

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

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"THE EINSATZGRUPPEN CASE"

Military Tribunal II

Case No. 9

THE UNITED STATES OF AMERICA

—*against*—

Otto Ohlendorf, Heinz Jost, Erich Naumann, Otto Rasch, Erwi Schulz, Franz Six, Paul Blobel, walter Blume, Martin Sandberger, Willy Seibert, Eugen Steimle, Ernst Biberstein, Werner Brauner, Walter Haensch, Gustav Nosske, Adolf Otto, Eduard Strauche, Emil Hausmann, Waldemar Klingelhoefner, Lothar Fendler, Waldemar von Radetzky, Felix Ruehl,
Heinz Schubert, and Matthias Graf,

Defendants

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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 against or Parkinsonism) will become progressively worse, his severance from these proceedings 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

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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 un-godly 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 appraisal. 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.

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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 monstrosity 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.

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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 Stahlecker 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

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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 reemphasized 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,

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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 narrates 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.

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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-28U.)

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-8405.)

Einsatzgruppe D operating near Simferopol communicated—

"During the period covered by the report 2,010 people were shot." (NO-3285.)

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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 Obergruppenfuehrer 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-8257.)

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 Lachoisk, reported—

"A large-scale anti-Jewish action was carried out in the village of Lachoisk. 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-8143.)

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

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leading out of the town and liquidated 113 Jews." (NO-8160.)

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." (NOSkOi.)

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-SU8.)

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-S187.)

Kommando leaders also frequently informed headquarters that certain groups had been "taken care of". (NO^SISI.) 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 Avith 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

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"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." (N O-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

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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-3H9.)

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-3H3.)

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-28U-)

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-2888.)

Einsatzgruppe C, reporting on conditions in Radomyshl, declared—

"A supply of food for the Jews as well as for the children

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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." (NOSU9.)

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-3U8.)

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-8 US.)

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-8160.)

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-2882.)

It was also stated—

"The underwear, clothing, and other wearing apparel col-

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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 task-masters, 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-2884.}

Trial of Major War Criminal, vol. VU. p. B10, Nunmbrff, 1947.

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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-3W4-.)

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-3S89.)

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,

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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.

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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-S157.)

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 reportwriter 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-3H6.)

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 girlfriend, 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

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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." (N 0-2653.)

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-S148.)

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), Einsatz-gruppe B advised that "during the period of the report, the liquidations of 37,180 people took place." {N 0-26 5 6.)

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—

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"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." (3J128-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 Novogradok 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	Jew	Communists	Total
	80,311	860	81,171
	30,025	1,843	31,868
	474	684	1,158
	7,620		7,620
Total	118,430	3,387	121,817

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To be added to these figures (L-180)—

<i>"In Lithuania and Latvia Jews annihilated by pogroms</i>	5,500
<i>Jews, Communists, and partisans executed in old Russian area</i>	2,000
<i>Lunatics executed</i>	748
<i>(Correct total— 130,065)</i>	122,455

Communists and Jews liquidated by State Police, and Security Service Tilsit during search actions
5,502

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-283^.)

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-

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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-8279.)

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-SIAO.)

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

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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

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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." (N0-2716.)

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-

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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 Estonia 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] Ia. 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.

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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-295^,)

One report-writer, describing conditions in Esthonia, complained that as the Germans advanced, the Esthonians arrested

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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

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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

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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 Sturmbannführer Puetz, to ascertain if the story had any basis in fact since he, Graebe, employed some Jewish workers whom he wished to protect. Sturmbannführer 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

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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." (2278-PS.)

In some areas special groups were set up.

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"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-28U-}

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-8408.)

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.)

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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 re-

quired 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

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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-SMb.)

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-

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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-84H-)

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-3H4-.)

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-8422.)

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-S157.)

Field Marshal von Reichenau, commanding the Sixth Army,

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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 [Genickschussspezialisten]. 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-*

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bers of those squads, which at that moment did not take part in the executions." (NO-382A.)

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 Ib 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-

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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

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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

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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 post-men 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." (JVO-2828.)

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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-2U8.)

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 Hauptscharfuehrer, 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-5A98.)

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

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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

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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—

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"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 battle-field 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 ex-termination 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-

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*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." (110A-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, re-ported 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

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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

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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

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and impartial trial, which the Tribunal has endeavored through-out 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. (6) 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

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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

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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 rep-

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

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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 *nullun 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

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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 non-military 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 Nuremberg trials, have only provided a machinery for the actual application of international law theretofore existing. In the comparatively recent Saboteurs case (*Fx parte Quirin S17 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

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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-

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cations made frequent reference to these international pledges.

The 1942 edition of the military manual [Recht der Landkriegs-fuehrung] 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

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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. ('Putativnohilfe' is the technical term in the German legal language.)"

"(6) 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

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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 *Staatsnotilfe* (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

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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.

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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

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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 non-combatants 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

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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 kill-ing 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

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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

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"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 be-

come 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

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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

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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 subordinate shall be

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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

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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?

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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 pol-

icy. 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 ex-press 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

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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 jays 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 marketsquare, 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,

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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 greyeyes, 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 massa-

cre, 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 Bolshevik? 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.

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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 be-

ings 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

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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.

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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 2\fa 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.*

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Concentration camp Auschwitz had to furnish continuously Jews fort his 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,

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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 multiplicitous executions he conducted, he ever released one victim. The interrogation follows:

"Q. But you did not in compliance with that order attempt to save 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

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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 in-

volved 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

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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. Llandovery 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

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ordered his subordinates Dithmar and Boldt to fire at the life-boats, 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 life-boats 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

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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—

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"(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 hi self 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.

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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

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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—

Every man is presumed to intend the consequences of his act.

Every man is responsible for those acts unless it be shown that he did not act of his own free will.

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 executes 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

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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

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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 Kom-

mando, 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

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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 Einsatzgruppen 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-

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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

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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 Einsatzgruppen 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.

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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. 86, 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,

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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 pr

gram 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 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 mis-treatment and murder of prisoners of war. * * * In dealing with

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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 non-combatants, 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.

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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 inef-

fectual 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

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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."*

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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

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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 downtrodden 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.

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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 truthloving", "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 (al-

ways 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;*

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*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,

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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

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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 Bolshevik ideology advocated the movement of atheism, "one should not throw pearls before swine". Then came the following:

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"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 fellowmen' 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.

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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 func-

tions 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

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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

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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-

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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 JUDGMENT

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.

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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

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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.

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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

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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, 988 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—

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"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 author-

ity 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

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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 fulltime 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 chief ship of Einsatzgruppe B is to refute the prosecution's

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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."

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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, CaseNo. 1, the United States of America against Karl Brandt, et al.,page 70.) [See Vol. //.]

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

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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

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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.

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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

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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

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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

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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-

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unist 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

Total.....	16,964"

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

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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—

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"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

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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 re-

viewed 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-
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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-

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ment and from one's own human ideas. If there 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

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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

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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

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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.

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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 specific 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."

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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.

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"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*

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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

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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,

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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 per-

formed 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.

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"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-3148, II B-53); Report No. 108. (NO-3156, II B-18, 21); Report No. 125. (NO-3408, IIB-12); and Report No. 133. (NO-2825, IIB-1U-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

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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. /, 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—

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"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 Weimann 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 Bolshevist 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.

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ERNST BIBERSTEIN

Ernst Emil Heinrich Biberstein was originally named Szymanowski. 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 Sturmbannfuhrer 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

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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

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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 arguing he could be excused from responsibility for the death of those who

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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 lib. As chief of this unit Braune knew of the Fuehrer Order and executed it to

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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 Sturmbannfuehrer 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 rea-

*sons, 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

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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 as-

serts 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

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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

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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

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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. III, 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

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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

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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.

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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."

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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

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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

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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 well as socials 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

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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 Dneestr 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 shooting 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

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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 16 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

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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 ascertain-

ment 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

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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

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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. Arid 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."

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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

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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.

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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-

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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 defen-

dant 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

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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.

Prom 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

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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.

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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-

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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

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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. III-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

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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 watertight 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

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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 Bolsheviks. 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

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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 denned by the judgment of the International Military Tribunal and is, therefore, guilty under count three of the indictment.

WALDEMAT 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.

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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."

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"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—

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"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. III-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

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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 sub-unit. 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

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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

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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

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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

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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 lib, 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

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for this by the Special Command lib, 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

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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."

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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 through-out 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

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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-

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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.

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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

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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 RADEZKY, on the counts of the

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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.

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