

POHL et al.

US Military Tribunal Nuremberg, Judgment of 3 November 1947

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JUDGMENT	6
A. Opinion and Judgment of the United States Military Tribunal II	6
OPINION AND JUDGMENT	6
THE JURISDICTION OF THE TRIBUNAL	7
COUNT ONE—THE COMMON DESIGN OR CONSPIRACY	8
COUNTS TWO AND THREE—WAR CRIMES AND CRIMES AGAINST HUMANITY	9
COUNT FOUR—MEMBERSHIP IN CRIMINAL ORGANIZATION	11
MEDICAL EXPERIMENTS	16
EUTHANASIA	17
TREATMENT OF CONCENTRATION CAMP PRISONERS	17
TREATMENT OF THE JEWS	19
LOOTING OF PUBLIC AND PRIVATE PROPERTY	20
ACTION REINHARDT	21
OSWALD POHL	23
CONCENTRATION CAMPS	24
DESTRUCTION OF THE WARSAW GHETTO	27
MEDICAL EXPERIMENTS	28
ACTION REINHARDT	30
OSTI [EASTERN INDUSTRY]	31
COUNT FOUR	33
AUGUST FRANK	33
COUNT FOUR	37
HEINZ KARL FANSLAU	37
COUNT FOUR	39
COUNT FOUR	40
JOSEF VOGT	40
ACTION REINHARDT	42
COUNT FOUR	43
GEORG LOERNER	43
CONNECTION WITH W [WIRTSCHAFTS—ECONOMIC] ENTERPRISES	43

SUPPLY OF FOOD AND CLOTHING TO CONCENTRATION CAMPS	46
ACTION REINHARDT	47
COUNT FOUR	48
ERWIN TSCHENTSCHER.....	48
TSCHENTSCHER'S ACTIVITIES IN THE WVHA	49
COUNT FOUR	52
RUDOLF SCHEIDE	52
CONCLUSION	54
COUNT FOUR	54
MAX KIEFER	55
CONCLUSIONS	58
COUNT FOUR	58
FRANZ EIRENSCHMALZ	59
COUNT FOUR	64
KARL SOMMER	64
THE ALLOCATION OF INMATE LABOR IN AMT D II OF THE WVHA	65
CONCLUSIONS	67
COUNT FOUR	67
HERMANN POOK	67
CONCLUSIONS	71
COUNT FOUR	71
HANS HOHBERG	71
HANS BAIER	74
COUNT FOUR	77
LEO VOLK	77
COUNT FOUR	80
KARL MUMMENTHEY.....	81
COUNT FOUR	84
HANS BOBERMIN.....	85
COUNT FOUR	87
HORST KLEIN	87

COUNT FOUR	89
SENTENCES	89
B. Concurring Opinion by Judge Michael A. Musmanno	91
COUNT ONE—THE COMMON DESIGN	92
COUNT TWO—WAR CRIMES	92
COUNT THREE—CRIMES AGAINST HUMANITY	93
COUNT FOUR—MEMBERSHIP IN CRIMINAL ORGANIZATION	93
GENERAL DISCUSSION	94
THE SS	95
CONCENTRATION CAMPS—ORIGIN AND DEVELOPMENT	102
TREATMENT OF CONCENTRATION CAMP INMATES	107
PUNISHMENT AND DEATH IN CONCENTRATION CAMPS	114
SS INDUSTRIES	117
MEDICAL EXPERIMENTS	125
EUTHANASIA PROGRAM	130
STERILIZATION	133
JEWS	135
TRANSPORTATION CASUALTIES	140
EXTERMINATION OF JEWS	142
THE WARSAW ACTION	149
THIEVERY	154
WVHA	159
ADJUDICATION	166
IX. RECONVENING OF MILITARY TRIBUNAL II FOR THE PURPOSE OF PERMITTING THE RECONSIDERATION OF ITS JUDGMENT	170
A. Introduction	170
B. Order of the Military Governor Reconvening Military Tribunal II and Order of the Tribunal Permitting Defendants to File Additional Briefs	170
HEADQUARTERS EUROPEAN COMMAND	170
PURSUANT TO MILITARY GOVERNMENT ORDINANCE NO. 7	170
X. SUPPLEMENTAL JUDGMENT OF THE TRIBUNAL	174

POHL	178
FRANK.....	182
GEORG LOERNER	184
FANSLAU	187
HANS LOERNER.....	189
TSCHENTSCHER	192
KIEFER	193
EIRENSCHMALZ.....	196
SOMMER.....	199
POOK.....	204
HANS BAIER	205
HANS HOHBERG	209
LEO VOLK	221
KARL MUMMENTHEY.....	228
HANS BOBERMIN.....	239
Order Confirming or Amending Original Judgment and Sentences	241

JUDGMENT

A. Opinion and Judgment of the United States Military Tribunal II

UNITED STATES MILITARY TRIBUNALS SITTING IN THE PALACE OF JUSTICE,
NUERNBERG, GERMANY AT A SESSION OF MILITARY TRIBUNAL II HELD
NOVEMBER 3, 1947

The United States of America

—vs—

Oswald Pohl, August Frank, Georg Loerner, Heinz Karl Fanslau, Hans Loerner, Josef Vogt, Erwin Tschentscher, Rudolf Scheide, Max Kiefer, Franz Eirenschmalz, Karl Sommer, Hermann Pook, Hans Baier, Hans Hohberg, Leo Volk, Karl Mumenthey, Hans Bobermin, and Horst Klein, Defendants.

OPINION AND JUDGMENT

Case No. 4

United States Military Tribunal II was established on the 14th day of December 1946 by General Order No. 85 of the United States Military Governor for Germany. It was the second of several Military Tribunals constituted in the United States Zone of Occupation pursuant to Military Government Ordinance No. 7, for the trial of offenses defined as crimes by Law No. 10 of the Control Council for Germany.

Under the order which established the Tribunals and designated the undersigned as members thereof, Military Tribunal II was ordered to convene at the Palace of Justice, Nuernberg, Germany, and to hear and determine such cases as might be filed by the Chief of Counsel for War Crimes.

Telford Taylor, Brigadier General, U. S. Army, Chief of Counsel for War Crimes, on 13 January 1947, filed an indictment against the defendants herein named, in the Office of the Secretary General of Military Tribunals.

A copy of said indictment in the German language was served on each defendant on 13 January 1947, except for the defendant Georg Loerner, who was served on 14 January 1947. More than thirty days after said indictment was served on each defendant,

{958}

Military Tribunal II arraigned the defendants in the Palace of Justice, Nuernberg, Germany, on 10 March 1947. Upon arraignment, each defendant entered a plea of "not guilty" to all the charges preferred against him. Prior to the arraignment, each defendant was assigned German counsel of his own selection and each defendant was represented by his counsel during the arraignment.

On 8 April 1947, the prosecution began its presentation of evidence. At the conclusion of the prosecution's case in chief the defendants began the presentation of their evidence. The submission of evidence and the arguments of counsel were concluded on 20 September 1947. The personal statements of all of the defendants were heard on 22 September 1947.

During the trial of the case, the Tribunal sat for 101 sessions, (on 101 different dates, including date of arraignment; also, including one-half day joint session with all Tribunals in bank).

During the trial the prosecution offered 21 witnesses, the Tribunal itself called one witness, and the defendants offered 45 witnesses, including the 18 defendants themselves, a total of 67 witnesses.

In addition, the prosecution put in evidence as exhibits, a total of 742 documents; the defendants put in evidence as exhibits a total of 614 documents, making a grand total of 1356 documents received in evidence. The entire record of the case consists of more than 9,000 pages.

Copies of all exhibits offered in evidence by the prosecution in its case in chief were furnished in the German language to the defendants before the same were offered in evidence.

During the entire proceedings each defendant was present in Court, except when a defendant was absent for a short time upon his own motion, owing to illness, or other reasons.

Counsel for the defendants made numerous applications to the Tribunal for the purpose of procuring the personal attendance of persons who had made affidavits on behalf of the prosecution. If at all possible, the Tribunal granted such applications and procured the personal attendance of such persons in order that they could be interrogated or cross-examined by defense counsel.

The trial was conducted generally along the lines usually followed by the trial courts of the various States of the United States, except as to the rules of evidence. In compliance with the provisions of Article VII of Ordinance No. 7, great latitude in presenting evidence was allowed prosecution and defense counsel, even to the extent at times of receiving in evidence certain matters of but scant probative value.

The trial was conducted in English and German with an adequate

{959}

sound system for conveying either language to all participants and listeners. All proceedings on the trial were reduced to writing in English and German, and an electrical recording of all proceedings was also made.

The Tribunal was most diligent in its efforts to allow each defendant to present his defense completely, in accordance with the spirit and intent of Military Government Ordinance No. 7. Counsel for each defendant was permitted to cross-examine witnesses of the prosecution and other defense witnesses and to offer in evidence all matters deemed of probative value.

THE JURISDICTION OF THE TRIBUNAL

The jurisdiction of Military Tribunal II is determined by Law No. 10 of the Control Council for Germany. The pertinent parts of this Law with which we are concerned provide as follows:

Article II

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

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

"(c) Crimes Against Humanity. Atrocities and offenses, 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 capacity in which he acted, is deemed to have committed a crime as defined in * * * this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime * * *."

The indictment in this case contains four counts and is filed pursuant to these provisions.

{960}

COUNT ONE—THE COMMON DESIGN OR CONSPIRACY

The first count of the indictment charges that the defendants, between January 1933 and April 1945, acting pursuant to a common design, unlawfully, wilfully, and knowingly did conspire and agree together, and with each other, and with divers other persons, to commit war crimes and crimes against humanity as defined in Control Council Law No. 10, Article II.

During the trial each of the defendants challenged this count of the indictment, and moved that the same be quashed and stricken from the indictment. The defendants alleged in their motions that under the basic law the Tribunal did not have jurisdiction to try the charge of conspiracy as a separate substantive offense. The motion to quash was argued by counsel for the prosecution and defense and thereafter the Tribunal granted the motion. In order that this judgment may be complete, the ruling of the Tribunal is incorporated in this judgment:

"It is the ruling of this Tribunal that neither the charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense.

"Count one of the indictment, in addition to the separate charge of conspiracy, also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We, therefore, cannot properly strike the whole of count one from the indictment, but, insofar as count one charges the commission of the alleged crimes of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the Tribunal will disregard that charge.

"This ruling must not be construed as limiting the force or effect of Article II, paragraph 2 of Control Council Law No. 10, or as denying to either prosecution or defense the right to offer in evidence any facts or circumstances occurring either before or after September 1939, if such facts

or circumstances tend to prove or to disprove the commission by any defendant of war crimes or crimes against humanity as defined in Control Council Law No. 10."

Inasmuch as the offenses charged in the unstricken part of count one are repeated in substance in counts two and three, the entire first count may for purposes of this judgment be disregarded

{961}

without detracting from the contents of the indictment as a whole.

COUNTS TWO AND THREE—WAR CRIMES AND CRIMES AGAINST HUMANITY

The second and third counts of the indictment charge the commission of war crimes and crimes against humanity. The counts are identical in content, except that in count two the acts which are made the basis for the charges are alleged to have been "committed against the civilian populations of occupied territories and prisoners of war," whereas in count three the criminal acts are alleged to have been "committed against German civilians and nationals of other countries." With this distinction observed, both counts will be treated as one and discussed together.

Counts two and three allege, in substance, that between September 1939 and April 1945 all of the defendants herein named, "were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the commission of atrocities and offenses, including but not limited to plunder of public property, murder, torture, illegal imprisonment and enslavement, and deportation to slave labor of, and brutalities, atrocities, and other inhumane and criminal acts against thousands of persons."

The indictment further avers that all of the defendants were associated with the Economic and Administrative Main Office, commonly known as the "WVHA" which was one of the twelve main departments of the SS.

The indictment more specifically charges the defendants with war crimes and crimes against humanity, as follows:

The defendant Oswald Pohl was the head of the WVHA and the defendants August Frank and Georg Loerner were his deputies. The WVHA was divided into Amtsgruppen [office groups or divisions], which were interrelated in their operations, purposes, and functions.

Amtsgruppe A, among other things, was responsible for financial matters of the SS, including those relating to its concentration camps. This Amtsgruppe was subdivided into five offices or Aemter, which were charged with responsibility for certain parts of the entire financial administration. The defendants Frank and Fanslau were, successively, heads of Amtsgruppe A. The defendants Hans Loerner, Frank, Vogt, and Fanslau were heads of offices or Aemter within this Amtsgruppe A.

Amtsgruppe B, among other things, was responsible for the supply of food and clothing for inmates of the concentration

{962}

camps, and of food, uniforms, equipment, billets, and camp quarters for the members of the SS. It was subdivided into five offices or Aemter. The defendant Georg Loerner was the chief of Amtsgruppe B, and the defendant Tschentscher was his deputy and chief of one of the offices or Aemter within this Amtsgruppe B. The defendant Scheide was head of Amt B V [5] within Amtsgruppe B.

Amtsgruppe C, among other things, was charged with the construction and maintenance of houses, buildings, and structures of the SS, the German police, and of the concentration camps and prisoner of war camps. It was subdivided into six offices or Aemter. The defendants Kiefer and Eirenschmalz were heads of Aemter or offices within this Amtsgruppe C.

Amtsgruppe D, which prior to March 1942 was known as the Inspectorate of Concentration Camps, was responsible, among other things, for the administration of the concentration camps and of the concentration camp inmates. It was responsible for the food, clothing, housing, sanitation, and medical care of the concentration camp inmates, and of the order, discipline, and regulation of the lives of the inmates. It was charged with the supply of the forced services and labor of the concentration camp inmates to public and private employers throughout Germany and the occupied countries. It was subdivided into six [four] offices or Aemter. The defendant Sommer was the deputy chief of one of the offices or Aemter of Amtsgruppe D, responsible for the supply of the services and labor of concentration camp inmates. The defendant Pook was in charge of matters relating to dentistry affecting the concentration camp inmates.

Amtsgruppe W, among other things, was responsible for the operation and maintenance of various industrial, manufacturing, and service enterprises throughout Germany and the occupied countries. In the operation of the enterprises under its control, this Amtsgruppe employed many concentration camp inmates. It was subdivided into eight offices or Aemter. The defendant Pohl was the head of Amtsgruppe W; the defendant Georg Loerner was his deputy; and the defendants Hohberg and Baier were his executive assistants. The defendant Volk was personal adviser on the staff of Oswald Pohl and head of the legal section of the executive office of Amtsgruppe W, and the defendants Mummenthey, Bobermin, and Klein were heads of offices or Aemter within this Amtsgruppe.

The indictment then goes on to charge that these defendants, acting concertedly within the framework of WVHA and in pursuance of a common criminal design, perpetrated, aided and abetted in the perpetration of atrocities and offenses against

{963}

persons and property, including plunder of public and private property, murder, extermination, enslavement, deportation, unlawful imprisonment, torture, persecutions on political, racial, and religious grounds, ill-treatment of, and other inhumane and unlawful acts against thousands of persons, including German civilians, nationals of other countries, and prisoners of war. The indictment then relates in detail the means and methods by which the above criminal acts were accomplished.

Counts two and three of the indictment conclude with the averment that these crimes and atrocities "constitute violations of international conventions * * *, the laws and

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

COUNT FOUR—MEMBERSHIP IN CRIMINAL ORGANIZATION

The fourth count of the indictment avers that all of the defendants herein except defendant Hohberg were members subsequent to 1 September 1939, of the SS, declared to be criminal by the International Military Tribunal and paragraph 1 (d), Article II of Control Council Law No. 10.

The law, as pronounced by the International Military Tribunal with reference to membership in an organization declared criminal, is as follows:

*"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 does not include the so-called riding units * * *."*

"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

{964}

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."

Under the American concept of liberty, and under the Anglo-Saxon system of jurisprudence, every defendant in a criminal case is presumed to be innocent until the prosecution by competent and credible proof has shown his guilt to the exclusion of every reasonable doubt. This presumption of innocence follows him throughout the trial until such degree of proof has been adduced. Beyond a reasonable doubt, does not mean beyond a vain, imaginary, or fanciful doubt, but means that the defendant's guilt must be fully proved to a moral certainty, before he is condemned. Stated differently, it is such a doubt as, after full consideration of all the evidence, would leave an unbiased, reflective person charged with the responsibility of decision, in such a state of mind that he could not say that he felt an abiding conviction amounting to a moral certainty of the truth of the charge.

If any defendant is to be found guilty under counts two or three of the indictment, it must only be because the evidence in the case has clearly shown beyond a reasonable doubt that such defendant participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the war crimes and crimes against humanity with which the defendants are charged in the indictment. Only under such circumstances may he be convicted.

If any defendant is to be found guilty under count four of the indictment, it must be because the evidence has shown beyond a reasonable doubt that such defendant was a member of an organization or group subsequent to 1 September 1939, declared to be criminal by the International Military Tribunal, as contained in the judgment of said Tribunal.

The defendants are charged in the indictment as officials of the Wirtschafts- und Verwaltungshauptamt (commonly called the WVHA) of the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS). The whole sordid history of the SS and its criminal activities has been told in detail in the judgment of the International Military Tribunal (pp. 268-273, Official Edition), and need not be repeated here. In this case, the Tribunal is concerned only with the members of the WVHA, or Economic Administrative Main Office, and its predecessors, the Hauptamt Verwaltung und Wirtschaft, or Main Office Administration and Economy, and the Hauptamt Haushalt und Bauten, or Main Office Budget and Buildings.

{965}

Early in 1942, the WVHA was organized under Himmler's order to coordinate and consolidate the administrative work of the SS. The organization of the former Administrative Department and Department of Budget and Buildings of the SS was taken over intact, and, in addition, another Main Office of the SS was incorporated into the WVHA, namely, the Inspekteur der Konzentrationslager, or Inspector of Concentration Camps. Of this revamped organization, the defendant Pohl was continued as chief and was in supreme command. The WVHA was divided into five Amtsgruppen, or departments [office groups or divisions], namely:

Amtsgruppe A—budget, law and administration.

Amtsgruppe B—supply, billeting, and equipment.

Amtsgruppe C—works and buildings.

Amtsgruppe D—concentration camps.

Amtsgruppe W—economic enterprises.

Each Amtsgruppe was headed by a chief and was, in turn, divided into Aemter or offices. For example, Amtsgruppe A was subdivided into Amt A I to Amt A V, Amtsgruppe B was likewise subdivided, while Amtsgruppe W was subdivided into Amt W I to Amt W VIII. Each Amt or office was charged with some specialized phase of the general field covered by its Amtsgruppe.

The WVHA, as one of the twelve main offices of the SS central organization, was charged with the administrative needs of the entire SS, including supplies of every kind, billeting, transportation, and also the administration of the entire system of concentration camps. This did not involve the commitment to, or release of inmates from concentration camps, but it did involve the maintenance and administration of the camps and the use of the inmates as a source of forced labor.

In addition to its functions as an administrative agency, WVHA managed and controlled a vast number of economic enterprises which were either owned or controlled by the SS. These enterprises embraced an extensive industrial empire, extending from Holland to

Poland and Hungary, and were operated almost entirely by the use of concentration camp labor. The operation and administration of these enterprises was the task of Amtsgruppe W, of which defendant Pohl was the chief and defendant Georg Loerner the deputy chief. Ancillary to Amtsgruppe W was an amorphous organization called staff W, headed by the chief of staff W, or chief W. This staff exercised general administrative supervision of the W industries, negotiated for and procured new enterprises, arranged financing, floated loans, negotiated financial matters with the Reich Minister of Finance, and in other ways performed broad coordinating functions within the framework of

{966}

the SS industries. The chief of staff W was at one time the defendant Hohberg and later the defendants Volk and Baier.

More than 25 of the SS industries were controlled, through stock ownership, by a parent holding company, known as Deutsche Wirtschaftsbetriebe, or DWB, of which defendant Pohl was the chief officer. These industries included a wide range of projects: stone quarries, brick manufacturing plants, cement mills, pharmaceutical factories, real estate, housing, building materials, book printing and binding, porcelain and ceramics, mineral water and fruit juices, furniture, foodstuffs, textiles and leather, etc. For the purposes of this case, four of these industries are of particular significance:

(1) The Deutsche Erd- und Steinwerke, known as DEST, which operated five granite quarries, six brick and tile plants, and a stone-cutting plant.

(2) The Klinker-Zement, manufacturing brick and cinder block, fireproof products, ceramics, lime, and chalk. This company had large subsidiaries at Golleschau, Prague, Lvov, and Bialystok.

(3) Ostindustrie, or OSTI, organized in March 1943 and dissolved a year later, which operated and later liquidated all the confiscated Jewish industries in the Government General, including foundries, textile plants, quarries, glass works, and others. Enforced Jewish labor was employed in these enterprises.

(4) The Deutsche Ausruestungswerke, or DAW, the German Equipment Works, which operated various industries in seven concentration camps, using forced inmate labor.

The freedom of man from enslavement by his fellow men is one of the fundamental concepts of civilization. Any program which violates that concept, whether prompted by a false feeling of superiority or arising from desperate economic needs, is intolerable and criminal. We have been told many times, "Germany was engaged in total war. Our national life was endangered. Everyone had to work." This cannot mean that everyone must work for Germany in her waging of criminal aggressive war. It certainly cannot mean that Russian, and Polish, and Dutch, and Norwegian noncombatants, including women and children, could be forced to work as slaves in the manufacture of war material to be used against their own countrymen and to destroy their own homelands. It certainly cannot mean, in spite of treaties and all rules of civilized warfare (if warfare can ever be said to be civilized), that prisoners taken in battle can be reduced to the status of slaves. Even Germany prior to 1939 had repudiated any such fallacious position. And yet, under the hypnotism of the Nazi ideology, the German people readily became complaisant to this strange and inhuman system. Under the spell of National Socialism,

{967}

these defendants today are only mildly conscious of any guilt in the kidnaping and enslavement of millions of civilians. The concept that slavery is criminal per se does not enter into their thinking. Their attitude may be summarized thus: "We fed, clothed, and housed these prisoners as best we could. If they were hungry or cold, so were the Germans. If they had to work long hours under trying conditions, so did the Germans. What is wrong in that?" When it is explained that the Germans were free men working in their own homeland for their own country, they fail to see any distinction. The electrically charged wire, the armed guards, the vicious dogs, the sentinel towers—all those are blandly explained by saying, "Why, of course. Otherwise the inmates would have run away." They simply cannot realize that the most precious word in* any language is "liberty." The Germans had become so accustomed to regimentation and government by decree that the protection of individual human rights by law was a forgotten idea. The fact that the people of the Eastern territories were torn from their homes, families divided, property confiscated, and the able-bodied herded into concentration camps, to work without pay for the perpetrators of these outrages—all this was complaisantly justified because a swollen tyrant in Berlin had scribbled "HH" on a piece of paper. And these are the men who now keep repeating, "nulla poena sine lege."

This Tribunal, in its judgment in the case of United States vs. Erhard Milch,* had occasion to say:

"The German nation, before the ascendancy of the NSDAP, had repeatedly recognized the rights of civilians in occupied countries. At the Hague Peace Conference of 1907, an amendment was submitted by the German delegate, Major General von Guendell, which read:

'A belligerent is likewise forbidden to compel the nationals of the adverse party to take part in the operations of war directed against their country, even when they have been in his service before the commencement of the war.'

"The German manual for war on land (Kriegsbrauch im Landkriege, Edition 1902) stated:

*'The inhabitants of an invaded territory are persons endowed with rights * * * subject to certain restrictions * * * but who otherwise may live free from vexations and, as in time of peace, under the protection of the laws.'*"

A faint effort has been made to show that, although no formal judicial proceeding in the nature of an accusation and trial was had in each case, nevertheless each Commitment to a concentration

{968}

camp was preceded by a sort of "cabinet trial" by the Gestapo and that this complied with German Law. To put it bluntly, the Tribunal does not believe a word of it. Commitments to concentration camps did not depend upon individual conduct but were the carrying out of a broad categorical Nazi political policy, frankly announced by Himmler. We can hardly be expected to believe that the thousands of Eastern women in Ravensbrueck and the boys and girls who were liberated from the concentration camps by the Allied Armies were accorded even a "cabinet trial." When whole villages were

* Trials of War Criminals before the Nuernberg Military Tribunals, Vol. II, pp. 789-790.

deported en masse, it is ridiculous to believe that each of the inhabitants was accused of some infraction of German Law, given a hearing of even the "cabinet" variety, and then solemnly found guilty and committed. Could any rational person believe that this or any comparable procedure accompanied the annihilation of the ghetto at Warsaw?

Far from making any attempt at formal accusation and determination of guilt, a conscious effort was made to evade embarrassing steps which slowed up the program of extermination. On 13 October 1942, Thierack, Reich Minister of Justice, wrote to Martin Bormann, stating (NO-558, Pros. Ex. 335):

" * * I intend to turn over criminal proceedings against Poles, Russians, Jews and gypsies to the Reichsfuehrer SS. In so doing I base myself on the principle that the administration of justice can only make a small contribution to the extermination of members of these peoples. The Justice Administration undoubtedly pronounces very severe sentences on such persons, but that is not enough to constitute any material contribution towards the realization of the above-mentioned aim. * * * I am * * * of the opinion that considerably better results can be accomplished by surrendering such persons to the police, who can then take the necessary measures unhampered by any legal criminal evidence. * * * The police may prosecute Jews and gypsies irrespective of these conditions."*

This specious and shallow excuse has been offered seriously in justification of a nationwide policy of deportation and slavery. We have witnessed a strange anomaly in this case. Defendants and their witnesses have bowed their heads in profound shame at the evidence of mass murder and wholesale extermination, but as to the cruel enslavement of whole races, they evidence little or no feeling of guilt or culpability whatsoever. They spoke freely and made voluminous records of "prisoner labor" and "inmate labor." They made elaborate industrial plans and wrote without shame, "We have been promised 8,000 Jewish laborers for this enterprise." They planned and started pretentious monuments

{969}

to the Nazi ideology and wrote, "Sauckel says that Eastern laborers cannot be furnished now, but that there should be no difficulty after the war." The SS economic leaders carried on extended negotiations over what they euphemistically called "prisoners' wages." Elaborate sliding wage scales were drafted and published. But in fact all this had nothing to do with wages. Not one mark was paid to the wage earners. The peons who wore the convicts' garb and carried the heavy stones up to the hill from the quarry at Mauthausen received only potato soup and a pallet of straw for their work. "Wages" referred to the amount the SS and other industries should pay per hour to the German Reich, the owner of the slaves. It seems to have been taken for granted by the Nazi leaders and the SS that mass deportation to enforced labor was a natural and legitimate concomitant of successful invasion, and that the civilian population was merely a part of the victor's spoils.

Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery—compulsory uncompensated labor—would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.

The extent of the deportation of Eastern civilian laborers and the ruthless manner in which they were seized and abducted has been related in detail in the judgment of the International Military Tribunal (pp. 243-247, Official Edition). To repeat the shocking story in the judgment in this case would serve no useful purpose. It is sufficient simply to state that it has been repeatedly and conclusively proved before this and other Tribunals that about 5,000,000 men, women, and children were violently seized and forcibly deported as slaves. As to the systematic extermination of the Jews, the International Military Tribunal has found (pp. 247-252, Official Edition) that, in pursuance of a fanatical public policy, it was deliberately decided to exterminate an entire race of human beings. There is no way to determine the total number of Jews who were killed, but in testimony before the International Military Tribunal it was stated that one military group operating in the East killed 90,000 people in one year, and another group killed 135,000 Jews and Communists in the first four months of the program. With these findings of fact by the International Military Tribunal this Court is in full accord and adopts them as found facts in the present case.

{970}

MEDICAL EXPERIMENTS

The fact that criminal medical experiments were performed upon the involuntary inmates of concentration camps has been repeatedly proved and determined before these Tribunals, in the case of *United States vs. Karl Brandt, et al.* (Tribunal I), in the case of *United States vs. Erhard Milch*, tried before this Tribunal, and by ample and convincing proof in the instant case. To completely document this finding of fact would result in unduly prolonging this judgment. It is sufficient to state that the performance of such criminal medical experiments has not been seriously denied. Defendants have unanimously denied knowledge of or participation in such experiments, but the proof of their performance stands substantially uncontradicted. The names of Dr. Rascher, Dr. Grawitz, and Dr. Beiglboeck have become infamous. The concentration camps furnished an unlimited supply of human subjects for these barbarous experiments, and inmates in large numbers were compelled to submit to so-called scientific tests which invariably involved torture and in thousands of cases maiming, disfigurement, and death. Inmates were placed in tanks, where the air pressure was decreased in simulation of high altitudes. A careful chart was kept of their violent reactions, which indicated intense pain and suffering. The chart not infrequently ended with, "Subject died at 9:18." Others were exposed, naked to freezing temperatures for hours, aided by ice-water immersion. As was to be expected, many subjects froze to death. Others were compelled to drink sea water until they went mad from thirst. Inmates were exposed to artificial inoculation of yellow fever, cholera, malaria, typhus, and spotted fever, and hundreds died as a result. Incisions were made in the legs of subjects and the development of gangrene accelerated by the introduction of septic foreign matter. Poison gas, mustard gas, phosphorous, and sulphur were used on inmates in order to prove that these chemicals are dangerous and often fatal—by no means a novel scientific finding. This is but a part of the horrible inventory. As one means toward "a final solution of the Jewish problem," a program of wholesale sterilization of the Jews was instituted and various methods by which sterility could be accomplished without the knowledge of the victim were devised. Even deliberate castration was resorted to.

EUTHANASIA

The wholesale extermination of those inmates who for any reason had become economically valueless to the Reich was accomplished by the euthanasia program. This plan was originally

{971}

adopted to dispose of the insane, but it was expanded to include the incurables, the aged, the "idle caters", the habitual criminals, and finally the political irreconcilables. It was a national Reich-approved plan for deliberate and premeditated murder on a large scale. Elaborate case histories of inmates were prepared and screened at the camps by travelling physicians, who by a process of snap judgment determined whether men and women should live or die. Those whose records happened to fall in the extermination file were shipped, like cattle to market, to an institution at Bernburg where "Action 14 f 13" was applied. This often was done by the injection of phenol or gasoline into the bloodstream, causing immediate death. After the extermination, the victim's personal effects, including the gold in his teeth, were shipped back to the concentration camp, and a report of "death from natural causes" was made out. This program was also extensively carried out directly in the concentration camps by the camp physicians.

TREATMENT OF CONCENTRATION CAMP PRISONERS

The only interest which the SS and the Reich had in concentration camp inmates was as productive units. They were regarded as so many machines, not as human beings. The only concern with the collapse or death of an inmate was with the loss of a productive laborer. Their arrogant attitude that all non-Germans were subhumans made them wholly indifferent to the fate of those whose right to live out their lives was as sacred as that of any German. This attitude was epitomized by Himmler when he said:

"Whether ten thousand Russian females fall down from exhaustion while digging an antitank ditch interests me only in so far as the antitank ditch for Germany is finished."

And later, at Posen [Poznan], in October 1943, he said:

"At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger."

When grinders or lathes broke down under hard use, they were scrapped; when inmates collapsed from exhaustion or hunger, they were shot or gassed. There was nothing incongruous in this to the twisted Nazi psychology. They talked and wrote frankly and volubly about it. True, there were some who professed a humanitarian interest in the welfare and comfort of the inmates, and who made some effort to alleviate their intolerable condition, but they still

{972}

kept them hard at work. Tasks were found even for the bedridden, while they awaited their turn at the gas chambers. The ghastly story of Germany's mistreatment of the millions of slaves who filled her concentration camps to bursting—the endless hours of exhausting labor, the beatings and killings, the starvation, the degradation—this has

become stale from retelling. That's the pity of it. It can be so soon forgotten. But let it be recorded here once more, for generations unborn to read and ponder, that millions of human beings between 1939 and 1945 were cast into slavery and treated with inhuman cruelty by a nation whose only excuse was economic need—the Nazi creed of "the state above humanity."

The story has come to the Tribunal from the lips of witnesses who personally experienced the horrors of the concentration camps—

Victor Abend—Polish inmate of three camps.

Bernhard Lauber—Polish inmate of two camps.

Jerzy Bielski—Polish inmate of two camps.

Albert Kruse—German inmate at Neuengamme.

Chaim Balizki—Polish inmate of two camps.

Herbert Engler—German inmate of Sachsenhausen.

Eugen Kogon—Austrian inmate of Buchenwald.

Josef Ackerman—German inmate of two camps.

Wolfgang Sanner—German inmate of Mauthausen.

Franz Mis—Yugoslav inmate of Dachau,

Helmut Bickel—German inmate of two camps.

We have had proof from camp commanders and physicians—

Karl Kahr—doctor at Dachau, Buchenwald, and Nordhausen.

Otto Barnewald—administrative chief at Mauthausen, Neuengamme, and Buchenwald.

Hermann Pister—commandant at Buchenwald.

Gerhard Schiedlausky—doctor at Mauthausen, Natzweiler, and Buchenwald.

Max Pauly—commandant at Neuengamme.

Rudolf Hoess—commandant at Auschwitz.

Philipp Grimm—commandant at Buchenwald.

We have seen the motion pictures of the frightful conditions in some of the camps when they were captured by the Allies—conditions so ghastly that they defy description. The proof is overwhelming that in the administration of the concentration camps the German war machine, and first and foremost the SS, resorted to practices which would shame the most primitive race of savage barbarians. All the instincts of human decency which distinguished men from beasts were forgotten, and the law of the jungle took command. If there is such a thing as a crime against humanity, here we have it repeated a million times over.

{973}

TREATMENT OF THE JEWS

This disgraceful chapter in the history of Germany has been vividly portrayed in the judgment of the International Military Tribunal (pp. 247-253 and 303, Official Edition). Nothing can be added to that comprehensive finding of facts, in which this Tribunal completely concurs. From it we see the unholy spectacle of six million human beings deliberately exterminated by a civilized state whose only indictment was that its victims had been born in the wrong part of the world of forbears whom the murderers detested. Never before in history has man's inhumanity to man reached such depths. Had Germany rested content with the exclusion of Jews from her own territory, with denying them German citizenship, with excluding them from public office, or any like domestic regulation, no other nation could have been heard to complain. But such prejudice and hatred, once fanned into flame, is difficult to control. And so, when the Nuernberg decrees against the Jews were pronounced, the fuse was lighted and soon the program of world-wide extermination of Jews was launched. Had Germany not been checked, one wonders what race, or creed, or nation would next have been branded as subhuman and marked for extermination.

In his own affidavit of 1 April 1947 (NO-2616, Pros. Ex. 523), Pohl states:

"The liquidation of Jews in the Auschwitz concentration camp in the years 1942 and 1943, when Rudolf Hoess was commander, was known to me through Himmler's speech, and I myself also saw the gas chambers and the crematorium in Auschwitz in the summer of 1944."

The most lurid descriptions of the Jewish extermination program are found in the reports of German officers themselves, in which, it can be assumed, the cruelties and atrocities are not exaggerated. Major General of Police Katzmann, reporting with evident pride in June 1943 on progress in murder in Galicia, writes:

"I report that the District of Galicia with the exception of those Jews in the camps under the control of the SS and Police is free from Jews. Jews still caught in small numbers are given special treatment by the competent detachments of police."

"Up to June 1943, 434,329 Jews have been evacuated. 21,156 are still in concentration camps. This number is being reduced 'currently.'"

"Since we received more and more alarming reports on the Jews becoming armed in an ever increasing manner, we started during the last fortnight in June 1943 an action throughout the whole of the district of Galicia with the intent to use strongest measures to destroy the Jewish gangsterdom. Special measures

{974}

were found necessary during the action to dissolve the ghetto in Lwow [Lvov] where the dugouts mentioned above had been established. Here we had to act brutally from the beginning, in order to avoid losses on our side; we had to blow up or to burn down several houses. On this occasion the surprising fact arose that we were able to catch about 20,000 Jews instead of 12,000 Jews who had registered. We had to pull at least 3,000 Jewish corpses out of every kind of hiding place; they had 'committed suicide by taking poison.'"

The "special treatment" referred to, means slaughter on the spot. The periodic reports of Stroop, SS Brigadefuehrer and brigadier general of police, who was charged with the destruction of the Warsaw ghetto, portrayed an astounding adventure in wholesale murder and robbery, ending with the terse statement, "There is no Jewish ghetto in Warsaw any more." The action terminated, he says, by blowing up the Warsaw

synagogue. He then submits an inventory of his victims: 56,065 Jews exterminated plus an estimated 5,000 to 6,000 destroyed by being blown up or dying in burning buildings, 4,400,000 Zlotys (Polish units of currency) seized and counted, with five to six million more uncounted. Also gold and paper money and large amounts of jewelry are listed. What strange mental twist induces this man to constantly refer to the inmates of the ghetto as "bandits"? The German inspector of armament in the Ukraine reports in December 1941:

" * * later specially detached formations of the police executed a planned shooting of Jews. It was done entirely in public * * * and in many instances with members of the armed forces taking part voluntarily. The way these actions, which included men, old men, women, and children of all ages, were carried out was horrible. So far about fifteen to twenty thousand Jews have been executed in the part of the Ukraine belonging to the Reich."*

In October 1941, Reich Commissioner Carl for the territory of Slutsk, reports:

*"The town itself offered a picture of horror during the action. With indescribable brutality * * * the Jewish people were taken out of their dwellings and herded together. Everywhere in the town, shots were to be heard, and in different streets the corpses of shot Jews accumulated. * * * The police battalion has looted during the action in an unheard of manner * * *. Everything of use such as boots, leather, cloth, gold, and other valuables has been taken away."*

The Tribunal is quite willing to accept these statements of these high-ranking German officers, who were eye-witnesses, as conclusive proof of the facts related.

{975}

LOOTING OF PUBLIC AND PRIVATE PROPERTY

The story of systematic pillage of occupied countries is related in the judgment of the International Military Tribunal (pp. 238-243, Official Edition), which this Tribunal adopts as findings of fact in this case. It is a tale of ruthless depravity unequalled in history. It was not confined to looting by individuals or isolated detachments. It was the carrying out of a general military policy, announced by the top command at the outset of the war. As early as October 1939, Goering issued the following directive:

*"The task for the economic treatment of the various administrative regions is different, depending on whether the country which is involved will be incorporated politically into the German Reich, or whether we will deal with the Government General, which in all probability will not be made a part of Germany. In the first mentioned territories, the * * * safeguarding of all their productive facilities and supplies must be aimed at, as well as a 'complete incorporation into the greater German economic system, at the earliest possible time. On the other hand, there must be removed from the territories of the Government General all raw materials, scrap materials, machines, etc., which are of use for the German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the naked existence of the population must be transferred to Germany. * * **

In pursuance of this policy of deliberate plunder, Poland, the Ukraine, and the occupied parts of Russia were stripped of agricultural supplies, food, raw materials, manufactured articles and such machinery as could not be used for German purposes where it stood. Obviously, this left large numbers of the population of these countries to starve, a fact which did not concern the German forces in the least. Alfred Rosenberg, Reich Minister for the occupied Eastern territories, bluntly stated in 1941 that the produce of Southern

Russian and the Northern Caucasus should be taken to the Reich to feed the German people. He said:

"We see absolutely no reason for any obligation on our part to feed also the Russian people with the products of that surplus territory. We know that this is a harsh necessity, bare of any feelings."

To call such inhuman policy, "a harsh necessity," is the acme of understatement. It was deliberate murder by starvation, nothing less. To show that the policy of plunder was not prompted by economic needs alone or the necessity of supplying the German Army and population with necessities, we find that churches, libraries, art galleries, and museums, not only in the East but in

{976}

France, Belgium, and Holland, were systematically looted of their treasures. This thievery was ordered, as the decree of Himmler put it, "for the strengthening of Germanism." The connection between the avowed purpose and the crime is not entirely clear. The experience of Prince Max Lobkowitz of Bohemia is typical. In his affidavit (NO-4942, Pros. Ex. 733) he states:

*"I am the owner of landed property, situated in several districts of Bohemia. * * * Over two-thirds of this property came under German rule in October 1938 as a result of the occupation by the Germans after Munich.*

"The rest of my property, including my chief residence at Roudnice and my house at Prague, came under German rule in March 1939, just after I had escaped with my family (wife and three sons) to London.

"I remained in the Czechoslovak diplomatic service, which I had entered in 1920 in London and during the war was appointed first Minister and later Ambassador to the Court of St. James. In February 1947, I was transferred from London to the Ministry of Foreign Affairs at Prague, to which I am attached now.

"The whole of my property was confiscated by the Germans.

"This confiscation included farm land, forests, vineyards, etc., as well as natural mineral spring, breweries, saw mills and several large houses, with old family collections (over 1,000 pictures, furniture, a library of over 100,000 volumes, historical archives, etc.)."

ACTION REINHARDT

The extermination and deportation of the Jews in the East produced a vast amount of valuable property, both real and personal, which the Reich was quick to recognize and seize. To marshal these resources, the Action Reinhardt was instituted, named approximately enough, for Reinhard Heydrich, formerly chief of the Security Police and SD, who met his death—and this, too, appropriately enough—in Czechoslovakia in 1942. The purpose of the action was to gather into the Reich all the Jewish manpower and wealth which could be reached. It was an ambitious and profitable undertaking for Germany. The Jews themselves were herded into concentration camps as slaves and their entire worldly possessions confiscated. The real property, where possible, was put to German use (largely through the WVHA agency of OSTI) and the movable property was shipped to WVHA, where it was inventoried, appraised, and distributed through prescribed

{977}

channels. The thoroughness of this program of looting is evidenced by the articles listed: featherbeds, quilts, blankets, woolen yardage, shawls, umbrellas, canes, thermos bottles, flasks, baby carriages, combs, handbags, belts, pipes, sun glasses, mirrors, table silver, luggage, linens, pillows, eye glasses, furs, watches, clocks, and jewelry. Everything that could be lifted was moved. The defendant Frank listed as received up to 30 April 1943, 94,000 men's watches, 33,000 women's watches, and 25,000 fountain pens. Currency and precious metals seized reached a total value of 60,000,000 Reichsmarks. About 2,000 carloads of textiles reached Germany as a result of this plunder, and in all a grand total of over 100 million Reichsmarks in personal property was thus acquired. When Jews died in concentration camps, additional loot became available. The clothing was stripped from their bodies and, after being carefully searched for hidden valuables and the distinguishing Jewish Star removed, was distributed to still living inmates or to German civilians. Camp commandants were cautioned not to ship clothing which was stained with blood or showed bullet holes. To complete the desecration, the hair was shorn from the heads of the dead (one report showed a carload of 3,000 kilograms) and all the dental gold was extracted and deposited through WVHA in the vaults of the Reich Bank. It was ordered by the defendant Frank that all property originating from Action Reinhardt be called, "goods originating from thefts, receiving of stolen goods, and hoarded goods." In the true sense, this description is more accurate than Frank intended.

In the Southern German Legal Gazette, March 1947, crimes against humanity are defined as acts involving "cruelty against human life, degradation of the dignity of man or destruction of human civilization." The Tribunal is quite content to use this German concept as a standard in deciding whether or not the facts heretofore found constitute crimes against humanity. Only one conclusion is possible. These facts establish beyond a reasonable doubt the wholesale commission of both war crimes and crimes against humanity. It next becomes necessary to determine to what extent, if any, the several defendants are criminally responsible therefore, by reason of actual perpetration, participation, or taking a consenting part therein.

A defense which has been almost universally advanced is that all the criminal acts of the Reich were conducted under a cloak of secrecy which prevented the defendants from knowing about them. Hitler's famous secrecy order has been offered by nearly every defendant. It has been urged that there was strict censorship of the press, that listening to foreign broadcasts was prohibited, that concentration camp prisoners were required upon

{978}

their release to be sworn to secrecy as to events which they had observed or experienced, and that the German people generally were kept in complete ignorance of what was going on. All these facts are true. But in the very nature of things, it was impossible to maintain complete secrecy or anything like it. It was impossible to keep hidden from public view the huge transports which carried the slave laborers from the East to the concentration camps. It was impossible to keep secret the public demonstrations against the Jews. Streicher's infamous, "Der Stuermer," had a circulation of 600,000 copies. Himmler spoke openly about "the final solution of the Jewish problem" at Poznan, Krakow [Kharkov], and Metz. When prisoners were

liberated from concentration camps, it is impossible to think that they maintained the complete secrecy to which they were bound. Soldiers returning on leave from Poland, Russia, and the Ukraine must have talked to some extent. The pall of smoke from the crematory at Auschwitz could not be kept hidden. In spite of decrees, foreign broadcasts were heard. The systematic murder of millions of human beings, extending over 5 years, could not by reason of its very magnitude be kept secret. It is undoubtedly true that millions of obscure and unimportant German citizens had no way of knowing and did not know of the horrible wrongs which were being perpetrated. But if high-ranking officers of the SS, whose daily tasks for years brought them into immediate contact with the operation of the camps, claim that they had no suspicion of the events occurring within the barbed wire, that defense cannot be believed. Undoubtedly some knew more than others, and some limited few knew nothing. With this conclusion Pohl himself agrees. In his interrogation of 13 June 1946 (NO-4728, Pros. Ex. 693), Pohl was confronted by Kaltenbrunner's testimony before the International Military Tribunal that, "there were only a handful of People in the WVHA who had any control or knew anything about concentration camps," to which Pohl commented:

"Well, that is complete nonsense. I described to you how these were handled in the WVHA. As for instance, in the case of the use of textiles and turning in of valuables, and also from Gluecks and Loerner right on down to the last little clerk, must have known what went on in the concentration camps, and it is complete nonsense for him to speak of just a handful of men."

In Liebehenschel's letter of 25 February 1943, written as chief of Amtsgruppe D [Amt D I] of the WVHA and addressed to all the concentration camp commanders, he states that the population in the East is beginning to be startled by the frequent casualties in the concentration camps. Apparently, in some areas at least, the secret was beginning to leak out.

{979}

The Tribunal is convinced that the ignorance professed by many of the defendants is the ignorance of convenience.

At the outset of the testimony, the Tribunal realized the necessity of guarding against assuming criminality, or even culpable responsibility, solely from the official titles which the several defendants held. It became apparent that, in conformity with the ancient German passion for high-sounding titles, many purely ministerial officers, performing perfunctory or even menial tasks, were designated by sonorous names which did not necessarily connote substantial power or authority. In some instances minor officers, engaged in purely routine tasks, were designated on the elaborate tables of organization by lengthy and awe-inspiring titles, which upon closer inspection were found to cover nothing more than a few desks in a remote corner. The Tribunal has been especially careful to discover and analyze the actual power and authority of the several defendants, and the manner and extent to which they were exercised, without permitting itself to be unduly impressed by the official designations on letterheads or office doors.

OSWALD POHL

Prior to 1934, defendant Pohl was chief disbursing officer of the German Navy. On a visit by Himmler to the naval base at Kiel in 1934, he met Pohl and persuaded him to sever his connection with the navy and assume an administrative position with the SS

Main Office. Pohl had been a member of the National Socialist Party since 1926 and of the SA since 1929. At Himmler's insistence he became chief of the administrative department of the SS Central Office in February 1934. In 1939 that office was organized into two Main Offices under the names, "Main Office Budget and Buildings," and, "Main Office Administration and Economy." These offices were in complete charge of all administrative matters affecting the fast growing SS. On 1 February 1942, these two Main Offices were united and renamed, "SS [Economic] Administrative Main Office," known as, "WVHA," to which was also added the Main Office of Inspector of Concentration Camps, which became Amtsgruppe D.

For 11 years Pohl was continuously the administrative head of the entire SS organization. His only superior within his field was Himmler. At the beginning of the war he became a member of the "Freundeskreis" or, "Circle of Himmler's Friends," a small select group of intimates who enjoyed Himmler's confidence. As chief of the WVHA he was in absolute control of an organization composed of 5 Amtsgruppen and 28 Aemter, with a personnel at

{980}

the peak of over 1,700 employees. He not only directed and administered the fiscal affairs of the entire SS but he was in charge of the administrative aspects of all concentration camps and was head of the tremendous industrial empire which the SS built up under Amtsgruppe W. It is obvious that his duties were not perfunctory or formal but that he was an experienced, active, and dominant head of one of the largest branches of the German military machine. Although he had no actual military duties in the field, he attained the military rank of Obergruppenfuehrer, which is equivalent to the rank of lieutenant general.

CONCENTRATION CAMPS

Three months after the outbreak of the war, Himmler ordered that "the supervision of the economic matters of these institutions and their application to work is the responsibility of SS Obergruppenfuehrer Pohl." The change in Reich policy by which concentration camps were converted from places of mere detention to places of productive free labor was announced in April 1942, and the ruthless plan of extracting from concentration camp inmates their last ounce of energy in furtherance of the Reich's war plans became operative. It became Pohl's task to implement this policy and to make it work effectively for the Reich. Neither Pohl nor the WVHA had anything to do with the commitment of inmates to concentration camps nor with their release, except by death. Neither Pohl nor any other member of the WVHA had authority to order the execution of concentration camp prisoners. Nor is there any evidence that he or they attempted to exercise any such prerogative. The order for executions originated between the Secret State Police and Himmler Personally. The greater part of the task of procuring inmates fell upon the Security Police and the SD, although it is quite evident that the SS and the Wehrmacht in the field rendered no little assistance. Pohl's jurisdiction began when the inmates reached the gates of the concentration camps. Pohl has contended that the inclusion in WVHA of Amtsgruppe D, which was concerned exclusively with concentration camp matters, was more a formal than an actual subordination; and that this Amtsgruppe, under Gluecks and Maurer, continued to operate more or less independently of Pohl,

taking most of their orders directly from Himmler. It is probably true to some degree that the heads of Amtsgruppe D, which had formerly been an SS Main Office, resented somewhat their subordination to Pohl and continued to look to Himmler for orders. The fact remains, however, that Pohl as head of the WVHA was the superior of Gluecks and

{981}

Maurer and was in a position to exercise and did exercise substantial supervision and control over Amtsgruppe D. Pohl himself, in his affidavit of April 3, 1947 (NO-2736, Pros. Ex. 525), states:

" * * Gluecks was chief of Amtsgruppe D and was subordinate to me in my capacity as Main Office Chief. Thus I became authority for the administration of concentration camps within the sphere of activity of the WVHA. The camp commanders were nominated by the SS Personnel Office on my recommendation and appointed by me."*

As chief judicial officer of the SS, he had full disciplinary power over all guards who served in the concentration camps. All judgments arising in disciplinary proceedings against SS guards were submitted to Pohl for modification or confirmation.

One of the purposes in organizing the WVHA was to centralize and 'concentrate administrative authority and to reduce the number of independent administrative offices. In view of the fact that the SS enterprises administered under Amtsgruppe W were manned by concentration camp inmates and in many instances operated in concentration camps themselves, it was inevitable that the administrative affairs of the camps should be placed in the hands of Pohl, who was also the head of the enterprises. The camps and the enterprises were so inseparable that a unified control of both had to be fixed, and this control was imposed on Pohl.

Armed with this power, Pohl energetically set about driving the inmates to the limit of endurance in order to further the economic and war efforts of the Reich. In April 1942, he wrote to Himmler:

"The custody of prisoners for the sole reasons of security, education, or prevention is no longer the main consideration. The mobilization of all prisoners who are fit for work, for purposes of the war now, and for purposes of construction in the forthcoming peace, come to the foreground more and more."

In the affidavit of Philipp Grimm (NO-2126, Pros. Ex. 298), who in 1942 was labor assignment officer at Sachsenhausen and later was transferred to office D II of WVHA, it is stated:

"Through my activity as labor assignment officer I know that in 1942 an order by Pohl was sent to the concentration camps, which authorized the camp commanders to retain prisoners who had been released for discharge by the Reich Security Main Office, but were important for the organization of labor in the camp. The duration of this illegal imprisonment could be extended to the end of the war."

To the very end of the war, Pohl kept a tight rein on all aspects of concentration camp administration. He constantly fought for

{982}

longer hours, more intense effort, more production, selection of specialized skills, less loafing, and more strict supervision. As of July 1944 there were 20 concentration camps and 165 labor camps supervised by his Main Office. There was no phase of the

administration of these camps in which he was not intensely interested, and this interest manifested itself at times in the smallest details. In some instances he recommended appointments and transfers of camp commanders, who were the slave drivers in the camps. In January 1943, in a letter to all camp commanders, he directed that the working hours of prisoners be kept at 11 hours per day during the winter, 6 days per week, and a half day on Sunday. In May 1941, when he found that half of a shipment of Jews from Hungary were women, he asked Himmler's approval for putting them to work on construction projects. Needless to say, Himmler consented. In December 1943, Pohl wrote to all camp commanders, complaining that SS guards were not urging prisoners to work sufficiently, stating, "Please instruct detachment leaders every Monday on this obvious duty of the guards."

In 1942, Gluecks, chief of Amtsgruppe D, in writing to the camp commanders, stated that Pohl had ordered that punishment by beating was to be executed by prisoners in concentration camps for men, but that it was forbidden to have foreign prisoners execute the punishment on German prisoners. This letter is significant because it recognizes Pohl's superior authority to issue such an order. If Gluecks enjoyed the degree of independence which Pohl attributes to him, he would have issued this order in person without attributing it to Pohl. On several occasions Pohl's interest led him to inspect concentration camps in person. He visited Ravensbrueck, Auschwitz, Dachau, and Oranienburg. During his visit to Auschwitz in 1943, Pohl was shown the plans for the enlargement of the camp, including the construction of four new crematories with modern gas chambers. His solicitude for the inmates led him to order that specially hardworking prisoners be granted additional rations of food and tobacco and permission to patronize the camp brothel. For this last service Pohl fixed the charge and prescribed the method of dividing the income between the female inmates, the woman manager, and the WVHA. He also held periodic conferences with concentration camp commanders in Berlin. It was part of his duty to select new sites for concentration camps and to determine their economic potentialities. When a new camp was proposed, he determined its size, capacity, and the number of inmates which would be utilized in it.

There is no need to further elaborate upon the proof on this point although much more could be adduced. From all the evidence, it becomes clear to the Tribunal that Pohl at all times had an

{983}

intimate and detailed knowledge of happenings in any way connected with the concentration camps. He made it his special business to know these facts. It is futile for him to say that he was not aware of the crematories when the plans were drawn and the construction supervised in his own organization and he visited the camps where they were installed. Nearly every Amt chief testified that he reported frequently to Pohl, in person, concerning events and problems arising in his immediate sphere. According to his own testimony and correspondence, he kept a running inventory, classified as to nationalities, of the labor supply of inmates in every camp. He knew how many prisoners died; he knew how many were unfit for work; and he knew what mass transfers were made from camp to camp. There was doubtless no other one person in Germany who knew as much about all the details of the concentration camps as Pohl. At least this much can be said and cannot be denied, that Pohl knew that hundreds of thousands of

men and women had been cast into concentration camps and compelled to work, without remuneration and under the most rigid confinement, for the country which had devastated their homelands and abducted them into bondage. When these slaves died from exhaustion, starvation, or from the abuse of the SS overseers, Pohl cannot escape the fact that he was the administrative head of the agency which brought about these tragedies. His was more than a mere consenting part. It was active participation. Leaving all other considerations aside, Pohl stands before this Tribunal as an admitted slave driver on a scale never before known. On this count if no other he is guilty of direct participation in a war crime and a crime against humanity.

The mistreatment of prisoners of war, especially Russian and Polish prisoners, in the concentration camps, must also be laid at the door of Pohl. On 30 September 1944, Martin Bormann, head of the Party Chancellory, sent out an order from Hitler, which said in part:

"The mobilization of labor of the prisoners of war will be organized with the present labor mobilization office in joint action between SS Obergruppenfuehrer Berger and SS Obergruppenfuehrer Pohl."

On 28 September 1944, Himmler ordered that the question of the labor allocation of prisoners of war was to be submitted to Pohl. Not since the Roman Caesars brought back their prisoners of war, chained to their chariot wheels, has such inhuman treatment been accorded captives in battle as is shown by the record in this case. They, too, were simply grist for Germany's mill. By her treatment of these prisoners, Germany made the honorable profession of a soldier a by-word and a slur.

{984}

DESTRUCTION OF THE WARSAW GHETTO

In the fall of 1942, Himmler's plans for the complete subjugation of Poland reached a pinnacle. The Jewish ghetto at Warsaw covered a total area of approximately 320 hectares, or 800 acres. It comprised a large residential area and, in addition, housed a great number of industrial enterprises, principally textile and fur manufacturing plants. The ghetto had a population of nearly 60,000 persons. In October, Himmler ordered that the entire Jewish population of the ghetto was to be gathered together in concentration camps in Warsaw and Lublin to be used as an immense labor pool for armament purposes. After the round-up was completed, the Jews were to be deported to large concentration camps in the East and Polish labor substituted in the Warsaw industries. Himmler added: "Of course, there, too, the Jews shall someday disappear in accordance with the Fuehrer's wishes." All private Jewish firms were to be eliminated and no Jew was to be employed in private industry. This order raised a strong protest from the armament firms in Warsaw, in which a large number of Jews were employed, but Himmler was obdurate and insisted on the letter of his order being carried out. The Jewish residents of the ghetto, however, resisted deportation vigorously, and a pitched battle, lasting over a week, was necessary to uproot them. In February 1943, Himmler directed that after the removal of the concentration camp the ghetto be completely demolished. In his order he stated:

"A master plan for the pulling down of the ghetto has to be submitted to me. It has to be accomplished in any case that the living space, which accommodated 500,000 subhumans and

was never suitable for Germans, will completely disappear, and that the city of Warsaw, with its one million inhabitants, will be reduced in size, having always been a dangerous center of rebellion."

This gigantic task of destruction and deportation was committed to Pohl as chief of the WVHA. Himmler directed that the "city center of the former ghetto is to be flattened completely and every cellar and every canal is to be filled in. After the work is finished, the area is to be covered up with earth, and a large Park is to be planted."

By an order dated 23 June 1943, addressed to the Higher SS and Police Leader in the East and to Pohl, Himmler ordered the erection of a concentration camp in the vicinity of Riga, to which the largest possible number of the male Jews were to be transferred. Surplus Jews from the ghetto were to be evacuated to the East, which meant ultimate starvation or extermination. In the

{985}

summer of 1943, Pohl set to work to carry out Himmler's order. The concentration camp in the Warsaw ghetto was established and Pohl appointed Goecke, a veteran of Mauthausen, as commandant. Pohl reported to Himmler that at first there were only 300 prisoners in the camp but that this number would be increased as speedily as possible. In October, Pohl reported that Amtsgruppe C of the WVHA had been charged with the technical execution of the demolition order and Amtsgruppe D with the placing of the prisoners. Pohl engaged four private contracting firms, who guaranteed to pull down and remove 4,500 cubic meters daily. He advised that 1,500 prisoners were being used as laborers at the end of October, but that upon securing additional mechanical equipment 2,000 more prisoners would be needed at once. In February 1944, Pohl reported that 3,750,000 cubic meters of buildings had been demolished, and that 2,040 prisoners were being used. By April, 6,750,000 cubic meters had been "pulled down and blasted," and 2,180 prisoners were being used. By June, 10,000,000 cubic meters had been destroyed and the concentration camp had been completed. Thus was accomplished the most complete task of destruction of a modern city since Carthage met its fate many centuries ago, and in this nefarious undertaking Pohl stood hand in glove with Himmler and Stroop in accomplishing the task of total destruction. This was not a city taken in battle; it had long before been captured and occupied by the German armed forces. It was the deliberate and intentional destruction of a large modern city and its entire civilian population. It was wholesale murder, pillage, thievery, and looting, and Pohl's part in accomplishing this abominable project is recorded in his own handwriting. He cannot free himself from his share in Brigadefuehrer Stroop's shameful boast—"The total number of Jews dealt with is 56,065, including Jews caught, and Jews whose extermination can be proved."

MEDICAL EXPERIMENTS

Pohl's connection with the medical experiments, which have already been described, consisted only in supplying the subjects from the inmates of the concentration camps. It is not claimed that he actually participated in the performance of the experiments or did anything more than make them possible by supplying victims from his inmate pool. Here, again, his own writings convict him. In his own affidavit, dated 23 June 1946 (NO-065, Pros. Ex. 183), Pohl outlines his part in these experiments. He states that he was aware

that experiments were being performed from April 1942 until the end of 1944; that Dr. Schilling continually asked for prisoners, but that he does not know the exact number that were sent; that at Himmler's request prisoners were

{986}

sent to Dachau for the purpose of experimentation; that he accompanied Himmler to Dachau on one occasion and observed a high-altitude experiment; he received reports from Dr. Lolling of the number of prisoners used in experiments, totalling 350 to 400; he knew of Dr. Clauberg's experiments in sterilization; he knew that about 40 different experiments were performed. He states (NO-407, Pros. Ex. 184):

*"The inmates were simply picked out and assigned for the experiments. Sometimes Himmler specified that inmates condemned to death should be used, but this was not always the case. There was no requirement that the subjects volunteer. We conducted no campaigns in the camp for volunteers; if these doctors were experimenting on volunteers, they need not have gone to Himmler and the concentration camps. It was for the very reason that they could not get volunteer subjects * * * that they went to Himmler and got him to consent to experiments on concentration camp inmates. This was a fact well known to anyone connected with those experiments. * * * In accordance with Himmler's racial policies, non-German nationals were essentially used in preference to German nationals."*

Further proof of Pohl's connection with these outrageous experiments would seem unnecessary, but there is plenty in addition. The affidavit of Rudolf Brandt, Himmler's adjutant, states:

"Subjects for experiments were selected by Pohl. Himmler or I used to inform Pohl that a certain number of prisoners should be supplied for a particular experiment. Certain groups were usually specified."

Concerning the warming experiments at Auschwitz and Dachau, Himmler wrote to Dr. Rascher: "I am sending this letter to Pohl, whom I request to order the execution of your experiments."

Himmler wrote to Dr. Grawitz approving the use of eight Jews of the Polish Resistance Movement for experiments in epidemic jaundice at Auschwitz and sent a copy to Pohl, with the notation—"Request that you duly note."

Dr. Sievers wrote to Pohl as follows:

"In compliance with our request of 30 September 1943, you approved the carrying out of experiments for the production of a new type of spotted fever vaccine, and for this purpose transferred 100 suitable prisoners to Natzweiler."

Pohl was particularly interested in the production of Schweigrohr, a plant to be used in producing wholesale sterilization. Pohl wrote to Himmler in June 1942, stating that experiments with this plant were at a standstill because the plant was obtainable only from North America and the proposed process for growing the plant in Germany in hot houses would not yield sufficient drug

{987}

to permit large-scale experiments. Continuing, Pohl stated that he had informed Dr. Koch that he would attempt to obtain permission to build a large hot house for cultivation of the plant. Pohl arranged to put Dr. Lolling, whom he refers to as "chief of my office D III," in touch with a Vienna biologist for further study, looking toward the large-scale

production of Schweigrohr. Rudolf Brandt sent to Dr. Clauberg Himmler's order to first confer with Pohl and then go to Ravensbrueck to pursue the sterilization program on Jewesses in that camp. Brandt inquires how long it would take to sterilize a thousand Jewesses by X-ray without their knowing it. Further proof could be accumulated, but it is unnecessary. Pohl's participation in the medical experiments was intimate and direct, and he must share the responsibility for their criminality.

The Tribunal finds that the food experiments in which Pohl was greatly interested did not involve the use of poisons but were simply legitimate experiments in the nutritional values of food. As such, of course, they had no element of criminality.

ACTION REINHARDT

This action, as has been indicated, involved a plan for draining the Eastern occupied countries of their last vestige of wealth. It had the two-fold purpose of reducing the East to abject poverty so that starvation would be the inevitable result to the population and, at the same time, filling the Reich Treasury. It was a program of deliberate wholesale brigandage which was, at the same time, an added aspect of the extermination program.

In the execution of this program, Pohl's WVHA played a major role. His organization was the clearing house for all the booty. All of the stolen property was routed through WVHA, where it was inventoried, appraised, and distributed. That Pohl knew of the criminal source of this property is evidenced by his letter of 9 February 1944, to Maurer, directing that valuables found in clothing were to be delivered in sealed boxes to Amtsgruppe D, and directing further, that nothing in the shipment should reveal its origin. The money which was stolen was secreted in the Reich Bank under the assumed name of Max Heiliger. On 4 July 1944, Pohl, in a communication to the Main Office chiefs, announced the names of officers responsible for the property seized in several areas, and stated: "As a matter of principle, it has to be kept in mind that the entire Jewish property is to be incorporated into the Reich property." Property from the Action Reinhardt which had been delivered to the Reich Main Treasury was kept in a separate account, appropriately called, "Department Booty."

Moved by the Christian spirit of Christmas, Pohl on 6 November

{988}

1943, wrote to Himmler, stating that he intended to make gifts of watches and fountain pens to SS units, and asked whether the gifts should be made in Himmler's name. Himmler approved Pohl's generous plan and added that 15,000 ladies' watches should be distributed to Germans coming from Russia for resettlement. Pohl thought it would be a generous gesture to distribute 3,000 clocks which had been repaired to guards at the concentration camps and to Berlin inhabitants who had been bombed. As an after-thought, he suggested to Himmler that 16 extra-fine gold precision wrist watches, valued at 300 Reichsmarks each, which had been repaired, be distributed among commanders of technical units.

Pohl's own statement as to his knowledge of the operation of Action Reinhardt and of his participation in the distribution of the loot is again quite sufficient. In his affidavit of 2 April 1947 (NO-2714, Pros. Ex. 585), he states that the action was instituted in 1941 or 1942 and was in direct charge of SS Gruppenfuehrer Globocnik; that by Himmler's

direction he contacted the president of the Reich Bank to arrange for delivery of the valuables; these transactions were to be carried out in extreme secrecy. Together with Georg Loerner, Frank, and others, he visited the Reich Bank and was shown the accumulated valuables in the bank vaults. "It was never doubted," he said, "that this loot was taken from Jews exterminated in the concentration camps. * * * As I learned in 1943, gold teeth and crowns of inmates of concentration camps were broken out of their mouths after liquidation. This gold was melted down and delivered to the Reich Bank. * * * When I received all the vouchers, setting out the economic assets received, I realized the extent of the operation. I realized that the greatest Part of the textile goods listed in these reports had been taken from people who had been violently put to death and that the Purpose of the operation had been the extermination of the Jews."

In another affidavit, 15 July 1946 (4045-PS, Pros. Ex. 536), Pohl further indicates his knowledge of, and participation in the ghoulisn scramble. The facts stated therein are cumulative and need not be specifically referred to.

The fact that Pohl himself did not actually transport the stolen goods to the Reich or did not himself remove the gold from the teeth of dead inmates, does not exculpate him. This was a broad criminal program, requiring the cooperation of many persons, and Pohl's part was to conserve and account for the loot. Having knowledge of the illegal purposes of the action and of the crimes which accompanied it, his active participation even in the afterphases of the action make him particeps criminis in the whole affair.

{989}

OSTI [EASTERN INDUSTRY]

Eastern Industries, known as "OSTI," was a running-mate of Action Reinhardt in the so-called final solution of the Jewish problem in the East. OSTI was organized 1 March 1943, and was dissolved one year later. The whole history of this project is clearly described in the report of Johann Sebastian Fischer in a final audit, 21 June 1944 (NO-1271, Pros. Ex. 491). It was impossible to completely strip the Eastern territories of all Jewish property. Some because of its nature could not be removed and some 'could be operated best by the Reich on the spot. To utilize this unremovable property, OSTI was organized, with a capital of 100,000 Reichsmarks. Of this Pohl held 75,000 and defendant Georg Loerner 25,000. Pohl was chairman of the Aufsichtsrat, or supervisory board, of which Georg Loerner was also a member. Globocnik and Dr. Max Horn were the active managers. Fischer describes the corporate purposes as follows: "OSTI had to administer all Jewish property within the territory of the Government General except cash, jewelry, and clothing; and in particular to utilize the manpower of the Jews living in the Government General for tasks benefiting the Reich."

This involved—

- (1) Utilization of the working capacity of the Jews by erecting industrial plants in the Government General in connection with the Jewish labor camps.
- (2) Taking over commercial enterprises which had previously been maintained by the SS in the Government General.

(3) Taking possession of movable property which was formerly Jewish, especially machines and raw materials. The machines were to be installed in plants and the raw materials to be used.

(4) Utilization of machines, tools, and merchandise formerly Jewish property which had been transferred to non-Jewish ownership.

A partial list of the industries thus administered included a glass works in Wolomin, a peat-cutting plant near Lublin, an iron foundry, a large textile factory, a plant for the manufacture of brushes, and a stone quarry. Globocnik states that the entire manpower was brought together and kept in closed camps into which the manufacture of essential items for war had been transferred. "* * * all together 18 establishments had been built up and still more were to be added. About 52,000 laborers were available."

The project continued as long as the supply of Jewish concentration camp labor was available, but when, due to the exigencies of the war, in the fall of 1943 this labor supply was withdrawn, it was determined to liquidate OSTI, and Dr. Horn was designated as liquidating officer.

{990}

As will be observed, OSTI was simply another manifestation of the policy of slave labor and appropriation of private property. Linked with Action Reinhardt, it was the consummation of the Reich plan to leave the occupied Eastern countries as vast stretches of scorched earth. In the OSTI phase of this plan, Pohl had even a more direct connection than he had with Action Reinhardt. Here he was the directing head and the chief executive of the project. As an original incorporator, he was in it from its inception and he actively participated in every phase of it until its liquidation. This being true, he was guilty of war crimes and crimes against humanity.

Under a plan which was perhaps devised to give some semblance of legality to this inherently lawless plan, Pohl was designated as a trustee of the properties seized in the East and operated by OSTI. This was a strange species of trusteeship. All of the interests of the trustee were violently opposed to those of the cestius qui trustent. The recognized concept of a trustee is that he stands in the shoes of his beneficiaries and acts for their benefit and in opposition to any encroachment on their rights. Here, however, the trustee was in the service of adverse interests and acted at all times under an impelling motive to serve those interests at the expense of his beneficiaries. Actually, the trusteeship was pure fiction. It cannot be believed that it was ever the plan of the Reich to return any of the confiscated property to its former Jewish owners, most of whom had fled and disappeared, or had been exterminated. The only probative value of this fictitious trusteeship is to furnish another cord to bind Pohl closer to OSTI's criminal purposes.

In an attempt at partial exculpation, Pohl has submitted in evidence (Pohl 3, Pohl Ex. 2) a decree, dated 28 February 1933, signed by Reich President von Hindenburg and Chancellor Hitler, suspending the provisions of the Weimar Constitution, which guaranteed personal freedom, freedom of speech and of the press, the right of assembly, privacy of communication, and immunity from search. The Secret State Police were given almost unlimited power over persons and property, independent of any obligations and free from restraint or review. They became the supreme authority of the

land. This tyrannical agency was the partner of WVHA in the administration of the concentration camps. Upon the promulgation of this decree, Germany became a police state and the liberty and lives of all German citizens were dependent upon the whims of men like Heydrich and Kaltenbrunner. It is to be assumed that if this is the kind of national government the people of Germany preferred, they were entitled to it. If they consented to surrender their human liberties to a police force, that was their

{991}

privilege, and any outsider who intruded could well be told to mind his own affairs. But when the attempt is made to make the provisions of such a decree extra-territorial in their effect and to apply their totalitarian and autocratic police measures to non-Germans and in non-German territory, they thereby invaded the domain of international law, where reason still rules. The Nazi leaders, drunk with power, could abuse and deceive the German people just as long as the German people submitted, but when they extended their tyranny into foreign lands and attempted to justify it by the provisions of local German Law, their arrogance became over-extended and a power superior to Hitler's came into play to stop them.

In recapitulation and upon the findings of fact heretofore made, the Tribunal determines that the defendant Pohl is guilty of war crimes and crimes against humanity, as alleged in counts two and three of the indictment.

COUNT FOUR

The Tribunal finds that the defendant Pohl was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

AUGUST FRANK

This defendant joined the SS as a private on 1 May 1932, and joined the National Socialist Party on 1 January 1933. In 1933, the concentration camp at Dachau had a number of minor industries manned by inmate labor, most of which were concerned with concentration camp maintenance. From 1933 to 1935, this defendant was engaged in minor administrative duties in these comparatively small enterprises. In 1935, at the request of the defendant Pohl, this defendant became SS Administrative Officer of the Special Purpose Troops (SSVT) and of the SS Death Head units, which were charged with the guarding of the concentration camps. His jurisdiction in this second capacity was somewhat limited because Kaindl was the special liaison officer for the Death Head units. In February 1940, this defendant became chief supply officer of the Waffen SS and Death Head units under Pohl, and when the WVHA was organized in 1942, he became Pohl's deputy chief of WVHA and chief of Amtsgruppe A, the administrative Amtsgruppe of WVHA. He served in this capacity until 1 September 1943, when he was permitted to resign to become administrative chief of the Order Police, which terminated his connection

{992}

with the WVHA. In this case we are concerned with judging his conduct only between 1 September 1939, and 1 September 1943.

Amtsgruppe A, of which Frank was the chief was the administrative branch of WVHA. It comprised five Aemter, as follows:

Amt A I—office of budgets.

Amt A II—finance and payroll.

Amt A III—legal matters.

Amt A IV—auditing office.

Amt A V—personnel.

Only two specifications in counts two and three of the indictment are involved in the consideration of Frank's case—(1) the administration of concentration camps, and (2) Action Reinhardt.

At the outset it is best to dispel an illusion, which all defendants have tried to create, that the component Aemter and Amtsgruppen in the WVHA were dissociated, isolated, and operated with almost complete independence of each other. The contention of the defendants has been that each Amt occupied a secluded cubicle which was so insulated that it was practically impossible for the members of one Amt or Amtsgruppe to know what was going on in another. This concept runs counter to the whole idea behind the organization of the WVHA, which was to consolidate and unify all the administrative functions of the SS. Not only the underlying plan of the organization but the nature of its functions make this contention entirely incredible. The administration of the concentration camps was a complex and intricate task, which was made further involved by the operation of the industries under Amtsgruppe W. Correlation and coordination were indispensable. Food, clothing, wages, labor supply, raw materials, financing, auditing, personnel, and security—all these were integrated functions, each of which bore an intimate relation to every other. As a comprehensive undertaking, it was a unit. With a personnel at the peak of about 1,700, it was obviously impossible for each person to know exactly what the other was doing, but each person must have known that the entire group was taking some part, great or small, restricted or unlimited, in the main task of administering the fiscal affairs of the SS. For example, the work of Amtsgruppe C in concentration camp construction and maintenance necessarily impinged upon Amtsgruppe A, which provided the money, Amtsgruppe B, which provided the raw material, and Amtsgruppe D, which provided the labor. Again, Amtsgruppe D, which was directly in charge of concentration camps, was dependent upon Amtsgruppe A for money and personnel, upon Amtsgruppe B for food, clothing, and billets, and Amtsgruppe C for construction and maintenance needs. As early as November 1941, Pohl suggested that meetings of all the W office chiefs be held periodically, "to

{993}

bring up for discussion all matters of general interest." Accordingly, Maurer issued an invitation to all the chiefs of W offices to attend a meeting 17 November, "in order to discuss questions and matters which concern all Amt chiefs and which can serve as suggestions for them." Georg Loerner, Hohberg, and Volk were present, among others. Again, in September 1943, Pohl called a meeting of W office chiefs, at which defendants Georg Loerner, Baier, Bobermin, Mummmenthey, Klein, and Volk were present with

others. Pohl announced that the meeting had been called because it had been noticed that following the removal of some of the Amts from Berlin, "regular cooperation between the staff and the offices is not always assured. * * * It is necessary more than ever before to cooperate very closely with the staff."

The isolation for which the defendants contend was in the very nature of things, a myth, and every person in the organization must have known that the WVHA was charged with two tremendous and related tasks—the economic administration of the concentration camps and the operation of the W industries with the labor supply which the camps furnished. Had the various defendants been shrouded in the profound ignorance which each claims, Pohl never could have run the WVHA with anything near the outstanding success which he achieved. The whole organization would simply have fallen apart for lack of cohesion.

What part, then, did the defendant Frank have in this industrial empire—an empire in which the chief problem of industry was adroitly solved by locking its labor supply behind barbed wire and paying it nothing? A man of more limited genius than Pohl could hardly have failed under those circumstances to show a profit.

First of all, Frank must conclusively be convicted of knowledge of and active and direct participation in the slave labor program. It cannot be imagined that he believed that all the inmates of the 20 concentration camps and the 165 labor camps scattered throughout the entire continent of Europe were German nationals, composed of habitual criminals, anti-Nazi and asocial persons, and others whom the Reich for security purposes thought best to imprison. He could not have been ignorant, for example, of Pohl's letter of 26 June 1942, to all Amtsgruppen, stating that the head of every branch office which was provided with prisoners or prisoners of war for work was responsible for the prevention of escape, robbery, and sabotage. He could not have been ignorant (because he himself dictated it) of Pohl's letter of 28 July 1942, to Himmler, discussing the commanders of many of the concentration camps and their qualifications and making recommendations for reassignments, detachments, and promotions. As an incorporating

{994}

partner with Georg Loerner in the leather and textile enterprise at Dachau, with an investment of 10,000 Reichsmarks which he protests came from some unknown source, Frank must have known that by 1 April 1941, 700 inmates of Ravensbrueck were employed. When, in September 1942, Frank wrote to the garrison administrators at Lublin and Auschwitz and directed that the Jewish Star be removed from the garments of deceased inmates, he must have been aware that the concentration camps were not populated exclusively by Germans. His testimony as a witness in his own behalf negatives any such ridiculous inference. It must be concluded, therefore, that Frank knew that the slave labor was being supplied by the concentration camps on a tremendous scale. It must also be conclusively presumed that Frank knew that slavery constituted a crime against humanity.

As to Action Reinhardt, his connection is equally obvious. His counsel protests that "he did not work for the political aims of National Socialism." The answer to this is that he had to work for those aims. Germany was a one-party political state; National Socialism

was Germany. The Party and the Reich were so inseparable, their aims and purposes were so interwoven, that it was impossible for anyone to have worked for the one without working for the other. It is futile to claim that the program of extermination of the Jews, or the ravaging of the Eastern countries, or the program of enforced slave labor, or the devastation of conquered territory, stemmed from National Socialist policy but not from the Reich. The SS, in which Frank attained the high rank of Obergruppenfuehrer, was a National Socialist agency, and anyone who worked, as Frank did, for 8 years in the higher councils of that agency cannot successfully claim that he was separated from its political activities and purposes.

It is his contention that he first became aware of the Jewish extermination program after hearing Himmler's Poznan speech 4 October 1943, a month after he had left the WVHA. It is his contention that, through the long series of acts relating to the disposition of the proceeds of Action Reinhardt before that date, he acted in the belief that the hundred million Reichsmarks of Jewish property, the 2,000 carloads of textiles, and the staggering amount of other loot arose from Jewish inmates who had died of natural causes and in the ordinary course of events. The very magnitude of the inventory would have put a person much less naive than Frank on inquiry, and of course, Frank's designation of the loot as "Jewish concealed and stolen goods," indicates a resort to secrecy and subterfuge which is entirely in conflict with his profession of innocent ignorance. But even if we were to give Frank's contention full faith and credit (which we do not), we

{995}

come to the inescapable conclusion that if he was not a confederate in murder he certainly was in larceny. By what process of law or reason did the Reich become entitled to one hundred million Reichsmarks' worth of personal property owned by persons whom they had enslaved and who died, even from natural causes, in their servitude? Robbing the dead, even without the added offense of killing, is and always has been a crime. And when it is organized, planned, and carried out on a hundred-million-mark scale, it becomes an aggravated crime, and anyone who takes part in it is a criminal.

It is Frank's contention that he did not know and had no means of knowing of the Jewish extermination program or that the vast amount of property accruing from Action Reinhardt resulted from the violent killing of Jews in concentration camps. He states that he believed that the property came from Jews who had died from natural causes, the number of whom was greatly increased by epidemics, or from stock piles of merchandise seized during the invasion of the Eastern countries. Both the amount and the nature of the goods seized make the acceptance of such a contention impossible. In a top secret communication to the chiefs of administration at Lublin and Auschwitz, dated 26 September 1942 (NO-724, Pros. Ex. 472), a year before Frank left the WVHA, he speaks of the utilization of the property "of the evacuated Jews," and as has been noted, refers to the goods as "originating from thefts, receiving of stolen goods and hoarded goods." He proceeds to specify the manner of distribution of the confiscated property, referring to the various articles by name. These are some of the articles which he claims to have assumed were seized from Jews who died from natural causes in concentration camps: alarm clocks, fountain pens and mechanical pencils, electric razors, flashlights, feather beds, quilts, umbrellas, walking sticks, thermos jugs, baby

carriages, table silver, bed and table linen, and furs. It is difficult to imagine a convoy of Jews from the East, packed so tightly into freight cars that many died, carrying with them for their 'comfort and convenience such items as electric razors, feather beds, umbrellas, thermos jugs, and baby carriages. It is equally incredible that they would be able to keep such articles in the concentration camps until they died of natural causes. It is fair to assume that the prisoners who froze to death or who died from exhaustion and exposure were not equipped with feather beds, quilts, and woolen blankets. Nor can it be believed that before being herded off to Auschwitz or Lublin they were given an opportunity to gather up their collections of old coins and stamps with which to amuse themselves during their idle time.

The fundamental question now arises as to Frank's criminal

{996}

responsibility for the hundreds of thousands of murders which were perpetrated in the concentration camps and which were followed by the wholesale confiscation of the property of the dead men. Assuming that Frank ultimately heard of the extermination measures, can it be said as a matter of law that his participation in the distribution of the personal property of the inmates exterminated makes him a participant or an accessory in the actual murders? Any participation of Frank's was post facto participation and was confined entirely to the distribution of property previously seized by others. Unquestionably this makes him a participant in the criminal conversion of the chattels, but not in the murders which preceded the confiscation.

We therefore cannot find from the proof that the defendant Frank is in law guilty of the murders of the Jews in the concentration camps, but we do find that he was guilty of participating and taking a consenting part in the wholesale looting which was described as Action Reinhardt.

Therefore, on two specifications—the slave labor program, heretofore, described, and the looting of property of Jewish civilians from the Eastern occupied countries—we find the defendant Frank guilty of war crimes and 'crimes against humanity.

COUNT FOUR

The Tribunal finds that the defendant Frank was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

HEINZ KARL FANSLAU

This defendant joined the National Socialist Party and the Allgemeine SS on 1 July 1931. On 1 March 1938, he became a member of the SS Special [Purpose] units, which later came to be known as the Waffen SS. In this organization he ultimately attained the rank of Brigadefuehrer (brigadier general). In January 1934 he became an auditor in the SS Central Administration Office at Munich. Between that date and the organization of the WVHA in February 1942, he held various administrative posts in the SS organization, with the exception of the period, 1 December 1940 to 30 September 1941, during which he was commander of the supply battalion of the SS Viking division at the front.

Within the organization of the WVHA, he was chief of Amt A V, the personnel office, and, upon Frank's resignation in September 1943, Fanslau succeeded him as chief of Amtsgruppe A, the chief administration office of the WVHA. As chief of Amt A V,

{997}

Fanslau's personnel work involved replacements, recruiting, discharges, promotions, assignments, and transfers. Within this field he dealt indiscriminately with the Waffen SS personnel and also with that of the concentration camps. Although he did not have the power to actually appoint camp commanders, he did make recommendations to Himmler or to the Main Personnel Office, through Pohl, for their transfer, appointment, or promotion, and he personally signed orders transferring camp commanders. (NO-4560, Pros. Ex. 716; NO-4505, Pros. Ex. 720.)

Much of the comment in this judgment as to the defendant Frank is equally applicable to the defendant Fanslau. As the officer in charge of personnel, he was as much an integral part of the whole organization and as essential a cog in its operation as any other of Pohl's subordinates. He was in command of one of the essential ingredients of successful functioning. This has no relation to "group condemnation," which has been so loudly decried. Personnel were just as important and essential in the whole nefarious plan as barbed wire, watch dogs, and gas chambers. The successful operation of the concentration camps required the coordination of men and materials, and Fanslau to a substantial degree supplied the men. He was not an obscure menial; he was a person of responsibility and authority in the organization, who was charged with and performed important and essential functions. As chief of Amtsgruppe A after Frank's resignation he occupied a dominant position right near the top of WVHA. His 'claim that he was unaware of what was going on in the organization and in the concentration camps which it administered is utterly inconsistent with the importance and indispensability of his position. Whether or not he was aware of the cold-blooded program of extermination of useless concentration camp inmates, he must have been aware that millions of human beings had been herded into concentration camps, in violation of all their rights and solely because Germany needed their labor, to work under the most inhumane circumstances.

The Tribunal finds without hesitation that Fanslau knew of the slavery in the concentration camps and took an important part in promoting and administering it. This being true, he is guilty of war crimes and crimes against humanity.

Evidence was introduced that while defendant Fanslau was in command of the supply battalion of the Viking division, which was engaged in the campaign against Russia in the Ukraine, a number of atrocities were perpetrated against the Jews in the vicinity of Tarnopol by the troops under Fanslau's command. The character of this proof has made the Tribunal reluctant to accept it as true beyond a reasonable doubt. The evidence as to Fanslau's

{998}

participation in these events was almost entirely hearsay and rumor, sprinkled with conclusions. Only the witness Otto claimed to have personal knowledge upon which to base his testimony. In view of the history of this witness, medical and otherwise, the Tribunal is unwilling to accept his testimony as true, especially when related to such a

serious accusation. The number of military units which were present on the occasion—SS Einsatzgruppen, SD troops, Wehrmacht members, Ukrainian police, and others—make identification of the actual perpetrators unreliable.

The Tribunal, therefore, finds no criminal responsibility attaches to defendant Fanslau's conduct as an officer of the Viking division.

COUNT FOUR

The Tribunal finds that the defendant Fanslau was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

HANS LOERNER

Defendant Hans Loerner joined the National Socialist Party on 1 January 1932, and the Allgemeine SS on 1 April 1933. He served as an administrative officer of the Allgemeine SS until he was transferred to the Waffen SS in October 1939, being later transferred to the Central Administration Office at Berlin, where he became a subordinate of Pohl as a personnel officer. He ultimately attained the rank of Obersturmbannfuehrer (lieutenant colonel) in the SS. Upon the organization of WVHA in 1942, he was appointed chief of Amt A I, the office of budgets. In April 1944, when Gustav Eggert, chief of Amt A II, was transferred to a field unit, Amts A I and A II were combined, and Loerner became chief of both Amts. Amt A II was concerned with finance and payroll matters. In the summer of 1944 he became deputy chief of Amtsgruppe A.

It is Loerner's contention that, with the adoption of the open budget at the beginning of the war, his duties greatly diminished and subsequently all but disappeared, and that the only substantial task left for him to perform was the simplification of the Todt Organization, to which most of his time was devoted. The fact remains, however, that Loerner continued to perform important administrative duties in connection with his Amt all through the war. It is hardly conceivable that he would have been retained as head of an office which had entirely lost its usefulness. On 11 May 1942, Loerner and Frank conducted negotiations for 6 days with the Reich Minister of Finance on the SS budget, involving the

{999}

number, rank, and salaries of personnel. In September 1942 Loerner rendered a report to the Reich Court of Accounts, stating that seven collecting camps for "undesirable Polish elements," near Danzig had already been established. He further reports that construction of a much larger camp, Stutthof, was begun at the end of 1939.

In October 1942, Loerner wrote that Himmler had ordered the Ahnenerbe to establish an Institute for Scientific Military Research, the expenses of which were to be met from funds of the Waffen SS, and instructed that "bills due were to be handed in to this office for payment." In November 1942, Sievers, who was one of the principals in the Ahnenerbe program, notes that he had discussed in detail with Loerner the plan to have the expenses of the Institute for Scientific Military Research met by the SS. The institute referred to was a part of the over-all plan for using concentration camp inmates for

medical experiments, but there is no evidence that, either through Sievers or otherwise, Loerner became aware of the criminal purposes of the institute.

During 1942 and 1943 Loerner was greatly concerned with the fixing of wage scales for the Waffen SS. In connection with the concentration camps, Kaindl, and later Burger of Amt D IV, concentration camp administration, assembled the budget items for the concentration camps and passed them on as part of the entire budget of the Waffen SS to Loerner in Amtsgruppe A, who reviewed it and put it in shape to be transmitted to the Main Department of Finance in Berlin.

After Loerner took over the control of Amt A II, his connection with the administration of the concentration camps became even more intimate, for here he was confronted by problems of financing and meeting payrolls. Eichele, who was paymaster of the Waffen SS, with an office in Dachau, states (NO-2325, Pros. Ex. 514): "In my work in the pay office, I was subordinate to Aemter A I and A II of the WVHA, of which Hans Loerner was the head." Requisitions for wages for SS personnel were made to Loerner in office A I. In the establishment of wage scales for concentration camps, Pohl ordered that Loerner be consulted.

From this proof it becomes quite apparent that the defendant Hans Loerner was anything but a figurehead in the WVHA. In spite of the diminishing importance of his office, he continued until the end to exercise vital and important functions within the structure of the WVHA in connection with its administration of the concentration camps. He was more than a mere bookkeeper. He exercised discretion and judgment and made important decisions, many of which related directly to the procurement and operation of concentration camps. To say the least, he took a

{1000}

consenting part in and was connected with the operation and administration of the concentration camps, which, as has been already pointed out, operated with a program of slave labor throughout the war.

By reason of his direct and intimate association with this program, defendant Hans Loerner must be deemed to be guilty of war crimes and crimes against humanity.

The evidence upon which it is sought to criminally implicate the defendant Hans Loerner in Action Reinhardt is in the opinion of the Tribunal insufficient to justify a conclusion of guilt on this specification.

COUNT FOUR

The Tribunal finds that the defendant Hans Loerner was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

JOSEF VOGT

The date at which Vogt joined the National Socialist Party is uncertain due to contradictions in the proof, but it was either in 1920, 1937, or 1938. The date of his entry into the SS is also indefinite. In his affidavit he states that he was never a member of the Allgemeine SS, but his official service record contains the entry, "1 October 1936, entry

into Allgemeine SS." In any event, it is clear that he was a member of the Party and of the SS before the war. In the SS he attained the rank of Standartenfuehrer, or colonel. Between 1936 and 1942, he served as an auditor, or in some related capacity in various SS offices, and when WVHA was organized in the spring of 1942, he became chief of Amt A IV, the office of audits, under the defendants Frank and Fanslau, in which office he continued until the surrender. Certain departments of the SS were excluded from the auditing functions of Vogt's Amt. Amtsgruppe C, the Main Construction Office, had its own separate auditing service under defendant Eirenschmalz in Amt C VI; Amtsgruppe W, the economic enterprises, was independently audited; expenses for medical and welfare service were not audited by Vogt's Amt, as was also true of the SS paymaster's office in Dachau. Only the stationary units of the Waffen SS were subject to audit by Amt A IV; all mobile units were subject to audit by the army administration, and all SS offices in the occupied territories were independently audited on

{1001}

the spot. Amt A IV did audit the receipts and disbursements of about 300 garrison cashiers, together with the records of Amtsgruppen A, B, and D of the WVHA. Vogt's duties never transcended those of an auditor. He was never a financial director; he did not authorize purchases, requisition material, direct distribution, order payment, or in any other way control fiscal policy. His sole task was to inspect and analyze the records (which others had made) of past transactions.

The prosecution seeks to inculcate Vogt on two grounds—that he took a consenting part in and was connected (1) with the mistreatment of concentration camp inmates, or at least in the employment of slave labor in the camps, and (2) with the atrocities incident to Action Reinhardt.

As to the first specification, there is no claim that Vogt was either a principal in, or an accessory to the actual mistreatment or enslavement of the concentration camp inmates. The most that is claimed is that because of his position he must have known about them and therefore took a consenting part in and was connected with them. His consent is not objectively shown. He nowhere expresses or implies consent. The only consent claimed arises from imputed knowledge—nothing more. But the phrase, "being connected with" a crime means something more than having knowledge of it. It means something more than being in the same building or even being in the same organization with the principals or accessories. The International Military Tribunal recognized this fact when they placed definite limitations on criminality arising from membership in certain organizations. There is an element of positive conduct implicit in the word "consent." Certainly, as used in the ordinance, it means something more than "not dissenting." Perhaps in the case of a person who had power or authority to either start or stop a criminal act, knowledge of the fact coupled with silence could be interpreted as consent. But Vogt was not such a person. His office in WVHA carried no such authority, even by the most strained implication. He did not furnish men, money, materials, or victims for the concentration camps. He had no part in determining what the inmates should eat or wear, how hard they should work, or how they should be treated. Nor is there any proof that he knew what they did eat or wear, or how hard they did work, or how they were treated. The most that can be said is that he knew that there were concentration camps and that there were inmates. His work cannot be considered any more criminal than that

of the bookkeeper who made up the reports which he audited, the typist who transcribed the audit report, or the mail clerk who forwarded the audit to the Supreme Auditing Court.

{1002}

ACTION REINHARDT

In June 1943 there arose some suspicion of financial irregularities in the SS garrison treasury at Lublin, whereupon Frank ordered Vogt to proceed to Lublin to audit the treasury books. During his audit, Vogt came across an "Account R," containing the record of a very large amount of money on hand. Vogt asked Wippern, Globocnik's deputy, what the account represented and was told that it was a secret which could not be disclosed. Vogt was told later, however, that the money had been confiscated from the Jews and then was shown a trunk full of jewelry and rare coins which was kept in a safe. The next day Wippern showed him a house stored with clothing which Wippern said had come from the confiscation. Before leaving Lublin, Vogt complained to Globocnik that the record of this account was not properly kept and that Globocnik did not have proper certificates identifying the owners of the property. He also commented that the Supreme Auditing Court had no notice of the fund and had no opportunity to audit it, as was their right and duty. After some controversy, Vogt and his assistant, Hahnefeld, returned to Berlin and reported to Frank and Pohl, and also to Knebel, a representative of the Supreme Auditing Court.

No further audit of the Reinhardt fund was made by Vogt, nor does it appear that he ever did anything further in connection with it except to write a letter on 15 March 1944, to all WVHA advisors asking whether they had any receipts or expenditures in connection with the evacuation of the Jews which had not been settled. This letter was written in pursuance of Pohl's order 9 December 1943, directing that upon completion of the resettlement operation vouchers were to be presented for audit to Vogt's Amt A IV. Vogt's letter, 15 March 1944, was merely a final check on compliance with Pohl's order.

Except for the audit of June 1943, referred to above, Vogt made no further audit of the proceeds of Action Reinhardt, but subsequent audits were made by Melmer, who had no connection with Vogt or his Amt.

It will be observed that this audit by Vogt of the garrison treasury at Lublin was not in performance of his regular duties. It was a special assignment by Frank, impelled by unusual and urgent circumstances which called Vogt aside from his usual duties. It constitutes a single isolated instance in which Vogt came in contact with Action Reinhardt. The question naturally arises, what should Vogt have done under the circumstances to avoid implication in Action Reinhardt? If his single experience amounted to taking a consenting part in or being connected with the felonious

{1003}

project, at least it can be said that he avoided all future experiences. At the time of his audit in Lublin, Action Reinhardt had been in progress for nearly two years and was near the point of conclusion. It was far too late to attempt to stop the launching of the vicious program even if Vogt had had the power to do so. The harm had been done, and he could not prevent it. He promptly reported his discoveries to his superiors and severed whatever slight connection he may have had with the project. He had inadvertently

stumbled upon evidence of a crime which had already been committed. Instead of trying to conceal it, he openly uncovered it and had no further connection with it. Again, the Tribunal is impelled to ask, what should he have done? Unless we are willing to resort to the principle of group responsibility and to charge the whole German nation with these war crimes and crimes against humanity, there is a line somewhere at which indictable criminality must stop. In the opinion of the Tribunal, Vogt stands beyond that line.

The Tribunal therefore finds the defendant Vogt not guilty of war crimes and crimes against humanity, as charged in the indictment.

COUNT FOUR

The Tribunal finds the defendant Vogt not guilty under count four of the indictment.

GEORG LOERNER

Defendant Georg Loerner joined the National Socialist Party in November 1931 and became a member of the SS the following year. His highest rank in the SS was Gruppenfuehrer, or major general. In May 1935 he was employed in the administrative office of the SS at Munich, and in the fall of that year he was given the assignment of organizing a department for clothing supply. In May 1939 he was transferred to Berlin, where he carried on the same task of supplying clothing and personal equipment to the SS troops upon requisition of the various units. Until April 1936, clothing for concentration camp inmates was supplied by the several local governmental units. After that date the task of supplying clothing for camp inmates as well as the SS armed units was taken over by the SS Administrative Office, of which the defendant Pohl was the head. This was Georg Loerner's initiation into concentration camp administration.

When the WVHA was organized in February 1942, Loerner became chief of Amtsgruppe B, which, among other duties, was charged with the supply of food and clothing to all stationary

{1004}

armed units of the SS (excluding armed forces in the field) and to the concentration camp inmates. In addition, Loerner was deputy chief of Amtsgruppe W which administered the economic enterprises owned or controlled by WVHA. After the defendant Frank left the WVHA in September 1943, he was succeeded by Loerner as deputy chief of the WVHA under Pohl.

From these three responsible positions held by Loerner, it will be seen that he was not an obscure subordinate in the WVHA organization. Each of the positions which he held required a broad measure of responsibility, which the documents in the case indicate he exercised in full.

CONNECTION WITH W [WIRTSCHAFTS—ECONOMIC] ENTERPRISES

With Pohl, defendant Georg Loerner was one of the incorporating partners in the German Economic Enterprises, known as "DWB", which was the holding company having control of nearly all of the W enterprises. He was an original incorporator with the defendant Frank of the leather and textile enterprise at Ravensbrueck, and with Pohl

was one of the organizers of OSTI, with an initial contribution of 25,000 Reichsmarks. He was also vice chairman of the board of supervisors of the Golleschau Portland Cement company, of which Pohl was the chairman. In addition, he was a director of the Cooperative House and Home Building company at Dachau. All of these companies were units of Amtsgruppe W, of which Loerner was deputy chief under Pohl. His connection with these concerns was much more than formal. He took an active and interested part in the management of their affairs and his voice was heard in the policy making. For example, in a conference with reference to the affairs of OSTI held 13 February 1943 (NO-1270, Pros. Ex. 61), at which Pohl, Loerner, Volk, and Hohberg were present, a series of questions was propounded which Loerner helped answer. The questions were preceded by the statement that the Jewish manpower in the Government General was to be used for armament production. Then the question is asked: "Must this mandate be regarded primarily from a political-police or from an economical point of view?"

Other questions followed:

"How many Jews live in the Government General, how are they split up as to sex and professional groups?"

"Who can give information about the nature, extent and location of the existing Jewish movable property?"

"Who is the possessor of the Jewish movable property?"

"How is the Jewish property to be taken over? Under a trusteeship

{1005}

or directly?"

"When are the Jewish enterprises not under the 'charge of the SS to be taken over, immediately or gradually?"

"Are concentration camps to be established according to the German pattern, which assigns the prisoners to the OSTI and other trustworthy firms?"

These questions were either answered or bypassed at the conference, but the significant point is that Loerner participated in the discussion and knew of the underlying program of OSTI to fully utilize Jewish slave labor in its enterprises. When it was determined to liquidate OSTI in March 1944 because of the withdrawal of its labor supply, Loerner attended the final meeting and signed the minutes with Pohl.

A report by Pohl, dated 7 December 1943 (NO-599, Pros. Ex. 63), of a conference at which Loerner was present, shows that it was agreed that 10 labor camps in the Lublin district should be taken over by the WVHA as branch concentration camps, as a result of which "the inmates of these labor camps will become concentration camp prisoners." It was further agreed that all other labor camps in the Government General should be taken over by WVHA "in the interest of a general clearing up." As a further measure of control, it was agreed that the police guards acting in the labor camps should be subordinated to the WVHA and taken over by that office, "as far as they are members or possible candidates for the SS."

A significant document (NO-2147, Pros. Ex. 30) is found in the report of Loerner and others to Pohl, 9 January 1942, concerning the proposed acquisition of property for the

enlargement of the concentration camp Stutthof. Pohl had collaborated with others in a detailed study of the proposed plan, which contemplated the housing of "25,000 prisoners, including prisoners of war." Although this plan was never consummated, Loerner participated in it up to the time of its abandonment. A few days later, Maurer reported to Loerner that Pohl had made him responsible for concluding the details and outlined at length his plans for acquiring the property for the concentration camp. If Loerner was only a straw man or a figurehead, it is difficult to understand why Maurer felt impelled to report to him.

Document NO-514, Pros. Ex. 414 discloses that on 3 March 1944, Loerner participated in a conference for the preparation of a new wage scale for prisoners, at which it was decided that their wages be fixed at about 75 percent of the wages paid in private industry. It will be observed again that this has no reference to wages to be paid the workers but only to the amounts to be paid by the industries to the concentration camps. Loerner participated in the

{1006}

conference to the extent of pointing out that it might be advisable to inquire whether these rates could be paid by the individual plants without loss and suggested that the plant cost sheets be checked.

That Loerner was not regarded as insignificant by Pohl is evidenced by Pohl's letter (NO-1048, Pros. Ex. 404) directing that all matters of importance concerning DWB should go to Loerner for his comment and signature before being sent to Pohl and directing Loerner to keep informed on all important developments in the DWB industries. The fact that this order was rescinded a short time later is of no consequence. The exhibit indicates that when Pohl wrote it he considered Loerner a responsible person of considerable consequence in the WVHA organization, especially with reference to the W enterprises.

In view of all this proof, Loerner's claim that he was a mere figurehead in the field of the concentration camps and the enterprises which were dependent upon them, falls flat. Whether or not he knew of the mistreatment and extermination of the prisoners has not been conclusively proved, although there is substantial ground for suspecting that he could not have avoided knowing it. It is undoubtedly true that he knew of the Reich policy of furnishing slave labor from the concentration camps to the vast area of industrial enterprises which were, at least in part, under Loerner's supervision. When Burger, of office D IV, reported to Loerner on 15 August 1944 (NO-1990, Pros. Ex. 73), that there were then over 500,000 prisoners in concentration camps and that over 600,000 more were expected immediately, Loerner must have known, and the Tribunal finds that he did know, that these inmates were slaves who had been snatched from their homelands and herded into concentration camps to further the German war effort. Loerner must have gleaned some knowledge from the list of expected new arrivals which Burger furnished him, as follows:

"1. From the Hungary Program (Jewish campaign)	90,000
"2. From Lodz (Police prison and ghetto)	60,000
"3. Poles from the General Government	15,000

"4. Convicts from the Eastern territories	10,000
"5. Former Polish officers	17,000
"6. From Warsaw (Poles)	400,000
"7. Current arrivals from France approximately	15,000-20,000
	612,000"

Assuming that mere knowledge is not sufficient to inculcate Loerner, it nevertheless appears conclusively that, in addition to

{1007}

knowing of the slave labor program, he helped administer it in an active and responsible fashion. His connection with the program was not remote or intangible; it was direct and vital. The fact that he knew that prisoners of war were also being enslaved and compelled to perform labor on war munitions in violation of the Hague and Geneva Conventions, only adds to his guilt. As an old veteran of World War I, he more than others, should have realized that there are certain rules of warfare which should be observed by all civilized nations and that one of the foremost of these rules was being violated under his very nose and with his help and connivance.

SUPPLY OF FOOD AND CLOTHING TO CONCENTRATION CAMPS

The first duty which a slave owner owes to his serfs is to feed, shelter, and clothe them properly. His own self-interest in maintaining their working capacity would seem to dictate no less. The story of the starvation and suffering of the concentration camp inmates, of their being beaten and abused and worked to death, is an old one and it would be idle to repeat it here. That they were under-fed and ill-clothed has been repeatedly proved before these Tribunals. The immediate question confronting this Tribunal is whether or not Loerner was responsible for these appalling conditions. It is to be observed that the supplying of concentration camp inmates was not his only duty. In addition he was required to supply the garrisons, guards, and other stationary units of the Waffen SS. It is obvious, we think, that no one had the right to provide for one group at the expense of the other, especially when such deprivation was carried to the extent of freezing and starvation. The Tribunal is well aware of the fact that the blockade of Germany and the military reverses which followed the surrender of Stalingrad made the problem of procurement of food and clothing an increasingly acute one, but we are also aware that even before Stalingrad it was the policy of the Reich to feed and clothe concentration camp inmates only to an extent which would permit them to keep on working.

WVHA was the top agency for the administration of the concentration camps and the task of administration was a comprehensive one. If WVHA was concerned with the last details of prisoners' wages, production and allocation, it was also concerned with furnishing food and clothing for prisoners, and this obligation carried down to the final step of distribution—actually seeing to it that the prisoners got the necessary supplies. The duty of administration goes that far. Clothing which is ordered or requisitioned

{1008}

but not delivered does not keep men from freezing. Loerner's office was not charged with labor allocation; but that did not prevent his going to Dachau in April 1941 to address a conference of labor allocation officers. In August 1944, Loerner was advised by Burger that with an immediate prospective camp population of over a million, he did not have sufficient clothing to supply their needs, in spite of having seized large amounts of civilian clothing in Hungary and Poland. Loerner was more than a mere purchasing agent or requisition clerk. He was a top-level administrative officer in charge of clothing supply, with all that that term implies. Pohl in an affidavit filed in the case (NO-2616, Pros. Ex. 523) states: "It was the responsibility of Loerner to assure the provision of clothing to the concentration camp inmates."

Fanslau corroborates this statement in his affidavit (NO-1909, Pros. Ex. 6): "Georg Loerner was in the last resort responsible for the procurement of clothing for the prisoners."

Loerner's defense is the typical one: "That was the duty of somebody else." He testified that all he could do was to receive the requisitions for clothing from Amtsgruppe D and process them by sending them to the SS clothing factories at Dachau. But the obligation of his responsible office did not end there. The industries in which he was so active as incorporator, director, and supervisor and to which he gave so much time and effort were the principal users of inmate labor. Both as an employer and as a supply officer it was his duty to see to it that the inmates were supplied with adequate clothing. It is not sufficient for him to say, "Well, I've ordered clothing. That's all I'm supposed to do." The lives of thousands of men depended on his doing more than that.

ACTION REINHARDT

The evidence concerning Loerner's connection with Action Reinhardt is not sufficient to convict him on this specification. There is some proof from which it may be reasonably inferred that he had knowledge of property being confiscated from Jews, but there is nothing which shows with the requisite degree of certainty that he knew that such property had been taken from Jews who had been killed in concentration camps or in pursuance of the extermination policy. Pohl stated in an affidavit that Loerner had prepared for his signature a "report on the realization of textile salvage from the Jewish resettlement" (NO-1257, Pros. Ex. 479). An order from Pohl (NO-725, Pros. Ex. 481), which was distributed to Amtsgruppe B among a number of others, refers to Administration of Jewish Property" and has a file note reading,

{1009}

"Reinhardt Prisoners Journal," but the order refers only to auditing procedure. There are other bits of proof on this subject, but in the aggregate it is insufficient to justify a determination beyond a reasonable doubt that Loerner took a consenting part in or was actually connected with the action itself.

On the grounds herein indicated and for the reasons specified, the Tribunal finds the defendant Georg Loerner guilty of war crimes and crimes against humanity, as charged in counts two and three of the indictment.

COUNT FOUR

The Tribunal finds that the defendant Georg Loerner was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

ERWIN TSCHENTSCHER

Tschentscher was born in Berlin, 11 February 1903. He attended public and higher schools in Berlin and finished his educational career in 1919. He was a professional soldier, having joined the Allgemeine SS as a private 1 May 1930, with SS No. 2447. He joined the Waffen SS at the beginning of the war 1 October 1939 with the rank of Standartenfuehrer. He joined the NSDAP 1 December 1928 with Party No. 102547. After completing a number of assignments with the SS on 30 November 1940, he was transferred to the SS Viking division, which was then being activated. He was placed in command of the economic battalion, consisting of the supply office and the bakers and butchers companies, and was directly subordinate to the defendant Fanslau. During the period of activation and training of this unit it was a part of his duties to give lectures to the troops. Among other topics discussed in these lectures, Tschentscher explained the ideology of the SS on the Jewish question, racial theories, the SS marriage program, and other military, and political subjects. He stated in these lectures that "the Jews were a foreign body within the community of the German people and that the solution of the Jewish question was to be that the Jews should disappear from Germany, should permanently settle in other countries, or be placed in concentration camps and places like that." Thus, it may be seen that he was thoroughly familiar with the aims of the SS and was willingly participating in planning and carrying out its program.

About the middle of June 1941, the division having completed

{1010}

its period of training and activation, moved into the area of Lublin in Poland. Tschentscher actively engaged in the first Russian campaign, from about the first of July until 31 December 1941, when he was transferred to Obersalzberg.

During this campaign, he was battalion commander of the supply column, as well as company commander, and directly subordinate to the defendant Fanslau. While his command was in the area of eastern Poland and in the Ukraine, thousands of Jewish civilians and other noncombatants were ruthlessly murdered and exterminated. There is evidence to the effect that members of Tschentscher's command engaged in this program, together with Einsatzkommandos. These murders and atrocities took place particularly in the vicinity of the Ukraine. There is hearsay evidence that Tschentscher personally participated in these crimes, but there is no direct evidence to this effect. There is some evidence that he had constructive knowledge of the participation of members of his command, but absolutely no evidence that he had actual knowledge of such facts. He emphatically denies participation in and all knowledge of these matters.

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. The Supreme Court of the United States pointed out in a decision entitled, "Application of Yamashita," 66 Supreme Court 340-347, the following:

"It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could with impunity neglect to take reasonable measures for their protection. Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates."

The reason for the rule is plain and understandable, but what has been said in this decision does not apply to the defendant Tschentscher.

Conceding the evidence of the prosecution to be true as to the participation of subordinates under his command, such participation by them was not of sufficient magnitude or duration to constitute notice to the defendant, and thus give him an opportunity to control their actions. Therefore, the Tribunal finds and adjudges

{1011}

that the defendant Tschentscher is not guilty of participating in the murders and atrocities committed in the Russian campaign as alleged by the prosecution.

TSCHENTSCHER'S ACTIVITIES IN THE WVHA

On 1 October 1943, the defendant was transferred to the WVHA and was appointed chief of Amt B I of Amtsgruppe B; shortly thereafter he was appointed deputy to Georg Loerner, chief of Amtsgruppe B. He stated that his duties and responsibilities as chief of Amt B I consisted of the following: All matters pertaining to food concerning the Waffen SS and the police at home, roughly for about 1,000,000 men. His duties also comprised the negotiations with the army administrative office, in order to fix the food rations for the troops. His office also worked on the planning and the actual delivery of the food, the earmarking of the rations, and their supply to 30 troop storage plants which were scattered over the Reich. His task was to have the food ready so that it could be collected by the troops. About twenty to thirty thousand concentration camp guards were fed by his office. This particular aspect of his feeding program was done by the troop camp stores in the area where the concentration camps were located. He stated that his office did not have anything to do with feeding and supplying food for concentration camp inmates.

It may be seen from his statements that the only contact his office had with concentration camps was the furnishing of food for the concentration camp guards. He further stated that Burger, chief of office D IV came to see him three or four times for the purpose of securing certain food for concentration camps. Burger stated that he wanted to have special diet furnished for sick inmates, such as fruit, canned vegetables, and wine in small quantities, which he could not otherwise obtain. He stated that he furnished these articles to Burger but realized at the time that he was exceeding his authority. (Tr. p. 3169.)

The defendant stated that he visited the concentration camps in a few cases. On one occasion, in 1941, he visited concentration camp Dachau. While there he participated in an inspection of the actual concentration camp, and testified that the barracks were extremely clean and quite fit for human habitation. The inmates kitchen, the hospital, and the dental station were very modern; and other installations, such as the bakery shop, the carpenter shop, and workshops were all in excellent condition. The inspection lasted about an hour and a half, and was conducted by five or six SS leaders (Tr. pp. 3177-8.)

Towards the end of 1944 he visited Buchenwald concentration

{1012}

camp for the purpose of obtaining a storage room for food. He saw some inmates marching past, but saw nothing that would attract attention. (Tr. p. 3179.)

In November 1943, in company with Kammler, chief of Amtsgruppe C, he made an inspection of concentration camp Dora, where two construction places were visited. Two large tunnels about 3 kilometers long had been built into the mountain. During these inspections, Pister, commander of Buchenwald, Foerschner, the commander of Dora, Barnewald, the administrative officer, and Dr. Schiedlausky, the camp physician of Buchenwald, were present. Tschentscher described the conditions as follows: clothing was insufficient, especially for cold weather; barracks were inadequate; the air was very bad from lack of ventilation. The inmates, approximately 1,500 to 2,000, were housed in the shafts of tunnels which were 8 to twelve meters high. The inmates slept on bunks, four on top of each other, and had insufficient covers. The lighting system was extremely bad and caused the inmates to appear to have dust from the stones covering their faces. The food was insufficient for the work to be performed. Medical care was also insufficient, as the camp did not have its own physician and the personnel consisted of inmates who were only medical assistants. A great many of the inmates were reported sick, and on that day sick call amounted to forty inmates. He further stated that deaths did not occur in the beginning, but later he heard that inmates had died probably as a result of exhaustion and colds. He stated that he did not need any confirmation of this fact when he saw the people, because when he saw them it was rather unnerving. He further concluded that when an epidemic occurred a catastrophe might follow because of the low resistance of the inmates. The defendant stated that when he saw these conditions his only thought was to help them as quickly as possible. On the following morning he made another short inspection, and what he observed only confirmed his conclusions. He returned to Berlin and gave immediate instructions to the various depots to turn over food from the storage warehouses. He stated that he also contacted office B II for clothing, and the Reich physician SS for medical supplies. He urgently requested that a physician be assigned and that medical personnel of the SS be furnished. He telephoned the main medical depot at Berlin, asking them to allocate medicine and disinfectants for the camp. He stated that he received the cooperation which he desired from all of these agencies, and that from his depots he furnished twenty to thirty tons of food—flour, peas, beans, canned meat, oils, fats, dehydrated fruits, and rice supplementing regular rations. In addition, he furnished post exchange items, rum and tea, as well as

{1013}

cigarettes and toilet articles. He then made the following significant statement: "It was our specific intention that these people be able to recover somewhat so that they would regain a better physical condition and be able to perform their work better." He stated that he made a written report to the defendant Pohl concerning this inspection, together with his recommendations. (Tr. pp. 3186-3193.)

The defendant admitted that approximately 3 or 4 weeks after the Dora inspection he was again requested to send additional food, which he did. He stated that upon Kammler's request he also sent food to a camp near Linz. (Tr. pp. 3194-5.)

The defendant was asked:

Q.: "Did your department maintain and supervise training kitchens at Oranienburg, Dachau, and Beneschau?"

A.: "We had three training kitchens, one at Dachau, one at Oranienburg, and a third one located at Beneschau, near Prague. These three training kitchens were also subordinated to me. I was the immediate superior; and I visited these three kitchens. I supervised and directed the training curriculum there."

The courses at these training kitchens included instructions as how not to prepare food. (Tr. p. 3236.)

He testified that office B I was dissolved in April 1945, owing to the condition of the war. When asked if he participated in the destruction of records of Amt B I, he answered: "Before we left Berlin we destroyed superfluous files, which was a routine matter and an order. The remaining files we took with us to the mountains. We burned them there." (Tr. p. 3254). He stated that the records were destroyed for the purpose of keeping them from falling in the hands of the enemy. He denied any knowledge of prisoners of war and nationals of other countries being confined in the concentration camps. He denied all knowledge of the "Reinhardt Action," and the program for the extermination of the Jews, of the medical experiments which were conducted in the concentration camps, of the euthanasia program, and of inhumane treatment and atrocities. He offered documents and the testimony of the witnesses, Walter Hoyer and Arnold Ertel in corroboration of his contentions.

The Tribunal concludes that the defendant Tschentscher was not a mere employee of the WVHA, but held a responsible and authoritative position in this organization. He was chief of Amt B I, and in this position had large tasks in the procurement and allocation of food. Conceding that he was not directly responsible for furnishing food to the inmates of concentration camps, he was responsible for furnishing the food to those charged with guarding these unfortunate people. According to his own admissions,

{1014}

on a number of occasions he furnished food to the inmates when requested to do so by those in authority. He contends, however, that he was not competent for this task and only furnished this food from a humanitarian motive. Nevertheless, from his own testimony we conclude that he had other motives as well, when he stated:

"It was our specific intention that these people be able to recover somewhat so that they would regain a better physical condition and be able to perform their work better."

"These people," included slave laborers from occupied territories and prisoners of war.

The Tribunal is fully convinced that he knew of the desperate condition of the inmates, under what conditions they were forced to work, the insufficiency of their food and clothing, the malnutrition and exhaustion that ensued, and that thousands of deaths resulted from such treatment. His many visits to the various concentration camps gave to him a full insight into these matters.

The Tribunal finds without hesitation that Tschentscher was thoroughly familiar with the slave labor program in the concentration camps, and took an important part in promoting and administering it. The successful operation of the concentration camps required the coordination and cooperation of experts, as well as materials, and Tschentscher as chief of Amt B I and deputy to Georg Loerner, contributed his share in the allocation of food and clothing.

The Tribunal finds and adjudges the evidence, and beyond a reasonable doubt, that the defendant Tschentscher is guilty of war crimes and crimes against humanity, as charged in counts two and three of the indictment.

COUNT FOUR

The Tribunal finds and adjudges from the evidence, and beyond a reasonable doubt, that the defendant Tschentscher was a member of a criminal organization, that is, the SS, under the conditions defined by the judgment of the International Military Tribunal, and is therefore guilty under count four of the indictment.

RUDOLF SCHEIDE

The defendant Rudolf Scheide was born on 24 December 1908, in Wolfenbuettel. He attended elementary schools until 1922; from 1926 to 1927 he served one year as an agricultural laborer near Brunswick, and during 1928 and 1929 he was with the voluntary labor service working on private estates. From 1929 to 1930 he did odd jobs for friends near his home, and from 1930 to 1933 he worked in the sugar factories in Schladen, and other places. He

{1015}

joined the NSDAP in 1929, with the Party No. 93508. He was a member of the SS from 1930 until the end of the War, and had the SS No. 2351. His first rank in the General SS was SS man, and last rank in the SS was Standartenfuehrer (colonel). He commanded a motorized company from 1938 until 1 October 1942. At that time his motorized organization became a division, and the defendant became the division technical officer. On 1 October 1942, he was transferred to the Economic and Administrative Main Office, WVHA. When he joined the WVHA on 1 October 1942, he became the chief of Amt B V as a technical expert in the field of motor transportation. In the defendant's own affidavit, (NO-2612, Pros. Ex. 10), he outlined in detail his duties as office chief of Amt B V of the WVHA. All motor transport technical officers were in principle subordinate to the Operational Main Office, formerly the command headquarters of the Waffen SS. Pohl informed him that Georg Loerner was his chief, and he thereupon reported to Loerner. As chief of Amt B V of the WVHA, he took over the whole of the transportation of the WVHA, with the exception of the transports of human beings, which were taken over by

D I. When he came to the WVHA he was commissioned by Gruppenfuehrer Loerner to bring all motor vehicles, weapons, and railroad transports under this office, so that everyone who had anything to do with them or with fuel, oils, tires, etc., was to report to him or to his Main Office. He was the representative of the Operational Main Office in the WVHA and was in charge of transportation for all the Amtsgruppen. Amtsgruppe A needed no transport space. Amtsgruppe B required transport space continually for forwarding goods to supply and equip the Waffen SS. Amtsgruppe C had its own quota of motor vehicles from the Operational Main Office, and had the vehicles of the private building firms put at its disposal. Amtsgruppe D constantly ordered motor vehicles from his office, and he passed on the orders to the Operational Main Office. These demands mostly came from Gluecks. He also dealt with the demands for arms and ammunition for the concentration camp guards and passed them on to the Operational Main Office, which in turn gave instructions to the ordnance depot of the Waffen SS in Oranienburg, where Amtsgruppe D collected these weapons. He never assigned the vehicles for the concentration camps to the camps themselves, but to Schulz who then assigned them to the concentration camps. If concentration camp inmates were shipped in railroad trucks, the preparations were made by the staff of Amtsgruppe D.

The prosecution contends that by virtue of the high office which the defendant held in the WVHA, he was required to

{1016}

furnish the necessary transportation for all the Amtsgruppen of the WVHA, including Amtsgruppe D, which had charge of maintenance and control of the concentration camps.

The prosecution further contends that according to the large field of tasks carried out by the defendant in connection with the various offices and Amtsgruppen of the WVHA, he gained knowledge of how the concentration camps were operated; how the prisoners were treated; who they were; and what happened to them; that the defendant Scheide further knew that the concentration camps engaged in the slave labor program, and that he furnished transportation in this program with knowledge of its use. The prosecution further contends that the defendant Scheide knew of the mass extermination program carried out by the concentration camps under Amtsgruppe D, and that he furnished Amtsgruppe D in this program with transportation, spare parts, tires, gasoline, and other necessary commodities for carrying out this program.

The defendant Scheide contends that he had no knowledge of any of the activities and programs of the concentration camps, and that there is no evidence other than his own affidavit, his own testimony, and that of other defendants as to his duties, responsibilities, and activities as chief of Amt B V of the WVHA. He further contends that the prosecution has not submitted a single document against the defendant which mentions his name, and that no prosecution witness has testified to any facts against the defendant. He further contends that the prosecution has submitted no evidence which would tend to show his individual guilt of the charges contained in counts two and three of the indictment.

The defendant further contends that the only evidence offered against him is contained in the organizational charts of the WVHA, which shows that he was chief of Amt B V of the WVHA.

CONCLUSION

After weighing all the evidence in the case, and bearing in mind the presumption of innocence of the defendant, and the burden of proof on the part of the prosecution, the Tribunal must agree with the contentions of the defendant. If the Tribunal were to convict the defendant on the charges contained in counts two and three of the indictment, the only evidence on the part of the prosecution to sustain such conviction would be the organizational charts of the WVHA, which show (and the defendant admits it) that he was the chief of Amt B V. All of the evidence as to the duties performed by the defendant in this capacity, the responsibilities

{1017}

assumed by him, the connections and influence that he had with other Amtsgruppen, and the knowledge that he had, if any, as to the activities and duties of the other Amtsgruppen, was furnished solely by the defendant himself and other defendants, who testified in corroboration of the defendant. Therefore, the Tribunal finds the defendant Rudolf Scheide not guilty of the charges contained in counts two and three of the indictment.

COUNT FOUR

The defendant admits that he joined the NSDAP in 1928, and that he was a member of the SS from 1930 until the end of the war. In regard to membership in certain organizations declared criminal by the International Military Tribunal, the following was said:

"A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. There must be a group bound together and organized for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organizations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organization. Membership alone is not enough to come within the scope of these declarations."

The defendant admits membership in the SS, an organization declared to be criminal by the judgment of the International Military Tribunal, but the prosecution has offered no evidence that the defendant had knowledge of the criminal activities of the SS, or that he remained in said organization after September 1939 with such knowledge, or that he engaged in criminal activities while a member of such organization.

Therefore, the Tribunal finds and adjudges that the defendant Rudolf Scheide is not guilty as charged in count four of the indictment, and directs that he be released from custody under the indictment when this Tribunal presently adjourns.

MAX KIEFER

The defendant Max Kiefer was born on 15 September 1889, in Kempen on the Lower Rhine. He graduated from public schools in 1909. Thereafter, he studied architecture at Munich and Aachen.

{1018}

During the time that he was engaged in his studies of architecture, a certain amount of his time was consumed with construction jobs of the Reich Railway Inspectorate, as well as taking study trips to Italy, France, Holland, and Belgium. In the year 1914 he completed his studies in architecture, was graduated, and soon thereafter became city architect for the city of Aachen.

During World War I, the defendant Kiefer was drafted into military service and served for the entire period of the war, being discharged with the rank of lieutenant in the reserve. After the First World War the defendant pursued his career as an architect working for the government and later as a private architect, specializing in city planning and housing projects. In 1936 he accepted a position with the Reich Air Ministry as building councilor in the department of dwellings and settlements. In this position his immediate superior was Kammler, who was later chief of Amtsgruppe C of the WVHA. The defendant joined the Allgemeine SS in July 1935 and the NSDAP in May 1937. When he was called up for military service in August 1941, Kammler intervened in his behalf and was successful in having him assigned to the Waffen SS. Later he was assigned to the building section of the Budget and Buildings Office of the WVHA. In February 1942, he was appointed chief of Office C II of the WVHA and remained as the chief of this office until the close of the War.

In order to properly carry out and maintain the various functions of the WVHA, specialists were required for every field. The defendant Kiefer was a specialist in architecture and his services were in great demand by the WVHA. With his great experience covering a long period of time as a master planner and architect, the Tribunal can easily understand why the defendant Pohl, as chief of the WVHA, appointed him chief of Amt C II, and assigned to him duties which included the planning, maintenance, and construction of concentration camps in the Reich and in occupied territories. Amtsgruppe C was the supreme building office of the Waffen SS, and office C II was concerned primarily with special construction tasks. The defendant, as chief of office C II, was also head of the main department in charge of general affairs of the Building Inspectorate. Subordinate offices to office C II, which were also subordinate to the defendant Kiefer, were as follows:

- C II/1—food and clothing installations.
- C II/2—arms, ammunition, and signalling installations.
- C II/3—hospitals and ambulances.
- C II/4—industrial buildings.
- C II/5—accommodations center bureau.
- C II/6—agriculture and special buildings.

{1019}

Despite the fact that none of the other offices within Amtsgruppe C was charged with special construction tasks or any of the constructions outlined above, the defendant contends that these office titles were only for organizational purposes and not actually concerned with building projects; the projects with which they were concerned were far removed from the realm of construction of concentration camp installations but were for humanitarian objectives. The defendant further contends that office C II/2 was concerned solely with the coordination of such construction with local zoning and building regulations. He further contends that his office only worked out general basic plans for hospitals and ambulances, and denies that he ever participated in the planning of construction of any hospitals or other buildings, or any concentration camps or concentration camp installations.

The Tribunal does not agree with such contentions. The evidence clearly shows that concentration camp hospitals were constructed, and that plans and drawings for such construction were prepared in the office C II. The prosecution offered in evidence Document NO-4470, Pros. Ex. 662, which was a drawing and plan for a hospital and sick bay for inmates of Auschwitz concentration camp. This drawing and plan was signed by the defendant himself. The prosecution also offered in evidence Document NO-4471, Pros. Ex. 663, which was a drawing and plan signed by the defendant himself for a sick bay for the troops at Auschwitz concentration camp. If the defendant and his office were competent to draft and approve such drawings and plans for such installations, the Tribunal may reasonably find that all other installations necessary for the maintenance and construction of concentration camps also emanated from this office. Since the defendant is an expert architect, the Tribunal concludes that the defendant not only planned the construction of such projects at Auschwitz, but that he supervised the progress of construction as any architect would do.

The concentration camps under Amtsgruppe D of the WVHA operated and maintained gas chambers and crematories in which thousands of people were exterminated and cremated. Some of the concentration camps had several of such installations. These installations were planned, erected, and maintained by some competent authority and Amt of the WVHA. Since Amt C II was the supreme authority for the planning and building of special tasks, the logical conclusion of the Tribunal is that such installations were planned and erected under the authority of Amt C II of the WVHA. The Tribunal further concludes that the very nature of such installations and their continued maintenance constituted knowledge of the purposes for which they were to be used.

{1020}

The defendant's knowledge of the classes of inmates in concentration camps is shown by the following testimony of the defendant himself:

"According to my opinion there is a big difference between a political prisoner and a criminal. I myself was definitely convinced that there were political prisoners in the concentration camps, prisoners whom the state wanted to get rid of or at least secure for special reasons. In my opinion the criminals were in the jails, whereas all the other ones were in the concentration camps." (R. 3387.)

The Tribunal finds that the defendant was also aware that inmate labor was used in construction projects authorized and planned by Amt C II and other offices within Amtsgruppe C. He testified that he saw Kammler's letter to Gluecks, dated 10 March 1942, concerning the assignment of prisoners of war, inmates, and Jews, to carry out the construction program of Amtsgruppe C but that no action was taken because it was not in his field of tasks. (NO-1292, Pros. Ex. 56, and Record page 3367.) In the preface to this document, the following appears:

"Subject: Employment of prisoners, prisoners of war, Jews, etc. to carry out the construction program of the SS Economic Administrative Main Office, Amtsgruppe C, 1942, in the third year of war."

A summary attached to the document shows the required workers listed under the various construction projects and the number of prisoners, and prisoners of war, Jews, etc., required to carry out the construction program for 1942. The summary shows conclusively that thousands of inmates, Jews, and prisoners of war, were to be used for construction projects at the various concentration camps. These included construction projects at Ravensbrueck, Oranienburg, Natzweiler, Wewelsburg, Dachau, Gross-Rosen, Auschwitz, Freudenthal, Weimar-Buchenwald, Neuengamme, Flossenbuerg, Gieshuebel, Krondorf Sued, Gruen, Neu-Rohlau, Mauthausen, Gusen, Brettstein, Lodz, and Poznan. The last entry in the summary was a request for 5,000 prisoners of war to be used at Danzig-Stutthof. Thus, the defendant Kiefer was officially put on notice that concentration camp labor, Jews and prisoners of war, were the means whereby his architectural plans were transferred from blueprints into actual constructions. The defendant contends that even though he might have read the document at the time he was totally ignorant of concentration camp conditions.

The Tribunal cannot accept this contention of the defendant. He was directly subordinate to Kammler, chief of Amtsgruppe C, and was also his deputy. As to his deputyship there can be no

{1021}

doubt. Kammler's appointment of the defendant as his deputy was in writing, and dated 8 September 1943, and states: "SS Sturmbannfuehrer Kiefer will in principle act as my deputy until further notice." (NO-1244, Pros. Ex. 45.)

The evidence clearly discloses that Kammler was thoroughly aware of the conditions in the concentration camps, and of the atrocities, murders, and ill-treatment of the inmates.

The Tribunal concludes that the defendant knew what Kammler knew, since he was his deputy and chief of Amt C II, and his duties required that he have such knowledge. The Tribunal further concludes that a person so close to Kammler and directly subordinate to him and designated by Kammler as his deputy would be advised of these facts. Such knowledge would of necessity entail familiarity with the facts as to the labor conditions on construction jobs, the type of labor employed, and the treatment accorded such labor. If these facts were known to him, the defendant would have had to know of the atrocities and inhuman tortures visited upon concentration camp inmates through Amt C II, Amtsgruppe C, and the WVHA.

Another source of information for the defendant was the weekly conferences of chiefs of offices and experts. These conferences were held, and the Tribunal concludes that they

were thorough and detailed. Kammler's position and duties increased to the point where he was forced to devote less and less time to Amt C II, and finally he was forced to move his offices from the WVHA building. Subsequently, the only contact between himself and the collaborators in Amtsgruppe C, was in the conferences with the Amt Chiefs (R. 3336). During these conferences Kiefer had ample opportunity to learn of the existence of the gas chambers and the crematories, the use of slave labor, the treatment of concentration camp inmates, the destruction of the Warsaw ghetto, and many other instances of the criminality of the organization of which he was an integral part.

The evidence clearly discloses that the defendant did not make the slightest effort to improve these conditions, or failing in that, to sever his relationship with the organization. His activities and willing cooperation clearly shows the voluntary manner in which he worked as an Amt chief of the WVHA. The Tribunal has given careful consideration to all the contentions made by the defendant, and all the evidence and documents offered by him to rebut the case of the prosecution, but the Tribunal cannot accept his version as to his knowledge, duties, and activities as Amt chief of office C II in the WVHA.

{1022}

CONCLUSIONS

The Tribunal therefore concludes (bearing in mind the presumption of innocence of the defendant and the burden of proof required of the prosecution) that the evidence clearly established beyond a reasonable doubt that the defendant Max Kiefer is guilty of war crimes and crimes against humanity, as charged in counts two and three of the indictment. He did not function in the role of the actual executioner, but was an office chief in the WVHA, which organization carried out the functions of extracting labor and personal resources from millions of unfortunate concentration camp inmates, Jews, and prisoners of war. His office duties and activities constituted one of the integral cogs in the evil machine of human destruction. His high professional learning, skill, and vast knowledge was prostituted to the needs of this organization. The planning and erection of a vast number of SS structures, both in the concentration camps and outside, would not have been possible without the contribution of the defendant Kiefer, as one whose services were most valuable and indispensable.

COUNT FOUR

The defendant admits that he was a member of the SS from 1935 and that he continued to be a member of the SS until the end. His contention that he was drafted into the SS in 1942 cannot be accepted by the Tribunal. His continued membership in the organization, his outstanding record in Amt C II, and all the other evidence in the case leads the Tribunal to the conclusion that the defendant voluntarily joined the SS and voluntarily remained in such organization until the end and participated in the commission of war crimes and crimes against humanity. He remained in such organization with knowledge of its criminal activities subsequent to September 1, 1939. Therefore, the Tribunal finds and adjudges the defendant Kiefer guilty under count four of the indictment.

FRANZ EIRENSCHMALZ

Defendant Eirenschmalz was born 20 October 1901, at Munich. He joined the General SS in July 1931. On 1 October, 1932, the defendant received a fulltime position with the SS in the administrative office. He did some outside construction work subsequent to occupying this position, but returned to the administration office and resumed his work in June 1934. His immediate

{1023}

superior in the administration office of the SS in 1934 was the defendant Pohl. From July 1934 until approximately the autumn of 1939, he was in the office, "Budget and Construction [Buildings]". In 1939, he was transferred to the Main Department [SS Operational Main Office] for the construction management of the Waffen SS and administration, as chief of Amt V/5. His immediate superior in this office was the defendant Frank. On 1 February, 1943, the Main Office, budget and buildings, was incorporated within the WVHA, and the defendant joined this organization as chief of Amt C VI of Amtsgruppe C. He was subordinate to Kammler, chief of Amtsgruppe C. Sometime between 1 February, 1942 and February 1943, he was appointed deputy chief of Amtsgruppe C, or Kammler's deputy. In May 1943, owing to illness, he entered a hospital and did not return to work with the WVHA until January 1944, and upon his return he was no longer deputy for Kammler. At all times between 1 February, 1942 and May 1945, he was chief of Amt C VI of Amtsgruppe C of the WVHA.

In order for the Tribunal to arrive at the truth in this case, a close scrutiny of the evidence was required. Witnesses made affidavits and later repudiated their contents by other affidavits, or while testifying as a witness. The defendant Eirenschmalz took the stand and testified in his own defense. He has utterly failed to impress the Tribunal with the truthfulness of his testimony. On the contrary, his answers to direct and simple questions were most evasive and indefinite. After much insistence, when a direct answer was finally obtained from him by either the Tribunal or counsel, he would later repudiate such an answer. In his testimony may be seen so many contradictions and evasive answers that the Tribunal was unable to determine the facts from his testimony. After a careful review of all of the evidence, the Tribunal arrived at its own conclusions as to the true facts of this case.

Amt C VI of Amtsgruppe C of the WVHA was subdivided into the following divisions:

Amt C VI/1, Building Material and Maintenance (Construction Maintenance) [of Waffen and Allgemeine SS real estate].

Amt C VI/2, Plant economy.

Amt C VI/3, Auditing and price control (after 1943, Price Control).

The prosecution offered in evidence Document NO-2616, Prosecution Exhibit 523, which was an affidavit made by the defendant Pohl, and the Tribunal deems it expedient to here incorporate certain portions of this affidavit:

{1024}

"9. *Amtsgruppe C of the WVHA arose from Amt II Buildings of the former Main Office of Budget and Buildings. SS Obergruppenfuehrer Dr. Kammler was chief of Amtsgruppe C from 1 February 1942 until the capitulation in May 1945.*

"10. *Amtsgruppe C was the highest construction office of the SS. Among other things, guiding principles concerning all constructions carried out within the SS were laid down by this office and passed on to subordinate construction offices and construction inspection sections.*

"11. *Furthermore, it was the duty of Amtsgruppe C to calculate the total building-material requirements of all construction inspection sections and to send requisition for this total requirement to the Speer Armaments Ministry. That was done once a year, and after Kammler had received these allocations of materials (quotas) from the Speer Armaments Ministry, he distributed them, according to requirements to the individual construction inspection sections. Thereby Kammler was given control over the construction undertaken by the offices carrying out the building as they were not legally able nor allowed to build without an official quota allocation being made by Amtsgruppe C.*

"12. *Kammler had a further means of control over the construction activity of the SS because the expenditures of the offices subordinate to him were examined by him; this also included an examination of prices. The above mentioned examinations were carried out by office VI of Amtsgruppe C. Standartenfuehrer Eirenschmalz was chief of this office from February 1942 until the capitulation.*

* * * * *

"14. *The new construction and repair of concentration camps was in principle the task of Amtsgruppe C, and its subordinate offices.*

"15. *It was the duty of the budget office in the former Main Office for Budget and Buildings to put those sums of money which were necessary for the establishment of concentration camps at the disposal of the Inspector of Concentration Camps Eicke. These sums were fixed in the SS Budget. Eicke had his own construction section with which he carried out the construction of concentration camps.*

"16. *I remember that the Auschwitz concentration camp was built in 1943. This work was carried out by the local construction inspectorate section (Construction Inspectorate Section Auschwitz), after the necessary allocations of material had been made to this construction inspection section by Amtsgruppe C of the Economic and Administrative Main Office.*

{1025}

"17. *The gas chamber installations and the crematories in the Auschwitz concentration 'camp were built by the method described in paragraph 16.*

"18. *The statement of accounts for these constructions was forwarded to office VI of Amtsgruppe C for preliminary examination for the Supreme Auditing Court of the Reich or else they were submitted to the auditors of Amt C VI. That was the prescribed official channel for all construction inspectorate sections which were responsible to Amtsgruppe C of the Economic and Administrative Main Office.*

"19. *The liquidation of Jews in the Auschwitz concentration camp in the years 1942 and 1943, when Rudolf Hoess was commander, was known to me, through Himmler's speech, and I myself also saw the gas chambers and the crematory in Auschwitz in the summer of 1944.*

"20. *The construction, that is to say, the extension of the Riga concentration camp was undertaken during the second half of 1942 or the beginning of 1943 as far as I know. This work was ordered by the Reich Security Main Office, and the carrying out of the project was undertaken and completed by the locally competent construction inspection section, as described above in paragraphs 16 and 19.*

"21. Standartenfuehrer Franz Eirenschmalz was chief of office C VI from February 1942 until May 1945. He had been an associate of mine since 3 February 1934, with interruptions. From January 1943 until May 1943 he was deputy chief of Amtsgruppe C.

* * * * *

"32. * * * Amtsgruppe C had a number of subordinate offices (construction inspectorates, etc.) in the Reich territory as well as in the occupied territories."

The defendant's activities in the construction and maintenance of concentration camps prior to the formation of the WVHA, is shown from the following documents:

Affidavit of Heinrich Ernst Krone (NO-2197, Pros. Ex. 53), which reads in part as follows:

"In August 1937 I was employed in the central construction management at Buchenwald as a specialist in technical branches. I was subordinate to the SS Administration Office and the section for building under Eirenschmalz. The protective electric fence was built by this central construction management under order of Eicke. The crematory in Buchenwald was built in 1939 or 1940 by a private contractor.

"In February 1943 I was transferred to Belgrade, where I did maintenance and building special jobs under the direction

{1026}

of office group C of the SS Economist [beim SS Wirtschaftler], who was head of the building section of group C and who was subordinate to office group C in Berlin.

"During the last years of the war it was the job of office group C to erect prisoner of war camps. The maintenance and repair of all buildings, particularly of those pertaining to the concentration camps, was Eirenschmalz' concern. He had to be kept informed of every repair job in concentration camps and also if gas chambers or crematories failed to function or needed repairs it was his job to have the repairs carried out."

Later in the same affidavit, the affiant outlines some of the duties of the defendant Eirenschmalz in connection with concentration camps after the creation of the WVHA, as follows:

"In February 1944 I heard for the first time, through the head of the Building Inspectorate, of an order that prisoner of war camps were to be erected by office group C. I know that a small prisoner of war camp was to be built somewhere, and the exact building instructions regarding measurements, projected buildings, washing facilities, etc., were furnished by office group C. During the last years of the war it was the job of office group C to erect prisoner of war camps."

The prosecution offered in evidence an affidavit of Wolfgang Grosch (NO-2322, Pros. Ex. 513) which tended to show the duties and activities of the defendant Eirenschmalz in regard to the construction and maintenance of concentration camps and SS projects before and after the formation of the WVHA. The pertinent parts are as follows:

"The first time I heard about Standartenfuehrer Eirenschmalz was in the middle of 1939. At that time Eirenschmalz was chief of the entire building operations within the SS Administrative Office. This position was similar to the position which Gruppenfuehrer Kammler had later on in the Economic and Administrative Main Office. Among other things it was Eirenschmalz' job to pay out the moneys for building projects of the SS Death Head units, and the General SS. It was his job to approve these moneys and to have them paid. Eirenschmalz remained in this position until about 1940 and then moved to Berlin to work with the Budget and Buildings Main Office. In this capacity he was assigned the tasks which he later had to carry out within the Economic and Administrative Main Office, Amt C VI.

"After the reorganization in 1942, and after the foundation of the Economic and Administrative Main Office, he became chief of Amt C VI, and remained there until the end of the war. About spring or summer of 1943, by Kammler's or Pohl's

{1027}

orders he became deputy chief of office group C and remained in this position, while still holding office as office chief C VI, up to the end of 1943.

"During the time he was Kammler's deputy, Eirenschmalz signed the official mail 'by order of Kammler'. Since the foundation of the Economic and Administrative Main Office, Eirenschmalz, among other things, was charged with granting subsidies for keeping up building operation of all building projects of the Waffen SS, which also included the concentration camps. In this capacity he had to grant annual subsidies for keeping up the building operations and for repair work. The bills obtained in return for these annual payments were sent to him afterwards as vouchers. Eirenschmalz knew, by way of the bills which he had to examine, when gas chambers or crematories or other 'concentration camp establishments were in need of repair.

"Eirenschmalz' position in the SS Administrative Office was that of the supreme chief for all questions concerning building operations. Within the office budget and buildings his tasks were restricted to the tasks carried out by the later office C VI, which he continued to carry out up to the end, in the Economic and Administrative Main Office."

The Tribunal is mindful of the testimony of this affiant when called upon to testify on cross-examination on behalf of the defendant. Even though he repudiated certain parts of this affidavit, from a review of all the evidence in the case, the Tribunal is of the opinion that this affidavit, upon the whole, speaks the truth.

The prosecution also offered in evidence another affidavit of Wolfgang Grosch (NO-2154, Pros. Ex. 52). The pertinent parts are as follows:

"1 February 1938, I was attached to SS Administrative Office with Eirenschmalz as immediate superior, where I remained until November, 1941, when I was transferred to the Central Russian Office. I was in Russia during the entire life of the WVHA.

"Amtsgruppe C was responsible for the construction of gas chambers and crematories when such construction had been demanded by Amtsgruppe D. The official channels were as follows: Amtsgruppe D contacted Amtsgruppe C. Amt C I drew up the building plans for these installations as far as the construction work was concerned and passed those on to Amt C III, who worked on the engineering section of the construction, the airing of gas chambers or the appliances for the gas to enter the chamber. Amt C III then handed these plans to a private firm which was to supply the special machinery of the

{1028}

cremating furnaces. Further on, through official channels, C III informed C V which passed on the order via the public works administrative division to the central public works department. The central public works department then handed the construction assignment to the respective construction department of the concentration camp which undertook the actual building with detainees assigned to them by D II. Amtsgruppe D gave orders and instructions to Amtsgruppe C with regard to the required building space and the purpose of these constructions. The actual consigner for the gas chambers and crematories was Amtsgruppe D."

Other evidence discloses that while the defendant Eirenschmalz was in the Main Office Budget and Buildings, he ordered the erection of a crematory at Dachau in the summer of 1940 (NO-4444, Pros. Ex. 641), and that at approximately the same time he ordered the construction of a crematory at Buchenwald (NO-4400 and NO-4401, Pros. Exs. 649 and 650, respectively). The defendant Eirenschmalz emphatically disputed all evidence

that he had any authority or gave any orders or participated in any way in the maintenance or construction of any installations of concentration camps.

The defendant admitted upon cross-examination that he visited Dachau in 1936 and 1937, and quite often thereafter he visited the garrison office at Dachau. He further admitted that on these visits to Dachau he sometimes saw the inmates working. He also admitted that he visited concentration camp Sachsenhausen, but that he never entered the protective custody part of the camp. He also admitted that he visited concentration camp Oranienburg, and saw inmates working there. He admitted that he visited Buchenwald in 1940 or 1941, but did not enter the protective custody part of the camp. He admitted that he visited concentration camp Ravensbrueck and talked to the construction manager of the clothing depot, but would not say how many times he had visited this camp. He testified:

"Q. When you made the visits to these camps that we have been talking about, you usually went on business, didn't you, that had something to do with your office affairs?"

"A. Yes."

He also admitted that he visited Auschwitz on one occasion in 1943 or 1944. He said that he was not sure that he saw inmates working in the armament plant on this visit. He denied ever visiting the concentration camps at Neuengamme, Stutthof, Natzweiler, Gross-Rosen, Mauthausen, and Bergen-Belsen. He did admit, however, that in 1940 and 1941 he visited Lublin for the purpose of discussing construction matters for the Waffen SS, but did not

{1029}

see any inmates working while there. He denied any knowledge of foreigners or prisoners of war being confined in concentration camps, but assumed that Jews were confined therein. He testified:

"Q. You knew, did you not, that the construction that was carried out by Amtsgruppe C in the concentration camps used inmate labor?"

"A. Yes."

The defendant denied any knowledge of the fact that Amtsgruppe W used inmate labor, but said that he could reach that assumption, although he did not know anything about the allocation of inmate labor. He emphatically denied having heard at any time during the war that anyone was mistreated or killed in a concentration camp, and stated that at no time was he informed that inmates were being underfed and undernourished in any concentration camp.

From all of the evidence in the case the Tribunal concludes the following: the defendant Franz Eirenschmalz was a member of the SS from an early date, and attained the rank of colonel in the Waffen SS. Over a long period of time, prior to the war, and prior to the organization of the WVHA and all during the war, he was occupied directly with construction matters of the SS, including the concentration camps. Throughout the entire trial he has endeavored to hide in every way possible his responsibility and participation in concentration camp construction-maintenance affairs. The evidence clearly discloses his active participation in matters pertaining to the operation, construction, and maintenance of concentration camps located in the German Reich and

in the occupied territories. His chief, the defendant Pohl, recognized his worth in the fields of task assigned to him in the WVHA, and when recommending his promotion gave a glowing account of his achievements and his loyalty to his tasks. The evidence clearly discloses that at all times, as chief of Amt C VI, he bore a full measure of responsibility for concentration camp construction matters, including the construction and maintenance of crematories and gas chambers. From his own testimony, it is clear that he visited a great number of the concentration camps at various times; that he saw and had an opportunity of seeing the inmates as they worked, the conditions under which they worked, and the housing conditions of the various camps.

The Tribunal concludes that the knowledge of the defendant concerning the erection and maintenance of the gas chambers and crematories in the various concentration camps put him upon actual notice of the intended use of these installations. Owing to the high position he held in the WVHA, we are forced to conclude that defendant Eirenschmalz had actual knowledge of

{1030}

"Action Bernhardt," and the, "Final Solution of the Jewish Problem," and that he knew that numberless thousands of unfortunate Jews and nationals of occupied territories were exterminated in the gas chambers and crematories erected and maintained under the supervision of his office and other offices of the WVHA. His activities in the SS, both before and after the organization of the WVHA, constituted a material cog in the machinery necessary for the operation of the concentration camps.

The Tribunal does not find that he was a so-called, "trigger man" in the deaths and atrocities committed on unfortunate people in the concentration camps, but that he, with others, operated and maintained the gigantic enterprises which resulted in the unlawful deaths of millions of slave laborers from occupied territories and prisoners of war.

The Tribunal finds and adjudges from the evidence, and beyond a reasonable doubt, that the defendant Eirenschmalz was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of war crimes and crimes against humanity, and finds him guilty as charged in counts two and three of the indictment.

COUNT FOUR

The Tribunal finds and adjudges from the evidence, and beyond a reasonable doubt, that defendant Eirenschmalz is guilty of belonging to the SS, an organization declared to be criminal by the International Military Tribunal, and as charged in count four of the indictment.

KARL SOMMER

This defendant was born 25 March 1915 in Cologne; he attended the elementary schools and four classes of high school; he belonged neither to the NSDAP, nor any other political party. He joined the Allgemeine SS in the last part of 1933 and became an SS private on 30 January 1934. His last rank in the Allgemeine SS was

Obersturmfuehrer. In March 1941, Sommer was appointed to the Inmate Labor Assignment Office of the Deutsche Erd- und Steinwerke, an SS enterprise. In this office he had the task of supervising inmate labor assignments, together with the supervision of the general welfare of the inmates. In October 1941, he succeeded to the head of the Department for Inmate Labor Assignment. Amt D II of the WVHA was called, "Labor Allocation of Inmates", and it was the task of Amt D II to arrange the labor allocation of inmates who were confined in concentration

{1031}

camps. Originally, labor forces were made available only for enterprises operated by the SS; later, after August or September of 1942, inmates were turned over to the industries inside of Germany, as well as in the occupied territories. The defendant Sommer was released from the Waffen SS in 1941, by reason of incapacity caused by a foot wound. He was then assigned to DEST on 1 March, 1941. He met Pohl about the end of 1941, and met Maurer early in 1942. Later Mummenthey secured the appointment of Sommer to office D II, as collaborator of inmate labor assignment with Maurer. He entered upon his duties with D II on 5 May 1942, and worked with this Amt until about April 1945. He was first Maurer's co-worker, and at the end of 1943 became Maurer's deputy. He lived in Berlin until 1943, then moved his permanent residence to Oranienburg.

THE ALLOCATION OF INMATE LABOR IN AMT D II OF THE WVHA

From all of the evidence in the case, including the testimony of the defendant, he was thoroughly familiar with every detail of Amt D II; its fields of task; training of inmates; allocation of labor for all inmates, wherever located; the amount and kind of work performed by them, their living conditions, treatment, food, clothing, and housing; the camps from which they were assigned, and the industries to which they were assigned; the payments made by the various industries for their work, the payment for work, if any, to the inmates, and the collection of the money for the work of the inmates from the various industries.

The Tribunal was greatly impressed by the detailed information which the defendant had in regard to every aspect of inmate labor and its allocation. The defendant testified that after March 1944 Maurer told him that he could designate himself as a chief of a Main Department, which he did, and at the end of 1942, or early in 1943, he became the deputy of Maurer, chief of Amt D II. By order of Gluecks he was permitted to wear slack trousers while in uniform and at other times to wear civilian clothing on account of the wound in his foot. He further testified that he never knew of any prisoners being confined in a concentration camp except political prisoners and criminal inmates. Later, he saw some Russian prisoners of war that were volunteers, he claimed. The defendant testified that he personally visited every one of the concentration camps during his work with Amt D II; that he remembered clearly his visits to Auschwitz in August 1943 and November 1944; and Bergen-Belsen in 1944, and again in 1945. He further testified that during a conversation with Gluecks, the

{1032}

chief of Amtsgruppe D and Inspector of the Concentration Camps, he was informed about the program for the extermination of the Jews in Auschwitz, but that he did not

participate in this program in any way, even though he was asked by Gluecks to do so. Immediately after this conversation with Gluecks, Pohl gave to Maurer an order concerning this program at Auschwitz. He further testified that all Amt chiefs of Amtsgruppe D had the permanent permission to enter and visit the concentration camps.

The prosecution offered in evidence an affidavit of the defendant Sommer (NO-1065, Pros. Ex. 304), which disclosed that the defendant personally knew of the allocation of between 500,000 and 600,000 inmate laborers from the concentration camps to the various plants and industries. This affidavit further disclosed that prisoners were requested by the plants from Amtsgruppe D (Maurer and Gluecks) or in case of personal connections, from Pohl.

The evidence disclosed that from Amt D II, the defendant Sommer furnished guards for the prisoners; that he made tabulations computing the wages due from DAW for concentration camp labor, also, that he reported that 36,784 prisoners from Lublin were supplied during July 1944 to DAW and that DAW was due to pay the sum of 55,176 Reichsmarks for such labor (NO-4181, Pros. Ex. 710).

From another affidavit of the defendant (NO-2739, Pros. Ex. 630), it is clearly shown that the defendant was thoroughly familiar with the program for the extermination of the Jews at Auschwitz and of the illegal medical experiments which were carried out in the various concentration camps.

The evidence further clearly discloses that the defendant was familiar with "Action Reinhardt," and was guilty of personally participating in this illegal and unwarranted action.

The evidence of the prosecution witness Jerzy Bielski, an inmate at Auschwitz from August 1942 until October 1944, tended to show that the defendant Sommer personally murdered two inmates at Auschwitz. After a careful review of all the evidence the Tribunal is of the opinion that the defendant Sommer was not guilty of these two atrocious murders and that the witness Bielski was mistaken as to the identity of the person responsible for such crimes.

There is evidence in the case which tends to show that the defendant Sommer actually knew of the existence of crematories and gas chambers in the concentration camps, and the purposes for which they were used.

Wolfgang Sanner, witness for the prosecution, testified that during 1944 and 1945 he was an inmate and was working on labor

{1033}

assignments at Mauthausen concentration camp. He received three letters from Amt D II signed by the defendant. In these letters Sommer gave the names of approximately twelve inmates, with instructions that they were not to be transferred to other camps and were not to be employed in camp Mauthausen. Within three to five days after receiving these letters, the inmates named therein were reported dead. The causes of death in these reports were, "shot while trying to escape," and "suicide by running into electrically charged wire."

The Tribunal does not deem it necessary to again enumerate in this judgment, the horrors and deaths of concentration camp inmates that resulted from inhumane treatment, beatings, tortures, starvation, murders, shootings, hangings, gassings, and burnings—nor would any useful purpose be served by again describing the millions of deaths and wholesale pillage and unlawful confiscation of property resulting from "Action Reinhardt," and the, "Final Solution of the Jewish Problem." Reference is hereby made to other parts of this judgment for these details.

Amt D II and the defendant Sommer played an important part in the commission of these atrocities and murders, and for such participation on his part, the defendant Sommer is criminally responsible.

The defendant Sommer testified at great length in his own defense, and attempted in various ways to answer and explain the evidence offered on the part of the prosecution. He offered documents, affidavits, and witnesses, in an effort to show a lack of criminal responsibility on his part in the operation of Amt D II of the WVHA. He emphatically denied all evidence which would tend to show guilt on his part of all charges in the indictment.

The Tribunal has carefully considered the evidence brought to its attention by the defendant, and has carefully and thoughtfully considered the closing argument of his counsel. But the Tribunal cannot and does not accept as true the defendant's contentions that his actions in D II did not involve criminal responsibility.

Without attempting to pass upon his guilt or innocence, the Tribunal deplors the fact that Gerhard Maurer was not apprehended prior to the commencement of this case, in order that his responsibility, if any, for the operation of D II could be determined.

CONCLUSIONS

The Tribunal finds and adjudges from the evidence, and beyond a reasonable doubt, that the defendant Karl Sommer is guilty of the charges contained in counts two and three of the indictment.

{1034}

COUNT FOUR

From all of the evidence in the case, including the admissions of the defendant, the Tribunal finds and adjudges, beyond a reasonable doubt, that the defendant Karl Sommer is guilty of the charges contained in count four of the indictment.

HERMANN POOK

Defendant Pook was born 1 May 1901 in Berlin; after completing his education at the elementary schools, he studied dentistry from 1921 to 1925 at the University of Berlin and passed his State examination in 1925. In 1927 he received his doctor's degree in Berlin and began practice as an independent dentist in Berlin-Lichterfelde. He joined the NSDAP in 1933, and in the same year became a member of the Reiter [mounted] SS. He was called into the Waffen SS on 1 October 1940, and the highest rank attained by him in the Waffen SS was Obersturmbannfuehrer (lieutenant colonel). On 6 September

1943, after completing a number of duty assignments for the Waffen SS, he was transferred to the SS Economic and Administrative Main Office, Amt D III of Amtsgruppe D, as chief dental officer, and held this position until the end of the war.

The order transferring him to the WVHA is as follows:

"SS Obersturmbannfuehrer Hermann Pook, born on 1 May 1901, at present Panzer Grenadier division 'Hohenstaufen', division staff, is transferred to the SS Main Economic and Administrative Office, Amtsgruppe D III, Oranienburg, in the capacity as dentist in charge, as of September 3, 1943.

"He is to report to the chief of the SS Main Economic and Administrative Office, Oranienburg, SS Obersturmbannfuehrer Lolling." (NO-1998, Pros. Ex. 574.)

Thus, from this order it is perfectly clear that he was directly subordinate in the WVHA to Dr. Lolling, chief physician of Amt D III. In his field of tasks, he was subordinated under three channels. He was subordinated to Gruppenfuehrer Gluecks, chief of Amtsgruppe D in military and disciplinary matters. He was subordinated to office XIV of Amtsgruppe D of the FHA [Fuehrungshauptamt], one of the twelve Main Offices of the SS, not connected with the WVHA. The medical office of the Waffen SS, upon its reorganization in the spring of 1943, became Amtsgruppe D of the FHA and was composed of various departments, one of which was office XIV, the dental office. This office was charged with the administration of the dental services for the whole of the SS, and among other things, for the supplying of materials to

{1035}

dental stations and the staffing of the SS divisions and Main Offices with dental personnel.

The position of chief dental surgeon in Amtsgruppe D of FHA was first occupied by Sturmbannfuehrer Reutter until September 1943 when the defendant Pook succeeded him. The field of tasks in this position of the defendant Pook consisted largely in the following: the channeling of correspondence passing between the camp dentists and office XIV, checking and considering for approval requisitions submitted by camp dentists; forwarding of monthly work, personnel, and gold reports from the camp dentists to office XIV, Lolling's subordinate; and matters relating to dental affairs in concentration camps. He was consulted on questions concerning the transfer and assignment of dental personnel within the concentration camps. He also worked in the Oranienburg dental clinic in dealing with the care of SS members and their dependents. He was also the supervisor of SS concentration camp dentists and camp inmate dentists. He exercised authority of 'command over the SS camp dentists as well. On page 4044 of the record, the defendant testified as follows:

"If it would have been necessary, and if I would have determined that the SS dentist in that camp had not really carried out his duty, and if I had seen that on the occasion of an inspection, then certainly I would have told him that during my visit, and I would have told him if he was not going to try any harder, then I would have to submit a report to my superior and he would be dismissed or punished."

As to the knowledge that the defendant had of conditions in concentration camps in which he had supervisory and administrative authority, the evidence clearly discloses that he made frequent inspection tours of dental stations located in the various concentration camps and outside labor camps. The defendant vigorously contends and

insists that he did not have knowledge of the manner in which the inmates were treated, nor did he have knowledge of conditions prevailing in such concentration camps. Despite his denials, the Tribunal is of the opinion, and so holds, that he was familiar with the atrocious conditions generally prevailing in the concentration camps. In January 1944, he visited Mauthausen 'concentration camp in company with Lolling, his superior, and spent the evening there. On at least one or more occasions he visited Buchenwald concentration camp, his last visit in this camp being in March 1945, just prior to the capitulation.

It is a matter of public knowledge from a report made by a United States Congressional Committee in April of the same year, and from motion pictures taken of this camp by the Allied armies upon its capture, and other documentary evidence in the case,

{1036}

that this camp constituted an extermination factory of civilians of occupied territories, Jews, and prisoners of war; that these unfortunate people were exterminated by starvations, beatings, tortures, incredibly crowded sleeping conditions, and sickness following inhumane treatment. Quoting from the United States Congressional Committee Report, which was offered in evidence, the following appears:

"Pictures and descriptions of the conditions at the camp cannot adequately portray what we saw there, and it is only when the stench of the camp is smelled that anyone can have complete appreciation of the depths of degradation to which the German Nazi Government and those responsible for it and its agencies, organizations, and practices have dropped in their treatment of those who failed to embrace the doctrines of the master race." (L-159, Pros. Ex. 177.)

These terrible conditions were found the month following the last visit to this camp by the defendant, yet the defendant denies that he noticed anything unusual while there. He further admits that he visited the Dora labor camps in March 1944, and that he inspected his dental station at Ohrdruf as late as March 1945, but still insisted that he saw nothing on these visits that would put him upon notice of the horrible conditions and inhumane measures that were being administered to the inmates.

The prosecution offered in evidence an affidavit of Dr. Werner Greunuss (NO-2156, Pros. Ex. 515), in regard to a visit of the defendant to labor camp number 3, which was concerned with the construction of the Fuehrer's headquarters at Ohrdruf. The Tribunal quotes the following portions of this affidavit:

"I remember a visit of Dr. Pook, the chief dental surgeon for all the concentration camps, who came from Berlin to inspect the installation for dental surgery at S III. He said that the treatment as applied was much too humane, that anaesthetics would have to be dispensed with, and that generally speaking, more rigorous dental work was to be carried out. Besides only really essential treatment should be given to these prisoners. Supply of material, which was under his control and for which he, as the highest instance, was responsible, were unsatisfactory in the camp at Ohrdruf, and I could only obtain this material with the greatest difficulty through channels from Buchenwald. Dr. Pook, to whom I presented my exact records, made fun of these civilian bureaucratic methods and told me that such a conscientious treatment of these people was out of the question. All my efforts to obtain dental treatment for the prisoners he termed ridiculous, and he gave orders that only essential work was to be performed, which meant that only

{1037}

tooth extractions were to be undertaken and no other treatment at all. These tooth extractions were to be carried out without any local anaesthesia. Many of these prisoners had no more teeth

and I was forbidden by Dr. Pook to have sets of artificial teeth made. Consequently many of these prisoners were not able to digest their food properly, and this resulted in serious disorders of the stomach and the intestines, which in many cases led to death.

"The gold fillings of deceased prisoners were removed by a prisoner dentist and then turned over to the SS dentist of the camp at Ohrdruf, who forwarded it to Barnewald."

The defendant emphatically denies the truth of this affidavit, contends that he had no such knowledge and that no such orders were given by him.

The Tribunal concludes that this affidavit portrays the true conditions prevailing in this camp and that the defendant's attitude towards these unfortunate people was as stated therein. Other evidence in the case corroborates the Greunuss affidavit. The defendant admitted that he heard of the extermination program of the SS sometime during the summer of 1944. After hearing of this program, he visited the concentration camp Auschwitz and had the opportunity of seeing, and did see, the mortality charts kept by Lolling. However, he denies that he noticed from these charts the actual death rate. It should be noted that at the time of his visit to the Auschwitz concentration camp the program of extermination was at its peak. In regard to the SS program of the final solution of the Jewish problem and the planned extermination of inferior races and political opponents of the Nazi regime, it would follow that thought was given as to what would be done with their personal property and valuables. The answer to this question was to confiscate and steal everything of value that could be obtained from their personal belongings and their bodies.

The International Military Tribunal in its judgment against Goering and others, found the following:

*"Evidence was given of the treatment of the inmates before and after their extermination. There was testimony that the hair of women victims was cut off before they were killed and shipped to Germany to be used in the manufacture of mattresses. The clothes, money, and valuables of the inmates were also salvaged and sent to the appropriate agencies for disposition. After the extermination, the gold teeth and fillings were taken from the heads of the corpses and sent to the Reich Bank." **

{1038}

By an order of Himmler, dated 23 September 1940, gold was to be removed from the teeth of deceased concentration camp inmates for the benefit of the Reich. The defendant Pook admitted knowledge of this order, but denied that he participated in the carrying out of this order, saying:

"As a leading dentist, I had nothing to do with the removal of gold teeth as far as people were concerned who had died natural deaths. As far as removal of gold was concerned from people who had been killed in the extermination programs, there was no question about that. I had no knowledge of the extermination program, and these actions. Therefore, I couldn't know anything at all about the removal of gold teeth either." (R. 3917)

The Tribunal concludes from all the evidence that the extermination program was at least in part an SS task. This program required many agencies and many SS responsible persons to carry it out and to conclude it. From the time that the subjects for extermination were collected to the time of their final extermination in the gas chambers

* Trial of the Major War Criminals, op. cit. supra, vol. 1, p. 262.

and crematories, various individuals had specific tasks assigned to them as their duties in carrying out this program. One of the final steps was to take from the mouths of the gassed victims the remaining vestige of value to the Reich, the gold from their teeth. Thus, when the defendant and his subordinates had completed their task of removing this gold, the flaming mouths of the crematory completed the program.

The Tribunal finds from the evidence, beyond a reasonable doubt, that the defendant Pook in his capacity as the chief dentist of the WVHA had constructive knowledge of the policy of extermination as carried out in the concentration camps by the SS, and, as his part therein he was charged with the confiscation of the gold from the mouths of the subjects and was directly responsible as one of the participants in such a program.

The Tribunal will not deal with "Action Reinhardt," at this point as a separate and distinct action, but has made its findings as to this defendant from the over-all picture of the SS extermination program. The confiscation of the dental gold of deceased concentration camp inmates was directly tied into and made a part of the extermination program and "Action Reinhardt."

CONCLUSIONS

The Tribunal finds beyond a reasonable doubt from the evidence in this case that the defendant Pook was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of

{1039}

war crimes and crimes against humanity, as charged in counts two and three of the indictment.

COUNT FOUR

The Tribunal further finds beyond a reasonable doubt that the defendant Pook was a member of the SS after 1 September, 1939, an organization declared criminal by the International Military Tribunal, as charged in the indictment. Therefore, the Tribunal finds and adjudges that the defendant Hermann Pook is guilty as charged in count four of the indictment.

HANS HOHBERG

Hans Hohberg was not a member of the NSDAP and never joined the SS. Educated and trained as an auditor, he was employed under contract by the SS Administration in his professional capacity. He first came into contact with Pohl in 1940 when he was engaged to audit the accounts of the various SS enterprises, and "if possible, to bring order into his companies." Hohberg states that his only superior was the Institute of Public Auditors, and that against his will Pohl made him chief of staff W. He sought to deny that he was chief of staff W, but the defendants Volk and Baier, as well as defense witness Karoli from staff W, all confirmed his (Hohberg's) official position.

The evidence shows that Hohberg's part in the SS industries went far beyond that of a simple auditor. The task of coordinating and directing W industries at the top level was the task of staff W, whose chief, according to the business order of SS WVHA, had

many duties. He was economic advisor to Pohl, assisted Pohl in the discharge of his duties of management, and the chiefs of the eight offices in department W were to report to Pohl only after conferring with the chief of staff W on all financial, economic, and other important matters concerning the management of the enterprises. The chief of staff W was to supervise the manner in which all funds and moneys furnished by or through DWB were to be used. He was to supervise business transactions of all SS industries, he was to examine the purchase and sale of all plots of land, and he employed and discharged all employees in staff W. In his testimony Pohl declared that staff W was the instrument which he used as the sole business manager of DWB in the supervision of the economic enterprises.

Hohberg is definitely associated with concentration camps. All W industries obviously were an essential part of the concentration camp system. Himmler, in his Metz speech, declared: "We cannot exist without the business enterprises."

{1040}

Because he was neither a member of the National Socialist Party nor the SS, Hohberg claims an immunity from responsibility for SS excesses. But he worked for the SS enterprises, he planned for the SS enterprises, he knew the SS enterprises used concentration camp labor, he knew the inmates were unpaid, badly fed, badly treated, yet he continued to work with the SS. He did not wear the SS uniform, but he cooperated and collaborated with the SS as much as if he held high rank in that organization. Having visited many of the concentration camps he cannot plead ignorance as to what transpired within them.

Hohberg showed a great deal of initiative in the development of the SS industries. In fact on the stand he described himself as the godfather of DWB.

Although his aim in Court was to demonstrate what an insignificant part he played in the WVHA set up, he could not resist the pride of pointing out how he completely reorganized the SS industries.

Karoli testified that Hohberg was the expert and economic brain of the enterprises.

When the workshops in the Dachau concentration camp were organized and incorporated into the DAW, it was Hohberg who handled the financial aspects of the transaction and advised Pohl as to what steps should be taken.

Testifying on the matter of remuneration for the use of concentration camp inmates, Hohberg stated: "I saw the amount of daily wages paid for the inmates and as an auditor I had to give my opinion on what these enterprises should pay to the Reich."

As an auditor, Hohberg was not compelled, as he said here, to render an opinion on what the enterprises should pay to the Reich.

Through Hohberg's efforts, the German Lebensmittel, the Textile and Leather Company, and the OSTI - all using inmate labor - were given the form of a company. He was frequently consulted when these enterprises were being founded.

The commanders of the concentration camps functioned under Pohl's direction as works managers of the various economic enterprises. Thus Hohberg had direct contact with

the concentration camps, since staff W, of which he was the chief, made the arrangements with concentration camp commanders in handling the various enterprises.

When the matter of transferring armament production to concentration camps was discussed, Hohberg accepted appointment as expert for the WVHA. People desiring to know the details of the transfer of armament enterprises to Neuengamme, Auschwitz, Lublin, and Ravensbrueck, were referred to Hohberg as

{1041}

being the person in WVHA competent to conduct negotiations.

When the Hermann Goering Works wanted inmate labor, Hohberg attended the conference which considered the ways and means of supplying these inmates. The memoranda written by Hohberg reveals intimate knowledge of concentration camp labor problems.

Hohberg himself testified that he handled the financial, organizational, and legal problems of the economic enterprises.

Hohberg inveighed against the SS, accused Pohl of crimes and expressed indignation at the concentration camp excesses. He testified that he left the WVHA because of his disapproval of its activities. But even after leaving, he accepted a contract from Pohl by which his family received 2,000 RM per month.

In 1944, after having left the WVHA, he carried out successful negotiations with Pohl and obtained the cooperation of the SS enterprises in the production of jet propelled planes.

Staff W played an important part in Action Reinhardt, in the supervision of OSTI, and in handling loans from the Reich funds. Pohl's report to Himmler, which was prepared by Hohberg, listed OSTI under staff W. OSTI is listed as a part of staff W on the chart of WVHA which was signed by Pohl.

The Tribunal has acquitted the defendant Vogt under the indictment and since he also was an auditor, a comparison between him and Hohberg is inevitable. The difference between them lies in the fact that Vogt at no time was anything but an auditor, whereas Hohberg, in addition to being an auditor, was an active participant in the economic enterprises of the SS in the several capacities of chief of staff W, financial director, and economic advisor.

Hohberg testified at great length on his opposition to the Nazi regime and how he participated in the resistance movement. While actually working with the SS enterprises, it is not apparent that he did anything to slow up the juggernaut of oppression over concentration camp inmates. However, after he left the WVHA it is not unlikely that he did lend himself to the underground movement working against the regime and organization with which he had at one time cooperated.

The Tribunal does not deny that Hohberg may have played an active part in that movement and will give that fact due weight.

The Tribunal finds Hohberg guilty under counts two and three of the indictment. He is not charged under count four of the indictment.

{1042}

HANS BAIER

Hans Baier joined the National Socialist Party on 1 May 1933. In 1937 Pohl induced him to enter the SS and had him transferred from the navy in which he was then serving. From April 1937 until August 1943 Baier conducted instruction courses on SS administration. He states that in these courses he never mentioned concentration camps, but one of his former students, Philipp Grimm, declared in an affidavit that at this school he was taught—"Everything in connection with the administration of troops in a concentration camp."

Baier's work as instructor apparently so well satisfied the demands of Nazi and SS ideology that it brought from Pohl the compliment that Baier's students could be appointed immediately to the Death Head units as administrative leaders.

Baier may not have mentioned concentration camps in his lectures but he could not help knowing about them, since in 1941 he had inmates from the Dachau concentration camp at his very school, employed in enlarging and extending it. Inmates worked there daily.

In August 1943 Baier became chief of staff W of the WVHA, following Hohberg. His counsel states that it is open to discussion whether Baier could be called Dr. Hohberg's successor. But the minutes of the W Chiefs of Amt meeting on 29 September 1943, written up by Dr. Volk, carries this item: "He (Pohl) recalled Standartenfuehrer Baier, commander of the school in Dachau, and appointed him 'chief of staff W.'"

As successor to Hohberg, Baier is as much involved as Hohberg in crimes against humanity arising out of his activities as chief of staff W. It is unnecessary to relate again the functions of the staff W chief, since that matter was sufficiently covered in the discussion of Hohberg's case. However, article 8 of the WVHA Code of Procedure may be quoted to show the important role the office of chief of staff W was given in the organization set-up:

"The Chief W."

Article 8

"The chief W is the economic advisor of the chief of the Main Office. In this capacity he is especially responsible for the supervision as well as the economic and financial counselling of the companies and offices; he moreover assists the chief of the Main Office in his leadership tasks."

It has been advanced in Baier's behalf that his work was confined to the spheres of auditing and taxation, but the references in the document books in this case are legion as to Baier's activities beyond that of auditor and tax expert.

{1043}

On 29 February 1944, Baier received a long report from Weber on the expenditures for prisoners in comparison with the wages paid to free workers. On 3 March 1944, Baier ordered that the various offices involved report to him on the industries employing prisoners.

On 17 March 1944, Maurer of Amtsgruppe D wrote Baier asking for a conference on the subject of wage scales for prisoners in the armament industries.

On 27 March 1944, Baier wrote a memorandum on the, "effects of a pay raise for prisoners working with the Deutsche Ausruestungswerke," (German Equipment Plants). This constant reference to wages for the prisoners is not to be understood as meaning anything for the prisoners, but only increased revenue for the SS. In fact toward the end of the war, Baier had from 5,000,000 to 6,000,000 RM in one account, sums which had been collected from individual enterprises. In an affidavit, made prior to the trial, he admitted that, "the fact that the inmates themselves did not receive any compensation obviously was an exploitation."

One of the most amazing documents presented at the trial on the subject of prisoner labor is a letter sent by the Allach-Munich G.m.b.H., to staff W, demanding reimbursement for losses incurred on account of the absence of prison labor. Part of the letter reads as follows:

"In consequence of the typhoid epidemic which broke out in the Dachau concentration camp in January 1943, no prisoners were available to us as workers from 26 January 1943 up to and including 2 March 1943. On 4, 5, and 6 March 1943 only 20 prisoners worked for us. For years our plant has been completely dependent on prison labor. A sudden withdrawal of these workers as it occurred in January this year, means the closing down of the whole plant.

"We are convinced that the losses incurred by us, through the withdrawal of prisoners in the period from 26 January to the beginning of the month of March, fall under paragraph 2 of the Business Regulations for the Financial Compensation office and should, therefore, be reimbursed.

"Without the typhoid epidemic in January and February 1943 we should have made a profit of about half the amount of the total for the 2d and 3d quarters of 1943, that is to say, about 21,300 RM, because operating conditions, apart from these circumstances, were the same. Instead of this profit we suffered losses of about 10,500 RM. Thus our losses resulting from the shortage of prisoners amounts to about 31,800 RM.

"In a letter written by Pohl under the date of 18 February 1944, he states that he charges chief W, SS Oberfuehrer Baier with

{1044}

certain duties, "regarding the management and supervision of all enterprises which are under the supervision and administration of WVHA."

But it is argued that it was impossible for Baier to exercise any management or direction in business enterprises because commercial law did not permit it. It is not apparent from the evidence in this case that SS enterprises or SS officers were halted from a performance of any self-serving function or deed by commercial law or any other law.

Baier was aware of the long hours of employment to which concentration camp inmates were subjected, having received from Pohl on 22 January 1943, a communication which reads: "I should like to point out that the working time of prisoners, laid down by order, which amounts to 11 hours daily, has to be kept up also during the winter months."

Baier was involved with Volk in the matter of the acquisition of real estate for the proposed concentration camp at Stutthof, already discussed in the Volk opinion.

Baier also had full cognizance of the OSTI operation. On 16 April 1944, he received a report from Dr. Horn on the state of the liquidation of the Ostindustrie G.m.b.H. In one of

his reports, Dr. Horn in winding up the affairs of OSTI, declared: "As the SS members are no longer needed they are sent back to the personnel office of the SS Economic and Administration Main Office if there are no other orders from the SS WVHA."

This in itself demonstrates how 'completely the OSTI was a WVHA activity. The Tribunal does not find that Baier participated in any of the early phases of OSTI, but it does find that his office trafficked in the ill-gotten gains from OSTI.

Baier states that he never visited a concentration camp, even though the Dachau concentration camp was only a 15 minutes' walk from his school. In any event he can scarcely claim ignorance of concentration camps. On 19 January 1944, he signed a document with a notice of Pohl's order converting into concentration camps the forced labor camps at Krakow-Placzow, Lvov, Lublin, and Radom-Blizyn. He does admit having visited some of the DWB factories which employed concentration camp inmates, but declares that he never heard of any irregularities in the treatment of prisoners. He then qualifies this with the statement that he confined his visits to the office rooms of the factory. But even though he never set foot inside a concentration camp, he was satisfied that the inmates were all criminals, having been all duly adjudicated so by authority of the State.

The Tribunal rejects Baier's explanation that he believed all inmates were criminals confined by due process of law. It was

{1045}

a matter of common public knowledge that merely the expression of opinion, no matter how innocuous, which could be interpreted as adverse to the interests of the Reich or of the Nazi Party, would land one in a concentration camp. It was a matter of general information that populations were brought in from other countries and thrown into concentration camps. That one as close as Baier to concentration camp activities could not know the real state of affairs is simply incredible unless it can be shown that Baier is mentally deficient.

It was not necessary for Baier to visit concentration or labor camps to learn of the dreadful living conditions existing in many of those establishments. Reports were sent to staff W on what was transpiring in the field. One report dated 4 December 1944, and directed to SS Main Economic and Administrative Office staff W, reveals the horrible state of affairs at camp Bisingen:

"The camp was occupied in the first days of October by 1,500, mostly Polish, prisoners. It is situated on an extremely wet meadow, there are no pathways. The ground has become completely bogged; the wetness is almost beyond control. The hygienic installations, which are of the most primitive kind, such as toilets, dispensary, and washrooms, are absolutely inadequate; further, they are too far apart, and hard to reach under these muddy conditions. Consequently, extreme filth and vermin are prevailing, and the health situation has become unjustifiable. On 1 December 1944 there were about 420 persons sick, mostly from diarrhea, general debility, and weakness of the heart. Since the camp has been in operation 233 deaths are on record (in 8 weeks!); of those only six were shot while trying to escape, and six committed suicide."

With Volk, Baier also knew of the need for guards at the Erzingen labor camp.

Baier's deputy signed many letters for Baier regarding the setting up of camps for prisoners engaged in forced labor. Baier states he did not hate the Jews and never

inveighed against them, all of which may be true. Nonetheless, he was an important part of an organization which exploited, oppressed, tortured, robbed, and eventually exterminated the Jews.

On 24 January 1944, Dr. Horn wrote Pohl, making a report on the ghetto plants at Lodz. A copy of this report was sent to Baier. On 8 June 1944, Mummmenthey wrote Baier recommending that a diamond cutting factory be established in the Bergen-Belsen concentration camp to be run by Jews, because the diamond industry of Amsterdam had come to a standstill as a result of the deportation and extermination of the Jewish workers there.

One document (NO-3839, Pros. Ex. 594) revealed that Baier

{1046}

was called upon to obtain barracks at the Auschwitz concentration camp for the housing of suitable prisoners to be used by the Getwent, G.m.b.H. (Company for Technical and Economical Development, Ltd.).

It is not claimed by the prosecution that Baier, or for that matter, any of the defendants in this case, physically manhandled Jews, or other detainees of the Reich. But it is maintained with reason that the systematic persecution, impoverishment, confinement, and eventual slaying of these persecutees could not have been possible without the vast machinery of the SS, of which the WVHA was one of the most important parts.

The Tribunal finds that Baier, in his position as chief of staff W, took a consenting and active part in the exploitation of slave labor. In this he comes quite clearly within the purview of Control Council Law No. 10 defining war crimes and crimes against humanity.

The Tribunal finds Baier guilty under counts two and three of the indictment.

COUNT FOUR

The Tribunal also finds him guilty under count four.

LEO VOLK

Leo Volk joined the NSDAP on 1 May 1933, stating that this was required of him in order that he might finish his legal education. Further, that on orders of the Young Lawyers' Organization he was compelled to join the Allgemeine SS. In December 1939 he was requested by the SS Main Office Administration and Economy as an expert on legal affairs. According to his statement, he refused to leave his work as information specialist with the Professional Trade Society of German Cities and Communities, and was therefore drafted into the Waffen SS and detailed to legal work in the Main Office III A 4, of the Main Office Administration and Economy on 3 January 1940.

In the summer of 1941 he was assigned to legal work with the DWB which was part of staff W. Later he became the head of the legal department in staff W, and acquired, as time went on, the titles and functions of deputy chief of staff W, Prokurist for DWB, Referent or private secretary, and legal advisor to Pohl. For one month, in the absence of Hohberg, he acted as chief of staff W. Volk was undoubtedly a very busy man. There

were so many facets to his unique position that at times he did not know himself in which capacity he was functioning.

Volk's attorney seeks to dim the luster of his client's versatility

{1047}

and to cry down the importance of his work by stating that Volk merely prepared notarial documents, carried on law suits and generally gave legal advice. The evidence, however, overwhelms this modest appraisal of Volk's capacities. It has been demonstrated by the documents and by Volk's own testimony on the witness stand that he was a vital figure in Amtsgruppe W charged with the handling of vast SS enterprises employing unnumbered concentration camp inmates.

It has been argued in Volk's behalf that he cannot be convicted of war crimes or crimes against humanity because the prosecution has not established that he personally ever killed, maltreated, or robbed a concentration camp inmate. The prosecution never attempted to prove that Volk directly and physically abused a human being. It has been further argued that in order to convict Volk of any crime it must be shown that, if he knew of maltreatment of concentration camp inmates, he had to have the power to prevent the maltreatment in order to be convicted of crime. The law does not require that the proof go so far. It is enough if the accused took a consenting part in the commission of a crime against humanity to be convicted under Control Council Law No. 10. If Volk was part of an organization actively engaged in crimes against humanity, was aware of those crimes and yet voluntarily remained a part of that organization, lending his own professional efforts to the continuance and furtherance of those crimes, he is responsible under the law. But it is submitted that he was not aware of any crimes and it is this which the prosecution must establish before it can ask for a conviction.

Volk's contract with the DWB provided:

"It is Herr Volk's duty to manage the business transactions of the DWB with the care as befits a proper business man."

In a letter to Pohl as early as 1 September 1941, Volk displayed his grasp of the entire SS enterprise set-up by making recommendations for various changes in business managers and recommending himself as successor to Mummenthey as manager of Cooperative Housing and Settlement Co., Ltd.

The DWB has been charged with exploiting concentration camp labor, but Volk argues that since the DWB was only a holding company, it could not use the services of physical labor. Academically this is correct, but the various subsidiary companies of DWB employed concentration camp labor on a vast scale and Volk could not avoid knowing this. On 13 July 1943, Gluecks, chief of department [Amtsgruppe] D, wrote Volk about the allocation of prisoners from the labor camp in Neurohau for the "Bohemia" firm. Paragraph 2 of this letter reads:

"I too considered it advisable that all questions connected

{1048}

with the allocation of prisoners should be settled by a concentration camp and at the beginning of June of this year, I, therefore, subordinated the detachment of female prisoners from Ravensbrueck to the official supervision of the concentration camp Flossenbuerg. 'Bohemia' is,

therefore, being cared for, as desired, by Flossenbuerg only. The camp commanders, both camps, have been instructed accordingly and will receive a copy of this letter today."

On 28[18] February 1943, the defendant, Bobermin, W I [II] office chief and manager of the Golleschau Portland Cement Company, which used concentration camp labor from Auschwitz, designated Volk as Syndikus [in charge of legal matters] of this company. In January 1942 in Stutthof, Volk participated in a conference having to do with the conversion of the civilian internment camp at that place into a concentration camp. This camp was to house 25,000 inmates including prisoners of war. On 12 January 1942 Volk wrote a long memorandum on the Stutthof concentration camp project. In this memorandum he analyzes in detail the various phases involved in the concentration camp plan, dwelling at length on the lucrative brick works within the area. Volk's inspection of the site, his conferences on the subject, his reports and memorandum demonstrate convincingly his familiarity with concentration camp policy.

In February 1944, Volk accompanied Pohl to Lodz on the same kind of a mission which had engaged him at Stutthof. The fact that Himmler had, prior to Volk's visit to Lodz, ordered the transformation of the ghetto there into a concentration camp, and the later fact that the plan was abandoned does not take away from the charge of the prosecution that Volk was actually involved in concentration camp affairs; and the fact that Volk himself advised against taking over all the enterprises at Lodz adds to the logic of the prosecution's charge.

In July 1942 Volk attended a conference which had to do with the Hermann Goering Works at Linz. A memorandum on this subject points out that inmates of the Mauthausen concentration camp were to be used in erecting a factory which was to utilize the Clinker returns of the Linz foundry. The fact that a change in the plan dispensed with the use of prisoners here does not wipe out Volk's knowledge of how concentration camp inmates were being employed.

On 12 December 1944, Volk asked that 79 guards be sent to a labor camp at Erzingen. This certainly would establish that he was aware of the use of prison labor.

Volk denies all knowledge of the presence of prisoners of war in concentration camps. Yet on 10 March 1942, he countersigned

{1049}

a letter from Kammler, chief of department [Amtsgruppe] C, WVHA, to the inspector of concentration camps, Gluecks, which contains this significant paragraph:

"In view of the increasing shortage of civilian workers the execution of the construction tasks devolving upon the SS Economic Administration Main Office in the third year of war, 1942, requires the employment of an increased number of prisoners, prisoners of war, and Jews."

On 1 July, 1943, Mummmenthey wrote the commandant of the concentration camp at Flossenbuerg that he and Volk were coming to visit him and specifically asked him to make arrangements so that Volk could visit the camp. Volk later denied that he went into the camp but only saw it from a distance, but this does not eliminate Mummmenthey's declaration of his (Volk's) interest.

Volk's counsel in his final plea argued that even if concentration camps were employed, this was no crime. He stated:

"It is therefore very doubtful whether the mere use of prisoners for unpaid work alone is sufficient to comply with the definition of the crime of enforcing so-called slave labor."

But, if forcibly depriving a man of his liberty, and then compelling him to work against his will without remuneration does not constitute slave labor, then the term has no meaning whatsoever.

Volk seeks to disassociate himself from complicity in the OSTI operation by stating that he was in Switzerland when OSTI was formed on 12 March 1943. However, he attended one of the first conferences on this project. He states that at this conference, which occurred 13 February 1943, its aims were not obvious and therefore he could not be charged with knowledge of its illegal objectives if any. But the memorandum on the subjects discussed at the conference lists as the first two items (1) the utilization of the Jewish manpower in the Government General; (2) the utilization of the Jewish movable property.

Since it was obvious that these two utilizations would be without compensation to the Jews involved, the criminal aspect of the operation must have been obvious at once. Volk, however, seeks to explain away his participation in this conference with the statement that he had been summoned to deal with any legal questions which might arise and did not know the subject of this discussion. It is rather difficult to accept that Pohl would ask Volk for a legal opinion without outlining to him the subject matter. Volk goes further and says that he never saw the questionnaire which was the basis for that discussion until the trial.

The evidence establishes that Volk was cognizant of the OSTI operations and the Action Reinhardt. On 31 August 1943, he

{1050}

joined with Baier in requesting a loan of 2,500,000 RM to OSTI. On 26 June 1943, he approved a memorandum signed by Hohberg on the transferring of funds from the Reinhardt fund to the German industrial firms.

Volk's indefatigable and far-flung efforts in behalf of the SS enterprises exploiting concentration camp labor, his close collaboration with Pohl, his initiative and energies exerted for the W industries bring him inevitably within the purview of Control Council Law No. 10 defining war crimes and crimes against humanity.

The Tribunal finds Leo Volk guilty under counts two and three of the indictment.

COUNT FOUR

It is not clear, however, that Volk is guilty under count four. The fact that he had a written contract with DWB would indicate that his connection with the Waffen SS was not as binding as military service implies. The fact also that he did not give up his position with the Deutsche Gemeindetag (German Community Day) * when he was drafted into the Waffen SS also attacks the exclusive authority of the SS over his movements. He continued to draw a salary from the civilian firm until May 1941. Volk's connection with the Waffen SS is not sufficiently free of ambiguity to justify the conclusion that it has been established beyond such reasonable doubt as to bring him within the provisions of

the IMT decision on this point. The Tribunal, therefore, finds him not guilty under count four.

KARL MUMMENTHEY

Karl Mummenthey joined the Allgemeine SS in 1934. In 1938 he became a legal assistant in the administrative office of the SS under Dr. Salpeter. In 1940, in order to avoid being drafted into the army he arranged with Salpeter to be taken into the Waffen SS and placed on detached service with the WVHA.

In his direction and management of the German Earth and Stone Works, known as DEST, none of the defendants was more directly associated with concentration camp inmate labor than Karl Mummenthey.

In January 1939, Mummenthey made an investigation of the company, and because of his recommendations, a separate legal department was set up under himself. In September 1939 he

German municipal league established by law as central organization under the Reich Ministry of Interior for promotion of common problems of municipal administration.

{1051}

became second business manager of DEST, and in September 1941, first business manager. When the Main Office Administration and Economy, and the Main Office Budget and Buildings amalgamated to form the WVHA, Mummenthey became chief of office W I, and as such continued to control DEST.

DEST had brickworks and quarries at the Flossenbuerg, Mauthausen, Gross-Rosen, Natzweiler, Neuengamme, and Stutthof concentration camps. The ceramic works of Allach and Bohemia were also subordinated to office W I under Mummenthey. The gravel works at Auschwitz and Treblinka, the granite quarry at Blizyn, the Clinker Works at Linz all formed part of the vast DEST establishments employing concentration camp labor. Mummenthey testified that plants subordinated to office W I used a maximum of from 14,000 to 15,000 inmates at one time.

The DEST industries were strictly concentration camp enterprises. Each DEST plant had a works manager appointed by Pohl upon recommendation by Mummenthey. These works managers made monthly reports to Mummenthey's office. Mummenthey frequently visited these plants and often called on the concentration camp commanders. Schwartz and Schondorff, in behalf of Mummenthey, also made periodical inspections of the plants.

Mummenthey's attorney in his final argument before the Tribunal said: "Without the connection with its Holding-Gesellschaft [Company] and Pohl's power of command, and without Mummenthey's membership in the SS, the DEST and thereby Mummenthey also, would hardly have to defend themselves before this forum." But it is precisely this which condemns Mummenthey. It is like saying that were it not for a robbery or two, a robber would not be a robber. It was Pohl's command, and by his command the entire WVHA is involved, plus Mummenthey's command as an SS officer, which made DEST what it was, an organization engaged in human slavery and human degradation.

The Tribunal must also renounce defense counsel's contention that Mummenthey did not accept the responsibility of chief of office W 1. All the evidence points to the contrary.

It has been Mummenthey's plan to picture himself as a private business man in no way associated with the sternness and rigor of SS discipline, and entirely detached from concentration camp routine. The picture fails to convince. Mummenthey was a definite integral and important figure in the whole concentration camp set-up, and, as an SS officer, wielded military power of command. If excesses occurred in the industries under his control he was in a position not only to know about them, but to do something. From time to time he attended meetings of the concentration camp commanders where all items pertaining to concentration

{1052}

camp routine such as labor assignment, rations, clothing, quarters, treatment of prisoners, punishment, etc., were discussed.

The evidence in this case reveals that there was perhaps no industry which permitted such constant maltreatment of prisoners as the DEST enterprises.

Prosecution witness Engler, testifying to conditions in the DEST plants at the Sachsenhausen-Oranienburg concentration camp, declared that the inmates worked 12 hours a day, that the food was insufficient, the clothing inadequate, and beatings constant; and that because of the heavy work and inadequate food there was an average of from 800 to 900 deaths per month. As a result of a report made by Engler on deplorable conditions at the camp hospital he was sentenced to a punitive company, 6½ days a week. In one month's time 19 out of 65 men in this company died. Engler stated that the average life duration of a punitive company worker was four weeks.

Mummenthey could not help knowing about concentration camp labor in the DEST enterprises. In Sachsenhausen-Oranienburg the inmate workers daily passed by the very building in which Mummenthey had his office. Their poor physical condition was obvious.

The prosecution witness, Kruse, a German citizen, testifying to conditions at the Neuengamme concentration camp, declared that the monthly death rate in that camp was from 8,000 to 12,000. During the construction period of the Clinker Works of DEST, the death rate went up to about 20,000.

Mummenthey called in his behalf the witness Helmut Bickel, a German citizen who served from 1939 to 1940 in the Clinker Works at Sachsenhausen, and from 1940 to 1945 in the Neuengamme Works of DEST. No witness gave a more harrowing account of concentration camp conditions than did Bickel, this defense witness. He testified that the food was not adequate for the work required of the inmates. "Proof of that is the extremely large number of inmates who died directly or indirectly of starvation." He further stated that reports were submitted by the works managers to Mummenthey's office every month and that these reports showed indirectly the intolerable conditions under which the inmates worked and lived. Mummenthey could not have failed to know the plight of the inmate workers.

Bickel described Mummenthey as a, "white crow," but it is obvious that he used this characterization because Mummenthey had done him a favor of some proportions. If

Bickel is to be believed at all, it cannot be accepted that Mummmenthey, amid all these excesses, atrocities and maltreatment, could remain so

{1053}

white a crow. It is not an unusual phenomenon in life to find an isolated good deed emerging from an evil man. Because of convenience, caprice, or even a sudden ephemeral gleam of benevolence forcing its way through a calloused heart, even a murderer can help a child to safety. A grim humor can cause a slayer to save his intended victim. But whatever the cause which motivated Mummmenthey's benevolence to Bickel, the kind deed is not enough to obliterate his indifference to the wholesale suffering of which he could not but be aware, and to alleviate which, in spite of his protestations, he did little or nothing.

Mummmenthey is not an aggressively vicious man. He is too lacking in imagination to conjure up the planning of murder and equivalent enormities. His criminality lies in culpable indifference to humanity, the sacredness of which demands respect in all parts of the world.

Mummmenthey attempted to evade responsibility by first stating that there were no atrocities and no inhuman treatment of concentration camp inmates; secondly, that if they did occur, they were caused by concentration camp guards over whom he had no control, and further that the treatment of inmates was subject to the supervision of the Messerschmitt and Junkers firms and other employers of inmates. But on cross-examination he admitted that he personally dealt with labor allocation. In fact his monthly report on W I for May, 1942 referred to the shortage of 1,500 inmates in the Gusen quarry, but declared that "this calamity" would be overcome when a new shipment of inmates arrived from Auschwitz the following month.

Mummmenthey has argued that DEST had nothing to do with food, clothing and billeting for the workers, and that it was impossible for him to know whether or not the inmates ate well since only the midday meal was consumed in the plants. Still he has testified that he was certain the inmates were sufficiently nourished because his plant managers so informed him. He even stated that through the ruse of misleading statements he was able to supplement the fare of the workers with extra rations. This, in spite of his assertion that so far as he was concerned the workers were well fed.

Mummmenthey's defense is almost naive. He stated that he did not know whether the inmates received any monetary compensation for their work. He went so far as to say that he tried to find out but never got a "satisfactory" answer. With the right spirit he could have found the answer in every document that he examined, and in the face of every concentration camp prisoner. Mummmenthey's assumed or criminal naivete went to the extreme of asserting that inmates were covered by accident insurance.

{1054}

We can imagine the tragicomic scene of a Polish Jew, half beaten to death by a concentration camp guard, applying to the concentration camp administration for workmen's compensation for the injuries inflicted upon him by the very organization from which he claimed compensation.

Mummenthey even professes an ignorance as to the hours of work required of concentration camp inmates. Aside from the inherent improbability of such a statement the record shows that Mummenthey received a copy of Pohl's order that inmates must work at least 11 hours a day and a half day on Sunday in case of emergency. In his own letter to Baier on 2 May 1944, he revealed his knowledge of the 11 hour rule and said: "I have directed Blizyn to increase the production of the undertaking by making all efforts, and to be particularly anxious that the best use be made of the Polish prisoners."

Mummenthey conceded that he visited the DEST gravel works at Auschwitz in 1940, 1941 and 1943, and at Treblinka in the spring of 1943. Whether he knew of the Jewish extermination program at Auschwitz is not demonstrated by concrete proof, but it is difficult to assume that with his position and opportunity for gaining information he could go to Auschwitz and not learn of what was transpiring in the gas chambers and crematoria.

Mummenthey had to know of OSTI and its nefarious program. The final audit of OSTI was prepared by one Fischer who said in his statement of the audit: "I received through SS Obersturmbannfuehrer Mummenthey the order to audit the Ostindustrie."

Mummenthey also professed ignorance about the Action Reinhardt. Yet the Allach Ceramic Works under Mummenthey received a loan of over 500,000 marks in May 1943 from the Reinhardt fund through the DWB.

Mummenthey could see nothing illegal or improper in the whole concentration camp set-up. He even went so far as to say that at the time he could see nothing illegal or improper in all of Hitler's doings and in all of the Gestapo doings.

Mummenthey's assertions that he did not know what was happening in the labor camps and enterprises under his jurisdiction does not exonerate him. It was his duty to know.

In his defense Mummenthey takes two entirely contradictory positions. One, that the concentration camp inmates were well fed, clothed, and housed, and decently treated; and the other that he was constantly engaged in conflict with the concentration camp commanders to improve their lot. The absurdity of the contradiction is obvious, but it goes further than is apparent because the camp commanders were themselves plant directors of DEST, and therefore subordinated to WVHA.

{1055}

In reaching the above findings the Tribunal disregarded entirely the testimony of the witness Krysiak.

The Tribunal finds Mummenthey guilty under counts two and three of the indictment.

COUNT FOUR

Because of his undisputed membership in the SS, with all the concomitant features outlined in the opinion of the IMT, the Tribunal also finds Mummenthey guilty under count four.

HANS BOBERMIN

Hans Bobermin joined the NSDAP in May 1933 and the General SS in the latter part of that year. In January 1940 he was "called" to the Waffen SS and placed in charge of the Main Department III A 4, in the Main Office Budget and Buildings. His rank at that time was SS Hauptsturmfuehrer. Bobermin, in addition to the duties of his office, served as deputy to Dr. Salpeter, chief of division III A. From 1 October 1940 the Main Department III A 4 was separated from office III A, and in the autumn of 1941 Bobermin's office was designated Amt W 2. In March 1942, when the WVHA came into existence, Bobermin's office became known as W II.

Bobermin's first and main task in the Waffen SS was to take over, control, and operate some 400 brick works in Poland, confiscated by the Reich with the overrunning, defeat, and conquest of Poland. It was the contention of the defendant that since these properties were located in that territory allotted to Germany in the treaty signed between Germany and Russia, no illegality was involved in the confiscation, at least so far as he was concerned. If this had been out and out conquest by Germany of all properties, regardless of private ownership, it would still be clear that Bobermin would not be free of guilt. But here an attempt was made to distinguish between owners. Racial Germans were exempt from the seizure, whereas Poles and Jews lost their property absolutely. They lost it not because they had committed any crime or had received any compensation for it, but simply because they were Jews and Poles.

In a letter drafted for Pohl's signature, Bobermin states on 3 July 1941, the following:

"As a result of the confiscation order of the Main Trusteeship Office East, dated 29 November 1939, 313 brickworks with an estimated annual output of 600 million bricks were seized at the beginning of 1940. As a result of the property disputes between the communities and the Main Trusteeship Office East,

{1056}

the community-owned brickworks were released from this seizure, but leased to the administration of the General Trustee to ensure an experienced management and a quick development. Out of these originally seized brickworks, four were returned to their owners, who had meanwhile been recognized as racial Germans. Finally, some brickworks were handed over to the Reich Works Hermann Goering after negotiations, as these brick works are in close operation—and economical connection with the mines secured by the Hermann Goering Works. Four works were given to German repatriates, who could prove to have owned and run brickworks before their resettlement."

Because Bobermin spent most of his time during the war out of Berlin, it may not be assumed that in some way he was disassociated from the WVHA. Many documents were introduced in evidence to demonstrate the close tie-up between him and Pohl. On 28 June 1941, Pohl appointed him as business manager of Ostdeutsche Baustoffwerke G.m.b.H. On 2 September 1941, Pohl appointed Bobermin as his deputy to inspect the former Russian territories for plants producing building material and for places in which new factories might be built. On 15 August 1941, Bobermin, quite proud of his work in reactivating the factory at Krubin, invited Pohl to attend the opening ceremonies which Bobermin described as a "celebration."

Most of the confiscated factories were taken from Jews who either had to flee Poland or were taken into custody and sent to concentration camps or extermination centers.

Bobermin denied all knowledge of this wholesale persecution. His witness, Winkler, who was chief of the Main Trustee Department East, stated that he did not know until late 1944 that many of the Jews whose property he was administering had been killed by the SS and other German forces in the East. Even if we accept this statement at its face value, the fact remains that he did learn of the criminality of this entire 'confiscation program, and yet remained in the office engaged in the very criminal venture. Could Bobermin have known less?

The massacre of the Jews in Poland was certainly not a secret. The International Military Tribunal found that, "the murder and ill-treatment of civilian populations reached its height in the treatment of the citizens of the Soviet Union and Poland", and that one-third of the population of Poland was killed off in the course of the occupation. How much Bobermin knew of these killings is not evident, although it clashes with human observation that he could have lived in Posen [Poznan] in the very heart of the territory where these excesses occurred, without having some awareness of what was taking place. Bobermin explains

{1057}

the phenomenon of the disappearance of the Jews with the observation that it was his impression that they had "fled", but did not know the reason for their flight. He did know, however, that the enterprises under his management would never be returned to their original owners. In the letter already referred to he stated that these properties would be given only to—

"Those who are considered worthy by the Reich Commissioner for Strengthening the German race in the East," and, "those who deserve preferential treatment for service at the front in this or the World War [I]; original members of the Nazi movement; those who have done useful work in the reconstruction of the East."

It is not clear from the evidence that concentration camp labor generally was used in operating the confiscated brickworks. The labor was allocated to the plants by the labor office which office also deported Poles to the Reich. These workers fell within the Reich classification of "free workers." That is to say, they came under Sauckel's jurisdiction as Plenipotentiary for Labor, and the International Military Tribunal has already passed upon the freedom exercised by the average foreign laborer employed by the Reich under Sauckel.

However, it is not disputed that Bobermin used concentration camp labor in his plant at Golleschau. As chairman of the Golleschau Cement Company and as chief of Amt W II, WVHA, within whose office the Golleschau plant fell, Bobermin's authority in the company could not be questioned. Golleschau was located about 70 kilometers from Auschwitz and it was from this notorious concentration camp that the Golleschau workers were drawn. Those who were unable to perform the work to which they were assigned in Golleschau were sent back to Auschwitz to whatever fate might await them. Bobermin attempts to deny responsibility for the employment of concentration camp inmates at Golleschau by stating that the proposal for this employment was made by Pohl. But Pohl was commander in chief of all WVHA activities. To here, expect exoneration from the charge of criminality on the basis of Pohl's superior command is to demand a certificate of innocence because of Himmler's orders or even Hitler's. Where

outright criminality is involved, superior orders are in themselves no excuse, although they may be argued in mitigation of punishment.

In the operation of his many enterprises Bobermin found it necessary to borrow money which came from the funds released through the Action Reinhardt. He, however, claims that he was ignorant at that time of the meaning of the Reinhardt operation. Much of the loot, which finally became the Reinhardt fund, was

{1058}

collected in the very area in which Bobermin's plants were operating. In view of his use of inmates from Auschwitz in the Golleschau plant, his high position in the SS, his close association with Pohl, his presence in Poznan when Himmler delivered his famous speech (although Bobermin denies having heard it), it is incredible that he would not know at the time the meaning of the Action Reinhardt.

In April 1944, Bobermin was transferred to Hungary as SS Wirtschaftfer, or economic administrator, bound to Pohl. In this capacity he supplied the SS and Police units with money, clothes, and incidentals. Here he learned of the transportation of Jews out of Hungary, but he states that he did not know they were being consigned to concentration camps or extermination centers. In any event, he affirms that he had no power to prevent the forced movement, even had he been aware of the destination of the Jews. The Tribunal accepts this explanation in the absence of any proof in the record to the contrary.

The Tribunal finds Bobermin guilty under counts two and three of the indictment.

COUNT FOUR

The Tribunal also finds Bobermin guilty under count four.

HORST KLEIN

Horst Klein studied law at the University of Lausanne, Freiburg, and Bonn, and in February 1933 finished his studies and passed his final examination as probationer. He worked in various courts looking toward a judicial career, but abandoned this intention when, as he stated, he observed that under Nazi rule the judges were denied complete independence of judgment and decision. In 1937 he became an assessor and then obtained employment in the bookkeeping branch of the Duerkopp-Werke. In February 1938 he took up employment with the "Society Sponsoring and Maintaining German Cultural Monuments, Registered Corporation."

He joined the NSDAP in May 1933 but held no honorary or functional office therein. In the same year he joined the Allgemeine SS. He never became a member of the Waffen SS. In February 1945 he was about to be inducted into this organization but the induction never materialized.

In 1939, the Society Sponsoring and Maintaining German Cultural Monuments was incorporated into the administration of the SS under the name of HS-1 (Main Department for Special Tasks). In 1940 Klein became chief of this department. In 1942

{1059}

when the WVHA came into being, Main Department HS-1 was designated Amt W VIII with Klein as its chief.

Although Amt W VIII was definitely an integral part of the WVHA and answerable to Pohl, it is not apparent that it was active in any aggressive way or that it forms part of the pattern of concentration camp inmate exploitation. This office had no connection with SS industries. Its work fell rather into the category of cultural and social welfare. In addition to directing the affairs of the society above-mentioned, Klein also managed the Society of Convalescent Homes for Natural Recovery and Standard of Life which operated convalescent homes for women and children and administered SS hospitals. Then there were two other organizations under his charge, the Externsteins and the King Henry establishment, the former devoted to the preservation of an old Germanic early Christian relic and the latter to the maintenance of the Cathedral at Quedlinburg. All these activities could have been effectively pursued outside the WVHA, and they were not an indispensable part of the machinery of the WVHA. These organizations brought no monetary returns to the coffers of the Reich. The direct opposite is true, since they were subsidized by the State.

It has been charged by the prosecution that Klein was responsible for excesses in the labor camp at Wewelsburg, but the proof before the Tribunal exonerates Klein from responsibility in that connection. He never managed or directed this camp. Several former inmates of Wewelsburg testified in Court that they not only never saw Klein in the camp, but never heard his name mentioned. The evidence would further establish that the Wewelsburg camp was not controlled by Klein, but by SS Obergruppenfuehrer Taubert. Further, that in the construction job itself which was being done at Wewelsburg, the man in charge was the architect SS Standartenfuehrer Bartels. Bartels had immediate control over the 500 men employed here and Klein had no authority whatsoever over them. In addition, Bartels had a rank superior to Klein's.

The construction work at Wewelsburg, which had to do with the restoration of a castle, was ordered by Himmler and the chain of command from Himmler to Bartels did not even go through Pohl, chief of the WVHA. The only objective part played by Klein in this entire project was the acquisition of the site, but there was nothing in the plan of taking over the real estate which indicated to Klein that a forced labor camp would go into operation here. On the contrary, his only information was that the land was to be used for enlargement of the castle area and future SS settlements.

The prosecution has charged Klein with obtaining credit on

{1060}

the Dresdner Bank for the financing of the Wewelsburg construction work. But when Klein entered this financial deal, the credit had already been obtained at the bank, the initiative having been taken in this respect by General Wolff on Himmler's orders. The sums which were then made available by Klein were used by Bartels who, on orders from Pohl, was not required to make any accounting for them to Klein.

The Tribunal also finds that Klein's participation in the matter of the acquisition of the Lakowicz property did not involve the commission of a war crime or crime against humanity. The little part which Klein had to do with this acquisition followed in point of time its confiscation by another Reich agency with which Klein was in no way connected.

Nor is there any connection between Klein and the pamphlet "The Subhuman," placed in evidence by the prosecution. Although this unsavory document was published by the Nordland Publishing Company, of which Klein had at one time been legal advisor and Prokurist, his connection with this organization had been severed a year or two prior to the appearance of the pamphlet.

Although Klein was a member of the SS, his conduct and attitude as it has come to us through the evidence did not reveal any fanatic adherence to the Nazi ideology. In point of fact, he got into personal difficulties himself because of his failure to cooperate whole heartedly with the Nazi program. On 1 October 1944 he was arrested because of a statement he had made criticizing certain practices of the Third Reich and the SS. An immediately ensuing illness which kept him confined to his home under guard and under observation saved him from trial and a possible severe penalty. His own sister, Frau Helga von Rouppert, was also arrested, denounced by the Gestapo, and committed to the concentration camp at Ravensbrueck. Her crime also consisted of derogatory remarks against the Reich. One specific statement had to do with her criticism of the German generals for not having deposed Hitler as the Italians had ousted Mussolini. Frau von Rouppert testified in Court and stated that her husband was also persecuted by the Gestapo, and, in order to avoid arrest, with attendant torture and degradation, committed suicide. Klein states that his own father died as the result "of all this excitement."

From all the evidence in the case the Tribunal concludes that Klein is not guilty under counts two and three of the indictment.

COUNT FOUR

Under the interpretation of the IMT decision, pointing out the factors required to convict an SS member of criminality, the

{1061}

Tribunal concludes that Klein does not fall within the category specified and therefore finds him not guilty under count four.

[Signed] ROBERT M. TOMS
Presiding Judge

[Signed] FITZROY D. PHILLIPS
Judge

[Signed] MICHAEL A. MUSMANN
Judge

SENTENCES

OSWALD POHL, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to death by hanging.

AUGUST FRANK, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have thus been convicted, this Tribunal sentences you to imprisonment for the remainder of your natural life, at such place of confinement as shall be determined by competent authority.

HEINZ KARL FANSLAU, this Tribunal has adjudged you guilty under 'counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment from this date for a period of 25 years, at such place of confinement as shall be determined by competent authority.

HANS LOERNER, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, the Tribunal sentences you to imprisonment from this date for a period of ten years, at such place of confinement as shall be determined by competent authority.

GEORG LOERNER, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been convicted, the Tribunal sentences you to death by hanging.

ERWIN TSCHENTSCHER, the Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have thus been 'convicted, this Tribunal sentences you to imprisonment from this date for a period of ten years at such place of confinement as shall be determined by competent authority.

MAX KIEFER, the Tribunal has adjudged you guilty under counts

{1062}

two, three, and four of the indictment filed in this case. For the crimes of which you have thus been convicted, this Tribunal sentences you to imprisonment for the remainder of your natural life, at such place of confinement as shall be determined by competent authority.

FRANZ EIRENSCHMALZ, the Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to death by hanging.

KARL SOMMER, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to death by hanging.

HERMANN POOK, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment from this date for a period of ten years at such place of confinement as shall be determined by competent authority.

HANS HOHBERG, this Tribunal has adjudged you guilty under counts two and three of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment for a period of ten years at such place of confinement as shall be determined by competent authority.

In view of the fact that you were not a member of the SS, or of the National Socialist Party, the Tribunal orders that your sentence begins as of 22 October 1945, the date of your first detention as a prisoner.

HANS BAIER, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment from this date for a period of ten years at such place of confinement as shall be determined by competent authority.

LEO VOLK, this Tribunal has adjudged you guilty under counts two and three of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment from this date for a period of ten years at such place of confinement as shall be determined by competent authority.

KARL MUMMENTHEY, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have been thus convicted, this Tribunal sentences you to imprisonment for the remainder of

{1063}

your natural life at such place of confinement as shall be determined by competent authority.

HANS BOBERMIN, this Tribunal has adjudged you guilty under counts two, three, and four of the indictment filed in this case. For the crimes of which you have thus been convicted, this Tribunal sentences you to imprisonment from this date for a period of twenty years at such place of confinement as shall be determined by competent authority.

B. Concurring Opinion by Judge Michael A. Musmanno

Oswald Pohl and his seventeen codefendants above enumerated have been indicted under Control Council Law No. 10, enacted by the Allied Control Council on 20 December 1945.

At varying times between January 1933 and April 1945, the defendants were administrators of the concentration camps of Germany and German occupied territory, and in the execution of these duties were, with the exception of Hohberg, all members of the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei, commonly known as the SS, which in itself was adjudicated by the International Military Tribunal to be a criminal organization, and also declared to be such by Article II of Control Council Law No. 10.

The indictment, filed in Nuernberg 13 January 1947 by Brigadier General Telford Taylor, Chief of Counsel for War Crimes, acting on behalf of the United States of America, charges the defendants with maintaining and administering concentration camps in such a manner as to visit injury, disease, starvation, torture, and death on thousands and millions of inmates. The indictment also charges the defendants with participation in a program of mass murders, spoliation, and expropriation on millions of Jews, Slavs, Poles, and other peoples, both in and out of the conquered countries. The indictment is laid in four counts, which because of its length will not be quoted in full. In condensed form it provides:

COUNT ONE—THE COMMON DESIGN

The defendants, acting in concert with each other and with others, unlawfully, wilfully, and knowingly were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the commission of war crimes and crimes against humanity.

It was a part of these plans and enterprises—

1. To formulate and carry out ways and means for financing the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei

{1064}

(commonly known as the "SS") and each of its various purposes, functions, activities, and enterprises.

2. To establish and maintain throughout Germany and other countries concentration and labor camps in which thousands of persons, including prisoners of war, German civilians, and nationals of other countries, were unlawfully imprisoned, enslaved, tortured, and murdered.

3. To supply the labor and services of the inmates of concentration camps to various industries and undertakings.

4. To furnish human subjects for criminal medical experimentation and to assist in carrying out the plans for such unlawful experiments.

5. To carry out the policy of the German Reich, to exterminate the Jewish race, to sterilize and castrate certain groups of peoples.

6. To carry out the so-called "euthanasia" program; and

7. To deport citizens of countries occupied by the armed forces of the German Reich, plundering their property, and impressing their services and labor for the German Reich.

Throughout the period covered by this indictment all of the defendants herein were associated with the Economic and Administrative Main Office (Wirtschafts- und Verwaltungshauptamt, commonly known as the "WVHA"), which was one of the twelve main departments of the SS.

The defendants participated as leaders, organizers, instigators, and accomplices in the formulation and execution of the said plans and enterprises, and accordingly are individually responsible for their own acts and for all acts performed by any person or persons in execution of the said plans and enterprises.

COUNT TWO—WAR CRIMES

Between September 1939 and April 1945 all of the defendants herein unlawfully, wilfully, and knowingly committed war crimes, as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the commission of atrocities and offenses against persons and property, including, but not limited to, plunder of public

and private property, murder, torture, illegal imprisonment, and enslavement and deportation to slave labor of, and brutalities, atrocities, and other inhumane and criminal acts against thousands of persons.

The WVHA took over jurisdiction of the concentration camps in Germany and the occupied 'countries and territories in the spring of 1942, and was charged also with the establishment and operation of new concentration camps.

{1065}

In Poland, Russia, and other countries the defendants assisted in planning and carrying out the plunder, spoliation, and confiscation of real and personal property of Jewish, Russian, Polish, and other private owners; of churches, communities, towns, cities, and states; the deportation to slave labor and other purposes of civilians there resident, and the resettlement of such regions by peoples asserted by the Nazis to be Aryans. The defendants systematically confiscated the personal property of living and deceased inmates of concentration camps.

Civilians and prisoners of war from all the countries of Europe were deported from their homelands and herded into the concentration camps, some of which were fitted with special installations, such as gas chambers and sealed buses, where they were exterminated.

Experiments were carried out to determine how most efficiently to use the labor and services of the living members of undesired "races" and nationalities, and to insure that such persons would be unable to propagate their kind. Countless persons, including nationals of occupied territories, were murdered in the so-called "euthanasia" program of the German Reich.

The defendants assisted in planning and carrying out medical, surgical, and biological experiments upon hundreds of involuntary human subjects, without regard to the lives of such subjects, resulting in the murder, torture, and ill-treatment of hundreds of persons.

COUNT THREE—CRIMES AGAINST HUMANITY

Between September 1939 and April 1945 all of the defendants herein unlawfully, wilfully, and knowingly committed crimes against humanity as defined by Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the commission of atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, illegal imprisonment, torture, persecution on political, racial, and religious grounds, and ill-treatment of, and other inhumane and criminal acts against German civilians and nationals of other countries.

COUNT FOUR—MEMBERSHIP IN CRIMINAL ORGANIZATION

All of the defendants herein, except defendant Hohberg, are charged with membership, subsequent to 1 September 1939, in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei

{1066}

(commonly known as the "SS"), declared to be criminal by the International Military Tribunal and paragraph 1 (d), Article II of Control Council Law No. 10.

GENERAL DISCUSSION

In the general lurid picture of World War II, with its wrecked cities, uprooted farmland, demolished transportation facilities, and public utilities, starvation, disease, ashes, death, rubble, and dust, one item of horror seems to stand out with particularly dramatic and tragic intensity—the concentration camp. It can be seriously doubted in the world of today, even among the most meagerly informed peoples that there exists a man or woman who in some manner or other has not heard of and recoiled at the mention of the phrase concentration camp.

Newspapers, magazines, books, lectures, and motion pictures have told the story in every country, in every city, village, hamlet, and town of organized society. Now it has been unfolded in a courtroom with all the safeguards for truth which judicial procedure affords. Prosecution and defense has each told its side, here every witness was subject to examination, cross-examination, recross-examination and then examination by the Court itself. At the bar of justice, documents could be and were scrutinized for authenticity, and the oath of truthfulness with the penalty of contempt ever ready for its violation, was imposed on every witness and defendant.

The trial lasted 101 days. The stenographic record of the testimony runs to 8,048 pages. The prosecution introduced 742 documents, and the defense 615 documents, totalling in all, several thousand pages. Prosecution and defense counsel (19 lawyers in all, in addition to the various assistants) made both opening statements and closing arguments, and the defendants themselves were allowed, in addition to the fullest rights of a witness, an opportunity to make a final declaration to the Court. From all this emerged a judicial pronouncement on concentration camps.

Although the majority of the Tribunal has filed an opinion on the guilt or innocence of each defendant, with which I, of course, concur, it does not, for reasons later noted, devote considerable space to the corpus delicti itself. There should be one document sufficiently comprehensive to which the legal profession and the lay public, now and in the future, can turn for an authoritative account on concentration camps. They should not be required to read through thousands of pages of transcript and scan tons of documents to obtain an adequate picture of this supreme crime against humanity through the ages. The writing, in the majority

{1067}

opinion, of a separate treatment on each of the 18 defendants already made for a rather long document, so that a complete coverage of the various features of the case with quotations and citations would produce a greater number of pages than might be met in the definite judgment. Thus, this concurring opinion is being filed so that there will be readily available a longer discussion for those desiring a more detailed account of the facts which brought about the judgment.

THE SS

The Economic Administration Main Office, commonly known as the WVHA, which maintained, administered, and operated the concentration camps of Germany and occupied territories was one of the Main Offices of the SS. This latter organization came into being in 1925 as an "elite section of the SA" for the ostensible purpose of protecting Nazi speakers at public meetings but with the avowed object of clearing away all obstacles in the political path to power of Hitler and his aggressive cohorts. In 1933 when the seizure of the government had been effectuated, the SS numbered 52,000 men. With each further increase of Nazi power the SS augmented in size and importance. By 1939 its ranks totaled 240,000 men and it was known as the Allgemeine SS. The SS originally contained two other formations, the Special Service [Purpose] Troops and the Death Head formations. The latter became guards for the concentration camps.

In 1939, units from the Special Service [Purpose] Troops and the Death Head formations fought in the Polish campaign under the designation of Waffen SS. By 1940 the Waffen SS numbered 100,000 and by the end of the war it could boast 40 divisions of 580,000 men. Defendant Tschentscher testified that the total strength of the Waffen SS numbered 1,000,000.

The SS Central Organization had 12 main offices, the two most important of which were the Reich Security Main Office (RSHA) and the WVHA. The latter, in addition to its concentration camp duties, administered and financed the various SS outfits; and [the SS also] operated a race and settlement office together with auxiliary offices for repatriation of racial Germans (Volksdeutsche Mittelstelle).

Heinrich Himmler, as the supreme police officer of the German Reich and Reichsfuehrer SS, constituted in himself the law for all branches of the SS, and a fortiori for the concentration camps, their administrators, guards, and inmates. As chief of the WVHA, Oswald Pohl, number 1 defendant in this case, represented Himmler and spoke in his name. In order to understand the

{1068}

controlling and guiding spirit of concentration camp administration it is necessary to speak of Heinrich Himmler.

Much that happened in concentration camps is simply incomprehensible, unless one comprehends Heinrich Himmler. The aims, purposes, and objectives of this incredible person must be blueprinted, before the happenings within the barbed wire enclosures of Germany make any sense at all. Without knowing Heinrich Himmler, life and death in concentration camps is simply a chaotic jumble of brutal primeval forces. With Heinrich Himmler the lurid farrago acquires order, system, direction, and goal.

Nowhere did Himmler more articulately reveal himself than in the speech to his SS generals at Poznan, Poland, in October 1943. The basic principle for the SS man, Himmler said, was that the SS man must be honest, decent, loyal, and comradely to members of his own blood and to nobody else.

"What happens to a Russian, to a Czech does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take, if necessary by kidnapping their

*children and raising them here with us. Whether nations live in prosperity or starve to death interest me only in so far as we need them as slaves for our Kultur [culture]; otherwise, it is of no interest to me. * * * Our concern, our duty is our people and our blood. It is for them that we must provide and plan, work and fight, nothing else. We can be indifferent to everything else." (* III/12, Doc. 1919-PS.)*

Absolutely slavish loyalty to Hitler was of course demanded of every SS man:

"If within the sphere of your knowledge there is ever anyone who is disloyal to the Fuehrer, or to the Reich, even if it is only in thought, you must see to it that this man is thrown out of the organization, and we will see to it that he departs this life." (III/17, Doc. 1919-PS.)*

This chaining of even one's thoughts to Hitler will help to clarify much of what is otherwise inexplicable in the unfoldment of SS excesses which often go beyond the realm of normal mental assimilation.

This explains how supposedly educated men can attend unflinchingly and even approvingly upon a man who speaks casually of out-and-out murder—"It is a mere nothing to shoot 10 Poles."

These SS men listened without resentment to Himmler reproaching those who engaged in all "the silly talk about humanity."

This man who refers to talk about humanity as silly, is the

{1069}

man whose word was law in the concentration camps; the man who with a stroke of the pen could wipe out thousands of human lives. (VIII/54, Doc. NO-2465.)

Extolling the mass murder of Jews, Himmler said: "This is a page of glory in our history."

Discoursing on the law of selection, Himmler portrayed for his hearers at Poznan the evaluation of the German character held together through the centuries by Nordic-Phalican-German blood. This new Nordi-Germanic person contains in himself the "creative, heroic, and life-preserving quality of the German people", and it devolves upon this Nordi-Germanic blood not only to win the war against the "subhuman" but to prepare for the after-war period, "then this organization will march forward into the future young and strong, revolutionary and efficient, to fulfil the task of giving the German people, the Germanic people, the superstratum of society which will combine and hold together this Germanic people and this Europe; and from which the brains which the people need for industry, farming, politics, and as soldiers, statesmen and technicians, will emerge." (III/16, 17, Doc. 1919-PS.)

And the superstratum must be so strong and vital that every generation can unreservedly sacrifice two or three sons from every family on the battlefield and that, "nevertheless, the continued flowing of the bloodstream is assured." (III/16, Doc. 1919-PS.)

It would appear from this that the ending of World War II was to be but the beginning of another war and still further wars—and this is exactly what Himmler envisaged. "Germany will impose her laws on the East and push forward little by little to the Urals.

* Designations represent document book number and page.

This generation must successfully bring it about that every SS division must spend a winter in the East every second and third year. Then we shall never grow soft."

And then he visualizes the great battle of Germany with its 250 to 300 millions (!) and other European peoples making a force of 600 to 700 millions battling one and a half million Asiatics.

The prosecution introduced during the trial an SS publication entitled, "The Subhuman." In magazine form, it consisted of scores of photographs comparing the vile Jews, Poles, and Russians against the cultured, civilized, Nordic Germans. The pictures on the left pages revealed unshaven, unkempt, ragged, emaciated, sickly humans; the pictures on the right portrayed well fed, cleanly dressed, washed, and shaven Germans. This descent into artificial and dishonest contrast reached its nadir of unfairness when it reproduced on one left hand page a picture

{1070}

of piteous, starving, diseased Jewish-Russian children, and on the other side fat, beribboned, laughing German boys and girls. The text accompanying the pictures was even more revolting than the pictorial comparison of poor unfortunate humanity with better favored creatures of the human race.

Even Roosevelt, Stalin, Churchill, and LaGuardia were pictured with these inscriptions:

"Subhuman will remain subhuman, and Jew will remain Jew, whether they are called Churchill, Roosevelt, or LaGuardia. For us they are the scum of the earth. They back Stalin, the subhuman No. 1. They are his confederates and comrades."

Some of the other inscriptions are quoted here, their application to the pictures being apparent:

"The subhuman, this apparently fully equal creation of nature, when seen from a biological viewpoint, with hands, feet, and a sort of brain; with eyes and a mouth, nevertheless is quite a different, a dreadful creature, is only an imitation of man with man-resembling features, but inferior to any animal as regards intellect and soul. In its interior, this being is a cruel chaos of wild, unrestricted passions, with a nameless will to destruction, with a most primitive lust, and of unmasked depravity.

"Subhuman—and nothing else.

"For not everything is alike that has a human face.

"Beast called beast.

"And this underworld of subhumans found its leader: the eternal Jew."

Although several of the defendants denied at the trial knowing anything about this SS publication, a letter introduced in evidence revealed that it was Himmler's intention this propaganda sheet should reach every German home. (Tr. p. 7158.)

That Himmler was a psychopathic degenerate must now be obvious to all the German people. But the enigma is that his intelligent contemporaries could listen without becoming ill to his imbecilities about the master race, Nordic supremacy, beauty, and culture.

When he spoke of "good blood," did not his hearers see that his face contained about as much blood as an angleworm, and when he expatiated on physical beauty, was it not

obvious that he was as beautiful as an anteater, and when he ranted on culture, did no one recall that he had the manners of a Patagonian goat?

In April 1943, at Kharkov, he boasted that in each invaded country he set up an SS organization.

"From the beginning, I have said to them, 'You can do what

{1071}

you like and leave what you like.' I leave everything entirely to you, but you may be sure, that an SS will be set up in your country, and there is but one SS in Europe, and that is the Germanic SS, led by the Reichsfuehrer SS. You can resist, or you can offer no resistance, it's all the same to me. We shall do it in any case." (III/23, Doc. 1919-PS.)

He promised further, that not only would the Germans in the Balkans be restored to the Fatherland, but also those in America.

"I beg you, rather (and here too I am stating a very sober opinion), to think in this case of these Germans in the whole of the Balkans, still more of these overseas, in America, when one day we must fetch over here in millions—and we shall succeed in doing so—who have held out for centuries." (III/24, Doc. 1919-PS.)

And then, nothing undaunted, Himmler is to grow new blood, good Germanic blood:

"They are the necessary conditions, for our race, and our blood to create for itself and put under cultivation, in the years of peace, (during which we must live and work austere, frugally and like Spartans), that settlement area in which new blood can breed, as in a botanical garden so to speak. (sic.) Only by this means can the continent become a Germanic continent, capable of daring to embark, in one, or two, or three, or five, or ten generations, on the conflict with this continent of Asia which spews hordes of humanity." (III/25, Doc. 1919-PS.)

This brain staggering speech does not omit, of course, the prediction of a Germanic world empire.

"The result—and I am convinced of this, I believe it and I know it—the result, the end of this war, regardless of however many months or even years it lasts, will be this: that the Reich, the German Reich, or the Germanic Reich of the German nation will with just title find confirmation of its evolution, that we have an outlet and a way open to us in the East, and that then, centuries later, a political Germany—a Germanic World Empire will be formed. That will be the result, that will be the fruit of all the many, many sacrifices, which have been made and which must still be made." (III/23, Doc. 1919-PS.)

This is the kind of maggoty meat on which the SS fed. This is the brand of criminal psychopathy they accepted as the expression of an exalted patriotism.

Although the SS organization was made up of the elite insofar as blood was concerned, it was ever in search of additional blood, and thus it developed an operation entitled, "Search for German Blood." This search was not restricted to an actual quest

{1072}

for Germanic corpuscles; it included also good, valuable property such as farms, fields, and factories in Poland, which, upon confiscation, were to be given a Germanic character. "A beginning should be made as soon as possible with changing the style of farms, fields, etc., in order to give them a pure, German character. Great importance has to be attached to the planting of hedges, etc." (XI/119, Doc. NO-30.)

Then there was the SS Race and Settlement Main Office which selected families and individuals of non-German blood, fit for incorporation into the German nation. At a conference on 19 August 1943, between the RSHA and the Race and Settlement Main Office, it was even admitted that the German nation itself did not have fixed characteristics.

*"Great weight must be attached to this point of view as the racial substance of the German nation is permanently subject, to changes due to the incorporation of new families from formerly non-German nationalities. * * * In this connection the procedure of reincorporation into the German nation comprises the incorporation of whole families and individuals as recorded by the race and settlement offices as well as all such cases as are proposed by the Higher SS and Police Leaders, including all mixed marriages and all questions of nationality." (VI/53, 54, Doc. NO-1763.)*

On 17 November 1943, chief of department [division] D of WVHA, ordered that in questioning inmates for re-Germanization or for special treatment, it became necessary to examine the prisoner from the racial point of view. It must be remembered that in SS language, special treatment meant hanging! (VI/55, Doc. NO-1452.)

Every code of chivalry bows in reverence before the church and clergy of all denominations and accepts with pride the protection of women and children the world over.

Although the SS organization was supposedly made up of the elite of German manhood, and although it pompously paraded an outward display of chivalrous ceremony, one searches in vain throughout the entire records of the organization for one single instance of a truly chivalrous deed. Into concentration camps they herded priests of all denominations; churches, and synagogues they desecrated and destroyed; women and children, if not Nordic born, were regarded and treated as weaklings.

Although the Nazi Government, in its early history, moved cautiously and slowly against the church in Germany proper, this caution dissipated and disappeared once the Nazi soldiers crossed the frontiers:

"In Poland as a first and eloquent example, the world learned

{1073}

*and became convinced of Hitler's destructive designs with reference to religion. The monument of the most Sacred Heart of Jesus at Poznan was blown up. They destroyed the stone chapelets with dynamite; the crosses were torn down and chopped to bits; churches were destroyed or converted into theatres, concert halls, (e.g., the cathedral in Gniezno), dance halls, or storage places for ordnance supplies. From numerous Polish dioceses, as for example the diocese of Poznan, Breslau, Pomerania, Gniezno, and others, the Germans exported all the Polish priests that they could get their hands on to concentration camps. (In very many countries they were all murdered.) It was the German belief that once they rid the people of priests, their task of inculcating into the souls of the Polish people, their own impious and wicked religious beliefs would be much simpler. * * * The priests who were arrested, as well as the archbishop and bishop, were placed in concentration camps together with criminals." (Doc. 1943-PS.)*

In December 1940, all priests imprisoned in various concentration camps were moved to Dachau. For a short period they were unmolested and were even allowed to hold chapel services. But on 24 September 1941, the Polish priests were deprived of their prayer books, rosaries, and all religious articles, and committed to manual labor. They were put to work at building crematories and gas chambers:

"Those priests who died were removed on wheelbarrows. The priests labored in the blazing heat and during inclement weather with no food and insufficient dress. SS troops gave the guards strict orders to use the clergy on the most difficult and hazardous jobs. Punishment was very severe for the slightest offense."

Their living conditions at Dachau were intolerable. (IV/119, Doc. 1943-PS.)

"In an assembly hall built to house 50 people, 308 priests resided. Three priests slept on a single bed. There was no opportunity for sleep or rest, yet it was necessary to do difficult manual labor. Their daily rations consisted of approximately one-eighth of a loaf of bread weighing about 185 grams, and one liter of watery soup. Of 1,646 of them who were arrested and sent to Dachau, 846 died as a result of the tortures inflicted there. Only 794 secular priests and monks, and also brothers of the same order remained." (IV/120, Doc. 1943-PS.)

Priests were used for medical experiments. Rev. Stanislaw Wolak, who spent 5½ years at Dachau stated:

"Of the twenty of us who were taken for experimental purposes, seven died a horrible death. Others remained crippled

{1074}

for the rest of their lives. These were the methods utilized by barbaric Hitlerites in their attempt to make medical progress." (IV/124, Doc. 1943-PS.)

At Auschwitz, clergymen were used for road-building—

"The steam roller used for pressing down gravel was tended and pulled by Catholic priests only. They were whipped with clubs until they fell unconscious, and then the steam roller rolled over them and crushed them." (XVIII/178, Doc. 2223-PS.)

That part of this opinion which treats of racial extermination will describe how children in concentration camps were gassed and cremated, sometimes cremated before being gassed. No language is capable of conveying the horror of these deeds. All we can do in this opinion is to quote from official records, documents, and the testimony of witnesses, so that in some later period a Dante or a Victor Hugo may be found who will tell in words of searing agony this great shame of the human race in the 20th century.

Only a Shakespeare could find the appropriate level of literary ignominy to which to consign the SS general who ordered the execution of 20 children because they had been experimented on, and then sent to the gas chambers, the four nurses who had witnessed the experiments. (V/133, Doc. NO-1201.)

At Auschwitz, one SS doctor, Hauptsturmfuehrer Mengele, conducted a series of experiments on twin children. During the experiment he accorded them the best of care, provided excellent lodging, and abundant food. The children were valuable for his studies ordered by the "Rassenforschungsinstitut" [Institute for Racial Research] in Berlin. Once the experiment was completed, he "took the children to the gas chamber where he himself shot them down with the pistol." (XI/37, Doc. NO-1949.)

On 6 January 1943, Himmler wrote Pohl:

"In operations against guerilla troops, men, women, and children suspected of guerilla activities will be rounded up and shipped to the camps in Lublin or Auschwitz." (XII/55, Doc. NO-2031.)

It will be noted here that Himmler demands the arrest of all those who are merely suspected. Since there exists no rule to guide the serpent of suspicion, especially when it is armed with the fangs of prejudice, therefore, women and children could be, and were, picked up on the mere whim and caprice of the arresting party. The women were put to work in concentration camps; "racially worthless adolescents were assigned

apprentices to SS economic enterprises," and children were placed in collective camps where they were to be taught "obedience, diligence, unconditional

{1075}

subordination, and honesty towards their German masters." It is interesting to observe that the honesty to be imparted to the children was to be limited to that due German masters. Of course in addition, the children worked as stone masons, locksmiths, joiners, weavers, spinners, and knitters on the farms and at other jobs. (XII/55, Doc. NO-2031.)

The fight against partisans was often used as an excuse for wiping out whole families and clans.

"The men of a guilty family, in many cases of the whole clan are to be executed on principle; the women are to be arrested and taken to a concentration camp; the children are to be removed from their homes, and concentrated in that part of the Gau that had originally belonged to the Reich. As to numbers and racial value of these children, I am expecting separate reports. All property of the guilty families will be confiscated." (IV/79, Doc. NO-681.)

Women in the concentration camps on the whole fared worse than the men, "because nobody concerned themselves about them." One prisoner, speaking of conditions at the women's concentration camp at Ravensbrueck stated:

"Even if on the whole the working conditions and the camp conditions did not turn out to be so harsh as in Buchenwald, we, however, certainly were acquainted with the fact that common means of punishment were cutting off the hair of the female prisoners and beating the prisoners on their naked buttocks."

Children also worked with the women, some as young as 8 years of age.

Pohl, on the witness stand, justified the presence of many children in the concentration camps on the ground that they also, in their own way, participated in the guerilla warfare against the Reich.

Upon the arrival of the first shipment of Jews from Hungary, Pohl notified Himmler that 50 percent of them were women.

"Since there is not sufficient adequate, purely female work available for this large number of women, we must put them to work for OT construction projects. Your approval is requested." (XIII/34, Doc. NO-592.)

Himmler reported: "Of course Jewish women are to be made use of for labor." And then as a gesture of solicitude for their health, he instructed Pohl to "be sure to import garlic from Hungary in sufficient quantity." (XIII/36, Doc. NO-030b.)

Himmler was not entirely devoid of a sense of benevolence. On 14 July 1943, he ordered that the infliction of punishment on Russian women was to be done by Polish women; and on Polish

{1076}

and Ukrainian women, by Russian women. "And as a reward the prisoners inflicting a punishment were to be given a few cigarettes." (V/177, Doc. 2187-PS.)

And as further evidence of his tender heart toward womankind, attention is directed to his order of 22 January 1943, "that women sentenced to death shall have no previous indication of the proposed execution of the death penalty." (VI/11, Doc. NO-1526.)

Never, however, was he so touched as when he learned (in the development of his plan that prostitutes were to warm men used in the freezing experiments), that a truly Nordic woman was being serviced for this job. This should never be, he declared, because "she belongs to that type of girl upon whom the attempt must be made in order to save her for the German people, and for her yet later life." (VII/102, Doc. 1583-PS.)

The writer of this opinion does not believe that the German people en masse knew of the obscenities, imbecilities, and criminalities of Himmler. However, the SS leaders and subleaders could not fail to be familiar with Himmler's schemes and ventures which ran the whole gamut of crime from petty thievery to mass murder. These trials are not only to render justice in accordance with the rules of law and humanity, but they are also to serve the purpose of acquainting the German people with the true character of the false gods they idolized and blindly followed. The German people must be enlightened on all the arrogance, conceit, pusillanimity, and brutality which went into the SS uniform. The German people must learn what pigmies rattled about in the big black boots of the Rottenfuehrer, Hauptscharfuehrer, Sturmscharfuehrer, and Obergruppenfuehrer. They will then demand in the future a show of worth, of religion, of honesty, of fundamental decency in a man before accepting him as a leader.

The tinsel trappings must be torn away and the SS revealed in all its shamelessness and cupidity. The German people must know the SS scale of values. Concentration Camp Inspector Morgen, in bringing charges against one Standartenfuehrer Koch, commandant of Buchenwald concentration camp, listed his offenses as; first, embezzlement and disloyalty; and second, murder. To the SS hierarchy human life was not as important as money and what it stands for. It was this type of gross presumption which placed SS men outside the doors of the Quedlinburg Cathedral to charge an entrance fee and in recompense hand the visitor a booklet, containing a speech by Himmler. (XVII/192, Doc. NO-547.)

The German people must look beyond the absurd body-jerking, infantile, goose-stepping of the SS and the even more absurd

{1077}

speeches of their leaders; and read some of the orders issued in all seriousness by this fantastic organization. One order to the SS guards in concentration camps proclaimed: "An SS man must be a leading example to the prisoners if the prisoners are to respect an SS guard. An SS guard must show pride and dignity and demonstrate through his example to the Communists and plutocrats that he is the bearer of the Third Reich." And then, so that no Communist or plutocrat might lose his awe for the SS man, the latter is particularly instructed not to avoid "falling rain by taking cover under trees or protruding wall pieces." (!!) (IV/39, Doc. 1216-PS.)

That was the Nordic-blooded, dashing, and elite SS.

CONCENTRATION CAMPS—ORIGIN AND DEVELOPMENT

Goering is credited with originating and establishing in 1933 the first concentration camp in Germany, the object of which was to concentrate within its restricting barbed wire, machine guns and the circle of influence of ferocious dogs, and occasionally even more ferocious guards, all the political enemies of the State. Not only those who had opposed

the Nazi Government which had just seized power, but all those who might oppose it, were isolated and restrained. It was enough to be accused of anti-Nazi activities if the subject talked against or even expressed a doubt about the policies of the government, if he listened to a foreign broadcast or expressed a defeatist attitude. It was enough to be committed to a concentration camp if a member of the German police, the Gestapo, or any one of a number of so-called security organizations suspected one of anti-Nazi behavior. Nor was there a judicial hearing of any kind. And once within the concentration camp the victim had no assurance when, if ever, he would be released. If a time limit was specified, it was seldom adhered to. The doomed prisoner remained until he was released by the RSHA (Reich Security Main Office) or was liberated at the end of the war by the Allied armies, if he had not died in the meantime.

Generally the population of a concentration camp was made up of three categories: (1) political enemies of the State, such as Communists; (2) criminals so adjudicated by the criminal code; (3) anti-socials.

The third classification was the most numerous. One became an anti-social very easily in the Nazi State. The good substantial citizen who discharged his National Socialist butler or the reliable, sober working man who changed his employment without the permission of the National Social Labor Exchange, found himself

{1078}

pronounced anti-social and soon inside a concentration camp wearing an insigne dedicated to that category of crime. (Tr. p. 755.)

Each inmate wore on the left breast of his striped prison suit a colored triangle, surmounted by his serial number, which from that moment became his name. Political prisoners were identified by a red triangle; criminal prisoners by a green triangle; immigrants, a blue triangle; Jews, a red and yellow triangle, superimposed to form a David's Star; asocial elements were distinguished by a black triangle; recidivists by a red triangle, and a red bar for each repetitive offense. Many prisoners also carried a bull's eye painted over the heart and back, this serving as a target for the SS guards. A punishment disk (red and white circle) marked prisoners inducted into a penal company for punishment. (VI/110, Doc. NO-2122.)

At the outbreak of the war, 1 September 1939, there were six large concentration camps in Germany, Dachau, Sachsenhausen, Buchenwald, Mauthausen, Flossenbuerg, and Ravensbrueck. (II/66, Doc. R-129.)

Between 1940 and 1942 nine more camps were erected, Auschwitz, Neuengamme, Gusen, Natzweiler, Gross-Rosen, Lublin, Niederhagen, Stutthof, and Arbeitsdorf. (II/66, Doc. R-129.)

On 30 April, 1942, Pohl reported to Himmler that the war had brought about a marked change in concentration camp policy. Whereas originally the inmate was incarcerated for the sole purpose of State security, his incarceration would now serve another purpose: He would be put to work.

"The mobilization of all prisoners who are fit for work, for purposes of the war now, and for purposes of construction in the forthcoming peace, come to the foreground more and more. From this knowledge some necessary measures result with the aim to transform the concentration

camps into organizations more suitable for the economic task, while they were formerly merely politically interested." (II/67, Doc. R-129.)

This was held by Pohl as a great step forward, and he ended his letter to Himmler on the jubilant note of—

"The collaboration of all authority goes on without any friction, the abolishment of lack of coordination in the concentration camps is hailed everywhere as the shedding of the fetters hindering progress." (II/67, Doc. R-129.)

Around each concentration camp mushroomed work camps to accommodate the inmate workers, every month being employed on a vaster scale. On 5 April 1944, Pohl reported:

"There exists at present:

"In Reich territory 13 concentration camps

"In Government General 3 concentration camps

{1079}

"In Eastern territories (Ostland) 3 concentration camps

"In the Netherlands 1 concentration camps

TOTAL 20 concentration camps

"In addition the following work camps are maintained (IV/16, Doc. NO-020):

"In Reich territory 130 work camps

"In Government General 3 work camps

"In the Eastern territories (Ostland) 30 work camps

"In the Netherlands 2 work camps

TOTAL 165 work camps"

Then with evident pride Pohl adds in his own handwriting: "During Eicke's time there were altogether 6 camps! NOW: 185!" (IV/16, Doc. NO-020.)

Before the Nazi Government reached the stage of absolute indifference to world opinion, an attempt was made to camouflage the true purpose of concentration camps. Thus, one of the captured Reich documents carries this interesting revelation:

"According to information received from the chief of the Security Police and the SD, the term: 'Civilian Internment Camp Bergen-Belsen' must be replaced, for tactical reasons by the term:

'Staging Camp Bergen-Belsen'.

This change is necessary because, according to the Geneva Convention, civil internment camps must be open to inspection by International Commissions." (IV/52, Doc. NO-1291.)

Some idea of the rapid expansion of concentration camps can be gained from the fact that whereas in 1939 Buchenwald held 5,300 prisoners, and in 1942, 9,000, it had swelled by the end of the war to a population of 20,000, including 1,000 boys under 14 years of age. Of course, with the adoption of the work policy in concentration camps, inmates were no longer limited to Germans, or even foreigners who by the remotest reasoning had been hostile to the Nazi State. The Reich Government had now embarked on a slave labor policy whose tentacles reached out to draw into its workshops the nationals of every nation it had overrun. Thus, the nationalities represented in Buchenwald in April 1945 were listed as follows (VI/68, Doc. L-159):

French	2,900
Polish	3,800
Hungarians	1,240
Yugoslavs	570
Russians	4,380
Dutch	324
{1080}	
Belgians	622
Austrians	550
Italians	242
Czechs	2,105
Germans	1,800
Dutch	260
Anti-Franco Spanish and miscellaneous	1,207
TOTAL	20,000

Russians were always a prolific importation and they came in such numbers that on 1 August 1942, the chief of department [division] D, WVHA, notified the commanders of all concentration camps:

"In order to save paper and labor, I, therefore, direct that neither the arrival of such a prisoner, nor his transfer into another camp is to be individually reported; moreover, no camp index cards are to be made out and sent to the Reich Security Main Office IV C 2. Reports to this Office are not to be made either." (IV/8-V/50, Doc. NO-1017.)

In their general indifference to international law it was not to be expected that the Reich hierarchy would be concerned about the Geneva and Hague Conventions. In defiance of these conventions, prisoners of war were not only imprisoned in concentration camps, but were made to work in armament factories. Even officer prisoners of war were required to work. On 6 August 1944, we find Himmler demanding:

"Find out what the Polish officers still in the prisoner of war camps are doing. Have they been assigned to work, or not? If not, I suggest they be transferred to the concentration camps immediately and be assigned to work as prisoners." (XIII/89, Doc. NO-071.)

At Dachau, 2 May 1945, 48 hours after the camp's liberation by the American forces, a United States investigating Congressional Committee found a population of 30,000 political prisoners living in barracks or sheds, none large enough for the hygienic accommodation of its occupants. A description of the outer aspects of the camp gives a general picture of most concentration camps:

"Two high, parallel barbed-wire fences surrounded the camp, the inner one 15 feet from the outside one, which was electrically charged. At intervals of about 50 yards, 20-foot towers rose above the outer wire, and from these towers armed guards looked down on the interior of the camp. At one end of the large enclosure was an open space for assembling the prisoners, and at

the extreme end was a large administration building. An inspection of one of the better barracks for men disclosed 390

{1081}

jammed into a room built to accommodate 50. Most were suffering from typhus or tuberculosis, and all were living skeletons due to lack of food. Outside, lying in rows, were about 300 bodies of those who had died and had been collected that morning from the various barracks." (VI/76, 77, Doc. L-159.)

On 14 April 1945, Himmler had ordered that these prisoners (30,000) were to be liquidated in the event the Allies arrived. Three hours before the bloody, mass extermination was to go into effect, the American forces liberated Dachau. (IV/120, Doc. 1943-PS.)

An investigation conducted by a war crimes team of the U. S. Ninth Army at Nordhausen, reported that between 75,000 and 80,000 forced laborers were imprisoned here. At the time of the liberation conditions in this camp were indescribably appalling. The dead bodies "were emaciated, and bony prominences of the skeletons were conspicuous under the skin. A pile of bodies, the result of one-day's deaths, was found under the steps." The mental condition of the prisoners had degenerated with their physical condition. Both living and dead were found in the same beds. Some effort had been made to burn the bodies; and partially burned, blackened bodies of 100 children lay about the premises. No organized effort was made to bury the dead. (XI/74, Doc. 2222-PS.)

Auschwitz, the largest of the concentration camps, contained at its peak a population of 125,000 and because of its size was, 5 May 1944, divided into three camps.

Eugen Kogon, a highly intelligent person who served many years as a concentration camp inmate, and from his experiences and study, wrote a book entitled, "The SS State", testified at length before us. He calculated that the average current population of inmates in all camps during the years of the war ranged between 600,000 and 1,000,000, and that in all, 8,000,000 people went through the concentration camps. Approximately half a million of these were Germans, the rest foreigners.

The supreme authority in every concentration camp was the camp commandant. He allocated the labor, prescribed the hours of work, the food and rest, established living conditions, and imposed all disciplinary regulations. He ruled with a rod of iron. His authority was absolute. Under the camp commandant came the camp adjutant who exercised a double function. He was subordinate to the Higher Police and SS Leaders in the district in which the concentration camp was located, and he also represented the traditional authority of the Higher Police Officers on behalf of the SS. Then came the camp leaders, SS officers charged with the protective custody of the inmates. Below the camp leaders,

{1082}

ranked report leaders who regulated the relations between inmates and the camp leader and camp commandant. Still further down the scale appeared the SS block leaders, each one supervising from 150 to 800 inmates, depending on the size of the block. Then there were the SS guards who manned the towers and machine guns, and guarded the prisoners at their work.

Each concentration camp had a central administration with a so-called political department which was under the camp commandant and had direct communication with the Gestapo and the Reich Security Main Office.

Since the SS did not bother itself to carry out all the practical work in the camps, a so-called self administration on the part of the prisoners was allowed. This self administration was invariably led by a well tested criminal, selected by the SS for his ability and personal power to carry out the orders of the SS, and to oppose his own comrades in the camp.

The term, "concentration camp," was brought home to America directly in a report made by SHAEF on the alleged murder of American and British prisoners of war in Sachsenhausen. According to the testimony of a German civilian inmate of the camp, between 60 and 80 American and British pilots, after having been questioned in the Gestapo headquarters at Berlin, were taken to Sachsenhausen and there, in May 1943, killed by machine gun fire. The clothing of the Allied soldiers was distributed among the internees, the witness claiming to have received himself an American combat jacket. This witness, Willi Feiler, also declared under oath before the American court of inquiry that at Sachsenhausen 18,000 Russian prisoners of war were thrust into barracks intended for only 1,600, that no food was served them, and that through shooting and starvation, the whole group had perished in 7 days. When 8,000 more Russian prisoners of war arrived, they were thrown into an enclosure under the muzzles of machine guns and held there without food or water. The witness described in the most harrowing language watching these prisoners starve. He said: "Human beings were crawling around like worms. I saw with my own eyes that the living ones had started to eat the dead ones." (V/28, Doc. NO-1932.)

TREATMENT OF CONCENTRATION CAMP INMATES

In the grillwork of the iron gates at the entrance to the Buchenwald concentration camp, large metal letters proclaimed, "WORK REDEEMS." Dr. Eugen Kogon, however, who spent 4½ years in this camp, declared that as he observed the type of redemption

{1083}

to which workers in this camp were doomed, he saw that pronouncement change into the inscription:

Per me si va nella città dolente,

Per me si va nell'eterno dolore,

Per me si va alla perduta gente.

Lasciate ogni speranza voi ch'è entrate!

(Through me you enter the City of those elected for grief,

Through me you enter to eternal pain,

Through me you enter to the people of the lost.

All hope abandon ye who enter here!)

Asked to describe a typical arrival at a typical concentration camp, Dr. Kogon testified that while generally the reception accorded a new arrival exceeded in distress what he had anticipated, the reception did not necessarily need to be a cruel one. 'It would happen, for instance, in 1942 if you were a German or member of a nation not particularly hated by the Nazis, that when you arrived you were well treated. You were not even beaten.' (Tr. p. 766.) Not being physically manhandled was regarded as a special consideration. If, however, you were a French (we won't mention if you were a Jew), you were treated in a manner, "which cannot be imagined or described." High civil service men, to the tune of 150, came from Compiègne to Buchenwald, "and 35 corpses fell out." (Tr. p. 766.)

Political prisoners, and particularly Jews, were to be humiliated personally, and their will broken. They were compelled to stand in the sun for hours with their arms behind their heads. They had to squat or sit on their knees. Jews, in all cases, were given a beating with a stick five times or more. They were mistreated because they were Jews. (Tr. p. 767.)

Camp rules were read to the arrivals, and as the SS leader droned out the Draconian regulations, they constantly heard: "This will be punished by death; that will be punished by death." The rules were never written out. If an inmate asked just what he was permitted to do, the SS man accosted, invariably replied: "You can always commit suicide. You can hang yourself. You can run into a barbed wire."

The prisoners' hair was shorn, their personal property taken, and then they were driven across the camp square naked. They were now supplied with concentration camp uniforms—trousers, a thin jacket in zebra colors, and wooden shoes without leather. These wooden shoes were not only a torment to the feet, especially when the inmate was compelled to run on the double, but they precipitated even nervous disorders.

While the less mentally agile suffered their own punishment

{1084}

in that they were unable by exercise of wit to escape tortures the more resourceful could avoid, still no greater misfortune could befall an inmate than to be recognized, or to be suspected of being, an intellectual. All those who wore spectacles were subjected to a hazard all their own. Goebbels had declared that "these intellectual beasts are dangerous." "Thus these intellectuals," Kogon pointed out, "or those who looked like intellectuals, were allocated to labor detachments where they perished quickly." (Tr. p. 769.)

The day's routine began (in the summer) at 4 in the morning, in the winter at 6 o'clock. En masse the inmates marched to the parade ground of the camp where the roll call (always by numbers and not by names) was called. A report was also made of those who had died during the night. Then some of the prisoners were called to the gate, not knowing what to expect. The quaking inmate might be required to stand there until night, receive a letter, be called to the political department to undergo a long, intense examination, or he might be called to the camp commandant and within 5 minutes be hanged. One inmate was compelled to stand at the gate all Christmas day, and then that night he was informed of a telegraphic message which announced his father's death. (Tr. p. 783.)

Following the morning roll call the work details were announced, with an intense struggle ensuing on the part of the inmates to obtain the tools for the particular job to which assigned. This enthusiasm for tools arose not out of the desire to work, but because "anyone who appeared during working hours without tools was either beaten to death by the SS Kommandofuehrer [detachment leader], or his number written down and a report turned in for a subsequent punishment. (Tr. p. 773.) In columns of five the inmates now marched to the place of employment which might be a stone quarry, clay pit, ammunition factory, or construction job anywhere from 1 to 20 kilometers away. When the day's work was done, which did not exclude indiscriminate floggings, each inmate was obliged to pick up bricks or a stone, at least 10 pounds heavy, to carry to the camp for no useful purpose:

"During my whole life I did not know that it was possible to walk during a snow storm and in the condition that we were, without gloves and to carry five bricks on the left shoulder after such a long working day for a distance of a kilometer and a half. I could not believe it. If we had any wounded among us, or any dead ones, then we had to carry them with our working commando into the camp." (Tr. p. 775.)

Back at camp the inmates dropped their stones and assembled

{1085}

for roll call again, and then the punishments were carried out. Sometimes collective punishment, every tenth person, was inflicted. The floggings usually consisted of between 5 and 25 whippings. The victim was required to count the strokes with the whipping SS Scharfuehrer. If a mistake was made, the whipping then started all over again from the very beginning. (Tr. p. 779.)

The rules required that every punishment be approved by Berlin, but it was the practice "to beat the inmate first and then send the request to Berlin. When the punishment came back okayed, which it invariably was, the punishment was inflicted all over again." The rules also provided that camp physicians had first to examine the inmate to establish if he could stand the whippings, witness Kogon testified:

"From my long experience in the concentration camp I only know of one case where the camp physician, during such a discussion, raised an objection and the punishment was interrupted." (Tr. p. 779.)

An inmate could be punished for almost any reason. Perhaps he had looked at an SS leader in an "unruly manner." Or perhaps he had, in order to protect himself from the rain, placed a paper bag under his clothing. This would constitute sabotage. It might be that the SS Leader considered that the stone carried by the inmate was not clean enough, or that the inmate might have picked up a fragment of a cigarette stub dropped by the SS guard. An inmate could be flogged because he gave an incorrect answer to an inquiry. He could be called to the gate, and then asked why he was standing there. He could not answer because he did not know the answer. Or he could be beaten because he answered in a fresh manner, for instance, "I don't know why I am standing here."

The punishments were by no means restricted to floggings. Russians, who took a piece of wire to tie their wooden shoes together so as not to lose them, were charged with sabotage and hanged. (Tr. p. 953.) If someone tried to escape he was hanged in the

presence of all inmates. Then there were specialized tortures. An inmate could be fed salt herring without water until he went crazy, or he could be hanged head down. Punishment?

"People were hanged to trees so that their toes could not touch the ground; people were hanged to wooden logs; people were killed, hanged, choked, shot to death." (Tr. p. 784.)

Concentration camp commandants were authorized to hang immediately all prisoners who refused to work. In the event of an air raid, prisoners who did not return within 12 hours after the all-clear signal were to be hanged. (III/111, Doc. NO-2327.)

Evidently realizing that the normal human being thinks well

{1086}

of his fellowman and would rather discount stories of inhumanities which go beyond the pale, witness Kogon exclaimed in Court: "These things are not things I am imagining at the present moment, they actually happened to comrades of mine in the concentration camp at Buchenwald." (Tr. p. 784.)

This business of punishment was not a matter of spontaneous ire with quick irresponsible chastisement. There were regularly printed forms indicating the type of punishment, the blows to be administered, etc.

A court of inquiry, acting for Supreme Headquarters Allied Expeditionary Forces made an investigation at the Dora camp near Nordhausen shortly after its liberation by the Allied forces. One inmate on April 13, 1945, related a particularly horrible incident:

"I mention an example of greatest bestiality: A woman in the last stages of pregnancy was thrown down by an SS man who then stepped on her with his boots until birth was forced. In blood and pain the woman died wretchedly. Similar scenes were frequently repeated. This small report is just a tiny part of what Hitler's Germany has done." (VI/92, Doc. 2222-PS.)

Kasimierz Czyszewski, an inmate at Buchenwald concentration camp described treatment of prisoners:

"At the commands (Kommandos) [working places] of the labor offices the prisoners were whipped by the SS, with the assistance of various Kapos (prisoners used as barracks policemen). Then a board was laid over the neck of the fallen prisoners. Two of the prisoners stood on it in see-saw fashion and throttled the prisoners. When the commandos (Kommandos) [detachments] entered camp, roll call was taken of the dead who had been murdered there up to a hundred each day." (XVIII/178, Doc. 2223-PS.)

Life was very cheap in a concentration camp. Waldemar Hoven, assistant medical officer at Buchenwald, in relating conditions at that camp, told of the jealousy on the part of some prisoners against other prisoners holding key positions. The former envied the leaders and made every effort to discredit them. This was considered a traitorous action and the person performing it a "traitor." In a very casual fashion, Dr. Hoven stated that 150 of these traitors were killed:

"The total number of traitors killed was about 150, of whom 60 were killed by phenol injections, either by myself or under my supervision in the camp hospital, and the rest were killed by various means, such as beatings, by the inmates." (X/126, Doc. NO-429.)

Paul Bennart, who served at Dora and Buchenwald, interviewed

{1087}

by an officer of U.S. First Army, answered as follows on treatment in a concentration camp:

"Q. Did you see any shootings or hangings at Sachsenhausen?"

"A. Yes. I saw Hauptscharfuehrer Gustaf Sorge shoot a Russian because the Russian would not stand at attention. Gustaf Sorge lives at Oranienburg, near Berlin."

"Q. Did you see any shootings or hangings at Dora during the time you were there?"

"A. Yes. I saw groups of two and three men which would total approximately sixty, hanged for alleged sabotage. All of the prisoners and workers were compelled to watch these hangings, which occurred in April and May 1944. The hangings were usually held on Sunday during roll call. These people were mostly Poles, Russians, and Czechs, whose names I do not know. I do recall a German prisoner named Schrader being hanged for having stolen some alcohol."

"Q. Who usually conducted the hangings?"

"A. Most often they were ordered by Hauptscharfuehrer Brumm and in many cases the prisoners were compelled to hang other prisoners under penalty of execution for their failure to cooperate. There was an order issued by Sturmbannfuehrer Forschner that prisoners who refused to assist in the execution of other prisoners would themselves be executed." (XI/84, Doc. 2222-PS.)

At times, when an inmate's death was decided upon, the camp commandant would inform him that on the following day he was to try to escape. In the camp office, the man's death already had been recorded "killed while attempting escape." The Austrian Consul General, Dr. Stiedler, was informed one day of the fate which awaited him the following day. Dr. Stiedler pleaded that he could not do this since he was a faithful Catholic, and condemned suicide. Nonetheless, the next day, while approaching a chain of guards, he was shot down. (Tr. p. 937.)

The witness, Josef Ackermann, who related the above incident, was an inmate first in Dachau, then in Buchenwald, and then in Nordhausen. At Buchenwald he served as physician's clerk in the pathological section, and was required to keep records of autopsies. The chief of the medical department in department [division] D, WVHA, Dr. Lolling, frequently wrote the director of the pathological section at Buchenwald: "I need immediately 10 entire skeletons, 12 skulls, or individual parts of the body, or we need some interesting bullet wounds." One day the camp physician, pointing to an inmate passing by, said to the witness:

{1088}

"Dr. Ackerman, I would like to have this skull on my desk tomorrow." And then, according to the witness:

"The very same evening, the prisoner was ordered to report to the hospital and on the next day he was on my autopsy table and the skull was taken apart, and it was turned over to Dr. Hoven." (Tr. p. 940.)

One specialty of the pathological section of the Buchenwald concentration camp was to remove the skin of prisoners and tan it:

"Production was carried out by two ways, either it was put into a transparent form, or it was tanned so that the skin became tough, like leather." (Tr. p. 940.)

The inmate who carried tattooed pictures on his body walked a precarious path. He was immediately catalogued and his skin marked for the collection (after his death) of tattoos kept in the special museum in Berlin. Hunchbacks or other persons with a body

structure of medical interest excited the anatomical and macabre avarice of half-crazed doctors who were not averse to killing to obtain the skeletons to incorporate into the collections of the SS doctors, or the display in the SS Medical Academy at Graz. (V/178, Doc. 499-PS.)

Delving into the medieval past for ideas on torture and brutalities, devising schemes of their own for unique, sadistic practices on the body and soul of their fellowmen, the degenerate and power-crazed SS men, ever seeking some new, bizarre bestiality for their criminally warped imaginations, went to the jungle tribes of Africa for anatomical grotesquenesses not theretofore known in Europe. As Indians scalped their deceased foes, certain African tribes bore away the decapitated heads of their failed enemies, and by a certain process reduced them to the size of a doll's head. A returned traveller from Africa was taken into the pathological section to instruct the SS staff in the mysteries of skull shrinking, and the revolting hideous thing was done. Various heads were shrunk, and, according to the witness, the SS men liked to have these things on their writing desks in order to consider themselves important. (Tr. p. 943.)

To what incredible nadir had human decency descended in SS Germany?

Death in a concentration camp at Buchenwald had reached such a degree of casualness that camp physicians demanded to know why reports were being made on the death of political Russians. "Time and paper (!) could be saved if these reports were dropped." (IV/56, Doc. NO-2148.)

Dr. Francis Mis, a Yugoslav who had studied at the Harvard College in America, was an inmate at Dachau at the time of its

{1089}

liberation by the American Forces. On 4 May 1945, he was questioned at length on conditions in the camp prior to its emancipation. He stated that upon arrival in the camp (4 September, 1944) he was taken to the quarantine barrack where five slept in each bed and where lice and vermin were rife. Put to work as a physician he found prisoners suffering from dysentery, which he attributed to bad and insufficient food. As a result of the malnutrition about 3,000 inmates died between September 1944 and April 1945. Ten thousand more died from spotted fever and 1,000 died from tuberculosis. (V/135-140, Doc. 2428-PS.)

At Buchenwald the ration allowance amounted to between 600 and 700 calories per day and consisted generally of a weak soup made from cabbage and other vegetables and a small piece of bread, 3 inches square. This meal was distributed once a day in the morning, and in the evening another small piece of bread was distributed. The diet was very deficient in animal fats and vitamins, and contained no meat. The U.S. Congressional Committee, examining this camp on 24 April 1945 reported:

"Available records at the time of liberation had been examined by the prisoners engaged in the administration of the camp, and the record revealed that 51,000 persons had died in the camp. At the time of our arrival the prisoners, in a pathetic gesture, had erected, of flimsy materials, a memorial to the dead of Buchenwald. Pictures and descriptions of the conditions at this camp cannot adequately portray what we saw there, and it is only when the stench of the camp is smelled that anyone can have complete appreciation of the depths of degradation to which the German Nazi Government and those responsible for it and its agencies, organizations, and

practices had dropped in their treatment of those who had failed to embrace the doctrines of the 'master race'." (V1/74-75, Doc. L-159.)

One witness testified that at the Mauthausen concentration camp dead inmates were not reported dead but their bodies were dragged to the roll call and in this way the living inmates could draw the food for the dead people. (Tr. p. 420.)

In August 1943 the construction of a V-bomb factory was undertaken in tunnels at the foothills of the Harz mountains about 2 miles north of Nordhausen. Here, water for drinking and washing was found only where laborers could locate a leak in the pipes. The prisoners slept where they worked. Many died from respiratory diseases contracted in the damp tunnels, and others died of heart ailments due to underground pressure. (XI/73-75, Doc. 2222-PS.)

{1090}

Any attempt on the part of an inmate to obtain food for himself could lead to disastrous consequences. At Flossenbuerg, prisoners who had stolen a frozen potato or a cabbage leaf were consigned to a so-called water hole where, with a heavy stone on their backs, they were made to run around in almost 30 centimeters of mud, where they either collapsed or voluntarily broke through the sentry lines. In any case the water hole was the equal of death. (VI/113, Doc. NO-2122.) At Ebensee the peelings required to feed 500 SS guards made up the midday meal for 15,000 prisoners. With these peelings the inmates received 100 grams of bread daily. (XI/40, Doc. NO-1949.)

At the Boelcke Kaserne at Nordhausen 1,500 grams of bread were allowed to eight men daily, and each received ½ liter of watery soup. Because of this starvation diet the prisoners called Nordhausen the "Living Cemetery." (XI/88, Doc. 2222-PS.)

The Austrian Minister of Justice, Dr. von Winterstein, unable to stand the degradation to which he was being subjected in the Buchenwald concentration camp, was one of those who willingly walked into the chain of guards and was shot under the guise of an attempted escape. (Tr. p. 784.)

At Niedersachsen, the inmates were awakened at 4 o'clock in the morning and got a cup of coffee. They worked in the quarries all day, returned to camp at 9 or 10 o'clock, when they received ½ liter of watery soup and sometimes two or three bad potatoes. By the time the inmate got to his bed on a bundle of straw it was midnight, thus having spent 20 hours on his feet with only 4 hours of sleep. From 2 February to 4 April, 1945, 3,500 inmates perished from hunger. (XI/76, Doc. 2222-PS.)

Almost nonexistent medical care, added to the lack of food, contributed heavily to the death rate. In the Neuengamme concentration camp there were from 3,000 to 4,000 sick inmates, and only one doctor with scarcely any medicine at all. (V/132, Doc. NO-1201.)

And in no camp did the prisoners have sufficient clothing in the wintertime to keep them warm. At Neuengamme a request was made for clothing for 15,000 prisoners, but only enough for 2,000 was supplied. Hundreds of prisoners suffered severely from frost boils and frozen feet. Office D III, WVHA, very frankly declared that it was impossible to clothe completely the 524,000 prisoners in the camps especially with 612,000 more on the way. Max Pauly, commandant of the Neuengamme concentration camp, declared that he had

only enough garments to clothe completely 25 percent of the prisoners in his camp. And, as if in complete solution of this problem, Pohl declared by order on 7 September 1944:

{1091}

"Subject: Supply of clothing for inmates of concentration camps."

EXTRACT

" * * We shall not tolerate the fact that only complaints about the bad quality of the clothing are made and perhaps the inmate in question is even pitied because the poor fellow no longer had any shoes, instead of teaching him how to treat his clothes by giving him regularly a sound thrashing if necessary * * *."*

PUNISHMENT AND DEATH IN CONCENTRATION CAMPS

We have seen how occasionally new arrivals were not even beaten upon entering a concentration camp. This omission was not always looked upon with approval. An SS Inspector of Security Police declared in a statement in Berlin on 16 June 1943, that "the punishment of thrashing upon arrival proved very successful." (IV/88, Doc. NO-1073.)

An officer in the Dutch Marines describing his introduction to the concentration camp at Sachsenhausen said:

"Once delivered into the concentration camp Sachsenhausen we were forced to obey the command 'hinlegen,' which means to lie down flat on the ground. Some of us who did not lie down fast enough according to SS Oberscharfuehrer Schubert, were kicked by him in the region of the kidneys and on the head." (XI/35, Doc. NO-1949.)

When this prisoner was asked his profession and he replied "officer," he was slapped twice in the face and ordered to make 250 deep knee bendings. When a prisoner of war asked for water he was answered with a kick in the face. (XI/35, Doc. NO-1949.)

One inmate, who inexplicably found something to smile about while standing in ranks, completely changed his mind about levity in a concentration camp when a Hauptscharfuehrer struck him with such violence as to knock out two teeth and fracture his nose bone. (XI/36, Doc. NO-1949.)

A prisoner's failure to tip his hat to an SS man was sufficient justification for his being beaten. (XI/75, Doc. 2222-PS.)

However, beatings, floggings, and torture, no matter to what degree inflicted, were not the utmost limit of a concentration camp inmate's fate. He ever walked the brink of death over which he could topple for reasons less than reason. A court of inquiry, on behalf of the Supreme Headquarters AEF [SHAEF], found at Dora that SS guards shot laborers upon the slightest pretext.

{1092}

"Six prisoners were shot one day because they had left their place of work to go to the water closet." Executions were often performed without trial over the shallow guise of the condemned man's having been a saboteur. On 13 March 1945, 13 inmates, one a Yugoslav doctor accused of administering medical assistance to prisoners, were hanged. (X/75, Doc. 2222-PS.)

The camp commandant of Neuengamme, commenting, after the war, on 250 prisoners executed during his incumbency, said: "Frankly, I do not know the reason for their execution." (V/133, Doc. NO-1201.)

At Mauthausen the most usual way of accounting for murdered prisoners was to declare them shot while escaping. In point of fact it was impossible for a prisoner to escape. The doomed prisoners were simply driven to the chain of the military post where they were shot down by the guards. It was an unwritten law that anyone shot while trying to escape had to die that same day. Thus inmates who had received only a scratch of a wound and would have been able to carry on were killed by an injection although the report would indicate that he had died from gunshot wounds. (Tr. p. 958.) In June 1941, Himmler visited Mauthausen and upon arrival found an inmate who that day had been shot while in an escape attempt. The man's wound was obviously mortal, but Himmler ordered: "I want this man to be dead by this evening." (X/142, Doc. NO-2333.)

Political prisoners who were particularly hated were made to carry stones of such a size and for such a distance that they collapsed. The prisoner being at the end of his strength was then beaten up to the chain of military posts where, under the pretense of firing at escaping prisoners, the sentries liquidated him. Occasionally a tree trunk was placed beyond the chain of military posts and prisoners were ordered to fetch it. They were then shot by the guards without any challenge. Occasionally the prisoner's cap was thrown into the chain of military posts and when he went to fetch it he was immediately shot by the guards. The camp was enclosed by an electrically charged fence. Prisoners were forced into this fence on which they remained for hours on end until completely charred or delivered by bullets. (V/178/179, Doc. 499-PS.)

Many prisoners hanged themselves to end their torture. (V/179, Doc. 499-PS.)

It often happened, however, that prisoners were killed by blows and then hanged to give the appearance of suicide. (V/179, Doc. 499-PS.)

"Prisoners who became unpopular or who were sent to Mauthausen to be eliminated, were paraded at night on the

{1093}

parade ground, and the dogs of the chief of the concentration camp were let loose on them until the prisoners were literally torn to pieces." (V/180, Doc. 499-PS.)

In the wintertime some of the newly arrived prisoners were placed under a hot shower, then chased out to the parade grounds where they were required to carry out exercises in temperature of 20 to 30 degrees below zero, while being flogged, whipped, and kicked often with fatal results. (V/180, Doc. 499-PS.)

At the Gross-Rosen concentration camp a fund of 500 marks was set up for the person conducting the executions. The official order announcing this distribution ends with the statement that the award is "to be given only once, about which nothing must be said." (VI/10, Doc. NO-1991.)

At Buchenwald every evening the inmates were required to report for roll call, bringing with them the naked bodies of all comrades who had died during the previous 24 hours. At the "Little Camp" where prisoners slept 16 to a shelf, an infraction of discipline—particularly an attempt to escape—not infrequently resulted in all 16 being condemned

to death. These prisoners were marched through a door into an open shaft where they crashed 13 feet down to the cement floor. As they hit the floor "they were garroted with a short double end noose by SS guards, and hung on hooks." Those who were still struggling were struck by a wooden mallet. The bodies were then taken to the incinerator room. For a period of 10 days in March 1945 the coal supply for the incinerator was exhausted. Awaiting the arrival of a new supply of coal, bodies to the number of 1,800 were allowed to collect in the front yard, stacked up like cord wood. When the Congressional Committee visited this camp immediately after the liberation they found a truck load of these bodies within the area of the incinerator. (VI/73, Doc. L-159.)

An American surgeon who entered with the liberating troops stated that the adult corpses weighed from about 60 to 80 pounds. (VI/74, Doc. L-159.)

Philipp Grimm, an SS man who had worked with the labor allocation office and in other capacities at various concentration camps stated that the number of deaths, as evident in the labor statistics in office D II, WVHA, amounted, according to his estimate, to 10 percent per month. In the defense plants the percentage was perhaps higher. (XI/213, Doc. NO-2126.)

Helmut Bickel, a German citizen who was an inmate at the Nordhausen concentration camp for 4½ years was called by the defense as a witness in behalf of defendant Mummethy. This witness testified that 38,000 inmates died in Nordhausen in a period of 5 years. Commenting generally on concentration camps

{1094}

he said that when plans for a new camp were being drawn up, the first item to be considered was not the kitchen nor the laundry, nor the workshops, but the crematory, the burial ground for the dead, and the punitive detachments. (Tr. pp. 5394-5472.) In one year, out of 10,000 population, 8,000 died, a death rate of 80 percent.

Wincenty Hein, a Polish lawyer and judge who had already served in camp Dora, estimated that at Dora and the surrounding 31 labor camps during the period of their existence, between 75,000 and 80,000 inmates perished. (VI/90, Doc. 2222-PS.)

At Dachau there was not a single day when the air was not filled with the sickly odor of burning human bodies. (VI/107, Doc. NO-2122.) The ex-inmate who made this statement was told of a certain Knoll, probably unbalanced, who was promised by the camp commander a snack (a piece of bread and piece of sausage) when he had completed the killing of 100 prisoners. On one occasion when Knoll asked for his snack, he was told he had not met his quota:

"Knoll replied that he had 97 and that he would finish off the remaining three quickly before noon. At noon we saw him enter the 'Jourhaus' (office building) and also saw him emerge again carrying the snack." (VI/107, Doc. NO-2122.)

Lt. Jean Veith of the French Army described an ingenious device set up at Mauthausen for the liquidation of French prisoners. Upon arrival they were unclothed and taken to a bathroom. Here they were required to stand against a measuring apparatus which recorded their height. As each prisoner backed toward the metrical measure an automatic contraption released a bullet in his neck as soon as the determining rod

measuring his height touched the top of his head (Tr. p. 116.) This same French officer told of a Pole, who, obviously deranged, approached an electrically charged fence. Veith pulled the man away, whereupon he was reproached by a SS Unterscharfuehrer who said that he wished to use this man as a target for firing with his automatic rifle. This SS Leader had already killed 50 prisoners in this manner. Prisoners not considered "worthy" to stay in the camp were shot in the neck while standing before their graves into which their inanimate bodies fell after the execution. (XI/38, Doc. NO-372.)

Dr. Edwin Katzen-Ellenbogen, a former American citizen, who had received various scholastic distinctions at American University, was arrested in 1941 by the Gestapo and eventually landed at Dora where he was used as a camp doctor. He saw 1,200 French officers sent to the Dora weapons factory to work. Of these 1,200, after 6 or 7 weeks, only 19 returned alive. Prisoners were compelled to work 14 hours a day and then beaten so that they could not rest.

{1095}

"This was the method employed to kill off the French military intelligentsia." (XI/62, Doc. NO-2326.)

Where sabotage was suspected, the SS men had authority to kill "any halting civilian prisoner just like knocking the ashes from your cigarette." (XI/86, Doc. 2222-PS.)

We have quoted from Witness Kogon's description of a typical arrival in a concentration camp. A Polish architect, who served in the Auschwitz concentration camp, described his arrival to Lt. Col. Givens of the U. S. Army on April 22, 1945:

*"Thousands waited naked in winter, in the ice and snow for frequent bathing in the mass pool which resulted in grippe, tuberculosis, and consequent death. Lice and vermin brought typhus, causing the death of thousands. In the 2-3 blocks up to a thousand prisoners were ill with typhus, and the camp doctor (an SS man whose name I don't recall) ordered whole blocks to be taken by truck to the crematory at Birkenau * * *. On the black wall of death in block 11 in Auschwitz thousands (according to my reckoning up to 50,000 prisoners) were killed by shots in the nape of the neck. They were mostly officers and the intelligentsia from all walks of life. Early in the morning during the roll call for work the prisoners were called in, taken to the office, and from there to the air raid shelter in block 11. They were brought out naked and were murdered by being shot in the nape of the neck by Oberscharfuehrer Pulitsch, Unterscharfuehrer Lachmann, Civilian Wosnica of the Gestapo and Hauptsturmfuehrer Aumeier. The blood was flowing in the gutter like a downpour of rain. Women and children brought from outside the camp were sentenced here by the special court and were also murdered. I myself witnessed these scenes from the neighboring block in which I lived. A pregnant woman with a two year old child in her arms was among them." (XVIII/177, 178, Doc. 2223-PS.)*

There are no statistics on the number of concentration camp inmates executed just before the camps were liberated but it is known that Himmler issued a written order that camps "threatened by the Allied troops should be placed under the jurisdiction of the local Higher SS and Police Leaders. The disposal of the inmates was to be left to their absolute discretion. This order was executed and never rescinded." (XXII/14.)

SS INDUSTRIES

Although the original idea behind concentration camps was the immobilization of brains and hands which in some conceivable

{1096}

way might undermine the Nazi tenure of power, it was not long until Himmler saw in these millions of idle hands a reservoir of manual strength which could be put to use for profit—lucrative profit. The SS would go into business.

With hundreds of army divisions marching all over Europe, industrial manpower at home became a critical item, and here, like an oil well discovered in one's cellar, were these hundreds of thousands of men for whom Himmler was responsible to no one but his nonexistent conscience. Publicly he wept that he had not thought of this before. When he learned that hundreds of thousands of Russian prisoners of war had died from exhaustion and hunger, his regret was not that they died but that it was deplorable by reason of "the loss of labor."

In a lecture prepared for SS men, the rhetorical question was asked, "Why does the SS engage in business?" The lecturer answered the question as follows:

"The era of liberal economic system demanded the precedence of economy, that is to say, first came economy and then the State. In contrast to that, National Socialism maintains this point of view:

The State gives orders to the economy. The State does not exist for the benefit of economy, but economy exists for the benefit of the State." (11/107, Doc. NO-1016.)

From the premise that economy exists for the State, it was a very short step to the proposition that all those subject to the State exist for the State. And if a man has no intrinsic right to exist within the State, it follows naturally that the State may use him as it sees fit. This proposition was very succinctly put forward in the lecture referred to.

"The Reich Leader SS in his capacity as chief of the German Police was confronted with the task of solving problems, which the Reich as such was not able to solve, viz to get hold of all antisocial elements, which no longer had a right to live within the National Socialist State, and to turn their working strength to the benefit of the whole nation. This was effected in the concentration camps. The Reich Leader SS, therefore, delegated SS Obergruppenfuehrer Pohl to set up concentration camp enterprises. In addition, he gave orders to establish companies on a private economy basis for the purpose of employing the prisoners." (11/107, Doc. NO-1016.)

And since the antisocialite lived only by sufferance of the State, it is easy to understand that the State had the right to employ him to the limit of his endurance, not even short of death. Instructions issued by the WVHA on 30 April 1942, over the signature of Pohl, provided that the employment of concentration camp

{1097}

labor must be, "in the true meaning of the word 'exhaustive'," and then, so that the inmate himself could feel the immediate absoluteness of his servility, full power to employ him was lodged in the concentration camp commander.

"The management of a concentration camp and of all the economic enterprises of the SS within its sphere of organization is in the hands of the camp commander. He alone is therefore responsible that the economic enterprises are as productive as possible." (11/68, Doc. R-129.)

The camp commander was authorized to establish working hours and working conditions, and so that he should not feel too restrained in this matter, the directive read:

"There is no limit to working hours. Their duration depends on the kind of working establishments in the camps and the kind of work to be done. They are fixed by the camp commanders alone." (11/68, Doc. R-129.)

With absolute dominion went every sense of restraint, even to the point where it brought diminishing returns to the master. Good business judgment would have dictated that, if not treated with exceeding care and comfort, the workers at least be supplied with a minimum of the bodily requirements so as to extract from them their best efforts in production. Even in the ancient days of slavery, the master was jealous of his slave's comfort and care because in him he had an investment. Of course, it may be that, because of the very fact the Nazi master had not expended a penny in the way of purchase, he subjected the slave worker to physical deprivations and, in addition, actual brutality. Always associated with the concept of work went the concept of extermination. These slaves were of inferior races: they were Poles, they were Slavs, they were Jews, they were in a word subhuman. Thus the inmates felt the whip, the lash, the spur of the mounted guard. The master profited regardless of results. If the slave produced, his hire enriched the coffers of the SS. If he succumbed and expired under the yoke of his labors, that made one less to corrupt the air to be breathed by the "master race." Thus from time to time the inmates were forced into tasks which brought only exhaustion, frustration, and despair. Heavy rocks were loaded on their backs to be by them transported to meaningless destinations, and there the human beasts of burden were ordered to take the loads back to the starting point. Brick and stone walls were erected, demolished the next day, and on the third day wearily constructed again.

In his Metz speech, Himmler said on this point:

"This activity is necessary, as I said, (1) to eliminate these negative people from the German people, (2) to exploit them

{1098}

once more for the great fold community by having them break stones and bake bricks so that the Fuehrer can again erect his grand buildings, and (3) to in turn invest the money, earned soberly this way, in houses, in ground, in settlements so that our men can have houses in which to raise large families and lots of children. This in turn is necessary because we stand or die with this leading blood of Germany and if the good blood is not reproduced we will not be able to rule the world." (Doc. 1918-PS.)

With overwork, mistreatment and undernourishment, the concentration camp workers died off in such numbers that their replacement became a critical item. Rudolf Hoess, chief of office D I, stated that in the more dangerous and more exhaustive jobs, 20 percent of the workers perished each month as the result of overwork or extermination because of inability to work. The situation reached such an alarming stage that the chief of Security Police and SD complained in December 1942:

"But I should like, however, to point out in this connection that because of the great number of deaths in the concentration camps, it was impossible to increase the total number of prisoners, in spite of the increased numbers sent to them recently, and that with a constant or even increasing death rate, it is unlikely that an improvement can be effected even by sending an increased number of prisoners."

In the same month the medical office D III complained to the camp doctors of all concentration camps:

"In the enclosed, a compilation of the current arrivals and departures in all the concentration camps is sent to you for your information. It discloses that out of 136,000 arrivals about 70,000 died. With such a high rate of death the number of prisoners can never be brought up to the figure as has been ordered by the Reich Leader SS."

Grist for the mill of death came from everywhere, not excluding the Reich Ministry of Justice whose chief decreed that all prisoners under protective arrest, Jews, gypsies, Russians, Ukrainians and Poles with more than 3 year sentences; and Czechs and Germans with more than 8 year sentences, were to be sent to concentration camps to be, "worked to death." This Minister of Justice declared in September 1942:

"With a view to freeing the German people of Poles, Russians, Jews, and gypsies, and with a view of making the Eastern territories which have been incorporated into the Reich available for settlements for German nationals, I intend to turn over criminal proceedings against Poles, Russians, Jews, and gypsies to the Reich Leader SS. In so doing I base myself on the principle

{1099}

that the administration of justice can only make a small contribution to the extermination of members of these peoples." (XII/32, Doc. NO-558.)

By 21 December 1942 the Justice Ministry had turned over 12,000 of these prisoners; subordinate agencies had received orders to transfer an additional 35,000. The SS did not fail its assignment. Pohl reported that the death rate of prisoners sent by the Justice Ministry was an average of 30 percent per year and even higher at Mauthausen. Out of 10,191 such prisoners received in Mauthausen, 3,306 had died by the first of the year. (XII/34, Doc. NO-1265.)

Although the fullest utilization of concentration camp labor for commercial purposes did not reach its peak until 1941 and 1942, the inmates had long before been recognized as profitable material. As early as 20 April 1939 we find the Administrative and Economic Main Office of the Reich Leader SS declaring that:

"Since the SS is extending its activity more and more to the field of private economy, we must act in accordance with this realization. (II/5, Doc. NO-542.)

"It would perhaps be a good thing to illustrate on the occasion of a conference with figures to camp commandants what financial loss the SS will suffer if a regular supply of prisoners is not kept up." (II/9, Doc. NO-542.)

As far back as 8 May 1940 it was decided that a special department would be set up for the operation of quarries in Norway. (11/27, Doc. NO-1045.)

By April 1942 the prisoners had fallen into such a pattern of slavery that the SS administration no longer regarded them as free human beings, but as chattels belonging to the Reich permanently. That they were merely war detainees did not enter the minds of the SS hierarchy. Thus plans were made as to how these prisoners should be used even after the war ended. "The mobilization of all prisoners who are fit for work, for purposes of the war now, and for purposes of construction in the forthcoming peace, come to the foreground more and more." (II/67, Doc. R-129.)

With the whole power of the Reich, especially its police forces, behind the SS commercial enterprises, it was not difficult to take over any establishment that seemed attractive. Thus an SS Sturmbannfuhrer reported in October 1944 that he had found a desirable basalt factory in Roemhild near Hildburghausen. He stated that he could arrange for taking over the plant because the mayor (who was an Ostuf., of the General SS) was willing to transfer the work. He declared further that, although he might be confronted with some difficulties, they were not insurmountable. "I hope to

{1100}

overcome all difficulties particularly because (1) more important orders are on hand; (2) the Gestapo will back up the matter 100 percent." (XVI/52, Doc. NO-1031.)

On 14 February 1944, Goering asked Himmler to place at his disposal, "as great a number of concentration camp convicts as possible for air armament as this kind of manpower proved to be very useful according to previous experience."

In view of the ever-increasing effectiveness of the Allied air power, Germany was forced to go underground with its airplane factories. "For work of this kind concentration camp convicts can be especially well concentrated at work and in the camp."

Himmler acknowledged this letter enthusiastically, advising that already 36,000 prisoners were being used in the air force industry with a contemplated increase to 90,000 prisoners. "The use of the prisoners has proved its brilliancy here." With regard to the transfer of air industry factories underground, Himmler states that 100,000 additional prisoners are required and then, like one rubbing Aladdin's lamp, he adds: "The plans for this task are already in full progress."

A fairly good idea of conditions at a concentration camp work center (V-weapons were being constructed here) was conveyed by the witness Karl Kahr:

"When I arrived in Dora in January 1944, I was horrified by the living conditions which I saw there and which prevailed for the inmates. In no way had any people been worried about the billets, nor did they worry about their clothing which they needed for their hard work, nor did they take care of any sanitary installations. Out of the 10,000 inmates at the time at least 7,000 of them had to live under the earth; that is in these specially built tunnels. Only 3,000 of them had the possibility to see the sunlight in the camp and to live in barracks. In addition, it so happened that the inmates during the 12-hour shift had to work in the tunnels and had to spend their leisure time in a tunnel nearby. For the sick inmates, while I was there, there were only four barracks for the sick which had the very least equipment that could be expected so that due to the great, large number of sick inmates it was almost impossible to take care of these inmates. Furthermore, due to bad clothing and bad shoes they had great injuries which occurred while they were working on these pointed stones; and the inmates were very badly fed. As they were very badly fed, they did not have the good resistance to these diseases so that the infections on their legs were at a horrible extent. I myself was a doctor. During my activities prior to that I had never seen such infections." (Tr. p. 177.)

{1101}

As a doctor in the SS, the witness had the opportunity to complain in behalf of the inmates about these vigorous working conditions. He was informed that it did not matter how many inmates died, the important thing was to get the construction project completed. It is thus not surprising that the death rate for one month (January 1944) was 8 percent. (Tr. p. 185.)

"These inmates died often of the diseases they brought along from other camps. In other words, the lung tuberculosis, which occurred very often. Furthermore, there were organic diseases which resulted from infections with typhus and spotted fever in other camps. And also, I myself saw inmates who organically speaking had no signs of disease but could often have died of malnutrition, because their bodies already showed certain signs of malnutrition." (Tr. p. 180.)

Dr. Bernhard Lauber, a Polish Jewish physician, also an inmate in Ohrdruf, testified that about 4,000 prisoners were employed in the underground factories. He stated that hospital facilities were nonexistent. Those who became ill had to be accommodated in stables.

"There were no beds in those stables, it was a concrete floor. The sick people lay on the bare floor, without straw, without covers, and blankets; no drugs; and these ill people were given 50 percent of the food which we were given. They were so ill that they couldn't eat very well. They lay there, with open wounds, and they were not dressed; and they died there by the thousands." (Tr. p. 291.)

Each day as the prisoners marched away from the roll call, 10 to 12 were left dead on the parade ground. (Tr. p. 292.)

If the concentration camp inmates had been made to work for the Reich directly without compensation or reward, that in itself would have been unjust, but it was worse than that. They were hired out to private industries which paid for their work, not to the prisoners but to the Reich. Thus, the inmates became beasts of burden to be hired out at the will of their masters. The employing industries deducted from the amount paid for their hire, two-fifths the wages of remuneration to cover the housing and food furnished the prisoners, but even Pohl regarded these services as inadequate:

"In view of the inadequate way in which the services were rendered, a deduction of two-fifths must be considered much too high, so that the labor of the prisoners for private industry was very cheap." (XIII/127, Doc. NO-382.)

Industries which did not have the benefit of concentration camp labor complained that the SS industries owed their competitive capability to their cheap or even free-of-charge labor. In the

{1102}

attempt to meet these arguments the SS prepared a paper pointing out that:

"For nutritive and psychological reasons the productivity of a prisoner is always considerably lower than that of a worker of the free industry." (XV/76, Doc. NO-510.)

Then, in order to silence the free industries it was seriously proposed to increase the pay of the workers which is simply tragically amusing when one realizes this increase of pay had nothing to do with the worker. He got no pay anyway. It simply meant that the SS or the Reich would become a little richer from the sweats of its foreign slaves.

The I.G. Farben Industry, the largest employer of concentration camp labor, was granted priority over all other industries. At its Buna Werke establishment it employed approximately 40,000 foreign workers and concentration camp inmates. The second largest employer of concentration camp labor was the Hermann Goering Works which drew its inmates from Auschwitz, Buchenwald, and Oranienburg. The German Oil and Research Company employed 10,000 inmates taken from Dachau. The Messerschmitt concern tapped Dachau, Flossenbuerg, and Mauthausen for its needs of inmate labor. The quarry at Mauthausen was operated by Messerschmitt. The camp at Oranienburg, furnishing labor for the clay pits and the brickworks, was equipped to house 25,000 inmates. The Krupp plant at Auschwitz engaged in the production of fuses, employed concentration camp labor. Approximately 250,000 prisoners were used as laborers in the armament industries, in labor camps and in Aussenlager. Construction projects and armament projects employed an additional approximate 100,000.

Wages for these inmates were fixed by the German Labor Front, but as previously indicated none of the money went to the inmates. It was paid to the Reich through

department [division] D. From April 1944 to February 1945 these payments amounted to a total of approximately 120 million RM.

In addition to working in labor camps, armament works and other immobile industries, concentration camp inmates were often taken on travelling labor assignments. Under orders of Pohl, SS construction brigades of 2,500 prisoners were made up for the construction of fortifications and supply lines for the V-1 and V-2 program in the west. A report on this operation, after speaking of the good accommodations and food afforded the men as they travelled from place to place, gives itself away with the statement:

"The footwear can be described as especially bad. Some of

{1103}

the prisoners have to go barefoot on account of nonexistent footwear. In spite of continuous repairs this situation cannot be remedied." (XXI/7, Doc. NO-2615.)

Dr. Werner Greunuss, speaking of a construction project at labor camp III at Buchenwald, declared that in the examination of 10,000 prisoners here he found one-third totally unfit for work or in need of special care. (XXI/22, 23, Doc. NO-21.)

Then there was the punitive detail where the workers' life could be forfeited for the slightest infraction or supposed infraction of rules. Witness Jerzy Bielski testified on the punitive company (made up of 150 inmates) to which he belonged in Auschwitz.

"All the people there did not get sufficient food. They were beaten during their work, and many of them were shot. On the average, ten prisoners were killed every day, and ten to twenty who had lost consciousness and who were otherwise sick were returned to the camp. The work had to be carried out at double time, and the work had to be achieved at such a speed that nobody was able to carry it out. Whenever we were unable to run as fast as we were told to, or whenever we showed that we did not have sufficient strength to push the carts, then we were always beaten by the foremen and the Kapos, and people were shot by the SS guards." (Tr. p. 305.)

Then there was the gravel pit where out of 300 workers, 10 to 20 dead were carried back each day. (Tr. p. 306.)

Witness Albert Henry Kruse described conditions in the clay pits at Neuengamme:

"I would have to start at the early morning. As soon as the working commandos were assigned new people the working commando started off for the day. These two thousand people were then driven on the double, falling over each other, until they reached their working place. The Kapos and SS people had great fun to beat these people while running after them, while there was confusion.

"Then the people were assigned to various working commandos." (Tr. p. 450.)

At 11:30 the inmates suspended for lunch.

"The food had to be eaten outside in the field regardless of whether it was winter or summer. It often occurred that Kapos, those were the foremen, in case the inmate should not hold the plate correctly, would kick it out of his hand so that he would have to spend the whole day without eating anything. If an inmate collapsed while he was working, which was absolutely natural due to the undernourishment there and it was a daily occurrence, then he was thrown into a closed in area, closed in

{1104}

by barbed wire, in which daily there were between ten and thirty inmates, and they had to lie there on the bare earth regardless of whether it was winter or summer." (Tr. p. 451.)

The monthly death rate in Neuengamme amounted to between 8 and 12 percent. During the period that the Clinker Works were being constructed, the death rate climbed to 20 percent, particularly during the winter months. In the month of January 1943, 1,200 inmates died. (Tr. p. 453.)

Witness Herbert Engler, who testified to working and living conditions at the Sachsenhausen concentration camp, was asked if the food served the workers was sufficient. He replied:

"Food, if you consider this happy word, was not sufficient.

"I have seen especially tall and strong men who usually need more food than others, that is small men, that these men very quickly reached a physical condition which made it necessary that they be sent to the concentration camp hospital and a part of them died and that was concerned mainly with the water, because the food, the prison food which was given there was mainly soup; there was a lack of food and water, was formed, if I may call it that as a layman, and the main part of the inmates died because of that reason." (Tr. p. 664.)

When the pangs of hunger became unbearable, inmates attempted to add to the camp ration by eating grass, digging up beets or raw potatoes or, "whatever looked like food." (Tr. p. 665.)

Where hospitalization was permitted, inmates often died because of wrong treatment by the camp doctors and inexperienced camp male nurses. (Tr. p. 666.)

As the result of heavy work, grossly disproportionate to the amount of food received, predisposing illness, 800 to 900 inmates died per month at Sachsenhausen. (Tr. p. 667.)

The SS were not entirely without some consideration for the inmates when hatred could be sheathed for a moment and thought given to obtaining the most in work from each prisoner. Prisoners of German nationality were even allowed to ask permission to let their hair grow. Workers who achieved peak performance were allowed to visit the brothel, "as a special reward." For this visit the prisoner paid 2 RM, 50 of which went to the brothel personnel and 1.50 RM to the Reich. (XXII/16.) Even bonus coupons were awarded for top production. The theory of these coupons was that they could be exchanged at the canteen or PX for certain food items or tobacco, but in 1944 and 1945, "it was scarcely possible to buy anything at all which was of interest to an inmate's

{1105}

feeding—which was, after all, the most important thing to him." (Tr. p. 707.)

Those who were placed in the punitive detail at Sachsenhausen carried stones for from 12 to 14 hours a day.

"In the Clinker SK, the punitive company, as I have already told the Tribunal this morning, the inmates could not survive as a general rule a period of four weeks. In order to give you the figures of the death rate, I shall have to say that during only one month, of 65 men who composed the Clinker punitive company, 19 inmates died. They died because they went through the guard chain, preferring suicide to the cruel treatment in the Clinker punitive company." (Tr. pp. 714, 715.)

The witness Eugen Kogon, whom we have already mentioned, explained that at Buchenwald his work as a digger was so exhausting that he is alive today only because he was able to bribe his Kapo to turn his head from time to time so that the witness might seize fragmentary rest periods.

At camp Dora, V-weapons were manufactured in the subterranean caverns. They were described by witness Josef Ackermann as so large that two freight trains could drive through them with still a big highway with other railroad installations there. Here the prisoners worked and slept. Thirty-five hundred lived in a big stone chamber.

"The beds were always filled. When one shift had to get up, the other shift had to return from work and take their places, and they would go into that which was filled with lice. It consisted of an old straw bag which stank terribly, and an old blanket which was suited for horses. The air in the mine was so full of calcium that it was hard to breathe." (Tr. p. 948.)

Working for 12 hours and fed insufficiently, many collapsed out of simple exhaustion.

"Whenever I walked through the mines I always had to step and walk over corpses. They were lying just on the way. Many of these prisoners committed suicide by throwing themselves down at the mines or by otherwise committing suicide; or they took a rope and hanged themselves to the next post." (Tr. p. 948.)

The death rate constantly increased. In February 1945, with 50,000 workers, 3,500 died. In March 1945, 5,000 died, that is to say, 10 percent of the total population.

The completely inadequate rest allowed the workers at Dora helped to swell the death rate. As a medical clerk, the witness Ackermann prepared a memorandum for Dr. Lolling, physician in charge of concentration camps, pointing out that by reason of working 12 hours and then being compelled to walk to their

{1106}

barracks, as well as being required to stand long roll calls, the prisoners did not reach their blocks until 11:30 at night. After getting something to eat, they thus did not get to bed until 12:30.

"In summer time they were again waked up at 2:30 in the morning, so that these people only were able to sleep for 1 1/2 or 2 hours. And this of course resulted in their complete exhaustion. The inferior food alone would not give any explanation for the fact that the corpses of all prisoners consisted of skin and bones. However, with this exhaustion they were unable to take any food, and if they had been given any food it still would not have been of any use." (Tr. p. 951.)

MEDICAL EXPERIMENTS

During the war Heinrich Himmler made the startling discovery that German soldiers succumbed to high altitude, pestilence, poisonous food, sea water, and freezing just like all other human beings. He resolved to do something about this and instructed his master scientists to find the mysterious compound which would prolong life, despite war's circumstance.

Where Ponce de Leon failed in his quest for unending youth, the Nazi scientists began, but experimentation was required. Tests had already been made with monkeys, but as their reaction did not entirely coincide with that of human beings, it was necessary to work with live men who could of course die during the test. It was only through the concentration camps that the human experimental material could be obtained.

As inmates refused to offer themselves as human guinea pigs, Himmler made participation in the experiments compulsory. Here and there in all the documents one finds some vague suggestions that only prisoners condemned to death were used in the dangerous tests. But the evidence in no manner whatsoever exhibits that only death-

condemned prisoners were used. And if a doomed man was killed through an experiment, there was nothing to show that any judicial tribunal worthy of the name, passed such final judgment upon him.

Between February and July 1942 high altitude or low pressure experiments were conducted on approximately 200 inmates at Dachau. Between 70 and 80 of these tests resulted fatally. One patient who observed from his window the experiment in the Pressure chamber was taken out by Rascher, put into the chamber and killed. (VIII/32, Doc. NO-911.)

These high altitude experiments were followed by cold water freezing experiments in which 80 out of 300 subjects died. Other

{1107}

experiments in the battle against winter involved the outdoor exposure of naked victims for from 8 to 14 hours. After this mass refrigeration of human life the master scientists made the astounding observation that frozen people derive some benefit from a hot bath. The weather was apparently very accommodating to the experimenting doctor, Dr. Rascher, who reported to Himmler under date of April 4, 1943:

"The question of saving people frozen in the open air has in the meantime been cleared up, since, thank goodness, there was once again a period of heavy frost weather in Dachau. Certain people were in the open air for 14 hours at -6° C., reached an internal temperature of 25° C, with peripheral freezings, and could all be saved by a hot bath." (Emphasis supplied.) (VII/123, Doc. NO-292.)

Himmler recommended to Dr. Rascher that women be used in the resuscitation experiment. The theory was advanced that a naked woman fondling a man whose blood had coagulated to subzero temperatures could restore normal warmth. It was intended that Jews and gypsies be assigned to this operation, but Dr. Rascher reported to Himmler that among these women he found a girl with unquestionable Nordic racial characteristics. It developed that she had volunteered as a prostitute at the concentration camp brothel in order to avoid the concentration camp life itself. While mass killing had never apparently disturbed this arch murderer, this incident touched him deeply and he said:

"It hurts my racial feelings to expose a girl as a prostitute, to racially inferior concentration camp elements, who has the appearance of a pure Nordic and who could perhaps by assignment of proper work be put on the right road." (VII/101, Doc. NO-323.)

Dr. Rascher and his fellow scientists were searching for a blood coagulant that would seal up wounds and staunch the flow of the life's fluid, a highly commendable undertaking. However, the methods employed to achieve this desideratum did not quite measure up to the idealism of the quest. With the thousands of soldiers being wounded every day on countless battlefields, the criminal Ponce de Leon still found it necessary to shoot innocent prisoners at Dachau in order to test the various drugs they had concocted. (VII/1, Doc. NO-065.)

Perhaps there is no physical torture so well covered in world literature as human thirst. The cries of the hapless voyager, whether on the sea of water, or ocean of sand, for potable water that cannot be found, have touched the emotions of every reading person.

Libraries have been written on this subject. The demonstrated data on physical, mental, emotional, and spiritual deterioration

{1108}

of the pitiful traveller deprived of drink are known to the scientists of every civilized country. However, the so-called scientists in the concentration camps, feeling themselves rich with life material, conducted experiments on human thirst, which not only did not solve the age old problem on how to survive without fresh water, but gratuitously inflicted pain, agony, and death on their innocent victims.

In the summer of 1944 a Dr. Beiglboeck at the Dachau concentration camp carried out experiments in which a large number of prisoners were required to drink sea water in order to determine how long they could stand it. An eye-witness, describing the agony of the victims, related how in their torment, they wildly threw themselves on the mops and rags used by hospital attendants and sucked the dirty water out of them in the urge to alleviate the thirst which was driving them into insanity. (VIII/31, Doc. NO-911.)

This Dr. Beiglboeck also conducted experiments with starvation diets, salt diets, and blood lettings. "It was Beiglboeck's Practice to send these prisoners undermined by the experiments to the regular infirmary in order to conceal the number of deaths among the experimental subjects."

Prisoners working in and around the experimental station stated that the doctors were proud National Socialists who had the confidence of Himmler's immediate staff because, "the additional sufferings of the patients were so obvious as not to be reconcilable with a physician's conscience." (VIII/32, Doc. NO-911.)

Experiments with malaria were frequent. At Dachau the experimental subjects (in many instances, priests) were placed in a small room where each was compelled to hold a box full of mosquitoes. As a result of the malaria experiments there were 30 deaths and as a result of complications 300 to 400 more died. Forty-nine patients died outside the malarial station. (VIII/3, Doc. NO-856.)

Experiments on the causes of jaundice epidemic resulted in various deaths. (VIII/34, Doc. NO-371.)

At Ravensbrueck experiments were conducted on the effectiveness of sulfanilamide. Incisions were made in the leg of the victims and gangrenous bacteria cultures were inserted. The wound was then closed and the leg encased in a cast. But since the infections which resulted were not typical of battlefield gangrene infections, it was decided to add tiny fragments of wood shavings to the bacteria cultures which would simulate the crust of dirt customarily found in battlefield wounds. (VIII/43, Doc. NO-228.)

"Before I could complete my report on the procedures used and the results obtained, (Dr. Grawitz) brusquely interrupted

{1109}

me and observed that the conditions under which the experiments were performed did not sufficiently resemble conditions prevailing at the front. He asked me literally, 'How many deaths have there been?' and when I reported that there had not been any, he stated that that confirmed his assumption that the experiments had not been carried in accordance with his directions." (VIII/44, Doc. NO-228.)

New experiments were initiated:

"The incisions were made on the lower part of the leg only in all series to make an amputation possible. It was not made on the upper thigh because then no area for amputation would remain. However, in the series the inflammation was so rapid there was no remedy and no amputations were made." (VIII/46, Doc. NO-228.)

Dr. Zofia Maczka, a former political prisoner in Ravensbrueck and now living in Stockholm, prepared an affidavit for the British Consulate in which she related her experiences at Ravensbrueck:

"The operations were to be carried out for scientific purposes, but they had nothing to do with science. They were carried out under horrible conditions. The doctors and the assisting personnel were not trained properly medically. Conditions were neither aseptic nor hygienic. After operations the patients were left in shocking rooms without medical help, without nursing, or supervision. The dressings were made according to the whim of the doctors with unsterilized instruments and compresses. Dr. Rosenthal who did most of the dressings, excelled himself in sadism. In summer of 1943 the last operations were carried out in the 'bunker'. 'Bunker' is the name of the horrible prison in the camp. The victims were taken there because they resisted and there in the cell, their dirty legs were operated on. This was the 'scientific atmosphere' in which the 'scientific' operations were carried out." (VIII/56, 57, Doc. NO-861.)

Poles, political prospective prisoners, 74 in number, were chosen as subjects. The youngest was 16 years of age, the oldest 48 years. Dr. Zofia Maczka described the procedure:

"The soft part of the calf of the legs was opened and the open wounds were infected with bacteria which were introduced into the wounds. The following were used: staphylococcus aureus, oedema malignum (clostridium oedematis maligni), gas gangrene bacillus (Gasbrandbacillus) (clostridium perfringens) and tetanus. Weronika Kraska was infected with tetanus. She died after a few days. Kazimiera Kurowska was infected with gas gangrene bacillus; she died after a few days. The following were infected with oedema malignum: Aniela Lefanowicz, Zofia Kiecol, Alfreda Prus, and Maria Kusmierczuk. The

{1110}

first three died after a few days: Maria Kusmierczuk got over the infection. She was lying ill for more than a year and became a cripple, but she lives, and is a living evidence of the experiments. Mostly pyogene stimulants were employed. The wounds were stitched after the infection and serious illness began. Many of the patients were ill for months and almost all of them became cripples." (VIII/57, Doc. NO-861.)

Many bone transplantation experiments were conducted. Practically all of the patients became permanent cripples. In addition they suffered the torturous fear they might be shot in order not to be living evidence of what had been done to them. (VIII/59, Doc. NO-861.)

This mania for experimentation was carried to the point where legs at the hip joint were removed from psychopathic patients to determine, it is assumed, if the amputation of legs might affect the mental condition of the patient. (VIII/63, Doc. NO-861.)

One very curious phase of this experimentation business was its secrecy. If the objective of medical experimentation in itself was just and the means honorable, it is difficult to understand why the procedure should be clothed in mystery except that the Perpetrators were fully conscious of the criminality of their acts. Thus we find Pohl reproaching Dr. Rascher for writing a magazine article on one experiment:

"I deem it necessary that in future publications you avoid carefully everything which could induce people who are familiar with the subject (and one must always consider that such people exist) to the conclusion that experiments on prisoners are involved." (VIII/70, Doc. NO-615.)

At Natzweiler between 150 and 200 prisoners were infected with typhus viruses, naturally without their consent, and without their having been at any time sentenced to such experiment. Fifty died from the experiment. (IX/29, Doc. NO-2466.)

Although neither side in World War II used poison gas, its employment was always a threatened possibility, and in anticipation of its use the concentration camp scientists experimented to ascertain the best treatment for wounds caused by Lost, commonly known as mustard gas. Inmates of the Sachsenhausen concentration camp were subjected to wounding in various parts of the body and then the wounds were infected with Lost. There seems to be no record of the results of this experiment except the usual one that, "some of the prisoners died as a result." (IX/39, Doc. NO-372.)

One searches in vain for a document which proclaims that as a result of all this experimentation there came to light—not a startling scientific discovery—but even a simple improvement in

{1111}

any normally prescribed treatment for a peace time ailment or a war time injury.

An ex-Buchenwald inmate described various types of poison gas experiments. In one experiment a certain fluid was dropped on the right and left forearm of the subject. After 24 hours serious symptoms of burning appeared. Seven out of thirty subjects died. Another experiment involved placing the subjects in a gas chamber where they were required to inhale outpouring gas. Rendered unconscious, attempts were then made to revive patients through artificial respiration. In most cases the attempts failed. The dead bodies were then dissected. Even in the manner the victims died, the experimenters were able to find a certain satisfaction. One Professor Hirt, after such a fatal experiment, shook hands with the practicing physician and said: "We may congratulate ourselves that our experiments turned out so well." (IX/48, Doc. NO-590.)

About 1,000 inmates were taken from Block 46 at Buchenwald for the typhus experiments. One-hundred fifty-five of these died. (Tr. p. 737.)

A certain Dr. Ding-Schuler, whose diary on experiments was a subject of much discussion at the trial, conducted various experiments with spotted fever. Out of the 39 subjects there were 21 fatalities. (Tr. p. 913.)

One inmate died under certain 'circumstances which baffled the experimenters. In order to find out what kind of poison and how much of it had been administered to the deceased, 4 Russian prisoners of war were given various doses without their knowledge. Testifying on this subject witness Kogon said:

"When two of the Russian prisoners of war suffered only a collapse and two were not dead, all four of them were taken to the crematorium, and there they were hanged after an hour.

"Q. Why did they hang them; do you know?"

"A. No. I do not know the reason. I assume as the whole thing was an SS trial and very strange—I think they wanted to get rid of the living witnesses." (Tr. p. 742.)

Testing the effect of incendiary bombs, the contents of sulphur bombs were poured on the arms of various prisoners and then the affected area set on fire. An attempt was made to extinguish the fire with certain drugs the scientists had manufactured. The wounds caused by these burnings went as deep as 1 1/4 to 1 1/2 centimeters. (Tr. p. 747.)

Between autumn of 1942 and the summer of 1943, 500 inmates at Buchenwald, Block 46, were experimented on as follows:

"One group of victims were first vaccinated with the spotted fever vaccine and then infected with the spotted fever virus.

{1112}

In order to contrast the effectiveness of the vaccine another group of inmates were merely infected with the spotted fever virus without any previous vaccination. During this time about 10 percent of the total number of the inmates used died as a result." (X/124, Doc. NO-429.)

A chemist, Paul Bennart, who was liberated from the Nordhausen concentration camp in April 1945, declared that while at Buchenwald he knew of experiments with typhus serums. From 300 to 400 prisoners were involved in these experiments which lasted two or three months, and eventually all of them died. (XI/83, Doc. 2222-PS.)

EUTHANASIA PROGRAM

On 1 September 1939, Hitler sent his armies smashing into Poland fully aware that he was in every probability precipitating a world war. This awareness informed him of the blood that was to flow, not only from his adversaries, but from the bodies of his own soldiers as well. Battle injuries and disease would incapacitate a substantial portion of his military; hospitals and doctors, throughout Germany, would be at a premium. Now throughout Germany, aged and incurably insane, as well as deformed children, were occupying hospitals desperately to be needed for his fighting men. These "useless eaters" were in the way, they were an impediment in the military program, and, in addition, an embarrassment to Hitler's theory of the master race. Only those who could strengthen the Nordic stock and the Third Reich were worthy of life. Hence Hitler decreed that these "useless eaters" be killed. This project of wholesale murder was given the euphemistic title, "Euthanasia Program", but in the profession it was known as 14 f 13.

The systematic murder proclaimed by 14 f 13 was achieved through a simple procedure. A commission of three physicians visited the various hospitals, institutions, and concentration camps to examine patients on whom reports had already been received as to their adaptability to the death program. The examinations performed, however, were more ritualistic than real, more perfunctory than fact-finding. Dr. Mennecke, a member of this commission, testified at Nuernberg in Military Tribunal I as follows:

"Q. Doctor, were all of the concentration camp inmates selected, actually insane?"

"A. No.

"Q. Will you explain your answer please?"

"A. By insanity we mean a disease which shows characteristic interferences with the mental activity which I will not describe

{1113}

but I will call them characteristics. That is what we mean by insanity. That condition, in the majority of cases of inmates in the concentration camps, was not true.

"Q. Were any inmates selected only for the reason that they were unable to work?"

"A. That is possible.

"Q. Were people selected who had diseases other than those of the mind, such as tuberculosis?"

"A. Yes. Such people were also included." (X/74, 75, Doc. NO-2635.)

Writing to his wife this, Dr. Mennecke confided that the commission itself considered the examinations as "merely a theoretical work."

"Afterwards we continued our examinations until about 16 o'clock, I myself examined 105 patients, Mueller 78 patients, so that finally a total of 183 reports were ready as a first portion. As second portion, a total of 1,200 Jews followed, all of whom do not need to be 'examined', but where it is sufficient, to take the reason for their arrest from the files (often very voluminous !) and to transfer it to the reports. Therefore it is merely a theoretical work." (X/57, Doc. NO-907.)

Ferdinand Roemhild, testifying in the "Medical Case" in Court No. 1, declared that in the summer of 1941 a delegation arrived at Buchenwald from the Reich Criminal Office and medically selected inmates under Action 14 f 13. The selection was accomplished by, "cynical remarks." The persons selected were loaded aboard a transport and sent to an unknown destination. "A few hours after their departure personal belongings came back, among them teeth." (X/127, Doc. NO-2636.)

In the autumn of 1941 an investigation was conducted of all Jews in that camp. Those that were unfit for labor were sought out and later sent away. Still later the witness saw reports to the effect that these Jews had died a "natural death." Six hundred persons were involved in the list. (X/127, Doc. NO-2636.)

Of those reputedly suffering from incurable tuberculosis, 500 were killed, but the witness said that the "largest amount of these people were only undernourished, and in better living conditions could have been saved without doubt." (X/129, Doc. NO-2636.)

The factor which determined death was not incurability but an inability to work! A communication from department [division] D of WVHA to the commandants of the concentration camps called attention to a report from one concentration camp in which it was said that 42 to 51 inmates selected for death became, "fit for work again." The communication then scolds the commandants: "This shows that the selection of these inmates is not being effected

{1114}

in compliance with the rules laid down. Only those inmates whose correspondence to the conditions laid down and this is the most important thing, those who are no longer fit for work, are to be brought before the examining commission." (X/40, Doc. 1151-PS.)

Further an order issued 27 April 1943 declared that if not killed, "bed-ridden patients are to be given suitable work which can also be done in bed."

The operation of the extermination program was described by one witness in Buchenwald as follows:

"They sat down on a chair quietly, that is without emotion, near a light. A male nurse blocked the vein in the arm and Dr. Hoven injected the phenol quickly. Still during the injection they died in a momentary total cramp without any sign of other pain. The time between the beginning of the

injection and the fatal result, I estimate at about one-half a second. For security reasons the rest of the dose was injected, although part of the injection would have been enough for the fatal result. (I estimate 5 cc.)

"The dead were carried into an adjoining room by the nurses—the time of my presence and witness I estimate at 10 minutes." (XXI/44, Doc. NO-257.)

The euthanasia program became an easy vehicle for the extermination of persons considered undesirable regardless of health. Jews had but little chance of survival once they appeared on the list of those to be examined. Dr. Mennecke testified:

"Well, it wasn't important to examine the Jews. The important fact was for the leadership of the program to find out what the reasons for their arrest were. The situation was that these Jews, in every case, were healthy, physically and mentally." (X/76, 77, Doc. NO-2635.)

This doctor also declared that it was made evident to him that if he did not go along with the murder project he might not only be subjected to imprisonment in a concentration camp himself, but, "even shooting was mentioned." (X/77, Doc. NO-2635.)

Waldemar Hoven, an SS physician, related that in 1941 the camp commandant at Buchenwald, informed of the euthanasia Program through a secret communication from Himmler, ordered that all Jewish inmates of the Buchenwald concentration camp be included in the 14 f 13 operation. "In accordance with these orders 300 to 400 Jewish prisoners of different nationalities were sent to the euthanasia station at Bernburg for extermination." (X/125, Doc. NO-429.)

The selection of the patients for extermination was sometimes camouflaged with the announcement that they were to be taken

{1115}

to another camp. One Walter Neff, a male nurse in a concentration camp related:

"Only when these invalids were taken away did we realize that it could not be a different living detail, because the people had to turn in their crutches and whatever else they had, and they were taken away by the hundreds. We could follow their route only as far as Linz, but the death reports which came in and their clothing which came back told us that the people had been liquidated." (X/131, Doc. NO-2637.)

In these camps the doctor went through the ward and indicated casually this one and that one for invalid execution. Sometimes whole blocks were evacuated in one action without any distinction as to the state of health of the individual patients. The period between the listing and removal was usually about 6 weeks, and those who were on the list were examined once more, not by a doctor, but by a Gestapo official! When he signed the slip it amounted to a death sentence. (X/131-134, Doc. NO-2637.)

At times there was not even the slightest pretense of selection. The chiefs of certain wards were instructed to submit so many names:

"It was like this, Dr. Brachtel told me 'there is an invalid action, from your tuberculosis ward, you will have to report at least 50 patients. If you do not do that the camp doctor will select them. You can imagine how many will be left then'." (X/135, 136, Doc. NO-2637.)

These nurses were forced into the blood-freezing dilemma of having to select 50 names for killing, or by doing nothing, permitting a much larger massacre!

Friedrich Entress, the SS physician, stated that in May 1942 he first became acquainted with the euthanasia action. An order from Dr. Lolling, chief physician of all concentration camps, directed that euthanasia was to be applied to the incurable tubercular and mental patients and those permanently incapable of work. In the autumn of 1942 this order was extended to include sick patients whose cure and reconvalescence was unlikely within 4 weeks!! (XXI/26, Doc. NO-2368.)

It is to the great credit of the church in Germany that once they learned that such a monstrous program existed, protest was made. The Bishop of Limburg wrote to the Minister of Justice in 1941:

"About 8 kilometers from Limburg, in the little town of Hadamar, on a hill overlooking the town, there is an institution which had formerly served various purposes and of late had been used as a nursing home; this institution was renovated and furnished as a place in which, by consensus of opinion.

{1116}

*the above-mentioned euthanasia has been systematically practiced for months, approximately since February 1941. The fact has become known beyond the administrative district of Wiesbaden, because death certificates from a Registry Hadamar-Moenchberg are sent to the home communities. (Moenchberg is the name of this institution because it was a Franciscan monastery prior to its secularization in 1803.) Several times a week buses arrive in Hadamar with a considerable number of such victims. School children of the vicinity know this vehicle and say: 'There comes the murderbox again.' After the arrival of the vehicle, the citizens of Hadamar watch the smoke rise out of the chimney and are tortured with the ever-present thought of the miserable victims, especially when repulsive odors annoy them, depending on the direction of the wind * * *. All God-fearing men consider this destruction of helpless beings as crass injustice, and if anybody says that Germany cannot win the war, if there is yet a just God, these expressions are not the result of a lack of love of Fatherland but of a deep concern for our people. The population can not grasp that systematic actions are carried out which in accordance with paragraph 211 of the German Criminal Code are punishable with death. High authority as a moral concept has suffered a severe shock as a result of these happenings. The official notice that N.N. had died of a contagious disease and for that reason his body had to be burned, no longer finds credence, and such official notices which are no longer believed have further undermined the ethical value of the concept of authority." (Doc. 615-PS.)*

However, this protest could not be strong enough to stop the merciless juggernaut of a Hitler-Himmler order from proceeding on its way, and thus by the time of the collapse, 275,000 people were killed in the euthanasia program throughout Germany and occupied countries. (X/1, Doc. NO-2680.)

STERILIZATION

Prior to, and actually during the period of the Jewish extermination program, there were some party leaders who sought another solution to their self-imposed problem on how to eliminate the Jew from Germany. Plans were considered for deporting Jews to faraway places, and one Dr. Hevelmann suggested the Island of Madagascar for this purpose. Such a project was actually drafted. (X/8.) Then as the need for manpower became more and more pressing, someone observed that it was bad economics to kill off work-producing units. The question then presented itself: How can the Jews be eliminated and yet their brawn be utilized?

{1117}

How could they be killed and yet be kept alive to work? The answer was sterilization. If the Jews could be sterilized, they could be employed for profitable labor, and the race would still be extinct for the coming generations. It was a brilliant idea. SS Oberfuehrer Viktor Brack wrote Himmler under date of 23 June 1942:

"Among 10 millions of Jews, are in Europe, I figure at least 2-3 millions of men and women are fit enough for work. Considering the extraordinary difficulties of the labor problem present us with, I hold the view that these 2-3 millions should be specially selected and preserved. This can, however, only be done if at the same time they are rendered incapable to propagate." (IX/84, Doc. NO-205.)

Dr. Pokorny wrote to Himmler about research work being conducted in this field:

"If, on the basis of this research, it were possible to produce a drug which after a relatively short time, effects an imperceptible sterilization on human beings, then we would have a new powerful weapon at our disposal. The thought alone that the three million Bolsheviks, at present German prisoners, could be sterilized so that they could be used as laborers but be prevented from reproduction, opens the most far-reaching perspectives." (IX/53, Doc. NO-035.)

Now came the search for the effective sterilizing agent. A certain Madaus found that the sap of the Schweigrohr (caladium seguinum), when taken by mouth, or given as an injection, produced after a certain time permanent sterility. However, experimentation along this line bogged down when it was learned that Schweigrohr grew only in North America, and during the war could not be imported in adequate quantities. Attempts to grow the plant from seed cultivated in hothouses had been crowned with success, but the process was slow and the yield not sufficient to permit large-scale experimentation.

On 30 May 1942 Professor Clauberg, chief of the Gynecological Clinic, recommended to Himmler the establishment of certain clinics for the testing out of various plans of sterilization without operation. (IX/68, Doc. NO-211.) Himmler informed Clauberg that the Auschwitz concentration camp would be at his disposal for these experiments on, "human beings and animals." Brandt, Himmler's adjutant, urged that "by means of some fundamental experiment a method should be found which would lead to sterilization of the persons without their knowledge." (IX/71, Doc. NO-216.) Himmler then wanted to know of Clauberg, before he started his job, how long would it take to sterilize a thousand Jewesses? (IX/72, Doc. NO-213.) To this Clauberg replied:

{1118}

"If my research continues to have the same results as up to now—and there is no reason to doubt that—then the moment is no longer far off when I can say: 'By one adequately trained physician in one adequately equipped place with perhaps 10 assistants (the number of assistants in conformity with the desired acceleration) most likely several hundred—if not even 1,000 per day.'" (IX/76, Doc. NO-212.)

By means of X-ray, with two-valve installation, about 150 to 200 persons could be sterilized daily. With 20 such installations, it was estimated that somewhere from 300 to 400 could be sterilized in a day. (IX/82, Doc. NO-203.)

Dr. Clauberg developed a method for the sterilization of women by introducing an irritating solution into the body. After conducting widespread experiments on Jews and gypsies at the Auschwitz concentration camp, several thousand women were sterilized. (IX/52, Doc. NO-440.)

One of the many victims of sterilization appeared in Court and testified to the irreparable damage which had been done him by the Nazis as a result of this program.

"We had to take off our clothes immediately and we were put underneath a big machine; and we were sterilized there. They put two blocks between our legs, which were hot, and that is how we had to stay for approximately 15 to 20 minutes. After that we were all sent back to our block, and we were put to work immediately. A few of those who were with us were immediately transferred to the hospital because they simply couldn't walk." (Tr. p. 634.)

Two weeks later this witness was taken to the hospital and castrated. In Court he broke down and wept as he related his harrowing experience and, in a state of shame and mortification, asked the Tribunal not to divulge his name so that his only surviving relative, a sister, might not know what had happened to him. (Tr. p. 633.)

JEWS

No attempt will be made in this opinion to analyze or explain anti-Semitism. No one has yet answered Shylock's lament:

"I am a Jew. Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions? Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die?"

{1119}

Anti-Semitism has existed in countries other than Germany, and with as little reason, but nowhere in the world and at no time in history has prejudice against a race been carried to the extremes of inhumanity and savagery witnessed during the Nazi regime in Germany and the countries which came under its despotic rule.

Point 4 of the Nazi Party program declared: "Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race." It also provided that Jews cannot hold public office, and that they should be treated as foreigners. Upon accession to power the Nazi not only put these policies into effect, but introduced oppressive measures of a far more serious nature. These oppressions included confiscation of property, levying of huge indemnities, seizure of assets, lootings of Jewish business, destruction of Jewish synagogues, arresting of prominent Jewish businessmen. Jews were compelled to wear a yellow star on the breast and back. At no time was it charged that these persons had committed any crime. Their only offense was that they belonged to a certain race. Cruel and unjust as were the restrictions and penalties above indicated, they were mere child's play compared to what was yet to befall the Jew. He was first and last deprived of his freedom.

It was not only the German Jew who was sent to the concentration camps, wherever the German armies and influence penetrated, doom was written for the Jews. The Nazis set out to gather up the Jews of the world. "The following will be evacuated and transported to the East: Jews of French nationality, Jews who are citizens of the former Czechoslovakia (Now Bohemia, Moravia and Slovakia), Poland, Norway, Holland, Belgium, Luxembourg, Yugoslavia (Serbia and Croatia), Greece, Baltic States (Lithuania,

Latvia, Estonia), Albania, Italy, and all stateless Jews (including those who have emigrated from Reich territories)." (IV/92, 93, Doc. NO-1411.)

The order to arrest all Jews in France provided that when a Jew was arrested all members of his family were to be arrested. And by family was meant, not only the immediate family of parents and children, but also married brothers and sisters and small children living in children's homes. Not one must escape. "In case not all members of the family are in the apartment, the apartment shall be occupied until the missing Jew returns." (IV/90.) When the arrests were made in cities, each house was to be carefully examined as to the number of Jewish inhabitants:

"In order to save work and petrol, the arrest parties must therefore be so prepared that not only one Jew is arrested,

{1120}

but that in one action a whole district (in the country a whole village, or a whole block of houses) is purged." (IV/90, Doc. NO-1411.)

Upon arrest, the Jews were required to take with them all their money, jewelry, and other valuables for reasons which will be seen later. They were obliged to transport with them all their clothing, underwear, bed linen, etc., for purposes also to be noted in another part of the opinion. Keys to their houses were to be turned over to the arresting authorities. (IV/93, Doc. NO-1411.)

The transport of these Jews was to be arranged so that there was no possibility of flight. "If there is no other possibility of security measures, their hands have to be tied together by a long rope." (IV/94, Doc. NO-1411.)

So that no Jews should escape the dragnet, bonuses were offered to informers. The amount to be paid the informer would be taken from the money of the arrested Jew. "If a Jew, thus betrayed and apprehended, has no money other Jews will be called upon to pay the bonus." (IV/96, Doc. NO-1411.)

As negligible as was the effort to return the property of deceased concentration camp inmates to their relatives, there was an out and out prohibition against returning property of Polish and Jewish prisoners, as well as the effects of prisoners from former Soviet territories. Alive or dead, they were absolutely outside the pale. (V/94, Doc. NO-393.)

"The return of valuables taken into safe keeping from Jews in concentration camps who are citizens of foreign countries, or to the relatives of those who have died, is out of the question." (V/149, Doc. NO-1235.)

Not only was the return of valuables taken from deceased Jews prohibited, but in the Protectorate a vigorous injunction was laid down against the return of the ashes of deceased Jews and Czechoslovakians. Nothing must be left of the hated Jew. (VI/1, Doc. NO-1510.)

Special letters and reports on the death of Jews in concentration camps were expressly forbidden. (VI/3.) The decease of Jews was to be reported only in roster form. (V/14, Doc. NO-1246.)

The crimes and sins of the Jewish inmates, however, were duly catalogued. An idea of the nature of the offenses which landed Jews in concentration camps can be gathered from a few of the charges taken from the concentration camp files:

*"Continuous race defilement by keeping her Jewish descent a secret and rendering the Hitler salute. * * * (X/113, Doc. NO-3060.)*

"Incredible, impudent, and spiteful remarks toward Germans. On the train made acquaintance of soldiers coming from

{1121}

the front, introduced herself as Jewess, gave them bread, swapped it for coffee and cocoa, then insulted the soldiers in the meanest possible way. (X/114.)

"Erna Sara Fritz, 23 Sep 04, divorced servant maid at Rumburg-South. Continues race defilement, fetched her Aryan lovers from the Café am Markt. Jewish full-blood prostitute. (X/115.)

"Committed race defilement with more than 60 Aryan men. (X/117.)

"Continuous race defilement: 'I detested Jewish men, therefore I looked for German lovers.' (X/117.)

"Committed race defilement with numerous German men, 1 bastard child. (X/118.)

"Impudent, challenging behavior toward members of the SS. (X/118.)

"Continuous race defilement. Camouflaged her Jewish descent by Catholicism, wore a Christian cross around her neck. (X/119.)

"Was seen at Lochwitz when she acquired from a farmer 1 pound of butter, 1 soda bottle full of cream, 1 bottle of milk (unskimmed milk). Stated it was compensation for work done for the farmer. (X/120.)

"Committed race defilement with more than 24 German men continuously." (X/120, Doc. NO-3060.)

The fact that the race defilement referred to could not of course have been committed without the active cooperation of the Aryan in no way mitigated the offense.

Every department of the Reich Government was polluted with Jewish hatred. Even the Ministry of Justice, presumably dedicated to safeguarding the rights of all peoples, prostituted itself to the point of officially declaring that criminal proceedings against the Jews (also the Russians, Poles, and gypsies) were to be turned over to the SS, the reason being, "that the administration of justice 'can only make a small contribution to the extermination of members of these peoples."

The Minister of Justice (!) then goes on to say that much better results can be accomplished by surrendering such persons to the police. "You can then take the necessary measures unhampered by any legal evidence. (XII/32, Doc. NO-558.)

On 8 December 1942, Himmler ordered the establishment of a diamond-cutting factory in the concentration camp at Herzogenbusch [Hertogenbosch], to which Jews had been deported from the Netherlands. The Aryan owners of the diamond establishments in the Netherlands asked that 80 Jewish polishers and 18 Jewish cutters be returned to the factory to complete the manufacture

{1122}

of half-finished articles. The request stated that the urgency of the decision was based on the fact that the Amsterdam diamond industry had practically come to a standstill by deportation of the Jews on 18 May.

The irony of this situation lies in the fact that, despite the ever-continued derogation of the Jews, the Nazis were compelled to admit that in many ways they were dependent upon those they despised. They hated the Jew but they made money on him. Propertyless Germans could, by getting free Jewish labor, develop into well-to-do proprietors and millionaires.

The road of sorrow for the Jew began with the deprivation of his citizenship rights, followed by the confiscation of his property, and then the humiliation of identification insignia which subjected him to degrading treatment publicly and privately. All this was but a prelude to the loss of his liberty, the forced confinement in a ghetto where he not only had no comforts and conveniences of decent living, but not even sufficient living space. Then came the concentration camp, with all its horrors of a living death, which later in itself became an actual death in an extermination camp. (XIX/48, Doc. NO-519.)

On 31 July 1941, Goering wrote SS Gruppenfuehrer Heydrich, charging him with making:

"All necessary preparations in regard to organizational and financial matters for bringing about a complete solution of the Jewish question in the German sphere of influence in Europe." (XVIII/7, Doc. 710-PS.)

How this solution was developed will be amply demonstrated later on in this opinion, but it is obvious already that the solution did not include much consideration for the sanctity of human life. At Mauthausen an occasional Jew was killed just for the entertainment of guests:

"I avoided frequent visits to the concentration camps because it was customary—especially at Mauthausen-Gusen near Linz/Danube—to hang one or two prisoners in honor of the visitors. At Mauthausen it was customary to make Jewish workers work in a quarry at great altitude. After a while the SS on duty would say: 'Pay attention, in a couple of minutes there will be an accident.' And, indeed, one or two minutes later, some Jews were thrown from the cliff and fell dead at our feet. 'Work accident was written in the files of the death.'" (Handwritten statement by Kurt Gerstein, former SS Obersturmfuehrer.)

How the program of "complete solution" went into operation in Galicia is told by the report of SS Gruppenfuehrer Katzmann entrusted with the task. He first made every Jew wear a white

{1123}

armlet bearing the Star of David in blue. Next he established forced labor camps and put 20,000 Jews working on military roads. All other Jews were registered and distributed for work by labor agencies. Then came the evacuation to concentration camps. However, many of the employers, quite satisfied with their Jewish workers, sought to retain them by issuing to them certificates of labor which called down the wrath of the SS, not on the employers but on the Jews. Thousands were charged with having forged their certificates and were "exposed to special treatment." (XVIII/103, Doc. L-18.)

The SS administration felt deeply offended because some German employers intervened in behalf of the Jews:

"Where Jews were arrested in the course of these checkups most of their employers thought it necessary to intervene in favor of the Jews. This often happened in a manner which had to be called deeply shameful." (XVIII/105, Doc. L-18.)

A German merchant working for the army in Lwow [Lvov] came in for special censure because he sent the following telegram to the SS Police Leader:

"The two certificates are craftsmen watchmakers; are resident in my future factory as night watchmen, and watchmakers in day time. I should not wish to be guilty of their death; after my return you can have them both, they do not run away. I beg of you." (XVIII/105, Doc. L-18.)

Those allowed to remain at work in the armament factories were housed in barracks, but relatives were prohibited from having accommodations even within the same block. Naturally the workers received no pay for this work. But money, nonetheless, was made on their services. The factories were required to pay to the SS and Police Leader of Galicia 5 zlotys per man and 4 zlotys per woman.

Then came the process of forced evacuation which the Jews, knowing what was in store for them, resisted.

General Katzmann [SS] reported:

"On the occasion of these actions, many more difficulties occurred owing to the fact that the Jews tried every means in order to dodge evacuation ('Aussiedlung'). Not only did they try to flee, but they concealed themselves in every imaginable corner, in pipes, chimneys, even in sewers, etc. They built barricades in passages of catacombs, in cellars enlarged to dugouts, in underground holes, in cunningly contrived hiding places, in attics, and sheds, within furniture, etc." (XVIII/111, Doc. L-18.)

The SS men drenched themselves with self-pity as they faced their task:

{1124}

"The detachments continually were exposed to serious physical and mental strain. Again and again they had to overcome the nausea threatening them when they were compelled to enter the city and pestilential Jewish holes." (XVIII/109, Doc. L-18.)

A long series of photographs accompanied the report. The inscription of one read:

"Exposed tunnel to a dugout. This dugout was 3-stoned, equipped with sanitary arrangements and radio apparatus, and supplied with food at least 5 months. It was occupied by 125 Jews, among them one physician. The inmates were rendered harmless by concentrated (explosive) charges." (XVIII/116, Doc. L-18.)

Dissolving the ghetto in Lwow the SS men had to use brutal measures, the report says, in order to avoid losses on their side:

"We had to blow up or to burn down several houses. On this occasion the surprising fact arose that we were able to catch about 20,000 Jews instead of 12,000 Jews who had registered. We had to pull at least 3,000 Jewish corpses out of every kind of hiding places; they had committed suicide by taking poison." (XVIII/117, Doc. L-18.)

And then in a burst of pride the SS report concludes:

"Despite the extraordinary burden heaped upon every single SS police officer during these actions, mood and spirit of the men were extraordinarily good and praiseworthy from the first to the last day. Only thanks to the sense of duty of every single leader and man have we succeeded to get rid of the PLAGUE in so short a time." (XVIII/118, Doc. L-18.)

A report on the Lodz ghetto, dated 24 January 1944, declared casually that as of 11 January 1944 the ghetto contained 80,062 Jews, of which 500 died every month, or 6,000 per year. (XIX/42, Doc. NO-519.)

And yet, as much as the Reich odiated the Jews, in some instances they were treated well. This was not because the attitude of their oppressors had changed, but because the victors at times felt the hot wind of the vanquished blowing across their faces, and so an anchor to windward was cast in order to be safe in the event the fortunes of war were to turn. In these instances Jews were actually employed in offices, and not a few of the Aryans helped themselves to the favor of Jewesses. All these brought down the wrath of Kaltenbrunner who decreed:

"Jews and persons on a similar level may be employed only for manual labor. All private relations with Jews, Jewesses, and persons on the same level as well as all dealings with them exceeding the bounds of duty, are prohibited."

{1125}

Himmler was furious with anyone who shielded a Jew, even if in doing so he was advancing the cause of the Reich:

"However, I have given directions to proceed unrelentingly against all those who believe that they have to oppose this step with so-called armament interest, but who in reality only wish to support the Jews and their business." (XX/1, Doc. NO-1611.)

He gave orders that all Jews in the armament works were to be removed therefrom and sent to concentration camps. "Of course, there too, the Jews shall some day disappear in accordance with the Fuehrer's wishes." (!!)

On 5 October 1942 Himmler ordered that all concentration camps within the Reich territory were to be cleared of Jews. "All Jews within these concentration camps are therefore to be transferred to Auschwitz or Lublin." What happened to the Jews sent to these two places is described later. (V/52, Doc. 3677-PS.)

TRANSPORTATION CASUALTIES

World War II, shattering every record for destruction, damage, turbulence, and death, eclipsed all known calculations also in the transportation of human freight. Never in any decade, or perhaps century, were there such mass migrations of human beings as occurred between 1939 and 1945. This vast movement was not limited to the armed forces. Civilian populations travelled as they never did before. Europe became a nomadic continent. Refugees, workers, slaves, laborers, captured peoples crossed frontiers and entered new horizons in a kaleidoscopic travelogue of misery and degradation that has no parallel even in fiction.

In describing the horrors experienced by the wretches transported to Auschwitz for extermination, the Polish investigation commission declared that they were subjected to such cruel suffering of body and soul that, "death in the steam chambers must have come almost as a welcome relief." (XVIII/81, Doc. 8811-PS.)

Transport was the name given to movement whether the travel was by vehicle, or on foot. When travel was by land, as many as 130 persons were placed in cattle or freight cars, and in wintertime no extra clothing was allowed for the journey. In one group of 4,500 men and 500 women who moved from Monowitz to Nordhausen in January 1945, a trip lasting 8 days, only twice were the prisoners given food which consisted of one-half loaf of bread and 106 grams of meat. Space was so tight that the weak and the sick were smothered by their own comrades when they

{1126}

sat down. Upon arrival at their destination, between 1,000 and 1,300 of the travellers were dead.

On 8 March 1945, 2,000 prisoners were taken from Nordhausen to Bolkenberg, a 10-day trip by wagon and foot for which they were given 3 days' food. Only 1,000 arrived alive. (VI/89, Doc. 2222-PS.)

The commandant of Buchenwald concentration camp, Hermann Pister, declared in an affidavit taken at Dachau on 3 February 1947:

"Transports from the East arrived most of the time in open boxcars, so that out of a transport with a total strength of 1,200 prisoners 300 arrived already dead in the Buchenwald CC, while the rest were merely skeletons. This happened frequently, and I found out that the transports were sometimes on the way for 4 weeks. In most cases, no advanced notice was given about these transports." (HI/122, Doc. NO-2327.) Gerhard Schiedlausky, physician at this same camp related:

"Each of these transports was met at the Buchenwald railway station by a group of personnel charged with the care of the inmates as well as by all available vehicles such as hand carts, carts and trucks to pick up the inmates who were no longer able to walk and to bring them to the bathing installations. Others were dragging along painfully supporting each other. There were cases when inmates who, to be bathed suddenly, collapsed and died under the shower. I remember one transport where among about 2,000 inmates, 460 of them were unloaded dead. The hospital chief reported to me about the fate of these arrivals and told me that within the next few days hundreds more of them died regularly. (XXI/b, Doc. NO-2332.)

Kurt Gerstein described the arrival of a 45-car train at Auschwitz [Belsec]. Of the 6,700 passengers who had boarded the train, 1,450 arrived already corpses. (XVIII/49, Doc. 1553-PS.)

It often happened that prisoners arrived in a debilitated condition but not yet too far gone to be saved. However, Gerhard Wiebeck declared in this connection:

"I had the impression that the SS men and those prisoners helping in unloading the other prisoners were anxious to see those who were still alive die, just to save themselves work." (XXI/31, Doc. NO-2331.)

Victor Abend testified that when he was transferred from Schoebnik to Auschwitz, he travelled in a freight car so crowded that it was practically impossible to lie down, that it carried no drinking water, nor did it have toilet facilities. The trip lasted 4 days during which time they were given no food.

{1127}

The United States Congressional Committee, inspecting Dachau, found a train of cars which had been used to bring prisoners into the camp:

"These cars were an assortment of odd boxcars, some of which could be locked, and some were the coal-car type. In each of them the floor of the car was covered with dead, emaciated bodies. In some of the cars there were more than enough to cover the floors. In size, these cars were of the small European type, which, when used for the movement of troops, would never accommodate more than 40 men. Nevertheless, the army officials in charge of this camp advised us that there were 50 of these cars in this one train and that at least 100 of these civilian prisoners had been jammed into each car—locked in—and they had been on the road for several days without food or water, and that approximately 3,000 of them were dead upon arrival and most of the others were in a dying condition. We saw many dead bodies on the ground. These prisoners had apparently crawled out of the cars and had died on the ground." (VI/78, Doc. L-159.)

Then there was the unique protest on the part of concentration camp commandants that between 5 and 10 percent of the Russian prisoners of war sent in to be executed arrived already half dead or dead altogether. Further, that on the hike between the railroad station and the camp, many collapsed from sheer exhaustion. The commandants complained that this state of affairs was very embarrassing because "the civilian population takes notice of these happenings." (V/176, Doc. NO-391.)

EXTERMINATION OF JEWS

When one comes to write on this subject the ink runs heavy, the words falter, and a sadness akin to a hopeless resignation enters the soul. How can one write about a planned and calculated killing of a human race? It is a concept so completely fantastic and so devoid of sense that one simply does not want to hear about it and is inclined to turn a deaf ear to such arrant nonsense. Barbarous tribes in the wilds of South Pacific jungles have fallen upon other tribes and destroyed their every member; in America, Indian massacres have wiped out caravans and destroyed whole settlements and communities; but that an enlightened people in the 20th century should set out to exterminate, one by one, another enlightened people, not in battle, not by frenzied mobbing, but by calculated gassing, burning, shooting, poisoning is simply blood-curdling fiction, fit companion for H. G. Well's chimera on the invasion from Mars.

{1128}

Adolf Eichmann, chief of the Jewish section of the Gestapo, estimated that the Hitler-Himmler extermination policy of the Jews resulted in the liquidation of 6,000,000 Jews, of which 4,000,000 were killed in extermination institutions. The murder of 6,000,000 human beings is entirely beyond the capacity of man's imagination and one instinctively refuses to believe. But the curtain of incredulity has lifted and the armor of incomprehensibility no longer protects. The evidence is in and what was utter fantasy and a mere macabre playing with numbers, is proved fact. The figure 6,000,000 is written in digits of blood, and no matter which way one turns their crimson horror is upon one.

Still, the cumulative shock of 6,000,000 dead is not felt unless one attends a murdering party of a small fraction of that ungraspable number. The great mass of the killings was done in gas chambers. Let an eye witness describe the operation of a gas chamber in Auschwitz:

"In 10 minutes the first train will arrive! And indeed, a few minutes later the first train came in from Lemberg [Lvov]. Forty-five cars, containing 6,700 persons; 1,450 of whom were already dead on their arrival. Behind the little barbed-wire openings, children, yellow, scared half to death, women, men. The train arrives: 200 Ukrainians, forced to do this work, open the doors, and drive all the people out of the coaches with leather whips. Then, through a huge loudspeaker instructions are given: to undress completely, also to give up false teeth and glasses—some in the barracks, others right in the open air—to tie one's shoes together with a little piece of string handed everyone by a small Jewish boy 4 years of age, hand in all valuables and money at the window marked 'Valuables', without bond, without receipt. Then the women and girls go to the hairdresser, who cuts off their hair in one or two strokes, after which it vanished into huge potato bags 'to be used for special submarine equipment, door mats, etc.', as the SS Unterscharfuehrer on duty told me. Then, the march begins: right and left, barbed wire, behind, two dozen Ukrainians with guns. Led by a young girl of striking beauty they approach. With Police Captain Wirth, I stand right before the death chambers. Completely naked they march by, men, women, girls, children, babies,

even one-legged persons, all of them naked. In one corner, a strong SS man tells the poor devils, in a strong deep voice, 'Nothing whatever will happen to you. All you have to do is to breathe deeply, it strengthens the lungs; this inhalation is a necessary measure against contagious diseases, it is a very good disinfectant!' Asked what was to become of them, he answered, 'Well, of course the men will have to work, building

{1129}

streets and houses. But the women do not have to. If they wish to, they can help in house or kitchen.' Once more, a little bit of hope for some of these poor people enough to make them march on without resistance to the death chambers. Most of them, though, know everything, the odor has given them a clear indication of their fate. And then they walk up the little staircase and see the truth! Mothers, nursemaids, with babies at their breasts, naked, lots of children of all ages, naked too; they hesitate, but they enter the gas chambers, most of them without a word, pushed by the others behind them, chased by the whips of the SS men. A Jewess of about 40 years of age, with eyes like torches, calls down the blood of her children on the heads of their murderers. Five lashes into her face, dealt by the whip of Police Captain Wirth himself, chases her into the gas chamber. Many of them say their prayers, others ask: who will give us the water for our death. Within the chambers, the SS press the people closely together; Captain Wirth had ordered: 'Fill them up full.' Naked men stand on the feet of the others. Seven to eight hundred crushed together in 25 square meters, in 45 cubic meters! The doors are closed. Meanwhile the rest of the transport, all naked, wait. Somebody says to me, 'Naked, in winter! But they can die that way!' * * * The answer was, 'Well, that's just what they are here for!' And at that moment I understood why it was called, 'Foundation Heckenholt.' Heckenholt was the man in charge of the Diesel engine, the exhaust gases of which were to kill these poor devils. SS Unterscharfuehrer Heckenholt tries to set the Diesel engine moving. But it does not start! Captain Wirth comes along. It is plain that he is afraid because I am a witness to this breakdown. Yes, indeed, I see everything and wait. Everything is registered by my stopwatch. Fifty minutes, seventy minutes—the Diesel engine does not start! The people wait in their gas chambers. In vain. One can hear them cry. 'Same as in a synagogue,' says SS Sturmbannfuehrer, Professor Dr. Pfannenstiel, Professor for Public Health at the University of Marburg/Lahn, holding his ear close to the wooden door. Captain Wirth, furious, deals the Ukrainian, who is helping Heckenholt, 11 or 12 lashes in the face with his whip. After 2 hours and 49 minutes—as registered by my stopwatch—the Diesel engine starts. Up to the moment the people in the four already filled chambers were alive, 4 times 750 persons in 4 times 45 cubic meters. Another 25 minutes go by. Many of the people, it is true, are dead at that point. One can see this through the little window through which the electric lamp reveals, for a moment, the inside of the chamber. After 28

{1130}

minutes only a few are living. After 32 minutes, finally all are dead! From the other side, Jewish workers open the wooden doors. Like stone statues the dead are still standing, there having been no room to fall or bend over. Though dead, the families can still be recognized; their hands still clasped. It is difficult to separate them in order to clear the chamber for the next load. * * * Two dozen workers are engaged in checking the mouths, opening them by means of iron hooks. 'Gold to the left, without gold to the right!' * * * Dentists with chisels tear out the gold teeth, bridges, or caps. In the center of everything, Captain Wirth. He is on familiar ground here. He hands me a large tin full of teeth and says, 'Estimate for yourself the weight of gold! This is only from yesterday and the day before yesterday! And you would not believe what we find here every day! Dollars, diamonds, gold! But look for yourself!'" (Doc. 1442-PS.)

Who wrote this sleep-robbing horror, this unspeakably mournful tale? A Jew, a Pole, a non-Aryan? This view into one of the deepest furnaces of hell was written by an SS Lieutenant, Kurt Gerstein, attending at the execution because of his technical knowledge on poison gases and his familiarity with the technique of sterilization of clothing of deceased persons.

Rudolf Franz Ferdinand Hoess, commandant at the Auschwitz concentration camp from 1 May 1940 to 1 December 1943, must stand out individually as the greatest mass murderer in history. His eminence in wholesale slaughter, his distinction in multiplicitous killing, his supremacy in systematic massacre, must dwarf the fame of all killers from the beginning of time. In comparison to Hoess, Genghis Khan was a Sunday school boy, Torquemada an entertaining Micawber, and Ivan The Terrible, an innocuous, benevolent, old man. With complete self-assurance, Rudolf Hoess declared under oath that he personally supervised the executions at Auschwitz until 1 December 1943, and he estimated that up to that time, 2,500,000 prisoners were, "executed and exterminated there in the gas chambers and crematories."

"At least a further half million people died from hunger and sickness, which adds up to a total amount of about 3,000,000 deaths. This figure represents about 70 or 80 percent of all persons who were sent to Auschwitz as prisoners. The remaining were picked out and used for slave work for the industries located in and surrounding the concentration camp."

Going into the details on this carnage, Hoess explained how he used a crystallized prusic acid which was thrown into the death chambers through a small opening:

"The older extermination camps, Belsec, Treblinka, and

{1131}

Wolzek had used monoxide gas. To exterminate 1,500 people between 5 and 7 cans of one kilo each of zyklon B were required in cold and humid weather."

Zyklon B gas was also used. Hoess calculated that during the time he was at Auschwitz, 10,000 cans had been purchased for this lethal use:

"This figure is arrived at by computing the number of 2½ million gassed people and the consumption of an average of 6 cans for every 1,500 people."

Not all the Jews arriving at Auschwitz were executed. Those who seemed strong, healthy specimens were permitted to work. The selection could scarcely be called a scientific one. As the prisoners came off the transport a Hauptsturmfuehrer looked at them cursorily, and, with a movement of his right or left hand, indicated respectively death or life. A slight movement of the right hand and the newcomer was sent on his way to the gas chambers; a flick of the left hand and the newly arrived prisoner lived to agonize, and probably later die in a work gang. (XI/86, Doc. NO-1949.)

All youngsters under 16 years of age, all mothers with children and all those sick or weak were taken to the gas chambers. (XXI/26, Doc. NO-2368.)

What happened to the doomed ones is described by one who witnessed the operation:

"In Auschwitz there were 4 crematories, of which 1 and 2 were the large ones, and 3 and 4 the small ones. Upon their arrival at the crematory, the SS ordered these people (men, women, and children) to jump from the trucks and when this order was not obeyed fast enough, they were beaten with sticks and whips. The SS also had police dogs at their disposal which they set on these people. After being unloaded they were all obliged to undress entirely in the dressing room, and no difference was made between men and women. When they were undressed they were taken into the gas chamber, which was underground in the crematories 1 and 2. These gas chambers looked like large bathrooms; they were tiled, provided with showerbath installations, which, however, were not connected with the water supply. When all the people were in the gas chambers the outside doors, which were gas-tight, were closed. SS Hauptsturmfuehrer Mengele, Tilo, and Klein, and their assistants, the noncommissioned officers of the medical service of the

Waffen SS, threw cans of HCN gas through small barred windows into the gas chambers, after which the windows were closed gastight. After 3 or 4 minutes no sign of life appeared anymore from these gas chambers, in which in this manner a

{1132}

concentration of one hundred percent was obtained. After a security limit of ten minutes the gas chambers were aired and the doors opened. The corpses of the men, women, and children, murdered in this horrible manner, were carried away from the gas chambers by the Kommando, the so-called 'Sonderkommando,' consisting exclusively of Jews and taken to the furnaces where they were totally burnt by pairs. The possessions of these people were declared State property at the station. The clothes were transported to Germany, after being sorted and distributed among Germans who had lost their belongings through air raids. However, the SS men stole much of this 'confiscated' property for their own use or to be used as means of payment on the black market." (XI/39, Doc. NO-1949.)

Heinrich Neumann, an inmate of Auschwitz, stated that in his estimation between 1940 and 1944 four million were executed and that, on certain days, the deaths reached the number of 20,000. (XI/79, Doc. 2222-PS.)

The United States Congressional Committee which inspected concentration camps in April 1945, reported on the facilities for killing which they found at Dachau. The gas chamber there was built of concrete, measured 20 by 20 feet, with a ceiling of some 10 feet in height. The supply of gas was controlled by means of two valves on the outer walls, and beneath the valves was a small glass-covered peephole through which the operator could watch the victims die, 100 to a gassing. Flanking the gas chamber were two warerooms measuring approximately 30 by 50 feet:

"At the time we visited the camp these warerooms were piled high with dead bodies. In one of the rooms the bodies were thrown in an irregular heap. In the other room they were neatly stacked like cordwood. The irregular pile of bodies was perhaps 10 feet high, covering most of the floor space. All of them were naked. It was quite evident that the daily death rate at Dachau, by execution and otherwise, far exceeded the daily capacity of the crematory to dispose of the bodies. The stench indicated that some of them had been there for several days." (VI/79, Doc. L-159.)

In the spring of 1942 an extermination camp was established at Treblinka. It contained 10 death chambers and opened up for business in the early autumn of 1943. Death was inflicted here by gas and steam, as well as by electric current. Behind the death building, and separated from the rest of the camp, stood the barracks and kitchen for the grave diggers. But as the executions grew in numbers mass graves were dug out by motor-driven machines and not by hand and shovels as in the beginning.

{1133}

While the actual execution operation was handled by the SS, the menial services had to be performed by the inmates themselves.

*"The unloading of the trucks, stripping of the victims, and sorting out of their clothes and shoes (Lumpensortierung), the emptying of the death chambers and the burying of the bodies. When a new transport arrived some of the Jews were picked out to do this work so long till they broke down morally under the impression of this organized and mechanized mass murder. Then they had to dig their own graves and take up their position at them, whereupon they were shot one by one by Sauer, personally. Their last duty before dying was to push the body of the preceding victim into its own grave. (XVIII/31, 81, Doc. 3311-PS.) * * * All victims had to strip off their clothes and shoes, which were collected afterwards, whereupon all victims, women and children first, were driven into the death chambers. Those too slow or too weak to move quickly were driven on*

by rifle butts, by whipping and kicking, often by Sauer himself. Many slipped and fell, the next victims pressed forward and stumbled over them. Small children were simply thrown inside. After being filled up to capacity the chambers were hermetically closed and steam was let in. In a few minutes all was over. The Jewish menial workers had to remove the bodies from the platform and to bury them in mass graves. By and by, as new transports arrived, the cemetery grew extending in eastern direction." (XVIII/31, Doc. 3311-PS.) It is estimated that 700,000 Jews were killed at Treblinka. The exact figures are impossible since the Germans kept no records of the Jews deported to this camp. (XVIII/31, Doc. 3311-PS.) Kurt Gerstein, who described the killings at Auschwitz [Belsec], also visited Treblinka:

"The next day, Captain Wirth's car took us to Treblinka, about 75 miles NNE of Warsaw. The installations of this death center differed scarcely from those at Belsec, but they were still larger. There were 8 gas chambers and whole mountains of clothes and underwear about 35-40 meters high. Then, in our 'honor' a banquet was given, attended by all of the employees of the institution. The Obersturmbannfuehrer Professor Pfannenstiel, MD, Professor Hygiene at the University of Marburg/Lahn, made a speech: 'Your task is a great duty, a duty so useful and necessary.' To me alone he talked of this institution in terms of 'beauty of the task, humane cause,' and to all of them, 'looking at the bodies of these Jews one understands the greatness of your good work!' The dinner in itself was rather simple, but by order of Himmler the employees of this branch received as much as they wanted as far as butter,

{1134}

meat, alcohol, etc. were concerned. When we left we were offered several kilograms of butter and a large number of bottles of liqueur." (XVIII/53, Doc. 1553-PS.)

When the gassings first began, just like any other mechanical operation, the facilities were a little primitive. Instead of the highly efficient, technically perfect concrete, steel, and tile gas chambers, two old farm buildings were used at Auschwitz-Birkenau. These two buildings had been constructed by the SS construction office:

"The windows were bricked up, the partitioning walls taken out and a special door put in, which shut the chamber airtight. The space was made to hold three hundred persons. The prisoners had to undress in a barrack situated next to the gas chamber, and were then taken into the gas chamber. After the doors were closed the gas (zyclon B) was thrown by three SS men through slits which could be shut, into the gas chambers. These SS men wore gas masks and were trained in the use of poison gas." (XXI/26, 27, Doc. NO-2368.)

The regulations prescribed that a physician had to be present at each gassing as a safeguard for the SS personnel!

"After 5 minutes the initial loud clamor and groaning had stopped. After a further 25 minutes the doors were opened and the corpses of the dead taken by a detail of CC inmates wearing gas masks to the open. The dental gold was removed under the supervision of a Unterscharfuehrer who had been assigned specially to the job by Dr. Lolling, then the corpses were loaded on lorries, and taken to graves which had been dug by a prisoners' detail. After the corpses had been buried the gas chambers were cleaned and were then ready again for the next transport. The clothing was collected, brought to the camp and taken over by the Sturmbannfuehrer Burger." (XXI/27, Doc. NO-2368.)

Witness Victor Abend testified this procedure was not entirely satisfactory because many of the people were not killed and then it became necessary to throw them into the cremating fire while still alive. The cremating process was also an improvised one. Holes were dug into the ground and filled with wood, gas was poured on the wood, and the bodies then placed in the ensuing conflagration. (Tr. p. 259.)

This system not only had various defects, but with the increase in business, more up-to-date methods were required. The trend of modernity toward mechanization and

assembly line methods was not overlooked even in this most modern of achievements—genocide—a business so novel that a new name had to be coined for it. Genocide, the scientific extermination of a race. Friedrich

{1135}

Entrees, camp physician at Auschwitz, continues with his narrative:

"The reason for the new construction of gas chambers and crematories was the increasing number of transports. The new crematories were built in such a manner that the complete process of liquidation could take place in one building. The prisoners were first taken to the dressing rooms and then to the gas chambers. The new gas chambers had properly constructed chutes through which the gas was let in and had a modern ventilation system. Adjacent to the gas chambers the crematories were situated, so that the crematories could carry out the liquidation of the prisoners in an assembly line manner (laufendes Band)." (XXI/27, Doc. NO-2368.)

And then the inevitable hardening of the heart and the callousness of feeling to mass human butchery which in time became as casual as the killing of beasts in an up-to-date abattoir:

"I am of the opinion that those participating in the gassings became a willing tool, under the pressure of the system prevalent in concentration camps, and the impressions made on them during the gassings by which one can explain that such actions were possible at all." (XXI/29, Doc. NO-2368.)

Several of the defendants on trial in this case testified that although they had visited Auschwitz and immediate vicinity, they did not know, nor did they learn anything of the mass exterminations taking place there. Gerhard Wiebeck, a former SS man and so-called war representative, made various trips to Auschwitz where a huge cloud of smoke, which could be seen for miles around, hung over the concentration camp. He was told by a member of the Reich criminal police and judicial officers of the concentration camp that, "the gassing of prisoners in Auschwitz was no secret." (XXI/32, Doc. NO-2331.)

Some efforts were made to hide from the doomed inmates what was awaiting them. Artificial trees were erected around the crematories and the gas chambers. But the waiting ones could, nonetheless, hear the screams of their wretched predecessors. So a method—the SS were resourceful—was devised to conceal the screams. A music camouflage was introduced:

"At that time the children were burned on big piles of wood. The crematories could not work at the time, and therefore, the people were just burned in open fields with those grills, and also children were burned among them. Children were crying helplessly and that is why camp administration ordered that an orchestra be made by a hundred inmates, and should play. They played very loud all the time. They played the Blue Danube or Rosamunde; so that even the people in the city of

{1136}

Auschwitz could not hear the screams. Without the orchestra they would have heard the screams of horror; there would have been horrible screams. The people two kilometers from there could even hear these screams; namely, that came from the transports of children. The children were separated from their parents, and then they were put to section III camp. Maybe the number of children was several thousand." (Tr. pp. 388, 389.)

In August 1944 some of the inmates rose in rebellion and destroyed one of the gas chambers. It did not prevent their being gassed, of course, and it brought about a

horrifying sequel which, could they have anticipated it, would in itself have stayed their indignant hands. The remaining three gas chambers continued to work, but one day they were being used for adults, and there was, on hand a batch of children to be exterminated. The SS, known for their quick wittedness in solving any trying problem, simply solved this one by burning the children—alive.

But they were not entirely devoid of feeling in the execution of this rather nasty job:

"When one of these SS people sort of had pity with the children, he took the child and beat the head against the stone first before putting it on the pile of fire and wood so that the child lost consciousness." (Tr. p. 389.)

The general practice, however, was simply to throw the tots into the flames. The procedure was simple:

"They used to put a sheet of wood, then the whole thing was sprinkled with gasoline, then wood again, and gasoline and wood, and gasoline—and then people were placed on there. Thereafter the whole thing was lit." (T/389.)

Several thousand children were burned alive at this time. (T/389.)

As a variation to this entire macabre performance, the assassins now introduced the murder van technique. The victims were gathered in a group and informed they were to be taken to another locality for resettlement. The van drew up and the families were loaded aboard.

"Then the doors were closed and the gas streamed in through the starting of the vehicles. The victims died within 10 to 15 minutes. The cars were then driven to the burial place, where the corpses were taken out and buried." (XVIII/23, Doc. 2620-PS.)

At Mauthausen concentration camp transport vans were fitted up in such a manner that Zyclon B could be introduced while the vehicle was in motion. In this way no time was lost. The van picked up prisoners at Mauthausen, passed them on the way to

{1137}

Gusen, where they were unloaded and cremated. At Gusen another load of prisoners was picked up, gassed on the journey back to Mauthausen and there cremated in the crematory awaiting them. (V/180, Doc. 499-PS.)

Germany was fighting a war for its very existence. Leaving apart the origin of the conflict, forgetting for the moment whether from Germany's point of view the war was just or unjust, the fact remained that after Stalingrad every resource of raw material and blood was needed to save Germany itself from invasion and destruction. By February 1943, it was evident to every person in Germany above the mental age of 10, that Germany was fighting a war for survivorship, fighting on the actual brink of total catastrophe. And yet, while teetering on that edge, the very strength needed to hold on was dissipated in the maniacal execution of a maniacal hate against a people who had in no way declared war against them. The direction of many combat troops sorely needed on the battlefield were diverted on this insane mission of extermination. Incalculable manpower was killed off, property of every description was destroyed—every consideration remained unconsidered as against this insanity to wipe out a defenseless race.

Oswald Pohl, on the witness stand, attempted to defend his position on the Jews by saying that he had not opposed the Jews prior to the war, but when the war came he

had to decide between Germany and the Jews, and he chose Germany. But it was not apparent that there was a necessity for such a decision. A German report on indiscriminate Jewish massacring in the Ukraine declared:

"The attitude of the Jewish population was anxious—obliging from the beginning. They tried to avoid everything that might displease the German administration. That they hated the German administration and army inwardly goes without saying and cannot be surprising. However, there is no proof that Jewry as a whole or even to a greater part was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them just as among the Ukrainians. But it cannot be said that the Jews as such represented a danger to the German armed forces. The output produced by Jews who, of course, were prompted by nothing but the feeling of fear, was satisfactory to the troops and the German administration." (XVIII/18-19, Doc. 3257-PS.)

In March 1945 the extermination program was halted, not because conscience long lost in the jungle of greed and arrogance had caught up with the Nazis, but because the labor supply had become so critical that thought had to be given even to keeping

{1138}

alive a few Jews. According to Gluecks, chief of department [division] D of WVHA: "There were still 15,000 Jews still alive." Himmler decided he could employ them also in another capacity. He could "use these people as the trump card in negotiations with Count Bernadotte", which Himmler thought at the time might save his life.

THE WARSAW ACTION

By 10 November 1940 the Government General of Poland had completed its announced intention of confining within one circumscribed area all the Jews of Warsaw. Separated from the rest of the city by walls, partitions, bricked-up doors and windows, the 400,000 Jews enclosed therein, looked forward to a life of slavery, imprisonment, degradation, misery and suffering. Deprived of their property, citizenship and freedom, compelled to work without compensation or remuneration of any kind, life had become desolate and unmeaningful. Yet there was still life. Crowded as they were into apartments and rooms not large enough for one-fifth their number, yet they could still live. They still had the association of their endeared ones, of their friends, and in each heart burned always the lamp of hope. Hope that this injustice could not go on forever; that those who had tortured and imprisoned them could not possibly always be triumphant. The world was in arms against these outlaws. The lamp burned brightly. It lighted up the dark days and the Cimmerian nights. It was enough that these prisoners could keep the flame of life burning, and the day would come when at last this nightmare would be over.

But in the summer of 1942 the light was extinguished for 75 percent of the population. Of the 400,000, 310,322 were taken away by the SS under the policy of "resettlement", and in January 1943, 6,500 more were "resettled".

Shortly thereafter Himmler visited Warsaw and ordered the evacuation of the Warsaw ghetto.

It was assumed that the remaining inmates of the ghetto, some 60 to 70 thousand, would submit docilely to Himmler's orders, but they did not. In a resistance which must take its place among the legendary heroisms of the ages, these helpless and defenseless people fought and left a monument of courage and selfless glory which loses none of its luster in being compared to Thermopylae, Balaklava, and the Alamo.

And by the same token, their aggressor assassins have left a record of infamy and cowardice which does not need to lower its black flag of shame to any Attila, Ghengis

{1139}

Khan, oriental despot, or head hunter chief in the wilds of the most savage jungle.

The record of the battle of Warsaw was written by the SS itself. Since the defenders all perished, not one of the oppressed was left to tell his story, nor is there any document to relate the tortures they suffered in those 27 days of unmitigated hell. SS General Stroop, in charge of the operation, kept a day-to-day account of the action, and it is from his reports that we are able to reconstruct this epic of suffering and death, and yet imperishable glory although generally unknown to the world.

When General Stroop first learned that the occupants of the ghetto refused to give themselves up, he expected that with the forces at his command he could break down all resistance in 1 day, certainly 3 days would be ample. At his disposal he had over 2,000 men and 36 officers distributed among cavalry, Panzer outfits, Wehrmacht, Waffen SS, flame throwers, police and Gestapo. For ordnance he had in addition to the usual rifles, pistols, machine guns, and hand grenades, heavy armored cars, one 10 centimeter howitzer, one flame thrower, three 2.20 centimeter AA guns, at least one tank and engineering equipment of all kinds with demolition units. All this, to move on civilian men, women, and children, possessed only of a determination to hold inviolate their freedom and armed only with such weapons as they could manufacture themselves and pick up here and there.

With ingenuity and foresight they had collected from the various plants in which they had been employed enough chemicals to construct the so-called Molotov Cocktail (bottles filled with explosive substances, corked with a lighted candle). They were able to put together hand grenades, they improvised rockets, they fashioned missiles. Thus, on the very first day, 16 April, when Stroop attacked with his tanks and two armored cars, he was considerably surprised to find this heavy armor thrown back:

"When we invaded the ghetto for the first time, the Jews and the Polish bandits succeeded in repelling the participating units, including tanks and armored cars, by a well-prepared concentration of fire. When I ordered a second attack, about 0600 hours, I distributed the units, separated from each other by indicated lines, and charged them with combing out the whole of the ghetto, each unit for a certain part. Although firing commenced again, we now succeeded in combing out the blocks according to plan. The enemy was forced to retire from the roofs and elevated bases to the basements, dugouts and sewers. I ordered to construct a barrier dam below the ghetto and filled with water, but the Jews frustrated this plan to a great

{1140}

extent by blowing up the turning off valves. Late the first day we encountered rather heavy resistance, but it was quickly broken by a special raiding party." (XX/10, Doc. 1061-PS.)

In a spirit of defiance which would have done credit to a duly organized and armed unit, the besieged hoisted flags above their home fortification, the Jewish and Polish standards.

Throughout Stroop's report the defending forces are never referred to as human beings. They are always Jews, subhumans, Polish bandits, gangsters, or terrorists. Although the report writer constantly characterizes the Jews as cowards, he describes deeds which

are performed only by the daring and brave who sell their lives and their honor dearly. One item in the SS General's report reads:

"Whereas it had been possible during the first days to catch considerable numbers of the Jews, who are cowards by nature, it became more and more difficult during the second half of the action to capture the bandits and Jews. Over and over again new battle groups consisting of 20 to 30 or more Jewish fellows, 18 to 25 years of age, accompanied by a corresponding number of women, kindled new resistance. These battle groups were under orders to put up armed resistance to the last and if necessary to escape arrest by committing suicide." (XX/12, Doc. 1061-PS.)

We see no poltroonery in that type of conduct. The report then immediately relates an episode of intrepidity which should have moved the SS forces to admiration of a brave foe if any chivalry at all had coursed through their veins:

"One such battle group succeeded in mounting a truck by ascending from a sewer in the so-called Presta, and in escaping with it (about 30 to 35 bandits). One bandit who had arrived with this truck exploded 2 hand grenades, which was the agreed signal for the bandits and Jews—there were Polish bandits among these gangs armed with carbines, small arms, and in one case a light machine gun,—mounted the truck and drove away in an unknown direction." (XX/12, Doc. 1061-PS.)

The attacking forces now brought their artillery into play, so that with roofs crashing and walls toppling about them the defenders were compelled to take to dugouts and to sewers to continue their resistance. The SS men pursued them into these refuges by flooding the sewers, introducing smoke candles and pouring creosote into the water. Each day the besiegers captured large numbers of the Jews and liquidated them on the spot or sent them to the extermination center at Treblinka, trains being in waiting every day for this macabre trip. But at no time was there any indication on the part of the besieged to surrender

{1141}

themselves. Dugouts were blown up, and the smashed masonry and falling debris took its uncounted toll, but the white flag never rose above the fighting and dying defenders:

*"As in the preceding days, uncounted Jews were buried in the blown-up dugouts and, as can be observed time and again, burned with this bag of Jews today. We have, in my opinion, caught a very considerable part of the bandits and lowest elements of the ghetto. Intervening darkness prevented immediate liquidation. I am going to try to obtain a train for T II tomorrow. Otherwise liquidation will be carried out tomorrow * * *. (XX/26, Doc. 1061-PS.) In a number of cases the inmates of the dugouts were hardly in a condition, when the dugout had been blown up, to crawl to the surface. The captured Jews report that many of the inmates of the dugouts became insane from the heat, the smoke, and the explosions." (XX/28, Doc. 1061-PS.)*

The report is filled with complaints about the unfairness of the subhuman adversary:

"The whole operation is rendered more difficult by the cunning way in which the Jews and bandits act; for instance, we discovered that the hearses which were used to collect the corpses lying around, at the same time bring living Jews to the Jewish cemetery, and thus they are enabled to escape from the ghetto. Now this way of escape also is barred by continuous control of the hearses." (XX/24, Doc. 1061-PS.)

The report continuously calls the defenders cowards and subhumans and continues narrating deeds of grandiose courage and deathless devotion to the cause of freedom:

"All the Jews caught today were forcibly pulled out of dugouts. Not a single one gave himself up voluntarily, after his dugout had been opened. A considerable part of the Jews caught were pulled out of the sewers. In one case the engineers laid a strong concentrated charge and had to

proceed to an adjoining entrance where they had something to do. In the meantime a Jew from the sewer removed the fuse from the concentrated charge, and appropriated the charge. In the further course of this operation we succeeded in catching this Jew, still in possession of the concentrated charge." (XX/35, Doc. 1061-PS.)

The battle had now developed into fierce encounters at close quarters. "Some of the Jews fired pistols from both hands." A few captured Jewesses carried pistols concealed in their bloomers which resulted in an order that "every Jew and bandit will be ordered, from today on, to strip completely for the search." (XX/37.)

{1142}

Though "cowardly", a Jewess, upon being arrested in a dugout "quick as lightning put her hand under her shirt, as many others had done, and fetched from her bloomers a 'pineapple' hand grenade, drew the safety-catch, threw the grenade among the men who were searching her, and jumped quickly to cover." (XX/49, Doc. 1061-PS.)

Astounded and bewildered by the resistance offered by the defenders, Himmler, on 23 April, issued orders to complete the combing out of the Warsaw ghetto "with the greatest severity and tenacity." General Stroop now attacked with flame-throwers and other incendiary means, setting fire to the ghetto which burst into a sea of flames:

"Not infrequently, the Jews stayed in the burning buildings until, because of the heat and the fear of being burned alive they preferred to jump down from the upper stories after having thrown mattresses and other upholstered articles into the street from the burning buildings. With their bones broken, they still tried to crawl across the street into blocks of buildings which had not yet been set on fire or were only partly in flames." (XX/13, Doc. 1061-PS.)

Stroop congratulated himself on the excellence of the strategy:

"Our setting the block on fire achieved the result in the course of the night that these Jews whom we had not been able to find despite all our search operations left their hideouts under the roofs, in the cellars, and elsewhere, and appeared at the outside of the buildings, trying to escape the flames. Masses of them—entire families—were already aflame and jumped from the windows or endeavored to let themselves down by means of sheets tied together or the like. Steps had been taken so that these Jews as well as the remaining ones were liquidated at once." (XX/21, Doc. 1061-PS.)

But there were some who preferred the yellow face of the devouring flames to the black countenance of the waiting SS:

"Over and over again we observed that Jews and bandits, despite the danger of being burned alive, preferred to return into the flames rather than risk being caught by us." (XX/25, Doc. 1061-PS.)

Others of this "cowardly" race "fired their arms until the last moment and then jumped into the street, sometimes from as far up as the fourth floor." (XX/30, Doc. 1061-PS.)

Day by day Stroop reported the advance made by his flame throwers, and never did he fail to add his word of deprecation:

"During today's operation several blocks of buildings were burned down. This is the only and final method which forces

{1143}

this trash and subhumanity to the surface." (XX/28, Doc. 1061-PS.)

And then summing up the day's operation:

"1,330 Jews pulled out of dugouts and immediately destroyed, 362 Jews killed in battle. Caught today altogether: 1,722 Jews. This brings the total of Jews caught to 29,186. Moreover, it is very probable that numerous Jews have perished in the 13 dugouts blown up today and in the conflagrations. At the time of writing not one of the Jews caught still remains within Warsaw. The scheduled transport to T II had no success (note of translator: This probably meant that no Jews were available for regular transport to the extermination camp)." (XX/29, Doc. 1061-PS.)

Stroop thought that some of the Jews were most unkind. They would jump "from the burning windows and balconies, abusing Germany and the Fuehrer and cursing the German soldiers." Did he assume that they would jump heiling Hitler? (XX/30.) The unreasonableness and persistence of the defenders was quite irritating to Stroop:

"If the Jews are requested to leave their dugout voluntarily, they hardly ever obey; they can only be forced to do so by the use of smoke candles." (XX/38, Doc. 1061-PS.)

Not until the blocks of buildings "were well aflame and were about to collapse," did the Jews emerge, "forced to do so by the flames and the smoke."

"Time and again the Jews try to escape even through burning buildings. Innumerable Jews whom we saw on the roofs during the conflagration perished in the flames. Others emerged from the upper stories in the last possible moment and were only able to escape death in the flames by jumping down. Today we caught a total of 2,283 Jews, of whom 204 were shot and innumerable Jews were destroyed in dugouts and in the flames. The sum total of Jews caught rises to 44,089." (XX/38, Doc. 1061-PS.)

The battle began 16 April. As late as 8 May Stroop reports, "a number of subhumans, bandits, and terrorists still remain in the dugouts where heat has become intolerable by reason of the fires." (XX/42, Doc. 1061-PS.)

But the brave Stroop, with his tanks, armored cars, and howitzers, pitting the ordnance of a modern army against a few men, women, and children in caves, dugouts, and smoldering ruins, proclaims on 8 May, "the undersigned is resolved not to terminate the large scale operation until the last Jew has been destroyed." (XX/43, Doc. 1061-PS.)

The SS report is accompanied by a series of photographs showing

{1144}

various phases of the battle. Scene after scene depicts flaming buildings, broken-boned men and women lying on the streets unable to move, children holding up their hands in terror, victims lining against the wall to be shot. And yet in this ultimate catastrophe the few remaining live ones still refuse to bow their heads to their oppressors so that General Stroop, the valiant, reports on 10 May, the twenty-fourth day of crimson, lopsided battle, "the resistance offered by the Jews has not weakened today." Up to this moment the defenders had lost 51,313. (XX/44-45, Doc. 1061-PS.)

On 16 May, at 20:15 hours, the Germans blew up the synagogue and silence settled over Warsaw. The large-scale action had terminated. Not one of the defenders was alive. Stroop reported:

"Only through the continuous and untiring work of all involved did we succeed in catching a total of 56,065 Jews whose extermination can be proved. To this should be added the number of Jews who lost their lives in explosions or fires but whose numbers could not be ascertained." (XX/14, Doc. 1061-PS.)

Aside from the great moral victory achieved by the SS in this intrepid action, they were able to report a few practical returns as, for instance, 5 to 6 million Zlotys, a considerable amount of foreign currency including \$14,300 in paper, \$9,200 in gold and "large amounts of valuables (rings, chains, watches, etc.)." The report closes with:

"With the exception of 8 buildings, (police barracks, hospital, and accommodations for working parties) the former ghetto has been completely destroyed. Where blowing up was not carried out, only partition walls are still standing." (XX/54, Doc. 1061-PS.)

THIEVERY

Running hand in hand with the extermination program, and definitely part of it, was the appropriation of all Jewish property, personal, real, and mixed. Every live Jew gave up his house, his land, his money, all his personal property. Every dead Jew gave up not only all this, including his watch, fountain pen, jewelry, clothing, and shoes, but also the gold teeth and fillings torn from his mouth after his murder. In some instances the dental gold was removed prior to the killings.

The property taken ran the entire gamut from estates, factories, and houses, down to the last little item of baby shoes. Nothing was omitted from this gigantic thieving program: everything from automobiles and locomotives down to the last suit of underwear was stripped from the defenseless and unoffending Jew. The thievery was on a scale not only to shame the fabulous pirates of the Spanish Main, but to stagger imagination and

{1145}

prostrate credulity. Were it not for the accurate and full records kept by the Nazis themselves, no one could believe that so vast a plan of thievery could be devised and carried into execution. Although no Nazi, alive or dead, has ever answered the question as to why the Jew had to die, there is no lack of evidence that his death enriched his captor, fattened his oppressor, and filled the blood-stained pocket of his assassin. All those whom the Nazi hierarchy represented detested, hated, and loathed the Jews, but nonetheless they carried their watches, wrote with their fountain pens, wore their clothing, and inserted the gold taken from the deceased Jews into their own mouths.

In June of 1942 Reinhard Heydrich, chief of Security Police and SD, met his death near the village of Lidice, Czechoslovakia at the hands of Czech patriots. The Nazi hierarchy made of Heydrich a sort of martyr and thus applied his name to an action which was a carefully devised plan to make the Jew pay with his property, his labor, his goods, and his life, for a deed with which he was in no way connected. This does not mean that the Jew would not have been equally destroyed even though Heydrich had continued to live, but the death of this Nazi bigwig gave name to an action worthy of the nefarious character whose fetid memory it perpetrated.

The Action Reinhardt was divided into four branches—

1. Evacuation of all Jews to concentration camps, labor camps, and extermination centers.
2. Utilization of their manpower.
3. Utilization of their property.

4. The recovering of hidden valuables and real estate. (XIX/22, Doc. NO-057.)

We saw how all Jews removed from their homes for transportation to concentration camps were ordered to take with them all their belongings. Under the cruel implication that this was done so that the owner could have an eye on his possessions, the Nazis were able to gather in, as if with a rake, all the Jews' property without even having to look for it.

As the Jew arrived at Auschwitz, or any other extermination camp, he turned in for "safe keeping" everything he carried with him except the clothes on his back. Before entering the "shower room" he removed his clothing and then after the lethal bath some sturdy Nazi apprentice dentist tore out his gold fillings.

As the exterminations were accomplished with modern assembly line methods, so were up-to-date business methods used in assembling the property, cataloguing, and distributing it.

On 26 September 1942, defendant Frank notified the chief of the SS garrison at Lublin that he was to send all confiscated

{1146}

moneys to the Reich Bank, and that all foreign exchange, rare metals, jewelry, precious and semi-precious stones, pearls, dental gold, and scrap gold were to be consigned to the WVHA which would in turn deliver it to the Reich Bank. Watches, clocks, fountain pens, mechanical pens, flashlights, wallets, and purses, were to be repaired and delivered to front line troops on a cash basis. Men's clothing and men's underwear, women's clothing and women's underwear, including footwear of all types, children's clothing and children's underwear, were to be turned over to the Volksdeutsche Mittelstelle "against payment." "Underwear of pure silk is to be handed over to the Reich Ministry of Economics."

Every type of commodity imaginable was included in this wholesale looting expedition: featherbeds, quilts, woolen blankets, cloth for suits, shawls, umbrellas, walking sticks, thermos-flasks, ear-flaps, baby carriages, combs, handbags, leather belts, shopping baskets, tobacco pipes, sun glasses, mirrors, table knives, forks and spoons, suitcases, knapsacks, bed sheets, bed linen, pillows, towels, wiping cloths and tablecloths.

Spectacles and eye glasses of every description were to be handed over to the medical office for utilization, although spectacles with gold frames were to be separated from the mass so that the frames could be utilized as rare metals.

Valuable furs of all kinds, raw and cured, ordinary furs, lamb, hare, and rabbit skins—everything—(nothing was discarded or lost) were included in this net which drew up from the sea of thievery all the possessions of a condemned and doomed race.

There was just a little evidence of self-consciousness in this brigandage in the desire to not make too evident the source of the loot. Accordingly Frank's order contained the injunction: "It has to be strictly observed, that the Jewish Star is removed from all garments and outer garments which are to be delivered." (XVIII/87, Doc. NO-724.)

On 19 October 1943, the execution of the Action Reinhardt was completed and SS General Globus [Globocnik] asked Himmler for a number of Iron Crosses to be

presented to the worthy persons for their meritorious accomplishment in this important task.

The accompanying report on the loot read:

"Valuables from the 'Reinhardt Operation' have been handed in at the SS WVHA Berlin for transmission to the Reich Bank or to the Reich Ministry of Economy as follows:

a. RM, total value RM 53,013,133.51

b. Foreign currency, in notes, from all main countries of the earth (particularly the half million dollars are noteworthy) total value RM 1,452,904.65
{1147}

c. Foreign currency in coined gold, total value RM 843,802.75

d. Precious metals (about 1,800 kg gold and about 10,000 silver in ingots) total value RM 5,353,943.00

e. Other valuables such as jewels, watches, glasses, etc. (in particular, the number of watches, about 16,000 watches in working condition and about 51,000 watches in need of repair, is noteworthy; they have been placed at the disposal of the troops) RM 26,089,800.00

f. About 1,000 boxcars of textiles, total value RM 13,294,400.00

in total RM 100,047,983.91

"About 1,000 boxcars of textiles are still in stock, and about 50 percent of above-mentioned other valuables, which still must be counted and appraised. It should be stressed that the valuations given above have been established on the basis of official exchange rates and prices, commercial values are, however, much higher, for instance when selling precious stones or metals abroad, as the flight into fixed values is greater there than in our country. Moreover, sales abroad bring us foreign currency." (XVIII/92, Doc. NO-060.)

On 30 November 1943 Himmler acknowledged the report and said to Globus [Globocnik]:

"I express to you my thanks and gratitude for the great and unique merits you have earned by the performance of operation Reinhardt for the benefit of the entire German nation." (XVIII/98, Doc. NO-058.)

So as to remove the stigma of Jewish origin and the stains of the homicidal blood, an office for Germanization was set up to Germanize the clothing taken from the murdered Jews. A report indicated the itemization:

Men's old clothing 97,000 sets

Women's old clothing		76,000 sets
Women's silk underwear		89,000 sets
		Total: 34 cars
Rags	400 cars	2,700,000kg.
Bed feathers	130 cars	270,000kg.
Women's hair	1 car	3,000kg.
Scrap material	5 cars	19,000kg.
		Total: 536 cars
		570 cars

{1148}

The same report goes on in further itemization of clothing whose quantity reaches a bulk which filled a total of 825 freight cars. (XVIII/130, Doc. NO-1257.)

Ever loath not to lose a single stolen pair of eye glasses, Himmler wrote Pohl under date of 15 January 1943:

"I again request SS Obergruppenfuehrer Pohl to arrange a written agreement with the Minister for Economics regarding each individual category; whether it is a question of watch-glasses, of which hundreds of thousands—perhaps even millions—are lying there, and which for practical purposes could be distributed to the German watchmakers or whether it is a question of turning-lathes, which we need for our workshops, and which we can either have legally given to us by the Minister for Economics or buy from him. Or whether it is a question of sewing machines to which the same thing applies, or common furs or superior ladies' furs. I believe, on the whole, we cannot be too exact." (XVIII/131, Doc. NO-1257.)

In an attempt to cheat their own knowledge and give the thinnest veneer of justification to their wholesale thievery, the SS referred to this property taken from the Jews as "Jewish concealed and stolen goods."

On 13 May 1943, defendant Frank reported that up to 30 April 1943, 94,000 men's watches, 33,000 ladies' watches, 25,000 fountain pens, etc., had been delivered. He suggested that the repaired watches be distributed among combat divisions and concentration camp SS guards, and asked Himmler what was to be done with the 33,000 ladies' watches.

Also what was to be done with—

"a. Some hundreds numismatically very valuable old gold and silver coins (partly from the period prior to the christian era) of high collector's value.

b. Four big boxes with valuable stamp collections, among them complete collections of an individual value of 40,000 marks and more.

c. About 5,000 watches of most expensive Swiss make, in pure gold and platinum cases, partly fitted with precious stones (golden watches of inferior make or of clumsy or ostentatious style were already handed to the Reich Bank for melting down.)" (XVIII/137, Doc. NO-2003.)

One does not know whether the author of the Reinhardt report was indulging in some grisly humor when he said that what was seized and taken under Action Reinhardt was

"accounted for and delivered with the greatest expediency and without defrauding."
(XIX/27, Doc. NO-059.)

{1149}

In accounting for miscellaneous items the report states:

"Valuable furniture and household items were reconditioned and mostly given to racial German settlers for use. But German agencies and army agencies got also such furniture as a loan against issuance of a bill. Items of minor value were either destroyed or given to the population as premiums for good harvests, etc. Efforts were made to dismantle parts such as locks, hinges, and the like from items which could not be used, and to use them again." (XIX/30, Doc. NO-059.)

It recapitulates:

"The total value of these items amounts to approximately 180,000,000 RM according to the attached list. The lowest value was taken as a basis so that the total amount is probably twice as high, apart from the value of the received items which are short, such as textiles of which more than 1,900 wagons had been delivered to German industry." (XIX/29, Doc. NO-059.)

We have seen that one phase of the Action Reinhardt emphasized the utilization of all confiscated, Jewish, industrial enterprises. A company (the Ostindustrie G.m.b.H.) was formed in March 1943, to run and exploit these industries. The stated object of the organization was "(1) to utilize the working capacity of the Jews by erecting industrial plants in connection with Jewish labor camps; (2) to take over commercial enterprises which had been maintained by the Higher SS and Police Leaders in the Government General; (3) to confiscate all Jewish machinery and raw materials; (4) to utilize all former Jewish machines, tools, and merchandise which had been transferred to non-Jewish ownership."

OSTI worked with a variety of branches of trade and industry: "Thus glass works were operated in Wolomin, a peat cutting plant was established in the marshes near Lublin, brushes were manufactured, a big textile factory was taken over, an iron processing plant was erected." (XIX/67, Doc. NO-1271.)

An equipment plant was operated in Oradin where uniforms were made, and shoes and civilian clothes repaired:

"When planning the main structure of the 'OSTI', the main emphasis was laid on the foundry in Lublin. The Jews confined to the Lublin labor camp were to be employed here for the armament production in an iron foundry. The construction of the works was begun in August 1943. After the burning of the Warsaw ghetto the machines, which were still serviceable, were brought to Lublin, were repaired and installed again. Machines from the Bialystok ghetto were also brought to Lublin. A very small part of the production was begun still in October

{1150}

1943. The main work was to commence in the middle of November." (XIX/73, Doc. NO-1271.)

OSTI would have been a most profitable organization for the Reich, but with the liquidation of the Jews there remained no manpower to run the industries, and the operation folded up in November 1943. (XIX/69, Doc. NO-1271.)

Aside from the desecration of the body which must fill every normal-minded person with revulsion, the extraction of dental gold from the deceased concentration camp inmates derived its criminality from the fact that it was, in a good percentage of the cases, premeditated larceny. Prisoners were required to go to the hospital, ostensibly for

examination and treatment of their teeth, but in reality so that a record could be made as to whether they had gold in their mouths or not.

"If he had gold in his mouth he was registered carefully and after he died he had to pay the gold from his mouth for the last tribute for the fight against National Socialism." (X/133, Doc. NO-2637.)

An SS dentist who served at Buchenwald describes the procedure of taking gold from deceased prisoners:

"I had also to make reports on the gold which was taken out of the mouths of deceased prisoners. These reports were made to the chief dental surgeon in Oranienburg. In 1944 this was Dr. Pook. The quantity of gold taken from the deceased prisoners had to be reported monthly along with the other routine reports through the mail. The gold was delivered to the administration officer, Barnewald, who, as far as I know, handed it over to the Reich Bank." (XXI/35, Doc. NO-2127.)

In 1943 office D III of WVHA issued an order to the effect that any one suffering from a disease was to receive a mark on the upper arm after examination and the eventual removal of any gold teeth, the sign to read: "Examined by the dental surgeon." (XXI/39, Doc. NO-2332.)

An order from WVHA dated 8 October 1942, stated specifically that "gold removed from the teeth and supplied in the normal way by the concentration camps" was to be delivered to the Reich Bank. (XXII/62, doc. NO-2305.)

The day following the visit of the U.S. Congressional Committee at Buchenwald a large cache of gold fillings and rare jewelry was discovered in a quarry near the camp. "Included were literally thousands of wedding rings alone." (VI/71, Doc. L-159.)

It is said of a famous Chicago packing house which is able to turn to some commercial use every part and item of slaughtered animals that of the pig, only the squeal is lost. Of the concentration camp inmate, the Reich lost nothing. The hair shorn from

{1151}

his head was sold at the rate of RM. 50 per kilogram, and the proceeds were deposited with the Reich treasury. (V/159, Doc. 8680-PS.)

WVHA

In 1934 Oswald Pohl, who is number one defendant in this case, was chief of administration of the SS office located at Munich. At the same time Pohl was Plenipotentiary of the Treasury of the Nazi Party. In this early stage, this one office controlled the finances and administration of the concentration camps as well as those of the Allgemeine SS, the Special Service [Purpose] Troops and the Death Head units. The office had also been engaged in business on behalf of the SS and Nazi Party, utilizing the labor of concentration camp inmates in various enterprises, such as the German Earth and Stone Works, and the Granite Works at Flossenbuerg, Mauthausen, Gross-Rosen and Natzweiler. In 1940 Pohl and Georg Loerner formed the German business enterprises which became known as the DWB Combine, a holding company for numerous business enterprises now being run by the Administration Department. Its capitalization exceeded 46 million RM.

On 20 April 1939, the administrative department, by an order of Himmler himself, became a main office of the SS with the title Administrative and Economic Main Office of the SS. This new office had three divisions:

Amt I (budget) which controlled the allocation of prisoner labor.

Amt II (buildings) handling all building and construction work.

Amt III (economic enterprises).

These three departments all had representatives in the concentration camps.

The actual immediate direction of the concentration camp local machinery came under still another organization known as the Inspectorate of Concentration Camps, not under Pohl's management.

Himmler, however, had long desired that there should be one central authority for concentration camps, and he wished that authority to be Oswald Pohl. Thus, in March 1942, these various offices were all consolidated into one organization which became known as the SS Economic Administrative Main Office (WVHA) with 5 separate departments or Amtsgruppen (A, B, C, D, W).

The functions and duties of the various departments may briefly be summarized:

Department A—administration

Office A I—budgets.

{1152}

Office A II—finance and payroll.

Office A III—legal.

Office A IV—audits.

Office A V—personnel.

Department B—supply billets

Office B I—food supplies.

Office B II—clothing.

Office B III—billeting office.

Office B IV—raw materials and procurement.

Office B V—transportation.

Department C—constructions

Office C I—general construction.

Office C II—special construction task.

Office C III—special technical fields.

Office C IV—special art projects.

Office C V—central constructions inspection office.

Office C VI—building maintenance.
Department D—concentration camps
Office D I—central office.
Office D II—inmate labor commitments.
Office D III—medical affairs and camp hygiene.
Office D IV—concentration camp administration.
Office D V—legal department.
Department W—economic enterprises
Office W I—Stones and Earth (Reich).
Office W II—Stones and Earth (East).
Office W III—food manufactories.
Office W IV—timber works.
Office W V—organization of agriculture, forestry, fisheries.
Office W VI—utilization of textiles and leather.
Office W VII—books and pictures.
Office W VIII—special projects.

Each office in department W was subordinate to the so-called staff W, which was responsible to the chief of the department. The head of staff W held the position of economic advisor to the managing director, Oswald Pohl, and had immediate supervision over the directors of the DWB, the auditing and legal departments, tax affairs and those concerning plant management. All communications to the highest party office, ministries and central authority, went through the chief of staff W.

Departments A, B, C, and D were allocated funds like any other administrative office of the Reich with government funds. Department W, on the other hand, worked essentially along commercial lines, utilizing private funds, bank credits, etc. It is

{1153}

Pohl's estimate that SS enterprises were financed 40 percent with Reich funds and 60 percent through private credit.

The WVHA offices were located in Berlin with the exception of department D installed at Oranienburg. Thus the defendants claimed they had no direct, physical contact with the concentration camps and could not know what was happening in them. However, in addition to the visits which many made to the camps themselves, there were meetings every 3 or 4 months in the WVHA building in Berlin and in the department D building at Oranienburg with the concentration camp commanders.

"The questions which were discussed at these meetings were mostly the following: labor assignment, food rations, clothing, quarters, treatment of the prisoners, nature of punishment and the carrying out of punishments, erection of new outside camps, evacuation of invalids to other

camps, questions of troops and guards, particularly—since there was a considerable shortage of guards—training of female wardens and their recruiting."

It was department D which ordered that prisoners of war detained in concentration camps were to be treated like all other inmates. This same department controlled labor allocations and even the camp commander had no authority to intervene in such matters. (III/112, Doc. NO-2327.)

The order for the gassings and for administering lethal injections to Russian prisoners of war came still from department D. Max Pauly, excommandant of the concentration camp at Neuengamme, stated that when he found the prisoners of war too feeble to work, he requested of department D that the working hours be reduced from 11 to 9 hours, but this was refused. (V/132, Doc. NO-1201.)

When detainees dead and dying arrived at the Buchenwald concentration camp in the mid-winter in open trucks, the camp commander protested to WVHA, but department D ordered that further transports were to be continued and accepted. (XI/17, Doc. NO-2125.)

Albert Schwartz, who worked as a labor assignment leader at this camp made daily reports to office D II. He stated:

*"I know, that many prisoners died and many others became unfit for work by the inadequate accommodation and nourishment and the lack of medical attendance. Amtsgruppe D and Amtsgruppe C were responsible for all these cases of death and horrible events. The Amtsgruppe D was responsible for the nourishment and accommodation of these prisoners while Amtsgruppe C was responsible for providing the necessary manpower in order to finish this building project within the stipulated time. * * * (XI/17, Doc. NO-2125.)"*

{1154}

"According to an order of D III all prisoners provided for the transport were to be examined for their fitness to work by the camp doctor, therefore D III is responsible for the state of health of the prisoners on transport." (XI/18, Doc. NO-2125.)"

Dr. Friedrich Entress, camp physician at Auschwitz, declared that the facilities of the concentration camp Auschwitz, which was subordinate to WVHA, were used for the execution of the extermination policy of the Reich Security Main Office. From these experiences and activities at Auschwitz, he accused the following of knowledge and participation in the gassings: the camp commander, his deputy, the labor allocation officer (subordinate to office D II), the camp physician (subordinate to office D III), chief of the administration (subordinate to office D IV), construction chief (subordinate to department C), and Pohl. (XXI/28, Doc. NO-2368.)

Further, that the garrison physician reported monthly on the progress of the medical experiments to Dr. Lolling, office D III. (XXI/28, Doc. NO-2368.)

Some idea of the amount of dental care given to the prisoners can be gained from the statement of Dr. Karl Abraham that he was the only dentist at Stutthof, which contained from 4,000 to 5,000 persons. He was subordinate to office D III. (XXI/34, Doc. NO-2127.)

In the beginning of 1942, Himmler began assigning manpower to the SS industries on a large scale, charging Pohl with the actual allocation of the inmates. In discharging this function he was to cooperate with Sauckel, Plenipotentiary for Labor, and Speer, Minister of Production.

August Frank was Pohl's deputy from 1 September 1942 to 1 August 1943. At the same time he functioned as chief of department A. Georg Loerner succeeded Frank as deputy chief of WVHA, and Fanslau, upon Frank's departure, inherited the chiefship of department A.

Prior to becoming deputy chief of WVHA, Georg Loerner was chief of department B, and in that capacity was responsible for the clothing and food requirements of the Waffen SS and the concentration camp inmates.

Department C was the chief construction office of the SS and it laid down the principles and guiding rules for SS construction. Department D calculated the total building material requirements for any particular construction business and made requisitions for such material from Speer of the armament industry.

The gas chambers and crematories of the Auschwitz concentration camp, built in 1943, came into existence through the

{1155}

machinery just indicated. The accounts for these constructions were sent to office C VI for preliminary examination and then to the Supreme Auditing Court of the Reich. The actual details of allocation of concentration camp inmates to the industries were worked out by office D II. Departments B and C had branch agencies, both in the Reich and occupied territories.

The control of WVHA over concentration camps is evidenced to the last detail. A document dated 30 July 1943, authorized permit for a truck from Auschwitz to Dessau and back for the purpose of obtaining "zyklon". This authorization is signed by Gluecks, chief of department D, WVHA.

Another document dated 26 August 1942, from WVHA authorizes a truck to go to Dessau to obtain material to be used for a "special purpose."

Although the extermination program was fairly generally known, the writers of documents shied away from actually using the expression.

"Your request for a 5-ton truck with trailer to go to Dessau and back for the purpose of getting material for the transfer (Umsiedlung) of Jews is hereby approved."

The "transfer" meant permanent transfer from life to death. Pohl dealt with Reich Bank director Emil Puhl on the matter of delivery of Action Reinhardt loot. On one occasion he visited the Reich Bank accompanied by Georg Loerner and August Prank. There he was shown the contents of the vaults by Emil Puhl, vice president, who said: "Well, your things are among them." On this matter Pohl specifically stated:

"Further details concerning the delivery of the concentration camp loot to the Reich Bank were worked out by my subordinates and the reports were squared by special Reich Bank and Amtsgruppe A personnel." (XXII/32, Doc. NO-2714.)

Pohl further stated:

"The first shipment of valuables of which I knew was made in the autumn of 1943. At this date there was no question as to the source of the material turned over to the Reich Bank. Generally speaking the loot realized from Action Reinhardt, as I learned later from Globocnik's final report and Vogt's auditing reports, consisted of a great variety of personal items such as gold teeth, rings, jewelry, and foreign currency. It was never doubted that this loot was taken from Jews

exterminated in the concentration camps. The gold jewelry and foreign currency was to be placed on deposit for the Reich in the Reich Bank for the benefit of the German Reich." (XXII/32, Doc. NO-2714.)

Pohl knew from 1943 that gold teeth and crowns of concentration

{1156}

camp inmates were broken out of their mouths after liquidation, melted down, and delivered to the Reich Bank. In 1944 he conferred with Funk, president of the Reich Bank, regarding the obtaining of uniforms for the Waffen SS. In support of his claim for these uniforms Pohl pointed out the great quantities of old clothes which the WVHA had turned over to the Reich—this old clothing represented the garments taken from exterminated Jews at Auschwitz and Lublin. Funk agreed with Pohl that in behalf of the Waffen SS he was entitled to privileged treatment on account of the delivery of the old clothes of the dead Jews.

Pohl sent one of his representatives (Sturmbannfuehrer Opperbeck) to Lublin to take over these enterprises acquired by Globocnik from the Jews. These enterprises were coordinated into a new company, Ostindustrie (OSTI) and placed under the command of staff W of the WVHA. (XXII/33, Doc. NO-2714.)

Upon the completion of Action Reinhardt all the concerns involved in this action were officially taken over by WVHA. Himmler wrote Pohl a letter expressly thanking him for his part in carrying out the economic side of Action Reinhardt. As in the extermination program, a degree of caution was always exercised in connection with the Action Reinhardt when it came to writing. Thus, though the meaning of Action Reinhardt was not much of a secret, yet when it came to depositing foreign currency taken from the slain Jews the account was made out in the name of one Max Heiliger, a fictitious person. (XXII/33, Doc. NO-2714.)

The involvement of WVHA in Action Reinhardt is complete. Pohl has spoken unequivocally of his arrangements with Himmler, Reich Bank President Funk, and Reich Bank Vice President Puhl, and Globocnik. Referring to the quantity involved, Pohl said, "There was a giant quantity of valuables, since the delivery continued for months and years." These articles, which have heretofore been partially enumerated were collected in the extermination camps, packed in crates, and sent to the WVHA in Berlin. (XXII/36, Doc. 4045-PS.)

Pohl was not niggardly with treasure taken from the slain Jews. On 6 November 1943, he wrote Brandt of Himmler's staff: "I intend to make a Yuletide gift to the units of the Waffen SS as indicated on the attached list from the watches, wristwatches, and fountain pens as listed on the same." (XXII/41, Doc. NO-2753.)

Himmler was quite pleased with Pohl's suggestion and added that 15,000 of the ladies watches should also be distributed as Christmas gifts among the German resettlers coming from Russia. (XXII/42, Doc. NO-2754.)

{1157}

Still there should be a limit to this generosity, especially when a sizeable profit could be made on some of the items. "* * * the watches with the most precious Swiss works in pure gold and platinum cases, etc., and also pure golden fountain pens and propelling

pencils have to be put at the disposal of the Reich Bank for sale abroad. The Reich Leader SS is of the opinion that also perhaps the stamp collections might be traded for foreign exchange." (XXII/43, Doc. NO-2754.)

Pohl did not forget his own WVHA in this bonanza. He kept 500 of the clocks for distribution to the concentration camps to be used in the guard rooms. (XXII/44, Doc. NO-2755.)

Then there were 16 special gold precision wristwatches with stop devices and technical reading devices, each valued at 300 RM. Pohl had these watches overhauled by office D II at Oranienburg and sent them on to Himmler, who replied: "I shall use the watches as a special award for brave soldiers, who have distinguished themselves at the western or eastern front by destroying tanks or in other outstanding ways." (XXII/46, Doc. NO-2749.)

All this was done on a high level of morality. Pohl declared on 4 July 1944, "As a matter of principle it has to be kept in mind that the entire Jewish property is to be incorporated into the Reich property." He then outlines in detail how credits should be made up for the loot. (XXII/48, Doc. NO-3161.)

On 16 June 1944, Pohl attended a conference in Auschwitz regarding the construction work to be done there, the labor of course to be inmate supplied. Among the long list of items approved for construction we find:

"10. Three barracks for the emergency measure 'Operation Jews'.

* * * * *

"16. Camouflage of the crematories, and security measures by constructing a second fence (the camouflage has to be effected by rush-mats which have to be obtained by the SS Standortverwaltung [SS garrison administration]).

"17. Construction of six mortuaries in Ba I and II." (XXII/39, Doc. NO-2359.)

All camp commanders were nominated by the SS Personnel Office on Pohl's recommendation and were appointed by him. Pohl has sought to place the blame for many concentration camp excesses exclusively on the commanders themselves as they had almost absolute power within their 'compounds, but since he was responsible for their appointment and could also dismiss them, he may not excuse himself entirely of these excesses when he was aware of their commission and could have prevented their continuation.

{1158}

Furthermore, as chief of the WVHA, Pohl was automatically chief judiciary officer for all men under the jurisdiction of the WVHA. The administrative positions numbered about 1,600. He was also chief judicial officer for all guards serving in the concentration camps whose number reached the figure of 30,000. As chief judicial officer he reviewed all judgments pronounced by the SS and Police court against the WVHA Police courts and camp guards.

Pohl visited the camps regularly on tours of inspection and thus could check on general conditions. Each month he received a survey on the population of the individual camps as well as the mortality rates.

The WVHA was the central administrative body for all concentration camps. As has been shown, it provided the clothing, the equipment, and supplies; it developed the construction program; it allocated the inmate labor; it operated the SS industries. It is inconceivable that the defendants, with several exceptions, 'could not have known what was transpiring in the concentration camps, even though their offices were not actually within the barbed wire enclosures. Knowing of the excesses and the crimes against humanity, were they in a position to prevent those excesses and to forestall the crimes against humanity?

ADJUDICATION

Mere knowledge of crime without the power to interfere carries no moral or legal condemnation. But knowledge of crime and participation in the system which makes that crime possible dissipates the concept of unblemished innocence.

That concentration camps were not nursing homes was common knowledge to the whole German population. It was also clear that the grim silence of the few who emerged from the barbed wire compounds before the end was not due to the ecstasy of their memories but to the numbness which goes with a horror beyond the mental or spiritual capacity to assimilate. Even before concentration and forced labor camps became so numerous, that they dotted Germany like poisonous toadstools, people knew of Dachau and spoke of it in the tone that mothers one time employed to frighten their children, as they hushedly spoke of the fiery domains of Lucifer. It would be stretching credulity to the point of reckless unconcern to assume that the very administrators of the concentration camp system did not know what was generally being said about it.

But it has been argued by the defendants that they were unaware of abuses in the camps and if perchance knowledge thereof

{1159}

percolated into their ken, they were powerless to prevent such abuses. However, it was within their power to be less enthusiastic in their individual tasks which inevitably contributed to the final result, they could have displayed less zeal in plaiting the strand which formed the rope eventually destined to hang some hapless victim from Czechoslovakia or Denmark. The crux of the whole situation lay in the doctrine of Fuehrerprinzip. SS men were expected to weave without thought, and strike without aim or reflection. No one was to think, no one was to reflect, no one was to ponder, except Adolf Hitler. The nation that had produced such men as Humboldt, Kant, Goethe, and Gutenberg, now had but one brain and one guiding hand.

The common defense of the accused at the bar as to why they joined the NSDAP and the SS was that, following the First World War, Germany was in a state of political turmoil and economic disintegration, that a score of parties battled for power, and that chaos and disaster impended; that Hitler then came along and with a strong hand stabilized the country, established order, abolished unemployment, built roads, and gave Germany dignity and prestige before the world. Leaving aside for the moment what the German people may have thought about Hitler in those early days, and, even if he accomplished a part of the things attributed to him, forgetting for the moment the manner of accomplishment, the fact remains that there came a time when it was obvious

to all those in Hitler's field of operation that he was leading the German people into ruin, destruction, disgrace, infinite misery, and sorrow. But no one, that is, practically no one, of his collaborators attempted to seize and render harmless the insane navigator, who was wildly propelling the ship of state toward rocks obvious to anyone not himself afflicted with the same mania.

The immediate coadjutors of Hitler were the SS. Theirs was the job of terrorizing, threatening, oppressing, and killing off all opposition and opponents. Hitler's second in command was the assassin Heinrich Himmler. Himmler headed the SS and laid down the policies of the concentration camps. It is simply unbelievable that if Himmler's co-workers and his immediate subordinates disapproved of his program of mass murder, pillage, thievery, kidnapping, torture, and diabolical destruction that they could not have done something about it. The truth of the matter is that each saw in the continuation of that program a benefit of some kind for himself, a higher rank, a gaudier uniform, an easier and more lucrative position, a bigger car, an increased authority, a longer strut, and a more numerous number of underlings to tremble before his greatness. Vanity, arrogance, and greed

{1160}

were the vehicles in which the SS took the German population to the abyss.

The adjudication of the individual defendants in the present case appears in the majority opinion filed simultaneously with this opinion, but the adjudication of guilt of the philosophy and ideology behind concentration camps is something that lies with the German people. The world has condemned concentration camps, as civilization long ago proscribed human slavery. That civilization naturally includes the Teutonic race which has made no inconsiderable contribution to the progress of the human spirit in its eternal struggle toward emancipation from the forces of evil which have caused unhappiness since the world's beginning. What happened to Germany?

Not an unimportant result of these trials is the documentation they have produced in reestablishing the age-long truism that inevitable disaster awaits any nation which reposes irrevocable absolute power in the hands of one man. History has been writing to no purpose if it does not show over and over again that absolutism is a drink too potent for any person, without its warping his brain, rotting his conscience, and destroying all reflexes of responsibility to the donors of the bottle.

What must horrify the population of Germany today even more than the physical wreckage which strews their land is their reflection on the demoralization of spirit which caused supposedly intelligent and conscientious fellow nationals to swear the oath:

"I vow inviolable fidelity to Adolf Hitler; I vow absolute obedience to him and to the leaders he designates for me."

Each person who took this oath renounced his personality, repudiated his judgment, put aside his intelligence, and set himself adrift on the ocean of moral irresponsibility. Here was the root of the upas tree under whose branches the horrible crimes against humanity were committed. This oath explains how man, made in the image of his fellowman, tortured and slew him not because of any grievance against him, but because orders coming from Hitler and those appointed by him wished it. Thus the

defendants in the present case did their own little or big job carefreedly, even though that job encompassed the drawing of plans for an extermination chamber, the purchasing of zyklon gas, or perhaps only the furnishing of zebra suits to concentration camp inmates. It was not the concern of the WVHA as to what happened at the end of the assembly line. Each member of this organization added his little bolt or twisted a little screw or turned the wheel of an insignificant lathe. It was not his responsibility as to what was done with the machine he was helping to fashion and create. The

{1161}

concentration camps of Germany and occupied territories are the ignoble monuments to these bolt and nut-turners.

One of the purposes of the war crimes program is to let the German people see what miserable wretches and bankrupt souls were running and ruining their nation. One of the objects of the trials is to demonstrate that such an oath as above quoted, which makes no acknowledgment of a Supreme Being and which takes no account of responsibility to the people of the nation, is first a sacrilege and then a dastardly crime, in that it puts an engine of destruction into the uncontrolled hands of a maniac. This kind of an allegiance is no demonstration of the cardinal virtue of loyalty, it is the utter renunciation of reason and thought. It is also one of three other things: feeble-mindedness, guileful conspiracy, or the criminal negligence of one who indifferently casts a monkey wrench out of a high window into a crowded street below. One who puts into motion a train of circumstances which can only inevitably lead to the harm of others may not plead lack of intent to do harm.

One salubrious prospect in the Nuernberg scene is the opportunity it affords the German people to see what frauds their leaders were, what petty thieves they were, and more than all, what despoilers they were not only of the present but of the future.

There can be no doubt that the vast mass of the German people believed that once the war was ended, peace, prosperity, and all the tranquility and harmony of home life would return, never to depart. But we have seen from Himmler's Metz speech that the Nazis plans were to fight continuous wars, that each German family was to have at least four sons, so that allowing for two to be mangled in death on some distant shrapnel-torn battlefield, there would still be two left to transmit the name. This was the pleasant future that the criminal rulers of Germany were holding out for their homeland.

No democracy worthy of the name would have tolerated a Himmler. With his ugly and grotesque posturings as world conqueror a democratic people, with democratic processes would have laughed him out of public life. In a true democracy Hitler could not have been elected the second time to the position of dog catcher, but under the sheerly fantastic idea of the Fuehrerprinzip he could and did remain in power until, with his own hand he pushed himself into the grave no other German was able or willing to dig for him. And the German people who had given him obeisance never before accorded a modern ruler were reviled and cursed by him in those final days. And Himmler, the man who operated the concentration camps, who murdered millions of innocents,

{1162}

and who had proclaimed death for those who even dared to think disloyalty to Hitler, in the end betrayed Hitler and set out to bargain with the Allies for his own life.

Had there been no Himmler and Hitler there would have been no concentration camps, and had the German people not given away their birthright of freedom and independence of spirit there could have been no Himmler and Hitler.

Amid her sorrow and wreckage, Germany has learned her lesson never to trust again those who would lead her to felicity over the corpses of decency, dignity, justice, and equality between man and man.

{1163}

IX. RECONVENING OF MILITARY TRIBUNAL II FOR THE PURPOSE OF PERMITTING THE RECONSIDERATION OF ITS JUDGMENT

A. Introduction

On 7 June 1948, General Lucius D. Clay, the Military Governor, issued an order reconvening Military Tribunal II, "at the request of the judges constituting the Tribunal" and, "for the purpose of permitting such reconsideration and revision of its judgment as may be appropriate" in the Pohl case. The Tribunal reconvened in Nuernberg, and on 14 July 1948 issued an "Order Permitting Defendants to File Additional Briefs." The order reconvening the Tribunal and the order of the Tribunal permitting the filing of additional defense briefs are reproduced in B below.

B. Order of the Military Governor Reconvening Military Tribunal II and Order of the Tribunal Permitting Defendants to File Additional Briefs

HEADQUARTERS EUROPEAN COMMAND

General Orders

No. 52

7 June 1948

PURSUANT TO MILITARY GOVERNMENT ORDINANCE NO. 7

At the request of the judges constituting the Tribunal, Military Tribunal II as constituted by General Orders No. 85, Office of Military Government for Germany (U.S.), dated 16 December 1946, as amended by General Orders No. 5, same office, dated 21 January 1947, consisting of Robert M. Toms, Presiding Judge, Fitzroy D. Phillips, Judge, Michael A. MUSMANN, Judge, and John J. Speight, Alternate Judge, is hereby ordered to reconvene at Nurnberg, Germany, on or about 12 July 1948 for the purpose of permitting such reconsideration and revision of its judgment as may be appropriate in the case of United States of America vs. Pohl, et al. (Case No. 4).

By Command of General Clay:

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

{1164}

Official:

[Signed] G. H. Garde

G. H. GARDE

Lieutenant Colonel, AGD

Assistant Adjutant General

UNITED STATES MILITARY TRIBUNALS
SITTING IN THE PALACE OF JUSTICE,
NURNBERG, GERMANY
AT A SESSION OF MILITARY TRIBUNAL II
HELD 14 JULY 1948, IN CHAMBERS

The United States of America

vs.

Oswald Pohl, et al., Defendants.

Order Permitting Defendants to File Additional Briefs

Case No. 4

On 7 June 1948 General Lucius D. Clay, Military Governor of the U.S. Zone of Occupation, issued General Order No. 52, ordering this Tribunal to convene at Nurnberg, Germany, on or about 12 July 1948 for the purpose of permitting such reconsideration and revision of its judgment as may be appropriate in the case of United States of America vs. Oswald Pohl, et al., Case 4.

In pursuance of that order, Tribunal II has reconvened at the Palace of Justice in Nurnberg to carry out the mandate of the Military Governor.

The record in this case discloses that at the conclusion of the proofs, each defense counsel was allowed 1½ hours to present oral closing arguments with the exception of counsel for defendant Pohl, who was allowed 3 hours. The thoroughness with which the respective cases for the defendants were argued is shown by the number of typewritten pages of the several written arguments.

Oswald Pohl	152 pages
August Frank	79 pages
Georg Loerner	63 pages
Heinz Karl Fanslau	19 pages
Hans Loerner	18 pages
Erwin Tschentscher	56 pages
Max Kiefer	36 pages
Franz Eirenschmalz	50 pages
Karl Sommer	54 pages
Hermann Pook	22 pages
{1165}	
Hans Baier	41 pages

Hans Hohberg	63 pages
Leo Volk	55 pages
Karl Mumenthey	33 pages
Hans Bobermin	55 pages
Josef Vogt	39 pages
Rudolf Scheide	43 pages
Horst Klein	31 pages
Total	909 pages

The transcript of the closing argument for the prosecution against all defendants comprises 73 pages.

The transcripts of these arguments were in the hands of the Tribunal at all times while considering its judgment and were given an attentive reading. These were considered in the nature of trial briefs.

The record also discloses (Tr. p. 6253) that on 15 August 1947 the Tribunal stated in open Court:

"This Tribunal does not need both a closing argument and a brief from either prosecution or defense. You say what you want in your closing argument. We will have a transcript of it, and we do not want a repetition of it in the way of a brief after that".

Subsequent to the rendition of the judgment on 3 November 1947, each of the defendants found guilty therein filed petition and appeal with the Military Governor of the U.S. Zone of Occupation. In such petitions and appeals two of said defendants claimed that as to them the Tribunal had made use of briefs filed by the prosecution after the taking of proofs and oral arguments were concluded, in the preparation of its judgment. The remaining thirteen of the convicted defendants made no such claim. Two of the defendants, Pook and Klein, actually filed written briefs in reply to the prosecution briefs.

In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's briefs. If, after fully considering such defense briefs, it should appear to the Tribunal that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not then been proved beyond a reasonable doubt, or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify, or amend the judgment now entered in accordance with the facts and the law as so determined.

{1166}

It is understood, of course, that as to the defendants, Vogt, Scheide, and Klein, who were acquitted, this has no application. Having once been acquitted, they cannot be again put in jeopardy. It is further understood that this is not in any way a retrial of the case, but is merely a supplementary proceeding for the limited and specific purpose herein referred to. Defense counsel have heretofore received translations into German

of the prosecution briefs. It is true also that the right to a review by the Military Governor of the original sentence and of any modified or amended sentence which may be hereafter entered remains intact and unimpaired. The Tribunal will receive and consider any briefs filed in conformity herewith, provided such briefs are in the hands of the translation division on or before Friday, 30 July 1948. The Tribunal will then await the translation into English of such briefs as soon thereafter as possible.

The Secretary General will direct the Marshal to immediately serve copies of this order on the respective defense counsel.

[Signed] ROBERT M. TOMS
Presiding Judge

[Signed] FOTZROY D.
PHILLIPS
Judge

[Signed] M. A. MUSMANNO
Judge

{1167}

X. SUPPLEMENTAL JUDGMENT OF THE TRIBUNAL

As stated in the original judgment, the defendants were arraigned on 10 March 1947, and the taking of proof began on 8 April 1947. During 101 court sessions, terminating 22 September 1947, the prosecution offered in evidence 742 documents, and the defendants 614 documents. The transcript of the proof consisted of 8,048 pages, exclusive of the judgment. The transcript of the closing argument of the prosecution consists of 73 typewritten pages. The transcript of the closing argument of the defense counsel includes the following:

Oswald Pohl	152 pages
August Frank	79 pages
Georg Loerner	63 pages
Heinz Karl Fanslau	19 pages
Hans Loerner	18 pages
Erwin Tschentscher	56 pages
Max Kiefer	36 pages
Franz Eirenschmalz	50 pages
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Horst Klein	31 pages
Total	909 pages

On 3 November 1947 the judgment was read in open Court and sentence imposed upon those defendants found guilty. Subsequently, counsel for the convicted defendants filed petitions with the Military Governor of the United States Zone of Occupation asking revision of the sentences under Article XVII(a) of Ordinance No. 7. In these petitions various reasons were given for revision of the judgment, including claims that the proof had not been properly evaluated by the Tribunal, that various exhibits had been misinterpreted, that findings of fact were not supported by the evidence, and that there was injustice in the disparity of sentences. Two defendants stated that in preparing the judgment,

{1168}

the Tribunal had denied the defendants the right to answer prosecution's briefs filed against them. The Military Governor did not pass on the contentions of any of the defendants, but instead, at the request of the Tribunal, issued General Order No. 52, dated 7 June 1948, ordering it to reconvene on or about 12 July 1948, "for the purpose of permitting such reconsideration and revision of its judgment as may be appropriate." The Tribunal accordingly reconvened, and on 14 July 1948 entered an order reading in part as follows:

"In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's briefs. If, after fully considering such defense briefs, it should appear to the Tribunal that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not then been proved beyond a reasonable doubt, or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify, or amend the judgment now entered in accordance with the facts and the law as so determined."

It will be observed that this order gave opportunity to all defendants to submit any arguments they wished, based on the record in the case. This completely removed any possibility of prejudice arising from the manner in which defendants claimed the original judgment had been prepared. It gave the defendants an unrestricted opportunity to supplement the 909 pages of defense argument already submitted with further briefs of any scope desired. In addition, the Tribunal ordered the return of all defendants to Nuernberg from the Landsberg prison so that their counsel could have free opportunity to consult with them.

It is the firm opinion of the Tribunal that this fulfilled every requirement of full and complete justice to the defendants, and gave them all the protection in their legal rights which could be asked.

Reconsideration of the evidence after judgment and new findings of fact based thereon are not new concepts in Anglo-Saxon Law. Motions for new trial, motions for rehearing, motions to reduce the verdict of a jury to conform to the proofs, and motions for judgment non obstante veredicto are familiar procedural steps in all courts. That is exactly what is being done in this case. No new or additional proof is being offered or received. The entire evidence heretofore received is being reexamined, and reanalyzed de novo, with the aid of additional defense arguments now submitted in briefs. The fact that a judicial conclusion was

{1169}

reached in the original judgment does not preclude the Tribunal from reaching a different judicial conclusion, if, after further deliberation, with or without briefs, such conclusion appears just and appropriate. Judicial judgments are not immutable. If the original court or an appellate court in the interest of justice sees fit to modify them, the power and authority to do so, even on its own motion, is undoubted, with the possible limitation that no penalty fixed by the original judgment could be increased. Defense counsel have taken the strange position of objecting to a supplemental proceeding which could not be prejudicial and could be beneficial to their clients.

There is a constant strain prevalent in the defense in all of these cases. Throughout the entire organization of WVHA, there is a disclaimer of any authority to do anything which might be interpreted as culpable. To illustrate, the Tribunal sets out to examine operation Z which seems to have certain elements of criminality. From the table of organization, it appears that this operation pertains to office A. Upon further inquiry, the head of office A protests that he had no authority to conduct operation Z, and that if he signed or received any documents connected with it, he was merely a conduit between two other offices. Upon inquiry, those other offices also claim that while operation Z seems to come within their sphere of competence, actually such operation started in office B, and terminated in office C. A composite picture of these defenses would lead the Tribunal to the conclusion that no one in the entire organization had any real responsibility or authority, except for the most perfunctory and casual tasks. Somewhere within this complex and elaborate organization, there must have been sources of authority for launching and implementing important functions. Organizations of such size and importance are not inert. They are set up to get things done and to get them done quickly and efficiently, and in order to accomplish that end, definite broad authority must be delegated. But according to the contention of the defendants, no one in the organization had any authority to do anything important. Even Pohl, the chief of the WVHA, depreciates his own power almost to the vanishing point. He denies any control of Maurer and Gluecks and the Inspectorate of Concentration Camps, and takes the position that in most important respects, especially if they involve suspected criminality, he was merely a mouthpiece for Himmler. If this was the German conception of a chain of command, the whole chain was composed of fragile links, only strong enough to carry a very light load. The testimony of the defendants and the briefs of their counsel are replete with statements such as these:

{1170}

"I did not have anything to do with the personnel of concentration camps. For this, there was a special personnel office within department D."

"It is true that I signed Exhibit X, but this letter was dictated by another."

"I did sign these orders of transfer, but they are really extracts from an order issued by the Main Office. I merely had to perform the subordinate function of passing on these excerpts."

"There were hardly any administrative tasks left which still needed to be dealt with."

"I had no insight into the activities of other departments."

"Nothing which had to do with administration proper belonged to his sphere of responsibility. There were other departments between him and the concentration camps which were responsible."

"It is correct, that on the plan of organization he appears as such, but no letter of appointment has been submitted."

These contentions, if true, go only to the extent of participation, by the several defendants. They serve, not as alibis, but as extenuating circumstances, at best. The most that they could do would be to exert a sort of centrifugal force in removing the defendant from the vortex of the criminal project toward, but not beyond, its perimeter.

In its original judgment the Tribunal indicated (Tr. p. 8079) that it "realized the necessity of guarding against assuming criminality, or even culpable responsibility, solely from the

official titles which the several defendants held". This should not be interpreted to mean, however, that the fact that a defendant occupies an important organizational position is of no consequence and has no probative value. People are placed in high positions for the purpose of exercising authority and performing duties pertaining to that position. If a man is designated as a purchasing agent, it can be fairly assumed that his duties and powers pertain to the making of purchases. If a defendant is designated as head of an Amtsgruppe, it is logical to assume that this was done with a purpose and that he was expected and authorized to perform the functions of an Amtsgruppe chief, and not merely to occupy an office with no duties or responsibilities or authority.

Several defense counsel have urged the contention that other persons, more responsible than their clients, have not been indicted or tried, and one has even gone so far as to suggest that his client should not be tried or sentenced unless and until his superior officer has been indicted and tried and judgment entered against him, a situation which might never arise. This results in

{1171}

the novel proposal that unless all suspects are accused, none should be indicted or tried. This would require the Tribunal to go far beyond its proper jurisdiction, and is, on the face of it, impossible. The sole province of the Tribunal is to judge those who are brought before it by the duly constituted prosecuting authorities who are entirely independent of the Tribunals. The judicial power does not extend to the institution or launching of criminal proceedings.

Defense counsel further urged that there is a noticeable disparity between the sentences imposed in comparable cases by the several Military Tribunals. They urged that even with respect to sentences imposed in cases concluded months after the judgment in this case was entered, some sort of uniformity should be achieved. To do this would involve deferring sentences in all cases until the last one had been tried, then reshuffling all the defendants into rough categories and imposing sentences by some undisclosed use of the law of averages. This strange and unique procedure is obviously impossible.

The burden of much of the defense briefs is that defense counsel disagree with the conclusions of the Tribunal drawn from the proof. As they did in their lengthy closing arguments, they repeat their concepts of the weight of the evidence and the credibility of the witnesses. Incriminating documents are met by the statement, "But the defendant denies this", or "the affidavit of witness X refutes this." Such a situation is, of course, typical of any judicial proceeding, but in the last analysis, it is the province of the Tribunal to determine the facts from conflicting proof. With the facts as so determined, it is to be expected that one side or the other will forever disagree.

Some defense counsel, including counsel for Georg Loerner, have undertaken to analyze the concurring opinion filed by Judge Musmanno and to dispute the conclusions therein. It is to be observed that this concurring opinion forms no part of the judgment of the Tribunal. It was filed by Judge Musmanno for the purpose of recording for historical purposes a complete story of the concentration camps. It was not read into the record on 3 November 1947 at the time of the rendition of the judgment, and was not read or

considered by the other judges prior to that date. The Tribunal, therefore, has not considered statements in defense briefs dealing with this concurring opinion.

Some of the defense briefs have been presented with several affidavits attached, purporting to give factual support to the contentions in the briefs. These affidavits cannot be received as an extension of the proofs in the case. They have never been offered or received in evidence, nor has the prosecution had any opportunity

{1172}

to cross-examine the affiants or submit counter affidavits or other impeaching proof. The Tribunal has clearly stated that it would review the record as it stood on 22 September 1947 when the prosecution and the defense rested their cases.

POHL

An elaborate and complex operation, such as the deportation and extermination of the Jews and the appropriation of all their Property, is obviously a task for more than one man. Launching or promulgating such a program may originate in the mind of one man or a group of men. Working out the details of the plan may fall to another. Procurement of personnel and the issuing of actual operational orders may fall to others. The actual execution of the plan in the field involves the operation of another, or it may be several other persons or groups. Marshaling and distributing the loot, or allocating the victims, is another phase of the operation which may be entrusted to an individual or a group far removed from the original planners. As may be expected, we find the various participants in the program tossing the shuttlecock of responsibility from one to the other. The originator says: "It is true that I thought of the program, but I did not carry it out." The next in line says: "It is true I laid the plan out on paper and designated the modus operandi, but it was not my plan, and I did not actually carry it out." The third in line says: "It is true I shot people, but I was merely carrying out orders from above." The next in line says: "It is true that I received the loot from this program and inventoried it and disposed of it, but I did not steal it nor kill the owners of it. I was only carrying out orders from a higher level." To invoke a parallelism, let us assume that four men are charged with robbing a bank. The first makes a preliminary observation, draws a ground sketch of the bank and of the best means of escape. The second drives the others to the bank at the time of the robbery and spirits them away after its completion. The third actually enters the bank and at the point of a gun steals the money. The fourth undertakes to hide or dispose of the loot, with knowledge of its origin. Under these circumstances, the acts of any one of the four, within the scope of the over-all plan, become the acts of all the others. Control Council Law No. 10 recognizes this principle of confederacy when it provides in Article II paragraph 2 "any person * * * is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans

{1173}

or enterprises involving its commission * * *." Typical of the attitude of the defendant is this statement in the brief filed 26 July 1948 on behalf of Pohl:

"Neither Pohl nor the WVHA had any decisive part in the organization of the liquidation of Jewish property. Neither Pohl nor the WVHA played any part in the execution of this liquidation but that their participation was limited to the duty of delivery ordered by the Reich Government, as far as valuables came to hand within the sphere of the WVHA."

In order for Pohl to have been criminally liable for the liquidation of the Jews and the appropriation of their property, it was not necessary for him to have had a decisive part in formulating the original plan, nor in carrying it out later. It would be sufficient to inculcate him, if he was an accessory to or abetted the criminal program or took a consenting part therein or was connected with plans or enterprises involving its commission. This could occur at any point in the course of the program.

Counsel for Pohl, in his closing argument, urged that Himmler's order to tear down the Warsaw ghetto was addressed to the Higher SS and Police Leader in Krakow, and not to the defendant Oswald Pohl, who was merely ordered (NO-2494, Pros. Ex. 501) "to have the prisoners collect and salvage the millions of bricks, the scrap iron, and other materials of the former ghetto."

The evacuation of the Jews from the Warsaw ghetto was accomplished by Stroop through the use of military force between 19 April and 16 May 1943. Six months before that, Himmler had ordered that all the Jewish workers in the ghetto "are to be gathered together in concentration camps on the spot, that is in Warsaw and Lublin, by SS Obergruppenfuehrer Krueger and Pohl." This was the document (NO-1611, Pros. Ex. 498) in which Himmler stated:

"Of course, there, too, the Jews shall some day disappear, in accordance with the Fuehrer's wishes."

It thus appears that at the very inception of the Warsaw operation, Pohl was made an active participant by Himmler's order, with definite duties and responsibilities. The document shows that Pohl's name is the first on the distribution list.

In January 1943, 3 months before the violent evacuation program was launched by Stroop, Himmler wrote to Krueger complaining that his evacuation program was not being carried out with sufficient speed to suit him and ordering the immediate transfer of 16,000 Jews to a concentration camp at Lublin. Pohl's name appears on the distribution list of this letter (NO-1882, Pros. Ex. 499).

On 16 February 1943, two months before the program of

{1174}

demolition was inaugurated by Stroop, Himmler wrote directly to Pohl, with a copy to Krueger (NO-2514, Pros. Ex. 500) as follows:

"(1) I am giving the order to establish an X concentration camp in the ghetto of Warsaw.

(2) All Jews living in Warsaw are to be transferred to this concentration camp; Jews are not permitted to work in privately owned enterprises.

(3) The former privately owned enterprises in the ghetto of Warsaw are being taken over by the concentration camp (Reich enterprise).

(4) The concentration camp Warsaw as a whole, including its enterprises and its inmates, is to be transferred to Lublin and its surroundings as quickly as possible, but in such a way that production does not suffer."

From these documents, it appears conclusively that Pohl was by no means a mere salvage contractor who was brought in to clear up the rubble after the destruction of the ghetto had been accomplished. The establishment of concentration camps, the elimination of private Jewish firms, the displacement and transfer of the entire Jewish population of the ghetto, of which Pohl had notice and in which he was ordered to participate and cooperate, are all antecedent to his final task of razing the buildings in the ghetto. In July, Pohl reported to Himmler that he had appointed Goecke as commandant of the new concentration camp established by Himmler's order in the Warsaw ghetto, and pledges the closest collaboration with Stroop.

The contention of Pohl that his only participation in the Warsaw program was to clean up the rubble, after the demolition had been accomplished by others not connected with him, is incontrovertibly refuted by these exhibits.

Counsel for Pohl takes exception to the phrase in the judgment, "great industrial empire" (Tr. p. 8080). This empire, he contends, consisted of the Deutsche Erd- und Steinwerke (DEST), the Deutsche Ausruestungswerke (DAW) and about 35 medium sized plants, employing less than 40,000 workers. In his closing argument (p. 148), counsel states that this activity involved the administration by WVHA of 13 concentration camps and about 500 labor camps. In his brief he states that in the last half of 1944, there were 12 concentration camps and 504 labor camps, in which 650,000-700,000 prisoners were employed. The Tribunal feels that the phrase "great industrial empire" is not a misnomer as applied to enterprises of this scope and magnitude.

On transcript page 8082 of the original judgment, the Tribunal stated:

{1175}

"As chief judicial officer of the SS, he had full disciplinary power over all guards who served in the concentration camps. All judgments arising in disciplinary proceedings against SS guards were submitted to Pohl for modification or confirmation."

This is an error. Pohl's authority to judicially review disciplinary measures was confined to the personnel of WVHA and did not extend to the concentration camp guards.

Pohl's counsel argues that the "primary criterion of any responsibility is the authority to punish," and that Pohl had no such authority over concentration camp commanders or guards. The conclusive answer to this is that the criterion of responsibility in this case has been fixed by Article II, paragraph 2, of Control Council Law No. 10, to which reference has been repeatedly made herein.

"In this military set-up there was no room for an administrative official to cooperate by issuing orders", counsel suggests. But Pohl made room. In R-129, Pros. Ex. 40, signed by Pohl (not "by order"), he signed a document which he designates as an order, addressed to chief of department [Amtsgruppe] D (Maurer) and all camp commanders and work managers, defining the policy in concentration camps and the responsibilities of commanders and work managers, requiring that work must be exhaustive, that working hours are to be fixed by camp commanders and that "sentries on horseback, watch dogs, movable watch towers, and movable obstacles are to be developed." In NO-1290, Pros. Ex. 60, Pohl orders that the working hours of prisoners be kept at 11 hours daily, 6 days per week, with a half day on Sunday. This order is addressed to all concentration camp commandants. In Document NO-1245, Pros. Ex. 89, Pohl orders all

camp commanders to maintain closer supervision by guards and to forbid conversation or contact with inmates. In NO-1544, Pros. Ex. 137, Pohl ordered each noncommissioned officer and guard to make loafing prisoners work. The number of such instances could be multiplied, but these are sufficient to show that Pohl found ample room, even as an administrative officer, to issue orders concerning the operation of concentration camps.

Counsel states in his brief (p. 17):

"The securing and allocation of workers for the armament industry was examined by the Reich Ministry for Armament and War Production and was subject to direct approval. It was not possible within the framework of this planned economy that Pohl on his own responsibility could allocate workers from the concentration camps to the armament industries."

The record is replete with proof that the defendant Sommer,

{1176}

head of Amt D II (inmate labor commitments) was charged with filling requisitions for labor from the concentration camps. We recognize that neither Pohl nor Sommer were charged with labor procurement. That was the task of Sauckel and the Secret Police. Nor did Pohl or Sommer initiate requisitions for labor. But when a request for 1,000 laborers for Mauthausen or Auschwitz came into WVHA, through the Reich Ministry for Armament and War Production, Sommer, as Pohl's subordinate in Amt D II, filled the order and through him the required number of inmates was assigned. No juggling of words can make anything of this except "allocation of workers for the armament industry." As a striking example of inconsistency, compare this statement in defendants brief (p. 20):

"This measure (the appointment of Sauckel as Plenipotentiary General for Labor Allocation) by Hitler also forced Himmler to remove the labor allocation of concentration camp inmates from the general jurisdiction of the Inspectorate of Concentration Camps and, by transferring it as a special task to the chief of WVHA (Pohl) as the proper authority, raise it to the ministerial level."

Let us look at them vis-à-vis (p. 17): It was not possible that Pohl could allocate workers to the armament industries (p. 20). Himmler removed the labor allocation of inmates from the Inspectorate and transferred it to Pohl on a ministerial level. To these may be added a third inconsistent position (p. 21):

" * * it was Pohl's duty to supervise the smooth execution of all orders. The cooperation of all those engaged in this special task was the prerequisite for success."*

That is exactly what the Tribunal has stated and restated many times. That is exactly what Control Council Law No. 10 referred to in Article II, Paragraph 2. It was Pohl's "supervision of the smooth execution" of criminal orders that makes his "prerequisite cooperation" criminal.

Much point has been made of Pohl's alleged mental and physical condition, arising from claimed brow beating and abuse, at the time he signed the numerous affidavits which were submitted in evidence. The evidence of such abuse is insinuated into this case by quoting from Pohl's testimony in Case No. 2 before another Tribunal more than 6 months after rendition of the judgment in this case. Each of the several affidavits signed by Pohl contained immediately before his signature the following statement:

"I have read the above statement consisting of 3 (three) pages in the German language and declare that this is the full truth according to my best knowledge and belief. I have had the opportunity to make alterations and corrections in the above

{1177}

statement. I have made this statement of my own free will without any promises of reward whatsoever and I was not subjected to any kind of threat."

This repeated affirmation by Pohl makes the Tribunal somewhat skeptical of the tale of the effect of claimed abuse on a "highly emotional and sensitive person" (p. 25) like himself, but passing that, if every affidavit of Pohl was deleted from the record or had never been offered in evidence, the tremendous volume of credible proof remaining would be more than ample to establish his guilt of the crimes of which he was convicted. It would be equivalent to removing a bushel of sand from a carload.

The comments of Pohl's counsel on the concurring opinion filed by Judge Musmanno have already been answered herein. It would be useless to repeat or elaborate upon them here. It is pertinent to conclude by stating that the prosecution never filed a closing brief as to the defendant Pohl, but rested upon its final argument in open Court on 22 September 1947.

After a careful review of the entire evidence and a thorough study of defense counsel's brief, the Tribunal is of the opinion that no reason has been disclosed for modifying or amending the judgment entered on 3 November 1947 as to the defendant Pohl and said judgment is accordingly affirmed in all respects including the sentence imposed thereunder.

FRANK

Counsel for defendant Frank states in his brief (p. 2): "All important factors which had any bearing on the trial as it stood at the time of the pronouncement of the judgment were taken into account at the time of my final plea (argument)". He, therefore, "considers it useless and superfluous if I am to be limited * * * to a reply to the prosecution closing brief", unless a complete new trial is held, the record reopened and further proof taken. In order to keep an anchor to windward, however, he says, "I nevertheless submit to the Court at this stage a preliminary review showing how I should present the case of my client in the event of a full resumption of the case." Under this statement, the Tribunal would be justified in foregoing any reconsideration of the judgment in Frank's case, but the Tribunal has no inclination to be technical, and will, therefore, carefully consider the arguments which counsel so grudgingly offers (or would offer) in Frank's behalf.

Counsel constantly refers to matters outside the record in this case. He quotes from testimony given in trials of other cases before other Tribunals, offered long after the judgment in this case was delivered. Sometimes he paraphrases, sometimes he

{1178}

quotes brief excerpts. He quotes from a decree (NO-4905, Pros. Ex. 2452) of the Reich Ministry of Finance introduced in evidence in Case No. 11 * and published in the Reich Law Gazette, in which the confiscation of the property of the Jews was delegated to fourteen Senior Finance Presidents, who, with the Gestapo, "removed and utilized * * * billions worth of property." He states that only one of these Senior Finance Presidents has ever been brought to trial, and that another even acted as President of a denazification court. He quotes a New York newspaper which states that the Army of Occupation "amassed booty * * * exceeding a total value of one billion dollars." What is the purpose of injecting these impertinent statements in his brief? They certainly do not rise to the dignity of proof, and in any event have not the remotest relation to the issue before the Tribunal in this case.

Frank's counsel states that "Frank's position as official group chief was purely administrative * * *. He could not give even the least executive order." We presume the emphasis is on the word "executive", meaning an order for which he was the original authoritative source. In an organization such as the WVHA, the difference between executive orders and implementing orders is one of degree only. Executive orders are not self-executing. They require the efforts of perhaps a number of intermediaries to make them effective. This point has been more elaborately discussed elsewhere in this supplemental judgment. That Frank was one of the most active of these intermediaries is shown by his own testimony that "he signed thousands of orders in nineteen months". His counsel follows this with this incredible nonsequitur: "There is no more convincing evidence that Frank had no official contact with the concentration camps." The theory of Frank's defense is epitomized in this statement in his brief: "Himmler issued instructions for the handing over (seizure) of valuables, Globocnik confiscated the valuables as prescribed by (German) law. The Reich Bank received the valuables for the credit of the Reich * * *. Frank was neither the instigator, the chief nor the beneficiary." Counsel deftly skips over Frank's place in this program. There were many steps and many actors between Himmler and Globocnik and between Globocnik and Puhl. Some steps were vital, some were merely auxiliary (or, as has been said, administrative). Some actors were primary, others were subordinate. But all served to keep the program moving smoothly and efficiently. In this coordinated movement, Frank had his place and it was not an insignificant one.

{1179}

The provisions of Article II, paragraph 2, of Control Council Law No. 10, are clear and unambiguous. It enumerates, in a descending scale of culpability, the persons who are deemed to have committed crimes:

- (1) Principals.
- (2) Accessories or abettors.
- (3) Persons taking a consenting part.
- (4) Persons connected with plans or enterprises involving its commission.
- (5) Members of certain organizations or groups.

* U. S. A. vs. Ernst von Weizsaecker, et al., vols. XII, XIII & XIV.

(6) Holders of high political, civil, or military positions.

The burden of most of the defense briefs is that the defendants do not come within class 1, so Q.E.D., they are innocent. That is exactly the position taken by counsel for Frank, as indicated by his argument quoted above. Of course, he was "removed" from the fountain head of the criminal project but not removed far enough to escape implication in it. Much time and language has been spent in these trials in ingenious attempts to distort or evade the plain meaning of the clear language of Control Council Law No. 10, especially Article II, paragraph 2. Frank's efforts to do this are futile.

After a careful review of the entire evidence and a thorough study of defense counsel's brief, the Tribunal is of the opinion that no reason has been disclosed for modifying or amending the judgment entered on 3 November 1947 as to the defendant Frank and said judgment is accordingly affirmed in all respects including the sentence imposed thereunder.

GEORG LOERNER

On behalf of the defendant Georg Loerner, it is claimed that Document NO-2147, Pros. Ex. 30, designated as a report of Georg Loerner and others to Pohl, which was referred to in the original judgment as a "significant document", was not, in fact, signed by Loerner. This contention is correct, but it must be stated that in the English translation of this document contained in document book 2, page 46, the document purports to have been signed by Loerner, and his typed signature appears at the end of the translated document. This exhibit was admitted in evidence without objection, and the only form in which it came to the Tribunal was translated into English in document book 2. It was only after the judgment had been entered that attention was called by defense counsel to the fact that the original German document

{1180}

bore the signature of Kammler instead of Loerner, a fact which it was impossible for the Tribunal to know before writing the judgment.

If this document constituted the only proof against Loerner, his guilt would, of course, not be established, but even after discarding this document as we do, there remains an overwhelming quantum of evidence which is amply sufficient to establish his guilt. Had the Tribunal never seen Document NO-2417, Pros. Ex. 30, it would nevertheless have arrived at the same conclusion.

Counsel for Loerner insists that Document NO-1990, Pros. Ex. 73, referred to in the original judgment (Tr. p. 8118), and which is a report from Burger of Office D IV to Loerner stating that over 600,000 additional prisoners from the East were expected immediately for confinement in concentration camps, proves nothing, because the 600,000 prisoners never actually arrived, but only a small percentage of them actually reached concentration camps. Counsel for defense entirely misconceives the significance of this exhibit. The size of the group of anticipated arrivals may mean little, but the fact that there was included in the list former Polish officers, advised Loerner of the fact that it was common practice to commit prisoners of war to concentration camps to be employed in war work. Leaving out all figures from this exhibit, it was sufficient to

inform Loerner of this unlawful practice, and the fact that Burger felt obliged to report to Loerner on this subject fixes Loerner's responsibility as a participant.

Loerner's counsel contends now (but not at the trial) that this letter was merely a subterfuge, with fictitious figures used, to assist Loerner in securing larger allotments of clothing and raw materials for the slaves and prisoners of war who actually were in the concentration camps. If that was its purpose, the motive cannot be condemned, but it conclusively shows Loerner's knowledge of the fact of slave labor. He knew there were some slaves in the camps, 'even if less than 600,000, and that it was his task to procure clothing for them. How can it be said that this did not constitute a "consenting part" in the crime of enslavement? Was he not "connected with a plan and enterprise" involving enslavement?

Some testimony was offered from which it might be inferred that Loerner was responsible for the furnishing of food to the concentration camp guards and inmates. This testimony was later repudiated or explained by the witnesses who offered it, and the Tribunal now places no reliance upon it. The Tribunal now finds that Loerner was not responsible for the furnishing of food

{1181}

to the inmates, but that this was done by the camp commanders from local civilian sources through the channel of Amtsgruppe D and the Reich Food Ministry. It remains true, however, that as stated in the original judgment (Tr. pp. 8119, 8120), Loerner did have the duty and responsibility of procuring and supplying clothing and raw material for the manufacture of clothing. Finished articles were distributed from the supply point at Ravensbrueck and raw material was fabricated at Dachau. It is true, as contended by Defense Counsel, that Loerner did not have the responsibility for distributing clothing to the concentration camps, but he was charged with keeping up the supply of clothing and raw material in the warehouses from which distribution was made.

Defense counsel contends that although Georg Loerner was appointed as Pohl's deputy, there was no documentary proof that he ever actually functioned in that capacity. He quotes Pohl as testifying that Loerner's appointment was "only a formality in order that a deputy might be at hand." This is specious reasoning. This is equivalent to saying that a man holding the office of fire chief was really not such, because he never attended a fire. The fact remains that by reason of his appointment, Loerner stood high in the councils of WVHA, ready to act as Pohl's deputy should the need arise. The fact that he was clothed with the authority fixes his status, even though the proof discloses no occasion when he exercised his authority.

An attempt has been made to play down and minimize Loerner's connection with the W enterprises. Defense counsel states:

"No proof has been furnished that Georg Loerner's connections with these companies were anything more than formal and that he was more than a straw-man in Pohl's hands, nor that he gave advice to which attention was paid. Only a few records of meetings have been cited in which he participated. However, it has not been proved that he made any suggestions in any of these meetings."

It is useless to try to make of Loerner the mute and servile pygmy which counsel portrays. It is interesting to note that Frank, who, with Loerner, was one of the two

original incorporators of the Textil and Lederverwertung in June 1940, also attempts to assume the same unimportant and humble role as Loerner in the organization of this company which employed inmate labor at Dachau, Ravensbrueck, and Oranienburg. This would imply that neither of the original incorporators of this large concern ranked much higher than an office boy or a messenger. The record refutes any such conclusion beyond any doubt. Counsel urges that Loerner was merely a member of the Aufsichtsrat

{1182}

of the Cooperative House and Home Building Company, a firm which was incorporated into WVHA "in organization, personnel and business matters."

The Aufsichtsrat is defined by Tribunal VI in Case No. 6 as follows:

"This body was in the nature of a supervisory board, somewhat comparable functionally, to those members of a board of directors of an American corporation who are not on the executive committee and who do not actively participate in the management of the business. Under German Law the Aufsichtsrat elected and removed members of the Vorstand, called special meetings of the stockholders, and had the right to examine and audit the books and accounts of the firm."

Whether or not one chooses to define Loerner's participation in this enterprise as merely formal or on a low level, the fact remains clear that he was in the front office and part and parcel of the executive group.

Counsel discusses Document NO-2133, Pros. Ex. 387, book 14, which is a letter from Maurer to several office chiefs, with copies to Loerner and Gluecks, as counsel states "for their information." That is exactly the point. As early as 24 January 1942, shortly before the organization of WVHA, Loerner was informed that land was to be purchased and a concentration camp housing 25,000 inmates was to be constructed at Stutthof. The acquisition of the land fell within Loerner's province as head of the legal division of Main Department I/2. Thus he had early knowledge of the existence, and at least partially, of the scope of the system of concentration camps. This early knowledge is only one factor in his guilt. Standing alone it is not enough, but it is a piece in the mosaic which in toto spells slavery.

After a careful review of the entire record in the case and a thorough consideration of the final arguments of defense counsel and briefs filed supplemental thereto, the Tribunal is of the opinion that the judgment of guilty under counts two, three and four of the indictment as determined on 3 November 1947 should be affirmed. A certain disparity, however, which might be claimed to be unjust is found in a comparison of the sentences imposed upon defendants Georg Loerner and August Frank. The similarity in length of service with WVHA, and as deputy to Pohl, a consideration of their respective ranks, and of the counts on which they were found guilty convinces the Tribunal that the sentence imposed upon Georg Loerner as announced in the original judgment on 3 November 1947 should, in the interest of justice, be modified. Although Georg Loerner was designated as deputy to Pohl, the record discloses no occasion on which he actually

{1183}

functioned in that capacity and no document signed by him as such deputy has been disclosed.

The judgment of guilty under counts two, three and four as set forth in the original judgment of 3 November 1947 is hereby in all respects affirmed. The sentence imposed on the defendant Georg Loerner on said date will be modified and amended as hereinafter provided.

FANSLAU

Counsel for this defendant insists that the Tribunal, in its original judgment, misconceived the import of Documents NO-4560, Pros. Ex. 716 and NO-4505, Pros. Ex. 720 in stating that he (Fanslau) personally signed orders transferring camp commanders (Tr. p. 8105).

Document NO-4560, Pros. Ex. 716 states in part "Sturmbannfuehrer Max Pauly, hitherto concentration camp Stutthof commander, is transferred to concentration camp Neuengamme as camp commander." This exhibit is signed by the defendant Fanslau as chief of the personnel office.

Document NO-4505, Pros. Ex. 720 states "SS Obersturmbannfuehrer Erich Schellin * * * is, effective 1 August 1942, transferred to the Higher SS and Police Leader East Krakow as SS Economist." This exhibit also is signed by Fanslau as chief of the personnel office.

The Tribunal recognizes, and at the time of writing the original judgment also recognized, that these exhibits should be considered in connection with Documents NO-020a, Pros. Ex. 81 and NO-2128, Pros. Ex. 331, the underlying orders of Pohl for the reassignment and detachment of certain camp commanders, which were merely implemented by Fanslau in Documents NO-4560, Pros. Ex. 716 and NO-4505, Pros. Ex. 720. The Tribunal was, and is, aware that in signing these orders, Fanslau did not exercise original authority, but the statement in the original judgment that "he personally signed orders transferring camp commanders" is borne out by the documents, and is true. On this basis, it is undoubtedly true that Fanslau was a proximate participant in the process of transferring concentration camp commanders. Assuming that he was not the initiator, nevertheless he was the instrument used by Pohl to make such transfers effective.

In his appeal to the Military Governor, Fanslau states that he "could only draw the conclusion that the labor allocation aimed at training asocial elements for work and preparing them for their reinstatement into the human society." Assuming that the concentration camps furnished a convenient place of imprisonment

{1184}

for these asocial persons who dared to dissent from the Nazi policy of tyranny and oppression, and who might be considered a source of danger within the Reich, certainly no person could be so naive as to believe that this was the only group confined in concentration camps. This specious brand of exculpation cannot be accepted, nor can it be believed that a man in Fanslau's position to know was unaware that the concentration camps also contained uncounted thousands of men, women, and children from the Eastern territories who had been abducted from their homes by force and herded into concentration camps to be worked to death for the German war machine. Can Fanslau claim with any sincerity that he did not know of Ravensbrueck, where thousands of women and children were confined? Can he with any degree of honesty claim that these women and children constituted asocial elements who were being

prepared for their reinstatement into the human society? This Tribunal would be credulous indeed to arrive at such a conclusion.

In stressing his contention that the duties of the several Aemter in WVHA were completely separated and that no connection or common responsibility existed among them, counsel for Fanslau uses an interesting but inapt illustration. He says:

"If one assumes that the entire administrative work carried out by the SS in the Economic Administrative Main Office corresponds to the building of a house, it becomes clear that different workmen are entrusted with different tasks:

The bricklayer builds the walls, the slater completes the roof, the plumber the sanitary fittings, the electrician the electric installations, the carpenter the windows and doors etc. Thus, if after the conclusion of the building or during the construction a faulty part is detected somewhere in the house, only the person who has built this part of the house can be made responsible for this fault, and not another person who was employed in a heterogeneous job on the same house. Thus, for a fault in the roof the slater, for a fault in the electrical installation the electrician will be responsible. Besides that only the architect supervising the building of the house could be made responsible."

There was nothing wrong with the planning or construction of the house of WVHA. It was skillfully planned and expertly constructed. It was a good house, but it sheltered criminal activities. It is the use to which it was put that was wicked. A noble cathedral may be the rendezvous of thieves and kidnappers and counterfeiters. WVHA was not a group of detached cottages. It was a single edifice but with many connecting rooms, and the corridors and halls between them were thronged with busy men, all hurrying

{1185}

on the business of their common master—Himmler. The Tribunal finds no reason to retract or modify its statement on this subject in the original judgment (Tr. p. 8096 et seq.).

Defense counsel raises the point that "Fanslau is responsible within the framework of troop administration only * * * but which is not liable to punishment." He reminds the Tribunal that administrative office heads of the Reich Security Office, the Wehrmacht, the Luftwaffe, and the navy have not been accused or convicted of crimes against international law. Let us repeat what has been so often said before. Fanslau has not been condemned because he was a military officer or because he ministered to the needs of the troops. His crime consists in using his position as an SS officer in WVHA to aid and abet a Nazi-sponsored system of slavery, spoliation, and looting. Field Marshal Milch, who was convicted by this Tribunal in Case No. 2, was not condemned because he was a field marshal and second in command of the Luftwaffe, but because in that capacity he participated in war crimes and crimes against humanity.

Fanslau's claim that as chief of Amt A V, the personnel office, his only function was to "replace administration officers for the paymaster service for Amtsgruppe D to be employed in the concentration camps" and involved only 5 or 6 men, finds no credible support in the record in this case. The claim that in signing (not promulgating) orders for the transfer of camp commanders, Fanslau was merely certifying to the correctness of an order of the Personnel Main Office has been sufficiently discussed and disposed of in this judgment under Frank's case. It need not be reexamined here. The Tribunal cannot accept the conclusion that the chief of Amt A V and later the chief of Amtsgruppe A was

merely a stenographer, and his high position and official acts belie such a menial classification.

HANS LOERNER

With reference to Loerner's budget duties and activities as head of Amt A I and A II (NO-2672, Pros. Ex. 86), the Tribunal in its original judgment (Tr. p. 8108) stated:

"In connection with the concentration camps, Kaindl, and later Burger of Amt D IV, concentration camp administration, assembled the budget items for the concentration camps and passed them on as part of the entire budget of the Waffen SS to Loerner in Amtsgruppe A, who reviewed it and put it in shape to be transmitted to the Main Department of Finance in Berlin."

A careful review of the record convinces the Tribunal that this statement is accurate and true. Requests for money appropriations

{1186}

for the concentration camps originated in the camps were sent by the camp commanders to Amtsgruppe D of WVHA. These requests, together with those from other activities of the SS, were then forwarded to Amt A I of which the defendant Loerner was chief. Loerner thereupon assembled all the budgets so forwarded to him and transmitted this entire budget of the Waffen SS to the Main Department of Finance in Berlin. The Tribunal did not and does not assume or find that Loerner had any authority to promulgate a budget, to raise it, or lower it, or to deny or allow it, and nothing in the original judgment implies any such finding. The testimony of Loerner's codefendant, Pohl, who was the chief of the entire WVHA and who must be presumed to know something of the powers and duties of his subordinates, states in part as follows (Tr. p. 1880):

*"Office group A put together the whole of the budget by listing together the various contributions * * *. The administrative office of the Inspectorate, that is office D IV, put together the budget for all concentration camps and then passed it on as part of a whole budget of the Waffen SS to office group A, which then put together the entire budget."*

There appears to be no substantial dispute as to this method of procedure, but counsel for Loerner disagrees, as is his privilege, with the conclusions which the Tribunal has drawn as to Loerner's culpability arising from these facts.

It is to be observed that the Tribunal in the original judgment (Tr. p. 8107) recognized Loerner's contention concerning the adoption of the open budget and its effect on his duties and responsibilities. It cannot be claimed that the Tribunal ignored this fact in reaching its conclusions.

A comparison between the case of Schwarzenberger, who was acquitted in Case No. 8, and Loerner, who was convicted in Case No. 4 is emphasized by Loerner's counsel. In his argument in Case No. 8, the prosecutor said:

"Loerner and Schwarzenberger joined the SS about the same time. Both served as administrative officers until August 1939, when both went into the army for a short time. Both were later transferred from the army to administrative positions. Loerner attained the rank of lieutenant colonel; Schwarzenberger that of colonel. Both were budget and finance officers. Both were administrative officers. Both participated in a criminal program."

Some similarity between the two men as to rank and function must be conceded, but it must be observed that the facts in no two cases are identical. Similarities may exist to a greater or lesser degree, but not absolute identity. Nor is it possible to assure

{1187}

entire unanimity in the findings of separate Tribunals. Disparity in conclusions, or findings of fact, may result from the disparity in emphasis which separate Tribunals may accord to the evidence. A single document may in the opinion of one Tribunal assume controlling force, and in the opinion of another Tribunal be given lesser weight. One Tribunal may find the testimony of one witness true, and another Tribunal may discredit it. In appraising the preponderance of the proof for and against the defendant, one Tribunal may find the scales to be tipped in one direction and another Tribunal in the other. This factor is inherent in any judicial proceeding in which human beings are involved. It has always been true, and doubtless, always will be. It is the only system we have, and we must use it as best we can. It is necessary in any judicial system that there be some place where factual determination becomes final and incontrovertible, even in the face of an apparently contradictory determination by some other judicial agency.

In the instant case, however, there are sufficient factual distinctions between this case and the Schwarzenberger case to make reconciliation between the judgments unnecessary. It is apparent from the record in this case that Loerner operated in a far wider field than Schwarzenberger (Case No. 8), said in its judgment rendered 4 months after the judgment in the instant case:

"His duties consisted almost entirely of paying out funds on lump-sum requisitions submitted to him by various organizations, and that, as chief of finance, he had no power to approve or disapprove requisitions for funds, which was a duty resting solely with the Reich Minister of Finance. He contends, furthermore, that not even in the requisitions and bills submitted to his office was there anything indicating the purpose for which the funds were to be used or had been used, and he never had knowledge of the purpose for which these funds were being disbursed. Schwarzenberger's contentions are supported by an abundance of evidence. It would appear from the evidence that Schwarzenberger's principal task was to submit to the Reich Minister of Finance a budget containing the estimated operational needs of the various departments; and upon approval by the Reich Minister of Finance, the funds were deposited with Schwarzenberger's office for payment to the various organizations. Volumes of documents have been introduced by the prosecution in this case—hundreds pertaining to the various organizations involved—and Schwarzenberger's name is conspicuous in its absence among these documents. No documentary evidence of an incriminatory nature has been offered against this defendant."

{1188}

Schwarzenberger's duties were apparently those of the ordinary cashier and disbursing officer. By contrast, Loerner's duties covered a far wider field and entered the realm of departmental policy, involving judgment and discretion. He did far more than merely receive funds and disburse them upon the order of higher authority. These instances are particularly referred to in detail in the original judgments of the Tribunal. For reference purposes, the following exhibits are pertinent:

NO-266, Pros. Ex. 204, book 7.

NO-098, Pros. Ex. 234, book 9.

NO-2789, Pros. Ex. 530, book 22.

NO-3161, Pros. Ex. 543, book 22.

NO-554, Pros. Ex. 448a, book 17.

NO-725, Pros. Ex. 481, book 18.

NO-243, Pros. Ex. 553, book 23.

Document NO-2117, Pros. Ex. 78, book 4: Dr. Schmidt urges that this report of Loerner's as to a financing plan for the Stutthof camp was not based on his own personal knowledge of the conditions in the camp, but was merely a summary of a statement of the position adopted by the Higher SS Leader in Danzig with reference to the fiscal position taken by the Reich Finance Office. His contention seems entirely beside the point. From the exhibit, it is apparent that as chief of the budget office, Loerner and Hildebrandt had been trying to straighten out the financing involved in the change-over of the Stutthof camp from the police jurisdiction to that of the WVHA. After a conference with Peukert of the Reich Court of Accounts, Loerner follows it with a written analysis and history of the change-over which discloses an intimate knowledge of the whole transaction. The exhibit is, on its face, a written opinion as to the auditing procedure involved. He decides definitely that "any. demands made by the German Reich during the time the camp was subordinated cannot be made valid." This document is much more than a mere "report summarizing a statement of the position adopted by the Higher SS and Police Leader in Danzig regarding the representations made by the Reich Finance Office." It is, on the contrary, an official opinion and ruling by Loerner.

Document NO-504, Pros. Ex. 41, book 2: Dr. Schmidt contends that this 6-day budget conference concerning SS personnel concerned only peacetime plans which were of no significance for the war budget and which were conducted during the war simply to create a peacetime financial basis for the SS. It is true that the conference, in setting up a table of organization, was taking a long range view extending into the time of anticipated peace, but it also specifically deals with personnel organization and

{1189}

strength for the current year of 1942. It was an integral and important part of the war program of the SS, and in it Loerner actively participated for 6 days. The document is significant in showing that Loerner was no mere figurehead charged with casual unimportant duties on behalf of the SS, but, on the contrary, was entrusted with grave responsibilities.

Document NO-517, Pros. Ex. 86, book 4: This is a memorandum by Baier as chief of staff W, concerning camp regulations for prisoners which Pohl had requested him to draw up. The regulations were to contain, among other things, comprehensive provisions for fixing the so-called wage scale for prisoners. In the work of drawing up the camp regulations, Baier specifies that Loerner should be consulted. Dr. Schmidt's contention is that Loerner was never actually consulted, and, therefore, the exhibit is insignificant. On the contrary, it is significant as showing the recognition of Loerner's position as a consultant, even though his services in that capacity may not have been actually used.

Counsel for Loerner in his brief (p. 5) states:

"In my opinion it is not admissible to draw a connection which is relevant under criminal law between a person, solely because of his employment in an office dealing with the administration of concentration camps, and the crimes committed in the concentration camps, unless there can be ascertained a demonstratable causal connection between the actions of this person and the crimes indubitably committed in the concentration camps, and, in addition, unless it can be ascertained that the defendant himself consciously and deliberately was guilty of acts of omission or commission."

In this opinion the Tribunal readily concurs, and so stated in the original judgment (Tr. p. 8079). Nor has the Tribunal deviated from that principle in this supplemental judgment. We pause to state, however, that any indignation over the concept of "mass punishment" and "group condemnation" appears somewhat hypocritical in the face of a national policy which condemned to summary death all Jews, all Bolsheviks, all Communists, all gypsies, all asocial persons, all dangerous elements, all "subhumans". The SS was an organization with the primary objective of meting out mass punishment and it savagely pursued that objective on a scale never before dreamed of. Now these defendants, members of that same SS, shrink with horror at the mere suspicion that such a policy is being used against them. The Tribunal has heretofore stated and now repeats its repudiation of the theory of mass punishment or group condemnation with all its implications.

{1190}

TSCHENTSCHER

Pursuant to an order issued by the Tribunal dated 15 June 1948, the defendant Erwin Tschentscher filed a closing brief in answer to the brief of the prosecution on 9 July 1948 and on 29 July 1948 he filed an additional brief in consequence of an order of the Tribunal dated 14 July 1948. The Tribunal further considering the judgment and sentence heretofore imposed against the defendant Tschentscher finds and concludes the following:

The defendant objects to the interpretation placed by the Tribunal upon a personal declaration made by the defendant when testifying in his own behalf, and to the importance given said declaration by the Tribunal in its judgment. The English translation of this declaration appearing in the record is as follows:

"It was our specific intention that these people be able to recover somewhat so that they would regain a better physical condition and be able to perform their work better."

In his brief the defendant contends that the correct English translation of the declaration should have been as follows:

"It was our specific intention to give those people at last the possibility to recover, so that they would regain a better health condition and by this a better working state."

It is a further contention of the defendant in his brief that the complete statement of the defendant which was in connection with this declaration should have been taken into consideration by the Tribunal and quotes the following:

"I must say that I did not need any confirmation because just when I saw the people it was rather unnerving; and one could count on the fact that when an epidemic occurred the inmates did not any longer have any physical resistance, and one could predict that a catastrophe might occur in

that field. I only had one thought, to help them as quickly and to as large an extent as possible so that these things would not happen."

This testimony of the defendant was fully considered by the Tribunal on Transcript page 8126 of the judgment.

The Tribunal concluded that the significance given the utterance and the findings deduced in its original judgment are correct. The Tribunal can find no material difference between the meaning of the passage as stated in the English translation appearing in the record and the translation contained in defendant's brief.

The defendant further complains in his brief that the following findings of the Tribunal in its judgment were not borne out by the evidence.

"The Tribunal is fully convinced that he knew of the desperate condition of the inmates, under what conditions they

{1191}

were forced to work, the insufficiency of their food and clothing, the malnutrition, and exhaustion that ensued and that thousands of deaths resulted from such treatment. His many visits to the various concentration camps gave to him a full insight into these matters."

These findings so adduced by the Tribunal are amply supported by the evidence. The admissions of the defendant, the testimony of the witness Barnewald (doc. book 8, p. 108), the affidavits of Dr. Schiedlausky (doc. book 8, p. 28) and Hermann Pister (doc. book 3, p. 109), and other evidence in the record showed conclusively the correctness of these findings and conclusions by the Tribunal.

The closing brief of the defendant dated 29 July 1948 reiterates his contentions as contained in his brief of 9 July 1948 and, in addition thereto, its further contents consisted almost entirely of arguments which stated the contentions of the defendant as to the conclusions found by the Tribunal in its judgment. The Tribunal considered such arguments, but with these arguments the Tribunal does not agree. The Tribunal has again carefully reviewed the entire judgment and sentence, together with the two closing briefs filed by the defendant and with the entire record in the case and finds no valid reason to disturb or modify the same.

Therefore the Tribunal reiterates and reaffirms its original judgment and sentence as to the defendant Erwin Tschentscher as heretofore entered in this case.

KIEFER

On 14 July 1948 the Tribunal entered an order reading in part as follows:

"In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments on behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's brief. If, after fully considering such defense briefs, it should appear to the Tribunal that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not been proved beyond a reasonable doubt or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify, or amend the judgment now entered in accordance with the facts and the law so determined."

This order gave to the defendant the right to submit any and all further arguments that he desired to submit, based on the record in the case. The defendant elected not to submit a closing

{1192}

brief in answer to the prosecution's brief but did, on 28 July 1948, file a document with Office of the Secretary General which he termed a "statement". In the concluding paragraphs of this document the defendant stated in part as follows:

"* * * the defense must expressly decline to remedy the procedural deficiency which has thus arisen by submitting a brief in reply to the closing brief.

"The whole trial has been legally concluded and it is now the task of the Military Governor, who is alone authorized to do so, to make up for procedural shortcomings in considering the clemency plea.

"He is, therefore, awaiting the decision of the Military Governor, to whom a copy of this brief will be sent."

Thus the defendant spurns the offer of the Tribunal which allowed him the opportunity of filing a closing brief and relies upon his appeal to the Military Governor for clemency. His appeal to the Military Governor for clemency makes no contentions that the Tribunal used the prosecution's brief in preparing its judgment but, in his "statement" of 28 July 1948, this contention is made.

On 13 October 1947 an order of the Tribunal was filed with the Secretary General to the effect that trial briefs filed by the prosecution would be disregarded. However, through misunderstanding or confusion between what had been announced in open Court and the true contents of the order of 13 October 1947, some members of the Tribunal considered excerpts from some of the briefs filed by the prosecution in the preparation of the judgment as to certain defendants only.

When the question of the use of prosecution briefs was raised by defense counsel following the judgment, the Tribunal at once advised the Military Governor for the United States Zone of Occupation that the Tribunal should be reconvened to allow defense counsel every opportunity to reply to prosecution briefs and to submit additional briefs if they so desired.

Notwithstanding the fact that the defendant refuses to file a closing brief in answer to the prosecution's brief, and further, that he is relying solely upon his appeal for clemency to the Military Governor and in order to be eminently fair to this defendant, the Tribunal will again consider the pertinent questions raised in the defendant's "statement" and reconsider the judgment and sentence in the light of the record.

In the defendant's "statement" he complains of a portion of the judgment appearing on Transcript page 8133 and contends that it is not supported by any evidence in the case. This portion of the judgment is as follows:

{1193}

"In the year 1914 he completed his studies in architecture, was graduated, and soon thereafter became city architect for the city of Aachen."

This finding was taken from the affidavit of the defendant, Document NO-1922, Prosecution Ex. 11. Portions of this affidavit which are pertinent to this finding are as follows:

"Then I studied for two and one-half years at the Munich Technical Academy and proceeded Easter 1910 from Munich to the Aix-la-Chapelle [Aachen] Technical Academy where I passed my examination as an architect in 1914.

"Subsequently I was employed by the government at Aix-la-Chapelle as chief of office and leading architect for the new building for the district court and the local court at Aix-la-Chapelle."

On Transcript page 3298 of the record, when the defendant was testifying in his own behalf, he testified to the following:

"In 1914 I was graduated as an architect and a city architect in Aachen."

Therefore it may be readily seen that the statement in the brief of the defendant to the effect that the finding of the Tribunal on this point was a complete fabrication is entirely unfounded, the truth being that this conclusion and statement by the Tribunal was taken from the sworn testimony of the defendant himself.

This sort of misrepresentation causes the Tribunal to suspect the integrity and sincerity of many other statements in the briefs filed by defense counsel.

The defendant complains that the following passage which occurs on Transcript page 8134 of the judgment, is incorrect and avers that the defendant, in cross-examination, expressly cleared up this matter. This passage is as follows:

"The defendant as chief of office C II was also head of the main department in charge of general affairs of the Building Inspectorate."

In Document NO-1288, Pros. Ex. 44, doc. Book 2, page 83, the following appears:

[Page 9 of original]

"DIVISION C II

Special Construction Tasks

Chief: SS Sturmbannfuehrer Kiefer

Deputy: SS Obersturmfuehrer Funke

Bureau: SS Strm. Tautz

SS Strm. Haack

Z.A. FRL. Friedel

{1194}

Section C II z.v.B.

General affairs relating to the building inspectorate

Chief: SS Sturaf. Kiefer

Deputy: SS Ostuf. Funke"

Although the defendant, on cross-examination, denied that any duties relating to the building inspectorate constituted any part of his field of tasks, the Tribunal did not accept his denial in fact of the matters contained in the document. Therefore, it may be clearly

seen from what source the Tribunal based its finding for the foregoing excerpt from the judgment.

The remaining paragraphs of the defendant's "statement" are merely arguments as to why the Tribunal should have not reached the conclusions as found by it. He complains particularly of the finding of the Tribunal that the defendant was Kammler's deputy. The Tribunal had ample evidence to support this finding from the appointment of the defendant by Kammler as his deputy, as set out in Document NO-1244, Pros. Ex. 45. The defendant further complains of the finding of the Tribunal that the defendant prepared plans and drawings for concentration camp installations. The Tribunal had ample evidence to support such findings from Documents NO-4470, Pros. Ex. 662 and NO-4471, Pros. Ex. 663, both of which the defendant admitted having signed.

Therefore the Tribunal, having again fully considered the closing statement of the defendant, together with his statement filed on 28 July 1948, together with the judgment and the entire record, and finds no legal or valid reason to modify, vacate, or amend its original judgment and hereby reiterates and reaffirms the same, except the sentence, which will be dealt with in another portion of this opinion.

EIRENSCHMALZ

On 14 July 1948, the Tribunal issued an order entitled "Order permitting defendants to file additional briefs". Among other things this order stated the following:

"In conformity with the policy of the Tribunal to afford defense counsel every possible opportunity to present full and complete arguments in behalf of the defense, such counsel as wish to do so will now be permitted to prepare and submit briefs in reply to the prosecution's briefs. If, after fully considering such defense briefs, it should appear to the Tribunal

{1195}

that the judgment heretofore entered as to any defendant is not then supported by the evidence and that his guilt has not been proved beyond a reasonable doubt or that the sentence imposed is unjust, the Tribunal will thereupon vacate, modify or amend the judgment now entered in accordance with the facts and the law so determined.

"The Tribunal will receive and consider any briefs filed in conformity herewith provided such briefs are in the hands of the Translation Division on or before 30 July 1948."

On 29 July 1948 the defendant filed what purported to be a brief. It consisted largely of the following: motion for the Tribunal to disqualify itself on account of alleged bias, motion for a new trial and that oral proceedings be resumed, summation of errors, incorrect statements and contradictions allegedly appearing in the judgment, arguments in regard to conclusions reached by the Tribunal in its judgment, a copy of defendant's appeal for clemency to the Military Governor for the United States Zone of Occupation, a large number of affidavits, all of which were filed and dated subsequent to the rendition of the judgment, testimony taken from witnesses before a Commissioner for the United States Military Tribunal IV in Case No. 11 which were taken during the month of June 1948, approximately eight pages of alleged errors in translation in the record and one error in translation which the Tribunal corrected by order.

In his so-called brief of seventy-two pages the only reference to the closing brief of the prosecution is found on page two and states the following:

"With regard to the Tribunal's decision of 23 July 1948 I wish to give my opinion on the closing brief of the prosecution and on the judgment which thereupon was announced by the Tribunal on 3 February (November) 1947, a verdict which was given following upon the closing brief of the prosecution and in a large measure based upon it. I am restricting myself to the most important points but add the brief submitted as a clemency plea to Military Governor General Clay on 17 November 1947, and make it an integral part of my arguments."

The brief of the defendant does not attempt to nor does it in any manner reply to the prosecution's brief. Therefore it is not in conformity with the order of the Tribunal. The Tribunal, by virtue of the order of the Military Governor dated 7 June 1948, is convened for the purpose of receiving such brief in reply to the prosecution's briefs as counsel for the defense wished to file and to then "reconsider and revise its judgment as may be appropriate." The brief of the defendant does not state in what factual excerpts the brief of the prosecution is in error but it

{1196}

merely attempts to point out errors committed by the Tribunal in its judgment, together with arguments as to the reasons why the Tribunal should not have so adjudicated.

Even though the defendant has not filed his brief in conformity with the order of the Tribunal, the Tribunal will reconsider its judgment and sentence as to this defendant and make such additional adjudication as justice may demand.

The opinion of the Tribunal has ruled on the consideration to be given of affidavits and to the documents and matters attached to defense briefs which were not a part of the record when the case was concluded and it is not necessary to again discuss the point here. Therefore the Tribunal will not consider affidavits, documents and other matters attached to defense briefs which were not a part of the record of the case when it was concluded.

Defense counsel, in his brief, alleged many errors in translation. In the preparation of its judgment the Tribunal relied upon an expert corps of translators, fully qualified and experienced. The translations were furnished to the defendant's counsel each day in the German language. No objection was made at any time during the trial as to any of these alleged errors in translation.

The Tribunal will now consider the main objections stressed by the defendant in his brief.

At the beginning of page 3 of his brief he states the following:

"Other evidence discloses that while the defendant Eirenschmalz was in the Main Office, Budget and Buildings, he ordered the erection of a crematory in Dachau in the summer of 1940 (NO-2256, Pros. Ex. 541) and that at approximately the same time he ordered the construction of a crematory in Buchenwald." (NO-4400 and NO-4401, Pros. Ex. 649 and 650.)

In connection with this passage of the judgment he avers the following:

"In contradiction to this, the, Tribunal on page 98 established that at that time the defendant, was no longer in that office. It says there:

'From July 1934 until approximately the, summer [autumn] of 1939 he was in the office "Budget and Buildings". In 1939 he was transferred to the Main Department for the Building Management of the Waffen SS and to the administrations as chief of the office V/5.'

"The first line of the passage of this portion of the judgment should read as follow:

"From July 1934 until approximately the summer of 1940" instead of "1939". This error arose in the judgment from the

{1197}

defendant's own testimony (Tr. pp. 3405, 3505). The defendant was not certain from his own testimony whether he was transferred from this office in the fall of 1939 or in the spring of 1940 but from the affidavit of Hans Peter Eichele, Document NO-2756, Pros. Ex. 541, Document Book 21, page 19, the following appears:

'In the summer of 1940 the Building Management Dachau erected a crematory, the order having been issued by the Main Office for Budget and Buildings (Standartenfuehrer Eirenschmalz), the leading official for building matters at the Administration Office SS.'

The correct date is further confirmed by Documents NO-4400, Pros. Ex. 649 and NO-4401, Pros. Ex. 650, Document Book 27.

The Tribunal is mindful of the fact that it is a contention of the defendant that the witness Eichele revoked this affidavit in his presence but it is the opinion of the Tribunal notwithstanding the contention of the defendant that this affidavit is true.

The defendant, in his brief, complains of the following finding by the Tribunal:

"His chief, the defendant Pohl, recognized his success in the fields of tasks assigned to him in the WVHA and, when recommending his promotion, gave a glowing account of his achievements and his devotion to duty."

It is true that the recommendation for promotion made by his codefendant Pohl was dated in the year 1937 and that the WVHA was organized 1 February 1942 but it must be remembered that his codefendant, Pohl, was his chief for a long period of time both before and after the creation of the WVHA. Therefore his codefendant, Pohl, had a much better knowledge of his qualifications than someone who had known him only after the WVHA came into existence.

The defendant, in his brief, complains of the following finding of the Tribunal:

"Sometime between February 1942 and September 1943 he was appointed deputy chief of office group C—thus Kammler's deputy."

This finding is substantiated by the affidavit of the defendant himself and the affidavit of his chief, Pohl. Pohl states in his affidavit that Eirenschmalz was deputy chief of Amtsgruppe C from January 1943 until May 1943 (NO-2616, Pros. Ex. 528) and Eirenschmalz, in his affidavit of 29 March, states the following:

*"Kammler's deputy, as chief of division C, was for 1942 SS Obersturmbannfuehrer Buschling, and from January 1943 until 1 May 1943, I myself was the officially-nominated deputy of Kammler * * *." (NO-2613, Pros. Ex. 12, doc. book 1.)*

{1198}

Thus it may readily be seen that this finding is based upon evidence of which the defendant cannot complain.

The remaining portions of the defendant's brief which complains of the findings of the Tribunal and his arguments against such findings are concluded on page 11 and are merely recapitulations and reiterations which were made by the defendant in his closing statement. A careful review of the entire record leads the Tribunal to a contrary view of these arguments and contentions. A minute and careful examination of the entire record

in the case, together with the closing statement of the defendant and his closing brief, leaves no doubt in the minds of the Tribunal of the guilt of this defendant beyond a reasonable doubt and as adjudged by the Tribunal in its original judgment. The evidence clearly discloses that the defendant, with others, operated and maintained the gigantic enterprises which resulted in the unlawful deaths of millions of slave laborers from occupied territories, and prisoners of war, and that he was a principal in, accessory to, ordered, abetted, took a consenting part in, and was connected with plans and enterprises involving the commission of war crimes and crimes against humanity and reiterates and reaffirms its original judgment and sentence in this case.

SOMMER

On 12 July 1948 counsel for the defendant Sommer filed a tentative brief pursuant to the order of the Tribunal dated 15 June 1948. At this time counsel for the defendant did not have the German translation of the brief filed by the prosecution against the defendant Sommer. Pursuant to the order of the Tribunal dated 14 July 1948 counsel for the defendant filed a brief dated 27 July 1948. In this latter brief counsel for the defendant deals with the case in a three-fold manner; first, when he answers the brief of the prosecution as to factual matters; second, he deals with the facts and conclusions as found by the Tribunal in its judgment and third, it consists of arguments as to what the Tribunal should have found from the evidence in the case. In support of his arguments he quotes portions of judgments of other tribunals which were entered subsequent to the trial of this case, excerpts from a diary, and other matters which are not a part of the record in this case and which were never offered in evidence nor considered by the Tribunal.

In dealing with the closing brief of the prosecution, counsel for the defendant, in his brief, says as follows:

"In this connection we deal with the contents of the closing brief only insofar as the statement made by the prosecution

{1199}

cannot be recognized at once in the open but may be evaluated as creating atmosphere.

"The closing brief of the prosecution evaluates the evidence submitted in the case Sommer in a manner and a form which is anything else but objective. The statements by the prosecution are, from the beginning aimed at creating a certain impression and are often made in a tone which make it difficult to formulate the answer in an objective manner in keeping with the dignity of the Tribunal."

On page 11 of the defendant's brief counsel for the defense states the following:

"1. The judgment passed by the Military Tribunal II Nuernberg, on the defendant Karl Sommer included grave factual mistakes, most of which are taken from the closing brief of the prosecution."

In his brief of fifty pages there is no contention made by the defendant that any sentence or any paragraph of the judgment was taken from the brief of the prosecution. Neither does he quote any part of the judgment which he says was taken from the brief of the prosecution. In the preparation of its judgment as against the defendant Sommer the brief of the prosecution was not referred to nor was it used in any manner.

In his attempt to show that certain findings by the Tribunal were taken from the brief of the prosecution, counsel for the defendant enumerated certain findings as being incorrect and then attempted to answer the same by his interpretation of what should have been the correct findings of the Tribunal. An example of these statements is as follows:

"4. Incorrect is the statement of the judgment that Sommer was 'transferred' to the DEST in March 1941. Correct is Sommer 'joined' the DEST on the basis of a private employment contract as a bookkeeper in 1941.

"5. Absolutely incorrect. It is the allegation of the judgment that 'later on Mummthey managed to get Sommer employed by the office D II to collaborate with Maurer in the allocation of prisoners'. In fact, Sommer was requested by Maurer for office D II against Mummthey's wishes."

It is interesting to note that not in a single instance has counsel for the defense shown where any finding of the Tribunal was taken from the brief of the prosecution. Of course, it is true that the prosecution, in its brief, gave fully and completely its contentions as to what the evidence disclosed and its contentions as to what conclusions the Tribunal should reach but this is natural when the prosecution was dealing with the evidence in the light of the prosecution's case.

{1200}

From a careful review and consideration of the defendant's brief the Tribunal can find nothing new. It is largely the reiteration and recapitulation of his closing argument made in open Court and of which the Tribunal gave careful consideration in the preparation of its judgment.

The defendant, in his brief, complains particularly of certain conclusions in the judgment with reference to labor allocation of detainees in office D II. The brief does not quote from the judgment but states conclusions as to what the Tribunal found to be true in its judgment.

In his brief the defendant states that all of the following statements made in the judgment are factually incorrect and are in direct opposition to the result of evidence. The Tribunal will deal with each of these statements as they appear in the brief.

"6. In the description of the labor allocation of detainees in office D II the judgment states that: 'At that time the defendant Sommer had had most detailed information about the extent and type of work done by them, their living conditions, treatment, food, clothing, and quarters.' (Page 119 of the German version of the judgment; page 8151 of the English transcript)".

From an affidavit of the defendant of date of 4 October 1946 (NO-1065, Pros. Ex. SOU) he gave detailed information concerning the allocation of inmate labor from his own recollection. Approximately eleven pages of this affidavit dealt with such allocations, from which particular concentration camp inmates were taken, their numbers including male and female inmates, the kind and type of work to be performed, and to whom sent. The affidavit concluded with this statement:

"All together about 500,000 to 600,000 concentration camp inmates were furnished by the Economic Administration Main Office for the commitment of labor. (This at the end of 1944)."

It should be remembered that all of this information was the direct result of the defendant's own recollection and was sworn to and subscribed by him in this affidavit. In this connection it will be remembered that the defendant, when testifying in his own defense in regard to this affidavit, made the contention that his recollection was refreshed by the interrogator by showing him

numerous documents and other material. From his admitted numerous visits and inspections of the concentration camps and other evidence in the case, the living conditions of the inmates, their treatment, food, clothing, and quarters were well known to him. Hermann Pister, camp commander at Buchenwald, in his affidavit states the following:

"Karl Sommer—I saw him repeatedly at the commander

{1201}

conferences which took place in Berlin-Oranienburg at average intervals of 3 to 4 months. Once he was in Buchenwald concentration camp, where he had a discussion with the Chief of the Labor Allocation.

"The commander conferences which took place at intervals of 3 to 4 months opened on the first day, mostly beginning at 1500 hours, on Pohl's direction in the WVHA in Berlin, besides the commanders of the main camps, sometimes all the Amtsgruppen chiefs and the Aemter chiefs who were concerned with CC's were present. To these participants belong: Pohl, Gluecks, Tschentscher, both Loerners', Dr. Volk, the Chief Physician Dr. Lolling, Frank—the latter until his assignment as administration chief of the police only—Mummenthey, Opperbeck, Maurer, Sommer and Schmidt-Klevenow.

"The questions which were discussed at these meetings were mostly the following: labor assignment, food rations, clothing, quarters, treatment of the prisoners, nature of punishment and the carrying out of punishments, erection of new outside camps, evacuation of invalids to other camps, questions of troops and guards, particularly—since there was a considerable shortage of guards—training of female wardens and their recruiting. These meetings took place partly in the WVHA in Berlin and partly in the building of Amtsgruppe D in Oranienburg." (NO-2327, Pros. Ex. 75, doc. book 3, pp. 109, 110.)

The defendant contended that he did not attend such meetings but was there on one occasion outside. The Tribunal finds that there can be no doubt of the defendant's intimate knowledge as to all of these matters.

b. The defendant Sommer had seen some Russian prisoners of war, of whom he states that they were volunteers (p. 119 of the German version of the judgment; p. 8152 of the English transcript). This was taken directly from the testimony of the defendant and can be readily seen from the record, in which he stated that he saw a number of Russian prisoners of war in concentration camps, but he assumed that they were volunteers for labor.

c. The defendant Sommer had stated that he had personally visited every concentration camp during his activity in office D II. (P. 119 of the German version of the judgment; p. 8152 of the English transcript.) This was taken directly from the testimony of the defendant and can readily be seen from the record of his testimony. On page 3838 of the record he testified in substance that he had visited Sachsenhausen approximately fifteen times, had visited Auschwitz on two occasions (Tr. p. 3839), Buchenwald and Gustloff (Tr. p. 3841), Dachau (Tr. p. 3843), Oranienburg

{1202}

(Tr. p. 3852), Gross-Rosen (Tr. p. 3853), and many other pages of the record disclose visits to other concentration camps. He further testified that on one occasion, while visiting the protective custody camp of one of the concentration camps, he saw the prisoners and that one inmate was not receiving his diet, that he immediately called the camp doctor and told him to make sure that he would receive it. This, of itself, would tend to show authority on his part in dealing with the welfare of the inmates.

d. The defendant Sommer had testified that in course of the conversation with Gluecks, the chief of the Amtsgruppe D, and Inspector of the Concentration Camps, he had been informed of the extermination program concerning the Jews at Auschwitz and that immediately after this conference with Gluecks, Pohl had given an order to Maurer referring to this Auschwitz program. (P. 120 of the German version of the judgment; p. 8152 of the English transcript.)

In regard to this conclusion in the brief, the judgment contains the following:

"He further testified that during a conversation with Gluecks, the chief of Amtsgruppe D and Inspector of the Concentration Camps, he was informed about the program for the extermination of the Jews in Auschwitz, but that he did not participate in this program in any way, even though he was asked by Gluecks to do so. Immediately after this conversation with Gluecks, Pohl gave to Maurer an order concerning this program at Auschwitz." (P. 8152 of the English transcript of the judgment.)

On Transcript page 3765 this excerpt from the judgment is clearly shown, and after the defendant had explained this matter, he completed his testimony regarding this incident in the following words: "That is how I heard about the extermination of Jews in Auschwitz."

e. The evidence shows that the defendant Sommer of office D II had procured guards for the prisoners. This finding is substantiated by the evidence in the case.

f. The evidence shows that the defendant Sommer had drawn charts showing the wages which the DAW owed for services of concentration camp detainees and that he submitted a report to the effect that during the month of July 1944, 36,784 detainees for Lublin had been placed at the disposal of the DAW and that the DAW had been charged with RM 55,176 for the work of these laborers. In this connection the Tribunal refers to the Document NO-2523, Pros. Ex. 710 (p. 120 of the German version of the judgment; pp. 8152-8153 of the English transcript). Document NO-4181, Pros. Ex. 710, document book 30 not only confirms

{1203}

this finding by the Tribunal but additional facts in regard thereto. It further showed that between 1 July 1944 and 30 September 1944, many more detainees from Lublin concentration camp had been placed at the disposal of the DAW and a much larger sum was due for their services.

It is significant to note that this exhibit is divided into three parts and each part is signed by the defendant as follows:

"Substantially correct and checked.

"For the chief of the Amt D II.

"Acting for:

[Signed] Sommer

SS Hauptsturmfuehrer and Main Office Chief

....."

[Rank]

Thus it may also be seen from this document that the defendant was then acting as deputy and Main Department chief when signing these documents.

g. One of the affidavits made by the defendant Sommer (NO-2789, Pros. Ex. 630) shows clearly that the defendant was completely familiar with the extermination program of Auschwitz and with the illegal medical experiments which were made in some of the concentration camps. (Pp. 120-121 of the German version of the judgment; p. 8158 of the English transcript.) These findings are confirmed by Document NO-2739, Pros. Ex. 630 but the Tribunal considered this only as to knowledge of the over-all picture of concentration camps by the defendant as he was not charged with any participation in these programs. These findings are also confirmed by the testimony of the defendant when testifying in his own behalf.

h. The evidence shows beyond doubt that the defendant was familiar with the "Action Reinhardt," and that he was guilty of personal participation in this illegal and unjust action. (P. 121 of the German version of the judgment; p. 8153 of the English transcript.)

These findings are confirmed by conclusions reached by the Tribunal from the defendant's own evidence. On transcript pages 3865 and 3872 the defendant testified in detail in regard to the watch repair shop at Sachsenhausen, that this property was confiscated enemy property which was property illegally taken from Poles, Jews, and Russians. The defendant had charge of this plant which repaired this confiscated property and which was illegally taken and confiscated by "Action Reinhardt." The defendant testified further that he knew that this property was private property.

i. There is evidence which seems to prove that the defendant

{1204}

Sommer actually knew of the existence of crematories and gas chambers in the concentration camps and of the purposes they served. That portion of the judgment which this erroneous statement refers to, reads as follows:

"There is evidence in the case which tends to show that the defendant Sommer actually knew of the existence of crematories and gas chambers in the concentration camps and the purposes for which they were used."

(This finding is confirmed by the testimony of the defendant while testifying in his own behalf).

j. Office D II and the defendant Sommer played a prominent part in the perpetration of cruelties and murders in the concentration camps and the defendant was, according to penal law, responsible for such participation. (P. 122 of the German version of the judgment; p. 8154 of the English transcript).

This was a conclusion and finding made by the Tribunal from all the evidence in the case and it constitutes a part of the adjudication of the Tribunal as to the guilt of the defendant.

In this connection it is interesting to note that the authority that the defendant had in affairs of Amt D II is described by the defendant in his own testimony on transcript page 3873 of the record:

*"In 1943 Maurer appointed me his deputy. * * * someone versed in all matters pertaining to his sphere of work."*

The remaining parts of the defendant's brief which dealt with excerpts from his diary and other matters which were never offered in evidence during the trial, the Tribunal cannot now consider. They constitute no part of the case and the Tribunal is not now permitting further proof to be offered.

The defendant complains of the following excerpt from the judgment which reads as follows:

"Without attempting to pass judgment upon his guilt or innocence the Tribunal deploras the fact that Gerhard Maurer was not apprehended prior to the commencement of this case in order that his responsibility, if any, for the operation of D II could be determined."

He says that this remark seems to indicate that the Court had certain misgivings as to its verdict in the case of Sommer. This contention is entirely erroneous. The Tribunal had no misgivings as to its verdict and the guilt of the defendant Sommer, but merely deplored the fact that all persons connected with the case could not be tried at one time rather than in a number of cases.

The gist of the remaining portions of defendant's brief consists of arguments and conclusions which were contained in detail in the defendant's closing plea and which have been reiterated

{1205}

here. However, the Tribunal has again carefully considered these arguments and contentions in connection with the judgment and the entire record in the case and fails to agree with the conclusions reached by the defendant but finds and adjudges to the contrary.

After a most careful review of this case in connection with the closing brief of the defendant and the entire record, the Tribunal finds no legal or just cause to alter, amend, vacate, or modify its original judgment and sentence. Therefore the Tribunal reiterates and reaffirms the original judgment and sentence heretofore entered in its original form and substance.

POOK

The Tribunal pronounced judgment and sentence against the defendant Hermann Pook on 3 November 1947, as appears of record. The prosecution, on 29 September 1947, filed its closing brief against this defendant. On 8 October 1947 the defendant Pook filed his closing brief in answer to the closing brief of the Prosecution.

Pursuant to an order of the Tribunal dated 15 June 1948, the defendant filed a closing brief dated 12 July 1948. Pursuant to an order of the Tribunal dated 14 July 1948 the defendant filed a statement in supplement of his brief of 12 July 1948.

In the preface of his brief of 12 July 1948 counsel for the defense stated the following:

*"In the case of the defendant Dr. Pook the prosecution handed in a closing brief against this defendant, dated 29 September 1947, which was then included in the judgment, partly literally and partly in paraphrase, without the defendant having been given any opportunity to reply to it. This reply cannot and will not be made now * * *."*

On 14 November 1947 the identical defense counsel filed in the Office of the Secretary General his appeal for clemency to the Military Governor of the American Zone of Occupation. In this appeal for clemency counsel for the defendant stated the following:

"The prosecution, after the conclusion of the trial, has presented a closing brief dated 29 September 1947. I have answered it on 8 October 1947. As I must assume that the Court has no longer taken into consideration this reply of mine in its finding of the verdict, permit me to enclose a copy of it with the present application. The closing brief of 8 October 1947 is to be a component part of my present application."

The Tribunal is astounded by this false assertion made by counsel for the defense in the preface to his brief of 12 July

{1206}

1948. Such conduct on the part of defense counsel causes the Tribunal to have grave doubts and genuine suspicion as to many-other assertions made by defense counsel in his closing briefs.

The closing brief of the defendant, dated 8 October 1947, contained approximately 11½ pages, answering in minute detail every assertion of fact made by the prosecution in its closing brief. For a period of approximately 25 days prior to the rendition of its judgment and sentence the Tribunal had, for its consideration, the closing reply brief of the defendant.

In preparing its judgment the Tribunal gave careful considerations to the written closing argument of the defendant which was delivered in open Court, together with his closing brief, and failed to agree with his contentions as to what constituted facts of the case. After a careful review of the entire record and after due consideration given to the closing brief of the defendant the Tribunal found and concluded otherwise.

Therefore the Tribunal, after having again fully considered the closing brief of the defendant dated 8 October 1947, together with his brief of 12 July 1948 and his statement of 27 July 1948, with the entire record of the case, the Tribunal is of the opinion that the defendant has had a fair, just, and complete hearing of his case and now finds no just cause to vacate, modify, or amend its original judgment and sentence and hereby reiterates and reaffirms the same.

HANS BAIER

Counsel for Hans Baier begins his brief with a reference to the Court Order of 13 October 1947. On 3 October 1947, the prosecution filed a closing brief against Baier. It is evident that the prosecution did not regard the statement in open court on 15 August as a bar to filing briefs. It is evident that counsel for the defendants Pook and Klein did not regard the statement in open court on 15 August as a bar to filing briefs. It is evident that a misunderstanding occurred on the subject of filing briefs. It must be emphasized, however, that the facts in the case are not altered by briefs. To the extent that assertions in any of the prosecution briefs were accepted by the Tribunal, the assertions were based on the documents and the transcript of the record. The documents and the transcript speak for themselves regardless of the briefs. Nonetheless, with the reconvening of the Court, counsel was given every opportunity to file briefs which,

because of the Order of 13 October they felt they were not entitled to file. Counsel for Baier has availed himself of this opportunity.

The comparisons between prosecution brief and judgment have

{1207}

been discussed in the Hohberg Judgment and need not be repeated here. The Tribunal here finds that in each instance of comparison drawn by defense counsel, the conclusions reached by the Tribunal were based on the record.

In his brief, defense counsel says:

"There is no proof for the assertion that Baier's functions embraced the carrying out of the slave labor program. The individual cases cited by the Tribunal in proof thereof clearly disclose that there were either special orders given to Baier by Pohl which did not fall within the field of work of my client, or that they did not concern any activity on the part of Baier but merely his taking notice of them."

Here defense counsel is relying on the defense of superior orders, but superior orders do not constitute a defense, although they may be pleaded in mitigation of punishment. That mitigation has been considered and passed on.

It is strenuously argued by defense counsel that Baier was entirely ignorant of concentration camp atrocities. Concentration camp inmates were being used by SS industries without remuneration. In their work they were abused, maltreated, starved, and some killed, either because of ill treatment, lack of care, or through punitive companies. Much of this was done for the industries, controlled and directed by staff W. Yet it is argued that those who directed the enterprises but had no contact with the inmates are not guilty of war crimes or crimes against humanity. A machinery of misery and destruction is put into operation and yet no one seems to be responsible for the resulting physical and moral devastations except perhaps Pohl.

It is admitted by counsel that Baier knew the prisoners did not receive wages. Being prisoners he knew they were deprived of their liberty. And all this adds up to slavery. But defense counsel says that Baier was a soldier in time of war and he could not resign without risking life and liberty. But there is no evidence that he protested his work, nor is there any evidence that he tried to get out of it, or that he did it with lack of enthusiasm. He joined the Nazi Party as far back as 1933, so it must be assumed he knew of Nazi policies and that he approved of them, Thus it is too late for him now to say there was nothing for him to do. Not all the Germans in Germany are in prisoners' docks or felons' cells. The vast population is free. They stayed out of trouble, they did not commit war crimes and crimes against humanity. That possibility was open also to Baier, as it was open to all others, but he chose the fruits and the glory of National Socialism, and as a consequence he finds himself in his present position.

{1208}

Baier not only was aware that inmates were unpaid, but he knew which industries employed them. Pohl testified as follows in this connection:

"Q. As a matter of fact you told Baier, did you not, to compile a list of all of the industries in Amtsgruppe W which used concentration camp inmates for the purpose of discussing

the question as to how much the inmates should receive, or, rather, how much the industries should pay for the use of inmate labor. You did that, didn't you?

"A. Yes. We discussed that.

"Q. You talked about the use of inmate labor when you discussed that, didn't you?

"A. Yes, certainly, of course.

"Q. There is no doubt in your mind that Baier knew which of the industries used inmate labor?

"A. That he knew very well." (Tr. p. 1821.)

Baier as chief of staff W could also not fail to know of the cruel principle underlying the entire program of the utilization of concentration camp labor. Document NO-1016, Pros. Ex. 46, dated 13 July 1944, concerning W Contribution to Lectures, and addressed to SS Oberfuehrer Fanslau, contains some highly illuminating passages:

*"Office group W comprises all economic enterprises under SS control. In studying the W enterprises first of all the urgent question arises: Why does the SS engage in business? * * *"*

"The Reich Leader SS in his capacity as chief of the German Police was confronted with the task of solving problems, which the Reich as such was not able to solve, viz to get hold of all antisocial elements which no longer had a right to live within the National Socialist State, and to turn their working strength to the benefit of the whole nation. This was effected in the concentration camps. The Reich Leader SS, therefore, delegated SS Obergruppenfuehrer Pohl to set up concentration camp enterprises. In addition he gave orders to establish companies on a private economy basis for the purpose of employing the prisoners." (II/105-107.)

Defense counsel says that Baier once visited the Dachau concentration camp, but he could find nothing which would have permitted the conclusion that the detainees were treated inhumanely.

The concentration camp at Dachau was one of the most notorious in all of Germany. In fact its reputation was so well known to the German people that Dachau became a symbol for all concentration camps and the mere mention of the word "Dachau" conjured up human suffering in its most miserable forms. If

{1209}

Baier found nothing inhuman at Dachau, the next logical query-should be, what constitutes inhumanity?

Defense counsel says further:

"But he did not know at that time that arbitrariness and forcible methods were the bases of the commitments to a concentration camp. Like many other Germans, Baier was of the opinion that legal proceedings had to precede any commitment to a concentration camp. It would have been impossible for him to have exact knowledge about that because he had nothing to do with the commitment of people to a concentration camp and the only agency designated to have such authority was the Reich Security Main Office. There is no further need for dwelling on the fact that severe secrecy regulations, protected by threatened draconic punishment, threw a veil over the methods practiced by the Gestapo. The so-called whispering propaganda on the nature of the commitments to concentration camps was certainly least apt to reach members of the SS because everybody was particularly careful and reserved in expressing such views to the face of SS members."

The Tribunal must reject this line of reasoning completely. To say that of all people, the SS did not know why people were sent to concentration camps and what happened to

them, especially the SS charged with running the plants using concentration camp inmates, is to argue what is sheerly unacceptable and contrary to the facts in the case and all reasonable observation.

Defense counsel seeks to absolve his client from guilt by arguing percentages:

"The evidence has shown that out of about 50 companies of the DWB only a few used inmate workers (record pp. 5015, 5016). The evidence further revealed that in those few W concerns which used inmate labor only a small percentage—namely 5-10 percent—of the concentration camp inmates were used."

But the fact remains that concentration camp inmates were used in W industries and used in an inhuman manner, and that constitutes war crimes and crimes against humanity.

Defense counsel says:

"The fact that the W concerns belonged to the same WVHA as the concentration camp administration does not permit the conclusion that they were internationally connected because until 1942 the concentration camp administrations were not part of the WVHA at all."

But the admission that the W concerns belonged to the same WVHA as the concentration camp administration in itself reveals the tie-up between the two, at least after 1942, and the crimes enumerated in the indictment certainly go beyond 1942.

{1210}

Defense counsel says:

"The finding in the judgment that an increase in the compensation for prisoners would have benefited the SS is incorrect; it does not tally with the result of the evidence presented. The exact opposite is true. The compensation for prisoners, which had to be paid by the W enterprises, was a payment to the Reich, i.e., an expense and not a gain for the W enterprises. The compensation was paid exclusively to the Reich into a special account. The fact that 5-6 million RM were booked in this account, can therefore not be regarded as an incrimination of Baier, but can only serve to exonerate him."

It is not clear that this exonerated Baier. The W enterprises paid to the Reich, of which they were certainly a part, 5,000,000-6,000,000 Reichsmarks for the use of slave labor. The Reich had no legal rights to payment for these prisoners, it had no legal rights in the prisoners whatsoever. If A kidnaps B and then hires him out to C who knows of the kidnaping, C is certainly not free from crime because he had nothing to do with the kidnaping or did not actually receive any money from the kidnaper or the victim. It is certain, in such a case, that C would have benefited from the use of the victim, as the W enterprises certainly benefited from the use of this "cheap" labor.

With reference to the Judgment wherein the Tribunal imputes knowledge to Baier of the excessive work hours imposed on the inmates, defense counsel says:

"Just in passing, I wish to mention here—because it is characteristic of the situation as it was at that time—that SS members, civilian employees, and civilian workers in the WVHA worked 12 hours per day."

But there is an abysmal difference between working on one hand for pay and, let us suppose, for one's country too, and on the other hand slaving gratuitously and being beaten, starved, and in many instances being required to manufacture arms and equipment to be used against one's own countrymen!

The Tribunal did not convict Baier of complicity in the OSTI operation, but it did say that "his office trafficked in the ill-gotten gains from OSTI." Defense counsel says in his brief:

"It is merely established that Pohl as chairman of the supervisory board, for want of another office, gave the order to the staff W to supervise in a legal capacity the liquidation of the OSTI in order to see to it that the business was properly wound up."

Staff W cannot plead innocence and certainly not ignorance of the evil doings of OSTI, and while this is not a major element of proof against Baier, it all argues against his oft repeated

{1211}

statement that he was entirely ignorant of the illegal and criminal deeds of WVHA. It was well established at the trial that OSTI was listed under the heading staff W as one of its activities. The functioning of staff W as described in the judgment herein on Hohberg was equally as effective under Baier as it was under Hohberg who preceded Baier as chief of staff W.

Defense counsel says that Baier's participation in the Litzmannstadt affair reacts to his credit. The sad and tragic end of the Litzmannstadt operation is discussed in the case of Volk. There it will be seen how much credit either Volk or Baier is entitled to for the frightful treatment accorded the inmates of the Lodz ghetto.

Defense counsel disclaims for his client any responsibility for obtaining barracks at the Auschwitz concentration camp for prisoners being used by Getwent G.m.b.H., by saying that Pohl ordered Baier "to requisition the huts in his name" from the commander of the camp. Here again we have Pohl being advanced as the universal scapegoat and here again it must be asserted that Baier was not a mere "messenger," as suggested by defense counsel, nor was he a mere lance corporal in the SS. He held high position and rank. With them went not only objective rewards and preferential treatment but also responsibility.

That responsibility he has had to meet at this trial.

After considering the briefs and arguments submitted by defense counsel in this proceeding and reviewing the entire record, the Tribunal finds no reason to disturb the judgment rendered on 3 November as to Baier, and accordingly confirms the judgment and sentence imposed.

HANS HOHBERG

Defense counsel has gone through the forced process of comparing statements in the judgment with assertions in the prosecution's briefs, as if a paraphrase or similar clause would in itself establish innocence of his client. As a matter of fact, this enumeration only emphasizes all the more the guilt of the defendant because in each instance where the judgment has been quoted, the record reveals the emphatic and conclusive evidence of Hohberg's culpability. We will take up the various sentences in the judgment which defense counsel has quoted and then immediately thereafter quote the record in authentication and substantiation of the Tribunal's finding:

{1212}

JUDGMENT

"* * * He sought to deny that he was chief of staff W, but the defendants Volk and Baier, as well as defense witness Karoli from staff W, all confirmed his (Hohberg's) official position."

THE RECORD

Volk's testimony—

"Q. The Prosecution has submitted that Hohberg had been the first Chief of staff W, and then after him, Baier. That is page 1009 of the German transcript, is that correct?

A. That is entirely correct." (Tr. p. 5041.)

Volk's testimony—

"Herr Dr. Hohberg was an auditor and, apart from that, he also had the title Chief of staff W. That can be seen from the documents. I don't have to tell you more." (Tr. p. 5156.) Baier's testimony—

"Q. (Judge Phillips) You state at the end of page 7: 'The auditor, Dr. Hohberg, was my predecessor as chief of the staff W in the WVHA.' Is that true or false?

"A. That is true." (Tr. p. 4864.) Statement by Hans Baier—

"The auditor, Dr. Hohberg, was my predecessor as chief of staff W in WVHA." (Doc. NO-1377-I/82.) Karoli's testimony—

"Q. (Judge Phillips) Who did the defendant Baier succeed as chief of staff W?

"A. Herr Dr. Hohberg." (Tr. p. 4863.)

"The task of coordination and directing W Industries at the top level was the task of staff W, whose chief, according to the business order of SS-WVHA, had many duties."

Letter to Fanslau on SS lecture—

"According to this identity in the field of production and single economic enterprises maintained by the SS are united in the office W I-VIII. At head of these offices stands the W staff of the SS Obergruppenfuehrer Pohl regarded from the point of view of private economies the Deutsche Wirtschaftsbetriebe G.m.b.H." (Doc. NO-1016, II/108.) [All italics supplied.]

The comment of defense counsel here that "From 30 June 1943, Hohberg did no longer work but joined the army," in no way-influences the applicability of the business order of the WWWWVHA because, although promulgated 24 November 1944, it only confirmed the theretofore existing practice. In this respect, the defense witness Karoli testified:

{1213}

"He was the economic advisor to Pohl * * *."

"* * * assisted Pohl in the discharge of his duties of management * * *"

"* * * and the chiefs of the offices in department W were to report to Pohl only after conferring with the chief of staff on all financial, economic and other important matters concerning the management of the enterprises."

"The chief of staff W was to supervise the manner in which all funds and moneys furnished by or through DWB were to be used * * *"

"He was to supervise business transactions of all SS Industries * * *."

"He was to examine the purchase and sale of all plots of land."

"Actually it only confirmed the conditions which already existed in the WVHA, namely, the tasks within Amtsgruppe W were actually fixed and compiled into one report in the form of a business regulation." (Tr. p. 4673.)

"The Chief W is the economic advisor of the chief of the Main Office." (Pohl) (Doc. NO-3170, XXIV/53.)

"* * * in addition he assists the Chief of the Main Office (Pohl) in the discharge of his duties of management." (Doc. NO-3170, XXIV/53.)

"The office chiefs (there were 8) have the right to report directly to the Chief of the Main Office. It is their duty to report orally to the Chief of the Main Office on all financial, economic and other matters which are of importance as far as managing the enterprises and concerns is concerned: This is to be done after consultation with the chief W." (Doc. NO-3170, XXIV/54.)

"The following duties have been turned over to the chief W * * *. Supervision of the manner in which all funds and monies furnished by or through the DWB to the enterprises, are used." (Doc. NO-3170, XXIV/53.)

"In this respect he is especially charged with the supervision and with giving economic and financial advice to the enterprises and offices." (Doc. NO-3070, XXIV/53.) See also transcript, page 4531: Hohberg's testimony:

"Q. * * * You supervised the economic enterprises from the point of view of finance, organization and legality?"

"A. That is correct."

"The following legal transactions are subject to examination by the chief W—
* * *

1. Purchase, sale, Mortgaging of Plots or rights to such plots." (Doc. NO-3170, XXIV/53.)

{1214}

"* * * and he employed and discharged all employees in staff W."

"Hiring and firing of employees (except Prokuristen) with a monthly salary of 600 RM and above." (Doc. NO-3170, XXIX/53.)

"In his testimony Pohl declared that staff W was the instrument which he used as the sole business manager of DWB in the supervision of the economic enterprises."

Pohl's testimony—

"The Staff W was the instrument which I used as the sole business manager of the DWB when I supervised these enterprises." (Tr. p. 1546.)

"All W Industries obviously were an essential part of the concentration camp system."

"Office Group W comprises all economic enterprises under SS control. In studying the W enterprises first of all the question arises: Why does the SS engage in business? * * *"

"The Reich Leader SS, therefore, delegated SS Obergruppenfuehrer Pohl, to set up concentration camp enterprises. In addition he gave orders to establish companies on a private economy basis for the purpose of employing the prisoners." (Doc. NO-1016, II/107.)

"Himmler, in his Metz speech, declared: 'We cannot exist without the business enterprises.'"

From Himmler's address to officers of the SS Leibstandarte 'Adolf Hitler' on the 'Day of Metz' (Presentation of historical Nazi flag.) (Doc. 1918-PS, XXVI/18):

"We cannot exist without the business enterprises."

"* * *. In fact on the stand he described himself as the godfather of DWB."

Hohberg's testimony—

"That was the foundation period of DWB. But when he had Prokuristen I had, of course, to resign, and legally, I, so to speak was the godfather of this baby, and then I withdrew." (Tr. p. 4564.)

"Karoli testified that Hohberg was the expert and economic brain of the enterprises."

Karoli's testimony—

"A. To put it very briefly, I reached that conclusion because, as soon as Dr. Hohberg left, the expert and the economic brain disappeared from staff W." (Tr. p. 4731.)

"When the workshops in the Dachau concentration camp were organized and incorporated into DAW, it was Hohberg who handled the financial aspects of the transaction and advised Pohl as to what steps should be

Hohberg's letter to Pohl, dated 3 September 1940.

"Berlin, 3 [18] September 1940 St. W.Ho/Ha.

taken."

"To SS Gruppenfuehrer Pohl, Here.

"By your letter of 31/1/40 addressed to Standartenfuehrer Dr.

{1215}

Salpeter you have given instructions for the transfer of the Economic Enterprises Dachau to the German Equipment Works (Deutsche Ausruestungswerke) on the basis of the former's balance sheet of 31 December 1939.

"SS Sturmbannfuehrer Maurer, [Amt D II], guarantees the assets on the balance sheet of the Economic Enterprises not to be overestimated and all liabilities to be included in the balance sheet. Checking of the assets is therefore not necessary, since they will be examined anyhow in the course of the review of the German Equipment Works due on 31/12/40.

[Signed] Hohberg"

"Testifying on the matter of the remuneration for the use of concentration camp inmates, Hohberg stated: 'I saw the amount of daily wages paid for the inmates and as an auditor I had to give my opinion on what these enterprises should pay to the Reich'."

Hohberg's testimony—

"I saw the amount of daily wages paid to the inmates, and as an auditor I had to give my opinion on what these enterprises should pay to the Reich." (Tr. p. 4373.)

"Through Hohberg's efforts, the German Lebensmittel, the Textile and Leather Company, and the Osti—all using inmate labor—were given the form of a company."

Hohberg's testimony—

"* * *. After all, these plants had already been in existence before and later, upon my suggestion, they only received the form and the title of a company. I mention these enterprises as the German Lebensmittel G.m.b.H., the Textile and Leather Evaluation G.m.b.H. or Deutsche Textil- und Lederverwertung G.m.b.H., and in the last month of my activities it was the OSTI." (Tr. pp. 4261-2.)

"He was frequently consulted when these enterprises were being founded."

Hohberg's testimony—

"Q. Were you called in any capacity, as a consultant, for instance when these enterprises were being formed?

A. Not always, but quite frequently." (Tr. p. 4354.)

"The commanders of the concentration camps functioned under Pohl's direction as Works

Order of Pohl to chief department

Managers of the various economic enterprises." D—30 April 1942:

"The management of a concentration camp and of all the economic

{1216}

*enterprises of the SS within its sphere of organization is in the hands of the camp commander. He alone is therefore responsible that the economic enterprises are as productive as possible * * *. He needs a clear professional knowledge of matters military and economic. (Doc. R-129, II/68.)*

That concentration camp commanders functioned as works directors is established (among other evidence) by Document NO-2160, III/116:

*"I herewith announce, that effective 31 August 1942 SS Oberfuehrer Loritz will leave his duties as commander of the concentration camp Sachsenhausen * * *. SS Obersturmbannfuehrer Kaindl will take his place effective 1 November 1942 * * *. Please transfer to the account known there (and) for SS Obersturmfuehrer Kaindl as the works director the living cost allowance in question for the concentration camp Sachsenhausen."*

"When the matter of transferring armament production to concentration camps was discussed, Hohberg accepted appointment as expert for the WVHA. People desiring to know the details of the transfer of armament enterprises to Neuengamme, Auschwitz, Lublin and Ravensbrueck, were referred to Hohberg as being the person in WVHA competent to conduct negotiations."

Letter from Kammler—Subject: Armament Plants for Concentration Camps.

"2. Staatsrat Dr. Schieber especially welcomed the standpoint of the chief of the main office to transfer suitable armament orders to the existing concentration camps. For this purpose Staatsrat Dr. Schieber will conduct final negotiations with the Army Ordnance Office, etc. during the next few days, in regards to orders for the following concentration camps:

a Hamburg-Neuengamme

b Auschwitz (production of parts for anti-tank guns envisaged)

c Lublin

d Ravensbrueck—Manufacture of armaments for the air-force—Dr. Schieber will exercise the pressure necessary to push on the construction measures required for this purpose.

{1217}

In regard to these negotiations I referred to Dr. Hohberg, as being competent within the Economic Administrative Main Office. Staatsrat Dr. Schieber will then discuss the draft with Dr. Hohberg.

The Chief of Amtsgruppe C

[Signed] Kammler."

(Doc. NO-1215, book 3.)

"When the Hermann Goering Works wanted inmate labor, Hohberg attended the conference which considered the ways and means of supplying these inmates. The memoranda written by Hohberg reveal an intimate knowledge of concentration camp labor problems."

Reference to Document NO-1914, XIV/65 and Document NO-1916, XIV/69 being memoranda written by Hohberg will conclusively demonstrate Hohberg's intimate knowledge of concentration camp labor problems. Only one paragraph will be quoted:

"Unless the Reich Leader SS desires to assist the Hermann Goering Works with prisoners out of personal or economic reasons, our participation in the form provided has not much point from the financial angle except if the Hermann Goering Works should agree to hand over part of the turnover to the 'Lebensborn' or some other office of the Reichsfuehrer."

The documentation in this operation reveals the important part played by Hohberg therein. Volk wrote:

"Concerning the establishment of the slag-utilization plant of the Hermann Goering Works at Linz, SS Obergruppenfuehrer Pohl has given instructions that Dr. Hohberg shall handle the transactions (translated also 'hold the pen'). I therefore request all offices in the building to keep in touch with Dr. Hohberg, since he alone is to keep the Obergruppenfuehrer informed by memo." (Doc. NO-1915, XIV/68.)

"Hohberg himself testified that he handled the financial, organizational, and legal problems of the Economic Enterprises."

Hohberg testimony:

*"Q. (By the President) * * *. You supervised the economic enterprises from the point of view of finance organization and legality?*

A. Yes. That is correct." (Tr. p. 4531.)

{1218}

"Hohberg testified that he left the WVHA because of his disapproval of its activities."

"The defendant never made any secret of his hostile attitude to the SS." (Final plea

Hohberg, p. 27)

"Hohberg, from the introduction of the National Socialist way of thinking, was an uncompromising enemy of National Socialism and its ideology and never changed his opinion." (p. 28) "Since his Lublin trip, Hohberg pressed for his release." (p. 56) "His decided stand against the SS system and the National Socialist regime expressed itself through manifold revolutionary propaganda." (p. 60) "Hohberg also planned to remain active later on as advisor of the DWB Concern, but not as an advisor of an SS Concern, but of a Reich Concern from which the influence of the SS or the WVHA was entirely excluded" (p. 62). Hohberg's testimony: "By the middle of 1942, roughly, on the basis of an arrangement with my friend, Dr. May, I turned away from the ideology of the WVHA entirely and we also hoped to have the political power of the DWB concern transferred somewhere else which is what I wanted to express here." (Tr. p. 4320.)

"But even after leaving, he accepted a Hohberg's testimony—
contract from Pohl by which his family
received 2,000 RM per month."

"Q. * * *. How much did your family get monthly?

A. Nineteen hundred and sixty-six marks.

Q. In other words, roughly, 2,000 marks?

A. Yes." (Tr. p. 4431.)

"In 1944, after having left the WVHA, he Hohberg's testimony—
carried out successful negotiations with Pohl
and obtained the cooperation of the SS
enterprises in the production of jet-propelled
planes."

"Q. Wasn't it you who, in 1944, suggested to Pohl to incorporate the SS enterprises into the Fighter Program?

A. Yes." (Tr. p. 4435.)

"I went in to see Pohl and I asked him to incorporate his enterprises into the jet-propelled fighter plane * * *. We got a deal through with Himmler, that Pohl actually had to

{1219}

join this program which was the Me-162, the jet-propelled plane." (Tr. p. 4435.)

"Staff W played an important part in 'Action Hohberg's testimony—
Reinhardt', in the supervision of Osti, and in

"Q. Was the Osti part of staff W? A. Yes. It

handling loans from the Reinhardt funds."

was. Herr Pohl ordered that the Osti be incorporated into staff W on the organizational chart, because according to branches there was no possibility open to incorporate that company in some other box of the organizational chart. (Tr. p. 4390.)

Document NO-1039, book 14, pages 31-33.

"17. Reinhardt Funds:

The contract between the Reich and the DWB concerning the loan from the Reinhardt funds must be drawn up in writing.

[Signed] Hohberg

8 August 43"

Document NO-1039, book 14, pages 23-24.

"To the Reich Leader SS 'T' Ostindustrie G.m.b.H. Lublin (abbreviated: OSTI (Eastern industrial Limited Lublin).) Newly founded Company for the exploitation of the balance of Jewish property and of Jewish labor in the government general."

Document NO-1015, book 16, page 93.

"To the Deutsche Wirtschaftsbetriebe G.m.b.H. Attention: Dr. Hohberg, Berlin W 35, Potsdamer Str. 95.

"As a result of consultation with IVa of the chief of the SS and Police Leader for the district Lublin, SS Sturmbannfuehrer Wippert, a total of Zl. 1,200,000—has been made available to us up to date. We are now asked to assign the available funds to the Economic and Administration Main Office, in care of SS Hauptsturmfuehrer Melmer, in favor of the 'Reinhardt' scheme. On the strength of the consultation, we had the impression that these credits would be available to us until at least 1 October of the current year

{1220}

in order that from the capital which has meanwhile accrued, and in connection with the impending increase of capital, we may possess the capital without having to fall back on bank credits. We now ask that negotiations should be made with SS Hauptsturmfuehrer Melmer to see if the funds made available to us so far can be left at our disposal until 1 October of this

year, and that in addition to this, we may obtain credits for RM 3,200,000 on which we could draw any time through the garrison administration in Lublin."

"Osti is listed as part of staff W on the chart Pohl's testimony— of WVHA which was assigned by Pohl."

*"Q. * * *. You also included Eastern Industries Ltd. in your chart which you looked at this morning, and said it was correct. That was included under staff W, wasn't it on the chart, do you recall that?"*

A. Yes, of course." (Tr. p. 1846.)

In his brief, defense counsel refers to the business order for economic enterprises of the SS, and states that it cannot apply to Hohberg because Hohberg had already left when this order was promulgated, but, as previously stated, Karoli testified that this order only confirmed an already existent procedure. The Tribunal accepts Karoli's testimony as trustworthy.

The statement by counsel that staff W was merely a title and not an official office without employees runs counter to all evidence in the case. Document after document refers to staff W, and Karoli himself was an employee of staff W. (Tr. p. 4658)

In laboring his argument that Hohberg was not chief of staff W, defense counsel seeks to minimize statements made to that effect by the codefendants Baier, Volk, Pohl, and the defense witness Karoli, but no reason has been advanced as to why these persons would want to perjure themselves on this point.

Defense counsel says that Hohberg never once saw the inside of a concentration camp. Hohberg was asked: "Q. Did you know anything about labor conditions in the enterprises which employed inmates?"

And he replied: "A. Yes. I visited several of those enterprises where inmates were working because I was under legal obligation to do so." (Tr. p. 4345)

{1221}

The term concentration camp in its broad sense includes not only the place where the inmates sleep but the immediate curtilage as well. Most of the atrocities associated with concentration camps occurred in the plants and industries operated by the concentration camps.

Max Wolf who testified for the defendant declared:

"I saw an industrial concentration camp, which was the mechanical workshop at Neubrandenburg. There the whole industrial enterprise was built up in the shape of a concentration camp, where even the engineers had to work who were members of my organization." (Tr. p. 4623)

As indicated earlier in this opinion, the concentration camp commanders were responsible for all economic enterprises within their sphere of organization. (Doc. R-129)

It is futile for Hohberg to plead innocence of concentration camps. He visited Auschwitz and spoke to the commander there, the infamous Hoess, although Hohberg did state that the visit occurred in the commander's office.

The witness Wolf verified Hohberg's knowledge of conditions in concentration camps:

"Q. Is it true, witness, that in 1942 Hohberg told you about atrocities that were being committed in concentration camps?"

"A. Yes. I said so; he reported that to me."

"Q. What was the earliest date that he told you about these things? Was it as early as 1941?"

"A. Yes." (Tr. p. 4629)

In his pretrial affidavit, Hohberg said:

"As long ago as 1942 it was clear to me that prisoners were employed for the economic concerns. Dr. May, the manager of the 'German Equipment Works' (Deutsche Ausruestungswerke) asked me to have a look at his concern, and in the course of doing so, I inspected the works in Lvov, Lublin, and Auschwitz. On this occasion I saw, among other things, how 5,000 women marched barefooted to their work, and this gave me a true picture of existing conditions." (Doc. NO-1294, l/83.)

He knew as early as 1940 or as early as 1941 that DEST was using inmate labor.

"Q. When did you first learn that the DEST was using inmate labor?"

"A. I heard that at a very early time, either at the end of 1940, or early in the course of the auditing 1941. At that time, I paid a brief visit to the DEST at Oranienburg and I walked through the plants there." (Tr. p. 4478)

Hohberg knew that concentration camp inmates were not paid for their work:

{1222}

"The President: Well, the Reich, we'll say, had 5,000 human machines, just as it might have had 5,000 motors and it said to the factories, 'We'll rent those human machines to you for so many Reichsmarks per day.'

The Witness: Yes. That is the way it was.

The President: Just as they could have rented 5,000 motors for so many Reichsmarks per month.

The Witness: Yes, quite so; exactly the same thing.

The President: The 5,000 human machines just got food and shelter.

The Witness: Yes.

The President: And nothing more.

The Witness: No, nothing at all."

Hohberg offered a rather grim reason for the impracticability of paying and cumulating wages:

"However, the problem is entirely different even if it had been the way you say it was, namely, that the inmate was to be paid a daily wage and the pay had accumulated. Then what use is it to the inmate if he dies later, or if he is gassed or something similar?" (Tr. p. 4371)

In reviewing the entire record in the Hohberg case, it becomes evident that in comparison with the sentences imposed on other defendants Hohberg fared well. The fact that he was not a member of the SS weighed in his favor, and the fact that once he left the WVHA he lent some aid and comfort to the anti-Nazi movements also contributed to the light sentence which he received.

On the basis of his activities in WVHA he could well have received a much severer punishment. He not only was aware of the abuse of concentration camp inmates but through his intense energies and zealous concern for the economic enterprises he materially contributed to their exploitation and oppression.

He proudly testified on the witness stand that he had saved the economic enterprises 10 million marks through the advice he had given them. It does not appear that this advice anywhere along the line included any plea for better food and treatment for the inmates.

Hohberg knew that in the infamous OSTI operation Jews were killed:

*"A. * * *. I have seen from the documents that actually the position was that utilization of the Osti later on, when the Jewish inmates had been taken away, became quite impossible; and these Jews were killed apparently at Himmler's orders; but their killing cannot have been the primary intention because otherwise there would have been no point in establishing these enterprises.*

{1223}

"Q. Let me ask you this, at the time that you participated in this conference about OSTI, did you already know at that time that Jews were being gassed in Auschwitz?"

"A. Yes." (Tr. p. 4518)

He knew that the taking of the Jewish property in the "Reinhardt Operation" was outright spoliation and plundering:

*"Q. * * * was payment made to those owners for the factories and the machinery which were confiscated by the Reich?"*

"A. No. I am sure of that. I can guarantee you that now. No. They did not get that. Let's assume, for instance, it was mainly Jewish property; they did not even get a nickel for that." (Tr. p. 4396)

He knew about OSTI from the beginning:

"Q. Did you know at that time anything further about the OSTI?"

"A. Yes. I knew about the principal and fundamental plans by the first conference which took place in January. During it the three following fundamental points of view were decisive." (Tr. p. 4391)

Hohberg's tie with the WVHA was only a contractual one, so that when he learned of the gross crimes being committed by that organization it was within his privilege to depart. He chose, however, to remain, calculating, undoubtedly, that it was to his advantage to remain. He entered the organization in the first place in order to avoid military service.

His witness Max Wolf testified:

"I believe there were three motives which I would like to stress. First of all he was interested in his job, then he had the wish to become more independent and, finally, thirdly, he had the possibility here to be able to dodge the draft." (Tr. p. 4599)

Hohberg devoted himself with as much energy to his tasks in staff W that when he left, the office lost much of its importance. Karoli testified:

" * *. In my opinion, therefore, staff W, as a result of the departure of Dr. Hohberg, had lost a considerable part of its importance." (Tr. p. 4710)*

It is obvious from all this that Hohberg enjoyed his work with the WVHA. He was proud of the important part he played in the economic enterprises of WVHA, even though this included, through slave labor, the degradation of human beings. His was no insignificant auditor's position. He was an advisor, instigator, planner, and organizer, and he did his

job with such verve and ability that when he left, the office he had held diminished in authority and force. He did his job so well that his family was

{1224}

awarded a pension of 2,000 marks a month. He did his job so well that even after he had left he was called back for consultation. He worked well with Oswald Pohl, the primary criminal of WVHA and concentration camp administration.

Karoli testified:

"I think the fact that Hohberg was an expert—and was regarded as such—made him, in Pohl's eyes and those of the other office chiefs, indubitably more important when he was consulted in matters of general economic importance to give his opinion." (Tr. p. 4753)

Hohberg may have later repented for the dynamic part he played in the operation of a machine which crushed human beings spiritually and physically, and the Tribunal has given him generous 'credit for such reformation, but nothing can wipe out the history of his complicity in the nefarious WVHA which operated a human factory of misery, known as the concentration camps.

After a thorough review of all the evidence in the case, the Tribunal finds that the original judgment and sentence should be confirmed and it is hereby confirmed.

LEO VOLK

Dr. Klinnert in his able brief of fifty pages in behalf of his client Leo Volk covers many subjects, but practically they are all related to his main argument, namely, that Volk is not guilty of crime because he was only a soldier doing his duty and that the guilty ones, if there is guilt, were the superiors who issued orders to him. Since, in every military, or civil organization either for that matter, everyone has a superior except the man at the very peak of the pyramid, Dr. Klinnert's argument, if carried to its logical extreme, would acquit everyone in the Nazi State but Hitler and possibly Himmler. But it is obvious that Hitler and Himmler could never have achieved alone the great destruction they inspired unless they had many coadjutors, helpers, and executants. Control Council Law No. 10, under which this Tribunal operates, specifically states that superior orders are no defense although they may be pleaded in mitigation of punishment.

Leo Volk may have been in himself a rather unimportant figure, so far as the Nazi supreme hierarchy is concerned, but the evidence establishes that he was an essential, integral member of the organization which accomplished crimes, atrocities, and inhumanities unparalleled in the history of the human race. The crime of the concentration camps of the Third Reich is a

{1225}

crime the whole world knows. This judgment does not suggest that Leo Volk actively participated in the beatings and other ill treatment practiced on the concentration camp inmates, but it does declare, as it did in the original judgment, that he was a vital figure in one branch of the WVHA responsible for the concentration camps of Germany and occupied countries.

Defense counsel very properly says: "The concentration camp policy was a violation of the principles of Christianity." From this statement he argues that Volk could not have participated in furthering the concentration camp policy because Dr. Volk came from a strictly Catholic family. The fact remains, however, that Volk joined the National Socialist party as early as 1933 and never left it, even after its anti-religious program became evident to everyone. That Volk is a kindly person at heart, as counsel points out, is not disputed. Nonetheless he remained part of a system which enslaved, tortured, and killed masses of population in the concentration camps he helped to administer. The fact that the Inspectorate of the Concentration Camps did not come within the framework of the WVHA until April 1942, does not change the fact that concentration camp inmates were used in the SS industries. On 30 April 1942, Pohl said:

"The mobilization of all prisoners who are fit for work, for purposes of the war now, and for purposes of construction in the forthcoming peace, come to the foreground more and more. From this knowledge some necessary measures result with the aim to transform the concentration camps into organizations more suitable for the economic task, whilst they were formerly merely politically interested." (II/67, Doc. R-129.)

Dr. Klinnert says:

"1. Some of the industrial enterprises of the branch companies of the DWB, i.e., the DEST G.m.b.H., and the DAW, employed concentration camp prisoners in their plants at a time when the Inspectorate of the Concentration Camps did not yet belong to the WVHA and Pohl was not in charge of the supervision."

This only emphasizes the policy of the industrial enterprises to exploit concentration camp labor regardless of the method of administration. Defense counsel says further that only a very small part of the more than 50 branch companies of the DWB employed concentration camp prisoners during the war. They did, however, use them and Volk was aware of that use. Dr. Klinnert says that Volk had no knowledge of the circumstances which made labor allocation of concentration camp inmates criminal. In this respect Dr. Klinnert falls into the same error committed by his predecessor who, in his trial brief for Volk, said:

{1226}

"It is therefore very doubtful whether the mere use of prisoners for unpaid work alone is sufficient to comply with the definition of the crime of enforcing so-called slave labor."

Here we repeat what was said in the original judgment, following the above observation:

"But, if forcibly depriving a man of his liberty and then compelling him to work against his will without remuneration does not constitute slave labor, then the term has no meaning whatsoever."

Defense counsel states the judgment declared that Volk had visited the Flossenbuerg concentration camp. The judgment did not so state. The episode of the visit to Flossenbuerg is described in the Mummenthay supplementary judgment and need not be repeated here.

Dr. Klinnert denies that Volk knew that "internees of the concentration camps included prisoners of war." Document NO-1292 speaks of the "employment of an increased number of prisoners, prisoners of war and Jews," and not "prisoners of war and internees", as counsel says in his further brief:

"The fact that prisoners of war and internees are mentioned separately, clearly shows that these prisoners of war were in PW camps and not in concentration camps, because otherwise they, too, would have been internees and there would have been no need to name them separately."

But here he overlooks the word "Jew". Using his reasoning, there would be no object in mentioning "Jews" either because they also would have fallen within the larger category of "internees". Nor is his argument convincing that it was not proved that Volk knew of this document, even though the accompanying letter bore the receiving stamp with Volk's initials. One signs one's initials for a purpose and the only purpose here would be to show that Volk had noted the contents of the document.

Defense counsel also says:

"According to the verdict the tribunal has seen a significant feature of evidence with regard to slave labor in the fact that the internees were not paid for their work. This was not known to Dr. Volk either. This knowledge has not been asserted in the verdict."

Since the nonpayment of concentration camp inmates was a fact established in the general opinion, it was not necessary to mention it specifically in Volk's judgment. Since it was proved in this case that the defendant participated in the exploitation of concentration camp labor, that finding necessarily included the finding that he knew the inmates were not paid, for this constituted an integral part of the charge of slave labor.

{1227}

It has been argued that Volk could have assumed that internees were paid but as a legal expert for DWB it would have been impossible for him to have accomplished his tasks over a period of years without knowing the facts in connection with so important an item as the matter of financial expenditure for wages, if there were any.

Defense counsel says:

"As has been stated in the verdict, it must also have been established that Dr. Volk consented to the exploitation of the internees, that he—in the words of the verdict—supported the system of exploitation of the concentration camp internees and the concentration camp policy."

The judgment found that Volk supported the concentration camp policy. It is no excuse to say that Volk was working for the holding company and did not employ any internees when it is known that the subsidiary companies, without which the holding company could not exist, employed concentration camp labor.

Dr. Klinnert says that Volk was never deputy chief of staff W, but in this connection reference is made to Document NO-3831. Under the heading, "Specification of the fields of work," this item appears: "Work domain of the deputy chief W, SS Hauptsturmfuehrer Dr. Volk: deputy for the chief W."

Defense counsel attacks the validity of this document but his predecessor, in making his final argument to Court, practically admitted that Volk was deputy, for, in arguing that Volk was not the chief of staff W, he said: "From the wording of the document, too (another document) it follows that Dr. Volk was only a deputy." (P. 37, final plea.)

It is to be observed also that during the absence of Hohberg, Volk, for one month, functioned as chief of staff W.

It is not correct, as defense counsel says, that Volk had no influence over the business management of the holding company since he handled only legal affairs. (Further brief 14.) Paragraph 2 of Volk's contract with the DWB read: "It is Herr Dr. Volk's deputy to manage the business transactions of the DWB (German Economic Enterprises) with the care as befits a proper business man."

This document also negates the argument that Volk's job was a compulsory military one, leaving him no choice. Paragraph 7 of the contract stated:

"Herr Dr. Volk has the right after accepting a public position, to terminate the contract by giving 3 months notice in agreement with the chief manager of the DWB (German Economic Enterprises). The DWB (German Economic Enterprises) has the right to impose a fine, censure, or compensation up to

{1228}

the amount of half a month's salary if Herr Dr. Volk contravenes the above-mentioned regulations. Herr Dr. Volk is not entitled to make a complaint in court."

Defense counsel states that if Dr. Volk "has shown full understanding of the nature of the SS enterprises, this in no (way) proves committance of a criminal act." But cognizance of the criminality of an operation and a continued participation in the administration of that operation brings the administrator within the scope of an illegal act. Otherwise it would mean that the man who plans a fraudulent bond transaction would be excused from responsibility simply because he did not actually deliver the false certificates.

The judgment did not say, as defense counsel declares, that Volk held a leading position in a subsidiary firm, but it did say that Volk was syndicus of the Portland Cement Company. Defense counsel denies that Volk was appointed syndicus as the judgment states. In this connection reference is made to Document NO-3909 which states:

"Poznan, 18 February 1943

"For the completion of your files I report that as of 29 October 1942 the following have been appointed:

"1. Members of the Aufsichtsrat.

Ministerialdirektor Oswald Pohl, Berlin to be chairman of the Aufsichtsrat.

"Diplom-Kaufmann Georg Loerner, Berlin to be deputy chairman.

"Diplom-Ingenieur Dr. Hans Kammler, Berlin.

"Syndikus Dr. Leo Volk, Berlin."

Defense counsel makes a point of the fact that "Volk had no control over the internees." It was not claimed by the prosecution, nor found by the judgment, that Volk directly controlled internees. If this had been established, Volk's sentence would have been far severer because in that event he would have been directly charged with the inhuman treatment accorded the internees. The extent of his participation in the inhuman treatment accorded internees was a "consenting part," as defined in Control Council Law No. 10.

Defense counsel denies for his client all responsibility for internee employment by saying that his duties necessitated his "almost continuous presence in the Konzern's

offices in Berlin." But the evidence reveals, and defense counsel even refers to the fact, that Volk made various trips into the field in connection with his work.

That the Inspectorate of the Concentration Camps was not part of the WVHA until January 1942, is of no great consequence in

{1229}

determining Volk's guilt. It was part of WVHA for over three years while Volk functioned in the WVHA set-up. It is also obvious that there was an active cooperation between the Inspectorate and the SS Industries prior to the amalgamation in January 1942.

The constant assertion that Volk had nothing to do with concentration camps is refuted many times in the evidence. The very document which defense counsel quotes in this respect shows the contrary. In Dr. Volk's memorandum of 12 January 1942 (quoted by defense counsel, p. 24), this passage appears:

"With the funds invested in the concentration camp, the Vistula SS administrative district intends to finance the settlement which is to be set up for SS men, thus requiring the major portion of the money which has been used for the erection of the KZ [concentration camp]."

The judgment made reference to Volk's visit to Lodz with regard to considering whether the ghettos there should be converted into a concentration camp, thus showing Volk's familiarity with concentration camp matters. The concentration camp project did not materialize and from this defense counsel draws the following conclusion:

"These statements in themselves prove that Dr. Volk could not have supported the KZ policy. By his attitude he only opposed such a policy, with all his power. What else could Dr. Volk have done to demonstrate more clearly his opposition to the KZ policy?"

But it was not because of Volk's opposition to a concentration camp policy that the Lodz project was abandoned. The reason was a grimmer and more tragic one. It was decided, as the result of the conference, that the concentration camp project would not be a profitable one. Document NO-519 states that the population of Lodz in 1944 was 80,062 Jews, of which 5,363 were children. The reductions by death were 500 per month or 6,000 per year. In Gauleiter Greiser's report of 9 February 1944, the following significant items appear:

"a. The personnel of the ghetto will be reduced to a minimum and retain only the number of Jews essential to the interest of the armaments industry.

"b. The ghetto therefore remains a Gau ghetto of the Reich Gau Wartheland.

"c. The reduction will be carried through by the special SS detachment (Sonderkommando) of the SS Hauptsturmfuehrer Botmann which already had prior activities in the Gau. The Reich Leader will give orders to withdraw SS Hauptsturmfuehrer Botmann and his special command from his mission

{1230}

in Croatia and again place him at the disposal of Gau Wartheland.

"d. The disposal and valuation of the contents of the ghetto remains in the hands of the Reich Gau Wartheland.

"e. After removal of all Jews from the ghetto and following the dissolution of it, the entire grounds of the ghetto are to go to the town of Lodz." [Italics supplied.]

Volk would have the world believe that he knew nothing about concentration camps. On 12 January 1942, he wrote a memorandum on the Stutthof concentration camp project. The memo contained the following paragraph:

"The Deutsche Wirtschaftsbetriebe G.m.b.H. get from the forestry administration the ground which is necessary for building the concentration camp. The square meter for this, according to the preliminary negotiations, shall cost 0.15 RM. As soon as the Deutsche Wirtschaftsbetriebe has obtained the ground they sell the entire concentration camp—insofar as it is built by this time—to the Reich at the estimated price."

No intelligent person could fail to know in 1942 that concentration camps under the Reich were places where people were not only denied their liberty but subjected to cruel and degrading treatment, perilous to health, limb, and life.

Defense counsel argues that Volk contracted with the DWB for his services because otherwise he would have had to do military service. But when it became evident to him that DWB was engaged in a criminal enterprise, he could at any time have denounced his contract and entered the military service. He cannot absolve himself from criminal responsibility by complaining that if he had not taken the civilian work he would have had to join the colors. Many of his countrymen were themselves being called to the military service. In time of war no one's life is a bed of roses, but one can at least keep one's conscience clean and avoid the stigma of war crime by declining to participate in obvious crimes against humanity.

Defense counsel argues:

"If he had been an important man in Amtsgruppe W, as the reasoning of the judgment tries to show, he would necessarily have had a military service grade which would have enabled him to issue instructions to the individual office chiefs."

In the first place, the grade of army captain is not an insignificant one, and in the second place, Volk's crime does not arise out of his having given orders to any one, but consists of his voluntary participation in a criminal project.

It is denied that Volk had anything to do with the OSTI enterprise or the Action Reinhardt. The judgment does not convict

{1231}

Volk of active participation in either of these nefarious enterprises, but it does declare Volk's knowledge of the nature of these transactions, all of which goes to negate Volk's contention throughout the trial that he was entirely innocent of the criminal ventures in which WVHA was constantly engaged.

On 30 July 1948 defense counsel filed a brief in addition to the one which has just been discussed. This additional brief argues the matter of the Court's declaration of 15 August and the Court order of 13 October regarding trial briefs. One of the reasons why the Tribunal reconvened was to give defense counsel an opportunity to file reply briefs to the prosecution briefs. Defense counsel has pointed out that the prosecution trial brief declared that the task of coordinating and directing W industries at the top level was the task of staff W and that the judgment came to the same conclusion. The similarity of language between the prosecution brief and the judgment in this respect is of no consequence so far as guilt is concerned as the conclusion reached by the Tribunal is based on the evidence in the case, and which fact defense counsel does not deny. This

statement was taken by the Tribunal not from the prosecution brief but from one of the documents in the case.

"According to this identity in the field of production, the single economic enterprises maintained by the SS are united in the offices W I-VIII. At head of these offices stands the W staff of the SS Obergruppenfuehrer Pohl regarded from the point of view of private economies the Deutsche Wirtschaftsbetriebe G.m.b.H." (Doc. NO-1016, II/108.) [All italics supplied.]

With regard to the judgment's conclusion that the defendant, because of his numerous positions, at times was not aware himself in which capacity he was functioning at the particular time, reference is made to his own statement on the witness stand:

"Q. Then, were you handling this matter as the personal referent of Pohl or as legal expert in Amtsgruppe W?

"A. Well, that's difficult to say that. You could say in both capacities, actually. Mr. Prosecutor you know I would like to tell you in advance that even my secretary did not always make a difference between the two. She wrote letters, sometimes under staff W and sometimes under personal Referent and, if I didn't pay good attention, then the letters were sent out under the wrong heading. I really could not judge the matter so severely and differentiate between the two." (Tr. p. 5185)

The defendant was not in any way prejudiced by the misunderstanding which brought about the confusion in the matter of filing briefs because the judgment was founded on the record and not

{1232}

on statements in the brief. Nonetheless, since the point was raised by defense counsel and so that no possible injustice could result because of the defendants not filing a reply to the prosecution briefs, this opportunity has been afforded the defendant to file additional briefs which he has now done twice.

In reply to the prosecution's brief, defense counsel, in his second further brief mentions four points. Number one has already been explained in the Mummert judgment as heretofore stated. Numbers two and three were already discussed in the defense counsel's final plea and were considered in arriving at the original judgment. The Tribunal sees no reason to change its conclusions with regard to these two items.

With regard to number four, the Tribunal has found from all the evidence that Dr. Volk's activities within the WVHA clearly established that he took a consenting part in the commission of crimes against humanity. This matter has also been discussed at some length in this supplemental opinion.

Defense counsel stated in his second further brief:

"If one denies any personal initiative on the part of a general, as chief of staff of an army, in action which he takes within his sphere of jurisdiction by virtue of his position because solely the commander is responsible, then this principle should be applied to Dr. Volk who could not possibly have acted on his own initiative in the DWB G.m.b.H."

The answer to this is a simple one. If the chief of staff simply performs military duties, he commits no crime, but if he himself violates the rules of war and the laws of humanity as established by international law he is responsible. Field Marshal Keitel, Chief of the High Command of the German Army [Armed Forces] was found guilty of war crimes and crimes against humanity and was convicted and executed even though he claimed that he had committed all his acts under the order of Hitler.

After a thorough reconsideration of the entire record in the case of Leo Volk, the Tribunal finds no reason to disturb its judgment of 3 November. The judgment and sentence against Leo Volk are therefore reaffirmed.

KARL MUMMENTHEY

On 16 November 1947, defense counsel for Karl Mummenthey filed a petition with the Military Governor for modification of sentence imposed on his client, alleging therein certain errors on the part of the Tribunal. On 12 July 1948, as the result of the order of the Tribunal defense counsel filed a "memorandum" in which much of what was argued in the petition for modification

{1233}

of sentence was repeated. Since the former presentation is the longer one and covers practically everything mentioned in the latter, the Tribunal will take up from the petition the various matters advanced by defense counsel as error.

Defense counsel is of the impression, or at least so argues, that preference was given to the prosecution over the defense in the matter of consideration of arguments respectively submitted. At the termination of the trial, defense counsel submitted a written argument of 33 single-spaced typewritten pages which covered most thoroughly and ably the case of Karl Mummenthey. The prosecution, in its closing summation of 73 pages against all the defendants, devoted less than 2 pages to the case of Karl Mummenthey. To supplement this meager treatment of Mummenthey's case, a trial brief which analyzed the evidence as it applied particularly to Mummenthey, was submitted by the prosecution. In both his petition and his memorandum, defense counsel makes much of the fact that five sentences or phrases taken from the judgment bear some resemblance to phraseology in the prosecution's trial brief. Since the material used by both the prosecution and the Tribunal, as well as the defendant, was necessarily all the same material, it is not so extraordinary that the Tribunal's findings should in some instances parallel the contentions of one or the other of the litigants. It is not contended by defense counsel that anywhere in these five fragments of similarity, the statements made by the Tribunal are not supported by the evidence. In one instance, a sentence taken from the judgment uses almost identically the same language employed by the defendant himself on the witness stand. In speaking of the defendant's efforts to ascertain whether inmates were paid, the Tribunal said that the defendant said: "He tried to find out but never got a satisfactory answer." The defendant's actual words in Court were: "I tried to find out * * * but I was never given a satisfactory reply." (Tr. p. 5605.)

In view of the Court order of 13 October defense counsel were entitled either to file replies to the prosecution briefs or the prosecution briefs should be disregarded. However, any use of the prosecution briefs prior to the order of 13 October could not in any way prejudice the defendant's cause since, as heretofore pointed out, the briefs could only speak of evidence already within the knowledge of the defendant as much as it was within the cognizance of the prosecution.

Nonetheless, since some ambiguity did result about the entire matter of filing trial briefs, the Tribunal resolved to reconsider its whole judgment so that no defendant could by any chance suffer through the lack of having filed every argument he desired

{1234}

to file. Thus defense counsel for Karl Mummmenthey, as all other counsel, were informed on two different occasions to file further briefs if they chose to do so. Defense counsel for Mummmenthey filed what he called a memorandum in which he repeats some arguments made in his petition which already covered fifty pages.

In the reconsideration of this case, the Tribunal now excludes from the evidence the letter allegedly written by Mummmenthey on 2 May 1944 to the codefendant Baier. The prosecution has acknowledged that although it had stated in open court that it intended to present this document, it did not, through an oversight, actually present the document.

Defense counsel in his petition, after making the statement, "The following immediately refutable findings are chosen at random," enumerates certain alleged errors in the findings, which will now be taken up seriatim:

a. *"In 1934 Mummmenthey did not join the General SS, but the riding units of the SS."*

In this respect, reference is made to Karl Mummmenthey's own testimony, in which the following appeared:

"Q. * * *. You joined the SS in 1934, is that right?

"A. Yes.

"Q. That's the Allgemeine SS?

"A. Reiter SS and Allgemeine SS." (Tr. p. 5680.) [All italics supplied.]

b. *"Mummmenthey did not enter the administrative office as legal advisor, but as a legal assistant."*

In this connection, reference is again made to Mummmenthey's own statement:

"In the legal department of the administrative office of the SS, I worked mainly on giving expert opinion on contracts of all types." (Tr. p. 5518.)

There can be no doubt that one who gives expert opinion is certainly a "legal advisor."

c. *"Mummmenthey did not arrange with Salpeter to be taken into the Waffen SS in order to avoid being drafted into the army. Rather, he was drafted into the Waffen SS at the instigation of Salpeter."*

Again we will look at Mummmenthey's own words to support the statement in the opinion:

" * *. In the year of 1940, since I had served with the Wehrmacht, I received an order to report to a rifle battalion, and I received that from the army corps area, Berlin-Wilmersdorf.*

I submitted this order to report for military service to Dr. Salpeter, and he told me that this was completely out of the

{1235}

question. He told me that a different settlement would be reached, and then he saw to it that I was conscripted into the Waffen SS. At the same time I was put on detached service in order to work for the DEST. (Tr. p. 5666)

" * *. In my opinion, my conscription into the Waffen SS was to serve the following purposes. One, persons who worked in the economic field were not to be subjected to the jurisdiction of the SS; two, these people were to be declared indispensable in this way. That is to say, this was to prevent their being conscripted by any military agencies." (Tr. p. 5667.)*

d. *"The Bohemia was not subordinated to office W I, but was only attached to it."*

Whether the Bohemia establishment was subordinated to Office W I, or only "attached", as defense counsel argues, is of little moment. The fact remains that it came under the jurisdiction of office W I.

*"From the fall of 1941 the direction of the so-called office W I and the leadership of the DEST and also Bohemia and Allach, which at that time from the organizational point of view, had been included in the DEST, were in the hands of Opperbeck and myself * * *. In this connection I would like to state that immediately after the departure of Dr. Salpeter the Bohemia, Allach, and Forbach, which actually did not belong in the DEST, by order of Pohl were included in a group of firms with the DEST." (Tr. p. 5529.)*

On page 5704 of the transcript, prosecution counsel asked Mummmenthey "the largest number of inmates employed in these 14 enterprises of DEST, and also Bohemia and Allach." Mummmenthey replied that the total figure was approximately between 14 and 15 thousand. Further:

"Q. Now, how did W I control and check on the operation of these plants? One way was that you made trips to the plants frequently, isn't that right?"

"A. Yes. As a business manager of the DEST, yes."

All this certainly indicates that Mummmenthey regarded the Bohemia plant as being subordinate to W I. There would be no point in his making inspection trips to these plants unless they were subordinate to the direction and control of his office.

e. "Kruse did not declare that the death rate in the camp was from 8,000 to 12,000, but only said 'from 8 to 12 percent'; therefore the death rate did not climb up to 20,000, but only to 2,000."

The testimony of the witness Kruse on this subject is as follows:

** * *. The monthly death rate in the camp of Neuengamme*

{1236}

amounted to probably between 8 and 12 percent. He also mentioned that during the construction time of the Clinker Works, the death rate had climbed up to 20 percent, particularly during the winter months. I also remember that he said, 'Once we had 1,200 dead this month'—and I believe that was in the month of January 1943."

Due entirely to a typographical error in the final stencilling process, the "8 to 12 percent" became 8 to 12,000 and the "20 percent" became 20,000. In considering the case of Karl Mummmenthey, the Tribunal accepted the testimony as it was actually given by the witness, namely, 8 to 12 percent and 20 percent. It did not 'consider the typographically incorrect 8,000, 12,000 and 20,000. It did, however, take note of the 1,200 dead referred to by the witness. It is to be observed in this connection that, so far as criminality is concerned, the guilt would be no less if Mummmenthey were responsible only for 1,200 instead of 20,000.

f. "Mummmenthey only admitted that he personally dealt with labor allocation when this was necessary."

Of course, to say that Mummmenthey only admitted dealing with labor allocation when necessary is begging the question because certainly he would only ask for inmates when it would be necessary. It was not contended by the prosecution or found by the Tribunal that he used inmates when they were not necessary. The fact is that Mummmenthey dealt with the matter of labor allocation:

"Here we dealt with the office D II with regard to all questions arising out of the inmates. We dealt with them whenever locally no agreement could be reached." (Tr. p. 5720.)

g. "Mummenthey did not say that the workers were well fed, but said that they were adequately fed in consideration of war conditions."

Mummenthey certainly intended to convey the impression that, insofar as he was concerned, the workers of DEST were well fed. Even defense counsel went on the record as saying, in commenting on Mummenthey's testimony in this regard, that the inmates received four times the amount of food received by Germans today. (Tr. p. 5619.)

Mummenthey testified that he saw the workers at lunch and observed that most of them could get second helpings. (Tr. p. 5625.) He said that the food was served warm because he could see the hot steam rising from the special containers. (Tr. p. 5654.) Testifying to the appearance of the inmates, Mummenthey said: "I would like to say that they were well rounded." (Tr. p. 5712.)

Defense counsel declared that the Tribunal "levelled most derogatory

{1237}

criticism at Mummenthey" and "compared him to a robber and murderer." This statement is utterly without foundation. What the Tribunal said in this connection was the following:

"Mummenthey's attorney in his final argument before the Tribunal said: 'Without the connection with its Holding-Gesellschaft and Pohl's power of command, and without Mummenthey's membership in the SS, the DEST and thereby Mummenthey also, would hardly have to defend themselves before this forum.' But it is precisely this which condemns Mummenthey. It is like saying that were it not for a robbery or two, a robber would not be a robber. It was Pohl's command, and by his command the entire WVHA is involved, plus Mummenthey's command as an SS officer, which made DEST what it was, an organization engaged in human slavery and human degradation."

Defense counsel states that the Tribunal did not give sufficient consideration to the witness Bickel's estimate of Mummenthey. Bickel did have words of commendation for Mummenthey, but it is not to be overlooked that although Bickel was a defense witness, he testified in the most graphic language to the atrocities, sufferings, beatings, starvation, and deaths in concentration camps, including Mummenthey's own plants. Nor did he spare Mummenthey completely. He was asked by prosecution counsel:

"Witness, didn't the defendant Mummenthey know from these monthly reports or otherwise gain knowledge of the high death rate, of sickness, of poor food, clothing, and bad physical condition of the inmates?" (Tr. p. 5482.)

And the witness replied:

"About the bad conditions of the inmates he must have had knowledge."

Defense counsel states that the Tribunal disregarded Bickel's testimony that the "plant and the plant management are not responsible for any deaths." However, Mummenthey, in addition to being business manager of DEST, was also chief of Amt W I. In this connection prosecution counsel asked Bickel if office W I would not know because of the high death rate in the Clinker Works there was being almost a complete turn-over of employees every year. And Bickel replied:

"Office W I, of course, would obtain knowledge about the problem which you have just described. It would hear about the following: the form and extent of the mechanization in the Clinker Works made it very desirable and required that the number of employees remained the same. However, the inmates where the mortality rate was extremely high, as well as concentration camp inmates, were included in the mortality

{1238}

rate. The inmates who worked in the mechanized part of the plant had a lower death rate than the inmates who worked outside." (Tr. pp. 5480-5481.)

He did say later that he believed Mummmenthey was told lies about the high mortality rate, but if the statement is true, it still does not excuse Mummmenthey from the grave responsibility of ascertaining what was happening to his employees.

Defense counsel says that the opinion in the Mummmenthey case was "one-sided," as in contrast to the opinions in all other cases. This assertion is obviously a gratuitous view because the sentence imposed on Mummmenthey was not as severe as that imposed on several other defendants.

After complaining that the judgment treated Mummmenthey harshly, defense counsel then points out the statement in the judgment:

"* * *. He (Mummmenthey) is too lacking in imagination to conjure up the planning of murder and equivalent enormities." It is precisely for this reason that the sentence in Mummmenthey's case was not capital. Defense counsel, in questioning his client, occasionally made some chiding remark about his client's phlegmatism. (Tr. p. 5611.) Whether it was because of Mummmenthey's lack of awareness, or whether it was just wanton indifference on Mummmenthey's part, which contributed to the enormities in the DEST establishment under Mummmenthey's active direction, is immaterial. He was the responsible person. He did not even deny this:

*"Q. * * * do you accept the responsibility for operation of the DEST enterprise?*

"A. I was a co-business manager of DEST German Earth and Stone Works and, in that capacity, which according to commercial law, namely according to G.m.b.H., I have to bear the responsibility for it." (Tr. pp. 5682-84.)

The witness Kruse, to whom defense counsel referred, spoke of the treatment accorded concentration camp inmates in the Clinker Works which belonged to DEST:

" * *. If an inmate collapses while he was working, which was absolutely natural due to undernourishment there and it was a daily occurrence, then he was thrown into a closed in area, closed in by barbed wire, in which daily there were between ten and thirty inmates, and they had to lie there on the bare earth regardless of whether it was winter or summer. (Tr. p. 451).*

"Q. Now, were beatings a frequent occurrence on the works?

"A. Beating was a daily occurrence in the Clinker Works." (Tr. p. 452.)

{1239}

Working in this establishment for 2½ months his weight decreased from 136 pounds to 90 pounds. Had he remained there 3 or 4 weeks longer he "would have gone through the crematory."

Mummenthey visited the DEST factories, conferred with the works managers, saw the inmates, and cannot plead ignorance to the inhuman treatment which no one can seriously deny was administered to concentration camp inmates.

Defense counsel argues that to charge Mummenthey with responsibility for conditions existing in the plants under his direction would be the same as charging "all members of all nations" with "crimes against humanity because they blinked at the commission of inhuman acts of their own nationals or those of other peoples." This statement ignores the fundamental fact that Mummenthey was legally charged with responsibility for the people under his direct management and control.

Defense counsel states that in contrast to the concluding opinion in the cases of the other defendants, the judgment does not contain the statement that the findings were established beyond a reasonable doubt. Defense counsel completely ignores what the Tribunal said on transcript pages 8059-60 in this regard:

*"Every defendant in a criminal case is presumed to be innocent until the prosecution by competent and credible proof has shown his guilt to the exclusion of every reasonable doubt. This presumption of innocence follows him throughout the trial until such degree of proof has been adduced. * * **

"If any defendant is to be found guilty under counts two or three of the indictment, it must only be because the evidence in the case has clearly shown beyond a reasonable doubt that such defendant participated as a principal in, accessory to, ordered, abetted, took a consenting part in, or was connected with plans or enterprises involving the commission of at least some of the war crimes and crimes against humanity with which the defendants are charged in the indictment. Only under such circumstances may he be convicted.

"If any defendant is to be found guilty under count four of the indictment, it must be because the evidence has shown beyond a reasonable doubt that such defendant was a member of an organization or group subsequent to 1 September 1939, declared to be criminal by the International Military Tribunal, as contained in the judgment of said Tribunal."

Thus it was not necessary to repeat in Mummenthey's judgment, as it was not stated in many of the other judgments, that Mummenthey particularly was guilty beyond reasonable doubt. This criterion is a sine qua non to the finding of guilt.

{1240}

Mummenthey admitted that people, held in concentration camps against their will, were compelled to work without remuneration. This, of course, is slavery. But defense counsel argues:

"Neither was it Mummenthey by any means who first made the DEST an inmate-worked factory, but he found this enterprise an inmate-worked plant when he entered upon his duties."

However, no authority is needed to establish the point that continuing a crime initiated by someone else does not exonerate the perpetrator of the offense.

Defense counsel states:

"It is a matter of course that a certain connection between the management of the DEST and thereby also Mummenthey's on one hand and the inmates problem on the other hand cannot be denied. This connection, however, was limited to the employment of prisoners in the plants."

Even if Mummenthey's responsibility were limited to the employment of prisoners in the plant, this would be sufficient to convict him of war 'crimes and crimes against humanity

because this is slave labor and nothing else. Defense counsel seems to forget that it is contrary to international law, municipal law, and to humanity and morals to deprive innocent people of their liberty and their well-being and because of these two deprivations, possibly deprive them also of their lives.

Defense counsel says that Mumenthey did not use the words "not improper" in connection with the subject of protective custody in concentration camps. Nor did the judgment charge him with the use of that phrase. It did impute to Mumenthey criminal knowledge of what was taking place under his eyes. Mumenthey seemed to think, and apparently his counsel agrees, that Mumenthey could be excused from responsibility by saying that he believed the Gestapo was a legal body, and that everything which Hitler and Himmler did were legal. Mumenthey's whole attitude on this subject can be gathered from his statement rather nonchalantly uttered:

"The fact about an internment in the camps as such did not seem something particularly important or something extraordinary to me." (Tr. p. 5576.)

Defense counsel says:

"One would look in vain, in the opinion of the Mumenthey case, for a single exhibit or compelling sentence to show that foreigners or prisoners of war were employed in the DEST plants."

The fact that this is not mentioned in the opinion does not mean that the evidence against Mumenthey on this point was not considered. The finding of guilt is based on the entire record,

{1241}

for it would be manifestly impracticable to quote all the testimony or even refer to all of it in the judgment. The evidence that foreigners and prisoners of war were used in the DEST plants is to be found in Mumenthey's own declarations on the witness stand.

"All I know is that in the Bohemia and in the quarry of Mauthausen, prisoners of war were being employed or were to be employed; and in the last case in order to educate them. (Tr. p. 5582.)

"I can only speak from the point of view of where I was at the time. That is the only way I can tell you about my recollection. Among the inmates in the plant at Oranienburg there were also foreigners. (Tr. pp. 5637-38.)

"There were factories, for instance, the factory of the Messerschmitt Works, where the whole plant was full of foreign workers. (Tr. pp. 5638-39.)

"Q. How many DEST plants were engaged in making war material?

"A. Flossenbuerg, St. Georgen with plane parts, Oranienburg with hand grenades, and Rothau was working with the taking apart of airplane motors. I do not know if you can call that part of armament activities. I believe so.

"Q. And in these plants that you just mentioned, inmates were employed?

"A. Yes.

"Q. And foreign inmates were employed?

"A. Yes, quite so. (Tr. p. 5657.)

"I heard about the fact that prisoners of war were to be used; however, to what extent this was actually done, I don't know. (Tr. p. 5725.)

"Q. Did you ever request prisoners of war for use in the DEST enterprises?

"A. Negotiations took place on one occasion with a prisoner of war camp about the procurement of prisoners of war. However, as far as I can recall, this plan was never carried out.

"Q. Well, you tried to get them, but you failed, is that it?

"A. Yes. This plan was disapproved.

"Q. And where were you going to use these prisoners of war?

"A. In my opinion, they were to be used at Neurohlau. (Tr. pp. 5738-39.)

"These prisoners of war worked for Bohemia, and then later the labor office withdrew them. I didn't consider the employment of these prisoners of war to be incorrect because after all they were manufacturing porcelain goods here." (Tr. p. 5740.)

Defense counsel seeks to convey the impression in his petition

{1242}

to the Military Governor that DEST employees obtained remuneration. He states:

"The DEST paid a voluntary bonus to the inmates, which amounted to approximately one-third of the inmates' wages paid to the Reich."

Commenting on this, it is enough to quote from the defendant himself:

"A. I took the attitude toward Dr. Salpeter and the managers that between DEST and the inmate no contract existed which is the reason DEST was not under obligation to pay wages. It was up to Reich to pay some compensation to the inmates from what DEST paid to the Reich by way of compensation for inmates, and we regarded it as contribution to various expenses borne by the Reich. (Tr. p. 5596.)

"Q. Why, you managed the industries that used these men to work, a number of industries, didn't you?

"A. Yes.

"Q. And you mean to say that you have no idea whether these inmates got any money for their labor or not? Now, do not be ridiculous, answer truthfully.

"A. Mr. President, from what I knew at that time I cannot say how the concentration camp gave anything to the inmates. All I can tell is what I saw from my own sphere of work. (Tr. p. 5603.)

"Q. I am glad that your eyes have been opened. Now, that they are open, are you convinced that the inmates got nothing but food and shelter for their 11-hours-a-day work? Do you believe that now?

"A. I am convinced of this today. Yes.

"Q. All right. Well, I call that slavery. What do you call it?

"A. Looking backwards, you can call it that, yes, retrospectively. (Tr. p. 5603.)

"Judge Phillips: Well, looking back from today, speaking as one member of this Tribunal and only for myself, if you had as much to do with the workings and the labor of as many concentration camp inmates as you admit that you did have, you are in grave danger of being guilty of criminal negligence in not finding out more than you did find out. A man can't sit idly by and have things like this happen and say, 'I didn't know', when he could have found it out by reasonable diligence." (Tr. p. 5604.)

It would seem that defense counsel sees every wrong in the judgment. Taking up the judgment's reference to Mummthey's connection with OSTI, defense counsel says:

"First of all the quotation is given incorrectly, in spite of

{1243}

*having been established repeatedly in the evidence, in as far as in the original communication of 21 June 1944, it does not say: 'by' Mummenthey but 'via' Mummenthey (NO-1271, Pros. Ex. 491) * * * "*

But the judgment actually reads: "Mummenthey had to know of OSTI and its nefarious program. The final audit of OSTI was prepared by one Fischer who said in his statement of the audit: 'I received through SS Obersturmbannfuehrer Mummenthey the order to audit the Ostindustrie.'" (Tr. p. 8186.)

The first sentence in Document NO-1271, from which this quotation was taken, reads:

*"In April 1944 I received through SS-Obersturmbannfuehrer Mummenthey the order to audit the Ostindustrie * * * ."*

As to the Action Reinhardt, it was not asserted in the judgment, nor was it claimed by the prosecution that Mummenthey actively participated in the action proper, but it did say that DEST derived some benefits from the Action Reinhardt. In this connection defense counsel put the following question to his client:

"In the course of this trial the words 'Action Reinhardt' and 'Reinhardt fund' has been used repeatedly. And in particular the DEST has been connected insofar as the loan from the Gold Discount Bank was granted. And all those loans were to have come from the Reinhardt fund through the knowledge of DEST. What do you know about that?" (Tr. pp. 5663-64.) And Mummenthey replied:

"Two loans by the German Gold Discount Bank were granted in 1939 and 1941."

The knowledge which Mummenthey possessed of the Action Reinhardt is not one of the major items of proof of criminality against him. Nevertheless, it is not correct to say, as defense counsel says, that because a crime has been completed no further crime may follow from it. Receiving stolen goods is a crime in every civilized jurisdiction and yet the larceny, which forms its basis, has already been completed.

Defense counsel states:

"Nothing is farther from my mind than to want to palliate the deeds of men who—no matter what their motives may have been—have debased the German reputation in the world."

He thus admits that crimes were committed in the concentration camps and the slave industries associated with them. If there were crimes, then there was responsibility, and who are the responsible ones? Karl Mummenthey is one of them. In the zeal of representing his client, defense counsel ignores the statements made by Karl Mummenthey himself. What kind of a mentality

{1244}

is it that declares, as Mummenthey did on the witness stand, that these poor beaten, starved wretches in the concentration camps worked "with willingness and love?"(!) To physical injury Mummenthey thus added criminal impertinence. After Mummenthey's extraordinary utterance about love, he was asked by the Tribunal:

"How can you say, Witness, that any man would love to be in prison and to work for months or years for nothing? Do you think any man would be happy to be imprisoned and work every day and get nothing for it?" (Tr. p. 5634.)

And he replied:

"Your Honor, I can only tell you what I can remember about those things at the time. Just as I stated before, that's the way it was."

Defense counsel speaks of Mummmenthey's "sympathy" which "springs from his deep human feelings." Yet, with all those sympathies he made the following utterances from the witness stand:

"A. I couldn't possibly have a fundamental misgiving against the compulsory labor on the part of the concentration camp inmate in the concentration camps. (Tr. p. 5579.)"

"Q. Oh, yes, before you leave the subject; you said that you assumed that anything that the Gestapo did was legal?"

"A. Yes."

"Q. Well, then, of course you assumed that anything that Hitler or Himmler did was legal?"

"A. According to my opinion at the time, yes. (Tr. pp. 5579-80.)"

*"Q. * * *. You didn't see anything illegal in the employment of inmates, is that correct?"*

"A. Yes. (Tr. p. 5580.)"

"The President: If you saw an inmate using a prisoner of war uniform designated as a prisoner of war, and working on munitions, you would have said: 'Well, it must be all right, it is legal.'"

"A. At the time I'd have to assume that." (Tr. pp. 5584-5.)"

In his memorandum filed 12 July defense counsel refers to a statement in the judgment against Volk, taking issue with the utterance therein:

"On 1 July 1943, Mummmenthey wrote the commandant of the concentration camp at Flossenbuerg that he and Volk were coming to visit him and specifically asked him to make arrangements so that Volk could visit the camp."

The letter referred to appears in Document NO-1030 and the disputed passage reads:

{1245}

*"As SS Hauptsturmfuehrer Dr. Volk does not yet know Flossenbuerg and would like to get to know it, we will * * *."*

In the English translation the pronoun "it" appeared as "camp". Although admitting that this was an incorrect translation, the prosecution insisted that the sense of the entire declaration obviously made it mean camp. Mummmenthey said that the letter referred "to the visit of the plant of Flossenbuerg of DEST." Defense counsel argues to the same effect, but there is nothing in the letter to bear out this interpretation. On the other hand, the interpretation given the letter by the prosecution is the more logical one. Flossenbuerg is a village of from 1,000 to 1,500 population. There is no reason why Volk would want to make a special trip to see the village itself. The important thing about Flossenbuerg was its concentration camp. The defendant admitted that if they wanted to make the trip to the village of Flossenbuerg it certainly would not be necessary to get the permission of the concentration camp commander to do so. (Tr. p. 5699.)

Mummmenthey not only took an active part in the management of DEST but he revealed a lively interest in the concentration camps themselves. The affidavit of Franz Josef Pister, former commander of the Buchenwald concentration camp, contained this item:

"The commander conferences, which took place at intervals of 3 to 4 months, opened on the first day, mostly beginning at 1500 hours, under Pohl's direction, in the WVHA in Berlin: besides the

commanders of the main camps, sometimes all the Amtsgruppen chiefs and Amt chiefs, who were concerned with concentration camps were present. To these participants belong: Pohl, Gluecks, Tschentscher, both Loerners, Dr. Volk, the chief physician, Dr. Lolling, Frank—the latter until his assignment as administration chief of the police only—Mummenthey, Opperbeck, Maurer, Sommer and Schmidt-Klevenow.

"The questions which were discussed at these meetings were mostly the following: labor assignment, food rations, clothing, quarters, treatment of the prisoners, nature of punishment and the carrying out of punishments, erection of new outside camps, evacuation of invalids to other camps, questions of troops and guards, particularly—since there was a considerable shortage of guards—training of female wardens and their recruiting. These meetings took place partly in the WVHA in Berlin and partly in the building of Amtsgruppe D in Oranienburg." (Doc. NO-2327, III/110.)

Papers filed 27 July 1948

On 12 July 1948 Dr. Froeschmann, counsel for Karl Mummenthey said (p. 9 of his memorandum):

"As counsel for the defendant Mummenthey, I must, therefore,

{1246}

decline to avail myself of the authorization of the Military Tribunal and comment in some way or other upon the contents of the prosecution closing brief."

On 27 July 1948 he filed 3 papers entitled respectively, "Statement", "Declaration", and "Comparison." None of these papers contains anything which he had not already stated in his petition and memorandum. Despite his many representations, Dr. Froeschmann cannot in justice ever protest that he was not given the fullest opportunity to present arguments in behalf of his client.

As in his petition and memorandum, Dr. Froeschmann in his statement, declaration, and comparison again devotes much time to showing that the Tribunal considered the closing brief of the prosecution. A reading of the judgment will show that the Tribunal did not neglect Dr. Froeschmann's brief, but quoted literally therefrom.

In making the comparison between the prosecution's closing brief and the Tribunal's judgment, defense counsel should have gone one step further and noted the comparison between the prosecution's closing brief and the evidence in the case. In almost every instance where the Tribunal's judgment parallels the prosecution brief, it will be found also that it corresponds with the evidence as given in Court on the witness stand or from a document. If buildings A and B are to be constructed from material furnished by the C factory, it is inevitable that buildings A and B will in some instances have materials which resemble each other.

Instead of demonstrating reasons why the judgment does not justify condemning Mummenthey, if that be a fact, defense counsel numerously repeated that has been accepted as an unprejudicial misunderstanding between what was said in open Court and what appeared in the Court order. From the statement in open Court the prosecution assumed that it could file closing briefs, and did so; and from the same statement some defense counsel assumed they could not. Two of the defense counsel apparently agreed with the prosecution that briefs could be filed, and did so. Prior to 13 October the prosecution filed several closing briefs; some were considered, others were not.

The prosecution brief filed in the Mummenthey case in no way prejudiced Mummenthey. With the exception of the letter of 2 May 1944, which has now been excluded, and the typographical error of percentages heretofore referred to, Dr. Froeschmann does not dispute the correctness of findings by the Tribunal which corresponded to assertions in the prosecution brief. And it is on this basis that the judgment must be founded; on the fact in

{1247}

the case and not what either counsel may say about the facts. The briefs of respective counsel are not evidence. If neither prosecution nor defense counsel had filed briefs, or if both sides had filed many briefs, or if one side had filed more briefs than the other, the judgment would still have to be based on the evidence in the record—and that alone.

Whatever disadvantage the defense claim they may have suffered because of the order of 13 October 1947, is now being rectified. The Tribunal has reconvened for the purpose of correcting any error and of making any revision which justice dictates. The fact that Dr. Froeschmann has not added anything to what was contained in his petition of 17 November 1947, in the way of substantive argument in behalf of his client, offers the explanation that he has nothing further to say for Karl Mummenthey.

The Tribunal having reconsidered the entire record in the Mummenthey case in accordance with what has been stated in this supplementary opinion, now concludes that nothing has been presented since the judgment of 3 November 1947, to justify any change or modification of it. Under all the evidence in the case the Tribunal concludes that the sentence is entirely proper and just. The judgment and sentence are accordingly reaffirmed.

HANS BOBERMIN

Dr. Gawlick has submitted an interesting, exhaustive, and able, "further brief," in behalf of his client Hans Bobermin. The brief has been read with great care and the original record has again been examined. The Tribunal is convinced that Hans Bobermin is not a brutal personality. Had it not been for the Nazi regime, there is no reason to disbelieve that his life would have been free of criminality and of direct or indirect violence. One of the most frightful aspects of National Socialism was its corroding influence on people originally of good conscience and of good will. However, these who fell under the evil effects of Hitlerism cannot excuse themselves from blame by pleading coercion. There was a time when they were free to do as they chose. There came a time when the intentions of Hitler and his Nazi Party—unprovoked aggression against other nations, enslavement of innocent peoples, extermination of populations, expropriation of property—became plain to any one with a modicum of intelligence. All this had to be clear to Bobermin as it was clear to those who were convicted at the IMT trial.

Bobermin did not lead an army of bayonets into Poland, nor did he sign any decrees of executions against unoffending peoples.

{1248}

He did, however, take over properties that were seized from innocent proprietors. Naturally he did not do this alone; he did it under the authority of his government, but his

government was engaged in an obviously illegal enterprise. His government was taking property from Poles and Jews for reasons of plunder and spoliation alone. Even though it may be argued that the Poles were to be regarded as enemies since their country was at war with Germany, it cannot be said with any semblance of reasoning that the Jews were making war on Germany. The taking of their property was nothing less than organized theft. The seizure of their property was part of a program of oppression and extermination, of which Bobermin could not be ignorant. Max Winkler, chief of Main Trustee Department East, and who testified for Bobermin, stated on the witness stand that towards "the end of 1944, I heard what happened to the Jews." He was asked whether these Jews would get their property back and he replies: "Well, not if they were dead."

Defense counsel says that Bobermin could not have known about this since he went to Hungary in 1944, but it is difficult to assume that, charged as he was with the administration of these seized plants, he would not make some inquiry as to what had happened to the owners of the plants.

It is true, as defense counsel points out in his further brief, that Bobermin apparently had nothing to do directly with the administration and supplying of concentration camps as such, but it cannot be assumed that merely because he was 250 kilometers away from Berlin he could be entirely ignorant of the nature of the main office of which his own office was a component part.

Bobermin cannot be absolved from responsibility because the actual act of seizure of the brick works had been achieved prior to the time he took them over, provided he was aware of the illegal nature of the seizure. Dr. Gawlick makes a point between "expropriation and seizure" but the important thing to consider is the intention of the Reich in taking over the properties. Document NO-1008, which enumerated the classes of persons or organizations which may apply for the properties after the war, described one category as:

"those who are considered worthy by the Reich Commissioner for Strengthening the German race [for commitment] in the East [Reichskommissar fuer die Festigung deutschen Volkstums fuer den Osteinsatz]."

This naturally would exclude the former Jewish owners and this naturally would make the seizing of their property pure plundering and spoliation.

{1249}

Dr. Gawlick says in his further brief:

"Seizure of alien property by the occupying power is admissible according to the Hague Convention whenever such steps are requisite for the maintenance of public order and security in the occupied territories."

But the record does not show that "such steps were requisite for the maintenance of public order and security in the occupied territory."

Dr. Gawlick says further:

"The attempt to differentiate between the proprietors was not made by Dr. Bobermin but by the Main Trustee Office East which, being an entirely independent Reich office, had no connection whatever with the WVHA and the office W II."

"Dr. Bobermin can, therefore, not be made responsible for the fact that in connection with the seizure, differential treatment was meted out to the Poles and Jews on the one hand, and ethnic Germans on the other. Legal responsibility in this respect rests with the German Reich, in particular with the Main Trustee Office East."

The time has passed when the executant of an obviously illegal, unconscionable and inhuman program can take refuge behind the assertion that it was not he who issued the order. Any one ordered to perform a patently illegal and inhuman act is charged by law to protest the order to the extent of his ability, short of endangering his own security. If he fails to do so he will be required to answer for the execution of the illegal act. Whether it be an order calling for the killing of innocent people or the taking of property from innocent proprietors, the rule is the same. By the promulgation and enforcement of this rule, some dignity is being restored to the human race.

Hans Bobermin has been convicted for his part in the crime of camp Golleschau. Dr. Gawlick argues that Bobermin had no authority over Golleschau and that only the camp commander had anything to do with the inmates employed there. Bobermin was the administrator of the plants in which these inmates worked and he obtained, in an official sense, the benefits of their work. He knew the workers were concentration camp inmates and he had to know that this was slave labor.

It is argued in Bobermin's behalf that in any event his criminality cannot be so great when, out of from 300 to 400 plants, concentration camp inmates were employed in only one of them. The crimes of the Nazi regime were committed on so vast a scale that it comes easy to plead forgiveness for a man who illegally exploited only several hundred people instead of several hundred thousand.

{1250}

It is not claimed by the prosecution, nor was it stated by the Tribunal, that Bobermin personally maltreated anyone, but it has been established that he took a consenting part in the commission of war crimes and crimes against humanity. It has been demonstrated beyond a reasonable doubt that he participated in a program of spoliation and plundering and that he authorized the use of concentration camp labor in the plant at Golleschau.

Defense counsel has pleaded that even if it be admitted that Bobermin was somewhat to blame for what transpired under his jurisdiction, the sentence imposed on him was too severe. There is this to be said in this connection. In Nuernberg the offenses of spoliation and slave labor have not been punished uniformly. Tribunals have differed on the measure of punishment meted out to those convicted of these offenses.

While not attempting to adjust the sentence in this case to what may have been imposed in any other cases, the Tribunal is satisfied, after a review of all the evidence, that the term of imprisonment to which Bobermin was sentenced should be reduced.

Order Confirming or Amending Original Judgment and Sentences

UNITED STATES MILITARY TRIBUNALS
SITTING IN THE PALACE OF JUSTICE, NURNBERG,
GERMANY

AT A SESSION OF MILITARY TRIBUNAL II
HELD 11 AUGUST 1948, IN CHAMBERS

The United States of America

vs.

Oswald Pohl, et al., defendants.

Case No. 4

Order Confirming or Amending Original Judgment and Sentences

The Tribunal, having this day filed with the Secretary General its written opinion and supplemental judgment in this cause, in conformity therewith:

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Oswald Pohl be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947

{1251}

as to the defendant Franz Eirenschmalz be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Karl Sommer be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant. August Frank be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Karl Mumenthey be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Hans Loerner be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Erwin Tschentscher be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Hermann Pook be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Hans Baier be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Leo Volk be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment heretofore entered and the sentence heretofore imposed on 3 November 1947 as to the defendant Hans Hohberg be and they are hereby confirmed in all respects.

It is ordered and adjudged that the judgment of the Tribunal entered on 3 November 1947 and the sentence imposed on said date as to the defendant Georg Loerner be and it is hereby amended as follows:

It is ordered and adjudged that the judgment of 3 November 1947 finding said defendant Georg Loerner guilty as charged in counts two, three, and four of the indictment is hereby in all

{1252}

respects affirmed. The sentence of said defendant on said date is hereby reduced from death by hanging to life imprisonment.

It is ordered and adjudged that the judgment of the Tribunal entered on 3 November 1947 and the sentence imposed on said date as to the defendant Max Kiefer be and it is hereby amended and modified as follows:

It is ordered and adjudged that the judgment of 3 November 1947 finding said defendant Max Kiefer guilty as charged in counts two, three, and four of the indictment is hereby in all respects affirmed. The sentence of said defendant on said date is hereby reduced from life imprisonment to 20 years imprisonment.

The judgment of the Tribunal entered on 3 November 1947 and the sentence imposed on said date as to the defendant Heinz Karl Fanslau be and it is hereby amended and modified as follows:

It is ordered and adjudged that the judgment of 3 November 1947 finding said defendant Heinz Karl Fanslau guilty as charged in counts two, three, and four of the indictment is hereby reduced from 25 years imprisonment to 20 years imprisonment.

It is ordered and adjudged that the judgment of the Tribunal entered on 3 November 1947 and the sentence imposed on said date as to the defendant Hans Bobermin be and it is hereby amended and modified as follows:

It is ordered and adjudged that the judgment of 3 November 1947 finding said defendant Hans Bobermin guilty as charged in counts two, three, and four of the indictment is hereby in all respects affirmed. The sentence of said defendant on said date is hereby reduced from 20 years imprisonment to 15 years imprisonment.

It is further ordered and adjudged that the time within which said defendants may petition the Military Governor of the United States Zone of Occupation for review of the judgment and sentences herein set forth under the provisions of Control Council Law No. 10 shall begin to run from the date on which a copy of the supplemental judgment shall be filed in the German language with the Office of Defense Information and not before.

[Signed] ROBERT M. TOMS

Presiding Judge

[Signed] FITZROY D. PHILLIPS

Judge

[Signed] MICHAEL A. MUSMANNO

Judge

{1253}