part-Germans (50%): RuS IV and RuS IVf) no objections from the point of view of racialism are to be raised.

Decisions concerning emigration applications of people from Alsace-Lorraine and Luxembourg resettled in the Reich are to be dealt with in the usual manner, namely, centrally, by the Race and Settlement Main Office SS.

I beg you to give this matter your attention.

The Chief of the Race and Settlement Main Office

[Signed] HILDEBRANDT

SS Lieutenant General and General of Police

Certified

SS Captain

[Signature illegible]

TRANSLATION OF DOCUMENT NO-5082
PROSECUTION EXHIBIT 699

TELETYPE FROM BRUECKNER TO THE COMMANDER OF THE SECURITY
POLICE IN PARIS, 6 APRIL 1943, CONCERNING THE DEPORTATION
OF LUXEMBOURG CITIZENS

6 April 1943

Commander of the Security Police - Paris
SS Major Bonifer

PARIS

The following applies to the teletype, Post Office, [Posthaus] Luxembourg, re individuals to be deported from Luxembourg to France:

Only pure Frenchmen are to be considered for deportation to France. The majority who are of German descent will only be considered for deportation to Germany. Please have the Chief of Civil Administration, Luxembourg, instructed accordingly after receipt of the lists.

VoMi, Berlin
[Initials] BR. (Brueckner)
SS Lt. Colonel

c. Selections from the Evidence of the Defense

EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS STIER*

DIRECT EXAMINATION

DR. VON DER TRENCK: Witness, will you please state your full name and your place and date of birth?

WITNESS STIER: Guenther Stier, born on 20 April 1906, in Berlin.

Q. At the beginning of the examination, may I ask you the following, Witness. Will you please make an interval after my question until the interpretation has finished?

A. Yes, I will.

Q. Will you tell us, in a few brief words, your career and your education?

A. I went to high school first, then I studied law and political economy, and I went to a commercial high school too. I worked then for three years with Siemens-Schuckert as a commercial

* Complete testimony is recorded in mimeographed transcript 3, 4 December 1947, pp. 1837-1900.

electricity expert. Then I was a lecturer at the University of Frankfurt, at the Institute for Corporation Law. At the same time, I made a publication concerning privately owned property and corporation property as judged under Roman, German, and English law.

Q. Well, after you had finished that period, what were your professional plans?

A. My intention was to become a professor at the university.

Q. Did you do so?

A. At the beginning I had no possibility to get a paid job as lecturer and, therefore, I got a job in the Ministry for Education and Instruction, where I was concerned with matters pertaining to schools and also with questions of Germans abroad, where I could apply my knowledge concerning corporations in line with the old German corporation law, and I gained more experience in that field.

Q. For a certain time you worked with VoMi then, didn't you?

A. Yes. I worked in a department of the Ministry of Education, which, as I already mentioned, dealt with the schools of Germans abroad and matters of a similar nature, and as an employee of that department I was taken over by SS Lt. General Lorenz into an agency which later on developed into VoMi.

Q. Did you then make an attempt to get into the work concerning resettlement in south Tyrol?

A. No. I couldn't state that in this manner. This was an emergency solution. In the sense, the kind of work I wanted to have, I didn't advance in VoMi, and Dr. Faehnrich, who at the time represented Herr Greifelt, made me the offer to work with him and that showed an interesting field of tasks for me.

Q. Then you worked there for a certain period of time and, if I remember well, you were drafted into the armed forces then.

A. Yes.

Q. When were you transferred to the Staff Main Office?

A. After I had fallen ill and was exempted from military service I was transferred to the Staff Main Office, and because I had formerly worked with the agency of the Four Year Plan on the resettlement of the south Tyrol Germans, I was exempted from military service by Herr Greifelt.

Q. What was your first position in the Staff Main Office?

A. I worked with Dr. Faehnrich, and my job was the registration of the resettlers brought into Germany from abroad. The registration had the aim of finding out their social, ethnic, legal, and historical background, and to explain this position to such agencies as later on would be entrusted with the resettlement proper.

Q. How long did you take care of that task?

A. Until 1942.

Q. What was your position as from 1942?

A. At the end of 1942 I became Amtschef of the office for
resettlement and ethnic questions.

* * * * *

Q. When and where did you hear for the first time of any
deportation measures which were carried out in Lorraine?

A. I heard of it in Metz in the spring of 1942. I had been sent
there because an order had been issued that the Staff Main Office
was to look for resettlement possibilities for resettlers from
Lorraine, and then I heard from SS Lt. General Bergmann [?] that
Buerckel, the chief of the civil administration had carried out a
wild deportation drive all of a sudden. I then refused to make
any statement about resettlement possibilities, and I reported
the matter to the Staff Main Office, where there was general
indignation about this matter. Greifelt then ordered that no
resettlers were to be sent to him and to France.

Q. Approximately how many resettlers were waiting for a
resettlement area at the time?

A. I believe there were approximately 80,000.

Q. But then in spite of this large number of people for whom
a place had to be found, no resettlement in Lorraine was put into
effect?

A. No.

Q. What did the Staff Main Office do about the deportation?

A. Then Greifelt established contact with Bergmann who, per-
haps on his own initiative, lodged a complaint with Himmler about
Buerckel's measures. Herr Huegel from the Staff Main Office
used his contacts with the Reich Ministry for Food, and he saw
to it that the Reich Ministry for Food also lodged a complaint
because they claimed that the harvest would be endangered.

Q. What was the success of all these protests with Himmler?

A. Himmler promised us that he would establish personal con-
tact with Buerckel in the near future.

Q. And did he ever realize his promise?

A. Yes.

Q. And what was the result of this discussion?

A. Himmler informed us that Buerckel had received authoriza-
tion from Hitler to clear Lorraine from undesirable elements, and
Himmler told us that in the meantime a deportation drive to
France which had been under way had been stopped, but the
Reich Commissioner would have to accept all those people whom
Buerckel didn't want to have in his area. He then informed us

of some individual regulations about the treatment which was to be accorded to these deportees.

Q. And what happened then after this discussion?

A. Buerckel, first of all, without announcing the fact to us, sent deportees who were placed into VoMi camps. Later on we tried to achieve some sort of settlement, and we always tried to put some obstacles in his way.

Q. How was the treatment regulated which was to be accorded to the people who had already been deported?

A. Well, they received the same treatment as the resettlers.

Q. I am now coming to Alsace. When did you hear about deportations which were carried out in Alsace, and who ordered that they were to be carried out there?

A. Already in the year 1942, after my first discussion in Metz, but before the discussion which took place between Himmler and Buerckel.

Q. What did the chief of civil administration in Alsace plan in this direction?

A. First of all, we heard quite generally that he wanted to carry out deportations on a larger scale in part into the Reich and in part to France.

Q. Did you then hear of a conference between Hitler and Wagner concerning the deportations?

A. Yes. However, that was much later on. This happened after the discussion between Himmler and Buerckel.

Q. And what was the subject of the discussion between Hitler and Wagner?

A. As far as it became evident from the file note of Wagner, which was shown to me, approximately 200,000 persons were to be deported from Alsace. The majority of these people were to be deported after the war. However, a considerable number were to be deported during the war, insofar as Wagner considered this to be necessary.

Q. Did the Staff Main Office do anything against this deportation plan?

A. Yes. The Staff Main Office tried in every respect to limit these deportations to the minimum, especially the Staff Main Office wanted to prevent all the deportations which were carried out on the ethnic political basis.

Q. Did the Staff Main Office deal with other interested agencies on this subject?

A. Yes. A discussion took place in August 1942, in which all agencies which might be interested participated. This was done because nobody actually felt competent, and no agency wanted to have anything to do with the subject. In view of the Fuehrer Order

shown by Hinrich and the order by Himmler, which had been issued in the meantime about the Lorrainers, we saw ourselves forced to do something, because if we fully objected to all these measures we had no chance of success whatsoever. After all, we had seen that example when we dealt with Lorraine.

Q. I would like to put to you Document 1470-PS, Prosecution Exhibit 275, from document book no. 5. It is document book 5-F. Do you know where this document, which does not bear any signature, originated?

A. This document originated with me.

Q. It is stated here with regard to the evacuation plans that they could be agreed to, and that the deportation action should be agreed to. Did you have the opportunity to tell the chief of civil administration anything different?

A. This was not a statement to the chief of the civil administration, but this was just a file note to aid my memory about a conference between experts of the main offices, and none of these experts had the right to make a decision there. This document only contains comments which perhaps were to be submitted to the respective office chiefs. Now it says here that the deportation plans could be agreed to in principle, this is under B-2. In this connection I must say that, especially in those days, as I have already mentioned before, a prohibition had been issued against the deportation of people to France.

Q. May I interrupt you for a moment? Who had issued this prohibition?

A. As far as I can recall, it was issued by the foreign office.

Q. Thank you—

A. However, it may have also been issued directly either by Himmler or Hitler. In any case, this was done at the instigation of the foreign office, and it was announced to us via the foreign office.

Q. What were the practical results of this discussion?

A. The principles of this conference were used in order to have them passed on to Hinrich, the representative in Strasbourg, so that he would have a basis for his work. He could then have a discussion on this subject with Wagner. He had told us before that Wagner would be more accessible to us than Buerckel, if we would limit him to some extent in his measures, while of course he would not be satisfied if we opposed all his measures. That is exactly what was done. Through his personal contact with Wagner, Hinrich was able to represent our point of view to him.

Q. What was the relationship of the figures of people who were supposed to be resettled by the chief of the civil administration to those who were actually deported?

A. The immediate plan of the Gauleiter included approximately 100,000 persons. According to this plan only, perhaps, three to four thousand people were agreed upon. This becomes evident from the fact that the groups which have been mentioned here varied in strength to a considerable extent, and that the evacuation was only agreed upon in the formal sense so as not to annoy Wagner. Naturally, this was not feasible at all, and the resettlement of the patois population varied until the end of the war. The patois population amounted to approximately 45,000 people; of these people, approximately 90 percent could be considered for deportation to the Reich.

In Article 2 practically the entire deportation was disapproved, and it is clearly put down here in a very cautious form. In practice, there only remained the alien population, and in this connection it must be pointed out that only those members of alien races were concerned here who were not actually entitled to reside in Alsace. After all, the Alsatians who spoke French and who lived in Alsace were listed under the term of the patois population. Therefore, the group belonging to an alien race belongs to the circle which would suffer the least in case their place of residence should be changed. Furthermore, a fundamental difference was made between the immediate plan, which has been mentioned here in B-2-3, which contains the suggestion that only those individual persons or families are to be deported whose resettlement was already necessary at this time, while Wagner originally had maintained the point of view that the entire group of persons were to be deported in the immediate future.

Q. Now, only a drive was carried out which represented a security measure in time of war. This was only a police action?

A. Yes, that has to be added—

MR. LAMB: Your Honors, she is going into a document here that there is a report that he made a document signed by him, and he is saying that apparently he did not mean anything that he said in the document. He has explained the whole thing and I think it would save time if he would just say that this document is not true or it is true. And on the last question she just put the words in his mouth as to what she wanted him to say. I would like her not to lead the witness.

PRESIDING JUDGE WYATT: May I say to the witness that it will become the duty of the Tribunal to construe these documents. This, you, as a lawyer, should know. So it will not be necessary for you in your testimony to attempt to construe the language contained in the document.

May I suggest to you again that you are going very, very much

more into detail than is necessary. Please state the facts in a clear, concise way, and do not argue the question.

WITNESS STIER: Very well, your Honor.

DR. VON DER TRENCK: Was the plan which becomes evident from the record here actually put into effect?

WITNESS STIER: Yes. It was put into effect, for the most part.

Q. Was it only changed in practice insofar as beyond the Himmler order full indemnification was to be given to the resettlers?

A. Yes.

Q. Did the deportation drive in Luxembourg correspond to what you have just described to us?

A. Fundamentally, the same thing happened there, with the exception that Luxembourg had stated from the very beginning that they would limit themselves to people who had to be deported urgently for police and security reasons.

Q. In all these groups of deportees, did the Staff Main Office see to it that the deportees were able to take along their personal goods?

A. Yes.

Q. When did the chiefs of the civil administration in these territories become the representatives of the Reich Commissioner for the Strengthening of Germanism?

A. As far as I am able to recall, Buerckel began to act in that capacity after the conference with Himmler at Wiesbaden. As far as I can recall with certainty, it was not yet when I went to Metz for the first time. Wagner had become representative already before as Reich Governor. However, I believe that for the chief of the civil administration area he became representative at the same time as Buerckel did. I can't give you any information whatsoever about Luxembourg.

Q. What was planned with regard to the resettlement of the deportees from the West?

A. Himmler had issued an order that these people were to be resettled in the East.

Q. Was this order carried out?

A. No.

Q. Why wasn't it carried out?

PRESIDING JUDGE WYATT: Well, the reasons, I do not believe, would be helpful. If it was not carried out, that would seem to be sufficient.

DR. VON DER TRENCK: What was done instead with these deportees?

WITNESS STIER: Just like the resettlers in Germany proper,

they were given a place of work and they were given apartments to live in, as far as possible.

But the majority of them also remained in the camps.

Q. Did they declare themselves willing on their own initiative to work in Germany during the war?

A. Yes, at the same time with the request that they did not want to be resettled in the East.

Q. Did they have the possibility, if they wanted to, to look for a place of work for themselves in Germany proper?

A. I cannot give you any information about these details.

Q. In the Western territories in the course of time, were other resettlers settled in these areas in the place of the people who had been deported?

A. Approximately one or two years later, after the deportation drive had been stopped, some resettlers were assigned to Lorraine. Whether they were assigned the same places from which Lorrainers had been deported to the Reich, I don't know, or whether Lorrainers went to France in the course of the first drive—that I am unable to tell you. Only very few resettlers went to Alsace and Luxembourg by special request of the chief of the civil administration.

Q. Can you give us any individual example for what you have just stated? Can you tell us in an example that the Staff Main Office, by not giving any resettlers to the chiefs of the civil administration, prevented deportations?

A. Yes. In one case in Luxembourg, we succeeded in doing that. Here resettlers were requested for two entire villages. The Staff Main Office immediately made an inquiry that this could not possibly agree with the deportation regulations, because it was hardly thinkable that an entire village had committed an offense against the state police. The matter was later on clarified by SS Lieutenant General Berkelmann, who was in a certain way our liaison officer. He objected there, and the deportation was not carried out, and therefore it was not necessary for us to furnish the resettlers.

* * * * *

EXTRACT FROM THE TESTIMONY OF DEFENDANT CREUTZ*

DIRECT EXAMINATION

* * * * *

DR. MERKEL (Counsel for defendant Creutz): I am now going to talk about the deportations from Alsace and Lorraine. Do you know what happened there?

* Complete testimony is recorded in mimeographed transcript, 8 and 9 December 1947, pp. 2062-2162.

DEFENDANT CREUTZ: I know, or I heard later on that in 1940, after the armistice with France, the chiefs of the civil administration wanted to keep a large number of people who had fled towards the West, to the western parts of France, from returning to Alsace and Lorraine, and their property was administered by the chiefs of the civil administration through custodians for enemy property on behalf of the chiefs of the civil administration. This already happened as early as 1940. I only heard this much later, in 1942 or so.

Q. What was done with the property of those persons who were not allowed to return or who had been deported?

A. As I have said before, this was administered on behalf of the chiefs of the civil administration by these general custodians for enemy property.

Q. Did the Staff Main Office play any part in these happenings?

A. No. It did not play any part at all.

Q. Did you have any knowledge of this?

A. Yes. I heard about it later on, approximately in 1942. That is when the Staff Main Office and I had our first contact with the question of Alsace and Lorraine.

Q. Did the Staff Main Office have anything to do with these incidents in Alsace and Lorraine later on?

A. Yes. When, in the year 1942, the chiefs of the civil administration in Alsace and in Lorraine were planning new and extensive deportations, the Staff Main Office also had to deal with this matter.

Q. Why did it have to deal with these things?

A. Because, since these people were to be deported to the East, that is, into Germany proper, not to France, it had to see to it that these resettlers were accommodated, that some place was found for these deportees.

Q. Was the purpose of these deportations a Germanization measure?

A. Just what purpose was pursued by the chiefs of the civil administration, I don't know. After all, only a very stupid person could think that Germanization could begin with a deportation, that is to say, that these people were first taken out of their previous homeland, that their apartments and houses and property were taken away from them, then one couldn't really expect them to become good Germans.

Q. Did the Staff Main Office deal with any deportations in that area?

A. No. The Staff Main Office did not order these deportations, since it dealt with Germanization measures. After all, these deportations would of necessity achieve the contrary result.

Q. Did you personally know the chiefs of the civil administration in Alsace and Lorraine?

A. No. I did not know any of them.

Q. Did you, yourself, go to Alsace and Lorraine on one occasion?

A. I did not go to Lorraine, but I passed through Alsace for a few hours.

Q. Do you know how many resettlers were concerned in these drives?

A. Initially, as I recall, the figure of almost 100,000 was mentioned for people who were to be deported. Later on, however, we were able to keep these figures lower. As far as I can recall, approximately 10,000 people were finally deported in this manner from Alsace and Lorraine.

Q. Were you present at the conference in August 1942, which took place in the Staff Main Office?

A. No.

Q. Do you know what measures were taken in this field in Luxembourg?

A. I only know that the deportations in Luxembourg were carried out on a very small scale. However, the Staff Main Office was not represented there at all.

Q. What was done with the property which these deportees left behind?

A. The property which these deportees had left behind was administered on their behalf and on their account by the German Resettlement Trustee Company (DUT), so that at least these property values would not get lost for these people.

Q. Did this administration mean that these properties were seized?

A. In my opinion, no.

Q. Why did the DUT take over these properties?

A. As I have said before, they did this so that these property values would be maintained for the deportees and so that the funds derived from the sale of these properties would be at the disposal of the resettlers to start a new livelihood.

Q. Were larger property values involved here?

A. I don't know.

Q. Did the deportees receive any indemnification?

A. They were to receive it. However, I don't think any of them received this indemnification up to 1945, because there was still no settlement possibility for them.

Q. In Document NO-2246, Prosecution Exhibit 274, in document book 5-F, it has been stated that the deportees from Alsace

and Lorraine were to be resettled in the Ukraine. Was this done?
(Document handed to witness.)

A. No.

Q. Did you have anything to do with the fact that people from Alsace and Lorraine were conscripted for military service?

A. No.

Q. What agencies dealt with these questions?

A. Decrees of that sort could only be issued by the chiefs of the civil administration in their respective areas. They must have done this in agreement with the Supreme Command of the Armed Forces.

Q. Did you have anything to do with the drafting of these decrees?

A. No.

Q. How do you explain the fact to yourself that these people were conscripted for military service?

A. I heard that in the Armistice of 1940, France had ceded Alsace and Lorraine to Germany in a secret amendment to a treaty. The cession was to be laid down in the peace treaty. Whether this is correct, I don't know. I only heard that by way of a rumor. That is how I explained it to myself that measures had already been taken in Alsace and Lorraine, which in general would not otherwise be taken in an area under civil administration.

Q. Do you know whether the incorporation of Alsace and Lorraine had already been accomplished?

A. As far as I know, it was not yet accomplished.

Q. Were these deportees prohibited from returning to Alsace and Lorraine?

A. Yes.

Q. Who gave this order?

A. The chiefs of the civil administration ordered this; they assumed the authority to expel people from the areas under their control, and to refuse residence in these areas to certain persons.

Q. Could this situation be remedied by giving instructions to the chiefs of the civil administration, especially since the chiefs of the civil administration were Plenipotentiaries of the Reich Commissioner?

A. No. An attempt of this kind would have been doomed to failure.

Q. Why?

A. Because the chiefs of the civil administration based their authority on plenary powers which they had received from the Fuehrer, and no Reich agency could take any measure in these areas which was not approved by the chief of the civil administra-

tion. He alone decided, for example, about the enforcement of completely unimportant ordinances which were in effect in the Reich, and the chief of the civil administration would issue these regulations especially in his areas because they were not valid in these areas on the basis of any law.

* * * * *

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS KUBITZ*

DIRECT EXAMINATION

* * * * *

DR. DOETZER (Counsel for defendant Brueckner): Witness, do you remember a discussion of advisers handling the matter of resettlement from Luxembourg?

WITNESS KUBITZ: I didn't think it was a discussion of advisers. I just happened to be there when Behrends was talking to his advisers and I remember hearing something about resettlement in Luxembourg.

Q. What was it about?

A. Gauleiter Simon, chief of the civil administration in Luxembourg, had expressed the desire to resettle certain parts of the population.

Q. What was Behrends' reaction?

A. Behrends didn't like the idea. He was against it.

Q. Did he commission Brueckner to negotiate to this effect with Gauleiter Simon?

A. Yes. I remember that after a lengthy discussion about how the deportation could be prevented, he commissioned Brueckner to go to see Gauleiter Simon, to talk him out of the plan, and if that didn't work to delay the affair as long as possible so that it should fizzle out.

Q. Do you know the result of this discussion with Brueckner in Luxembourg?

A. The result was that the planned deportation did not take place, and as far as I know, Brueckner suggested, on Behrends' instructions, that an ethnic card index be introduced in order to delay the affair.

Q. Do you know whether Brueckner was in any way concerned in starting this ethnic card index in Luxembourg?

A. No. Brueckner didn't set up that card index.

Q. Who prepared the card index?

A. The card index was prepared by the Simon people, together

* Complete testimony is recorded in mimeographed transcript, 22 and 23 December 1947, pp. 2989-3020.

with a Referent who was from the office of Behrends. His name was Posthaus.

Q. Was Posthaus subordinate to the defendant Brueckner?

A. No. As I have already said, Posthaus was a Referent from Behrends' office. He was subordinated to Behrends and not to Brueckner.

Q. Did you ever find out that Gauleiter Simon had carried out deportations of people from Luxembourg?

A. Yes. I have heard that Gauleiter Simon carried out deportations for security police reasons.

Q. Did Herr Brueckner have anything to do with that?

A. No.

Q. Do you remember whether there were discussions going on in VoMi in which deportations from Alsace and Lorraine were discussed?

A. Yes.

Q. What did Brueckner say about these deportations?

A. He disliked the idea.

Q. Do you remember, Witness, whether there was ever a talk concerning deportations from France?

A. When I returned from the army in 1941, I was told that ethnic Germans, because the situation was favorable to them, had reported to the German military commander. The military commander did not know what to do with these people, and had the idea of resettling them. He suggested this plan to Himmler, and Himmler ordered VoMi to carry out this plan. Behrends did not like this plan, and ordered Brueckner to get in touch with the foreign office in order to get the help of this office in turning down this plan. In fact, with the help of the foreign office, through discussion with Brueckner, this plan was not carried out.

Q. Do you know whether VoMi established an office in France?

A. I don't know whether VoMi established an office in France. I only heard once that an office should be established there. I believe it was the office of the military commander, to which later on some people of VoMi were attached. I don't know the details.

* * * * *

7. GENERAL ASPECTS OF THE FORCED EVACUATION AND RESETTLEMENT PROGRAM

a. Introduction

Argument of the prosecution on the general aspects of the forced evacuation and resettlement program appears in the prosecution's opening statement on pp. 622 to 694.

The selections herein from the prosecution's case contain only contemporaneous documents dealing with resettlement of nationals from several countries and contemporaneous statistical data showing the numbers of persons involved. This documentary evidence is set forth on pp. 937 to 943. The entire cross-examination of the defense witness, Guenther Stier, a high official of the Staff Main Office (RKFDV) appears on pp. 943 to 947.

Concerning the broader aspects of the resettlement program, the defense argued that it could not have been a crime for Germans to evacuate foreign nationals during the war. In this connection, the defense alleged that after the termination of belligerency, the U.S.S.R. and Poland evacuated Germans from Germany. This argument was developed in the closing statements for the defendants Greifelt and Lorenz pertinent extracts of which appear on pp. 948 to 954.

b. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-3568
PROSECUTION EXHIBIT 316

EXTRACTS FROM "BRIEF FACTS ABOUT SETTLEMENT", JANUARY 1944,
REGARDING GENERAL INFORMATION ON THE SETTLEMENT AREAS
ANNEXED TO AND INCORPORATED INTO THE GREATER GERMAN
REICH.

Only for official use

January 1944

Published by The Reich Commissioner for the Strengthening
of Germanism

General information on the settlement areas annexed to and
incorporated into the Greater German Reich.

Reich Gau Wartheland

Total area 44,000 square kilometers.

4,400,000 inhabitants (100 per square kilometer), of which
area—194,000 Germans from the Reich, 245,000 resettlers,
493,000 persons registered in the German People's List
(Group I—218,000, Group II—192,000, Group III—64,000,
Group IV—9,000), roughly 3,450,000 Poles and others.

Reich Gau Danzig-West Prussia (Incorporated Eastern Territories)

Total area 21,200 square kilometers.

1,650,000 inhabitants (78 per square kilometer), of which are—50,000 Germans from the Reich (estimate), 52,000 resettlers, 938,000 persons registered in the German People's List (Group I: 113,000, Group II—97,000, Group III—726,000, Group IV—2,000 *), 689,000 Poles and others.

Province East Prussia (Incorporated Eastern Territories)

Total area 16,200 square kilometers.

1 million inhabitants (62 per square kilometer), of which are—6,000 Germans from the Reich, 8,000 resettlers, 46,500 persons registered in the German People's List (Group I—9,000, Group II—22,500, Group III—13,500, Group IV—1,500), 920,000 Poles and others.

Province Upper Silesia (Incorporated Eastern Territories)

Total area 10,000 square kilometers.

2,600,000 inhabitants (245 per square kilometer), of which are—100,000 Germans from the Reich (estimate), 38,000 resettlers, 1,420,000 persons registered in the German People's List (Group I—97,000, Group II—211,000, Group III—976,000, Group IV—54,000), roughly 1,040,000 Poles and others.

General Government

Total area 142,000 square kilometers.

17,000,000 inhabitants (120 per square kilometer), of which are—100,000 Germans from the Reich (estimate), 9,000 resettlers, 80,000 German old-time residents, 50,000 persons of German stock (registration not yet completed), 4,000,000 Ukrainians, roughly 12,800,000 Poles and others.

Reich Gau Sudetenland

Total area 22,600 square kilometers.

2,900,000 inhabitants (130 per square kilometer), of which are—1,100 resettlers.

* This figure is computed on the basis of information from the branch offices of the German People's List which, however, do not list the persons under 18 years of age who cannot apply on their own behalf, in a uniform manner. The figures quoted are, therefore, minimum. The figure quoted for Poles and others is arrived at by computing the difference, and is therefore a maximum figure.

Protectorate Bohemia and Moravia

Total area 49,000 square kilometers.

7,400,000 inhabitants (151 per square kilometer), of which are—350,000 Germans from the Reich (estimate), 6,300 resettlers, 7,000,000 Czechs and others.

Occupied parts of Carinthia and Carniola

Total area 3,300 square kilometers.

200,000 inhabitants (63 per square kilometer), of which are—
[illegible]

Temporary members of the Carinthia People's Association, 22,000 Slovenes and others.

[Next paragraph largely illegible.]

Alsace

Total area 8,300 square kilometers.

1,000,000 inhabitants (128 per square kilometer), of which are—30,000 Germans from the Reich (estimate), 3,100 resettlers, 960,000 Germans (old-time residents), 40,000 patois inhabitants, 25,000 Frenchmen and others.

Lorraine

Total area 2,600 square kilometers.

547,000 inhabitants (88 per square kilometer), of which are—53,000 Germans from the Reich, 5,600 resettlers, 418,000 Germans (old-time residents), 70,000 Frenchmen and others.

Luxembourg

Total area 2,600 square kilometers.

287,000 inhabitants (110 per square kilometer), of which are—11,000 Germans from the Reich, 600 resettlers, 230,000 Germans (old-time residents), 45,000 others.

[Next paragraph largely illegible.]

WESTERN RESETTLEMENT

I. Registration:

	Processed through Immigration Center	Of whom statistically evaluated—		Of whom to be settled—					
		Persons	Households	E	LO	LU	O	A	
Germans living in France ¹	18,379	* 13,149	* 5,751	4,763	1,321	200	128	6,700	
Breakdown:									
Alsations	7,772	6,382	3,028	4,492	158	11	3	1,718	
Lorrainers	2,227	2,003	840	139	1,089	5	3	817	
Luxembourgers	632	350	194	8	10	165	3	145	
Others	7,748	4,401	1,801	144	106	5	119	4,023	

¹ Disregarding special registration Douai (5,570 persons).² Without S-Cases (268 persons, 91 households).

II. Settlement:

	Total	Alsace	Lorraine	Luxembourg	East	Germany proper
Persons	8,941	3,091	730	73	* 45	4,102
Households	3,362	1,469	314	40	* 29	1,501

* Of which one in the Protectorate.

EASTERN RESETTLEMENT

Region of origin	Total resettlers	Settlement in the Incorporated Territories			Not to be settled ¹	Still to be settled
		Persons	Percent of Settlement	Allocated to jobs in Germany proper		
Esthonia and Latvia.....	76,857	57,171	74.4	6,000	186	13,500
Lithuania.....	51,049	29,202	57.2	9,400	811	11,400
Volhynia, Galicia, Narew region.....	136,463	109,336	80.1	19,000	6,954	1,060
Eastern part of General Government.....	32,914	25,940	78.0	5,550	775	700
Bessarabia.....	93,329	8,022	94.3	2,100	964	1,300
North Bukovina.....	43,641	23,880	54.7	10,400	6,400	2,559
South Bukovina.....	52,129	40,164	77.0	6,750	796	4,100
Dobruja.....	15,448	11,201	72.5	1,000	40	3,100
Romania proper.....	10,021	1,075	10.7	3,550	370	5,150
Gottsche and Ljubljana.....	15,908	13,102	87.3	1,100	140	600
Bulgaria.....	1,945	219	11.2	150	3	1,650
Remainder Serbia, roughly.....	2,900	350	12.1	1,000	83	1,650
Russia, roughly.....	220,000	785	0.4	4,750	338	214,000
Greece, roughly.....	350	—	—	—	11	250
Bosnia.....	13,370	3,287	17.8	2,950	95	12,650
Slovakia.....	21	—	—	—	—	100
Total²	770,585	403,733	73.2³	73,750	18,032	278,800

¹ Persons of alien stock eliminated from the resettlement operation.

² "Russia action" disregarded.

³ Totals are the same as in original document.

THE LAND UTILIZATION IN THE SETTLEMENT AREAS
[chart not reproduced]

*BREAKDOWN BY AGE AND OCCUPATION OF THE
RESETTLERS*
[chart not reproduced]

TRANSLATION OF DOCUMENT NO-5711
PROSECUTION EXHIBIT 866

MEMORANDUM, 2 FEBRUARY 1942, CONCERNING HIMMLER'S
ORDERS ON DEPORTATIONS AND RESETTLEMENTS

Copy!

II-B-Dr. Fr./Wf

Berlin-Dahlem, 2 February 1942

Memorandum

Subject: Orders of the Reich Leader SS on the occasion of the verbal report submitted by SS Colonel Professor Dr. Meyer on 26 January 1942.

1. The problem of the remaining resettlers—
 - a. Settlement in General Government.
 - b. Settlement in Lorraine.
 - c. Settlement of the Dobruja Germans.
 - d. Settlement of the inhabitants of the Groeden Valley.
2. Slovenian housemaids for large families.

Ad 1. The Reich Leader SS at present disapproves of settlement plans to be initiated in the General Government.

The remaining resettlers in the camps of the VoMi [repatriation office for Ethnic Germans] are to be resettled in 1942, with the exception of approximately 50,000 ethnic Germans.

[Handwritten note] 40 estates granted by Major General Backe

In accordance with Gauleiter Greiser's suggestion, the German ethnic group from the Dobruja can for the time being be placed in group settlements on estates in the Warthe Gau. The delegate in Poznan will shortly forward concrete proposals to the Main Department of Planning and Land.

The Reich Leader SS wishes that the settlement on this project in Lorraine of remaining resettlers, preponderantly, Bessarabia Germans, be thoroughly intensified. The Reich Leader SS visualizes a number of about 10,000 persons.

A settlement of ethnic Germans in the Crimea is, as a matter

of principle, out of the question, since the settlement of the Crimea, if at all affected, will be guided by other basic principles (SS selection).

The still remaining resettlers are if possible, to be settled in the administrative districts Zichenau and Bialystok. Negotiations on this point between the Main Department of Planning and Land on the one hand, and Gauleiter Koch on the other hand are now under way.

The Reich Leader SS attaches great importance to the actual start of the Groeden resettlement operation. For reasons of population policy, the Reich Leader SS objects to the suggestion to use parts of the south Carinthian territory for that purpose. The Reich Leader proposes to settle the entire Groeden group in the Saybusch district. SS Major General Greifelt will be charged with upholding that proposal against any objections which may be raised.

Ad 2. The Reich Leader SS requests the immediate allocation of Slovenian housemaids for large families, based on the assumption that approximately 16,000 Slovenes are suitable for Germanization and are to be Germanized as soon as possible. The SS Main Office VoMi is requested to consider the above and give its comment at once.

[Signed] signature

To:

SS Main Office VoMi [Repatriation Office for Ethnic Germans]
Main Dep. I. Staff Main Office
Main Dep. III. Staff Main Office
Main Dep. IV. Staff Main Office
Central Land Office

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS STIER*

CROSS-EXAMINATION

* * * * *

MR. LAMB: Dr. Stier, how many people were brought in from the countries surrounding Germany, Yugoslavia, France, Poland, Czechoslovakia, Romania, and other countries for the purpose of resettlement? Give me the approximate number?

WITNESS STIER: Approximately 800,000, as far as I can guess. You mean who were taken into Germany; did I understand you correctly?

* Complete testimony is recorded in mimeographed transcript, 3 and 4 December 1947, pp. 1887-1901.

Q. How many people were handled in this resettlement program? How many people were moved about from one place to another?

A. Approximately 800,000 resettlers were brought into Germany. Here I am not counting the deportees which figure I cannot give you an estimate of.

Q. There were approximately two million people handled by the Staff Main Office in this resettlement program, weren't there?

A. Two million? I don't believe there were two million.

Q. A million and a half?

A. No. I wouldn't say a figure higher than one million. However, I am unable today to give any exact figures.

Q. Dr. Stier, the Staff Main Office handled all of these people, did it not?

A. Cases of resettlers? Yes.

Q. And you were the expert on resettlement in that office, weren't you?

A. I was in charge of the department which carried this out, yes.

Q. Now these forced evacuations and forced deportations that took place and this policy of forced Germanization was ordered by Himmler, is that what you testified to?

A. I don't quite understand your question.

Q. There were forced deportations, were there not?

A. Yes, from the Reich to other countries, yes.

Q. And there was forced Germanization, a program of forced Germanization was there not?

A. I know nothing about it.

Q. Didn't you testify a moment ago that the defendant Brueckner opposed this forced Germanization?

A. We never talked about compulsory Germanization.

Q. What did he oppose then?

A. He was opposed to Germanization as such. After all, at the time the majority of the population in the frontier areas was actually trying hard to obtain German nationality and, we placed various objections in the way.

Q. Oh, you were trying to prevent people from becoming Germans? Was that your program?

A. Yes, if they were not of German descent.

Q. Now, you have testified that Slovenes who were not of Nordic blood, who were not German, were forced to come into Germany; were not those Slovenes put in camps and was not there a decree which stated that if these Slovenes escaped they would be hanged?

A. It is correct that I stated that these Slovenes were brought

into the Reich by force. However, I never heard a single word about any hangings.

Q. Now, of all these people that were brought into Germany from foreign countries, these foreign people who were not Germans, a part of them were to be resettled in the Eastern territories and a part of them would remain in Germany—that's true, isn't it?

A. Among the ethnic Germans who had been resettled a part remained in Germany proper and part of them went into the newly incorporated territories.

Q. Now the ones that were to remain in Germany were people who were not considered reliable enough from a political standpoint to be put in the Eastern territories or on the outskirts of the German Reich?

A. Not only because of this reason were they sent to Eastern districts but yesterday I mentioned in detail groups and reasons why some of these resettlers were not allowed to move into certain areas.

Q. And that is one of the reasons you gave, their political unreliability?

A. Yes.

Q. Now when these people who remained in Germany as the "A" Cases were brought in from these other countries, these foreign countries, they were promised that they would be resettled, and when their property was taken from them in these foreign countries, it was promised that they would be given property in Germany equivalent in value to what they had had in their own country. That is true, isn't it?

A. Yes.

Q. And these people who were kept in Germany were not given what they had been promised, were they, these "A" Cases.

A. Until the end of the war these promises had not been kept in all cases.

Q. That is all I wanted to know. Now I don't want to know what you intended to do but what you actually did. Now how many of these people remained in Germany as so-called "A" Cases?

A. I cannot give you the figure any more at this time.

Q. Can you estimate it?

A. I don't want to give you an inaccurate figure because I may be mistaken to a considerable extent.

Q. You were the expert on resettlement and you have been able to sit on the witness stand and remember verbatim a telegram or teletype that was sent by Himmler, but you can't estimate the number of "A" Cases, is that true?

A. I can recall all the things pretty well where I myself played an active part. However, I myself did not personally deal with the "A" Cases, and the number of "A" Cases varied continually, and that is why I am uncertain. If you do have to have a number, I can give you one, but I have pointed out before that I would like to make a strong difference between what I know or know approximately and what I have to guess at.

Q. That is all right.

A. But if you want to have an approximate figure—

PRESIDING JUDGE WYATT: Well, I think you have said enough to indicate that you don't want to do it.

MR. LAMB: Now, among these people that were brought in to Germany there were a great many people who were not ethnic Germans who had no Nordic blood. That is true, is it not?

WITNESS STIER: I would not say that this was a large number. It was just a small percentage.

Q. Regardless of what your intentions were after the war, these people who were brought in as "A" Cases were used as forced labor after they were brought into Germany, were they not?

A. No. I never heard anything about slave labor at all. I never saw anything of it.

Q. They were made to work, were they not?

A. According to the general laws and regulations, all Germans had to carry out a certain amount of work.

Q. Yes, and people who were not Germans and who lived in Germany had to carry out a certain amount of work, did they not?

A. I am not informed about that. As soon as these persons left the resettlement program, I did not have any control over them any more, or knowledge of their activity.

Q. Well, you have testified a lot about the Slovenes here. You know that the Slovenes were made to work, do you not?

A. Yes. They had to work.

Q. Yes, and those Slovenes wanted to go back to their home country, Yugoslavia, didn't they?

A. They wanted to go back to lower Styria where they came from, yes.

Q. Yes. Now you have testified about deportations in various countries. Now the Staff Main Office knew when they brought these million or so people in to resettle them that they were going to have to be resettled on somebody's land, didn't they, that somebody was going to have to be moved out, isn't that true?

A. I didn't quite understand your question.

Q. The Staff Main Office and all of its officials knew that in this program whereby over a million people would be resettled that somebody would have to move from their farms, some people would have to be moved from farms in order to make room for these million people that were going to be resettled?

A. Yes.

Q. And you know now that a great many of these people who were moved out of these farms were forcefully moved out?

A. That they were deported by force?

Q. Yes.

A. Who was deported by force?

PRESIDING JUDGE WYATT: That is what he asked you, Mr. Witness, if you knew whether anybody was or not.

WITNESS STIER: Yes.

MR. LAMB: Now, you have testified that everything that was done that was wrong, such as deportations, and so forth and so on, was done by Himmler; that is true, isn't it?

A. As far as I am informed, yes.

Q. The Staff Main Office was headed by the defendant Greifelt during its entire existence, was it not?

A. Yes.

Q. And these other defendants whom you have mentioned here who were against everything that was done that was wrong, were also in that office almost during the entire time of its existence, weren't they?

A. No. Schwarzenberger came later on, and Huebner was not in the Main Office.

Q. All right. Himmler had the right to discharge any of those people, did he not?

A. Yes.

Q. Did he discharge anyone?

A. Well, since they were still there, they couldn't have been dismissed.

Q. Now you also stated that in opposing everything that Himmler did which was wrong, that these people disagreed with it, but isn't it a fact that they went ahead and did these things in spite of their opposition to the idea?

A. They did not oppose all measures, but they only opposed certain things which have been discussed here in detail.

Q. But regardless of the opposition, these things did transpire, did they not?

A. In some part, yes.

c. Selections from the Arguments of the Defense

*EXTRACT FROM THE CLOSING STATEMENT OF THE DEFENSE FOR DEFENDANT GREIFELT*¹

BY

Forced Evacuation and Resettlement Population Groups (count 16 of the indictment)

1. Resettlement by order of the state, in general

The former American Secretary of State James F. Byrnes has reported on the Yalta Conference.² According to this report Prime Minister Churchill stated, when the Polish claims for the Oder frontier backed by Marshal Stalin were discussed:

"He estimated that the taking of territory in East Prussia as far west as the Oder would necessitate the moving of six million Germans.

"Stalin protested that the number would be much smaller because 'where our troops come in, the Germans run away.'

"Churchill reminded him that consideration must be given 'to where these Germans are, that run away,' and asked: 'Will there be room for them in what is left of Germany?'

"Privately, Churchill expressed to me the opinion that placing the line at the Neisse River would mean the transferring of nearly nine million Germans. 'Such a number,' he asserted, 'could never be absorbed in what would remain of Germany.'"

This discussion shows the opinion of the leading statesmen at that time that the drawing of a new border line in the East would involve a large-scale evacuation affecting as many as 9 million persons, and that this would happen was foreseen as a matter of course. No hesitation based on international law was voiced during the discussion.

International law is created through "frequent practical recognition of states, in their dealings with each other."³ Any legal standard laid down by international law which is not acknowledged and applied by the leading powers has lost its quality of mandatory international law, at least in the part of the world in which it has practically become obsolescent.

According to a report from the First Polish Journalists' Association for Study and [the protection of] Common Interests [Erste Journalistische Arbeits- und Interessengemeinschaft in

¹ This part of the closing statement for defendant Greifelt was not read into the record but was submitted to the Tribunal in the form of a brief. Closing statement is recorded in mimeographed transcript, 16 February 1948, pp. 4872-4903.

² New York Herald Tribune, Paris Edition, 18 October 1947.

³ Pitt Cobbett, *Leading Cases on International Law*, vol. I, p. 5.

Polen] dated 3 July 1947, which in Germany is circulating as originating from "Information Agency West", the Polish Government has named the eastern German provinces newly occupied by the Poles "Polish Western Territory". (*Meyer-Hetling 129, Meyer-Hetling Ex. 129.*) An ordinance dated 6 September 1946 has been issued concerning the "Settlement in the Polish Western Territories". The "settlement operation" is expected to be completed by 1948. A "settlement plan for the Polish Western Territories" has been drawn up—it would be interesting to compare it in detail with the former German settlement plans for the Incorporated Eastern Territories. Terms like "resettlers" and "land planning" are used. There are also settlement authorities and a chief in charge of these authorities. But it never occurs to anybody to accuse this chief or Mr. Morgenthau because of his settlement activity in Greece 1923–24 of crimes against international law. Neither did the Greeks resettle voluntarily in 1923, nor did the Germans who were evacuated in 1945, nor the Poles who were forcibly evacuated from the territory of the Soviet Union into Polish territory.

All these facts show that the "forced evacuation and resettlement of population groups", which the prosecution has made the subject of a charge under count 16, are in themselves no crime against international law.

But is it possible that under special circumstances they can become a crime?

The prosecution alleges that enemy population was "deported to work as slave laborers". Undoubtedly, the resettlement in its actual meaning, i.e., the exchange of houses and working facilities controlled by state agencies, does not involve the enslavement of a group of resettlers; it is possible to resettle people without enslaving them. Besides, enslavement comes under a specified charge, count 18 of the indictment. I shall discuss this point later, whereas now I want only to call the attention to and to deal with the concept of resettlement without its ramification. Surely, criminal acts ranging from theft to homicide can be committed in the course of a mass movement of people; but the resettlement procedure as such cannot be judged by these incidental occurrences.

Is it possible that voluntary participation is a criterion? Is resettlement not a violation of international law if it takes place on a voluntary basis?

In the short but glorious history of the United States the concept of freedom plays an important part. In the "Bill of Rights" of Virginia of 12 June 1776 it says:

"That all men are by nature equally free and independent,

and have certain rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”¹

The magnanimous Atlantic Charter of 14 August 1941² is based on the rights of man as they were for the first time established in the “Bill of Rights”. But today if we look back upon the brief period of time from 1776 to 1914, and beyond that on the 6 millennia of the history of humanity, then we are shocked to realize that the work of the noble men who worked on the Bill of Rights was to us, the continental Europeans who occupy the western tip of the huge Asiatic continent covering three-fifths of all habitable space of the earth, nothing but a dream, a wonderful but distant dream, forever beyond the limits of realization in our parts of the world.

What is freedom?

Lord Acton, one of the champions of freedom, has given a definition to this effect—“By freedom I understand the security for every human being in pursuing what he believes to be his duty, to be protected from the influences of the authorities and of the majority, of usage and of the opinions of other people.”³

This freedom, or even the beginning of such freedom we do not have and never had. I except the members of the French nation, the carrier of the Great Revolution of 1789, and the Swiss. Insofar as French state territory should come within the scope of this trial, I shall make special statements with respect to this. The resettlement which is the main subject of our discussion took place far east of the French frontier, and none of these resettlers ever lived under conditions which provided them protection against the influences of their authorities to pursue what they considered to be their duty.

At the time when the ideals had already become tradition in America, which inspired Thomas Jefferson when he drew up the Declaration of Independence⁴, King Frederick William I of Prussia lectured the members of the diet in these words which have become famous: “I shall stabilize sovereignty and con-

¹ The German translation of the “Document of American Democracy”, Wiesbaden 1947, p. 97, reads: “Alle Menschen sind von Natur aus gleichermassen frei und unabh angig und besitzen gewisse angeborene Rechte, deren sie, wenn sie in den Zustand einer Gesellschaft eintreten, durch keine Abmachung ihrer Nachkommenschaft beraubt oder entkleidet werden koennen, und zwar den Genuss des Lebens und der Freiheit und dazu die Moeglichkeit, Eigentum zu erwerben und zu besitzen und Glueck und Sicherheit zu erstreben und zu erlangen.”

² Ibid., p. 179.

³ Quoted from Ralph Barton Perry: “American Ideals”, German Edition 1947, p. 155.

⁴ Perry, *ibid.*, p. 148.

solidate the crown as a rock of bronze, and leave the diet windbags to the Junkers." And this wind-bagging was all that ever came of the whole thing in our country in spite of all wind-catchers of constitutional law; it dominated our political climate.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT OF THE
DEFENSE FOR DEFENDANT LORENZ **

* * * * *

When I spoke, at the beginning of my final plea, of larger aspects in the light of which all the data discussed at this trial have to be taken into consideration, I meant the historical aspects. The term "resettlement" presumably has been coined only in the course of the last decennia and got its special significance. Resettlements have in fact taken place as long as mankind can remember, and such movements of nations were mostly in connection with wars, sometimes also with oppression of nations or parts of nations, taking place either in the wake of military conquests or as a result of a war or coercion. Such movements of nations, on a larger or smaller scale, for the most varying reasons, have taken place very frequently in the European continent. Due to the peculiarity of the historical development in Germany, it so happened that, in particular, people of German origin crossed the borders of their fatherland and emigrated to foreign countries. That happened at a time when national states, in the very sense of the word did not exist and the immigration of German colonists was welcomed by the rulers of foreign countries. The rising of national consciousness, which appeared more and more in the course of the last century, the establishment of consolidated national states from a widely split up structure of single small countries, had the result that those Germans who had, protected by the authorities, kept their cultural characteristics, were considered in the course of the new development as outsiders and became obvious as such. Discords resulted between the German minorities and the majority of the respective nation, discords which carried in themselves the danger of international conflicts. Such discords did not only exist with regard to German minorities, but also with regard to minorities of many other nations, for instance, Italians, Czechs, Poles, Hungarians, and others. Therefore, it was a very reasonable tendency to remove the danger of such discords by means of exchanging such minorities and to secure a peaceful development in Europe.

The well-known American, Sumner Welles, criticized, justifiedly,

* Closing statement is recorded in mimeographed transcript, 17 February 1948, pp. 5012-5043.

in his book "The Time for Decision", the fact that one did not regulate the problem of minorities by resettlement after the First World War, and I quote:

"The minority problem could have been corrected only by courageous and radical steps providing for the orderly transfer of populations. Only in one instance, however, where Greek and Turkish minorities were involved, was such a transfer undertaken."

Such exchange operations have already taken place before and the resettlements as of 1939 have a number of precedents, in particular at the time after the Balkan wars and after the First World War; so, for example, as resettlement of the Greek population of Asia Minor took place in Europe in accordance with the treaty of Lausanne which ended the war between Turkey and Greece in 1923, which affected nearly one and a half million Greeks. Through the peace treaty of Neuilly in 1919, Bulgaria had been obliged to accept Bulgarian resettlers from the neighboring countries. One hundred twenty-five to two hundred thousand people were affected by this measure. When, through the peace treaty of Versailles, various eastern provinces of Prussia belonging to Germany had been ceded to Poland, a large number of Germans, about one million Germans who would not decide to vote for Poland, had to leave their homeland. Because of that they lost their property, and their rather problematic claims for compensation were referred to the German Reich.

The League of Nations in Geneva and the Permanent Court for International Justice at The Hague had to deal continuously with complaints and grievances of the national minorities in Europe after the end of the First World War. The decisions made by these institutions could, of course, not satisfy any of the participants since they were by compromises. There was, therefore, tension between the various countries of Europe because of the minority problem, which could lead to war, and very nearly led to war in September 1938. It had to be obvious, therefore, to anybody who himself experienced or observed the developments after the war that a resettlement of the national minorities on a large scale could and had to lead to appeasement in Europe. This motive was officially publicized as the decisive factor when the first resettlements took place in 1939.

Hitler expressed that in his fundamental speech of 6 October 1939 as follows, and I quote:

"The most important task, however, is a new order of ethnographic conditions, that is to say, a resettlement of nationalities, so that at the conclusion of this development better demarcation lines will result than is the case today. However,

this is not a problem which is limited to this very space, but it is a task which goes far beyond that, for the whole east and the whole southeast of Europe is partly filled with untenable islands of German ethnic groups, and they are exactly the cause for continuous international tensions. In an age of the principle of nationalities and the thought of race, it is Utopian to believe that these members of a racially valuable people could be assimilated without further ado. It is, therefore, one of the tasks of a far-sighted order of European life to carry out resettlements here in this case in order to eliminate at least part of the causes for European tensions in such a way. Germany and the Union of Soviet Socialist Republics have agreed to mutually help each other in this problem."

The also well-known fact that the peace treaty, signed with the cooperation of the Allies, sanctioned such resettlements already after the last World War and had even been stipulated, proves clearly that resettlement as such does not constitute a violation of international law: because these peace treaties should, after all, serve the establishment of conditions based on international law. The Potsdam Agreement of the heads of the Allied Governments of August 1945 has also taken into consideration the resettlement in Germany of German parts of the population from territories where the Germans had been settled for centuries. I do not wish to examine in this respect the question of whether or not Germany is entitled, after its unconditional surrender, to be treated in accordance with the Hague convention and, if this question is answered in the negative, whether or not the same conclusion will be reached on the basis of the general international common law. I only refer to the decision of the IMT according to which the principles of the Hague convention, even though they have not been accepted by some states, have just the same become established principles of international law, and I cannot believe, that the Allies wanted to disregard acknowledged principles of international law or humanity with regard to the treatment of Germany after the capitulation.*

The Potsdam Agreement of August 1945 states explicitly that the resettlement should take place according to plan and in a humane manner. This should be an important clue, how the signatory powers of the Potsdam Agreement stood in reference to the problem of resettlement and international law. They

* The verdict of the Military Tribunal III, in Case 3, U. S. A. vs. Josef Altstoetter, et al., which will not apply the Hague rules of land warfare to the occupation of Germany, emphasizes however that in view of the complete collapse of Germany, the "Allies had been faced with a far greater categoric human duty" than is the case in a normal occupation during a war. [The foregoing footnote in original closing statement.] For Case 3, see vol. III, this series.

apparently did not consider resettlement as such, indeed not even the évacuation because this is what was intended by the Potsdam Agreement—as a violation of international law, nor, without doubt, as a violation of the principles of humanity—they only made the reservation that the resettlement should be effected by orderly and humane procedure.

Consequently, it might be quite justified to argue that resettlement can be objected to only if the limits of orderly conduct and humanity have been surpassed.

C. Plunder of Public and Private Property

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Lorenz, Brueckner, Hofmann, Hildebrandt, Schwalm, Sollmann, Ebner, Tesch, and Viermetz were charged with special responsibility for and participation in criminal conduct involving plunder of public and private property in the occupied countries (*indictment, count one, par. 20; count two, pars. 24 and 25*). On this charge only the defendants Greifelt, Creutz, and Lorenz were convicted.

Selections from the documentary evidence of the prosecution concerning plunder of Polish property have been set forth on pp. 954 to 976. An extract from the closing statement for the defendant Greifelt concerning the same point appears on pp. 977 to 982. This is followed by selections from the evidence of the defense on pp. 982 to 989.

Evidence and arguments, concerning the plunder of public and private property in countries other than Poland have been omitted.

2. SELECTIONS FROM THE EVIDENCE OF THE PROSECUTION

PARTIAL TRANSLATION OF DOCUMENT NO-4672
PROSECUTION EXHIBIT 589

EXTRACTS FROM DECREE CONCERNING THE TREATMENT OF
PROPERTY BELONGING TO THE CITIZENS OF THE FORMER POLISH
STATE OF 17 SEPTEMBER 1940

[Handwritten] Confiscation

DECREE

Concerning the Treatment of Property Belonging to the Citizens
of the former Polish state 17 September 1940
(Reich Law Gazette I No. 170 p. 3 S) [sic]

Article 1

In pursuance of the order for the execution of the Four Year Plan of 16 October 1936 (Reich Law Gazette I p. 887) in connection with the order for the introduction of the Four Year Plan in the Eastern territories of 30 October 1939 (Reich Law Gazette I p. 2125) the following is ordered for the territory of Germany proper including the Incorporated Eastern Territories:

1. The property of citizens of the former Polish state is subject to confiscation, property custodianship, and requisition according to the letter of the following directives within the territory of Germany proper including the Incorporated Eastern Territories.

2. This does not apply to the property of persons, who according to Article 6 of the decree of the Fuehrer and Reich Chancellor with regard to the division and administration of the Eastern territories of 8 October 1939 (Reich Law Gazette I p. 2042) have acquired German citizenship. The competent office (Article 12) can admit further exceptions.

3. The citizens of the former Polish state and the Polish citizens of the former Free State Danzig are on an equal basis.

Article 2

1. Confiscation is to be pronounced in the case of property—

a. of Jews,

b. of persons who have fled or are not only temporarily absent.

2. Confiscation can be pronounced—

a. if the property is necessary for public welfare, especially in the interest of the defense of the Reich or the strengthening of Germanism, or

b. if the owners or other persons with a legal claim immigrated after the 1 October 1918 to the territory of the German Reich at that time.

3. Confiscation can be limited to individual objects of property.

4. To be expected from confiscation regularly are—

a. movable objects, which are exclusively meant to serve for personal use, and

b. cash, bank and savings accounts as well as stock up to the total value of one thousand Reichmarks.

* * * * *

Article 3

Property includes all movable and immovable objects (including all accessories), claims, partnerships, rights, and interests of all kinds.

Article 4

1. As soon as confiscation has taken place these persons who

had the right of disposition lose this right over the confiscated property. The authority of the general administrator according to the order about public administration of agricultural and forestry enterprises and real estate in the Incorporated Eastern Territories of 12 February 1940 (Reich Law Gazette I p. 355) remains unchanged.

2. Whoever has confiscated property in his possession or custody is to continue to administer it until further notice. Changes or disposition of property or its proceeds is only permissible within the limits of regular business. All other measures especially the disposition of real estate necessitate the permission of the competent offices (Article 12).

Article 5

1. In the case of property subject to confiscation, property custodianship can be ordered, if orderly administration necessitates it.

2. An order for property custodianship is the same as confiscation.

* * * * *

Article 9

1. Confiscated property can be requisitioned by the competent office (Article 12) for the good of the German Reich, if public welfare, especially the defense of the Reich or the strengthening of Germanism necessitates such a move.

2. Prior to requisitioning the confiscated property is to be listed at the competent office according to more detailed directives.

3. The Reich is responsible for the debts connected with the requisitioned property up to the amount of the sales value of the requisitioned property. Rights connect to requisitioned objects remain intact.

4. The right of disposition over requisitioned property belongs to the jurisdiction of those offices authorized for requisition. In the case of disposition of agricultural property, agreement between the Reich Commissioner for Strengthening of Germanism and the Reich Minister for Food and Agriculture is always to be established.

5. The settlement of the kind and extent of the compensation which is permitted for loss of property during the execution of this order, is reserved. No compensation is granted for measures of the competent office (Article 12) on the basis of Articles 16 and 17.

Article 10

1. Property custodianship can also be ordered for the property

of a corporate body, of societies, organizations and other personal organizations, in which capital of citizens of the former Polish state was predominantly representative—still in 1939—or the administration of which was decisively influenced by citizens of the former Polish state.

2. As long as the property custodianship lasts, the authority of the director or of other persons authorized as managers or deputies rest; the same applies to the authorities of all official organs.

3. In this case only shares and participation of citizens of the former Polish state are subject to requisitioning.

Article 11

1. The confiscation or order of the property custodianship are to be entered into the land registry or in other applicable public register at the request of the competent office (Article 12). It can also be demanded that the name of the property custodian be entered.

2. If the land registry or other applicable public registry becomes incorrect through measures on the basis of this order, it is to be corrected upon application of the competent office (Article 12), Article 1, paragraph 3–5 of the second decree, re—Execution and Supplementing of the Law concerning Compensations with regard to requisitioning or Transfer of Property of 18 March 1938 (Reich Law Gazette I p. 317) is to be applied in accordance with these provisions.

Article 12

1. The deputy of the Four Year Plan—Main Trustee Office Ost is competent for measures and decisions on the basis of this order; for agriculture including agricultural branch enterprises the Reich Commissioner for Strengthening of Germanism is competent.

2. The offices competent according to paragraph 1 can transfer the execution of their authority to other offices or transfer them partially. Complaints against their decision are to be placed at the competent office according to paragraph 1.

No delay can be obtained through the complaint. Complaints are inadmissible if more than one year has passed since the announcement of the controversial decision.

Article 13

If someone contradicts the confiscation or the order for property custodianship with the assertion that he is a German national, the proceedings are to be interrupted. The competent office

(Article 12) requests a decision from the district president about German nationality [of the individual involved]. The affected person is likewise entitled to make this request. A complaint against the decision of the district president to the Reich Minister of the Interior is admissible. The decision concerning the German nationality is binding for the procedure of the competent office (Article 12) on the basis of this order.

* * * * *

Berlin, 17 September 1940

The President of the Cabinet Council for the Defense of the Reich and Plenipotentiary for the Four Year Plan

[Signed] GOERING
Reich Marshal

TRANSLATION OF DOCUMENT NO-2676
PROSECUTION EXHIBIT 592

DIRECTIVES FROM HIMMLER, 10 NOVEMBER 1939, CONCERNING
COLLABORATION WITH THE MAIN TRUSTEE OFFICE EAST

The Reich Leader SS and Chief of the German Police
The Reich Commissioner for Strengthening of Germanism
S I V 1 No. 886/39-176-

Berlin, 10 November 1939

To

- a. All Supreme Reich Authorities
The Reich Protector of Bohemia and Moravia and the Governor
General at Krakow
- b. The Reich Governors
- c. Governments of all the Lands
- d. All Chiefs of Provincial Administration and Chief of Regional
Administrations
- e. All Higher SS and Police Leaders

Subject: Collaboration of the offices of the Reich Leader SS with
the Main Trustee Office East.

In agreement with the chief of Main Trustee Office "East"
mayor (retired) Dr. h.c. Max Winkler, I inform you herewith:

I. In the interest of a uniform direction and transfer of industry within the territories of former Poland which have now become integral parts of the German Reich, and within the occupied Polish territories, Field Marshal Goering, in his capacity as Chairman of the Ministerial Council for Reich Defense and

Plenipotentiary for the Four Year Plan, has, by decree of 19 October 1939, established the Main Trustee Office "East" which is directly subordinated to him, and has appointed the retired mayor Dr. h.c. Max Winkler as its chief.

The Main Trustee Office "East" has its seat in Berlin (at present Berlin NW 87, Brueckenallee 3; from the middle of November, at Berlin W 9, Potsdamerstr. 28) and also at Krakow with the Governor General of the occupied Polish territories. Trustee offices which are directly subordinate to it, will be established at—

Danzig for the Reichsgau Danzig-West Prussia,

Poznan for the Reichsgau Poznan,

Zichenau for the government district Zichenau,

Katowice for the government district Katowice,

Warsaw for the districts Warsaw and Lublin.

II. In order to carry out confiscations—the right to confiscate has been granted them by the decree mentioned at the beginning—the Main Trustee Office "East" and its trustee offices avail themselves of the offices, agencies, and establishments of the Reich Leader SS and Chief of the German Police, or of the agencies set up by him in the occupied Polish territories.

The registration and confiscation of agricultural property (including agricultural auxiliary concerns) in the hands of Polish and Jewish owners is carried out exclusively by the Reich Leader SS in his capacity as Reich Commissioner for Strengthening of Germanism, if necessary in agreement with the Reich authorities concerned.

III. The confiscation of the Polish State property will be decreed and regulated by a special decree of the Ministerial Council for Reich Defense. As far as requisitioning of agricultural property (including agricultural auxiliary concerns) is concerned their administration and exploitation is handled by the Main Trustee Office "East" in accordance with directives given by the Reich Leader SS who will establish the necessary contact with the Reich Minister for Food and Agriculture. He can also demand that the Main Trustee Office "East" should transfer its authority in this respect to offices established by him. This regulation does not affect the forest central by the Reich Office for Forestry and its subordinated offices.

IV. At the request of the Main Trustee Office "East" other property of Polish and Jewish owners will be confiscated on behalf of the German Reich by the Reich Leader SS and Chief of the German Police and also seized at special request. The registration of these properties is handled by the Main Trustee Office "East".

V. In accordance with requirements the Reich Leader SS and Chief of the German Police will transfer liaison officers of the competent Higher SS and Police Leader to the aforementioned trustee offices.

In order to settle all questions arising from the collaboration of the Reich Leader SS and the Main Trustee Office "East", a commissioner (SS Lieutenant Colonel Galke) is assigned to the Main Trustee Office "East" who, at the same time, will act as liaison officer to all authorities, agencies, and institutions of the Reich Leader SS and Chief of the German Police. He is located at the office in Berlin.

I attach importance to the fact that all authorities and bureau chiefs collaborate as closely as possible with the Main Trustee Office "East" set up by the Chairman of the Ministerial Council for Reich Defense and Plenipotentiary for the Four Year Plan.

[Signature] H. HIMMLER.

TRANSLATION OF DOCUMENT NO-724
PROSECUTION EXHIBIT 572

MEMORANDUM FROM SS GENERAL FRANK TO THE CHIEFS OF THE
LUBLIN AND AUSCHWITZ CONCENTRATION CAMPS, 26 SEPTEMBER
1942, CONCERNING THE UTILIZATION OF JEWISH PROPERTY

26 September 1942

Copy

Top Secret

6 copies—4th copy

Chief A/Pr./B.
Journ.Nr.050/42 secr.
VS 96/42

Subject: Utilization of property on the occasion of settlement and
evacuation of Jews.

To the Chief of the SS—Garrison Administration, Lublin.
To the Chief of Administration, Concentration Camp Auschwitz.

Without taking into account the over-all regulations which are expected to be issued during October, pertaining to the utilization of mobile and immobile property of the evacuated Jews, the following procedure has to be followed with regard to the property carried by them—property, which will in all orders in the future be called goods originating from thefts, receiving of stolen goods, and hoarded goods—

1. *a.* Cash money in German Reich Bank notes have to be paid into the account, Economic and Administrative Main Office 158-1488 with the Reichsbank in Berlin-Schoeneberg.

b. Foreign exchange (coined or uncoined), rare metals, jewelry, precious and semi-precious stones, pearls, gold from teeth and scrap gold have to be delivered to the SS Economic and Administrative Main Office. The latter is responsible for the immediate delivery to the German Reich Bank.

c. Watches and clocks of all kinds, alarm clocks, fountain pens, mechanical pencils, hand and electrical razors, pocket knives, scissors, flashlights, wallets and purses are to be repaired by the SS Economic and Administrative Main Office in special repair shops, cleaned and evaluated, and have to be delivered quickly to front line troops.

Delivery to the troops is on a cash basis through the post exchanges. 3-4 price grades are to be set and it has to be made sure that each officer and man cannot buy more than *one* watch.

Exempt from sale are the gold watches, the utilization of which rests with me. The proceeds go to the Reich.

d. Men's underwear and men's clothing including footwear has to be sorted and valued. After covering the needs of the concentration camp inmates and especially of the troops they are to be handed over to the office for ethnic Germans. The proceeds go to the Reich in all cases.

e. Women's clothing and women's underwear including footwear, children's clothing and children's underwear including footwear have to be handed over to the office for ethnic Germans against payment. Underwear of pure silk is to be handed over to the Reich Ministry of Economics according to orders by the SS Economic and Administrative Main Office. This order refers also to underwear paragraph *d.*

f. Featherbeds, quilts, woolen blankets, cloth for suits, shawls, umbrellas, walking sticks, thermos flasks, ear-flaps, baby-carriages, combs, handbags, leather belts, shopping baskets, tobacco pipes, sun glasses, mirrors, table knives, forks and spoons, knapsacks, and suitcases made from leather or artificial material are to be delivered to the office for ethnic Germans. The question of payment will be decided later.

Their own needs in quilts, woolen blankets, thermos flasks, ear-flaps, combs, table knives, forks and spoons, and knapsacks can be furnished from Lublin and Auschwitz from these stocks against payment from budget funds.

g. Linen, such as bed sheets, bed linen, pillows, towels, wiping cloths, and tablecloths are to be handed over to the office for ethnic Germans against payment.

Bed sheets, bed linen, and towels, wiping cloths and tablecloths, can be furnished for the needs of troops from these stocks against payment from budget funds.

h. Spectacles and eyeglasses of every kind are to be handed into the medical office for utilization. (Spectacles with golden frames have to be handed in without glasses together with the rare metals.) A settlement of accounts for the spectacles and eyeglasses need not take place with regard to their low value and their limited use.

i. Valuable furs of all kinds, raw and cured, are to be delivered to the SS Economic and Administrative Main Office. Ordinary furs (lamb, hare, and rabbit skins) are to be reported to the SS Economic and Administrative Main Office, office B II, and are to be delivered to the clothing plant of the Waffen SS, Ravensbrueck near Fuerstenberg (Mecklenburg).

k. All items mentioned under the letters *d*, *e*, *f*, which have only 1/5 or 2/5 of the full value or are useless altogether will be delivered via the SS Economic and Administrative Main Office to the Reich Ministry for Economics for utilization.

For the decision on items which are not mentioned under the letters *b-i*, application for a decision as to their utilization should be made to the Chief of the SS Economic and Administrative Main Office.

2. The SS Economic and Administrative Main Office will establish all prices under observation of the legally controlled prices. This estimation however can be made later on. Petty evaluations which only waste time and personnel may be eliminated. Average prices for single items have to be established in general. For instance, one pair of used men's trousers 3—RM, one woolen blanket 6—RM etc.

For the delivery of useless items to the Reich Ministry for Economics average kilo prices will have to be established.

It has to be strictly observed, that the Jewish star is removed from all garments and outer garments which are to be delivered. Furthermore, items which are to be delivered have to be searched for hidden and sewed in values, this should be carried out with the greatest possible care.

As deputy,

[Signed] FRANK

SS Brigadier General and Brigadier General of the Waffen SS

PARTIAL TRANSLATION OF DOCUMENT NO-2601
PROSECUTION EXHIBIT 606

EXTRACTS FROM LETTER FROM GREIFELT TO HIMMLER, 21 OCTOBER
1943, CONCERNING THE UTILIZATION OF CONFISCATED POLISH
PROPERTY

Reich Commissioner for the Strengthening of Germanism
Staff Main Office
III-2/2-10-43-Wir./St.-Ma
Please indicate above File No. and date in reply.
Journal No.: 406/43 g.

Berlin-Halensee, 21 Oct. 1943
140-142 Kurfuerstendamm
Telephone: Collective Number
977891, and
963991

Secret

Referent: SS Hauptsturmfuehrer Wirsich
Subject: Utilization of confiscated formerly Polish "developed
sites" for the financing of the war.

To:

Reich Leader SS
Berlin SW 11, 8 Prinz-Albrecht-Strasse
Reich Leader,

The Reich Minister of Finance has submitted a draft of an "Ordinance concerning the imposition of a mortgage on all confiscated former Polish real property", and further a draft of a First Executive Order for the carrying out of this ordinance. According to these drafts it is intended to impose a mortgage amounting to approximately 400 million Rm for the benefit of the German "Girozentrale" on all formerly Polish house property in the Incorporated Eastern Territories now confiscated by the Main Trustee Office East. The German "Girozentrale" will negotiate a loan of the same amount in the German capital market. The proceeds of the loan will accrue to the Reich for the financing of the war.

* * * * *

As it at the moment appears inopportune to oppose the loan plan of the Reich Minister of Finance against which no material objections can be raised, with a reference to the more far-reaching intentions of forming a separate settlement capital, but as on the other hand an implementation of this loan plan would in every respect be contrary to the ideas of the Reich Leader SS, our

office suggests to submit the following opinion to the Reich Minister of Finance:

1. Through the Fuehrer Decree of 7 October 1939 the Reich Leader SS charged with the extensive task of developing new settlement areas. The preliminary mortgaging of one of the essential foundations of the settlement construction would, to a certain extent, already now determine the subsequent development and thus impede the subsequent execution of this Fuehrer Order.

2. In the ordinance or at least in an executive order for the carrying out thereof an exact figure of approximately 400 million Rm would have to be stated for the first time. On the basis of this figure it would be possible for everybody in foreign countries to calculate that the entire Polish house property without exceptions has been confiscated. The reasons for hesitation dictated by international law and foreign policy which in 1940 were conclusive for formulating the ordinance concerning Polish property in such a way that it could not be realized by any uninitiated person that actually all Polish real property was supposed to be confiscated, would thus be thrown overboard.

3. We do not find it quite proper that exactly a mortgage on confiscated Polish houses is offered to the German loan subscriber as security together with a Reich guarantee.

4. A loan amounting to approximately 400 million Rm would under present conditions secure the financing of the war only for a few days. Such insignificant financial achievement cannot compensate for the general political disadvantages of the loan plan.

Our bureau requests most respectfully to be instructed whether the present loan plan of the Reich Minister of Finance is to be opposed with these reasons, or whether the Reich Leader SS, with a view to the strained situation of the Reich finances, will be inclined temporarily to abandon its own plans concerning the formation of separate settlement funds.

[Shorthand notes]

[Stamp]

Personal Staff Reich Leader SS

Received on 26 October 1943

Journal No.: 47/159/43 g.

To: Reich Leader.

Chief of Staff Main Office

[Signature] GREIFELT

SS Major General and Major General of the Police

PARTIAL TRANSLATION OF DOCUMENT NO-3181
PROSECUTION EXHIBIT 312

EXTRACTS FROM REPORT FROM GREIFELT TO HIMMLER, 12 MAY 1943,
CONCERNING (AMONG OTHER SUBJECTS) COMPENSATION FOR
CONFISCATED POLISH PROPERTY AND COVERING LETTER FROM
GREIFELT TO RUDOLF BRANDT, 19 MAY 1943

The Reich Commissioner for Strengthening of Germanism
Staff Main Office
-O/I 20 a - He/Ma

Kindly list in your reply above
reference number and date.

Personal Staff, Reich Leader SS
[Stamp]
Central Archives
File # Secret 35/11
19 May 1943
Berlin-Halensee, 19 May 1943
Kurfuerstendamm 140

Secret

[handwritten notes] [Initials] 22/5

Subject: Report to Reich Leader SS on 12 May 1943
Reference: None
Enclosure: 1

Copies of the various subjects
have been made and are attached
to this one.

[initial] 25 May 1943

To the
Reich Leader SS Personal Staff,
Attention of SS Lieutenant Colonel Dr. Brandt
Berlin SW 11, Prinz-Albrecht-Strasse 8

Dear Comrade Brandt!

Please find enclosed for your information and addition to your
files a memorandum on my report to the Reich Leader SS.

The Chief of the Staff Main Office
[Signature] GREIFELT
SS Major General and Major-General of the Police
[Shorthand notes]

[Stamp]

[First line illegible]

Received: 22 May 1943

Journal # 47/97/43 g

to: RF

Personal Staff Reich Leader SS

Central Archives

File: Secret: _____

Memorandum on report to the Reich Leader SS on 12 May 1943

1. Subject: Resettlement in the General Government.
* * * * *
2. Subject: German Workers from Bosnia for the Munitions Industry in the District of Radom.
* * * * *
3. Subject: Resettlement of expelled Slovenes.
* * * * *
4. Subject: Special Case Zwetko.
* * * * *
5. Subject: Resettlement of expelled Lorrainers.
* * * * *
6. Subject: Expulsion of Lorrainers.
* * * * *
7. Subject: Resettlement of expelled Alsatians.
* * * * *
8. Subject: Expulsion from Alsace and French Interference in the Events in Alsace.
* * * * *
9. Subject: Resettlement of Russia-Germans in Galicia.
* * * * *
10. Subject: Resettlement of Gottschee—Germans.
* * * * *
11. Subject: Resettlement of Bukovina—Germans in Galicia.
* * * * *
12. Subject: Impairing of the harvest through Resettlement Measures in the Government General and the Ukraine.
* * * * *
13. Subject: Settlement Organization.
* * * * *
14. Subject: Directives for the Organization of the Administration in the German Settlement Areas.
* * * * *
15. Subject: Administration, Economy and Finances in the Occupied Eastern Territories.
* * * * *

16. Subject: Information Sheet for Resettlement Applicants.

* * * * *

17. Subject: Compensation for Poles.

Reference: Journal No. 47/15/43 g, dated 3 December 1942
294 bl.

The Reich Leader SS has pointed out that the property in question in the Incorporated Eastern Territories was formerly German property which was robbed in 1918 and for which no one can demand compensation. On the other hand, the situation in the General Government is different since the Poles there are still owners of their property. Insofar as this property will be utilized for German resettlement measures, one could, therefore consider a compensation for the previous owner. Besides, it was absolutely necessary to make at first a report to the Fuehrer since, to date, the entire Poland policy was based on clear directives by the Fuehrer. It was necessary to let these questions, on which the discussion had started, rest until such time.

* * * * *

TRANSLATION OF DOCUMENT NO-2667
PROSECUTION EXHIBIT 614

REPORT FROM WINKLER TO THE BRANCH OFFICE OF THE RKFDV IN
BIELITZ (POLAND), 12 MARCH 1942, CONCERNING THE SEIZURE
OF POLISH PROPERTY

Office Commissioner Osiek
District Office of the Communities
Osiek, Gross Polanka, Grejetz and Lasy East
Wittkowitz, Bielany Lenki, and Plaletz

Osiek, 12 March 1942

To the Reich Commissioner for the Strengthening of Germanism
Department Settlement
in Bielitz
Nikelsdorf — West Nr. 111
Ge/Hoi
631

Subject: Your letter of 4 March 1942, re: Seizure and handing
over to the settlers of all live and dead stock which
are to be found on the settlement block, especially
domestic animals.

I can give you the pleasant information that the action which
started unexpectedly on 10 at 7 o'clock in the morning was car-

ried out without interference and with great success, thanks to the unselfish work of the political chiefs. I will carry out inspections in the near future as there is a possibility that one or the other Pole has something hidden that is property of the settlers. I have come across the most peculiar things here. I have discovered two illegal slaughters, have found skies and field glasses, and have also discovered hens with tied legs which had been hidden by Poles in barns under straw. It still has to be considered whether the reservations, as far as they have not been settled with Germans but still serve the Poles as homes, should not be included in a future action. I have already informed you of my ideas by telephone and would like to suggest that, until the final settlement of the reservations, the fields should be turned over for cultivation to those settlers who can guarantee a faultless cultivation. The live and dead stock could be distributed accordingly by the settlement advisers. The reservations in themselves are so small that they do not offer enough soil and they will hardly be utilized so that the settler sees his only means of support in the small area of the reservation.

I do not want to influence your decisions with my suggestions, however, I did want to mention this arrangement.

[Signature] WINKLER

PARTIAL TRANSLATION OF DOCUMENT NO-1943
PROSECUTION EXHIBIT 570

GENERAL DIRECTIVE NO. 18-C BY HIMMLER, 15 DECEMBER 1942,
CONCERNING THE HANDLING OF JEWISH PROPERTY IN THE
GENERAL GOVERNMENT, AND UNDATED MEMORANDUM CONCERNING
SAME SUBJECT

The Reich Leader SS

Reich Commissioner for the Strengthening of Germanism

[Stamp]

Personal Staff Reich Leader
SS, Administration of
Archives,
File No. Secret/55/7

C-6/10/19.9.42, Journal No. 38/42 secret

Field Command Post, 15 December 1942

Secret!

GENERAL DIRECTIVE No. 18-C—

by the Reich Leader SS and Chief of the German Police, Reich
Commissioner for the Strengthening of Germanism concerning
the handling of Jewish Property in the General Government

By decree of the Fuehrer and Chancellor of the Reich concerning the Strengthening of Germanism dated 7 October 1939, and by the authority vested in me as the Chief of the German Police, I herewith direct:

1. The entire real estate property of the Jews in the General Government will, with immediate effect, be assigned to purposes connected with the Strengthening of Germanism (particularly for the accommodation of resettlers and other privileged applicants). The utilization is controlled exclusively by the Higher SS and Police leader in the General Government and state secretary for security, as my representative in my capacity as Reich Commissioner for the Strengthening of Germanism, for the account and benefit of the General Government.

2. The offices and persons appointed for the administration will carry on the administration under the supervision and instructions of my representative as hitherto, unless he decides otherwise in individual cases.

3. Real estate in the meaning of paragraph 1 comprises town and rural real estate of every description, as well as stationary industrial and trade enterprises with all equipment, stocks, accessories, participations, privileges and interests of every description pertaining thereto.

4. My representative in the General Government is authorized to take all measures and steps necessary to carry out this task.

[Signed] H. HIMMLER

Certified true copy:
[Signature] SCHUH
SS First Lieutenant

[stamp]
Personal Staff Reich Leader SS
Administration of Archives
File No. Secret/55/7

From the memorandum by SS Major General Greifelt on his report to the Reich Leader SS on 15-12-42.

Subject: Handling of Jewish Property in the General Government.
Reference: Diary No.: 38-7-43 secret of 6-12-42.

The Reich Leader SS has signed a *General Directive* whereby the entire Jewish real estate is to be placed at the disposal for the Office for the Strengthening of Germanism. The Reich Leader SS declared on this occasion that he reserves for himself the right to settle the question of ethnic entities in the Government General on his own authority. A land registry office will be at-

tached to the office of the Commissioner as soon as possible.
Certified true copy:

[Initialed] W. 31-1

[signature] CONRAD
SS Sergeant

for the files
[Initial] R.

PARTIAL TRANSLATION OF DOCUMENT NO-2665
PROSECUTION EXHIBIT 566

REPORT, SIGNED BY GREHL, 15 NOVEMBER 1944, CONCERNING THE
INSPECTION OF THE GHETTO OF LITZMANNSTADT [LODZ]

Office, construction

Schweiklberg, 15 November 1944

VII-2/Ost-20 Gr /Kg.2117

[illegible handwriting] 18 November 1944

Subject: Ghetto-demolition-Lodz.

Reference: Inspection on 10 November 1944 by SS 1st Lieutenant
Grehl.

1. Note: [Handwritten] 1. acknowledged
2. filed

A conference and inspection of the demolition measures carried out in the Litzmannstadt Ghetto by the Office of the Deputy of Reich Commissioner for Strengthening of Germanism took place on 10 November 1944 upon order of the Chief of the Staff Main Office.

The inspection and ensuing conference was attended by—
SS Major Hirschboeck, of the Office of the Deputy of the Reich Commissioner;
SS 1st Lieutenant Bastian, of the Construction Inspection of the Waffen SS and Police Reich-East, Poznan;
SS 1st Lieutenant Grehl, of the Reich Commissar for Strengthening of Germanism—Staff Main Office—Schweiklberg.

SS Major Hirschboeck reported that SS Colonel Huebner had been entrusted with the demolition work and had been started in the beginning of October. About 45 workers are employed at the moment in the actual demolition work. The workers are Polish laborers of the construction firm Seifert at Lodz, who had been made available by the Labor Office Lodz.

In addition, 25 Polish workers, male and female, had been

made available by the Labor Office Lodz for the purpose of evacuating furniture and household goods. These workers were sent to the firm Seifert too, in order to avoid any special wage accounting at the Office of the Deputy of the Reich Commissioner for Strengthening of Germanism.

A certain part had been assigned from the city administration to the Reich Commissioner for demolition. Up to the present 14 solid apartment houses, two to four stories high, and 4 one-story wooden barracks have been demolished. At the demolition work only wooden and iron parts are salvaged. The walls remain standing, and it is intended to tear them down at a later date. Among others wooden post, planks, window and doorframes, and some staircases are salvaged. The wood is piled up in the street. On the basis of a police order the wood must not be used before another year, because of danger of epidemics.

* * * * *

Summarizing one can say that household goods inspected were not exactly the right thing for resettlers, completely disregarding the fact that the furniture was very badly worn already and does not fit into a rural household; it has to be added that among the other household goods the most needed things are lacking. Among the china, cups and deep plates were not to be found at all but there was a great surplus of serving plates, candy dishes and gravy pots. The salvaging of stoves, which had been announced as rather successful by the SS Colonel Huebner, will not show too great a success because the condition of the stoves, or the material of the stoves, does not permit a successful salvaging in most cases. The standing requisition for the district Lodz in office III must therefore be maintained. That had been corroborated by SS Major Hirschboeck.

Still to be mentioned is that the charges arising from the storage are exceedingly high. The storage Krefelderstr, 64 charges e.g. for approximately 7000 qm a rent of Rm 35.000.

[Signature] GREHL
SS 1st Lieutenant

2. Chief of the Staff Main Office—for your information.
3. Office V, SS Senior Colonel Schwarzenberger—for your information.
4. Office III—for your information.

TRANSLATION OF DOCUMENT NO-5395
PROSECUTION EXHIBIT 750

DIRECTIVES FROM HIMMLER TO POHL AND LORENZ, OCTOBER 1942,
CONCERNING THE DELIVERY TO ETHNIC GERMANS OF CONSIGN-
MENTS OF CLOTHING FROM LUBLIN AND AUSCHWITZ WARE-
HOUSES

The Reich Leader SS

Journal No. B 94/42-Top Secret

Field Command Post, 24 October 1942

Secret!

To the

1. Chief of the SS Economic and Administrative Main Office
SS Lieutenant General Pohl *
2. Chief of the Main Office of the Repatriation Office for Ethnic
Germans,
SS Lieutenant General Lorenz

From the articles of clothing and other items stored in the
Lublin and Auschwitz warehouses, consignments are to be de-
livered for this Christmas of 1942 to the following receivers:

1. To the ethnic German group in Transnistria, approximately
135,000 persons.
2. To the Germans in the General Government Zhitomir, ap-
proximately 45,000 persons.
3. To the ethnic German settlements in the Halbstadt district,
approximately 40,000 persons.
4. To the ethnic Germans in Corizza, approximately 15,000
persons.
5. To the ethnic Germans in Nikolaev, approximately * * *
(number not dictated by the Reich Leader SS).
6. To the settlers in the government Lublin.

The ethnic Germans included under 1, 5 are to be provided each
with a dress or suit and, as far as available, with a coat and hat,
3 shirts, appropriate underclothing, and other items of daily use
as well as a suitcase. Needy persons are also to be given feather
beds, blankets, and bed linen.

For the outfit tiny operation, a total estimate broken down in
figures, and especially necessary articles of clothing and equip-
ment, is to be submitted.

[Signed] H. HIMMLER

P. S. To the letter to Pohl—

The matter is very urgent, the things must be at our disposal
by Christmas!

* Defendant in case of United States of America vs. Oswald Pohl, et al., Case 4, vol. V, this
series.

2. SS Obergruppenfuehrer Pruetzmann

3. SS Oberfuehrer Hofmeyer

Carbon copy sent, with the request to acknowledge.

By order: [initials]

BM

SS Lieutenant Colonel

PARTIAL TRANSLATION OF DOCUMENT NO-4060
PROSECUTION EXHIBIT 18

EXTRACT FROM THE TABLE OF ORGANIZATION OF THE STAFF MAIN
OFFICE, RKFDV

Reich Commissioner for the Strengthening of Germanism
Organization and Setup of the Staff Main Office

* * * * *

Central Land Office

Activity

Chief or official in charge

VIII. Central Land Office

SS Lieutenant Colonel Mundt

Registration of the entire real estate available for re-Germanization

1. Law. Legal questions resulting from the registration, confiscation, sequestration and transfer of real estate.

Koch

2. Land. Supervising and superintending of the land offices and field offices. Examining of matter pertaining to registration. Report on the results of the registration.

Koch

3. Card index. Sifting and evaluation of the registration forms in a card index, according to communities and size.

von Puttkammer

4. Statistical and map department.

* * * * *

TRANSLATION OF DOCUMENT NO-4130
PROSECUTION EXHIBIT 601

SERVICE INSTRUCTION NO. 38, SIGNED BY GREIFELT, 12 DECEMBER
1940, CONCERNING OFFICES COMPETENT FOR REAL ESTATE AND
AGRICULTURAL PROPERTY

The Reich Leader SS
Reich Commissioner for the Strengthening of Germanism
A-1/4/12 December 1940/Coe/Wo.

Berlin, 12 December 1940

Service Instruction No. 38

Subject: Regulation of competence of dealing with questions connected with lands and real estate, particularly, with sales of real estate.

1. Within my office, the Central Land Office and the land offices according to the decree, dated 17 September 1940, are competent for the securing, particularly for the registration, confiscation, and seizure of all agricultural property available from the Reich as represented by the Reich Leader SS, Reich Commissioner for the Strengthening of Germanism.

2. All actions aiming at disposing of this real estate, in particular, applications for allotment of land, are therefore to be submitted to the Central Land Office via Chief of the Main Planning Department. After considering the facts for the planning, the Central Land Office, attended by the competent land office investigates: (a) whether the landed estate is subject to confiscation and seizure by the Reich Commissioner, (b) whether this very estate is earmarked in favor of other applicants or whether other applications concerning same are submitted, (c) what the value of the claimed estate is and to what an extent it is suitable for the purpose in question.

3. Subsequently, the Central Land Office passes on the documents concerned to the respective competent main department for further action.

4. It is up to the competent main department to make material arrangements, to settle the individual terms of purchase, and to bring about final decision.

5. The professionally competent main department informs and passes on to the Central Land Office all documents concerned after consultation of possibly interested branches. Upon suggestion of the competent main department, the Central Land Office brings about (a) agreement with the Reich Food Ministry and recall from public management, (b) registration of a blocking

note in the card-index, (c) information of the applicant about decision of the application and, if the request was granted, information about the general conditions of taking possession, and invitation of contacting the competent local land office in order to conclude the purchasing contract, (d) passing of the whole matter on to the land office and giving authority to conclude the sales transaction either in court or before a public notary.

[Signed] GREIFELT
SS Brigadier General

Certified true copy.

[Signature] GOETZ
Attorney

TABLE OF FARMS AND ESTATES REGISTERED AND SEIZED BY THE CENTRAL LAND OFFICE IN THE EASTERN TERRITORIES, BROKEN DOWN BY NUMBER AND AREA, PUBLISHED BY THE STAFF MAIN OFFICE, RKFDV

Chart No. 5

THE FARMS AND ESTATES REGISTERED AND SEIZED BY THE CENTRAL LAND OFFICE IN THE EASTERN TERRITORIES, BROKEN DOWN BY NUMBER AND AREA

[1 hectare 2.47 acres]

Gau	By questionnaire			Break-down of the area to be registered			
	Total area hectares	To be registered hectares	Not to be registered— Area, hectares ¹	Area not to be registered, hectares ²	Area to be registered		
					Total	Polish and Jewish private property, hectares	Polish State property, hectares
Danzig—W. Pr...	2,124,961	2,018,713	106,248	541,201	1,477,512	1,123,802	353,710
Wartheland	4,392,150	4,172,542	219,608	845,350	3,327,192	3,167,781	159,411
East Prussia	1,641,781	1,559,692	82,089	111,639	1,448,053	1,272,071	175,982
Silesia	1,061,517	1,009,751	51,766	379,691	630,060	492,345	137,715
Total	9,220,409	8,760,698	459,711	1,877,881	6,882,817	6,055,999	826,818

Gau	Registered area and farms			Sequestered area and farms			Confiscated area and farms		
	Area in hectares	Percent of the total area	Number of farms, percent estate	Total area hectares	Percent of area to be sequestered	Number of farms and estates	Average area in hectares	Total area in hectares	Number of farms and estates
Danzig	2,019,233	95.0	127,581	1,439,215	97.4	91,113	15.8	20,080	53
Wartheland	3,960,937	90.2	399,882	2,675,640	80.4	287,967	9.3	17,379	45
East Prussia	1,638,967	99.8	139,071	1,198,709	82.8	116,986	10.2	7,877	112
Silesia	1,025,563	96.6	261,927	536,423	85.1	130,576	4.1	14,160	106
Total	8,644,700	93.8	928,461	5,849,987	85.0	626,642	9.3	59,496	316

¹ Non-agrarian urban real estate has been estimated with 5 percent of the total area.

² Property of ethnic Germans, State, Church, public bodies, foreigners, etc.

3. SELECTIONS FROM THE ARGUMENTS OF THE DEFENSE

*EXTRACTS FROM THE CLOSING STATEMENT FOR DEFENDANT GREIFELT*¹

Spoliation (Subsection 20 of the indictment)²

1. Facts

The indictment charges the defendants of the Staff Main Office, especially Greifelt, with special responsibility for the spoliation of private and public property. The indictment classifies as spoliation mainly the use of property belonging to other people for the purpose of the carrying out of the resettlement.

The following dates are of importance with regard to this problem:

a. 7 October 1939—Appointment of Himmler to Reich Commissioner,

b. Second half of the month of October 1939—Start of the organization of the office Greifelt which was able to operate until the beginning of 1940.

Schedule of confiscations

29 September 1939	Decree concerning the appointment of <i>preliminary</i> managers. ³
5 October 1939	Seizure of property by <i>military</i> occupation.
12 October 1939	Goering commissions Dr. Winkler, the later director of the main trustee office "East" with the <i>general trusteeship administration</i> .
19 October 1939	Creation of the main trustee office "East" within the Four Year Plan.
15 January 1940	Decree about the administration of Polish <i>domains</i> .
20 January 1940	Appointment of a general administrator for the <i>forests</i> .
12 February 1940	Decree about the <i>public management</i> of plants of agriculture and forestry.
17 September 1940	<i>Decree about the property</i> of the Poles.

¹ Closing statement is recorded in mimeographed transcript, 16 February 1948, pp. 4872-4903.

² This part of the closing statement for Defendant Greifelt was not read into the record but was introduced in the form of a brief.

³ Order Gazette for the Occupied Territories No. 7/39.

This schedule shows clearly that the decisive steps for the seizure of Polish property were not taken by the RKFDV but by completely different authorities, and at a time before the office Greifelt had become active at all. Already on 29 September 1939 the decree concerning the appointment of preliminary managers was issued (1707-PS, *Pros. Ex. 590*) and on 5 October 1939 the order of the military authorities. Chaotic conditions were the result—the army, the agriculture, the local administration, the Party, and everyone who had an office or uniform interfered. Goering acted and tried to create order; he succeeded by appointing Winkler.

It was misleading to list the decree about the property of the Poles of 17 September 1940 (NO-4672, *Pros. Ex. 589*) in Volume XIV as first document, before listing the decrees concerning the expropriation measures which were issued before 17 September 1940. In order to give us a clear picture the volume would have to be supplemented by adding the above cited decrees and by listing them in the beginning; at least the decree of 19 October 1939 which is now listed in the index as the second document, would have to be transferred to the beginning. The Document 1707-PS, Prosecution Exhibit 590 which is listed in the document book as the third document, does not represent the decree of 19 October 1939. This decree is not contained in the document book at all, but only an announcement of Goering, dated 1 November 1939, about the establishment of the Main Trusteeship Office East. This announcement mentions the establishment of the Trustee Office East as a *fait accompli*. But the actual establishment had already taken place on 19 October 1939 on the basis of an order of the Four Year Plan. (NO-2676, *Pros. Ex. 592*.) In accordance with page 2 of Exhibit 590 seizures could, from that time on, only be ordered by the Main Trustee Office East “in agreement with the concerned chiefs of the administration”—the Reich Commissioner for the Strengthening of Germanism or the office Greifelt were not mentioned at all.

All this gives us the picture of a struggle for power within the occupied eastern territories; Himmler, after his initial success of 7 October 1939, suffered a serious set-back as a consequence of Goering's interference.

At the end of 1939 Himmler tried to reassert himself by starting negotiations with Winkler. At the end of November 1939 a confidential discussion took place between the two (*Tr. p. 1460*). Greifelt did not participate but waited in the antechamber without getting informed about the real purpose and the result of the conference. Greifelt only heard about the result through decrees of Himmler which were not issued by the Staff Main Office but

by the Reich Security Office. This is evident from the file numbers of the submitted documents. (NO-2676, *Pros. Ex. 592*; NO-4663, *Pros. Ex. 594*.) Again, the Staff Main Office did not have any decisive saying in such matters, let alone that it was the "driving power".

In the mentioned discussion Winkler conceded to Himmler that requisition of *agricultural* assets, in contrast to trade assets and municipal property ownership, be effected by the Reich Commissioner. But the administration and use of the agricultural assets as well, remained in the hands of the Main Trustee Office "East"; it was to be carried out only "in accordance with the instructions of the Reichskommissar" who, however, on his part, had to clear the matter with the Ministry of Food. (1707-PS, *Pros. Ex. 590*.)

Meanwhile, however, the third rival apart from Himmler and Goering, the Ministry of Agriculture under Darre, had not remained idle and had also been successful. This resulted in the regulations concerning the public management of agriculture and forestry, dated 12 February 1940. (*Greifelt 41, Greifelt Ex. 41*.)

The Ministry of the Interior appeared in the form of a further rival through its plan to initiate Reich claim to the Polish communal and administrative assets for the interior administration. Furthermore, it extended its endeavors to the procuring from the assets of the incorporated eastern regions, of compensations for those ethnic Germans who had suffered losses during the last few years under the Polish domination, on account of their being Germans. (*Greifelt 46, Greifelt Ex. 46*.)

All these requisitions were not intended to benefit the resettlers; they restricted the possibilities of their settlement. The resettlers' interests which were represented by Greifelt in accordance with his order, appeared as the last in the plan. One is reminded of the words of Friedrich Schiller: "Late; long after the partition had taken place * * *."

Even the bridge which Himmler built between himself and the Main Trustee Office "East" "in accordance with necessity, not out of personal desire", was manned with a guard against Greifelt, namely Galke, who had been named Generalreferent and liaison leader to the Main Trustee Office "East", directly by Himmler, without Greifelt having been asked. (NO-4664, *Pros. Ex. 595*.) The significance of Galke's position is immediately evident from next Document NO-3934, Prosecution Exhibit 596, which, in the same way as all other pertinent documents, bears a file number of the Reich Security Main Office. In Document NO-4682, Prosecution Exhibit 597, signed by Winkler, Greifelt is again not mentioned at all.

Without any connection, the prosecution proceeds to introduce

a Document NO-4221, dated 1943, as Prosecution Exhibit 599 which concerns the resettlement events in the region of Laibach. This individual problem should have been treated as such.

Greifelt's task to look after the interests of the settlers naturally caused him to be opposed to the wishes and desires of the Germans of the Old Reich who wanted to move to eastern provinces because they hoped for more favorable chances of bettering their living conditions. Trusteeships always have an allure but not always to suitable trustees. In his office Greifelt coined the nickname "land hunters" for such people. (*Tr. p. 1474.*) Above all, however, the Wehrmacht was a dangerous rival which threatened the interests of the settler. The town of Gdynia was entirely evacuated since it was a war harbor. The intended accommodation of Baltic resettlers became impossible through the military measures; on the contrary, the space necessitated for the resettlers was further limited as a result of this military requisition (*NO-4613, Pros. Ex. 290.*)

Only if all these conflicting interests are considered, can the regulation concerning Polish assets of 17 September 1940 be understood, which affected the Ministerial Council for the Reich defense as well as the Four Year Plan; that is to say, the highest authorities in comparison with whom Greifelt was just a small man.

This directive regulated the pertinency of the Main Trustee Office "East" and the RKFDV. The jurisdiction of this office was restricted to agricultural property. The requisitioning of Polish assets was effected for the benefit of the Reich; that is to say, this requisitioning to the benefit of the Reich, which as mentioned above had been carried out for a long time, was legislated. The Reich became obligated to compensate the requisitioning. At first the RKFDV was commissioned with an independent authority function in the execution of the requisitions which, however, were merely of a declaratory nature.

For the purpose of internal official use the "internal directives" were issued on 15 April 1941 at Himmler's express instructions and they were signed by Greifelt. (*R-92, Pros. Ex. 600.*)

A study of these internal directives, which comprise 24 pages of the document book, discloses that this represents a detailed job drawn up by the jurists, many of whom have appeared as witnesses before the Tribunal. It was clear to the authors of these directives that in practice the confiscation was only a restraint upon the disposition of property, a "preparation for possible subsequent requisition of the property," and that this restraint covering agricultural property was already in effect as a result of other regulations, in particular the decree dated

12 February 1940. (*Greifelt 41, Greifelt Ex. 41.*) The jurists under Greifelt further emphasized the agreement with the foreign office and the commissioner for enemy property with respect to all property which belonged to those people who held other citizenship in addition to their Polish citizenship. (*NO-2561, Pros. Ex. 608.*) Naturally, Greifelt's jurists were familiar with the expert views of the foreign office, which I shall discuss later. (*NO-5049, Pros. Ex. 198; Meyer-Hetling 52, Meyer-Hetling Ex. 52.*) Therefore, Greifelt did not collaborate to such an extent that this resulted in the confiscation of Polish property, but rather was faced with acts which had already been consummated and could only exercise very modest, advisory influence to the effect that the property which was at the disposal of the Reich by virtue of decision of the highest offices of the German government was not claimed directly for the conduct of the war or for the satisfaction of private industrial interests, but to at least a small extent benefited the resettlers who were streaming in from foreign countries, in other words, foreigners according to the sense of the indictment. The struggle with which he was faced in this connection is illustrated by the prosecution documents, namely, Document NO-3203, Prosecution Exhibit 619, document book 14-b, and, above all, by his letter to Himmler, Document NO-2601, Prosecution Exhibit 606, document book 14-a. In this letter he opposes the attitude of Goering that "the property falling to the Reich in the conquered territories should first serve the financing of the war," and refers to the interests of the resettlements. (*Tr. pp. 1473-74.*)

Moreover, the activity of Greifelt in his capacity as administrative chief was necessarily limited to giving free reign in the implementation of their duties to the circle of special advisers, for the most part professional legal men, who were subordinate to him, since everything as described above, was regulated by law. He himself adhered strictly to the orders and laws and constrained his subordinates to do likewise.

* * * * *

The sharp division between industrial property (the Main Trustee Office "East" had the exclusive right of disposal over this property) and agricultural property was decisive for the practical implementation of the resettler's property settlement and the claim upon the property confiscated by the Reich. The RKFDV exercised right of disposal only over agricultural property on the basis of the Polish Property Decree.

As far as the *industrial* sector was concerned, Greifelt and the Staff Main Office were active only in a supervisory capacity in the implementation of the property settlement (*Tr. p. 1912*).

The practical execution was the responsibility of the Main Trustee Office "East" acting for the Reich as seller; the interests of the resettlers as potential owners were represented by the German Resettlement Trustee Company. If a purchase was decided upon, the contract was concluded between the Main Trustee Office "East" and the resettler. (*Tr. p. 1756.*) The German Resettlement Trustee Company acted, so to speak, as a broker. (*Tr. p. 1809.*) Neither the resettler nor the German Resettlement Trustee Company had anything to do with the former Polish owner.

4. SELECTIONS FROM THE EVIDENCE OF THE DEFENSE

EXTRACT FROM THE TESTIMONY OF DEFENDANT MEYER-HETLING*

DIRECT EXAMINATION

* * * * *

DR. BEHLING (Counsel for defendant Meyer-Hetling): What tasks did the Central Land Office handle at the time when you directed it, that is to say, when it belonged to the Main Department of Planning and Land?

DEFENDANT MEYER-HETLING: The only activity was registration, until the end of 1941—90 to 95 percent of the enterprises had been registered. The Central Land Office worked simultaneously on behalf of the Reich Statistical Office, and it had the closest contact with that statistical office after that time.

Q. I now submit to you a document presented by the prosecution, NO-3078, Exhibit 21, in Document Book 2-B, on page 5, according to which document, the Central Land Office had to take care of the functions of the Reich Office for Land Procurement. Please explain your attitude in this connection.

A. As already testified to by the witness Golling, in no single instance was any use made of this authorization. I cannot remember that anything was done as a result of this, and especially so since the prosecution was unable to present any proof about this.

Q. Did you ever confiscate any land for purposes of resettlement? Did you ever seize or confiscate land?

A. The question of land procurement for the task of the final settlement of resettlers was only to be taken care of after the war had ended. I know of no single instance in which land was confiscated for purposes of resettlement by the Central Land Office or by any of its subordinate agencies.

* Complete testimony is recorded in mimeographed transcript, 9-11 December 1947, pp. 2201-2289.

Q. Did the Central Land Office deal with material agrarian law?

A. Since the Central Land Office had no power of decision in relation to agrarian law, the legal questions were not part of its competence.

Q. As chief of the land office, or later, as office [Amt] group chief, did you have authority to issue directives concerning the property registered by the Central Land Office?

A. As far as Himmler had not claimed or reserved this right for himself, this authority to issue directives was solely in the hands of the Agricultural Department.

Q. Was the competent person in the agricultural department, Dr. Hiege, the man who later took over the direction of the Central Land Office?

A. Yes, the same.

Q. What functions did the Central Land Office have to fulfill after the regulations about Polish property had been issued?

A. Also functions were only of a formal nature. First of all, we had to take over the property which had already been confiscated by the global confiscation order; we had to take it over from the various other agencies and register it uniformly. That was the so-called registration activity of the Central Land Office. Moreover, the Central Land Office confirmed the sequestrations that had been made by a newly pronounced individual confiscation decree.

Q. Did this process have any legal effect?

A. No. It was only a declaratory act.

Q. What rights were retained by the owners of this property that had been confiscated?

A. The real estate, as such, had already been confiscated by the previously issued regulations of the Supreme Commander of the Army and the chief of the civil administration, and it remained blocked by the regulation concerning Polish property. The owners had the right—as they had had before—to dispose of the accessories property, that is to say, movable capital, tools and equipment, and products, within the framework in an orderly economy.

Q. Did additional regulations come into effect as a result of the seizure activity of the Central Land Office?

A. No. They did not come into effect.

Q. A further task of the Central Land Office was the organizational plan for the treatment of legal questions.

I will repeat my question: A further task of the Central Land Office as laid down in the organizational plan was the treatment of legal problems which arose from changes in properties. How about that problem?

A. The regulations concerning Polish property provided for the possibility of confiscation. According to the internal directives, however, Himmler had reserved that right for himself personally, as Reich Commissioner. The Central Land Office was only the executive organ and had only to take care of the registration and land title functions.

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS
SIEGFRIED GOLLING*

DIRECT EXAMINATION

* * * * *

DR. VON DER TRENCK (Counsel for defendant Greifelt): Thank you. Were farms given to resettlers outright?

WITNESS GOLLING: No.

Q. So far as other farms were concerned, were agricultural enterprises handed outright to resettlers in the Incorporated Eastern Territories?

A. Yes. There have been quite a number of cases.

Q. I believe that the translation was not quite correct just now. The word "resettler" was mentioned in the translation, but in this case it is a question of handing over agricultural property to people who are not resettlers. When was property so handed over to people?

A. First of all, we have to eliminate a group of cases in which the Reich Governors, during the first period when they were chiefs of the civilian administration, and had decisive authority, had handed over properties. Then, there are some cases which we can summarize by calling them donations.

I remember the case of Guderian and the case of Daluege. In these cases, Hitler had presented these gentlemen with an estate which we had to give to them, and for which we were paid by Hitler.

Q. How many cases do you think there were taken over altogether?

A. So far as genuine donations are concerned, I remember only these two cases.

Q. In what other cases was land transferred to a larger extent?

A. There were some cases, for instance, on Hitler's orders, where the former owner of an estate in Mecklenburg had to be taken care of by us. Hitler personally had bought his estate, and we were instructed to sell him another estate in place of it. Then

* Complete testimony is recorded in mimeographed transcript, 4 December 1947, pp. 1902-1961.

there were transfers of property, in some cases, for reasons of military necessity.

Q. What do you mean by that?

A. For instance, the areas of a number of troop-training grounds.

Q. How large were the areas taken altogether, and how many troop-training grounds were involved?

A. I can name six large troop-training grounds, apart from smaller drill grounds and airdromes. The training grounds were the grounds Iser in Upper Silesia—

Q. I think we can dispense with the enumeration. They are all grounds in upper Silesia and in the Incorporated Eastern Territory, aren't there?

A. Yes, but the total area of these training grounds comes to about 300,000 hectares.

Q. Were appropriations carried out with this aim also in the remaining Reich territory?

A. In the Reich area very extensive work was carried out by the Reich Resettlement Company, which had been established in 1935 for this purpose. Similar training grounds had been established in various localities.

Q. The Ministry had the possibility to oppose giving land for these purposes?

A. There could have been no question of that.

Q. Apart from the cases just mentioned by you, that is, the donation, the troop-training grounds and, I believe, you mentioned other transfers necessary for military purposes, was any other property given away in the Incorporated Eastern Territories?

A. No.

Q. I must correct myself—rural property.

A. Yes, of course.

Q. Did the Reich Commissioner receive anything in return for these transfers?

A. We got nothing in return for the troop-training grounds. As for the rest, the money was transferred to our account.

Q. In what form did it exist, and how was it administered?

A. It was simply the account of our finance department.

Q. Did it bear a special name?

A. Yes. It was called, "Land Transfer Account".

Q. Is it correct that in this account smaller payments were also received, and for what reason?

A. Yes. It is correct. The payments were paid into this account by people who could not buy farms just now, and who for some reason or other had to lease the farms. In order to clarify the question of ownership, we had to clarify the question of land

books first of all, and this created great difficulties, and in such cases we had to operate with provisional lease payments.

Q. Excuse me, you said previously that rural property was not transferred. This case must refer to a special group of cases which you will have to explain to us?

A. I had mentioned gravel pits as an example. I said previously that these gravel pits for road-building purposes were necessary for the war effort, within this framework.

Q. What we are concerned with now are smaller rural areas which were to be utilized for industrial purposes?

A. Yes, this happened.

Q. And the payments into the accounts were made for such purpose?

A. Yes.

Q. Thank you. Did the Staff Main Office reject any attempts to acquire land and property in the East through the Reich Commissioner and did it succeed in this effort?

A. Many people approached us as they desired to acquire land and property, partly with the support of the most influential personages. My department chief, Hieke, spent a lot of time, in order to reject these requests. He often succeeded by spending days of work on them, to refuse these requests.

Q. Can you name a single case?

A. Yes, for instance, the ministerial director or state secretary Guett, who had a promise from Hitler, and in spite of that we succeeded in long negotiations, to refuse this request.

Q. On the basis of the Foundation Decree of 7 October 1939 for the provision of land and property for resettlers, did the Reich Commissioner have the possibility of providing land and property for the armed forces?

A. Yes. According to this decree, this law was applicable as far as we were concerned.

Q. Was it applied in practice by you?

A. We could not apply it because in the meantime the Four Year Plan had made plans for the issuance of the Polish Property Decree of 17 September 1940. I had drafted plans in the sense of the old Expropriation Law of 1935. However, attorney Goetz at that time as head of the legal department, pointed out that the Main Trustee Office demanded the proper regulation of the Polish Property Decree.

There was to be no division of the field of work of the Main Trustee Office and of agriculture. Legally, these things had to be settled in the same way, and for this reason, paragraph 12 of this Polish Property Decree was created, which defined the competency of the Reich Commissioner with regard to confiscation.

TRANSLATION OF MEYER-HETLING DOCUMENT 85
MEYER-HETLING DEFENSE EXHIBIT 85

AFFIDAVIT OF WALTER GERLACH, 3 NOVEMBER 1947, CONCERNING
MEYER-HETLING'S ACTIVITIES

Affidavit

I, Walter Gerlach, born at Gusow, District Lebus, 25 August 1896, at present in the Court Prison at Nuernberg, have been duly warned that I make myself liable to punishment if I make a false affidavit. I declare under oath that my statement is true and was made in order to be submitted as evidence to Military Tribunal No. I in the Palace of Justice at Nuernberg, Germany.

In the period from 1939 to 1944, I was staff leader of the office of the Deputy of the Reich Commissioner for Strengthening of Germanism in Koenigsberg. Among others, the land office of Zichenau came under my official supervision. Its duty was to register all real estate owned by Poles in my sphere of duty and to draw up a sort of inventory of real estate for a settlement planned for after the war.

The land office Zichenau was not established until the summer of 1940 and at the time of the events mentioned below was subordinate to SS 1st Lieutenant Risch. Before the registration work of the land office began and before Provincial President Koch was appointed Deputy of the Reich Commissioner for Strengthening of Germanism, on his own authority Koch had already confiscated and taken into his possession several Polish estates for purposes of the self-administration of the district and for the so-called Erich Koch Foundation. In spite of objections on the part of the Staff Main Office, (Central Land Office), Koch continued his arbitrary actions even after his appointment as deputy, so that the position of the land office Zichenau became more and more difficult.

In 1941 or 1942, Prof. Meyer-Hetling and I visited Koch personally in Koenigsberg in order to dissuade him from his arbitrary actions and to induce him in the future not to carry out any further wild confiscations. Koch promised everything.

On the occasion of a later visit by Prof. Meyer-Hetling in Zichenau, the land office director again objected to Koch's behavior. Above all, it was a matter of the orders pertaining to the estate Krasne, where Koch himself was temporarily living. On the personal order of Koch, land belonging to Polish peasants was simply incorporated into the economy of the estate. Prof. Meyer-Hetling immediately went with me to Krasne in order to ascertain the facts on the spot. This establishing of the illegal activity

of Koch became, as I learned later, the basis of a complaint to Himmler on the part of the Berlin office. Prof. Meyer-Hetling took the initiative in this case.

I have cited the dates from memory and they are not unqualifiedly binding.

[Signature] WALTER GERLACH

Nuernberg, 3 November 1947

TRANSLATION OF MEYER-HETLING DOCUMENT 83
MEYER-HETLING DEFENSE EXHIBIT 83

AFFIDAVIT OF HEINZ FIEDLER, 22 OCTOBER 1947, CONCERNING THE
AUTHORITY OF THE CENTRAL LAND OFFICE

Affidavit

I, Heinz Fiedler L.L.D., born on 30 January 1909 at Poznan, residing at Frankfurt-Main, Letzter Hasenpfad 17, have been duly warned that I make myself liable to punishment by making a false affidavit. I declare under oath that my affidavit is true and has been made in order to be submitted in evidence before the Military Tribunal No. I, at the Palace of Justice, Nuernberg, Germany.

I was active from February 1940 until February 1942 at the Central Land Office as chief of the subdepartment for "legal affairs". The Central Land Office was at the time of my activity merely an office for registration and land registration which had to give at any time information concerning the land available for settlement purposes and which had to collect data pertaining to economy of management registration and land registration. In this respect it had to note also the dates of requisitionings and confiscations according to the decree for the treatment of Polish properties concerning the agricultural properties. In connection with this activity, the Central Land Office participated by way of advice and directives in the practical execution of the requisition and confiscation measures according to the above-mentioned decree; in doubtful cases it took part also in decisions.

According to my recollection, the Central Land Office did not possess independent authority of disposal regarding agricultural real estate during my time of activity. According to my knowledge, individual property transfers in the annexed Eastern territories were carried out only since 1941. Altogether it might have amounted to a few thousand of hectares. The data for such formal property transfers had to be procured partly by the Central Land

Office and partly by Amt IV. The chief of the Main Office had reserved for himself the right for all transfers of properties. The chief of the Main Office granted about 1942 to the Central Land Office the general authorization to dispose to a limited extent over individual furniture and household items.

During the time when Professor Meyer was the Chief of the Central Land Office and also in his capacity as Chief of the Amtsgruppe, he always was interested in its sphere of activity and represented its interests. I remember for instance that among other things, he protested in official conferences against arbitrary requisitions of real estate especially by the district offices.

[Signed] DR. HEINZ FIEDLER

Frankfurt–Main, 22 October 1947

D. Kidnaping of Children of Foreign Nationality

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Hildebrandt, Hofmann, Sollmann, Ebner, Tesch, Viermetz, Lorenz, and Brueckner were charged with special responsibility for and participation in criminal conduct involving kidnaping of children of foreign nationality (*indictment, count one, par. 11; count two, pars. 24 and 25*). On this charge the defendants Greifelt, Creutz, Lorenz, Brueckner, Hofmann, Hildebrandt, and Schwalm were convicted, and the defendants Meyer-Hetling, Schwarzenberger, Huebner, Sollmann, Ebner, Tesch, and Viermetz were acquitted.

The selection of arguments and evidence concerning the kidnaping of children has been divided into five parts: The program, pages 990 to 993; Polish children, pages 993 to 1028; Czech children, pages 1028 to 1052; Yugoslav children, pages 1053 to 1073; and general arguments of the prosecution and defense, pages 1073 to 1076.

Argument of the prosecution concerning the general program for the kidnaping of children of foreign nationality and the principles applied by German authorities during the war is contained in the opening statement, pages 621 to 693.

2. THE PROGRAM

a. Selections from the Evidence of the Prosecution

PARTIAL TRANSLATION OF DOCUMENT L-70 PROSECUTION EXHIBIT 384

EXTRACTS FROM A SPEECH BY THE REICH LEADER SS HIMMLER AT BAD SCHACHEN ON 14 OCTOBER 1943

* * * * *

* * * I consider that in dealing with members of a foreign country, especially some Slav nationality, we must not start from German points of view and we must not endow these people with decent German thoughts and logical conclusions of which they are not capable, but we must take them as they really are.

Obviously in such a mixture of peoples there will always be some racially good types. Therefore I think that it is our duty to take their children with us, to remove them from their environment, if necessary by robbing or stealing them * * *. Either we win over any good blood that we can use for ourselves and give it a place in our people or * * * we destroy this blood.

* * * * *

For us the end of the war will mean an open road to the East, the creation of the Germanic Reich in this way or that * * * the fetching home of 30 million human beings, of our blood, so that still during our lifetime we shall be a people of 120 million Germanic souls. That means that we shall be the sole decisive power in Europe. That means that we shall then be able to tackle the peace, during which we shall be willing for the first twenty years to rebuild and spread out our villages and towns, and that we shall push the borders of our German race 500 kilometers further out to the East.

EXTRACT FROM THE TESTIMONY OF PROSECUTION WITNESS LAVITAN*

* * * * *

DIRECT EXAMINATION

MR. NEELY: Witness, would you please state your name and your profession?

WITNESS LAVITAN: Louis Lavitan; my profession is public welfare administration.

* Complete testimony is recorded in mimeographed transcript, 2 February 1948, pp. 4759-4763.

Q. And what is your present position today?

A. I am at present director for the U.S. Zone of the IRO [International Refugee Organization], Tracing, Child Search Branch.

Q. And in your work, in connection with child search, what offices, what German agencies has it come to your attention that were involved with the taking of these children; and will you please state where this information came from?

A. In the course of the past year and a half the Tracing, Child Search Branch has discovered certain documents and has heard statements by little children, by certain German foster parents, and by neighbors of such foster parents, which have disclosed to us about seven German organizations which in one way or another have been connected with the selection, the training, the institutionalization—

PRESIDING JUDGE WYATT: Witness, the only thing that the Tribunal is interested in now is what you know about the number of children that came in through Lebensborn, that is all.

MR. NEELY: Your Honor—

JUDGE O'CONNELL: I have been refreshing my mind by looking at such notes as I have made, and my recollection and the notes that I have before me is that it has been testified that 167 children were brought into Lebensborn. Isn't the issue in rebuttal whether that is correct or whether there was more or less?

MR. NEELY: Witness, I only have one question to ask you. How many children of foreign nationality have been located by your department, and of this number, how many were children who were under the custody at a former time of Lebensborn?

WITNESS LAVITAN: A few less than ten thousand children have been located by us, and have either been repatriated or are in stages of repatriation. Of these, we have complete evidence on exactly 340 as having been in the hands of Lebensborn at one time or another.

Q. Now, I would like to ask you in this connection: You are speaking only of the American Zone of Germany; is that correct?

A. I am speaking only of the U.S. Zone of Germany.

b. Selections from the Argumentation of the Defense

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT SOLLMANN **

* * * * *

The jurisdiction of the Lebensborn in no way lies within the

* Closing statement is recorded in mimeographed transcript, 18 February 1948, pp. 5176-5205.

scope of the SS, still less is it correct to say that with reference to children the Lebensborn was the deciding authority for all measures taken by the SS. However, it seems necessary to discuss briefly the question whether the SS had a *program* with regard to foreign children, and if so, what it was. For this purpose I should like to pick out a few documents of entirely different character.

On 11 July 1941, that is, immediately after the beginning of the war with Russia, Himmler issued an order to take care of German ethnic children in Russia. (NO-4274, *Pros. Ex. 442.*) It would certainly be an unfounded suspicion if behind this order one should try to scent the starting of a program for a crime of kidnaping children. Even from a hostile nationalistic point of view it ought not to be regarded as a criminal action to take care of children of one's own nationality in a hostile country without going into any considerations of citizenship in advance. One year later, on 19 July 1942, a report was written from the Central Russian territory concerning a secret *experiment* which the Sonderkommando Pflaum had carried out in Bobruisk and the object of which was the selection of 30 children. (NO-3727, *Pros. Ex. 443.*) We can readily suppose that this was a Germanization experiment which was carried out with Russian children and can readily state that this went beyond the bounds of what can be defended. The fact that this was an *experiment*, in which, moreover, the Lebensborn in no way participated, is again insufficient, however, to justify the suspicion of a criminal program of kidnaping children. (NO-2218, *Pros. Ex. 447.*)

In a letter from Himmler of 20 May 1944 he says (NO-2218, *Pros. Ex. 447*): "I consider it very important that the orphans, in the entire Balkan areas be collected by our divisional commanders. We are Germans and cannot look on while innocent children belonging to a nation which is in itself decent and fine are neglected and perish due to unfavorable circumstances. I have endowed scholarships for these poor orphans in schools and will even establish special schools for them, so that later, when order and stability are restored, they will be given back to the Croatian State as decent men and women and desirable citizens." Himmler looks out for foreign orphans in the Balkans. One can perhaps say: Of course Himmler did not have any humane motives and intentions in doing this, he was planning to kidnap these children. There is only one thing to be said against this, namely, that at that time it was by no means necessary for Himmler to camouflage his intentions of kidnaping foreign children through humane remarks. Once again it must be mentioned in connection with this that the Lebensborn was completely ignorant of this matter too

and in no way involved in it, which indeed even the prosecution has not claimed.

Therefore, it would doubtless be a pure construction to try to reduce the subject "foreign children and the SS" to *one* common denominator and say: In this field, too, all the thoughts and actions of the SS agencies were dominated by exaggerated and overlapping ideas of blood and race, by ideas which finally degenerated to a criminal covetousness of children of foreign nationality. However, instead of seeing Himmler's ideas and notions as part of a criminal program one could put them on a scale which shows the following notations: (1) humane solicitude for children of foreign nationality, (2) a solicitous interest based on nationalistic motives in ethnic German children far from their homeland, (3) nationalistic tendencies, and finally, (4) romantic ideas about the value of German blood, which then degenerated in wild plans and actions. However, it is quite certain that the *Lebensborn* was never in any way involved in a criminal program. It set out upon its course guided by the most humane and natural idea which one can imagine, and remained true to this idea, which constituted its highest law and program, as long as it existed—the idea of chivalrous protection for the expectant mother and loving care for her child.

* * * * *

3. POLISH CHILDREN

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-3074
PROSECUTION EXHIBIT 406

LETTER FROM CREUTZ TO THE REICH GOVERNOR OF THE WARTHE-
LAND, 12 AUGUST 1941, CONCERNING THE GERMANIZATION OF
POLISH CHILDREN

Copy

I-3/4-7/14 July 1941/Dr.Ko/Mq

12 August 1941

Subject: Germanization of children from former Polish orphan-
ages or from Polish families.

Reference: Your letter of 14 July 1941—Diary No. 626/41 Ko/Au
To the Reich Governor of the Reichgau Wartheland

Deputy of the Reich Commissioner for Strengthening of Ger-
manism

Poznan

Kaiserring 13.

There are a great number of children in former Polish orphan-

ages who on account of their racial characteristics must be considered to be children of Nordic parents. These children are to be returned to Germandom and therefore must be subjected to a racial and psychological selection procedure. Children found to be biologically valuable for Germandom are to be Germanized.

Therefore the Reich Governor (Gau self-administration) assembled some time ago for the time being about 300 children from former Polish orphanages in a camp in the Warthegau. According to information received from the competent official of the Reich Ministry of the Interior these children are supposed to have already been subjected to that examination procedure. The Reich Leader SS ordered, according to your letter of 14 July 1941, on the occasion of his last inspection tour in the Warthegau, to educate children of Polish families who show especially good racial qualifications in children's homes with the aim to Germanize them later. For the time being 2 to 3 children's homes are to be set up in the Warthegau.

I presume that this order of the Reich Leader SS refers to children of good racial qualities in the Warthegau who are in Polish orphanages.

In case this order of the Reich Leader SS should also refer to children with good racial qualities whose Polish parents are still alive, I wish already now to mention the great difficulties which would result from this action. Therefore I request you to state your opinion on this subject.

At the same time I ask you to intervene on my behalf in the action of the Reich Governor (Gau self-administration) by referring to the 300 children from former Polish orphanages assembled by the Reich Governor (Gau self-administration) in the Warthegau. I beg to examine especially, whether the racial and psychological selection procedure has exclusively been carried out by the SS Race and Settlement Main Office or its branch department Lodz. In case this examination procedure was carried out by another office than the one mentioned by me, I beg you to take over these matters immediately together with the branch department of the SS Race and Settlement Main Office in Lodz.

Furthermore I would appreciate information as to how many children are in former Polish orphanages and how many of them would probably be suitable for Germanization.

Your earliest reaction to above problem is greatly appreciated.

By order:

[Signed] CREUTZ
SS Colonel

TRANSLATION OF DOCUMENT NO-1615
PROSECUTION EXHIBIT 407

CIRCULAR SIGNED BY GREIFELT, 19 FEBRUARY 1942, CONCERNING
THE GERMANIZATION OF POLISH CHILDREN

The Reich Commissioner for the Strengthening of Germanism
Staff Main Office

Reference Number: 1-2/4-7/5 Mar 40 — Dr.Ko/Mq.

Berlin-Halensee, 19 February 1942
Kurfuerstendamm 140

[Stamp]

Personal staff Reich Leader SS
Central Archives
File NoA R/.....

Distribution

* * * * *

Regulation No. 67/I

Addressed according to special distribution key.

Subject: Germanization of children from Polish families and
from former Polish orphanages.

There is a great number of children staying at former Polish orphanages and with Polish foster parents, who must be regarded as children of nordic descent, on account of their outward appearance. Investigations have shown that all orphans who descended from ethnic German parents were in the past systematically taken by the Poles to Polish orphanages, as "foundlings", or to Polish foster parents. The children were given Polish names. Documents regarding the children's descent are nowhere available.

In order to be able to regain for German folkdom those children whose racial appearance indicates nordic parents, it is necessary that the children who are in former Polish orphanages and with Polish foster parents are subjected to a racial and psychological process of selection. These children, who are considered to be racially valuable to German folkdom, shall be Germanized.

The children, who are considered suitable for Germanization on the strength of the racial and psychological process of selection, will therefore, at the age of 6 to 12 years, be sent to German home schools; children belonging to the age group 2 to 6 years old will be boarded with families to be designated by the Lebensborn.

In agreement with the agencies concerned I am giving the following instruction for the execution of this regulation:

I

1. The Youth Offices of the Reich Gau Wartheland will register children living in former Polish orphanages and with Polish foster parents and report them to the Reich Governor of the Reich Gau Wartheland (Gau self-administration).

2. The Reich Governor of the Reich Gau Wartheland (Gau self-administration) will report the registered children to the Race and Settlement Main Office, Field Office Lodz.

3. In order to determine whether these children are suitable for Germanization, they will be racially examined by the Race and Settlement Main Office, Lodz.

4. Those children, who are racially examined by the Race and Settlement Main Office and described as suitable for Germanization, have to be examined thoroughly as to their state of health (a health record for each child, the Wassermann test, X-rays, tuberculin test, thorough delousing of the children, etc.).

5. The results of the examinations of children considered suitable for Germanization on the strength of the present selective system have to be communicated to the Reich Governor of the Reich Gau Wartheland (Gau self-administration).

6. The Reich Governor (Gau self-administration) at Poznan will transfer the children, whose names were given to him, to the Gau Children's Home at Brockau (Gostingen district).

7. At the Gau Children's Home at Brockau the children will be given psychological tests by Dr. Hildegard Hetzer (NSDAP, Reich Leadership Main Office for Public Welfare). Furthermore the head of the Gau Children's Home will, after consultation with the nursing personnel, make a character analysis of each child. The children will stay at Brockau for about six weeks.

8. After the examination at Brockau is finished, the Reich Governor of the Reich Gau Wartheland (Gau self-administration) will turn over the results of the examinations of the children at the Gau Children's Home, to my representative at Poznan.

9. On the strength of all available examination material the Reich Governor of the Reich Gau Wartheland, Plenipotentiary of the Commissioner for the Strengthening of Germanism will decide which child shall be subjected to the process of Germanization. In any doubtful cases, I request my representative at Poznan to contact the two receiving agencies for the children (Lebensborn and the Inspector of the German home schools).

II

1. My representative will report the children from 2 to 6 years, who have been considered suitable for Germanization, to the Lebensborn. The Lebensborn transfers the children at first to one

of its own children's homes. Subsequently the Lebensborn will see to it that the children are placed in childless families of SS members, with the purpose of a later adoption. The guardianship for these children transferred to the children's home of the Lebensborn is taken over by the Lebensborn.

2. My representative at Poznan will report all children from 6 to 12 years of age who have been considered suitable for Germanization, to the inspector of the German home schools. The inspector of the German home schools will accommodate these children in special home schools, which answer the children's needs. Those children, who leave the German home schools with positive results, are to be lodged in rural homes of Germany proper.

3. Even before these children are granted German citizenship they are to be treated like German children.

4. At first all those children, who were staying in former Polish orphanages, are processed and provided with homes. After this action is finished those children are examined, who were living with Polish foster parents. In order to avoid any alarm on the part of the Polish foster parents, they have expressly to be told that the children will be given free places at school, respectively they will be accommodated in convalescent homes.

5. The foster children must *not* be taken away from families, if the latter are suitable for Germanization.

6. Foster children and own children of families suitable for Germanization can, upon application of the head of the family, be admitted to the German home schools.

III

1. On the strength of the preparatory work performed so far, children will be at the disposal of the Lebensborn and the inspector of the German home schools for the first time on 1 April 1942.

2. I request the Lebensborn and the inspector of the German home schools to send to me comprehensive reports (for the first time on 1 September 1942) concerning the accommodations and conduct of the children under their care.

3. Special attention is to be given that the expression "Polish children suitable for Germanization" may not reach the public to the detriment of the children. The children are rather to be designated as German orphans from the regained Eastern territories.

IV

1. I ask the Reich Minister of the Interior to take care of all

costs within the frame of public welfare, in as far as they don't arise from the care of the children at the German home schools.

2. The costs for the children to be accommodated at the German home schools will be carried by our agency until instructions to the contrary are issued.

The Chief of the Stabshauptamt
[Signed] GREIFELT
SS Major General

Certified copy

TRANSLATION OF DOCUMENT NO-2793
PROSECUTION EXHIBIT 414

MEMORANDUM OF THE REICH MINISTRY OF THE INTERIOR,
10 DECEMBER 1942, CONCERNING REGISTRATION FOR GERMANI-
ZATION OF POLISH ORPHAN CHILDREN

[Handwritten]

To Referat I/40 for reasons of competency
For Referat I/52 a copy of this [?]
Of the resulting orders is requested.

18 December

The Reich Minister of the Interior
Pol. O-VuR. R III 3/35 /42

Berlin NW 7, 10 December 1942
Unter den Linden 74

Urgent

Confidential

Subject: Establishment of a special registration office at the children's home at Kalisz/Warthegau.

By order of the Reich Leader SS, the Lebensborn has been entrusted with the task of Germanizing the former Polish children from Polish orphanages. For that purpose, the children will be brought to the Gau Children's home at Kalisz/Warthegau; they will be examined there racially with a view to hereditary biology and psychologically; and in case of a positive decision on their eligibility for Germanization, they will be placed in Lebensborn homes.

It has been shown in the course of time that it must be expected that remaining Polish relatives and friends will attempt to find the location of the children. This can be done at any time through an inquiry at the local police registration office. That, however, would endanger the intended purpose, i.e., the Germani-

zation of the children. Difficulties in the education, which might be caused if the children should be influenced by their relatives, must be eliminated under any circumstances.

I, therefore, request that a separate police registration office be established for that home, to be known as "Police Registration Office II in Kalisz/Warthechau". Cooperation with the existing offices, especially with the residence registration office at Kalisz, is to be secured.

The head of the home is to be appointed the chief of the registration office. In his position as chief of a registration office, he is authorized to use a special official seal (Text: Police Registration Office at) [sic].

The activities of the new registration office in regard to residence registration is to be limited to the Polish orphans living in the home. The said registration office is not authorized to issue certificates of residency in accordance with section II, subparagraph 3, paragraph 1 of the 2d circular decree to the Reich Regulations of Registration (Ministerial Gazette, Interior Administration [MBliV.], page 689) of 10 April 1938.

For the personnel employed in the home, etc., the already existing local registration office at Kalisz will remain competent.

I request that you take all measures necessary for application of general police regulations concerning residence registration.

All expenses arising from this are to be charged to the community as expenses for local police administration.

This matter must be treated confidentially and is not to be published.

By order:

[Signed] BADER

A certified true copy.

To the Reich Governor of the Warthechau at Poznan

TRANSLATION OF DOCUMENT NO-1371
PROSECUTION EXHIBIT 425

LETTER FROM TESCH TO EBNER, 16 JULY 1943, REQUESTING EXPERT
OPINIONS ON GERMANIZED POLISH CHILDREN

Adoption Agency

Children from the East

To SS Senior Colonel, Dr. Ebner
Hermann Schmid Strasse 5

Dear Senior Colonel,

Enclosed I am forwarding to you the memorandum on a discussion with Oberregierungsrat Eckelberg from the Reich Ministry

of the Interior. Simultaneously I am submitting to you four cases which require the establishment of an expert opinion as provided for in the memorandum.

It concerns—

[handwritten] request from Nordrach (?)

1. the boy Klaus Peter Hermann Burckhardt (formerly Kazimierz Kedrolinski) who was allegedly born on 29 April 1937 in Lodz. The child can be, at best, only 4 or 5 years old according to statements of the child's foster parents, of Kolmar in Alsace, Kuerschnersrainstrasse 3. [This paragraph is crossed out.]

[handwritten] request from Heim Sonnenwiese immediately

2. the boy Hermann Luedeking (formerly Roman Roszatowski) who was allegedly born in Lodz on 21 January 1936. The marked passages in the letter from the foster mother Frau Maria Luedeking, residing at Lemgo/Lippe Pagenhelle 246, reveal apparently justified doubts as to the age of the child.

[handwritten] request from Nordrach (?) [shorthand notes]

3. the girl Helene Fischer (formerly Helene Fice) who allegedly was born in Poznan on 27 March 1935. The child's foster father, the administrative official at the school for ethnic Germans in Achern/Baden, Karl Ludwig Streidel informed me, during his visit at the office on 12 July 1943, that the girl must be much younger.

[shorthand notes]

4. the boy Sigmund Merkelbach (formerly Zygmunt Saradzinski) who allegedly was born in Lodz on 17 August 1936 and who since November 1942 has been in the care of the family of Franz Merkelbach residing in Koblenz-Karthause, Merodestrasse 4. According to the report of 23 September 1942 from the Home Hochland in Steinhoering, addressed to you, Colonel, the size and weight of the boy corresponded approximately to that of a child 4 to 5 years of age.

I would like to ask you, Colonel, to examine the cases mentioned here and to have the age of the children determined by a doctor's certificate.

[Signature] TESCH
SS Major

Munich, 16 July 1943
vB/Ca

TRANSLATION OF DOCUMENT NO-4899
PROSECUTION EXHIBIT 413

APPLICATION FROM HELENA STASZEWSKA TO THE YOUTH OFFICE,
LODZ, 22 JANUARY 1943, FOR RETURN OF HER GRANDCHILD

[handwritten]

To the Buergermeister in Lodz, Youth Office.

[stamp]

Town Administration Lodz
25 January VI913
Office 460

[handwritten]

Staszewska Helena, living in Lodz, Pfeifengasse 24.

Request re: file number 46 D 78

Herewith I would like to make the following request. My grandchild Helena Bukowiecka born on 29 June 1934 in Lodz was taken from me by the Youth Office. Herewith I would like to ask for the return of the child. I pledge myself to support the child, by refusing assistance entirely. The child was taken from me on 18 September 1942.

In expectation of consideration of the request, I would like to recommend the request for kind attention.

[signature] STASZEWSKA

[stamp]

The Oberbuergermeister
People's Welfare Office
Departm. Youth Office
Lodz

received: 28 1943

[Handwritten]

Lodz, 22 January 1943

TRANSLATION OF DOCUMENT NO-4903
PROSECUTION EXHIBIT 413

MEMORANDA OF 13 JULY 1943 AND 10 JANUARY 1944, REGARDING
DISPOSITION OF HELENA BUKOWIECKA

Order of 13 July 1943

[handwritten] 1. The answer to the D.R.R. has already been given.

2. Resubmitted as ordered (10 December 1943).

[handwritten] By order of:

File

[initial illegible]

Order of 10 January 1944

1. The minor Bukowiecka Helena is in Brockau since 22 September 1942.

She is now being cared for by the Lebensborn SS Munich.

The file B/78 has already been submitted to the Gau Youth Office.

2. Card registry office has been informed.
3. Put in the files.

By order of:

[signature] KUNNZ [?]

EXTRACT FROM THE TESTIMONY OF PROSECUTION WITNESS
PACZESNY*

DIRECT EXAMINATION

MR. NEELY: Witness, would you please state your name?

WITNESS PACZESNY: Slavomir Grodomski Paczesny.

Q. Where were you born?

A. In Lodz.

Q. When were you born?

A. 11 November 1931.

Q. Are your mother and father living today?

A. Yes, they are alive.

Q. In 1942 did a woman come to your home or your parents and take you to a Children's Home in Lodz?

A. Yes, in Kopernika Street.

Q. Do you remember the name of this woman who took you from your home?

A. No, I don't.

Q. Were your parents at this time financially able to support you?

A. Yes, they were.

Q. Had you been ill at this time; were you at this time?

A. No.

Q. Was your mother or your father ill at this time?

A. No.

Q. Where was this children's home where you were taken to located?

A. In Kopernika Street.

Q. That is in Lodz? Is that correct?

A. Yes, it is in Lodz.

* Complete testimony is recorded in mimeographed transcript, 6 November 1947, pp. 1141-1148.

Q. How many children were in this institution when you were taken there?

A. 40.

Q. Were you ever ill in the children's home?

A. No.

Q. Were you ever examined in Lodz?

A. Yes, I was.

Q. Were pictures taken of you?

A. Yes.

Q. Were these profile pictures?

A. It was in three positions.

Q. Did they examine and take down notes as to the color of your eyes and hair?

A. Yes, they did.

Q. Do you remember who examined you at the time?

A. Yes, Dr. Grohmann.

Q. Was anyone else with Dr. Grohmann at this time?

A. I do not remember.

Q. Did your father try to get you away from the children's home?

A. Yes, my father wanted to.

Q. What did they tell your father when he tried to take you from the children's home?

A. That I do not remember.

Q. Did your mother ever visit you while you were in the children's home in Lodz?

A. Yes.

Q. Did you get to talk to her while you were in the children's home?

A. Yes, I could, but through the fence.

Q. She could not come in and talk to you inside. Is that correct?

A. She couldn't; only on Sundays, when there was no supervisor.

Q. Then she came but was not allowed to come? She came when the supervisor was not there. Is that correct?

A. Yes, she came in front of the house when the supervisor was not there.

Q. Where were you sent after leaving the children's home in Lodz?

A. To Kalisz.

Q. How many children were in the home in Kalisz?

A. About 30.

Q. 40? Is that correct?

A. 30.

Q. Were you taught to speak and read German in Kalisz?

A. Yes.

Q. Were you Polish children allowed to speak Polish among yourselves?

A. Yes. We were not allowed to do it, but I did it secretly.

Q. If any of the children spoke Polish, what happened? Were they punished?

A. Yes.

Q. Were you ever punished?

A. Yes, I was.

Q. What did they do to you?

A. They shut me up in a room and gave me neither dinner nor supper.

Q. Did your mother come to see you while you were in Kalisz?

A. Yes, my mother came.

Q. Did you get to speak to your mother while you were in Kalisz?

A. No, I did not.

Q. How did you know that she came to Kalisz?

A. Other children saw her.

Q. But you never saw your mother in Kalisz?

A. No.

Q. How long did you stay in Kalisz?

A. Six months.

Q. And where were you sent after leaving Kalisz?

A. To Luxembourg.

Q. And how many children were with you in Luxembourg?

A. 15.

Q. Were these all boys or were part of them girls?

A. Boys and girls.

Q. And how long did you stay in Luxembourg?

A. One month.

Q. Where were you sent after leaving Luxembourg?

A. To Salzburg.

Q. And while you were in Salzburg were you told that you would be sent to German families?

A. Not in the beginning.

Q. Were you told that you would not return to Poland and should forget all about it?

A. Yes.

Q. Were you ever given cards in Salzburg with new names?

A. Yes.

Q. What was the name which was given to you?

A. Karl Grohmann.

Q. Do you know who gave you these cards? Were they people in uniform?

A. Yes.

Q. What color uniforms did they wear, do you remember?

A. Black.

Q. Did you use this name, Karl Grohmann, all the time after it was given to you?

A. Yes, I had to.

Q. And after you received this name were you placed with a German family after leaving the home in Salzburg?

A. Yes, immediately after I received the name.

Q. What was the German's name with whom you were placed?

A. I do not remember.

Q. Was he a farmer or just what did he do?

A. Yes, he was a farmer.

Q. Did you work on the farm while you were there?

A. Yes, I had to.

Q. Do you remember where this farmer lived?

A. Yes.

Q. And how long did you stay with the farmer?

A. Four months.

Q. Were you told to call the farmer and his wife mother and father?

A. Yes.

Q. And after you left the farmer's house where did you go?

A. To Bischofshofen.

Q. Do you remember the name of this farmer?

A. Yes, I do.

Q. Do you know the reason why your place was taken away, while you were with the first farm, and taken to the home of the second farmer?

A. Yes I do.

Q. Would you please tell us what that reason was?

A. Because I had contact with Poles in the first place.

Q. Do you mean connection with the Polish children in the neighborhood?

A. No. There were Serbian soldiers who could speak Polish.

Q. And what was the name of the second farmer whom you lived with?

A. That was a woman.

Q. What was her name?

A. Maria Stiller.

Q. How were you returned to Poland after the end of the war?

A. Polish soldiers came to this peasant woman.

Q. And do you now live with your mother and father in Poland?

A. Yes, I do.

Q. Just one more question, Witness. While you were away from Poland were you allowed to write or contact your parents?

A. Not always.

Q. Were you allowed to while you were with your foster parents?

A. Yes.

Q. And did you hear from your parents?

A. Yes, I received letters.

Q. But was this allowed or did someone bring these letters to you?

A. No, I received them by mail, by the postman.

Q. But you were told not to write any letters; wasn't that correct?

A. No. In Kalisz I was not allowed to write any letters; in Salzburg I wasn't allowed to do it either.

Q. But you did just the same as when you spoke Polish when you were not allowed to, you did it anyway. Isn't that correct?

A. Yes, I did.

Q. The prosecution has no further questions.

* * * * *

b. Selection from the Argumentation of the Defense

*EXTRACTS FROM THE CLOSING STATEMENT FOR DEFENDANT SOLLMANN **

* * * * *

II

Now I shall turn to the charge against the defendant Max Sollmann concerning alleged abduction of Polish children. To be sure, the prosecution emphasizes in its indictment that the crime of kidnaping is in many ways worse than any other crime, as perhaps the mass murder of Jews, the atrocities of the concentration camps, the inhuman medical experiments, etc. But the prosecution has not said what it understands by the crime of kidnaping, what the characteristics of a crime of this sort are. According to German law that man is guilty of kidnaping who takes away a minor from his parents, guardian, or foster parent by means of deceit, threats, or force. (Sec. 235 of the German Reich Penal Code.) The prosecution will hardly want to oppose this definition with a different definition. I, for my part, would not contradict if the prosecution were to say: The reason kidnaping is so detestable is that helpless children are deprived of the love of their

* Closing statement is recorded in mimeographed transcript, 18 February 1948, pp. 5176-5205.

parents and in this way are perhaps damaged for life in mind, spirit, and body; further: This crime is especially detestable if the children are taken out of their native land and surroundings and forcibly placed in a foreign country, and if this should happen in large numbers that the ethnic group concerned is weakened as by the letting of blood. However, we are not dealing here with the moral evaluation of abstract facts, but rather with the deeds of Max Sollmann and his co-workers. Consequently, these deeds have as little connection with such a criminal act or with any other punishable offense as the proper acts of a doctor have with bodily injury or some such offense.

What really happened in regard to the Polish children from the Warthegau?

In a decree of 19 February 1942, the so-called Decree 67/I, (*NO-1615, Pros. Ex. 407*) Greifelt announced that the Poles had previously systematically placed all orphans of ethnic German origin in Polish orphanages or with Polish foster parents as "foundlings", that these children had been given Polish names and that there were no records showing the ancestry of these children; these children had to become German again. For this purpose there had to be a screening process and the children who were between 2 and 6 years of age had to be placed with German families through the Lebensborn Society. The Reich Ministry for Ecclesiastical Affairs and Education was to care for the children over 6 years of age in so-called home schools [Heimschulen].

The fact that this decree was sent without the safety measure of secrecy to numerous agencies certainly does not speak in favor of the assumption of kidnaping, much less does the procedure as prescribed by the decree; it was not an SS agency that laid hands on these children and then transported them to Germany proper without much ado, but rather the competent State Youth Agencies; then the children were sent to a German children's home in the Warthegau, from there, after the decision of the Reich Governor, i.e., the highest Reich agency, to a home of the Lebensborn Society or of the Reich Ministry for Ecclesiastical Affairs and Education for the purpose of being placed with a German family; in the meanwhile there were various tests such as are usually given to children today, not in order to separate the loot according to wheat and chaff, but to make sure that this expensive process which had such important consequences for the well-being of the child, would only be used in the case of children who actually were ethnic Germans.

Since the records were missing, a racial examination had to be used, an emergency measure, it is true, but the only means by which it was possible, according to the science of that time, to

find out with approximate certainty the nationality of the child in the absence of records.* To say the government of the Third Reich did not, after the occupation of Poland, turn its attention first of all to the orphans of ethnic German origin that were in Polish orphanages, but had by force taken children without regard to this, children that were of Polish origin but had a Germanic appearance, because of the German-like appearance, would be to fundamentally misunderstand the nationalistic attitude of the leading circles of the Third Reich and to accuse them of betraying their own ideology of blood and race.

As has been noted, it was not some SS agency which took charge of children which remained here and there after the Polish orphanages had been dissolved, because it was thought that they were of ethnic German origin, but the *State Youth Agencies*, which were *obligated* by law (Reich Law for the Welfare of Youth of 9 July 1922) to see to it that the children within their territory were given an upbringing of bodily, spiritual, and social excellence and particularly to take care of the so-called *foster children*, that is children who have been sent to orphanages, children's homes, or families to be taken care of.

It was not easy to carry out this task in the Warthegau, because it meant clearing up and cleaning up the conditions that existed up to then under Polish supervision. For there were not only orphans in the orphanages, but also children whom the parents either no longer could or would support. (*Sollmann 17, Sollmann Ex. 2 (7).*) There were also parentless or abandoned children and children in need of education in welfare homes and in private foster agencies, and among these children there were above all also *children of ethnic German origin* whose ethnic origin could not or was not to be respected under the Polish rule, despite the existing minority rights which were guaranteed by international law. I believe that it is not only a German conception if I say that it was also one of the main tasks of the State Youth Offices to protect the ethnic rights of these children. If ethnic German parents under Polish rule often sent their children from Poland to Germany to be brought up, so that the child should not become Polish by going to Polish schools and associating with Polish friends, then there was no less reason and justification for the State Guardians, i.e., the Youth Offices, to protect the ethnic German orphans, who had already been more or less Polonized, from a final total loss of their nationality by transplanting them to German surroundings.

* See testimonies of Dr. Bartels, 29 January and 30 January 1948; Heinze-Wisswede, 27 October 1947; Dr. Schulz, 5 November 1947; Dr. Staudte, 29 January 1948; Roedel, 23 December 1947.

However, the cause of contention and thereby the reason for the charge on this point does not seem to be the question of whether such a measure was justified, but rather the difference of opinion of what an ethnic German, or more specifically, what a German and what a Polish child is.

If we consider the opposite, it seems that today the commissions classify as Polish children to be sent back to Poland from Germany all children born in Polish territory, that is, also the children of such parents who once belonged to the German minority in Poland and who, if they were still alive today, undoubtedly would have been turned out of the Polish territories of today with their children. The desires of the children themselves are also not considered, who are already 16 or 17 years old today and still have only the one desire, namely to remain in Germany, that they had at the age of 12 or 13 when they wanted nothing more ardently than to come to Germany, the land of their fathers. What standards did the Germans use after they had the power in Poland after 1939 and presumably were intent on weakening the Polish nation by abducting Polish children?

A person is an "ethnic German" if of pure German stock, if he has command of the German language, and if he identifies himself with the German nation. Persons with three German grandparents and one foreign grandparent are only *regarded* as "ethnic" Germans. (*NO-3495, Pros. Ex. 44.*)

It is not only a National Socialist conception, but a common phenomenon with natural causes, that a country that is large and strong wants to keep the number of those who want to participate in the honor and advantages that accrue to such a strong nation, as small as possible. From this point of view, the suspicion that Decree 67/I had as its purpose, for some unfathomable reason, the abduction of children of foreign countries is an illusion.

Today's official definition of membership in the German nation is by no means so narrow as it was during the National Socialist regime. I shall quote the definition from the Bavarian Refugee Law of 8 July 1947 (Bavarian Legal Gazette 1947, No. 12) to wit: "German nationality exists if the native language or one parent is German." (*Sollmann 24, Sollmann Ex. 2 (14).*)

According to the marriage order of General McNarney of 19 December 1946 for the American troops, everyone is a German who has a German father, or in the case of an illegitimate child, a German mother; furthermore, *every inhabitant of Germany who previously had belonged to an ethnic German group in Poland, Czechoslovakia, etc., shall be considered a German.* If one of the young girls who has testified before this High Tribunal wanted

to marry an American soldier tomorrow, she would undoubtedly be a German according to the American conception. I hardly believe that the High Tribunal can look upon this same girl as a stolen Polish child and convict the defendant Max Sollmann on account of this girl and about 250 of her comrades, both boys and girls, from the Warthegau.

The objection will be made; the question whether the children were Polish or German cannot even be discussed, because the children had been born on sovereign Polish territory and therefore were almost certainly Polish citizens. In this regard I must say I can omit entirely to present legal arguments of whether, since the occupation of Poland in 1939, there existed a Polish citizenship *de facto* and *de jure* at all. The following, rather, is of decisive importance: Contrary to the promises for the right of the peoples to self-determination, which were made in the preliminary treaty of 5 November 1918 for the later peace treaties, millions of Germans, as is well known, came under foreign rule after the peace treaties of 1919, including two million Germans under Polish rule. To establish conditions which might be somehow acceptable under international law certain fundamental rights of national minorities against the countries in which they were incorporated were recognized and guaranteed by the League of Nations in the so-called minority treaties of 1919-20, including the freedom to use their language in private and commercial matters, the right to establish their own welfare organizations and schools, etc. Because the League of Nations gave no guarantee to national minorities, a legal demarkation of such membership was avoided in the minority treaties, and finally, since the League of Nations only provided very poor legal protection, the word and the spirit of these treaties were not respected and the minority groups subjected to a relentless assimilation policy. (See Textbook of International Law by Prof. Hold-Ferneck, teacher of international law at the University of Vienna, published 1930 and 1932, part II, p. 41.)

* * * * *

The Lebensborn, as already mentioned, never had anything to do with the process of Re-Germanization [Wiedereindeutschungsverfahren] or similar matters, the men and women of the Lebensborn had hardly any more knowledge thereof than any other average citizen since this was entirely beyond their spheres of task and technical fields. The fact that the staff of the Lebensborn also used terms like "suitable for Germanization", etc., proves at the most the vague notion prevailing in the Lebensborn in respect to these ideas. If the prosecution, however, wants to interpret the Germanization of the children under the care of the Lebens-

born as perhaps meaning a more or less radical National Socialist education, it is nevertheless clearly proved from the numerous statements by the former staff members of the home Oberweis (*Tr. pp. 3705-3715; 493-535; Sollmann 22, Sollmann Ex. 2; Sollmann 58, Sollmann Ex. 6*) and above all from those given by the foster children and foster parents themselves (*Sollmann 81a, 81b, 83, 84, 86, 87, 89-99, Sollmann Ex. 9, Sollmann 100-102, 104, 106-121, Sollmann Ex. 10*) that the Lebensborn had no ambitions in this field whatsoever; moreover, in respect to selection and instruction of the foster parents the Lebensborn has shown a complete lack of political interest; it is by no means true that the children were placed predominantly in the homes of SS families. They were given a Christian and religious education by their foster parents and were in no way influenced in the National Socialist theory. The Lebensborn, requesting reports about the children's education, has never put up a single question to this effect or even raised a protest or a warning. Its sole aim was that the children were cared for with particular love and grew up under the best possible external conditions.

The children from the Warthegau for whose care and transit the Lebensborn had been used against its will and intent were described in the Decree 67/I and by the children's home Kalisz of the Gau self-administration, which had sent the children, as ethnic German orphans who had been exposed to attempts of Polonization in Polish orphanages and Polish foster homes, who particularly had been given Polish names and about whose origin no sufficient data is available. (*Tr. pp. 493-535.*) The Lebensborn could have been satisfied with the fact that there was no reason whatsoever to doubt these statements. This it could not do and did not want to do for three reasons.

a. From the beginning, the Lebensborn considered it its obvious task to care for the children under its protection not only physically and educationally but also to represent the legal interests of the children which in the first place included the clarification of the personal status, as for example also the filing of the paternity suit against the illegitimate father.

b. However, an ignoring of the specific deficiencies in regard to name and personal data of the children who had come from the Warthegau was not possible in view of dealing with the authorities, for the essential coupons for food and clothes could be obtained only by presenting specific documents, in which connection the authorities varied in their demands with respect to the documents. Besides that, it was the main task of the Lebensborn with regard to the children from the Warthegau to place them in good foster homes. For this important matter, too, cer-

tificates and documents had to be made available in the interest of the children which, in view of the obscurity of the circumstances and the lack of reliable data, certainly meant an extraordinary burden for the members of the staff in respect to their sense of responsibility. Whenever it became necessary the Lebensborn, to the best of its knowledge and belief and strictly within the scope of the law, has helped the children in spite of this. In a few cases, only 15 to 20, it was necessary to issue provisional birth certificates in accordance with paragraphs 25 and 26 of the law concerning the personal status (*Sollmann 63, Sollmann Ex. 7 (1)*); in numerous cases one resorted even to so-called foster home certificates which were given an official character through the use of envelopes from the Staff Main Office of the Reich Commissioner for the Strengthening of Germanism (*Sollmann 84, Sollmann Ex. 9 (3)*); in other cases again, ordinary certificates of the registered association Lebensborn were sufficient. Since it was notorious that in numerous cases the names of children had been Polonized or were unreliable because of the lack of personal data and were therefore worthless or even obviously false (*Tr. pp. 4574-4586; 1060-1098*), one had to face additional difficulties, namely, the question concerning the names these children were to be given in these documents. In as far as it did not appear to be essential otherwise, here too, the children could retain the already Germanized names. In cases, however, where it was requested by the foster parents or where, owing to other reasons of expediency, it was found advisable, the children, if only in consideration of a possible subsequent adoption, were in a few cases temporarily given the surnames of their foster parents, in the same way as this is still handled by the German authorities. (*Sollmann 66, Sollmann Ex. 7 (4)*.) That in such cases one cannot talk either of concealment or even of falsification of the names or the personal status of the children is shown by the fact that the very names the children had at the time of arrival were false and that, with bureaucratic accuracy, it was seen to it that the names the children had carried up till that time, even though false, were preserved in the documents and that the names of the children's foster parents were reported back to the registration office Kalisz from where the children had come to the Lebensborn. Beyond that, it was furthermore seen to that the police registration offices in the children's places of origin were informed accordingly. (*Sollmann 71a, 81b, Sollmann Ex. 9 (1)*.)

c. However, the Lebensborn was not satisfied with the given information for a third reason as well. It did not regard the taking over of ethnic German children from the Warthegau as a mere business matter. The defendant Max Sollmann and the

other principal members in the staff of the Lebensborn felt before their conscience a personal responsibility that these valuable goods which they were to care for should not be harmed, in spite of all, through an erroneous conception of the conditions which led to the children's arrival. It is a fact that they themselves participated in the intensive investigations for the purpose of obtaining the records, and for that purpose undertook difficult journeys; above all, the door to the Lebensborn was wide open for everyone who could give any useful information about the origin or national extraction of the children. If it was found that there were still legitimate relatives by blood, that is, not the mere existence of former foster parents, the child was released without objection if it was so desired. The Lebensborn was even more pleased at being relieved of one more case of burden and responsibility if it could be subsequently ascertained that, in spite of all precautionary measures, the child was not of ethnic German but of Polish origin after all; in this case too, the child was immediately released and returned to a Polish foster home. (*Sollmann 22, Sollmann Ex. 2 (12).*)

The defendants of the Lebensborn are accused, as their contribution to the crime of kidnaping, not only with concealing the children's names and therewith suppression of their identity, but also with withholding their true origin from the German foster parents. (*Tr. pp. 98-100*), and finally with inclusion of the children in a mysterious system of secrecy which already existed.

It evidently means that the Lebensborn had allegedly played the role of the receiver of kidnaped children. As far as the alleged withholding of the true origin from the German foster parents is concerned, there is no need for me to waste a word after having been able to submit two document books (*Sollmann 81a, 81b, 83, 84, 86, 87, 89-99, Sollmann Ex. 9; Sollmann 100-102, 104, 106-121, Sollmann Ex. 10*) containing affidavits—not to mention at all the witnesses who testified directly before this Tribunal—all of which clearly prove exactly the contrary, namely, that the Lebensborn, in the most conscientious manner, has transmitted to the foster parents its entire information about the children.

The following is to be added in regard to the system of secrecy:

The Lebensborn was a place of refuge for pregnant women. In my document book I have submitted the recent articles of two Swiss authors on scientific matters (*Sollmann 3, 4, Sollmann Ex. 1 (3) (4)*) who confirm that discretion, perhaps even the preservation of anonymity of the mother—the latter, by the way, was not practiced by the Lebensborn—is in some cases irremissible in order to keep the mother from despair, abortion, and infanticide. In its homes the Lebensborn had its own police registration offices,

and own registrar's offices, partly for reasons of mere technical expediency; partly, however, in order to erect the protecting walls of the Lebensborn also around the public-legal sector. In this narrow sector the private association Lebensborn managed to obtain rights of state authority not in order to conceal crimes or immorality but to preserve the secrecy of motherhood and give protection against prying and ill-disposed outsiders.

The ethnic German children in the Lebensborn were not included into the possibilities of secrecy. (*Tr. pp. 1060-1098.*) On the contrary, by explicit order of the defendant Max Sollmann, the children were permitted to correspond as and with whom they liked. (*Sollmann 22, Sollmann Ex. 2 (12).*) Max Sollmann, who, by explicit order, rescinded contrary directions of other authorities—which, by the way, did not have any criminal motives either—does not seem to have been an expert in the trade of kidnaping.

May it please the Tribunal. We are not dealing here with inanimate objects and, in the final analysis, not with abstract ideas either, political speeches of official decrees or correspondence taken out of context cannot be decisive. We are dealing with young human beings of flesh and blood who have allegedly become the victims of a serious crime. The main argument of our defense are these young people themselves, and it was the tactics of our defense in the first place to let these young people speak for themselves. We have presented as witnesses to the Tribunal a number of these so-called displaced Polish children who at the time of the "kidnaping" were already 12 years of age and over (*Tr. pp. 4187-4214*); besides that, we have produced a number of affidavits by other persons of that age who likewise at that time had already reached an age in which, under normal conditions, a child graduates from school in order to choose a profession. (*Sollmann 81a, 81b, 83, 84, 86, 87, 89-99, Sollmann Ex. 9; Sollmann 100-102, 104, 106-121, Sollmann Ex. 10.*) Consequently, one cannot say that these witnesses could not give correct information. On the contrary, they are in a position to give the best description of the history of their displacement and about their knowledge and opinion in regard to everything of importance in this case. Out of a total of 250 children we have not presented any specially selected cases of exception but those cases which were accessible to us in view of our limited possibilities. I am certain that the Tribunal, from the clear faces and the firm bearing of these young witnesses, has already gained the right impression.

* * * * *

My document books 9 and 10 contain affidavits of more al-

legedly abducted children, which agree in essential parts with these testimonies, but also numerous affidavits by German foster parents. Everywhere the children came into natural, materially, morally and equally good conditions; everywhere a relationship of loving care and hearty understanding between children and foster parents. If towards these allegedly abducted children the intentions would have been of the kind as imputed by the prosecution, they certainly would not have been brought into these well-to-do families, but into institutions fashioned after the model of the Prussian military orphanages, perhaps with a National Socialist variation. The foster parents loved and cared for these children as though they had been their own, and the Lebensborn, when it demanded educational reports, was only interested to know if the children were well off physically and mentally, but not whether the child had already been properly "Germanized," or had become a good National Socialist. The foster parents also suffered with the children and felt the pain, if a child disappointed them, like Frau Anna Mehnert the foster mother of Hilga Antczak (*Sollmann 94, Sollmann Ex. 9 (11)*); this child caused her much trouble on account of her inclination to lie and to steal; still she stood up for her like a real mother for her child, and Hilga Antczak only on 24 July 1947 has expressed her hearty gratitude to her "aunt Mehnert" through a letter from Lodz identified on the witness stand. (*Sollmann 95a, Sollmann Ex. 9 (12)*.) That this same Hilga Antczak could manage to testify about her foster parents before this High Tribunal in an untruthful and hateful manner can only be explained by pathological considerations or by presuming uncontrollable influences. May it also be mentioned here that at instigation of the foster mother of Alina Antczak, a sister of the aforementioned, an investigation was conducted by a specially instructed person regarding the family conditions of these sisters in Lodz. (*Sollmann 99, Sollmann Ex. 9 (16)*.) The result permits us to say that obviously the pre-conditions for a public upbringing were given because of the neglect towards the children on the part of their parents; furthermore that the parents were in complete agreement that their children should be placed so well in Germany. This visit of Frau Berlinghof in Lodz is also revealing for the reason that it is quite unusual for foster parents of abducted children to arrange for such visits together with the delivery of photographs and letters. In conclusion, I wish to refer to the fact that today the Military Government in numerous cases leaves these allegedly abducted children with their foster parents, and that in many cases these children are being adopted only now, because it was continually

and on principle refused by the Lebensborn, since for such an incisive act a further clarification of conditions was to be awaited.

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c. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS GRAEBE*

DIRECT EXAMINATION

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DR. THIELEFREDERSDORF (Counsel for defendant Ebner) : What position did you have during the time from 1922 until 1936?

WITNESS GRAEBE: I was Representative in the Polish Sejm [parliament] and Representative of the German minority in the League of Nations.

Q. You said you were Representative in the Polish Sejm. Is that the Polish parliament?

A. Sejm is the Polish word for parliament, as in Germany the Reichstag.

Q. In this capacity of yours, did you know anything about the constant fight of the minorities in Poland for their existence?

A. Yes, that was my main task which I had to carry out.

Q. Your main task. Would you describe that in more detail please?

A. To stand up for the German minority in parliament and to see that the agreement concerning the protection of minorities be carried out.

Q. Were the children also concerned in this?

A. The children were one of the main tasks in this fight. All that mattered was that these children were brought up as Germans.

Q. Was this German upbringing endangered?

A. Yes, it was endangered because the Polish Government disapproved of it because they did not want to keep to the agreement for the protection of minorities and made great difficulties for us.

Q. What aims did the Polish authorities and private circles have concerning these children?

A. The Polish Government and also the Polish associations did everything—

Q. Would you please give the name of the association?

A. It was called Westmark Association. Everything was done in order to naturalize as many German children as possible. Of

* Complete testimony is recorded in mimeographed transcript, 29 January 1948, Tr. pp. 4588-4598.

course, we objected to this, to Polonizing these children, to making them Polish.

Q. In what manner did the Poles try to make these children Polish subjects?

A. These efforts to make these children Polish were mainly conducted in this manner that they made it difficult for us to let these children attend German schools so that many children who lived in the diaspora, that is, in districts where there were more Poles than Germans, had no possibility of attending a German school, and the children were forced to attend Polish schools.

Q. On the other hand, is it right that the minority rights granted the German children the right to German upbringing and German schools?

A. Yes, the right of the minorities gave us this right to have our own schools. This was a kind of cultural autonomy although this actual word, "cultural autonomy" was not actually used, but we had the right that our children should be able to attend German schools.

Q. On this occasion may I ask who guaranteed the minority rights and on what was it based?

A. The minority rights were based on the peace treaty of Versailles and the agreement for the protection of minorities which the Allied Powers made with Poland, and it was also based on the supervision by the League of Nations who had made it their charge to carry this out and to look after it. Therefore, I was entitled to have the protection of the League of Nations concerning these children.

Q. Please tell us why the Germans wanted to insist on it, that their children went to German schools and not to Polish ones?

A. We attached value to it, of course, that our children were brought up in a German way, that they learned the German language and the German language was not taught in the Polish schools, and at one time was even prohibited.

Apart from that they were brought up to hate everything that was German. They had to learn songs like "Poland isn't lost yet," and "The German is still not hanging with his feet up." These and similar ones weren't songs we wanted our children to learn.

Q. The League of Nations, which was the authority to realize the rights of the minorities, could it actually guarantee that the minority rights were adhered to?

A. In all, I made 144 complaints to the League of Nations. This concerned questions of schooling, and also the treatment of the children was one of the most important points I talked about.

Q. The League of Nations could immediately improve conditions then?

A. No, unfortunately they could not do this. Long negotiations had to take place so that any question which I brought up there took ages before it was decided upon, and this did not mean yet that it was carried out finally by the Polish Government.

Q. What kind of part did the orphans play, who are of particular interest here, in this ethnic battle?

A. The orphans also played an important part here. While the parents lived they had the possibility of looking after these children, but after the parents had died, we assumed responsibility for them.

Q. May I interrupt you? You said "we"—do you mean—

A. I mean the German minority, and I counted myself one of them, because I, in particular, was the one who represented the entire German minority to the outer world. We were denied these rights although, on the basis of the agreement for the rights of the minorities, we had a right to look after these children. In many cases I was not even informed when these children had become orphans. In the large territory I only gained knowledge of part of the cases, so that it can have occurred that children simply disappeared and were put into Polish orphanages without my knowing anything about it.

Q. If you did hear something, what happened then?

A. If I did hear something, of course, I stood up for their rights or I asked people to look after these children in order to put them into German families if possible, but in most cases, or at least in very many cases, we did not succeed because the local Polish authorities wanted to look after these children instead, and these children were brought into Polish orphanages or into Polish families so that we could no longer influence them.

Q. Because of such violations of the rights of the minorities of the German orphan children, did you undertake any steps officially?

A. I visited the Minister of the Interior, the Prime Minister—

Q. For the sake of clarity would you tell us please which Minister of the Interior?

A. Wittkowski.

Q. I mean which nation?

A. The Polish Minister of the Interior, Wittkowski, I visited, then the Prime Minister, together with my colleague the Catholic canon Klinke.

Q. Would you please repeat that last sentence?

A. Together with my Catholic colleague, who was also Representative. I visited Wittkowski [Minister of the Interior] as well as the Prime Minister, in order to discuss these questions.

Q. And this colleague, would you please repeat, what was his name?

A. His name was Klinke.

Q. Could you tell us how great the number of German orphans was who were kept in Polish orphanages because the representative of the minorities knew nothing about them or could not intervene on their behalf?

A. It is very difficult to say this. I really cannot say this now any more how many children were concerned at the time.

Q. Was there a definition laid down by international law of the expression "ethnic group"?

A. No, that did not exist.

Q. What definition of this idea did the minorities themselves have?

A. For the minorities who, in the congress of all nationalities, where all minorities of the European peoples were represented, first of all it was important what they wanted to be.

Q. If the statement who they wanted to belong to was not considered, what then? With small children, for example, who could not yet state what they wanted, what directions did you follow then concerning nationality? Could one judge by the language then?

A. No, one could not judge according to language because if children went to Polish schools or even were living in Polish institutions, they did not learn German at all. They only learned Polish. The question of language, therefore, was of no importance. A great number of inhabitants in the province of Poznan and East Prussia who at home spoke a kind of bad Polish and only spoke broken German and yet said that they wanted to belong to the German minority, that did exist.

Q. But in the Polish orphanages, for example, the children could not learn German?

A. No. They were not allowed to speak German there ever; they had to speak Polish. They were punished if they spoke German.

Q. Could one not draw conclusions according to the names of the children?

A. No, one could not do that either. In Poland, for example, we had many gentlemen in important positions who had German names. The name of the Prime Minister was Bartels, the Minister for Postal Matters was Kuehn; the Secretary of State was called Beck. All those are German names.

Q. And yet—

A. And yet they were Poles. On the other hand, I knew quite a number of Germans who have Polish names. I know Poladewski,

Gregodewski, Radowski, well known personalities, at least for me, who were definitely Germans. There were also people who had two names, Hutten-Sczatski, who played an important part, and there are two large books about them in German.

Q. I think, Witness, that that gives us sufficient information. Concerning the question of names there is another point which I wish to raise. Do you know whether the German names were entered always in the Polish registers exactly as they were in the German original?

A. No, they were not. We had to struggle very hard in order to achieve this, and we did not always manage it. The Polish registration offices, in particular in the District of Poznan and Pomorze [Pommerellen], tried by all means to Polonize the names. I can give particular examples for this for it was tried with Christian first names, Hans was changed to Jan, and the name Albert was changed to Woitscha. They also tried to change the second names—the family names—so sometimes one could not even recognize them. For example, the word “Schneider,” which is written in German S-c-h-n-e-i-d-e-r was changed and became “Szanjger”; or “Seydlitz” written S-e-y-d-l-i-t-z was changed to “Sajdlec.”

No one could recognize the name Seydlitz there. The word “Michel” as a family name, I happen to know was entered as “Michalek.” No one recognized that this meant Michel. That was a complete alteration in the personal status.

Q. Did you personally object officially against this changing of names?

A. In this case I objected to the Polish Parliament and asked them to stop this in the name of the German minorities.

Q. Were the people concerned in case their names were entered incorrectly, always able to defend themselves successfully against this changing of names?

A. In many cases the people concerned only noticed it when they had come home and read the paper which they had received after registering the child. In many cases they did not have the courage to do it because of the existing terror; they did not dare to do it. In particular, if they lived in the diaspora, they did not dare to do anything about it. And if the parents were dead, there was nobody else who could do this.

Q. What possibility was there then to establish the German nationality of German orphans who were brought into Polish orphanages if the documents give no information about this? If the names did not help, we cannot draw conclusions according to names; if we cannot clarify it according to the language, and if no other certificates testified about this, then what possibility was there?

A. That was very difficult, of course, to find out. Concerning adult—

Q. May I ask first, if in your experience you complained about some children because they had been brought to Polish orphanages; did you also complain about such cases where one had no definite proof, and did you tell the Polish authorities about it?

A. We did try but mostly unsuccessfully, almost always unsuccessfully. I was always glad if in cases which were quite obvious I could achieve it that the name was changed. In such difficult cases, it was very hard for me because I could not offer any proof; and it was of no use.

Q. A few final questions now. Do you know anything about racial research?

A. No, I never dealt with it.

Q. Do you have any idea about the National Socialist racial theories?

A. No, I have not.

Q. Then I may consider you as a completely unbiased person concerning this field. Can you say as such a person whether merely on the basis of common sense it was possible to decide in these territories where the population was mixed, whether a person belonged to that ethnic group or another—whether it was a Ukrainian or a Pole or a German, for example?

A. It was very difficult to decide which was a Pole and which was a Ukrainian; it was almost impossible. But in my opinion, in general it was quite possible to say who was a German and who was a Pole. But it was difficult in the case of children from mixed marriages or if in the past some Slavic blood had been mixed with German blood.

Q. You mean then, apart from children from mixed marriages, merely by looking at a person one could select the Germans?

A. Yes, in general one could.

Q. Does this apply to children as well, in your opinion?

A. Not to infants of course—but if they were half-grown children, yes, doubtless. I often saw children play and could tell you without any trouble those were German children and those were Polish children—even if they spoke the same language.

Q. Thank you. I have no further questions.

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS BERGNER*
DIRECT EXAMINATION

DR. RENSTCH (Counsel for defendant Sollmann): Witness, will you please give the Tribunal your full name?

* Complete testimony is recorded in mimeographed transcript, 23 January 1948, pp. 4225-4238.

WITNESS BERGNER: My name is Lucie Bergner.

Q. Please spell your last name, if you please.

A. B-e-r-g-n-e-r.

Q. Bergner?

A. Yes, that is correct; my name is Bergner.

Q. Will you please tell me when you were born?

A. I was born on 12 February 1931.

Q. Do you know where you were born?

A. No.

Q. Where do you live now?

A. In Plankstadt near Heidelberg.

Q. And with whom do you live there?

A. I am living with August Treiber.

Q. Who is that, what profession does he follow?

A. He is a farmer.

Q. A farmer?

A. Yes.

Q. Does he have a wife?

A. Yes.

Q. What is the wife's name?

A. Her name is Maria Treiber.

Q. They are your foster parents?

A. Yes, they are my foster parents.

Q. I would now like to know whether you can remember your real parents?

A. No, I cannot remember my real parents.

Q. Whom can you remember then?

A. I can only remember my grandmother.

Q. Were you ever living with that grandmother?

A. Yes.

Q. And you still remember where?

A. That was in Poland, near Poznan.

Q. What sort of a memory do you carry with you of your grandmother?

A. I remember that my grandmother told me that my parents had died and she always wanted that I be transferred to foster parents.

Q. And otherwise you don't know anything about your grandmother?

A. Well, my grandmother told me that my father married once again.

Q. I mean do you know anything about your grandmother herself.

A. Yes, my grandmother was 81 years old.

Q. Was she healthy?

A. No, she was old and had always been sick.

Q. Was she able to take care of you?

A. No, she was not.

Q. And what was the result of that? Did your grandmother want to see that you could get into some sort of a home that you could be taken care of better?

A. Yes, that is what she wanted.

Q. What language did you talk with your grandmother?

A. She talked Polish, but she also knew how to speak German.

Q. Do you still remember that quite clearly?

A. Yes, I do.

Q. And did you yourself speak Polish too?

A. Yes, I did.

Q. Even then did you speak German at that time also or did you learn German later?

A. Yes, I knew German at that time but not very much.

Q. At the time when you were there with your grandmother?

A. Oh yes.

Q. How long did you stay with your grandmother, that is to say, when did that stay end?

A. I was with my grandmother until I was taken away to a children's home.

Q. And in what children's home?

A. In Kalisz.

Q. Did your grandmother approve this fact that you were transferred there?

A. Oh yes, my grandmother liked that very much.

Q. Did your grandmother talk to you about what would later happen to you or something like that, if she would die one day?

A. Yes, she said that she always wanted that I should come into a foster home.

Q. Were you then put with someone in Kalisz or did your grandmother still bother with you at all?

A. No, she didn't.

Q. Did you see her once more?

A. No.

Q. How did they treat you in this children's home in Kalisz?

A. I liked it; they treated me very well. They treated me better there than my grandmother did.

Q. What sort of people were there in this home, were they women or men?

A. They were women.

Q. Were they governesses?

A. Yes.

Q. What language did these people talk?

A. They spoke German.

Q. And the children among themselves, what language did they talk?

A. They spoke Polish.

Q. Did the governesses like that or didn't they?

A. Oh yes, they liked it.

Q. Did they object to that, or prohibit it?

A. No, they didn't.

Q. Were you punished when you spoke Polish among yourselves?

A. Oh no, never.

Q. Remember very clearly, or rather try to remember as clearly as you can, whether there has ever been a case in which punishment was administered for that reason?

A. No, I can't remember any.

Q. How long did you stay in this children's home in Kalisz?

A. Well, it was about until spring.

Q. What year?

A. 1944.

Q. And where did you go from there?

A. I went to Oberweiss.

Q. Did other children go along there too?

A. Yes, about 15 or 20.

Q. Who brought you to Oberweiss?

A. Oh, that was a woman who brought us there.

Q. Where was she from?

A. She was one of the governesses at the children's home in Kalisz.

Q. In Oberweiss was there also a home?

A. Yes, there was a home too.

Q. And how did they treat you in this home in Oberweiss?

Q. Oh, I liked it; they treated me very well.

Q. Tell me, why you liked it so much; you seem to remember that very fondly.

A. We got everything and we could do what we pleased. We got good food.

Q. Do you remember some of the people that were in charge of that group at that time?

A. Frau Merkner and Frau Rieger.

Q. How did these women treat you?

A. They were very kind to me.

Q. And whom did you like best of all?

A. I must mention Mrs. Merkner.

Q. Will you please be careful and try to speak as clearly as you can. You speak a Swabian dialect and that makes it a little

more difficult. I would now like to ask you, can you remember that you were punished in any way there at this home in Oberweiss?

A. No, there were no punishments at all in Oberweiss. They didn't punish us at all.

Q. Do you know anything about the fact that children were supposed to have been locked into a cellar underneath the earth which was dark?

A. Oh no, there wasn't even a cellar in Oberweiss.

Q. You mean there was a house without a cellar?

A. No, there was no cellar in Oberweiss.

Q. Well, if there was an air raid where did you go then?

A. Well in Oberweiss we had to stay among the trees then.

Q. In Oberweiss were there SS members who took care of the education of the children?

A. No, they came into this home occasionally, but only in the office.

Q. How many were there around?

A. Oh, about two.

Q. Were you a member of the BDM when you were at Oberweiss?

A. No, I wasn't.

Q. Did you hear any lectures concerning National Socialism or about the Fuehrer in Oberweiss?

A. No.

Q. How long did you stay altogether in Oberweiss?

A. Until October 1944.

Q. And where did you go then?

A. I went to Plankstadt to my foster parents.

Q. To the home of the Treibers?

A. Yes, that is correct.

Q. Were you sent there, or forced to go there?

A. No, I wasn't.

Q. Did you go voluntarily?

A. Yes, I did.

Q. Well, how did all that happen. Will you tell me about that please?

A. My foster parents came to Oberweiss and they told me they wanted a child and she looked at me and said, "this girl I want to have," so I went for walks with her and then I went along with them.

Q. And that was Frau Treiber?

A. Yes, that's right.

Q. She went for walks with you?

A. Yes.

Q. And you had conversations with her?

A. Yes.

Q. What did she talk to you about?

A. Well, she told me that she had had two sons and that both of them were killed in action during the war.

Q. And why did she talk to you about that?

A. She told me that she was so alone and that also she had a farm and that it was difficult for her to be alone that way.

Q. Did you also like Mrs. Treiber?

A. Yes, I did.

Q. And you then agreed to the suggestion that she made to you?

A. Yes.

Q. You said a few minutes ago that you liked it so much in this home in Oberweiss. Did you like to leave there?

A. No, I didn't like to leave there at all.

Q. Now were you forced to go with your foster mother?

A. No.

Q. Then why did you go with her?

A. Because I wanted to have a foster mother.

Q. Then what was your experience when you came to the Treiber's, how did they treat you?

A. Oh, it was wonderful in the country.

Q. What was your position within the family then?

A. Well, it was a farm.

Q. Were there other children too beside you?

A. No, only myself.

Q. Were you considered as the daughter of the house?

A. Yes, I was kept as if I were their own daughter.

Q. How were you quartered in this farm house; where did you sleep?

A. My room is in the second floor and I have two beds and two chests and it is a complete room.

Q. It is a well equipped room?

A. Yes, it is.

Q. And you are still sleeping in this room?

A. Yes, I am.

Q. Did you go to an agricultural school?

A. I went to grammar school and I am still going to the secondary or vocational school.

Q. Now when you stayed with your foster parents the Treibers, were you a member of the BDM, the association of German girls?

A. No.

Q. Were you or weren't you? I didn't understand. Were you a member of the BDM?

A. No.

Q. Will you please speak more clearly. Do you know whether your foster parents Treiber were members of the NSDAP?

A. No, I know that for sure.

Q. How do you know that for sure?

A. Because we got a letter from the de-Nazification court and I had that in my hands and I read it.

Q. What did the letter say?

A. That they are not included within the application of the law.

Q. In Plankstadt did you have religious instructions too?

A. Yes.

Q. What is your religion?

A. Protestant.

Q. Are your foster parents Protestant?

A. Yes.

Q. When were you confirmed?

A. In 1945, 1st of March.

Q. Will you please tell me now quite frankly how do you like staying with your foster parents Treiber?

A. I like it there very much; I like it with my foster parents.

Q. Would you ever like to leave again?

A. No, I would not.

Q. No further questions, thank you.

CROSS-EXAMINATION

MR. NEELY: Witness, you remember your grandmother very well, don't you?

WITNESS BERGNER: Yes, I do.

Q. And I guess from what you have told us that financially she had a pretty hard time didn't she, taking care of you?

A. (No answer.)

Q. Witness, did you understand my question?

A. Yes.

Q. Your grandmother was, shall we say, a little poor, wasn't she; was she not?

A. Yes, she was.

Q. But she was very good to you, wasn't she; she looked after you as though you were her own child?

A. Yes, she did.

Q. And you would say she did everything to make things as comfortable for you as she possibly could.

A. Yes, but she couldn't take care of me very much.

Q. That is right; your grandfather was dead; isn't that correct?

A. Yes, that is right.

Q. Now, do you know when you first entered the school at Kalisz; could you give me the date?

A. No; I can't say that for sure; I don't remember quite.

Q. But you were living with your grandmother when you went into Kalisz; is that right?

A. Yes, that is right.

Q. Did they come to your grandmother's home, and then some very nice people did escort you to the home in Kalisz?

A. Yes, there was one woman.

Q. Do you remember, I mean, I guess you hated to leave your grandmother at that time, didn't you?

A. No, not at all; but after all I wanted to have foster parents.

Q. But at the same time you must have loved your grandmother and hated to leave her at that time, didn't you?

A. Oh, that wasn't so bad.

Q. What you liked best, you liked to have good food and good care, didn't you? That is what you liked better than your grandmother, isn't it?

A. Well, yes of course.

Q. Sure. And you wanted to be like the other kids and have nice clothes and a nice home, and play with the other kids; that is what you wanted, isn't it?

A. Yes, yes, that is just what I wanted.

* * * * *

4. CZECH CHILDREN

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-4173
PROSECUTION EXHIBIT 397

LETTER FROM HIMMLER TO SOLLMANN, 21 JUNE 1943, CONCERNING
CHILDREN OF EXECUTED MEMBERS OF THE CZECH RESISTANCE
MOVEMENT

The Reich Leader SS
Journal No. 26/31/43
Rf/Rn

Field Headquarters, 21 June 1943

[Stamp]

Personal Staff Reich Leader SS
Central Archives
File No. Secret/111/10

Dear Sollmann,

This is to order you to get in touch with SS Lieutenant General

Frank, Prague, at once. The thing for you to do will be to visit him. The problem to be solved is the care, education and accommodation of Czech children whose fathers or parents had to be executed as members of the resistance movement. The decision, of course, will have to be a very judicious one. The bad children will be taken to certain children's camps. The children of good racial stock who, unless subjected to proper care and education, are of course likely to become the most dangerous avengers of their parents, must, I think, be placed into the charge of a "Lebensborn" nursery on probation for the time being, and if possible put to a character test, to be distributed among German families as foster or adopted children.

Heil Hitler!

Yours

[Signed] H. HIMMLER

2. SS Lieutenant General Frank, Prague

3. Chief of the Security Police and SD

Copy transmitted with request to take due note.

By order:

[initials] Br [BRANDT]

SS Obersturmbannfuehrer

TRANSLATION OF DOCUMENT NO-4171
PROSECUTION EXHIBIT 398

LETTER OF REPLY FROM SOLLMANN TO HIMMLER, 7 JULY 1943,
PROMISING TRANSFER OF CZECH CHILDREN TO LEBENSBOERN
(SEE NO-4173, PROS. EX. 397)

Lebensborn, The Vorstand

Munich 2, Herzog-Maxstrasse 3-7, 7 July 1943

Postal Address: Munich 1, P.O. Box 14

Telephone: 13114-15-16

To the Reich Leader SS

via the Staff Fuehrer of the Personal Staff

So/Lei

Diary No. 225/43

Berlin SW 11, Prinz Albrecht Strasse 8

Subject: Diary No. 26/31/43g RF/Bn.

Reich Leader,

I have visited SS Lieutenant General Frank in Prague as ordered. I promised that the Lebensborn in each case will assume the responsibility for all children racially acceptable providing

they are not of school age and transfer them through the channels of a Lebensborn home to foster parents or parents by adoption.

At present two such children are known, they are in a Czech orphans' home. SS Lieutenant General Frank estimates the number of children that can be considered for Lebensborn at the present time at perhaps 50 to at most 100; perhaps, however, according to his opinion, there are only 20. SS Lieutenant General Frank has instigated investigations. The registration as well as the transfer to Lebensborn will cause no excitement.

SS Lieutenant General Frank will inform you in detail, Reich Leader, as to the possibilities of accommodating other children which Lebensborn is not taking over for matters of expediency.

Heil Hitler!

Yours SOLLMANN

SS Colonel

[Stamp]

Personal Staff RFSS
Received 10 July 1943
File No. 26/31/43g
RF

TRANSLATION OF DOCUMENT NO-435
PROSECUTION EXHIBIT 399

LETTER FROM THE MINISTER OF STATE FOR THE PROTECTORATE OF
BOHEMIA AND MORAVIA TO RUDOLF BRANDT, 13 JUNE 1944,
CONCERNING CHILDREN OF EXECUTED CZECHS

The German Minister of State for Bohemia and Moravia
Personal Adviser

Prague, 13 June 1944

[handwritten note]

In order as regards F. [?]. Lebensborn
would necessarily have to be informed
[initial illegible]

21 June

Nr. St.M IV C — 35 j/43 g.
(refer to in reply)

Secret

To SS Colonel Dr. Brandt,
Personal Staff Reich Leader SS, Field Command Post

Dear comrade Brandt,

Concerning the matter "children of executed Czechs" I wish to reply to your letter directed to SS Lieutenant General Frank,

dated 6 February of this year, diary index No. 26/2/44 g Bra/H, that the conversation between SS Lieutenant General Frank and SS Colonel Sollmann took place on 2 July of last year in Prague. Colonel Sollmann stated during this conversation that racially valuable children up to six years would be considered eligible by the "Lebensborn". In individual cases even children up to 12 years could be adopted, but experience has shown, however, that difficulties would arise in such cases, when adopting them by a German family.

The commander of the Security Police and the SD has instructed the Superior State Police Offices [Staatspolizeileitstellen] Bruenn [Brno] and Prague to bring about a registration of Czech children, whose parents were executed under martial law or had died in a concentration camp. It was intended, to have children up to six years and suitable for Germanization brought into German families through the "Lebensborn". The older children, who were no longer suitable to be brought into a German family, were to be housed collectively somewhere outside the Protectorate, in order to attempt a collective reeducation. As regards the further treatment of children not suitable for Germanization, a decision of the Reich Leader SS should have been sought for. *The registration of the children has been effected in the meantime.*

It was, however, not possible to carry out the other measures planned, because considerable agitation would have resulted therefrom among the Czech population. For the time being the children were housed with relatives and friends where they became quite familiar. The mere examination of the children would have caused some sensation and would have brought about a state of affairs, unbearable with regard to the present situation in the Protectorate and especially to the maintenance of labor peace necessary for the unlimited production of war material. For that reason no further steps were taken in connection with the registry of children. The decision as to their further treatment has to be postponed.

Sixty-five children of Czechs, who were executed under martial law, were housed collectively, 46 of them in the internment camp at Swatoborschitz and 19 in a children's home at Prague-Reuth. These are mostly children whose parents were living in the former villages of Liditz [Lidice] and Lezaky, the inhabitants of which were shot or put in a concentration camp in connection with the measures taken after the attempt on SS Lieutenant General Heydrich. Seven of these children, selected at an examination by the branch-section Bohemia and Moravia of the Race and Settlement Main Office SS [Aussenstelle Boehmen und Maehren des Rasse- und Siedlungshauptamtes SS] as being suit-

able for Germanization, were housed in a children's home in the Warthegau.

The commander of the Security Police and the SD has tried as early as the beginning of the past year, to obtain a decision through RSHA [Reich Security Main Office] on the further treatment of the children housed in Swatoborschitz and Prague-Reuth who were not found suitable for Germanization. In connection with this, a transfer to the East had been proposed. Today a transfer of these children from Bohemia and Moravia is no longer possible, because in the meantime some of the relatives found out the whereabouts of the children and illegally established a hardly to be controlled communication. This development is also connected with the fact that Czech personnel were employed; made necessary by the lack of Germans. Some time ago a renewed examination of the children was carried out by the branch section Bohemia and Moravia of the Race and Settlement Main Office. On this occasion three more children, who could not be valued before on account of their youth, were classified as an acceptable addition to our population and 19 children as barely acceptable. It is true, that the setting up of the evaluation scheme was done on a generous scale.

It is intended to have the racially acceptable elements of the collectively housed children transferred through the Lebensborn to German families or to a children's home whereas the children over 16 years are to be sent to a concentration camp.

No further measures are to be taken at the present, according to Lieutenant General Frank's opinion. It is, however, to be observed in the future, that children are to be included in cases where judgment is passed on both parents, at the least they are to be removed immediately from the place.

Heil Hitler!

Yours

[Signature illegible]

SS Colonel

[Stamp]

Personal Staff

Received on 20 June 1944

Diary No. 26/2/44 g

R F

TESTIMONY OF PROSECUTION WITNESS HANFOVA*

DIRECT EXAMINATION

MR. NEELY: Would you please state your name, Witness?

WITNESS HANFOVA: Maria Hanfova.

Q. How old are you, Miss Hanfova?

A. 17.

Q. Where were you born?

A. In Lidice.

Q. Were you living in Lidice on 9 and 10 June 1942?

A. Yes.

Q. Then if my figures are correct, you would have been 12 years old at the time, is that correct?

A. Yes.

Q. Would you please describe what happened on 9 and 10 June in the village of Lidice?

A. On 9 June the German soldiers surrounded Lidice, and on 10 June, in the morning, they woke us up at three o'clock. After this, we were led to the school house, and from the school house we were loaded in trucks and they transported us to Kladno. In Kladno, we were left in the high school. Then on Friday we were separated—mothers were separated from their children. After this, we were transported in trucks to the railroad station, and we were told that our mothers would follow us.

Q. Witness, when you were separated from your parents in Kladno, were all the children placed in the group with you?

A. Yes.

Q. And where did you go from Kladno?

A. From Kladno, we went to some station.

Q. Do you remember where this station was?

A. We didn't know where it was.

Q. And then what happened after being taken to this station?

A. Then we were loaded on a train and taken to Lodz.

Q. How many children were with you when you were taken to Lodz?

A. 104.

Q. On your way to Lodz, how were you treated?

A. Very badly.

Q. Would you describe what you mean by your "bad treatment?"

A. We were given a little bit to eat—just black coffee and bread, and the little children were hungry. They cried and asked for their mothers.

* Testimony is recorded in mimeographed transcript, 30 October 1947, pp. 802-812.

Q. Were there nurses on this train to take care of the younger children?

A. There were nurses with us and they took care of the little children, but very badly.

Q. And then from Kladno you went to Lodz, is that correct?

A. Yes.

Q. Were you ever examined while in the camp in Lodz?

A. No.

Q. How long did you stay in this camp at Lodz?

A. We stayed in Lodz for a week with the rest of the children.

Q. And then were you ever separated into groups in Lodz?

A. Then they came and selected seven of us.

Q. Would you state the names, if you remember, of these seven children?

A. Yes. Marie Hanfova, Anna Hanfova, Marie Dolezalova, Vera Vokata, Emilie Freyova, Vaclav Hanf.

Q. And how were you treated while you were in the camp in Lodz?

A. We were treated very badly.

Q. And after leaving Lodz, where did you go?

A. Then we went to Lodz, in a town.

Q. Another camp in the same city?

A. Another camp in the same station.

Q. And how long did you stay here?

A. We stayed here about two months.

Q. But only the seven who had been selected, as you say, with you?

A. Yes.

Q. What happened to the other children after you were separated? Do you know?

A. We were not allowed to question about them. We don't know what happened?

Q. Have you ever seen any of these children or heard of these children since the separation took place?

A. I never saw them.

Q. There are none living in Czechoslovakia that you know of; is that correct?

A. I don't know.

Q. And after leaving Lodz where were you seven children taken?

A. Then they took us to Puschkau [district of Poznan].

Q. And did you meet any other Czech children in Puschkau besides these seven?

A. Children were there from Prague; other children from Lezaky, Vaclav Zelenka and Hana Spotova.

Q. The last two that you mentioned, Zelenka and Spotova, they were children from Lidice?

A. Yes, those were two Lidice children.

Q. And they had been with you at Kladno in the beginning; is that correct?

A. Yes.

Q. While you were in the home Puschkau did you see any other children there which you would say were Polish or who spoke Polish?

A. They spoke Czech and they spoke Polish and German.

Q. How many children altogether were there in the home, Puschkau?

A. About 72.

Q. Were there any German children in this home or children who spoke German?

A. Yes.

Q. Were these children who spoke German treated differently than you Czech children were?

A. The German children were treated differently than the Czech children.

Q. Were they treated better than you Czech children?

A. Yes.

Q. Do you remember the name of the person in charge of the children's home in Puschkau?

A. Yes, I do.

Q. Would you give me her name, please?

A. Martha Hepfner.

Q. Do you remember any of the other names of the employees in the home in Puschkau?

A. Yes, I do.

Q. Would you state those names?

A. Otto, Lorenz, and Wetzell.

Q. While you were at the home in Puschkau what did you do all day long?

A. We had to go to school, learn German, write, count, read, greet, and we had to work too.

Q. What type of work did you do?

A. We worked in a garden.

Q. While you were at this home did you have any ceremonies where you had to give the Nazi salute and so forth?

A. There were festivities in Hitlerjugend.

Q. Were you forbidden to speak Czech while in the home in Puschkau?

A. Yes.

Q. Did you ever forget and speak Czech at any time?

- A. No, I didn't.
- Q. Well, if any of the children ever spoke Czech were they punished in any way?
- A. They were not given any food and they were beaten.
- Q. Did this at any time ever happen to you?
- A. Yes, it happened to me and to my brothers too.
- Q. In the home Puschkau would you say that most of your schooling was to learn German, to speak and write German?
- A. Yes.
- Q. What did they tell you about Czechs in the home Puschkau?
- A. They told us that we would be Germans; that we would probably never come back to Czechoslovakia; that we would become Germans.
- Q. Did they ever say anything about Czechs being inferior, no good?
- A. No, we never were told that.
- Q. You were never told that?
- A. No, we weren't.
- Q. Not while you were in Puschkau?
- A. Yes.
- Q. Did you ever make any remarks about your father and what had happened to him; also your mother?
- A. We never knew. No one ever told us.
- Q. Did you ever try to write to your mother or father?
- A. We tried to but we were not allowed to.
- Q. Were you ever punished for trying to?
- A. No, I wasn't, but we were not allowed to write.
- Q. What did they say when you told them, if you ever did, that you wanted to go back home?
- A. I was always told that we were not to go back and we were to stay in Germany.
- Q. And after you left the home Puschkau where did you go?
- A. Hefner took me to a family.
- Q. And where was this family? What was the name of this family?
- A. This family was in Dessau and the name was Richter.
- Q. But going back to Puschkau once more, Witness, how long were you in Puschkau altogether before going to the Richter family?
- A. There we stayed about a year.
- Q. And by what name were you known in home Puschkau?
- A. Hanff.
- Q. How did you spell your name there? Was it H-a-n-f or H-a-n-f-f?
- A. Two f's.

Q. When you went to Richter's house what name did you go under there?

A. Marga Richter.

Q. And you were never called Maria Hanff or Hanfova?

A. No.

Q. How did the Richters treat you?

A. Badly also.

Q. Did they ever say anything about being a Czech?

A. Yes, they did.

Q. What did they say?

A. That I am from Czechoslovakia and now I have to listen to Germans; that I will become a German; that I have to be against the Czechs.

Q. Did they say that you should be proud to become a German?

A. Yes, they told me that.

Q. What did you do while you were with the family Richter?

A. I had to go to a German school.

Q. Did you go to school with other German children?

A. Yes.

Q. How were you treated by these German children?

A. At the beginning it was bad because I was a Czech and I didn't belong among them. I also was given a German Hitler Youth uniform. I had to join the Hitlerjugend. Then, later on, when the children became more friendly to me, it was much better.

Q. Did you ever work while you were with the Richter family?

A. Yes.

Q. And you were always made to speak German while with the Richter family?

A. Yes.

Q. And if you did not, what happened?

A. I was told I never should talk Czech.

Q. Did anyone, Witness, ever come around to inspect the home in which you were living while you were with the Richters?

A. Yes.

Q. What sort of questions did they ask you or Mrs. or Mr. Richter?

A. How they treated me and if I was a good girl.

Q. When did you return to Czechoslovakia?

A. On the 22 November 1945.

Q. And who returned you to Czechoslovakia? How were you returned?

A. Two women found me.

Q. With whom are you now living?

A. With my father's sister,

Q. And you are living where in Czechoslovakia?

A. In Krocehlavy-Kladno.

Q. Is your sister living with you?

A. No.

Q. Where is she living?

A. On the frontier in Podmokli-Decin.

Q. Did she live in Germany during the war?

A. Yes.

Q. Do you know the family whom she lived with?

A. Yes.

Q. What was the name of that family?

A. Straus.

Q. And where is your brother today?

A. Near where I live.

Q. Witness, in the beginning you named seven children who were separated with you in Lodz; also two other names, Spotova and Zelenka whom you met in Puschkau. Have you seen these children since you have returned to Czechoslovakia?

A. Yes.

Q. Have you talked with these children?

A. Yes.

Q. Did they all live in Germany during the war?

A. Yes.

Q. Did they seem to have the same general experiences which you have told us here?

A. I cannot tell.

MR. NEELY: Thank you, Witness. I have no further questions.

TRANSLATION OF DOCUMENT NO-5364
PROSECUTION EXHIBIT 714

AFFIDAVIT OF HERMANN A. KRUMEY, 30 SEPTEMBER 1947,
CONCERNING GERMANIZATION OF CZECH CHILDREN

* * * * *

From May 1940 until the end of March 1944 I was chief of the office of the Resettlement Center (UWZ) in Lodz/Warthegau, under the Inspector of the Security Police and Security Service [SD] Poznan. From March 1944 to May 1944 I was with the Sonderkommando Eichmann of [under] the commander of the Security Police in Budapest, Hungary.

From May 1944 to April 1945 I was superintendent of the camp for Hungarian Jews in Vienna and Lower Danube/Austria.

Shortly thereafter, on 3 May 1945, I was taken prisoner in Bolzano, Italy.

2. I became a member of the S.D.P. (Sudeten German Party) in 1934. I became a member of the General SS at the end of 1938, and of the Waffen SS at the end of 1939. My last rank in the General SS was SS lieutenant colonel, and in the Waffen SS, SS 2d lieutenant. I have the following decorations and distinctions of the Third Reich.

* * * * *

8. In 1942 orphaned Czech children from the Protectorate (Czechoslovakia) came to the camp of the Resettlement Center (UWZ) in Lodz/Warthegau. I remember there were altogether a little less than 100 children. After the arrival of these Czech children, I asked the chief of the field office at Lodz of the Race and Settlement Main Office, Dongus among others, whether he knew what was going to be done with these children. Subsequently, Dongus visited the camp of the Resettlement Center (UWZ) and took a look at the Czech children there; he took about 8 of them to the camp of the field office of the Race and Settlement Main Office in Lodz/Warthegau. These children taken by the Race and Settlement Main Office were declared by Dongus to be qualified for re-Germanization according to racial points of view. Dongus further told me that those children declared to be suitable for re-Germanization would be sent to Germany and turned over to German families. Then, as the rest of these almost 100 Czech children had not been found qualified for re-Germanization by the Race and Settlement Main Office, these Czech children were, by an order received via the Gestapo, transferred to the Gestapo at Lodz through my office; as far as I remember, this order came from Department IV of the Reich Security Main Office. If I recall correctly, I myself was actively taking part in this procedure.

I have read the above statement consisting of six pages in the German language and declare that according to the best of my knowledge and belief it is the full truth. I have had an opportunity to effect changes and corrections in the above statement. This declaration I have made voluntarily without any promise of reward and I was subjected to no compulsion or duress of any kind.

[Signed] KRUMEY, HERMANN

Nuernberg, 30 September 1947

b. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT SOLLMANN*

DIRECT EXAMINATION

* * * * *

DR. RATZ (Counsel for defendant Sollmann): Witness, the Lebensborn also took care of several children who previously had been located in the children's home in Puschkau, in the district of Poznan and who had originally come from the Protectorate. What do you know about that case?

DEFENDANT SOLLMANN: Toward the end of August 1942 the Lebensborn received a teletyped inquiry from Prague, whether they could take over 200 ethnic German orphans in this home. I disapproved this request through my collaborator Ueberschar because the Lebensborn couldn't accommodate these children. In the summer of 1943, one year later, I received a written order from Himmler and this is Document NO-4173, Prosecution Exhibit 397, that I was to contact the German Reich Minister for Bohemia and Moravia, SS Lieutenant General Frank, on the question of the care, education and accommodation of Czech children whose parents had been executed. At the time I went to see Frank and I convinced him in the course of a brief discussion that the Lebensborn did not want to include themselves in this matter and it could not do that.

Q. And how did you convince him finally?

A. By telling him that I was only concerning myself with ethnic German orphans who did not have any families, that is to say, orphans without relatives. On this occasion I found out that there were only two orphans altogether who perhaps would be of interest for the Lebensborn. Frank regretted at the time that I had been ordered to come to Prague for nothing. As a matter of fact in the course of my work such cases occurred repeatedly. Some agency or other would turn to Himmler with a critical inquiry and then I would receive an order that we would have to discuss this matter, then I would go to that agency and everything was just plain air, just a big snow job. I can recall that on one occasion I was ordered to go to Paris in order to care for 50,000 children and not even five children actually existed. As a matter of fact I didn't regret that I had to go to Paris.

Q. Witness, according to the letter, Document NO-4171, Prosecution Exhibit 398, which you wrote to Himmler, as the result of your journey to Prague, one could conclude that you stated that

* Complete testimony is recorded in mimeographed transcript, 23, 26 January 1948, pp. 4298-4389.

you were ready to accept these children and that perhaps you took over a number of these children into the Lebensborn later on. What can you say in that connection?

A. I took the trip in the summer of 1943. As the result of this trip not a single child came to the Lebensborn. My reply to Himmler, in substance, corresponded to the order of Himmler. This was appropriate and it was even necessary if I wanted to safeguard the agreement which I had reached with Frank according to which the Lebensborn, in spite of the order Himmler had given, would not be included in this entire affair.

Q. Accordingly did you give a false description to Himmler?

A. No, it was not false at all. I only failed to report to Himmler and I had agreed with Frank that the Lebensborn should be excluded.

Q. It is decisive whether or not as the result of this trip the Lebensborn took over any Czech children?

A. No, as a result of my trip, no Czech children were taken over.

Q. Before that or later on did you go to Prague again?

A. No, I have only been to Prague once in my life and that was in the summer of 1943.

Q. Witness, Document NO-435, Prosecution Exhibit 399, a letter was submitted which shows that Medical Councilor Dr. Giess sent this to Dr. Brandt on Himmler's staff in the summer of 1944. Can this letter be described as being a reproduction of your conversation with Frank in the agreement you reached?

A. What Dr. Giess wrote down as a plan and a partly executed measure in 1944 was neither mentioned by Frank nor by Giess in the course of our discussion in 1943.

Q. In your affidavit you stated that in your discussion the fact had been mentioned that children who were older than 16 years were to be sent into labor camps. What sort of camps did you visualize when you said that? Was there something unusual about that?

A. In this connection I must say that I did not mention labor camps at all but the expression was used in the course of the discussion. I didn't think anything about it at the time. Not only within greater Germany, but also in other European countries, and countries beyond Europe, there were and still are labor camps, or labor service camps for young people above the age of 16.

Q. Witness, therefore, I understood you correctly then that from your discussion in Prague in the year 1943 and also from the trip which one of your collaborators of Berlin, Ueberschar, took in 1942 to Prague in order to disapprove the request of a

Prague agency to accept 200 ethnic German orphans in the Lebensborn and as a result of which not a single child was sent to Germany proper, much less into Lebensborn?

A. Yes, that is correct. Not a single child came to us as the result of this trip. Not only no Czech children, but no children at all.

Q. How did the Lebensborn establish contact at all with the 12 or 13 children which were the subject of this trial under the term, "the children from Lidice."

A. In August 1942 the Lebensborn received a request from the children's home at Puschkau which belonged to the District Self-Administration in Poznan and which was operated by it and this has been exhibited as Document NO-5414, Prosecution Exhibit 715. The Lebensborn requested in a letter to care for several children in the Protectorate who were mentioned by name, that is to say, they were to furnish clothing for these children and we complied with this request. From Document NO-5416, Prosecution Exhibit 719 it becomes evident that the Lebensborn must have been requested a second time to furnish clothing for an additional seven children from the Protectorate. We also complied with that request. As becomes evident from a prosecution document whose number I don't know at the moment, these children had come from Lodz and they were sent to the District Children's Home at Puschkau and the Lebensborn had not been informed of the fact that these children were sent there and of course Lebensborn had nothing to do with it. The District Self Administration of Poznan already at that time considered the Lebensborn to be an exemplary institution in the field of care and assistance for children. The men in the District Self-Administration office in Salzberg conferred with the Lebensborn instead of working with the NSV [Public Welfare]. That is why in the care to be given to these children from the Protectorate the advice of the Lebensborn was used as being only natural. We consulted the District Self-Administration in Poznan in the course of examination of the prerequisite with reference of placing these children in foster homes in cases where the District Self-Administration had selected homes for these children. In the examination of the prerequisites by the Lebensborn in this respect was limited to formal questions but in any case for the competent agencies of the District Self-Administration in Poznan, it was a good feeling at least to know that the foster homes which they had selected had been examined from the viewpoint of the Lebensborn. The examination, therefore, was applied to couples who had volunteered to take a foster child at the District Self-Administration. The examination consisted of the fact whether or not this couple

could take care of a child. Then they had to submit their geneo-logical chart in accordance with usage in the German Reich of National Socialist doctrine. One thousand prerequisites had to be fulfilled in order to show that these people were worthy of having the honor of looking after the foster child and that is why the Lebensborn had its own machinery to do this and with their experience that was routine work for them. After the children had been put into foster homes, the Lebensborn tried with more or less success to establish or maintain contact with the foster parents. In one individual case, already in June 1942, the Lebensborn had been requested by the District Self-Administration to take care of children from Prague and not from Lidice. There were two children and for these two children the Lebensborn, on 27 July 1942, had suggested foster homes.

The children actually arrived on 29 December 1942. The span of time of perhaps half a year which passed between these two dates was filled in by the following: The first information which the Lebensborn received about these two children, and which the Lebensborn passed on to the couple, to the foster parents, stated that these two children did not have any families. Two weeks later the Lebensborn received the information that it was probable, or that the possibility existed, that in this case the mother of the children was still alive, and that she was in a concentration camp. The Lebensborn immediately reported this information to the prospective foster parents. Furthermore, at the same time, the Lebensborn requested the decision of Himmler of what was to be done in this case. The social workers in charge already reacted in such a motherly way in this case that they even expected an immediate inquiry to Himmler would bring about the release of this woman from the concentration camp. Himmler decided that after two years these two children were to be returned to their mother, at the latest by the end of the war; that is to say, as soon as their mother would be released from confinement, and Dr. Weiss, who was to give a foster home to the children was informed of that fact, and Frau Weiss declared herself willing to accept the children under these circumstances, and she promised to look after them to the best of her ability, as though they were her own, and she kept her promise. At the beginning of 1944, the Lebensborn again took steps, to clarify this affair with the intention of locating the mother of these children. That was not a simple thing to do. Some extensive correspondence resulted with agencies of the state and the SS, in the Reich and within the Protectorate. However, there were so many contradictions as a result of this correspondence with regard to the question whether the mother was still alive, and if she was alive where she could be

found, that it was not possible to clarify this matter before the end of the war.

Q. Witness, did you personally participate in this extensive correspondence?

A. I can recall that one of my collaborators reported to me that in the course of the inquiries on two or three occasions he made inquiries at the concentration camp at Ravensbrueck, and he told me that he had not received any reply. In order to give more emphasis to such an inquiry, I myself, using an official letterhead which was at my disposal—not the letterhead which was used in this trial, “Reich Commissioner for the Strengthening of Germanism,” but a letterhead which read, “Reich Leader SS, Personal Staff, Office II, Munich 2, Herzog-Max Strasse, 327”—wrote to the headquarters of the concentration camp Ravensbrueck, and I also wrote to Himmler. In both cases I did not have any success whatsoever. Therefore, I put this whole correspondence into a folder together with things I wanted to report to the Reich Leader; for I wanted to discuss the whole matter with Himmler in person; however, this discussion never took place.

Q. At any rate you can state that the foster parents of these children had been informed about the conditions which actually prevailed, as far as this information had become available to the Lebensborn; that the foster parents knew that they were duty bound to return the children to their mother as soon as it was possible to do so?

A. Yes.

Q. Do you know whether at the end of the war these children were returned?

A. Yes. On 5 July 1945, they were taken away by their uncle, and I myself saw the photostatic copy of a letter of the family which contained a lot of recognition and which the uncle of these children turned over to the foster parents for use as they saw fit.

Q. With regard to these 12 or 13 children, did you hear of any other cases where the mother of a child was in punitive confinement or in protective custody?

A. No, not one.

Q. Witness, can you state that the Lebensborn pursued all cases energetically where the information had become available, even if it was sketchy, that there was a possibility that members of the family of these children were still alive; and that the Lebensborn intended to return these children to their families?

A. Yes. I already mentioned that we adhered to one basic principle in the Lebensborn with regard to this; that was the principle that mother and child are one single unit. Of course this did not only apply to the children who had been born within

the Lebensborn, but it applied to every child that had any contact whatsoever with the Lebensborn.

* * * * *

TRANSLATION OF SOLLMANN DOCUMENT 53
SOLLMANN DEFENSE EXHIBIT 6(3)

AFFIDAVIT OF UDO VON WOYRSCH, 7 JANUARY 1948,
CONCERNING SOLLMANN'S ACTIVITIES

Copy

Affidavit

I, Udo von Woyrsch, born in Schwanowitz, Government District Breslau, 24 July 1895, have been duly warned that I make myself liable to punishment if I make a false affidavit. I declare under oath that my statement is true and was made in order to be submitted as evidence to the Military Tribunal in the Palace of Justice, Nuernberg, Germany.

I know Herr Sollmann from his activity as Vorstand of the registered cooperative association "Lebensborn" in Munich.

In July 1943, on the occasion of a duty trip to Prague, Sollmann visited me in Dresden, where he stayed until the next train departed. I must have been previously informed as to Sollmann's arrival in Dresden, either in writing or by telephone, for I met his train and we talked in my apartment. I inquired as to the purpose of his trip to Prague. He explained that as a result of an order of Himmler's, he was supposed to discuss the question of the education, care, and accommodation of Czech orphans with the German Minister of State for Bohemia and Moravia, SS Lieutenant General Frank. At the same time he added that he had made up his mind, in spite of Himmler's order, to keep the Lebensborn out of this matter. I replied at once that for the Lebensborn the question of taking on children could only be considered when it was in agreement with the statutes of the Lebensborn. In this case, however, this seemed to me to be very much open to question. I particularly warned Sollmann about Dr. Gies, the personal Referent of Frank. Sollmann accepted my allusions and warnings most gratefully, and repeated that he had, of course, already made up his mind before coming to me and speaking with me, but that he was not yet quite clear as to how he could persuade Lieutenant General Frank to accept his standpoint and in what form he should report to Himmler.

For the rest, I discussed with Sollmann the relationship of Protectorate (Sudetengau) [sic] to Germany proper. I gave him

my personal impression that a policy of appeasement was not being pursued there. By this discussion with me, Sollmann was even further strengthened in his negative attitude. When he departed for Prague, I had the firm impression that under no circumstances would he be willing to carry through the order of the Reich Leader SS or the proposals of the Prague offices.

[Signed] UDO V. WOYRSCH

Nuernberg, 7 January 1948

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS BARTELS*

DIRECT EXAMINATION

* * * * *

DR. RATZ (Counsel for defendant Sollmann): Witness, I am now coming to the second chapter. The Czech children. When did you first obtain knowledge about the Czech children?

WITNESS BARTELS: In 1942, a short time after I began on a part time basis to take over the direction of department III [in the District Self-Administration Poznan].

Q. Who told you about it?

A. I heard about it from my chief, the Gauhauptmann; somebody had made a request to him that he should accept a small number of those children, and accommodate them in one of his homes.

Q. What information did you get in the course of your discussion with the Gauhauptmann?

A. The Gauhauptmann told me that as a result of punitive measures in the Heydrich affair in the Protectorate, a number of children had been ascertained who allegedly were of German descent, whose parents had also lost their lives in the course of these punitive measures, and we would have to accept them for the time being.

Q. On that occasion was the fact discussed just what agency had addressed this request to the District Self-Administration, or did you see a letter to that effect?

A. No. I don't want to completely exclude the possibility that the Gauhauptmann mentioned the agency. However, it was so small that I don't recall it.

Q. Was it the Lebensborn?

A. It certainly was not the Lebensborn, because I would have recalled that, since as a result of Decree 67/I we had contact with them.

* Complete testimony is recorded in mimeographed transcript, 29, 30 January 1948, pp. 4628-4695.

Q. What was your attitude with regard to that statement made by the Gauhauptmann?

A. I only raised one objection on administrative grounds. This consisted of the fact that according to my official opinion children who were from distant districts should not be brought up with the funds on our budget.

Q. What was the opinion of the Gauhauptmann in that connection?

A. He admitted that my opinion was correct, naturally, but he stated that for the time being we would have to take care of the children, and the financial question would be settled later on.

Q. And what happened then?

A. That was also correct, then I suggested putting these children into the children's home in Puschkau in the district of Poznan.

Q. Who brought these children into your district children's home at Puschkau?

A. I don't know.

Q. Wasn't this rather unusual as a matter of fact, so that this actually should have remained in your memory?

A. In my department III there were more than 20 such homes and institutions, and receiving 13 children actually happened every day. This was handled by the matron or the social worker, or, at best, by the Referent.

Q. From where were the children brought?

A. I cannot tell you that with certainty, but, as far as I remember, they came from Lodz.

Q. What other children were located in the home at Puschkau?

A. Only German children. We didn't have any home at all for Polish children, and Puschkau was a home of the voluntary educational assistant group for German children.

Q. Several Czech children have stated that there were also Polish children together with them in Puschkau, who also spoke Polish. What can you say about that?

A. It is impossible that Polish children were at Puschkau. That some of the children at Puschkau spoke Polish is not surprising at all, because most of the children who were there were ethnic German children, and also came from resettler families from the eastern part of Poland, who outside of their home had only spoken Polish at all times.

Q. According to the claim of the prosecution, some mothers of these children were still alive, and were in protective custody?

A. We didn't hear anything about that, but the children always told us that on this occasion they had lost their parents, or had

become separated from them. I know this because the children would discuss this matter with the home matron.

Q. In what way were the children brought up in the home?

A. They were brought up like all the other children in homes.

Q. Did they speak Czech or German with these children?

A. We were using German in talking to the children, because after all this was a German children's home where German was spoken, just as probably in a Czech home, Czech would be spoken; after all, the entire personnel only spoke German.

Q. Did these children attend school at Puschkau?

A. If they were of school age, they attended school there, or rather, at Unterberg, because Puschkau didn't have its own school.

Q. Then from the home at Puschkau some of these children were already turned over to their foster parents, is that correct?

A. Some of them came to families from Puschkau.

Q. Did the Lebensborn play any part in finding foster homes for them?

A. I think that was not yet the case at that phase. In my opinion this only happened later on in the case of two children who were turned over to foster parents in Germany proper, a professor's family, or something like that and two other children who came to Oberweiss. However, I don't know if any foster homes were found for these children.

Q. Can you still give us the names of some of these foster homes?

A. You are referring to foster homes in the Warthegau where the children were sent. From my memory I can still recall the following foster homes: The Schillers in Poznan; an Eichelmann family, from my own administration office, a Frau Straus from Unterberg, who was employed in the home at Puschkau; and the Agricultural Councillor Beckel, from Unterberg.

Q. Can you tell us something about the level of these foster homes?

A. These foster homes which I have just mentioned I know personally. They were families which were in a very favorable financial position, and pretty much above the average of the usual foster home. However, above all, they really liked these children, and that was the most important factor as far as we were concerned.

Q. The child who came from the Schiller family has testified before this Tribunal that it had been treated very badly there. While there, it had had to undergo an operation, for which there was no actual reason, according to the testimony of this child. Can you tell us something about that matter, in particular, did you hear anything about the fact on one occasion or the other

that the Lebensborn had ordered something of this kind to be carried out?

A. I know nothing about it, and I never heard anything to that effect.

Q. Furthermore, the child stated that in the Schiller family it had received the name of Schiller. Do you know anything about that?

A. In this connection I can only say that in foster homes it was not unusual that children adopted the name of their foster parents. That probably was also the case here, and the youth welfare authorities always welcomed this, because this meant that the relationship between foster children and foster parents was improved, and it became a close relationship as in a real family; no changes were made in the official documents, however.

Q. Were these children adopted by the foster parents? As in this case which you mentioned, or any other cases?

A. This was not done. Several of these foster parents came to see me, for example, Frau Alscher, who expressed a desire to adopt the child. However, it was then disapproved, because conditions were unclarified, and during wartime no adoptions could be carried out at all.

Q. Were foster parents told where the children came from? That is to say, that they were children from the Protectorate, and did they know the name of these children?

A. We informed the foster parents about everything we knew about these children, and all foster parents living near Poznan came to see me or my Referent, and they would discuss these things also with the Home Administration.

Q. From the prosecution's Document NO-5428, Exhibit 727, which is contained in Document Book 8-E, it becomes evident that Frau Paetel visited you once, that she declared herself willing to give her name to a child in order to avoid difficulties. Can you tell us what difficulties were involved here?

A. In the case of Frau Paetel and her child it was like this. The Food and Economic Office made difficulties for her, because she received German food ration cards because she had her German allowances from the Economic Office. The reason for this was that the child had a name that didn't sound German. At the time I told her that she should give the name of Paetel to the child simply because then all these difficulties would be alleviated. However, no official change in name was carried out. Besides, I could not have done that anyhow.

Q. How did you just happen to contact the Lebensborn with regard to these children?

A. The home at Puschkau or the District Youth Office used the

experience of the Lebensborn in order to find foster homes. In order to understand that, one must realize that the finding of foster homes occurs very rarely through a District Youth Office, it is usually handled by another agency. The Lebensborn, however, had such experience, and the second reason is the following: We tried to get these children insured with the Lebensborn, which would have been of great benefit for the older children but we didn't have anything at all in that field. For this purpose we submitted total lists of these children to the Lebensborn.

Q. For some time did some of these children also stay at the children's home at Bluetenau?

A. Several of these children came to Bluetenau, that was the home I referred to yesterday. However, I don't know exactly at what time they were sent to that home, and how many children were sent there.

Q. What sort of home was Bluetenau, and to whom did it belong?

A. It belonged to us and was staffed by our personnel.

Q. Witness, you stated at the beginning that the Gauhauptmann had mentioned the fact that these children were allegedly of German descent. Didn't you have any doubt later about this opinion?

A. I can answer that in the negative. At the time I didn't have these doubts. I still don't have any doubts with regard to the majority of these children. The majority of the names of these children were German, and two which I have mentioned in the document, Hamm and Spott, are certainly of German origin, and one mother is called Barbora Frey and the ending Ora was nothing but the Czech ending to the name by using a few additional letters.

Q. Later on did you have to deal with these children again?

A. That was a considerable time later. This was in the middle of December 1945. At the time, in my Hildesheim apartment, the colonel from the Czech Secret Police, Anatol Pelikan, came to see me, and he was accompanied by another man whose name I don't know, whom, however, so far as I recall I saw again later in the course of interrogation, here in Nuernberg. Furthermore, a lady was present who was presented by Colonel Pelikan to me as a mother of the child from Lidice. At the time I heard from Colonel Pelikan the word "Lidice" and the closer details connected with this name for the first time. Colonel Pelikan requested me to assist him in finding the thirteen children who had been at Puschkau, and I promised him all my assistance. In the course of approximately two weeks I located the names of the foster parents, and their location, after the evacuation, now in Germany

proper. I informed him of all these details, and of course, I was helped by the memory of the personnel which had worked at Puschkau. In accordance with instructions through Captain Sicher, this liaison officer in Brunswick, I informed him of these things. Colonel Pelikan told me at the time that all these questions to me didn't have the purpose, as he expressed himself, of preparing some sort of revenge, but he told me he had been at Puschkau, and that he had carried on other investigations, and, he also showed me pictures from Puschkau, and he assured me that he knew that the children had been well treated at Puschkau, and that he only was requesting my aid and assistance. He said, literally, that Puschkau was a light ray in the dark picture of Lidice, and a similar sentence was later on quoted in the press.

Q. Was one of the children who had been at Puschkau, did it belong to the mother you talked to who was looking for her child?

A. No. So far as I can recall we were unable to ascertain that.

Q. Did you hear anything of the fact whether the thirteen children in whose search you participated actually returned home?

A. I can only say about that that I read about it in the papers.

Q. Two of the children from Lidice who were at Puschkau have testified at this Tribunal that they had been beaten and that they had gone without their regular meals if they spoke Czech in the home. Can you tell us something in that connection?

A. I personally don't know anything about it. However, according to the regulations which were issued for the treatment of the children in our homes, and according to the personnel who were working there, I consider that to be out of the question.

Q. What staff did you have there at Puschkau?

A. We had a matron Frau Hoepfner there for the home, the head; then, we had children's nurses, graduates from our own schools, and I myself selected this staff from the hundreds of people who had been trained in these schools.

Q. And now my final question, Witness. At that time would you have had the possibility of refusing to accept these children and refusing to find foster homes for them?

A. I personally certainly could not have done so because I had to adhere to the orders my chief issued. However, at that time I believed that it was a humanitarian measure to accept these children, and here after I was interrogated by Colonel Pelikan I always asked myself whether I made a mistake there, but I still don't know that today. If the children had not been accepted by us, then probably we would have been reproached for that now.

DR. RATZ: Thank you. I have no further questions.

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS
KRUMEY*

CROSS-EXAMINATION

* * * * *

DR. ZAPF (Counsel for defendant Hofmann): Witness, in your affidavit which my predecessor has already mentioned you also stated that Dongus designated Czechoslovakian children as being fit for re-Germanization, those are children who had arrived in the camp of the UWZ [resettlement office] in a transport. Before the arrival of these children did you already receive directives in that connection?

WITNESS KRUMEY: No. I had no directives at all and I didn't know what was to happen with these children.

Q. What did you do then?

A. I complied with my orders and contacted the local authorities to ask them whether they had any knowledge about what was to happen to these children and thus it was that Dongus found out that children were there.

Q. Could you establish during your contact with Dongus whether he had had previous information or directives as to what should happen to these children?

A. No. I was under the impression Dongus didn't know anything.

Q. Did you receive an order by the RSHA according to which the children had to be handed over to the Gestapo according to lists?

A. An order arrived via the Gestapo that the children had to be handed over.

Q. Together with this order did you receive a directive also concerning possible re-Germanization of these children?

A. No.

Q. That will do. In this connection did you also receive orders from the RuSHA?

A. No.

* Complete testimony is recorded in mimeographed transcript, 17 December 1947 and 12 January 1948, pp. 2667-2672; 3478-3479.

5. YUGOSLAV CHILDREN

a. Selections from the Evidence of the Prosecution

PARTIAL TRANSLATION OF DOCUMENT NO-681
PROSECUTION EXHIBIT 390

INSTRUCTIONS FOR EXECUTION OF THE ACTION AGAINST PARTISANS AND "OTHER BANDITS" IN UPPER CARNIOLA AND LOWER STYRIA, 25 JUNE 1942

The Reich Leader SS
The SS Reich Leader's Staff Command

Fuehrer Headquarters 25 June 1942

In 15 copies—1 copy

Enclosure to diary No. 323/42 Top secret.

TOP SECRET

Instructions for execution of the action against partisans and other bandits in Upper Carniola and Lower Styria

1. The basis for the execution of the entire action is exact reconnaissance of the whole region by the Security Police and the correct estimation of the opponent's organization. Above all it is the task of the Security Police to reconnoiter by all possible ways and means the position of the bands and of single enemy groups, in particular the seats of the band leaders.

2. When the detailed forces will be going into action I deem necessary—

(a) surrounding and cutting off the territory to be cleared up (to be done best by last reserve troops,—Landesschuetzen—reserve battalions and police reserve battalions).

(b) pressing forward by shock troops and special detachments against bands, reconnoitered beforehand by the Security Police, and their destruction in battle,

(c) pursuing of those scattered groups by single reconnaissance units and chasing of the bandits until annihilation.

(d) punitive action against villages guilty of supporting the bands.

3. The action has to prevent from doing further harm all elements having supported the bands of their own free will by men, provisions, arms, and shelter. The men of a guilty family, in many cases of the whole clan are to be executed on principle, the women are to be arrested and taken to a concentration camp, the children are to be removed from their homes and concentrated

in that part of the Gau that had originally belonged to the Reich. As to numbers and racial value of these children I am expecting separate reports. All property of the guilty families will be confiscated. The other aim is to free the loyal population from the oppression of the bands and to make them feel secure within the Reich.

4. The carrying out of this action will require of the leaders and the men the utmost devotion to duty and circumspection and also extraordinary physical feats and exertions in this difficult mountainous country.

I am confident that leaders and men of the SS and police will fulfill all that is expected from them.

[Signed] H. HIMMLER

Certified by:

[Signature illegible]

Lieutenant Colonel of the Protective Police [Schupo]
and SS Lieutenant Colonel

TRANSLATION OF DOCUMENT NO-5304
PROSECUTION EXHIBIT 710

MEMORANDUM FROM CREUTZ TO VoMi, 5 SEPTEMBER 1942, CONCERNING THE GERMANIZATION OF CHILDREN FROM UPPER CARNIOLA AND LOWER STYRIA

The Reich Commissioner for the Strengthening of Germanism
Staff Main Office

Berlin-Halensee, 5 September 1942
Kurfuerstendamm 140

I-2/8 — Dr. Ko/Gh

File: Placing of children of shot criminals [Gewaltuebrecher] from Upper Carniola and Lower Styria

Reference: Today's telephone conversation between Herr See and Herr Dr. Kolditz.

To the Reich Commissioner for the Strengthening of Germanism
Repatriation Office for Ethnic Germans (VoMi)

Berlin W 35

Tiergartenstrasse 18a

With reference to the above mentioned telephone conversation, I herewith confirm that the Lebensborn in Munich, in its capacity of a main office of my agency, will carry out the above children's operation, as far as I am competent. Please have the competent Operational Gau Directorate [Gau-einsatzfuehrungen] instructed accordingly.

As agreed upon, the Lebensborn will directly contact you concerning the carrying out of this children's operation.

By order:

Signed: CREUTZ
SS Senior Colonel

Certified true copy:
[Signature] REINDL
Munich, 12 October 1942/Re.

TRANSLATION OF DOCUMENT NO-3019
PROSECUTION EXHIBIT 394

LETTER FROM THE RKFDV BRANCH OFFICE, MILITARY DISTRICT XVIII
TO VoMi, 14 SEPTEMBER 1942, CONCERNING TRANSFER OF CHILDREN
OF PARTISANS FROM UPPER CARNIOLA AND LOWER STYRIA
TO THE ALTREICH (GERMANY PROPER)

[Stamp] Personal Staff Reich Leader SS
Correspondence administration.
File No. Secret 190/14

Copy

The Higher SS and Police Leader in the Military District XVIII
Deputy of the Reich Commissioner for the Strengthening of Germanism

Salzburg, 14 September 1942

3/42 secret O/Wa.

To the Liaison Office for Ethnic Germans

Secret

Berlin W 35

Tiergartenstrasse 18a

Subject: Transfer of children of partisans from Upper Carniola and Lower Styria to the Altreich (Germany proper).

By order of the Reich Leader SS dated 25 June 1942, Journal No. 323/42 Top Secret the children of partisans and rebels who were classified according to the recognized groups by the SS Race and Settlement Main Office, are to be transferred from the areas above named into the Altreich and there to be looked after by the VoMi.

The children of category 1 and 2 between $\frac{1}{2}$ and 12 years of age are to be handed over by VoMi to the "Lebensborn", Munich 2, Herzog-Maxstrasse 3-7, which is responsible on its part for the care and/or adoption of those valuable children.

The immediate transfer of the children through VoMi was

agreed upon on 12 August 1942 in the presence of Frau Viermetz, representative for "Lebensborn", SS Major Obersteiner representing the Higher SS and Police Leader of Alpenland, SS Colonel Blume, Commander of the Security Police and SD as well as your own Representative, party comrade Cyriak of VoMi in Klagenfurt.

The requisitioning of transportation (rail) as well as the allocation of accompanying guards is effected by the Commander of the Security Police and SD; the assignment of accompanying personnel, the reception of the transports and the preparation of camps in the Altreich is the responsibility of VoMi.

SS Captain Roedel commissioned by the Higher SS and Police Leader Alpenland, with the classification of the families, respectively their children, will arrange for the lists and card indexes to be handed to the accompanying transport guard. The children intended for "Lebensborn" are to be turned over to it after having been registered in advance. Their card indexes will be remitted directly to "Lebensborn" by the Higher SS and Police Leader, but these children will be indicated on the transport lists for your information.

The present situation is, that, up to now, no transport has in fact left Upper Carniola and that the catastrophically overcrowded reception camps constitute an extremely dangerous potential center of an epidemic. The children from Lower Styria, on the other hand, have already been transported to Frohnleiten in Styria. The transfer from Frohnleiten of the children intended for "Lebensborn" would have to be arranged by you in agreement with the latter association.

In connection with the whole affair we would suggest that a representative from Berlin be sent to Veldes in order to discuss the matter thoroughly once again with the Higher SS and Police Leader Alpenland (SS Major Obersteiner) as well as the competent agencies of the Security Police and "Lebensborn", and to set the transport finally on its course.

Frau Viermetz, "Lebensborn", Munich, SS Major Obersteiner, Salzburg, Kapitel-Platz 2, the Commander of the Security Police at Veldes, Grand Hotel, and the representatives of VoMi at Klagenfurt and Graz would have to be informed of the date of the discussion.

By order:

[Signed] OBERSTEINER
SS Major

I certify the correctness of the copy

[Illegible Signature]

SS Corporal

Munich, 4 August 1943/Kr.

TRANSLATION OF DOCUMENT NO-5201
PROSECUTION EXHIBIT 707

MEMORANDUM FOR SS MAJOR (F) BRUECKNER, 10 FEBRUARY 1943,
CONCERNING BASIC REGULATIONS REGARDING THE TREATMENT
OF THE DEPORTEES FROM UPPER CARNIOLA

No. 351/48

Memorandum for SS Major (F) Brueckner

Subject: Basic regulations regarding the treatment of de-
portees from Upper Carniola.

Reference: Your memorandum of 4 February 1943, Br/KE-
VI/197.

Referring to the above-mentioned memo, I take the liberty to submit the following proposals regarding the persons in question, asking for examination and information, whether it might be possible to start negotiations from here with the offices concerned, based on the proposals made simultaneously in writing, so that the results can be formulated in basic regulations.

Deportees from Upper Carniola—KOK

a. *Relatives of Executed Communist Bandits* [Partisans]. The relatives of the above-mentioned group have been shot according to the stipulations of the order of the Reich Leader of 24 January 1942 for their active participation in partisan warfare or for befriending the bandits. The survivors have been assigned to camps of the Repatriation Office for Ethnic Germans in connection with this measure. The persons concerned can be divided in groups as follows:

1. Parts of Slovene families who were evacuated by force, whose relatives (fathers and sons) were arrested by German authorities, and who are now in custody pending trial at the penitentiary Wigaun/Upper Carniola.

2. Parts of Slovene families who were evacuated by force, whose missing relatives presumably are with the still active partisans or whose residence is unknown, that is, who fled to the present Italian part of former Yugoslavia.

3. Entire families who were evacuated by force, who are suspected of having been in touch with the partisans or who otherwise participated in activities hostile to the state.

As all deportees of this group of persons are suspicious to a larger or lesser degree, the Einsatz directorates were originally ordered by me to take the persons suitable for allocation under guard into a close labor allocation camp. As the behavior of

these deportees in the camp community is a comparatively good one, according to reports submitted to me recently, I have authorized the Einsatz officials to assign some worthy ones for individual labor allocation. However, the camp leaders are under obligation to exercise special control over the persons assigned to individual labor allocation. New reports have already been received by my office, according to which the deportees in question behave very well also at the individual labor allocation and that in general they have shown their willingness to work. For further treatment the following proposals are submitted: According to the oral and written reports submitted to me by the Einsatz directorates, all persons in question have been screened already in regard to race and health by SS Captain Roedel, the delegate of the SS Race and Settlement Main Office. Only the families which have at this occasion been found suitable for re-Germanization have been assigned to the transports for the camps of the Repatriation Office for Ethnic Germans. However, my rechecks referring to these reports, have proved that also in some cases families unsuitable for re-Germanization have been brought into the camps. Therefore I consider it necessary that those families who are not suitable for re-Germanization and those persons for whom a racial evaluation is missing, are to be rescreened by racial examiners of the SS Race and Settlement Main Office. This racial examination is the more necessary, because it turned out already during the deportations from Lower Styria, that the racial examiners at the places of origin had made the examinations according to too stringent rules. Furthermore, according to a recent order of the Reich Leader SS, also persons of a racial qualification RuS B III plus are to be included into the re-Germanization program. In my opinion the remaining families, not suitable for re-Germanization are to be put again at the disposal

[Handwritten marginal note:] yes

of the Reich Security Main Office. The deportees found suitable for re-Germanization on account of the racial and health examination have to remain, in the opinion of this office, at the housing camps of the Office for Repatriation of Ethnic Germans. After the expiration of a certain time, which has to be fixed at least with

[Handwritten marginal note:] yes

two years, the camp leader has to designate those families worthy to be included in the Germanization program by reason of their behavior and their later capacity. These persons would be reported to a Higher SS and Police Leader to be nominated, who would assign these families to labor allocation in Germany proper

by providing housing facilities, and who, in addition, would carry out the usual Germanization measures.

b. *Unattached children of executed Communist partisans from Lower Styria and Upper Carniola.* By application of the above-mentioned order of the Reich Leader approximately 600 children from Lower Styria as well as from Upper Carniola have been transferred to the camps of the repatriation office for ethnic Germans, which I had centralized for organizational reasons within the Einsatz directorate Bayreuth. According to a decree of the Staff Main Office, these children have been transferred to the Lebensborn society, which on its part takes care of their welfare and or adoption. Conferences with Frau Viermetz, representative of the Lebensborn, have already taken place in that respect. Because the above-mentioned society could convince itself that the children are well taken care of at the Einsatz directorate Bayreuth and as the Lebensborn has no similar housing facilities at its disposal, the immediate transfer of the children was not carried out. At the present time the Lebensborn is preparing the adoption places whereby it is contemplated to consider first of all the accommodation of the infants and small children up to three years of age. The transfer of the children up to ten years of age will probably take a longer time.

Proposal

In my opinion it is out of question that the Lebensborn should be entrusted with the taking care of the children older than ten years. This concerns approximately 300 children who should be sent to special institutions. The educational measures should be directed in a lesser degree not to achieve a high grade of education but rather to establish an association with Germanism. It should be verified whether this task could be assumed by the Main Office, SS Lieutenant General Heissmeyer. At the same time it should be considered whether the older girls could be employed as servants in the houses of SS officers or leading party officials.

Kindly let me know your point of view regarding the entire complex of questions.

Berlin W 35., 10 February 1943
Tiergartenstrasse 18a
Journal No. 32000 and 34 800 Se/Ir.

[Signature:] KLINGSPORN
SS 1st Lieutenant

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS UEBE*

* * * * *

DIRECT EXAMINATION

MR. MEYER: Witness, will you give the Tribunal your name?

WITNESS UEBE: Otto Uebe.

Q. Will you state your nationality?

A. German.

Q. When and where were you born, Witness?

A. In Strasbourg on the 22 February 1888.

Q. Were you ever a member of the Nazi Party?

A. Yes.

Q. When did you join the Party?

A. In 1932.

Q. Where were you living in the summer of 1942?

A. In Bayreuth.

Q. When did you first think of adopting a child?

A. In 1942, before my son was killed in combat. He requested me if he were to be killed in the war I was to adopt a child and that I was to bring him up as a monument to him and devote myself again to living with my wife.

Q. When did you first apply to Lebensborn for an orphan child?

A. As far as I know, early November 1943.

Q. With whom—

A. Just a minute, please. I must correct myself. It was 1942.

Q. With whom did you correspond in Lebensborn?

A. With a certain Miss Edelmann.

Q. What did you do as a result of this correspondence?

A. I was requested to go to the children's camp of Kohren-Sahlis and there look at several children. There I was shown approximately five or six boys and two girls. I picked out one of the girls because I had been told that the other one probably still had a mother. Apart from that I didn't like that child and I therefore took the other one. Later on, however—I didn't take the child along with me right away because I wanted to discuss it with my wife first—later they wrote me that this child had already been promised to another family.

Q. What nationality were the children first shown to you?

A. I was told that these children were of Polish descent.

Q. Did you continue to correspond with Lebensborn after this?

A. Yes, I repeatedly requested that a child be assigned to me. Later on I asked an acquaintance in Munich to personally speak to Lebensborn and thereupon both he and Lebensborn informed

* Complete testimony is recorded in mimeographed transcript, 4 November 1947, pp. 932-942.

me that I was again to go to Kohren-Sahlis and there were two children available there, not two years of age yet, one a boy and one a girl. My wife and I, therefore, on the 7th of June went there because just on this day I was anxious to take over the child, this being my son's birthday, and there together with my wife I took the boy.

Q. Witness, what were you told about those two children and about their parents and what nationality they were?

A. I was told that those children came from South Carniola. I wasn't interested any further in the girl but I was told about the boy that his parents had probably been murdered by Serbian bands; that this was a full orphan.

Q. Witness, is the child sitting at the prosecution table the child you selected?

A. Yes.

Q. Witness, would you have taken this child if there would have been any doubt in your mind that the parents of this child were living?

A. No. I desired to adopt the child and this could only be done if it was a full orphan.

Q. Witness, did you ask Lebensborn to have the name of the child changed?

A. Yes. I was asked whether I was anxious that the child bear my name immediately. This could be done I was told, and then I replied in the affirmative and in Kohren-Sahlis the child was signed out under the name of Wolfgang Uebe and registered again in that name in Bayreuth.

Q. Did you have any further correspondence with Lebensborn after that?

A. All I did was to request Lebensborn to confirm for me that I was taking care of the child myself so that I could get a tax reduction and furthermore that I would get a child's allowance from the place where I worked. I received another letter thereupon in which it was confirmed that the child Mathias Potucnik, now called Wolfgang Uebe, had been taken into my family and that I alone was responsible for the welfare of the child as there were no other people alive responsible for taking care of it.

Q. After that did Lebensborn ever let you know that anyone else or the parents of this child were living?

A. Yes. At the end of 1944 I was notified that the father had been found and wanted the child returned to him. I was informed about it and asked if and when I was willing to turn over the child to him. On that point I replied that I loved the child, that it was in our family and had become used to us, and would they kindly give me the address of the father so that I could contact

him personally. In answer to this I received a letter that I was to do nothing whatsoever; the matter would be submitted to the Reich Leader SS personally for his decision. Thereupon I heard nothing further from Lebensborn on the subject.

Q. Witness, after the war did you register this child as a foreign child adopted by you?

A. Yes. When the order was issued that children were to be registered I made the notification that I had such a child which was actually not adopted; it is a foster child still in the care of my family but the adoption had not formally taken place.

Q. Did you later hear from Mr. Mathias Potucnik?

A. Yes, I was told by the municipal administration at Oberhausen, where I live, that UNRRA by order of Mr. Potucnik at Klagenfurt, St. Veiterstrasse 77, was inquiring as to the welfare of the child and thereupon knowing that Potucnik was the father, I wrote to him; months passed before a Mr. Fahrenberger notified me that Mr. Potucnik was the father and he demanded that the child should be returned to him; as a matter of fact the letter was very nice. The father himself did not know German well and therefore the gentleman, an uncle and relative was taking up negotiations with me; his father and mother had been in a concentration camp and the mother had died there while the father had come back and now wished to have the child.

Q. Witness, where are you taking the child from here?

A. I am going to take the child to the German-Austrian frontier and there I will hand it over to Mr. Fahrenberger who will turn it over to the father.

CROSS EXAMINATION

* * * * *

DR. SCHMIDT (Counsel for defendant Tesch) : Are you sure that the alleged father is really the father of the child?

WITNESS UEBE: There is no doubt. First of all the identity of names; then the fact that the people knew exactly when the child had been born; they knew where it had been born; then they also sent the photograph of the sister which shows great family likeness in features and apart from that I asked for a physical defect which the child has and which could only be known to the closest relatives and they named the physical defect. Yes, it is beyond all doubt that this child is the child of Mr. Potucnik in Yugoslavia.

Q. You mentioned that prior to that you had already been in this institution of Kohren-Sahlis in order to select a child and you stated that you had been told in regard to a girl that you could not be given this child because most probably the parents were still alive. Is that correct?

A. Yes. I was advised not to take the child which was, as I already said, not acceptable to me anyhow, because probably a mother was still alive.

Q. In regard to the other children, were you told they were orphans?

A. I had no interest in the other Polish children because we were determined only to accept a girl, and the boys—I liked some of them but they were not paid any attention by me; they were sent away, but the two girls stayed and at that time I was told that the one girl, which later I couldn't get, was a full orphan and about the other girl they told me, that probably the mother was still alive.

Q. Did the director of this orphanage tell you that these children were Polish children?

A. Yes.

Q. And was there any talk of ethnic German children?

A. No. Of course it was understood that it had to be a child of German blood.

Q. You mean to say that even those children designated Polish were of German origin, or were ethnic German?

A. Yes. The names which were given to me, although I don't recall them any more now, were definitely German. For example, the child I desired to select was called Theresa.

Q. And this little boy whom you did take into your family later on—is he, according to your opinion, a Serbian or Croatian or Slovenian child, or is it a child of ethnic Germans?

A. Probably ethnic German; he is blond, blue eyes, and rather tall and he went through various homes and was checked by the Racial Political Office—or whatever its name was—as to his membership to an ethnic group and as to his descent.

Q. This uncle whom you mentioned several times is the man by the name of Fahrenberger?

A. Yes, the name is Fahrenberger.

Q. This seems to be a brother-in-law of the real father of the child?

A. Yes, and I assume that the relationship is as follows: Mr. Potucnik, from Gaberg—but I don't know this for sure but it seems to be judging from the exchange of correspondence—is a brother of Frau Fahrenberger of Klagenfurt.

Q. Are you able to indicate the address of this Mr. Fahrenberger?

A. Yes, Klagenfurt, St. Veiterstrasse 77-79.

Q. I have no further questions.

b. Selections from Evidence and Arguments of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT VIERMETZ*

* * * * *

DIRECT EXAMINATION

DR. ORTH (Counsel for defendant Viermetz) : Witness, I should now like to turn to a different point of the charges, and this is the charge against you concerning the abduction of children, that is to say, the so-called children from Upper Carniola. Will you please describe to the Tribunal what your connection was with these children?

DEFENDANT VIERMETZ: In about August of 1942, my boss sent me to Salzburg, at the desire of the Higher SS and Police Leader of Alpenland. It was my assignment to find out whether it would be possible for the Lebensborn to grant the desire of the Higher SS and Police Leader concerning the taking of infants and smaller children into a home of the Lebensborn.

Q. Herr Sollmann did not give you any further details, did he?

A. No. I believe he didn't know any more about it himself.

Q. Did Herr Sollmann tell you anything, especially that these were children of partisans, or so-called "bandit children"?

A. No.

Q. Did you then make this trip to Salzburg, according to orders, and to whom did you report?

A. I visited the adjutant of the Higher SS and Police Leader, and this adjutant then told me to go and see Herr Obersteiner.

Q. What were you told there in connection with the children?

A. Herr Obersteiner told me that there were several infants and small children in a transient camp in St. Veit, near Veldes, who were accommodated there primitively, and who were supposed to be moved away from there as soon as possible.

Q. Who was this Herr Obersteiner?

A. He was a member of the agency of the Higher SS and Police Leader of Alpenland.

Q. But in your affidavit, Document NO-4708, Prosecution Exhibit 391, you state that you had negotiated with the RuSHA in Salzburg. Is that statement correct?

A. No. I couldn't possibly have negotiated with the RuSHA in Salzburg. At that time, it is true, I found out in Salzburg that Herr Obersteiner was the RuS Leader at the office of the Higher SS and Police Leader of Alpenland, but that he also had other functions in connection with this office. As I said once before, I don't know in what capacity he was active concerning this matter

* Complete testimony is recorded in mimeographed transcript, 28 January and 2 February 1948, pp. 4492-4573; 4778-4780.

of the children from Upper Carniola. I don't know any exact details about the various competencies of these gentlemen, nor did I discuss these matters with them in detail in the course of my journeys.

Q. What other things did Obersteiner tell you concerning these children?

A. He told me that the Lebensborn was supposed to take care of the orphans that were among these children, and that they were supposed to be accommodated as soon as possible. He also told me that there was supposed to be a conference in Veldes for the purpose of discussing all these matters.

Q. Were you present at this conference in Veldes?

A. Yes.

Q. At that time was Veldes within the area of the German Reich?

A. Yes.

Q. What matters were touched upon at this conference in Veldes?

A. Welfare measures for these children, and also welfare measures to be applied to the adults that were in this camp in St. Veit.

Q. In the course of this conference, did you gain knowledge of the order of the Reich Leader SS of 25 June 1942, concerning the treatment of those "bandit children" in Upper Styria, and also concerning the execution of this order? Did you gain knowledge of that in the course of this discussion?

A. No.

Q. As to this order itself, the competence of this order, and the directives, were they the subject matter of this conference at all?

A. No.

Q. In the course of this discussion, was mention made of the fact that men who had participated in partisan actions were supposed to be executed, and that women were supposed to be committed to concentration camps and their children were supposed to be moved away from their homeland?

A. As long as I was present at this conference, no word about that was mentioned at all.

Q. What was said in this connection about the origin of these children?

A. In the course of this conference, no details were mentioned about these children, but then it was only a question of moving out all the inmates of this transient camp in St. Veit as soon as possible and bringing them into better surroundings; that is to say, all inmates, and not only the children.

Q. Do you remember whether the expression "bandit children" was used in the course of this conference?

A. No, no, I can't remember that.

Q. How did you stand on the question with regard to the fact that the Lebensborn should take over children from Upper Carniola and move them out as soon as possible?

A. I myself was not able to make any decision for the Lebensborn. I was only in a position to take cognizance of the facts of the case and to report them to my boss. That rapid aid was necessary, of course, had become clear to me after a description of the circumstances.

Q. Then why did you go to St. Veit with Obersteiner?

A. As I said before, in the course of the conference in Veldes, no details were to be gotten concerning the number of infants and smaller children. Therefore, Obersteiner suggested that I should go and get the information at the place itself, because only when I had this information could my boss make a decision as to whether or not we were in a position to take these children into the Lebensborn homes.

Q. Was St. Veit then still in the area of the German Reich?

A. Yes.

Q. What sort of a camp was that in St. Veit?

A. Well, it was a so-called transit camp.

Q. In your affidavit you state that this was a VoMi camp. Is that correct?

A. In the course of my interrogation I said it was possible that it may have been a VoMi camp, but in the course of this trial here it became clear that this was not a VoMi camp. In any case, I did not say that with certainty in my interrogation.

Q. With whom did you negotiate in the camp on behalf of those children?

A. I spoke with Mr. Roedel.

Q. Was that the same Roedel who was testifying here in the Court sometime ago?

A. Yes.

Q. In your affidavit, Document NO-4708, Prosecution Exhibit 391, you stated that Roedel was a director of the camp, is that a correct statement?

A. No. It isn't. I would have to add to this that in the course of such visits I really did not try to inform myself in detail about the official positions of the various people I talked to. I did not think it was so important. Roedel was the only man with whom I talked in this camp and therefore I concluded that he was the director of the camp.

Q. What did Herr Roedel tell you about these children?

A. Herr Roedel showed me the very primitive conditions in which the children lived and complained about the fact that he had a lot of trouble to take care of these children as was required, for instance he could not get milk for the infants; he did not have any bakeries and there were only straw sacks to sleep on; and for these reasons something would have to be done, the children would have to be moved and accommodated in orderly surroundings; and he thought the best way would be to take them into a home of the Lebensborn.

Q. Did Herr Roedel ever use the expression "bandit children"?

A. No.

Q. Well, what did Herr Roedel call these children?

A. Well, I can't remember a certain designation, I don't think he used one. He spoke of resettlers, etc. I did not make a note of all these expressions.

Q. Did Herr Roedel tell you these children were German nationals?

A. That is possible but I can't remember that I asked him about that in any special way. I assumed that was a matter of course if I was called in to deal with such a matter.

Q. Did you look at the children yourself?

A. Yes.

Q. And what was the impression you gained?

A. I even had conversations with some of the children, some of the larger children and I also looked at some of the smaller children, and I found out that a few infants and smaller children were in the camp that were designated to me as being orphans, but most children had been taken over by neighbors of their parents or by not very close relatives so that the question of transporting these children in a special transport right away was not acute any more, but they could stay in the care of these people in the camp until a complete move was accomplished.

Q. In the course of your visits to St. Veit did you select any of the children in any form?

A. No.

Q. Did you on this occasion make any agreements with Herr Roedel or Obersteiner concerning these children and the Lebensborn?

A. No.

Q. What did you report to Herr Sollmann about the result of your official duty trip?

A. I reported to him about what I saw and heard, and I pointed out to the boss that it may be necessary for the Lebensborn to grant assistance to these children perhaps by temporarily taking

them into a Lebensborn home and also by finding foster homes for them.

Q. What was the decision made by Herr Sollmann subsequently?

A. I was supposed to let the matter rest until I would get further information from another agency as to what the Lebensborn could do for these children.

Q. Did the Lebensborn take any action on its own initiative on this matter?

A. No.

Q. What did you hear later on about this matter of the children?

A. Later on there was correspondence with the VoMi in Berlin which turned to the Lebensborn on the initiative of the Higher SS and Police Leader Alpenland, concerning the taking of the infants and small children into a home of the Lebensborn and perhaps finding foster homes for these children.

Q. As far as you know, did you in the Lebensborn receive any sort of documents concerning the children to be taken over by the Lebensborn?

A. I really don't know that exactly.

Q. Did you then gain knowledge of the letter of the Higher SS and Police Leader of Salzburg to VoMi of 14 September 1942, Document NO-3019, Prosecution Exhibit 394?

A. I can't remember this letter.

Q. Did you take part in this second conference in Veldes which was mentioned in this letter?

A. No.

Q. Do you know whether the second conference took place at all?

A. No.

Q. Do you know whether the correspondence just mentioned was initiated by the Lebensborn or whether it was the VoMi that started again with this matter?

A. I don't know that for certain, but I believe that the VoMi inquired from the Lebensborn about the taking over of these children into Lebensborn homes.

Q. Do you know who carried out these transports of these children from Upper Carniola from St. Veit into the Lebensborn homes?

A. No, I don't.

Q. In your affidavit Document NO-4703, Prosecution Exhibit 77 you stated with certainty these transports were carried out by the VoMi. How did you come to make this statement?

A. In the conference at Veldes, a certain Herr Cyriak of the

VoMi was present, and that is why I assumed the VoMi carried out these transports, but in the course of my interrogations I am sure, I did not say that with certainty. I was never present at such a transport and I can therefore never make any definite statement about it.

Q. As far as your knowledge reached, did the Lebensborn have anything to do with these transports?

A. No, it certainly had nothing to do with it.

Q. What else did the Lebensborn do in this matter of the children?

A. At the end of 1942, the social worker of the department foster homes and adoptions visited a VoMi camp near Regensburg in which the people from St. Veit had been transferred in the meantime. This visit was made because of correspondence with the VoMi. This expert was supposed to inform herself on the spot which children were now to be transferred to foster homes and whether there was still a number of very small children which were supposed to be taken into a home of the Lebensborn on a temporary basis. Later on there was also a conference with the NSV in Berlin which also had something to do with the care of these children. At this conference two gentlemen of the VoMi participated and on the strength of this correspondence we talked also about these children. I pointed out to these gentlemen once again that the Lebensborn could only take action if it had the necessary documents for finding foster homes for these children. The gentlemen assured me at the time that they would procure these documents.

Q. What sort of documents did you ask for from the VoMi?

A. Well, the birth certificates of the children, the death certificates of their parents, that is to say all these papers from which it could be shown whether or not these children were orphans.

Q. Why did the Lebensborn not take over these children in its home simply upon the request of the VoMi?

A. We had absolutely no possibility of doing that, for there were only a very few places in the Lebensborn homes for children, and we really had no facilities for taking in children.

Q. Then what sort of agreement did the Lebensborn reach with the VoMi?

A. As far as I can remember, the children were to remain in the camps of the VoMi, until the Lebensborn would be able to make available some foster homes and a few children, that was assured to the gentlemen of the VoMi, were supposed to be taken into a Lebensborn home because of better living conditions there.

Q. Did you at that time ask Herr See also for documents concerning the children?

A. Yes.

Q. Did Herr See call these children "children without home ties" in the course of this conversation?

A. Yes, at least those children that were supposed to be transferred into the care of the Lebensborn.

Q. Did anyone tell you at that time that Lebensborn was also supposed to take care of children from Lower Styria?

A. No.

Q. How many of these children were in the care of the Lebensborn?

A. I can't give any exact figures about that because I did not handle the details of these matters because at that time my activities were mostly restricted to Belgium.

Q. Do you know what happened to these children that were not in the care of the Lebensborn?

A. Yes, the social worker from the department foster homes told me that on occasion of a journey into this VoMi camp near Regensburg she had found out that most of these children had been placed in foster homes through the NSV.

Q. Do you know that Lebensborn cared for these children without family ties from Upper Carniola in the camps of the VoMi by sending them clothing?

A. No. I really don't know. I had nothing to do with the matter.

Q. Do you remember that the Reich Youth Leader once asked that the Lebensborn include this office in the care of the children from Upper Carniola and Lower Styria?

A. That is possible, because I believe in the course of the conference at Berlin with the NSV somebody must have been there from the Reich Leadership.

Q. How do you explain that the VoMi asked the Reich Youth Leadership to contact the Lebensborn and not only that but to contact you personally, how do you explain that fact?

A. Well, probably because I was in Berlin about this matter negotiating with VoMi offices and also with the NSV.

Q. Can you still remember what sort of position the Lebensborn had with regard to the Reich Youth Leadership?

A. No. I don't know.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT * FOR
DEFENDANT HOFMANN*

It remains to be discussed whether and to what extent a participation of Hofmann in the action in Southern Carinthia and Lower Styria can be established.

Schafhauser mentioned in his affidavit, Document NO-5004, Prosecution Exhibit 703, document book 8-D, that the children had been racially examined by RuSHA before they reached the camp. But he also mentioned that they had been forcibly separated from their parents in June or July 1943, in other words at a time when Hofmann did not hold office in RuSHA any longer. Inasmuch as parts of the population in the Austrian border areas were deported, this was a police action taken for reasons of military security, or it concerned the deportation of members of partisan bands and their families. The racial screenings carried out in this connection have been fully discussed by the witness Roedel. (*Tr. p. 3452.*) Whereas, in the prosecution affidavits it is mentioned repeatedly that Roedel received his instructions from a certain RuS Field Leader, Obersteiner, it must be kept in mind that Obersteiner was then holding a twofold position. He was a RuS field leader attached to the Higher SS and Police Leader and at the same time Referent [Sachbearbeiter] of the Deputy of the Reich Commissioner for the Strengthening of Germanism. (*Tr. pp. 1992-3.*) In both cases, he was subject to the supervision of the Higher SS and Police Leader, in other words he was responsible to the Higher SS and Police Leader. In his capacity as RuS field leader, only technical directives could be given to him by RuSHA. Insofar as plans and measures concerning the re-Germanization of children were concerned, he did not receive any instructions from the defendant Hofmann either directly or through Obersteiner. Roedel has pointed out particularly that he did not submit to RuSHA a report on the St. Veit camp. (*Tr. p. 3452.*) He was not in charge of the Veldes camp. The document (NO-3019, *Pros. Ex. 394*) as such confirms that this statement is correct. The letterhead reads: "The Higher SS and Police Leader in the Military District XVIII, Deputy of the Reich Commissioner for the Strengthening of Germanism," and the letter is signed, "By order: [Signed] OBERSTEINER."

On page 2 of the document, it is said: "SS Captain Roedel is commissioned by the Higher SS and Police Leader Alpenland with the classification of the families and their children respectively and will arrange for the lists and card indices to be handed

* This part of the closing statement was not read into the record but was presented to the Tribunal in the form of a brief. Closing statement is recorded in mimeographed transcript, 17 February 1948, pp. 5077-5112.

to the accompanying transport guard." RuSHA is not mentioned in it at all. Similarly, the order initiating the action concerning the children of bandits does not mention RuSHA, (NO-3020, Pros. Ex. 389; NO-681, Pros. Ex. 390) so that Hofmann cannot have had any knowledge of this order which was classified top secret.

TRANSLATION OF SOLLMANN DOCUMENT 117
SOLLMANN DEFENSE EXHIBIT 10(16)

LETTER TO FRAU MALISCH FROM THE CHIEF OF MAIN DEPARTMENT
A, LEBENSBOERN, 23 MAY 1943, CONCERNING HER FOSTER CHILD

Copy

Lebensborn
Main Department A.

Munich 2, 23 May 1943
Herzog-Maxstr. 3-7
Telephone 13114/15/16
Postal address: Munich 1, P.O.B. 14.

Frau Elfriede Malisch, *Schlatt am Randen*, Amt Konstanz, Zollhaus.

Ob. Kr. K. 9. /vB.

Subject: Your foster child.

Reference: Your letter of 17 May 1943.

Dear Frau Malisch.

I very much regret that I must tell you in reply to your above letter that I cannot help you about the procurement of clothing cards. If you desire it, I could apply to the management of the home at Sonnenwiese at Kohren-Sahlis and could ask them to certify that the economic office of the district Borna did not issue any clothing cards for Joseph Sagoschen. But I doubt whether this certificate will help you.

I would advise you to take out a private insurance for the child with the Deutsche Krankenversicherungs A.G. Munich, Schwantalerstr. 99.

I regret that I can still not send you any records concerning the origin of the child, it will still take some time until the investigations have been completed. I beg you to have a little further patience; as soon as I get the records you will naturally be notified.

I would advise you to postpone your journey to Munich, because even orally I could give you no further information.

I hope that the little Christel will give you much pleasure and meanwhile greet you with

By order:

Heil Hitler!

The Chief of the Main Department A

[Signed] EDELMANN

6. ARGUMENTS OF PROSECUTION AND DEFENSE

a. Selections from the Prosecution's Closing Briefs

EXTRACTS FROM THE CLOSING BRIEF AGAINST THE MAIN RACE AND SETTLEMENT OFFICE

* * * * *

RuSHA was "exclusively competent for practical selection and elimination" (NO-2791, *Pros. Ex. 49*) and in line with this exclusive authority its agents had to screen children as to "their racial value" and to see to it that only "racially good types of children" were taken for Germanization. (See Himmler's instruction.) (L-70, *Pros. Ex. 384*.)

* * * * *

Contrary to the contentions of the defendants that they considered these children as "ethnic Germans" the documents leave no doubt that the defendants, the leading members of RuSHA, knew that in executing Greifelt's order they had to deal with children who not only were foreign nationals but belonged to non-German ethnic groups as well. Several documents originating in RuSHA speak of "*Germanizing of orphans of foreign blood*" (NO-946, *Pros. Ex. 385*); "*Germanization of names of foreign orphans*" (NO-950, *Pros. Ex. 386*); and "*Orphans of aliens*" (NO-1600, *Pros. Ex. 153*). [Emphasis added.]

It is significant that in the statements of RuSHA concerning racial qualities of children examined there are no statements to the effect that the examination proved those children to be of German blood. The statements of RuSHA examiners advising that those children be included into "re-Germanization procedure" speak of them only as of "desirable increase of population". (NO-4917, *Pros. Ex. 702*; NO-4322, *Pros. Ex. 701*; NO-4320, *Pros. Ex. 886*.) The activities of RuSHA in connection with kidnaping of children were not limited to racial selection.

* * * * *

RuSHA was the agency entrusted with giving German sounding names to the kidnaped foreign children. (NO-950, *Pros. Ex. 386*.)

* * * * *

*EXTRACT FROM THE CLOSING BRIEF AGAINST
DEFENDANT SOLLMANN*

During the course of this proceeding, the defendants have repeatedly emphasized how well they treated these children and the wonderful care afforded them—this was further attested to by several of the children who appeared here as witnesses for the defense. In comparison to treatment of other children whom these defendants rejected for Germanization, this may well be true, but it is no defense for a kidnaper to say he treated his victim well. Even more important, we must ask ourselves why they were so comparatively well treated. The answer is simple—these innocent children were abducted for the very purpose of being indoctrinated with Nazi ideology and brought up as “good” Germans. This serves to aggravate, not mitigate, the crime.

In general, Lebensborn preferred to handle “racially valuable” children not over six years of age. (*NO-435, Pros. Ex. 399.*) Sollmann stated that in certain cases he could even take children up to 12 years of age; however, experience had shown that this usually resulted in difficulties. This age limitation is easily understood. At these tender years, the children could be more easily molded in the Nazi way of life. Also, it was much easier to conceal the true identity of these children and to deceive the foster parents into thinking they were German children whose parents had been killed in an air raid or some other form of military operation. That German foster parents were deceived into thinking these children were “ethnic German children”, is evidenced by the testimony of the foster parents who appeared before this Tribunal as witnesses.

The defendants have also placed great stress upon the fact that the majority of the abducted Polish children were living in Polish welfare institutions or with Polish foster parents before being seized and placed into German foster homes. But not in one single instance did the defense make any attempt to show that permission had been obtained from the custodians of these children from whom they were taken. Furthermore, there is no evidence that the relatives of these abducted children were contacted in any way to ask their permission or even to notify them that the children were being sent to Germany. The evidence proves conclusively that everything possible was done to conceal from the relatives the whereabouts of these abducted children. That the majority of these children did have relatives is evidenced by the testimony of the children who appeared before this Tribunal as witnesses, both for the prosecution and for the defense. In this connection, it must also be remembered that this program of

Germanization was not only a crime against the individual, but also a crime directed against the occupied countries.

When one realizes the tender years of these Polish children at the time they were abducted and placed into German foster homes, it is not surprising that some of the Polish children, who appeared before this Tribunal as defense witnesses, expressed no desire to return to their homes or their native lands. Their testimony shows that they were seized at such an early age that few even remember their parents or relatives. The greater portion of the lives of these young witnesses have been spent with the German foster parents with whom they were placed by Lebensborn and, thus, it is only natural that the children have developed a sense of security during these early years of their lives. Yet, the ease of readjustment and the great satisfaction of being returned to their relatives and to their native countries is evidenced by the testimony of the two Czech and three Polish children who appeared before this Tribunal as witnesses for the prosecution. That the decision of some of these immature children to remain in Germany should be decisive is absurd—the child's greatest security lies with its return to its parents and relatives and to its own country which owes him protection and is prepared to give him that protection.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT SOLLMANN **

* * * * *

I should like at the end of this whole chapter of the indictment—Kidnaping of children of foreign nationality for the purpose of Germanization—to remind you of the severe words of the prosecution in the indictment, according to which actions of the defendants were carried out as a part of a systematic program of genocide aimed at the annihilation of foreign nationals and national minorities, and, on this point, I should like to state the following: The Lebensborn participated in this arbitrarily asserted so-called systematic program of genocide with some 250 children from the Warthegau, 13 children from Czechoslovakia and 20 children from Upper Carniola and Lower Styria. The witness for the prosecution Lavitan declared, on the last day of the proceedings, before this honorable Court, that the participation of Lebensborn in the alleged removal of 10,000 Polish children was to be put at 340 children; whatever the circumstances

* This part of the closing statement was not read into the record but was presented to the Tribunal in the form of a brief. Closing statement is recorded in mimeographed transcript, 18 February 1948, pp. 5176-5205.

may be as regards these 340 children—we have proved that there were 250 children—has been discussed in special detail before the honorable Court. In a period of war of more than 5 years duration, during which Germany and her allies had occupied almost the whole of Europe and had consequently adults and children completely in their power, in which millions of people were killed, millions of people lost their homes, Lebensborn took into its care and keeping altogether 300 children at most—and saved them. I can safely leave it to the judgment of the honorable Court as to whether even this number of 300 alone possibly justifies the theory of the prosecution as regards participation of the Lebensborn in genocide and the annihilation of foreign national minorities or whether one is not compelled to believe, in accordance with the mere common sense of the Lebensborn defense, that the Lebensborn intended to do and did something quite different with these children, namely, that it performed a work of mercy.

* * * * *

E. Forced Abortions

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, Schwalm, Huebner, Lorenz, and Brueckner were charged with special responsibility for and participation in criminal conduct involving abortions on foreign nationals (*indictment, count one, par. 12; count two, pars. 24 and 25*). On this charge only the defendants Hofmann and Hildebrandt were convicted.

The prosecution alleged that the Race and Resettlement Main Office played a prominent role in the accomplishment of forced abortions. The defense argued that the interruption of pregnancy of Eastern female workers was carried out only on a voluntary basis, that the Race and Settlement Main office did not participate in the procedure whatsoever, and that this office was informed for racial-political reasons only after the abortions had already been accomplished.

A short extract from the closing brief of the prosecution concerning the Race and Settlement Main Office, referring to the prohibition of abortions under German and other law, appears at page 1077. Selections from the evidence of the prosecution are set forth on pages 1077 to 1089. This is followed by an extract from the closing statement for the defendant Huebner, on page 1089, and by selections from the evidence of the defense, pages 1090 to 1100.

EXTRACT FROM THE CLOSING BRIEF OF THE PROSECUTION CONCERNING THE RACE AND SETTLEMENT MAIN OFFICE

* * * * *

Abortions were prohibited in Germany under Article 218 of the German Penal Code. (NO-5130, *Pros. Ex. 466.*) After the Nazis came to power this law was enforced with great severity. Abortions were also prohibited under the Polish Penal Code (*Document NO-3089 (b), Prosecution Exhibit 468*), and under the Soviet Penal Code. But protection of the law was denied to the unborn children of the Russian and Polish women in Nazi Germany. Abortions were encouraged and even forced on these women.

* * * * *

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-3520
PROSECUTION EXHIBIT 470

CIRCULAR, SIGNED BY KALTENBRUNNER, 9 JUNE 1943, CONCERNING
INTERRUPTION OF PREGNANCY OF FEMALE EASTERN WORKERS

Transcript of copy

The Reich Commissioner for the
Strengthening of Germanism
Reich Security Main Office
IV D — 186/43 secret — 599 (Foreign workers)

Berlin, 9 June 1943

Express Letter

SECRET!

To the Higher SS and Police Leader,
State Police, Regional Offices
Criminal Police, Regional Offices

By way of informing:

The Reich Security Main Office—Distribution B
The Inspectors and Chiefs
The Security Police and the SD
The Chiefs of the Einsatzgruppen
The Commanders of the Security Police and the SD
The SD—Regional Offices

Interruption of pregnancy of Eastern female workers.

Subject: In cooperation with the offices concerned, the Reich Health Leader has decreed in his Order No. 4/43, dated 11 March 1943, that in the case of Eastern female workers, pregnancy may be interrupted if the pregnant woman so desires. Concerning the request of the Eastern female worker, the officer for expert opinion for abortion is the locally competent medical office. The office for expert opinion is bound in its decision by the consent of the deputy of the Reich Commissioner for the Strengthening of Germanism: when his consent has been granted the abortion is authorized.

In this connection I decree the following:

1. The consent for abortion of Eastern female workers on the part of the offices of the Reich Commissioner for the Strengthening of Germanism is valid herewith as retroactively granted in the cases in which the father was a man of foreign race (not Germanic). In these cases, the office for expert opinion will, therefore, not obtain the consent of the Higher SS and Police Leader as Deputy of the Reich Commissioner for the Strengthening of Germanism, but may order the abortion on its own authority.

2. Obtaining the consent of the Higher SS and Police Leader as Deputy of the Reich Commissioner for the Strengthening of Germanism is, according to this, necessary only in the cases in which it is maintained or is probable that the father was a German or a member of an ethnically related (Germanic) race.

The Higher SS and Police Leaders will subsequently be informed of these cases, together with the statement of the personal histories of the Eastern female worker and the father, month of pregnancy, race and citizenship of the father, as well as place of residence of both, or the address of the place of employment. On the basis of this declaration, a racial examination of the pregnant woman and the father is to be carried out by the race and settlement leader. If it is found by this racial examination that a racially valuable result is to be expected, then the consent for abortion is to be denied. If on the basis of the racial examination the offspring is expected not to be racially valuable, the consent for abortion is to be granted.

The racial examination is to be carried out rapidly. Further directives concerning the carrying out of the racial examination and the treatment of the cases in which the consent for abortion is to be *denied* are issued by the Reich Leader SS and Chief of the German Police, or by the Race and Settlement Main Office SS.

3. Criminal prosecution of abortion undertaken according to this procedure in the case of Eastern female workers is of course, suspended.

The decree is not suitable for passing on to the district and local police authorities.

[Signed] DR. KALTENBRUNNER

Certified:

[Signed] Office Employee

Seal

For the correctness of the copy:

[Signed] Dr. O. HINTZ

TRANSLATION OF DOCUMENT NO-1384
PROSECUTION EXHIBIT 472

CIRCULAR LETTER FROM KALTENBRUNNER TO THE HIGHER SS AND POLICE LEADERS, GESTAPO DIRECTORATES AND CRIMINAL POLICE DIRECTORATES, 1 AUGUST 1943, CONCERNING INTERRUPTION OF PREGNANCY OF FEMALE EASTERN WORKERS AND POLISH WOMEN

The Reich Leader SS
The Reich Commissioner for the
Strengthening of Germanism
Reich Security Main Office
IV D — 186/43 secret — 599 (foreign workers)

Berlin, 1 August 1943

SECRET!

To the Higher SS and Police Leaders,
Gestapo Directorates,
Criminal Police Directorates.

For compliance:

RSHA [Reich Security Main Office]

Distribution B

Inspectors and Supreme Commanders of the Security Police
and SD [Security Service]

Commanders of the Security Police and SD

SD Directorates

Subject: Interruption of pregnancy of female Eastern workers
and Polish women.

Reference: Decree of 9 June 1943 — IV D — 186/43 secret — 599
(foreign workers)

The procedure for the interruption of pregnancy of female Eastern workers, as prescribed by the above named decree, is to be applied similarly for interruptions of pregnancy of Polish

women (inhabitants of the Reich not belonging to the German people and stateless ethnic Poles), in case they apply for interruption of pregnancy.

The certifying offices for pregnancy interruption of female Poles of the medical associations are urged to apply for approval of the interruption of pregnancy to the Higher SS and Police leaders, not only in those cases, which fall under subsection 2 of the above-mentioned decree, but—regardless of what ethnic group the genitor belongs to—also in those cases, where the Polish woman, in the opinion of the certifying office, makes a good impression in regard to her racial stock. In those cases, an examination of both the pregnant woman and the genitor is to be made along racial lines, and it should then be further proceeded according to the above-mentioned decree.

The decree should not be transmitted to the district or local police authorities.

[Signed] KALTENBRUNNER

Certified:

certified:

[Signature illegible]

[Signed] Kerl

SS Captain

Clerk

[handwritten] Z

TRANSLATION OF DOCUMENT NO-3557
PROSECUTION EXHIBIT 473

ORDER, SIGNED BY HILDEBRANDT, 13 AUGUST 1943, CONCERNING
INTERRUPTION OF PREGNANCY OF POLISH WOMEN

Chief of the Race and Settlement Main Office SS

RA

C/2

Ha/Be.

Berlin SW 68, 13 August 1943

Hedemannstrasse 24.

[Stamp]

[handwritten]: 538/43, secret *SECRET!* secret

[handwritten:] to the Race and Settlement Leaders

[initials]

[stamp]: 21 March 1944

Subject: Interruption of pregnancy in the case of Polish women.
Distribution List: III

By order of the Reich Commissioner for Strengthening of Germanism—Reich Main Security Office—File Number IV D—186/43 secret A—599 (foreign workers) dated 1 August 1943, which is enclosed herewith, the already established possibility of interruption of pregnancy in the case of Eastern female workers is

extended also to Polish women (protected and stateless persons of Polish folkdom).

I should like to emphasize especially that the necessity for the racial examination, which takes place upon the suggestion of the SS Race and Settlement Main Office, also applies here.

The directives for the RuS field leaders' decision in the racial examination are the same as the ones laid down by me through the ordinance of 13 August 1943 to be applied in decisions about applications for pregnancy interruption for Eastern female workers.

All files of cases, in which the RuS field leader refuses the pregnancy interruption, are to be submitted to the Race and Settlement Main Office together with photographs and addresses of their relatives, so that they may be examined in the light of inclusion into the re-Germanization program.

Chief of the SS Race and Settlement Main Office

[Signed] HILDEBRANDT

SS Lieutenant General and General of the Police

[handwritten notes]

[stamp]

7 September 1943

Certified copy:

[Signed] GUERSCHNER

SS Captain

TRANSLATION OF DOCUMENT 1753-PS
PROSECUTION EXHIBIT 476

LETTER OF 30 OCTOBER 1943, ENCLOSING REPORT FROM THE BAYREUTH BRANCH OFFICE OF THE SD TO DR. HESSLER, DISTRICT OFFICER FOR PUBLIC HEALTH, 25 OCTOBER 1943, CONCERNING OBJECTIONS BY CATHOLIC PHYSICIANS TO INTERRUPTIONS OF PREGNANCY OF FEMALE FOREIGN WORKERS

Security Service of Reich Leader SS

SD Sector Bayreuth

III B GA 8

Ha.

Bayreuth, 30 Oct. 1943

Alexanderstr. 6

To the District Office [Gauamt] for Public Health

Bayreuth

for Dr. Hessler personally

[Stamped]

Received 1 November 1943

Diary No 4074

Concerning: Exchange of reports.

Status: Current.

Enclosed report LB III B 3 of 25 October 1943 is forwarded to your office for your kind attention.

Acting for:

[Signed] HECKENBAUER [?]
SS 1st Lieutenant

Party member Dr. Hessler

III

III B 3 — Public Health (Copy of III B 2 — Foreign Nationals in the Reich)

LB III SD—Sector Bayreuth, 25 Oct 43.

The decree on interruptions of pregnancy of female Eastern workers and female Poles has called forth objections on the part of a minority of reactionary Catholic physicians. Even physicians who hold the right political views occasionally voice objections.

The Reich Leader of Public Health, in a directive of 11 March 1943, decreed that pregnancy of female Eastern workers may be interrupted at will. The Reich Leader SS, with regard hereto, on 9 June 1943, issued a decree of implementation proceedings and extended this decree as of 1 August 1943 also to interruptions of pregnancy of female Poles.

Medical professional men received this decree with mixed feelings. A basic rejection on the part of the majority of physicians could not be ascertained (Hof, Amberg, Coburg, and Landshut), whereas some few physicians discussed the possibility of interruption of pregnancy adopting a highly disapproving attitude (Neumarkt and Bamberg). These physicians argued that the decree was not in accordance with the moral obligation of a physician to preserve life. Individual physicians pointed out that a discriminating evaluation of fellow nationals and of foreign nationals should not be permitted to lead to such distinction in the field of medicine. It was even reported in one case (Neumarkt) that physicians had stated they had not the least intention of either advising or carrying out an abortion. Should the war be lost, female workers from the East would, whenever possible, state that such and such a physician had summoned them for an abortion; the application forms would perhaps be found; and for this the physicians would be executed. (Will be investigated).

They would therefore carry out abortions only if, during the examination of the person concerned, a secret abortion could be performed without the person's knowledge. When National Socialist fellow Germans, holding proper views on the subject,

pointed out that the birth rate of female Eastern workers and female Poles represented a biological weapon against the German people and that the decree of the Reich Leader SS was consequently to be considered, among other things, a safety measure for the German people, they—reluctantly acknowledged this argument but—deplored the fact that this point was not stated in the decree.

It is reported that it is chiefly Catholic reactionary physicians who are influenced by the above-mentioned considerations. However, in a case made public, a well-known gynecologist in Bamberg whose political opinions are sound objected to carrying out an interruption of pregnancy. (III B 3 PA 1437/38 of 31 July 1943.)

The following opinion of a politically sound district physician [Amtsarzt] of Coburg could be construed as reflecting the opinion of many physicians who otherwise hold the right views: "Personally, I must say that I was disappointed by the report that abortions would be permitted on pregnant female Eastern workers. In general, I personally consider it in accord with medical and especially with German ethics that a pregnant woman is inviolable. My common sense tells me of the expediency of the decree and I have successfully filed several applications."

From Regensburg it is reported: "According to the opinion of most physicians this measure is to be considered a very dangerous experiment. One fully realizes the necessity of this experiment from the standpoint of racial, national, and labor considerations; sanitary objections of any kind would not exist either if the interruptions are carried out professionally in a hospital; however, if the decree becomes known, the danger will exist that encouragement will be given to the prevailing tendency to approve of abortions, and that the gradual realization, on the part of the average person, of how abominable such a practice is, will be completely eliminated. One physician said verbatim: "A damaging effect upon the morals of German women and girls which through the exigencies of war have to a great extent become unstable, cannot and will not fail to appear," and he subsequently states that this tendency has already been observed now and then in circles of women and girls, in spite of the fact that nothing is yet known about the decree in question.

Various physicians further emphasized that in the event the decree became known, a well directed propaganda by the enemy would draw profit from this state of affairs.

A point especially to be considered in connection with how the decree is received is the fact that in the beginning it was not clear, up to what month abortions might be carried out. Thus

it is understandable if occasionally objections against carrying out this measure were voiced and the expression "child murder" was heard now and then (Coburg). Within the sphere of the chamber of physicians [Aerztekammer], Upper Franconia, whose director was at the same time the district leader [Gauamtsleiter] of the Office of Public Health it was decreed by the latter that *interruptions were to be carried out*

[Marginal note:] Gau!

only during the first 20 weeks of pregnancy. Camp physicians under the jurisdiction of the above named chamber of physicians were instructed to establish definite consultation hours for female Eastern workers. The female Eastern workers were to be instructed during those consultation hours as to the possibilities of an interruption of pregnancy.

According to reports submitted, female Eastern workers and female Poles make use of the possibility of an interruption of pregnancy. *Up to 1 May 1943 the above-mentioned chamber received 19 applications from Eastern female workers.* Detailed figures are as yet not available.

As is reported from Coburg, the more intelligent female Eastern workers had misgivings about interruption of pregnancy, since they knew from their native country that a woman's ability to conceive suffers through artificial abortion.

TRANSLATION OF DOCUMENT NO-3513
PROSECUTION EXHIBIT 491

MEMORANDUM FROM THE LABOR OFFICE, KATOWICE, TO THE
RKFDV BRANCH OFFICE, KATOWICE, 1 AUGUST 1944, CONCERN-
ING INTERRUPTION OF PREGNANCY OF FEMALE EASTERN
WORKERS

Labor Office Katowice

Sub-branches: Friedenshuette, Schulstrasse 8

Laurahuette, Richterstrasse 2

Myslowitz, Schlageterstrasse 10a

Katowice, 1 August 1944

Heinzelstrasse 34

[Illegible stamp on top of date line and address]

File No. II F-5510/44 Schn/St.

Please quote above file number when replying.

To the Reich Commissioner for the Strengthening of German
Folkdom,

(9a) in Katowice O/S

Krakauerstrasse

Subject: Pregnancy interruption of the female Eastern workers.
Status: No prior action.

Between April and June 1944, the following female Eastern workers:

1. Neschur Dona, Plant Laurahuette, in Laurahuette,
2. Czerner Alexandra, Plant Laurahuette, in Laurahuette,
3. Diomina Anna, firm of Zapke and Zimmermann, Katowice,
4. Awdejewa Valentina, firm of Zapke and Zimmermann, Katowice,
5. Schtscherbanj Juchtyma, Oheimgrube, Katowice,
6. Kostynko Katarina, Ferrum A.G., Katowice,
7. Aksonenko Jakilina, Oheimgrube, Katowice,
8. Mayboroda Anna, Ferrum A.G., Katowice,

were admitted to the sick ward of the I.G. Farben Industry A.G., Auschwitz, at the request of the Association of German Health Insurance Physicians, district branch Katowice, for pregnancy interruption.

With reference to the confidential decree of the Plenipotentiary General for Labor Allocation [GBA], dated 25 August 1943, will you please let me know whether these pregnancy interruptions have been approved by you.

By order:

[Signature illegible]

TRANSLATION OF DOCUMENT NO-3512
PROSECUTION EXHIBIT 492

LETTER FROM THE HIGHER SS AND POLICE LEADER SOUTHEAST TO
THE RKFDV, KATOWICE, 29 SEPTEMBER 1944, CONCERNING A
PREGNANCY INTERRUPTION

The Higher SS and Police Leader Southeast
The SS Race and Settlement Field Leader
Upper Silesia

Beuthen, Upper Silesia, 29 September 1944
Braunauerplatz, House of the SS
Tel.: 3926

Ki/Dz Journal No. 4099/44

Subject: Pregnancy interruption in case of the female Eastern worker Nowikowa, Alexandra, residing at Camp VIII, Auschwitz.

Reference: Your letter of 28 August 1944, File sign: St — 0310
— C — 3509 — Wo/H.

Enclosures: None.

[stamp]

Katowice, 2 October 1944

To the Gauleiter, Oberpraesident
as Plenipotentiary of the Reich Leader SS
Reich Commissioner for the Strengthening of Germanism
Katowice
Krakauer Strasse 50

The above-mentioned woman was racially examined and was given the designation Race and Settlement III, undesirable population increase. A racial examination of the father of her child cannot take place, since the above-mentioned woman does not know the father's address.

Our office agrees to a pregnancy interruption in the case of the above-mentioned woman.

Acting for:

[Signed] EMMERICH
SS Captain

[Marginal note]
Previous matter added!
2 October 1944
[Initials] GA

TRANSLATION OF DOCUMENT NO-5829
PROSECUTION EXHIBIT 889

LETTER FROM ROEDEL TO THE HIGHER SS AND POLICE LEADER,
RHINE-WESTMARK, 9 JUNE 1944, CONCERNING THE CASE OF
OLGA TSCHUMA

[handwritten] Steffen, Mayor (4

[stamp]

The Higher SS and Police Leader
Rhine-Westmark
The SS Leader in Race and Settlement Affairs

Wiesbaden, 9 June 1944
Uhlandstrasse 4/5
[initial] B

Concerning: Pregnancy of Eastern worker.
Reference: none.

[stamp]
The Higher SS and Police Leader Westmark
In: 13 June 1944
File No. [initial] W VI d

To the
Office of the Higher SS and Police Leader
Rhine-Westmark
Metz
Baerenstrasse 10

According to information received by this office, the Eastern worker Olga Tschuma, born on 3 March 1925, residing in Landsweiler, Richthofenstrasse 4, is in her fifth month of pregnancy. The father allegedly is her employer Ludwig Rosport.

I request that you contact the competent state police office in Metz at once, and find out where the two can be examined, so that this matter will not be held up here too long and thus an abortion made impossible.

The Higher SS and Police Leader
The Race and Settlement Leader
[Signed] ROEDEL
SS Major

Certified copy:
[Signature] GARNES

EXTRACT FROM THE TESTIMONY OF PROSECUTION WITNESS
BRIEDER*

DIRECT EXAMINATION

MR. LAMB: Please state your name.

WITNESS BRIEDER: Reinhard Brieder.

Q. What is your age?

A. I am 36 years old.

Q. What did you do after the war?

A. Since 1931 I studied law at various universities and last I was a Gerichtsassessor [assistant judge] in Hamburg.

Q. What was your profession prior to the war?

A. I was a Gerichtsassessor at Hamburg.

Q. Were you ever admitted to practice law in Hamburg?

A. Yes, since summer 1939.

Q. Were you ever stationed at Frankfurt/Main during the war? Please give the dates.

A. Yes. Since 1943 I was in charge of the Gestapo agency in Frankfurt/Main.

Q. What was your official title?

A. I was a Regierungsrat [government counsellor]; an SS Major [Sturmbannfuehrer] by assimilated rank.

Q. Were you chief of police there?

* Complete testimony is recorded in mimeographed transcript, 30 October 1947, pp. 772-783.

A. Yes. I was in charge of the Gestapo agency of the Government District of Wiesbaden.

Q. Please give the dates in which you held that position?

A. From the middle of September 1943 until the arrival of the American troops, towards the end of March 1945.

Q. Were there foreign Eastern workers, Poles, and Russians working in the factories in your district during that time?

A. Yes. We had a total of 83,000 foreigners in our district.

Q. Were there women among these foreigners?

A. Yes. We also had a large number of women among them.

Q. Did your office receive reports of pregnancy of these women in this laborers' units?

A. Yes, we received a decree from Berlin which I passed on to the Landraete [district counsellors] and foremen in charge of these foreign workers; there were Russian and Polish women mentioned in this decree and it said that these women were to be informed by the men in charge of the labor camps that if they were pregnant and if the male partner was also a foreigner that they could have an abortion performed. The procedure was that the man in charge of the foreign labor camp was to determine the names of the pregnant women and was to put it to the woman to have an abortion performed. If they agreed to this then the name was submitted with a statement that the woman was in agreement with it to my agency, and my agency then would pass on the name to the Higher SS and Police Leader, and the Higher SS and Police Leader would send representatives of the Race and Settlement field leader to the labor camps so that a racial examination could be carried out. If it became evident as the result of this examination that the Race and Settlement field leader was interested in the woman in question, then he would negotiate with the competent labor offices and, as far as I am informed, the women were taken into German families so that there they could assimilate themselves to German conditions.

Q. In other words the purpose of this examination by the Race and Settlement Main Office which you have described was to determine whether or not the pregnant woman and her expected offspring were desirable from the standpoint of being Germanized. Is that true?

A. Yes, that is my opinion.

Q. Now, you have been discussing the cases where the pregnancy of these women or both parties to the pregnancy were foreigners, that is, where both the man and the woman were Poles or Russians. Is that right in these particular cases that you have just discussed?

A. Yes; of course a man in question could be another foreigner, for instance a French civilian worker and so on.

Q. But in any event they were foreigners?

A. Yes.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT HUEBNER **

* * * * *

My evidence pertaining to *counts 12 and 13 of the indictment—abortions and taking away of infants from female Eastern workers*—brought about a clear conclusion. Two competent witnesses were produced: Haessler, a former employee of the Reich Security Main Office and there in charge of the department which dealt with these questions; and Vietz, Race and Settlement field leader in Danzig-West Prussia, confirmed concurrently that the decisive ordinances introduced by the prosecution were not effective in the Warthegau district because the specific group of persons to which they referred was not at all found in this area. Female Eastern workers classified as such could be found only in Germany proper; I have proved this by documentary evidence through Huebner Document 82, Huebner Exhibit 88. Among the Polish women likewise, only those who had been allocated to labor in Germany proper were affected because the purpose of the ordinances was the conservation of manpower which was important only in the case of these women employed in work of war importance, the so-called "P" Poles, because they were compelled to wear the "P". As to this point no clearer statement can be imagined than that of the witness Vietz, whose area consisted of districts of Germany proper and of Incorporated Eastern Territories. Therefore, he is the person to know in which parts of his area the ordinances were in force, and he, in particular, has confirmed my defense statement. From this it appears that the possibility that Huebner as Race and Settlement field leader occupied himself with these questions must be eliminated; such occupation in his capacity as staff leader of the RKFVDV was not even alleged by the prosecution.

* * * * *

* Closing statement is recorded in mimeographed transcript, 17 February 1948, pp. 4973-5011.

b. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT HILDEBRANDT*

DIRECT EXAMINATION

* * * * *

DR. FROESCHMANN (Counsel for defendant Hildebrandt): Now, let's turn to paragraph 12, that is: Interruption of Pregnancy. We have already touched upon this problem slightly when we talked of your activities as Higher SS and Police Leader in Western Prussia. The prosecution maintains that all cases of pregnancies were reported to the Race and Settlement Main Office and that the deported female Eastern workers were forced to submit to this abortion if the examination of the race and settlement leader ascertained that the expected child would not be of any racial value. I am stressing, from this document particularly, that it is alleged that this was done in order to keep those mothers for work and in order to reduce the population of the Eastern people. Will you please look at the following documents from document book 9: NO-3520, Prosecution Exhibit 470; NO-5007, Prosecution Exhibit 475; NO-3556, Prosecution Exhibit 480; NO-1380, Prosecution Exhibit 483; NO-3454, Prosecution Exhibit 484. What do you have to say to these assertions and charges contained in the documents?

DEFENDANT HILDEBRANDT: Basically speaking I have to say that it is not correct to say that all cases of interruption of pregnancy had to be reported to the Race and Settlement Main Office. Concerning the question of the abortions themselves, it is just lately that different viewpoints have been discussed but especially the German provinces [Laender] have adopted a different standpoint. Some of them have rescinded Article 218; others have not and others again have just postponed it and other countries have not rescinded it at all. Interruption of pregnancy is or was never considered as murder, but it was considered a special violation against life. Generally this incurs considerably milder punishment than if it were murder. Up to now nobody had the idea to see in this interruption of pregnancy a crime against humanity. From Document NO-3520, Prosecution Exhibit 470 it becomes apparent that the first fundamental decree, 443, of 11 March 1943, was issued by Reich Health Leader Conti. My defense counsel, Dr. Froeschmann, has included this decree in another document which he submits and which has the document number 112. Interruption of pregnancy presupposes a voluntary application made by the

* Complete testimony is recorded in mimeographed transcript, 19-21 January, 2 February 1948, pp. 3874-4120; 4771-4774.

pregnant Eastern worker. This application was decided upon by the responsible medical chamber. The interruption of pregnancy, therefore, expressly rested on a voluntary application of the mother involved, and Hessler, Commissioner of Criminal Affairs has confirmed that in great detail. The Race and Settlement Main Office here again as in most of the cases submitted by the prosecution was informed only after the fact, without having been previously consulted or having participated in it and it was also only called in for the purpose of giving an expert opinion. The calling in of the Race and Settlement Main Office—as in paragraph 14 [of the indictment]: unlawful sexual intercourse—was based on the consideration that there was a certain interest on the part of the Germans, namely, in cases when the father was a German or Northwest European. Repeatedly and justifiably, it can be stated that the effect of the Racial Examiner's activity was in most cases a favorable one because in the case of the interruption of pregnancy this interruption was possible on a voluntary basis anyway. Whereas in case 14, unlawful sexual intercourse, the offense committed by the man involved had already been incurring the most severe punishments on the order of the Reich Security Main Office, without participation of our office. It is furthermore important to mention that the Race and Settlement Main Office received this order only for its field of activity and in order to pass it on in July 1943. I had no misgivings and I had also no right to refuse to pass this decree on because this decree had already been passed on by the Gestapo without my intervention. The order provided for the decisive intervention by the highest health authority of the Reich. This Reich health authority was to take care of the technical part of the matter.

The interruption of pregnancy itself, however, in most of the cases, was carried out without the intervention of the Race and Settlement Main Office because the execution of the order and the whole treatment of the question rested with the lower level administrative agencies and the level of the district councillor and the health office. The Race and Settlement Main Office never heard about those cases and was never informed about them. It didn't have to be called in either because the orders were unambiguous. The prosecution has submitted a document which is NO-3454, exhibit 484, and this document leads to very interesting conclusions which I am going to mention here. My staff leader, as was proper, drew up this chart, and the basic facts are the following: In Upper Franconia, within one year and nine months, 637 applications of that nature were received by the responsible authority, in this case, the health agency. Of these 637 applications, 443 were dealt with only and alone by the health office which

approved them and carried them out; the fathers had been Eastern workers. The Race and Settlement Main Office after all was only called in if the father was a German or a man of kindred race. Of these 637 applications, 103 were withdrawn, that is, no abortions were carried out and nobody was forced to have one performed. Forwarded to the Reich Commissioner for the Strengthening of Germanism were 91 cases where the fathers were Germans or of kindred race. Approved by the representative of the Reich Commissioner were 57 applications; out of the 91 cases, 34 were rejected. In other words in those cases the children were born on the strength of the intervention of the racial examiner. In other words, out of this figure of 637 applications covering 21 months only 57 approved applications remained. That is how it was in practice and therefore the document of the prosecution is very useful in order to clarify the situation. The Race and Settlement Main Office, therefore, was only a kind of forwarding agency which was informed about the existence and about the effectiveness of the order but no more and no less. That concluded the affairs as far as the Race and Settlement Main Office was concerned, fundamentally speaking. A personal subjective attitude towards the matter was unnecessary all the more as it came to our knowledge that in those cases the women themselves had applied for the interruption of pregnancy and had wanted it themselves and that these abortions could only be carried out on a voluntary basis.

Q. Witness, will you please study Document NO-3557, Prosecution Exhibit 473 carefully. There you see that the applicability of the regulations concerning interruptions of pregnancies was extended to cover Polish women as well, and an order was given to the effect that also in such cases in which abortions were refused a report should be made, so that the cases could be examined within the program of the re-Germanization procedure. Did you sign this decree?

A. Yes, this decree was signed with my stamp. I already explained this stamp signing a while ago. Harders, from the Racial Office, who has also been mentioned before, certified the legitimacy.

Q. In other words Harders signed this document with your name and passed it on without getting your prior approval?

A. Yes, and he passed it on and it was simply the passing on of a police decree and not of a decree of the Race and Settlement Main Office or the Racial Office.

Q. Does the same refer to exhibit 474?

A. Yes.

Q. Did Harders have the authority to issue such decrees on his own initiative?

A. Before passing on these two decrees and particularly Document NO-933, Prosecution Exhibit 474, of course, Harders would have had to get my approval and show me the draft of his letter, and as he explains his own views at the end, he wouldn't have had the right to put my name under it. It would have been different if he had only passed on an existing order of the Race and Settlement Main Office but not in this case where he expresses his own views at the end of the letter. The final sentence of this letter is quite nonsensical and not at all in line with my own views insofar as the sentence refers to a separation of our own ethnic group from everything that is racially inferior. That attitude and these views are absolutely in contradiction to my general views which I have already explained, according to which, in such cases—as also in the case 14, the case of unlawful sexual intercourse—the activity of the examiner should be limited to the purpose which Harders quite rightly stresses: that is in accordance with the police decree of the Race and Settlement Main Office, to keep all blood which was racially valuable.

The sentence of separation is complete nonsense; for the interruption of pregnancy or for illicit sexual intercourse it could not be applied at all. It is without any point, what he says there. However, it was in line with the personality of this man who felt very important. In 1944 when I returned from southern Russia I immediately took steps to see to it that Harders was sent to the front in some activity or other.

Q. Witness, referring now to Document NO-3556, Prosecution Exhibit 480, I don't think that we have to say anything more because it dates 19 December 1944 and the views explained in that document are again in contradiction with the approval which you should have obtained first. Does that refer also to Document NO-1380, Prosecution Exhibit 483? I am referring to 480 and to 483, Witness.

A. About Exhibit 483 I have to stress that that dates from a period when I was with the army. I don't know the letter. Now Document NO-3454, Prosecution Exhibit 484—

Q. Well, we have already mentioned that.

A. This is about statistics. We never received any statistics. Such statistics were kept with the health authorities and would not be shown to us. The Race and Settlement Main Office had no file index like that and the Racial Office had none either. Only by accident we saw this document which was submitted by the prosecution, that is, the statistics from the district of Upper Franconia. Normally we would never have received such statistics.

DR. FROESCHMANN: Your Honor, in this connection I am going to submit three documents and the numbers are Hildebrandt 112,

113, and 114, which show exactly the whole procedure, particularly the voluntary application for interruption of pregnancy, the expert opinion of the doctor after examination, and also the result of rejection of the interruption of pregnancy applied for, but I am not yet in a position to submit these documents as exhibits because they haven't been translated yet.

Concerning this, I have two final questions to you, Witness. Did you or any responsible experts in your office ever hold the view that the interruption of pregnancy should serve the purpose of keeping women for labor commitment and of reducing the number of population of the Eastern peoples?

DEFENDANT HILDEBRANDT: No, in no way.

Q. The second question. Did you or your office ever intervene into Polish jurisdiction in order to guarantee that interruption of pregnancy be exempt from punishment?

A. No, I had no possibilities nor any inclination in this connection.

* * * * *

TRANSLATION OF HILDEBRANDT DOCUMENT 112
HILDEBRANDT DEFENSE EXHIBIT 42

CIRCULAR, 5 APRIL 1943, CONTAINING THE DECREE OF REICH
HEALTH LEADER DR. CONTI, CONCERNING THE INTERRUPTION OF
PREGNANCY OF FEMALE EASTERN WORKERS

Copy

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor and Manpower

Berlin, 5 April 1943
SW. 11, Saarlandstr. 96

GZ. VI 2 — 1940.28/37

Confidential!

To the Presidents of the Land Labor Offices
with copies for the Directors of the Labor Offices

Subject: Female Eastern workers—interruption of pregnancy.

The Reich Health Leader has issued the decree No. 4/43, regarding the interruption of pregnancy of female Eastern workers, the text of which I quote below:

The Reich Health Leader

Decree No. 4/43

Not for publication!

Confidential!

Subject: Interruption of pregnancy of female Eastern workers.

In agreement with the Reich Commissioner for the Strengthen-

ing of Germanism, basing myself on the authority delegated to me by the Plenipotentiary General for Labor Allocation on 12 May 1942, I herewith order that in the case of female Eastern workers the "Directions for Interruption of Pregnancy and Sterilization for Health Reasons" (published by the Reich Medical Board, edited by Prof. Hans Stadler, Lehmann's Publishing House, Munich 1936) may be departed from and that the pregnancy may be interrupted if the pregnant woman so desires.

In order to comply with such desires the following procedure is to be adopted:

Application has to be made to the Advisory Committee for Interruption of Pregnancy of the responsible medical board. The latter will contact the delegate of the Reich Commissioner for the Strengthening of Germanism. If this office agrees with the application for interruption, the advisory committee will make a decision and charge a surgeon with the treatment. The sick bays established for Eastern laborers, particularly those in which the confinements of female Eastern workers take place, may also be considered as suitable establishments for the treatment.

Munich, 11 March 1943

[Signed] DR. L. CONTI

Request that this decree be brought to the notice of the medical service.

Acting for:

[Signed] Signature

TRANSLATION OF HOFMANN DOCUMENT 75
HOFMANN DEFENSE EXHIBIT 80

DECREE FOR THE PROTECTION OF WEDLOCK, FAMILY AND MOTHERHOOD, BY MINISTERIAL COUNCILLOR TIETZSCH IN THE REICH MINISTRY OF JUSTICE

Extract from "Deutsche Justiz" (German Justice) Administration of Justice and Legal Policy 11th year.

DECREE FOR PROTECTION OF WEDLOCK, FAMILY AND MOTHERHOOD

by Ministerial Councillor Tietzsch in the Reich Ministry of Justice page 244:

Final Regulations

(Sc. to abortion)

The Decree is intended to protect the German family and the German mother. Abroad somewhat less stringent rules are frequently in force, sometimes appropriate rules are entirely lack-

ing. It would therefore be an unjust hardship to judge the foreigner staying in the interior in these criminal acts with the same severity as the German. The Decree therefore empowers the Reich Minister of Justice to arrange that the new regulations relating to crimes are not to be applied to persons who are not German subjects of German folkdom. The issue of appropriate regulations is in preparation.

* * * * *

TRANSLATION OF SCHWALM DOCUMENT 103
SCHWALM DEFENSE EXHIBIT 103

EXTRACT FROM THE AFFIDAVIT OF KURT STOLL, 11 DECEMBER 1947,
CONCERNING VOLUNTARY INTERRUPTION OF PREGNANCY OF
FEMALE EASTERN WORKERS

I, Kurt Stoll, born on 29 March 1907, at Wiebelskirchen, district of Ottweiler, at present in the Court Jail of Nuernberg, had my attention drawn to the fact that I render myself liable for punishment if I make a false affidavit and I herewith make the following statements under oath in the knowledge that they will be used as evidence in Military Tribunal I, Case 8, in the Palace of Justice, Nuernberg, Germany.

The following is known to me from the time of my employment at the office of the Representative of the Reich Commissioner for the Strengthening of Germanism, Gau Oberdonau [Upper Danube district] in the years of 1944 and 1945.

The interruption of pregnancy of female Eastern workers was voluntary. A respective application by the women was necessary. This application was forwarded by the doctor of the plant to the competent health office. The health office also decided independently in all cases in which the father was an Eastern worker. On principle, in these cases the consent of the Reich Commissioner for the Strengthening of Germanism was given. Therefore no re-examination of the aptitude examiner was necessary.

When it was determined that the father of the expected child was a German (or a Dane, a Swede, a Norwegian, a Dutchman, or a Fleming) the health office was only permitted to make a decision in agreement with a representative of the Reich Commissioner for the Strengthening of Germanism, who could put in his veto in those cases. If it was possible, both parents had to be reexamined and an interruption of the pregnancy could not be carried out if the expected child was considered a desirable increase of population.

This practice was based on an ordinance of the Reich Security

Main Office which already was in force at the time of my transfer to this office.

* * * * *

11 December 1947

[Signed] KURT STOLL

TRANSLATION OF HILDEBRANDT DOCUMENT III
HILDEBRANDT DEFENSE EXHIBIT 4I

CORRESPONDENCE CONCERNING THE REQUESTED INTERRUPTION
OF PREGNANCY OF A FEMALE POLISH WORKER

To the Local Association of Physicians in Nuernberg

1. The female Pole Lina Pas, born 2 May 1925 in Dnepropetrovsk, employed with Konrad Odoerfer, Weinhof 5, Post Office Altdorf, requests pregnancy interruption.

[Signed] LINA PAS

signature of the pregnant woman

2. The Pole Solack Henrich, born 1 October 1920 in Jaroslaw, employed with Hahn in Winkelhaid, District Nuernberg, herewith declares to be the genitor of the child.

[Signed] Signature

signature of the genitor.

3. *To be filled out by the physician:*

The female Pole Lina Pas is three months pregnant.
Altdorf, 1 November 1944

[Signed] DR. WINDLER

Signature of the physician.

Remarks: none.

24 October 1944

Dr. G/B

To Regierungsrat Dr. Drexler
SS Administrative Main Sector "Main"
Nuernberg

Ernst vom Rath-Allee 24

The female Eastern worker Lina Pas, born 2 May 1925, employed with Konrad Odoerfer, has applied for pregnancy interruption. She is 2 $\frac{1}{4}$ months pregnant.

The genitor of the child is Solack Hench [sic], Pole.

I request you to deal with this application.

1 Enclosure.

Heil Hitler.

[Signed] Signature

The Higher SS and Police Leader "Main"

File Number: RuS — D / IV b 1 Re

Nuernberg, 19 December 1944

Ernst vom Rath-Allee 60

Telephone 4 16 92/93

SECRET

To the Local Association of Physicians

Nuernberg — 0

Kesslerplatz 5/I

Subject: Pregnancy Interruption. Female Eastern Worker Lina Pas, born 2 May 1925.

Reference: Your letter dated 24 October 1944.

Examination of the above-mentioned person was made. The pregnancy interruption in the case of the applicant is *not* approved.

By order:

The Higher SS and Police Leader "Main"

[Signed] Signature

SS Lieutenant Colonel

22 December 1944

Dr. E/B.

To the German Labor Front

Nuernberg

The application for pregnancy interruption for the female Eastern worker Lina Pas, born 2 May 1925, employed at Konrad Odoerfer, is rejected.

Heil Hitler!

[Signed] Signature

EXTRACT FROM THE TESTIMONY OF DEFENDANT SCHWALM*

DIRECT EXAMINATION

* * * * *

DR. HEIM (Counsel for defendant Schwalm): After 1 March 1943, what did you have to do with questions in regard to paragraphs 12-14 of the indictment?

DEFENDANT SCHWALM: I personally, as a result of my assignment and my position, had nothing to do with these things anymore. If any conferences took place at all, then they took place without me. I do not know either that the chief of the Race and Settlement Main Office had developed a large amount of activities in this field. After all, it becomes clear from the documents that

* Complete testimony is recorded in mimeographed transcript, 8, 9, 12 January 1948, pp. 8336-8448.

the Racial Office and in the Racial Office the employee Harders worked primarily on that matter. Just how they did their work individually was not told to me by Harders nor did the chief of the Racial Office tell me anything about it. With regard to paragraph 12 of the indictment, abortions on Eastern workers, I only learned from the documents submitted here that Conti had instigated the entire matter. On 4 March 1943, Conti issued an order to that effect, and Conti was the highest health official of the Reich Ministry of the Interior. Furthermore I have discovered here from the documents that only in July the Reich Commissioner for the Strengthening of Germanism—and this time by way of the Reich Security Main Office—issued corresponding instructions. At the time I could only gain knowledge of these instructions when these instructions were also distributed to the Race and Settlement Main Office. However, this only applies to very few instances. It does not apply to decrees and documents which have been presented here by the prosecution such as Document NO-3089, Exhibit 468, Document NO-3557, Exhibit 473, Document NO-1384, Exhibit 472, and Document NO-3520, Exhibit 470.

Q. Did the way the leadership of the Security Police deal with these questions not surprise you?

A. No. On the contrary, already the first decree of Himmler as the Reich Commissioner, on 17 October 1939 stated quite clearly that the Reich Security Main Office was competent for all policies toward aliens and in these questions it would bear the responsibility, and was competent as far as the work was concerned. In all cases of paragraphs 12-14 of the indictment, however, quite clearly alien nationals are involved, that is to say, questions are concerned which arose from the labor allocations of foreign nationals; that is why the responsible leadership and administration of all these questions were carried out in the Reich Security Main Office, and that is why we were not surprised about it.

Q. Did you have any misgivings about the inclusion of the examiners at the time?

A. Naturally, the inclusion of the examiners had been ordered by the Reich Leader who was the highest authority. Of course we ourselves also had discussions about the inclusion of the examiners; however, according to the situation prevailing we considered this procedure as being correct and as being relatively reasonable. After all, there were a large number of acceptable reasons for that. I would even say, political ones.

Q. You just spoke about political reasons. What political reasons were decisive for that?

A. After all, it was a reason which had a certain history and which had quite definite validity. The fight of the National Socialist Party was characterized by its constant anti-Bolshevist attitude. According to the opinion which I had at the time, and which I still hold today, there were three possibilities for expansion of bolshevism. First of all, there was the possibility of utilizing propaganda by word, in literature, and by films. Secondly, the political way of armed conflict and we were right in the midst of this armed conflict. Thirdly, for me, as an anthropologist and a biologist, there was a third possibility, and that was the possibility of biological infiltration. I myself, as an anthropologist, considered this possibility to be the most dangerous one. By considering the fact that we, at the time, had to break the power of bolshevism, the inclusion of the Race and Settlement Main Office and its examiners seemed to be quite a logical measure at the time.

* * * * *

F. Taking Away Infants of Eastern Workers

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Huebner, Hildebrandt, Hofmann, Schwalm, Sollmann, Ebner, Tesch, and Viermetz were charged with special responsibility for and participation in criminal conduct involving the taking away of infants of Eastern workers (*indictment, count one, par. 13; count two, pars. 24 and 25*). On this charge only the defendants Hofmann and Hildebrandt were convicted.

Argument of the prosecution concerning this aspect of the case appears in its opening statement on pages 622 to 694. A selection from the evidence of the prosecution is set forth on pages 1100 to 1109. This is followed by a selection from the evidence of the defense on pages 1109 to 1112.

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-1413
PROSECUTION EXHIBIT 499

CIRCULAR OF THE REICH MINISTER OF THE INTERIOR, 5 JUNE 1944,
CONCERNING ILLEGITIMATE CHILDREN OF FOREIGN FEMALE
WORKERS

The Reich Minister of the Interior

B II 402 /44
8036 I

Berlin, 5 June 1944

To: the Youth Offices and their supervisory authorities
Regional [Landes] (Gau) Youth Offices,
Health Offices and their supervisory authorities,
Welfare Associations and their supervisory authorities
Subject: Illegitimate children of foreign female workers.

I

Foreign female workers who come to the greater German Reich for employment in war-economy work are no longer to be transferred back to their home country in case of pregnancy.

“Foreign Children Care Centers” will be established in the billets for foreigners to care for their children. The costs will be a matter for special regulation. *The establishment of the foreign children care centers and the expenses connected therewith will be no concern of the communities*, they will be supervised by the Reich Food Estate or by the German Labor Front. The Youth Offices are authorized to supervise these centers.

The illegitimate children of the above-mentioned foreign female workers whose progenitors belong to the German racial group or to Danish, Flemish Dutch, Norwegian, Swedish, or Walloon nationality and who can be regarded as valuable, shall not be sent to the Foreign Children Care Centers but shall be educated as German children. Relevant detailed instructions have already been issued to the police and to the Plenipotentiary for Mobilization of Labor.

II

I herewith decide as follows—in agreement with the Reich Minister of Justice to the extent necessary:

1. The enterprises report to the Youth Offices through the labor office any illegitimate pregnancies of foreign female workers. The Youth Office thereupon starts investigations as to the progenitor. If the progenitor is of German or kindred blood the Youth Office reports the case to the Higher SS and Police Leader who will give instructions for racial screening. The Youth Office also reports to the Higher SS and Police Leader with a relevant explanation of the facts in such cases where it assumes that according to the prevailing circumstances the progenitor is of German or kindred blood. If the pregnant woman refuses to disclose the name of the father, the Youth Office can order an interrogation through the competent State Police Office.

2. *a.* The medical, eugenic, and racial examination is carried out by the physicians of the health offices. The SS leader in charge of Race and Settlement, as deputy of the competent Higher SS and Police Leader and in his capacity as delegate for the Reich Commissioner for the Strengthening of Germanism, will at the

same time be given the opportunity to make his own investigations according to the directives issued by the Reich Leader SS.

b. The dates for carrying out these examinations will be agreed upon in good time between the SS leader in charge of Race and Settlement and the health offices. The SS leader in charge of Race and Settlement will inform the health office of the persons to be subjected to these screenings and this office will issue the summons.

c. Before examinations are made the SS leader in charge of Race and Settlement will have to make a preliminary investigation.

d. The health office will make an official report (with photograph) on the result of the examination, using the form-sheet for examinations (Reich Printing Office No. B 101) in pursuance of the joint circular decree I d 204 XX/40 5626 g secret, 3 April 1941 issued, but not published, by the Reich Minister of the Interior and the Reich Protector of Bohemia and Moravia with reference to the third ordinance for the execution of and as supplement to the Marriage Law of 22 October 1940—Reich Law Gazette I page 1488. The report is to be placed at the disposal of the SS leader in charge of Race and Settlement.

e. The examinations of the pregnant women and the illegitimate fathers are to be effected *free of charge* by the health offices in the course of their duties.

3. On the basis of the results the SS leader in charge of Race and Settlement matters will come to a decision in regard to the treatment of the pregnant women and the children in pursuance of the directives issued by the Reich Leader SS, Race and Settlement Main Office, and will pass the result of the racial screening on to the Youth Office which reported the case. If the result is *negative* the child is sent after birth to a Foreign Children Care Center without the assistance of the Youth Office. The Youth Office has only to make the customary reports to the guardianship court, unless it is a matter of an exceptional case as provided for in article IV. If the result of the racial screening is *positive*, the Youth Office will apply to the guardianship court for its own appointment as guardian; no application shall be made for the appointment of an individual guardian. An important point when deciding on the application is that the guardianship court must take into consideration the possible existence of regulations of international private law and particularly the possible existence of agreements with the home country of the child. However, the care of the child will be in the hands of the National Socialist Peoples Welfare Association which will *accommodate* the child in a home or in a family.

4. The obligation of the Youth Offices to report every illegitimate birth, if the mother or the father are of alien nationality, to the Reich Committee for Public Health Service (circular decree of 7 October 1941, IV W II 22/41 – 8026 – not published) is not affected by this circular decree.

5. If a foreign female worker, about whom a pregnancy report has been made to the Youth Office, moves from her place of work to the district of another Youth Office, the Youth Office which received the first pregnancy report will be informed by the labor office of the transfer. The respective Youth Office will send its records and the information from the labor office to the Youth Office then competent. If a report had been already made to the SS leader in charge of Race and Settlement with the competent Higher SS and Police Leader, the former is likewise to be informed about the change of working place and the Youth Office then competent.

6. If the Youth Office receives a report from a registrar's office of the birth of an illegitimate child of a foreign female worker, and it has not received a pregnancy report about the mother as per section II, No. 1, it must then act in pursuance of this circular decree. The Youth Office will take similar steps in cases where a foreign female worker is delivered of an illegitimate child after *1 January 1942*. The cases in question can be taken from the reports made to the Reich Committee for Public Health Service (vid. section II, No. 4 of this circular decree). It is not necessary to make special inquiries as to whether such cases have occurred. This affects particularly those Youth Offices to which the circular decree of 7 October 1941 does not apply.

III

Illegitimate children of foreign female workers who, according to section I, are to be reared as German children and for whom Youth Offices have been appointed as official guardians as per section II, No. 3, are to be cared for by the public welfare agencies according to the principles valid for German children, if under the old rules a case of indigence and need for legal welfare is given. Concerning the final obligation for public welfare for these children I herewith decide in accordance with article 38, sentence 2 of the Public Welfare Ordinance in agreement with the Reich Minister of Labor: If in pursuance of the ordinance concerning competence in matters of legal welfare any District Public Welfare Association is definitely liable for the welfare, the Regional Public Welfare Association to which it belongs takes its place.

IV

In cases of birth out of wedlock to stateless foreign female

workers the registrar's office need not pass on the report about the births to the guardianship court. The Reich Minister of Justice will inform the guardianship courts accordingly.

V

The decree also applies to illegitimate children of female workers from the annexed Eastern territories, from Lower Styria and Upper Carinthia who are under "protection" status. It does not apply to illegitimate children of female workers from the protectorate.

VI

This circular decree is not to be published even in the journals for use in public services.

By order:

[Signed] Signature

Certified true copy:

[Signature illegible]

SS Captain

TRANSLATION OF DOCUMENT NO-4370
PROSECUTION EXHIBIT 503

LETTER FROM THE HIGHER SS AND POLICE LEADER IN MILITARY DISTRICT XIII, TO THE OFFICE FOR PUBLIC WELFARE, NSDAP, GAU MAIN-FRANCONIA [MAINFRANKEN], 15 APRIL 1944, CONCERNING THE TREATMENT OF CHILDREN OF FOREIGN FEMALE WORKERS IN THE REICH

The Higher SS and Police Leader
Military District XIII
Deputy of the Reich Commissioner
for the Strengthening of Germanism
Nuernberg, 24, Ernst-vom-Rath-Allee

Nuernberg, 15 April 1944

To the Gau Leadership of the NSDAP
Main Franconia
Office for Public Welfare
Wuerzburg, Fritz Schillinger House

Subject: Treatment of the children of foreign female workers in the Reich.

The Polish woman, Barbara Koscielniak, born 4 March 1918 at Pomieze, residing at Wuerzburg-Frauenland, Zeppelin Strasse

(Polish Camp) expects a child (6th month) whose father is the Pole Zbigniec Kowski, born 22 October 1921 at Przemyśl, residing at Wuerzburg, Eckstrasse (Polish Camp).

An application for interruption of pregnancy made by the expectant mother had been denied, because a racially valuable offspring may be expected.

I request that, after birth, the child be taken into the care of the National Socialist People's Welfare Association for Racially Valuable Children.

By order :

[Signature illegible]
SS Captain

TESTIMONY OF PROSECUTION WITNESS RUDOLF MEYER*

DIRECT EXAMINATION

MR. SHILLER: Witness, when and where were you born?

WITNESS MEYER: On 16 October 1892 at Velpke.

Q. When did you join the Nazi Party?

A. 1 April 1938.

Q. How long have you been registrar of births and deaths at Velpke, Germany?

A. From 1 January 1936.

Q. Witness, when was a home for children of foreign workers established in Velpke?

A. April or May 1944.

Q. Do you know who established this home?

A. No.

Q. Did you register the deaths of children which occurred at this home?

A. Yes. I did.

Q. How many such deaths did you register?

A. Eighty-four of them.

Q. During what period of time did these deaths take place?

A. From 10 May 1944 to 25 December 1944.

Q. Was there any cause of death that you remember as having been given very frequently on the death certificate?

A. Yes.

Q. Will you please state it?

A. Yes. Weakness, gastro-enteritis.

Q. The prosecution has no further question.

* Testimony is recorded in mimeographed transcript, 5 November 1947, pp. 1039-1040.

TESTIMONY OF PROSECUTION WITNESS HOPPE*

DIRECT EXAMINATION

MR. SHILLER: Witness, when and where were you born?

WITNESS HOPPE: 16 January 1898 in Seggerde.

Q. That is in Germany, is it not?

A. Yes.

Q. Do you have any children, Witness?

A. Yes.

Q. How many children?

A. Nine of them still living.

Q. Do you know when a home for children of foreign workers was opened in Velpke?

A. In April 1944.

Q. Do you know what organization ran this home?

A. No.

Q. Did you see any Polish women, approximately in June 1944?

A. Yes.

Q. Will you please tell the Tribunal when and where you saw these women?

A. We lived directly on the main road.

Q. Did these women stop at your home?

A. No. Many of them passed through.

Q. I mean, Witness, did you talk to them when they passed your home?

A. Not with all of them; only with the one whose child I had.

Q. Will you please tell the Tribunal the name of a Polish woman who spoke to you?

A. Veronika Plutkaca.

Q. What did this woman ask you to do, Witness?

A. She asked me to accept the child. She was afraid it would die in the home.

Q. Witness, was this woman taking her child to the home?

A. Yes.

Q. Why was she taking this child to the home?

A. She told me she was forced to do that.

Q. What was the child's name, Witness?

A. Bruno.

Q. How old was this child?

A. Eight months of age.

Q. Did you take this child in your home, Witness?

A. Yes.

Q. Did you tell this woman you would take care of it for her?

* Testimony is recorded in mimeographed transcript, 5 November 1947, pp. 1040-1045.

A. I did.

Q. How long did you keep this child?

A. For three days.

Q. What happened after three days, Witness?

A. Mayor Noeth and Local Group Leader Mueller came.

Q. What did they say to you, Witness?

A. Frau Bolata and I had taken in a child.

Q. What did they say about your keeping the child, Witness?

A. They said we had to turn over the child immediately, and didn't we know that that was subject to punishment?

Q. Did you then take this child to the home, Witness?

A. First of all, I said, "We must feed and wash the child."

Q. What did they tell you then, Witness?

A. Then the Mayor said, "No. The child must be taken there immediately."

Q. Did you then take the child to the home, Witness?

A. Yes. I washed it, fed it, and took it to the home.

Q. What day was this that you took the child to the home?

What day of the week was this?

A. Sunday morning.

Q. Did you go back to the home to see this child again, Witness?

A. Yes. The next day I went there, and on Wednesday.

Q. When you went there on the next day—that is Monday, Witness, did you see how the child was taken care of?

A. It wasn't taken care of well.

Q. When you first brought the child to the home on Sunday, Witness, did you take any food to be given to the child?

A. Yes. I gave a bottle of good milk along with the child.

Q. What did you see when you returned to the home on Monday, Witness?

A. The same milk was still there in the bottle, but sour.

Q. And, Witness, did you say that you visited this home again on Wednesday?

A. Yes.

Q. Will you please describe to the Tribunal the conditions at the home?

A. When I entered the home, it made a very dirty impression on me.

Q. Will you please give a few more details, Witness, as to the conditions?

A. The first entrance was the kitchen, which was over-heated; then there was a big room, which due to the weather conditions was very hot, and the child was there naked and dirty lying in a box—where all of them were in a box. The paillasse as well as the covers, were dirty—very dirty.

Q. Witness, do you mean to say that each child had its own box?

A. Yes.

Q. What were the children lying on in the box, a mattress?

A. No. It was a paillasse.

Q. Witness, what was the condition of the children, so far as you could see?

A. From what I saw, the children were absolutely starved and very much neglected.

Q. Witness, what were the physical signs on the children by which you could tell that they were neglected?

A. They were very thin and they looked very old—their faces did.

Q. Witness, did you ever go back to the home to see the child Bruno after you paid this visit on Wednesday?

A. Yes. Three weeks later, together with the mother of the child, because the child had fallen sick, and I notified the mother and asked her to come.

Q. When the mother came, Witness, were you both permitted to see the child?

A. No.

Q. Did you ever see the child again, Witness?

A. Only on my urgent request, on that day. On that day they showed us the child through the window.

Q. After this, Witness, did you ever see the child again?

A. No. Fourteen days later I was told that it had died.

Q. Was the mother called to the child's deathbed, Witness?

A. No. I had to notify the mother, and this was at the time when the child had already been buried.

Q. Thank you. The prosecution has no further questions.

THE PRESIDENT: Any questions by the defense?

CROSS-EXAMINATION

DR. MAAS (Counsel for the defendant Schwalm): Witness, how far removed from your apartment was this home?

WITNESS HOPPE: Approximately 10 minutes.

Q. Did you not know who had established this home?

A. No.

Q. Did the district leader have anything to do with it?

A. We assumed he did because he visited me.

Q. And didn't you hear from acquaintances as to whom the home was subordinated?

A. No.

Q. In your direct examination you said that you had repeatedly been at the home.

- A. Yes.
- Q. The home where you delivered the child?
- A. Three times.
- Q. Was it easy for you to enter the home?
- A. At first, yes; but at the end, no longer.
- Q. How many children were there in the home altogether?
- A. When I was there, there were 54 children.
- Q. Do you know that many of these children died?
- A. Yes.
- Q. How do you know that?
- A. Because the corpses had to pass us on the road, on the way to the cemetery. We lived directly on the main road.
- Q. And when were the corpses carried by?
- A. At first, every week—every eight days—later on, it was more often.
- Q. And you were always present at the time?
- A. Yes—most of the time, because we live on the road.
- Q. Were these corpses not taken away immediately after death occurred?
- A. I can't answer that question exactly.
- Q. Isn't it unusual that corpses were carried by every eight days, in view of the fact that so many children died?
- A. At the beginning, we saw them almost every day; and later on, they were carried by back roads.
- Q. Do you know whether the district leader was sentenced to death because he was in charge of this home?
- A. No, I can't answer that question.
- Q. I have no further questions.

b. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT HILDEBRANDT*

DIRECT EXAMINATION

* * * * *

DR. FROESCHMANN (Counsel for defendant Hildebrandt): Well, that brings me to point 13 [of the indictment]. During your term of office as chief of the RuSHA, we have the letter of the Reich Leader SS dated 27 July 1943, Document NO-1383, Prosecution Exhibit 496, from document book 10. Did that letter come to your knowledge?

DEFENDANT HILDEBRANDT: It is possible that I got this letter

* Complete testimony is recorded in mimeographed transcript, 19-21 January 1948, 2 February 1948; pp. 3874-4120 and 4771-4774.

for information because my office is so mentioned on the distribution list.

Q. What is particularly interesting, looking at that document?

A. When I look at this document I can see with great detail the chronological activity of the whole procedure split up into ten agencies directly involved in this affair. First of all, Reich Leader SS and Chief of the German Police; (2) RSHA; (3) General Plenipotentiary for Labor Allocation Sauckel; (4) Health Leader Dr. Conti; (5) the Labor Exchange; (6) the Youth Office; (7) the Higher SS and Police Leader as representative of the Reich Commissioner; (8) the racial examiner of the RuS leader attached to the Higher SS and Police Leader; (9) the National Socialist Welfare, in other words, the Nazi Party in the case of a positive judgment; and (10) the Foreign Children Care Center of the German Workers Front or Reich Food Estate.

Q. Will you please look at page 7 of this document, Witness? Were you connected with the separation of infants from their mothers?

A. No, but here again I want to point out that according to this document here the possible and temporary separation from the mother was possible only with the approval of the mother. For the rest I was not connected with the whole matter.

Q. Did you ever hear about the fact that such infants were brought to special collection centers for extermination, as charged by the prosecution?

A. No, never. That would have been complete nonsense too, and it would have been in contradiction with the basic idea of keeping valuable blood by the racial examinations, if this valuable blood had been destroyed after birth. It is completely absurd.

* * * * *

TRANSLATION OF SOLLMANN DOCUMENT 34
SOLLMANN DEFENSE EXHIBIT 3(8)

AFFIDAVIT OF AUGUST MEINE, 28 NOVEMBER 1947, CONCERNING
THE LEBENSBORN HOME FOR EASTERN WORKERS

I, August Meine, born on 13 October 1916, British Internment Number 100579, at present in the Court Prison at Nuernberg, have been duly warned that I make myself liable to punishment if I make a false affidavit. I declare under oath that my statement is true and was made in order to be submitted in evidence before Military Tribunal No. I at the Palace of Justice, Nuernberg, Germany.

With regard to the question of whether the Lebensborn had

anything to do with female Eastern workers and the children borne by them in Germany, I remember vividly a conversation which I had with Dr. Tesch in August or September 1943 in Berlin.

I had met Dr. Tesch, whom I knew personally, by accident and I seized the opportunity to have him convey my thanks and appreciation to Herr Sollmann for the hospitality offered to my wife in the Lebensborn Home, Steinhoering, where a short while ago she had given birth to our third child. My wife had gained an extraordinarily good impression of the personnel of the home and particularly also of the good understanding among the mothers. Dr. Tesch promised to communicate my wife's praise to Herr Sollmann and also my appreciation for the laudable activities of the Lebensborn, since it so well confirmed the work the Lebensborn had done so far. He said that there had actually been danger of a change. A decree by the Reich Security Main Office recently had provided that in special cases also Eastern workers, in other words Polish and Russian women were to give birth to their children in the Lebensborn homes. However, despite this decree Lebensborn had been able to extricate itself from such an obligation and in subsequent decrees in this field Lebensborn was no longer included. The course pursued up to now that the young German women were able to become better acquainted with each other without any external inhibitions or difficulties as would be caused by another language would thus also be maintained in the future.

[Signed] AUGUST MEINE

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS RADUSCH*

DIRECT EXAMINATION

* * * * *

DR. SCHWARZ (Counsel for defendant Hofmann): Now, the prosecution has made the charge that children of aliens were subjected to racial examinations, and that according to the result of the examination these children were either subjected to re-Germanization or sent to extermination camps. As a racial examiner, or in your capacity as RuS Leader, did you ever carry out such an examination?

WITNESS RADUSCH: No. At no time.

Q. Well, did you have knowledge of such orders?

A. No.

Q. Or did you hear about such an extermination camp?

* Complete testimony is recorded in mimeographed transcript, 12 January 1948, pp. 3465-3477.

A. No.

Q. Did you have means to determine otherwise, and to see how children of foreign workers were treated?

A. I visited a children's home in a factory camp near Hamburg, where German children were lodged together with the children of Eastern female workers, and all I can say is that I was delighted about this lodging, and I gained the best possible impression. The children were cared for in the same way by Red Cross nurses, and the mothers, the Eastern workers, always had the opportunity, even during their working hours, to come and see their children and say hello to them.

Q. Had these children been brought into this home on the strength of a racial examination? Could you determine that?

A. No, but I don't think that was the reason.

Q. In the area of the Higher SS and Police Leader, Southwest, do you have knowledge of any case where, in the case of a racially desirable child, a mother had been forced to separate herself from her child?

A. No.

Q. Now the prosecution has submitted a fundamental decree dated 27 July 1943. That is Document NO-1383, Prosecution Exhibit 496, in document book 10. In this order mention is made of the fact that if mothers of racially desirable children wanted to return home with their children, they should be conscripted for work in the Reich and should thus be kept in the Reich territory. Now my question is whether this was carried out in the area of the Higher SS and Police Leader at Stuttgart?

A. Well, I don't even know that order.

Q. I only wanted to know whether such a case was carried out in practice.

A. No, that is unknown to me.

* * * * *

G. Hampering Reproduction of Enemy Nationals

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, Schwalm, Huebner, Lorenz, and Brueckner were charged with special responsibility for and participation in criminal conduct involving measures intended to hamper reproduction of enemy nationals. (*Indictment, count one, par. 13; count two, pars. 24 and 25.*) On this charge the defendants Greifelt, Lorenz, Brueckner, Hofmann, and Hildebrandt were convicted; and the defendants Creutz, Meyer-Hetling, Schwarzenberger, Huebner, and Schwalm were acquitted.

Argument of the prosecution concerning this aspect of the case appears in the opening statement on pages 1622 to 1694. Evidence of the prosecution and the arguments and evidence of the defense have been divided herein into three parts: prevention of marriages, pages 1113 to 1118; treatment of illegitimate Polish children, pages 1118 to 1121; and sterilization, pages 1121 to 1127.

A selection from the documentary evidence of the prosecution concerning the prevention of marriages of enemy nationals is set forth on pages 1113 to 1117. An extract from the closing statement for the defendant Greifelt on this point appears on pages 1117 to 1118.

One document from the prosecution's evidence on the treatment of illegitimate Polish children is set forth on pages 1118 to 1119. An affidavit by Josef Altstoetter, former department chief in the Reich Ministry of Justice and one of the defendants in Case No. 3 (Vol. III) concerning this document, submitted by the defense, follows on pages 1119 to 1121.

A selection from the documentary evidence of the prosecution concerning sterilization is set forth on pp. 1121 to 1127. A selection from the evidence of the defense follows on pp. 1127 to 1131. The prosecution introduced evidence in order to prove that the Jewish husband of Margarete Gertrude Sydower was to be sterilized (NO-1494, Prosecution Exhibit 556). The defense, in order to rebut this proof, called the witness Herbert Aust, an official of RuSHA, who was active in Belgium at that time. In rebuttal, the witness Willi Sydower himself was called by the prosecution. In order to preserve the chronological sequence in which this evidence on the "Sydower Case" was introduced in the trial, this evidence has been set forth on pp. 1131 to 1139.

2. PREVENTION OF MARRIAGES

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-3592
PROSECUTION EXHIBIT 535

CIRCULAR, SIGNED BY KLINGER, 5 AUGUST 1944, CONTAINING
DECREE OF THE REICH MINISTRY OF INTERIOR CONCERNING
MARRIAGES OF POLES

The Chief of the SS Race and Settlement Main Office

RA

C2 d

Ha/Sch

78/44

Prague, 5 August 1944
Main Post Office

Subject: Marriage of Polish protectees

Here: Restriction by fixing a minimum marriage age.

Distribution: List III

The Decree of the Reich Ministry of the Interior, dated 5 April 1943, made known by distribution III Ra 2/43, dated 15 May 1943, has in the meantime been altered by Decree I Sta R 5545 IV/43—4028, dated 10 January 1944.

At present, the decree reads as follows:

“On the strength of Art. 11 of the First Ordinance Concerning the Status of Protectees dated 25 April 1943 (Reich Law Gazette, part I, page 271) and in agreement with the chief of the Party Chancellery and at the same time in my capacity as Reich Commissioner for the Strengthening of Germanism, applying Art. 8, paragraph 3 of the First Ordinance concerning the Status of Protectees, I order the following, effective immediately:

A male Polish protectee may not conclude a marriage before he has completed his 28th year, a female Polish protectee may not conclude a marriage before she has completed her 25th year.”

[Signed] DR. FAUST

It is requested that cognizance be taken of these facts and that corresponding action be taken when dealing with applications for permission [for marriages] of *Polish* protectees.

This decree applies only to Polish nationals. Furthermore, it is to be noted that this decree concerns only Polish *protectees* and is not to be applied to stateless persons of Polish extraction.

The Chief of the Racial Office of the SS Race and Settlement Main Office acting for:

[Signed] KLINGER
SS Lieutenant Colonel

Certified copy:

[Signature] GUERSCHNER
SS Captain

TRANSLATION OF DOCUMENT NO-3593
PROSECUTION EXHIBIT 537

CIRCULAR, SIGNED BY KLINGER, 22 SEPTEMBER 1944, EXPLAINING
DECREE OF THE REICH MINISTRY OF INTERIOR (NO-3592, PROS.
EX. 535)

[handwritten] protectees

The Chief of the Racial Office of the SS Race and Settlement Main
Office

RA C/2.— d Ha/Ri. 98/44.

Prague, 22 September 1944
Main Post Office

Subject: Marriages of Polish protectees.

- Reference: 1. Circular Decree of the Reich Ministry of the Interior, dated 10 January 1944 concerning the fixing of a minimum marriage age (made known in distribution list III/RA 38/44).
2. Chief Rus/RA-73/44, dated 26 July 1944.

Distribution list: III

There were doubts concerning the fact of whether the above-mentioned circular of the Reich Ministry of the Interior, dated 10 January 1944, applied only to marriages of Polish protectees among themselves, or whether it was to be applied also in general cases of marriage between Polish protectees and stateless persons or other aliens.

In connection with this, the following needs to be pointed out:

1. The circular of the Reich Ministry of the Interior, dated 10 January 1944, concerning the fixing of a minimum marriage age for Polish protectees *refers only to marriages of protectees with each other.*

The Circular was issued on the basis of Article 11 and by applying Article 8, paragraph 3 of the first Ordinance Concerning the Status of Protectees, which provides that marriages between protectees are not subject to any restrictions, insofar as nothing else is provided on the basis of Art. 11 of this Ordinance.

2. Marriage of Polish protectees to nonprotectees (that is to say, stateless persons or other aliens) are subject to Art. 8, paragraph 1 of the Ordinance Concerning the Status of Protectees which *prohibits marriage.*

Such marriages cannot be concluded until the implementation order to the Ordinance Concerning the Status of Protectees has appeared, since the higher administrative authorities as well as the subordinated bureaus of the Reich Commissioner for the Strengthening of Germanism have not issued directives about granting exemptions according to Art. 8, paragraph 2 of the above-mentioned ordinance.

The statement of the above-mentioned facts is made in agreement with the Reich Ministry of the Interior. It is requested that cognizance be taken of said facts and that action be taken accordingly.

The Chief of the Racial Office of the SS Race and Settlement Main Office acting for:

[Signed] KLINGER
SS Lieutenant Colonel

Certified copy:

[Signature] GUERSCHNER

SS Captain

TRANSLATION OF DOCUMENT NO-3297
PROSECUTION EXHIBIT 538

CIRCULAR FROM KLINGER, 30 SEPTEMBER 1944, CONCERNING
MARRIAGES OF MEMBERS OF GROUP 3 OF THE REICH RACIAL
REGISTER

The Chief of the Racial Office of the SS Race and Settlement Main
Office

RA c 2 114/44 Ha/Ri.

Prague II, 30 September 1944

[Handwritten note] Marriage matters
Mail Distribution Office

[Stamp]

The Higher SS and Police Leader Danzig and Western Prussia
Deputy of the Reich Commissioner for the Strengthening of Germanism

Arrived: 6 October 1944

[Abbreviations and Initials: illegible]

Letter file: No. File No.

Subject: Marriage of members of Group 3 of the German People's List.

References: General Order, Reich Leader SS, RKFDV 12/C of 9 February 1942.

Distribution: III

In accordance with General Order No. 12/C of the Reich Leader SS, the Reich Commissioner for the Strengthening of Germanism, of 9 February 1942, with regard to the treatment of persons entered in the German People's List, *marriages of members of group 3 of the German People's List are permissible both with other members of group 3 of the German People's List as well as with German citizens.*

Other marriages, e.g., with members of group 4 of the German People's List, with non-Germans or persons having revocable German citizenship who do not belong to group 3 of the German

People's List, *are not permissible*. This *prohibition*, as a matter of principle, also excludes marriages between members of group 3 of the German People's List and *persons eligible for re-Germanization*.

Marriages of members of group 3 of the German People's List with political officials of the NSDAP, with leaders of its affiliated organizations, officers, members of the Reich Labor Service, officials in highest, higher and intermediate grades, as well as with employees of authorities who can act independently, may be entered into only with *special permission*, which must be obtained from the Staff Main Office.

It is requested that applications for marriage permits by members of group 3 of the German People's List be especially scrutinized.

For the Chief of the Racial Office in the SS Race and Settlement Main Office

[Signed] KLINGER
SS Lieutenant Colonel

Certified:
[Signature: illegible]
SS Captain

b. Extract from the Closing Statement for Defendant Greifelt*

* * * * *

Concerning the next count, prevention of marriages, I can be very brief. In his examination Greifelt declared that he had nothing to do with such measures. (*Tr. p. 1563.*) Whatever was implemented in this field was a concern of Himmler's Reich Security Main Office, or his Ministry of the Interior. The documents introduced by the prosecution in book 12 emanated from the Reich Security Main Office or the RuSHA. In Document NO-3593, Prosecution Exhibit 537 "Offices of the Reich Commissioner" are mentioned. According to Document NO-3592, Prosecution Exhibit 535 this can only mean the RuSHA. The Staff Main Office is only mentioned on the last page of this volume because the approval of the Staff Main Office was required for marriages between persons classified in group 3 of the German People's List and political leaders and organization leaders. But this was due to the control exercised with respect to marriages of such functionaries, not to measures aiming at extermination of other nationalities. But prevention of marriages can have a relevancy to International Law only if it has this aim, but not if it is merely

* This part of the closing statement was not read into the record, but was presented to the Court in the form of a brief. Closing statement is recorded in mimeographed transcript, 16 February 1948, pp. 4872-4903.

a measure to control the discipline and the way of life of state functionaries.

That Greifelt was inclined to advocate the abolition also of this interference with the sphere of personal determination of a human being appears in subsection 19 of the conference memoranda, dated 12 May 1943. (NO-3181, Pros. Ex. 312.) As soon as the marriage itself was made difficult, not with respect to the German partner but to the partner of alien race, it was not the Staff Main Office but the Party Chancellery, the Office for Racial Policy, or the RuSHA which were to take action. (NO-4041, Pros. Ex. 103.) As already frequently emphasized, the Staff Main Office had nothing to do with persons of alien races in pursuance of its official tasks and can therefore not be held responsible now either.

3. TREATMENT OF ILLEGITIMATE POLISH CHILDREN

TRANSLATION OF DOCUMENT NO-1126
PROSECUTION EXHIBIT 419

FILE MEMORANDUM OF THE CONFERENCE AT THE REICH MINISTRY OF JUSTICE ON 10 MARCH 1943, CONCERNING SUBSISTENCE CLAIMS OF ILLEGITIMATE POLISH CHILDREN AGAINST THEIR POLISH FATHERS

Copy

File memorandum—conference at the Reich Ministry of Justice on 10 March 1943

Subject: Handling of subsistence claims of illegitimate Polish children against their Polish fathers.

Presiding:

Ministerialdirektor Altstoetter
Competent Referent Rexroth

The following were represented:

Reich Ministry of Interior
Government Councillor Hoffmann
Government Councillor Enke of
the Party Chancellery
Reich Commissioner for the
Strengthening of Germanism—
Repatriation Office for Ethnic
Germans
SS Major Brueckner;
SS Race and Settlement Main Of-
fice
SS Captain Harders

Representatives of the Presidents of the District Courts of Appeals for Poznan, Danzig, Katowice and Koenigsberg.

The matter in question was considered to be a *political* problem. The attempt must be made in accordance with political interests to find the most practicable procedure for the political offices, the judiciary and the administrative authorities. The various different regulations followed by each district are to be discontinued, and a uniform procedure for the annexed Eastern territories as well as for the remaining Reich territory is to be developed.

Because of the raising of the marriage age for Poles, the number of legitimate children is reduced, resulting in an increase in the number of illegitimate children. The information most recently obtained showed that the number of illegitimate children is increasing to an even greater extent than the number of legitimate children is decreasing. It must be the purpose of the intended regulation to reduce the number of illegitimate children as far as possible, but in no way to cause a further increase.¹

* * * * *

[Signed] HARDERS
SS Captain

Berlin, 10 March 1943
Certified true copy:
[illegible]

TRANSLATION OF BRUECKNER DOCUMENT 12
BRUECKNER DEFENSE EXHIBIT 12

AFFIDAVIT OF JOSEF ALTSTOETTER², 19 NOVEMBER 1947, CONCERNING THE FILE MEMORANDUM OF THE CONFERENCE AT THE REICH MINISTRY OF JUSTICE ON 10 MARCH 1943 (NO-1126, PROS. EX. 419)

I, Josef Altstoetter, born 4 January 1898 in Griesbach, at present Nuernberg Military Court Prison, was at first duly warned that I make myself liable to punishment by rendering a false affidavit. I declare in lieu of oath that my statement is true and was made to be presented in evidence before the Military Tribunal I, Nuernberg, Germany.

1. From January 1943 until the end of the war I was department chief in the Reich Ministry of Justice in charge of civil law and civil law administration.
2. In the spring of 1943 I presided over a departmental conference that took place at the Reich Ministry of Justice concerning the settlement of alimony suits brought against their procreators by illegitimate Polish children.
3. I no longer remember what authorities or agencies were

¹ Other parts of this document are quoted in the opening statement of the prosecution, pp. 622-694, and in the judgment, section IX, vol. V of this series.

² Defendant in Case 3, United States of America vs. Josef Altstoetter, et al., vol. III, this series.

invited to attend this conference. I only know that the conference was well attended and that the attendance list in the file note of 10 March 1943, No-1126 signed by the SS Captain Harders and presented to me here by the defense counsel is not exhaustive. But I still remember well that the representative of the VoMi asserted at this conference the incompetence of his agency.

4. The file note of the SS Captain Harders is not an official protocol by the Reich Ministry of Justice of the conference but a memorandum. The file note does not reproduce truly the course of the conference as I still remember it today. The main point of the conference was the demand made by the Reich Ministry of the Interior to transfer to the Youth Offices in the Reich the establishing of the paternity of illegitimate children of mothers of Polish nationality. This demand was rejected by the Reich Ministry of Justice on principle. This attitude of the Reich Ministry of Justice was opposed at this conference by a large majority of the representatives of other authorities. Among others it was just the circle of representatives of the Presidents of the District Courts of Appeals from the incorporated Eastern territories who voiced the opinion that such a viewpoint could not be carried out in practice. It was pointed out that the judicial authorities there could not handle the increase in business because of the difficult personnel situation and that difficulties would result from various Youth Offices who so far had strictly declined to appeal to the courts in the cases in question. Because of this situation various compromise proposals were put forward, among others also the one that the Youth Offices should be obliged to appeal to the courts, but only in those cases where a German interest existed. In all other cases the establishing of paternity and the decision on alimony should be left to the Youth Offices. In this connection the individual authorities and agencies submitted proposals for specific regulations according to their own interests.

No decision in this sense was made. The Ministry of Justice expressly reserved its position in regard to the compromise proposals. I do not remember exactly what position the individual representatives took. But the following I know definitely:

- a. The SS Captain Harders did not stand out at this conference. Naturally I do not know what the purpose of his description was. I do not remember Harders.
- b. I distinctly remember that the representative of the VoMi, Brueckner, expressed himself against any attempt to regulate the number of children of persons of Polish nationality in general.

5. Following the conference, an exchange of letters took place between the Reich Ministry of Justice and the Reich Ministry

of the Interior. In consequence of the basic attitude of the Reich Ministry of Justice, no agreement could be reached, so that a solution of the problem was *not* achieved up to the time of the collapse.

[Signed] JOSEF ALTSTOETTER

Nuernberg, 19 November 1947

4. STERILIZATION

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-1495
PROSECUTION EXHIBIT 881

MEMORANDUM FROM HOFMANN TO THE RACE OFFICE, 12 FEBRUARY 1942, CONCERNING THE TRANSFER TO THE EAST OF STAFF AND FACTORIES OF GAERTNER, A GERMAN NATIONAL LIVING IN PARIS

The Chief of the SS Main Race and Settlement Office
H/SP

Berlin, 12 February 1942

To: The Race Office
located in the house.

Subject: Report to the Reich Leader SS on 9 and 10 February 1942.

The Reich Leader informed me that a couple named Gaertner was living in Paris. The husband is a German National, his wife is French. Gaertner owns several factories, the staff of which comprises about 3,000 men. All these factories are to be shifted to the East including the personnel. For this reason it will be necessary in the near future to examine the personnel from a racial point of view. The Reich Leader mentioned especially that older members of the personnel, even if they don't come up to the racial standards required, should be resettled, if they can no longer cause damage in the biological sense, and finally, even these members of the personnel who, though not meeting the racial requirements, are willing to be sterilized.

The Reich Leader will give more detailed instructions in the near future.

The Chief of the Race and Settlement Main Office

[stamp]

[Signed] HOFMANN

SS Major General

[Handwritten]

12 February 1942

[illegible initial]

TRANSLATION OF DOCUMENT NO-5311*
PROSECUTION EXHIBIT 832

MEMORANDUM ON "IMMEDIATE REICH MEASURES TO DECREASE THE DANGERS FROM INFILTRATION IN VIEW OF THE NUMEROUS BIRTHS OF ALIENS IN RURAL AREAS", 16 MAY 1944

IMMEDIATE REICH MEASURES TO DECREASE THE DANGERS FROM INFILTRATION IN VIEW OF THE NUMEROUS BIRTHS OF ALIENS IN RURAL AREAS

I. Basic facts.

Nowhere in the German ethnic body is the ethnic race and racial effect of the numerous *births of children of alien race* so fatal in the long run as it is in the German rural areas.

First of all, the percentage of children of alien blood in rural areas is substantially higher than among the population of alien blood (working) in industry. Thus the birth figures for illegitimate children of alien blood in the district East-Hannover are proved to be 80 percent for rural areas, but only 20 percent as far as industrial workers of alien blood are concerned.

Secondly. Contact in the country, in the small villages and on the farms is developing much earlier and closer between the children of alien blood and the German country children. Then follows the process of getting used to one another, and after that again the *outward* assimilation. Sooner or later, the final result would be a melting of these elements of alien blood and race with the German rural population.

Thirdly. A rural population of such an extensive racial mixture would, in the course of time, contaminate the entire German people with that undesirable mixture of physical, spiritual, and character traits as has developed in the country due to the infiltration of persons of alien blood, especially since the rural population always had, and still has today, a proportionately higher birth rate than the German urban population.

Therefore, children of alien blood born in the rural areas, regardless of whether both parents are of alien blood or one part is of German descent, may, as a matter of principle, *under no circumstances grow into the body of the German people and/or must again be eliminated from it in time.*

II. Emergency measures.

1. A thorough, retroactive and continuous statistics set-up must register these children of alien blood in all communities, regions, and districts of the Reich. The regional deputies of the district

* This unsigned document, dated 16 May 1944, was discovered in the files of VoMi.

offices for the rural population will carry out these investigations in cooperation with the regional offices for folkdom questions by a certain date (1 September 1944 ?).

The figures we shall arrive at even now can be seen from statistics compiled in specific districts.

Thus, in 1943, 1,500 children of alien blood were born in the rural areas of the district of East-Hannover; in the district of Saxonia, 631 women of alien blood who were working in agricultural jobs gave or were going to give birth to children.

In all districts the figures are on the *increase*.

2. Comprehensive *sterilization* of such men and women of alien blood in German agriculture who, on the basis of our race laws—to be applied even more strictly in these cases—have been declared inferior with regard to their physical, spiritual, and character traits.

3. A ruthless but skillful *propaganda among farm workers of alien blood* to the effect that neither they nor their children, produced on the soil of the German people, could expect much good; in other words, immediate separation of parents and children, eventually complete estrangement; sterilization of children afflicted with hereditary disease.

In order to round out his propaganda in a practical way contraceptives should be quietly distributed (with the Reich bearing the cost). There is no harm in leaving a valve open to the natural desires of the persons of alien blood as long as this will not interfere with cutting off the flow of reproduction among these people of alien race.

4. *General and strictest compliance* with the principle of taking away from their mothers for good all newly-born children of female farm workers of alien blood as well as children of German women if the father is of alien race, *at the latest 4 weeks after their birth*, and then sending them to geographically remote homes.

Annotation: It must be said that in this direction, the opinion in many districts and even in many district offices with regard to the rural population is too superficial and “complacent”.

For instance, a report by the District Leader Halle-Merseburg of 2 February 1944 advances a viewpoint which is impossible under race and ethnic aspects:

“With regard to the upbringing of the children of alien race, I am of the opinion that it *may be handled by their mothers of foreign blood until they are 5 years old.*” (!)

There are mainly the *following reasons* which make it necessary to carry out in principle and generally the separation of mothers of alien blood from their children:

a. To leave the children with the mother of alien blood for a prolonged period would mean a *continued and increasing bother to the German farmer's wife*, who more or less has to take care herself of the child of alien blood when its mother is working on the farm.

b. To leave the child for a prolonged period would mean a *growing psychological attachment* of the mother of alien blood to her child and an increasing horror at tearing this attachment to pieces. Even the German farmer's wife and the members of her family and the farm hands might easily come into a relationship of psychological attachment with the infant of alien blood.

c. Especially if it is known that early separation of the female farm worker of alien blood from her child is carried out generally, so to speak automatically, *then no reluctance at all* by any of the parties involved and the actual separation can be completed as painlessly as possible. As an ominous fate, it must be constantly on the mind of the female farm worker of alien blood that to give birth to a child in Germany would mean to lose it at the same time.

d. To proclaim this *biological state of emergency*, which is hard for those of alien blood, but necessary for our people, will have a *deterrent effect on the large majority of women of alien blood*, and in part also upon the men; it will easily lead to a *decrease in the birth rate*, a fact which is wholly desirable for us. (But apart from this deterrent measure, the practical measure of distributing contraceptives to persons of alien blood is also necessary!)

e. The deterrent effect will be all the greater since there are also *other severe measures* connected with the separation.

f. The children who grow up in separation thus, at least mean a loss to the foreign folkdom from an *educational point of view*, even though by that very fact the *intermingling of blood* within Germanism is promoted. But also in this direction it will be easier to employ further successful steps after complete separation has been carried out than it would be if the children remained with their mother of alien blood.

All these viewpoints demand the *only right emergency measure: unconditional general separation as soon as possible of the illegitimate children, and those from the marriage of the mother (family) of alien blood, and placement in proper Children's Homes for Aliens.*

5. *Children's Homes for Aliens* will be established immediately all over the Reich (they will be called for short "Homes for Alien Children").

a. Upon request by the regional deputy for the rural popula-

tion, every regional office of the *Reich Peasant Organization* will establish in its region up to x Homes for Alien Children in proportion to the requirements. The competent regional counsellor will assume the promotion and final supervision of all construction and remodelling.

b. The financial means to establish the children's homes will be obtained as follows: from funds of the regional office of the Reich Peasant Organization farmers' cooperatives, regional administrations, and individual farmers of the communities concerned; in addition the Reich Funds for Labor Allocation will be utilized.

Other financing: unremunerated cartage by farmers; collaboration of village tradesmen at reduced prices; allocation without charge of foreign labor on construction jobs.

Existing buildings [such as] (barns, sheds) are to be utilized if possible.

Note: A successful example in this direction was set in 1943 by the community of Echemin the government district Lueneburg, which established an "Infants' Home for Foreigners" with a capacity of 24 infants in a shed that was 20 meters long and 5 meters wide, at a cost of RM. 2,200.00 for building expenses and RM. 600.00 for equipment.

c. The Homes for Alien Children should not, if possible, be located in a village that also contains persons of alien blood, but rather in a rural town, in order to increase rather than shorten the distance between the children of alien blood and their procreators.

d. Supervision and care of these Homes for Alien Children should possibly be handled in the following manner (on the basis of the example set by Echen):

A suitable evacuee family, living near the home, will take over the supervision of the home, upon remuneration.

A woman of alien blood will be in charge, if necessary with the help of other women of alien blood.

e. The current expenses for the Home for Alien Children are covered in the district of East-Hannover in a really exemplary manner as follows:

The mother pays RM. 12.00 per month, and the father RM. 15.00 per month. If the paternity cannot be ascertained, the mother pays an additional RM. 15.00 thus contributing a total of RM. 27.00. The amounts are deducted monthly in advance from the pay by the plant manager and turned over to the local peasant leader who passes them on to the district Peasant leader.

These dues are admittedly hard on the parents of alien blood, but they are just; and they certainly will contribute more toward

causing the farm workers of alien race to restrict themselves in producing children.

Note: In contrast to these people of the district of East-Hannover, who know how to deal with the situation is the demand of the employment office at Ansbach, Franken which makes farmers sign a document to the effect that they have to take back the mother of alien race together with the infant after their discharge from the maternity hospital and assume the responsibility for the cost and up-bringing of the infant!

f. The *visiting hours* for the mother and/or father must be confined to a minimum. In the district of East-Hannover visits to the children are restricted to two per month, and then only on a Sunday and for 2 hours.

Thus all *emergency measures* lead to the following goal: To restrict to a minimum the production and birth of such children of alien race; in cases, however, where such children actually are born, *to kill the parents' desire for further reproduction*, if possible, by separation on the one side and by the continuous payments of money on the other; by taking away the children to avoid their being brought up in surroundings of alien race.

The emergency measures, therefore, are indispensably necessary and cannot be delayed.

III. Long range measures.

Since it must be expected that in view of the primitive sensuality and fertility of the farm workers of alien race, children will always be born in spite of all precautions, ethno-political foresight, to forestall infiltration of any kind in the country, requires that still further and more severe measures be planned and, if necessary, carried out concerning these children.

The following basic principles must be observed in this connection:

1. As a rule, none of these children of alien race grow up in these Homes for Alien Children, may take residence or work in the country. The rural population as a "source of life for the nation" is too good on one side, and on the other side its blood has been devaluated too much during the last few generations.

2. At the conclusion of the war every endeavor must be made *to send* most of the farm workers of alien blood together with their families *back to their countries of origin*. This transfer from German agriculture has to be carried out gradually but energetically in proportion to the valuable *German* labor which the rural population will receive from town and country.

3. Only the *most valuable* among the growing children of alien blood are to be left in greater Germany and trained for *industry*. The percentage thereof must not be too large and the selection must be made with the **greatest ethno-political responsibility!**

4. For *elder* children of alien race who are to be recruited for German industry, *proper training institutions in the form of camps* will have to be created, whereupon their discharge from the Homes for Alien Children, they will receive instruction in manual trades.

IV. Over-all goal.

In dealing with this group of questions the economic, vocational, and numerical side must always *take second place* to the ethno and racial-political aspects. Even the most severe economic, occupational, educational, and administrative sacrifices have to be made whenever there is an opportunity to replace alien blood by valuable *German* blood. In this most difficult and most decisive of all questions *all* authorities of the Reich, even more desirable, all sections of the people must cooperate in the same direction.

Wuthenow-Dorf, 16 May 1944.

b. Selections from the Evidence of the Defense

EXTRACT FROM THE TESTIMONY OF DEFENDANT BRUECKNER*

CROSS-EXAMINATION

* * * * *

MR. SHILLER: Witness, on direct examination you stated that you had been invited to a conference on the prevention or hampering of reproduction of foreign nationals, but that this invitation was issued to you by mistake. Did you ever have any other contact with the hampering of reproduction by propaganda, sterilization or other methods?

DEFENDANT BRUECKNER: I can't remember.

Q. Will you please look at Documents NO-5311 and NO-5312 which I offer for identification as Prosecution Exhibits 832 and 833? Will you please look at NO-5311 first? Witness, will you please look at the top of the first page?

A. Yes.

Q. Do you see there a handwritten notation: "Z.d.A."—"Zu den Akten"?

A. Yes.

Q. Do you see that, Witness?

A. Yes.

Q. That means "for the files" does it not? Isn't that in your handwriting, Witness?

A. Yes. That is my handwriting and I wrote "for the files" on

* Complete testimony is recorded in mimeographed transcript, 19 December 1947, pp. 2824-2894.

it. There is no other note on it because VoMi had no connection with these measures. It was a letter for information.

Q. Witness, will you look at the next document, NO-5312, Prosecution Exhibit 833? This is a letter from the VDA to Office 6, your office on the same subject, is it not?

A. I am in no position to judge at the moment whether there is any connection between the two documents.

Q. Witness, if you will just look at NO-5312 then, will you please tell the Tribunal why your office should have received this letter?

A. Yes. I initialed it myself.

Q. You mean the handwritten note at the top of the first page, Witness? I am not sure if the translation has those handwritten notes. Would you please just read the few words at the top?

A. I personally wrote my full name on it; [I wrote] "Professor Schoepke, for information and to be returned to myself", signed with my name in full.

Q. And why did you get this letter, Witness, just for information?

A. I don't know.

Q. Witness—

A. There is no indication on it that it was handled by any of us.

Q. Witness, I think we can now go on to the next point. Are you sure that you never knew of the sterilization of children?

A. I cannot remember any incident of this kind.

Q. Witness, will you please look at Document NO-5342, which I now offer for identification as Prosecution Exhibit 834? Will you just glance over the first page and look especially at the second page of that photostat copy? There is just one short paragraph on the second page. Have you read that paragraph, Witness?

A. What paragraph, please?

Q. On the second page of the photostat.

JUDGE O'CONNELL: Excuse me. I would like to have time to read the letter also.

MR. SHILLER: I am sorry, your Honor.

JUDGE O'CONNELL: You are asking the witness questions before the members of the Tribunal can complete the reading. All right.

MR. SHILLER: Witness—

DEFENDANT BRUECKNER: Just a moment. I haven't quite finished.

Q. Have you now finished, Witness?

A. Yes.

Q. Witness, will you please look at the paragraph on the second page? When you say in that paragraph that the non-Aryan chil-

dren involved may be transferred to Germany provided that they are sterilized, you knew at that time that children were being sterilized, did you not?

A. In this paragraph I say that it is a matter entirely within the competence of the Reich Security Main Office.

Q. Yes; but, Witness, didn't you know at the time you wrote that that children were being sterilized, regardless of who was doing it? Didn't you know that, Witness?

A. This document clearly expresses my view at the time. It is a matter for the Tribunal to examine what expression was chosen.

* * * * *

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS
REINHOLD LORENZ*

DIRECT EXAMINATION

* * * * *

DR. DOETZER (Counsel for defendant Brueckner): Did Office VI or Brueckner have any connection with the taking away or the sterilization of children?

WITNESS LORENZ: No.

Q. Witness, I am now showing you the documents submitted by the prosecution on cross-examination, NO-5312 and NO-5311, Prosecution Exhibits 833 and 832, respectively. Look at these documents please. Do you know these documents?

A. Document NO-5312 I know. I don't know the other document, that is, NO-5311.

Q. Did you handle the case mentioned in Document NO-5312?

A. Yes. I did.

Q. Did you pass Document NO-5312 on to Brueckner for his information?

A. I submitted it to him and told him that this was a matter which concerned aliens.

Q. How do you know that exactly? Can you tell from the document?

A. Yes. I know the document, it was passed on to me by mail and I read it through and established right away that it was an affair which was no concern of ours.

Q. Did you make any note on this document?

A. Yes. It is still at the top here, to "SS Lieutenant Colonel Brueckner for information", and my signature.

Q. Did you yourself then go to Brueckner with this document?

* Complete testimony is recorded in mimeographed transcript, 23 December 1947, pp. 3053-3062.

A. I then went to Brueckner with this document and told him what it was about and that it was a matter concerning aliens. Thereupon I remember perfectly that Brueckner said, "This is no affairs of ours. Inform the district manager of the VDA that we have no connection with this and that if he has any part in it he is to stop immediately." Further, I was to show this document to Professor Schoepke who was an outspoken opponent of Germanization for his information. I then called up the district manager of VDA, had him come to Berlin for discussion—as I also had other matters to take up with him—and explained our point of view to him. Professor Schoepke also received this document from us. I only want to mention that the district manager, I think his name was Petzold, was later on relieved of his duties.

Q. Did you make any note about your measures?

A. Yes. We always did that on such occasions.

Q. Is a note on this document or is it attached to this document?

A. No. There is nothing there.

Q. Did Brueckner, as head of Office VI, order you to destroy documents when the collapse came or what did he do?

A. No. On the contrary all our documents, including the secret documents and whatever else we had, card indices, etc., had to be carefully packed. Nothing was allowed to be destroyed.

Q. Did you stick to this or did you destroy documents?

A. No. Not a single document was destroyed as far as I can tell.

Q. Witness, did Brueckner confidentially tell his colleagues in the way you have just described what his opinions were?

A. No. Brueckner was very frank in his views and confessions. Not only in our circle but in the presence of other people too, he made no attempt to hide his opinions. I and other colleagues of his often advised Brueckner to be more discreet in the interest of his own safety, but he refused, so that we were often afraid that measures might be taken against him.

DR. DOETZER: Thank you, Witness, I have no further questions.

* * * * *

**c. Evidence of Prosecution and Defense Concerning
"Case Sydower"**

TRANSLATION OF DOCUMENT NO-1494
PROSECUTION EXHIBIT 556

LETTER FROM THE RACE AND SETTLEMENT LEADER AUST,* TO RuSHA,
GENEALOGICAL RECORDS OFFICE, 27 MAY 1944, CONCERNING
THE CASE OF SYDOWER

Office of SS Major General Jungclaus Race, and Settlement Leader
File No. RK III/S — A/Rue.

Local Office, 27 May 1944
Field Post No. 07515 AP (RuS)

Subject: Examination of the naturalization of Margarete Gertrude Sydower, née Rosenwald, born on 21 July 1909 in Berlin-Schoeneberg, residing at present in Brussels III (Schaerbeek), Avenue Chezahl 95.

Reference: Inquiry by the Administrative Area Headquarters [Military] 672 Brussels.

Enclosures:

To the SS Race and Settlement Main Office
Genealogical Records Office
Kyffhaeuser Burghof
Post Rossla/Harz.

[Stamp] Registered

The Administrative Area Headquarters 672 requests from the above-mentioned proof of Aryan descent, in order to decide whether the husband as a Jew and stateless person and former Reich German must wear the Star of David.

The husband emigrated in May 1939 with the approval of the Reich, and the wife, as a Reich German, has a residence permit for Belgium until 31 October 1944.

Since such inquiries by the above-mentioned at the German Registry Offices have been unsuccessful up to now, we enclose herewith the genealogical record made out in the name of the child of the couple, with the request for reexamination in the Jewish file there and for the appropriate decision. The notations made in red were based on documents which had been submitted.

The husband is a Jew, was a noncommissioned officer in the First World War, and was decorated with the Iron Cross Second Class. He also received the wound decoration in black.

* See testimony of Aust, pp. 1132-1134.

S. is not opposed to the idea of submitting to voluntary sterilization.

We ask you for further information in this matter.

The Race and Settlement SS Leader

[Signature] AUST
SS Major

[stamp]

SS Race and Settlement Main Office

5 June 1944

[Initial illegible]

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS
HERBERT AUST*

DIRECT EXAMINATION

* * * * *

DR. HEIM (Counsel for defendant Schwalm) : For example, was the Higher SS and Police Leader to give you orders concerning the registration of the Jewish population [in the Netherlands] ?

WITNESS AUST: No. He couldn't do that. For that the prerequisite competences and also the possibility to carry out such a tremendous task with the available means was lacking.

Q. Did you ever give official help in connection with a Jewish matter?

A. Yes.

Q. Will you please describe this case here in brief?

A. For some time during 1943 to 1944 I was also entrusted with the official business of the RuS leader in Brussels. One day the Administrative Area Headquarters [Oberfeldkommandantur] sent a lady to me who carried a letter of introduction. In this letter I was asked to help this lady in the procurement of genealogical records. The matter in question was the proof concerning the ancestry of a Mrs. Sydower, who was married to a Jew, who, I believe, in 1939, had emigrated to Belgium with the permission of the Reich Government. According to existing laws, the question now came up of whether he would have to wear the Star of David or not. If this woman could prove that she herself was not of pure Jewish ancestry, the husband would not have to wear this star. I agreed to this request which originated in the application of Mrs. Sydower, and wrote to the genealogical records office in order to clarify Mrs. Sydower's ancestry.

Q. Witness, was this within your sphere of activity?

* Complete testimony is recorded in mimeographed transcript, 12 January 1948, pp. 8480-8525.

A. No. This was not within my sphere of activity.

Q. Why, then, did you take any action in this matter?

A. I saw no reason because of my attitude toward the Jewish problem not to help this woman who was in a sort of an emergency, and I was pleased to be able to do so.

Q. Could the man or the woman have suffered any sort of disadvantage through that?

A. No. They would not have been put to any disadvantage through that.

Q. From document book 13-A of the prosecution, I am handing you Document NO-1494, Exhibit 556. Does this document contain the case that you have just mentioned?

A. Yes. From this letter you can also see by the fact that the various ribbons are mentioned which the husband earned during the war, that it had a friendly tendency.

Q. Why did you contact the genealogical records office in this question if it was true that this office had only rather limited material and was only competent for the SS?

A. Firstly, the genealogical records office had much more experience in the procurement of these records and in addition, the genealogical records office was free to inquire at various other offices—I am now thinking of the registry agencies in the Reich—while I myself could not very well pass over the heads of superior agencies to get this information.

Q. Did not the genealogical records office also have the possibility of contacting the Reich Eugenics Office?

A. Certainly. The genealogical records office had that possibility, and the Reich Eugenics Office, as far as I know, was frequently consulted by SS members in cases of an ancestry examination. However, it was not up to me to contact this agency directly.

Q. Now, was the genealogical records office actually competent in this matter?

A. Since that was a matter which concerned only civilians, the genealogical records office was clearly not competent. For this reason I gave the file the heading "Naturalization Examination" in order to prevent it from being returned with the note "cannot be taken care of" by one of Ossiander's assistants.

Q. Did you have the agreement of the chief of the RuSHA, that is of Hildebrandt, to take this course of action?

A. I could never have contacted the chief of the RuSHA with such a nonofficial matter. Even though I know that I exceeded my competency, I know that it was done for a good purpose, and I am quite sure that I would have had the support and the agreement of SS Lieutenant General Hildebrandt if I had had trouble

with any agency that might have obtained this letter by chance and have reprimanded or even punished me.

Q. Do you know what happened to the Sydower file?

A. When I became chief of the welfare command on 1 July 1944, I ceased to be in charge of the official business in Brussels. At the beginning of September, Brussels was already occupied by Allied troops, and I cannot say what happened to it. I personally had the impression that the Administrative Area Headquarters wished to delay this whole procedure, and of course it took weeks until the answer to this letter finally came in. Frau Sydower herself visited me once more—that must have been shortly before my transfer—and I don't know whether this letter had already been received at that time, and what was contained in it. I don't know whether I personally relayed this letter to the Administrative Area Headquarters, or whether it was done by one of my collaborators who had remained in Brussels.

EXTRACT FROM THE TESTIMONY OF PROSECUTION WITNESS
SYDOWER*

DIRECT EXAMINATION

MR. SHILLER: Witness, what is your full name?

WITNESS SYDOWER: My name is Willy Sydower.

Q. When and where were you born?

A. I was born on 24 July 1894 at Roseck in the district of Deutsch-Krone.

Q. Are you of the Jewish faith?

A. Yes.

Q. Is your wife Jewish, Witness?

A. No. She is not, she is of mixed blood. Her grandfather was Jewish.

Q. Witness, did you leave Germany in 1939?

A. Yes.

PRESIDING JUDGE WYATT: Any dispute about that? On this personal history I don't know that there is any rebuttal about that. Let's get down to the facts.

MR. SHILLER: Very well, your Honor. Witness, where were you in the spring of 1944?

WITNESS SYDOWER: At Brussels, in Belgium.

Q. Did you have to wear the Star of David?

A. I didn't wear it.

*Complete testimony is recorded in mimeographed transcript, 2 February 1948, pp. 4752-4763.

Q. On what basis were you exempted from the rule that Jews had to wear that badge?

A. At that time the decree had been issued that if one partner in a marriage was of Christian faith, that is of Aryan descent as it was called at the time, then the other partner did not have to wear the star and I said that this was the case with me although it was not correct.

Q. In a very few words, what did it mean to have to wear the Star of David at that time?

PRESIDING JUDGE WYATT: That is not in rebuttal of any testimony that I know of that has been delivered in this case, the question of who had to wear it and why.

MR. SHILLER: Very well, your Honor. Witness, will you please tell the Tribunal the story of your effort to avoid wearing the Star of David in the spring of 1944?

JUDGE O'CONNELL: Would you be good enough to point out for my guidance what part of the testimony of Aust you seek to rebut?

MR. SHILLER: On 12 January 1948 the defense witness Aust testified that he had seen a Mrs. Sydower and a Mr. Sydower, because Mr. Sydower was making efforts to avoid wearing the badge of David; he testified further about the question of sterilization in connection with Mr. Sydower, the witness here present.

JUDGE O'CONNELL: Thank you.

PRESIDING JUDGE WYATT: What do you seek to disprove that he testified about?

MR. SHILLER: Your Honor, the witness Aust on that date testified that Mr. Sydower, of his own volition, brought up the question of sterilization and stated that he was willing to be sterilized in order to remain married to his wife and not to have to wear the Star of David.

PRESIDING JUDGE WYATT: Let's get right down to that question without circling all over Europe. That is the only question before the Tribunal then.

MR. SHILLER: Witness, did you and your wife go to see a Mr. Aust in Brussels?

WITNESS SYDOWER: Yes. That was in the year 1944.

Q. Witness, will you please relate to the Tribunal the conversation which Mr. Aust had with you in connection specifically with the point of sterilization?

A. I had been exempted by the Administrative Area Headquarters as the result of the statement that my wife was of purely Aryan descent. This exemption was prolonged from case to case, sometimes for 3 months, sometimes for 4 weeks and sometimes for half a year. But, now I was to submit complete proof that my

wife was of purely Aryan descent. I was unable to submit this proof and I did not want to do so because, after all, her grandfather had been a full Jew. The Administrative Area Headquarters, however, did not want to grant me the exemption any longer if I did not submit this proof. In order to achieve that the Administrative Area Headquarters referred us to the race office or whatever the name of the agency was. My wife did all this and met Mr. Aust there. She submitted her case and told him that we were unable to furnish the complete proof that was required. I do not know the exact conversation that took place because I wasn't there. I never visited these offices. I was waiting for her outside at the time. Then suddenly my wife came out and she told me that Mr. Aust, with whom she had talked, had put to her the question of whether or not I was willing to have myself sterilized. I myself would have to answer this question and for this reason I would have to appear there personally. My wife said that nothing else could be done, that I would have to enter the office, which I then actually did. On that occasion I also talked to Mr. Aust and in the course of our discussion Mr. Aust put this question to me. However, my wife had already prepared me for what was coming and I said that this question was somewhat of a surprise to me and so sudden that I couldn't comment on it for the moment. In any case all I wanted to do was to gain time. I didn't say that then, I say it now.

Then Mr. Aust asked me whether in principle I refused to comply with this measure or something to that effect; then I told him I did not refuse to comply with it, but first I had to consider the matter. I couldn't decide right away. Why I said that was because I wanted the inquiries which he had to make to go on, so that the matter would be delayed, and I succeeded in doing this. However, the Racial Office must have discovered that my previous statements were not correct because toward the end of August 1944 I received a letter from the Administrative Area Headquarters saying that I had to go there, together with my exemption certificate. On one Monday my wife went there—

PRESIDING JUDGE WYATT: Wait a minute, wait a minute, Witness. What is the name of the witness that testified?

MR. SHILLER: Aust. A-u-s-t.

PRESIDING JUDGE WYATT: Witness, don't tell anything that happened out of the presence of the witness Aust; just simply tell what transpired between you—

WITNESS SYDOWER: Well,—

PRESIDING JUDGE WYATT: Wait a minute, wait a minute.

WITNESS SYDOWER: Yes.

PRESIDING JUDGE WYATT: Letters you received from other

sources and conversations you had with other people are not admissible here now. All that you can tell is what transpired between you and Aust.

MR. SHILLER: May it please the Tribunal, I believe the witness has now covered that point adequately and the prosecution has no further questions.

PRESIDING JUDGE WYATT: Any cross-examination of this witness?

CROSS-EXAMINATION

DR. HEIM (Counsel for defendant Schwalm): Witness, was any immediate pressure exerted on you in order to visit that agency at Brussels?

WITNESS SYDOWER: Yes. Otherwise my exemption wouldn't have been extended any longer. I had to go there so that the Racial Office would be able to furnish the proof for me, and they were to make additional inquiries about that because I was unable to furnish the certificate about my wife's grandfather, and I didn't want to do so either.

Q. Did the Administrative Area Headquarters tell you that the agency of Mr. Aust was competent for this matter?

A. Yes. They told me that he was competent.

PRESIDING JUDGE WYATT: I will have to remind this counsel just what I told counsel for the prosecution. The only subject of this inquiry is the conversations he had with the witness Aust—nobody else.

DR. HEIM: Witness, from document book 13-A of the prosecution, I am now going to hand you the Document NO-1494, Exhibit 556.

PRESIDING JUDGE WYATT: Is that a conversation with Aust? Does that refer to a conversation with the witness Aust?

DR. HEIM: This letter was dictated by Mr. Aust in the presence of the witness, your Honor.

PRESIDING JUDGE WYATT: Very well.

DR. HEIM: Witness, was this letter, which you have before you now as a document, dictated by Mr. Aust in your presence?

WITNESS SYDOWER: I don't know that, I know nothing about it.

PRESIDING JUDGE WYATT: Any other questions?

DR. HEIM: Witness, can you still remember the day when you had this discussion?

WITNESS SYDOWER: It was in 1944, but I can't recall the exact date any more, it may have been in April or May.

Q. Is that date correct?

A. I don't know that exactly.

Q. Does this date agree with the date on the document?

A. It states here 27 May, but I can't say that precisely, I cannot tell you that at all.

Q. Did Aust tell you that he was acting upon his own decision in order to help you?

A. Upon his own decision to help me? After all, I went there myself with my wife. I had been sent there by the Administrative Area Headquarters.

Q. In the course of the discussions did Aust tell you that he was competent for this matter?

A. I don't know that, but I assume he was competent. After all the agency in Brussels wasn't very big.

Q. Didn't you on your own initiative make the suggestion that perhaps you would be willing voluntarily to subject yourself to sterilization?

A. That would be the same thing for me as if I volunteered for the gas chamber; how could I make such a suggestion?

DR. HEIM: Your Honor, I consider it important and appropriate in order to shorten the trial if I were given the opportunity to recall the witness Aust, who is located in the prison here, and to confront this witness with him.

PRESIDING JUDGE WYATT: We can't go on here always with one man saying, "yes I did", and the other man saying, "no, I didn't".

DR. HEIM: Your Honor, then I request permission that in the rebuttal of the defense I can recall the witness Aust to the witness stand.

PRESIDING JUDGE WYATT: You can do anything but get a denial of what he said which is already done. Any other questions for this witness?

DR. HEIM: Thank you; I have no further questions.

EXAMINATION

PRESIDING JUDGE WYATT: Mr. Witness, were you, as a matter of fact, ever sterilized?

WITNESS SYDOWER: No. I was not.

JUDGE O'CONNELL: I would like to ask counsel what is the number of that document you referred to.

DR. HEIM: This was Document NO-1494, Prosecution Exhibit 556. It is contained in document book 13-A of the prosecution.

JUDGE O'CONNELL: Thank you.

PRESIDING JUDGE WYATT: Let the witness retire from the stand.

MR. SHILLER: May it please the Tribunal, I would like one short question.

REDIRECT EXAMINATION

MR. SHILLER: Witness.

WITNESS SYDOWER: Yes.

Q. How did you escape sterilization? By going underground, or, what, Witness?

A. No. Toward the end of August I was told by the Administrative Area Headquarters that I should turn in my exemption certificate. Thereupon I hid immediately.

PRESIDING JUDGE WYATT: Wait a minute. You are just going into the very things I said you couldn't. Let the witness retire from the stand.

H. Punishment for Sexual Intercourse with Germans

I. INTRODUCTION

The defendants Greifelt, Creutz, Meyer-Hetling, Schwarzenberger, Hofmann, Hildebrandt, and Schwalm were charged with special responsibility for and participation in criminal conduct involving severe punishment of foreign nationals (slave laborers and prisoners of war) for sexual intercourse with Germans (*indictment, count one, par. 14; count two, pars. 24 and 25*). On this charge only the defendants Hofmann and Hildebrandt were convicted.

Argument of the prosecution concerning this subject appears in the opening statement on pages 622 to 694. The selection from the evidence of the prosecution and from the evidence and arguments of the defense has been divided into two parts: Treatment of aliens who had sexual intercourse with Germans, pages 1140 to 1165; and, Meaning of the expression "Special Treatment", pages 1166 to 1172. The defendants claimed not to have known that "special treatment" in this connection meant hanging. The prosecution introduced evidence concerning the meaning of this expression.

A selection from the evidence of the prosecution concerning the treatment of aliens who had sexual intercourse with Germans is set forth on pages 1140 to 1154. This is followed by extracts from the closing statements for the defendants Greifelt and Hofmann on pages 1154 to 1157. A selection from the evidence and arguments of the defense appears on pages 1154 to 1165.

One document selected from the prosecution's evidence on the meaning of the expression "Special Treatment" appears on pages 1166 to 1167. This is followed by selections from the evidence of the defense on this point, on pages 1167 to 1172.

2. TREATMENT OF ALIENS WHO HAD SEXUAL INTERCOURSE WITH GERMANS

a. Selections from the Evidence of the Prosecution

PARTIAL TRANSLATION OF DOCUMENT 1918-PS PROSECUTION EXHIBIT 92

EXTRACT FROM HIMMLER'S ADDRESS TO PARTY COMRADES,
7 SEPTEMBER 1940

* * * * *

[Page 45]

If a Pole has any dealing with a German woman, and by this I mean sexual intercourse, then the man will be hanged right in front of his camp. Then the others will not do it. Besides, provisions will be made that a sufficient number of Polish women and girls will come along as well so that a necessity of this kind is out of the question.

[Page 46]

The women will be brought before the courts without mercy, and where the facts are not sufficiently proved—such borderline cases always happen—they will be sent to a concentration camp. This we must do, unless these one million Poles and those hundreds of thousands of workers of alien blood are to inflict untold damage on the German blood. Philosophizing is of no avail in this case. It would be better if we did not have them at all—we all know that—but we need them. This is what I expressly wanted to say regarding the problem of the Polish workers.

* * * * *

TRANSLATION OF DOCUMENT NO-1365 PROSECUTION EXHIBIT 528

CIRCULAR ISSUED BY THE REICH SECURITY MAIN OFFICE SIGNED BY KALTENBRUNNER, 10 FEBRUARY 1944, CONCERNING PUNISHMENT FOR SEXUAL INTERCOURSE OF GERMANS AND FOREIGN WORKERS; ATTACHED COVER LETTER, 13 MARCH 1944, AND GESTAPO FORMS

SECRET

Copy

The Reich Leader SS and Chief of the German Police
S IV D 2 8 — 235/44g — 11 —

Berlin, 10 February 1944

SECRET

To:

All Higher SS and Police Leaders within the Territory of the Reich
Commanders of the Security Police and the SD in Lorraine—
Saar Palatinate

at Metz

and for the Alsace

at Strasbourg

Inspectors of Security Police and SD
State Police Branch Offices

For information:

Office I (12 for Ref. I B 3, 3 for I Org.)

Office III (2 for III A 5 and III B)

Office IV (2 for Gst., 1 [one] each for IV A 1, IV c 2, IV D
(foreign labor), IV D 1, IV D 3 and IV D 5)

Office V (3 copies)

The Reich Commissioner for the Strengthening of Germanism—
Staff Main Office

at Berlin-Halensee (2 copies)

SS Race and Settlement Main Office

at Berlin (2 copies)

all Higher SS and Police Leaders outside of the Territory of
the Reich

Senior Commanders of the Security Police and SD

Commanders of the Security Police and SD

Main Offices of Criminal Police

SD Main Sections [SD Leitabschnitte]

Subject: Punishment of severe offenses and illicit sexual inter-
course of foreign workers from the East and South-
east as well as Polish, Serbian, and Soviet Russian
prisoners of war.

Reference: Circular of 10 December 1940 — S IV D 2 a -
3382/40, 5 July 1941 and 4 November 1941 — S
IV D 2 c - 4883/40 Secr. - 196, 12 December 1941
— S IV D 2 c — 1474/41 Top Secr., 10 March
1942 — IV D 2 c — 4883/40 secr. - 196 and IV A -
1 e - 4883/40 secr., 29 June 1942 - 235/42 secr. -
40, and of 17 November 1942 — 552/42 secr. /104,
and of 7 April 1943 - IV A 1 c - 2652/43 secr.

A. General points

I. The dangers for the German homeland, arising from the ever
increasing utilization of foreign labor, can only be averted if
ruthless measures are taken against all severe offenses. The knowl-

edge and experiences acquired from the handling of such cases are condensed as follows. *The above-mentioned circulars are repealed at the same time.*

The following groups of persons are subject to the enactment:

a. Workers of Polish nationality (Polish civilian workers, Western workers [Westarbeiter] of Polish folkdom and former Poland).

b. Foreign workers of non-Polish nationality, of the Government General and the Incorporated Eastern Territories (Ukrainians, White Ruthenians, Russians, Gorals).

c. Workers from Lithuania.

d. Workers from the former Soviet territory (Eastern workers [Ostarbeiter]).

e. Workers from the territory of the Military Commander for Serbia.

Concerning definition of *a* see circular decree of 10 September 1943 — S IV D 2 c - 2071/43, concerning "Treatment of Workers of Polish Folkdom within the Reich Territory", and for *b-d* circular decree of 20 February 1942 — S IV D 208/42 (foreign workers) concerning "General Regulations for Enlistment and Utilization of Workers from the Eastern Territories," and supplementary decrees.

The special regulations valid for the Czechs will remain in force.

The decree will not be valid for the indigenous population in the Incorporated Eastern Territories.

II. Especially acts of sabotage, crimes of violence, and immoral crimes as well as sexual intercourse with German women and girls are to be considered as severe offenses.

Cases of sexual intercourse require a thorough treatment because severe measures will also be taken against German women.

III. On principle, the cases will not be handed over to justice. Only those cases are to be transmitted there, where a court sentence appears to be desirable for reasons of political disposition of the public and where it has been ascertained by previous sounding that the court will pass the death sentence. (See circular of 30 June 1943 — III A 5 b - 187/V/43 - 176 - 3.)

IV. In the case of Polish and Serbian prisoners of war only cases of sexual intercourse will be dealt with by the Security Police, other offenses by the Wehrmacht. In the case of Soviet Russian prisoners of war, cases of sexual intercourse as well as acts of violence perpetrated during their imprisonment will be prosecuted by measures of the State policy.

B. Proceedings

I. Crimes of violence, immoral crimes, etc. In case of crimes

of violence, acts of sabotage, and immoral crimes an application for special treatment [Sonderbehandlung] must be filed immediately by express letter or teletype with the Reich Security Main Office.

II. *Sexual intercourse between foreign men as mentioned under AI and German women.* In all cases of sexual intercourse and immoral actions of a serious nature committed with consent of the women, reports have to be submitted in two copies making use of the enclosed form. All points to be considered and all enclosures to be appended for the ascertainment are to be seen from the form.

1. *Taking into protective custody.* As a rule both partners are to be taken into custody, when sexual intercourse becomes known. The application for protective custody has to be made out briefly in duplicate referring to the formal report which is to follow. Contrary to the usual procedure it is to be directed to the competent technical branch (see section D), which forwards the report to branch IV C 2 after removing the duplicate and commenting on the case. Concerning Eastern workers and Poles the circular decrees of 27 May 1942 — S IV D — 293/42 (foreign workers) — section IV — resp: of 4 May 1943 — IV C 2 — General No. 42,156, are to be observed.

In cases of sexual intercourse or any other prohibited association with Polish, Serbian, or Soviet Russian prisoners of war, the German woman concerned is, to begin with, also to be taken into protective custody. At the same time a penal proceeding according to paragraph 4 of the decree for the protection of Germany's defense [Wehrkraftschutzverordnung] must be instituted.

In order to have the transfer of the involved prisoner of war applied for at the OKW in time, the facts are also to be reported at once to the competent branch of the Reich Security Main Office (see section D) by means of teleprint message. The public prosecution dealing with the case and the document number are to be indicated in the report. Applications for transfer of Soviet Russian prisoners of war are to be made to the camp commander directly.

2. *Investigation of nationality.*

a. *In the case of Polish civilian workers and non-Polish workers from the General Government and the Incorporated Eastern Territories,* the nationality is to be investigated in doubtful cases by inquiry in the Incorporated Eastern Territories at the district offices of the German Public Registration [Deutsche Volksliste], in the General Government at the Immigration Central Office (branch office Krakow).

b. In the case of workers from Lithuania as well as from Serbia and Eastern workers; the nationality is as a rule not to be investigated. If the prisoner, however, should credibly insist to be a racial German, this is to be examined by the Reich Commissioner for the Strengthening of Germanism, Repatriation Office for Ethnic Germans, Advisory Office for Immigrants, at present Berlin W 35, Karlsbad 20. In regard to racial Germans among the Eastern workers the directives of the circular decree of 27 May 1942 — S IV D — 293/42 (foreign workers) No. I.

3. Judgment as to race

a. Polish civilian workers, foreign non-Polish workers from the General Government and the Incorporated Eastern Territories, as well as workers from Lithuania in all cases are to be examined by the competent SS chief of Race and Settlement affairs at the office of the Higher SS and Police Leader for their fitness to become German nationals. He forwards the result of the examination to the Race and Settlement Main Office of the SS which provides the racial-biologic certificates and forwards one copy to the Reich Security Main Office, the second one to the competent State Police Branch Office. If all other inquiries are complete except for the certificate, the formal report is, nevertheless, to be submitted. The completion of paragraph 3(b) of the form will in this case be taken care of from here.

The chief of the Race and Settlement Office is to be requested to undertake the examination, immediately a case becomes known. The following documents—as far as they are on hand—are to be submitted to the chief of the Race and Settlement Office at the introduction of the case, otherwise they are to be forwarded later. For the man: photographs, front view of head, side view of head, head in half profile, and picture in full size (undressed). Copy of the opinion of character and work, transcript of interrogation, physician's certificate regarding state of health, and list of address. For the woman: photographs and copy of the transcript of the interrogation. Persons with bad body deformities or severe illnesses, as tuberculosis, syphilis, or insanity, need not be examined for their fitness to become German nationals.

b. Workers from Serbia and Eastern workers. Workers from Serbia and Eastern workers have to be examined only if they have impregnated the German woman concerned.

4. Reputation of the German woman. The reputation of the German woman is to be carefully determined, because the degree of punishment is definitely influenced hereby. The act itself is not to be considered, because it speaks for itself, and it is of special importance, whether the woman concerned otherwise fulfilled her duties towards people and family. We cannot assume that

a woman is morally depraved or inferior because of occasional extra-marital sexual intercourse or because of the presence of an illegitimate child. In such an important evaluation facts must necessarily be provided.

5. *Attitude of the husband.* The husband is to be asked in all cases—possibly by his superior Wehrmacht office—whether he wants to divorce his wife or whether he has forgiven her.

6. *Impregnation of the German woman.* As soon as a case of sexual intercourse becomes known, it is to be determined by the official physician, whether the German woman involved is pregnant. If that is true and the fifth or—in cases of rape and mental disturbance or weakness on the part of the woman—the seventh month of pregnancy is not yet exceeded a report briefly describing the ascertained facts is to be directed to the Reich Security Main Office immediately, by means of teleprint. The report must state the stage of pregnancy and whether, and if so, which person besides the concerned alien might be considered the father of the expected child. The alien, who is considered the father as well as the involved German woman in this case *are to be brought before the chief of the Race and Settlement Office at once for racial examination* (see No. 3). He is to be informed that this is a case of pregnancy which must be dealt with quickly and which is to be expressly indicated as such when submitting the particulars to the Race and Settlement Main Office of the SS.

The entire report of cases of pregnancy is to be made before the final formal report. It is pointed out that these first inquiries are to be carried out very conscientiously in spite of the necessary urgency, because important decisions depend upon it.

7. *Matrimony.*

a. *Polish civilian workers, alien workers of non-Polish nationality from the General Government and the Incorporated Eastern Territories as well as workers from Lithuania.* If the alien is considered fit to become a German national, and if both partners are single and are both judged favorably, they are to be asked whether they want to marry. If the German girl is under age, the guardians are also to be asked. In the event of a positive decision, the girl is not to be taken into protective custody but is to be released, and the decision of the competent technical branch of the Reich Security Main Office is to be requested. At the same time she is to be informed that the marriage, in the event it is approved, will only be possible if the genealogical examination proves positive and that some time will pass until this is completed.

b. *Workers from Serbia and Eastern workers.* Marriage of

workers from Serbia, or Eastern workers and German girls are at the present time not considered.

III. *Sexual intercourse between German men and female foreign workers, mentioned under A I.*

1. *Treatment of the foreign female worker.*

a. In all cases where the foreign female worker is induced to sexual intercourse by the German man, who exploits her relationship of dependence, she is to be taken into protective custody (up to 21 days) and to be transferred to another place of work after her release from custody.

b. If a relationship of dependence did not exist, her delivery to a concentration camp for women is to be requested. If there should be aggravating circumstances (repeated cases, corruption of German youths, etc.) this is to be specially pointed out in the application for protective custody.

As far as female Eastern workers or Polish women are concerned, the procedure as put down in *b* according to circular decree of 27 May 1942 — S IV D - 293/42 — (foreign workers) — section IV, resp. 4 May 1943 — IV C 2 - 11 g. No. 42,156, is to be followed.

If the foreign female worker concerned becomes pregnant by the German man or by an alien, the instructions of the circular decree of 27 July 1942 — S IV D - 377/42 (foreign workers)—concerning the treatment of pregnant foreign workers and the children, born by foreign female workers inside the Reich—are to be applied accordingly. Such pregnant women are to be sent to a concentration camp only after the delivery of the child and at the end of the nursing period.

With regard to a possible interruption of the pregnancy of female Eastern workers and Polish women upon their own request, the orders and decrees of the Reich Commissioner for the Strengthening of Germanism in the Reich Security Main Office, of 9 June and 1 August 1943, IV D 186/43g. 599, foreign workers, are valid.

2. *Treatment of the German man involved.* The delivery to a concentration camp is on principle to be requested. In addition, further measures of the State Police or charges (alimony, etc.) may be proposed according to the case. If the German man induced the foreign female worker to sexual intercourse in a specially irresponsible and brutal abuse of a relationship of dependence and has thus particularly contributed towards the loss of German prestige this is to be pointed out in the report so that further measures can be taken.

If the German man concerned is a plant-manager or if such a person has considerably damaged his supervisory responsibility

in this respect, provisions should be made that foreign female workers are to be removed from his sphere of responsibilities, resp. are not to be transferred to him.

3. *Applications for protective custody.* The applications for protective custody are to be made out on one report for both persons involved. This is to be made out in single form, contrary to the usual procedure, and to be addressed to the competent technical branch (see section D) which forwards the application to branch IV C 2.

C. *Carrying out the ordered executions.*

The decree for carrying out the execution, forwarded with circular decree of 14 January 1943 — IV D 2 c — 450/42 g — S1, is to be observed.

Executions are usually to be carried out in the concentration camp or in the vicinity of the labor camps. They are only to be carried out on the scene of the deed if it seems necessary for intimidation and is therefore specially ordered.

D. *Final notes.*

Carrying out the special treatment shall serve especially to intimidate the foreign workers inside the Reich; this, however, will only be completely achieved if the expiation follows the deed at once. Therefore the inquiries have to be completed immediately. It must be made possible for the reports to be submitted to the RSHA in the case of B I, 4 days at the latest; B II, 2 months at the latest; and B III, 3 weeks at the latest after the event. These offices which are involved in the process are to be informed of this fact.

For the work in the Reich Security Main Office the following branches to which the reports are to be forwarded directly are competent: in cases according to AI *a* and *b*, branch IV D 2; in cases according to AI *c* and *d*, branch IV D 5; in cases according to AI *e*, branch IV D 1.

Acting for:

[Signed] DR. KALTENBRUNNER

Certified:

[Signed] SCHWIEDL

Chancellery official

Correctness of copy certified by:

[Signature]

SS Captain

SECRET

Chief of the SS Race and Settlement Main Office

RA

C/2 a7

Ha/Be.

22/44

Prague, 13 March 1944
Postal Communication Office

Subject: Special treatment

Concerns: extension, respectively rearrangement of the procedure.

Enclosures: 1

Distributing list: III

Enclosed please find circular decree S IV D 2c - 235/44 g — 11 — issued by the Reich Security Main Office in agreement with the SS Race and Settlement Main Office.

It is again pointed out that special treatment procedures have to be dealt with as *matters of priority*; the necessity of an *especially urgent dealing with all pregnancy cases is once more called to your attention.*

The Chief of the Racial Office in the Race and Settlement Main Office

[Signed] SCHULTZ
SS Colonel

Certified true copy:
[Signed] HARDNER
SS Captain

Sample Form

Secret State Police
State Police Office in Date..... 194....
To the Reich Security Main Office
— IV D 1 —
— IV D 2 —
— IV D 5 —
(cross out if not applicable)

Berlin SW 11
Prinz Albrecht Strasse 8

Subject: Forbidden sexual intercourse between laborers of alien nationality from East and Southeast, as well as Polish, Serbian, and Soviet Russian prisoners of war and German women.

Reference:

Enclosures: Interrogation notes (one copy), three photographs and opinion of character and working ability of the persons concerned, copy of form.

1. *Persons concerned:*

a. *Civilian worker of alien nationality, respectively prisoner of war.*

.....
born on at
(Age at time of offense.....years old)
Family Status: single married

b. *German.*

.....
born on in
(Age at time of offense: years old).
Family Status: single, married, widowed, or divorced.
Number and age of children:

2. *Facts of case:* (Space for facts of case at least 1/2 page.)

3. *Concerning the alien partner:*

a. *Ethnic group.*

b. *Eligibility for re-Germanization:* (Opinion of the Race and Settlement Main Office of the SS.)

c. *Opinion of character and working ability.*

d. *Official advice.*

e. *Arrested on.*

4. *Concerning the German woman:*

a. *Reputation.*

b. *Attitude of the husband.*

c. *Impregnated by the alien national:* no yes
in her month.

d. *Particulars of the child.*

Offspring of the intercourse.

First and last name born on at
(If feasible, to be submitted after birth)

e. *Sterilization:* already carried out necessary
not necessary

f. *Marriage:* not intended (Only to be filled out,
if the alien national is eligible for re-Germanization and
if both are single).

g. *Arrested on*

5. *Petition:*

a. *For the worker of alien nationality.*

b. *For the German woman.*

PARTIAL TRANSLATION OF DOCUMENT NO-3271
PROSECUTION EXHIBIT 142

EXTRACT FROM THE "REPORT ON RE-GERMANIZATION" BY
HAEMMERLEIN, SUBMITTED BY THE RACE AND SETTLEMENT LEADER
NORTHEAST TO THE CHIEF OF THE RuSHA IN MAY 1944

* * * * *

II. *Exclusion from the special treatment [Sonderbehandlung]
measures of the State Police.*

1. In order to avoid that persons who might be suitable from a racial point of view but are deemed unsuitable as regards character or who are anti-German in their attitude are admitted for re-Germanization procedure and in order to prevent the re-Germanization of such persons from being taken up before the racial examination of kin is concluded, the Reich Leader SS has ordered that in the future Poles or other alien males from the East suitable for re-Germanization, who have had sexual intercourse with German women and are to be Germanized, must be confined, for a period of 6 months, to the special section for persons due for re-Germanization which has been established in special Camp Hinzert.⁴⁸

2. Cases which are recommended by the higher state authorities for special treatment must be carried out by the competent Race and Settlement Leader without delay, because in case of a negative result the special treatment to be applied is effective only if it immediately follows the action.

3. If the suitability for re-Germanization is affirmed, the address of the members of the kin must be taken and forwarded to the Race and Settlement Main Office, in order to include the entire kin, in the re-Germanization procedure if feasible. After having examined the entire kin the Race and Settlement Main Office will inform the RKfFdV of the final result of the examination.

4. The Reich Security Main Office will be informed by the RKfFdV to which SS Administrative Main Area [SS Oberabschnitt] the person suitable for re-Germanization will have to be assigned after dismissal from the concentration camp. Persons from the Eastern territories are admissible to assignments in the districts of the Higher SS and Police Leaders Alpenland, Danube, Elbe, North Sea, Baltic Sea, and Spree only.⁴⁹

⁴⁸ RKfFdV [RKFDV] of 20 February 1943, file No. II-I-3/[?]- (9 May 1940) Foe/La. [Footnote in original.]

⁴⁹ RKfFdV of 25 February 1942—Secret—File No. I-3/4-9 May 1940 Foe/We. [Footnote in original.]

Persons slated for special treatment may be dismissed from special Camp Hinzert only, after the final judgment as to their suitability for re-Germanization, which has to be made out by the Main Race and Settlement Office, has been submitted.⁵⁰

5. This new procedure is applicable also for persons who are suitable for marriage and who have never been punished before.

In cases where the Reich Leader SS has approved the marriage between the alien man and the German girl, the necessary steps for the marriage will have to be taken immediately, in order that the marriage may take place right after expiration of the 6 months' stay in the camp if deemed suitable.

Applications for exemption from procuring foreign nubile certificates may be approved of only after the final judgment following the examination as to kinship and character has been submitted.⁴⁸

6. If it should be established in the course of the stay in the camp that the person concerned is not suitable for re-Germanization, for reasons of character, the Higher SS and Police Leader of the Staff Main Office will be informed accordingly.

7. If re-Germanization is not considered the usual application for special treatment on the part of the state police authorities will have to be made out, taking the following into consideration:

a. The proposals for special treatment must state whether the Pole concerned has been officially advised that sexual intercourse with German women is prohibited for Polish civilian workers under threat of capital punishment.

b. Also in cases of sexual intercourse or indecent acts performed by Polish civilian workers with German women which, in all probability, will not lead to special treatment (Poles who have not been advised, persons whose nationality is doubtful, Poles under 18 years, who have had intercourse with German women considerably older than they, obviously having been seduced by them) the Reich Leader SS has reserved the final decision for himself. In these cases too, the point of view of the Higher SS and Police Leader will have to be asked and the usual material submitted.⁵¹

⁵⁰ RKfFdV of 6 October 1942—File No. 1-3/4-9 May 1940 Diary No. 528/41 (Secret). [Footnote in original.]

⁵¹ Reich Leader SS and Chief of the German Police of 5 July 1941, File No. S IV D 2 c-4883/40 g-196. [Footnote in original.]

TRANSLATION OF DOCUMENT NO-850
PROSECUTION EXHIBIT 516

CIRCULAR ISSUED BY JUERS, CHIEF OF THE RECRUITING OFFICE OF
THE WAFFEN SS, 5 MARCH 1942, CONCERNING THE EXAMINA-
TION OF POLES BY EXAMINERS OF THE WAFFEN SS

Copy

Order 51

The Reich Leader SS
SS Main Office — Recruiting Office of the Waffen SS
II 2 File No. 9 a /R Br/Ba.

Berlin W 35, 5 March 1942
Luetzowstr, 48/49
Post Office Box 43

Since the SS aptitude examiners at the recruiting offices have been instructed by a decree of the Race and Settlement Main Office, based on an order by the Reich Leader SS to conduct examinations in certain cases as to the fitness for Germanization of Polish prisoners of war and civilian workers who have become liable to punishment because of sexual intercourse with German women, the presentation of such Poles has, according to reports by some recruiting offices, recently increased to such a degree that the examinations pending for entrance into the Waffen SS, which at present are of decisive importance to the war effort, have suffered from this. Among other things, at one recruiting office even handcuffed Poles under police escort were brought in. There can be no question but that this is very seriously disturbing the examinations for induction into the Waffen SS, especially from the recruiting point of view. In agreement with the Race and Settlement Main Office, therefore, it is ordered that examinations of these Poles which are ordered by the Reich Leader are to be conducted in agreement with the authorized offices (Higher SS and Police Leader, respectively and Security Police Leader) at such times, when the examinations for entrance into the Waffen SS will in no case suffer from this. It will be made possible for the examination of these Poles, and also that of isolated cases which have not yet been examined of persons belonging to racial groups capable of Germanization, to take place after the completion of the entrance examinations, or, what is still better, in a different building.

In this connection it is expressly emphasized that the medical examination of these Poles should be made by the physicians of the Recruiting Office, only in exceptional cases, namely, if a Polish person who has been found racially suitable for Germanization

is suspected of being no longer fully capable of work for reasons of health.

In the case of those capable of Germanization a thorough official medical examination is necessary because of the required X-ray examination. An examination of racially unfit individuals does not take place in any case.

Chief of the Recruiting Office of the Waffen SS

[Signed] JUERS
SS Brigadier General

Distribution: All recruiting offices.

For information:

Chief of the SS Main Office

Race and Settlement Main Office

Medical Department of the SS Main Office

Department II 1 c and II 2 a

Certified true copy:

[Signature illegible]

SS Private 1st Class.

TRANSLATION OF DOCUMENT NO-2864
PROSECUTION EXHIBIT 524

LETTER FROM SCHWALM TO THE REICH LEADER SS, ATTENTION
KRANEFUSS, 3 DECEMBER 1943, CONCERNING INVESTIGATION OF
"SPECIAL TREATMENT" CASES BY RuSHA

The Chief of the Race and Settlement Main Office SS
Staff command Schw./Stu.

Berlin SW 68, Hedemannstr. 24
3 December 1943

Subject: Free pass of the Reich Railway for the Race and Settlement Main Office SS.

To the Reich Leader SS Personal Staff
atten: SS Senior Colonel Kranefuss
Berlin

With reference to the telephone conversation between SS Colonel Kranefuss and myself I beg to state:

The Race and Settlement Main Office needs the same full number of free passes for the year 1944 as in the years before. The privilege of the security police is to be claimed for the sector of the Race and Settlement Main Office SS to the greatest possible extent for the following reason: the Race and Settlement Main Office SS has the standing order to investigate the "Special

Treatment" cases indicated by the Reich Security Main Office. These special treatment cases are racial examinations of workers of alien races arrested by the state police for illicit intercourse with Germans. The examinations must be made as quickly as possible and currently since without the opinion of the Race and Settlement Main Office SS a decision of the Reich Security Main Office cannot be reached.

By order:

The Chief of the SS Race and Settlement Main Office

[Signed] SCHWALM

SS Lieutenant Colonel

b. Selections from the Evidence and Arguments of the Defense

*EXTRACT FROM THE CLOSING STATEMENT FOR DEFENDANT GREIFELT **

* * * * *

Punishment of Sexual Intercourse and Prevention of Propagation

(Paragraphs 14 and 15 of the indictment)

Among these dismal subjects a gleam of light appears. Apparently no turmoil of war, no reserve towards prisoners of war, and no racial ideology can prevent Cupid from shooting his arrows to kindle the spark of love in human hearts even among smoking ruins. Eros applies a human method of examination far superior to all RuSHA racial examiners if it is allowed to take its course. It is indeed both tragic and comic when one considers the senseless efforts of the Himmler police to stop sexual intercourse with persons of alien race, as it would read in Himmler's German. The exclamation of Hildebrandt on 21 January, in the afternoon session, that Himmler would have liked most of all to have thunder and lightning governed by police regulations is significant. (*Tr. p. 4060.*)

The author of Document NO-3033, Prosecution Exhibit 513, book 11, is, as legislative Don Quixote, to be pitied because of his estrangement to life believing to be able to "dam up" the strongest power of the world, love, bylaws, and ordinances. It was a relief to hear from Hildebrandt on 20 January that as far as he knew only a few men became the victims of these efforts. (*Tr. pp. 3957-58.*) Let us hope that the victims of this madness were not much more numerous in other places. An indication of this is, thank God, that "special treatment" was not applied in the Incorporated Eastern territories. (*Tr. p. 3956.*)

* This part of the closing statement was not read into the record but was presented to the Tribunal in the form of a brief. Closing statement is recorded in mimeographed transcript, 16 February 1948, pp. 4872-4908.

The Staff Main Office is mentioned only in two of the documents contained in document book 11. First, in an order dated 20 February 1943 (*NO-2873, Pros. Ex. 521*) which is not signed by Greifelt, and which dates back to the time at the beginning of 1943 in which, following the clash with Himmler in December 1942, as already mentioned, he was not on duty. The ordinance is based on a direct order of Himmler and was drawn up in the Staff Main Office only for this reason that the Staff Main Office was in charge of the care of persons transferred to the re-Germanization procedure by other offices. These persons were to be treated as Germans, and therefore no longer belonged to the aliens in the sense of administrative law. The Staff Main Office did not come into the picture until Himmler had made his decision, and such decision was to the effect that the person whom Himmler had spared from receiving special treatment was now to be cared for as a person suitable for re-Germanization, which means, he was to be accommodated; housing and work had to be provided, indeed he was to be accorded preferential treatment. The task of the Staff Main Office was only that of a charity association, which cares for ex-convicts after they have served their term or have been pardoned. (*Tr. pp. 1559, 3794, 3957.*) Greifelt did not make himself liable to punishment when caring for these people after they had escaped death by the skin of their teeth; on the contrary, he would have violated his duty as a human being if he had not done so.

In Exhibit 521, book 11, which I just quoted, Dr. Bethge forwards an order of Himmler directing that the persons exempted from Himmler's special treatment should not be turned over directly to the Staff Main Office to be cared for, but were to be sent first to the Hinzert Camp, and from there turned over to the Staff Main Office, when it had been ascertained that their suitability for Germanization, as it says in the document, "was warranted by their character". I repeat, warranted by their character, not by their possible racial qualifications. The commitment to the Hinzert Camp was effected through the Reich Security Main Office (*Hofmann 67, Hofmann Ex. 73*), the Staff Main Office had no power in this respect, neither could it issue a discharge order. (*Tr. p. 1562.*)

The second document out of the entire collection of prosecution documents contained in book 11 is the circular decree of the Reich Security Main Office dated 15 February 1943 which had been sent to the Staff Main Office. This was necessary because thereby all Reich Security Main Office orders dealing with the same subject were rescinded, although no function of the Staff Main Office is referred to anywhere in the text of the 13-page decree.

A third reference to the Staff Main Office in this connection, but not found in any document but only in a Hofmann affidavit, has been corrected by Hofmann himself in his examination on 7 January, afternoon session. The document to which Hofmann refers in his affidavit is NO-4141, Prosecution Exhibit 481, which originated with the Higher SS and Police leader in Wuerttemberg, and was sent to the Reich governors of Wuerttemberg and Baden. It mentions the deputy of the Reich Commissioner for the Strengthening of Germandom as represented by the Higher SS and Police Leader. The words "the same" in subsection 4 on page 4 of the original refer to the deputy; this does not mean at all the Staff Main Office. In these matters the Deputy of the Reich Commissioner was not subordinated to the Staff Main Office of the Reich Commissioner, but instructions were, without exceptions, issued by the Reich Security Main Office.

* * * * *

*EXTRACT FROM THE CLOSING STATEMENT FOR
DEFENDANT HOFMANN **

* * * * *

Let us take the case of the forbidden sexual intercourse. In the case of the result of racial examinations being negative Himmler personally could pronounce a judgment, by which the delinquent could be sentenced to death by hanging, concentration camp, etc., if the other constituent elements, such as criminal facts, as for instance rape, or the behavior of the perpetrator, or the health examination, etc., were also unfavorable. I want to stress in particular that sexual intercourse between the foreign workers themselves, for instance, was not prohibited; this shows that not their procreation was to be prevented, but that it was only intended to counter the dangers recognized by the Security Police. (*Hofmann 66, Hofmann Ex. 72; Hofmann 59, Hofmann Ex. 65; Hofmann 184, Hofmann Ex. 160.*)

It must further be taken into consideration that the foreign workers had to sign a statement saying that they had been instructed about the prohibition. Thus they acknowledged this regulation and were aware of the consequences if they did not adhere to the prohibition.

The prohibition of sexual intercourse was also necessary for reasons of military security, as it is well known that intimate relations of this kind present most opportunities for espionage and thus considerably endanger the military situation. The soldier at the front, furthermore, must be sure that his dependents at

* Closing statement is recorded in mimeographed transcript, 17 February 1948, pp. 5077-5112.

home, such as fiancées and wives, will refrain from all sexual intercourse with members of a nation which he considers an enemy. On the other hand, there were reasons of national policy, as it had become apparent, that a mixing of German and Slav nationals would lead to new frictions and finally to an infiltration of foreigners into Germany proper [Altreich], by reason of the biological superiority of the Slav peoples. The considerations and misgivings were partly the same as those which have induced other states as well to forbid sexual intercourse between members of their race and nationality and people of a different kind. Thus, for instance, a number of states of the United States of America have issued laws forbidding marriages between whites and Negroes, which are considered and punished as offenses and even as crimes. (*Hofmann 54, Hofmann Ex. 61.*) In the South African Union every intercourse between whites and Negroes outside of marriage is punishable by imprisonment on the basis of the so-called Immorality Act No. V. (*Hofmann 62, Hofmann Ex. 55; Hofmann 63, Hofmann Ex. 56.*) In the same way the Allies, England and the United States, have issued so-called fraternization laws. (*Hofmann 77, Hofmann Ex. 81.*) There is a well-known case in which a German prisoner of war in England was punished by imprisonment for having offended against this law. (*Hofmann 70, Hofmann Ex. 75; Hofmann 83, Hofmann Ex. 83.*)

If the court reaches the conclusion that this whole procedure, as laid down in the decrees that have been collected, or the threatened punishment, must be regarded as measures exceeding the security measures actually necessary, then the result is undoubtedly unlawful. If, however, the racial examiner's answer was positive, the delinquent was usually saved from these unlawful consequences. If the other circumstances, in particular the examination of the whole family of the perpetrator, showed that he was of German descent, that, therefore, the dangers of sabotage, etc., and in particular, the biological danger of infiltration of foreigners, did not exist in his case, then he was included in the re-Germanization procedure, provided that he declared his willingness. In this case, these people were treated as Germans. They received considerably better treatment than the other foreign workers. Apart from this, I refer in this connection to the statements of my colleague, Dr. Heim, who will deal with the lawfulness of the re-Germanization procedure. I therefore suggest that this result was not unlawful.

* * * * *

TRANSLATION OF HOFMANN DOCUMENT 54
HOFMANN DEFENSE EXHIBIT 61

EXTRACT FROM "INFORMATION SERVICE OF THE RACIAL-POLITICAL
OFFICE OF THE NSDAP REICH ADMINISTRATION", 30 JULY 1937,
CONCERNING RACE PROTECTION LAWS OF OTHER COUNTRIES

Information Service of the Racial-Political Office of the NSDAP
Reich Administration 30 July 1937 — No. 18-0902, pages 1 - 3

Insert following in filing key as subsections to 09:01 Domestic 02 Foreign.
Supplement previous issues of 09 by adding 01.

RACE PROTECTION LAWS OF OTHER COUNTRIES

DENMARK

Denmark was one of the first nations in Europe to pass a law permitting sterilization. The Danish sterilization law was changed in 1934 in accordance with the German example and the principle of voluntariness was abandoned. The vital interests of the community, as it says in the preamble, are to take precedence over the interests of the individual. The feeble-minded are sterilized.

ENGLAND

Unwritten racial laws exist for the Englishman to a large extent. It is, for example, beneath the dignity of an Englishman to marry any woman from the colonies. Some bathing resorts near London prohibit colored persons from staying there.

FINLAND

The draft of the Finnish law on the sterilization of persons with a hereditary disease goes back to 1929. The motion for the bill, which likewise provides for compulsory sterilization in specific cases, was passed in Parliament by a vote of 144 to 14.

NORWAY

Norway also has a sterilization law. Efforts aim on the one hand at "securing a fertile breed" and on the other hand at "seeing that the nation is freed from parasites". Persons are sterilized who suffer from mental diseases or from imperfectly developed mental faculties and are therefore not capable of caring for themselves and their offspring by their own labor.

SWEDEN

The Swedish Parliament has occupied itself with the question of sterilization since 1922 and in 1929 passed a law in this respect.

The voluntariness which was expressed in this at first was annulled by an amendment in 1934. Compulsory sterilization therefore exists and is applied in cases of insanity.

UNITED STATES OF AMERICA

Since 1907 sterilization laws have been passed in 29 States of the United States of America. Those affected by the law were primarily criminals, feeble-minded, insane, epileptics, alcoholic and narcotic addicts, as well as prostitutes. Although almost all states try to carry out sterilization on a voluntary basis the courts have more than once ordered compulsory sterilizations. In a judgment of the Supreme Court of October 1926 it says, among other things: "It is better for everybody if society, instead of waiting until it has to execute degenerate offspring or leave them to starve because of feeble-mindedness can prevent obviously inferior individuals from propagating their kind. The principle justifying compulsory vaccination is broad enough to cover the severing of the Fallopian tubes".

The United States, however, also provides an example for the racial legislation of the world in another respect. Although it is clearly established in the Declaration of Independence that everyone born in the United States is a citizen of the United States and so acquires all the rights which an American citizen can acquire, impassable lines are drawn between the individual races, especially in the Southern States. Thus in certain States Japanese are excluded from the ownership of land or real estate and they are prevented from cultivating arable land.

Marriages between colored persons and whites are forbidden in no less than 30 of the Federal States. Marriages contracted in spite of this ban are declared invalid. A few might be mentioned here:

Alabama: Prohibition of marriage between a Negro or a person of Negro origin and a white person. A marriage contracted in spite of this is regarded as a crime.

Arizona: Marriage between a white person on one side and a Negro, Mongolian, or Indian on the other side is considered null and void.

Arkansas: Marriage between a white person on one side and a Negro or Mulatto on the other side is considered illegal and void.

California: Marriage between a white person on one side and Negroes, Mongolians, or Mulattoes on the other side is considered illegal and void.

Florida: Marriage between a white person and a person who has one-eighth or more of Negro blood is considered null and void.

Louisiana: Marriage between a colored person and a white, as well as marriage between Indians and blacks, is forbidden.

Maryland: Marriage between a white person and a Negro or a descendant of Negroes back to and including the third generation is void and considered a crime.

This far from complete enumeration should meet the wishes of our collaborators for some examples.

TRANSLATION OF HOFMANN DOCUMENT 77
HOFMANN DEFENSE EXHIBIT 81

ORDER OF THE SUPREME COMMANDER, ALLIED EXPEDITIONARY FORCES, 12 SEPTEMBER 1944, CONCERNING RELATIONSHIP BETWEEN ALLIED OCCUPYING TROOPS AND INHABITANTS OF GERMANY

SUPREME HEADQUARTERS
ALLIED EXPEDITIONARY FORCES
Office of the Supreme Commander

12 September 1944

Subject: Policy, relationship between allied occupying troops and inhabitants of Germany.

To: Commander-in-Chief, 21 Army Group.
Allied Naval Commander, Expeditionary Force.
Air officer Commander-in-Chief, Allied Expeditionary Force.
Commanding General, 12th Army Group.
Commanding General, Communications Zone, European Theater of Operations, U.S. Army.
Commanding General, United States Strategic Air Force.
Commander, U.S. Naval Forces in Europe.
Commanding General, Sixth Army Group.

* * * * *

2. Attached hereto, Appendix "A", is a directive setting forth the policy which will govern the relationship of Allied personnel to the inhabitants of those parts of occupied Germany under the control of the Supreme Allied Commander, and the measures which will be adopted to implement that policy.

* * * * *

[s] Dwight D. Eisenhower
DWIGHT D. EISENHOWER
General, U. S. Army

SUPREME HEADQUARTERS
ALLIED EXPEDITIONARY FORCES

APPENDIX "A"

to letter, 12 September 1944

*Policy on Relations Between Allied Occupying Forces and
Inhabitants of Germany*

* * * * *

4. Nonfraternization

Definition: "Nonfraternization" is the avoidance of mingling with Germans upon terms of friendliness, familiarity, or intimacy, whether individually or in groups, in official or unofficial dealings. * * *

5. General policy of nonfraternization

a. There will be no fraternization between Allied personnel and the German officials or population.

b. This policy of nonfraternization is necessary in order to emphasize the relationship between the occupation forces and themselves and to circumvent their efforts to defeat the objects of our occupation. * * *

6. Attitude toward Germans in official contacts

a. Allied personnel dealing with Germans on official business will be just, but firm. They will adopt an attitude of stern courtesy. They will make it clear by words and attitude that immediate compliance with orders and instructions will be required and enforced. In official, as in personal matters, there must be no fraternization. The definition laid down in paragraph 4 above, applies to both.

b. Contacts and official matters with Germans, both military and civilian, will be restricted to the minimum necessary to insure adequate supervision of execution of the surrender terms and other official business. There will be no entertaining, "official" or otherwise.

c. Germans holding, or appointed to, official positions, such as police, administrative, or military positions, will be made to understand that they hold office by consent of Allied authorities, and only so long as they conform to Allied instructions and requirements.

7. Administrative measures implementing "nonfraternization"

The policy on nonfraternization will be implemented by the adoption of the following measures:

a. Segregation in quarters.

b. Marriage. Marriage with Germans or personnel of other enemy countries is prohibited.

c. Religious services. Whenever possible, church services con-

ducted by Allied chaplains will be provided. When this is not possible, attendance at German churches will be permitted; in such cases, separate seating will be provided for the troops.

d. Restrictions on contacts. The following must be prohibited: visiting German houses; drinking with Germans; shaking hands with them; playing games or sports with them; giving or accepting gifts; attending German dances or other social events; accompanying Germans on the street, in theaters, taverns, hotels, or elsewhere (except on official business); discussions and arguments with Germans, especially on politics or the future of Germany.

e. Execution and enforcement. Commanders will take energetic action to implement and execute the policies and instructions contained in this section. Uniform enforcement of nonfraternization is especially important throughout the zones of the Allied armies.

8. Orientation of troops.

Prior to their arrival in Germany, commanders will take all practicable measures to inform their troops as to—

a. The mission of the occupying forces, their attitude towards the German people, and the standard of conduct required of them.

b. The characteristics of the German people, their probable attitude towards the forces of occupation, and the types of propaganda which they are liable to employ. Emphasis should be laid upon the necessity for nonfraternization and the means by which this policy is to be effected.

* * * * *

10. Application to all Allied personnel.

The provisions of this memorandum will apply to all personnel of the Allied Expeditionary Forces, including Army, Navy, Air Forces, and all civilians under military control.

Special Orders for German-American Relations

* * * * *

a. Never to associate with Germans. * * *

b. Contacts with Germans will be made *only* on official business. Immediate compliance with all official orders and instructions and surrender terms will be demanded of them and will be firmly enforced.

c. American soldiers must not associate with Germans. Specifically, it is not permissible to shake hands with them, to visit their houses, to exchange gifts with them, to engage in games or sports with them, to attend their dances or social events, or to accompany them on the street or elsewhere. Particularly, avoid all discussions or argument with them. Give the Germans no chance to trick you into relaxing your guard. * * *

EXTRACT ENTITLED, "A STROLL THROUGH THE HISTORY OF THE
NATIONS," FROM "BLOOD AND RACE IN LEGISLATION"

Excerpt from "Blood and Race in Legislation" by
Johann von Leers

A stroll through the History of the Nations
Published by: I.F. Lehmanns-Verlag, Munich

Page 98.

* * * However, on 19 May 1913 the State of California passed a law (Anti-Alien Land Law) that only American citizens and foreigners eligible for naturalization could acquire garden or farm land or lease it for a period longer than three years. The States of Texas, Nebraska, Colorado, New Mexico, Washington, and Arizona passed similar laws; in some other states they were proposed but rejected. The Federal Supreme Court declared that these laws were not unconstitutional. At the same time a second problem arose. The immigration of Japanese women increased sharply since, in many cases, the Japanese men had their fiancées and wives follow them.

The Immigration Law of 26 May 1914 then excluded Japanese in general since the Japanese could not be naturalized. The Japanese Government protested against this, the gentlemen's agreement came to nothing and was now also renounced by the Japanese, by whom, up to then, it had been "always loyally and conscientiously observed" (note of 31 May 1924). This led to very acrimonious disputes at that time and that well-known remark by the Japanese ambassador Hanihara about "grave consequences" (which in English diplomatic usage really means the same as "War"). To be sure, the ambassador had not meant this, but the Japanese press acclaimed him, and feeling between the two nations at that time was extraordinarily tense.

* * * * *

Pages 112-113.

SEGREGATION

In recognition of the extraordinary danger which lies in the mixing of races the South African Government, despite some resistance just from missionary circles has set up the principle of the clean "separation of black and white". This principle has found a three-fold application.

In the first place the law of 30 September 1927 (Immorality Act No. 5) prescribed a penalty for any "illicit" sexual inter-

course between white persons and natives. The penalty can be as high as five years imprisonment. Any intercourse outside of marriage is considered illicit.

* * * * *

TRANSLATION OF HOFMANN DOCUMENT 63
HOFMANN DEFENSE EXHIBIT 69

CIRCULAR DECREE OF THE REICH LEADER SS AND CHIEF OF THE GERMAN POLICE IN THE REICH MINISTRY OF THE INTERIOR, 18 JULY 1942, CONCERNING TREATMENT OF WORKERS

Extracts from General Collection of Decrees of the RSHA, 2d part
Page 55.

Treatment of workers from the former Soviet territory.
(Eastern workers)

Circular decree of the Reich Leader SS and Chief of the German Police in the Reich Ministry of the Interior, dated 18 July 1942

S IV D No. 293/42 (foreign workers)

* * * * *

Page 57.

Enclosure: Pattern of a Service Regulation concerning the treatment of Eastern workers housed in camps.

* * * * *

Page 59.

* * * * *

7. The Eastern workers are to be warned that every sexual intercourse with Germans will be most heavily punished; capital punishment will be inflicted on Eastern male workers for sexual intercourse with German women, female Eastern workers will be committed to a concentration camp in case of sexual intercourse with German men. Likewise, German men and women who cohabituate with Eastern workers will, of course, have to expect severe measures by the State Police.

There are no objections to sexual intercourse between Eastern male and female workers, so far as the order in the camps is not affected by it. There must be, however, a distribution of prophylactics, in order to avoid pregnancies as far as possible. There will be no interference with an attempted interruption of pregnancy by female Eastern workers. Existing pregnancies are to be reported to the police authorities in due time to enable a removal of the female Eastern workers when they become unfit for work.

* * * * *

EXTRACT FROM THE TESTIMONY OF DEFENSE WITNESS PANCKE*

DIRECT EXAMINATION

* * * * *

DR. SCHWARZ (Counsel for defendant Hofmann) : At your time, that is prior to 9 July 1940, was RuSHA already involved in examinations concerning illicit sexual intercourse between Germans and Poles?

WITNESS PANCKE: I don't know that exactly. It depends upon the date of the corresponding order of the Reich Leader.

Q. You don't remember that order, do you?

A. No. I know of the order, but I don't know at what time this order was issued.

Q. Therefore you don't know whether you received this order in your capacity as chief of RuSHA.

A. No, but I believe I can remember that this order on sexual intercourse between Poles and German women first became known to me by a publication in a newspaper and, therefore, I assume that it only occurred after I had left RuSHA, but I can't say for sure.

Q. Do you mean the time when racial examiners were appointed for racial examinations, is that what you mean, examination of Poles?

A. Yes.

Q. You don't mean the prohibition as such, that is the prohibition which, as you just explained, only became known to you by newspaper reports.

A. Yes.

Q. Can you remember what this newspaper report said?

A. It said that pursuant to a decree of the Reich Ministry of the Interior, or the Reich Leader SS, as chief of the German Police—I don't remember exactly—sexual intercourse between Polish workers in the Reich area and German women and girls was prohibited and that violation of this decree could be subject to punishment by death.

Q. Did you also read newspaper reports to the effect that due to violation of this prohibition executions had been carried out?

A. Yes.

Q. That was published?

A. Yes.

* * * * *

* Complete testimony is recorded in mimeographed transcript, 29 October 1947, pp. 654-734.

3. MEANING OF THE EXPRESSION "SPECIAL TREATMENT" IN THIS CONNECTION

a. Selections from the Evidence of the Prosecution

TRANSLATION OF DOCUMENT NO-4634
PROSECUTION EXHIBIT 514

MEMORANDUM OF THE GESTAPO DISTRICT HEADQUARTERS, DUESSELDORF, 15 JUNE 1944, CONCERNING SPECIAL TREATMENT FOR FOREIGN WORKERS

Gestapo District HQ Duesseldorf

Ratingen, 15 June 1944

L — IV 1 c — 7 / Be Ma 223/44 secret

[Stamp]

To the office:

30 June 1944

[illegible]

3 July 1944

[Stamp] SECRET

1. Herr Funk: enter into journal II/

2. Letters:

To the branch offices

To Office IV 1a, IV 1c (R), IV 1c (P) and IV 6 b in the building.

Subject: Special Treatment for Foreign Workers.

Reference: My circular decree of 20 June 1944.

Enclosures: None.

In amending my directive of 20 June 1944, I request that those persons subjected to special treatment be sent to a crematorium to be cremated if possible. In order to maintain secrecy, foreign workers belonging to the same ethnic groups are not to be recruited for making the necessary preparations in the case of execution by shooting. However, for purposes of intimidation, the proclamation by means of posters of the execution of the death sentence in the labor camp will be continued.

Attention is again called to the necessity of an immediate report to this office. This order is to be kept under lock and key by the office managers themselves.

3. To offices: IV 1a, IV 1 c R, IV 1 c P and IV 6 b in the building

[Stamp]

To the office

3 July 1944

Subject: Special Treatment for foreign workers

Reference: Decree of 20 June 1944

Enclosures: None

In all cases of special treatment, whenever an immediate removal to a concentration camp for the purpose of easing the shortage of space is not possible a request is to be made to the Reich Security Main Office for permission to carry out the executions on the spot with the explanation that the carrying out of the execution must take place here for the deterrent effect and because of the impossibility of removal of those concerned by train.

The execution itself is regulated according to the decree of 20 June 1944. The report of the execution to the RSHA shall not divulge the technical nature of the execution because Berlin prescribes the gallows on principle. The execution is to be reported approximately as follows:

"In agreement with the inspector of the Security Police and the SD [Security Service] for the Military District VI in Duesseldorf, the special treatment approved by that office and to be carried out in concentration camp so-and-so has been executed. This action has been taken because of the impossibility of removal of those persons involved, and to prevent escapes which have occurred in some instances from police prisons and other penal institutions."

I request the closest observance of this order when making reports.

4. Director III for his information.

5. Enclose Wv [?] sheets every four weeks
disposed of and noted on 25/7/44.

6. For the files

IV I c (P)7 / —

By order:

N / K

P/27/6

b. Selections from the Evidence of the Defense

TRANSLATION OF HOFMANN DOCUMENT 67
HOFMANN DEFENSE EXHIBIT 73

EXTRACTS FROM CIRCULARIZED DECREE, 4 MAY 1943, CONCERNING
STREAMLINING OF PROTECTIVE CUSTODY PROCEDURES

Copy of an excerpt from General Collection of decrees of the
RSHA 2d part.

General directives in matters concerning protective custody

Streamlining of protective custody procedures. Circularized decree by the Chief of the Security Police and the SD [Security Service] dated 4 May 1943 — IV C 2 No. 42 156. (Directives of the Reich Minister for the Interior dated 25 January Police S-V 1 No. 70/37-179 g — and dated 4 October 1939 — Police S I V 1 No. 100/39-179 g-) Confidential!

The Reich Leader SS and Chief of the German Police has approved, according to my suggestion concerning the streamlining of business procedure for the duration of the war, that the protective custody directives be amended, and that all Polish prisoners should be interned in concentration camps.

* * * * *

(4) Polish civilian workers who have sexual intercourse with German women, after having been racially examined, will be sent to concentration camps as specialist workers if they prove to be incapable of being Germanized, or if they can be Germanized, to the SS special Camp Hinzert. Independently of these measures, reports will be submitted to the Reich Security Main Office in the usual manner. If executions are being considered, a temporary protective custody will be ordered, also in doubtful cases, and immediate application will be made to the Reich Security Main Office to pass down a decision.

* * * * *

IV

(1) Statistical reports will be submitted on the fifth day of each calendar month, starting 5 June 1943, according to the following specimen. The time limit will be strictly observed.

1. Number of effected protective custody warrants on the department's own responsibility (excluding temporary arrests), * * * comprising (a) political offenses * * *, (b) violations against the economic stability * * *, (c) sexual intercourse * * *.

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2. Of the total number mentioned under 1, the following have been ordered interned in a concentration camp: (here the individual camps will be listed.)

Negative reports are requested.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT SCHWALM*

CROSS-EXAMINATION

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MR. SHILLER: Witness, in discussing Document NO-2864, which

* Complete testimony is recorded in mimeographed transcript, 8, 9, and 12 January 1948, pp. 3336-3448.

is Exhibit 524 in Book 11, you said that you did not know at the time what special treatment meant. This is your letter, Witness, of 3 December 1943, concerning three railroad passes for RuSHA, so that the RuSHA examiners could investigate special treatment cases.

DEFENDANT SCHWALM: Yes.

Q. Witness, will you please look at the last sentence of this letter?

A. Yes.

Q. Doesn't this sentence say that the RSHA [Reich Security Main Office] could not reach a decision without asking the opinion of RuSHA?

A. Yes. It says that in the letter.

Q. Witness, when you wrote that, didn't you know that when the result of the racial examination was negative that this decision was hanging?

A. In this case, counsel, I believe it is a matter of clarifying the concept of this. In my direct examination, I stated in detail, and I said that the special concept of special treatment from the State Police was at that time, and a long time after that, not known to me. For myself, the concept of "Special Treatment" in cases such as those mentioned here meant a racial examination of alien workers who had illicit sexual intercourse with Germans. That is what I understood when special treatment was mentioned, and that was familiar to me.

Q. Witness, did you know at the time that where a negative decision was reached by the racial examiner that the decision was likely to be hanging?

A. No. I did not know that.

Q. Well, Witness, on direct examination you stated that the Poles were told that they were to be hanged if they had sexual intercourse with German women, isn't that correct?

A. No. I said that the Poles were informed that sexual intercourse was prohibited and that they were threatened with capital punishment. However, I believe that it was impossible that every Pole or Eastern worker who had sexual intercourse with a German worker was actually hung.

Q. Witness, that is not the question. What I am asking you is, in a great number of cases many of these Poles and Eastern workers were freely told that capital punishment might be imposed upon them if they were caught after they had had sexual intercourse with German women, is that correct?

A. I can only tell you that which I saw from the document that came to my eyes here. I, myself have never issued a warning to one Eastern worker, whether it was before 1945 or in 1947.

I never saw such a form in which these warnings were issued to Eastern workers or Poles.

Q. Witness, from the documents, it's obvious that there was no attempt at secrecy in this connection. Now what did you mean by the word "decision" in this last sentence of your letter, when you say that, "A decision of the RSHA cannot be reached without the opinion of RuSHA."?

A. As I can see the matter now, this sentence contains a fundamental error. It contains the error that it was not the Reich Security Main Office which made the decision but it was the Reich Leader SS that made it. I knew that the Reich Leader SS used all possible documents in order to reach his decision; among others, also this opinion of the racial examiner. How he made this decision was, in many cases, dependent—I would like to say—on the criminal point of view of the matter, whether it was a case of rape and assault. It depended more on these facts than on the opinion of the RuSHA.

Q. Witness, we are going off the track again. Please try to answer my question this time. Regardless of whether you feel that the letter is correct in stating that the decision was made by the RSHA or by Himmler, you knew that a decision was going to be made and that this racial examination was, to say the least, important in that connection, did you not?

A. The racial examination was, as I saw from the testimony of Hofmann, based on six or seven documents which had to be sent in in this connection. That is to say, it was part of those six documents and it was a sixth part of the whole opinion that had to be given.

Q. Witness, you knew a decision was going to be reached, did you not?

A. That a decision had to be made? Yes. That I knew.

Q. But you had no idea what the decision was going to be; in other words, you didn't know that hanging was a possibility?

A. As to what the decision would be? No. I did not know.

Q. Now, Witness, my question is that you knew that hanging was a possible decision, did you not?

A. Just as possible as marriage.

Q. So that in these cases of sexual intercourse which you say you called "Special Treatment", you knew that a possible decision was hanging? Is that correct?

A. Yes. It was a possibility.

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CROSS-EXAMINATION

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MR. SHILLER: Witness, on direct examination, in connection with the phrase "Special Treatment", you stated that the meaning of this phrase was known in detail only to the members of the State Police. Wasn't this term "Special Treatment" used as a matter of course in the agencies of RuSHA and among the field leaders of RuS and the racial examiners of RuSHA.

DEFENDANT HILDEBRANDT: No. The expression was known, but there was no precise conception of what the expression signified. It was a collective term and only the Gestapo knew in detail what the consequences of the term "Special Treatment" were, and the consequences differed quite a bit. The judgments differed considerably and, therefore, it was impossible to describe the whole consequences in one word. This word was only a collective term which afterwards was split up into various consequences which in final effect remained unknown to the RuS leaders, because they only had to give expert opinion.

Q. Witness, will you please look at Documents NO-5836 and NO-5837, which I am offering for identification as Prosecution Exhibits 845 and 846. These are two reports, Witness, by a racial examiner named Ratzeberg, in connection with two trips he made in August and in October, 1944.

A. May I ask you what document you are referring to, Mr. Prosecutor?

Q. Witness, if you will look at the first Document NO-5836, will you please look at paragraph number 3, headed "Secret State Police", with the subheading "(1) Special Treatment"?

A. Yes. I see what you mean.

Q. You see a number of cases listed under that, Witness, names and numbers meaning something in connection with the racial judgment. If you will look at the other document, Witness, NO-5837, paragraph II, Gestapo Branch Office-Mainz, with the subheading "(1) Special Treatment", there are some more cases given?

A. Yes. I see that.

Q. Now Witness, are there any cases that could be listed under such a heading except cases involving Poles or Eastern workers who were accused of having had forbidden sexual intercourse with German women?

* Complete testimony is recorded in mimeographed transcript, 19-21 January 1948; 2 February 1948; pp. 3874-4120; 4771-4774.

A. The term "Special Treatment" apparently refers to that case, yes.

Q. Witness, didn't you know that one of the possible decisions in these cases was the death penalty, if it was decided that the man was not racially valuable?

A. I told you already that the racial judgment was not the only component in that decision. Various other witnesses, and also myself, testified to that, that the Reich Leader quite personally reserved his own judgment, and that it never occurred that the judgment by the racial examiner was decisive; I can very well imagine that—just with this very delicate conception of illicit sexual intercourse—the way the matter had occurred was much more decisive than whether the man had a nose four or five centimeters long; whether it was rape, or whether there was violence, or whether it was—

PRESIDING JUDGE WYATT: Mr. Witness, the question he asked you was whether or not you knew that one of the possible punishments was death. Not how the judgment was made up, but whether or not that was a possible punishment. That is the only question.

WITNESS HILDEBRANDT: Yes.

MR. SHILLER: Witness—

WITNESS HILDEBRANDT: (Interrupting) It was one of the possibilities, as I heard, not officially but through other channels, that there were even posters put up concerning this. Officially I was in no way connected with the final decision.

Q. Witness, if the man involved in these cases was not killed, or put in a concentration camp, he was re-Germanized, was he not?

A. That I do not know. There were various categories.

Q. Witness, did you ever hear of any other alternative besides re-Germanization or concentration camp or hanging?

A. There was also imprisonment. I don't mean imprisonment in concentration camps, I mean imprisonment in a prison.

* * * * *

I. Membership in the SS

I. INTRODUCTION

Under count three of the indictment all defendants, except the defendant Viermetz, were charged with membership in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS), an organization of the Nazi Party

declared to be criminal by the International Military Tribunal and hence guilty of acts constituting crimes under paragraph I-d of Article II of Control Council Law No. 10. Short extracts from the testimony of some of the defendants concerning their membership in the SS are set forth on pp. 1173 to 1185.

2. EXTRACTS FROM TESTIMONY CONCERNING MEMBERSHIP IN THE SS

EXTRACTS FROM THE TESTIMONY OF DEFENDANT GREIFELT*

DIRECT EXAMINATION

* * * * *

DR. HAENSEL (Counsel for defendant Greifelt): How was it that you came to the SS?

DEFENDANT GREIFELT: Not for reasons of political conviction but truly speaking for reasons of pure distress. As I have already told you, in spite of all my efforts it was not possible in 1933 to find a new position. In June of 1933 quite by chance I met an old comrade of mine whose name was Seidel-Dittmarsch. He was a comrade from the First World War. He knew of my trouble and he asked me to come to him and work for him. I did not know what he was doing at the time and I was told that he held a high position in the SS. It was understandable that a person who for 15 or 18 months had been without work and income, and who had to look after his wife and family would make use of any possibility to earn a living which, even though modest, was adequate.

Q. Wasn't a uniformed group within the state rather unusual, or were there other political organizations in Germany at that time that wore uniforms?

A. Well, I don't know about that; there was the SA and there was a Red Front Fighters League [Rotfrontkaempferbund—Communists], and the Stahlhelm [Nationalists] and the Reichsbanner [Social Democrats]. We saw all these formations on the streets during parades and propaganda marches. As for the purpose of the organizations or formations, or whatever you want to call them, I was not acquainted with that at the time, and as to the SS I knew as little about it as I did of the other organizations. By my old comrade from the First World War, I was persuaded to join the SS, all the more so as he told me that he wanted to make me his personal adjutant. I did my work as an adjutant merely by doing office work.

* Complete testimony is recorded in mimeographed transcript, 24-26 November 1947, 1-2 December 1947, pp. 1404-1750.

Q. Were you told about any secret aims for which the SS was working? Did you have to make any secret promises?

A. No, I did not. I was in Berlin as adjutant. The Reich Leadership SS at that time was stationed in Munich and that meant that I did not come into close contact with the main leadership of the SS, nor did I have an opportunity to become acquainted with whatever ideological or political aims they might have had.

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DR. HAENSEL: I am now coming to the last count of the indictment; that is, count three. Here the prosecution charges you with having been a member of the SS that is to say, a member of a criminal organization. You have already told us in the course of your examination just what brought you to join the SS, but you were repeatedly promoted and rose to the rank of SS Lieutenant General. On what exactly, were your promotions based?

DEFENDANT GREIFELT: From the year 1937 these promotions were connected with my assignment and my official position. Since I had to negotiate with the Italian Government and other foreign governments and also with authorities within Germany proper, these promotions were to give me a certain amount of support. I believe that this is generally customary where diplomats and public servants are concerned.

Q. Did you ever serve in the SS during the war, or were you ever in charge of any SS unit?

A. No. I was in charge of a part of a government agency, and for that reason I mostly wore civilian clothing.

Q. And you also received the rank of a general in the police. Just on what was this promotion based?

A. This also was purely honorary. No person was more surprised about this fact than I was.

Q. Did you ever carry out any police functions?

A. Never.

Q. Did you ever have anything to do with the criminal aims with which the SS is charged or did you know anything about them?

A. No.

Q. You have already told us that you were not acquainted with the speech at Poznan. Do you know the speech which Himmler made at Bad Schachen or Metz? I am referring to Document 1918-PS, Exhibit 92, on page 127 of the German text.

A. The two speeches mentioned only came to my knowledge here in Nuernberg in the course of the past year.

Q. Was your capacity as a general in the police decisive for your authority?

A. No. As far as my identity papers were concerned, I travelled

around with a ministerial passport. This was an identification paper which showed that I was a high government official. It had a sort of diplomatic character and it had been issued to me by the Foreign Office.

Q. In the basic information the Staff Main Office has been described as one of the main offices of the SS. Is that correct?

A. No. The Staff Main Office of the Reich Commissioner was always a component of a main Reich agency.

Q. Could you know at all, or did you know, just what happened in the police or what happened in the SS as an organization and what work the individual SS main offices did?

A. No. I was unable to know that.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT MEYER-HETLING*

DIRECT EXAMINATION

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DR. BEHLING (Counsel for the defendant Meyer-Hetling): Did you ever hold any office in the Party [NSDAP]?

DEFENDANT MEYER-HETLING: No.

Q. Did you ever receive a distinction from the Party?

A. No. I did not receive any medals from the Party, nor did I ever attach any importance to those things.

Q. How did you come to the SS?

A. That was as a result of my contact with the Peasant leader and my appointment to the Reich Council of Peasants.

Q. Just what sort of an organization was the Reich Council of Peasants?

A. The Reich Council of Peasants was a representative council of a number of leading personalities who wanted to devote their time to the development and solution of agricultural problems in practice and in theory.

Q. Who was in charge of the Reich Council of Peasants?

A. Darré.

Q. What was Darré's relationship to Himmler at the time?

A. They were friends. Both of them graduated in agricultural science, and as a result of this they agreed in their agricultural political views.

Q. And what was the effect of this on your personal career?

A. At the time it was customary for men in public life to belong to one of the units whose members wore uniforms, for example, the SA, the SS, the NSKK. For the most part, the Peasant

* Complete testimony is recorded in mimeographed transcript, 9-11 December 1947, 2 February 1948, pp. 2201-2289 and 4776-4778.

leaders at the time were members of the SS, or they were attached to the SS in a body, since they would receive a rank in the SS which was fitting to their position in public life.

Q. Who asked you to enter the SS?

A. By order of Darré I was asked by a collaborator of Darré's to join the SS.

Q. Did you have any misgivings about entering the SS?

A. No.

Q. Did you perform any active service in the SS?

A. I did not perform any duty in the SS, and I was never called upon to carry out any tasks in the SS. I was an honorary officer in the SS.

* * * * *

DR. BEHLING: Professor, yesterday we left off by saying that you confirmed to me that you had been active in the SS. Did you have any activity in the SS in a propagandistic way or scientific way?

DEFENDANT MEYER-HETLING: No.

Q. When you entered the SS, did you swear an oath of allegiance?

A. No.

Q. Did anything change in your position in the SS until you entered the army in 1944?

A. No. It remained the same all during this time. I was never in the SS on a professional basis.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT LORENZ*

DIRECT EXAMINATION

* * * * *

DR. SCHUBERT (associate Counsel for defendant Lorenz): Referring to paragraph 2 of your affidavit, I ask you to state why in 1930 you became a member of the Nazi Party and of the SS.

DEFENDANT LORENZ: I joined the Nazi Party and the SS because I held the conviction that this Party wanted the best for Germany. From 1919 until 1934 I was a lessee of a government estate. I was owner of a sawing mill, a grinding mill, and of a distillery, and I lived in the Free State of Danzig. Danzig had been previously a part of the German Reich and was almost exclusively populated by racial Germans.

Q. Go ahead, a little bit quicker.

A. But officially at that time Danzig was not a part of the

* Complete testimony is recorded in mimeographed transcript, 17 and 18 December 1948, pp. 2730-2816.

German Reich. Among all the Germans in the Danzig Free State—and they constituted at least 95 percent of the Danzig population—the desire prevailed to return to the German Reich as quickly as possible, because they held the conviction that the small Free State of Danzig, in the long run, would not be able to exist between Poland and Germany. I believed that the National Socialist Party would certainly make it their aim, and would try to prevent the Polish influence in Danzig becoming overwhelming, or would prevent Poland annexing Danzig. This desire was expressed quite openly by many Poles, by the Polish newspapers, and by Polish statesmen.

In paragraph 2 of the affidavit, I have the following correction to make. It is not correct that I became a general of the Waffen SS at the same time as a general of the police. I did not hold these positions simultaneously. First I became, for a certain period, general of the police, and then after that I became a general of the Waffen SS.

Q. Do you have anything to add to the list of your distinctions under paragraph 3 of the affidavit?

A. No.

Q. In paragraph 4, you described your SS career. Any additions?

A. I have to remark that until 1934, when I was SS major general and leader of the SS Main Sector, Hamburg, I was only an honorary leader and as such I did not receive any pay. Only in Hamburg I was paid as an SS leader. In other words, there I became an active SS leader and I drew that pay until 1936. Then I retired from active SS service and was entrusted with other tasks, but not paid by the SS any longer. I remained a member of the SS, with the rank of lieutenant general, because I saw no reason to retire from the SS, particularly as I always made the acquaintance only of clean and decent people in the SS. I make a distinction, or even a very considerable distinction, concerning my relations to the General SS and to the Waffen SS, and to Himmler. We all rejected Himmler because he deviated so far from our original plans that we old members felt that we had been betrayed by him.

Q. How about that quick career you had in the SS? How did that come about?

A. Until 1933 I was not very quickly promoted. Then, after the access to power, quite a number of new members poured into the SS. A great number of higher leadership positions were newly created and it was a matter of course that the leaders, the higher SS leaders, would be selected from among those people who had already for some time been members of the SS, and, apart from

that, who had been former active officers and therefore presented the qualifications necessary for leadership. I myself never agitated for promotion.

Q. What was your task, as SS major general at Hamburg?

A. I had to lead the SS, which was just a Party organization.

Q. Did you have anything to do with police tasks?

A. No. Not at all.

Q. At that time did you have anything to do with concentration camps in Hamburg?

A. No. Never.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT HOFMANN*

DIRECT EXAMINATION

DR. SCHWARZ (Counsel for defendant Hofmann): Herr Hofmann, will you please tell the Tribunal your full name?

DEFENDANT HOFMANN: My name is Otto Hofmann, with one "f".

Q. Will you please give briefly your curriculum vitae.

A. I was born March 1896 in Innsbruck. I attended the elementary school in Munich and then high school, classic side. In August 1914 I volunteered for the Bavarian army and took part in the battles on the western and eastern fronts. In 1917 I was shot down at the Romanian front by a Russian fighter plane and was taken prisoner by the Russians. After five weeks, during which I was very well treated for part of the time, I was able to escape. In 1918 I married. In 1919 I was released from the army as an officer in the reserve. I started in my father-in-law's business, in order to study for a business career. In 1924 I was made an agent. In 1925 I divorced my first wife. I left the business and started on my own. On 6 January 1927 I remarried, and I now have been happily married for 21 years.

Q. Will you please describe to the Tribunal your activities in the NSDAP?

A. In 1929 I became a member of the NSDAP; already in the year 1923 I had belonged to it for a few months. In 1929 economic life was already deteriorating and in political life there were signs of disturbances and unrest. I hoped that the NSDAP would bring a positive solution on a national basis for political life, and put economic life on a social basis. The attempts of the older and the newly created parties to prevent the general decay were in vain.

* Complete testimony is recorded in mimeographed transcript, 6 and 7 January and 12 February 1948, pp. 3169-3332; 4774-4776.

Q. Were you yourself active in the NSDAP in a political way?

A. No.

Q. Will you please describe your career in the SS?

A. In April 1931 I became a member of the SS. The political tensions at that time had further increased; more and more often there were clashes between the members of the rightist parties—that is the Stahlhelm, the SA, and the SS—on the one hand, and the members of the leftist organizations—that is the Reichsbanner, the Communist Red Front Association—on the other hand. At that time I did not want to stand apart, and I did want to have others take the coals out of the fire for me, especially as in the growing communism I saw a deadly danger for Germany. These were the only reasons for my joining the SS.

Q. Herr Hofmann, do you wish to say with that, that in contrast to many other people who became members of the Party and the SS for egotistical reasons, you considered in the first place the need of your country and the danger of communism?

A. Yes. That is correct.

Q. What was your further career in the SS. Will you please describe in brief your various appointments.

A. Yes. At first I worked on an honorary basis and in the years 1931 and 1932 I organized several motor units in the SS. In 1932 I got into trouble with Streicher. A disparaging remark that I made about him was reported to him. I had no contact with him at all. Thereupon he had me watched and tried to hamper my career in the SS, to the extent that in 1933 my livelihood was almost completely jeopardized. Therefore, at the beginning of 1933 I accepted an offer of employment at the headquarters of the SS, and I transferred my residence to Munich. At first I was employed as a Referent for a few months, and then as staff leader of a main sector in Brunswick. In 1934 I was leader of a regiment of SS in Magdeburg, and subsequently of a regiment in Hamburg. From the middle of 1935 until 1936 I was leader of District XV in Altona. During this time it was my special task to look after the family life and the morals of the members of the SS, and I organized family evenings and parties in which women and grown-up children of the SS men took part.

Q. And what were your tasks afterwards?

A. It is possible that it was on the basis of my activities that I have just described, that I was taken over into the Race and Settlement Main Office, and I was then appointed as SS leader for race and settlement questions in the main district West in Duesseldorf.

Q. What were your tasks there?

A. In general, I was the representative of the Race and Settle-

ment Main Office in the district there. I had no special instructions. My personal relations with the leader of the main district was an essential point and also my own initiative. Special and routine duties were the supervision of the selection of the SS applicants, according to the regulations concerning appearance which were valid for the SS, in collaboration with the physician who had to confirm their physical fitness. Another duty was to foster close connections with the provincial and district Peasant leaders and the agencies of the HJ—the Hitler Youth.

Q. Why do you mention the peasant leaders.

A. Close relations with the peasantry were aimed at because the members of the SS were to be interested in agricultural settlement. One also had to work against the flight from the land.

Q. What were your further duties?

A. The RuS leader had to look after the eugenics research offices of the SS, regiments, and, according to his qualifications and talents, he influenced cultural life within the areas of the main district. Schooling itself had been taken away from the competency of the RuS leader in 1938 after the educational office had been taken out of the Race and Settlement Office and had been placed under the SS Main Office. A duty which also took on ever-increasing importance after 1937 was the care of widows and orphans, which was also under the competency of the RuS leader because of Himmler's order concerning the care of widows and orphans.

Q. In this connection, I am handing you Hofmann Document 1, Hofmann Exhibit 4 for identification, and I would like you to tell the court whether the order which is mentioned on page 4 is the order that you have in mind.

A. Yes. That is the basic law concerning the care of widows and orphans.

Q. When did you become chief of the Eugenics Office in RuSHA?

A. At the beginning of 1939 I was appointed to this task because of Pancke's request, as I have found out here.

Q. What were your duties there?

A. The Eugenics Office was responsible for carrying out the betrothal and marriage order which Himmler had issued on 31 December 1931 to the SS.

Q. Will you please look again at the document and see if you mean this order?

A. Yes. It is on page 3.

Q. Will you then please continue with describing your duties?

A. An SS man could marry only if he got a license and a permit from the Race and Settlement Main Office, that is from

Himmler. The examination of his person and of his ancestry as well as that of the fiancée and her ancestry, according to eugenic, health, and racial points of view, should, if humanly possible assist in guaranteeing happy marriages with healthy children. The order was intended, above all to have an educational effect.

Q. Is it correct that Himmler was very interested in these applications for betrothals and marriages?

A. He was not only very interested, but he was extremely interested in it; he, for instance, made personal decisions on all marriage applications of leaders, of full-time members of the SS, and in all doubtful cases. He examined those applications very carefully and compared especially the photographs with the personal description, and very often he would complain about even small differences. I can tell you my own personal experience, Dr. Schwarz, how during a flight from Berlin to Lodz I noticed him looking through the betrothal and marriage applications, and later on he said to me that this examination of the applications was to some extent a rest from his duties.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT HILDEBRANDT*

DIRECT EXAMINATION

DR. FROESCHMANN (Counsel for defendant Hildebrandt): Witness, please give the Tribunal your full name and the place and date of your birth.

DEFENDANT HILDEBRANDT: My name is Richard Hildebrandt. I was born on 13 March 1897 at Worms on the Rhine.

Q. Please describe briefly your youth and your education until you entered public service.

A. First of all, I had a classical education at the Gymnasiums of Worms on the Rhine, Frankfurt on the Main, and Dorsten in Westphalia. Then I finally matriculated. In the spring of 1914, I volunteered for service with the armed forces and I entered the German army. I participated in the campaigns in Poland, Russia, and later on in France, until the time of the collapse in 1918, as an officer in the field artillery. In November 1918, I was discharged from the army as lieutenant in the reserve. Before the war, I had really intended to study forestry; however, this plan was prevented by the fact that, as a result of Germany losing large territories through the Versailles Treaty, a large number

* Complete testimony is recorded in mimeographed transcript, 19-21. January 1948, 2 February 1948, pp. 3874-4120; 4771-4774.

of officials in the forestry service in these territories had to be given jobs in the remainder of Germany, and so prospects in this profession were poor. That is also why in 1919 I trained as a business man in the ceramics enterprise of my father in the Rhineland. After that, when I had completed my apprenticeship, I attended the universities at Cologne and Munich. I studied economics, history, and history of art. In my youth through my father's business, I was placed in contact with social questions and with workers. That is why I had a strong inborn inclination for the study of economics. I had gained valuable experience about social and labor questions, especially from these early days, and also through the contact which I had with my father. My studies of these three subjects I can still recall with pleasure, as at that time I was able to listen to the great teachers of national economics, Schmoller, von Wiese, and Schmalenbach; also the historian Graf Du Moulin-Eckart; and the famous art historian, Woelfflin.

After I completed my studies, which had various interruptions, I worked in various positions in commerce and in industry, above all, in the ceramics industry in Germany. I was usually a correspondent or a foreign correspondent. The political situation in Germany, especially after the inflation, became extremely difficult and complicated. The economic situation deteriorated accordingly. I had very close relatives in the United States of America. There was a brother of my mother's who was a farmer in Ohio, besides that, my fiancée at the time was visiting her aunt in New York, who was an American by birth. Under these circumstances I decided in 1928 to emigrate to the United States of America.

I lived over there for two or three years on what I was able to earn through manual labor, and later also through so-called professional work. I married my fiancée in New York City, and we now have three children. My family today is living in Bavaria.

I also would like to mention that in New York I finally worked in an export firm for books, and here again I had a post as correspondent. Moreover, in New York I joined the local group of the NSDAP which existed there at the time. This was a registered society. Every meeting held and all the work we did was under both flags, the German flag and the flag of the United States. As a result of my hard struggle for a livelihood there, and the speed and bustle in that country to which I was not then accustomed, I did not have any time to take any special interest in the activities of that group, for I, myself, for most of the time was away from New York, in Connecticut, in Pennsylvania, in New Jersey, and so on, where I was mainly at work on farms. In the year 1930 I returned to Germany, and in 1931 I joined the SS.

I remained in the ranks of the SS until the end of the war in 1945.

Q. Witness, from October 1939 until March 1943, you were a Higher SS and Police Leader as well as the Representative of the Reich Commissioner for the Strengthening of Germanism at Danzig-West Prussia; is that correct?

A. Yes.

Q. On 1 April 1943, you became Chief of the Race and Settlement Main Office. Is that correct also?

A. Yes.

Q. At the end of December 1943, were you ordered to southern Russia, as Higher SS and Police Leader, to army group "A"?

A. Yes.

Q. In September 1944, did you return to your old position as Chief of the Race and Settlement Main Office?

A. Yes.

Q. And did you remain there with intervals in field service, until 1945?

A. Yes. That is correct.

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EXTRACT FROM THE TESTIMONY OF DEFENDANT SOLLMANN*

DIRECT EXAMINATION

DR. RATZ (Counsel for defendant Sollmann): Witness, will you please give your full name, your age and your career and your political life in brief to the Tribunal?

DEFENDANT SOLLMANN: My name is Max Sollmann. I was born on 6 June 1904. I had the intention of studying economics and modern languages. I left high school with a diploma because I wanted to earn the money for these studies myself. After I got into business I was no longer able to study at the university. I had various jobs as foreign correspondent, as cashier, as business manager of various companies, and was on the board of stock companies. At the beginning of 1929 I went to Colombia, in South America, and I worked there for about 5 years with the Standard Oil Company of New Jersey, that is to say with one of its subsidiaries, the Tropical Oil Company. I was a commercial employee in the oil fields of this company. At the beginning of 1934 I came back to Germany and became a member of an economic examination corporation as lecturer. Besides this post that I held for about 2 years, I studied economics on my own. I was especially

* Complete testimony is recorded in mimeographed transcript, 23 and 26 January 1948, pp. 4293-4389.

interested in balances and taxation. At the end of 1935 I took over the post of a member of the board of a real estate company in Berlin. In 1937 the chief of the Personnel Staff of the Reich Leader SS, General Wolff, had me appointed to a position at the head office, for commercial and economic questions, on the personnel staff of the Reich Leader SS. Up to that time I had not met Himmler.

On 20 December 1922 I became for the first time a member of the NSDAP. I remained a member until the prohibition in November 1923. I became a member of the Party again in November 1926, and I stayed in it until 6 April 1929. I joined the NSDAP for the third time in January 1937, and remained a member until the surrender. In March 1920 when I was still going to school, I volunteered for the army. I became a member of the Free Corps Epp "Oberland". I took part in the so-called Hitler Putsch in 1923 as a member of the "Oberland" association.

On 19 August 1938 I received the Golden Party Badge of the NSDAP. In March 1939 I received the Blood Order.

I became a member of the SS in the summer of 1937, retroactive to 20 January 1937. My last rank was SS senior colonel in the general SS and in the Waffen SS. I was drafted into the Waffen SS on 17 August 1942. In the spring of 1942 I received the title of office chief in the personnel staff of the Reich Leader SS.

My decision, in 1937, to accept employment in the personnel staff of the Reich Leader SS and to become a member of the SS, was voluntary. I thought that it was an honor to have received such an offer without having made application for it. The first post that I had was as deputy head for the department of economic aid, in the personnel staff of the Reich Leader SS. At the end of 1938 I asked to be allowed to resign from active duty. General Wolff, who at that time was my superior, refused my resignation, and until my appointment to the Vorstand [board of directors] of the Lebensborn, he gave me various special jobs to do. During this time I had been transferred temporarily, as a matter of form, to the SS administrative office, while the economic aid department was being moved to the SS administrative office, but during all this time of my formal membership of the SS administrative office, I did not receive one single order from that office itself. At one time it was intended that I should become head of the department, "Finance and Economics" in Greifelt's office. At that time another suggestion came from the president of the German Reich Bank, who asked Himmler to agree to my appointment as head of the personnel at the German Reich Bank. Himmler, however, at the end of February 1940 appointed me to the Vorstand of the Lebensborn. In March 1940, I was registered in the asso-

ciation in the judicial court register. I took over the official business of this registered welfare society, which had its headquarters in Munich, on 15 May 1940.

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[Further materials from the record in the RuSHA Case appear in volume V. See Contents, p. VIII, this volume.]

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